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Affidavit on Application for Certiorari.

(Filed April 10, 1924.)

State of New Jersey,)
County of Hudson,) ss.:

MAY L. QUINLAN, being duly sworn, upon her oath deposes and says: That she is a resident of the City of Jersey City, in the County of Hudson and State of New Jersey; that she is a property owner and taxpayer in the Borough of Fair Haven, in the County of Monmouth and State of New Jersey, owning in her own right the following described property:

10

BEGINNING at the north or Navesink River, the northwest corner of land now or formerly of Elizabeth DeHart on the easterly side of a road running from the river to the highway leading from the Village of Shrewsbury Town to Black Point; thence running south thirty-five degrees and eighty-eight links to a stone; thence running north fifty-five degrees east two chains to a stone; thence running north thirty-five degrees and thirty minutes west six chains and a half to said river, and thence up said river as it winds and runs westward to the place of beginning.

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30

That on or about June 26th, 1923, proceedings were started by the Borough of Fair Haven to lay sidewalks and curbing on Pearl Street north of Fair Haven Road, and that on that date an ordinance was introduced to that effect.

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Affidavit on Application for Certiorari.

That deponent's land fronts on said Pearl Street and is within the purview of the ordinance. That thereafter and on or about August 28th, 1923, an alleged contract was entered into with James Norman and Sons for the laying of the sidewalk and curbing required by the ordinance by the Borough of Fair Haven. That thereafter, and on or about November 15th, 1923, the portion of the sidewalk in front of the premises owned by deponent was laid. That thereafter and on the first day of April, 1924, deponent received a notice from J. N. Davis, Borough Collector, of the Borough of Fair Haven, that an assessment for \$439.57 had been levied against deponent's property on the east side of Pearl Street, in the Borough of Fair Haven, in the County of Monmouth, and State of New Jersey; that said assessment was for laying 1816 feet of sidewalk at a cost of \$339.52, for excavating 22 cubic yards (presumably of earth) at a cost of \$22.00, plus \$18.05 for engineering fees.

Said assessment is levied against deponent's land and is a charge against the same, and deponent's land as aforesaid is liable for the payment thereof.

That deponent at no time received a notice from the Borough of Fair Haven, in the County of Monmouth, either by mail, personal service, or publication in a public newspaper, or from any public officer thereof, that said assessment was about to be made, nor was deponent afforded any opportunity to be heard prior to the levying of said assessment. That deponent has been informed that the amount of said assessment was determined by the Borough Engineer of the Borough of Fair Haven, who apportioned the cost of the laying of the sidewalk against deponent's property irrespective and without regard to the benefits that might

Affidavit on Application for Certiorari.

properly obtain therefrom or the damages sustained by the laying thereof. That no benefit whatsoever will be derived by deponent or her said property from the laying of said sidewalk, due to the fact that prior to the enactment of the ordinance above referred to, deponent's property already had a sidewalk thereon, which was in a good state of repair. 10

Deponent further says that said sidewalk was not laid in a workmanlike manner and that water from the drainage of the street is already undermining the north end of the walk, and in a short time deponent believes said north end of the walk will be swept away.

Deponent further says that on Wednesday, March 12, 1924, all the bills for the laying of the Pearl Street sidewalk were delivered except deponent's. Deponent went to the home of Joseph Davis, Tax Collector of the Borough of Fair Haven, and asked him for her bill. He said that her bill was not ready, as the Engineer had not measured her property as yet, and a piece of the sidewalk at the end near the beach had to come off. Deponent asked him what was meant by this statement that part of the sidewalk had to come off, but said Joseph Davis could give no answer. Said Davis then told deponent that her tax bill would be ready on Wednesday (which would be March 26th). 20 30

That deponent has been advised that at a meeting of the Borough Council held Tuesday, March 25th, the assessment map for the Pearl Street sidewalk was sent back to Engineer Allen for correction. Deponent has no knowledge or information as to whether or not the said assessment map has ever been filed or corrected. 40

Affidavit on Application for Certiorari.

Deponent further says that nothing has been done whatsoever toward laying the curbing referred to in the alleged contract of August 28th, 1923, and that deponent has been informed and believes that the alleged contract is an entire contract and deponent cannot be assessed at any rate until the curbing as well as the sidewalk is laid; or, in other words, until the contract has been completed *in toto*.

10

20

Deponent therefore prays that a Writ of Certiorari may issue out of the New Jersey Supreme Court directed to the Mayor and Common Council of the Borough of Fair Haven in the County of Monmouth and State of New Jersey, requiring said Mayor and Common Council to certify the said proceedings to the said New Jersey Supreme Court for review.

MAY L. QUINLAN.

Subscribed and sworn to before me }
 this 7th day of April, 1924. }

STEPHEN M. EGAN, JR.,
 Attorney at Law of New Jersey.

30

40

Affidavit on Application for Certiorari.

State of New Jersey, }
 County of Hudson, } ss.:

ROBERT QUINLAN, of full age, being duly sworn on his oath according to law, deposes and says:

I reside in the City of Jersey City, County of Hudson and State of New Jersey, and am a brother of May L. Quinlan, the person who made the foregoing affidavit. 10

That on April 7, 1924, at the instance of my sister, I spoke with Joseph Davis, the Tax Collector of the Borough of Fair Haven, and asked him when the assessment map for the laying of the sidewalk on Pearl Street, as corrected, had been filed in his office. He said that he did not know the exact date, but that it had been filed some time between March 24th and March 29th, 1924. 20

ROBERT QUINLAN.

Subscribed and sworn to before me }
 this 7th day of April, 1924. }

STEPHEN M. EGAN, JR.,
 Attorney at Law of New Jersey.

30

40

Writ of Certiorari.

New Jersey, ss.:

The State of New Jersey to Charles Cross, Harvey
 M. Little, William F. Van Note,
 Howard Morris, Samuel H. Cleel-
 (L. S.) land, Jr., William B. Little, Jr., and
 Tony Hunting, Mayor and Common
 10 Council of the Borough of Fair
 Haven, and Borough of Fair Haven,
 Respondents,

GREETING:

We, being willing for certain reasons to be cer-
 tified of and concerning the contract and the as-
 sessment made in pursuance thereof in the mat-
 ter of the laying of sidewalks and curbing on
 Pearl Street, north of Fair Haven Road, as is said,
 20 Do COMMAND YOU that the said proceedings, re-
 ports, schedules and maps concerning the contract
 and the assessment made in pursuance thereof in
 the matter of the laying of sidewalks and curbing
 on Pearl Street north of Fair Haven Road, in the
 Borough of Fair Haven, in the County of Mon-
 mouth, and State of New Jersey, with all things
 touching the same, together with this Writ, you
 do distinctly and openly send, under your hands
 and seals to our Justices of our Supreme Court of
 30 Judicature, at Trenton, on the 28th day of April
 instant, that our said Justices may cause to be done
 thereupon what of right, and according to the laws
 and constitution of this State ought to be done.

IT IS FURTHER ORDERED that each party have leave
 to take depositions to be used upon the return
 of this Writ, provided two days notice of the tak-
 ing of said deposition be given.

Writ of Certiorari.

WITNESS, WILLIAM S. GUMMERE, ESQUIRE, Chief
Justice of our said Supreme Court, at Trenton, this
10th day of April, 1924.

EDWARD J. KELLEHER,
Clerk.

N. LOUIS PALADEAU, JR.,
Attorney. 10

Endorsement on Writ of Certiorari:

NEW JERSEY SUPREME COURT.

MAY L. QUINLAN,
Prosecutor,

v.

CHARLES CROSS, *et al*, and BOROUGH OF
FAIR HAVEN, 20
Respondents.

WRIT OF CERTIORARI.
Allowed

Returnable April 28th, 1924.
F. T. L., J. S. C.

N. LOUIS PALADEAU, JR.,
Attorney for Prosecutor,
15 Exchange Place, 30
Jersey City, N. J.

Return to Writ.

(Filed April 26, 1924.)

NEW JERSEY SUPREME COURT.

10	<p style="text-align: center;">MAY L. QUINLAN, Prosecutor,</p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">CHARLES CROSS, <i>et al.</i>, and BOR- OUGH OF FAIR HAVEN, Respondents.</p>	} On Certiorari.
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To the Honorable the Justices of the Supreme
Court of Judicature of New Jersey:

20 Charles Cross, Harvey M. Little, William F. Van
Note, Howard Morris, Samuel H. Cleeland, Jr.,
William B. Little, Jr., and Tony Hunting, Mayor
and Common Council and the Borough of Fair
Haven, of the County of Monmouth and State of
New Jersey, in obedience to the command of the
writ hereto annexed, to us directed, do hereby cer-
tify and send to you the said Justices, the con-
tract and the assessment made in pursuance there-
of in the matter of the laying of sidewalks and
curbing on Pearl Street, in the Borough of Fair
30 Haven, together with the proceedings, reports,
schedules and maps covering the contract and the
assessment made in connection with the laying of
said sidewalks and curbing, with all things touch-
ing the same, together with said writ.

IN WITNESS WHEREOF, we have caused the seal
of the Borough attached and this return to be

Return to Writ.

signed by the Mayor and attested by the Borough Clerk.

Mayor and Common Council of the Borough of Fair Haven.

CHARLES P. CROSS,

(Seal)

Mayor.

10

Attest:

M. FLOYD SMITH,
Clerk.

(Seal)

PETITION FOR LAYING OF SIDEWALKS AND
CURBING ON PEARL STREET NORTH
OF THE FAIR HAVEN ROAD.

WE, the subscribers, property owners and residents of that portion of Pearl Street situate in the Borough of Fair Haven between Fair Haven Road and the river, do hereby petition the Mayor and Council of the Borough of Fair Haven to regularly adopt an ordinance which shall provide and require the construction of suitable sidewalks and curbing along that portion of Pearl Street above mentioned.

20

Mary C. F. Cleary
R. E.
F. W. Kendrick
Jane E. Rankin
Mary L. Martin
P.

M. E. Sands
Walter Chadwick
Charles L. Bennett
Yaegues
Harry H. Hershé
John A. Hobrough

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Return to Writ.

ORDINANCE.

AN ORDINANCE TO PROVIDE FOR THE CONSTRUCTION OF
SIDEWALKS AND CURBING ON BOTH SIDES OF
PEARL STREET BETWEEN THE FAIR HAVEN ROAD
AND THE NORTH SHREWSBURY RIVER.

10 BE IT ORDAINED by the Mayor and Council of the
Borough of Fair Haven:

1. That all owners of land abutting or border-
ing upon Pearl Street in the Borough of Fair
Haven between Fair Haven Road and the North
Shrewsbury River shall cause to be constructed
sidewalks and curbs to conform with the estab-
lished grade and specifications to be furnished by
the Borough Engineer.

20 2. Said owners shall be allowed thirty days'
time in which to perform the work hereby re-
quired and written notice of the required work
shall be served personally upon such owners as
reside in the Borough of Fair Haven, and such
written notice shall be sent by mail to such owners
as do not reside in the Borough, and if their post
office addresses be unknown, such written notice
shall be posted on the premises affected by this
30 ordinance, and in case of neglect or refusal of
said owners to do the work herein provided for
within the time required, the said Borough of Fair
Haven may cause the same to be done under the
direction of the Street Superintendent and charge
the expense thereof against the land abutting or
bordering upon such street, which amount so
charged shall forthwith become a lien upon said
land and become a part of the taxes next to be
assessed and levied, and to bear interest at the
same rate as taxes and to be collected and en-

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Return to Writ.

forced by the same officers and in the same manner as taxes.

3. This ordinance shall take effect when published according to law.

The foregoing ordinance passed July 10th, 1923.

Approved.

10

CHARLES P. CROSS,
Mayor.

Attest:

M. FLOYD SMITH,
Clerk.

State of New Jersey, }
Monmouth County, } ss. :

20

JOSEPHINE KEARNS, of the Red Bank Register, a newspaper printed and published at Red Bank, in said County and State, who being duly sworn, deposeth and saith that the advertisement, of which the annexed is a true copy, has been published in said newspaper one time on the 27th day of June, A. D. 1924.

JOSEPHINE KEARNS.

30

Sworn and subscribed to before me }
this 21st day of April, A. D. 1924. {

THOMAS IRVING BROWN,
Notary Public of N. J.

My commission expires May 2, 1926.

40

Return to Writ.

JAMES NORMAN & SON

GENERAL CONTRACTORS

Estimates Given On All Kinds of Work

47-51 Shrewsbury Ave.,

Red Bank, N. J., Aug 28, 1923.

10

To the Mayor & Council
of the Borough of Fair Haven.

Gentlemen:—

We will construct concrete sidewalks on Pearl Street for the sum of 22c. per square foot. Concrete curb 50c. per lineal foot.

Respectfully submitted,

20

(Signed) JAMES NORMAN & SON.

October 2, 1923.

James Norman & Son., Esqs.,
Shrewsbury Avenue,
Red Bank, New Jersey.

Gentlemen:—

30

The Council accepts your bid for sidewalks and curbing of Pearl Street and they wish you to start this work as soon as possible.

Very truly yours,

M. FLOYD SMITH.

MFS/DW

40

SIDEWALK ASSESSMENT MAP
PEARL AVENUE, FAIR HAVEN, N.J.

SCALE 1 IN. = 50 FT.

JAN. 1924

G. KALLEN JR., C.E.



RED BANK - FAIR HAVEN ROAD

BOROUGH OF FAIR HAVEN, ELIZABETH SANDS
644 sq. ft.

ELIZABETH PARKER
358 sq. ft.

APPLEGATE & VIATERYMAN
810 sq. ft.

Borough of Fair Haven - 48 sq. ft.
CHAS. BENNETT
148 sq. ft.

J & V DECIOUS
148 sq. ft.

MARY MARTIN
302 sq. ft.

DONALD BANKIN JR.
374 sq. ft.

F. L. HENDRICK
174 sq. ft.

SAMUEL HENDRICKSON WEST
182 sq. ft.

STEPHEN MANN
244 sq. ft.

DUDLEY PARKER
148 sq. ft.

M. J. MC ANERNEY
800 sq. ft.

GRAND VIEW CLUB INC.
714 sq. ft.

R. A. CAMERON
357 sq. ft.

C. A. HENDRICKSON
384 sq. ft.

P. & E. MORRELL
280 sq. ft.

JOHN ALGOR
227 sq. ft.

WALTER CHADYK
282 sq. ft.

MARY CLEARY
230 sq. ft.

J. ANDREASCH
248 sq. ft.

J. C. MINZKY
322 sq. ft.

CLAY ST.

EDWARD YILBUR
447 sq. ft.

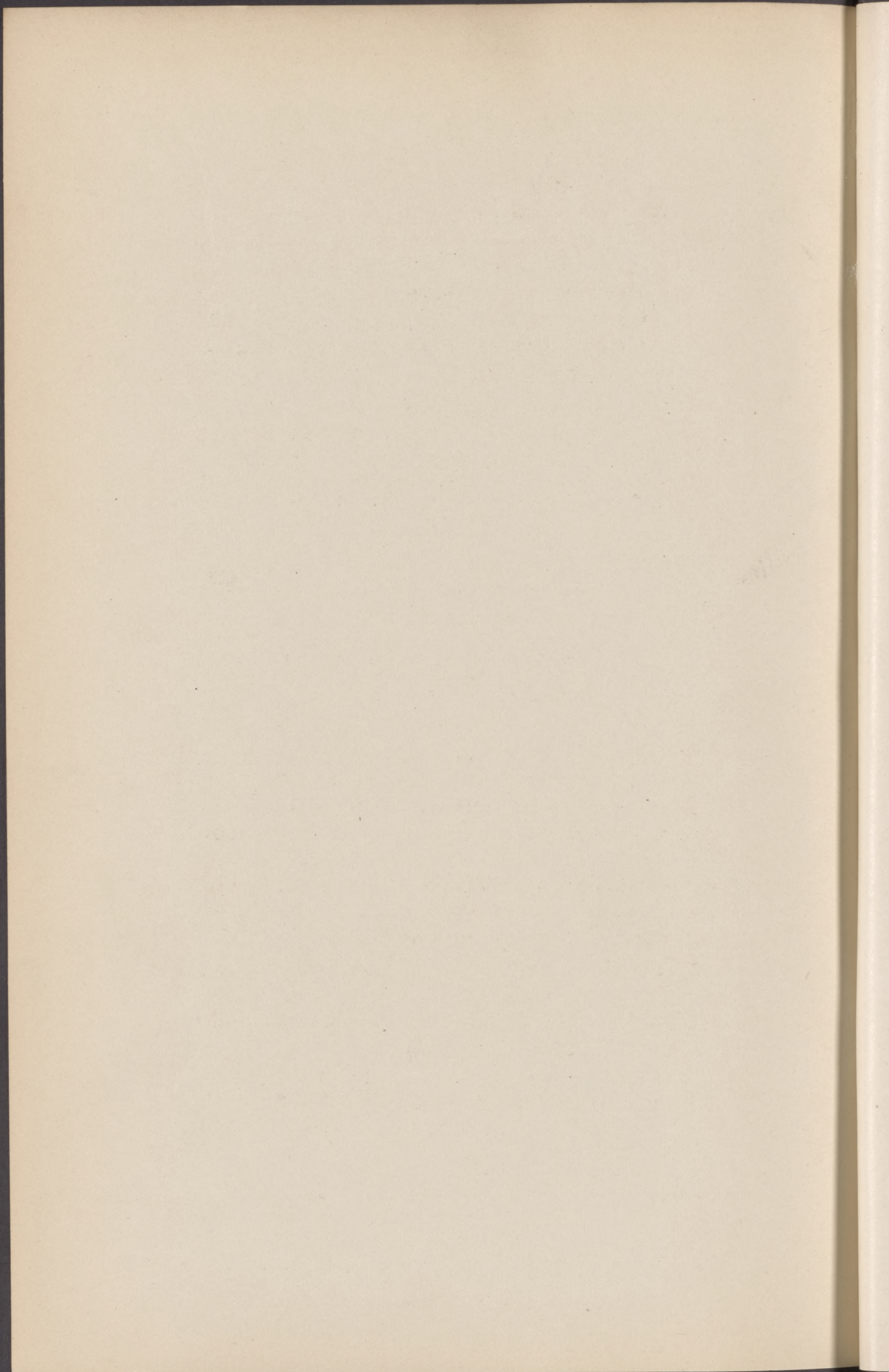
HARRY H. HERCHE
144 sq. ft.

MAY L. QUINLAN
1912 sq. ft.

NORTH

DOCK

SHREWSBURY RIVER



Return to Writ.

COPY OF RECORDS OF MEETINGS OF THE
MAYOR AND COUNCIL OF THE BOROUGH
OF FAIR HAVEN, NEW JERSEY, IN RELA-
TION TO THE CONTRACT AND ASSESS-
MENT FOR THE LAYING OF SIDEWALKS
AND CURBING ON PEARL STREET NORTH
OF THE FAIR HAVEN ROAD.

10

Regular meeting, present Mayor Cross, Councilmen H. M. Little, W. B. Little, Jr., Cleeland and Hunting, absent Councilmen Smock and Van Note. Page 183 of minutes (Petition presented for sidewalks and curbing on Pearl Street, north of Fair Haven Road.) Meeting June 12, 1923. Motion by Mr. Cleeland seconded by Mr. H. M. Little that same be received and referred to Attorney Smock to prepare an ordinance. Carried.

20

Regular meeting June 26, 1923, present Mayor Cross, Councilmen Smock, H. M. Little, W. B. Little, Jr., Van Note, Cleeland and Hunting. Page 187 of minutes. (Mr. Smock introduced an ordinance for sidewalks and curbing on Pearl Street, north of Fair Haven Road.) Motion by Mr. H. M. Little seconded by Mr. Hunting that ordinance pass first reading. Carried unanimously on roll call. Motion by Mr. H. M. Little seconded by Mr. Smock that notice of ordinance be published in Register on June 27th, 1923 for hearing on July 10th, 1923. Carried unanimously on roll call.

30

Regular meeting July 10th, 1923, present Mayor Cross, Councilmen Smock, H. M. Little, W. B. Little, Jr., Van Note and Cleeland, absent Mr. Hunting. Page 190 of minutes. Motion by Mr. Smock seconded by Mr. H. M. Little that the sidewalk ordinance for Pearl Street be brought up for sec-

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Return to Writ.

ond reading. Carried. No objections made on hearing. Motion by Mr. Smock seconded by Mr. W. B. Little, Jr., that ordinance pass second reading. Carried unanimously on roll call. Motion by Mr. H. M. Little seconded by Mr. Cleeland that the ordinance be brought up for third and final reading. (Carried unanimously on roll call.)
 10 Motion by Mr. Van Note seconded by Mr. Cleeland that the ordinance for sidewalks on Pearl Street as passed be published in the Chat. Carried. Motion by Mr. Smock seconded by H. M. Little that the Clerk notify property owners on Pearl Street to lay sidewalk. Carried.

Regular meeting August 14, 1923, present Mayor Cross, Councilmen Smock, H. M. Little, W. B. Little, Jr., Van Note and Cleeland, absent Mr.
 20 Hunting. Page 197 of minutes (Mr. H. M. Little of Street Committee reported still putting gravel on Pearl Street). Page 198 of minutes. (Communication from John S. Applegate & Son about Pearl Street sidewalks and asking the Borough to lay some.)

Regular meeting August 28th, 1923, present Mayor Cross, Councilmen Smock, H. M. Little, W. B. Little, Jr., and Hunting, absent Van Note and
 30 Cleeland. Page 201 of minutes. Motion by Mr. Smock seconded by Mr. W. B. Little, Jr., that bids for Pearl Street sidewalks and curbing be opened. Carried. James Norman & Sons, submitted the following bid: 22c. sq. feet for sidewalks and 50c. for curb lineal foot. Motion by Mr. Hunting seconded by Mr. H. M. Little that the bid be accepted and Norman notified to go ahead with the work. Carried unanimously on roll call.

Return to Writ.

Regular meeting Nov. 13, 1923, present Mayor Cross, Councilmen Smock, H. M. Little, W. B. Little, Jr., Van Note and Cleeland, absent Mr. Hunting. Page 209 of minutes. Mr. H. M. Little of Street and Walk Committee reported sidewalk laid on one side of Pearl Street.

Regular meeting Nov. 27, 1923, present Mayor Cross, Councilmen H. M. Little, W. B. Little, Jr., Van Note, Hunting and Cleeland, absent Mr. Smock. Page 211 of minutes. Mr. H. M. Little of Streets and Walks Committee reported sidewalks finished on Pearl Street. Communication from Attorney Smock informing the Clerk to allow Mr. Quinlan to examine the records at this meeting.

Regular meeting February 5th, 1924, present Mayor Cross, Councilmen H. M. Little, W. B. Little, Jr., Van Note and Cleeland, absent Morris and Hunting. Page 234 of minutes. Motion by H. M. Little seconded by Mr. W. B. Little, Jr., that the bills of James Norman & Son for \$2,258.30 for sidewalks on Pearl Street and \$22 for excavating be paid. Carried unanimously on roll call. Motion by Mr. Cleeland seconded by W. B. Little, Jr., that the Mayor and Clerk be authorized to execute a temporary note for \$2,280.30 for three months for Pearl Street sidewalks. Carried unanimously on roll call.

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May L. Quinlan, direct.

NEW JERSEY SUPREME COURT.

10	<p style="text-align: center;">MAY L. QUINLAN, Prosecutor,</p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">CHARLES CROSS, <i>et al.</i>, and BOR- OUGH OF FAIR HAVEN, Respondents.</p>
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20 Testimony taken in the above entitled action before me, George A. Wardell, a Supreme Court Examiner, at my office at 15 Exchange Place, Jersey City, New Jersey, Friday, June 6th, 1924, at 10 o'clock in the forenoon in pursuance of notice given therein and dated the 2nd day of June, 1924, in the presence of:

L. LOUIS PALADEAU, Esq., Attorney for the Prosecutor, Stephen F. Egan, Esq., of Counsel.

HENRY D. BRINLEY, Esq., of Messrs. Wilson & Smock, Attorneys for the Respondents.

30 GEORGE A. WARDELL,
Supreme Court Examiner.

MAY L. QUINLAN, the prosecutor, sworn as a witness on her own behalf, testified as follows:

Direct examination by Mr. Paladeau:

Q. Miss Quinlan, where do you reside? A. 322 Fourth Street, Jersey City.

Q. Do you own any property in Fair Haven? A. Yes, on Pearl Avenue, foot of Pearl Avenue, Fair Haven.

May L. Quinlan, direct.

Q. What does it consist of? A. House and garage.

Q. Has it a frontage on Pearl Avenue, Fair Haven? A. I don't know whether you would call it the frontage or the side—

Q. But it is partly on Pearl Street? A. Yes,—
on Pearl Avenue. 10

Q. Did you receive at any time any notice from the Common Council for the Borough of Fair Haven to do any work on the property, and, if so, when? A. On July 25th I received a notice from the Borough of Fair Haven.

Q. July 25th when? A. 1923, stating that I was to put down a sidewalk and curb of concrete or other durable material within 30 days from date, according to the grade and specifications of the borough engineer. 20

Q. Would you say grade and specifications,—do you mean grade and specifications? A. Plan and specifications.

Q. After receiving this notice, what did you do? A. I went to lawyer Quinn of Red Bank and asked him to communicate with the Borough of Fair Haven about some drain pipes that the water on the street,—Pearl Street, in the two blocks, runs over on my property, and in 1922 I had to repair three feet of that brick walk I had down there— 30

Q. (Interrupting.) Never mind that. What did you do in regard to the improvement, Miss Quinlan?

Mr. Brinley: I ask that that part about the drainage be stricken out.

Mr. Paladeau: Yes, you may have that stricken out.

May L. Quinlan, direct.

Q. What did you do with reference to going to the Council? A. I went to the engineer.

10 Q. Who was the engineer? A. Mr. Allen of Red Bank,—during the week of August 13th, and he was not in when I called, and I saw an assistant there, and he told me to come back in half an hour, and I went back and saw Mr. Randolph and asked if he had any plans or specifications about the sidewalk and he told me that he did not have any.

Q. He told you that he didn't have any? A. Yes.

Q. Is that all that he said? A. Yes.

Q. Did you, in August, 1923, see any plans and specifications regarding the Pearl Street improvement? A. No.

20 Q. What was the date of your last appearance in the borough engineer's office, about? A. About August 16th.

Q. Within a period of 30 days, beginning July 25th, 1923, did you ever receive any plan or specifications of the property? A. No.

Q. Were you, during this 30-day period, ready and willing to conform with any plan? A. Yes, I was.

30 Q. Do you, of your own knowledge, know when the plans and specifications were ready? A. I believe it was some time in September or October,—I don't know just what month it was. It was long after the time I saw him about it.

Q. Do you know of your own knowledge when the actual work was begun on the improvement, approximately? A. November 3rd, I think,—on Saturday afternoon at 3 P. M.

Q. In 1923? A. 1923.

May L. Quinlan, direct.

Q. When was the work commenced on your property, approximately? A. About November 15th, 1923.

Q. After the work was begun on your property, did you, at any time, see the contractor? A. Yes,—not after the work was begun on my property. I saw him when he began the work on Pearl Street, on the improvement. 10

Q. What was the conversation? A. On November 6th, on election day, I went there to the house,—I was not there, I was in Jersey City,—but in the afternoon I went out there and went down to see the contractor at Pearl Street and Main Road and I asked him what he had to say, and he said, “What have you to say?” And I said, “You came to see me; I haven’t anything to say. What have you to say,”—well, he didn’t say very much, and I asked him was he going to cut down the bank. He had told my mother that day,—the same day,— 20

Q. (Interrupting.) No, repeat just the conversation you had with him? A. I asked him was he going to cut down the bank, and he said he didn’t know what they were going to do, and I said that I had heard they were going to cut it down a foot, and he said that he didn’t know anything about it, and I said, “Do you start to work without knowing what you are going to do?” 30

Q. That is all that you had to say to him at that time? A. Yes.

Q. When the work was commenced,—or, rather, what, if anything, happened to your embankment after the work had begun on this improvement? A. The driveways were taken away and the embankment was all taken down.

Q. What do you mean “was taken away”? A. They were carted away, dug out and carted away, 40

May L. Quinlan, direct.

and I found that they were sold to people on the road there.

Q. Did you have any conversation with any of the workmen that were digging out around there?

A. On November 17th,—that was Saturday—

10

Mr. Brinley: I object to that as immaterial, what conversation she had with workmen in charge of the borough.

Q. You may answer the question. A. When I got down there Saturday afternoon there was not any part of one driveway left there at all, and there was a colored man with a wagon, and I said, "What are you doing, carting away the driveways that cost me so much money to put down?" Well, he almost turned white,—

20

Mr. Brinley: I move that that be stricken out, about the color.

Q. Continue. A. He said first that they told him to leave it that way, and then they told him to take it away, and I said, "I gave orders—"

Q. Who told him? A. I don't know, but I gave orders to Mr. Norman not to touch that place until I saw the lawyer.

30

Q. Did you ask the colored man who he was working for? A. Yes, and he said that he was under orders of the borough.

Q. Do you know of your own knowledge whether, on the opposite side of Pearl Street,—that is, opposite to your property, there are any driveways similar to yours? A. There are driveways, but they didn't cost as much as mine.

Q. I mean are they similar to yours? A. They are similar to mine, but the driveways were left there, and are still there.

40

May L. Quinlan, direct.

Q. When this cement sidewalk was laid, do you know what the condition of the weather was? A. When it was finished up, it was a driving rain,—one of the worst storms we had had during the year.

Q. Was there anything done with regard to the cutting of your property on Pearl Street? A. Yes. 10

Q. What was done? A. They dug it. I understand that they were to dig down a foot, and we measured 29 inches in one place, and then they had to fill that in again.

Q. Why,—do you know? A. I was told by the workmen that they were going to take the driveway next to mine up.

Mr. Brinley: I object to what the workmen said as being immaterial. 20

Q. Did you, at any time prior to the lowering or altering of this grade see any plan or specifications covering the same? A. No.

Q. Did you attempt to find out if there was one in existence? A. No, at that time I did not.

Q. Did you ever receive any bill from the borough for this Pearl Street improvement, and, if so, when? A. On April 1st, 1924, I received a bill, but the other property owners down there received theirs about March 12th. 30

Mr. Brinley: I move that the latter part of the answer be stricken out as hearsay, that relating to the time when the other owners received their bills.

Q. From whom and under what conditions did you get your bill? A. I was talking to a property owner down there, and she asked me if I had received my bill for the improvement— 40

May L. Quinlan, cross.

10 Q. (Interrupting.) Just how did you get your bill,—that is the question? A. I went to the post office to see if my bill was in the post office, and it was not there, and I went to the collector's office, Mr. Davis, and he told me that my bill was not ready, that my place had not been measured by the engineers, and I said, "It is very funny that other people can get their bills and I don't get mine."

Mr. Brinley: I object to the comment made to the collector as immaterial.

Q. You may continue. A. I didn't get mine until I had written to them after I had returned home, and I received it about April 1st, 1924.

20 Q. When you were talking to Mr. Davis, did you see the bill for your work? A. I asked him to show me the bill, and at first he hesitated, and then he showed me the bill.

Q. What was it that he showed you? A. A piece of paper about 5 by 8 inches, and I was told the price which was paid by Messrs. Norman & Son for these two blocks of sidewalk. He did not mention any curbing, because the curb was not put down yet.

30 Q. From the time you saw this bill up to the present time, has the curb been laid? A. No.

Cross examination by Mr. Brinley:

Q. When did you first occupy your property in the year 1923?

Mr. Paladeau: I object to that as immaterial.

A. Why, I go down every Saturday and spend the week-end down there during the year.

May L. Quinlan, cross.

Q. Every Saturday during the year? A. Almost every Saturday in the year; sometimes on holidays I go down, too, on holidays.

Q. Was that during 1923?

Mr. Paladeau: Objected to for the same reason as before.

10

A. Yes, it was during the year 1923.

Q. And then you were down there every weekend during the year 1923? A. Almost every weekend. I have a yearly ticket.

Q. When did you move down there permanently?

Mr. Paladeau: I object to that as immaterial.

A. I leave my furniture down there all the time, so I can go down there at any time I feel like it. I can go down there any day at all.

20

Q. There is a time, Miss Quinlan, when you leave your Jersey City residence and move to Fair Haven permanently? A. Yes, there is, when I go to stay all the time. My vacation I spend there.

Q. And when was that in 1923? A. I went down in July, but my people were down there before that in 1923.

Q. Your family? A. Yes.

30

Q. When did your family move down there permanently for the summer of 1923? A. I don't know when. It was during May or June. My sister commuted every day from there and my mother stayed there all the time, but I couldn't stay there. I went down there week-ends and whenever we had a holiday.

Q. You are the title owner of this property? A. Yes.

40

May L. Quinlan, cross.

Q. You alone? A. Yes.

Q. And your household consists of whom? A. Of my mother and my two brothers and my two sisters, besides myself.

10 Q. And do all of these persons constitute your household? A. When we have moved permanently there for the summer. They are now down there all the time.

Q. But some of them are, all the time? A. My mother and my two sisters and myself are down there all the time during the vacation.

Q. Was a petition presented to you by anyone requesting the borough to lay a sidewalk on Pearl Street? A. No.

Q. On which your property faces? A. No.

20 Mr. Paladeau: I wish to note an objection on the record to all of the foregoing testimony, with the exception of the one as to title as being immaterial and irrelevant.

Q. Miss Quinlan, which side of the street does your property front on? A. I believe it is the east side.

Q. And that side is much higher than the west side, is it not? A. It is a little higher; not so much higher.

30 Q. It was not necessary to disturb the roadways on the west side after your grade was established,—the roadways leading into the various properties? A. Well, it was not necessary to disturb—to destroy,—to disturb my driveway at the end there, the gutter-part; they disturbed the end part,—they did not destroy the roadway on the other side.

Q. The roadways? A. Not the driveways, no.

Q. That is what I referred to. They did not disturb them on the west side? A. No, they did

May L. Quinlan, cross.

not disturb the outer part of the road on the other side, no.

Q. It was not necessary to disturb these roadways because the property on that side was lower than on your side,—is that it? A. Not very much lower. It was higher than the property at the beginning of Pearl Street,—the property runs up from Pearl Street and towards the river, it runs down. 10

Q. Where, on the east side, is your property located with reference to the river? A. My property runs from the river,—faces on the river.

Q. And Pearl Street runs generally north and south? A. Yes.

Q. And you are the highest property of all there? A. At one point; there at the river it was very low.

Q. But that is the bank? A. The bank, but that was cut down, too. 20

Q. But there was no street laid out on the bank?

A. There was 125 feet of brick sidewalk running to the river five feet wide.

Q. The street was not laid out beyond the bank, was it? A. What do you mean by the bank?

Q. There is a bank on the northerly side of your property leading to the river? A. The bank was the original dirt sidewalk and you go right out of the property onto this embankment and of course that was much higher than the middle of the street. Now, there was a gravel walk up to this brick sidewalk which was 125 feet long and about five feet wide. 30

Q. That is not just what I am asking you; the sidewalks on both the east and west side of Pearl Street are level with each other, are they not? On the same grade? A. You mean now?

Q. Yes? A. Yes. 40

May L. Quinlan, cross.

Q. And the properties on the west side of Pearl Street are lower than your properties? A. A little lower.

Q. And it was not necessary to disturb any of the roadways on the properties on the west side of Pearl Street in order to allow persons to get in and out after the sidewalks had been laid, was it?
10

Mr. Paladeau: Objected to as calling for a conclusion.

A. One driveway was disturbed,—Mrs. McIneny's,—but the one right opposite mine was not disturbed.

Q. How much was it necessary to cut your embankment down in order to complete the sidewalk to the grade? A. My sidewalk was even to the sidewalk next to me, and there was a concrete walk there, and I was—
20

Mr. Brinley: I ask that that be stricken out.

Q. (Repeated by the stenographer). A. I couldn't tell you how much it was necessary because at one place they cut down 29 inches near the garage, and then they filled it in again.

Mr. Brinley: I move that that be stricken out.
30

The Witness (continuing): They cut down much more than they were supposed to cut down, and then they filled it in again.

Mr. Brinley: I ask that that be stricken out, that dissertation as not responsive to the question.

Q. Where did the contractors start these sidewalks? A. On Pearl Avenue and Main Road, on the west side of the street.
40

May L. Quinlan, cross.

Q. And your property was the last sidewalk of all that was laid in connection with that improvement? A. Yes.

Q. Were you in Fair Haven on the 10th of July, 1923? A. Yes, I was.

Q. Did you see the notice in the Red Bank Register advising residents of a public hearing on that improvement set for July 10th? A. No, I did not. 10

Q. You do not read the Red Bank Register? A. I certainly do, and get the Register and Chat, and Chat is a Fair Haven paper, and I thought it was allowable to advertise in that paper—

Mr. Brinley: I move that that be stricken out.

Q. When did you first receive any information from any source in regard to the borough proposing to lay a sidewalk on your street? A. When I received the notice, July 25th. 20

Q. What year? A. 1923.

Q. Did you, at any time, employ any contractor to lay your sidewalk? A. I didn't make any contract, because I didn't know how to lay it, if I laid the sidewalk,—

Mr. Paladeau: Just answer the question.

A. (continued). I don't employ anybody at all,— 30
no.

Q. Were you in Fair Haven when the contractor started to lay his sidewalk? A. Yes, I was.

Q. Did you continue,—remain there, until the work was done? A. No, I have to go to school. I have to go home.

Q. Were you down there at any time after he started the work? A. Yes, I was down there on election day; he started the work on November

May L. Quinlan, redirect-recross.

3rd, and I was down that day, and I went home Sunday night and then I came down on election day, November 6th, and I was down the weekends after that, and we spent Thanksgiving down there, too.

10 Q. When you were down there on election day, he had not started yet to excavate, or to dig on any part of your property, had he? A. He did not do mine until the very last one, but he went pretty near, close up to mine, leaving all of the other, and didn't continue.

Mr. Brinley: I think that is all.

Redirect examination by Mr. Paladeau:

20 Q. You say that yours was the last piece to be laid; what do you mean by that? A. Of the two blocks, it was the last sidewalk to be laid.

Q. Was there any work done on the property at all prior to the laying of the sidewalk? A. Oh, yes, they came and dug it out before they were ready to lay the sidewalk at all.

Q. Did they dig the others before they dug yours? A. Yes, they laid Pearl Street and Main Road, and then came up to my place,—they were not ready for it.

30 *Recross examination by Mr. Brinley:*

Q. You were there when they started to dig these various holes that you speak of? A. Not when they started to dig. I was in the city, here. My mother was there.

Q. How many days before they actually started to dig did they excavate for the work? A. I couldn't tell you how many days.

40 Q. Approximately? A. It was November 15th when they started to dig the holes. I was not there

May L. Quinlan, recross.

when they started to lay the sidewalk. It was in November some time.

Q. The whole work was completed by the 27th of November, was it not? A. I don't know just what date it was. It was in November, some time; the latter part of November. It was very cold and raining when it was completed.

10

Q. And the excavating which they did, do you remember whether it was necessary to lay this sidewalk to the grade—it was, was it not? A. I don't know anything about the grade.

Q. As you now observe it, it was—is not that so? A. The sidewalk seems to be all crooked to me; there were no lines laid at all; mine goes in and out.

Q. It was necessary to do the excavating, as a matter of fact, was it not, in order to lay the sidewalk at that grade at which it is now laid, is not that so? A. I can't say whether it was or not. I don't know anything about the grade. I was not told anything about the grade—

20

Q. You saw how much excavating there was? A. Yes, I saw it. They did too much excavating and put it back again.

Q. How much did they cut it down? A. I measured 29 inches in one place, and then they put it all down there, and that was solid dirt, when they dug that out, when they took that out, it was solid dirt again, and that sidewalk they had to fill, and it is not a good foundation.

30

Q. Do I understand you now to say that they dug that excavation 29 inches more than was necessary, and then filled it up 29 inches again? A. No, not the 29 inches. They filled up to the grade it is now.

40

Frank Quinlan, direct.

Q. And when they excavated the 29 inches to which you refer, how much below the established grade was that? A. I don't know what the established grade was.

Q. You know what it is now? A. It is about a foot down now, I should judge.

10 Q. About twelve inches, not the 29, you mean?
A. Yes.

Q. In other words, they dug out 17 inches that was unnecessary? A. Yes, they were going to dig the concrete driveway next to me up.

Mr. Paladeau: Objected to as immaterial.

Redirect examination by Mr. Paladeau:

20 Q. At the present time, approximately what is the distance between the sidewalk as laid and the embankment on your property? A. The embankment?

Q. Where they cut it down, the hedge, I mean? A. It is almost two feet.

Q. You said that before the work was fully completed the curb was laid out? A. No, the curb is not laid, just the sidewalk.

30 FRANK QUINLAN, called as a witness on behalf of the prosecutor, being first duly sworn, testified as follows:

Direct examination by Mr. Paladeau:

Q. Where do you live? A. 322 Fourth Street.

Q. You are a brother of Miss Quinlan? A. I am.

Q. Do you know of your own knowledge of a reception of a notice by Miss Quinlan of the doing of an improvement? A. I do.

40 Q. Did you accompany Miss Quinlan at any time when she went to the borough engineer's office to

Frank Quinlan, direct.

ascertain whether or not plans and specifications were ready for the doing of this work? A. I did.

Q. How many times did you accompany her? A. I accompanied her three times.

Q. When, approximately? A. During the week of August 13th to 18th,—I think August 13th, on the first occasion, August 16th on two additional occasions. 10

Q. 1923, that is? A. Yes, 1923.

Q. Did you hear what was said at that time? A. I did.

Q. What was said? A. On the first occasion, about August 13th, we—

Q. (Interrupting.) Excuse me, this just refers to the plans and specifications? A. We inquired at the office of the engineer at Red Bank, New Jersey, if he had any plans and specifications that would enable my sister to be guided by in the event that she decided to lay the sidewalk in front of her property on Pearl Street. The engineer or his assistant, I am not sure which it was, because I am not acquainted with them, told her that they were not ready yet. On August 16th, I accompanied my sister to Red Bank, and we called on Lawyer Quinn,— 20

Q. Never mind that. A. (Continued.) And we called again on the borough engineer and we again inquired if he had the plans and specifications ready for the proposed laying of the sidewalks on Pearl Street, Fair Haven. He advised us that he did not know of any plan prepared as yet, and suggested that we call back later and consult the engineer,—I think Mr. Randolph, and we called back later in the day, I think approxi- 30

Frank Quinlan, cross.

mately in an hour or so, when he said Mr. Randolph would probably be back, and we talked with Mr. Randolph. Mr. Randolph told my sister in my presence that there were no specifications or plans ready as yet for the proposed laying of the sidewalk. That was all that was said.

10 *Cross examination by Mr. Brinley:*

Q. Mr. Quinlan, you say that on August 16th was the last time you called upon Mr. Allen? A. I do.

Q. And what was the time previous to that? A. Approximately August 13th, about.

Q. And when was the first time? A. I say about August 13th.

Q. You made two calls? A. August 13th, 1923, —we made three calls upon him.

20 Q. Not in one day? A. No; two in one day, and one previous to that.

Q. You talked with Mr. Randolph on the occasion of your visit, your second visit of August 16th? A. I did.

30 Q. You asked him didn't you, whether the grade had been established on Pearl Street? A. I did not ask him about the grade. I asked him if the plans and specifications for the laying of the sidewalk on Pearl Street were prepared in order that my sister might know how to be guided in the event that she decided to lay the sidewalk herself as I have said,—she had the privilege to do so in the event that she wanted to, and so that is what I said to Mr. Randolph.

Q. How much of the time in the summer of 1923, did you spend at Fair Haven?

Mr. Paladeau: Objected to as immaterial and not proper cross examination.

The Witness: Am I obligated to answer?

40

Mr. Brinley: Yes, answer the question.

Frank Quinlan, cross.

A. I spent—I made numerous visits to my sister's home in Fair Haven; I spent two weeks on my vacation from August 5th to August 20th, 1923, at her home in Fair Haven.

Q. Were you there when the contractor began his work?

Mr. Paladeau: I object to that as not proper cross examination.

10

A. I was not.

Q. Were you there at any time during the progress of the work? A. I was not.

Q. Did you or your sister, to your knowledge, make any arrangement to have a contractor lay your walk?

Mr. Paladeau: Objected to on the ground that it is not proper cross examination.

20

A. I didn't make any arrangements, or my sister did not make any arrangements for the reason that we did not know how to be guided in making any arrangements, and that is the reason we made an endeavor to obtain these specifications and plans from the borough engineer.

Q. What was the point about which you were in so much doubt and which deterred you from having a contractor lay your walk? A. Before we decided to enter into any contract, we felt that we should have proper plans and specifications to be guided by, and then we would know about our doubts.

30

Q. How long have you been going to Fair Haven? A. On and off, for the past ten years or more.

Q. Do you know Mr. Norman of Red Bank? A. I do not.

40

Robert Quinlan, direct.

Mr. Paladeau: Objected to as incompetent, irrelevant and immaterial, and as not proper cross examination.

Q. Do you know any contractors in Red Bank who lay sidewalks?

10 Mr. Paladeau: Same objection.

A. I do not.

ROBERT QUINLAN, a witness called on behalf of the prosecutor, having been first duly sworn, testified as follows:

Direct examination by Mr. Paladeau:

Q. Where do you live? A. At No. 26 Dwight Street, Jersey City.

20 Q. You are the brother of Miss Quinlan, the prosecutor in this case? A. Yes.

Q. Did you know, of your own knowledge, that Miss Quinlan was served with a notice regarding this improvement? A. I do.

Q. During the month of August, 1923, did you see engineer Randolph of the Borough of Fair Haven? A. I did.

30 Q. What was the purpose of your visit? A. To ascertain the grade and specifications and plan of the work for the sidewalks on Pearl Street.

Q. What did he say,—what conversation took place? A. I went to see him the early part of August, and they were not ready at that time, and I saw him again about the 24th of August, and they were not ready at that time, and I saw him again about the 24th of August, and still they were not ready.

Q. This was all in 1923? A. 1923; and later on,

40

Robert Quinlan, direct.

around the first of September, I saw him and he had the plan about completed, and we protested against the change of the grade, and at that time he told me that the Council had not accepted that, and it might not be the way he had drawn it, and I was led to believe that there would be a hearing on the changing of the grade, and that that really did not decide it. 10

Q. Did you have any conversation with the engineer after the work was begun? A. Yes, I saw Mr. Randolph on the 16th of November and protested again about the change of the grade, and he told me that it was not necessary to change the grade,—that if the street people said so, he would leave the grade as it was. I called his attention to the fact that the grade went uphill on the west side of the street from the main street. 20

Q. Did you have a conversation with anyone else regarding the holding up of the work on your sister's property? A. Yes.

Q. With whom, and what was it, and when? A. Mr. Smart, of the Borough Council.

Q. When was it? A. The 15th, the morning of the 15th day of November.

Mr. Brinley: Just let us get that straight. There are two Mr. Smarts.

The Witness: The attorney for the borough. 30

Q. What was that conversation?

Mr. Brinley: Objected to as immaterial.

A. I called him on the telephone and I told him that I had requested our attorney, Mr. Quinn, to get in touch with him.

Robert Quinlan, cross.

Mr. Brinley: I further object on the ground that what he told Mr. Quinn, his attorney, is immaterial.

10 A. (Continued.) To give us an opportunity to object to the change of the grade, the proposed change, and I protested against their going ahead with the work without giving us the opportunity; he said that he would get in touch with the officials and with my attorney, which he did, and he called me back and said that the work had been stopped on condition that I go to Fair Haven that night and meet the mayor and talk the matter over. I went to Fair Haven,—reached the mayor's house about 7:30 and was told that he was not at home. I went down to the property, saw that they had ripped up the walk in various places at the beginning of the walk, at this Scocroft's house, 20 that they had dug down two and a half feet approximately, away beyow the grade as now established. Then I had something to eat and went around to the Borough Hall and the door was locked; that was around 9:30 o'clock and I waited around there for quite a while, probably half an hour, and did not see anybody, and then I went down to my sister's house for the evening,—for the night. 30

Cross examination by Mr. Brinley:

Q. Mr. Quinlan, how much of the summer of 1923 did you spend at Fair Haven?

Mr. Paladeau: Objected to as improper cross examination and as immaterial.

A. I was there practically every Saturday, and I spent about a week there in August.

40 Q. When did you begin to go down there over week-ends in the spring or summer of 1923?

Robert Quinlan, cross.

Mr. Paladeau: Objected to for the same reason as before.

A. I went down there in May, from May on.

Q. Are you a reader of the Red Bank Register?

Mr. Paladeau: Objected to for the same reason as before.

10

A. Yes.

Q. Did you see the notice of a public hearing on the ordinance for July 10th, 1903?

Mr. Paladeau: Objected to as not proper cross examination.

A. No.

Q. When did it first come to your attention that the Council first proposed to lay a sidewalk on Pearl Street? A. When my sister received the notice about laying the sidewalk.

20

Q. Did you and your brother and sister all bombard Mr. Allen's office at once? A. No, I was there myself three times alone, at different times.

Q. When was it that you made this protest, or had this conversation with the mayor? A. In the middle of October.

Q. And when was it that you tried to find the borough clerk and member of the Council? A. Oh, that was some time after the job was completed; I saw the mayor before the job was started.

30

Q. You did see the plan for this improvement, did you not, Mr. Quinlan? A. When?

Q. At any time? A. Yes, I saw a plan that I was told was not official; I saw a plan with the mayor and I asked him if it had been accepted by the Council, and he said no.

Mr. Brinley: Mr. Paladeau, we haven't

40

Robert Quinlan, cross.

that original; that is in Trenton. May I refer to this as a duplicate of the original map filed?

Mr. Paladeau: That is the assessment map, is it not?

10 Mr. Brinley: Yes, that is a copy of the map I sent to you.

Mr. Paladeau: I object to that, because that is the plan. You are referring to specifications; you are asking Mr. Quinlan if he saw a plan or specifications.

Q. Where did you see that plan? A. I saw the plan in the engineer's office; it was not completed at the time.

20 Q. And when did you see it? A. In the early part of September,—around the first of September.

Q. That was before any actual work had been started? A. Yes.

Q. And did that plan show the grade to be established on Pearl Street? A. It showed a grade, but not the grade that is there now.

Q. After that, did you see another plan at any time? A. Yes.

30 Q. And when did you see the second plan? A. I saw it about the middle of October in the mayor's house.

Q. At the mayor's house, did you say? A. Yes, sir.

Q. And that was before the work was undertaken? A. Yes.

Q. Did that disclose the grade? A. Not the grade that is there now.

Q. Did it disclose a grade? A. Yes, a grade.

Q. And what is the difference between the grade which is now established and the grade which was

Robert Quinlan, cross.

disclosed by the second plan you have just referred to? A. I don't know; it may be, in some places, I think it is a foot.

Q. What was there upon the map to show you that there is a difference of a foot between the sidewalk as now laid and the sidewalk as planned by the map? A. Why, it was drawn approximately to cut down that bank a foot, and as it is now, it appears to me,—I haven't measured it,—but it appears to me to be at least two feet in places.

10

Q. The sidewalks on the west side of Pearl Street as now laid out are at the same grade? A. I don't know; they look to be, I never measured them.

Q. You now have your embankment finished,—completed, haven't you? A. No.

Q. Did you ever appear before the Borough Council at any time? A. I did.

20

Q. Did you offer any protest? A. No, not to make a protest.

Q. Do you attend their meetings? A. I do not.

Q. I do not understand the answer to the first question in which you say that you did attend? A. When you say "Do I attend the meetings," I thought that you meant do I generally attend the meetings.

Q. No. A. Now, you say did I ever attend them, and I say yes, I did, but I do not attend them, if that is what you mean, if you mean attend them generally, every meeting, or every two or three meetings, no.

30

Q. Did you ever attend any meeting of the Borough Council after the filing of the petition for the improvement of Pearl Street up to the present time to make any protest as to the laying of the sidewalks in front of your property? A. No.

Mr. Brinley: That is all.

40

Mary E. Quinlan, direct.

MARY E. QUINLAN, called on behalf of the prosecutor, having been first duly sworn, testified as follows:

Direct examination by Mr. Paladeau:

10 Q. Where do you live? A. 322 Fourth Street, Jersey City.

Q. You are the mother of May L. Quinlan? A. Yes.

Q. Now, were you in your home,—your daughter's home, in Fair Haven, at the time the digging was first commenced? A. I was.

Q. What happened on that day,—first, when was it, about,—do you remember? A. It was about the 15th of November, 1923.

20 Q. What happened on that day? A. Three wagons drove up, and they commenced digging.

30 Q. What time of day was that? A. About eight o'clock in the morning, and I didn't get out until about half past eight, and I asked them to wait until I telephoned for my son, but they kept on digging, and didn't pay any attention to me. I said, "We think a great deal of the hedge and we don't want it destroyed," and not to go too close to it, and that I thought we were allowed some ground outside of it, but they didn't mind it; they made it worse, and they said their orders were to take it all,—the whole thing.

Q. Their orders were to take everything? A. To take it all.

Q. Who told you that? A. The colored man who had charge of the digging.

Q. What is his name? A. His name was Allen.

Q. Is that the man there? A. Yes.

Q. He told you that he had orders to take everything? A. Yes, from the borough,—that they were

Mary E. Quinlan, cross.

down at the corner, two men, and I wanted to go down and speak to them, to go down.

Q. Do you know how far the hedge stands from the sidewalk? As it is laid out now, how far was the hedge from the sidewalk,—a foot or two feet or three feet,—can you approximate it in any way?

A. All we could do was to bank it up. We had to put pieces in the side to save the hedge. 10

Q. But you couldn't tell how far it was? A. No.

Cross examination by Mr. Brinley:

Q. Is your hedge still there? A. It is, of course, I stayed there all day long for nearly three days, watching it, and these men acted like wild men, not like civilized people,—it was great sport for them.

A. Yes, they were digging, because I had to get out of bed and put my clothes on and they were working awful hard; they know that I was alone there, and that is the reason they acted that way. 20

Mr. Brinley: I move that that be stricken out.

Q. Mrs. Quinlan, it was necessary for them to do the digging which they did in order to lay the sidewalk as it is now laid? A. Couldn't they wait until somebody would come down and see about it,—until the owner would come? She did not live down there. 30

Q. (Repeated by the stenographer.)

Mr. Paladeau: That is objected to as calling for a conclusion from the witness.

A. I suppose so; I don't suppose they could lay it. They had to dig some way.

M. Floyd Smith, direct.

Redirect examination by Mr. Paladeau:

10 Q. Did you see any stakes driven or any lines being followed, or any cord stretched along the street where they were digging? A. No, when they first started, they didn't, until one of the neighbors came along and said, "You should have cords there; they do, on the other side."

Q. There were no cords there when they started to dig? A. I didn't see any, no, until the neighbor said that they ought to have, and then the man put cords down.

By Mr. Brinley:

Q. There were stakes? A. There were, on the outside there, yes.

20 Q. Not on the inside? A. Not on the inside, no.

M. FLOYD SMITH, called as a witness on behalf of the prosecutor, having been first duly sworn, testified as follows:

Direct examination by Mr. Paladeau:

Q. Where do you live? A. Fair Haven, New Jersey.

30 Q. You are the Borough Clerk of the Borough of Fair Haven? A. I am.

Q. Were you on July 10th Borough Clerk of the Borough of Fair Haven? A. Yes.

Q. And on that date an ordinance was passed entitled "An Ordinance to Provide for the Construction of Sidewalks and Curbs on Both Sides of Pearl Street Between Fair Haven Road and the North Shrewsbury River," was there not? A. Yes.

A copy of said ordinance being produced, counsel for the prosecutor offers it in evi-

George K. Allen, direct.

dence, it being an ordinance to provide for the construction of sidewalks and curbing on both sides of Pearl Street between Fair Haven Road and the North Shrewsbury River, passed July 10th, 1923.

(The said copy of the said ordinance is marked P1.)

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(The examination of this witness suspended.)

GEORGE K. ALLEN, a witness called on behalf of the prosecutor, having been first duly sworn, testified as follows:

Direct examination by Mr. Paladeau:

Q. Where do you live? A. Red Bank, New Jersey.

Q. You are the borough engineer of Fair Haven? A. Yes.

20

Q. Did you prepare a plan and specifications in conformity with the ordinance heretofore read?

A. I caused plans to be prepared; I didn't see the ordinance.

Q. It is an ordinance entitled "An Ordinance to Provide for the Construction of Sidewalks and Curbing on both sides of Pearl Street Between Fair Haven Road and the North Shrewsbury River, Passed July 10th, 1923"—did you prepare plans and specifications in conformity with that ordinance? A. We made a survey and fixed a grade.

30

Q. Did you prepare any specifications for the grade? A. Plans.

Q. Did you prepare them? A. My associate prepared them.

Q. Did this plan or the specifications cover the laying of the grade? A. The laying of the grade?

40

George K. Allen, direct.

Q. Yes? A. It embodied changes in the present—in the existing grade of the sidewalk at some places, if that is what you mean, but there was no grade ever established before for the street, to my knowledge.

10 Q. No grade had ever been established before, to your knowledge? A. Not to my knowledge, no.

Q. What happened to the plans after your associate drew them up, do you know? A. I presume they were delivered to the Borough of Fair Haven.

Q. Do you know whether they were or not? A. Not personally.

Q. Are you the official borough engineer, or are there two engineers? A. I am the official engineer, but Mr. Randolph did the work in this case.

20 Q. As official engineer, aren't you supposed to furnish any plans or specifications called for? A. I look the plans over and furnish them.

Q. Did you furnish them? A. I looked the plans over, and I presume they were furnished; I presume they were delivered to the borough; I couldn't say that they actually got them.

By Mr. Regan:

30 Q. If you drew these plans, Mr. Allen, who would take them to the City Clerk, or whatever his title is? A. One of the councilmen might.

Q. I didn't ask you who might,—who would? A. Whoever called for them from the borough.

Q. Did anybody ever call for them? A. Not to my knowledge.

Q. Not to your knowledge? A. I didn't see anybody.

40 Q. You would know if anybody called for a plan,—it would come to your knowledge through being the head of that office, wouldn't it?

George K. Allen, direct.

Mr. Brinley: Objected to as argumentative.

A. Not necessarily.

Q. How would you know if anything was called for or delivered from your office? A. My assistant might give it to them.

Q. I say, how would you know? A. I wouldn't know, unless they called on me personally. 10

Q. So that, if anything is called for from the borough engineer by the Common Council you, as borough engineer, wouldn't know whether they got it or not? A. I would know if they did not get it. They would let me know right away.

Q. I didn't ask you that— A. (Interrupting.) That is the only way I would know.

Q. Can't you answer my question? 20

Mr. Brinley: I object to the question on the ground that it has already been answered, that it is answered from the very nature of it.

A. No.

Q. Do you know of your own knowledge whether a contract was let for that improvement?

Mr. Brinley: Objected to as being an improper inquiry. 30

A. I do not.

Q. Did you ever prepare any plan or specifications or both, for this contract? A. I saw the plans after they were prepared.

Q. I say, did you? A. Personally, no.

Q. Do you know who did? A. Yes.

Q. Who? A. Mr. Randolph.

Q. Prepared the plans? A. Prepared the plans, yes, sir. 40

George K. Allen, direct.

Q. Do you know of your own knowledge, Mr. Allen, whether or not that plan that was furnished through your office was changed with reference to any grade? A. No, sir.

Q. When you say no, do you know? A. I do not.

10 Q. You don't know whether it was changed?
A. I don't know of any change.

Q. If there was any change after it left your office, would it, in the natural course of your dealings with the Council, be referred back to you or your office for any change? A. I presume it would; if they ordered it changed, they would naturally send it back to be changed.

Q. But you don't know whether that was done or not? A. No, sir.

20 Q. Did you finally O. K. the contractor's work as borough engineer? A. Not in this case.

Q. Who does? A. The chairman of the street committee, I presume; I don't know who it is.

Q. But you have nothing to do with that? A. Stake the lines, and the contractor did the work.

30 Q. So you issued no certificate for anything like that for the job? A. I O. K.'d—I did measure up the amount of the bill,—just made the map and sent it to the clerk, showing the amount of sidewalk laid in front of each property and what it measured.

Q. How did you determine that? A. By the work actually done.

Q. Did you supervise that work? A. Mr. Randolph measured the work after it was done; I didn't handle this job at all.

Q. You didn't touch this job at all? A. No.

George F. Randolph, direct.

GEORGE F. RANDOLPH, a witness called on behalf of the prosecutor, having been first duly sworn, testified as follows:

Direct examination by Mr. Paladeau:

Q. You are from the Borough of Fair Haven?
A. No, sir.

10

Q. Where? A. I reside at Freehold, New Jersey, with business at Red Bank.

Q. You are associated with Allen? A. Yes.

Q. Have you any title officially in the Borough of Fair Haven? A. No, sir.

Q. You are not the borough engineer? A. No, sir.

Q. Did you prepare plan and specifications covering this improvement on Pearl Street? A. I prepared plans, yes.

20

Q. What did you do with those plans, Mr. Randolph? A. To the best of my recollection, they were delivered personally by me to Mr. Clarence Smart, who was then a member of the Council.

Q. When? A. In the early fall of 1923.

Q. To the best of your recollection, what date was that? A. I delivered them to Mr. Clarence Smart, who was one of the Council men of the Borough of Fair Haven.

Q. Yes,—did you prepare any particular specifications outside of a general plan for the laying of these sidewalks? A. No.

30

Q. No, is your answer? A. No.

Q. Can you state more definitely when they were delivered, the plans? A. No, sir.

Q. When you say "fall," what is your idea of the fall? A. I would say early fall,—I would say somewhere about August or September, probably,—I do not recall that.

40

George F. Randolph, direct.

Q. Is not August generally considered summer?

A. If you want to quibble over that, you might, but I call it early fall.

Q. You call August early fall? A. I did in this case, yes; just now it is my impression, that is all.

10 Q. After these plans, or this plan, was delivered, did they come back to you? A. No, sir.

Q. The plan as you had delivered it to the Council, did you say? A. To one of the Council men.

Q. To one of the Council men; was it changed, do you know? A. Not to my knowledge.

Q. Did the work conform absolutely with the plan you submitted? A. The work as done?

20 Q. Yes. A. I hesitate to say absolutely, because there are certain circumstances which, when you stake out a piece of ground, that has an abrupt edge, the contractor in laying sidewalks, in conforming with the plan, in staking it out, stakes it out at about fifty feet intervals, and if you come to an abrupt edge, it will make it awkward to make a sharp angle at that point, and the contractor may find it advisable to bring this point slightly around on a curve to take off the sharp angle.

Q. Does that make much variation in the plan?

A. Very little variation; the work is substantially as planned.

30 Q. And is the grade as you planned it substantially the same? A. Yes.

Q. Did you have any conversation with Mr. Quinlan about this,—Mr. Robert Quinlan? A. I don't know them by name; I had conversations with both.

Q. This gentleman here in the corner (indicating)? A. Yes.

Q. Do you recall when that was? A. It was during the summer of 1923, sometime.

40

George F. Randolph, direct.

Q. During the summer? A. Yes, and later, probably in September, also, I do not recall the month. It was two conversations.

Q. Do you recall the conversations? A. Not particularly,—generally, yes.

Q. Do you recall any conversation about change of grade? A. Yes. 10

Q. Would you tell us what that conversation was? A. You mean the change of grade as planned?

Q. Yes? A. As I recall, Mr. Quinlan was in there before the plan was finished, and it was shown him about what was to be done in front of his property,—that is what he was interested in; he wanted to know about how much cut was to be there, and I told him about a foot or a foot and a half, and he thought that that was excessive, and we pointed out to him why that was necessary,—that there was a road there, or unimproved sidewalk on each side, and that the natural drainage of the street is over to a point on the Fair Haven Road, that it flows toward the Fair Haven Road, and that to get the water away, you must carry the water to the river, and to do that it would require as flat a grade as it is practicable,—as it is possible to use, and that that necessitated a cut in front of his property. 20 30

Q. Did you have any subsequent conversation with him? A. I believe I did.

Q. When? A. Later than that, some time.

Q. Later than that, you have said; when was that? A. I told you it was about—the first was some time in the summer, probably July or August.

Q. Do you call August the summer now—I am not trying to make a joke out of it, but it is quite material. A. I think you are quibbling over a 40

George F. Randolph, direct.

very small point. When I referred to the latter part of August as early fall.

10 Q. I am not referring to a small point or quibbling, because they had 30 days from July 23rd to make this improvement. A. Pardon me, but my remarks were very general. I cannot state it as a fact on a certain day; I cannot recall a certain day. I can recall the impression,—if you are pleased to have August summer, I am satisfied.

Q. I want the day if I can get it. A. I can't give you that.

Q. Did you supervise this work, Mr. Randolph? A. Yes.

20 Q. Did you issue any certificate on it or anything like that? A. I made a certificate of the amount of sidewalk that was laid to be presented by the contractor to the Council.

Q. Did the certificate include only what was done by the contractor? A. The amount of sidewalk laid, yes.

Q. Did you say that it was done in a workmanlike or businesslike manner? A. The fact that we gave that certificate would imply that—no, nothing like that was done.

30 Q. This certificate, do you recall what it was,—I mean, just what you gave them? A. It was the amount of lineal feet, the amount of square feet of sidewalk laid on that street.

Q. Did you total up the amount of money that was due under that? A. No, sir, we had no knowledge of the price.

Q. That certified only to the sidewalk? A. To the sidewalk only.

Q. You didn't certify to the curb? A. No, sir.

Q. Would you, as a matter of business, from

Charles H. Norman, direct.

your office, certify to the curb? A. There was no curb laid.

Q. So it was only the sidewalk that was covered in your certificate? A. Yes.

Mr. Paladeau: That is all.

Cross examination by Mr. Brinley:

10

Q. Were you down there while the work was going on? A. Yes.

Q. Did you make an inspection of it from time to time? A. Yes.

Q. Were you down there when it was completed? A. Yes.

Q. Did you make any inspection of it then? A. Yes.

Q. Will you state what kind of work was done, —whether or not it was properly and workmanlike done? A. It was done properly and in a workmanlike manner; it was a first class job.

20

CHARLES H. NORMAN, a witness called on behalf of the prosecutor, having been first duly sworn, testified as follows:

Direct examination by Mr. Paladeau:

Q. Where do you live? A. Red Bank, New Jersey.

30

Q. Are you a member of the firm of James Norman & Sons? A. Yes.

Q. Who had the contract on this work? A. Yes.

Q. When did you know that the work was to be done, and how? A. When and how?

Q. Yes,—when did you know the improvement was to be made and how did you know it,—that

40

Charles H. Norman, direct.

the sidewalk was to be laid? A. Mr. Smart asked me to present him with a figure—

Q. Which one? A. The Councilman of the Borough of Fair Haven.

Q. Did you submit a bid to the Council for the doing of the work? A. Yes.

10 Q. What did the bid cover? A. 22 cents a square foot for the sidewalks and 50 cents a running foot for the curbing.

Q. That price to cover all the work, or single items? A. Single items.

Q. Before submitting your bid, did you receive any plans or specifications upon which to base it? A. No, I did not receive any plan or specifications.

Q. No plan or specifications at all? A. No.

20 Q. How did you make up your figure? A. How? Well, in a businesslike way, on our billheads.

Q. I know, but did you look at the property, or just take the figures out of the air? A. Oh, we know that property by heart! We don't have to look at it.

Q. In other words, when you get a bid, if you know the property, you don't look at it,—you just make a bid on it? A. That is all; there was no profile or anything to go by at the time I was asked to bid.

30 Q. After the bid was accepted, when did you begin to work? A. I started excavating about the latter part of October.

Q. By whom were you told to proceed? A. I was notified by the borough clerk in writing.

Q. By whom were you told to alter the embankment or grade upon the Quinlan property? A. I didn't alter any property, only to go by the stakes, wherever the stakes were I put the side-

Charles H. Norman, direct.

walk right to the stake. I didn't ask for information,—I can read a stake properly.

Q. Were the stakes laid when you started to work? A. Yes.

Q. Did you consider the work of altering the grade and embankment when you submitted the bid? A. No, I did not,—there was no profile for the street. 10

Q. You knew the property by heart? A. Yes, part of it,—most of it.

Q. This is one of the parts that you didn't know by heart? A. Well, that was the smallest part.

Q. On what part of Pearl Street did you begin your work? A. On the west side, main road, working down to the river.

Q. Did you follow the original line of Pearl Street in making the improvement? A. I followed the grade stakes. 20

Q. I mean that when you started, did you follow the original line right down the line? A. Yes, one side at a time.

Q. Did you excavate in the same manner—you had charge of the excavation? A. Yes, I had charge of the work.

Q. Did you excavate on both sides in rotation following the original line? A. Yes.

Q. You heard Miss Quinlan's testimony that the excavation was jumped from eight or ten houses up the street down to in front of her property? A. There was hardly any excavation on the east side until we got to Quinlan's, and they are on a high knoll, and I had to start my excavation before I could lay the walks, and I had to start three or four days ahead, so that when they got up there, they could go on without delay. 30

Q. Was Mr. Allen working under orders from 40

Charles H. Norman, direct.

you,—Allen, the excavator? A. I think I took that matter up with Mr. Smart and Mr. Little about the excavation, and they said to dispose of the dirt and Mr. Allen was there hauling the dirt away from the other properties that they threw out, and I asked Mr. Allen if he knew of any place near
10 to get rid of the dirt, and he said there was a man on some street that wanted to use some dirt, and he would see him. That is all I know about it.

Q. Who gave Allen orders to take away the hedge? A. Mr. Allen did not take the hedge away; it is there.

Q. I know, but do you know if anyone gave him any orders? A. The hedge was not taken.

Q. I know, but did you ever hear any orders
20 to take it away? A. No.

Q. Can you tell from the excavation that you saw there—you are familiar with the conditions there? A. Yes.

Q. As the result of the excavation, the hedge came down and it was cut down like that (indicating)? A. No, it was not.

Q. It was cut in like that (indicating again)? A. No, sir, it was not cut in like that.

Q. How was it cut in? A. It was scooped out,
30 like—

Q. (Interrupting.) It was scooped out underneath the hedge? A. No, we didn't go under the hedge; we didn't go on the property. There was a fence there,—a wire fence,—outside the hedge.

Q. What about the driveway? A. The driveway was built out in the road with an iron pipe or clay pipe under it, so that we could go up in her yard,—the driveway was four feet out in the road.

Charles H. Norman, direct.

Q. When you excavated that driveway, didn't that leave a sheer drop of two or three feet?

A. No.

Q. It left it so that you couldn't get a carriage in or an automobile? A. Sixteen or eighteen inches, something like that.

Q. Were there any plans made to fix that condition? A. They told me not to fix any. 10

Q. Who told you? A. It was not this lady (indicating Miss Quinlan). Her sister. They said they would attend to that themselves.

Q. Is the work fully completed now as covered by your contract? A. The curb is not in.

Q. That is part of the contract? A. Yes.

Q. When do you expect to complete the work? A. When we get notice from the Council.

Q. Have you been paid? A. Just for the sidewalk. 20

Q. When? A. I can't recall. I have a record of it in my ledger.

Q. Can you give me the month? A. No; it was in January, I think.

Q. Are you in the habit of laying a lot of sidewalks? A. Yes, that is my business.

Q. In Fair Haven? A. Yes, most all of them.

Q. In Fair Haven, how many sidewalks have you laid for the borough? A. I haven't for the borough, but for private parties. 30

Q. And you can't remember when you were paid by the borough for this work? A. I think in January.

Q. Of this year? A. Yes.

Q. How? A. By check.

Q. Check of the borough? A. Yes.

Charles H. Norman, cross.

Cross examination by Mr. Brinley:

Q. Was the property staked before you did any work upon it? A. Yes,—I wouldn't know how to make the cut unless the stakes were there.

Q. Did you follow the line of the stakes? A. Why, certainly.

10 Q. Mrs. Quinlan, or one of the witnesses, has testified to the fact that deep holes were dug by you on her property and that the excavation was unnecessarily deep. A. They may have scooped two or three shovelful more than was necessary in scooping out a small space of six or seven feet; we do that sometimes, and one place is a little deeper than the plan, but the dirt is left on the side and thrown back where it is scooped out, but I don't know that that was the fact here.

20 Q. Did you go any further into her property in the wire fence and hedge than was necessary? A. No, the hedges are standing, both of them; they were not disturbed.

Q. What kind of walk did you lay there,—I mean by that, tell us the mixture which you put in and the depth of the walk? A. The walk was four inches thick,—three inches of concrete and one inch of what we call "top coat" 1-3-5 for the bottom and 1-2 for the top.

30 Q. Won't you make it just a little more detailed than that, what you mean by 1-3-5, for us laymen? A. One part cement, three parts sand, and five parts slag for the bottom and the top coat, 1 part cement and 2 parts sand.

Q. How long have you been in the concrete sidewalk business? A. Twenty years.

Q. And how does this mixture compare with what you generally use? A. It is all the same mixture for sidewalks.

40

Ulysses S. Allen, direct.

Redirect examination by Mr. Paladeau:

Q. Do you use this mixture all the time? A. On sidewalks, yes.

Q. It is the same kind that you use in Red Bank?
A. Yes.

Q. Do you know the condition existing across the street? A. In regard to the grade? 10

Q. Yes. A. They are exactly level.

Q. Do you know that the line of the street is six inches above the sidewalk at the present time?
A. The line of the street? You mean the crown of the road?

Q. Right up where the curb goes? A. The gutter,—well, you will find that all over.

Q. It is the same on the Quinlan side of the road?
A. Yes, it is. 20

ULYSSES S. ALLEN, called as a witness on behalf of the prosecutor, being first duly sworn, testified as follows:

Direct examination by Mr. Paladeau:

Q. Where do you live, Mr. Allen? A. Fair Haven.

Q. What are you,—a contractor? A. Well, yes, you might say that.

Q. For whom were you working during the month of November, 1923? A. Well, I just couldn't recall who all I done work for. 30

Q. Were you working for the Borough of Fair Haven? A. I was sometimes.

Q. Let me be more specific; in regard to the Pearl Street improvement, who were you working for? A. Well, I don't know,—we might call it Mr. Norman; he had the contract, and was taking the dirt out. 40

Ulysses S. Allen, direct.

Q. From whom were you accepting orders? A. From Mr. Norman.

Q. Then you were working for Mr. Norman at the time? A. Yes, if you might call it that.

Q. You say you were taking orders from Mr. Norman? A. Mr. Norman says that he had some dirt—
10

Q. (Interrupting.) Who was paying you? A. The man that was hauling the dirt.

Q. You got paid for hauling the dirt and selling it? A. No, sir, I didn't sell it.

Q. What did you do with it? A. Why, the dirt was to be moved, and he told me and he gave me the dirt to move it away, and the gentleman where I was delivering the dirt paid me so much a day for the team as I did for Mrs. Quinlan. I hauled some in her lot, and she paid me by the day the same way.
20

Q. Did you hear Mr. Quinlan or one of the witnesses testify that you had sold that dirt to some one at the other end of the street? A. I didn't hear that.

Q. You don't know what you would call that, do you? A. No.

Q. Did you at any time actually take away any of the hedge on the Quinlan property? A. No, sir, I did not.
30

Q. Did you hear Mrs. Quinlan testify that you told her that you had orders to take everything? A. I heard her say so, but no orders were given me.

Q. It is not so,—she is not giving the truth? A. Well, no one ordered me to take it away.

Q. Did you say that to Mrs. Quinlan? A. I did not.

Ulysses S. Allen, cross-redirect.

Q. What was done with the sand or dirt that was taken from the Quinlan property? A. What became of it?

Q. Yes, what became of it? A. Oh, I hauled some to different parties that want filling in.

Q. What was the price you obtained for the dirt? A. Nothing. 10

Q. You gave it away? A. Yes, sir.

Q. When you started to work on this Quinlan property, what guided you in the digging? A. The stake on the grade,—the surveyor had that.

Q. Can you read a stake? A. He had a stake.

Q. Can you read a stake? A. Yes.

Q. Do you know surveying? A. Yes, sir.

Cross examination by Mr. Brinley:

Q. Mr. U. S. Allen, did you receive any orders from Mr. Norman or any instructions from the Borough of Fair Haven to remove Miss Quinlan's hedge? A. No, sir. 20

Q. Did you receive any orders from Mr. Norman or any official of the Borough of Fair Haven to do any more excavating than was necessary in order to make a place for the sidewalk? A. No, sir.

Q. And did you, as a matter of fact, dig any more dirt from Miss Quinlan's property than was necessary for the laying of the sidewalk? A. No, sir. 30

Q. Did you cart some of the dirt from Miss Quinlan's sidewalk line onto her own property? A. Yes, sir.

Redirect examination by Mr. Paladeau:

Q. You said you only took out enough dirt to lay the sidewalk,—did you hear it testified to here before that some of the dirt had to be put back? 40

Harvey Little, direct.

Mr. Brinley: I suppose that that is an improper question, to refer to another witness's testimony, and I think I will have to object to it at this time.

10 A. When I was taking the dirt out, I was only going to the level of the grade, and Mr. Norman had a man coming along and preparing this sidewalk, and we have three teams there all in abreast and we come and dig as the teams stand, and of course we can't at the time level it up just as you go along, but we never came below the grade.

HARVEY LITTLE, a witness called on behalf of the prosecutor, having been first duly sworn, testified as follows:

20 *Direct examination by Mr. Paladeau:*

Q. Where do you live? A. Fair Haven.

Q. What is your official position in the Borough of Fair Haven? A. Well, I am President of the Council, Chairman of the Road Committee, and of one or more committees.

Q. As Chairman of the Road Committee, you have the work on street improvements? A. Yes.

30 Q. You were in charge of an improvement known as Pearl Street improvement? A. No, when Mr. Norman accepted the contract, that put me out.

Q. You had nothing more to do with it after Mr. Norman accepted the contract? A. No, sir.

Q. You heard them testify that a grade was established, and I think Mr. Allen said there was no grade at one time, and they established a grade,—now, on what authority did they establish a grade? A. I couldn't tell you that,—only they were ordered to do it by the Council.

40

Harvey Little, direct.

Q. What do you mean,—they were ordered,—did they pass an ordinance? A. I couldn't tell you that.

Q. You are the President of the Council; don't you know whether an ordinance was passed? A. All I know is that they had orders to establish a grade on Pearl Street for sidewalks and curbing.

10

Q. Don't you know, as a member of the Council, that it is necessary to get an ordinance before changing the grade?

Mr. Brinley: You have the ordinance on the table.

Q. Do you know whether any ordinance was passed covering the changing of the grade on Pearl Street? A. I do not, no, sir.

Q. The contractor testified that he was paid,—how was he paid? A. By check.

20

Q. From what account was the money drawn? A. I think there was a note put in the bank.

Q. Was there any ordinance authorizing that? A. I couldn't tell you.

Q. At the time the improvement was originated, was there any method or plan for the paying of the contractor? A. No.

Q. Were there any funds available at the time the contract was let? A. No.

30

Q. How was the assessment arrived at? A. What do you mean?

Q. How did you assess so much for Miss Quinlan, and so much for Mrs. Jones,—whatever the names may be? A. Why, according to whatever footage there was on their line, I suppose.

Q. You are a member of the Street Committee? A. Why, that gentleman over there (indicating) assessed each one for the number of feet.

40

M. Floyd Smith, direct.

Q. Yes, but the engineer has no power to assess it. The engineer only prepared the plan. All right, and the Borough Council accepted it.

Q. Well, who fixed the assessment? A. I can't get you right on that—Mr. Allen fixed the assessment map, and the Borough Council accepted that as it was drawn up.

Q. Yes, but the assessment map simply contains so many square feet. A. I know it.

Q. Now, in sums of dollars and cents, who set the assessment? A. I suppose the borough collector.

Q. Do you know how the assessment was arrived at? A. No, I do not.

Q. You were one of the members in charge of the fixing of the assessment? A. No, sir.

Q. Who was in charge of the assessment work? A. I couldn't tell you.

Q. Do you mean to tell me that you don't know who has charge of the fixing of sums of money for the assessments? A. Why, the assessor of the township, William Circhell, I suppose.

Q. Who is he? A. Squire Circhell.

Q. Does he authorize this map? A. I suppose he does, he assesses them all.

M. FLOYD SMITH, his examination being resumed, testified as follows:

Examination by Mr. Paladeau (continued):

Q. You have your books, minutes of the Council? A. Yes.

Q. Has the assessor, whatever his name is, that Mr. Little mentioned, made a report to the borough? A. No.

Q. Who has made a report to the borough? A.

M. Floyd Smith, direct.

Mr. Paladeau, may I make a suggestion? I think you had Mr. Little confused on the matter of the assessment. He was speaking,—I think that what he had in mind was the assessment of the town property generally, not as to the assessment map.

Q. Who makes the assessment map? A. The assessment map was accepted by the Borough Council and bills were ordered to be sent out, and that was turned over to the borough collector, Joseph W. Davis. 10

Q. Who arrives at the assessment with regard to the street,—is it this assessor,—in dollars and cents? A. What street?

Q. I mean, when a street is repaired? A. You are talking about Pearl Street?

Q. Yes? A. The borough collector made up the bills on this assessment. 20

Q. How was it accepted by the Board? A. By motion duly made and seconded, that the assessment map be accepted.

Q. Was there any ordinance on it accepting it? A. No.

Q. Any resolution? A. Just a regular motion.

Q. Just the bare motion? A. Just the bare motion; I can give you the date of it if you want it.

Q. I don't think it is necessary at this time; have you with you a proof of service of a notice that an assessment was to be levied? A. No. 30

Q. Was there any notice given of an assessment to be levied? A. From whom?

Q. By the Borough Clerk of the properties to be assessed and by the Borough,—in other words, by the Borough by resolution or ordinance? A. No,—I want to qualify that in this way; the ordinance provided that if the work was not done

M. Floyd Smith, direct.

within 30 days, the work would be done by the Borough and assessed against the property.

Q. After the work was finished, what notice, if any, was sent out to the owners that the assessment was to be made? A. None.

10 Q. Coming back to the contract, was there any advertisement for bids? A. No.

Q. Were there any specifications furnished by the Borough to the contractor? A. No.

Q. Have you the contract? A. No, it is filed down at Trenton.

Q. Have you a certified copy of it? A. No,—you are speaking of the contract now? I mean by a contract,—this letter of Norman's—

Q. (Interrupting.) The writer of which, James Norman & Sons, did the work? A. Yes.

20 Q. I show you a copy of two letters, and I ask you if they are the letters that make the authority of Mr. Norman to do the work? A. I will say that, to the best of my knowledge, they are.

Mr. Paladeau: These are letters that were sent to me with the return on the certiorari, and I offer them in evidence.

(Marked P-2 and P-3.)

30 Q. Is that the only authority Mr. Norman had for the work? A. Yes.

Q. Is it customary to give out contracts for the doing of improvement work without a guarantee by the contractor that the work will hold good over a certain period?

Mr. Brinley: Objected to as improper, what the custom was.

A. I can't answer.

M. Floyd Smith, direct.

Q. Was there a guarantee in this contract? A. No, only his general reputation.

Q. There was nothing in writing? A. No.

Q. I am going back to ask what was the date of that assessment map that you volunteered about a moment ago, of the assessment map by the Borough Council? A. January 22nd, 1924. 10

Q. After that was there any correction made on the map? A. Not to my knowledge.

Q. Was the map taken from you at any time after that, this copy on file in your office? A. Delivered to Mr. Davis,—the collector. May I ask a question? What kind of correction do you mean?

Q. Was any assessment changed after the first filing on January 22nd? A. There was a motion passed by the Council to deduct a certain number of square feet from the north end of the sidewalk laid on the east side of Pearl Street. 20

Q. Namely, the Quinlan property? A. Well, it is shown there.

Q. It was originally assessed to the Quinlan property? A. Yes.

Q. Therefore, it was changed as of that date and a new assessment made against the Quinlan property? A. Yes.

Q. What date was that? A. I will have to refer to the minutes to find out. 30

Q. When was the engineer's map fixing the grade of Pearl Street submitted to the Board of Borough Council and when was it accepted? A. That was taken care of by the street committee; I have that map. I can't give you the exact date it was filed, but the map was on file.

Q. Was it ever accepted by the Borough Coun-

Harvey Little, direct.

cil? A. I don't recall any motion being made accepting it.

Q. You cannot show any minutes that would show an acceptance of the grade map? A. No.

Q. Was there any ordinance passed, to your knowledge, authorizing the change of grade? A. No.

10 Q. Was there ever any hearing held on the change of grade? A. No.

Q. Under date of February 5th you have in your minutes that the mayor and clerk be authorized to execute a note for three months for the Pearl Street sidewalks,—have you the proof of the advertising of that? A. Advertising of what?

Q. That a note was to be secured? A. No.

20 Q. That an ordinance was to be passed authorizing the payment by note. A. No.

Q. Was there any ordinance passed authorizing the council to give a three-months note to pay the contractor for the Pearl Street improvement? A. No ordinance, no.

Q. How was it done? A. By motion.

Q. Simply by motion? A. Yes.

HARVEY LITTLE, recalled:

30 *Direct examination by Mr. Paladeau:*

Q. Do you know when, if ever, the grade map was accepted on the Pearl Street improvement?

A. I can't tell you, unless it is down there in the minutes.

Q. And if it is not in the minutes, it was never accepted? A. It could not be.

I certify that the foregoing testimony was taken before me by Hooper Harris, a stenographer selected by me and by me duly sworn faithfully

Appearances.

and truly to take stenographically and reproduce in typewriting the testimony given, and that such testimony was taken in my immediate presence and hearing by said stenographer, sworn as above stated, and I believe that it accurately states the evidence given.

GEORGE A. WARDELL,
Supreme Court Examiner.

10

NEW JERSEY SUPREME COURT.

<p>MAY L. QUINLAN, Prosecutor,</p> <p style="text-align: center;"><i>v.</i></p> <p>CHARLES R. CROSS, <i>et al.</i>, and BOR- OUGH OF FAIR HAVEN, Respondents.</p>	}	<p>On Certiorari and Rule for Taking Depositions.</p>
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Depositions taken pursuant to Notice dated June 7th, 1924, by the Attorney of the Respondents to the Prosecutor and service thereof acknowledged by the Attorney of the Prosecutor and annexed hereto, before the subscriber, Frederick W. Hope, a New Jersey Supreme Court Commissioner, at his office, corner Broad and Front Streets, Red Bank, N. J., on Thursday, June 19th, 1924, at 11 o'clock in the forenoon.

30

APPEARANCES:

Mr. N. Louis Paladeau, Jr., No. 15 Exchange Place, Jersey City, N. J., for the Prosecutor, and

Mr. Henry D. Brinley, of the firm of Wilson & Smock, No. 10 East Front St., Red Bank, N. J., for the Respondents.

40

George K. Allen, direct.

State of New Jersey, }
County of Monmouth, } ss.:

10 I, VERNON W. ROSE, of full age, do solemnly swear that I will faithfully and truly take stenographically and reproduce in typewriting, to the best of my ability, the testimony to be given in a certain cause now pending in the New Jersey Supreme Court, wherein May L. Quinlan is Prosecutor and Charles P. Cross, *et al.*, and Borough of Fair Haven, are Respondents, so help me God.

VERNON W. ROSE.

Sworn to and subscribed before me }
this 9th day of June, 1924. }

20

Master in Chancery of N. J.

GEORGE K. ALLEN, of full age, being first duly sworn according to law, upon his oath testifies as follows—

Direct examination by Mr. Brinley:

30 Q. Mr. Allen, you have previously testified that you were the surveyor for the Borough of Fair Haven in 1923, have you not? A. Yes.

Q. Did you prepare a grade map for the Pearl Street improvement? A. I had one prepared.

Q. Do you mean to say by that, in your office and under your direction? A. Yes.

Q. When was it prepared, Mr. Allen? A. The map was finished in the fore part of September, 1923.

40 Q. I show you a map and ask you if that is the map which you had prepared, establishing the grade of Pearl Street? A. That is the map of the proposed grade for Pearl Avenue, Fair Haven.

George K. Allen, direct.

Q. Who did the actual work in preparing it?

A. Mr. George F. Randolph.

Q. And he is your assistant? A. He is my associate.

Q. Who made the actual survey from which this grade map was drawn? A. Mr. Randolph.

Q. And what was done with the grade map, as far as you know, personally? A. It was delivered to Mr. Smock, a member of the Council of Fair Haven, and also a member of the street committee. 10

Q. Was any other grade map, Mr. Allen, prepared by you for the Borough of Fair Haven in connection with the Pearl Avenue improvement?

A. No, sir.

Q. Did Miss Quinlan or any of her family see this grade map to your knowledge? A. There was a gentleman by the name of Quinlan (I don't know which one it was) in my office and saw the lead pencil map from which this map was traced. 20

Q. And about when was that, Mr. Allen? A. My recollection is that it was the latter part of August, 1923.

Q. Did Miss Quinlan or any of her family, or anyone in her behalf, ever ask you to place grade stakes or give a grade for the laying of sidewalks in front of her property on Pearl Avenue? A. No, sir. 30

Q. Did Miss Quinlan or any member of her family ever ask you for specifications for the laying of the sidewalk in order that it might be laid on her property? A. No, sir.

Q. Mr. Allen, are you familiar with the price for concrete sidewalk in the summer of 1923?

Objected to on the ground that it is an improper question.

George K. Allen, direct.

A. Yes.

(It is understood that Mr. Paladeau objects, without constant repetition, to the questioning of Mr. Allen on the reasonableness of the price of concrete.)

10 Q. And what was the basis of your knowledge in 1923, of the price of concrete sidewalk? A. Quite a large amount of work was done under my direction in 1923, on concrete sidewalks.

Q. Was this done in municipalities similarly situated to Fair Haven, with respect to railroad facilities, and general facilities for the carrying of materials? A. I don't quite understand the question. They could not be exactly the same; the bulk of the work was done in Red Bank.

20 Q. Was any other work done elsewhere than in Red Bank? A. Yes, in Sea Bright.

Q. Referring to the Red Bank work, how long have you been Borough Engineer of that municipality? A. For the past 9 years, and previous to that, 3 years; that would be 12 years altogether.

Q. During your incumbency as engineer of Red Bank, did you supervise the laying of sidewalks?

A. Yes.

30 Q. Generally speaking, was the work extensive? A. Yes.

Q. In the summer of 1923, in your opinion, what was a fair price for the laying of concrete sidewalks on Pearl Avenue, Fair Haven, per square foot? A. 22c.

Q. Does this grade map establish a grade upon which the sidewalk on Pearl Avenue, Fair Haven, was laid? A. Yes.

George K. Allen, cross.

Cross examination by Mr. Paladeau, Jr.:

Q. When was the grade map delivered, if ever?

A. It was delivered to a Councilman, Mr. Smock, in the fore part of September, 1923.

Q. Do you know this of your own personal knowledge? A. I didn't see it delivered.

10

Q. Then you don't really know whether or not he got it, do you? A. I know that he got it because he told me about having it.

Q. You testified at the hearing which was conducted on June 16th, in response to this question, "What happened to the plans after your assistant drew them up, do you know?" You answered, "I presume they were delivered to the Borough of Fair Haven," and on further questioning, "Do you know whether they were or not," you answered, "Not personally." Is that correct? A. I know they were delivered to Mr. Smock, the Councilman.

20

Q. Why are you so sure of the date? A. Why, I know when it was worked on and have the lead pencil map up in my file still.

Q. Did you do any of the work? A. No; I saw the work done. I looked the map over while it was being worked on.

Q. Did any of the Quinlans see any official grade map, or did they only see a drawing of the same? A. They only saw a drawing, to my knowledge.

30

Q. To your knowledge, when did the map become official, if ever? A. I can't answer that; I don't know.

Q. Then up to the present date, you don't know whether or not there is any official map, do you? A. I do not.

40

George F. Randolph, direct.

GEORGE F. RANDOLPH, of full age, being first duly sworn according to law, testifies as follows:

Direct examination by Mr. Brinley:

10 Q. Mr. Randolph, you were associated with Mr. Allen in 1923 in his engineering work, were you not? A. Yes.

Q. Did you make a survey of the property and establish a grade for the laying of the sidewalks on Pearl Avenue, Fair Haven, N. J.? A. Yes.

Q. About when? A. About the summer of 1923.

Q. As a result of that survey, did you prepare a map? A. Yes.

Q. Approximately, when? A. The map was completed in September of 1923.

20 Q. I show you a map marked Exhibit R-1 and ask you if that is the grade map which you prepared (witness shown map). A. Yes.

Q. What was the purpose of the map? A. The purpose of the map was to establish a grade for that street and have it on record so that any grade work would be done according to the map.

Q. Did you ever prepare any other grade map for Pearl Avenue? A. No.

Q. Was that map the basis for the laying of the sidewalk on Pearl Avenue? A. Yes.

30 Q. After this was prepared, what did you do with it? A. I delivered it to Mr. Clarence Smock, when prepared. He was a member of the Council and a member of the Street Committee.

Q. When and how did you deliver this map to Mr. Smock? A. It was delivered in September, 1923. I delivered it personally to Mr. Smock at his house by handing it to him.

Q. Did you place the grade stakes? A. Yes.

40 Q. And did you place them according to the sur-

George F. Randolph, direct.

vey indicated on this map? A. Very approximately, yes.

Q. As near as you could? A. Yes.

Q. Was the sidewalk laid to this grade approximately correct? A. Yes.

Q. Did Miss Quinlan or any member of her family or anyone in her behalf ask you to establish a grade and place grade stakes for the laying of sidewalks on her property? A. No. 10

Q. Did Miss Quinlan or anyone in her behalf, at any time ask you for plans and specifications in order that she might lay sidewalks in front of her property? A. No.

Q. Were you at Fair Haven from time to time while the work of the contractor was in progress? A. Yes.

Q. Do you recollect the hedge which is on Miss Quinlan's property? A. Yes. 20

Q. Approximately how far is it from the inner sidewalk line? A. Approximately 2 feet.

Q. Was the hedge at any time disturbed? A. Not to my knowledge.

Q. Did you see the walk after it was completed? A. Yes.

Q. Had the hedge been disturbed then? A. It showed no indication of having been disturbed.

Q. Mr. Randolph, are you familiar with the prices for the laying of sidewalks in the year 1923? (Objected to on the ground that it is an improper question.) It is agreed that the objection of the prosecutor shall go to the whole examination as to the reasonableness of the price of the concrete.) A. Yes. 30

Q. And in 1923, Mr. Randolph, did you supervise the laying of sidewalks in the locality of Fair Haven? A. Yes. 40

George F. Randolph, cross.

Q. How extensive was your work in connection with the laying of sidewalks in 1923? A. About 100,000 square feet of sidewalk.

Q. Did your work involve a knowledge of the price of sidewalk laying? A. Yes.

10 Q. In your opinion, what is a reasonable price for the laying of a concrete sidewalk in the Borough of Fair Haven per square foot, in the summer of 1923? A. 22 or 23c.

Cross examination by Mr. Paladeau, Jr.:

Q. Mr. Randolph, going back to the other examination when the counsel started to quibble about the word "summer," what time in the summer of 1923 was the survey made? A. About July.

20 Q. About what day in July? A. About the middle of July; about the 15th.

Q. Under whose authority did you make the survey? A. Directly?

Q. Yes. A. Under the authority of Mr. Allen, Borough Engineer of Fair Haven.

Q. By what authority was the grade map drawn up? A. By Mr. Allen, Borough Engineer of Fair Haven.

Q. Did you see the ordinance by virtue of which the work was done? A. No, sir.

30 Q. The grade map you say was finished when? A. In September.

Q. Approximately when in September? A. In the early part of September, about the 5th or 7th.

Q. Between July 25 and August 25th, the grade map was not ready, was it? A. No.

Q. Did the Quinlans, any of them, come to see you at your office? A. Yes.

Q. With respect to what? A. Change of grade

George F. Randolph, cross.

that we were making for sidewalks on Pearl Avenue.

Q. Did they inquire whether or not a grade map was ready? A. Yes.

Q. Was there any official grade map ready at any of the times they called? A. I cannot recall, the last time they called, whether or not the grade had been definitely decided upon. 10

Q. Do you know whether or not the grade map had been accepted by the Borough and made official, the last time they called? A. I do not.

Q. But they did come to make inquiries in regard to the grade, or regarding a change in grade on the Pearl Street improvement of Pearl Avenue, did they not? A. Yes.

Q. As late as November 15th, 1923, was there to your knowledge any official acceptance of the grade map by the Borough? 20

(Objected to as being immaterial to this witness.)

A. I do not know either way; I have no way of knowing.

Q. Do you recall any conversation had with Mr. Quinlan sometime between November 10th and 20th in regard to the grade map? A. I cannot tell as to the date. 30

Q. Do you recall as to having any conversation any time in November, 1923, with Mr. Quinlan, or any of the members of his family in regard to a grade? A. The same answer.

Q. Did you ever have any conversation with Mr. Quinlan in regard to a grade? A. Yes.

Q. When? A. I cannot tell when it was; its my trouble, I cannot recall.

Q. Between July 25th, 1923, and August 25th, 40

M. Floyd Smith, direct.

1923, do you recall any conversation with the Quinlans on the grade map? A. There was a conversation about that time.

Q. Where? A. In our office.

Q. At the time the Quinlans were at your office, or any of them, to look at the grade map, all that was ready for them to see was a pencil drawing, is not that so? A. Yes.

Q. As late as November, 1923, do you recall telling Mr. Robert Quinlan that if the Borough authorized it, you could still change the grade of the street? A. Yes.

Redirect examination by Mr. Brinley:

Q. Mr. Randolph, if the Borough authorized it, you could change this grade so as to make a mountain side of it, couldn't you? A. Yes.

M. FLOYD SMITH, of full age, being first duly sworn according to law, upon his oath testifies as follows:

Direct examination by Mr. Brinley:

Q. Mr. Smith, you were the Borough Clerk in 1923, were you not? A. Yes.

Q. What notices, if any, were sent out by you in connection with the Pearl Street improvement? A. Regular printed notices were sent to each one of the property owners on Pearl Street.

(Copy of printed notice offered in evidence and marked Exhibit R-3.)

Q. And when were those notices sent out? A. They were sent out in the latter part of July; around July 23rd; it was about that date.

Q. When, with reference to the public hearing,

M. Floyd Smith, direct.

did you send out the notices? A. The public hearing was held on July 10th, and after that I went to Mr. Curchin, the assessor, and got from him a list of all the property owners on both sides of Pearl Avenue, and I made up the notices from that list which he furnished me.

Q. When, with reference to the awarding of the contract did you send out the notices? A. I sent out the notices long before the contract was let. 10

Q. Approximately how long, Mr. Smith? A. It was August 28th, 1923, that the contract was awarded to Norman & Sons.

Q. When, with reference to that date did you send out the notices? A. Over a month previous.

Q. And how did you send the notices out? A. By mail in a stamped envelope with my return card in the corner. 20

Q. What was the purport of the notice? A. Notice to the property owner that an ordinance for the construction and laying of sidewalks on Pearl Avenue had been passed and giving the property owners 30 days in which to do the work themselves. If the work was not done within the 30 days, the borough would take steps to cause the same to be done, and it would be assessed against the property and collected as other taxes in the borough.

Q. In connection with the passage of the ordinance, what public notice, if any, was given by you? A. The ordinance was published, together with a notice of hearing, in the Red Bank Register for a hearing to be held on July 10, 1923. 30

Q. Was any notice given of the passage of the ordinance? A. Yes.

Q. What notice? A. Notice that the ordinance was passed was published in the "Chat." 40

M. Floyd Smith, direct.

Q. What is the "Chat"? A. A local newspaper published and circulated in the borough of Fair Haven.

Q. Mr. Smith, I show you a map marked Exhibit R-7 and ask you if you have ever seen it before?

A. I have.

10 Q. Has it ever been in your possession? A. It has.

Q. How and when did it come into your possession? A. It was delivered by Mr. Clarence Smock, a former Councilman and member of the Street Committee of the Borough of Fair Haven for 1923.

Q. To whom was it delivered, and how and when? A. Mr. Smock brought this map to one of the regular meetings in September, 1923, I cannot recall which one.

20 Q. And what was done about it, Mr. Smith? A. It was in my possession from that time on until the Street Committee used the same to show it to the various property owners on Pearl Avenue.

Q. How did it get from Mr. Smock's possession into your possession? A. He handed it to me.

Q. Where? A. At a borough meeting.

Q. Did you ever have in your possession any other grade map than the one which you now hold? A. No.

30 Q. Have you any knowledge of any other grade map having been prepared for Pearl Avenue excepting Exhibit R-1? A. No.

Q. What protest, if any, was ever made to you as Borough Clerk or at any Council meeting by the prosecutor or anyone in her behalf, in reference to this improvement? A. None.

Q. Did Miss Quinlan or anyone in her behalf ever request the borough at any time, including

M. Floyd Smith, cross.

the public hearings, to establish a grade for her property? A. No.

Q. Do you know Mr. Clerk, what proportion of the sidewalks on Pearl Avenue were laid under the contract of Norman & Sons?

Objected to on the ground that it is an improper question. 10

A. The sidewalks were laid on both sides of the street from Fair Haven Road to the river.

Q. Do you mean by that, that every sidewalk was laid by Norman & Sons? A. Yes.

Q. Do you mean by that, that no one on Pearl Avenue laid his or her own sidewalk? A. Yes.

Q. Did Miss Quinlan, or anyone in her behalf, request of you an inspection of the map? A. No.

Cross examination by Mr. Paladeau, Jr.: 20

Q. When, as Borough Clerk, did you ever call for bids for the laying of the Pearl Avenue sidewalks, if ever? A. I never called for any.

Q. Were you ever instructed to call for any? A. No.

Q. When was Norman & Sons' so-called bid received by the borough? A. August 28th, 1923.

Q. On what date was the bid of Norman & Sons accepted and the contract made? A. The bid was accepted by the Borough Council on August 28th, 1923. 30

Q. That was the same date the bid was received by the Borough Council, wasn't it? A. Yes.

Q. On what date did you say this map was given to you by Mr. Smock, the Councilman? A. I didn't say on any particular date; I said at one of the regular meetings in September; I cannot recall what one it was. 40

M. Floyd Smith, cross.

Q. In other words, the grade map was not given to you as Borough Clerk until after the contract had been entered into with Norman & Sons by the Borough for the laying of sidewalks on Pearl Avenue, was it? A. No.

10 Q. Then no grade map was given to you until after the acceptance of the bid by the Borough Council on August 28th, was there? A. That's right.

Q. There was no grade map given to you at that time? A. No.

Q. Do you consider the giving to you by Mr. Smock, an official acceptance of the grade map for Pearl Avenue? A. Yes.

20 Q. At the hearing on June 6th, in response to this question, page 73, the question was, "When was the engineer's map fixing the grade of Pearl Street submitted to the Borough Council, and when was it accepted?" and your answer was, "This was taken care of by the street committee; they have that map. I cannot give you the exact date it was filed, but the map was on file. Q. Was it ever accepted by the Borough Council? A. I don't recall any motion having been made accepting it. Q. You cannot show the minutes that would show an acceptance of the grade map? A. No." Do you
30 remember that? A. Yes.

Q. By what authority did Mr. Smock give you the map? A. He was a member of the street committee.

Q. Did the Council authorize Mr. Smock to give you the map? A. No.

Q. Was there an authorization of any kind or any resolution passed accepting the grade map as on file in your office? A. No.

40 Q. Are all maps thus presented in that manner?

M. Floyd Smith, redirect.

Objected to on the ground that it is irrelevant and immaterial.

A. Not always.

Q. Do you recall any instance in which a map was given to you without being accepted by the Borough?

10

Objected to as being immaterial and irrelevant.

A. I don't just now.

Q. At any meeting at which you were present, was there any reference made to the taking into consideration of the work on the Quinlan property on Pearl Avenue, regarding a change in grade?

A. Not to my knowledge.

Redirect examination by Mr. Brinley:

20

Q. Mr. Clerk, are you prepared to say that no map was ever received by you in connection with a public improvement without a formal resolution authorizing its acceptance?

Objected to on the ground that it is immaterial and irrelevant, and further, that the question has already been answered.

A. No.

Q. Mr. Smith, calling your attention to the assessment map, was that map ever accepted by the Borough? A. Yes.

30

Q. Do your minutes show such acceptance? A. Yes.

Q. Will you refer to the minutes and read what they say regarding this matter, giving the date of the meeting? A. Reading from the Minutes of January 22nd, 1924: "On Jan. 22, 1924, assessment map of Pearl Street received. Motion of Mr. H. M.

40

M. Floyd Smith, recross.

Little, seconded by Mr. Cleeland, that the same be received and bills be sent out; carried unanimously on roll call."

Q. Mr. Smith, in your return did you include this resolution? A. No, I don't think I did.

Q. And why? A. I overlooked it.

10 Q. Have these minutes just referred to been added to or changed since they were entered in the minute book in January, 1924? A. No.

Recross examination by Mr. Paladeau, Jr.:

Q. Referring to page 72 of the testimony taken on June 6th, this question was asked, "Was any assessment changed after you first billed it January 22nd? A. There was a motion passed by the Council to deduct a certain number of square feet from the north end of the sidewalk on the east side of Pearl Street. Q. Namely the Quinlan property? A. Well, it shows there. Q. It was originally assessed to the Quinlan property? A. Yes. Q. And therefore it was changed as of that date and a new assessment made against the Quinlan property? A. Yes." Do you remember that? A. Yes.

20

Q. What date was the change made? A. At a meeting held March 25th, 1924, the following motion was made, "Motion of Mr. VanNote, seconded by Mr. Cleeland, that the Borough Engineer be requested to assess the 6 squares on the north end of Pearl Street, east side, to the Borough of Fair Haven; carried unanimously on roll call."

30

Q. So that nothing in the minutes authorizes a change of the assessment map to conform with that motion? A. Only what I have just read.

Q. Then the assessment map stands as it was passed on January 22, 1924, does it not? A. Yes.

Edmund C. Hendrickson, direct.

Redirect examination by Mr. Brinley:

Q. Mr. Smith, who was the owner of the property from whom the assessment was taken, which was changed to the Borough of Fair Haven?

Objected to as being immaterial and irrelevant.

10

A. May L. Quinlan.

EDMUND C. HENDRICKSON, of full age, being first duly sworn according to law, upon his oath testifies as follows:

Direct examination by Mr. Brinley:

Q. Mr. Hendrickson, where do you live? A. I live in Fair Haven.

Q. How long have you lived there? A. All my life.

20

Q. What is your business? A. I am a mason contractor.

Q. Were you engaged in that business in the year 1922? A. Yes.

Q. And how long, approximately, have you been engaged in that business? A. About 18 years, approximately.

Q. In connection with your business in the year 1923, were you engaged in the laying of sidewalks? A. Yes.

30

Q. How extensive? A. Quite large, I would say.

Q. Did you lay any sidewalks in the year 1923 in Fair Haven, or elsewhere? A. Yes, I did.

Q. In your opinion what was a fair price per square foot for the laying of concrete sidewalks in the summer of 1923? A. The price of sidewalk would vary according to conditions. The price

40

Edmund C. Hendrickson, cross.

was about 25c. in 1923. I would consider 22c. or 23c. a fair price on Pearl Avenue.

Q. What would you consider a fair price per square foot if the contractor were to lay approximately 2,000 running feet, 4 feet in width and 4 inches in depth? A. About 23c. would be a fair price on an amount of that kind in Fair Haven.

Q. Are you familiar with the mixture of concrete sidewalks? A. Yes.

Q. What have you to say as to the quality of a mixture consisting of one part cement, 3 parts sand, and 5 parts slag for the bottom, and the top coat 1 part cement and 2 parts sand? A. I would consider this a very good mixture.

Q. Did you see the sidewalk laid on Pearl Avenue after the walk was completed? A. Yes; I walked down it plenty of times.

Q. Did you examine it carefully? A. I examined it lots of times.

Q. What have you to say as to its quality? A. I would say that it is of good quality.

Cross examination by Mr. Paladeau, Jr.:

Q. Approximately how many contractors are there in the vicinity of Red Bank, Rumson and Fair Haven who make a practice of laying sidewalks? A. There are a great many persons who do a general contracting work, and there are some who specialize in that kind of work.

Q. Do you make a specialty of laying sidewalks? A. I do not.

Q. What, if anything, do you make a specialty of?

Objected to as immaterial and irrelevant.

A. General contracting mason.

Edmund C. Hendrickson, cross.

Q. As a mason in this vicinity, are you familiar with conditions existing in nearby towns, for instance, Rumson and Red Bank? A. I am.

Q. Do you know whether any contract was made with Red Bank or Rumson in 1923 for the laying of concrete sidewalk at 22c. a square foot?

Objected to as being immaterial as to what might have been.

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A. There might have been.

Q. Saying that 22c. in an estimate was a fair figure, would your answer be the same if specifications had been given out before the awarding of the contract? A. I would consider that a fair figure as the specifications were read after that.

Q. To straighten you out, the testimony Mr. Brinley read was not from the specifications; that was simply Mr. Norman's, the contractor's, own specifications. Suppose the sidewalk was to be 6 inches deep, would that have any bearing on the price?

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Objected to as being immaterial and irrelevant.

A. Yes, sir.

Q. When was the last time you walked down Pearl Avenue?

Objected to as being immaterial and irrelevant.

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A. I walked down it night before last.

Q. Are you familiar with the Quinlan property?

A. I am.

Q. In your walk the other night did you notice the wearing away of the concrete midway between the Quinlan property?

Objected to as being improper, inasmuch

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Edmund C. Hendrickson, redirect.

as a long time has elapsed since the sidewalk was laid, and there being many other causes which might cause a break, besides defective workmanship.

A. Such a thing might be possible but I didn't see it.

10 Q. As you said before, under the specifications as quoted from that record, how long should a sidewalk of the kind laid on Pearl Avenue stay after it became broken or worn away under ordinary use? A. It will depend on conditions.

Q. What kind of conditions? A. All conditions.

Q. What, for instance? A. For instance, the trees might grow roots and expand, pressing the walk up; the passing of heavy trucks might do it; there's a million things which might cause it.

20 Q. Would that be the fault of faulty work? A. No.

Q. This sidewalk was laid in November, 1923, and up until now, in ordinary use, should any of the sidewalk be worn away? A. I have seen them wear away.

Q. What condition is that due to? A. Sometimes to weather and sometimes to the use it is put to.

30 Q. Are you familiar with Pearl Avenue, and particularly that part of it upon which this sidewalk was laid? A. Yes.

Q. Is it a street over which many pedestriains walk, or are there just a few daily? A. A few people there travel over it; it is not very much used. There is considerable roller skating done on that street.

Redirect examination by Mr. Brinley:

40 Q. Mr. Hendrickson, would the passing of heavy

Joseph W. Davis, direct.

vehicles and trucks over the sidewalk have a tendency to break it?

Objected to on the ground that it is immaterial and irrelevant.

A. Yes.

Recross examination by Mr. Paladeau, Jr.:

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Q. Would the passing of vehicles break the skin or top dressing of the sidewalk? A. Sufficient weight would crack it.

JOSEPH W. DAVIS, of full age, being first duly sworn according to law, upon his oath testifies as follows:

Direct examination by Mr. Brinley:

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Q. Mr. Davis, what position do you hold in the Borough of Fair Haven? A. Collector and Treasurer of the Borough.

Q. And did you hold this position in 1923? A. I did.

Q. Are you the gentleman who made up the assessments for Pearl Avenue? A. No, I did not make up the assessments; they were made up by Mr. Allen, the Borough Engineer.

Q. Did you compute the amount which property holders owed the Borough? A. I did.

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Q. And what was the basis of your computation? A. Per square foot.

Q. And where did you get your knowledge from as to the number of square feet which should be charged to each property owner? A. From the assessment map turned over to me by the Borough Council.

Q. (Witness is shown a blueprint of the assess-

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Joseph W. Davis, direct.

ment map for the improvement on Pearl Avenue, made by George K. Allen in January, 1924, and is asked if that is a true reproduction of the assessment map which he used in computing the amount which each property owner owed the Borough.)

A. To the best of my knowledge, it is.

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(It is stipulated by the attorney for the Prosecutor that inasmuch as the original assessment map has been filed with the Clerk of the Supreme Court in this proceeding, it is admitted that this is a true copy of the assessment map now on file, and that the map may be used and offered in evidence as such.)

Offered in evidence and marked Exhibit R-2.

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Q. Mr. Davis, the assessment map showed what with respect to the property holders, and the number of square feet? A. The assessment map showed the number of square feet in each property, and was the basis which I used in computing the tax on each property for the concrete sidewalk.

Q. Now, in making out the bills, how did you arrive at the amount? A. I simply copied from the map the number of square feet and multiplied that by 22 cents, which was the contract price for laying the sidewalk.

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Q. Did you charge anything in addition to that to the property holders? A. Yes, the engineer's fees.

Q. Amounting to what? A. I am not positive, but I think the engineer's fees were \$97; if I remember correctly, it came to 67 or 77 cents per 100 square feet.

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Q. And how did you arrive at that 67 cents per

Joseph W. Davis, direct.

100 square feet? A. I took the engineer's bill and divided it up into the total amount of sidewalk laid.

Q. And was that added to each taxpayer's bill?

A. Yes.

Q. Was there anything else added, in costs or charges? A. Yes; there was a charge of \$22 on a piece of property for grading it. 10

Q. And was that the Quinlan property? A. That was.

Q. Was there any other charges taken into consideration in making up your bills? A. No.

Q. No legal fees or any expenses of any kind?

A. No.

Q. About when did you send out the bills, Mr. Davis? A. The bills were sent out, all except one of them, on the 2nd or 3rd of March, 1924, and all were dated March 1st, 1924. 20

Q. And which was the one which was not sent out? A. Miss May Quinlan.

Q. And why was it not sent out? A. It was claimed that there had been a mistake made on the Quinlan property in the assessment of the number of square feet.

Q. Mr. Davis, examining the map, I notice that May L. Quinlan is charged with 1,912 square feet; with how many feet did you charge her in your bill? A. With 1,816 square feet. 30

Q. Deducting how much, Mr. Davis, from the figures which show on the assessment map, marked Exhibit R-2? A. 96 feet.

Q. And why? A. The Borough claims to own 24 running feet on the north end of the east side of Pearl Avenue, and that was the reason for the reduction.

Q. And this is a continuation of the Quinlan property? A. Yes. 40

Joseph W. Davis, direct.

Q. To what portion of the property owners did you send bills? A. I sent bills to all of them.

Q. Was all the sidewalk on both sides laid under the contract made between the Borough and the contractor?

10 Objected to on the ground that it is an improper question.

A. It was all laid by one man, Norman & Sons.

Q. Did any of the property owners lay their own walk?

 Objected to on the ground that it is an improper question.

A. Not one of them laid their own walk.

20 Q. Up to this time, Mr. Davis, how many property owners and what proportion of the property owners have paid their bills for this improvement? A. Well, I should judge that one-half has paid; maybe more.

Q. Will you indicate on the assessment map, marked Exhibit R-2, with lead pencil crosses, the property owners who have paid their bills? A. I have done that; they number 13.

30 Q. How did you send the bills out, Mr. Davis? A. By mail, in the regular official collector's envelope; by that I mean an envelope with a return card to the collector printed in the corner.

Q. When did you send out Miss Quinlan's bill? A. Approximately about the second week in March, 1924; it might have been along the 28th.

Q. Did Miss Quinlan or anybody in her behalf ever make a protest to you of the amount of the bill? A. No.

40 Q. Why did you send the bill out at that time? A. One of the Councilmen instructed me to take

Joseph W. Davis, cross.

off 24 running feet, and I wouldn't take it off until I was authorized by the Borough Council officially.

Q. And were you formally authorized by the Borough Council to reduce that assessment? A. I was; on the second week in March; about March 28th.

Q. Mr. Davis, did you take this off of the assessment and enter the amount which was directed by the resolution of the Borough Council to which you have just referred? A. I took off just what the Borough Council informed me to take off. 10

Cross examination by Mr. Paladeau, Jr.:

Q. Mr. Davis, do you make all the assessments for improvements in the Borough of Fair Haven?

A. I have made them all except one: Lake Avenue, which I did not make.

Q. After you have arrived at the amount due from the various property owners, do you take into consideration what damage, if any, was done to their property? A. No, sir. 20

Q. Why? A. I consider the sidewalk an improvement, not a damage.

(Mr. Paladeau, Jr., moves that this answer be stricken out as unresponsive.)

Q. What notice, if any, did you give to the property owners after you arrived at those figures? 30

Objected to on the ground that no notice is required under the statute.

A. I didn't consider that there was any notice to be given.

Q. Aren't you the assessor of the town? A. No, sir.

Q. What is your official position? A. Collector.

Q. Who was the assessor? A. I suppose the en-

Charles P. Cross, direct.

gineer; I don't know; later the assessment map was turned over to me.

Q. Who has the authority to make an assessment?

Objected to on the ground that the answer calls for a conclusion of law.

10 A. I am not a lawyer; I can't tell you.

Q. Is there an assessor for the Borough of Fair Haven? A. There is, yes, for taxes.

Q. Is there an assessor for improvements? A. No particular assessor that I know of.

CHARLES P. CROSS, of full age, being first duly sworn according to law, upon his oath testifies as follows:

20 *Direct examination by Mr. Brinley:*

Q. Mr. Cross, are you the Mayor of the Borough of Fair Haven? A. I am.

Q. Were you the Mayor in 1923? A. Yes.

Q. I show you a grade map of Pearl Avenue, marked Exhibit R-1, and ask you if you have seen that map before? A. I have.

30 Q. And when did it come to your attention first, in an official way? A. It was brought to the Borough Council by Mr. Clarence Smock, to one of the meetings.

Q. What Borough Council meeting? A. It was a usual meeting of the Borough Council.

Q. About when? A. I should say, some time in September, 1923.

40 Q. And what was done with it by Mr. Smock after he brought it to the Council meeting? A. He placed it on the table and stated that he had a map showing the proposed grade of Pearl Avenue.

Charles P. Cross, direct.

Q. Into whose hands did it get after Mr. Smock had it and it was placed on the table; what official?

A. It came to the Borough Clerk, Mr. Smith.

Q. When did the map get into your possession, Mayor? A. At a Council meeting some time in September or October, 1923.

Q. And who did you get it from? A. I got it when it was presented to the Council to show to Mr. Farrand; I may have got it from the Clerk. 10

Objected to as being unresponsive.

Q. Did you ever see or know of any other assessment map other than the map which is now offered in evidence and marked Exhibit R-1? A. Not on Pearl Avenue, no.

Q. Did the Borough Council ever authorize any other grade map for Pearl Avenue for 1923? A. No, there was no other one. 20

Q. At any time after that? A. No.

Q. Did Mr. Quinlan ever see this grade map? A. He did, sir.

Q. When, approximately? A. In October, 1923.

Q. And at that time, had the work been started on Pearl Avenue by the contractors? A. No, sir.

Q. And where did he see it? A. In my house.

Q. Has the map been changed or modified in any way since? A. Not that I know of. 30

Q. Did you as Mayor, ever receive any protest, written or oral at any of the public meetings of the Borough Council of the grade established by this map for the Quinlan property? A. No, sir.

Q. Did Miss Quinlan or anyone in her behalf ever request a conference with you in regard to this matter? A. No one to me personally, except Mr. Quinlan wanted to look at this map.

Q. Did you ever make any appointment with Mr. Robert Quinlan to discuss this matter? A. Personally, no. 40

Charles P. Cross, direct.

Q. As a result of information brought to your attention, did you ever arrange for a conference or hold yourself in readiness for a conference over this matter? A. Yes.

10 Q. What and when? A. I was at the Borough Hall in the Borough of Fair Haven on two occasions, in the evening. Mr. H. M. Little and Mr. W. B. Little, Jr., both Councilmen, were present the first evening, and Mr. H. M. Little and myself were at the second meeting.

Q. Were you there for a conference with Mr. Quinlan? A. Yes.

20 Q. How long did you remain at the Council chamber? A. The first evening, approximately, until 9 o'clock; I got there sometime between quarter of eight and eight o'clock. The second evening, we arrived there at approximately quarter of eight or eight o'clock, and stayed until approximately 8:45.

Q. Were you down on Pearl Avenue when the work was in progress? A. Yes, I was down there several times.

Q. Were you down there after the contractor had started to excavate or lay the walk on the Quinlan property? A. Yes.

30 Q. Are you familiar with the hedge on the Quinlan property? A. Yes, I have seen it.

Q. At any time when you were there, did you see any unnecessary holes or deep excavations on the Quinlan property? (Objected to on the ground that the answer calls for a conclusion of facts.) A. Not any more than was necessary.

Q. Was the hedge disturbed? A. Not that I was aware of.

Q. Have you seen the hedge since the improvement was completed? A. Yes.

Charles P. Cross, cross.

Q. And is it still there? A. Yes.

Q. Is there a fence between the hedge and the sidewalk? A. Yes.

Q. At the time you showed this grade map to Mr. Quinlan, did you tell him that it was unofficial?

A. I did not.

Q. Did you tell him at that time that no change was contemplated or would be made in the grade map? I knew of none. 10

Q. Did you tell him that any change would be made? A. No, sir.

Q. Did Miss Quinlan or Mr. Robert Quinlan, or anyone in their behalf at any time request of you at any public meeting, or at any other time, the establishment of a grade for the laying of sidewalks in front of the Quinlan property? A. No, sir. 20

Cross examination by Mr. Paladeau, Jr.:

Q. Mayor, you said under direct examination, in response to the question, "Was there any other grade map authorized," and you said not to your knowledge or something amounting to that, what I want to know is, "Was there any grade map authorized for the Pearl Avenue improvement"? A. Well, if I'm not mistaken, the ordinance puts this matter in the hands of the Street Committee. 30

Q. Is the Street Committee a separate body or is it formed of members of the Council? A. It is formed of members of the Council.

Q. Does it proceed of its own accord, or under orders from the Council? (Objected to as being immaterial and irrelevant.) A. I am under the impression that the ordinance passed for this improvement stated that the work was to be under the jurisdiction of the Streets and Walks Commit- 40

Charles P. Cross, cross.

tee. (Mr. Paladeau, Jr., moved that this answer be stricken out as not responsive.)

Q. Can you not give me a clearer answer to this question? A. If I had the ordinance here I could.

10 Q. If I may say Mayor, the ordinance has nothing to do with the question I ask; I ask you, do they take orders from the Council? A. As a general thing, they take orders from the Council.

Q. When was there any resolution introduced by the Council accepting the grade map, to your knowledge? A. The Clerk has a record of the minutes.

20 Q. You are Mayor of the Borough and you don't know what resolutions are passed? (Objected to on the ground that the question is immaterial and irrelevant.) A. I'd have to be a pretty smart man to remember them all. (Mr. Paladeau moves that this answer be stricken out as not responsive.)

Q. You heard the Clerk testify that no grade map had ever been accepted, and that there was no resolution of the Council accepting same; is that true to your knowledge? A. That the Clerk testified to, I don't remember every sentence.

30 Q. I am asking you, was it accepted by formal resolution? (Objected to on the ground that it is an improper question to ask this witness, the Clerk being the only one who can answer, he having the books in his charge.) A. My knowledge as far as that goes, I leave to the minutes of the Council meeting.

Q. In other words, if the map was accepted formally by the Borough, it would appear in the minutes? A. Ordinarily it would.

Q. Was the Clerk in the habit of leaving things out of the minutes? A. No, but we are not all infallible.

Charles P. Cross, redirect—recross.

Q. Mayor, what was the purpose of the first meeting? A. You will have to ask Mr. Quinlan that; I had no direct knowledge of what it would be.

Q. When the second meeting, Mr. Mayor, was arranged, did you see Mr. Quinlan at all that night? A. No, sir.

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Redirect examination by Mr. Brinley:

Q. Does the Street Committee always receive instructions from the Borough Council for all of their official acts? A. They do as a rule, unless some minor thing comes up which they have to take care of.

Q. Mr. Mayor, did you make any use of this grade map which is marked Exhibit R-1, in connection with the improvement? A. What do you mean, "make any use of it"?

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Q. Did any of the property owners on Pearl Avenue request an inspection of this map? A. They did; Mr. W. Farrand; Mr. Marshall; Mr. McAnnery and Mr. Quinlan.

Q. Did all of them make this request of you? A. They did.

Q. And were all of them shown this particular grade map which is offered in evidence? A. They were, sir.

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Q. Was this the only grade map that was ever shown to any of the property owners on Pearl Avenue by you? A. Yes, sir.

Recross examination by Mr. Paladeau, Jr.

Q. You say that the Street Committee takes orders from the Borough Council with the exception of minor things; do you call the exhibiting of a grade map a minor thing? (Objected to on the

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George F. Randolph, direct.

ground that the question calls for a conclusion).

A. I don't know that it is a minor thing, no.

Q. When was the map shown to Mr. Quinlan?

A. I believe sometime in October.

Q. Can you give me approximately the date? It was on a Saturday night, that's what I do know.

10 Q. About when; the 15th or 20th or when? Off hand, I can't say; I wouldn't put myself down on record on that for I don't remember, but it was on a Saturday night. (Grade Map is here offered in evidence and marked Exhibit R-1).

Objected to by Mr. Paladeau, Jr., as not being official.

20 GEORGE F. RANDOLPH, being recalled, and having heretofore been duly sworn according to law, testifies as follows:

Direct examination by Mr. Paladeau, Jr.

Q. Mr. Randolph, did you prepare and draw the assessment map marked Exhibit R-2? A. Yes.

Q. When you prepared said map, why did you put on the map that 1,912 feet as belonging to the Quinlan property? A. It showed that from the best of our information.

30 Q. Showed on what? A. We measured the number of feet abutting the improvement, starting from Mr. Quinlan's south line and continuing past his property showed that number of lineal feet, going to high water mark if necessary.

Q. Did you remeasure the property after the assessment map was accepted by the Borough, namely on January 22nd, 1924? A. No.

Q. Did you know that there was 96 feet of sidewalk that the Borough of Fair Haven claims as owning? A. I don't know anything about that.

40 Q. It was not done through your office? A. No.

Robert Quinlan, direct.

ROBERT QUINLAN, of full age, being first duly sworn according to law, upon his oath testifies as follows:

Direct examination by Mr. Paladeau, Jr.

Q. You have heard the Mayor testify as to the proposed meetings of yourself and the Mayor; will you let me have your version of what happened? 10

A. I received a telephone message from my mother and as a result of this telephone message, I called the Borough Attorney, Mr. Smock on the telephone and told him that my sister's attorney, Mr. John Quinn, had been requested by me to take the matter up with the Borough Council for a grade for the Pearl Street sidewalk, and that they had started the work without giving me an opportunity to be heard. Mr. Smock told me to come down that evening and he would have the work stopped on condition that I came down that evening. (Mr. Brinley moves that the telephone conversation which Mr. Smock, the Borough Attorney, had with Mr. Quinlan be stricken out.) I talked the matter over with the members of the Borough Council. Then he called me back and told me that he had had it stopped. I came down that evening and went to the Mayor's house at about 7:30, but he was not at home. I then went down to my sister's house and found out that the work had not been stopped; that he stopped it for a few minutes and then it had gone ahead. I then went over to the Gene Tunney's house and brought him over to see the condition of the walk. (Mr. Brinley moves that this be stricken out as immaterial and irrelevant.) I then went back to the Borough Hall and the door was locked. It was then a little after 9 o'clock; maybe half-past nine; the

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Joseph W. Davis, direct.

building was locked but somebody was in there for the lights were lit. I stayed outside for a while and a man came out and I asked him if the Mayor was in there and he said "No." The next morning I went to Attorney Smock's office and told him that his agreement to have the work stopped had not been carried out. (Objected to as being im-
 10 material.) I told him about having Quinn take the matter up with him and he said that Quinn had taken the matter up with him. (Respondent objects as to what Quinn said to Mr. Smock), and that Quinn had agreed to write him a letter asking him if he had taken it up with the Borough Council, and he said that he had not. Attorney Smock then said to me, "Why can't we stop this fighting?" Attorney Smock said to me, "If you will deed that
 20 back property over to the borough there will be no more trouble." (Objected to as being immaterial.) I told him that I came down to talk about the sidewalk.

No Cross Examination.

JOSEPH W. DAVIS, being recalled, and having heretofore been duly sworn according to law, testifies as follows:

30 *Direct examination by Mr. Paladeau, Jr.:*

Q. Has a bill been presented by the Borough for their part of the walk for the Pearl Avenue improvement? A. No.

Q. Will a bill be presented to the Borough? (Objected to because it calls for a conclusion in the future.) A. I shall ask the Borough for a release of each assessment against the borough.

Q. How is that assessment to be paid? A. What
 40 assessment?

Joseph W. Davis, direct.

Q. Against the Borough? A. It is never paid; it is simply released by the Borough.

Q. Who pays the contractor for their part of the work? A. The Borough.

Q. How? A. In this case I paid it by note.

Q. On what bank was the note drawn? A. Second National of Red Bank. 10

Q. As Treasurer, do you pay the bills? A. Not until they recommend me to pay the bills; they give me an order to pay them.

Q. When did you receive an order from the Borough to pay the contractor? A. I can't tell.

Q. Approximately, can you tell me? A. I think it was the 1st of February of this year.

Q. That would be before the bills for the assessment were sent out? A. Yes, sir.

Q. Did you as Treasurer sign the note? A. I cannot just exactly tell about this particular note; some of the notes I sign, and some of them I do not; it depends on what they are to pay. 20

Q. And did you sign this note? A. I can't tell.

Q. If you did not, who did? A. The Mayor and the Clerk with the seal of the Borough.

Q. Is there any recommendation by you on the note that it should be signed? A. Not an improvement note, no.

Q. Who recommends to you? A. Some Councilman of the Borough. 30

Q. Do you know by what authority that note was issued? A. I do.

Q. Do you know whether or not there was any recommendation by the Borough Council? A. I know there was.

Q. Was there any ordinance passed or public notice given to your knowledge, of the authority for the making of said note by the Borough? A. Yes. 40

Joseph W. Davis, direct.

Q. When was this notice given, and to whom?

A. The ordinance was passed I think, sometime in July or August of 1923, authorizing the laying of the sidewalk; paying by note, the issuing of a note.

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(Mr. Paladeau, Jr., asks leave of counsel to refer to the ordinance, and to this Mr. Brinley replies, "You may.")

Q. I show you a copy of the ordinance as passed and ask you to point out where there is any authority to make a note? A. There is nothing in that ordinance.

Q. Should there have been anything in the ordinance?

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(Objected to by Mr. Brinley as calling for a conclusion of law.)

A. I don't know whether there should have been or not.

Q. Do you know of your own knowledge, there not being anything in the ordinance authorizing the making of a note, by what authority the note or notes were made? A. I do not.

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Q. As Treasurer of the Borough, what, if anything, do you have to do with the making up of the yearly budget?

(Objected to by Mr. Brinley as immaterial and irrelevant.)

A. I have nothing.

Q. Who makes up the budget? A. The Borough Council.

Q. Was there any provision made in the budget of 1923 to pay for the sidewalk improvement on Pearl Avenue? A. No.

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Amendment to Return.

(Filed January 6, 1925.)

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">MAY L. QUINLAN, Prosecutor,</p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">CHARLES CROSS, <i>et al.</i>, and BOR- OUGH OF FAIR HAVEN, Respondents.</p>	}	On Certiorari.	10
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It is stipulated and agreed between the attorneys of the parties that the return now filed may be amended by the additional extract from the minutes of the Borough Clerk, to wit:

January 22, 1924. Assessment map of Pearl Street received. Motion by Mr. H. M. Little and seconded by Mr. Cleeland that the same be received and the bills sent out. Passed unanimously on roll call.

Dated January 2nd, 1925.

WILSON AND SMOCK,
Attorneys of Respondents.

N. LOUIS PALADEAU, JR.,
Attorney of Prosecutor.

Reasons in Certiorari.

(Filed May 7, 1924.)

NEW JERSEY SUPREME COURT.

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MAY L. QUINLAN,
Prosecutor,

v.

CHARLES CROSS, *et al.*, and BOR-
OUGH OF FAIR HAVEN,
Respondents.

} On Certiorari.

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The said prosecutor, by N. Louis Paladeau, Jr., her attorney, comes and prays that the contract and the assessment made in pursuance thereof in the matter of the laying of sidewalks and curbing on Pearl Street in the Borough of Fair Haven, as well as all the proceedings of said Borough of Fair Haven, the Assessment Commissioners thereof, and the Mayor and Common Council of said Borough, may be set aside and reversed and for nothing holden, for the following reasons:

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1. That the said proceedings are improper and illegal and were not taken in conformity with lawful authority on the part of the said Borough of Fair Haven.

2. That the alleged contract under and by which the said improvement was done was illegal in that the Borough of Fair Haven drew up no specifications for the work and failed to advertise for bids for the same, even though the amount of the contract greatly exceeded the sum of \$500.00.

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Reasons in Certiorari.

3. That no notice was given to the prosecutor of any kind of any proceedings to impose assessments for benefits in accordance with law, and prosecutor was therefore unable to produce testimony as to the damage done in the completion of the work.

4. That the assessment under review in this case is an assessment growing out of the laying of the sidewalk only, and that if there is a legal contract, it is an entire contract, and no assessment could legally be levied until the curbing as well as the sidewalk was laid.

5. That the said proceedings were illegal in that no moneys had been appropriated or were available at the time of the awarding of the alleged contract and that no ordinance was passed authorizing the improvement and the levying of an assessment upon the property of the prosecutor for the cost of the improvement or any part thereof.

6. That the said ordinance, contract and assessment are in divers other respects illegal.

Dated May 7th, 1924.

N. LOUIS PALADEAU, JR.,
Attorney of Prosecutor.

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Opinion.

(Filed August 1, 1925.)

NEW JERSEY SUPREME COURT.

MAY L. QUINLAN,
Prosecutor,

v.

CHARLES CROSS, *et al.*, and BOR-
OUGH OF FAIR HAVEN,
Respondents.

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For the Prosecutor, N. LOUIS PALADEAU, JR.
For the Respondents, WILSON & SMOCK.

LLOYD, J.:

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This was a certiorari granted to bring before the Court the contract and assessment made in pursuance of an ordinance for the laying of sidewalks and curbing on Pearl Street and Fair Haven Road in the Borough of Fair Haven. The contract was made with James Norman & Sons, contractors, at the rate of twenty-two cents per square foot for sidewalks and fifty cents per lineal foot for concrete curbing. This contract was evinced by a short correspondence between the parties. The sidewalks were laid but the curbing was not laid. The bill for the entire work on the sidewalks for \$2,258.30 was paid by the Borough. The grounds upon which it is sought to set aside the contract and assessment are substantially that the contract was let without public advertising and being in excess of \$500, was under the provisions of the home rule act of 1917 illegal; that no specifications

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Opinion.

for the work were given; that no notice was given to the prosecutor of any proceedings to impose assessments for benefits according to law; that the contract if valid was an entire one and that no assessment could be legally made for the sidewalk alone and until the curbing was laid; and finally, because no moneys were appropriated or available at the time of the awarding of the contract, nor was any ordinance passed authorizing the improvement and levying of the assessment on the property by the prosecutor. Substantially these averments are admitted by counsel for the respondents, but it is claimed that the prosecutor has debarred herself from favorable action from the Court by reason of laches in that she was cognizant of the improvement, that she made no objection during the progress of the work, and that by her silence she acquiesced in the improvement. 10 20

The question for solution is, therefore, reduced to the single proposition (assuming the irregularities and these were certainly flagrant), is the prosecutor in any position at this time to question the validity of the contract and the assessment thereunder on her property?

It appears from the proofs that the prosecutor, while cognizant of the steps that were being taken, took no action looking to the arrest of the proceedings under the ordinance and the improvement until after the entire work had been completed and was in use. I think under the authorities and under all principles of justice and equity, she was obliged to act promptly upon learning of the contemplated action, and not permit the expenditure of large sums of money and the commitment of the municipal authorities to a course of action which entailed great burden and expense 30 40

Opinion.

upon it if she were going to attack the validity of the contract and the subsequent action thereunder. The authorities dealing with the question of laches under such circumstances are numerous and in no uncertain voice. They declare that one situated as the prosecutor cannot sit idly by and observe such
10 improvements without thereafter being estopped from complaining. *Cunningham v. Borough of Merchantville*, 61 N. J. L., 466; *Glass Works v. Glassboro*, 79 N. J. L., 352. The case of *Schumm v. Seymour*, 24 Eq., 143, cited by the prosecutor dealt with the case of fraud on the part of the municipal authorities and relief was accorded to the complainant on that theory. In the present case there is no suggestion of bad faith.

In this case if the proceedings were set aside it
20 would work an injustice upon the municipality and an equal one upon property owners who would bear an unjust assessment and as was said in *Glass Works v. Glassboro, supra*, "the writ may be refused when it appears that the public interest will suffer or private injustice will be done. If the prosecutor suffers the public work, on account of which his property may properly be assessed for benefits, to proceed for several weeks without applying for his writ, and only applies after the work
30 is nearly completed, at a large expenditure of public moneys, the writ will be refused, or if allowed will be dismissed when these facts are brought to the attention of the Court."

When the writ was allowed in this case it was stipulated by counsel that I should hear the case as and for the Supreme Court sitting in one of its branches.

Having reached the conclusion that the proceedings should not be disturbed, the writ will be dis-
40 missed.

Rule for Judgment.

(Filed August 12th, 1925.)

NEW JERSEY SUPREME COURT.

<p>MAY L. QUINLAN, Prosecutor,</p> <p style="text-align: center;"><i>v.</i></p> <p>CHARLES CROSS, <i>et al.</i>, and BOR- OUGH OF FAIR HAVEN, Respondents.</p>	}	<p>On Certiorari.</p> <p>RULE AFFIRMING ASSESSMENT OF TAXES.</p>	<p>10</p>
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The Court having heard the argument of counsel and inspected the assessment of taxes removed by the writ in the cause and duly considered the reasons filed;

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IT IS ORDERED that said writ of certiorari be dismissed.

Entered Aug. 12, 1925.

On Motion of WILSON and SMOCK,
Attorneys of Respondents.

A true copy.

EDWARD J. KELLEHER,
Clerk.

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Notice of Appeal and Grounds of Appeal.

(Filed October 1, 1925.)

NEW JERSEY SUPREME COURT.

10	<p style="text-align: center;">MAY L. QUINLAN, Prosecutor,</p> <p style="text-align: center;"><i>v.</i></p> <p style="text-align: center;">CHARLES CROSS, <i>et al.</i>, and BOR- OUGH OF FAIR HAVEN, Respondents.</p>	}	On Certiorari.
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To

WILSON & SMOCK, Esqs.,
Attorneys of Respondents.

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TAKE NOTICE, that prosecutor appeals to the Court of Errors and Appeals from the whole of the judgment entered in this case on the following grounds:

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1. That the Supreme Court erred in affirming the proceedings and the assessment brought up for review by the writ of certiorari in this case.
2. That the Supreme Court erred in refusing to set aside the proceedings and assessments brought up for review and returned with the writ herein.
3. That the Supreme Court erred in refusing to hold that the proceedings and the assessment thereunder were illegal and void and should be set aside.

N. LOUIS PALADEAU, JR.,
Attorney of Prosecutor.

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[4549]

New Jersey Court of Errors and Appeals

MAY L. QUINLAN,
Prosecutor-Appellant,

v.

CHARLES CROSS, *et al.*, and BOR-
OUGH OF FAIR HAVEN,
Respondents-Appellees.

} On Certiorari.

BRIEF FOR PROSECUTOR-APPELLANT.

This is an appeal from a judgment of the Supreme Court dismissing a writ of certiorari, which judgment was entered on opinion of Mr. Justice Lloyd, sitting as a single Justice. The writ was allowed to review the proceedings taken by respondents-appellees, the Mayor and Common Council of the Borough of Fair Haven, for the laying of sidewalks and curbing on Pearl Street, north of Fair Haven Road in said Borough, and particularly the assessment for benefits thereunder.

The writ in this case was applied for and allowed after part of the work under the contract in this matter was completed, namely, the laying of the sidewalks, but before work was begun on the curbing. Prosecutor-appellant contends that as there was one improvement undertaken, no assessment could be levied until the completion of said work, that is, both the laying of the sidewalk and the curbing. Her further contention is that the alleged assessment was illegally made.

In the Court below prosecutor-appellant, having the contract before the Court, pointed out all the

patent irregularities in the proceedings from the passage of the ordinance, and brought out the following irregularities and violations of law in the proceedings leading up to the award of the contract:

1. There was no advertisement for bids although the amount of the contract exceeded the sum of \$500; and consequently no plans or specifications for the work to be contracted for were provided (State of Case, p. 64, lines 9-12).

2. The contractor was not required to give a bond as provided by statute (State of Case, p. 65, lines 1-3).

3. The contract was awarded before the map fixing the grade for said improvement had been received by the Borough Council and no ordinance was passed authorizing such change of grade.

4. No money was appropriated and no funds were available for the payment of the improvement at the time of the awarding of the contract.

Mr. Justice Lloyd in his opinion, while admitting that the irregularities were certainly flagrant (State of Case, p. 107, lines 22-24), read the contract and the assessment together and found that there was laches as to the contract and dismissed the writ, thereby denying the prosecutor-appellant any relief as to the untimely and illegal manner in which the assessment was levied.

Prosecutor-appellant in this Court, disregarding the irregularities in the awarding of the contract and the question whether or not laches is a good defense on a review of the award of the contract, intends to confine herself strictly to these salient points, namely:

1. The assessment under review in this case is an assessment growing out of the laying of the sidewalk only, and no assessment could legally be levied until the curbing as well as the sidewalk was laid.

2. No notice required by law or of any kind was given to the prosecutor-appellant of the proceedings to impose assessments for benefits.

3. The assessment under review is illegal because it was never confirmed by the Mayor and Common Council of the Borough of Fair Haven.

Statement of Facts.

The return to the writ of certiorari (State of Case, pp. 8 to 15) and the testimony (State of Case, pp. 16 to 102) show the following:

Prosecutor-appellant is the owner of a plot of land situated on the easterly side of Pearl Street between Fair Haven Road and the North Shrewsbury River. Under the proceedings in question the Borough undertook the construction of sidewalks and curbs on said Pearl Street between Fair Haven Road and the North Shrewsbury River, to conform with the established grade and specifications to be furnished by the Borough Engineer.

The proceedings were initiated by petition of certain property owners to which prosecutor-appellant was not a party (State of Case, p. 9). This was followed by the passage of an ordinance on July 10th, 1923, by the Borough Council under and by virtue of which owners affected thereby were compelled to lay sidewalks and curbing within thirty days of the service of a written notice upon them (State of Case, pp. 10 and 11). Prosecutor-appellant received a notice on July 25, 1923 (State

of Case, p. 17, line 16), but was unable to do the work because of the failure of Borough to provide an established grade and specifications as called for in the ordinance (State of Case, p. 68, lines 35-37) although prosecutor-appellant made diligent inquiry for said grade map (State of Case, pp. 48-49, lines 32-40, 10 to 36). A contract for the laying of the sidewalks and curbing was awarded August 28th, 1923 (State of Case, p. 14, lines 27 to 40), although no grade map was available to property owners until sometime in September of that year (State of Case, p. 68, lines 31-37).

The laying of the sidewalks under the contract was completed the latter part of November, 1923, but no work had been commenced on laying the curbing under said ordinance and contract up to the allowing of the writ in this matter (State of Case, pp. 50-51, lines 40, 1-4) and the Court below was in error in stating in his opinion that the entire work had been completed and was in use (State of Case, p. 107, lines 28-33).

Without giving notice of any kind to the prosecutor-appellant as required by law or affording her an opportunity of offering testimony as to the damage done to her property in the laying of the sidewalks in question (State of Case, p. 64, lines 3-5; p. 91, lines 20-34) and before the curbing was laid, the Borough received and filed a map known as "Sidewalk Assessment Map, Pearl Avenue, Fair Haven, N. J." (State of Case, facing p. 12), on January 22nd, 1924, and ordered bills sent out (State of Case, p. 103).

After the filing of said map and on March 25th, 1924, the assessment on prosecutor's property was changed although no alteration was made in the map as filed (State of Case, p. 82, lines 14-40), and on April 10th, 1924, or sixteen days thereafter, prosecutor was allowed this writ (State of Case, p. 7, line 3).

POINT I.

The assessment under review in this case is an assessment growing out of the laying of the sidewalk only, and no assessment could legally be levied until the curbing as well as the sidewalk was laid.

The contract entered into for the purpose of the improvement set out in the ordinance consists of two letters, one by the contractor, James Norman & Son, to the Mayor and Council of the Borough of Fair Haven, and the other by the Borough to the contractor, which reads:

“The Council accepts your bid for sidewalks and curbing of Pearl Street and they wish you to start work as soon as possible” (State of Case, p. 12).

The purpose of the ordinance, as well as the petition of the landowners for the improvement, and the contract cannot be misunderstood—the improvement undertaken was the laying of sidewalks and the curbing thereof.

The Borough of Fair Haven failed to wait for the completion of the entire improvement and proceeded to levy an assessment when only part of the improvement was completed, namely, the laying of the sidewalks, and disregarded the fact that curbing had not been laid. The testimony of Mr. Norman as to how far the improvement had progressed was:

“Q. Is the work fully completed now as covered by your contract? A. The curb is not in.

“Q. That is part of the contract? A. Yes.

“Q. When do you expect to complete the work? A. When we get notice from the Council” (State of Case, p. 55, lines 15-19).

Chapter 152, P. L. 1917, Article 25, page 411, provides for sidewalk improvement as follows:

“The governing body of every municipality shall have power to make * * * ordinances regulating and providing for the construction, paving, repaving, curbing * * * of sidewalks. * * *”

The Borough of Fair Haven undertook under this law the improvement in question, consisting of the laying of sidewalks and curbing of same.

Chapter 152, P. L. 1917, page 412, as amended by P. L. 1923, Chapter 169, page 454, provides the method of apportioning the cost of such improvements among the properties benefited thereby and the method to be followed in arriving at the cost thereof *after the improvement has been made*:

“Whenever any sidewalk improvement shall be made by any municipality, a true and accurate account of the cost and expense thereof shall be kept and apportioned among the several properties improved in proportion to the frontage of their respective lands, and a true statement of such cost, under oath or affirmation, shall be forthwith filed by the officer, or any successor or successors in the office of such officer, of the municipality in charge of such improvement, with the clerk of the governing body; said governing body shall examine the same, and if the same is properly made, shall confirm the same and file such report with the officers of said municipality charged with the duty of collecting taxes. The said officer shall record the said sidewalk assessment in the same book as other assessments.”

There is no alternative method provided by the statute for making an assessment before the improvement is made, and no legal assessment could be made, therefore, until after the improvement was completed, the time provided by the act.

The section of the statute last above referred to (Section 4) has not been construed by our Courts. By analogy, however, it may be compared with that involved in the recent case of *Gross v. Hague*, 99 N. J. Law, 457, where at page 462, the Court through Mr. Justice Katzenbach, stated:

“No determination can be made as to whether or not a property is specially benefited by a local improvement until the improvement has been actually completed.”

The prosecutor contends, in view of the established rule of law that where the statute defines a method of procedure the acts of a municipality are legal only when that procedure is strictly adhered to, that no assessment can be legally levied before the time indicated by the statute, and that is when the improvement has been made.

Terhune v. Passaic, 41 N. J. Law, 90;
App. v. Stockton, 61 N. J. Law, 520, at 523;
Gross v. Hague, 99 N. J. Law, 457.

Prosecutor directs the attention of the Court to the opinion of Mr. Justice Lloyd, sitting below, where it can be readily seen that his decision is based in part on an erroneous conception of the facts. The opinion says:

“It appears from the proofs that the prosecutor while cognizant of the steps that were being taken, took no action looking to the arrest of the proceedings under the ordinance and the improvement *until the entire work had been completed and was in use.* * * *”
 (State of Case, p. 107, line 28-33).

That this is not the fact is readily apparent from the testimony of Mr. Norman above set forth and also from the testimony of Mr. Randolph, the engineer in charge of the improvement (State of Case, pp. 50-51, lines 40, 1-4). Nowhere in the

testimony (pp. 16-102) or in the return to this writ (pp. 8-15) does there appear anything on which this finding by the Court below could be based but rather the converse is distinctly shown, and the fact is that the Borough has never completed the improvement.

Prosecutor respectfully submits that the case was decided below on the erroneous finding that the entire improvement had been completed and followed by a legal assessment, while the fact is the improvement has not been completed and the attempted assessment was untimely and illegal.

Prosecutor submits further that said assessment is illegal also because the notice required by the statute was not given to the prosecutor or to any other property owner affected before the assessment in the case was levied, which contention will be treated as the next point.

POINT II.

No notice required by law or of any kind was given to the prosecutor-appellant of the proceedings to impose assessments for benefits.

Chapter 152, P. L., 1917, page 319, as amended by Chapter 156, P. L., 1922, page 271, regarding assessment for sidewalk improvements provides:

*“When any sidewalk improvement shall be made by any municipality, the governing body thereof, before confirming the report of the officer in charge of such improvement, shall give notice to the owner or owners named in said report of the time and place that said governing body will examine the same. * * *”*

The notice required by the above statute was not given to prosecutor-appellant and other owners affected by such improvement of the intention of

the Borough officials to examine the report of the officer in charge of the improvement. Neither the required notice nor proof of the giving of same can be found in the return to the writ in this matter (State of Case, pp. 8 to 15), and of course the municipality must sustain the assessment for the improvement by the proceedings returned with the writ including the required legal notice.

The prosecutor-appellant as a property owner affected by the improvement, and having suffered damage in addition because of the manner in which the sidewalk had been laid (State of Case, p. 19, lines 32-40; pp. 40-41, lines 19-40, 1-12) was entitled to have notice of the proceeding of the Mayor and Council required by law and to be heard on the question of the amount of the assessment to be levied against her property.

In *Groel v. Newark*, 78 N. J. Law, 144, it is said:

“It is the right of a land-owner specially affected by a public improvement, to be informed, either by actual or constructive notice, of the time and place appointed for the meeting of council to consider their proposed action. This is so because the act is judicial in character; it being contrary to natural justice that a person should be bound by proceedings of a judicial character affecting his person or property without having an opportunity to be heard. *Camden v. Mulford*, 2 Dutcher, 49; *State v. Orange*, 3 Vroom, 49; *State v. Jersey City*, 5 Id., 31; *West Jersey Traction Co. v. Board of Public Works of Camden*, 27 Id., 431; *Landis v. Vineland*, 31 Id., 264; *Sears v. Atlantic City*, 43 Id., 435; affirmed, 44 Id., 710.

“This right was denied the prosecutor, for there was no notice, either actual or constructive, to him. The public meeting of November 12th, 1903, did not amount to notice of an intention to pass an ordinance which might put a burden upon the property of the prosecutor.”

In the more recent case of *Gross v. Hague*, 99 N. J. Law, 457, it was held by this Court:

“A landowner whose property may be assessed for benefits for a local improvement is entitled to a notice to the effect that it is proposed to assess his property for benefits for said improvement.”

In the instant case neither the notice required by the statute nor any other notice was given prosecutor-appellant (State of Case, p. 64, lines 3-5; p. 91, lines 20-34). The provision of the statute is clear:

*“The governing body * * * shall give notice to the owner or owners.”*

Prosecutor respectfully submits that the assessment is illegal as the statutory notice was not given to prosecutor-appellant, a property owner affected by said improvement and assessment.

POINT III.

The assessment under review is illegal because it was never confirmed by the Mayor and Common Council of the Borough of Fair Haven.

The flagrant disregard and violation of the provisions of the statutes under which the respondent-appellee derived its authority to make the improvement here involved, is further illustrated by the irregular manner in which the alleged assessment was made.

Section 4 of the statute above referred to, P. L. 1917, Chapter 152, page 412, as amended by P. L. 1923, Chapter 169, page 454, requires:

“Whenever any sidewalk improvement shall be made by any municipality, a true and accurate account of the cost and expense thereof

shall be kept and apportioned among the several properties improved in proportion to the frontage of their respective lands, and a true statement of such cost, under oath or affirmation, shall be forthwith filed by the officer, or any successor or successors in office of such officer, of the municipality in charge of such improvement, with the clerk of the governing body; *said governing body shall examine the same, and if the same is properly made, shall confirm the same* and file such report with the officers of said municipality charged with the duty of collecting taxes. The said officer shall record the said sidewalk assessment in the same book as other assessments."

The proceedings set out in the return to the writ do not disclose any compliance with the statute as above set forth. Digesting this section it is observed that the following steps must be taken:

I. A true and accurate account of the cost and expense thereof shall be kept and apportioned.

II. A true statement of such cost under oath shall be forthwith filed by the officer in charge of the improvement with the clerk of the governing body.

III. The governing body shall examine the same and if the same is properly made shall confirm the same and file such report with the officers charged with the duty of collecting taxes.

Absolutely nothing of the kind has been done nor has there been any attempt to observe the terms of the statute, and no statement under oath of the cost was filed as required by the act, although such statement would be the only basis for the assessment in question. The only record of an attempt to levy an assessment is contained in the following resolution of the Borough of Fair Haven (State of Case, p. 103):

"January 22, 1924. Assessment Map of Pearl St. received. Motion by Mr. Little and seconded by Mr. Cleeland that the same be received and the bills sent out. Passed unanimously on roll call."

and a map designated as

"Sidewalk Assessment Map, Pearl Avenue, Fair Haven, N. J."

which is found in the state of case facing page 12.

There might just as well have been no statute at all so far as any effort by the Borough of Fair Haven to comply with the terms thereof is concerned.

There is nothing before the Court to show how and what amount was arrived at as a proper assessment. In fact there is nothing to show that there is an assessment. The return to the writ merely shows the receipt of an alleged assessment map by the Borough, while an examination of the map shows nothing but lot and street lines, names of the owners and an amount of square feet, although Section 4 of the statute above set forth requires an assessment based on frontage.

Further, in the testimony (State of Case, p. 82, lines 27-33) it is brought out that on March 25th, 1924, the assessment map was changed because of the following resolution:

"March 25, 1924. Motion of Mr. Van Note seconded by Mr. Cleeland, that the Borough Engineer be requested to assess the 6 squares on the north end of Pearl Street, each side to the Borough of Fair Haven; carried unanimously on roll call."

which was the property of the prosecutor-appellant (State of Case, p. 83, lines 1-11), and further that while the prosecutor-appellant is charged with 1912 square feet on the map filed with this return

she was actually billed for 1816 square feet (State of Case, p. 89, lines 28-31), because of the change so ordered.

Prosecutor-appellant submits that a mockery has been made of the statute in this case, the same having been disregarded from the beginning of proceedings for the improvement up to and including the assessment therefor and no attempt made to comply with the requirements thereof and it is very obvious that the assessment, if it can be so termed, was not made in the manner required by the act. The Court and the parties to the suit are bound by the facts set forth in the return to the writ (State of Case, pp. 8-15).

It is possible that the respondents-appellees will argue that prosecutor-appellant has been guilty of laches in not suing out her writ within thirty days from January 22, 1924, but prosecutor-appellant respectfully directs the Court's attention to the provision of the statute that the writ shall be applied for within thirty days after the confirmation of the assessment.

"No certiorari * * * shall be allowed * * * after thirty days shall have elapsed from the date of the confirmation of such assessment or award." 1921 P. L., page 515, Chapter 195.

Appellant cannot be held guilty of laches because up to the present time the assessment in this case has never been confirmed. Because of this fact appellant comes within the purview of the case of *Evans, et al v. Township of North Bergen*, 39 N. J. Law, 456, where it was held:

"Where an act provided that no certiorari to remove an assessment should be allowed after thirty days have elapsed from the confirmation of the assessment, the limitation will not begin to run if the confirmation has no legal existence for want of notice of filing of the report * * *."

In the case at bar there has been no confirmation as required by the statute, and if a confirmation had been attempted the same could have had no legal existence and would be void for want of the required legal notice.

POINT IV.

It is respectfully submitted that the judgment of the Supreme Court affirming the proceedings under review and dismissing the writ of certiorari allowed in this case should be reversed and the assessment under review should be set aside and for nothing holden.

In closing the appellant respectfully urges that the assessment be declared illegal and set aside. The testimony and return in this matter, as a whole, exhibit manifest irregularities in levying an assessment on the Pearl Street improvement. The Court cannot fail to see that in every step taken the statutes affecting the improvement have been most flagrantly violated and disregarded.

Not only do the appellees attempt to assess the appellant in this case before the improvement undertaken is completed, the curbs not having been laid to date, but they attempt to enforce an illegal or void assessment, it being clearly shown that no notice of proceedings on assessment was ever given to appellant and that the alleged assessment was never confirmed.

These errors are not mere slips or oversights on the part of officials of the Borough of Fair Haven, but show an absolute indiscretion in the conduct of the affairs of the Borough and a manifest disregard for the statutes of the State from which authority to make the improvement in question is derived.

Appellant most respectfully directs the Court's attention again to the case of *Gross v. Hague, et al.*, 99 N. J. Law, 457, where this Honorable Court held:

"The power of a municipality in the matter of street improvements is a specially delegated power, and the acts of a municipality are legal only when they strictly follow the procedure laid down by the legislature."

Appellant, therefore, respectfully requests the Court to reverse the decision of the Court below, and to declare illegal and void the assessment and the proceedings on the improvement brought up by the writ of certiorari in this case with costs.

PALADEAU & CARISSIMI,
Attorneys for Appellant.

N. LOUIS PALADEAU, JR.,
Of Counsel.

New Jersey Court of Errors and Appeals

MAY L. QUINLAN,

Prosecutor-Appellant,

VS.

CHARLES CROSS, et al., and BOR-
OUGH OF FAIR HAVEN,

Respondents-Appellees.

On Certiorari

Brief for Respondents-

Appellees

The respondents-appellees will deal with the points raised by the prosecutor-appellant in the same order in which they appear in the prosecutor-appellant's brief, namely:

POINT ONE.

"That the assessment under review in this case is an assessment growing out of the laying of the sidewalk only and no assessment could legally be laid until the curbing as well as the sidewalk was laid." It is true that the ordinance contemplated the laying of a sidewalk and curb. It is also true that James Norman & Son submitted a proposal to the Mayor and Council to construct the curb as well as the sidewalk. It is also a fact, as the prosecutor-appellant suggests, that no curbing has been laid on Pearl Street to the present time. It appears in the testimony that none of the property owners on Pearl Street laid the sidewalk, but that Norman, the contractor, laid the sidewalk for the entire length of the street on both sides, under his contract, (p. 90, l. 8) and that he was paid by the Borough direct for the full amount of the work. It is just as true that none of the property owners have laid the curb.

Referring to paragraph No. 2 of the ordinance, (p. 10, l. 20), it will be found to provide "that the owner shall be allowed thirty days' time in which to perform the work required * * * , and in case of neglect or refusal of said owners to do the work herein provided for within the time required, the said Borough of Fair Haven *may* cause the same to be done, under the direction of the Street Superintendent, and charge the expense thereof against the land abutting or bordering upon said street."

Under this language, it seems entirely within the right of the Borough, if it so desires, not to oblige the property owners to lay the curb, upon the refusal or neglect of the property owners to lay either the sidewalk or the curb. Apparently the Borough Council determined to lay only the sidewalk and charge the property owners with the cost thereof. There may have been good and sufficient reasons why the Borough Council determined not to burden the property owners with the additional expense of laying the curb, and for aught that appears in the record the decision of the Borough Officials to enforce this has been abandoned. Whatever the facts may be as to the curbing, the prosecutor-appellant is not in a position to complain, first of all, because she can lay the curb in front of her property at any time if she so desires; and secondly, because if the Borough attempts to lay the curb, she has her legal remedy in the Courts, based upon the matters and facts disposed of in the suit at bar. She has not been prejudiced in any way, by being obliged to pay for the improvement which has been made upon her property, and in not being asked to pay for something which was not done. Respondents believe the proper time to make this objection is when an attempt is made to lay the curb, and that in this proceeding it is both inopportune and immaterial.

In the brief of both prosecutor and respondents submitted to Mr. Justice Lloyd, this same point was dealt with extensively and as a separate topic, and we submit that the Justice in rendering his opinion had all the facts correctly in mind, and spoke advisedly and correctly when he said that "the prosecutor took no action looking to the arrest of the proceeding until after the entire work had been completed and was in use." The prosecutor is in error in claiming "that it can be readily seen that his decision is based in part on an erroneous conception of the facts." This is conclusive when the whole opinion is read, because prior to the comment of the Court above referred to, the Court recites the fact that "the sidewalks were laid and the curbing was not laid," that "the entire work for sidewalks was paid by the Borough," and mentions the point made by the prosecutor that "the contract if valid was an entire one, and that no assessment could be legally made for the sidewalk alone."

The case of *Gross vs. Hague*, 99 N. J. L., 457, and other cases recited for the prosecutor under this point are not controlling in this case, because in those cases, an attempt was made to assess for the benefits of an improvement which had not actually been made. In the *Gross* case, for example, the question involved the widening of a street. It is quite beyond dispute that Assessment Commissioners, before the street was widened, involving not only the taking of land but the destruction of buildings as well, could not sit in judgment to determine the benefit or detriment accruing to the respective property owners.

POINT TWO.

The prosecutor in point No. 2 of her brief is dealing only with the notice which the statute requires shall be given to the property owner of the time and place when the report of the Assessment Commissioners will be submitted to the Mayor and Council for formal approval. It is an undeniable fact, that this notice was not given to the prosecutor, or any other property owner. That this failure, however, to comply with the law has not affected the substantial rights of the prosecutor, is made equally clear after reading the testimony of Mr. Davis, the treasurer, who testified that the basis of determining the amount of the assessment to be laid against each property owner was as follows: The bill of the contractor for laying the sidewalks, plus \$97 for engineer's fees (no other fees, legal or otherwise, included) was apportioned among the property owners according to the number of square feet of sidewalk laid on the property of each, and a bill sent to them in that amount. On this point Mr. Davis testified as follows:

Q. Mr. Davis, the assessment map showed what with respect to the property holders, and the number of square feet?

A. The assessment map showed the number of square feet in each property, and was the basis which I used in computing the tax on each property for the concrete sidewalk.

Q. Now, in making out the bills, how did you arrive at the amount?

A. I simply copied from the map the number of square feet and multiplied that by 22c, which was the contract price for laying the sidewalk.

A. Did you charge anything in addition to that to the property holders?

A. Yes, the Engineer's fees.

Q. Amounting to what?

A. I am not positive, but I think the Engineer's fees were \$97.00; if I remember correctly, it came to 67c or 77c per 100 square feet.

Q. And how did you arrive at that 67c per 100 square feet?

A. I took the Engineer's bill and divided it up into the total amount of sidewalk laid.

Q. And that was added to each taxpayer's bill?

A. Yes.

Q. Was there anything else added in costs or charges?

A. Yes; there was a charge of \$22.00 on a piece of property for grading it.

Q. And was that the Quinlan property?

A. That was.

Q. Was there any other charge taken into consideration in making up your bills?

A. No.

Q. No legal fees or any expenses of any kind?

A. No.

What objection to this method of assessment could be made by the prosecutor it would be difficult to imagine. This fact is further impressed upon our minds after reading the testimony of Mr. Hendrickson, page 83, bottom, Mr. Allen, the Borough Engineer, page 70, bottom, and Mr. Randolph, his associate, page 74, top, all of whom testified that they were familiar with the cost of sidewalk construction and that 22c per square foot was a reasonable price.

POINT THREE.

The third point discussed by the prosecutor is the failure of the Mayor and Council formally to approve the assessment for the Pearl Street improvement. Here again the fact is undeniable that there was not a compliance with the statute, although there was an attempt to comply with the statute by the filing of an assessment map and a resolution ordering the bills to be sent to the various property owners. This, in effect, amounted to a confirmation, particularly in this case, because the assessment upon the property became a mere matter of mathematical calculation based upon the bill of the contractor plus engineer's fees, and the frontage of each property owner on the street. The same comment may be made here which was made in reference to the previous point, namely, that no substantial injustice was done to the prosecutor. There is no allegation whatever in the case that it was not correctly apportioned.

POINT FOUR.

The prosecutor is guilty of laches. In the opening statement prosecutor alludes to certain other failures to comply with the statute, but inasmuch as she expresses the determination not to rely upon these, they will not be discussed by the respondents.

Although it is an undeniable fact that the prosecutor has not been harmed by the failure of the Mayor and Council to observe specifically the requirements of the statute, respondents do not for one moment wish to put themselves in the position

of justifying these omissions, and it is a matter of embarrassment to be obliged frankly to concede these omissions, but the respondents believe that the whole controversy should be determined upon the conduct of the prosecutor as outlined in the testimony. Respondents believe that the prosecutor by her own neglect to adopt adequate legal remedies which were available to her, should not and cannot at this late date come into Court and ask that the assessment be set aside, involving, as it would, great embarrassment to the Borough and financial expense to the taxpayers.

It will be recalled that the sidewalk was completed and had been in use and enjoyed by all, including the prosecutor, for a matter of four or five months, before the application was made for the writ. The Borough had paid the contractor for his work and obtained the money therefor by obligating itself in the form of a note in the bank. At the time of the hearing more than one-half of the property owners had paid their share of the assessment. (P. 90, l. 22.)

Perhaps the clearest way to present to the court the laches of the prosecutor will be to give the important dates in connection with the adoption of the ordinance and the laying of the assessment. From the testimony and from the return the following facts and dates will be gleaned:

1923.

May or June,	Prosecutor's family opened their summer home on Pearl Street in Fair Haven and remained there for the remainder of the year 1923.
June 12,	Petition filed by property owners for the improvement.
June 26,	Ordinance introduced.

June 27,	Ordinance published in Red Bank Register, in accordance with resolution, fixing July 10th as the time for the public hearing.
July 10,	Public hearing.
July 10,	Second reading and final passage of ordinance.
July	Notice of passage of ordinance published in the "Chat."
July 25,	Prosecutor received notice to lay the sidewalk within thirty days.
Aug. 28,	Bids opened by Borough Council for the laying of the sidewalk.
Aug. 28,	Contract awarded to James F. Norman & Son.
Oct. 2,	Contractor notified by Clerk of acceptance of bid and to proceed with work.
Oct. (Latter part)	Contractor began the laying of sidewalks.
Nov. 15,	Contractor began the laying of Prosecutor's sidewalk.
Nov. 27, 1924.	Work completed.
Jan. 22,	Assessment map received and filed by order of the Borough Council and bills for the sidewalk improvement ordered sent out.
Feb. 5,	Contractor paid for the work by the Borough.
Apr. 10,	Writ of certiorari allowed.

The testimony will disclose the fact that the prosecutor and her family opened her summer home on Pearl Street, in Fair Haven, the latter part of May or the beginning of June, 1923, and that the family

lived continuously on the premises for the remainder of the calendar year. (See page 23, bottom.)

The main highway leading from Red Bank through Fair Haven and Rumson runs generally east and west. Pearl Street in Fair Haven runs northerly from the main highway aforesaid to the Shrewsbury River. The prosecutor's property was the last property going north on the east side, that is, the property nearest the river.

The contractor began his work on the west side of Pearl Street at the main highway and worked to the river; began again on the east side of Pearl Street at the main highway and again worked to the river, so that the Quinlan property was the last to have the sidewalk laid. The street was comparatively level before the improvement, except opposite the prosecutor's property, where there was somewhat of a bank. From the very first the prosecutor was bitterly opposed to this improvement. She and the members of her family made a number of visits to the office of the Borough Engineer during the summer in order to examine the map and ascertain to what extent the Borough proposed to cut down the bank in front of her property. Informal objections were made to the Mayor and one or two futile attempts were made to confer with the Mayor about it, but at no time did the prosecutor or any member of her family appear at a council meeting and protest or make any written protest of the contemplated improvement.

The prosecutor and her family were living on the premises in the latter part of October when the contractor began his work on the westerly side of Pearl Street and they were still there when he began the excavating in front of her own property. They had a dispute with the contractor about the removal of the soil which then constituted the sidewalk, fearing that the hedge in front of the premises would be

damaged, but during all this time, the prosecutor did not resort once to any legal remedy in order to protect her rights or make any formal protest. The prosecutor claimed that she made inquiries at the office of the Borough Engineer during July and August for specifications and for a grade map. Both the Borough Engineer and Assistant Engineer deny categorically that at any time did the prosecutor, or any member of her family, ever ask for specifications, or ask to have grade stakes placed. They admit that some one of her family did come and ask to see the map and inquired to what depth the bank would be cut down. The prosecutor further alleges that Mr. Randolph, the Assistant Engineer, showed her a map which he said was unofficial. He absolutely denies this and says he showed her the map which was to represent the established grade and told her that it had not at that time been formally adopted, and that it could be changed if the Borough Council ordered it, but she made no effort to have the Borough Council change it. As a matter of fact, it never was changed. See page 69, testimony of Mr. Allen, also page 76, testimony of Mr. Randolph.

We think we can disregard as absolutely insincere her statement that she contemplated the laying of the sidewalk and that she was unable to do so because she could not get specifications necessary for the work. She admits that on July 25, 1923, she actually received notice to lay her sidewalk within thirty days. Although the grade map was not completed on August 25, 1923, according to the testimony of the Engineer, it does not appear that this fact was known to her, and it further appears that it was completed and handed to Mr. Smock, the chairman of the Street Committee, in the fore part of September, which would be about a week after the thirty days had elapsed.

It will be observed from the dates hereinbefore set forth that although a resolution was passed by the Mayor and Council on August 28th, accepting the bid of Norman & Son, which was at the same meeting at which Norman presented his bid, the contractor was not notified by the Clerk of the acceptance of his bid until October 2, (see letter of the Clerk, page 12), so that a matter of six weeks elapsed after the grade map was completed and in the hands of the Borough Officials before the contractor was ordered to proceed with his work by the Clerk, and a matter of more than two months before the work on the prosecutor's property was actually begun. About the middle of October, the Engineer actually established a grade on the ground by the placing of grade stakes for the guidance of the contractor.

Whatever had been prosecutor's hope during the summer that the grade would be changed to meet her wishes, this hope, of necessity, must have been abandoned when in the latter part of October the contractor actually began the laying of the walk. All this time the prosecutor sat idly by and spent her time fretting and worrying over the matter, but took no legal action to protect what she considered to be her rights. As result of all this, it appears that nine months elapsed between the public hearing and the granting of the writ; $8\frac{1}{2}$ months from the notice of the laying of the sidewalk to the granting of the writ; $7\frac{1}{2}$ months from the time the contract was awarded to the granting of the writ; $5\frac{1}{2}$ months from the time the contractor began his work to the allowance of the writ, and 5 months from the time the work was begun on the prosecutor's property to the allowance of the writ.

It is a well established principle of law, that a property owner cannot sit idly by and see a municipi-

pality go to the expense of making a public improvement and take no legal steps to protect her rights.

We will respectfully call the Court's attention to a few of the leading cases upon this point. In *Cunningham vs. Borough of Merchantville*, 61 *Law*, 466, a taxpayer removed an ordinance for the construction of a sidewalk by a certiorari to the Supreme Court. When the writ was allowed the work under the contract was nearly complete and funds had been delivered in payment thereof. In this case more than a month passed before the prosecutor took any action and the Court held that the prosecutor was barred by laches, using this language, "inquiring by certiorari into the validity of a contract to do work for a municipality will not be made at the instance of a prosecutor who had suffered the work to proceed for several weeks and only applies for his writ after the work is nearly complete."

In *Glass Works vs. Township of Glassboro*, 79 *N. J. Law*, 452, a certiorari was obtained to review an ordinance for the construction of curbing and sidewalks on a street upon which the prosecutor was an abutting owner. There the prosecutor argued that the ordinance was invalid because of the failure to comply with certain statutory requirements. In spite of these irregularities which were admitted, the Court dismissed the writ in this language, "it must be considered as completely settled in this state, that when the proceedings of a municipal corporation have contemplated and resulted in the expenditure of public money, objections, *even when founded on lack of authority*, must be made promptly." The writ may be refused when it appears that the public interest will suffer, or private injustice will be done. If the prosecutor suffers the public work, on account of which his property may properly be assessed for benefits, to proceed for several weeks without applying for his writ, and only ap-

plies after the work is nearly completed, at a large expenditure of public moneys, the writ will be refused, or, IF ALLOWED, will be dismissed when these facts are brought to the attention of the Court. "We think the prosecutor failed to comply with the diligence required by law. In sitting passively by for a period of forty-six days after actual notice that the work was contemplated and until \$569.02 of the public money had been expended, the prosecutor is barred by laches from now inquiring into the validity of the ordinance under which the work was done and which is essential to an assessment upon his land for the benefits conferred."

In the case at bar, an expenditure of five times this amount has been made and the improvement was completed and in use and the improvement completely financed and largely paid for before any action was taken by the prosecutor. To have this writ made absolute and the assessment now set aside would lead to utter confusion and to great additional expense upon the property holders of the Borough in general, and would result in no good to the prosecutor. This is particularly true, inasmuch as it is shown that, in spite of the failure to comply with the law in a number of respects, no financial injury was suffered by the prosecutor, and the very fact that the prosecutor delayed so long before attempting to assert what she claims to be her rights, lends credence to the belief that her purpose is not so much to have a wrong remedied as it is to win a technical victory.

To the ^{SAME} said effect as the case just cited is *Bowne vs. Logan*, 43 N. J. Law, 421; in fact, this is the case which was the basis of the decision of 79 Law, 352, above cited. In *McKevitt vs. Hoboken*, 45 N. J. Law, 482, a certiorari was granted to review the legality of an assessment for a sewer. Here again the prosecutor raised the objection that certain for-

malities required by law had not been complied with. The Court went on to say, "However essential a legally signed petition may have been, as the foundation for the exercise of the power to build this sewer, yet a person whose rights were affected could not remain quiescent until a large sum of money had been expended and then invoke the aid of the law to throw the burden upon the entire community."

"The law requires diligence, and the party who stands by and sees work of this character in the course of construction attended by the incurrence of indebtedness or the expenditure of money waives his right to take those objections which if promptly interposed would have stopped the work and saved the expense."

The same principle is presented again and again throughout the decisions of our Courts. See *Hoboken Land and Improvement Company vs. Hoboken*, 36 N. J. Law, 291. *Wilkinson vs. Trenton*, 36 N. J. Law, 499. *Malone vs. Jersey City Water Commissioners*, 30 N. J. Law, 247. *Zabriskie vs. Hudson City*, 29 N. J. Law, 104, and *Grant vs. Clarke*, 38 Law, 102.

In this latter case the certiorari was granted to review the return of surveyors of a highway. The writ was allowed fourteen months after the return was filed. The prosecutor had full knowledge of the defects in the return but was silent until the road had been opened and valuable improvements made amounting to \$15,000, and then procured a writ. The Court then went on to deal with the inconvenience and loss which the land owners and the public would suffer if the writ were allowed and stated that on the formal hearing of the writ, it did not come to the attention of the Court that public moneys had been spent and the improvement had proceeded to the completion, and states that where these facts come later to its attention it has no hesitancy

in changing its former decision and dismissing the writ for laches. This is exactly the situation in reference to the prosecutor in this case.

Assuming but not admitting that the prosecutor could not lay her walk because she had no specifications and no grade, she cannot rely upon this fact and now argue for the allowance of the writ. The fact that she was denied, as she claims, the right to lay her walk herself, because of the failure of the municipality to provide specifications and a grade, would have been the best reason that can be conjured for the Court to have allowed her a writ were these facts made known to it at any time after the 25th day of August, 1923, when the thirty day period expired. She chose to sleep a further period of two months during which time not a spadeful of earth was turned on Pearl Street, and a period of nearly three months before any attempt was made to lay the sidewalk in front of her property, and she, not content with this, let the matter drift until April 10th of the following year, when the work had been completed and financed, and a large part of the improvement paid for before application was made for relief.

For the reasons above set forth, we respectfully request the Court to affirm the opinion of the Supreme Court and to dismiss the writ with costs to the prosecutor.

Respectfully submitted,
WILSON AND SMOCK,
Attys. and of Counsel for Respondents.