New Jersey Court of Errors and Appeals

GEORGE VOORHIS, Prosecutor-Appellant, vs. THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF FRANKLIN, IN THE COUNTY OF BERGEN, Defendant-Appellee.	On Ceriorari. On Appeal from Supreme Court.

BRIEF OF PROSECUTOR-APPELLANT.

Statement of Facts.

This is an appeal from the judgment of the Supreme Court affirming the proceedings of the Township Committee, the respondent, in laying out a road, which proceedings were certioraried into that Court by the prosecutor-appellant.

On August 5th, 1915, the Township Committee of the Township of Franklin, in Bergen County, received a petition to lay out and open a public road, 30 feet in width, to begin at the Ponds Church Road and extend back in a straight course through the land of the prosecutor-appellant for a distance of 1,367.07 feet; and then through the lands of Forster W. Freeman and J. Millar Nicol, situate at

the rear of the prosecutor-appellant's land, for a distance of 852.29 feet. The total length of the road to be about 2,219 feet (pp. 4-7). That about two-thirds of the whole length and width of the road would extend through the lands of the prosecutor-appellant. The terminus of the proposed road would end in the lands of J. Millar Nicol, which are described by Mr. Nicol and the other witnesses whose depositions are taken in this case as being located on a hillside and being vacant, unimproved and overgrown with cedar trees and brush. Mr Nicol's lands comprise about three-acres. The land of Mr. Freeman is quite similar to that of Mr. Nicol. His land is also unimproved, uncultivated and in large part consists of swamp.

Beginning at the rear of the lands of both Mr. Freeman and Mr. Nicol there is a wooded ridge or mountain extending back about three-quarters of a mile. So that the proposed road would end at the slope of this mountain, and at a great distance from any other public road or any building whatever. It would be a *cul-de-sac.*

This petition was presented to the Township Committee under the provisions of Chapter 166 of Laws of 1914, page 310, etc., and the action of the Township Committee on the petition was purported to be in accordance with that act.

The actions and proceedings of the Committee appear in the return made by the Township Clerk to the writ of certiorari (pp. 3-14).

The Committee, upon receiving the petition for the laying out of the road on August 5, 1915, directed the Clerk to post notices that the ordinance would be taken up for consideration at the committee meeting on September 2nd, 1915, and for receiving and hearing objections to the proposed improvement.

On September 2nd, 1915, the prosecutor-appellant appeared by attorney at the committee meet-

ing and objected to the improvement and requested an opportunity to be heard in opposition to the proposed ordinance. Eleanor Hughes Butler and Flora Hughes Smith, who are the owners of property that the proposed road would front for its entire extent, and whose lands would be affected by the ordinance, also appeared by attorney and made a like objection and request to that of the prosecutor-appellant. The prosecutor-appellant and the other property owners above mentioned, making such objections and request, stated that they had no notice of the introduction of the ordinance before the previous day, September 1st, 1915, and that they requested a postponement for a reasonable time to present their reasons and evidence in opposition to the ordinance. They contended that there was no public necessity for the road and that the Committee had no authority to lay out a public road at that place, 30 feet wide—the law required 33 feet as the minimum width in such a place. Their request was refused and the Committee thereupon immediately passed the ordinance.

It is admitted that no notice was given by the Township Committee to the owners of the land that would be affected by the ordinance, except the notices posted at the hall where the Committee held their meeting, at Wyckoff, and in four post offices situate in the township.

WE CONTEND THAT THE ORDINANCE WAS NOT LEGALLY PASSED BY THE TOWNSHIP COMMITTEE, AND THAT THE SAME IS NULL AND VOID.

1. *The notice required and intended by the statute to be given to owners of property to be affected by the proposed road was not given to the owners in this case.*

It is true that the act under which this ordinance was introduced prescribes the manner in which the

Clerk shall give *public* notice of the proposed improvement. The notice to be given to *private persons,* whose lands would be affected by the proposed improvement, is prescribed by another act of the Legislature, viz.: "An Act Concerning Townships" (Revision of 1899), 4 *C. S.,* p. 5563, etc.; Section 21 of the above-mentioned act prescribes:

> "No ordinance providing for the changing of the grade of any sidewalk, street or highway, or any part thereof, *defining or establishing the boundaries thereof,* compelling the removal of any encroachment that may be thereon, or providing for constructing, curbing, recurbing, paving, relaying or repairing any sidewalk or gutter, shall be adopted until notice of the time and place when said ordinance will be considered shall be given to the owner or owners of the lands in front of or bordering which such encroachment may exist or such improvement be proposed; this notice shall be written or printed and shall state, generally, the object of said proposed ordinance, and shall be served upon said owner or owners at least ten days before the date fixed for the consideration of said proposed ordinance, in the following manner: by personal service; or by mailing to the post office address of said owner; or by publication, for one insertion in a newspaper printed in the county and circulating in the township; or by posting in five of the most public places of the township, at least one of which shall be in front of or upon some portion of the premises in front of or bordering which such improvement shall be proposed; the affirmative vote of all the members of the committee shall be necessary for the adoption of such proposed ordinance."

The purpose of giving public notice of an ordinance is to apprise the taxpayers of the municipality so that they may approve or oppose the expenditure of money for such improvement. Such notice was given by the Township Committee of the introduction of this ordinance, *but they failed to give the notice to the owners of the property through which the proposed road would pass that the statute directed them to give.* There is no denial of this fact. The Clerk testifies (p. 21) that he gave no other notice than by posting the notices in five places in the township; that no notice was posted on the lands through which the proposed road would run (p. 21), and that he did not give any written notice or mail any to the prosecutor-appellant (p. 21).

We insist that this failure to give the prescribed notice is fatal, and for that reason the ordinance must be set aside.

The mischievous result of this failure to give the prescribed notice is apparent from the testimony of the prosecutor-appellant and the attorney representing the other owners of land through which the proposed road would pass. This testimony shows that the prosecutor-appellant had no knowledge of the intention of the Committee to consider the passage of the ordinance until the afternoon of the day next preceding the date on which it was passed. He was, therefore, prevented from properly presenting to the Committee his evidence and reasons in opposition to the ordinance. The same is true as to the other owners whose lands would be affected.

When the attorneys for the owners stated that fact to the Committee and requested an adjournment, they were peremptorily refused (pp. 52, 53). Mr. Quackenbush, one of the Committee, testifies (p. 40) that the Committee refused the request to

adjourn the meeting because "they had notice enough."

Our Constitution and our law will jealously guard the right of private property. Those who attempt to take it for public use, whether they be private or municipal corporations, must comply strictly with every condition, direction and limitation prescribed by the Legislature of our State. In the case at hand the Township Committee, by the passage of this ordinance, ignored the prosecutor-appellant's right of private property, and arbitrarily, and without the sanction of the law, proceeded to appropriate a great part of his land for public use. Our courts will not permit any such unlawful exercise of this power of *eminent domain.*

It would seem needless to refer to any authority in support of our contention, but attempts to take private property unlawfully for public use have been so often tried and frustrated in our State that we respectfully call this Court's attention to a few of those cases.

In *Railroad Co.* v. *Cape May,* 58 *L.,* p. 570, the Supreme Court said:

> "The resolution and ordinance were adopted without notice to the prosecutor and without affording an opportunity for a hearing. The return and evidence show this to be true, and, under the circumstances of this case, this omission renders the proceedings of the City Council in the matter fatally defective. This error is a fundamental one."

The judgment of the Supreme Court, setting aside the ordinance in that case, was affirmed by the Court of Errors and Appeals (60 *L.,* p. 224).

In *Traction Co.* v. *North Arlington,* 67 *L.,* p. 161, it is held that:

> "Where a municipal ordinance is proposed to be adopted, by which valuable property rights would be injuriously affected, notice to the property owner is a necessary prerequisite to its passage."

If it should be argued by defendant that the prosecutor-appellant had constructive notice of the proposed ordinance, we refer to the section of the statute already quoted (*supra*) which prescribes the mode of service of such notice, to wit: personal service, or by mailing, or by publication, or by posting in five of the most public places in the township, *at least one of which shall be in front of or upon some portion of the premises in front of or bordering which such improvement shall be proposed.*

No notice by either of these modes was given to the prosecutor-appellant or to any of the owners whose lands would be affected by the ordinance. The ordinance is therefore null and void.

2. *The proposed ordinance was not legally passed.*

Paragraph 3 of Chapter 166, Laws of 1914, page 311, prescribes that "the Township Committee upon receiving application and the introduction of the ordinance for making of such improvement, shall cause the clerk to give public notice of such proposed improvement, and fix a time to receive and hear objections thereto."

This passage of the act must be construed as requiring notice to be given of the proposed improvement and the introduction of the ordinance. The resolution (p. 6) is in keeping with this con-

struction. It is also provided in Section 3 (*supra*) that the Committee, after such hearing, shall not proceed or take any action to pass the ordinance unless they deem the improvement a public necessity.

There was no hearing had by the Township Committee of the objections to the ordinance. The Committee merely filed the written objections, and refused to hear any evidence as to the question whether or not the road was a *public* necessity. This question cannot be arbitrarily decided by the Committee without hearing evidence. Their refusal to hear evidence in support of the objections makes the ordinance void.

3. *The prosecutor-appellant, as well as the owners of property affected by the ordinance, were not permitted by the Township Committee to present their objections to the ordinance and the denial of their right to do so by the Committee was illegal and it vitiates the act of the Committee in passing the ordinance.*

There is no denial by defendant of the fact that the property owners appearing in opposition to the ordinance were peremptorily refused an opportunity to give their reasons and evidence in support of their ground of opposition. This is admitted by defendant. (See testimony of the Township Clerk, p. 22; of Peter Quackenbush, a member of the Committee, p. 40; of William Rosenkrans, Esq., p. 52, and of Charles B. Dunn, Esq., p. 73.)

The property owners were condemned without a hearing.

This refusal of the Committee, when it knew that no effective and legal notice had been given to the objectors, was a high-handed and unconscionable abuse of power. We are confident that this Court

will not approve such conduct, but will declare it to have been arrogant, unreasonable and illegal.

Under this point the Court must keep in mind the fact that, on November 25th, 1914, the same Committee, after hearing evidence, unanimously denied this same application *because it was not a public necessity* (Case, p. 17, l. 40; pp. 39 and 40). No new facts since that decision were presented. The conditions there (p. 30, l. 30) had not changed. Their act in passing the ordinance was taking the law in their own hands.

The judgment of the Supreme Court should be reversed for the reasons hereinabove set forth.

The Supreme Court evidently believed that the posting of the notice of the ordinance in five public places in the township was sufficient notice to the objectors; but it apparently overlooked the requirement of Section 21 of the Township Act (4 *C. S.*, p. 5563), which we have already referred to. We insist that the act requires the serving of the notice on the owners of the property affected by the proposed road personally or by mailing or by publication, or by posting in five of the most public places in the township, at least one of which shall be in front of or upon some portion of the premises to be affected. No such notice was given in this case.

> "Every provision of the statute conferring the power of eminent domain must be strictly complied with and such compliance must affirmatively appear on the face of the proceedings."
>
> *Manda* v. *Orange*, 75 *L.*, 251.
>
> "It is the right of a land owner especially affected by a public improvement to be informed by notice of the time and place appointed for the meeting of the council to consider their proposed action."
>
> *Groel* v. *City of Newark*, 78 *L.*, 142.

The depositions show that the objectors did not receive the statutory notice of the ordinance. That the prosecutor-appellant's attorney first learned of the proposed ordinance on the evening of the day prior to its passage; that he immediately went to prosecutor-appellant's house and found him to be in a sick and weak condition and unable to appear before the Committee the following day; that he, together with the attorney of the other objectors, appeared before the Committee the following day, September 2nd, and stated to them that Mr. Voorhis was sick and requested them to adjourn the matter, to give an opportunity to the objectors to be heard. This request was refused and the Committee then passed the ordinance (Case, p. 73).

This action of the Committee was clearly illegal. It was such procedure that our Court condemned and set aside in the case of *Railroad Co.* v. *Cape May,* 58 *L.,* 570, above referred to.

See also cases cited in this opinion.

4. *The ordinance is fundamentally defective for the reason that it attempts to lay out and open a public road of a width less than is required by law.*

No further argument is called for in connection with this point. The law requires a public road to be at least 33 feet wide—this is only 30 feet wide. The power to take private property for public use is vested only in the State under its right of eminent domain. When such power is exercised it is carefully shielded by restrictions and limitations. And among those restrictions we find this in relation to the taking of private property for the use of a public road. The Road Act, 4 *C. S.,* paragraph 76, page 4462, prescribes:

> "That every public road or highway which shall hereafter be laid out or altered shall

not be laid more than one hundred feet wide, *nor shall any such road be less than two rods wide,* unless the same be laid out in a city, town, village or borough, and where, by reason of buildings or other permanent erections, such road cannot be conveniently laid out of such width."

This act has not been repealed or amended.

The proposed ordinance lays out a public road 30 feet in width and would take private property for a public use not permitted by our Constitution or laws. *This reason alone is sufficient to void the ordinance.* A public road must be two rods wide. This road is not within the exceptions. It is laid through an open field; there are no buildings or obstructions along the line (Valentine, pp. 35 and 36; Fletcher, p. 30; Smith, p. 33). It leads to no other road or dwelling.

We contend that the ordinance is void for the reason that it attempts to lay out a public road of the width of 30 feet, whereas the General Road Act requires such road to be not less than 33 feet in width.

The opinion of the Supreme Court asserts that the Road Act is superseded by the Township Act. If that be true, there can be no limit that may be fixed for the width of public roads. That would be left to the interest, opinion or whim of a township committee. They might lay out roads 150 feet wide, or as narrow as 15 feet. Yet the Constitution wisely provides (Art. IV, Sec. VII, par. 11) that no special legislation can be enacted in the matter of "laying out, opening, altering and working roads or highways."

The provision of the General Road Act relative to the width of public roads in townships has not been repealed or amended.

The case of *Saulsbury* v. *Guskin,* 37 *Vr.,* 111; 66 *N. J. L.,* cited in the opinion of the Supreme Court, does not apply to the case at bar. The point raised here as to the legal width of a public road was never considered there.

In that case it was a question of the exercise of a right conferred upon a local municipality by express enactment in its charter or by the Court of Common Pleas. There was no reference to the Road Act. *The width of the road was not at all in question.*

A public road in a township must be at least 33 feet in width. No statute now in force authorizes a public road of less width than 33 feet in a township and an ordinance to lay out such a road is a nullity.

5. *The ordinance is unreasonable and therefore void.*

The evidence shows that the only persons whose property would be benefited by the proposed road are the witnesses Freeman and Nicol. These persons do not reside in the township, and the land they own is described as unimproved, uncultivated and lies remote from any highway or building, along the side of a mountain. That part of the township where these lands are located and where the proposed road would be laid, is occupied by farmers only, and the land is used for farming and no new buildings have been erected in the neighborhood for many years past (pp. 29 and 30, 33, 36, 37). There are sufficient roads in that part of the township for the use of the public (p. 37).

We contend that an ordinance to lay out a public road, under such a state of facts, such ordinance requiring the taking of valuable private property and the expenditure of public money, is unreasonable and should be set aside by this Court for that

reason. Certainly it cannot be urged that there is any reasonable public necessity to open a public road through valuable private property just to enable persons to gain access to remote, unimproved and unoccupied tracts of mountain land. Such persons should apply for a private road. *This ordinance would actually use the public money for private gain.* The owners of these tracts knew their location and should have known whether or not they were accessible by any road or way (pp. 64-68) at the time of purchase. The taxpayers of the township should not be burdened with the cost of this road for the benefit of private property.

There is still another reason why this ordinance is unreasonable. These two tracts owned by Mr. Freeman and Mr. Nicol are part of a farm formerly owned by one Hennion (pp. 45, 63). Hennion used a driveway or lane from the Ponds Church Road in going back to the rear of his farm, where these tracts are located (p. 45). When parts of this farm were subsequently sold the purchasers acquired, by law, a right of way through the Hennion farm to those tracts. In *Heiser* v. *Martin,* 9 *N. J. L. J.,* p. 277, the Court held that "where a man sells all but one of his lots, surrounded by the others which he has sold, the law reserves to him a right of way to that lot over the land he had sold. This is so, although no reservation of such right of way over the land he had sold be expressed in the conveyance."

The right of way reserved by law to the prior owner is a right that runs with the land and is now vested in the present owners of those two tracts.

Mr. Freeman, one of the owners, admits that he never tested in the courts his right to this way over the Hennion tract, which fronts on the Ponds Church Road, part of which he now owns (p. 65). Mr. Nicol, the owner of the other tract, always con-

sidered that he had a right of way (p. 68) to this property from the Ponds Church Road through the Hennion land.

These owners cannot impose a burden on the public and take private property for a public road when they have at least a colorable title to a right of way, the possession of which they have never asserted or attempted to use. A private road is not obtained at public expense.

This ordinance would apply to their use the public money to enable them to avoid the hazard and expense of a law suit or the expense of a private road. Such an ordinance the Township Committee has no right to pass. There is no public necessity for this road. It would benefit no one except the two owners of these tracts (p. 36, l. 20). The ordinance is unreasonable. It is an imposition upon the public. "An ordinance to be good must be reasonable." *Long* v. *Jersey City,* 37 *L.,* 348.

6. *The Township Committee abused its right to take private property for public use.*

The testimony shows that an attempt was made, about one year ago, by the owners of these two tracts to have the Committee pass an ordinance to lay out this proposed road. At that time the owners of the lands that would be affected by the said road learned of the intention of the Committee to consider the ordinance in time to appear prepared to present their objections to its passage. Upon hearing evidence and the reasons of the objectors the Committee unanimously decided that the road was not a public necessity and refused to pass the ordinance. The members of the Township Committee then are the same who comprised the Committee when the ordinance under review was passed (pp. 17, 18, 19, Clerk's Deposition, and p. 38, Quackenbush's Depositions).

No change of conditions has taken place since the time the first ordinance was refused, in 1914, until the passage of this ordinance. This is admitted. See deposition of Mr. Quackenbush (p. 41), and no cause appeared to the Committee why there was any more reason for the laying out of this road in 1915 than there was in 1914, when the same committee declared that it was not a public necessity (p. 41). No evidence was considered by the Committee upon which it declared this road a public necessity (p. 53), and its action in passing the resolution that it was so is nugatory for that reason. The members of the Committee did not even inspect the premises where the proposed road was to be laid out (p. 40, bottom). It was simply granting a favor to private property owners at the expense of the public.

We contend that the judgment of the Committee that the road is a public necessity, not being supported by a particle of evidence, is void, and the passage of this ordinance over the objections of more than one-half of the abutting property owners is a nullity, and contrary to the statute. It is an abuse of judicial discretion. The whole road is 2,219 feet in length—and of this 1,367.07 feet is through the land of the prosecutor-appellant (pp. 4-7).

The opinion of the Supreme Court holds that the Court must assume that the Committee considered the objections filed.

It is difficult to see how that can be assumed in face of the testimony of the Township Clerk and of the member of the Committee, Mr. Quackenbush, both of whom testified (pp. 22 and 40) that the Committee refused to hear any reasons or evidence on the part of the objectors.

The filing of the objections by the Committee cannot be construed as a hearing of the objections.

7. *The ordinance is defective for other reasons hereinafter mentioned.*

We contend that either of the six reasons above set forth is in itself sufficient to have this ordinance set aside. In addition to those reasons, let us point out some other defects in the passage of the ordinance which render it void under the statute. For example:

(a) The ordinance is not signed by the Clerk in the ordinance book (see the Return, p. 14). This the law requires to be done (*P. L.,* 1915, Chapter 185, p. 348).

(b) Neither was it published in a newspaper, as required by the same act (see *Clerk's Testimony,* p. 23, l. 31).

An ordinance has the force of a general law passed by the Legislature (*Bohan* v. *Weehawken Twp.,* 65 *L.,* 490), and it follows that all the exactness of form and substance prescribing its passage must be strictly adhered to, else it is without any force.

The above omissions of the statutory requirements for the passage of the ordinance render it void.

8. *The defendant-appellee's contentions are not supported by the law or the facts.*

1. The defendant-appellee argues that notwithstanding the requirement of the General Road Act that no public road can be laid out of a width less than two rods, that the Township Committee may, by virtue of the authority given it by the Act of 1914, under which it passed the ordinance, disregard the provisions of the Road Act, and lay out a road of less width than two rods.

Now the act under which the Township Committee proceeded is entitled "A Supplement to An Act entitled An Act Concerning Townships" (Revision of 1899).

While this act contains a repealer, it certainly does not repeal the section of the Road Act prescribing the required width of a public road. This act merely directs the procedure to be followed by the Township Committee in laying out a public road and the provisions of the Road Act not inconsistent with this act are still in full force. We therefore insist that the ordinance under review is void for the reason that it purports to lay out a public road of a less width than the statute authorizes or permits.

If the Act Concerning Townships should have the effect ascribed to it by defendant, it would be unconstitutional because its object is not expressed in its title. We do not deem it necessary to cite any authority on this point. The constitutional provision is clear (par. 4, Sec. VII, Art. IV).

And, moreover, if the act relied upon by defendant authorized a township committee to lay out a public road 30 feet wide, the act would come within the inhibition of paragraph 11 of the same section of the Constitution, for it would be a special law in the case of "laying out, opening, altering and working roads or highways."

2. Defendant argues that inasmuch as the Township Committee passed a resolution that the road was a public necessity, that made it *ipso facto* a public necessity.

We quote the language of the resolution:

> "George Voorhis, Flora Hughes Smith and Eleanor Hughes Butler, having objected thereto in writing and it appearing probable

> that they are the owners of one-half of the property fronting within the limits mentioned in the application for said road or highway, we do hereby declare that we deem such road or highway to be a public necessity" (p. 11).

It is admitted that no evidence whatever was adduced before the Committee to show that the road was a public necessity (p. 40), and from the language of the resolution it would appear that the only reason the Committee had to declare it so, was the fact that the owners of one-half of the property to be affected by it objected to it. There were no facts to support the judgment of the Committee. Their action was *ultra vires.*

CONCLUSION.

We submit that the decision of the Supreme Court clearly indicates an erroneous conception of the questions raised against the proceedings under review. The guarantee that private property cannot be taken for public use without compensation, and then only by due process of law, seems to have been disregarded. The guarantee that no man shall be deprived of his liberty or his property without first having an opportunity to be heard, has also been overlooked. Here a strip of land 1,367 feet in length by 30 feet in width was to be taken from the farm of the prosecutor-appellant. He was anxious to be present and heard in oppositon. The Committee knew that other property owners were protesting against the improvement and desired to be heard and to produce testimony before action was taken. They knew that Mr. Voorhis was sick and could not be present on September 2nd, 1915

(p. 72), and that he desired to be heard (Dunn, p. 73; Rosenkrans, p. 50). An adjournment was asked for, to afford an opportunity to bring witnesses before them. Mr. Quackenbush, one of the Township Committee, testified (p. 40, l. 25), "We didn't grant it; the Committee said they had notice long enough and they didn't grant it." The Committee did not go over the location of the proposed road (p. 40, l. 40). The witness knew of no changes which had taken place since he voted against the passing of the ordinance in 1914. He had never been over the ground.

The Committee not only denied to these property owners and taxpayers a hearing, but admitted on the stand that they reached their decision without any facts or evidence on which to base the same. We cannot conceive how a court of review in this State, fully understanding the facts, can give approval to the action of this Committee. Bearing in mind that the ordinance itself is illegal, we insist that the judgment of the Supreme Court should be reversed and this ordinance declared null and void.

Respectfully submitted,

MICHAEL DUNN,
CHARLES B. DUNN,
MICHAEL J. MURPHY.

New Jersey Court of Errors and Appeals

GEORGE VOORHIS, Prosecutor-Appellant, vs. THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF FRANKLIN, IN THE COUNTY OF BERGEN, Defendant-Respondent.	On Certiorari. On Appeal from Supreme Court.

BRIEF OF DEFENDANT-RESPONDENT.

The purpose of the writ of certiorari in this case was to set aside an ordinance to lay out and open a public road in the Township of Franklin, adopted by the Township Committee of said Township on September 2nd, 1915. The ordinance is on page 13 of the Case.

The proceedings were had under a supplement to the Act Concerning Townships, approved April 14th, 1914 (Laws of 1914, p. 310).

The road begins in the southwesterly line of the Ponds Church Road and runs thence southwesterly along the dividing line between lands of William M. Smith (as stated in the ordinance) and William G. Butler (as stated in the ordinance) on the one side, and of George Voorhis, Forster W. Freeman and J. Millar Nicol on the other side; and goes

over the edge of lands of the three last-named persons. It is 30 feet wide and about 2,218 feet in length. (See map.)

It seems that Flora Hughes Smith, instead of William M. Smith, and Eleanor Hughes Butler, instead of William G. Butler, claim to be the owners of the lands on the westerly side of the road (Case, pp. 8 and 10). Said Flora Hughes Smith is the wife of William M. Smith (Case, p. 31, l. 28, etc.), and said Eleanor Hughes Butler appears to be her sister (Case, p. 61, l. 14, etc.), and it appears that the land now claimed by Mrs. Butler was formerly owned by Mr. Butler and came to her in some way upon his death (Case, p. 59, l. 1, etc.; bottom of p. 61 and top of p. 62).

The road passes over 1,367 feet before reaching the land of Mr. Freeman, and then goes 670 feet through Mr. Freeman's land before reaching that of Mr. Nicol.

Mr. Freeman's land comprises about 23 acres (Case, p. 56), and Mr. Nicol's about 3½ acres (Case, p. 68). Their lands are accessible only through this road. (As to Freeman: Case, p. 56, l. 16, etc.; as to Nicol: Case, p. 68; as to both: Case, bottom of p. 40 and top of p. 41.)

They desire to improve their said lands and build upon them, but cannot do so until they are rendered accessible by this or some other road. (As to Freeman, Case, p. 58, l. 18, etc.; as to Nicol, Case, p. 68, l. 1, etc.)

Their lands can be reached only by passing over the lands of Mr. Voorhis or those formerly of Mr. Butler, now of Mrs. Butler (see map), as just beyond them is a mountain (Case, p. 30, l. 19, etc.; p. 33, bottom). And the right or privilege of doing so is denied by Mr. Voorhis, and was denied by Mr. Butler before he died (Case, p. 59, l. 1, etc.; p. 65, l. 10, etc.).

The appellant's brief speaks of the land of Messrs. Freeman and Nicol to be reached by this road as unimproved and uncultivated. It is true they are unimproved and uncultivated, with the exception of some trees planted by Mr. Nicol on his land (Case, p. 59, l. 27, etc), and they will doubtless so continue until they are rendered in some way accessible. There is nothing in the testimony to show that they are not adapted to both building and farming purposes. Mr. Fletcher, one of the prosecutor's witnesses, who has a summer residence nearby, speaks of these lands as ordinary farm lands, "grown in cedars." The cedars and bushes can easily be cut off. Mr. Freeman's description of these lands is evidently correct (Case, p. 56, l. 21, etc.).

Case, p. 38, l. 28-2e.

The proposed road, 30 feet wide, is just what is needed there. It is true, as the appellant's counsel say, that it ends at the slope of a mountain, and is a *cul de sac*. The fact that it cannot go any further on account of the mountain shows good reason for not making it any wider. That it is a *cul de sac* is no objection to it as a public road.

Atkinson v. *Bishop*, 10 *Vr.*, 226, 228.

I will now proceed to a consideration of the points presented in the appellant's brief.

APPELLANT'S FIRST POINT.

The notice required and intended by the statute to be given to owners of property to be affected by the proposed road was not given to the owners in this case (Appellant's brief, p. 3).

It is admitted that the notice required by the act under which these proceedings were had was given (Appellant's brief, top of p. 5). But the contention is that the notice required by section 21 of the Township Act (C. S., p. 5579) should also have been given. No such objection is presented in the Grounds of Appeal filed; and not having been so presented, is not entitled to consideration here.

> *Suburban Land Company* v. *Vailsburgh*, 39 *Vr.*, 311.
> *Stanton* v. *Board of Education, Id.*, 496.

The Supreme Court in dealing with this point says:

> "We do not consider the legislation cited by the prosecutor (said section 21 of the Township Act) applicable to this situation, since the proceedings here are taken under a statute which provides a method of proceeding in townships. L. 1914, p. 310. The notice required to be given by the statute after the ordinance has been introduced, affords the required protection to property owners affected by the proposed improvement" (Case, p. 82, l. 31, etc.).

The counsel in referring in their brief to these remarks by the Supreme Court say that the court "apparently overlooked" this requirement of this section 21 (p. 9). Why, it was to this very re-

quirement that the court referred when it spoke of "the legislation cited by the prosecutor."

There is no doubt as to the correctness of the doctrine of *Groel* v. *City of Newark,* 78 *L.,* 142, cited by the counsel, that "it is the right of a landowner specially affected by a public improvement to be informed by notice of the time and place appointed for the meeting of the council to consider their proposed action", but such notice is required to be personal only when no constructive notice is provided for; and when a constructive notice is provided for, no personal notice is required. When a public notice is provided for, that is constructive notice and is sufficient. *State, Boice, Pros.,* v. *City of Plainfield,* 9 *Vr.,* 95. A public notice is provided for by the act under which these proceedings were had (Laws of 1914, p. 311, §3). And such notice was given (Case, p. 7, l. 1, etc.; p. 82, l. 30, etc.). The court was clearly right in holding that no other notice was required. And we will add, in respect to said section 21 of the Township Act, that it applies only to existing streets, and not to the opening of new streets.

APPELLANT'S SECOND POINT.

The proposed ordinance was not legally passed (Appellant's brief, p. 7).

Under this point there are two contentions, one of which is that the legislative provision providing that "the Township Committee upon receiving application and the introduction of the ordinance for making of such improvement, shall cause the clerk to give public notice of such proposed improvement, and fix a time to receive and hear objections thereto," must be construed as requiring two notices to

be given; one of the proposed improvement, and the other of the introduction of the ordinance for the improvement. As to this contention the Supreme Court said: "It is only after the petition is received and the ordinance introduced that notice is required to be given of the proposed improvement" (Case, p. 82, l. 23, etc.). That the court was right in this is too clear for dispute. The other contention under this point is that there was no hearing by the Township Committee of the objections to the ordinance. The response to this contention is given under the appellant's next point.

APPELLANT'S THIRD POINT.

The prosecutor-appellant as well as the owners of property affected by the ordinance were not permitted by the Township Committee to present their objections to the ordinance, and the denial of their right to do so by the Committee was illegal, and it vitiates the act of the Committee in passing the ordinance (Appellant's brief, p. 8).

No such point is stated in the Grounds of Appeal filed. The one nearest like it is sub-division (d) to first Ground of Appeal stated (Case, p. 85), but that relates to the time of the introduction of the ordinance, while this relates to the time of the passage of the ordinance. But the statement made under this point is not true in fact. The appellant and owners of property affected by the ordinance here referred to are Mr. Voorhis (the appellant), and Mrs. Smith, and Mrs. Butler. They were all represented at the meeting appointed for the hearing of objections. Mr. Charles B. Dunn represented

the appellant (Case, p. 52, l. 1, etc.), and Mr. Rosenkrans represented Mrs. Smith and Mrs. Butler (Case, p. 50, l. 40, etc.), and they were all heard all they had to say (Case, p. 25, l. 31, etc.; p. 53).

It appears from the testimony referred to by the counsel under this point that this objection is, not that the parties were not heard, but that the Committee refused to adjourn the hearing to some future time so that they could be heard again, or more at length. This refusal to adjourn is not set out in the Grounds of Appeal as one of the objections to the ordinance, and is therefore not entitled to be considered here. There is, however, no foundation for the claim that those parties did not have sufficient notice of this hearing, and were therefore entitled to another hearing. The appellant in his first testimony said he could not say how many days it was between the time he heard of the meeting and the time of the meeting (Case, p. 46, l. 28; p. 47, l. 15). It is true he afterwards said he thought he was speaking then of the ordinance of 1914 (Case, pp. 70 and 71). A reading of his testimony just referred to will show that it was the ordinance now in question and not the ordinance of 1914 that was then being spoken of. But notice of the meeting in question was telephoned to Dunn's office and directly to Mr. Michael Dunn by Mr. Smith a week before it was held (Case, p. 75, l. 29, etc.). This Michael Dunn is one of the counsel who signed appellant's brief. Notice to his counsel was notice to him. There is no doubt that Mr. Smith looked after the interest of his wife and Mrs. Butler in the matter. It was he who employed Mr. Rosenkrans to act for them therein (Case, p. 50, bottom), and he signed Mrs. Butler's written objections for ~~him~~ her as her attorney (Case, p. 8), and he admits that Mr. Freeman told him

about the matter (Case, p. 75, l. 5, etc.), and that he did so the first week in August (Case, p. 76, l. 27, etc.). This must have been very soon after the ordinance was introduced, which was on the 5th of the month (Case, p. 4). The fact that Mr. Freeman then told Mr. Smith about the matter shows that there was no underhanded work therein. Mr. Freeman said he did this in pursuance of a promise he had made Mr. Smith (Case, p. 60, l. 25, etc.). Mr. Freeman also says he asked Mr. Smith to see Mr. Voorhis or Mr. Dunn, his attorney, and he said he would (Case, p. 61, l. 1, etc.). Mr. Smith denies this last part of the conversation (Case, pp. 74 and 75), and Mr. Freeman reaffirms it (Case, p. 78).

There was really no occasion for further hearing on the subject. It was a simple proposition, whether this road, absolutely necessary to making about 26 acres of land accessible and available, should be laid. The testimony of a hundred witnesses that the road was not a necessity to the general public would not have altered the case.

As to this matter of a further hearing, the Supreme Court said: "The ordinance was introduced August 5, 1915, and the hearing fixed for September 2, 1915, and there is nothing in the act which would indicate that the legislature contemplated an adjournment" (Case, p. 83). It is quite likely that, if the adjournment had been granted, the ordinance could have been set aside on that ground, no power to adjourn having been given in the act (Laws of 1914, §3).

APPELLANT'S FOURTH POINT.

The ordinance is fundamentally defective for the reason that it attempts to lay out and open a public road of a width less than is required by law (Appellant's brief, p. 10).

The meaning of this statement, as appears from the brief, is that the law requires a public road to be at least 33 feet wide, while the road in question in this case is only 30 feet wide. This point is based upon section 76 of the General Road Act, 4 C. S., p. 4462. That section provides that a public road shall not be less than two rods wide except in cities, towns, villages and boroughs, etc. Section 77 of the act provides that private roads shall not be more than 30 feet wide. The proceedings for laying out both public and private roads are prescribed in the act. Those for a public road are initiated by application of ten or more freeholders (section 1 of the act), and those for a private road are initiated by application of a person desiring it (sec. 1). But in both cases the roads are laid with a view to public as well as private convenience (sec. 5). And in both cases the roads are for public as well as for private use. *Perrine* v. *Farr*, 2 *Zab.*, 356, 363; *Allen* v. *Stevens*, 5 *Dutch.*, 509, 511; *Parmley* v. *White*, 6 *Vr.*, 203. For it is the fact that a private road is for public use as well as for private use that enables land to be taken for it (same authorities). The difference between a private road and a public road consists in the manner of application for the same as above stated (*Perrine* v. *Farr, supra*), and the fact that the public is not bound to keep a private road, as it is a public road, in repair (*Allen* v. *Stevens, supra*). Upon the passage of the act of 1914, under which

these proceedings were taken, all power to lay out and open roads in the townships under the General Road Act ceased, and all such proceedings had to be taken under the other act.

Salsbury v. *Gaskin,* 37 *Vr.,* 111.

There is no distinction between public and private roads laid out and opened under this act of 1914; all are public roads, no matter what the width may be; all are laid out and opened under precisely the same application and through precisely the same proceedings; and all so laid out and opened have to be kept in repair by the public. There can, therefore, be no such thing as a private road, as above described, laid out and opened under the act of 1914. And so if no public road can be thus laid out and opened of less width than 2 rods, then no road of less width than that can be laid out and opened under that act. It follows, if such view is correct, that although there could be roads of less width than that laid out and opened in townships before that act was passed, none can be after the passage of that act. Such a view of the matter is clearly an absurd one.

The correct view is, that as by virtue of the act in question the authority to lay out and open roads is taken from the provisions of the General Road Act and vested in the Township Committee, such authority carries with it everything relating to that matter, including the determination of the width of the roads so laid out and opened. For it is well settled in this state that when such authority is conferred by charter or special law upon a municipality, the General Road Act does not apply.

Cross v. *Morristown,* 3 *C. E. Gr.,* 305, 308.
Taintor v. *Morristown,* 2 *Vr.,* 57, 61.
Bodine v. *Trenton,* 7 *Vr.,* 198, 201.

Said section 76 of the General Road Act excepts from its width restriction of public roads all cities, towns, villages and boroughs, as already mentioned. The reason it does so is that such places, even when existing by virtue of charters or special laws, unless such charters or special laws confer upon them authority to lay out and open roads, etc., are subject in respect thereto to the General Road Act, and so to exempt those of them so subject to the General Road Act from such width restriction, they were thus expressly excepted therefrom. But as soon as such powers are conferred upon such places, they are no longer subject to the General Road Act in respect to the subject-matter thereof.

> *Pancost* v. *Troth,* 5 *Vr.,* 377.
> *Rogers* v. *Troth,* 7 *Vr.,* 422.

The Supreme Court in dealing with this subject says:

> "We conclude the act of 1914 supersedes the provisions of the General Road Act upon the subject, and vests the necessary power for that purpose in the Township Committee," citing *Salsbury* v. *Gaskin,* 37 *Vr.,* 111 (Case, p. 83).

The appellant's counsel think the Supreme Court erred in this matter. They urge four grounds for this view. The first is, that if it be true that the Road Act is superseded by the Township Act, "there can be no limit that may be fixed for the width of public roads. That would be left to the interest, opinion or whim of a township committee. They might lay out roads 150 feet wide, or as narrow as 15 feet." The second is, that giving the Township Committee that power would be a violation of the provision of the constitution that no special

legislation can be enacted in the matter of "laying out, opening, altering or working roads or highways"; the third is that the provisions of the General Road Act relative to the width of public roads in townships has not been repealed or amended; and the fourth is that the case of *Salsbury* v. *Gaskin,* cited by the Supreme Court, does not apply to this case. The first ground relates merely to a matter of public policy. If, as the counsel claim, that policy is a bad one, the remedy is to be sought in the legislature. The courts merely construe the statutes as they find them; they do not amend them even by construction. As to the second ground, it is enough to say that as the act in question applies to all townships, it is general and not special legislation. The third ground is completely met by the fact that it is not necessary for a superseded law to be expressly repealed or amended in order to give full effect to the law superseding it. As to the fourth ground: The point in support of which the case of *Salsbury* v. *Gaskin* was cited by the court is that the act of 1914 superseded the general provisions of the Road Act upon the subject of the opening of roads in the townships. The counsel does not think the act applicable to this case because the width of a road was not in question in that case. The matter in question in that case was whether the act there involved superseded the General Road Act upon the subject of private roads, and the court held that it did. If such an act supersedes the provisions of the General Road Act in the matter of private roads, it is difficult to see why it does not do so in respect to the matter of the width of roads. The established principle is that special legislation upon a particular subject supersedes general legislation upon the same subject. State, *Taintor* v. *Morristown,* 4 *Vr.,* 57, 61. And legislation upon the subject of roads, whether gen-

eral or special, includes the establishing of the width of roads as well as the matter of the laying out of roads whether public or private. See *Taintor* v. *Morristown, supra,* in which the matter of the width of a sidewalk was involved and the question was, which prevailed, the provisions of the General Road Act or the provisions of the Charter of Morristown.

APPELLANT'S FIFTH POINT.

The ordinance is unreasonable, and therefore void (Appellant's brief, p. 12).

This point is based on two grounds, the first of which is that there is no "reasonable public necessity" for the road. And the reason stated why there is no "reasonable public necessity" for the road is that its only purpose is, to use the counsel's own language, "just to enable persons to gain access to remote, unimproved and uncultivated tracts of mountain land." Reducing this language to the present case, it means that there is no "reasonable public necessity" for a road giving access to the 26 acres of land owned part by Freeman and part by Nicol, for the reason that such lands are mountain lands, remote, unimproved and unoccupied. Now these lands are not mountain lands. Mr. Freeman's land, being much the largest tract, does not reach to the foot of the mountain, and Mr. Nicol's land is only partly on the side of the mountain (Case, p. 56, l. 37, etc.). Nor are these lands remote. As I have already stated, it is only 1,367 feet from the Ponds Church Road to Freeman's land, and Nicol's land is only 670 feet further on. It is a pity the counsel cannot argue their case

without resorting to hyperbole. It is true these lands are unimproved, with the exception of the planting of a few trees by Mr. Nicol on his land, and also unoccupied, and of course they will remain so until they are rendered accessible.

Although one of the Grounds of Appeal is that there is no public necessity for the proposed road, such ground is not presented as a distinct point in the counsel's brief. The reason is obvious.

The second section of the act in question provides that

> "if at the time and place so specified (for the hearing of objections), the owners of one-half of the property fronting within the limits mentioned in said application object thereto in writing, the Township Committee shall not proceed to pass such ordinance unless said Township Committee shall deem the same to be a public necessity" (Laws of 1914, p. 313, last part of Section 2).

At that time and place a resolution was passed by the Committee which ended as follows:

> "George Voorhis, Flora Hughes Smith and Eleanor Hughes Butler, having objected thereto (the proposed improvement), in writing, and it appearing that they are the owners of one-half of the property fronting within the limits mentioned in the application for said road or highway, we do hereby declare that we deem such road or highway to be a public necessity" (Case, p. 11).

It was after the passage of this resolution by a unanimous vote that the ordinance was finally passed, also by a unanimous vote (pp. 11 and 12).

The statute does not say there must be in such a case a public necessity for the road, but only that the Township Committee shall deem the same to be a public necessity; and the Township Committee having so declared, the court will not go behind the declaration, unless there is something illegal about their action. The Supreme Court, dealing with this subject, says:

> "The act makes the Township Committee the judges as to whether a public necessity for the road exists, where one-half of the property owners affected by the road object. In this case there were objections filed, which we must assume the Committee considered, and by the passage of the ordinance the implication is that the Township Committee deemed the road to be a public necessity."
> Case, p. 83, bottom etc.

It would appear from this that the resolution mentioned was in fact unnecessary.

The counsel understand the situation perfectly. They know very well it would not be of any use for them to attempt to show that there was an error of judgment on the part of the Committee in the matter; that is a question the court would not even consider; therefore they attack the ordinance on the ground that it is illegal. And here they maintain that the ordiannce is illegal because unreasonable It is perfectly clear, however, that under the facts of this case as they actually are, this ordinance, instead of being unreasonable, was an exceedingly reasonable exercise of the discretion of the Township Committee.

> "Where an ordinance is within the powers granted to the municipality in its charter, the presumption is that it is reasonable, and the judicial power to declare it void can be

> exerted only when, from the inherent character of the ordinance, or from evidence taken showing its operation, it is demonstrated to be unreasonable."
>
> *Traction Co.* v. *Elizabeth,* 29 *Vr.,* 619, 622.

I will add, although I do not think I am required to go into the matter, that this case comes within the meaning of the term "public necessity," if it is needed for the convenience of so much of the public as may have occasion to use it. *New Jersey R. R. etc. Co.* v. *Hancock,* 6 *Vr.,* 537, 545, etc.; *Gregory* v. *Jersey City,* 7 *Vr.,* 166, 167 and 168; *Ellerman* v. *Chicago Junction Railways etc. Co.,* 4 *Dick. Ch.,* 217, 241, etc.; *Penna. R. R. Co.* v. *Elizabeth,* 12 *Vr.,* 319, 321; *Newark* v. *Vernon Township,* 30 *Vr.,* 94, bottom; *National Dock R. R. Co.* v. *Central R. R. Co.,* 5 *Stew. Eq.,* 755, 765; *De Camp* v. *Hibernia R. R. Co.,* 18 *Vr.,* 43, 46; *Atkinson* v. *Bishop,* 10 *Vr.,* 226, 228; *Randolph on Eminent Domain,* p. 53. The reference to Randolph is to this statement therein: "If a use is public in point of law, it is immaterial that comparatively few persons will in fact actually enjoy its benefits." That this road is so needed is perfectly clear. The court in the case of *Salsbury* v. *Gaskin* said:

> "Public necessity must exist for the laying out of a private road. The surveyors must certify that in laying it they had regard to public convenience. Such roads are public in their character and uses." 37 Vr. 113, near bottom.

There can be no doubt that at least as many persons would have occasion to use this road as have occasion to use the generality of private roads that have been laid out legally under the Road Act.

The counsel say: "Such persons should apply for a private road" (p. 13). It would not make any difference if they did, for public necessity is required just as much in one case as in the other, as already shown. And if we were applying for a "private road," such road would take this strip of the appellant's "valuable private property," about the taking of which in this matter the counsel make so much ado, just the same. Under the Road Act, if now available, either Mr. Freeman or Mr. Nicol could apply for this same road to his particular land alone. Surely, such a road would not be any more of a "reasonable public necessity" in that case than it is in this case. The fact is that an application was made about three years ago under the Road Act for the laying out of a private road over this property of the appellant, but it was found that the provisions of that act under which private roads were laid out had been superseded, so that such private road could not be laid out under it (Case, p. 63, l. 11, etc.). It was this very case of *Salsbury v. Gaskin* that knocked the application out of court. Freeman and Nicol, or either of them, cannot therefore apply for a private road under the Road Act, and they certainly cannot apply for a private road under the act under which these proceedings were had, for all the roads laid out under that act must without a question be public roads.

The other ground upon which the counsel based this point was that Freeman and Nicol already have a right-of-way over the land now owned by Mrs. Butler. Upon this point the counsel say:

> "These two tracts of land owned by Mr. Freeman and Mr. Nicol are a part of a farm formerly owned by one Henion (pp. 45, 63). Henion used a driveway or lane from the Ponds Church Road in going back to the rear of his farm, where these tracts are lo-

> cated (p. 45). When parts of this farm were subsequently sold, purchasers acquired, by law, a right-of-way through the Henion farm to those tracts."

The trouble with the counsel's statement, and consequently with his law, is that the statement is not according to the facts. Mr. Henion did not own the whole of this "Henion farm." All that he owned was what are now the Freeman and Nicol tracts. The rest of this "farm," now owned by Mrs. Smith and Mrs. Butler, were owned by Mrs. Henion, and were given by her one part to her son and the other part to her daughter (Case, pp. 44 and 45). Therefore, this right-of-way of his, if any he had, was over his wife's land to his land. And it does not appear that he ever sold either of the tracts he did own; he certainly did not sell the Freeman tract, for Freeman evidently purchased that tract of Henion's heirs in 1912 and 1913 (Case, pp. 57 and 58), and it does not appear when or how the land that belonged to Mrs. Henion passed to her son and daughter.

Then it is exceedingly doubtful whether a man can acquire a right-of-way over his wife's land by user. If he can, it must be by user adverse to her. It is not likely that there was such a user in this case. Certainly no such user now appears. Then if such a right-of-way now exists, and Freeman and Nicol should establish it by proceedings at law or in equity, they could use it only for the purpose for which Henion used it, that is, to go to and from vacant land; they could not use it in going to and from land they may have built upon. That such is the case is elementary. The rule is stated with illustration by Justice Joel Parker in the case of *Heiser* v. *Martin,* cited by the counsel, 9 *N. J. L. J.*, 277, 278. In that case the road would be of but

little benefit to Freeman and Nicol, and of no benefit to the public. Besides, it does not appear that this matter was brought to the attention of the Township Committee. Their action cannot be considered as tainted by unreasonablenes on account of a matter of which it does not appear they had any knowledge.

Any expense to the township in the maintenance of this road would be more than offset by the increased taxable value of the lands rendered accessible by the road. Indeed, such increased taxable value is, as I have already intimated, a strong reason for opening the road.

As to the taking of the appellant's valuable land for the road, it will be seen by looking at the map that a lane now runs through the greater part of his land so taken, and for the land so taken he will be paid. And it will be observed that he does not claim any other damage by the opening of the road than the taking of the strip of his land for such road (Case, bottom of p. 47 and top of p. 48).

APPELLANT'S SIXTH POINT.

The Township Committee abused its right to take private property for public use (Appellant's brief, p. 14).

This point is not set out in the Grounds of Appeal filed; it is another attack upon the validity of the ordinance.

This alleged abuse consists in the Committee's deciding that the road was a public necessity in 1915, when it decided just the opposite in 1914, without any change in conditions. The reversal of legislative action, even without any apparent reason therefor, is not an abuse of legislative power. Legislative power is abused only when its legiti-

mate limits are exceeded or it is applied to improper purposes. The point here pressed involves the motive of the Committee in reversing its previous action. Its motive may have been good in 1914 and bad in 1915; or it may have been bad in 1914 and good in 1915; or it may have been either good or bad at both times. But the motives of the Committee in this matter cannot now be questioned. *Kean* v. *Elizabeth,* 25 *Vr.,* 462, 466; *Moore* v. *Haddonsfield,* 33 *Vr.,* 386, 391. The reasons given by Mr. Quackenbush, one of the members of the Committee, and the appellant's own witness, for the action of the Committee upon this ordinance, would seem to show very good motive for such action (Case, p. 40, l. 28, etc.; p. 41, l. 5, etc.).

The statement of the counsel that the Committee refused to hear any reasons or evidence on the part of the objectors is not true. They refer to pages 22 and 40 of the Case in support of this statement; but all that appears there is that the Committee refused an adjournment.

It does not appear that any evidence was presented to the Committee in 1914. A protest was presented, signed by thirty-eight persons (Case, p. 18), who merely said: "We do not deem such a road necessary" (Case, p. 24, l. 20, etc.). At that time the Committee, according to the record, merely decided that the road was not a public necessity *at that time* (Case, top of p. 18). It is clear that the reason such action was then taken was that it was thought the parties would settle the matter among themselves. (See testimony of Mr. Quackenbush on p. 39 of Case, top; and then see the testimony of Mr. Smith at the bottom of p. 76 and top of p. 77.) The matter not having been settled in the meantime, the Committee did on the second application what it should have done on the first.

APPELLANT'S SEVENTH POINT.

The ordinance is defective for other reasons hereinafter mentioned (Appellant's brief, p. 16).

These reasons are: (1) The ordinance is not signed by the clerk in the ordinance book as required by law; and (2) The ordinance was not published in a newspaper as so required. It will be seen by looking at the statutory provision referred to in the brief that the signing of the ordinance by the clerk in the ordinance book is a mere formal matter which does not affect the validity of the ordinance; and that there is no time limited for such signing or for the publication. Either can be done at any time. Of course, the service of the writ in this case, and the prompt appeal after the entry of the judgment, stopped all other action in the matter. If the ordinance is sustained by this court, these formalities can be afterwards supplied.

APPELLANT'S EIGHTH POINT.

The defendant-appellee's (respondent's) contentions are not supported by the law and the facts (p. 16).

What is said under this point is a mere copy of the reply of our brief before the Supreme Court, and the matters stated therein are so fully covered by what we have already said that there is nothing left for us to say in respect thereto.

All Grounds of Appeal not urged in the appellant's brief I have considered as abandoned and so have not noticed them here.

It is respectfully submitted that the judgment of the Supreme Court should be affirmed.

GEO. S. HILTON,
Counsel for Respondent.

INDEX.

PLEADINGS, ETC.

TESTIMONY.

Supreme Court of New Jersey.

(Filed April 20, 1916.)

GEORGE VOORHIS, *Prosecutor-Appellant,* *vs.* THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF FRANKLIN IN THE COUNTY OF BERGEN, *Defendant-Appellee.*	*On Certiorari.*

10

Notice of Appeal.

To George S. Hilton, Esq.,
Attorney of Defendant-Appellee.

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Sir : —

You will please take notice that the above Prosecutor appeals from the judgment rendered in the above case on March 28th, 1916, to the Court of Errors and Appeals of the State of New Jersey. And that it will hereafter, as provided by the statute in such case made and provided, serve and file its grounds of appeal.

Charles B. Dunn,
Attorney of Prosecutor-Appellant.

30

Dated April 19th, 1916.

Writ of Certiorari.

New Jersey Supreme Court 10

GEORGE VOORHIS, Prosecutor, vs. THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF FRANKLIN, IN THE COUNTY OF BERGEN, Defendant.	On Certiorari.

20

This writ is allowed. Let it be sealed. To be argued Nov. Term, 1915.

JAMES F. MINTURN,
Justice of Supreme Court.

NEW JERSEY, SS:

(Seal.) THE STATE OF NEW JERSEY TO *The Township Committee of the Township of Franklin, in the County of Bergen, in the State of New Jersey,* GREETING: 30

We being willing, for certain reasons, appearing by the affidavit of George Voorhis, filed in this cause, to be certified of a certain ordinance passed by the Township Committee of the Township of Franklin, in the County of Bergen and State of 40

New Jersey, on the second day of September, nineteen hundred and fifteen, for the opening and laying out of a public road in said township, beginning at the Ponds Church Road and extending over the lands of the said George Voorhis and the lands of Forster W. Freeman and J. Millar Nicol, for a distance of about twenty-two hundred and eighteen feet, do hereby ~~command you that you certify and~~ send, together with this writ, under your seal, to our Justices of our Supreme Court of Judicature, at Trenton, on the fourteenth day of October, nineteen hundred and fifteen, the ordinance aforesaid, and all matters and things touching and concerning the same, as fully and entirely as they appear upon the record of the Clerk of said township, that therein may be done what of right, and according to the laws of this State should be done.

WITNESS: W. S. GUMMERE, Esq., Chief Justice of our Supreme Court, at Trenton, this twenty-fourth day of September, nineteen hundred and fifteen.

CHARLES B. DUNN,
Attorney.

WM. C. GEBHARDT,
Clerk.

(Filed October 11, 1915.)

Return to Writ.

NEW JERSEY SUPREME COURT.

GEORGE VOORHIS, Prosecutor, vs. THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF FRANKLIN, IN THE COUNTY OF BERGEN, Defendant.	Writ of Certiorari.

10

I, ALONZO W. RAMSEY, Clerk of the Township of Franklin, in the County of Bergen and State of New Jersey, in obedience to the commands of this writ, directed to the Township Committee of the Township of Franklin, in the County of Bergen, the ordinance passed by this committee on the second day of September, 1915, together with all matters and things touching and concerning the same as they appear upon the records of the minutes of our said meetings and the proceedings and all things touching and concerning the same to the Honorable Justices of the Supreme Court of Judicature at Trenton at the time and place within mentioned, we do certify and send as we are commanded.

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IN TESTIMONY WHEREOF, I, ALONZO W. RAMSEY, Clerk of said Township of Franklin, in the County of Bergen, have hereunto set my hand and caused the seal of said township to be hereto affixed this 11th day of October, One Thousand Nine Hundred and Fifteen.

ALONZO W. RAMSEY,
Clerk.

40

(Township Seal.)

PROCEEDINGS OF THE TOWNSHIP COMMITTEE MEETING AUGUST 5, 1915.

Petition presented by F. W. Freeman, signed by 10 freeholders, for the laying out of the road through the lands of George Voorhis, &c., as per the following:

To the Township Committee of the Township of Franklin, in the County of Bergen:

The subscribers, freeholders of said Township, residing therein, respectfully apply to your Honorable Body to lay out and open a public road or highway in said Township, at least thirty feet wide, beginning at the junction of the southwesterly line of the Ponds Church Road with the northwesterly line of land of George Voorhis, and running thence southwesterly along said last mentioned line, on the northeasterly side thereof, over lands of said George Voorhis and land of Forster W. Freeman and land of J. Millar Nicol to the southwesterly line of said land of said J. Millar Nicol, a distance of about twenty-two hundred and eighteen feet.

Dated June 30, A. D. 1915.

An ordinance introduced by resolution of the Committee and passed first reading:

Ordinance Opening Public Road.

Be it ordained by the Township Committee of the Township of Franklin, in the County of Bergen, as follows:

1. A public road or highway shall be laid out and opened in said Township of Franklin of the width of thirty feet, the center line whereof is described as follows: Beginning at a point in the

southwesterly line of said public road known as the Ponds Church Road, at the distance of fifteen feet southeasterly at right angles from the dividing line between lands of William M. Smith, and lands of George Voorhis, and running thence (1) through lands of George Voorhis south forty-three degrees and forty-three minutes west (magnetic 1904), parallel with and distant fifteen feet southeasterly at right angles from said last mentioned line, and the dividing line between lands of William C. Butler and lands of George Voorhis, one thousand one hundred and fifty-nine feet and seventeen hundredths of a foot to a bend, and thence (2) through lands of the said George Voorhis, Forster W. Freeman, and J. Millar Nicol south forty-nine degrees and nine minutes west parallel with and distant fifteen feet southeasterly at right angles from the line dividing lands of William C. Butler on the northwest and lands of George Voorhis, Forster W. Freeman, and J. Millar Nicol on the southeast, one thousand and fifty-nine feet and thirty-six hundredths of a foot to the dividing line between lands of George Voorhis and lands of J. Millar Nicol, said line being the southwesterly line of said lands of said J. Millar Nicol, as the same is shown on a map made from survey October 21st, 1914, by William Ferguson's Son.

2. The said Township Committee hereby determines to take and appropriate for the purpose of laying out and opening said public road or highway such lands and real estate as may be necessary therefor upon making compensation to the owners by purchase thereof at a price to be agreed upon, and if an agreement as to compensation cannot be made, by the payment of damages according to law.

3. The damages resulting from laying out and opening said public road or highway shall be duly awarded and paid and the benefits therefrom duly assessed upon the property benefited thereby, according to law.

10

Resolution.

An application in writing, signed by at least ten Freeholders of this Township, residing therein, having been made to this Committee for the laying out and opening of a public road or highway, at least thirty (30) feet wide, beginning at the junction of the southwesterly line of the Ponds Church Road with the northwesterly line of land of George
20 Voorhis, and running thence along said last mentioned line, on the northeasterly side thereof, over lands of said George Voorhis, and land of Forster W. Freeman and land of J. Millar Nicol to the southwesterly line of said land of said J. Millar Nicol, a distance of about twenty-two hundred and eighteen (2218) feet, and an ordinance for that purpose, fixing the width of said street at thirty (30) feet, having been introduced, accompanied by a map prepared under the direction of this Com-
30 mittee, showing the location and character of the improvement, and the lands and real estate to be taken therefor, and the names of the owners of such lands and real estate, it is ordered that this Committee meet on the 2nd day of Sept. at 2 P. M. at Wyckoff Chapel, Wyckoff, N. J., to receive and consider objections to said improvement, and that the Township Clerk give public notice of such proposed improvement, and of the time and place of such meeting, according to law.

40

Notice of Hearing to Consider Objections.

Notice of the Proposed Laying Out and Opening of a Public Road or Highway in the Township of Franklin, in the County of Bergen.

Notice is hereby given that the Township Committee of the Township of Franklin, in the County of Bergen, proposes to lay out and open a public road or highway in said Township, of the width of thirty feet, beginning at the junction of the southwesterly line of the Ponds Church Road with the northwesterly line of land of George Voorhis, and running thence southwesterly along said last mentioned line, on the northeasterly side thereof, over lands of said George Voorhis and land of Forster W. Freeman and land of J. Millar Nicol to the southwesterly line of said land of J. Millar Nicol, a distance of about twenty-two hundred and eighteen (2218) feet, and that the said Committee will meet on the 2nd day of September, 1915, at Wyckoff Chapel, Wyckoff, N. J., to receive and consider objections to said improvement.

By order of the Township Committee.

Dated Aug. 5, 1915.

A. W. Ramsey,
Township Clerk.

MEETING OF SEPTEMBER 2, 1915.

In the matter of Opening Road through lands of George Voorhis, Forster W. Freeman and J. Millar Nicol objections were filed by George Voorhis, Flora Hughes Smith and Eleanor H. Butler:

10

IN THE MATTER OF THE APPLICATION FOR THE PASSAGE OF AN ORDINANCE TO LAY OUT A PUBLIC ROAD THROUGH THE LANDS OF GEORGE VOORHIS.	Notice of Objection.

20

The undersigned, being the owner of property fronting within the limits mentioned in the application made for the laying out of a public road from Ponds Church Road to lands of J. Millar Nicol, in the Township of Franklin, County of Bergen, does hereby object to the passage of an ordinance by the Township Committee of the Township of Franklin, County of Bergen, for the laying out of said public road.

30

ELEANOR HUGHES BUTLER,
By Wm. M. Smith,
Atty.

40

Dated September 1st, 1915.

To the Township Committee of the
Township of Franklin, Bergen County.

IN THE MATTER OF THE APPLICATION FOR THE PASSAGE OF AN ORDINANCE TO LAY OUT A PUBLIC ROAD THROUGH THE LANDS OF GEORGE VOORHIS.	Notice of Objection.

10

The undersigned, being the owner of the property fronting within the limits mentioned in the application made for the laying out of a public road from Ponds Church Road to lands of J. Millar Nicol, in the Township of Franklin, County of Bergen, does hereby object to the passage of an ordinance by the Township Committee of the Township of Franklin, County of Bergen, for the laying out of said public road over or through his said property.

30

GEORGE VOORHIS.

30

40

Dated September 1st, 1915.

To The Township Committee of the
Township of Franklin, Bergen County.

10

IN THE MATTER OF THE APPLICATION FOR THE PASSAGE OF AN ORDINANCE TO LAY OUT A PUBLIC ROAD THROUGH THE LANDS OF GEORGE VOORHIS.	Notice of Objection.

20 The undersigned, being the owner of property fronting within the limits mentioned in the application made for the laying out of a public road from Ponds Church Road to lands of J. Millar Nicol, in the Township of Franklin, County of Bergen, does hereby object to the passage of an ordinance by the Township Committee of the Township of Franklin, County of Bergen, for the laying out of said public road.

FLORA HUGHES SMITH.

30

Dated September 1st, 1915.

To the Township Committee of the
Township of Franklin, Bergen County.

Postponement of hearing requested by Lawyers Dunn and Rosenkrans, representing the above clients, refused.

Objection made by Lawyer Rosenkrans on the ground that the ordinance calls for a road of thirty
40 feet in width whereas the law required at least

thirty-three feet in width for a public road. Objection overruled.

2nd Objection.—No affidavit or proof that the notice of a hearing were properly posted. Same overruled.

10

Resolution Deeming Road Public Necessity.

Whereas notice has been given according to law that this Committee proposes to lay out and open a public road or highway in this Township, of the width of thirty feet, beginning at the junction of the southwesterly line of the Ponds Church Road with the northwesterly line of lands of George Voorhis and running thence southwesterly along said last mentioned line on the northeasterly side thereof, over lands of said George Voorhis and land of Forster W. Freeman and land of J. Millar Nicol, to the southwesterly line of said land of J. Millar Nicol, a distance of about twenty-two hundred and eighteen feet, and the said George Voorhis, Flora Hughes Smith and Eleanor Hughes Butler having objected thereto in writing, and it appearing probable that they are the owners of one-half of the property fronting within the limits mentioned in the application for said road or highway, we do hereby declare that we deem said road or highway to be a public necessity.

20

30

Carried by full vote of the Board.

Objection made by Lawyer Rosenkrans against the Township Committee for passing the resolution for the proposed public road as a public necessity on the ground that no affidavits have been produced, no witnesses sworn or any legal evidence of any nature whatever produced before the Board in regard to whether the proposed road is a public necessity or not. Objection overruled.

40

On motion it was ordered that the ordinance for laying or opening a public road or highway over the lands of George Voorhis, J. Millar Nicol and Forster W. Freeman be finally passed. Carried.

Resolution Appointing Commissioners of Appraisement.

Resolved, that George Demarest, Abram DeCrocker and Aaron Hopper, three discreet and impartial persons, residents and freeholders of this Township, be and they are hereby appointed Commissioners to make all assessments in favor of the owners of lands or real estate damaged or taken in the laying out and opening of a public road or highway in this Township, of the width of thirty feet, beginning at the junction of the southwesterly line of the Ponds Church Road with the northwesterly line of land of George Voorhis, and running thence southwesterly along said last mentioned line, on the northeasterly side thereof, over lands of said George Voorhis and land of Forster W. Freeman and land of J. Millar Nicol, to the southwesterly line of said land of J. Millar Nicol, a distance of about twenty-two hundred and eighteen (2,218) feet, under an ordinance for that purpose passed by this Committee, or upon the owners of any lands or real estate for benefits conferred by such improvement; and that the sum of ten dollars each be and is hereby fixed as the compensation of each of said Commissioners, the same to be included in and made a part of said assessment.

The Clerk reports that he posted notices relative to the laying out of a road over lands of Voorhis, Freeman & Nicol as instructed at the last meeting, by posting the same one at Midland Park Post-Office, one at Wyckoff Post-Office, one at Wyckoff Hall, one at Campgaw Post-Office and one at Crystal Lake Post-Office.

The following is a copy of said ordinance as adopted:

Be it ordained by the Township Committee of the Township of Franklin, in the County of Bergen, as follows:

1. A public road or highway shall be laid out and opened in said Township of Franklin of the width of thirty feet, the center line whereof is described as follows: Beginning at a point in the southwesterly line of said public road known as the Ponds Church Road, at the distance of fifteen feet southeasterly at right angles from the dividing line between lands of William M. Smith, and lands of George Voorhis, and running thence (1) through lands of George Voorhis south forty-three degrees and forty-three minutes west (magnetic 1904), parallel with and distant fifteen feet southeasterly at right angles from said last mentioned line, and the dividing line between lands of William G. Butler and lands of George Voorhis, one thousand one hundred and fifty-nine feet and seventeen hundredths of a foot to a bend, and thence (2) through lands of the said George Voorhis, Forster W. Freeman, and J. Millar Nicol south forty-nine degrees and nine minutes west parallel with and distant fifteen feet southeasterly at right angles from the line dividing lands of William C. Butler on the northwest and lands of George Voorhis, Forster W. Freeman, and J. Millar Nicol on the southeast, one thousand and fifty-nine feet and thirty-six hundredths of a foot to the dividing line between lands of George Voorhis and lands of J. Millar Nicol, said line being the southwesterly line of said lands of said J. Millar Nicol, as the same is shown on a map made from survey October 21st, 1915, by William Ferguson's Son.

2. The said Township Committee hereby determines to take and appropriate for the purpose of laying out and opening said public road or highway such lands and real estate as may be necessary therefor upon making compensation to the owners by purchase thereof at a price to be agreed upon, and if an agreement as to compensation cannot be made, by the payment of damages according to law.

3. The damages resulting from laying out and opening said public road or highway shall be duly awarded and paid and the benefits therefrom duly assessed upon the property benefited thereby, according to law.

Approved.

CHARLES FOX,
Chairman.

NEW JERSEY SUPREME COURT.

GEORGE VOORHIS, Prosecutor, vs. THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF FRANKLIN, IN THE COUNTY OF BERGEN.	Certiorari. Depositions.

10

DEPOSITIONS ON THE PART OF THE PROSECUTOR in the above stated cause taken, pursuant to rule and notice, before me, Edward O'Byrne, a Supreme Court Examiner, at my office in the Romaine Building, 136 Washington Street, Paterson, New Jersey, on the twenty-eighth day of October, Nineteen hundred and fifteen, at two o'clock in the afternoon, in the presence of Michael Murphy, Esq. (Charles B. Dunn), for the prosecutor, and George S. Hilton, Esq., for the defendant.

20

EDWARD O'BYRNE,
Supreme Court Examiner.

It is stipulated and agreed that these depositions shall be taken down in shorthand notes by the examiner, the signatures of the witness thereto being waived, and that the typewritten transcript thereof shall have the same force and effect as if said depositions were taken down in longhand by the examiner and signed by the respective witnesses.

30

Supreme Court Examiner.

40

ALONZO W. RAMSEY, sworn as a witness on the part of the prosecutor, being duly sworn according to law on his oath, deposes and says:

Direct examination by Mr. Murphy.

10 Q. You are clerk of the Township Committee of the Township of Franklin? A. I am.

Q. How long have you been clerk? A. This is the fifth year.

Q. Have you with you the books and documents that you were subpœnaed to produce here? A. I have.

Q. What are they? A. The minute book and the ordinance book.

Q. Will you please produce them? A. (Witness
20 produces books.)

Q. Which is the minute book? A. (Indicating) This is the minute book.

Q. The one with the buff cover? A. Yes, sir.

Q. And the ordinance book is the book with the black cover? A. Yes.

Q. You have had charge of these books, as I believe, during the term of your office? A. Yes, sir.

Q. Will you turn to your minute book and look at the minutes of the meeting held about a year
30 ago, at which the matter of a proposed public road through the property of George Voorhis, Forster W. Freeman and J. Millar Nichol was brought up?

Mr. Hilton: I object to that as being irrelevant.

A. I find a record of a matter there pertaining to the same thing.

Q. On what page? A. On page 189, under date
40 of October 1st.

Q. Tell us from that record the procedure that was taken in that matter at that meeting?

Mr. Hilton: We understand that our objection applies to all questions in regard to that matter.

Mr. Murphy: Yes.

A. In the first place, I have here an application signed by at least ten freeholders of this township, residing there in—— 10

Q. You need not read. Just tell us what it is? A. That is the application.

Q. An application for what by these ten freeholders, what did they apply for? A. They applied for the opening of the road, as I understand it, through the lands of Forster W. Freeman, J. Millar Nichol, a distance of about 2218 feet.

Q. Did you mention George Voorhis? A. I mentioned George Voorhis, Forster W. Freeman and J. Millar Nichol. 30

Q. What proceedings were taken, according to your record, upon that application? A. The petition was filed, signed by the ten freeholders, and proper notice given for the hearing to be held before the Township Committee; the notices properly posted, of which I have a copy here, the ordinance introduced.

Q. When was the ordinance introduced? A. November 5th, 1914. 30

Q. Go ahead, continue with the proceedings that were taken in reference to that matter? A. On the 5th of November the meeting was adjourned to November 19th. The meeting was adjourned by order of the Board.

Q. What occurred at that meeting, at the meeting of November 19th? A. Adjourned meeting of November 5th, for the purpose of hearing objections against the proposed road of Forster W. Freeman and J. Millar Nichol, adjourned to November 25th. November 25th, adjourned meeting, the Township 40

Committee upon considering the necessity of proposed road across lands of George Voorhis, Forster W. Freeman and J. Millar Nichol decided that the same was not a public necessity at this time, and that is all the record we have on the matter.

10 Q. How was the vote? A. I have no record of the vote.

Q. Do you remember what the vote was? A. I rather think it was unanimous.

Q. Do you remember that a protest was filed at that time? A. There was a petition filed at that time; there was a protest and petition as well.

Q. Signed by a large number of residents and property owners of the Township of Franklin giving the reasons why the road should not be built?

20 Mr. Hilton: Let him state from his recollection what the petition contained. The petition will speak for itself. He cannot testify to the contents.

Q. Do you remember such a protest having been filed? A. The protest as I understood it——

Q. (Interrupting) Do you remember that such a protest was filed? A. I do remember that there was one. I think here it is. (Witness produces 30 paper.) If I am not mistaken.

Q. You identify that protest? A. Yes, sir.

Q. How many names does that contain—have you counted them? A. I have not counted them.

Q. As I counted there are thirty-eight. A. Thirty-eight is right.

Q. That protest contained the names of thirty-eight residents and property owners in the Township of Franklin, is that right? A. Yes, sir.

Q. At the meeting at which this protest was con- 40 sidered, property owners were represented by counsel, were they not? A. Yes, sir, I believe they were.

Q. And at the request of counsel the meeting was adjourned, was it not? A. That is right. Which meeting do you refer to?

Q. The meeting I am speaking of is the meeting of November 5th? A. November 5th, 1915.

Q. How many adjournments were had of that meeting? A. Two I believe; from the fifth to the nineteenth, and from the nineteenth to the twenty-fifth. 10

Q. The vote of the committee was unanimous against the ordinance? A. As I recall it. There is no record of it, but that is my recollection of it.

Q. Who were the members of the committee at that time? A. Charles Fox, H. P. Winters and Peter Quackenbush.

Q. At that time in November, 1914, who were the members of the committee? A. Charles Fox, H. P. Winters and Peter Quackenbush. 20

Q. Was a man by the anme of Packer a member at that time? A. On January 1st, 1914, William J. Packer retired, so he positively could not have been a member of the Board in 1914.

Q. Who are the members of the committee at the present time? A. The same; H. P. Winters was re-elected last year, which puts the Board practically the same.

Q. When was the ordinance referred to in these proceedings introduced? A. August 5th, 1915. 30

Q. Turn to your minute book showing the minutes of the meeting held on that date? A. On page 220, here is the first record we have of that.

Q. I see written in your minute book under date of August 5th, 1915, this: "Petition presented by F. W. Freeman, signed by ten freeholders for the laying out of a road through lands of George Voorhis, etc., as per the following:" When did you write that in that book? A. August 5th, 1915. 40

Q. Did you write it at the same place and with the same writing instrument that you wrote the rest of the writing on that page with? A. I would say the same place——

Q. (Interrupting) Did you? A. I would say I wrote it at the same place, but not necessarily with the same instrument, for the simple reason that my fountain pen has, on different occasions, given out, and I have had to use another pen; I could not say that I wrote it with the same instrument; that would be impossible, but I would say I have written it at the time and place, but not necessarily with the same instrument, but it might have been done, at that, but I cannot say that positively, because I know that on one or two occasions my fountain pen ran dry, and they have writing material there, so, that being the case, I would use them.

Q. What does your minute book show further with reference to the subsequent proceedings at that meeting; what does it show further than that? A. After that the ordinance introduced, by resolution of the committee and past first reading to lay out road through lands of George Voorhis, as per the following, which is the ordinance.

Q. The ordinance is attested by nobody? A. The ordinance is attested by nobody?

Q. Yes. A. This is not the ordinance. This is the notice.

Q. Go to the next proceeding on that date of August 5th in reference to this ordinance as shown by your record. A. First reading, copy of the notice, as follows, etc. That is all there were conducted at that meeting.

Q. Now, when was the first meeting at which the matter was taken up? A. September 2nd.

Q. Prior to September 2nd, what had you done, if anything, in reference to this ordinance? A.

Posted the notices as required by instructions of the Township Committee.

Q. You posted notices? A. Yes.

Q. Where did you post the notices? A. Posted one at Midland Park Post Office, one at Wyckoff Post Office, one at Wyckoff Hall, our meeting place, one at Campcaw Post Office, and one at Crystal Lake Post Office. 10

Q. That is all the notices? A. Five, yes, sir.

Q. They were not published? A. Not by me; no.

Q. Nor served on anybody? A. No. My instructions were to post them.

Q. Do the committee hold stated meetings? A. They do.

Q. On what dates? A. The first Thursday in every month. 20

Q. When this ordinance was up before the committee on September 2nd, did anybody appear in opposition to it? A. There did.

Q. Who? A. Mr. Rosenkrans and Mr. Dunn.

Q. Do you know whom they said they represented? A. They represented Mr. Smith——

Q. Did Mr. Rosenkrans represent Mr. Smith and Mrs. Butler and did Mr. Dunn represent Mr. Voorhis or did they not? 30

Mr. Hilton: I object to the question as leading.

A. I believe they did. My understanding of the matter was that Mr. Dunn——

Mr. Hilton: I object to his understanding. We want the facts proved.

Q. You know they were lawyers representing owners of property through which this proposed road is to be built? A. Yes, sir. 40

Q. You knew that, didn't you? A. Yes, sir.

Q. Did they ask the committee to give them an opportunity of a hearing in the matter? A. That is what the meeting of September second was.

Q. I did not ask you that. Did they ask the committee on September second for an opportunity for a hearing? A. They did.

Q. Did they state that they had received no notice until the previous day, and that they wanted some time to show the committee that there was the same opposition to the ordinance that there had been in November, 1914?

Mr. Hilton: I object to that question upon the ground that it is putting testimony into the mouth of the witness.

Q. I asked you if you remembered that? A. I understand that they asked for an adjournment, as I understand it—is that the idea?

Q. Yes. A. Yes.

Q. They asked for an adjournment? A. That is right.

Q. Did the committee grant an adjournment at their request? A. They did not.

Q. Was any other business taken up by the committee on that date, except this ordinance matter? A. Oh, yes.

Q. Was this the first matter taken up? A. That was the first business done; yes, sir.

Q. Let me see the ordinance book? A. (Witness produces book.)

Q. The ordinance book contains the ordinance in question on what page? A. On pages 22 and 23.

Q. Your return is true in reference to this ordinance? A. Yes, to the best of my knowledge.

Q. Have you on the return noted this notation in ink: "Granted September second, 1915"? A.

No; that was put on when it was put in the book here.

Q. By you? A. By me.

Q. When? A. I cannot say the date positively as far as that is concerned.

Q. Was it put in after the chairman of the committee signed the ordinance? A. Yes. He did not sign it in the book; he signed it before it was put in the book. I did not put that in until that was complete. 10

Q. Was there anything further done by you in reference to that ordinance besides what you have told us? A. To make return to the Supreme Court in Trenton, that is the only thing I have done.

Q. Anything further in regard to the ordinance except pasting it in your book; was there anything further done by you with reference to it? You know, don't you? Did you do anything more about it? Did you do anything further about the ordinance from what you have told us? A. Nothing, only put it in the book, the place where it belonged. 20

Q. That is all you have done? A. That is a question that might be misleading. You may mean one thing and I might mean another.

Q. What do you mean? A. I put it in the book, as the law required.

Q. Did you do anything more about it? A. Not to my knowledge. 30

Q. Did you ever put it in a newspaper? A. No, sir; I have not.

Q. Did anybody? A. Not to my knowledge, and yet it may possibly have been done.

Q. Who would do it? A. Possibly our counsel might think it necessary.

Q. Who is your counsel? A. John B. Zabriskie.

40

Cross-examination by Mr. Hilton.

Q. At the first meeting that you have mentioned that you say that property owners were represented by counsel do you know what property owners were represented by counsel? A. By their names; we can get them from the list; some of them are known to me and some of them are not.

Q. Who were the counsel? A. Mr. Dunn and Mr. Murphy were there at the time; I do not know whether they both represented them or one of them; I could not say as to that; they were the ones that presented this protest.

Q. You say that there was a petition and protest presented; was there both a petition and protest presented? A. This is a petition, is it not?

Q. What is a petition? A. A petition for the road—a petition against it.

Q. Is that what you call the protest; are they both the same thing? A. This is the same thing. It simply says: "We do not deem such road necessary."

Q. When you mentioned both a petition and a protest you meant the same thing? A. I did in that case.

Q. You meant the protest? A. Yes, sir. He named it a petition, but it is in reality a protest.

Q. You say that at that time there was an adjournment. Who made the request for the adjournment? A. The same parties that filed this protest.

Q. For what purpose was the meeting of September second held? A. To allow them to present further——

Q. (Interrupting) This is the meeting of September second. I am referring to this second application, not to the first—to the meeting of September second of this year. A. September second, 1915,

was a meeting to take up the regular business of the township; that is a regular meeting.

Q. What was done at that meeting with regard to this matter? A. At this time the matter of the ordinance was taken up.

Q. Were parties heard at that time? A. They were. 10

Q. Were any notices given that the parties would be heard at that time? A. Notices properly posted in five different places according to the law.

Q. What counsel appeared at that time?

Mr. Murphy: I object. This is a repetition.

Q. What counsel for the objectors appeared? A. Mr. Rosenkrans appeared at that time.

Q. Was Mr. Dunn there? A. I believe he was, if I remember rightly. I know I have a record of Mr. Rosenkrans being there. 30

Q. Did they say whom they represented? A. They did.

Q. Whom did they say they represented? A. They represented, that is, Mr. Rosenkrans said he represented Mrs. Smith and Eleanor Hughes Butler.

Q. Whom did Mr. Dunn represent? A. Mr. Voorhis. 30

Q. Were the parties heard—all that they desired to say? A. They were. All the evidence they had at that time was——

Q. (Interrupting) Were they heard? A. They were given a hearing.

Q. They were heard all they had to say? A. All they had to say.

By Mr. Murphy.

Q. I would ask you again, Mr. Ramsey, to turn to the minutes of the meeting of November, 1914, 40

when the first application was acted upon, and show me the notation in your record?

Mr. Hilton: We object again upon the ground that it is irrelevant.

10 A. November 25th, the Township Committee did not consider the road a public necessity.

Q. Now, Mr. Ramsey, was that phrase, "At this time," put in by you when you wrote up these minutes? A. They were.

Q. Do you notice that it appears in a different ink? A. I do.

Q. Do you notice that there is continued the same writing afterward? A. Yes.

Q. And that writing is absolutely different from
20 the writing of this phrase? A. Yes.

Q. How can you explain that? A. Very easily. When I came to look it over, I perceived that that was the expression used.

Q. You put that in afterwards? A. What do you mean by "afterwards"?

Q. You say that when you came to look at it, that was the expression used—that is, when you had written this out, you afterwards put in the phrase "At this time"—did you or did you not? A. I say
30 that was put in there the same day that the minutes were written.

Q. But after you had written out the rest of the minutes and had closed up your book, you opened it and then you put in that phrase? A. I cannot say that.

Q. Did you write continuously these words, "Decided that the same was not a public necessity at this time"? Did you put in "at this time" right after you wrote the word "necessity"? A. I can
40 say yes as well as no.

Q. Did you or did you not? A. I cannot say——

Q. (Interrupting) I am asking you now whether you continued and wrote the phrase "At this time" immediately after you wrote the word "necessity"? A. I cannot; according to the way it looks there, it looks as if I used another pen.

Q. It does? A. I am satisfied it was done the same day. 10

Q. But not at the same time as you wrote the rest of it? A. I would not want to say yes or no to that question. I would not want to say. That is, whether it was done after or before, but that is the way it was decided.

Q. You have no explanation to give as to the difference of the ink there? A. I have an explanation; the explanation is, if it is different.

Q. That evidently is different ink, is it not? A. It is. It evidently is, but not positively. 20

Q. You know it is; you say it is? A. No, I don't know; nor anyone else. You will find in looking through the book, you will find that at times I used my fountain pen, and at times I used another; they are both there at the desk; the people in the hall furnish ink.

Q. You have testified that the rest of it is in the same ink, and this is different? A. Is it different? That is the point. 30

Q. Will you say it is not in different ink, these three words "At this time"; are they not in different ink from the rest of the minutes; will you say they are not? A. Will I say that it is not?

Q. Yes. A. Yes.

Q. You say it is not different? A. I cannot say so; I cannot say so.

By Mr. Hilton.

Q. I find here in this entry to which your attention has been called these words, "At this time," 40

the words to which your attention was called, and after that there appeared the words "Hackensack Republican" and some other words. State whether or not the words "At this time" and "Hackensack Republican" and the following words are the same pen and ink, according to your belief, from the appearance? A. They are the same.

By Mr. Murphy.

Q. Were these three words written consecutively after the preceding words? A. I cannot say the way it was done; I cannot say that, not positively.

ANDREW J. FLETCHER, sworn as a witness on the part of the prosecutor, testifies as follows:

Direct examination by Mr. Murphy.

Q. Where do you live? A. 23 Ward Street, Paterson, New Jersey.

Q. Have you also a residence in Bergen County? A. Yes, sir; at Franklin Lake.

Q. Do you own property there? A. Yes.

Q. Is it contiguous property to the property of Mr. George Voorhis? A. Yes.

Q. It fronts on the Ponds Church Road? A. Yes.

Q. On the opposite side from Mr. Voorhis? A. Yes.

Q. How much property do you own there? A. In the neighborhood of two hundred and fifty acres.

Q. Are you acquainted with the lands of Mr. Voorhis? A. Yes.

Q. Do you know its nature and location, etc.? A. Yes.

Q. Do you also know the land owned by Mrs. Smith—Mrs. William M. Smith? A. Yes.

Q. Does that adjoin the land of Mr. Voorhis? A. Yes.

Q. And do you also know the land of Eleanor Hughes Butler? A. Yes.

Q. Does that also adjoin the lands of Mr. Voorhis? A. Yes.

Q. Do you know the location of the land owned by J. Millar Nicol? A. Yes.

Q. And the lands owned by Forster W. Freeman, adjoining that of Mr. Nicol? A. Yes.

Q. What is the location of Mr. Nicol and Mr. Freeman's land in reference to the land of Mr. Voorhis and the land of Mrs. Smith and the land of Mrs. Butler? A. I believe that the Voorhis land bounds it, it would seem to me, on the southwest.

Q. I mean, is it in the rear or in the front? A. It is in the rear.

Q. In the rear of the lands I have mentioned? A. Yes.

Q. And have you ever been on the ground? A. Yes.

Q. What is the nature of the land belonging to Mr. Nicol and Mr. Freeman? A. In what particular?

Q. As to its arability or other natural conditions? A. Well, I would deem it to be ordinary farm land.

Q. Is it cultivated? A. The last time I saw it it was grown in cedars; that is about a year ago.

Q. You can see it from your place of residence? A. Yes, you can see part of it.

Q. Have you seen any change in it since? A. I don't know; I never paid any attention to it.

Q. Are there any buildings on it? A. Not that I know of.

Q. Do you know whether there are or not? A. I don't know.

Q. If there were, you would see them, would you not? A. Well, I might.

Q. Can you tell approximately the distance that these lands lie from the Ponds Church Road? A. I would think about three-eighths of a mile.

Q. And they lie directly behind the lands of Mr. Voorhis? A. Part of it lies behind his line.

Q. Are there any houses between Mr. Voorhis' house and these lands? A. No.

Q. Are there any buildings further in the rear of these lands from the Ponds Church Road? A. Not to my knowledge.

Q. What is the condition of the ground lying behind these lands? A. Mountainous.

Q. And any buildings there? A. No, not to my knowledge.

Q. And about how far do these mountains extend back, if you know? A. Well, do you mean the ridge, over the ridge?

Q. Yes, up the ridge. A. Well, they possibly extend back for three-quarters of a mile, that is, up over the ridge and back.

Q. How long have you lived there? A. Well, I have had this place there for the last ten years, between nine and ten years.

Q. During that time did you notice much change in the development of that immediate vicinity? A. Not very much.

Q. Have many, if any, new families moved into that section? A. Well, there have been a couple of families moved into it; yes.

Q. Where are they located? A. One of them is Mr. Smith, on one place.

Q. Is he along the main road? A. Yes, just where the main road turns; and Mr. Freeman himself; that is all I know of.

Q. From your knowledge of conditions and location there, would you say that there is any more need for a public road, as proposed by this ordinance, now than there was one year ago?

Mr. Hilton: I object to that as irrelevant and incompetent. 10

A. No.

Q. Or five years ago? A. No.

Q. Or ten years ago? A. Well, I was not there ten years ago; but nine years ago, no.

No cross-examination.

20

WILLIAM M. SMITH, sworn as a witness on the part of the prosecutor, testifies as follows:

Direct examination by Mr. Murphy.

Q. Where do you reside? A. I reside now near Franklin Lake.

Q. Have you any property there? A. My wife owns a piece of property there.

Q. How much land? A. About four acres. 30

Q. Where is it located with reference to Mr. Voorhis' property? A. It adjoins it on the west; it is at the northwest corner of his property.

Q. How long have you known that section? A About forty-three years, I should say.

Q. How old are you? A. Sixty-one.

Q. Do you also know the location of the property belonging to Mr. Nicol and Mr. Freeman through which the proposed road to be laid out by this ordinance would pass? A. I do. 40

Q. Where is that located with reference to your

property? A. Well, southwest, but further on; it does not touch Mrs. Smith's property, but borders on Mrs. Butler's property.

Q. How far away from Mrs. Smith's property is it? A. About three hundred yards I should think.

10

Q. Have you seen the blueprint showing the proposed road to be laid out by the ordinance? A. Yes.

Q. And you have observed the markings on that? A. I have seen them; I do not recollect what they were, but I recollect that the total length was about twenty-two hundred feet.

Q. (Showing witness) I show you this map filed with the Township Committee, showing the location of the proposed road, and I ask you if you understand the drawing on this map? A. Yes.

20

Q. Now, I will ask you whether the end of this proposed road is further away from the point indicated on the Ponds Church Road in this map from which it proceeds than it would be from other points on the Ponds Church Road? A. I should think there might be a slight difference; it might be slightly nearer the point at the turn of the road by the Hughes property, what is called the Hughes property; the difference would be slight, no.

30

Q. Do you know that at any time a driveway of some description was used from the point that you have now mentioned on this map leading back into the rear lands?

Mr. Hilton: Objected to as irrelevant.

A. I do not know anything about it being used.

Q. Do you see indications of a lane or road going from the point that I have mentioned back to these lands?

40

Mr. Hilton: Objected to upon the ground that it is irrelevant.

A. There is no indication of a lane.

Q. There is a line? A. Some indications of a line, but I do not think it goes very far back.

Q. It leads back in that direction? A. It leads around the west; it leads around a small pond which is on the property; further than that I do not know. I do not think it goes off the property. 10

Q. Are you acquainted with the condition of the land owned by Mr. Nicol and Mr. Freeman? A. Yes, I think I am.

Q. What is the general condition of it? A. It is not cultivated, entirely uncultivated, except for a few very small trees that have been put in there. I was over there, entirely without reference to this case, within the last twenty days, and, of course, there is no cultivation. 30

Q. It is what you would call a hillside? A. Mr. Nicol's place is all hillside, I think, and the other property is hillside and a little swampy.

Q. And the rest of it is overgrown with trees and cedars, etc., is it or is it not? A. A good many cedars.

Q. And brambles and briers?

30

Mr. Hilton: I object to the question as leading.

A. Yes, but I do not know how much there is on it.

Q. Any buildings on it? A. No buildings.

Q. What is the condition of the land immediately behind it? A. Mountain.

Q. Have you noticed, during the time that you have known this immediate neighborhood, very much, if any, development there? A. None. 40

Q. Have you any difficulty in using a necessary road to any places that you wish to go to from your home there?

Mr. Hilton: Objected to as irrelevant.

10 A. No.

Cross-examination by Mr. Hilton.

Q. This lane that you mentioned, where does that begin and where does it terminate? A. Well, so far as I know, it begins almost at the junction on the west side on what was called the Hennion property and what is called the Hughes property at the road; there is only one point where these two
20 come together.

Q. Is that lane opened now or has it been fenced off? A. It is almost obliterated now; some of the ground has been plowed over in order to make the field a little more——

Q. (Interrupting) Just answer the question. Is that lane opened now or has it been fenced off? A. It is fenced off.

Q. Do you know who fenced it off? A. Mr. Butler.

30 Q. How long ago was that done? A. Why, three years ago I should say.

Q. Until that time it had remained opened for how long, according to your knowledge? A. I don't know that it had ever been opened until the fences fell down that was upon the Hennion property; there was nothing only the pond adjoining that I speak of, that is, as far as I could say now, where the road could go to in Hennion's time. Hennion went in to his house and went up further inside
40 his fence. Mrs. Hughes enlarged this opening of the road in her time for her convenience.

Q. You have spoken of a fence put up there about three years ago by Butler; was the lane opened at that time? A. There was an apparent roadway there that Mrs. Hughes had taken stuff out of there herself for her own convenience. 10

Q. At that time, when this fence was put up, there was no fence there? A. No.

Q. At that point? A. No; there was a row of posts across there, but no wire on them.

Q. How long had they been there with no wire on them? A. I could not say about that. That row of posts was put there to mark the dividing line between Mrs. Smith's property and the property which is now Mrs. Butler's.

Q. You don't know of any fence being there before the fence that was put up three years ago? A. No, I do not. 20

JOHN W. VALENTINE, sworn as a witness on the part of the prosecutor, testifies as follows:

Direct examination by Mr. Murphy.

Q. How old are you? A. I will be sixty-two years old next month. 30

Q. How long have you lived in Franklin Township? A. I have lived there all my life in Franklin Township.

Q. Do you know the location of this proposed road? A. Yes, sir.

Q. Do you know the location of the land supposed to belong to Mr. Nicol and Mr. Freeman, to which this road would lead? A. Well, I have never bothered much with it; I see it pretty much all the time. I work right by it. 40

Q. What kind of land is it? A. Mr. Freeman's is mostly kind of little hills, and some parts of it is grown up with cedars, and sandy.

Q. How about Mr. Nicol's? A. It is partly mountain, on the side of the mountain, hilly.

10 Q. Are there any houses there? A. No, sir; I never seen any in my time.

Q. Do you know whether there ever was a roadway or lane leading up from the Ponds Church Road back up in their direction?

Mr. Hilton: I enter an objection to all questions along this line upon the ground that this examination is irrelevant.

A. I never knew any roadway only what Mr.
20 Hennion used to his own property.

Q. Where was Mr. Hennion's property in reference to the property owned by Mr. Nicol and Mr. Freeman? A. Well, Mr. Hennion's started right where Mr. Smith's line is, that is where the house was, and he owned the whole strip right straight up to the mountain, and this offset Mr. Freeman has to the Smith property.

Q. This lane that Mr. Hennion used went into—A. (Interrupting) Into his own land. That is all
30 the road I ever saw there.

Q. He owned all the land there that Mr. Freeman owns part of? A. He owns part of Mr. Hennion's land.

Q. And the land that Mr. Nicol owns was also a part of it? A. As far as I know; I cannot swear to it.

Q. Do you know whether there have been any new houses built in that section in the last four years? A. No new houses.

40

No cross-examination.

GARRET BERDAN, sworn as a witness on the part of the prosecutor, testifies as follows:

Direct examination by Mr. Murphy.

Q. Where do you reside? A. Preakness.

Q. Are you acquainted with the section of the country through which this proposed road would pass? A. Yes; I know the land well. 10

Q. How long have you known it? A. Fifty years.

Q. Do you have occasion, in your business, to see it often, or not? A. Three or four times a year, at least.

Q. Have you noticed, during your knowledge of this section, whether any development has occurred there? A. Not as I know of.

Q. Have you seen any? A. I have not seen any there. 20

Q. What is the condition of that country now, generally, as compared with what it was twenty-five years ago? A. Just about the same; I don't see any improvement.

Q. Do you drive through the country roads in your business? A. I do.

Q. Are there sufficient reasonable roads in that section for usual purposes? 30

Mr. Hilton: I object to that upon the ground that it is entirely irrelevant.

A. Yes; there is all the roads there that is needed; I don't know.

Q. As far as you know? A. As far as I know; there is as much as needed.

Q. What is your business? A. Fire insurance.

No cross-examination. 40

PETER QUACKENBUSH, sworn as a witness on the part of the prosecutor, testifies as follows:

Direct examination by Mr. Murphy.

Q. Where do you live? A. Wyckoff.

10 Q. Do you hold any public office in the Township of Franklin? A. Member of Township Committee.

Q. How long have you been a member of the Township Committee? A. Pretty near three years, it will be in a few days.

Q. Were you present at the Township Committee in November, 1914, when an ordinance was introduced to open a road leading from the Ponds Church Road through the lands of George Voorhis and others into the lands of Mr. Nicol and Mr.

20 Freeman? A. Yes, sir.

Q. Was that ordinance at that time acted upon by the committee? A. Yes, sir.

Q. Was there opposition to the passage of that ordinance by the owners of the property through which the road would go? A. Oh, yes; there was a lot signed it.

Q. Are you familiar with the location of the proposed road? A. I know where it goes, as far as I can look; that is all I know.

30 Q. You know where it goes? A. Yes.

Q. You have often travelled on the Ponds Church Road past Mr. Voorhis' place and past Mrs. Smith's place? A. Yes; hundreds of times.

Q. What disposition of the matter did the committee make at that meeting in November, 1914? A. You see I don't remember just which meeting I am speaking about; I know I was there because I have been there at every meeting.

Q. I mean the meeting referred to at which the

40 ordinance was introduced.

Mr. Hilton: I object upon the ground that the record shows what was done.

A. Well, there was a meeting where we did not lay the road on account—I thought they would get it settled; I thought they would settle it themselves; I thought if it was put off, it would be settled all right. So we didn't pass it, as I remember; we agreed not to lay it, or something like that.

Q. Do you remember whether the vote was unanimous or not, that all you three members of the committee voted the same way? A. Yes; yes, sir.

Q. Now, you are also a member of the committee at present, and were a member on August 5th last? A. I was present at every meeting that has been held in three years.

Q. Was there an ordinance introduced on August 5th to lay out this road? A. This year, do you mean?

Q. Yes. A. Yes, I guess so; yes.

Q. At how many meetings had this matter come up before your committee? A. Two, I guess; two or three; I forget; I don't know; I didn't keep any date. You will have to go to the record for that; I cannot remember that, just which was or was not.

Q. Do you remember whether the matter came up at more than one meeting of the committee? A. Why, yes, sure; it must have done.

Q. Well, do you remember? A. My recollection is two meetings, but I didn't keep any dates; I don't know.

Q. Do you know what was done with the matter at the first meeting it was brought up? A. What was done?

Q. What was done with it? A. I don't know; I don't remember anything about it. You will have to go to the records for that.

Q. Do you remember the meeting of September

2nd, when Mr. Rosenkrans as attorney for Mrs. Smith and Mrs. Butler, and Mr. Dunn as attorney for Mr. Voorhis appeared? A. Yes; I remember that.

Q. Did they appear as representing these parties? A. Yes.

10

Q. Did they request, did they state to you, that they had not received notice of this meeting until the day prior to September 2nd? A. Yes.

Q. Did they request you to allow them an opportunity to show that other property holders were interested? A. Yes.

Q. In protesting against it? A. Yes.

Q. Did they ask you to grant them an adjournment of the meeting? A. Yes, sir.

Q. So they could produce testimony? A. Yes.

20

Q. And produce also other property owners? A. Yes, sir.

Q. What did the committee do with reference to that request? A. We didn't grant it. The committee said they had notice long enough, and they didn't grant it.

Q. The committee at that time decided that this was a public necessity, didn't they? A. Yes, sir.

Q. Upon what, if anything, did the committee base their determination? A. Judgment, I guess; I don't know what else; just good judgment.

30

Q. Did anybody come besides the persons proposing the road to ask the committee that the road be laid out there? A. Did anybody come and ask the committee to lay out the road?

Q. Yes. Did anybody besides those who signed the petition, the ten freeholders, come before the committee? A. No.

Q. Did the committee go over the location of this proposed road? A. I did not. No.

40

Q. Did you know the condition of affairs on the premises where this proposed road was to be laid

out in 1914 as well as you know it in 1915? A. Just the same.

Q. Had any changes taken place during that year? A. Not to my knowledge; no, sir.

Q. Therefore, can you give us any reason why you changed your opinion as to this being a necessity? A. I believe we wanted to get a road through there; we wanted to get the town up there and get a lot of taxes in there and help the town along and help the public and help this man get out and his people.

Q. What—what else? A. Let these people get out, and I don't know—a dozen other things. I have not got it down.

Q. Do you mean to help them get out or to get in? A. They wanted to get out when they got in. If they go around the other way and get in.

Q. Can they go around another way? A. I don't know anything about it.

Q. Were the members of the committee who passed this ordinance on the committee when the ordinance was introduced in November, 1914? A. Yes, sir.

Q. The same ones? A. The same ones.

Q. Was this the first matter that you took up at that meeting on September 2nd? A. I don't remember. I guess not; I guess we had something else to do. My recollection is we done something else, and I ain't sure about it; we had our regular business that meeting, you know.

Cross-examination by Mr. Hilton.

Q. Do you know the location of Mr. Freeman's property through which this road would pass? A. Yes.

Q. Is his property accessible by any road or way at the present time? A. No, sir; no; there was a

road in there that Jack used to get in with his oxen.

Q. You know the location of Mr. Nicol's property? A. I ain't been back over any of it.

10 Q. You know where it is? A. Yes.

Q. Can that be reached by any road now? A. No.

Q. At the time you took action on the 2nd of September with regard to this ordinance, you knew that this property could not be reached by any other road except this new one? A. Yes.

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20 GEORGE VOORHIS, the prosecutor, sworn as a witness in his own behalf, testifies as follows:

Q. What is your age? A. Sixty-nine.

Q. Where do you live? A. Franklin Lake.

Q. How long have you live there? A. Since 1867.

Q. Do you own any property there? A. Yes, sir.

Q. How much land? A. 123 acres.

Q. Where is it located with reference to the
30 Ponds Church Road? A. It adjoins Mr. Mackenzie's land up to Mr. Smith's land.

Q. Does it front on Ponds Church Road? A. All the way.

Q. For what distance? A. Nearly half a mile.

Q. What is the nature of the land which you own there? A. Nice land along the road.

Q. As to being level or otherwise? A. The best land in that section, I can tell you that.

Q. Is it level? A. Most part of it.

40 Q. What has it been used for and what is it used for? A. For farming.

Q. Where is your building located? A. In front, on the main road.

Q. About how far? A. About 125 feet or 150 feet, I think, something like that; well, I forget now.

Q. Does your land extend back to the land of Mr. Freeman? A. Yes, sir. 10

Q. Where does Mr. Nicol live? A. Where does he live?

Q. Where does he live? A. I don't know where he lives.

Q. Where does Mr. Freeman live? A. In Paterson, I believe.

Q. Do you know the size of the tracts of land owned by Mr. Nicol and by Mr. Freeman? A. Why, the tract that Mr. Nicol now owns, the way I understand it, is about three and sixty-one hundredth acres. 20

Q. How big is Mr. Freeman's? A. Twenty-nine and sixty-one hundredth acres in the whole Hennion tract. I have got about five acres of it, and some you can take out twenty-four acres over Mr. Freeman's, or something like that.

Q. How far back from the Ponds Church Road do these tracts lie? A. I should say it was 240 yards. 30

Q. What is the nature of the land? A. Poor, sandy.

Q. Before you reach it does the land change in nature, I mean going up from Ponds Church Road? A. Oh, my, yes.

Q. How? A. Why, the land along the road is heavier soil.

Q. And as you go back from the road what change, if any, is made in the land? A. Gravel, hills, sandy. 40

Q. Any swamps there? A. Yes; most of this is lying in swamps, in a cedar swamp.

Q. What kind of land is it behind there? A. In back of their property?

Q. Yes. A. I have got thirty-eight acres back of them; it is all mountain.

Q. No buildings back there at all? A. None at all; never was.

10

Q. Is the land back there arable, tillable? A. Portions, but very little of it.

Q. You have seen this map showing the proposed road, have you not? A. Oh, my, I know every inch of it.

Q. I show you this map and indicate to you the proposed road beginning at the Ponds Church Road and extending up to the Nicol tract. A. That is the road they want.

20

Q. Where is your land; your land goes to the westerly side of the proposed road? A. Yes, about west, back to the mountain. There is eighty acres down to Mackenzie's.

Q. Your line goes back to the line marked on the map "Property Line." Who owns the road on the other side of the proposed road? A. Mr. William M. Smith owns it, and beyond William Smith's line is the line of William C. Butler.

30

Q. Do you know how long Mr. Nicol and Mr. Freeman have owned these back lots? A. Well, I cannot give you the date, but I should think three years.

Q. And do you know who were the owners of these lots before Mr. Nicol and Mr. Freeman bought them? A. They belonged to John V. Hennion.

Q. You knew him? A. Certainly.

Q. Did his original tract of land extend out to the Ponds Church Road? A. Not what Mr. Hennion owned himself. He bought this off Nicholas Ackerman who was the executor; old man Hennion

40

bought these twenty-nine acres from those executors, and the tract that Mrs. Smith and Mrs. Butler have now was given part to one daughter and the other side to the son.

Q. I am asking you whether the tract that Mr. Hennion owned, part of which is comprised in these two particular tracts of Mr. Nicol and Mr. Freeman, did not back to the Ponds Church Road? A. No; that is twenty-nine acres that Mr. Hennion bought himself, but his wife owned the other side where Mr. Butler is now. 10

Q. Did you know of a lane or driveway there from Ponds Church Road into these tracts?

Mr. Hilton: Objected to as irrelevant.

A. Every farmer has his own right of way to the mountain. 20

Q. Do you know that there was a lane used by Mr. Hennion from thePonds Church Road back to those tracks? A. Yes; he had the road the same as I, and the same as Mr. Hughes.

Q. Would that land be nearer to these tracts, or shorter to these tracts, than the proposed road?

Mr. Hilton: It is understood, is it not, that my objection stands to all of this testimony upon the ground that it is irrelevant? 30

A. Oh, my, a good deal.

Q. What is the value of your property fronting on Ponds Church Road, per acre? A. That is a question I cannot answer, what it is worth.

Q. What effect would this proposed road have upon the value of your property, if it were built? A. What do you mean?

Q. If this road were built, what effect would it have on the value of your property? A. It would have no effect at all as far as the value goes. 40

Q. Would you be able to utilize your property for purposes of selling or otherwise as well, if the road were built as if it were not built? A. It would not help me any.

Q. Would it hurt you? A. Certainly.

10 Q. Are there any buildings to the rear of your house? A. No, sir.

Q. Has there been any development in that section of the township during your recollection? A. None.

Q. What is the business of most of the people living there? A. Farmers, most of them.

Q. You saw the notice of an introduction of an ordinance for this same road last November, didn't you? A. Yes, sir.

20 Q. And what did you do in reference to that at that time; did you consult counsel? A. Yes; certainly.

Q. What did you instruct him to do; did you give instructions to go before the Board and protest against the passage of the ordinance? A. Yes.

Q. He did so? A. I think so.

Q. That was last November? A. Yes.

Q. When did you first learn that this ordinance was to be taken up by the Township Committee this last time; how soon before the committee meeting 30 did you learn it? A. I cannot answer that.

Q. Was there any notice of the passage of this ordinance posted on your premises? A. No, sir.

Q. Did you receive any notice of it personally? A. No, sir.

Q. Or through the mail? A. No, sir.

Q. Or in any other way? A. No, sir.

Q. How did you learn that the ordinance was going to be introduced? A. There was one posted up in Crystal Lake station and somebody was over 40 and came over and told me about it.

Q. Do you remember that that was the day before the ordinance was to be introduced, and that you came down and instructed your counsel to go up the next day before your committee and oppose it?

Mr. Hilton: I object to the question as leading. 10

A. I cannot say how many days it was before.

Q. Were you represented before the Township Committee at their meeting on September 2nd when this ordinance was introduced? A. I think so. I think Mr. Dunn was there.

Q. Did you instruct him to represent you there? A. Yes; certainly.

Q. You retained him to represent you there, did you? A. Yes, sir. 20

Cross-examination by Mr. Hilton.

Q. I understood you to say that this new proposed road would not affect your land in any way? A. Would not affect me?

Q. Yes. A. It would affect me.

Q. Then, you did not say it would not affect you? A. Eh? 30

Q. You did not say it would not affect you? A. As far as the road goes, it is a detriment to me.

Q. In what respect would the road be a detriment to you?

Mr. Murphy: I object to that.

A. It takes a lot of good land, and the land is worth more than the land they own back there.

Q. That is all, is it not? A. As far as the road goes, if I want a road there I can put it there myself over my own land. 40

Q. That is the only way it affects you, it takes from you some good land? A. Yes.

Q. Now, Mr. Voorhis, about that lane that you were telling about—that is the lane between your property and Smith's? A. Yes.

10 Q. Then comes the land between you and Mr. Butler? A. Yes.

Q. Where would that lane strike your land? A. You mean my back land?

Q. Yes. A. I suppose, as near as I can know the line here, this line from the back part of mine would be nearly two-thirds of the distance from the back end to the mountain.

Q. Would it strike your land or would it strike Freeman's land or Nicol's land—that lane? A. 20 That lane would strike both of their pieces of property. My land runs straight down to the swamp.

Q. You have spoken in your testimony about a lane that would be nearer to Mr. Freeman and Mr. Nicol's property than the proposed road? A. It came down here as far as Mr. Smith's and came right out by Mr. Hennion's barn gate, and that is where Mr. Hennion had his road to his property.

Q. Where would it strike Freeman's? A. It 30 would have to go over the Hennion property.

Q. Ponds Church Road runs west from your westerly line? A. Well, northwest.

Q. And then turns and goes southwest? A. Yes, about.

Q. And then turns off again? A. And then turns off.

Q. At that corner point there was a lane? A. Yes, right by Mrs. Hughes' gate.

Q. And that ran across to Hennion's property? 40 A. On Hennion's property.

Q. That was Hennion's property, now Mr. Hughes' property? A. Now, Mr. Hughes'.

Q. When did you first know about that lane? A. On the Hennion property?

Q. Yes. A. As long as I have lived there, since 1867; that is quite awhile.

Q. Has the lane been there since 1867? A. No; the old man got so he could not work, and didn't do anything.

Q. All you know is that the lane passed on the ground? A. Certainly.

Q. You never knew it to be used? A. Not since Mr. Hennion died, or before he died.

Q. Did you ever know it to be used? A. Before he died.

Q. How long ago is that? A. Well, he died October 14th, 1898.

Q. And before that he had used that lane? A. Always.

Q. And do you know whether that lane is open now on Ponds Church Road? A. No; it is not open.

Q. What is there? A. Mr. Butler put a wire fence across it.

Q. How long has that fence been there? A. I cannot answer. Perhaps two or three years.

Q. Was that the first fence ever across there? A. Mr. Hennion always had that open.

(At this point the further taking of depositions on the part of the prosecution is adjourned to Thursday, November 4th, 1915, at 2 o'clock in the afternoon.)

NEW JERSEY SUPREME COURT.

GEORGE VOORHIS, Prosecutor, vs. THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF FRANKLIN, IN THE COUNTY OF BERGEN, Defendant.	Certiorari. Depositions.

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FURTHER DEPOSITIONS ON THE PART OF THE PROSECUTOR in the above-stated cause taken, pursuant to adjournment, before me, Edward O'Byrne, a Supreme Court Examiner, at my office in the Romaine Building, 136 Washington Street, Paterson, New Jersey, on the 4th day of November, 1915, at 2 o'clock in the afternoon, in the presence of Michael Murphy, Esq., and Charles B. Dunn, Esq., for the prosecutor, and George S. Hilton, Esq., for the defendants.

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Supreme Court Examiner.

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WILLIAM ROSENKRANS, sworn as a witness on the part of the prosecutor, testifies as follows:

Direct examination by Mr. Murphy.

Q. You are a practising attorney and lawyer of this State? A. Yes, sir.

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Q. Were you retained by— A. (Interrupting) I was retained by Mr. William M. Smith to act for

his wife, Mrs. William M. Smith, and a Mrs. Eleanor Hughes Butler.

Q. For what purpose? A. For the purpose of filing a protest in regard to the proposed road which is the subject-matter of this hearing. Mr. Smith came to me on the day before the hearing—I think that was September 1st, late in the afternoon—and told me the situations, and he stated that he had come to Paterson to get John H. Reynolds of the Paterson Savings Institution as his lawyer; that Mr. Reynolds had appeared for him in a previous hearing on the same matter, that is, the same proposed road and that he was conversant with the facts, but that Mr. Reynolds was away on his vacation and he could not find him. I drew up the formal notices of protest and they were signed and filed the next day with the Clerk.

Q. Filed by you? A. Filed by me with the Clerk of the Board.

Q. Mr. Smith met you at Paterson, I presume? A. Yes; in Paterson.

Q. The place where this meeting was held was at Wyckoff? A. Yes.

Q. A distance of six or eight miles from Paterson? A. Yes. I told Mr. Smith at the time I met him, after talking the matter over with him, that in order to properly take care of himself and Mrs. Smith and Mrs. Butler, I would have to have the matter adjourned in order to look up witnesses and look into the matter.

Q. Did you tell him that you made an effort to get such an adjournment from the committee? A. I stated that I would make such an application, yes.

Q. You appeared before the committee? A. Yes; the next day I appeared before the committee at the meeting.

Q. Was there any other attorney present? A. Mr. Charles B. Dunn also appeared.

Q. Whom did Mr. Dunn represent? A. Mr. George Voorhis.

Q. And he and you both appeared for the purpose of obtaining an adjournment?

Mr. Hilton: Let him say what he did.

A. The meeting, I think, was called together about 2 o'clock in the afternoon, and after filing the protest I requested an adjournment in behalf of Mrs. Smith and Mr. Smith and Mrs. Butler, stating the ground that I had just been called into the case, the previous afternoon, and had not had time to look into the merits of it or to witnesses, and also stating that the counsel who was conversant with it, Mr. John H. Reynolds, was on his vacation and asked that they put the matter off until Mr. Reynolds came back, as he knew all about the case, or, if they would not that, that they would adjourn it for at least a week or some reasonable time, so that I could work it up in behalf of my clients.

Q. What response did they make to that request on your part? A. That request was denied, and I may say that there were several arguments. We made that request a number of times.

Q. Did Mr. Dunn also make such a request? A. Mr. Dunn made a like request on behalf of Mr. Voorhis, that he wanted a chance to produce witnesses for a hearing, and that was also denied.

Q. Was there any reason given by the committee for their denial of these requests, that you remember? A. The committee stated that they were there to have the meeting and intended to hold it, and that they would not put the matter off.

Q. Did they act on that matter then at that hearing? A. They did, and they afterwards passed the ordinance or attempted to pass it.

Q. And after you were refused an adjournment, did you enter any formal objections to the passage of the ordinance? A. I entered, I think, three or four formal objections.

Q. Do you remember now the substance of your objections? A. One objection was on the ground that the notice and the ordinance and the map filed called for a public road thirty feet wide, and my objection to that was that it was contrary to law, the road law stating that the road should be at least two rods wide—a public road. Another ground of objection was that they were passing the ordinance without giving the people entering protest a chance for a hearing; and the third ground, if I recollect it, was that they passed the ordinance without having any evidence before them whatsoever—no one being sworn nor any testimony being taken—as to whether the road was necessary or not.

Q. Had anybody appeared at that meeting in behalf of the petitioners for the road to give reasons or to give evidence as to the necessity of the road? A. The only person that I can recollect that was there was Mr. Freeman, and no evidence was taken of any kind in regard to whether it was necessary or unnecessary.

Q. So that no person appeared to give testimony in reference to the necessity or not of the road? A. The only person that was there was Mr. Freeman.

Q. Did Mr. Freeman give any evidence? A. Mr. Freeman objected to the adjournment, but gave no evidence as to whether the road was necessary or not.

Q. Was a refusal of an adjournment by the committee put to a vote by the committee? A. Yes, sir; it was voted upon by the committee.

Q. After this matter had been completed, I presume you left the meeting? A. I left the meeting.

Q. Did the clerk enter, if you know, in his minutes what transpired at that meeting? A. The clerk took down notes during the meeting.

Q. Did the clerk take any part in the discussion? A. The clerk seemed to have taken a very active part in it.

Q. In what respect? A. He seemed to have more to say than most of the members.

Q. Did he make suggestion to the Board? A. Yes, sir; he made suggestions; I might say that he made so many suggestions that if I had been a member of the Board, I think I would have the Board tell him that he was clerk, and that his duty was to record what was done and not to suggest what should be done.

NEW JERSEY SUPREME COURT.

GEORGE VOORHIS, Prosecutor, vs. THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF FRANKLIN, IN THE COUNTY OF BERGEN, Defendants.	Certiorari. Depositions.

Depositions on the part of the defendant in the above stated cause, taken before me, Edward O'Byrne, a Supreme Court Examiner, at my office in the Romaine Building, 136 Washington Street, Paterson, New Jersey, on the 4th day of November, nineteen hundred and fifteen, at 2 o'clock in the afternoon, in the presence of George S. Hilton,

Esq., for the defendant, and Michael Murphy, Esq., and Charles B. Dunn, Esq., for the prosecutor.

Supreme Court Examiner.

It is stipulated and agreed that these depositions shall be taken down in shorthand notes by the examiner, the signatures of the witness thereto being waived, and that the typewritten transcript thereof shall have the same force and effect as if said depositions were taken down in longhand by the examiner and signed by the respective witnesses.

Supreme Court Examiner.

FORSTER W. FREEMAN, sworn as a witness on the part of the defendant, testifies as follows:

Direct examination by Mr. Hilton.

Q. You live in this City? A. Yes, sir.

Q. And are engaged in the practice of law? A. Yes, sir.

Q. How long have you been engaged in the practice of law in this City? A. I passed the bar in June, 1894; twenty-one years, about, I think, or a little over.

Q. Do you own a piece of land located on this proposed road? A. Yes, sir; I have a small farm there.

Q. Is the property indicated as yours on this map your property? A. Yes, I own the property that has been indicated on this map, and I own a small farm there besides this.

Q. How many acres are there in the land on this proposed road which you own? A. There are about twenty-three acres there, I think; twenty-two or twenty-three acres, I am not quite sure; it is over twenty acres.

10 Q. How far is that from the Ponds Church Road? A. Well, I would have to refer to the map to get the figures from it.

Q. Well, about? A. Oh, it is a thousand feet or a little over, I think; I think it is a little over a thousand feet; it may be twelve hundred feet.

Q. Is there at the present time any means of reaching it? A. There are no means of reaching it now.

Q. Except— A. (Interrupting) Except over

20 this proposed road.

Q. Will you state the general character of the land? A. Why, the ground is what you might term rolling farm ground. Of the piece that I have there are probably ten acres that are in a swamp down there that has been previously mentioned. The rest of it is tillable, rather of a sandy soil. It has not been tilled in some years, though, to my knowledge.

Q. How about cedars growing there? A. There are cedars there. Some cedars have grown up on

30 it and small bushes here and there, but that is a very easy matter to clear up.

Q. How about its being on a hillside? A. Well, mine is not on a hillside. Mr. Nicol's property lies partly on a hillside and partly on the level, but mine does not reach to the foot of the mountain. It is very level ground; what I term rolling.

Q. What is the general character of Mr. Nicol's land? A. Well, that on the hillside has some trees, woods on it; it is a little stony. The rest of it is

40 similar to mine. I might say that entire section of Jersey up there is more or less stony—small

stones in sections—but there are here and there fields that are quite clear of stones and that would apply to my land. Most of my land has very few stones on it, and Mr. Nicol's is stony on the hillside, but not below.

Q. Mr. Nicol's land is the land indicated on the map as belonging to him? A. Yes, that is his property. 10

Q. Have you your deeds for your piece of land with you? A. Yes, I have the deeds. There are five different deeds comprising my title. My property came direct to me. Mr. Nicol's property was deeded direct to him by Mr. Edgar A. De Yoe.

Mr. Hilton: I offer in evidence deed dated October 12th, 1912, from Matilda Eichwald and others to Forster W. E. Freeman, recorded in the Clerk's office of the County of Bergen on January 7th, 1913, in Book 835 of Deeds, Passaic County, on page 377, etc. 20

(Deed marked Exhibit D-1.)

Mr. Hilton: I also offer in evidence deed dated April 20th, 1912, from Benjamin Hennion and his wife, Forster W. Freeman, recorded in the Clerk's office of Bergen County on July 19th, 1912, in Book 835 of Deeds, on pages 373, etc. 30

(Deed is marked Exhibit D-2.)

Mr. Hilton: I also offer in evidence deed dated October 16th, 1912, from Walter E. Cole and wife and others to Forster W. Freeman, recorded in the Clerk's office of Bergen County on January 7th, 1913, in Book 835 of Deeds for said county, on pages 380, etc.

(Deed is marked Exhibit D-3.)

Mr. Hilton: I also offer in evidence deed dated October 2nd, 1912, from Sarah E. Vanevra and her husband to Forster W. 40

Freeman; recorded in the Clerk's office of Bergen County on January 7th, 1913, in Book 835 of Deeds, for said County, on pages 372, etc.

(Deed is marked Exhibit D-4.)

10 Mr. Hilton: I also offer in evidence deed dated October 2nd, 1912, from Margaret Ellen Baumont to Forster W. Freeman; recorded in the Clerk's office of Bergen County on January 7th, 1913, in Book 835 of Deeds, Passaic County, on pages 375, etc.

(Deed is marked Exhibit D-5.)

Q. What use have you made of this land which you own there? A. I have not made any use of 20 it, for the reason that I cannot get into it; but I expect to.

Q. What use do you expect to make of it? A. I expect to build in there, if I am ever able to get into it, to clean it up and develop it.

Q. Is it adapted to building purposes? A. It is adapted to building purposes or farming purposes; the ground is high, dry and healthy.

Q. Something was said the other day about a lane or road up through there somewhere; what 30 do you know about that lane? A. Why, there is no lane, no visible lane going up to this ground. There formerly was a lane used, as far as I can learn and from investigation in conjunction with the owners of the Voorhis place and the owners of my ground and the Butler place, and the Hennion place. The lane entered from the public road on what is now the Butler place and went across a corner of that, and then went into the Voorhis place and went by the Voorhis ground onto my ground; 40 but that has been fenced off and closed off. So far as I can learn or get any information of it, there never was any other lane.

Q. What did you learn in regard to the rights of the parties in that old lane, that is, the rights of the owner of the Hennion property? A. I spoke to Mr. Voorhis, and he denied that I had any rights to use the lane or go over his ground; and I spoke to Mr. Butler at the time when he was on East, when his mother-in-law, Mrs. Hughes, died, and Mr. William Smith, and they both denied that I had any right to go over their ground; and they immediately had a fence put across what was the old lane there, so that I have been unable to go in there at all.

Q. Have you investigated the legal question as to whether you had any rights to use any of these ways that ever were there? A. So far as I can ascertain, I cannot find that I have any right to use any of that lane as it formerly went.

Q. Is there any other way that leads across? A. There is no other way that leads across.

Q. You attended the meetings of the Township Committee held in November of last year and previous to that? A. Yes.

Q. When the subject of the proposed road was up? A. Yes.

Q. You attended all of the meetings? A. I have attended all of the meetings.

Q. That is, I mean when the question of this road came up? A. Yes, sir; that is, when this road question came up.

Q. Did John H. Reynolds appear there in behalf of Mrs. Smith or anybody else at any of these meetings? A. Mr. Reynolds never personally appeared at any of these meetings.

Q. Do you know where Mr. Quackenbush, one of the members of the committee, lives? A. I don't know where he lives, but I am well acquainted with Mr. Quackenbush.

Q. Do you know how far he lives from where the meetings were held? A. Well, I should say roughly it might be a mile and a half.

Q. Where were the meetings held? A. The meetings were held in Wyckoff in what they call the Borough Hall.

10 Q. Do you know how far from the place of meeting Mr. William Winters lives? A. All three committee men live, I think, within a radius of a mile and a half or two miles from the place of the meetings—probably nearer.

Q. And you attended the meetings held on the 5th of August and also on the 2nd of September? A. I attended both of the meetings; yes, sir.

Q. Do you recollect whether anything was done with regard to this ordinance at the meeting of Au-
20 gust 5th? A. Yes, sir. At the meeting of August 5th the ordinance was introduced. It was passed the first reading, and the clerk was ordered to post the necessary legal notices, giving notice of a hearing to consider objections.

Q. Now, before these meetings were held did you speak to any of the parties interested about the matter? A. Shortly after the meeting of August 5th, within a week after it—I could not give the exact date, but I think it was within the next few
30 days—I saw Mr. William Smith who appeared here as a witness and whose wife appears as a protestant, and I informed him that the petition had been filed and just what had been done—all the proceedings—and I told him the date of the next meeting, September 2nd. I might say that I had previously had conversations with Mr. Smith regarding the road, and I had promised him that if anything was done to go ahead with this road, that I would let him know, and I did so. That was at least three
40 weeks before September 2nd.

Q. Did you say anything to him about letting

the other people know it? A. Yes. I asked him if he would see Mr. Voorhis, of whom he is a neighbor up in the country, or Mr. Dunn, his attorney, and he stated that he would.

Q. Mr. Smith's wife, I think, owns a piece of land adjoining this proposed road? A. Yes; on the right side. 10

Q. Who owns the rest of the Hennion plot, as we call it? A. The rest of the Mrs. Hennion farm is owned, I believed, by Mrs. Eleanor Butler.

Q. Is she any relative of Mrs. Smith? A. I believe she is a sister of Mr. Smith's wife. That is my understanding.

Q. Do you know whether the piece of land owned by Mrs. Butler is under the control or superintendence of Mr. Smith? A. Mr. Smith lives there and has the use and apparent control of it. His brother-in-law, Mr. Butler, lives somewhere in the West, I believe—Spokane. 20

Q. You live in the City of Paterson? A. Yes, sir; I live at 556 Market Street, Paterson.

Q. How long have you lived in Paterson? A. Since 1890, twenty-five years.

> Mr. Murphy: I would like to enter an objection to all of the testimony of this witness in reference to his knowledge of Mr. Smith's relation with the property or his wife and his information as to the property owned by Mrs. Butler, on account of its being without foundation of actual knowledge, being only hearsay. 30

Q. State what the foundation of your knowledge is on that subject? A. Why, before I purchased the property which is on this map and which I own there adjoining this proposed road, I made a search of the records at Hackensack Court House, Bergen 40

County, to see who owned the adjoining properties, and I searched the Voorhis tract and I searched the Hughes tract at the same time as I searched my own tract, and I found that the property formerly owned by Hennion had been deeded to Mr. Hughes; that he had purchased it at a previous sale; that Mr. Hughes had died, leaving his wife, as I remember, a life right in it, and the heirs had deeded it to Mrs. Hughes; that Mrs. Hughes afterwards deeded it to Mrs. Butler's son, and upon his death, I presume, it was inherited by Mrs. Butler. She claims to be the owner of it, so I have been told.

Q. I mean in regards to Mr. Smith having any superintendence over this land; what is the foundation of your information on that subject? A. Why, the foundation is that I have talked with Mr. William Smith personally several times regarding the place. He has lived on the place each summer. He has just moved off the place these last few days, I think, to come down to his city residence, and he hires the men there apparently and has complete control and supervision of the place.

Q. You state "apparently." What do you see that leads you to say that? A. I see that he lives there, and I see that he directs the work and apparently is in charge of the place, and in talking of it he speaks of it in that way.

Cross-examination by Mr. Dunn.

Q. How did you acquire title to this particular piece, in the first place? A. I bought the tax title, in the first place, from the township.

Q. And you afterwards made a search of it? A. I afterwards made a search of it and bought the title of the heirs.

Q. And you discovered, in making the search, that Hennion owned a piece, that is, the piece that Butler now owns? A. Yes.

Q. Do you also know that the title of Hennion and the title of his wife to this whole farm, including your acreage—you have twenty-three acres? A. Twenty-three acres.

Q. (Continuing) Was part of the Hennion farm? A. It was, I believe, belonging to Mr. Hennion. 10

Q. And Mrs. Hennion owned the part where Hughes afterwards purchased? A. She inherited it from her father, I think.

Q. So that Mr. Hennion lived there in the farmhouse, did he not? A. I don't know where Mr. Hennion lived, except as I have been told.

Q. That is the only farmhouse on the property? A. That was before my time.

Q. That is the only house on the property? A. The only house is the Hughes house. 20

Q. The Hughes house was the Hennion house? A. That I don't know. I presume so, but that was before my title.

Q. You searched the title, and you found that the title Hughes got came from Hennion? A. Yes.

Q. So that while Mr. Hughes and his wife lived there they had the use of your twenty-three acres; how many acres in the Butler place, do you know? A. That I don't remember now. It is much larger than my place.

Q. Were they or not one farm? A. I presume it was. 30

Q. And at that time and even now, the Ponds Church Road goes right around the Butler farm, does it not? A. It does not go round it; it goes on a bend in front of it, but does not go round.

Q. And while Hennion lived there, he and his wife owned this farm, and he had access to the Ponds Church Road there in front of his place, had he not? A. I would suppose so.

Mr. Hilton: We object to going into any 40

investigation of the right of way at this hearing.

Q. (Showing witness) I show you this blueprint; that was filed with the return to the writ of certiorari; was it not? A. Yes, sir.

10 Q. I ask you this question: Is there any public road entering to your tract of land that you can reach, different from the road as laid out on this map; is there any shorter way to the public road? A. There is not.

Q. At the time that you purchased this property at tax sale, did you know that there was no means of getting to it?

Mr. Hilton: I object to that question upon

20 the ground that it is irrelevant.

A. I knew it was not on a public road.

Q. Did you know that there was no right of way over other land to it? A. No, sir.

Q. Did you know for what purpose this tract of twenty-three acres was used before you got it? A. No, sir.

Q. Was there anything on the land to indicate to you that you had a right of way over what was

30 afterwards purchased by the Hughes people; did you know whether there was any right of way from your twenty-three acres over what was purchased afterwards by Mrs. Hughes—the property purchased by Mr. Hughes? A. No; I did not know anything about it.

Q. At the time you bought it you knew there was no way to get to the public road; is that right? A. I did not know whether there was or not.

Q. Did you know, when you bought it, that this

40 whole farm was known as the Hennion farm, including Hughes'?

Mr. Hilton: I object to the question upon the ground that it is irrelevant.

A. Now, let me see; I don't think I did at the time that I bought the tax title. I was told by Mr. Voorhis that it belonged to somebody in Philadelphia.

Q. Have you ever commenced proceedings or attempted to exercise your right to get over the property purchased by Hughes, now known as the Butler property? A. No. I have not tried to force my way in. Mr. Butler and Mrs. Smith denied my right to go through and put a fence up, and I have not tried to force it.

Q. So that the question of your right has never been determined by a court of law or equity? A. Not to my knowledge, no; not by me.

Q. Have you made any application in any court for the laying out of a private road over this property? A. I did; about three years ago, I think, and I found that the act under which private roads are laid out had been superseded, so that it was impossible to lay out a private road under it.

Q. Was the description used by you making application for the private road and the map used by you the same as is now used by you in making application for this public road? A. No, sir. My recollection is that it was not.

Q. You have never insisted to Mr. Butler or Mr. Hughes, or to the owners of what is known as the Butler property, that you had a right of way over their lands? A. Not that I remember now.

Q. And have never attempted to enforce it? A. No, sir.

By Mr. Murphy.

Q. You say that the length of this road is 1,000 feet? A. The question was as to the distance of my land from the road, not the length of this road.

Q. Through what extent of your land does the road go? A. The proposed road?

Q. Yes. A. The map shows it; it goes entirely across.

Q. About how many feet? A. I could not tell you without looking at the map. The entire road is 2,280 feet, as I remember it, and I think mine is less than half.

Q. Mr. Freeman, you say that when you attended the meeting held in November, 1914, that Mr. Reynolds did not appear. Do you remember that Mr. Dunn stated at that meeting that he appeared as representing Mr. Reynolds, the attorney of Mr. Hughes and Mr. Butler? A. Yes, and Mr. Dunn appeared personally, at that meeting—one or both of them—representing, I believe, Mr. Reynolds, but Mr. Reynolds did not personally appear.

Q. So that the Butler and Hughes interest was represented at that meeting also? A. Oh, they were represented there, or ostensibly were represented.

Q. You say that you apprised Mr. Smith of their intended introduction of this ordinance last September. You did not notify Mr. Voorhis? A. I do not think I notified him.

Q. He is your nearest neighbor, is he not? A. No; he is not.

Q. He is one of the nearest? A. He is right close there. I might say, if you want the information, that he never speaks to me, so that I do not trouble to speak to him.

Q. At the meeting held on the 5th of August last you were present? A. Yes, sir.

Q. Did the clerk enter in his minute book the proceedings as they went along? A. Well, that I could not correctly answer, because I did not particularly observe what he did. I know that he wrote as he went along.

Q. Did he remain in the hall with you after the

meeting had adjourned? A. I did not stay until the end of the meeting.

Q. Did you see him in reference to the minutes or what they contained between August 5th and September 2nd? A. No, sir; I did not. 10

Q. Did you write him? A. No, sir; I did not.

Q. Did you make any suggestion to him as to how the minutes should be entered? A. No, sir; I did not.

Q. Did he ask you anything about it? A. Not that I remember; I do not think he did.

J. MILLAR NICOL, sworn as a witness on the part of the defendant, testifies as follows: 20

Direct examination by Mr. Hilton.

Q. Where do you live? A. I live on Diamond Bridge Avenue, Hawthorne, New Jersey.

Q. What is your business? A. A manufacturer of gums.

Q. Do you own this property indicated on this map, being the map filed before the Township Committee in this matter, showing property? A. I do; yes. 30

Q. Have you the deed for that property? A. Yes, sir; here it is. This is my deed.

Mr. Hilton: I offer in evidence deed from Edgar A. De Yoe to J. Millar Nicol and Camilla Nicol, his wife, dated March 12th, 1912; recorded in the Clerk's office in the County of Bergen on March 19th, 1912, in Book 808 of Deeds for said County, on pages 380, etc. (Deed is marked Exhibit D-6). 40

Q. What use are you making of that land? A. I have not been able to make any use of the land; I cannot get in.

Q. What purpose do you propose to make of it, if you can get in? A. I propose to build a summer home there.

10 Q. Is there any means whatever now of getting into your lands, except over the proposed road? A. No, sir; not to my knowledge.

Cross-examination by Mr. Dunn.

Q. How many acres have you there? A. About three and a half acres.

Q. Now, your land adjoins the tract of land of Forster W. Freeman? A. Yes, sir.

20 Q. And was a part of this tract? A. Well, not when I bought it. I bought it from Mr. De Yoe.

Q. I mean it was part of the original tract? A. I presume so from what I have heard.

Q. The original tract being a tract of twenty-nine and sixty-four hundredth acres, conveyed to Hennion by Nicholas Ackerman; were you familiar with that property at the time you bought it; did you see the land before you bought? A. Yes, sir; I had seen it before I bought it.

30 Q. You knew at that time that you had no way of getting to the public road? A. I knew there was no public road there into it, but the right of way I never considered; I supposed I had it.

Q. You never attempted to get a right of way? A. The only thing I have attempted to do is to walk through, past Mr. Butler's house, but they have put a fence there now, and you cannot go through that way.

Q. Were you informed, before you bought it,

40 that there was a right of way through the Butler

farm to the Ponds Church Road? A. No, sir; I took those things for granted.

Q. You took a chance on it? A. I took a chance on it, I supposed Mr. De Yoe would sell me something with a right of way to it, and I did not even make inquiries about it.

10

Q. After they put the fence up there on the Butler tract, did you make any attempt to tear the fence down? A. No, sir.

Q. Are there any houses of any kind along this public road or in this territory that the public road is going to run through? A. No.

Q. And this road ends at the foot of a mountain, does it not? A. It ends at Voorhis' place, in the mountains.

Q. At Voorhis' mountain tract? A. Yes.

20

Q. It does not connect with any other road? A. No.

Q. What is the nature of your land there? A. Why, it goes up a little way on the hillside. The rest of it is more on the flat and sandy, more of a sandy soil.

Q. Any cedar trees growing on it? A. There are a few cedar trees on it, and I planted some apple trees there.

Q. What did you pay for the land? A. I paid $350 for it; $100 an acre.

30

Mr. Hilton: It is agreed that the notices of the meeting on September 2nd of the Township Committee of the Township of Franklin in respect to this matter, were posted the requisite period of time before the meeting.

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NEW JERSEY SUPREME COURT.

GEORGE VOORHIS, Prosecutor, vs. THE TOWNSHIP COMMITTE OF THE TOWNSHIP OF FRANKLIN, IN THE COUNTY OF BERGEN, Defendant.	Certiorari. Depositions.

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FURTHER DEPOSITIONS AND DEPOSITIONS IN REBUTTAL, on the part of the prosecutor, taken by consent, on this 9th day of November, 1915, at 3 o'clock in the afternoon, at my office in the Romaine Building, Paterson, N. J., in the presence of Michael J. Murphy, Esq., attorney of prosecutor, and George S. Hilton, Esq., attorney of defendant.

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Supreme Court Examiner.

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GEORGE VOORHIS, the prosecutor, already sworn on his own behalf, recalled and further examined as follows:

Direct examination by Mr. Murphy.

Q. At the last hearing, when you testified, Mr. Voorhis, you were asked this question: "When did you first learn that this ordinance was to be taken up by the Township Committee this last time; how soon before the committee meeting did you learn it?" Did you understand that question then as referring to the ordinance which was passed Sep-

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tember 2nd, 1915, or the ordinance which was introduced November, 1914? A. I only saw the notice up at Crystal Lake Station a year ago. That is the only notice I saw.

Q. When this question was asked, did you know that it referred to the last ordinance on September 2nd? A. Did I what? 10

Q. When this question was asked you at the last hearing, did you know that it referred to the ordinance that was passed last September? A. Why, no.

Q. What ordinance did you understand it as referring to? A. What—this last time?

Q. When this question was asked you, did you understand this question as referring to the ordinance of September 2nd, 1915, or as to the ordinance introduced a year ago? A. I understood it was the ordinance of 1914. 20

Q. Now, I ask you what notice, if any, did you have that this ordinance was to be introduced on September 2nd, 1915? A. I had no notice until Mr. Dunn came in the evening before and told me; I think that was the day before.

Q. That would be September 1st? A. Perhaps about that time.

Q. Was Mr. Dunn, your attorney, the first one that gave you information of it? A. Yes. 30

Q. About this ordinance? A. Yes, sir.

Q. And when Mr. Dunn informed you that this ordinance was to be considered the next day, did you sign a protest against the passage of it? A. Yes, sir.

Q. And did you request, through your attorney, Mr. Dunn, that the committee should give you an opportunity to be heard in protest against it, and to bring witnesses to show that this road was not necessary? 40

Mr. Hilton: I think you are putting the testimony into the witness' mouth. I object to the question as leading.

10 Q. Were you able that evening or the next day to attend at the meeting? A. I was not.

Q. Why? A. I was sick.

Cross-examination by Mr. Hilton.

Q. Mr. Dunn represented you in this matter, didn't he? A. Yes, sir.

Q. And he came to see you when? A. It was in the evening of the 1st of September, I think.

Q. How did he happen to come to see you? A. 20 Why, he came to give me notice, I suppose; I knew nothing; I could not get out.

Q. What did he say when he came? A. Why, he said that this would come off the next day, I think.

Q. And you were not present at the meeting? A. No, sir.

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30 CHARLES B. DUNN, sworn as a witness on the part of the prosecutor, testifies as follows:

Direct examination by Mr. Murphy.

Q. You were the attorney of Mr. Voorhis? A. Yes, sir.

Q. And have been his counsel for a considerable time? A. For a number of years.

Q. When did you first learn that the ordinance 40 of the Township Committee of the Township of Franklin, passed on September 2nd, 1915, was to

be considered by that committee? A. On the afternoon of September 1st Mr. William Smith came to my office and told me about it. I immediately telephoned to Mr. Freeman and requested him to have the thing go over for a couple of weeks, to give Mr. Voorhis an opportunity to be heard, and he refused to grant the request, and I immediately prepared my protest and got an automobile and went up to Mr. Voorhis' residence; I got there about half-past 5 o'clock or 6 o'clock in the evening; I told Mr. Voorhis that the meeting was to be held the next day; he had not heard anything about it. I told him it would be necessary to have the matter go over for a couple of weeks and to have a day fixed when we could bring all the testimony and present it to the Township Committee; and I had no doubt in my own mind at that time but that the comittee would grant our request and fix a day for the hearing. Mr. Voorhis at that time was in a very weak condition and remained so for a week or ten days after that. I appeared before the committee on the evening of September 2nd, 1915, and I urged them to adjourn the matter to give us an opportunity to bring in witnesses. I put it on the ground that Mr. Voorhis was sick, that he was a large property owner and taxpayer, and that he ought to have an opportunity to be heard; but they refused our request and would not consider anything, but just voted it through.

Q. At that time Mr. Rosenkrans was also present representing— A. (Interrupting) Mr. Rosenkrans was present and made practically the same request for adjournment, representing Mr. Smith and Mrs. Smith and Mrs. Butler. Mr. William Smith was also present, and he made a request for adjournment to have an opportunity to produce witnesses and give the Township Committee some basis to act upon.

Cross-examination by Mr. Hilton.

Q. You were present when the testimony was taken here before? A. Not all of it; no.

Q. (Repeated upon request of counsel) You
10 were present when the testimony was taken here before? A. No; I was not; I only heard, I think, one witness or half a witness. The first day I was tied up; I was unable to be here.

Q. Your informant, you say, was Mr. Smith? A. Mr. William Smith.

Q. And when did he inform you? A. I think about 3 o'clock of the 1st of September, the day before.

Q. Didn't he leave any word at your office before
20 that, that the matter was pending? A. Not to my knowledge; no, sir. I had Mr. Voorhis in my office on the Saturday previous to that, and Mr. Voorhis knew nothing about it then. I might state that during the previous week I was away on my vacation, previous to September 1st I was not in town.

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30 WILLIAM SMITH, a witness already sworn on the part of the prosecutor, recalled and further examined as follows:

Further direct examination by Mr. Murphy.

Q. Mr. Freeman has testified here at the last hearing, as follows: "Did you say anything to him (meaning you) about letting the other people know it?" Answer. "Yes I asked him (meaning you) if he
40 would see Mr. Voorhis, of whom he is a neighbor up in the country, or Mr. Dunn, his attorney; and

he stated that he would." Did Mr. Freeman make that statement or request to you? If he did, what did you answer and what did he say about it? A. I would like to tell exactly what was said.

Q. Do so, if you please? A. Mr. Freeman came to me and said he was going to begin these proceedings again, and that the matter would come up about, as I recollect it, the 1st or 2nd of September. I said: "Well, I feel that I am under obligations to notify Mr. Reynolds as to this matter." Mr. Freeman had said before that that he did not feel under any obligations to notify Mr. Voorhis. I said: "I feel that I am under obligations to notify Mr. Reynolds, but I do not know that I am under any obligation to notify Mr. Voorhis." That is all that was said about it.

Q. Mr. Reynolds was your attorney? A. He had been attorney for Mrs. Smith and Mrs. Butler.

Q. Did you notify Mr. Voorhis? A. No. I intended to notify Mr. Reynolds and Mr. Dunn. I think it was right after, I should say right after that, in the course of the next three days I should say, I was going back and forth to the country, and the first opportunity I had I telephoned on the same day, both to Mr. Reynolds' office and Mr. Dunn's office, but neither of them was in. Then, later, I should think, about as much as a week before the 2nd of September, I telephoned to Mr. Dunn's office and got Mr. Michael Dunn, and he said that Mr. Charles Dunn was not in, and I asked him if he would make a memorandum to let Mr. Charles Dunn know about this matter, that it would come up on the 2nd of September. I tried to get Mr. Reynolds, too.

Q. What did Mr. Michael Dunn say when you asked him to make that memorandum? A. Mr. Michael Dunn said he would notify Charles, and

he said that Charles was out of town on his vacation. I tried to get Mr. Reynolds that day also, but was unable to get him. I did not get Mr. Reynolds until the first day of September. On that day I met Mr. Freeman and had a talk with him, and then I came over and told Mr. Dunn and told Mr. Reynolds, but Mr. Reynolds was going away that day on his vacation.

Q. And he sent Mr. Rosenkrans up, did he? A. He left some word with Mr. Dunn, and Mr. Dunn sent Mr. Rosenkrans, I think.

Q. You know that Mr. Rosenkrans was there? A. Mr. Rosenkrans was there.

Q. You were present at that meeting, too? A. Yes.

Q. What did you do? A. I made about the same explanation that I have made now as to facts, about the notice. I do not know that I made any request for postponement, but Mr. Dunn did, and Mr. Rosenkrans also did so.

Cross-examination by Mr. Hilton.

Q. How long before September 2nd was it that you had the talk with Mr. Freeman? A. I should think it was the first week in August. Mr. Freeman said he was going away, and that he had started the matter, as I understood it, or was starting it then, and it would go on.

Q. You were in Paterson all the time from that time on until the 1st of September? A. Well, I was in Paterson or in Oakland running back and forth every day. I was busy all the time; and all the time I would say in explanation of my not being very active to notify either of these parties, I was trying to make some arrangements by which I could raise the money to make a settlement with

Mr. Freeman, which I thought would obviate all his troubles.

Q. And during that time was Mr. Reynolds in the city? A. Not all the time, because I tried to get him twice and did not succeed.

Q. How many times did you try to get Mr. Dunn? A. Twice. 10

Q. How long was the first time after you had talked with Mr. Freeman that you tried to get Mr. Reynolds?

Mr. Murphy: I object upon the ground that the witness was under no duty to notify anybody except his own attorney.

A. I should say within about three or four days. 20

Q. Then, when do you say it was that you tried to notify Mr. Reynolds the next time? A. About a week before the 2nd of September—within as much as a week before, and within a period of a week and ten days before. That was the time I tried to notify both Dunn and Reynolds and got Mr. Michael Dunn.

Q. When was the first time that you tried to notify Mr. Dunn—how long after your talk with Mr. Freeman? A. Well, it was three or four days after. 30

Q. And the same time you tried to notify Mr. Reynolds? A. The same time that I tried to get Mr. Reynolds.

Q. State whether or not you recollect that Mr. Freeman specifically asked you to notify Mr. Dunn? A. I would rather not say anything about that. I recollect very distinctly about it.

Q. That he did not? A. Mr. Freeman said that he did not feel under any obligation to notify Mr. Voorhis. 40

Q. Did he ask you to notify Mr. Reynolds? A. He did not.

Q. He did not ask you notify anybody? A. No.

10 Q. What did he say when you said that you felt under obligations to notify Mr. Reynolds? A. He said that was all right: "Do as you please about it."

The taking of depositions on the part of the prosecutor is closed.

EDWARD O'BYRNE,
Supreme Court Examiner.

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FORSTER W. FREEMAN, a witness already sworn on the part of the defendants, recalled and further examined as follows:

Direct examination by Mr. Hilton.

Q. Mr. Smith has stated particularly what took place between you and him at the time he mentioned, as he recollected. Now, will you state what took place at that time, as you recollect it? A. I went to see Mr. Smith on purpose to notify him about the starting of this proceeding, as I had promised him that I would give him notice.

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Mr. Murphy: I object to this upon the ground that it is repetition of testimony already given by this witness.

40 Q. Go ahead. A. I saw Mr. Smith, and he has practically stated the conversation correct with

one exception. I did say that I felt under no obligation to notify Mr. Voorhis, but I further said that I thought probably he ought to be notified, and would he see Mr. Dunn or Mr. Voorhis, either of them, and tell them; and he said he would. We had considerable further conversation, but that is the only part which he has practically forgotten. 10

NO CROSS-EXAMINATION.

(The taking of depositions on the part of the defendant is closed.)

EDWARD O'BYRNE,
Supreme Court Examiner.

(Filed September 24, 1915.) 20

NEW JERSEY SUPREME COURT.

GEORGE VOORHIS, Prosecutor, vs. THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF FRANKLIN IN THE COUNTY OF BERGEN, Defendant.	On Certiorari. Reasons.

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GEORGE VOORHIS, the said prosecutor, by Charles B. Dunn, his attorney, comes and prays that the ordinance to lay out and open a public road in the Township of Franklin, in the County of Bergen, passed by the Township Committee of the said township, on the second day of September, 1915, may be reversed and for nothing holden for the following reasons: 40

Reasons.

1. There was no notice of the introduction of the ordinance as required by the statute.

2. The ordinance was passed at the meeting of the Township Committee, held on September 2nd, 1915, although notice had been given by the said Township Committee that the ordinance would be introduced at its meeting to be held on that date.

3. The ordinance was not acted upon at more than one meeting of the Township Committee, as required by law.

4. Owners of property affected by the proposed public road to be opened and laid out by said ordinance were refused a hearing by the Township Committee when said ordinance was introduced.

5. The ordinance does not lay out or open a public road of legal width.

6. The ordinance purports to open a public road of a certain width, to wit: thirty (30) feet, although a road of said width is not permitted to be opened by the law of the State.

7. The ordinance appropriates private property illegally to public use.

8. There is no public necessity for the proposed road which would be opened and laid out by the said ordinance.

9. The Township Committee illegally exercised its right to declare the proposed road to be opened by the said ordinance a public necessity.

10. The said ordinance is in other respects unlawful, irregular and void.

CHARLES B. DUNN,
Attorney of Prosecutor.

(Filed March 10, 1916.)

NEW JERSEY SUPREME COURT.

November Term, 1915.

GEORGE VOORHIS

vs.

THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF FRANKLIN, IN THE COUNTY OF BERGEN.

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Argued November Term, 1915. Decided February Term, 1916.

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Charles B. Dunn, for Prosecutor.

George S. Hilton, for Defendant.

Argued before Justices Parker, Minturn and Kalisch.

On Certiorari removing Proceedings to Open a Public Road.

Per Curiam :

This record shows that August 5th, 1915, the Township committee of Franklin Township, in Bergen County, were requested by petition to lay out and open a public road which was to run through the land of the prosecutor, and through the land of Forster W. Freeman and J. Miller Nichol, the total length of the road to be about 2,219 feet.

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The petition was presented to the committee under chapter 166, P. L. 1914, p. 310. On the same day the committee introduced an ordinance for the opening of the road and passed a resolution to meet

on September 2nd, at 2 P. M. to receive and consider objections to the improvement, and directed that the clerk give public notice of the fact. A notice was given by the clerk to that effect, August 5, 1915. September 1, 1915, the prosecutor filed with the committee his objection to the passage of the ordinance.

The Attorneys for the prosecutor and objector, on the day fixed for the hearing, asked for a postponement which was refused. The objection now made is that the ordinance called for a road of thirty feet in width, whereas the law required at least thirty-three feet.

The second objection is that no affidavit or proof exists that the notice of a hearing was properly posted.

As to the reason last urged we have concluded that the act does not require such notice. See Sec. 37, 311, P. L. 1914. It is only after the petition is received and the ordinance introduced that notice is required to be given of the proposed improvement.

We do not consider the legislation cited by the prosecutor applicable to this situation, since the proceedings here are taken under a statute which provides a method of procedure in townships. L. 1914, p. 310.

The notice required to be given by the statute, after the ordinance has been introduced, affords the required protection to property owners, affected by the proposed improvement. It also appears from the record that notice was posted in five public places as required by the statute.

It is further urged that the Township council passed the ordinance at the meeting held September 2, 1915, whereas no notice had been given by the Township council as to the intention to introduce

the ordinance. We find nothing in the statute referred to which requires such notice.

It is urged that the ordinance was not acted upon at more than one meeting of the township council. We find proof in the case which shows that the ordinance was acted upon at more than one meeting. 10

The fourth reason is based upon the refusal of the committee to give the prosecutor a hearing when the ordinance was introduced. The statute does not provide for any hearing at that time. Section 2 of the act provides that the hearing shall be had after the ordinance has been introduced and notice is then required to be given of a time and place of hearing. The ordinance was introduced August 5, 1915, and the hearing fixed for September 2, 1915, and there is nothing in the act which would indicate that the legislature contemplated an adjournment. 20

The fifth and sixth reasons are that the ordinance does not lay out or open a public road of legal width. We conclude the act of 1914 supersedes the provisions of the general Road act upon the subject, and vests the necessary power for that purpose in the Township Committee.

Saulsbury v. Guskin, 37 Vr. 111.

The seventh reason assigned that the ordinance appropriated private property illegally to public use is without merit, unless it is intended to present the point that it was illegally passed, without giving the prosecutor a hearing, which as we have observed is not the fact in this case. 30

The eighth reason assigned we deem to be without substance. The act makes the Township committee the judges as to whether a public necessity for the road exists, where one half of the property own-

ers affected by the road object. In this case there were objections filed, which we must assume the committee considered, and by the passage of the ordinance the implication is that the Township committee deemed the road to be a public necessity.

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The proceedings of the Township Committee are therefore affirmed.

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(Filed May 19, 1916.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

GEORGE VOORHIS, *Prosecutor-Appellant,* *vs.* THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF FRANKLIN, IN THE COUNTY OF BERGEN, *Respondent.*	*On Certiorari.*

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George Voorhis, Prosecutor-Appellant herein, within the time required by the statute in such case made and provided, comes and sets forth his grounds of appeal :

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1. The Court should have set aside the ordinance of the Township Committee of the Township of Franklin, the respondent herein, for one or more of the following reasons set out by prosecutor-appellant in the said matter, to wit :

(a) There was no notice of the introduction of the Ordinance as required by the statute.

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(b) The Ordinance was passed at the meeting of the Township Comittee, held on September 2nd, 1915, although notice had been given by the said Township Committee that the Ordinance would be introduced at its meeting to be held on that date.

(c) The Ordinance was not acted upon at more than one meeting of the Township Committee, as required by law.

(d) Owners of property affected by the proposed public road to be opened and laid out by said

Ordinance were refused a hearing by the Township Committee when said Ordinance was introduced.

(e) The Ordinance does not lay out or open a public road of legal width.

(f) The Ordinance purports to open a public road of a certain width, to wit (30) feet, although a
10 road of said width is not permitted to be opened by the law of the State.

(g) The Ordinance appropriates private property illegally to public use.

(h) There is no public necessity for the proposed road which would be opened and laid out by the said Ordinance.

(i) The Township Committee illegally exercised its right to declare the proposed road to be opened by the said Ordinance a public necessity.

20 (j) The said Ordinance is in other respects unlawful, irregular and void.

2. The Court misinterpreted the statutes of the State relating to public roads.

3. The Court misinterpreted the statutes of the state prescribing the powers of the Township Committee relative to opening and laying out public roads.

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4. The Court misinterpreted the statutes of the State, and the constitution of the State relative to the taking of private property for public use.

5. The Court erred in confirming the determination of the Township Committee that the said road was a public necessity without the said Committee hearing or considering any evidence tending to indicate that it was a public necessity.

6. The Court erred in confirming the determination of the Township Committee that the said road was a public necessity notwithstanding that the said Township Committee, on a previous application, to wit : one year prior to the date of the ordinance, had determined, upon hearing and considering evidence adduced before it, that said road was not a public necessity.

Charles B. Dunn,
Attorney of Prosecutor-Appellant.

(Filed March 28, 1916.)

NEW JERSEY SUPREME COURT.

GEORGE VOORHIS, Prosecutor, vs. THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF FRANKLIN, IN THE COUNTY OF BERGEN, Defendant.	On Certiorari. Rule for Judgment.

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The Court having inspected a certain ordinance passed by the Township Committee of the Township of Franklin, in the County of Bergen and State of New Jersey, on the second day of September, nineteen hundred and fifteen, for the laying out of a public road in said Township, beginning at the Ponds Church Road and extending over the lands of the said George Voorhis and the lands of Forster W. Freeman and J. Miller Nicol, for a distance of about twenty-two hundred and eighteen (2218) feet, and the proceedings touching and concerning the same, returned with the writ of certiorari in this cause, the depositions taken by the parties to the cause, and the reasons for setting aside the said ordinance, and having heard the arguments of counsel therein, and having duly considered the same, do order that the said ordinance be in all things affirmed.

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Entered Mar. 28, 1916,

On motion of GEO. S. HILTON,
Attorney.

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Wm. C. Butler

Wm. M. Smith

Property Line

Existing Line

Beginning of Pub. Line

Ridge Road

Rocky Brook

Wood

Peter W. Freeman

0.5 Miles by Road

Property Line

George Voorhis

0.5 Miles by Road

Proposed Road

Rocky Brook

Rocky Brook

Road

MAP OF

Proposed Road

in FRANKLIN TOWNSHIP

Bergen Co. N.J.

Drawn from survey [illegible] by Hon. Engineer [illegible]

Scale [illegible]