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WRIT OF CERTIORARI.

Returnable October 11, 1919.

NEW JERSEY, *ss.*

THE STATE OF NEW JERSEY to WILLIAM D. BROWN,
(L. S.) Clerk of the City of Camden, GREETING: 10

We being willing for certain reasons upon complaint of Public Service Railway Company to be certified of and concerning proceedings had and taken by and before the City Council of the City of Camden pursuant to a notice signed by Charles H. Ellis, Mayor, dated September 23, 1919, addressed to the Mockett Construction Company, builder, and Public Service Railway Company, owner, concerning two sheds or structures in the City of Camden, one at Broadway and Morgan street, and the other east of Delaware avenue on lands of the Camden and Philadelphia Ferry Company; 20

Do command you that you forthwith as fully and entirely as before you they appear and remain, certify and send under your seal to our justices of our Supreme Court at Trenton on the 11th day of October, nineteen hundred and nineteen, such notice and all orders, actions and proceedings had and taken by the City Council of the City of Camden under such notice and concerning the subject matter thereof, together with this writ, that we may cause to be done thereon what, according to the laws and constitution of this state, ought to be done. 30

Witness the Honorable William S. Gummere, Chief Justice of our Supreme Court, at Trenton, this twenty-fifth day of September, in the year of our Lord one thousand nine hundred and nineteen.

ENOCH L. JOHNSON,
Clerk.

FRANK BERGEN,
Attorney.

40

Allocatur:

THOMAS W. TRENCHARD,
J. S. C.

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RETURN.

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

In obedience to the command of this writ, directed to William D. Brown, Clerk of the City of Camden, I hereby certify and send, under the seal of the City of Camden, to the Honorable Justices of the Supreme Court of Judicature of New Jersey, the notice, resolution, proceedings of Council and Section 14 of the Building Code, being the notice, actions and proceedings concerning the subject matter mentioned in said writ, as fully and entirely as before the City Council they remain, as is commanded.

In testimony thereof, I, William D. Brown, City Clerk of the City of Camden, have hereunto set my hand as such clerk, and caused the seal of the City of Camden to be affixed this sixth day of October, A. D. 1919.

WM. D. BROWN,
City Clerk.

(SEAL)

Camden, N. J., Sept. 23, 1919.

To the Mockett Construction Company, builder, and the Public Service Railway Company, owner:

You are hereby cited and ordered to appear before City Council at the City Hall, Camden, N. J., on Thursday, September 25th, 1919, at three o'clock in the afternoon of said day, to show cause why that certain one-story, frame building of the dimension of sixty-eight feet four inches in length, by seven feet in depth, with the fences and other appurtenances connected therewith, located at Broadway and Morgan street, in the Eighth Ward, Camden, N. J., should not forthwith be torn down and removed by you because the same has been constructed and is now maintained contrary to the ordinances of the City of Camden.

And also to show cause at the same time why that one-story frame building, of the dimension of sixty-eight feet and four inches in length by twenty-five feet in depth, constructed by you at the Pennsylvania Railroad Ferries, in the Third Ward of said city, should not be forthwith torn down and removed because

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the same has been constructed and is now being maintained contrary to the ordinances of the City of Camden.

Take further notice that unless you show good cause therefor I shall request the direction of City Council for an order to have both of said structures, with the fences and other appurtenances connected therewith, immediately removed at your expense. 10

And you, the Public Service Railway Company, are also notified to produce at the time and place aforesaid, any authority you may have received and from whom, to reconstruct or relay your railway tracks at the Federal Street Ferry, and to change the method of receiving and discharging passengers in that vicinity.

(Signed) CHARLES H. ELLIS,

(SEAL) *Mayor.* 20

Abstract from Minutes of Camden City Council, Sept. 25, 1919.
A Regular Stated Meeting of Camden City Council Was Held at City Hall on Thursday, Sept. 25, 1919.

Mr. David Jester, President, in the Chair.

The roll was called as follows:

Present: Abbott, Bender, Bolzau, Bowen, Carney, Corson, Dellmuth, Forsyth, Gamberling, Greer, Ogden, Hibbs, Kelly, Kirk, MacIntosh, Prince, Roberts, Robinson, Rodan, Schneider, Van Hart, von Nieda, Way, Jester, Pres.; Jones. 30

Twenty-five quorum present.

The Mockett Construction Company, builder, and The Public Service Railway Company, owner, having been cited by the Mayor to appear before City Council to show cause why two buildings, one at Broadway and Morgan street, and one at Federal Street Ferry, should not be torn down and removed, the President directed that said hearing be held at this time.

Mr. Mockett was examined by the City Solicitor and produced plans and building permits. 40

The following resolution was adopted:

WHEREAS the Building Inspector of the City of Camden on August 29, 1919, issued two certain permits numbered B-81

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and B-82 to the Mockett Construction Company for the erection of two certain frame buildings, one at Broadway and Morgan Street, Camden, and the other at the Pennsylvania Railroad Ferry, Camden;

And Whereas, certain plans were filed by the builder with the Building Inspector;

10 And Whereas said structures have been illegally and improperly constructed for the following reasons:

1. Said structures were not erected according to the plans filed.

2. Said structures were erected without submission to or approval by the proper city authorities.

Now, Therefore, be it Resolved, that the Building Inspector be and he is hereby instructed to notify the Mockett Construction Company, builder, and the Public Service Railway Com-
20 pany, owner, to appear before him and show cause why the two permits, B-81 and B-82, issued by him August 29, 1919, to the Mockett Construction Company for frame buildings, one at the foot of Federal Street, and the other at Broadway and Morgan Street, should not be revoked or proper plans presented to and approved by the proper city authorities, and if this be not done, and if the said permits be revoked,

Be it Further Resolved that the Mayor be and he is hereby directed to give notice to said builder and owner to forthwith remove said buildings and if the same be not done pursuant to
30 said notice,

Be it Further Resolved, that the Mayor be and he is hereby authorized and directed to remove the same at the expense of the said builder and owner.

Judge Armstrong representing the Public Service Corporation, served upon Counsel the following writ of certiorari:

The State of New Jersey to William D. Brown, Clerk of the City of Camden, Greeting:

40 (Seal)

We being for certain reasons upon complaint of Public Service Railway Co. to be certified of and concerning proceedings had and taken by and before the City Council of the City of Camden pursuant to a notice signed by Charles H. Ellis, Mayor, dated

Return.

Sept. 23, 1919, addressed to the Mockett Construction Company, builder, and Public Service Railway Company, owner, concerning two sheds or structures in the City of Camden, one at Broadway and Morgan Street, and the other East of Delaware Avenue on lands of the Camden and Philadelphia Ferry Co.

Do command that you forthwith as fully and entirely as before you they appear and remain, certify and send under your seal to our Justices of the Supreme Court at Trenton on the 11th day of October, nineteen hundred and nineteen, such notice and all orders, actions and proceedings had and taken by the City Council of the City of Camden under such notice and concerning the subject matter thereof, together with this writ, that we may cause to be done thereon what, according to the laws and constitution of this state, ought to be done.

Witness the Honorable William S. Gummere, Chief Justice of the Supreme Court at Trenton, this twenty-fifth day of September in the year of our Lord one thousand nine hundred and nineteen.

ENOCH L. JOHNSON,
Clerk.

Frank Bergen,
Attorney.

On motion same was received and filed and proper return ordered made thereto.

On motion adjourned.

WILLIAM D. BROWN,
(Seal) *Clerk.*

Abstract from the Building Code of the City of Camden, N. J.
Sec. 14. Permits may be revoked.

The Building Inspector shall have power to revoke or annul any permit hereby granted, in case of the violation of any City ordinance or of any provision of this code or for the abuse of any of the privileges granted by the same, or when any building is so far completed as to render any further use of the street unnecessary, and said permit in case of such revocation, can be renewed only by the express order of the Building Com-

mission of said city. Every contractor must notify the Building Inspector in writing immediately when he is released from completing any contract or if the contract with him has been broken; otherwise his responsibility as such contractor hereunder shall continue.

10 (SEAL)

REASONS.

Filed.

20 # New Jersey Supreme Court

PUBLIC SERVICE RAILWAY COMPANY, *Prosecutor,* *vs.* CITY OF CAMDEN, *Defendant.*	*On Certiorari.* *Reasons.*

30 The prosecutor, Public Service Railway Company, comes into court here and alleges the following reasons why the said resolution of the defendant, the City of Camden, is illegal and void:

1. The Mayor of the City of Camden was without jurisdiction to give the notice dated September 23rd, 1919, returned with the writ in this cause.

2. The City Council was without jurisdiction to have the hearing under the notice of the Mayor dated September 23rd, 1919.

3. There is no jurisdiction of the building inspector to re-
40 voke the permits referred to in the proceedings brought up for review.

4. The City Council was without jurisdiction to order the removal of the structures referred to in the proceedings brought up for review.

Reasons.

5. The City Council was without jurisdiction to order the Mayor to remove the structures referred to in the proceedings brought up for review.

6. The resolution of the City Council passed September 25th, 1919, brought up by the writ in this cause is not within the jurisdiction of the Council.

10

7. The resolution of September 25th, 1919, brought up with the writ of certiorari in this cause, improperly and unlawfully authorized and directed the destruction of the prosecutor's property.

8. The structures referred to in the resolution of the City Council of September 25th, 1919, are built on private property, lawfully constructed and maintained by the prosecutor, and Council has no jurisdiction or authority to pass a resolution providing for the destruction thereof.

9. If the building permits referred to in the resolution of September 25th, 1919, were revoked it would not thereby render the structures of prosecutor illegally or improperly erected.

20

10. The City Council of the City of Camden can not authorize or direct the Mayor of the City of Camden to remove said structures.

11. The Mayor of the City of Camden by resolution of City Council or otherwise is without lawful power or authority to remove said structures.

12. The City Council of the City of Camden can act herein, if at all, by ordinance only, and not by resolution.

30

13. The structures erected by prosecutor referred to in the proceedings brought up for review are upon private property, legally and properly erected, and violate no valid statute, ordinance or regulation, and prosecutor is entitled to peaceably and quietly possess and enjoy the same.

14. The resolution and proceedings are in divers other respects contrary to law, and are offensive and injurious to prosecutor.

Wherefore prosecutor prays the return to said writ and resolution and these reasons being inspected and the proofs considered, that the said resolution may be adjudged illegal, improper, void and of no effect, and be set aside.

40

FRANK BERGEN,
Attorney of Prosecutor.

RULE TO TAKE AFFIDAVITS.

Application now being made by Frank Bergen, attorney of prosecutor, for a rule permitting the taking of affidavits to be read on hearing of the writ of certiorari in this cause;

It is ORDERED that the prosecutor have leave, according to the rules and practice of this Court, to take affidavits which may be read upon the hearing in this Court of the writ of certiorari heretofore allowed herein.

Entered October 16, 1919.

On motion of

FRANK BERGEN,
Attorney of Prosecutor.

I allow this rule this fifteenth day of October, 1919. Let it be entered in the minutes.

THOMAS W. TRENCHARD,
Justice Supreme Court.

Martin Schreiber, direct.

NEW JERSEY SUPREME COURT.

PUBLIC SERVICE RAILWAY COMPANY, *Prosecutor,* *vs.* CITY OF CAMDEN, *Defendant.*	*On Certiorari.* *Affidavits on Rule.*

10

Transcript of testimony taken in the above-entitled cause before Frederick E. Baker, a Supreme Court Examiner, in Room 703, 80 Park Place, Newark, New Jersey, at ten o'clock in the forenoon of Thursday, October 23rd, 1919, pursuant to the following notice theretofore given:

"PLEASE TAKE NOTICE that pursuant to a rule entered in the above-stated cause, I shall take affidavits on behalf of the prosecutor to be used on the hearing of the writ of certiorari in this cause, before Frederick E. Baker, Supreme Court Examiner, in Room 703, at No. 80 Park Place, Newark, New Jersey, at the hour of ten o'clock in the forenoon, on Thursday, October 23, 1919, where you may attend and proceed, in accordance with the rules of the Supreme Court in such case made and provided.

20

"Very respectfully,

30

FRANK BERGEN,
Attorney of Prosecutor.

To

EDWIN G. C. BLEAKLY, ESQ.,
Attorney of Defendant."

The said notice is endorsed as follows: "Service of the within notice is hereby acknowledged this 18th day of October, 1919. E. G. C. Bleakly, Atty of Defendant."

40

Appearances:

Frank Bergen, Esq., and E. A. Armstrong, Esq., for the prosecutor;

Edwin G. C. Bleakly, Esq., for the defendant.

10 It Is Stipulated and Agreed, by and between the attorneys for the respective parties, that the testimony shall be taken down stenographically by the Supreme Court Examiner and afterwards reduced to typewriting, the signatures of witnesses to the depositions being waived.

MARTIN SCHREIBER, called on the part of the prosecutor, being duly sworn, testified as follows:

Direct examination by Mr. Armstrong.

20 Q What is your profession? A Engineer.

Q You are chief engineer of Public Service Railway Company, are you not? A Yes.

Q How long have you been an engineer practicing your profession in connection with railroad and street railway construction? A About nineteen years.

Q How long have you been connected with the Public Service Railway Company and its affiliated companies? A Sixteen years.

30 Q Did you have any supervision, and, if so, what, over the construction of the passenger canopy or shed on the lands owned or controlled by the Emergency Fleet Corporation near the New York Shipyards, in the city of Camden, and on the Camden and Philadelphia Ferry Company's property in front of the ferry-house in Camden? A Yes, sir, I had charge of the design and installation.

Q These two structures are the subject-matter of this proceeding under review by certiorari, are they not? A Yes.

Q In the notice given by the Mayor, as returned under the
40 writ in this cause, I see the one on the Emergency Fleet property is stated as located at Broadway and Morgan street; that is not the correct location, is it? A No; it is south of Morgan street.

Q And east of Broadway? A Yes, and east of Broadway.

Q Have you plans of these canopies? A Yes.

Q Will you please produce the plans for the one on the Emergency Fleet Corporation plot? A (Witness produces a plan.)

Q This plan that you produce shows what? A That shows the general layout of the loops and the canopies and the trainmen's quarters.

Q Now the property in question controlled by the Emergency Fleet Corporation is enclosed by a loop showing track on this, isn't it? A Yes, sir. 10

Q And the canopy is where in relation to that? A On the southwesterly side of the plot.

Q And will you please mark that? A Yes; I have marked it "A."

Mr. Armstrong. I ask that this plan be marked Exhibit 1 for prosecutor.

(Said plan marked Exhibit 1 for prosecutor.) 20

Q Did you procure any photographs of this canopy "A"? A Yes.

Q Will you please produce them, and describe them? A One is a general photograph of the entire layout.

Mr. Armstrong. I offer it and ask that it be marked Exhibit 2 for prosecutor.

(Said photograph marked Exhibit 2 for prosecutor.)

Q I ask you to mark on this photograph, Exhibit 2 for prosecutor, an arrow pointing to this canopy "A"? A (Witness does so.) 30

Q And what is the other photograph? A The other photograph is a photograph of the detail of the canopy.

(Photograph last mentioned offered in evidence and marked Exhibit 3 for prosecutor.)

Q What wall, if any, does this canopy have about it? A It does not have any wall; it is just a shed.

Q Can you shortly describe the construction of it? A It simply consists of posts and roof timbers, and the roof timbers are covered with slate shingles. 40

Q How is it furnished, if at all? A It is furnished with booths and turnstiles that are movable.

Q What are these booths—individual booths for people to sit in—shelter for people to sit in, the collecting of fares, and so on? A Yes, they are individual booths for the operators, operators of turnstiles—operators or collectors.

Q Are the booths shown in this Exhibit 3 for prosecutor connected or separated? A They are separate.

Q And how do they compare with the booths that you usually use? A They are interchangeable; we use them all over the entire State.

Q Have you a plan of the one opposite the ferry-house of the Camden and Philadelphia ferry? A (Witness produces a plan.)

(Plan last produced offered in evidence and marked Exhibit 4 for prosecutor.)

Q What is shown to the west of this plan, on Exhibit 4? A Pennsylvania ferry-house.

Q Will you mark "B" on here at the place where the shelter canopy is erected, and "Ferry House," too, at the place where that is? A (After writing.) I have written "Ferry House" at the place indicated, and put the letter "B" alongside of the canopy, on Exhibit 4.

Q This shows the approaches to the ferry, "Driveway," "Delaware Avenue," and the street railway tracks, does it? A Yes.

Q Have you a like photograph of this shelter? A Yes.

Q Produce that, please, and describe it. A The first is a general view of the entire shelter, looking from the ferry.

(Last mentioned photograph offered in evidence and marked Exhibit 5 for prosecutor.)

The Witness (producing another photograph). The second is a general view, looking toward the ferry, showing turnstiles.

(Last mentioned photograph offered in evidence and marked Exhibit 6 for prosecutor.)

Q And the next? A (Producing another photograph.) The next is a close-up view, showing the details of the booths and turnstiles; showing how the booths and turnstiles are located in relation to the canopy.

Q And showing coming from the ferry—entering from the ferry? A Yes, sir.

(Last mentioned photograph offered in evidence and marked Exhibit 7 for prosecutor.)

Q How is this canopy furnished? A It is furnished with the same sort of booths and turnstiles as the canopy of the New York Shipyard Company. 10

Q There is, however, at the south end of this canopy, indicated here, an entrance place; how is that furnished? A That has some benches.

Q The ordinary iron-frame park benches? A Yes, sir; and there is a wind-breaker also.

Q On which side is that? A On the ferry side; on the westerly side.

Q What walls, if any, does this building have? A It has not any walls. 20

Q What connection do these booths have to the building,—I mean physical connection, if any? A They have none, as shown in the photograph.

Q Are they portable? A They are portable.

Q The construction of this canopy, how does it compare with the other? A The general construction is the same, only it is wider.

Q Measurements are shown here? A Yes, sir. 30

Q Have you the detail— A (Interrupting.) No, the measurements are shown on the drawings that are on record with the permit that was given to the Mockett Construction Company.

Q Those buildings you say were constructed under your supervision as chief engineer? A Yes.

Q Have you a copy of the building code furnished by the City of Camden? A I have.

Q Will you please produce it? A (Witness produces a pamphlet of 106 pages entitled "Building Code of the City of Camden, New Jersey.") 40

(Said Building Code marked Exhibit 8 for prosecutor.)

Q I ask you where, in this Code, if at all, there is a definition of a frame building? A On page 17, section 25.

Martin Schreiber, cross.

Q Is, or is not, either of these shelters or canopies a frame building as there defined?

(Objected to on the ground that the Code itself is the best evidence.)

10 A In my judgment neither are frame buildings as defined here.

(Counsel for the prosecutor gives notice that under Exhibit 8 for prosecutor he proposes to refer to section 25, on page 17, and the provisions contained in the ordinance as to the issue of permits; the revocations thereof, and prosecutions and penalties. They appear in two or three different places in the Code itself.)

Section 25, on page 17, of the Camden Building Code, Ex-
20 hibit 8 for prosecutor, reads as follows:

"SECTION 25

"Frame Buildings"

"A frame building shall be taken to mean a building or structure of which the exterior walls or over fifty per cent. of said walls shall be constructed of wood.

"Buildings sheathed with boards, and partially or entirely covered with four inches of brick or stone work, shall be deemed to be frame buildings.

30 "Wood frames covered with metal, whether the frames are sheathed or not with boards, shall be deemed to be frame structures."

Q In the construction of these shelters was or was not any use made of the public streets of the city of Camden for the storage or piling of material? A No.

Cross examination by Mr. Bleakly.

Q Mr. Schreiber, your photographs and plans, first at the New York Shipyard, do not show the large eight-foot high fence,
40 do they? A Why, yes, here is a fence (indicating).

Q Referring to Exhibit 1? A Yes.

Q Well, of course, from that plan that fence might be a foot high? A That is a plan of the fence; that don't show any height.

Q And your photographs do not show the fence at all, do they? A Oh yes, those photographs show it.

Q Which one—referring to Exhibit 2— A (Pointing.) See the fence along there; the same heights as that.

Q Now it shows the fence at the corner of Broadway and Morgan street? A Yes, sir. 10

Q In Exhibit 2. But there is a similar fence around the canopy "A," is there not? A Yes, sir.

Q And it runs back to the east parallel with Morgan street, about 400 feet, does it not? A Yes, roughly 400 feet.

Q It is all a part of that general terminal construction? A Yes, sir.

Q The fence was absolutely necessary, was it not, to the installation and use of that terminal as planned? A Well, most of the fence was in before this particular construction was put in. It was necessary for the original construction. *This*, of course, was necessary for this construction for that matter, but the fence was in place; there was another fence put in. 20

Q You put up some fence? A Just shifted, a piece taken out and used.

Q In other words you constructed a sort of a pen there, did you not? A Well, the pen was already there, and we took and just inserted the booths in the space, in the fence.

Q And shifted part of the fence and connected it? A Connected it up; yes, sir. 30

Q Now, going back to the ferry terminal as shown on Exhibit 5, which is the general plan photograph; there is no fence there shown at all, is there? A On one there is some fence shown.

Q Which one? A *This.*

Q Exhibit 6? A Yes, there is a fence shown there; and Exhibit 4—

Q Exhibit 4 shows the fence, you say? A Yes, *here* is the fence.

Q Well, that shows the location of the fence— A It don't show the height, no. 40

Q And that is a pen, is it not? A It is an enclosure.

Q By an eight-foot fence? A Yes, about that.

Q And that fence is an integral and necessary part of that whole plan and terminal, is it not? A Yes, it is required to operate it.

Q That is all.

10 DAVID KNIGHT, called on the part of the prosecutor, being duly sworn, testified as follows:

Direct examination by Mr. Armstrong.

Q Mr. Knight, you live where? A I live at No. 83 Fortieth street, Irvington, New Jersey.

Q Essex county? A Yes, sir.

Q And what position have you with Public Service? A Superintendent of buildings.

Q You are a master builder, in your calling? A Yes, sir.

20 Q You, yourself, had nothing to do with the erection of these canopies? A No.

Q Here in controversy? A No, not in Camden.

Q You have seen these exhibits? A Yes, sir; I have seen those drawings.

Q And how do these canopies or shelters compare with canopies and shelters elsewhere in use upon the system for the purposes here? A Just about the same as we have all over the system; just about the same kind of canopy as at Palisade Park, and scattered all over the State.

30 Q What, as a master builder, have you to say of these—are they or not buildings? A They are not a building; not called a building.

Q What part of the building, if any, are these booths shown there? A Why, that is furniture; that is not a part of the building.

Q Are they connected or disconnected from the building? A Disconnected; they are not connected with them.

Q How, if in any way, do these booths differ from booths usually used in structures of this kind by the company and

40 elsewhere, where a booth is required? A As far as I can tell from these pictures they are just the same as we have all over the State in every place.

Q Is or is not each booth an individual separate thing? A Each one is individual; they are made that way, and set up that

way; they are made in sections, and set up that way in place, like a piece of furniture.

Q What walls, if any, do these structures have about them? A Haven't any walls; nothing but a line of posts.

Cross examination by Mr. Bleakly.

Q You didn't superintend the construction of these terminals, did you? A No, sir, not these. 10

Q Have you ever been to see them? A No, sir.

Q That is all.

JOHN L. O'TOOLE, called on the part of the prosecutor, and being duly sworn, testified as follows:

Direct examination by Mr. Armstrong.

Q Have you official connection with Public Service Railway Company, and if so, what is it? A Assistant to the president. 20

Q Were you present at the meeting of City Council in the city of Camden, held September 25th, 1919? A I was.

Q By whom were you accompanied, if anyone? A By the assistant general counsel, E. A. Armstrong; also by Mr. H. C. Stevenson; and one or two others.

Q Do you recall whether or not there was read before the Council a notice signed by the Mayor, and the calling of Mr. Mockett before the Council, and a statement made by Mr. Bleakly, the law officer of the city? A I do; I recall that there was such a proceeding. 30

Q After such, was there any call made upon you or the representatives of the company? A There was a call for the representatives of Public Service Railway Company, to which I responded.

Q What was said, if anything, as to the jurisdiction of the Mayor and the Council, under the notice and under the proceedings?

Mr. Bleakly. Said by whom, Judge? 40

Q On behalf of the company? A As I responded to the call for the representative of Public Service Railway Company Mr. Bleakly set forth his views, if I might so express it, of the reason for calling upon the company; and he described at some

length what had been done with regard to the construction of certain terminals at the ferry and at the New York Shipyard. When he had concluded I made the remark, "Very well, sir"; and Mr. Bleakly thereupon asked me if the company did not desire to explain its position—or words to that effect. Whereupon Mr. Armstrong made the statement that the company did not recognize the jurisdiction of the Mayor and the Council in the matter, under the steps that had been taken—did not recognize that the notice was of such a character, or their authority was of such a character as to give them jurisdiction. I am not attempting to give the exact language of Mr. Armstrong, but I am giving the substance and the sense of what he said.

Q Do you recall whether or not he said that there was nothing so far that needed to be answered? A He said that nothing had transpired that he heard that would call for an answer on the part of the company—Mr. Armstrong having in the meantime gotten up and stood beside me.

Q Do you remember whether or not Mr. Bleakly then said, "We propose to take action," or words to that effect? A I do; something to the effect, "Well, if there is no explanation and no answer, we propose to take action."

Q When was it, in relation to that, that the resolution was read and passed? A Almost immediately following the statement of the law officer of Camden, Mr. Bleakly; one of the councilmen offered a resolution, which was sent up to the clerk, and read. My recollection is that it was unanimously adopted.

Q In typewriting, was it? A Apparently.

Q It was a prepared resolution? A It was a prepared resolution.

Q After that the writ of certiorari was presented, was it not? A Immediately after the vote had been taken Mr. Armstrong addressed the chair, saying that he had a writ of certiorari, which was thereupon served.

Q That is all.

No cross examination.

RICHARD E. DANFORTH, called on the part of the prosecutor, being duly sworn, testified as follows:

Direct examination by Mr. Armstrong.

Q What is your profession, Mr. Danforth? A Mechanical engineer.

Q How long have you followed that profession? A For twenty-eight years. 10

Q During that time in what line of professional business have you been? A I have been largely, if not exclusively, in the construction and maintenance and operation of street railways.

Q What official position have you with Public Service Railway Company? A I am vice-president and general manager of Public Service Railway Company.

Q Are you acquainted with the shelters or sheds at or near the plant of the New York Shipbuilding Corporation on lands of the Emergency Fleet Corporation, and on lands of the Camden and Philadelphia Ferry Company opposite the ferry-house? A I am. 20

Q Have you examined Exhibits 1 to 7 inclusive? A I have.

Q Do or do not these show such shelters or pavilions? A They show the shelters as they existed at the time I saw them.

Q Do or do not the plans show the location of them? A The plans show the location of such shelters.

Q Are they erected on public or private property? A They are erected on private property. 30

Q By consent of whom? A By the consent of the owners, so far as I know.

Q The company does not own this property, does it—I mean the real estate on which they are erected? A Public Service? Neither the Public Service nor any of its subsidiaries.

Q The ownership by Public Service is limited to the structures themselves and their furnishings? A Simply to the structures and furnishings.

Q What occasioned the erection of these canopies or pavilions? A The undertaking of a new street fare collection, and a new system—a new rate of fare on the lines of Public Service Railway Company throughout the State of New Jersey, which system and rates included the collection of fares at the end of the journey of each passenger. 40

Q Is the system you refer to the zone fare system as put in force under the order and report of the Public Utility Commission? A It is.

Q How, in general character, do these structures differ from structures elsewhere erected by you on your system? A They differ not at all in physical characteristics. They differ in use of such structures from those in vogue prior to the inauguration of the zone system, so called, in that prior to the inauguration of the zone system fares were collected as, or before, passengers boarded the car to undertake a journey; while under the zone system generally fares were collected after passengers had finished their respective journeys. An exception to this practice had been in use for upwards of a year at the terminus of the line in Newark, at the plant of the Submarine Boat Corporation, where the fares of the workmen at this point using the cars of the Railway Company were collected at turnstiles, both as they left the plant at night, and as they entered the plant in the morning; this process being followed to facilitate the movement of cars and to speed up the handling of the workmen at this plant.

Q In the case to which you refer the passengers paid as they entered, rather than as they left; is that correct? A They paid at the plant of the Submarine Boat Corporation; they paid as they left the cars—when going to work in the morning. They paid as they entered the car terminal at night; so that two sets of turnstiles were used; the booths and stiles being arranged so that they could be altered for either operation as occasion demanded.

Q How do those booths compare with the booths and turnstiles in use at these two structures? A They are substantially identical, being the same general dimensions and type of construction.

Q Were such booths in use elsewhere on your line before the inauguration of this plan? A Yes, for many years.

Q What walls, if any, do these structures have? A The shelter at the terminal opposite the New York Shipbuilding plant in Camden, on Broadway, has no walls. It is merely an umbrella-type shelter.

Q There are things, as appearing by the photograph Exhibit 3, within that shelter; what are they? A Those are the assembled booths, placed at the various turnstiles to protect

the cashier operating the stile and the money collected by such cashier.

Q Are these booths individual, or collective? A They are individual, box-form, booths.

Q Movable or stationary? A They are movable.

Q Now will you please tell how the pavilion opposite the Pennsylvania ferry is furnished, if that at all differs from the other? A At the northerly end of this shelter or canopy, or canopy-covered platform, there is a row of turnstiles and booths arranged in pairs, with spaces between to permit of persons passing the turnstiles as fares were paid. The southerly end of the platform is equipped with park benches for the convenience of persons waiting under the shelter for cars. A wind-breaker divides the outgoing from the ingoing portion of the platform; and also the waiting side, the outgoing side, it being the southerly portion of the platform, there is a wind-break along its westerly edge to protect waiting passengers from the westerly winds.

Q Are there any doors in that? A There are doors in that, for the convenience of persons desiring to enter the space.

Q Are these furnishings a part of or detachable from the structures?

Mr. Bleakly. Objected to as a mere matter of opinion. The facts will speak for themselves.

Q Answer. A (After the reading of the question.) They are all detachable and separate from the physical structure, from the permanent physical structure.

Q At the terminal shown on Exhibit 4 some re-arrangement of your tracks as they before existed was required to be made, was it not? A It was.

Q How did the passengers board and leave cars before that time? A The tracks extended into the ferry company's property along the roadway on the Market street side of the plot, terminating in a loop near the ferry-house; passengers boarded and alighted from the cars at or in this loop. The tracks—the extension of the tracks in Federal street, on the southerly side of the plot, were carried along the southerly roadway to a point near the ferry-house, there terminating in a loop, at which point passengers boarded and alighted from the cars.

Richard E. Danforth, cross.

Q On what portion of the property shown on this Exhibit 4 is your company a licensee of the Camden and Philadelphia Ferry Company, the owner of the land? A Our tracks, equipment, shelters, as shown on Exhibit 4, west of Delaware avenue, are all on lands so licensed.

10 Q Were or were not these two structures, and the equipment of them, as they are shown on Exhibit 1 and Exhibit 4, and by the photographs, necessary, in your opinion, to put in force this zone system? A They were according to the programme mapped out as being necessary for the successful operation of the system.

Q When the pavilion was built and the tracks relocated, as shown on Exhibit 4, at the place of incoming cars, gates were placed and a fence erected, were they not? A They were.

Q And were or were not such devices necessary? A They

20 were necessary.

Q The dotted lines on this Exhibit 4 show the tracks before the change, do they not? A We call those broken lines.

Q Well, the broken lines? A The broken lines show tracks which were not disturbed by the re-arrangement of the terminal, but do not show the full extent of the tracks on the property of the ferry company as they existed prior to the construction of this terminal.

Q Those tracks extended on the location from the broken lines westward, both sides, to the loop, towards the ferry—to

30 the loop? A They did. I might add, in other words, that that portion of the tracks, the tracks that are shown in solid lines on the drawings, are the relocated tracks, and that immediately east of the tracks on the plot, between the driveways, is a broken line marked "fence," which, of course, was not included in the previous description of broken line for the railroad track.

Q In the building of these two structures, these two shelters, did you do it by your own men, or by a contractor? A Done by a contractor.

40 Q Who was the contractor? A The Mockett Construction Company.

Cross examination by Mr. Bleakly.

Q Where else in the State do you have fences like you have at these two Camden terminals? A At the Edgewater ferry

terminal of our lines in Edgewater; at the Weehawken terminal of our lines in Weehawken; at our Hoboken terminal, at the D. L. & W. ferry; at the terminal loop at the Federal Shipbuilding plant at Kearny; at the terminal at the Submarine Boat Corporation, Newark; at Public Service Terminal in Newark; at Palisade Amusement Park near Cliffside.

Q Well, let me put it to you in other words: Are there any places or terminals where you do not have this extensive lot of fences? A We have terminals which are not used by a large number of persons; we have one terminal at Exchange Place, Jersey City, where the traffic is not—the business done is not done at the terminal any more; it used to be; conditions have changed.

Q So that practically— A (Continuing.) So that practically every place where we have a heavy loading point is provided with fencing.

Q Is it extensive in length, that is, the fencing, as it is at the Camden terminal? A The fencing in every instance is made sufficient to enclose the loading space, the loading platforms and areas; and where the pay-as-you-leave system is used the unloading platforms and areas as well.

Q Then the fencing system, as inaugurated at Camden in your opinion was necessary to this whole proposition? A Absolutely.

Q And the installation at Camden, at Broadway and at the ferry terminal, was a Public Service terminal, was it not? A I would not say that was entirely so.

Q What is it—what are they, rather? A The terminal at the Pennsylvania-Camden ferry is a Public Service terminal layout. The terminal opposite the New York Shipbuilding Company's plant on Broadway is the Emergency Fleet Corporation terminal.

Q Well, but used by you as one of your terminals? A Operated by us.

Q That is what I mean, operated by you. So that, for all practical purposes, leaving out the ownership question, it is a Public Service terminal, as a matter of operation? A Yes.

Q And these fences make a sort of a pen, in each case, do they not? A They make a pen or enclosure.

Q Running around the enclosure some several hundred feet in each case, do they not? A Yes.

Q Now, a mere shed would not have been sufficient at all for your purposes, would it? A A mere shed without tracks or fences or anything else certainly would not be good for any purpose.

Q A mere shed with tracks would not have been sufficient? A Under the zone method of collection?

10

Q Yes. A It would, except for the fact that by the use of turnstiles we facilitated the movement of passengers.

Q Then you didn't need any fence at all, did you? A The fence would only be required if it was necessary or advisable to protect the public from the cars or to assist the public to pass through turnstiles and not beat their way by sneaking out.

Q Was there— A (Continuing)—or getting in without payment of fare.

20

Q So that the fences then became necessary parts of the system? A A necessary part of the system for fare collection.

Q And it was a necessary part of that system before you installed it; in other words, it was a part of your plan before you began the work, was it not? A Well, I don't know as to that.

Q Didn't you have the plans made here in the office? A Plans were made in the office; I didn't have them made.

Q You have been speaking about this plan, Exhibit 4? A Yes, sir.

30

Q Do you mean to say you don't know anything about that plan? A I know very little about it, except that I saw it.

Q Well, didn't you have a similar plan, whether in rough shape or not, before you started work down there? A I didn't have; the Railway Company had it, but I didn't.

Q Well, you knew about it? A In a general way.

Q Are you not sufficiently versed with the business of the company to know whether these terminals were planned in advance or not? A I am sufficiently versed to know whether the terminals were planned or not.

Q Well—these terminals? A Generally, yes.

40

Q And they did have a plan for a terminal? A I don't know.

Q Who does know? A I should have to refer that to my assistant, Mr. Donecker, or to Mr. Schreiber. I don't know.

Q That is all.

Certificate of Examiner.

CERTIFICATE OF EXAMINER.

STATE OF NEW JERSEY,
COUNTY OF ESSEX, } *ss.*

I HEREBY CERTIFY that the foregoing depositions were taken before me as Supreme Court Examiner in Room 703, 80 Park Place, Newark, New Jersey, on Thursday, October 23rd, 1919, at the time specified therein, in the presence of Frank Bergen, Esq., and E. A. Armstrong, Esq., for the prosecutor, and Edwin G. C. Bleakly, Esq., for the defendant; that it was stipulated and agreed by and between the attorneys for the respective parties that the testimony should be taken stenographically and afterwards reduced to typewriting, the signatures of witnesses to the depositions being waived; and I further certify that the foregoing depositions were taken down stenographically by me, and are a true and accurate transcript of the depositions given by the witnesses.

Dated October 24, 1919.

FREDERICK E. BAKER,
Supreme Court Examiner of New Jersey.

Notice of Taking Affidavits.

NEW JERSEY SUPREME COURT

PUBLIC SERVACE RAILWAY COMPANY, *Prosecutor,* *vs.* CITY OF CAMDEN, *Defendant.*	*On Certiorari.* *Notice of Taking Affidavits.*

10

PLEASE TAKE NOTICE that pursuant to a rule entered in the above stated cause, I shall take affidavits on behalf of the defendant to be used on the hearing of the writ of certiorari in this cause, before Edward I. Berry, Supreme Court Examiner, at the City Hall, Camden, New Jersey, at the hour of ten o'clock in the forenoon, on Saturday, October 25, 1919, where you may attend and proceed, in accordance with the rules of the Supreme Court in such case made and provided.

20

Very respectfully,

E. G. C. BLEAKLY,
Attorney for Defendant.

To FRANK BERGEN, Esq.,
Attorney for Prosecutor.

EDWIN G. C. BLEAKLY,
Attorney for Defendant,
317 Market Street,
Camden, N. Y.

30

Service of the within notice is hereby acknowledged this 20th day of October, 1919.

FRANK BERGEN,
Attorney for Prosecutor.

40

NEW JERSEY SUPREME COURT

PUBLIC SERVICE RAILWAY COMPANY, *Prosecutor,* *vs.* CITY OF CAMDEN, *Defendant.*	*On Certiorari.* *Affidavits.*

10

Affidavits in the above stated matter taken this 25th day of October, A. D. 1919, at ten o'clock A. M., pursuant to notice annexed, before Edward I. Berry, Supreme Court Commissioner, at the Clerk's Office in the City Hall, Camden, New Jersey. In the presence of E. Ambler Armstrong, Esq., for the Prosecutor, and E. G. C. Bleakly, Esq., for the Defendant.

20

It is agreed that the affidavits shall be taken stenographically and the signatures of the witnesses waived.

GEORGE W. JOHNSON, sworn.

By Mr. Bleakly.

Q Are you Assistant Building Inspector of the city of Camden? A I am.

Q In charge of the permit book? A Yes, sir.

30

Q I show you the permit book and call your attention to building permits 81 and 82. A They are numbered there A and B.

Q B-81 and 82, dated August 29, 1919; were those permits issued by your department? A Yes, sir.

Mr. Bleakly. They are offered in eivdence; I have duplicates here that you will probably want; these can be marked, if satisfactory to you. They are exact copies except that they are marked "Duplicate Permit."

40

(Said duplicate permits are marked Exhibits D 1 and and D 2.)

Q Mr. Johnson, have you the original applications here on which these permits were issued? A Those are the ones.

George W. Johnson, direct.

Q These are they? A These are the originals, yes, signed by Raymond W. Fisher of the Mockett Construction Company.

Mr. Bleakly. They are offered in evidence, the application for Permit B-81 being marked Exhibit D. 3 and application for Permit B-82 being marked Exhibit D. 4. With the permission of counsel I will use duplicates and have the duplicates marked so that we can use them for printing. Is that satisfactory, Judge?

Mr. Armstrong. Oh, certainly.

Mr. Bleakly. We do not want to mark our original records.

Mr. Armstrong. Certainly not, they ought never to be marked; sometimes they are.

Q Mr. Johnson, in connection with the application for Permit B-81, was there any drawing filed by the Mockett Construction Company? A Yes, sir.

Q Is this it? (Showing witness drawing.) A Yes, sir, stamped on the back at the time the permit was issued.

Q What date? A August 29, 1919.

Q Did you have blue-prints made of that? A Yes, sir, I did; they are there.

Q Is this a blue-print of that drawing? (Exhibiting blue-print.) A Yes, sir, that is a copy of it, yes, sir.

Mr. Bleakly. I offer that in evidence instead of the original, with the Judge's permission.

(Said blue-print is marked Exhibit D. 5.)

Q Now, at the same time, in reference to the Application B. 82, was there a drawing filed for the structure on Broadway or near Broadway and Morgan? A Yes, sir, Broadway just south of Morgan street, this is.

Q Is that it? A Yes.

Q Did you have a blue-print made of that? A Yes, sir, I did.

Q And is this the blue-print? A Yes, sir, that is a copy of it.

Mr. Bleakly. I offer that in evidence.

(Said paper is marked Exhibit D. 6.)

Mr. Bleakly. Judge, I am going to furnish you with a bunch of these so you can have these and put them in your book. Now, I want to withdraw Mr. Johnson temporarily and recall him again. Do you want to cross examine him now or later on?

Mr. Armstrong. Well, I do not want to cross examine him until you are through with him, of course. 10

(Witness withdrawn.)

WILLIAM D. SAYRES, sworn.

By Mr. Bleakly.

Q What is your profession, Mr. Sayres? A At present I am City Draftsman, City Architect.

Q Are you connected with the City Engineering Department? A I was for eighteen years, since 1897. 20

Q For the past few years you have been the City Draftsman and City Architect? A Yes.

Q Is that correct? A Yes, sir.

Q Have you examined the applications, the permits and plans which have been offered in evidence here in reference to these two structures, one near the Pennsylvania Terminal and the other at Broadway and Morgan street? A I have, sir.

Mr. Armstrong. Don't call it Broadway and Morgan street; it is not on Broadway and it is not on Morgan. 30

Mr. Bleakly. It fronts on Broadway, pretty near.

Mr. Armstrong. No, it does not; it is some hundred feet south of it.

Mr. Bleakly. I think they call it that in the application, and Application B-81 reads Broadway and Morgan.

Mr. Armstrong. It is not at Broadway and Morgan.

Mr. Bleakly. Well, we won't dispute about it, then; that is immaterial.

40

Q And have you within the past few days examined these structures? A Yes, sir.

Q And won't you state in what particulars, if any, the structures or structure erected at the Federal Street Terminal of the Pennsylvania Railroad Company or in that vicinity by the

Mockett Construction Company under this permit differs from the plan Exhibit D. 5 and the application filed therewith. A You mean the construction?

Q Yes. A The size?

Q Both. A In the first place the plan calls for a construction of sixty-eight feet four inches, but to my measurement it is 108 feet, with four feet overhang, making it 112 feet in length. The permit calls for 68 feet 4 inches. The width of it is all right. They have ten ticket offices with turn-stiles set in concrete, the turn-stile stands, which does not appear on the plan. The ticket office is embedded or dowelled into concrete and attached to the fence, which does not show here. There are some three or four hundred feet of fencing from seven to nine feet high, which is attached to this construction. The posts here, the posts that hold this construction, don't show that they are set in concrete; they are all embedded,—it does here in one place at the end, but they are all embedded in the concrete, all of them, except this shows one here.

Q From your examination of that structure, is it a temporary or permanent structure? A As it has been painted and they are painting underneath, I would say it is a permanent construction.

Q Has it any of the characteristics of a temporary structure? A No, it has a roof covering and seems to be finished and painted, thoroughly finished as though it was a permanent structure, I would say.

Q Are these ticket offices in any sense portable or temporary? A No, I should say that they are fastened and they seem to be permanent, the ticket offices. Everything is fastened to the cement, thoroughly finished in every respect, they are painted and finished, everything finished about them. The stands are enclosed, too; they are enclosing the west end some twenty-four feet.

Q Is that frame? A Yes.

Q Does it show on the plan there at all? A It does not show on the plan, no. They have got windows and doors and then enclosed about 24 feet.

Q Does this three or four hundred feet of fencing show on the plan? A No, sir.

Q What is the nature of that fencing, is it an enclosure or what is it? A It encloses the people who get off of the cars.

Q Somewhat of a pen? A I would say so, yes, sir; there is only one opening where the cars go in and out at each end.

Q Do any of these ticket offices show on this plan? A No, sir, not on the plan I have here.

Q Are these ticket offices more than fifty per cent frame? A Yes, the ticket offices are ninety per cent. 10

Q The walls, you mean? A Yes, the walls; the ticket office all around is enclosed; that is, ninety per cent of them are frame construction.

Q The City Ordinance provides that a frame building shall be taken to mean a building or structure of which the exterior walls or over fifty per cent. of such walls shall be constructed of wood. In your examination of these ticket offices, did they come within that definition of a frame structure or a frame building, being over fifty per cent. of the walls constructed of wood? A They are over fifty per cent., yes, sir. 20

Q Now, I call your attention to Exhibit D. 6, being plan of the structure south of Morgan street, in the vicinity of Broadway and Morgan—is that satisfactory, Judge?

Mr. Armstrong. That is a fact.

Q Have you examined the structure or structures as erected by the Mockett Construction Company at this point? A Yes, sir.

Q And in what respects, if any, does the structure, or do the structures as so erected differ from this plan, Exhibit D. 6. A Well, at that location they have ten ticket offices about the same size as at Market Street Ferry, with turn-stiles and stands permanently set and finished. 30

Q How set? A Set in concrete, painted and finished.

Q Are they in any sense portable? A I would say not.

Q How about the size of the structure with reference to the size shown on the plan? A Why, it conforms with the plan.

Q And is there any fencing shown on this plan? A There seems to be two propositions; there seems to be one that was built before this was built down there and fencing enclosing the whole. There is fencing around there, not in front entirely. 40

Q But there is fencing that holds this in as a pen; is that shown on the plan? A No, sir.

William D. Sayres, cross.

Q Now, is this structure in any sense a temporary structure? A No, I would say not; I would say it was permanent that is my opinion.

Q And are these structures frame buildings in your opinion or from your examination, rather, within the definition of the City Ordinance? A They are over fifty per cent.

10 Q What do you mean by over fifty per cent.? A They are over fifty per cent. of frame construction.

Q Are these buildings within the prohibited zone, fire zone, for frame buildings in the city of Camden? A Well, I couldn't tell you that, Mr. Bleakly; the Building Inspector would have to answer that question; that comes under the Building Inspector.

Cross examination by Mr. Armstrong.

20 Q On the plans that have been submitted here, the detail of construction of only one of the posts is shown? A Yes, here, Judge; that is, you are speaking of the Market street proposition?

Q Both the plans the same way? A Yes.

Q Now, each post is constructed in accordance with the detail, isn't it? A I didn't examine every post, Judge.

Q Well, everyone you examined was? A The ones that I examined were, yes, sir.

Q And it is not unusual at all to show the detail of only one 30 post when they are all to be alike, is it, on plans? A Well, a good draftsman will show all his posts.

Q But I say—answer my question. A Yes, sir.

Q You think it is preferable to show each of the posts, although duplicated in exactly the same detail as the other? A That is right, sir.

Q But it is not at all unusual for pencil drawings such as this to indicate it as I have said, is it, and as they appear here? A The posts and shed can be shown; it has been shown that way, yes, sir, before.

40 Q Now, these two structures, these are open sheds, aren't they? A They are covered sheds, what we call a covered shed.

Q Yes, but open—they have no sides to them? A Part of it is encased in.

Q Except that part that you refer to, there is no side at all, is there, to any of them? A No, sir.

Q And the side to this structure is only a few feet as compared with the structure itself, the one referred to in B-82? A You mean this plan here of Market street?

Q Yes. A There is about 24 feet that is cased in on the west side of it.

Q And that casing that you speak about is built about as high as wainscoting with sash above it, isn't it? A It has a door. 10

Q Out-side of the doors? A It is built all the ways up to the roof; that is, it encloses the thing solid with glass and a door.

Q I say, it is something about like the size of wainscoting and then sash above? A Yes, sir.

Q And the only solid frame at all are the doors, the swinging doors, aren't they? A You mean in just that little—

Q I am speaking about the place that has any sides to it, the twenty feet that you referred to. A Yes, sir, the whole thing makes one whole, solid enclosure there. 20

Q With glass and with doors? A Yes, sir.

Q And with this base it makes one— A One finished job.

Q One solid enclosure for about twenty feet. A About 24 feet.

Q About 24 feet? A Absolutely.

Q On the west side toward the Ferry? A Yes.

Q All the rest of the structure is entirely open? A No, sir.

Q Isn't it? A No, sir, it is made an enclosure by fencing and by ticket offices. 30

Q Yes, but the ticket offices do not reach within what you call the ticket offices—within six or eight feet of the roof, do they? A No, sir.

Q It is all open there? A Above the ticket offices.

Q And now these that you call ticket offices and booths are back how far from the front of the structure? A Well, I should say about, I can't say positively, but I would say about eight feet.

Q Why, didn't you measure it down there? A I didn't measure from the overhang back. You could say from the posts or say from the centre out, or say what you wanted. 40

Q They are back from the posts some distance? A They are back from the overhang, yes.

Q And back from the overhang you think about eight feet? A About that.

Q And they are on the one side through which passengers go to the turn-stiles? A Yes.

Q Each one of these booths is a separate piece of construction, isn't it? A Some of them, the two end ones are separate; they are double booths; that is, the booths are double.

Q Now, you examined this carefully, didn't you? A Yes, sir.

Q When they are set together, those two that are set together are themselves entirely built separately, aren't they, so that one could be away from the other and another one put in its place? A I wouldn't say that.

Q Didn't you examine as to that? A They are so tight down there that I can't tell that. There is casing over the cracks, that is, they built it open, then they built the casing around and it is pretty hard with that casing to tell what is in there without taking the casing off; you would have to examine the casing.

Q You didn't examine the inside? A Yes, I was in one of the booths.

Q Each one is finished separate inside? A Yes.

Q And those booths are, for illustration, about the size of what we know as telephone booths, aren't they? A Oh, no; a good deal larger.

Q How much larger? A Well, they are four feet by four feet.

Q That is, they are four feet square? A And they are double booths, that would be four by eight.

Q I am speaking of each booth. A The booths are built double, Judge, 4 x 8.

Q I understood you to say the two on the end are not double? A They are all built double, Judge, 4 x 8.

Q But each separate booth is 4 x 4? A I don't know anything about separate booths.

Q What? A I am not saying anything about separate booths.

Q Well, there are two booths? A Really, the booths, when you measure them, would be 4 x 8.

Q And that includes two booths? A That includes two booths, yes.

Q And in each of these booths a turnstile operates, doesn't it? A Not in the booth, outside of the booth.

Q Well, at each of these booths? A Yes, sir; with a stand.

Q And that booth is used for the cashier to sit and receive money? A Yes.

Q It has sash all around it, hasn't it, glass all around it? A Not all around it; no, sir. 10

Q Well, on three sides of it? A I wouldn't say on three sides of it; no, sir.

Q Well, you examined this, didn't you? A Yes, sir.

Q And don't you remember now? A Well, I don't know what you mean; if there is a grating or window, if you call that a sash or not.

Q There is an opening on three sides of it? A I would say two sides.

Q Are you saying from your positive recollection now? A That is my recollection of it; yes, sir. 20

Q Are you positive about that? A Whether it is glass or not, do you mean? What do you mean by a sash? I don't understand what you mean by a sash.

Q I mean, on three sides of it is a construction other than solid wood? A No, I would say two sides.

Q Two sides? A That is my recollection of it; yes, sir.

Q You won't be positive about that, will you? A No, sir.

Q In this part where there are these doors and sash that you speak about, are there any seats or benches? A Inside there? 30

Q Yes. A People sit in there, yes.

Q Well, are there seats or benches? A Yes, sir.

Q Ordinary park benches, or didn't you notice what they were? A Benches.

Q Yes; did you notice whether they were set in concrete or not? A They weren't set in concrete.

Mr. Bleakly. You are speaking now of the fence, aren't you, Judge?

The Witness. Benches, he said. 40

Mr. Bleakly. No, but he said the enclosure: you don't mean the offices.

Mr. Armstrong. He understood what I meant and answered it perfectly, properly, so I suppose he did.

Mr. Bleakly. I didn't understand you.

William D. Sayres, cross.

Mr. Armstrong. Well, you don't have to answer, you know.

Mr. Bleakly. No, I simply have to watch it.

Q The fence that you speak about extends from the building northward to gates on the west side, doesn't it? A Yes, sir; the fence, one part of the fence extends north to the tracks where the cars come in.

Q Well, it doesn't go to the track, does it? A I don't know what fence—there are three fences there, you know, you haven't stated just what you mean.

Mr. Armstrong. (To the stenographer.) Just read my question. (To the witness.) You understand we are referring now to the Federal street road. A In Market street; yes, I understand that thoroughly; yes, sir.

Q Now, I will ask the question again as I did before. The fence on the west side extending northward runs from the structure over toward the tracks, doesn't it? A Yes, sir; runs over to the tracks, very close to it.

Q And there are gates hung there, aren't there? A Gates across the track? I didn't see any gates across the track.

Q You saw no gates there? A Not across the track; no, sir.

Q Did you see any gates open that could close the track in? A No, sir.

Q Then on the other side there is a— A That is toward Delaware avenue, parallel with Delaware avenue?

Q Yes, running parallel with this other a fence runs down alongside of the track until it comes to a point just beyond the booths? A Just beyond, opposite the booths, isn't it?

Q It runs south parallel with the track until— A It is further down than the booths are; yes, sir.

Q Then inside the structure a fence divides the covered structure from the place where passengers go to board cars and where they go after leaving the cars, doesn't it, at right angles to this other? A Yes.

Q Now, you say you noticed no— A The fence starts and runs east from the booths; it is attached to the ticket offices. The fence is attached to the ticket offices and runs east over nearly to the tracks, separating where the people get in and off.

Q From the last booth to the south? A From the southerly

booth, yes, attached to the southerly booth, the southerly ticket office, and runs over to the tracks.

Q This fence does not run up to the roof, does it? A The fence doesn't run as high as the roof?

Q Yes. A The fence is eight feet above grade, eight feet high.

Q Well, of course, you haven't answered my question. A Well, there are different parts of the roof, Judge. There is the overhang—see?

Q You understand what I mean? A No, there is the top of the roof, the overhang attached to this roof; you could say this was the roof and say that was the roof, see?

Q But if there is a pitch, an overhang or anything else, the fence is not attached to the roof, is it, does not reach the roof at any point? A It is not attached to the roof.

Q Well, it doesn't reach the roof? A You will have to run a line to be sure. The roof don't come where the fence runs up; I told you it was eight feet above the grade.

Q Then if the roof does not come where the fence runs up, it does not touch the fence, does it? A It is connected by posts the fence is connected to the ticket office by posts; the posts support the roof set in the concrete.

Q But the roof is several feet above the top of the fence? A No, not this part of the roof isn't, not the overhang isn't.

Q Well, the fence doesn't come to the overhang, does it? A I told you the overhang is out here; you will have to run a line out to know that, have to run a level line to know that. The fence comes in here, see; you would have to extend the top of the fence out to tell that.

Q The fence then is some ten feet from the overhang of the roof inside, isn't it? A It is about twenty-four feet from the end of the building, north of the building. This is what I mean—

Q Well, you can't mark, you know, on that. A Well, I won't mark it; I am trying to explain to you what I mean. You would have to take an instrument to tell whether the top of the fence was on a level with the lowest part of the roof.

Q Now, you are trying to tell me that you are not able to say whether the top of the fence at its highest point and the lowest part of the roof at its lowest point, the overhang are the same distance from the surface of the ground, is that what

you are trying to tell me? A Yes, that is what I am trying to tell you.

Q What I am asking you is whether from where the fence is located and where the roof is located if they come within several feet of touching? Isn't that plain—don't you understand that, illustrating it when you see it that way? A Yes.

Q Now, can you answer my question? A Well, it is pretty hard to tell. The fence comes—the roof comes down and the fence comes right underneath the overhang, comes right underneath it.

Q Well, you went there and measured at the direction of the city counsel of Camden, didn't you? A I went down there and looked the proposition over.

Q You testified that you made measurements, didn't you? A Sure, I made measurements, some measurements.

Q And you went to look it over so as to testify here? A That is not a measurement; that is an observation.

Q You did not go to make observations then? A Sure, I observed and measured both.

Q And that is the best answer you can make to me as to how near this fence within the covered shed comes to the top of the roof? A The top of the roof? You see, this is the top of the roof. The fence comes within some parts, the top of the fence would come within twelve inches of some parts of the roof. I can tell you that. Does that answer your question?

Q Just wait a minute here; I don't think the witness undertakes to be mysterious, but one or the other of us is pretty dumb. Now, this is the end, isn't it? (Indicating on blue-print.) A This lower fence is not on the end, Judge.

Q I understand that, if you will wait and listen to me. A All right.

Q The booths are back here, as I understood you to say, about eight feet, as near as you can tell. A Yes, that is right.

Q And the fence starting back of the booth? A And comes this way; yes, sir.

Q Now, that is near the peak of the roof, isn't it, back there? I am trying to get you to tell me how far it is from that eight feet approximately to the roof, and you are talking about if the fence was carried out or a level was put on it, etc. A Well, the fence does come along here, Judge, and this is some part

of the roof here. The fence comes right back of the roof here; here is where I mean.

Q Now, this comes out toward the tracks, doesn't it, this fence? A Yes, sir.

Q And the point where you say you think it comes within maybe twelve inches— A About twelve. 10

Q Of the roof, is the extreme overhang to the east? A That is it exactly.

Q And back at the other part, within the covered canopy at the other end near the booths, it is several feet from the roof, isn't it? A Yes, sir.

Q Now, this structure built with a roof and on these posts, with exception of about the 24 feet you speak of, disregarding these booths which are not connected at the top, has no walls at all, has it? A Only the fence walls, the walls of the fence That is the only enclosure it is, is the fence. 20

Q I am speaking about this roof structure. The fence runs across, crosswise, dividing the property, and the other fence is outside entirely. A The shed and fence form an enclosure so that you have got—

Q I said this covered enclosure with this roof, that is what I asked; I am not asking about the enclosure that is in the fence line, but there are no walls to this covered enclosure, are there? A No side walls; no, sir.

GEORGE W. JOHNSON, recalled. 30

By Mr. Bleakly.

Q Did you recently make an examination, Mr. Johnson, of these two structures, one in the vicinity of Broadway and Morgan and the other in the vicinity of the Pennsylvania Terminal, Federal and Market streets? A Some of them I made partial inspection in the regular line of duty.

Q You have recently been down there? A Yes, I looked some of them over since this question has come up.

Q In what respect, if any, does the structure or do the structures erected at the Pennsylvania Ferry Terminal by the Mockett Construction Company differ from the application and plan Exhibit D. 5? First as to size. A Well, the size is—the permit calls for 68 feet, 4 inches, and it is 108. There is what we term in the trade, three more bents added to this—these bents 40

are about thirteen feet six—from what the permit originally calls for. The bents are the spaces between posts.

Q Is there any fence or fencing shown on the plans? A No.

Q Or in the application? A No, none at all.

10 Q How much fencing is there constructed there? A Now, I couldn't tell you that, Mr. Bleakly.

Q Well, approximately. A No, I couldn't approximately tell, because—

Q Well, is it ten feet or— A Oh, you mean in the length?

Q Yes. A No, there is quite a good deal of fence around there; I didn't measure that because there wasn't on the permit in regard to a fence.

Q Did you examine these ticket offices, how they were constructed? A Why, I saw them there; I saw there was a series

20 of ticket offices there that wasn't on the plans.

Q Are they temporary or permanent structures? A Well, I should say they were permanent; they are there the same as the rest of it.

Q Is this whole structure in your judgment a temporary or —that is, from your observation—a temporary or permanent structure?

Mr. Armstrong. I object to that as incompetent, irrelevant and immaterial.

A How is that again?

30

(Question repeated.)

A I should say it was permanent. The permit calls for a permanent building, it does not call for a temporary building.

Mr. Bleakly. I move to strike that out, as it is not responsive to my question as to what the permit calls for; the permit will speak for itself.

Q How about the structure down at the vicinity of Broadway and Morgan; were there any ticket offices shown on this

40 plan? A No, sir; none at all.

Q Such as are now constructed there? A No, sir.

Q Do these ticket offices have a covered roof outside of the roof of the shed? A Yes.

Q Now, these structures, the one at Federal street and the one down in the vicinity of Broadway and Morgan, are they

within the prohibited fire zone that is prohibited to frame buildings? A They are according to our ordinance, building code.

Q And these ticket offices, are they within the definition from your observation of a frame building, having exterior walls of over fifty per cent. constructed wood? A Yes, they are all wood.

10

Cross examination by Mr. Armstrong.

Q You are referring now when you say that to the booths? A Yes, sir.

Q You know, don't you, that these booths were shipped there complete? A No.

Q Don't you know anything about it? A No, sir; I couldn't say to that, whether they were built there or whether they were shipped there or what.

Q Didn't you observe while the work was in progress there at all? A Not while they were going on; no, sir; the job was finished by the time I got down.

20

Q And you don't know whether they were built there or shipped there? A No, sir; I couldn't say that.

Q The booths themselves are some feet within the outside line of of the shed, aren't they? A Yes, sir; practically setting in the center.

Q Almost in the center of it? A Practically, yes.

Q And they themselves make no wall to the shed at all, do they? A Well, no; they are not attached to the roof.

Q There is six or eight feet above them to the roof, isn't there? A I couldn't say to that.

30

Q Well, some considerable distance? A There is some distance there; I couldn't say what it is.

Q Now, did you notice whether on the other side there are seats for passengers? A Which ones have you reference to?

Q The other side from the booths. A No, I say, which one of these buildings?

Q We are speaking now altogether of the Federal street, the first one. A Oh, Federal street?

Q Yes. A Did I take notice of what?

40

Q Whether there were seats, settees or benches provided for passengers? A There were some scattered around there in the enclosure; I noticed that. In fact, I pretty near fell over one the other day when I was there. I didn't think about them, I was hurrying to catch the car.

Q The shed itself, this canopy arrangement has no walls at all, has it? A Yes, they are starting to put walls around it now.

Q Now, what you were speaking about as walls is that shelter at the west end, 24 feet? A No, it is 40 feet.

10 Q No, the 24 feet that was erected here according to Mr. Sayres' testimony. A I ain't saying what Mr. Sayres says; what I am saying is there is 40 feet of it there.

Q Forty feet of what you call wall? A Yes, sir; three bents.

Q A part of it consists of doors, doesn't it? A The same as any other house, doors and windows.

Q Is it the same as a house? A The side boarded up.

Q Aren't these great, wide doors larger than in any ordinary house that you know of? A Oh, no; of course, some houses, 20 some halls and things have large doors; they have windows and doors, of course.

Q These doors are how wide? A I don't know; I should say about six feet, probably, the double doors.

Q And there are how many doors there, do you recall? A I only recall one.

Q Only recall one door? A That is all.

Q And the other part of it is—I don't know what you call it in the trade, as you say, but about the height of wainscoting, with sash above it, isn't it? A It is built of beaded boards.

30 Q Yes, I say, about the height of waincoting? A There is no schedule of the height of waincoting; from the ground to the sill of this sash is all board.

Q Yes, how far? A I don't know.

Q Four feet? A More than that, I should say.

Q Five feet? A Somewhere in that neighborhood.

Q Between four and five feet; the rest is glass sash, isn't it? A Glass and wood.

Q Of course, there is wood between the glass panes? A Yes, sir; at the ends, too.

40 Q Now, when you speak of being more than half of the walls of the structure of wood, you are referring altogether to these booths, aren't you? A I didn't say anything about it being half, did I?

Q More than half, didn't you? A When?

Q In answer to Mr. Bleakly's question? A Oh, the booths?

William D. Brown, direct.

Q Yes. A Yes, they are all wood.

Q I say, you were referring to them altogether? A Yes.

Q And the booths at Federal street are exactly the same as the booths in the one down near the New York ship yard building? A I think so; yes, I should say they were the same.

Q A similar thing? A Yes.

Q Did you measure the size of them? A Yes, they are about four or four and a half, something like that, four by eight. 10

Q In the neighborhood of four feet? A Yes.

Q And that provides a place for the cashier or collector to sit and receive the money? A Somebody to be in there, yes.

Q And they are each placed at the points where passengers are discharged from the cars? A Well, I know the ferry is, but I don't know about the ship yard; I haven't been down there when they are unloading.

Q You haven't been there? A No, not when they were unloading. 20

By Mr. Bleakly.

Q Mr. Johnson, these benches referred to, are they movable or not? A Why, yes.

Q Are they in any way fastened to the structure or the cement? A I don't think so; they are ordinary park benches.

WILLIAM D. BROWN, sworn.

By Mr. Bleakly. 30

Q Mr. Brown, you are the city clerk? A Yes, sir.

Q Did you act as clerk of city council on September 25th last? A Yes.

Q When a certain resolution which has been taken up by these proceedings was adopted? A Yes, sir.

Q Do you remember a hearing being given to the Public Service Railway officials?

Mr. Armstrong. I object to that on the ground that this officer has made a return of what took place there, and he cannot in this way contradict or amplify his return; and the question is improper because it is leading and calls for a conclusion. 40

Q Go ahead, answer?

(Question repeated.)

William D. Brown, cross.

A Yes, sir.

Q Was Mr. Mockett of the Mockett Construction Company called as a witness? A Yes, sir.

Q Do you know whether he produced the permits in reference to these structures? A I saw papers in his hand which were said to be the permits.

10 Q Was he shown these plans, the originals of D. 5 and 6 at that meeting? A He was shown the plans; yes, sir.

Q Was he asked anything about the structures that he had erected? A Yes, sir.

Q Did he give any explanation as to—

Mr. Armstrong. Well, I object to this as improper, being leading, as well as renew the objection already made.

Q What explanation, if any, did he make in reference to the structures he had erected? A What explanation did he

20 make?

Q Yes, being different from the plans? A As I recall it the only explanation he made was that he admitted he had a fence and turnstiles that wasn't on the plans; that is all I recall.

Q Was it before or after that admission that the resolution was adopted, the resolution in question? A Afterward.

Cross examination by Mr. Armstrong.

Q Mr. Brown, I show you what purports to be a stenographic

30 report of the proceedings? A Yes, sir.

Q I ask you to look at it and say whether, after looking at that, you can say whether or not that concurs with your recollection of what was said and done, and all that was said and done? A That was my recollection, Judge; I am willing to answer any questions.

Q I wanted you to run over this.

Mr. Bleakly. I am perfectly willing the whole thing should go in; you need not ask him any questions; we will agree that that is a stenographic report of what hap-

40 pened and put it in.

Mr. Armstrong. All right, it is agreed by counsel that the paper presented contains a stenographic report verbatim of the proceedings, including the adoption of the resolution.

Mr. Bleakly. By the way, Judge, you have offered the Building Code; do I understand the whole code has gone in?

Mr. Armstrong. What I thought was, you would have the copies and then we could make use of anything we would want in it, anything that is in the code. 10

Mr. Bleakly. Well, it is understood that anything in this code we can use?

Mr. Armstrong. Yes, anything at all, we can use it. And then I wanted to know if you would give me some copies of it.

Mr. Bleakly. Yes, how many copies do you want, three or four?

Mr. Armstrong. Suppose you give me five?

Mr. Bleakly. All right. 20

The following is a stenographic report of the proceedings of City Council of the city of Camden at a meeting held at the at three P. M. on the notice given in this case as above referred to:

A Councilman. I move that the hearing on this notice to the Public Service Railway Company and to the Mockett Construction Company be postponed until the solicitor of the Council arrives.

A Councilman (after the arrival of Mr. Bleakly). I move that we proceed to the hearing. 30

Mr. Bleakly. Mr. President, and members of the Council, the Mayor has given notice to the Mockett Construction Company as builder, and to the Public Service Railway Company, as owner, citing them to appear here this afternoon to show cause why the two structures, one at the foot of Morgan street and Broadway, and the other at the Pennsylvania Railroad ferries, should not be removed. I have this notice here, and I see here the representative of the Mockett Construction Company, and also the representatives of the Public Service Railway Company; 40 and to carry on this hearing I would like to call Mr. Mockett. Please come up here, Mr. Mockett.

Mr. Mockett. At the present time I would like to call on the Public Service attorney to state the matter.

Mr. Bleakly. I am going to ask you some questions.

(Mr. Mockett then came toward the front of the room, and was questioned as follows.)

By Mr. Bleakly.

10 Q Did you submit these two plans—I show you a plan marked pay-as-you-enter—Zone P. R. R. Ferry: Please look at that plan, and tell us if you got a permit? A Yes, sir.

Q Have you got it with you? A I have got it here.

Q Please produce it. A (Witness produces a permit.)

Mr. Bleakly. Permit No. B-82, for frame building dimension 68 feet 4 inches by 25 feet, slate coat roof, etc.

Q Now, Mr. Mockett, didn't you construct something entirely different from what is shown on that plan? A Exactly as
20 shown on the plan, with the addition that has been put to it since, consisting of roof for booths and fences.

Q You never got any permission for these booths—you got no permit for anything of that kind, but only just what is shown on this plan? A That is all.

Q You got no permission from anybody of the building department except this permit to build according to this plan, that is all you got? A Yes, sir.

Q (Showing witness another plan.) What have you to say
30 as to this plan: is this a plan that you also submitted? A Yes, sir.

Q What else did you construct down there besides what is shown on this plan? A The booths were built, and the turnstiles—

Q Fences? A No fences.

Q Did you fence it in? A I didn't fence it in.

Q You placed the booths and turnstiles? A Yes, sir.

Q You made some additions, in addition to what is shown
40 on this plan here? A This, here, booth and turnstiles.

Q And that plan was never submitted, so far as you know, to the building committee? A I am not sure as to that.

Q You didn't submit that plan to the Building Commission outside of this plan here and this one: and they were both subject to the action of the building commission.

By a Councilman.

Q Who did erect those fences around all the loop there? A Oh, you are speaking of those; the other was done last year.

Q Who did it? A Mockett Construction Company last year —I didn't know that was in question this afternoon, because there are two of these canopies—I am speaking of the one just erected— 10

Q I am speaking of the fence down at the Ferry— A At Morgan street I am speaking of.

By Mr. Bleakly.

Q Mr. Mockett constructed this fence, and these booths and things down here at the Ferry. For whom did you construct them? A Public Service Railway Company.

Q By their direction? A Yes, sir.

Q That is all. 20

Mr. Bleakly. Now, Judge Armstrong.

The President. Mr. Armstrong.

Mr. O'Toole. The Public Service Railway Company is represented by Mr. E. A. Armstrong, and by myself, John O'Toole.

Mr. Bleakly. You may want to hear I think about the matter, perhaps, before you start. It is very evident that these two skeleton plans submitted to the building inspector and for which permits were given are for mere sheds. What has been constructed there, however, is entirely different from what was 30 submitted. Under our ordinances and building regulations here detailed plans must be submitted showing exactly what is to be constructed. That has not been done in this case. Therefore the structures and so forth that have been erected there are contrary to the city's ordinances.

In the second place, such structures being more than mere open doors, would have been submitted to and passed upon by the Building Commission, frame structures of that kind not being permitted within the city limits within the fire zone without permission of the building commission. So that in two respects 40 the structures there existing are violations of the city ordinances. That is the side of the city that I thought you would like to know.

Judge Armstrong. We are very much interested to hear them.

Mr. Bleakly. No doubt. Well, if you have anything to say here is your chance.

Judge Armstrong. As I understand it the Council has no jurisdiction.

Mr. Bleakly. Well, that is our contention. If you have nothing to say,—you have a right to be heard; if you want to be heard now is your chance.

Judge Armstrong. I haven't any observations to make.

Mr. Bleakly. And you don't care to say anything?

Judge Armstrong. We had a notice from the Mayor. We are here. We do not understand that the Mayor or Council in this way has any jurisdiction for anything of this kind, and the criticism seems to be made that we have built some booths and some fence for which we filed no plan and haven't any idea of filing any plan for those. I don't understand it is required of us. It is required for the structures such as we have built, for which the permits were issued.

Mr. Bleakly. I understand it goes further, too, that you had no right to erect even such a structure as that without the permission of the building commission.

Judge Armstrong. I don't so read your Code.

Mr. Bleakly. Perhaps you don't. Have you anything further to say?

Judge Armstrong. That is all I have to say. We deny the jurisdiction of the Council to take any action here.

Mr. Bleakly. Yes. We propose to take action.

(Thereupon a councilman sent to the reading desk a paper which was read, as follows.)

Whereas, The Building Inspector of the city of Camden, on August 29, 1919, issued two certain permits, numbered B-81 and B-82, to the Mockett Construtcion Company, for the erection of two certain frame buildings, one at Broadway and Morgan street, Camden, and the other at the Pennsylvania Railroad Ferry, Camden; and

Whereas, Certain plans were filed by the builder with the Building Inspector; and

Whereas, Said structures have been illegally and improperly constructed, for the following reasons:

1. Said structures were not erected according to the plans filed.

2. Said structures were erected without submission to or approved by the proper city authorities:

Now, Therefore, Be It Resolved, That the Building Inspector be and he is hereby instructed to notify the Mockett Construction Company, builder, and the Public Service Railway Company, owner, to appear before him and show cause why the two permits, B-81 and B-82, issued by him August 29, 1919, to the Mockett Construction Company for frame buildings, one at the foot of Federal street, and the other at Broadway and Morgan street, should not be revoked or proper plans presented to and approved by the proper city authorities, and if this be not done and if said permits be revoked,

Be It Further Resolved, That the Mayor be and he is hereby directed to give notice to said builder and owner to forthwith remove said buildings, and if the same is not done, pursuant to said notice,

Be It Further Resolved, That the Mayor be and he is hereby authorized and directed to remove the same at the expense of the said builder and owner.

A Councilman. I move the adoption of the resolution.

Motion seconded, and resolution unanimously adopted.

OPINION OF SUPREME COURT.

Filed February 18, 1920.

NEW JERSEY SUPREME COURT.

November Term, 1919. No. 210. 10

PUBLIC SERVICE RAILWAY COMPANY, *Prosecutor,* *vs.* CITY OF CAMDEN, *Defendant.*	*On Certiorari.*

Before Justices Swayze and Kalisch. 20

For the prosecutor, Frank Bergen and E. A. Armstrong.

For the defendant, Edwin G. C. Bleakly.

Per Curiam:

The prosecutor maintains certain terminal sheds or pavillions, one at the Federal street ferry and the other at Broadway and Morgan streets, in the City of Camden.

The mayor caused a notice to be served upon the company and its contractor to show cause before the city council why these structures should not be ordered removed, and in default 30 of removal by the company, why the mayor should not be authorized to remove the same. Proceedings were had before the common council in which the prosecutor was afforded a hearing and it appeared by counsel who objected to the jurisdiction of the common council in the matter. The common council passed a resolution reciting that the structures were illegally erected and directed the building inspector to call upon the prosecutor to show cause why the permits under which the structures were erected should not be revoked or proper plans presented to and approved by the city authorities, and if this be not done and if 40 the said permits be revoked then the mayor is directed to give notice to the builder and owner forthwith to remove the buildings, and if the same is not done then the mayor is authorized and directed to remove the same at the expense of the builder and owner.

It does not appear that the building inspector called upon the prosecutor to show cause why the permits should not be revoked, etc, or that he took any steps to carry into effect the resolution of the common council. Thus far the prosecutor has sustained no injury. Nor is the threatened injury so imminent as to require judicial interference. We cannot foretell what the inspector may decide to do after a hearing of a rule to show cause, which as yet appears not to have been issued. As the case is before us there is nothing more than a resolution authorizing the inspector of buildings to call upon the prosecutor to show cause why the permits should not be revoked. We think, therefore, that the granting of the writ was premature and should be dismissed, with costs.

RULE TO DISMISS.

This matter being opened to the Count by Edwin G. C. Bleakly, counsel for the defendant, and the Court being of the opinion that the granting of the writ in the above cause was premature and should be dismissed;

It is, on this twenty-first day of February, A. D. 1920, Ordered that the writ of certiorari allowed in the above cause be and the same is hereby dismissed with costs against the prosecutor.

Entered February 21, 1920,

On motion of

E. G. C. BLEAKLY,
Attorney for Defendant.

NOTICE OF APPEAL.

Filed March 22, 1920.

NEW JERSEY SUPREME COURT.

10

PUBLIC SERVICE RAILWAY COMPANY, *Prosecutor-Appellant,* *vs.* CITY OF CAMDEN, *Defendant-Respondent.*	*On Certiorari.* *Notice of Appeal.*

To Edwin G. C. Bleakly, Esq.,
Attorney for Defendant-Respondent:

20

TAKE NOTICE, that the appellant, Public Service Railway Company, prosecutor in the above-stated cause, appeals to the Court of Errors and Appeals from the judgment in this case dismissing the writ of certiorari with costs; because it claims the Supreme Court committed error therein for the reasons that it ought, by its judgment, for one or more of the reasons assigned by the prosecutor, have reversed, vacated and set aside the order and proceedings brought up for review by the writ of certiorari in this cause, with costs against the defendant.

FRANK BERGEN, 30
Attorney for and of Counsel with Prosecutor-Appellant.

Dated, March 8th, 1920.

Endorsed:

Service acknowledged for City of Camden.

E. G. C. BLEAKLY,
Atty.

3/9/20 40

Filed March 22, 1920.

ENOCH L. JOHNSON,
Clerk.

Exhibit 8 for Prosecutor.

I, Enoch L. Johnson, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the notice of appeal filed and also of a rule entered in the minutes of the Court in the above-stated cause.

10 In testimony whereof, I have set my hand and the seal of said Court at Trenton, this twenty-
(seal) third day of March, A. D. nineteen hundred and twenty.

ENOCH L. JOHNSON,
Clerk.

Extracts from "Building Code of the City of Camden," Ex-
20 **hibit 8 for prosecutor.**

Section 2.

The Building Inspector.

There shall be appointed by City Council from among the qualified voters of said city, a fit and suitable person, who shall be a practical master builder, to be the Building Inspector of said city, for such term as may be fixed by law and until his successor shall be duly elected and qualified. In case of a vacancy by
30 death, resignation, removal or otherwise, the City Council shall in like manner elect another such person. The Building Inspector shall perform all the duties, have all the powers, and be subject to all the provisions of law, ordinances of the City Council, and of this Code.

Said Building Inspector shall act as Clerk to the Building Commission and shall keep proper records of its proceedings.

Section 7.

No Construction or Alteration Without Permit.

40

No wall, structure, building, or any part thereof, shall hereafter be built or constructed, nor shall any building already erected be altered, raised, moved, rebuilt, demolished or have additions made thereto except by permit and in conformity with the provisions of this Code and the Ordinances of the City.

Exhibit 8 for Prosecutor.

Section 14.

Permits May be Revoked.

The Building Inspector shall have power to revoke or annul any permit hereby granted, in case of the violation of any City ordinance or of any provision of this Code or for the abuse of any of the privileges granted by the same, or when any building is so far completed as to render any further use of the street unnecessary, and said permit in case of such revocation, can be renewed only by the express order of the Building Commission of said City.

Every contractor must notify the Building Inspector in writing immediately when he is released from completing any contract or if the contract with him has been broken; otherwise his responsibility as such contractor hereunder shall continue.

Section 25.

Frame Buildings.

A frame building shall be taken to mean a building or structure of which the exterior walls or over fifty per cent. of said walls shall be constructed of wood.

Buildings sheathed with boards, and partially or entirely covered with four inches of brick or stone work, shall be deemed to be frame buildings.

Wood frames covered with metal, whether the frames are sheathed or not with boards, shall be deemed to be frame structures.

Section 98.

Penalties and Prosecutions.

It shall be the special duty of the Building Inspector to enforce the provisions of this Code and to prosecute violators of any of the provisions hereof in the name of the City of Camden. He shall give notice in person or by letter regularly posted to any person or persons, corporation or corporations, erecting, constructing, altering or repairing any building or other structure contrary to the provisions hereof, to immediately cease such work and to remove the portion so placed and to comply fully with the provisions of this Code within five days from the giving of such

notice. When, in the judgment of the Building Inspector, any building, structure or any portion thereof or appurtenance thereto is in a dangerous condition from any cause whatsoever, he shall order such condition remedied or the building, structure, portion or appurtenance thereof, removed, secured or repaired, within three days of written notice given in person or by letter regularly posted to the owner, agent or person in charge thereof.

Every person or corporation given notice to remove, secure or remedy any such defective building or structure, under this section, shall fully comply with such notice or be subject to prosecution and the imposition of the penalties provided for herein. The Building Inspector shall be empowered, in addition thereto, to remove, repair or secure such dangerous buildings, structures or portion or appurtenances thereto, and the cost thereof shall be paid by the owner or owners thereof and collected as provided by law. He and his assistants shall have free access at all reasonable hours to all buildings in the City of Camden.

The Building Inspector shall also be empowered to remove at the expense of the owner of the building or structure in the course of erection, alteration or repair, or of the person performing the work, all building or other materials used therein or rubbish arising therefrom, or any fixtures or appliances therefrom found in or upon any of the streets or roads of the City of Camden, contrary to the provisions hereof.

Any person or persons, corporation or corporations, violating any of the provisions of this Code, shall be proceeded against before the Recorder and for each violation of this Code or any of the provisions hereof, on conviction the violator shall pay a fine of fifty dollars and the costs of prosecution. In addition to such penalty the Building Commission or the Building Inspector may revoke any permit granted for any work where such violation occurred or the license of such violator if the violation shall have occurred in the prosecution of work which he has been licensed to perform within the City of Camden under the provisions hereof.

Exhibit 8 for Prosecutor.

SECTION 8.

Filing Plans and Statements.

Before the erection, construction, addition to, raising, removal or alteration of any building or structure, or of any part of same is begun, there shall be submitted to the Building Inspector an application, on an appropriate blank to be furnished by such Inspector, containing a detailed statement of the specifications thereof and accompanied by a full and complete copy of the necessary plans of such proposed work. The application shall contain a sworn statement, giving the full name, residence and business address (by street and number wherever possible) of the owner of the building and of the owner of the premises upon which such building or structure is to be erected, altered, razed, removed or added to. The application shall describe the location of said building, structure, or premises, and also giving the name and address of the architect, contractor, builder, or other representative duly authorized to perform or have performed said work and to whom notices shall be sent during the progress of such work. The application and statement shall be made by the owner or lessee of the building or by the architect, builder or other duly authorized representative of the owner or lessee.

Any false affidavit or statement made on or in connection with any application submitted in pursuance of the provisions of this section shall be deemed just cause for the revocation of any permit issued pursuant thereto.

Said sworn statement, and a detailed statement of the specifications, and a copy of the plans shall be kept on file in the office of the Building Inspector.

No work shall be done in, on or about any building, structure, wall, platform, staging or flooring, or any part thereof, until said statement and plan shall have been so filed with and approved by the Building Inspector and a permit therefor issued.

The Building Inspector shall not grant a permit for the erection of any building or of any other structure or for any enlargement, addition to, alteration or repair of the same until he has ascertained that the means of ingress and egress thereto are good and sufficient.

All work done on, in or about any building, structure, platform, staging or flooring, shall be strictly in accordance with the ap-

proved detailed statement of specifications and copy of plans filed as aforesaid.

In case it is desirable or necessary to change any such plans or specifications during the progress of the work, after having obtained a permit therefor, it shall be unlawful to proceed with any such change until application has been made therefor in writing and approved by the Building Inspector, and he may in any such case require revised plans and specifications to be filed. A duplicate set of plans and specifications with the permit must be kept at the building or other structure during the progress of the work authorized and be accessible at all times to the Building Inspector. The Building Inspector shall have authority to order any reasonable change made in such plans or specifications should it be found, upon inspection, that there are conditions present which make such change necessary for the safety or security thereof or to comply with this Code, and in such case notice of such change shall be given, in writing, by the Building Inspector to the owner or his agent, or to the contractor in charge of the work, provided that no such change shall be made or ordered except it conform to the provisions of this Code.

Nothing in this section shall be construed to prevent the Building Inspector from granting his approval for the erection of any part of a building, or any part of a structure, where plans and detailed statements have been presented for the same, before the entire plans and detailed statements of said building or structure have been submitted or approved.

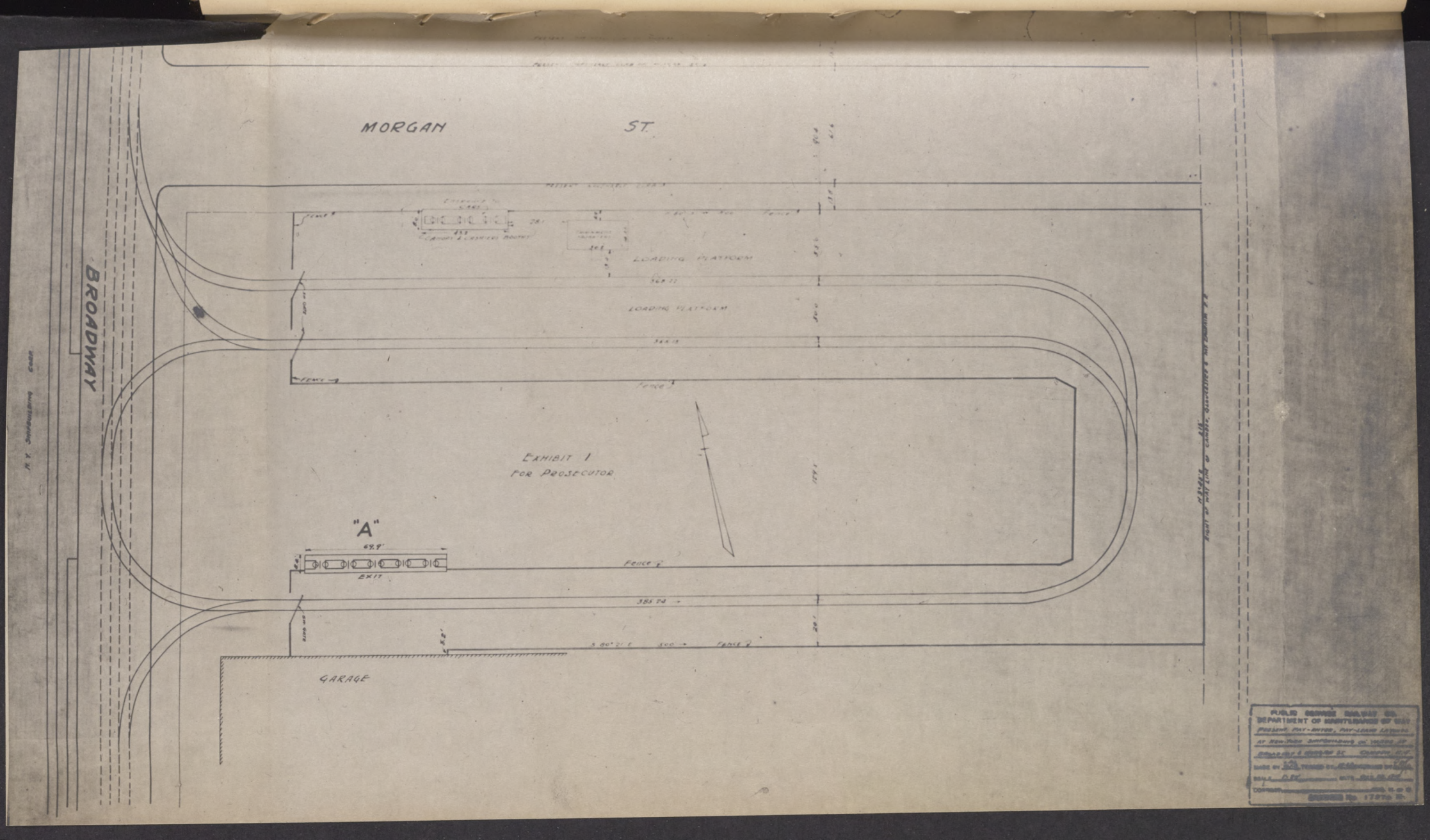
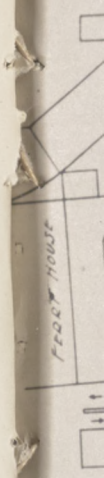
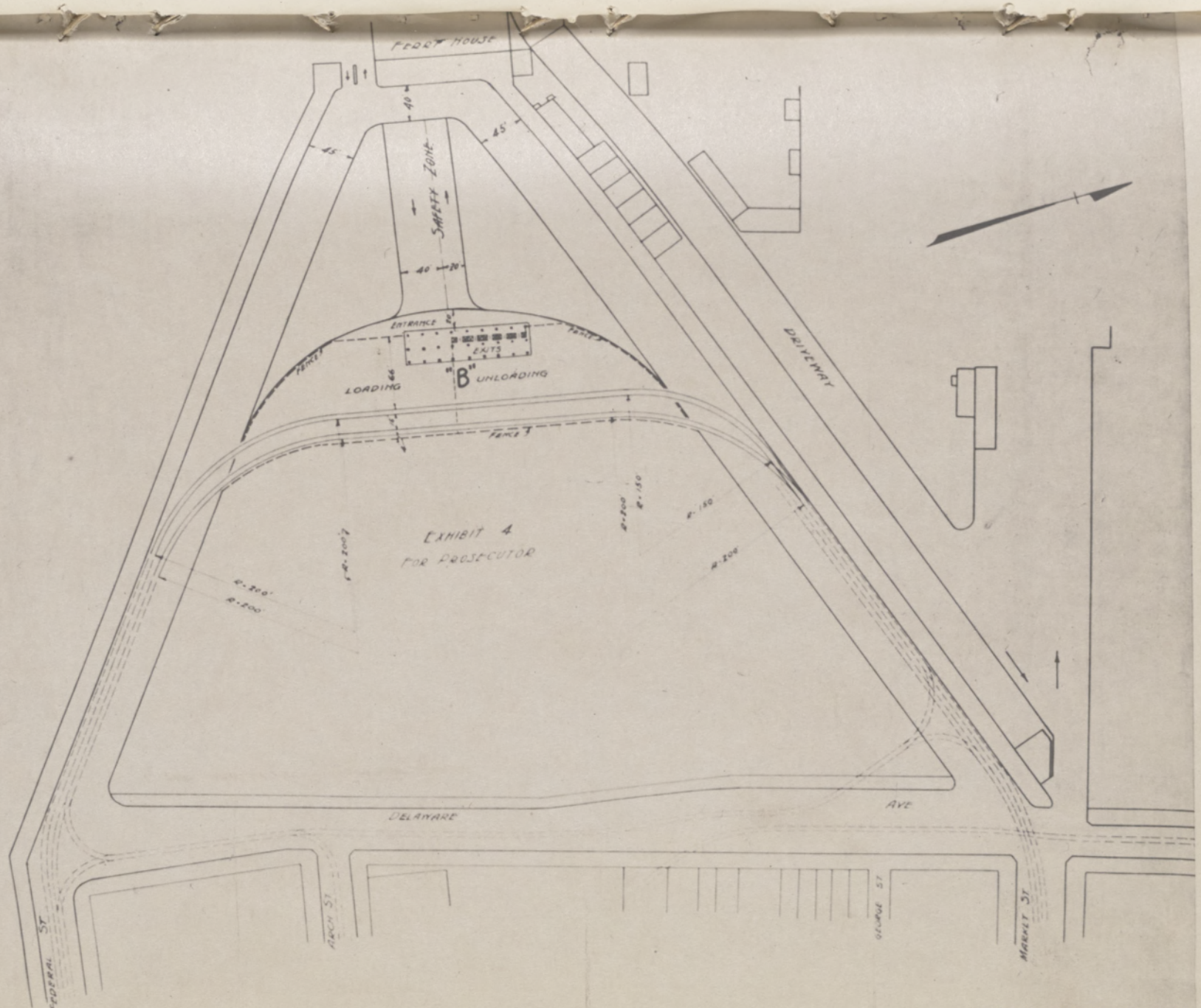

MORGAN ST.
BROADWAY
LOADING PLATFORM
LOADING PLATFORM
Fence
EXHIBIT 1
FOR PROSECUTOR
"A"
69.9'
EXIT
385.74
S 80° 21' E 300
GARAGE

Exhibit 2
for inspector


Exhibit 3 for
Prosecutor
60


FERRY HOUSE



PUBLIC SERVICE RAILWAY CO.
DEPARTMENT OF MAINTENANCE OF WAY
PROPOSED STORING NEW TERMINAL
AT MARKET ST FERRY
CAMDEN N.J.

Exhibit 5
for
Prosecutor

Exhibit - 6
For Prosecutor

Exhibit No. 7
Prosecutor.

NEW JERSEY SUPREME COURT.

Public Service Railway Company,	)	
Prosecutor,	:	On Certiorari.
vs.	)	~~[illegible]~~.
City of Camden,	:	
Defendant.	)	

EXHIBITS OF THE DEFENDANT.

BUILDING PERMIT

No. B 81

Camden, N. J., Aug 29 1919

Permission is hereby granted to Mockett Construction Co contractor, and _____ owner, for the construction of 1 - Frame building for Transient purposes 1 stories in height, dimensions 68'-4" by 7'-0" roof of ~~Shingles~~ Slate Coated, location Broadway & Morgan Street, 8th Ward

Duplicate Permit

This permit to be considered void at the expiration of six months, unless active operations have been commenced within said time, and shall be rescinded and considered void as to the continuation of the work or the further erection of said building by the violation of the terms of any of the ordinances of the City of Camden relating to buildings or the use of the streets. And shall be void unless a license is taken out as provided in the Building Code under which this is issued.

Fee . . . . $ 2.00

Filing Plans .50

Residence of Contractor 541 Market Street

W. H. Day

Building Inspector.

PERMITS MUST ALSO BE OBTAINED FROM WATER, STREET AND ELECTRICAL DEPARTMENTS

All ranges must be set on hearths of brick, slate or cement extending at least twelve inches beyond the range; no range or other heating apparatus must be set against wood, lath or plaster partitions.

BUILDING PERMIT

No. B 82 ~~75~~

Camden, N. J., Aug 29 1919

Permission is hereby granted to Mockett Construction Co contractor, and owner, for the construction of 1 - Frame building for Transient purposes 1 stories in height, dimensions 68'-4" by 25'-0" roof of Slate Coated Shingles, location P. R. R. Ferries Street, 3rd Ward

Duplicate Permit

This permit to be considered void at the expiration of six months, unless active operations have been commenced within said time, and shall be rescinded and considered void as to the continuation of the work or the further erection of said building by the violation of the terms of any of the ordinances of the City of Camden relating to buildings or the use of the streets. And shall be void unless a license is taken out as provided in the Building Code under which this is issued.

Fee . . . . $ 3.00 Residence of Contractor 541 Market Street

Filing Plans .50

Building Inspector.

PERMITS MUST ALSO BE OBTAINED FROM WATER, STREET AND ELECTRICAL DEPARTMENTS

All ranges must be set on hearths of brick, slate or cement extending at least twelve inches beyond the range; no range or other heating apparatus must be set against wood, lath or plaster partitions.

Duplicate Application.
FORM "B"

Ex.D 5

PLAN NO. ..... PERMIT NO. B 81

APPLICATION FOR ERECTION OF NEW BUILDINGS

Application is hereby made to the Building Inspector of the City of Camden, for the approval of the detailed statement of the specifications and plans herewith submitted, for the erection of the building..... herein described. All provisions of the Building Law and Ordinances shall be complied with in the erection of said building....., whether specified herein or not.

(Sign here) Mockett Construct Co.

Camden, N. J., Aug 29 1919

Address 541 Market St

1. State how many buildings are to be erected.....
2. How occupied; if for dwelling, state the number of families Transient
3. What is the street and number thereof, or the side of the street and distance from the nearest cross street? N.E. cor Broad & Morgan Sts for S trolley loop on New York Ship N Yard XXXX
4. Size of lot—No. of feet front ---- ; No. of feet rear ---- ; No. of feet deep ----
5. Front building—No. of feet front 68'4" ; No. of feet rear 68'4" ; No. of feet deep 7'-0
6. Back building—No. of feet front " ; No. of feet rear " ; No. of feet deep "
7. No. of stories in height—Front building one ; Back building one
8. Give total height—Front building 18'-0" ; Back building 18'-0"
9. Give height of each story—Basement ---- ; 1st story 9'-4" ; 2nd story ----
   3rd story ---- ; 4th story ..... ; 5th story ..... ; 6th story ..... ; 7th story .....
   8th story .....
10. What will be the depth of foundation walls from curb level or surface of the ground? 4'-0"
11. Upon what kind of soil will the foundation be laid? Cinder fill
12. What will be the footing, stone or concrete? Concrete ; If stone, give size and thickness .....
    ..... ; If concrete, give width, thickness and composition
    City Spec.
13. If piers are used, give size 24" Sq ; Footing ----
14. Give thickness of foundation walls ----- ; Of what material constructed? .....
15. What will be the thickness of the upper walls? .....

STORIES	FRONT WALLS	SIDE WALLS	REAR WALLS	PARTY WALLS
Basement				
First story				
Second story				
Third story				
Fourth story				
Fifth story				
Sixth story				
Seventh story				
Eighth story				

16. Of what materials will the walls be constructed? No walls
17. Give composition of mortar in foundation walls .....
18. Give composition of mortar in upper walls .....

19. If party walls are to be re-inforced, state materials, thickness of re-inforcement, and how laid ---------

20. What will be the material of front? All open; if of stone, what kind? ------

21. Give thickness of ashlar ------; and thickness of backing ------

22. Will the roof be peak, flat or mansard? Peak; and give materials of roofing felt Shingles Slate coated

23. What will be the means of access to roof? none

24. What will be the materials of cornices? "

25. Give size of bay windows and where located "

26. Give size of overhanging bath "

27. Give size of frame shed "

28. Give material of floor beams Concrete floor

29. Give material of girders 6" x 8"

30. Give material of columns 6" x 6"

31. Give size and distance between centers of joists, girders and columns, as follows:—

FLOORS	JOISTS	CENTRES	GIRDERS	CENTRES	COLUMNS	CENTRES
Basement						
1st floor						
2nd floor						
3rd floor						
4th floor						
5th floor						
6th floor						
7th floor						
8th floor						

32. What materials will be used in roof rafters? Wood

33. Give size of bottom chord -----; top chord -----; diagonals

34. Give size of centre rods -----; diagonal rods; heel rods

35. If building is of steel frame and fireproof construction, state style of columns and floors. (Full plans and details required) ------

36. How many rows of bridging to each tier of beams? -----

37. What will be the distance of wooden girders, beams or timbers from all flues? ------

38. If any hoistways, state how protected -------

39. Will headers and trimmers be hung in stirrup-irons? ------

40. State if any hot air, steam or other furnaces -------

41. If the front, rear or side walls are to be supported in whole or in part by iron girders or lintels, give definite particulars as to size of girders, jam boxes, etc. ------

42. If girders are to be supported by brick piers, state size of piers ------

43. Will a fire escape be provided? ----- What kind? -------

44. How much will the building cost? $ 900 Approx.

45. Give size of yard space to each house -----

46. How many buildings are to be taken down? None

47. Time of commencing At once

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

Personally appeared before me the subscriber, a Notary Public for the State of New Jersey, residing in the City of Camden, N. J. .....

.....

the applicant above named, who, being duly sworn according to law, deposes and says that the facts above set forth are true to the best of his knowledge and belief. Deponent further says that the foregoing are all the alterations or repairs he proposes to make to the building above described.

Sworn to before me this .....
day of *19*

Mockett Construction Co

Raymond W. Fisher
541 Market St

.....
Notary Public of New Jersey.

REPORT OF INSPECTOR

Camden, N. J., ... 19

To the Building Department:

Work was commenced on the within-described building on the ..... day of ..... and completed on the ..... day of ....., and has been done in accordance with the plans and specifications, except as noted below.

Respectfully submitted,

..... *Inspector.*

REMARKS

.....

.....

.....

Camden, N. J., ... *19*

This is to certify that I have examined the within detailed statement, together with a copy of the plans relating thereto, and find the same to be in accordance with the provisions of the Law and Ordinances relating to buildings in the City of Camden, that the same has been approved and entered in the records of this Department.

.....

Inspector.

Ex D 4

DUPLICATE APPLICATION

FORM "B"

PLAN NO. ..... PERMIT NO. B 82

APPLICATION FOR ERECTION OF NEW BUILDINGS

Application is hereby made to the Building Inspector of the City of Camden, for the approval of the detailed statement of the specifications and plans herewith submitted, for the erection of the building..... herein described. All provisions of the Building Law and Ordinances shall be complied with in the erection of said building....., whether specified herein or not.

(Sign here) Mockett Construct Co

Camden, N. J., August 29 1919

Address 1541 Market St

1. State how many buildings are to be erected one
2. How occupied; if for dwelling, state the number of families Transient
3. What is the street and number thereof, or the side of the street and distance from the nearest cross street? at the junction of Market and Federal Sts ferries Camden Ward
4. Size of lot—No. of feet front ------; No. of feet rear ------; No. of feet deep ------
5. Front building—No. of feet front 68'4"; No. of feet rear 68'4"; No. of feet deep 25'0"
6. Back building—No. of feet front ; No. of feet rear ; No. of feet deep
7. No. of stories in height—Front building one; Back building one
8. Give total height—Front building 18'-0"; Back building 18'-0"
9. Give height of each story—Basement ------; 1st story ------; 2nd story
   3rd story; 4th story; 5th story; 6th story; 7th story
   8th story
10. What will be the depth of foundation walls from curb level or surface of the ground? 4'-0"
11. Upon what kind of soil will the foundation be laid? Solid earth
12. What will be the footing, stone or concrete? Concrete; If stone, give size and thickness
    ; If concrete, give width, thickness and composition
    City Specs.
13. If piers are used, give size 24" Sq.; Footing ---
14. Give thickness of foundation walls ------; Of what material constructed?
15. What will be the thickness of the upper walls? ------

STORIES	FRONT WALLS	SIDE WALLS	REAR WALLS	PARTY WALLS
Basement				
First story				
Second story				
Third story				
Fourth story				
Fifth story				
Sixth story				
Seventh story				
Eighth story				

16. Of what materials will the walls be constructed? Brick
17. Give composition of mortar in foundation walls
18. Give composition of mortar in upper walls

19. If party walls are to be re-inforced, state materials, thickness of re-inforcement, and how laid ------

20. What will be the material of front? All open; if of stone, what kind? -------

21. Give thickness of ashlar -------; and thickness of backing -------

22. Will the roof be peak, flat or mansard? Peak; and give materials of roofing Slate coated felt shingles

23. What will be the means of access to roof? None

24. What will be the materials of cornices? "

25. Give size of bay windows and where located "

26. Give size of overhanging bath "

27. Give size of frame shed "

28. Give material of floor beams Concrete floor

29. Give material of girders 6" x 8"

30. Give material of columns 6" x 6"

31. Give size and distance between centers of joists, girders and columns, as follows:—

FLOORS	JOISTS	CENTRES	GIRDERS	CENTRES	COLUMNS	CENTRES
Basement						
1st floor						
2nd floor						
3rd floor						
4th floor						
5th floor						
6th floor						
7th floor						
8th floor						

32. What materials will be used in roof rafters? Wood

33. Give size of bottom chord -----; top chord -----; diagonals ----

34. Give size of centre rods -----; diagonal rods -----; heel rods ----

35. If building is of steel frame and fireproof construction, state style of columns and floors. (Full plans and details required) -------

36. How many rows of bridging to each tier of beams? -------

37. What will be the distance of wooden girders, beams or timbers from all flues? -----

38. If any hoistways, state how protected -------

39. Will headers and trimmers be hung in stirrup-irons? -------

40. State if any hot air, steam or other furnaces -------

41. If the front, rear or side walls are to be supported in whole or in part by iron girders or lintels, give definite particulars as to size of girders, jam boxes, etc. -------

42. If girders are to be supported by brick piers, state size of piers -------

43. Will a fire escape be provided? -----. What kind? -------

44. How much will the building cost? $ 1500 Approx

45. Give size of yard space to each house XXXX

46. How many buildings are to be taken down? None

47. Time of commencing At once

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

Personally appeared before me the subscriber, a Notary Public for the State of New Jersey, residing in the City of Camden, N. J.....

.....

the applicant above named, who, being duly sworn according to law, deposes and says that the facts above set forth are true to the best of his knowledge and belief. Deponent further says that the foregoing are all the alterations or repairs he proposes to make to the building above described.

Sworn to before me this .....
day of..... *19*

Mockett Construction Co
Raymond W. Fisher
541 Market St.

.....
Notary Public of New Jersey.

REPORT OF INSPECTOR

Camden, N. J.,..... 19

To the Building Department:

Work was commenced on the within-described building on the .....day of .....
and completed on the.....day of....., and has been done in accordance with the plans and specifications, except as noted below.

Respectfully submitted,

.....*Inspector.*

REMARKS

.....

.....

.....

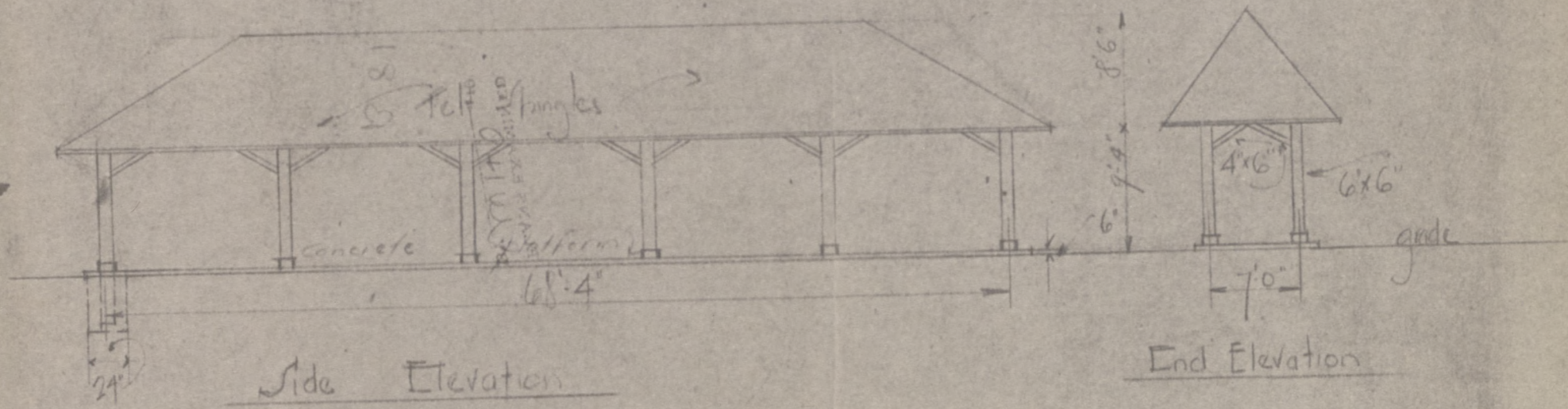
Camden, N. J., ... *19*

This is to certify that I have examined the within detailed statement, together with a copy of the plans relating thereto, and find the same to be in accordance with the provisions of the Law and Ordinances relating to buildings in the City of Camden, that the same has been approved and entered in the records of this Department.

.....

Inspector.

D. 5



Side Elevation

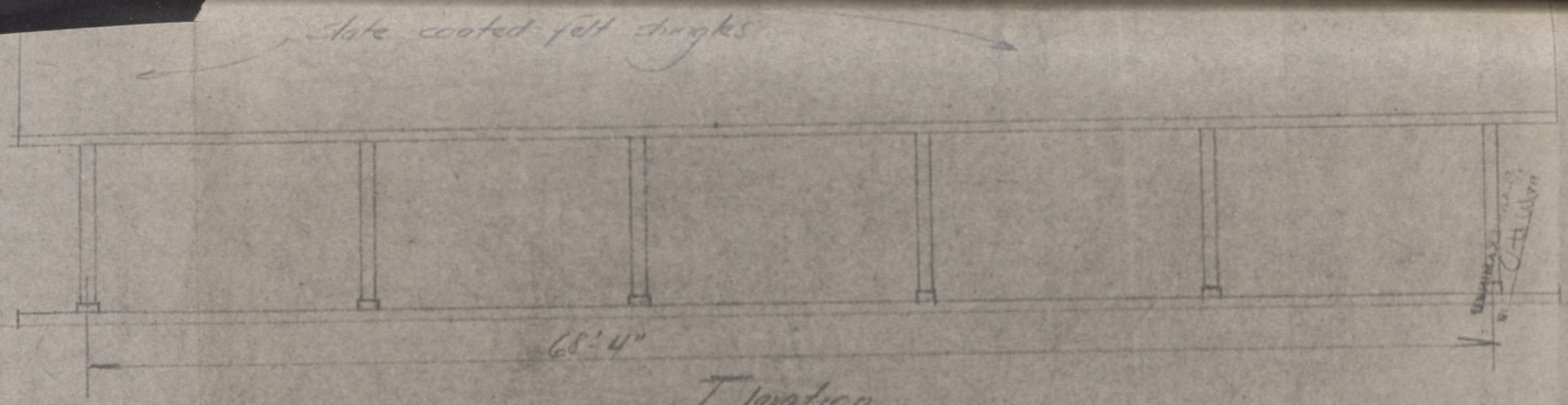
End Elevation

Shed for pay-as-you-leave system at the
New York Shipyard Camden N.J.

Scale 1/8" = 1'-0"

C12-532

Aug. 25. 1919



Elevation

End

Detail plan for proj as per
fence system at P.R.R. Ferry

C18-533

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

PUBLIC SERVICE RAILWAY COMPANY, *Prosecutor-Appellant,* *vs.* CITY OF CAMDEN, *Defendant-Respondent.*	*On Certiorari.* *On Appeal from Supreme Court.*

BRIEF OF APPELLANT.

Statement.

Public Service Railway Company, the prosecutor, has two terminals in the City of Camden, both of which are upon private property. One is on property that is under the control of the United States Shipping Board Emergency Fleet Corporation, adjoining the work of the New York Shipbuilding Corporation; and the other is on property of the Camden and Philadelphia Ferry Company opposite the ferry entrance of the Pennsylvania Railroad Company ferries.

Owing to a change inaugurated by the Board of Public Utility Commissioners which required the collection of fares from passengers on leaving the cars, it became necessary to rearrange these terminals in order to avoid congestion because of the large number of people discharged at one time, the cars being emptied at these terminals. The terminals and their character are shown by Exhibits P. 1 to P. 7, consisting of plans and photographs, and appearing in the state of case after p. 58. It was necessary to erect a structure at each place, in the nature of a shelter pavilion or shed, because passengers when they left the cars had to pass by booths and through turnstiles to pay fare.

For a year or more before this system was inaugurated a fence had been constructed at the Emergency Fleet terminal around the loop where the cars ran, and that fence was cut away and a shed or pavilion constructed, being there inserted. It consisted of timbers set in the ground, being practically an umbrella construction, with a roof over the same. This pavilion was furnished with portable fare booths, as used elsewhere by the company, each booth having therein a place for a cashier and the operation of a turnstile, as shown in the picture. This

Emergency Fleet terminal was used for the discharge of passengers alone. Passengers boarded the cars at another point, as shown by the plan.

The structure built at the ferry was a little different, because under the same roof was a waiting place for passengers about to board the cars, and instead of there being only one line of posts, there were two. The ferry structure is similarly furnished. At the waiting place for passengers there is a wind-break, consisting of a board and glass section with two double doors, all as shown in the photograph. Before the construction of this ferry terminal there were two terminals at the ferry, each in the shape of a loop, one on the north side and the other on the south, which now have been discontinued, and all the cars brought into this place. This shed or pavilion is likewise furnished with booths and turnstiles for passengers leaving the cars, and in addition has the wind-break already mentioned; and in the place where passengers wait to board the cars there are park benches. There is in addition a fence along both sides of the tracks entering this place of discharge, so that passengers are required to go through the turnstiles and pay fare before they leave. This fence is also shown.

Under the building code of the city of Camden it is necessary, prior to the erection of any structure, to obtain a permit from the building inspector. The Mockett Construction Company was the contractor which built these two shelters and obtained the permits from the building inspector. The permits are in evidence (D. 1 and D. 2), as are also the applications therefor and the plans filed therewith (being numbered from D. 3 to D. 5 inclusive). These terminal structures, sheds or pavilions, are exactly the same as those in use at all similar terminals of the company throughout the state, all of which are furnished with the same uniform booths, which are portable and shipped from place to place as they are needed. The building code of the city of Camden defines "a frame building shall be taken to mean a building or structure of which the exterior walls or over fifty per cent. of said walls shall be constructed of wood." These pavilions are frame, except the roof is covered with a fireproof slateroofing. They have no exterior or other walls.

The mayor of the city served a notice on the company and its contractor to show cause before the city council why these structures should not be ordered removed, and in default of removal by the company, why the mayor should not be authorized

to remove the same (case, p. 2). Proceedings were had before the city council and a resolution was passed reciting that the structures were illegally erected, and directing the building inspector to call upon the prosecutor to show cause why the permits (D. 1 and D. 2) should not be revoked, and if they should be revoked, directing the removal of the structures, and in default of the prosecutor doing the same, the Mayor to remove them at the expense of the prosecutor (case, p. 3). In the notice there was some reference made to the relocation of the tracks, but that was not pursued. Immediately after the passage of the resolution the writ of certiorari in this cause was presented (case, p. 4).

When the case came on to be heard before the supreme court that court dismissed the writ with costs, on the ground that it was premature, saying—"As the case is before us there is nothing more than a resolution authorizing the inspector of buildings to call upon the prosecutor to show cause why the permits should not be revoked." (Case, pp. 51-2). The appeal is prosecuted here because it is asserted that the supreme court entirely lost sight of the fact of the lack of jurisdiction for the council proceeding in this way. It adjudged by its order that the structures were illegal and improperly constructed. It submitted nothing to the building inspector, who was its subordinate appointee, except the *pro forma* revocation of the permits. When this should be done then the mayor of the city should give notice to the owner to remove the structure, and on the owner's failure so to do the mayor himself should remove the same. None of which procedure is authorized by the charter, nor by ordinance of the city. For something attempted beyond jurisdiction a writ of certiorari is not premature.

Argument.

I.

The appellant alleges that there is no authority in the charter of the city of Camden authorizing the mayor to give notice on which the proceedings brought up for review were based, nor is there authority in the city council to hold a hearing upon such notice or pass the resolution in question. The charter of the city of Camden (P. L. 1871, p. 210) limits the duties of the mayor so that he is practically only the head of the police department. It is true that many general acts, now in force, require the approval of the mayor for the enactment of ordinances for the pay-

ment of money and the like. None, however, give him general executive powers. All powers of the streets and general powers, outside of the keeping of the peace, are committed to the city council. The city council can only declare what shall constitute a nuisance or unlawful erection, or provide for the removal of a nuisance or unlawful erection by ordinance. All the power that it has is under sec. 30, which authorizes it to pass ordinances; paragraph XXXI thereof contains all the authority it has over and concerning buildings. It has been given no authority to act in this respect otherwise than by ordinance. *Hunt* v. *Lambertville,* 45 N. J. L. 279; *Halsey* v. *Newark,* 54 N. J. L., 102; *Bergen Neck Ry. Co.* v. *Bayonne,* 54 N. J. L., 474; *Dilts* v. *Stockton,* 73 N. J. L., 158; *Hitchner* v. *Richman,* 74 N. J. L., 234.

The city has acted in this matter by ordinance and so expressed its will. This it has done by its building code, which is an ordinance of the city. It states the duties of a building inspector, whose election is provided for in the charter, the issue of permits by him, the revocation by him under certain circumstances of permits issued, but does not provide for any report by him directly to the city council, or that the city council may by resolution give him direction. This building code also prescribes the penalties for any violation thereof, as it may for the violation of any other ordinance, and the method for prosecution to recover such penalty, which is limited to $50. Nowhere is there any authority in the charter authorizing the ctiy, the building inspector or any other body to enter upon private property and destroy a structure claimed to be erected contrary to the building code. Nor does any city ordinance make any such futile attempt. The city council was entirely without jurisdiction to pass the resolution in question, as already stated. First: there was no evidence before the Council of the facts alleged in the resolution upon which it is based, as a stenographic report of the proceedings (case, pp. 45-49) clearly shows. Second: if there had been any violation of the code, suit would have to be brought by the building inspector, as therein provided, before the recorder of the city. Third: the penalty is limited to the sum of $50., and there is no authority to order the removal or destruction of any structure or building erected in violation of the building code.

II.

The structures in question in no wise violate the building code. There is nothing therein which prohibits their erection. It is true that the building code defines fire limits, and frame buildings may not be erected within the fire limits (which limits embrace both of the localities in question) without certain permissions and consents, that were not obtained in these two instances. The building code, which is in evidence (p. 8), in its 25th paragraph (case, p. 55) defines what is a frame building, and these two pavilions or canopies do not come within that definition; so that there was no prohibition of the erection thereof. It is true that the one at the ferry is slightly longer than the plan, filed with the building inspector, called for, two bents of the shed being added, that being the place where persons intending to board the cars go. Whether application for the extension of the permit was or was not made, does not seem to be clear (see case, p. 46, line 40); but be that as it may, there appears no record thereof.

Upon the testimony taken on behalf of the defendant it was shown that no permits for the installation of the booths were taken out, nor for the erection of the fence. There is no doubt at all about this. None were taken out. None were required by the building code or anything else. The booths are portable, such as are used by the appellant all over the State. They are shipped from place to place, and are no more a part of the structure than are the park benches used in the ferry pavilion for the comfort and convenience of intending passengers. There is no provision in the code requiring any permit whatsoever for a fence. Indeed, fences, with the exception of partition fences dividing property owners' property, concerning which there are certain limitations, are nowhere referred to.

Apparently an attempt was made on the part of counsel for the defendant, in taking affidavits, to treat the fence as a wall, and then again these several booths as a wall. This could but fail. The booths, as the evidence shows, were way within the roof and did not come near the top of it, were either single or in pairs, and separated by turnstiles, and were entirely portable. The fence was a fence, and nothing else. The witnesses for the City said the booths sat in or upon concrete bases, but what that has to do with any change of their character did not appear.

The city draughtsman and architect criticised the plans filed with the building inspector because he said *each* of the posts did

not show the concrete base or foundation on which it sat, but he admitted that that was shown in detail at one of the posts and that it was not at all unusual in building plans to show such detail only at one spot. He contented himself with criticising that usual custom, and suggested that he thought it would be better if such detail had been shown at each of the posts. Why such useless multiplication was desirable he did not suggest.

Neither before the council when the resolution was adopted, nor by the testimony taken under the rules in this cause, was the slightest warrant shown for the recitals contained in the resolution and on which it is based, and on the contrary it abundantly appears that such assertions were entirely unfounded and are untrue.

III.

The sole ground of the supreme court's opinion why it dismissed the writ was, as shown in the opinion (case, p. 52) * * * "It does not appear that the building inspector called upon the prosecutor to show cause why the permits should not be revoked, etc., or that he took any steps to carry into effect the resolution of the common council. Thus far the prosecutor has sustained no injury. Nor is the threatened injury so imminent as to require judicial interference. We cannot foretell what the inspector may decide to do after a hearing of a rule to show cause, which as yet appears not to have been issued. As the case is before us there is nothing more than a resolution authorizing the inspector of buildings to call upon the prosecutor to show cause why the permits should not be revoked. We think, therefore, that the granting of the writ was premature and should be dismissed, with costs."

By an inspection of the building code (case, pp. 54-58 inclusive) it appears that the building inspector is an appointee of the city council; answerable to the council, and its subordinate. The judgment of the city council (case, p. 4) decided that—"said structures have been illegally and improperly constructed." On page 55, section 14 of the code, it shows various reasons why the building inspector may revoke and annul permits; and one of them is where the building is so far completed that no further use of the street is necessary. While it is true that the city had adjudged that the structures were illegally and improperly constructed, and therefore it must be a foregone conclusion what the servant of the city council would do on his notice to show

cause, the council went further and directed the mayor to give notice to remove said structures, and in default of their being removed, to do it himself; in another way carrying out the illegal notice given by the mayor (see case, pp. 2 & 3), and on which the City Council acted. It appears by the return that there is no evidence at all before the city council as to the illegality of the structures; and even if they had been illegal and were a violation of the building code, as shown by section 98 (case, pp. 55 & 56), that the method of procedure was by complaint before the recorder, where the party complained of would have a right to appear and be heard. In this case the whole proceeding was illegal and beyond the jurisdiction of the council, and timely objection was made. That under such circumstances a writ of certiorari properly lies cannot successfully be questioned. *State* v. *Freeholders of Hudson,* 23 Law, 206; 24 Law, 718; *Drake* v. *Berry,* 42 Law, 60; *Mowery* v. *Camden,* 49 Law, 106; *Jackson* v. *French,* 53 Eq., 322.

When the question of jurisdiction is one that still may be raised, it not having yet been done, then it may be conceded that a writ of certiorari may properly be denied. It does not yet appear that the inferior tribunal will not admit its lack of jurisdiction. In this case, however, the question of jurisdiction was timely raised, but the city council carried the matter on to a final judgment on its part. The only thing delayed was the execution of that judgment, and that was simply delayed, leaving it to the action of the subordinate servant of the judicial body. When he should act in accordance with the expressed wish and opinion of his master, then the judgment would be put in force. As has already been shown a decision of this subordinate might well be on the ground that the permit was no longer needed, as there was no occasion further to occupy the streets. In that case it is made the duty of the building inspector to revoke his permit. The structures were completed and there was no further need, even if there ever had been, to occupy the street, and therefore the building inspector might well say, independent of this judgment of the city council, he would revoke the permit. Under such circumstances, or any circumstances leading to a revocation of the permit, the action of the city council was absolute and final. The mayor was purported to be empowered by its action, notwithstanding the lack of jurisdiction and the illegality, to enter upon the private property of the prosecutor and destroy the same. Certainly the prosecutor

should not be and legally is not bound to sit still and await the threatened trespass proposed to be committed under color of legal authority, when all the proceedings are absolutely without jurisdiction. This is something, we submit, that does call for judicial interference, and that the judgment of the supreme court to the contrary is erroneous. Had the action of the city council been to direct a prosecution under the code, then it might be well said that at this stage nothing called for judicial interference; but the council ordered to be done what it had no legal authority to order and direct; and the whole case shows that the apprehension of the prosecutor that an attempt would be made to carry this illegal action into effect was not unfounded.

It is respectfully suggested that the judgment of the supreme court should be reversed.

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New Jersey Court of Errors and Appeals

PUBLIC SERVICE RAILWAY COMPANY, *Prosecutor-Appellant,* *vs.* CITY OF CAMDEN, *Defendant-Respondent.*	*On Certiorari.* *On Appeal from Supreme Court.*

PROSECUTOR IN REPLY.

This court will not, in accordance with its settled practice, where a judgment in the supreme court is under review, examine the facts, the determination of which in the supreme court, resulted in its judgment, in such cases where the judgment is founded on such determination. It will, however, at any time examine far enough to see whether there are any facts at all to sustain the judgment, as that is at all times a question of law. When in such a case as this the judgment is not based upon any consideration of disputed facts, it may become necessary to examine the facts as submitted to the court below, to see if the judgment thereby should be supported, if this court differs from the rule of law pronounced by the supreme court on the reasons as it gives. It is our contention that there were no facts or adjudication of facts before city council or shown by the affidavits taken to justify any action by city council in case it had jurisdiction for the procedure it took in this case.

There are two structures in question here: one at the New York Shipbuilding plant, and the other at the Pennsylvania Railroad ferry. The only attack made upon either structure was the one at the ferry, and that attack was because the shed extended longer and the wind-break was erected and some fences were erected, none of which appeared in the permit. Both for the wind-break and for the fences no permits were necessary, nor was there any provision in the building code permitting the granting of permits for such purpose. As before said, the *length* of this shelter exceeded that specified in the application, but the building code itself provides for such things.

There was not one word of testimony attempting or pretending to suggest that the structure at the shipyard differed in any particular from that in the plans filed. No fence was built; indeed, a part of the fence was cut away to provide for it. No wind-break was erected; nor did it exceed the dimensions of plans in any particular. Both structures are furnished with booths and turnstiles, of course; but there was no attempted contradiction of the explanation of these being merely furniture, and no more a part of the building than the rest benches were. The proceedings indiscriminately condemned both structures, adjudged both to be illegal erections, and ordered the building inspector to proceed against both. Should we grant, for the argument's sake, there was even a technical foundation for the proceeding against the one at the ferry, which we do not, it cannot be pretended there was for the one at the shipyard. The condemnation by city council was of both.

The resolution and proceedings of city council were, as before claimed, unwarranted, unfounded, beyond the jurisdiction of the council, and an injurious judgment against the prosecutor, which ordered the destruction of its property.

What city council did was not a mere harmless reference to an officer or a department or an agency of the city, to put in force the legal operations of such department. If it is true that thing is included within the judgment expressed by city council in its resolution, still there are the other and faulty things contained therein, and for this the judgment should be reversed. Attention of counsel was called on this phase of the case to *Cape May* v. *Railroad Co.*, 60 N. J. L. 224, where city council pronounced an erroneous extra-jurisdictional judgment, and also a resolution referring matters to the city solicitor for action. The supreme court by its judgment set aside the whole proceeding. This court, while affirming the correctness of the opinion as to part, said as to the resolution referring to the city solicitor, that that was unobjectionable, and for that reason reversed the judgment below as being too extensive. This case is exactly the converse of that, of course. It may be held, as the supreme court did, that there was no objection in referring this for appropriate action to the building inspector, but by going further the city council was wrong and the judgment of the supreme court in affirming the whole of such action, which, of course, it did by dismissing the writ, although not in terms and probably not intending to, was

error. That was the reason this case was cited to counsel for the defendant. If it be assumed for the moment that the building inspector should afford a proper hearing and proceed in all things regularly, the injury and damage by the further unauthorized action of city council remain.

An inspection of the record, the notice served by the mayor, the statement of the attorney of the city before the council at the meeting when action was taken, the resolution finally adopted, show without the necessity of any further argument whatsoever, that the statement with which counsel for the defendant concludes, as follows:

> "The municipal authorities in this case did not take or evince any desire to attempt to take any drastic action against the prosecutor; and in fact no action at all without fully apprising it in advance of every step they proposed to take."

is, to say the least, disingenuous.

Counsel further says: "The prosecutor had no right to assume that the building inspector, or any other official, would act illegally." This may be well answered by the statement that all of the other officials who had acted at all had acted illegally and without warrant of law; that they had exceeded their jurisdiction and threatened to do great damage in further excess thereof. The prosecutor had the best right in the world, the warrant to assume that they would act as they had threatened to act—that is, that such was consistent with the way that they had acted in the past in this particular case. The injury to the prosecutor is not a fanciful and possible one merely. It is a present and actual one, and for that reason it is submitted the judgment herein reviewed should be reversed.

June Term, 1920.

FRANK BERGEN,
Of Counsel with Prosecutor-Appellant.

NEW JERSEY COURT OF ERRORS AND APPEALS

PUBLIC SERVICE RAILWAY COMPANY, Prosecutor, Appellant, vs. CITY OF CAMDEN, Defendant, Respondent.	ON CERTIORARI. ON APPEAL FROM SUPREME COURT. BRIEF FOR DEFENDANT, CITY OF CAMDEN.

1. Statement of Facts.

The facts in this case are that the Public Service Railway Company employed Mockett Construction Company, builders, to erect two street railway terminals in the City of Camden, one at the Federal Street Ferry, the main gateway of the City of Camden, and the other in the vicinity of the New York Shipbuilding plant, Broadway and Morgan street.

On August 29, 1919, two permits were taken out for this purpose, one known as B-82 and the other as B-81. These permits are found in the printed book. Both permits were issued on signed applications of the builder, Exhibits D-3 and D-4. Both applications stated distinctly that they were for "transient"; that is, temporary purposes or uses. There is nothing in either application

from which any public official could learn that the structures were to be *permanent* street railway terminals.

The structures as erected were clearly intended to be permanent.

The plans filed shows merely open sheds as proposed to be erected. Under the Building Code of the City of Camden, offered in evidence by the Prosecutor, Section 8, paragraph 6, it is provided that before the erection of any structure is proceeded with, a *detailed* statement of the specifications and a *full* and *complete* copy of the necessary plans of such proposed work must be filed, together with the application. The application is to describe the structure. The Code provides that any false affidavit or statement made in connection with the application shall be just cause for the revocation of the permit issued pursuant thereto. This also provides that any work done shall be strictly in accordance with the copy of the plans filed. The plans filed in these two applications are marked Exhibits D-5 and D-6, and are annexed to the printed book.

Structures Erected Contrary to Plans.

It clearly appears from the evidence in the case that these structures were not erected according to the plans or applications submitted. In other words, they were erected entirely outside of the permits which were issued. As far as the structures themselves are concerned there might as well have been no permits issued or applied for.

a. These structures are clearly not transient, but from all the evidence, photographs and other exhibits, it clearly appears that they were intended to be permanent struc-

tures, and not in any sense "transient," which the Standard Dictionary defines as "temporary, not permanent, of short duration, passing before the vision in a brief time and then disappearing from the view."

b. The building at the Federal Street Terminal, according to the application and the plan filed, was to be sixty-four feet long, whereas, the building which was constructed under this permit and application is *one hundred and eight feet long*. (Printed book, page 30.)

c. Ten ticket offices, permanently and solidly constructed and imbedded in cement, every one of them frame structures, were erected under each one of these alleged open sheds. (See page 30.)

d. At the Federal Street Terminal an alleged windshield twenty-four feet long, was constructed, thus enclosing a part of the shed. The plan filed showed an *open* shed. The application, line 16, said "no walls," and on line 20, front to be *"all open."*

e. High board fences were constructed, making a sort of a pen or large enclosure, and forming a part of the terminal. According to Mr. Danforth, the General Manager, (page 23, line 26), these fences were a necessary part of the structure which the company intended to build and use. If the company intended, at the time it made the application for these permits, to build a permanent street railway terminal at each of these points, as the same are now constructed, then the permits were secured on a false representation, and the Building Inspector was necessarily deceived. If, on the other hand, the plans of the Railway Company were changed after the original

application was made, Section 8 of the Building Code, provides for such contingency and makes it unlawful to proceed with any such change until a new application has been made and revised plans and specifications filed. No new application was filed. As a matter of fact, therefore, it is apparent that these structures have been erected without any lawful authority.

f. These ticket offices were frame structures erected within the fire zone limits where frame structures are prohibited. (Page 40, line 5, and p. 1, lines 1 and 2.)

2. Had Mayor or City Council Any Jurisdiction?

This brings us to the question which is the main contention raised by the Prosecutor as to whether or not, in view of these facts, the Mayor or City Council had any jurisdiction to take any action in the premises. The Mayor is the head official or Executive Magistrate of the City. Properly and primarily his duties are executive, and he is necessarily charged with the duty of seeing that the laws and ordinances of the city are obeyed.

Dillon, 5th Edition, Vol. 1, Section 387, page 668.

It is evident under the very title of the office, that the duty of the Mayor is to see that there is no infringement of the police power of the municipality. The violation of any ordinance or municipal regulation is necessarily a matter of considerable concern to the Chief Executive of any municipality, who has a conscientious regard for the duties of his office.

The City Council being the law-making body of the city, is also concerned in seeing that its laws and ordinances are not violated.

What the Mayor Did.

With these admitted violations of the Building Code staring him in the face, the Mayor served a notice on the Prosecutor, and cited it to appear before City Council. In other words, he asked them to attend a public hearing on what appeared to be a gross violation of the Building Code. There was certainly nothing illegal in the Mayor's calling attention to an apparent violation of the city's Building Code. It was certainly proper for him to notify the Prosecutor also so that if it desired it could appear and defend itself. The Prosecutor appeared in response to this notice and a hearing was given. Enough facts were elicited at that hearing to show that there appeared to be a violation of the code. Council did not then (as anticipated by the Prosecutor when it secured the writ) take any drastic or final action. It very properly concluded that it had no jurisdiction to revoke the permits in question, and it thereupon passed a resolution directing the Building Inspector to notify the builder and the owner to appear before him and to show cause why the two permits should not be revoked or proper plans presented. In other words, what Council did was to instruct the Building Inspector to perform his duty under the code. It took no final action affecting the rights of the Prosecutor.

Permits May Be Revoked by Inspector.

Section 14 of the Building Code provides that for the violation of any code or the abuse of any permit, the same can be revoked or annulled by the *Building Inspector*. It must be clear that the Building Inspector had a perfect right to have the builder and the owner appear before him to see whether the permit had been violated, and to take up the question of revocation.

3. Writ Prematurely Issued.

City Council had a perfect right to instruct the Building Inspector to proceed according to the Code and perform his duty, and while the Prosecutor may question the right of the City Council to take any other action, this much they were fully justified in doing. After the resolution in question was passed the Prosecutor served the writ in this case. We claim that the service of the writ at this time, after the adoption of a resolution of this kind, was premature. It was then clearly evident that there was to be no immediate or hasty action; that a hearing was to be given as provided by the code before the proper tribunal, and if at that hearing the permits were revoked the resolution then provided for another notice to the Prosecutor, fully protecting the Prosecutor's rights by giving ample notice of every proceeding that the officials were taking. If the Building Inspector, after a proper hearing, had revoked the permits, and if the Mayor had then served a notice directing the removal of the structures, the Prosecutor would then have had ample time to seek the aid of this Court.

Prosecutor Made Erroneous Assumption.

The original notice served by the Mayor in this case was simply a notice that a public hearing would be given. The Prosecutor had no right to assume that any drastic action would be taken by City Council. The Mayor did not say that he would take any such action—simply that he would request City Council to take action if good cause were not shown. The Prosecutor evidently assumed that City Council would take drastic action without affording a proper hearing to the Prosecutor.

But City Council did not take any such action and there was not the slightest intimation to the Prosecutor or any threat from City Council that such drastic action would be taken. The Prosecutor waited until Council had adopted the resolution in question before the writ was served, so that at the time of the service of the writ the Prosecutor knew that it would be afforded a proper hearing before the Building Inspector, and that if the Building Inspector revoked the permits it would still receive a further notice before other action was taken, and that it would have ample time and opportunity to protect itself by applying to this Court. The service of the writ by the Prosecutor, therefore, after the adoption of the resolution in question was certainly premature and unnecessary.

The resolution in question, on its face, is not illegal. The Council under this resolution, did not presume to assume the jurisdiction which was vested in the Building Inspector. If the resolution had directed the Mayor to immediately, without any further hearing or notice, to tear down or remove the structures in question, then doubtless the Prosecutor would have had sufficient grounds for the service of the writ. Of course, the Prosecutor need not, in such case, have waited until the Mayor or other official had proceeded to demolish the structures in question.

In *Montgomery vs. Trenton, 36 N. J. L., 79, at page 85*, the Court said:

> "The taxpayer may resort to certiorari for his protection against an illegal ordinance or resolution without waiting until the assessment is actually imposed."

No Injury to Prosecutor.

But the Court in that same case said that no right of action could accrue to any taxpayer *until he suffered some special injury.* We may well ask what special injury or damage had been done to the Prosecutor in this case at the time of the adoption of this resolution? The main point of the resolution was that the Building Inspector should give notice to the Prosecutor to appear before him and show cause why the permit should not be revoked.

If the permits were lawfully and properly issued and the Prosecutor could maintain this position before the Building Inspector, we must presume that there would have been no revocation. If, on the other hand, the permits were unlawfully issued and the Building Inspector should so find, the Prosecutor was to have another opportunity, namely, by notice, so that *after* the revocation by the Building Inspector the Prosecutor would have sufficient opportunity to apply to this Court if such a course were found necessary. The whole trouble is that the Prosecutor anticipated drastic and illegal action, which was never taken, and which the Prosecutor knew would not be taken at the time it served the writ.

In *Watson vs. Medical Society, 38 N. J. L., 377,* it was held:

> "An order, judgment or determination affecting the rights of the Prosecutor is necessary as a foundation for the use of the writ."

The assumption on the part of the Prosecutor that the Building Inspector would act contrary to law was entirely unwarranted at the time the writ was served. The case at that time presented no final action of the city to be considered by this Court. The proper city authority, namely, the Building Inspector, was merely instructed to

perform his duty, and it must be presumed that he would perform that duty in a legal and proper manner. No final action by him had been taken.

See *Hoxey vs. Woodruff, 39 N. J. L., 72,* bottom page 74.

As was held in the case of *Elder vs. Medical Society, 35, N. J. L., 200,* at page 202, "certiorari will not lie until after final judgment."

The Building Inspector had given no final judgment as yet, and the Building Inspector had jurisdiction to revoke the permits in question.

It is well said in *Corpus Juris, Vol. 11, page 110, paragraph 47,* "certiorari will not lie to prevent anticipated wrong or injury. Therefore, it does not lie to prevent a threatened excess of jurisdiction."

4. Reply to Prosecutor's Brief.

Council in their brief say:

> "The appeal is prosecuted here because it is asserted that the Supreme Court entirely lost sight of the fact of the lack of jurisdiction for the Council proceeding in this way. It adjudged by its order that the structures were illegal and improperly constructed.
>
> It submitted nothing to the Building Inspector, who was its subordinate appointee, except the *pro forma* revocation of the permits."

We take issue with this statement. The Building Inspector was instructed to notify the Prosecutor to ap-

pear before him, and show cause why the permits should not be revoked.

This was clearly not *pro forma* merely. Such a statement assumes that the Building Inspector would violate his oath of office and proceed illegally and without giving the Prosecutor any hearing as he was directed to do.

Council had a perfect right to call the Inspector's attention to this breach of the city's building code and to instruct him to proceed thereunder.

No penalty was imposed by City Council prior to the giving of this proposed hearing. Council had taken no final action and the Inspector had not acted at all.

See *Hamblet vs. Asbury Park, 61 N. J. L., 502,* affirmed November 21, 1898.

In *Bill Posting Sign Company vs. Atlantic City, 71 N. J. L., 72,* this Court held:

> "Certiorari is not the appropriate remedy to restrain a mere threat."

In the present case we claim there was not even a threat of any *illegal action*, but if it be claimed by the Prosecutor that the removal of the structures in question, after the revocation of the permits, was a threat—that is all it *was* —there was no present or *final* determination by the City Council that the structures should be removed, regardless of the Prosecutor's rights, or without affording the Prosecutor a *proper hearing*. The fact is, the Prosecutor assumed that there was a threat and that it was not to be afforded a valid and proper hearing. This assumption was not in accord with the actual facts, and it is clear from the whole case that there was no immediate danger of any drastic action being taken.

If the Inspector had jurisdiction, no harm was done. If he did not have jurisdiction, the Prosecutor could have raised that point before the Inspector himself. We may now consider the question of the Inspector's jurisdiction.

Power of Inspector to Revoke.

Did the Building Inspector have power to revoke the permits in question?

The Building Code gives him this power.

If, as the Prosecutor contends, the only penalty for such a gross violation of the Building Code is to inflict a fine by a proceeding before the Recorder, then any illegal structure could be erected and maintained on the mere imposition and payment of a fine.

The fact that such a building is erected on private property is immaterial, because practically all structures erected under the Building Code are so erected on private property.

Section 98 also provides that in addition to the penalty provided for a violation of the code, the Inspector may revoke any permit granted where such violation has occurred. This is in addition to the power to revoke gvien in Section 14.

If the Building Inspector may not revoke a permit after a proper hearing, how shall the rights of the public be protected?

If a building *108* feet long is to be constructed under a permit authorizing one *64* feet long, is a mere fine going to satisfy the demands of the law?

Is the police power of the city so inefficient?

What Mayor or Council Did Immaterial.

We need not concern ourselves so much with what the Mayor or City Council did, because their action pointed, and in fact would eventually have culminated in the action or *non-action* of the Building Inspector. Neither need we be concerned so much whether these ticket offices were frame structures or mere temporary booths. The outstanding, undeniable fact is that this ferry terminal building, as completed, was 108 feet instead of 64 feet long, and that both structures were permanent and in no sense "transient" or temporary.

This amounted to a fraud or deception practiced on the Building Department, and in violation of the Building Code.

It was incumbent on the Executive of the city to make some move and not to sit supinely by and allow such a flagrant violation of law to pass unnoticed. The Mayor simply did his duty in instituting an inquiry into this alleged violation, and Council did its duty in requesting the Building Inspector to act in a perfectly lawful way, viz., by calling on the Prosecutor to appear before him and show cause why these permits should not be revoked.

Perhaps the Prosecutor might have shown some good cause, who knows?

Perhaps it could have shown the Building Inspector had no jurisdiction.

Prosecutor Assumed Inspector Would Act Illegally.

The Prosecutor is here before this Court assuming not only that the Building Inspector either had no jurisdic-

tion, and that, having no such jurisdiction, he would have acted anyhow, and that to the damage and detriment of the Prosecutor, *or* that if he did have such jurisdiction he would have acted illegally. Counsel in his brief, under paragraph III, says:

> "Therefore it must be a foregone conclusion what the servant of the City Council would do on his notice to show cause."

The Prosecutor had no right to assume that the Building Inspector, or any other official, would act illegally.

Counsel has cited the case of *Mowery vs. Camden, 49, N. J. Law, p. 106,* as part of the proposition that a certiorari may some times issue before a final decision of the inferior tribunal.

At page 109 of the *Mowery case, 49, N. J. Law,* the Court said:

> "A certiorari may legally issue before final decision, but ordinarily should not be allowed until then, for happily the tribunal may correct its error in time."

The tribunal in this case, namely, City Council, had already corrected any apparent error or claim to jurisdiction at the time the writ was served, if the Prosecutor had any justification for securing the writ by reason of the notice to appear originally served on it.

It will be noticed from the case that it was *after* the resolution was adopted that the writ was presented (see page 18, lines 30 to 35).

Council had then by the adoption of this resolution clearly evinced its intention *not* to act, but to refer the matter to the proper city tribunal.

The resolution as adopted was merely an instruction to the Building Inspector to institute some action. As far as City Council itself is concerned it was not a final decision; neither was it a final conclusion of any matter, lawfully or unlawfully before that body. In fact it clearly appeared that the Prosecutor was not to appear before City Council, but that it was to appear, after proper notice, before the Building Inspector, who had full power and authority to revoke permits.

It was evident, *after* the resolution was adopted, that Council had washed its hands of the whole matter and turned the whole proceeding over to the Building Inspector, admittedly the proper tribunal, before whom the Prosecutor was to be cited to appear.

What possible harm could come or did come to the Prosecutor by the adoption of this resolution. In effect the resolution was a mere notice to the Building Inspector that the Building Code was being violated and that he should proceeed to investigate the alleged violation.

The Prosecutor did not even wait for the Building Inspector to serve the notice; it did not even wait for the Building Inspector to give it a hearing or reach a final decision, and until the Building Inspector did reach such a final decision nothing was to be done under the resolution.

As the Court below said:

> "It doesn't appear that the Building Inspector took any steps to carry into effect the resolution. Thus far the Prosecutor has sustained no injury, nor is the threatened injury so imminent as to require judicial interference."

We claim that there was not even a suggestion of any proposed illegal action at the time the writ was served,

but the Prosecutor simply assumed that there was a possibility of some illegal action at some *future* date.

If City Council itself, after the adoption of the resolution, or pursuant to the authority of the resolution, was still proceeding, or evincing an intention to proceed forthwith against the Prosecutor, the case would be different, but a careful reading of the resolution shows, as the Court below found, that City Council had merely passed up the whole controversy to the Building Inspector, the proper tribunal under the Building Code, whose duty it was to determine whether or not the permits should be revoked.

At the time the writ was served, therefore, the Prosecutor had nothing to fear. It should have waited, not only until it was served with a rule to show cause, but until the Building Inspector had arrived at some definite and final decision.

It is entirely beside the case to say that the proceeding before City Council was illegal or beyond its jurisdiction, because City Council did not render a final decision against the Prosecutor. It practically admitted it had no jurisdiction by referring the matter to the Building Inspector. The whole purport of the resolution was to call the attention of the proper tribunal to an apparent breach of the Building Code.

The Prosecutor misses the main point in the resolution by assuming Council proposed, on its own authority, to revoke the permit in question. In other words, the Prosecutor had assumed, as appears by the brief of counsel in this Court, to which we have heretofore called attention, that the Building Inspector would not act on the evidence before him; not in accordance with the code; not according to law; but that he would proceed in a merely *pro forma* manner to revoke the permits in

question. The Prosecutor had no right to assume such false premises; he had no right to assume that any city official would violate his oath of office or act illegally. Therefore the Prosecutor, after the adoption of the resolution, should have withheld the writ in this case. It did not need to be served, because the Prosecutor was not even at that time threatened with any injury.

City Council had a perfect right to direct the Building Inspector to proceed to investigate the alleged violation of the Building Code. A resolution directing such an investigation was certainly not beyond the power or authority of City Council.

It is a common practice among legislative bodies to adopt resolutions of this kind, calling upon proper officials or tribunals to make certain investigations.

If City Council had called upon the wrong tribunal the issue might have been different, but even then the Prosecutor should have waited to have seen if such wrong tribunal made any attempt to proceed. In this case admittedly the Building Inspector was the proper tribunal, but the Prosecutor did not even wait to see whether the Building Inspector would proceed at all, even in a perfectly proper and legal manner, but it chose to serve the writ in question after it was apparent from the resolution that City Council itself did not propose to proceed against the Prosecutor in the premises.

The Prosecutor has suffered no injury and neither was any threatened at the time the writ was served.

This Court therefore should affirm the judgment of the Supreme Court.

Respectfully submitted,

E. G. C. BLEAKLY,

City Counsel.

June Term, 1920.

Counsel has cited on a pencil memorandum, since the service of his brief, the case of *Cape May vs. Railroad Co., 60 N. J. Law, 224,* presumably for the purpose of showing the kind of a resolution that Council could lawfully adopt without notice to the Prosecutor. It must be borne in mind that the resolution in question was not adopted without notice to the Prosecutor, but what is more to the point, this resolution provides first, for a hearing after notice before the Building Inspector, and even subsequently to that, in case of an adverse decision on his part, the resolution provides for a further notice to the Prosecutor, so that by the resolution in question the Prosecutor is protected at every stage.

No drastic action was attempted or authorized. The Council evidently declined to act on the Mayor's notice, pursuant to which notice the writ in this case was obtained. When this fact became evident to the Prosecutor, after the adoption of the resolution, it should have abandoned its writ and waited to see first what the Building Inspector would do, and second, if he decided against them, then it could safely have awaited a notice from the Mayor.

The municipal authorities in this case did not take or evince any desire to attempt to take any drastic action against the Prosecutor; and in fact no action at all without fully appraising it in advance of every step they proposed to take.

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