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TESTIMONY.

EXHIBITS.

Complainants' Exhibits:

Petition of Appeal.

(Filed and served, October 10, 1930.)

New Jersey Court of Errors and Appeals

ISAAC R. SRAGER, ARTHUR D. JONES, SAMUEL TAUB, FRANK FINKELSTEIN, MORRIS ISRAEL, WILLIAM ANKLOWITZ, KALMAN ROTHBERG, SAMUEL KLINE, MORRIS ABRAMS and HARRY DREIER,

Complainants-Appellants,

vs.

HARRY MINTZ, DAVID B. MEYROWITZ, MORRIS MEYROWITZ, FRANK MOFSHOVITZ, NATHAN RUBENSTEIN, HYMAN OGENS, JULIUS VELINSKY and ABRAM DEUTSCH,

Defendants-Respondents.

On Appeal from the Court of Chancery.

To the Honorable New Jersey Court of Errors and Appeals, in the Last Resort in All Causes:

THE PETITION of Isaac R. Srager, Arthur D. Jones, Samuel Taub, Frank Finkelstein, Morris Israel, William Anklowitz, Kalman Rothberg and Samuel Kline, of the city of Plainfield, county of

Union and state of New Jersey, and Morris Abrams and Harry Dreier, of the borough of North Plainfield, county of Somerset and state of New Jersey, appellants in the above-stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, upon the advice of the Honorable Malcolm G. Buchanan, Vice-Chancellor, dated the 8th day of September, in the year nineteen hundred thirty, in a cause therein depending, wherein your petitioners were complainants and Harry Mintz, David B. Meyrowitz, Morris Meyrowitz, Frank Mofshovitz, Nathan Rubenstein, Hyman Ogens, Julius Velinsky and Abram Deutsch were defendants, in these respects, to wit: for that said final decree adjudges and decrees that the bill of complaint of your petitioners, as complainants in said cause, should be, and for that it thereby was, dismissed; the Court of Chancery failed and refused to make and enter a final decree in the said cause in favor of your petitioners, as complainants therein, for the relief prayed for in their said bill of complaint; the Court of Chancery failed and refused to grant, make or issue an injunction, or decree or order in the nature thereof, in accordance with the prayer of said bill, enjoining and restraining said Harry Mintz, David B. Meyrowitz, Morris Meyrowitz, Frank Mofshovitz, Nathan Rubenstein, Hyman Ogens, Julius Velinsky and Abram Deutsch and each of them and the several agents, servants and employes of them and each of them, permanently or otherwise, from maintaining, operating or causing or procuring

the maintenance or operation of a poultry slaughter house upon the premises of said Harry Mintz described in said bill of complaint; from carrying on, conducting or actively permitting upon said premises any business, process or practice of slaughtering or killing chickens, ducks, geese, fowl or other poultry or any or either of them, or causing or procuring such business of slaughtering or killing to be conducted or carried on thereon or slaughtering or killing of any chicken, duck, goose, fowl or other poultry or causing or procuring the same to be done in and upon said premises; and said final decree is erroneous, contrary to the law, the facts and the equities disclosed by said bill of complaint and the proofs in the cause, constitutes a denial of justice to your petitioners and is in these and other respects wrongful and oppressive: and your petitioners humbly appeal from the whole of said final decree and from each and every part thereof, upon the ground that the same is erroneous, for that it orders, finds and adjudges that your petitioners are not entitled to relief in the premises, as prayed for in their said bill; for that it orders and adjudges that said bill be dismissed; for that it adjudges and decrees that your petitioners' prayer for an injunction, or a decree or order in the nature thereof, be denied; for that it denies to your petitioners the equal protection of the law and due process of law and for that said final decree was and is for these and other reasons unequitable, contrary to the law and the facts and oppressive to and confiscatory of the rights of your petitioners in the premises.

Your petitioners therefore humbly pray that said final decree of the Chancellor may be, in the particulars aforesaid, and because thereof, reversed, set aside and for nothing holden; and that your petitioners may have such relief in the premises as to this honorable court may seem meet: And your petitioners will ever pray, etc.

JOHN WINANS,
Solicitor of and of Counsel
with Appellants.

Bill of Complaint.

(Filed, December 13, 1928.)

IN CHANCERY OF NEW JERSEY.

To his Honor, EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey:

Complainants, Isaac R. Srager, Arthur D. Jones, Samuel Taub, Frank Finkelstein, Morris Israel, William Anklowitz, Kalman Rothberg and Samuel Kline, all residing in the city of Plainfield, Union County, New Jersey: and Morris Abrams and Harry Dreier, both residing in the borough of North Plainfield, Somerset County, New Jersey, for their joint and several bill of complaint, exhibited in behalf of themselves and each of them and in behalf of all other persons, similarly situated, who may come in as parties to this cause and contribute to the expenses hereof, respectfully show unto your Honor that—

Bill of Complaint.

1. At all times herein mentioned, Harry Mintz was and is the owner in his own right in fee simple, and actually seized and possessed of all that certain lot, tract or parcel of land and premises, situate, lying and being in the city of Plainfield, county of Union and state of New Jersey, designated and known as No. 512 West 3d Street, and more particularly described as follows:

Beginning at a point in the middle of West 3d Street at the easterly corner of a tract of land conveyed to the Central Railroad Company of New Jersey by James Leonard; thence northwesterly along the northeasterly line of said Leonard's tract, 144 feet, more or less, to the most easterly corner of a tract of land conveyed by Nathan Meyers and wife and Samuel Taub and wife to Congregation Ohavey Zedek, a corporation, by deed recorded in the Union County Register's office in book 1001 of deeds for said county, at pages 258, etc.; thence southwesterly along line of land of said Congregation Ohavey Zedek, 30 feet more or less to lands of James Mahan; thence southeasterly along said Mahan's line, 143 feet, more or less, to the middle of West 3d Street; and thence northeasterly along said street, 30 feet to the place of beginning; subject to easement for a right of way, granted by said Nathan Meyers and wife and Samuel Taub and wife to said Congregation Ohavey Zedek and its successors, by the conveyance aforesaid; said right of way extending over and across the strip of land, 9 feet in width, extending along the southwesterly boundary

line of the above described premises, throughout the whole depth, from the aforesaid lands of said Congregation Ohavey Zedek to West 3d Street at the front of said described premises;

whereon there were at all said times and still are erected and standing, (1) a 2½-story frame dwelling house, situate near the street frontage of said premises and occupying approximately the entire width thereof, except a 9-foot alley, comprising the right of way aforesaid, extending along the southwesterly side of said lot or parcel; (2) a 1-story brick store building, forming an extension at the front of said dwelling house, and extending thence, throughout the whole width of said lot or parcel, except the alley aforesaid, to the street frontage of said whole premises; and (3) a rear building, situate about 10 feet distant from and parallel with the rear line of said premises and boundary line of said land of Congregation Ohavey Zedek, and extending across the whole width of said premises, excepting the 9-foot alley aforesaid; which rear building (3) is hereinafter more particularly described.

2. Each of the complainants, other than complainant Arthur D. Jones, has been at all times mentioned in this bill of complaint, and now is, the owner in his own right in fee simple and actually seized and possessed of certain separate and distinct tracts or parcels of land, and of the buildings and improvements respectively erected and standing thereon, situate, lying and being in the same block on West 3d Street, in Plainfield aforesaid,

wherein said premises of Harry Mintz are situate, or a block immediately adjacent thereto, and either adjoining or in the immediate vicinity of said Mintz's premises.

3. At all times herein mentioned complainant Arthur D. Jones was and is the pastor of Mount Olive Baptist Church, a religious corporation, whose church edifice and adjoining parsonage occupy a tract of land bounding 115 feet in width on the center line of West 3d Street, distant about 75 feet northeasterly along West 3d Street from said premises of Harry Mintz; and complainant Arthur D. Jones was and is the tenant in actual occupancy of said parsonage, being a 2½-story frame dwelling house, situate on the most westerly corner of said two streets and separated from said Mintz's premises by only two narrow intervening properties, one comprising a 2-story frame dwelling house and the other a combination cement-block and shingle 2-story building, divided into two stores and residence premises.

4. The respective lands of the several complainants, other than Arthur D. Jones, were and are as follows:

(a) *No. 514 West 3d Street and South 2d Street Premises;* comprising plot of land fronting 30 feet in width on West 3d Street, immediately adjoining said premises of Harry Mintz, and 2½-story frame store and dwelling house thereon, owned and occupied by complainant Isaac R. Srager; also adjoining premises extending to and fronting 160 feet in

width upon South 2nd Street, with several dwelling houses thereon, occupied by tenants holding under said complainant, abutting on southwesterly lines of premises of defendant Harry Mintz and of Congregation Ohavey Zedek and rear line of the latter;

(b) *No. 516 West 3d Street;* comprising a tract or parcel of land owned and occupied by complainant William Anklowitz; fronting 30 feet in width on the center line of West 3d Street, immediately adjacent to and on the southwesterly side of the lastly-above described premises of complainant Isaac R. Srager, and extending northwesterly along line of lastly mentioned premises, of the same width throughout, a distance of 172 feet; together with a 2½-story frame building, containing store and dwelling premises;

(c) *No. 530 West 3d Street;* comprising a tract or parcel of land, situate on the northwesterly side of West 3d Street, distant about 275 feet southwesterly from said premises of Harry Mintz, together with a frame dwelling house thereon, owned by complainant Morris Israel and occupied by a tenant, holding under said lastly-mentioned complainant;

(d) *Three Separate Parcels;* comprising lots of land situate on the northwesterly side of West 3d Street, distant respectively about 200 feet and 300 feet southwesterly from said premises of Harry Mintz, together with dwelling houses standing thereon; all owned

by complainant Harry Dreier, and occupied by tenants holding under him;

(e) *Nos. 505 and 507 West 3d Street;* comprising a plot of land fronting on the southeasterly side of West 3d Street, diagonally opposite said premises of Harry Mintz, and containing two combination store and residence buildings; owned by complainant Kalman Rothberg and wife and occupied by several tenants holding under said owners, or one of them;

(f) *Nos. 523, 525 and 527 West 3d Street;* comprising a plot of land fronting on the southeasterly side of West 3d Street, diagonally opposite said premises of Harry Mintz, together with several dwelling houses standing thereon; all owned by complainant Morris Abrams and occupied by several tenants holding under him;

(g) *No. 529 West 3d Street;* comprising a plot of land fronting on the southeasterly side of West 3d Street, diagonally opposite said premises of Harry Mintz, containing a combination grocery store and residence, owned by complainant Frank Finkelstein and leased by him to a tenant holding under him;

(h) *Nos. 543 and 545 West 3d Street;* comprising two separate tracts or parcels of land, each containing a building; one of which contains a furniture store and residence thereover, both occupied by complainant Samuel

Kline; and the other a frame dwelling house owned by complainant Samuel Kline and leased to a tenant holding under him; and

(i) *No. 446 West 3d Street;* comprising a private residence and the curtilege whereon it stands, owned and occupied by complainant Samuel Taub,

and each of the said complainants has respectively owned or held and occupied his said respective parcel or parcels of land, with the improvements thereon as aforesaid, during and throughout a long period of time immediately prior to the making and filing of this bill, and long prior to the commencement of the wrongful doings and threats of the defendants and each of them, hereinafter more fully stated and complained of.

5. At all times herein mentioned, the Common Council of the City of Plainfield (properly designated The Inhabitants of the City of Plainfield) was a duly-organized and -existing legislative body, having and exercising full and complete jurisdiction, power and authority to make and enact ordinances, having the force and effect of law, within and throughout said city of Plainfield and for and in behalf of the municipal corporation thereof; and, at the time of the enactment of the Zoning Ordinance of the City of Plainfield, as hereinafter mentioned, said Common Council had full and complete jurisdiction, power and authority to state, enact, promulgate and enforce the same.

6. On or about April 2, 1923, said Common Council of the City of Plainfield (properly designated The Inhabitants of the City of Plainfield) duly made, adopted and enacted into law a certain ordinance, designated and entitled "Zoning Ordinance of the City of Plainfield"; and made, adopted and enacted a certain map or plan, designated and entitled "Building Zone Map," referred to in and thereby made part of said Zoning Ordinance of the City of Plainfield; a copy of which Zoning Ordinance of the City of Plainfield is hereunto annexed, marked "Exhibit A" and hereby made part hereof, and a copy of said Building Zone Map is hereunto annexed, marked "Exhibit B" and hereby made part of this bill.

7. Said zoning ordinance, "Exhibit A" annexed hereto, and said building zone map, "Exhibit B" annexed hereto, or either of them, have never been repealed or otherwise revoked, nor modified or amended in any manner respecting the provisions thereof relating to the occupancy or use of the land, premises and buildings aforesaid belonging to or in the occupation of said Harry Mintz, or the occupancy or use of the hereinbefore mentioned or described premises owned, held or occupied by these several complainants; and both said zoning ordinance and building zone map are and at all times since the adoption or enactment thereof have been in full force and effect and binding upon and wholly effective in relation to said land, premises and buildings of Harry Mintz and upon and in relation to the defendants herein and each of them in regard to their joint and several relations to said premises.

8. Said land, premises and buildings of Harry Mintz are and at all times since the adoption and enactment thereof have been in a light industrial zone or area, as defined by said zoning ordinance and shown on said building zone map.

9. At all times herein mentioned the Board of Health of the City of Plainfield was and is a duly-constituted and -existing organization and board, having and exercising, under the authority and in behalf of the municipality thereof, full, complete and general power, jurisdiction and authority, both legislative and administrative, over all matters concerning health, sanitation and hygiene within and throughout said city, and full power and lawful authority to make, adopt, enact, promulgate and enforce ordinances and regulations having the force and effect of law in relation thereto.

10. At the time of the adoption and enactment thereof, said Board of Health of the City of Plainfield had full and complete power, jurisdiction and authority to make, adopt, enact into law and promulgate and give full legal effect to the Sanitary Code of the City of Plainfield, hereinafter mentioned.

11. On or about January 27, 1926, said Board of Health of the City of Plainfield duly made, adopted, enacted, promulgated and gave full legal force and effect to a certain ordinance, law or regulation having the force and effect of law within and throughout said city, entitled "Sanitary Code of the City of Plainfield," including a

certain enactment, part or article thereof known, designated and distinguished as "Article X," relating to poultry; a copy of which said article X of said sanitary code is hereunto annexed, marked "Exhibit C" and hereby made part of this bill.

12. Said sanitary code has never been repealed or otherwise revoked, nor modified or amended in any manner respecting the provisions thereof relating to poultry and said article X, being "Exhibit C" hereunto annexed, has never been repealed, revoked in whole or in part, modified or amended; but the same and each and every enactment and provision thereof have been at all times since the adoption or enactment thereof and still are in full force and effect and binding upon and wholly effective in relation to the parties to this suit and their respective lands, premises and buildings situate within the city of Plainfield aforesaid; excepting as and to the extent that said sanitary code or article X thereof, relating to poultry, has been superseded, revoked, modified or amended by said zoning ordinance, being "Exhibit A," annexed hereto, and/or said building zone map, being "Exhibit B," hereto annexed.

13. Ever since a time soon after the enactment and taking effect of said zoning ordinance the Board of Zoning Appeals, now known as the Board of Adjustment, of the City of Plainfield has been and is a duly-constituted and -existing organization and board, having and exercising certain special and restricted power and authority, pursuant to section XIII of said ordinance,

to vary the application of certain of the regulations contained therein, in harmony with their general purpose and intent, without changing the boundaries of the respective zones, and to grant relief against onerous operation thereof and improvident restrictions thereunder, in certain limited and restricted particulars, as more fully set forth in said section XIII.

14. Said Board of Zoning Appeals, now known as the Board of Adjustment, has never done or suffered any act or proceeding, whereby any of the provisions, requirements and restrictions of said zoning ordinance or of said building zone map have been amended, varied or modified or any relief or immunity granted against the application thereof, in relation to said land, premises and buildings of said Harry Mintz, or any part thereof; and all said provisions, requirements and restrictions have been at all times since the enactment and adoption of said zoning ordinance and still are in full force and effect as and to the extent that they relate or purport to relate to Harry Mintz or to his said land, premises and buildings or any part thereof.

15. At all said times there was and is erected and standing upon the land and premises of Harry Mintz aforesaid, a certain rear building, constructed partly of wood-frame, and partly of cement blocks or other fireproof materials, approximately parallel with and distant about 10 feet southeasterly from the rear line of said premises, being also the boundary line of said adjoining premises of Congregation Ohavey

Zedek, and occupying substantially the entire width of said Harry Mintz's premises, except for the 9-foot alley aforesaid; the northeasterly portion of which rear building is of wood-frame construction, about 12 feet by 16 feet in horizontal dimensions and about 12 feet high, its depth and height being uniform with those of the other part of the building, the whole being covered by one continuous roof constructed upon a uniform grade or level; and the southwesterly portion, to which a recent addition has been made, as hereinafter particularly set forth, consisted, prior thereto, of a single chamber or space about 8 feet in width, parallel with West 3rd Street, by about 16 feet in depth and 12 feet high, with cement floor resting immediately on the ground, side- and rear-walls of cement-block or other fireproof construction and a garage-entrance doorway, with door, occupying practically the entire front of this portion of the building, facing West 3rd Street and affording access thereto by means of a small rear yard adjoining the dwelling house on the same premises and the alley at the southwesterly side thereof.

16. At all said times said northeasterly portion of rear building was and still is used exclusively for the storage and confinement of live poultry, for which purpose cages or coops were and are provided and used therein, occupying substantially the entire interior thereof on both floors; and said northeasterly portion is peculiarly adapted to the purpose aforesaid and suitable for no other purpose, in that portions of the outside walls thereof are composed of lattices, grat-

ings, meshes or other open-work construction, allowing free access to the outer air.

17. At all said times until the commencement of construction of the addition thereto, as hereinafter stated, the southwesterly portion of said rear building was habitually used as a private garage for the storage of one automobile, owned and in common use by said Harry Mintz and habitually stored therein; for which purpose it was peculiarly adapted by the type of its construction, which comprised a cement floor at substantially grade level, fireproof walls and a large entrance doorway and door, sufficient in size to permit the passage of such automobile and affording access thereto by means of the alley and rear yard aforesaid.

18. No enclosed runway or enclosure of any kind, other than said northwesterly portion of said rear building, for the use or safekeeping of poultry or for any other purpose, has ever been constructed or caused or suffered to stand upon said premises of Harry Mintz, and no poultry has ever been kept in any enclosed runway thereon.

19. At all said times no business, practice or process of slaughtering chickens, ducks, geese, fowl or any other poultry has ever been conducted or carried on upon said premises; said rear building or any part thereof has never been used for or devoted, in whole or in part, to the slaughtering of poultry of any kind and said premises or any part thereof have never been used in such

manner or for such purpose as to constitute a non-conforming use, as mentioned in or contemplated by section VII of said Zoning Ordinance, being "Exhibit A" annexed hereto.

20. At divers times in the year 1928, prior to the granting or issuance of the pretended permit to conduct a poultry slaughter house, being "Exhibit E" hereto annexed, prior to the making or filing of the application for a permit to make alterations and additions to said rear building, being "Exhibit F" hereto annexed, prior to the granting or issuance of the pretended permit to alter, repair and make additions to said rear building, hereinafter mentioned, and prior to the commencement of any work of alteration, repair, addition or extension to or upon said rear building, being the particular work hereinafter mentioned, the precise dates whereof are unknown to complainants, Harry Mintz (hereinbefore mentioned), David B. Meyrowitz, Morris Meyrowitz, Frank Mofshovitz, Nathan Rubenstein, Hyman Ogens, Julius Velinsky and Abram Deutsch, who are the defendants in this suit, for the purposes of causing and procuring to be made certain violations of the provisions of said Zoning Ordinance of the City of Plainfield, being the particular violations and intended violations thereof in this bill mentioned; of causing and procuring to be made certain violations of the Sanitary Code of the City of Plainfield, and particularly Article X of said sanitary code, relating to poultry, being the particular violations and intended violations thereof in this bill mentioned; of creating and maintaining and causing and procuring the

creation and maintenance of a nuisance in and upon said premises of Harry Mintz, and particularly in, upon and in relation to said rear building situate thereon; and thereby menacing, endangering, destroying and otherwise injuring the lives, health, safety and comfort of, and inflicting serious loss upon and grievous and irretrievable destruction and depreciation in and upon the property and property rights of, not only these complainants and each of them, but also the public generally, including the inhabitants of said city of Plainfield and sojourners therein, and particularly the owners, tenants and occupants of the lands adjacent to or in the neighborhood of said premises of defendant Harry Mintz, including said premises of the several complainants, and wholly disregarding the lives, health, safety, comfort and property rights of other persons, including complainants and each of them, conceived and proceeded to put into execution a certain project and scheme to construct, install, inaugurate, maintain and operate and to cause and procure the construction, installation, inauguration, maintenance and operation of a slaughter house or place for the slaughtering, killing and dressing of poultry, including chickens, ducks, geese and other fowl, in and upon said premises of defendant Harry Mintz; to prosecute, carry on and conduct therein the business, process and practice of slaughtering, killing and dressing poultry for hire and to cause and procure the prosecution, carrying on and conducting of said business by providing live poultry and causing and procuring the slaughtering and killing thereof in and upon the premises aforesaid.

21. Pursuant to and in furtherance of said project and scheme, defendants at the times last aforesaid entered into a certain compact, undertaking and conspiracy to and with each other and to and with one or more other persons to complainants unknown, whereby defendants and each of them undertook, agreed and declared it to be their intention to engage in and carry on said business, process and practice of slaughtering, killing and dressing poultry for hire upon said premises of defendant Harry Mintz and to construct, install, inaugurate, maintain and operate in and upon said premises, or cause and procure so to be done, a slaughter house and place for the slaughtering, killing and dressing of poultry as aforesaid.

22. Pursuant to and in furtherance of said project and scheme, defendants at or about the times last aforesaid caused and procured to be made a certain agreement or indenture of lease of and affecting a parcel of land, being part of said premises of defendant Harry Mintz, including the southwesterly portion of said rear building, for the purpose and with the intent of utilizing such demised premises for and devoting the same to the construction, installation, inauguration, maintenance and operation of such slaughter house and the conducting of such business, process and practice of slaughtering, killing and dressing poultry therein; and defendants and each of them thereupon entered into and upon and took possession of said demised premises, and have always since continued to occupy and possess, and still occupy and possess the same, in pursuance

of their said project and scheme and in furtherance of the purposes thereof.

23. Pursuant to said project and scheme and in furtherance of the purposes thereof, defendants and each of them, on or about June 25, 1928, caused to be made and filed in the office of the Board of Health of the City of Plainfield, a certain application in writing, signed by defendant David B. Meyrowitz, whereby application was made to said Board of Health to issue to and in the name of defendant David B. Meyrowitz a certain license or permit to conduct a poultry slaughter house upon other premises owned and occupied by defendant Morris Meyrowitz, at No. 536 West 3d Street, in the city of Plainfield aforesaid; and thereafter by and upon the certain act and consent of defendants and each of them, by word of mouth and not in writing, said written application was so modified and amended so as to apply for a license or permit to conduct such poultry slaughter house at No. 512 West 3d Street, being the premises aforesaid of the defendant Harry Mintz; and thereafter from time to time until the time of the granting and issuance of the pretended license or permit, being "Exhibit E" hereto annexed, defendants and each of them, personally and by and through defendant David B. Meyrowitz, continued to apply to said Board of Health, to renew their said application for a license or permit, as so amended, and to urge the issuance thereof, effective as to said premises of defendant Harry Mintz.

24. Thereafter and on or about October 3, 1928, said Board of Health of the City of Plainfield, in ostensible compliance with said applications, issued or caused to be issued to and in the name of defendant David B. Meyrowitz a certain pretended license or permit, dated the day and year last aforesaid, which purported to license and permit said defendant to conduct a poultry slaughter house at No. 512 West 3rd Street, at Plainfield aforesaid, being said premises of defendant Harry Mintz, for and during the period of one year from the date thereof; a copy whereof is hereunto annexed, marked "Exhibit E" and forms part of this bill; but said pretended license or permit is illegal and void, because (1) it purports to authorize the conducting of a business and the maintenance of an establishment prohibited by the Zoning Ordinance of the City of Plainfield, being "Exhibit A" annexed hereto, and (2) it was issued for the full period of one year, contrary to the provision of article X of said Sanitary Code, limiting such license or permit to the end of the calendar year in which issued.

25. Pursuant to said project and scheme and in furtherance of the purposes thereof, defendants and each of them, on or about November 19, 1928, caused to be made and filed in the office of the Department of Buildings of the City of Plainfield a certain application in writing for a permit to alter, repair and make additions to said rear building on the above described premises of defendant Harry Mintz, by extending the front of the private garage, constituting the southwest-

erly portion thereof, a distance of 4 feet southeastwardly toward the front street line of said premises, upon a width of 8 feet throughout, corresponding with the entire width of said southwesterly portion, being the garage aforesaid; which application bears date the day and year last aforesaid, was signed by defendant Harry Mintz, and has annexed thereto an affidavit, subscribed and sworn to by Alexander Smith, the building contractor hereinafter mentioned; a copy of which application and affidavit is hereto annexed, marked "Exhibit F" and forms part of this bill.

26. Said application, "Exhibit F" annexed hereto, was false and misleading, with knowledge thereof and intent thereby to deceive on the part of defendants, in that (1) it exaggerated the size of the land and premises upon which said work was intended to be performed, (2) it depreciated the dimensions and size of the then-existing building upon which said work was contemplated, (3) it disparaged the cost of said work and (4) it misstated the purpose thereof to be the enlargement of the garage then thereon, whereas the true intent of defendants was to destroy its character and availability as a garage and to convert it into and thereafter use it as a poultry slaughter house; and defendants and each of them thereby deceived and mislead said Inspector of Buildings and the several other officers and members of the Department of Buildings of said City of Plainfield, who at all said times believed and relied upon defendants' said statements and representations, and thereby induced him and them to grant

and issue the certain permit next hereinafter mentioned.

27. At the time last aforesaid, in pursuance of said project and scheme and in furtherance of the purposes thereof, defendants and each of them, by means of said false and misleading application, "Exhibit F" annexed hereto, and the false statements contained therein as aforesaid, caused and procured to be issued out of said Department of Buildings, by John S. Dahl, Inspector of Buildings of said City, an alleged and pretended permit, dated November 19, 1928, which purported to authorized said owner, defendant Harry Mintz and said contractor, Alexander Smith, who then and at all times thereafter acted in that regard as the agent and vice-principal of and for and in behalf of defendants and each of them at their special instance and request, to make certain designated alterations and repairs in and upon said garage, and to build an addition thereto of the dimensions and size of 4 by 8, and thereby to enlarge, but for garage purposes only, the said private garage; which building permit was thereupon, on or about the day of its date, posted upon the exterior wall of said then-existing garage, being the southwesterly portion of said rear building, and kept there displayed at all times thereafter until the present time.

28. The Department of Buildings of the City of Plainfield and said John S. Dahl, building inspector as aforesaid, or either of them have not and never had any authority to issue any permit authorizing or purporting to authorize the con-

struction, alteration, repair or making of an addition to any building in said city for the purpose of creating or enabling the exercise therein of any use contrary to the provisions of the Zoning Ordinance of the City of Plainfield, being "Exhibit A" annexed hereto, or to authorize any such use, contrary to the provisions of said zoning ordinance or of the building zone map referred to therein and forming part thereof, being "Exhibit B" annexed hereto, or in any way to authorize or empower any person or persons, including defendants and each of them, to violate or contemn said zoning ordinance, building zone map or any of the provisions thereof.

29. After the issuance of said alleged and pretended permit to alter, repair and make addition, "Exhibit F" annexed hereto, defendants and each of them, in pursuance of said wrongful and unlawful project, scheme and conspiracy and in furtherance of the purposes thereof, acting by themselves and by and through the said building contractor, Alexander Smith, and his servants, made and caused to be made certain alterations, repairs and additions to said rear building, at the southwesterly portion thereof, being the previously-existing private garage, by tearing out the southeasterly wall or front of said garage and extending same southwesterly a distance of about 4 feet, thereby enlarging the interior space thereof by approximately 32 square feet of superficial area, building certain walls or partitions, doorways and doors in said enlarged interior space and constructing a small exterior entrance doorway and door and an exterior window

in lieu of the former wide garage doorway, thereby wholly destroying the character and availability thereof as a garage and the possibility of using the same for the storage of any automobile or for any other garage purpose; remodelling and making divers structural alterations and additions in and to said building as it previously existed, thereby converting it into a poultry slaughter house; and constructing therein a certain floor or floors and certain sidewalls, such floors being paved with a material impervious to moisture and sloped to a bell-trap connection connected with the sanitary sewer of said city; certain of said side-walls being covered to a height of at least 6 feet with a moisture-proof material and the balance of said walls and part of the ceiling thereof being finished with a smooth laid surface, and the entire interior being enclosed with floor, side-walls and ceiling and divided into at least 2 separate rooms, one of them available for slaughtering or killing poultry and the other for plucking and cleaning poultry after or during the process of slaughtering; and certain means for ventilation of said interior leading directly to the outside air, without intervention of any ventilating shaft whatever; all in ostensible compliance with subdivisions (a), (b), (c) and (d) of section 6 of article X of the Sanitary Code of the City of Plainfield, as more fully set forth in "Exhibit C" hereto annexed.

30. Pursuant to said project and conspiracy and in furtherance of the purposes thereof, defendants and each of them, during the progress

of and at the completion of said work of alteration, repair and addition, procured, provided and installed in said altered and remodelled building a certain specially-constructed killing-table or -bench and certain other fixtures, appliances, apparatus and implements necessary for conducting the business, process and practice of slaughtering, killing and dressing poultry, all of which said killing-table or -bench, fixtures, appliances, apparatus and implements were and are sufficient for and peculiarly appropriate to said business of slaughtering, killing and dressing poultry and are not adapted or intended for use in any other business or practice whatever.

31. From time to time and at all times since the first conception of said project and scheme and the inception of said conspiracy and until the present time, defendants and each of them have stated and threatened to and respecting complainants and each of them and to the public generally, that they, defendants, and each of them intended to and would conduct a poultry slaughter house in and upon said premises and in and by means of said former garage building, and would kill and slaughter poultry therein for hire; that defendant David B. Meyrowitz would be in active charge thereof and of the business, process and practice of slaughtering, to be conducted therein forthwith upon the completion of said work of alteration, repair and addition and thenceforward indefinitely in the future, and that each and every the other defendants would participate therein as co-proprietors, co-operators and patrons thereof.

32. Defendants and each of them have lately commenced to conduct and are now conducting and carrying on said business, process and practice of slaughtering, killing and dressing poultry upon said described premises of defendant Harry Mintz, are now engaged in maintaining and operating such poultry slaughter house in and upon said premises and are actively engaged in slaughtering, killing and dressing poultry therein.

33. By reason of the premises, defendants and each of them have created and are now maintaining in and upon said premises a nuisance highly detrimental to the lives, health, safety and comfort, not only of the owners, occupants and tenants of adjacent lands and buildings, but also of the public generally, and highly destructive of and inimical to the several lands, premises and buildings lying and being in the neighborhood of said premises of defendant Harry Mintz, including the respective properties of the several complainants in this suit, and a serious cause of depreciation of the values and rental values of complainants' said several lands and in violation of the provisions of the Zoning Ordinance of the City of Plainfield and the Sanitary Code of said city; and have caused and are causing large quantities of offensive, dangerous and unhealthful fumes, vapors and odors, and loud, offensive and dangerous noises to be created upon and to emanate from said premises of defendant Harry Mintz and threaten and intend to continue so to do, all to the manifest oppression of, and serious loss and damage to complainants and each of them.

34. Before the commencement of this suit complainants have frequently and in a friendly manner applied to the defendants and each of them and requested them to desist from and forego their said wrongful and unlawful doings, pretenses and threats in the premises; but the defendants and each of them have always wholly failed and refused so to do.

Complainants, being wholly without adequate remedy in the courts of law, respectfully pray:

1. That defendants and each of them and the several agents, servants and employes of them and each of them may be strictly enjoined and restrained by the order and decree of this honorable court, permanently and during the pendency of this cause, from maintaining, operating or causing or procuring the maintenance or operation of a poultry slaughter house upon said premises of defendant Harry Mintz; carrying on, conducting or actively promoting upon said premises any business, process or practice of slaughtering or killing chickens, ducks, geese, fowl or other poultry, or any or either of them, or causing or procuring such business of slaughtering or killing to be conducted or carried on thereon or slaughtering or killing any chicken, duck, goose, fowl or other poultry or causing or procuring the same to be done in and upon said premises; and that a writ of injunction or order in the nature thereof may be issued, out of this honorable court, directed to the defendants and each of them, in accordance with the prayer of this bill;

2. That complainants may have such other and further relief in the premises as shall be just and agreeable to equity and good conscience;

3. That Harry Mintz, David B. Meyrowitz, Morris Meyrowitz, Frank Mofshovitz, Nathan Rubenstein, Hyman Ogens, Julius Velinsky and Abram Deutsch, who are the defendants to this suit, may answer this bill of complaint, and each statement made herein, but without oath; and

4. That a writ of subpoena may issue, commanding said defendants to answer this bill of complaint and to abide by such decree as this court may make in the premises.

JOHN WINANS,
Solicitor of and of Counsel
with Complainants,
533 Belvidere Avenue,
Plainfield, New Jersey.

Exhibits Annexed to Bill.

Exhibit A—Copy of text of Zoning Ordinance and copy of schedule limiting height and bulk of buildings, annexed thereto.

Exhibit B—Copy of Building Zone Map.

(Exhibits A and B annexed to the bill are identical with Exhibit C-1 in evidence, and by agreement of solicitors are not printed here.)

Exhibits Annexed to Bill of Complaint.

Exhibit C.

BOARD OF HEALTH—PART OF SANITARY CODE.

Article X.

Poultry.

Sec. 1. Pigeons, chickens, ducks, geese or other fowl, shall not be kept in the City of Plainfield except under the following conditions:

Sec. 2. Such fowl shall not be allowed to fly or run at large, but shall be confined in a suitable house or coop with an enclosed runway; except homing or carrier pigeons for which a special permit must be obtained.

Sec. 3. No part of such coop, house or runway shall be less than twenty-five feet from the doors or windows of any building occupied by human beings, whether for dwelling or business purposes, except by written permission from this Board of Health; provided, that poultry kept temporarily in markets, may be kept under the conditions hereinafter specified.

Sec. 4. No person shall, in the City of Plainfield, maintain any live poultry market or engage in the business of slaughtering and preparing poultry for sale without a license. Such license may be issued by the Board upon written application therefor and the payment of a fee of five dollars. Every such license shall expire on the

30th day of December next following the date of its issuance.

Sec. 5. No place shall be licensed to carry on said business except such as are on the ground floor and such place shall be used only for the keeping, slaughtering and marketing of poultry while so licensed.

Sec. 6. All live poultry markets and poultry slaughter houses shall conform to the following requirements:

(a) They must be entirely enclosed with floor, sidewalls and ceiling.

(b) The floors thereof shall be paved with a material impervious to moisture and shall be properly sloped to a proper bell trapped connection directly connected with the sanitary sewer. The walls of the room in which poultry slaughtering is actually carried on shall be covered to a height of at least six feet with a smooth, moisture proof material and the balance of the walls and ceiling shall be finished with a smooth laid surface.

(c) They shall be divided into at least two separate rooms and neither plucking or cleaning shall be permitted in the room used for slaughtering. Water-tight steel or iron receptacles having tightly-fitting covers shall be provided, and all feathers, entrails, and refuse removed in the process of plucking shall be immediately put in said receptacles

and removed daily by a regular licensed collector.

(d) The room used for slaughtering shall be ventilated directly to the outside air and shall not open into any ventilating shaft whatever.

Sec. 7. All live poultry kept on the licensed premises shall be confined in coops all of which shall be constructed of galvanized wire of at least eight gauge of uniform size and have a removable bottom of sheet metal; said coops shall be cleaned thoroughly each day. All stands, counters, etc., shall be substantially built and have a top of marble, slate or sheet metal. All coops, stands, etc., shall be raised at least six inches above the floor to allow for flushing. A plentiful supply of potable water shall be available and used. Stands and counters shall be so arranged as to allow ample passageway for the public. All parts of such poultry markets and slaughter houses shall be kept in clean and sanitary condition at all times.

Sec. 8. Live poultry kept for sale upon any premises, shall be confined within a coop having a removable metal bottom, which shall be cleaned daily.

Exhibits Annexed to Bill of Complaint.

Exhibit D.

1928
Year

Poultry Slaughter House — Kind of License
David Meyerowitz — Name

To the Board of Health, City of Plainfield,

I hereby apply for a License to conduct a poultry slaughter house at 536 W. 3rd St.

In case such License is granted, I agree to comply with and abide by all the provisions, rules and regulations of the Article of the Sanitary Code of the City of Plainfield relating to the above.

Signed DAVID B. MEYROWITZ
P. O. Address 408 Darrow Ave.
Date: Application 6/25/28

Exhibit E.

No. 251 City of Plainfield, N. J.

BOARD OF HEALTH

This is to Certify, that D. Meyrowitz having agreed to comply with and abide by, all the provisions of Article No. of the Sanitary Code of the City of Plainfield, is hereby licensed to conduct a poultry slaughter house at No. 512 West 3rd St. in the City of Plainfield, for one

year from the date hereof, subject to the provisions of said code.

Dated Oct. 3, 1928.

By Order of the Board of Health of the City of Plainfield

N. J. R. CHANDLER
Health Officer

Amt. of fee $10.
Vehicle License No.

Exhibit F.

OFFICE OF
DEPARTMENT OF BUILDINGS
CITY HALL, PLAINFIELD, NEW JERSEY

Application to Alter, Repair and Make Additions

Application for Permit No. .....

Date 11/19, 1928

..... hereby makes application for a permit to make alterations and additions to building according to the following detailed statement of the specifications and plans herewith submitted. All provisions of the Build-

ing Ordinances shall be complied with in the erection of said building whether specified herein or not.

Owner sign here HARRY MINTZ
Address 512 W. 3rd St.

1. Location 512 West 3rd St City

2. What is the character of the alteration or addition To build 4 ft in front of garage longer

3. Size of present building 18 x 16 Size of addition 4 x 8

4. How many stories Main Building (when completed) one

5. Size of lot 32 x 180

6. Thickness of External Walls—1st floor 8 in 2d floor ..... 3rd floor ..... 4th floor .....

7. Floor beams—1st ..... 2nd ..... 3rd ..... 4th .....

8. Size of Girders (wood) ..... Supporters .....

9. Size of Girders (Iron) ..... Supporters .....

10. Size of Wooden (posts) ..... Supporters .....

11. Size of Iron (columns) ..... Supporters .....

12. Trimmers or Headers ..... How Framed .....

13. Light Shaft, how fireproofed .....
.....

Exhibits Annexed to Bill of Complaint.

14. Elevator (Passenger) ..... (Freight) .....

15. How to be occupied .....
Number of Families .....

16. Cost of Changes, $200. Fees of Dept. ....

Remarks (state clearly here all particulars)

.....

.....

.....

New Jersey, }
Union County, } ss.:

..... being sworn on his oath according to law, deposes and says that he is the person making the within application; that he resides at No. ..... Street, in the ..... of ..... and that he is the .....of the building or structure proposed to be built and constructed on the premises within referred to, and that the statements therein contained are correct and true in all particulars.

ALEX SMITH,
1321 Plainfield Avenue.

Sworn and subscribed before me this
19th day of November, 1928.

JOHN S. DAHL,
Notary Public.

Subpoena Ad Respondendum.

(Issued December 13, 1928; served December 14, 1928.)

New Jersey, to wit, *The State of New Jersey,* to Harry Mintz, David B. Meyrowitz, Morris Meyrowitz, Frank Mofshovitz, Nathan Rubenstein, Hyman Ogens, Julius Velinsky and Abram Deutsch:

(L. S.) *Greeting:* Whereas a bill of complaint has lately been exhinited against you in our Court of Chancery by Isaac R. Srager, Arthur D. Jones, Samuel Taub, Frank Finkelstein, Morris Israel, William Anklowitz, Kalman Rothberg, Samuel Kline, Morris Abrams and Harry Dreier, to be relieved touching matters therein contained.

THEREFORE, we command you, if you intend to make a defense, that you file an answer to said bill in the office of the Clerk of our said court at Trenton, on or before the expiration of twenty days from and after the twenty-fourth day of December, 1928, and in default thereof such order or decree will be made against you as the Court shall think equitable and just.

Witness, his Honor, EDWIN ROBERT WALKER, Chancellor of our said State, at Trenton, the thirteenth day of December, in the year of our Lord one thousand nine hundred and twenty-eight.

JOHN WINANS, Sol'r. THOMAS BARBER, Clerk.

Answer.

(Filed January 18, 1929.)

IN CHANCERY OF NEW JERSEY.

ISAAC R. SRAGER, et als., *Complainants,* vs. HARRY MINTZ, et als., *Defendants.*	Bill for Injunction, etc. Answer.

The answer of the defendants.

1. They admit paragraph 1.

2. As to paragraphs 2, 3 and 4, they have no knowledge or information sufficient to form a belief.

3. They admit paragraph 5, except, they say that the authority of said Common Council in the power and authority to make and enact ordinances having the force and effect of law, is limited by the Charter of the City of Plainfield, and the statutes of the State of New Jersey and has also been so limited since said corporation in said city.

4. They deny paragraphs 6, 7 and 8, except, that they say that the Common Council of the City of Plainfield has enacted a Zoning Ordinance; and say that said Zoning Ordinance has

been modified and amended at various times since its enactment and that the map accompanying and made a part of said Zoning Ordinance has also been modified and amended at various times since the enactment of said ordinance.

5. They admit paragraphs 9 and 10.

6. They deny paragraphs 11 and 12, except, that they say that the Board of Health of the City of Plainfield has enacted a Sanitary Code; and that said code has from time to time been modified and amended.

7. They deny paragraphs 13 and 14.

8. They deny paragraphs 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34, except, they say; that a building permit was issued for the alterations in said building and that said alterations were made in strict conformity to the Building Code and the work done under said building permit was passed by the building inspector of the City of Plainfield; and that a business has been conducted in said building under a license issued by the Board of Health of the City of Plainfield and in strict conformity to the Sanitary Code of the City of Plainfield; and that both said building permit and said license from said Board of Health were properly issued and that no misrepresentations were made in the application therefor and that the business conducted in said building is not a nuisance and is not being conducted as a result of any conspiracy.

They say; that this suit is brought by the complainants as a part and parcel of a controversy

between the Orthodox Jewish Churches in the City of Plainfield, to prevent these defendants from carrying out the codes of their religions in conformity hereto.

DAVID SCHNEIDER,
Solicitor of Defendants.

Replication.

(Filed January 27, 1929.)

IN CHANCERY OF NEW JERSEY.

71/204.

ISAAC R. SRAGER, et als., *Complainants,* vs. HARRY MINTZ, et als., *Defendants.*	On Bill for Injunction, etc. Replication.

The complainants join issue on the answer of the defendants.

JOHN WINANS,
Solicitor of Complainants.

Case.

Testimony taken in this cause, at the State House, Trenton, New Jersey, on Wednesday, the twenty-ninth day of May, 1929, at 10:30 A. M. (daylight saving time).

Before—Hon. Malcolm G. Buchanan,
Vice Chancellor.

Appearances:

John Winans, Esquire, for complainants.
David Schneider, Esquire, for defendants.

Mr. Winans: (In the absence of the Court.) Counsel for the respective parties stipulate and agree that the witness Michael D. O'Keefe is now in attendance and is about to be excused from further attendance, and that it shall be deemed for all purposes of the present trial that he has testified to the following facts, which counsel hereby stipulate to be true, to wit:

That he resides in the City of Plainfield; that he now is, and at all times since the organization of the Board of Zoning Appeals of the City of Plainfield has been, one of the members of that board; that he knows all of the proceedings that have been taken by said Board of Zoning Appeals since its organization; that no resolution, consent or other act has ever been done, committed or given effect by said Board of Zoning Appeals, which has changed the nature, character or extent of the zoning regulations appertaining to the block in the City of Plainfield bounded on the east by Liberty Street, on the west by Plainfield Avenue, on the south by West Third Street and

on the north by Second Street; and that the same now is, and at all times since the passage, enactment and taking effect of the zoning ordinance of the City of Plainfield, has been in what is designated and known as the Light Industrial Zone; that the district is being used exclusively for business and residence purposes.

And counsel stipulate that this may be read upon the final hearing of the cause with the same force and effect as though the witness attended personally and testified.

That is the stipulation, which you agree to, Mr. Schneider?

Mr. Schneider: Yes.

(The above stipulation was read to the Court, when Court convened.)

Mr. Winans: I offer in evidence a deed dated June 19, 1911, made and executed by the American Baptist Home Mission Society, as grantor, to the Mount Olive Baptist Church, of the City of Plainfield, as grantee, and recorded in the Union County Register's office of book 575-E, pages 1, etc.

Mr. Schneider: No objection.

The Court: Is there any reason why paragraphs 2, 3 and 4 should not be admitted?

Mr. Winans: Including sub-divisions identified by letters—

The Court: The paragraphs in their entirety.

Mr. Schneider: I will admit these particular people own these particular premises, but not as far as the distance is concerned. I think the distance is important. I don't deny the ownership.

The Court: Is there any dispute about the distance?

Mr. Schneider: I will admit that.

Mr. Winans: I will withdraw from evidence the offer of the exhibit.

GEORGE B. WEAN, a witness produced on behalf of the complainants, being duly sworn, testifies as follows:

The Court: What do you want to prove by this witness?

Mr. Winans: The ordinance.

The Court: Is there any dispute about that?

Mr. Schneider: I will admit that.

Mr. Winans: Does counsel specifically admit that Exhibit A, annexed to the complainant's bill, correctly sets forth the zoning ordinance as now in force in the City of Plainfield? This is a printed copy furnished by the City Clerk, forming Exhibit A, annexed to the bill. My purpose was to have the Clerk offer a similar one from his own files, which is precisely the same.

The Court: All right; you may do that.

Direct Examination by Mr. Winans:

Q. You reside at Plainfield and are the City Clerk of Plainfield? A. I am.

Q. How long continuously have you occupied the position of City Clerk? A. Since November 16th, 1925.

George B. Wean—For Complainants—Direct.

Q. Were you Clerk of the City of Plainfield at the time the zoning ordinance was enacted? A. I was not.

Q. Are you official custodian of the records showing the proceedings of Common Council in that City? A. I am.

Q. Have you brought with you the minute books and the ordinances relating to zoning matters? A. Yes, sir.

Q. Will you produce the original zoning ordinance, please? A. (Witness does so.)

Mr. Winans: I offer in evidence the original zoning ordinance of the City of Plainfield and ask that it may be deemed marked in evidence as an exhibit for the complainant and that a copy of it be substituted for the purposes of the court.

The Court: Is that a copy of it?

Mr. Winans: Yes, sir.

Q. This is a copy of the corporation notice, but it does not show the final adoption? A. That is right; it does not show the final adoption. As far as the reading goes it's all right.

Q. Is that a copy of the complete zoning ordinance of the City of Plainfield, having appended to it a notice that the Common Council will consider the matter contained here and omitting a notation of when it was adopted? A. It is to the best of knowledge and belief.

Q. It is what you keep in your office and distribute for the information of residents and persons who want the same? A. Yes, sir.

The Court: Let it be admitted.

Said zoning ordinance is marked Exhibit C-1.

Q. Mr. Wean, is there annexed to the zoning ordinance and forming part of it, a zoning map? A. Printed on the back of the ordinance.

Q. And is that in all respects the same as the map I now show you forming the reverse side of Exhibit C-1? A. It is to the best of my knowledge and belief.

Q. Is there a schedule limiting the height and so forth of buildings, annexed to it? A. Yes.

Q. Is that the same as the schedule annexed to Exhibit C-1 which I now show you? A. Yes, sir.

Q. And that is the schedule which limits the height and bulk of buildings? A. Yes.

Q. Since the enactment of the zoning ordinance you have testified to, have any ordinances purporting to be amendments or supplements thereto, been enacted by the Common Council? A. There have.

By the Court:

Q. What was the date of the enactment? What was the date the ordinance was adopted? A. Adopted April 2, 1923, and approved April 3, 1923.

Q. Was there on August 20, 1923, adopted an amendment to the zoning ordinance affecting West Third Street one hundred feet on both sides and Southwest of Morris Street to McDowell Street to Halsey Street from "C" Residence to "A" Business, zone number 1, which ordinance

was approved by the Mayor, August 22, 1923, and appears in book 34 of the Council minutes on pages 97 and 131? A. Yes, sir.

Mr. Winans: I offer in evidence, the amendatory ordinance just referred to by the witness and ask that it be admitted and marked. I also offer in evidence, minute book 34 of Common Council relating to the enactment of this same ordinance.

The Court: Do you admit that the orginal ordinance is in force and effect.

Mr. Schneider: I do.

Q. Is there a board of zoning appeals? A. It was originally zoning appeals; now it's the Board of Adjustment.

Q. Is that still functioning in the City of Plainfield and has it been approximately since the date of enactment, or the taking effect of the zoning oridinance? A. Yes.

Mr. Winans: I move that I may amend the bill of complaint in those portions where the board of zoning appeals is referred to by inserting afterwards "Now known as the Board of Adjustment."

Mr. Schneider: I have no objections.

The Court: That may be done.

Q. Who are the members of the Board of Adjustment? A. Mr. Wigton, Mr. Perkins, Mr. O'Keefe, Mr. Vivian and Mr. Morse.

Q. Mr. Wean, is the Mr. O'Keefe the gentlemen known as Michael D. O'Keefe whose testimony was stipulated into the record just before court opened this morning? A. Yes, sir.

Mr. Schnieder: No questions.

JOHN S. DAHL, a witness produced on behalf of the complainants, being duly sworn, testifies as follows:

Direct Examination by Mr. Winans:

Q. Mr. Dahl, you reside in Plainfield? A. Yes, sir.

Q. And you are the Building Inspector of Plainfield, are you not? A. Yes, sir.

Q. How long have you continuously held that position? A. 18 months.

Q. You say 18 months? A. Yes, sir.

Q. Were you the Building Inspector in last November? A. Yes, sir.

Q. Was an application filed in your building department to alter, repair, or make addition to a garage building in the rear of premises owned by Harry Mintz, 512 West Third Street, on or about the 19th of November, 1928? A. Yes, sir.

Q. Have you that application with you? A. Yes, sir. (Producing paper.)

Q. You have produced an application in two sheets, one containing a diagram and the other a form of printed matter? A. Yes, sir.

Mr. Winans: I offer that in evidence. Said application is marked Exhibit C-2.

Q. Mr. Dahl, was a permit issued in accordance with the application that has been marked Exhibit C-2? A. A permit?

Q. Was one issued? A. A permit was granted for alteration to a garage, or pool room. It was immaterial to us what he used it for.

Mr. Winans: I move that the answer be struck out as not responsive.

The Court: Strike it out.

Q. (Stenographer repeats the question.) A. Yes, sir.

Q. Have you that permit? A. Here?

Q. Have you that permit with you? A. No, that is a copy of it.

Q. Is there a permit contained in the paper of two sheets that was just offered in evidence and marked as Exhibit C-2? A. That is the only paper we have.

Q. You did issue a permit? A. Yes.

Q. In this matter? A. That is a copy of the permit that was issued.

Q. And was that permit, the original of it, placed in a conspicuous place on the building of which the alteration and addition has been made? A. I think it was, I'm not quite sure.

Q. You inspected the building as the work was going on? A. Yes, it didn't take only a couple of days to do it.

Q. You inspected it? A. Yes.

Q. You were around there while the work was going on? A. Yes, sir.

Q. You inspected and observed whether the conditions of the application and permit were being complied with? A. Yes, sir.

Q. And you examined it after the alterations were completed? A. Yes, sir.

Q. Will you describe just what was done to that building in the alteration and addition you refer to? A. There was an addition in the front of an open shed made of concrete blocks and a four-foot addition on the front of the building that was there, and there was a door and a window as far as I remember.

Q. Originally, before this alteration work was commenced, this building was a garage, wasn't it, with just one large front door? A. There was no door in it that I know of.

Q. There was an open doorway? A. It was open altogether.

Q. And the place was broad enough for an automobile to be parked in? A. Yes.

Q. And that building was used for the storage of an automobile? A. Yes, that was.

Q. After this alteration was done, which I understand extended the walls four feet out— A. Yes.

Q. And those walls were about eight feet practically? A. Yes, sir.

Q. Eight feet apart? A. Yes.

Q. Indicating an addition to the building, four by eight, of approximately thirty-two square feet? A. Yes.

Q. When that work was finished, what sort of front wall was built to the added portion? A. Concrete walls and a door.

Q. Is there any door sufficient in size to admit the passage of automobile? A. No, sir.

Q. Are the partitions inside that building as it has stood ever since the alterations were made the— A. There was no partitions in it.

Q. Did you examine it upon its completion? A. Yes, sir; the completion of the construction work.

Q. How recently have you seen that building? A. I haven't been there since it was finished.

Q. Not at all? A. No.

Q. Was it in use when you last saw it? A. No, sir.

Q. It wasn't in use? A. No, sir; it wasn't.

Q. Did you ever isue any certificate of occupancy authorizing any person to use that building for any purpose other than garage purposes? A. No.

Cross Examination by Mr. Schneider:

Q. Now, Mr. Dahl, at the time this particular garage was completed you made a full inspection of the same and found that the same complied with the building code? A. As far as the construction was concerned, yes, sir.

Q. And that is all you were interested in? A. Yes, sir.

Q. The construction? A. Yes, sir.

Q. What its use was, was immaterial to you? A. What?

Q. What its use was, was immaterial to you? A. Well, I can't answer that.

Q. You can't answer that? A. No, sir.

Q. It didn't make any difference to you whether it was used for a garage or whether it was used for the purpose of killing chickens, did it? A. Well, no.

NATHAN MEYERS, a witness produced on behalf of the complainants, being duly sworn, testifies as follows:

Direct Examination by Mr. Winans:

Q. Mr. Meyers, you live at Plainfield? A. Yes, sir.

Q. Do you know the premises at 512 West Third Street, now owned and occupied by Harry Mintz? A. Yes, sir; I do.

Q. Did you own that property? A. Yes, sir.

Q. How long ago? A. Seven years ago.

Q. You did own it at that time? A. Yes, sir.

Q. What is the width of that property? A. Thirty-foot front.

Q. What is the depth? A. The depth from the middle of the street is 173 feet.

Q. What is it from the northern building line, that is, on the north side of West Third Street? A. Thirty feet to the middle of the road.

Q. That would mean that the depth of the lot is 143 feet from the building line? A. Yes, sir.

Q. Is the whole street frontage of that lot built up, or a portion reserved for another purpose? A. It was a vacant space there when we sold to Benjamin Frankel—

Q. You don't get my meaning. I simply ask you, on the front of that property where it comes up to the building line, if it is built on the whole width? A. It has 9 feet for a driveway.

Q. Is that driveway on the west or the east side of the lot? A. On the west.

Q. That leaves 21 feet? A. 21 feet.

Q. For the easterly side of the lot? A. Yes, sir.

Q. Is anything built on the 21 feet? A. When we owned it there was an old building; we had it about 20 feet off the building line, vacant space in front, and the rear—

Q. Just a minute. Has that old building been carried out, or an addition built bringing it out to the street line? A. No.

Q. That building that is up to the building line has what width on the street? A. On the street is about 21 feet.

Q. Does it run back the same width a certain distance? A. Yes, to an old building.

Q. And the old building is a little less than— A. A little less in the back.

Q. Counting the entire structure from the street line back, about what is the depth? A. About 60, or 61, or 62 feet.

Q. The alleyway, or driveway, extends all the way from West Third Street along the westerly side of the lot clear to the rear line of the lot, doesn't it? A. Not to the rear line, no.

Q. To the rear line of Mr. Mintz's property? A. Yes.

Q. And the front, 61 or 62 feet of that is occupied by the old building along with the extension

which carries it out to the front street line? A. Yes, sir.

Mr. Schneider: That is objected to.

The Court: Is there any question about the fact in your mind?

Mr. Schneider: There is a slight doubt in my mind.

The Court: Have you examined this property?

Mr. Schneider: Yes, sir.

The Court: I will overrule the objection.

Q. To the rear of this building, that fronts on the street, and in that I am including the old building with the front extension, to the rear of that, what comes next? A. Comes next, a vacant space between the old building that used to be, and the new building they put up for a slaughter house. I saw them put up a slaughter house.

Q. There comes a vacant space? A. There comes a vacant space.

Q. That runs from the rear of the front building? A. Yes.

Q. Back to the building that you have spoken of where they are killing chickens? A. Yes, sir.

Q. How much is there there which is open from the rear of the Mintz's building, back to the chicken slaughter house? A. About 24 or 25 feet.

Q. You know what I mean? A. I think so.

Q. What is the width of that open space? A. The open space is about 25 feet I mean.

Q. I mean in the other direction. Is it the whole width of the lot, 30 feet, that is open there? A. Yes, sir.

Q. What is the size of this rear building that is built where they slaughter chickens? A. Yes.

Q. What is the size of that building? A. It is about in size, about 18 by 16—9 feet—30—18 by 21.

Q. The 21 feet you indicate is running from the east line of the Mintz's premises out to the beginning, or east side of the alley, is it not? A. Yes, sir.

Q. And a distance of about 24 feet is the distance of that open space from the rear of the Mintz building and back in a northerly direction to the chicken slaughter house? A. Yes, sir.

Q. The chicken slaughter house was 21 feet? A. Yes.

Q. That is from the east side of the Mintz lot to the alley? A. To the Mintz alley.

Q. What is the distance back from the street to the fence of that chicken slaughter house? A. From the street has to be altogether, about 118 feet.

Q. You mean from the street back? A. It has to be from the street back, it has to be about 100 feet, 102 feet—101, or 2 feet.

By the Court:

Q. The east of the slaughter house? A. The east of the slaughter house, 18 feet.

Q. Do you understand these questions? A. Yes.

Q. Do you mean from north to south? A. No, from east to west is 21 feet, from east to west—from the north to the south is 18 feet.

Q. Then, to the rear of that slaughter house, is there another open space? A. Yes, sir.

Q. To the rear of the slaughter house? A. Yes.

Q. And that runs to the rear line of the Mintz lot? A. Yes.

Q. Have you seen this chicken slaughter house lately? A. Yes, sir.

Q. How often do you go around to these premises? A. How often?

Q. Yes. A. Very often I go around there.

Q. What do you mean by very often? A. Pretty often.

Q. Do you mean every week, or several times a week? A. Several times a week.

Q. You go around there several times in a week? A. Yes, sir.

Q. Do you know the old building that was there prior to last November? A. Yes, sir.

Q. What was it? A. A place for an automobile and a partition four feet from the ground to keep chickens.

Q. The east part of this building was to keep chickens? A. Yes, sir; the west part was for the garage.

Q. The west part was the garage? A. Yes, sir.

Q. And the east part for chickens? A. Yes.

Q. This garage part, was that large enough for an automobile to drive in and stay? A. What size automobile? A large automobile it wouldn't.

Q. A small size automobile? A. Yes.

Q. Was there room for a Ford truck? A. Yes, sir.

Q. What was that building used for by Mr. Mintz up to November, 1928? A. To store a car in.

Q. Was there a front door on it on the side toward Third Street? A. No.

Q. Was there an open space there? A. Yes, sir.

Q. There was an open space? A. There was.

Q. A doorway, or archway? A. Yes.

Q. Was it through that doorway, or archway that he drove a little car in and out? A. Yes.

Q. Did you see some work of alteration going on on that building around November, 1928? A. Yes.

Q. What? A. I saw making an addition on that part of 4 or 5 feet added to the building toward the street.

Q. Did that carry a portion of the building further out towards Third Street? A. Yes, sir.

Q. About four feet? A. Yes.

Q. What is the width of that addition? A. 21 feet.

Q. Did you see what was done in the inside of that garage? A. They made some improvements there, they put in doors and made a concrete fioor, and made a sink so the water shall run down, and I don't know what else.

Q. After this alteration was finished, was it a garage? A. No.

Q. What was it? A. They made it for the purpose of slaughtering chickens.

Q. Have you seen chickens slaughtered there? A. Yes.

Q. You have seen that yourself? A. Yes, sir.

Q. Who have you seen about the premises when chickens have been slaughtered there? A. No, I didn't notice the exact person.

Q. Did you see some men around there when the work was going on? A. Yes.

Q. Do you know what I mean? While this alteration and addition was going on on the garage, did you see Harry Mintz on the premises? A. Yes.

Q. Did you see David B. Meyrowitz? A. No, I haven't seen him.

Q. Didn't see him on the premises? A. No.

Q. Did you see Morris Meyrowitz on the premises? A. No.

Q. Did you see Frank Mofshovitz? A. No.

Q. Did you see Nathan Rubenstein? A. Yes.

Q. Julius Velinsky? A. Yes.

Q. Did you see Abram Deutsch, there? A. Yes, sir.

Q. You saw all those persons? A. Yes, sir.

Q. Has a slaughtering house been going on there since? A. Yes.

Q. Who has been doing that slaughtering? A. A special man.

Q. Is he an employee? A. Yes, sir.

Q. You have seen that? A. Yes.

Q. Who have you seen there when slaughtering has been going on? Has Harry Mintz been there? A. Yes.

Q. Has David B. Meyrowitz been there? A. I saw him there.

Q. Have you seen Morris Meyrowitz there? A. No.

Q. Have you seen Frank Mofshovitz there when they were slaughtering? A. Yes.

Q. Have you ever seen Nathan Rubenstein there? A. No, I saw his son.

Q. And Julius Velinsky? A. No.

Q. Have you seen Abram Deutsch? A. No, I seen his son.

Q. Is his son in business with him? A. Yes.

Q. Is his son employed in the butcher shop? A. Yes.

Q. You have seen him working there? A. Yes.

Q. Is the inside of what used to be the garage, one space, or is it divided? A. Divided.

Q. How many rooms has it now? A. Two.

Q. Is there a door connecting those two rooms? A. I haven't seen.

Q. Is there a desk? A. I haven't seen it.

Q. What was it used for, killing purposes? A. They got to use a chair and a desk. He has to keep his certain tools there.

Q. Is there a killing bench there? A. Oh, yes.

Q. About what size is that? A. About 8 feet by 4, about.

Q. And that is made of wood? A. No; yes, made of wood and covered with copper tin.

Q. That is covered with copper, or tin? Is that what you mean? A. Copper tin—copper.

Q. Is there anything to carry off the blood that runs in the yard? A. I haven't seen.

Q. He has a place on the end of the bench for poultry? A. Yes, a bag.

Q. And that is used for killing poultry? A. Yes, sir.

Q. Have you seen blood and feathers on it? A. Yes.

Q. You have seen that when you have looked at it? A. Yes.

Q. Is that work still going on? A. Yes.

Q. When did they begin killing at that place? A. Since they completed it.

Q. Along toward the last of the year 1928? A. Yes.

Q. And ever since they have kept on? A. Yes, sir.

Q. Do you reside in the neighborhood? A. No, I live two blocks away.

Q. But you have occasion to go there quite often? A. Yes.

Cross Examination by Mr. Schneider:

Q. You have no business on that street, have you? A. In going to the bakery and going to friends there, I go through three or four times a day.

Q. Are you interested in this case, whether an injunction is issued or not? A. No.

Q. Mr. Meyers, do you remember when this controversy started? A. Yes.

Q. You were an active member—you took an active part more or less, didn't you? A. What?

Q. Opposing these butchers from getting their permit from the Board of Heath? A. I'll tell you why.

Q. Were you? A. I'll tell you this thing.

The Court: Answer the question. You can explain it after.

Q. (Stenographer repeats the question.) Didn't you take an active part and as a member of some congregation oppose the permit that these butchers wanted for a slaughter house? A. No.

The Court: What is the purpose of this. Is there going to be any denial of any of the facts he has testified to?

Mr. Schneider: I can't dispute that.

The Court: Then why go into it?

Mr. Schneider: I am trying to show motive, why he should go down Third Street so much.

The Court: What have I to do with that? He has testified to certain facts, which you say you do not dispute. What difference does his motive make?

Mr. Schneider: It has been my idea that when a witness comes to the stand and testifies to certain facts, that he has taken such an interest in this case. They deny he has taken any opposition to it. I want to show that this man is interested.

The Court: I will not permit you to ask questions along the lines of the last one. You say you do not deny any of the things he has testified to.

Q. Did you make any measurements yourself?

The Court: Since you have said you don't dispute it, why do you ask him that question?

Mr. Schneider: I didn't say that.

The Court: Do you, or do you not, dispute any of the facts he has testified to?

Mr. Schneider: I do dispute some of the facts. I want to know whether he measured or got this knowledge from someone else.

The Court: Do you desire me to ask you again?

Mr. Schneider: I do dispute some of the facts he testified to.

The Court: What do you dispute?

Mr. Schneider: The exact measurements as testified to.

The Court: Is that of any materiality?

Mr. Schneider: It may prove to be material.

The Court: In what way are the measurements disputed?

Mr. Schneider: The size of the lot from the building line to Mintz's.

The Court: What do you say it is?

Mr. Schneider: I don't know.

The Court: Then how do you dispute it?

Mr. Schneider: To lay a foundation so I may put someone on the stand.

The Court: Do you deny it?

Mr. Schneider: I don't deny it.

The Court: All right, I will terminate the examination now. This witness may be excused now.

HARRY MINTZ, one of the defendants above-named, being duly sworn, on behalf of the complainants, testifies as follows:

Direct Examination by Mr. Winans:

Q. Mr. Mintz, you are one of the defendants in this case? A. Yes.

Q. You know the property at 512 West Third Street? A. Yes.

Q. That property is 30 feet wide? A. What?

Q. Your land is 30 feet wide, isn't it? A. 30 by 155 to 50, from the middle line.

Q. That is, from the center of the street to the rear line of what you own? A. Yes, sir.

Q. You still own that property? A. Yes.

Q. Is there an alley way 9 feet wide all the way back?

The Court: If that is not to be denied, it is all proved.

Q. Mr. Mintz, is there a building towards the rear of your lot that is used for killing chickens?

The Court: I am going to accept everything the other witness has testified to as being true, unless there is some denial of it.

Mr. Winans: That question is simply preliminary, your honor.

The Court: All right, it may be answered.

Q. (Stenographer repeats the question.) A. Yes, sir.

Q. Now, who occupies that building for the killing of chickens? A. You mean who? I no forstand.

Q. Did you give the people who are killing chickens there, permission to do so? A. Yes.

Q. And have you visited there while the killing of chickens was going on in that building? A. Yes.

Q. Did David Meyrowitz participate in the killing of chickens there? A. Yes.

Q. Was Morris Meyrowitz there? A. Yes.

Q. And Frank Mofshovitz? A. Yes.

Q. Was Nathan Rubenstein there? A. Yes.

Q. Was Hyman Ogens present? A. Yes.

Q. Was Julius Velinsky present? A. Yes.

Q. And Abram Deutsch? A. Yes.

Q. And they participated? A. Yes.

Q. And has that been with your consent and approval at all times? A. Yes.

Cross Examination by Mr. Schneider:

Q. When you say these parties participated in the killing of these chickens, do you mean they did the killing themselves? A. No, they got a man to kill them.

Q. What did you call that man? A. The man was Sokovitsky.

Q. Is he the only man that does the killing? A. Yes, sir.

Q. Before you allowed these butchers to come in there to do any killing, did they obtain a Board of Health license?

Mr. Winans: That is objected to as not being the best evidence and not proper cross examination.

The Court: The objection is sustained.

Re-direct Examination by Mr. Winans:

Q. Is this rabbi you speak of employed by you, and the other defendants? A. What's you mean?

Q. Is this rabbi you speak of employed by you and the other defendants to do the killing there for you? A. I don't know.

By the Court:

Q. You say there is a rabbi, or a man who does the actual killing? A. Yes.

Q. Is he employed by you? A. Not by me, by all the butchers.

ISAAC R. SRAGER, one of the complainants in this case, being duly sworn on behalf of the complainants, testifies as follows:

Direct Examination by Mr. Winans:

Q. Do you own and reside at the house and lot next door to Harry Mintz's property, 512 West Third Street, Plainfield? A. Yes, sir.

Q. And you know the location of the poultry slaughter house on Harry Mintz's premises? A. Yes, sir.

Q. How far is that poultry slaughter house from any of the windows of the house you are living in? A. Where I live, it is 18 feet from my window.

The Court: What do you want to show by this witness?

Mr. Winans: The particular facts of nuisance which we have alleged.

Q. When you are in your house and near the windows that are near the poultry slaughter house, do you smell anything? A. I can't open the windows for smell.

Q. You keep your windows shut? A. I keep all the time closed, the windows,

Q. Do you have them open sometimes? A. Five and six o'clock in the morning, before they kill them.

Q. Is the smell good or bad? A. Its a good smell.

Q. Not a bad smell? Is it a good or a bad smell? A. A bad smell.

Q. How long have you lived in that house? A. I live there about 22 years, I think.

Q. Long before the slaughter house was there? A. Yes.

Cross Examination by Mr. Schneider:

Q. You know of another slaughter house on the same street, do you not? A. That's further away.

Q. Do you? A. Yes.

Q. How far is this slaughter house away from this particular one in question? A. About 45 feet I think.

Q. 45 feet? A. Yes, I think.

Q. Did you ever make any objections to the other slaughter house? Did you ever smell anything there from that slaughter house? A. What? I would be glad if they took out the two of them. I didn't—

Q. Did you ever make a complaint to the Board of Health? A. I make it pretty near every day.

Q. To whom did you make your complaint? A. I made it the last two weeks.

Q. Do you know who the officer in charge was, that you made the complaint to? A. To Chandler's assistant.

Q. Did he make any inspection? A. I don't know. He tell you. I don't know.

Q. Did you make any complaint and did Mr. Chandler give you any answer? A. He give me answer, they going to keep chickens in a bag.

Q. Mr. Chandler told you that? A. Mr. Chandler tell me that. And in the daytime he got him like he is.

Q. Mr. Srager, are you a member of the Congregation Ohavey Zedek? A. Yes.

Q. And as such member of that congregation, at the same time, you are an officer, isn't that so? A. I don't know.

Q. An officer of that congregation? A. Now or at that time?

Q. At the time the slaughter house was built? A. No.

Q. Mr. Srager, did you ever oppose or take any active part after due notice given to any one, at the Board of Health, whether these butchers should get a permit or not?

Mr. Winans: That is objected to.

The Court: You had better reframe that question.

Q. There are two congregations in the City of Plainfield, are there not? A. Two of them.

Q. And they are united more or less for certain purposes? A. Yes, sir.

Q. And taking these two congregations together— A. Yes.

Q. Were you on a committee. A. I am not on a committee.

Q. Were you on a committee which were appointed to oppose an application made by the butchers to obtain a permit from the Board of Health for the use of the place for a slaughter house? A. I am not on a committee.

Q. You knew there was a meeting that took place that night, did you not, Mr. Srager? A. I don't know.

Q. Do you mean to tell the Court there was no such meeting took place at the Board of Health? A. No, I don't know a meeting.

Q. You knew they were constructing something there and they were going to use it for a slaughter house? A. I don't know.

Q. Did you ever at any time make any threats to Mr. Deutsch and other butchers that you were going to have a stop put— A. I have nothing to do with them; I never told them.

Q. You know you are under oath to swear to tell the truth? A. Yes, I tell the truth.

Q. Where did you make the complaint to the Board of Health? A. I make it on the sidewalk, and I tell him everything I did on the sidewalk and feathers and everything, and he told him to stop that and he don't stop it.

Q. So the only time you made a complaint was if you saw Mr. Chandler on the street? A. I didn't go myself.

Q. You didn't deem it important enough to go up to the City Hall and make a complaint? A.

The Board of Health come every week in the slaughter house, and that's where I seen him.

By the Court:

Q. How long have you been in this country? A. About thirty-three years.

Q. Do you expect to stay here the rest of your life? A. Yes, sir.

Q. Why don't you learn the English language? A. I don't know.

Q. Do you carry any personal prejudice against the defendants in this case? A. What?

Q. Any personal prejudice, hatred? A. No.

Q. You are talking about getting a smell from this slaughter house? A. Yes.

Q. What kind of a smell is it? A. They kill chickens; on hot weather you get a smell from the chickens, from the feathers.

Q. What kind of a smell is it? A. I can't tell you what kind of a smell it is; not a good smell, anyhow.

By Mr. Schneider:

Q. Mr. Srager, during the daytime, if any time, the slaughtering takes place then. Isn't that so, during the day time? A. During the day time.

Q. During the day time you are occupied with your business? A. That is near the slaughter house.

The Court: Are you seriously questioning the nuisance phase of this case?

Mr. Winans: Not any further than I have gone. I do think these complainants

ought to show a personal interest in the situation, in order to justify their presence in court, and make it seem they are not intruders.

Q. You are occupied in business during the day time, are you not? A. I go sometimes upstairs. I have to take my meals upstairs, and the family upstairs.

Q. Did Mr. Chandler ever make a complaint to him, ever tell you that place is kept in a sanitary condition and there is no need to make any complaint?

Mr. Winans: That is objected to as not binding on complainants.

The Court: Objection sustained.

Re-direct Examination by Mr. Winans:

Q. When you are attending to your business, where does your family stay? A. Upstairs.

Q. In this house? A. In this house.

Q. When you heard a chicken slaughter house was being put up there, did you hire me to stop it? A. Yes, sir.

Re-cross Examination by Mr. Schneider:

Q. As a matter of fact, did you think when you signed that petition you were going to court? A. Sure.

Q. Did you think you were going to court? Did you sign it with the intention of going to court? A. Yes.

Q. Did you know you were going to court at the time you signed the petition? A. Yes.

Mr. Winans: He didn't sign anything. I ask your Honor to take judicial notice of the City charter of Plainfield.

ARTHUR D. JONES, one of the complainants, being duly sworn, testifies as follows:

Direct Examination by Mr. Winans:

Q. Dr. Jones, you are the pastor of the Mount Olive Baptist Church of Plainfield? A. Yes, sir.

Q. And have been continuously for how long? A. Twelve years and nine months, lacking two days.

Q. That church fronts on the westerly side of Liberty Street between Second Street and West Third Street, doesn't it? A. Yes.

Q. And adjoining it, and occupying the corner of West Third Street and Liberty Street, is the parsonage, known as No. 218 Liberty Street? A. Yes.

Q. Who occupies that parsonage? A. Myself and my family.

Q. How many are in your family? A. There are twelve in my family.

Q. And you and your family have lived there how long? A. We have lived there twelve years and nine months.

Q. And the church which adjoins your premises, extends back between Second and Third Streets about how far from Liberty Street? A. About 105 or 110 feet.

Q. It has windows on the rear and sides? A. Yes, sir.

Q. Do you know where the slaughter house is on the Harry Mintz premises? A. I do.

Q. How far is that slaughter house from the windows of your church? A. About sixty-four or five feet.

Q. And you examined that last night, did you not, with a view to ascertain that distance? A. I did.

Q. The block of land in which this property is located—I am referring to your church and the Harry Mintz property—is bounded on the east by what street? A. By Liberty Street.

Q. And on the west by what street? A. Plainfield Avenue.

Q. On the north by what street? A. Second Street.

Q. And on the south by what street? A. Third Street.

Cross Examination by Mr. Schneider:

Q. Mr. Jones, you are a party to this action, are you not? You brought suit against these defendants? A. No.

Q. You didn't? A. No.

Q. A few months back, Mr. Jones, you were asked to sign a petition, were you not? A. Yes.

Q. At the time you were asked to sign the petition, what was the purpose of it? A. Well, my purpose in signing it was to hinder, if possible, another slaughter house near us.

Q. Would you be surprised if I told you you were a party to this action? A. Well, in the sense of trying to hinder it, of course.

Q. Now, Mr. Jones, you have no particular objections towards this slaughter house, whether it is or isn't— A. Yes, I have.

Q. For what reason? A. There are times when it becomes an annoyance to us, in that the odors are not so pleasant.

Q. Isn't this other slaughter house—there are two slaughter houses? A. Yes.

Q. And the one which these defendants do not control is further away from your house than the other one? A. Yes.

Q. In other words, this other slaughter house which is not controlled by the defendants, is how many feet away from your house? A. Oh, I don't know exactly; I should judge about a hundred or eighty-five or ninety feet—something like that.

Q. You testified that this slaughter house is sixty feet away? A. About sixty or sixty-five.

Q. And the other one is nearer to your house, and you still say it's a hundred feet? A. No, the other—

Mr. Winans: Objected to. He didn't say that.

Q. There's another slaughter house besides the slaughter house in question? A. Yes.

Q. Now, not referring to the slaughter house in question, referring to the other slaughter house controlled by the Congregation, how many feet is that slaughter house from the nearest window of your home? A. I don't know.

Q. Would you say about forty feet nearer to your home? You would, wouldn't you? A. I only observed the distance of the one I answered about.

By the Court:

Q. Is the other one nearer or further away? A. I am not certain about that.

Q. There is another slaughter house? A. Yes.

By Mr. Schneider:

Q. You know where 512 West Third Street is? A. Yes, sir.

Q. You know where Mintz's butcher shop is? A. Yes, sir.

Q. Now, the slaughter house in question is behind his property. Is that so, Mr. Jones? A. Yes.

Q. Now, there is another one more eastward and nearer to your home?

Mr. Winans: That is a statement by counsel. It is not correct.

A. They are near together.

Q. I will ask you this question: before these butchers conducted this slaughter house, there was another slaughter house? A. Yes.

Q. You know where it is? A. About, yes.

Q. Is that nearer to your home than the slaughter house in question? A. Well, they are both right in the same line, so near together.

Q. When you smell a bad odor, you don't know whether it comes from this or the other? A. We regarded that the first one was there. We have not just begun smelling them.

Q. It is not a nice situation? A. No, it is not. It becomes very unpleasant.

By the Court:

Q. You got the odors from this other slaughter house before this new one was built? A. Yes.

Q. And you don't know whether the odors now come from one of these or both? A. Well, that's it.

Re-direct Examination by Mr. Winans:

Q. While the papers were being prepared to begin this suit, did you come to me and ask me to leave your church out and put you in instead? A. Yes, sir.

Complainants rest.

ABRAM DEUTSCH, one of the defendants, being duly sworn, testifies as follows:

Direct Examination by Mr. Schneider:

Q. Mr. Deutsch, where do you reside? Where do you do business? A. 509 West State Street.

Q. Are you interested in the slaughter house which is in the rear of the premises 512 West Third Street? A. Yes, sir.

Q. Will you tell his Honor just exactly what was done from the time you made the alterations to that shed in the back of the slaughter house to the present time?

The Court: What do you want to show?

Mr. Schneider: I think if we can give you a story of what took place—

The Court: What do you want to show?

Mr. Schneider: The purpose of bringing this action is not because it was a nuisance, but more or less a controversy to prevent these people conducting a slaughter house.

The Court: But if it is a nuisance that motive makes no difference whatever.

Q. Are you familiar with the structure of that slaughter house? A. Yes.

Q. How was that constructed?

The Court: Is there any question about that? The sole issues here are whether it is a legally operated slaughter house, and whether it is a nuisance. Those are the only two issues.

Mr. Schneider: Then I don't want to show anything besides motive and the construction of the slaughter house.

ELIZABETH J. ROSENSON, a witness produced on behalf of the defendants, being duly sworn, testifies as follows:

Direct Examination by Mr. Schneider:

Q. Miss Rosenson, you are an offcer of the Board of Health of the City of Plainfield? A. I am the office secretary of the Board of Health of the City of Plainfield.

Q. Do you know whether the Board of Health of the City of Plainfield have given David B.

Meyrowitz, one of the butchers, the permission to use that particular place as a slaughter house?

Mr. Winans: Objected to as irrelevant and immaterial, and not the best evidence.

The Court: I will permit it.

A. The Board of Health granted Mr. Meyrowitz a permit to conduct a poultry slaughter house at that particular address.

Q. When? A. The first one was granted October 3, 1928.

Q. Has it been renewed ever since? A. Yes, the second one was granted January 11, 1929.

Q. Has Mr. Chandler, as health officer, inspected that place?

Mr. Winans: Unless the witness was present I object.

By the Court:

Q. Have you any personal knowledge? A. I don't know that it was inspected.

Q. Were you there? A. No.

Q. You only know from what he told you? A. Yes.

The Court: Strike it out.

Mr. Schneider: She has the minutes of three meetings which took place, and that will show, your Honor, that it was not because of the odor. They were at the mercy of the other butchers. Can I offer it?

The Court: If there is anything in it which tends toward proof on the question of nuisance or the other issue in this case.

Q. Do you remember Mr. Meyrowitz making an application for a Board of Health permit for a slaughter house? There were quite a few meetings in reference to it, were there not?

Mr. Winans: Objected to.

The Court: All right; I will overrule the objection.

Q. Have you got those minutes here? A. I have (producing them).

Mr. Winans: I would like to ask your Honor to rule whether testimony of this sort is admissible on the question of nuisance only or whether it is going to the question of the legality of the construction.

The Court: That is a question of legal argument. I think counsel has in mind that there are admissions against interest.

Mr. Winans: I submit if the legal right exists there can't be a declaration against interest to destroy the right.

The Court: It is simply on the nuisance phase of it. Do you say you don't rely on nuisance as a cause of action, as separate and apart from the question of the violation of the City ordinance?

Mr. Winans: What I meant was that the purpose of this suit—the issues here do not rest on the question of a common law nuisance. The purpose in showing the offensive odors and that it was a nuisance was merely to show that the persons have a special interest to come into court and

enforce the ordinance. There are two slaughter houses there, and conceivably the other one is a nuisance. This suit is against the one which came into existence since the ordinance was—

The Court: You are not seeking any relief on the basis of a common law nuisance?

Mr. Winans: No, sir.

The Court: Then it is no use going into that.

Q. Is this the minutes of the first meeting? A. Yes, sir.

Q. Would you mind reading the minutes of that particular meeting?

Mr. Winans: Objected to.

The Court: What do you want to show?

Mr. Schneider: Mr. Winans has just told you that maybe one or the other of the slaughter houses is a nuisance. He takes this out of his suit, but your honor can see plainly why he brings it against this particular one. In other words, if the other one is just as much of a nuisance, why don't they bring it against the other one?

The Court: He says, or infers, that the other one is exempt from the operation of the ordinance, and they are simply suing to enforce their rights under the ordinance which was passed.

Mr. Schneider: Well, motive wouldn't have anything to do with it, then.

The Court: That is just what I have been trying to indicate to you.

Both sides rest.

Conclusions.

(Filed November 22, 1929.)

IN CHANCERY OF NEW JERSEY.

Between
ISAAC R. SRAGER, et als.,
Complainants,
and
HARRY MINTZ, et als.,
Defendants.
} Conclusions.

BUCHANAN, V.-C.:

Complainants' bill is filed to restrain defendants from carrying on the business of slaughtering poultry in the premises owned by defendant Mintz, alleging the same to be a nuisance detrimental to the lives, health and comfort of complainants and the public generally, and depreciative of the value of complainants' properties, and violative of the provisions of the zoning ordinance of the City of Plainfield and also violative of its sanitary code.

It is duly proven or admitted that defendants are carrying on the slaughtering of chickens on the Mintz property, with his participation or authorization and consent, for the purpose of providing Hebrew citizens with poultry killed in accordance with the tenets of the Hebrew religion; also that complainants are the owners and tenants of several parcels of land and buildings in the immediate vicinity of the Mintz property.

Conclusions.

The case was not tried on the theory of a common law nuisance; and it is my recollection that complainants' counsel at least tacitly admitted that the proofs were not sufficient to entitle complainants to an injuncation upon the theory of common law nuisance, alone. At any rate, I so find: the proofs do not establish that the slaughtering of poultry as carried on by defendants constitutes a nuisance which this court should enjoin, under the principles of the common law.

But it is contended,—and proven,—that defendants' conduct in the matter complained of is violative of the provisions of the Plainfield zoning ordinance and of its sanitary code, and it is contended that by reason thereof complainants are entitled to the relief sought.

This contention is pressed in two aspects. One is that the zoning ordinance, by establishing certain restrictions in the several zones, tends to create or conserve property values in those zones, and gives to the owners of property in such zones corresponding rights against the violations of the restrictions and the consequent damage to the value of their properties.

It is common knowledge that the purpose and intent of the so-called zoning ordinances is to stabilize property values in the several zones, by preventing the intrusion of merchantile or manufacturing business into residential districts, and keeping manufacturing out of mercantile zones; and that the zones established thereby are essentially arbitrary in so far as their relationship to the police power of the State is concerned.

An examination of the zoning ordinance in question shows that it is of that type. It was

passed in 1923. The Supreme Court in *Ignaciunas* vs. *Risley,* 88 N. J. L., 712, TOOK THE VIEW THAT THE PROVISIONS OF SUCH AN ORDINANCE WERE UNCONSTITUTIONAL AND VOID except to the extent that they might be justified as a valid exercise of the power, and that arbitrary exclusions or restrictions could not be so justified. In that view this court concurs.

Complainants' theory of rights to values based upon an "arbitrary" zoning ordinance, therefore cannot be maintained unless this ordinance has been subsequently validated,—for it is still the only ordinance passed by Plainfield in that behalf. It seems clear that the ordinance has not been validated. The constitutional amendment of 1927 speaks in futuro and does not purport to give the legislature authority to validate zoning ordinances adopted prior to the amendment. The act of 1928 (P. L. 1928, p. 696), purporting to validate such prior ordinances would therefore seem unconstitutional for that reason, and also for the reason that the title of that act in no wise expresses that the act is intended to validate ordinances previously adopted.

It is however further contended on behalf of complainants that the ordinance in question is valid to the extent that its provisions are justifiable as an exercise of police power; that as to certain provisions,—(1) prohibiting unauthorized buildings or alterations; (2) prohibiting unauthorized use or occupancy of a building, and (3) prohibiting the slaughtering of animals,—those provisions are applicable to the whole city and justified as an exercise of police power; and that

defendants have violated all three of those provisions.

Let us assume the correctness of this entire contention. It is not perceived that it is probative of complainants' claim to relief in this court. This court has not jurisdiction to restrain violations of criminal or prohibitory statutes or ordinances merely as such. It may, and does, at the suit of the public or those representing the public, restrain certain classes of public nuisances. But to warrant the intervention of this court on behalf of private individuals, it must appear not only that the acts complained of are unlawful,—whether at common law or by reason of statute or ordinance,—but also that they will result in special and particular injury and damage to the individual complainants for which there is no adequate remedy at law.

In the instant case there is nothing whatever to show that defendants violations of the prohibitions against unauthorized alterations of the building and against the mere unauthorized use of the building, have occasioned or will occasion any special damage, or indeed any damage, to complainants. The slaughtering of animals is not at common law a nuisance per se. Assuming (but not deciding) that the result of the prohibition against slaughtering in this ordinance makes slaughtering a nuisance per se in the city of Plainfield, it is obvious that it is made a public nuisance, and complainants must show special and particular injury and damage to themselves, in order to be entitled to sue. The damage must be more than a mere theoretical or trivial damage,

—Humphreys vs. Eastlock, 63 N. J. Eq., 136. The damage in the instant case is not shown by the proofs to be more than trivial, if indeed more than theoretical,—because of the character of the locality, and the existence of another slaughtering establishment in the immediate vicinity (which is not prohibited by the ordinance because established prior to the passage of the ordinance).

The bill must be dismissed; but without costs.

Decree Dismissing Bill.

(Dated, September 8, 1930; filed September 10, 1930.)

IN CHANCERY OF NEW JERSEY.

71/204.

Isaac R. Srager, et als., *Complainants,*	On Bill for Injunction, etc.
vs.	
Harry Mintz, et als., *Defendants.*	Decree Dismissing Bill.

This cause coming on to be heard, on bill, answer, general replication and oral proofs, before Hon. Malcolm G. Buchanan, the vice-chancellor to whom the same was referred by the Chancellor,

to hear the same for the Chancellor, and to report thereon to him, and advise such order or decree as should be made therein, at Chancery Chambers in the State House at Trenton, on the 29th day of May, 1929, in the presence of John Winans, Esq., of counsel with complainants, and David Schneider, Esq., of counsel with defendants; and the court having heard the testimony of the witnesses and read the documentary evidence produced by the respective parties and heard the arguments of their counsel and considered the same; and having thereupon made and filed a decision in favor of the defendants and against the complainants: It is thereupon, on this eighth day of September, 1930, adjudged and decreed that the bill of complaint of the complainants in this cause be and the same hereby is dismissed, without costs.

Respectfully advised:
MALCOLM G. BUCHANAN,
Vice-Chancellor.

E. R. WALKER,
C.

Notice of Appeal.

(Served September 16, 1930; filed September 17, 1930.)

IN CHANCERY OF NEW JERSEY.

71/204.

ISAAC R. SRAGER, et als., *Complainants,* vs. HARRY MINTZ, et als., *Defendants.*	On Bill for Injunction, etc. Notice of Appeal.

The complainants and each of them hereby appeal from the final decree dismissing the bill of complaint in this cause, dated the 8th day of September, 1930, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

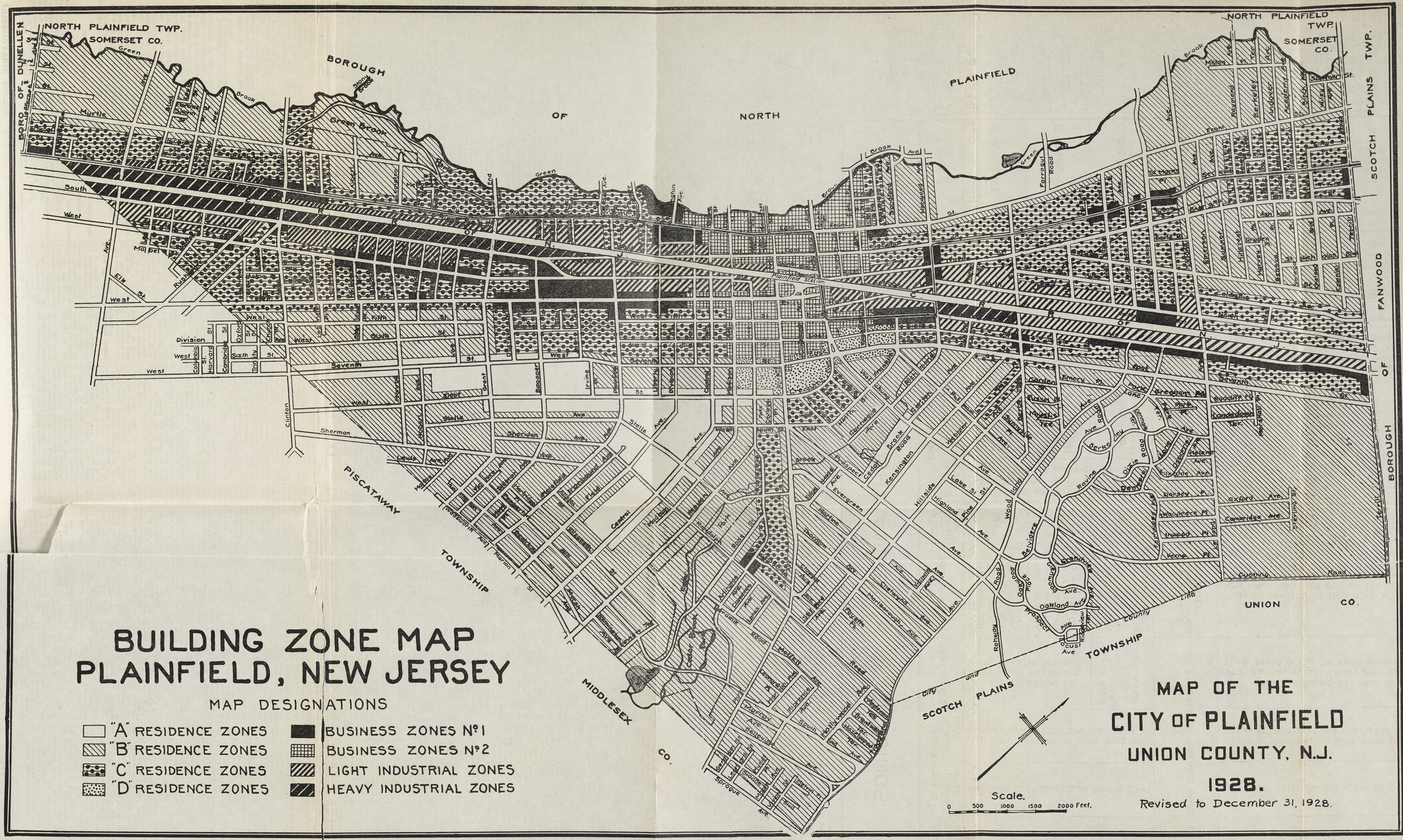
Dated, this 10th day of September, 1930.

JOHN WINANS,
Solicitor of Complainants.

I conceive there is good cause for appeal in the above-stated cause.

JOHN WINANS,
Of Counsel with Complainants.

EXHIBIT C-1.



BUILDING ZONE MAP
PLAINFIELD, NEW JERSEY

MAP DESIGNATIONS

- "A" RESIDENCE ZONES
- "B" RESIDENCE ZONES
- "C" RESIDENCE ZONES
- "D" RESIDENCE ZONES
- BUSINESS ZONES Nº1
- BUSINESS ZONES Nº2
- LIGHT INDUSTRIAL ZONES
- HEAVY INDUSTRIAL ZONES

MAP OF THE
CITY OF PLAINFIELD
UNION COUNTY, N.J.
1928.

Revised to December 31, 1928.

CORPORATION NOTICE

NOTICE IS HEREBY GIVEN that the Common Council of the City of Plainfield, will on Monday, April 2, 1923, at eight o'clock P. M., at the Council Chamber, City Hall, City of Plainfield, consider the final passage, in substantially the form set out below, of a certain ordinance now pending in said Body, viz:

AN ORDINANCE

AN ORDINANCE REGULATING AND LIMITING THE HEIGHT AND BULK OF BUILDINGS HEREAFTER ERECTED AND REGULATING AND DETERMINING THE AREA OF YARDS, COURTS AND OTHER OPEN SPACES, AND RESTRICTING CONGESTION AND REGULATING AND RESTRICTING THE LOCATION OF TRADES AND INDUSTRIES AND THE LOCATION OF BUILDINGS DESIGNED FOR SPECIFIED USES AND ESTABLISHING THE BOUNDARIES OF ZONES FOR THE SAID PURPOSES AND PROVIDING PENALTIES FOR THE VIOLATION OF ITS PROVISIONS.

The Inhabitants of the City of Plainfield, by their Common Council, do enact as follows:

Section I. Kinds of Zones.

For the purpose of regulating and restricting the location of trades and industries and the location of buildings designed for specified uses, for the purpose of regulating and limiting the height and bulk of buildings hereafter erected, and for the purpose of regulating and determining the area of yards, courts and other open spaces for buildings hereafter erected, the City of Plainfield is hereby divided into eight classes of zones:

1. "A" Residence zones.
2. "B" Residence zones.
3. "C" Residence zones.
4. "D" Residence zones.
5. Business zones No. 1.
6. Business zones No. 2.
7. Light Industrial zones; and
8. Heavy Industrial zones, as shown on the building zone map which accompanies this ordinance and is hereby declared to be a part thereof. The zones designated on said map are hereby established. The zone designations which accompany said building zone map are hereby declared to be a part thereof. No building or premises shall be erected, altered or used for any other than a purpose permitted in the zone in which such building shall be erected except in conformity with the regulations herein prescribed for the zone in which such building is located.

Section II. Use Regulations Controlling Residence Zones:

In a residence zone, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used, except for one or more of the following uses:

1. Dwellings or tenements, including the office of a physician, surgeon, dentist, lawyer, dressmaker, artist, or musician, when situated in the same dwelling or apartment used by such physician, surgeon, dentist, lawyer, dressmaker, artist or musician as his private dwelling.
2. Boarding houses.
3. Hotels.
4. Churches.
5. Schools, libraries or public museums.
6. Clubs, except clubs the chief activity of which is a service carried on as a business.
7. Philanthropic or eleemosynary uses or institutions, other than correctional institutions, or asylums for the insane.
8. Railroad passenger stations.
9. Farming, truck gardening, nurseries or greenhouses.
10. Accessory uses customarily incident to the above uses, the term accessory use, however, not including a business or any building or use not located on the same lot with the building to which it is accessory, or a sign more than four square feet in superficial area. A garage or a group of garages for more than three motor vehicles shall not be permitted as an accessory use; but such garage or garages need not be occupied by the motor vehicles owned by the occupant of the premises to come within the definition of an accessory garage. Such garage may not, however, be occupied by any commercial truck except as permitted in Section XIII.

A bill board, sign board or advertising sign shall in no case be permitted as an accessory use. The placing of a "for sale" or "for rent" sign not exceeding four square feet in area shall, however, be permitted as an accessory use. A fence or other structure deemed by the inspector of buildings to be designed primarily to cause annoyance or damage to an adjoining owner shall in no case be permitted as an accessory use.

A driveway or walk used for access to a business or industrial use shall in no case be permitted as an accessory use unless it provides access to property situated in an industrial zone bordering upon a railroad and which, without such driveway or walk, would have no outlet upon a public street.

Section III. Use Regulations Controlling Business Zones:

In a business zone, no building or premises shall be used, and no building shall be erected or altered which is arranged, intended or designed to be used for any of the following specified trades, industries or uses:

1. Bag cleaning establishment.
2. Blacksmith shop or horse-shoeing establishment.
3. Building material storage yard.
4. Bottling works, with the exception of dairy products.
5. Carousel, roller coasters, whirligigs, merry-go-rounds, ferris wheels or similar amusement devices.
6. Carting, express, hauling or storage yard.
7. Contractor's plant or storage yard.
8. Coal, coke, lumber or wood yard.
9. Dry cleaning establishment employing more than four persons.
10. Garage or group of garages for more than five motor vehicles, except as permitted in Section XIII.
11. Ice Plant or storage.
12. Laundry employing more than four employees.
13. Livery or boarding stables.
14. Motor vehicle service station except as permitted in Section XIII.
15. Stone yard or monument works.
16. Storage or baling of scrap paper, iron, bottles, rags or junk.
17. Any trade, industry or use prohibited in an industrial zone.
18. Any kind of manufacture or treatment other than the manufacture or treatment of products clearly incidental to the conduct of a retail business conducted on the premises.

No use permitted in a residence zone shall be excluded from a business zone. Nothing in this section shall be deemed to exclude a newspaper establishment or an electric sub-station from a business zone.

Section IV. Use Regulations Controlling Light Industrial Zones:

In a light industrial zone no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used for any of the following specified trades, industries or uses:

1. Blast furnace.
2. Boiler works.
3. Forge.
4. Iron, steel, brass or copper foundry.
5. Rolling mill.
6. Smelter.
7. Any trade, industry or use prohibited in a heavy industrial zone.

No use permitted in a residence or business zone shall be excluded from a light industrial zone.

Section V. Use Regulations Controlling Heavy Industrial Zones:

In a heavy industrial zone, no building or premises shall be used, and no building shall be erected or altered which is arranged, intended or designed to be used for any of the following specified trades, industries or uses:

1. Acetylene gas manufacture.
2. Arsenal.
3. Asphalt manufacture or refining.
4. Brick, tile or terra cotta manufacture.
5. Candle manufacture.
6. Coke Ovens.
7. Crematory.
8. Creosote treatment or manufacture.
9. Disinfectant, insecticide or poison manufacture.
10. Distillation of coal, wood or bones
11. Emery cloth and sand paper manufacture.
12. Explosives, manufacture or storage.
13. Fat rendering.
14. Fertilizer manufacture.
15. Gas (illuminating or heating) manufacture in excess of 10,000 cubic feet per day except for purposes of public utility.
16. Glue, size or gelatine manufacture.
17. Lamp black manufacture.
18. Lime, cement or plaster of paris manufacture.
19. Oilcloth or linoleum manufacture.
20. Paint, oil, shellac, turpentine or varnish manufacture.
21. Petroleum, refining of same or its products.
22. Potash works.
23. Printing ink manufacture.
24. Pyroxylin plastic manufacture or the manufacture of articles therefrom.
25. Raw hides or skins — storage, curing or tanning.
26. Reduction of garbage, dead animals, offal or refuse.
27. Rock or stone crusher.
28. Rubber or gutta percha manufacture or treatment.
29. Sauerkraut manufacture.
30. Sausage manufacture.
31. Shoe blacking or stove polish manufacture.
32. Slaughtering of animals.
33. Soap manufacture.
34. Starch, glucose or dextrine manufacture.
35. Stock yards.
36. Sugar refining.
37. Sulphur dye manufacture.
38. Sulphurous, sulphuric, nitric or hydrochloric acid manufacture.
39. Tallow, grease or lard manufacture or refining.
40. Tar distillation or manufacture.
41. Tar roofing or waterproofing manufacture.
42. Tobacco (chewing) manufacture or treatment.
43. Wool pulling or scouring.
44. Yeast plant.
45. Any trade or use that is noxious or offensive by reason of the emission of odor, dust, smoke, gas or noise.

No use permitted in a residence, business or light industrial zone shall be excluded from a heavy industrial zone.

Section VI. Special Regulations Relative to Garage and Service Stations:

Under no circumstances shall a permit be issued for the erection or enlargement of a garage for more than five motor vehicles, a group of garages for more than five motor vehicles, or for a motor vehicle service station or for the conversion of any premises not so used to be used for such purposes, in any business or industrial zone, if any part of the lot or plot in question is situated within a distance of two hundred feet, as measured along the public streets of, or within any portion of a street between two intersecting streets in which portion there exists:

1. A public school.
2. A duly organized school, other than a public school, conducted for children under sixteen years of age and giving regular instruction at least five days a week for eight or more months a year.
3. A hospital maintained as a charitable institution.
4. A church.
5. A theatre containing at least 300 seats or,
6. A public library.

No exception shall be made to the provisions of this section by the Board of Zoning Appeals.

Section VII. Non-conforming Buildings and Uses:

Any non-conforming use existing at the time of the passage of this ordinance may be continued and any existing building designed, arranged, intended or devoted to a non-conforming use, may be reconstructed or structurally altered, and the non-conforming use therein changed subject to the following regulations:

a. The structural alterations made in such building shall in no case exceed fifty per cent. of its assessed value, nor shall the building be enlarged, unless the use therein is changed to a conforming use.

b. No non-conforming use shall be extended at the expense of a conforming use.

c. In a residence zone, no building or premises devoted to a use permitted in a business zone shall be changed into a use excluded from a business zone.

d. In a residence zone or a business zone, no building or premises devoted to a use permitted in a light industrial zone shall be changed into a use excluded from a light industrial zone.

e. In a residence, business or light industrial zone, no building or premises devoted to a use excluded from a light industrial zone shall be structurally altered, if its use shall have been changed since the time of the passage of this ordinance to another use also excluded from a light industrial zone.

f. In a residence, business or light industrial zone, no building devoted to a use excluded from a light industrial zone shall have its use changed to another use which is also excluded from a light industrial zone, if the building shall have been structurally altered since the time of the passage of this ordinance.

Section VIII. Location of Accessory Buildings in Residence Zones:

Accessory buildings in residence zones shall conform to the following regulations as to their location upon the lot:

1. In the case of an interior lot fronting upon only one street, no accessory building shall be erected or altered so as to encroach upon that half of the lot depth nearest the street.
2. In the case of an interior lot fronting upon two or more streets, no accessory building shall be erected or altered so as to encroach upon that fourth of the lot depth nearest each and every street.
3. In the case of a corner lot fronting upon two street, no accessory building shall be erected or altered so as to encroach upon the area between each respective street and a line drawn parallel to such street in a manner to divide the lot into two equal parts.
4. In the case of a corner lot fronting upon three or more streets, no accessory building shall be erected or altered so as to encroach upon that fourth of the lot depth nearest each and every street.
5. No accessory building shall be located within ten feet of its rear lot line or side lot line when such line forms part of the front half of the side line of an adjacent interior lot, or the front quarter of an adjacent through lot whether the latter be on interior or corner lot.
6. Notwithstanding any requirement in this section, the foregoing rules shall not prohibit an accessory building sixty feet or more from any street bounding the block.
7. The limitations imposed by this section upon the location of an accessory building shall be waived when the accessory building is incorporated as an integral part of, and enclosed by the same enclosing walls as the building to which it is accessory.

Section IX. Schedule Limiting Height and Bulk of Buildings:

No building hereafter erected or altered shall be erected or altered to exceed the height, or to accommodate or house a greater number of families, or to occupy a greater percentage of the lot area, or to have narrower or smaller rear yards, front yards, side yards, inner or outer courts than is laid down in the accompanying "Schedule Limiting Height and Bulk of Buildings" for the zone in which such building may be located.

Section X. Families per Acre:

No dwelling or tenement house shall hereafter be erected or altered to accommodate or make provision for more families per acre than the number indicated in the "Schedule Limiting Height and Bulk of Buildings" for the zone in which such dwelling or tenement house may be located. The maximum number of families which may hereafter be housed on any plot of ground shall not exceed the integral number obtained by multiplying the acreage of such plot, whether its area is either more or less than an acre, by the number indicated in the "Schedule" for its particular zone. The limitations imposed by this section shall, however, not prohibit the erection of a one-family house on any plot containing at the time of the passage of this ordinance an area smaller than that required for a one-family house by the "Schedule." The area of no plot shall for the purposes of this section be deemed to back from its street front. A "family" as used in this section shall be deemed any number of individuals living and cooking together as a single housekeeping unit.

Section XI. Front Yards.

No building shall be erected and no building shall be reconstructed or altered so as to project in any wise beyond the average setback line observed by the buildings on the same side of the street, within the block, at the time of the passage of this ordinance. Where there are existing buildings at the time of the passage of this ordinance on only one side of the street within the block, then the setback line on the vacant side shall be the same as the average setback line on the improved side of the street within the block. The foregoing rule shall, however, in no case be applied so as to keep the street wall, walls or covered porches of buildings further back from the street line than the maximum depth of front yard indicated in the "Schedule Limiting Height and Bulk of Building" for the zone in which such building is located. Where there is no existing building on either side of the street within the block, no new building shall be erected with its street wall, walls or covered porches nearer to the street line than the maximum depth of front yard shown for each respective zone in the "Schedule."

A building erected on a corner lot shall be required to comply with the setback line on only its narrow street front. In cases where the two street frontages of a corner lot vary in length the lot shall be deemed to be situated on the street containing the narrower frontage in computing the average setback line. Where the two street frontages of a corner lot are of the same length, the owner may elect which street is to govern the setback line of his building.

Section XII. General Provisions Relative to Height and Area Regulations:

a. Unless otherwise expressly provided, the term rear yard, front yard, side yard, inner court or outer court, when used in this ordinance, shall be deemed to refer only to a rear yard, front yard, side yard, inner court, or outer court required by this ordinance. No lot area shall be so reduced or diminished that the yards, courts or other open spaces shall be smaller than prescribed by this ordinance. No existing building shall be altered, enlarged, or rebuilt except in conformity with the regulations herein prescribed.

b. Except as otherwise provided in this ordinance, every room in which persons live, sleep, work or congregate, shall have at least one window or ventilating skylight opening directly either upon a street or upon a rear yard, front yard, side yard, inner court or outer court located upon the same lot and conforming to the requirements prescribed by this ordinance as to its minimum area and least dimensions. Courts, yards and other open spaces if provided in addition to those required by this ordinance, need not be of the area and dimensions herein prescribed. No yard, court or other open space provided about any building for the purpose of complying with the provisions of this ordinance shall again be used as a yard, court or other open space for another building. The provisions of this ordinance shall not be deemed to apply to courts or shafts for bathrooms, toilet compartments, hallways or stairways.

c. A rear yard extending along the rear lot line shall be required on every lot or portion thereof where the rear line of the lot is more than fifty-five feet back from the nearest street. This provision shall, however, not apply to a corner lot situated in either a business or an industrial zone.

d. An interior lot running through the block from street to street or within fifty-five feet of another street shall not be required to provide a rear yard when improved with a single building. When situated between lots requiring rear yards on either or both sides, such lots shall, however, be required to provide an inner court on such side or sides on which the adjoining lots are required to provide rear yards. Where such lot is not within a residence zone, the lowest level of such inner court or courts shall not be above the sill level of the second story windows nor in any case more than twenty feet above the curb level. Where such lot is within a residence zone, the lowest level of such inner court or courts shall not be above the curb level.

e. Accessory buildings may occupy forty per cent. of the required area of the rear yard up to an average height of fifteen feet above the curb level in a residence zone. The yard area occupied by such accessory building shall, however, be included in computing the maximum percentage of the lot area which may be built upon in any given zone.

f. Chimneys or flues may be erected within a rear yard, provided they do not exceed five square feet in the aggregate and do not obstruct ventilation.

g. The area required in a court or yard at any given level shall be open from such level to the sky unobstructed, except for the ordinary projections of skylights and parapets above the bottom of such court or yard, and except for the ordinary projections of window sills, belt courses, cornices and other ornamental features to the extent of not more than four inches.

h. An open or lattice enclosure from fire-escape or solid-floored balcony to a fire tower may project four feet into a rear yard.

i. A corner of a court or yard may be cut off between walls of the same building provided that the length of the wall of such cut-off does not exceed [illegible] feet, and further provided that the required area of the court or yard is not diminished.

j. Windows opening on an offset to a court or yard shall be deemed to comply with the provisions of this ordinance, provided such offset is no deeper in any part than it is wide on the open side. The open side of such offset shall in no case be less than six feet wide. The area contained in an offset shall in no case be included in computing the required area of a court or yard.

k. The height provisions of this ordinance shall not apply to the erection of church spires, belfries, towers designed exclusively for ornamental purposes, chimneys, flues or gas holders. The height provisions of this ordinance shall, moreover, not apply to bulkheads, elevator inclosures or water tanks occupying in the aggregate less than ten per cent. of the area of the roof on which they are located.

l. Nothing in this ordinance shall prevent the erection above the height limit of a parapet wall or cornice extending above such height limit not more than three feet. Nothing in this ordinance shall prevent the projection of a cornice beyond the street wall to an extent of not more than three feet.

m. Courts or shafts used exclusively for lighting and ventilating bathrooms, toilet compartments, hallways or stairways need not comply with the area regulations of the different zones. Such courts or shafts shall, however, not be less than fifteen square feet in area nor less than three feet in width.

n. No dwelling or tenement house erected after the passage of this ordinance shall be constructed in back of, or to the rear of buildings on the front of the lot. No building not now used as a dwelling or tenement house and situated in back of or to the rear of buildings on the front of the lot shall be altered or used after the passage of this ordinance as a dwelling or tenement house. This provision shall, however, not prohibit the erection and maintenance of dwelling quarters in connection with an accessory building upon the rear of the lot, provided the persons occupying such quarters are employed in domestic service upon the premises.

o. No building which is arranged, intended or designed to be used for residential purposes shall hereafter be erected or altered to a height in excess of four stories unless it provides for the maintenance of adequate elevator service.

Section XIII. Board of Zoning Appeals:

a. A Board of Zoning Appeals is hereby established. Said board shall consist of five members appointed by the Mayor. Of the original appointees to such board, one member shall be appointed for a term of one year, two members for a term of two years and two members for a term of three years. The successors of the original appointees shall be appointed for a term of three years. All appointees to fill vacancies shall be for the unexpired term. Said board shall elect a chairman and such other officials and employees as shall be necessary. The members of the Board shall receive no compensation for their services.

The board of zoning appeals may, in a specific case, after public notice and hearing and subject to appropriate conditions and safeguards, determine and vary the application of the regulations herein established in harmony with their general purpose and intent, without changing the boundaries of the respective zones, as follows:

1. Where a zone boundary line divides a lot in a single ownership at the time of the passage of this ordinance, permit a use authorized on either portion of such lot to extend to the entire lot, but not more than twenty-five feet beyond the boundary line of the zone in which such use is authorized.
2. Permit the extension of a non-conforming use or building upon the lot occupied by such use or building at the time of the passage of this ordinance.
3. Permit the erection of an additional building upon a lot occupied at the time of the passage of this ordinance by a business or industrial establishment and which additional building is a part of such establishment, where carrying out the strict letter of the provisions would result in practical difficulties or unnecessary hardship.
4. Grant in undeveloped sections of the city temporary and conditional permits for not more than two years structures, and uses in contravention of the use regulations controlling residence zones; provided such uses are important to the development of such undeveloped sections and also provided that such uses are not prejudicial to adjoining neighboring sections already developed.
5. Exempt a proposed building, either in whole or in part, from the front yard requirement. This relief shall, however, be granted only in cases where the proposed building adjoins on either or both sides of buildings that do not conform to the minimum setback line or where compliance with the minimum setback line would cause unnecessary hardship to the owner without any compensating benefit to the community.
6. Adopt from time to time such rules and regulations as may be deemed necessary to carry into effect the provisions of this ordinance.
7. Vary any requirement of this ordinance in harmony with the general purpose and intent, so that substantial justice may be done.
8. Permit in a business zone, subject to the prohibition of Section VI, the construction, extension, alteration or conversion of a building intended for the storage or repair of motor vehicles or for a motor vehicle service station, provided, however, that no motor vehicle shall be repaired within twenty-five feet of any street line.
9. Permit the storage of not more than one commercial truck in and accessory garage located in a residence zone.
10. Permit any public utility in a restricted zone.
11. Report to the Common Council upon all amendments proposed to the provisions of this ordinance and upon all changes proposed in the boundaries of the different kinds of zones as laid down upon the building zone map.

b. All meetings of the board of zoning appeals shall be public. The presence of four members shall be necessary for a quorum. The clerk to the board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote indicating that fact. The final disposition of any appeal shall be in the form of a resolution either reversing, modifying, or affirming the decision of the building inspector. If a resolution fails to receive four votes in favor of the appellant, the action shall be deemed a denial, and a resolution denying the appeal shall be entered upon the record.

Section XIV. Plats:

All applications for building permits shall be accompanied by a plat in duplicate drawn to scale showing the actual dimensions of the lot to be built upon, the size of the building to be erected, the setback line observed by buildings within the block and such other information as may be necessary to provide for the enforcement of the regulations contained in this ordinance. A record of such applications and plat shall be kept by the building inspector.

Section XV. Certificates of Occupancy:

No land shall be occupied or used and no building hereafter erected or altered shall be occupied or used in whole or in part for any purpose whatsoever until a certificate of occupancy shall have been issued by the building inspector, stating that the premises or building complies with all the provisions of this ordinance.

No change or extension of use and no alteration shall be made in a non-conforming use or premises without a certificate of occupancy having first been issued by the building inspector that such change, extension or alteration is in conformity with the provisions of this ordinance.

Certificate of occupancy shall be applied for at the same time that the building permit is applied for and shall be issued within ten days after the erection or alteration of the building shall have been completed. A record of all certificates shall be kept on file in the office of the building inspector and copies shall be furnished upon request to any person having a proprietary or tenancy interest in the building affected. A fee of two dollars shall be charged for each original certificate and one dollar for each copy thereof.

No permit for excavation for, or the erection of any building shall be issued before application has been made for a certificate of occupancy. No building or premises may be occupied until such certificate shall have been issued.

Section XVI. Completion and Restoration of Existing Buildings:

Nothing herein contained shall require any change in the plans, construction or designated use of a building for which a building permit has been heretofore issued or plans for which are on file with the building inspector at the time of the passage of this ordinance, and a permit for the erection of which is issued within three months of the passage of this ordinance and the construction of which, in either case, shall have been diligently prosecuted within a year of the date of such permit and the ground story framework of which, including the second tier of beams, shall be completed within such year, and which entire building shall have been completed according to such plans as filed within two years from the date of the passage of this ordinance.

Nothing in this ordinance shall prevent the restoration of a building destroyed by fire, explosion, act of God, or act of the public enemy, to the extent of not more than fifty per cent. (50%) of its assessed value, or prevent the continuance of the use of such building or part thereof or prevent a change of such existing use under the limitations provided in Section VII. But any building destroyed in the manner aforesaid to an extent exceeding fifty per cent. (50%) of its assessed value at the time of such destruction may be reconstructed and thereafter used only in such a manner as to conform to all the provisions of this ordinance.

Section XVII. Zone Boundaries:

The zone boundaries are, unless otherwise indicated, either street lines or lines drawn parallel to and one hundred feet back from one or more of the street lines bounding the block. Where two or more zone designations are shown within a block two hundred feet or less in width, the boundary of the more restricted zone shall be deemed one hundred feet back from its street line. Where two or more zone designations are shown within a block more than two hundred feet in width, the boundary of the less restricted zone shall be deemed one hundred feet back from its street line.

Section XVIII. Amendments, Alterations and Changes in Zone Lines:

The Common Council may from time to time on its own motion or on petition, after public notice and hearing, amend, supplement or change the regulations and zones herein established. Whenever the owners of fifty per cent. or more of the frontage in any zone or part thereof shall present a petition duly signed to the Common Council, requesting an amendment, supplement, change or repeal of the regulations prescribed for such zone or part thereof, it shall be the duty of the Council to vote upon said petition within ninety days after the filing of the same by the petitioners with the city clerk. If, however, a protest against such amendment, supplement or change is presented, duly signed and acknowledged by the owners of twenty per cent. or more of any frontage proposed to be altered, or by the owners of twenty per cent. of the frontage immediately in the rear thereof, or by the owners of twenty per cent. of the frontage directly opposite the frontage proposed to be altered, such amendment shall not be passed except by a three-quarters vote of the Council. If any area is hereafter transferred to another zone by a change in zone boundaries by an amendment as above provided, the provisions of this ordinance shall apply to buildings or premises existing at the time of the passage of such amendment in such transferred area.

Section XIX. Interpretation of Regulations:

In their interpretation and application, the provisions of this ordinance shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. It is not intended by this ordinance to repeal, abrogate, annul or in any way to impair or interfere with any existing provisions of the law or ordinance or any rules, regulations or permits previously adopted or issued, or which shall be adopted or issued pursuant to law relating to the use of buildings or premises; nor is it intended by this ordinance to interfere with or abrogate or annul any easements, covenants or other agreements between parties; provided, however, that where this ordinance imposes a greater restriction upon the use of buildings or premises or upon the height of buildings or requires larger yards, courts or other open spaces than are imposed or required by such existing provisions of law or ordinance, or by such rules, regulations or permits, or by such easements, covenants or agreements the provisions of this ordinance shall control.

Section XX.. Enforcement and Penalties:

It shall be the duty of the building inspector strictly to enforce all the provisions of this ordinance. The general agent architect, builder, contractor, owner or tenant or any other person who commits, takes part or assists in any violation of this ordinance or who maintains any building or premises in which any violation of this ordinance shall exist, shall for each and every violation be imprisoned in the Union County jail for a period not exceeding thirty days or be fined, not exceeding Two Hundred Dollars ($200) or both. Each day that a violation is permitted to exist shall constitute a separate offense.

Section XXI. Validity of Ordinance:

If any section, paragraph, subdivision, clause or provision of this ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged, and the remainder of this odinance shall be deemed valid and effective.

Section XXII. Definitions:

Certain words in this ordinance are defined for the purposes thereof as follows:

a. Words used in the present tense include the future; the singular number includes the plural and the plural the singlar; the word "lot" includes the word "plot;" the word "building" includes the word "structure."

b. A "non-conforming building or use" is one that does not conform with the regulations of the zone in which it is situated.

c. A "lot" is a parcel of land occupied by one building and the accessory buildings or uses customarily incident to it, including such open spaces as are required by this ordinance.

d. A "corner lot" is a parcel of land not over fifty feet in width at the junction of and fronting on two intersecting streets.

e. A "interior lot" is a lot other than a corner lot.

f. The "depth of a lot" is the mean distance from the street line of the lot to its rear line measured in the general direction of the side lines of the lot.

g. The "street line" is the dividing line between the street and the lot.

h. A "rear yard" is an open unoccupied space on the same lot with a building between the rear wall of the building and the rear line of the lot.

i. A "front yard" is an open, unoccupied space on the same lot with a building situated between the street wall of the building and the street line of the lot.

j. A "side yard" is an open, unoccupied space on the same lot with a building situated between the building and the side line of the lot and extending through from the street to the rear yard, or where no rear yard is required, to the rear line of the lot.

k. An "inner court" is an open, unoccupied space on the same lot with a building not extending to either the street or the rear yard.

l. An "outer court" is an open, unoccupied space on the same lot with a building extending to either the street or the rear yard.

m. The "building area" is the maximum horizontal projected area of a building and its accessories.

n. The "least dimension" of a court or yard is the least of the horizontal dimensions of such court or yard.

o. The "length of an outer court" is the horizontal distance between the end opening on a street or a rear yard and the end opposite such street or rear yard.

p. The "height of a court or yard" is the vertical distance between the lowest level of such court or yard to the highest point of any bounding wall. Where there is a gable or mansard the height shall be measured to the average height of such gable or mansard, provided the combined width of all dormers in the roof shall not exceed thirty per cent. of the length of the building on the court or yard. In case the combined width of all the dormers exceeds thirty per cent. of the length of the building on the court or yard, the height shall be measured to the eaves of the highest dormer. In any given case, the height of a court or yard shall be measured to the eaves, gable or mansard, giving it the maximum height.

q. The "height of a building" is the vertical distance measured in the case of flat roofs from the curb level to the highest point of the roof beams adjacent to the street wall, and in the case of pitched roofs, from the curb level to the average height of the gable. In the case of both flat roofs and pitched roofs, the measurement shall be made through the center of the street facade. Where no roof beams exist or there are structures wholly or partly above the roof, the height shall be measured from the curb level to the highest point of the building. Where the walls of a building do not adjoin the street, the average level of the ground along the front wall of the building may be taken in measuring its height instead of the curb level.

r. A "story" is that part of a building between any floor and the floor above, or in its absence the ceiling or roof above. A story in which persons live, sleep, work or congregate, the ceiling of which is more than three feet above the curb level, shall be counted as that fraction of a story which its height above the curb level bears to the height of the story. A story which extends less than three feet above the curb level shall not be counted in determining the number of stories. Any story under the pitched roof at the top of a building, the floor of which is not more than two feet below the plate, shall be counted a half story when not more than sixty per cent. of said floor area is used for rooms, baths or toilets, otherwise it shall be counted as that fraction of a story which its floor area in rooms, baths and toilets bear to the entire floor area.

s. The "curb level" is the permanently established grade of the street in front of the lot. Where the lot level is higher than the curb level, the average level of the former along the wall in question may be taken as the base for measuring the height of a side yard, inner court or outer court. Where a lot fronts upon two or more streets of different levels, the curb level of the higher street may be taken as the base for measuring the height of open spaces and buildings to a distance 100 feet back from the street with the higher curb level.

Section XXIII. When Effective:

This ordinance shall take effect immediately.

Dated March 20, 1923.

JOHN J. CARROLL,
City Clerk.

(See reverse side for Zoning Map)

SCHEDULE LIMITING HEIGHT AND BULK OF BUILDINGS

ZONES	MAXIMUM HEIGHT		FAMILIES PER ACRE	MAXIMUM BUILDING AREA	MANDATORY LOCATION OF UNENCUMBERED AREA	FRONT YARDS		SIDE YARDS	REAR YARDS	INNER COURTS		OUTER COURTS
	STORIES	FEET				MINIMUM DEPTH	MAXIMUM DEPTH			MINIMUM WIDTH	MINIMUM AREA	
"A" RESIDENCE	2½	35	5	20%	FRONT YARD, 2 SIDE YARDS AND REAR YARD.	SETBACK LINE OBSERVED BY BUILDINGS ON SAME SIDE OF STREET BETWEEN TWO INTERSECTING STREETS ON DATE OF PASSAGE OF ORDINANCE.	50 FT.	MINIMUM WIDTH OF EACH SIDE YARD MUST EQUAL 6 FEET. AGGREGATE WIDTH OF TWO SIDE YARDS MUST EQUAL 40% OF LOT WIDTH.	MINIMUM DEPTH 25% OF LOT DEPTH BUT NEED NOT EXCEED 25 FEET	6 FEET, BUT NOT LESS THAN 3 INCHES FOR EACH FOOT OF BUILDING HEIGHT.	TWICE SQUARE OF REQUIRED LEAST DIMENSION.	MINIMUM WIDTH OF 6 FEET, BUT NOT LESS THAN 3 INCHES FOR EACH FOOT OF BUILDING HEIGHT.
"B" RESIDENCE	2½	35	9	30%	FRONT YARD, 2 SIDE YARDS AND REAR YARD.		30 FT.	MINIMUM WIDTH OF EACH SIDE YARD MUST EQUAL 4 FEET. AGGREGATE WIDTH OF TWO SIDE YARDS MUST EQUAL 25% OF LOT WIDTH.				
"C" RESIDENCE	2½	35	18	40%	FRONT YARD, 1 SIDE YARD AND REAR YARD.		25 FT.	MINIMUM WIDTH OF EACH SIDE YARD MUST EQUAL 4 FEET. AGGREGATE WIDTH OF SIDE YARD OR SIDE YARDS PROVIDED MUST EQUAL 25% OF LOT WIDTH.	MINIMUM DEPTH 20% OF LOT DEPTH BUT NEED NOT EXCEED 20 FEET.			
"D" RESIDENCE	6	75	70	50%	FRONT YARD, 2 SIDE YARDS, OTHERWISE AS REQUIRED BY TENEMENT HOUSE LAW.	AVERAGE SETBACK LINE OBSERVED BY BUILDINGS ON SAME SIDE OF STREET BETWEEN TWO INTERSECTING STREETS ON DATE OF PASSAGE OF ORDINANCE.	20 FT.	MINIMUM WIDTH OF EACH SIDE YARD MUST EQUAL 4 FEET.	AS REQUIRED BY TENEMENT HOUSE LAW			
BUSINESS N°1	4	50	70	90% ABOVE 2ND. STORY SILL LEVEL OR 20 FEET ABOVE CURB LEVEL IN CASE OF INTERIOR LOTS. NO LIMITATION ON CORNER LOTS.	REAR YARD IN CASE OF INTERIOR LOTS.	OPTIONAL	OPTIONAL	NONE REQUIRED, BUT IF PROVIDED MUST BE 3½ FEET AND NOT LESS THAN 1 INCH FOR EACH FOOT OF BUILDING HEIGHT.	MINIMUM DEPTH 10% OF LOT DEPTH, BUT NEED NOT EXCEED 10 FEET ON INTERIOR LOTS NONE REQUIRED ON CORNER LOTS.	4 FEET, BUT NOT LESS THAN 1½ INCHES FOR EACH FOOT OF BUILDING HEIGHT.	TWICE SQUARE OF REQUIRED LEAST DIMENSION.	MINIMUM WIDTH OF 4 FEET BUT NOT LESS THAN 1½ INCHES FOR EACH FOOT OF BUILDING HEIGHT.
BUSINESS N°2	6	75	70			OPTIONAL	OPTIONAL					
INDUSTRIAL	6	75	70		OPTIONAL	OPTIONAL	OPTIONAL					

CORPORATION NOTICE

24. Pyroxylin plastic manufacture or the manufacture of articles therefrom.

line or side lot line when such line forms part of the front half of the

line of the lot is more than fifty-five feet back from the nearest street. This

1. Where a zone bou
vides a lot in a singl

Exhibit C-2.

Exhibit C-2 is identical with Exhibits D and E annexed to the bill and is not here printed by agreement of solicitors.

New Jersey Court of Errors and Appeals

ISAAC R. SRAGER, et als.,
Complainants-Appellants,

vs.

HARRY MINTZ, et als.,
Defendants-Respondents.

BRIEF FOR APPELLANTS.

Complainants have appealed from a decree of the Court of Chancery which dismissed their bill of complaint. The action was on bill for injunction (State of Case, pp. 4-29), answer (pp. 38-40), general replication (p. 40) and oral proofs taken before Vice-Chancellor Buchanan in open court.

The bill prayed relief by injunction restraining the numerous defendants, all united in the joint undertaking, from using certain land of defendant-respondent Mintz, therein described (pp. 5, 6), situate in the city of Plainfield, in a manner and for a purpose contrary to the Zoning Ordinance of that City, by operating thereon a slaughterhouse, to the manifest detriment of neighboring land-owners and -occupants, taxpayers of the same city, among whom the complainants are included,—each claiming to have

suffered and to be threatened with special damage to his person and property.

Relief was denied to complainants-appellants and their bill dismissed (p. 84) on two grounds, both which they challenge as erroneous, viz.: *first,* that the Zoning Ordinance seeks to impose "arbitrary" restrictions upon the premises in question, that it was never "validated" by force of the constitutional amendment, and was therefore, in respect of such "arbitrary" provisions, not a valid or enforceable enactment (p. 81); and *second,* that complainants have not been shown to have suffered or to be susceptible to such "special damage" or "particular injury" (pp. 82, 83) as would entitle them to the remedy of injunction to restrain the continuance of the acts complained of, admittedly in contravention of the anti-slaughterhouse provisions of the Zoning Ordinance,—provisions which are of uniform application to the whole city and not arbitrary in the sense of discriminating between localities.

The Facts

were either admitted by the pleadings, conceded in open court or proved without dispute on final hearing. There was no material fact in issue.

Defendant Harry Mintz is the owner and in possession of the premises in question, known as No. 512 West Third Street, at Plainfield (bill, par. 1, at pp. 5, 6; 51, 62), fronting 30 feet in width on the northwesterly (generally styled the northerly) side of West Third Street (*ib.*), about 170 feet southwest (or west) of Liberty Street (pp. 7, 70, 71), and extending thence northwestwardly (or northwardly), the same width through-

out, a depth of 173 feet from the center line (p. 51), or 143 feet from the property line (pp. 5, 51), of West Third Street, or 150 to 155 feet, as approximated by defendant Mintz (p. 62), to the rear line, where it abuts upon adjoining premises of the Congregation Ohavey Zedek (pp. 5, 42, 43, 52).

A 9-foot alley occupies the whole westerly side of the lot from the front-street line to the rear boundary (pp. 52, 62), which affords access to the rear portions of the Mintz property and to the adjacent premises in the rear. The rest of the lot, 21 feet in width (pp. 52, 62), is occupied by front and rear buildings and open courts. The combination dwelling and meat market of defendant Mintz, 21 feet wide (p. 52) by 60 or 62 feet deep (*ib.*), occupies the whole street frontage exclusive of the alley (*ib.*).

The remainder of the lot is vacant (pp. 53-55), except for a rear building 100 to 102 feet back from the street line (p. 54), originally a garage and chicken shed (bill, pars. 16, 17 at pp. 15, 16; 48, 55, 56),—the conversion of which into a slaughterhouse (pp. 48, 49, 56, 64) and its devotion ever since to the practice of killing poultry (pp. 56-59, 62, 64, 71), comprising an alteration and a use contrary to the Plainfield Zoning Ordinance (*vide,* Exh. C-1, at pp. 86, 87), form the basis of complainants' cause of action.

The complainants severally are owners or occupants (or both) of improved property in the same neighborhood (bill, par. 2, at pp. 6, 7), separately described in paragraph 3 and sub-paragraphs (a) to (i), inclusive, under paragraph 4 of complainants' bill (pp. 7-10), which titles and occupancies were proved by parol or by deeds in evidence and

finally conceded by counsel for defendants-respondents (p. 42).

The adjacent corner of Liberty and West Third Streets is owned by Mount Olive Baptist Church, an incorporated religious society of colored people, and occupied by its church edifice and parsonage, both fronting on Liberty Street, the latter at the extreme corner and the church proper adjoining it (bill, par. 3, at p. 7; concession, p. 42; 70). Its pastor, Rev. Arthur D. Jones, one of the complainants, and his family, occupy the parsonage (p. 70). The rear windows of the church building are only "about 64 or 65 feet" distant from the objectionable slaughterhouse (p. 71) and those of the pastor's residence only slightly more distant.

One other parcel of land, the ownership, occupancy and dimensions of which were not disclosed, except that its breadth must fall within the space of "about 64 or 65 feet" mentioned above, intervenes on West Third Street between the church premises and those of defendant Mintz.

Complainant Isaac R. Srager owns and occupies the land, 30 feet in width, with 2½-story store and dwelling house thereon, known as No. 514 West Third Street, immediately adjoining the premises of defendant Mintz on the west (bill, sub-par. [a], at p. 7); at least one of whose windows is only 18 feet from the slaughterhouse (p. 64), little more than the width of the 9-foot alley; and Srager is also the owner of extensive property in the rear fronting on South Second Street and occupied by various tenants (bill, at top of p. 8).

The other complainants, Anklowitz (bill, sub-par. [b], at p. 8), Israel (*ib.*, sub-par. [c], at p. 8),

Dreier (*ib.*, sub-par. [d], at pp. 8, 9), Rothberg (*ib.*, sub-par. [e], at p. 9), Abrams (*ib.*, sub-par. [f], at p. 9), Finkelstein (*ib.*, sub-par. [g], at p. 9), Kline (*ib.*, sub-par. [h], at pp. 9, 10) and Taub (*ib.*, sub-par. [i], at p. 10), own and, either personally or through their several tenants, occupy other parcels of land, each containing a dwelling house or combination store and dwelling, some situate in the same block in West Third Street, some on the opposite side of the street and one, that of complainant Taub, in a block immediately adjacent; all as more particularly described in the several lettered sub-paragraphs under paragraph 4 of the bill (pp. 8-10).

On April 2, 1923, the Common Council of the City of Plainfield enacted the Zoning Ordinance (Exh. C-1, at pp. 86, 87), the objects of which are fully embraced in its title. This ordinance, the due enactment and binding force of which were conceded upon the hearing (pp. 43, 46), was a valid exercise of legislative power, *provided* it does not contravene any provision of the federal or State constitution, and falls within the powers of local self-government expressly delegated by acts of the State legislature.

A copy of this ordinance is annexed to complainants' bill and designated "Exhibit A" and a copy of the "Building Zone Map," referred to in Section I of the ordinance and thereby made part thereof, is annexed to the bill and designated as "Exhibit B" (p. 29; Exh. C-1, at pp. 86, 87).

George B. Wean, City Clerk of Plainfield (p. 43), produced the original minute books of the Common Council, showing enactment of the Zoning Ordinance and several ordinances purporting to amend the same (pp. 44-46), but none showing any change in its provisions affecting the prem-

ises in question; and counsel for defendants-respondents thereupon conceded that the original Zoning Ordinance was still in force and effect (p. 46).

The City Clerk testified also that the Board of Adjustment, originally known as the Board of Zoning Appeals (p. 46), consisted of Messrs. Wigton, Perkins, O'Keefe, Vivian and Morse (*ib.*) and identified Michael D. O'Keefe, the witness whose testimony had previously been read into the record (pp. 41, 42), as a member of this board (p. 47).

In Section XIII, the ordinance established a Board of Zoning Appeals, the name of which has since been changed to Board of Adjustment, with restricted powers, "in a specific case, after public notice and hearing and subject to appropriate conditions and safeguards" to "determine and vary the application of the regulations" (thereby) "established, in harmony with their general purpose and intent, without changing the boundaries of the respective zones."

Mr. O'Keefe testified that he was and at all times since its inception had been, a member of this board; that he was familiar with all of its proceedings since its organization; that no resolution, consent or other act had ever been done, committed or given effect by said board which had changed the nature, character or extent of the zoning regulations pertaining to the premises in question; and that said premises were and at all times had been in the Light Industrial Zone, as fixed by the Zoning Ordinance (pp. 41, 42); and counsel for both parties stipulated that the testimony, so given by Mr. O'Keefe, was true (*ib.*).

The characteristic principle of zoning legislations is the division of a municipality into sepa-

rate zones; wherein varying regulations apply, as to character and size of the buildings, proportionate areas of lands not to be built upon, and the respective residential, business or industrial uses to which the same may be devoted. The Plainfield ordinance accomplishes this by Section I, which reads as follows:

Section I. Kind of Zones.

For the purpose of regulating and restricting the location of trades and industries and the location of buildings designed for specified uses, for the purpose of regulating and limiting the height and bulk of buildings hereafter erected, and for the purpose of regulating and determining the area of yards, courts and other open spaces for buildings hereafter erected, the City of Plainfield is hereby divided into eight classes of zones:

1. "A" Residence zones.
2. "B" Residence zones.
3. "C" Residence zones.
4. "D" Residence zones.
5. Business zones No. 1.
6. Business zones No. 2.
7. Light Industrial zones; and
8. Heavy Industrial zones, as shown on the building zone map which accompanies this ordinance and is hereby declared to be a part thereof. The zones designated on said map are hereby established. The zone designations which accompany said building zone map are hereby declared to be a part thereof. No building or premises shall be erected, altered or used for any other than a purpose

permitted in the zone in which such building shall be erected except in conformity with the regulations herein prescribed for the zone in which such building is located.

The Building Zone Map (Exh. B annexed to bill, p. 29; Exh. C-1, pp. 86, 87) shows that the Mintz premises are located in what is defined as a "Light Industrial Zone"; indicated by heavy oblique shading lines; being in the block bounded on the east by Liberty Street, south by West Third Street, west by Plainfield Avenue, and north by South Second Street, adjoining the southerly side of the right-of-way of the Central Railroad of New Jersey. It may be more readily located by assuming an (inverted) equilateral triangle, its upper angles coinciding with the initial letters of the words "of" and "North" in the legend "Borough of North Plainfield" in the open white space at the top of the map, the lower angle (apex) of which will approximate the location of the block referred to.

The provision against killing of animals is city-wide. In this regard, the Zoning Ordinance provides as follows:

Section IV. Use Regulations Controlling Light Industrial Zones:

In a light industrial zone no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used for any of the following specified trades, industries or uses:

* * * * *

7. Any trade, industry or use prohibited in a heavy industrial zone.

No use permitted in a residence or business zone shall be excluded from a light industrial zone.

The *slaughtering of animals* or the conducting of *any trade or use that is noxious or offensive by reason of the emission of odor, dust, smoke, gas or noises* are not permitted in either residence or business zones; as appears by reference to sub-paragraphs 1 to 10, inclusive, of Section II and sub-paragraph 17 of Section III of the ordinance.

Section V. Use Regulations Controlling Heavy Industrial Zones:

In a heavy industrial zone, no building or premises shall be used, and no building shall be erected or altered which is arranged, intended or designed to be used for any of the following specified trades, industries or uses:

* * * * *

32. Slaughtering of animals.

* * * * *

45. Any trade or use that is noxious or offensive by reason of the emission of odor, dust, smoke, gas or noise.

* * * * *

Section VII. Non-conforming Buildings and Uses:

Any non-conforming use existing at the time of the passage of this ordinance may be

continued and any existing building designed, arranged, intended or devoted to a non-conforming use, may be reconstructed or structurally altered, and the non-conforming use therein changed subject to the following regulations:

* * * * *

e. In a residence, business or light industrial zone, no building or premises devoted to a use excluded from a light industrial zone shall be structurally altered, if its use shall have been changed since the time of the passage of this ordinance to another use also excluded from a light industrial zone.

f. In a residence, business or light industrial zone, no building devoted to a use excluded from a light industrial zone shall have its use changed to another use which is also excluded from a light industrial zone, if the building shall have been structurally altered since the time of the passage of this ordinance.

It is in evidence that the building subsequently converted into a slaughter house had been previously used as a private garage, and did not constitute a non-conforming use (pp. 49, 55).

The physical acts of defendants, demonstrably violative of definite prohibitions in the Zoning Ordinance, consisted of (1) making an unauthorized alteration and addition to an existing building, thereby in fact and in effect converting it from a lawful structure devoted to an authorized use, into an unlawful structure adapted and actu-

ally devoted to a prohibited use (pp. 49, 50, 55, 56); (2) occupying and using the reconstructed building, without the authorized alterations, and after having made prohibited alterations thereto, disentitling them to and without having obtained a certificate of occupancy (p. 50); and (3) conducting in and upon said building and premises a business, and devoting the same to a use prohibited by the ordinance, i. e., slaughtering of animals (pp. 53, 56-58, 62, 63, 71).

Complainants proved, and it was not disputed, that each of the defendants participated in all of the acts enumerated above, viz.:

Harry Mintz (pp. 35, 47, 51, 53, 56, 57, 62); David B. Meyerowitz (pp. 33, 57, 63); Morris Meyerowitz (p. 63); Frank Mofshovitz (pp. 57, 63); Nathan Rubinstein (p. 63); Hyman Ogens (p. 63); Julius Velinsky (p. 63), and Abram Deutsch (pp. 58, 63).

Complainants proved, without contradiction, that offensive odors and noises emanated from the slaughterhouse and that these penetrated neighboring premises, notably those of complainants Srager (pp. 65, 68) and Jones (pp. 72, 73). It is submitted that the Court will judicially notice the infringement of property rights and menace to health which these conditions denote, especially where the result is to give to the legislative will its clearly intended effect, by safeguarding the identical rights which were the subjects of its solicitude.

The bill, in paragraphs 32 and 33 (p. 27), alleges maintenance and operation of the slaughterhouse as constituting a common-law nuisance, detrimental to the civil and property rights of complainants; but this is not the gravamen of the cause and it was expressly disavowed as such upon the

hearing (pp. 77, 78). Proof of noxious and noisome conditions on defendants' premises and of resultant injuries was presented, not to show a common-law nuisance, but to characterize defendants' wrongful and tortious acts as productive of actionable injury, to prove special damage and to distinguish complainants from mere volunteers without rights to protect or wrongs to redress.

Early in the year 1928 (bill, pars. 20, 21; at pp. 17-19; pp. 33-34, 34-36, 62, 63) the individual defendants effected a combination for the purpose of conducting a slaughterhouse business in the block indicated above, which, by force of the Zoning Ordinance, is in the Light Industrial Zone. In view of the city-wide prohibition against slaughtering, it may be unimportant in what zone these premises are situate; for Section V, regulating Heavy Industrial Zones, prohibits slaughtering therein, and Section IV, relating to Light Industrial Zones, prohibits therein "any trade, industry or use prohibited in a Heavy Industrial Zone" (vide, Exh. B annexed to bill; Exh. C-1, pp. 86, 87).

Their project contemplated such alterations and additions to the small rear building on the Mintz lot as would convert it from a garage into a slaughterhouse, and its subsequent operation as such. To this end, defendant David B. Meyerowitz on June 25, 1928, applied to the Plainfield Board of Health for a license to operate a slaughterhouse at No. 536 (not 512) West Third Street (Exh. D annexed to bill, at pp. 33; 76), under a provision of the Sanitary Code (Exh. C annexed to bill, at pp. 30-32), necessarily superseded by the later enactment of the Zoning Ordinance. Thereupon on October 3, 1928, a license was issued by the Health Officer, specifying the location of

the proposed slaughterhouse as the premises of defendant Mintz at 512 West Third Street (Exh. E annexed to bill, at pp. 33, 34; 76).

Thereafter on November 19, 1928 (p. 34), defendant Mintz applied to the Department of Buildings of the City of Plainfield for a permit to enlarge this building, but for garage purposes only (p. 35), by constructing an addition thereto of 4 feet by 8 feet (Exh. F annexed to bill, at pp. 34-36; in evidence, Exh. C-2, at p. 48). The application was signed by Mintz (p. 35) and sworn to by Alex Smith (p. 36), who, although his identity was not disclosed, assumedly was the contractor; and was presented to John S. Dahl, building inspector (p. 47), who produced in court the original application, identical with Exhibit F annexed to the bill (pp. 34-36; 47, 48). A permit was accordingly issued, authorizing the alteration of this rear building into "a garage or poolroom" (p. 48). The building inspector testified that the original permit was displayed on the building, as required by law, during progress of the alterations (*ib.*).

This application, notwithstanding it was sworn to, was deceptive and false in fact, in that it exaggerated the dimensions of the land upon which the work was contemplated, giving dimensions of 32 feet by 180 feet (pp. 22, 35), whereas its actual dimensions are only 30 feet by 143 feet (pp. 5, 6, 51, 62); it depreciated the dimensions of the then-existing building (p. 22), giving 18 feet by 16 feet (p. 35), whereas the building was actually 18 feet in depth by 21 feet in width (p. 54), the full width of the lot, exclusive of the 9-foot alley (pp. 52, 62); and it misstated the purpose thereof to be a mere enlargement of a garage (pp. 35, 48, 55-57).

These misstatements are important in their relation to definite provisions of the Zoning Ordinance (Exh. C-1, at pp. 86, 87), relative to the size and bulk of buildings and proportionate areas to be built upon.

An application for a building permit should be a "frank assertion of believable facts."

> *Mannino* vs. *Moffett* (not yet officially reported), 153 Atl., 381.

Nevertheless, a permit was issued, authorizing only an addition to the garage for garage or poolroom purposes (p. 48). The Building Inspector frankly stated "It was immaterial to us what he used it for" (p. 48); that he was interested only in the construction part and not in the subsequent use of the altered building (p. 50) and it made no difference whether it was used for a garage or for the purpose of killing chickens (p. 51). No certificate of occupancy was ever issued, authorizing its use for other than garage purposes (p. 50).

It was in this rear building, when altered into a slaughterhouse, that the business of slaughtering poultry was inaugurated shortly before the filing complainants' bill in the cause on December 13, 1928 (p. 4), and where it was continued since (pp. 56-59, 62, 63, 64 and 71).

The Questions

presented upon this appeal are simple, but fundamental. Complainants insist that—

I.—The proscription of slaughtering in Plainfield is a valid and enforceable legislative enactment; because—

A.—It is not prohibited by the Constitution of the United States;

B.—It is in harmony with the Constitution of this State;

C.—It is within the lawfully delegated powers of local self-government; and

D.—It is a city-wide exercise of the police power.

II.—Complainants-appellants have suffered special damage sufficient to entitle them to the remedy of injunction.

I.

The proscription of slaughtering in Plainfield is a valid and enforceable legislative enactment.

Laws for the protection of property or preservation of health are a proper exercise of the police power. They are not among the powers delegated to the federal government or prohibited to the states, and so were reserved to the several states and to the people therof.

A—Local regulation, restriction or prohibition of slaughter houses is not contrary to the Constitution of the United States. Such legislation, state or municipal, is not prohibited by the "due process of law," "equal protection of the laws," "taking private property" or "impairment of contracts" clauses of the Constitution.

This subject naturally presents two aspects,—(1) the power of the state, through its legislature, to legislate concerning its own reserved police powers; and (2) the power of a municipality, a

creature of the state, to make valid regulatory provisions within the police power of the state and its own delegated authority. The principle of local self government depends upon the power of the state to delegate its authority to the extent indicated.

(1) This inherent power of the State itself is upheld in the *Slaughter-House Cases* (*The Butchers' Benevolent Assoc. of New Orleans* vs. *The Crescent City Live Stock, &c., Co.* and other cases), 16 Wall., 36; 21 Law. Ed., 394, in which it was *held,* by Miller, J., as follows:

> "The Act" (under review, being a State statute of Louisiana, relegating stock-yards and slaughter-houses to a remote place and creating a monopoly of their operation) "divides itself into two main grants of privilege, the one in reference to stock-landings and stock-yards, and the other to slaughter-houses."
>
> * * * * *
>
> "It is, however, the slaughter-house privilege, which is mainly relied on to justify the charges of gross injustice to the public, and invasion of private right.
>
> "It is not, and cannot be successfully controverted, that it is both the right and the duty of the legislative body, the supreme power of the State or municipality, to prescribe and determine the localities where the business of slaughtering for a great city may be conducted. To do this effectively it is indispensible that all persons who slaughter

animals for food shall do it in those places and nowhere else.

* * * * *

"The power here exercised by the Legislature of Louisiana is, in its essential nature, one which has been, up to the present period in the constitutional history of this country, always conceded to belong to the States, however it may now be questioned in some of its details.

" 'Unwholesome trades, slaughter-houses, operations offensive to the senses, the deposit of powder, the application of steam power to propel cars, the building with combustible materials, and the burial of the dead, may all,' says Chancellor Kent, 2 Com., 340, 'be interdicted by law, in the midst of dense masses of population, on the general and rational principle, that every person ought so to use his property as not to injure his neighbors; and that private interests must be made subservient to the general interests of the community.' This is called the police power; and it is declared by Chief Justice Shaw that it is much easier to perceive and realize the existence and sources of it than to mark its boundaries, or prescribe limits to its exercise. Com. vs. Alger, 7 Cush., 84.

"This power is, and must be from its very nature, incapable of any very exact definition or limitation. Upon it depends the security of social order, the life and health of the citizen, the comfort of an existence in a thickly populated community, the enjoyment of private and social life, and the beneficial use of property."

In the case of *Standard Oil Co.* vs. *City of Marysville,* 279 U. S., 582; 73 Law. Ed., 856, although the validity of a municipal ordinance was immediately in question, the decision nevertheless sustained the exercise of police power under State authority. It was *held,* per Stone, J., as follows:

"We need not labor the point, long settled, that where legislative action is within the scope of the police power, fairly debatable questions as to its reasonableness, wisdom and propriety are not for the determination of courts, but for that of the legislative body on which rest the duty and responsibility of decision.

"*Zahn* vs. *Board of Public Works,* 274 U. S., 325; 71 Law. Ed., 1074.

"*Hadacheck* vs. *Sebastian,* 239 U. S., 394; 60 Law. Ed., 348.

"*Euclid* vs. *Ambler Realty Co.,* 272 U. S., 365; 71 Law. Ed., 303.

"*Jacobsen* vs. *Massachusetts,* 197 U. S., 11; 49 Law. Ed., 643.

"*Laurel Hill Cemetery* vs. *San Francisco,* 216 U. S., 358; 54 Law. Ed., 515.

"*Thos. Cusack Co.* vs. *Chicago,* 242 U. S., 526; 61 Law. Ed., 472.

"*Price* vs. *Illinois,* 238 U. S., 446; 59 Law. Ed., 1400.

* * * * *

"The passage of the ordinance was within the delegated powers of the city council (Cities Service Oil Co. vs. Marysville, 117 Kan., 514, 43 A. L. R., 854, 231 Pac., 1031),

and it acted within its constitutional province in dealing with the matter as one affecting public safety.

"*Pierce Oil Corp.* vs. *Hope,* 248 U. S., 498; 63 Law. Ed., 381.

"From the facts as found it might, in the exercise of a reasonable judgment, have at least concluded that the danger of ignition to the tanks placed underground, under the conditions prevailing at Marysville, was no greater than when placed above-ground and that in the event of ignition the danger to life and property was very much less.

"We may not test in the balances of judicial review the weight and sufficiency of the facts to sustain the conclusion of the legislative body, nor may we set aside the ordinance because compliance with it is burdensome.

"*Chicago & Alton R. Co.* vs. *Tranbarger,* 238 U. S., 67, at page 77; 59 Law. Ed., 1204, at page 1211.

"*Hadacheck* vs. *Sebastian* (*supra*).

"*Rast* vs. *Van Deman &c., Co.,* 240 U. S., 342; 60 Law. Ed., 679.

"It does not preclude petitioners from locating their storage tanks without the city limits. Hence, the burden imposed upon them cannot be greater or otherwise more objectionable than that imposed by the enforced removal from cities by legislative action of dangerous or offensive trades or businesses.

"*Pierce Oil Corp.* vs. *Hope* (*supra*).

"*Hadacheck* vs. *Sebastian* (*supra*).
"*Reinman* vs. *Little Rock,* 237 U. S., 171; 59 Law. Ed., 900.
"*Euclid* vs. *Ambler Realty Co.* (*supra*)."

In *Welch* vs. *Swasey,* 214 U. S., 91; 53 Law. Ed., 923, the federal Supreme Court upheld statutes of the Massachusetts legislature which arbitrarily imposed varying limitations upon the height of buildings in different sections of the city of Boston.

(2) Municipal ordinances dealing with subjects of state jurisdiction and within the scope of their delegated authority, or held by the courts of the state so to be, will not be disturbed by the federal courts.

Standard Oil Co. vs. *City of Marysville* (*supra*).
Jefferson City Gas-Light Co. vs. *Clark,* 95 U. S., 644; 24 Law. Ed., 521.
Northwestern Fertilizing Co. vs. *Hyde Park,* 97 U. S., 659; 24 Law. Ed., 1036.

In *Bissell* vs. *City of Jeffersonville,* 24 How., 287; 16 Law. Ed., 664, it was *held*

> "Laws to obviate mistakes and irregularities in the proceedings of municipal corporations when they do not impair any contract or injuriously affect the rights of third persons, are within the competency of the legislative authority."

In *Lee County* vs. *Rogers,* 7 Wall., 181; 19 Law. Ed., 160, the Supreme Court upheld an enabling act of the Iowa legislature, which ratified an unau-

thorized issue of county bonds, and *held* valid and enforceable the bonds so validated.

The two decisions lastly above cited are important to us chiefly in their relation to Section 7 of Chapter 274 of the Laws of New Jersey for 1928, which extended to municipal zoning ordinances, previously enacted, the principles of the constitutional amendment, then recently adopted, thereby enlarging their scope to coincide with their expressed purpose; of which further consideration will be had *infra*.

It thus appears that there is no federal obstacle to the adoption by states or their political subdivisions of legislative acts within the police power. By statute or by ordinance fire districts may be created and modified or dissolved; frame buildings may be prohibited or restricted to localities or subjected to conditions arbitrarily defined; and maximum heights for buildings may be prescribed.

Welch vs. *Swasey* (*supra*).

Businesses may be segregated or restricted, or driven beyond the corporate bounds, and monopolies may be created.

Slaughter-House Cases (*supra*).

A business otherwise lawful may be interdicted.

Powell vs. *Pennsylvania*, 127 U. S., 678; 32 Law. Ed., 253.

Transportation may be curtailed or abolished, except within the scope of interstate commerce; and even in this field, with some enablement by Congress, or without such sanction when the pub-

lic health is involved, designated commodities may be excluded from transportation into a state.

Seaboard A. L. R. Co. vs. *No. Carolina,* 245 U. S., 298; 62 Law. Ed., 299.
Smith vs. *St. Louis & S. W. R. Co.,* 181 U. S., 248; 45 Law. Ed., 847.

Even before the taking effect of the 18th amendment to the United States Constitution, this was accomplished by concurrent acts of Congress and state legislatures. Demonstrably the infirmity was only an incident to the distribution of powers under the constitution and not due to any proscription implied from its terms; for statutes cannot modify or deflect the application of a constitutional provision.

The national constitution does not even impose the "rule of reason"; police regulations may be discriminatory, provided they are not confiscatory. Fire limits must necessarily be arbitrary, —"the line must be drawn somewhere."

B—Prohibition of slaughterhouses within defined limits is in harmony with the Constitution of this State. Zoning regulations are both arbitrary and discriminatory; city-wide regulations may be arbitrary, but are not discriminatory. To be effective, a zoning ordinance must be discriminatory, and the discrimination must be arbitrary. Application of their regulations must depend on the accident of location, which is abstract and positive; rather than upon mere position, which is concrete, or upon proximity, which is relative. Before the advent of zoning legislation, the height of buildings had been regulated in relation to the width of adjacent streets. Formerly saloons, and

latterly garages, have been excluded from the neighborhoods of churches and schools; although a brothel would elsewhere be less innocuous than within the sphere of influence of a church. Under a zoning ordinance, nothing more ponderable than a zone-boundary line directs its varying applications.

In a state where special or class legislation is constitutionally restricted, as in New Jersey (N. J. Constitution, Art. IV, Sec. VII), it required little of divination to predict the judicial attitude toward the earlier attempts at zoning legislation, previous to the recent constitutional amendment on that subject. It is fundamental, at least in New Jersey, that while general legislation, as distinguished from class legislation, may differentiate between classes, yet the classification must be positive and based upon considerations having some relation to the purpose of the law; but this principle was subversive of the theory and intent of zoning legislation and led to nullification of much that the legislature and some of the municipal governing bodies sought to accomplish in the way of zoning. A zoning ordinance could not be given effect where it ran counter to the "rule of reason," as it was inherent they must.

It was the purpose and effect of the constitutional amendment of 1927 to remedy this defect.

In 1917 the Legislature enacted "An act concerning municipalities" (ch. 152, p. 319), which, *inter alia,* granted power to municipal governing bodies, as follows:

* * * * *

(n) To regulate and control the construction, erection, alteration and repair of build-

ings and structures of every kind in such municipality.

(o) To prohibit within certain limits the building, erection or alteration of any building or structure of wood or combustible materials.

(p) To regulate the use, storage, sale and disposal of inflammable or combustible materials, and to provide for the protection of life and property from fire, explosions and other dangers; and to provide for inspections of buildings, docks, wharves, warehouses and other places, and any goods and materials therein contained to secure the proper enforcement of such ordinances.

* * * * *

(ee) To regulate the size, height and dimensions of any and all division or partition fences between the lands of any two or more adjoining owners, &c.

There is nothing in this act which warrants the exercise of the ample powers conferred thereby, except by general ordinances, applicable throughout the whole territory of the municipality, nor any authority for the creation of zones wherein varying requirements would prevail, except as to fire limits. Nevertheless, power was conferred to regulate, by city-wide provisions, (n) building operations, (o,p) fire protection, (p) inspection of buildings and (aa) line fences. Plainfield's legislation on the subjects of building inspections, conforming to building permits, when granted, and necessity for certificates of occupancy is city-wide

and general, and it is these provisions, among others, that defendants have violated.

C—Regulation or abolition of slaughterhouses and the business of slaughtering is a duly-delegated function of the City of Plainfield. The present Zoning Ordinance of the City is a valid exercise of that delegated power.

In 1920 the Legislature enacted an act entitled "Supplement to an act entitled 'An act concerning municipalities,' approved March 27, 1917" (ch. 240, p. 455), the pertinent portion of which provided as follows:

> 1. The governing body of each and every municipality in this State shall have power by ordinance to regulate and restrict the location thereafter of trades and industries and the subsequent location of buildings designed for a specified use in any designated area, and may divide the municipality into districts of such number, shape and area as it may deem best suited to carry out the purposes of this act. For each such district regulations may be improved (*sic*) designating the trades and industries that shall be excluded or subjected to special regulations and designating the uses for which buildings may not be erected or altered. Such regulations shall be designed to promote the public health, safety and general welfare. The governing body or other body having control of the streets shall give reasonable consideration, among other things, to the character of the district, its peculiar suitability for particular uses, the conservation of property values,

and the direction of building development in accord with a well considered plan.

Although the statute lastly above cited was repealed by Section 11 of Chapter 146 of the Laws of 1924 (*infra*), yet it is important because it formed the basis of many of the judicial decisions on the question of zoning; and it was in force when the Zoning Ordinance of the City of Plainfield was adopted and took effect; but this and other ordinances enacted under the authority of the act of 1920 were expressly perpetuated by Section 6 of the later act (Laws of 1924, ch. 146, sec. 6, at p. 326).

In *Ignaciunas* vs. *Risley,* 98 N. J. L., 712, it was *held* that an ordinance of the Town of Nutley, enacted under the assumed authority of the act of 1920, was incapable of justifying the refusal of a building permit for a combined store and residence building in Residence Zone B of the town, which the ordinance attempted to restrict to exclusive residence purposes. Defendants attempted to justify the denial of a building permit under the police power, as affecting the public health, but Katzenbach, J., writing for the Supreme Court, said:

> "The defendants do not claim that a grocery and meat store is a nuisance in a residence locality or elsewhere. They claim that the health and safety of the public demand the exclusion of stores in residential districts, for the following reasons: The first is that people in their homes need quiet, especially when ill and during the early morning hours. A store brings noise by the coming and going of customers and the delivery of

merchandise. We see no relation between stores and noise." * * * "Some stores are noisy; some are quiet. The same is true of homes. On the ground we see no justification for invoking the police power to exclude stores from residential districts."

The judgment of the Supreme Court was unanimously affirmed by the Court of Errors and Appeals (99 N. J. L., 389), with opinion by Gummere, C. J., containing the following:

"The Supreme Court in disposing of the application for a peremptory writ assumed, for the purpose of its decision, that the ordinance in question was authorized by the statute and held that the legislation was void so far as it permitted the town of Nutley to prohibit the relator from erecting a combined store and dwelling upon his lot, for the reason that it was violative of the rights of private property guaranteed to him by the federal and state Constitutions, and consequently was not justified as an exercise of the police power of the state.

"We do not find that a consideration of this fundamental principle is required by us in determining the present appeal. And for this reason: The Legislature in its grant of power to the several municipalities of the state to regulate the use to which a property owner may put his property, even to the extent of prohibiting its use for a particular purpose, limited that power by the provision of the statute that such regulation must 'be designed to promote the public health, safety and general welfare.' If, therefore, the ordinance,

in its application to the property of any particular owner, does not come within the limitation of the statute, to that extent it is without legal justification and void."

In an extensive annotation on the subject of "New Jersey Cases" in 54 A. L. R., at pages 1049, *et seq.*, it is stated:

"In New Jersey the courts have continued to follow the authority of Ignaciunas vs. Risley (1923), 98 N. J. L., 712, 121 Atl., 783, affirmed in (1924) 99 N. J. L., 389, * * *. It is perhaps advisable again to call attention to the fact that the Court of Errors and Appeals in that case did not pass on the constitutional question, holding, instead, that the ordinance there involved, in so far as it prohibited the erection and uses of a combined store and dwelling in residential district was not within authority conferred by statute upon municipalities, empowering them to enact zoning ordinances designed to promote 'the public health, safety, and general welfare.' "

In a multitude of later cases, many of them in the Court of Errors and Appeals, in which this principle was considered, the authority of *Ignaciunas* vs. *Risley* (*supra*) was invariably followed and never questioned; until, upon adoption of the constitutional amendment in 1927, a different rule became applicable. The effect of this constitutional change, and of the act passed by the legislature at its succeeding session (1928), was to legitimize the arbitrary division of a municipality into zones and the arbitrary application to the

respective zones of different regulations concerning structures and uses, based upon no other or greater distinctions than those of mere locality.

It is not contended, or even admitted, that adoption of the constitutional amendment or the passage of the enabling act which gave effect to its provisions was essential to the validity of these regulations of the Plainfield Common Council which defendants have violated; since in these regards the provisions of the Zoning Ordinance applied equally to the whole City. Thus, throughout the whole City, it was unlawful (1) to build an unauthorized structure or make unauthorized alterations to an existing structure; (2) to occupy a building for an unauthorized purpose, or devote it to an unauthorized use; or (3) to conduct the business of slaughtering animals. These matters are clearly within the police power of the state; authority to legislate locally concerning them was conferred upon the Plainfield Common Council; and this authority was exercised by means of a general ordinance, which, in these regards at least, had general application throughout the entire City, regardless of zones.

By Chapter 162 of the Laws of 1922 (approved March 11, 1922), it was provided as follows:

> "1. The governing body or other body having control of streets in each and every municipality in this State shall have power by ordinance to regulate and restrict the location thereafter of trades, industries and residences" * * *. "For each such district regulations may be imposed designating the trades and industries that shall be excluded or subjected to special regulations and designating the uses for which buildings may not be

erected or altered. Such regulations shall be designed to promote the public health, safety and general welfare. The governing body shall give reasonable consideration, among other things, to the character of the district, its peculiar suitability for particular uses, the conservation of property values, and the direction of building development in accord with a well considered plan."

By Chapter 234 of the Laws of 1922 (approved March 13, 1922), it was provided as follows:

"1-a. * * * Such regulations shall be uniform for each class of buildings throughout any district, but the regulations in one or more districts may differ from those in other districts. Such regulations shall be designed to secure safety from fire and other dangers and to promote the public health and welfare, including, so far as conditions may permit provision for adequate light, air and convenience of access, and shall be made with reasonable regard to the character of buildings erected in each district, the value of land and the use to which it may be put, to the end that such regulations may promote public health, safety and welfare and the most desirable use for which the land of each district may be adapted and may tend to conserve the value of buildings and enhance the value of land throughout the municipality."

In the year 1927, at a special election called for the purpose, the constitutional amendment relating to zoning legislation was adopted by a majority of the votes cast; and the governor, by procla-

mation dated October 18, 1927, proclaimed it in force. This amendment is as follows:

> "3. To section six of Article IV of the State Constitution add a new paragraph to be known as paragraph 'five,' which shall read as follows:
>
> "5. The Legislature may enact general laws under which municipalities, other than counties, may adopt zoning ordinances limiting and restricting to specified districts and regulating therein, buildings and structures, according to their construction, and the nature and extent of their use, and the exercise of such authority shall be deemed to be within the police power of the State. Such laws shall be subject to repeal or alteration by the Legislature" (Pamph. Laws, 1928, pp. 820, 821).

Since zoning ordinances, as such, had never been declared unconstitutional by the courts of this State or of the United States, the effect of numerous State decisions having been merely to restrict their application to instances where physical differences justifying the discrimination in question were found to exist, this constitutional amendment did not operate merely to sanction the enactment of future zoning ordinances, nor to revive existing state or municipal legislation on the subject, nor to validate any municipal ordinances previously enacted; but rather to remove a bar, previously held to exist, to some aspects of their enforcement. The net result was therefore that existing municipal ordinances, never invalidated, but merely restrained as to the extent

of their applicability, became enforceable, regardless of previous limitations which made discriminations dependable upon the question of reasonableness.

The phraseology of the constitutional amendment of 1927 is at least significant. The legislature is authorized to *enact* general laws under which municipalities may *adopt* zoning legislation of the characteristically discriminatory type. Adoption connotes acceptance of an existing situation,—a child *adopted* must necessarily be one already in existence.

This indicates that it was wholly unnecessary that either state legislation or municipal ordinances on this subject should be re-enacted; nor was it necessary that the state legislature should, by any enabling act, give force to municipal zoning ordinances previously adopted. This is the rationale of the decision in *Koplin* vs. *Village of South Orange* (not offic. rep.), 142 Atl., 235, which related to a cause of action which arose in the month of March, 1927, previously to the adoption of the constitutional amendment or the subsequent (1928) enabling act. In this case it was held:

> "Supreme Court takes judicial notice of chapter 274, P. L., 1928, authorizing municipalities to adopt zoning ordinances limiting and restricting to specified districts and regulating therein buildings and structures according to their construction, nature, and extent of their use.
>
> "Under P. L., 1928, c. 274, secs. 3-5, 7, enacted pursuant to power conferred by constitutional amendment submitted to and ratified by voters, and authorizing municipalities to adopt zoning ordinances with a provision

therein serving existing ordinances, mandamus will not issue to require permit for construction of apartment house in residential district prohibited by municipal zoning ordinance passed in 1922, since whether retroactive provision brings ordinance within police power of state or not, there is nevertheless no vested right controlling in the exercise of discretion in issuance of writ of mandamus unless permit is issued and work actually commenced thereunder."

In the *per Curiam* opinion in this case is cited and followed the authority of *Rohrs* vs. *Zabriskie* (not offic. rep.), 133 Atl., 65, in which retroactive effect is given to an ordinance of the Village of Ridgewood, prohibiting within a designated area, the erection of any building exceeding 3 stories in height; and the refusal, prior to enactment of the ordinance, of a permit to erect such a building within such area, was held to be justified and mandamus refused to the property owner, applicant for the permit. In *Koplin* vs. *Village of South Orange* (*supra*), the court, commenting upon *Rohrs* vs. *Zabriskie,* holds as follows:

"We believe that the principle declared in that decision is conclusive of the present case in this court. It therefore follows that the writ applied for must be denied. For we believe it to be immaterial whether the changed conditions arise from an intervening valid municipal ordinance, as in that case, or from a statute enacted pursuant to an amendment of the Constitution of the state, as in this case. Under the authority of the Zabriskie case, the writ of mandamus being

discretionary, there can be no vested rights that control the exercise of that discretion, unless a permit is issued and work actually commenced thereunder."

At the next session (1928), the legislature enacted a comprehensive act entitled "An Act to enable municipalities to adopt zoning ordinances limiting and restricting to specified districts and regulating therein buildings and structures, according to their construction, and the nature and extent of their use, and the repeal of sundry zoning laws" (Laws, 1928, chapter 274, p. 696) which conferred upon municipal governing bodies authority to enact zoning legislation, as comprehended by the constitutional amendment.

Section 3 of the act provides that the limitation and restriction, by means of a zoning ordinance, of the nature and extent of the uses to which buildings may be put, shall be deemed to be within the police power of the state; and that same shall include the right to regulate and restrict, among other things, "the location and use of and extent of use of buildings and structures for trade, industry, residence or other purposes."

Section 4 authorizes the creation of zones, to which varying restrictions may be applied.

Section 5 requires that restrictions be laid in accordance with a comprehensive plan, to lessen street congestion, secure safety from fire and other dangers, promote health, morals or general welfare, provide adequate light and air, prevent overcrowding or undue concentration of population, and with reasonable consideration for the character of the district.

Section 7, which has peculiar application to the Plainfield Zoning Ordinance, which was enacted

and took effect on April 2, 1923, provides as follows:

> "7. Existing Zoning Ordinances Saved. Whenever any municipality shall have adopted an ordinance, or ordinances, prior to the adoption of this act, for any of the purposes set forth in this act, such ordinance, or ordinances, shall continue in effect as if they had been adopted under the provisions of this act; and it shall not be necessary in such cases for the governing body or board of public works to appoint a zoning commission as provided by section six herein. All such ordinances shall remain in full force and effect, except in so far as they are inconsistent with the provisions of this act, until they shall have been amended, or repealed by the governing body or board of public works."

This brief review of legislation now in force indicates that the governing body of the City of Plainfield,—which under the charter is the Common Council,—has authority to legislate locally concerning all 3 of the particular derelictions,—commission of at least the physical acts constituting which, the defendants have admitted.

D—The prohibition of slaughterhouses is city-wide and not discriminatory.

Power to regulate or prohibit slaughter houses and slaughtering of animals within the city limits was inherent in the Common Council under the city charter and was expressly delegated to it, under the general police powers of protecting the health, morals and welfare of the people, by vari-

ous acts relating to municipal corporations, which are not confined wholly to zoning acts. The Common Council has, by general ordinance, declared these practices to be detrimental to the public health and welfare and has prohibited them throughout the entire city.

Plainfield is divided into 8 zones: Residence Zones "A," "B," "C" and "D"; Business Zones "No. 1" and "No. 2"; Light Industrial Zones and Heavy Industrial Zones.

Section V of the Zoning Ordinance, in subdivision 32, prohibits "slaughtering of animals" in a Heavy Industrial Zone; Section IV, subdivision 7, prohibits in a Light Industrial Zone "any trade, industry or use prohibited in a Heavy Industrial Zone," including "slaughtering of animals"; Section III, subdivision 17, prohibits in any Business Zone, "any trade, industry or use prohibited in an industrial zone," including "slaughtering of animals"; Section II limits the permitted uses in any Residence Zone, including those designated as "A," "B," "C" and "D," to those generally classed as residential or accessory thereto, such as dwellings, hotels, churches, schools, clubs, railroad passenger stations, farms and horticultural establishments, but wholly excluding all industrial uses, such as "slaughterhouses." Thus, slaughtering being prohibited in every zone of the city, it follows that the prohibition is city-wide.

The other provisions violated by defendants are equally applicable to the entire city. There is no discrimination in requiring everybody to apply for and take out a permit from the Superintendant of Buildings before beginning construction of a new building or alterations or additions to one already

standing; nor requiring that the purposes specified in the permit, when issued, shall be strictly adhered to; nor in requiring that a building shall not be occupied without a proper 'certificate of occupancy'; nor in requiring that a building shall be occupied for the use intended, and shall not be devoted to nor used for any prohibited use or any use for which it was not adapted.

The learned trial court *held* in his "conclusions" (p. 81), as follows:

> "Complainants' theory of rights to values based upon an 'arbitrary' zoning ordinance, therefore cannot be maintained unless this ordinance has been subsequently validated,—for it is still the only ordinance passed by Plainfield in that behalf. It seems clear that the ordinance has not been validated. The constitutional amendment of 1927 speaks in futuro and does not purport to give the legislature authority to validate zoning ordinances adopted prior to the amendment. The act of 1928 (P. L. 1928, p. 696), purporting to validate such prior ordinances would therefore seem unconstitutional for that reason, and also for the reason that the title of that act in no wise expresses that the act is intended to validate ordinances previously adopted."

It may be suggested that the accomplishing of "adopting" may be effected passively as well as actively; that refraining from a given act connotes adoption of the contrary course. The Common Council might and did, under legislative sanction, adopt its own ordinance of 1923 by omitting to disavow it in 1928. It therefore fulfilled the

conditions even of an act which spoke "*in futuro.*" Equally conformable was the Act of 1928 to the constitutional amendment of October 18, 1927, when it empowered municipalities to adopt their previous zoning ordinances (the amendment does not say "enact") by the passive method.

It seems that the object of the act of 1928 was sufficiently expressed in its title.

Mortland vs. *Christian,* 52 N. J. L., 521.
Walter vs. *Town of Union,* 33 N. J. L., 350.
Newark vs. *Mt. Pleasant Cemetery Co.,* 58 N. J. L., 168.
Easton &c. R. Co. vs. *Central R. Co. of N. J.,* 52 N. J. L., 267.

This act, the title of which is "An Act to enable municipalities to adopt zoning ordinances limiting and restricting to specified districts and regulating therein buildings and structures, according to their construction, and the nature and extent of their use, and the repeal of sundry zoning ordinances" (Laws of 1928, ch. 274), was passed by right of the constitutional amendment of 1927 (of later date than par 4, sec. 7 of Article IV of the State Constitution, and by implication an amendment thereof), which contained no provision as to the singleness of its purpose, nor the inclusion thereof in its title.

It was *held* by the Supreme Court in *Werblin* vs. *Wigton, et als.,* now on appeal in this court (Court of Errors and Appeals, May Term, 1931, No. 157), as follows:

> "The City of Plainfield is zoned pursuant to an ordinance whose validity is now questioned in the present case. * * *

"The next point is that the Act of 1928, page 696, section seven, is unconstitutional because the object of the legislation in section seven is not expressed in the title. The act was that passed in pursuance of the constitutional amendment of 1927 and considered at some length by the Court of Errors and Appeals in the case of *Durkin Lumber Co.* against *Belleville,* 147 Atl., 555.

"The effect of section seven is generally that where a municipality has adopted a zoning ordinance before the passage of the act, such ordinance shall continue in effect as though it had been adopted under the provisions of the Act of 1928; and it is now claimed that the title of the act of 1928, namely, 'An act to enable municipalities to adopt zoning ordinances limiting and restricting to specified districts and regulating therein buildings and structures according to their construction and the nature and extent of their use, and the repeal of sundry zoning laws,' does not constitutionally express an intent to validate for the future the zoning ordinances passed before this act took effect.

"We are not impressed with this argument, particularly as the Court of Errors and Appeals in three very recent cases distinctly held that this statute validated preexisting zoning ordinances. *Steinberg* against *Board,* 146 Atl., 318; *Paramount Realty Co.* against *Irvington,* 146 Atl., 319, and *Marlyn Realty Co.* against *West Orange,* 146 Atl., 320. In the case of *Durkin Lumber Co.* against *Belleville,* already cited, which, which was a carefully argued and fully considered case, the point does not seem to have occurred to either

counsel or the court. In view of these decisions, we consider it to be sufficiently settled, at least so far as this court is concerned."

This court *held,* in *Steinberg* vs. *Board of Adjustment of Nutley* (not officially rep.), 146 Atl., 318, as follows:

"The decision of the Supreme Court was rendered on May 1, 1928; subsequent to the adoption of the Zoning Amendment to our Constitution (article 4, sec. 6, par. 5; see P. L. Sp. Sess., 1927, p. 818 D, which took effect October 18, 1927, and the enactment of the Statute of April 3, 1928, P. L., p. 696) passed pursuant to the power vested in the Legislature by that amendment. *This statute validated pre-existing zoning ordinances passed by the various municipalities of the State;* and it was held by the Supreme Court in Koplin vs. South Orange, 142 A., 235, 6 N. J. Misc. R., 489, that as the zoning ordinance of that municipality had been validated before the decision of the case by the Court, the action of the building inspector in refusing to issue a permit for the erection of an apartment house in a district where such buildings were prohibited must be held valid, even if the ordinance, at the time of its adoption, was invalid so far as the right of the prosecutors in that case were concerned. The case was appealed to this Court. * * * The judgment of the Supreme Court was affirmed by us, for the reasons stated in the opinion delivered by it.

Following our decision in the Koplin case, we conclude that the judgment under review must be affirmed."

II.

Appellants have suffered special damage in the premises, sufficient to entitle them to the remedy of injunction.

The court will take judicial notice of the nature of the slaughtering industry, with its distressful sounds, noisome odors and dangerous emanations. Total prohibition of this offensive and health-menacing business has been shown (*supra*) to be not contrary to the federal or state constitution and, particularly where a closely built-up community is concerned, exercise of this function by state or municipal authorities is peculiarly appropriate.

Slaughter House Cases (*supra*).
Greenstein vs. *Bigelow* (not offic. rep.), 135 Atl., 661.

In the *per Curiam* opinion in the case lastly cited, it is *held:*

> "From the proofs before us we conclude that the provisions of the zoning ordinance, prohibiting a building to be erected upon the property in question for use as a place for the slaughter and dressing of poultry are not unreasonable, but, on the contrary, are a reasonable exercise of the police power of the city of Newark."

Bispham, in his Principles of Equity, treating of the subject of Injunctions as applicable to Nuisances, writes:

Nuisances are either public or private. A private nuisance is an injury to the property of an individual. A public nuisance is an injury to all persons who come within the sphere of its operation.

439. The remedy for public nuisance is by information by the attorney general. The attorney general may likewise proceed by bill in equity; and if an individual has also sustained special damage over and above the public injury, he also may proceed by bill (Bispham's Prin. of Eq., 4th Ed., secs. 438, 439).

* * * The modern doctrine may be stated in general terms to be that equity has concurrent jurisdiction with courts of law in all cases of private nuisance, the interference of chancery in any particular case being justified on the ground of restraining irreparable mischief, or of suppressing interminable litigation, or of preventing multiplicity of suits (*ib.*, sec. 439).

Now, if the complainant's legal right is admitted, or if it be clearly established, then his right to an injunction is plain. But if it is manifest that the complainant has no legal right, the injunction must be refused (*ib.*, sec. 440).

Injunction is the usual, appropriate and only efficacious remedy, in this state, for the protection of property rights against the aggressions of neighboring property owners, not amounting to trespasses; and owners or occupants of land, suffering or threatened with injury to their property, whether tangible or intangible, will not be remitted to a remedy at law, even where such

remedy exists and is measurably compensatory. The *crux* is the existence of a *right infringed* or *threatened* with infringement.

While property is peculiarly a subject of the court's solicitude, yet injunctive relief is appropriately afforded for the protection of the right of personal safety, guaranteed by both federal and State constitutions, including the safeguarding of health. The health and, to a measurable extent, the comfort of the occupant are so inextricably bound up in the beneficial *user* of land as to form part of the *rei.*

Roessler, etc., Chemical Co. vs. *Doyle,* 73 N. J. L., 521.
Meigs vs. *Lister,* 23 N. J. Eq., 199.
Laird vs. *Atlantic Coast Sanitary Co.,* 73 N. J. Eq., 49.

Injunction is the appropriate remedy to protect real estate against a variety of aggressions; to restrain waste:

Van Derveer vs. *Tallman,* 1 N. J. Eq., 9.
Scudder vs. *Trenton Del. Falls Co.,* 1 N. J. Eq., 694.
Chenango vs. *Cox,* 26 N. J. Eq., 452.
Peer vs. *Wadsworth,* 67 N. J. Eq., 191.

repeated or continuing trespasses, including encroachments by buildings:

Rogers Locomotive, etc., Works vs. *Erie R. Co.,* 20 N. J., 379.
Southmayd vs. *McLaughlin,* 24 N. J. Eq., 181.
Capone vs. *Ranzulli,* 99 N. J. Eq., 627.

unlawful entry:

Johnston vs. *Hyde,* 25 N. J. Eq., 454.

cutting timber:

Kerlin vs. *West,* 4 N. J. Eq., 449.

nuisance:

Roessler, etc., Chemical Co. vs. *Doyle* (*supra*).
Meigs vs. *Lister* (*supra*).
Sayre vs. *Mayor, etc., of Newark,* 58 N. J. Eq., 136.
Laird vs. *Atlantic Coast Sanitary Co.* (*supra*).
Ross vs. *Butler,* 19 N. J. Eq., 294.

including restraint of a public nuisance, in behalf of one or more individuals suffering peculiar injuries:

Roessler, etc., Chemical Co. vs. *Doyle* (*supra*).
Lippincott vs. *Lasher,* 44 N. J. Eq., 120.
Ross vs. *Butler* (*supra*).

violations of restrictive covenants in deeds:

Richards vs. *Burdsall,* 10 N. J. Eq., 274.
Schreiber vs. *Drosness,* 100 N. J. Eq., 591.
Haskell vs. *Wright,* 23 N. J. Eq., 389.

Injunction will not issue to safeguard the lives, safety, health or well being of the public, as such,

where it is resorted to merely as an expedient to enforce the criminal law:

Green vs. *Piper,* 80 N. J. Eq., 288.

but if individuals suffer damage peculiar to themselves, by reason of propinquity or other causal circumstance, injunction will lie for their protection.

Gilbough vs. *West Side Amus. Co.,* 64 N. J. Eq., 27.
Roessler, etc., Chem. Co. vs. *Doyle* (*supra*).
Ross vs. *Butler* (*supra*).
Lippincott vs. *Lasher* (*supra*).
Carbaljal vs. *Vivien Ice Co.,* 158 La., 784; 104 So., 715; 41 A. L. R., 623 (annotated at 41 A. L. R., 626).
Audette vs. *O'Cain,* 39 Can. S. C., 103.
Brokaw vs. *Carson,* 74 W. Va., 340; 81 S. E., 1133.

This is true even though the wrongful act be a crime and the effect of the injunction be to prohibit its commission.

McMillan vs. *Kuehnle,* 76 N. J. Eq., 256.
Gilbough vs. *West Side Amus. Co.* (*supra*).

In *Green* vs. *Piper* (*supra*) it is *held,* per Emery, V.-C., as follows:

"Courts of equity, on proper occasion, interfere to protect property rights, and for this purpose sometimes interfere when the acts complained of are crimes; but they never exercise a jurisdiction based solely on the

right of a suitor or citizen to prevent the commission of a crime or its continuance."

This is also the rationale of the decision, by Backes, V.-C., in *Maplewood Township* vs. *Margolis* (not yet offic. rep.), 136 Atl., 707, in which the township sued for injunction to restrain erection of an apartment house in violation of a prohibitory provision contained in the local zoning ordinance, which had already been declared invalid by the Supreme Court, in directing issuance of a peremptory mandamus for a building permit (*Margolis* vs. *Maplewood Township* [not offic. rep.], 135 Atl., 662); and it appeared that resort was had to the equity court in order to make a reviewable case, the issuance of mandamus being deemed to have rested in the discretion of the court and not to have involved the equities of the situation. It appeared also that in the prior, or mandamus, suit an attempt had been made to bring in as additional parties respondent several owners of property adjacent to that of the relator upon the ground that they were entitled to assert rights inhibitory to the erection of an apartment house in that locality, by virtue of a restrictive covenant or covenants contained in one or more deeds; but that their right to intervene was denied by the court. The learned Vice-Chancellor, in the injunction suit, calls attention to the illegality, already found to exist in the zoning provision, citing *Margolis* vs. *Maplewood Township* (*supra*), *Ignaciunas* vs. *Nutley* (*supra*) and *Jersey Land Co.* vs. *Scott,* 100 N. J. L., 45; ignores the supposed rights of adjacent property owners under the assumed contractual restrictions, they properly being strangers to the injunction suit; and proceeds *obiter* to discuss the propriety of injunc-

tion as a remedy, had the zoning provision been valid and enforceable, as follows:

> "If the ordinance were authorized by law, and the law provided no adequate remedy and protection, equity undoubtedly would lend aid, but, as the case stands, the township has no legal right; it has no lawful ordinance in respect of the matter upon which it rests its prayer for relief."

Since the rights of adjacent owners under restrictive covenants were expressly excluded, and only the provisions of the zoning ordinance were under consideration by the Court, this is a distinct recognition of injunction as a remedy for violation of a zoning regulation.

It is perinent to observe that this and all of the cases cited in the same connection arose before adoption of the constitutional amendment and the subsequent legislation which gave it direction and effect. The stated purpose of recent zoning legislation is to enhance the usefulness and value of neighboring properties in the interests of their owners and to inaugurate a scheme of uniform development for their peculiar advantage.

The purpose for which injunctions issue are manifold and diverse. Given a right susceptible to enforcement, practically any deprivation of or encroachment upon that right may be enjoined by exercise of the broad power of the equity jurisprudence, whether it occur through voluntary agression, sufferance or mere desuetude. This power is inherent in the Court and not necessarily dependent on any statute, although the right to be conserved may have its origin in a statute.

The right to the indicated redress may arise *ex contractu,* as in case of a building restriction,

which is express; or a prescriptive right, which presuppose an ancient grant; or by operation of law, whether common law or statutory.

In *Ocean City Assoc.* vs. *Schurch,* 57 N. J. Eq., 268, it is held, by *Grey,* V.-C., as follows:

> "but if the act to be restrained constitutes a crime only, and is not destructive of property, nor of a character which will result in pecuniary damage, an injunction will not be allowed."

Nevertheless the rule is well settled that where the intervention of equity by injunction is warranted by the necessity of protection to civil rights or property interests, the mere fact that a crime or statutory offence must be enjoined as incidental thereto will not operate to deprive the court of its jurisdiction.

22 Cyc., 902.
Cumberland Glass Mfg. Co. vs. *Glass Bottle, &c., Assoc.,* 59 N. J. Eq., 49.
Barr vs. *Essex Trades Council,* 53 N. J. Eq., 101.
In re Debs, 158 U. S., 564; 39 Law. Ed., 1092.
Union Pac. R. Co. vs. *Ruef,* 120 Fed., 102.
United States vs. *Elliott,* 64 Fed., 27.
Juvenile Delinq. Ref. Assoc. vs. *Diers,* 60 Barb. (N. Y.), 152.

In the *Debs* case (*supra*) it was held by the federal Supreme Court that something more than the threatened commission of an offense against the laws of the land is necessary to call into ex-

ercise the injunctive power of the courts; that there must be some interference, actual or threatened, with property or rights of a pecuniary nature; but that when such interferences appear, the jurisdiction of a court of equity arises and is not destroyed by the fact that they are accompanied by or are themselves violations of the criminal law. So, a combination to arrest the operation of railroads engaged in interstate commerce, which constituted an unlawful conspiracy in restraint of commerce among the states, was enjoined, notwithstanding the acts constituted crimes.

It is the right exclusively, whether public or private, which is cognizable in a court of equity, —not the penalty which the law attaches to its violation. This is the principle which underlies such cases as *Green* vs. *Piper* (*supra*) and *Ocean City Assoc.* vs. *Schurch* (*supra*), in which injunctions to prevent violations of the Vice and Immorality Act were refused.

It would be futile to look to any statute to estimate or delimit the equity power of injunction; that jurisdiction is inherent under the constitution and beyond the power of the legislature to amplify or restrict.

N. J. Const., Art. VI, Sec. IV, Subd. 1.
West Jersey & S. R. Co. vs. *Atlantic City & S. T. Co.*, 65 N. J. Eq., 613.

Nevertheless, a competent legislative body may create or declare rights which thereby become enforceable in a constitutional court.

Section 65 of the General Corporation Act (Revision of 1896), as amended by chapter 300 of the laws of 1912 (Comp. Stat., 1st Supp., 425, sec.

33), authorizes application by a creditor or stockholder for an injunction restraining a corporation from functioning as such, where insolvency or other cause specified in the act appears; and purports to confer authority upon this court to issue injunctions in such cases; but this in no wise extends the jurisdiction of the court;—the title of the act, "An Act concerning corporations," indicates this. It merely created a new right of action, or defined an old one, to which the inherent power of the court attached.

Rawnsley vs. *Trenton, &c., Ins. Co.*, 9 N. J. Eq., 95.
Same case, *ib.*, 347.
Pierce vs. *Old Dominion Copper, &c., Co.*, 67 N. J. Eq., 399.

Section 7 of the act of 1884, concerning taxation of corporations (4 Comp. Stat., 5292, sec. 507), authorized the attorney general, upon his own initiative or at the request of the state comptroller, to apply for an injunction against a corporation defaulting in payment of its taxes, and undertook to empower this court to grant injunctions in such cases. This provision operated merely to create a statutory remedy for the violation of a statutory duty, but its effect was not to endue the court with any additional powers. This is evident from the decision of Bird, V.-C., in the two cases, *In re Electro Pneumatic Transit Co.* and *In re Bookwalter Steel, &c., Co.*, 51 N. J. Eq., 71.

By the act of 1899, entitled "An Act to secure the purity of the public supplies of potable waters in this state" (Laws, 1899, ch. 41), the state board of health was authorized to file a bill in Chancery,

in the name of the state, on its own relation, for injunction to prohibit pollution of the waters protected by the act, and directed that court to proceed upon such bills. The effect of this legislation was to extend the power of the board of health, without affecting that of the court.

State ex rel. Board of Health vs. *Diamond, &c., Co.*, 63 N. J. Eq., 111.

Recent changes in organic law have somewhat enlarged the scope of equity practice in the issuance of injunctions to restrain the commission of crimes, especially where some public or private injury is involved. It was held by the Supreme Court of Errors of Connecticut that an injunction may be issued by a state court, to restrain the sale of intoxicating liquor, upon the sole ground that such act is declared by the National Prohibition Act to be a public nuisance, without proof that such sale constitutes a nuisance in fact.

United States vs. *Stevens*, 103 Conn., 7; 130 Atl., 249.

The necessary connotation is that the state court accepted the definition of a public nuisance, as contained in the so-called "Volstead Act," for there was no proof of the existence of a nuisance in fact. The power exercised was that inherent in a court of equity to abate a nuisance; usually on proof that a nuisance in fact exists, but in this case, upon mere proof of the fact of liquor-selling, plus the dictum of Congress that such act constitutes a nuisance. The court must have exerted merely its constitutional power, since the 18th amendment to the federal constitution, the applicable portion of which reads as follows:

> "Sec. 2. The Congress and several States shall have concurrent power to enforce this article by appropriate legislation,"

does not purport to enlarge the jurisdiction of any state court; and the act of Congress, limited by the provisions of section 8 of Article I of the Constitution, would be ineffectual to do so. The conclusion is inescapable, therefore, that the Connecticut court adopted the statutory definition of a public nuisance, and applied the remedy of injunction to the conventional, though not actual, nuisance so found to exist.

Counsel is not aware of any reported case in New Jersey which parallels the Connecticut case just cited (*United States* vs. *Stevens*); but it is probable that the same rule would apply in this court. The presence on our statute books of a sufficiently effective prohibition enforcement act and the fact that the federal court in this district has not been laggard in enforcing the provisions of the Volstead Act have undoubtedly lessened and probably rendered wholly unnecessary such application to our State courts.

Doubtless the provisions of section 22 of the National Prohibition Act, defining a "public nuisance," created a substantive right, and its counterpart, an actionable wrong, capable of enforcement by the civil remedy of injunction. The United States is a corporation, quasi-foreign and quasi-domestic, entitled to sue in a State court for the protection of its civil rights, guaranteed to it by the 18th federal amendment. In such situation, it appears to be the duty of a State court to accept cognizance.

> "A state court of competent common-law jurisdiction cannot decline to take cognizance

of and adjudicate according to the forms of the common law, a cause of action for damages arising under an act of Congress."

Second Employers' Liability cases (*Mondou* vs. *New York, N. H. & H. R. Co.*), 223 U. S., 1; 56 Law. Ed., 327.

Reference has been made to recent changes in organic law, as broadening the field within which a court of equity will exercise its injunctive power,—specific mention being made of injunctions as a means of enforcement under the National Prohibition Act. The "Zoning Amendment," even more recent, presents an analogous situation. The authorities in many states, in similar cases, and upon the identical grounds here presented, have upheld the issuance of injunctions, at suit of owners or occupants of neighboring land, to restrain zoning-law violations detrimental to their civil or property rights.

Rice vs. *VanVranken,* 132 Misc., N. Y., 82; affirmed 225 App. Div., N. Y., 179.

Fitzgerald vs. *Merard Holding Co.,* 106 Conn., 475; 138 Atl., 483.

Pritz vs. *Messer,* 112 Ohio St., 628; 149 N. E., 30.

Holzbauer vs. *Ritter,* 184 Wis., 35; 198 N. W., 852.

Cohen vs. *Rosedale Realty Co.,* 120 Misc., N. Y., 416; affirmed 206 App. Div., N. Y., 681; Same case, 121 Misc., 618; affirmed 211 App. Div., 812.

Knothe vs. *Zinzer,* 96 Conn., 709; 115 Atl., 477.

Irwin vs. *Lutece Baby, etc., Shop,* 156 La., 740; 101 So., 125.

New Orleans vs. *Liberty Shop,* 157 La., 26; 101 So., 798.
Jardine vs. *Pasadena,* 199 Cal., 64; 248 Pac., 225.
Aurora vs. *Burns,* 319 Ill., 84; 149 N. E., 784.
Inspector of Buildings vs. *Stoklosa,* 250 Mass., 52; 145 N. E., 262.

No distinction is here made between acts of the state legislature and legislation by a municipal governing body, for they are alike in operation and effect. Within its restricted *locale,* an ordinance is as much the law of the land as a state statute; just as the act of an agent, within the scope of his authority, is precisely as effective as the act of the principal himself.

The only differences between an ordinance and a statute, so-called, are administrative and relatively unimportant: (1) *Ignorantia legis neminem excusat.* Knowledge of the law is presumed, as necessary to its enforcement; but only the laity are charged with knowledge of an ordinance. Opposing counsel and the court are deemed to be ignorant of a local enactment, until informed of its existence by an appropriate allegation in a pleading; but, when so advised, the court will take judicial notice of its existence, if not of its contents, while counsel will be put upon inquiry as to both. (2) A general law is part of the consciousness of the court; but an ordinance, like a foreign law, requires to be proved. Yet, when proved, it ceases to be a fact in evidence and is restored again to the category of law. (3) Violation of a general statute, when it sustains the relation of proximate causation, is a fact upon which an actionable cause may be predicated; but

a local ordinance will be scrutinized and its purpose surveyed, before it is permitted to form the basis of a civil action. A zoning ordinance, as indicated by its title and context, is intended to regulate the rights and duties of property owners *inter sese,* and to promote their interests by imposing a scheme of uniform development. It therefore sets up rights, as between neighboring owners and occupants, cognizable in equity (*vide,* cases lastly cited) and at law.

Gaston vs. *Ackerman,* 6 N. J. Misc., 696; 142 Atl., 546.

Of the same type is an ordinance or local regulation, declaratory or in extension of the common-law rule, requiring an adjoining land owner, in case he excavates upon his own land, to furnish lateral support to that of his neighbor;—

Gordon vs. *Automobile Club of America,* 101 Misc., N. Y., 724.

See also *Bergen* vs. *Morton Amuse. Co.,* 178 App. Div., N. Y., 400, which indicates the distinction between legislation of this sort and the usual snow-removal ordinance, which creates rights between the abutting owner and the municipality only, and affords no right of action to a highway traveller who sustains injury because of ice allowed to accumulate on the sidewalk, in violation of the ordinance.

Courtney vs. *Central R. Co. of N. J.,* 18 N. J. L., 173.
Sewell vs. *Fox,* 98 N. J. L., 819.

In the case *sub judice,* the due enactment and binding effect of the Zoning Ordinance were con-

ceded by counsel (pp. 43, 46) and it thereupon became at once a fact in evidence and the law of the case.

The language of the constitutional amendment, as well as the title of the enabling act of 1928, emphasizes the regulatory, rather than the penal, purpose of the ordinances authorized thereby.

This act (Laws, 1928, ch. 274), in section 3, authorizes a municipal "governing body," as defined by the act, to enact a zoning ordinance, and, in section 7, perpetuates valid existing ordinances.

Section 5 of the act directs that zoning regulations shall be made in accordance with a comprehensive plan and designed for one or more of the prescribed purposes, and "with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of property and encouraging the most appropriate use of land throughout such municipality."

Section 6 provides for the appointment of a "zoning commission," to recommend boundaries of zones and appropriate regulations for each; that public hearings shall be held and a report made; and that no zoning ordinance shall be adopted, amended or repealed, until after public hearing by the municipal authority, at which "parties in interest and citizens shall have an opportunity to be heard." The use of the expression "*parties in interest,*" as distinguished from citizens generally, who are mentioned cumulatively in the same connection, is highly persuasive of the regulatory character of the intended legislation.

This consideration is emphasized in other portions of the State Zoning Act, notably in section

8, which provides that in case of protest by the owners of 20 per cent. of the lands affected, no amendment of existing zoning regulations may be made, otherwise than by the vote of at least three-quarters of the constituent members, except repeal of previously-existing ordinances, which are not subject to this protection; and in section 9, which recognizes the interests of owners of property within 200 feet of the affected area, by prescribing notice to them as a prerequisite to the hearing and determination of an appeal from the action taken by an administrative official.

Section 10 of the State act provides that provision may be made by ordinance for the enforcement of local zoning ordinances and remedies provided for its violation; also that the "proper local authorities" * * * "may institute any appropriate action or proceeding to prevent" violations thereof, with an express proviso that the remedies so authorized shall not be exclusive, as indicated by the phrase "in addition to other remedies"; thus effectually removing zoning regulations from the class of cases in which the inclusion of a remedy in the body of the act creating a right is held to exclude a former common-law remedy. See—

Dollar Savings Bank vs. *United States,* 19 Wall., 227; 22 Law. Ed., 80.
Pollard vs. *Bailey,* 20 Wall., 520; 22 Law. Ed., 376.

as distinguished from—

Tremain vs. *Richardson,* 68 N. Y., 617.
Renwick vs. *Morris,* 3 Hill, 621; affirmed, 7 Hill, 575.

Complainants have been shown to possess valuable rights, seriously infringed by the admittedly wrongful acts of defendants. This situation demands relief. Recovery of monetary damages in a court of law, for injuries only vaguely to be estimated by common-law methods, is not adequate relief; especially as courts of law have no power to compel cessation of the injury during the progress of the litigation, or thereafter. Nor does the fact that the ordinance affords to the municipality a remedy, penal or otherwise, for the public wrong, satisfy the requirement that the adjacent property owner, suffering special damage from the same violation, must have an adequate remedy, available upon his own initiative, and commensurate with the peculiar injury from which he suffers.

A similar question of the right of an adjoining property owner to an injunction restraining violation of a zoning ordinance was before the New York Supreme Court, at Special Term (Equity) in Schenectady County, in the case of *Rice* vs. *VanVranken,* 132 Misc., N. Y., 82, in which Mr. Justice Heffernan held as follows:

> "The plaintiffs have brought this action for a permanent injunction, restraining the defendant from erecting apartment houses upon land owned by him at the corner of Union Avenue and University Place in the city of Schenectady, and on premises adjoining, on the theory that the same is in violation of a zoning ordinance. Plaintiffs are the owners of, and occupy, one-family residences adjacent to, and in the immediate vicinity of, defendant's property."

* * * , *

"Finally, defendant asserts that plaintiffs have no standing to maintain this action; that they have no adequate remedy at law by proceeding against the building inspector of the city who is charged with the enforcement of the ordinances; and that no case can be found where property owners have been permitted to maintain an action such as this to restrain a violation of the zoning law. The question involved is one of form and not of substance. The absence of precedent presents no obstacle to the exercise of the jurisdiction of a court of equity. The power to make precedent is not exhausted. That authority still rests in the courts. Certainly, the power of the court never depends upon the mere accident as to whether or not there is some prior adjudication on the subject. The fact that no case can be found in which relief has been granted under similar circumstances is no reason for refusing it. If that were so, not infrequently the court would find itself powerless to grant adequate relief, solely because in the dim and distant past the precise question had never arisen. Precedent is only useful in so far as it points the way in which principles have been applied. In other words, it is merely a guide but never a bar. A court of equity should be responsive to the needs of the people for the purpose of affording remedies and protecting rights. In the administration of justice it should never hesitate to adapt itself in the application of old principles to new situations.

"To divest a court of equity of jurisdiction the remedy at law must be plain, adequate and complete. By allegation and proof the

plaintiffs here have established that they will be specially and peculiarly damaged if defendant is permitted to consummate his purpose. Under these circumstances what is their remedy? The defendant answers that it is mandamaus. Mandamus against whom and for what purpose? Surely, there is no need to invoke this extraordinary remedy against the building inspector for the revocation of the permits, for precisely that result has been accomplished by the ordinance. It is true that the building inspector is required to enforce this legislation. That remedy, however, is not exclusive. Any violation of the ordinance is a misdemeanor. Is the building inspector to be mandamused in order to charge one who violates the ordinance with a crime? The door of the criminal court is open to every citizen for the same purpose. Certainly these plaintiffs cannot, by mandamus, compel the city to institute an action. What action is the building inspector to take that is not available to them? If the plaintiffs should apply to the court for mandamus against the inspector, what procedure will they ask the court to direct him to institute? Obviously, a proceeding against the building inspector would not be complete. It would not end the controversy. He must invoke other process. It cannot be seriously doubted that the remedy in equity is more appropriate and better adapted to effectuate justice between the parties and put an end to this litigation. Manifestly, it would be against equity and justice to decline jurisdiction in the situation presented here."

* * * * *

"Plaintiffs are, therefore, entitled to the relief prayed for, with costs."

The Appellate Division in the Third Department, sustained this judgment on appeal, and held, in the unanimous opinion, by Hill, J., as follows:

"Plaintiffs cannot maintain this suit to restrain the violation of the ordinance enacted for the protection of th e public unless it appears that their personal or property rights will be injured. (*Empire City Subway Co.* vs. *Broadway & S. A. R. R. Co.*, 87 Hun, 279; affd., 159 N. Y., 555; *Atkins* vs. *West*, 222 App. Div., 308.) The evidence shows that a direct financial loss will be sufferred by them if the apartment is erected. Under such conditions, they may maintain the suit. (*N. Y. Cement Co.* vs. *Consolidated Rosedale Cement Co.*, 178 N. Y., 167.)

"The judgment should be affirmed, with costs" (225 App. Div., N. Y., 179).

That same question was also before the Connecticut Supreme Court of Errors, in the case of *Fitzgerald* vs. *Merard Holding Co.*, 106 Conn., 475; 138 Atl., 483, in which it was held, in the unanimous opinion, by Wheeler, Ch. J., as follows:

"The plaintiff had the right to maintain this action which seeks to compel the owner of this building to make it conform to the zoning regulations and to restrain the defendants from using it for business purposes. The primary duty of enforcing these regula-

tions rested upon the zoning commission. The right to enforce them by injunction, where their violation had resulted, is now resulting or will result in special damage to one's property, exists in the one so injured, and is not dependent upon his having requested the public authorities in charge to enforce the violation and their refusal or failure to perform their duty. If one suffers an injury special and peculiar to his property from an obstruction in a town common upon which his property fronts, he is entitled to maintain an injunction against the continuance of the encroachment without application to the proper authorities. Otherwise, he would not have adequate remedy at law. This "means a remedy vested in the complainant, to which he may, at all times, resort, at his own option, fully and freely, without let or hindrance." *Wheeler* vs. *Bedford,* 54 Conn., 244, 249; 7 Atl., 24. For a like reason we held that the owner of land abutting on a highway possessed special and peculiar rights in the highway, for the infringement of which he might maintain an action for injunctive relief without first requesting the authorities to act. *Knothe* vs. *Zinser,* 96 Conn., 709; 115 Atl., 477. While these business buildings are not in themselves a nuisance, the same analogy exists in this case; in each class of actions the special damage suffered is the foundation of the action, and the request of the public authorities to stop the violation would be equally urgent. In the case before us upon the allegations the request was repeatedly made and the authorities refused to act in violation of their clear public duty. The re-

quests did not strengthen the position of plaintiff in the eye of the law; if she has suffered special damage in the manner alleged, the equitable jurisdiction is clear, though no request has been made to the proper authority to stop the violation of the zoning regulations. *Euclid* vs. *Ambler Realty Co.*, 272 U. S., 365, 386; 71 L. Ed., 303, 310; 54 A. L. R., 1016; 47 Sup. Ct. Rep., 118. Injunction will issue to prevent the erection of buildings in violation of a municipal ordinance or regulation though they are not nuisance *per se,* if the person seeking such injunction shows that their erection will work special or irreparable injury to him and his property.

In an annotation in 54 A. L. R., at pages 366, *et seq.,* it is stated as follows:

"In the reported case (*Fitzgerald* vs. *Merard Holding Co., ante,* 361) the court squarely holds that one whose residential property is or will be substantially damaged by the use of adjoining premises for business purposes, in violation of a zoning ordinance which the authorities have failed to enforce, may enjoin such use of the adjoining premises, and is not limited to relief by mandamus. And the court intimated that this would be so, regardless of whether the plaintiff originally entered any protest to the authorities, although as a matter of fact the plaintiff in the case at bar did not make such a protest.

"This decision is in accord with *Pritz* vs. *Messer* (1925), 112 Ohio St., 628; 149 N. E., 30, which held that a property owner residing

in a municipality in which a valid zoning ordinance was in full force and effect had legal capacity to apply for an injunction against the erection of an apartment building upon a lot contiguous to her real property, upon the ground that the proposed structure would violate the zoning ordinance. The court reasoned that the benefit to be derived from the observance of the zoning regulations accrued not only to the municipality, but also to the abutting property owner; that the plaintiff was accordingly in a position analogous to that of one for whose benefit a contract has been made by another party; and that, having a substantial interest in the enforcement of the zoning restrictions, plaintiff was a proper party to enforce their observance by a suit for injunction.

"The contention that injunction was not the proper remedy by which to enforce a zoning ordinance, but that it should be enforced by arrest and prosecution, in accordance with its provisions, was overruled in *Holzbauer* vs. *Ritter* (1924), 184 Wis., 35, 198 N. W., 852, enjoining the construction of a store building in a residential district, at the instance of property owners, in order to prevent irreparable injury to their property, such threatened injury being regarded as special damage and different from that of the general public.

* * * * *

"And in reply to the contention that a court of equity would not enforce by injunction a municipal zoning resolution unless that remedy was specifically created by the legis-

lature, and unless it appeared that the structure sought to be restrained would create a nuisance, it was said in *Cohen* vs. *Rosedale Realty Co.* (1923), 120 Misc., 416; 199 N. Y. Supp., 4; affirmed in (1923) 206 App. Div., 681; 199 N. Y. Supp., 916 (granting a temporary injunction at the instance of owners of residential property, to restrain the erection of stores), that, inasmuch as plaintiffs showed that they would sustain special damage by reason of the construction of the proposed buildings, the defendant might be restrained at the instance of the plaintiffs from continuing the nuisance, 'even though mandamus will lie as well to compel the taking down of the structure by the proper municipal authority.' ''

To the same effect is the dictum of Mr. Vice-Chancellor Backes, in *Maplewood Township* vs. *Margolis* (not offic. rep.), 136 Atl., 707; affirmed 138 Atl., 924.

Suits for injunctions to restrain zoning-law violations have been of two sorts: (1) actions by adjacent property owners, suffering damage peculiar to themselves, and (2) actions by a municipality to restrain violation of its own zoning regulations.

(1) Counsel has been unable to find, among reported decisions in courts of the United States, or any of the states, any instance in which an injunction has been refused a neighboring land-owner or -occupant who has shown injury to his property or civil rights, greater or different from that suffered by the municipality. Of the reverse class of cases are those lastly-above cited, i. e., *Rice* vs.

VanVranken (*supra*), *Fitzgerald* vs. *Merard Holding Co.* (*supra*), *Pritz* vs. *Messer* (*supra*), *Holzbauer* vs. *Ritter* (*supra*) and *Cohen* vs. *Rosedale Realty Co.* (*supra*), in which courts of New York, Connecticut, Ohio and Wisconsin granted injunctive relief upon application by neighboring property owners; *Irwin* vs. *Lutece Baby & Novelty Shop* (*supra*) and *Bott* vs. *Lakowsky* (*supra*), in which the court, in Louisiana, while denying injunctions because of duplicating other pending litigation, distinctly recognized the principle that a neighboring property owner is entitled to injunctive relief in such cases; *Jardine* vs. *Pasadena* (*supra*), in which the court, in California, while recognizing the principle that a neighboring property owner is entitled to injunctive relief, refused an injunction upon the one ground that the zoning regulation alleged to have been violated, had been repealed; *People* vs. *Linabury,* 209 N. Y. Supp., 126, a criminal prosecution for removing sand from a lot, in violation of a zoning provision, which the court, in New York, held to be invalid and unenforceable, but nevertheless held that if the taking of sand in fact constituted a nuisance, any person sustaining special damage might sue; and *O'Brien* vs. *Turner,* 255 Mass., 84; 150 N. E , 886, and *Whitridge* vs. *Park,* 100 Misc., N. Y., 367, in which the courts, respectively in Massachusetts and New York, denied injunctions for lack of proof of any special damages to the several plaintiffs.

(2) Suits by municipalities to obtain injunctions restraining violation of their own zoning regulations have resuted in a wide diversity of decisions. The prevailing view seems to be that such applications are not in aid of any property

or civil rights, but purely to aid in the enforcement of penal provisions; in which the conclusions reached in *Green* vs. *Piper* (*supra*) and *Ocean City Association* vs. *Schurch* (*supra*) are controlling. Nevertheless, such injunctions have been granted, upon application by municipal authorities, in at least two of the states, Illinois and Massachusetts: *Aurora* vs. *Burns,* 319 Ill., 84; 149 N. E., 784; and *Inspector of Buildings* vs. *Stoklosa* (*supra*); and recognized in principle by the Delaware Court of Chancery in *Wilmington* vs. *Turk,* 14 Del. Ch., 392; 129 Atl., 512.

The conclusion is inescapable that New Jersey is already definitely aligned with New York, Connecticut, Ohio, Wisconsin, Louisiana, California, Massachusetts, Illinois, and inferentially, Delaware also; for Mr. Vice-Chancellor Backes, in *Maplewood Twp.* vs. *Margolis* (*supra*), in denying injunction to the Township of Maplewood, complainant, upon a bill to enjoin violation of one of its own zoning regulations, already held by the Supreme Court to be invalid and unenforceable, *held* as follows:

> "If the ordinance were authorized by law, and the law provided no adequate remedy and protection, equity would undoubtedly lend aid, but, as the case stands, the township has no legal right; it has no lawful ordinance in respect of the matter upon which it rests its prayer for relief;"

and the actionable interest of a neighboring property owner, and his right to intervene for his own protection, were expressly upheld in *Gaston* vs. *Ackerman,* 6. N. J. Misc., 696, which was on certiorari to review action by municipal officials in

granting permit contrary to local zoning provisions; wherein it was held that the

> "prosecutor, owning tract of land containing 1-family dwelling on same street, and in same residence zone, as tract on which apartment house was sought to be erected," had "sufficient property interest to entitle him to raise the question as to right of board to grant permit violating zoning ordinance of city."

Adjacent property owners have vested rights to require observance and enforcement of a zoning ordinance, and a status in court to enforce those rights.

> *Conway* vs. *Atlantic City* (not offic. rep.), 154 Atl., 6.
>
> *Schumacher* vs. *Union City* (not offic. rep.), 154 Atl., 406.

In *Stokes* vs. *Jenkins* (not yet offic. rep.), 152 Atl., 383, it was *held* by Fielder, V.-C., as follows:

> "The first question presented is: Has this court jurisdiction to grant injunctive relief against a violation of a municipal zoning ordinance on the complaint of an individual, in case special damage is shown to have been sustained by the complainant as a result of such violation?"
>
> * * * * *
>
> "In *Fielders* vs. *North Jersey St. R. Co.*, 68 N. J. Law, 343, it was said that there is no distinction between a valid statute and a valid ordinance in respect to the binding force

of a duty created thereby; that a lawful municipal ordinance is an exercise of the delegated power of legislation, and that when adopted, in the exercise of that power, ordinances frequently prescribe for persons subject thereto a rule of conduct for the purpose of insuring the safety of others. In *Evers* vs. *Davis,* 86 N. J. Law, the court quoted with approval the following: 'The Legislature must be assumed to know the law, and if upon common-law principles such a statute would affect private rights, it must have been passed in anticipation of that result. The Legislature is to be credited with meaning just what it said—that the conduct forbidden is an offense against the public, and that the offender shall suffer certain specified penalties for his offense. Whether his offense shall have any other legal consequence has not been passed on one way or the other as a question of legislative intent, but is left to be determined by the rules of law. If the effect of such a statute is to change the relations of individuals to one another, this must come about, not through the intent of those who enacted the statute, but by the operation of common-law principles.'

"In *Weller* vs. *McCormick,* 52 N. J. Law, 470, the court said: 'It is a general principle that where there rests upon any person a public duty either arising at common law or created by statute, and that duty is due to the public, considered as composed of individuals, and for their protection, each person specially injured by a breach of the obligation is entitled to a private action to recover compensation for his damage.'

* * * * *

"The Zoning Act recognizes personal or property rights in property owners and provides for their protection, as, under section 8 of the act, no change can be made in a zoning ordinance without giving protesting property owners a hearing; that an appeal may be taken to a board of adjustment by any property owner aggrieved by a decision of a municipal administrative officer, and that notice of hearing on the appeal shall be given property owners who may be affected thereby.

"In other jurisdictions it has been held that, if one who owns property in a district designated as residential suffers special injury through the violation of the zoning restriction by an owner of other property in the same district, he may maintain a suit to enjoin such violation. Holzbauer vs. Ritter, 184 Wis., 35, 198 N. W., 852; Pritz vs. Messer, 112 Ohio St., 628, 149 N. E., 30; Fitzgerald vs. Merard Holding Co., 106 Conn., 475, 138 A., 483, 54 A. L. R., 361; Cohen vs. Rosedale Realty Co., 120 Misc. Rep., 416, 199 N. Y., 4, affirmed 206 App. Div., 681, 199 N. Y. S., 916; Id., 121 Misc. Rep., 618, 202 N. Y. S., 95.

"The zoning ordinance of the town of Dover took from the complainants the right they had theretofore enjoyed of the free use of their property for any lawful purpose. The legal justification or consideration for the restrictions imposed on their property was that like restrictions were imposed on all property within the zone, and the assumption that an equal benefit would accrue to all property owners. If, therefore, the restrictions cease to be universal in their application, the

theory of equal benefit fails. The benefits which the complainants were to acquire were through rights in the nature of an easement on part of the defendant's lot. Such benefits tended to promote their and their tenants' health and general welfare by giving them greater safety against fire, adequate light and air, and more privacy in their home life, and such benefit necessarily added to the value of the complainants' property. The burden imposed on the complainants' lot by way of easement for the benefit of the defendant remains, but the benefits intended to be given the complainants will be lost to them if the violation committed by the defendant is permitted to continue. Because of the location of complainants' lot with reference to the violation, the complainants suffer special damage, greater than any other individual member of the public. The situation created by defendant's violation of the ordinance specially affects the complainants personally and must cause depreciation in value of their property. Infliction on the defendant of the penalty prescribed by the ordinance will bring no relief to the complainants, and, since the municipality has instituted no proceeding against the defendant to enforce this, or any other remedy, I conclude that the complainants are entitled to relief from this court by injunction, to place them in the enjoyment of the benefits, peculiar to themselves and their property, which the zoning ordinance in question conferred on them" (citing *Gilbough* vs. *West Side Amusement Co., supra,* and *Gaston* vs. *Ackerman, supra*).

The necessity of cleaning up this noisome area is manifest from the testimony of Isaac R. Srager (pp. 65-69) and Rev. Arthur D. Jones (pp. 70-73). The conditions of malodor and unhealthfulness were not disputed by defendants, but they sought to justify themselves by the fact that another slaughterhouse is located somewhat further away from complainants' residences, though in the same zone and block (pp. 65, 73). The latter, however, is a non-conforming use and as such is not contrary to the Plainfield Zoning Ordinance (Exh. C-1, at p. 86,—Sec. VII), although at the same time, it may constitute a common-law nuisance.

To clean up the neighborhood, the sequence of complainants' proceedings must be,—*first,* to obtain relief by injunction against defendants' slaughterhouse, and *then,* to seek further relief under the police power of the State against the earlier structure and use. A bill seeking relief against the operators of both slaughterhouses would be multifarious.

> "If there are several nuisances of like nature surrounding the complainants, they must seek relief from each separately; they cannot be joined in one suit, nor need the suits proceed *pari passu.*"
>
> *Meigs* vs. *Lister,* 23 N. J. Eq., 199.

See also—

> *Emans* vs. *Emans,* 13 N. J. Eq., 205.
> *Crane* vs. *Fairchild,* 14 N. J. Eq., 76.
> *Miller* vs. *Willett,* 70 N. J. Eq., 396.

To reverse this order and proceed first against the non-conforming use, as a common-law nuisance (for in such action the Zoning Ordinance would not avail), would only invite a defense that

the neighborhood is one devoted to slaughterhouses. The decree appealed from is in an action to suppress the later slaughterhouse, on grounds that it is contrary to the Zoning Ordinance and Building Code of the city,—to which action the operation of the earlier slaughterhouse is not a defense.

Defendants' slaughterhouse being removed, complainants should have no serious difficulty in suppressing the earlier and protected nuisance, and so rendering this congested city district a fit place to live in.

The cases cited under this point rest upon two principles of broad application and general recognition,—(1) that maintenance of a structure or use prohibited by a valid municipal regulation constitutes a wrong analogous to, but independent of the doctrine of common-law nuisance; and (2) that neighboring owners or occupants are entitled to relief by injunction against the resulting injuries peculiar to themselves.

Besides the purely statutory wrong, the mere presence of a slaughterhouse in a built-up portion of a city has been held to be a nuisance *per se,* or, at least, to constitute *prima facie* evidence of an actionable wrong;

Reichert vs. *Geers,* 98 Ind., 73;
Bushnell vs. *Roberson,* 62 Ia., 540; 17 N. W., 122;
Seifried vs. *Hayes,* 81 Kentucky, 377;
Woodyear vs. *Schaefer,* 57 Md., 1;

and the fact that the statute provides a remedy by indictment does not divest a court of equity of its power of injunction.

Minke vs. *Hopeman,* 87 Ill., 450.
Bushnell vs. *Robeson* (*supra*).

CONCLUSION.

It is respectfully submitted that the final decree appealed from should be in all respects reversed, with costs to appellants.

JOHN WINANS,
Solicitor of and of Counsel
with Appellants.

Gallo & Ackerman, Inc., 142 Liberty St., 'Phones—Hitchcock 4-3078-9
4843

In Chancery of New Jersey

Isaac R. Srager, et als.,
Complainants-Appellants,

and

Harry Mintz, et als.,
Defendants-Respondents.

On Bill for Injunction

BRIEF FOR DEFENDANTS - RESPONDENTS.

This is an appeal from a decision by Vice-Chancellor Buchanan dismissing a bill for an injunction filed to restrain defendants from carrying on the business of slaughtering poultry for the purpose of providing Hebrew citizens with poultry killed in accordance with the tenets of the Hebrew religion. There is another similar slaughter house about forty-five feet away (Case, Testimony for complainants p. 65, lines 30-33,) and this suit is practically an effort on the part of those controlling the other slaughter house to prevent the newer one from doing business. Relief was not sought on the basis of a common law nuisance (Case, Admission by complainants' Counsel, p. 78, lines 10-13), if rabbi is employed to do the actual killing,

(Case, Testimony for Complainants, p. 64, lines 11-12). There was no special damage shown, although an attempt was made to show that there was an odor, but testimony for complainants was that it was not known from which slaughter house the odor came (Case, Testimony for Complainants p. 74, lines 1-11), if building alteration permit had been granted by the City Building Inspector and an inspection made after the alterations were completed, and the Building Inspector said that they complied with the building code (Case, Building Inspector's Testimony for Complainants, p. 50, lines 29-40: p. 51, lines 1-10). The Board of Health granted a permit to conduct the poultry slaughter house on October 3, 1928, and again on January 11, 1928. (Case, Board of Health's Office Secretary's Testimony, p. 76, lines 10-20).

Bill of complaint was filed Dec. 13, 1928.

Hearing was held May 29, 1929.

Conclusions were filed Nov. 22, 1929.

Decree was made Sept. 8, 1930 and filed Sept. 10, 1930.

Petition of appeal filed Oct. 10, 1930.

Appeal to be heard on briefs this Oct. term, 1931.

An inspection of these various dates would seem to indicate that the question of damages did not, and does not, enter into the case very strongly, if at all, otherwise there would have been shown some haste in an endeavor (1) to have the decree made at once on the filing of the Conclusions on Nov. 22, 1929, and not have waited until Sept. 8, 1930, nearly a year later;

and (2) to have this appeal heard as soon after the filing of the petition of appeal on Oct. 10, 1930, as possible, and not have waited until this Oct. Term, 1931, a year later. Does not such failure to act make questionable the good faith of the complainants-appellants in the premises?

There is nothing in the testimony, as the learned Vice-Chancellor points out in his opinion (Case, Conclusions, p. 82, lines 24-40; p. 83, lines 10-17), to show any damage to complainants and damages other than theoretical or trivial damages must be shown.

Morris & Essex R. R. Co. vs. Prudden, 20 N. J. Eq. 530, 537.
(Errors and Appeals, 1869, Depue. J.)
Humphreys vs. Eastlack, 63 N. J. Eq. 136, 143.
(Chancery, 1893, Grey, V. C.)

The printed Brief of seventy-four pages for appellants is a very clever bit of special pleading in an endeavor subtly to inject into the cause of this case this very question of nuisance which was abandoned at the hearing.

The only question remaining at the end of the hearing was whether there is an abstract right to enjoin a claimed violation of the zoning ordinance of the City of Plainfield at the instance of complainants who are private citizens of the City of Plainfield, merely because of the claimed violation itself, without further proof, that the claimed violation is a *nuisance*, which theory was abandoned when the defendants offered the Board of Health's permit. The said ordinance

having been passed prior to the adoption of the constitutional amendment as to zoning and the enabling statute following, and the City, through its Building Department having granted a permit covering the claimed violation.

That question, it is most respectfully submitted, must be answered in the negative, and for several reasons:

1

The ordinance by its terms permits of changes in individual cases from its strict terms. Those changes, having been permitted by competent legal authority and a permit issued, the reviewing power as to such action is in the law courts and not in Chancery.

2

The enabling statute in so far as it attempts to legalize a prior zoning ordinance is unconstitutional for two reasons:

1. The constitutional amendment (Sec. 6 par. 5) relates solely to laws and ordinances to be passed subsequent to the amendment;

The amendment reads:

> "The legislature may enact general laws under which municipalities, other than counties, may adopt zoning ordinances limiting and restricting to specified districts and regulating therein, buildings and structures, according to their construction, and the nature and extent of their use, and the exercise of such authority shall be deemed

to be within the police power of the State. Such laws shall be subject to repeal or alteration by the Legislature."

It will be noted that the power given is altogether in future. There is nothing in the amendment giving the Legislature authority to validate ordinances theretofore adopted which were void at the time of the adoption of the amendment or to validate an application of such ordinance as was illegal at the time of the adoption of the amendment.

2. The title of the statute (P. L. 1928 Chap. 274 pp. 696, etc.) does not embrace the validating of prior ordinances or the validating of an application of such ordinance.

The title of the statute is:

"An act to enable municipalities to adopt zoning ordinances limiting and restricting to specified districts and regulating therein buildings and structures, according to their construction, and the nature and extent of their use, and the repeal of sundry zoning laws."

Paragraph 7 of the statute reads:

"7. Existing Zoning Ordinances Saved. Wherever any municipalities shall have adopted an ordinance, or ordinances, prior to the adoption of this act, for any of the purposes set forth in this act, such ordinance, or ordinances, shall continue in effect as if they had been adopted under the provisions of this act; and it shall not be necessary in such cases for the governing body or board

of public works to appoint a zoning commission as provided by section six herein. All such ordinances shall remain in full force and effect, except in so far as they are inconsistent with the provisions of this act, until they shall have been amended, or repealed by the governing body or board of public works."

That the saving of existing ordinances or the application of such ordinances is not embraced in the title of the act would seem too clear to need argument. Under the constitutional provision (Sec. 7. Par. 4), therefore, that the object of an act "shall be expressed in the title," the statute in so far as the provision validating existing ordinances or the application of such ordinances is concerned is unconstitutional.

3

But, independently of the foregoing, equity will not enforce the ordinances of municipal corporations by injunction unless the act sought to be restrained is a nuisance, and the question of nuisance was eliminated from this case at the hearing.

In Ventour City vs. Fulmer, et. al., 92 N. J. Eq. 478 (Chancery 1921, Leaming, V. C.) (unanimously affirmed by the Court of Errors and Appeals on the Vice Chancellor's opinion 93 N. J. Eq. 650), the Court said:

"The general doctrine is, as tensely stated in Hudson vs. Thorne, supra (7 Paige N. Y. 26), that it is no part of the business of this court to enforce the penal laws of the

State or the by-laws of municipal corporation by injunction, unless the act sought to be restrained is a nuisance. This statement of the rule is in harmony with the decisions in this state. Green vs. Piper, 80 N. J. Eq. 288, and cases on pg. 290.

In Healy et. al. vs. Sidone, 127 Atl. Rep., Pg. 520, Chancery 1923, (Leaming V. C. held:

"That it is no part of the duty of a court of equity to enforce by injunction the penal laws of the state or ordinances of municipalities unless the acts sought to be restrained is a nuisance. 92 N. J. Eq. 478, 113 Atl. Rep. 488. Affirmed 93 N. J. Eq., 660, 117 Atl. Rep. 925."

In view of the foregoing other discussion of the voluminous Brief for appellants would seem to be unnecessary.

It is most respectfully submitted that the decree appealed from should be sustained.

October Term, 1931.

DAVID SCHNEIDER
Solicitor for Respondents

W. S. ANGLEMAN
of Counsel

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