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Following additional exhibits in this case are
in envelope accompanying this State of
Case:

Exhibit P3, for Prosecutor-Appellant

Exhibit P4, for Prosecutor-Appellant

Exhibit P5, for Prosecutor-Appellant

Exhibit P6, for Prosecutor-Appellant

Exhibit P8, for Prosecutor-Appellant

Exhibit R1c, for Defendants-Respondents

OPINION.

(Filed Nov. 18, 1930.)

NEW JERSEY SUPREME COURT.

Nos. 264, 265, 280, 281, 295, 298. October Term, 1930

10

WILMAR COMPANY, a corpo-
ration of New Jersey,
Prosecutor,

v.

COUNTY OF CAMDEN, *et als.,*
Defendants.

WILMAR COMPANY, a corpo-
ration of New Jersey,
Prosecutor,

v.

COUNTY OF CAMDEN, *et als.,*
Defendants.

20

Argued October 8, 1930.

Decided

1930.

On Certiorari.

30

For prosecutor, JOSEPH H. CARR.

For defendants, County of Camden, Board of
Chosen Freeholders of Camden, Leslie H.
Ewing, Director, and Fred W. George, Clerk

of Board of Chosen Freeholders of Camden County, WALTER S. KEOWN.

For defendants, Central Airport, Inc. and Central Airport Development Company, EDWARD L. KATZENBACH, ALBERT E. SCHEFLEN.

10

Before JUSTICES CAMPBELL and BODINE.

BODINE, J.:

These cases were argued together and the testimony taken on the rules was by stipulation used on the argument of the present writs.

20 The prosecutor owns 140 building lots abutting on Browning Road in Camden County. The land was acquired in 1925, and adjoins the property of Central Airport on the north.

The Central Airport land is shown upon the following map (Exhibit R-1D), reduced and photostated. It is to be observed that the airport property is bounded on the west by the State Highway sometimes called Crescent Boulevard, on the south by the Cooper River, on the east by Browning Road, and on the north by Kaighn Avenue and lands of the prosecutor.

30 Lands to the west of Crescent Boulevard and to the east of Browning Road are owned by the same persons who own the airport. Capital investments amounting to more than \$3,500,000 have been already placed in the airport project. It is the purpose of the promoters to so conform to the standards of the Department of Commerce of the United States that the airport will be one of the largest

and safest in the world. Such a development serves the interests of the nation by facilitating the transportation of mails and by making aviation safe and expeditious.

The Camden County Park Commission quite properly have in mind the use of certain of the airport's lands along the Cooper River. This action will reduce the size of the airport to the detriment of aviation. The lands along the Cooper River are suitable for boulevard and park purposes, and should, of course, be preserved for all time as a natural beauty spot. The lands the Park Commission contemplate taking are marked on the map with the numerals 6, 7 and 8. Park Commission lands marked with numerals 5, 9 and 10, by virtue of P. L. 1930, p. 37, are to be conveyed to the airport. 10

As appears from the map, Browning Road divides the airport from lands belonging to the owners of the airport marked Central Airport Development Company. The plan worked out by the Freeholders to meet the requirements of the Park Commission and the airport was to vacate a portion of Browning Road about 2150 feet long and connect this road up with the proposed boulevard along the Cooper River. The change makes a road about a thousand feet longer for travel, but also brings the traveler along this roadway into the Cooper River Boulevard. Obviously, the advantages are great to those using the airport and to those using the roadway. 20

The resolutions and agreements entered into to make the plan possible are assailed. The first resolution of the Board of Freeholders passed at the meeting of December 27, 1929, vacates the portion of Browning Road shown on the map in yellow. The second resolution authorized the execution of a so-called escrow agreement. This agreement provides that the owners of the airport will dedicate land for 30

a county road as shown on the map in blue. Until the Park Commission boulevard is completed along the Cooper River as shown in blue, the using of Browning Road, as now constituted, is to continue. Instruments sufficient to effect the carrying out of the plan were deposited by the land owners with the West Jersey Title and Guarantee Company.

10 It is apparent from the map that the only result of the alteration is that the roadway becomes about a thousand feet longer, but there is the added advantage that it opens upon a public park system. The Park Commission secures valuable land for the boulevard project, and the airport secures suitable acreage in a single plot. The Park Commission is proceeding with an elaborate program, and the county is altering a certain road so as to fit in with the new scheme of things. The whole improvement cannot be completed at once, but there must be a start. All the parties are bound to go on with
20 their respective acts, and no rights are to accrue until the whole program is completed—a wise and legal precaution.

The resolution of the Board of Freeholders was, in part, as follows:

30 “Whereas, this Board deems it advisable to do everything in its power to help the development of the airport in question, in order that the City and County of Camden may have the advantage of having an airport, serving them and their vicinity, having the highest rating from the Department of Commerce of the United States of America, and for that reason has under consideration the vacation of a section of Browning Road hereinafter referred to, and the establishment of a new road to take its place, to the east of the proposed airport site as aforesaid, the lots for said new development

to be dedicated by the Central Airport Development Company as aforesaid."

"An alteration of a highway, as the expression is used, generally refers to a change in the course thereof, and therefore necessarily involves to some extent the establishment of a new highway for which the substitution is made." 29 Corpus Juris, 503.

"Every Board of Chosen Freeholders shall have power and authority * * * (c) to widen, 10
alter, straighten, change the grade or location of, any road or highway under its control, or any part thereof," P. L. 1918, 587; P. L. 1929, 249.

Statutes authorizing the alteration of highways have universally been regarded as within the legislative power. 29 Corpus Juris, 504; Parkhurst v. VanDerveer, 48 N. J. L. 80.

"As to all public rights in the street, the municipal action was clearly legislative. It became judicial only in case it imposed an additional burden upon the land of the abutting owners." Moore v. Haddonfield, 62 N. J. L. 386, 389. 20

"The right of the State to destroy public improvements of this class without compensation is not limited by the constitution, and except for the statute, as expressed in the charter of the city, this street could have been vacated without the slightest consideration of its effect 30
upon any land lying along it, or the payment by the city of compensation to any landowners for damages" Newark v. Hatt, 79 N. J. L. 548, 550.

The statute under which the proceedings under review was taken makes no provision whatever for compensation.

"It is settled that the vacation of a street

does not impair private rights, and in the absence of a statute giving damages, even a landowner who is injured is not entitled to compensation." *Borough of Verona v. Freeholders*, 88 N. J. L. 55, 58.

10 The argument is made that the proposed new dedication goes to a dead end until the Park Commission boulevard is constructed, and that hence there is special damage. Of course, if the proceeding is viewed as a whole, no such thing happens. The several agencies interested are cooperating to effect an improvement which will benefit the entire county and possibly the nation at large. The use of Browning Road continues until the whole improvement is accomplished.

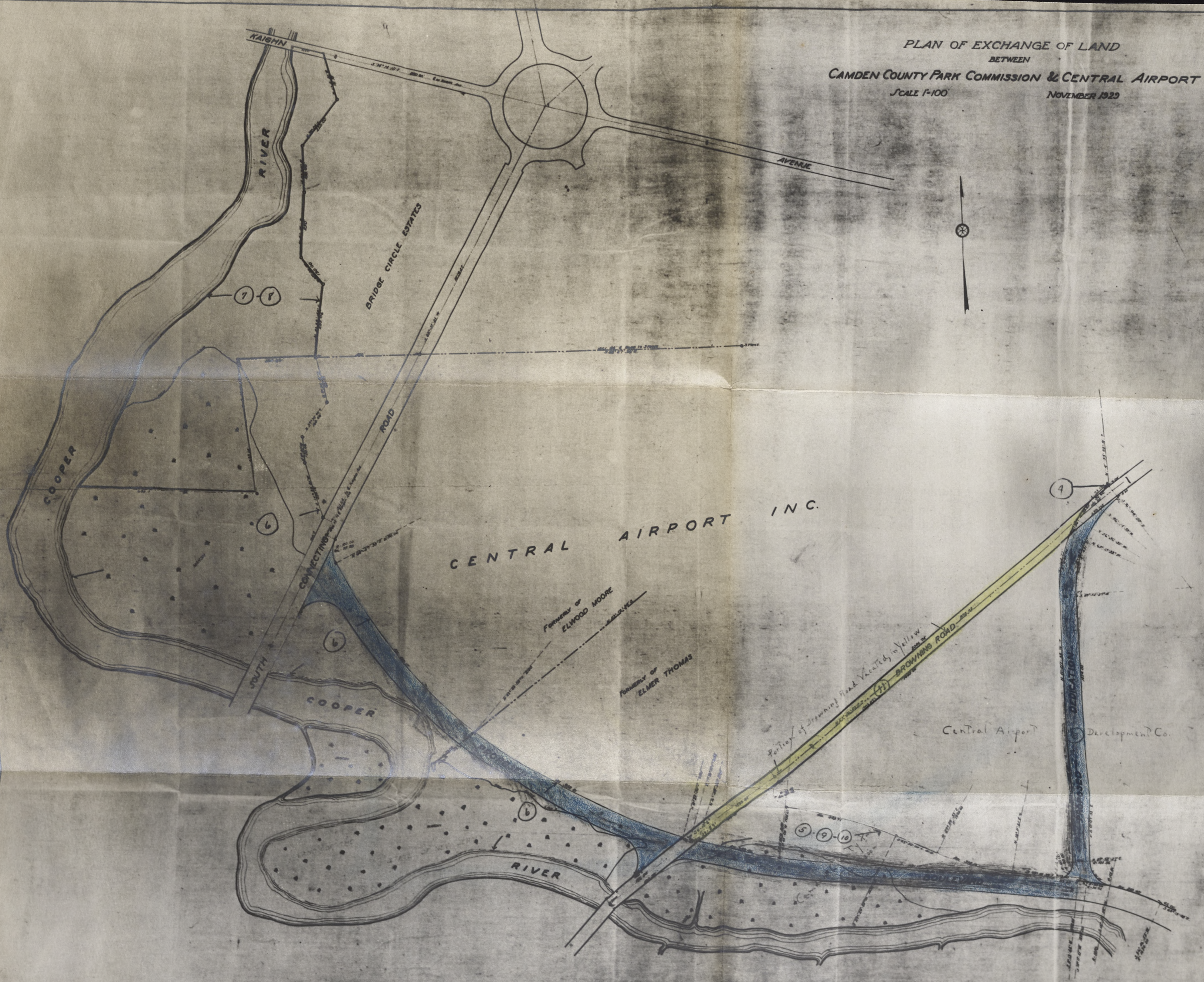
20 "Except in the instances where statutory provision to the contrary exists, the law gives no compensation for losses resulting from a valid surrender of public rights. And this is so because, ours being a government by the people, such surrenders can only be made by the people's representatives, and, as they generally hold office for short periods of time, and must exercise their power in the face of the people, it is assumed that their power, in this respect, will never be exercised, except when the public good imperatively demands it." *Dodge v. Pennsylvania R. R. Co.*, 43 N. J. E. 351, 356.

30 The consent of the township of Pennsauken does provide that the old road shall be kept open till the new section of the road and the boulevard are completed. This provision is not only usual but essential to the interests of all concerned.

There is nothing to suggest that the alteration was to subserve a private purpose. *Kean v. Elizabeth*, 54 N. J. L. 462, affirmed 55 Id. 337.

The proceeding will not be set aside, and the writ will be dismissed.

PLAN OF EXCHANGE OF LAND
 BETWEEN
 CAMDEN COUNTY PARK COMMISSION & CENTRAL AIRPORT
 SCALE 1"=100' NOVEMBER 1929



2

ORDER DISMISSING WRIT.
NEW JERSEY SUPREME COURT.

WILMAR COMPANY, a corpo-
ration of New Jersey,
Prosecutor,

10

v.

COUNTY OF CAMDEN, BOARD
OF CHOSEN FREEHOLDERS
OF COUNTY OF CAMDEN,
LESLIE H. EWING, Di-
rector, and FRED W.
GEORGE, Clerk of the
Board of Chosen Free-
holders of County of
Camden,

Defendants.

On Writ of Certio-
rari.
Order Dismissing
Writ.

20

The Court having heard the arguments of counsel
in the above-entitled case at the October Term, 1930,
and after considering the same having decided that
the writ of certiorari herein allowed should be dis-
missed.

It is on this 6th day of December, 1930, ordered
that said writ of certiorari be and the same is hereby
dismissed.

30

Entered Dec. 6, 1930.

On motion of

WALTER S. KEOWN,
EDWARD L. KATZENBACH,
ALBERT E. SCHEFLEN,

Attorneys for Defendants.

A true copy.

FRED L. BLOODGOOD,

Clerk.

ORDER DISMISSING WRIT.

NEW JERSEY SUPREME COURT.

10 WILMAR COMPANY, a corpo-
ration of New Jersey,
Prosecutor,

v.

20 COUNTY OF CAMDEN, BOARD
OF CHOSEN FREEHOLDERS
OF COUNTY OF CAMDEN,
LESLIE H. EWING, Di-
rector, and FRED W.
GEORGE, Clerk of the
Board of Chosen Free-
holders of County of
Camden, CENTRAL AIR-
PORT, INC., a corporation
of Delaware, and CEN-
TRAL AIRPORT DEVELOP-
MENT COMPANY, a corpo-
ration of the State of
New Jersey,
Defendants.

On Writ of Certio-
rari.
Order Dismissing
Writ.

30

The Court having heard the arguments of counsel in the above-entitled case at the October Term, 1930, and after considering the same having decided that the writ of certiorari herein allowed should be dismissed.

Order Dismissing Writ

11

It is on this 6th day of December, 1930, ordered that said writ of certiorari be and the same is hereby dismissed.

Entered December 6, 1930.

On motion of

WALTER S. KEOWN,

EDWARD L. KATZENBACH,

ALBERT E. SCHEFLEN,

Attorneys for Defendants.

A true copy.

FRED L. BLOODGOOD,

Clerk.

10

20

30

NOTICE OF APPEAL.

NEW JERSEY SUPREME COURT.

10 WILMAR COMPANY, a corpo-
ration of New Jersey,
Prosecutor,

v.

COUNTY OF CAMDEN, BOARD
OF CHOSEN FREEHOLDERS
OF COUNTY OF CAMDEN,
LESLIE H. EWING, Di-
rector, and FRED W.
GEORGE, Clerk of Board

20 of Chosen Freeholders
of County of Camden,
Defendants.

On Certiorari.
Notice of Appeal.

30 *To Walter S. Keown, Esquire, Attorney for the De-
fendants, County of Camden, Board of Chosen
Freeholders of Camden, Leslie H. Ewing, Direc-
tor, and Fred W. George, Clerk of Board of
Chosen Freeholders of Camden County:*

Dear Sir:

Please take notice that the prosecutor in the above
matter hereby appeals to the Court of Errors and
Appeals from the whole of the judgment entered in
the above-stated cause on the following ground:

Notice of Appeal

13

1. The Supreme Court erred in giving judgment for the defendants instead of for the prosecutor and in dismissing the writ of certiorari.

Respectfully,

JOSEPH H. CARR,

*Attorney for and of Counsel
with Wilmar Company.*

Dated December 2, 1930.

10

[ENDORSED]

Service of the within notice is hereby acknowledged this 2nd day of December, A. D. 1930.

Without prejudice.

Walter S. Keown,

Attorney for County of Camden, Board of Chosen Freeholders of Camden, Leslie H. Ewing, Director, and Fred W. George, Clerk of Board of Chosen Freeholders of Camden County.

20

30

NOTICE OF APPEAL.
NEW JERSEY SUPREME COURT.

10 WILMAR COMPANY, a corpo-
ration of New Jersey,
Prosecutor,

v.

20 COUNTY OF CAMDEN, BOARD
OF CHOSEN FREEHOLDERS
OF COUNTY OF CAMDEN,
LESLIE H. EWING, Di-
rector, FRED W. GEORGE,
Clerk of Board of
Chosen Freeholders of
County of Camden, CEN-
TRAL AIRPORT, INC., a cor-
poration of Delaware,
and CENTRAL AIRPORT
DEVELOPMENT COMPANY,
a corporation of the
State of New Jersey,
Defendants.

On Certiorari.
Notice of Appeal.

30 *To Walter S. Keown, Esquire, Attorney for the De-
fendants, County of Camden, Board of Chosen
Freeholders of Camden, Leslie H. Ewing, Direc-
tor, and Fred W. George, Clerk of Board of
Chosen Freeholders of Camden County; and
Albert E. Schefflen and Edward L. Katzenbach,
Esquires, Attorneys for the Defendants, Central
Airport, Inc., and Central Airport Development
Company:*

Gentlemen:

Please take notice that the prosecutor in the above matter hereby appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above-stated cause on the following ground:

1. The Supreme Court erred in giving judgment for the defendants instead of for the prosecutor and in dismissing the writ of certiorari.

Respectfully,

JOSEPH H. CARR,

*Attorney for and of Counsel
with Wilmar Company.*

10

Dated December 2, 1930.

[ENDORSED]

Service of the within notice is hereby acknowledged this 2nd day of December, A. D. 1930.

20

Without prejudice.

Walter S. Keown,

Attorney for County of Camden, Board of Chosen Freeholders of Camden, Leslie H. Ewing, Director, and Fred W. George, Clerk of Board of Chosen Freeholders of Camden County.

30

Service of the within notice is hereby acknowledged this 2nd day of December, A. D. 1930.

Without prejudice.

Albert E. Scheffen,

Attorneys for Central Airport, Inc., and Central Airport Development Company.

NOTICE OF APPEAL.

NEW JERSEY SUPREME COURT.

10	WILMAR COMPANY, a corporation of New Jersey, <i>Prosecutor,</i>	}	On Certiorari. Notice of Appeal.
	v.		
	COUNTY OF CAMDEN, BOARD OF CHOSEN FREEHOLDERS OF COUNTY OF CAMDEN, LESLIE H. EWING, Director, and FRED W. GEORGE, Clerk of Board		
20	of Chosen Freeholders of County of Camden, <i>Defendants.</i>		

To Walter S. Keown, Esquire, Attorney for the Defendants, County of Camden, Board of Chosen Freeholders of Camden, Leslie H. Ewing, Director, and Fred W. George, Clerk of Board of Chosen Freeholders of Camden County:

30

Dear Sir:

Please take notice that the prosecutor in the above matter hereby appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above-stated cause on the following ground:

1. The Supreme Court erred in giving judgment for the defendants instead of for the prosecutor and in dismissing the writ of certiorari.

Respectfully,

JOSEPH H. CARR,

*Attorney for and of Counsel
with Wilmar Company.*

Dated December 16, 1930.

10

[ENDORSED]

Service of the within notice is hereby acknowledged this _____ of December, A. D. 1930.

20

Attorney for County of Camden, Board of Chosen Freeholders of Camden, Leslie H. Ewing, Director, and Fred W. George, Clerk of Board of Chosen Freeholders of Camden County.

30

NOTICE OF APPEAL.

NEW JERSEY SUPREME COURT.

10 WILMAR COMPANY, a corporation of New Jersey,
Prosecutor,

v.

20 COUNTY OF CAMDEN, BOARD OF CHOSEN FREEHOLDERS OF COUNTY OF CAMDEN, LESLIE H. EWING, Director, FRED W. GEORGE, Clerk of Board of Chosen Freeholders of County of Camden, CENTRAL AIRPORT, INC., a corporation of Delaware, and CENTRAL AIRPORT DEVELOPMENT COMPANY, a corporation of the State of New Jersey,
Defendants.

On Certiorari.
Notice of Appeal.

30 *To Walter S. Keown, Esquire, Attorney for the Defendants, County of Camden, Board of Chosen Freeholders of Camden, Leslie H. Ewing, Director, and Fred W. George, Clerk of Board of Chosen Freeholders of Camden County; and Albert E. Scheften and Edward L. Katzenbach, Esquires, Attorneys for the Defendants, Central Airport, Inc., and Central Airport Development Company:*

Gentlemen:

Please take notice that the prosecutor in the above matter hereby appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above-stated cause on the following ground:

1. The Supreme Court erred in giving judgment for the defendants instead of for the prosecutor and in dismissing the writ of certiorari.

Respectfully,

JOSEPH H. CARR,

*Attorney for and of Counsel
with Wilmar Company.*

10

Dated December 16, 1930.

[ENDORSED]

Service of the within notice is hereby acknowledged this _____ of December, A. D. 1930.

20

Attorney for County of Camden, Board of Chosen Freeholders of Camden, Leslie H. Ewing, Director, and Fred W. George, Clerk of Board of Chosen Freeholders of Camden County.

30

Service of the within notice is hereby acknowledged this 2nd day of December, A. D. 1930.

Without prejudice.

Albert E. Scheffen,

Attorneys for Central Airport, Inc., and Central Airport Development Company.

WRIT OF CERTIORARI.

NEW JERSEY, to wit:

10 The State of New Jersey to the County
 of Camden, Board of Chosen Freeholders
 (Seal) of County of Camden, Leslie H. Ewing,
 Director, and Fred W. George, Clerk of
 the Board of Chosen Freeholders of the
County of Camden. We being willing for certain
reasons to be certified of a certain resolution passed
by the Board of Chosen Freeholders in and for the
County of Camden on the 27th day of December,
1929, whereby, among other things, a certain section
of Browning Road was sought to be vacated and the
public rights therein released and extinguished from
any previous dedication.

20 We do command you that the aforesaid resolution
 passed by the Board of Chosen Freeholders in and
 for the County of Camden on the 27th day of De-
 cember, 1929, seeking to vacate certain section of
 Browning Road and to extinguish and release public
 rights therein and dedication thereof, with the rec-
 ords of the meetings of the said Board at which the
 said resolution was considered and acted upon, to-
 gether with all things touching and concerning the
 passing, approving and adopting of the said resolu-
30 tion as fully and entirely as before you they remain,
 and leading up to or in any way arising therefrom,
 to our Justices of the Supreme Court of Judicature
 at Trenton on the second day of September next, you
 certify and send, together with this writ that every-
 thing may be done what, of right and according to
 the laws of this State, should be done.

Witness, WILLIAM S. GUMMERE, ESQUIRE, Chief Justice of our Supreme Court at Trenton this thirteenth day of August, A. D., nineteen hundred and thirty.

JOSEPH H. CARR,
Attorney.

FRED L. BLOODGOOD,
Clerk.

10

[ENDORSED]

This writ is allowed; let it be sealed.

By the Court:

THOMAS W. TRENCHARD,
J. S. C.
August 13, 1930.

20

WRIT OF CERTIORARI.

NEW JERSEY, to wit:

The State of New Jersey to the County of Camden, Board of Chosen Freeholders
(Seal) of County of Camden, Leslie H. Ewing, Director, and Fred W. George, Clerk of the Board of Chosen Freeholders of the County of Camden; Central Airport, Inc., a corporation of Delaware, and Central Airport Development Company, a corporation of the State of New Jersey. We being willing for certain reasons to be certified of a certain resolution passed by the Board of Chosen Freeholders in and for the County of Camden on the 27th day of December, 1929, author- 30

izing and instructing the director and clerk of the said Board to execute a memorandum of agreement between Central Airport, Inc., Central Airport Development Company and the County of Camden, a copy of which agreement was made part of said resolution, and also the contract referred to in said resolution.

- 10 We do command you that the aforesaid resolution, passed by the Board of Chosen Freeholders of the County of Camden on the 27th day of December, 1929, whereby the director and clerk of said Board were authorized and instructed to execute a memorandum of agreement between the Central Airport, Inc., Central Airport Development Company and the County of Camden, a copy of which agreement was made a part of said resolution, with the records of the meetings of the said Board at which the said resolution was introduced and passed as well as the
- 20 aforesaid agreement, together with all things touching and concerning the passing, approving and adopting of the said resolution and the approval and execution of the said contract and also all matters and things leading up to or in any way arising therefrom as fully and entirely as before you they remain, to our Justices of the Supreme Court of Judicature at Trenton on the second day of September next you certify and send, together with this writ that everything may be done what, of right and according to the laws of this State, should be done.
- 30 Witness, WILLIAM S. GUMMERE, ESQUIRE, Chief Justice of our Supreme Court at Trenton this thirteenth day of August, A. D., nineteen hundred and thirty.

JOSEPH H. CARR,
Attorney.

FRED L. BLOODGOOD,
Clerk.

[ENDORSED]

August 19, 1930

Service acknowledged

Walter S. Keown,
Attorney for County of
Camden, Leslie H. Ewing
and Fred W. George.

10

This writ is allowed; let it be sealed.

By the Court:

THOMAS W. TRENCHARD,

J. S. C.

August 13, 1930.

20

30

RETURN TO WRIT.
NEW JERSEY SUPREME COURT.

10 WILMAR COMPANY, a corpo-
ration of New Jersey,
Prosecutor,

v.

COUNTY OF CAMDEN, BOARD
OF CHOSEN FREEHOLDERS
OF COUNTY OF CAMDEN,
LESLIE H. EWING, Direc-
tor, and FRED W. GEORGE,
Clerk of BOARD OF
20 CHOSEN FREEHOLDERS OF
COUNTY OF CAMDEN,
Defendants.

On Writ of Certiorari
Return to Writ.

30 We, Leslie H. Ewing, Director, and Fred W. George, Clerk of the Board of Chosen Freeholders in and for the County of Camden, on behalf of ourselves, the Board of Chosen Freeholders of the County of Camden, and the County of Camden do herewith submit to the Supreme Court of the State of New Jersey the resolution passed by the Board of Chosen Freeholders in and for the County of Camden, on the 27th day of December, 1929, seeking to vacate a certain section to Browning Road and to extinguish and release public rights therein and dedication thereof, with the record of the meetings

of the said Board at which said resolution was considered and acted upon together with all things touching and concerning the passing, approval and adoption of the said resolution, as by the writ of certiorari sealed the 13th day of August, 1930, before the Honorable William S. Gummere, Chief Justice of the Supreme Court, we are commanded so to do.

I, Leslie H. Ewing, do hereby certify that I am 10
the Director of the Board of Chosen Freeholders of the County of Camden, State of New Jersey, and I, Fred W. George, do hereby certify that I am the Clerk of the Board of Chosen Freeholders of the County of Camden and State of New Jersey, and we do hereby certify that the annexed are true copies of all proceedings, etc., of the said Board of Chosen Freeholders and that together they constitute the entire record of proceedings with reference to the above referred to resolution. 20

Signed this 24th day of September, 1930, and sealed with the seal of the County of Camden and State of New Jersey.

THE COUNTY OF CAMDEN,
*Board of Chosen Freeholders in
and for the County of Camden.*

LESLIE H. EWING,
*Director of the Board of Chosen
Freeholders in and for the
County of Camden.* 30
(Seal)

FRED W. GEORGE,
*Clerk of the Board of Chosen
Freeholders in and for the
County of Camden.*

WALTER S. KEOWN,
Attorney.

NEW JERSEY SUPREME COURT.

V.

On Writ of Certiorari
Return to Writ.
Stipulation.

30 1. Exhibit P7, covering pages 148 to 187, inclusive,
of the printed state of the case, containing the pro-
ceedings of the County of Camden.

2. Exhibits R1, R1a, and R1b, covering pages 188 to 193, inclusive, of the printed state of the case, and the affidavit of W. E. Barto, the letter from Central

Airport Development Co., to West Jersey Title & Guaranty Company and the escrow agreement in the hands of the West Jersey Title & Guaranty Company.

3. Exhibit R2, covering pages 142 to 147, inclusive, in the printed state of the case, being the right of way between Central Airport, Inc., *et als.*, and the County of Camden.

JOSEPH H. CARR,

10

Attorney for Prosecutor.

WALTER S. KEOWN,

*Attorney for Defendants, County
of Camden, Board of Chosen
Freeholders in and for County
of Camden, Leslie H. Ewing
and Fred W. George.*

20

30

RETURN TO WRIT.
NEW JERSEY SUPREME COURT.

10	WILMAR COMPANY, a corpo- ration of New Jersey, <i>Prosecutor,</i>	}	
	v.		
20	COUNTY OF CAMDEN, BOARD OF CHOSEN FREEHOLDERS OF COUNTY OF CAMDEN, LESLIE H. EWING, Direc- tor, and FRED W. GEORGE, Clerk of BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF CAMDEN, <i>et als.,</i> <i>Defendants.</i>	}	On Writ of Certiorari Return to Writ.

30 We, Leslie H. Ewing, Director, and Fred W. George, Clerk of the Board of Chosen Freeholders in and for the County of Camden, on behalf of ourselves, the Board of Chosen Freeholders of the County of Camden, and the County of Camden do herewith submit to the Supreme Court of the State of New Jersey the resolution passed by the Board of Chosen Freeholders in and for the County of Camden, on the 27th day of December, 1929, whereby the Director and Clerk of said Board were instructed and authorized to execute a memorandum of agreement between Central Airport, Inc., Central Airport Development Co., and the County of Camden, a copy of which agreement was made a part

of said resolution, together with the record of the meetings of the said Board at which said resolution was introduced and passed as well as the aforesaid agreement, together with all things touching and concerning the passing, approval and adoption of the said resolution and execution of the said agreement, as by the writ of certiorari sealed the 13th day of August, 1930, before the Honorable William S. Gummere, Chief Justice of the Supreme Court, we are commanded so to do. 10

I, Leslie H. Ewing, do hereby certify that I am the Director of the Board of Chosen Freeholders of the County of Camden, State of New Jersey, and I, Fred W. George, do hereby certify that I am the Clerk of the Board of Chosen Freeholders of the County of Camden and State of New Jersey, and we do hereby certify that the annexed are true copies of all proceedings, etc., of the said Board of Chosen Freeholders and that together they constitute the entire record of proceedings with reference to the 20 above referred to resolution.

Signed this 24th day of September, 1930, and sealed with the seal of the County of Camden and State of New Jersey.

THE COUNTY OF CAMDEN,
*Board of Chosen Freeholders in
and for the County of Camden.*

LESLIE H. EWING,
*Director of the Board of Chosen
Freeholders in and for the 30
County of Camden.*

(Seal)

FRED W. GEORGE,
*Clerk of the Board of Chosen
Freeholders in and for the
County of Camden.*

WALTER S. KEOWN,
Attorney.

RETURN TO WRIT—STIPULATION.

NEW JERSEY SUPREME COURT.

10 WILMAR COMPANY, a corpo-
 ration of New Jersey,
Prosecutor,

v.

COUNTY OF CAMDEN, BOARD
 OF CHOSEN FREEHOLDERS
 OF COUNTY OF CAMDEN,
 LESLIE H. EWING, Direc-
 tor, and FRED W. GEORGE,
 Clerk of BOARD OF
 CHOSEN FREEHOLDERS OF
 20 THE COUNTY OF CAMDEN,
et als.,

Defendants.

On Writ of Certiorari
 Return to Writ.
 Stipulation.

It is hereby stipulated and agreed between coun-
 sel that the following, appearing in the printed book
 of this case, shall be and are hereby considered to
 be the return to the writ, as follows:

30

1. Exhibit P7, covering pages 148 to 187, inclusive,
 of the printed state of the case, containing the pro-
 ceedings of the County of Camden.

2. Exhibits R1, R1a, and R1b, covering pages 188
 to 193, inclusive, of the printed state of the case, and

the affidavit of W. E. Barto, the letter from Central Airport Development Co., to West Jersey Title & Guaranty Company and the escrow agreement in the hands of the West Jersey Title & Guaranty Company.

3. Exhibit R2, covering pages 142 to 147, inclusive, in the printed state of the case, being the right of way between Central Airport, Inc., *et als.*, and the County of Camden. 10

JOSEPH H. CARR,
Attorney for Prosecutor.

WALTER S. KEOWN,
*Attorney for Defendants, County
of Camden, Board of Chosen
Freeholders in and for the
County of Camden, Leslie H.
Ewing and Fred W. George.*

EDWARD L. KATZENBACH,
ALBERT E. SCHEFLIN, 20
*Attorneys for Defendant, Cen-
tral Airport, Inc.*

EDWARD L. KATZENBACH,
ALBERT E. SCHEFLIN,
*Attorneys for Defendant, Cen-
tral Airport Development Co.*

STIPULATION.

NEW JERSEY SUPREME COURT.

10 WILMAR COMPANY, a corpo-
 ration of New Jersey,
Prosecutor,

v.

COUNTY OF CAMDEN, BOARD
 OF CHOSEN FREEHOLDERS
 OF CAMDEN COUNTY,
 LESLIE H. EWING, Direc-
 tor, and FRED W. GEORGE,
 Clerk of BOARD OF
 20 CHOSEN FREEHOLDERS OF
 COUNTY OF CAMDEN,
Defendants.

Stipulation.

30 It is hereby stipulated between counsel under-
 signed that the state of the case used on the rule to
 show cause why the writ of certiorari should not be
 issued shall be taken as the state of the case on the
 writ of certiorari itself and that there shall be
 printed with the state of the case in addition to the
 matters appearing in the state of the case on the
 rule to show cause why certiorari should not issue,
 the following:

1. The writ of certiarari.

2. The return of the writ of certiorari.
3. The stipulation relating to the return of the writ.
4. This stipulation.

*Attorney for Defendants, County
of Camden, Board of Chosen
Freeholders of County of Cam- 10
den, Leslie H. Ewing, Director,
Fred W. George, Clerk of
Board of Chosen Freeholders
of County of Camden.*

*Attorney for Prosecutor, Wilmar
Company.*

20

30

STIPULATION.

NEW JERSEY SUPREME COURT.

10 WILMAR COMPANY, a corpo-
 ration of New Jersey,
Prosecutor,

v.

COUNTY OF CAMDEN, BOARD
 OF CHOSEN FREEHOLDERS
 OF COUNTY OF CAMDEN,
 LESLIE H. EWING, Direc-
 tor, FRED W. GEORGE,
 Clerk of BOARD OF
 20 CHOSEN FREEHOLDERS OF
 COUNTY OF CAMDEN;
 CENTRAL AIRPORT, INC., a
 corporation of Delaware,
 and CENTRAL AIRPORT
 DEVELOPMENT COMPANY,
 a corporation of the
 State of New Jersey,
Defendants.

Stipulation.

30

It is hereby stipulated between counsel under-
 signed that the state of the case used on the rule to
 show cause why writ of certiorari should not be
 issued shall be taken as the state of the case on the
 writ of certiorari itself and that there shall be
 printed with the state of the case in addition to the

matters appearing in the state of the case on the rule to show cause why certiorari should not issue, the following:

1. The writ of certiorari.
2. The return of the writ of certiorari.
3. The stipulation relating to the return of the writ. 10
4. This stipulation.

*Attorney for County of Camden,
Board of Chosen Freeholders of
County of Camden, Leslie H.
Ewing, Director, Fred W.
George, Clerk of Board of
Chosen Freeholders of County
of Camden.* 20

*Attorney for Central Airport,
Inc., a corporation of Delaware,
and Central Airport Develop-
ment Company, a corporation
of New Jersey.*

*Attorney for Prosecutor, Wilmar
Company.* 30

REASONS.

NEW JERSEY SUPREME COURT.

10 WILMAR COMPANY, a corpo-
 ration of New Jersey,
Prosecutor,

v.

COUNTY OF CAMDEN, BOARD
 OF CHOSEN FREEHOLDERS
 OF COUNTY OF CAMDEN,
 LESLIE H. EWING, Direc-
 tor, and FRED W. GEORGE,
 Clerk of BOARD OF
 20 Chosen Freeholders of
 County of Camden,
Defendants.

On Certiorari.
 Reasons.

The prosecutor, Wilmar Company, by Joseph H. Carr, its attorney, hereby gives the following reasons why the proceedings under review, should be set aside and for nothing holden:

30

1. The County of Camden was without authority or power to vacate the section of Browning Road in question under the circumstances of this case.

2. The County of Camden had no power to vacate the section of Browning Road in question unless the same was unnecessary for public travel, and the sec-

tion in question was, in fact, necessary for public travel.

3. The County of Camden was required to pass upon the question of the vacation of the section of Browning Road in question and the necessity of the same for public travel as a judicial question and did not do so.

4. There has never been a finding by the County of Camden that the section of Browning Road in question is unnecessary for public travel, nor did the county have any evidence or facts before it from which to make such a finding. 10

5. In point of fact, the section of Browning Road sought to be vacated is necessary for public travel.

6. The prosecutor will suffer special damage by the attempted vacation proceedings and was entitled to have the matter of the vacation proceedings considered from a judicial standpoint by the county, which was not done. 20

7. The attempted vacation proceedings were conditional, upon matters not authorized by law, and a vacation upon the conditions appearing in this case is unauthorized by law.

8. The attempted vacation proceedings and the resolutions under review are unreasonable. 30

9. The proceeding in question was for a purely private purpose, subserving no public purpose and the county in effect by the vacation proceedings has sold the right in the road for a consideration, when

it should have judicially determined the necessity of the road apart from any question of consideration in money or property accruing to the county as a result of the vacation.

10. The consent of Pennsauken Township to the road vacation proceeding was conditional upon matters not authorized by law and the proceedings based thereon are invalid.

10

JOSEPH H. CARR,
Attorney for Prosecutor.

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REASONS.

NEW JERSEY SUPREME COURT.

WILMAR COMPANY, a corpo-
ration of New Jersey,
Prosecutor,

v.

COUNTY OF CAMDEN, BOARD
OF CHOSEN FREEHOLDERS
OF COUNTY OF CAMDEN,
LESLIE H. EWING, Direc-
tor, FRED W. GEORGE,
Clerk of BOARD OF
CHOSEN FREEHOLDERS OF
COUNTY OF CAMDEN;
CENTRAL AIRPORT, INC., a
corporation of Delaware,
and CENTRAL AIRPORT
DEVELOPMENT COMPANY,
a corporation of the
State of New Jersey,
Defendants.

10

On Certiorari.
Reasons.

20

30

The prosecutor, Wilmar Company, by Joseph H. Carr, its attorney, hereby gives the following reasons why the proceedings under review, and the contract, should be set aside and for nothing holden:

1. The County of Camden was without authority

or power to vacate the section of Browning Road in question under the circumstances of this case.

2. The County of Camden had no power to vacate the section of Browning Road in question unless the same was unnecessary for public travel, and the section in question was, in fact, necessary for public travel.

10 3. The County of Camden was required to pass upon the question of the vacation of the section of Browning Road in question and the necessity of the same for public travel as a judicial question and did not do so.

20 4. There has never been a finding by the County of Camden that the section of Browning Road in question is unnecessary for public travel, nor did the county have any evidence or facts before it from which to make such a finding.

5. In point of fact, the section of Browning Road sought to be vacated is necessary for public travel.

30 6. The prosecutor will suffer special damage by the attempted vacation proceedings and was entitled to have the matter of the vacation proceedings considered from a judicial standpoint by the county, which was not done.

7. The attempted vacation proceedings were conditional, upon matters not authorized by law, and a vacation upon the conditions appearing in this case is unauthorized by law.

8. The proceeding in question was for a purely

private purpose, subserving no public purpose and the county in effect by the vacation proceedings has sold the right in the road for a consideration, when it should have judicially determined the necessity of the road apart from any question of consideration in money or property accruing to the county as a result of the vacation.

9. The contract made by the county, which is under review, being based upon the illegal action in vacating the road, is subject to all of the infirmities to which the proceedings are subject. 10

JOSEPH H. CARR,
Attorney for Prosecutor.

OPINION.

(Filed Aug. 2, 1930.)

NEW JERSEY SUPREME COURT.

10

January Term, 1930.

Nos. 272, 273, 274, 275.

WILMAR COMPANY,

Prosecutor,

v.

BOARD OF CHOSEN FREE-

HOLDERS OF THE COUNTY

20

OF CAMDEN, LESLIE H.

EWING, Director, and

FRED W. GEORGE, Clerk,

Respondents.

WILMAR COMPANY,

Prosecutor,

v.

BOARD OF CHOSEN FREE-

30

HOLDERS OF THE COUNTY

OF CAMDEN, LESLIE H.

EWING, Director, and

FRED W. GEORGE, Clerk;

CENTRAL AIRPORT, INC.,

and CENTRAL AIRPORT

DEVELOPMENT Co.,

Respondents.

SIGMUND SCHOENAGLE,
Prosecutor,

v.

BOARD OF CHOSEN FREE-
 HOLDERS OF THE COUNTY
 OF CAMDEN, LESLIE H.
 EWING, Director, and
 FRED W. GEORGE, Clerk,
Respondents.

10

SIGMUND SCHOENAGLE,
Prosecutor,

v.

BOARD OF CHOSEN FREE-
 HOLDERS OF THE COUNTY
 OF CAMDEN, LESLIE H.
 EWING, Director, and
 FRED W. GEORGE, Clerk;
 CENTRAL AIRPORT, INC.,
 and CENTRAL AIRPORT
 DEVELOPMENT Co.,
Respondents.

20

Submitted January Term, 1930.

Decided, 1930.

30

ON CERTIORARI.

For prosecutor, Wilmar Company, JOSEPH H.
 Carr;

For prosecutor, Sigmund Schoenagle, AARON HEINE;

For respondent, Board of Chosen Freeholders of the County of Camden, WALTER S. KEOWN;

For respondents, Central Airport Inc., and Central Airport Development Company, EDWARD L. KATZENBACH, ALBERT E. SCHEFLIN.

10

BEFORE: JUSTICES TRENCHARD, LLOYD and CASE.

PER CURIAM:

20 The petitions in these cases are for writs of certiorari to determine the validity of the vacation by the Board of Chosen Freeholders of the County of Camden of a portion of Browning Road in that county. Various reasons are urged for the allowance of the writs, and as the facts presented in the petitions and proofs submitted under the rule to show cause allowed by this Court establish that there are legally debatable questions presented, the writs will be allowed.

30

AFFIDAVIT.

NEW JERSEY SUPREME COURT.

WILMAR COMPANY, a corporation of New Jersey, <i>Prosecutor,</i>	10
v.	
COUNTY OF CAMDEN; BOARD OF CHOSEN FREEHOLDERS OF COUNTY OF CAMDEN; LESLIE H. EWING, director, and FRED W. GEORGE, clerk of Board of Chosen Freeholders of County of Camden, <i>Defendants.</i>	20

On Certiorari.
Affidavit.

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

1. Anthony Malatesta, being duly sworn according to law, on his oath deposes and says that he is a director of the Wilmar Company, a New Jersey corporation, prosecutor herein, and treasurer of that corporation, and is duly authorized to make this affidavit. 30

2. Said Wilmar Company is the owner of certain real estate in the Township of Pennsauken, County

of Camden, and is and has been for a number of years a taxpayer therein.

3. The Wilmar Company is the owner of certain building lots in Pennsauken Township, as shown on a plan made by Walter H. Macnamara, on September 11, 1922, and approved by the township committee of that township on December 22, 1924. Prosecutor owns approximately one hundred and forty-
10 two lots shown on said plan, of which twenty-one front on Browning Road, with a total frontage on Browning Road of approximately five hundred and seventy-three feet. A large number of said lots are accessible by means of Nash Avenue, a street opening out of Browning Road, laying northwest of the intersection of Browning Road and Kaighn Avenue. Said tract of land of which the prosecutor's lots constitute a large part is intersected by Kaighn Avenue, and is bounded on the south by Browning Road
20 aforesaid.

4. Prosecutor acquired the lands owned by it, above referred to, in the year 1925. For many years prior to that date Browning Road was a main highway of Camden County, and according to deponent's information was a main highway long before Camden County was organized. It has been for many years the most direct means of going from Merchantville and Pennsauken Township to Collings-
30 wood and the White Horse Pike. Both Merchantville, Collingswood and Pennsauken Township are among the larger suburbs of Camden, and have grown greatly in population in the last ten or twelve years. And in the last ten or twelve years the built-up sections of these communities have extended in Merchantville and Pennsauken Township southwardly along Browning Road in the general direc-

tion of prosecutor's property and northwardly from Collingswood in the general direction of prosecutor's property, the development from these communities following in general the line of Browning Road.

5. In the year 1926, the State of New Jersey opened a new State highway known as Crescent Boulevard, by means of which additional means of access are provided to Collingswood and Merchant- 10
ville, but Browning Road remains the most direct route, not only for communication between these towns, but also from the north and west to the White Horse Pike, and Browning Road is at the present time heavily traveled. Deponent's information is that one of the purposes of the large expenditure made by the State on the Crescent Boulevard was to provide a highway to relieve Browning Road.

6. After the purchase by the prosecutor of the 20
lands referred to, and in the year 1928 and 1929, corporations known as Central Airport, Inc., and Central Airport Development Company acquired a large number of acres of land laying northwesterly, westerly and southerly of prosecutor's property, which acreage was intersected by said Browning Road. Central Airport constructed in 1929 an airport on the land north of Browning Road and is now operating the same.

7. On August 14, 1929, Central Airport, Inc., pre- 30
sented to the Board of Chosen Freeholders of Camden County a petition which was referred to the Road Committee of that Board. The petition reads as follows:

"To the Board of Chosen Freeholders of the
County of Camden:

Gentlemen:

The petition of Central Airport, Inc., a corporation of the State of Delaware, respectfully represents:

1. That it is the owner of all lands abutting Browning Road from Cooper Creek to point in said Road from which it is proposed to lay out a new road hereinafter referred to.

10

2. That it is the owner of all land which will abut on the proposed re-located Browning Road as shown by the plan hereinafter referred to.

3. That it presents herewith a plan showing Browning Road as now laid out, and the portion of Browning which it is desired to re-locate and the position of such re-location.

20

4. That petitioners are now operating an airport from which increasing numbers of planes will leave and arrive. That entrants for the National Air Races to be conducted from Cleveland in the State of Ohio will leave from the petitioner's airport. That petitioners have every reason to believe that its airport will become a landing place for air mail planes of the United States Government on or about September 1, 1929, and that it is their purpose to make said airport one of the best airports in the world.

30

5. That in order to carry out the purposes of your petitioner it is necessary that the airport which it conducts should be classified by the United States Government as an 1-A-1 airport and in that connection it is necessary that land to the East of Browning Road, as now laid out, should become a part of the airport, such additional land being shown on said plan as lying between Browning Road as now located and Browning Road in its proposed location.

Your petitioner prays that your Honorable Body will adopt a resolution, after due notice and public hearing, vacating the portion of said Browning Road delineated on said plan as 'Section to be vacated' and will in lieu thereof accept a dedication of a portion of Browning Road as re-located, as shown upon said plan.

Your petitioners will ever pray, etc.

Central Airport, Inc.

By Nicholas S. Ludington, 10
President.

Attest:

J. William Markeim,
Secretary. (Seal)''

8. No public hearing was held on the foregoing petition until December 27, 1929. A notice of such public hearing was published and a copy thereof is attached, marked Exhibit "A."

20

9. At said public hearing prosecutor objected, through its counsel, to the vacation of Browning Road in the manner proposed in the notice of the hearing.

10. There was presented to the meeting a so-called consent of the Township Committee of Pennsauken Township, which reads as follows:

"Whereas, notice has been received from the Clerk of the Board of Chosen Freeholders of 30 the County of Camden that it is the intention of said Board to consider a resolution providing for the vacation of portions of Browning Road, hereinafter described, being in the Township of Pennsauken, and extinguishment of any and all public rights therein, at a meeting to be held on December 27th, 1929, at 8:30 P. M.; and

Whereas, it is necessary that the Township Committee consent thereto, prior to the adoption of any resolution by said Board affecting said vacation of the portions of said road and the extinguishment of any and all public rights therein; and

10 Whereas, the Township Committee is informed that the portions of Browning Road proposed to be vacated, as aforesaid, will be kept open for public travel until such time as certain lands about to be dedicated to the County of Camden for a new road located East of the portions of the existing road proposed to be vacated, have been paved and connected to a road to be laid out, constructed and paved by the Camden County Park Commission along the North and East Bank of the Cooper River; and

20 Whereas, the Township Committee is of the opinion that it is for the best interest of the Township that such consent be given for the reasons as contained in the notice referred to in paragraph one hereof, and other similar reasons; and

Whereas, the portions of Browning Road proposed to be vacated and any and all public rights therein extinguished as aforesaid, are described as follows:

30 Beginning at a point in the centre line of Browning Road (49.50 feet wide) and in the Northerly proposed new line of lands of the Camden County Park Commission, said point being distant 401.94 feet Northeastwardly from an angle in Browning Road over Cooper River; thence (1) North 53 degrees 56 minutes 00 seconds East along the centre line of Browning Road, the distance of 1978.42 feet to the point

of intersection of the curved Northwesterly new line of Browning Road (66 feet wide) with the centre line of Old Browning road (49.50 feet wide) and said point of intersection, being located 182.98 feet measured along the centre line of Old Browning road, Southwestwardly from and at right angles from the point of intersection of the Easterly line of lands of Central Airport, Inc., with the Northwesterly line of Browning road (49.50 feet wide); thence (2) 10 Southwestwardly, curving to the South with a radius of 523.77 feet the arc distance of 61.36 feet to a point in the Southeasterly line of Browning road (49.50 feet wide); thence (3) South 53 degrees 56 minutes 00 seconds West along the Southeasterly line of Browning road the distance of 1903.87 feet to a point in the proposed new line of lands of the Camden County Park Commission; thence (4) 20 Westwardly along said new line of lands of Camden County Park Commission, curving to the North with a radius of 2190 feet the arc distance of 30.87 feet to a point and the place of beginning.

It is the intention of the above description to include all of the Southeasterly half of Browning road between the lateral lines named.

Beginning at a point in the centre line of Browning road (49.50 feet wide) and in the proposed new Northerly line of lands of the Camden County Park Commission, said point being 30 distance 401.94 feet Northeastwardly from an angle in Browning road over Cooper River; thence (1) Westwardly along the proposed new line of lands of the Camden County Park Commission, curving to the North with a radius of 2190 feet the arc distance of 30.56 feet to a point in the Northwesterly line of Browning road;

10 thence (2) North 53 degrees 56 minutes 00 seconds East along the Northwesterly line of Browning Road, the distance of 2086.74 feet to the point of intersection of the curved Northwesterly new line of Browning road (66 feet wide), with the tangent Northwesterly old line of Browning Road (49.50 feet wide) and said point of intersection, being located 92.60 feet Southwestwardly, measured along the old line of Browning road from the Easterly line of lands of Central Airport, Inc.; thence (3) Southwestwardly curving to the South with a radius of 523.77 feet the arc distance of 93.83 feet to a point in the centre line of Browning road (49.50 feet wide); thence (4) South 53 degrees 56 minutes 00 seconds West along the centre line of Browning road the distance of 1978.42 feet to a point and the place of beginning.

20 It is the intention of the above description to include all of the Northwesterly half of Browning road between the lateral lines named.

30 Now, therefore, be it Resolved, by the Township Committee of the Township of Pennsauken, in the County of Camden, New Jersey that consent be and is hereby given to the vacation by the Board of Chosen Freeholders of the County of Camden of the portions of Browning Road hereinbefore described, same being located in the Township of Pennsauken and the extinguishment of any and all public rights therein.

BE IT RESOLVED that this consent shall be evidenced by a certified copy of this resolution to be presented to the Clerk of the Board of Chosen Freeholders of the County of Camden

aforesaid on or before said meeting of December 27th."

11. Thereupon the following resolution was adopted, from which the description is omitted, that being the same as in the notice above referred to:

"WHEREAS, at a regular meeting of this Board held December 11th, 1929, a resolution was adopted providing that at this meeting the proposed vacation of a section of the road 10 known as Browning Road, being a County Road in the County of Camden, would be considered; and

WHEREAS, thereafter, a certified copy of said resolution was duly filed in the office of the County Clerk of the County of Camden, and public notice was duly given under the terms of the Act hereinafter referred to, which said notice stated that at this meeting the vacation of the portion of said Browning Road herein- 20 after referred to would be considered, and that any and all objections to the same would be heard and considered by this Board at a meeting to be held on the 27th day of December, 1929, at 8:30 o'clock P. M., in the room of the Board of Chosen Freeholders in the Court House, Camden, New Jersey; and said notice was duly advertised under the terms of said resolution and the statute in such case made and provided in the official newspapers of this 30 Board at least ten days before the holding of this meeting, and proofs of said publication have been duly filed with the Clerk of this Board; and

WHEREAS, this Board has heard and considered all objections made at this meeting to the proposed vacation; and

WHEREAS the Township Committee of the Township of Pennsauken, being the municipality in which the said section of Browning Road hereinafter described is situate has been given notice, pursuant to provisions of Chapter 195, P. L. 1928, and has duly filed in writing, with the Clerk of this Board, its consent to the vacation of said section of Browning Road hereinafter provided for;

10 NOW, THEREFORE, BE IT RESOLVED by the Board of Chosen Freeholders in and for the County of Camden in the State of New Jersey, that by virtue of the power and authority vested in it by Chapter 185, P. L. 1918, and the amendments thereof and supplements thereto, that that section of Browning Road, being a County Road, under the jurisdiction of this Board, hereinafter described, be and the same is hereby vacated and all public rights therein released and extinguished from any previous
20 dedication no matter how acquired. The said section of Browning Road so vacated being more particularly described as follows:

(Description)

And be it further resolved that the Clerk of this Board be and he is hereby authorized and instructed to file a certified copy of this resolution with the County Clerk of the County of Camden, within ten days after the date hereof.

30 Horace G. Githens."

12. Said resolution seeks to vacate that portion of Browning Road immediately south and west of prosecutor's lands, and would leave prosecutor's lands abutting on a cul de sac, instead of on a main highway.

13. The prosecutor is a New Jersey corporation, the director of the said Board of Freeholders is Leslie H. Ewing, and the clerk thereof is Fred W. George.

14. Wilmar Company prays that a writ of certiorari may be allowed to review the aforesaid resolution passed December 27, 1929, and all matters and things touching and concerning the same, and leading up to or in any way arising therefrom, as fully and entirely as before them may remain. 10

ANTHONY MALATESTA.

Sworn and subscribed before me this 30th day of December, A. D. 1929.

ELMER J. PATTERSON,
Notary Public of N. J.

RULE TO SHOW CAUSE.

NEW JERSEY SUPREME COURT.

10	WILMAR COMPANY, a corporation of New Jersey, <i>Prosecutor,</i>	} On Certiorari. Rule to Show Cause.
	v.	
20	COUNTY OF CAMDEN; BOARD OF CHOSEN FREEHOLDERS OF COUNTY OF CAMDEN; LESLIE H. EWING, director, and FRED W. GEORGE, clerk of Board of Chosen Freeholders of County of Camden, <i>Defendants.</i>	

30 Upon reading the affidavit in the above stated cause, it is on this 31st day of December, 1929, ordered, that County of Camden; Board of Chosen Freeholders of County of Camden; Leslie H. Ewing, director, and Fred W. George, clerk of Board of Chosen Freeholders of County of Camden, do show cause before the undersigned, at room 401 State House Annex in the City of Trenton, on Jany. 20th, A. D., 1930, at 10:30 o'clock in the forenoon of said day, why a writ of certiorari should not be issued out of and under the seal of this Court, commanding the said County of Camden; Board of

Chosen Freeholders of County of Camden; Leslie H. Ewing, director, and Fred W. George, clerk of Board of Chosen Freeholders of County of Camden, or one of them to certify and send to the Justices of the Supreme Court of Judicature a certain resolution passed Decemer 27, 1929, by the Board of Chosen Freeholders of Camden County and all matters and things touching and concerning the same, and leading up to or in any way arising therefrom, as fully and entirely as before them may remain, and 10

It is further ordered that either party hereto have leave to take depositions to be used upon the hearing thereof, and

It is further ordered that until the further order of this Court the said County of Camden; Board of Chosen Freeholders of County of Camden; Leslie H. Ewing, director; and Fred W. George, clerk of Board of Chosen Freeholders of County of Camden, be and they are hereby directed to abstain from all proceedings under and by virtue of said resolution. 20

It is further ordered that service of this order and affidavit may be made upon said defendants as provided for service of summons in civil causes.

J. L. BODINE,
Justice of Supreme Court.

[ENDORSEMENT]

30

Service acknowledged of rule and affidavit December 31, 1929.

Walter S. Keown,
Attorney of County
of Camden & other
defendants.

AFFIDAVIT.

NEW JERSEY SUPREME COURT.

10 WILMAR COMPANY, a corporation of New Jersey,
Prosecutor,

v.

20 COUNTY OF CAMDEN; BOARD OF CHOSEN FREEHOLDERS OF COUNTY OF CAMDEN; LESLIE H. EWING, director, FRED W. GEORGE, clerk of Board of Chosen Freeholders of County of Camden; CENTRAL AIRPORT, INC., a corporation of Delaware, and CENTRAL AIRPORT DEVELOPMENT COMPANY, a corporation of the State of New Jersey,
Defendants.

On Certiorari.
 Affidavit.

30

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

1. Anthony Malatesta, being duly sworn according to law, on his oath deposes and says that he is a director of the Wilmar Company, a New Jersey

corporation, prosecutor herein, and treasurer of that corporation, and is duly authorized to make this affidavit.

2. Said Wilmar Company is the owner of certain real estate in the Township of Pennsauken, County of Camden, and is and has been for a number of years a taxpayer therein.

3. The Wilmar Company is the owner of certain building lots in Pennsauken Township, as shown on a plan made by Walter H. MacNamara, on September 11, 1922, and approved by the Township Committee of that township on December 22, 1924. Prosecutor owns approximately one hundred and forty-two lots shown on said plan, of which twenty-one front on Browning Road, with a total frontage on Browning Road of approximately five hundred and seventy-three feet. A large number of said lots are accessible by means of Nash Avenue, a street opening out of Browning Road, laying northwest of the intersection of Browning Road and Kaighn Avenue. Said tract of land of which the prosecutor's lots constitute a large part is intersected by Kaighn Avenue, and is bounded on the south by Browning Road aforesaid.

4. Prosecutor acquired the lands owned by it, above referred to, in the year 1925. For many years prior to that date Browning Road was a main highway of Camden County, and according to deponent's information was a main highway long before Camden County was organized. It has been for many years the most direct means of going from Merchantville and Pennsauken Township to Collingswood and the White Horse Pike. Both Mer-

chantville, Collingswood and Pennsauken Township are among the larger suburbs of Camden, and have grown greatly in population in the last ten or twelve years. And in the last ten or twelve years the built-up sections of these communities have extended in Merchantville and Pennsauken Township southwardly along Browning Road in the general direction of prosecutor's property and northwardly from Collingswood in the general direction of prosecutor's property, the development from these communities following in general the line of Browning Road.

5. In the year 1926, the State of New Jersey opened a new State highway known as Crescent Boulevard, by means of which additional means of access are provided to Collingswood and Merchantville, but Browning Road remains the most direct route, not only for communication between these towns, but also from the north and west to the White Horse Pike, and Browning Road is at the present time heavily traveled. Deponent's information is that one of the purposes of the large expenditure made by the State on the Crescent Boulevard was to provide a highway to relieve Browning Road.

6. After the purchase by the prosecutor of the lands referred to, and in the year 1928 and 1929, corporations known as Central Airport, Inc., and Central Airport Development Company acquired a large number of acres of land laying northwesterly, westerly and southerly of prosecutor's property, which acreage was intersected by said Browning Road. Central Airport constructed in 1929 an airport on the land north of Browning Road and is now operating the same.

7. On August 14, 1929, Central Airport, Inc., presented to the Board of Chosen Freeholders of Camden County a petition which was referred to the Road Committee of that Board. The petition reads as follows:

“To the Board of Chosen Freeholders of the County of Camden:
Gentlemen:

The petition of Central Airport, Inc., a corporation of the State of Delaware, respectfully 10
represents:

1. That it is the owner of all lands abutting Browning Road from Cooper Creek to point in said Road from which it is proposed to lay out a new road hereinafter referred to.

2. That it is the owner of all land which will abut on the proposed re-located Browning Road, as shown by the plan hereinafter referred to.

3. That it presents herewith a plan showing 20
Browning Road as now laid out, and the portion of Browning which it is desired to re-locate and the position of such re-location.

4. That petitioners are now operating an airport from which increasing numbers of planes will leave and arrive. That entrants for the National Air Races to be conducted from Cleveland in the State of Ohio, will leave from the petitioner's airport. That petitioners have every reason to believe that its airport will be 30
come a landing place for air mail planes of the United States Government on or about September 1, 1929, and that it is their purpose to make said airport one of the best airports in the world.

5. That in order to carry out the purposes

of your petitioner it is necessary that the airport which it conducts should be classified by the United States Government as an 1-A-1 airport and in that connection it is necessary that land to the East of Browning Road, as now laid out, should become a part of the airport, such additional land being shown on said plan as lying between Browning Road as now located and Browning Road in its proposed location.

10

Your petitioner prays that your Honorable body will adopt a resolution, after due notice and public hearing, vacating the portion of said Browning Road delineated on said plan as 'Section to be vacated' and will in lieu thereof accept a dedication of a portion of Browning Road as re-located, as shown upon said plan.

Your petitioners will ever pray, etc.

Central Airport, Inc.

20

By Nicolas S. Ludington,

President.

Attest:

J. William Markheim,

Secretary (Seal)."

8. No public hearing was held on the foregoing petition until December 27, 1929. A notice of such public hearing was published and a copy thereof is attached, marked Exhibit "A."

30

9. At said public hearing prosecutor objected, through its counsel, to the vacation of Browning Road in the manner proposed in the notice of the hearing.

10. There was presented to the meeting a so-

called consent of the Township Committee of Pennsauken Township, which reads as follows:

“Whereas, notice has been received from the Clerk of the Board of Chosen Freeholders of the County of Camden that it is the intention of said Board to consider a resolution providing for the vacation of portions of Browning Road, hereinafter described, being in the Township of Pennsauken, and extinguishment of any and all public rights therein, at a meeting to be held on December 27th, 1929, at 8:30 P. M.; and 10

Whereas, it is necessary that the Township Committee consent thereto, prior to the adoption of any resolution by said Board affecting said vacation of the portions of said road and the extinguishment of any and all public rights therein; and

Whereas, the Township Committee is informed that the portions of Browning Road proposed to vacated, as aforesaid, will be kept open for public travel until such time as certain lands about to be dedicated to the County of Camden for a new road located East of the portions of the existing road proposed to be vacated, have been paved and connected to a road to be laid out, constructed and paved by the Camden County Park Commission along the North and East Bank of the Cooper River; and 20 30

Whereas, the Township Committee is of the opinion that it is for the best interest of the Township that such consent be given for the reasons as contained in the notice referred to in paragraph one hereof, and other similar reasons; and

Whereas, the portions of Browning Road proposed to be vacated and any and all public rights therein extinguished as aforesaid, are described as follows:

10 Beginning at a point in the center line of Browning Road (49.50 feet wide) and in the Northerly proposed new line of lands of the Camden County Park Commission, said point being distant 401.94 feet Northeastwardly from an angle in Browning road over Cooper River; thence (1) North 53 degrees 56 minutes 00 seconds East along the center line of Browning Road, the distance of 1978.42 feet to the point of intersection of the curved Northwesterly new line of Browning Road (66 feet wide) with the center line of Old Browning Road (49.50 feet wide) and said point of intersection, being located 182.98 feet measured along the center line of Old Browning Road, Southwestwardly from and at right angles from the point of intersection of the Easterly line of lands of Central Airport, Inc., with the Northwesterly line of Browning Road (49.50 feet wide); thence 20 (2) Southwestwardly, curving to the South with a radius of 523.77 feet the arc distance of 61.36 feet to a point in the Southeasterly line of Browning Road (49.50 feet wide); thence (3) South 53 degrees 56 minutes 00 seconds West along the Southeasterly line of Browning Road the distance of 1903.87 feet to a point in the proposed new line of lands of the Camden County Park Commission; thence (4) Westwardly along said new line of lands of Camden County Park Commission, curving to the North with a radius of 2190 feet the arc distance of 30.87 feet to a point and the place of beginning. 30

It is the intention of the above description to include all of the Southeasterly half of Browning Road between the lateral lines named.

Beginning at a point in the center line of Browning Road (49.50 feet wide) and in the proposed new Northerly line of lands of the Camden County Park Commission, said point being distant 401.94 feet Northeastwardly from an angle in Browning Road over Cooper River; 10
thence (1) Westwardly along the proposed new line of lands of the Camden County Park Commission, curving to the North with a radius of 2190 feet the arc distance of 30.56 feet to a point in the Northwesternly line of Browning road; thence (2) North 53 degrees 56 minutes 00 seconds East along the Northwesternly line of Browning Road, the distance of 2086.74 feet to the point of intersection of the curved Northwesternly new line of Browning road (66 feet 20
wide), with the tangent Northwesternly old line of Browning Road (49.50 feet wide) and said point of intersection, being located 92.60 feet Southwestwardly, measured along the old line of Browning road from the Easterly line of lands of Central Airport, Inc.; thence (3) Southwestwardly curving to the South with a radius of 523.77 feet the arc distance of 93.83 feet to a point in the center line of Browning road (49.50 feet wide); thence (4) South 53 de- 30
grees 56 minutes 00 seconds West along the center line of Browning road the distance of 1978.42 feet to a point and the place of beginning.

It is the intention of the above description to include all of the Northwesternly half of Browning road between the lateral lines named.

Now, therefore, be it Resolved, by the Township Committee of the Township of Pennsauken, in the County of Camden, New Jersey, that consent be and is hereby given to the vacation by the Board of Chosen Freeholders of the County of Camden of the portions of Browning Road hereinbefore described, same being located in the Township of Pennsauken and the extinguishment of any and all public rights therein.

10 BE IT RESOLVED that this consent shall be evidenced by a certified copy of this resolution to be presented to the Clerk of the Board of Chosen Freeholders of the County of Camden aforesaid on or before said meeting of December 27th."

11. Thereupon the following resolution was adopted, from which the description is omitted, that being the same as in the notice above referred to:

20 "WHEREAS, at a regular meeting of this Board held December 11th, 1929, a resolution was adopted providing that at this meeting the proposed vacation of a section of the road known as Browning Road, being a County Road in the County of Camden, would be considered; and

30 WHEREAS, thereafter, a certified copy of said resolution was duly filed in the office of the County Clerk of the County of Camden, and public notice was duly given under the terms of the Act hereinafter referred to, which said notice stated that at this meeting the vacation of the portion of said Browning Road hereinafter referred to would be considered, and that any and all objections to the same would be heard and considered by this Board at a meet-

ing to be held on the 27th day of December, 1929, at 8:30 o'clock P. M., in the room of the Board of Chosen Freeholders in the Court House, Camden, New Jersey; the said notice was duly advertised under the terms of said resolution and the statute in such case made and provided in the official newspapers of this Board at least ten days before the holding of this meeting, and proofs of said publication have been duly filed with the Clerk of this Board; and 10

WHEREAS, this Board has heard and considered all objections made at this meeting to the proposed vacation; and

WHEREAS the Township Committee of the Township of Pennsauken, being the municipality in which the said section of Browning Road hereinafter described is situate has been given notice, pursuant to provisions of Chapter 195, P. L. 1928, and has duly filed in writing, with the Clerk of this Board, its consent to the vacation of said section of Browning Road hereinafter provided for; 20

NOW, THEREFORE, BE IT RESOLVED by the Board of Chosen Freeholders in and for the County of Camden in the State of New Jersey, that by virtue of the power and authority vested in it by Chapter 185, P. L. 1918, and the amendments thereof and supplements thereto, that that section of Browning Road, being a County Road, under the jurisdiction of this Board, hereinafter described, be and the same is hereby vacated and all public rights therein released and extinguished from any previous dedication no matter how acquired. The said section of Browning Road so vacated being more particularly described as follows: 30

(Description)

And be it further resolved that the Clerk of this Board be and he is hereby authorized and instructed to file a certified copy of this resolution with the County Clerk of the County of Camden, within ten days after the date hereof.

Horace G. Githens."

10 12. Said resolution seeks to vacate that portion of Browning Road immediately south and west of prosecutor's lands, and would leave prosecutor's lands abutting on a cul de sac, instead of on a main highway.

13. Following the passage of the last mentioned resolution by the Board of Chosen Freeholders, another resolution was presented, read and passed. The following is a copy thereof:

20 "WHEREAS, this Board has heretofore vacated a certain portion of Browning Road in the Township of Pennsauken, being a County Road, in order that the same may be used in connection with the development of the Airport in the County of Camden; and

30 WHEREAS in connection with said vacation, certain agreements were made on behalf of Central Airport, Inc., and Central Airport Development Company, owners of the Airport in question, which agreements are as set forth in the memorandum of agreement between the said companies and the County of Camden, a copy of which agreement is annexed hereto and made a part of this resolution;

NOW, THEREFORE, BE IT RESOLVED by the Board of Chosen Freeholders in and for

the County of Camden in the State of New Jersey, that the Director and Clerk of this Board be and they are hereby authorized and instructed to execute the memorandum of agreement between the Central Airport, Inc., Central Airport Development Company and the County of Camden, a copy of which agreement is hereto annexed and made a part hereof, in order that the terms thereof may be binding upon the County of Camden.” 10

14. The agreement referred to was not read at the time of the passage of the resolution, but prosecutor obtained a copy from the clerk of the Board the morning of December 28, 1929. It reads as follows:

“Memorandum of Agreement between Central Airport, Inc., a corporation of the State of Delaware and Central Airport Development Company a corporation of the State of New Jersey, as parties of the first part and the County of Camden, a municipal corporation of the State of New Jersey, as party of the second part. 20

1. The parties of the first part agree to dedicate to the party of the second part a sixty-six (66) feet right of way to be used as a County Road, the description of the said 66 feet right of way to be deeded and dedicated being as follows: 30

Beginning at a point in the Southeasterly line of Browning Road 49.50 feet Southeasterly from and at right angles to the point of intersection of the Easterly line of lands of Central Airport, Inc., with the Northwesterly line of Browning Road, thence (1) South 36 degrees, 04

minutes 00 seconds East at right angles to
Browning Road the distance of 8 or 6 (?) .25
feet to a point of curve; thence (2) Southwest-
erly curving to the South with a radius of 457.77
feet the arc distance of 431.91 feet to a point
of tangency; thence (3) South 0 degrees 07
minutes 33 seconds East the tangent distance
of 1054.00 feet to a point of curve thence (4)
Southeasterly curving to the East with a radius
of 101.86 feet the arc distance of 132.58 feet to
a point of connection in the line of lands of the
Camden County Park Commission; thence (5)
Westerly along the line of lands of the Camden
County Park Commission curving to the South
with a radius of 1050 feet the arc distance of
129.58 feet to a point of tangency; thence (6)
North 81 degrees, 46 minutes, 16 seconds West
along the opposed new line of lands of Camden
County Park Commission the tangent distance
of 83.65 feet to a point of curve; thence North-
easterly and curving to the North with a radius
of 60 feet the arc distance of 103.00 feet to a
point of tangency; thence (8) North 0 degrees,
7 minutes 33 seconds West parallel with and
distant 66 feet West at right angles from third
course herein the tangent distance of 1054.00
feet to a point of curve thence (9) Northeasterly
curving to the East with a radius of 523.77 feet
and concentric with the second course the arc
distance of 245.91 feet to a point in the tan-
gent Southeastwardly line of Browning (49.50
feet wide) thence (10) Northwardly 53 degrees
56 minutes East along the Southeastwardly line
of Browning Road the tangent distance of 239.08
feet to a point and the place of beginning.

Beginning at a point in the Northwestwardly

line of Browning Road (49.50 feet wide) where the same is intersected by the Easterly line of lands of Central Airport, Inc., thence (1) South 53 degrees 56 minutes 0 seconds Westwardly along the Northwestwardly line of Browning Road (49.50 feet wide) the distance of 92.60 feet to its intersection with the curved Northwestwardly new line of Browning Road (66 feet wide) thence (2) Northeastwardly with a radius of 523.77 feet the arc distance of 93.09 feet to a point of tangency; thence (3) Northwardly 53 degrees 56 minutes 00 seconds Eastwardly still along the Northwestwardly new line of Browning Road the tangent distance of 4.99 feet to a point in the Easterly line of lands of Central Airport, Inc., thence (4) Southwardly 4 degrees 53 minutes 00 seconds Eastwardly along the Easterly line of Central Airport, Inc., the distance of 9.64 feet to a point in the Northwestwardly line of Browning Road (49.50 feet wide) and the place of beginning. 10 20

The above lands are described herein according to survey and plan of proposed dedication and vacation of a portion of Browning Road, Pennsauken Township, Camden, County, New Jersey, dated November 29, 1929, and prepared by Remington, Vosbury & Goff, Civil Engineers.

2. The party of the second part agrees to grade the new Road referred to in item #1 above and to pave and maintain the same after the establishment and improvement of said Road in accordance with item #3 hereof. 30

3. It is understood and agreed between the parties hereto that the parties of the first part will grant to the party of the second part the right to continue to use Browning Road as constituted, from the date of the signing of this

10 memorandum of agreement until such time as the Camden County Park Commission has actually laid out, constructed and paved a new Boulevard or road along the Northerly or Easterly bank of Cooper River connecting the Bridge across the Cooper River at Browning Road with the new road as dedicated by the parties of the first part and hereinabove described. Upon the completion of said Boulevard by the Camden County Park Commission the party of the second part shall grade, build and construct the new road as particularly described in item #1 hereof, and upon the completion of the improvement of said new Road the parties of the first part shall then have the right to remove all physical evidences of the County Road from that section of Browning Road hereafter vacated by the County of Camden.

20 4. It is further understood and agreed between the parties hereto that in the event of any litigation affecting the resolution of the County of Camden to be adopted, or in any way attempted to be adopted, in connection with the proposed vacation of Browning Road, or in the event of any litigation affecting the legality of the procedure in connection there with, the party of the second part will defend said litigation, and the expense of said litigation, exclusive of counsel fees, shall be borne by the parties of the first part herein.

30 In Witness Whereof, the various parties hereto have caused these presents to be signed by their respective officers and have hereunto affixed their respective corporate seals.

Dated this day of
December, A. D., 1929.

Signed, Sealed and
Delivered in the
Presence of:

Central Airport, Inc., a corporation of Delaware

By
President

Attest.....

Secretary
Central Airport Development 10
Company, a corporation of
New Jersey

By
President

Attest.....

Secretary
County of Camden, a municipal corporation of New Jersey,

By 20
Director, Board of Chosen
Freeholders.

Attest.....

Clerk, Board of Chosen
Freeholders."

15. The proposed dedication referred to in said resolution and agreement described a tract of land, as shown on the map exhibited at said meeting, which extends at an angle of approximately forty-five degrees to the existing line of Browning Road, to land shown as belonging to the Camden County Park Commission. Said strip of land does not extend to any road or highway shown on said map or existing on the land of the Park Commission. The distance from the end of the proposed dedication 30

along the land of the Park Commission to the line of Browning Road sought to be vacated is approximately as long as said dedicated strip, and approximately as long as said proposed vacated road. Said proposed dedication, at the present time would be a mere cul de sac, prosecutor does not know whether said contract has been executed or not.

16. The prosecutor is a New Jersey corporation, the director of said Board of Chosen Freeholders is Leslie H. Ewing, and the clerk thereof is Fred W. George. Central Airport, Inc., is a Delaware corporation and Central Airport Development Company is a New Jersey corporation.

17. Wilmar Company prays that a writ of certiorari may be allowed to review the resolution last above referred to, and which approved of the last mentioned contract, passed December 27, 1929, and to review the approval of said contract, and the execution thereof, if it be executed, and also all matters and things touching and concerning the same, and leading up to or in any way arising therefrom as fully and entirely as before them may remain.

ANTHONY MALATESTA.

Sworn and subscribed to before me, Camden, N. J., this 30th day of December, A. D., 1929.

ELMER J. PATTERSON,
Notary Public of N. J.

RULE TO SHOW CAUSE.

NEW JERSEY SUPREME COURT.

WILMAR COMPANY, a corporation of New Jersey,
Prosecutor,

10

v.

COUNTY OF CAMDEN; BOARD OF CHOSEN FREEHOLDERS OF COUNTY OF CAMDEN; LESLIE H. EWING, director, FRED W. GEORGE, clerk of Board of Chosen Freeholders of County of Camden; CENTRAL AIRPORT, INC., a corporation of Delaware, and CENTRAL AIRPORT DEVELOPMENT COMPANY, a corporation of the State of New Jersey,
Defendants.

On Certiorari.
Rule to Show Cause. 20

30

Upon reading the affidavit in the above stated cause, it is on this thirty-first day of December, 1929, ordered, that County of Camden; Board of Chosen Freeholders of County of Camden; Leslie H. Ewing, director, Fred W. George, clerk of Board of Chosen

- Freeholders of County of Camden; Central Airport, Inc., a corporation of Delaware, and Central Airport Development Company, a corporation of the State of New Jersey, do show cause before the undersigned, at room 401, State House Annex in the City of Trenton, on January 20th, A. D., 1930, at 10:30 o'clock in the forenoon of said day, why a writ of certiorari should not be issued out of and under the seal of this Court, commanding the said County of Camden; Board of Chosen Freeholders of County of Camden; Leslie H. Ewing, director, Fred W. George, clerk of Board of Chosen Freeholders of County of Camden; Central Aripport, Inc., a corporation of Delaware, and Central Airport Development Company, a corporation of the State of New Jersey, or one of them to certify and send to the Justices of the Supreme Court of Judicature a certain resolution passed December 27th, 1929, approving a certain agreement between the County of Camden and
- 20 Central Airport, Inc., and Central Airport Development Company, and also to review the approval of the said contract and the execution thereof, if it be executed, and all proceedings and things touching and concerning the same as fully and entirely as they remain, and

It is further ordered that either party hereto have leave to take depositions to be used upon the hearing thereof, and

- 30 It is further ordered that until the further order of this Court the said County of Camden; Board of Chosen Freeholders of County of Camden; Leslie H. Ewing, director, Fred W. George, clerk of Board of Chosen Freeholders of County of Camden, Central Airport, Inc., a corporation of Delaware, and Central Airport Development Company, a corporation of the State of New Jersey, be and they are

hereby directed to abstain from all proceedings under and by virtue of said resolution and agreement.

It is further ordered that service of this order and affidavit may be made upon said defendants as provided for service of summons in civil causes.

J. L. BODINE,

Justice of Supreme Court.

10

[ENDORSEMENT]

Service acknowledged Dec. 31, 1929,
of rule and affidavit.

Walter S. Keown,

Attorney for County of

Camden, Fred W.

George and Leslie

W. Ewing.

20

30

DEPOSITIONS.
NEW JERSEY SUPREME COURT.

- | | | | |
|----|--|---|---|
| | <p>WILMAR COMPANY, a corporation of New Jersey,
<i>Prosecutor,</i></p> | | |
| | v. | | |
| 10 | <p>COUNTY OF CAMDEN, BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF CAMDEN, LESLIE H. EWING, director, and FRED W. GEORGE, Clerk of the Board of Chosen Freeholders of the County of Camden,</p> | } | <p>On Rule to Show Cause.
On Certiorari.
Depositions.</p> |
| | <i>Defendants.</i> | | |
| 20 | <p>WILMAR COMPANY, a corporation of New Jersey,
<i>Prosecutor,</i></p> | | |
| | v. | | |
| 30 | <p>COUNTY OF CAMDEN, BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF CAMDEN, LESLIE H. EWING, director, and FRED W. GEORGE, Clerk of the Board of Chosen Freeholders of the County of CAMDEN, CENTRAL AIRPORT, INC., a corporation of Delaware, and CENTRAL AIRPORT DEVELOPMENT COMPANY, a corporation of New Jersey,</p> | } | <p>On Rule to Show Cause.
On Certiorari.
Depositions.</p> |
| | <i>Defendants.</i> | | |

January 16, 1930.

APPEARANCES:

For the prosecutor, JOSEPH H. CARR, Esq.

For the defendants, GEORGE GILDEA, Esq., appearing for EDWARD L. KATZENBACH, Esq.; A. E. SCHEFLEN, Esq., and CHARLES C. SAVAGE, JR., Esq., representing the Central Airport, Inc., 10
and Central Airport Development Company, and GEORGE D. ROTHERMEL, Esq., appearing for the County of Camden, Board of Freeholders of the County of Camden, Leslie H. Ewing, director, and Fred W. George, Clerk of the said Board of Chosen Freeholders.

Before EDWARD I. BERRY, Supreme Court Commissioner. 20

Depositions taken in the above-entitled causes, pursuant to rule and on notice, this sixteenth day of January, A. D., nineteen hundred and thirty, at ten o'clock A. M., in the Board of Freeholders' room in the Court House, Camden, New Jersey (the same having, by consent of counsel, been adjourned 30
from the office of Edward I. Berry, Broadway and Cooper Streets, Camden, New Jersey), before Edward I. Berry, Supreme Court Commissioner, in the presence of Joseph H. Carr, Esq., representing the prosecutor; George Gildea, Esq., appearing for Edward L. Katzenbach, Esq.; A. E. Scheflen, Esq.,

and Charles C. Savage, Jr., Esq., representing the Central Airport, Incorporated, and Central Airport Development Company; and George D. Rothermel, Esq., appearing for the County of Camden, the Board of Freeholders of the County of Camden, Leslie H. Ewing, director, and Fred W. George, clerk of said Board of Chosen Freeholders, except that Mr. Rothermel states that on behalf of the two
10 defendants, Ewing and George, objection is made that they are not proper parties to the proceeding, and notice is given that at the proper time application will be made to dismiss as to them, since their action was taken as officials of the County of Camden and not in their individual capacities.

It is stipulated and agreed between counsel that the depositions shall be taken stenographically and the signatures of the witnesses waived. It is also stipulated between all the counsel hereto that the
20 testimony in the two causes as above entitled shall be taken together.

ANTHONY E. MALATESTA, SWORN.

By Mr. Carr:

Q. Mr. Malatesta, you hold an office in the Wilmar
30 Company?

A. Yes.

Q. What office?

A. Treasurer.

Q. Have you here any papers relating to this property that is involved in this suit?

A. Yes, sir.

Q. What have you?

A. I have an affidavit.

Q. What other papers do you have—a deed?

A. I have a deed.

Q. Is that a deed to the Wilmar Company?

A. To the Wilmar Company and an affidavit here.

Q. Well, I don't care about that.

Mr. Carr: Said deed is offered in evidence.

Mr. Gildea: I object to it as not proved.

10

(Said deed is marked Exhibit P1 for the prosecutor.)

Q. Now, Mr. Malatesta, the deed which you produced, which is marked P1, does that cover the land that is owned by the Wilmar Company, the prosecutor in this action?

20

Mr. Gildea: I object to that on the ground that the deed is not properly proved, on the ground that the question calls for a conclusion, and on the further ground that if the deed is proper evidence it speaks for itself.

A. Yes, sir.

Q. Now, Mr. Malatesta, do you also have here a map?

A. Yes.

30

Q. Will you tell me how the map is marked in the lower left corner?

A. "Approved by the Township Committee of Pennsauken Township, Attest by Robert V. Peabody, Township Clerk, December 22, 1924."

Q. What is that map a plan of, Mr. Malatesta?

Mr. Gildea: I object to that. If the purpose of this testimony is to show the ownership of land by the prosecutor, it is not proper proof of the ownership of land.

Q. You may answer the question.

A. Why, there is one hundred forty-four lots, including the whole piece of ground that we have there.

10

Mr. Carr: I offer the map in evidence.

Mr. Gildea: I object to it on the ground that the map is irrelevant and not proper proof of ownership of land.

(Said map is marked Exhibit P2.)

20

Mr. Carr: I would like to know for information whether these objections are voiced by the private corporations defendant or offered by the county.

Mr. Rothermel: The statement on behalf of the county is that the county, for the purpose of saving the record, would like the advantage of all of the objections taken by the other two defendants and did not enter objection merely to save time and the record.

30

Cross-examination.

By Mr. Rothermel:

Q. One question, Mr. Malatesta: How many lots, as shown on that particular plan, does your corporation not own?

A. There is about one hundred forty-four lots.

Q. I understand that; I say, how many lots as shown on that plan do you not own?

A. Well, I didn't go through them, to tell the truth, so I am just ——

Q. Well, pardon me, answer this question then: There are certain lots shown on that plan which your corporation does not own, are there not?

A. Well, I don't know unless I go over it.

10

RICHARD R. MILLER, SWORN.

By Mr. Carr:

Q. Mr. Miller, what is your occupation?

A. Photographer.

Q. And you carry on your business where?

20

A. At 512 Federal Street, Camden.

Q. At my request did you take some photographs of Browning Road recently?

A. I did.

Q. When were they taken?

A. Last Saturday noon.

Q. Saturday, January 11th?

A. 11th, yes.

Q. Have you the photographs with you?

A. No.

30

Q. Are these the photographs?

A. Those are the photographs.

Q. Referring to a picture which shows on the left a street sign marked "Marlton Avenue," I will ask you to state what view that shows?

A. The photograph is a view looking west on

Browning Road, taken from a point about 50 feet east of the east curb line of Marlton Avenue.

Mr. Carr: I am going to ask that this particular photograph that I am showing you be marked now for identification.

(Said photograph is marked Exhibit P3 for identification.)

10

Q. What is the road which appears in the lower right foregoing of the picture and extends to the horizon?

A. Browning Road.

Q. The crossroad is ——

A. Marlton Avenue.

Q. Otherwise known as Marlton Pike?

A. Marlton Pike.

20 Q. I call your attention to the fact that the picture shows a gasoline station on the right; is there an intersection at that point?

A. Well, you mean the gas station as shown about the center of the picture?

Q. Yes.

A. That is the intersection of Kaighn's Avenue and Browning Road.

Q. Which way is Camden on that picture?

A. Camden is to the north, or to the right of the picture.

30 Q. And which way is Collingswood?

A. Collingswood would be to the west.

Q. Over the horizon of that picture?

A. Yes.

Q. And which way is Merchantville?

A. Merchantville would be to the east.

Q. Approaching the picture?

A. Approaching the picture.

Mr. Carr: I offer that picture in evidence.

(Said photograph is marked Exhibit P3 for the prosecutor.)

Mr. Carr: I produce a photograph and ask to have it marked P4 for identification.

Q. Now, Mr. Miller, I refer you to Exhibit P4 and I will ask you to state what that shows? 10

A. It is a view looking west on Browning Road, from a point at about the end of the wire fence running east and west along Browning Road.

Q. The road shown in the picture, then, is Browning Road?

A. Browning Road.

Q. And approaching the picture, what community would be in the direction toward the picture?

A. Looking toward the picture you would be leaving Merchantville. 20

Q. And approaching what?

A. Facing Collingswood.

Q. I notice a wire fence shown on the right of the picture; does that fence enclose quite a large piece of ground there?

A. Yes.

Q. That land enclosed within the wire fence is reputed to be owned by the airport?

A. Yes.

Q. That is your understanding? 30

A. To the best of my knowledge.

Q. Now, the wire crosses or takes off at right angles or at some angle from Browning Road, doesn't it?

A. Yes.

Q. How near to the point where that cuts off was the photograph taken?

A. My camera was set about on a line with that angle.

Q. That is to say, at the point where the wire fence makes an angle and departs from Browning Road, was where your camera was set?

A. This is right.

Mr. Carr: I offer that in evidence.

10 (Said photograph is marked Exhibit P4 for the prosecutor.)

Q. Now, I show you a third picture which has been marked Exhibit P5 for identification, and ask you what view that represents?

A. A view of Browning Road looking west, photographed from a point about three hundred feet west of the angle in the fence.

20 Q. In other words, taken from a point about three hundred feet west of the point at which the last photograph was taken?

A. Yes.

Q. There seem to be houses visible in the background of that picture, Mr. Miller; what is that community?

A. That is a part of Collingswood.

Q. Does Cooper Creek, or Cooper River, appear in that picture?

30 A. I think not; Cooper's Creek is further down, considerably. No, you cannot see it in this picture.

Q. The picture overlooks the creek?

A. Yes.

Mr. Carr: I offer that in evidence.

(Said photograph is marked Exhibit P5 for the prosecutor.)

Cross-examination.

By Mr. Gildea:

Q. You do not know, of course, whether or not the wire fence marks the boundary of the airport's land, do you?

A. No, I do not.

Q. Who selected the point at which these photographs were to be taken? 10

A. The gentleman who was with me.

Q. Who was he?

A. Mr. Seabrook.

Q. Is he connected with the Wilmar Company, do you know?

A. I can't tell you; I don't know.

Q. How far is it from the point where the first picture about which you have testified, Exhibit P3, was taken, to the point where Exhibit P4 was taken on Browning Road? 20

A. May I see the photographs?

(Photographs handed witness.)

A. I would say approximately one thousand or twelve hundred feet.

Q. You say it is a thousand or twelve hundred feet?

A. Approximately.

Q. Approximately from the point where P3 was taken to the point where P4 was taken? 30

A. Yes, twelve to fifteen hundred feet; I did not measure it.

Q. You did not measure it?

A. I did not measure it; that is merely —

Q. How did you get there—in an automobile?

A. Yes.

Q. Well, what is your best estimate of the distance?

A. I would say twelve or fifteen hundred feet.

Q. Twelve or fifteen hundred feet?

A. I may possibly be wrong, but that is my best estimate.

Q. Now, how far was it from the point where Exhibit P4 was taken to the point where Exhibit
10 P5 was taken?

A. I would say about three hundred feet.

Q. About three hundred feet?

A. About three hundred feet.

Q. For whom did you understand you were taking these pictures?

A. Why, I was merely asked to take them by Mr. Seabrook.

Q. You don't know what his connection with the case is?

20 A. I have no idea at all, sir.

By Mr. Rothermel:

Q. Could you tell me how wide the paved portion of Browning Road is at the point where these photographs were taken?

Mr. Carr: I object to that; that is not cross-examination. Mr. Miller is merely called to prove
30 the photographs, and not give dimensions or distances or anything of the kind.

A. I should say about thirty feet.

Q. The paved portion of the road is thirty feet wide?

A. Yes.

Q. Have you attempted in these photographs to show the relative heights or grading conditions that exist on Browning Road?

A. No, sir, I tried to show actual conditions as they exist.

Q. You were not asked to take any photographs of the road further down near the Cooper River, were you?

A. No.

Q. Are you familiar with that section of Browning Road? 10

A. I go through there occasionally.

Q. Where do you live?

A. Pitman, New Jersey.

EDGAR A. FREEMAN, SWORN.

By Mr. Carr:

20

Q. What is your business, Mr. Freeman?

A. Real estate.

Q. You are carrying on your business where?

A. 314 Market Street, Camden.

Q. For how many years have you been in business there?

A. Forty-three.

Q. In the same business?

A. Yes.

30

Q. Do you know the neighborhood and the property shown in the pictures, Exhibits P3, P4 and P5?

A. I do.

Q. Do you know the property shown on the map marked Exhibit P2?

A. I do.

Q. And the property referred to in the deed marked Exhibit P1? That, I guess, you will have to look at.

A. This property is described by nine different tracts, and it seems ——

Q. Well, the question is whether you know that property?

A. I do.

10 Q. Now, how long have you known Browning Road, Mr. Freeman?

A. For fifty years.

Q. Has it been an open, public road that long?

A. That and much longer.

Q. You remember it for fifty years?

A. Yes.

Q. How old are you?

A. Fifty-nine.

Q. I didn't think you were as old as that.

20 A. I will be sixty in a short time.

Q. Is it a paved road?

A. It is.

Q. Are you able to say for how long it has been a paved road?

A. Well, it has been repaired at different times; it is an asphalt road, but it has been repaired occasionally.

Q. From where and to where does the road go or extend?

30 A. It runs from Merchantville to Collingswood.

Q. Has there been development in Merchantville and Collingswood in the neighborhood of this road?

A. Oh, yes, quite a few houses built there in the last ten years.

Q. When you say "Merchantville," do you distinguish between Merchantville and Pennsauken Township?

A. Well, this property is in Pennsauken Township, but the road goes directly to Merchantville.

Q. Well, has there been development in Pennsauken Township, that is, realty improvements?

A. Yes, houses been built there.

Q. Along this road?

A. Yes.

Q. What effect has this road had heretofore on the development of property abutting on it?

10

Mr. Gildea: I object to that as calling for a conclusion, and on the further ground that unless the question is confined to the particular part of the road with which we are concerned, it is irrelevant.

Mr. Rothermel: The county makes the same objection.

Q. Answer the question.

A. Kindly repeat the question.

20

(Question repeated.)

A. There are very few houses built on the property in question.

Q. Answer my question, please?

Mr. Gildea: I move the answer be stricken out, or do you move it?

30

Mr. Carr: I think it is my privilege, and I do so move, yes, sir.

Q. I am not referring, Mr. Freeman, to this road with respect to the property shown on that map, but I am referring to Browning Road from Mer-

chantville to Collingswood; having that in mind, the entire length of that road, I will ask the stenographer to repeat the previous question.

A. During the past ten or twelve years a number of properties have been built on Browning Road between Merchantville and Collingswood.

Q. Again I will ask the stenographer to repeat the question.

10 Mr. Gildea: I object to the answer, if you are not going to move to strike it out.

Mr. Carr: Well, that answer is all right.

Mr. Gildea: I object to the answer on the ground that it is not responsive to the question, and on the further ground that it is too indefinite, and that it is not shown to have any relation to the part of the road with which these proceedings are concerned.

20

(Former question is repeated as follows: "Q. What effect has this road had heretofore on the development of property abutting on it?")

Mr. Gildea: I make the same objection.

Q. In Merchantville, Pennsauken Township and Collingswood.

30 Mr. Gildea: I make the same objection as was made to the question when originally asked.

(Question repeated as amended.)

A. Having such a main thorofare leading from these two cities or towns, it is wide enough and

simply available for homes, and fairly good home sites; some are very fine, especially near Merchantville.

Q. You say that is the effect of this road on these abutting properties?

Mr. Gildea: I make the same objection.

A. This road being there as it is, about a sixty-foot wide street, makes it available for fine homes, and the road being there would be a very great advantage to property abutting on it. 10

Q. And has that developed in other parts of the road—are there some parts of Browning Road in which that condition has taken place?

A. It has, yes.

Q. Now, getting down to the property in question, may I ask whether there are now any improvements or many improvements on the land shown on that map? 20

Mr. Gildea: I object to that on the ground that it is not shown that the land on the map belongs to the prosecutor.

Q. You may answer.

A. On the land owned by the prosecutor there are no improvements.

Q. That was not my question.

A. Pardon me; all right. 30

Q. Don't let Mr. Gildea ask you the question; he will have his time later and I know he will avail himself of it very well. Now I would like to have mine answered.

A. Let's repeat your question again and see if I understand it.

(Question repeated.)

Q. My question is as to the land shown on this map.

A. Yes, on the land shown on the map there is a gas station.

By Mr. Rothermel:

10 Q. What map are you referring to?

A. P2.

Mr. Rothermel: On behalf of the county I object to the witness using this map, as it has not been shown that the lots depicted thereon are owned by the prosecutor.

By Mr. Carr:

20 Q. Answer the question.

A. I am speaking from the map before me, Exhibit P2 for the prosecutor. On the corner of Browning Road and Kaighn Avenue there is an oil station there, and immediately to the south, along Browning Road, there are three or four dwelling houses.

Q. I call your attention to Exhibit P3, Mr. Freeman, and ask you whether the gas station and houses shown to the right of Browning Road in that picture are the houses and gas station to which you
30 now refer?

A. Yes, sir.

Q. Has there been more development in Merchantville, Pennsauken Township and Collingswood, toward the other communities along Browning Road, than there has been on other roads or in other directions?

Mr. Gildea: That is objected to as irrelevant, because it is not confined or related to the part of Browning Road that these proceedings are concerned with.

Q. Answer the question.

A. The improvements on the roads about three or four miles from Camden, as these particular roads are, are about the same, have been about the same as has been on this road, relatively the same. 10

Q. My question was not clear. Has Merchantville extended toward Collingswood, or Pensauken Township extended toward Collingswood more along the line of this road than in some other lines?

Mr. Gildea: I make the same objection.

A. Well, I would say it is about the same.

Q. What other roads are there extending from Merchantville or Pensauken Township to Collingswood? 20

A. This is about the only road, a direct road between the two towns.

Q. I think I neglected to ask you, Mr. Freeman, but I will ask you now, have you bought and sold land in Camden County in the neighborhood of the land in question?

A. Yes.

Q. And are you familiar with the value and with the conditions creating value in land of this character in this general location? 30

A. I am.

Q. Is there much or little travel on this road, Mr. Freeman, from your knowledge?

A. There is quite considerable travel on this road; I use it myself, frequently.

Q. Now, as a matter of opinion, calling now for your opinion, would you regard the road as a necessary road or unnecessary road for public travel?

Mr. Gildea: I object to that.

A. It is very necessary.

10 Mr. Gildea: I object to that as calling for a conclusion and not the subject of expert testimony, not the subject of opinion evidence, and on the further ground that it is irrelevant, incompetent and immaterial.

Cross-examination.

By Mr. Rothermel:

20 Q. Mr. Freeman, you have been engaged in the real estate business in Camden County how long?

A. About forty-three years.

Q. And you are associated with your brother in that business?

A. Yes.

Q. Where do you live?

A. I live in Moorestown.

Q. That is in Burlington County?

A. Yes.

30 Q. How long have you lived in Moorestown?

A. About five years.

Q. Where did you live before that?

A. In Camden all my life.

Q. Camden City, you mean?

A. Yes.

Q. Now, as I understand it, you stated that considerable building or a number of dwellings, had

been erected on Browning Road between Merchantville and Collingswood?

A. Yes.

Q. Confining yourself to Browning Road between, say, Federal Street and the Marlton Pike, how many dwellings are in there, erected on Browning Road itself?

A. Between Federal Street and Kaighn Avenue or the Marlton Pike?

Q. Between Federal Street and the Marlton Pike? 10

A. I cannot, of course, give you the exact number, because I have not counted them, but there are a number of dwelling houses along that road on both sides of the street; the exact number I do not know.

Q. Are you familiar with the borough line of the Borough of Merchantville where it crosses Browning Road?

A. No, I don't know exactly.

Q. You have an idea where Pennsauken Township starts? 20

A. Oh, yes.

Q. How many dwellings are there on Browning Road between Federal Street and Marlton Pike in Pennsauken Township?

A. I would not know without going and counting them.

Q. More than four?

A. I would not know without going and counting them.

Q. I mean your best recollection. You are familiar with this road; you travel this road all the time; it is very necessary for you to do so. Now, how many dwellings are there on Browning Road between Federal Street and Marlton Pike that are in Pennsauken Township? 30

A. What is the distance that you speak of?

Q. There are a number of dwellings immediately

adjacent to Federal Street in the Borough of Merchantville, aren't there?

A. Right, very fine homes, yes.

Q. Right, and at that point the road is very much wider and is really a borough street, isn't it?

A. Right.

Q. Now, when you get outside of that, at the point where it begins its character as a county road into Pennsauken Township, how many dwellings are
10 there between that point and Marlton Pike?

A. There are relatively few in that particular space that you speak of.

Q. Are there any between Federal Street and Kaighn Avenue—I beg pardon; are there any dwellings between Marlton Pike and Kaighn Avenue on Browning Road?

A. I am not just sure about that. I don't know where you get your starting point from, exactly.

Q. Well, you know where Marlton Pike intersects
20 Browning Road, don't you?

A. Yes; I don't know how many dwellings there are there.

Q. You cannot tell me how many dwellings there are on Browning Road between Kaighn's Avenue and the Marlton Pike?

A. No.

Q. How many dwellings are there fronting on Browning Road between Kaighn's Avenue and the Cooper River?

30 A. I don't know that, either.

Q. Are there any?

A. I am not just sure about it.

Q. Well, would you say there are none or would you say there was one or two or whatever number you choose to give?

A. I would have to go there and make an inspection to give a correct answer.

Q. Well, didn't you go out there and look this thing over before testifying?

A. No.

Q. Is it necessary for you to do that?

A. I have not been out there; I have been over the road many times.

Q. I say, is it necessary for you to go out there to see this before you could testify?

A. What I saw is the land in question.

Q. Just answer my question, Mr. Freeman, 10 please?

A. What is that?

(Question repeated.)

A. I am very familiar and have gone out many times.

Mr. Rothermel: I move that that be stricken and ask the witness to answer the question as pro- 20 pounded.

The Witness: Just repeat the question, please.

(Question repeated.)

A. Yes.

Q. How many dwellings are there fronting on Browning Road between the Cooper River and Had- 20 don Avenue, if you know?

A. I don't know, exactly.

Q. Are there any?

A. Yes, I think there are.

Q. Well, how many—what is your best estimate?

A. Probably five or six.

Q. They would be in the Borough of Collings- wood?

A. Yes.

Q. Now, are you sure of that five or six, or is that just a guess?

A. Just a guess.

Q. And would you be surprised if you were told that there were none there?

A. I would be surprised.

Q. You would be? So your best estimate of the number of dwellings actually fronting on Browning Road between Cooper River and Haddon Avenue is between five and six?

A. Yes.

Q. And you still think there are those there?

A. I do.

Q. How recently have you seen Browning Road?

A. Probably ten days ago I drove over it.

Q. In the last year, how many times have you seen Browning Road?

A. Probably fifteen times.

20 Q. Fifteen times in a year you have gone over there?

A. Yes.

Q. But to you Browning Road is very essential for you to travel on and you use it fifteen times a year, is that correct?

A. Yes, probably more.

Q. Still, in your opinion, it is very essential for your own personal use?

A. I do.

30 Q. Now, I understood you to say that Browning Road was sixty feet wide?

A. Approximately.

Q. Well, do you wish to amend that or change that?

A. I think it is about sixty feet wide.

Q. At what point are you speaking of Browning

Road when you say it is sixty feet wide, in your opinion?

A. In front of this property in question.

Q. In front of what property?

A. The property in question owned by the company here.

Q. Don't refer to the map; just tell me where that property is, if you will?

A. Where are the photographs showing the street—have you got them here?

Q. Do you need the photograph in order to tell me that?

A. Oh, no.

Q. Then, without referring to the photograph, where is it?

A. I referred to the width of the street in front of the property owned by this Wilmar Company, across Browning Road.

Mr. Gildea: I object to that as not proper evidence of ownership of the property; I do not object to the rest of the answer. 20

Q. Do you know the physical characteristics of this particular property that you say was owned by the Wilmar Corporation?

A. I do.

Q. What is it?

A. It consists of approximately 11½ acres; I judge that approximately 8 acres is high land, and the balance is low land, largely. 30

Q. What is on that high land, if anything?

A. On the land owned by this company? There are no buildings on it at all.

Q. What is on it—I am not asking you what is not on it; I am asking you what is on it?

A. A few trees.

Q. Is it a few or a good many?

A. There are quite a number of them there.

Q. Practically a forest, isn't it?

A. Well, there are a few there, probably a hundred.

Q. Very close together?

A. Some of them are.

Q. Is there also a ditch or a stream on this property, running under Browning Road?

10 A. There is.

Q. At that point the land is very low, is it?

A. Very low, yes.

Q. There is quite a decided dip in the grade of Browning Road at that particular point?

A. Yes.

Q. Now, I think you stated that on this land that you say was owned by the prosecutor, there was an oil station and how many dwellings?

20 Mr. Carr: He did not say that.

A. No, I did not say that.

Mr. Carr: He said in the lands shown on that map.

30 Q. I beg your pardon; all right. When you were referring to the oil station and three or four dwellings, you meant, if I understood you correctly, the land on what I would call the northwest or southwest corner of Kaighn Avenue and Browning Road?

A. Southwest, yes.

Q. Southwest?

A. Yes.

Q. And the prosecutor's land is somewhere in that neighborhood, that corner there?

A. It is just immediately south of these dwelling houses, commences almost at the line of the last house to the south.

Q. Let's get back to these dwelling houses; what type of dwelling houses are there?

A. A rather cheap type of dwelling houses.

Q. Probably erected for \$800 or less?

A. No, they cost more than that.

Q. \$1,000?

A. No, more than that.

10

Q. Do they have any cellars under them?

A. I don't know that.

Q. Do they have more than one story in height?

A. Some are two stories.

Q. Referring to Exhibit P3, would you please show me that two-story dwelling that you refer to?

A. Come here and I will show it to you; there is the first story and there is the second story, right there on these two houses.

Q. Is that what you would call, as a real estate 20 man, a one and a half-story bungalow?

A. No, I will say it has two stories.

Q. And as a real estate expert of forty-three years' experience, you would call that a two-story dwelling, is that correct?

A. Yes.

Q. And you know of no such type of dwelling as is usually termed a one and a half-story bungalow?

A. Oh, I have heard it so termed, but as an actual fact, it is a two-story property.

Q. As a matter of fact, aren't these that one and a half-story bungalow type? 30

A. I would call that a two-story property.

Q. But other real estate men of your experience would call it a one and a half-story bungalow, wouldn't they?

A. They might so call it, yes.

Q. And you would also call this a very cheap type of dwelling, wouldn't you?

A. Relatively so, they are.

Q. Not at all in the same category as the dwellings that you refer to as being within the Borough of Merchantville on the Browning Road?

A. Not at all.

10 Q. Now, what other roads—I withdraw that. I understood you to state that this was the only road which communicated directly between Collingswood and Merchantville; is that correct?

A. It is the main, direct road leading between the two towns, yes.

Mr. Gildea: I ask that that answer be stricken out, and ask that the witness answer my question, please.

20 (Question repeated.)

A. I meant to state that this was the main, direct road.

Q. I don't care what you meant to state, Mr. Freeman; please answer the question as it is asked.

A. It is the main road between the two places.

Mr. Gildea: I ask that that be stricken from the record as not responsive.

30 Q. My question, Mr. Freeman, is this: Is Browning Road the only road connecting Merchantville and Collingswood?

A. No.

Q. As a matter of fact, Crescent Boulevard runs within three hundred feet of it, doesn't it, almost parallel?

A. Yes.

Q. Browning Road, according to your information—or pardon me—according to what you have testified here today, you say is about sixty feet wide?

A. Yes.

Q. Is it paved the entire width with asphalt?

A. No.

Q. How wide would you say the paved portion of Browning Road is?

A. Probably twenty feet.

10

Q. And Crescent Boulevard is paved with what?

A. Cement.

Q. Concrete, in other words?

A. Concrete and cement.

Q. And how wide is that road, the paved portion?

A. I suppose it is probably eighty feet.

Q. And it is true that that almost parallels Browning Road, within three or five hundred feet, doesn't it?

A. It does not parallel it; it takes it on a curve. 20

Q. It practically parallels it, running, of course, at a slight curve down to the round point?

A. Yes.

Q. And that also goes immediately through Merchantville and connects directly with Collingswood?

A. Right.

Q. Do you ever use the Crescent Boulevard?

A. I do.

Q. Fifteen times a year?

A. I use it almost daily.

30

Q. Between Merchantville and Collingswood?

A. When I have business in Collingswood and want to go to Merchantville, or vice versa, I usually go over Browning Road. I have been going over that way for many years.

Q. As a matter of fact, you can make better time if you use the Crescent Boulevard, can't you?

A. Well, it depends on where you are going. I would not go half a mile out of my way to go down the Crescent Boulevard.

Q. Do I understand you to say it would take you half an hour longer to go from Merchantville to Collingswood?

A. No, I say I wouldn't go half a mile out of my way to go on the Crescent Boulevard.

Q. The Crescent Boulevard is half a mile from
10 Browning Road at what point?

A. The Crescent Boulevard passes Federal Street at 42nd Street, and this Browning Road is possibly, oh, half a mile or a mile to the eastward.

Q. Half a mile or a mile—do you mean that?

A. About half a mile.

Q. And from Browning Road to the Crescent Boulevard in Collingswood—how far would you say that was?

A. Oh, about a half a mile.

20 Q. Now, there is considerable traffic on the Crescent Boulevard, isn't there?

A. Yes.

Q. In comparison, how much traffic is there on Browning Road?

Mr. Carr: I want to object to this.

Mr. Rothermel: This man is supposed to be an expert, I assume, from the character of his testimony.
30

Mr. Carr: All right, if you want it as expert testimony, all right.

Mr. Rothermel: I do not; I am cross-examining.

Mr. Carr: I withdraw my objection.

A. The traffic on the Crescent Boulevard is very much greater than on Browning Road.

Q. And the reason you use the Browning Road fifteen times a year is to get out of some of the traffic on Crescent Boulevard, isn't it?

A. Not at all.

Q. No?

A. No, if I am in Merchantville or Collingswood

Q. You have answered my question, Mr. Freeman, thank you. Now, the Borough of Merchantville, Mr. Freeman, do you class that as a manufacturing center or a dwelling community? 10

A. Merchantville?

Q. Yes.

A. Why, a dwelling community.

Q. There is very little, if any, manufacturing of any kind there?

A. Very little.

Q. The Borough of Collingswood, would you class that as a manufacturing community or a dwelling community? 20

A. Largely a dwelling community.

Q. Both of them have direct means of communication by roads with the City of Camden?

A. Yes.

Q. And by way of the bridge to Philadelphia?

A. They have.

Q. Particularly is that true since the building of the Crescent Boulevard?

A. That is true. 30

By Mr. Gildea:

Q. How far is it, Mr. Freeman, if you know, from the intersection of Kaighn Avenue with the Brown-

ing Road to the point where Cooper's Creek crosses Browning Road?

A. About three-quarters of a mile.

Q. Do you happen to know where the Central Airport is?

A. I do.

Q. How far is it from the land shown on this map that you have before you to the land of the Central Airport Company?

10 A. The land of the Central Airport Company abutting on Browning Road adjoins this property.

Q. And there are no houses on Browning Road, are there, on the airport property?

A. None whatever.

Q. Nor across the road from it?

A. None whatever.

Q. On the property of the Central Airport Development Company?

A. None whatever.

20 Q. Now, how far is the southerly side, the south-westerly side of the property shown on that map, from Kaighn Avenue?

Mr. Carr: You may look at that, Mr. Freeman; do you want paper?

The Witness: I would like to have that map you had showing the lots that you own; I could give it to you then.

30 Mr. Carr: That is the map; it is marked faintly. I do not think that involves the question, though.

The Witness: No, I can get what I want right here. About three hundred feet.

Mr. Gildea: I don't think the witness understands.

The Witness: No, I do not understand that question. You mean from this point?

Mr. Gildea: No, I was referring not to any property owned by any particular person, but to the map itself.

The Witness: About three hundred seventy-five feet.

10

Mr. Carr: No, Mr. Gildea wants to know how far it is from Kaighn Avenue to this point—is that right?

Mr. Gildea: That is right.

The Witness: Oh, I misunderstood the question. Ten hundred fifty feet—no, eleven hundred feet.

By Mr. Gildea:

20

Q. When you said ten hundred and fifty feet, you left out Nash Avenue?

A. Left out that street, yes.

Q. The distance you have given as eleven hundred feet, is the distance from the southwest corner of Kaighn Avenue and Browning Road —

A. And the southern point of the land of the Wilmar Company.

Q. No, wait; let me ask the question. And the southern corner of the land shown on this map? 30

A. Right.

Q. By the way, are you employed by the Wilmar Company?

A. Yes.

Q. In what capacity?

A. Oh, no, only to give this testimony.

Q. You are employed then as an expert witness?

A. Yes.

Q. Do you have any other business relations with them?

A. None whatever.

By Mr. Carr: And, Mr. Freeman, you do frequently testify as an expert in Camden County,
10 don't you?

A. I do occasionally, yes.

Q. Mr. Freeman, Mr. Rothermel interrupted you when you tried to explain why you did use Browning Road fifteen times last year in preference to Crescent Boulevard. Will you please state for the record why you used Browning Road instead of the Boulevard?

A. I do considerable appraisal work for the bank
20 and others and have occasion frequently to go from Merchantville to Collingswood, examining properties in both towns, and I find it depends on where I am, of course, but it is much more convenient for me to go by way of the Browning Road than by way of the Crescent Boulevard.

Q. And in travelling over this road, do you find other automobiles there, or are you usually alone?

A. I never go there without passing some cars.

30 By Mr. Rothermel:

Q. How many cars do you pass?

A. Oh, probably there may be ten or twelve; it depends on time of day or the evening.

Q. And would you say that twelve was the most that you have ever passed?

A. No, I have passed more than that at times.

Q. From Merchantville to Haddon Avenue, or rather from Federal Street to Haddon Avenue, is a distance of what, two and a half miles or three miles?

A. Just about.

BEALE M. SCHMUCKER, SWORN.

10

By Mr. Carr:

Q. You are county engineer?

A. I am.

Q. You are under subpoena by the prosecutor in this case, the Wilmar Company?

A. Yes.

Q. You were requested in that subpoena to produce a map, various maps showing Browning Road? 20

A. Yes, sir.

Q. I will first ask you if you have a road map of the county?

A. Yes, sir.

(The witness produces a map which is offered in evidence and marked Exhibit P6 for prosecutor.)

Q. Now, Mr. Schmucker, I notice in the lower right corner that you indicate a scale; that is an accurate scale, is it? 30

A. Yes, sir.

Q. There is also a legend that State highway roads are marked in a certain manner, county highway roads in another manner, and municipal improved roads in a certain way?

A. Yes, sir.

Q. Now, that legend is correct, is it?

A. The municipal improved roads shown are the various connecting roads that are through roads; not all municipal streets are shown.

Q. You did not attempt to show the streets?

A. Not all the paved streets in the towns.

Q. Now, Browning Road, about which we have been talking, is indicated here?

10 A. Yes, sir.

Q. Browning Road, therefore, extends from Collings Avenue in Collingswood across the West Jersey and Seashore Railroad, across Haddon Avenue, across Cooper Creek, across Kaighn Avenue and Marlton Pike into the Borough of Merchantville, where it seems to continue to Westfield Avenue, is that correct?

A. There is a continuous road between those points.

20 Q. Yes, I am not asking now whether this is all a county road; I mean, Browning Road extends —

A. It is not known as Browning Road over that entire route; from Maple Avenue to Westfield Avenue is known as Wellwood Avenue.

Q. From Collings Avenue in Collingswood to the White Horse Pike is approximately how far?

A. Approximately one thousand feet.

Q. So that Browning Road in Collingswood is about one thousand feet from the White Horse Pike?

30 A. Yes.

Q. Where Browning Road crosses Haddon Avenue, about how far is it from Crescent Boulevard?

A. From Crescent Boulevard, not quite a half mile, about a third of a mile.

Q. In feet about how far?

A. In feet, about between seventeen and eighteen hundred feet.

Q. At Marlton Pike how far is Browning Road from Crescent Boulevard?

A. About twenty-one hundred feet—about two thousand feet.

Q. At Maple Avenue, Merchantville, which is a continuation of Federal Street, Camden, measured along Federal Street, how far is Browning Road from the Boulevard?

A. About three thousand feet.

Q. Browning Road intersects Crescent Boulevard 10 at the point shown on this map, doesn't it?

A. Browning Road or Wellwood—our county records that are given us still show it as Wellwood Avenue. There may have been a local change which is not on file.

Q. But this road which continues—which is a continuation of Browning Road—intersects Crescent Boulevard in Pennsauken Township?

A. Yes, sir.

Q. And Browning Road then hits Westfield Avenue, is that right? 20

A. Yes, sir.

Q. Which otherwise is known as the Burlington Pike?

A. Yes, sir.

Q. How far is the point of intersection of Browning Road or Wellwood Avenue with Westfield Avenue, from the intersection of Crescent Boulevard and Westfield Avenue?

A. Crescent Boulevard and Westfield Avenue? 30 About a mile and three-quarters.

Q. I notice that Wellwood Avenue is marked as being simply a municipal improved road; it is not a county road?

A. It is not a county road.

Q. You had some statement you wanted to make

about Browning Road in Collingswood, between Haddon Avenue and Collings Avenue.

A. Browning Road in Collingswood between Haddon Avenue and Collings Avenue is no longer a county road.

Q. What part of Browning Road is a county road?

A. Browning Road is a county road from Haddon Avenue in Collingswood northeastwardly to the borough line of the Borough of Merchantville.

10 Q. And, therefore, so far as the county character of the road is concerned, it is limited to the Boroughs of Collingswood and the Township of Pennsauken?

A. Correct.

Q. Extending southeastwardly at Marlton Pike, I notice a broken line, the first broken line after passing Browning Road. That is not a road, but is a division line between Delaware and Pennsauken Township—is that correct?

A. It is.

20 Q. What is the next line which intersects Marlton Pike?

A. The line of a small tributary of Cooper Creek.

Q. And the next heavy line?

A. That is the bridge route of the Pennsylvania Railroad.

Q. And the next road, therefore, that extends from Merchantville?

A. It is a road known variously as Stoy's Landing, Sorrel Horse or Haddonfield Road.

30 Q. That extends from the easternmost end of Merchantville to what municipality?

A. To Haddonfield, through Delaware Township to Haddonfield, and also extends beyond those limits.

Q. And also extends northerly or northeasterly to the Burlington Pike?

A. Yes.

Q. About two miles east of the Crescent Boulevard?

A. Correct.

Q. Now, there is a road leading from Merchantville marked on this map, Chapel Road?

A. Yes.

Q. Which intersects the Haddonfield and Sorrel Horse Road?

A. Yes, sir.

Q. Are there any other roads across country in 10 the county running in a southwesterly or southerly direction from Merchantville or Pennsauken to Haddonfield or Collingswood other than the Haddonfield and the Sorrel Horse Road, Browning Road and what we have called the Crescent Boulevard?

A. None running directly, no, sir.

Q. Where is Grove Street on this map?

A. Grove Street is a continuation of this road.

Q. Referring to the —

A. To the Haddonfield—Sorrel Horse Road, which 20 is known as Grove Street in the Borough of Haddonfield.

Q. Now, the roads which you have referred to are the only roads which are on the ground and used at the present time between those municipalities?

A. Between those municipalities mentioned, yes.

Q. Can you indicate on this map where Crescent Boulevard strikes Collingswood?

A. Where it strikes Collingswood?

30

Q. Yes.

A. Right there. (Indicating on map.)

Q. I am going to ask you if you do not refer to the extreme northerly point of the Borough of Collingswood?

A. I do.

Q. And there is on that road in the Borough of

Collingswood about how much frontage—how many feet in the Borough of Collingswood?

A. In the Borough of Collingswood?

Q. Yes, referring now to Crescent Boulevard.

A. Approximately a mile.

Q. Are you including that part marked “Woodlynne?”

A. No, sir, you asked for the Borough of Collingswood; it extends from there to there. (Indicating on map.)

Q. Isn't this in the Borough of Woodlynne?

A. No, sir.

Q. It is marked “Woodlynne,” isn't it?

A. Yes, I am mistaken on that. There is a portion of the old creek there, where it crosses the old creek. It is about three-quarters of a mile in the Borough of Collingswood.

Q. It goes into the Borough of Collingswood, then into the Borough of Woodlynne and then into Collingswood?

A. Yes.

Q. And then into Haddon Township?

A. Then into Haddon Township.

Q. How far is it from the intersection of Browning Road with Collings Avenue to the intersection of Crescent Boulevard and Collings Avenue?

A. Browning Road and Collings to Crescent Boulevard and Collings?

Q. How far is that?

A. About seven-eighths of a mile.

Q. Mr. Schmucker, we have referred to Crescent Boulevard in the Borough of Merchantville?

A. Crescent Boulevard in the Borough of Merchantville? I don't believe so.

Q. It may have been by a previous witness.

A. It does not quite touch the Borough of Merchantville.

Q. That is what I wanted to bring out; Crescent Boulevard does not impinge on the Borough of Merchantville?

A. I don't believe so; it may be within a very short distance, but I don't believe it touches the borough.

Q. And the Crescent Boulevard that we have been referring to is a part, is it not, of a State-wide system of high speed highways?

A. No higher speed than any other highways. 10

Q. One other question; there has been some reference to the width of paving on the Crescent Boulevard; I think the last witness said it was paved to the extent of eighty feet, in answer to Mr. Rothermel. Now, let me ask you whether the width of paving of that road is uniform.

A. On the Crescent Boulevard?

Q. Yes.

A. No, sir.

Q. How wide is the paving on Crescent Boulevard 20 where Crescent Boulevard crosses Marlton Pike, between the Marlton Pike and the creek?

A. Those roads are not under my care, but I believe that is two fourteen-foot strips.

Q. There are parts of it, however, which are paved to just twice that width?

A. To fifty-six, yes, sir.

Cross-examination.

30

By Mr. Rothermel:

Q. What is the width of paving, if you know, Mr. Schmucker, on the Boulevard between Marlton Pike and Federal Street, or the extension of Maple Avenue?

A. On Crescent Boulevard?

Q. Yes.

A. A portion of it is twenty-eight and a portion of it anywhere between twenty-eight and fifty-six feet.

Q. And from Round Point or Kaighn Avenue out to Haddon Avenue —

A. It is all paved fifty-six feet, I believe. It is all paved, and I believe the width is fifty-six feet.

10 Q. Now, does Browning Road run from what you might call the center of Merchantville to the center of Collingswood?

A. No, sir.

Q. What portions of these respective communities does it connect?

A. It runs from the northwesterly portion of Merchantville, the end of Merchantville, to the northerly end of Collingswood.

20 Q. To what do you refer as what we might term the center of Collingswood?

A. I would say Haddon and Collings Avenue.

Q. What would you refer to as the center of Merchantville?

A. Center Street and Maple Avenue.

Q. How far is it from Center Street and Maple Avenue to Browning Road and Maple Avenue?

A. Center Street is not shown, but I can tell approximately where it is; it is about two-thirds of a mile.

30 Q. And from that point down to the Boulevard is how far?

A. It is about half a mile, a little bit more than that—three thousand feet, possibly.

Q. Then from Haddon and Collings Avenue to Browning Road, how far is that—that is, to Browning Road and Haddon Avenue?

A. Two-thirds of a mile again.

Q. And another third from Browning Road and Haddon down to the Boulevard and Haddon?

A. About that.

Q. I understood you to testify that Browning Road is a county road from the Pennsauken Township or Merchantville Borough line across to Haddon Avenue in Collingswood?

A. Yes.

Q. What is the distance from Federal Street on Maple Avenue to the Pennsauken Township or Merchantville Borough line, approximately? 10

A. Approximately fifteen hundred feet.

Q. And within those boundaries, that is, from Federal Street or Maple Avenue down to the Merchantville Borough line, it is a municipal street?

A. It is.

Q. Going outside of that, to that portion on which Browning Road is a county road, what is the width of the paved road there? 20

A. Eighteen feet.

Q. And the type of paving, please?

A. It is an amesite top coat on a penetration macadam base.

Q. And does that width continue throughout the entire length of Browning Road as a county road?

A. It does.

Q. What would you say the length of Browning Road as a county road is, that is, between the Merchantville Borough line and Haddon Avenue? 30

A. About two miles.

Q. How much of that is involved in the vacation proceedings?

A. A little over two thousand feet.

Q. That is about one-sixth or one-seventh of its entire length?

A. Wait a minute; it is a little bit more than that; it is about a fifth of it, is what it really is.

Q. You are familiar with the details of the vacation proceeding which is the subject of this inquiry, are you not?

10 Mr. Carr: I wish to object at this time and have it noted on the record that this is not cross-examination, and I object for that reason; I think the respondent should make Mr. Schmucker his witness if he wishes to ask that question.

Mr. Rothermel: I will withdraw the question; I have nothing further.

By Mr. Gildea:

20 Q. Which road has the better pavement, Browning Road or Crescent Boulevard?

A. Crescent Boulevard.

Q. Now, you said that Crescent Boulevard does not run into the Borough of Merchantville, but it does, does it not, intersect Maple Avenue, Merchantville, just over the borough line?

A. It intersects Maple Avenue in the City of Camden and Pennsauken Township which is a short distance from the Borough of Merchantville.

30 Q. How far from the Borough of Merchantville does Crescent Boulevard intersect Federal Street or Maple Avenue, whichever it is at that point?

A. A couple of hundred feet; as a matter of fact, I think it is two squares.

Q. And what is the paving on Maple Avenue, if you know, in Merchantville?

A. In Merchantville?

Q. Yes.

A. A bituminous surface on a concrete foundation.

Q. Now, as a matter of fact, from Maple Avenue just outside of the borough limits of Merchantville to Haddon Avenue in Collingswood, Crescent Boulevard parallels Browning Road, doesn't it, approximately?

A. Approximately.

Q. And the distance from each road would be approximately the same from those two points? 10

A. Very close.

Q. From Maple Avenue, Merchantville, to Haddon Avenue, Collingswood, is that correct?

A. Approximately, yes.

Q. Now, which road was built first, Browning Road, or the Crescent Boulevard?

A. Browning Road.

Q. Is the Crescent Boulevard, or was it when it was constructed, an entirely new road, or was it an improvement of an existing road? 20

A. There were short stretches of existing road which were widened, but it was nearly entirely a new right of way.

Q. That is, a main through thorofare?

A. Yes, sir.

Q. Did you tell us how far the intersection of Crescent Boulevard and Maple Avenue is from the intersection of Browning Road and Maple Avenue in or near Merchantville? 30

Mr. Rothermel: He testified to that.

Q. That is in the record, is it?

A. Yes.

Q. Now, Browning Road is still open, isn't it?

A. Yes.

Q. All the way from Merchantville to Collingswood?

A. Yes, sir.

Q. Could you indicate on this map, on this county map with reasonable accuracy the part of the road of Browning Road which is involved in the vacation proceedings which are the subject of this controversy?

A. Yes, sir.

10 Q. Will you do that for us? You had better take a pen, if you will, use your ruler if necessary, so as to get ——

Mr. Carr: I have no objection to the exhibit being marked as long as we do not obscure any of the existing lines.

20 The Witness: The easiest way to mark it would be from there to there. (Indicating on map.)

Mr. Carr: All right.

The Witness: I will put an (A) on it.

Mr. Carr: The witness indicates on the map from the letter (A) a line from a point to the north of Cooper's Creek to a small stream.

30 Q. Now, could you indicate on the map—is there sufficient room on the map there, is it large enough, to indicate the proposed new location of Browning Road?

Mr. Carr: I object to that; that is not cross-examination; I have not asked him anything about any new roads.

Mr. Gildea: Well, it is part of the proceeding.

Mr. Carr: I object to that as not cross-examination.

Mr. Rothermel: Answering the objection, I would like to call the Court's attention to the fact that there are two proceedings here for which this testimony is available, and one of those proceedings takes up a certain agreement specifically referring to the re-location. 10

(Question repeated.)

A. There is sufficient room, but the designation of the previous strip is at the location where it would be shown.

Q. I see, so that the designation you now have on the map serves a dual purpose; it shows that part of the present Browning Road which is to be abandoned, and it shows the re-location? 20

A. It does not show the re-location, but the re-location is between those points and cannot be shown properly, due to the designation of the previous stretch.

Q. In other words, it would be new territory covered by that designation?

A. Covered by that designation.

Q. Is it true that the proposed re-location or re-located part of Browning Road is to meet a road which is to be laid out along the northerly side of Cooper Creek? 30

Mr. Carr: I object on the ground, first that it is not cross-examination, second it is not the proper way to prove it, Mr. Schmucker is not competent to

prove any such fact, and the best evidence should be produced.

(Question repeated.)

A. That is the contemplation that has been taken between the County of Camden and the Park Commission, and the Crescent Airport in these meetings on these proceedings.

10 Q. And that proposed road along the northerly side of Cooper Creek will connect with the present Browning Road at Cooper Creek?

Mr. Carr: I object to that for the same reason.

A. Yes.

Q. Now, were you subpoenaed by the prosecutor in this cause to produce any other map?

20 A. I was subpoenaed to produce what maps I had, the county road map and the map concerning the re-location desired.

Q. On the witness stand you have already been asked to produce the road map?

A. I have.

By Mr. Carr:

30 Q. Mr. Schmucker, Mr. Gildea asked you two questions with respect to the central parts of Collingswood and Merchantville; let me ask whether the Browning Road in Merchantville and in Collingswood as well, is nearer to the central part of each of those communities than Crescent Boulevard by the distance between them that you have already given?

A. It is.

Q. Now, Mr. Schmucker, I produce book marked "Roads A" and call your attention to page 33, where it says, "In the matter of the application of John W. Mickle and others for a public road in the Townships of Delaware and Newton," which extends through pages 34, 35 and 36, and apparently 37, and ask you whether you will refer to that record and state whether the road referred to in that return and indicated in the drawing on page 37, is the Browning Road as now opened? 10

A. It is.

Q. The sketch in the books shows the road extending from what is now known as Maple Avenue, on the map in the book shown as the Camden and Moorestown Turnpike, over the Camden, Ellisburg and Marlton Turnpike, now known as Marlton Avenue or Marlton Pike, crossing Cooper Creek and ending at the Haddonfield and Camden Turnpike, now known as Haddon Avenue—is that correct?

A. Yes.

20

Q. And the lines of that road as shown in this book covered by this surveyor's return, are the lines of Browning Road as now laid out?

A. Yes, sir.

Q. And of a width of —

A. Three rods, except from the Cooper River southerly to the highland, where it is four rods.

Q. Is it a three-rod road throughout?

A. Yes, sir.

30

Mr. Carr: I offer the road return found in this book and call attention to the fact that the return was made on the 24th day of June, 1854.

By Mr. Rothermel:

Q. Mr. Schmucker, what happened to that portion of the road between Federal Street, or the

Camden and Moorestown Turnpike, and the line of the Borough of Merchantville or the Township of Pennsauken?

A. What happened to it?

Q. Yes—it is shown on this return as part of the Browning Road, isn't it, as a county road?

A. That is not necessarily a county road; that is a public road; it is laid out as a public road, not as a county road. That lays it out only as a public
10 road.

Q. The mere fact that that return is made there, does not necessarily mean that that is a county road?

A. No, sir, practically all our main connecting roads are laid out in the same way. It is opened as a public road.

Q. It has no significance as to whether it is a county road or not?

A. None whatever.

20

By Mr. Gildea:

Q. Well, it is a county road now?

A. Portions of it.

By Mr. Rothermel:

Q. One more question, Mr. Schmucker—a three-rod road and four-rod road, what is the width of
30 feet of those?

A. Three rods, 49½ feet, four rods, 66 feet.

Q. A rod is 16½ feet, then?

A. Yes.

By Mr. Carr:

Q. Mr. Schmucker, the map which was used in

these vacation proceedings was a map not prepared by yourself, but by Remington, Vosbury and Goff—is that right?

A. That is correct.

By Mr. Gildea:

Q. Who are they, who are those gentlemen who prepared the map?

A. They are civil engineers practicing in this locality. 10

Q. Do they have any official connection with the county, or any part of the county?

A. Mr. Remington is engineer for the County Park Commission.

By Mr. Carr:

Q. Mr. Schmucker, your reference to the effect of this road return upon Browning Road—am I to understand you are not contradicting or changing your previous testimony that Browning Road is a county road at the present time? 20

A. Oh, no, I am not changing that; I say that that return of it is only a return as a public road. Those portions I have designated are county roads, but not by the act of that return.

30

FRED W. GEORGE, SWORN.

By Mr. Carr:

Q. Mr. George, you are clerk of the Board of Chosen Freeholders of Camden County?

A. Yes.

Q. And have been for many years?

A. Yes.

Q. Mr. Rothermel, counsel for the Board, produces a folder of papers relating to the vacation of Browning Road and also relating to a certain agreement between Central Airport and Central Airport Development Company of the one part and the County of Camden of the second part?

10 A. Yes.

Q. Those papers are certified under your hand and seal as of January 9, 1930. Does this folder which you may want to look at include a correct copy of the record and proceedings with respect to this Browning Road vacation and new dedication?

A. Yes, sir.

20 Mr. Rothermel: I would like to limit that insofar as Camden County is concerned.

Q. Insofar as the County of Camden is concerned, or the Board of Freeholders of that county?

A. Yes, sir.

Q. I notice that the agreement, approved at a meeting held on December 27th, is inserted in this folder as not signed; has that agreement been signed, Mr. George, by you as clerk of the Board, or by Dr. Ewing as director, if you know?

30 A. Yes, it was signed.

Q. It has been signed?

A. Yes.

Q. Will you state when it was signed?

A. I think it was the day it was passed.

Q. Now, it was passed at a meeting called to convene at 8:30 P. M., wasn't it?

A. Yes.

Q. On that day, Friday, December 27th?

A. Yes.

Q. And was it signed that same evening?

A. I think so, either that or the next day.

Q. As submitted to the county prior to that evening, had the agreement already been signed by the two private corporations?

A. Previous to its submission to the Board meeting?

Q. Yes.

10

A. Yes, sir.

Q. Were there ever any other proceeding of any kind or nature taken by the county except that which is included in this file of papers produced by your counsel?

A. I think not.

Q. Well, can't you say yes or no, please—you ought to know?

A. I should say no.

Q. My question, Mr. George, is directed solely to what was done in connection with the vacation of Browning Road and any dedication of some other road during the year 1929?

20

A. I should say no.

Mr. Carr: I want to offer this file, including the map attached to the resolutions.

(Said file is marked Exhibit P7, for the prosecutor.)

30

Q. Mr. George, I show you the contract respecting which we have been talking, and ask you to note that it is dated the 27th day of December, and ask you if, looking at that, you are able to say the day the county signed?

A. It was signed on the evening of the 27th after the meeting.

Q. So that after this meeting was over the execution of this paper was completed?

A. Yes, sir.

Cross-examination.

By Mr. Gildea:

10

Q. Mr. George, at the meeting of the Freeholders at which the resolution dealing with Browning Road was considered and acted upon, were there any objectors, except the Wilmar Company?

A. I think there were two or three people that were heard in the matter.

Q. Didn't they all speak for the same company—do you know or don't you?

20 A. I don't think they did.

Q. The copies included in this folder which you have had before you of the notice of the meeting at which the county road situation was to be considered, the copy of the resolution of the Township Committee consenting to the vacation of that portion of Browning Road and the resolution of the Freeholders acting upon that vacation, and the copy of the agreement between the county, the Central Airport, Inc., and the Central Airport Development Company with respect to keeping Browning Road open until the new road is finished are true copies of those documents, aren't they?

30

A. They are.

SIGMUND SCHOENAGLE, SWORN.

By Mr. Carr:

Q. Mr. Schoenagle, you are the prosecutor in another action which is now pending in the Supreme Court to review this vacation proceeding, aren't you?

A. I am.

10

Q. What is your business?

A. In the retail haberdashery business.

Q. Have you ever engaged in real estate transactions?

A. I have.

Q. Have you lately visited the neighborhood of this vacation?

A. Three days ago.

Q. Are you able to say how many houses there are between Maple Avenue, Merchantville, and the Marlton Pike?

20

Mr. Gildea: I object to that on the ground that it is irrelevant unless the question refers solely to that part of Browning Road which is involved in these proceedings.

Q. Answer the question.

A. I know of thirty in almost the immediate vicinity of this location.

30

Q. Where are they located, Mr. Schoenagle?

A. On Browning Road.

Q. How far from Marlton Pike?

A. I would say about four hundred feet from Marlton Pike and the intersection of Browning Road, known as Arristone Development.

Q. There has been a new —

A. A new development, twelve on Browning Road.

Q. There has been a new school or something built out there, too, hasn't there?

A. A new Vocational School opposite this development.

Q. That is in Pennsauken Township between Merchantville and Marlton?

A. Between Merchantville and Marlton Pike.

10 Q. Are you familiar with the point where the Merchantville and Pennsauken lines meet on Browning Road, do you know where that is?

A. At the paved road, isn't it?

Q. Well, assuming that it is at that point, what other houses are there in Pennsauken Township between Merchantville and Marlton Pike?

A. Well, there are some on both sides of the road.

Q. How would you characterize the neighborhood with respect to its built-up character?

20 A. Leaving Maple Avenue or Federal Street as you would call it, going toward the Cooper River, on Browning Road, starting at the intersection of Merchantville, as you might say, there are some very beautiful homes on both sides of Browning Road.

Q. As you proceed toward this vacated area —

A. As you get toward the Cooper River on Browning Road —

Q. Going which way?

30 A. Going toward the Cooper River.

Q. Going north or south?

A. Well, I would say that is going south; I think Browning Road runs north and south, doesn't it?

Q. There is a map, and here is your compass?

A. Yes.

Q. For the purpose of identifying your property,

Mr. Schoenagle, I show you Exhibit P3, and ask you whether that shows any property that you are interested in.

Mr. Gildea: I object to that as irrelevant, unless we are taking depositions in all four cases.

Mr. Carr: We are not.

Mr. Gildea: Then I object.

10

Mr. Rothermel: I make the same objection on behalf of the county.

Q. Answer the question.

A. I do.

Q. This fire plug, does that have any relation to any property in which you are interested?

Mr. Rothermel: I make the same objection.

20

A. We own it.

Q. Are there fire mains and water mains for fire purposes all through that section?

A. I presume there are.

Mr. Gildea: I move that be stricken out as an assumption, not a statement of fact within the witness' knowledge.

30

Cross-examination.

By Mr. Rothermel:

Q. Mr. Schoenagle, where are these thirty houses that front on Browning Road?

A. Well, there are twelve on the Browning Road; the others are on the Arristone Development.

Q. The Arristone Development is immediately adjacent to the Borough of Merchantville, isn't it?

A. It is.

Q. And the nearest house to Marlton Avenue is about how far?

A. I should say about six hundred feet.

10 Q. Now, after you leave Marlton Avenue, how many houses are there fronting on Browning Road going toward Collingswood?

A. Going toward Collingswood?

Q. Yes.

A. Over the creek, you mean, over the river?

Q. Well, let's confine ourselves, say, between Marlton Avenue and Cooper River?

20 A. There are none between Marlton Avenue and Cooper River outside of the gas station on the corner—two gas stations, one on one corner and one on the other; one is on Kaighn Avenue corner.

Q. Now, going from Cooper River to Haddon Avenue, how many houses are there that front on Browning Road, if any?

A. I think there are three.

Q. Twelve and three equal how many?

A. I am now saying from Cooper River to Haddon Avenue.

Q. Cooper River to Haddon Avenue in Collingswood, three?

30 A. Yes.

Q. I understood you to say from Marlton Pike over to Cooper River none?

A. Outside of the stations, the gasoline stations, and one of the stations has a house attached.

A. All right, one then; then from Haddon Avenue to the borough line of Merchantville you said twelve?

A. There are more than twelve.

Q. Pardon me, I misunderstood you; I will again ask you: How many houses are there that front on Browning Road between the borough line of Merchantville and Marlton Pike?

A. On the Arristone Development, which is about six hundred feet away from Marlton Pike, there are twelve fronting on Browning Road.

Q. Yes.

A. And on the opposite side there is two, and on 10 the side streets, cross streets, there are two.

Q. I am not interested in the cross streets; my question is fronting on Browning Road?

A. There are two.

Q. That is a total of eighteen on Browning Road?

A. Fourteen.

Q. We are now taking the whole length; twelve, two, one and three?

A. Well, where is the Vocation School?

Q. You count that, do you?

20

A. Well, that is a development, an improvement, isn't it?

Q. My question was confined to dwellings; also on the other side of Browning Road opposite the Vocational School, there is the Pennsauken Township Sewage Treatment plant?

A. That is back off Browning Road.

Q. But when you come to Marlton Pike and Kaighn Avenue, from then on, over toward Collingswood, you strike only four houses, is that 30 right?

A. I said three houses and the gasoline station, didn't I?

Q. With a house attached?

A. Well, on Kaighn Avenue there is one oil station.

Q. And those four houses are between the Cooper River and Haddon Avenue in Collingswood?

A. Yes.

Q. So that between the Marlton Pike and Cooper River is only an oil station and a house attached?

A. To my recollection, yes.

Q. And that is the part of Browning Road that is immediately concerned in this vacation proceeding or re-location proceeding, isn't it?

10 A. Yes.

Q. Now, there is no industry of any kind on Browning Road, is there, other than the oil stations which you referred to?

A. At this immediate section?

Q. Any section of it?

A. Not there.

Q. And the developments which contain the dwelling houses you have referred to are dwellings?

A. Yes.

20 Q. And for that section of the Marlton Pike which lies between Federal Street and, say, Kaighn Avenue there are ample road facilities to get to the Crescent Boulevard?

Mr. Carr: I object to that as not cross-examination; I didn't ask this witness anything about that.

30 Q. There are ample road facilities connecting that section of the Marlton Pike with both the City of Camden and the Crescent Boulevard, and through it to practically every municipality in Camden County, aren't there?

Mr. Carr: I make the same objection.

A. Repeat that again.

(Question repeated.)

Q. I am referring to that section of Browning Road lying between Federal Street or Maple Avenue and the Marlton Pike?

A. It just depends to where a man wants to go and what road he wants to pick.

Q. In other words, for any one who lives in that particular section between Federal Street and Kaighn Avenue, he has the option of three or four roads to get to any point in the county that he wants to go, hasn't he? 10

A. Yes, sir.

By Mr. Gildea:

Q. I understand that you are the prosecutor in another application for a writ of certiorari to review these proceedings? 20

A. Yes.

Q. Are you interested in the Wilmar Company?

A. No, sir.

Q. Are you acquainted with the officers of the Wilmar Company?

A. I don't even know who they are.

Q. You don't even know who they are? Where do you live?

A. Camden, New Jersey.

Q. What is your main business? 30

A. Haberdashery, furnishings.

By Mr. Rothermel:

Q. Mr. Schoenagle, one further question: I understood you to testify in answer to Mr. Carr's question that you own a property somewhere in the

neighborhood of the section of Browning Road being vacated. Do you own it as a matter of fact?

A. Yes, sir.

Q. Solely and individually?

A. No, sir.

Q. You mean title is in your name?

A. Title is in my name.

Q. And you have an interest?

10 A. There are only two partners in it, one other man interested.

By Mr. Gildea:

Q. But there is another man interested in it?

A. Yes.

Q. Who is a partner with you?

A. Yes, sir.

20 Mr. Carr: I object to that as immaterial and irrelevant.

WALTER H. MACNAMARA, SWORN.

By Mr. Carr:

Q. What is your business, Mr. MacNamara?

30 A. Civil engineer.

Q. Carry on your profession where?

A. In the City of Camden and suburbs of Camden, practically the southern part of New Jersey.

Q. Have you recently inspected the neighborhood of Browning Road and Marlton Pike and Browning Road and Cooper River?

A. Yes, I have.

Q. You know how many houses there are from Marlton Pike to Cooper Creek?

A. I do.

Q. How many?

A. Two.

Q. What are they?

A. Bungalows.

Q. What else is there between Marlton Pike and Cooper Creek?

A. What else?

10

Q. Yes.

A. Well, on Browning Road now you are speaking of?

Q. Yes.

A. I only recall the two bungalows.

Q. Isn't there a gas station?

A. That is really at the intersection of Kaighn Avenue, yes, a gas station at the intersection of Browning Road and Kaighn Avenue, that is right, I ought to know, I laid it out.

20

Q. Now, outside of those houses which are shown in this picture, Exhibit P3—that is correct, isn't it? That is what you have just referred to?

A. That is right.

Q. From there down to Cooper Creek, there are no buildings at all, are there?

A. To my knowledge, no, sir.

Q. On either side of Browning Road?

A. On either side.

Q. Now, do you know—if you do not know, please say so—how many houses there are over Cooper Creek, the other side of Cooper Creek, between the creek and Haddon Avenue?

30

A. You want me to speak from my memory?

Q. Of your own knowledge.

A. Oh, my own knowledge, I know of three houses.

Q. May there be more?

A. I don't think so, Mr. Carr.

Q. In addition to those houses, are there other buildings?

A. Yes.

Q. What other buildings are there?

A. There is a schoolhouse, I suppose you would call it the southeast side of Browning Road.

10 Q. In Collingswood?

A. In Collingswood, that is right.

Q. Any other mercantile or industrial buildings?

A. No, sir.

Q. Now, going on the other side, between Marlton Pike and Merchantville, in Pennsauken, do you know how many houses there are?

A. Well, I will have to give you my idea.

Q. How lately have you seen them?

A. I haven't gone there and counted them, understand.

20 Q. You know where the borough line is?

A. I do, yes, sir.

Q. What general line of development has Merchantville or Pennsauken Township followed in that neighborhood?

A. Why, I would call it a typical suburban type of development.

Q. And along what road or roads?

A. Along Browning Road.

30 Q. Is there any other road there upon which the town could develop, or on which it could feed besides Browning Road?

A. I don't understand the question.

Q. In this section is there any other road leading out of Merchantville or through Pennsauken along which the Town of Merchantville or Pennsauken could develop except Browning Road?

A. No, sir.

Q. Will you give us some idea as to how many houses there are either on Browning Road or opening from it between Marlton Pike and the borough line?

A. Well, there is this Arristone Development you heard referred to; I understand there are twelve houses there. There is the Vocational School and there are a couple or two or three of the old farm houses along Browning Road there. Then, when you come on toward Merchantville, before you hit the borough line, there are, to the best of my memory, I would say, about ten mighty fine homes along Browning Road. 10

Q. Before you get into the borough?

A. Before you get to the Borough of Merchantville.

Q. Have you made a map, Mr. MacNamara, showing the general conditions in that section?

A. Well, I did not go down as far as those homes we spoke of. 20

Q. Mr. MacNamara, you have made a sketch or drawing showing general conditions in this neighborhood?

A. That is correct, yes, sir.

Q. And you produce it?

A. Yes, that is it.

Mr. Carr: Is there objection to this?

30

Mr. Gildea: Is it drawn to scale?

The Witness: Yes, one inch to two hundred feet; it is marked on the plan.

Q. You made this to scale?

A. Yes.

By Mr. Gildea:

Q. From a survey?

A. Not from a survey; that is compiled from maps.

By Mr. Carr:

10 Q. Showing on this map the proposed vacation and the proposed dedication; you got that from what source?

A. I compiled it from maps.

Q. Well, from what maps?

A. It is a series of maps.

Q. Made by Mr. Remington or Mr. Schmucker?

A. Some of them made by Mr. Remington, some made by—no, the majority of them were made by Mr. Remington with the exception of one that I made.

20 Q. That was this one?

A. That was that one in there, yes.

Mr. Carr: I will offer the map.

(Said map is marked Exhibit P8 for the prosecutor.)

30 Q. Now, Mr. MacNamara, the proposed dedication or the proposed vacation as shown here, you obtained from a map —

A. That was prepared for, I think, the Township of Pennsauken.

Q. By Mr. Remington?

A. Remington, Vosbury & Goff; correct.

Q. That map is in evidence here?

A. Yes.

Q. The section showing Nash Avenue and St. Clair Avenue is shown on the map that you, yourself, made, over the property now owned by the Wilmar Company in part?

A. A map that I, myself, made, yes.

Mr. Gildea: We object to that as evidence of ownership.

Q. Now, north of Marlton Pike you show a number of streets; what are they taken from? 10

A. Oh, this is taken from a map known as Brown-
ington north of Marlton Pike and east of Browning
Road, and on the north of Marlton Pike west of
Browning Road was taken from a plan known as
Camden Villa.

Q. Are there houses in here?

A. Yes, there are houses along here; how many
I don't know.

Q. But not actually on Browning Road? 20

A. I think they are all, on second thought, al-
though I did not tell you before, they are all houses
on Browning Road.

Q. You don't know how many?

A. No, I do not.

Mr. Gildea: When the witness said "along here,"
he indicated north of Marlton Pike.

The Witness: That is correct, yes, sir. 30

Q. Now, Mr. MacNamara, do you travel over
Browning Road at all?

A. Oh, I travel it, yes, quite a little.

Q. In the carrying on of your business?

A. That is right.

Q. Do you find that it has any advantages over other roads?

Mr. Gildea: I object to that as irrelevant.

A. Yes, I do.

Q. Why do you use it rather than use other roads?

10 Mr. Gildea: I object to that as irrelevant.

Mr. Rothermel: I object to it further on the ground that he has not stated that as yet.

Q. Do you use the road in preference to other roads?

A. Yes.

Q. And why?

20 Mr. Gildea: I object to that on the same ground and also as incompetent, irrelevant and immaterial.

A. Why, for the purpose of argument—and this happens quite often—if we are working in Collingswood and we have to go to Merchantville to do some work, it is the nearest direct road to Merchantville, and naturally I am going to take it.

Q. Would you regard it as a road that is necessary for the public use?

30 Mr. Gildea: I object to that on the ground that that is not the subject of expert testimony, on the further ground that it calls for a conclusion, on the further ground that the witness' conclusion is irrelevant and the question itself is irrelevant.

Q. Go ahead and answer it.

A. Give me that question again.

(Question repeated.)

A. Oh, absolutely, yes.

Q. There has been a lot of talk about houses around Browning Road; are there any houses on the Crescent Boulevard to speak of?

Mr. Gildea: I object to that as irrelevant. 10

A. I do not know of any. Well, there are some, no doubt, but, gee, you are covering a lot of territory when you ask me that question.

Cross-examination.

By Mr. Gildea:

Q. This map is not made from an actual survey, is it? 20

A. No, sir.

Q. Can you tell which of these streets on the map between Marlton Pike and Cooper River are actual streets, and how many of them are paper streets not actually laid out on the ground?

A. Between Marlton Pike—

Q. On the north and Cooper River on the south? Of course, Browning Road is laid out, isn't it? 30

A. The only indication of the streets as shown on that plan, that is, to a layman, would be that they are rough-graded; to my knowledge, there are no curbs and sidewalks.

Mr. Carr: Referring now to which?

The Witness: I think he has reference to Nash Avenue, St. Clair Avenue and Packard Avenue.

Q. They are not actually laid out on the ground, are they?

A. When you say "laid out," do you mean improved with curbs?

Q. Opened.

10 A. I say they are rough-graded; that is an indication of the streets.

Q. Are there any houses on those streets?

A. No, sir.

Q. No sidewalks or curbs?

A. No, sir.

Q. Now, did you, as a matter of fact, yourself, measure the distance from the corner of Kaighn Avenue and Browning Road to Cooper River?

20 A. The corner of Kaighn Avenue and Browning Road to Cooper River?

Q. Yes.

A. I did not at the time I prepared this map, but I have measured that distance, and as a matter of fact, this map was prepared from a map I made about ten years ago, at which time I did measure the distance.

Q. So the distance shown on this map is accurate, then, is it?

30 A. Accurate to scale, because there are no dimensions shown.

Q. Now, to the south of Cooper River, I see you have indicated a street called South Cooper River Drive where did you get that?

A. From the plan of that locality which was known as the Vineyards Tract.

Q. And that plan was filed in the Register of Deeds' Office by the owners of the Vineyards Tract?

Q. Well, he did tell you what he wanted the map to show, didn't he?

A. Exactly what I have shown on that drawing is what he asked me for.

Q. Haven't you ever seen the Park Commission's map dealing with that park development?

A. No, sir, I have not.

Q. You know that there is a park development in progress along there?

10 A. Oh, yes.

Q. You did not think it worth while to go look at that map?

Mr. Carr: I object to that; it does not appear the man could have seen it.

By Mr. Rothermel:

20 Q. Mr. MacNamara, referring to Packard, Nash and St. Clair Avenues south or west of Kaighn Avenue, you say that there are actual physical conditions there which might mark those places as streets?

A. Well, to the best of my memory the streets were rough-graded.

Q. As a matter of fact, isn't it a woods?

A. Why, the southerly portion of that ground is wooded, yes.

30 Q. Isn't it wooded right in here around what is termed St. Clair, or what is shown rather on this map as St. Clair and Packard Avenues?

A. Over certain sections of St. Clair Avenue and Packard Avenue, yes.

Q. And are the trees cut down there and the streets graded at that point?

A. No.

By Mr. Carr: It is only partly graded?

A. Only partly. The section where these streets come into Kaighn Avenue was rough-graded some years ago.

By Mr. Rothermel:

Q. For what, 25 or 50 feet from Kaighn Avenue?

A. I think back as far as the fast land only; that is my recollection. 10

By Mr. Carr:

Q. You were the engineer of the different owners?

A. Of the owners at that time, the intent was to rough-grade these streets.

Q. But you did not go so far as to actually cut down any trees and lay out any streets?

A. No, we did not go beyond the fast land. 20

Mr. Carr: The trees are on this low land that has been referred to, the edge of that.

A. Yes.

PROSECUTOR RESTS.

(At this point a recess was taken until 2:15 o'clock P. M.) 30

A. I assume so; I have a copy of it in my office.

Q. Now, when you prepared this map, you knew, as a matter of fact, didn't you that the Camden County Park Association planned to open a river drive on the north side of Cooper River?

A. No, I don't know that I did.

Q. Well, did you go and ask the Park Commission anything about it?

A. No, sir.

Q. You knew what the question in this controversy 10 was, didn't you?

A. Oh, I did that, yes.

Q. Didn't it seem important to you to find out from the Park Commission what their plans were with respect to a boulevard on the north side of Cooper River?

A. No, because I was not asked to do more than prepare a plan showing the relative location of this vacation and the surrounding territory.

Q. Well, you knew, did you not, that your plan 20 was going to be used in a proceeding which involved the whole situation there, the result of the change of location of that road?

A. I supposed it was going to be used; I did not know, as a matter of fact.

Q. Who gave you your instructions for the preparation of this plan?

A. Why, Mr. Heine.

Q. He did not tell you to find out what the location of the Park Commission's road along the north 30 side of Cooper Creek was to be, did he?

Mr. Carr: I object to that as immaterial and irrelevant.

Q. Did he tell you that?

A. No, he didn't tell me anything.

(Taking of testimony in the matter resumed at 2:15 P. M., pursuant to adjournment, in the presence of counsel for the respective parties.)

10 Mr. Gildea: The respondents, Camden County Board of Chosen Freeholders, Central Airport, Incorporated, and Central Airport Development Company offer in evidence the affidavit of W. E. Barto, having attached to it an escrow agreement between the Camden County Park Commission, Central Airport, Incorporated, Central Airport Development Company, Bridge Circle Estates, Incorporated, and Hurley Realty Company, and having annexed there-
20 to two maps, one being sheet 2NS, a plan showing property to be acquired for park purposes in Pennsauken Township, New Jersey, the other being drawing numbered 172 Camden County Park Commission entitled "Plan of Exchange of Lands between Camden County Park Commission and Central Airport, November, 1929." This is offered in lieu of the production of Mr. Barto with the papers themselves.

(Said affidavit is marked Exhibit R1 for the respondents and the various documents annexed thereto are marked respectively Exhibits R1A, R1B and R1C and R1D.)

30 Mr. Carr: I will stipulate that Mr. J. C. Remington, Jr., engineer, whose name appears on these maps, would, if called, testify that the maps contain a true delineation of the descriptions and other matters referred to in the papers enumerated in the escrow agreement dated December, 1929, attached to Mr. Barto's affidavit. I will also stipulate that if

Mr. Barto were here, he would testify to what his affidavit contains.

Mr. Gildea: It is stipulated that the escrow agreement attached to Mr. Barto's affidavit which has just been offered, and the instruments referred to in that escrow agreement, and the agreement entered into between Central Airport, Incorporated, and Central Airport Development Company and the County of Camden, dated December 27, 1929, are the only written agreements which have been entered into between Central Airport, Inc., Central Airport Development Company, Bridge Circle Estates, Inc., Hurley Realty Company, the County of Camden and the Camden County Park Commission, or any of them. 10

Mr. Carr: It is also stipulated that the reference in the escrow agreement to the supplementing of a letter of October 4, 1929, by an agreement on the part of the Camden County Park Commission does not refer to a written agreement not produced. I ask to have it noted that the papers referred to in the escrow agreement, being numbered from 1 to 11 inclusive, have not been produced. 20

Mr. Gildea: It is agreed that the documents numbered from 1 to 10, inclusive, in the escrow agreement, a copy of which is attached to Mr. Barto's affidavit, contain no collateral agreements which are relevant to the issue with which we are concerned, and document number 11 in the escrow agreement is of the same purport as the agreement entered into between the Airport Company, the Airport Development Company and the County of Camden on December 27, 1929. Counsel agree that number 11 may 30

be produced by the county and made a part of the record.

Mr. Carr: It is further stipulated that all of the papers referred to in this escrow agreement are still held in escrow under this agreement.

10 Mr. Rothermel: I offer in evidence copy of the agreement number 11 in the escrow agreement above referred to, and ask that the same be marked as Exhibit R2 for the respondent, Camden County.

(Said agreement is so marked.)

ROLLIN S. SALTUS, JR., SWORN.

20 By Mr. Gildea:

Q. Mr. Saltus, are you connected with the Central Airport, Inc.?

A. I am.

Q. In what capacity?

A. Vice-president.

Q. And are you familiar with the company's property in Pennsauken Township fronting on Browning Road?

30 A. I am.

Q. What is that property of the Central Airport, Inc., being used for now?

A. Being used for an airport.

Q. How long has it been used as an airport?

A. You mean by the Central Airport, Inc.?

Q. Yes, by the Central Airport, Inc.

A. Since the beginning of this summer.

Q. Was it used as an airport by somebody else before that?

A. A certain portion of it was.

Q. How long have you yourself been connected with aviation?

A. I flew during the war and went actively into aviation some five years ago.

Q. Do you devote your whole time to this enterprise?

A. No, not my entire time.

10

Q. Well, do you devote your whole time to various phases of aviation?

A. I do.

Q. Now, you are a pilot yourself?

A. Yes, sir.

Q. Is the airport now in daily use as a landing field for airplanes?

A. Yes.

Q. Is there any mail received there?

A. The Pitcairn Aviation who operate the New York-Atlanta Mail are using that field.

20

Q. That company carries United States mail?

A. Yes, sir.

Q. And do they receive mail at the airport?

A. Yes, they discharge and pick up mail there.

Q. From what points in the immediate vicinity do they receive mail?

A. It is collected from Camden and Philadelphia.

Q. Is it now the air mail port for Camden and Philadelphia?

30

A. For the district comprising both cities.

Q. Are you familiar with the requirements of the Department of Commerce in connection with the classification of airports?

A. Yes, sir.

Q. What is the highest classification that the Department issues?

A. Classification known as A. 1. A. rating, the first A, referring to the general facilities and type of ground, the figure 1, the second classification, referring to the actual size of the airport and the third referring to the night lighting equipment on the airport.

10 Q. Are you familiar at all with the negotiations that have been carried on between the Central Airport and allied companies, Central Airport Development Company and the Bridge Circle Estates, Inc., and the Park Commission of Camden County?

A. Fairly so; I have not been active in them myself.

Q. But you have been with the company during their progress?

A. Yes, sir.

Q. Now, you know, as a matter of fact, do you not, that the airport had been asked to make certain conveyances to the Commission?

20

Mr. Carr: I object to that.

A. Yes.

Q. I am not saying what the conveyances were. I show you a map which has been marked Exhibit R1D and ask you if you are generally familiar with the outlines of the land shown on that map.

A. Yes, sir.

30 Q. Now, is the Central Airport an A. 1. A. airport now?

A. It has no rating at present.

Q. What are the ground requirements for an A. 1 A. airport—can you give us those, please?

A. I can give you them either from the actual rating book or from memory, whichever you wish.

Mr. Carr: May I interrupt a moment? It does not appear who does this rating.

Mr. Gildea: We will make it appear.

Q. Is that yours (referring to book handed witness)?

A. I brought it here.

Q. All right; pick it up. Who issues ratings for airports?

A. The Aeronautic Branch of the Department of Commerce, U. S. Government.

Q. Now, what are the ground requirements issued by that branch of the Department of Commerce for an A. 1 A. airport? 10

A. May I read them?

Mr. Carr: May I see them? (After examining book.) I am perfectly willing to have you put this in with the sole qualification that I will object to it because of materiality, and not because of his competence to give it. If you want to put this in, I don't care. 20

Mr. Gildea: We don't want to put the whole book in.

Mr. Carr: Well, so much as you like. My only objection is that it is not relevant or material. I am not going to object that he is not qualified to prove it, so it won't be necessary to read that, will it? 30

Q. I show you what purports to be the official regulations of the Aeronautics Branch of the Department of Commerce, effective January 1, 1929, called "Aeronautics Bulletin No. 16" and ask you if that document gives the regulations now in force

respecting the ground requirements of an A. 1 A. airport?

A. To the best of my knowledge, it does.

Q. Will you take your pencil and draw lines around the part of the bulletin to which you have just referred?

(Witness complies.)

- 10 Mr. Gildea: I offer so much of the bulletin as has been marked in the manner indicated by the witness for the purpose of showing the requirements therein mentioned.

Mr. Carr: My objection is merely that the fact is immaterial and irrelevant. I do not object to the competency of the proof of the witness.

- 20 (The portion of the bulletin in question marked by the witness is read into the record as follows:
“Rating on size of effective landing area. Sec. 6.
‘1’ Rating. In addition to the basic requirements, an airport receiving a ‘1’ rating on size of effective landing area shall have at least 2500 feet of effective landing area in all directions, with clear approaches, and the field shall be in good condition for landing at all times or it shall have landing strips not less than 500 feet wide, permitting landing in at least eight directions at all times, the landing
30 strips not to cross or converge at angles of less than forty degrees, nor any one of the landing strips to be less than 2,500 feet in effective length, with clear approaches. By clear approaches is meant absence of buildings, towers, and other obstacles over which a 7 to 1 glide or climb to or from the edge of the landing area would not be possible, and absence of

smoke-stacks, towers, high tension power lines, &c., which constitute obstructions even though beyond the 7 to 1 ratio. (See Sec. 4(b) for increase in allowable safe climbing ratio for altitudes in excess of 1,000 feet above sea level.) When the airport lies at an altitude in excess of 1,000 feet above sea level, the dimensions of the effective landing area or the effective lengths of the landing strips shall be increased to the corresponding values shown in figure 2.")

10

Q. Now, do you know of your own knowledge whether or not the Central Airport Company and its allied companies own enough land shown upon the map marked Exhibit R-1D, if they retained all of the land which they own as shown on that map, to meet the ground requirements of an A. 1 A. airport?

A. If they retained all the land within the area bounded by the river and Crescent Boulevard, Kaighn Avenue and Browning Road, they would have just enough. 20

Q. And the boundaries you have just given are the present boundaries of their land?

A. They are the present boundaries of their land.

Q. Now, if that part of the company's land which is indicated on the map as plot 6—I mean that part of plot 6 which lies between the Crescent Boulevard and Browning Road—is disposed of in any manner by the airport company, then they will not have sufficient ground for an A. 1 A., airport. 30

A. No, sir.

Q. Now, if the Central Airport disposes of the land I have just mentioned and acquires the opportunity to use land owned by the Central Airport Development Company to the west of Browning

Road, indicated on the map as between the existing Browning Road and the proposed new road, by the vacation of the present Browning Road, will the Central Airport Company then have sufficient amount of space for an A. 1 A. airport?

A. Yes, sir.

By Mr. Rothermel:

- 10 Q. Mr. Saltus, one question: Under this plan of re-locating Browning Road as shown by this map R-1D I think it is, as I understand it, one of the requirements of an A. 1 A., airport is a certain length of run-way and a certain number of run-ways?

A. Yes.

Q. That is, four run-ways of a minimum width of what?

A. Five hundred feet.

- 20 Q. Five hundred feet?

A. Wait a minute; the run-way definition is a hundred feet, but the landing strip definition which is required is five hundred feet wide.

Q. But the length of it?

A. Is twenty-five hundred feet for the number one rating.

- Q. Now, under this proposed re-location of Browning Road to this point, how much more, if any, than the twenty-five hundred feet of minimum
30 length will the Central Airport and its associated companies have?

A. I haven't got a scale, but they will have a great deal longer run-way in this direction, and it will be a much better field because of the fact that we have that territory, because it will give us much longer run-ways.

Q. With Browning Road in its original location, would you be able to get a landing strip or run-way of sufficient length to meet those requirements?

A. You can just do it by a very bad arrangement of the run-way without giving up any property, but it makes for uneconomical airport operation.

By Mr. Carr:

Q. It could be done, however—that is what I understood your earlier testimony to be? 10

A. It could be done.

By Mr. Rothermel:

Q. If, however, certain of the lands as shown by that map were conveyed either to the Park Commission or to any other person, could you still meet these minimum requirements? 20

A. No, sir.

Q. If I understand you correctly then, in order for the Park Commission to get the land which they either need or require or would like to have, to carry out the Cooper River project, which would involve either a dedication or a grant by the airport companies to them, that would immediately make your field too small to meet the requirements of an A. 1. A. airport?

A. It would make it too small to meet the second 30 requirement for an A. 1. A. airport.

By Mr. Gildea:

Q. One thing I forgot to ask: What is the difference between an A. I. A. airport and any other air-

port? I do not mean in requirements, I mean in use as a practical matter in the business?

A. The Department of Commerce has ruled——

Mr. Carr: Now, I am going to object to that. I think you called for the witness' own opinion, didn't you?

10 Mr. Gildea: Yes, he is an expert.

Mr. Carr: Well, I would rather have him give his opinion than the Department of Commerce unless he refers to this.

Mr. Gildea: Unless his opinion is based on rulings well-known in the industry.

20 Mr. Carr: I do not object to his giving his opinion.

Mr. Gildea: Well, we will see what the witness says; then if you wish to strike some of it out, all right.

30 The Witness: The ruling of the Department of Commerce on approved schools, which has just gone into effect, requires an A. 1. A. airport for instruction if a field is to get an approved school rating. That is not contained in there; that is in the school bulletins.

Q. Now, is it advantageous to an airport to have a rating? Aside from the benefits which you have just mentioned, is it advantageous to have a Department of Commerce A. 1. A. rating?

A. It certainly is, and in addition, it is getting in-

creasingly more so, with the tendency of the Department to specify what type fields transport operators shall use.

Q. And is it or is it not true that compliance with the Department of Commerce regulations as to what an A. 1. A. airport is, is conducive to greater safety in the landing and taking off on an air field?

A. That is the entire idea of the regulations, to insure greater safety.

Q. So that an A. 1. A. airport then is safer for 10 use than an airport which does not meet the requirements of an A. 1. A. airport?

A. Certainly.

Q. Well, is it true that the whole purpose of the regulations of the Department of Commerce is to insure safety?

Mr. Carr: I object; I think you are going pretty far.

20

Mr. Gildea: All right, the question is withdrawn.

Cross-examination.

By Mr. Carr:

Q. Mr. Saltus, the book you referred to also gives the ratings for number two and number three, doesn't it?

A. Yes, sir.

30

Q. And number 4?

A. I believe so.

Q. Will you mark so much of those requirements as relate to 2, 3 and 4 numbered fields?

(The witness complies, indicating pages 9, 10 and 11 of the book.)

Q. Now, Mr. Saltus, I take it from your answers to your counsel's questions, that you regard the enlargement of the field as a matter of very much pecuniary value to the airport—that is true, isn't it?

A. True from the operating viewpoint in every way. It makes for more economical operation and safer operation.

Q. More likely safer, and more likely to be productive or remunerative business than it would otherwise be; is that true?

A. The best example——

Q. Well, is that true or not?

A. Yes, because people will naturally come there if it is a good airport.

Q. If the Park Commission took the land which is shown on number 6, whether it was by deed, dedication or any other manner, would the airport then be within the number two rating of the Department of Commerce?

A. I believe it would; I haven't checked up.

Q. Well, would you like to check it before you answer?

A. It would probably take me half an hour to work out the strips.

Q. Well, you are willing to say it would?

A. I say it probably would.

Q. As a matter of fact, the part now marked as 6 on that map is not used for landing purposes at all, is it?

A. No, but there are obstructions there that we would have to—if we were to try to get a rating on the field without giving up 6, we would have to do considerable filling there to get our run-way length.

Q. But, as a matter of fact, you have been oper-

ating since the spring of 1929, without using 6 and without using the land which is south of Browning Road and between the proposed vacation and the proposed dedication?

A. That is true.

Q. You have been operating—you have a school there, haven't you?

A. Yes.

Q. And you have passenger planes that arrive and leave?

A. Yes.

Q. And the air mail uses your field?

A. Yes.

Q. All without using either 6 or the proposed addition south or southeast of Browning Road?

A. Yes, sir.

By Mr. Gildea:

Q. Do you know how long the negotiations with the Park Commission have been going on?

A. Not exactly; I know they have been going on for several months.

Q. Practically ever since you started operation?

A. Practically ever since we started operation.

By Mr. Rothermel:

Q. Have you applied to the Department of Commerce for any rating for this field?

A. Not as yet because we have not known where we stood on these projects.

Q. Have you informally?

A. We have talked about it with them but have made no application.

JAY C. REMINGTON, JR., SWORN.

By Mr. Gildea:

Q. What is your profession, sir?

A. Civil engineer.

Q. Do you practice as a member of a firm or by
10 yourself?

A. A firm.

Q. What is the name of your firm?

A. Remington-Vosbury & Goff, a partnership.

Mr. Carr: I will admit that he is well qualified.

Mr. Gildea: That is, you admit the qualifications
of the witness as a civil engineer?

20 Mr. Carr: Yes, sir.

Q. Now, is your firm engineer for the Camden
County Park Commission?

A. No, I am.

Q. You are?

A. Yes.

Q. Now, referring to the map which has been
marked as Exhibit R-1D, are you familiar with that
part of Camden County shown on this map?

A. Yes.

30 Q. Did you prepare this map, by the way?

A. I did, I was responsible for its preparation.

Q. Was it done by you or under your supervision?

A. Under my supervision.

Q. Does the Camden County Park Commission
have anything to do with the proposed park along
Cooper Creek, Cooper River?

A. Yes.

Q. And does that part of the proposed park system of Camden County which lies along Cooper River as shown on this map, come under the jurisdiction of the Camden County Park Commission?

A. It does.

Q. Now, has the Camden County Park Commission, to your knowledge, taken any steps to acquire title to any of the land shown on this map?

10

Mr. Carr: I wish to object to that.

A. It has.

Mr. Carr: I do not know the purpose of the question, but the proper way to prove that would be by some other means, either by the officers or minutes of the Commission. Mr. Remington is not a member of the Commission.

20

(Question repeated.)

A. To my knowledge, yes.

Q. From whom have they endeavored to acquire title?

Mr. Carr: I make the same objection.

A. From the Central Airport, Inc., the Bridge Circle Estates and Central Airport Development Company. 30

Q. Now, referring to the map again, and those portions of it which are designated by the number 6, lying between what is delineated as the Cooper River and the north side of the proposed boulevard shown on this map north of Cooper River, is that

the part of the land shown on this map which you refer to when you say that the Park Commission has taken steps to acquire title to it?

A. Yes.

Q. You are familiar with the plans of the Park Commission for the development of a park along Cooper River?

A. Yes.

10 Q. And is that land to which I have just referred necessary to the development of the park at that point?

Mr. Carr: I object to that for the reason that it is not a matter to which this witness is competent to testify, that it is a matter of opinion on which he is not qualified; it also is irrelevant to the issue.

A. It carries out our design.

Q. When you say "our design" you mean——

20 A. It carries out the design of the Park Commission.

Q. And that design of the Park Commission includes the construction of the proposed boulevard which is shown on this map just to the north of Cooper River?

Mr. Carr: I object to that on the ground that this is not the proper way to prove such design, if there is one, that the witness is not a member of the Park
30 Commission, he is merely an employe, he has no knowledge on the subject, and it is irrelevant and immaterial to the present inquiry.

Q. Do you remember the question?

A. I am engineer for the Park Commission and I have been instructed by the members of the Park

Commission to survey and advertise—to prepare plans and specifications and advertise for bids for the construction of this proposed boulevard.

Q. Shown on this map?

A. Shown on this map.

By Mr. Rothermel:

Q. Mr. Remington, as engineer, are your duties merely to carry out instructions given to you by the Park Commission, or do you act as advisor to them in connection with park projects? 10

A. Both.

Q. It is a fact then that when the Park Commission has any project under consideration, you are called in and consulted by them in connection with that project?

A. I make a study of it and report the findings to them for their final disposition.

Q. Now, this boulevard on the north branch of the Cooper River, how long has that been, we might say, under consideration? 20

A. Since January, 1925, to my knowledge.

Q. And the consideration culminated in what action being taken by the Park Commission?

Mr. Carr: I object to that for the reason, in addition to those already given, that the way to prove the action of the Park Commission is by its minutes. The minute book is in Court, and if the action of the Park Commission is to be shown, it should be produced. 30

Q. May I add to that question, as evidenced by the instructions given to you personally by the Park Commission?

Mr. Carr: I object to that on the further ground that any official action of the Park Commission would have to be shown by its minutes. Now, I left the minutes in Mr. Remington's care this morning; they ought to be here and they should be produced.

Q. Answer the question, please.

10 (Question repeated as amended.)

A. Concerning the re-location of Browning Road?

Q. And the boulevard on the north branch of the Cooper River?

A. By surveys and land acquisition the Park Commissioners have authorized me to construct this boulevard as part of the project of the Cooper River valley improvement.

Q. Now, are those plans prepared as yet?

20 A. They are not complete; they are in the process of preparation.

Q. Is this map marked R-1D one of those plans?

A. Yes.

Q. Does that show upon it the proposed course of the boulevard to be constructed?

A. It shows the correct location for that boulevard within the areas of the tracts, of the several tracts or parcels of land.

30 Q. Mr. Remington, under this exchange of properties, how many acres, if you can say, will the Park Commission acquire from the airport or its allied companies—just approximately?

A. In the neighborhood of fifty-eight.

Q. Fifty-eight acres?

A. Yes.

Q. There are certain portions of land to go back to the airport, aren't there?

A. Yes.

Q. How much is that also approximately?

A. You are getting into figures now, gentlemen.

Mr. Carr: You do not have to be exact—approximately.

The Witness: Less than three acres.

Cross-examination.

10

By Mr. Carr:

Q. Mr. Remington, you do not propose or attempt to say what action was taken at any of the meetings officially by the Park Commission, do you?

A. Yes, to this extent, that I was present at the meeting when I was given instructions to proceed with this boulevard improvement.

Q. Were the instructions to do that and to report back? 20

A. No, to actually do it, to receive bids for it.

Q. When was that meeting?

A. That was either the last meeting in December, or the regular meeting in December, one or the other.

Q. There has been no definite contract signed for any of that work?

A. Oh, no, we are not ready for that yet.

Q. And when it will be done is a matter that still remains to be determined? 30

A. We will probably advertise for bids within six weeks.

Q. And before you advertise for bids, you will again receive instructions from the Park Commission, won't you?

A. Only to determine the date for advertising.

Q. But until then you won't do anything with the matter?

A. Except to complete the survey and specifications.

Q. You say you received instructions to do this preliminary work; they were given to you by whom?

A. The president and members of the Commission in session.

10 Q. That is, Mr. Walworth, the chairman, and other members present at this meeting?

A. Yes.

Q. This boulevard line may be changed before it is actually constructed, may it not?

A. It is possible, but it is not likely.

Q. Has this map ever been approved by the Board by action at a meeting?

A. Yes.

Q. At what meeting was that, the same meeting?

20 A. A meeting before, I think; no, a prior meeting; the date I don't know. This map, together with the descriptions, were turned over in escrow to the title company or someone; that was the time it was approved.

J. WILLIAM MARKEIM, sworn.

30 By Mr. Gildea:

Q. Mr. Markeim, are you connected with the Central Airport, Inc.?

A. I am.

Q. In what capacity?

A. Secretary.

Q. Now, is it true that Central Airport, Inc., Cen-

tral Airport Development Company and the Bridge Circle Estates are all controlled by the same interests?

A. They are.

Q. Now, do you have with you the deeds of Central Airport for this property as shown upon Exhibit R-1D?

Mr. Carr: It is stipulated that the lands shown on the map marked R-1D, are owned as marked thereon. 10

Mr. Gildea: It is further stipulated that the westerly boundary of the land of the Wilmar Company adjoins the easterly boundary of the Central Airport Company at the line running north and south on map R-1D at or near the number 4 in a circle toward the right side of the map.

Q. Mr. Markeim, how long have you been secretary of the Central Airport Company? 20

A. I have been secretary of the Central Airport Company since May, 1929. I was engaged, though, with the Ludingtons since 1925.

Q. I see, the Ludingtons are interested in the enterprise?

A. Yes.

Q. Have you been familiar with the negotiations that have been going on between Central Airport, Inc., and the Park Commission of Camden County? 30

A. I have been.

Q. Is it true that the Park Commission has sought to get from Central Airport title to certain land along Cooper Creek?

A. Yes.

Q. And by referring to this map, can you say that

that land includes the tract marked 6 in a circle in yellow?

A. Yes.

Q. And you know, as a matter of fact, don't you, that deeds have been delivered in escrow?

A. They have.

Q. Now, does the delivery of those deeds depend upon the payment of any cash consideration by the Camden County Park Commission to the Airport?

10

Mr. Carr: I object to that; the nature of the delivery and the terms are in writing and the writing will speak for itself.

A. Do you mind repeating that question?

(Question repeated.)

20

A. No.

By Mr. Rothermel:

Q. Mr. Markeim, you have heard Mr. Remington's testimony as to the amount of ground involved in the exchange; what is your recollection, if you know, as to the amount of ground acquired by the Park Commission under this re-location scheme, and acquired by the Airport?

30

A. A total—on the three tracts?

Q. Yes.

A. A total of approximately sixty-five acres.

Q. That who gets?

A. That the Camden County Park Commission gets.

Q. What does the airport get?

A. We get approximately three acres back.

Q. What did those sixty-five acres cost the airport interests?

A. They cost us ——

Q. The average cost?

A. Five hundred eighty thousand dollars.

Q. In addition to being secretary, what are your actual duties in connection with the airport?

A. I have entire charge of their finances and of their real estate matters and of their construction work.

10

Q. In connection with these real estate transactions, are all of those in your hands?

A. They are.

Q. What, in your opinion, is the value of the property which the County Park Commission is acquiring by reason of this exchange?

A. Approximately one hundred forty thousand dollars.

Q. And the value of the three acres which the airport interests are getting, what is that?

20

A. I would say that had a value of between two and three thousand dollars.

Q. How much, Mr. Markeim, aside from the actual cost of the land involved, have the airport interests invested in this project, that is, for actual improvements, buildings, etc.?

A. Four hundred eighty-seven thousand dollars up to the present time.

Q. Are there any commitments not included in that estimate?

A. I have authorizations which I am holding of approximately thirty thousand dollars. I beg pardon—I would like to correct that—of fifty-two thousand dollars.

30

Q. What is the total cost of all of the ground in the immediate vicinity here purchased by the airport and other allied interests?

A. In excess of three million dollars. The cost of the lands which we conveyed to the Park Commission by the deeds in escrow is five hundred and eighty thousand dollars; that is based upon the average acreage of the entire tracts that we purchased and the purchase price.

Q. And the one hundred forty thousand figure —

A. Is based upon my opinion of the value of it, of that type of land.

10

Cross-examination.

By Mr. Carr:

Q. That would mean that, taking the average cost of the land, the land proposed to be conveyed by the airport to the Park Commission is about sixty acres?

A. Yes.

20

Q. And that sixty acres was acquired by the airport interests at about ten thousand dollars?

A. Between nine and ten thousand dollars an acre.

Q. And you, if I understand you correctly, say that because of the particular character of the land to be conveyed to the Park Commission, the value of that land is materially less than the average cost per acre, and would not be more than two or three thousand dollars an acre?

A. Yes.

30

Q. Because of the fact that it is —

A. Low land.

Q. Largely meadow land bordering on the river?

A. Yes.

Q. Now, you spoke of some three million dollars having been paid for land; that includes —

A. That includes Bridge Circle Estates, the airport —

Q. Central Airport, Inc.?

A. And Central Airport Development Company.

Q. Now, how do you divide that between Bridge Circle Estates—what would the cost of that land have been to the airport?

A. That is not to the airport, that is to the estate, the Ludington Estate. The cost was five hundred and ninety thousand dollars in 1925.

Q. For how many acres?

A. For some forty acres, and I think we paid out 10 around seventy-five thousand dollars in interest and carrying charges.

Q. I don't care about that. Central Airport, Inc.; the average cost per acre to that corporation of the land appearing in their name on this map was how much?

A. That was one million, four hundred and some thousand dollars; I would have to refer to my books there.

Q. Containing how many acres? 20

A. I would have to get my books to get the actual acreage of each company.

By Mr. Rothermel:

Q. Can you estimate it approximately?

A. I imagine that is about one hundred fifty-four acres.

By Mr. Carr:

30

Q. That cost the airport a little less than ten thousand dollars an acre?

A. That is right.

Q. And across on the south side of Browning Road, Central Airport Development Company—how many acres have they?

A. Central Airport Development? They have sixty acres in one tract that they paid six hundred eighty-eight thousand dollars for, and they have sixty-two, I think it is, in the other tract, that they paid two hundred ten thousand dollars for.

Q. That is more distantly removed from Browning Road and from Kaighn Avenue and the Boulevard, is that right?

A. That is right, but then the Central Airport
10 Development Company owns other land; I was including that. You asked me what the three companies had bought in that vicinity; they own other land beside the Kaighn Avenue side; they own other land here and own other land here. (Indicating on map.)

Q. Referring to north of Kaighn Avenue both sides of the south connecting road?

A. Yes.

Q. And what price did you put that in, Mr.
20 Markeim?

A. That was purchased at a price of about eighty thousand dollars an acre.

Q. Eighty thousand dollars?

A. That is right; it is quarter acre pieces and they paid twenty-five thousand dollars for each piece.

Q. So that this whole section, while it is undeveloped with houses, is composed of very high-priced land, isn't it?

30 A. Particularly right around the circle here; that is where the value increases.

Q. This whole section, however, is high-priced land, isn't it?

A. No, I wouldn't say it is high-priced land, because I have other realty companies that I am president of that own land directly opposite the air-

port that we paid much less price per acre for; we paid about five thousand dollars an acre for.

Q. Well, five thousand dollars is a lot of money, isn't it?

A. It just depends on the type of land you are buying; it is all boulevard frontage.

Q. The land that is owned by the Central Airport, Central Airport Development Company, and Bridge Circle Estates, was all high-priced land and the adjoining land would be proportionately valued taking 10 into consideration the special circumstances?

A. It depends entirely upon the circumstances, the type of land, and the uses you want it for, and things of that kind.

Q. I want to clear up something; your testimony, as I recall it, was to the effect that the land that the airport was to get from the Park Commission was worth two or three thousand dollars. Do you mean two or three thousand dollars an acre, or two or three thousand dollars altogether? 20

A. Two or three thousand dollars an acre.

Q. And how many acres does the airport get from the Park Commission?

A. I said two or three acres; that is only an estimate; I never had any figures to give me the exact acreage.

Q. I am not asking for the exact figures. So that the approximate value, in your opinion, of the land to be received by the airport and allied companies, is about ten thousand dollars? 30

A. Yes.

Q. And the approximate cost of the land to be conveyed is five hundred eighty thousand dollars, and the approximate value about one hundred forty thousand dollars?

A. That is right. I wouldn't say ten thousand

dollars; I would say it would be nearer to six or seven thousand dollars.

Q. And the consideration moving to the airport to complete this transaction is the vacation of this road?

A. Well, I do not know that that is the consideration; I couldn't say.

Q. What else is it in addition to the land that the airport interests and the allied companies acquire from the Park Commission—what other considerations are there moving to the airport other than the vacation of the road?

A. There are no other considerations.

Q. Unless Browning Road is vacated as outlined, this additional acreage across from Browning Road would not be available for the airport?

Mr. Gildea: You mean the acreage lying to the west?

20

Mr. Carr: South.

Mr. Gildea: Southeast; I think that already appears.

A. Would not be available? I think it would be available, but I don't think the airport would be interested in having it; they only want it for airport purposes.

30

JAY C. REMINGTON, JR., recalled.

By Mr. Rothermel:

Q. One thing I neglected to do, Mr. Remington: You are familiar with all the details of this re-location project, aren't you?

A. Yes.

Q. Can you tell me, either from your own personal 10 knowledge or by referring to this map, the approximate length of Browning Road which is being vacated?

A. Why, the section that is being vacated is about two thousand feet, 1978, I think, to be correct; it is marked on the plan.

Q. Along the center line appears the figure "1978.42."

A. That is it.

Q. Now, when the proposed re-location is made, 20 and the boulevard completed, what will be the distance required to get from the point marked 4, where the re-location starts, around to the point just north of the Cooper River bridge on Browning Road as it is at present?

A. Why, the excess distance will be approximately nine hundred feet.

Q. You mean in going around the two sides of the triangle down to the same point, the distance is nine hundred feet greater than going in a straight 30 line?

A. Traversing two sides of the triangle is about nine hundred feet more than traversing the base of the triangle. To present it briefly, it means about a minute and a half at the rate of thirty miles an hour, or the equivalent of about two city blocks in distance.

Q. And five minutes at fifteen miles an hour?

A. Yes.

Cross-examination.

By Mr. Carr:

10 Q. Mr. Remington, are you a director in the airport?

A. No.

Q. Were you formerly?

A. No, never. I was invited, but on account of my position with the Camden County Park Commission and the workings that I saw that we were going to encounter and in order to relieve myself of any embarrassment, I declined the invitation.

Q. That is all right; I thought you were?

A. No.

20 Q. It was advertised that you were?

A. I know it was; I would like to be but I am not.

RESPONDENTS REST.

PROSECUTOR'S REBUTTAL.

30 ZAIDEE M. CASTOR, SWORN.

By Mr. Carr:

Q. You are secretary of the Camden County Park Commission?

A. Yes.

Q. Do you have with you the minute book?

A. Yes.

Q. Will you please look at the book and state whether or not there has been any formal resolution passed or adopted by the Park Commission, fixing the lines of a road near or bounding on the land of the airport?

A. Yes, I believe this resolution does.

Q. You are referring to a minute passed November 7, 1929, found on page 251 of the minute book?

A. Yes.

Q. Wherein it is stated?

10

Mr. Rothermel: I object to what is said in there; the resolution is there, Mr. Carr.

Mr. Carr: I want to read it in the record.

A. "BE IT RESOLVED that the Park Commission evidence its co-operation with the Central Airport, Inc., in the mutual exchange of property shown on plan marked X, being the plan of the joint effort of the engineers of the Park Commission and the Central Airport, said mutual exchange of properties to be conditioned upon the passage by the Board of Chosen Freeholders of Camden County of a resolution providing for the vacation and re-location of Browning Road as shown on the said plan. AND be it further resolved that the land owned by the Central Airport, Inc., and Central Airport Development Company, generally known as King property, also the land running along the Cooper River, adjacent to Kaighn Avenue owned by the Bridge Circle Estates, Inc., be considered and included as part of the exchange of property in the matter. And be it further resolved that the carrying out of the proposed plan be subject to the consent of the Hurley Realty Company as to piece on the plan marked in

20

30

pink and to the north of Park Boulevard, lying between the Cooper River and Browning Road, which said area marked in pink is to be conveyed to the Central Airport Development Company. And be it further resolved that a copy of this resolution be sent to the Board of Chosen Freeholders and Central Airport, Inc.”

Q. Now, is there any other reference in the minutes, Mrs. Castor, after that, to this airport
10 matter?

A. “RESOLVED that the proper officers ——”
Yes, that refers to it.

Mr. Carr: The witness refers to a minute of December 26, 1929, wherein it is said ——

The Witness: “RESOLVED that the proper
officers of the County Park Commission of Camden
County be and they are hereby authorized and di-
20 rected to execute the paper known as the escrow
agreement of West Jersey Title and Guaranty Com-
pany, also deed dated December 26, 1929, prepared
to Hurley Realty Company under said escrow agree-
ment, purporting to carry out the agreement exist-
ing between the said Commission and Central Air-
port and allied companies with respect to exchange
of certain lands of said Commission and said Cen-
tral Airport and allied companies contemplated to
be carried into effect under resolution dated Novem-
30 ber 7, 1929, following said agreement.”

Q. Now, Mrs. Castor, is there any reference in those minutes to the line of a proposed Park Boulevard extending on or over or near the land to be exchanged and conveyed to the Park Commission? I call the witness' attention to map marked R-1D, and state that the road to which my question is addressed

is the road marked on this map, "Proposed boulevard." Is that question clear to you?

A. Do I have a resolution covering that?

Q. Is there anything in the minutes referring to that stretch of the proposed boulevard except as you may have read the minutes?

A. I do not know that there is; I don't believe there is. These are the only ones that I know of.

Q. Is this the plan marked X?

A. I don't know; I am not familiar with the plans. 10

Cross-examination.

By Mr. Gildea:

Q. Do you recall being present at a meeting when Mr. Remington was instructed by the Park Commission to proceed with the plans for this proposed boulevard and to secure bids for its construction?

A. No, I don't believe I was present then. I don't 20 remember that. I am not present at all the meetings; they have executive sessions.

By Mr. Carr:

Q. Well, do the matters that transpire at these executive sessions get into the minute book?

A. Yes.

Q. And in those cases you get the minutes from whom? 30

A. The president.

Q. Then the practice is for the minutes to be read at the following meeting and approved?

A. Oh, yes.

Q. Have all the minutes been approved?

A. Oh, certainly.

Q. So that the minutes up to the present time have been approved of every meeting?

A. Yes.

PROSECUTOR RESTS.

RESPONDENT'S REBUTTAL.

10

J. C. REMINGTON, JR., recalled.

By Mr. Gildea:

Q. You have heard Mrs. Castor's testimony as to the meeting held on November 7th, is that the date?

A. Yes.

20 Q. Will you refer to the minutes in this book of the meeting of November 7th? Now, is the map referred to in this resolution as the plan marked X the same map that has been marked in this proceeding as R-1D and which I now show you?

A. This is a blue-print of that particular plan which was discussed, and the coloring has been put on it when it was submitted to the title company, just to show the segregation of the parcels of land. There has been no change in lines or calculations.

30 Q. Now, there was a reference made in this resolution to the proposed plan being subject to the consent of the Hurley Realty Company. Now, that consent was evidenced by a deed of the Hurley Realty Company, wasn't it, subsequently? Do you know as a matter of fact of your own knowledge?

Mr. Carr: Well, I know they consented, Mr. Hurley and Mr. Moran both told me.

A. I know the deed is in the hands of the title company with the other deeds being held in escrow.

Cross-examination.

By Mr. Carr:

Q. This map R-1D, or X as it has been both called, when that was submitted to the Park Commission, 10 did it show the proposed vacation and proposed dedication as it now appears?

A. Yes.

Q. The only change was this writing?

A. The writing, these marks.

Q. The writing and the marks supplied by the title company?

A. Yes.

BOTH SIDES REST.

20

(It appearing that the depositions taken today have been so extended that it will be impossible for the Commission to have the same transcribed by Tuesday next, it is stipulated and agreed that on Tuesday next counsel for the various parties will 30 appear before the Supreme Court and request that the return to the rule to show cause be continued until some day at the convenience of the Court, not earlier than Monday of the following week, and will also ask for a ruling as to whether the Court will require that the depositions be printed.)

EXHIBIT P1
for Prosecutor.

DEED

Thurston G. Nourse et ux et al
to

The Wilmar Company

10

Received at CAMDEN, N. J., Sept.
30th, 1925, at 4:00 P. M. and Recorded
in Book No. 601 of Deeds Page 490 &c
in the Office of the Register of Deeds,
&c., of CAMDEN COUNTY.

Joshua C. Haines
Register

20

EXHIBIT R2

THIS INDENTURE made the 11th day of December in the year of our Lord one thousand nine hundred and twenty nine (1929), between CENTRAL AIRPORT, INC., a corporation of the State of Delaware, and CENTRAL AIRPORT DEVELOPMENT COMPANY, a corporation of the State of New Jersey, parties of the first part, and the COUNTY OF CAMDEN, a municipal corporation of the State of New Jersey, party of the second part: WITNESSETH that,

30

WHEREAS the Board of Chosen Freeholders of the County of Camden has vacated or is about to vacate, with the consent of the Township of Pennsauken, all that part of Browning Road in the said Township of Pennsauken hereinafter described:

AND WHEREAS an alternative route for said Browning Road, in place of said vacated portion, has been or is about to be dedicated by the parties of the first part hereto over their lands, connecting with a new boulevard along or near the Northerly bank of Cooper River to the Eastward of said Browning Road, and over the lands of the County Park Commission of the County of Camden; said Boulevard or road over lands of County Park Commission of the County of Camden, connecting on the 10 Westward with the unvacated portion of Browning Road Southwestward of the vacated portion hereinafter described, and connecting on the Eastward with the new section of Browning Road to be dedicated by the parties of the first part hereto; said new section also connecting at its Northerly end with the unvacated portion of Browning Road lying Northeastward of the vacated portion hereinafter described; all of the above being shown on survey and plan of proposed Dedication and Vacation of a 20 Portion of Browning Road, Pennsauken Township, Camden County, New Jersey, November 1929, Remington and Vosbury, Civil Engineers, copy of which plan is hereto attached and made a part hereof.

AND WHEREAS it is expected that there will be some delay in the final completion and opening of said alternative route or new road along and over said lands of the County Park Commission of the County of Camden, and of the parties of the first part hereto, as hereinabove set out, and as shown 30 on the above mentioned plan; and it is desired by the parties of the first part hereto that pending such final completion of said alternative route, there shall be no interruption in the actual use of said vacated portion of Browning Road, without, however, in any sense re-dedicating to public use, such vacated portion of Browning Road;

NOW THEREFORE, this Indenture witnesseth: that said parties of the first part, for and in consideration of the premises and of the sum of One Dollar to them and each of them in hand paid by party of the second part, the receipt whereof is hereby acknowledged, do for themselves and each of themselves, their respective successors and assigns, grant unto said party of the second part and its successors, the full and free right, liberty and privilege
10 to use the said vacated portion of Browning Road as shown on said plan and as hereinafter described, for public travel by foot passengers and vehicles of any sort, and/or for any other allied uses, so long as the same may be reasonably necessary to connect for public travel the two unvacated portions of Browning Road as hereinabove mentioned, and until the completion by the Camden County Park Commission of a new boulevard on the East or North bank of the Cooper River, and the completion by
20 the County of Camden of a new road to the East of Browning Road as herein described, and no longer. It being understood and hereby agreed that this indenture shall not work a re-dedication of said vacated portion of Browning Road, but that this shall be construed to be merely a license or privilege for temporary use of said vacated portion; and it is further understood and hereby agreed that said County of Camden must complete that portion of the new line of Browning Road as dedicated by parties of the first part hereto, within a reasonable time
30 after the completion of the new Boulevard by the County Park Commission, as herein referred to. The said vacated portion of Browning Road being described as follows:
Situate in the Township of Pennsauken, in the County of Camden and State of New Jersey,
NO. 1—The Northwesternly portion of Browning

Road to be vacated, BEGINNING at a point in the centre line of Browning Road (49.50 feet wide); and in the proposed new Northerly line of lands of the Camden County Park Commission, said point being distant four hundred and one and ninety-four hundredths feet Northeastwardly from an angle in Browning Road over Cooper River; thence (1) Westwardly along the proposed new line of lands of the Camden County Park Commission, curving to the North with a radius of two thousand one hundred and ninety feet, the arc distance of thirty and fifty-six hundredths feet to a point in the Northwesterly line of Browning Road; thence (2) North fifty-three degrees fifty six minutes East along the Northwesterly line of Browning Road, the distance of two thousand and eighty-six and seventy-four hundredths feet to the point of intersection of the curved Northwesterly new line of Browning Road (sixty-six feet wide) with the tangent Northwesterly old line of Browning Road (forty-nine and fifty hundredths feet wide), and said point of intersection, being located ninety-two and sixty hundredths feet Southwestwardly measured along the old line of Browning Road from the Easterly line of lands of Central Airport, Inc., thence (3) Southwestwardly curving to the South with a radius of five hundred and twenty-three and seventy-seven hundredths feet, the arc distance of ninety-three and eighty-three hundredths feet to a point in the centre line of Browning Road (forty-nine and fifty hundredths feet wide); thence (4) South fifty-three degrees fifty-six minutes West along the centre line of Browning Road, the distance of one thousand nine hundred and seventy-eight and forty-two hundredths feet to a point and place of beginning.

NO. 2—The Southeasterly portion of Browning Road to be vacated, BEGINNING at a point in the

- centre line of Browning Road (forty-nine and fifty hundredths feet wide) and in the Northerly proposed new line of lands of the Camden County Park Commission, said point being distant four hundred and one and ninety-four hundredths feet Northeastwardly from an angle in Browning Road over Cooper River; thence (1) North fifty-three degrees fifty-six minutes East along the centre line of Browning Road, the distance of one thousand nine hundred and seventy-eight and forty-two hundredths feet to the point of intersection of the curved Northwesterly new line of Browning Road (sixty-six feet wide), with the centre line of Old Browning Road (forty-nine and fifty hundredths feet wide), and said point of intersection, being located one hundred and eighty-two and ninety-eight hundredths feet measured along the centre line of Old Browning Road, Southwestwardly from and at right angles from the point of intersection of the
- 10 Easterly line of lands of Central Airport, Inc., with the Northwesterly line of Browning Road (forty-nine and fifty hundredths feet wide); thence (2) Southwestwardly, curving to the South with a radius of five hundred and twenty-three and seventy-seven hundredths feet, the arc distance of sixty-one and thirty-six hundredths feet to a point in the Southeasterly line of Browning Road (forty-nine and fifty hundredths feet wide); thence (3) South fifty-three degrees fifty-six minutes West along the Southeast-
- 20 erly line of Browning Road, the distance of one thousand nine hundred and three and eighty-seven hundredths feet to a point in the proposed new line of lands of the Camden County Park Commission; thence (4) Westwardly along said new line of lands of Camden County Park Commission, curving to the North with a radius of two thousand one hundred and ninety feet, the arc distance of thirty and eighty-
- 30

seven hundredths feet to point and place of beginning.

IN WITNESS WHEREOF the said party of the first part have caused these presents to be signed by their respective officers, and have hereunto affixed their respective corporate seals, the day and year first above mentioned.

CENTRAL AIRPORT, INC.

a corporation of Delaware.

BY Nicholas S. Ludington 10
President.

Signed, sealed and delivered
in the presence of
"hereinabove" 3rd line from
bottom of first page, written
over erasure before execution.

ATTEST:

J. William Markeim

(Seal)

Secretary

CENTRAL AIRPORT DEVELOPMENT 20
COMPANY,

a corporation of New Jersey.

BY Nicholas S. Ludington
President.

ATTEST:

J. William Markeim

(Seal)

Secretary

30

RIGHT OF WAY

Between:

CENTRAL AIRPORT, INC. et al

and

COUNTY OF CAMDEN

EXHIBIT P7.
for Prosecutor.

10 I, FRED W. GEORGE, Clerk of the Board of Chosen Freeholders in and for the County of Camden, in the State of New Jersey, hereby certify that the annexed copy of petition is a true copy of a certain petition made by Central Airport, Inc., and filed by them with me on the 14th day of August, 1929, the original of which petition is now on file in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of this Board, this ninth day of January, 1930.

Fred W. George
(Seal) Clerk, Board of Chosen Freeholders.

20

To The Board of Chosen Freeholders of the County
of Camden:

Gentlemen:

The Petition of Central Airport, Inc., a Corporation of the State of Delaware, respectfully represents:

30 1. That it is the owner of all lands abutting Browning Road from Cooper Creek to point in said Road from which it is proposed to lay out a new road hereinafter referred to.

2. That it is the owner of all land which will abut on the proposed re-located Browning Road, as shown by the plan hereinafter referred to.

3. That it presents herewith a plan showing Browning Road, as now laid out, and the portion of Browning Road which it is desired to re-locate and the position of such re-location.

4. That petitioners are now operating an Airport from which increasing numbers of planes will leave and arrive. That entrants for the National Air Races to be conducted from Cleveland, in the State of Ohio, will leave from the petitioner's Airport. That petitioners have every reason to believe that its Airport will become a landing place for air-mail planes of the United States Government on or about September 1st, 1929, and that it is their purpose to make said Airport one of the best Airports in the world. 10

5. That in order to carry out the purposes of your petitioner, it is necessary that the Airport which it conducts should be classified by the United States Government as a 1-A-1 Airport and in that connection it is necessary that land to the East of Browning Road, as now laid out, should become a part of the Airport, such additional land being shown on said plan as lying between Browning Road as now located and Browning Road in its proposed location. 20

Your petitioner prays that your Honorable Body will adopt a resolution, after due notice and public hearing, vacating the portion of said Browning Road delineated on said plan as "Section to be vacated" and will in lieu thereof accept a dedication of a portion of Browning Road as re-located, as shown upon said plan. 30

Your petitioners will every pray, &c.
CENTRAL AIRPORT, INC.
BY Nicholas S. Ludington
President.

Attest:

J. William Markeim,

Secretary.

(SEAL)

10

WHEREAS Central Airport, Inc., has established an airport at the intersection of Kaighn Avenue and the new Crescent Boulevard, and in connection therewith has erected certain hangars and proposes to erect further hangars upon that site, and is endeavoring to induce numerous firms, interested in the development of air transportation, to establish at that point places of business incidental to the development of air transportation, in order to create at that point, within the County of Camden, an airport for the County of Camden and vicinity; and

20 WHEREAS Central Airport, Inc., owns all of the lands between Kaighn Avenue, Crescent Boulevard, Browning Road and the Cooper River, immediately abutting upon that section of Browning Road hereinafter referred to, and Central Airport Development Company owns all of the lands on the West side of the section of Browning Road hereinafter referred to, and these two companies are associated in the development of the airport referred to herein; and

30

WHEREAS in order to fulfil the requirements as laid down by the Department of Commerce of the United States of America for the establishment of an airport having an A-1-A rating, this being the highest rating for an airport under said regulations,

it is necessary that runways have a certain stipulated length, which with the present position of Browning Road cannot be obtained in connection with the airport referred to above, but which can be obtained by vacating that portion of Browning Road hereinafter referred to, and laying out a new road to the East of the proposed airport site, which new road would connect with Browning Road immediately South of Kaighn Avenue, and connect with the new Park Boulevard along the North bank 10 of the Cooper River to be laid out and constructed by the Camden County Park Commission; and

WHEREAS this Board deems it advisable to do everything in its power to help the developers of the airport in question, in order that the City and County of Camden may have the advantage of having an airport, serving them and their vicinity, having the highest rating from the Department of Commerce of the United States of America, and for that reason has under consideration the vacation of a 20 section of Browning Road hereinafter referred to and the establishment of a new road to take its place, to the East of the proposed airport site as aforesaid; the lands for said new road to be dedicated by the Central Airport Development Company as aforesaid;

NOW, THEREFORE, BE IT RESOLVED by the Board of Chosen Freeholders in and for the County of Camden, in the State of New Jersey, that under and by virtue of Chapter 185, P. L. of 1918, 30 and the amendments thereof and supplements thereto, this Board has determined that it will consider a Resolution providing for the vacation of that section of Browning Road, being a County Road of the County of Camden, more particularly described as follows:

10 BEGINNING at a point in the center line of Browning Road (49.50) feet wide) and in the Northerly proposed new line of lands of the Camden County Park Commission, said point being distant 401.94 feet Northwestwardly from an angle in Browning Road over Cooper River; thence (1) North 53 degrees 56 minutes 00 seconds East along the center line of Browning Road the distance of 1978.42 feet to the point of intersection of the curved Northwesterly new line of Browning Road (66 feet wide) with the center line of Old Browning Road (49.50 feet wide) and said point of intersection, being located 182.98 feet measured along the center line of Old Browning Road, Southwestwardly from and at right angles from the point of intersection of the Easterly line of lands of Central Airport, Inc., with the Northwesterly line of Browning Road (49.50 feet wide); thence (2) 20 Southwestwardly, curving to the South with a radius of 523.77 feet the arc distance of 61.36 feet to a point in the Southeasterly line of Browning Road (49.50 feet wide); thence (3) South 53 degrees 56 minutes 00 seconds West along the Southeasterly line of Browning Road the distance of 1903.87 feet to a point in the proposed new line of lands of the Camden County Park Commission; thence (4) Westwardly along said new line of lands of Camden 30 County Park Commission, curving to the North with a radius of 2190 feet the arc distance of 30.87 feet to a point and the place of beginning.

It is the intention of the above description to include all of the Southeasterly half of Browning Road between the lateral lines named.

BEGINNING at a point in the center line of

Browning Road (49.50 feet wide) and in the proposed new Northerly line of lands of the Camden County Park Commission, said point being distant 401.94 feet Northeastwardly from an angle in Browning Road over Cooper River; thence (1) Westwardly along the proposed new line of lands of the Camden County Park Commission, curving to the North with a radius of 2190 feet the arc distance of 30.56 feet to a point in the Northwesterly line of Browning Road; 10
thence (2) North 53 degrees 56 minutes 00 seconds East along the Northwesterly line of Browning Road, the distance of 2086.74 feet to the point of intersection of the curved Northwesterly new line of Browning Road (66 feet wide) with the tangent Northwesterly old line of Browning Road (49.50 feet wide), and said point of intersection, being located 92.60 feet Southwestwardly, measured along the old line of Browning Road from the Easterly line of 20
lands of Central Airport, Inc., thence (3) Southwestwardly curving to the South with a radius of 523.77 feet the arc distance of 93.83 feet to a point in the center line of Browning Road (49.50 feet wide); thence (4) South 53 degrees, 56 minutes 00 seconds West along the center line of Browning Road the distance of 1978.42 feet to a point and the place beginning.

It is the intention of the above description to include all of the Northwesterly half of 30
Browning Road between the lateral lines named.

The above lands are described herein according to survey and plan of proposed dedication and vacation of a portion of Browning Road, Pennsauken Township, Camden County, New Jersey, dated November 29th, 1929, and pre-

pared by Remington, Vosbury & Goff, Civil Engineers.

10 BE IT FURTHER RESOLVED that pursuant to the provisions of the Act hereinabove referred to, this Board does hereby designate the 27th day of December, 1929, at 8:30 o'clock, P. M., and the room of the Board of Chosen Freeholders in the Court House, Camden, New Jersey, as the time and place when and where this Board shall consider the resolution providing for the vacation of that section of Browning Road hereinbefore described, and the extinguishment of any and all public rights therein.

20 BE IT FURTHER RESOLVED that the Clerk of this Board be and he is hereby instructed to publish the note of said meeting at least once in the official newspapers of this Board, said publication to be at least ten days prior to the date of the meeting at which said resolution shall be consideration, and said notice to specify that this Board will meet at that time and place for the purpose of hearing and considering any and all objections to the vacation of Browning Road proposed in this resolution, which objections may be presented by any and all person or persons interested therein.

30 AND BE IT FURTHER RESOLVED that the Clerk of this Board be and he is hereby instructed and authorized to send a copy of this notice to the Clerk of the Township of Pennsauken wherein the above described portions of said road are located pursuant to Chapter 195 P. L. 1928, said copy to be sent by registered mail.

(The map annexed to this Resolution shows this property to be the same as shown on the map which is annexed to the Resolution passed on December 27th, 1929)

CLERK'S CERTIFICATE

I, Fred W. George, Clerk of the Board of Chosen Freeholders in and for the County of Camden in the State of New Jersey, hereby certify that the annexed copy of resolution is a true and correct copy of the original resolution passed by the said Board at a regular meeting held on the 11th day of December, 1929. 10

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Board, this ninth day of January, 1930.

Fred W. George
(Seal) Clerk, Board of Chosen Freeholders.

STATE OF NEW JERSEY }
COUNTY OF CAMDEN } ss. 20

FRED W. GEORGE, of full age, being duly sworn, according to law on his oath, deposes and says that:

1. He is the Clerk of the Board of Chosen Freeholders in and for the County of Camden in the State of New Jersey.

2. That the copy of public notice annexed to this affidavit is a true copy of public notice issued by the Board of Chosen Freeholders at a regular meeting of the said Board, held on the 11th day of December, 1929. that said notice, pursuant to resolution passed by said Board on the 11th day of Decem- 30

ber, 1929, was published in the following newspapers on the dates set opposite the respective names:

The Breeze —December 12th, 1929.

Morning Post —December 13th, 1929.

Evening Courier —December 13th, 1929

The Argus —December 12th, 1929.

10 as further evidenced by the respective proofs of publication issued by said newspapers and annexed hereto; that on the 12th day of December, 1929, he did send a certified copy of said notice to Robert V. Peabody, Clerk of the Township of Pennsauken, by registered mail.

Fred W. George.

Sworn to and subscribed
before me this 9th day
of January, A. D. 1930

R. S. Matlack

N. P. of N. J.

20

PUBLIC NOTICE.

30 Taken notice that the Board of Chosen Freeholders in and for the County of Camden in the State of New Jersey, will consider the vacation of a portion of Browning Road, being a County Road in the County of Camden, and the extinguishment of all public rights therein; said portion of Browning Road to be affected being more particularly described as follows:

BEGINNING at a point in the center line of Browning Road (49.50 feet wide) and in the Northerly proposed new line of lands of the Camden County Park Commission, said point being distant 401.94 feet Northeastwardly from

an angle in Browning Road over Cooper River; thence (1) North 53 degrees 56 minutes 00 seconds East along the center line of Browning Road, the distance of 1978.42 feet to the point of intersection of the curved Northwesterly new line of Browning Road (66 feet wide) with the center line of Old Browning Road (49.50 feet wide) and said point of intersection, being located 182.98 feet measured along the center line of Old Browning Road, Southwestwardly from and at right angles from the point of intersection of the Easterly line of lands of Central Airport, Inc., with the Northwesterly line of Browning Road (49.50 feet wide); thence (2) Southwestwardly, curving to the South with a radius of 523.77 feet the arc distance of 61.36 feet to a point in the Southeasterly line of Browning Road (49.50 feet wide); thence (3) South 53 degrees 56 minutes 00 seconds West along the Southeasterly line of Browning Road the distance of 1903.87 feet to a point in the proposed new line of lands of the Camden County Park Commission; thence (4) Westwardly along said new line of lands of Camden County Park Commission, curving to the North with a radius of 2190 feet the arc distance of 30.87 feet to a point and the place of beginning.

It is the intention of the above description to include all of the Southeasterly half of Browning Road between the lateral lines named.

BEGINNING at a point in the center line of Browning Road (49.50 feet wide) and in the proposed new Northerly line of lands of the Camden County Park Commission, said point being distant 401.94 feet Northeastwardly from

an angle in Browning Road over Cooper River; thence (1) Westwardly along the proposed new line of lands of the Camden County Park Commission, curving to the North with a radius of 2190 feet the arc distance of 30.56 feet to a point in the Northwesterly line of Browning Road; thence (2) North 53 degrees 56 minutes 00 seconds East along the Northwesterly line of Browning Road, the distance of 2086.74 feet to the point of intersection of the curved Northwesterly new line of Browning Road (66 feet wide) with the tangent Northwesterly old line of Browning Road (49.50 feet wide) and said point of intersection, being located 92.60 feet Southwestwardly, measured along the old line of Browning Road from the Easterly line of lands of Central Airport, Inc.; thence (3) Southwestwardly curving to the South with a radius of 523.77 feet the arc distance of 93.83 feet to a point in the center line of Browning Road (49.50 feet wide); thence (4) South 53 degrees 56 minutes 00 seconds West along the center line of Browning Road the distance of 1978.42 feet to a point and the place of beginning.

It is the intention of the above description to include all of the Northwesterly half of Browning Road between the lateral lines named.

The above lands are described herein according to survey and plan of proposed dedication and vacation of a portion of Browning Road, Pennsauken Township, Camden County, New Jersey, dated November 29th, 1929, and prepared by Remington, Vosbury & Goff, Civil Engineers.

AND TAKE FURTHER NOTICE that the Board of Chosen Freeholders, in and for the County of Camden in the State of New Jersey, by resolution has designated the 27th day of December, 1929, at 8:30 o'clock, P. M., as the time and the room of the Board of Chosen Freeholders in the Court House, Camden, New Jersey, as the place when and where a public hearing upon the proposed vacation of said section of Browning Road shall be held; at such time and place any and all objections to the proposed vacation may be presented by any and all person or persons interested therein, and said objections will then be considered by said Board of Chosen Freeholders. 10

FRED W. GEORGE,

Clerk, Board of Chosen Freeholders.

Dated, Camden, N. J.

1929.

20

LEGAL NOTICE.

PUBLIC NOTICE.

Take notice that the Board of Chosen Freeholders in and for the County of Camden in the State of New Jersey, will consider the vacation of a portion of Browning Road, being a County Road in the County of Camden, and the extinguishment of all public rights therein; said portion of Browning Road to be affected being more particularly described as follows: 30

BEGINNING at a point in the center line of Browning Road (49.50 feet wide) and in the Northerly proposed new line of lands of the Cam-

den County Park Commission, said point being distant 401.94 feet Northeastwardly from an angle in Browning Road over Cooper River; thence (1) North 53 degrees 56 minutes 00 seconds East along the center line of Browning Road, the distance of 1978.42 feet to the point of intersection of the curved Northwesterly new line of Browning Road (66 feet wide) with the center line of Old Browning Road (49.50 feet wide) and said point of intersection, being located 182.98 feet measured along the center line of Old Browning Road, Southwestwardly from and at right angles from the point of intersection of the Easterly line of lands of Central Airport, Inc., with the Northwesterly line of Browning Road (49.50 feet wide); thence (2) Southwestwardly, curving to the South with a radius of 523.77 feet the arc distance of 61.36 feet to a point in the Southeasterly line of Browning Road (49.50 feet wide); thence (3) South 53 degrees 56 minutes 00 seconds West along the Southeasterly line of Browning Road the distance of 1903.87 feet to a point in the proposed new line of lands of the Camden County Park Commission; thence (4) Westwardly along said new line of lands of Camden County Park Commission, curving to the North with a radius of 2190 feet the arc distance of 30.87 feet to a point and the place of beginning.

It is the intention of the above description to include all of the Southeasterly half of Browning Road between the lateral lines named.

BEGINNING at a point in the center line of Browning Road (49.50 feet wide) and in the proposed new Northerly line of lands of the Camden County Park Commission, said point being distant 401.94 feet Northeastwardly from an angle in Browning Road over Cooper River; thence (1)

Westwardly along the proposed new line of lands of the Camden County Park Commission, curving to the North with a radius of 2190 feet the arc distance of 30.56 feet to a point in the Northwesterly line of Browning Road; thence (2) North 53 degrees 56 minutes 00 seconds East along the Northwesterly line of Browning Road, the distance of 2086.74 feet to the point of intersection of the curved Northwesterly new line of Browning Road (66 feet wide) with the tangent Northwesterly old line of Browning Road (49.50 feet wide) and said point of intersection, being located 92.60 feet Southwestwardly, measured along the old line of Browning Road from the Easterly line of lands of Central Airport, Inc.; thence (3) Southwestwardly curving to the South with a radius of 523.77 feet the arc distance of 93.83 feet to a point in the center line of Browning Road (49.50 feet wide); thence (4) South 53 degrees 56 minutes 00 seconds West along the center line of Browning Road the distance of 1978.42 feet to a point and the place of beginning.

It is the intention of the above description to include all of the Northwesterly half of Browning Road between the lateral lines named.

The above lands are described herein according to survey and plan of proposed dedication and vacation of a portion of Browning Road, Pennsauken Township, Camden County, New Jersey, dated November 29th, 1929, and prepared by Remington, Vosbury & Goff, Civil Engineers.

AND TAKE FURTHER NOTICE that the Board of Chosen Freeholders, in and for the County of Camden in the State of New Jersey, by resolution has designated the twenty-seventh day of December, 1929, at 8:30 o'clock P. M., as the time and the room of the Board of Chosen Freeholders in

the Court House, Camden, New Jersey, as the place when and where a public hearing upon the proposed vacation of said section of Browning Road shall be held; at such time and place any and all objections to the proposed vacation may be presented by any and all person or persons interested therein, and said objections will then be considered by said Board of Chosen Freeholders.

Dated, Camden, N. J., December 11, 1929.

10

FRED W. GEORGE,
Clerk, Board of Chosen Freeholders.

PROOF OF PUBLICATION.

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

20

William H. Jefferys, of full age, being duly sworn according to law, on his oath says: That he is the publisher of the Camden Argus and East Side Press, a weekly newspaper, printed, published and circulated in the City of Camden, County of Camden, and State of New Jersey, and that the Notice of a public hearing on the proposed vacation of a portion of Browning Road, of which the annexed is a true copy, was published in said newspaper on the 12th day of December, A. D. 1929. One insertion

30

only.

Wm. H. Jefferys.

Sworn and subscribed before me this 6th day of January, A. D. 1929.

Horace Scherneck,
Notary Public.

PUBLIC NOTICE.

Take notice that the Board of Chosen Freeholders in and for the County of Camden in the State of New Jersey, will consider the vacation of a portion of Browning Road, being a county road in the County of Camden, and the extinguishment of all public rights therein; said portion of Browning Road to be affected being more particularly described as follows: 10

BEGINNING at a point in the center line of Browning Road (49.50 feet wide) and in the Northerly proposed new line of lands of the Camden County Park Commission, said point being distant 401.94 feet Northeastwardly from an angle in Browning Road over Cooper River; thence (1) North 53 degrees 56 minutes 00 seconds East along the center line of Browning Road, the distance of 1978.42 feet to the point of intersection of the curved Northwesterly new line of Browning Road (66 feet wide) with the center line of Old Browning Road (49.50 feet wide) and said point of intersection, being located 182.98 feet measured along the center line of Old Browning Road, Southwestwardly from and at right angles from the point of intersection of the Easterly line of lands of Central Airport, Inc., with the Northwesterly line of Browning Road (49.50 feet wide); thence (2) Southwestwardly, curving to the South with a radius of 523.77 feet the arc distance of 61.36 feet to a point in the Southeasterly line of Browning Road (49.50 feet wide); thence (3) South 53 degrees 56 minutes 00 seconds West along the Southeasterly line of Browning Road the distance of 1903.87 feet to a point in the proposed new line of lands of the Cam- 20 30

den County Park Commission; thence (4) Westwardly along said new line of lands of Camden County Park Commission, curving to the North with a radius of 2190 feet the arc distance of 30.87 feet to a point and the place of beginning.

It is the intention of the above description to include all of the Southeasterly half of Browning Road between the lateral lines named.

- 10 BEGINNING at a point in the center line of Browning Road (49.50 feet wide) and in the proposed new Northerly line of lands of the Camden County Park Commission, said point being distant 401.94 feet Northeastwardly from an angle in Browning Road over Cooper River; thence (1) Westwardly along the proposed new line of lands of the Camden County Park Commission, curving to the North with a radius of 2190 feet the arc distance of 30.56 feet to a point in the Northwesterly line of Browning Road; thence (2) North 53 degrees 56 minutes 00 seconds East along the Northwesterly line of Browning Road, the distance of 2086.74 feet to the point of intersection of the curved Northwesterly new line of Browning Road (66 feet wide) with the tangent Northwesterly old line of Browning Road (49.50 feet wide) and said point of intersection, being located 92.60 feet Southwestwardly, measured along the old line of Browning Road from the Easterly line of lands of Central Airport, Inc.;
- 20 thence (3) Southwestwardly curving to the South with a radius of 523.77 feet the arc distance of 93.83 feet to a point in the center line of Browning Road (49.50 feet wide); thence (4) South 53 degrees 56 minutes 00 seconds West along the center line of Browning Road the distance of 1978.42 feet to a point and the place of beginning.
- 30

It is the intention of the above description to in-

clude all of the Northwesterly half of Browning Road between the lateral lines named.

The above lands are described herein according to survey and plan of proposed dedication and vacation of a portion of Browning Road, Pennsauken Township, Camden County, New Jersey, dated November 29, 1929, and prepared by Remington, Vosbury & Goff, Civil Engineers.

AND TAKE FURTHER NOTICE that the Board of Chosen Freeholders, in and for the County 10
of Camden in the State of New Jersey, by resolution has designated the twenty-seventh day of December, 1929, at 8.30 o'clock P. M., as the time and the room of the Board of Chosen Freeholders in the Court House, Camden, New Jersey, as the place when and where a public hearing upon the proposed vacation of said section of Browning Road shall be held; at such time and place any and all objections to the proposed vacation may be presented by any and all person or persons interested therein, 20
and said objections will then be considered by said Board of Chosen Freeholders.

FRED W. GEORGE,

Clerk, Board of Chosen Freeholders.

Dated, Camden, N. J., December 11, 1929.

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

30

H. C. Greenwood, of full age, being duly sworn according to law, says, that he is BOOKKEEPER of the MORNING POST and that a Notice, of which the annexed is a true copy, was published in the THE MORNING POST, a newspaper printed and

published daily in the city of Camden, county of Camden, State of New Jersey, once a Day for one day, on the 13th day of December, A. D. 1929.

H. C. Greenwood.

Sworn and subscribed before me this 4th day of January, A. D. 1930.

Alf. Neef,

(Seal)

Notary Public.

10 My Commission Expires December 13, 1933.

PUBLIC NOTICE.

20 Take notice that the Board of Chosen Freeholders in and for the County of Camden in the State of New Jersey, will consider the vacation of a portion of Browning Road, being a County Road in the County of Camden, and the extinguishment of all public rights therein; said portion of Browning Road to be affected being more particularly described as follows:

30 BEGINNING at a point in the center line of Browning Road (49.50 feet wide) and in the Northerly proposed new line of lands of the Camden County Park Commission, said point being distant 401.94 feet Northeastwardly from an angle in Browning Road over Cooper River; thence (1) North 53 degrees 56 minutes 00 seconds East along the center line of Browning Road, the distance of 1978.42 feet to the point of intersection of the curved Northwesternly new line of Browning Road (66 feet wide) with the center line of Old Browning Road (49.50 feet wide) and said point of intersection, being located 182.98 feet measured along the

center line of Old Browning Road, Southwestwardly from and at right angles from the point of intersection of the Easterly line of lands of Central Airport, Inc., with the Northwesternly line of Browning Road (49.50 feet wide); thence (2) Southwestwardly, curving to the South with a radius of 523.77 feet the arc distance of 61.36 feet to a point in the Southeasterly line of Browning Road (49.50 feet wide); thence (3) South 53 degrees 56 minutes 00 seconds West along the Southeasterly line of Browning Road the distance of 1903.87 feet to a point in the proposed new line of lands of the Camden County Park Commission; thence (4) Westwardly along said new line of lands of Camden County Park Commission, curving to the North with a radius of 2190 feet the arc distance of 30.87 feet to a point and the place of beginning. 10

It is the intention of the above description to include all of the Southeasterly half of Browning Road between the lateral lines named. 20

BEGINNING at a point in the center line of Browning Road (49.50 feet wide) and in the proposed new Northerly line of lands of the Camden County Park Commission, said point being distant 401.94 feet Northeastwardly from an angle in Browning Road over Cooper River; thence (1) Westwardly along the proposed new line of lands of the Camden County Park Commission, curving to the North with a radius of 2190 feet the arc distance of 30.56 feet to a point in the Northwesternly line of Browning Road; thence (2) North 53 degrees 56 minutes 00 seconds East along the Northwesternly line of Browning Road, the distance of 2086.74 feet to the point of intersection of the curved Northwesternly new line of Browning Road (66 feet wide) with the tangent Northwesternly old line of Brown- 30

ing Road (49.50 feet wide) and said point of intersection, being located 92.60 feet Southwestwardly, measured along the old line of Browning Road from the Easterly line of lands of Central Airport, Inc.; thence (3) Southwestwardly curving to the South with a radius of 523.77 feet the arc distance of 93.83 feet to a point in the center line of Browning Road (49.50 feet wide); thence (4) South 53 degrees 56 minutes 00 seconds West along the center line of Browning Road the distance of 1978.42 feet to a point and the place of beginning.

It is the intention of the above description to include all of the Northwesterly half of Browning Road between the lateral lines named.

The above lands are described herein according to survey and plan of proposed dedication and vacation of a portion of Browning Road, Pennsauken Township, Camden County, New Jersey, dated November 29, 1929, and prepared by Remington, Vosbury & Goff, Civil Engineers.

AND TAKE FURTHER NOTICE that the Board of Chosen Freeholders, in and for the County of Camden in the State of New Jersey, by resolution has designated the twenty-seventh day of December, 1929, at 8.30 o'clock P. M., as the time and the room of the Board of Chosen Freeholders in the Court House, Camden, New Jersey, as the place when and where a public hearing upon the proposed vacation of said section of Browning Road shall be held; at such time and place any and all objections to the proposed vacation may be presented by any and all person or persons interested therein, and said objections will then be considered by said Board of Chosen Freeholders.

FRED W. GEORGE,

Clerk, Board of Chosen Freeholders.

Dated, Camden, N. J., December 11, 1929.

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

H. C. Greenwood, of full, age, being duly sworn, according to law, says that he is bookkeeper of the EVENING COURIER and that a Notice, of which the annexed is a true copy, was published in the EVENING COURIER, a newspaper printed and published daily in the city of Camden, county of Camden, State of New Jersey, once a Day for one day, on the 13th day of December, A. D. 1929. 10

H. C. Greenwood.

Sworn and subscribed before me this 4th day of January, A. D. 1930.

(Seal)

Alf. Neef,
Notary Public.

20

PUBLIC NOTICE.

Take notice that the Board of Chosen Freeholders in and for the County of Camden in the State of New Jersey, will consider the vacation of a portion of Browning Road, being a County Road in the County of Camden, and the extinguishment of all public rights therein; said portion of Browning Road to be affected being more particularly described as follows: 30

BEGINNING at a point in the center of Browning Road (49.50 feet wide) and in the Northerly proposed new line of lands of the Camden County Park Commission, said point being distant 401.94 feet Northeastwardly from an angle in Browning Road over Cooper River; thence (1)

- North 53 degrees 56 minutes 0 seconds East along the center line of Browning Road, the distance of 1978.42 feet to the point of intersection of the curved Northwesterly new line of Browning Road (66 feet wide) with the center line of Old Browning Road (49.50 feet wide) and said point of intersection, being located 182.98 feet measured along the center line of Old Browning Road, Southwestwardly from and at right angles from the point of intersection of the Easterly line of lands of Central Airport, Inc., with the Northwesterly line of Browning Road (49.50 feet wide); thence (2) Southwestwardly, curving to the South with a radius of 523.77 feet the arc distance of 61.36 feet to a point in the Southeasterly line of Browning Road (49.50 feet wide); thence (3) South 53 degrees 56 minutes 0 seconds West along the Southeasterly line of Browning Road the distance of 1903.87 feet to a point in the proposed new line of lands of the Camden County Park Commission; thence (4) Westwardly along said new line of lands of Camden County Park Commission, curving to the North with a radius of 2190 feet the arc distance of 30.87 feet to a point and the place of beginning.

It is the intention of the above description to include all of the Southeasterly half of Browning Road between the lateral lines named.

- BEGINNING at a point in the center line of Browning Road (49.50 feet wide) and in the proposed new Northerly line of lands of the Camden County Park Commission, said point being distant 401.94 feet Northeastwardly from an angle in Browning Road over Cooper River; thence (1) Westwardly along the proposed new line of lands of the Camden County Park Commission, curving to the North with a radius of 2190 feet the arc

distance of 30.56 feet to a point in the Northwesterly line of Browning Road; thence (2) North 53 degrees 56 minutes 0 seconds East along the Northwesterly line of Browning Road, the distance of 2086.74 feet to the point of intersection of the curved Northwesterly new line of Browning Road (66 feet wide) with the tangent Northwesterly old line of Browning Road (49.50 feet wide) and said point of intersection, being located 92.60 feet Southwestwardly, measured along the old line of Browning Road from the Easterly line of lands of Central Airport, Inc.; thence (3) Southwestwardly curving to the South with a radius of 523.77 feet the arc distance of 93.83 feet to a point in the center line of Browning Road (49.50 feet wide); thence (4) South 53 degrees 56 minutes 0 seconds West along the center line of Browning Road the distance of 1978.42 feet to a point and the place of beginning. 10

It is the intention of the above description to include all of the Northwesterly half of Browning Road between the lateral lines named. 20

The above lands are described herein according to survey and plan of proposed dedication and vacation of a portion of Browning Road, Pennsauken Township, Camden County, New Jersey, dated November 29, 1929, and prepared by Remington, Vosbury & Goff, Civil Engineers.

AND TAKE FURTHER NOTICE that the Board of Chosen Freeholders, in and for the County of Camden in the State of New Jersey, by resolution has designated the twenty-seventh day of December, 1929, at 8.30 o'clock P. M., as the time and the room of the Board of Chosen Freeholders in the Court House, Camden, New Jersey, as the place when and where a public hearing upon the proposed vacation of said section of Browning Road shall 30

be held; at such time and place any and all objections to the proposed vacation may be presented by any and all person or persons interested therein, and said objections will then be considered by said Board of Chosen Freeholders.

FRED W. GEORGE,

Clerk, Board of Chosen Freeholders.

Dated, December 11, 1929, Camden, N. J.

10

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

20 Claud P. Strawly, of full age, being duly sworn, according to law, says that he is Treasurer of THE BREEZE, a public newspaper, printed and published in the town of Berlin, in the County of Camden and State of New Jersey; that a notice, of which the annexed is a true copy, was published in said newspaper on Dec. 12, 1929, and continued therein for _____ weeks successively thereafter, at least once each week, to wit: Dec. 12, 1929, making in all 1 publications.

Sworn and subscribed before me this 23 day of Dec., A. D. 1929.

H. H. Chambosse,

Notary Public.

30

(Seal)

Commission expires Feb. 7th, 1932.

WHEREAS, Notice has been received from the Clerk of the Board of Chosen Freeholders of the County of Camden that it is the intention of said

Board to consider a resolution providing for the vacation of portions of Browning Road, hereinafter described, being in the Township of Pennsauken, and the extinguishment of any and all public rights therein, at a meeting to be held on December 27th, 1929, at 8:30 P. M.; and

WHEREAS, it is necessary that the Township Committee consent thereto, prior to the adoption of any resolution by said Board effecting said vacation of the portions of said road and the extinguishment of any and all public rights therein; and 10

WHEREAS, the Township Committee is informed that the portions of Browning Road proposed to be vacated, as aforesaid, will be kept open for public travel until such time as certain lands about to be dedicated to the County of Camden for a new road, located East of the portions of the existing road proposed to be vacated, have been paved and connected to the road to be laid out, constructed and paved by the Camden County Park Commission along the North and East Bank of the Cooper River; and 20

WHEREAS, The Township Committee is of the opinion that it is for the best interest of the Township that such consent be given for the reasons as contained in the Notice referred to in paragraph one hereof, and other similar reasons; and

WHEREAS, the portions of Browning Road proposed to be vacated and any and all public rights therein extinguished, as aforesaid, are described as follows: 30

BEGINNING at a point in the center line of Browning Road (49.50 feet wide) and in the Northerly proposed new line of lands of the Camden County Park Commission, said point being distant 401.94 feet Northeastwardly from an angle

- in Browning Road over Cooper River; thence (1) North 53 degrees 56 minutes 00 seconds East along the center line of Browning Road, the distance of 1978.42 feet to the point of intersection of the curved Northwesterly new line of Browning Road (66 feet wide) with the center line of Old Browning Road (49.50 feet wide) and said point of intersection, being located 182.98 feet measured along the center line of Old Browning Road, Southwestwardly
- 10 from and at right angles from the point of intersection of the Easterly line of lands of Central Airport, Inc., with the Northwesterly line of Browning Road (49.50 feet wide); thence (2) Southwestwardly, curving to the South with a radius of 523.77 feet the arc distance of 61.36 feet to a point in the Southeasterly line of Browning Road (49.50 feet wide); thence (3) South 53 degrees 56 minutes 00 seconds West along the Southeasterly line of Browning Road the distance of 1903.87 feet to a
- 20 point in the proposed new line of lands of the Camden County Park Commission; thence (4) Westwardly along said new line of lands of Camden County Park Commission, curving to the North with a radius of 2190 feet the arc distance of 30.87 feet to a point and the place of beginning.

It is the intention of the above description to include all of the Southeasterly half of Browning Road between the lateral lines named.

- 30 BEGINNING at a point in the center line of Browning Road (49.50 feet wide) and in the proposed new Northerly line of lands of the Camden County Park Commission, said point being distant 401.94 feet Northeastwardly from an angle in Browning Road over Cooper River; thence (1) Westwardly along the proposed new line of lands of the Camden County Park Commission, curving

to the North with a radius of 2190 feet the arc distance of 30.56 feet to a point in the Northwesterly line of Browning Road; thence (2) North 53 degrees 56 minutes 00 seconds East along the Northwesterly line of Browning Road, the distance of 2086.74 feet to the point of intersection of the curved Northwesterly new line of Browning Road (66 feet wide) with the tangent Northwesterly old line of Browning Road (49.50 feet wide) and said point of intersection, being located 92.60 feet Southwestwardly, 10 measured along the old line of Browning Road from the Easterly line of lands of Central Airport, Inc.; thence (3) Southwestwardly curving to the South with a radius of 523.77 feet the arc distance of 93.83 feet to a point in the center line of Browning Road (49.50 feet wide); thence (4) South 53 degrees 56 minutes 00 seconds West along the center line of Browning Road the distance of 1978.42 feet to a point and the place of beginning.

It is the intention of the above description to include all of the Northwesterly half of Browning Road between the lateral lines named. 20

The above lands are described herein according to survey and plan of proposed dedication and vacation of a portion of Browning Road, Pennsauken Township, Camden County, New Jersey, dated November 29th, 1929, and prepared by Remington, Vosbury & Goff, Civil Engineers.

NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Pennsauken, in the County of Camden, New Jersey, that consent be and is hereby given to the vacation by the Board of Chosen Freeholders of the County of Camden to the portions of Browning Road hereinbefore described, same being located in the Township of Pennsauken, and the extinguishment of any and all public rights therein. 30

BE IT FURTHER RESOLVED that this consent shall be evidenced by a certified copy of this resolution to be presented to the Clerk of the Board of Chosen Freeholders of the County of Camden aforesaid on or before said meeting of December 27th.

10 I, Robert V. Peabody, Township Clerk of the Township of Pennsauken, in the County of Camden and State of New Jersey, hereby certify the foregoing is a true and exact copy of a resolution passed by the Township Committee of the Township of Pennsauken at an adjourned regular meeting held on the 23rd day of December, A. D. 1929.

Given under my hand and the Official Seal of the Township of Pennsauken this 26th day of December, A. D. 1929.

20

Robert V. Peabody,
Township Clerk.

30 I, FRED W. GEORGE, Clerk of the Board of Chosen Freeholders in and for the County of Camden, in the State of New Jersey, hereby certify that the annexed copy of resolution is a true and exact copy of the resolution filed with me, as Clerk of this Board, by Robert V. Peabody, Township Clerk of the Township of Pennsauken, in the County of Camden and State of New Jersey, on the 27th day of December, 1929.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official seal of this Board, this Ninth day of January, 1930.

(Seal) Fred W. George,
Clerk, Board of Chosen Freeholders.

WHEREAS, at a regular meeting of this Board, held December 11th, 1929, a resolution was adopted providing that at this meeting the proposed vacation of a section of the road known as Browning Road, being a County Road in the County of Camden, would be considered; and

WHEREAS, thereafter, a certified copy of said resolution was duly filed in the office of the County Clerk of the County of Camden, and public notice was duly given under the terms of the Act hereinafter referred to, which said notice stated that at this meeting the vacation of the portion of said Browning Road hereinafter referred to would be considered, and that any and all objections to the same would be heard and considered by this Board at a meeting to be held on the 27th day of December, 1929, at 8:30 o'clock P. M. in the room of the Board of Chosen Freeholders in the Court House, Camden, New Jersey; and said notice was duly advertised under the terms of said resolution and the statute in such case made and provided in the official newspapers of this Board at least ten days before the holding of this meeting, and proofs of said publication have been duly filed with the Clerk of this Board; and

WHEREAS, this Board has heard and considered all objections made at this meeting to the proposed vacation; and

WHEREAS, the Township Committee of the Township of Pennsauken, being the municipality in which the said section of Browning Road hereinafter described is situate, has been given notice, pursuant to provisions of Chapter 195, P. L. 1928, and has duly filed in writing, with the Clerk of this Board, its consent to the vacation of said section of Browning Road hereinafter provided for:

NOW, THEREFORE, BE IT RESOLVED by

the Board of Chosen Freeholders in and for the County of Camden in the State of New Jersey, that by virtue of the power and authority vested in it by Chapter 185, P. L. 1918, and the amendments thereof and supplements thereto, that that section of Browning Road, being a County Road under the jurisdiction of this Board, hereinafter described, be and the same is hereby vacated and all public rights therein released and extinguished from any previous dedication no matter how acquired. The said section of Browning Road so vacated being more particularly described as follows:

Beginning at a point in the center line of Browning Road (49.50 feet wide) and in the Northerly proposed new line of lands of the Camden County Park Commission, said point being distant 401.94 feet Northeastwardly from an angle in Browning Road over Cooper River; thence (1) North 53 degrees, 56 minutes 00 seconds East along the center line of Browning Road, the distance of 1978.42 feet to the point of intersection of the curved Northwesterly new line of Browning Road (66 feet wide) with the center line of Old Browning Road (49.50 feet wide) and said point of intersection, being located 182.98 feet measured along the center line of Old Browning Road, Southwestwardly from and at right angles from the point of intersection of the Easterly line of lands of Central Airport, Inc., with the Northwesterly line of Browning Road (49.50 feet wide); thence (2) Southwestwardly, curving to the South with a radius of 523.77 feet the arc distance of 61.36 feet to a point in the Southeasterly line of Browning Road (49.50 feet wide); thence (3) South 53 degrees 56 minutes 00 seconds West along the Southeasterly line of Browning Road

the distance of 1903.87 feet to a point in the proposed new line of lands of the Camden County Park Commission; thence (4) Westwardly along said new line of lands of Camden County Park Commission, curving to the North with a radius of 2190 feet the arc distance of 30.87 feet to a point and the place of beginning.

It is the intention of the above description to include all of the Southeasterly half of Browning Road between the lateral lines 10 named.

BEGINNING at a point in the center line of Browning Road (49.50 feet wide) and in the proposed new Northerly line of lands of the Camden County Park Commission, said point being distant 401.94 feet Northeastwardly from an angle in Browning Road over Cooper River; thence (1) Westwardly along the proposed new line of lands of the Camden County Park Commission, curving to the North with a radius 20 of 2190 feet the arc distance of 30.56 feet to a point in the Northwesterly line of Browning Road; thence (2) North 53 degrees 56 minutes 00 seconds East along the Northwesterly line of Browning Road, the distance of 2086.74 feet to the point of intersection of the curved Northwesterly new line of Browning Road (66 feet wide) with the tangent Northwesterly old line of Browning Road (49.50 feet wide) and said point of intersection, being located 92.60 30 feet Southwestwardly, measured along the old line of Browning Road from the Easterly line of lands of Central Airport, Inc., thence (3) Southwestwardly curving to the South with a radius of 523.77 feet the arc distance of 93.83 feet to a point in the center line of Browning Road (49.50 feet wide); thence (4) South 53 de-

grees 56 minutes 00 seconds West along the center line of Browning Road the distance of 1978.42 feet to a point and the place of beginning.

It is the intention of the above description to include all of the Northwesterly half of Browning Road between the lateral lines named.

10 The above lands are described herein according to survey and plan of proposed dedication and vacation of a portion of Browning Road, Pennsauken Township, Camden County, New Jersey, dated November 29th, 1929, and prepared by Remington, Vosbury & Goff, Civil Engineers.

AND BE IT FURTHER RESOLVED that the Clerk of this Board be and he is hereby authorized and instructed to file a certified copy of this resolution with the County Clerk of the County of Camden, within ten days after the date hereof.

20

CLERK'S CERTIFICATE.

I, FRED W. GEORGE, Clerk of the Board of Chosen Freeholders in and for the County of Camden in the State of New Jersey, hereby certify that the annexed copy of resolution is a true and correct
30 copy of the original resolution passed by the said Board at a special meeting held on the 27th day of December, 1929.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of this Board, this day of January, 1930.

(Seal) Fred W. George,
Clerk, Board of Chosen Freeholders.

STATE OF NEW JERSEY }
COUNTY OF CAMDEN } ss.

FRED W. GEORGE, of full age, being duly sworn according to law on his oath, deposes and says that on the 12th day of December, 1929, he, as Clerk of the Board of Chosen Freeholders in and for the County of Camden in the State of New Jersey, filed with Charles F. Wise, County Clerk of the County of Camden, a certified copy of the resolution adopted by the said Board of Chosen Freeholders at a regular meeting held on the 11th day of December, 1929, which resolution provided for the consideration of a resolution to vacate a section of Browning Road, and which resolution has been heretofore set out in full. 10

Deponent further says that on the 28th day of December, 1929, he filed with the said County Clerk a certified copy of the resolution adopted by the said Board at a special meeting held on the 27th day of December, which resolution provided for the vacation of a section of Browning Road as aforesaid, and which resolution has been heretofore set out in full. 20

Fred W. George.

Sworn to and subscribed
before me this 9th day
of January, A. D. 1930.

R. S. Matlack

N. P. of N. J.

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WHEREAS this Board has heretofore vacated a certain portion of Browning Road in the Township of Pennsauken, being a County Road, in order

that the same may be used in connection with the development of the Airport in the County of Camden; and

WHEREAS in connection with said vacation certain agreements were made on behalf of Central Airport, Inc., and Central Airport Development Company, owners of the Airport in question, which agreements are as set forth in the memorandum of agreement between the said companies and the
10 County of Camden, a copy of which agreement is annexed hereto and made a part of this Resolution;

NOW, THEREFORE, BE IT RESOLVED by the Board of Chosen Freeholders in and for the County of Camden in the State of New Jersey, that the Director and Clerk of this Board be and they are hereby authorized and instructed to execute the memorandum of agreement between the Central Airport, Inc., Central Airport Development Com-
20 pany, and the County of Camden, a copy of which agreement is hereto annexed and made a part hereof, in order that the terms thereof may be binding upon the County of Camden.

MEMORANDUM OF AGREEMENT, between CENTRAL AIRPORT, INC., a corporation of the State of Delaware, and CENTRAL AIRPORT DEVELOPMENT COMPANY, a corporation of the State of N. J., as parties of the first part, and the COUNTY OF CAMDEN, a municipal corporation
30 of the State of New Jersey, as party of the second part.

1. The parties of the first part agree to dedicate to the party of the second part, a sixty-six (66) foot right of way to be used as a County Road, the description of said sixty-six (66) foot right of way to be deeded and dedicated being as follows:

BEGINNING at a point in the Southeasterly line of Browning Road 49.50 feet Southeastwardly from and at right angles to the point of intersection of the Easterly line of lands of Central Airport, Inc., with the Northwesterly line of Browning Road; thence (1) South thirty-six degrees 04 minutes 00 seconds West at right angles to Browning Road the distance of 8.25 feet to a point of curve; thence (2) Southwestwardly curving to the South with a radius of 457.77 feet the arc distance of 431.91 feet to a point of tangency; thence (3) South 0 degrees 07 minutes 33 seconds East the tangent distance of 1054.00 feet to a point of curve; thence (4) Southeastwardly curving to the East with a radius of 101.86 feet the arc distance of 132.58 feet to a point of connection in the line of lands of the Camden County Park Commission; thence (5) Westwardly along the line of lands of the Camden County Park Commission, curving to the South with a radius of 1050 feet the arc distance of 129.58 feet to a point of tangency; thence (6) North 81 degrees 46 minutes 16 seconds West along the proposed new line of lands of Camden County Park Commission the tangent distance of 83.65 feet to a point of curve; thence (7) Northeastwardly and curving to the North with a radius of 60 feet the arc distance of 103.00 feet to a point of tangency; thence (8) North 0 degrees, 07 minutes, 33 seconds West parallel with and distant 66 feet Westward at right angles from the third course herein the tangent distance of 1054.00 feet to a point of curve; thence (9) Northeastwardly curving to the East with a radius of 523.77 feet and concentric with the second course the arc distance of 245.91 feet to a point in the

tangent Southeasterly line of Browning Road (49.50 feet wide); thence (10) North 53 degrees 56 minutes 00 seconds East along the Southeasterly line of Browning Road the tangent distance of 239.08 feet to a point and the place of beginning.

10 BEGINNING at a point in the Northwesterly line of Browning Road (49.50 feet wide) where the same is intersected by the Easterly line of lands of Central Airport, Inc., thence (1) South 53 degrees 56 minutes 00 seconds West along the Northwesterly line of Browning Road (49.50 feet wide) the distance of 92.60 feet to its intersection with the curved Northwesterly new line of Browning Road (66 feet wide); thence (2) Northeastwardly along the new line of Browning Road, curving to the East with a radius of 523.77 feet the arc distance of 93.09 feet to a point of tangency; thence (3) North 53 degrees 56 minutes 00 seconds East and still
20 along the Northwesterly new line of Browning Road the tangent distance of 4.99 feet to a point in the Easterly line of lands of Central Airport, Inc., thence (4) South 4 degrees, 53 minutes 00 seconds East along the Easterly line of Central Airport, Inc., the distance of 9.64 feet to a point in the Northwesterly line of Browning Road (49.50 feet wide) and the place of beginning.

30 The above lands are described herein according to survey and plan of proposed dedication and vacation of a portion of Browning Road, Pennsauken Township, Camden County, New Jersey, dated November 29th, 1929, and prepared by Remington, Vosbury & Goff, Civil Engineers.

2. The party of the second part agrees to grade

the new road referred to in item one above and to pave and maintain the same after the establishment and improvement of said road in accordance with item three hereof.

3. It is understood and agreed between the parties hereto that the parties of the first part will grant to the party of the second part the right to continue to use Browning Road, as constituted, from the date of the signing of this memorandum of agreement until such time as the Camden County Park Commission has actually laid out, constructed and paved a new boulevard or road along the North or East bank of Cooper River, connecting the bridge across the Cooper River at Browning Road with the new road as dedicated by the parties of the first part and hereinabove described. Upon the completion of said boulevard by the Camden County Park Commission, the party of the second part shall grade, build and construct the new road as particularly described in item one hereof, and upon the completion of the improvement of said new road the parties of the first part shall then have the right to remove all physical evidences of the County Road from that section of Browning Road hereafter vacated by the County of Camden.

4. It is further understood and agreed between the parties hereto that in the event of any litigation affecting the Resolution of the County of Camden to be adopted, or in any way attempted to be adopted, in connection with the proposed vacation of Browning Road, or in the event of any litigation affecting the legality of the procedure in connection therewith, the party of the second part will defend said litigation, and the expense of said litigation,

exclusive of counsel fees, shall be borne by the parties of the first part herein.

IN WITNESS WHEREOF, the various parties hereto have caused these presents to be signed by their respective officers, and have hereunto affixed their respective corporate seals. Dated this day of December, A. D. Nineteen Hundred and Twenty-nine.

Signed, Sealed and
10 Delivered in the
Presence of

CENTRAL AIRPORT, INC.,
a corporation of Delaware.

BY
President.

ATTEST:

.....

Secretary.

20

CENTRAL AIRPORT DEVELOP-
MENT COMPANY, a corporation
of N. J.

BY
President.

ATTEST:

.....

Secretary.

COUNTY OF CAMDEN, a
municipal corporation of
New Jersey

30

BY
Director, Board of Chosen
Freeholders.

ATTEST:

.....

Clerk, Board of Chosen
Freeholders.

CLERK'S CERTIFICATE.

I, FRED W. GEORGE, Clerk of the Board of Chosen Freeholders in and for the County of Camden, in the State of New Jersey hereby certify that the annexed copy of resolution is a true and exact copy of the resolution adopted by this Board at a special meeting held on the 27th day of December, 1929, and that the copy of agreement made by and between Central Airport, Inc., Central Airport Development Company and the County of Camden, which is annexed to the said resolution and made a part thereof, is a true and exact copy of the agreement which is on file in my office. 10

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of this Board, this 9th day of January, 1930.

Fred W. George,
Clerk, Board of Chosen Freeholders. 20

(Seal)

EXHIBIT R1.
for Respondents.

STATE OF NEW JERSEY }
COUNTY OF CAMDEN } ss.

W. E. Barto, of Camden, N. J., of full age, being 30
duly sworn according to law, deposes and says:

That he is Vice-President and Secretary of the West Jersey Title and Guaranty Company, and that said Company has in its possession, duly executed and acknowledged, the eleven instruments mentioned in Escrow Agreement dated December, 1929, relat-

ing to the vacation of Browning Road and other matters, signed by Central Airport Development Company, Bridge Circle Estates, Inc., Hurley Realty Company, Camden County Park Commission and Central Airport, Inc., and that said Title Company is to hold these instruments for delivery and record in accordance with the terms of said Escrow Agreement.

10 And this deponent further says that this Company also has in its possession an additional Deed from Central Airport Development Company to County Park Commission of the County of Camden, covering a small triangular lot in Delaware Township, of about five-eighths of an acre in Delaware Township, adjoining and appurtenant to deed being Item No. 1 in the Escrow Agreement, which is held by this Company in escrow, together with the instruments named in the Escrow Agreement,
20 Development Company, dated January 3, 1930.

W. E. Barto

Sworn and subscribed before me
this 9th day of January, A. D.
1930.

Clement R. Lippincott
Notary Public of N. J.

EXHIBIT R1a
for Respondents.

COPY

LUDINGTON MANAGEMENT, INC., OF N. J.
Camden, New Jersey, 10
January 3, 1930.

App. 59527.

In Re: CENTRAL AIRPORT DEVELOPMENT
CO.

West Jersey Title & Guaranty Co.,
Third and Market Streets,
Camden, New Jersey.

Gentlemen: Attention: Mr. W. E. Barto.

Herewith I am enclosing you Deed of Central
Airport Development Company to County Park 20
Commission of the County of Camden for the tri-
angle on the King tract, which I presume is to be
held in escrow together with the other Deeds which
have been delivered either by Mr. Savage, Mr.
Schefflen, or Mr. Morse Archer, Jr.

I wish to take this opportunity of thanking you
for the valuable services you have rendered us in
this and other transactions to date, and assure you
of our appreciation of your co-operation.

Very truly yours, 30
CENTRAL AIRPORT DEVELOPMENT CO.
(Signed) J. W. Markeim,
Secretary.

JWM:A
Encl.

EXHIBIT R1b.
for Respondents.

COPY

ESCROW AGREEMENT

10 West Jersey Title and Guaranty Company,
Camden,
New Jersey.
Gentlemen:

The undersigned parties herewith deliver to you
in escrow, the following instruments:

- (1) Deed Central Airport Development Company
to Park Commission, covering part of King
Tract.
- 20 (2) Release of Mortgage covering tract in No. 1,
Girard Trust Company, Trustee, to
Grantor.
- (3) Deed Central Airport Development Company
to County of Camden, covering New Brown-
ing Road, 66 feet wd.
- (4) Central Airport, Inc. to County of Camden,
covering corner of new Browning Road.
- (5) Deed from Camden County Park Commission
to Hurley Realty Company, releasing Park
land.
- 30 (6) Deed from Central Airport, Inc. to Park Com-
mission, covering parts of Elmer Thomas
and Elwood Moore tracts.
- (7) Deed from Bridge Circle Estates, Inc. to
Park Commission covering land along
Cooper River and Kaighn Avenue.
- (8) Release of Mortgage from W. S. Thomas to

- Bridge Circle Estates, covering land mentioned in No. 7.
- (9) Deed Hurley Realty Company to Central Airport Development Company, for same as No. 5.
 - (10) Collateral Mortgage and accompanying Bond, Central Airport Development Company to Hurley Realty Company, for same as No. 5.
 - (11) Grant of temporary right of way over 10
vacated portion of Browning Road, Central Airport, Inc., and Central Airport Development Co. to County of Camden.

These deeds &c. are delivered pursuant to agreements between certain of the parties hereto, made for the purpose of developing and enlarging the Camden County system of parks, and also of establishing, developing and maintaining an airport of such size and character as to be eligible for the highest 20
rating under the classification and regulation of the United States Government, as substantially set forth in a letter of October 4, 1929, from Central Airport, Inc. to the President and Members of the Camden County Park Commission, as supplemented by an agreement on the part of the Camden County Park Commission to keep and maintain the proposed road to the North and West of Cooper River along its banks over the lands covered by the deeds aforesaid at a level not above that of Contour No. 7, and 30
to fill in the land of Central Airport Development Company lying immediately adjacent to the proposed park boundary to a height of at least four and one half feet above the level of Contour 7, where the 500 feet wide "runways" for airplanes approach said boundary, and in Memorandum of Agreement

between Central Airport, Inc. and Central Airport Development Company, of the first part, and County of Camden, of the second part, dated December 1929.

- 10 In order to effectuate these purposes, instruments above numbered three, four and eleven, are to be delivered by you and recorded upon the vacation in proper legal fashion of those portions of Browning Road as set forth in the said last mentioned agreement, and the remainder of said instruments hereinabove described are to be delivered by you and recorded upon the legal confirmation by legislation or otherwise of the title to land to be conveyed from the Park Commission to Hurley Realty Company and by it in turn to Central Airport Development Company by deeds above mentioned. Parts of lines 7, 8 & 9 struck out before execution.

20 CAMDEN COUNTY PARK COMMISSION

By J. F. Wallworth,

President

(SEAL OF COMMISSION)

Z. M. Castor, Secy.

CENTRAL AIRPORT, Inc.

By: R. Sanford Saltus, Jr.

Vice-President.

(SEAL OF CENTRAL AIRPORT)

J. William Markeim, Secy.

30 CENTRAL AIRPORT
DEVELOPMENT COMPANY

By: C. Townsend Ludington,

Vice President.

(SEAL OF COMPANY)

J. William Markeim, Secy.

BRIDGE CIRCLE ESTATES, INC.

By: William C. Roberts,
Vice President

(SEAL OF BRIDGE CIRCLE &C.)

J. William Markeim, Secy.

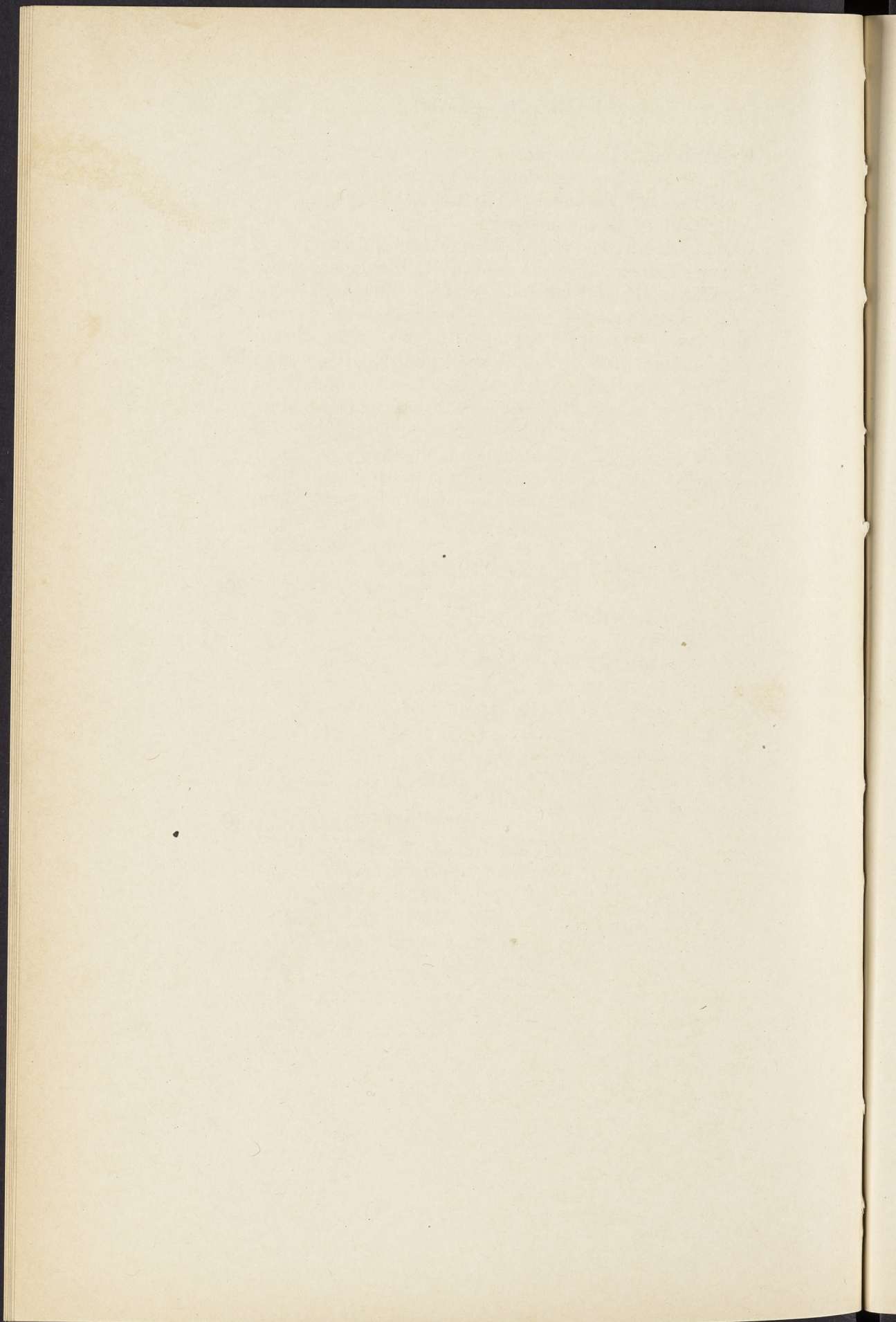
HURLEY REALTY COMPANY:

Jerome Hurley, Pres. Wm. H. Atkinson, Secy
(SEAL OF HURLEY REALTY COMPANY)

10

20

30



NEW JERSEY COURT OF ERRORS AND
APPEALS.

WILMAR COMPANY, a corporation
of New Jersey,
Prosecutor-Appellant,

v.

COUNTY OF CAMDEN, BOARD OF CHOSEN FREEHOLDERS
OF COUNTY OF CAMDEN, LESLIE H. EWING, Direc-
tor, and FRED W. GEORGE, Clerk of Board of
Chosen Freeholders of County of Camden,
Defendants-Respondents.

WILMAR COMPANY, a corporation
of New Jersey,
Prosecutor-Appellant,

v.

COUNTY OF CAMDEN, BOARD OF CHOSEN FREEHOLDERS
OF COUNTY OF CAMDEN, LESLIE H. EWING, Direc-
tor; FRED W. GEORGE, Clerk of Board of
Chosen Freeholders of County of Camden; CEN-
TRAL AIRPORT, INC., a corporation of Delaware,
and CENTRAL AIRPORT DEVELOPMENT COMPANY,
a corporation of the State of New Jersey,
Defendants-Respondents.

BRIEF FOR PROSECUTOR.

ABSTRACT OF THE FACTS.

These two cases are on writs of certiorari to review certain action of the Board of Chosen Freeholders of Camden County. One proceeding is directed to a resolution affecting a portion of Browning Road, a county highway in the County of Camden. The other proceeding is directed to a resolution predicated upon the prior vacation of the road under which the County of Camden was authorized to execute an agreement with Central Airport, Inc., and Central Airport Development Company, whereby these corporations dedicated a strip of land for use as a public highway, and under which agreements the land covered by the attempted vacation was to be kept open for public travel, notwithstanding the vacation proceedings. The details of these resolutions and of the subject-matter thereof, will be discussed at greater length in the brief.

The applications for these writs were presented at the January Term, and the Court concluded that there were legally debatable questions presented which justified the issuance of the writs (Opinion in State of Case, p. 42).

By stipulation, the testimony taken on the rules to show cause was agreed to be considered as taken in connection with the writs of certiorari. The Supreme Court dismissed the writs, the opinion being delivered by Mr. Justice Bodine.

It appears from the evidence that Browning Road was originally laid out in 1854 and established by surveyors, whose return under the then existing

statute was recorded in that year (Case, p. 125). Some time subsequent to the making of such return, the exact date not being shown, the road was taken over by Camden County as a county road (Case, pp. 125-127). The lines of the road at the time of the adoption of the vacation resolution, and as the road still remains, were identical with the lines of the road established in 1854 (Case, p. 125), so that the road as existing at the time of the vacation proceedings had been used for approximately seventy-five years.

The prosecutor, Wilmar Corporation, purchased land abutting on Browning Road in 1925, at the time of which purchase the land of which it is the owner was laid out in building lots and it acquired and still owns approximately one hundred and forty lots, many of which abut on Browning Road and others of which abut on streets opening from Browning Road (Case, pp. 80-81-186). The prosecutor's land is thus a building lot development proposition and directly adjoins the lands of Central Airport, hereafter referred to (Case, p. 171, Exhibit R-1D). Exhibit P2 is a map of prosecutor's property; Exhibits 3, 4 and 5 are pictures of Browning Road at the point in question. (They are particularly described at pages 83 to 89 of the Case.) The gas station and houses on the right in P3 are on lots shown on Exhibit P2, but are not now owned by the prosecutor. This picture faces in the direction of the vacated portion of the road. The large tree shown on the right of Browning Road in this picture is on prosecutor's land. Exhibit P4 was taken at the point of junction of prosecutor's land on the right and shows the airport land enclosed within a

wire fence. This portion of the road is vacated. Exhibit P5 was taken at the point of the rise shown on P4 and shows more of the road which is vacated. The vacation extends to the foot of the hill shown in this picture, overlooking Cooper Creek or Cooper River, which does not show in the picture. The houses in the distance are beyond Cooper River in the Borough of Collingswood. Prosecutor's land consists of about $11\frac{1}{2}$ acres or 144 lots. About $3\frac{1}{2}$ acres are low, the rest high land (Case, pp. 101-102, 82-83).

It appears Browning Road connects the Borough of Merchantville with the Borough of Collingswood, running from the former Camden and Moorestown Turnpike to the Camden and Haddonfield Turnpike. These communities are of long standing and have recently increased considerably in population, the lines of their growth extending southwest from Merchantville toward Collingswood and northeast from Collingswood toward Merchantville. Between these two boroughs is the Township of Pennsauken, and Merchantville has grown along Browning Road toward Collingswood to a considerable extent in Pennsauken Township. There was considerable evidence as to the character of the neighborhood (Case, pp. 93 to 100, 131 to 136, 139 to 141). There are some buildings on Browning Road on lots previously sold out of the tract of which the prosecutor now owns the remaining lots, but there are actually no buildings on the lands of the prosecutor.

From the evidence of the county engineer and the map of county roads introduced in evidence, with the exception of the new State Highway, known as the "Crescent Boulevard," Browning Road is the

first road outside of Camden cutting across from one suburban community to another, and the road nearest to Camden which enables persons to cut across country without going into the City of Camden. Browning Road and its extension at the present time now runs from River Road in Pennsauken Township to Merchantville; through Merchantville again to Pennsauken Township; through Pennsauken Township to Collingswood and in Collingswood connects with Collings Avenue a short distance from the White Horse Pike. It, therefore, permits one from any of the main highways of River Road, Maple Avenue or Moorestown Pike, Marlton Pike, Haddon Avenue or Haddonfield Pike to reach the White Horse Pike, one of the main arteries of travel in the State. The road has been used for generations for cross-traffic of this nature. The use of the road at the present time is referred to in the Case at pp. 110 and 143, 144, 145.

The next road cutting across country beyond Browning Road is known as the Haddonfield and Sorrel Horse Road, which runs in the same general direction as Browning Road, but quite some distance farther from Camden. The latter road connects with the Kings Highway, which also is a cross-country road, in many places at a much greater distance from Camden than the Haddonfield and Sorrel Horse Road. These cross roads were the only means by which travel could cut across the northerly portion of Camden County without going into Camden City until the recent construction made by the State Highway Department.

After prosecutor purchased its land, the State of New Jersey constructed what is designated in the

testimony as "Crescent Boulevard" and the "Bridge Connecting Road," which are shown on the map. These roads were constructed by the State of New Jersey through its State Highway Commission at a very large expense. Crescent Boulevard, as appears from the county map, takes up from the Burlington Pike in a southwesterly direction, connecting with the White Horse Pike. While it is possible to reach this road from Merchantville and Collingswood, yet Crescent Boulevard is not as near to the central portions of Merchantville and Collingswood as Browning Road is. There was no evidence nor intimation in the testimony that the State Highway Department was consulted regarding the proposed vacation of a part of Browning Road, and no indication that there would not be objection by the State to such procedure. We wish to suggest that whether the State has a right to object to the vacation of Browning Road or not, public policy would require all intersecting roads to be kept open in order to enable the new State Highways to fulfill their purpose without unduly burdening them by the termination of pre-existing lines of communication. The county road map is in evidence (Exhibit P6). It shows the road in question and other roads in that section of the county. The county engineer testified regarding distances and locations of the various roads, at some length (Case, pp. 112 to 126). It should be noted that county counsel and the witness, Freeman, both fell into error respecting the distance of Browning Road from the new Crescent Boulevard. These are not 300 feet apart, as stated at pp. 60, 61, but much further (Case, pp. 106, 112, 113 and Exhibit P6).

Without further elaboration of the facts shown by the map, we will refer to Exhibit P2, showing the plan of property, the road map, Exhibit P6, above referred to, a plan, Exhibit P8 (explained, Case, pp. 141 to 143), showing Browning Road from Merchantville to Collingswood with the building lot developments now adjoining the airport in the neighborhood of the proposed vacation, the three pictures, Exhibits P3, P4 and P5, showing the character of the road and its improved condition at the present time, and also the map attached to the resolution in question (Exhibit P7), and the map (Exhibit R-1D).

Some time after Wilmar Corporation purchased its land, Central Airport, Inc., and Central Airport Development Company acquired very considerable acreage adjoining on both sides of Browning Road. This was in the year 1928. The land enclosed by Browning Road, Kaighn Avenue, Crescent Boulevard and Cooper's Creek, with the sole exception of the land owned by prosecutor (and the lots in prosecutor's tract which are in the hands of others), is owned by the Airport and devoted to airport uses at the present time.

In August of 1929, Central Airport and Central Airport Development Company presented a petition to the Board of Chosen Freeholders which appears in the State of the Case, at page 192. This petition recited, among other things, that it was the purpose of the airport to have its airport classified by the United States Government as an 1-A-1 airport and that to carry out that purpose it was necessary that land to the east of Browning Road, which is the land of Central Airport Development Company, become a part of the airport, and, therefore, prayed that the

Board of Freeholders would adopt a resolution vacating a portion of Browning Road and accept the dedication of certain lands of the petitioner in lieu of such vacated road.

The first action which was taken on this petition by the Board of Freeholders was on December 11, 1929, at which time a resolution (Case, p. 194), was passed reciting the establishment of the airport, the ownership of lands on both sides of Browning Road by the two interested corporations; that in order to fulfill the requirements of the United States for a A-1-A rating for said airport, it was necessary that the runways of the airport should have a length which could not be obtained in view of the present position of Browning Road, but which could be obtained by vacating a portion thereof and laying out a new road; reciting that the Board deemed it advisable to do everything in its power to help the development of the airport and resolved that the Board would consider the proposed resolution for vacation and directed that a notice be given of a meeting to be held on December 27, for the purpose of hearing objections to the vacation. A notice (Case, p. 200), was given providing that the Board of Freeholders would consider the vacation of a portion of Browning Road as described in said notice and the extinguishment of all public rights therein, and that a public hearing would be held upon the proposed vacation on December 27, 1929, at which time objections could be made.

There was presented at the meeting on December 27, a consent (Case, p. 216), of the Township Committee of Pensauken Township. This consent recited the receipt of a notice of such meeting; that

the Township Committee's consent was necessary, and expressly stated:

"WHEREAS, the Township Committee is informed that the portions of Browning Road proposed to be vacated, as aforesaid, will be kept open for public travel until such time as certain lands, about to be dedicated to the County of Camden for a new road, located east of the portions of the existing road proposed to be vacated, have been paved and connected to the road to be laid out, constructed and paved by the Camden County Park Commission along the north and east bank of the Cooper River."

Said consent further stated that the Township Committee was of the opinion that the best interest of the township required that such consent be given; described the road proposed to be vacated, and resolved that consent was given to the vacation of such road and the extinguishment of any and all public rights therein.

Prosecutor and other property owners objected to the vacation at the meeting on December 27th, but notwithstanding such objection a resolution vacating said road was adopted. Said resolution (Case, p. 221) recited the notice and consent of the township, the hearing of objections, and resolved that the section of Browning Road in question "be and the same is hereby vacated and all public rights therein released and extinguished from any previous dedication no matter how acquired."

Following this action at the same meeting a resolution was adopted (Case, p. 225) reciting the vacation of part of Browning Road and resolved that

the Board of Freeholders execute a certain agreement presented with the resolution between the airport and the Airport Development Company. This agreement (Case, p. 226) provides for the dedication of a proposed new road; that said new road shall be graded, paved and maintained by the county and provides:

“3. It is understood and agreed between the parties hereto that the parties of the first part will grant to the party of the second part the right to continue to use Browning Road, as constituted, from the date of the signing of this memorandum of agreement until such time as the Camden County Park Commission has actually laid out, constructed and paved a new boulevard or road along the north or east bank of Cooper River, connecting the bridge across the Cooper River at Browning Road with the new road as dedicated by the parties of the first part and hereinabove described. Upon the completion of said boulevard by the Camden County Park Commission, the party of the second part shall grade, build and construct the new road as particularly described in item one hereof, and upon the completion of the improvement of said new road the parties of the first part shall then have the right to remove all physical evidences of the county road from that section of Browning Road hereafter (sic) vacated by the County of Camden.

4. It is further understood and agreed between the parties hereto that in the event of any litigation affecting the resolution of the County of Camden to be adopted, or in any

way attempted to be adopted, in connection with the proposed vacation of Browning Road, or in the event of any litigation affecting the legality of the procedure in connection therewith, the party of the second part will defend said litigation, and the expense of said litigation, exclusive of counsel fees, shall be borne by the parties of the first part herein.”

At the close of the meeting at which these two resolutions were adopted, the agreement referred to was executed, the parties being present for that purpose (Case, pp. 128, 129, 130). No other action or proceedings were even taken by the county (Case, p. 129). A day or two later, rules to show cause why writs of certiorari should not issue were obtained by Wilmar Corporation.

It should be noticed that nowhere in any of the papers referred to is there any finding or recital of a finding that Browning Road as laid out and existing on the ground in that section proposed to be vacated was unnecessary for public travel. The map attached to the resolution for the vacation of the road, being Exhibit P7, shows that portion of the road proposed to be vacated and shows the proposed new dedication by the airport interests. It will be noticed from this map that the proposed new dedication runs to lands designated as owned by Camden County Park Commission. It appears from the evidence that these lands do not belong to the Camden County Park Commission, and will not belong to the Camden County Park Commission unless certain conditions are met, the papers being held in escrow.

There has been no dedication by the Camden County Park Commission or by anyone else of any land for a road connecting with the road marked as proposed dedication on Exhibit P7. There is no agreement upon the part of anyone to make such a dedication. This is important, in view of the reference throughout the proceedings to the construction of a new park boulevard by the Camden County Park Commission. There is absolutely no testimony to show when such a road will be built, just where it will intersect the proposed new road, if at all, whether the roads will connect on grade or not or anything of that sort. There was produced by the defendant an escrow agreement, so-called, under which many papers were deposited with the West Jersey Title & Guaranty Company, of Camden, to be delivered for record, some of which were to be delivered for record "upon the vacation in proper legal fashion of those portions of Browning Road as set forth in said last-mentioned agreement," and the remainder of said instruments were to be delivered for record "upon the legal confirmation by Legislature or otherwise of the title to land to be conveyed from the Park Commission to Hurley Realty Company and by it in turn to Central Airport Development Company." It is to be particularly noted that while several of these papers consist of deeds to the Park Commission, yet none of them have any relation to the question of the road dedication or vacation, as was expressly stipulated by counsel upon the failure to produce the papers (Case, pp. 150 to 152, inclusive). The only paper among the eleven papers referred to in this escrow agreement, which was produced by the defendants,

was number eleven. This grant (R2) (Case, p. 186) recites a proposed dedication by the Park Commission, which, however, is not a party to the instrument; recites that there will be "some delay" in the opening of the Park Commission road, and grants the right to use the vacated portion of the road "so long as the same may be reasonably necessary to connect for public travel the two unvacated portions of Browning Road and until the completion by the Camden County Park Commission of a new boulevard on the east or north bank of the Cooper River and the completion by the County of Camden of a new road to the east of Browning Road as herein described, and no longer." This grant also contained the following proviso: "Said County of Camden must complete that portion of the new line of Browning Road as dedicated by the parties of the first part hereto within a reasonable time after completion of the new boulevard by the County Park Commission as herein referred to."

The lands shown on the maps adjoining the airport as lands of the Camden County Park Commission will not belong to it until the deeds in the escrow agreement are recorded, so that the Park Commission could not, if it would, make any dedication now of a connecting road (Case, pp. 234, 231, 152, 150, 164 to 166). There was no proof of any definite action by the Park Commission appropriating any special land for a park boulevard, or agreeing to construct such a road. There is a reference in the so-called escrow agreement (pp. 234, 235) to an agreement upon the part of the Camden County Park Commission to keep and maintain a proposed road north and west of Cooper River along its

banks over the lands covered by the deeds at a level not above that of contour number seven. The terms of this agreement are now shown, and in view of the stipulation of counsel regarding the papers left in escrow, such agreement is not to be found in such escrow papers (pp. 150-152). There is no agreement referred to therein to connect said proposed park boulevard with the proposed road dedicated by the airport interest. It does not appear whether contour seven is the present contour of Browning Road where it is cut off by the vacation on the creek or whether contour seven will intersect Browning Road at that level or whether the park boulevard will be on high ground and cross over the dead end of Browning Road at the Collingswood end of the vacation.

An attempt was made to show action by the Park Commission by producing an employe of the Commission, one J. C. Remington, who is an engineer employed by it. He testified (Case, pp. 165 to 170) that there had been talk about a road to be constructed by the Park Commission along the Cooper River since 1925 (Case, p. 167), and that recently he had been instructed to obtain figures and get estimates of the cost of constructing such a road. This testimony was put in over objection upon the ground that the manner in which action by the Park Commission should be proved was by its minutes, or, in the absence of minutes, by the members of the Board, and that this employe was not competent to decide as to the action of the Park Commission. Similar comment may be made respecting the testimony of the county engineer regarding the contemplated park boulevard, which, likewise, was taken

over objection (Case, pp. 123 and 124). In rebuttal, the prosecutor produced the Park Commission minute book, from which it appears that there has never been any official action taken by the Park Commission, agreeing to dedicate any road connecting with the proposed new road or new dedication by the airport interest, or agreeing to any contract to that effect (Case, pp. 181 to 184, inclusive). The nearest approach in the minutes to such an action is a resolution (Case, pp. 181-182), expressing a desire to cooperate with the airport interests, but nothing definite appears from these minutes, which were of a meeting of November 7, 1929. It also appeared that all of the minutes had been approved (Case, pp. 183, 184), so it seems beyond doubt that there is no official action binding the Park Commission. It would seem that for some reason or other not disclosed, a studied effort has been made to keep the Park Commission out of the picture.

The defendants proved the purchase by the airport interests of a large quantity of land adjoining prosecutor's land and adjoining Browning Road and in that neighborhood at very large prices (Case, pp. 172 to 178, inclusive). The airport apparently has purchased land in this immediate vicinity at prices ranging from \$80,000.00 per acre in the heart of things (Case, pp. 175 to 176), to \$5,000.00 an acre at the most distant points southwest of Browning Road (p. 177). The main airport tract, which is the tract adjoining prosecutor's land, appears to have been purchased at an average of about \$10,000.00 per acre (p. 176). The defendants also proved that the deeds deposited in escrow would convey to the Park Commission for park purposes

lands which cost the airport interests about \$580,000.00, although the witness said that in his opinion said lands were not worth more than \$140,000.00, the explanation being that the price of \$580,000.00 was the average price on the whole tract, or about \$10,000.00 per acre, and that the land remaining to the airport was worth more than the average price and the land to be conveyed to the Park Commission worth less than the average price (pp. 177, 178). In exchange for this transfer to the Park Commission, it was testified by the defendants that the airport interests would receive, from the county, land worth less than \$6,000 or \$7,000 and that the only additional consideration for the conveyance to the Park Commission was the vacation of Browning Road (p. 178). It would, therefore, seem fair to say that the county interests and the airport interests had agreed that in exchange for the small amount of land mentioned and the vacation of Browning Road the airport interests would pay the county in land somewhere between \$150,000.00 and \$580,000.00.

Strange to say, notwithstanding the various recitals in the resolutions and other papers referred to as the need by the airport of additional land, the testimony produced by the defendants was to the effect that the airport did have enough land for its purposes at the present time, and could receive an 1-A-1 rating at the present time (Case, p. 157); but that if it used its present land for that purpose it would result in less economical operation (Case, p. 159) than if the vacation proceedings were completed and sustained. It appears that the airport has operated since the summer of 1929 (Case, p.

152); has a flying school (p. 163); is an air-mail port (p. 153); has made no application for rating by the Federal authorities (pp. 163, 164), but that the highest rating is desirable to the airport (Case, pp. 156 to 161). Other testimony as to the benefit of the transaction to the airport appears at pages 154, 159, 162 and 163.

GROUND OF APPEAL.

The Supreme Court erred in giving judgment for the defendants instead of for the prosecutor and in dismissing the writ of certiorari.

ARGUMENT.

COUNTY IS WITHOUT POWER TO VACATE THIS ROAD, AND DID NOT FOLLOW THE LAW IN ATTEMPTING TO VACATE.

A. THE ROAD IS NECESSARY FOR PUBLIC USE.

B. THIS WAS A QUASI-JUDICIAL QUESTION AND PROSECUTOR WOULD SUFFER SPECIAL DAMAGE BY THE VACATION.

C. THE ACTION OF THE COUNTY WAS BASED UPON ILLEGAL CONDITIONS.

D. IT MAY BE SUGGESTED TO THE COURT THAT IN THE PRESENT CASE THE COUNTY DID NOT ACT UNDER SUB-DIVISION "g," BUT ACTED UNDER SOME OTHER PROVISION OF SECTION 1101, SUCH AS SUB-DIVISION "c," UNDER WHICH THE BOARD OF FREEHOLDERS IS GIVEN POWER AND AUTHORITY "TO WIDEN, ALTER, STRAIGHTEN, CHANGE THE GRADE OR LOCATION OF ANY ROAD OR HIGHWAY UNDER ITS CONTROL, OR ANY PART THEREOF."

E. THIS VACATION PROCEEDING WAS FOR A PURELY PRIVATE PURPOSE, SUBSERVING NO PUBLIC PURPOSE, AND THE COUNTY IN EFFECT HAS SOLD THE RIGHT IN THE ROAD WHEN IT SHOULD HAVE JUDICIALLY DETERMINED THE NECESSITY OF THE ROAD.

F. THE FINDINGS OF FACT BY THE SUPREME COURT ARE NOT SUPPORTED BY THE EVIDENCE INsofar AS THEY RELATE TO (1) ACTION OF THE PARK COMMISSION AND (2) THE POINT THAT THE VACATION WAS TO SUBSERVE A PRIVATE INTEREST, &C. (AS RAISED BY POINT E ABOVE).

COUNTY IS WITHOUT POWER TO VACATE THIS ROAD, AND DID NOT FOLLOW THE LAW IN ATTEMPTING TO VACATE.

A. THE ROAD IS NECESSARY FOR PUBLIC USE.

There is no power in the county to vacate any road of any kind unless that power is expressly conferred.

Hoboken v. Hoboken, 36 Law, 540, at page 549;

Methodist Church v. Hoboken, 33 Law, 13, at page 19;

Ricker v. Clerk, 85 Law, 66;

Parkhurst v. Vanderveer, 48 Law, 80;

Warren v. State, 29 Law, 353.

The only grant of power to the county at the present time to vacate roads is found in Section 1101 of the Act Relating to Counties (Laws of 1918, Chapter 185, as amended 1929, Chapter 143). This section provides, *inter alia*: "Every Board of Chosen Freeholders shall have power and authority:

g. To vacate any road or highway under its control or any portion thereof *that may be unnecessary for public travel.*"

If the road is not unnecessary for public travel, there is no power in the county to vacate it. In view of the fact that, if the power exists, the landowner who may be harmed by such vacation is without remedy against the municipality and can-

not prevent the vacation nor recover damages therefor in the absence of express authority, which is here absent, it would follow that unless the road is unnecessary to public travel the landowner affected may suffer great harm by the vacation and should be given every consideration in an attempt to determine whether or not the road proposed to be vacated is unnecessary for public travel. *The prosecutor's theory with respect to the exercise of the power to vacate under this sub-division is that there must be at the very least a finding by the Board of Chosen Freeholders that the road proposed to be vacated is unnecessary and that that finding is quasi-judicial in nature and must be based upon evidence or at least upon facts. It appears in this case that there never was any finding by the Board of Freeholders that the road vacated was unnecessary.* Such a finding does not appear directly nor by recital in any action taken by the Board. So that from this angle we have a case where an attempt is made to vacate with the question of necessity for public travel having apparently never been considered, let alone decided.

The evidence presented by the prosecutor in part is directed to showing that this road, by reason of its location, long continued use, the developments along its line and the present conditions of traffic upon the public highways, is a necessary highway. No attempt was made by the county to meet that issue, at least at this hearing. The testimony stands uncontradicted.

Furthermore, the proceedings themselves, it seems to us, demonstrate that not only did the county fail to find as a fact that the proposed vacated road was

unnecessary for public travel, but definitely indicate that there is a necessity for the use of the road. In the first place, at the same meeting at which the resolution affecting the road was passed, a second resolution was passed approving an agreement between the county and the airport interests, which provided that the airport interests would grant to the county *the right to continue to use Browning Road, as constituted*, from the date of the signing of this memorandum of agreement until such time as the Camden County Park Commission has actually laid out, constructed and paved a new boulevard or road along the north or east bank of Cooper River, connecting the bridge across the Cooper River at Browning Road with the new road as dedicated by the parties of the first part and hereinabove described, *and that upon the completion of said boulevard by the Camden County Park Commission, the county would grade, build and construct the new road as particularly described in item one of the said agreement, and upon the completion of the improvement of said new road, the airport interests would then have the right to remove all physical evidences of the county road from that section of Browning Road hereafter vacated by the County of Camden.* It, therefore, appears that, notwithstanding the vacation, the road is required to remain open and in use until certain other roads are constructed.

The consent given by the Township of Pennsauken to the vacation of the road, while not expressed to be upon condition, recites that

“WHEREAS, the Township Committee is informed that the *portions of Browning Road*

proposed to be vacated, as aforesaid, *will be kept open for public travel until such time as certain lands* about to be dedicated to the County of Camden for a new road, located east of the portions of the existing road proposed to be vacated, have been paved and connected to the road to be laid out, constructed and paved by the Camden County Park Commission along the north and east bank of the Cooper River; and''

Furthermore, the only paper referred to in the escrow agreement which was produced by the county is the grant of the right of way, portions of which are given above. Under this agreement the park boulevard construction may be delayed for years.

It seems beyond question, therefore, that the county did regard the road as necessary for public travel and, this being so, it would follow that the vacation proceedings were improper and nugatory. *If the county power is not limited in the way suggested, it would have been equally within its power to have vacated the highway immediately in front of the lands of prosecutor without leaving the prosecutor any remedy whatever and it seems to us that the doctrine which the county must adopt to justify the present proceedings must go that far.*

It may be suggested that because another road is to be substituted at some time in the future, the question of necessity for travel becomes unimportant. This will be dealt with later, but we wish at this time to say that such future roads may never be built and, what is more important, travellers in the county and owners of land on Browning Road

are entitled to pass over a public road maintained by the county and ought not to be required to substitute a private right of way over the lands of private owners. There is no obligation imposed upon the owners of the vacated road to maintain this private right of way, and with it open to use for an indefinite time, it would very naturally become out of repair or impassable. In fact, it would be to the interest of the owners to allow it to become impassable.

B. THIS WAS A QUASI-JUDICIAL QUESTION
AND PROSECUTOR WOULD SUFFER
SPECIAL DAMAGE BY THE VACATION.

Various illustrations of quasi-judicial questions arising in municipal ordinances and resolutions are illustrated by the cases of

Moore v. Haddonfield, 62 Law 386;

Verona v. Board of Essex, 88 Law 55, affirmed 89 Law, 373;

Sears v. Atlantic City, 72 Law 435;

Amerman v. Briggs, 50 Law 114.

In the case of *Verona v. Essex, supra*, the question was whether the Board of Chosen Freeholders of Essex County, as successors to the Public Road Board of that county, was authorized to vacate gores and angles of old roads. It was held that where such vacation did not make access to the prosecutor's land more inconvenient, nor close a highway, it did not make the action of the Freeholders in vacating the gores and angles judicial in

character. This case, in which the opinion was by Justice Swayze, quoted with approval from the Court of Errors and Appeals in the opinion in *Moore v. Haddonfield*, *supra*, in which the Court of Errors said, "As to all public rights in the street the municipal action was clearly legislative. It became judicial only in case it imposed an additional burden upon the land of the abutting owners." In the Verona case, Justice Swayze said:

"The facts of the present case do not require us to pass on the general question whether proceedings to vacate a highway may not be judicial in character. All that we need pass on is whether they are so in the present case. No highway is closed; the vacation of the gores is not shown even to make access to the prosecutor's property more inconvenient; so far as the case shows, land of the prosecutors which was formerly subject to the public easement is relieved therefrom. It is settled that the vacation of a street does not impair private rights, and in the absence of a statute giving damages, even a land-owner who is injured is not entitled to compensation."

The present case seems to be clearly one in which an additional burden was placed upon the land of the prosecutor and part of the highway was closed by the vacation; the proposed new dedication goes to a dead end until some indefinite period not now determined; and even if and when the Park Commission constructs a boulevard, the result of the action of the county will be to convert the present direct highway between two suburban towns into a

roundabout means of communication and tend to divert travel away from the lands of the prosecutor to other communities and thus retard its success as a building lot development.

In the case of *Read v. Camden*, 54 N. J. Law, 347, there were several questions considered and resolved in favor of one municipality, but with respect to one provision of the ordinance it was said by the Court of Errors:

“The purpose of this vacati^oin we have not been able to discover; but, so far as we can see, its effect is to render the whole enterprise abortive, as an effort to subserve public interests, instead of being a reasonable means of conducting public travel through Second Street over the railroad above the risk of collision with trains, the embankment of which the plaintiff complains becomes, under this provision of the ordinance, only an approach to a small patch of private land where the traveller may be compelled by the owner to turn back and retrace his steps to the former level of the street.

Because of this feature of the ordinance, we think the scheme is unreasonable, and, therefore, the ordinance and all proceedings under it should be set aside.”

An illustration of the judicial character of proceedings of this nature relating to highways is to be found in *Amerman v. Briggs*, 50 N. J. Law, 114. This case involved proceedings by surveyors of the highway respecting encroachments on the public road. There had been previous action by the surveyors respecting encroachments which was followed

by the later action under consideration in the cited case. The question that was considered was whether, where there were two determinations on the subject-matter of encroachments, both could stand. In determining this question, the Court decided that the question of encroachments was judicial in nature and when the question had once been passed upon could not be re-determined.

That we will be seriously damaged by the proposed vacation is supported by the language of the Court of Errors in the case of *Newark v. Hatt*, 79 Law, 548. This was a case where the statute under which the road was vacated provided for the assessment of damages to owners suffering thereby. The remedy contemplated by the Act in question was said to be 'not such damage as the owner may suffer in common with the public, but the impairment of the value of the land caused by the vacation of the street.' No award was made to the owner in that case, apparently for the reason that the owner did not abut on the part vacated but only abutted up a *cul de sac* created by the vacation. At the present time that is the exact situation of the lands of the prosecutor, and that condition will continue until some action is taken by the Park Commission to connect the Park Boulevard with the dead end of the new dedicated road. It is true that there will be private right of way but the prosecutor might have such a private right of way in any event, whether such right were reserved to him by the action of the municipality or whether it arose out of private contract of previous owners. That an owner may have a private right of way over privately owned lands would not prevent the right from being

in a legal sense a *cul de sac* where the public rights in a road are vacated.

In holding that the owner adjoining the vacated portion of the road was damaged by the action of the municipality and should be compensated, Justice Bergen, speaking for the Court of Errors, in *Newark v. Hatt*, said:

“There is nothing to be found in the adjudged cases in this State inconsistent with the view that the right of the public in an open highway is of passage over it, and that this right the abutting owner has in common with the public, and suffers in common with it when deprived of such right by obstruction to that use, and that there is, in addition to this, at least a special right of access to his land from the next adjacent intersecting streets, over the highway on which it abounds, and that such right of access, in either direction the street allows, in a special advantage to the lands lying on it between any two intersecting streets. It is not a question whether the land adjoins the vacated portion or not, but rather, will its value be impaired if deprived of one of the immediate means of access to it? We are of opinion that such right of access is of special advantage to all the land abutting a highway on a block between two streets, and that the vacation of a part of such street diminishes the value of all the land between the next adjacent cross streets, and that in appraising the damage to the lands of the plaintiffs-in-error the Commissioners of Assessment should consider to what extent, if any, such lands are diminished in value because de-

prived of one means of access, but should not allow any damages on account of the track elevation.”

Another case involving the same principal and theory is *Beecher v. Newark*, 64 Law, 475. In this latter case the mere construction of a bridge over a street as a passageway between two buildings owned by the Prudential Insurance Company was held to be a special injury to other owners on the street.

These cases are cited, not to show, as might be inferred from the opinion of the Supreme Court below, that we are entitled to compensation, but rather, to show that the circumstances cause us special damage; and therefore, the proceeding bringing about this special damage is quasi-judicial and if it is a quasi-judicial proceeding, there must be at least a finding, as argued above, that the road is unnecessary for public travel and this finding must be based on evidence, or, at least on facts. The facts of this case as set forth in the abstract herewith clearly show that the road is a necessary road (see argument under previous heading “A”).

C. THE ACTION OF THE COUNTY WAS BASED UPON ILLEGAL CONDITIONS.

The action of the county in this case may be shortly stated in this manner: The county has undertaken to vacate a road necessary for travel, the vacation necessarily to become effective immediately, upon the condition that a right of way shall be dedicated by the airport interests, the persons bene-

fited by the vacation; that this dedication shall run to a certain point; and also has been made upon the expectation that the lands located at the point where the dedication ends are to be conveyed to the Park Commission of the county by instruments now in escrow, and also upon the expectation that at some indefinite time in the future the Park Commission will take action whereby a road will be built to connect the new dedication with the southerly dead end of Browning Road; in the meanwhile leaving travelers under the necessity of passing over a private right of way. Likewise the consent of the township while not expressed to be upon condition, shows by its recital that it in fact is upon condition. None of these conditions are proper nor within the law on the question of the right to vacate this road. If the conditions were met and the expectations realized, the question then presented would be a different one from that now before the Court. *Under the law, the only condition to be met in considering the vacation is that the road shall be unnecessary for public travel. This has never been decided, and the fact appears to be otherwise.*

In the case of *Hammer v. Elizabeth*, 67 Law, 129, there was an attempt to do practically the same thing that was done in this case. In that case an ordinance was passed by the City of Elizabeth which provided for the vacation of a certain street, subject to the proviso that the vacation would not become effective unless accepted by the owners in writing within sixty days of its passage and unless within one year \$40,000.00 should be expended for the erection of a building and machinery for manufacturing purposes upon the lands in the portion of the

street vacated and abutting lands. If these conditions were not complied with, no vacation would take place. It was also provided that if the owners ceased to use the street for manufacturing purposes it would again become a public street or highway. It was held that such conditions were unauthorized by law and that a street could not be vacated under conditions similar to those contained in the ordinance in question. The manner in which the result is sought in the present case differs somewhat from the procedure followed in the Elizabeth case, but the facts show that the same intention was present and the same result sought, although there may have been an effort to avoid the effect of this Elizabeth case by a course of circumlocution.

There could have been no action by the county without the consent of the township, the law (P. L. 1918, chapter 185, Sec. 1127), providing "that no road or portion thereof shall be vacated without the consent of the governing body of the municipality in which the same is located." The consent recites that whereas the township is informed that the portions of Browning Road proposed to be vacated will be kept open for public travel "until, etc.," and therefore the consent is given. This in effect incorporates into the township consent, the conditions which are expressly present in the action of the county. There is no warrant in law for such qualified or conditional consent. An illustration of a consent given upon an unauthorized condition, and which consent was therefore held to be invalid is *Davis v. Town of Harrison*, 46 N. J. L. 79.

D. IT MAY BE SUGGESTED TO THE COURT THAT IN THE PRESENT CASE THE COUNTY DID NOT ACT UNDER SUB-DIVISION "g," BUT ACTED UNDER SOME OTHER PROVISION OF SECTION 1101, SUCH AS SUB-DIVISION "c," UNDER WHICH THE BOARD OF FREEHOLDERS IS GIVEN POWER AND AUTHORITY "TO WIDEN, ALTER, STRAIGHTEN, CHANGE THE GRADE OR LOCATION OF ANY ROAD OR HIGHWAY UNDER ITS CONTROL, OR ANY PART THEREOF."

It is submitted to the Court that upon familiar principles of statutory construction the provisions of sub-division, "c" are to be read in connection with the other sub-divisions of Section 1101 and also are to be read in the light of the other provisions of the statute and of other laws relating to the subject-matter.

We submit, therefore, that if an attempt is made to alter or to relocate a road and it is sought at the same time to vacate an old location of the road, that vacation can only be made under the conditions of sub-division "g," and that until the conditions of sub-division "g" can be met, there can be no vacation. This construction works no injury to the municipality in a proper case, as it simply means that the municipality must allow the former road to remain as a public road until the road in the new location is completed and available for public travel. That this is a proper construction is made evident

by consideration of the other provisions of Section 1101. For instance, in sub-division, "a," it is provided that the freeholders have power to lay out and open free public roads in the county, etc. It would not be suggested that because this particular power is not coupled with an express condition, that the county has power to lay out roads and take lands for the purpose without first acquiring such lands by purchase or by eminent domain, or in some manner authorized by law; and so, while sub-division "c," above quoted, which relates to change of location, also relates to the change of the grade of roads, it is noteworthy that there is a section of the Counties Act, No. 1137 (Laws 1918, Chapter 185, page 600), which provides that where any road under control of the Board of Freeholders shall be altered in grade the owner may recover damages suffered thereby. As a matter of fact, while the language of certain of the preliminary papers refers to the transaction as a relocation of the road, yet the effective words of the resolution before the Court makes it clear that a vacation was intended, and that is, in fact, the only way in which the result sought can be obtained. In other words, if there was an alteration or relocation without a vacation, the title to the old road would still be subject to the right of public easement and the road would still be a public road. The right to alter or relocate a road is subject to the limitation of sub-division "g," that before a road is vacated it must be unnecessary for public travel; to the same extent as the power given by this section in sub-division "a" to lay out and open roads is subject to the limitation that the land for the road must be first acquired by purchase or

eminent domain; and to the same extent as the power to change the grade of a road under this subdivision "c" is subject to the limitation of Section 1137 of the same Act, giving the owner the right to recover damages therefor.

Under the old practice there were many cases of proceedings whereby roads were altered and relocated. A reference to these cases makes it clear that the relocation is effected by acquiring some land and vacating other land and there is nothing we submit, in any of the reported cases, to support the inference that relocating a road carries with it in some manner the vacation of a road, or that authority to relocate or alter carries with it authority to vacate. The power to vacate is provided for by an entirely separate sub-division of the Act. I refer to:

Fowler v. Larabee, 59 Law, 259;

Norton v. Truitt, 70 Law, 611;

Purcell v. Edison, 65 Law, 541.

In the case of *Norton v. Truitt* it was said that, "Alteration is distinct from laying out and from vacating." In the *Fowler Case*, the Court of Errors and Appeals said that the alteration was proposed to be done by "vacating a part of said road and laying out a public road to take and fill the place of the part so vacated." In the *Purcell Case*, the statute relied upon to justify the proceedings was an Act of 1890, providing a mode for altering short pieces of a public road by vacating such road, or a portion thereof, by relaying the same, or a portion thereof, or substituting another road therefor.

Justice Van Syckel said:

"It was neither a relaying of the road vacated, nor a substitution of another road therefor. It was a vacation of an existing road and the laying out of a new road in another place distant from the locality of the road vacated. It was not a substitution of another road for the road vacated; the prosecutor was entirely deprived of the way from his farm over the road vacated, and was not given, by this proceeding, any other way in substitution for it, and he suffered this injury without being given any opportunity to be heard in defense of his rights.

It is true that by traveling in a roundabout way through another previously existing highway he could reach the new road laid out by the proceedings certified, but that would be the situation if the new road throughout its entire length was ten miles distant from the road vacated."

This is almost exactly applicable to the present case.

As illustrative of the arguments stated above as to the construction of the various sub-divisions of Section 1101, reference is made to *Amerman v. Briggs*, 50 Law 114. It was there held that the statute providing for altering and laying roads and straightening out encroachments did not confer the power to take lands in such alterations but that lands for such purpose could only be taken by the public upon compensation made to the owner.

E. THIS VACATION PROCEEDING WAS FOR A PURELY PRIVATE PURPOSE, SUBSERVING NO PUBLIC PURPOSE, AND THE COUNTY, IN EFFECT, HAS SOLD THE RIGHT IN THE ROAD WHEN IT SHOULD HAVE JUDICIALLY DETERMINED THE NECESSITY OF THE ROAD.

There are several cases in this State which have passed upon the effect to be given to the fact that a private purpose is subserved by a vacation proceeding. The respondents, no doubt, will cite *Kean v. Elizabeth*, 54 Law 462. In that case the prosecutor was distant eighteen hundred or two thousand feet from the vacated road. The Court recognized that the principal inducement to the action of the council in vacating the road was to permit the tract of land to be sold to a company which would locate extensive works upon it and so increase the prosperity of that portion of the city. It was held that motives which induced municipal proceedings were always of a mixed character, and that the size of lots for building purposes was a proper factor to be taken into consideration in the vacation as well as laying out and altering streets. The Court said:

“If the Courts can enter into the motives of the municipal Legislature in respect to acts of this kind in any case, it must be one in which the public interests have been glaringly sacrificed to subserve private ends.

“Nothing of this sort appears in this case. The vacated portion of the street runs through salt meadows and crosses an unbridged creek,

and there is not a house or building along the line of it.

Between the property of the prosecutrix and the vacated part of the street, York Street is crossed by Schiller Street, which is open and built upon.

Under all the circumstances, the action of common council is not properly the subject of a suspicion of being influenced by any considerations other than to conserve the best interests of the city."

This case was followed in *Sherwood v. Paterson*, 88 Law 456. This case involved paper streets only and the vacation was for the purpose of retaining a private manufacturing company in Paterson. The Court said:

"Without going so far as to say that the union of such a motive with other more public consideration might never be enough to vitiate the ordinance, we think we are safe in holding that the facts of the present case bring it within the rule of *Kean v. Elizabeth*, 54 N. J. L. 462; affirmed 55 Id. 337."

It will be noticed that both of these cases did not go so far as to say that private motives would never vitiate vacation proceedings. In the first case, it is intimated that where public interests are "glaringly sacrificed to subserve private ends," the action would be held to be void, and in the *Paterson* case, the language then quoted would seem to indicate that the possibility of some such circumstance was in the mind of the Court in that instance. It is to

be noted that while the Court of Errors and Appeals affirmed the case of *Kean v. Elizabeth*, that Court did not take occasion to make any pronouncement regarding the effect of the private motive.

The case now before the Court is one in which it is not proposed to make any improvement on the lands whatever. The land in question is to be used as a landing field for airplanes. Such a use will add nothing to the ratables, will not increase prosperity nor otherwise aid the public or the individuals constituting the public. The truth is that the sole benefit arising from the vacation is to the airport interests, which can thus operate their field in a more economical manner. *We contend that what the county has attempted to do here is to sell the public rights for a valuable consideration without regard to the necessity which may exist to use the road.*

It appears from the evidence that as consideration for vacating this road and for the conveyance to the airport interests of land worth less than ten thousand dollars, the county is receiving a conveyance to the Park Commission of land which cost the airport interests about five hundred and eighty thousand dollars, which they now say is not worth more than one hundred and fifty thousand dollars, and the strip of land running to land to be acquired by the Park Commission, which is to be paved and maintained by the county. It would seem that the county has bartered the public rights in Browning Road to the airport interests in exchange for one hundred and fifty thousand dollars, or five hundred and eighty thousand dollars' worth of land to be conveyed to the Park Commission. This is the mo-

tive which is quite apparent on the facts shown. *The owners in the situation of the prosecutor were entitled to have the question of the necessity of this road and the merits of the vacation determined as a quasi-judicial question and the prosecutor was entitled to the exercise of the judgment of the Board on the question of whether the general public would be benefited by the vacation, considered from the standpoint of the road and from no other standpoint, and the prosecutor has just cause to complain if the question of the necessity of this road were side-tracked and the vacation decided because of a large contribution made to the county or County Park Commission by a private party in order to secure the vacation of a road for that private interest.*

The case is analogous to *Hampton v. Poland*, 50 Law 367. That matter involved the proceedings taken by surveyors of the highway in Monmouth County, whereby a road was vacated and a new road laid out in its stead. It appeared that in that case a party in the interest of one of the applicants for the alteration of the road by way of inducement to them to make the proposed alteration, represented that such interested parties would at their own expense grade and put the road to be laid out in as good condition as the road to be vacated then was, and would pay all damages and expenses of said alterations and that the township should be put to no expense on account thereof. The Court, speaking by Mr. Justice Knapp, said:

“The laying of highways is peculiarly a matter of public concern; its design is to promote not private rights, but the public convenience. Private interests are affected but incidentally

only in the pursuit of the public good. Surveyors of highways, in laying out public roads, exercise the right of eminent domain. Where the public interests require it, the land-owner must surrender up his land upon compensation, but he should not be compelled to yield it except as public interest shall require it. It is true the law has intrusted the management of proceedings for laying public highways to private hands, but applicants for public roads, although moved to become so by considerations of mere private interest, voluntarily assume the conduct of public interest, one in which all members of the community, charged with the duty of making and maintaining roads, have an equal interest with themselves, not only to secure the laying of those which the public need calls for, but to oppose and prevent such as are not demanded by the public interest." * * *

"There is no doubt that the members of the Township Committee, as individuals as well as representing that body, were opposed to the alteration of this road on the ground that, in their belief, the public interest did not require it, and had taken steps to oppose the road before the surveyors. It is equally clear that the promise to make the road and save the township from expense induced them to withdraw their opposition. They opposed the road from the conviction either that the change was not warranted by any public necessity or that the necessity was not commensurate with the expense that would result. And as the law has entrusted to private hands, not only the advocacy, but the

opposition to public roads, it was an injury to the land-owner as well as to the public to suppress an honest expression of these convictions by a promise to pay money in the public relief, for if the applicant, moved by a private interest, may buy off that opposition springing from public considerations, it will not be impossible or perhaps difficult to appropriate private property to what is in essence a mere private use.

* * * ,,

“A course of action on the part of the applicants, standing as public prosecutors to suppress and hush by illegal promises oppositions based on public considerations, violates the spirit and policy of the road law. To press such invalid promises, in the relief of the public burdens which the road will impose upon those officers charged with the duty of deciding upon the public and private rights, must be damaging to the public as well as the opposing land-owner. True, we may not probe the motives which finally control in the decision of surveyors, nor look into the merits of a road laid, yet we may and ought to regard the means used to shape the decision of such tribunals, and when they prove to be illegal and of such force as is calculated and likely to lead to erroneous or oppressive judgment, a shape of evil is presented that the Court should repress.

It is one thing to inquire into the motives which shape a judgment and another and different thing to guard the judicial body from im-

proper and illegal influences such as are liable or likely to misshape its judgment.

The owner of land has the right to demand that the public necessity for taking his lands from him shall be determined upon the inherent merits of the application. The public necessity which may be too weak in itself to demand that sacrifice of the private land-owner, gains nothing in strength from the willingness of a citizen, because of private interests, to assume all or an undue share of the resulting public burden."

There are, of course, some cases in which no question could be raised as to the action of the public as where a land-owner agrees to give his land for the purpose of a highway, and at the other end of the line there are cases so flagrant as to indicate that the public consent has been bought. We submit that this is a case of the latter character.

It is well settled that public rights are not the subject of barter and sale. Thus, in the case of *Trustees v. Hoboken*, 33 Law 13, at page 19, which involved a public square, Justice Depue said that the lands so dedicated could not be sold. In general, on this point, see 43 C. J., title Municipal Corporations, Section 2101, and 44 C. J., title Municipal Corporations, Section 2606.

F. THE FINDINGS OF FACT BY THE SUPREME COURT, ARE NOT SUPPORTED BY THE EVIDENCE INSOFAR AS THEY RELATE TO (1) ACTION OF THE PARK COMMISSION AND (2) THE POINT THAT THE VACATION WAS TO SUBSERVE A PRIVATE INTEREST, ETC. (AS RAISED BY POINT "E" ABOVE).

1. Action of the Park Commission.

1. The Court below placed great reliance, in fact, the opinion seems to be largely based, upon the impression that the Park Commission was tied into this project in such a way as to make it certain that there would be a Park Boulevard with which the new road would connect. The evidence does not support this view.

The evidence in this respect is reviewed in the preceding abstract (pp. 11 to 14, inclusive).

There is absolutely no evidence, in a legal sense, of any obligation on the part of the Park Commission to construct a boulevard to connect with the new road. Such a boulevard may never be constructed, may not be constructed for many years (has been the subject of discussion only, since 1925), and when constructed may be on the other side of the Cooper River.

No officers or members of the Park Board were called by the respondents as witnesses, no contracts or other documents binding the Park Commission were produced, nor were the Park Board minutes produced by the respondents. The respondents pro-

duced an employee of the Park Commission, one Remington, an engineer, and sought to prove their case by his testimony. His testimony was taken over objection. Clearly an employee of a public corporation cannot testify as to its official action. The best evidence in any case would have to be produced.

The prosecutors produced the secretary of the Park Board and the minute book which failed to show any binding contract on the part of the Park Commission to construct this boulevard. It was not even attempted by the respondents to prove by oral testimony the terms of any contract on the part of the Park Commission, oral or written. The various forms of secondary evidence of a binding obligation which are sometimes relied on, were not attempted to be put in the case.

The failure to produce any legal evidence as to the Park Commission action, must be considered as showing a studied effort to keep the Park Commission out of the picture, and leads to the conclusion that it was impossible for the respondents to show by legal evidence what the Park Commission proposed to do, or when, or that it would do anything with this land or boulevard.

It was not even proved that the Park Commission was in possession of funds with which to do anything. In this connection the Court will take notice of Chapter 79 of P. L. 1930 (p. 312), and Chapter 233 of P. L. 1930 (p. 1037), providing for bond issues for the purpose of raising money for park purposes and a referendum. There is no proof that this Act was ever complied with.

The Park Commission is operating under Chap-

ter 331, P. L. 1926, p. 730, and is clearly a quasi-municipal corporation, just as is a board of education or other similar body.

McQuillan on Municipal Corporations (2nd Ed.), Sec. 602, says:

“The fundamental principle is that the affairs of a corporate body can be transacted only at a valid corporate meeting. Its legislative and discretionary powers can be exercised only by the coming together of the members who compose it, or those who are its duly constituted representatives—the legal corporate authorities—and its purposes or will can be expressed only by acts or votes embodied in some distinct and definite form. The existence of the council or governing body is as a board or entity, and the members thereof can do no valid act except as a board. In short, the general legal rule is that, to bind the municipality, the council or legislative body must be duly assembled and act in the mode prescribed by the law of its creation, evidenced by an order entered of record, and such act, if legislative in character, must ordinarily be by ordinance, by-law or resolution, or something equivalent thereto.”

Schumm v. Seymour, 24 N. J. Eq. 143, 153;

State v. Jersey City, 35 N. J. L. 404;

State v. Van Buskirk, 40 N. J. L. 463;

State v. Jersey City, 25 N. J. L. 309;

Butler v. Passaic, 44 N. J. L. 171;

Halsey v. Rapid Transit, 47 N. J. E. 380
and 391;

Burlington v. Dennison, 42 N. J. L. 105.

A municipal corporation acts as a board and can do no valid act except when organized and acting as a board, and such act must be by ordinance, or resolution, or something equivalent thereto.

Dey v. Jersey City, 19 N. J. E. 412;

Schumm v. Seymour, 24 N. J. E. 143 and 153;

Coar v. Jersey City, 35 N. J. L. 404.

The Park Commission has power to adopt rules and regulations for the protection, regulation and control of parks and parkways, etc., to appoint police, with power to arrest, to exercise the power of eminent domain, to lay out and open roads, to assess benefits, which shall be a lien on the land assessed, and to collect which the assessed lands may be sold, may borrow money on bonds and do other acts of a municipal or quasi-municipal nature.

Under the definitions and cases collected in Chapter 2 of McQuillan on Municipal Corporations (2nd Ed.), especially Sections 125 and 135, the Park Commission is clearly a municipal or quasi-municipal corporation.

The nearest approach to an agreement of the Park Commission is contained in the so-called "escrow" agreement, but the terms of this agreement were not shown. In view of the stipulation by counsel (Case, pp. 150 to 152), that this reference to an agreement does not refer to a written agreement not produced; that the papers Nos. 1 to 10, referred to in the escrow agreement were not produced; that these papers not produced (which are named and enumerated on pp. 234, 235), contain no collateral agreement relevant to the issue; and that the escrow

agreement and the instruments referred to in the escrow agreement were all the written agreements which have been entered into by the Park Commission and other parties or any of them; *it must necessarily follow that there was no binding agreement on the part of the Park Commission respecting the boulevard. And certainly a public body cannot contract verbally. The reference in the escrow agreement may refer to an anticipated future agreement, or to an oral agreement, but it cannot in the light of the above (and of the evidence referred to in pp. 11 to 14 hereof) be considered as referring to an existing binding agreement. If there was an agreement, why was it not produced, after the question had been raised on the original application for certiorari?*

Therefore, the findings of the Supreme Court as to the acts and intentions or proposed action of the Park Commission are not supported by the evidence.

2. The Supreme Court found that there was nothing to suggest that the action under review was to subserve a private purpose.

The purpose of the vacation was to enable the airport to secure an 1-A-1 rating, by enabling it to enlarge its area (See abstract, above, pp. 7 and 8). This would seem to be a private purpose. Every argument that may be advanced as to why an airport would be advantageous to the community would be equally applicable to a railroad terminal, and it would hardly be suggested that a vacation of this sort to enable a railroad terminal to be enlarged

would be permitted. The fact that travel by air is in its early stage of development does not change the principle involved.

The inducement to the county to vacate the road was to be the conveyance to the county or its agencies of valuable real estate (See abstract, above, pp. 15-16), and was, in effect, a sale of the private right of the prosecutors for the benefit of a private corporation, the airport, for a consideration moving to the county.

The fact that the county received an addition to its treasury does not make the transaction one for a public purpose (*Hampton v. Poland*, 50 N. J. L. 367).

Respectfully submitted,

JOSEPH H. CARR,
Counsel for Prosecutor,
Wilmar Corporation.

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New Jersey Court of Errors and Appeals

WILMAR COMPANY,
Prosecutor-Appellant,

v.

COUNTY OF CAMDEN, *et als.,*
Defendants-Respondents.

WILMAR COMPANY,
Prosecutor-Appellant,

v.

COUNTY OF CAMDEN, *et als.,*
Defendants-Respondents.

ON APPEAL FROM SUPREME COURT.

BRIEF FOR RESPONDENTS.

The respondent, Central Airport, Inc., is the owner of a tract of land situated in the County of Camden, and bounded on the west by the State highway

known as the "Crescent Boulevard," on the south by Cooper River, on the east by Browning Road, and on the north by Kaighn Avenue and land of the prosecutor. This tract of land is shown on the map marked "Exhibit R1D," a photostatic copy of which is attached to page 9 of the State of the Case. (On this map Crescent Boulevard is called "South Connecting Road.") That part of Browning Road which is to be relocated is colored yellow, while the new section of that road and the Park Boulevard are in blue. The land cost the Airport Company over \$1,400,000.00 (p. 175). Other land to the west of Crescent Boulevard and land to the east of Browning Road is owned by the persons owning the airport, and the total cost of all of this land was in excess of \$3,000,000.00 (p. 174). The amount spent by the airport in preparing its property for airport purposes at the time of taking the depositions in this case was \$487,000.00 (p. 173), and the expenditure of some \$52,000.00 in addition had then been authorized.

The actual operation of the airport commenced at the beginning of the summer of 1929 (p. 152). It is used for the transportation of mail to and from Camden and Philadelphia, and by passenger planes. A flying school is also conducted there (p. 163).

The location of the airport is decidedly advantageous, as will appear from the road map of Camden County, which is marked "Exhibit P6." It is located upon the State highway known as the "Crescent Boulevard," which is one of the main thoroughfares of the State, and which at the northwest corner of the airport's property connects with the new

highway known as the Bridge Connecting Road leading to the bridge over the Delaware River to Philadelphia, and it fronts on Kaighn Avenue, which is a direct thoroughfare into the heart of the City of Camden.

It is the purpose of the owners of the airport to make it one of the best airports in the world (p. 193, l. 14). To be ranked as one of the leading airports the Central Airport must comply with the conditions laid down by the Aeronautics Branch of the Department of Commerce, which are discussed and quoted in part on page 156 of the record. One of the principal requirements is sufficient area. The airport now has in one tract sufficient land to comply with these requirements as to area (p. 157, l. 19). If the Park Commission of Camden County takes from the airport the land along Cooper River needed for the Cooper River Park project, the airport will not then have in one tract sufficient land to meet the requirements of the Aeronautics Branch of the Department of Commerce for an A1A airport (p. 157, ll. 26, *et seq.*).

The purpose of the requirements of the Department of Commerce with which the respondent airport desires to comply is to insure greater safety in air transportation (p. 161). The importance of making such transportation as safe as possible is immediately apparent. To that end there is a tendency upon the part of the Department of Commerce to specify what type of fields transport operators shall use (pp. 160, 161).

That the Board of Chosen Freeholders of the County of Camden and the Township Committee of

the Township of Pennsauken, in which township the airport is located, deem the airport an advantage to Camden County and the township appears from their action, which is involved in this matter, and particularly from the preliminary resolution passed by the Board of Freeholders on December 11, 1929. In this resolution the Freeholders said, *inter alia*:

“Whereas this Board deems it advisable to do everything in its power to help the developers of the airport in question, *in order that the City and County of Camden may have the advantage of having an airport, serving them and their vicinity, having the highest rating from the Department of Commerce of the United States of America, * * *.*”

(p. 195).

The importance to any community and to the country at large of the development of aviation is, we believe, evidenced by the inauguration of air mail routes and the action of the Federal Government in this connection, *the construction in various parts of the State of public airports at the public expense*, and the important part which would have to be played by airplanes in defending the country from attack. These considerations are important regardless of the view which may be entertained of the safety of airplane travel. The advantage to Camden County of having an airport of the highest type maintained at an ideal place within the county at private expense, making it unnecessary to provide and maintain such facilities at public expense, undoubtedly and quite properly prompts the county to

lend every legitimate aid to the project. Municipal airports are authorized by statute (P. L. 1929, p. 49).

But it is doubtful if the proceedings which are being reviewed in this case would ever have been initiated were it not for the fact that the plans of the Park Commission of Camden County, if they are to be carried out, make it necessary that the Commission take part of the land of the Airport Company which lies along the northerly bank of Cooper River for the construction of a park and park boulevard. It appears from the testimony that the Park Commission has been negotiating for this land since the operation of the airport started (p. 163). The park and boulevard to be laid out by the Park Commission are to be a part of the park system of the County of Camden designed for the healthful recreation of the citizens of the county. So important is this enterprise considered by the Legislature that it has given such Park Commissions the right to exercise the power of eminent domain in carrying out their plans (p. L. 1926, p. 739).

The land of the airport and its allied companies, which the Park Commission needs for its purposes, is shown on Exhibit R1D (attached to page 9 of the State of the Case) by the numerals 6, 7 and 8. The Park Commission and the airport and its allied companies have entered into an agreement under which deeds for the parts of the land in question have been deposited with the West Jersey Title and Guaranty Company. This agreement is Exhibit R1b and is printed on page 234 of the record. In-

cidentally, under this agreement a small tract of land is to be conveyed by the Park Commission to the airport for the purpose of straightening property lines.

Under the terms of the escrow agreement above referred to, as soon as Browning Road is relocated in accordance with the plans approved by the county and township, the Park Commission will acquire title to the lands it needs for its purposes, and a small tract of land of between two and three acres will come to the airport from the Park Commission (this being the tract on R1D indicated by the numerals 5, 9 and 10), without the payment of any money consideration by any party to any other party. According to the testimony, the land which the Park Commission will acquire has a value of somewhere between \$140,000.00 and \$580,000.00 (pp. 177, 178). The value of the land which the airport gets from the county is somewhere between \$6,000.00 and \$9,000.00. Of course, if the Park Commission were obliged to condemn the land it requires from the airport along Cooper River, and the alteration of Browning Road were not made, the damages to the airport would be very large, as it would be deprived of land needed for making it an A1A airport.

The Board of Freeholders of the County of Camden has taken steps to forward the development of the park system and the airport by the passage of the resolutions which are here for review. The proceedings in which these resolutions were passed were instituted by a petition filed by the Central Airport, Incorporated, with the Freeholder (p. 192).

Attached to this petition was a plan, which is in evidence (p. 7), showing the portion of Browning Road to be altered or relocated. The motives of the Freeholders will be discussed in our reply to the contention of the prosecutor that the county has sold the public rights in the road.

The statement of counsel for the prosecutor, on page 16 of his brief, from which it might be inferred that the only purpose of changing the location of Browning Road is to make the airport operation more economical, is misleading. It is clear from the testimony of Mr. Saltus (p. 157) that if the land which the Park Commission desires is conveyed to it the airport will not then have in one piece enough land for an A1A airport. It may be true that one of the results of the relocation of Browning Road will be more economical operation (p. 159). It is also true that the reason no application has been made to the Federal authorities for a rating is that the airport has been waiting for the outcome of these proceedings so that they may know what land they can report as available for airport purposes (p. 163).

The prosecutor is the owner of land at the southwest and northwest corners of Browning Road and Kaighn Avenue. Kaighn Avenue is a direct highway into the City of Camden, and at the Bridge Circle, as shown on the maps R1D and P6, connects with the Crescent Boulevard. Crescent Boulevard appears to be about a quarter of a mile from Browning Road and parallels it from Merchantville to Collingswood. *The prosecutor owns no land fronting on the part of Browning Road involved in this*

proceeding. All of the land fronting on that part of the road is owned by the respondents, Central Airport, Inc., and Central Airport Development Co.

It has been contended by the prosecutor that Browning Road is the only direct route from Merchantville to Collingswood. The evidence shows that the State highway, known as the "Crescent Boulevard," parallels Browning Road, at a distance of about a quarter mile to the west, from Merchantville to Collingswood, and that the Crescent Boulevard is a much better and more modern road. The streets laid out on the map of the prosecutor all give access to Kaighn Avenue without travelling over any part of Browning Road.

There is nothing whatsoever in the evidence to show that Browning Road is a necessary road, if that be important. All that appeared was that in going from the suburban community of Merchantville to Collingswood, another suburban community, the distance is a trifle shorter if you go by Browning Road instead of by the State highway, paralleling it. In travelling from Collingswood or Merchantville, or from the land of the prosecutor, to Camden, the largest city in Camden County, Browning Road would not be used. Wilmar Company is a real estate company, with lots to sell, principally to those citizens of Camden who desire to move out into the suburbs. Access to Camden is not had over Browning Road.

The evidence is that when the portion of Browning Road in question has been relocated, the dis-

tance between Merchantville and Collingswood, over the Browning Road, will be increased nine hundred feet (p. 179). Of course, in the meantime the Browning Road as now laid out remains open for public travel.

THE FINDING OF THE SUPREME COURT
THAT THE PROCEEDINGS UNDER RE-
VIEW PROVIDE FOR AN ALTERATION
OF THE COURSE OF A PORTION OF
BROWNING ROAD AND NOT FOR THE
CLOSING OF THE ROAD WAS CORRECT.

The prosecutor has endeavored to convince the Court that the action to which they object contemplates the absolute vacation and closing of a part of Browning Road without providing for laying out a substitute for the part closed. This is not true, but if the Board of Chosen Freeholders of Camden County, acting in pursuance of the statute (P. L. 1918, Chapter 185, as amended by P. L. 1929, Chapter 143), passed a resolution, after public notice, vacating all or a part of the road, we have no doubt that the petitioners would be without redress, as the statute makes no provision for compensation to property owners. In the case of *Newark v. Hatt*, 79 N. J. L. 548, 550, this Court said:

“The right of the State to destroy public improvements of this class without compensation is not limited by the constitution, and except for the statute, as expressed in the charter of the city, this street could have been vacated

without the slightest consideration of its effect upon any land lying along it, or the payment by the city of compensation to any land owners for damages."

It has been held that the question whether a road is necessary or not cannot be looked into on certiorari.

State v. Bergen, 24 N. J. L. 548;

Hampton v. Poland, 50 N. J. L. 367.

It must be presumed that the Board charged with the maintenance of county roads knows the relative location of the various roads in the county. We do not believe that a Court should be called upon to substitute its judgment of the necessity of a road for that of the Board elected by the people of Camden County, and to which the Legislature has given the power of determining which roads are necessary and which are not. As was said in *Dodge v. Penna R. R. Co.*, 43 N. J. Eq. 351 (affirmed 45 N. J. Eq. 366), of a street vacation by the Common Council of Jersey City to permit the elevation of railroad tracks:

"Such surrenders can only be made by the people's representatives, and as they generally hold office for short periods of time, and must exercise their power in the face of the people, it is assumed that their power in this respect will never be exercised, except when the public good imperatively demands it."

The prosecutor also contends that a resolution vacating a road is invalid unless it is stated in the resolution that the Board passing it found as a fact that the road vacated was unnecessary for public travel. No authorities are cited in favor of this novel proposition, and the rule is, where a judgment is reviewed on certiorari, that the record will be aided by the presumption that facts necessary to support the judgment were found. *Britton v. McDonald*, 43 N. J. L. 591. The resolution which they say amounts to an absolute vacation recites that: "This Board has heard and considered all objections made at this meeting to the proposed vacation" (p. 221). There is no contention made that proper notice of the consideration of the resolution, if notice was necessary, was not given. If this were an absolute vacation, as the prosecutor contends, the act of the Board of Freeholders in passing the resolution after hearing and considering objections would certainly amount to a finding that the road was unnecessary for public travel. Much more could be said on this point if we thought it important, but the Supreme Court held that an absolute vacation of Browning Road was not intended, but what was done amounts to an alteration or relocation.

Following the line of prosecutor's argument, we think it clearly appears from the record that there was absolutely no evidence to support the contention that Browning Road is a necessary road. The situation is not that which appears in practically every case cited by the prosecutor on this point where access to the land of an abutting owner was entirely cut off by a vacation. There is no point which

could be reached over the Browning Road which cannot be reached over other existing roads with a comparatively slight increase in distance. While it may be true that, for some people, at certain times, Browning Road might be slightly more convenient than the Crescent Boulevard, such slight increase and convenience does not, we contend, amount to necessity.

Nevertheless, it clearly appears from the record that there is no intention of closing Browning Road, either temporarily or permanently. This appears from the following parts of the Record:

1. In the petition of the airport to the Board of Freeholders for an alteration of Browning Road (p. 193), the following prayer appears:

“Your petitioner prays that your Honorable Body will adopt a resolution, after due notice and public hearing, vacating the portion of said Browning Road delineated on said plan (meaning the plan attached to the petition, p. 7) as ‘Section To Be Vacated,’ and will in lieu thereof accept a dedication of Browning Road as relocated as shown upon said plan.”

2. The third recital of the preliminary resolution of the Board of Freeholders (p. 195) recites the necessity of vacating a part of Browning Road *and laying out a new section of road in place of the part vacated.*

3. The resolution of the Township Committee of Pennsauken Township (p. 217) contains the following recital:

“Whereas, the Township Committee is informed that the portion of Browning Road proposed to be vacated, as aforesaid, will be kept open for public travel until such time as certain lands about to be dedicated to the County of Camden for a new road, located east of the portions of the existing road proposed to be vacated, have been paved and connected to the road to be laid out and constructed and paved by the Camden County Park Commission along the north and east bank of the Cooper River.”

4. The resolution passed by the Board of Freeholders immediately after the passage of the so-called vacation resolution provides for the execution of an agreement accepting land for the new part of the road, and providing that the old road shall be kept open for public travel until the new portion of Browning Road and the Park Boulevard are finished (pp. 225, *et seq.*).

5. The agreement executed in pursuance of the last mentioned agreement provides that the old road is to remain open for public travel until the substituted road and the Park Boulevard are finished (p. 186).

6. The map R1D, prepared by the Park Commission's engineer (pp. 120, 121), as well as the map attached to the airport's petition (P7), both show the old road and the new location of the part of the road in question.

The resolution vacating the part of the road to be discontinued and the resolution providing for the agreement accepting the land for the new location of the road, and providing that the old road shall remain open until the new road is completed, were passed at the same meeting, one resolution immediately following the other, and at the time of the passage of the first resolution the Board of Freeholders had before it the agreement provided for in the second resolution, which agreement had already been executed by the other parties to it (p. 129, ll. 5, *et seq.*).

The fact that the alteration of the road was accomplished by two resolutions rather than one, even if a formal defect, could not in any manner be injurious to the prosecutor.

The Board of Freeholders of the County of Camden has power to alter or change all or any part of a road under its jurisdiction. It is not contended by the prosecutor that Browning Road is not a county road. The Board's authority to alter such a road is given by Chapter 185 of the Laws of 1918, as amended by Chapter 143 of the Laws of 1929, which amended subdivision c of Section 1101, Article 11, of "An Act Concerning Counties." Among the powers given by this Act to Boards of Chosen Freeholders is the following:

"c. To widen, *alter*, straighten, *change the grade* of or *location* of any road or highway under its control, or *any part thereof.*"

The prosecutor further contends that a mere private right of way exists over the part of Browning

Road which has been altered until the new section of the road is built. The agreement continuing Browning Road in existence as now laid out (p. 144) provides for such continuance,

“So long as the same may be reasonably necessary to connect *for public travel* the two unvacated portions of Browning Road, as hereinabove mentioned, and until the completion by the Camden County Park Commission of a new boulevard on the east or north bank of the Cooper River, and the completion by the County of Camden of a new road to the east of Browning Road, as herein described, and no longer.”

This, we submit, is not a private right of way, but a public right of way, and, indeed, the right which the members of the public have in any road is merely a right of way.

PROSECUTOR SUFFERS NO SPECIAL DAMAGE BY THE PROCEEDINGS UNDER REVIEW.

In the brief of the prosecutor several cases are cited as sustaining its contentions that the action of the Freeholders was quasi-judicial, and that the owner of property which is left on a cul de sac by a vacation of a part of a street suffers special damage. The cases cited, however, show that the mere suffering of special damage does not give the right to object to the vacation of a street, and, furthermore, that unless compensation is provided by stat-

ute for special damage resulting from a street vacation, compensation cannot be recovered.

We assume that this part of the prosecutor's argument is based upon the proposition that an absolute vacation and shutting off of Browning Road from public travel is designed, and that if that is true, because there is no intersecting street between a part of the lands of the Wilmar Company and the part of the road to be closed, the prosecutor, Wilmar Company, is in a position where it can object to the vacation of Browning Road, because Browning Road is a necessary road. As we have said above, if Browning Road were to be closed entirely at the point in question, the Board of Freeholders would have a right to take such action, and the prosecutor would have no legal right to object and no right to compensation, because in the statute under consideration no provision is made for compensation for damages resulting from the vacation of a road. And, furthermore, the mere fact that in one direction Browning Road might be slightly more convenient for users of the property of the Wilmar Company than the Crescent Boulevard, this slight convenience would not make Browning Road necessary for public travel, paralleled as it is by the Crescent Boulevard a short distance to the west, which State Highway reaches, without much greater distance, communities which could be reached over Browning Road.

We submit that the case of *Moore v. Haddonfield*, 62 N. J. L. 386, cited by the prosecutor, indicates that a road vacation proceeding which does not prevent access to lands, and does not assess the cost of

the improvement against property owners, is a legislative rather than a judicial action. But it makes no difference in this case whether the action was legislative or judicial.

The case of *Read v. Camden*, 54 N. J. L. 347, cited on page 23 of the prosecutor's brief, involved proceedings which were set aside because a right of way had not been procured for the public over a small piece of private land across which a traveler would be compelled to go in using the road in question in that case, and for that reason the scheme was held unreasonable and set aside. No such situation exists in the present case.

THE ACTION OF THE COUNTY WAS NOT BASED UPON ILLEGAL CONDITIONS.

The prosecutor contends that the present case is similar to the case of *Hammer v. City of Elizabeth*, 67 N. J. L. 129, where the city passed an ordinance which provided that a certain street should be vacated and that the vacation should not become effective unless the owners, within sixty days after the passage of the ordinance, accepted the vacation ordinance in writing, and unless within one year thereafter \$40,000.00 should be expended for the erection of a building and machinery for manufacturing purposes upon the lands in the portion of the street vacated and abutting lands. In that case such conditions were held unlawful.

The proceedings in the present case are not conditional, and the effect of the case of *Hammer v.*

City of Elizabeth was not avoided by circumlocution, as contended by the prosecutor. *The only condition attached to the present proceeding is as to the time when the old road shall cease to be used, and that is the usual condition attaching in such a case, namely, that the old road shall cease to be the road when the new road is finished.* And again, in this connection, we say that by no stretch of the imagination can it be claimed that the prosecutor suffered any damage through any delay which may occur in the building of the new section of Browning Road and the Park Boulevard, because the Freeholders saw to it that the use of Browning Road as now laid out will be continued until the substituted route is completed.

The next contention of the prosecutor is that the consent of the Township of Pennsauken is invalid because it was conditional, and this consent is said to be conditional because of a recital that the Township Committee had been advised that no part of Browning Road would be closed until the substituted route had been completed.

In the case of *Davis v. Town of Harrison*, 46 N. J. L. 79, cited by the prosecutor in this connection, the resolution passed by the Common Council gave consent to the laying of water pipes by a water company upon condition that a certain proposition which included the fixing of rates be strictly adhered to in every particular. The Act under which the Common Council was proceeding gave it no authority to attach any conditions to the laying of water pipes.

By its terms, the resolution of the Township of Pennsauken is unconditional (p. 216). It is true that

there is a recital in the resolution to the effect that the Township Committee has been informed that the part of the road to be altered would be kept open until the new section of the road and the Park Boulevard are finished. This, however, does not attach a condition to the resolving part of the resolution, if any resolution at all were necessary. We can, however, find no provision in the statute requiring the consent of the Township Committee to a relocation of a portion of a county road, which is really what is involved in this case.

UNDER THE LAW AN ALTERATION OR
CHANGE OF LOCATION OF A PART OF A
ROAD RESULTS IN A VACATION OF
THAT PART OF THE ROAD WHICH IS
ALTERED OR RELOCATED.

It is contended in the prosecutor's brief that a mere change in location of a part of a road does not result in a vacation of any part of a road. None of the cases cited by the prosecutor supports its position in this particular. All that was held in the case of *Fowler v. Larabee*, 59 N. J. L. 259, was that, under the Road Act then in force, surveyors, in vacating a part of a road and laying out a new road in lieu of the part vacated, should include in their assessments of damages the damages suffered by any landowner (other than an applicant for the change of the road), by the altering of the road. In that case, the surveyors included only the damages for land taken for the new location and nothing

for the damages resulting from the change of location. This was held to be erroneous.

The case of *Norton v. Truitt*, 70 N. J. L. 611, also cited by the prosecutor under this head, holds that under the road laws then effective a petition for the laying out of a public road cannot be used to widen or alter a road or street in a village without the consent of three-fourths of the owners in interest of the land fronting on the part of the road or street affected.

In the case of *Pursell v. Edison*, 65 N. J. L. 541, also cited by the prosecutor, it was held that a statute prescribing the mode of altering short pieces of a public road by vacation and relaying of the same or substituting another road therefor, did not authorize the vacation of an existing road and the laying out of a new road in another place whereby the prosecutor was entirely deprived of a way from his farm over the road vacated. In this case the new road was laid out a distance from the locality of the road vacated. That is not the situation in the present case.

The rule is that an alteration of a road results in a vacation of a part of the old road. In the case of *State v. Bergen*, 21 N. J. L. 342, 345, the Court said:

“The application was to vacate so much of the old road as was covered by the new road proposed to be laid out. It was proper that the two should be blended, for the reason that if the road should be laid out as applied for, *the old road must necessarily be vacated.*”

The general rule given in 29 Corpus Juris, 516, Section 224, is as follows:

"It has been repeatedly decided that an *alteration* by competent authority of an existing road or way operates as a *discontinuance* of such portions of the old road as are not embraced within the limits fixed for the new one (citing *State v. Bergen*, 21 N. J. L. 342), and, unless otherwise provided, no special order of discontinuance is necessary. Nor does the fact that one of the termini as altered is different from the terminus in the same direction of the old road affect the application of the principle. There are, however, certain cases in which alterations will not have this effect as where the old road is not thereby rendered unnecessary (citing *Attorney-General v. Morris, etc., R. Co.*, 19 N. J. Eq. 386, reversed on other grounds, 20 Eq. 530, where it was held that the vacation of a road which crossed another road, does not vacate any part of the road so crossed); where there is strictly no alteration, but rather the establishment of a new road; or where there is no record to show that an alteration was intended. *In any case the old road continues the public highway until the new road is laid out and made practicable*, and it is sometimes so provided by statute. Where a road has been discontinued by the effect of an alteration therein, it can be re-established only by the proper statutory proceedings, or by dedication by the owner."

And at page 503 of the same volume of Corpus Juris, Section 198, it is said:

“An alteration of a highway, as the expression is used, generally refers to a change in the course thereof, and, therefore, necessarily involves to some extent the establishment of a new highway, *and the vacation of a part of the old highway for which the substitution is made*
* * *.”

If the alteration of a road does not result in a vacation of a part of the road, it would seem to result in nothing but the building of an additional road. How could it be said that the highway was altered or its location changed if the old highway forever remained as it had been originally?

THE PROCEEDINGS TAKEN BY THE BOARD
OF CHOSEN FREEHOLDERS OF CAMDEN
COUNTY WERE NOT FOR PURELY PRIVATE PURPOSES, AND THE COUNTY
HAS NOT SOLD THE RIGHTS OF THE
PUBLIC IN BROWNING ROAD.

The prosecutor places great reliance upon the case of *Hampton v. Poland*, 50 N. J. L. 367, to sustain their contention that in the present case the Board of Chosen Freeholders were moved by improper motives in passing the resolutions in question. In that case it appeared that someone wanted a road altered. The Township Committee had opposed the alteration of the road. The promise of those wanting the road altered to save the Town-

ship from expense in connection with the alteration, caused the Township Committee to change their minds. Surveyors in making the alteration laid out the relocated road across land of the relator over her objection. It does not appear from the report of the case that any public interest would be served by the change of the road. As we read the opinion, the ordinance was set aside upon two grounds, namely, that the objection of the Township Committee was overcome by an offer to bear the expense of the change, and that it was unlawful to alter a road for purely private interests when such alteration involved the taking of lands of another person by eminent domain. Neither of these factors exists in the present case.

There is no evidence whatsoever that the Board of Chosen Freeholders ever had any objection to the alteration of Browning Road and no land is being taken by condemnation to make the alteration. *All of the land, which abuts on the part of the road which is altered, is owned by the respondent corporations who are interested in the development of the airport.*

Furthermore, the present case is much more analogous to the case of *Kean v. Elizabeth*, 54 N. J. L. 462, affirmed 55 N. J. L. 337. In that case the Supreme Court said, page 466:

“Nor do I find any substance in the point that the vacation was made to subserve a private interest.

It is true that the proceedings for vacation were taken immediately after a petition for

such vacation had been presented by the trustees of the Trumbull estate.

The vacated portion of the street had been laid over the Trumbull lands. There appears to have been an opportunity to sell a tract of said land to a company which would locate extensive works upon it, and so increase the prosperity of that portion of the city.

The required piece of land could not have been obtained without a vacation of this part of Work Street. This was probably the principal inducement to the action of common council. But the motives which induce municipal proceedings of this kind are always of a mixed character.

Regard for private interests are necessarily intertwined with public interests. The size of lots for building purposes is a proper factor to be taken into consideration in the vacation, as well as in laying out or altering streets."

The avowed purpose of the Board of Freeholders as expressed in their preliminary resolution (p. 195) is as follows:

"WHEREAS, this Board deems it advisable to do everything in its power to help the developers of the airport in question, *in order that the City and County of Camden may have the advantage of having an airport, serving them and their vicinity, having the highest rating from the Department of Commerce of the United States of America*, and for that reason has under consideration the vacation of a section

of Browning Road hereinafter referred to, and the establishment of a new road to take its place, to the east of the proposed airport site as aforesaid, the lands for said new road to be dedicated by the Central Airport Development Company as aforesaid."

This recital seems to us to bring the case within the case of *Kean v. Elizabeth*. That the case of *Kean v. Elizabeth* dealt with an absolute vacation, whereas the case now before the Court is the case of an alteration of a road, seems to us to make no difference in principle.

The advantage to the County of Camden from the proper development of this airport have already been referred to, as has been the fact that other municipalities in the State have, with legislative sanction, deemed it necessary to establish municipal airports at public expense.

There is no evidence that the members of the Board of Freeholders of Camden County were induced by the promise of the airport to convey land to the Park Commission, to alter Browning Road. Of course, the Freeholders know that if the Park Commission takes part of the airport's land the airport will then not have sufficient area in one tract for an airport of the highest type, and if it were true that the conveyance of land to the Park Commission influenced the Freeholders, this would not be improper. The park is being built not for private purposes, but for public purposes. If the Freeholders feel that the park is of sufficient importance to warrant the change of location of Browning

Road, nothing improper could be inferred from their altering the road. Apparently the prosecutor wants the County to cripple the airport by taking land for park purposes. This the County authorities think is unfair, and they believe that the airport is of great importance to the County and should be permitted to develop and function properly.

It seems to us that this is a very different situation than that which the Court condemned in the case of *Hampton v. Poland*, *supra*.

THE FINDINGS OF FACT BY THE SUPREME COURT, ATTACKED BY THE PROSECUTOR IN THIS COURT, ARE SUPPORTED BY THE EVIDENCE.

The finding of the Supreme Court upon a disputed question of fact, upon certiorari, is final, if there is any evidence supporting such finding.

Moran v. Jersey City, 58 N. J. L. 653.

George v. Board of Excise, 74 N. J. L. 815.

Specht v. Central Passenger R. Co., 76 N. J. L. 631.

Kahn v. Tilt, 103 N. J. L. 110.

It is stated in the brief for the prosecutor that there is no evidence that the Park Commission has done anything to indicate its intention to build a boulevard along the north bank of Cooper River which will connect the new section of Browning Road with the old road where the latter crosses Cooper River. It appears from the testimony that the map

marked R1D, which shows the location of the park and boulevard, Browning Road as now existing, and the relocated section of Browning Road, was prepared by Jay C. Remington, Jr., who is engineer of the Camden County Park Commission (pp. 164, 165). He has been instructed by the Park Commission to prepare surveys, plans and specifications and advertise for bids for this boulevard (pp. 166, 167). It further appears from the testimony of the same witness that the map which is R1D was the map referred to as "X" in the resolution passed by the Park Commission on November 7, 1929, which appears on page 181 of the record (p. 184). This resolution, we submit, is additional evidence of the plans and intentions of the Park Commission. The resolution passed by that Commission on December 26, 1929, appearing on page 182 of the record, authorizes the execution on its behalf of the escrow agreement which is referred to many times in the case, and is printed on page 234 of the record. This escrow agreement refers to an agreement "on the part of the Camden County Park Commission to keep and maintain the proposed road to the north and west of Cooper River along its banks over the lands covered by the deeds aforesaid at a *level* not above that of Contour No. 7" (p. 235). Document No. 11 described in the escrow agreement is printed on page 186 of the record as "Exhibit R2." This agreement (p. 188) provides that Browning Road shall remain open "so long as the same may be reasonably necessary to connect for public travel the two unvacated portions of Browning Road as hereinabove mentioned, and until the completion by the

Camden County Park Commission of a new boulevard on the east or north bank of Cooper River and the completion by the County of Camden of a new road to the east of Browning Road as herein described, and no longer."

We submit that the Park Commission has gone just as far as it can go in planning to build the Park Boulevard before the title to the land covered by the deeds delivered in escrow passes to it. If it made a contract for the construction of this road now the prosecutor would undoubtedly apply for writs of certiorari to set aside the contract upon the ground that some of the land to be covered by the road is not owned by the Park Commission. *As a matter of fact, the land which the boulevard will cover, between the old section of Browning Road and the new, is now owned by the Park Commission, as appears on R1D, that land not being included in any of the parts of that map marked as covered by instruments mentioned in the escrow agreement.* Prosecutor's map (P8) shows that this land is now owned by the Park Commission. Of course, the Commission would be criticised if it undertook to build the Park Boulevard piecemeal.

In this connection it must also be remembered that the prosecutor has held up the alteration of Browning Road and the building of the Park Boulevard since December, 1929, by its prosecution of these proceedings. It is hardly in a position to complain because the boulevard has not been started.

In any event, this situation cannot in any manner cause damage to the prosecutor because it distinctly appears from all the evidence that Browning Road

will continue in its present position until the relocated portion and the Park Boulevard, to connect it with the old road, have been completed and opened. The contention that this old part of the road might be permitted to fall into disrepair is impertinent. If no change were made in the road the prosecutor would have no legal right to compel the county to make improvements to the road. As a matter of fact, the photographs in evidence show that the road is in good condition and the county has continued to give it the same treatment as is given other parts of Browning Road in this vicinity.

The transaction between the airport and the county, as represented by the Park Commission, is somewhat complicated. The airport cannot afford to part voluntarily with land necessary to make its property an A1A airport unless other land, to wit, the land lying east of Browning Road, and owned by the airport interests, is made available for airport purposes. The Park Commission cannot agree with the airport to cause Browning Road to be relocated after the Park Boulevard is completed, nor do we believe that the Board of Freeholders could be bound by such an agreement. The proceedings had to start somewhere, and had to be conducted with safety to all parties concerned, and since the *status quo* is to be preserved by keeping Browning Road open as a public thoroughfare until the boulevard and the relocated portion of the road have been completed, we cannot see how the prosecutor can possibly be damaged by the *modus operandi* adopted by the county.

The evidence as to the motives of the Board of Freeholders has been discussed at length above.

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

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