

I N D E X

	PAGE
Writ of Certiorari.....	1
Return	3
Stipulation	5
 PROSECUTOR'S DEPOSITIONS:	
W. Fred Brelsford—Direct.....	7
Cross	35
Dr. James V. Roberts—Direct.....	51
Cross	53
 RESPONDENT'S DEPOSITIONS:	
Thomas Lee—Direct.....	54
Reasons	56
Notice and Petition of Appeal.....	i
Stipulation	iii
Notice	iv

NOTICE AND PETITION OF APPEAL

INDEX

Page

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

48

49

50

51

52

53

54

55

56

57

58

59

60

61

62

63

64

65

66

67

68

69

70

71

72

73

74

75

76

77

78

79

80

81

82

83

84

85

86

87

88

89

90

91

92

93

94

95

96

97

98

99

100

NOTICE AND PETITION OF APPEAL

NEW JERSEY SUPREME COURT.

GARRETT D. LOGAN,
Prosecutor, }
vs. } Notice and Petition 10
CITY OF BEVERLY, } of Appeal.
Defendant. }

To V. Claude Palmer, Esq., Attorney for Prose-
cutor:

Take Notice, that the defendant, the City of Beverly, appeals to the Court of Errors and Appeals, in the last resort in all causes in New Jersey, from the whole of the judgment entered in this cause on the following grounds: 20

First: The Supreme Court erred in holding that the ordinance which is the subject of this litigation should be set aside because a remonstrance against the passage of the ordinance was disregarded when the ordinance including curbing and in holding that the said improvement was a local improvement under the act known as Chapter 152, Pamphlet Laws of 1917. 30

Second: That the Court erred in holding that the entire ordinance was void, when by the very na-

ture of the ordinance, it was divisible and should have been only held void in part, if void at all.

FRANCIS J. SMITH,

*Attorney for Defendant
and Appellant.*

[ENDORSED]

10

Service of copy of within notice is hereby duly acknowledged this 6th day of Feb., 1920.

Palmer & Powell,

Attys. of Deft.

20

30

STIPULATION.

COURT OF ERRORS AND APPEALS.

GARRETT D. LOGAN,

Appellee,

vs.

CITY OF BEVERLY,

Appellant.

Stipulation.

10

The parties to this cause, plaintiff and defendant, by their several attorneys, hereby agree that the printed state of the case as used in the argument of this cause in the Supreme Court, be and the same is hereby stipulated and agreed to be the state of the case for the argument of this matter in the Court of Errors and Appeals, except that there shall be added the notice of argument and notice and petition of appeals in this matter.

20

It is further stipulated that the service of a copy of the state of the case as used in the court below upon the attorney for the appellee shall be good and sufficient service of the state of the case in this court.

V. CLAUDE PALMER,

Attorney for Appellee.

FRANCIS J. SMITH,

Attorney for Appellant.

30

NOTICE.

COURT OF ERRORS AND APPEALS.

10	GARRETT D. LOGAN, <i>Prosecutor,</i>	}	On Certiorari.
	vs.		
10	CITY OF BEVERLY, <i>Defendant.</i>		Notice.

SIR:

Take Notice, of the argument of the issue joined in this cause before the Court of Errors and Appeals of New Jersey, to be held at the State House, in the City of Trenton, State of New Jersey, on the first Tuesday in March, next, at eleven o'clock in the forenoon, or soon thereafter as the Court can attend to the same.

Yours respectfully,

FRANCES J. SMITH,

Attorney for Defendant.

TO

V. CLAUDE PALMER, ESQ.,

Attorney for Prosecutor.

30

[ENDORSED]

Service of copy of within notice is duly acknowledged on sixth day of Feb., 1920.

Palmer & Powell,
Atty. for Deft.

WRIT OF CERTIORARI.

New Jersey, to wit: The State of New Jersey, to W. Fred Brelsford, Clerk of the Board of Commissioners of the City of Beverly, and the Board of Commissioners of the City of Beverly, Greeting:

We, being willing, for certain reasons, to be certified of a certain ordinance passed by the Board of Commissioners of the City of Beverly, in the State of New Jersey, on the 3d day of June, 1919, entitled "An ordinance regulating and Providing for the Construction, Reconstruction, Paving, Repaving, Curbing, Recurbing, Improving and Repairing the sidewalks, in the Streets of the City, at the cost and expense of the Owner or Owners of lands in front of which any such improvement shall be made, and for the Regulating and Providing for the Construction, Reconstruction, Paving, Repaving, Curbing, Recurbing, Improving and Repairing the sidewalks in the angles of the intersection of the Streets and the Curbing thereof and the laying of cross walks at the General Expense of the City," and a certain ordinance introduced and passed on first and second reading by the Board of Commissioners of the City of Beverly in the State of New Jersey, on July 1st, 1919, entitled "An Ordinance Regulating and Providing for the Construction, Reconstruction, Paving, Repaving, Curbing, Recurbing, Improving and Repairing the sidewalks in the Streets of the City at the cost and expense of the Owner or Owners of land in front of which any such improvement shall be made."

We do command you that the aforesaid ordinance passed by the Board of Commissioners of the City of Beverly, the first of which was passed on June

3d, 1919, and the second of which was passed on first and second reading on July 1st, 1919, with the record of the notices sent to the property owners, of the proposed introduction of said ordinances, together with proof of the publication or service thereof, together with the records of the minutes of the said Board of Commissioners at which said ordinances were introduced and passed, together with all things touching and concerning the passing, approving and
 10 enacting of the said ordinances, together with all notices sent to property owners and the record of proceedings for providing the money to pay for said improvement, as fully and entirely as before you they remain, to our Justices of the Supreme Court, Adjudicature, at Trenton, on the 24th day of October, instant, next you certify and send, together with this writ, that therein may be done, what of right and according to the laws of this State should be done.

20 Witness, William S. Gummere, Esq., Chief Justice of our Supreme Court, at Trenton, this 14th day of October, nineteen hundred and nineteen.

ENOCH L. JOHNSON,
Clerk.

PALMER & POWELL,
Atty. for Prosecutor.

[ENDORSED]

30

This writ is allowed. Let it be sealed, on condition that it be brought on for argument at November Term, 1919.

Samuel Kalisch,
 Justice of the Supreme Court.
 Dated October 14, 1919.

RETURN.

*To the Honorable, the Justices of the Supreme Court
of Judicature of New Jersey:*

I, W. Fred Brelsford, Clerk of the Board of Commissioners of the City of Beverly, in the County of Burlington and State of New Jersey, in obedience to the command of the writ hereto annexed, to me directed, do hereby certify and send to you, the said Justices, a certain ordinance passed by the Board of Commissioners of the City of Beverly, in the State of New Jersey, on June 3d, 1919, entitled "An Ordinance regulating and providing for the construction, reconstruction, paving, repaving, curbing, recurbing, improving and repairing the sidewalks in the streets of the city, at the cost and expense of the owner or owners of land in front of which any such improvement shall be made, and for the regulating and providing for the construction, reconstruction, paving, repaving, curbing, recurbing, improving and repairing the sidewalks in the angles of the intersections of the streets and the curbing thereof, and the laying of cross walks at the general expense of the city," together with the record of the notices sent to the property owners of the proposed introduction of said ordinance, together with proof of the publication or service thereof, together with the records of the minutes of the said Board of Commissioners at which said ordinance was introduced and passed, together with all things touching and concerning the passing, approving and enacting of the said ordinance, and the record of the proceedings for providing the money to pay for said improvements as fully and entirely as the same re-

main in my hands and possession, as by the said writ I am commanded as appears by the testimony hereto annexed.

In witness whereof I have hereunto set my hand and seal this twentieth day of October, nineteen hundred and nineteen.

W. FRED BRELSFORD,
Clerk of the Board of Commissioners of the City of Beverly.

10

20

30

STIPULATION.

NEW JERSEY SUPREME COURT.

GARRETT D. LOGAN,
Prosecutor,

vs.

W. FRED BRELSFORD, City
Clerk of the City of
Beverly, in the County
of Burlington, and The
Board of Commissioners
of the City of Beverly,
Defendants.

On Writ of Cer-
tiorari.
Stipulation.

10

20

It is hereby agreed that the testimony heretofore taken upon a rule to show cause why a writ of certiorari should not be issued to review a certain ordinance of the City of Beverly, shall be considered as the return to the writ allowed on October 14th, 1919, and shall be used upon the argument of the writ the same as though it had been taken for that purpose, together with the fact that the prosecutor, Garrett D. Logan, is an owner of property, and a taxpayer of said City of Beverly, owning property which would be affected by said ordinance.

PALMER & POWELL,
Attys. for Prosecutor.
FRANCIS J. SMITH,
Atty. for Defendants.

W. FRED BRELSFORD, SWORN.

By Mr. Palmer:

Q. Now, Mr. Brelsford, you are City Clerk of the City of Beverly?

A. I am.

Q. And have been for how long?

A. Since the 1st day of May, 1919.

Q. Have you with you the minute book or the minutes of the Board of Commissioners of the City of Beverly? 10

A. I have.

Q. Will you produce that book?

A. Right here, sir.

Q. Let me look at it just a minute. (After examining book). Mr. Brelsford, turning to your minutes of the meeting of May 6, 1919, will you read the resolution that there appears with reference to the sending of notices to property owners with regard to a contemplated sidewalk improvement ordinance? 20

A. "Mr. Perkins upon leave offered the following resolution: Be it resolved that the City Clerk be and he is hereby directed to notify the property owners of the City of Beverly that an ordinance will be introduced at a meeting to be held on May 20th, 1919, at 8 P. M., providing for the laying of sidewalks and curbs on all of the streets of the said city, the same to be charged against the abutting property owners." 30

Q. Now, in pursuance of that resolution, what did you do?

A. Well, notice was sent to the property owners as per this—I don't know what you call it.

Mr. Smith: Proof of service?

The Witness: Proof of service.

Q. Now, according to that proof of service, when were those notices sent?

A. On the 8th day of May, 1919.

Q. How was that service made on the property owners?

A. Partly by mail and the nearby ones were delivered by one of the constables.

10 Q. What does your affidavit say was done with them?

A. It states that they were mailed in the post office.

Q. Now, is there any proof of any service of any notice by anyone else other than by you?

A. Not regarding this, no.

Q. Does that list that you have in your hand, purporting to be a list of names of property owners who were notified that this ordinance would be introduced, contain all the names of the property owners of the City of Beverly?

A. That I could not swear to.

Q. Well, you have made an affidavit saying that you served by mail a notice on the parties in that list; does that contain all of the property owners of the City of Beverly?

A. I don't know.

Q. As far as you know the only service of this notice that was made was made by you and made by mail to such names as appear on this list?

A. As far as I know, yes.

Q. Now, will you read into the record the notice that was mailed by you to the parties on that list?

A. "Take Notice. To the property owners of the City of Beverly: Take notice that an ordinance will be introduced at a meeting of the Board of Com-

missioners of said City to be held on Tuesday, May 20, 1919, at 8 o'clock P. M., providing for the laying of sidewalks on and curb of all streets of said City, the same to be assessed against the abutting properties. A public hearing on said ordinance will be held at that time and place. By order of the Board of Commissioners, W. Fred Brelsford, City Clerk."

Q. Now, can you tell, Mr. Brelsford, by looking through that list, whether or not it has on it all the names of all the property owners of the City of Beverly? 10

A. No, I cannot.

Q. Now, Mr. Brelsford, will you turn to your minutes of the meeting of May 20th and read the first item with reference to this ordinance?

A. Do you mean with regard to the bills and things like that?

Q. No, with regard to the ordinance.

A. "Mr. Perkins moved that the ordinance entitled 'An ordinance regulating and providing for the construction, reconstruction, paving, repaving, curbing, recurbing, improving and repairing the sidewalks in the streets of the city at the cost and expense of the owner or owners of lands in front of which any such improvement shall be made' be taken from the table and placed back on first reading for the purpose of amendment." 20

Q. Now, was that the first thing that was done with regard to this ordinance on this meeting of May 20th? 30

A. I believe so.

Q. Is there any record in the minutes of May 20th of the introduction of that ordinance prior to the resolution that you have just read?

A. No, sir, I believe that is the first.

Q. Then the minutes of this meeting of May 20th do not show the introduction of this ordinance? The first thing being shown on the minutes is the resolution that it be placed back on first reading for the purpose of amendment; that is correct, isn't it?

A. As far as I can see.

Q. Now, the resolution that you have just read does not appear in the order in the minutes with relation to other items therein; why was it placed out
10 of order?

A. Well, I will tell you: I write these minutes up on Sunday morning from notes, and my notes are all on pieces of paper or on a pad, and in writing them up I got hold of the wrong piece of paper, is the only explanation I can make, and after I had the resolution—or not the resolution, but the ordinance, all written in the book, it looked wrong to me, and in going through my papers I found these motions,
20 and I immediately went to Mr. Smith and had him straighten me out on the matter.

Q. Now, when was that resolution written in that you have read?

A. On the Sunday following May 20th.

Q. And merely appears out of place because of your mistake in getting hold of your notes?

A. That is all, entirely.

Q. What is the next thing that appears in the minutes with reference to this ordinance in this same meeting of May 20th?

30 A. "Mr. Perkins moved that the ordinance heretofore introduced entitled, 'An ordinance regulating and providing for the construction, reconstruction, paving, repaving, curbing, recurbing, improving and repairing the sidewalks in the streets of the city at the cost and expense of the owner or owners of lands in front of which any such improvement shall be

made' be amended as contained in this amendment, which motion was carried."

Q. What was the amendment? What do your minutes show the amendment to be?

A. "Mr. Perkins moved that Section 3 of the ordinance entitled, 'An ordinance regulating and providing for the construction, reconstruction, paving, repaving, curbing, recurbing, improving and repairing the sidewalks in the streets of the city at the cost and expense of the owner or owners of lands in front of which any such improvement shall be made,' be amended to include both sides of Jennings Street from Pine to Warren Street." 10

Q. What is the next thing that appears in your minutes of this meeting with reference to this ordinance?

A. The Clerk was directed to read the ordinance as amended, which is as follows:

"AN ORDINANCE"

"Regulating and Providing for the Construction, Reconstruction, Paving, Repaving, Curbing, Recurbing, Improving and Repairing the Sidewalks, in the Streets of the City, at the cost and expense of the Owner or Owners of lands in front of which any such improvements shall be made, and for the Regulating, and Providing for the Construction, Reconstruction, Paving, Repaving, Curbing, Recurbing, Improving, and Repairing the sidewalks in the angles of the intersections of the streets and the Curbing thereof and the laying of cross walks at the general expense of the City." 20 30

Be it ordained and enacted by the Board of Commissioners of the City of Beverly, assembled, and it is hereby enacted by the authority of the same.

Section 1. That the sidewalks on the streets of this City hereinafter specified shall be paved with a

cement or concrete pavement, and shall be curbed with a cement or concrete curb. When the pavement is of less width than the whole sidewalks the pavement to be laid in the center line of said sidewalk as monumented for the said lines, and to be of dimensions, material and workmanship as set forth in the plans and specifications prepared by the City Surveyor and a copy of which is filed in the office of the said City Surveyor and in the office of the Collector of Taxes, and that there shall be written upon each of said copies at the time of filing the same, the title of this ordinance and signed by the said City Surveyor and Collector of Taxes, respectively, for the purpose of identification, provided that the curbing may be of any suitable material.

10 Section 2. That there shall be and hereby is appropriated for the purpose hereinbefore referred to and on the Streets herein enumerated the sum of Fifty Thousand Dollars, (\$50,000) or so much thereof as shall be necessary for the purpose.

20 Section 3. That the sidewalks upon the following streets shall be paved and curbed in accordance with the provisions of this ordinance, to wit:

Both sides of Warren Street, from East City Line to West City Line;

Both sides of Cooper Street, Railroad Avenue to Bank Street;

Both sides of Putnam Street, Cooper Street to Mount Holly Street;

30 Both sides of Pine Street, East City Line to Mount Holly Street;

Both sides of Walton Avenue, Railroad Avenue to Pine Street;

North side of Railroad Avenue, East City Line to Mount Holly Street;

Both sides of Broad Street, Railroad Avenue to Bank Street;

Both sides of Oak Street, Magnolia Street to Cooper Street;

Both sides of Elizabeth Street, Railroad Avenue to Perkins Street;

Both sides of Jennings Street, Pine Street to Warren Street;

Both sides of Wilmerton Street, Church Street to Warren Street;

Both sides of Church Street, East City Line to Cooper Street;

10

Both sides of Perkins Street, Cooper Street to Parker Street;

Both sides of Van Kirk Street, Warren Street to North end of Van Kirk Street;

Both sides of Van Sciver Street, Warren Street to North end of Van Sciver Street;

Both sides of Walnut Street, Warren Street to North end of Walnut Street;

Both sides of Spruce Street, Railroad Avenue to Oak Street;

20

Both sides of Mount Holly Street, Railroad Avenue to Third Street;

Both sides of Laurel Street, Railroad Avenue to Bank Street;

Both sides of Parker Street, Perkins Street to Pine Street;

Both sides of Melbourne Avenue, Warren Street to Railroad Avenue;

Both sides of Bentley Avenue, Warren Street to Railroad Avenue;

30

Both sides of Chestnut Street, Railroad Avenue to Putnam Street;

Both sides of Magnolia Street, Pine Street to Penn Street;

Both sides of Locust Street, Railroad Avenue to Bank Street;

Both sides of Third Street, Cooper Street to Mt. Holly Street;

Both sides of Second Street, Walnut Street to Magnolia Street;

Both sides of Front Street, Cooper Street to Magnolia Street;

10 Both sides of Penn Street, Broad Street to Magnolia Street; to be paved, repaved, repaired and re-laid and curbed. Said work to be prosecuted to completion under the direction and supervision of the Director of the Department of Streets and Public Improvement, Parks and Public Property, and the City Surveyor and in accordance with stakes and marks placed by said City Surveyor for the purpose of designating the line and grade of said respective pavements and curbs. That the Board of Commissioners may also appoint an inspector for the said work who shall make his report in writing to the said Commissioners as to the work upon each

20 Street separately and shall approve or disapprove same, and no work shall be accepted until approved by said Commissioners. The compensation of the inspector shall be fixed by the Board of Commissioners.

All sidewalks and curbs shall conform to the established grade as nearly as practicable.

30 Section 4. Before making or proceeding to make the improvements referred to and before awarding any contract for the making thereof, the City Clerk shall cause notice of the said contemplated improvement to be given to the owner or owners of any lands in a manner and form required by law. And that proof of service of such notice shall be filed within ten days thereafter in the office of the Collector of Taxes.

Section 5. A true and accurate account of the cost

and expense of the said improvements, including therein all advertising, printing, engineering, plans and specifications, attorney's fees, service fees and all other expenses incident thereto, and upon the completion of said improvements the total cost and expense thereof shall be apportioned among the several properties improved in proportion to the frontage of their respective lands and a true statement of such costs under oath or affirmation shall be forthwith filed by the City Surveyor with the Collector of Taxes; thereupon the Board of Commissioners shall examine the said statement, and if the same is properly made, shall confirm the same and file it or a certified copy thereof with the Collector of Taxes of the City. The Collector of Taxes shall record the said assessments in the same book as other assessments. 10

Section 6. Every such assessment, unless paid within two months from the date of confirmation thereof, shall bear interest at 7 per cent per annum, from the date of confirmation as aforesaid and shall be a first and paramount lien upon the respective lands assessed, to the same extent as assessments for local improvements under the statute, and shall be collected and enforced in the same manner. 20

Section 7. Each and every owner assessed as aforesaid may pay his assessment forthwith or at his option in ten equal installments, together with the accrued interest thereon at the rate of 7 per cent per annum. Each installment shall fall due annually at the time the last installment of the assessments for local taxes upon real estate falls due, and shall be collected by the Collector of Taxes upon notice sent out by him with notice for local real estate tax. The first installment shall be payable at the first tax collecting 30

period after the work upon the property assessed has been completed and the statement or report of the cost thereof filed and confirmed as aforesaid.

Section 8. Nothing herein contained shall be considered to effect any sidewalks or curbs of said streets or any of them, which are in satisfactory repair and at the official grade and otherwise conformable to the intent and provisions of this ordinance, which is to be determined by the Board of Commissioners by resolution.

10 Section 9. Everything to be done by the Board of Commissioners under this ordinance subsequent to the passage hereof shall be done by resolution. The plans and specifications hereinabove referred to may at any time be corrected, altered or added to, by resolution. The width and other dimensions of any particular sidewalks may be changed and altered by resolution whenever the Board of Commissioners thinks it advisable so to do but in case of any such
20 alteration, correction or addition to the said plans and specifications or said dimensions, notice thereof, as hereinabove set forth, shall be given to the owner or owners affected thereby.

Section 10. Notice of the contemplated improvement shall be given to the owner or any owners of the lands affected hereby, which notice shall be in the manner and form required by law and work on the said improvements shall be begun forthwith after thirty days after the serving of the said notice and
30 shall be finished as soon as practicable.

Section 11. And be it further ordained that the laying of cross walks and the curbing, paving, repaving or curbing of the portion of the sidewalks that lay in the angles of the intersections of the streets, shall be done at the general expense of the City.

Section 12. All ordinances or parts of ordinances inconsistent with this ordinance be and the same are hereby repealed.”

Q. Now, your minutes do not show any other or further amendment to that ordinance other than the one you have read with reference to Jennings Street?

A. Well, I don't know, I will have to look through; I don't recall any such thing.

10

Q. Well, look through your minutes of that meeting.

A. I don't see anything further.

Q. Now, Mr. Brelsford, when this ordinance was passed upon first and second reading, are you sure that the provision with reference to both sides of Third Street from Cooper Street to Mt. Holly Street was in the ordinance at that time?

Mr. Smith: I want to object to any attempt to change the minutes or evidence as to what happened at the meeting by oral testimony.

20

A. How am I going to find that out?

Q. Well, answer the question—do you know or don't you know? You either know or you don't know.

A. I don't know.

Q. Did not, as a matter of fact, the ordinance as passed upon first and second reading provide for the paving of Third Street from Cooper to Magnolia Street rather than from Cooper to Mt. Holly Street, as appears in your minutes?

30

A. Do you mind repeating that? I don't quite follow that, Mr. Palmer.

(Question repeated).

Mr. Smith: Now, you mean at this meeting, don't you? He means at this meeting.

Mr. Palmer: Read him the question again.

(Question repeated).

10 A. Well, I don't know; my only record shows from Cooper Street to Mt. Holly Street; I know of no other record except what I have here.

Q. Now, I show you, Mr. Brelsford, what purports to be the original draft of the ordinance in question and ask you if it is now in the same condition and relates to the same streets as it was when it was presented to the Board of Commissioners of the City of Beverly at this meeting of May 20, 1919?

20 A. To the best of my knowledge and belief it is; I couldn't tell unless I compared the two.

Q. How do you account then for the interlineations and changes as appear upon that original draft of the ordinance?

A. These, you mean?

Q. Yes.

A. The night that this ordinance was taken up—

Q. You mean by that the meeting of May 20th?

30 A. May 20th; I think Mr. Smith brought the ordinance here and it was gone over by the Commissioners and corrections made by either one or the other, I couldn't swear to which one, before it was turned over to me.

Q. Now, were those alterations made before or after it was passed upon first and second reading?

A. Before.

Q. Now, with reference to Third Street, this origi-

nal draft of the ordinance apparently reads as follows: "Both sides of Third Street, Cooper to Magnolia Street;" then the word "Magnolia" appears with a pen mark through it and the word "Mt. Holly" placed above it. Do you know by whom that was done and when?

A. I do not.

Q. Do you know when the other changes as they appear on this original draft of the ordinance were made and by whom?

A. I don't know who made them except as I explained before; either Mr. Smith or one of the Commissioners on the night of May 20th.

Q. Did you see the original draft of this ordinance before any changes or interlineations were made?

A. I couldn't swear to that.

Q. You don't know whether you did or did not?

A. No, I don't know, no; the thing might have laid here on the table and I might have picked it up at that time and looked at it, but it was not turned over to me until it had been corrected, as far as I can recall.

Q. Now, Mr. Brelsford, still continuing with the minutes of May 20th, will you read what your minutes show took place after the passage of this ordinance upon first and second reading,

A. Aftr it had been adopted on second reading?

Q. Yes.

A. "Mr. Perkins moved that the ordinance entitled, 'An ordinance regulating and providing for the construction, reconstruction, paving, repaving, curbing, recurbing, improving and repairing the sidewalks in the streets of the city at the cost and expense of the owner or owners of lands in front of which any such improvement shall be made,' be laid upon the table for two weeks, and that the

10

20

30

Clerk be instructed to have same advertised in the manner prescribed by law.”

Q. Now, what, if anything, did you do with reference to the advertisement of this ordinance?

10 A. I have proof of publication of said ordinance as passed on first and second reading in the “Beverly Banner,” a weekly newspaper published in the City of Beverly, said publication having taken place on the 23d day of May, 1919, and a further
10 publication of the same on the 30th day of May, both of which publications had at the bottom thereof a notice that said ordinance would be taken up after consideration on its third reading and final passage at a regular meeting of the Board of Commissioners to be held on June 3d, 1919, at 8 o'clock P. M., in the City Hall, Beverly, N. J., at which time and place all persons so desiring will be heard in reference thereto.

20 Q. Now, Mr. Brelsford, will you turn to your minutes of June 3d?

A. Yes, sir.

Q. And will you read the first item that appears therein with reference to this ordinance?

30 A. “The Clerk announced that he had received a remonstrance signed by a number of the property holders of the City against the passing of the ordinance entitled, ‘An ordinance regulating and providing for the constructing, reconstructing, paving, repaving, curbing, recurbing, improving and repairing the sidewalks in the streets of the City at the cost and expense of the owner or owners of land in front of which any such improvement shall be made,’ and was instructed to read same.”

(It is stipulated and agreed between counsel that before the passage of the ordinance a protest

against the passage thereof was filed with the City Clerk, and that the same was signed by sixty-six and two-thirds per cent of the property owners affected by the proposed improvement).

Q. Now, Mr. Brelsford, what was the next item in your minutes with reference to this ordinance or remonstrance?

A. "Mr. Perkins moved that the remonstrance just read be received and referred to the City Surveyor, which motion was carried." 10

Q. What, if anything, did you do with that remonstrance in pursuance to the resolution that you have just read?

A. Turned it over to the City Surveyor.

Q. And who is that?

A. Clement M. Anderson.

Q. Has there ever been any report made by Mr. Anderson as City Surveyor to the Board of Commissioners with reference to this remonstrance, as far as you know? 20

A. No, not that I know of; I don't think the minutes show any.

Q. Now, do, as a matter of fact, the minutes show that any report ever was received by the Board of Commissioners of the City of Beverly from Mr. Anderson with reference to this remonstrance?

A. No.

Q. Now, Mr. Brelsford, will you tell me what next occurs in your minutes of June 3d with reference to this ordinance? 30

A. "Mr. Perkins moved that the ordinance entitled, 'An ordinance regulating and providing for the constructing, reconstructing, paving, repaving, curbing, recurbing, improving and repairing the sidewalks in the streets of the city at the cost and

expense of the owner or owners of land in front of which any such improvement shall be made,' be taken from the table and placed on third and final reading, which motion was carried, and immediately subsequent thereto the said ordinance was passed upon third and final reading by the Board of Commissioners of the City of Beverly."

Q. What next appears in your minutes with reference to this ordinance?

10 A. "Mr. Levin moved that the ordinance just adopted be advertised according to law, which motion was carried."

Q. Now, what, if anything, did you do with reference to the advertisement of this ordinance after this meeting of June 3d?

A. I have proof of publication of said ordinance in the "Beverly Banner" on the 6th day of June, 1919, which advertisement contained a notice stating that the ordinance was passed on third and final
20 reading and adopted at a meeting of the Board of Commissioners held on June 3, 1919.

Q. What next appears in your minutes at this meeting of June 3d with reference to this ordinance?

A. "Mr. Perkins moved that the City Clerk be directed to serve the following notice according to law on the property owners on the part of the streets hereinafter referred to."

30 Mr. Smith: It is stipulated that the notice of the intention to make the improvement referred to the Act of 1918, while the act under which the work was contemplated was the Act of 1917.

Q. Turning to your minutes of the meeting of August 12, 1919, will you read what the minutes

show with reference to notice under this ordinance?

A. "Mr. Levin offered the following resolution: Be it resolved that the City Clerk be authorized to notify the abutting property owners to lay sidewalks on the north side of Railroad Avenue, Laurel Street to Mt. Holly Street, both sides of Pine Street, Laurel Street to Mt. Holly Street, both sides of Putnam Street, Laurel Street to Mt. Holly Street, both sides of Oak Street, Laurel Street to Broad Street, north side of Warren Street, Cooper Street to West City Line; south side of Warren Street, Cooper Street to Mt. Holly Street, both sides of Third Street, Cooper Street to Magnolia Street, both sides of Second Street, Cooper Street to Magnolia Street, south side of Front Street, Cooper Street to Magnolia Street, west side of Laurel Street, Railroad Avenue to Putnam Street, east side of Laurel Street, Putnam Street to Front Street; east side of Broad Street, Railroad Avenue to Front Street; east side of Magnolia Street, Front Street to Warren Street, both sides of Magnolia Street, Warren Street to Pine Street; both sides of Bentley Avenue, Warren Street to Railroad Avenue; east side of Mt. Holly Street, Warren Street to Railroad Avenue; and both sides of Warren Street, Cooper Street to West City Line, north side of Railroad Avenue, Laurel Street, to Mt. Holly Street, to be curbed—that they shall within thirty days from the receiving of such notice complete the laying of said sidewalks and the setting of said curbs on said streets in accordance with the plans and specifications hereto adopted." "And be it further resolved that the said notices shall be directed, served and in the form provided by law."

Q. Now, Mr. Brelsford, what, if anything, has

been done in pursuance to that resolution with reference to the sending of these notices?

A. An affidavit of Clement M. Anderson says, "That he is the person charged of the mailing of the notices, a copy of which is hereto annexed and made a part herein; that the persons hereinafter enumerated are non-residents of the City of Beverly and property holders therein and reside outside of the City of Beverly, and that their post office addresses are set opposite their names." This is followed by a list of names with addresses, then the following: "Deponent further says that on the 15th day of August, 1919, he mailed a copy of the said notices to each of the persons hereafter enumerated by placing the same in the post office at Beverly, with postage prepaid thereon, addressed to the above addresses respectively." Then there is an affidavit of John Schuck, who deposes and says, "That he is the Chief of Police of the City of Beverly, and that he served a notice, a copy of which is hereto annexed, to each of the following property holders and residents of the City of Beverly, by serving upon them personally or by leaving it at their place of residence, with a member of the family over the age of fourteen," which is followed by a list of names. There is no notice or copy of any notice attached to the above affidavits. These above affidavits were filed with me on August 26, 1919.

Q. Now, Mr. Brelsford, turning to your minutes of June 17th, will you read what appears there with reference to the advertising of bids for work on the sidewalks?

A. "Mr. Levin, upon leave, offered the following resolution: Be it resolved that the City Clerk be and he is hereby directed and authorized to advertise for bids for the laying of sidewalks and setting

of curbs on the streets enumerated in the foregoing resolution.”

Q. Now, “the foregoing resolution” referred to there was the resolution that has been placed into this record enumerating the streets the property owners living along which were to receive notice of the contemplated improvement?

A. I believe that is correct.

Q. Then your answer is “yes”?

A. Yes.

Q. What appears next with reference to the receiving of bids or awarding of a contract?

A. Under minutes of meeting of July 29, 1919, the following appears: “President Lee announced that bids for the laying of sidewalks, etc., would now be opened. Bids received from F. Guy Meyers Company, Inc., and Fred Spatz, Jr., were opened and read. Mr. Levin moved that the bids be referred to the City Surveyor for the purpose of compiling, which motion was carried.”

Q. Now, that is the last that has been done?

Mr. Smith: That is the last that has been done.

Mr. Palmer: There has been no report on that?

Mr. Smith: No, no report; that has been laying there ever since.

Q. Now, find, Mr. Brelsford, the resolution with reference to the financing on this subject. My notes show it was July 1st.

Mr. Smith: I want to object to the introduction of evidence as to the resolution of financing, the reason being that the statute provides that the invalid-

ity of the one shall not in any way affect the invalidity of the other, and it is not a proper matter to consider in a certiorari of the ordinance.

A. It is July 8th: "Mr. Levin offered the following resolution:

Whereas, it is the purpose of the Board of Commissioners of the City of Beverly, to cause the paving of certain sidewalks and the setting of curbs
10 along the outer edges thereof in said city and the laying of cross walks.

And whereas an ordinance providing for the laying of said sidewalks, cross walks and the setting of said curbs, has been adopted by the said Board of Commissioners.

And whereas there has been appropriated for the purposes set forth in the said ordinance herein referred to, the sum of fifty thousand dollars.

And whereas bids have been asked for the said
20 work and the letting of contracts for the completion thereof is contemplated.

And whereas, it is necessary that the said improvement be temporarily financed.

And whereas, a supplemental debt statement directed to be filed under chapter 240 of the laws of 1917 and the amendments thereof and the supplements thereto has been filed with the City Clerk of the City of Beverly.

And whereas, each and every act, condition, and
30 thing required to be done, to have happened and to be performed, precedent to and in the issuance of these notes has been done, has happened and has been performed in full and strict compliance with the Constitution and Laws of the State of New Jersey, and that the total indebtedness of the City of Beverly, including the issue of notes of which this

is one, is not in excess of any Constitutional or Statutory limitation of indebtedness and the faith and credit and property of the City of Beverly, are hereby irrevocably pledged to the payment hereof.

Now, therefore, be it resolved, that there be and there is hereby authorized, the issuance by the said City of Beverly, temporary notes in such sums as may be necessary and not to exceed twenty thousand dollars and that the interest thereof shall be at a rate not exceeding six per centum. 10

And it is further resolved that the Mayor, City Treasurer and the City Clerk be and they are hereby authorized and directed to execute said notes and affix the corporate seal for and in the name of the City of Beverly thereto in the manner and in the form required by law.

And it is further resolved, that the notes shall be for the term of six years, and shall be in the sum of five hundred dollars each, and may be payable at any interest period during the term for which they were issued and shall contain therein the general terms of the purpose for which they are issued. 20

And it is further resolved, that the notes shall be substantially as follows:

TEMPORARY NOTE.

Beverly, New Jersey, 1919.

Six years after date, the City of Beverly, in the County of Burlington, a municipal corporation of the State of New Jersey, promises to pay to the order of the First National Bank of Beverly, New Jersey, the sum of five hundred dollars with interest thereon at $5\frac{1}{2}$ per centum per annum, payable semi-annually. 30

This note is one of a series of forty notes of five hundred dollars each, amounting in the aggregate to twenty thousand dollars, all of a like tenor and

amount, and are issued to temporarily finance the paving of sidewalks, setting of curbs and laying of cross walks, on the streets and sidewalks in the City of Beverly, New Jersey. The cost of which improvements are to be assessed against the abutting property owners, with the exception of the curbing of the sidewalks in the intersection of the streets and the cross walks, which are to be paid for by general taxation.

- 10 These notes are issued pursuant to an Act entitled, 'An act to authorize and regulate the issuance of bonds and other obligations and the incurring of indebtedness, by county, city, borough, village, town, township, or any municipality governed by an improvement commission,' approved March 22, 1916, being chapter 252 of the pamphlet laws of 1916, and the amendments thereof and the supplements thereto. And also by virtue and in
- 20 pursuance of a resolution of the City of Beverly, duly adopted at a regular meeting of the Board of Commissioners thereof, held July 8, 1919.

It is hereby certified and recited that each and every act, condition, and thing required to be done, to have happened, and to be performed precedent to and in the issuance of this note, has been done, has happened, and has been performed in full and strict compliance with the Constitution and Laws of the State of New Jersey, and that the total indebtedness of the City of Beverly, including the issue of notes

30 of which this is one, is not in excess of any Constitutional or Statutory limitation of indebtedness and the faith and credit and property of the City of Beverly, are hereby irrevocably pledged to the payment hereof.

In witness whereof, the City of Beverly has caused this note to be executed under its corporate seal,

signed by its Mayor and City Clerk, and counter-
signed by its City Treasurer.

.....
Mayor.

.....
City Treasurer.

Countersigned:

Attest:

.....

City Clerk.”

10

“And be it further resolved that all other matters
in respect to the temporary notes shall be deter-
mined by the Commissioner of Revenue and Finance.

Morris R. H. Levin.”

Q. Now, Mr. Brelsford, going back to your meet-
ing of June 3d and after the passing on third and
final reading of the ordinance which has been read
into the record, what do your minutes show with
reference to the introduction of another ordinance? 20

A. The minutes show the introduction of an or-
dinance which is as follows:

“AN ORDINANCE.

“Regulating and Providing for the Construction,
Reconstruction, Paving, Repaving, Curbing, Recurb-
ing, Improving and Repairing the Sidewalks in the
Streets of the City, at the Cost and Expense of the
Owner or Owners of land in front of which any
such Improvement shall be made.

“Be it ordained and enacted by the Board of 30
Commissioners of the City of Beverly, and it is
hereby enacted by the authority of the same.

“Section 1. That the sidewalks on the streets
of this City and hereinafter specified shall be paved
and curbed with a cement or concrete pavement,
when of less width than the whole sidewalk the

pavement to be laid in the center line of said sidewalk as monumented for the said lines, and to be of dimensions, material and workmanship as set forth in the plans and specifications to be prepared by the City Surveyor and a copy of which is to be filed in the office of the said City Surveyor and in the office of the City Clerk, and that there shall be written upon each of said copies at the time of filing the same the title of this ordinance and signed
 10 by the City Surveyor and City Clerk respectively for the purpose of identification, provided, that the curbing may be of any suitable material.

“Section 2. That the sidewalks upon the following streets shall be paved in accordance with the provisions of this ordinance, to wit:

“North side of Railroad Avenue, Laurel Street to Mount Holly Street;

“Both sides of Pine Street, Laurel Street to Mount Holly Street;

20 “Both sides of Putnam Street, Laurel Street to Mount Holly Street;

“Both sides of Oak Street, Laurel Street to Broad Street;

“North side of Warren Street, Cooper Street to West City Line;

“South side of Warren Street, Cooper Street to Mount Holly Street;

“Both sides of Third Street, Cooper Street to Magnolia Street;

30 “Both sides of Second Street, Cooper Street to Magnolia Street;

“South side of Front Street, Cooper Street to Magnolia Street;

“West side Laurel Street, Railroad Avenue to Putnam Street;

“West side of Laurel Street, Warren Street to Front Street;

“East side of Laurel Street, Putnam Street to Front Street;

“East side of Broad Street, Railroad Avenue to Front Street;

“East side of Magnolia Street, Front Street to Warren Street;

“Both sides of Magnolia Street, Warren Street to Pine Street;

10

“Both sides of Bentley Avenue, Warren Street to Railroad Avenue;

“East side of Mount Holly Street, Warren Street to Railroad Avenue;

“Both sides of Warren Street, Cooper Street to West City Line; and North side of Railroad Avenue, Laurel Street to Broad Street, to be curbed.

“Said work to be prosecuted to completion under the direction and supervision of the Board of Commissioners and the City Surveyor, and in accordance with stakes and marks placed by said City Surveyor for the purpose of designating the line and grade of said respective pavements and curbs. That the Board of Commissioners may also appoint an inspector for the said work who shall make his report in writing to the Board of Commissioners as to the work upon each street separately and the Board of Commissioners approve or disapprove same and no work shall be accepted until approved by said Board of Commissioners. His compensation shall be fixed by the Board of Commissioners. All sidewalks and curbs shall conform to the established grade as nearly as practicable.

20

30

“Section 3. Before proceeding to make the improvements referred to in this ordinance or any part of the same and before awarding any contract

for the making thereof or any part thereof the City Clerk shall cause notice in writing of said contemplated improvement to be given to the owner or owners of any lands affected thereby; said notice shall contain a description of the property affected sufficiently definite in terms to identify the same, as well as a description of the required improvement and a notice that unless said improvement shall be completed within thirty days after service thereof it is the intention of the City to make such improvements or cause the same to be done, pursuant to an act entitled 'An Act concerning municipalities,' approved March 27th, 1917. Said notice to be served upon such parties as is provided by law.

20 "Section 4. A true and accurate account of the costs and expense of the said improvements, including therein all advertising, printing, engineering, plans and specifications, attorney's fees, service fees and all other expenses incident thereto, and upon the completion of said improvements the total cost and expenses thereof shall be apportioned among the several properties improved in proportion to the frontage of their respective lands, and a true statement of such costs under oath or affirmation shall be forthwith filed by the City Surveyor with the City Clerk; thereupon the Board of Commissioners shall examine the said statement, and if the same is properly made, shall confirm the same and file it or a certified copy thereof with the Collector of Taxes of the City. The Collector of Taxes shall record the said sidewalks assessments in the same book as other assessments.

30 "Section 5. Every such assessment shall bear interest at seven per centum per annum from the time said statement and report is filed in the office

of the City Clerk, and from the date of confirmation thereof as aforesaid, shall be a first and paramount lien upon the respective lands assessed, to the same extent as assessment for local improvements under the statute, and shall be collected and enforced in the same manner.

“Section 6. Each and every owner assessed as aforesaid may pay said assessment forthwith with the interest accrued thereon or at his option in ten equal annual installments, each installment to bear interest at the rate of 7 per centum per annum. Each installment shall fall due annually at the same time the assessments for local taxes upon real estate fall due and shall be collected by the Collector of Taxes upon notice sent out by him with notice for local real estate tax. The first installment shall be payable at the first tax collecting period after the work upon the property assessed has been completed and the statement or report of the cost thereof filed and confirmed as aforesaid.

10

20

“Section 7. Nothing herein contained shall be considered to affect any sidewalks or curbs of the said streets or any of them, which are in satisfactory repair and at the official grade and otherwise conformable to the intent and provisions of this ordinance, which is to be determined by the Board of Commissioners by resolution.

“Section 8. Everything to be done by the Board of Commissioners under this ordinance subsequent to the passage hereof shall be done by resolution. The plans and specifications, hereinabove referred to may at any time be corrected, altered or added to by resolution. The width and other dimensions of any particular sidewalk or sidewalks may be changed and altered by resolution whenever the Board of Commissioners thinks it advisable so to

30

do, but in case of such alteration, correction or addition to the said plans and specifications or said dimensions notice thereof as hereinabove set forth shall be given to the owner or owners affected thereby.

10 “Section 9. In case it shall be necessary to lay any cross walks, or to grade, pave, repave or improve any portions of sidewalks, that lay in the angles of the intersections of streets, the same shall be done at the general expense of the City.

“Section 10. In lieu of awarding separate contracts for the making of said sidewalks improvements, the City may award a contract to the lowest, responsible bidder for making all sidewalk improvements under this ordinance. Such contract, shall be awarded in the same manner and after the same advertisement as other contracts.

20 “Section 11. In case the Board of Commissioners shall determine by resolution that it is only necessary to repair any designated sidewalk or to repair or reset any designated curb in order to make same conform to said plans and specifications then in every such case the said sidewalk shall be repaired or the said curb repaired and reset under and by virtue of the terms of this ordinance and in accordance therewith.

30 “Section 12. That there shall be and hereby is appropriated for the purpose of laying of said sidewalks and setting of said curbs the sum of twenty thousand dollars (\$20,000) or so much thereof as may be necessary for the purpose.

“The above ordinance will be considered on third and final reading at a meeting of the Board of Commissioners to be held in the City Hall, at Beverly, New Jersey, on Tuesday evening, July 1st, 1919.

“By order of the
“BOARD OF COMMISSIONERS.

“Attest:

“W. Fred Brelsford, City Clerk.

“6-20 2t.”

(It is stipulated and agreed between counsel that the above ordinance has never been finally passed by the Board of Commissioners of the City of Beverly).

10

Cross-examination.

By Mr. Smith:

Q. The attention of the City Clerk is called to the minutes of April 22, 1919, particularly to an ordinance which was introduced on that date, and he is asked if that ordinance provides—

20

Mr. Palmer: That is objected to; if you want to offer that ordinance I have no objection to your putting it into the record, but I object to your asking the Clerk as to the provisions of it.

Q. What is the title of the ordinance which was introduced on the 22d day of April, 1919, providing for the paving of certain sidewalks in the City of Beverly?

30

Mr. Palmer: I object to that unless the whole ordinance is introduced.

Mr. Smith: I just want to identify the ordinance, that is all.

Mr. Palmer: Well, it is not the same one; the title may be the same.

A. "An ordinance regulating and providing for the construction, reconstruction, paving, repaving, curbing, recurbing, improving and repairing the sidewalks in the streets of the City at the cost and expense of the owner or owners of lands in front of which any such improvement shall be made."

10 Q. Have you a copy of that ordinance?

A. I think I have.

Q. Will you kindly read the ordinance?

A. (Reading):

"AN ORDINANCE.

"Regulating and Providing for the Construction, Reconstruction, Paving, Repaving, Curbing, Recurbing, Improving and Repairing the sidewalks, in the Streets of the City, at the cost and expense of the Owner or Owners of lands in front of which any

20 such improvement shall be made.

"Be it ordained and enacted by the Board of Commissioners of the City of Beverly, assembled, and it is hereby enacted by the authority of the same.

30 "Section 1. That the sidewalks on the streets of this City hereinafter specified shall be paved with a cement or concrete pavement, and the sidewalk on Railroad Avenue, from Walton Avenue to Broad Street, shall be curbed with a cement or concrete curb. When pavement is of less width than the whole sidewalk the pavement to be laid in the center line of said sidewalk as monumented for the said lines, and to be of dimensions, material and workmanship as set forth in the plans and specifications to be prepared by the City Surveyor and a copy of which is to be filed in the office of the said City Surveyor

and in the office of the Collector of Taxes, and that there shall be written upon each of said copies at the time of filing the same, the title of this ordinance and signed by the said City Surveyor and Collector of Taxes, respectively for the purpose of identification, provided that the curbing may be of any suitable material.

“Section 2. That there shall be and hereby is appropriated for the purpose hereinbefore referred to and on the Streets herein enumerated the sum of 10 twenty-five thousand dollars, (\$25,000), or so much thereof as shall be necessary for the purpose.

“Section 3. That the sidewalks upon the following streets shall be paved in accordance with the provisions of the ordinances, to wit:

“On South side of Warren Street from East City Line to Mount Holly Street;

“East side of Broad Street from Railroad Avenue to Delaware River;

“West side of Cooper Street, Railroad Avenue to 20 Front Street;

“North side of Putnam Street, Laurel Street to Melbourne Avenue;

“North side of Pine Street, Spruce Street to Bentley Avenue;

“North side of Railroad Avenue, Walton Avenue to Broad Street;

“East side of Bridge Street, Putnam Street to Warren Street;

“East side Walton Avenue, Railroad Avenue to 30 Pine Street;

“North side of Oak Street, Bridge Street to Cooper Street;

“South side of Church Street, Cooper Street to East City Line; and

“West side of Walnut Street from Warren Street to Second Street.

“Said work to be prosecuted to completion under the direction and supervision of the Director of the Department of Streets and Public Improvements, Parks and Public Property, and the City Surveyor and in accordance with stakes and marks placed by said City Surveyor for the purpose of designating the line and grade of said respective pavements and curbs. That the said Board of Commissioners may also appoint an inspector for the said work who shall make his report in writing as to the work upon each street separately and shall approve or disapprove same, and no work shall be accepted until approved by said inspector. His compensation shall be fixed by the Board of Commissioners. All sidewalks and curbs shall conform to the established grade as nearly as practicable.

“Section 4. Before making or proceeding to make any contract for the making thereof, the City Clerk shall cause notice of the said contemplated improvement to be given to the owner or owners of any lands in a manner and form required by law. And that proof of service of such notice shall be filed within ten days thereafter in the office of the Collector of Taxes.

“Section 5. A true and accurate account of the cost and expense of the said improvements, including therein all advertising, printing, engineering, plans and specifications, attorney’s fees, service fees and all other expenses incident thereto, and upon the completion of said improvements the total cost and expense thereof shall be apportioned among the several properties improved in proportion to the frontage of their respective lands, and a true statement

of such costs under oath or affirmation shall be forthwith filed by the City Surveyor with the Collector of Taxes; thereupon the Board of Commissioners shall examine the said statement, and if the same is properly made, shall confirm the same and file it or a certified copy thereof with the Collector of Taxes of the City. The Collector of Taxes shall record the said assessments in the same book as other assessments.

“Section 6. Every such assessment, unless paid 10
within two months from the date of confirmation thereof, shall bear interest at seven per centum, (7%), per annum, from the date of confirmation as aforesaid and shall be a first and paramount lien upon the respective lands assessed, to the same extent as assessments for local improvements under the statute, and shall be collected and enforced in the same manner.

“Section 7. Each and every owner assessed as aforesaid may pay his assessment forthwith or at his 20
option in ten equal installments together with the accrued interest thereon at the rate of seven per centum, (7%), per annum. Each installment shall fall due annually at the time the last installment of the assessments for local taxes upon real estate falls due, and shall be collected by the Collector of Taxes upon notice sent out by him with notice for local real estate tax. The first installment shall be payable at the first tax collecting period after the work 30
upon the property assessed has been completed and the statement or report of the cost thereof filed and confirmed as aforesaid.

“Section 8. Nothing herein contained shall be considered to affect any sidewalks or curbs of said streets or any of them, which are in satisfactory repair and at the official grade and otherwise con-

formable to the intent and provisions of this ordinance, which is to be determined by the Board of Commissioners, by resolution.

10 "Section 9. Everything to be done by the Board of Commissioners under this ordinance subsequent to the passage hereof shall be done by resolution. The plans and specifications herein above referred to may at any time be corrected, altered or added to, by resolution. The width and other dimensions of any particular sidewalks may be changed and altered by resolution whenever the Board of Commissioners thinks it advisable so to do, but in case of any such alteration, correction or addition to the said plans and specifications or said dimensions, notice thereof, as hereinabove set forth, shall be given to the owner or owners affected thereby.

20 "Section 10. Notice of the contemplated improvement shall be given to the owner or any owners of the lands affected hereby, which notice shall be in the manner and form required by law and work on the said improvements shall be begun forthwith after thirty days after the serving of the said notice and shall be finished as soon as practicable.

"Section 11. All ordinances or parts of ordinances inconsistent with this ordinance be and the same are hereby repealed."

Q. Will you turn to your minutes and tell us what action was taken on that ordinance?

30 A. "Mr. Levin moved that the ordinance as read be adopted on first reading, which motion was carried."

Q. Was there any other action taken?

A. "Mr. Perkins moved that the ordinance just read be laid on the table for four weeks, which motion was carried."

Q. Was the resolution in reference to the amendment to the ordinance which was passed on June 3d written at the same time as the other minutes of the said meeting?

Mr. Palmer: He said it was; he explained that.

Q. At the time of the reading of these minutes at a subsequent meeting and their approval by the Board of Commissioners, were they read then in the order in which they occurred or in the order in which they appeared in your book? 10

A. In the order in which they occurred.

By Mr. Palmer:

Q. Now, will you tell us, Mr. Brelsford, what happened to this ordinance introduced on April 22d?

A. It looks as if the ordinance was taken from the table and placed back on first reading for the purpose of amendment. 20

Q. What ordinance?

A. The ordinance entitled, "An Ordinance regulating and providing for—

Q. Wait a minute; that goes subsequent to the introduction of the second ordinance, doesn't it?

A. That goes in the minutes prior to the reading of that ordinance.

Q. All right; now, what amendment was made to the ordinance of April 22d? 30

A. Which one of these paragraphs do you want now?

Q. Now, you answer the question.

A. I will have to read these three paragraphs to answer your question then.

Q. All right, go ahead.

A. "That the ordinance entitled, 'An Ordinance regulating and providing for the constructing, reconstruction, paving, repaving, curbing, recurbing, improving and repairing the sidewalks in the streets of the City at the cost and expense of the owner or owners of land in front of which any such improvement shall be made,' be taken from the table and placed back on first reading for the purpose of amendment." That motion was carried. Then the next motion relative to it is, "That the ordinance heretofore introduced entitled, 'An ordinance regulating and providing for the construction, reconstruction, paving, repaving, curbing, recurbing, improving and repairing the sidewalks in the streets of the City at the cost and expense of the owner or owners of land in front of which any such improvement shall be made,' be amended as contained in this amendment," which motion was carried. "Then, Mr. Perkins moved that Section 3 of the ordinance entitled, 'An ordinance regulating and providing for the construction, reconstruction, paving, repaving, curbing, recurbing, improving and repairing of sidewalks in the streets of the City at the cost and expense of the owner or owners of land in front of which any such improvement shall be made,' be amended to include both sides of Jennings Street from Pine to Warren Street, which motion was carried." Then the ordinance was read as amended.

Q. All right; now, where was it read as amended? Read it as it was amended.

A. The Clerk was directed to read the ordinance as amended:

"AN ORDINANCE.

"Regulating and Providing for the Construction, Reconstruction, Paving, Repaving, Curbing, Recurbing, Improving and Repairing the Sidewalks, in the

Streets of the City, at the cost and expense of the Owner or Owners of lands in front of which any such improvements shall be made, and for the Regulating, and Providing for the Construction, Reconstruction, Paving, Repaving, Curbing, Recurbing, Improving, and Repairing the sidewalks in the angles of the intersections of the Streets and the Curbing thereof and the laying of cross walks at the general expense of the City.

“Be it ordained and enacted by the Board of Commissioners of the City of Beverly, assembled, and it is hereby enacted by the authority of the same. 10

“Section 1. That the sidewalks on the streets of this City hereinafter specified shall be paved with a cement or concrete pavement, and shall be curbed with a cement or concrete curb. When the pavement is of less width than the whole sidewalks the pavement to be laid in the center line of said sidewalk as monumented for the said lines, and to be of dimensions, material and workmanship as set forth in the plans and specifications prepared by the City Surveyor and a copy of which is filed in the office of the said City Surveyor and in the office of the Collector of Taxes, and that there shall be written upon each of said copies at the time of filing the same, the title of this ordinance and signed by the said City Surveyor and Collector of Taxes, respectively, for the purpose of identification, provided that the curbing may be of any suitable material. 20 30

“Section 2. That there shall be and hereby is appropriated for the purpose hereinbefore referred to and on the Streets herein enumerated the sum of fifty thousand dollars, (\$50,000) or so much thereof as shall be necessary for the purpose.

“Section 3. That the sidewalks upon the follow-

ing streets shall be paved and curbed in accordance with the provisions of this ordinance, to wit:

Both sides of Warren Street, from East City Line to West City Line;

Both sides of Cooper Street, Railroad Avenue to Bank Street;

Both sides of Putnam Street, Cooper Street to Mount Holly Street;

10 Both sides of Pine Street, East City Line to Mount Holly Street;

Both sides of Walton Avenue, Railroad Avenue to Pine Street;

North side of Railroad Avenue, East City Line to Mount Holly Street;

Both sides of Broad Street, Railroad Avenue to Bank Street;

Both sides of Oak Street, Magnolia Street to Cooper Street;

20 Both sides of Elizabeth Street, Railroad Avenue to Perkins Street;

Both sides of Jennings Street, Pine Street to Warren Street;

Both sides of Wilmerton Street, Church Street to Warren Street;

Both sides of Church Street, East City Line to Cooper Street;

Both sides of Perkins Street, Cooper Street to Parker Street;

30 Both sides of Van Kirk Street, Warren Street to North end of Van Kirk Street;

Both sides of Van Sciver Street, Warren Street to North end of Van Sciver Street;

Both sides of Walnut Street, Warren Street to North end of Walnut Street;

Both sides of Spruce Street, Railroad Avenue to Oak Street;

Both sides of Mount Holly Street, Railroad Avenue to Third Street;

Both sides of Laurel Street, Railroad Avenue to Bank Street;

Both sides of Parker Street, Perkins Street to Pine Street;

Both sides of Melbourne Avenue, Warren Street to Railroad Avenue;

Both sides of Bentley Avenue, Warren Street to Railroad Avenue;

Both sides of Chestnut Street; Railroad Avenue to Putnam Street;

Both sides of Magnolia Street, Pine Street to Penn Street;

Both sides of Locust Street, Railroad Avenue to Bank Street;

Both sides of Third Street, Cooper Street to Mt. Holly Street;

Both sides of Second Street, Walnut Street to Magnolia Street;

Both sides of Front Street, Cooper Street to Magnolia Street;

Both sides of Penn Street, Broad Street to Magnolia Street; to be paved, repaved, repaired and relaid and curbed. Said work to be prosecuted to completion under the direction and supervision of the Director of the Department of Streets and Public Improvement, Parks and Public Property, and the City Surveyor and in accordance with stakes and marks placed by said City Surveyor for the purpose of designating the line and grade of said respective pavements and curbs. That the Board of Commissioners may also appoint an inspector for the said work who shall make his report in writing to the said Commissioners as to the work upon each Street separately and shall approve or disapprove

10

20

30

same, and no work shall be accepted until approved by said Commissioners. The compensation of the inspector shall be fixed by the Board of Commissioners.

“All sidewalks and curbs shall conform to the established grade as nearly as practicable.

10 “Section 4. Before making or proceeding to make the improvements referred to and before awarding any contract for the making thereof, the City Clerk shall cause notice of the said contemplated improvement to be given to the owner or owners of any lands in a manner and form required by law. And that proof of service of such notice shall be filed within ten days thereafter in the office of the Collector of Taxes.

20 “Section 5. A true and accurate account of the cost and expense of the said improvements, including therein all advertising, printing, engineering, plans and specifications, attorney’s fees, service fees and all other expenses incident thereto, and upon the completion of said improvements the total cost and expense thereof shall be apportioned among the several properties improved in proportion to the frontage of their respective lands and a true statement of such costs under oath or affirmation shall be forthwith filed by the City Surveyor with the Collector of Taxes; thereupon the Board of Commissioners shall examine the said statement, and if

30 and file it or a certified copy thereof with the Collector of Taxes of the City. The Collector of Taxes shall record the said assessments in the same book as other assessments.

“Section 6. Every such assessment, unless paid with two months from the date of confirmation thereof, shall bear interest at 7 per cent per annum,

from the date of confirmation as aforesaid and shall be a first and paramount lien upon the respective lands assessed, to the same extent as assessments for local improvements under the statute, and shall be collected and enforced in the same manner.

“Section 7. Each and every owner assessed as aforesaid may pay his assessment forthwith or at his option in ten equal installments, together with the accrued interest thereon at the rate of 7 per cent per annum. Each installment shall fall due annually at the time the last installment of the assessments for local taxes upon real estate falls due, and shall be collected by the Collector of Taxes upon notice sent out by him with notice for local real estate tax. The first installment shall be payable at the first tax collecting period after the work upon the property assessed has been completed and the statement or report of the cost thereof filed and confirmed as aforesaid. 10

“Section 8. Nothing herein contained shall be considered to affect any sidewalks or curbs of said streets or any of them, which are in satisfactory repair and at the official grade and otherwise conformable to the intent and provisions of this ordinance, which is to be determined by the Board of Commissioners by resolution. 20

“Section 9. Everything to be done by the Board of Commissioners under this ordinance subsequent to the passage hereof shall be done by resolution. The plans and specifications herein above referred to may at any time be corrected, altered or added to, by resolution. The width and other dimensions of any particular sidewalks may be changed and altered by resolution whenever the Board of Commissioners thinks it advisable so to do, but in case of any such alteration, correction or addition to 30

the said plans and specifications or said dimensions, notice thereof, as hereinabove set forth, shall be given to the owner or owners affected thereby.

10 “Section 10. Notice of the contemplated improvement shall be given to the owner or any owners of the lands affected hereby, which notice shall be in the manner and form required by law, and work on the said improvements shall be begun forthwith after thirty days after the serving of the said notice and shall be finished as soon as practicable.

“Section 11. And be it further ordained that the laying of cross walks and the curbing, paving, repaving or curbing of the portion of the sidewalks that lay in the angles of the intersections of the streets, shall be done at the general expense of the City.

20 “Section 12. All ordinances or parts of ordinances inconsistent with this ordinance be and the same are hereby repealed.”

By Mr. Smith:

Q. Mr. Brelsford, down here in the corner you have “No. 1” and “No. 2,” page 24, with a notation on the edge of page 21. What is the meaning of that?

30 A. It means that in writing up the minutes from my notes taken of the meeting of Tuesday, May 20th, one of the sheets was accidentally mislaid, and the ordinance was written in prior to certain motions which were afterward entered on pages 24 and 25.

Q. Now, will you show us what motions were afterward written? You have “1” here and you have “2” here; was this motion afterward written? Now, here is another motion; when was that written?

A. What do you mean?

Q. When did that occur? Did that occur immediately following one and two, or did it occur at some other time in the proceedings?

A. If I recall correctly it occurred immediately after one and two. I started with a part of two really.

Q. You started with a part of two?

A. That is what I did, yes.

Q. What is the meaning of that mark there?

A. I don't know, unless it means that the reading 10
of the ordinance should be inserted in there.

Q. Don't you see that these are distinct resolutions? Can you explain why you don't remember this resolution when you remember that one and this one?

A. Not unless it was a motion made after the reading of the ordinance.

Q. Do you know whether it was or was not?

A. If you wait, maybe I can find out. I have the rough notes here, maybe I can tell from that. (Wit- 20
ness then produced a number of papers and proceeded to examine them).

Q. Have you examined the rough notes?

A. I have.

Q. What do you find?

A. It appears that this motion was made after the reading of the ordinance. Now, I don't know whether it does either.

Q. Then I understand that 1 and 2 are the two motions which are out of the proper order of 30
sequence; is that correct?

A. That is correct.

Q. 1 and 2 were passed before the ordinance as amended, was read, is that correct?

A. That is correct.

Q. Here you have a little arrow; do you know what is the meaning of that?

A. I can't recall.

Q. Can you say whether the motion made by Mr. Perkins to amend Section 3 was made before or after the reading of the ordinance, which is referred to on page 21?

10 A. On referring to the rough notes of minutes of this meeting I find that the motions marked 1 and 2 on pages 24 and 25, are Nos. 5 and 6 in the rough notes. I also find that No. 7 is a motion amending the ordinance to include both sides of Jennings Street, from Pine to Warren Street. My recollection is that I was authorized to read the ordinance as amended after this motion.

Q. Is that the motion for the amendment of Section 3?

A. Yes, sir, that is the way it looks to me.

20 Q. The motion referred to as No. 2 ends up with the words, "to be amended as contained in this amendment."

A. That is correct.

Q. What was the amendment that was handed to you at that time?

A. My recollection is that No. 7 in my rough notes, which moves that Section 3 be amended to include both sides of Jennings Street, from Pine to Warren Street.

30 Q. The motion referred to as No. 2 says, "This amendment," and then subsequently, as appears by the minutes, "Mr. Perkins moved that Section 3 be amended." Do you understand that the amendment here is the same amendment as referred to in the latter motion as Section 3?

A. That is not my understanding.

Q. Well, what is your understanding?

A. My understanding is they are two different amendments.

Q. Well, where is the amendment that is referred to in motion No. 2?

A. I don't know, unless it is the big one.

Q. What do you mean by the big one?

A. The ordinance itself.

Q. By the ordinance itself, do you mean the ordinance referred to as, "The ordinance as amended was then read"?

A. I do.

10

Q. Then do you say or not that the ordinance was read subsequent to 2, but before the motion of Mr. Perkins as to Section 3, or was the ordinance read after the motion by Mr. Perkins as to Section 3?

A. My recollection is that it was read prior to the motion of Mr. Perkins relative to Section 3.

Q. A few minutes ago I understood you to say that it was read subsequent; do you want to correct that testimony now?

20

A. By further looking over the rough minutes and a little thought it looks as if I should; I don't know.

DR. JAMES V. ROBERTS, SWORN.

By Mr. Palmer:

30

Q. Where do you live, Doctor?

A. Cooper Street, Beverly.

Q. How long have you lived in Beverly?

A. About forty-three years.

Q. Were you present at the City Hall in the City

of Beverly, on the evening of May 20th, at the time of the reading of a certain ordinance relating to the paving of sidewalks in the City of Beverly on first and second reading?

A. Yes, sir.

Q. Do you recall how that ordinance read with reference to Third Street?

Mr. Smith: I object; the minutes of the meeting
10 will show what occurred there.

A. Yes, sir.

Q. How was the ordinance read with reference to Third Street?

A. That Third Street should be curbed and flagged, both sides, from Cooper Street to Magnolia.

Q. Was there any amendment passed at that meeting?

20 (Same objection).

A. No, sir.

Q. Changing that distance?

A. No, sir.

Q. Did you see the publication of that ordinance in the "Beverly Banner" immediately following the meeting or within a few days following the meeting of May 20th?

A. The following Friday, yes.

30 Q. Did you examine that publication?

A. Yes.

Q. What did that show with reference to the ordinance relative to Third Street?

A. It showed from Cooper Street to Mount Holly.

Q. Mount Holly Street?

A. Mount Holly Street, yes.

Cross-examination.

By Mr. Smith:

Q. You did not appear at the final passage of the ordinance and object to it, did you, for that reason?

A. Didn't appear and object? I was here.

Q. You were here at the time of the final passage?

10

A. Yes, sir.

Q. You made no objection at that time?

A. No objection.

Q. Who was here with you?

A. Charles Parsons and Walter Fish, C. J. Parsons.

Q. Was Mr. Logan here?

A. He can answer for himself; I don't know whether he was here or not.

Q. You don't know?

20

A. No, he told me he wasn't.

Q. Did anyone at that time object to the passage of this ordinance?

A. Not that I heard.

Mr. Palmer: You mean for that reason?

The Witness: On account of that; yes, Mr. Herring was here also.

30

Mr. Palmer: That is all that I have to offer.

Mr. Smith: I understood the other day in my conversation with you that the testimony was going

to be confined to what the minutes showed, and for that reason I did not bring the Board of Commissioners here. If you want Dr. Roberts' testimony to stand, I think I want an opportunity to bring the Commissioners here, because you told me the other day, if you remember, who you were going to examine, and I came here prepared—

Mr. Palmer: Sure, I am perfectly willing.

10

PROSECUTOR RESTS.

THE CASE FOR THE RESPONDENTS.

THOMAS LEE, SWORN.

By Mr. Smith:

20

Q. What is your position in the City of Beverly, Mr. Lee?

A. President of the Board of Commissioners.

30

Q. Were you present at a meeting held on May 20th, at which an ordinance entitled, "An Ordinance regulating and providing for the construction, reconstruction, paving, repaving, curbing, recurbing, improving and repairing the sidewalks in the streets of the City of Beverly, at the cost and expense of the owner or owners of lands in front of which such improvement shall be made, and for the regulating and providing for the construction, reconstruction, paving, repaving, curbing, recurbing, improving and repairing the sidewalks in the angles of the intersections of the city streets, and curbing thereof and the laying of cross walks at the general expense of the city," was introduced by Mr. Perkins?

A. I was.

Q. At the time that ordinance was introduced, did it provide for the laying of sidewalks on Third Street from Cooper Street to Mount Holly, or did it provide for the laying of sidewalks on Third Street from Cooper to Magnolia?

A. When it was introduced it provided from Cooper Street to Mount Holly Street.

Q. Can you tell us when these various changes in the ordinance were made—were they before or after the introduction of this ordinance? 10

A. What changes have you reference to?

Q. The different streets.

A. My recollection is that this was on the table here and reconsidered prior to presenting it to the body, and these changes were made; then it was presented to the body in regular form with these changes in it.

Q. Do I understand that these changes were made at what might be termed an informal consideration of the ordinance? 20

A. Before the ordinance—

Q. Wait—and before the meeting of the Board of Commissioners?

A. Before its consideration was made by the body.

Q. And before its introduction?

A. Before its introduction.

Q. In whose handwriting are these alterations?

A. I take that to be in your handwriting.

No cross-examination.

30

BOTH SIDES REST.

REASONS.

NEW JERSEY SUPREME COURT.

10 GARRETT D. LOGAN,
Prosecutor,
 vs.
 W. FRED BRELSFORD, City
 Clerk of the City of Beverly, in the County of
 Burlington, and the
 Board of Commissioners
 of the City of Beverly,
Defendants.

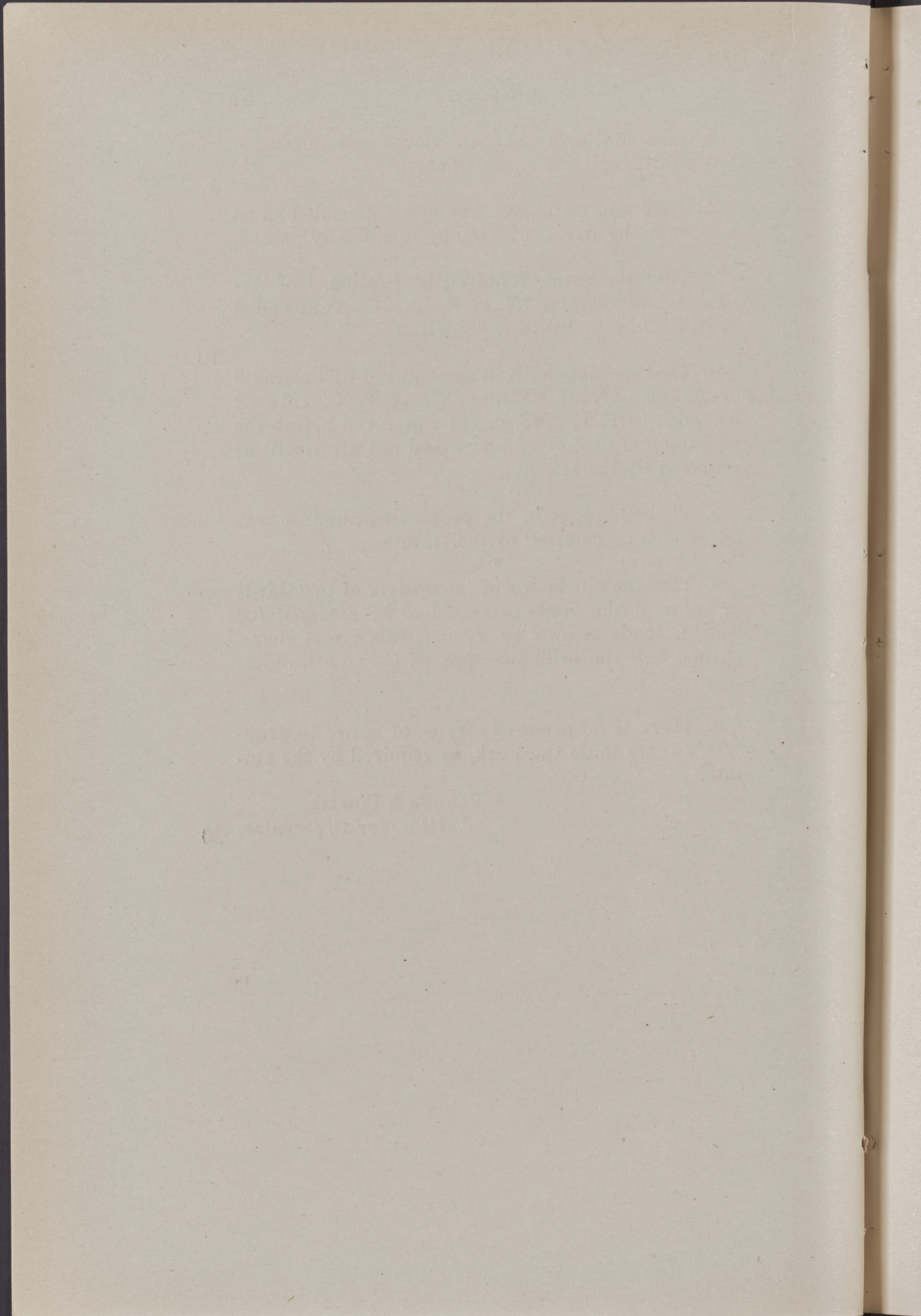
On Writ of Certiorari.
 Reasons.

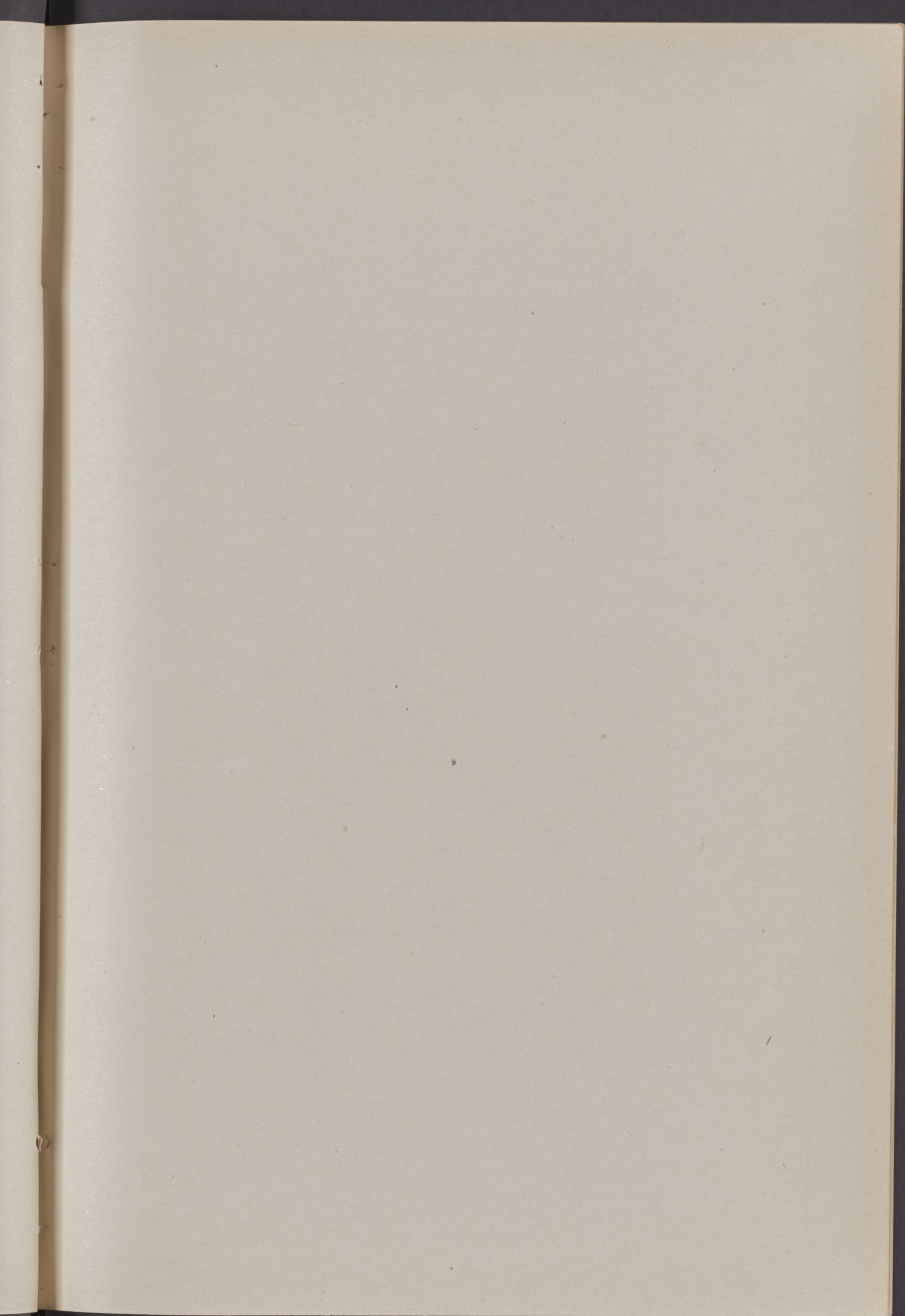
20

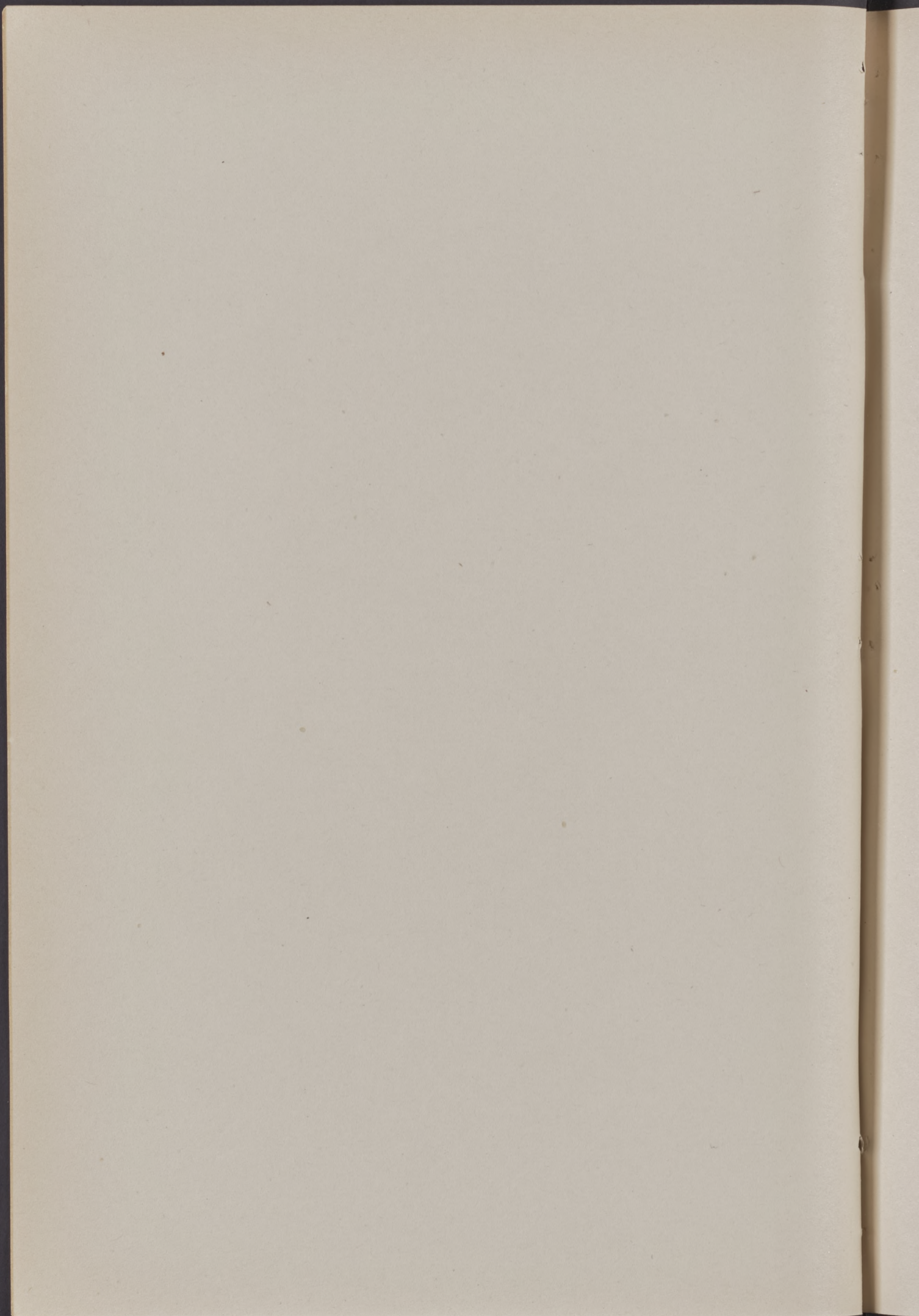
30 The said prosecutor, by Palmer & Powell, attorneys, comes and prays that the ordinance of the City of Beverly, passed June 3, 1919, entitled "An Ordinance regulating and providing for the construction, reconstruction, paving, repaving, curbing, recurbing, improving and repairing the sidewalks in the streets of the City, at the cost and expense of the owner or owners of lands in front of which any such improvement shall be made, and for the regulating and providing for the construction, reconstruction, paving, repaving, curbing, recurbing, improving and repairing the sidewalks in the angles of the intersections of the streets, and the curbing thereof and the laying of cross walks at the general expense of the City," be set aside, reversed and for nothing holden, for the following reasons:

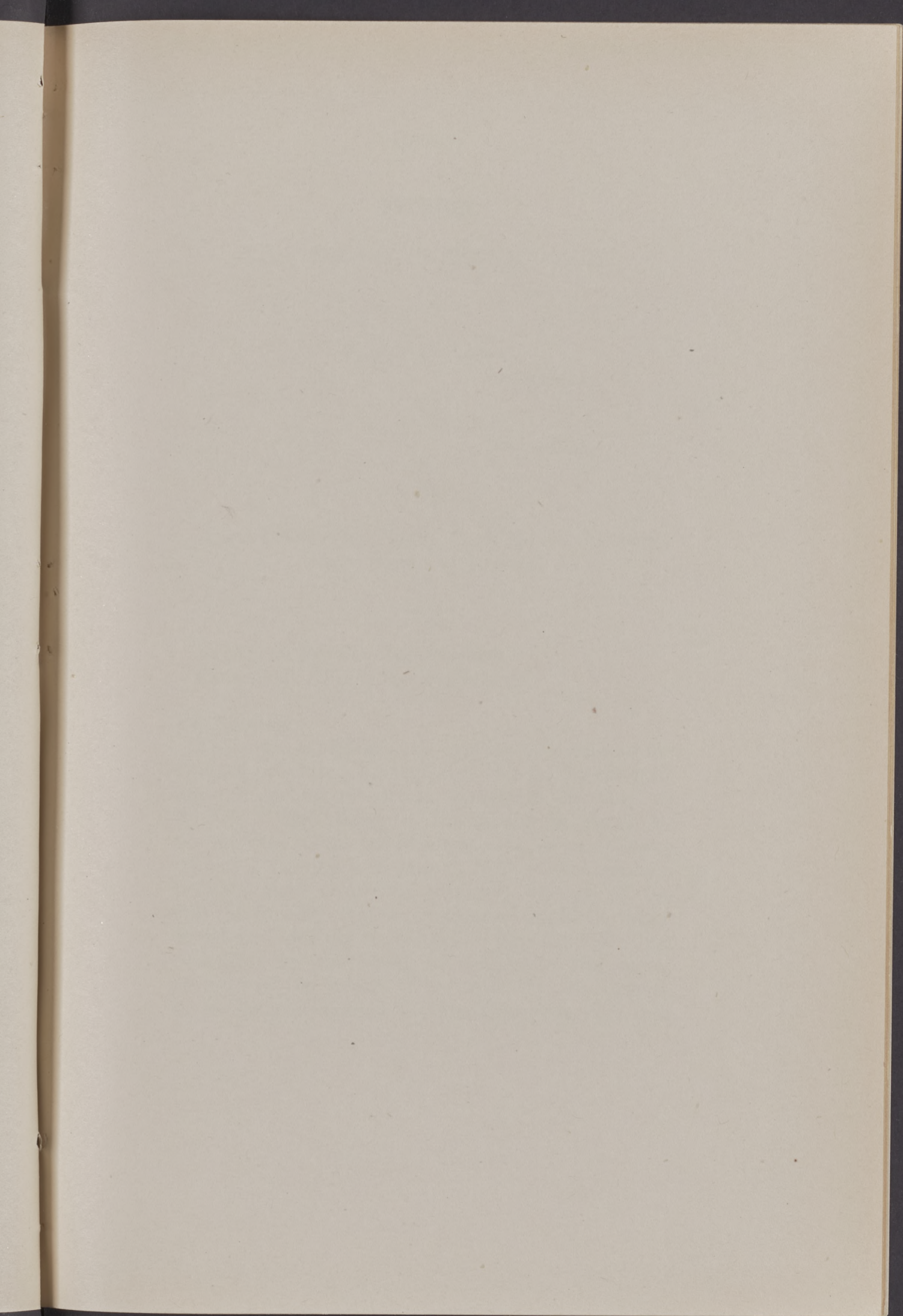
1. That said ordinance was never introduced before said Board of Commissioners.
2. That said ordinance was never amended so as to include the streets covered by it as finally passed.
3. That the notice required by Section 9 of Article XX of Chapter 152 of P. L. 1917, as amended in P. L. 1918, p. 484, was not given.
4. That the notice given as required by Section 9 of Article XX of Chapter 152 of P. L. 1917 as amended in P. L. 1918, p. 484 was given before the introduction of the ordinance and not afterward as required by the statute. 10
5. That no notice of the proposed ordinance was advertised as required by the statute.
6. That the objections of the owners of two-thirds in value of the lands proposed to be assessed for benefit, made known by remonstrance was disregarded and the ordinance passed over such objection. 20
7. There is no proof of service of notice to property owners to do the work, as required by the statute.

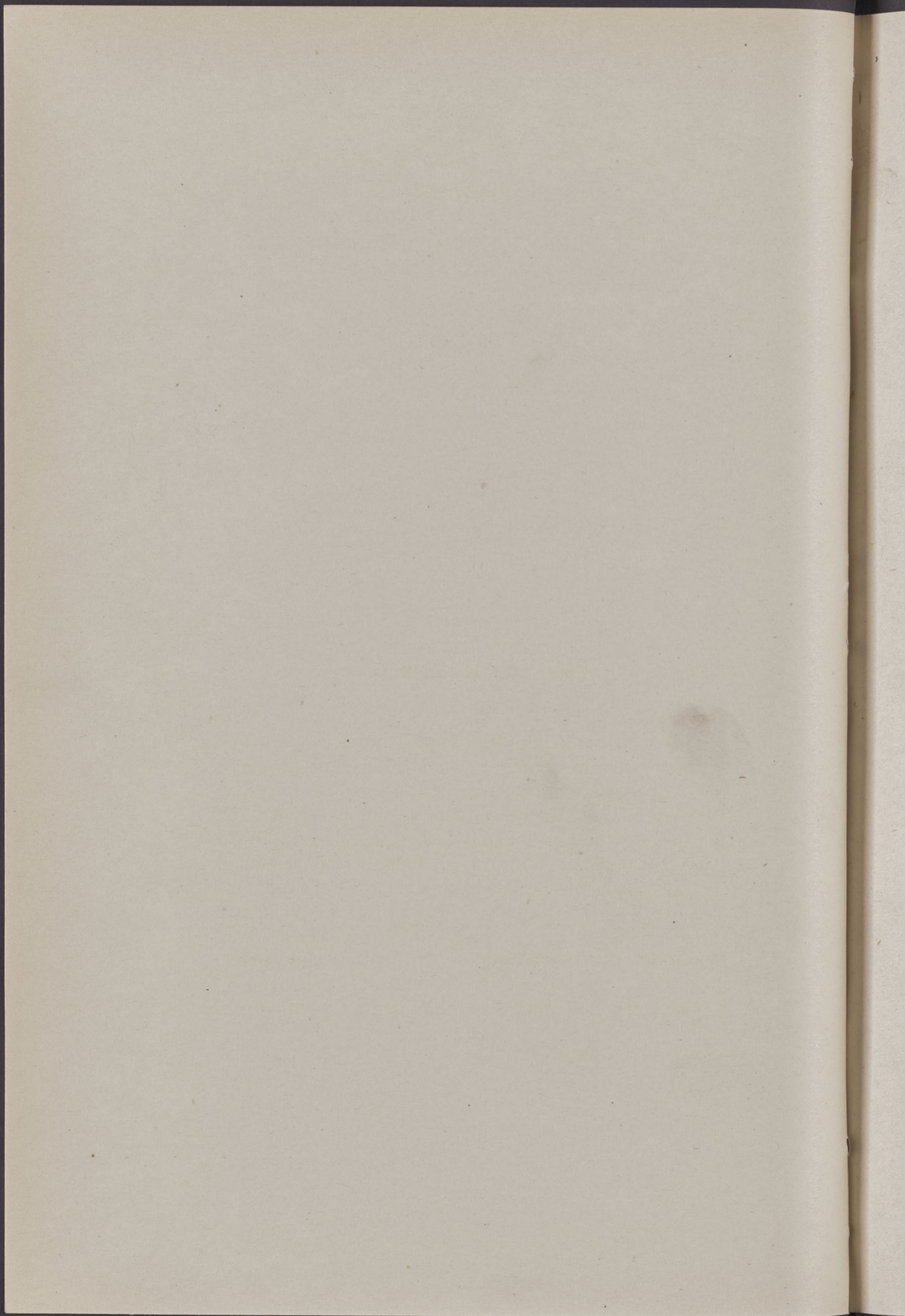
PALMER & POWELL,
Attys. for Prosecutor. 30











*Opinion***OPINION.**

NEW JERSEY SUPREME COURT.

GARRET D. LOGAN,
Prosecutor,
 vs.
 CITY OF BEVERLY,
Defendant.

10

Argued November Term, 1919, before Justices
 TRENCHARD and BERGEN.

PALMER & POWELL, for Prosecutor.
 FRANCIS J. SMITH, for Defendants.

20

PER CURIAM:

This writ challenges the legality of a certain ordinance providing, among other things, for the paving and curbing of certain streets in the City of Beverly. The history of this action as shown by the minutes of the board appears to be as follows: that at a meeting held May 6, 1919, it was resolved that the clerk notify the property owners of the City of Beverly that an ordinance would be introduced at a meeting to be held on May 20, following, providing for the laying of side walks and curbs, on most of the streets of the said city, the expense to be charged against the abutting property; that

30

Opinion

the notices were mailed to some, and served on the other owners, and there seems to be no doubt that the prosecutor had the notice for he attended; that on May 20th a motion was made that an ordinance of the same character but limited to a lesser number of streets be taken from the table for the purpose of amendment, which was ordered; that the ordinance was amended by including nearly all the streets in the city; that the ordinance was then **10** given a second reading; its further consideration postponed for two weeks, and the clerk instructed to advertise the same, which was done by publication in the weekly newspapers with a notice attached that it would be taken up for passage June 3rd, following; that on June 3rd a remonstrance against the passage of the ordinance signed by two-thirds in value of the property owners affected by the proposed improvement, which had been previously filed, was submitted by the clerk to the **20** common council and by it referred to the city surveyor; that notwithstanding this remonstrance the council at once took up the ordinance and passed it.

These proceedings are subject to the statute entitled "An Act Concerning Municipalities" Chapter 152, P. L. 1917, Article 20 of which provides that a local improvement is one the cost of which, or a portion thereof, may be assessed on lands in the vicinity thereof, benefitted thereby.

30 It also provides what shall be a work of local improvement, among others, "The curbing or re-curbing of a side walk in, upon, or along a street." Section ten provides that no local improvement shall be undertaken where objections thereto in writing are filed by the owners of two-thirds in value of the lands proposed to be assessed for benefits accruing from such improvements.

Opinion

The first point made is that no notice was given before the introduction of the ordinance as required by Section 9 of Article 20. But this section was changed in 1918 P. L. Chapter 163, page 484, which provides that the notice may be given after introduction of any ordinance, which seems to obviate the objections that no notice was given before the introduction. The defendant does not claim that, if the improvement is, under the act above referred to, a local one, the common council could disregard the remonstrance, but insists that it is not what is defined in the act to be a local improvement. Articles 20 and 25 of the statute, which are those pertinent to this controversy are to some extent ambiguous but we think that the building of curbing is, under a proper construction of the act, a local improvement. The subject of Article 20 is, as indicated by the act, "Improvements" and declares that every municipality may undertake any of the following works as a local improvement. "(c) The curbing or re-curbing, guttering or re-guttering of a sidewalk in, upon or along a street, road, avenue, alley, or other public highway or portion thereof." This is one of the improvements which the statute expressly forbids, if owners of two-thirds in value of the lands proposed to be assessed for benefits shall file objections thereto, which was done in this case. It is urged by the defendant that such an improvement ceases to be local if the municipality chooses to impose the cost and expense by an assessment on the owners of land in front of the improvement, and therefore is not one where the cost may be assessed upon lands in the vicinity benefitted thereby, which the act says is one of the elements of a local improvement. This argument is based on Article 25

10

20

30

Opinion

which declares in Section one that all municipalities may by ordinance provide for the construction, among other things, of side walks and curbing at the cost of the land owners in front of which it is made. The statute then proceeds to declare the method of assessment for sidewalk improvements, which is upon lands in the vicinity thereof, limited to those in the vicinity who are abutting owners, but does not change the construction of

10 curbs from its description as a local improvement. We are of the opinion that when the Legislature gives the right to two-thirds of the land owners in value to arrest a proposed curb construction by a remonstrance, that, without expressly saying so, they did not grant an implied power to a municipality to destroy this right by conferring authority to impose the cost on adjacent owners of the land benefitted. Article 20 expressly provides an arrest of a curbing improvement by remonstrance

20 signed by a given ownership, and Article 25 does not do away with this. It grants the same power to curb as Article 20, and provides the method of assessment. This ordinance undertakes to curb most of the streets in a city of considerable size, and it is not enough to deprive two-thirds of its citizens affected, of a legislative right to protest, simply because a particular improvement includes within its provision the improvement of sidewalks with a curbing improvement which is subject to a

30 remonstrance. The real question presented is what is the effect of the remonstrance. It is not clear that the right of remonstrance is prohibited as to an ordinance which requires the building of all the side walks in a municipality, but that it is not necessary to determine in this case. We are of the opinion that this ordinance should be set aside be-

Opinion

cause the remonstrance was disregarded when the ordinance included curbing, which seems to us to be described by the act as a local improvement.

The prosecutor is entitled to a judgment setting aside the ordinance.

[ENDORSED]

Filed Jan. 30, 1920.

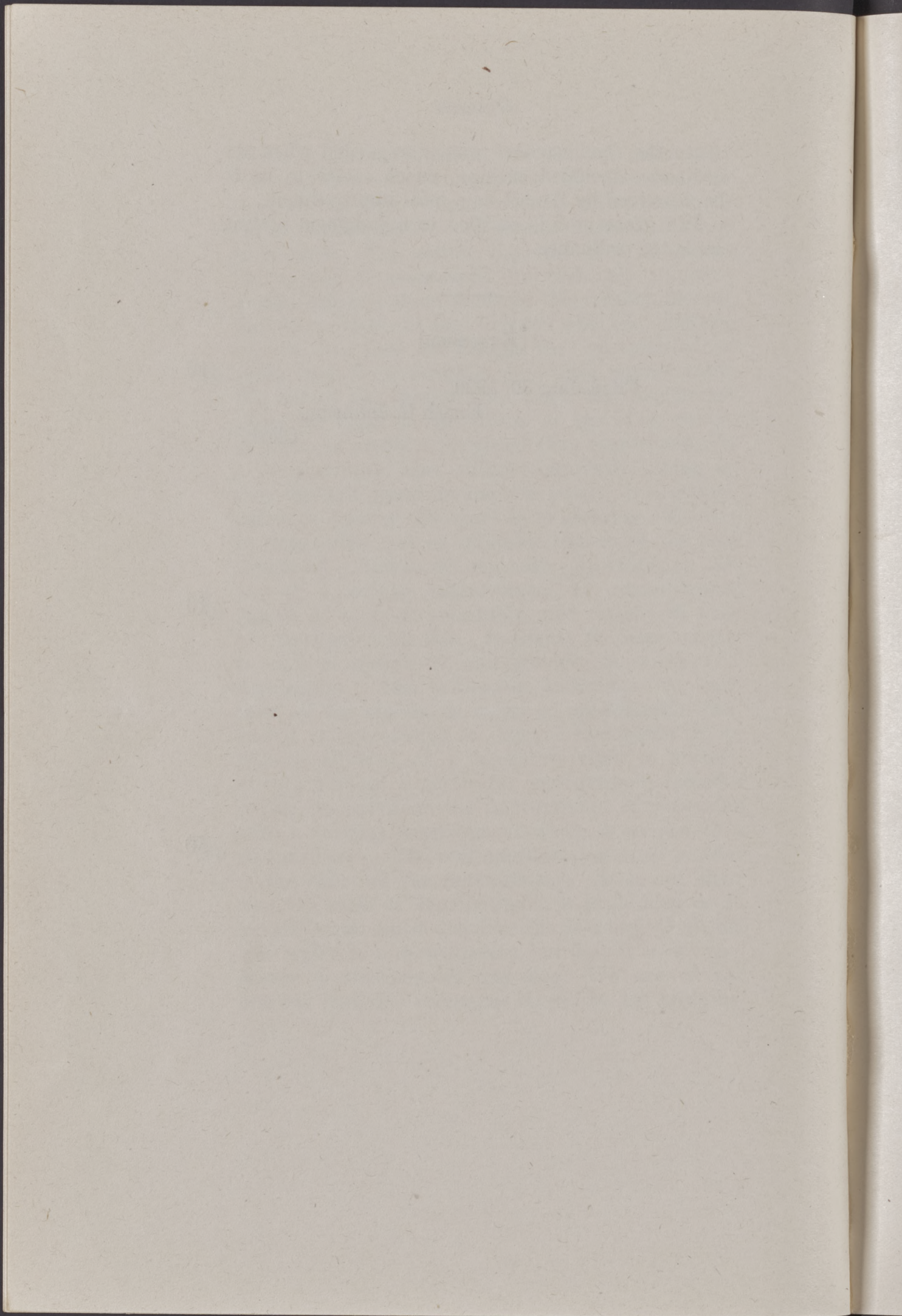
Enoch L. Johnson,

Clerk.

10

20

30



NEW JERSEY
COURT OF ERRORS AND APPEALS

<p>GARRET D. LOGAN, Prosecutor and Respondent,</p> <p style="text-align: center;">vs.</p> <p>W. FRED BRELSFORD, City Clerk of the City of Beverly, and the Board of Commis- sioners of the City of Bev- erly, in the County of Bur- lington, Defendants and Appellants.</p>	}	<p>ON CERTIORARI</p> <p>ON APPEAL FROM THE SUPREME COURT.</p> <p>BRIEF FOR PROSE- CUTOR AND RESPONDENT.</p>	10
---	---	---	----

This is an appeal from a decision of the New Jersey Supreme Court on a Writ of Certiorari to set aside an ordinance of the City of Beverly, in the County of Burlington, relating to sidewalk and curbing improvements on all of the streets of the City of Beverly. The Supreme Court set aside the ordinance and this appeal is taken from that decision. 20

FACTS.

The City of Beverly is a Municipal Corporation, governed by a commission pursuant to Chapter 221 P. L. 1911, page 426, and the amendments thereof and supplements thereto. It is also governed by Chapter 152 of P. L. 1917, page 319 &c., known as the "Home Rule Act." It undertook to pass an ordinance for the construction of sidewalks and curbs on practically all of the streets of the City of Beverly. This ordinance is the one subject to attack in this case. At a meeting of the City Commissioners on May 6th, 1919, the following resolution was adopted, "Be it resolved that the City Clerk be, and he is hereby directed to notify the property owners of the City 30

of Beverly that an ordinance will be introduced at a meeting to be held on May 20th, 1919, at 8.00 P. M., providing for the laying of sidewalks and curbs on all of the streets of the said City, the same to be charged against the abutting property owners." (S. C. page 7). This notice was served on some of the property owners by mail and on some by personal service, but no proof of such service appears. (S. C. page 8). A meeting was held on May 20th, but the minutes of that meeting do
10 not disclose the introduction of any ordinance with regard to the laying of sidewalks and curbs. The first thing that appears in the minutes of May 20th is a motion to place back on first reading for the purpose of amendment an ordinance entitled "An ordinance regulating and providing for the construction, reconstruction, paving, repaving, curbing, recurbing, improving and repairing the sidewalks in the streets of the streets of the City at the cost and expense of the owner or owners of lands in front of which any such improvement shall be
20 made." (S. C. page 9). The minutes do not disclose the introduction of the above entitled ordinance, or the introduction of any ordinance of this character at this meeting on May 20th. Yet, an ordinance entitled as above was placed back on first reading for the purpose of amendment. The amendment as made was to include both sides of Jennings street from Pine to Warren street. (S. C. page 11). The ordinance was then read as amended as follows: "An ordinance regulating and providing for the construction, reconstruction, paving, repaving,
30 curbing, recurbing, improving and repairing the sidewalks in the streets of the City at the cost and expense of the owner or owners of land in front of which any such improvement shall be made and for the regulating and providing for the construction, reconstruction, paving, repaving, curbing, recurbing, improving and repairing the sidewalks in the angles of the intersections of the streets and the curbing thereof, and the laying of crosswalks at the general expense of the City." (S. C. page

11, line 20). It will be immediately seen that the title of the ordinance as then read is quite different from the title of the ordinance as read for the purpose of amendment, and entirely different from the notice given to the property owners. The notice was for the laying of sidewalks and curbs on all the streets of the City, the same to be charged against the abutting property owners. The title of the ordinance as used for the purpose of amendment substantially complied with the notice. The title of the ordinance as read and passed bears very little resemblance or relation to the title as it was used for the purpose of amendment and notice, because it provides for the construction, repairing and curbing of the sidewalks at the intersection of the streets. 10

The last quoted ordinance provides in section 1 thereof for the material for the sidewalks and curbs, the width of the same according to plans and specifications prepared by the City Surveyor. Section 2 provides the sum of \$50,000.00 for the purposes enumerated in the ordinance. Section 3 designates the streets. Section 4 provides for the giving of notice of such contemplated improvement and requires proof of service to be filed. Section 5 provides for the keeping of an account of the costs and expenses of the improvements including all incidental costs, and upon the completion of said improvements an apportionment thereof among the several properties in proportion to the frontage of their respective lands, and for the examination of said statement by the City Commissioners, and the sending of a copy to the collector for the purpose of assessment. Section 6 provides for the payment of said assessment. Section 7 provides for the payment of the assessment in installments. Section 8 provides that the ordinance shall not affect sidewalks or curbs which are then satisfactory as to grade and material to the City Commissioners. Section 9 provides for the doing of subsequent work by resolution and for the amendment, correction or alteration of the plans or specifications by resolution. Section 10 provides for the 20 30

giving of notice to the property owners for the construction of the work. Section 11 provides for the curbing and paving of the angles at the intersection of the streets. Section 12 is a general repealer of all ordinances inconsistent therewith.

When it appeared in the course of the taking of the testimony in this case that the ordinance of May 20th had never been introduced before the City Commissioners, and that the amendment as shown by the minutes
10 did not put the ordinance into the shape as passed, the attorney for the City of Beverly, realizing this difficulty, sought to help out the situation by a reference to something that had taken place even prior to the meeting of May 6th. He had the City Clerk turn to the minutes of April 22nd, and there found that on April 22nd an ordinance had been introduced with the following title "An Ordinance regulating and providing for the construction, reconstruction, paving, repaving, curbing, recurb-
ing, improving and repairing the sidewalks in the streets
20 of the City at the cost and expense of the owner or owners of lands in front of which any such improvement shall be made." (S. C. page 36). Section 1 of this ordinance provides for the material and kind of construction required, according to plans and specifications prepared by the City Surveyor. Section 2 provides the sum of \$25,000.00 for the work. Section 3 designates the streets. Section 4 provides for the work being done under the supervision of the director of the department of streets and public improvements, and the City engineer, and also
30 provides for the appointment of an inspector. Section 4 provides for the giving of notice to the property owners. Section 5 provides for the keeping of an account of the costs and expenses. Section 6 provides for the payment of the assessment. Section 7 provides for the payment of assessments in installments. Section 8 provides that sidewalks and curbs then in satisfactory condition should not be disturbed. Section 9 provides for the doing of subsequent work by resolution, and the making of altera-

tions, corrections and additions to the plans and specifications. Section 10 provides for the giving of notice to the property owners to do the work. Section 11 is a general repealer of inconsistent ordinances. The difference of these two ordinances is shown in the number of the streets to be covered, which for convenience are here placed in parallel columns:

ORDINANCE OF
APRIL 22nd.

1. S. Side of Warren St., East City line to Mount Holly St.
2. E. Side Broad St., Railroad Ave. to Delaware River.
3. W. Side Cooper St., Railroad Ave. to Front St.
4. N. Side Putnam St., Laurel St. to Melbourne Ave.
5. N. Side Pine St., Spruce St. to Bentley Ave.
6. N. Side Railroad Ave., Walton Ave. to Broad St.
7. E. Side Bridge St., Putnam St. to Warren St.
8. E. Side Walton St., Railroad Ave. to Pine St.
9. W. Side Oak St., Bridge St. to Cooper St.
10. S. Side Church St., Cooper St. to East City Line.
11. W. Side Walnut St., Warren to Second St.

ORDINANCE OF
MAY 20th.

1. Both sides Warren St., East City line to West City line. ¹⁰
7. Both sides Broad St., Railroad Ave. to Bank St.
2. Both sides of Cooper St., Railroad Ave. to Bank St.
3. Both sides Putnam St., Cooper St. to Mount Holly St.
4. Both sides Pine St., East City line to Mount Holly St. ²⁰
6. N. side Railroad Ave., East City line to Mount Holly St.
5. Both sides Walton St., Railroad Ave. to Pine St.
8. Both sides Oak St., Magnolia St. to Cooper St.
12. Both sides Church St., East City line to Cooper St. ³⁰
16. Both sides Walnut St., Warren St. to North End of Walnut St.
9. Both sides Elizabeth St., Railroad Ave. to Perkins St.
10. Both sides of Jennings St., Pine St. to Warren St.
11. Both sides Wilmerton St., Church St. to Warren St.

- 10
- 20
- 30
13. Both sides Perkins St.,
Cooper St. to Parker St.
 14. Both sides Van Kirk St.,
Warren St. to North End of
Van Kirk St.
 15. Both sides VanSciver
St., Warren St. to North End
VanSciver St.
 17. Both sides Spruce St.,
Railroad Ave. to Oak St.
 18. Both sides Mount Holly
St., Railroad Ave. to Third
St.
 19. Both sides Laurel St.,
Railroad Ave. to Bank St.
 20. Both sides Parker St.,
Perkins St. to Pine St.
 21. Both sides Melbourne
Ave., Warren St. to Railroad
Ave.
 22. Both sides of Bentley
Ave., Warren St. to Railroad
Ave.
 23. Both sides Chestnut St.,
Railroad Ave. to Putnam St.
 24. Both sides of Magnolia
St., Pine St. to Penn St.
 25. Both sides Locust St.,
Railroad Ave. to Bank St.
 26. Both sides Third St.,
Cooper St. to Mount Holly St.
 27. Both sides Second St.,
Walnut St. to Magnolia St.
 28. Both sides Fourth St.,
Cooper St to Magnolia St.
 29. Both sides Penn St.,
Broad St. to Magnolia St.

The above shows clearly that the ordinance of May 20th had no relation or connection to the ordinance of April 22nd.

After the passage of this ordinance of May 20th, it was published in the Beverly Banner, with a notice that the ordinance would be taken up for third reading and final passage at a meeting to be held on June 3rd. (S. C. page 20). At the meeting held on June 3rd, there was received by the City Commissioners a remonstrance against the passage of the ordinance, signed by the owners of two-thirds in value of the lands proposed to be assessed for benefits accruing from such improvement. (S. C. page 20 and 21). This remonstrance or objection was referred to the City Surveyor, and so far as the record discloses, he never made any report on said remonstrance to the City Commissioners. (S. C. page 21). The City Commissioners then proceeded to pass the ordinance over said remonstrance. (S. C. page 22). The City Clerk was authorized to publish the ordinance and send notice to certain property owners requiring them to do the paving contemplated by the ordinance. This notice stated that the work was contemplated under the provisions of the Act of 1918, while as a matter of fact the proposed improvement was under the act of 1917. (S. C. page 22 and 23). The City Clerk was instructed to send these notices, and there appear two affidavits on file, one by Clement M. Anderson and the other by John Schuck stating that they had mailed and served certain notices, but no copies are attached thereto and there is nothing to show what, if any, notice was sent.

Thereafter, the prosecutor made application for a Writ of Certiorari to review this ordinance and a Rule to Show Cause was allowed, under which testimony was taken and argued before Justice Kalisch, who thereupon allowed the writ and the case was argued before the Supreme Court on the same testimony as taken on the Rule to Show Cause. The Supreme Court set aside the ordinance, and this appeal is taken to review its decision.

ARGUMENT.

The validity of this ordinance is to be determined by the consideration and interpretation of Articles XX and XXV of Chapter 152 of the Laws of 1917, page 319, known as the "Home Rule Act."

Article XX has for its heading the word "Improvements." It defines a local improvement as follows:

1. "A local improvement is one, the cost of which or a portion thereof, may be assessed upon lands in the vicinity thereof benefited thereby."

"Any municipality may undertake any of the following works as a local improvement":

(e) The curbing or recurbing, guttering or reguttering of a sidewalk in, upon or along a street, road, avenue, alley or other public highway, or portion thereof."

Article XXV has for its heading the word "Sidewalks," and provides as follows:

1. "The governing body of every municipality shall have power to make, enforce, amend and repeal ordinances regulating and providing for the construction, reconstruction, paving, repaving, curbing, recurbing, improving and repairing of sidewalks in the streets, roads and highways of the municipality at the cost and expense of the owner or owners of the land in front of which any such improvement shall be made."

It will be seen by an examination of these two articles that a municipality is given power to provide for the curbing of sidewalks by each ordinance. In Article XX the power is given as one of the things that may be undertaken under the name of a local improvement. By Article XXV the power to provide for curbing is given as incident to power for the construction and paving of sidewalks.

Section 10 of Article XX as amended in P. L. 1918, page 484, provides that no local improvement shall be undertaken by a municipality where the owners of two-thirds in value of the lands proposed to be assessed shall

file with the clerk of the governing body a remonstrance or objection to the passage of the ordinance. That of course applies to any local improvement designated in Article XX. Such remonstrance was filed in this case and was turned over to the City Surveyor and no report made thereon and the ordinance immediately thereafter passed by the City Commissioners.

The Supreme Court in its decision in this case took the view that the Legislature in conferring upon the property owners the right of protest to prevent the passage 10 of an ordinance providing for the curbing of sidewalks in Article XX of this section, did not intend and could not in Article XXV immediately take away that power from the citizens merely by coupling the curbing improvement with some other improvement such as paving of sidewalks. That having given to the citizens the right to arrest or stop an ordinance to lay curbing the Legislature did not intend to immediately thereafter take away that right, so that the citizens had no power of control over a curbing improvement when coupled with some other 20 work. The soundness of this doctrine is scarcely open to even question. The appellants in their brief do not seem to seriously contend against the soundness of this doctrine, but place their chief reliance upon the theory that the two subjects, namely, curbing and sidewalks may be separated, and if the curbing part of the ordinance is invalid the part dealing with the consideration of sidewalks is valid by virtue of the provisions of Article XXV. To separate these two things in the same ordinance would seem to result in the practical destruction of the 30 ordinance. It would change materially the question of costs and make invalid the appropriation made by the ordinance for the two kinds of work. There is no effort in so far as the ordinance goes to separate the costs of one kind of work from the other, and an appropriation is made to cover both. It would seem from the reading of the ordinance that the matters are so interwoven in practically every section of the ordinance that to declare

one invalid it must also declare the other invalid.

Further, the protest or remonstrance against this improvement was directed against the whole scheme and not merely against the curbing. If the rights or wishes of the citizens, being owners of two-thirds in value of the property that might be subject to assessment, are to be given any consideration at all, then the remonstrance must be considered as applying to the whole scheme of improvement. If the sidewalks can be improved under
10 this ordinance and the curbing eliminated, then the City Commissioners seem to have the power to force an improvement, and the consequent assessment for the payment thereof, on the property owners against the protest of a big majority of them. If the municipality possesses that power then the so-called "Home Rule Act" certainly loses most of its force.

The whole plan for the passage of this ordinance was on the part of the City Commissioners in the beginning based upon the theory that the work was to be under-
20 taken as a local improvement. They did the things that are required under Article XX to indicate to the citizens of the City of Beverly that the proposed improvement was to be made under Article XX as a local improvement. The notice given was such as is required by the act under Article XX. The publication and mailing of these notices is all in accordance with the act, so that the citizens were naturally led to believe, regardless of the actual wording of the ordinance, that the City Commissioners contemplated the work as a local improvement.
30 Having led the public into that position and finding themselves over-whelmed, so far as sentiment is concerned, with the filing of a remonstrance, the commissioners then changed the basis of their position and now say they were proceeding under an entirely different article. It is no answer to this argument to say that a careful reading of the ordinance and close examination of the statute would have told the people that the work was contemplated under Article XXV. They had no oppor-

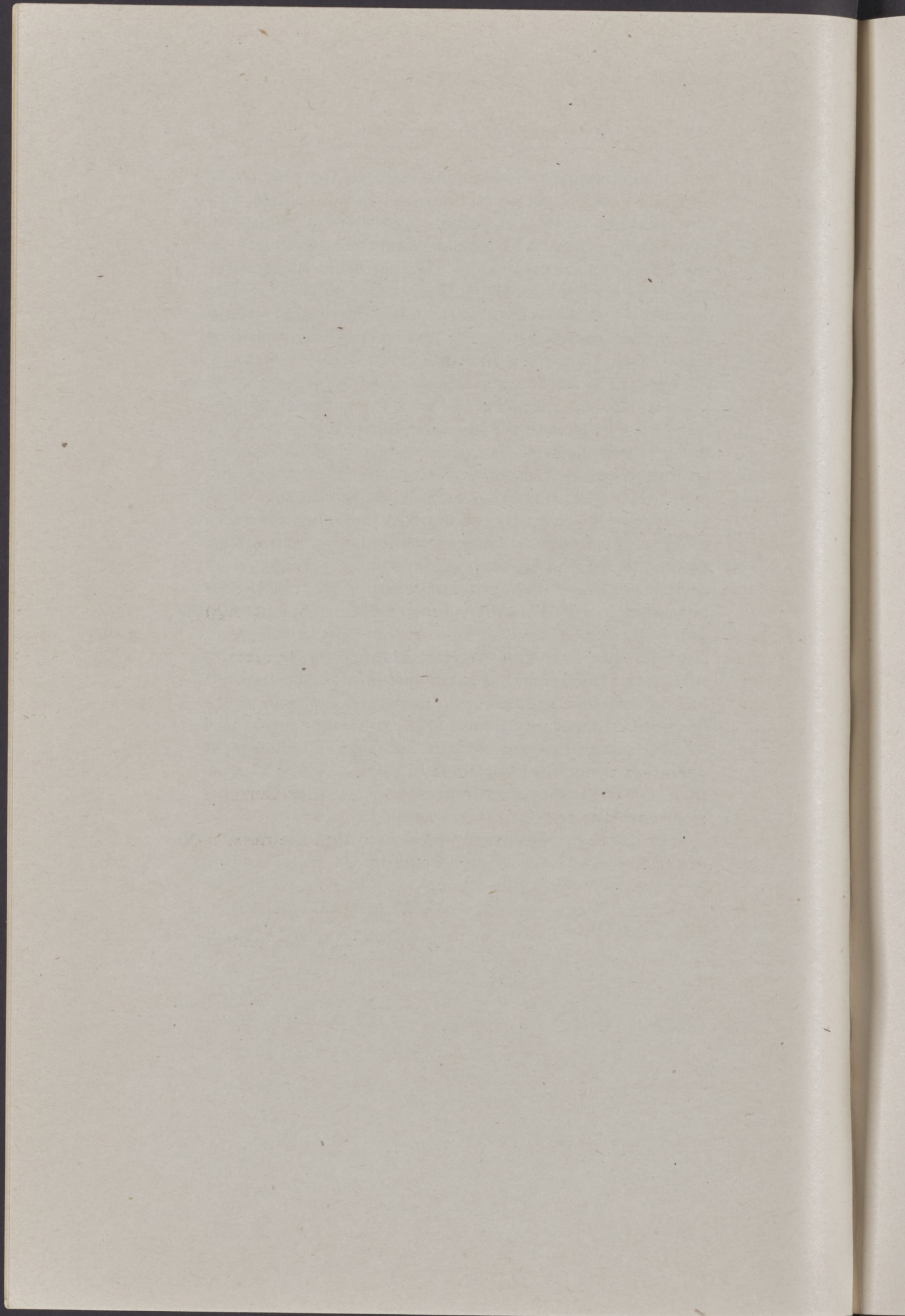
tunity to examine the ordinance prior to the date of its first and second reading. They had only a notice that an ordinance of that character would be introduced at that meeting, and as a matter of fact the ordinance as supposedly introduced could very easily have been regarded as being under the authority of Article XX. The citizens of the City of Beverly then did the only thing that lay in their power to stop the work, namely procure the signatures to the remonstrance as it had been read.

There is, however, another reason for setting aside 10 this ordinance, and that deals with the proper introduction of it as a legislative act of a municipality. The testimony clearly discloses that no such ordinance as is sought to be separated was ever properly presented before the City Commission as a legislative body. That this is true is shown by the effort made, when the testimony in this case was taken, to shift the ordinance back to one of April 22nd, for the purpose of getting before the City Commission some legislation that had been properly presented to them for consideration, but even 20 that will not help the situation, because the ordinance of April 22nd bears very little resemblance as to the streets that were to be improved to the one now in question. It has never been satisfactorily explained and cannot be upon any other theory than that the ordinance introduced on May 6th and passed on May 20th was intended to be operative under the provisions of Article XX, and if so then it could not be legally passed by the City Commission when the remonstrance was filed.

It is therefore respectfully submitted that the decision 30 of the Supreme Court should be affirmed.

PALMER & POWELL,

Attorneys for Respondent.



NEW JERSEY COURT OF ERRORS AND
APPEALS.

GARRETT D. LOGAN,
Prosecutor,
vs.
W. FRED BRELSFORD, City
Clerk of the City of Bever-
erly, and the Board of
Commissioners of the
City of Beverly, in the
County of Burlington,
Defendants.

On Certiorari.

Rule to Show Cause.

BRIEF OF DEFENDANTS.

The City of Beverly is a municipal corporation governed by a commission pursuant Chapter 221, P. L. 1911, p. 462, and the amendments thereof and supplements.

The opinion of the Court below was based on contention of the prosecutor seems that the filing of the remonstrance referred to in the testimony on p. 19 took from the Commissioners jurisdiction to pass the ordinances.

The Court's attention at this time is called to the structure of the Act of 1917, and particularly to the scheme therein carried out. Each article is a complete remedy in itself and deals with a separate subject. Many different methods are provided by the different articles to attain the different ends therein particularly set forth. Under Articles 23, 24 and others, the ordinances must be voted on before they are effective. In fact, different articles provide different means. Now, it is provided in Article XX that after the filing of such a remonstrance no such improvement as referred to in this article shall be undertaken. The article under which sidewalks are laid and curbs set is Article XXV. However, curbs may be set under either sections. Let us now look to the primary and fundamental difference between these articles and we will soon see that the provisions of one do not apply to the provisions of the other. Article XX provides that a municipality may set curbs as a local improvement. And it defines a local improvement to be "a local improvement is one, the cost of which, or a portion thereof, may be assessed upon lands in the vicinity thereof benefited thereby." It also provides for the methods of assessment of benefits. Now, what does the ordinance in question provide? The title says, "at the cost and expense of the owner or owners of lands in front of which any such improvement may be made." See p. 7. And on p. 12, (Sect. 5 of the ordinance) "Upon the completion of said improvements the total cost and expense thereof shall be apportioned among the several properties improved in proportion to the frontage of their respective lands." No reference is made to assessments on lands benefited, which may not be abutting, but on the properties in front of which the improvement was laid. This makes it clear that the

Commissioners did not act under Article XX, but under Article XXV which provides (p. 411, P. L. 1917) that "the municipality shall have power to make, enforce, amend and repeal ordinances regulating and providing for the construction, reconstruction, paving, repaving, curbing, recurbing, improving and repairing of sidewalks in the streets, roads, highways of the municipality, at the cost of the owner or owners of the land in front of which any such improvement shall be made." And examination of the title of the ordinance will show that it follows, almost, *verbatim* the statutory grant of power in Article XXV. It does not provide for assessing against those benefited, but against those before whose land the improvement is made. This ordinance cannot be construed as coming under Article XX or being affected by the provisions thereof. Therefore, the jurisdiction of the Board of Commissioners was not affected by the remonstrance.

I would at this time call the Court's attention to the fact that there is no provision in Article XX for the laying of sidewalks, but curbs only, and that sidewalks cannot be laid under any article in this act except Article XXV. Therefore, the proceedings in this ordinance must be under Article XXV.

No reference is made to assessment against properties in the vicinity benefited. Indeed, it is conceivable that an abutting property might not be benefited, but in fact injured, while one in the vicinity, and not abutting, benefited.

The Court below in their opinion seems to lay stress on the fact that Section IV of Article XXV refers to assessments for sidewalk improvements and seems to have the view that this does not affect the construction of curbs or change the method of assessing for curbs as that provided in Article XXV.

The apparent error in this is that the construction, reconstruction, paving, repaving, curbs, improving and repairing of sidewalks, which is provided under Article XXV, would be a sidewalk improvement, whether it was curbing or paving, or both, or either. The Court seems to have confused the words sidewalk and paving and to have limited the improvement of sidewalk to paving alone, while it is clearly the intention of the act that the word sidewalk improvement shall include all the things enumerated in Article XXV, which includes curbing.

Section XX provides that "Every municipality may undertake any of the following works as a local improvement." The Court's attention is called to the word "may." Surely, no one would seriously contend that the curbing of a sidewalk is not an improvement thereof, and improvements are provided for by Section XXV. We contend that this gives two methods of assessment which are radically different. There is no reference in one section to the method of assessment in the other.

In fact, the first paragraph of Article XXV says that the governing body shall have power to pass ordinances regulating and providing among other things for the curbing and recurbing of sidewalks to be assessed against the owner of the property in front of which any such improvement is made. This clearly sets forth separate methods of assessments as stated above, one of which is against properties benefited under Section XX and one against property abutting under Section XXV. Those which are assessed under Section XX are controlled by the provisions of Section XX, those which are assessed under Section XXV are not affected by the provisions of Section XX.

Again calling your Honor's attention to the contention that this ordinance is under Article XX, and not XXV of the "Home Rule Act," I would say that this cannot affect the validity of the ordinance so far as it provides for the laying of sidewalks and possibly eliminate, if their contention is correct, the provision for the setting of curbs, though as we have said before, it is our opinion that Article XX does not apply, if the provision as to sidewalks is good, and as to curbs is bad, the ordinance is then divisible for the provision as to laying of sidewalks, assessment of the cost thereof, etc., is a complete ordinance.

The law of New Jersey, as I understand it is, "If any invalid provisions are separable from and independent of the valid provisions, and can be so severed without defeating the object of the legislative body, the valid provisions of the ordinance will be sustained and given their appropriate effect."

Dillon on Municipal Corporations, paragraph 647;

Staats vs. Washington, 45 New Jersey Law, 318; Affirmed, 46 New Jersey Law, 209;

Haynes vs. Cape May, 52 New Jersey Law, 180;

Kolb vs. Boonton, 64 New Jersey Law, 163-165;

Doran vs. Camden, 64 New Jersey Law, 666.

This principle has been followed down to date.

The Ninth Street Improvement vs. City of Ocean City, 91 New Jersey Law, 704.

The rule is well settled that municipal ordinances, like statutes, may be invalid in some of their provisions and valid as to others. Where the portion of an ordinance which is invalid is distinctly separable

from the remainder, and the remainder in itself contains the essentials of a complete enactment, the invalid portion may be rejected and the remainder will stand as valid and effective.

33 *Cyc.* 322;

Staats vs. Washington, 45th New Jersey Law, 318; Affirmed, 46th New Jersey Law, 209;

Haynes vs. Cape May, 52d New Jersey Law, 180; 19th Atlantic 176.

In view of the law, this defendant respectfully submits that the Court should find:

First. That the Court below erred in holding that the ordinance is invalid, and

Second. That the ordinance in its entirety is valid and the proper exercise of power conferred by the statute, or

Second. That the ordinance is valid so far as relates to the laying of sidewalks in said city.

The Court erred in holding the ordinance void in its entirety.

FRANCIS J. SMITH,
*Attorney for Defendants
and Appellants.*

© 1900 by the
Smithsonian Institution



Smithsonian Institution

Содержание

Содержание