

166-192 998

Record No. 1644

In the
Supreme Court of Appeals of Virginia
at Richmond

THE TOWN OF FALLS CHURCH, AND
OTHERS,

v.

THE COUNTY BOARD OF ARLINGTON
COUNTY, AND OTHERS

FROM THE CIRCUIT COURT OF THE COUNTY OF ARLINGTON

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M. B. WATTS, Clerk.

166 Va 192

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AT RICHMOND.

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THE TOWN OF FALLS CHURCH, AND OTHERS,
versus
THE COUNTY BOARD OF ARLINGTON COUNTY, AND
OTHERS.

PETITION FOR WRIT OF ERROR AND
SUPERSEDEAS.

*To the Honorable Chief Justice and Associate Justices of
the Supreme Court of Appeals of Virginia:*

Your petitioners, the Town of Falls Church, a municipal corporation; L. P. Daniel, Mayor of said Town; the Board of School Trustees of the Town of Falls Church, a *quasi* public corporation, and 24 citizens of the Town of Falls Church, intervenors, are aggrieved by a final judgment entered by the Circuit Court of Arlington County on the 17th day of January, 1935, in a certain proceeding lately pending in said Court under the style of James B. Gould and others, petitioners, *v.* The County Board of Arlington County, and others, defendants, whereby the corporate limits of the town of Falls Church were ordered to be contracted as of April 1st, 1935, by having detached therefrom all of that portion of the said town within the County of Arlington, and all the corporate property, real and personal, within that territory belonging to said town was transferred to the County of Arlington (except two certain wells and their appurtenances) and the town required to account to the county for all taxes levied therein for

the current year, the town prohibited from levying any taxes therein thereafter but was required to continue to educate in its public schools all school children resident in the detached territory for two years thereafter (except two certain wells and their appurtenances).

This territory comprises about 25% of the population and area of said town, 30% of its taxable values, and 60% of its stores and places of business, while the county was required to contribute to the payment of but 29.2% of outstanding school bonds and but 18% of its water bonds outstanding.

STATEMENT OF THE CASE.

The town of Falls Church was incorporated by an Act of Assembly approved March 31, 1875, Session Acts 1874-1875, page 403 (see stipulation, p. 52). According to the census of 1930 it has a population of 2,019, of whom 1,465 were Fairfax citizens and 550 in Arlington, and in 1934 had 2,121, of whom 1,596 were residents in Fairfax County and 525 in Arlington (Stipulation, p. 37).

The corporate limits of said town set out in Section 9 of said Act have been but slightly varied from that time to this, in each instance by special act of the Legislature. The last alteration was made by Acts 1887, page 464. At all times the town and its most thickly settled portions have been partly in Arlington County and partly in Falls Church.

The Court will recall that Arlington County is that portion about 30 square miles, triangular in shape, of the 10 miles square partly in Maryland and partly in Virginia ceded from Fairfax County by Virginia to the Federal Government about 1790 and receded to Virginia about 1840. On this recession Virginia established it as a new county, Alexandria, and some fifteen years ago changed its name to Arlington. The boundary between Fairfax and Arlington are two purely arbitrary lines at right angles to each other forming originally parts of two sides of the ten miles square, which point of intersection forming the right angle is within the corporate limits of the town.

The only railroad touching this town at the time of its incorporation was the old Washington, Ohio & Western Railroad running from Alexandria, Virginia, to Leesburg and Bluemont. Since then a second railway, an electric trolley line known as the Arlington & Fairfax, enters the town and the principal stations and depots of each line lie within this triangle and within the Arlington county portion of the town. On July 8, 1932, J. B. Gould and other residents of the town

of Falls Church residing in that triangle in the limits of Arlington County, acting under the provisions of Chapter 216 of the Act of Assembly 1920, page 310, approved March 16, 1920, entitled: "An Act to provide for the contraction of the corporate limits of towns located partially in one county and partially in another", and now carried in the Annotated Virginia Code of 1930 as Section 2971(1), filed a petition in the Circuit Court of Arlington County alleging that the town was located partially in Arlington County and partially in Fairfax County, and that it was "deemed desirable" to contract the corporate limits of the town by striking therefrom all the territory located in Arlington County, and petitioning the court to so amend the charter of the town, alleging no reasons therefor whatsoever.

An order was entered that day pursuant to that Act making the *Board of Commissioners of Arlington County, Virginia*, sole defendant thereto and directing the Clerk to *summon* the said *Board of Commissioners of Arlington County* and "the Mayor of the Town of Falls Church" to appear before that Court on the 6th day of September, 1932, and make such defense against the prayer of the said petition as they or any of them may have (see Tr., p. 15).

On the day stated, the Arlington County Board appeared and joined in the prayer, and L. P. Daniel, as Mayor, appeared and filed a demurrer and answer to said petition. The demurrer was subsequently amended by additional specifications.

The grounds of demurrer were stated in detail (Tr., pp. 16, 24, 28), and briefly stated were that the act in question was enacted in a manner contrary to the Virginia Constitution, and that its provisions violated both the Constitution of Virginia and of the United States.

Without waiving this demurrer the Mayor *assumed* to answer the petition and denied that it would be to the interest of the majority of the people of the territory proposed to be stricken to have the corporate limits so contracted, and affirmed that the general good of the residents of each section of the town and as a whole would be materially affected by granting the prayer in various particulars which he enumerated, and then set out as facts:

(a) That more than \$100,000.00 had been invested by the town as a whole and by its citizens in the establishment of public and primary high schools for the education of the children of the entire community; that bonds and other interest bearing obligations of the town were outstanding and unpaid in excess of \$75,000.00, and that to detach the territory from

the school district as now constituted would disorganize and unbalance this entire educational plant.

(b) That within the two years preceding, bonds of the town in an additional sum of \$125,000.00 had been issued pursuant to the provisions of its charter after an affirmative vote by a majority of *all* of its *freeholders*, as well as by a majority of its qualified voters at a special election held pursuant to Section 127 of the Constitution, and to grant the prayer of the petition would result in disorganizing and unbalancing this system and plant and its future growth and development, and would leave the town charged with public debts largely in excess of 18% of the assessed valuation of its remaining real property contrary to the provisions of the Constitution of Virginia, and would constitute an unbearable burden upon the remnant of the town and its inhabitants, as well as its ability to construct and maintain a suitable sewerage system, which the proper development of the town and its future greatly require.

(c) That the town is served by two railroads, the principal depots and stations of each of which are located in that portion of the present town within the limits of Arlington County, and to grant the prayer of the petition would deprive the town of any control over these stations and the proper policing thereof, greatly to the detriment of the best interests of the town.

(d) That the principal business section of the town in which are located the principal offices, stores, places of business and mercantile activities of the town and which had been developed as a single community to meet the legitimate necessities of all as one community, are largely located in that portion of the town in Arlington County and get their chief value from their proximity to the bulk of population which is on the Fairfax side of the line, and to grant the prayer of the petition would deprive the town itself of control over and interest in its chief business center, greatly to the disadvantage of the community as a whole.

(e) That there was established under the authority of the town and with the aid of the town council, a voluntary fire department; that the engine house is located within that portion of the town within the County of Arlington, and to grant the prayer of the petition would disrupt the present organization and deprive the town of the right to contribute to its support or to control it, and would require duplications of plant and appliances in respect to this important element of local safety and self-government.

The demurrer was overruled (Tr., pp. 25 & 29) over the petitioners' exceptions.

Subsequently, the Town of Falls Church, The Falls Church School Board, and certain of its inhabitants, were permitted to intervene and they adopted the answer and demurrer of the Mayor as their own (Tr., p. 29.)

After hearing evidence the court granted the prayer of the petition and directed the contraction of its corporate limits as prayed, and in addition undertook to dispose of all the corporate property of the town lying within the limits of Arlington County by transferring it all to Arlington County, and undertook to apportion the debts of the town as between the town and the county by requiring the town to account for and pay over to the County 5% of all taxes collected by it for the fiscal year ending August 31, 1935, and ordered the town to continue to educate all the Arlington children living in that section of the old town in Arlington County, for two years in the future *without charge*, but to turn over to the County of Arlington all revenue received by it from such property and the state during that period.

ASSIGNMENTS OF ERROR.

Your petitioners assign the following errors: The court erred:

1. In overruling the demurrer to the petition.
2. In determining that the prayer for contraction should be granted.
3. In making disposition of the corporate property of the town and in the provisions as to the payment of the debts and obligations of the said town as between the county and the inhabitants of said town, in the following respects:
 - (a) In striking out and refusing to receive evidence in support of items 1, 5, 6 and 7 of the bill of particulars filed by the town in response to the requirements of the court.
 - (b) In requiring the town as restricted to furnish educational facilities for children residing in that portion of the town detached and restored to Arlington County, notwithstanding it required the town to account to the county for all taxes, including school taxes, collected for the current year, and deprived it of the power to levy such taxes hereafter.
 - (c) In requiring the County of Arlington to pay an inadequate portion of the outstanding school and water bonds of the town, and in not requiring the County to pay the proportion of indebtedness allotted to it in cash instead of merely as the obligations mature.
4. In restraining the authorities of the town from here-

after making contracts and public improvements in the town in the exercise of its corporate powers pending the final determination of this cause on appeal.

ARGUMENT.

I. The demurrer to the petition should have been sustained.

The act under which it is filed is unconstitutional for the reasons hereinafter stated.

(a) Its enactment was violative of Section 52 of the Constitution of Virginia, which provides:

“No law shall embrace more than one object which shall be expressed in its title, nor shall any law be revived or amended with reference to its title, but the act revived or the section amended shall be reenacted and published at length.”

The act under which this proceeding is instituted was approved March 16, 1920, Acts of 1920, page 310, and has never before been construed or acted on. Its title is:

“An Act to provide for the contraction of the corporate limits of towns located partially in one county and partially in another.”

It appears in the Annotated Code of 1930 as Section 2970 (1).

At the time of enactment and now, Sections 2969, 2970 and 2971 were, as they are now, in full force and effect and dealt comprehensively and completely with the subject of the contraction of the corporate limits of *all* cities and towns in the state whether partly in one county and partly in another or not, pursuant to the express provisions of Sections 64 and 65 of the Constitution of Virginia, and in terms applied to towns which lay partly in one county and partly in another.

Under those sections the initiative for such a contraction was reposed in the councils of the various cities and towns. Section 2969, among other things, provided for an ordinance defining accurately the boundary of the territory proposed to be stricken off and its publication in the newspapers, and further provided:

“A copy of said ordinance shall be served by such city or

town upon the Board of Supervisors of the contiguous county or counties of which such territory may become a part,"

following which the *city or town* was required to apply to the Circuit Court for an order confirming the ordinance or to the judge thereof in vacation, with the right in any one or more residents or freeholders of the territory proposed to be stricken off or "the attorney for the Commonwealth of the county or counties contiguous thereto" to appear and by petition set forth *reasons* why the corporate limits should not be reduced, after which the court was required, upon ascertaining certain facts, among others that the contraction of the corporate limits would not leave the bonded debt of the city or town in excess of 18% of the real estate valuation; that less than three-fourths of the freeholders in the territory oppose the contraction; and that no substantial injury to persons *owning real estate in the territory* proposed to be stricken off or to the county of which it will become a part will be caused thereby, and that the contraction "will be for the interest of the city or town", an order granting such contraction should be entered. It makes no provision whatsoever for disposition of the title to the *corporate* property of the town within such territory, but leaves it unaffected, affecting the jurisdiction only, whereas the act here in question gives neither the town involved nor its council any part in the proceedings at all, grants the initiative to a "majority of the voters qualified to vote at the preceding November regular election residing in that part of the town which it is *proposed to be stricken off*" by petition to the Circuit Court of the county in which is located that part of the town proposed to be stricken off, and requires only the Board of Supervisors of *that* county to "be named as defendants to the petition and a copy thereof served only on said Board". It further provides that on the filing of said petition "the court shall fix a day on which said petition shall be heard" and shall direct the clerk to cause to be summoned "the Board of Supervisors of the county and the *Mayor* of the town who, without formal pleadings, shall make such defense against the prayer of the said petition as they may have, one or more residents or freeholders of the territory *proposed to be stricken off* may appear and set forth reasons why the same should not be done", while no corresponding rights are extended to other residents. It then provides, *if the court shall be satisfied* that it will be to the interest of a majority of the people of the *territory proposed to be stricken off* and that the *general good* of the *community* will not be materially affected, such court shall, by an order entered in its common law order book reciting these facts, "or-

der that the charter of such town by *name and style* * * * be amended accordingly". It also provides, "The court, in its order, may make such disposition of the *corporate property* of the said town as may seem to it just and equitable, and shall also make such provision as to the payment of any debts or obligations of the said town as between the *county* and the *inhabitants* of the said town as to the court may seem just and equitable".

All of these things being done and finally decreed, for the first time is any right of the inhabitants of the portion of the town or its remaining inhabitants in any way recognized:

"Any one or more of the *petitioners*, or the *defendants*, or any *inhabitants* of said town who may feel themselves *aggrieved by the order* amending said charter or by the refusal to enter such order, may at any time within *sixty days from the date of said order*, upon giving bond for costs, the amount thereof to be fixed by the court, apply to the Supreme Court of Appeals for a writ of error and *supersedeas* according to the general law."

It will thus be seen that this Act of 1920 amends in many particulars not only the sections named, 2969, 2970 and 2971, in that it changes the entire method of procedure and changes the powers and jurisdiction of the court in the proceedings; it also materially amends the method as well as the rights of interested parties to seek relief at the hands of *this* court on appeal under the provisions of Sections 6336 and 6337 touching the right of appeal which secures to all aggrieved parties the

right to apply to this court "in all matters concerning * * * the right of the state, county or municipal corporation to levy tolls or taxes or involving the construction of any statute, ordinance or county proceeding * * * irrespective of the amount involved * * * or by final judgment, decree or order in any civil case" (Sec. 6336)

within six months unless "the controversy is for a matter less in value or amount than \$300.00". No reference is made nor is it intimated either in the title or in the act that any of these sections are to be amended, nor are either of said acts amended or said sections as amended "reenacted and published at length" as amended as required by Section 52 of the Constitution.

That this action is an amendment of all these statutes is clear.

“ ‘Amendment’ is an alteration or change of something, proposed in a bill or established at law. Any statute which adds a provision to a section of an existing statute is an amendment.” *State v. Cooney*, 70 Mont. 355, 225 P. 1007.

The right to apply for the contraction of the limits of cities or towns of all kinds and the rights of appeal were already established by statutory law, and hence the statute amending and altering these provisions was necessarily an amendment.

In *Feigenspan v. Bodine*, 264 Fed. 185, the validity of the 18th Amendment to the Federal Constitution was attacked. One ground of attack was that Article V. of the Constitution providing how amendments thereto should be made, did not authorize unlimited change. It was argued that the word “amendment” carries its own limitation; that it is confined to the correction of the text or at most to changes in the scope or of the subjects dealt with in the Constitution. The court there held:

“The definitions of the word ‘amendment’ include additions to as well as corrections of matters already treated.”

This definition given to the word “amendment” is applicable to the questions in this case.

It would seem to require no further argument to show that the Act of 1920 now published as Section 2971(a) of the Annotated Code, does amend Sections 2969, 2970, 2971 and 6336 and 6337 of the Code, in that it alters those statutes and puts towns located partially in one county and partially in another on a footing different from that previously established under these statutes and different from towns entirely in one county, as well as from one which is partially in three or more counties, and places them upon grounds entirely different and distinct from those applicable to the other two classes, deprives the town interested of the right to be heard until after its rights are finally adjudicated, and also permits the town affected by it to be left without enough real estate values to comply with the constitutional requirements in respect to taxable values.

Provisions similar to Section 52 are found in most, if not all of the state constitutions.

Comparable constitutional provisions have been passed on in dozens of cases in Alabama, Arkansas, Illinois, Kentucky, Missouri, Oregon and Texas. It has been the basis of one or two decisions in numerous other states. Because of the number of decisions we confine this memorandum to de-

cisions of Illinois, where the provision has been most often passed on, and to Virginia.

Article IV of the Constitution of Illinois provides:

“And no law shall be revived or amended by reference to its title only, but the law revived or the section amended shall be inserted at length in the new act.”

In *People v. Stevenson*, 272 Ill. 325, 111 N. E. 1018, the court held the enactment of a statute to be in violation of the same article, saying:

“Even though an act profess to be an *independent* act and does not *purport* to amend any prior act, still if it makes changes in an existing act by adding new provisions and mingling the new with the old on the same subject so as to make the old and the new a connected piece of legislation covering the same subject, the latter must be considered an amendment of the former and as within the constitutional prohibition.”

The title of the act there in question was “An Act concerning Real Estate Agency Corporations” and in no way referred to the general incorporation act which it was held to amend.

In *Board of Education v. Haworth*, 274 Ill. 538, 113 N. E. 939, an act of 1915 was challenged as in violation of the same constitutional provision because it amended Section 14 of the School law without inserting at length the section as amended nor even referring to the school act. The court held it unconstitutional, saying:

“It makes no difference in determining whether the act is amendatory of the existing act, whether it *professes* to be an amendment or not, but the character of the act is to be determined by an examination and comparison of its provisions with prior laws which are left in force. Although the act *purports* to be complete in itself, if it is merely an attempt to amend a law by intermingling new and different provisions with the old ones or by adding new provisions creating out of the prior act and the new act a complete law, the act is amendatory. *Badenock v. City of Chicago*, 222 Ill. 71, 78 N. E. *Hollingsworth v. Chicago Coal Co.*, 243 Ill. 98, 90 N. E. 276.”

In *Iverson Brown's Case*, 91 Va. 762, the question was whether an act entitled “An Act to amend and reenact Sec-

tions 2131, 2133, 2134, 2135, 2137, and to repeal Sections 2141 * * * and 2147 * * * in relation to oysters, and to add independent sections thereto" was constitutional. Numerous other grounds of unconstitutionality were advanced. It was contended that it violated Section 15 of Article V of the Constitution identical with Section 52, above quoted, because of the insufficiency of its title. In that part of its opinion dealing with this contention the court said:

"It was not to amendments of general statutes thus consolidated into a Code that Section 15 of Article V of the Constitution was intended to apply, but it was aimed at the separate acts in their original enactment, when the opportunity existed for the evils and the mischief to be done, which the constitutional provision was designed to prevent or defeat. It is not necessary, therefore, to do more, if so much, in amending and reenacting or repealing any part of the Code or adding thereto, than refer to the proper chapter and section thereof to be amended or repealed or added to, and adopt and express in the title of the amendatory act the number and subject of such chapter, if the provision of such amendment by reenactment or by additional section or sections is germane to the subject of the chapter."

That Section 2971(1) added to and amended Chapter 120 of the Code and particularly Sections 2969, 2970 and 2971, complete in itself on "Extension or Contraction of the corporate limits of cities and towns", is shown by the fact that the compilers of the 1930 Code found it necessary to publish it therewith and give it a supplemental number, but the Act did not refer to this chapter in any way as amended or repealed or added to thereby. The language above quoted by this court recognizes that any provision which adds to or alters statutory provisions already dealing with a matter must comply with the constitutional requirement about amendments both in its title and in its terms.

(b) The method of invoking the jurisdiction of the court as prescribed in the act is:

"Whenever it is *deemed desirable* to contract the corporate limits of a town located partially in one county and partially in another, a majority of voters qualified to vote at the preceding November general election, residing in that part of the town which it is proposed shall be stricken off, may petition the circuit court of the county in which that part of said town is located to amend the charter of said town * * *.

"Such petition shall be signed by a majority of the voters qualified to vote at the preceding November regular election residing in that part of the town which it is proposed shall be stricken off. * * *

"The board of supervisors of the county in which is located the part of said town proposed to be stricken off shall be named as *defendants* to said petition and a copy thereof served on said board and published in some newspaper published in that county."

Whereupon it becomes the duty of the court to fix a day for hearing and direct the clerk to cause said board and "the mayor of the town" to be summoned. On such hearing residents or freeholders of the territory "*to be stricken*" and the Mayor "may appear" and set forth reasons against granting the petition, and it is made incumbent upon the court if "satisfied that it will be to the interest of a majority of the people of the territory proposed to be stricken off and that the general good of the community will not be materially affected", to order that the charter of the town be amended accordingly. It is thus shown that a specified authoritative legislative intent which is non-delegable arises from this petition of qualified voters of a fragment of the town.

It is submitted that this is an election within the meaning of the Constitution.

"Elections are contrivances of government by which persons called electors exercise their will as to who shall exercise the functions of government." *People v. Board of County Canvassers*, 29 N. E. 327, 334, 14 L. R. A. 624.

"The word 'election' is not limited in its definition to meaning the act or process of choosing the person for a public office * * *. The Century Dictionary defines 'election' to mean a deliberate act of choice, particularly a choice of means for accomplishing a given end; * * *. In Worcester's Dictionary the word 'election' is defined as the act of electing or choosing; power of choosing; free choice; preference; selection." *State v. Hirsch*, 24 N. E. 1062, 1063.

In the light of these definitions it is clear that what is accomplished by the action of these designated qualified voters is to empower them to require that the judge of the circuit court "shall exercise the functions of government" in a certain respect, and that in so doing they make a choice and declaration which brings into play the means for accomplishing their purpose.

With these definitions in mind we look to the constitutional provisions involved.

Section 27 of the Constitution provides:

“All elections by the people shall be by ballot; all elections by any representative body shall be *viva voce* * * *; the absolute secrecy of the ballot shall be maintained.”

If the action of these qualified voters is an election, then it was not conducted by ballot and the secrecy of the ballot was not maintained.

Section 28 prescribes that:

“The General Assembly shall provide for ballots without any distinguishing mark or symbol, for use in all state, county, city, and *other* elections by the people.”

Section 63 provides that:

“The General Assembly shall not enact any local, special, or private law * * *;

“11. For conducting elections or designating the places of voting.”

It is submitted that this act violates all of these provisions.

We are not ignorant that *Willis v. Kalmbach, and others*, 109 Va. 475, apparently puts a different construction upon this provision. That opinion, however, deals more particularly with the provisions of Section 18 of the Schedule 1901-2, and does not refer to either the provisions of Section 27 or Section 28 of the Constitution, and Section 115(a) of the present Constitution was not then in existence. It provides:

“No debt shall be contracted by any county * * * except in pursuance of authority conferred by the General Assembly by *general law*; and the General Assembly shall not authorize any county * * * to contract any debt except a debt created in anticipation of the collection of revenue * * * for the then current year or to redeem a previous liability unless, in the general law authorizing the same, provision be made for the submission to the qualified voters of the proper county * * * for approval or rejection by a majority vote of the qualified voters voting in an election, of the question of contracting such debt; and such approval shall be a prerequisite to contracting such debt.”

Independent of the question immediately involved, this provision of the Constitution has been violated by the judgment of the court here complained of as will hereafter be more particularly pointed out.

In *Willis v. Kalmbach*, *supra*, however, Judge Harrison delivered a dissenting opinion which it is respectfully submitted correctly discusses the principles here involved, and which should be followed by this court in the case at bar.

(c) The act in question also violates Section 39 of the Constitution which provides:

“Except as hereinafter provided, the legislative, executive and judicial departments shall be separate and distinct, so that neither exercise the powers properly belonging to either of the others, nor any person exercise the power of more than one of them at the same time.”

The following propositions show the integrity of this assignment:

(i) The contraction or extension of the corporate limits of a town is in exercise of a legislative function which ordinarily cannot be delegated at all.

(ii) Though the legislature may delegate to subordinate administrative tribunals the ascertainment of prescribed facts which may constitute a condition precedent to the application and enforcement of the declared legislative policy.

(iii) But this must be done in a manner not violative of Section 39 of the Constitution prohibiting the intermingling of legislative, executive and judicial powers, and the exercise of the power of more than one of them by any person at the same time.

The act in question first delegates to a majority of the qualified voters of a fragment only of a specified class of electors of a special class of towns the power to determine when it is “deemed desirable” to contract the corporate limits of such a town without respect to the wishes of the majority of the voters of the town, many of whom are excluded from participation in this process of “choice” whether called an election or not and they having so determined in the manner prescribed, then impresses upon the court, a branch of the judicial department of government, the further legislative function not of determining whether it is in fact “desirable” in the public interest to contract the corporate limits of the town, but to be satisfied, 1st, that it will be to the interest of “a majority of the people of the territory proposed to be

stricken off”, and, 2nd, that the *general* good of some undefined and unascertained “community” will not be “materially affected”, whereupon it becomes mandatory upon the court to order the contraction without regard to the wishes of the residents of the balance of the town or the town itself, or whether it will be to their interest or the interest of a majority of them or of the town or not.

These are clearly legislative and administrative functions and not judicial ones.

The question as to the power of the legislature to delegate some functions somewhat similar to this in the case of the contraction and expansion of the corporate limits of cities and towns, has been upheld by this court in *Henrico County v. Richmond*, 106 Va. 282, and *Norfolk County v. Duke*, 113 Va. 94, and various other cases.

The acts there in question, however, require action by the *constituted authorities* of a town to adopt a resolution setting forth

“the necessity for or expediency of annexation and the terms and conditions upon which it desires to annex such territory,”

and on the hearing the court is permitted to ascertain and determine the *fact* of such “necessity” and “expediency” and whether the terms and conditions set forth in the ordinance are reasonable and fair for the future management and improvement of such territory, and only when “satisfied of the necessity for and expediency of such annexation that such conditions and provisions are reasonable and fair” is required to authorize the annexation. These provisions have been held by this court to be a sufficient legislative declaration of the policy of the state in that regard.

In other words, the policy of the state has been declared to be in favor of permitting cities and towns in the exercise of a delegated legislative power to expand their limits whenever and only whenever there is not only expediency but necessity therefor as ascertained by them, and that specified terms of annexation are fair and just, and in every such case the city or town is required to assume and provide for the reimbursement of the county or counties for just proportion of any existing debt of the county or counties and for the then value of all permanent public improvements as may be in the territory affected, including public roads, streets, byways, water mains, sewers, garbage disposal systems, fire protection facilities, bridges or other permanent public improvements.

It is such provisions as these that have been declared to be a sufficient declaration of public policy and of the details

to be observed by the administrative body to justify the delegation of the ascertainment and prescription of these details by the legislature. It requires no comparison of those statutes, Sections 2975 and 2958 of the Code nor a comparison of the provisions of Sections 2969, 2970 and 2971 which prescribe the general policy of the state which again impresses on the city councils the ascertainment of the public interest in this respect and require its ascertainment merely to be submitted to the circuit court for the purpose of ascertaining

“that such contraction of the corporate limits will not leave the bonded debt of the city or town in excess of 18 per centum of the assessed value; that less than three-fourths of the freeholders in the territory to be detached oppose the contractions, and that no substantial injury to persons owning real estate in the territory *proposed to be stricken off or to the county of which it will become a part will be caused thereby*, but that the striking off of such territory will be for the interest of the city or town.”

It is to be observed that in these statutes these questions of determining, at least intially, the public policy involved in either the contraction or expansion of the corporate limits of cities or towns are delegated by the general assembly to the corporate authorities of cities and towns pursuant to express legislative authority to so do (Sec. 65 Va. Constitution), whereas there is no authority in the Constitution to delegate such questions to a section of the qualified voters of any city or town.

Section 65 of the Constitution provides :

“The General Assembly may, by general laws, confer upon the boards of supervisors of counties, and the councils of cities and towns, such powers of local and special legislation as it may, from time to time, deem expedient, not inconsistent with the limitations contained in this Constitution.”

There is no power implied in this to delegate like powers to a segment of the voters of the town. In the enactment of Sections 2956, 2957 and 2958 providing for the extension of the corporate limits of cities and towns, and in the provisions of Sections 2969, 2970 and 2971, all of which are conditioned upon the initial exercise of this delegated power by the town or city councils. The expediency of such a proceeding is entrusted in its entirety to the corporate authorities under the Constitution, and this legislative authority is delegated to them pursuant to the express provisions of Section 65 of the

Constitution aforesaid. This same power is sought by the legislation here in question to be vested in a segment of the voters of the town and without constitutional authority.

In fact it may well be argued that the attempt to delegate such authority to such a segment of the voters is in derogation of those provisions of Section 117 of the Constitution prescribing that the General Assembly "at the request of any city or town, made in manner provided by law, may grant to it any special form of organization and government authorized by sub-section (b)", and that if the legislature desired to vest such right of contraction in a segment of the population that the legislation therefor must be "at the request" of the "city or town made in manner provided by law" *Expressio unius exclusio alterius*.

The absolute necessity that there shall be a sufficient declaration of legislative policy and intent either by the legislature itself or by some tribunal to which the legislature is authorized to delegate its legislative functions in that regard is pointed out by this court in the case of *Thompson v. Smith*, 155 Va. 367, where this court condemned an ordinance of the City of Lynchburg which provided: "The chief of police is authorized and directed to revoke the permit of any driver who, in his opinion, becomes unfit to drive an automobile on the streets of the city, with the right to the holder of such permit to apply to the judge of the municipal court to have his permit reinstated." The lamented late Justice Epes of this court, delivering the opinion of the court, said:

"But the appellant contends that the provision * * * authorizing the chief of police to revoke the permit of any driver who, in his opinion, becomes unfit to drive an automobile on the streets of the city is void because it is a delegation of legislative power to an administrative officer. If this contention is good, then the ground of demurrer relied upon by the appellee is not good.

"When acting upon an application for the reinstatement of a permit upon an application for the reinstatement of a permit revoked by the chief of police, the judge of the municipal court is acting as an administrative officer, and not in a judicial capacity and his discretionary power is the same as that of the chief of police, except that the exercise of his discretion may supersede that of the chief of police."

This is identically the situation here. The judge of the Circuit Court in granting the prayer for the contraction of the corporate limits is acting as an administrative officer, but unlike the Brown case, his discretionary power is not as

broad as that of the chief of police in the Lynchburg case. He passed not on the necessity for the contraction or on its expediency but merely on whether it is to the interest of the *party petitioning* him to grant it and that no material damage is inflicted on the town itself as a whole or any part of it or its inhabitants, but on "the community" undefined. We can say here as was said in the Lynchburg case: "He is controlled by no more specific definition of what constitutes the expediency or necessity for this action than are the original petitioners. The court there continued:

"Therefore, if the provisions of the ordinance authorizing the chief of police to revoke a permit be void because it is a delegation of legislative powers to an administrative officer (and we may say of a judicial officer) and vests an arbitrary and uncontrolled discretion in the chief of police, the provisions of the ordinance authorizing the exercise of the same discretion (here a more limited discretion) by the judge of the municipal court upon an application for reinstatement of the permit is also void; and the provision of the ordinance that the person whose permit has been revoked * * * may apply to the judge of the municipal court for a reinstatement thereof cannot constitute an adequate remedy at law."

On page 379, Justice Epes continued:

"It is a fundamental principle of our system of government that the rights of men are to be determined by the law itself * * *. This principle ought not to be surrendered for convenience or in effect nullified for the sake of expediency. It is the prerogative and function of the legislative branch of the government, whether state or municipal, to determine and declare what the law shall be, and the legislative branch of the government may not divest itself of this function or delegate it to executive or administrative officers.

"This does not mean, however, that no discretion can be left to administrative officers in administering the law. * * * This is particularly true where the discretion to be exercised * * * relates to police regulations designed to protect the public morals, health, safety and general welfare * * *. But, it should be added, the reasonable discretion which may be vested in its administrative officers is limited to a discretion in its essence ministerial and *not legislative*, though it may be such as may be exercised by the legislature.

"In principle, legislation and administration are quite distinct powers; but in practical application the line which separates their exercise is not clearly marked or easily defined.

However, in their definition in practical application lies the difference between government by legislation and government by bureaucracy.

“* * * The majority of the cases lay down the rule that statutes or ordinances vesting discretion in administrative officers and bureaus must lay down rules and tests to guide and control them in the exercise of the discretion granted in order to be valid.”

And again at page 381:

“* * * The correct principles for determining whether it is void because it delegates legislative power to the administrative officer are stated by the court in *Mutual Film Corporation v. Ohio Industrial Commission*, 236 U. S. 239, in the following language: ‘The legislature must declare the policy of the law and fix the legal principles which are to control in given cases; but an administrative body must be invested with the power to ascertain the facts and conditions to which the policy and principles apply’.”

On page 383, the opinion discusses various provisions of the ordinance there in question and upholds those which control in granting the permit, and concludes:

“The discretion here vested in the chief of police is essentially ministerial and not legislative.

“But when we come to examine the provisions with reference to revocation * * * the policy of the law and the legal principles which are to control * * * are not determined or determinable from the terms of the ordinance.

“The ordinance specifically provides that conviction of a felony * * * shall of itself operate to revoke * * *, and that if the holder of the permit * * *, and it is necessarily implied that subsequent lack of the requisites for the issuance of a permit constitutes unfitness to drive * * *.

“Thus far the policy of the law may be said to be declared; but it is clear that it is intended by the ordinance to vest the chief of police with authority to revoke permits for *other causes*, if in his opinion such causes render the holder of a permit *unfit to drive* on the streets of the city. But for what *other causes* is it the policy of the law that the chief of police may revoke a driving permit? What legal principles shall guide and control him in determining what *other causes, characteristics or acts*, or things done or omitted, make a man unfit to drive on the streets of the city of Lynchburg * * *

Or does the policy of the law extend so far as to authorize the revocation of a permit because the holder has done things which have a relation to the general security of the property of citizens (as, for instance, committed petit larceny), or to the morals of the community (as, for instance, transported women of bad reputation in his automobile)? Is it the policy of this ordinance to authorize the revocation of a permit because the holder is not of good character, or because he has had an accident which caused damage for which he is financially unable to pay? * * *

"Certainly the ordinance itself affords no answer to these questions as to the scope of the policy of the law therein declared. It is left wide open to the uncontrolled discretion of the chief of police in each individual case."

Similar questions present themselves in this case. What are the facts or circumstances which the policy of the law declares shall constitute a reason for the drastic action taken in this case in disrupting the town of Falls Church?

The only reasons assigned by any witnesses were that, contrary to the facts, the school facilities in the town of Falls Church in some respects were not as good as those in the high schools of Arlington County, and that the taxes were higher in the town than in the county (See deposition of Mrs. Moran, Tr., pp. 87, 88) and during the drought year of 1931 or 1932 there was a scarcity of water which has since been remedied; there was better garbage collection by the county than by the town, and similar testimony as to supposed favoritism of the town council of Falls Church. There is certainly no legislative policy in Virginia that territory shall be taken from a town and given to the county merely because taxes are higher, nor because residents of one part of a town think themselves not favored of the powers that be. If such were the policy there could be no town in Virginia, or city either, for the taxes in all towns are necessarily higher than they are in counties because the towns have usually to bear all of the county taxes and in addition the town taxes, and one of the incidents of urban, as of country life, is to abuse all officers with discretionary powers.

The distinction between the powers exercised by the town councils of cities and towns in ascertaining the expediency for the extension or contraction of their limits is that by constitutional power and direction the Legislature has the right to delegate these functions of expediency to the corporate authorities, and no such function can be delegated under the Constitution either to the segment of voters involved here or to the courts, certainly without a clear declaration of what

facts shall constitute grounds for contraction or expansion at the instance of such classes of people. The question here involved is very similar to that at issue in the recent decision of the Supreme Court of the United States in *Parana Refining Co. v. Ryan*, decided January 7, 1935, and reported in *Advance Opinions 1934-35*, p. 223, *et seq.*, where there is a very thorough discussion of the principles.

The question there was the validity of Section 9(c) of the National Industrial Recovery Act of June 16, 1933. The court there held that that clause constituted an unwarranted delegation of legislative power to the President of the United States. After quoting the provision of the Constitution of the United States that "all legislative powers therein granted shall be vested in the Congress of the United States" and reviewing very thoroughly the preceding decisions of the court on that point and the law which authorized the President to prohibit the transportation in interstate and foreign commerce of all petroleum and petroleum products produced or withdrawn from storage in excess of the amount permitted by state authority, said, page 229:

"Assuming for the present purpose, without deciding, that the Congress has power to interdict the transportation of that excess in interstate and foreign commerce, the question whether that transportation shall be prohibited by law is obviously one of *legislative policy*. Accordingly we look to the statute to see whether the *Congress* has *declared* a policy with respect to that subject; whether the Congress has set up a standard for the President's action; whether the Congress has required any finding by the President in the exercise of the authority to enact the prohibition.

"Section 9(c) * * * does not attempt to control the production of petroleum * * * within a state. It does not seek to lay down rules for the guidance of state legislatures or state officers. It leaves to the states and to their constituted authorities the determination of what production shall be permitted."

In the same way here there is no standard and no rules for the guidance of the segment of the qualified voters of Falls Church in determining "the expediency" of contraction of the corporate limits of that town other than their own wishes or of the court in determining "the interest of the majority" of the petitioning section, or what shall be deemed to "materially affect the community", but leaves that to the unbridled desires of the one and the discretion of the other.

The court continues:

"It does not qualify the President's authority by reference to the basis or extent of the state's limitation of production. * * * It establishes no criterion to govern the President's course. It does not require any finding by the President as a condition of his action. The Congress in Section 9(c) thus declares no policy as to the transportation of the excess production. So far as this section is concerned it gives to the President an unlimited authority to determine the policy and to lay down the prohibition or not to lay it down, as he may see fit."

In the case at bar, there is absolutely no limitation on the *desires* of the *petitioners* to initiate such a proceeding, does not even require any conclusion of benefit to themselves, to the community or to the state. The finding required by the court is that the granting of the contraction shall be to the benefit not of the community, not of the town, not of the county, but to the "best interest" of the petitioners, and that the granting of the petition will not "materially affect the community" without any definition or determination as to what may or may not be deemed to materially affect the general community or may or may not be deemed to be to the best interest of the petitioners.

Again the court said:

"We examine the context to ascertain if it furnishes a declaration of policy or a standard of action, which can be deemed to relate to the subject of action, which can be deemed to relate to the subject of Section 9(c) and thus to imply what is not there expressed."

After referring to the general statements of policy contained in other sections of the same act, the court says, page 230:

"This general outline of policy contains nothing as to the circumstances or conditions in which transportation of petroleum or petroleum products should be prohibited * * *. It is manifest that this broad outline is simply an introduction of the act leaving the legislative policy as to particular subjects to be declared and defined, if at all, by the subsequent sections.

"It is no answer to insist that deleterious consequences follow the transportation of hot oil, oil exceeding state allowances. The Congress did not prohibit that transportation. The Congress did not undertake to say that the transportation of hot oil was injurious. The Congress did not say that

transportation of that oil was unfair competition. The Congress did not declare in what circumstances that transportation should be forbidden, or require the President to make any determination as to any facts or circumstances. Among the numerous and diverse objectives broadly stated, the President was not required to choose * * *. The Congress left the matter to the President without standard or rule, to be dealt with *as he pleased*. The effort of ingenious and diligent construction to supply a criterion still permits such a breadth of authorized action as essentially to commit to the President the functions of the legislature rather than those of an executive or administrative officer executing a declared legislative policy. We find nothing in Section 1 which limits or controls the authority conferred by Section 9(c)."

This is all true to an almost unqualified extent of the authority here conferred in combination on this segment of voters and the court combined.

Again the court says, on page 231:

"The question whether such a delegation of legislative power is permitted by the Constitution is not answered by the argument that it should be assumed that the President has acted, and will act, for what he believes to be the public good."

This is one of the very powers which is committed by this provision to the judge of a court. He is only necessitated to inquire to what, if any, extent the granting of the contraction will "materially affect" an unascertained "the community". The court says in respect to this:

"The point is not one of motives but of constitutional authority, for which the best of motives is not a substitute. While the present controversy relates to a delegation to the President, the basic question has a much wider application. If the Congress can make a grant of the legislative authority of the sort attempted by Section 9(c) we find nothing in the Constitution which restricts the Congress to the selection of the President as grantee. The Congress may vest the power in the officer of its choice or in a board of commission such as it may select or create for the purpose. Nor, with respect to such a delegation, is the question concerned merely with the transportation of oil, or oil products in excess of what the state may allow. If legislative power may thus be vested in the President, or other grantee, as to that excess

of production, we see no reason to doubt that it may similarly be vested with respect to the transportation of oil without reference to the state's requirements. That reference simply defines the subject of the prohibition which the President is authorized to enact, or not to enact, as he pleases, and if that legislative power may be given to the President or other grantee, it would seem to follow that such power may similarly be conferred with respect to the transportation of other commodities in interstate commerce with or without reference to state action, thus giving to the grantee of the power the determination of what is a wise policy as to that transportation, and authority to permit or prohibit it as the person or board or commission so chosen may think desirable. In that view there would appear to be no ground for denying a similar prerogative of delegation with respect to other subjects of legislation."

Every word of this applies to the situation thus presented.

It is no answer to this contention to say that similar powers of initiation are granted by the general annexation and contraction statutes to the councils of cities and towns to initiate proceedings for extension or contraction, because the Virginia Constitution itself, in the provisions of Section 126 expressly authorizes and directs the legislature to pass general laws for the extension and contraction of the corporate limits of cities and towns, and Section 65 expressly authorizes the delegation of powers of local legislation to the corporate authorities of counties, cities and towns.

The case of *Eubank v. City of Richmond*, 226 U. S. 137, 57 L. Ed. 156, which reversed the judgment of this court, reported in 110 Va. 749, is directly in point on the question here being discussed of the right to make the action of a segment of citizens resident in one part of the town controlling in a degree the determination of a public tribunal. The statute there involved authorized the councils of all cities and towns

"to make regulations concerning the building of houses in the city or town and in their discretion * * * in particular district * * * to prescribe and establish building lines."

This was a delegation authorized by Section 65 of the Constitution.

By virtue of this power the city council of Richmond passed an ordinance prescribing that:

“Whenever the owners of two-thirds of property abutting on any street shall in writing request the committee on streets to establish building lines * * * the said committee shall establish such line so that the same shall not be less than 5 feet nor more than 30 feet from the street line.”

The plaintiff was the owner of a lot 33 feet wide on the south side of Grace Street and was preparing to build a house thereon, but no construction work had been done. Two-thirds of the property owners petitioner for the establishment of a building line and in accordance with the petition an ordinance was passed establishing a building line which interfered with the projected building. The court upheld the validity of the ordinance saying that “the validity of such legislation is generally recognized and upheld as an exercise of the police power”.

On appeal the Supreme Court of the United States, speaking through Mr. Justice McKenna, 226 U. S. 137, 57 L. Ed. 156, said:

“Whether it is a valid exercise of the police power is the question in the case, and that power we have defined, as far as it is capable of being defined in general words, a number of times. It is not susceptible of circumstantial precision. * * * It is the most essential of powers, at times the most insistent * * *. But necessarily it has its limits and must stop when it encounters the prohibitions of the Constitution. A clash will not, however, be lightly inferred * * *. This condition is urged by defendant in error, and attentive to it we approach the consideration of the ordinance. * * *

“It leaves no discretion in the committee on streets as to whether the street line shall or shall not be established in a given case. The action of the committee is determined by two-thirds of the property owners. In other words, *part of the property owners* fronting on the block *determine* the extent of use that other owners shall make of their lots, and against the restriction they are impotent. This we emphasize. One set of owners determines not only the extent of use, but the kind of use which another set of owners may make of their property. In that way is the public safety, convenience or welfare served by conferring such power? The statute and ordinance, while conferring the power on some property holders to virtually control and dispose of the property rights of others, *creates* * * * *no standard by which the power thus given is to be exercised*. In other words, the property holders who desire and have the authority to establish the lines may do so solely for their own interest or even capri-

ciously. Taste (for even so arbitrary a thing as taste may control) or judgment may vary in localities, indeed, in the same locality. There may be one taste or judgment of comfort or convenience on one side of a street and a different one on the other. There may be diversity in other blocks, and viewing them in succession, their building lines may be continuous or staggering (to adopt a word of the mechanical arts) as the interests of certain of the property owners may prompt against the interests of others. The only discretion, we have seen, which exists in the street committees or in the committee of public safety, is in the location of the line between 5 and 30 feet. It is hard to understand how public comfort or convenience, much less public health, can be promoted by a line which may be so variously disposed.

"We are testing the ordinance by its extreme possibilities to show how in its tendency and instances it enables owners to control the property rights of others, and property determined, as the case may be, for business or residence.

* * * One person having a two-thirds ownership of a block may have that power against a number having a less collective ownership. If it be said that in the instant case there is no such condition presented, we answer that there is control of the property of the plaintiff in error by other owners of property, exercised under the ordinance. This, as we have said, is the vice of the ordinance and makes it, we think, an unreasonable exercise of the police power.

"The case requires no further comment. We need not consider the power of a city to establish a building line or regulate the structure or height of buildings."

The very weakness there pointed out and the distinction between the right of a city in the exercise of delegated legislative authority to establish building lines, and the power of the state to vest any portion of this power in a segment of the people in interest, is existent here. In all of the other extension and contraction statutes the initiative and determination of expediency is vested in a legislative body expressly authorized to receive such delegated powers, and the court is only called on to see that that power is not exercised to the prejudice of other people. In the case at bar the powers vested in the segment of the electors resident in a given portion of the town may be controlled in the language of the Supreme Court by "even so arbitrary a thing as taste", "or judgment or comfort or convenience".

There may be diversity in other sections of the same fragment of the town and in other sections of the town whose electors have no voice in it, but this conclusion of "expe-

diency" having been once expressed by this segment of electors becomes binding, not absolutely, it is true, in all respects on the court to which the supervisory power is committed, but in all respects it is binding except, first, if this supervisory power becomes "satisfied that it will be to the interest of a *majority of the people* of the territory proposed to be stricken off", that is, to the interest of the very people who have asked that it be done, without regard to the interest of the residue of the other people of that territory, or to the extent to which these other people may or may not own all or the greater part of the property therein, and absolutely without regard to the interest of the residents of the residue of the town and the owners of property therein; and, second, "that the good of the community will *not* be materially affected" without any definition of either the term "good" or the term "community" or the extent of the community whose "good" is to be taken into consideration, it then becomes the duty of the court without regard to any other considerations not only to grant the contraction as asked for and not otherwise, with the added power ("not duty", the verb "may" being used instead of "shall") to "make such *disposition* of the corporate property of the said town" without restriction and without any standards to govern it as "may seem to it just and equitable", and in addition to make *such provision* as to the payment of any debts or obligations of said town "as between the *county* and the *inhabitants* of the said town as to the court may seem just and equitable; wholly ignoring the *town* in its corporate capacity and its obligations as such, and as will hereafter be pointed out, with no right to the town in its corporate capacity or any of its inhabitants outside of the section sought to be detached from it, up to this point, to intervene at all.

It may be suggested here as it was to the U. S. Supreme Court in the Eubank case that "we are testing the law by its extreme possibilities". But as was said there "we are doing this to show how in its tendencies and instances it enables the convenience of purposes or interests of one set of property owners to control the property rights and property of others". Even though in the instant case no such condition was presented, as was said there "we answer that there is control of the property of the plaintiff in error by other owners of property unde this law", and that this is but one of the vices of the law.

(d) The letter and spirit of Sections 63, 64 and 65 of the Virginia Constitution which limit the power of the court to indulge in special legislation is violated by this law.

Section 63 of the Constitution is as follows:

"Section 63. The General Assembly shall confer on the courts power to grant divorces, change names of persons and direct the sale of estates belonging to infants * * * and shall not, by special legislation, grant relief in these or other cases of which the courts or *other tribunals* may have jurisdiction.

* * * * *

"The General Assembly shall not enact any local, special or private law * * *.

"7. Exempting property from taxation.

"8. Remitting, releasing, postponing, or diminishing any obligation or liability of any person, corporation or association to the state or to any political subdivision thereof.

* * * * *

"11. For conducting elections or designating the places of voting."

Section 64 directs that in all cases enumerated in the last section the General Assembly:

"* * * shall enact general laws. Any general law shall be subject to amendment or repeal, but the amendment or partial repeal thereof shall not operate directly or indirectly to enact, and shall not have the effect of the enactment of a special, private or local law."

Section 65. "The General Assembly may, by general laws, confer upon the Boards of Supervisors of counties and the councils of cities and towns, such powers of local and special legislation as it may from time to time deem expedient, not inconsistent with the limitations contained in the Constitution."

(i) When the legislature undertakes to classify subjects for legislation, that classification shall have some rule or reason back of it and shall not be arbitrary.

It is respectfully submitted that no sound reason can be assigned why a majority of the voters resident in a segregated portion of a town should have an arbitrary right to have territory there separated from the town in which it has been incorporated on conditions and considerations different from

those accorded to the residents of a city likewise situated, or why they should be accorded a like right on terms and conditions differing from those accorded citizens of other towns lying wholly within one county or within three counties. See *Smith v. Board of Supervisors*, 159 Va. 304, 165 S. E. 526; *Quesinberry v. Hull*, 159 Va. 270, 165 S. E. 383, and *Farmer v. Christian*, 154 Va. 48, wherein this definition of special acts taken from *Budd v. Hancock*, 66 N. J. Law 133, received approval:

“A law is special in a constitutional sense when by force of an inherent limitation it arbitrarily separates some persons, places or things from those upon which, but for such separation, it would operate.”

And wherein Prentis, Chief Justice, in discussing it, said:

“This definition undoubtedly strikes at the foundation of the subject; for an arbitrary separation of persons, places or things of the same general class, so that some of them will and others of them will not be affected by the law, is of the essence of special legislation.”

(ii) The provisions of the act here in question also violate the letter and spirit of these provisions in this: That, under the doctrine *Expressio unius exclusio alterius*, the direction that the General Assembly shall confer on courts the power to grant divorces and change the names of persons, direct the sale of estates belonging to other persons, and shall not, by special legislation, grant relief in these or other cases of which the courts or *other tribunals* may have jurisdiction, excludes from it the power to grant to courts other non-judicial powers unless expressly provided in the Constitution and because, under the general law, the councils of cities and towns come within the definition of “other tribunals” mentioned in Section 63 which “may” have jurisdiction over the cases therein inhibited under the express provision of Section 65, which requires that such jurisdiction shall be conferred by general laws upon the boards of supervisors of counties and the councils of cities and towns, both of whom by this action are excluded from any initiative under the circumstances here involved and does not even permit the municipal corporation to be made a party or to take part in the case until after it has been determined.

The provision of Section 65 excludes the idea that such powers shall be conferred upon the courts or upon any segment of the population, and the letter as well as the spirit of

these several provisions negative the thought that by amending what had previously been the general law by special act shall operate directly or indirectly to have the effect of the enactment of a special law.

(iii) The act in question also violates Section 126 of the Constitution in that it is not a general law for the extension and contraction from time to time of the corporate limits of "all cities and towns". The reasoning applied in the authorities cited in support of the preceding propositions apply with equal force here.

2. The act in question violates both Section 11 of the Virginia Bill of Rights and the 14th Amendment to the Constitution of the United States "that no person shall be deprived of his property without due process of law", and prohibits the impairment of the obligation of contracts in violation of Section 10, Article I of the Constitution of the United States, which provides that no state shall pass any law impairing the obligation of contracts.

The act not only permits the court to contract the corporate limits of the town of Falls Church, but without process or pleading permits the court to "make such disposition of the corporate property of said town as may seem to it just and equitable, and to make such provision as to the payment of *any debt or obligations of the town* as between the county and the *inhabitants* of said town as to the court may seem just and equitable" and make possible the impairment of contracts. It thereby not only enables the town to be deprived of its property but impairs the rights and obligations of the town and its inhabitants *inter se*.

The act can escape condemnation as conferring legislative powers upon a segment of the population and the courts either singly or collectively, only on the theory that the act itself does establish sufficient standards to control the discretion both of the segment of the population involved and of the court in the administration of the law. As heretofore pointed out, no such standards have been established. On the contrary, the matter in the first place is dependent upon the whim and caprice of inhabitants of the segment of the town who may constitute, however, but a comparatively small fraction of the entire town. This whim having been expressed without assignment of facts or reasons of any kind puts the burden of proof upon the county that will receive the amputated section of the town, and upon the residents of the residue of the town to show that material injury will be done not to the town but to the "community", whatever that may mean, but provides for no notice to the town itself in its corporate capacity or to the inhabitants of the town as such,

and even if they acquire knowledge either by accident or by design, it gives neither the town nor the residents of the majority portion of the town any right to intervene or be heard in the proceeding until after the case has been heard and determined. In other words, after the horse has been stolen they are given the right to attempt to lock the stable door and then go in pursuit of the horse. The only right then given is not to apply to the court which had decided the case, but to this court for a writ of error upon a record already made possibly in their absence.

In this connection it may be said that petitioners intervened below and were permitted to present their case before that tribunal. This is true, but as will hereafter be shown, this does not save the act from condemnation. The constitutionality of an act depends upon the *right* preserved to a party affected thereby to enjoy process of law, and not that a hearing was granted as a favor. He is not compelled to go into court as a suppliant for the right to be heard. He must go with the right to demand and insist upon a hearing after notice. This is one of the broad distinctions between mere legislation and litigation.

There is no better statement of the distinction between a judicial inquiry and a legislative proceeding than that stated in *Prentis v. Atlantic Coast Line R. Co.*, 211 U. S. 210:

“A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation, on the other hand, looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some part of those subject to its power. The establishment of a rate is the making of a rule *for the future* and, therefore, is an act legislative, not judicial in kind, as seems to be fully recognized by the Supreme Court of Appeals (*Com. v. Atlantic Coast Line R. Co.*, 106 Va. 61), and especially by its learned president in his pointed remarks in *Winchester & S. R. Co. v. Com.*, 106 Va. 264, * * *

“Proceedings legislative in nature are not proceedings in a court, within the meaning of the Rev. Stat., Sec. 720, no matter what may be the general or dominant character of the body in which they may take place. * * * That question depends not upon the character of the body, *but upon the character of the proceedings*. * * * The decision upon them cannot be *res judicata* when a suit is brought. See *Reagan v. Farmers' Loan & T. Co.*, 154 U. S. 362. And it does not matter what inquiries may have been made as a preliminary to the legislative act. * * * The nature of the

final act determines the nature of the previous inquiry. * * * If a state Constitution should provide for a hearing before any law should be passed, and should declare that it should be a judicial proceeding *in rem* and the decision binding upon all the world, it hardly is to be supposed that the simple device could make the constitutionality of the law *res judicata*, if it subsequently should be drawn in question before a court of the United States. And all that we have said would be equally true if an appeal had been taken to the Supreme Court of Appeals (Va.), and it had confirmed the rate. Its action in doing so would not have been judicial, although the questions debated by it might have been the same that might have come before it as a court, and would have been discussed and passed upon by it in the same way that it deals with them if they arose afterwards in a case properly so called."

This last comment of Chief Justice White is with special reference to the provision in the Constitution of Virginia for an appeal from the State Corporation Commission directly to the Supreme Court of Appeals of Virginia, and on the record made there alone. Justice White continues:

"We gather that these are the views of the Supreme Court of Appeals itself. *Atlantic Coast Line R. Co. v. Com.*, 102 Va. 599, 621. They are implied in many cases in this and other United States courts in which the enforcement of rates has been enjoined, notwithstanding notice and hearing, and what counsel in this case call 'litigation' in advance. Legislation cannot bolster itself up in that way. Litigation cannot arise until the moment of legislation is past. See *Southern R. Co. v. Com.*, 107 Va. 771, 772."

Notwithstanding this, it is equally well established that even in those cases in which the legislature has the right to delegate to subordinate tribunals, whether judicial or administrative, a measure of its power of legislation, it is a necessary condition to such limited delegation that it shall be subject to the due process provisions of state and federal constitutions.

"Notice to a party whose rights are to be affected by judicial proceedings is an essential element of due process." *Riverside and D. R. Cotton Mills v. Menefee*, 237 U. S. 189; *Seldon v. Kennedy*, 104 Va. 826; *Adams v. Roanoke*, 102 Va. 53; *Boggs v. Com.*, 76 Va. 989.

"Before a special tax or assessment can become a fixed

and permanent charge upon the property of an individual, he must have notice of it and some opportunity to contest its validity and amount * * *, and the fact that an assessment has been in fact fairly apportioned *does not cure the invalidity of a statute which does not provide for notice and an opportunity to be heard.*" 12 C. J. 1263.

"Where the legislature of a state, instead of fixing the tax itself, commits to some subordinate body the duty of determining whether, in what amount, and upon whom it shall be levied, and of making its assessment and apportionment, due process of law requires that *at some stage of the proceeding before the tax becomes irrevocably fixed*, the taxpayer shall have an opportunity to be heard, of which he *must have notice*, either personal, by publication or by law, *fixing the time and place of the hearing.* * * * (Citing many cases.)

"If it is enough that, under such circumstances, *an opportunity is given* to submit in writing all objections to and complaints of the tax to the board, then there was a hearing afforded in the case at bar. But we think that *something more than that, even in proceedings for taxation, is required by due process of law.* Many requirements essential in strictly judicial proceedings may be dispensed with in proceedings of this nature. But even here a hearing, *in its very essence*, demands that he who is *entitled* to it shall have *the right* to support his allegations by argument, however brief; and, if need be, *by proof, however informal.*" *Londoner v. Denver*, 210 U. S. 373, 385, 52 L. Ed. 1103, 1112.

"It may be contended that some of the rights here in question are not property. This may be so as to some of them in a strict sense, but what the court of appeals said of the right to hold an office in *Fugate v. Weston*, 156 Va. 107, 113, is equally applicable here:

"Much has been said about the rights to office. It is not property in any narrow sense. If that were the touchstone this result might follow: The legislature, acting through the Governor or any other designated agent, might remove at pleasure any constitutional officer displeasing to it when the Constitution itself did not forbid. Should he protest, it might answer: 'We have taken no property from you and you have no right to complain'—a proposition which answers itself.

"In *Ekren v. McGovern*, 154 Wis. 157, 46 L. R. A. (N. S.) 796, is this satisfactory statement as to the nature of an office: 'So we may safely bring together the apparently conflicting ideas. An office, as a place, is not property. The right to hold an office and to take its emoluments until de-

prived thereof upon condition subsequent—due process of law—is property, in the broad sense, which includes everything of every nature, tangible, intangible, corporeal, or incorporeal, valuable, pecuniarily or otherwise, to its possessor. In the sense incorporated into the fundamental guaranties, it is property'. See also, *Foster v. Jones*, 79 Va. 642, 52 Am. Rep. 637; *Blair v. Marye*, 80 Va. 485.

"Neither rights nor property can be confiscated by a legislative act without a judicial hearing after due notice."

Again on page 115:

"Unless a Constitution provides otherwise, the *right* to notice is universally recognized when a question essentially judicial is involved. It is as old as the common law and is reaffirmed in Magna Charta, c. 29. In *Ramshay's Case*, 18 Q. B. 190, it is characterized as one of 'the implied conditions prescribed by the principles of eternal justice'. It is a part of the law of the land, or of due process of law. Va. Const., sections 8, 11; *Foster v. Kansas*, 112 U. S. 201, 28 L. Ed. 689; *Shurtleff v. United States*, 189 U. S. 311, 47 L. Ed. 828."

"The authorities on this point are overwhelming, and the decisions of all the tribunals of every country where an enlightened jurisprudence prevails are all one way. It lies at the very foundation of justice, that every person who is to be affected by an adjudication should have the *opportunity of being heard in defense*, both in repelling the allegations of fact, and upon the matter of law; and no sentence of any court is entitled to the least respect in any other court, or elsewhere, when it has been pronounced *ex parte* and without opportunity of defense.'"

"It is not enough that the owners may *by chance have notice*, or that they may as *a matter of favor have a hearing*. The law must *require notice to them, and give them the right to a hearing and an opportunity to be heard*. *Stuart v. Palmer*, 74 N. Y. 183.

"The law authorizing the proceeding must *require notice* or it will be unconstitutional."

One of the most recent cases dealing with the absolute necessity for notice is the decision of the Supreme Court of the United States in *Southern Railway Co. v. Virginia, ex rel Shirley*, 290 U. S. 190, 78 L. Ed. 260, reversing the decision of this court in the same case reported in 159 Va. 779, 167 S. E. 578, which involved the validity of the Act of 1930, Annotated Code 1930, Sec. 3974(a), providing:

“* * * whenever the elimination of an existing crossing * * * of a state road by a railroad and the substitution therefor by an overhead crossing becomes in the opinion of the State Highway Commission necessary for public safety and convenience * * * the State Highway Commissioner shall notify in writing the railroad company * * * stating particularly the point at which the existing grade crossing is to be eliminated and that the public safety or convenience requires * * * and shall submit to said railroad company plans and specifications * * *. It shall thereupon be the duty of the railroad company to provide * * * in accordance with the plans and specifications * * * provided, however, that if the railroad company be not satisfied * * * such company may within 60 days * * * file a petition with the State Corporation Commission setting out its objections to the plans and specifications and its recommendations * * * in lieu thereof, and the Commission shall hear the complaint as other complaints are heard and shall approve the plan submitted by the State Highway Commissioner, or other plans in lieu thereof.”

The Court said:

“Certainly to require abolition of an established grade crossing and the outlay of money necessary to construct an overhead would take the railway’s property in a very real sense.”

Certainly not in any more real sense than the court has taken the property and water works of this town located in the detached portion and given it to the county of Arlington and thereby impaired the integrity of the system. But the court proceeded:

“If we assume that by proper legislation a state may impose upon railways the duty of eliminating grade crossing, when deemed necessary for public safety and convenience, the question here is whether the challenged statute meets the requirements of due process of law. Undoubtedly, it attempts to give an administrative officer power to make final determination in respect of facts—the character of a crossing and what is necessary for the public safety and convenience—without notice, without hearing, without evidence; and upon this *ex parte* finding, not subject to *general review* (italics supplied) to ordain that expenditures shall be made for erecting a new structure. The thing so authorized is no mere police regulation. * * *

"In the comparatively few cases in which such questions have arisen, it has been distinctly recognized that administrative orders, quasi-judicial in character, are void if a hearing was denied; if that granted was inadequate or manifestly unfair, if the finding was contrary to the indisputable character of the evidence.

"*Chicago M. & S. P. R. Co. v. Minnesota*, 134 U. S. 418, 457, 458, 33 L. Ed. 970, 981, involved an act of the Minnesota legislature which *permitted* the Commission *finally* to fix railway rates without notice. It was challenged because of conflict with the due process clause. This court said:

" 'It deprives the company of its right to a judicial investigation by due process of law, under the forms and with the machinery provided by the wisdom of successive ages for the investigation judicially of the truth of the matter in controversy, and substitutes therefor, as an absolute finality, the action of a railroad commission which, in view of the powers conceded to it by the state court, cannot be regarded as clothed with judicial functions or possessing the machinery of a court of justice * * *. No hearing is provided for, no summons or notice to the company *before* the commission has found what it is to find and declared what it is to declare, no opportunity *provided* for the company to introduce witnesses before the commission, in fact, nothing which has the semblance of due process of law; * * *

" 'If the company is deprived of the power of charging reasonable rates for the use of its property, and such deprivation takes place in the absence of an investigation by judicial machinery, it is deprived of the lawful use of its property, and this, in substance and effect, of the property itself, without due process of law and in violation of the Constitution of the United States'.

"The claim that the questioned statute was enacted under the police power of the state, and, therefore, is not subject to the standards applicable to legislation under other powers, conflicts with the firmly established rule that *every state power is limited by the inhibitions of the 14th Amendment*. (Citing many cases.) * * *

"Counsel submit that the Legislature, without giving notice or opportunity to be heard, by direct order might have required elimination of the crossing. Consequently, they conclude the same end may be accomplished in any manner which it deems advisable without violating the Federal Constitution. But if we assume that a state legislature may determine what public welfare demands and by direct command re-

quire a railway company to act accordingly, it by no means follows that an administrative officer may be empowered, without notice or hearing, to act with finality upon his own opinion and ordain the taking of private property. There is an obvious difference of an administrative official not supported by evidence. In theory, at least, the legislature acts upon adequate knowledge after full consideration and through members who represent the entire public."

The action here being attacked is the part taken by a segment of interested parties acting upon whim or their own views as to their private interests in part and an administrative officer acting under limitations placed upon him by reason of such action, and his action after a hearing to which the other interested parties have access only by accident or favor.

The Supreme Court, in the Shirley case, *supra*, continued:

"Considering the decisions here, it is clear that no such authority as that claimed for the Commissioner could be entrusted to an administrative officer or body under the power to tax, to impose assessments for benefits, to regulate common carriers, to establish drainage districts, or to regulate business. *Turner v. Wade*, 254 U. S. 64, 70, 65 L. Ed. 134, *Browning v. Hooper*, 269 U. S. 396, 405, 70 L. Ed. 330; *I. C. C. v. L. & N. R. Co.*, 227 U. S. 88, 57 L. Ed. 431; *Embree v. Kansas City, etc., Road District*, 240 U. S. 242, 247, 60 L. Ed. 624, 627; *Yick Wo v. Hopkins*, 118 U. S. 356, 30 L. Ed. 220."

And again:

"The infirmities of the enactment are not relieved by an *indefinite right of review* in respect of some action spoken of as arbitrary. Before it properly can be taken under the edict of an administrative officer the appellant is entitled to a fair hearing upon the fundamental facts."

The necessity of *securing* such a right to a hearing in the statute itself was discussed by the Supreme Court of the United States in *Coe v. Armour Fertilizer Works*, 237 U. S. 412, 59 L. Ed. 1027.

There the Armour Company had secured a judgment against a corporation and sued out a writ of execution which was returned *nulla bona*, whereupon, pursuant to statutory authority the plaintiff sued out an execution against one Henry L. Coe, a stockholder of the company, in an amount equal to the amount remaining unpaid upon his subscription of stock

of the defendant company. This execution, pursuant to the same authority was levied upon a parcel of land, the property of Coe, but there was no interference in his possession nor any step taken towards selling the land when Coe filed a petition to quash the execution alleging that it had been issued without notice to him and amounted to the taking of his property without due process of law, and that the statute permitting it was void under the Constitution of Florida and the due process and equal protection clauses of the 14th Amendment.

The circuit court quashed the execution “* * * but not on the ground of unconstitutionality of the statute * * * the statute is constitutional, but the execution cannot issue until some preliminary steps are taken”.

The Armour Company then removed the cause *by appeal* to the Supreme Court of Florida, which reversed the lower court, holding that the statute required no preliminary steps to be taken and that there was no general law requiring previous notice to him and no necessity therefor, adding:

“A stockholder * * * becomes such charged with knowledge that under the statute, upon the return of *nulla bona* upon an execution issued against the corporation, an execution may be issued against him for the unpaid subscription to the stock he holds. * * * The statute * * * affords the means by which the officer holding the execution may obtain definite information as to the stockholders and the unpaid subscriptions on the stock. If the person against whom the execution is issued is not in fact a holder of stock upon which there is unpaid subscription, or if the amount of the execution is in excess of the unpaid subscription, the stockholder may have appropriate relief under the statute providing for the testing of the legality of executions.”

The case went back to the circuit court with a mandate “that such further proceeding be had in said cause, as, according to right, justice, the judgment of said supreme court and the laws of the state of Florida, ought to be had”. It was again brought on for hearing before the circuit court, when, without further pleadings or evidence judgment was rendered denying the motion to quash. The Supreme Court of Florida affirmed this judgment, saying:

“Coe does not claim that he was (not) in fact a stockholder, nor that there remains no balance due upon his stock, nor seek to interpose any of the defenses pointed out as open to him upon the former hearing but stands boldly

on his attack upon the constitutionality of the act, and by a proceeding unknown to our practice. There does not appear to have been any forcible seizure of any property of the said Coe, other than the formal levy * * *. The statute presents many difficulties that may arise as to others not similarly situated, and may as such be beyond the power of the legislature; but the party now before this court has not brought himself within the class who may justly complain, and the judgment as to him, upon the authority of our former holding, is therefore affirmed."

On this judgment the case was carried to the U. S. Supreme Court. It may be pointed out here that there are many analogies between the relation of a stockholder in a corporation to the corporation, and those of a property holder and citizen in a municipal corporation to the municipality and his responsibility for its debts. After reviewing the Florida statutes under which this proceeding was authorized, which entitled any stockholder to a hearing and relief, if in fact, he turns out not to be indebted to the corporation, the court said, page 422 L. Ed. 1031:

"We understand, therefore, that in the present case the court held that * * * on a return of 'no property' * * * an execution may be issued against any stockholder without notice to him or other preliminary steps; that the writ is to be enforced against his property to the extent of his unpaid subscription to the stock that he holds in the company, and this amount the officer ascertains from the custodian of the records of the corporation * * *; that if the persons against whom the execution is issued is not in fact a holder of stock upon which there is an unpaid subscription, or if the amount of the execution exceeds the unpaid subscription, he may have relief * * *; and that, in the absence of such objection on his part, the execution is enforced, although there may have been only a formal levy, without there may have been only a formal levy, without even such notice to the owner of the property as might be implied from a forcible seizure or an interference with his possession.

"Thus construed, and as applied in this case, we think Sec. 2677 is repugnant to the 'due process of law' provision of the 14th Amendment, which required at least a hearing, or an opportunity to be heard, in order to warrant the taking of one's property to satisfy his alleged debt or obligation; and in our opinion the other sections do not adequately supply the defect.

"It may be conceded that a judgment * * * against a corporation * * * may consistently with the 14th Amendment, be treated as concluding the stockholder respecting the existence and amount of the indebtedness so adjudged. * * * But before a third party's property may be taken to pay that indebtedness upon the ground that he is a stockholder and indebted to the corporation * * * he is entitled, upon the most fundamental principles, to a day in court and a hearing upon such questions as whether the judgment is void or voidable for want of jurisdiction or fraud, whether he is a stockholder and indebted, and other defenses personal to himself. * * *

"The suggestion * * * that a hearing upon pertinent questions of fact may be had at the instance of the alleged stockholder *after the execution issues*, and before interference with his possession or his property right, therefore plaintiff in error, having been at liberty in this proceeding to raise meritorious questions, is not 'within the class who may justly complain', will not withstand critical analysis."

It was suggested there, as it will probably be suggested here, that none of these considerations apply because as a matter of fact the plaintiff in error had notice and an opportunity was afforded him to present his defenses though the statute did not require this. The court said, page 424 L. Ed. 1032:

"The fallacy of this is that it ignores the issue of law raised by the petition of plaintiff in error, and substitutes an issue of fact for which he was not summoned and which he has not consented to litigate. To one who protests against the taking of his property without due process of law, its is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits. *Rees v. Watertown*, 19 Wall. 107, 123 L. Ed. 72, 77.

"Nor can extra-official or casual notice, or a hearing granted as a matter of favor or discretion, be deemed a substantial substitute for the due process of law that the Constitution requires. In *Stuart v. Palmer*, 74 N. Y. 183, 188, 30 Am. Rep. 289, which involved the validity of a statute providing for assessing the expense of a local improvement upon the lands benefited, but without notice to the owner, the court said: 'It is not enough that the owners may by chance have notice, or that they may as a matter of favor have a hearing. The law must *require* notice to them, and give

them the right to a hearing and an opportunity to be heard'. The soundness of this doctrine has repeatedly been recognized by this court. Thus, in *Security Trust & S. B. Co. v. Lexington*, 203 U. S. 323, 333, 51 L. Ed. 204, 208, 27 Sup. Ct. Rep. 87, the court, by Mr. Justice Peckham, said, with respect to an assessment for back taxes: 'If the statute did not provide for a notice in any form, it is not material that as a matter of grace or favor notice may have been given of the proposed assessment. It is not what notice, uncalled for by the statute, the taxpayer may have received in a particular case that is material, but the question is whether any notice is provided for by the statute * * *. And in *Louisville & N. R. Co. v. Central Stock Yards Co.*, 212 U. S. 132, 144, 53 L. Ed. 441, 446, 29 Sup. Ct. Rep. 246, it was said: 'The law *itself must save the parties' rights*, and not leave them to the *discretion of the courts as such*.'"

Should it be suggested that the provisions of the statute requiring publication of the notice and posting at the front door of the Court House of Arlington County did constitute notice to the town and *all* of its inhabitants, it is respectfully submitted that this cannot be true. The publication of this notice was not a notice to any of the appellants, all of whom were residents of Fairfax County and the posting is at the Court House door of the county "in which is located the part of said town proposed to be stricken off", that is, in which the petitioners themselves lived but not in which the bulk of the town was located nor where the great bulk of its population lived, and the only persons therein *named* as defendants were "the *Board of Supervisors of the county* in which is located the part of said town proposed to be stricken". It was only subsequent to this publication and after the case had been set for hearing that any notice of any kind or character was required to be served on anybody else, and that person was only the *mayor* of the town who might as well have been a resident of that portion of the town proposed to be stricken off as of the residue of the town located in Fairfax County, and for that matter he may as well have been one of the petitioners himself. He is not the corporate entity interested nor empowered to act for the town in such matters. As a matter of fact and as the evidence in this case shows, a number of the mayors of this town had been residents of that portion of the town located in Arlington County, and the Chairman of the County Board of Arlington County, one of the petitioners, was an ex-mayor of the town. There is nothing in the statute in any way naming the town of Falls Church in its corporate capacity

as a party or requiring notice of any kind be served upon it, or allowing appearance by it or on its behalf, though "the Board of Supervisors of the county in which is located the part of said town proposed to be stricken" was required to be named as the sole defendant to the petition. It could be as soundly argued that a suit and judgment against L. P. Daniel, Mayor, could be enforced against the town.

Instead of permitting either the town itself in its corporate capacity or any resident of that portion of the town not sought to be detached to intervene and have a right to appear *at the hearing*, it is expressly provided only that

"* * * any one or more residents or freeholders of the territory *proposed to be stricken off* may appear and set forth reasons why the same should not be done."

There is not a line in the act in any way requiring or permitting notice to the town in its corporate capacity or any resident of the town other than those living in the territory sought to be detached, nor permitting any of them to appear or take any part in the proceeding during its pendency in the court until *after* the case shall have been *decided* adversely to the wishes of the town itself and the residents thereof;

"Any one or more of the petitioners, defendants (sic) or *any inhabitants of said town* who may feel themselves aggrieved by the order amending said charter, or by the refusal to enter such order, may at any time within sixty days from the *date of said order*, upon giving bond for costs, the amount thereof to be fixed by the court, apply (not to the court below to correct any errors to its prejudice or an opportunity to show cause against it, but) to the Supreme Court of Appeals for a writ of error and *supersedeas according to the general law*."

This can only mean upon a record made in the lower court in a proceeding to which they were not parties and had no right secured to appear.

We may even concede, however, that the notice required by the statute might by possibility reach the intelligence of the citizens of that portion of the town not to be detached, but notice is not sufficient to constitute process of law. Notice is merely a step preliminary to preserving the real right which is the right to appear at the hearing and to be heard. A right to notice without a right to be heard is no right at all.

In *Riverside and D. R. Cotton Mills v. Menefee*, 237 U. S. 189, 194, 59 L. Ed. 910, 912, it was said:

"* * * that a corporation, no more than an individual is subject to be condemned without a hearing, or may be subjected to judicial power in violation of the fundamental principles of due process * * *."

"To condemn without a hearing is repugnant to the due process clause of the 14th Amendment, needs nothing but statement." 12 C. J. 1234.

"A hearing, or an opportunity to be heard is absolutely essential. We cannot conceive of due process of law without this." *Stuart v. Palmer*, 74 N. Y. 183, 191.

"* * * he cannot be divested of this right by any act of the legislature." 12 C. J. 1234.

"It is the rule as old as the law, and never more to be respected than now, that no one shall be personally bound until he has had his day in court, by which is meant, until he has been duly cited to appear and has been afforded an opportunity to be heard. Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and can never be upheld where justice is justly administered." *Hovey v. Elliott*, 167 U. S. 409, 417, 42 L. Ed. 215.

"It is patent that any scheme or so-called procedure which would permit one person to take from another any article, or record, or property arbitrarily, without any hearing or day in court, or without affording an opportunity to be heard, would be to take the property of another without due process." *Hovey v. Elliott*, 167 U. S. 409, 417, 42 L. Ed. 215. *In re Letcher*, 190 S. W. 12, 21."

"The object of notice which is an essential element of due process, is to afford an opportunity to appear and be heard, and if the hearing is denied, the notice is ineffectual for any purpose." 12 C. J. 1236.

In the same way it must be apparent that the striking off of a large section of the territory and population and a large part of its privately owned property and franchises of a corporation which has incurred debts on the faith of its revenues as well as its property, must necessarily result in impairing its contracts by diminishing the right and power of the creditors and by increasing the *pro rata* liability of the residents of the town as it left, and by discharging from liability thereafter the population and property that is segregated from the old town. It is important in this connection to note that \$118,000.00 of the indebtedness of this town was

created for the installation of a water system for the entire town, a large per cent of which was and is in the detached portion of the town, and some of it even located beyond its corporate limits in the county of Arlington, which bond issue was incurred by virtue of a bond election under the provisions of Section 127 of the Virginia Constitution and the statutes pursuant thereto, for a "specific undertaking from which the * * * town may derive a revenue", and yet, under the express provisions of this statute and under the order of the court appealed from not only is the territory located in Arlington County detached from the town but it is prescribed (Tr., p. 314):

"From and after the effective date of this decree the county of Arlington shall own and hold all public improvements and real and personal property of every kind and description of the town of Falls Church located within that portion of the town herein provided to be stricken from the corporate limits of the town, excepting two certain wells and the lots of land now owned by the town of Falls Church upon which these wells are located."

It is well recognized that such properties as these held by towns are held under the same pecuniary responsibility and rights as individuals or quasi public corporations engaged in like business.

"Cities or towns, whenever they engage in transactions not public in their nature, act under the same pecuniary responsibility as individuals, and are as much bound by their engagements as are private persons, nor is it in the power of the Legislature to authorize them to violate their contracts. *Savings Society v. Philadelphia*, 31 Pa. 175, 185", cited with approval by the U. S. Supreme Court in *Mount Pleasant v. Beckwith*, 100 U. S. 514, 25 L. Ed. 699, 704.

"Extensive powers * * * are doubtless possessed by the Legislature; but the Constitution provides that no state shall pass any 'law impairing the obligation of contracts', from which it follows that the Legislature, in the exercise of any such power, cannot pass any valid law impairing the rights of existing creditors of the old municipality." *Mount Pleasant v. Beckwith*, 100 U. S. 514, 25 L. Ed. 699, 704, citing numerous cases.

"Whenever the charter of a city, at the time of the issue of bonds, made it the duty of the city authorities to levy and collect the amount, when reduced to judgment, like other city charges, the same court held that a subsequent

Act of the Legislature prohibiting the city from levying such a tax would be repugnant to the Constitution." *Soutter v. Madison*, 15 Wis. 30.

In the leading case of *People ex rel Board of Park Commissioners v. Common Council of Detroit*, 28 Mich. 228, 15 Am. Rep. 202, this question is quite thoroughly discussed by Judge Cooley in an able opinion, where, beginning on page 207, Judge Cooley speaking for the court, says:

"In *People v. Hurlbut*, 24 Mich. 44, 9 Am. Rep. 103, we considered at some length the proposition which asserts the amplitude of legislative control over municipal corporations and we there conceded that when confined as it should be, to such corporations as agencies of the state in its government, the proposition is entirely sound * * *.

"But we also endeavored to show * * * that though municipal authorities are made use of in state government and as such are under complete state control, they are not created exclusively for that purpose but have other objects and purposes peculiarly local, and in which the state at large, except in conferring the power and regulating its exercise is legally no more concerned than it is in the individual and private concerns of its several citizens. Indeed it would be easy to show that it is not from the standpoint of state interest, but from that of local interest, that the necessity of incorporating cities and villages most distinctly appears. * * * It is because where an urban population is collected many things are necessary for their comfort and protection which are not needed in the country, and which the country and township organizations with their imperfect powers and machinery cannot well supply, that the state is of the locality a subordinate commonwealth, which while it shall perform for the state, wholly or in part what the county and township officers performed before, shall also be endowed with capacities to provide for its citizens such matters of necessity or convenience as their health, protection, comfort or enjoyment as a political community may demand. Indeed it is a matter of general observation that the state does not force upon the local community these larger powers, but waits to be solicited to confer them when the people interested shall deem them for their advantage. * * *

"We also referred in *People v. Hurlbut* to several decisions in the Federal Supreme Court and elsewhere, to show that municipal corporations considered as communities endowed with peculiar functions for the benefit of their own citizens, have always been recognized as possessing powers and ca-

capacities, and as being entitled to exemptions, distinct from those which they possess or can claim as conveniences in State government. If the authorities are examined it will be found that these powers and capacities, and the interests which are acquired under them, are usually spoken of as *private*, in contradiction to those in which the State is concerned, and which are called *public*, thus putting these corporations, as regards all such powers, capacities and interests, substantially on the footing of private corporations. This distinction is very carefully drawn in *Bailey v. New York*, 3 Hill 531, which concerned the New York water-works, and also in *Small v. Danville*, 51 Me. 362; *Philadelphia v. Fox*, 64 Penn. St. 180, and *Western College v. Cleveland*, 12 Ohio (N. S.) 375. It is well stated by Lewis, C. J., in *Western Saving Fund Society v. Philadelphia*, 31 Penn. St. 183, in speaking of a municipal corporation as the owner of gas works: 'The supply of gas light', he says, 'is no more a duty of sovereignty than the supply of water. Both these objects may be accomplished through the agency of individual, or private corporations, and in very many instances they are accomplished by these means. If this power is granted to a borough or a city, it is a special *private franchise*, made as well for the private emolument and advantage of the city as for the public good. *The whole investment is the private property of the city*; as much so as the lands and houses belonging to it. Blending the two powers in one does not destroy the clear and well settled distinction, and the process of separation is not rendered impossible by the confusion. In separating them, regard must be had to the object of the legislature in conferring them. If granted for public purposes exclusively, they belong to the corporate body in its public, political or municipal character. But if the grant was for purposes of private advantage and emolument, though the public may derive a common benefit therefrom, the corporation *quoad hoc* is to be regarded as a *private company*. It stands on the same footing as would any individual or body of persons upon whom the like *special franchises* had been conferred'. In *San Francisco Gas Company v. San Francisco*, 9 Cal. 453, it is held that in providing light for corporate conveniences, a municipal corporation is on the same footing with a private corporation, and may be held liable on implied contract. In *Oliver v. Worcester*, 102 Mass. 499, 3 Am. Rep. 485, a like distinction is drawn between the public and private capacities and responsibilities of municipal corporations. And in *Dillon on Municipal Corporations*, Sec. 39, pains are taken to collect many authorities to the same effect. Indeed the history of municipal corporations in the county from which

we derive our institutions will show that they first came into existence by spontaneous local action of their members, taken for their own benefit and protection. * * * And the city of London has always been, and is now, vastly more important in its private capacity as a corporation than in its public capacity as an agent of government.

"We should not discuss this subject in the present case if the course of the argument had not seemed to indicate that our opinions in *People v. Hurlbut* had been, to some extent, misapprehended. We intended, in that case, to concede most fully that the state must determine for each of its municipal corporations the powers it should exercise, and the capacities it should possess. * * *

"But it cannot be contended that authority in the legislature to determine what shall be the extent of capacity in a city to acquire and hold property, is equivalent to, or contains within itself the authority *to deprive the city of property actually acquired by legislative permission*. As to the property it thus holds for its own private purposes, a city is to be regarded as a constituent in state government and is entitled to the like protection *in its property rights* as any natural person who is also a constituent. The right of the state, as regards such property, *is a right of regulation*, and though broader than exists in the case of individuals, *is not a right of appropriation*. The constitutional principle that no person shall be deprived of property without due process of law applies to artificial persons as well as natural, and to municipal corporations in their private capacity, as well as Corporations for manufacturing and commercial purposes. * * * To this extent the corporate right appears to us to be a *clear and undoubted exception to the general power of control which is vested in the state.*" *People ex rel Board, etc., v. Common Council of Detroit*, 15 Am. St. Rep. 202, 207, 211."

This case has been cited hundreds of times in subsequent cases.

It is beyond the power of the state to prohibit the corporation from discharging the property and inhabitants of a town from liability for its debts. Neither can it accomplish the same end indirectly or in part by discharging a portion of the property and a portion of the inhabitants of the town from their proper liability therefor.

For these and other reasons apparent on the face of the record it is submitted that the demurrer to this complaint should have been sustained.

II. The court erred in granting the prayer of the petition for the contraction of the corporate limits of Falls Church.

In order to understand the wrong and injury done the town by this action it is well to consider the essential facts briefly.

The town was first incorporated by Act of Assembly approved March 31, 1875, Session Acts 1874-1875, page 403—Stipulation, 19, Tr., p. 52. The corporate limits are set out in Section 9 of that Act. Though they have been altered slightly from time to time since that date none of these changes affected any portion of the territory within the limits of Arlington County. The last alteration was by act of May 21, 1887, page 464. Since then they have not been changed.

The area of the town comprises 1,568 acres, of which 1,278 acres are within Fairfax County and 290 acres in Arlington. The population of the town as of February 1, 1934, under a census taken by the authorities of Arlington County was 2,121, of which 1,596 were resident in Fairfax County and 525 in Arlington County.

Exhibit No. 8 is a map of the town showing the location of each building, public or private, other than mere outbuildings, within each section of the town. The uses to which these buildings are devoted are as shown by the legend. The figures opposite the location of each building indicate the number of occupants in each. It shows 417 dwelling houses in the Fairfax County portion and 131 in the Arlington County portion, and 31 stores or other places of business in the Arlington County section with but 24 in the Fairfax County portion. While the Fairfax portion of the town has much the greater area, much the greater population, all of the churches and all of the schools, both public and private, and the only bank in the town, the majority of the stores and other places of business that serve this population are located in the Arlington County portion of the town. This is so because the railroad stations and depots of the two railroads serving this community are in the Arlington section of the town. See Stipulations 8 and 14 (Tr., pp. 38 & 40, Ex. 9a).

Of the taxable values of the town the real estate is assessed at \$1,127,865.00, and the personal property at \$168,380.00, a total of \$1,296,445.00 of which \$919,465.00 is located in the Fairfax section of the town and \$376,780.00 in the Arlington section (Exhibit 2, Stipulation, 2, Tr., p. 31).

The outstanding bonded indebtedness of the town consists of \$118,000.00 issued for a water system for the whole town pursuant to a vote by the people under the provisions of Section 127 of the Constitution, and, therefore, not to be counted in the debt limit, and \$65,000.00 of school bonds which must

be included in the debt limit. The existing debt limit based on 18% of \$1,127,865.00 is \$203,015.00. Deducting the \$65,000.00 of school bonds outstanding would leave the town with ability to still incur indebtedness to the extent of \$138,000.00. The town has contracted with the Federal Emergency Relief authorities for a loan of about \$135,000.00 for the purpose of installing a sewerage system deemed essential to the health of the town.

If the prayer for contraction is granted the town will not have authority to incur this indebtedness unless it can have the project put on a self liquidating basis within five years and maintained thereon, and the loan is authorized by a majority vote of the qualified voters.

Exhibit No. 1 filed with the Stipulation of Facts (Tr., p. 30) shows separately the county levies of Fairfax County within Providence and Falls Church Districts of that County and in Arlington County, and the town levy in all sections of the town. It shows the same with respect to fire levies, pension funds, road debt and the schools and school debts in the various sections of the town, and also the total tax levies, town and county. The total tax levy, county, town and district, in that portion of the town lying in Falls Church Magisterial District is \$3.16; that lying in Providence is \$2.86, and that portion lying in Arlington County is \$2.65, and the town levy uniform in all sections of the town is \$1.45 per \$100.00. The town has a thoroughly sufficient and efficient water system. Its streets and sidewalks are well paved and maintained and lighted. It has two all time police; a health officer; contributes to the support of a volunteer fire company, the fire house being located in the Arlington County section of the town, and pays for the insurance of the firemen.

The town, which is a separate School District, maintains first class primary and high schools administered under what is known as the 7-4 system, that is, seven years in the primary school and four years in the high school. It has 147 pupils and six teachers in its high school, one teacher to every 24 pupils, whereas the Arlington County high school spoken of so highly have 31.6 pupils per teacher.

Arlington County has no high school closer than three miles from Falls Church and no primary school within a mile and a half of the corporate limits; and this school is so very crowded and so far away from some of the residents of Arlington County that at least thirteen Arlington County pupils attend the Falls Church primary schools for which the county denies any responsibility. This County school, the Robert E. Lee, was so very crowded at the time that the evidence was taken in this case that two of its classes had to be

limited to a three hour day, and under no circumstances afforded accommodation for but 35 additional pupils, whereas, in event of corporate contraction, it would have been necessary for Arlington County to provide additional accommodations for at least 112 additional pupils, 99 from Falls Church alone and 13 from Arlington County beyond the corporate limits (see Tr., pp. 12 and 47), 24 high school and 88 elementary.

Exhibit No. 9A shows the corporate limits of the town and the groupings of population therein and adjacent thereto indicated by dots on this map. There are three groupings of population as so indicated and the most populous is the point where the Leesburg Turnpike crosses the highway now known as the Lee Highway. The less populous sections are two other points where the railroad now known as the Washington & Old Dominion Railway crosses the Leesburg Turnpike now known as West Falls Church, and the other where it crosses the Lee Highway now known as East Falls Church. These two points afforded the only ready access to the principal settlement of Falls Church. It was evidently the purpose of the incorporators in seeking incorporation and of the Legislature in granting, to embrace within the corporate limits these three points, not because part of them were in Arlington and part in Fairfax County, but in spite of that fact, and because all three constituted a single community with railroad and highway facilities in common and should, for this cause, be under a common community control. It is also apparent from the contours shown by these maps and as stated in the testimony (see Stip., 14, Tr., p. 40, Exhibit 9B, and Mayor Daniel's testimony, Tr., p. 231) shows that the natural drainage basin for both sections of the town is almost coincident with the dividing line between the two counties and that the natural drainage from both sections of the town fall into this drainage basin which makes it very important for the town to be able to control this drainage basin. The population in East Falls Church is in no sense an extension of the population of what might be spoken of as the urban section of Arlington County, that is the section close to Washington.

The dots indicating the presence of dwellings show that the groupings of these three centers of population in the town of Falls Church are contiguous and that the groupings of population outside of the town are segregated from the town by large areas of rural land with comparatively few buildings on them. In fact, the territory in Fairfax County adjacent to but not in the corporate limits is more densely built up than is the case on the Arlington side of the town.

The most thinly settled portion of Arlington County as shown on this map, Exhibit No. 9A, is to the west of a line thereon extending from Veitch on the Washington Virginia Railroad to the Station of Vandewerken on the Great Falls branch of the Washington & Old Dominion Railroad Company. All of the territory to the west of this imaginary line is extremely thinly built up until the corporate limits of Falls Church are reached; whereas all of the territory of Arlington County to the East of that line is quite heavily and densely built up. A mere glance at this map demonstrates the accuracy of these conclusions. That this town as at present constituted is but one community and should not be separated is shown by these striking facts: The Fairfax portion of the town contains more than 75% of the population. There are in the entire town 55 stores and other places of business, yet 31 of these, or nearly 60% are situated in the Arlington County portion of the town, while but 24, or practically 40% are in the Fairfax portion, notwithstanding the fact that the Fairfax portion contains all of the schools, all of the churches, the town hall, the telephone exchange, the only bank, the municipal buildings and the police headquarters. A more striking illustration could not be furnished of the fact that, owing to the location of the railroads and principal highways of the town and their intersection therein, that the bulk of the business is conducted there while three-fourths of the population live in the Fairfax section. It is admitted that to contract the limits of this town as indicated will increase the tax rate of the residue of the town variously estimated at from 18 to 40 cents on the \$100.00.

1. No benefits to the inhabitants of the segregated territory.

The only tangible benefit that has been pointed out by any witness as accruing to anybody as the result of detaching the territory, taxable values and population concerned from the town, is that it will result in a slight reduction of taxes to be paid by some of the residents of the Arlington section of the town. This is the only legitimate result also of the lengthy opinion of the Court. The only witnesses resident in the territory sought to be detached were Mrs. Moran, an employee of Arlington County and apparently the leader of the secessionists (Tr., pp. 82-107); Philip B. Nourse (Tr., pp. 116-119); Dr. Knowles (Tr., pp. 120-130); C. A. Stewart (Tr., pp. 129-130); Walter T. Jewell (Tr., pp. 130-136); Mrs. A. H. Barbor (Tr., pp. 136-141); Mr. Harry A. Fellows (Tr., pp. 142-147); and Mrs. Mary E. Ryer (Tr., pp. 148-150). All of these,

with one or two possible exceptions, are close neighbors of Mrs. Moran, located on or about the convergence of Cedar Street, Brown Avenue and Lee Highway, the places of residence of Mrs. Brown (Tr., p. 104), Mr. Nourse (Tr., p. 116), Dr. Knowles (Tr., p. 120), Mr. Stewart (Tr., p. 130), and Mrs. Barbor (Tr., p. 163). These probably constitute the "we" so frequently mentioned by Mrs. Moran in her testimony. The residences of the other two are not stated with sufficient clearness to locate them with respect to this machine gun nest of the petitioners. Mr. Nourse (Tr., pp. 117 and 119), and Mr. Stewart (Tr., p. 130) frankly stated that the *only* benefits they could think of to accrue to anyone by reason of contraction was reduced taxes, as shown by Exhibit 1-B. These taxes are \$2.20 in Arlington County outside of Falls Church, and inside of Falls Church aggregate \$2.65 for the Arlington County section, made up of \$1.20 direct to the county, plus the uniform town rate of \$1.45 (Ex. 1-C), a difference of but 45 cents. The Fairfax County citizens of Falls Church pay the same town rate of \$1.45 plus the county rate of \$1.71 in Falls Church Magisterial District, a total of \$3.16 in that District, or plus the county rate of \$1.41 in Providence District, a total of \$2.86 in that portion of the town in Providence District. Hence, the citizens of both sections of the town of Falls Church lying within Fairfax County now pay more taxes than do those in that section within the limits of Arlington. This is due largely to District Road taxes to pay District Road Bonds voted by the two Magisterial Districts which embrace parts of the Fairfax County portion and which were supposed to benefit peculiarly the the whole town of Falls Church. See *Falls Church v. Fairfax County*, 151 Va. 672, where the litigation touching the liability of property within the Fairfax County portion of the town was determined adversely to the town. The Arlington County section were lucky in being exempted from this tax. The latter alone complain of the town expense but wish to *increase* the burden of that expense on the already more heavily taxed Fairfax section.

As held in the *Alexandria Annexation case*, 117 Va. 230, this reason of itself is not sufficient for refusing annexation even where a *necessity* for a change of status had to be proven. *A fortiori* it is not a sufficient reason for contraction where the necessity for changing the *status quo ante* of long standing in reliance on and around which many investments have been made and many commitments, both private and municipal, have been incurred, must be proven.

It has already been pointed out that this inequality is not the result of any discrimination on the part of the town au-

thorities which levies the same taxes on all of its inhabitants wherever they reside—\$1.45—\$1.00 of which is for all town purposes and the 45 cents is levied, 35 cents for taxes and retirement of the school bonds for which all citizens of the town on both sides of the county live (even Mrs. Moran voted, and of which she now complains) and the other 10 cents is for fire protection, i. e., support of the fire company and indemnity insurance for its members.

None of the other so-called reasons whether assigned by these petitioning witnesses or by ingenious reason of counsel or in the opinion of the court, are of any merit, even if established. The great bulk of them are proven to be either contrary to the facts or are unsupported otherwise than by optimistic invasions of the realm of supposition and prediction, contrary to the evidence and to human experience. Only a few will now be called to the attention of the court.

Mrs. Moran (Tr., p. 86) says "it seems" to her that neighbors back of her received greater benefits for tax expenditures. Her children (Tr., p. 87) had to go to Arlington County in order to give them "*eighth grade schooling*", a conclusion wholly contrary to the fact. Mr. Jewell (Tr., p. 132) assigned the same foolish reason. The eighth grade in Falls Church is a High School grade. In Arlington County it is a Junior High. Her child could have gotten this "schooling" in either "Falls Church at that time had only a two year high school". That was seven years ago (Tr., p. 94). This condition has long since been changed. She personally knows nothing of the present conditions. She also claims "we" never had advantage of "dental clinics". She was entitled to them if they were there to be had and Dr. Chichester says they would have been granted, if applied for. Fairfax County now maintains the same character of service in its schools that Arlington affords. "No improvements *I can think of* on streets". The evidence shows she is mistaken in this.

She complained of the water situation (Tr., p. 88). The evidence shows she is utterly mistaken in respect to the water situation and that since Falls Church installed its system it has laid 100 per cent more lineal feet of water lines in the Arlington County section without charge to abutting owners than Arlington County did previously, charging \$1.00 per foot.

She also complains that while she got free scavenger service from Arlington County that it was only with the consent of the town. As already pointed out she was *entitled* to this service from the county in part return for the taxes levied on her property by it. She is still entitled to it and can get it unless she thinks the like service rendered by the town is

superior. It is wholly unnecessary to break up the town to get from the county any scavenger, police or health service the county renders to any of its citizens. The jurisdiction of both are concurrent in the town in these respects. The fact that the Fairfax section of the town did not get the service from Arlington County is no reason for disrupting the town. The evidence of the other petitioners and witnesses is but a re-hash of these complaints of real or imaginary discrimination or priorities by town officials in expending public funds. Such complaints seem incident to the expenditures of all funds when the requirements or ambitions of the inhabitants exceed the local budgets. This condition is not peculiar to Falls Church or to any section of it and we have no reason to believe or even suspect that Arlington County is free of the same element of human nature.

The intimation that there is intentional discrimination on the part of the officials against the Arlington County section is disproven by the statistical evidence in this case, by the fact that Mr. Fellows, a resident of Arlington County, was for eight years the elected mayor of the town, and succeeded by Mr. Moncure, another such resident, by the testimony of Mr. Parmelee, and is disclaimed by Mr. Fellows, Mr. Nourse, Mr. Stewart, and Dr. Knowles (Tr., p. 125).

It remained for Mr. Jewell (Tr., p. 138) to take the prize in assigning his reasons. 1st, that the people of Arlington County are more broad-minded and less jealous; and, 2nd, that Falls Church has not grown as rapidly as Clarendon, and, therefore, should be disrupted. So far as there is any shadow of basis in these complaints, they furnish no basis for relief in court. They are complaints as to the exercise of discretion by executive officers and furnish no reason for destroying the town by court order. How one or more of a body of 500 citizens expects to have their grievances given more sympathetic attention by a governing board elected from a population of 30,000 with many diverse interests, than by a governing body elected from a population of 2,000 by wards, of whom they constitute 25 per cent, whose problems are all in common and under their immediate eyes, is inconceivable.

2. Effect on the Community highly injurious.

Not only does the evidence fail to show affirmatively that the community will be not materially affected, it shows affirmatively that it will be materially and injuriously affected at least in the following respects:

(i) In impairing the efficiency of its school system:

(a) by decreasing the school population essential to a well rounded school without decreasing appreciably the overhead expense of operating the school.

(b) By leaving the town with a school plant in the way of buildings and equipment in excess of present needs for its decreased population.

(c) By leaving the town and the school board encumbered with bonded debts, judiciously incurred by popular vote of the entire population, a charge on a smaller population and a lesser tax base.

(d) By impairing the morale of the school and its staff.

(ii) In depriving the town of access to and the exercise of its police power over—

(a) The principal railroad stations and depots used daily by the mass of its citizens, many of whom are department clerks in Washington and have to use these facilities daily.

(b) Over its chief sources of supply for its water system.

(c) Over the water shed and natural drainage channels necessary to the proper drainage of the town, whether storm or sewer discharge.

(d) Over 60% of the stores and business houses at which its citizens are accustomed to deal. See *City of Alexandria v. County of Alexandria*, 117 Va. 230.

(iii) In depriving the town of 25% of its population and 33 1/3% of its taxable values resulting from the location with reference to the territory asked to be detached with reference to the town and its activities and the business incident thereto.

(iv) In so limiting the borrowing capacity of the town that it impairs its capacity to finance needed future improvements and will probably make it impossible for it to finance the needed sewerage system testified to by the witnesses.

(v) In lessening the ability of the town within the requisite five years to put its water system on the financial basis and thereafter maintain it, necessary to have its outstanding bonds issued in connection therewith excluded from calculations in ascertaining its borrowing power under Section 127 of the Constitution and the statutes enacted pursuant thereto, all as contemplated at the time the bonds were issued on the credit of the whole town pursuant to an election by all of the electors of the town and all of the inhabitants of the section now sought to be detached, all of whom voted therefor except 11.

(vi) In leaving the town with two of its wells and 13,000 lineal feet of water lines beyond its jurisdiction and police power.

(vii) By depriving the town of 30% of its taxable values and the revenues therefrom without materially decreasing the operating expenses necessary to be raised by taxation and hence compelling the remaining section of the town to be taxed at a largely increased rate over that at present, though this particular section is even now taxed at a higher rate than is the section sought to be detached.

(viii) By depriving the town of its only fire house and fire fighting apparatus and its right to police and regulate the same.

(ix) Detaching the town from its political contacts with Arlington County necessarily prejudiced the entire community.

(x) And last, but not least, the order disrupts in no small degree the civic, social, religious and political associations and instrumentalities, those unseen and often unrealized bonds which constitute the web and woof of every community, the outgrowth of years of unrecorded but unremitted mutual association, mutual suffering and mutual sacrifice and contribution in the struggle upward and which serve to give the stamp of character and individuality to every community worthy of the name, and on those within its influence.

Falls Church is justly proud of its character so obtained and wishes to preserve it. These constitute the intangible as well as the imponderable elements of civic and social life and effort. While not sacrosanct, they are in a sense sanctified—they are not to be lightly dealt with nor lightly destroyed, as would be the probable result of granting the prayer of the petition. It is clear, therefore, that the petitioners have failed to comply with the requisites of the statute upon which they rely in either letter or spirit, even should the statute be held constitutional.

3. Even though the public interest demanded the destruction of the town of Falls Church, the remaining segment of the town has not been justly dealt with in that—

1st, the town was allotted nothing for public improvements in the way of permanent improvements in sidewalks and streets to the extent of \$34,284.30 comprised in Item 3 of the bill of particulars, as required by the public policy evidenced by the express provisions of Section 2958, requiring cities to pay for such improvements under like conditions, to-wit:

“for the then value of such permanent public improvements as may have been made in the territory annexed, either by

way of macadamizing public roads or streets, or by constructing concrete sidewalks on public roads or streets, or by laying water mains or sewers."

"What is sauce for the goose must be sauce for the gander."

The town in like manner was deprived of the cost of the necessary rights of way and expenses necessarily incident to dissevering its existing water mains at the Arlington-Fairfax County line and installing anew the necessary pipes for maintaining the circulation of water within the contracted town system estimated at \$10,000.00, and not permitted to introduce evidence in support thereof, as shown by the final order (see Tr., p. 312).

2nd. Because, instead of requiring the county to pay as a condition of such contraction 29.6% of *all* outstanding indebtedness and in cash, it merely required the County of Arlington to pay a sum equal to 29.6% of the principal and interest due on its school bonds "*as and when the same shall become due and payable* according to the tenor and effect thereof", and "a sum equal to but 18% of the amounts of principal and interest due on the water bonds as and when the same or any installment of either should become due and payable".

3rd. Because, under the provisions of Section 115(a) of the Constitution as adopted in 1928, the county was prohibited from incurring any indebtedness "except in pursuance of an authority conferred by the General Assembly by general law", which section further prohibited the General Assembly from authorizing

"any county * * * to contract any debt except to meet casual deficits in the revenue, a debt created in anticipation of the collection of the revenue of the county for the then current year, or to redeem a previous liability, unless in the general law authorizing the same provision be made for the submission to the qualified voters of the proper county * * * for approval or rejection by majority vote of the qualified voters voting in an election on the question of contracting such debt and such approval shall be a *prerequisite* to contracting such *debt*."

No such election has been authorized or held and hence this indebtedness prayed for by the County in its answer uniting in the prayer of the petition, should have been required to have been paid in cash.

It is respectfully prayed that this honorable Court will award a writ of error to the said judgment of the Circuit Court of Arlington County herein complained of and review and reverse the same, and award your petitioners a *supersedeas* to the operation of said judgment pending the final determination of this Court on said writ of error, and that this petition be treated as our brief, all of which is respectfully prayed.

THE TOWN OF FALLS CHURCH,
a Municipal Corporation,
L. P. DANIEL,
Mayor, Town of Falls Church,
THE BOARD OF SCHOOL TRUSTEES
OF THE TOWN OF FALLS CHURCH,
24 CITIZENS OF THE TOWN OF
FALLS CHURCH, Intervenor,
By Counsel.

JNO. S. BARBOUR,
Attorney for Petitioners.

I, John S. Barbour, Counsel practicing in the Supreme Court of Appeals of Virginia, do certify that in my opinion there is error in the judgment of the Circuit Court of Arlington County complained of in the foregoing petition, for which the said judgment should be reviewed and reversed.

Given under my hand this 6 day of March, 1935.

JNO. S. BARBOUR.

I, John S. Barbour, Attorney for Petitioners, do also certify that a copy of the foregoing petition was mailed to Mr. Lawrence W. Douglas and Mr. Thomas W. Phillips, Attorneys for the Appellees above named at Clarendon, Virginia, on March 5, 1935.

JNO. S. BARBOUR.

Received March 7th, 1935

M B. WATTS, Clerk.

March 22, 1935. Writ of error and *supersedeas* awarded by the court. Bond \$500.

M. B. W.

RECORD

In the Circuit Court of Arlington County, Virginia.

Filed July 7, 1932.

In Re: Contraction of the Corporate Limits of the Town of Falls Church, Virginia:

To the Hon. Walter T. McCarthy, Judge of the above styled Court:

The undersigned allege:

(1) That the Town of Falls Church, Virginia, is located partially in Arlington County, Virginia, and partially in Fairfax County, Virginia.

(2) That it is deemed desirable to contract the corporate limits of said Town by striking therefrom the territory thereof located in Arlington County, Virginia, the boundary of the territory proposed to be stricken off being accurately defined as follows:

All that portion of the territory of the Town of Falls Church, Virginia, lying in Arlington and Washington Magisterial Districts, Arlington County, and which is known and described as follows:

BEGINNING at a large planted stone on the estate of the late J. C. DePutron, at the original Western corner of the District of Columbia, and which is also at the corner of Fairfax and Arlington Counties, and at the corner of the Town of Falls Church; thence with the boundary of the said town S. 83° 15' E. 2404 feet, more or less, to a planted stone in the center of Little Falls Street, also called the Chain Bridge Road, at a point at which said street is intersected by the boundary of the land formerly known as the Bowen tract; thence, with the boundary of said town, S. 49° 15' E. 3482 feet, more or less, to a planted granite stone at a point which
page 2 } formerly marked the Northeast corner of John Brown's barn; thence, with the boundary of said town, S. 28° 45' E. 2410 feet, more or less, to a point at which there formerly stood a large pin-oak tree on the Gott tract; thence, with the boundary of said Town, S. 4° 15' W. to the boundary between Fairfax and Arlington Counties; thence, with said boundary in a Northwesterly direction to the place of beginning.

Supreme Court of Appeals of Virginia.

(3) The undersigned hereby petition the Circuit Court of Arlington County, Virginia, to amend the charter of the said Town of Falls Church, Virginia, so as to exclude from the corporate limits of said Town the portion of territory thereof located in Arlington County, Virginia, above described, pursuant to Chapter 216, Acts of Assembly, 1920.

J. B. GOULD,
 MARY E. RYER,
 FRANK M. THOMPSON, JR.,
 GEO. S. VANDERMARK,
 LAURA T. BOLDIN,
 CHARLES E. BOLDIN,
 KARL S. KIMBALL,
 MARY L. VANDERMARK,
 G. E. VANDERMARK,
 MILDRED S. THOMPSON,
 KATHLEEN TALBOTT,
 T. M. TALBOTT, M. D.,
 H. L. HIETT,
 M. LOUISE EASTON,
 FLORENCE E. PHILLIPS,
 E. A. KIMBALL,
 MRS. E. A. KIMBALL,
 MISS MARGARET L. KIMBALL,
 HELEN L. KIMBALL,
 MARGARET W. HIETT.

page 3 {

State of Virginia,
 County of Arlington, to-wit:

This day personally appeared before me, the undersigned Notary Public in and for the state and county aforesaid, whose commission expires on the 14 day of March, 1936, J. B. Gould, who being first duly sworn, on oath, according to law, stated that he was personally present when each of the signatures to the above petition were affixed thereto, and knows that the same are the signatures of the parties whose names are signed hereto.

J. B. GOULD.

Subscribed and sworn to before me, this 2nd day of June, 1932, in my county and state aforesaid.

Given under my hand this 2nd day of June, 1932.

J. V. MORAN,
 Notary Public.

In the Circuit Court of Arlington, County, Virginia.

In Re: Contraction of the Corporate Limits of the Town of Falls Church, Virginia:

To the Hon. Walter T. McCarthy, Judge of the above styled Court:

The undersigned allege:

(1) That the Town of Falls Church, Virginia, is page 4 } located partially in Arlington County, Virginia, and partially in Fairfax County, Virginia.

(2) That it is deemed desirable to contract the corporate limits of said Town by striking therefrom the territory thereof located in Arlington County, Virginia, the boundary of the territory proposed to be stricken off being accurately defined as follows:

All that portion of the territory of the Town of Falls Church, Virginia, lying in Arlington and Washington Magisterial Districts, Arlington County, and which is known and described as follows:

BEGINNING at a large planted stone on the state of the late J. C. DePutron, at the original Western corner of the District of Columbia, and which is also at the corner of Fairfax and Arlington Counties, and at the corner of the Town of Falls Church; thence with the boundary of the said town, S. 83° 15' E. 2404 feet, more or less, to a planted stone in the center of Little Falls Street, also called the Chain Bridge Road, at a point at which said street is intersected by the boundary of the land formerly known as the Bowen tract; thence, with the boundary of said town, S. 49° 15' E. 3482 feet, more or less, to a planted granite stone at a point which formerly marked the Northeast corner of John Brown's barn; thence, with the boundary of said town, S. 28° 45' E. 2410 feet, more or less, to a point at which there formerly stood a large pin-oak tree on the Gott tract; thence, with the boundary of said Town, S. 4° 15' W. to the boundary between Fairfax and Arlington Counties; thence, page 5 } with said boundary in a Northwesterly direction to the place of beginning.

(3) The undersigned hereby petition the Circuit Court of Arlington County, Virginia, to amend the charter of the said Town of Falls Church, Virginia, so as to exclude from the

corporate limits of said Town the portion of territory thereof located in Arlington County, Virginia, above described, pursuant to Chapter 216, Acts of Assembly, 1920.

R. A. CRENSHAW,
R. C. L. MONCURE,
P. B. NOURSE,
LIDE B. CRENSHAW,
HARRIET F. NOURSE,
IRENE W. MONCURE,
ADELAIDE M. BROOKS,
CHARLES BROOKS,
B. E. ROTHGEB,
HELEN P. ROTHGEB,
M. E. EVERETT,
LEWIS H. WELD,
CLARA J. WELD,
ANN F. McCAULEY,
JOHN F. McCAULEY,
L. D. ROBERTS,
HOWARD LOWRY.

State of Virginia,
County of Arlington, to-wit:

This day personally appeared before me, the undersigned Notary Public in and for the State and County page 6 } aforesaid, whose commission expires on the 14th day of March, 1936, Rufus A. Crenshaw, who being first duly sworn on oath, according to law, stated that he was personally present when each of the signatures to the above petition were affixed thereto, and knows that the same are the signatures of the parties whose names are signed thereto.

RUFUS A. CRENSHAW.

Subscribed and sworn to before me, this 2nd day of June, 1932, in my county and state aforesaid.

Given under my hand this 2nd day of June, 1932.

J. V. MORAN,
Notary Public.

In the Circuit Court of Arlington County, Virginia:

In Re: Contraction of the Corporate Limits of the Town of Falls Church, Virginia:

To the Hon. Walter T. McCarthy, Judge of the above styled Court:

The undersigned allege:

(1) That the Town of Falls Church, Virginia, is located partially in Arlington County, Virginia, and partially in Fairfax County, Virginia.

(2) That it is deemed desirable to contract the corporate limits of said Town by striking therefrom the territory thereof located in Arlington County, Virginia, the boundary of the territory proposed to be stricken off being accurately defined as follows:

All that portion of the territory of the Town of Falls Church, Virginia, lying in Arlington and Washington Magisterial Districts, Arlington County, and which is page 7 } known and described as follows:

BEGINNING at a large planted stone on the estate of the late J. C. DePutron, at the original Western corner of the District of Columbia, and which is also at the corner of Fairfax and Arlington Counties, and at the corner of the Town of Falls Church; thence with the boundary of the said town, S. 83° 15' E. 2404 feet, more or less, to a planted stone in the center of Little Falls Street, also called the Chain Bridge Road, at a point at which said street is intersected by the boundary of the land formerly known as the Bowen tract; thence, with the boundary of said town, S. 49° 15' E. 3482 feet, more or less, to a planted granite stone at a point which formerly marked the Northeast corner of John Brown's barn; thence, with the boundary of said town, S. 28° 45' E. 2410 feet, more or less, to a point at which there formerly stood a large pin-oak tree on the Gott tract; thence, with the boundary of said Town, S. 4° 15' W. to the boundary between Fairfax and Arlington Counties; thence, with said boundary in a Northwesterly direction to the place of beginning.

(3) The undersigned hereby petition the Circuit Court of Arlington County, Virginia, to amend the charter of the said Town of Falls Church, Virginia, so as to exclude from the corporate limits of said Town the portion of territory

Supreme Court of Appeals of Virginia.

thereof located in Arlington County, Virginia, above described, pursuant to Chapter 216, Acts of Assembly, 1920.

page 8 }

FRED S. WOODYARD,
R. E. WOODYARD,
MARTIN I. COOK,
PAUL S. NISWANDER,
HELEN NISWANDER,
ELIZABETH H. COOK,
PATRICK J. COOK,
MARY E. COOK,
PAUL A. COOK,
ANNA W. COOK,
JOHN A. McCAULEY,
LOLA M. WAKEFIELD,
EDW. E. ELDRIDGE,
BLANCHE ELDRIDGE,
EDITH KERR BEAN,
GEO. F. PETTY,
JANIE BLOWER.

State of Virginia,
County of Arlington, to-wit:

This day personally appeared before me, the undersigned Notary Public in and for the State and County aforesaid, whose commission expires on the 14th day of March, 1936, Geo. F. Petty, who being first duly sworn on oath, according to law, stated that he was personally present when each of the signatures to the above petition were affixed thereto, and knows that the same are the signatures of the parties whose names are signed thereto.

GEO. F. PETTY.

Subscribed and sworn to before me, this 2nd day of June, 1932, in my county and state aforesaid.

Given under my hand this 2nd day of June, 1932.

J. V. MORAN,
Notary Public.

page 9 } In the Circuit Court of Arlington County, Virginia:

In Re: Contraction of the Corporate Limits of the Town
of Falls Church, Virginia:

To the Hon. Walter T. McCarthy, Judge of the above styled
Court:

The undersigned allege:

(1) That the Town of Falls Church, Virginia, is located partially in Arlington County, Virginia, and partially in Fairfax County, Virginia.

(2) That it is deemed desirable to contract the corporate limits of said Town by striking therefrom the territory thereof located in Arlington County, Virginia, the boundary of the territory proposed to be stricken off being accurately defined as follows:

All that portion of the territory of the Town of Falls Church, Virginia, lying in Arlington and Washington Magisterial Districts, Arlington County, and which is known and described as follows:

BEGINNING at a large planted stone on the estate of the late J. C. DePurton, at the original Western corner of the District of Columbia, and which is also at the corner of Fairfax and Arlington Counties, and at the corner of the Town of Falls Church; thence with the boundary of the said town, S. 83° 15' E. 2404 feet, more or less, to a planted stone in the center of Little Falls Street, also called the Chain Bridge Road, at a point at which said street is intersected by the boundary of the land formerly known as the Bowen tract; thence, with the boundary of said town, S. 49° 15' E. 3482 feet, more or less, to a planted granite stone at a point which formerly marked the Northeast corner of John Brown's barn; thence, with the boundary of said town, S. 28° 45' E. 2410 feet, more or less, to a point at which there formerly stood a large pin-oak tree on the Gott tract; thence, with the boundary of said Town, S. 4° 15' W. to the boundary between Fairfax and Arlington Counties; thence, with said boundary in a Northwesterly direction to the place of beginning.

(3) The undersigned hereby petition the Circuit Court of

Arlington County, Virginia, to amend the charter of the said Town of Falls Church, Virginia, so as to exclude from the corporate limits of said Town the portion of territory thereof located in Arlington County, Virginia, above described, pursuant to Chapter 216, Acts of Assembly, 1920.

HENRY KNOWLES,
ADA H. KNOWLES,
MARY H. SMYTH,
IDA H. POOLE,
A. H. BARBOR,
DOROTHY D. JONES,
W. R. GRAHAM,
HATTIE B. GRAHAM,
MARGARET GRAHAM,
ROBERT J. FORMAD,
J. B. HENRY,
ELIZABETH T. STEWART,
C. A. STEWART,
MARY T. STEWART,
F. W. JONES,
DELAVAN R. TALBOTT,
PHILIP M. TALBOTT.

page 11 }

State of Virginia,

County of Arlington, to-wit:

This day personally appeared before me, the undersigned Notary Public in and for the State and County aforesaid, whose commission expires on the 14th day of March, 1936, Henry Knowles, who being first duly sworn on oath, according to law, stated that he was personally present when each of the signatures to the above petition were affixed thereto, and knows that the same are the signatures of the parties whose names are signed thereto.

HENRY KNOWLES.

Subscribed and sworn to before me, this 2nd day of June, 1932, in my County and State aforesaid.

Given under my hand this 2nd day of June, 1932.

J. V. MORAN,
Notary Public.

In the Circuit Court of Arlington County, Virginia.

In Re: Contraction of the Corporate Limits of the Town of Falls Church, Virginia:

To the Hon. Walter T. McCarthy, Judge of the above styled Court:

The undersigned allege:

(1) That the Town of Falls Church, Virginia, is located partially in Arlington County, Virginia, and partially in Fairfax County, Virginia.

(2) That it is deemed desirable to contract the page 12 } corporate limits of said Town by striking therefrom the territory thereof located in Arlington County, Virginia, the boundary of the territory proposed to be stricken off being accurately defined as follows:

All that portion of the territory of the Town of Falls Church, Virginia, lying in Arlington and Washington Magisterial Districts, Arlington County, and which is known and described as follows:

BEGINNING at a large planted stone on the estate of the late J. C. DePutron, at the original Western corner of the District of Columbia, and which is also at the corner of Fairfax and Arlington Counties, and at the corner of the Town of Falls Church; thence with the boundary of the said Town, S. 83° 15' E. 2404 feet, more or less, to a planted stone in the center of Little Falls Street, also called the Chain Bridge Road, at a point at which said street is intersected by the boundary of the land formerly known as the Bowen tract; thence, with the boundary of said town, S. 49° 15' E. 3482 feet, more or less, to a planted granite stone at a point which formerly marked the Northeast corner of John Brown's barn; thence, with the boundary of said town, S. 28° 45' E. 2410 feet, more or less, to a point at which there formerly stood a large pin-oak tree on the Gott tract; thence, with the boundary of said Town, S. 4° 15' W. to the boundary between Fairfax and Arlington Counties; thence, with said boundary in a Northwesterly direction to the place of beginning.

(3) The undersigned hereby petition the Cir- page 13 } cuit Court of Arlington County, Virginia, to amend the charter of the said Town of Falls Church, Vir-

ginia, so as to exclude from the corporate limits of said Town the portion of territory thereof located in Arlington County, Virginia, above described, pursuant to Chapter 216, Acts of Assembly, 1920.

BESSIE C. JEWELL,
WALTER T. JEWELL,
MAUDE K. PAINE,
W. L. TURNER,
ETHEL TURNER,
R. G. PAINE,
A. H. McPHERSON,
ELSIE M. CASE,
A. W. McPHERSON,
BUYDE A. FELTS,
THOS. A. HODGSON,
MRS. T. A. HODGSON,
T. M. HODGSON,
CARRIE A. HODGSON,
KATE S. BARBOR,
JESSIE V. MORAN,
H. E. MORAN,
E. GERTRUDE CLOYES,
J. E. RUCKER,
RUTH E. CLOYES,

State of Virginia,
County of Arlington, to-wit:

This day personally appeared before me, the undersigned
Notary Public in and for the State and County
page 14 } aforesaid, whose commission expires on the 14th
day of March, 1936, Kate S. Barbor, who being
first duly sworn on oath, according to law, stated that she
was personally present when each of the signatures to the
above petition were affixed thereto, and knows that the same
are the signatures of the parties whose names are signed
thereto.

KATE S. BARBOR.

Subscribed and sworn to before me, this 2nd day of June,
1932, in my county and state aforesaid.

Given under my hand this 2nd day of June, 1932.

J. V. MORAN,
Notary Public.

State of Virginia,
County of Arlington, to-wit:

James B. Gould, of Falls Church, Arlington County, Virginia, being duly sworn, says on oath that he ascertained the number of voters qualified to vote at the November election, 1931, residing in that portion of the Town of Falls Church which is located in Arlington County, Virginia, to have been 123, and of said qualified voters, 91 have affixed their signatures to the attached petition.

JAMES B. GOULD.

Subscribed and sworn to before me, the undersigned Notary Public in and for the County and State aforesaid, this 2nd day of June, 1932.

J. V. MORAN,
Notary Public.

My commission expires: March 14, 1936.

page 15 }

ORDER.

Entered July 11, 1932.

This day came James B. Gould and others claiming to be a majority of voters qualified to vote at the November, 1931, general election, residing in that part of the Town of Falls Church, hereinafter fully described, and filed their petition to amend the Charter of said Town so as to exclude said portion from the Corporate Limits thereof; and

It appearing to the Court:

1st: That said petition appears to accurately define the boundary of the territory purported to be stricken off; and

2nd: That satisfactory proof that said petition has been published in Arlington County, Virginia, once a week for four successive weeks and has been posted on the front door of the Courthouse of said county for a like period has been filed with said petition.

IT IS, THEREFORE ADJUDGED and ORDERED, pursuant to Chapter 216, of the Acts of Assembly of Virginia, 1930, that The County Board of Arlington County, Virginia, and the Mayor of the Town of Falls Church, Virginia, be

and the same hereby are made parties defendant to said petition and the Clerk of this Court is hereby ordered to summon the said The County Board of Arlington County, Virginia, and the Mayor of the Town of Falls Church, Virginia, to appear before this Court on the 6th day of September, 1932, and make such defense against the prayer of said petition as they or any of them may have; and one or more residents or freeholders of the territory proposed to be stricken off may likewise appear and set forth reasons why the same should not be done.

WALTER T. McCARTHY, Judge.

page 16 } DEMURRER AND ANSWER OF L. P. DANIEL,
MAYOR OF TOWN OF FALLS
CHURCH, VIRGINIA.

Filed October 4th, 1932.

Now comes L. P. Daniel, Mayor of Town of Falls Church, Virginia, one of the defendants in the above-entitled matter, and demurs to the petition of James B. Gould, et al., on the ground that said petition is insufficient in law and specifies the following grounds of demurrer:

I. The statute upon which said motion is based, to-wit: Chapter 216 of the Acts of Assembly of Virginia of 1920 is void because contrary to the Constitution of the State of Virginia in that it violates sections 39, 52, 63, 65, and 126 of the Constitution of Virginia in the following respects:

(a) The said Act of March 16, 1920, violates Section 39 in that it attempts to vest legislative power and discretion in the courts or the judges thereof without there being any provisions in the Constitution authorizing such vesting.

(b) It violates Section 52 in that its object and purpose is to amend Sections 2969, 2970 and 2971 of the Code of Virginia as it then existed and now exists, but makes no reference thereto in its title or elsewhere, and said sections as amended were not re-enacted and published at length.

(c) It violates Section 63 in that the legislative power attempted to be vested in courts by said act is not one of those provided for in Section 63 and is in effect an attempt to enact local and special legislation, contrary to the provisions of Section 63, and especially sub-section 8 thereof.

(d) It violates Section 63 of the Constitution in that that

section requires powers of this character if delegated to be delegated to the boards of supervisors of the counties or the councils of cities and towns and not in courts or page 17 } individuals.

(e) It violates Section 126 in that it is not a general law for the extension and contraction from time to time of the corporate limits of all cities and towns, but is a special act for such purpose.

II. It violates both Section 11 of the Bills of Rights of Virginia and the Fourteenth Amendment to the Constitution of the United States in that it permits the town of Falls Church and the residents of a portion thereof to be deprived of their property without due process of law. The town of Falls Church constitutes a separate School District and is governed by a separate Board of School Trustees, itself a corporate entity and by a vote of a majority of its inhabitants, resident both in Fairfax and Arlington counties, have, pursuant to law, issued bonds on the credit of the town for the purposes of establishing water works and educational institutions which are outstanding and unpaid, which under the law, constitute potential charges upon the property of all of its citizens within the town as at present constituted and yet neither the town itself, its town council, its School Board, nor any of the inhabitants or voters of that portion of the town residing in the county of Falls Church are or can, under the provisions of said act, be made parties to the petition or be permitted to introduce evidence or to participate in any way in the trial of said case by which a large proportion of the property now responsible may be relieved from such charge until after the same shall have been heard and determined by this Court, notwithstanding the fact that a large proportion of the improvements constructed from the proceeds of said bond issues, as well as other public improvements constructed from the taxes of the inhabitants of the entire town lie within the page 18 } limits of that portion of the town which it is proposed to detach from the town and confer on the County of Arlington.

III. It is further violative of the spirit, as well as the letter of said provisions, in that it undertakes to empower the court to make "such disposition of the corporate property of the town as may to it seem just and equitable and to make like provision as to the payment of any debts or obligations of said town as between the county and the inhabitants of the said town", notwithstanding the fact that neither the said town, its town council, its School Board, nor any in-

habitants of that portion of the town which is not proposed to be detached are or can be made parties to said proceeding or even permitted to intervene therein until after the said property shall have been disposed of by the court and the rights of the inhabitants of the said town adjudged by it.

IV. It violates Section 10 of Article I of the Constitution of the United States in that the said proposed action will impair the obligation of the contracts of said Town and its School Board as applied to the facts in this case.

And now, without waiving said demurrer or any specification of grounds as aforesaid, for answer to said petition, shows:

1. This respondent is without knowledge as to whether a majority of the qualified voters who voted in the preceding November general election and who now reside within the corporate limits of that part of the town which is located in Arlington County, are parties to said petition or signed the same, and calls for strict proof of each of these provisions.

2. It is without knowledge as to whether the provisions of said act requiring the publication and posting of said notice has been complied with and calls for strict proof of that.

3. This respondent denies that it will be to the interest of a majority of the people of the territory proposed to be stricken from said town to grant the prayer of said petition and calls for proof thereof, and says that the general good of the residents of each section of the town and as a whole will be materially affected by granting the prayer in the following particulars, among others:

It would deprive the town of Falls Church of the control of a large portion of the water shed and outfall which drains large portions of both parts of the town and which it is very important to the health and well-being of the citizens of both sections of the town should be under a common municipal control and management;

That more than one hundred thousand dollars (\$100,000) has been invested by the town of Falls Church as a whole and its citizens in the establishment of public primary and high schools for the education of the children of the entire community and specially *adopted* to its needs as a whole, for which bonds and other interest-bearing obligations of the entire community are now outstanding and unpaid in excess of Seventy-five Thousand Dollars (\$75,000), and that to de-

tach this territory and its inhabitants from the school district as now constituted would disorganize and unbalance this entire educational plant.

4. That within the past two years bonds aggregating an additional \$125,000 have been sold by the town of Falls Church pursuant to the provisions of its charter, requiring affirmative votes by a majority of all its freeholders and a majority of all of its voters, and the proceeds have been expended in the erection of a water system for both sections of said town as a single community and adapted to page 20 } its needs as a whole, and to grant the prayer of the petition would result in disorganizing and unbalancing this system and plant and its future growth and development and would leave the town of Falls Church charged with public debts largely in excess of 18% of the assessed valuation of its remaining real property, contrary to the provisions of the Constitution of Virginia, and would constitute an unbearable burden upon the remnant of the town and its inhabitants and would greatly hamper the progress of the town, its future orderly development, and impair its ability to construct and maintain a suitable sewerage system, which the proper development of the town and its future greatly requires.

5. That the said town is served by two railroads, the principal stations of both of which are located in that portion of the present town of Falls Church within the limits of Arlington County, and to grant the prayer of the petition would deprive the residue of the town of Falls Church, which embraces more than % of the population of the entire town of any control over these stations and the proper policing thereof, greatly to the detriment of the best interest of the entire community, and especially of that portion of the community which is within the limits of Fairfax County.

6. That the principal business section of the said town, in which are located the principal offices, stores, places of business and mercantile activities of the town, and which has been developed as a single community, and the legitimate necessities of all as one community are largely located in that portion of the town which lies within Arlington County, and these places of business get their chief value from their proximity to the bulk of population of the town which is on the Fairfax side of the line, and to grant the prayer of the petition would deprive the town itself of its page 21 } control over, and interest in, its chief business center, greatly to the disadvantage of the community as a whole, though the principal churches and all the educational institutions aforesaid, as well as cemeteries of this

single community are located in the Fairfax portion of the town.

7. That there is established under the authority and with the aid of the Town Council a voluntary fire department designed primarily for the protection of the entire town from fire; that this fire company is composed of volunteer members from both sections of the town; the fire house of said company is located within that portion of the town within the county of Arlington, and that to grant the prayer of the petition would disrupt the present organization, deprive the town of the right to contribute to its support, would require duplications of plant and appliances in respect to this important element of local self-government, and prove detrimental to the entire community.

8. That as applied to the facts in this case, to enforce said law would be in violation of Sections 39, 52, 63, 65 and 126 of the Constitution of Virginia, Section 11 of the Bill of Rights, a part of the Constitution of Virginia, and in addition thereto is in violation of Section 9 of Article I of the Constitution of the United States and of the Fourteenth Amendment to the Constitution of the United States.

Now having fully answered he prays that the said petition may be dismissed and that he may be hence discharged.

L. P. DANIEL,
Mayor of the Town of Falls Church.

H. M. KEYSER,
10th and E Streets, N. W.
Washington, D. C.

JNO. S. BARBOUR,
906 Shoreham Building
Washington, D. C.
Counsel for Respondent.

page 22 } MOTION TO STRIKE ANSWER.

Filed October 21, 1932.

Comes now James B. Gould, one of the petitioners in the above-styled suit and moves this honorable court to strike from the answer of L. P. Daniel, Mayor of the Town of Falls Church, Virginia, the following:

All of paragraph numbered three (3) of said answer with the exception of the first thirty-eight (38) words thereof,

and all of paragraphs numbered four (4), five (5), six (6), seven (7), and eight (8) of the said answer on the ground that they and each of them are *irrelevant* and immaterial and constitute no defense in law to the prayer of the petition filed herein;

And in addition that the said paragraph numbered eight (8) of said answer is surplusage, redundant, and merely raises a second time the identical grounds of demurrer and points of law set forth in the pleadings of said L. P. Daniel, Mayor of the Town of Falls Church, Virginia, filed with said answer in this suit.

JAMES B. GOULD,
By Counsel.

JESSE, PHILLIPS & KLINGE,
By: T. W. PHILLIPS,
Attorneys for Petitioners.

page 23 } ANSWER OF THE RESPONDENT, THE
COUNTY BOARD OF ARLINGTON COUNTY,
VIRGINIA, A BODY CORPORATE.

Filed November 1, 1932.

Now comes the County Board of Arlington County, Virginia, a body corporate, defendant in the above-entitled cause, and for answer to the petition of J. B. Gould, et al., heretofore filed in this cause, respectfully states unto this Court as follows:

1. That it believes that it will be to the interest of a majority of the people of that portion of Arlington County lying within the present corporate limits of the Town of Falls Church for the prayers of the said petition to be granted.

2. That it believes that the general good of the community in question will not be materially affected.

Wherefore, and for answer to said petition, this defendant does now accede to the prayers therein contained and does pray this court to grant the relief therein asked for.

Now having answered said petition, this defendant prays to be hence dismissed with its reasonable costs in this behalf expended.

COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA, Defendant,
By HARRY A. FELLOWS, Chairman.

LAWRENCE W. DOUGLAS,
Counsel for Respondent.

page 24 } ADDITIONAL GROUNDS OF DEMURRER.

Filed March 10, 1933.

1a. The statute under which the proceeding is brought violates the following provisions of the Constitution: Sec. 27, Sec. 29, Clauses 8 & 11 of Sec. 63, Sec. 64.

2a. It vests legislative discretion in a portion of the citizens of a town.

3rd. The statute itself was repealed by the Act of March 20th, 1920. Acts 1920 p. 588.

JNO. S. BARBOUR,
H. M. KEYSER,
Attys. for Town of Falls Ch.

Mch. 10/33.

page 25 } ORDER.

Entered December 16, 1933.

This cause came on this day to be heard upon the petition heretofore filed in this cause, and the demurrer thereto of L. P. Daniel, Mayor of the Town of Falls Church, and was argued by counsel;

AND IT APPEARING to the Court that the said demurrer should be overruled,

IT IS HEREBY ORDERED AND DECREED that the said demurrer be and the same is hereby overruled; to which order of the court the said L. P. Daniel, Mayor of the Town of Falls Church, doth except.

And upon agreement of counsel for all parties of record this cause is herein set for hearing on the merits on February 12, 1934.

WALTER T. McCARTHY, Judge.

page 26 } PETITION TO INTERVENE.

Filed February 12, 1934.

Now comes the Town of Falls Church in its corporate capacity and shows that it is deeply and vitally concerned in the matters and things involved in the petition filed by James

B. Gould, et als., praying for the contraction of the corporate limits of the Town of Falls Church, because the object of said petition is to contract the corporate limits of your petitioner to deprive it of its property, and otherwise affect the civic rights, interests and duties of all of said Town and of all its citizens, and for that reason asks to be allowed to intervent in this cause and to be made a party defendant thereto and to demur to the said petition and to answer the same, and upon being allowed to so intervene it adopts as its own the demurrer and answer of L. P. Daniel, Mayor of the Town of Falls Church, heretofore filed in this cause, and prays that the said petition may be dismissed and that it be dismissed without day.

TOWN OF FALLS CHURCH,

By JNO. S. BARBOUR,
Its Attorney.

page 27 } PETITION TO INTERVENE.

Filed February 12, 1934.

Now comes the Board of School Trustees of the Town of Falls Church, a corporation, and shows that it is vitally interested in the matters and things sought to be effected by the petition of James B. Gould, et als, praying a contraction of the corporate limits of the Town of Falls Church, Virginia, in that it is vested with the power and duty of operating the schools and the public school system within the limits of said Town as now constituted by law, and that the purpose of said petition is to contract the limits of the said town and thereby reduce the amount of real and personal property subject to taxation for the support of its schools, and the number of pupils eligible to instruction therein, and upon the basis of which it has constructed its buildings and incurred indebtedness therefor by virtue of a vote of the majority of its inhabitants, as well as of its freeholders, upon the credit of said Town, and that to grant the prayer of said petition would greatly impair the ability of your petitioner to meet its obligations thus incurred, and would greatly impair the usefulness of the educational plants now owned and operated by it. It therefore prays for leave to intervene in said cause and to be made a party defendant thereto, and upon being so admitted it adopts as its own the demurrer an answer of L. P. Daniel, Mayor of the Town of Falls Church, Virginia, heretofore filed in this cause, and

prays that the said petition of said James B. Gould may be dismissed and this respondent hence dismissed without day.

BOARD OF SCHOOL TRUSTEES OF THE
TOWN OF FALLS CHURCH,

A Corporation.

By JNO. S. BARBOUR,
Its Attorney.

page 28 } ADDITIONAL GROUNDS OF DEMURRER
FILED BY L. P. DANIEL, MAYOR OF THE
TOWN OF FALLS CHURCH, THE TOWN OF FALLS
CHURCH, AND THE BOARD OF SCHOOL TRUSTEES
OF FALLS CHURCH, VIRGINIA.

Filed February 12, 1934.

In addition to the grounds of demurrer originally filed by L. P. Daniel, Mayor of the Town of Falls Church and adopted by the other defendants herein named, the following grounds of demurrer are assigned:

The Act violates the provisions of Secs. 27 and 29 of the Constitution of Virginia; it violates Sec. 63, and especially sub-sections 8 and 11 thereof of the Constitution of Virginia; it violates Secs. 64 and 65 of the Constitution of Virginia.

The above are in addition to the grounds of demurrer set out in the original demurrer of L. P. Daniel and were all argued before the Court before said demurrer was passed on.

L. P. DANIEL,
Mayor of the Town of Falls Church.

THE TOWN OF FALLS CHURCH,
By JNO. S. BARBOUR, Its Atty.

THE BOARD OF SCHOOL TRUSTEES
OF FALLS CHURCH, VIRGINIA.
By JNO. S. BARBOUR,
Its Attorney.

page 29 } ORDER.

Entered February 12, 1934.

This day again came the parties by their counsel and on motions of the Town of Falls Church in its corporate ca-

capacity and the Board of School Trustees of Falls Church in its corporate capacity, and T. O. Marr and seven other citizens of the town of Falls Church in Fairfax County, Virginia, W. L. Mitchell and fifteen other citizens and freeholders of said town in Arlington County, for leave to intervene in this cause as parties defendant, and thereupon did by leave of Court file their petitions to intervene, and L. P. Daniel, Mayor of the Town of Falls Church, who has heretofore appeared and demurred to and answered the petition, by like leave of Court stated additional grounds of demurrer, and all of said intervenors having adopted his answer and demurrer as so amended as their answer and demurrer, the Court doth overrule all of said demurrers, to which action of the Court each of said defendants and intervenors excepted; and thereupon, A. W. McPherson, H. L. Hiatt and Alice Browning, three of the original petitioners in this cause, asked leave to have their names stricken from said petition.

WHEREUPON, Neil K. Stevens and 18 other residents of Arlington County, not resident within the corporate limits of the Town of Falls Church, asked leave to intervene, which leave was refused by the Court, to which action of the Court they severally excepted.

And this cause being partially heard, is continued until tomorrow.

WALTER T. McCARTHY, Judge.

page 30 } In the Circuit Court of Arlington County, Virginia.

Filed Feb. 15, 1934.

James B. Gould, et al., Petitioners,

v.

The County Board of Arlington County, et al., Defendants.

In Law #

STIPULATION.

It is stipulated between counsel representing the various parties to this cause that the following facts may be considered by the Court as established, subject to the limitations hereinafter stated.

1. Levies.

That portion of the Town of Falls Church lying in Fair-

fax County consist in part of a portion of Providence District and in part of a portion of Falls Church District; that portion lying within Arlington County is not affected by district lines. Exhibit No. 1 shows separately the county levies in Falls Church District outside of Falls Church, the county levies within the Town of Falls Church, in Providence and Falls Church Districts, respectively, and in Arlington County, and the town levy in all sections of the town. It shows the same with respect to fire levies, pension funds, road debt, and the schools and school debts in these various sections of the town, and also shows the total tax levies, town and county, levied in the three sections of the town above mentioned; that is, a total of \$3.16 in that portion of the town lying in Falls Church Magisterial District of Fairfax County; \$2.86 in that portion lying within Providence District in Fairfax County; and \$2.65 in that portion lying within Arlington County. There are attached to Exhibit No.

1 specimen copies of the tax bills of both Fairfax
page 31 } and Arlington Counties and the Town of Falls
Church, marked, respectively, Exhibits No. 1-A,
1-B and 1-C.

2. Taxable Values.

Exhibit No. 2 shows the taxable values of all real estate, personal property, merchandise and public utilities, stated separately in the Fairfax and Arlington County portions of the Town of Falls Church for the year 1934 as compared with the year 1932. The taxation for the Rosslyn Gas Company is not stated separately because it does not seem to have been assessed separately, and for that reason it has been allocated to the two sections in porportion in which the taxable values on the other subjects of taxation exist, as shown by this statement. The public utilities valuations as shown are made by the State Corporation Commission and by it certified to the town authorities.

3. Residents Securing Water Direct from Arlington County.

Exhibit No. 3 shows the residents of the Arlington County portion of the town who get their water directly from the Arlington County system and who pay Arlington County therefor directly, with no accounting between the two jurisdictions as more fully referred to below.

4. Water Systems.

It is agreed among the parties to this cause that the following situation exists with respect to the water systems

owned by the Town of Falls Church and by Arlington County respectively in the Falls Church area: reference is made to a map designated as Exhibit No. 4 in this cause which is the basis of the statement herein contained.

In 1930 the County of Arlington, which secures its supply of water by purchase from the Federal Government through the water system of the District of Columbia, extended its mains into the Town of Falls Church and laid cer-
page 32 } tain lines along certain streets in the Arlington

County portion of that town, after having sought and obtained permission from the Town of Falls Church to use its streets for that purpose. Later in the same year or within eighteen months of that time, the Town of Falls Church constructed a municipal water system, securing its supply from three driven wells; and distributed this supply by a system of mains extending through the Fairfax County portion of the town and through most of the Arlington County portion which had not theretofore been served by Arlington County mains.

This system was constructed after the question had been submitted to two different elections; submitted first to the freeholders of the entire Town of Falls Church, and second to all of the qualified voters of the said Town, in each of which elections there was an affirmative majority in favor of the installation of the system and issuance of the bonds of the municipality to pay therefor.

It is understood that the respective water systems were constructed by the two municipalities by mutual agreement, there being then no conflict of interest, and that the mains were laid with the assent of all parties in interest then and in this cause.

Exhibit No. 4, above referred to, shows the location and size of the various lines as shown on the legend on the said exhibit as of the present date, February 12, 1934.

The wells from which the Town of Falls Church derives its supply of water are likewise shown on the map and they are as follows: Well No. 1 is located in the Fairfax portion of the town and it has a tested capacity of twenty-five gallons per minute; Well No. 2 is located in the Arlington County portion of the town and has a tested capacity of seventy gallons per minute; Well No. 3 is located in the Ar-
page 33 } lington County portion of the town, near the in-
tersection of Madison and Walnut Streets, and has
a tested capacity of thirty-eight gallons per min-
ute.

The water from these wells is pumped directly into a network of mains, and surplus water under pressure rises in a

distributing tank of two hundred thousand gallons capacity, located as shown on the map in the Fairfax portion of the town. This tower has an elevation above the ground of one hundred twenty-five feet to the top.

There are certain fire hydrants installed by both of the systems or as part of both of the systems, the location of these being as shown upon the exhibit.

All of the water consumers in the Fairfax County portion of the town, three hundred sixteen in number, have a metered service and pay for their water at the rate of \$22.00 per annum on the first 40,000 gallons used, with an additional rate of 25c for each 1,000 gallons consumed in excess of that amount.

In the Arlington County portion of the town there are three distinct classes of consumers as follows: in East Falls Church or in the Arlington County portion of Falls Church, there are 40 consumers served through mains constructed entirely by the County of Arlington, in which class a metered service is rendered and payment is made to Arlington County direct at the rate of \$20.00 per annum for the first 40,000 gallons, a rate of 30c per 1,000 for the next 20,000 gallons, 25c per 1,000 for the next 20,000 gallons and 22c per 1,000 for any amount in excess thereof. This water is furnished by Arlington County.

Class 2. There are 26 consumers of water in the Arlington County portion of the town who receive their water from the town's source of supply entirely through mains constructed by the town. These persons are rendered a metered service and pay a rate which is the same as that
page 34 } charged in the Fairfax County portion of the town
as above stated.

Class 3. There are 17 persons in the Arlington County portion of the town who are supplied with water from the Arlington County source of supply in the following manner: water flows through Arlington County pipes into pipes constructed by the town and thence into the homes of these consumers through individual meters. These meters are read by a representative of Arlington County who takes the aggregate amount of gallonage, and upon that basis renders to the Town of Falls Church a bill for that aggregate at 30c per 1,000 gallons. The Town of Falls Church bills the individual consumer for this same water at its regular rate and collects from the individuals and pays the Arlington County charges therefor on the basis heretofore stated.

The rates for the various types of consumption of water in the two municipalities are shown upon three bills which are attached to this statement, identified as Exhibits No. 4-A,

4-B and 4-C respectively. Both systems adjust the excess over a yearly period.

It is agreed that those lines which have been constructed by Arlington County, as shown on the exhibit, were subject to the following charge to the property owner thereof: There was a charge of \$1.00 per front foot for each lineal front foot of property abutting such lines.

In addition to the above charge there was made by Arlington County to each domestic water consumer a charge of \$40.00 when the meter was installed, which charge includes the cost of installation of the meter and connection, and includes rental and maintenance of the meter. The Town of Falls Church paid the entire charge for the installation of its system out of the bond issue and made no front footage charge. It lends the meter free of charge and made a tapping charge of \$20.00.

page 35 } Exhibit No. 4-D shows the aggregate receipts and disbursements on account of the installation and operation of the water system from its installation in July, 1931, to January 6, 1934. This is supplemented by a statement showing the actual receipts and disbursements for the maintenance and operation of the system, identified as Exhibit 4-E.

The pressure at which water is delivered in the Arlington County system is from thirty to forty pounds per square inch. The pressure at which water is delivered from the Falls Church system is from forty to sixty-five pounds per square inch.

5. Roads.

This map, marked Exhibit No. 5, represents correctly the street system of the Town of Falls Church, both in Arlington and in Fairfax Counties. The roads shown in pink are surfaced with concrete, and those shown in blue are *surfaced* in tar macadam; those barred, whether in blue or pink, are State highways; those shown in orange are in part unsurfaced and in part surfaced with gavel or broken stone. As to those in orange, proof may be submitted as to their construction and any further facts about them. As to the streets shown in the outline and not colored, they are merely on paper, unaccepted by the town and probably plotted by the original owners.

The State road in barred pink was a road originally constructed by the town but taken over by the State in 1918 and maintained by the State Highway Department until 1930, when it was reconstructed in part and since maintained wholly by the State. The Broad Street State Highway shown in blue

was originally constructed by the town and maintained until about 1932, when it was taken over by the State, since which time it has been maintained by the State. It will be understood that the State reconstructed all of the present concrete Lee Highway in the town, that road being shown in barred pink.

The map referred to as Exhibit No. 5 shows a total length of public streets which have been taken over by the Town of Falls Church, either formally or by use and through improvements, in the aggregate amount of 94,350 lineal feet; and this length, 19,018 lineal feet, constitutes a part of the State Highway System; of which 1,882 lineal feet are in the Arlington County portion of Falls Church and 17,136 lineal feet are in the Fairfax County portion thereof.

Of those streets which are not a part of the State Highway System but are either concrete or macadam roads, there are of concrete roads in the Arlington County portion 280 lineal feet; in the Fairfax County portion, none; of macadam in the Arlington County portion 4,329 lineal feet; in the Fairfax County portion 18,673 lineal feet.

Of all other streets shown on the exhibit (except those which are projected only and do not actually exist), there are in the Arlington County portion 18,388 feet, and in the Fairfax County portion 33,652 feet.

6. Curbs and Sidewalks.

All concrete curbs and sidewalks on Washington Street and on Columbia Street, shown on the map marked Exhibit No. 6, were installed by the town and paid for as follows: Two-thirds from taxes on the entire town; one-third by assessment against the abutting property owners. The other curbs and sidewalks were paid for by the town as a whole.

7. Street Lights.

Exhibit No. 7 is a map showing the number and location of street lights in both portions of the town. There are a total of sixty-eight street lights, of which seventeen are located in the Arlington County portion and fifty-one are located in the Fairfax County portion.

The lights are the property of and are maintained by the Virginia Public Service Company, and the town from general taxation pays therefor at the rate of \$15.00 per light per annum.

8. Buildings and Census.

Exhibit No. 8 is a map of the Town of Falls Church, showing the location of all buildings exclusive of out buildings,

within both portions of the town. The use to which these buildings are devoted are as shown on the legend. The figures opposite the location of each building indicate the number of occupants in each building. The plat shows the number of dwellings, businesses, schools and churches to be as follows: Dwellings in the Arlington County portion—131; dwellings in the Fairfax County portion—417; business houses in Arlington County portion—31; business houses in Fairfax County portion—24; schools in Arlington County portion—none; schools in Fairfax County portion, including public private and parochial schools—5. (This includes 3 public school buildings; one on Washington Street, the James Madison School, and two constituting the Jefferson School, which is a high school, on Cherry Street; the two schools indicated at the corner of Spring Street and Broad Street include a convent and parochial school.)

According to a census made by the petitioners as of February 1, 1934, there are 2,121 inhabitants in the Town of Falls Church, of whom 1,596 reside in the Fairfax County portion and 525 reside in the Arlington County portion.

The total area of the Town of Falls Church is 1,568 acres, of which 290 acres lie in Arlington County portion of the town and 1,278 acres in the Fairfax County portion of the town. This plat shows that in the Arlington County portion of Falls Church there is one dwelling (excluding page 38 } business houses, churches, etc.) for each 2.21 acres; while in the Fairfax County portion of the town there is one dwelling for each 3.07 acres, likewise excluding buildings that are not dwellings.

9. Public Health Service.

It is agreed that the Public Health work of the areas involved is administered in the following way: Arlington County has a Health Officer who functions in the Arlington County portion of the Town of Falls Church only in limited cases and upon the request of the town authorities; Fairfax County has a similar Health Officer. The town has in *additions* its Health Officer, Dr. Charles A. Ransom, and maintains a sanitary service under the direction of the Mayor through the Police Department. The Falls Church Health Officer resides in the Fairfax County portion of the town and is paid no compensation for his services, but discharges whatever duties are incumbent upon that office.

10. Police Protection.

The police protection of the County of Arlington is rendered by a staff of eighteen officers, three of whom are deputy

sheriffs, and the remainder of whom are special officers employed upon a full time basis, all of whom are under the direction and control of the Sheriff of Arlington County. A regular patrol of the County is maintained, but the Arlington County officers do not patrol any portion of the Town of Falls Church and do not go into the town except upon the request of the enforcement officers of the town or upon some emergency. Substantially the same situation is true with respect to the County of Fairfax in its relation to the Fairfax County portion of Falls Church.

The Town of Falls Church is policed by two paid officers, a sergeant and a special officer on a full time basis under the control of the Mayor. They furnish a patrol
page 39 } over the streets of the town and respond to calls within the two counties within a mile of the corporate limits in an emergency.

11. Zoning.

The town has under way and in progress a zoning ordinance which it is anticipated will be completed and in force within a reasonable time. Arlington County has had for some time in force a comprehensive zoning ordinance.

12. Fire Protection.

The Town of Falls Church, like the Counties of Arlington and Fairfax, is dependent upon volunteer companies for its fire protection. These companies own their own land and buildings, and in the case of Falls Church and Fairfax County, but not of Arlington County, they own their own equipment. By special statutory provision, Arlington County is prohibited from laying a fire levy in the Town of Falls Church at the present time, as is Fairfax County. The Town of Falls Church now lays its own levy for fire protection in order to distribute equally over the town a tax for the supply of fire hydrants and the water used in fighting fires, in addition to the support of the fire company, for the reason that unless such a tax were levied by the town, the costs of furnishing water for fires and creating a fund for fire hydrants would be borne wholly by water users and not by those who have the benefit of fire hydrants but who are not water consumers.

The membership of the fire department is voluntary and is composed of volunteers from both sections of the town, except that one full-time man is employed and paid by the town. The fire equipment consists of one five-hundred gallon, tripple combination pumper of American-LaFrance manufacture, one chemical hose wagon, and one Ford chemical

truck. The volunteer company owns this equip-
 page 40 } ment and the fire house is located in the Arlington County portion of the town and likewise owned by the volunteer company. The town has provided in its budget the sum of \$900.00 for the operation of the current year, which includes the salary of a paid employee.

In Arlington County the equipment is owned by the county and the county makes contributions to the support of the various companies in that it purchases hose, furnishes heat and light, miscellaneous supplies, and maintains a central control for police and fire dispatching. The Town has a similar dispatching system. Arlington County is required by statute to underwrite compensation to firemen who are injured in line of duty. This is taken care of in the major part by the maintenance of policies of insurance against these losses. The Falls Church volunteer fire company is protected under these policies, and the Town of Fall Church, as required by law, pays to the County of Arlington, its due proportion of the total amount premium which is fixed by law.

13. Public Utilities.

Telephone service, electricity, gas and all other types of public service except water are furnished both of the areas in question by public utility companies, not municipally owned.

14. Sewers.

Exhibit No. 9-A is a topographic map of that portion of Arlington and Fairfax Counties in which the Town of Falls Church lies, and on it are sketched the corporate limits of the Town of Falls Church. The pink shows that portion of the town that lies in Arlington County, and the blue shows that portion which lies in Fairfax County. It also shows the location through the town of the Washington & Old Dominion Railroad and of the Arlington & Fairfax Railway,
 page 41 } designated on said map as Washington & Virginia Railway.

Exhibit No. 9-B is a copy of the same map with the drainage area of the two portions of the town, shown by the black line marked "divide"; that portion to the north and east is in blue and comprises all the town that is in Arlington County and a portion of that in Fairfax County; that to the south and west is wholly within Fairfax County and is shown in pink; the two outfalls of these areas are shown by round black dots. The drainage of the section in blue is to Four

Mile Run, which lies partly in Arlington County and partly in Fairfax County.

15. School System.

In response to a questionnaire presented by counsel for the petitioners the following statistics and statements were made by Mr. Samuel Stiles, member and secretary of the School Board, of Falls Church:

Number of school buildings in Falls Church? Three public school buildings.

Name of elementary school? James Madison.

The following statistics relate only to the James Madison School:

When built? 1925.

Who drew the plans? Roswell Mitchell, Architect.

Were the plans approved by the State Architect to conform with the State regulations in regard to light, ventilation and sanitation? Yes.

Number of class rooms? Ten.

Number and kind of other rooms? Auditorium, one rest room, one dressing room, two lavatories, one supply room, one engine room, one furnace room, one kitchen, one stage, and a basement recreation room, all in addition to the class rooms.

Size of school site? Approximately two acres.

page 42 } Number of grades taught in this school? Seven.

In each grade we have a high and a low grade. The children in the high grade are promoted in February and children in the low grade are promoted to high; in other words, they stay in one grade the entire year.

Number of teachers in this building? Ten; one additional elementary teacher has her class in the high school building and she teaches the low third and the low fourth.

Total number of pupils enrolled in this school—Three hundred eighty-three.

Number of pupils enrolled from the portion of the town which is in Arlington County or the territory in question? Seventy-five; one hundred seventy-seven from the Fairfax County portion of the town, and one hundred thirty-one from outside the corporate limits of whom thirteen come from Arlington County without compensation and one hundred eighteen from Fairfax County for whom tuition is paid amounting to \$3,000.00 per year.

School population as of 1934 in that portion of Falls Church which is in Fairfax County? Four hundred one.

School population as of 1934 in that portion of Falls Church which is in Arlington County? One hundred thirty-seven.

Greatest distance that any pupils living in the town attending this school have to go? A mile and a quarter.

That appears to be all the questions in regard to the Madison School. The school is comfortably filled. We have plans drawn for additions which were drawn in 1932, and it is a very easy proposition to enlarge a school. The school was built at the urgent request of the East Falls Church people.

They are the ones who were very solicitous to have page 43 } the school built so that additions could be put on, so we built two blind wings at the back of the school. We have a plan suggested by Mr. Long and presented to us.

Is the reason of that class being in the high school that you have not room comfortably to take care of it? Yes and no. We had surplus room in the high school and the first and second grade were crowded, so we thought by shifting this class to the high school it would enable us to take care of the little children. Other adjustments can be made easily.

We have in connection with the school, janitor service, water supply, cafeteria, electric lights and everything like that. We have fire protection and fire escapes. We have everything possible that an up-to-date, first class, A No. 1 school could have. The only thing we lack is in the activities. We have no swimming pool, no cadet corps. We have a basketball team and a football team, but our funds are not sufficient to go into all of those things extensively, so we have concentrated on education.

Our pupils, especially in the high school, have almost individual instruction. We have a wonderful corps of teachers. The pupils leave our school and go to colleges and we have received letters from the principals of colleges commending our principal for the education, and the scholars that leave our school get very high ratings after they have been in these institutions where they elect to go the first year. We had a letter from William and Mary in which a young lady was highly commended for her English. That is what we have done. We have concentrated on education. That is why our school is so popular in the county and why so many prefer coming to our school than going elsewhere.

It is a fact that during all this depression the page 44 } town has never curtailed the appropriations, and we have not had to make any reductions in salary to carry through this period; and in addition to that, in the year 1931 we had a way of paying our teachers by starting our teachers at \$85.00. After they were with us a year they

got \$90.00, the next year \$95.00. Some of the teachers got \$95.00 when I went on the Board. They had been with us quite a while. In 1931 we cut out that \$85.00 and we paid all our teachers \$90.00, so considering the depression and everything we really raised the rate of our teachers' pay, and we have never in all the years given less than one hundred eighty days' teaching time, which is the time required by the State, and we have always paid our teachers. We hope we always will. We are in a position to pay them this year, so we will have one hundred eighty days' teaching time this year.

Do both of the sections of a grade occupy the same room at the same time? In the first and second grade they do occupy the same room. In the other rooms they have a departmental system in the higher grades, and the teacher changes in that case except with the scholars in the high school.

Are all the rooms occupied? Yes. I can tell you exactly how they are occupied right here. The first grade occupies one room, second grade occupies one room, third grade high one room, fourth grade high one room, fifth grade high one room, fifth grade low one room, sixth grade high one room, sixth grade low one room, seventh grade high one room, seventh grade low one room.

This proposed addition that you referred to, what financial assets have you to bring that about? How would you go about that from a financial standpoint? Leaving out the Government's propositions, we would naturally go to the

Literary Fund for a loan, not by bond issue be-
page 45 } cause the amount would be too small, for we would
not put twelve rooms on all at once. We would go to the Literary Fund for a loan and we would borrow the balance from some local source. That way we would put up the addition, and we are only waiting to reduce our present Literary Fund indebtedness to a figure where we feel it would be right for us to ask for an additional loan.

The money from the various sources would be borrowed from the Literary Fund or other sources and would be paid back by school taxes? That is right, and the Council appropriates the funds to meet the payments on the loan.

And the money would come out of the general Council or school taxes, whatever it may be? Yes.

The following statistics relate entirely to the high school:

Have you a high school? Yes.

What is the name and location of this school? The name

is the Jefferson High School and the location is Broad and Cherry Streets.

When was it built? About 1880.

Who drew the plans and were they approved by the State Architect, We have no records to show who drew the plans, and probably there were no requirements at that time by any State Architect.

Does this building conform to the present requirements as to light, ventilation and sanitation? Yes. In the summer of 1932 we put in sanitation, and upon the completion of the sanitation plant we had a gentleman from Richmond come out there. He went all over the building and passed on the building and gave us an O. K. This was both before and after the improvements. Before the improvements he looked at

the building with a view to locating the lavatories
page 46 } and inspected the building thoroughly, then drew
the plans up for this improvement, based on what
we observed. After it was all over, they inspected the improvement and made some complimentary remarks on the way the building was built, the foundation and the beams and everything, because they never build a building like that these days.

This gentleman was from the State Board of Education? Yes. Mr. Long sent him out.

His approval was with respect to sanitation or to the light, ventilation and sanitation? His approval was with respect to light, ventilation and sanitation.

How were these improvements financed? We first negotiated with the Literary Fund Committee. We had to do the work in the summertime. We went to the bank and borrowed \$2,500.00 from the bank, and we put in a request for \$1,700.00 from the Literary Fund. We carried that \$2,500.00 in the bank until January when the Literary Fund loaned us \$1,700.00. We took that \$1,700.00 and curtailed our note in the bank, reducing our note to \$800.00. Then we paid all the bills and the thing was in operation. Then we curtailed the \$1,700.00 note. These notes were made payable in fifteen years, for the first series of years \$100.00 each, and toward the end \$125.00 or \$150.00 to make up the total. The note at the bank of \$800.00 we curtailed every four months, and that is how we are meeting that obligation.

Then the funds with which you make these curtailments come, generally speaking, out of the school taxes? School taxes and out of the appropriation of the General Fund; that is, the school taxes of \$1.00 in Fairfax County, \$.70 in Arlington County and \$3,500.00 from the town.

Number of class rooms in this building? We have five

class rooms in that building, but we also have two
 page 47 } in the annex or science hall, the adjoining building.
 That is where we get our three buildings in Falls
 Church.

Number of teachers in these buildings? Six, which includes the principal, and then we have also that one elementary teacher which we have mentioned before, which would make seven in that building; in other words, we have seventeen teachers in the whole school system.

Number and kind of other rooms? Two lavatories, a furnace room and the laboratory.

Size of the site? About one acre.

Is it a four-year high school? Yes.

Is it an accredited high school? Yes.

By whom is it accredited? The State Board of Education and the Southern Association of Colleges and Secondary Schools.

What courses are offered in this high school? Academic and commercial.

Number of pupils in the Senior class now and the number that graduated last spring? Thirteen in the Senior class now, and twelve graduated last spring.

Number of pupils enrolled in this school? Total, one hundred forty-seven.

Number of pupils enrolled from that portion of the town which is in Arlington County or the territory in question? Twenty-four. From the Fairfax portion of the town, sixty-three; from outside the corporate limits, sixty. None of the sixty come from Arlington County; all come from Fairfax County. The sixty high school students from Fairfax, outside of the corporate limits, are paid for at a flat rate by Fairfax County, which tuition is included in the \$3,000.00 that is above mentioned.

page 48 } In regard to the annex or science hall, it is located on Cherry Street on the high school property. It was built in 1922. There are two rooms used for commercial classes, and a laboratory.

In those buildings we have electric lights, water and all necessary conveniences.

How are the high school graduates rated? They are rated as one of the highest in Northern Virginia, if not one of the highest in Virginia. As I stated before, Strayer's would give an examination all over the county, and you will look at the record and find Falls Church first, second and third. Last year Herndon beat us out for third place, so that we came in the first, second and fourth places.

Are they received on equal rating with Arlington County? I do not know the State rating, but I know by experience how it is classed. You see, we have plenty of time for individual instruction, and that is what the parents desire and that is why they send to our school children from away, and when I say "away" I mean a little distance up in the county; and that is the only thing we hold forth to the parents.

Is the high school crowded? It is not crowded in the high school. In fact, not crowded in the elementary school either. That is one thing that the parents of the children recognize. Our effort from the educational standpoint makes us one of the leading institutions in Northern Virginia.

What is the nearest high school, outside of Washington and Lee in Arlington County? I presume McLean. Fairfax is going to have quite a large school. Although I am a member of the Board, it is only out of compliment to the Town of Falls Church that they have a member. We are a little place of our own. Our relations are very
page 49 } cordial with Fairfax County.

The outstanding school bonds which are the primary obligation of the town itself are \$67,000.00. The other obligations of the School Board are due to the Literary Fund, \$3,200.00, a balance of a loan of \$6,000.00 which is to be retired in eight years; the bank loan of \$700.00, the residue of a \$2,500.00 loan which is to be retired in four years; the Literary Fund obligation of \$1,600.00, a residue of the loan of \$1,700.00, which residue is to be retired in the course of fourteen years.

The outstanding bond issue of \$67,000.00 is to be retired at the rate of \$2,000.00 per year from January 1, 1935, to January 1, 1940, inclusive; \$3,000.00 from January 1, 1941, to January 1, 1946, inclusive; \$4,000.00 from January 1, 1947, to January 1, 1954; and \$5,000.00 on January 1, 1955.

All of the public school buildings mentioned above are located in the Fairfax County portion of Falls Church.

16. Annual Revenues of School Board.

The following is a statement of the total annual revenues of the Falls Church School Board for the sessions of 1930-1931, 1931-1932, and 1932-1933, stated separately for each year as derived from the Fairfax County School Tax, the Fairfax County State Fund, the Arlington County School Tax, the Arlington County State Fund, general appropriations of the Town Council of Falls Church and other sources of revenue:

Sources of Revenue	1930-1931	1931-1932	1932-1933
Fairfax Co. School Tax	\$7,799.57	\$8,358.00	\$8,296.03
Fairfax Co. State Funds	4,130.50	4,447.58	3,683.38
Arlington Co. School Tax	2,595.39	2,241.33	2,936.49
Arlington Co. State Funds	959.00	900.00	901.46
Appropriation by the Town of Falls Church	3,500.00	3,500.00	3,500.00
Other Sources*	3,054.58	3,361.18	3,108.25
Grand Total	<u>\$22,039.04</u>	<u>\$22,807.99</u>	<u>\$22,425.61</u>

page 50 } *Includes \$3,000.00 paid for tuition by Fairfax County.

In addition to these appropriations by the Town of Falls Church, the Town of Falls Church pays the interest on these outstanding school bonds and takes care of the retirement fund.

If the town had not included any portion of Arlington County for the 1930-1931 session, the revenues of the town would have been \$18,484.65; for the 1931-1932 session, \$19,666.76; and for the year 1932-1933, \$18,587.66. These figures are arrived at by deducting the totals for those various years of the Arlington County School Tax Fund and the Arlington County State Funds, and assuming that the appropriation from the town itself would remain constant at \$3,500.00 a year and not be reduced because of the contraction of the limits.

17. Financial Data on the County of Arlington.

Exhibit No. 10 is a statement of the entire long term indebtedness of the County of Arlington, including all bonded indebtedness. This includes all fixed or other indebtedness of the county except the following:

There is a claim which has been asserted against the County of Arlington by the American-LaFrance and the Foamite Industries, in the present amount, including accrued interest, of approximately \$41,000.00. The county denies that this is a valid outstanding obligation, and this contention has been sustained by the Circuit Court of Arlington County in an action brought by the claimants. A writ of error was awarded claimants by the Court of Appeals of Virginia from this decision, and the final determination of this matter is now pending.

There is no present floating indebtedness of the page 51 } county nor was there such indebtedness on June 30, 1933, which is the date of the statement shown on Exhibit No. 10.

The cash assets of the county are as follows:

Municipal bonds held by the School Department, \$80,000.00;
Water bond debt service, \$105,000.00;
Current cash in the School Fund, \$.;
Current cash for all County Funds, \$.

The last two mentioned cash items are as of January 31, 1934; against these items there should be deducted, by reason of bills accrued to February 1, 1934, and unpaid, the amount of \$.

The assessed value of real and personal property subject to taxation in the County of Arlington for the year 1932 was \$25,601,157.00. See Exhibits 10-A and 10-B for further detail.

18. Financial Data of Falls Church.

Exhibit No. 11 shows the financial statement of the Town of Falls Church as of August 31, 1933, the end of the fiscal year, exclusive of the water account and the school account, shown elsewhere. Exhibit No. 12 shows the financial statement of the water account of the Town of Falls Church.

It is agreed that the assessment for purposes of general taxation in that portion of the Town of Falls Church lying in Fairfax County is made by the official or Board who assesses the remainder of Fairfax County; and that the assessment for purposes of general taxation in that portion of the Town of Falls Church which is in Arlington County is made by the same official or Board who assesses such property elsewhere in Arlington County.

The only persons who receive salaries from the Town of Falls Church are the Clerk-Treasurer, who does page 52 } receive some small amount of fees—for instance, in a building permit there is a fee of 25c for making it out and taking care of it—\$60.00 a month is his stated salary; two police officers receive fixed salaries, the town sergeant receiving \$125.00 per month and the special officer approximately \$95.00 per month, and in addition such fees as are lawful—for instance, fees for the service of a paper; and indirectly, through the fire department, one man in the fire department receives a salary of \$40.00 a month. The

office of Mayor carries no salary but merely the fees provided by law.

19. Incorporation.

The Town of Falls Church was incorporated by Acts of the Assembly and approved March 31, 1875, Session Acts, 1874-1875, page 403. The corporate limits were set out in Section 9 of that Act. The boundaries of the town were altered by Act of May 21, 1887, Acts of 1887, page 464, which altered in some minor degree the southern boundaries lying in Fairfax County, and from that time to the present time there have been no material changes in the corporate limits of the town.

The most recent description of the corporate limits is found in the Acts of 1924, page 79, approved March 3, 1924; subsequent to which time there have been two acts affecting the Charter; the one approved March 24, 1932, authorizing the Town of Falls Church to acquire the water system of the County of Arlington within its limits; the other, approved March 25, 1932, Session Acts, 1932, page 539, amending Section 4 of the Charter, empowering it to establish and maintain a fire department, and to have exclusive right to levy within its discretion a fire protection tax to purchase and maintain fire hydrants, and prohibiting the Counties of Arlington and Fairfax from levying any fire protection tax within the said town; providing further that the
page 53 } discontinuance of such levy by Arlington County
would not relieve that county from liability under an act providing compensation for death or injury of volunteer firemen, but requiring the town to annually pay over to the county its proper proportion of the annual premiums; also authorizing it to install a system of sewers and water works and to levy such tax as may be necessary for the maintenance and operation of same.

Within the corporate limits, the only common freight carrier serving this territory is the Washington & Old Dominion Railroad, exclusive of bus lines, with two stations in the corporate limits, one at East Falls Church in Arlington County, and the other at West End in Fairfax County.

The telephone service for the entire town is furnished by the Chesapeake & Potomac Telephone Company with its central office in the portion of the town located in Fairfax County, immediately over the bank building.

There is one bank building, located in the town with the principal offices in Fairfax County, and with a branch office in East Falls Church.

It is also stipulated that the petitioners reserve the right

to check and controvert any statement contained in the statement of Mr. Stiles. Both sides reserve the right to supplement these statements by any competent testimony.

JESSE, PHILLIPS & KLINGE,
By T. W. PHILLIPS,
Attorneys for the Petitioners.

LAWRENCE W. DOUGLAS,
Attorney for the County Board of
Arlington County.

JNO. S. BARBOUR,
Attorney for the Mayor of Falls Church
and the Intervenors.

page 54 }

OPINION OF COURT.

Filed June 23, 1934.

This case arises upon a petition filed by certain of the residents of that portion of Falls Church which is also a portion of the County of Arlington who seek to have the corporate limits of said Town contracted so as to exclude therefrom all of the territory now included therein which is also a part of the County of Arlington, the petition being filed pursuant to the statutory provisions of Chapter 216, Acts of 1920 (1930 Code, Section 2971, Sub-section 1).

It is agreed between counsel representing the various parties that under the law and the pleadings, the Court's action upon the petition must be founded upon its determination of two questions; namely:

1. Would the granting of the prayers be to the interest of a majority of the people in the Arlington County portion of the Town?

2. Would the general good of the community be materially affected by such action?

Counsel in their briefs of this matter have subdivided and classified the various elements affecting these principal inquiries; and while it is obvious that each of these elements must necessarily bear upon and affect the answer to these questions, it should be borne in mind that they are only elements and that the material questions are as above stated. They will now be discussed in the order named.

The Court does not consider it necessary to give a detailed analysis of the evidence concerning the advantages or dis-

advantages that may arise from the granting of the prayer, but deem it sufficient to point out what appear to be incapable conclusions.

page 55 } 1. SCHOOLS. The schools of the County are superior to those of the Town in that the system of the County (The 6-3-3 System) is more advanced than that of the Town (The 7-4 System). The schools of the County are accredited by the Southern Association of Colleges and Secondary Schools, whereas, those of the Town are not. This difference in rating arises out of certain requirements as to library, laboratory, space and teacher load which the County of Arlington meets but the Town of Falls Church does not. The curriculum of the County schools is more varied, the contacts of the students are broader, and the financial condition of the County is more fitted to take care of future growth.

2. ZONING. The County has already been zoned and while the Town has the authority, it has not exercised it.

3. HEALTH. The Health Department of the County is superior to that of the Town in that the Health Department has at its head a full-time specialist who is assisted by a full-time assistant and two full-time nurses, and maintains at different points in the County health clinics for children and regular school inspection; whereas, the Health Department of the Town consists of the volunteer services of a practicing physician, aided by the Mayor, who is a government employee, and a police force of two.

4. POLICE. The police force of the County, consisting as it does of eighteen full-time officers, is better able to cope with modern day crime conditions than is the Town force of two full-time officers. The Court does not believe that the argument advanced by the Town, as to the availability of its officers, due to the small territory which they have to cover, is of sufficient weight to overcome the advantages of the greater number of officers maintained by the
page 56 } County of Arlington, particularly in view of the fact that the territory covered by officers of the County is comparatively small.

5. WATER. The water system of Arlington County is of a type more fitted to the development taking place in this territory than is that of the Town. It is more certain, safe and capable of future expansion and it is noteworthy that there are fifty-seven persons in the Town now using County water, of whom seventeen take from the County, notwithstanding the fact that their mains are those of the Town. It is also true that the cost of obtaining water from the County is \$2.00 per year less than it is from the Town.

6. SEWER. It appears that sewers have become an urgent necessity in parts of the County and parts of the Town; that the County of Arlington is now engaged in the installation of sewers, whereas, a separate sewer system for the Town is not only not a surety but a very doubtful thing; that Four-Mile Run is not only a natural drainage basin for the Town, but also for a large part of the County and that a considerable portion of the County lying north and east of the Town would be cut off from its natural connection with the County's mains if the Town should install a separate sewer system. It is to be noted from Mayor Daniel's testimony, on page 154, that while a plan for separate sewers for the Town is a feasible thing, yet, "It would present some features that it would probably be better to avoid".

In the preceding paragraph doubt was expressed as to the possibility of the Town ever obtaining a separate sewer system. That doubt was based mainly upon the financial condition of the Town shown below.

The total assessed valuation for the Town for the year 1934 is \$1,385,900.00. The outstanding bonds, in case a page 57 } sewer project were put through upon the basis which the evidence indicates is now being worked upon, would be as follows:

Title of Bonds	Amount	Percentage of Assessment
School bonds now outstanding	\$ 67,000.00	(4% +)
Water bonds now outstanding	118,000.00	(7% +)
Proposed sewer bond issue	225,000.00	(16% +)
A total bonded indebtedness of		\$410,000.00 (28% +)

It will thus be seen that the bonded indebtedness in case of the issuance of these bonds would be over 28% of the total assessment of property, which, in view of Section 127 of the Constitution, would be prohibited unless said sewer system produced revenue to the Town. The above figures include the water bonds which it might be contended are revenue producing but which does not appear to be a certainty from the evidence. However, if the amount of the water bonds are deducted from the above figures, there would still be a total bonded indebtedness of \$292,000.00, or 21% of the total assessed value of the property of the Town, which would be a violation of the constitutional provision unless the sewer system were revenue producing.

In addition, before any such bonds could be issued they would first have to be approved by the voters of the Town

and on the present scheme of things the whole plan would have to be approved by the Federal Public Works Administration, which, it appears, has already indicated its preference for a joint system for the County and Town.

7. PROGRESS. It has been maintained by some of the witnesses on behalf of the petitioners, and argued by their counsel, that Arlington County is more progressive than is the Town of Falls Church and the Court believes that this conclusion is supported by evidence not because
page 58 } of any difference in mentality between the residents of the Town, but because the growth of Arlington County has either necessitated or afforded certain benefits in advance of the Town. It is to be noted in this regard that the County has furnished its people, prior to the furnishing of such service by the Town, the following: a fully accredited high school, water, zoning, trash and garbage collection, and is now proceeding to install a sewer system. If these things are progressive, then, clearly the County's progress is in advance of the Town's.

8. TAXATION. It appears from the testimony of Mr. Basil D. Boteler that the properties in the Fairfax portion of the Town are assessed by the assessors of Fairfax County at a lower rate than those of the Arlington portion of the Town which are, of course, assessed by the Arlington assessors. If this be true, it necessarily follows that even though the rate paid by the residents of the two different portions of the Town be the same, nevertheless, the residents of the Arlington portion of the Town pay the higher tax and the Court cannot help but feel that this situation, coupled with the right of all of the citizens of the Town to vote in all Town elections, is in a large part the basis for a great deal of the dissension which exists in the Town.

The evidence shows that should the prayer of the petitioners be granted, the Arlington residents of the Town of Falls Church would obtain the benefit enumerated above, not by having their taxes increased but by having their taxes decreased at the rate of 45c per \$100.00.

Counsel for the Town has argued that a good many of the services which are furnished the citizens of the County by the County Government and are not furnished to the Arlington County residents of the Town are not ad-
page 59 } vantages which would come to those citizens by reason of the contraction of the Town's limits because he says these services should be rendered to those citizens by the County at the present time. The Court is forced to reject this argument, at least insofar as the schools, roads, police, or the health department are concerned, because the

Town charter makes the Town a separate school and road district, the statute under which the County police are appointed limits their jurisdiction to that part of the County which is not within the limits of an incorporated town, and the law concerning the authority of the health officer ends his authority in incorporated towns immediately upon the appointment of a health officer for the town; but conceding the Town counsel's argument to be true, the question arises, "Why should the citizens pay 45c per \$100.00 additional tax for these services when they can obtain them without paying it?"

As against the advantages above enumerated, the only disadvantages which appear to the Court to be likely to affect the Arlington County citizens of Falls Church are:

1. A temporary dislocation of the students from that portion of the Town, whom the County may not be immediately able to care for, but for whom, according to the testimony of Mr. Fletcher Kemp, the County is ready and able to erect a new school at Highland Park; and whom the Court, following the precedent of the case of *Warwick County v. The City of Newport News*, 120 Virginia 177, believes it has the authority to protect by such temporary orders as may be necessary.

2. The citizens of that portion of the Town who desire to use the County's water system will be required, in case they have not already done so, to pay to the County \$1.00 per front foot for water mains in front of their property; in no case, however, to exceed the sum of \$100.00.

page 60 } From what has been said before, there does not seem to be any question but that the first of the main questions arising in this case should be answered in the affirmative.

In order to answer the second of the main questions with which we are concerned, it appears necessary to determine to some extent what is comprehended by the word "community". Regardless of what the definition of this word may be, it is certain that the legislature intended it to include that part of the Town which might be excluded from the corporate limits, as well as that portion which might remain therein, and the Court interprets it to include the territory surrounding the Town which is materially affected by this petition; and it, therefore, follows that even though the Court should determine that some disadvantages fell to the lot of the Town by reason of such contraction, yet it might be the duty of the Court to answer the question in the negative because of the greater weight of the advantages which

would be obtained by that portion of the Town removed and by that territory immediately surrounding the Town.

As far as that portion of the community sought to be excluded is concerned, the Court has already pointed out what seem to it to be distinct advantages from such exclusion. As to the surrounding territory, it appears that there will be a distinct advantage in having its natural drainage basin under one authority and particularly in having its natural drainage basin under an authority certainly capable of developing a sewerage system.

The evidence shows, and counsel for the Town admits, that the growth of the County population is at a much greater rate than is that of the Town. The Court believes this remarkable growth justifies the conclusion that in the near future the County must become the nucleus of a city
page 61 } of the first class. It follows that it is to the advantage of all of the territory likely to be included therein to have the development of its roads, its zoning, its sewer, water, school and police systems come under the control of Arlington County as soon as it can expediently take charge of and develop the same; in order that the development may be planned and controlled with regard to the whole instead of with regard to future minor parts thereof.

As to that portion of the Town remaining after the contraction, the Court will now discuss what it believes to be the advantages and disadvantages which must arise in case the prayer of the petitioners is granted.

SCHOOLS. It does not appear that any injury will result to the Falls Church school system except the loss of contracts by pupils and the loss of revenues. While the Court will not disparage the value of contracts, it does seem that this loss is relatively small. The loss of revenues will be discussed later.

FIRE PROTECTION. The Court is unable to see how any material injury will result from the Town's loss of whatever jurisdiction it may have in this regard. The fire company would be just as close to the property of the Town as it is now and no reason appears why its members, who are volunteers and composed of residents of both portions of the Town, would not be just as much moved to protect the property of the Town as they are now. On the other hand, the Town will be benefited financially by being relieved of the necessity of appropriating anything for this purpose.

ZONING. It should be borne in mind in any discussion of this problem that the necessity for zoning usually arises from density of population, that there are few rural communities

having such regulations, and that the regulations
 page 62 } become more and more stringent in the more
 densely populated communities. It is true that
 the Town is more densely populated than the surrounding
 territory of the Counties. But it is also true that the growth
 of population in Arlington County is at a much greater rate
 than in the Town; that the County authorities felt the neces-
 sity for such zoning regulation some time back, whereas, the
 Town, which also has such authority, has not yet exercised it.
 If the Court is right in its opinion that Arlington County
 much form the nucleus of a future city, it follows that it
 should as soon as possible obtain the right to zone the ter-
 ritory which will undoubtedly be a part of that city.

Any claim of material damage under this heading must
 necessarily be purely conjectural. It is true that the Town
 loses its power to zone the territory sought to be excluded,
 but it is also true that the Town has not yet exercised this
 authority and, therefore, up to this time has considered such
 power unnecessary.

SEWERS. Counsel for the Town argued that it would be
 a great calamity for the drainage system to be under two
 jurisdictions, and yet it appears that the Town instituted ne-
 gotiations with the County to connect with the County sys-
 tem and the Mayor admits that such a plan would be better
 for the Town except for cost. The Act of the Legislature
 of 1934 dealing with this subject appears to have fully pro-
 tected it in this respect. The Court is of the opinion that
 under that Act the Town may force the County to take care
 of it in this respect and will be protected from being over-
 charged therefor by the Circuit Court.

Counsel for the Town assert that the case of *Alexandria*
v. Alexandria County is controlling on this question but the

Court does not so view it. The ruling of the Court
 page 63 } in the case cited was that the limits of the city
 should extend to the middle of Hunting Creek.
 The City of Alexandria was a City of the first class and had
 a sewer system. Hunting Creek was a larger body of water
 than Four-Mile Run, which is a comparatively shallow stream
 running through a large portion of the County. In view of
 the doubt which the Court has already expressed as to the
 ability of the Town to fulfill its desire for its own sewers,
 it seems that the preservation of this right, for which coun-
 sel so strenuously argued, would be the preservation of right
 which cannot be used and would, therefore, be of no benefit
 to the Town but might, in the end, result in a detriment; for
 it would undoubtedly make the use of the County sewer sys-
 tem by the citizens of the Town a more expensive proposition

than if the County were to be allowed to run its mains into the disputed part of the Four-Mile Run drainage system at the time when it is installing its own sewers. When it is noted that the Court in the case cited was called upon by the statute to determine what was necessary and expedient under the facts of that case, it follows that the case is not an authority here where the facts are so different.

WATER. It appears from the evidence that the Town has set aside a sum of approximately \$8,000.00 for the purpose of reimbursing the County for the County's water mains now installed in the Town. Obviously, in case of contraction, the Town would not have to pay this sum to the County and would, therefore, be benefited to that extent. The witness Gage places great emphasis upon the fact that should the contraction take place the water system of the Town would be forced to contain many dead-ends, but it appears from a cross examination of this witness that there are at present a number of such dead-ends.

The argument has been made that the contraction will seriously affect the Town's ability to maintain its present water system. This argument appears to the Court untenable in view of the three financial tabulations appearing below:

Present Water Budget
Income

342 patrons @ \$22.00	\$7,524.00	
17 patrons @ \$10.00	170.00	\$7,694.00
Interest on \$5,000.00 Bank Deposit @ 3%		150.00
Interest on \$5,438.00 in General Fund @ 5%		422.00
Excess water used by patrons		250.00
		<u>\$8,516.00</u>

Disbursements

Interest on \$118,000		
Bonds @ 5%	\$5,900.00	
Salaries	661.00	
Miscellaneous Expenses	1,057.00	\$7,618.00
Applicable to debt reduction		898.00
	<u>\$8,516.00</u>	<u>\$8,516.00</u>

Water Budget in Case Contraction Refused Income

399 patrons @ \$22.00		\$8,778.00
Interest @ 3% on	\$10,438.00	
Less Payment on Arlington Mains	8,000.00	
	<hr/>	
	\$ 2,438.00	73.14
Excess Water		300.00
Disbursements		
Interest on \$118,000 Bonds @ 5%	\$5,900.00	
Salaries	661.00	
Miscellaneous Expenses	1,057.00	
Applicable to debt reduction	1,533.14	
	<hr/>	
	\$9,151.14	\$9,151.14

page 65 } Note: The above takes no account of extra expense resulting from furnishing water to 57 additional users.

Budget in Case Contraction is Allowed

Income		
316 persons @ \$22.00		\$6,952.00
Arlington's portion of interest 15%		1,180.00
Interest on \$5,000.00 @ 3%		150.00
Interest on \$5,438.00 @ 5%		271.90
Use of Excess Water		200.00
Arlington's portion of debt reduction 20% of \$1,500		300.00
Disbursements		
Interest on \$118,000 Bonds @ 5%	\$5,900.00	
Salaries	661.00	
Miscellaneous Expenses	1,057.00	
Applicable to debt reduction	\$1,435.90	
	<hr/>	
	\$9,053.90	\$9,053.90

Note: The above takes no account of possible reduction of expenses from smaller number of users, nor does it take into account possible reduction of interest by application to debt reduction of money now held to pay for Arlington mains in the Town.

Counsel for the Town contend that the case of *Alexandria v. Alexandria County, supra*, is authority binding the Court to see that the Town maintains jurisdiction over the source of the Town's water supply, or wells, two of which it ap-

pears are in the Arlington County portion of the Town. The Court, however, does not view the case cited as authority for such a proposition. Practically every large city in the country gets its water from a source beyond its jurisdiction and in some cases the distance approximates 100 page 66 } miles. The case in question does not rule upon the source of the water supply of Alexandria City but its reservoir. The source of the supply of Alexandria's water is not now within the jurisdiction of the City. The Town's water tower is its reservoir and will remain within the jurisdiction of the Town.

INTANGIBLES. It is argued that to contract the limits of the Town will disrupt the "intangibles", namely, the civic, social, religious and political associations and instrumentalities; and yet it appears that the petition in this cause is signed by 91 out of 123 qualified voters in the Arlington portion of the Town; that there are different civic associations in each of three sections of the Town; that the Town's people themselves commonly distinguish between parts of the Town, referring to "West End", "East End", "The Town"; that there are two post offices in the Town, one in "The Town" and one in "East End", and that "East End" has a branch bank; and that there are three distinct tax areas. From this, it will appear, at least so far as East Falls Church is concerned, that there is no unity in regard to these "intangibles".

FINANCIAL CONDITION. The Court has undertaken to set up a statement showing the effect upon the financial condition, and particularly the levies of the remainder of the Town in case the contraction is awarded. The evidence submitted on this subject is not as certain and as clear as could be desired, but in the Court's opinion is sufficient to support the statement which follows:

Assessed Value of Town Property for year 1934.

Fairfax	%	Arlington	%	Total
\$1,001,965	70.3+	\$422,061	29.6+	\$1,424,026.00

page 67 } Revenues

Tax Levy	\$14,528.49	
Less 15% Uncollected	2,178.27	
	<hr/>	12,350.22
Delinquent Taxes 70.3% of 1933		1,516.71
Miscellaneous Taxes 70.3% of 1933		3,294.34
Fairfax County School Tax		10,019.65

State Contribution	3,683.38
Tuition (present)	3,000.00
Tuition additional from Fairfax	4,130.00

Disbursements

Schools (Schedule A)	\$25,304.05	
Roads & Public Works (Schedule B)	6,616.79	
Salaries (Schedule C)	1,800.00	
Lights (Schedule D)	1,710.00	
Library	300.00	
Mayor's Account (Schedule E)	143.88	
Contingent & Misc. Expenses (Schedule F)	3,662.79	
Fire Department	000.00	
Necessary to balance Budget		1,543.21
	<hr/>	
	\$39,537.51	\$39,537.51

Schedule A

Schools (Maintenance & Operation)		\$22,425.61
Annual Bond Retirement		2,000.00
Interest on Bonds \$67,000.00 @ 5%		3,350.00
Interest on Literary Loans 5,500.00 @ 6%		330.00
		<hr/>
		\$28,105.61
County's Assumption of 29.6% of debt retirement	\$ 592.00	
County's Assumption of 29.6% Int.	1088.28	
Savings Estimated from reduction of pupils 5%	1121.28	2,801.56
	<hr/>	
Total School Disbursements		\$25,304.05

page 68 } *Schedule B*

Roads & Public Works	9,398.82
Savings on Arlington portion	2,782.05
	<hr/>
Total Roads & Public Works	\$ 6,616.77

Schedule C

Salaries	\$ 2,280.00
Less Fire Department Salary	480.00
Total Salaries	\$ 1,800.00

Schedule D

Lights	2,280.00
Less Arlington Lights 25%	570.00
Total Lights	\$ 1,700.00

Schedule E

Mayor's Account	\$ 151.45
Saving of 75% by contraction	7.57
	\$ 143.88

Schedule F

Contingent & Miscellaneous Expenses	\$ 4,578.48
20% Savings by contraction	915.69
	\$ 3,662.79

In explanation of the above statement and schedules: The levy is figured upon the present rate and the assessed valuation shown by Exhibit #2. The delinquent taxes are based upon collections for 1933 as shown by Exhibit 11; the savings shown in the schedules are of course somewhat in the nature of speculations, the evidence not being clear enough to support anything else. The item of uncollected taxes is of course purely an arbitrary figure which will change with conditions.

page 69 } The item which sets up an additional \$4,130.00 tuition from Fairfax is based upon the evidence showing that there are 118 Fairfax County pupils attending the Town's elementary school, and 60 of such pupils attending its high school, for which Fairfax pays the Town only \$3,000.00, whereas, the cost to the Town for each high school pupil is \$42.25 and for each elementary pupil \$34.40. It is recognized that this assumes that Fairfax will pay the addi-

tional amount, which is not a certainty, but it is also recognized that it must pay or withdraw its pupils from the Town schools, that if withdraw there would certainly result a substantial reduction in the cost of schools. The Court is of the opinion that a demand for an increase in the Fairfax contribution to the Town schools would be so fair that it would be immediately met.

The reduction of \$480.00 for Fire Department salaries made in Schedule C is based upon the evidence that such salary is now paid and will not have to be paid in case of contraction. This salary is clearly not included in the Budget (Exhibit 11) appropriation to the Fire Department.

It will be seen from this statement that the citizens of the remainder of the Town will be called upon to pay an additional tax of approximately 16 cents per \$100.00, but it should be noted that if the testimony of Mr. Boteler is correct in stating that the assessed valuation of the Fairfax portion of the Town is less than the assessed valuation of the Arlington portion of the Town, then it follows that the residents of the Fairfax portion of right should pay more taxes and it further should be noted that it is no more unjust to call upon the citizens of the Fairfax portion of the Town to pay an increased rate of taxes than it is to call upon the citizens of the Arlington portion of the Town
page 70 } to pay a rate of tax which is higher than is necessary to obtain for them the same or greater benefits; and, further, it appears from the evidence that the present condition of the schools is such as to make imminent an increase in taxation necessary to take care of the expansion of the schools to eliminate the present crowded condition.

If it appears that an increase in taxation must arise in case this petition is granted, it might be well to inquire whether the true basis for such increase be the contraction of the Town limits or be the result of righting an injustice which is now being done to the citizens of East Falls Church, or whether the citizens of the remainder of the Town have any justification for their insistence upon the maintenance of the Town itself.

Modern means of transportation and communication and increase of density of population have brought many communities so close together today as to make it expedient to abolish certain local forms of government and to exercise the powers of these governments through the State Legislature from whom they were delegated in the first instance. This State has three times recently indicated that trend by its establishment of a statewide road system under the "Byrd Road Law" by the creation of a state police force and by

the creation of special trial and police justices for the counties.

If it be asked, even if these features are adequately cared for by county or state, what of our water and sewer necessities? the answer is that special legislation for the creation of such districts has been passed and can be passed to take care of these matters without the necessity of setting up an unnecessary municipal corporation.

page 71 } Argument has been advanced that the Town is losing its police control over its means of communication. As most of this complaint seems to be directed at the wilful manner in which the transportation companies establish routes and stops, it appears to the Court that the State Corporation Commission is competent to control such alleged abuses.

POLICE AND PUBLIC HEALTH. If there is to be any effect upon these subjects from the proposed change, it appears that it will be good insofar as the Town is concerned, for the same officials will have less territory to cover.

The Court is of the opinion that the prayer of the petition should be granted.

page 72 } **BILL OF PARTICULARS.**

Filed November 20, 1934.

The Town of Falls Church and its intervening citizens file the following bill of particulars of its demands against the County of Arlington to be paid it in cash in event its boundaries are contracted:

The value of its two wells, lots, pumps and attached appurtenances now located in that portion of the Town lying in Arlington County	\$ 25,000.00
29.6% of the outstanding total of \$118,000.00 of water bonds	34,928.00
29.6% of the outstanding total of \$68,000.00 in school bonds	20,128.00
29.6% of Literary loan	1,628.00
Estimated cost of the necessary rights of way and dissevering the existing water mains at the Arlington-Fairfax County line, and providing the necessary circulation of water within the contracted town system	10,000.00
Estimated value of permanent street improvements in the territory proposed to be stricken installed by the Town	34,284.30

Indemnity for the increased taxation in the con- tracted town as the result of contraction	40,080.00
	<hr/>
	\$166,048.30

JNO. S. BARBOUR,
Atty. for Respondents.

page 73 }

ORDER.

Entered November 24, 1934.

THIS DAY again came J. B. Gould and others, petitioners, by their attorney, Thomas W. Phillips; the County Board of Arlington County, Virginia, by its attorney, Lawrence W. Douglas; and L. P. Daniel, Mayor of the Town of Falls Church, the Town of Falls Church, the Board of School Trustees of the Town of Falls Church, W. L. Mitchell, and fifteen others, intervenors, by their attorney, John S. Barbour;

AND IT APPEARING TO THE COURT that the Town of Falls Church is located partially in Arlington County and partially in Fairfax County, Virginia; that on July 7, 1932, the petitioners herein, being a majority of the voters qualified to vote at the preceding November general election residing in that part of said Town lying within Arlington County, Virginia, filed their petition in this suit praying that the charter of said Town of Falls Church be amended so as to exclude from the corporate limits of said town that part thereof which is located in Arlington County, Virginia; that said petition was duly signed and presented, upon due notice, to this Court, and accurately defines the boundary of the territory prayed to be stricken off; and that all requirements of law, and particularly of Chapter 216 of the Acts of Assembly, 1920, having been complied with by petitioners; and it further appearing that the requisite parties defendant, as well as certain intervenors, have appeared, pleaded and participated in all proceedings herein, after due notice and publication and posting thereof as by law required; that due hearings have been had and evidence taken; and the Court having maturely considered all of the evidence in the case, both oral and documentary, including stipulations, maps, documents, records and exhibits, and proceedings

page 74 } heretofore had in this case, and the cause having been submitted by consent of all parties upon briefs without oral argument, the Court is of opinion, in accordance with the memorandum in writing heretofore filed as a part of the record in this case, that the prayer of peti-

tioners should be granted and that the charter of the Town of Falls Church should be amended so as to exclude from the corporate limits of said Town that part of said Town which is located in Arlington County, Virginia; and that it will be to the interest of a majority of the people of the territory herein ordered to be stricken off, and that the general good of the community will not be materially affected by the amendment of the charter so as to exclude from the corporate limits of said Town that part thereof which is located in Arlington County, Virginia; but the Court, not being able at this time to order what disposition of the corporate property of the said Town will be just and equitable, nor what provision as to the paying of any debts or obligations of the town as between the County of Arlington and the inhabitants of said town should be made, the parties by agreement having refrained from introducing evidence on those matters pending the determination of whether the prayer for contraction should be granted, it is now ordered that this cause be continued for trial on those questions until December 17, 1934, and the defendants are required to furnish the plaintiffs a bill of particulars of their demands in that respect on or before November 15, 1934.

IT IS FURTHER ordered that the authorities of the Town of Falls Church shall not between the entry of this order and the further order of the Court, make or contract to make any permanent public improvement or contract with relation to any franchises, rights of way, bond issues or indebtedness for which the County of Arlington may become liable in whole or in part, without the consent of page 75 } the authorities of said County and without the supervision of the officials of said County charged with the duty of making similar improvements within said county; provided that this direction shall not be construed as preventing the town authorities of the Town of Falls Church from directing and holding a freeholders' election as to the propriety of carrying into effect a certain contract heretofore entered into between the said town and the Public Works Administration of the United States, or any modification thereof, in regard to funds for the construction of a sewer system; provided further that any bonds issued pursuant to such contract and such election shall not constitute a charge against any property within that part of the Town of Falls Church within the limits of Arlington County, and in which the said County shall have constructed sewer facilities pursuant to an agreement or arrangement under the provisions of the Act of Assembly approved March 27, 1934, Acts 1933-4, p. 412.

The defendants, the Town of Falls Church, L. P. Daniel, Mayor of said Town, the Board of School Trustees of said Town, and W. L. Mitchell and the fifteen other intervenors, except to the foregoing findings of the Court in respect to the propriety of contracting the corporate limits of said Town of Falls Church, because they are contrary to the law and the evidence and are against the weight of the evidence.

And this cause is continued.

WALTER T. McCARTHY, Judge.

page 76 } MOTION TO REJECT.

Filed December 26, 1934.

Now comes the respondent, the County Board of Arlington County, Virginia, and, without admission of liability on its part on account of other items, moves this Honorable Court to reject such parts of the claim and demand of the Town of Falls Church as are set forth in the first, fifth and sixth and seventh items of the Bill of Particulars of the Town, on the ground that the Town is not entitled, as a matter of law, to any payment from the County on account of the items so enumerated.

THE COUNTY BOARD OF ARLINGTON
COUNTY, VA., Respondent,

By Counsel.

THOMAS W. PHILLIPS,
Atty. for Petitioners.
LAWRENCE W. DOUGLAS,
Attorney for Respondent.

page 77 } ORDER GRANTING MOTION.

Entered December 26, 1934.

This case came on for hearing on a motion and was argued by counsel, at the conclusion of which the Court granted the motion and the Attorney for the Plaintiff is required to furnish a Bill of Particulars.

And this case is continued and set for hearing on January 17th, 1935.

WALTER T. McCARTHY, Judge.

page 78 } In the Circuit Court of Arlington County,
Virginia.

James B. Gould, et al., Petitioners,

v.

The County Board of Arlington County, et al., Defendants.

In Law.

This cause came on to be heard before the Honorable Walter T. McCarthy, Judge of the Circuit Court of Arlington County, Virginia, at the Arlington County Court House, Clarendon, Virginia, February 12, 1934, at 10:00 A. M.

Present: Thomas W. Phillips, Esq., of the firm of Jesse, Phillips & Klinge, Attorney for the Petitioners; Lawrence W. Douglas, Esq., Attorney for the County Board of Arlington County; John S. Barbour, Esq., Attorney for the Mayor of Falls Church and the Intervenor.

page 79 } Mr. Phillips: If Your Honor please, counsel on both sides has had some discussion in regard to the possibility of saving time, particularly with statistical information. I believe if we were allowed a short time to confer about it, it might save a day or so of examination, particularly in regard to matters of public knowledge, public record and municipal functions. If the Court will indulge us, I believe we can save a great deal of time.

The Court: That is perfectly agreeable to me.

Mr. Barbour: I concur in that suggestion, if Your Honor please, but at this stage I desire to get the pleadings straight in this matter, and I present to Your Honor certain petitions to intervene, first on behalf of the Town of Falls Church, on behalf of the Board of Trustees of the Falls Church School District which is an independent corporate entity, and on behalf of certain citizens of Falls Church, both citizens resident in the territory in Fairfax County and citizens resident in the portion of the town which lies in Arlington County.

Some days ago I forwarded copies of these petitions to counsel on the other side so there would be no element of surprise, and the intervenors merely adopt the answers already filed, assuming that the prayer to be permitted to intervene would be granted. Is there any objection to that?

Mr. Douglas: None at all.

Mr. Barbour: I ask that they be filed. If Your
page 80 } Honor please, Your Honor will recall that in a memorandum in defense of a demurrer in this

cause, I raised a point in my brief that had not been raised in the former demurrer. The demurrer in that respect will be so amended as to cover those points, and I have drawn such an order, and these intervenors demur and answer on exactly the same grounds. There is nothing new in the grounds of the demurrer, and we will get together on the order.

Mr. Douglas: I should like to present a petition in contemplation of the words of the statute that the Court should consider the welfare of the people in the surrounding area. I have a petition signed by a number of residents of a portion of Arlington County lying beyond the confines of the Town of Falls Church which I would like to present and ask that it be made a part of this cause. The petition is of a general nature, by people living out beyond the town limits.

Mr. Barbour: If Your Honor please, we object to any such parties being admitted as parties in this proceeding. I do not think they have any such direct interest as to permit them to be parties, as the County Board of Supervisors or the County Board is supposed to represent them here.

The Court: I ask you this, Mr. Douglas. Isn't it a purely technical question as to whether they are parties or not? Any of the things that might affect them could be considered and introduced and would be just as relevant to page 81 } the issues raised by the Board of Supervisors as it would to any one in the petition.

Mr. Douglas: I think that is true, but that does not constitute a reason why they should not be permitted to file a petition.

The Court: What I am driving at is what the practical effect would be in allowing this to be filed in regard to the subsequent testimony.

Mr. Douglas: These people are of that rather vague term used in the statute, "the community", in the immediate proximity of the corporate limits of the town. I think their interests must be considered by the Court, regardless of whether they petition to be made parties or not. They come under the classification not of a necessary party, but a proper party.

Mr. Barbour: I see no reason of any right they have in the matter one way or the other. If it is to be introduced as evidence in this case, it certainly is not proper.

Mr. Douglas: This petition, of course, is not evidence of itself. It is simply a request that they be made parties. Their rights under the statute are obviously to be considered by the Court along with those of the other residents.

The Court: I think the motion for leave to file this petition should be denied.

Mr. Douglas: Allow us an exception for the reason stated.
At this time counsel went into conference, which
page 82 } conference consumed the balance of the day, February 12.

February 13, 1934.

Conference between counsel in regard to the Stipulation was continued and consumed the whole day.

February 14, 1934.

Thereupon,

MRS. JESSIE V. MORAN,
a witness of lawful age, being first duly sworn,
deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Phillips:

Q. Please state your name.

A. Jessie V. Moran.

Q. Where do you live?

A. East Falls Church.

Q. In the Town of East Falls Church?

A. In the Town of East Falls Church, Arlington County.

Q. How long have you lived in the Town of East Falls Church?

A. We moved there in April, 1918. It will be sixteen years in April.

Q. Have you ever held any position with respect to polls and voting?

A. I was Registrar for about eight years, a full eight years.

Q. For what precinct?

page 83 } A. For Falls Church precinct of Washington Magisterial District.

Q. There has been filed in this suit a petition signed by a number of parties claiming to be qualified voters as of November, 1931, election. Have you seen that petition?

A. Yes.

Q. I hand you this petition. Have you made any investigation at any time as to whether the signers of that petition were qualified voters as of the November election, 1931?

A. Yes. I was a member of the committee who prepared a list of the qualified voters for that election who were eligible to vote.

Q. How did you and the committee go about that?

A. Our committee was composed of Dr. Claude, who is appraiser of the Falls Church Bank and for the Arlington & Fairfax Building and Loan Association, and very familiar with properties in town; Mr. Philip Nourse, who is Postmaster; and Mr. Rufus Crenshaw, who has lived in the town all his life and knows Falls Church better than most people; and I myself from the Registration Office. We thought those people were more familiar with the property, and we procured a list of all the registered voters in the Falls Church precinct of Arlington County, and from that list page 84 } we made a selection of those who live inside the corporate limits. Where there was any question in the minds of the people, we took such steps to verify that they were actually in the corporation. Then we prepared a list of all who were on the registration books and we checked that list from a list furnished by Arlington County of those who had paid their poll tax and were eligible on that score to vote in the November election.

Q. A portion of East Falls Church at that time was separated with respect to the County into what was known as the Arlington Magisterial District. Did you include that in your investigation?

A. Yes; I think we found five families or five properties. There were very few who were qualified voters. We checked them over very carefully along with the rest.

Q. From your examination of the registration books, poll tax list and so on. With your personal knowledge and the parties you have mentioned, are you in a position to say how many qualified voters lived in that portion of Falls Church lying in Arlington County in the November, 1931, election?

A. Allowing for the possibility of some slight error having crept in, I would say there are one hundred twenty-three.

Q. Of that number are you in a position to state how many have signed the petition which I just handed you?

A. I personally counted the names of the persons who had signed it and there were ninety-one.

page 85 } Q. Are there any names on that petition who are not qualified voters as of November, 1931, election?

A. To the best of my knowledge, there were none included. We excluded all who were not.

Mr. Phillips: I think that is all.

CROSS EXAMINATION.

By Mr. Barbour:

Q. Mrs. Moran, the question is not so much as to what you do not know as to what you do know. Do you know that all the signers of this petition were qualified voters of the Town of Falls Church?

A. Yes, sir; relying on the registration books and the list furnished by the Treasurer of Arlington County, they were all qualified voters.

Mr. Barbour: That is all.

Mr. Phillips: That is all.

And further this deponent saith not.

Mr. Phillips: I believe it has been agreed as to the petitioners themselves that this petition contains affidavits of parties who saw them sign, and it is agreed that will stand as sufficient proof as to the signers and as to the publication already in the files.

Mr. Barbour: It is not necessary to call the persons who saw them sign.

page 86 } Mr. Phillips: Mrs. Moran, will you take the stand again, please?

Thereupon,

MRS. JESSIE V. MORAN,
being recalled to the stand, further deposes and says as follows:

RE-DIRECT EXAMINATION.

By Mr. Phillips:

Q. Mrs. Moran, you are one of the petitioners in this cause?

A. Yes.

Q. Will you state briefly your reasons for desiring the contraction of the corporate limits as prayed for in the petition?

A. Do you mean my reasons that led me to sign the petition?

Q. Yes.

A. Well, as I testified before, I moved to the town in 1918. We purchased a piece of property which we have lived in ever since. We had a little over three-quarters of an acre of ground with a frontage of one hundred thirty-three feet. The corporate limits ran just back of our property so that my neighbors in the rear of me are outside of the corporate limits

of the town, and in all the years we have lived there, it seems to me they received greater benefits for their tax expenditures and more privileges than we who live this side of the corporate line.

page 87 } In the first place, their tax rate was considerably less than ours has been all these years, although they live across from an imaginary line. They paid a smaller tax because the County tax plus the town tax has been greater than the tax paid by them as county property owners.

I had two small children who were of school age and I sent them to the grade school in Falls Church. They received a fair education in some ways and very mediocre in others. Finally they finished the seventh grade and there was no eighth grade in the school, and it was necessary, in order to give them the eighth grade schooling, to send them to Arlington County School, Washington and Lee. They sent a bill for \$65.00 or \$130.00 for the two of them. That was quite an expenditure, and as my husband was a Federal employee he was entitled to the use of the Washington public schools, so I sent them in to the Washington school. That made it necessary for them to have a long journey, plus the expense and inconvenience.

Falls Church at that time had only a two-year high school. It was impossible for my children to attend that high school and go on to college. It was necessary for me to send them out of the town school in order to prepare them for entrance to college. They were not eligible to attend any Arlington County school without the payment of this fee, whereas if

I had lived on the other side of the line it would page 88 } have been my privilege to send them there.

They never had the advantages of the dental clinic the children in the county had. They never had the benefit of the health centers or any of the privileges that go automatically to people who live in the county.

In all the sixteen years I have lived there, I have paid taxes each year and there have been absolutely no improvements I can think of placed on our street. Our street is centrally located and is very much used. There was one period when town taxes were apportioned according to wards for road improvements, and we had a surface put on our street, not a very durable one but probably the best they could afford. It has worn out long since. The street at our corner, or Cedar Street, has for years been bad. When I have gone to see my friends I have sometimes gotten stuck in the mud. We have appeared before the Council over and over again and petitioned them to take some action in these

matters we thought our just dues, and we have received very little consideration.

Q. With respect to water, Mrs. Moran, have you any comment to make on that?

A. I think the water situation was really what brought all our feeling to a focus. When Arlington County first proposed its bond issue for water mains we were asked to come in and vote on it. We were assured we would be given page 89 } exactly the same consideration as the rest of the county and the main would be laid east of the Falls Church line out of that original bond issue money, which was seven hundred or seven hundred fifty thousand. They would be laid as part of that, and we would have our laterals off that, at one dollar a front foot with one hundred dollars as a maximum. That was quite a consideration to us as we have very large front footages, and most of the properties are large pieces of property, and we entered that election in good faith and voted in the election, and only five votes in our precinct were cast against the bond issue.

After the election, Arlington County, in order to lay the mains, found it necessary to have permission from the Town Council to enter the streets. I have been on committees to appear before the Town Council and urge them to grant that permission so we could have our water connection, but it was refused for one reason or another and delayed in every possible and conceivable way. As much as two years passed. Then came the summer of the terrible drought, and conditions were horrible. We made a further concerted effort to get water. It was tantalizing to have it come to the corporate limits and stop there. It was represented to the Council that the fire protection was tremendously enhanced if water were brought down to the Fairfax County lines, and it could be used for the protection of the rest of the town. We worked on it from that angle and finally got permission to have the mains laid.

page 90 } However, the delay had cost us this much. At that time the money from the original bond issue had been spent and they were unable to grant us—we had to pay one dollar a front foot irrespective of the amount. We had one hundred thirty-two and a fraction feet, and I paid one hundred thirty-two and a fraction dollars to get the water to my house. That is true of every water user in Falls Church.

The drought continued, and our friends on the other section of the town were in a most desperate condition. They had water carts take the water around from house to house and sell it by the gallon. The town thought it would be very

beneficial to have its water system. It was represented to us in our section that we should not oppose the issue because we were standing in the way of our friends, and of course we are just as fond of the people on the other side of the line as we are on this side; and it was represented also that some arrangement would be made whereby the people who had already been put to the expense of taking water from Arlington County—some arrangement would be made to equalize so that there would be no injustice.

On that basis we went to the polls and only eleven people in our precinct voted against the bond issue in the town, believing in good faith the thing would be worked out in some way. There never has been any equitable adjustment in the matter. We are now subject to obligation on our page 91 } property for two bond issues. Whether they will ever be enforced—that is a question for the future.

We tried to get an adjustment of the water situation. It is a matter of considerable confusion, and no action was taken on it. It was brought out that Arlington County was a community that would probably forge ahead in its development, and such questions as the water proposition would be multiplied by other utilities of similar nature installed in Arlington from time to time, and we were in a position to pay the penalty straight along for all the improvements the town installed or the county installed. We were in the middle ground and our property would be obligated on both sides. We decided our only recourse was to identify ourselves exclusively with the county and to relieve ourselves of the obligations in our town.

Q. Did you have any experience with either municipality in connection with the scavenger service?

A. Prior to the installation of free scavenger service in the county there was a service which people could take advantage of by paying a certain amount, I think it was two dollars for three months, and our friends who were just across the line took advantage of that. Many of them had that service. They were glad to have it. We in the town had great difficulty in disposing of the garbage. We would dig up holes in the yard and bury it or burn it, and we asked if the page 92 } county would allow us to pay and to have this service, and they said yes, but only on permission of the town that they use the collection wagons and come into the town. It was represented that the town was going to install a garbage collection system and that it would be far better for the town as a whole if we would wait and join in with that service so that our contributions would help finance the service in the town. That collection never was installed

in the town, and we never got it until this petition was filed. We now get it, but that was since the petition was filed.

Q. Was the garbage collection by the county with or without cost to you?

A. Without cost.

Q. Do you know of any benefits that would accrue to the citizens of the town living in the Arlington County section by remaining in the town?

A. I can't think of anything.

Q. Do you know of anything else you care to say?

A. I think I have pretty well covered my point of view.

Mr. Phillips: You may cross examine.

RE-CROSS EXAMINATION.

By Mr. Barbour:

Q. You are an employee of Arlington County, I believe?

A. Yes, I have been for two years.

Q. How long have you been in that service?

page 93 } A. Two years.

Q. You came to East Falls Church in 1918?

A. Yes.

Q. Did any one make you buy that property?

A. No, sir.

Q. You came there voluntarily?

A. Yes, sir.

Q. You say that you pay more tax rates in the town portion than the corresponding people who live just across the line?

A. Yes; when I was paying \$3.15, they were paying \$2.85. The Washington District was \$2.85 when we were just across this imaginary line and were paying \$3.15.

Q. Do you know how that tax rate was made up?

A. I think I do. The county assessment, speaking of 1932— I presume it varies considerably from year to year, sometimes greater and sometimes less. In 1932 I think the Arlington County tax was \$1.70 on our property on a hundred dollars, and the town tax was 35c for the school bonded indebtedness and \$1.10 for the corporation tax, making \$1.45 to the town and \$1.70 to Arlington County, making a total of \$3.15. The total Washington District tax was \$2.85 that year.

Q. You speak about the schools. How many children have you that attend school now?

A. I haven't any now. They finally got through,

page 94 } Q. How long has it been since you have had children in school?

A. I have a son in college now. This is his third year.

Q. He does not attend public schools in either Fairfax County or Arlington County?

A. Not now.

Q. How long has it been since you have had any children of school age?

A. I am just trying to calculate how long it has been. I think it has been six years.

Q. How many years did your children attend the public schools of Falls Church?

A. Seven years.

Q. That would take it then up to 1925?

A. I think that is correct.

Q. Then some of your children, one or more of them, went to Arlington County so as to get the benefit of the eighth grade?

A. Yes.

Q. When was that?

A. I am not sure. It is a little difficult to get dates with complete accuracy. It was either 1926 or 1927. It would take a little time to calculate exactly. I didn't refresh my mind.

Q. You know nothing then about the school system as it at present exists as to its efficiency?

page 95 } A. Personally, I am unable to testify to anything of first-hand knowledge except in my capacity as an active member of the Citizens Association. We receive reports from the School Committee of both the town and the county.

Q. I am not asking you what you heard anybody say. I am asking what you know yourself.

A. I do not know of first-hand knowledge.

Q. In several statements you have made you said "Representations were made to us", or "it was represented to us". Who made those representations to you that you are speaking about? I believe you said first in that respect in response to representations that were made to induce you to vote for the Arlington County bond issue.

A. Yes; there were various representations made.

Q. Those representations were not made to you by any authority of the Town of Falls Church?

A. No, they were not. I brought that fact out to show we had a right to suppose we would have a maximum front footage.

Q. Were those representations made to you by the Arlington County authorities?

A. Yes.

Q. And they were not lived up to?

A. They were ready to live up to them had they been taken advantage of in a reasonable time.

page 96 } Q. What was done by you to see that they were lived up to and what was failed to be done by any Falls Church authorities which resulted in their not being lived up to?

A. We appeared before the Town Council to request permission for the use of the streets, without which the county was unable to enter the town.

Q. When was that?

A. That was in 1927.

Q. What was it that you wanted the town to do?

A. We wanted the town—we specifically asked that a resolution be passed or that the Town Clerk write a letter to the Board of Supervisors stating that permission was given for the use of the streets for laying the mains.

Q. What was the result of that?

A. There was no result at all.

Q. Weren't mains laid in East Falls Church?

A. They were laid during the year of the drought after conditions and fire hazards became so great that it became to the advantage of the other section of the town to have water mains brought to their front door.

Q. Do you know why that permission was not given?

A. That would only be surmise on my part.

Q. We don't want what you surmise. If you know, say so.

The proposition that you were speaking of was
page 97 } submitted by the Arlington County authorities who made it a condition to the laying of these mains that the price should be paid for the water that the town authorities did not think was just.

A. The reasons brought up—

Q. Well, isn't it a fact?

A. I am not sure I understand your question.

Q. Isn't it a fact that the Arlington County authorities expressed a willingness to extend the pipes into the town on condition that the town would pay for that water at a specified rate which they thought was unjust?

A. Into the Fairfax County section of the town; there was no question of the town paying anything for the laying of the mains or furnishing water to East Falls Church. That was another issue entirely. That was the question of the town paying for water furnished Fairfax County.

Q. Wasn't the proposition as submitted to the town to furnish water to the entire town for forty thousand gallons daily at the rate of four thousand dollars a year?

A. Our section had no interest in itself except as a matter of friendship to the rest of the town.

The Court: Mr. Barbour asked what the Arlington County proposition to Falls Church was. If you do not know, say so.

Q. Wasn't that the proposition that they would furnish forty thousand gallons daily at the rate of four page 98 } thousand a year?

A. I was trying to say my interest in it was not keen enough to inform myself of those details.

Q. You do not know whether that was correct or not?

A. No, I could not say.

Mr. Douglas: That would make it ten cents a gallon, Mr. Barbour.

Mr. Barbour: Will you read the question?

Question read by the Reporter as follows:

"Q. Wasn't that the proposition that they would furnish forty thousand gallons daily at the rate of four thousand a year?"

Q. (Continued) Without respect to any conditions of the town as between Arlington County and Fairfax County?

A. I am not informed on that subject at all.

Q. Those pipes in Falls Church were ultimately laid pursuant to an agreement between the town and the county, entered into prior to the existence of the drought, were they not?

A. I think not, but I am not sure.

Q. Are you prepared to deny the accuracy of that?

Mr. Douglas: You have not established when the drought was.

Mr. Barbour: Well, she has referred to it.

Q. When do you fix the drought?

A. I think the drought—

The Court: Does that make any difference, Mr. Barbour? You were asking this witness what she knows. It page 99 } doesn't make any difference whether that proposition is true or not.

Mr. Barbour: It was merely to the suggestion of Mr. Douglas that I tried to fix the time of the drought.

The Court: She doesn't know when the contract was entered into. Isn't that true, Mrs. Moran?

The Witness: It is my belief—

The Court: Do you know?

The Witness: No, I do not. I did not see the contract signed. I do not know the date.

Q. Isn't this the fact about this matter, that the county authorities stopped their water lines at a point about 19 hundred feet distant from the corporate limits?

A. I do not know.

Q. And were unwilling to extend a line more than six inches in diameter, whereas the town authorities wanted an eight inch pipe line extended, and they were squabbling about that? Isn't that the fact about the matter as far back as December, 1929?

A. A six inch pipe was quite sufficient for any need of the Arlington County section of the town, and our only interest was getting a six-inch pipe.

Q. The original plan was not to extend it to Falls Church at all, was it?

page 100 } A. I don't know anything about the original plan.

Q. Isn't it a fact that the town authorities intervened with the county authorities and tried to get them to bring the water in there, and they were willing to pay to put in only a six inch pipe?

A. A six inch pipe was sufficient for our needs.

Q. You don't know anything about that?

A. I only know a six inch pipe would have been sufficient for our needs.

Q. Sufficient for your use?

A. Sufficient for East Falls Church.

Q. You voted for these bond issues both in the county and the town, did you not?

A. I voted for the one in the county; I was one of the eleven that voted against it in the town.

Q. There was also a school board election?

A. Yes.

Q. You voted for that?

A. Indeed I did.

Q. These representations about equalizing the situation was as to taking care of the citizens who had already paid front-age charges on their improvements; you say nothing was ever done in that respect?

A. Nothing has ever been accomplished in that respect.

Q. Isn't it a fact that you pay no water rates at page 101 } all?

A. No water rates?

Q. To the Town of Falls Church?

A. No water rates to the Town of Falls Church.

Q. You got what you originally agreed to pay for, and the people who buy this water from Falls Church pay for it, do they not?

A. Yes, sir.

The Court: What are you referring to?

Mr. Barbour: The water rates. The water system is a self-supporting proposition. As I understand it, they get their water from Arlington County and they pay Arlington County, and the citizens in Falls Church who buy from the town pay the town rates for it.

The Witness: Have I a right to explain?

Mr. Barbour: I have no objection.

The Witness: I only wanted to say, I personally have invested \$133.00 in a front footage charge, and I am also bonded by the town for the installation of the water system from which I derive no benefit.

Q. But you do not pay anything for that, and that is purely a hypothetical conclusion, is it not? The water users pay for it.

A. Of course, it is problematical whether they will ever need more than twenty-five thousand dollars.

Q. You paid one dollar per front foot to the page 102 } County of Arlington?

A. One dollar per front foot.

Q. You made some complaint about the scavenger service? Does the Town of Falls Church furnish a scavenger service?

A. No, sir, not to my knowledge. The Town of Falls Church does not furnish us with a scavenger service.

The Court: Mr. Phillips asked you about the scavenger service and I understood your reply to have reference to garbage collection service.

The Witness: That is the only thing I had in mind. I did not make any mental connection at all. I was thinking of garbage and trash collection entirely in my testimony.

Q. Does Arlington County render scavenger service to residents of Falls Church within Arlington County?

A. It has since the signing of this petition.

Q. Since that time?

A. Yes.

Q. Is there any charge made for that service?

A. Not now.

Q. How is it paid for?

A. Paid for, I presume, out of the tax money.

Q. It is paid for out of the taxes of Arlington County people, isn't it?

page 103 } A. Out of our contribution to the Arlington County taxes, yes.

Q. Where do you attend church?

A. At Old Falls Church.

Q. Don't the people generally in the Arlington County portion of the town, as far as they attend church at all, don't they attend churches in the Falls Church section of the town?

A. Yes, I think that is true.

Q. The whole thing is one community?

A. We have tried to make it so.

Q. In social and civic activities the people all combine together, do they not?

A. Not as much recently as times gone by.

Q. Do you think that holding off has been due to the activity of yourself and your associates in trying to break up the town?

A. No, sir.

Q. And to separate it?

A. No, sir.

Q. What is it due to, if it is not due to that?

A. I think one thing it is due to is the fact that the roads between our Arlington County section and Washington have so tremendously improved that our people have become closer affiliated with the rest of Arlington County. It used to be we were so shut in by roads we were necessarily one
page 104 } community. Since the opening up of roads to the entire county our interest has widened and we have grown to think more of Arlington County and closer access to Washington.

Q. You do not take part in the civic activities of Washington, do you?

A. No, but we do of the county, very largely.

Q. Don't you feel your first obligation is to the community in which you live?

A. Yes, that is what we have tried to fulfill.

Q. Aren't they best served by a larger and more cohesive community?

A. No, sir, I don't think so.

Q. You believe in small circles?

A. No, I believe that our interests are best served by connection with the development of the modern community of Arlington County.

Q. You have spoken of the conditions of the road in front of your house as being a mud hole.

A. I said Cedar Street, just around the corner where many of my friends live, was a mud hole.

Q. Will you state where your house is?

A. Brown Avenue between Lee Highway and Cedar Street, just about half way between the two. Brown Avenue is practically Memorial Drive. It is just another name
page 105 } for it.

Q. Between which streets?

A. Lee Highway and Cedar Street. We are west from Lee Highway, the fourth house west from the Lee Highway. Brown Avenue is Memorial Drive.

Q. You are on the opposite side of Lee Highway?

A. I cross Lee Highway every evening going home.

Q. West of Lee Highway?

A. Fourth house west.

Q. What kind of a street is that in front of your property?

A. I don't know much about road building. It is one of these streets where you pour some tar and put some crushed stone on that.

Q. Tar and macadam?

A. I suppose it is.

Q. You are complaining of the condition of that street, are you?

A. It isn't very good, but it is better than Cedar Street and one or two other streets in Falls Church. It's a pretty poor road. My complaint was practically directed to our sidewalk condition. As we lead directly into the highway, our street is used as a path upon which people go to the highway. It is traveled daily, and the little sidewalk has never been repaired or fixed up in any way since I have been there except under some of the C. W. A. work—perhaps it was under the
page 106 } relief work—but they took up about six bricks and turned them over and put them down again.

That is the only thing that has been done to that street since I have been living there.

Q. It is a brick sidewalk, is it not?

A. The bricks have become so irregular from years and years of use, and the bricks are up on end and you turn your ankle and ruin your shoes, and there are mud holes in it where the rain gathers on rainy days so that it is above the rubbers. It is worse than no sidewalk at all.

Q. You would rather have no sidewalk at all?

A. I would rather have nice cinders in there.

Q. Hasn't a portion of that sidewalk been taken up and relaid within the past six months?

A. I referred to that. I think two men came and made a pretense of taking up a few bricks. If work was done in the last six months, it was very poor work.

Q. You do not think it was done as well as it should have been done?

A. I don't think it was done at all.

Mr. Barbour: That is all.

RE-DIRECT EXAMINATION.

By Mr. Phillips:

Q. What political representation does East Falls Church have on the Town Council? How is the town divided? Into wards?

A. Yes, the town is divided into three wards, first, second and third wards.

page 107 } The Court: The Town Charter would be a more satisfactory way to prove that.

Mr. Phillips: I doubt if the Town Charter would show that. I am asking for this for the purpose of ascertaining further information.

Q. In which one of the wards is the East Falls Church section?

A. The East Falls Church section is a part of the second ward, not the complete second ward because some part of it is in Fairfax County.

Q. Does it lie in any other part of any other ward?

A. No.

Q. By what method does it obtain representation on the Council?

A. In June, the second Tuesday of June of each year, we vote for our Councilmen. I am not sure whether two or three are elected at that time. There are two Councilmen from each ward, and the town as a whole votes. The Council is elected by the vote at large, although they must be residents of the wards which they are to represent.

Q. From the second ward in which the part of the town in Arlington County lies, how many representatives do you have on the Council?

page 108 } A. At this present time?
 Q. Yes.
 A. We have one, Mr. J. V. Turner.

Mr. Phillips: That is all.

Mr. Barbour: No further questions.

And further this deponent saith not.

Mr. Douglas: We propose to call at this time, if the Court considers it proper, a resident of Arlington County lying in a small corner of the county to the north of the Town of Falls Church. Your Honor will recall we presented a petition signed by this gentleman, Mr. Stevens, and others to intervene. Your Honor ruled it was not proper to intervene here, and we now offer the testimony of Mr. Stevens to show how the welfare of the adjacent community will be promoted or it would not be harmed by this action that the petitioners seek to have invoked; the community of which I am speaking being outside of the corporate limits of the Town of Falls Church and in close proximity thereto.

Mr. Barbour: I see no objection to that testimony.

The Court: All right.

Thereupon,

NEIL E. STEVENS,

a witness of lawful age, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Douglas:

page 109 } Q. Will you state your full name?
 A. Neil E. Stevens.

Q. Where do you live, Mr. Stevens?

A. On the road which is sometimes known as the Crupperville Road and sometimes as the Louenville Road, which runs from the Christian Science Church to McLean. It is an old county road and must have a legal name, but I do not know it. I have lived on that road between the boundary of the Falls Church corporation and the Arlington and Fairfax County line.

Q. You live in Arlington County?

A. That is right.

Q. Where are you employed?

A. Department of Agriculture in Washington.

Q. Are there any others in the neighborhood of that area out there?

A. There are, I think, twelve houses. It is a little village or community of twelve houses with, I presume, twenty residents.

Q. Would you say where most of the wage earners work?

A. Most of them work in Washington.

Q. There is no industry within that area that is self-supporting?

A. No. We trade in Falls Church.

Q. In getting to and from Washington, which is the most direct way?

A. The ordinary and most usual way is to go page 110 } to Falls Church and then into town.

Q. Is there any manner or is there any highway or means of community with the remainder of Arlington County except through East Falls Church?

A. One could go and on occasion one does go through McLean and into town, and one could go to McLean and around Chain Bridge Road, and occasionally we do that.

Q. You would have to go all around one side of Arlington County in order to get in on the other side?

A. That is right. If you have a map I can show you.

Q. I will ask you this question. Do you consider your community would be adversely affected—

Mr. Barbour: If Your Honor please, we object to that. He can state any facts that he knows.

Mr. Douglas: I will withdraw that question.

Q. Are you familiar, Mr. Stevens, with the petition that has been filed here by certain qualified voters of Falls Church?

A. I have not read the petition. I know there is a petition.

Q. Are you familiar with the purpose of the petition?

A. I think so; yes, sir.

Q. Do you know of any facts which would adversely affect the rights of your community if the prayers of that petition were granted?

page 111 } A. No, sir.

Q. Do you know of any facts which would operate to improve your community if the prayers of that petition were granted?

A. Of course, I do not know what would happen. You are asking me to predict. I have an opinion as to what I think might happen. I do not know whether that is legitimate testimony or not.

Q. Will you state with respect to the roads you daily travel

in leaving your home—you go over an Arlington County road?

A. That is right.

Q. What has been the condition of that road over the past five years?

A. It is a hard surface, rock, gravel and macadam road.

Q. When you come to the corporate lines, what is the condition of the road?

A. Mud when it is wet; dust when it is dry.

Q. Have you ever yourself undertaken to improve that road?

A. If I may go back ten years, a number of us got together and raised some one hundred ten or one hundred fifteen dollars. Mr. Franklin was then living. This was Fairfax County.

By the Court:

Q. In order to get into the Lee Highway you have to traverse part of Fairfax County?
page 112 } A. No.

Q. Doesn't the Louenville Road go into Falls Church through Arlington County and Fairfax County?

A. No.

Q. Do you go down the Louenville Road until it comes into Lee Highway?

A. We go down to the car track and then down the car track.

Q. I thought you came down the Louenville Road that comes into Lee Highway.

Mr. Douglas: Here is a map. Show it on here.

A. Here we are right here. Here is what we call First Street with the Washington-Virginia Railway on it. I live on this road here, and in here is the corporation line and the county line is supposed to be here along in this way. The piece of road I am discussing—Arlington County maintains this road here and this is the Arlington County road and this is the Fairfax County road and this is a gravel-clay road maintained by Fairfax County. This is tar-surfaced over here up to the Falls Church line here. There is no surface from there on. It is at times impassable. Ten years ago this little group here was actually in Fairfax County, and we raised some one hundred ten or one hundred fifteen dollars and put cinders and tar and fixed this road up. That lasted for a while. After Mr. Franklin's death we raised
page 113 } money on numerous occasions, twenty or twenty-five dollars, and my two boys and I hauled rock

and did what we could to keep it open. The county line runs up here.

By Mr. Douglas:

Q. Referring again to that map, Mr. Stevens, is there any other better road leading from your neighborhood into the Lee Highway?

A. None that is passable. Some of the boys in a Model T Ford can get through the wood road there.

Q. But that is not a passable road?

A. No.

Q. And runs through a sparsely settled section?

A. It runs through the woods. It is just a wood road.

Q. Do you have city water in your house?

A. Yes, sir.

Q. That is furnished by whom?

A. Through the Town of Falls Church.

Q. Is there any way in which any county improvement being projected in that area can approach your property except through the Town of Falls Church?

A. It could go through the woods.

Q. Is there any practical way?

A. No feasible way they can get way in except through the town.

page 114 } Q. You pay the uniform rate of tax?

A. I pay taxes to Arlington County. I hope it is the uniform rate.

Mr. Douglas: That is all.

CROSS EXAMINATION.

By Mr. Barbour:

Q. Mr. Stevens, you say you get water now from the town?

A. Yes, sir.

Q. You have town mains?

A. I do not know what the legal status is. We paid for them out of our own pockets.

Q. You get them from the town and pay the town for the water?

A. Yes, sir.

Q. Arlington County did not furnish you with water from its system?

A. That is quite true.

Q. About this road you are talking about, isn't that road at present under reconstruction?

A. It is being widened. I have seen a sign up—C. W. A.—it is now being widened.

Q. They are putting eight inches of gravel on it?

A. I do not know what they are doing. They haven't done it yet.

page 115 } Q. The road has been regraded, hasn't it?

A. It has been widened but the old part of the road has not been touched.

Q. The work was active until snow came and stopped work on it, was it not.

A. That is right.

Q. Are you familiar with the road system of Arlington County? Aren't there plenty of communities in Arlington County, as in all counties, where the road is not hard surfaced?

A. I think very likely. I drive very little in the county.

Q. It is not unusual to go into some community where the roads are not as good as in other communities?

A. I suppose so.

Mr. Barbour: That is all.

RE-DIRECT EXAMINATION.

By Mr. Douglas:

Q. I will ask you whether or not it is a fact that you sought to join this cause and become a party to the petition?

A. Yes, sir. I do not know how much statement I may make in that connection.

Mr. Barbour: I do not think that is necessary.

The Court: That is all that is necessary.

Mr. Douglas: No further questions.

page 116 } And further this deponent saith not.

Thereupon,

PHILIP B. NOURSE,

a witness of lawful age, being first duly sworn, deposes and says as follows:

Mr. Phillips: I would like to make it known that we will want to recall Mr. Nourse for an entirely different matter that has nothing to do with this now.

DIRECT EXAMINATION.

By Mr. Phillips:

Q. State your full name.

A. Philip B. Nourse.

Q. Where do you live?

A. East Falls Church, Arlington County.

Q. How long have you lived there?

A. In East Falls Church?

Q. Yes.

A. Twenty-two years.

Q. Could you give more specifically your address and the location of your home?

A. Corner, Brown Avenue and Cedar Street.

Q. You are one of the petitioners in this cause, are you not?

A. Yes.

Q. Will you please state as briefly as possible why you deem it desirable to have the corporate limits con-
page 117 } tracted as prayed for in the petition?

A. I think our tax would be less, and the county could give us as much, if not more, by being in the county alone than in the county and town.

Q. Do you know of any benefit that you or the other citizens of East Falls Church derive from the fact that they are in the town?

A. How it that?

Q. Do you know of any benefit that the citizens of Falls Church derive from being in the town?

A. You mean any more benefit than being in the county?

Q. That is right.

A. No, sir.

Q. Are there any particular items further than what you have said that convince you it would be better to be in Arlington County alone?

A. Not other than is stated, that we would not have as large taxes and would derive as much benefit from being in the county as we now have.

Q. Are you in a position to state the condition of improvements as contrasted between one side and the other; that is, are the improvements which have been placed in the town by the town better or more extensive on one side than on the other, such as roads or any other improve-
page 118 } ments?

A. We have very little road in the Arlington County section of Falls Church in proportion to the amount of road they have in the Fairfax County section of the Town

of Falls Church. Lee Highway is a State road which runs through East Falls Church and through the town but that is not a county road and not a town road. The same applies to Memorial Drive.

Mr. Phillips: That is all.

CROSS EXAMINATION.

By Mr. Barbour:

Q. Mr. Nourse, it just happens that more important State highways pass through Fairfax County portion of the town, the crossroads of the Lee Highway and the Alexandria and Leesburg Pike?

A. The Alexandria and Leesburg Pike and the Lee Highway cross in the Fairfax County portion of the town, yes, sir.

Q. The Lee Highway passes through both portions of the town?

A. Yes, right through the town, and the Alexandria and Leesburg Pike goes the other way.

Q. The road from Loudoun County to Alexandria crosses the Lee Highway in the Fairfax portion of the town?

A. Yes.

Q. That is where the old church is located?

A. It is located below the crossing of the Alexandria and Leesburg Pike and the Lee Highway, about one block. It is the old Episcopal Church.

Q. The only element that appeals to you about the matter is that you pay less taxes—is that true?

A. And being in the county as a whole.

Q. What effect, in your judgment, would the taking off of this portion of the town have on the balance of the town? Do you think it would benefit the town?

A. I don't see how it would affect them any.

Q. You don't think it would affect them at all?

A. No, sir.

Mr. Barbour: That is all.

And further this deponent saith not.

page 120 } Thereupon,

DR. HENRY KNOWLES,

a witness of lawful age, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Phillips:

Q. Dr. Knowles, will you state your name for the Record?

A. Henry Knowles.

Q. Where do you live?

A. East Falls Church.

Q. In Arlington County?

A. In Arlington County.

Q. How long have you lived there, Doctor?

A. I have lived in the present house for nine years. I have lived in Falls Church since June, 1916.

Q. Will you give the location of your present home?

A. Corner of Brown Avenue and Cedar Street.

Q. You are one of the petitioners for the contraction of the Town of Falls Church, are you not?

A. Yes, sir.

Q. Will you state briefly any reasons you have for so petitioning the Court?

A. In the very first place, the thing has long been in my mind, unnecessary duplication of government, especially in a small community, that we had absolutely no need of both a town and a county government there. Another thing

—and this I stated time and again when I was a
page 121 } member of the Town Council as far as I was able

to observe in my experience, there was nothing that the Town Council was able to do for the citizens that could not be better done by the county authorities, by reason of the fact they had better equipment and more funds. I thought it was a great waste of money and everything on a dual government in that community, and still think so.

Q. In particular reference to the portion of the town in Arlington County, do you know of any benefit that would accrue to those people by remaining in the town?

A. No, sir, I have never been able to see any since I have lived in that community.

Q. Can you see any further advantages by the contraction of the limits so as to place them under the sole government of Arlington County.

A. In my mind, yes, sir. I think if we were solely in Arlington County that the people of our community would receive

greater consideration from the rest of the county, especially the county government; that they would take more interest in us because we would not be like orphans out in Falls Church. There would be a greater county community spirit, and I believe that the county officials would take a greater interest in our welfare.

Q. With respect to improvements generally, have you any comment to make?

page 122 } A. Well, there are so few improvements made over there at all, and generally speaking you might say that is true of the town, as the town has not sufficient funds and never has had to administer a government over such an area as it has.

There have been times when more has been done over in our part of the town than recently. I should say about the streets they are very much as have been described. The town has not sufficient funds to keep the streets in good condition. That road, Brown Avenue, where Mr. Nourse and Mrs. Moran and I live, it is a gravel road with a coating of tar on it, and it is largely now depressions and bumps. Do you wish any more?

Q. Yes.

A. Sanitary inspection and enforcement of sanitary laws and regulations and the proper health inspection—in the town we have never had any efficient sanitary inspection with authority. I mean with authority that is exercised to abate nuisances. It cannot be done under the present conditions. We had a wholly unpaid sanitary officer, and no matter how competent he may be, since he is not paid and is dependent on the patronage of the community, he has never gone in and abated nuisances in the way that the county sanitary officer does. When we are suffering from a nuisance in Arlington County we have to get the county sanitary inspector to come there; and when I was in the Council I remember distinctly when I was calling on such officers we
page 123 } first had to have the permission of the town before he would come in. I suppose a blanket permission has been given now as they come in on call, as they have recently come in to an adjoining property of mine.

The matter of trash and garbage collection is a most important thing. I have lived there all these years, going through all the difficulties Mrs. Moran enumerated, about disposing of garbage, especially in the summer when it becomes offensive in such a short time, of burying and burning it. Trash collection—I do not know what it is now, but we used to have trash collections twice a year, and it was quite a spectacle with all the bags and barrels and everything lined

up on the sidewalk. It was the most grotesque thing imaginable. We had none of that.

The garbage was more perplexing yet. Burying it and burning it as much as we could in the furnace, and such as that. Now we have a county collection, and in that way we are pretty much on the same basis as the people living in the city. That has been a great help.

Another thing I may volunteer is in the matter of county police. I believe we would be much better off if we were wholly under the police system which is managed more efficiently. The fact is, I am quite sure if I needed a policeman my first thought would be of the county system. I would send down and see if I couldn't get a man down there hurriedly. If a single policeman is out on his beat,
page 124 } I do not know where I could locate him, but with police headquarters in the county I would expect immediate action for having men to do it.

I think the county is, by reason of its organization, its equipment, the number of men engaged in one way or the other to carry on the affairs of the county, by reason of the fact that so many give all of their time to it and are not away from that section as most of us are, they could give better service to us than they could before.

That is what comes to me from the years of living there, from the time I served on the Town Council, and what I believe is the general feeling in our community. There is no ill feeling against our friends across this imaginary line, but because we felt we had an opportunity to better our physical condition and in every way to improve the situation as it presents itself in the Arlington County side of the town.

Mr. Phillips: You may take the witness.

CROSS EXAMINATION.

By Mr. Barbour:

Q. Is it your idea that the eastern portion of the town has not been fairly dealt with by the town as a whole? Is that your idea?

A. Well, I think that is half of it. That we have not had more is due to an ineradicable condition there, the lack of finances in the town. It is trying to carry on a
page 125 } bigger work than it has the resources to do. I do think this—

Q. You have not answered my question. Answer my question and then make your explanation.

Mr. Phillips: I would like to have the question read.

The Court: I think the question is very plain and he has not answered it.

The Witness: I beg your pardon. I do not wish to do anything I should not.

Mr. Barbour: Will you read the question, please?

Question read by the Reporter as follows:

“Q. Is it your idea that the eastern portion of the town has not been fairly dealt with by the town as a whole? Is that your idea?”

A. I would not say that. I would not say that, only as it might come about in this way. The fact that that part of the town can never have more than two councilmen with the majority of four living over on the Fairfax County side, and now five live on the other side it may be they are more prone to look out for their own section than they would for ours.

Q. Now, the population over there is about four hundred or five hundred, and fifteen hundred on the other side. Now, the population of Arlington County is something like twenty or thirty thousand as against five hundred for East Falls Church. Will the county wag the little part of
page 126 } Falls Church or do you think East Falls Church is going to wag the County of Arlington?

A. We do not expect to wag it, but we do believe we would receive more consideration and we would have more than four or five hundred of the population. We pay a greater proportion than our population would indicate.

Q. What, in your judgment, would be the effect of depriving the balance of the town of that source of revenue.

A. By reason of their contracted area of administration I don't see where they would be injured. I might put it this way. They—

Q. If they do not give you as much revenue as your taxation entitles you to in the way of distribution at the present time, wouldn't that necessarily injuriously affect the balance of the town?

A. I can't say that the town would be injured.

Q. Doesn't it stand to reason that as far as your local interests are concerned, that living on each side of an imaginary line your immediate local needs can much more effectively and directly be brought to the attention of your governing body?

A. No, sir.

Q. Even though your Council is elected as a whole—you

think, that it can in the entire community spread over thirty square miles for which the governing body is also elected as a whole without respect to distance, that they can
 page 127 } care for your local needs and that they can be more effectively and more directly brought to the attention of your governing body in the county than they can in the town?

A. As has been brought out, when they have been brought to the attention of the Council, there has been difficulty in getting anything done. I think this, instead of being any benefit, the fact that the town lies in two different counties rather tends to confusion.

Q. Isn't it a fact that these communities have grown up as a whole and as one community?

A. Yes, sir.

Mr. Phillips: You mean East and West Falls Church?

Q. East and West Falls Church?

A. Yes.

Q. They have their same civic societies and civic associations of different kinds to define the interests of this particular body?

A. So far as the civic association goes, they are of a community nature of various sections. There is an East Falls Church Citizens' Association. I do not know the others. Our function was each one looking out for his own section of the town.

Q. You have a common fire protection system?

A. Yes.

page 128 } Q. Common police protection?

A. Yes, sir.

Q. You think the interests of this community would be advanced by disrupting this growth of fifty to seventy-five years?

A. I think this, Mr. Barbour, I might as well state it. We are one corporation but three distinct communities. The man in West Falls Church, the old part, who lives in the village, or East Falls Church—I have spent thirty years there. Each one is for his own separate section and is more interested in that than in the town as a whole.

Q. Do you think that condition will be relieved by cutting you off from this community and putting you in a larger unit in which you have a much smaller voice?

A. I think it will relieve it as far as East Falls Church is concerned, undoubtedly.

Q. You served on the Town Council?

A. Yes, sir.

Q. How long were you on the Town Council?

A. Two years.

Mr. Barbour: That is all.

RE-DIRECT EXAMINATION.

By Mr. Phillips:

Q. In the municipal institution of Falls Church you pay taxes to how many sources—I do not mean East page 129 } Falls Church; I mean the whole town.

A. I don't know that I quite get that.

Q. The residents of the town as a whole are so divided as to pay taxes to three separate municipalities—is that not so?

A. They are not separate municipalities. There is only one municipality.

Q. By living in one municipality individuals in different sections pay what kind of taxes?

A. Town county and State.

Q. How many counties?

A. Two counties.

Q. And the town?

A. And the town.

Mr. Phillips: That is all.

And further this deponent saith not.

Thereupon,

CHARLES A. STEWART,
a witness of lawful age, being first duly sworn, deposes
and says as follows:

DIRECT EXAMINATION.

By Mr. Phillips:

Q. Will you state your name?

A. Charles A. Stewart.

Q. Your address?

A. East Falls Church.

Q. Could you more definitely state where in page 130 } East Falls Church?

A. On Brown Aveune, house as numbered by

the gas company is 204 Brown Avenue. I might make it clearer by saying I live between Mrs. Moran and Mr. Nourse.

Q. That is in Arlington County?

A. Arlington County.

Q. How long, sir, have you lived in East Falls Church?

A. Over thirty-five years.

Q. You are one of the petitioners in this cause, are you not?

A. Yes.

Q. Can you state briefly such reasons as you may have for desiring the contraction of the corporate limits of Falls Church so you will be solely under the government of Arlington County?

A. The reason is the matter of reduction of taxes.

Q. Do you have any other or further reason for desiring to get out?

A. No special reason, no, sir.

Mr. Phillips: I think that is all.

Mr. Barbour: No questions.

And further this deponent saith not.

Thereupon,

WALTER T. JEWELL,

a witness of lawful age, being first duly sworn, deposes and says as follows:

page 131 } DIRECT EXAMINATION.

By Mr. Phillips:

Q. Please state your name.

A. Walter T. Jewell.

Q. Your address?

A. I live in East Falls Church, Arlington County, on a road called Locust Street; 707 is supposed to be the number of the house.

Q. How long have you lived in the town?

A. More than eighteen and a half years.

Q. You are one of the petitioners in this cause?

A. Yes, sir.

Q. Will you briefly state any reasons you may have for wanting the corporate limits contracted so you will be in Arlington County solely?

A. There is every reason for reverting to the county. Because the county has a health officer who is not a general prac-

tioner; it has adequate police protection; and Arlington County has been merciful, on the Arlington County part of the corporation by extending its water mains into that part of the corporation and in charging a specific amount which has been reduced. It has sent men in twice a month to collect garbage, ashes and trash, whereas the corporation collected trash twice a year. The improvements made by, probably, page 132 } the State have exceeded any improvements made by the corporation, or at least the east end of the town.

By Dr. Ware's drugstore, which also is supposed to be a railroad station for the Washington-Virginia Railroad, is a treacherous place. In fact, there is no right nor left, no traffic regulations, and I have seen two people knocked down; and when it rains heavily there is sufficient water there, over the sewer, to float a small boat. The cement street between the business houses and the railroad tracks was laid by the business men and paid for by them. Many streets in the Arlington County part of the corporation have been improved by the citizens at their expense. Many children have gone to Washington at school because the eighth grade was eliminated. Eventually they did get a four-year graded high school course, but they are still using the old school which has been condemned, I am told, three times. That was the plea—

Mr. Barbour: We object to that statement.

The Court: State only what you know yourself.

A. (Continued) When the appeal for the bond issue was being circulated for a new school, the plea was that the old school was condemned as unfit for use. The children are still using it.

There seems to be considerable jealousy between what is known as Falls Church—that is, the old town—page 133 } and the more progressive section known as the East End. Business seems to come from the East End as business from Washington went from 9th and Pennsylvania Avenue up to 15th and H, and then on up to Connecticut Avenue. Most of the improvements are made in old Falls Church, the old town, notwithstanding the fact that petition after petition has been made to the Council for improvements. Very little improvement has been made, and especially where for the protection of health we need it. We need a traffic light at Lee Boulevard and A Street where those two streets intersect, also two railroad tracks, but the traffic light was put up in Falls Church.

Q. At the village, do you mean?

A: The old town:

Q: The Fairfax County side?

A: Yes, in Fairfax County.

Q: I think that is all unless you have something to add to that statement:

A: I am heartily in favor of getting out of the corporation and reverting to the county. We know exactly what to expect. The county has been considerate of East Falls Church, and all the people to whom I have talked are most anxious to secede from the town and revert to the county.

Mr. Barbour: We object, if Your Honor please.

The Court: I do not think it adds anything. A
page 134 } lot of people would not be here if that were not
true.

Mr. Phillips: That is all.

CROSS EXAMINATION.

By Mr. Barbour:

Q: What is your business?

A: I am Adjuster of Measurements.

Q: Where are you employed?

A: The Bureau of Navigation.

Q: In Washington?

A: In Washington.

Q: Your reasons for going back into the county are that the county has been so kind and benevolent to East Falls Church?

A: I just indicated we would receive more from the county than from the corporation.

Q: You pay taxes to the county, don't you?

A: Yes.

Q: Don't you think you are entitled to some benefit from the county?

A: Entitled to some from the corporation.

Q: You don't think the town has been run correctly?

A: That is right.

Q: If you had been on the Council you would have run it differently?

A: If I had been, I would have tried very hard.

page 135 } Q: That is not unusual, is it? Doesn't every-
body think the other fellow is wrong?

A: It's mostly one-sided.

Q: Why do you think the wishes of East End in Arlington County can be made more effective if brought into a community of thirty to thirty-five thousand people than it would in

a community of fifteen hundred in which it comprises twenty-five per cent?

A. Probably more broad-minded people. Take, for instance, Clarendon. That is not an incorporated town, and that has far exceeded Falls Church in growth.

Q. You think the people of East Falls Church are more broad-minded than those in West Falls Church?

A. I didn't say that. I said Arlington County.

Q. Well, East Falls Church is in Arlington County, isn't it?

A. Yes.

Q. This narrow-mindedness of West Falls Church which you have spoken of—

A. I should say jealously.

Q. Where was it you saw enough water to float a boat?

A. At the last heavy rain. I would be glad to meet you the next heavy rain and take you down to the East End and show you.

page 136 } Q. What fences up that water?

A. I suppose mud and trash in the sewer pipe.

Mr. Barbour: That is all.

Mr. Phillips: No further questions.

And further this deponent saith not.

Court recessed from twelve, noon, to one P. M. for lunch.

Thereupon,

MRS. A. H. BARBOR,

a witness of lawful age, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Phillips:

Q. You are Mrs. A. H. Barbor?

A. Yes.

Q. You live in Falls Church?

A. I do.

Q. Will you give your address there?

A. 709 Cedar Street, southwest corner of Brown Avenue and Cedar Street.

Q. That is in that portion of the town lying in Arlington County?

A. It is.

Q. You have lived there a number of years?

A. At least twenty-five years, I think.

Q. You are one of the petitioners in this cause?

A. I am.

page 137 } Q. Will you state as briefly as you can what reasons you have for desiring to get out of the corporate limits?

A. We think it would be greatly to our interest in a number of ways. We feel we have more in common with the affairs of Arlington County than of the town. There is also the water situation. Where we are on Brown Avenue, which is the extension of Memorial Drive, the county water pipes are up and down Cedar Street, and up Cedar Street on one side we have the county water system and up Brown Avenue we have the town water pipes. We feel there is a duplication there. We feel that if we were outside of the town our school facilities would be improved. The county schools are better than the town schools.

There are no sidewalks at all. Probably ten or twelve years ago they made a gravel walk down to the little station where we take the car, and then there's a little brick walk down to Cedar Street. The road isn't in very good condition; and half way up Cedar Street is the county line, and you can tell readily where you strike the county line. Brown Avenue runs into Little Falls Street and half way up there is the county line again. That is an improved road. The road to Franklin Park or Oak Grove and the road to Livingston Heights are good roads. We do feel the county would do more for us in a number of ways than the town.

Q. Are there any municipal advantages or disadvantages that you know of due to the fact that you are within the corporate limits?

A. We feel we would have better conditions at what we call the East End; that is, the business section of East Falls Church, where the stores are located. We have practically no police regulations at all, and it is a very dangerous place. There is no regulations for traffic or anything of the kind. No traffic light. I suppose if we would call a police officer we we could find one. He is never visible. Automobiles go anywhere at all, and our children—one of the principal reasons we feel that we would be better off in the county, we might have more sidewalks for the children. They have to use the roads, and the roads are not in very good condition.

Q. Are you in a position to say how the roads in East Falls Church compare with those in West Falls Church exclusive of State roads?

A. I am not very familiar with West Falls Church.
Mr. Phillips: That is all.

CROSS EXAMINATION.

By Mr. Barbour:

Q. Mrs. Barbor, as I understood your testimony, you entertain the belief if you go into Arlington County your general condition will be improved?

A. Yes.

page 139 } Q. What reasons have you to believe that?

A. For instance, I spoke about the county line. Right up Cedar Street, half a square above us, is the county line and you can see the difference in the road.

Q. What road is that?

A. Cedar Street, which goes into Crossman Street.

Q. What is the difference between them?

A. They are much better. They have been improved.

Q. What is the difference in character of the construction of the two roads?

A. The other streets have been cared for and built up, and ours has not.

Q. What is the difference in surfacing? Is there any difference between them? What is the character of the surface?

A. Probably not any difference in the surfacing on the other side, but they have kept them up and ours have not.

Q. Maybe on your side they are used more. Isn't that true?

A. No, I do not think so because Brown Avenue is an extension of Memorial Drive and up to Lee Highway it is a State road. There is a very small section where Little Falls Road goes into Livingston Heights and Franklin Park where there is a much better road.

Q. Which side of Lee Highway do you live on?

page 140 } A. The west side.

Q. Side towards Fairfax County?

A. Yes, sir.

Q. The road leading up to your house is a macadam road, isn't it?

A. It is; I suppose you would call it macadam. It has tar surface up to Cedar Street.

Q. And the balance of that road was a road constructed by Dr. Knowles when he was on the Council; in front of your home that is gravel?

A. I don't believe anything has been done to it since Dr. Knowles probably was on the Council. I am not sure whether Dr. Knowles or Dr. Talbot. Once in a while they go around with a scraper and scrape the stones up on the sides.

A. It might be improved. It isn't as good a road as the roads outside of the corporation.

Q. It is not as good as some outside, but it is better than some outside; isn't it?

A. I suppose it is. We have not street markers in that section. I don't know whether they have any in the village proper. We understood that all the streets in the county would be marked. In one little association we have for several years had a fund, and we wanted to use that fund to put a marker at Brown Avenue and the Highway, and
page 141 } we applied to the Council for permission to put a street marker and pay for it out of our own funds. The Council did not give us permission and said they were going to put markers at all the streets in the village and would include ours; and I may say the Mayor will bear me out in that.

Mr. Barbour: That is all.

And further this deponent saith not.

page 142 } Thereupon,

HARRY A. FELLOWS,

a witness of lawful age, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Douglas:

Q. Please state your name.

A. Harry A. Fellows.

Q. Your place of residence?

A. East Falls Church, Virginia.

Q. You are a resident of that portion of the town of Falls Church which lies in Arlington County?

A. I am.

Q. State what, if any, official position you hold with the County of Arlington.

A. Member of the County Board.

Q. State what, if any, official position you have held in the past with respect to the Town of Falls Church?

A. At one time I was a member of the council of Falls Church and have been elected mayor of the town for four terms.

Q. Please state whether or not your name is among the names of those who have signed the petition.

A. I have never signed a petition. I assume my name is not there.

Q. Are you a qualified voter in the Town of Falls Church as of the election of November 1931?

A. I was.

Q. Will you state whether or not you concur in page 143 } the prayers of that petition?

A. I do.

Q. Will you please state your reasons for believing that the interest of this area will be promoted by the contraction of the corporate limits asked for in that petition?

A. I think that the people of East Falls Church are not as well governed by the officials of the town as they would be if they were to place themselves under the jurisdiction of the County. I feel that the County is active and progressive and by reason of its ability to raise taxes and otherwise, is in a better position to administer the affairs of the people of East Falls Church to their better advantage than are the officials of Falls Church.

Q. That is not in any sense a reflection on the Government of the town?

A. In no sense.

Q. Merely that the government of the county is larger and better equipped?

A. That is right.

Q. You consider that the remainder of the town would be seriously adversely affected by the separation of this area of East Falls Church?

A. I do not.

Mr. Douglas: You may take the witness.

page 144 } CROSS EXAMINATION.

By Mr. Barbour:

Q. You say you were mayor of Falls Church for how many terms?

A. Three full terms and one part term.

Q. What is a term?

A. Two years.

Q. You were mayor for seven or eight years?

A. For seven or eight years.

Q. How long were you on the council?

A. One year.

Q. In addition to that?

A. Yes.

Q. You resided in East Falls Church at that time?

A. I did.

Q. There could not have been any prejudice against Arlington County side of your town on account of your residence over there, could there have been?

A. I am not prepared to say there was any special prejudice; if there was, that prejudice was overcome by my election.

Q. You were elected by the majority vote of the entire town?

A. I was.

Q. The same thing was true when you were elected a member of the council? Members of the council page 145 } elected by the town as a whole?

A. It was.

Q. When you were mayor you did not act to the prejudice of your side of the town as contrasted with your actions toward the part of the town in Fairfax County?

A. When I was mayor, I did my best to administer to the benefit of the residents without respect to any particular section.

Q. And you did so?

A. To the best of my ability.

Q. Has the County of Arlington a superfluity of finances to extend its government functions without raising taxes?

A. You mean to the part which is proposed to be annexed?

Q. Yes.

A. The county is amply able to take care of that themselves.

Q. If that is done, the County does not get additional revenue, does it?

A. Yes.

Q. What additional revenue?

A. \$1.70 on a hundred dollars.

Q. \$1.70?

A. Our present rate is \$2.20 we allow a credit of \$1.70 to the town of Falls Church.

Q. So that of the \$2.20 you collect from the page 146 } residents of Falls Church, you allow them \$1.70?

A. We allow a credit of \$1.70.

Q. Of the taxes then levied on the residents of Arlington County within Falls Church, the county now benefits to the extent of fifty cents?

A. The town benefits to the extent of fifty cents. If I may put it this way: I am paying more taxes by reason of residing in the Town of Falls Church than I would if I resided outside the town of Falls Church.

Q. I am not asking you whether or not you pay more. I

am asking about the revenue of the county and whether it would be increased by this attachment.

A. The Town of Falls Church is deriving a fifty-cent tax for schools which goes to the benefit of the schools of Falls Church from the people of East Falls Church. That fifty cents would be collected by the county as a part of its levy of \$2.20. It would benefit, therefore, to the extent of fifty cents.

Q. That is what I asked you and you said it was not true. Now that is true, is it?

A. That is the fact regardless of what I may have said before.

Q. Isn't it a fact, Mr. Fellows, as I understand it, there is levied by the county in the town fifty cents and seventy cents, making \$1.20, is that right?

A. I am not so sure about that. There is a page 147 } straight levy on part of the town, I believe it is \$1.00 on a hundred. In addition to that there is a levy of thirty-five cents for a bond issue for schools. I think there is a further levy of ten cents and perhaps fifteen for the Fire Department.

Mr. Barbour: The facts of this matter are stipulated so we will not go into this any further.

Q. As I understand it, your reasons for believing that this secession should be allowed is that you do not think the people are as well governed in the town as they are in the county of Arlington?

A. As they would be in the County of Arlington; that is one of the reasons.

Q. You think Arlington County is more active and progressive than the Town of Falls Church?

A. I feel quite sure of that, yes.

Q. And the county is in a better position to advance its interests? That is your opinion?

A. That is my opinion.

Mr. Barbour: That is all.

And further this deponent saith not.

Thereupon,

MRS. MARY E. RYER,
a witness of lawful age, being first duly sworn, deposes and
says as follows:

DIRECT EXAMINATION.

By Mr. Phillips:

Q. Please state your name.

page 148 } A. Mrs. Mary E. Ryer.

Q. Where do you live?

A. In East Falls Church, Virginia, in Arlington County.

Q. What street?

A. Grant Avenue.

Q. Any particular number or near any particular street?

A. 410.

Q. You have lived there for some time, have you?

A. I have lived on that street—

Q. I mean within the town?

A. I have lived twenty-two years in East Falls Church.

Q. Do you have any children of school age?

A. I have one now.

Q. Will you please state as briefly as possible your experience with the education of any of your children while living within the Town of Falls Church?

A. Well, my experience has been that Falls Church high school did not meet with the requirements of my children. I have had two boys who have gone to Washington and Lee because of the fact that there were more advantages to be derived in their attending school at Washington and Lee High School. I was compelled to pay tuition there.

Q. Washington and Lee High School is located in Arlington County outside of the town limits?

A. Yes.

Q. Proceed.

page 149 } A. My point is that I feel we have better school advantages to be out of the corporation than we have by being within.

Mr. Phillips: That is all.

CROSS EXAMINATION.

By Mr. Barbour:

Q. You say you have one child of school age?

A. Yes, right now.

Q. What were your requirements for high school education that were not met by the Falls Church High school?

A. Well, I don't know as I can tell you exactly.

Q. Don't you know?

A. It was difficult to arrange a course for my sons to take the subjects that they preferred to take because the school was so small that the course was made out to the best advantage of the majority, and in the larger school you could have more choice of subjects and your requirements could be met easier in that way.

Q. Do you know what particular course it was you wanted your son to take that he could not take?

A. He is taking a general course.

Q. What was it; you said he could not take a course. What was it you wanted him to take and he could not take.

A. There were business subjects he could not get at the other school.

Q. Was that the course you wanted him to take page 150 } and he could not take?

A. Yes, sir, I wanted him to take business subjects along with the other subjects too.

Q. For that reason you put him in the Washington and Lee high school where he paid tuition, is that right?

A. Yes, sir.

Q. How long ago was that?

A. He just finished there this past year, the end of the last school year.

The Court: That would have been four years ago?

The Witness: No, he attended down there about two years.

Q. Your son then took how many years high school over here?

A. He took two years there.

Q. Then he took two years over at Washington and Lee, is that right?

A. I didn't mean he took two years in Falls Church. He took two years at Arlington County, one year at Falls Church and he was up in the Valley of Virginia for a couple of years.

Q. To what school did he go up there?

A. Shenandoah Valley Military Institute.

Q. After doing that, he came back to Washington and Lee and went there?

A. Yes, sir.

page 151 } Mr. Barbour: That is all.

And further this deponent saith not.

Thereupon,

P. M. CHICHESTER,

a witness of lawful age, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Douglas:

Q. You are Dr. P. M. Chichester, health officer of Arlington County?

A. Yes.

Q. How long have you held that position?

A. A fraction over ten years.

Q. I ask you first, Doctor, as briefly as you can, to outline the general function of your office and generally the service your office performs to the people of Arlington County. I don't mean to go into detail.

A. Just to run over it: the work in itself is the prevention of diseases, promotion of happiness, principally through educational process.

Prevention of disease is accomplished through certain medical procedures, sanitation, supervision of school children and parents can have pointed out to them any defects in order that it may be corrected; supervision of the schools to prevent as far as possible the inroads of communicable diseases; certain preventive procedures, and the conduct of infant welfare stations for the same purposes leading up to the school and the entrance to school.

page 152 } Looking after water supplies in order that people may have as pure a water supply as possible; preventive treatments of various sorts, those that are known to be effective and safe.

Q. You mean quarantine service and vaccination?

A. Vaccination.

Q. Antitoxin treatment?

A. Antitoxin treatments are preventive in a way. Distribution of educational literature through the schools and health centers; inspection of stores, inspection of milk supplies; and so on.

Q. You devote your full time to that work, Doctor?

A. Full time.

Q. Have you one or more assistants?

A. I have one assistant and nurses, who, of course, are engaged in the work under my supervision.

Q. Do you extend your service ordinarily to that area known as the Arlington County portion of Falls Church?

A. Only so far as I have been called upon.

Q. By whom?

A. By individuals or probably some of the officials. I cannot say that positively; certainly when individuals have called on us for various things such as inspection of sanitary arrangements and the inspection of a store or water supply.

Q. In general, you do it only in special cases?

A. Only in special cases.

Q. As part of your routine, you do not assume page 153 } jurisdiction over that area.

A. No.

Q. You have no Well Baby Clinic in that area?

A. No, and still the health centers have never turned any one down that have come from Falls Church down there.

Q. You do maintain clinical centers?

A. In the old magisterial districts we had a center in each one.

Q. Are you or is your department equipped to take over the active health work in this area I have just mentioned if the prayer of the petitioner in this cause was granted?

A. Yes. There is no reason why we could not assume the same responsibility there as we do in the rest of the county.

Q. At substantially no additional cost?

A. No additional cost except so far as the individual going over and that is in the day's work.

Q. The entire compensation for your service is paid you by Arlington County?

A. Paid by the County Board.

Mr. Douglas: Your witness, Mr. Barbour.

CROSS EXAMINATION.

By Mr. Barbour:

Q. Doctor, these same services are performed in all counties, aren't they.

A. I suspect I would have to answer that in the page 154 } negative, Mr. Barbour. There are only a few counties in the State that have that service.

Q. I am not saying they carry it to so high a degree as you do?

A. I am not trying to intimate that. All the counties in the State are far from being serviced.

Q. Isn't Fairfax County serviced the same as yours?

A. Fairfax County is.

Q. The services of your office are not denied to any resident of Falls Church because they are within the limits of Falls Church?

A. Not if they call.

Q. Do not your clinics give the same service to them?

A. Yes, people come from Alexandria, Falls Church, Fairfax and Washington. We never turn any one down.

Q. You do not mean to tell the Court, do you, Doctor, that you have time to spare in the administration of your office, do you, and that you are looking for more work to do?

A. I don't think I did.

Q. Doctor, do you undertake to inspect the water supply of Arlington County?

A. The wells, in so far as I can only do that on request and on complaint of any particular person. So far as the city service is concerned, I am thankful to have that taken care of across the river.

page 155 } Q. That is taken care of by the Federal Government?

A. Yes, sir.

Q. There is a working agreement and understanding between your office and the health offices of Falls Church and they accept your conclusions in respect to sanitation.

A. Very friendly relations; I have taken no active part in there because of the existence of the corporation.

Q. You have no reason to complain of the health of any other portion of Arlington County being injuriously affected by any of the conditions in Falls Church, have you?

A. No, sir.

Mr. Barbour: That is all.

And further this deponent saith not.

Thereupon,

BASIL D. BOTELER,

a witness of lawful age, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Douglas:

Q. Your name is Basil D. Boteler?

A. Basil D. Boteler.

Q. What is your business?

A. Well, my profession is an attorney at law; I have also for a number of years been connected very actively with the Fairfax and Alexandria Building Association, which does business in this county and the adjoining county of Fairfax.

Q. In connection with that business, Mr. Bote-
page 156 } ler, do you have occasion to make appraisals of
real estate in both counties?

A. Yes, sir.

Q. Over any considerable period of years past?

A. For the past twenty-four years, I have been on the Ap-
praisal Committee of our Association.

Q. And further in connection with your profession, do you
find it necessary to examine land records and assessment rec-
ords from time to time?

A. During the period of time of my connection with our
Association, I have done practically all the title examining,
which, of course, would involve the inspection of tax records
to a certain extent.

Q. Your examination of records of this type, would you
say that that is just a casual part of your business or a great
part of your business or profession?

A. Examination of titles?

Q. Titles and records and things like that.

A. That consumes a large part of my time.

Q. Over a great number of years such as you have already
testified?

A. Yes.

Q. Based on that general experience and observation of
the land records, tax records of the two counties, are you
in a position to say whether in your opinion the assessments
generally are higher in one county than in the
page 157 } other?

A. My opinion is that the assessments in Ar-
lington County are somewhat higher than they are in Fair-
fax County.

Mr. Douglas: That is all.

And further this deponent saith not.

Thereupon,

DONALD E. BALL,
a witness of lawful age, being first duly sworn, deposes and
says as follows:

DIRECT EXAMINATION.

By Mr. Douglas:

Q. Will you state your name?

A. Donald E. Ball.

Q. Mr. Ball, I want to direct your attention to Exhibit 5,

which is the subject of stipulation among counsel. In this exhibit #5 are shown three different classifications of road, all of which are described and certain statistics concerning which are contained in the stipulation. I want to ask you only this additional question. As to the roads shown on this map in orange, will you please make a general statement as to the type of construction to be found on those roads?

A. The roads shown in orange are not water resisting.

Q. Gravel?

A. Some gravel surface, some ordinary clay.

Q. They vary from good gravel to bad dirt?

A. Yes, sir.

Q. In both Fairfax County and Arlington County portions of the town there are some good gravel and some page 158 } bad dirt and all the variations in between?

A. Yes, sir.

Q. The good gravel and bad dirt pretty well divided between the two sections?

Mr. Barbour: Let the witness testify.

A. I would say so.

Mr. Douglas: I was just trying to save time.

Mr. Barbour: You do not always save time that way.

Mr. Douglas: That is all.

CROSS EXAMINATION.

By Mr. Barbour:

Q. What is your connection with the County of Arlington?

A. I was employed by the county to assist Mr. Potterton in preparing maps of the Town of Falls Church.

Q. Your duties are just special with respect to this?

A. Yes.

Q. These roads you have marked on there in pink and blue are either tar macadam or concrete?

A. Pink is the concrete and blue is the tar surface.

Q. Then all the balance of the road in here, good, bad and indifferent, you have grouped together under the head of yellow, is that correct?

A. Yes, sir.

Q. Some of them good, you say, and some of them bad?

A. I do not know whether I would say some of page 159 } them were exactly good, some a little better than others.

Q. What is the material that they are surfaced with in so far as they are surfaced?

A. From the part you can see?

Q. Yes.

A. Park Avenue is being surfaced at the present time with clay and gravel taken from a pit; South Street, they are doing the same; and Louenville Road, with the same material there.

Q. South Street and Louenville Road the same way?

A. And Park Avenue.

Q. How about Lincoln Avenue?

A. I would not say that Lincoln Avenue was in good condition at all. It is rough.

Q. What is it surfaced with, if anything?

A. Gravel, ranging from half inch to four and five inches. I never stopped to examine but if you ride along, that is what it looks like.

Q. What about South Street?

A. South Street has the clay and gravel. I imagine the road is about completed now. They have been working on it.

Q. Recent construction?

A. Recent construction; I do not know how the travel is or whether it can be traveled or not.

Q. What are the elements that would affect that? So new that it has not been worn down? What do you page 160 } mean by that?

A. I do not know that the surface has been packed.

Q. If it has not been packed, it has not been completed then?

A. No, sir.

Q. Does that so far as you know meet the requirements of the State Highway Department for a gravel surface road?

A. As far as the material used, yes.

Q. You just do not know the exact present state of the surface?

A. No.

Q. In this connection, here is a street designated on this map as Jefferson Street. I am advised that the name has been changed to Mosby Street because there is another Jefferson Street in the town?

A. This was Jefferson Avenue; the other Jefferson Street.

Q. The Louenville Road, that is under reconstruction?

A. Yes.

Q. About completed the reconstruction of the same kind, is it not?

A: I have not seen the top; I imagine they are getting it the same place.

Q: While we are at it, this map shows Four Mile Run and depicts the course of this stream properly?

A: Yes.

Q: That also lays out the natural course of page 161 } any sewer line for this territory on both sides of that line in the course of Four Mile Run?

Mr. Douglas: I do not know whether he is qualified to answer that?

A: I do not know. The stream has a water shed on both sides.

Q: On both sides of the line?

A: As far back as the water shed would run.

Q: You have run it back?

A: I cannot tell by looking at this map how far the water would run each side to the stream.

Q: This stream starting on Broad Street, you have a stream entering into that Run. You judge that is down grade and all streams enter Four Mile Run. Streams go down grade usually; don't they?

A: Yes.

Mr. Douglas: Here is the topographic map.

Q: If a—

Mr. Douglas: You cannot tell how far back the water shed goes.

Mr. Barbour: There is nothing showing distinctly the stream on the topographic map. This is a much larger scale. That is all, I believe.

RE-DIRECT EXAMINATION.

By Mr. Douglas:

Q: Are you familiar with all of the county page 162 } roads that lead from Arlington County into the Falls Church area?

A: Yes, sir.

Q: Will you state, if you know, how many of those roads are hard surface? I mean by that, with some tar or water resisting binder. If you know.

A: They are all surface treated roads with the exception of Wilson Boulevard and I would not be sure of that. I do

not know what surface Wilson Boulevard has the other side of Torrison Station. I know it is tar that far.

Q. That is the boundary of the town?

A. Yes, I don't think it is hard surface.

Q. All other streets are?

A. Yes.

Mr. Douglas: That is all.

Mr. Barbour: No further questions.

And further this deponent saith not.

Mr. Phillips: If Your Honor please, we have, as the Court knows, attempted to stipulate many of the physical facts in this case. We have them reduced to writing and we would like the opportunity now to look them over before closing our case. If Your Honor will indulge us, we think we can conserve the ultimate time of the Court by going over that now.

The Court: All right. Court will adjourn until tomorrow morning at 10 A. M.

page 163 }

February 15, 1934.

Court convened at 10 A. M.

Mr. Phillips: Mr. Kemp; will you take the stand, please?

Thereupon,

FLETCHER KEMP;

a witness of lawful age, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION:

By Mr. Phillips:

Q. Professor, will you state your full name for the record?

A. Fletcher Kemp.

Q. Where do you live?

A. In Arlington County.

Q. What address?

A. 424 Arlington Avenue.

Q. What is your occupation?

A. Superintendent of Schools.

Q. Of the schools of Arlington County?

A. Yes, sir.

Q. How long have you occupied that position?

A. Seventeen years.

Q. How many high schools do you have in the county?

A. One.

Q. What is the name of that high school?

A. Washington and Lee.

Q. Where is that high school located?

A. Located on Garrison Road and Clements
page 164 } Avenue.

Q. Do you know how many pupils attend that high school at the present time?

A. Eighteen hundred and ninety-three.

Q. What courses are given at that high school?

A. Academic or classical course, scientific, general course, industrial and commercial courses.

Q. When, if you recall, was that high school built?

A. 1924 and 1925.

Q. What would you say concerning that high school with reference to whether it was modern or up-to-date?

A. It is modern in every respect both as to the physical as well as the professional side.

Q. How many class rooms are in that high school?

A. Fifty-five teaching units in the building at one time at the present time.

Q. In addition are there any accessory rooms?

A. We have nine.

Q. Do you recall what they are?

A. Consist of auditorium, cafeteria, clinics, offices, and club rooms.

Q. Is this high school accredited with respect to the Department of Education of the State of Virginia?

A. It is.

Q. Is it accredited by the Southern Association of Colleges and Secondary Schools?

page 165 } A. It is.

Q. Does this school furnish courses other than day courses?

A. It does.

Q. Do you have in that school students who live elsewhere than within Arlington County?

A. We have.

Q. Do you have any from the Town of Falls Church?

A. We have.

Q. Do you recall how many?

A. About ten.

Q. For which they pay compensation?

A. Yes, sir.

Q. Do you recall how many teachers are employed in that school at the present time?

A. We have fifty-six teachers exclusive of the principal and assistant principal.

Q. Are you in a position to state what the average school teacher's pay is in that school, approximately?

A. I should say \$1,300.00.

Q. Per annum?

A. Yes, sir.

Q. That school offers a full term course each year as determined by the Department of Education?

A. Yes, sir, our course is one hundred and ninety days.

Q. With respect to the capacity of that high
page 166 } school, have you room for additional pupils or
otherwise?

A. That building will accommodate comfortably 2,150 pupils.

Q. In addition to the scholastic activities, do you have any other activities of a school nature?

A. Yes, sir.

Q. Extra-curricular?

A. Extra-curricular activities, plenty of them.

Q. What are they please?

A. The cadets, athletics, glee club, band, science clubs, English Club, about, I think, every activity that can possibly be thought of that would be advantageous to a modern school course and would be advantageous to a child is there in that high school.

Q. What is the closest grade school in Arlington County to the town of Falls Church?

A. Robert E. Lee.

Q. Where is that located?

A. Located on the Lee Highway.

Q. Can you estimate how far from the Falls Church line?

A. I should say about a mile and a quarter.

Q. In that school, do you know how many pupils are now being taught?

A. Yes, sir, one hundred and sixteen.

Q. Do they all live in Arlington County?
page 167 }

A. They do.

Q. None in the Town of Falls Church?

A. No.

Q. Do you know when that school was built, approximately?

A. 1924.

Q. With respect to whether it is a modern up-to-date school, have you anything to say?

A. It is in every respect.

Q. How many class rooms in that school?

A. Four.

Q. Is it customary for schools of that character to receive any credit or recognition by the Education Department of the State?

A. It is.

Q. What recognition or credit has that school under that term?

A. Your high school could not be an accredited high school by the Southern Association of Colleges and Secondary Schools unless all of your elementary schools are of standard. In other words, in making out your report and filing application, it becomes necessary that you also give in full detail the courses, equipment and classifications of your teachers.

Q. What advantage, Mr. Kemp, is it to have a high school accredited by the Association of Southern Colleges and Secondary Schools?

page 168 } A. In order that the work done by the students, graduates of that school or under-graduates of that school, may be accepted by any standard school in the United States.

Q. With respect to the capacity of the Robert E. Lee School, have you sufficient space to accommodate additional pupils?

A. We have.

Q. Can you say what number can comfortably be accommodated there?

A. We can accommodate thirty-five additional pupils.

Q. Professor Kemp, you are familiar with the section of East Falls Church lying in Arlington County in a general way, are you not?

A. Yes, sir.

Q. Assuming that the prayer of this petition were granted and the school activities in that territory came exclusively under your jurisdiction, would you be in a position to accommodate them?

A. We would.

Q. Can you state by what means you would undertake to accommodate these additional pupils, both as to high and grade schools?

A. As far as the high school pupils are concerned, they would be cared for in the Washington and Lee High School.

Q. Without compensation, of course?

page 169 } A. Yes, sir. In regard to the elementary school, it would be a matter of making some provision. At the present time we have a provision made for the erec-

tion of a school known as Highland Park, in that vicinity. Due to the fact that we have not seen the need for it as yet, it has not been built. A site has been purchased, and if such should happen, unquestionably this school would be so provided as to accommodate this section and also the section we are discussing.

Q. In other words, it would be possible to change the site you already have to a place more central for the students to be accommodated?

A. Yes, sir.

Q. Have you any finances for such a project?

A. Yes, we have. We have at the present time securities amounting to \$80,000 that could be used for that purpose.

Q. From your past experience, would you suggest that it would require all of that money or less to build the school?

A. It would be less.

Q. Substantially less?

A. Substantially less. I should say around \$20,000.00.

Q. Both of these school buildings conform to the present requirements as to light, ventilation and sanitation, I presume?

A. Yes, sir.

Q. I have in mind with respect to that question, the Washington and Lee High School and the Robert E. Lee graded school?

A. Yes, sir.

Q. Mr. Kemp, is there any record or publication which indicates what high schools are and which are not accredited by the Association of Southern College and Secondary Schools?

A. Yes, sir.

Q. I hand you this publication and ask you to state what it is.

A. It is the Proceedings of the Southern Association of Colleges and Secondary Schools for the year 1933.

Q. By consulting that volume, are you ready to say whether or not the Jefferson High School is accredited by that association?

A. The Jefferson School is not in the list of the accredited schools of this publication and also the Annual Report that has just recently been issued by the State Board of Education lists the accredited schools by the Southern Association of Colleges and Secondary Schools and the Jefferson School is not accredited in the Annual Report either.

Q. Professor Kemp, if this projected school, which you suggest could be built, were built, what would be the farthest

distance a pupil living in East Falls Church would have to walk to it, say from Ware's Drug Store?

A. The present site we have for Highland Park page 171 } and from the point you have mentioned is exactly one mile.

Q. And if re-located in accordance with your suggestion, would it be nearer or farther away?

A. It would be nearer.

Mr. Phillips: You may have the witness.

CROSS EXAMINATION.

By Mr. Barbour:

Q. I understood you to say, Professor, that you have 1,893 pupils at present in the Washington and Lee High School?

A. Yes, sir.

Q. Have you any statement as to the high school population of Arlington County?

A. I should say, Mr. Barbour, that is a very good index of the high school population of Arlington County.

Q. You think the entire high school population of the County is attendant then on that school?

A. Yes, sir.

Q. That there are no high school pupils in the County that go anywhere else?

A. Some high school pupils are going to Washington from Arlington County; and quite a number, I believe, in proportion, a much larger number is going from Fairfax County and Falls Church than from Arlington County.

Q. What is the basis for that conclusion?

A. For a report at a conference we had with page 172 } Dr. Glew a while ago showed a very large portion of Virginia—

Q. Have you a copy of that record?

A. I said a conference.

Mr. Barbour: We ask that that be stricken out.

Mr. Phillips: It was in response to a question.

Mr. Barbour: No proper basis.

The Court: I don't think it ought to be stricken out. It is more a matter of argument. Motion denied.

Mr. Barbour: All right, sir.

Q. In speaking of the Washington and Lee High School, the question was asked as to how many class rooms and you

answered that it had fifty-five teaching units. Is there any distinction there?

A. The reason I made it fifty-five teaching units is that we have fifty-five classes going on at one time.

Q. How many class rooms are there?

A. Some people classify a laboratory not as a class room. The reason I used it as a teaching unit, I thought you might get very technical. Including everything, it is equal to fifty-five classes going on at one time at the Washington and Lee High School.

The Court: How many rooms are there?

Q. How many class rooms are there?

A. That is the thing I am answering. I will say fifty-five including laboratories and shop rooms.

page 173 } Q. How many laboratories and shop rooms are there?

A. Nine of those.

Q. Nine laboratories and shop rooms combined?

A. Yes, sir, but they are class rooms, too.

Q. Forty-six excluding laboratories and shop rooms?

A. Fifty-five class rooms.

Q. If you exclude from your classification nine laboratories, it leaves forty-six rooms?

A. Yes.

Q. You also said there were nine accessory rooms, what were they? You said fifty-five teaching units and nine accessory rooms, did you mean by those those laboratories and shop rooms?

A. No, I did not. We have club rooms, clinics, auditorium, cafeteria and so on. They are in addition to the class rooms.

Q. All told on that basis, you would have sixty-four rooms then?

A. Sixty-four rooms and if you include the toilet and boiler rooms and all those, it would run much more.

Q. Include them all. We don't want to exclude anything. We want to find out what it is.

A. The toilets and furnace rooms run about eight more.

Q. Seventeen accessory rooms, if you count them as accessory rooms?

page 174 } A. I would not speak of those as accessory rooms. We do use those for consultation with pupils and so on and we don't use the others in that respect.

Q. You say that your teachers' average salary is \$1,300.00 per annum. What do you include in that average?

A. Just the teachers in the high school and the principal.

Q. Teachers and principal and assistant principal?

A. Yes.

Q. Has there been any reduction in pay of your school teachers in the past several years?

A. There has not.

Q. Has there been any increase?

A. No, sir.

Q. Standing still in that?

A. Yes, sir.

Q. Has there been any reduction in pay of any of the staff of your school system?

A. We have not reduced any of the teachers' salaries.

Q. Have you reduced the salaries of any of the balance of your staff of your school system?

A. Except the Superintendent of Schools.

Q. Can you state what is the highest salary you pay and also the lowest?

A. The highest salary—the principal of the high school receives \$3,200.00.

page 175 } Q. The highest teacher's pay?

A. The highest teacher is paid \$2,000.00.

Q. The lowest?

A. The lowest teacher is—you mean in the high school?

Q. You were speaking of the average pay.

A. Average pay of the high school alone?

Q. Yes.

A. The average pay—

Q. The lowest pay of the high school teachers?

A. \$855.00.

Q. Can you give me that same information for your graded school?

A. Primary schools including colored schools?

Q. Exclude the colored schools.

A. The lowest pay, I think, is \$807.00.

Q. And the highest?

A. And the highest in the elementary schools, I am giving it approximately, is around \$1,400.00.

Q. Speaking of this Robert E. Lee graded school, which you state was the closest school to the corporate limits, and you stated that is a mile and a quarter?

A. Approximately that.

Q. A mile and a quarter from the corporate line. Do you know how far that is from the most extensive line of Arlington County that is within Falls Church?

page 176 } A. Mr. Barbour, I could not say. I am only estimating it. It may be more or less.

Q. You were taking from the Robert E. Lee School down to the corporate limits?

A. Down to the drug store.

Q. That is beyond the corporate limits, twelve hundred yards I should say. Can you give the size of the Robert E. Lee School building?

A. You mean by that the number of class rooms?

Q. The size of the building, outside dimensions. It is a rather small building, isn't it?

A. I should say it would run in length between seventy-five and eighty feet and about sixty feet in width.

Q. And has four class rooms in it?

A. Yes.

Q. Do you have the dimensions of those class rooms?

A. Those class rooms run about twenty-two or twenty-three by twenty-nine or thirty.

Q. One hundred and sixteen pupils there, I understood you to say?

A. Yes.

Q. You thought it had capacity for thirty-five more?

A. Yes.

Q. That would make one hundred and fifty in round numbers?

A. Yes.

page 177 } Q. That would be mighty near forty to a room?

A. Not necessarily, Mr. Barbour, because your first grade is one a half-day basis and the second grade is on a half-day basis. We have an extra room there. To keep a child six years of age in school over three hours is an imposition on the child unless you are going to run a day nursery. We let our first and second grades go for half a day. That statement can be borne out by the Educational Committee in Chicago which only allows their first grade to until eleven, the third to twelve.

Q. If this territory were taken over then, Professor, it would require the enlargement of your present class rooms and you could not take care with your present plant, you could not take care of the school population of East Falls Church for your graded school?

A. Mr. Barbour, you asked me to make a direct answer there. I believe you have around about seventy-five or one hundred elementary pupils that come out of that territory. If seventy-five or a hundred pupils were thrown on my hands to take care of, I would not bother very much about them. If I only had a group of that number, it would not bother me very much. I would handle them very quickly. There

are several methods could be used. Those pupils could be transferred without any difficulty.

Q. You could not accommodate them in the Robert E. Lee elementary school, could you?

A. The Robert E. Lee elementary school, no; page 178 } but we have ample space in other portions where they could be handled. If they were thrown over to me tomorrow morning, it would not take me but a few minutes to take care of them.

Q. Where would you take care of them?

A. Cherrydale or Clarendon. The Clarendon school has got plenty of room to take care of them without any trouble in the world. I could take care of them and we are going to build a school in that territory.

Q. The Robert E. Lee Elementary School—its capacity is based on using your class room for double classes, is it not?

A. No, I would not want you to say that because unless you are going to develop your school into a day nursery, some of the children—

Q. I understood you to say you base it on a three-hour attendance for the school?

A. We do that for the first and second grades. We have a spare room in the Robert E. Lee school not being used right now.

Q. That is the basis on which you are making your calculation, that is, a half day attendance for the several junior classes in your elementary schools, is that right?

A. First and second grade classes.

Q. Is this the book that you read from about the accredited high schools in Virginia?

A. Yes.

page 179 } Q. This book shows that Washington and Lee is an accredited high school?

A. Yes, sir.

Q. It reports the number of teachers as thirty-five instead of fifty-five?

A. Yes, sir.

Q. It reports your enrollment as a thousand and one instead of 1,800? Will you explain that?

A. Washington and Lee is a junior and senior high school and our report is based upon the six-three-three basis and thereby they take into consideration the senior high school department and not the junior high school department. I have given you the two departments together. Furthermore, I wish to advise that Washington and Lee is not only accredited as a senior high school but also as a junior high school.

Q. Doubly accredited?

A. Yes, sir, getting double honors.

Q. Your high school is a four-year high school? Four grades?

A. No, sir, our system here, Mr. Barbour, is what is known as the six-three-three system. Six for the elementary schools, three for the junior high school and three for the senior high schools. The other system, the Falls Church system, is seven-four.

Q. How many pupils are in each of those
page 180 } grades? Can you give me that?

A. At the Washington and Lee high school?

Q. Yes.

A. I can go up and give you the report of the number of pupils in each grade.

Mr. Barbour: Make a memorandum and hand it to counsel on the other side and it can be inserted in the record.

The Court: Your school system calls for one more year of actual attendance for completion of high school than Falls Church?

The Witness: Yes.

Q. That is the effect of your six-three-three?

A. Yes.

Q. There is one other thing. You said you had an English Club. What is that English Club?

A. The English Club are the pupils who are in the school who get together at different times, meet and discuss English and they have research committees, and it is a club that is there for the improvement of English, the same as in science.

Q. You have English classes in addition to these English clubs?

A. Yes, they become so interested that they want to go further than we offer in them school so we formed this club.

Q. I believe I asked you if you knew the distance from this
page 181 } Robert E. Lee primary school to the limits of the
most extensive limits of East Falls Church, that
is that portion of the town of Falls Church that
is in Arlington County, and you did not have that information, I believe.

A. I told you I thought it was approximately about a mile and a quarter.

Q. Your mile and a quarter estimate was down to the drug store?

A. Yes, sir.

Q. That is an entirely different proposition. I under-

stood you to say you had a fund of \$80,000.00 that might be used for the purpose of constructing schools. What are the obligations against that \$80,000.00? What is it built up for?

A. It was built up—I should say there are no obligations against it.

Q. No obligations against it? What is it?

A. Municipal bonds that the School Board bought.

Q. Where did they get the resources to buy them?

A. Came from the annexation territory.

Q. They were the funds paid for as a result of the Alexandria fund?

A. Yes, sir.

Q. What is your usual normal growth in your school population, Professor?

A. Usual? I am going to say this to you. One year we had nine hundred increase at the peak and the
page 182 } lowest year we had about, I should say, two hundred and seventy-five.

Mr. Barbour: That is all.

RE-DIRECT EXAMINATION.

By Mr. Phillips:

Q. When you offer those figures as to normal growth, do you mean by that, or can you divide that into high school and graded school?

A. Yes, it could be.

Q. What proportion of that figure would be the normal growth of your high school? Small or large? By growth, I mean additional pupils.

A. The past few years the growth has been in the high school.

Q. Professor Kemp, the figures you have given as to the attendance in your high school, do those include your night school pupils?

A. No, sir.

Q. They do not. Do you know how many night school pupils you have?

A. I should say around one hundred or one hundred and twenty-five. I have not those figures. I cannot carry them in my mind.

Q. The Washington and Lee high school is built upon a tract of land. Do you recall the dimensions of it?

A. About twelve and one-half acres.

page 183 } Q. In the original construction of that school, was any provision made for additions to it?

A. There was.

Q. The plans are so drawn?

A. Yes.

Mr. Phillips: That is all.

RE-CROSS EXAMINATION.

By Mr. Barbour:

Q. It has been added to already several times since it was first constructed?

A. Yes, sir; also bonds authorized but unsold to put on fourteen or eighteen more rooms if we need to.

Mr. Barbour: No further questions.

And further this deponent saith not.

Pursuant to agreement between counsel, the following statement by Professor Kemp is inserted in the record:

“The enrollment by grades in the Washington and Lee high school as of the present time is as follows:

Grade 7—	386
Grade 8—	399
Grade 9—	413
Grade 10—	282
Grade 11—	234
Grade 12—	170
Post-	
Graduate—	9 1,893”

Mr. Phillips: Before proceeding with the next witness, I would like to state into the record by agreement page 184 } between counsel that the area of Arlington County, exclusive of Government reservations, is 23.07 square miles and that the population as of the 1930 census is 26,615.

Mr. Barbour: That is satisfactory.

Thereupon,

ALLAN B. McDANIEL,
a witness of lawful age, being first duly sworn, deposes and
says as follows:

DIRECT EXAMINATION.

By Mr. Douglas:

Q. Will you state your name and address?

A. Allan B. McDaniel, address, 7 Grafton Street, Chevy Chase, Maryland.

Q. Your profession, Mr. McDaniel?

A. Civil engineer.

Q. How long have you been engaged in the practice of that profession?

A. In active practice since July, 1901; about thirty-three years, less than thirty-three years.

Q. Have you during that time been engaged in the construction of sewer projects?

A. Yes.

Q. Frequently or infrequently?

A. Occasionally over that period; quite extensive work in the Middle West; in South Dakota in 1907 to 1912; occasionally as a consultant; since that time during the World War and for two years thereafter, July, 1920, page 185 } principal engineer of the Construction Department of the Army; I was in charge of this branch and was in contact with the construction of various classes of army construction, including camps, cantonments, depots, munitions plants, et cetera, all over the country.

Q. Are you now employed in any official capacity by the County of Arlington?

A. Chief Engineer of the Sanitary Division of the County of Arlington.

Q. What is the primary purpose of your employment?

A. To have charge as chief engineer of the Sanitary Division engaged in making surveys of Arlington County, the necessary base maps and the designs to serve for the construction of a county-wide sewerage system.

Q. You are now engaged in that work?

A. Yes, I have been since the first of September, 1933.

Q. Have you prepared a map showing a comprehensive plan of a county-wide sewerage system in the County of Arlington?

A. Yes, preliminary design and plan has been prepared.

Q. Does this map I now show you, Mr. McDaniel, accu-

rately portray what is supposed to be done in the construction of this project within the County of Arlington including that portion of Falls Church lying in that county?

A. This map is a preliminary layout showing the trunk lines proposed to be constructed under this sewer project and the two treatment plants. It is a preliminary page 186 } map and is not up to date. It is not an accurate map. It is used as a progress chart to show the progress of the surveys and field work. We need it in the office in checking up the laterals and tying the various lines together.

Q. Does the legend on that map correctly show the nature and description of these various lines?

A. The lines are not fully described.

Q. Do they show substantially what they are?

A. They show substantially what they are but not finally nor accurately; just a preliminary layout.

Mr. Douglas: I ask that this map be identified as McDaniel Exhibit #13 and admitted in evidence in this cause.

(McDaniel Exhibit #13 offered in evidence.)

Q. In connection with your plan of a comprehensive sewer system for Arlington County, have you taken into consideration the drainage area as distinguished from the political lines of the town of Falls Church?

A. In our preliminary design we took account of the natural drainage area lying outside of the political boundaries of Arlington County to the north and west, lying in Fairfax County.

Q. Have you had one or more conferences with a representative of the Town of Falls Church with respect to this map?

A. Yes.

page 187 } Q. With whom were those conferences held, if you will please state?

A. Had a conference in the office of the Sanitary Division with Mr. J. C. Cook of the McCreary Company of Atlanta, Georgia, who is, as we understand it, the technical representative of the Town of Falls Church.

Q. Can you state briefly what the purpose of that conference was?

A. The purpose of that conference was to carry out the instructions as a result of a former meeting held the latter part of December of the County Board of Arlington County and the Town Council of Falls Church, in which certain rep-

representatives of both of those bodies were to get together informally and go over this whole situation, in especial relation to the sewerage system and the fact that the whole sewerage system of Arlington County would have possible benefits to the Town of Falls Church. As a result of that action Mr. Cook came to our office and we had a conference with him and went over our plans and our design data, which so far is entirely of a preliminary nature because it has been impossible to date to complete our surveys and our design.

Q. I believe that this map that has just been introduced in evidence shows all the principal trunk lines?

A. It does.

Q. Among those trunk lines is there one known page 188 } as the Four Mile Run trunk line?

A. Yes.

Q. Can you say where the head of the branch of Four Mile Run is?

A. In regards to Arlington County, that comes in the northwest part of the county.

Q. The plan, you have already stated, contemplates the disposal of sewage from all of Arlington County, including that portion of the Town of Falls Church lying in Arlington County, does it not?

A. It does.

Q. Please state, Mr. McDaniel, whether you have made a survey of that portion of Four Mile Run branch area lying in the Fairfax County portion of the Town of Falls Church?

A. We made a preliminary study of that section.

Q. Preliminary study as distinguished from an actual survey on the ground?

A. Yes.

Q. Have you made a similar preliminary study of the remaining area in Falls Church, that is, the area in Falls Church not in the Four Mile Run drainage area?

A. Yes, sir.

Q. Have you extended that survey to include the drainage area of which the remainder of the Town of Falls Church is a part?

page 189 } A. Yes, to the west.

Q. Known as Tripps Run drainage area?

A. Known as Tripps Run drainage area.

Q. Have you made a preliminary survey as to what might be done with the sewage from those two areas, that is, the Tripps Run area located in the part of Falls Church not in the Four Mile Run area and the Fairfax portion of the Four Mile Run area?

A. Yes, we have made a little preliminary study of that situation.

Q. Have you stated your conclusions based on that survey in writing to any person?

A. Yes, this was made in writing and submitted to the County Board at this preliminary meeting previously referred to by the witness between the County Board and the Town Council.

Mr. Barbour: Whom do you mean as the witness?

The Witness: Myself.

The Court: This Tripps Run area is the area where the colored settlement is and drains into Holmes Run?

Mr. Douglas: All the area west of Mr. Guy Church's home.

The Court: Drains down into Holmes Run, does it?

The Witness: Yes, and that is the source of water supply of the City of Alexandria to the south of the Town of Falls Church.

Mr. Douglas: Since this (indicating typewritten report) is merely a preliminary survey, instead of of-
page 190 } fering it for the record, I am going to ask the
witness what the substantial purpose of this survey was and what was to be accomplished by the survey made.

Mr. Barbour: If I understand correctly, this survey was made pursuant to probably a joint resolution or similar resolutions adopted by the Board of Arlington County and the Town Council of Falls Church.

Mr. Douglas: That is it exactly.

Mr. Barbour: I think those resolutions should go into the record.

Mr. Douglas: We agree there has been a united effort on the part of both corporate groups to save duplication of effort and inefficiency attendant on the construction of two systems by trying to have one system.

The Court: Do you want the resolutions in the record?

Mr. Barbour: We can put them in. I think that sufficiently explains it.

Q. Since this is merely a preliminary survey, I am going to ask you what the substantial purpose of this survey was and what was to be accomplished by this survey?

A. The purpose of this survey was to ascertain in a preliminary way to what extent the Four Mile Run trunk line sewer, which extends from the northwestern part to the corner of Arlington County to a treatment plant on the Four

Mile Run near the intersection of U. S. No. 1 and
page 191 } new State Highway No. 9, might be of service
not only to East Falls Church lying within the
political boundaries of Arlington County but also to the area
of the Town of Falls Church lying to the west of that section.

Q. In your opinion as a civil engineer, could this entire sewage including the disposal in the Tripps Run area be handled more efficiently and less expensively by a single disposal plant than by having two systems?

A. Our preliminary investigation would indicate that it would be a matter of efficiency for this trunk line sewer to carry the sewage or pump the waste through its trunk line pipes to one sewage disposal plant, thereby obviating the construction of a major portion of the trunk line system as proposed by the Town of Falls Church and the filtration and treatment plant that is proposed also to treat the sewage of the Falls Church area.

Q. In addition to the initial construction costs there are maintenance costs attached to each of these disposal plants, are there not?

A. Yes.

Q. They continue as long as the system endures?

A. They will carry constant expense.

Q. There is also a heavy volume of liquid discharged from any sewage disposal plant, is there not?

A. What we call affluent after the raw sewage has been treated, which is generally chlorinated and deposited into an open stream, there is no pollution due to the size
page 192 } of the stream to take care of this affluent so that
it will be harmless to the surrounding community through which it would pass.

Q. If there were a sewage plant constructed for the Falls Church area, in the Tripps Run Area, that affluent would have to be routed into Tripps Run?

A. It could be pumped over. It is the plan, I think, to pump through the natural drainage to the treatment plant and then to Madison Avenue and Fort Story.

Q. Go into the Four-Mile Run drainage area?

A. Yes.

Q. If it were allowed to be discharged into Tripps Run area, where would it go?

A. Into Tripps Run and Holmes Run, which is the water supply of Alexandria.

Q. Go into the Barcroft reservoir?

A. The reservoir, yes.

Q. That would be impractical, to say the least, would it not?

A. If the sewage was properly treated and properly chlorinated, it would be practical but would be undesirable especially in low water conditions.

Q. Directing your attention for the moment to the financial set-up, have you any knowledge as to how the Arlington County system is proposed to be financed?

A. It is my understanding that the Federal page 193 } Administrator of Public Works has very recently signed a contract with Arlington County, Virginia, for a grant of loan for the sum of \$2,500,000 to finance the cost of construction of the countywide sewerage system.

Q. I am going to ask you if this is an agreement between the County of Arlington and the United States of America relative to the financing of the project?

A. To my knowledge and belief, it is.

Q. Look at the last page and see whether that has been executed by the United States Government.

A. It has. It is signed by Harold Ickes, Emergency Administrator of Public Works.

Q. In your study of the situation in Arlington County, do you think that secures the adequate financing of the construction of the sewer system such as you describe?

A. I believe it does.

Q. I want to direct your attention, Mr. McDaniel, to Exhibits 9-A and 9-B, which have been introduced in evidence, and ask you if those topographic maps display with accuracy the topography of the ground in the Falls Church area?

A. I believe they do. These are evidently taken from the District of Columbia, United States Geological Survey topographic maps.

Q. The divide on there is substantially accurate? Shown by a broad flat line?

page 194 } The Court: Put on by his office?

Mr. Douglas: No, the town put that on.

A. That seems to be substantially accurate.

Q. Is there any problem shown on that map that has not been contemplated by your survey?

A. Just from a superficial study, I would say not. It shows the divide and also shows the Falls Church limits.

Mr. Douglas: You may take the witness, Mr. Barbour.

CROSS EXAMINATION.

By Mr. Barbour:

Q. Coming back to this map, I wish to allocate myself with respect to these outside lines. Is this the Arlington County line?

A. This is the Arlington County line, the line between Arlington County and Fairfax County.

Q. On the south?

A. This is west; this is north running this way. Yes, this is the northern boundary. This is the river over here; this is Pimmet Run. (Witness indicating on the map, Exhibit #13.)

Q. Can you indicate on that map where the Lee Highway is? Is this the Lee Highway here?

A. No, sir, this is Lee Highway here.

Q. That long blue line marked "60,000"?

A. No, that is a co-ordinate line. Those are the co-ordinates we used in our survey. The Lee Highway page 195 } winds down around in here and down into Rosslyn.

Q. The Lee Highway is shown on this map, starts here, and is marked "Hwy"?

A. Yes.

Q. Can you indicate on here where the corporate line is?

A. Yes, it comes aound in there. We just roughly show here. You see, of course, this is a different scale, a much smaller scale. It comes down in through here and it intersects here just above Wilson Boulevard. This is Wilson Boulevard and it goes across here on up in here.

Thereupon, the witness located the corporate limits of Falls Church on Exhibit #13 and drew lines to indicate said limits.

Q. The area in the lower left-hand corner of the map marked Exhibit #13, indicated by lead pencil lines, shows that portion of the Town of East Falls Church within Arlington County, is that right?

A. Yes, sir.

Q. How much of this map is in reference to the drainage involved in the Falls Church area or basin?

A. This western section here, that shows the trunk line of Four Mile Run?

Q. Does this black line running in a general way parallel with the western line of Arlington County, does that represent flow of Four Mile Run?

A. Yes, sir.
page 196 } Q. Of the Four Mile Run Valley?
A. Yes.

Q. I understood you to say it was impractical in your judgment, while possible, for the sewage from the Town of Falls Church, from any portion of the town, to be carried over to the other side of the divide?

A. No, sir.

The Court: He didn't say it was impractical; he said it was undesirable.

The Witness: I think I said that in answer to a question by Mr. Douglas in regard to the Alexandria reservoir.

Q. That would contaminate the head waters of the Alexandria water supply, would it not?

A. Yes.

Q. Now, to bring the sewage from both sections of Falls Church into the Four Mile Run shed, it would require the pumping of the sewage across that divide?

A. Either pumping or tunneling it through.

Q. Then the practical way, I suppose it would be possible for the Town of Falls Church to pump it into the Tripps Run drainage system?

A. Yes, and Four-Mile Run.

Q. Isn't it essential in that aspect to the proper drainage of Falls Church that it shall have control of this Four Mile Run basin?

page 197 } A. Falls Church could handle all of its raw sewage outside of the County by establishing its own trunk line sewers and treatment plant, but it would be preferable to handle it in the northeastern portion of Arlington County and along the Four Mile Run.

Q. That is the logical drainage area for this entire population?

A. Yes, sir.

Q. And if this area is cut off from—this area in dispute or that area of Falls Church which is in Arlington County—is cut off from the town, it would deprive the town of access to that drainage valley, would it not?

A. You have got a certain natural drainage or running out here, which these exhibits show, and the natural drainage which we are designing for in connection with our Four Mile Run trunk sewer, it is contemplated will take care of that, yes, sir.

What I was trying to bring out, Your Honor, you have a certain drainage area here in Fairfax County that as far as

filtration, surface flow and sub-surface flow, we are going to have to take care of anyhow.

The Court: If that portion of the Town of Falls Church which is sought to be taken out of the limits and put in Arlington County, is taken, how then will the Four Mile Run basin at any point encroach upon what is left in Falls Church?

I mean would the town of Falls Church then have page 198 } access to the basin?

The Witness: They would. They could put their plant in the Fairfax County portion in the town limits and discharge their affluent into the head of Four Mile Run in a natural stream.

The Court: Natural stream runs through Fairfax County?

The Witness: Yes, sir.

Q. The only portion of the Four Mile Run area that would then be in Falls Church?

A. That is the main line and tributaries to the north.

Q. If they undertook to empty the sewage in the open stream, it would pollute the entire stream?

A. If not properly treated. That is the reason. Falls Church would have its treatment plant here and the affluent would be discharged here.

Q. That would be a very small proportion of the area of the Town of Falls Church that would come into that as the curve of the stream is the opposite direction, is it not?

A. Drainage is all to the south.

Mr. Barbour: Drain it up hill. That is all.

RE-DIRECT EXAMINATION.

By Mr. Douglas:

Q. The sewerage system you have discussed here has nothing to do with the surface drainage?

A. No, that would be a storm water system.

Q. The construction of this trunk line down Four Mile Run will not interfere with the natural running page 199 } of the stream?

A. Not at all.

Q. That portion of the stream that naturally runs in the Fairfax County area will continue to run down to the river unobstructed by any sewer put there?

A. Yes.

Mr. Douglas: That is all.

RE-CROSS EXAMINATION.

By Mr. Barbour:

Q. These negotiations or conferences you have spoken of having with Mr. Cook have not come to any confirmation?

A. No, sir.

Mr. Barbour: That is all.

And further this deponent saith not.

Mr. Phillips: It is agreed between counsel that Exhibits #4-D and #4-E will be supplemented by a statement of the outstanding unpaid water bills as of the periods they purport to cover.

Court recessed for lunch from 12 Noon to 1:00 P. M.

Mr. Phillips: If Your Honor please, Mr. Braden, a witness we have tried to get every day, has been sick all week. He is the last witness we intended to put on. We are unable to agree to go ahead and put him on later. Under the circumstances, we are placed in the position of having to ask for a continuance.

Mr. Douglas: I feel constrained to object to any continuance of this cause from this day, the cause having page 200 } started here, I think we ought to continue with the matter. Under the circumstances, I don't think we have yet formally agreed to have a continuance in the future. It ought to be continued with until it is completed subject to the limitation of the Court's time and not subject to the limitation of counsels' time.

The Court: I have had the opinion for some time that there was a good deal of testimony. It seems to me the most of the facts are in black and white. What can Mr. Braden add that is not already in your assessment records?

Mr. Phillips: He has information concerning the structure of County government.

The Court: Information concerning the structure of County government is all in the books.

Mr. Douglas: Not entirely. The facilities which it offers the people, yes, but the application of those facilities to the practical government is not here.

Mr. Phillips: Under the statute, the County form of Government, it might be permissible to do certain things; it would not necessarily show from the books they are done.

Mr. Douglas: Do I understand Your Honor has made a ruling on the informal request for a continuance?

The Court: No, I had not made a ruling.

Mr. Barbour: It was my understanding it was assented to. No objection was made. This is the first objection I have heard in regard to it.

page 201 } Mr. Phillips: It is true you mentioned that to us and we have endeavored to be as agreeable as possible any way we can accommodate you. Under these circumstances I think I am jeopardizing my clients' interests to agree to a continuance. We have asked nothing difficult nor nothing out of the ordinary, nor that will do them any harm. We feel we should receive some reciprocation from you. If we are obliged to go along without using this witness, then I will join Mr. Douglas in an objection to a continuance of this case from tonight.

Mr. Douglas: We had not assented to the continuance. It was assumed it would be on the basis we would continue the relation of reciprocity. We had depended primarily on Mr. Braden and continued to the trial of this matter in his absence because we were anxious to get along on matters which had been set for some time. He was definitely a material witness and we have been handicapped to some extent and had to patch up our testimony by others where he would have had it immediately available.

Mr. Barbour: I am unable to appreciate the position of counsel on the other side that I have not been accommodating and willing to accommodate in every way. I stipulated we might be able to get through. If we do not get through, I do not want to open my case until they have completed theirs. I say we might as well adjourn now and then we can put on our case. I just want you to say whether you are through or not.

Mr. Phillips: We will waive the witness as
page 202 } far as the petitioners are concerned and as far as we are concerned, consider our case in.

Mr. Douglas: The County Board concurs in that. We are definitely going to oppose a continuance from this evening.

Mr. Barbour: We will do our very best.

The Court: We will worry about that when we come to it.

Mr. Barbour: Mrs. Edwards, will you take the stand, please?

Thereupon,

MRS. M. GREGORY EDWARDS,
a witness of lawful age, being first duly sworn, deposes and
says as follows:

DIRECT EXAMINATION.

By Mr. Barbour:

Q. Mrs. Edwards, will you state your full name?

A. Mrs. M. Gregory Edwards.

Q. Where do you live?

A. Falls Church, during the school term.

Q. How long have you lived there, Mrs. Edwards?

A. This is the fifth year.

Q. What is your connection, if any, with the school system
of Falls Church?

A. I am principal of the schools.

Q. Is that the principal of the Jefferson High School?

A. Principal of both schools, Jefferson and Madison
Schools.

Q. Please state whether or not the Jefferson School is an
accredited high school.

page 203 } A. Jefferson is accredited by the State Board
of Education of Virginia.

Q. Have you the certificate?

A. The certificate is there. I left it on the table.

The Court: Do you wish to introduce that?

Mr. Barbour: I will just let the certificate contravert it,
I believe.

Q. Is the school accredited by the Southern Association of
College and Secondary Schools?

A. The school is not accredited by the Southern Association
of Colleges and Secondary Schools because it fails to meet
certain requirements.

Q. What are the requirements?

A. There are a number of requirements we fail to meet
because of limited finances. The first requirement, I think,
is the teacher load, meaning that each teacher should have
a minimum of thirty pupils. They vary that and in foreign
languages it is only twenty-five.

Another requirement is a \$2,500.00 library with an annual
appropriation of \$500.00 as a minimum, an annual appro-

priation of \$500.00 for a library. Another is the laboratory requirement, laboratory equipment. One requirement is this: every pupil in the laboratory should have a laboratory desk and a certain amount of space and such other requirements made by the Association of Southern Colleges page 204 } and Secondary Schools. There are numbers of others. Would you like me to name the others?

Q. I think that is enough. You say you have been the principal of this school for five years?

A. Yes, this is the fifth year.

Q. It has been testified here that there are enrolled in the schools from Arlington County twenty-four in your high school and seventy-five in your primary school. Will you state to the Court what would be the effect on your school of the withdrawal of that many pupils from it?

A. I think the withdrawal of those pupils would cripple the schools noticeably because of the contacts that these pupils make, the larger the school, the wider contact and greater incentive to work. Simply on that account. I don't think it would cripple it in scholarship.

Q. That is aside from the financial crippling?

A. There would be a financial crippling, undoubtedly.

Q. Have you any pupils in your school that come from Arlington County outside of Falls Church?

A. There are thirteen outside the corporation of Falls Church, yes, sir.

Q. Are they in your high school or in the primary school?

A. I think those pupils are in the primary, perhaps one in the high school.

Q. Do you know whether any compensation is paid by Arlington County for the tuition of those pupils? page 205 }

A. I think not; so far as I know, there is not.

Q. Do you know why they come to your school instead of going to the Arlington County schools?

A. Perhaps because—

Mr. Phillips: I object to any statement based on perhaps unless the witness knows or unless the pupils are here to testify.

A. (Continued.) I cannot say.

Q. You do not know?

A. I do not know.

Mr. Barbour: You may take the witness.

CROSS EXAMINATION.

By Mr. Phillips:

Q. Do you know whether any arrangements are made between the authorities of the Town of Falls Church and the authorities of Arlington County whereby these thirteen children are sent to your schools from outside the county?

A. I do not, no.

Q. Do you have anything to do with the financial administration of the schools?

A. Not anything.

Q. Would you explain for my information, I didn't quite get the "teacher load" although you did explain it?

A. Each teacher is required, if the school is admitted to the Southern Association of Colleges and Secondary Schools to carry a certain load, a minimum number of pupils. Thirty pupils is the minimum. I think they waive that in a great many cases.

Mr. Barbour: You stated the minimum. Did you mean maximum?

The Witness: Maximum, pardon me.

Q. You meant maximum?

A. Yes.

Q. Do I understand that the teacher load being heavy, that the teachers have more pupils than the maximum set by the Association?

A. Yes, that is not always true. One of my last year teachers had a load of forty-five pupils in the one class.

Q. With respect to your high school, is this teacher load heavy there?

A. I am referring to the high school.

Mr. Phillips: That is all.

And further this deponent saith not.

Thereupon,

SAMUEL STILES,

a witness of lawful age, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Barbour:

Q. State your name for the record.

A. Samuel Stiles.

Q. Mr. Stiles, you have already made a statement under

stipulation so it will be unnecessary to go into page 207 } the detail of that?

A. Yes.

Q. In that stipulation, however, you did make the statement that the Falls Church high school was accredited in the Southern Association of Colleges and Secondary Schools. Please state whether or not that is a correct statement.

A. I am very glad you asked that question, Mr. Barbour, because I was unfortunately misinformed in regard to that general question. We are not accredited in that association about which you asked.

Q. Have you made any statement as to the cost per pupil for education furnished by the Falls Church School Board?

A. Yes, sir.

Q. Will you state that?

A. The cost of the pupil for the high school is \$48.25 a session; the cost for the Madison School or elementary school is \$34.40 per pupil per session.

Q. Is that independent of cost of buildings or interest on investment, etc.?

A. That does not take into—

Q. State what elements are considered in that figure.

A. That does not take into account the capital outlay or debt service of the school.

Q. That is taken care of independently of that?

A. That is taken care of independently of that.
page 208 } That does not enter the cost of the pupil at all.

Q. Assuming that the town is contracted as prayed for, what effect will that have on your revenues and on your schools? In the first place, would it reduce the cost of operating your schools?

A. No, it would not. The maintenance and operation of the school would be exactly the same, and we would have to employ the same number of teachers. The only cost would be supplies, etc., for indigent pupils. I do not think Arlington County has any indigent pupils that we have to buy textbooks for. That is the only thing that I can think would increase the cost and that would be comparatively nothing.

Q. What additional revenue would have to be raised for that portion of the town remaining in Falls Church?

A. Well, the taxpayers of Falls Church proper in the case of a separation would be called upon to pay from \$3,500 to \$4,000 a year. The County of Fairfax could not increase their school tax unless the supervisor so devised for the whole county as they have a unit tax for the whole county. The only redress the Board would have would be to ask the town

to increase its appropriation from \$3,500.00 to \$4,000.00, which would naturally fall on the entire town.

Q. If this secession is permitted or approved by the Court and the pupils now attending your schools from the Arlington County portion of the town should be per-
page 209 } mitted to attend, what would be necessary in the way of charging for such attendance?

A. We would be obliged to charge for the high school pupils \$50.00 a session per pupil; for the Madison School or elementary grades, it would be \$35.00 a session for pupils.

Q. That is, assuming they all came?

A. Assuming they attended one hundred per cent. Of course, that does not take into account those thirteen pupils from Arlington County that we educate for nothing.

The Court: What period of time does a session cover?

The Witness: One hundred and eighty teaching days exclusive of holidays, actual teaching days.

Q. Do you know why it is that children who are eligible for attendance on the County of Arlington schools, and not resident of Falls Church, elected to attend the Falls Church schools?

A. I can give you a specific reason for one family. He came to my house in May and he asked permission to send his child to Madison School. He lives within a stone's throw of the Robert E. Lee School. His child is six years old and I told him that he was out of the town, that he was in the county, and he put up a pitiful plea. He said that the conditions at the Robert E. Lee School were such that he did not want his child to go there. They were over-crowded and he had some particular reasons, acquaintance with the East Falls Church children, and he—

page 210 } Mr. Phillips: I had hoped it would not be necessary to interrupt. Any further statement based on what this person told you, we will have to object to.

The Witness: I am giving his entire conversation at the time he called at my house.

Mr. Barbour: If Your Honor please, this is an official statement received by a member of the Board of Trustees in making application for this very thing. I think it is proper evidence.

The Court: I think that would be material and relevant if any one were questioning Mr. Stiles' right to receive the child into the school. The purpose of this is to reflect on the Arlington County schools and I don't think that is quite right.

Mr. Barbour: We are not reflecting on the Arlington County schools.

The Court: By comparison you are.

Mr. Barbour: I am trying to show we have a system in the town preferred by the residents in the town.

The Court: I think the objection ought to be sustained.

Mr. Barbour: All right, sir. That is all.

CROSS EXAMINATION.

By Mr. Douglas:

Q. Mr. Stiles, you told us, I believe, that you took into your schools and are now educating thirteen children from Arlington County?

A. Yes, sir.

page 211 } Q. From whom you receive no tuition?

A. That is right.

Q. The facilities of your school are not taxed by doing that?

A. No, sir.

Q. You are not embarrassed by doing that?

A. Not embarrassed at all, sir.

Q. You have been connected with the schools for many years, have you not?

A. I have been a member of the School Board six years.

Q. It is a labor of love with you, isn't it?

A. No, it is a labor of \$10.00 a year, I think. I am under that impression. Then I get \$55.00 additional for being clerk of the Board, \$65.00 all told, being clerk, secretary and everything else.

Q. You know then as a matter of fact that there are occasionally disgruntled families?

The Court: You are going to cross examine him about the very thing Mr. Phillips objected to.

Q. Isn't it a fact that a number of families in Falls Church send their children to Arlington County schools and pay tuition to those schools?

A. Mr. Kemp so testified that there were ten and what the tuition was. I didn't think we had ten that went to Washington and Lee. Some we knew about and the others we were uncertain about.

page 212 } Mr. Douglas: I think that is all.

And further this deponent saith not.

Thereupon,

JOHN H. O'NEILL,

a witness of lawful age, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Barbour:

Q. What is your full name?

A. John H. O'Neill.

Q. Where do you reside?

A. In East Falls Church.

Q. In East Falls Church. Is that in the corporate limits of Falls Church?

A. Yes.

Q. And in that portion of it lying in Arlington County?

A. Yes, sir.

Q. Are you in favor of or opposed to the granting of the petition in this case, Mr. O'Neill?

A. I have not heard what I might call a complete presentation of either side. My first impression is we are living in good neighborhood there, it is a very pleasant community and my one child that attends the school is satisfied, the associations and so on are pleasant, and it seems to me that if the community was all in one bunch, located together geographically, it would be a sensible civic arrangement to have it all one unit.

page 213 } Q. As a patron of the Falls Church school, do you prefer your child to go to the school where it now goes?

A. It is more convenient as well as pleasant.

Q. Just where is your residence, Mr. O'Neill?

A. The house number is 601 Monroe Street.

Q. Is the location of the school buildings in Falls Church more convenient to you than having to go to the Robert E. Lee School?

A. Yes; it is perhaps half the distance.

Mr. Barbour: That is all.

CROSS EXAMINATION.

By Mr. Phillips:

Q. How many children of school age, do you have?

A. One.

Q. You have lived in the Town of Falls Church how long?

A. It will be two years the first of May.

Q. Are you a freeholder there?

A. No, sir.

Q. Were you a qualified voter as of November, 1931?

A. No, sir.

Mr. Phillips: That is all.

And further this deponent saith not.

Thereupon,

MRS. MARY B. CLINE,
a witness of lawful age, being first duly sworn,
page 214 } deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Barbour:

Q. State your full name.

A. Mrs. Mary B. Cline.

Q. You reside in Falls Church?

A. Falls Church.

Q. In the Fairfax portion of the town?

A. Yes.

Q. Will you state the exact location of your home?

A. 307 Washington Street.

Q. Have you any children of school age who attend the schools?

A. I have one child in the high school now, and I have six other children who have attended school at Falls Church.

Q. Can you state for the benefit of the Court any other advantages or disadvantages which will accrue as the result of splitting the town into two portions as prayed in this petition we are examining here?

A. I think it would be a great disadvantage to both sections of the town to separate it. We have worked together in practically all of our civic matters and accomplished very good work. I think it would cripple our town a great deal to take half of our citizens and the proportionate number of pupils from the schools.

Q. You have spoken of your civic activities, page 215 } will you state what they consist of?

A. Well I have been more particularly connected with the—perhaps you would call it—social work, Red Cross, helping to administer such charity funds as we have, and in former years working with the Women's Club,

which has been very much interested in our school and the library of the town.

Q. Where is that library located?

A. Located in the Town Building on Washington Street where the Council rooms are located.

Q. Is that supported and contributed to and participated in by the residents from all portions of the town?

A. Yes, I believe it is.

Q. Is anything contributed to it by the Town Council?

A. Yes, there has been. I am not able to say just what sum has been paid but they have contributed each year.

Q. How about the church facilities in the Town and the congregations. How are they composed?

A. The majority of the churches are in the Fairfax section of the Town; all, I believe, except one.

Q. Which one is that?

A. That would be the Christian Science Church. I am not sure; I think that is in Arlington County.

Q. How are the congregations of those churches made up?

A. A great many members living in the East Falls Church section. It would, I imagine, disrupt a good many
page 216 } of those groups also.

Q. Have you had any children to graduate from the Falls Church schools?

A. Yes, sir, I have three daughters who graduated from the high school there.

Q. Have the results been satisfactory in that respect?

A. Very satisfactory. I am very proud of the work they have done. Two of them were awarded scholarships, one at Strayers' and one at Temple; the other daughter was able to pay her own way through the school by the work she was able to do in the office after my husband's death.

Mr. Barbour: Take the witness.

CROSS EXAMINATION.

By Mr. Phillips:

Q. I understood you to say you had six children?

A. I have eight children, to be exact. One of them is not in school now; only one in the high school now.

Q. You stated that three of them either were now or had been to the high school?

A. Graduated from the high school at Falls Church.

Q. In what schools are the others?

A. I have one other child who is of school age, a young boy, who attended the Falls Church high school but due to

an automobile accident he has been out of school a year and a half. In starting him again, we have entered him at Western High School.

page 217 } Q. Washington, D. C.

A. Washington, D. C.

Q. In your opinion if this portion of the town were stricken off, it would disrupt the churches and the congregations?

A. I think so.

Q. Would that in any way prevent the same people from attending the same churches.

A. I think quite naturally if they were not citizens of Falls Church, they would not take any interest.

Q. May I ask if you have any persons going to those churches that are not living in the town proper?

A. Yes, we do have. I am speaking of my own church. I know we do have them.

Q. Some residents outside of the town take an active interest in the churches in the town?

A. Yes, there are certain ones, yes.

Mr. Phillips: That is all.

And further this deponent saith not.

Thereupon,

HENRY RADFORD THOMPSON,

a witness of lawful age, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Barbour:

Q. State your full name.

A. Henry Radford Thompson.

Q. Where do you reside?

page 218 } A. East Falls Church.

Q. Within the corporate limits of Falls Church and in Arlington County?

A. That is right.

Q. How long have you resided there, Mr. Thompson?

A. I have been in the Arlington County portion of Falls Church thirty-six years.

Q. I believe you are one of the signers of the petition asking to be admitted as an intervenor in this case that the prayer of the petition be not granted?

A. I signed a petition not to grant it.

Q. Will you please state to the Court any advantages or disadvantages either, which will accrue, in your judgment, by reason of the disruption of the town?

A. On the school question—I have three children going to grade school. They would have to go to the Robert E. Lee School. I would not let them go there. I wouldn't let them walk up the road without a sidewalk. I would take them to the city first. That is one reason I have lived there all my life. I have been there sixty years.

Q. How many children in the grade school?

A. Three in the grade school.

Q. Have you any more?

A. No.

Q. What are the relations so far as you have
page 219 } been able to observe them, existing between the
different sections of the town?

A. So far as I know, all right. First class so far as I know. I have not seen any bad feeling anywhere.

Q. They are a homogeneous people?

A. Yes.

Q. Get along together?

A. Fine.

Q. What about transportation facilities from a public standpoint; I am not speaking now of private vehicles.

A. You mean to the city?

Q. Yes.

A. Car line and bus line both; transportation all right; sidewalks are good.

Q. Served by the same railroad lines and same bus lines?

A. Two bus lines out there now since the Arlington and Fairfax bus line comes to the corporation line.

Q. Citizens from both sections of the town use the same station, do they not?

A. Yes, sir.

Q. Patronize the same stores largely?

A. Yes.

Mr. Barbour: That is all.

Mr. Phillips: No questions.

page 220 } And further this deponent saith not.

Thereupon,

FRANK H. EASTMAN,
a witness of lawful age, being first duly sworn, deposes and
says as follows:

DIRECT EXAMINATION.

By Mr. Barbour:

Q. Please state your full name.

A. Frank H. Eastman.

Q. Where do you live?

A. I live on Lee Highway, corner of Brown Avenue.

Q. In the Arlington portion of Falls Church?

A. Yes.

Q. You have also signed a petition asking that the town
be not disrupted, I believe?

A. Yes, sir.

Q. How long have you resided in Falls Church?

A. Well, about fifty years more or less.

Q. Where is your business?

A. In Washington.

Q. What is your business?

A. National Electric Supply Company.

Q. Are you an engineer?

A. Yes.

Q. Will you please state to the Court what advantages or
disadvantages will accrue to this community, in your judg-
ment, as a result of disrupting the town, splitting it into
two parts?

A. It seems to me that disrupting the town
page 221 } would cripple that part of it as would be Falls
Church, the corporation, if this part of it was
taken away, and also the school situation. I would think they
would be—rather, the children outside the corporation would
be—at a disadvantage, not having the school facilities of the
town.

Q. You have spoken of or made reference to the school
facilities. Have you been at any time in the past, and if so,
how long ago, connected with the school system of the town?

A. Yes, I was on the School Board at one time.

Q. Have you ever been on the Town Council?

A. No.

Q. How long ago were you on the School Board?

A. I don't remember exactly. I should say it must have
been around 1915, or something like that.

Q. How long did you serve on that?

A. It seems to me I was on the School Board for eight years.

Q. Ending in 1915 or beginning then?

A. No, I think it began prior to that time; I don't remember. I don't remember the dates. I think it ended along in 1919 or 1920.

Mr. Barbour: That is all.

CROSS EXAMINATION.

By Mr. Douglas:

Q. The school system of Falls Church is rather page 222 } an efficient one, I believe, from the testimony. Do you consider it an efficient system?

A. As far as I know. I have not had any close contact with it recently.

Q. Your last close contact with it was when you served on the School Board?

A. Yes.

Q. You have two children of your own past high school age?

A. Yes.

Q. Where did they attend school?

A. They went to the Falls Church schools in the grades.

Q. Where did they continue their studies?

A. In the Western High School, Washington.

Q. Would you care to state why you did not send them to the high school in Falls Church?

A. We thought probably the Western High School was better than Falls Church. As I remember it, at that time there were only two years of high school in that school, and of course, in Western they had the four years. Of course, the school is very small and I think there were only twenty or twenty-five pupils in the entire high school.

Q. Do you attend church in Falls Church?

A. Yes.

page 223 } Q. Do you mind stating which?

A. Presbyterian.

Q. Assuming the prayer of the petition in this cause was granted, would you consider you were prohibited from attending church in Falls Church?

A. No, I would not be prohibited.

Q. If you wanted to go up to Mr. Brown's hardware store to get some hardware, don't you think he would still sell it to you?

A. I imagine so.

Q. Likewise if you wanted to put a little money in the Fairfax portion, they would let you do it?

A. Yes.

Q. Do you feel the comity in this area would be such that Dr. Ware would be willing to sell drugs to people in the Fairfax County area?

A. I think so if they could pay for them.

Mr. Douglas: That is all.

RE-DIRECT EXAMINATION.

By Mr. Barbour:

Q. You think, Mr. Eastman, the people of Falls Church ought to have some little interest about the policing of these different facilities which are afforded them and which they are compelled to patronize? Don't you think the people of a community should have some say so in the administration and policing of the various facilities which they are compelled to patronize?

page 224 } A. I should think so. I didn't think of that, particularly.

RE-CROSS EXAMINATION.

By Mr. Douglas:

Q. Concerning this police situation, you know, of course, there is a police department in the County of Arlington?

A. Yes.

Q. I assume that you also—

The Court: You will get a chance to argue on both sides when you get the facts in.

Q. You were not under the impression you would not have police protection if the petition were granted, were you?

A. No.

Q. As efficient as what you are now getting?

A. So far as I know.

Q. As a business man, don't you think if your territory was solely under one jurisdiction, it might be a little more efficiently protected than if it were in two jurisdictions as it is now?

A. I don't know whether it is in two jurisdictions.

Mr. Douglas: I will withdraw the question.

Q. There is quite a well defined strip of land along the Four Mile Run, lying approximately along the line between the Arlington and Fairfax Counties, a portion of this town is not very thickly built up as the rest of the town?
page 225 } A. Yes.

Q. There has always been a distinct difference between the East End and the Village and they have been regarded more in the nature of separate communities more than as integral parts of the same community, isn't that true?

A. I hardly think so. We have two post offices; there used to be three post offices. The reason for that division is the low land which is not suitable for building purposes.

Q. Sort of forms a natural boundary between the two?

A. Yes.

Mr. Douglas: I think that is all.

And further this deponent saith not.

Thereupon,

L. P. DANIEL,
a witness of lawful age, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Barbour:

Q. Will you please state your full name?

A. L. P. Daniel.

Q. Where do you live?

A. I live in Falls Church, in that part of the town located in Fairfax County.

Q. How long have you resided there?

A. More or less for thirty years.

Q. What is your business, Mr. Daniel?

A. I am in the Interior Department.

page 226 } Q. In Washington?

A. In Washington.

Q. What division or what section?

A. Geological Survey, Interior Department.

Q. What is your official relation, if any, to the Town of Falls Church?

A. I am mayor.

Q. How long have you been mayor?

A. Three years and a half, practically.

Q. Are you in a position to state to the Court the effect

on the Town of Falls Church and on the community as a result of the granting of the prayer in this case to disrupt the town as it now exists?

A. I am.

Q. State to the Court, as briefly as you may, just what those effects will be, either beneficial or non-beneficial.

A. I think they will be non-beneficial in a general way. The separation of the town would have a bad effect on both sections of the town, particularly on the Arlington section of the town, because it would strike off from administration, local social conditions, school conditions, conditions affecting water, sewerage and other matters.

Particularly, it would separate that portion of the town of Falls Church which lies in the County of Arlington, which is a fairly densely settled community, about half page 227 } a square mile. It would set it apart from the community with which it has been connected, and set it apart from the closer and more settled communities of Arlington County, because after you leave a settlement that has been wholly developed within itself and go out into Arlington County in the same direction, you enter into rural sections that are quite extensive. From Brown Avenue you travel quite a long distance before you get to a built-up section out in the northwestern section. It is country with farms and woods. Along the Lee Highway there are relatively few houses until you get down to Ballston and Cherrydale so that that particular section, so far as its physical condition is concerned, would be a small section of Arlington County, pretty densely settled, cut off from the balance of Arlington County.

The other conditions affecting the Fairfax part of the town—separate it from its natural communications, which are the railroads for freight and merchandise, coal and lumber and all that sort of thing, you would naturally expect to find around the freight centers wherever they are located, it would separate that section from the section that has contributed so much to its up-building in effort, sympathy and money.

Mr. Barbour: Your Honor understands that a great deal of this is filled in by stipulation, with respect to facilities, etc.
The Court: Yes.

Q. To what extent are you familiar with the conditions affecting the sewerage of the town, both past and page 228 } prospective, Mr. Daniel?

A. Do you wish me to make a statement?

Q. Yes.

A. The Town of Falls Church in certain sections is in dire need of sewers. Some of those sections are located in the Fairfax County portion of the town; some of them are located in the Arlington County portion of the town. There has been a great deal of discussion of the sewage disposal in the town. It has gone to the point where the town has committed itself to having a survey made, plans and specifications provided, and has made application to the Public Works Administrator for a loan of \$225,000, with which to install a sewer system. That application is now pending before the Public Works Administrator, either in Richmond or in Washington.

There have been difficulties, particularly to the Town of Falls Church, in getting this through because we had met with the requirement of the Public Works Administrator to bring into harmony and cooperation with the remaining portion of Arlington County outside of the town, a system that would not duplicate facilities.

Continuing along that line we have had conferences with the Board of Arlington County, who have cooperated in a friendly spirit and have offered perhaps what they think is the best they can offer to the town in a cooperative way, and the matter so far as it has been referred to, stands page 229 } in that position where the Town has had a meeting *the* the Arlington Board and adopted a resolution whereby the town's engineers and the engineers of the county would meet and make such distributions and provisions as would avoid this duplication, either in the installation of a common sewer system or two sewer systems.

Following that plan, if there were any legal questions, the attorneys for the town and the Commonwealth's Attorney would meet and adjust that to the end that it might attempt to secure from the Legislature the necessary legislation that would enable the town and county to cooperate.

The town's plans are complete, necessarily, within themselves and provide for complete sewerage system throughout practically all the town, certainly so far as is justified, a system of laterals and trunks connecting the sewer in the two main basins of the town and provide for one disposal along the Four Mile Run outfall, because the other out-fall empties into the water supply of Alexandria City, and I take it that would be an unfriendly thing and would be contrary to the wishes of the people of our community. Even if they could empty that sewage within a mile and a half of that reservoir, they could not wish to do it.

That would leave one other out-fall. Along that out-fall Arlington County has provided an out-fall sewer which runs

to the disposal plant which they are contemplating installing at Four Mile Run. We got to the point where page 230 } we had received this report that Mr. McDaniel, the engineer, submitted and he stipulated in that report certain charges which the Town of Falls Church would be required to meet in order to install the enlarged sewer mains for carrying additional sewage, certain enlargement of the plant and the treatment of the sewage, if and when an agreement is reached whereby they will take care of the sewage that will be added by the Town of Falls Church.

The figures set out in there are an estimated amount of \$60,000 for the enlarged sewers and \$9,000 for additional disposal facilities, and a charge of twenty dollars a million gallons for the treatment of the sewage. That situation presents a financial question as to the ability of the town to meet that charge. That, of course, will have to be decided by the Town Council.

As against that charge, there was a counter-cost—I am speaking from recollection—of approximately \$45,000 for the installation of the independent sewage plant for the Town of Falls Church, located at about Hyson, which is about at the corporate limits.

Now that brings us to the question of the participation of the town with Arlington County in its installation of sewers and cooperation in the disposition of the matter of disposal. If the Town of Falls Church should find itself unable financially to use those facilities which are available to them—as to the figures I am not questioning page 231 } at this time—if they should find themselves unable to utilize those facilities, they would be forced to rely upon their own facilities, which is the installation of a sewage disposal plant and non-participation in the large expense of increasing sewer pipes.

That plan is a feasible plan. It has met with the approval of the State Board. It presents some features probably it would be better to avoid. Failing the ability of the Town to be able financially to do that, that is the solution.

The Town of Falls Church geographically has two drainage basins, a drainage basin that empties at Four Mile Run and a drainage basin that empties at Tripps Run into the reservoir of Alexandria City. The high ground is located as marked by me on that exhibit.

Q. Which exhibit are you referring to?

A. That topographic map.

The Court: Exhibit 9-B.

A. (Continued) In the event that this separation should now interpose in the plans of the Town of Falls Church, it would cut off the out-fall, the only out-fall being in the Four Mile Run, and would necessitate pumping the sewage either over the divide or tunnelling it under as mentioned by the Engineer of Arlington County. It would cut off the space available to the town at or near the point that their engineer stated in his examination would be the small section of Four Mile Run available to the Town in that page 232 } basin, the Four Mile Run basin, which is very small, affording a very small place to install a town sewage disposal plant. It is in the center, almost in the center, of the thickly settled parts of the town, a very little distance from houses of all kinds, within seven hundred feet of the pumps now furnishing the water, the water supply of Falls Church. In other words, we would be superimposing over the water system of the town a sewage disposal plant. Obviously, that makes us want to locate the sewage disposal plant a good ways away from the wells.

Q. Where are the wells?

A. The wells are located in the Arlington County portion of the town; one of them, as shown on the exhibit, at the corner of Madison Street, is, I judge without measuring it, only 700 feet, which has a tested pump supply of thirty-eight gallons per minute; the larger well has a tested capacity of seventy gallons per minute and is located at Columbia and South; the smaller well of twenty-five gallons per minute tested capacity is located in the Fairfax County portion of the town, just under the tower and close to the Town Hall.

Q. What is the capacity of that well?

A. Tested capacity of twenty-five gallons per minute. The town, in its effort to secure a water supply, attempted to sink wells in other places. We went up in the Fairfax portion of the town along the Lee Highway to sink one in order to keep from draining those other wells and met page 233 } with no success and had to abandon the drilling of those wells at those points. The reason for the town installing pumps was that the town had made efforts to secure water from Arlington County but Arlington County was paying to the town the rate of five and one-half cents per thousand gallons—

The Court: Arlington County pays to the town?

A. (Continued) Arlington County pays to the City of Washington five and one-half cents per thousand gallons. I personally went to the War Department for the Town of Falls

Church to request permission to receive their water subject to the charge of Arlington County. The best price we could obtain was thirty cents a thousand gallons, which we are now paying. We are now pumping water from our wells at two cents a thousand gallons.

Q. The water you get from Arlington County you pay—

A. Thirty cents and the water we are pumping, our pumping cost is about two cents a thousand gallons.

Q. If this disruption is allowed, it would place its principal wells outside of the jurisdiction of the town and also its access to the great portion of the drainage of Four Mile Run, is that correct?

A. That is correct.

Q. As the town now exists, it has access to that stream altogether?

page 234 } A. Yes. Further, on the matter of sewerage, if I might continue the statement, in the installation of the sewer system we have certain plans and specifications including installation of mains and laterals in the Arlington County portion of the town. Those slopes are generally from both directions as shown by the topographic maps, generally down into the low levels where the Four Mile Run stream flows. Obviously, it is relatively very cheap construction to install mains that will carry that sewage by gravity down into the one run-off sewer, whereas to pump the sewage from the other section is a more expensive proposition. So that the town would be denied the benefit of installing a sewerage system. It would be denied a large section of the cheaper installation, cheaper maintenance and cheaper sewage disposal and would necessitate a larger percentage of more expensive installation, more expensive maintenance and disposal.

Q. Speaking of the map and the divide indicated on the map, could you indicate with any degree of accuracy for the benefit of the Court just how and where that divide would cross the various principal streets so that it could be located on the other maps?

A. Yes, sir. That divide would enter the town at or about the intersection of Great Falls Street and West Street, that being the highest point, and the water falling in two directions from that; running in a southerly direction, it
page 235 } would cross Lincoln Avenue about half way between Great Falls and Oak Streets, which would be Greenwich Street; continue in the southerly direction in the direction of Pennsylvania Avenue and Fulton Street; run approximately with Fulton Street to New York Avenue. It would cross Lee Highway at or about the Town Hall and run

in a southeasterly direction, crossing Broad Street between Cherry and Fairfax. It would re-cross Broad Street at about what is called a proposed Newland Street, and run parallel with Broad Street a short distance to the north and re-cross it again about half way from the Old Georgetown Pike and South Street.

Q. Which side of that, leaving out of consideration the Arlington County portion of the town, which side of that divide is more densely populated, taking into consideration the Fairfax County side of that line?

A. I would say that taking into consideration the population as divided by the natural divide, that from appearances it looks to be about equal.

Q. Fifty-fifty of the population on the Fairfax part of the town?

A. I should say so, yes. Of course, there is part of the other basin in the Fairfax part of the town which would increase the total population of the town by that amount or would account for it.

Q. Do you think that the town would be able or that it would be to the interest of the town rather, to enter into this sewerage arrangement on the basis indicated by page 236 } the expert who testified this morning?

A. I do not because I do not think the basis according to the reports of our engineers can be borne out by the figures.

Q. State the reason why?

A. One reason is that inquiry has not been made of the engineer of Arlington County as to why he did not utilize the full head that was available to him at Falls Church. In other words, they have not utilized the full elevation to reduce the size of pipes, which would result in a decreased amount of money charged for the pipe; be able to get away with a smaller amount of pipe by using the full head.

Q. The steeper the grade, the less pipe needed?

A. The more rapid the flow in a small pipe. Then as to the charge for sewage treatment. As stated by our engineer and as shown by the towns and communities using sewage disposal, the charge is closer to an average of from three to ten rather than twenty for a million gallons of treatment. Those are matters open for discussion between the engineers.

Q. What information can you give to the Court in respect to the varying water rates and water arrangements in the town? There seem to be several classes of rates for water and also explain how that arrangement was brought about.

A. In the first instance, Mr. Asa Phillips, who was then the water engineer for Arlington County, approached the

page 237 } Town of Falls Church with a proposal to propose to provide a supply of water for the Town of Falls Church, which would be done by extending the water mains that were then existing to and terminating at the R. E. Lee School or about that vicinity. The proposal was to extend those mains up to the corporate limits of the Town of Falls Church and furnish a supply of water at that point which would be available for use of Falls Church. The terms of that I can read from the minutes of a meeting of the Town Council, if it is desirable that I so do.

Thereupon, it was proposed in the Council under date of February 5, 1927—this is from the minutes of the Town Council—

“The Mayor and town council of the town of Falls Church (which includes within its corporate limits a considerable area within Arlington County) have given very careful consideration to the matter of water supply, or which the County is now engaged with particular reference to the installation of distribution mains within the corporate limits so as to secure the earliest general use of water by the householders after the county supply mains have been installed and desire to submit the following agreement for your approval.”

This is the agreement that was submitted and prepared by Mr. Asa Phillips:

“(1) As under the law the water supply system is to be entirely self-supporting with all costs to be paid from funds derived from the sale of water, it would seem page 238 } most necessary and advantageous to the County to secure at the earliest date sufficient revenue from the sale of water to meet these charges.

“(2) It is recognized that with the limited water funds at the disposal of the county and the great demand that must be expected for lateral service mains in every section of the county as soon as the supply mains are laid that the county will not find itself ready to promptly install such lateral service mains in Falls Church as soon as the Lee Highway supply main is laid to the lookout limit of the town.

“(3) In order to fully cooperate with the county in making the water supply system financially successfully and self-sustaining and to enable our citizens to speedily obtain the benefit of a public water supply and fire protection, we make the following formal proposal for your approval, viz:

“(a) The town agrees to take water from the County Lee

Highway supply main at the corporate limits and provide all lateral distribution system therefrom paying for all water delivered as measured by water meter at that point, and

“(b) Provided, that a supply up to 125,000 gallons per day will be available when and as needed under sufficient head to provide about 33 pounds pressure at a 340 ft. level, the town agrees to pay to Arlington County the sum of Four Thousand (\$4,000) dollars annually in two equal six month payments beginning with the date that water is ready in the supply mains at the corporate line for delivery
page 239 } such sum to be a standby or ready to service charge regardless of whether the town actually takes any water or not, and

“(c) Provided further, that for this sum of Four Thousand (\$4,000) Dollars annually paid to the County, the County will allow and deliver to the town a quantity of water up to, but not to exceed a daily average of forty thousand (40,000) gallons, and

“(d) Provided further that for any and all quantity of water delivered in excess of this amount, the town is to pay to the County an annual sum in addition to the Four Thousand (\$4,000) Dollars aforesaid such additional sum to be determined by applying to said excess quantity the basic rate fixed in paragraph (c) and

“(e) Provided further that the ordinary domestic rate to householder consumers within the corporate limits shall be the same as fixed by the County for the ordinary domestic rate for household convenience understood to be at the beginning Twenty-Seven (\$27.00) Dollars for a meter quantity not to exceed Forty Thousand (40,000) gallons per annum and that any further changes in said domestic rates will be proportionally reflected in said basic rate, and

“(f) Payment for water to be made by the town of Falls Church to the Treasurer of Arlington County promptly on rendering of bills—”

page 240 } Mr. Douglas: Do I understand this agreement was ever entered into by the Board of Supervisors of Arlington County?

Mr. Barbour: It was not.

Mr. Douglas: Submitted to the Board of Supervisors of Arlington County?

The Witness: Submitted to Falls Church by Asa Phillips and the Board.

Mr. Douglas: He would obviously have no way of binding the County.

Mr. Barbour: He did.

Mr. Douglas: I didn't want to interrupt but I thought we would pretty soon get to the end of it.

The Witness: Further on you will find Mr. Asa Phillips appears and withdraws this offer on behalf of the Arlington County Board of Supervisors.

Mr. Douglas: I am wondering what the purpose is.

Mr. Barbour: Your witness testified about misrepresentations being made to the Town of Falls Church and people similarly situated, by not doing what it offered to do. These minutes show the town has acted in good faith all the way through in trying to protect the interests of all its citizens from what it believes an exorbitant charge for water.

Mr. Douglas: We have stipulated that each side has constructed a water system.

The Court: As I understand Mr. Barbour, the purpose of this evidence is that there has been some implication from the testimony of the petitioners in this case that the residents of East Falls Church portion have been discriminated against, whether wilfully, prejudiciously or otherwise, it has been done. I think the purpose of this evidence is to indicate that it is not a well-founded belief.

Mr. Douglas: I still don't think some letter written by Mr. Phillips as an employee, long since not an employee of the County, is relevant.

Mr. Barbour: It shows just one step which finally ended in their bringing in an additional nineteen hundred feet; shows the whole circumstances under which the town acted.

Mr. Douglas: Is it all going to be as tortuous as this.

Mr. Barbour: I don't know; I have not read the minutes.

Mr. Douglas: We agree to copies going in there.

Mr. Barbour: That is all we want. We will give the reference and have the stenographer copy it in the record.

The Witness: I have given most of the original proposal. The balance is as follows:

"And it is expressly agreed that the County is authorized to cut off the supply of water to the Town in the event any bill is not fully paid within thirty days of date of rendition."

On February 14, the minutes show the following:

"Voted that the Mayor appoint a committee of three to take charge of the matter of securing water supply for the town through the Board of Supervisors of Arlington County."

Under date of April 7, the Committee reported—

Mr. Barbour: Give the date and page so the reporter can refer to it.

The Witness: April 7, page 227, the Committee reported as follows:

“Mr. Daniel lays before special meeting of council, the contract covering delivery of water to Falls Church at its corporate limits to the County of Arlington.

“Mr. Westcott moved that the contract at once be referred to Water committee to deliberate and report on at once. Duly seconded and carried.

“The Committee after thoughtful consideration of the contract felt that it should be revised as to the supply of water to be made available to Falls Church namely, that the maximum of 125,000 gallons per day set forth in the contract be increased to 200,000 gallons and a supply equal to future requirements of the town be provided as required. The Committee asked that this change be brought to the attention of Mr. Asa Phillips, Water Engineer for Arlington County and the Board of Supervisors at its meeting Monday April 11th, with a view to having the contract revised accordingly.

“Mr. Westcott moved that the water committee be instructed to take over the question of feasibility of bonding the town of Falls Church for roads along with bonding it for water mains. Seconded and carried.”

page 243 } On April 11, page 229, Mr. Asa Phillips, “who was present by request addressed the council, stating that on account of this action by the council the Board of Supervisors had rescinded its action accepting the proposition of the council to furnish water supply as it could not agree to delay the work in the County.”

On May 16—

Q. What year?

A. 1929. A contract was entered into with the McCreary Company which eliminated that.

The Court: What page?

The Witness: May 16, page 236.

Q. For a survey?

A. For an independent survey for provision of water for the Town of Falls Church, which terminated the negotiations.

On May 14, 1928, page 279, a resolution was presented as follows:

"Be it resolved that the Board of Supervisors of Arlington County, Virginia, constituting as such the Board of Water Commissioners of said County, be and they are hereby authorized and empowered to make use, for the purpose of laying water mains, laterals, etc., and to do all things needful in connection therewith, of all streets, highways, public alleys and lanes in that part of the town of Falls Church, lying within Arlington County as fully as said Board
page 244 } now has the right to use and occupy any public road or street in said County."

That was not consummated. That was referred to a committee and was not completed.

At page 46, book 2, the minutes read as follows:

"Mr. Harry A. Fellows appeared before the Council and spoke in reference to efforts heretofore made to have the system of water supply of Arlington County extended within the Town of Falls Church. Mr. Fellows stated the details of conference held with the Board of Supervisors and other officials of Arlington County, and expressed the belief that those officials were disposed to extend the water mains into Falls Church when the way should be opened for them for that purpose. He thereupon submitted a form of ordinance which he stated had been prepared by the Commonwealth's Attorney of Arlington County and would be satisfactory to the Board of Supervisors of that County.

"After discussion of the subject it was moved by Councilman Knowles, seconded by Councilman Sale, that an ordinance of the Town Council be, and is hereby enacted in the following form:

"Be it ordained by the Town Council of the Town of Falls Church, Virginia, That authority is hereby granted to the Board of Supervisors of Arlington County to use any and all streets and alleys of the incorporated Town of Falls Church for the purpose of laying water mains and laterals.

No obligation is imposed upon the Town by this
page 245 } authority to pay for the said mains or the laying of the same and no obligation is incurred by the said Board of Supervisors of said County requiring it to lay the said mains in and along said streets and alleys.

"The authority given by this ordinance is for the purpose of permitting and allowing the said Board of Super-

visors to use the streets and alleys so designated for the purpose of laying mains whenever the said Board of Supervisors desires to use the same in extending its water mains for the use and benefit of residents in said Town of Falls Church residing along said streets and alleys.' "

Mr. Douglas: What was the date of that?

The Witness: That is the proceeding of the Town Council August 12, 1929.

A. (Continued) Page 72, book No. 2, a report of the committee on Water, Sanitation and Public Health, in reference to the extension of water mains from about the Robert E. Lee School to the town line of Falls Church, for which a charge was mentioned of between twelve and fifteen hundred dollars, to be paid by the Town of Falls Church, is as follows:

"Councilman Parmelee, Chairman of the Committee on Water and Sanitation, reported that the authorities of Arlington County were planning to begin within a few days the work of extending the existing eight-inch water main along Washington Street (Lee Highway) from the corporate line of the Town to the intersection of that street with page 246 } the line of Arlington and Fairfax Counties; that because of the expense involved it was planned to use six-inch pipe in making such extension; and that the use of eight-inch pipe could be secured if the Town of Falls Church, or other interested parties, would pay the additional expense which would be thereby incurred, estimated by the Arlington County Engineer to be about \$1,500."

Page 76 of the said book—

Mr. Barbour: Give the date.

A. (Continued) January 13, 1930, the committee reported after a conference and correspondence with Engineer Kinier in reference to estimates as follows:

"For an 8" cast iron extension—1900'—\$4,690.00.

"For a 6" cast iron extension—1900'—\$3,426.00." Those were the figures proposed by the County for the installation of a continuation of that pipe of 6" and an additional charge for increasing it to 8" to meet the requirements of the whole town.

Mr. Douglas: I don't think any witness cast any reflection

by reason of the construction of these mains. None of these figures were acted on.

The Witness: They were declined by the town. I suppose they didn't have the money.

Mr. Barbour: We are trying to give the history of your installation of the pipes.

Mr. Douglas: It is interesting but I was won-
page 247 } dering if it could possibly be relevant.

The Court: Implication has been made here that the citizens of East Falls Church had been discriminated against by the governing offices of Falls Church. This is directly in answer to that. There was one particular implication in regard to the service of water.

Mr. Douglas: The statement was made they waited a long time for the council to act.

Mr. Barbour: This shows that.

Mr. Douglas: Yes, it shows the request on May 12, 1928, and on August 12, 1929, it was acted on. Was any discrimination suggested in regard to the figures put in here now?

The Court: Yes, sir.

Mr. Douglas: I didn't recall that.

A. (Continued) And notice was given to Arlington County of the actions of the Town of Falls Church on notice of the increase in price on the size of those pipes.

On page 28, January 27, 1930, a resolution addressed to C. L. Kinnier, Directing Engineer of Arlington County, as follows:

“RESOLVED: That the proposal contained in the letter addressed on January 3, 1930, to the Mayor by C. L. Kinnier, Directing Engineer of Arlington County, to lay an eight-inch water main on Washington Street from the Corporate Line
page 248 } to the Fairfax County Line, instead of the six-inch main now contemplated, on condition that the town of Falls Church pay the estimated difference in cost amounting to \$1,264, and deposit such sum with Arlington County in advance, be, and is hereby, declined.”

That was the end of the negotiations for water and the town then and the County then extended that main into the town in 1930 for which the town people made up a sum of money of \$1.00 a foot and paid for it. As to that I cannot testify. That was in 1930, the drought thereafter occurring in September. The water pipes had then been installed in the Town of Falls Church. The wagons that were spoken of, the water

trucks and wagons that were used for the distribution of water secured it from the Arlington County supply, for which the town paid a metered charge. A special meter was put on and the town furnished water to any one that wanted it; distributed water throughout the whole town and distributed water in that way. The pipes were in there at that time.

Thereafter in December a petition was presented to the Town of Falls Church, about in December, beginning the operations for a bond issue to install water in the town. The elections were passed by the freeholders. There was a freeholders' election and a voters' election, the bonds issued and the water pipes were installed throughout Falls Church with a tacit agreement, no written agreement, between the town and the then board, and the understanding the town
 page 249 } had was that they would be able to purchase those pipes and take them over as part of the town system. Connections were made and joined together so far as the physical part of it is concerned.

There has been a complete town water system installed. Part of it is owned by Arlington County under the placing of their pipes in there. Due to the fact that there is a difference in pressure of water, Arlington County's being as stated, considerably lower than the pressure maintained in the Fairfax County portion, it is necessary to valve those pipes over to keep from losing all the water in the tank.

Q. If you do not do that, all of the water from Fairfax County, having more pressure, would flow into Arlington County?

A. That is correct. That is the situation as it at present exists. The town has set aside funds to at any time purchase those mains if the county will turn them over to the town.

Q. In 1932, I believe there was a special act of the General Assembly authorizing the County to sell and the town to buy the water pipes you have in the town?

A. That is correct, at a fair valuation.

Q. And limiting the activities of those departments known as Water and Sanitary District—

The Court: Sanitary Division applies to the sewers.

Mr. Barbour: I think it is all under the Board with the same individuals—

page 250 } Q. What was done under that act?

A. I can only tell you my recollection. I believe that nothing has ever been done under that act so far as I know because it would be futile if the town is to be separated

to purchase pipes from Arlington County and then they would buy them back.

Q. Was that act passed?

A. In 1932, March.

Q. Following that act, was this attempt to separate the town?

A. Just shortly thereafter.

Q. We have stipulated, I believe, the financial situation of the town. Will you please state to the Court the extent to which the town would be inconvenienced, if it would be inconvenienced, that is the remaining portion of the town, by granting this petition so far as its control over the transportation facilities of the town, both bus and otherwise, by public utilities companies?

A. The matter of buses—the town has just recently had a difficulty that is typical of that. The bus line of Arnold Company, the Washington, Virginia and Maryland, I think it is called, came into the Town of Falls Church and selected certain bus routes and stops that suited their purposes or convenience undoubtedly. They selected a stop at the corner of Cedar and Brown's Avenue, right close by the
page 251 } residence of Mrs. Barbor, and there was a petition circulated and signed by many citizens, I do not recall the number, protesting against the use of that bus route and they were forbidden to use it, whereupon they abandoned the bus route at the request of the council to establish other bus routes. They went before the State Corporation Commission with a request to the effect that resulted in confirming the routes they had established and practically seized for themselves. In other words, the bus companies were just operating without regard to the wishes of the people or subject to the control of the authority, and at the present time they are operating under that same provision. When it came up for trial, they withdrew their application but have continued the operation.

Just that type of operation, if the town had no control over the complete operation of buses and that sort of thing, could not exercise some control as to where they were establishing a bus route in a residential section, they could go across the lines and do as they please.

As to the facilities for lumber, coal and freight, there are two stations in the Town of Falls Church, one at West and where not much material is delivered, it is merely a Post Office, and at the east end where the coal yards and freight yards and merchants for the heavier materials have their storage space. That is in the Arlington County portion of

the town. The revenue to be derived from that page 252 } would be cut off from the Town of Falls Church with its operations, which helped to build it up, would be cut off from them, and they would have no control over it.

Mr. Douglas: Which one of the operations?

The Witness: The terminal freight operations, from which the town now derives a tax for utility assessment.

Q. What effect would it have on your railroad facilities?

A. You mean the transportation of passengers?

Q. Passengers and freight?

A. The town authorities exercise control over the actual operation of trains by ordinances, regulating speed and stops and that sort of thing, which I presume are covered by county ordinances as well. Whether there would be any other effect on the operations affecting the people as passengers or not, I am not prepared to say except that anything that generally affected the community would generally affect transportation.

Q. Do you know anything as to the extent to which the signers of the petition in this cause asking for secession are patrons of the public schools?

A. I have been served with a notice of this petition and attached to it are the names of the signers. Going over it, a large number of the people who signed that petition are elderly people who do not have children or young children who attend that school. Relatively few people on that petition have any children who go to school.

page 253 } Q. Is there any other statement, Mr. Daniel, that I have not called your attention to which you would like to make to the Court affecting the merits, or affecting the advantage or disadvantage of it?

A. Testimony has been adduced the other day to the effect that there was discrimination or persons who testified there had been discrimination against that portion of the town lying in Arlington County. I want to state that, in my opinion, as they stated in their opinion, certainly so far as I know, no discrimination has been practiced against the Arlington County portion of the town. They have received equally as much in improvements if not more in proportion to the size and area involved as any other part of the town.

I want to point out in connection with the laying of the concrete street through the Town of Falls Church, that was laid by the State Highway from the corporate limits to the intersection of Broad Street, it was made a provision incidental to the installation of that wider street than is ordinarily

provided by the State Highway Department, that the town would put in and install concrete sidewalks. That was, of course, in lieu of shoulders, gravel shoulders, they would put on the ordinary street. In lieu of that, the town would provide concrete sidewalks and the State would widen that to the extra width.

I think it is stated in the stipulation that the costs of that ran about \$5,000. The exact figure is given in page 254 } there. That money was assessed one-third against the abutting property owners and two-thirds paid for by the citizens of the whole town, and as will be observed by a map, which is also in the stipulation, most all of that was installed in that portion of the town that lies in Arlington County.

As far as I have heard, I have not heard any criticism from any resident of Fairfax County part of the town complaining about spending that money for sidewalk and storm sewer.

Q. I believe some lady testified she was discriminated against in the location of the signal light?

A. It has been frequently discussed about installing a signal light at the drug store corner. Some several years ago a resolution was offered in the Town Council, an ordinance was offered and passed regulating traffic at that particular intersection and limiting the parking space some number of feet, which I think was fifty. The Council adjourned and the Council was called back into session the next night on account of the complaint. They do not want that limitation on parking. That is not an intersection; it is simply a one-way street leading into a State Highway, and before the Town of Falls Church will be able to install a traffic light there, I think we would have to consider the wishes and decision of the Highway Department and the general good of the traveling public.

There would be no good purpose for holding up traffic where it is simply entering and not crossing the highway. page 255 } The traffic light installed at Broad and Washington Streets, to my knowledge, has been there practically eight years.

Q. Can you give the Court any information, Mr. Daniel, in regard to the character of the surface of this yellow street about which there has been some testimony?

A. The distinction made between the streets on the map that is submitted under the stipulation is the pink barred lines show the State Highways that are made of concrete, blue barred lines, in my recollection, show the macadam State Highways, other roads of macadam treated in blue, and other

roads and streets are under a general classification of unimproved.

In East Falls Church and Arlington County portion of the town, there is one highway, Brown's Avenue or Memorial Drive, which many people are under the erroneous impression that the State constructed that highway. The Town of Falls Church constructed that surface treatment, paid for it out of its own money; constructed a culvert near Mr. Fellows' house, and there has been no contract entered into between the Town and the Highway Department for the maintenance of that street. It has the physical aspect of any other street in the town. That is a well conditioned street except the last block which is a gravel street.

South Street, they have been working on that street from the intersection of Brown's Avenue southward for about two years, throughout the extent to which it is in
 page 256 } Arlington County and throughout the Fairfax County line. Spent about ten thousand dollars. That street is practically completed.

Q. Which street is this?

A. South Street.

Q. That is shown in blue?

A. Shown as an unimproved street. That street, according to the testimony of the County Engineer here yesterday, conforms to the requirements of the State Highway Department for that type of gravel road. It has been regraded and relocated in many places.

We widened another street Mr. Stevens identified to as needing consideration and I think some \$800 is involved in the improvement of that street, some little distance from the Christian Science Church to the town line.

Cedar Street for one block is unimproved, the south block. Two blocks and then it joins Arlington County Road. It is shown in blue. One block of that is not in good condition; the other block was constructed by the town with the use of washed gravel and sand and is a good street of that type and without further treatment, those streets entering from Arlington County, it is my opinion that road will last years when the others are gone.

Q. As to the treatment of those streets, is there any discrimination between the part in Arlington County and in the Fairfax County portion of the town?

page 257 } A. No, sir. I think the reverse has been true.

I think there has been more money spent relatively on that portion of the street and the streets are in better condition in that part of the town, particularly north of the railroad track, than any other portion of the town.

Mr. Barbour: You may take the witness.

CROSS EXAMINATION.

By Mr. Douglas:

Q. Major, I was very much interested in the last question Mr. Barbour asked you. You say you should think that if anything more money had been spent on the streets and other internal improvements in that portion of the town in Arlington County than in the other portion of the town?

A. That is correct.

Q. You have yourself a very kindly feeling for the people of East Falls Church?

A. Yes.

Q. And you try to distribute the money that is available equally in all portions of the town?

A. I do not distribute it. The road money is distributed under the authority of the Road Board or Board on Roads and Public Works, which is made up of one councilman from each of the wards of the town.

Q. When I say "you" you understand I mean the government?

page 258 } A. That is correct.

Q. What is paid it by Arlington County is returned to Arlington County in the form of benefits?

A. Not necessarily.

Q. Substantially?

A. Yes.

Q. You have no personal prejudice as to the prayer of this petition?

A. Personally I have no feelings as to whether it is granted or not granted.

Q. No personal interest?

A. No personal interest.

Q. Purely an official interest?

A. Purely an official interest.

Q. And you voice only your official sentiments?

A. That is correct.

Q. There is very little overhead in the way of salaries and the like paid by the Town of Falls Church?

A. That is right.

Q. It does not pay much to run the Government?

A. No.

Q. You yourself receive no salary?

A. No member of the governing board receives any salary.

Q. The only salary you receive is in fees?

A. Only fees.

Q. Can you tell us what those are?
page 259 } A. I cannot tell you what the record shows.
Q. How about the last fiscal year or any fiscal year?

A. I can tell you about an average of what they are; probably five or six or seven dollars a week.

Q. So that that would be a very small pittance compared to the services you give to the town?

A. That is correct.

Q. With regard to the public schools, you say either the old or the young people, either too old or too young to have children, most of those signed the petition?

A. Going over the names, I knew a great many of them personally, I was struck with the large number that signed the petition who did not have children going to school. It was so noticeable it attracted my attention.

Q. There is quite a substantial school population in the East Falls Church area?

A. Yes, sir.

Q. A great majority of the qualified voters signed the petition?

A. Ninety-one out of a total population of five hundred and fifty as shown by the census.

Q. Out of the total population of five hundred and fifty only ninety-one signed?

A. Ninety-one signed it out of a total population as shown by the census of five hundred and fifty.

page 260 } Q. A great number of those five hundred and fifty are children and not eligible to vote?

A. That is true.

Q. There is no reason to believe then that is not a cross-section and would reflect the true sentiment?

A. I would not agree to that.

Q. You would not say it was so?

A. I would not say it was or was not.

Q. It is a reasonable inference?

A. No, I would not say that would be a reasonable inference because these voters were solicited and the others were not.

Q. I believe that is the only statement you made concerning the public school. You did not go into that in detail?

A. I am not familiar with the immediate operations of the school.

Q. Do you know of any solicitation that was brought to bear on the folks who withdrew their names from the petition after they had originally signed?

A. The three persons—I only know of two persons. When

this petition was signed, it struck me as being peculiar that a petition of that kind should be circulated and so largely signed by the people in the town without some intimation reaching the mayor. If there were complaints or objections or that such a large number of ninety-one would sign a petition and keep it quiet; that struck me as being peculiar. After a long time had elapsed, I met Mr. McPherson and asked him if he would tell me what the trouble was and why he signed that petition. He said he signed it because of the condition of the street in front of his house.

Q. Did you send Mr. Mitchell, the town officer, to see these people?

A. I understood there were some who wished to sign a petition. I had a petition prepared and he went around and interviewed some of them.

Q. He is the town officer?

A. That is correct.

Q. Of the group that originally signed, you received the names of how many who wished to retract their signature?

A. Dr. Talbot was one and Miss Katherine Talbot was another. There were three on the petition who wished to have their names struck off. I personally do not know the others; I personally have not solicited them. I do think it would be probably the duty of the mayor to see that the interests of the citizens other than those who signed the petition were protected. I do not see any impropriety about it.

Q. How long ago did Mr. Mitchell take this petition around?

A. In the last couple of weeks.

Q. Was it your idea that your official duty demanded that you try to get these people to retract their signatures?

A. Simply to afford them an opportunity if they wished to intervene.

Q. Concerning the matter of railroad facilities, you say your town now has the power of regulating the operation of trains by enacting ordinances?

A. The ordinances are there.

Q. You would, of course, lose that power only to such portion as came out of the town?

A. I do not understand.

Q. The prayer of this petition if granted would not affect your power to enact ordinances?

A. Only so far as they operate in the town.

Q. You would not want to regulate them if they were not in the town?

A. Have no interest or right to regulate them outside of the town.

Q. So that that would not really constitute an objection to this prayer being granted that you cannot enact ordinances that would be applicable to the county portion?

A. You mean so far as railroads are concerned?

Q. Yes.

A. No, I don't think that would, the actual operations out of the town is no business of the town. As to the buses, it would be a detriment to the town where they could not control the operation of railroad crossings im-
page 263 } mediately approaching the town. The County of Arlington would not necessarily protect and provide for the operation of trains almost in the teeth of Falls Church. It would be only a few hundred feet in Falls Church. It is conceivable that Arlington County would not provide for the operation of trains and street cars in the interest of the Town of Falls Church.

Q. Wherever there is a boundary line you have that situation, do you not?

A. That would be a detriment to the Town of Falls Church. That is our main line of communication and almost right at our door. Due to our lack of ability to have some control it would be a detriment to the town.

Mr. Barbour: Don't you think a governing body chosen from this community would have better judgment as to how these trains should be operated rather than a governing body chosen by Arlington County?

Mr. Douglas: I am not sure but that Arlington County has shown itself to be as efficient to handle its local police problems as Falls Church. Ask the witness, he might feel differently.

Q. Concerning this matter of the terminal freight station and loss of revenue. That is owned by the Washington and Old Dominion?

A. That is correct.

Q. Do you know when they last paid any taxes
page 264 } to the Town of Falls Church?

A. Two or three months ago.

Q. Are they delinquent in their taxes at the present time?

A. I think they are to some extent. I think they are delinquent this year but that is not delinquent.

Q. Have they paid 1932 taxes?

A. I think they have. The Town of Falls Church passed an ordinance assuming taxes up to January, I think. Under

those circumstances, the Washington and Old Dominion are not delinquent.

Q. You knew they were in the hands of a receiver and operation gravely threatened at this time?

A. I couldn't tell you about that.

Q. How many trains do they run a day through the Town of Falls Church?

A. I don't know their schedule. I would not like to say.

Q. Would you say it was more than three?

A. I cannot tell you.

Q. Not an indispensable facility to the transportation of the town?

A. Yes, sir.

Q. You would say so?

A. Of course, if it went into bankruptcy and could not operate, it would, of course, go out of operation. It is a very essential utility.

page 265 } Q. As far as convenience to the folks in the town is concerned, you don't have any idea, do you, Major, that the Washington and Old Dominion, while it continues to operate, would serve them any less efficiently if the terminal were in Arlington Country?

A. No, we would lose that revenue with which to operate. Same thing would apply to the electric railroad, the Arlington and Fairfax Railroad, the electric light company, gas company and so on.

Q. You would not have to build any concrete streets or tar streets either?

A. Already constructed those and expected to derive the benefit from having done that. After having done that work, Arlington County would get the benefit of it.

Q. The money you have received from the Town of Falls Church you would expect to distribute?

A. Yes.

Q. If you were relieved of the revenue, you would be relieved of the burden of spending it?

A. Relieved of the whole thing to the detriment of the Town.

Q. Be kind of a washout?

A. No, to the detriment of the town.

Q. A financial detriment to the town when the money you get out of East Falls Church you put back into
page 266 } East Falls Church?

The Court: I suppose you gentlemen are going to argue. I will be glad to hear your argument. It seems to me this

is all a matter of argument. The facts are here. The inferences you draw from them come in the argument.

Mr. Douglas: I want to find out what he means by detriment. He says here it would be a detriment to the Town of Falls Church to have this portion go out. He made statements on direct examination to indicate it could not be a financial detriment.

The Court: If he has not pointed out any detriment to you, I take it the testimony in that regard is useless if he has not proven anything.

Mr. Douglas: I will try to narrow it and limit my questions, if Your Honor please, so as to get through more quickly.

Q. At the present time, Major, how much is the Town of Falls Church paying to the County of Arlington annually for all the water they get, do you know?

A. I would not like to state that in view of the fact that you have a statement.

Q. Falls Church charges \$22.00 as a minimum charge?

A. That is right.

Q. It sells water at retail to seventeen persons and for those seventeen persons buys water wholesale from Arlington County?

A. That is true.

page 267 } Q. If you pay thirty cents a thousand for your water, assuming the minimum of forty thousand gallons a year, it would cost you \$12.00 a year?

A. About fifty per cent of what we receive from the individual.

Q. You pay the county twelve and collect twenty-two?

A. Yes.

Q. If each one of those persons were using the minimum, you would be paying the County of Arlington approximately two hundred dollars a year?

A. According to those figures.

Q. Arlington County permitted the installation of valves at the end of its line?

A. That is right.

Q. And built an eight-inch line main up to Falls Church?

A. Eight inch up to the Robert E. Lee School and extended a six inch main from the Robert E. Lee main to the county line of Arlington at East Falls Church, for which it proposed to make a charge for increasing that to an eight inch main which was declined by the Town of Falls Church so there is only a six inch line.

Q. It is eight inches at the corporate limits?

A. I don't know where that ends.

Q. In other words, they built either a six or an eight inch main and the County of Arlington permits the Town of Falls Church to deliver water from the County
page 268 } of Arlington without any charge for the pipes
Arlington County installed?

A. On that same basis that you sell water to other wholesale users, and it is in excess of your wholesale rate. You are delivering to the Town of Falls Church as a wholesaler for water distributed to the town in excess of the amount you charge your wholesalers in the county.

Q. As to the amount of benefit they derive and the amount they pay, you speak about the unfair manner—

A. I didn't use that word.

Q. You speak about the relations between the town and the county Board of Supervisors. You are paying substantially two hundred dollars a year to Arlington County for water?

A. Assuming it is on the basis of forty thousand gallons for each consumer.

Q. And you sell that water for \$374.00?

A. That is correct.

Q. And you deliver part of the water through Arlington County water mains?

A. That is the same proposal you deliver water to anybody. You deliver water to the place where the hook-up is. That is not a preference rate but rather more than you charge your own wholesalers.

Q. You said, Major, the wells from which you receive your water are in Arlington County. Two of them are in Arlington County, are they not?

page 269 } A. One in Fairfax County and one of a tested capacity of thirty-eight gallons and one with a tested capacity of seventy gallons are in the Arlington County portion of the town. Those two wells are located in the Arlington County portion of the town.

Q. Can you tell me what daily per capita consumption of water that allows for?

A. No, I cannot tell you; roughly, about twelve million gallons a year.

Q. You do not know what the normal consumption of water is per capita?

A. No, other than that. I do not check those bills. The committee takes care of that part.

Q. The thing I frankly do not understand, I wish you to enlighten me. Concerning the access to Four Mile Run, if you build your own disposal plant in the Falls Church area, there

is quite a little section that runs completely over into the Fairfax County portion of Falls Church?

A. A very small section, only a few hundred feet.

Q. How many feet do you think it would take you to dump the affluent from your disposal plant into Four Mile Run?

A. The outfall of that would be a reasonably sized pipe.

Q. One pipe?

A. Yes.

Q. Needs one pipe to dump into Four Mile Run?
page 270 } A. That definitely locates the spot you have got to have your disposal plant.

Q. You can put your disposal plant anywhere you want as long as you have gravity and pump it down, can you not?

A. The more you go into that, the more you go into densely settled population; the farther you get away from that point to the west, the more you get into houses. You have to set it in the low land.

Q. Is it your view that Falls Church can construct its own sewage disposal plant at a lower price than you can join with Arlington County?

A. Can construct one at an estimated cost of approximately \$43,000.00.

Q. I am talking about the whole system.

A. And the charge of Arlington County according to your engineer's report there is \$69,000.00 and the treatment that your engineer gives us twenty dollars a million gallons whereas our estimate is not to exceed ten dollars a million gallons and possibly lower than that.

Q. No reason why the Public Works Administration would insist on your joining forces with Arlington County if you could do it more efficiently alone, is there?

A. I don't know that they have insisted one way or the other.

page 271 } Q. I thought you said they wanted to see this thing developed as a unit?

A. That has been my information; that is only hearsay.

Q. How much did you say your engineer estimates it would cost to put in a system in the Town of Falls Church?

A. The total cost is \$225,000, including all costs.

Q. One other thing I did not understand. About this business of regulating the buses, I believe you made that as an additional reason why this petition could not be granted because the bus company had done things in East Falls Church which the council had not been successful in stopping?

A. Not only East but West.

Q. You think the powers of the council would be enhanced if this petition were denied?

A. I think it would be desirable to have control over the buses.

Q. You would still have the same control in the Town of Falls Church?

A. Still have the same control if it would remain as it is. If you strike that part out, I think the control would be lowered because you would have them going from one place to the other; they would go where they please and stop on the line or some place like that.

Q. Just so they stop in that portion?

A. We are interested in the bus line if they are going to operate in the Town of Falls Church and we want page 272 } reasonable service. We are not particularly benefited if at the option of the bus operator, he wanted to stop at the Arlington County line and say "We are out here. You can walk down here". I think that would be a distinct disadvantage if they did not want to submit to the control of the town.

Q. The line of Four Mile Run is approximately the dividing line of the Fairfax County portion and the Arlington County portion?

A. The dividing line between Fairfax and Arlington County then swings out at the lower end where it makes the final swing. It swings over to the northeast.

Q. There in East Falls Church where it is most thickly populated or about on a line with the Lee Highway?

A. No.

Q. What you mean by East Falls Church?

A. Practically on the line.

Q. At that point it forms the natural boundary between these two areas?

A. I suppose you might call that a natural boundary, not an actual boundary.

Q. The existence of that natural boundary there, the low ground on the other side of the stream, there being fewer improvements on both sides of the stream?

A. At that point?

Q. At all points along the stream?

page 273 } A. There is less likelihood in building up in that low ground. That is actually what has happened. When you go further down the stream toward the corporate line, then the stream takes a distinct dive and goes in the northwest direction over to the clearing in Arlington County when it goes out of the county.

Q. You do not anticipate any great feeling between the people in Arlington County and Fairfax County if the prayer of this petition were granted?

A. Personal feeling?

Q. Animosity or any bad feeling among them?

A. I don't know *it* what extent that would happen. I think the feeling might be this. Naturally, the people living in the Falls Church portion of the town would be interested in further developing their section, patronizing the merchants, building up a business section, increase the taxable value, and might prefer to throw their custom to those merchants rather than in the other sections of the town; that would be to the detriment of the merchants in East Falls Church.

Q. If they are satisfied about that, the town could not complain?

A. The town is a corporation.

Q. Yes.

A. I think so. It would be to the detriment of the town as a corporation. They would lose that revenue in the first instance. Whether they would get it back or not
page 274 { in the building up of their own community, I don't know.

Q. I don't understand how you are going to lose revenue. You do not anticipate there will be any question of people not being able to go to church even though there were no line at all?

A. Why, of course; the same as going into different states to church, but the activities of the church are more or less local, and I don't think that you will find that there are very many people that are going a long ways to Arlington or from Falls Church to other sections. They generally go to the churches around where they live.

Q. I believe I understood you to say with respect to the sidewalk, the sidewalk was built along the Lee Highway and that you spent considerably more money in East Falls Church on that sidewalk than the proportion you took out?

A. Yes. I do not answer that question as to the proportion taken out.

Q. Their proportionate share?

A. The proportionate share of Arlington County was larger than the proportionate share that was expended in the Fairfax County portion of the town.

Mr. Douglas: That is all.

And further this deponent saith not.

Thereupon,

JAMES H. PARMELEE,

a witness of lawful age, being first duly sworn, deposes and says as follows:

page 275 } DIRECT EXAMINATION.

By Mr. Barbour:

Q. State your name for the record.

A. My name is Julius H. Parmelee. I live in Falls Church at number 311 Little Falls Street in the Fairfax County portion of the town, and I am a member of the Town Council of Falls Church, serving my third term in the Council, representing the Second Ward of the Town, two thirds of which consists of the Arlington County portion of Falls Church.

Q. Can you state to the Court what, if any advantages and what, if any, disadvantages will result to the Town of Falls Church as a result of detaching from it that portion of its territory which lies in Arlington County?

A. Before I start on that, Your Honor, I would like to refer briefly to one or two things which have been brought up in the testimony this afternoon that should be cleared up.

The first has to do with the Washington and Old Dominion Railroad, which has been referred to, and its essential character to the town. I think it is perhaps overlooked that that railroad is the only means by which Falls Church secures its freight and express. All the coal, lumber and other of the heavier products which come into the town come in only by that form of transportation.

Another question which has been referred to is the question of the personal attitude of the citizens of East Falls

Church toward the actions of the Council in that
page 276 } part of the town, and reversing, the actions or reactions of the Council toward that part of the town. Being, as I said, a member of the Council, representing that particular ward of the Council, and at the same time living in the Fairfax County portion of Falls Church, I have come closer to that phase of it, I think, than any members of the Council.

The citizens of East Falls Church have elected me to membership in their citizens' association, a mark of friendship I greatly value. Personally I have had the pleasure of sitting with them and discussing our common problems of the town. Among other things, the very question of this cause has been discussed a number of times. I might say the dis-

cussion has always been free of any feeling of animosity, in the most friendly and open and frank fashion.

When the question first came up at the first meeting of the Association, which I attended, at which the subject was discussed, I expressed myself very strongly on the subject and told my fellow members of the association where I stood so that there might be no misunderstanding as to my position. I assured them I would be glad to serve them in any way I could on the Council. That was before the last municipal election in Falls Church, and I was very much pleased to have a very heavy support from that portion of the town. I mention that not because of its intrinsic value but because it represents no feeling.

Having constituents in my ward from Fairfax page 277 } County and Arlington County, and being approached by both sections for assistance in town matters for the care of the streets and for other public purposes, I think I have been in fairly good position to estimate whether the Arlington County residents of Falls Church have felt that they were being discriminated against, and after nearly six years of service in the council, I can say most emphatically there has been no such evidence of feeling of discrimination. I think there has been no discrimination and there have been no signs that my constituents in Falls Church felt that way. If they had, I feel sure I would have heard from them.

I think, Your Honor, a matter of this kind can be reduced to rather simple terms if one approaches it with a proper perspective. I have tried to look at it myself in as detached a way as possible. In fact, I have thought of it as would a man that was president of two corporations rather closely linked together, perhaps one a subsidiary of the other, and the owner weighs a thing as to one or the other corporation—

The Court: Doctor, I do not want to interfere with the examination. I don't think you have anywhere near answered the question Mr. Barbour asked. It so happens that the Town of Falls Church has employed Mr. Barbour to argue this case for them.

Mr. Barbour: He was coming up to the considerations.

The Witness: I am hoping to present some page 278 } figures. I will try to shorten it, if I may.

The Court: Put it down for me to consider. I don't think it is up to you to tell me how to look at it from the witness stand. I think you ought to answer the question Mr. Barbour has asked you.

The Witness: I shall try to do so, Your Honor.

A. (Continued) I refer specifically to the question of the burden on the Fairfax County residents of Falls Church so far as one can make any general calculation of such a burden if this separation should take place.

Mr. Phillips: Doctor, may I ask what this book is?

The Witness: I am not going to use it.

The Court: Go ahead.

A. (Continued) Let me introduce the subject of the added cost by saying that at the present time in the whole Town of Falls Church the tax rate is \$1.45 on a hundred dollars; of that thirty-five cents represents a special tax to carry school bonds.

Mr. Phillips: This has all been stipulated.

A. (Continued) Ten cents represents a special fire protection tax so that the actual tax which the council levies for what may be called the running expenses of the town and for general school purposes is \$1.00 per one hundred dollars of taxable value.

page 279 } Mr. Phillips: You are speaking of 1933?

The Witness: Present tax year, yes.

A. (Continued) Let us take first the running expenses of the town and by that I mean the general expenditures other than for schools. Those consist for the most part of police, clerical and account expenditure and highway, streets and roads.

As to the roads and streets, it may be assumed that if a certain mileage of roads and streets is withdrawn from the town, proportionately the same amount of expenditure will be made unnecessary. We can dismiss that.

As to the other general expenses, I think the council would feel it extremely difficult to reduce those. Certainly any reduction which might be made would be extremely small, so small as to be negligible. The cost monthly to the town of its policing, its general overhead, and by that I mean its clerical cost for town clerk, town treasurer, the man who generally supervises our streets and highways plus a small amount for materials and supplies, is \$300.00 per month, or \$3,600.00 a year in round figures.

Mr. Phillips: All of these figures are stipulated and your statement is merely inference from them. An argument will

mean maintenance and operation. I am not referring to the bond situation at all. That amount, the amount which Falls Church is now deriving from the Arlington County portion of Falls Church is \$3,800.00, to which should be added thirty per cent of the \$3,500.00 which the Town Council appropriates from general taxation funds for the purpose of the schools. Thirty per cent of \$3,500.00, which now comes from Arlington County is \$1,050.00, which added to the \$3,900.00 and some odd dollars received from Arlington County, represents a total of about \$5,000.00, the cost of which would be thrown on the Fairfax County portion of Falls Church under a separation agreement. That \$5,000.00 would be equivalent to fifty cents per one hundred dollars of taxable value.

There is, then, the question of the water works. I am speaking again of the maintenance and operation of the water system. As to that, it is extremely difficult to make any estimate of the added taxation which might be thrown on the Fairfax County portion of Falls Church under a separation arrangement, but I feel sure there would be something.

We then have eleven cents on a hundred dollars of taxable value added to the Fairfax County portion of the town, fifty cents per hundred dollars for the operation and maintenance of the school, or a total of sixty-one cents, which, I feel, is a conservative statement of those two factors, making no allowance for the third factor of water maintenance and operation of the water system. Even if it were only sixty-one cents, that would represent an increase of nearly one-third on one hundred dollars of taxable value. That would be entirely on top of the added value of carrying the capital obligations of the town.

Q. Do you know of any advantages that would accrue to citizens of the Fairfax portion of the town by reason of this detachment?

A. I cannot conceive of any advantage whatever to the Fairfax County citizens. It is all disadvantage and detriment.

Q. Do you know of any that will accrue to the Arlington County section?

A. My own approach to this has been from the point of view of Arlington County. As a whole, I find it difficult to understand how there could be any advantage to Arlington County.

Mr. Phillips: May I ask that the witness confine his remarks to East Falls Church.

be made. While I am delighted to listen to you, I feel we are wasting time rather than getting new facts.

Mr. Barbour: Mr. Parmelee is a member of the Town Council of Falls Church. He has made a study of this proposition and has stated to Your Honor what the application of these taxes is. It does seem to me that is a matter which is to be taken into consideration in this matter.

The Court: I don't think it is irrelevant and immaterial to testify as to the possibility of reducing the overhead expenses. I think it can be argued just as well if the figures are already in.

Mr. Phillips: The actual disbursements and receipts are all in.

Mr. Barbour: The total revenue is here; these details are not here.

Mr. Phillips: The salaries of policemen, town clerk and so on.

Mr. Barbour: The details are not in there, not gotten together in the way Mr. Parmelee is trying to present it and show the applicability of them to the Court.

Mr. Phillips: The figures are there and Mr. Parmelee is arguing from these figures.

The Witness: What I am leading up to is a statement of the increased tax in the Fairfax County portion of Falls Church if the separation takes place. I don't think that is in the record. I am not familiar with the record.

The Court: I think Mr. Phillips will admit these overhead expenses necessary to run the town as it now exists cannot be cut down if the property is taken away, and it naturally follows the people of Falls Church must have their taxes increased. I think the argument will show that to be true.

Mr. Phillips: Provided the same services are necessary.

The Witness: I want to say how much it would be necessary.

The Court: All right.

A. (Continued) Of this \$3,600.00, approximately thirty per cent comes from East Falls Church or about \$1,100.00. That expense would be thrown on the Fairfax County citizens under that separation arrangement, which would mean eleven cents on a hundred dollars on the Fairfax County portion of the town.

In the case of the school, I assume it has been testified that no appreciable reduction could be made in the running expenses of the school and when I say running expenses, I

Q. In other words, a great many of these things are your impressions of what these things are?

A. That is. I would not say a great many of page 285 } them were.

Q. You say that you can see no advantage to the people living in the eastern section of the town to become a part of Arlington County under the sole government of Arlington County. You made a considerable study of what effect that would have on those particular citizens?

A. There are certain tangible and intangible forces one has to take into consideration. I have given thought to both phases. I would not say I made a complete study of it, particularly of the tangible factors.

Q. Are you familiar with the water works and general water system in the Town of Falls Church?

A. In a general way.

Q. Have you any idea of the financial basis on which it runs?

A. I would prefer to have the chairman of our Water Committee to testify to that.

Q. Did I not understand you to say, however, of your own knowledge that one of the features which led you to believe it would be a bad thing to divide the town was the water system?

A. I said I believed it would mean more expense to the Fairfax County side. I was careful not to make an estimate of the amount of such expenses because I have not made a detailed study.

Q. You don't remember whether it would be a substantial amount or not?

page 286 } A. I think it would be.

Q. You are not conversant with the actual financial set-up of the water system?

A. I have not made recently a detailed analysis of it.

Q. May I ask how long since you have made a detailed analysis of it?

A. About a year ago.

Q. Do you recall any of the statistics at that time?

A. That depends on what you mean by statistics.

Q. Do you have any idea of the financial condition?

A. About breaking even; taking in just enough money to pay expenses and interest charges.

Q. Do you know how many users of water that subscribe to your Falls Church system have lived in East Falls Church?

A. No, I could not testify to that.

Q. You would not know whether they are many or few?

Q. Do you know of any advantage that would accrue to the Arlington County portion of the town?

A. No.

Q. Do you know of any that would accrue to Arlington County as a whole?

A. I can think of none, no, sir.

Mr. Barbour: That is all, I believe.

CROSS EXAMINATION.

By Mr. Phillips:

Q. Dr. Parmelee, I wrote down here the statement I understood you to make. "The only means of receiving freight and express is by the Washington and Old Dominion". Is that true?

A. That is true.

Q. No freight or express is received in Falls Church by any other vehicle?

A. No, I did not make that statement. I spoke especially of coal, lumber and other heavy freight. I used that phrase.

Q. Do you happen to know much about the way coal is actually brought to the Town of Falls Church generally, the bulk of the coal for that section?

A. Comes by rail by the Old Dominion, if that is what you mean.

page 284 } Q. Do you know where it is unloaded?

A. In the town.

Q. Whether in the town or not?

A. A considerable portion of it is unloaded in the town.

Q. You know that to be a fact?

A. Yes.

Q. Would you be able to say what portion is unloaded in the town?

A. No.

Q. You would not deny it might be a comparatively small portion?

A. All of the coal that comes out of the local dealers' yards to our own citizens' bins is, I think, unloaded in the town.

Q. You are not sure of that?

A. And we have two or three dealers.

Q. Who are the dealers, please?

A. The two dealers I have in mind are Snyders and Elliott.

Q. You undertake to make the positive statement that their coal is brought into Falls Church by rail?

A. I would not testify to that specifically. That is my impression.

A. I would rather not express an opinion. I have not checked them up recently.

Q. Isn't it a fact that the number of subscribers which you would lose by this would have some bearing on the additional expense of your water system to the remaining citizens of Fairfax County?

A. Only part of the story.

Q. What would be the rest of the story?

A. A number of factors involved—

page 287 } The Court: I wish you would not ask that question. It would just throw the doors open.

Q. May I ask you this? In reaching your conclusion that so far as the Water Department is concerned, it would be a considerable loss, at least a tangible loss to the remaining section of the town, you have not considered and you do not know what revenue is received by this end over here?

A. I have stated I did not know. I have also stated that is only one of the factors.

Q. Do you believe—you mentioned the matter of policing—do you believe that the people of East Falls Church would have less police service than they do at the present time if they were in Arlington County?

A. I would rather not make a comparison there. I would say they would get no better policing over a large area like Arlington County than they do now when they are served over a comparatively small area in Falls Church.

Q. Your opinion is based on your connection with the Council, your status as a citizen, and your observation of it over a period of time?

A. And one more factor. Any citizen is within a mile from our Police Station; in other words, the Police Station is reasonably in the center of the town and easily accessible to every part of the town, whereas the citizens of East Falls Church would be farther from police headquarters
page 288 }

Q. Are you familiar with the police facilities as to the County of Arlington?

A. I would rather not make any comparison.

Q. I gathered you had placed them on the same level.

A. I was speaking of the distance and accessibility.

Q. Now, Mr. Parmelee, I understood you to say that you believed it would be to the detriment of these people in East Falls Church to have this petition granted?

A. I did not think that was the question. I was asked if there would be any benefit.

Q. Then I understand you can conceive of no benefit to them that would accrue to them by being in Arlington County?

A. I do not consider any.

Q. Do you consider any reduction in taxes a benefit?

A. It might be if that stood alone and no offsetting factors.

Q. Can you name one detriment, one offsetting factor against this tax, if these people in East Falls Church are allowed to remain solely under the jurisdiction of Arlington County?

A. The policing matter is one we have just mentioned.

Q. I understood you to say there was no distinction.

A. I understood you to ask me to make a comparison relative to the efficiency of the two jurisdictions. I would not express an opinion on that question. The question of accessibility in any police department is a very important factor. I have had citizens in East Falls Church say they were very glad we had a police station which gives them twenty-four hour service per day.

Q. Do I gather you feel there is better police protection to the people of East Falls Church under the present situation than if this territory is under Arlington County?

A. More accessible.

Q. Are you familiar with the general set-up of the police department in Arlington County?

A. No.

Q. How can you say it would be better policed?

The Court: He did not say that.

Mr. Phillips: I will withdraw the question.

Q. How can you say that service would be more accessible?

A. Because service that is within a mile or less and because I said a mile is almost the outside limit of any point in East Falls Church, that police station is more accessible than one three or four miles away.

Q. You believe in Arlington County there would not be any police accessible in less than a mile?

A. I am speaking of present conditions, of course.

Q. You understand under present conditions that part is not patrolled by Arlington County?

A. Yes.

page 290 } Q. To offset this benefit of tax reduction, do you know of any other factor that would be a detriment besides the accessibility of police?

A. Intangible factors. I do not know whether evidence would be admissible. They are extremely important. As a

citizen of the town, whether I live on one side or the other, to live in a unit neighborhood and community all under one jurisdiction with more or less common interests, and that has been the case for fifty years and has grown up with a solidarity and mutuality of interest. The minute you draw an arbitrary line, because it would be arbitrary line, through the town, those interests would largely disappear. Intangible factors are more important than any dollars and cents you can possibly produce.

Mr. Phillips: That is all.

And further this deponent saith not.

Thereupon,

GUY N. CHURCH,
a witness of lawful age, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Barbour:

Q. Mr. Church, have you stated your full name?

A. Guy N. Church.

Q. You live in Falls Church?

A. Falls Church, Virginia, the Fairfax County portion of the town.

Q. How long have you resided there, Mr.
page 291 } Church?

A. The period since the War, continuously;
since 1918.

Q. What are your business activities, Mr. Church?

A. I am in the real estate business.

Q. Do you specialize in real estate in this section—Arlington County and Fairfax County?

A. Yes.

Q. Can you state to the Court any facts which bear on the question of advantages or disadvantages to these communities as the result of the proposed absorption of the Town of Falls Church?

A. I think the main harm in the separation of the two sections Dr. Parmelee has just stated. Falls Church is one of the oldest incorporated towns in this part of the country. To break up that corporation would break up a condition that has meant a great deal to the residents, the *esprit de corps*, the friendly feeling among the residents that has been

there for a long time. Those things the people of the town have worked for and accomplished together. They mean a good deal to the corporation as a unit. I feel the breaking up of that unit would be detrimental to the part that is left in Fairfax County.

Q. Would it interfere with the progress of the town in any direction, and if so, how? Please state how it would interfere with the progress of the town to its detriment and progress?

A. I feel there would be a detriment to the town in that its development has been in the past along a certain line that has been known as Falls Church, to designate a certain section of the corporation of Falls Church. To lose a section of that corporation would work a hardship. Future development will involve sewerage and possible other things that will come along; we are planning zoning and I feel that eventually when zoning comes in, that town should be considered as a unit in that respect.

Mr. Barbour: That is all.

CROSS EXAMINATION.

By Mr. Phillips:

Q. Mr. Church, both of your objections are more or less of an intangible nature with respect to the town in general, is that right?

A. Yes, they are. I have not made any specific comparison.

Mr. Phillips: That is all.

And further this deponent saith not.

Thereupon,

CHARLES E. GAGE,

a witness of lawful age, being first duly sworn, deposes and says as follows:

DIRECT EXAMINATION.

By Mr. Barbour:

Q. Mr. Gage, state your full name.

A. Charles E. Gage.

Q. Mr. Gage, you live in the Fairfax County portion of the Town of Falls Church?

page 293 } A. Yes, sir.

Q. And are chairman of the Water and Sanitation Committee of the Town?

A. That is right.

Q. Does your committee have supervision of the systems of water and sewerage?

A. That is right.

Q. What are your business activities outside of your official connection with the town, Mr. Gage?

A. I am in the Government service.

Q. What branch?

A. Department of Agriculture.

Q. How long have you resided in Falls Church?

A. Twenty-five years.

Q. How long have you served on the Town Council?

A. About eight years.

Q. Have you given the subject of the proposed dis-memberment of the Town of Falls Church consideration?

A. I have.

Q. In connection with your duties as chairman of the committees and member of the Town Council?

A. Yes, sir.

Q. Can you state to the Court in your own way and as briefly and as pointedly as you may, any advantages or disadvantages which will result to the Town as a
page 294 } whole or to either part of it as a result of the proposed dis-memberment?

A. I am not prepared to discussed any advantages because I have not been able to discover any. The disadvantages that would result—

Mr. Phillips: Are you talking about East Falls Church or disadvantages to those in the Fairfax portion?

Mr. Barbour: My question embraced both.

Mr. Phillips: I wonder if he can break it down.

Mr. Barbour: Let him proceed and you will find out.

A. (Continued) My principal interest in this connection is in connection with the operation of the water system and the possible operation of the sewerage system. The water system is what is known as a grid system, the name of which is rather expressive. It is laid out by the engineers with reference to the easy distribution of water from whatever point it might be taken into the system.

We have found it to our advantage to drill wells for water, deep wells and those wells, the majority of them, lie in Arlington County. We have not been successful so far in drilling

wells in the Fairfax County portion of the town. It might be that we would have success. We had to abandon one well we attempted there and the one well which we completed is the lowest capacity well we have. The immediate conclusion is that the separation of East Falls Church from the Fairfax County portion of the town might jeopardize our
 page 295 } supply of water. Most of our water comes from the wells in Arlington County.

Another consideration in connection with the water relates to the finances, which has already been alluded to by a previous witness, which lies in the fact that there are overhead expenses for water which would not be reduced by reason of the separation and the revenue that remains would have to bear a heavier burden of overhead.

The Court: The overhead expenses in regard to water are paid out of what?

The Witness: Paid out of water revenue. The water revenue is divided between that service and running expenses of the system.

Mr. Barbour: I believe these plats will show what proportion of the water system is in the two jurisdictions?

Mr. Phillips: Yes.

Mr. Barbour: All right, Mr. Gage.

A. (Continued) In connection with the sewerage system, it happens that the area sought to be stricken off from Falls Church is the natural drainage basin of the town, and it results from that, that the different trunk lines of the different lines of sewers, which would convey the affluent from most, if not all, of the remainder of the town, drain toward that basin. The line at which the separation would take place cuts across the basin and on to high ground beyond. The
 page 296 } separation would, therefore, involve serious engineering difficulties in bringing the trunk lines, the sewer lines, to a focal point for sewage disposal.

Q. There has been something said with respect to locating a sewage disposal plant in the portion of the Fairfax section of the town which would remain or which would join a small section of the Four Mile Run. Would it be practical to locate a sewage disposal plant there that would take care of the necessity of the entire town as it would remain?

A. I don't think so. We have on our plans one sewer line on Lincoln Avenue which would be separated from the proposed disposal plant, the one involved in your question, by two railroad cuts and up a drainage basin of Four Mile Run, which it would be necessary to cross from one side to the

other. The difficulties of carrying that sewer line over it, across that drainage basin and across the intervening territory would be very material.

Q. Have you made any inquiry of the condition of the streets which are designated on a certain plat in yellow as being unimproved?

A. I think I would have to consult that map. I do not know that I would know which streets are indicated on there as unimproved.

Q. They are all the streets in the town, Mr. Gage, except the two State Highways and that portion which is constructed either of concrete or of tar macadam?

A. That would not be a correct classification.

page 297 } Q. I call your attention now to Exhibit 5, on which all of the streets that have been actually opened are indicated in blue, pink or yellow. The pink and blue are either tar macadam or concrete. Those that are barred in pink and blue are State highways. Those not barred are town streets. All the residue of the open streets are marked on that plat in yellow and are designated on the plat as unimproved, but the engineer who made it said he classified in that all streets which were not tar macadam or concrete, whatever their surfaces were, some mud, some gravel and some stone, I believe. Can you tell us to what extent those streets are improved and the relative degree of improvement on those streets in the Arlington portion of the town is as compared with like streets in the Fairfax portion of the streets?

A. Some of the streets indicated here as unimproved have received various degrees of improvement from very substantial gravel treatment, which has been done in most of the cases, to cinder treatment, which has been used in one case.

On the north side of the railroad tracks there is only one section of streets in there which are unimproved, which are literally unimproved. That is a small section from here to the railroad tracks.

Q. From the intersection of First Street?

A. From Little Falls Street.

Q. A portion of Little Falls Street from the in-
page 298 } tersection of First Street to the dividing line between the counties.

A. That is unimproved.

Q. Is that the only street you see that should be designated as unimproved?

A. On this side of the railroad tracks it is the only street I see marked yellow which has not had some improved treatment and which is not actually in good improved condition.

Some of the streets have been improved to some extent; some no treatment. That little section of Crossman Street from Lee Highway to the County line and it is true of one portion of Cedar Street; in the section to the south of the railroad tracks there are several streets which are unimproved and they are not even colored on this map.

Q. Those streets not colored are not opened up?

A. At any rate, there has been less improvement work in some of this area known as the Barracks and it is true on this side of the tracks. Here is a street marked as Jefferson Avenue, properly known as Mosby Street, which has been furnished with a hard base and while it is not in a smooth condition now, it has been made in a smooth condition and probably will receive some treatment in the next few weeks.

Grant Avenue, indicated as unimproved, has been surfaced, a portion has been taken down and has been re-treated, and is in good condition today. Some of these other streets are

included in the civil works projects now in page 299 } progress. That is particularly true of South Street throughout its entire length in both counties; it is being put in an improved condition.

There are streets in both counties of the town that are in need of attention and will receive it as soon as funds permit.

Q. Did you ever see a city, town or county that did not have such streets?

A. No, I never did.

Q. You are familiar with the layout of the water system as constructed by the town?

A. Yes, sir.

Q. Both on the Arlington County portion of the town and in the Fairfax portion of the town?

A. Yes.

Q. Assuming, Mr. Gage, that this detachment is made and the water system belonging to the town, which would then be in Arlington County and outside of the corporate limits, was detached from the system, what would be necessary, what additional investment by the town would be necessary in order to perfect its water system itself?

A. Very difficult to say. We constructed our system at a time when labor costs and material costs were very low. It is absolutely inconceivable that we could duplicate the work for the same money today. There is quite an element of uncertainty there in connection with the wells be-
page 300 } cause as I testified earlier, the drilling of the wells is uncertain. Never know what we are going to get. In fact, of the four attempts that have been made to

get water, only those in Arlington County could be said to be even fairly successful.

Q. What would be necessary to complete the circulation of water in the Fairfax County side of the divide?

A. It would be necessary to install a tie line extending along the county line to connect up the broken ends of the present system. The effect of that would be to avoid a lot of dead ends of pipes in which water would become stagnant and unpalatable.

Q. I show you Exhibit #4; according to the legend the lines installed by Arlington County are solid and the barred lines are Falls Church lines. The different kinds of barring showing the different dimensions of the pipe. Indicate on the plat there just where this tie line would have to be constructed.

A. It would have to commence perhaps, not over there but it should commence in here.

Mr. Douglas: Will you designate that for the stenographer?

The Witness: Should commence on Meridian Street. It should commence on Great Falls Street, cut across Meridian Street, across Lincoln Avenue, and follow reasonably close to the Arlington County line to take in these ends of mains, over to Columbia Street. Eventually it would probably have to be extended over to South Street.

page 301 } Q. The circulation of the system as now constructed requires a flow of water through the Arlington County section?

A. The circulation of water is so designated that it flows through the mains and in such a way as to avoid dead ends in which the water would become stagnant.

Q. And the wells you referred to are in Arlington County?

A. Yes, one well on South Street near the end of Columbia. We have one on Madison Street and Walnut.

Q. They are indicated on the maps?

A. They are indicated on the maps.

Mr. Barbour: Take the witness.

CROSS EXAMINATION.

By Mr. Douglas:

Q. Referring to that water map very briefly, Mr. Gage, you have some dead ends in your system at the present time, have you not?

A. That is true.

Q. One on New York Avenue, Pennsylvania Avenue, Little Falls Street, Grant Avenue, Jefferson, Madison, to mention only a few near the county line?

A. That is true. Those will eventually be closed up.

Q. Those lines you speak of as being necessary to construct if the corporation limits were contracted would make an improvement that does not now exist?

A. That is not true, no. This line would cut page 302 } across the main system of supply. Pump water from this well clear around this way into the tank. The water comes down Lincoln Avenue. Those are main lines, which at some point must be connected up in order to provide circulation under any conceivable trouble.

Q. The town itself owns the wells?

A. Yes.

Q. The fact that the corporate limits would be contracted would not have anything to do with the ownership of the wells? They would still own the wells?

A. Still own the wells if they do not take them away from us.

Q. The Court could not take private property as distinguished from political sub-division, could it?

A. I don't know.

Q. The reason I asked that question is that you seem to think the separation of the town would separate you from your wells?

A. In the event of the separation of the town, taking away from us our wells and lines in East Falls Church would jeopardize the supply system of the rest of the town.

Q. How long have you been on the council, Mr. Gage?

A. Something like eight years.

Q. As far as you have had anything to do with the Government, have you tried to extend the benefits page 303 } into Arlington County in proportion to the taxes?

A. Absolutely.

Q. Would you say substantially the amount of taxes paid in have been spent in that portion?

A. I have not made that statement. We do not attempt to localize expenditures by taxes.

Q. Substantially the money that is being paid in to the Town of Falls Church by the Arlington County section is being returned to it in benefits?

A. I am not prepared to make a statement.

Q. Are you a civil engineer?

A. No, sir.

Q. Can you answer this question? Do you know where

the McCreary Company had planned in the design to put your sewage disposal system?

A. The plans as involved in the McCreary Company's design—the plans for disposal system as involved in the design was on Four Mile Run at or near the corporation limits at the far end of the drainage basin of East Falls Church.

Q. Do you know of any reason why, if the town were contracted, you could not bring that disposal plant up stream and put it at the lowest point where it would still remain in the town?

A. One of the main difficulties is the fact that it calls for a sewer line on Lincoln Avenue. Lincoln Avenue page 304 } is on the far side of this Four Mile Run basin, from this area over here on Columbia Street we will say. In between Lincoln Avenue and the area which your question involves, there are two railroad tracks, at portions in deep cuts, at portions on rather high fills. Between the railroad tracks and the area you propose is a strip of march land, an area of march land, after which the main coming from Lincoln Avenue would necessarily have to cross the Lee Highway, and this other area to get to this possible location of a disposal plant that involves a territory with very little fall.

Aside from the difficulty of getting a main directly across these railroad cuts and embankments and getting it over to this location for a disposal plant, the fall would probably be so limited that some pumping or some engineering method would have to be devised to overcome the lack of natural drainage.

Q. The fall of the sewage into the disposal plant or the affluent?

A. Into the disposal plant.

Q. How would you get over those conditions if you placed your disposal plant down here?

A. The sewer main would continue on down Lincoln Avenue and then the engineering difficulties would have been avoided.

Q. Do you know how many water customers Falls Church has in the Arlington County portion of Falls Church?

A. We have about twenty-seven on our own page 305 } lines and I do not know the number on Arlington County lines.

Mr. Barbour: All those matters are stipulated.

Q. Do you know how much money has been received from that entire number of customers in the past year? What

together with the exhibits and stipulations therein referred to, comprises all of the evidence introduced by either side on said trial and all the incidents thereof, with the exception of certain exhibits used in connection with said evidence and stipulations and therein referred to respectively as Exhibits 1, 1-A, 1-B and 1-C; Exhibits 2, 3, 4, 4-A, 4-B, page 307 } 4-C, 4-D and 4-E, 5, 6, 7, 8, 9-A, 9-B, 10, 10-A, 10-B, 11, 12 and 13, and further identified by my signature endorsed on each, and that it was agreed by counsel representing all parties to this proceeding that in lieu of certifying copies of the said exhibits referred to as a part of the foregoing record that the originals thereof shall be transmitted by the Clerk of this Court to the Clerk of the Supreme Court of Appeals of Virginia and to be treated as a part hereof, and it is so ordered by the Court; and except further, that it was stipulated as a part of the evidence in the case that as a part of the arrangement existing between the town of Falls Church and the County of Fairfax whereby the town admitted to its schools children residing in Fairfax outside of its limits, that the County took care of all the colored school children in the town without charge, the town having no colored schools, and that the colored children so schooled last year were 12. And I further certify that the attorneys for the plaintiff had reasonable notice in writing of the time and place when said report of testimony and other incidents of the trial and the Certificates of Exception therein referred to would be tendered and presented to me for verification and signature.

Given under my hand this 23rd day of February, 1935, within sixty days from the date on which the final judgment above mentioned was rendered.

WALTER T. McCARTHY,
Judge of the Circuit Court for Arlington
County, Virginia.

page 308 } I, Walter T. McCarthy, Judge of the Circuit Court for Arlington County, Virginia, do certify that the foregoing is an accurate typewritten copy of the Certificate of Exception No. 1 in the above-entitled cause of James G. Gould, et al., Petitioners, v. The County Board of Arlington County, and others, defendants, this day certified to by me.

Given under my hand this 23rd day of February, 1935.

WALTER T. McCARTHY,
Judge of the Circuit Court for Arlington
County, Virginia.

page 309 } In the Circuit Court of Arlington County,
Virginia.

James B. Gould, et al., Petitioners,

v.

The County Board of Arlington County, et al., Defendants.

CERTIFICATE OF EXCEPTION NO. 2.

It is hereby certified that upon the trial of this matter, and after the Court had announced its final conclusion as stated in the final order entered in this cause on January 17, 1935, the defendants, L. P. Daniel, Mayor of the Town of Falls Church, the Town of Falls Church and the several intervenors therein, through their counsel, each severally excepted to the final order and judgment of the Court for the following reasons:

That the said order and judgment is contrary to the law and to the evidence, and is contrary to the weight of the evidence; and because the Court struck out items 1, 5, 6 and 7 of its Bill of Particulars and declined to receive evidence in support thereof; also because the court erred in contracting the corporate limits of the town as stated in said order, and because the Court had no jurisdiction to require the town

after such restriction to furnish educational facilities for children residing in the Arlington

County portion of said town after the contraction for any period, and certainly not for the extended period required by said order, without charge, and if it had jurisdiction that the court exceeded its proper discretion in exercising the same; and further because the court refused to embrace in said provision a direction that the County of Arlington should continue to account to the town of Falls Church for school taxes collected within said area stricken from the town and during the period that they are required to furnish educational facilities for all white children therein; and because the Court erred in giving to the County of Arlington all public improvements, especially the permanent street and sidewalk improvements within the stricken portion of the said town without just compensation; and because instead of requiring the County of Arlington to pay in cash to the town of Falls Church a proper pro rata of the bonded indebtedness of said town both for water bonds and for school issues, it only required them to contribute to the payment thereof as they severally matured; because the effect of the order is to materially restrict the debt limit of the town by

decreasing the assessed value of its real estate without reducing correspondingly its indebtedness, thereby limiting the power of the town to incur future indebtedness for necessary public improvements; and because the proportion of such indebtedness required to be assumed by the County is too small and to the prejudice of the town; and because the court is without jurisdiction to restrain the authorities of the town from making contracts and public improvements in the exercise of its corporate powers between the entry of the order and the final determination of the cause, and even if the Court had jurisdiction in entering the order in this respect it has exceeded its jurisdiction, and because the County of Arlington is without power to incur the debt imposed upon it by the judgment of the court.

Given under my hand this 23rd day of February, 1935, within sixty days from the date on which the final judgment above mentioned was rendered.

WALTER T. McCARTHY,
Judge of the Circuit Court for Arlington
County, Virginia.

I, Walter T. McCarthy, Judge of the Circuit Court for Arlington County, Virginia, do certify that the foregoing is an accurate typewritten copy of the Certificate of Exception No. 2 in the above-entitled cause of James B. Gould, et al., Petitioners, v. The County Board of Arlington County, and others, defendants, this day certified by me.

Given under my hand this 23rd day of February, 1935.

WALTER T. McCARTHY,
Judge of the Circuit Court for Arlington
County, Virginia.

page 312 } FINAL ORDER.

Entered January 17, 1935.

This matter coming on this day to be heard upon the papers formerly read, including the order entered in this cause on the 24th day of November, 1934, from which it appears that this cause was continued for further hearing, to be held upon December 17, 1934, upon the questions of disposition of corporate property of the Town of Falls Church, and upon the further question as to what provision should be made for the payment of the debts and obligations of the Town

as between the County of Arlington and the inhabitants of the Town;

And the Town of Falls Church and its intervening citizens having filed their bill of particulars of their demands against the County of Arlington, consisting of seven items of demand, the aggregate amount of which was One Hundred and Sixty-six Thousand and Forty-eight Dollars and thirty cents (\$166,048.30), and offered to present evidence tending to prove each of them; to which the County of Arlington and the petitioners in this cause objected and filed their motions to strike as to Items 1, 5, 6 and 7 of the said bill of particulars; and upon argument of counsel;

And the Court having maturely considered the same, doth sustain each of the said motions, and being of the opinion that, as a matter of law, the Town of Falls Church is not entitled to recover from the County of Arlington anything by virtue of said Items 1, 5, 6 and 7, of its said bill of particulars, doth order these items to be stricken, as to which action of the Court the intervenors and the respondent, L. P. Daniel, Mayor, excepted.

And upon further argument of counsel as to the remaining items numbered 2, 3, and 4, of the said bill
page 313 } of particulars, with respect to the corporate property and debts of the Town of Falls Church, the Court doth order as follows:

(1) That the charter of the Town of Falls Church be, and the same is hereby amended so as to exclude from the corporate limits of said Town all of that part of said Town which is located in Arlington County, Virginia, and which is more particularly described as follows:

BEGINNING at a large planted stone on the estate of the late J. C. DePutron, at the original western corner of the District of Columbia, which is also at the corner of Fairfax and Arlington Counties, and at the corner of the Town of Falls Church; thence, with the boundary of said Town, S. 83° 15' E. 2404 feet, more or less, to a planted stone in the center of Little Falls Street, also called the Chain Bridge Road, at a point at which said street is intersected by the boundary of the land formerly known as the Bowen Tract; thence, with the boundary of said Town, S. 49° 15' E. 3482 feet, more or less, to a planted granite stone at a point which formerly marked the northeast corner of John Brown's barn; thence, with the boundary of said town, S. 28° 45' E. 2410 feet, more or less, to the point at which there formerly stood a large pin-oak tree on the Gott tract; thence, with the boun-

dary of the said Town, S. 4° 15' W., to the boundary between Fairfax and Arlington Counties; thence with the said boundary in a northwesterly direction to the place of beginning, it being the intention of this order to strike off from said Town all that part of the territory thereof which is located in Arlington County, Virginia.

(2) That the said amendment shall be and become effective and in force from and after 12 o'clock, midnight, on the 31st day of March, 1935.

(3) It is further ordered by the Court that all white children living in that portion of Arlington County within the territory herein stricken from the Town, and all white children who shall attain school age within the period hereinafter set forth, living in the said territory, shall have the right to attend the public schools of the Town of Falls Church, and to enjoy all of the school facilities extended to other children within the Town, without charge of any
 page 314 } kind, until July 1, 1937. Any colored school children living in the area hereby stricken from the Town, shall be entitled, forthwith, to attend the schools for colored children in Arlington County.

IT IS FURTHER ADJUDGED AND ORDERED that the proper authorities of the Town of Falls Church shall account for and pay over to the treasurer of the County of Arlington, on August 31, 1935, a sum equal to five-twelfths of all taxes assessed and collected for the fiscal year beginning September 1, 1934, against all property, real, personal or otherwise, located in that portion of the Town of Falls Church herein stricken from the corporate limits of the Town; and on the 31st day of August of each year thereafter, for the next ensuing five years, the said town authorities shall likewise account for and pay over to the Treasurer of the said County of Arlington a sum equal to five-twelfths of all taxes on said property for the said fiscal year beginning September 1, 1934, which may not have been paid during the current year, but which may thereafter be paid during the ensuing period of five years.

From and after the effective date of this decree, the County of Arlington shall own and hold all public improvements and real and personal property of every kind and description of the Town of Falls Church, located within that portion of the Town herein provided to be stricken from the corporate limits of the Town, excepting two certain wells, and the lots of land now owned by the Town of Falls Church upon which these wells are located; and excepting also those

water pipe lines running from Well No. 2, as shown on Exhibit No. 4, a part of the evidence in this cause, in a westerly direction along Columbia Street to the division line between Arlington County and Fairfax County, and from Well No. 3, shown upon said plat, in an easterly direction along Walnut Street to Monroe Street, thence in a south-
 page 315 } erly direction along Monroe Street to Columbia Street, where this line intersects with the line from Well No. 2; and excepting a short section of pipe with fire hydrant extending across the Fairfax-Arlington line, on Meridian Street, as shown on said plat.

The County shall, prior to the effective date of this order, insert a cut-off valve, so as to sever the two systems at the intersection of Walnut Street and Monroe Avenue, as shown on said plat. The right is also reserved to the Town to have access to the lines so reserved for the purposes of repair and replacement.

AND IT FURTHER APPEARING TO THE COURT that the existing debts and obligations of the Town of Falls Church are:

(a) Water bonds, issued under date of May 1, 1931, bearing interest at the rate of five per cent per annum, and payable on May 1, 1961. Of an original authorized issue of \$125,000, there is now outstanding		\$118,000.00
(b) School bonds issued under date of May 1, 1925, bearing interest at the rate of 4.7 per cent per annum, payable serially:		
\$2,000 per year from Jan. 1, 1936, to Jan. 1, 1940, both inclusive		
\$3,000 per year from Jan. 1, 1941, to Jan. 1, 1946, both inclusive,		
\$4,000 per year from Jan. 1, 1947, to Jan. 1, 1954, both inclusive,		
* \$5,000 on January 1, 1955.		
Of the original issue of \$75,000, there is now outstanding		65,000.00
(c) Aggregate of indebtedness		
page 316 } to Virginia Literary Fund, \$2,800.00		
	1,500.00	
To Falls Church Bank,	400.00	
	<hr/>	
Outstanding		4,700.00
		<hr/>
Total outstanding indebtedness.....		\$187,700.00
		<hr/>

AND IT FURTHER APPEARING from the evidence that the following are the facts with respect to the corporate property now owned by the Town:

- (a) That all school property of the Town, including all buildings and the furniture therein, are located within the Fairfax County portion thereof.
- (b) That the Town has in hand by way of unexpended water construction funds the sum of \$9,669.31
- And by way of other unexpended revenues, the sum of 2,037.93
- (c) That with respect to water pipe lines there exist in the system of the Town of Falls Church the following:

8 inch lines 4,930 feet
of which 100 per cent are in Fairfax
County.

6 inch lines 56,720 feet
of which 86.02 per cent are in
the Fairfax County portion.

4 inch lines 150 feet
of which none are in the
Fairfax County portion.

2 inch lines, or less 14,420 feet
of which 70 per cent are in the
Fairfax County portion of the
Town.

IN CONSIDERATION WHEREOF, it is further ordered ordered that the Town of Falls Church keep and retain title to all of the public school properties now owned by the Town; that the Town likewise keep and retain all of the wells, pipe lines and other property pertaining to the water system of the Town and located in the Fairfax County por-
page 317 } tion thereof, together with the two wells located in the Arlington County portion thereof, and the water pipe lines above described.

IT IS FURTHER ADJUDGED AND ORDERED that the County of Arlington shall pay a sum equal to 29.6 per cent of the amounts of principal and interest due on the above-mentioned school bonds, as and when the same shall become due and payable, according to the tenor thereof; that the said County shall likewise pay a sum equal to 18 per cent of

the amounts of principal and interest due on the above-mentioned water bonds, as and when the same, or any installment of either, shall become due and payable according to the tenor thereof.

IT IS FURTHER ADJUDGED AND ORDERED that the share which the County Board of Arlington County, Virginia, would otherwise be entitled to receive of the unexpended water construction funds of the Town of Falls Church, and of other unexpended revenues of the Town, above mentioned in this decree, shall be set off against the proportion of the indebtedness of the Town to the Virginia Literary Fund and to the Falls Church Bank, or other floating indebtedness, it being the intention of this order, in making the required adjustment of corporate property and of corporate indebtedness, to offset these items in such manner that the said County Board will have no right to participate in any cash on hand except the 1934-1935 levy above provided for; nor shall the said Board be required to contribute to the two items of indebtedness last mentioned.

IT IS FURTHER ORDERED that the authorities of the Town of Falls Church shall not, between the entry of this order and the final determination of this cause, make or contract to make any permanent public improvements or contract with relation to any franchise, right-of-way, bond issues or indebtedness for which the County of Arlington, page 318 } ton, or that portion thereof now within the Town of Falls Church, may become liable in whole or in part, without the consent of the proper authorities of said County.

The Clerk of this Court is hereby directed to certify to the Clerk of the Town of Falls Church, and to the Clerk of the School Board of the Town of Falls Church, each, a copy of this order.

To each and every of which rulings and judgments of the Court L. P. Daniel, Mayor, and the other intervenors, severally excepted.

And this order is final.

WALTER T. McCARTHY, Judge.

page 319 } I, John A. Petty, Clerk of the Circuit Court of Arlington County, Virginia, the same being a Court of Record, do hereby certify that the foregoing are true copies of the originals on file and of record in my office in the case of J. B. Gould, et als., v. The County Board of

Arlington County Virginia, et als., and they constitute the transcript of record in accordance with the application of John S. Barbour, Attorney for the Town of Falls Church, L. P. Daniel, Mayor, and the intervening inhabitants, notice of which application has been accepted by Thomas W. Phillips, Attorney for the Petitioners, and Lawrence W. Douglas, Attorney for the County Board of Arlington County, Virginia.

Given under my hand this 25th day of February, 1935.

JOHN A. PETTY
Clerk of the Circuit Court, Arlington
County, Virginia.

Amount paid for Transcript \$36.41.

A Copy—Teste:

M. B. WATTS, C. C.

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