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NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

BETWEEN FRANK BRUNETTO, *Complainant,* *and* THE TOWN OF MONTCLAIR IN THE COUNTY OF ESSEX, and WILLIAM H. SENIOR, BUILDING INSPECTOR OF THE SAID TOWN OF MONTCLAIR, IN THE COUNTY OF ESSEX, *Defendants.*	*On Bill for Injunction, etc.* *Notice of Appeal.*

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To Frank Brunetto, Complainant, or to Howard F. Kirk, Solicitor of Complainant:

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SIR:

TAKE NOTICE, that the defendants, the Town of Montclair, in the County of Essex, and William H. Senior, Building Inspector of the Town of Montclair, in the County of Essex, hereby appeal from the order of the Chancellor made in the above named cause on June 21st, 1916, and from the whole and every part thereof.

Dated July 18th, 1916.

HARTSHORNE, INSLEY & LEAKE,
Solicitors of Appellants.

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We conceive that there is good cause for appeal in the above stated cause.

EUGENE W. LEAKE,
Of Counsel with the Appellants, Town of Montclair, in the County of Essex, and William H. Senior, Building Inspector of the Town of Montclair, in the County of Essex.

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Service of a copy of the within notice of appeal is acknowledged this 20th day of July, 1916.

HOWARD F. KIRK,
Solicitor of Complainant.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The petition of the Town of Montclair, in the County of Essex, a municipal corporation of the State of New Jersey, and of William H. Senior, Building Inspector of the Town of Montclair, in the
20 County of Essex, the appellants in this cause, respectfully shows that your petitioners find themselves aggrieved by an order made in the above named cause on June 21st, 1916, by the Chancellor, wherein Frank Brunetto was complainant and your petitioners were defendants, in this respect; that the said order directed that an injunction be issued restricting the Town of Montclair, in the County of Essex and State of New Jersey, and its co-defendant, William H. Senior, its Building Inspector,
30 and all other officers, agents and employees of said Town of Montclair, from enforcing the fire ordinance of the Town of Montclair against the complainant in reference to the building described in the bill of complaint which complainant is constructing in the rear of his premises, which premises were recently annexed to the Town of Montclair, and also from abating, tearing down, removing or destroying the complainant's said building and from instituting any suit for the recovery of any
40 penalties as provided for in the fiire ordinance of

the Town of Montclair, on account of the erection of said building by the complainant.

Your petitioners respectfully appeal from the whole of said order on the ground that the same is erroneous, and that the bill of complaint of the said complainant should have been dismissed, with costs to these petitioners who were the defendants therein. 10

Your petitioners, therefore, pray that the said order made on June 21st, 1916, may be reversed, set aside and for nothing holden, and that said bill of complaint may be dismissed and that your petitioners may have such further relief in the premises as to this Court shall seem meet.

Dated July 18th, 1916.

HARTSHORNE, INSLEY & LEAKE, 20
Solicitors and of Counsel with Petitioners.

Service of a copy of the within notice of appeal is acknowledged this 20th day of July, 1916.

HOWARD F. KIRK,
Solicitor of Complainant.

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ANSWER TO PETITION OF APPEAL

IN CHANCERY OF NEW JERSEY.

BETWEEN TOWN OF MONTCLAIR IN THE COUNTY OF ESSEX, ET AL., *Appellant,* *and* FRANK BRUNETTO, *Respondent.*	*On Petition of Appeal.* *Answer.*

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The answer of above named respondent to the petition of appeal of the above named appellant.

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This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless, says and admits, that an order was made on the twenty-first day of June last past, and entered in the Court of Chancery in cause for that purpose mentioned in the said petition, as therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be called. And this respondent is advised and prays that the said order is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

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HOWARD F. KIRK,
Solicitor for and of Counsel with Respondent.

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BILL OF COMPLAINT

IN CHANCERY OF NEW JERSEY.

To his Honor, Edwin R. Walker,
Chancellor of the State of New Jersey:

Complaining, shows unto your Honor, your orator, Frank Brunetto, of No. 1 Bloomfield ave., Town of Montclair, County of Essex and State of New Jersey, 10

1. That your orator has been seized in fee simple of a tract of land and the buildings thereon since February 3, 1905, in the Town of Montclair, County and State aforenamed, which premises are described as follows:

Beginning at a point on the northerly side of Bloomfield avenue, at the southwest corner of land of John Inglis; thence along said land north fifty-eight degrees fifteen minutes east one hundred thirty-three feet six inches to land of William R. English; thence along said land north thirty-two degrees twenty-five minutes west ten feet; thence still along land of William R. English north eighty-three degrees forty-two minutes east seventy-seven feet seven inches to land of Edmund A. Smith; thence still along his land north six degrees seven minutes west fifty feet; thence south sixty-four degrees two minutes west two hundred twenty-six feet six inches to Bloomfield avenue; thence along Bloomfield avenue south thirty-one degrees forty-five minutes east forty-five feet to the place of beginning; including the fee in the soil embraced in the sidewalk in front of and adjoining the said premises, and in that part of the soil in said Bloomfield avenue in front of and adjoining said tract of land and premises to the center of Bloomfield avenue, subject to the easement of the public therein. 20 30

2. Your orator further says that since he has 40

been seized of the premises in question there has been on said lot two frame buildings, one in the front, being 20x60 feet, two story high, and one in the rear, 16x20 feet, two and one-half stories high; that both of said buildings had no cellar under them until March 30, 1916.

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3. Your orator further says that on February 7, 1916, an act entitled "An act to consolidate with and annex to the Town of Montclair, in the County f Essex, a part of the territory embraced within-the bounds of the Borough of Glen Ridge, County of Essex and State of New Jersey," was introduced in the Legislature of New Jersey, which act became a law April 1st, 1916, and known as Chapter 141 of the Laws of 1916, on page 294.

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4. Your orator further says that on or about February 1, 1916, he engaged one Donato Rizzola, an architect, of the City of Newark, to prepare for your orator a set of plans and specifications for your orator for the erection of a two and one-half story frame and stucco building, 20x26 feet, the said building to be erected in the rear of your orator's lot, hereinbefore described.

5. Your orator further says that on or about March 6, 1916, he applied for a building permit to the building department of the Borough of Glen Ridge for the removal of the 16x20 building to your orator's rear westerly property line, to erect a cellar under said building and to do various other alterations and repairs which said building was in need of; that your orator at the time also filed with said inspector two sets of blue prints of the 20x26 building which was also to be erected on the easterly side of the 16x20 building, and paid the building inspector of said borough the sum of $10.00 as a fee for said permit.

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6. Your orator further says that on March 7th, 1916, he received his permit from the aforementioned building department.

7. Your orator further says that on March 7th, 1916, he commenced the construction work aforementioned and for which he had received his permit from the building department of the Borough of Glen Ridge which is marked Exhibit B. That he entered into contractoral relations with material men, laborers and mechanics for the completion of said work.

8. Your orator further says that said construction work was carried on as speedily as possible from the time it was begun until April 6, 1916.

9. Your orator further says that during the time that said work was in progress, that is between March 7, 1916, and April 6, 1916, the said construction was inspected regularly and only by the building inspector of the Borough of Glen Ridge. County and State aforesaid.

10. Your orator further says that during the time that said work was carried on, (that is, from March 7, 1916, until April 6, 1916) the following work was done: A. The old building, that is, the one 16x20, was raised, moved to its permanent location, a cellar was erected under it and various other repairs were done. B. In the new building, that is, the 20x26, the cellar was excavated, footing course laid, cellar walls erected, chimney raised to the same level as the cellar walls, piers constructed to the necessary height, so the whole building was ready for its first tier of beams. All the aforementioned work was performed by virtue of the building permit issued by the building department of the Borough of Glen Ridge.

11. Your orator further says that prior to April 1, 1916, his property had been subject to all the ordinances, by-laws, rules and regulations made by the governing body of the Borough of Glen Ridge, County and State aforesaid; that your orator was informed from time to time prior to April 1, 1916, by officials in the different departments of the Town of Montclair, that they had no jurisdiction of anything pertaining to the mode of the use of the aforementioned described premises.

12. Your orator further says that on or about April 6, 1916, while he was in the rear of the aforedescribed premises supervising the aforementioned construction work, one William Senior, whom your orator is informed is the building inspector of the Town of Montclair, County and State aforesaid, came and ordered all the mechanics, laborers, etc., to cease work and told your orator, unless he went to his office and secured a building permit from said building inspector of the Town of Montclair, said construction work could not be carried on, and if any more work was resumed he would institute suit for the recovery of certain penalties prescribed in a certain fire ordinance of the Town of Montclair and marked Exhibit A; that said penalties are described in Section 2 of said ordinance.

13. Your orator further says that he is illiterate and does not speak the English language fluently, and that he has a son who is twenty-seven years of age who does; that the same day the said son came home he informed him of the visit of the building inspector of the said Town of Montclair and that said son immediately went to the office of said building inspector.

14. Your orator further says that when his son came home he, the son, informed your orator that

he had been to the office of the building inspector of the Town of Montclair; that he had seen the building inspector and had asked said inspector why he had stopped the construction of the work on his father's premises and by what authority was he authorized to stop the construction work which his father was lawfully carrying on, and that his father had complied with all the rules and regulations of the building department of the Borough of Glen Ridge; that he the son, had procured a building permit (Exhibit B) from the said building department of said Borough; that said work had been in progress for nearly a month, and that he, the building inspector, had no authority to interfere with the progress of said work.

15. Your orator further says that his son was informed that the land was annexed to the Town of Montclair by a recent act of the Legislature (the same act hereinbefore mentioned) and that since April 1, 1916, all the work performed must be done according to the rules and regulations of the building department of the Town of Montclair, and that the permit procured from the Borough of Glen Ridge on March 7th, 1916, was void after April 1, 1916.

16. Your orator further says that the said son then tendered a set of plans and specifications to said building inspector at the same time telling him that these were the same as the ones filed with the building department of Glen Ridge and demanded a permit so his father could complete his building, the 20x26 feet one.

17. Your orator further saith that said building inspector then said that said plans did not comply with the ordinance of the Town of Montclair as the territory embraced in your orators premises was in-

cluded in a certain territory described in a certain ordinance of said Town of Montclair, and marked Exhibit A; that any territory annexed to the Town of Montclair from the Borough of Glen Ridge after enactment of said ordinance would automatically become a part of said fire limit and that any building thereafter to be erected or to be completed after the annexation of said territory would have to comply with said ordinance, and that the only way your orator could finish his building, the 20x26, was to get a new set of plans prepared, and approved by said building inspector.

18. And your orator further says that the fire ordinance of the Town of Montclair cannot effect the premises owned by your orator.

19. Your orator further says that *on or about April 6, 1916, he had spent over $500.00 for labor and over $500.00 in material in order to perform the aforementioned work;* that he had entered into contractoral relations to complete the balance of said work.

20. Your orator further says that if he were to be compelled to comply with the requests of said building inspector and other officials of said Town of Montclair your orator would loose $1,000.00 in labor, material and plans which would be worthless to your orator and that your orator would have to pay a large sum of money as damages to different contractors who will not be able to perform their contracts.

21. Your orator further says that the ordinance in question, Exhibit A, is void, as it practically gives the governing body of the Town of Montclair despotic powers, that is, the said ordinance is class legislation, as it vests in said town council power to

make exceptions in cases of certain property owners and refuse the same privilege to others.

22. Your orator further says that said ordinance or any other building ordinance of the Town of Montclair does not apply to the erection of your orators building in the rear of his lot, which building was commenced, and work carried on for at least four weeks before he was stopped by said building inspector, and at least three weeks prior to the transfer of your orators premises from the jurisdiction of the governing body of Glen Ridge to the jurisdiction of the governing body of the Town of Montclair.

23. Your orator further says that the provisions of said ordinance of the Town of Montclair are void as far as it concerns his property as he commenced his work on March 7, 1916, and spent large sums of money, entered into contractoral relations in order to improve his property; that all the work that he has done was performed under a legal ordinance of the Borough of Glen Ridge who had jurisdiction of the subject matter at the time.

24. Your orator further says that if the building inspector would be allowed to enforce the said ordinance against his property your orator would be deprived of his constitutional rights guaranteed to him under Section 10 of Article 1, of the Constitution of the U. S., which forbids the states to pass any ex post facto law, or law impairing the obligation of contracts, also the 5th and 14th amend ments to the Constitution of the U. S., and of paragraph 3, section 7, article 4 of the Constitution of the State of New Jersey, which provides that "the Legislature shall not pass any bill of attainer, ex posto facto law, or law impairing the obligation of contracts or depriving a party of any remedy for en-

forcing a contract which existed when the contract is made; that the building is not to be constructed of combustible material nor will it be a nuisance as stated in said ordinance, but although the ordinance is void and does not apply to your orators premises as ordinances in the enforcement of the
10 police power of the municipality are to be construed strictly against a municipality, the Mayor and Town Council of the Town of Montclair and defendant, William H. Senior, its building inspector, are threatening and preparing under its provisions to tear down said building and destroy said building if your orator were to complete it according to his plans filed with the building department of the Borough of Glen Ridge, but to arrest and prosecute the plaintiff under the provision of the second section
20 thereof all to your orators irrepairable damage and injury, and which will subject him to a multiplicity of suits for which he has no adequate remedy at law, to the end therefore that the said Mayor and Town Council of the Town of Montclair, of the County of Essex and State of New Jersey and William H. Senior, its building inspector, of said Town, and residing at 55 Walnut street in the Town of Montclair, may, without oath, full, true and perfect answer make to all and singular the matters and
30 things, as fully and particularly as if the same were here again repeated, and be distinctly interrogated thereto.

25. And your orator now prays that a writ of injunction issue from this Court enjoining and restraining said Mayor and Town Council of the Town of Montclair and its co-defendant William H. Senior the duly appointed, qualified and acting building inspector of said town and all other offi-
40 cers, agents and employees of said Town from

further proceedings to enforce the provisions of said ordinance hereto annexed and marked Exhibit A, and from abating, tearing down, removing or destroying plaintiff's building which he may hereafter complete as per plans hereinbefore mentioned, and from trespassing upon or in any way interfering with your orator's enjoyment of his said premises, and from interfering in any manner with the possession or title of your orator of, in or to said lot and tract of land, the buildings to be situated thereon which now are in the course of construction, and also the State writ of subpoena, likewise issuing out of and under this seal of this Honorable Court to be directed to the said Mayor and Town Council of the said Town of Montclair, and William H Senior, its building inspector, therein and thereby commanding them to appear before this Honorable Court according to law and the course of this Court, at a certain day, and under a certain penalty therein to be expressed then and there to answer the premises and to stand to, abide by and perform such decree as to your Honor shall seem meet.

And your orator as in duty bound, will ever pray, etc.

HOWARD F. KIRK,
Solicitor and of Counsel of Complainant.

IN CHANCERY OF NEW JERSEY.

BETWEEN FRANK BRUNETTO, *Complainant,* *and* TOWN COUNCIL OF THE TOWN OF MONTCLAIR, COUNTY OF ESSEX AND STATE OF NEW JERSEY, AND WILLIAM H. SENIOR, BUILDING INSPECTOR OF THE SAID TOWN OF MONTCLAIR. *Defendants.*	*On Bill, &c.* *Affidavit.*

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STATE OF NEW JERSEY,
COUNTY OF ESSEX, } SS.

FRANK BRUNETTO, of full age, being duly sworn upon his oath according to law, deposes and says: I am the complainant in the foregoing bill of complaint; that I have had the same read to me and translated from English into Italian, and I know the contents thereof, and that the same is true to the best of my knowledge and information and belief.

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2. I further say that I am the owner in fee simple of the premises described in paragraph one (1) of said bill of complaint; that there has been erected on said premises two buildings of frame, one 20x60 and the other 16x20, from the time I purchased the said premises and up to March 30th, 1916; that on February 7th, 1916, an act, the purpose of which was to annex my property to the Town of Montclair, was introduced in the Legislature of the State

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of New Jersey, said act being enacted into a law and went into effect on April 1st, 1916, and known as Chapter 141, Laws of 1916, on page 294.

3. That on or about February 1st, 1916, I engaged one Donato Rizzolo, an architect, to draw a set of plans for the erection of a two and one-half story frame and stucco building, 20x26, to be erected in the rear of my premises; that on March 6th, 1916, I applied to the building department of Glen Ridge, New Jersey, for a building permit for the erection of said building and the removal of the 16x20 front building to the westerly property line of my lot; at the same time I paid a fee of $10 and said permit was granted to me on March 7th, 1916.

4. I immediately commenced the construction of said building, that is, the 20 x 26 building and the removal of the old 16 x 20 building to the westerly property line, and carried on said work as speedily as possible until April 6th, 1916; that while the said work was being carried on, one John A. Brown who, I was informed, was the building inspector of said Borough of Glen Ridge, inspected the said construction work and gave directions how it should be carried on from March 7th, 1916, until about April 6th, 1916.

5. That during this period the following work was performed: a. The old building, that is, the one 16 x 20, was raised and removed to its permanent location, a cellar was erected under it and various other repairs were made. b. For the new building, that is, the 20 x 26, the cellar was excavated, footing course laid, cellar wall erected, chimney raised to the same level as the cellar walls, piers constructed to the necessary height, so that the whole building was ready for its first tier of beam All of the said work was done according to the

building ordinance of the Borough of Glen Ridge, and by virtue of the aforementioned building permit, issued by the building department of Glen Ridge.

6. That on April 6th, 1916, while I was supervising the construction of said building, one William H. Senior came to where I was working and ordered all mechanics to cease working, and told me that I could not finish my building unless I first procured a building permit from him as building inspector of the Town of Montclair, and that if I or my mechanics did any more work without receiving his permit, he, the said building inspector, would institute suit against me to recover penalties as provided for in Section 2 of the ordinance, and would demolish any part of said building which was thereafter erected, a copy of which ordinance is hereunto annexed and marked Exhibit A.

7. That later in the day, when my son, Thomas Brunetto came home, I told him that the building inspector of Montclair had stopped the construction work on the two buildings, and I then told my son to go and see what the building inspector wanted. When my son returned from the Montclair building inspector's office, he informed me of the conversation which he had with the said building inspector, and set forth in the bill of complaint and my son's affidavit hereunto annexed.

8. That from the commencement of the work until April 6th, 1916, I had spent over $500 for labor and over $500 for material.

9. That I had entered into contractural relations with several contractors to complete the said work and furnish material for the same.

his
FRANK X BRUNETTO,
mark.

Sworn to and subscribed before me
this 22nd day ofMay, 1916.

JOHN J. MILLER,
Master in Chancery of New Jersey.

IN CHANCERY OF NEW JERSEY. 10

BETWEEN

FRANK BRUNETTO,

Complainant,

and

MAYOR AND TOWN COUNCIL OF THE TOWN OF MONTCLAIR, COUNTY OF ESSEX AND STATE OF NEW JERSEY, AND WILLIAM H. SENIOR, BUILDING INSPECTOR OF SAID TOWN OF MONTCLAIR, 20

Defendants.

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } SS. 30

THOMAS BRUNETTO, of full age, being duly sworn upon his oath, deposes and says:

1. I am the son of Frank Brunetto, the complainant in the foregoing bill of complaint.

2. I am acquainted with the facts set forth in the said bill of complaint and know them to be true.

3. That on April 6, 1916, I arrived home about 3.30 in the afternoon, and that my father informed 40

me that William H. Senior, who was at the time the building inspector of the Town of Montclair, had been on the premises and had ordered him (my father) not to continue the construction of the work in question. And that he had ordered all the mechanics to cease working; that if any more work was performed on said building, without obtaining a permit from the building department of Montclair, that he, as building inspector, would commence suit for the recovery of penalties as prescribed in a certain ordinance, copy of which is hereunto annexed and marked Exhibit A.

4. That I immediately went to the office of said building inspector and asked him why he was interfering with the construction of the work being carried on on my father's premises, as I had procured for my father a building permit for the erection of the building in question on March 7th, 1916, from the building department of the Borough of Glen Ridge, New Jersey; that my father had conducted said construction work according to the building ordinance of the Borough of Glen Ridge, and that said work had been supervised and inspected by the Glen Ridge building authorities, and that he, the said Senior, replied that he did not care about that, that my father's property was annexed to the Town of Montclair on April 1st, 1916 and that the building permit which I had procured for my father on March 7th, 1916, from the building inspector of Glen Ridge was void after April 1st, 1916.

5. That I then tendered the said inspector a set of plans which were like the ones I had filed in the building department of Glen Ridge, and which the building department of said Borough had issued a permit for, and then demanded from said William H.

Senior a permit. I was informed by the said building inspector that my father's plans did not comply with the building ordinances of Montclair and in particular to the ordinance hereunto annexed, and that he would not approve of any plans unless they complied with said ordinance, that is, it would have to be of brick construction. 10

6. At various times, previous to April 1st, 1916, I have had occasion to see different officials of the Town of Montclair with regard to my father's property, and I had always been informed by them that they had no jurisdiction over the premises in question, and that the Glen Ridge authorities were the persons who had jurisdiction over the premises.

THOMAS BRUNETTO.

Sworn to and subscribed before me, this 22nd day of May, 1916. } 20

HERBERT HANNOCH,
Master in Chancery of New Jersey.

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EXHIBIT "A"

An ordinance to establish fire limits within the Town of Montclair and to provide for the proper enforcement thereof.

Be it ordained by the Council of the Town of Montclair in the County of Essex as follows:

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Section 1. Hereafter there shall not be built or erected within the Town of Montclair, in the County of Essex, within the limits hereinafter specifically designated, any frame building or wooden building, in whole or in part, nor any building unless the outside walls thereof shall be at least eight inches thick; provided, however, that the Town Council may, by resolution passed by a three-fourths vote of all the members thereof, permit frame or wooden
20 or partly frame or wooden buildings to be erected within the said limits, when the circumstances of the particular case or cases in their judgment require such exception. The fire limits herein established are as follows, to wit:

Beginning at the southeasterly corner of Bloomfield avenue and St. Luke's Place, running thence southerly along the easterly line of St. Luke's Place to a point distant 150 feet southwesterly from the southerly line of Bloomfield avenue measured at
30 right angles thereto; thence along a line paralled to Bloomfield avenue to the westerly line of Orange avenue; thence along the westerly line of Orange avenue to the northerly line of Hillside avenue; thence easterly in a straight line crossing Orange avenue and Valley Road to the northeast corner of Valley Road and Church street; thence along the northerly side of Church street 100 feet; thence northerly parallel to Valley Road to a point 150 feet southerly from the southerly side of Bloomfield
40 avenue measured at right angles thereto; thence

southeasterly parallel with Bloomfield avenue to the intersection of this line with the northerly side of Church street; thence southwesterly crossing Church street to a point 150 feet south of southerly line of Church street measured at right angles thereto; thence easterly parallel with Church street to the westerly side of South Fullerton avenue; thence along said westerly side of South Fullerton avenue 180 feet southerly; thence easterly across said avenue and at right angles thereto to a point 150 feet east of the easterly line of said avenue measured at right angles thereto; thence northerly parallel to South Fullerton avenue to a point 150 feet from the south side of Bloomfield avenue measured at right angles thereto; thence southeasterly parallel with Bloomfield avenue to the line of Glen Ridge Borough; thence along said line northerly to a point 150 feet north of the north line of the Erie Railroad measured at right angles thereto; thence northwesterly parallel with the northerly line of the Erie Railroad to the centre line of Grove street; thence southerly along the centre line of Grove street to the southerly line of the Erie Railroad; thence southeasterly along the southerly line of the Erie Railroad to a point 200 feet distant from westerly line of Pine street measured at right angles thereto; thence southerly parallel to the westerly line of Pine street and 200 feet distant therefrom measured at right angles to a point distant 150 feet northerly from Glen Ridge avenue measured at right angles thereto; thence northwesterly along a line parallel with Glen Ridge avenue and distant 150 feet at right angles therefrom until said line intersects a line drawn parallel to Bloomfield avenue and distant 150 feet northerly therefrom; thence along a line parallel to Bloomfield avenue and distant 150 feet northerly there-

from measured at right angles to said avenue, to the westerly side of Park street; thence northerly to the southerly line of Portland Place; thence westerly along said line of Portland Place and the continuation thereof in a straight line to the easterly side of Bell street; thence southerly along said easterly side of Bell street to a point 150 feet from Bloomfield avenue and 150 feet therefrom; thence parallel with Bloomfield avenue northwesterly to the easterly line of the property of Daniel V. Harrison; thence in a straight line to the southeasterly corner of St. Luke's Place and Bloomfield avenue, the point of beginning.

Also beginning at the southerly side of Walnut street 150 feet westerly from Forest street; thence southerly parallel with Forest street to a point that would be intersected by a line drawn parallel to and 125 feet southerly at right angles from the southerly side of Walnut street as laid out east of Forest street; thence easterly parallel with Walnut street and 125 feet southerly from the southerly line of the same to a point 150 feet westerly from Greenwood avenue; thence southerly and parallel with Greenwood avenue to a point that would be intersected by the southerly line of Willard place, if extended westerly across Greenwood avenue; thence easterly along said line to a point 150 feet east of Greenwood avenue; thence northerly crossing Willard place to a point on the rear line of Mary E. Reilly's land, said point being about 91 feet north of Willard place; thence easterly along the rear line of lot fronting on Willard place, said line being the southerly line of land of I. Newton Rudgers and Frederick J. Rudloff to the southerly line of the Erie Railroad; thence southeasterly along the southerly line of the Erie Railroad to the center line of Grove

street; thence northerly along the center line of Grove street to a point distant 150 feet northerly from the northerly line of the Erie Railroad measured at right angles thereto; thence northwesterly parallel to the northerly line of the Erie Railroad and 150 feet distant therefrom to a point that would be intersected by the northerly line of land of the United States Printing Company, if extended easterly; thence westerly along said line to a point 150 feet west of the westerly line of Forest street; thence southerly and parallel with Forest street and 150 feet therefrom to the place of beginning.

Also beginning at the intersection of the easterly line of the right of way of the Erie Railroad and the southerly line of Lorraine avenue; thence easterly along the southerly line of Lorraine avenue crossing Valley Road to the northeast corner of land of Mary S. H. Giffin as shown on Tax Maps of Montclair and designated as Lot 1, Block "C," Map 16; thence along the easterly line of said land and the westerly line of land of W. O. Persons southerly 200 feet to the southwest corner of said W. O. Persons' land; thence easterly along the southerly line of land of W. O. Persons, John N. and F. C. Ives, estate Hayward Johnston, Ellen Brooks, A. G. Sime and George C. Holt to the westerly line of land of W. H. Power; thence along said westerly line of land of W. H. Power southerly crossing Bellevue avenue to the northwest corner of Northview avenue and Bellevue avenue; thence along the westerly side of Northview avenue southerly about 220 feet to the northeast corner of land of E. R. North; thence westerly along the northerly line of said land, and the southerly line of land of estate of A. J. Littell to the easterly side of Valley Road; thence in a westerly prolongation of said line of

said estate of A. J. Littell westerly to the easterly line of said right of way of said railroad; thence northerly along said right of way to the place of beginning.

Sec. 2. Any person who erects any building or suffers or permits to be erected upon any lot or parcel of land owned by him or her, any frame or wooden building, in whole or in part, or any building having its outside walls less than eight inches thick, within the limits hereinbefore prescribed, contrary to the provisions of this ordinance, shall be liable to a fine or penalty of ten ($10) dollars for each day that such prohibited building, whether complete or not, stands or remains within such prescribed limits.

Sec. 3. The word "person" as used in this ordinance shall be taken to include a corporation and also one or more persons or corporations jointly offending.

Sec. 4. This ordinance shall take effect immediately and shall apply to all buildings, extensions or additions, the actual construction of which has not been begun at the time of the adoption of this ordinance.

All ordinances and parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed.

Adopted October 24th, 1910.

HENRY V. CRAWFORD,
Mayor.

Attest:
HARRY TRIPPETT,
Town Clek. r

EXHIBIT B.

Plan No. 308.

DEPARTMENT OF BUILDINGS FOR THE BOROUGH OF GLEN RIDGE, ESSEX COUNTY, NEW JERSEY.

APPLICATION FOR BUILDING PERMIT.

Application is hereby made to the Superintendent of buildings for the erection, alteration, or moving of the structure herein described.

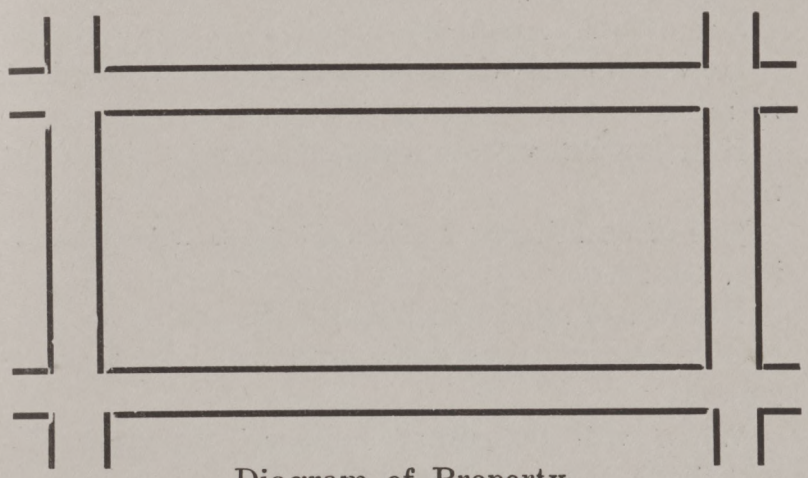

Diagram of Property.

BOROUGH OF GLEN RIDGE, March 7, 1916.

This is to certify that the within detailed statement of specifications and a copy of the plans relating thereto have been submitted to the Superintendent of Buildings for the Borough of Glen Ridge, Essex County, N. J., and are hereby approved.

JOHN A. BROWN,
Inspector of Buildings
for the Borough of Glen Ridge.

State how many buildings are to be erected, altered or moved? One to be moved, one re erected. **Sizes**

What is the location thereof? Rear of 991 Bloomfield avenue. **Location**

EXHIBIT B

Any public dining room? Cafe? No.

How many sleeping rooms? 3 in one, and 2 in the other.

How is building to be occupied? Dwelling.

State the number of families? One in each.

How was building occupied? Dwelling.

10 Is there any other building on lot? Yes.

If building is to be removed, state how many days it will require? Two weeks.

Size of lot? About 45x226.

How will excavation be guarded? With plank form.

How far will outside walls be from lot line? 2½ feet.

Size of building? 20 ft. x 26 ft., new, old building, 16x20.

20 Number of stories in height? 2½ each.

Give height from curb level to highest point? 29 feet.

When will temporary builders' shanty be demolished? None will be built.

Is any part of old building to be demolished or removed? No. Front building, in about 2 weeks.

What is the character of the ground? Sand and clay.

Will any old materials be stored on floors? No.

30 **Foundations** State depth of foundations below ground? 4 feet minimum.

Give materials and size of footings? Concrete, 10 in. and 24 in.

Give materials and size of foundation walls? Concrete, block 12 in. and 8 in. on 16 stone.

Kind of cement? Portland.

State of what material cellar floor and ceiling will be finished? 4 in. cement floor, ceiling plastered.

40

EXHIBIT B

If no cellar, describe protection of ground beneath 1st floor. None.

Give material and size of interior cellar supports. If brick piers, give thickness of cap and bond stones? 12 in. x 12 in. brick piers. 3 stone caps.

If lally colums, give diameter, also size and thickness of plates? None. 10

Give material of chimney and size of chimney foundation? Brick, two 16 in. x 16 in. **Chimney**

Give thickness of brick back of fireplace? 8 in.

Material of lining? Fire brick.

Composition of mortar for chimney above roof Cement.

Size of Corbel in chimney? None.

Height of chimney above roof? 3 ft.

Material of chimney capping? Cement. 20

Distance of wood beams from flue, at front side? 4 in.

Of what material will the walls be constructed? Pure stucco. **Walls**

Give vertical distance between fire stop?———

Give thickness of walls for each story?

Cellar: front 12 in. and 8 in.; rear same; side same.

1st story: front 6 in.; rear 6 in.; side 6 in.

2d story: front 6 in.; rear 6 in.; side 6 in. 30

How will brick work be bonded? ———

How far will any wall be built in advance of other walls? ———

How far apart vertically will wall be anchored at corners? ———

What will be the size of the sills, posts, plates, studding, braces? 3x6 in.—4x6—2x4, respectively.

Describe footing of studd partitions on plate below? 6x8 girder.

40

EXHIBIT B

Describe fire stops for studd partitions? Between beams and midway in height.

How are wood walls to be framed? Mortice and tone.

Floor beams Give the safe floor capacity or strength per square foot. 75 lb.

10 Describe anchors at end of beams? ———

Are beams to have beveled ends? ———

State length of bearings for end of beams?

1st tier: material, hemlock; size 2x10; distance on centers 16 in.; spans 13 ft.

2d tier: material, hemlock; size 2x8; distance on centers 16 in; spans 13 ft.

3d tier: ———

Roof: material, hemlock; size 2x6; distance on centers 7 ft.

20 State distance of wood floor beams where they are supported by party walls? ———

Give thickness of headers? 4 in.

Trimmers? 4

Any stirrup iron? Yes.

Are any beams to be carried by studd partitions? No.

Describe bridging? 1 to 2 in.

Describe cutting of wood beams for pipes? Near support.

30 **Girders and Columns** Give material of girders? Hemlock.

Size of girders under 1st tier? 6x8 Hemlock.

Roof Will the roof be peak, flat or mansard? Peak.

Give material of roofing? Rubberoid.

What kind of fire escape will be provided?———

Describe exit to roof? ———

Any staging on roof?

Heating Describe system for heating of buildings? Steam.

Give minimum distance of vertical hot air flue from the hot air heater? ———

40 Describe boxes for inclosing indirect radiators?—

EXHIBIT B

Describe construction of chases and hot air flues? None.

Describe protection of smoke and steam pipes passing through wood partitions? ———

Describe construction behind wainscoting or any studded off walls?——— **Fire Protection**

Describe construction of dumbwaiter, elevator and vent, shaft doors and bulkhead? ———

Give materials and construction of skylights, gratings and nettings under same? ———

Will stand pipes and hose be provided? ———

Give material and construction of fire proof floors? ———

Give material and construction of special stair enclosure? ———

Describe fence? As at present.

" billboard? ———

Are any of the following materials to be stored on premises?: Gun powder, saltpeter, kerosene, hemp, flax, tow, hay, rush, firewood, boards, shingles or shavings? No. **Lighting**

State height of gas brackets from ceiling? 3 ft.

Will any swinging gas brackets be placed on studd walls? No.

How will gas lights be guarded near windows? None.

State length of arm of gas brackets? 12 in.

Describe where electric switch will be placed on main feed wire? In cellar.

Water closets (how many)? First story 1; second story 1. **Plumbing**

Urinals? None.

Wash-basins? Second story 1.

Bath-tubs? Second story 1.

Wash-tubs? ——

EXHIBIT B

Sinks? First story 1.

How will the sewage and drainage of the buildings be disposed of? Connected with sewer.

Owner? Frank Burnett.

Address? 991 Bloomfield Ave.

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

Frank Burnette, being duly sworn, deposes and says, that he is the owner of premises known and designated as No. 991 Bloomfield Ave., in the Borough of Glen Ridge, County of Essex, State of New Jersey; that the foregoing are all the new structures, alterations or repairs to be made on said premises; and that all provisions of the Building Code and other laws and regulations governing
20 said new structure, alterations or repairs will be complied with, whether specified herein or not. The cost of proposed work is estimated to be $2,000.

his
Signature of applicant, FRANK ⋈ BURNETTO.
mark

Address, 991 Bloomfield Ave.
Glen Ridge.

Sworn to before me this 6th }
day of March, 1916. }

THOMAS BURNETTO,
30 Commissioner of Deeds of New Jersey.

INFORMATION FOR BUILDERS.

Application may be made by Owner, Leasee, Agent, Architect or Builder.

Blanks will be supplied by Inspector. Three copies of application and two of plans are to be filed with the Inspector.

Permits are issued by Inspector of Buildings.

Permit expires in one year.

40 Permits are required for all new or alteration of

EXHIBIT B

buildings, walls, fences, platforms, stagings, flooring for standing or seating, plumbing and drainage, fireplaces, chimneys or elevators.

Fee for permit for alteration, new building or removal, is one dollar per thousand of estimated cost.

The minimum fee for alteration is $2.00, and for new and removal of buildings $10.00. 10

The fine for violation is $100.00 or 30 days confinement in the County jail, also the permit will be provoked until the law is complied with.

If notice served on owners of unsafe buildings are not promptly complied with, the police will remove the tenants, the Building Department will make the premises safe and the expense will be collected from the owner by due process of law.

I hereby certify that the enclosed is a true copy 20
of the original bill, affects and order.

HOWARD F. KIRK.
Solicitor for Complainant.

30

40

ORDER TO SHOW CAUSE

IN CHANCERY OF NEW JERSEY.

BETWEEN FRANK BRUNETTO, *Complainant,* *and* 10 MAYOR AND TOWN COUNCIL OF TOWN OF MONTCLAIR, COUNTY OF ESSEX, AND STATE OF NEW JERSEY, AND WILLIAM H. SENIOR, BUILDING INSPECTOR OF SAID TOWN OF MONTCLAIR, *Defendants.*	*On Bill, etc.* *Order.*

Upon reading the bill of complaint in this cause and the affidavits thereto annexed and on motion of Howard F. Kirk, solicitor of the complainant; it is, on this 22nd day of May, 1916,

20 *Ordered*, that the defendants show cause before the Chancellor, at the Chancery Chambers in Newark, on the 6th day of June next, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an injunction should not issue, restraining the Mayor and Town Council of the Town of Montclair, and its co-defendant, William H. Senior, its building inspector, and all other officers, agents and employees of said town from further proceedings to enforce the provisions of said ordinance, 30 annexed to the bill of complaint, and for such other relief as may be just.

And it is further ordered, that a copy of the said bill and affidavits and of this order, certified by complainant's solicitor, be served upon the said defendants respectively within five days from the date of this order.

E. R. WALKER, C.

Respectfully advised,
J. E. HOWELL, V. C.

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STIPULATION

IN CHANCERY OF NEW JERSEY.

BETWEEN FRANK BRUNETTO, *Complainant,* *and* TOWN OF MONTCLAIR, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY, AND WILLIAM H. SENIOR, BUILDING INSPECTOR OF SAID TOWN OF MONTCLAIR, *Defendants.*	*On Bill, Etc.* *Stipulation.*

10

20

It is hereby agreed between the parties hereto that the bill and order in the above entitled cause shall be amended so as to read "Town of Montclair in the County of Essex and State of New Jersey," instead of "Mayor and Town Council of Town of Montclair, County of Essex and State of New Jersey," wherever stated in the bill.

Paragraph one of the bill, lines 1, 2 and 3 are amended as follows: "That your orator has been seized in fee simple of a tract of land and buildings thereon since Feb. 3rd, 1905, in the Borough of Glen Ridge, County and State aforesaid, until April 1st, 1916, since which date your orator has been seized in fee simple of a tract of land and the buildings thereon situated in the Town of Montclair."

30

It is hereby stipulated that the map annexed hereto is a correct copy of a survey covering the premises now known as No. 1 Bloomfield avenue,

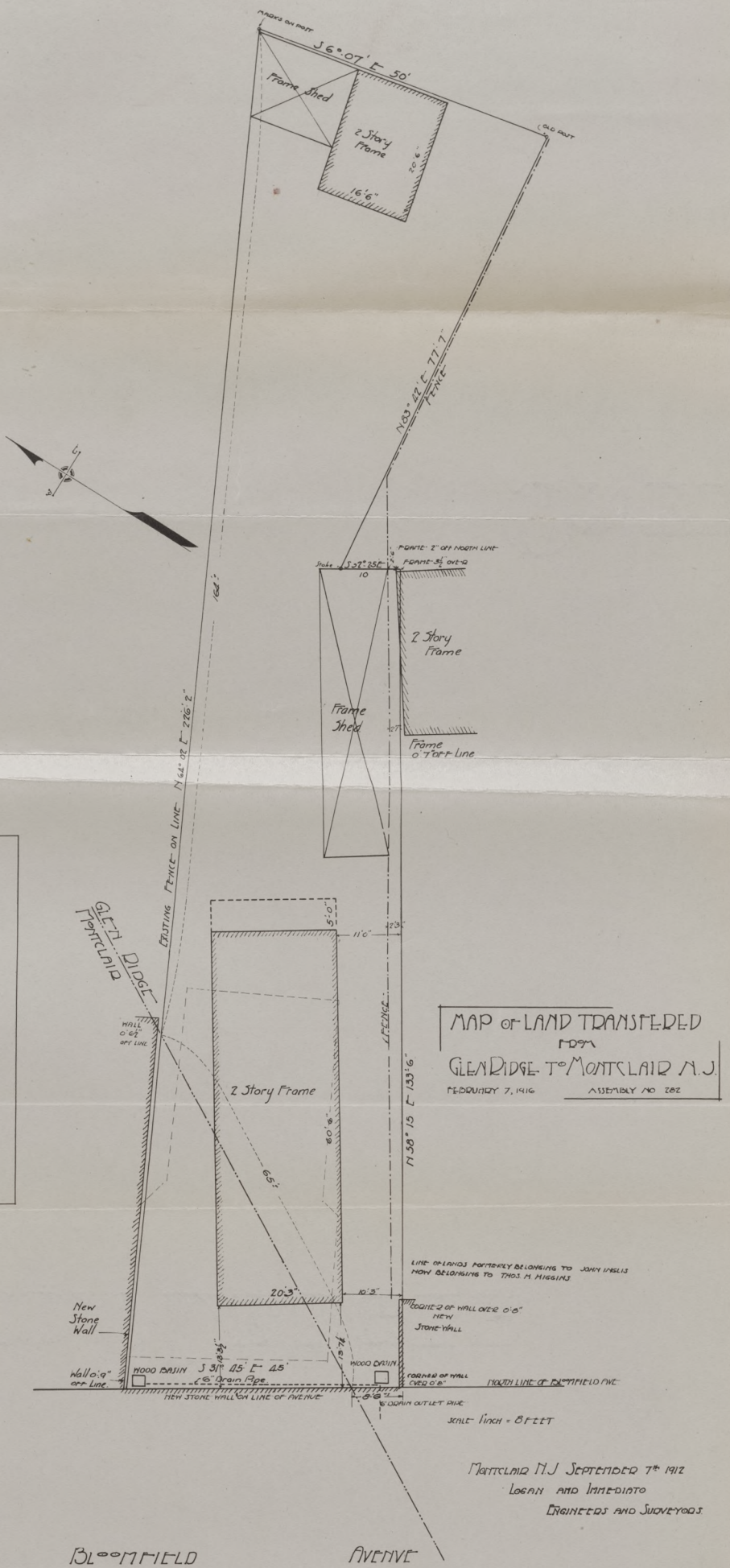
40

STIPULATION

Montclair, N. J., formerly known as No. 991 Bloomfield avenue, Glen Ridge, N. J.; that previous to the statute made a law April 1st, 1916, (which act is known as Chapter 141 of the Laws of 1916, page 294) all the premises on the annexed sketch east of the dotted line marked Glen Ridge-Montclair and owned by the complainant, were situated in the Borough of Glen Ridge in the County of Essex and State of New Jersey, and all the premises west of the dotted line marked Glen Ridge-Montclair were situated in the Town of Montclair, County of Essex and State of New Jersey. It is also agreed that the description set forth in the act above referred to covers all the premises shown on the annexed diagram which are east of the dotted line marked Glen Ridge-Montclair and that the permit granted by the Borough of Glen Ridge March 7th, 1916, covered the two rear buildings; and it is also agreed that there is no controversy or any allegation set forth in the bill in reference to the front building which was previous to April 1st, 1916, situated partly in the Borough of Glen Ridge and partly in the Town of Montclair.

HOWARD F. KIRK,
Attorney for Complainant.

HARTSHORNE, INSLEY & LEAKE,
Attorneys for Defendants.



MAP OF LAND TRANSFERED FROM GLEN RIDGE TO MONTCLAIR N.J.

FEBRUARY 7, 1916 ASSEMBLY NO 282

MONTCLAIR N.J SEPTEMBER 7th 1912

LOGAN AND INNEDIATO

ENGINEERS AND SURVEYORS

ANSWERING AFFIDAVIT

IN CHANCERY OF NEW JERSEY.

BETWEEN FRANK BRUNETTO, *Complainant,* *and* THE TOWN OF MONTCLAIR, IN THE COUNTY OF ESSEX, et al., *Defendants.*	*On bill for injunction. Answering Affidavit.*

10

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

WILLIAM H SENIOR, being duly sworn according to law, on his oath deposes and says:

20

I am the inspector of buildings of the Town of Montclair in the County of Essex, and am one of the defendants in the above-named case, and by virtue of my office have sole authority to receive applications for permits to build, alter and repair buildings within the town limits of the Town of Montclair, and have sole authority to issue these permits.

Shortly after April 1, 1916, when the property of Thomas Brunnetto, the complainant, became annexed to the Town of Montclair, in the County of Essex, I found that said Brunnetto was doing work for the construction of a new building on his property, and upon going there, I found workmen employed; the said complainant was there, but I knew that he could not speak English, and I cannot speak Italian, so I called a mason, whom I knew could speak both English and Italian, and who was the foreman on the job, and told him that the land upon which said new building was to be erected

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40

was now within the limits of the Town of Montclair, and that Brunnetto had no permit to erect the building on said land, issued by the Town of Montclair; that a permit was required under the ordinances of the Town of Montclair, and if the work was prosecuted on the said building it would be my
10 duty to commence an action to recover the penalties laid down in the Building Code of Montclair from Brunnetto. This I told him to translate to Brunnetto, which apparently he did, because Brunnetto became very excited, and I was told by this mason that Brunnetto said he had a right to go on with the work. Then I left him.

I did not, at that time, nor have I at any other time, said that if the building was erected in defiance of the ordinances of Montclair, that I would
20 demolish the same; and I have neither the authority nor the intention to demolish any building erected in said town in violation of its ordinances, or otherwise; the only thing I stated I would do, was if work was continued I would commence suit for the penalties of the ordinances of Montclair.

The same day Thomas Brunnetto, the son of Frank Brunnetto, came to my office with a set of plans and told me that his father intended to erect a building on this land, in accordance with this set
30 of plans. I examined said plans, and told him that the building described therein was in violation of the fire ordinance of Montclair. He made no application for a permit for the erection of this building, and permit for its erection has not been refused. The only application for a permit he made was for the making of certain alterations in and to another building on this tract of land, and that permit was issued to him, and I understand that the work in making these alterations is now progressing.

40 It is provided in an ordinance in the Town of

Montclair entitled, "An ordinance to regulate and control the inspection, construction, alteration and repair of buildings in the Town of Montclair," as follows:

CHAPTER II.

Permits, applications and unsafe buildings and temporary structures. Permits to be obtained. 10

Section 1. That before any person or persons shall erect, raise, construct, alter or remove any building or buildings, the person or persons intending or desiring to erect, construct, raise, alter or remove the same, shall first apply for and obtain from the said Inspector of Buildings a permit signed by said inspector and pay for such permit at the rate of one dollar per one thousand dollars of the estimated cost of the building or alteration, or fraction thereof, if such fraction be greater than one-half. 20

Application for Permits.

Sec. 2. Every application for a permit for the erection of any buildings or the alteration of a building, where such alteration is to cost over $500, shall be in writing, signed by the person proposing to make the alteration, or erect the building, or his agent, which shall state where the building is proposed to be erected, giving a description of the lot by map, block and lot number, and the description thereot, or of the alteration proposed to be made; and a duplicate copv of the plans and specifications of the said building to be made, shall accompany the said application, and shall be filed by the Inspector of Buildings in his office as a public record. Said attached statement and specifications and copy of the plans shall be kept on file in the office of the 30 40

Inspector of Buildings, and neither the erection, construction nor alterations of said buildings or structure, nor of any part thereof, shall be commenced or proceeded with until said statement and plans and specifications have been so filed. and the permit issued by the said Inspector of Buildings, and such plans and specifications must show compliance with the provisions of this ordinance.

A full and complete copy of said ordinance being annexed hereto and marked with my signature.

No permit has ever been asked for under this ordinance for the erection of a new building on the plot of land of the complainant, which was annexed to Montclair from Glen Ridge on April 1, 1916.

WILLIAM H. SENIOR.

Sworn and subscribed to before me this 20th day of June, 1916.

HENRY L. YOST,
Notary Public of N. J.

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

EUGENE W. LEAKE, being duly sworn according to law, on his oath deposes and says:

1. I am the Town Attorney of the Town of Montclair, in the County of Essex.

2. On May 4, 1916, I received through the mails a letter from Thomas Brunetto, being the same person described in the bill of complaint in the foregoing named action as the son of the complainant and as the one who defended the transaction set forth in the bill of complaint. Said letter is presented herewith and is marked with my signature, a true copy of the same being as follows:

ANSWERING AFFIDAVIT

THOMAS BRUNETTO,

Real Estate and Insurance.

NEWARK, N. J , May 3rd, 1916.

Mr. Edward W. Leake,
239 Washington St.,
Jersey City, N. J. 10

Dear Sir:

The facts in regard to my father's case are as follows; On Feb, 7th, 1916, on his behalf I had a bill introduced in the Legislature which was finally signed by the Governor on March 17th and went into effect on April 1st. The purpose of said bill was the annexation to the Town of Montclair, a certain strip of land which was formerly a part of the Borough of Glen Ridge. 20

At the time that I had the aforementioned bill introduced he had two buildings on his lot, both frame, one in the front, 20 x 60 feet, and one in the rear, 16 x 20 feet; and his intentions were to raise the rear building and move it to one side of the lot and to erect a cellar under it; also to wreck the front building and to use the old material to erect another building in the rear (20 x 26), said building to be of frame and stucco construction and to erect a four or six family brick building in the front. 30

On March 6th, 1916, I made application to the building department of Glen Ridge for the alteration of the rear building (that is the 16 x 20), filed the plans for the new (20 x 26) and paid the Building Inspector a fee of $10.00 for a permit on March 7, 1916; the permit was granted on March 7th, 1916.

On or about the time the permit was granted he commenced work and by April 1st he had spent about $1,000, entered into contractual relations 40

with several contractors to complete all the work on the new building and on the one which was being altered. Since the time he commenced work on the rear building he has found that the cost of building material is very high; for example, plain brick $14.00 per M; cement, $2 15 per 100 lb., etc.; therefore
10 he has decided not to build in the front for at least another year or two. If you think it would help the town council in seeing their way clear in allowing my father to complete the work which he commenced under the Glen Ridge permit, he will enter into a stipulation that whatever building or buildings which are hereafter built in the front will be of brick or stone.

As the building in question is only a structure 20 x 26, two stories high and in territory which the
20 town of Montclair had no jurisdiction until April 1st, 1916, which was long after the work was commenced, and as the property is on the boundary line of the town, I hope the Council will be lenient enough to allow him to complete his work without having to go to a Court of Equity and apply for injunctive relief. I am,

Yours truly,

(Signed) THOS. BRUNETTO,
EUGENE W. LEAKE.

30 Sworn and subscribed to before me this 20th day of June, 1916.

FLORENCE NICHOL,
Notary Public of N. J.

An ordinance to amend an ordinance entitled "An Ordinance to establish fire limits within the Town of Montclair and to provide for the proper enforcement thereof," adopted October 24th, 1910.

40 Be it ordained by the Town Council of the Town

of Montclair in the County of Essex, as follows:

Section 1. That Section 1 of the ordinance entitled "An Ordinance to establish fire limits within the Town of Montclair and to provide for the proper enforcement thereof," adopted October 24th, 1910, be amended to read as follows: 10

Section 1. Hereafter there shall not be built or erected within the Town of Montclair, in the County of Essex, within the limits hereinafter designated, any frame building or wooden building, in whole or in part, nor any building unless the outside walls thereof shall be at least eight inches thick; provided, however, that the Town Council may, by resolution passed by a three-fourths vote of all the members thereof, permit frame or wooden or partly frame or wooden buildings to be erected 20 within the said limits when the circumstances of the particular case or cases in their judgment require such exception. The fire limits herein established are as follows, to wit:

Beginning at the southeasterly corner of Bloomfield avenue and St. Luke's Place, running thence southerly along the easterly line of St. Luke's Place to a point distant 150 feet southwesterly from the southerly line of Bloomfield avenue, measured at right angles thereto; thence along a line parallel to 30 Bloomfield avenue to the westerly line of Orange avenue; thence along the westerly line of Orange avenue to the northerly line of Hillside avenue; thence easterly in a straight line crossing Orange avenue and Valley Road to the northeast corner of Valley Road and Church street; thence along the northerly line of Church street 100 feet; thence northerly parallel to Valley Road to a point 150 feet southerly from the southerly side of Bloomfield avenue, measured at right angles thereto; thence south- 40

easterly parallel with Bloomfield avenue to the intersection of this line with the northerly side of Church street; thence southwesterly crossing Church street to a point 150 feet south of southerly line of Church street measured at right angles thereto; thence easterly parallel with Church street to the
10 westerly side of South Fullerton avenue; thence along said westerly side of South Fullerton avenue 180 feet southerly; thence easterly across said avenue and at right angles thereto to a point 150 feet east of the easterly line of said avenue measured at right angles thereto; thence northerly parallel to South Fullerton avenue to a point 150 feet from the south side of Bloomfield avenue measured at right angles thereto; thence southeasterly parallel with Bloomfield avenue to the line of Glen Ridge Bor-
20 ough; **thence along said line as it may have been or may hereafter be changed from time to time by the Legislature of the State of New Jersey** northerly to a point 150 feet north of the north line of the Erie Railroad measured at right angles thereto; thence northwesterly parallel with the northerly line of the Erie Railroad to the center line of Grove street; thence southerly along the centre line of Grove street to the southerly line of the Erie Railroad; thence southeasterly along the southerly line
30 of the Erie Railroad to a point 200 feet distant from westerly line of Pine street measured at right angles thereto; thence southerly parallel to the westerly line of Pine street and 200 feet distant therefrom measured at right angles to a point distant 150 feet northerly from Glen Ridge avenue measured at right angles thereto; thence northwesterly along the line parallel to Glen Ridge avenue and distant 150 feet at right angles therefrom until said line intersects a line drawn parallel to Bloomfield
40 avenue and distant 150 feet northerly therefrom;

thence along the line parallel to Bloomfield avenue and distant 150 feet northerly themfrom measured at right angles to said avenue; to the westerly side of Park street; thence northerly to the southerly line of Portland Place; thence westerly along said line of Portland Place and the continuation thereof in a straight line to the easterly side of Bell street; thence southerly along said easterly side of Bell street to a point 150 feet from Bloomfield avenue and 150 feet therefrom; thence parallel with Bloomfield avenue northwesterly to the easterly line of the property of Daniel V. Harrison; thence in a straight line to the southeasterly corner of St. Luke's Place and Bloomfield avenue, the point of beginning.

Also beginning at the southerly side of Walnut street 150 feet westerly from Forest street; thence southerly parallel with Forest street to a point that would be intersected by a line drawn paralled to and 125 feet southerly at right angles from the southerly side of Walnut street as laid out east of Forest street; thence ersterly parallel with Walnut street and 125 feet southerly from the southerly line of the same to a point 150 feet westerly from Greenwood avenue; thence southerly and parallel with Greenwood avenue to a point that would be intersected by the southerly line of Willard Place if extended westerly across Greenwood avenue; thence easterly along said line to a point 150 feet east of Greenwood avenue: thence northerly crossing Willard Place to a point on the rear line of Mary E. Reilly's land, said point being about 91 feet north of Willard Place; thence easterly along the rear line of lot fronting on Willard Place, said line being the southerly line of land of I. Newton Rudgers and Frederick J. Rudloff to the southerly line of the Erie Railroad; thence southeasterly

along the southerly line of the Erie Railroad to the centre line of Grove street; thence northerly along the centre line of Grove street to a point distant 150 feet northerly from the northerly line of the Erie Railroad measured at right angles thereto; thence northwesterly parallel to the northerly line of the
10 Erie Railroad and 150 feet distant therefrom to a point that would be intersected by the northerly line of land of the United States Printing Company if extended easterly; thence westerly along said line to a point 150 feet west of the westerly line of Forest street; thence southerly and parallel with Forest street and 150 feet therefrom to the place of beginning.

Also beginning at the intersection of the easterly line of the right of way of the Erie Railway and the
20 southerly line of Lorraine avenue; thence easterly along the southerly line of Lorraine avenue crossing Valley Road to the northeast corner of land of Mary S. H. Giffin as shown on Tax Maps of Montclair and designated at Lot 1, Block "C," Map 16; thence along the easterly line of said land and the westerly line of land of W. O. Persons southerly 200 feet to the southeast corner of said W. O. Persons' land; thence easterly along the southerly line of land of W. O. Persons, John N. and F. C. Ives,
30 estate Haywood Johnston, Ellen Brooks, A. G. Sime and George C. Holt, to the westerly line of land of W. H. Power; thence along said westerly line of land of W. H. Power southerly crossing Belleview avenue to the northwest corner of Northview avenue and Belleview avenue; thence along the westerly side of Northview avenue southerly about 220 feet to the northeast corner of land of E. R. North; thence westerly along the northerly line of said land of estate of A. J. Littell
40 to the easterly side of Valley Road; thence in a

westerly prolongation of said line of said estate of A. J. Littell westerly to the easterly line of said right of way of said railroad; thence northerly along said right of way to the place of beginning.

Section 2. This ordinance shall take effect immediately.

Adopted June 12, 1916. 10

EDWIN MORTIMER HARRISON,
Mayor.

Attest:

HENRY WARE JONES,
Acting Town Clerk.

I, HENRY WARE JONES, Acting Town Clerk of the Town of Montclair, in the County of Essex, do hereby certify that attached hereto is a true copy of an ordinance of "An Ordinance to amend an 20 Ordinance entitled 'An Ordinance to establish fire limits within the Town of Montclair, and to provide for the proper enforcement thereof,' adopted October 24, 1910." That said amendment as adopted June 12, 1916, by the Town Council of the Town of Montclair, in the County of Essex, has been advertised as provided for by law.

[SEAL.] HENRY WARE JONES,
Acting Town Clerk
of the Town of Montclair, 30
in the County of Essex.

THOMAS BRUNETTO

Real Estate and Insurance

Notary Public Phone 7346 Market
Commissioner of Deeds
Justice of the Peace

Residence Room 1002 Union Building
991 Bloomfield Avenue Newark, N. J.
Glenridge, N. J. 40

ANSWERING AFFIDAVIT

Newark, N. J., May 3rd, 1916.

Mr. Edward W. Leake,
239 Washington St.,
Jersey City, N. J.

Dear Sir:

10 The facts in regard to my father's case are as follows: On Feb. 7th, 1916, on his behalf I had a bill introduced in the Legislature which was finally signed by the Governor on March 17th and went into effect on April 1st. The purpose of said bill was the annexation to the Town of Montclair, a certain strip of land which was formerly a part of the Borough of Glen Ridge.

At the time that I had the aforementioned bill introduced he had two buildings on his lot, both 20 frame, one in the front 20x60 feet and one in the rear 16x20 feet; and his intentions were to raise the rear building and move it to one side of the lot and to erect a cellar under it; also to wreck the front building and use the old material to erect another building in the rear (20x26), said building to be of frame and stucco construction and to erect a four or six family brick building in the front.

On March 6th, 1916, I made application to the 30 building department of Glen Ridge for the alteration of the rear building (that is the 16x20), filed the plans for the new, (20x26) and paid the Building Inspector a fee of $10.00 for a permit on March 7, 1916; the permit was granted on March 7th, 1916.

On or about the time the permit was granted he commenced work and by April 1st he had spent $1,000, entered into contractual relations with several contractors to complete all the work on the new building and on the one which was being altered. 40 Since the time he commenced work on the rear

building he has found that the cost of building material is very high, for example, plain brick $14.00 per M. cement $2.15 per 100 lb., etc., therefore he has decided not to build in the front for at least another year or two. If you think it would help the Town Council in seeing their way clear in allowing my father to complete the work which he commenced under the Glen Ridge permit, he will enter into a stipulation that whatever building or buildings which are hereafter built in the front will be of brick or stone.

As the building in question is only a structure 20x26, two stories high and in territory which the Town of Montclair had no jurisdiction until April 1st, 1916, which was long after the work was commenced, and as the property is on the boundry line of the Town, I hope the Council will be lenient enough to allow him to complete his work without having to go to Court of Equity and apply for injunctive relief. I am,

Yours truly,

THOS. BRUNETTO.

ORDER FOR INJUNCTION

IN CHANCERY OF NEW JERSEY.

BETWEEN FRANK BRUNETTO, *Complainant,* *and* TOWN OF MONTCLAIR IN THE COUNTY OF ESSEX AND STATE OF NEW JERSEY AND WILLIAM H. SENIOR, BUILDING INSPECTOR OF SAID TOWN OF MONTCLAIR, *Defendants.*	*On Bill, Etc., Order for Injunction.*

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The bill of complaint in this cause and the affidavits thereto annexed having been filed and a rule to show cause having issued on June 6th, 1916, and argument having been heard by counsel on both sides, it is, on this twenty-first day of June, nineteen hundred and sixteen, on motion of Howard F. Kirk, of counsel with complainant, ordered that an injunction do issue restraining the Town of Montclair in the County of Essex and the State of New Jersey, and its co-defendant, William H. Senior, its Building Inspector, and all other officers and agents and employees of said Town of Montclair, from enforcing the fire ordinance of the Town of Montclair against the complainant in reference to the building described in the bill of complaint, which he is constructing in the rear of his premises, which premises were recently annexed to the Town of Montclair, and also from abating, tearing down, removing or destroying plaintiff's said build-

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ing and from instituting suit for the recovery of any penalties as provided for in the fire ordinance of the Town of Montclair on account of the erection of said building by the complainant.

E. R. WALKER,
Chanceller.

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Respectfully advised,
J. E. HOWELL, V. C.

INJUNCTION.

STATE OF NEW JERSEY, SS.

[SEAL]

The State of New Jersey to Town of Montclair, in the County of Essex and State of New Jersey, and William H. Senior, its Building Inspector, and their officers, agents and employees and each and every one of them.

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GREETING:

Whereas, it has been represented to us in our Court of Chancery on the part of Frank Brunetto, complainant, that he has lately exhibited his bill of complaint against you, the said Town of Montclair in the County of Essex and State of New Jersey, and William H. Senior, Building Inspector of the Town of Montclair and an order for injunction has been signed by the Court on the twenty-first day of June, nineteen hundred and sixteen, touching the matters therein contained, and it appearing that your acts and doings in the premises are contrary to equity and good conscience;

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We therefore, in consideration thereof and of the particular matters in the said bill and order set forth, do strictly enjoin and command you, the said Town of Montclair, in the County of Essex and State of

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New Jersey, and William H. Senior, Building Inspector of said Town of Montclair, and all other officers, agents or employees of said Town of Montclair, and each and every one of you, to absolutely desist and refrain from enforcing the fire ordinance of the Town of Montclair against the complainant in reference to the building described in the bill of complaint, which complainant is constructing in the rear of his premises and which premises were recently annexed to the Town of Montclair, and also from abating, tearing down, removing or destroying plaintiff's said building and from instituting suit for the recovery of any penalties as provided for in the fire ordinance of the Town of Montclair, on account of the erection of said building by the complainant until our said Court shall make other order to the contrary.

WITNESS, Edwin R. Walker, our Chancellor, at Trenton, the 23rd of June, nineteen hundred and sixteen.

JOHN H. McADAMS,
Clerk.

HOWARD F. KIRK,
Solicitor for Complainant.

Copy sent June 23, 1916.

Service acknowledged June 26, 1916.

NEW JERSEY

Court of Errors and Appeals.

FRANK BRUNETTO, (*Complainant*) *Respondent*, *vs.* TOWN OF MONTCLAIR. IN THE COUNTY OF ESSEX ET AL., (*Defendants*) *Appellants*.	*On Appeal, etc.*

Reply to Brief of Respondent.

Respondent is in error when he states that $100 required to be deposited by appellant had not been deposited. We deposited $100 with the Clerk in Chancery and hold his receipt.

The statute relied on by respondent as giving him a "vested" property right to erect his building on the land annexed, is printed in the *Compiled Statutes, volume 3, page 3457, Section 7*. Its title is as follows:

> "*An Act concerning consolidated cities and "towns and annexed townships, and "regulating the manner of such annex-"ation and consolidation*."

We contend that this statute does not apply to the annexation of a part of a *borough* to a town, as in the present case. *Van Riper v. Parsons, 40 N. J. L., 1*, cited as authority for respondent's argument construes the meaning of the word "*towns*" in Art. IV., Sec. VII., Pl. 11 of the Constitution, hold-

ing that the word "*towns*" therein was a generic word and included cities, etc. This case does not construe the statute cited by respondent, nor do we find any case construing that statute. We submit that the word "*township*" in the title and body of that act cannot be held to include the class of municipalities known as "*boroughs.*"

Respectfully submitted,

HARTSHORNE, INSLEY & LEAKE,

Of Counsel with Appellants.

New Jersey Court of Errors and Appeals

FRANK BRUNETTO, Complainant-Respondent, vs. TOWN OF MONTCLAIR, in the County of Essex, and WILLIAM H. SENIOR, Building Inspector, Appellants.	On Appeal from order directing issuance of injunction *pendente lite.*

BRIEF FOR RESPONDENT

I

This appeal should be dismissed with costs as appellant did not deposit the sum of $100.00 with the Clerk of the Court of Chancery as required within the time as required. by rule No. 21 of Court of Errors and Appeals, which provides:

> "In all cases of appeal from any order or decree of the Court of Chancery, the party appealing shall, within twenty days after filing the notice of appeal in chancery, either in term or vacation, file with the Clerk of this Court a petition of appeal, in

which shall be briefly stated the order or decree complained of and the grounds of appeal, and shall within five days after filing the same, serve a copy thereof on the solicitor of the adverse party if he has a solicitor, or if he has not, then on the adverse party, if to be found in this State, and shall also within 30 days after filing said petition, deposit with the Clerk in Chancery one hundred dollars to answer the costs of the appeal, if the appellant shall not prosecute the same to effect; and in default of serving a copy of the petition, and *making of such deposit as aforesaid, proceedings may be had on the order or decree appealed from, as if such appeal had not been made; and the said appeal may be dismissed by this Court, with costs.*"

II

The appeal should also be dismissed as the petition of appeal (case, p. 3, l. 10), does not point out any specific error of law by the Vice Chancellor who made the original order for an injunction.

Subdivision (2) of additional Rule of the Court of Errors and Appeals promulgated June Term, 1912, says:

> "IN EQUITY THE SPECIFICATION SHALL STATE AS PARTICULARLY AS MAY BE IN WHAT THE DECREE IS ALLEGED TO BE ERRONEOUS."

Addis vs. Rushmore, 74 N. J. L., 649.
2 Ruling Case Law 163 and cases cited under Note 1.
3 Corpus Juris, 764.

III

Answer to Argument No. 1 of Appellants' brief.

The issue in this case is not whether respondent is entitled to a building permit from the Town of Montclair or not, but the point at issue is, that respondent having once complied with the building code of the Borough of Glenridge, which had jurisdiction over respondent's premises on March 7, 1916 (Case, p. 8, l. 10), and respondent having immediately commenced work, expended money and entered into contractual relations (Case, p. 6, ll. 20 to 40; p. 7, ll. 10 to 40), he thereafter had a vested property right to complete said building according to plans which he had filed with the building department of the Borough of Glenridge, and EQUITY would be the only tribunal that would supply the proper and adequate remedy, that is the remedy of INJUNCTION.

SECTION 7 OF MUNICIPAL CORPORATION ACT Vol. 3, C. S. Rev., 1910, p. 2957 provides:

> "That whenever one or more townships or any part thereof shall be annexed to or consolidated with any city or town by or pursuant to any general or special law, immediately upon such annexation or consolidation taking effect the charter of the city or town to which such township or townships shall be annexed or added and the supplements thereto, and all general laws affecting the same, and the ordinances and regulations of such city or town shall extend to and have the same force and effect

> within the territory of the township or townships so annexed to or consolidated with such city or town as the same shall have therefore had within the original limits of such city or town; and the charter or charters of any township or townships, the entire territory of which shall be annexed to or consolidated with the territory of such city or town and the supplements thereto, shall be deemed and taken and are hereby declared to be repealed immediately upon such annexation or consolidation taking effect; *provided, that such repeal shall not operate to affect any right which any such annexed township or any person shall have acquired under or by virtue of the law or laws so repealed;*

and provided further, that all ordinances and regulations of such annexed township or townships, so far as the same may be consistent with the charter and ordinances of such city or town, shall continue in full force and effect until the same shall be lawfully repealed, rescinded or altered by the proper municipal authority of such city or town. (P. L., 1891, p. 456).

In *Van Riper vs. Parsons,* 40 N. J. L., p. 1, the Supreme Court held; that a statute similar to the one in question embraced all municipalities. The above case was again cited with approval by this Court in *Pell vs. Newark,* 40 N. J. L., p. 553.

Therefore it seems from the statutory provisions which were in force when respondent's premises were annexed to the Town of Montclair, appellants accepted respondent's premises subject to any contractual right which the respondent at the time had with the Borough of Glenridge,

and if it could not revoke the building permit which respondent had paid a fee to obtain from said borough, neither could the Town of Montclair its successor.

This is the reason upon which the Vice Chancellor based the original order, that is: the respondent came within the meaning of the above statute, and that when he had complied with the building regulation of the Borough of Glen Ridge, had secured a permit, for which he had paid a fee of ten dollars, and had commenced work and expended money, he had a vested right of property which a COURT OF EQUITY WOULD PROTECT.

Aside from the above statute, the law seems to be as follows;

A building permit is a license, and while the licensee does not act upon it, it can be revoked at any time, but once the licensee has commenced work on said permit, expended money, he, the licensee, acquires a vested right to complete the work described in said license, and the licensor cannot revoke the license once the licensee has begun work and expended money by virtue of said permit.

Lantz v. Heightstown, 17 Vroom., 102, on p. 107;
Buffalo v. Chadeayne, 134 N. Y., 163, 31 N. E., 443;
People v. O'Brien, 111 N. Y., 1-62;
In re Union Elevated R. R. Co., 112 N. Y., 61-75;
People *ex rel.* v. Otis, 90 N. Y., 48-52;
Stewart v. Palmer, 74 N. Y., 183;
Detroit v. Plank Road, 43 Mich., 140;
Dainese v. Cooke, 91 U. S., 580;
St. Louis v. Dorr, 136 Mo., 370, 37 S. W., 1118;

1. On detachment of territory from one municipalit to another, contracts created by ordinances of the forme extending throughout its limits, cannot be abrogated by the latter. 28 Cyc 175 and 229; People v. Block, 203 Il 363, 67 N.E. 809; Abbott on Municipal corporations Vol 1 74, section 41; Jersey City etc. R. R. Co., v. Garfield

Gallagher v. Flury, 99 Md., 181, 57 Atl., 672;
City of Louisville v. Cumberland Tel. & Teleg. Co., 224 U. S., 649;
Owensboro v. Cumberland Tel. & Teleg. Co., 223 U. S., 66;
Rhodes v. Otis, 33 Ala., 600;
Woodburgh v. Pashley, 7 N.H., 237;
City of Lowell vs. Archambault, 189 Mass., 70;
Commissioner vs. Brennan, 103 Mass., 70;
Commissioner v. Kinsley, 133 Mass., 578-579;
Hearn v. State, 1 Ohio, 2021;
Hudson Tel. Co. v. Jersey City, 49 N. J. L., 303, on p. 305.

Peoria Ry Co vs. Peoria Lem Co 96 N.E. 689 on 692.

Therefore, the rule of law being, that the licensor cannot revoke a permit when the licensee has expended money under the authority given in said permit, when the Town of Montclair, on April 1st, 1916, accepted the territory annexed to it by the legislature, it, the Town of Montclair, took said territory subject to all contracts that complainant had with the Borough of Glen Ridge, either by ordinance or resolution, or by permit, and therefore, just as soon as respondent expended money and began construction under the license granted to him by the building authorities of Glen Ridge on March 7th, it could not thereafter cancel said permit, and the respondent acquired a vested right to complete the work which was lawfully commenced by authority of the building permit issued by the building inspector of said borough, and if the Borough of Glen Ridge could not revoke said license, neither could the

Town of Montclair, and the respondent acquired vested right to complete the building in question against the Borough of Glen Ridge and its successor, the Town of Montclair.

3. Complainant does not deny that after April 1st, 1916, his property was ~~not~~ subject to all ordinances, rules and regulations of the Town of Montclair, but he disputes the right of the Town of Montclair to estop him from completing the building in question which he commenced under the building permit given by the Borough of Glen Ridge, and that the Town of Montclair must permit the complainant to complete his building, which he commenced on or about March 7, 1916, as Article 4, Section 7, Paragraph 5 of the Constitution of the State of New Jersey specifically says:

> "That the legislature shall not pass any bill of attainder *ex post facto* law, or law impairing the obligation of contracts or depriving a party of any remedy for enforcing a contract which existed when the contract is made,"

and the Constitution of the State of New Jersey further provides, *i. e.*, Article 1, Paragraph 16,

> "private property shall not be taken for public use without just compensation."

Therefore, if the Town of Montclair were to be permitted to restrain the complainant from completing his building, complainant would be deprived of a remedy of enforcing a contract which existed when the contract was made and about One Thousand Dollars which complainant has expended and obligated himself by contract to pay towards the erection of the building in question, would be lost by him.

Hudson Tel. Co. v. Jersey City, 49 N. J. L., 303, on p. 305.

Respondent does not admit that he is required to get a permit from the Town of Montclair in order to continue the construction of the building which was commenced under the Glen Ridge permit, but on the contrary respondent claims that the permit which he obtained from Glen Ridge on March 7, was sufficient to complete his building. Therefore, respondent having acquired a vested property right against Glen Ridge, certiorari is not the proper remedy to protect a vested property right, an injunction would be the only remedy and cases cited by appellant do not apply to case in hand.

Bond vs. City of Newark, 4 C. E. Green, pp. 376-384;
Schumn vs. Seymour, 9 C. E. Green, 143-147;
Cape May & Schhellinger's Landing R. R. Co. vs. The City of Cape May, 35 N. J. E., 419.

Answer to Argument No. 2 of Appellants' brief.

The matter of contractual relations are fully sustained by the allegations in the bill and affidavits and answering affidavits do not deny the same.

The original ordinance Section 4 (Case, p. 24, between ll. 20 and 30), provides that this ordinance does not apply to any building the construction of which had commenced prior to the adoption of the ordinance.

Therefore if for argument it is conceded that

the fire limit ordinance would automatically extend to cover respondent's premises as claimed by appellants, the ordinance did not affect any building which was in the course of construction at the time the ordinance went into effect, April 1, 1916, and as respondent had at the time commenced work and spent over $1000 towards the completion of his building, therefore, none of the cases cited by appellant apply to the matter at issue. The case of *Bloomfield vs. Glen Ridge* does not apply to the case at hand, as principal issue in ~~this~~ our case is not whether the fire ordinance is valid or not, but respondent's desire to complete his building which he commenced under the Glen Ridge permit, therefore, certiorari is not the proper and adequate remedy.

The case of *Salem vs. Maynes,* 123 Mass., 372, does not apply to the case in hand, as in that case the building was not commenced until after the ordinance went into effect. (123 Mass., p. 374, last par.).

The case of *Williams vs. Chicago,* does not apply to the case at hand as that was a case of an ordinance similar to our Tenement House Act and had reference to buildings of a certain size and containing a certain number of families or over.

The case of *Scribner vs. Grand Rapids,* 77 N. W., 699, 119 Mich., 188, does not apply to the case at hand, as in that case the landowner knew that such an ordinance was being enacted and it was proven that the owner could complete the work commenced with a stone finish as well as a tar finish.

The case of *Munn vs. Ill.,* does not apply to the case at hand, as respondent does not deny that appellants had power to pass any ordinance prescribing fire limits within the limits of the Town

of Montclair, but respondent contends that the Town of Montclair did not have authority to pass an ordinance prescribing fire limits and the governing body of said town reserved the right to give a permit to erect frame buildings in said district whenever they saw proper (Case, p. 20, ll. 10 to 20).

(1) The ordinance in question is void as it vests in the town council discretionary powers, whether to give permits to erect frame building in said fire limits, or not, and does not provide a uniform rule of action.

(2) That said ordinance is void, on the further ground that it permits certain persons who might have the influence, to get a permit to do certain things on his premises and prohibit other persons owing property in said district from doing the same thing. In other words, it is a crime for one person to erect a building of a certain character on his premises within said fire district, and it is not a crime for his neighbor to do the same thing, who owns premises which are also included in said district.

Therefore, if the ordinance, upon its face, restricts the right of dominion, which the owner might otherwise exercise without question, not according to any uniform rule, but so as to make the absolute enjoyment of his own depend upon the arbitrary will of the town authorities, it is invalid because it fails to furnish a unifom rule of action and leaves the right of property subject to the will of such authority who may exercise it, as so as to give exclusive profits or privileges to particular persons.

~~*Indiana case:*~~

Elkhart v. Murray, 75 N. E., 593 (and cases cited in brief, p. 6);
Hays v. Poplar Bluff, 173 S. W., 676, L. R. A., 1915-D, p. 595.

5. The Court of Equity has power to restrain, by injunction, a municipality from instituting criminal proceedings when such criminal prosecutions are threatened under color of an invalid ordinance for the purpose of compelling the relinquishment of a property right.

28 Cyc., 891, par. G;
Joyce on Injunctions, Secs. 531 and 573;
Newport v. Newport, etc., Bridge Co., 90 Ken., 193;
Covington v. Barry, 93 Ken., 43;
Truax v. Raich, 239 U. S., 33; 35 Sup. Ct. Rep., #7, p. 9;
Barr v. Essex Trades Council, 59 Eq., 101;
Cape May v. Schellinger R. R. Co. v. City of Cape May, 35 N. J. Eq., 419.

Respondent has reason to go in a Court of Equity in order to avoid a multiplicity of suits, for the reason that Section 2 of ordinance in question (Case, p. 24, l. 10), prescribes a penalty of $10 for each day that such prohibited building stands within such prescribed limits and by Chapter 194, Laws of 1907, page 443 and page 444 provides that if fine is not paid defendant may be imprisoned.

"~~Page 6-A, 531.~~ A Court of Equity may, in order to prevent a multiplicity of actions, enjoin the prosecution of actions to enforce a void city ordinance, and in such

a case, the Court had jurisdiction, at the suit of any person injuriously affected by the void ordinance.

Newport v. Newport, etc., Bridge Co., 90 Ken., 193, 13 S. W., 720, the Court held:

> "That if a city ordinance is invalid, one who is affected by it, has the right, in order to prevent irreparable injury and a multiplicity of prosecution, to go into a Court of Equity for redress"

The Court also said, in the same case:

> "The Chancellor often interferes to prevent an illegal use of power by municipal authorities, and where such consequences follow the enforcement of an ordinance, as will result in this instance, a proper case is presented for equitable relief, if the ordinance be invalid."

In *Covington v. Barry,* 93 Ken., 43, 18 S. W., 1026, the appellees, the mayor and chief of police of the city being about to enforce an ordinance by having the company's officers arrested and its cars returned to the stable, this action was brought enjoining it. If the ordinance was invalid, then, to prevent a multiplicity of prosecutions, and such consequences as would necessarily result from its enforcement, the company has a right to ask the preventative equitable relief. This is often done to prevent the illegal exercise of power by municipal authorities.

In *Truax v. Raich,* 36 Sup. Ct. Rep., on page 9, Justice Hughes held:

> "It is also settled that while a Court of Equity, generally speaking, has no juris-

diction over the prosecution, the punishment, or the pardon of crimes or misdemeanors (*Re Sawyer,* 124 U. S., 200), a distinction obtains, and equitable jurisdiction exists to restrain criminal prosecution under unconstitutional enactments, when the prevention of such prosecutions is essential to the safeguarding of rights of property."

Citing:

Davis & F. Mfg. Co. v. Los Angeles, 189 U. S., 207, 218;
Dobbins v. Los Angeles, 195 U. S., 223-241;
Ex parte Young, 209 U. S., 123;
Phila. Co. v. Stimson, 223 U. S., 621.

In *Barr v. Essex Trades Council,* 53 Eq., 101, from syllabus 4, page 102, the Court held:

"Even where there is a legal remedy, equity will interfere by injunction to prevent (1) an injury which threatens irreparable damage, and (2) a continuing injury, when the legal remedy therefor may involve a multiplicity of suits. The criterion of the application of this jurisdiction is the inadequacy of the legal remedy, depending on whether (1) the injury done or threatened is of such a nature that, when accomplished, the property cannot be restored to its original condition, or cannot be replaced by means of compensation in money; (2) whether full compensation for the entire wrong can be obtained without resort to a number of suits."

Answer to Argument No. 3 of Appellants' brief.

Respondent denies that the ordinance in question (if constitutional), would automatically extend to include the whole premises owned by the respondent.

The fire ordinance in question does not apply to the premises in question, as it was enacted to cover a certain prescribed and known district at the time it was enacted, *i. e.*, October 24, 1910, and at that time, the Town of Montclair had no jurisdiction to prescribe fire limits beyond its own limits, and therefore, the complainant's premises were not included in said ordinance.

Municipalities are permitted to enact ordinances establishing fire limits within its territory by the exercise of the police power. Ordinances in derogation of common law rights are to be construed strictly and literally against the municipality, that they operate only prospectively and not retrospectively, and if the ordinance in question would include the complainant's premises, said ordinance did not apply to said premises until April 1st, 1916, and that by virtue of Section 4 of Exhibit "A" annexed to the bill of complaint, said ordinance does not apply to any work which was in the course of construction when said ordinance takes effect.

Freund on Police Power, Sec. 538, p. 567;
Jackson v. Miller, 69 N. J. Eq., 182, 60 Atl., 1019, on p. 1021;
Morton v. Westinger, 113 Pacific, 7;
Lewis Southerland on Statutory Construction, Vol. 2, p. 543, Sec. 1014.

Answer to Argument No. 4 of Appellants' brief.

1. Appellants do not show that either respondent or his son had anything to do with the passing of the above act except to have it introduced in the general assembly on Feb. 7, 1916, or that respondent controlled the legislative machinery of the State and further it does not show that any fraud was practiced on the legislature, or the Governor of our State. The proofs show that the Town of Montclair knew that respondent had secured a permit from Glen Ridge for the building in question and that he had commenced work on the same.

2. Respondent commenced his work prior to the introduction of the annexation act in the legislature by ordering plans and specifications. State of case page 6, line 20.

3. Respondent in his bill alleged that his premises were subject to all ordinances of the Borough of Glen Ridge prior to April 1, 1916 (State of case p. 8, line 10) and that the Montclair authorities never had any jurisdiction of respondent's premises and appellants did not deny said facts either in answering affidavits or petition of appeal.

There is nothing in this case to show that respondent did not act with clean hands and a clear conscience, but it would appear that the reverse is true, that is, that the appellants hands are not clean as shown by the enacting of the amended ordinance between the signing of the rule to show cause in this case and the issuing of an injunction. See state of case pages 40 and 45. This was an attempt to affect the respondent's property by special legislation and there is nothing to show that there was a public necessity for this special act.

The constitution of the State of New Jersey gives power to the legislature to change or alter the boundary lines between municipalities at its discretion, there is nothing in the proofs to show that this was a private act of the respondent's benefit alone, on the contrary the town of Montclair was benefited by having additional territory added to its bounds with the natural increase in taxes incident thereto.

Finally the respondent respectfully asks that the appeal of the Town of Montclair and William H. Senior be dismissed with costs.

HOWARD F. KIRK,
Solicitor for and of Counsel with respondent.

CASES IN POINT

In *City of Buffalo v. Chadeayne,* 134 N. Y., 163, 31 N. E., 443, an action was brought to recover a penalty for an alleged violation of an ordinance pertaining to the erection of wooden buildings within the prescribed fire limits of the City of Buffalo. On the 11th day of July, 1887, the common council of the city passed a resolution granting permission to the defendant to erect seven frame wooden houses upon premises owned by him and specifically described. This resolution was duly approved by the Mayor, and thereupon the defendant entered into a contract for the materials with which to make such structures. He made excavation for the cellars, and laid a portion of the walls, prior to the first day of August. On that day the common council, without notice to him, passed a resolution which it is claimed rescinds the former resolution. The charter of the plaintiff (Chap. 518, laws 1870) provides that

> "the city shall have power by its common council, from time to time to enact ordinances to prescribe the limits within which wooden buildings shall be erected and the manner in and material of which all buildings shall be constructed within such limits. Every building erected or placed contrary to any ordinance passed under the last above provision shall be deemed a common nuisance and may be abated as such."

Title 3, sec. 8, subdivision 4,

> "Pursuant to this provision the common council enacted ordinances, among which we find the following: 'No person shall, without permission of the common council, erect, place, or move any building constructed in whole or in part, of wood, within the limits of the city of Buffalo, as defined by sec. 2 of Title 1 of the charter of said city.'"

Ordinances, c. 5, sec. 20. The defendants buildings are within the fire limits, as prescribed by the ordinance. He, therefore, had not the right to construct them without the permisison of the common council. Such permission, as we have seen, was granted on the 11th day of July, 1887, and thereby he acquired the right to proceed with the construction of his buildings, and to possess and enjoy the comforts they might afford. *As soon as he had entered upon the construction of the buildings and incurred liabilities for work and material, he had a property interest in them. To this right he was entitled to protection.*

In *Dainese v. Cooke*, 91 U. S., 580, 23 L. Ed., 251, the Court held that:

> "where the proper officer gives a permit for the erection of a building contemplated by a contract shown him, a clear case of departure from the permit, or of danger to the public interests, must be shown before the one obtaining it can be arrested midway in the construction of the building and required to remove it."

St. Louis v. Dorr, 136 Mo., 370, 37 S. W., 1118, the Court held that,

> "Where a permit for the erection of a brick building in St. Louis to be used as a dwelling house has been granted, a part of which is used for a business house during the process of its erection, in accordance with specifications submitted to the Commissioner of Public Building, whereupon the Commissioner revokes his license, after which the owner continues work on the building, an action against him for a penalty on a charge that he has erected a building without having first obtained written permission cannot be sustained."

This case is cited in *McQuinlan on Municipal Ordinances,* sec. 471,, as authority for the statement that, under the St. Louis charter and ordinances the Commissioner of Public Buildings has not the power to restrict the use of a building for which a permit has been issued.

In *Gallagher v. Flury,* 99 Md. 181, 57 Atl., 672, the Court held that,

> "A permit for the erection of a stable, granted by the proper officer in accordance with an ordinance generally applicable, authorizing the granting of such a permit,

cannot be cancelled by the city council by a resolution, as it would deprive him of rights given to all other property holders."

In City of Louisville v. Cumberland Tel. & Telegraph Co., 224 U. S., 649.

The assent of the municipality when once given conformably to the charter of a telephone company empowering the latter, with and by the consent of the city council, to construct and maintain a telephone system in the city, perfects the company's franchise, which, being a legislative grant, cannot thereafter be repealed, nullified or perfected by municipal ordinance.

Owensboro v. Cumberland Tel & Teleg. Co 223 ~~Co.~~ U. S., 66.

The general authority given by a city charter "to make, publish and repeal all ordinances for the following purposes, including *inter alia,* the power to regulate the street alleys, and sidewalks" cannot be construed as a reservation of a power to revoke or destroy contractual rights which have vested under an ordinance granting to a telephone company, its successors and assigns, the right to place and maintain its poles and wires in the city streets.

A license is irrevocable when it is coupled with a grant, or when the licensee has on the faith of the license spent money in executing works of a permanent character on the land.

2 B & Ald., 724;
11 A. & E. 34;
Rhodes v. Otis, 33 Ala., 600, 73 Am. Dec., 439;
Woodburgh v. Pashley, 7 N. H., 237, 26 Am. Dec., 739.

In *Lantz v. Hightstown,* 17 Vr., p. 102, on page 107, the Court said:

> "Nevertheless, the license is a privilege for which either a fee or a tax is paid, in the way of consideration, possibly, but as a condition precedent to the issuance of the evidence of the granting of such license. When this act is done and the license if granted to carry on a trade or occupation for a period of time within the power of the appointing body to name, it should not be subjected to the fluctuation of sentiment caused by changing membership in the licensing body, or shifting views upon the questions which have been, or should have been, examined and passed upon."

And to the same effect—

Com. v. Brennan, 103 Mass., 70;
Com. v. Kinsley 133 Mass., 578-579;
Hirn v. State, 1 Ohio St., 20-21;
Schwuchow v. Chicago, 68 Ill., 444.

City of Lowell v. Archambault, 189 Mass., 70, the Court held:

> "A license granted by the Board of Health, under statutory authority, for the erection of a stable without any limit as to time, cannot be revoked by such board in the absence of statutory authority, existing regulations of the board, or some provision in the license itself for its revocation."

In *Elkhart v. Murray,* 75 N. E., 593, the Court said:

> "The ordinance must be certain, permanent, legal provisions operating generally

and impartially upon all within the territorial jurisdiction of such city and no part thereof be left to the will or unregulated discretion of the common council, or any officer.

"If an ordinance, upon its face, restricts the right of dominion which the owner might otherwise exercise without question, not according to any uniform rule, but so as to make the absolute enjoyment of his own depend upon the arbitrary will of the city authorities, it is invalid, because it failed to furnish a uniform rule of action and leaves the right of property subject to the will of such authority who may exercise it so as to give exclusive profits, or privileges, to particular persons and cases cited."

In *Hays v. Poplar Bluff,* 173 (Mo.) SW., 676, 1915 D. L. R. A., p. 595, the Court, in construing an ordinance having a section very similar to section 1 of the ordinance in question (Town of Montclair), sec. 315 of said ordinance of Poplar Bluff, State of Missouri, reads as follows:

"Whenever any person or persons shall desire to construct building, or place any wooden building within the fire limits of the city of Poplar Bluff as hereinbefore described, such person, or persons, shall file with the Mayor and Council, an application in writing, setting forth the location, size, and manner of construction of the proposed building, and the purposes for which it is to be used. Such application must be accompanied by the written consent of all persons owning property within the block in which such proposed building is to be erec-

ted, or placed. *Upon the filing of such application and written consent of the property owners aforesaid, the Council may, by resolution, authorize the construction or erection of the desired wooden buildings, within the said fire limits; provided, that the names of the members voting for and against said resolution shall be entered on the journal, and a vote of a majority of all members elected to the council shall be neccessary for its passage.*"

On page 599 of 1915-D L. R. A., the court said:

"In considering such questions, we usually begin with some form of the ancient and indubitable proposition, that, under our system of government, municipal corporations possess no power or faculties not conferred upon them, either expressly or by fair implication, by the law which creates them, or by other statutes applicable to them. As we said in *St. Louis v. Dreisoerner,* 243 Mo., 217, 223, 41 L. R. A. (N S), 177, 147 S. W., 998, 999; 'Any fair, reasonable doubt concerning the existence of power is received by the Court against the corporation and the power is denied.' "

St. Louis v. Bell Tel. Co., 96 Mo., 623, 2 L. R. A., 278, 9 Am. St. Rep., 370, 10 SW, 197;

Nevada use of Gilfillan v. Eddy, 123 Mo., 557, 27 SW, 471;

Independence v. Cleveland, 167 Mo., 388, 67 SW, 216.

The power upon which defendants have planted themselves for justification in this case at issue

is contained in sec. 9228 in article 4 of chapter 84 of the revised statutes of 1909, relating to cities of the third class, and is as follows:

> "The council may also provide, by ordinance, limits, within which no building shall be constructed except of brick or stone or other combustible materials, with the fireproof roofs and impose a penalty for the violation of such ordinance and may cause buildings commenced, put up, or removed into such limit, in violation of such ordinance, to be removed, or abated."

That this provision gives ample power to the legislative department of the city government to establish districts in which no building of other than incombustible materials shall be constructed is evident; but to construe it to give power to establish districts in which buildings of combustible or incombustible materials may be constructed, as when may be arbitrarily determined by the Mayor and council in each particular case, requires us to reject its broadly prohibitive words, thus rendering it meaningless and inoperative, or to add words of commission which would defeat the evident object of the enaction, which is that all persons owning property within the limits established, and the general public as well, should be protected against the menace of combustible structures within such limits. It bears no evidence, as does the ordinance, that the legislature had in mind the idea that each block should stand alone in the matter of such protection, and the record of disastrous fires in cities furnishes no foundation for such a theory. Now is there any evidence in the act of a legislative notion *that those who might have the necessary influence, the "pull," as it is*

often called in the expressive language of our time, might obtain special permission not open to others, to build combustible structures within the designated limits.

It laid down a rule applicable alike to all, of government by law and not by special privilege or favor. An attempt of the general assembly to authorize the ordinance in question would have been an attempt to confer upon the agent of its own creation a law making power which the constitution had expressly withheld from itself.

Clause 26 of sec. 53 of the fourth article of our constitution forbids the passage by the general assembly of any local or special law, granting to any person any special right, privilege, or immunity. It would, of course, be absurd to say that, in the face of this constitutional inhibition, it might, by special law permit such an individual as it should select from time to time to violate a penal law, and grant them immunity therefor. It would be still more absurd to say that the general assembly could give itself the power to grant such special privileges and immunities by the clumsy subterfuge of inserting in all prohibitive and penal laws a condition that the forbidden act might only be done with its permission expressed by statute. But it would be the most absurd of all to contend that, although the constitution had withheld from the general assembly, the power to pass such laws, that body might give its own agent, the legislative body, a municipal corporation, the power to make them.

Page 600, 1915-D L. R. A., citing *Elkhart v. Murray,* 165 Ind., 304, 75 N. E. 593, the Supreme Court of Indiana said:

> "If an ordinance upon its face, restricts the right of dominion, which the owner

> might otherwise exercise without question, not according to any uniform rule, but so as to make the absolute enjoyment of his own depend upon the arbitrary will of the city authorities, it is invalid, because it fails to furnish a uniform rule of action and leaves the right of property subject to the will of such authorities, who may exercise it so as to give exclusive profits or privileges to particular persons."

The wealth of authority opened up by the court in its citations in that case has been of great assistance in the investigation of the subject. This Court also, in *St. Louis v. Russell,* 116 Mo., 248, 257, 20 L. R. A., 721, 22 S. W. 470, 472, held—

> "An ordinance of the city of St. Louis invalid for the reason that by its provisions that one citizen is permitted to erect a livery stable in a certain locality by obtaining the written consent of the owner of one half the ground in the block, while another of like merit would not be permitted to do so for want of such consent."

In that case the Court cites, with its approval, numerous authorities; among others *Barthet v. New Orleans,* 24 Fed., 564, in which an ordinance of that city was held invalid, which made it unlawful to maintain a slaughter house "Except permission be granted by the council of the City of New Orleans"; *State v. Mahner,* 9 Sou., 480, in which an ordinance forbidding the keeping of more than two cows by any reason within certain prescribed limits without a permit from the city council was held void, and various other cases cited by the learned court in the above case of *Hays v. Poplar Bluff.*

The constitution of the State of New Jersey has a same provision in regard to the legislature passing special laws, etc.,

Article 4, sec. 7, paragraph 11 of the constitution of State of New Jersey says:

> "The legislature shall not pass private, local, or special laws in any of the following enumerated cases, that is to say, regulating the internal affairs of towns and counties, etc., but the legislature shall pass general laws, providing for the cases enumerated in this paragraph, and for all other cases, in its judgment may be provided for by general laws."

Freund on Police Power, Sec., 538, p. 567. Principle of non retro-active operation, a problem of peculiar difficulty is presented by retroactive police legislative which substantially destroys vested property rights to accommodate a change of surrounding circumstances or of public sentiment, while the condition of the property itself remains what it was before. Most police legislation even for the protection of safety and health is precautionary in its nature, it does not deal with danger which is imminent to such degree that loss or injury may be expected almost as a certainty but with conditions under which those who are accustomed to them can live without a sense of injury or even of discomfort.

Therefore, the general rule is that such legislation operates only prospectively, and does not demand the sacrifice of existing physical property.

Jackson v. Miller, 69 N. J. E., p. 182, also 60 Atl., p. 1019, on page 1021, Court said:

> "The general rule is that mere police legislation of this character operates only

prospectively, and does not demand the sacrifice of existing physical property."

In *Morton v. Westinger,* 113 Pac., p. 7, the court held: A municipal ordinance establishing fire limits and prohibiting the erection or rebuilding of frame structures have no retroactive operation, and cannot require the removal of existing buildings. San Francisco Ord., No. 31, sec. 3, prohibiting the erection, construction, alteration or enlargement of frame buildings within fire limits, does not prohibit the repair of an existing frame building or the completion of one begun before its passage, invoking the rule that laws in der. ogation of individual rights are strictly construed as having retroactive effect.

Lewis Southerland on Statutory Construction, Vol. 2, p. 543, sec. 1014, says:

> "Restrictions on the building or repairing of wood structures in the populous part of a city, commonly designated as fire limits, are invasions of private rights, and to be strictly confined to their lateral import."

Citing:

> Stewart v. Commonwealth, 10 Watts, 307;
> Brady v. Northwestern Ins. Co., 11 Mich., 425-451;
> Bootj v. State, 4 Conn., 65;
> Tuttle v. State, 4 Conn., 68.

In *Hudson Telephone Co. v. Jersey City.,* 8 Atl., 123, 49 N. J. L., 303, on page 305.

The facts were as follows:

It appears from the evidence taken in the cause that the company proceeded to place poles along the route marked out by the ordinance. They had

placed from thirty-five to forty-five poles, at an expense of about $10 a pole, and had expended other moneys in and about the erection of the poles. Then was passed the ordinance brought up before us, which repeals the ordinance which confers permission to place the poles as above mentioned.

Certainly, after the expenditure of money in the erection of poles, made in reliance upon the municipal designation, the company obtains a vested right of which they cannot be stripped by a subsequent revocation of such designation.

In *Cape May and Schellenger's Landing R. R. Co. v. The City of Cape May,* 33 Eq., p. 419, Vice Chancellor Van Vleet held:

> "All legislative acts, or exercise of discretionary power within their authority, are beyond the control of the courts, however, unwise, or impolitic, or even when done from corrupt motives, or unworthy purposes. There legislative powers, are, when exercised within their authority supreme. But when the corporations have fulfilled their legislative functions, and have exercised their legislative discretion, and are about carrying their legislation into execution, then, if the effect of their act is to violate vested rights or inflict irreparable wrong, the courts may properly intervene."

Citing:

> Bond v. City of Newark, 4 C. R. Greene 376, 384.

Vice-Chancellor Dodd gave expression to similar views in *Schumn v. Seymour,* 9 C. E. Greene, 143-147.

28 Cyc., 891, Par G.—Injunction enforcement of ordinances. (1) void ordinances. A municipality and its officials will be enjoined from acting under and enforcing a void ordinance when the proposed enforcements will deprive the complainant of his property or property rights, and will cause injury which cannot be compensated by damages or where the illegal action will give rise to a multiplicity of actions at law if it is not prevented.

Joyce on Injunctions, Paragraph 573.

Where a municipal ordinance is seeking to enforce an ordinance which is void, it may be enjoined at the suit of any person who is affected by it.

Citing:

Mayor etc., v. Radecke, 49 Md., 218;
Smith v. Rangs, 15 Ill., 399;

In the case of Jersey City etc. St. R. Co. v Garfield, 68 N.J.L. 587 53 Atl 11, the court held that where a township committee passed an ordinance granting certain rights to the prosecutor, an electric railway company, and after the acceptance of its ordinance by the prosecutor, a borough was formed out of a part of the territory of the township, the ordinance of the borough annuling the ordinance of the township was void.

IN PEOPLE V. BLOCK, 203 Ill. 363, 67 N.E.R. 809, page 811, the fact is stated that "Where a town legally grants a franchise and such town is subsequently annexed to another municipality, the latter is powerless to repeal by resolution the ordinance granting the permit."

28 Cyc page 175

Par. 17 PRE-EXISTING RIGHTS AND LIABILITIES. IN GENERAL. The law, to a certain extent, and equity fully, recognizes the property rights and liabilities of an organized community and preserves and enforces them through all the changes of class and grade of municipal corporation by the application of the doctrine of succession, wherever it is applicable.

28 Cyc page 229

On detachment of territory from a municipal corporation and creation of a new and separate municipality, contracts created by ordinances of the original municipality, extending throughout its limits, cannot be abrogated by the new municipality by annuling the ordinance within its limits.

NEW JERSEY

Court of Errors and Appeals.

FRANK BRUNETTO, (*Complainant*) *Respondent*, *vs.* TOWN OF MONTCLAIR, IN THE COUNTY OF ESSEX, and WILLIAM H. SENIOR, BUILDING INSPECTOR, (*Defendants*) *Appellants*.	*On Appeal from Order Directing Issuance of Injunction pendente lite.*

Brief of Hartshorne, Insley & Leake, for Appellants.

STATEMENT OF CASE.

This appeal is from an order of the Chancellor (advised by V. C. Howell) filed June 21st, 1916, ordering that an injunction do issue restraining the appellants "from enforcing the fire ordinance of th "Town of Montclair against the complainant in "reference to the building described in the bill of "complaint, which he is constructing in the rear of "his premises, which premises were recently an-"nexed to the Town of Montclair, and also from "abating, tearing down, removing or destroying "plaintiff's said building and from instituting suit "for the recovery of any penalties as provided for "in the fire ordinance of the Town of Montclair on "account of the erection of said building by the "complainant "

The Town Council of the Town of Montclair on October 24, 1910, passed an ordinance under author-

ity of P. L. 1905, page 341 (4 Compiled Statutes 5531, Section 369, forbidding, within the limits therein prescribed, the erection of "*any frame building or wooden building, in whole or in part, nor any building unless the outside walls thereof shall be at least eight inches thick.*" This ordinance is referred to as the "fire limit" ordinance.

(*The ordinance is printed in case, pages 20–24.*)

Prior to April 1st, 1916, the respondent owned a lot of land partly within the Town of Montclair (that part being subject to the "fire limit" ordinance), and partly within the Borough of Glen Ridge (case, page 2, lines 10-39).

On February 7th, 1916, a bill was introduced in the Legislature extending the boundaries of the Town of Montclair so as to annex to the Town of Montclair the portion of respondent's lot which was within the Borough of Glen Ridge (*case, page 6, line 10*); this bill was passed and approved by the Governor, March 17th, 1916, and by its terms became effective April 1st, 1916 (*P. L. 1916, page 294*).

This bill was introduced in the Legislature by Thomas Brunetto, the respondent's son, on behalf of the respondent (*case, page 39, lines 10-20*).

On March 6th, 1916, respondent applied to the building inspector of Glen Ridge for a permit for the moving of an old building to a new location and the erection of a frame building on the rear part of his lot, and on March 7th, 1916, received the permit (*case, page 6, line 28*).

Respondent commenced work on March 7th, 1916 (case, page 7, line 7), and continued work until April 6th, 1916, when the old building had been moved and the cellar excavated for the new building and the cellar walls laid up ready for the first tier of beams (*case, page 7, lines 7 to 40*).

On April 6th, 1916, the building inspector of the Town of Montclair (the act of annexation having become effective April 1, 1916), ordered respondent to stop work on the frame building until respondent obtained a permit from the Building Department of Montclair for the doing of the work, and said that if work was carried on without a permit the building inspector would commence suit to collect the penalties of the "fire limit" ordinance, above referred to (*case, page 8, lines 14–30*).

The following day respondent, through his son, applied for a building permit, which was refused by the building inspector because the proposed building did not conform to the requirements of the "fire limit" of the Town of Montclair (*case, page 8, line 40, to page 10, line 15*).

The bill of complaint prays for an injunction restraining the appellants (1) "from further proceedings to enforce the provisions of the 'fire limit' ordinance, (2) from abating, tearing down, removing or destroying complainant's building which he may hereafter complete according to the plans mentioned, (3) from trespassing upon or in any way interfering with respondent's enjoyment of his premises, and (4) from interfering in any manner with the possession or title of respondent, of, in or to said lot and tract of land, the buildings to be situated thereon which are now in the course of construction" (*case, page 12, line 33, to page 13, line 15*).

After the bill of complaint had been filed and before the hearing on the respondent's application for the order directing the injunction to issue the Town Council of the Town of Montclair *amended the "fire limit" ordinance so as to include the part of respondent's lot annexed to the Town of Montclair* under

P. L. 1916, page 294 (*case, page 40, line 34, to page 45, line 30*).

The appellants filed their answering affidavits containing the building inspector's affidavit wherein he denied that any threat was made to tear down respondent's building if erected and stating that he informed respondent that if the work was continued on the erection of the frame building it would be the building inspector's duty to commence suit to collect the penalties of the "fire limit" ordinance (*case, page 35, line 28, to page 36, line 15*).

POINT I.

The respondent has an adequate remedy at law.

Briefly stated the facts set out in the bill of complaint (case, page 5), are as follows:

Respondent had completed the foundation walls on which he was going to erect a frame building when the lot of land became annexed to and a part of Montclair; the work done by respondent before the annexation was done with the permission of the building inspector of Glen Ridge; after the annexation respondent was forbidden by the building inspector of Montclair to continue the erection of a frame house, because it would be in violation of the ordinances of Montclair, and a threat was made by the building inspector of Montclair to commence suit for the penalties of these ordinances if respondent continued to erect the house.

The ordinances of Montclair have been passed under direct legislative authority; respondent contended that the ordinances did not apply to him or effect his property; the appellants claim that respondent and his property were bound by the ordinances.

The respondent had a full and complete adequate remedy at law. He could (1) disregard the ordinances of Montclair and continue work on the building thereby compelling the appellants to begin suit for the penalties of these ordinances and in that suit the question of whether or not the ordinances applied to respondent and to his property would be litigated and the judgment of the Trial Court in such case could be reviewed on certiorari to the Supreme Court; or (2) if respondent did not want to invite a prosecution he could apply to the Supreme Court for a writ of mandamus to compel appellants to issue to him a building permit, and in such a suit the question of whether or not the "fire limit" ordinance of Montclair applied to respondent's property would have to be decided. If respondent was entitled to a building permit from the Town of Montclair the building inspector was bound to issue it under the building code of Montclair (*case, page 37, line 10*).

Certiorari is the proper remedy to test the validity of municipal ordinances.

Note—For cases sustaining this argument see "Cases on Point I.," post page 11.

POINT II.

Nothing appears in respondent's case to give equity jurisdiction.

The respondent's allegation of irreparable injury in the bill of complaint is not sustained. When the building inspector threatened to enforce the penalty under the "fire limit" ordinance, respondent had only completed the foundation walls of his building and there was nothing in the case before the Court below to show that the walls were not

available for a building that would conform to the requirement of the "fire limit" ordinance.

There is nothing in the bill of complaint to show that the contractual relations of the respondent were disturbed; the allegation that he had entered into contractual relations was merely a conclusion and no proof was introduced to sustain that claim.

But even if he had entered into such relations whatever rights he had acquired in his property were subject to the exercise of the police power of the Town of Montclair. After the bill of complaint had been filed wherein the question of whether the "fire limit" ordinance of October 24th, 1910 (*Exhibit A, case, page 20*) applied to respondent's property, the Town of Montclair amended that ordinance, which amendment became effective before the hearing in the Court below so as to clearly bring respondent's property under the control of said ordinance (*See case, page 40, line 35, to page 45, line 30*).

Note.—For cases sustaining this argument see "Cases on Point II.," post page 12.

POINT III.

The "fire limit" ordinance of October 24th, 1910, bound respondent's property even before the amendment of June 12th, 1916.

On October 24th, 1910, the Town of Montclair under authority of *P. L. 1905, page 341* (*4 C. S. 5531, Sec. 369*) passed the "fire limit" ordinance which is printed in the case at page 20 as Exhibit A. The lines laid down in the "fire limit" ordinance of October 24th, 1910, commenced at a point south of Bloomfield avenue and run in an irregular direction easterly "to the line of Glen Ridge Borough;

thence along said line northerly to a point 150 feet north of the north line of the Erie Railroad measured at right angles thereto" (*case, page 21, line 19*). Respondent's property before the annexation was partly in Glen Ridge and partly in Montclair (*see map, page 34*) at this point in the line laid down in the "fire limit" ordinance; when the Legislature on April 1st, 1916, changed the line of Glen Ridge Borough we contend that the line laid down in the ordinance of October 24th, 1910, was automatically changed to include respondent's property.

However, before the order directing the injunction to issue was made by the Court, the Town of Montclair amended the "fire limit" ordinance so as to include respondent's property without any doubt. The amended ordinance is printed in *case, page 40, line 35.*

POINT IV.

Respondent disqualified himself from his right to invoke the aid of a Court of equity. He does not come in "with clean hands."

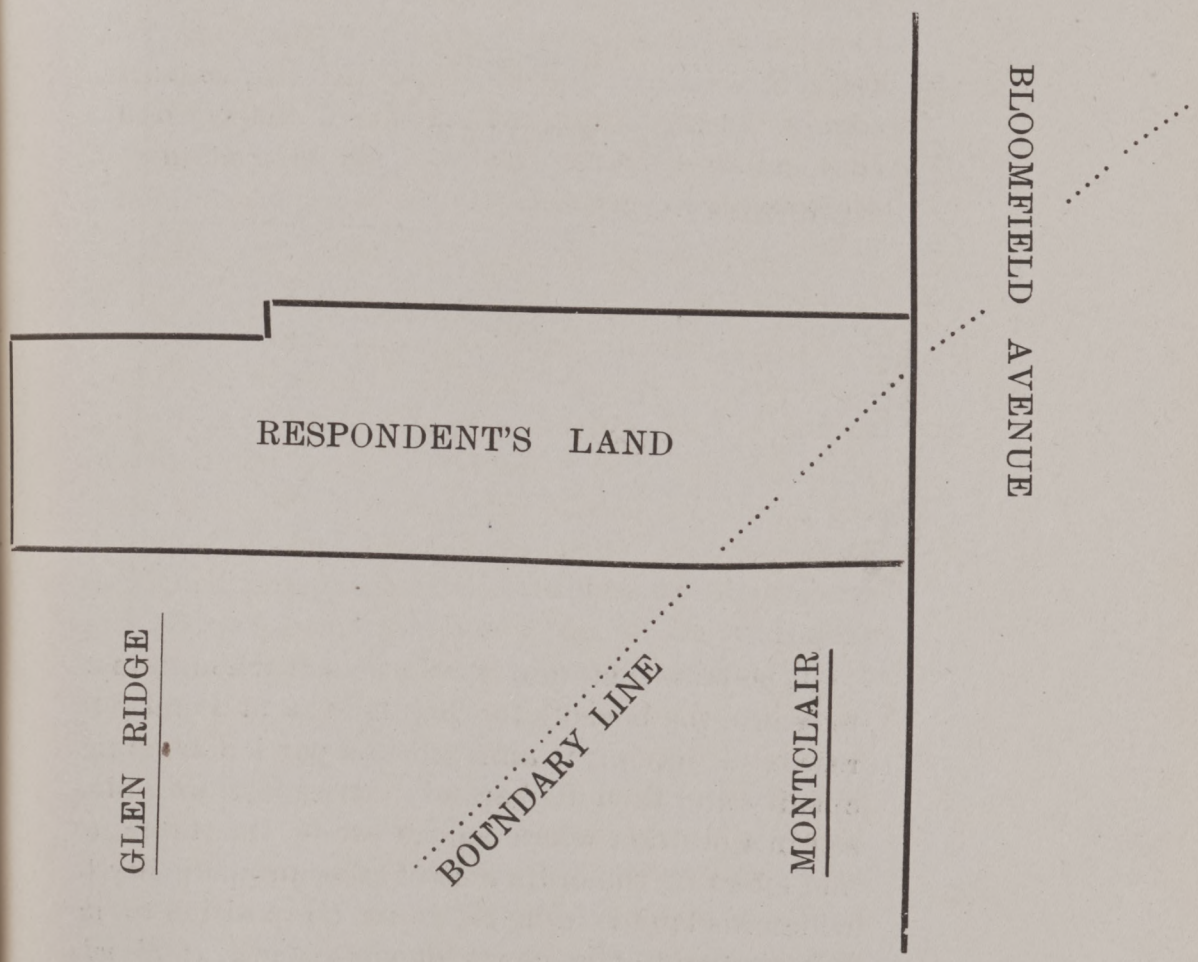
It is plain from the facts set out in the bill of complaint that respondent set in motion the machinery of the Legislature which resulted in the annexation of the larger part of his lot of land to Montclair, and while the bill was pending in the Legislature, and before it became effective, took steps to secure a permit from Glen Ridge, so he could erect a building within the limits of Montclair, *which did not comply with the requirements of the Montclair ordinances.*

The annexation bill was introduced in the Legislature *February 7th, 1916* (*case, page 6, line 10*); it was introduced on behalf of respondent by his son (*case, page 39, line 10*); respondent's son is mentioned in the bill of complaint as afterwards negotiating with the building inspector of Montclair concerning a building permit for this same building (*case, page 8, line 30, to page 9, line 36*), and the same son who made an affidavit on respondent's behalf attached to the bill of complaint (*case, page 17, line 30*); respondent on *March 6th, 1916*, applied to the Glen Ridge building department for a building permit (*case, page 6, line 28*); he received his building permit from Glen Ridge on *March 7th, 1916* (*case, page 7, line 1*); and went to work on the same day (*case, page 7, line 4*); the act of the Legislature which had been introduced on February 7th, 1916, was approved by the Governor *March 17, 1916*, and became effective April 1, 1916 (*P. L., 1916, page 294*).

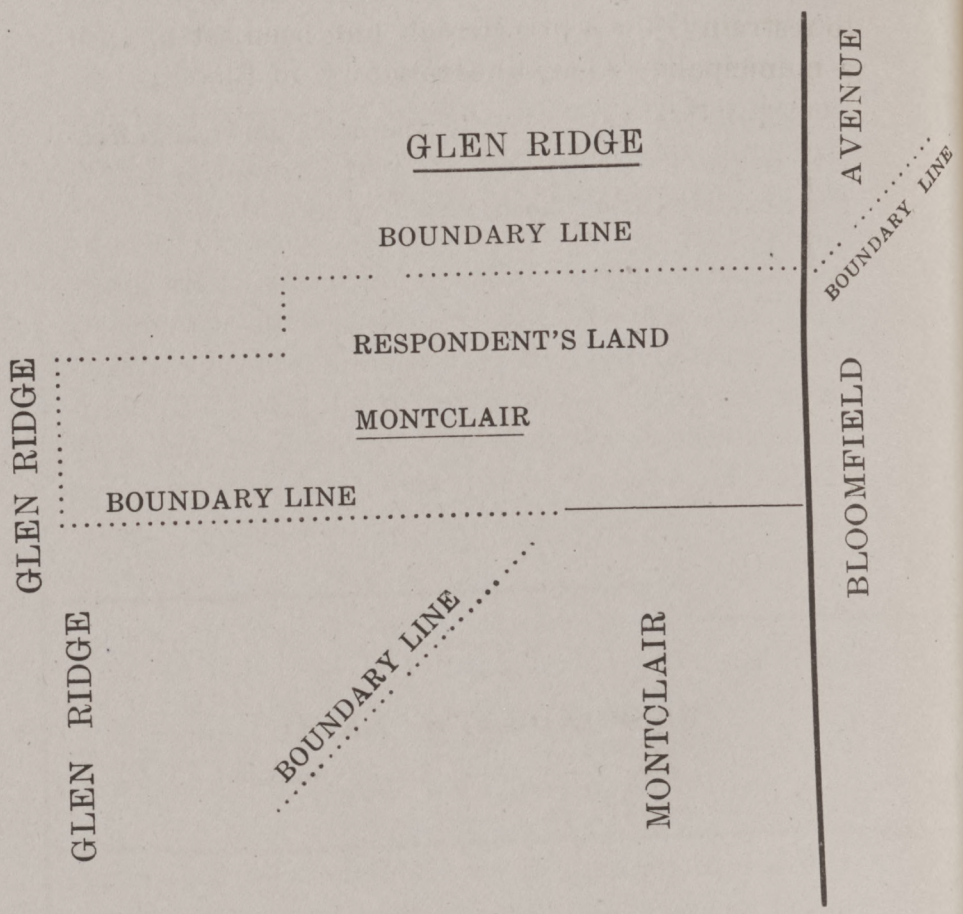
The Court's attention is directed to the map printed in *case, page 34*, which was respondent's exhibit in the Court below. The description contained

in section 1 of the act of the Legislature (P. L., 1916, page 294) was very plainly taken from this map as a comparison will show. The act of the Legislature was a private act, pure and simple, for the respondent's benefit alone.

Before this Act of the Legislature became effective respondent's lot was situated with reference to the municipalities' boundary line as follows:



After the Act became effective the boundary line of the municipality was as follows:



Appellants maintain that a person who attempts to secure the benefits for his land that comes by reason of having it annexed to a particular municipality and then deliberately attemps to put himself in a position where he can evade the intention and effect of the ordinance of the municipality to which his land is annexed is in no position to invoke the aid of a court of conscience. "*He who comes into equity must come with clean hands.*"

Respectfully submitted,

HARTSHORNE, INSLEY & LEAKE,

Of Counsel with Appellants.

CASES ON POINT I.

Bloomfield v. Glen Ridge, 55 N. J. Eq., 505 (Er. & Ap., 1897): Bloomfield asked for an injunction to restrain Glen Ridge (which had been set up into a municipality from the territory of Bloomfield), from interfering with certain sewer pipes within the boundaries of Glen Ridge which pipes had been laid by Bloomfield before the division of the latter municipality. Glen Ridge claimed the right to control the sewer pipes under an ordinance of its council. The Court of Chancery refused the injunction and dismissed the bill of complaint; on appeal this was affirmed. The opinion of the Court of Appeals (page 510) said: "The principle is well settled that where the rights of individuals or public corporations are invaded by the acts of persons exercising municipal powers in an illegal manner, the parties aggrieved must seek redress by certiorari. *Tucker v. Freeholders of Burlington, Sax., 283; City of Camden v. Mulford, 2 Dutch., 49; State, Gregory v. Jersey City, 5 Vr., 390; State v. Washington, 15 Vr., 605; South Orange v. Whettingham, 29 Vr., 657; Hunt v. Lambertville, 17 Vr., 59.*

"That the legality of these ordinances can be reviewed and the proceedings under them arrested by certiorari cannot be successfully controverted.

"The existence of an adequate remedy at law excludes the right to invoke the aid of a Court of equity.

"Certiorari is the appropriate proceeding to test the validity of municipal ordinances, and, so far as appears, it will be an adequate remedy in this case. It is not to be presumed that the public officers to whom such writ is addressed will attempt to take any action in virtue of such ordinances pending the litigation."

See also on this point in addition to the cases cited above:

Jersey City v. Lembeck, 31 N. J. Eq., 255, at p. 268.

Dusenberry v. Newark, 25 N. J. Eq., 295.

Holmes v. Jersey City, 12 N. J. Eq., 310.

CASES ON POINT II.

City of Salem v. Maynes, 123 Mass., 372; the Legislature gave authority to cities to establish "fire limits" and to forbid the erection of frame buildings therein; the same act gave authority to Courts of Equity to enforce the provisions of ordinances enacted thereunder. Defendant on March 19, 1877, made a written contract for the erection of a frame building; work on its erection had commenced March 14th, 1877; on April 23rd, 1877, the City of Salem by ordinance established fire limits and forbid the erection of frame buildings therein; May 15th, 1877, before the cellar had been completed by defendant his attention was called to the ordinance and a threat made to enforce its provisions; he disregarded the threat and continued and on June 27th, 1877, Court proceedings were commenced to compel the removal of the building. *Held*, that the building must be removed. C. J. Gray in the opinion of the Supreme Court said: "There can be no doubt of the right of the Legislature, in the exercise of the police power, and for the protection of persons and property against the dangers of fire, to authorize cities and towns, by ordinances and by-laws, to restrict or prohibit the erection of wooden buildings within the municipality, or within any district thereof. All contracts between individuals and even charters granted by the State are subject to the exercise of this power"

Williams v. Chicago, 266 Ill., 267, Sup. Court Ill., 1915. Suit to enjoin the city from enforcing an ordinance. Williams owned 10 apartment houses erected in 1908 under a permit from the city in compliance with its ordinances. In 1912 the city passed an ordinance requiring the owners of the apartment houses of the same class as Williams to install additional fire apparatus (there were over 6,000 owners affected by this ordinance of 1912). The bill alleged that if the ordinance was enforced his houses would be closed and great loss result. The bill was dismissed for want of equity.

Held, that the fact Williams houses were constructed under permits from the city and in accordance with the ten existing ordinances is no valid objection to this ordinance. "All rights are subject to the police power of the State, and a citizen cannot acquire a vested right of exemption from a proper and reasonable exercise of that power for the public health, safety or welfare."

Scribner v. Grand Rapids, 77 N. E., 699 Mich. Sup. Court, 1899.

Scribner owned property in Grand Rapids; prior to May 22, 1897, there was a boardwalk in front of it; on that day they, by notice, were required to rebuild the walk in accordance with the city's ordinances; on June 4th, 1897, they let a contract for a tar walk; on June 7th the City Marshal notified them to stop construction of the walk, and on the evening of that day the council passed a pending ordinance extending the stone walk area to include their premises and a resolution requiring them to lay down a stone walk. The foundation which had been completed to that day for the tar walk was adapted to a stone walk.

Complainants, not building the stone walk, the city did so, and, the Court held, could collect the cost from the complainants.

The complainants rested their refusal to build a stone walk on the ground that they were notified to build a tar walk and had contracted to do so when stopped by the city.

See also *Munn v. Illinois, 94 U. S., 113.*