

2712  
191-184  
Record No. 3682

In the  
Supreme Court of Appeals of Virginia  
at Richmond

WASHINGTON AND OLD DOMINION R. R.

v.

CITY OF ALEXANDRIA, VIRGINIA

FROM THE CORPORATION COURT OF THE CITY OF ALEXANDRIA

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

M. B. WATTS, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

191 VA 184

**NOTICE TO COUNSEL**

This case probably will be called at the session of court to  
be held

**MAR 1950**

You will be advised later more definitely as to the date.

Print names of counsel on front cover of briefs.

M. B. WATTS, Clerk.



## RULE 5:12—BRIEFS

**§1. Form and Contents of Appellant's Brief.** The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

**§2. Form and Contents of Appellee's Brief.** The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

**§3. Reply Brief.** The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

**§4. Time of Filing.** As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) The opening brief of the appellant shall be filed in the clerk's office within twenty-one days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. The brief of the appellee shall be filed in the clerk's office not less than twenty-one days, and the reply brief of the appellant not less than two days, before the first day of the session at which the case is to be heard.

(b) Unless the appellant's brief is filed at least forty-two days before the beginning of the next session of the Court, the case, in the absence of stipulation of counsel, will not be called at that session of the Court; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) Counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

**§5. Number of Copies.** Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

**§6. Size and Type.** Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

**§7. Effect of Noncompliance.** If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.



CLERK  
SUPREME COURT OF APPEALS



RICHMOND, VIRGINIA

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IN THE  
**Supreme Court of Appeals of Virginia**  
AT RICHMOND.

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**Record No. 3682**

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WASHINGTON AND OLD DOMINION RAILROAD,  
a Virginia Corporation, Plaintiff in Error,

*versus*

CITY OF ALEXANDRIA, VIRGINIA,  
Defendant in Error.

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PETITION FOR WRIT OF ERROR.

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*To the Honorable, the Justices of the Supreme Court of Appeals  
of the State of Virginia:*

Your petitioner, Washington and Old Dominion Railroad, a corporation, respectfully represents that its is aggrieved by a final judgment entered August 3, 1949, by the Corporation Court of the City of Alexandria, Virginia, whereby petitioner was convicted of erecting a coal trestle on its right of way in violation of the zoning ordinance of the City of Alexandria, namely, section 4, sub-section (B), chapter 28, of the Code of the City of Alexandria, Virginia, as amended by ordinance No. 463, of said city. This judgment was rendered on a jury verdict which found the petitioner and its co-defendant, Arthur F. Campbell, guilty of violating said ordinance and fixed their punishment by a fine of \$10.00 against each defendant. The co-defendant, Arthur F.

Campbell, has not appealed from this judgment. Petitioner 2\* presents herewith a \*transcript of the record in said action and prays that a writ of error may be allowed and that said judgment may be reversed. Three photographs introduced into

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evidence by petitioner are not included among the exhibits, since the trial court excluded all photographs (Tr., p. 131) and allowed the jury to have a view. The petitioner will be hereinafter referred to as the defendant railroad.

### ASSIGNMENT OF ERRORS.

1. The trial court erred in overruling the defendant railroad's motion to quash the criminal warrant on the ground that the defendant railroad is a public service corporation and that, accordingly, the city of Alexandria lacked the authority to zone the defendant railroad's right of way so as to interfere with its charter obligations as a public carrier of passengers and freight.

2. The trial court erred in the admission of testimony by Harry F. Miller that the "zoning classification" of land embraced in the right of way of the defendant railroad had not been changed since the preparation of the revised zoning map because the question and answer assumed that the city had proved, as a matter of law, that the right of way of the defendant railroad had, in fact, been originally zoned to "A" Residential.

3. The trial court erred in granting instructions 1, 2, and 3 tendered by the city of Alexandria, since, in so granting said instructions, the court held, as a matter of law, that the city of Alexandria had in fact zoned the right of way of the defendant railroad to "A" Residential zone.

4. The trial court erred in overruling the defendant railroad's motion to set aside the verdict and enter final judgment for the defendant railroad since the city failed, as a matter of law, to prove that the right of way of the defendant railroad was zoned to "A" Residential.

### *Points Involved.*

1. Does the authority of the city of Alexandria to enact zoning legislation enable it to zone the defendant railroad's right of way so as to interfere with the performance of the defendant's charter obligations as a public carrier?

2. The revised zoning map of the city of Alexandria (Exhibit 1-c), which is the sole means of determining whether the right of way of defendant railroad is zoned "A" Residential is susceptible of two equally justified interpretations: either, that said right of way is not zoned in any classification; or, that said right of way is zoned "A" Residential. Is such a penal ordinance sufficiently definite as to be capable of valid enforcement against the defendant railroad?

3. Where one of two equally justified interpretations will bring the zoning ordinance into conflict with the authority which the State Corporation Commission exercises over the defendant

railroad, and the other interpretation will not result in such a conflict, which interpretation will be favored by the court?

### STATEMENT OF THE FACTS.

4\* \*The criminal warrant (Tr., p. 176)\* charged:

"\* \* \* that Washington and Old Dominion Railroad between 30th day of June and 2nd day of July, 1948, at said city, did unlawfully erect a structure in an A-residence zone, to-wit, a coal trestle for operation and use of a fuel yard on the Washington and Old Dominion Railroad right of way near Randolph Avenue in violation of Section 4, Subsection (B), chapter 28 of the Code of the City of Alexandria, as amended by Ord. No. 463. \* \* \*"

Section 4 of subsection (B), chapter 28 of the Code of the city of Alexandria is a part of the zoning ordinance of the city of Alexandria. Said Section 4, subsection (B) as amended by ordinance No. 463 (exhibit 1-b, pp. 2-3) provides, in part, as follows:

"(B) In the "A" residence zones, unless hereinafter provided, no building or premises shall be used and no building or structure shall be hereafter erected, altered, or repaired except for one or more of the following uses: \* \* \*"

Permitted uses in "A" Residential zone are then enumerated.

Section 3, Article II, of said zoning ordinance, as amended by ordinance No. 463 (Exhibit 1-b, p. 1) provides as follows:

BX  
"Sec. 3. Location and Boundaries of Zones. The boundaries of said zones shall be as shown upon the revised map designated as "Second Revised Zoning Map," dated March, 1946, signed by the Mayor of Alexandria, and the Clerk of the Council, on file in the office of the City Engineer, which is hereby made a part of this chapter, and said revised map and all notations, references, and other data shown thereon is by this reference made a part hereof to the same extent as if the information set forth on said map were fully described and incorporated herein." e

The defendant railroad is a Virginia Corporation (Tr.' 5\* p. 140). \*Since its incorporation in 1935 it has been engaged in interstate and intrastate commerce (Tr., p. 140). The coal trestle, the erection of which constitutes the alleged

\*Page references follow paging of clerk of trial court as made at bottom of each page of transcript.



violation, is located at a point on the railroad right of way called Alexandria Junction (Tr., p. 140). This is a regular unloading station for coal shipments under tariffs on file with the Interstate Commerce Commission and the State Corporation Commission (Tr., p. 140), and the entire unloading facility is located within the 100 ft. right of way of the railroad (Tr., p. 29). Coal delivered at this facility by the railroad originated mostly in Pennsylvania or West Virginia (Tr., p. 28).

The evidence showed that a wooden trestle and wooden coal bins had been located at that point on the railroad right of way since 1892 (Tr., p. 27), and used since that time; that it had first been used as a coaling station by the Southern Railroad, a predecessor of the defendant (Tr., p. 28). The trestle handled coal which was shipped in interstate commerce (Tr., p. 28). The trestle and bins were subsequently leased to the Potomac Coal Company when the Company was owned by one Harding (Tr., p. 37). The property was being so used as a coal yard when the zoning ordinance of the city of Alexandria was adopted.

The Potomac Coal Company was later acquired by a partnership of which Arthur F. Campbell was a member (Tr., p. 137); and Mr. Campbell leased the trestle, bins, and additional space for office and scales, from the railroad for ten years, with option to renew (Tr., pp. 25, 138). Mr. Campbell was also president of the Northern Virginia Construction Company (Tr., p. 132); and because of the bad state of repair of the trestle (Tr., p. 6\* 41) it was agreed between the railroad \*and the Northern

Virginia Construction Company (Tr., p. 132) that a portion of the trestle would be replaced at cost by the Construction Company, with concrete piers substituted for the wooden ones (Tr., p. 133).

Before undertaking this construction, Mr. Campbell took a Mr. Lash, the then building inspector of Alexandria, to the ground and showed him what he proposed to do (Tr., p. 136). Mr. Lash told Mr. Campbell that he didn't see why a permit was necessary or that there was any violation of the zoning ordinance (Tr., p. 136). Mr. Campbell also discussed the proposed construction with the city manager (Tr., p. 137) who likewise stated that he didn't see any violation or any need for a permit. Mr. Campbell's corporation, Northern Virginia Construction Company, accordingly proceeded with the work of repair (Tr., p. 137).

It was conceded at the trial (Tr., p. 99) that only by reference to the legend on the zoning map (Exhibit 1-c) could it be determined whether or not the right of way of defendant railroad was zoned in any classification.

The legend on the revised zoning map (Exhibit 1-c) shows eight classifications of zoning of property within the corporate limits of the city of Alexandria. Zone "A" Residential is shown as

*W. & O. D. R. R.*  
white: that is, it is the same color as the paper on which the map is printed. All other zones are variously colored.

It was admitted by the city that some property located within the city limits, although shown as white on the revised zoning map, was not zoned at all. ~~It was conceded that the streets are not zoned (Tr., p. 173);~~ but it was contended that certain other areas shown on the map as white were zoned "A" Residential: 7\* e. g., the Potomac \*Railway yards, the R. F. & P. R. R. Co., land and the entire right of way of the defendant, Washington and Old Dominion Railroad.

An examination of the revised zoning map discloses that the right of way of the defendant railroad traverses the northeast portion of the city. At the easterly end, it abuts property which is zoned "E" Industrial; as it proceeds northwesterly it crosses a large area occupied by the R. F. & P. R. R. Co. yards and the Potomac Yards, used by five railroad lines (Tr., p. 33), and then crosses River Road at a point just east of an industrial area. This industrial area is bounded on the north by Calvert Avenue, on the east by River Road, on the southwest by the defendant railroad's right of way, and covers two square blocks. The railroad right of way, immediately adjacent to this industrial area, is, however, still shown as white. The trestle in question is located near this industrial area at a point just southeast of where Calvert Avenue crosses the railroad right of way. A witness for the prosecution, Mr. George Giammittorio, admitted (Tr., p. 61) that warehouses had been constructed in this industrial area and near the place where the defendant railroad was constructing its trestle. These warehouses are served by two spur tracks of the defendant railroad (Tr., p. 31).

As the defendant's right of way continues its course across the city, it passes through property which, although immediately adjacent to it, is differently and variously zoned. But throughout its entire course through the city, the defendant railroad's right of way is shown as white. *A - Residential*

Mr. Fred Pettit, clerk of the council of the city of Alexandria, \*was called as a witness for the prosecution (Tr., p. 13). On cross-examination he stated (Tr., p. 15) that he could not say whether some areas on the map were not zoned; that the George Washington High School property and property owned by the city of Alexandria were not, to his knowledge, zoned at all (Tr., p. 16); that he didn't know (Tr., p. 17) whether the Potomac Yards were zoned "A" Residential, although shown on the map as white; that he didn't know (Tr., p. 18) if the map was up to date; and didn't know (Tr., p. 18) whether it was active or not; that he didn't know (Tr., p. 18) whether there were recent industrial rezonings which were not shown on the map; and that he didn't know (Tr., p. 19) whether the map was accurate or not.

On re-cross examination (Tr., pp. 20-21), Mr. Pettit stated that he assumed the streets were zoned "A" Residential since they were shown as white on the map; and for the same reason he assumed (Tr., p. 21) that the right of way of defendant railroad was zoned "A" Residential.

On further re-cross examination, Mr. Pettit stated (Tr., p. 22) that he thought recent changes in zoning had been made by ordinance but that they had not been posted on the map.

Mr. Harry F. Miller, Field Building Inspector of the city of Alexandria, was called as a witness for the prosecution (Tr., p. 97). It was his duty to record changes on the zoning map in accordance with changes made by the City Council (Tr., p. 97). He stated that he didn't know if the Potomac Coal Yard was "A" Residential (Tr., p. 104) and didn't know if the streets are zoned "A" Residential (Tr., p. 104).

Mr. Miller admitted (Tr., p. 105) that changes had been made in the zoning classifications, but had not been posted on the 9\* master \*map (Tr., p. 105); that two recent rezonings from Residential to "E" Industrial had occurred on the north side of Calvert Avenue, between River Road and the right of way of the Washington and Old Dominion Railroad (Tr., pp. 106-107); that neither of these changes were shown on the revised zoning map (Exhibit 1-c); and that he didn't know if the city had ever required the R. F. & P. R. R. Co. to comply with the requirements of "A" Residential zone.

### ARGUMENT.

From the foregoing statement of facts it is apparent that the revised zoning map of the city of Alexandria (Exhibit 1-c) is subject to two equally justified interpretations: either that the right of way of the defendant railroad is not zoned in any classification; or, that it is zoned "A" Residential.

Aside from the doubt, engendered by the zoning map itself, that the City Council of Alexandria intended to zone the defendant railroad's right of way "A" Residential, there are further and stronger reasons for believing that the City Council did not so intend:

(1) By such a zoning the city of Alexandria would assume jurisdiction of the right of way of the defendant railroad and the facilities located thereon; and by so doing the city would necessarily invade the province of the State Corporation Commission.

(2) Such a zoning would impose unreasonable limitations on the defendant railroad which would seriously interfere with the maintenance of its facilities and with the performance of its duties as a public carrier.



yes 10\* \*(3) Such a zoning would result in an unreasonable and arbitrary classification, since it would create an "A" Residential strip, 100 feet in width, extending across the northeasterly portion of the city of Alexandria and adjoining properties variously and differently zoned.

No 1. *The supervision, regulation and control of the defendant railroad's facilities are vested in the State Corporation Commission; and it is to be presumed that the City Council of Alexandria did not intend, by its zoning ordinance, to assume jurisdiction over those facilities, since this would conflict with the authority of that Commission.*

The State Corporation Commission was created by Sec. 155, Virginia Constitution. Its powers are derived from the Constitution. See *City of Richmond v. Chesapeake and Potomac Telephone Co.*, 127 Va. 612, 617; 105 S. E. 127, 129 (1920). On the other hand, the powers of a city government are derived from the acts of the General Assembly and may be taken away at any time by the General Assembly. See *City of Richmond v. Virginia Railway & Power Co.*, 141 Va. 69, 96; 126 S. E. 353, 361 (1925). When there is a conflict between the constitutional powers of the State Corporation Commission and the powers of a city, the power of the State Corporation Commission will prevail. *City of Portsmouth v. Virginia Railway & Power Co.*, 141 Va. 44; 126 S. E. 366 (1925).

The defendant railroad is a public transportation company (Virginia Code, Sec. 3693). Section 156 (b) of the Constitution of Virginia (1902) provides that the State Corporation Commission " \* \* \* shall have the power and be charged with the duty of supervising, regulating and controlling all transportation and transmission companies doing business in this State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses therein by such companies; and to that end the commission \* \* \* shall require them to establish and maintain all such *public service facilities and conveniences as may be reasonable and just* \* \* \*." (Italics added.)

In *City of Portsmouth v. Virginia Railway & Power Co.*, 141 Va. 44, 51, 126 S. E. 366, 368 (1925) the court said: " \* \* \* Under Section 156 (b) of the Constitution, the State Corporation Commission is given the power and is charged with the duty of supervising, regulating, and controlling all transportation and transmission companies doing business in this state, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses therein by such companies, and to that end may make proper rules and regulations. The Commission is also charged with the duty of requiring them

to establish and maintain all such public service, facilities, and conveniences as may be reasonable and just, with the power to alter and amend such rules, regulations, and requirements from time to time. These powers appear to include the supervision and regulation of every facility the use of which affects the obligations of the transportation company to the public. Then there

are the various statutes which have been passed pursuant 12\* to the Constitution, which because they \*have been so often quoted we do not repeat, the manifest purpose of which is to *vest the Commission with all of the powers of the state which are necessary to regulate and control such corporations in so far as their duties to serve the public are concerned.* \* \* \*” (Italics added.)

In *Norfolk & P. Belt Line R. Co. v. Commonwealth*, 103 Va. 289, 49 S. E. 39 (1904) the Court held that the State Corporation Commission has power to regulate switching facilities under Section 156 (b) of the Constitution of Virginia (1902). It would seem that there is no difference in principle between switching facilities, or tracks where cargoes are unloaded at the premises of individual shippers, and a trestle for unloading coal; and the term, “Public service facilities and conveniences” should not, we submit, be so construed as to *exclude* a coal trestle which is located on the defendant railroad’s right of way.

Not only does it appear that the State Corporation Commission has jurisdiction of the coal trestle located on the right of way of defendant railroad, but there is serious doubt that the city of Alexandria has jurisdiction of any railroad facility.

Ordinance No. 463 (Exhibit No. 1-b) was adopted pursuant to Section 3091 (1) of the Code of Virginia (Michie, 1942), which reads: “For the promotion of health, safety, morals, comfort, prosperity, or general welfare of the general public, the council or other governing body of any city or town may, by ordinance, divide the area of the city or town into one or more districts of such shape and area as may be deemed best suited to carry 13\* out the purposes of \*this chapter, and in such district or districts may (establish, set back building lines,) regulate and restrict the location, erection, construction, reconstruction, alteration, repair or use of buildings and other structures, (their height, area, and bulk, and percentage of lot to be occupied by buildings or other structures, the size of yards, courts and other open spaces,) and the trade, industry, residence and other specific use of the premises in such district or districts.”

If there is justification for the interference by the city of Alexandria with the performance by the defendant railroad of its duties as a public carrier, it must be found within the wording of Section 3091 (1). Although the language of the statute is very inclusive, it contains no mention either of railroads or of other public utilities. The absence, in the statute, of any reference to

railroads would, it seems, at least create a reasonable doubt as to whether the statute was written with railroads in mind. When there is a reasonable doubt as to the existence in a city of a power, then the power must be denied. See *Board of Supervisors of Henrico County v. City of Richmond*, 162 Va. 14, 25, 173 S. E. 356, 360 (1934). ✓

Even assuming that the city of Alexandria was given power under Section 3091 (1) to interfere through its zoning laws with the performance by the defendant railroad of its duties as a public carrier, then the delegated power so given the city would conflict with the Constitutional power given the State Corporation Commission. The State Corporation Commission has 14\* jurisdiction over the facilities \*of the defendant railroad by virtue of Section 156 (b) of the Constitution of Virginia (1902). Spur tracks and switching facilities, for loading and unloading railway cars on the premises of individual shippers, have been held to come under the jurisdiction of the State Corporation Commission. *Norfolk and P. Belt Line R. Co. v. Commonwealth*, 103 Va. 289, 49 S. E. 39 (1904). There would seem to be even stronger reason for holding that a coal trestle, located on the defendant railroad's right of way, is likewise a facility.

If, then, the State Corporation Commission has jurisdiction of the coal trestle in question, the power of the city to legislate with respect to this facility must be denied. *City of Lynchburg v. Dominion Theatres*, 175 Va. 35, 7 S. E. (2d) 157 (1940); see, also, Sections 65 and 164, Constitution of Virginia (1902); *Town of Victoria v. Victoria Ice, Light and Power Co.*, 134 Va. 134; 114 S. E. 92 (1922).

2. Even if we assume that the City Council of Alexandria intended to zone the defendant railroad's right of way to "A" Residential, the ordinance would impose an unreasonable restriction on defendant in the maintenance of its facilities and would jeopardize the discharge of its duties to the public.

Section 19 (8) of Ordinance No. 463 (Exhibit 1-b) provides that when a non-conforming structure shall have been damaged to the extent of fifty per cent of its value, then such non-conforming use shall terminate and revert to the conforming use 15\* of the zone in \*which it is located. The city contends that the entire right of way of the defendant railroad is zoned "A" Residential. Presumably, the right of the defendant railroad to repair its property within the city limits would be confined to repairs of less than fifty per cent of an entire structure. It would be prohibited from removing a structure with the object of replacing it with a modern one; indeed, the present criminal action arose out of the attempt by the defendant railroad to re- ✓



place a wooden trestle, which was in a dangerous state of disrepair (Tr., p. 41), by a concrete pier trestle. It is hardly necessary to point out that such a limitation on the defendant railroad's performance of the duties required of it as a common carrier of passengers and freight, would ultimately make it impossible for the railroad to fulfill the obligations imposed upon it by its charter. It is by such foreseeable consequences of an ordinance, as well as what has been done thereunder, that its constitutionality is tested. See *Southern Railway Co. v. Commonwealth*, 107 Va. 771, 777; 60 S. E. 70, 72 (1908).

3. *Even if we assume that the City Council of Alexandria intended to zone the defendant railroad's right of way to "A" Residential, the ordinance would be unreasonable and arbitrary since it would create an "A" Residential strip, 100 feet in width, extending across the northeasterly portion of the city of Alexandria and adjoining properties variously and differently zoned.*

*Reed.*  
Section 3091 (3), Virginia Code, a part of the enabling act under which the zoning ordinance of the city of Alexandria 16\* was \*adopted, provides that zoning regulations shall be made with reasonable consideration for the character of the district zoned.

The second revised zoning map of the city of Alexandria (Exhibit 1-c) shows that the right of way of the defendant railroad passes through, and is adjacent to, sections of the city zoned "A" Residential, "B" Residential, "C-1" Residential, "C-2" Residential, "D-2" Commercial, and "E" Industrial. If the entire right of way of the defendant railroad is zoned "A" Residential, as the city contends, then such zoning plainly contravenes Virginia Code Section 3091 (3). It would be extremely difficult to disprove what would be indicated by the map: that such zoning would be discriminatory, unreasonable and arbitrary so far as the right of way of the defendant railroad is involved.

*Turns on this. Not zoned in fact.*  
4. *The second revised zoning map of the city of Alexandria (Exhibit 1-c) fails, as a matter of law, to establish that the right of way of the defendant railroad is zoned "A" Residential.*

*Reed.*  
The color of the paper upon which the zoning map is printed is white. The zone classifications within the city are designated by the use of various colors. The right of way of the defendant railroad is white, that is, it is the same color as the paper. However, on the basis of that fact, and that fact alone (Tr., pp. 99, 145) the city of Alexandria contends that the 100 ft. right of way of the defendant railroad is zoned "A" Residential in its entirety, regardless of the zone classification of adjacent property.

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17\* The map also shows that all of the streets and alleys are white; the Potomac Railway Yard, where there is no residential construction whatever (Tr., p. 33) is white; and all land owned by the city of Alexandria is white.

It is not believed necessary to review again the testimony of the city officials, Mr. Fred Pettit (Tr., pp. 13-22) and Mr. Harry F. Miller (Tr., pp. 97-110); the testimony of both of these witnesses is fully outlined in the "Statement of Facts," and reference is respectfully made to that statement. In connection with that testimony, however, it is submitted that when those charged with the duty of knowing the zone classifications are in such doubt about the ordinance that they themselves don't know which areas of the city are zoned "A" Residential and which are not, then the ordinance is too indefinite, too uncertain, to be the basis for a criminal conviction.

It was not the duty of the defendant railroad to prove that its property was not zoned, as counsel for the city assumed; but it was the duty of the city to prove beyond a reasonable doubt that it was so zoned.

The case of *Polls v. Commonwealth*, 113 Va. 732, illustrates forcibly the recognition of the presumption of innocence throughout every stage of a criminal prosecution, and the burden imposed upon the prosecution to establish guilt beyond a reasonable doubt. In this case, a conviction of murder in the second degree in the lower court was reversed because of error in the following instruction granted for the Commonwealth (p. 733):

18\* "First. 'The court instructs the jury that if they believe from the evidence that the Commonwealth has proven, beyond a reasonable doubt, that the deceased was killed by the accused with a deadly weapon in his previous possession, and that the accused relies upon the defense of self-defense to excuse the act, then the jury are instructed that their minds must be satisfied from the evidence that the said defense is a true one.' "

In holding this instruction erroneous, Whittle, J., speaking for the court on page 733 of the opinion, states as follows:

"But we are of opinion that the circuit court erred in giving the first instruction. It is a fundamental principle of criminal law that a person charged with the commission of crime is presumed to be innocent; and that presumption follows the accused through every stage of the prosecution. Moreover, the plea of not guilty denies every essential allegation in the indictment, and lays upon the prosecution the burden of proving the guilt of the defendant beyond a reasonable doubt. *That burden is continuous, and can never be imposed upon the accused, although*

*the evidence may shift from one side to the other, to meet the varying exigencies of the trial.*" (Italics added.) See, also, *Hurd v. Commonwealth*, 159 Va. 880.

As indicated, the prosecution proceeded on the theory that the mere introduction of the revised zoning map (Exhibit 1-c) established the fact that the defendant railroad's right of way was zoned "A" Residential. A witness for the city, Harry F. Miller, was questioned as follows (Tr., pp. 98-99):

Mr. Pancoast:

"Q. Can you tell his Honor and the gentlemen of the jury whether or not any changes had been made or any amendments have been made to this map since its date—in March, I believe, or May, 1946—with respect to the land known as the Potomac Coal Company?

"Mr. Chambliss: I object to the question, if your Honor please, because the site has not been proved so far by any 19\* competent testimony that the railroad's right-of-way is zoned.

"The only testimony on that point is that all the streets are white, the railroad is white, and A-residential is white, and the one who identified that map, over there, stated that he did not know whether—he could only say that A-residential was white, but whether or not the streets and the others, and the right-of-way of the railroad was A-residential, he could not say.

"Mr. Pancoast: He was attempting to have the Clerk interpret that map, if your Honor please. The map speaks for itself. It is a matter of defense. If they do not believe it is zoned A-residential, as indicated by that map that is in evidence, why, then, that is up to them.

"Now, I am trying to find out by this question, if your Honor please—I am trying to show fairly and justly whether or not there has been any change in this particular land, any amendment to the map. The map is the controlling evidence, and the principal evidence, and the most important evidence, and the only evidence that indicates the action of the Council in laying off the zones of the City.

"Mr. Chambliss: If your Honor please, may I answer that, please?

"The Court: All right.

"Mr. Chambliss: Mr. Pancoast says it is a matter of defense.

"It is the problem of the City in this case to prove beyond a reasonable doubt that the right-of-way of the Washington and Old Dominion Railroad is in fact zoned A-residential.

20\* "At this point the evidence on that is most unsatisfactory, and Mr. Pancoast is now belatedly remedying his case through Mr. Miller.



"We are perfectly willing for that map to speak for itself, and we agree that is a rule of evidence, but he can not remedy the map with the testimony of Mr. Miller.

"I object to the leading question which he had just put to Mr. Miller on those grounds."

None the less, the witness was permitted to answer the question, over the objection and exception of the defendant railroad.

As appears from the argument of the objection at the time (Tr. p. 99), the vice in the question and the answer was that they both assumed that the city had proved, as a matter of law, that the right of way of the defendant railroad had, in fact, been originally zoned to "A" Residential.

It will not be questioned that the revised zoning map itself raises a doubt that the City Council of Alexandria intended to zone the right of way of defendant railroad as "A" Residential. In addition, the conflict of powers which would necessarily flow from such a zone classification, make it all the more certain that the council did not so intend.

Similarly, the zoning enabling act of the city of Alexandria (Virginia Code Section 3091 [1]) is likewise susceptible of two constructions: either, that the act gives the city the power to interfere with the performance by defendant railroad of its duty as a public carrier; or, that the act is not intended to confer such power upon the city. If it be construed as not giving the  
21\* city \*this power, the constitutionality of the statute will be sustained. Whenever two constructions of a statute are possible, the court adopts that which sustains the constitutionality of the statute. See *H. L. Cappel of Richmond, Inc., v. City of Richmond*, 162 Va. 833, 840, 175 S. E. 316, 318 (1934). It is, therefore, submitted, that Virginia Code Section 3091 (1) should be construed as to deny to the city of Alexandria the power to interfere with the performance by the defendant railroad of its duties as a public carrier.

#### CONCLUSION. .

!! The city of Alexandria has failed, as a matter of law, to prove that the right of way of the defendant railroad is zoned "A" Residential. The revised zoning map, which is the sole basis for the claim of the city that the right of way is so zoned, is susceptible of two equally justified interpretations, one of which is the right of way is not zoned in any classification. The conclusion that the right of way is not zoned is further supported by the presumption that the ordinance was not intended to be unreasonable and arbitrary and that it was not intended to cause a conflict between the powers of the city of Alexandria and those of the State Corporation Commission.

22\*      \*Defendant railroad prays that it may be awarded a writ of error; that the judgment of the Corporation Court of the City of Alexandria be reviewed and reversed; and that final judgment be rendered for the defendant railroad.

Respectfully submitted,

WILSON M. FARR,  
HARDEE CHAMBLISS, JR.,  
Attorneys for petitioner, Washing-  
ton and Old Dominion Railroad.

The undersigned attorneys, practicing in the Supreme Court of Appeals of Virginia, certify that, in their opinion, the judgment complained of ought to be reviewed.

They aver that a copy of this petition was delivered to opposing counsel in the court below on December 1, 1949, and that this petition is to be filed in the office of the Clerk of the Court at Richmond.

They desire to state orally the reasons for reviewing the judgment complained of, and adopt this petition as their opening brief.

WILSON M. FARR,  
Fairfax, Va.  
HARDEE CHAMBLISS, JR.,  
Fairfax, Va.

Received December 1, 1949.

M. B. WATTS, Clerk.

Jan. 12, 1950. Writ of error and *supersedeas* awarded by the court. Bond, \$100.

M. B. W.

## RECORD

### BILL OF EXCEPTION NUMBER 1.

Be it remembered that at the trial of this case, and before the taking of any testimony therein, Washington and Old Dominion Railroad, by its counsel, moved the Court to quash and dismiss the warrant issued against it in this case, on the following grounds:

(a) Because said Railroad is a public service corporation and hence the City of Alexandria has no power to interfere by zoning of any part of its right of way with the discharge of the duties imposed upon it by its charter and the statute law of this Commonwealth as a public carrier of freight and passengers.

(b) Because under the express terms of Ordinance Number 463, adopted by the City of Alexandria, public utility structures are thereby expressly exempted from the operation of such ordinance and hence the structure complained of, to-wit, the coal trestle on the line of the right of way of the said Railroad is beyond the scope of said ordinance, which motion the Court overruled, to which ruling of the Court, the said Railroad, by its counsel, excepted, and tenders this, its Bill of Exception Number 1, which it prays may be signed, sealed, enrolled and made a part of the record in this case, which is accordingly done.

Teste: This 28th day of September, 1949.

Wm. P. WOOLLS (Seal)

Judge

### BILL OF EXCEPTION NUMBER 2.

Be it remembered, that on the trial of this case, the City of Alexandria, by counsel, introduced in evidence the City Code, Ordinance Number 463, and Zoning Map, which are designated by Franklin A. Steinko, stenographer, as plaintiff's Exhibit Numbers 1-a, 1-b and 1-c, and that the City of Alexandria, Washington and Old Dominion Railroad and Arthur F. Campbell introduced certain other evidence and the Court certifies that the aforesaid Exhibits introduced by the City of Alexandria and the following evidence on behalf of the City of Alexandria and Washington and Old Dominion Railroad and Arthur F. Campbell is the evidence and all the

evidence that was introduced by the City of Alexandria and Washington and Old Dominion Railroad and Arthur F. Campbell in the trial of this case.

page 3 } Index.

Franklin A. Steinko  
Stenotype Reporter  
1420 New York Ave., N. W.  
Washington 5, D. C.

page 4 } Virginia:

In the Corporation Court of Alexandria City  
City of Alexandria,

*v.*

Washington & Old Dominion Railroad, and Arthur F. Campbell,  
Defendants.

Alexandria, Virginia.

Thursday, October 28, 1948.

The above-entitled matter came on for hearing in the Corporation Court of Alexandria City, Virginia, before the Honorable William P. Woolls, Judge of said Court, and a jury, between the hours of ten o'clock a.m. and six-thirty o'clock p.m., in the Court House at Alexandria City, Virginia.

Appearances: Joseph M. Pancoast, Esq., City Attorney; and T. Brooke Howard, Esq., Counsel for the City of Alexandria;

Hardee Chambliss, Esq., and Wilson M. Farr, Esq., Counsel for the Defendant Washington and Old Dominion Railroad; and Carl Budwesky, Esq., Counsel for the Defendant Arthur F. Campbell.

## PROCEEDINGS

Mr. Pancoast: If your Honor please, Mr.  
page 5 } Howard would like to sit in on the prosecution's  
side, sir.

The Court: All right.

Are you gentlemen ready?

Mr. Pancoast: Yes, sir.

Mr. Chambliss: Yes, sir.



If the Court please, I would like to make two preliminary motions to the Court in the Chambers.

Mr. Pancoast: I notice that my first witness has not shown up here. Sergeant, would you have Mr. Pettitt called?

(The jurors were examined on *voir dire*; jury was sworn.)

(All persons expecting to testify were thereupon sworn, following which these proceedings were had:)

The Court: Are you trying these cases together?

Mr. Pancoast: Yes, sir.

Mr. Chambliss: Yes, sir.

The Court: You gentlemen said that you had a motion?

Mr. Chambliss: Yes, if your Honor please.

The Court: All right.

(Whereupon, a short recess was had and the Court and counsel for respective parties retired in the Chambers where the following occurred:)

page 6 } Mr. Chambliss: If your Honor please, this is a criminal warrant against the Washington and Old Dominion Railroad by the City of Alexandria, claiming the violation of a zoning ordinance of the City.

We move that the warrant be quashed and dismissed on the ground that the Washington and Old Dominion Railroad is a public service corporation, and that even assuming—which we by no means concede—that an attempt has been made to zone the right-of-way of the Washington and Old Dominion Railroad, we do not think that the City of Alexandria has power to interfere with the obligation of the Washington and Old Dominion Railroad to the public under its charter, and under the Statutes of Virginia, as a common carrier of passengers and freight.

Accordingly, even assuming—but not conceding—that the right-of-way is zoned, we think that it is in doubt so far as the right-of-way of the Washington and Old Dominion Railroad is concerned.

The Court: All right. Anything you want to say about this?

Mr. Pancoast: Yes, sir.

I believe that I can submit authorities to show that the municipalities under the enabling act have the authority to zone all land within its corporate limits, and that the public

utilities in it or operating within the City of  
page 7 } Alexandria are subject to those regulations within  
any reasonable limit in so far as they are valid and  
properly enacted pursuant to the enabling act.

Were that not so the City would be powerless to put into effect the execution of the power that is given to it through the enabling act.

Now, this motion comes somewhat as a surprise and a little late. Therefore, I have not at my finger tips these authorities for your Honor—the authorities to argue such a motion—and it would seem to me that the Defendants could not blow hot and cold at the same time in this motion by saying that they admit—at least for the purpose of the motion—that the land is zoned A-residence, and then in the same breath say that the City has no power or authority to zone the land because it is owned by or used by a public utility.

The Zoning Ordinance enacted pursuant to the enabling act gives proper recognition to public utilities. It gives proper recognition to the responsibilities that they may have to the public and is not unreasonable in that respect, and also the Zoning Ordinance recognizes specifically the principal of non-conforming property, and they are treated just as any other corporate citizen of the City.

The Court: Anything further, gentlemen? All right, I will overrule the motion.

Mr. Chambliss: I have one further motion, and  
page 8 } it is this.

Under the express terms of Ordinance No. 463, public utilities structures are exempted from the operation of the ordinance, and the Washington and Old Dominion Railroad as a public service corporation has erected a structure, and described as a structure, on the right-of-way of the Washington and Old Dominion Railroad near Randolph and Calvert Streets in this City.

Under the Ordinance No. 463 that structure is expressly exempt by the terms of the ordinance and we move, accordingly, that the warrant should be dismissed on that specific ground.

Mr. Pancoast: All right, sir. I invite your Honor's attention to the Ordinance No. 463—and may I say, sir, that 463 is an amendment of Chapter 28 of the Code of the City of Alexandria—which in its entirety, that is the Chapter in its entirety, deals with zoning.

Now, Ordinance No. 463 says—amendment of several sections—and the part that deals with this question is Section 4 of Chapter 28, as amended.

*What color is A-1?*

*Good.* Washington and Old Dominion R. R. v. Alexandria, Va. 19

The amendment adds one more zone classification known as A-1, and sets forth the uses in that super zone.

~~The next paragraph, (B), relates to A-residence zoning—~~  
and it is the same zoning that is called A-residence in the  
former ordinance—that is the zone in which we  
page 9 } propose to prove by the zoning map that this prop-  
erty is located in.

Now, may I invite your attention to that paragraph (B),  
in which it says: "~~In A-residence zone unless hereinafter  
provided no building or premises shall be used and no build-  
ing or structure shall be hereafter erected, altered, or re-  
paired except for one or more of the following uses.~~"

Then we go on down to "Uses", to number 13, "Public  
utility buildings constructed and used for non-manufactur-  
ing purposes." All right. Now,—

The Court: Just a minute! All right, Mr. Pancoast.

Mr. Pancoast: —the law requires that a special assent of  
the Council be given before any public utility building not  
used for manufacturing purposes, or to be used for non-  
manufacturing purposes, must be given before that use may  
be permitted.

Mr. Chambliss: I must object to that argument, if your  
Honor please.

The failure to get a permit is not involved in the warrant  
here.

Mr. Pancoast: That is a matter the defendants have to  
show. This law does not permit it without a permit.

Mr. Chambliss: The warrant does not say failure to get a  
permit but the violation of A-residence zoning regulation.

Mr. Pancoast: That is true.

page 10 } We are not prosecuting for not getting a permit.

We are prosecuting for erecting the structure in  
contray to Section 4.

The Court: All right. Are you finished, Mr. Pancoast?

Mr. Pancoast: Yes, sir; that answers the motion.

The Court: Is there anything further you want to say, Mr.  
Chambliss?

Mr. Chambliss: Just this, in support of what I have said  
in connection with the railroad being a public service cor-  
poration.

I call your Honor's attention to the provisions of Section  
3693 of the Code, which provides that railroads are trans-  
portation companies, and which further provides that trans-  
portation companies are state public service corporations.

The Court: All right.

Mr. Budwesky: In the event that any question may arise in the Court's mind on the use of the word "building"—

The Court: I am not worried about that.

Mr. Budwesky: The word "building" under the ordinance includes the word "structure".

The Court: All right. I will overrule that.

Mr. Chambliss: I take an exception.

(The following occurred in the presence of the jury.)

(Opening statements by Mr. Pancoast and Mr. page 11 } Chambliss, and at which time Mr. Chambliss introduced three photographs marked "Washington and Old Dominion Railroad's Exhibits Nos. 1, 2 and 3.")

Mr. Pancoast: If your Honor please, at this time I would like to introduce the zoning ordinances of the City of Alexandria under which we prosecute.

The Court: All right.

Mr. Budwesky: Are you using Ordinance No. 463?

Mr. Pancoast: The Code with several amendments. I will call the numbers of them, if it is agreeable.

The Court: All right, sir.

Mr. Pancoast: The Code with 463, 470, 484, 493, 502, and 528, and 550, being all amendments to the substantial part of the Code.

Mr. Budwesky: And connected to the issuance of this warrant.

Mr. Chambliss: Is that all?

Mr. Pancoast: Let me see. No, the 550—I will leave that out. That is all.

Mr. Chambliss: Mr. Pancoast, do I understand you are going to offer all of those ordinances, numbers of which you gave, in evidence?

Mr. Pancoast: The whole zoning law of the City of Alexandria.

Mr. Chambliss: If your Honor please, I object page 12 } to the introduction of anything into evidence except the Code of the City of Alexandria, as set forth in the warrant here, and as amended by one single ordinance, No. 463—that is the one set forth in the warrant.

The Court: May I see the warrant?

This warrant confines itself to No. 463.

Mr. Pancoast: All right, sir. I just want to be fair and wanted to show you all the amendments. That is all right with me.

*Fred Petitt.*

The Court: Objection is sustained to all of the exhibits offered except the Code and the amendment No. 463.

Mr. Chambliss: If your Honor please, I am not familiar with those and that is why I had to ask of that. If you want to declare a recess and let me look at them, and maybe I will not have any objections to them.

We are prepared on what is charged in the warrant.

The Court: That is all up to you, gentlemen. If you want to do that it is perfectly all right with me.

Mr. Pancoast: It does not make a great deal of difference with me. I would just as soon use it that way.

The Court: The City Code and No. 463. All right.

Mr. Pancoast: I also invite your Honor's attention to the map that is referred to in Section 3 of the amendment of No. 463.

I want to call Mr. Petitt.

page 13 } Mr. Chambliss: Are you introducing this in evidence?

Mr. Pancoast: I am going to introduce that at this time, Mr. Chambliss.

(The City Code, Ordinance No. 463, and the map referred to were marked "Plaintiff's Exhibits No. 1-a, 1-b, and 1-c" and received in evidence.)

Thereupon

FRED PETITT

was called as a witness by counsel for the City of Alexandria and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Pancoast:

Q. Mr. Petitt, you are Fred Petitt?

A. Yes, sir.

Q. And what official position do you hold in relation to the City Council of Alexandria City Government?

A. Clerk of the Council.

Q. And in Ordinance No. 463, amendment to the Zoning Regulations of the City of Alexandria, referring to Section 3, to a zoning map purporting to be signed by the Mayor and



*Fred Petitt.*

the Clerk of the Council, dated March 1946, I will ask you to look at this map over here on the side of the wall, and ask you if that is the zoning map referred to?

A. That is it, all right.

page 14 } Q. Is that the map, Mr. Petitt?

A. Yes.

Mr. Pancoast: After the witness vacates the chair may we put it perhaps a little closer to the jury, if there is a place, sir?

The Court: Against the wall, if you want to.

Mr. Pancoast: Thank you, sir.

By Mr. Pancoast:

Q. Mr. Petitt, has the Washington and Old Dominion Railroad or Mr. Arthur F. Campbell in this case ever obtained from the City Council a permit to repair an erection or construct the coal trestle on its right-of-way near Randolph Avenue just southeast of its intersection with Raymond Avenue, which location was formerly operated by the Potomac Coal Company?

Mr. Chambliss: If the Court please, I object to that question on two grounds. First, it is leading; second, the issue of whether or not they applied for a permit is not involved in this case.

Mr. Pancoast: If your Honor please, in this very ordinance read a moment ago, under Section 4, which we prosecute, they must have it in order to use a public utility in A-residence—

The Court: I will rule on it. It is slightly leading. It is permissible. I will overrule both grounds.

page 15 } Mr. Chambliss: I would like to note an exception.

By Mr. Pancoast:

Q. That is, according to the records of the City Council?

A. No, sir, not according to the records of the City Council.

Mr. Pancoast: Your witness.

The Court: Can you gentlemen all see that from where you are?

*Fred Petitt.*

CROSS EXAMINATION.

By Mr. Chambliss:

Q. Mr. Petitt, I see that this City of Alexandria revised zoning map has a legend on it, over here on the corner, various colors, is that correct, and opposite those colors what the colors stand for?

A. Yes.

Q. Of course there are some areas on the map that are not zoned, is not that so?

A. I couldn't tell you that, sir.

Q. You do not know?

A. No.

Q. Well, if they were not zoned they would be colored white, is that not so?

A. I think so.

Q. Yes. For example, these streets, here—Braddock Road, for instance—that is white; Cameron Mills Road page 16 } is white; King Street is white; Commonwealth Avenue, that is white. If I do not state any of these correctly I want you to say so. I notice, also, that down here, that George Washington High School is zoned white, a block marked "George Washington High School", that is not zoned at all.

A. Not to my knowledge.

Q. That is right. And over here, a flat block owned by the City of Alexandria, shown here as white, that is not zoned at all, is it? The part shown as "City of Alexandria", which is just south of the development called East Braddock, that is shown as white; that is not zoned, is it?

A. Not to my knowledge.

Q. Not to your knowledge?

A. No.

Q. Now, when we come over here to the Potomac Yard, which is south of River Road, here, all that is white, is it not?

A. Yes, sir.

Q. I beg your pardon?

Mr. Pancoast: I must interpose an objection at this time to this line of questioning, for this reason. The attorney for the defendants is attempting to have Mr. Petitt interpret the zoning map, and the zoning map speaks for itself in so far as the interpretation is concerned in that it shows by its legend that white means A-residence, sir.

page 17 } Mr. Chambliss: I am not at all sure that is the case, if your Honor please. Mr. Petitt has testi-

If not zoned colored white  
(white)

*Fred Petitt.*

fied that there are white areas on this map that are not zoned anything, to his knowledge.

The Court: Mr. Petitt has been put on the stand as a witness for the City, and he has testified that this is the map that has to do with this ordinance. Now, then, you have him as your witness when you go outside of that phase. He is the City's witness just the same.

Mr. Pancoast: I reserve the right to cross examine him on that point.

The Court: All right.

By Mr. Chambliss:

Q. Now, getting back to the Potomac Yards, Mr. Petitt, that is shown on this map as white, there is no question about that, and so far as you know that is not zoned at all? Is that area zoned on this map?

A. I don't know.

Q. You do not know?

A. I don't know anything at all about it.

Q. If it were rezoned, certainly—is that map supposed to be up to date?

A. I presume it is. I am not sure. I am not an expert on maps.

Q. I know. Are you not the custodian of this?

page 18 } A. No, sir. All I am is the Clerk of the Council,  
sir.

Q. Clerk of the Council?

A. That is right.

Q. You do not know whether this map is up to date or not?

A. I really don't know.

Q. You do not know whether it is active or not?

A. I couldn't tell you that, sir.

Q. Now, this industrial section over here, purple—the color purple—the area east of the Washington and Old Dominion Railroad's right-of-way, that is industrial, is it not, Mr. Petitt, as shown here?

A. I imagine it is. It is marked purple.

~~Q. Is not that what the map says?~~

A. That is what the map says.

Q. So that it would be industrial?

A. Yes.

Q. And do you know whether or not there are other industrial areas, that have been zoned recently, that are not shown here as industrial?

*Fred Pettitt.*

A. I wouldn't know, sir.

Q. You are not familiar with the rezoning ordinances?

A. No, sir.

Q. Now, this area in blue, is that B-residential, B-residential as shown there? It is not A-residential, is it?

page 19 } A. No, sir, not according to the map.

Q. And I believe that you testified, Mr. Pettitt, that you do not know whether this map is accurate or not at this moment, do you?

A. No, I don't know whether it is up to date or not.

Mr. Chambliss: I see. That is all.

Mr. Pancoast: I want to ask you a few questions.

#### RE-DIRECT EXAMINATION.

By Mr. Pancoast:

Q. Mr. Pettitt, you were asked whether or not this was zoned and I believe you said that it was not zoned.

The Court: Mr. Pancoast, you make a statement. Just ask him. What are you referring to?

Mr. Pancoast: Pointing to the George Washington High School property.

Q. I ask you to look at the legend there and tell us whether or not that does not show white on the legend as being A-residential?

A. It conforms with the marking of the map.

Q. Then under that legend, what would be the George Washington High School, the property?

A. It would be A-residential.

Q. And what would be the Washington and Old Dominion Railway running northwest and southeast covering the property involved in this litigation? What would that  
page 20 } be zoned according to the legend?

A. It is marked white. It would be A-residential.

Mr. Pancoast: That is all.

#### RE-CROSS EXAMINATION.

By Mr. Chambliss:

Q. Mr. Pettitt, the only grounds you have for saying that

*Fred Pettit.*

*Q. Yes* that right-of-way, the Washington and Old Dominion Railroad, is shown A-residential is that it is marked white?

A. That is all.

Q. Your office does not have any other evidence if it is zoned A-residence but for the fact it is marked white on that, do you?

A. Unless the minutes of the Council would show that. I couldn't keep that in my head.

Q. That is right. Are all the streets likewise zoned A-residence on that map?

A. Are you asking me?

Q. Every one of the streets. Yes. Look at it. They are all white?

A. If they are white I assume they are A-residential according to the markings of the map.

*Q. Yes* Q. All the streets are A-residential according to the markings of the map. No matter what district that you go by the streets are all A-residential. The street running out here is A-residential. The street outside the court room page 21 } is marked A-residential, according to the markings of the map.

A. If they are marked white.

Mr. Chambliss: That is all.

By Mr. Budwesky:

Q. When you said that the right-of-way of the Washington and Old Dominion Railroad Company was zoned A-residential, you did it for the same reason that you say King Street is zoned A-residential, according to this map, is that correct?

A. I am saying everything that—everything that I am saying is determined by the markings on the map inasmuch as I am not an authority on what is rezoned and what isn't.

Q. King Street on that map, from the river all the way up, is in white, which according to you would be A-residential, is that right?

A. Yes.

*Q. Yes* Q. And for the same reason the right-of-way of the Washington and Old Dominion Railroad is A-residential, is that right?

A. That's right, sir.

Mr. Budwesky: All right.

The Court: Anything further, gentlemen?



*Fred Petitt.*

FURTHER RE-DIRECT EXAMINATION.

By Mr. Pancoast:

Q. Mr. Petitt, what does the Beverly area show? Reference has been made to King Street, Beverly Hills, and page 22 } Rosemont areas. What do they show?

A. Beverly is in white, Mr. Pancoast, so I take it that it is A-residential.

Mr. Pancoast: All right, sir.

FURTHER RE-CROSS EXAMINATION.

By Mr. Chambliss:

Q. Mr. Petitt, as a matter of fact, there have been some recent changes made to that map that have not been put on there, recent ordinances that they have not gotten around to putting on that map?

A. I think so. I couldn't say so with authority.

Mr. Chambliss: That is all.

The Court: All right, Mr. Petitt, that will be all.

Mr. Pancoast: Just one more question, your Honor.

FURTHER RE-DIRECT EXAMINATION.

By Mr. Pancoast:

Q. Mr. Petitt, do any of those ordinances—as far as you know—involve this property which is involved in this litigation?

A. I couldn't say, sir.

Mr. Pancoast: That is all. I believe Mr. Petitt would like to be excused, sir.

The Court: All right. What do you want next?

Mr. Pancoast: I would like to call Mr. George page 23 } C. Baggett.

Mr. Chambliss: Are you calling him as an adverse witness?

Mr. Pancoast: I am calling him as an adverse witness because he is the manager of the defendant corporation.

Thereupon

GEORGE C. BAGGETT

was called as an adverse witness by counsel for the City of Alexandria and, having been duly sworn, was examined and testified as follows:

CROSS EXAMINATION.

By Mr. Pancoast:

Q. Mr. Baggett, you are George C. Baggett?

A. That's right.

Q. And where do you live, sir?

A. 18 West Maple Street, Alexandria, Virginia.

Q. What is your occupation, sir?

A. Vice-President and General Manager of the Washington and Old Dominion Railroad.

Q. Now, were you connected with the corporation that operated the railroad in years past?

A. Yes, sir.

Q. Could you say to his Honor and the jury whether or not the area of your right-of-way—strike that out. First of all let me ask you this: Does your corporation page 24 } own the right-of-way involved in this litigation running northwesterly through the City and particularly along and parallel to Randolph Avenue, and somewhat southeasterly of the crossing at Raymond Avenue? In other words, where the Potomac Coal Company used to operate a fuel yard?

A. It owns the property.

Q. It owns the property?

A. Yes.

Q. Was there a coal yard operated there in July 1931?

A. There was.

Q. And was there a fuel yard operated there in July 1940, the date of the adoption of the code, the Zoning Code?

A. There was.

Q. As it is codified and put into evidence here?

A. It was; yes, sir.

Q. Now, I would like to invite your attention to July of 1948—or rather between the date of June 30, 1948, and July 2, 1948—did at any time prior to that time, or just prior to that time, your corporation engage Mr. Campbell, or anyone for him, whom he elected, to reconstruct the coal trestle on your property?

*George C. Baggett.*

A. It did, yes, sir.

Q. With whom did you do business on that occasion?

A. Mr. Campbell.

Q. And was anything done pursuant to that agreement?

A. He attempted to make some repairs to it but  
page 25 } he was stopped.

Q. All right, sir. Now, did your corporation enter into a lease with Mr. Campbell, or someone for whom—a firm, of which he is a member—he was engaged, acting, for the lease of that area?

A. We entered into an agreement with the Potomac Coal Company.

Q. Do you know who the Potomac Coal Company is?

A. ~~The agreement is signed—as I recall it—a Mr. Shepherd.~~

Q. Do you know whether or not Mr. Campbell has anything to do with that?

A. I don't think the agreement shows that he has. I don't know whether he did or not.

Q. And did Mr. Campbell at any time talk to you about the rental of the property?

A. Yes, sir.

Q. And did you make any arrangements for the rental of the property?

A. Covered by the agreement.

Q. How long were they to rent the property?

A. I think it was for ten years with the option of renewal.

Q. And what did your lease, or agreement, indi-  
page 26 } cate the use he was going to put the property to?

A. The same use that it has been put to under the Potomac Coal Company to which he was the successor.

Q. To which who was the successor?

A. Mr. Campbell's concern, Potomac Coal Company, operating under the same trade company.

Q. What business did that indicate?

A. Coal yard.

Q. How much of the property was to be rented to them?

A. Whatever the old agreement covered, and as provided in this new agreement.

Q. Did that include the coal trestle?

A. Yes, sir.

Mr. Pancoast: I believe that is all. I beg your pardon, there is one more question. No, I will withdraw it.

*George C. Baggett.*

DIRECT EXAMINATION.

By Mr. Chambliss:

Q. Mr. Baggett, how long have you been with the Washington and Old Dominion Railroad?

A. I was with the Washington and Old Dominion Railway from 1918 until 1932, with the receivers since 1932 until 1937, and with the present corporation from 1936.

Q. Now, the tracks where this trestle is located, what was the first railroad that owned that right-of-way, do you know?

page 27 } A. Well, there have been about five different railroads that operated through that section. One of the first ones was: Loudoun Hampshire; Washington, Ohio and Western; Richmond and Danville Dispatch; Southern Railway; and, Washington and Old Dominion Railway and then the Washington and Old Dominion Railroad.

Q. Now, the Southern Railway was the immediate predecessor to the Washington and Old Dominion Railway?

A. That is correct.

Q. Do you know whether or not the Southern Railway had a coaling station there?

A. It did.

Q. Were the bins and trestles built at the time the Southern operated it?

A. They were.

Q. And they covered the area shown in Washington and Old Dominion's Exhibit No. 2? Would you look at that photograph?

A. Substantially covered by this entire section. There may have been some little addition made to it, but it substantially covered it.

Q. Do you know when the Southern started using that coaling station?

A. It is my information that they started in 1892.

Q. In 1892?

page 28 } A. Yes.

Q. Did they ever abandon such?

A. No, sir.

Q. When did the Washington and Old Dominion Railway start using the coaling station?

A. When they first leased the line from the Southern Railway, in 1912. They used that as a coaling station for their steam locomotive up until the time when it went into an

*George C. Baggett.*

electric trolley system, and then they discontinued that as a coaling station, and then found a more commercial use for it by leasing it to a firm known as the Potomac Coal Company under which a coal yard was operated at the same location.

Q. Now, where did you sell that coal that you dumped in there, Mr. Baggett?

W.V. & Pa. A. That is inter-state traffic, and originated mostly in the State of West Virginia, or in the State of Pennsylvania; the Bituminous coal comes from West Virginia, and the Anthracite comes from Pennsylvania.

Q. And where does your company pick up that coal for delivery?

A. If it moves from Pennsylvania, we pick it up at the Potomac Yards, from either the Baltimore and Ohio or the Pennsylvania Railroads. If it comes from the South we generally get it from the Southern in Alexandria.

Q. Now, do I understand that the present practice, then, the railroad would deliver the coal to the bins at the Alexandria Junction, where the trestle involved is located, and it would be taken away by the Potomac Coal Company, is that correct?

A. The Washington and Old Dominion would deliver it.

Q. The Washington and Old Dominion; that is what I mean.

A. Yes.

Q. Incidentally, how wide is the railroad right-of-way, Mr. Baggett?

100 A. One hundred feet.

Q. Is the structure entirely on the railroad's right-of-way?

A. It is.

Q. You have been down to that neighborhood, have you not?

A. I have.

Q. If I were to show you certain photographs of the trestle and that immediate neighborhood would you recognize them?

A. I do.

Mr. Pancoast: If your Honor please, these photographs which are being introduced, which are being attempted to be put into evidence at this time have certain markings emphasizing certain things. I do not feel that that page 30 } is correct and that they should go into the record.

The Court: Do you object to them?



*George C. Baggett.*

Mr. Pancoast: I agree on some of them. But I do not think this one should go in.

The Court: Well, which ones do you object to?

Mr. Pancoast: I object to the one numbered three, as emphasizing; and I object to number four, that emphasizes; and—all of them have marks on them there to emphasize certain things. I do not know what they are intended to emphasize and I do not believe that they should go into the record. I would be willing for the jury to take a look at the property. That would be the most expedient way for them to get all of the views that might be obtained.

Mr. Chambliss: If your Honor please, we would like to get these in the record, and I think the few markings—there are just a couple of little x's on each picture—I do not see how it can be seriously argued that they emphasize anything particularly.

The Court: If there are any marks on there, there is an objection. Can you get that "x" off?

Mr. Chambliss: I will try to get them off with ink eradiator.

By Mr. Chambliss:

page 31 } Q. Mr. Baggett, in the last twelve months, have you been operating—or rather, have you been using that coal yard, there, as a coal yard?

A. Yes, sir.

Q. Do you know off-hand how many carloads of coal and other materials you have dumped there at the Alexandria Junction?

A. Since—

Q. Since January first.

A. Since January 1st, there have been seventeen carloads.

Q. And at that point—

A. And dumped in the trestle.

Q. And in regard to the character of the neighborhood immediately around this trestle. Do you have any occasion to serve any warehouses over there?

A. Yes, sir.

Q. Do you have a spur track for that purpose?

A. We have two spur tracks that serve the Oakville District.

Q. Referring to that Zoning Map, Mr. Baggett, when you speak of the Oakville District, is that the area shown in purple on this map?

*George C. Baggett.*

A. That is correct.

Q. Just south of Randolph Avenue and bounded page 32 } —rather east of Randolph Avenue, and bounded on the north by Calvert Avenue?

A. That is correct.

Q. Is that correct?

A. That is correct.

Q. And bounded on the south by an un-named street? Incidentally, Mr. Baggett, you are familiar with that area here called Potomac Yards, are you not?

A. I am.

Q. Are there any railroad lines running along there?

A. They do.

Q. Do you know of your own knowledge what railroad lines run there?

A. Yes, sir.

Q. Which lines?

Mr. Pancoast: If your Honor please, I would like to object to that, on the ground that it is not relevant. I do not see the relevancy of that particular question, how it bears on the issues in this case.

The Court: What is the materiality of it, Mr. Chambliss?

*white*  
Mr. Chambliss: It is relevant in that Mr. Pettitt testified, if the Court please, to the fact that the Potomac Yards are zoned A-residential because they are so marked on page 33 } this plat. I just want to put into the evidence the fact that there is a lot of railroad traffic in that alleged A-residential zone.

The Court: All right. Let it in.

Mr. Pancoast: All right.

By Mr. Chambliss:

Q. Mr. Baggett, what railroad lines run through the Potomac Yards, to your knowledge?

*A-1111*  
A. Richmond, Fredericksburg & Potomac Railroad; Baltimore and Ohio; Pennsylvania Railroad; Southern Railway; and the Chesapeake and Ohio Railroad.

Q. Are you familiar with the structure in that area called the Potomac Yards on this Zoning Map?

A. I am.

Q. Are there any residential houses in that area?

A. Not in the Potomac Yards.

*George C. Baggett.*

Q. Looking at the map, Mr. Baggett, that area I believe is ~~white, as shown here?~~

A. That is correct.

Q. Mr. Baggett, does your railroad engage in intra-state or just inter-state?

A. Both; intra and inter-state.

Q. What do you mean by "inter-state"?

A. Traffic which originates in other states or passes through another state between our state and another state.

page 34 } Q. Do you have such traffic?

A. Yes, sir.

Q. Now, what do you mean by "intra-state"?

A. That moves and originates only within one state.

Q. You handle that type, too?

Q. Has there ever at any time been any abandonment of the Alexandria Junction as a coaling station or coal yard by the

A. Yes, sir.

Washington and Old Dominion Railroad?

A. No, sir.

Mr. Chambliss: That is all.

Mr. Pancoast: Just a few more questions, Mr. Baggett.

### RE-CROSS EXAMINATION

By Mr. Pancoast:

Q. You say that there has been no abandonment of the railroad junction and the function of the coal yard—let me get it straight for the benefit of the jury, Mr. Baggett.

The coal yard function was operated not by the railroad but by some other persons known as the —or trading as the Potomac Coal Yard; is that not true?

A. Coal yard?

Q. Yes, sir, coal yard.

A. Yes, sir.

Q. Now, I want to refer to Washington and Old Dominion Railroad's Exhibit No. 2—this picture here—and  
page 35 } I believe you said that the trestle, the whole trestle, originally started way back at the south-east end and came all the way up to this point indicated at the northwest end of the trestle?

A. No, sir, I never said that.

Q. You never said that?

A. No, sir.

*George C. Baggett.*

Q. Let me ask you this: What was originally in the area or place where these columns stick up, five cement columns? What was originally there?

A. I would say—

Q. Before these were put in?

A. —that the embankment was there, which leads to the coal trestle.

Q. Well, now, was there not a wooden trestle in place of these?

A. There may have been part of it.

Q. Part of the wooden embankment went up only four feet higher than it is at the present time, did it not?

A. I wouldn't testify as to that. I don't know whether it was four feet or five feet.

Q. Let me ask you this: Did the Potomac Coal Company put coal down on the ground where these are—at a point that would be between these big columns and piers, I believe you call them?

A. Did the Potomac Coal Company put coal in page 36 } there?

Q. Have you or your corporation put coal there, or did they in turn have you put it in those bins way down south, on the east end?

A. It is my recollection that the bins were provided in the southeast end of the trestle. This is an approach to the bins.

Q. And that is the only place that they put coal?

A. Only place they dropped the coal down.

Q. Dropped the coal?

A. Yes, sir.

Q. Now, is it contemplated to drop the coal anywhere in here after this is completed—and when I say here, I mean in the base between the cement columns that are indicated on this picture?

Mr. Chambliss: If the Court please, what is contemplated in the future is certainly not relevant here. What was erected in the alleged violation is important.

Mr. Pancoast: He had a lease—

The Court: If he knows the answer. His company entered into a lease with the Potomac Coal Company.

The Witness: I assume it is the intention to use as much of the property as may be necessary to provide an up-to date coaling station.

*George C. Baggett.*

By Mr. Pancoast:

Q. Then would that necessitate the deposit of page 37 } coal between these columns?

A. Not necessarily; no, sir.

Q. How about down here, where the picture indicates steel foundations for six more columns, would coal be dumped between those bases, if and when the columns are erected and the bases are made there for coal?

A. I assume some part of it would, some part of the base would be used for coal or otherwise we couldn't have a coal yard if we were not going to use it.

Q. That part has never been used—and when I say that part I mean for a distance for some eighty—I can not say about the distance, between the northerly-most column and wood indicated on that picture. It has never been used in the past for the deposit of coal. Is it contemplated for the deposit of coal under the new set-up?

A. Before I could answer that question directly I would have to confer with my Superintendent, over there. I might say that it may be and that some part has been used heretofore.

Q. How many coal cars can you get up top to the bins at one time?

A. At one time we could get—as I recall—at least three cars. But later on the trestle got in such bad repair that the former operator, Mr. Harding of the Potomac Coal Company, disconnected the trestle from the part where the car, page 38 } trestle rested and the coal was moved up there by machine of some character, which was operated by electricity. That little machine would carry the coal up to the top of the bin and then drop it through the bin, but the car did not rest on the top of the trestle as it did formerly, in the past years.

Q. Now, Mr. Baggett, at the time that Mr. Harding gave up the operation of the fuel yard—or the coal yard—what was the condition of the repair of this trestle?

A. It was in a very bad state of repair.

Q. And how about the wooden part that existed; were these over and above where these concrete pillars are, here?

A. All of it was in bad repair. In fact, it couldn't be used for a coal yard, it was in such a bad state of repair and that was the reason we wanted to improve it.

Q. Mr. Baggett, could you say what part of the trestle formerly consisted of the wooden coal bins at the southeast

*George C. Baggett.*

end? In other words, what proportion of the length of the entire trestle constituted the coal bins at the southeast end?

A. I couldn't give the number of feet, no, sir.

Q. Are you familiar with this map dated September 21, 1923, marked "Washington and Old Dominion Railway Property leased at the Alexandria Junction;" one inch equal to fifty feet. I believe the number is—I can not see it—it has C-14, that is visible, which I will first show to your counsel?

Mr. Chambliss: That is all right.

By Mr. Pancoast:

page 39 } Q. Would this map assist you in telling us how much of the trestle at that time consisted of the coal, wooden coal bins at the southeast corner or end of the trestle?

A. I would have to read this in conjunction with the agreement before I could say definitely how many feet.

Q. Can you say, Mr. Baggett, what part or what proportion of the entire trestle consisted of the wooden structure northwest of the coal bins—where the columns are located and to be located at the present time?

A. You mean in feet?

Q. Yes, sir.

A. No, sir.

Q. Or in any other way?

A. I don't think so. I don't think I could.

Mr. Pancoast: All right, sir. I believe that is all.

Mr. Budwesky: Can I ask a question, Judge? It makes it a little complicated but there are different interests represented here.

By Mr. Budwesky:

Q. Mr. Baggett, the portion of the wooden structure that has been removed and the concrete piers that have been placed thereupon, which it was proposed to replace the tracks, is that a part of the trackage facility of the Washington and Old Dominion Railway Company?

page 40 } A. Yes, sir.

Mr. Howard: If your Honor please, I think that question is objectionable because Mr. Budwesky said that it covers their concrete abutment to be used for the purpose of



*George C. Baggett.*

running tracks. I understood this witness to say that he was not certain for what purpose they were going to be used, whether for bins, to dump coal, or what the situation was. I do not think, unless he can qualify, he can state definitely for what purpose they are going to be used. The question would be improper.

The Court: Let's see what Mr. Baggett said about that.

Mr. Budwesky: If I may be heard on the question. The concrete piers obviously could not be placed there for any other purpose than to support the tracks themselves.

Mr. Howard: Wait a minute!

Mr. Budwesky: What happens on the ground when the piers—and on the ground is another question.

The Court: Just a moment! Let's see what Mr. Baggett said, first.

Mr. Howard: There is nothing in the record to show that these concrete piers were to be used for that purpose.

page 41 } there are fifty tons to the car—maybe twenty-five question? Perhaps we can clear this situation.

By Mr. Budwesky:

Q. Mr. Baggett, did you employ the Northern Virginia Construction Company, through Mr. Campbell, to do some work for you at any time?

A. I entered into an agreement with them.

Q. And you were to pay them for some certain work that they were to do, is that right?

A. That's right.

Q. And that work was to consist of what?

A. Consist of rebuilding the trestle and making repairs—make it suitable for use as a railroad facility.

Q. At that point, are you familiar with the trackage that is available?

A. Substantially, yes, sir.

Q. Is there a main line track?

A. Yes, sir.

Q. Is there a spur track on grade?

A. Yes, sir.

Q. Is there another delivery track on the trestle?

A. Yes, sir.

Q. There is a main line, a spur track on grade, and then the trestle?

A. And a lead track to the trestle.

*George C. Baggett.*

page 42 } Q. And that has been a facility of the railroad company—as I understand from you—for many years?

[[ A. I know it has been to my personal knowledge since 1918, when I first went to the railroad company.

Mr. Budwesky: That is all.

FURTHER RE-CROSS EXAMINATION.

By Mr. Pancoast:

Q. Mr. Baggett, how much did you pay Mr. Campbell, or the corporation for which he was acting, for the reconstruction?

A. I haven't paid him anything.

Q. How much did you agree to pay him?

A. He is to do it at cost to him.

Q. And—

A. And we would reimburse him for his expenses.

Q. How much were you to pay him under your agreement for the lease of the property?

A. He pays us for the lease of the property.

Q. How much was he to pay you, then?

A. How much?

Q. Yes.

A. Five dollars a year.

Q. Did the lease cover the trestle?

A. It did.

Q. And did I understand you to say that the trestle was not in such condition that it would be used unless  
page 43 } it was rebuilt?

( A. No. I testified that since the first of January 1948, that he had unloaded 17 carloads of coal in the trestle but that after Mr. Campbell started to make repairs to it, it was not in condition to be used.

Q. At the time he started?

A. Yes, sir.

Mr. Pancoast: That is all.

Mr. Chambliss: Just a moment, Mr. Baggett.

FURTHER RE-DIRECT EXAMINATION.

By Mr. Chambliss:

Q. Mr. Baggett, in connection with the coal that was dumped from the trestle, the trestle approaching the old bins, did you ever dump any coal down under the trestle itself?

*George C. Baggett.*

A. Not until it reached the top of the trestle and then the coal was dumped.

Q. But you had dumped it down between the end of the embankment, where the wooden trestle begins, and the bin started? You did dump it in that area, did you not?

A. Well, I don't think so. Unless we had a bin under it, it wouldn't be dumped at all if there wasn't any bins in which it could be dumped.

Q. How much coal did you haul over that annually? Do you have any idea?

A. Approximately fifty carloads over, about—  
page 44 } there are fifty tons to the car—maybe twenty-five  
hundred tons a year. That has been an average  
for a good many years.

Q. And was the revenue which you obtained from the hauling of that coal the reason you leased the trestle to Mr. Campbell for such a nominal rental?

A. That is right. We couldn't do business and continue refusing revenues from the traffic.

Q. To continue the coal business there?

A. Yes, sir.

Q. You mean, to continue the coal business there?

A. Yes, sir.

Mr. Chambliss: That is all.

Mr. Pancoast: That is all.

Mr. Budwesky: That is all.

The Court: That is all, Mr. Baggett.

Gentlemen, suppose you recess for about five minutes, now.

(Whereupon, a brief recess was taken and at the completion of which the following occurred:)

The Court: Who do you want next?

Mr. Pancoast: I would like to call Mr. George Giammittorio.

The Court: All right.

Thereupon

GEORGE M. GIAMMITTORIO

page 45 } was called as a witness by counsel for the City of  
Alexandria and, having been duly sworn, was  
examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Pancoast:

Q. Mr. Giammittorio, will you give your full name, please?

A. George M. Giammittorio.

Q. Where do you live, Mr. Giammittorio?

A. 311 Calvert Avenue.

Q. And where is that in relation to the property in question in this action?

A. About one hundred and fifty feet away.

Q. How long have you lived in this vicinity, Mr. Giammittorio?

A. All my life, twenty-seven years.

Q. Are you familiar with the railroad trestle that was once used by Mr. Harding, trading as the Potomac Coal Company, according to the evidence in this case, as it existed prior to June 30th of this year, 1948?

A. Yes, sir. I am very familiar with it.

Q. Do you know what happened to the coal trestle between June 30th and July 2, 1948?

A. It was removed prior to that time by Mr. Campbell's organization.

page 46 } Q. How long prior to that time?

A. I would say approximately two years or so. I am guessing on the time.

Q. And what was put in there, in its place? Strike that out. How much of it was removed?

A. I would say two-thirds or three-quarters.

Q. All right, sir. What was put there in its place?

A. There was a shovel that excavated quite a bit of dirt.

Q. At what point, Mr. Giammittorio?

A. They excavated under the old wooden trestle, and then they excavated a portion of the track north of where the old wooden trestle was originally. They excavated a portion of the track and the entire portion, length of the old wooden trestle, which had been removed by them.

Q. How much ground did they take out of there, in feet? I mean, for what depth did they excavate where the old trestle was?

*George M. Giammittorio.*

*Structure*  
A. About four or five feet.

Q. And what is there now?

A. There are six concrete piers, have substantial concrete walls about 16 feet high, twelve to fourteen feet wide, and about eighteen inches thick. I haven't measured page 47 } those. This is simply from observation. In addition to those piers, there are seven footings, seven additional footings on which piers are to be placed.

Q. Do you know who did that work?

A. Yes, sir.

Q. Who did?

A. Mr. Arthur Campbell, Northern Virginia Construction Company.

Q. How do you know that?

A. I was told that by Mr. Campbell, himself, and by his son-in-law, Mr. Varney and Mr. Shepherdson. I saw Mr. Varney and Mr. Shepherdson on the project working.

Q. Just when did the erection or construction that has gone on take place, Mr. Giammittorio?

A. It took place between June 28th and July 2d.

Q. Was it in the daytime or nighttime?

A. It was both, in the daytime and nighttime.

Q. Mr. Giammittorio, you said that you lived there all your life. Do you remember the use of the property and to what extent it was operated? Was it operated as a coal yard by Mr. Harding some years ago?

A. Yes, I remember very well. It was operated by Mr. Harding on a very small scale. He used to dump one coal car at a time.

Q. And as far as you know, when did that operation cease?

page 48 } A. I don't recall the date that it ceased. But I understand that just a short while back that Mr. Campbell purchased the Potomac Coal Company from Mr. Harding.

Q. Mr. Giammittorio, was coal ever deposited in it, or on the ground, and in the space where the concrete piers have been erected and where, as you have testified, it appears that six or more are to be erected?

A. No, it was not. The coal was deposited in the bins several hundred feet south of that point.

Q. Do you recall the overall dimensions of this trestle from the south end to the embankment?

A. Approximately three hundred feet.

*George M. Giammittorio.*

Q. And what part of that trestle consisted of the bins? What was the length of that? Do you have any notes which you could refresh your memory?

A. I have notes, but I don't have them with me. I would say 120 feet.

Q. And have you looked at the bins recently?

A. Yes.

Q. Did you look at the bins at the time specified in the warrant—that is to say, June 30th to July 2d?

A. Yes, I did.

Q. What was the condition of the bins then?

A. They were in a state of complete collapse and decay.

Q. What was the condition of the trestle that page 49 } has since been removed?

A. The same condition, complete decay and collapse.

Q. How often do you see the property?

A. Every day. I can't help but see it. Every time I go out in the yard, I see it.

Q. Now, how many people live around there, Mr. Giammittorio?

A. Well, the section at Del Ray—there is quite a few people living up and down Randolph, Burke Avenue, Stewart Avenue—it is a complete residential section. Over there on my side is Calvert Avenue and Swan Avenue, the other side of Raymond Avenue.

Q. Will you indicate on this map, for the gentlemen of the jury, where you live and where the coal trestle is? You can step right over there, with his Honor's permission, and point it out to the gentlemen of the jury.

A. I live here.

Q. Now, for the stenographer, will you indicate where you are pointing?

A. I am pointing to a street indicated as Calvert Avenue, which is on the east side of the Washington and Old Dominion Railroad right-of-way. My house is located about one hundred and fifty feet from the site of the coal yard or coal trestle.

Q. Do you know any other people that live there page 50 } —as near as or any closer—to the coal trestle?

A. My father's home is closer than mine. He is about fifty feet away. There are about seven or eight houses—seven or eight brick houses—on Calvert Avenue. Raymond

Decay

*George M. Giammittorio.*

Avenue is completely built up with residential houses. That is the next street north of Calvert Avenue.

Q. And how far away is that from the coal trestle?

A. Raymond Avenue intersects the Washington and Old Dominion Railroad's right-of-way, three or four hundred feet north of the coal trestle.

Q. Now, on the south side of the tracks, what is the condition, or who lives there, and what is the condition of that land close by or in the vicinity of the coal trestle?

A. It is all residential land. It is all occupied by people who resided in this community for twenty or thirty years.

Q. Do you know Mr. Rothgeb?

A. Yes, sir, I do. He has lived there for twenty to twenty-five years.

Q. How close is he to the Potomac Coal Company land?

A. He is about twenty feet away from it. There is a small driveway that separates his back yard from the coal company's right-of-way, and the trestle.

Q. Mr. Giammittorio, during the course of your living there, and according to your observations, was  
page 51 } coal ever deposited where the new cement piers  
are now built and where it appears, according to  
your testimony, that some more piers are to be built by the  
foundations? Has coal ever been deposited along there under  
that trestle?

Mr. Chambliss: If the Court please, I do not think that Mr. Giammittorio is qualified to answer that question unless it is shown that he was in a position to see whether the coal was deposited when all the cars were out there.

The Court: Well, he is subject to cross examination, Mr. Chambliss. He says he has lived there all his life. He can answer to the best of his knowledge.

Mr. Pancoast: Can you answer? Do you know what I am trying to ask?

The Witness: I can answer it. I understand the question. The wooden trestle was in such a bad state of decay and repair—

Mr. Chambliss: I object, if your Honor please, as being unresponsive and ask that it be stricken, sir.

The Court: Sustain the objection.

Mr. Pancoast: Just answer the question.

The Witness: The coal was not dumped on the ground, but part of the track was removed in order that a smaller car

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( coming to the top of the trestle could dump the coal into the bins at the top of the trestle. The coal was never  
page 52 } deposited on the ground, there. There were several means of getting the coal to the top of the trestle in lieu of taking a heavy coal car up there inasmuch as they were afraid it would collapse.

By Mr. Pancoast:

Q. Now, in relation to the overall distance of the trestle as it existed prior to Mr. Campbell's work, and in relation to what it is now, what have you to say as to that? What is the comparison? Are they the same as far as overall distance is concerned?

A. As to that I can testify what Mr. Campbell told me he was going to do there. I don't want to be bound too much by distances because I have not made any accurate measurements of the distances.

Q. Well, you said something about some excavation not necessarily under the trestle, the old wooden trestle, but some in the approach. What have you to say about that, if anything?

|| A. Well, the old wooden trestle has been expanded by the new concrete bins or concrete trestle. It has been expanded northwardly and earth has been removed from the embankment, I would say—guessing—twenty to thirty feet.

Q. All right. Now you said something about what Mr. Campbell told you about the use, or intended to use the trestle. What have you to say about that?

Rebuilt  
page 53 } A. Mr. Campbell came to my office and he told me that he understood that I was the spokesman—I was representing the people out there, in that community—and that the people were objecting to his rebuilding the coal trestle. I told Mr. Campbell that the people out there very strongly objected to his rebuilding the coal trestle. They had always understood that when the wooden trestle rotted out it could not be rebuilt and never would be and that would be the end. They have been trying to get rid of the coal trestle there for some time, some twenty years. I told Mr. Campbell that we were not trying to put him out of business, or that we were trying to keep him from going into the coal business.

Mr. Chambliss: If the Court please, I do not think that this is the proper time for Mr. Giammittorio to argue the



*George M. Giammittorio.*

case. I think that if they want to put in statements to bind Mr. Campbell, that is one thing. I do not think that he should be allowed to say what he said to Mr. Campbell at this time.

The Court: What would be the pertinency of that, Mr. Pancoast, as far as this warrant is concerned?

Mr. Pancoast: I am trying to ascertain for the benefit of the Court and jury the extent to which Mr. Campbell page 54 } bell intended to use this property. I think that is very material. I propose to show that—by this question—he intended to extend and enlarge, by the rebuilding of this coal business there—

Mr. Budwesky: May I ask the counsel for the City whether he is binding Mr. Campbell, as the President of the Northern Virginia Construction Company, in erecting this trestle, in which event the question is entirely irrelevant, or whether he is undertaking to bind Mr. Campbell as a partner in the Potomac Coal Company, which is not before the Court?

Mr. Pancoast: Well, now, I am perfectly willing to answer that question, if it would help the Court.

The Court: No, that would not help me. What I would like to know is: if Mr. Giammittorio is going to elaborate Mr. Campbell's plans, inasmuch as he is not charged with that? He is charged with the erection of a structure, coal trestle, for the operation of a fuel yard. Now, the size of it, as I see it, it would not make any difference. If it should not be erected or whether it is permissible to erect, that is the question, here. What would be the materiality of it?

Mr. Pancoast: As the warrant says: "For the operation and use as a coal yard." Now, this relates to that page 55 } operation and use as intended by Mr. Campbell according to his conversations or representations to this witness. And so far as to whether this relates to the corporation or to Mr. Campbell, I say that it relates to Mr. Campbell, himself, because he can not hide in so far as the violation is concerned under a corporate existence or any partnership existence.

Mr. Chambliss: If your Honor please, I think the single inquiry here is as you stated a moment ago. Did we erect a structure over there in violation of a zoning ordinance? If so, that is the inquiry, or was it permitted? Now, what our future plans might be or what Mr. Campbell's plans might be are irrelevant to the question before this Court today, and I object to the testimony and ask that the jury be instructed to

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ignore such testimony as this witness has given which bears on that question and which is prejudicial to the railroad.

The Court: He can testify to what Mr. Campbell told him as to the purpose that he intended to use the property, but as to the size of it, I do not think that he need go into that.

Mr. Pancoast: All right.

By Mr. Pancoast:

Q. Did Mr. Campbell tell you anything about the purpose of the erection there?

page 56 } A. Yes, sir. Mr. Campbell told me that he was going to rebuild the trestle, and inasmuch as it had become too dangerous, and that the railroad would not deliver coal to him there, he was going to have facilities for the dumping of six cars there.

Mr. Pancoast: Your witness.

#### CROSS EXAMINATION.

By Mr. Chambliss:

Q. Mr. Giammittorio, you are a practicing lawyer here in Alexandria, are you not?

A. Yes, I am.

Q. And you were born out there, I think, near where this trestle is located?

A. Within fifty feet of it.

Q. I think you were born in the house that is the nearest to the trestle structure?

A. That is correct.

Q. That is owned by your father?

A. That is correct.

Q. You and he, of course, have talked about this case together?

A. Oh, yes.

Q. And he has asked you to present it on his behalf?

Mr. Howard: If your Honor please, I object to that unless you intend to show prejudice—

page 57 } Mr. Chambliss: I am merely trying to show the interest of the witness.

Mr. Pancoast: If your Honor please,—

The Court: He has already testified where he lives. He

*George M. Giammittorio.*

lives within 150, or one hundred feet of it and his father lives within fifty feet, and other people live—this man Rothgeb—live within twenty feet of it.

Mr. Pancoast: The warrant shows that it was issued on the complaint of the City Attorney and not on the complaint—

Mr. Chambliss: I will get to that in just a minute, Mr. Pancoast.

By Mr. Chambliss:

Q. Other relatives of yours live in the immediate neighborhood, is that right, Mr. Giammittorio?

A. Yes, sir, they do.

Q. And they likewise have asked you to press this matter for them?

A. Everybody in the community. Everyone in the court room has asked me to do that inasmuch as I am the only attorney in the vicinity.

Q. I see. The residents are here in the court room?

A. Yes.

Q. This morning?

A. Yes. I can name them.

Q. As a matter of fact, Mr. Giammittorio, at the  
page 58 } time the warrant was taken out by the City in this  
          } case you spoke to Mr. Pancoast about it, did you  
not?

A. I think I spoke to everybody in Alexandria about it, including Mr. Budwesky.

Q. You asked him to have the warrant issued?

A. No, I asked for advice on it.

Q. But did you not actually request that the warrant be issued against the Washington and Old Dominion Railroad?

A. I don't know that I specifically made that request. I know that I talked to all the city officials that I thought had any control over the project.

Q. You talked to Mr. Pancoast about it?

A. Yes.

Q. The City Attorney?

A. Yes.

Q. Did you talk to Mr. Colasanto about it?

A. Yes.

Q. And you told them that you were anxious that the action be pressed?

*George M. Giammittorio.*

A. Yes.

Q. Is that correct?

A. Yes.

Q. Against the Washington and Old Dominion Railroad?

A. In the interest of everybody in the community.

Q. Particularly in your interest?

page 59 } A. Well, I was representing myself as attorney.  
I was attorney for the other people in the community.

Q. As a matter of fact, it is your judgment, is it not, Mr. Giammittorio, that your property would be considerably increased in value if this trestle was taken away from there?

Mr. Pancoast: If your Honor please, that has no bearing upon this case. Mr. Chambliss has repeatedly said that such things are—

The Court: Sustain the objection.

Mr. Chambliss: I note an exception to your Honor's ruling since I intended to prove further interest and bias of the witness.

The Court: All right, sir.

By Mr. Chambliss:

Q. Now, there is considerable industrial zoning around that immediate area, is there not, Mr. Giammittorio?

A. The area is residential, prevailing residential.

Mr. Chambliss: Would you mark this, please? Mark that as "Washington and Old Dominion Railroad's Exhibit No. 4 for identification."

By Mr. Chambliss:

Q. I am showing you a photograph marked, "Washington and Old Dominion Railroad's Exhibit No. 4 for identification", which is taken from the top of a railroad box car, and approaching a house, which is seen in the left  
page 60 } background of the picture. Do you recognize that neighborhood, Mr. Giammittorio?

A. Yes, sir, I do.

Q. Do you recognize that particular house with a dormer window—a two-story house with a dormer window—on the roof?

A. I would have to guess at it. The only thing I can see is a roof.

*George M. Giammittorio.*

Q. What is your best guess?

A. My best guess would be that the house belongs to Mrs. Pennazolio.

Q. Is she related to you?

A. She is my aunt.

Q. That is a fair picture representation of that neighborhood as the tracks approach the—

Mr. Howard: What neighborhood?

Mr. Chambliss: Is this a fair picture—now, I want you to be fair—representation of that neighborhood as the tracks approach the trestle?

The Witness: It is not; no, sir. It is a very biased picture.

By Mr. Chambliss:

Q. What is wrong with it, Mr. Giammittorio?

A. It is a photograph taken of some warehouses that are in the vicinity.

Q. Warehouses are there, are they not?

page 61 } A. That is true, but it doesn't show any houses that are also there.

Q. At this particular location, there are warehouses there, are there not?

A. It only shows a roof, as I see, of one house. You asked me if the photograph was a true picture, and I said it was a biased picture.

Q. All right. I will ask you this. Is that a true picture of that particular location with the trestle in the background?

A. I don't know, not having taken the photograph and not being there.

Q. You have lived there all your life, have you not?

A. You are not asking me what I know personally. You are questioning me about this photograph.

Q. It is your statement that it is not a true photograph?

A. I don't know whether it is true or not.

Q. It is biased, is that your characterization?

A. Yes.

Q. Because it does not show enough houses, is that it?

A. It is taken merely to show the warehouses that I admit are there.

Q. I see.

A. It is a very small portion of the community.

page 62 } Q. But as far as what it does show, it is a true and correct picture of the area covered in that photograph?

*George M. Giammittorio.*

A. I don't feel that I am qualified to answer that.

Q. You have lived there all your life. You can see and you have been there daily?

A. That is true. If you want me to testify as to what is there, I can. But I don't feel that I can testify as to what that photograph—

Q. I want to be fair with you and I want you to be fair with me.

A. All right.

Q. Can you say whether or not that is a true photograph of what it purports to depict?

A. I can not.

Mr. Pancoast: I object to the introduction of it, if your Honor please.

Mr. Chambliss: I am not offering it.

By Mr. Chambliss:

Q. Now, Mr. Giammittorio, directly across from your property, there on Calvert Avenue—

Mr. Howard: If your Honor please, as I understand it, that picture was not offered in evidence. I thought the picture was in evidence. I do not think he would have the right to examine the witness on something that is not in evidence, and I think the question and answer should be page 63 } stricken.

The Court: All right. Mr. Chambliss merely referred to it—

Mr. Chambliss: I said, "Washington and Old Dominion Railroad's Exhibit No. 4 for identification." I did not have it in.

Mr. Howard: I thought it was an exhibit.

Mr. Chambliss: If the Court please, I will have that picture identified later on and have it put into evidence.

The Court: All right, otherwise the testimony will be stricken.

Mr. Howard: All right.

The Court: All right, let's get along.

By Mr. Chambliss:

Q. Now, Mr. Giammittorio, on the Calvert Avenue, where you live, I believe you indicated that you lived right here,

*George M. Giammittorio.*

about the corner of Calvert Avenue and Montrose Avenue, is that correct?

A. No, sir.

Q. Where your house is?

A. No.

Q. Where is it?

A. My house faces north on Calvert Avenue. It is the second house on the south side of Calvert Avenue, which runs east and west. It is approximately one hundred feet from the Washington and Old Dominion Railroad's right-of-way. About there (indicating). This small street that comes off of Raymond Avenue. Let's see, now. I was indicating the north side. I am on the south side. I am here.

Q. You are on the south side of Calvert Avenue, just east of the Washington and Old Dominion right-of-way?

A. That is correct.

Q. And you are across from Calvert Avenue in an area which is shown here as an area which would be C2-residential, across the street and a little west?

A. Yes.

Q. As a matter of fact, that area in there has recently been zoned industrial, has it not, as shown on this map as being orange?

A. I don't know.

Q. I am reading from paragraph three of Ordinance No. 542 of the City of Alexandria, and ask you if you are familiar with where this property is located. "(e) 436 through 446 Calvert Avenue known as Lots 22 (a) and 22 (b), Block 18, assessment map 206 located on the north side of Calvert Avenue, 118.98 feet west of River Road having a total frontage of 150 feet and a depth of 110 feet from B-residential to E-industrial." Do you recognize that description?

page 65 } A. I assume that is the description of a portion of the warehouse area which had for some reason or other—

Mr. Pancoast: Wait a minute! What is the date on that ordinance?

Mr. Chambliss: The date is June 1948, is it not, Mr. Giammittorio?

The Witness: Yes, sir.

By Mr. Chambliss:

Q. Can't you place that property directly across the street

*George M. Giammittorio.*

from your house and up a little bit, that is, towards the Potomac Coal Yards, which would be east?

A. Yes, this property is towards the Potomac Yards, but whether that is the property—I think it is. I think this is a part of the same plot of land that is occupied by the warehouses at the present time.

Q. Now, on Ordinance No. 512—

Mr. Pancoast: The date, please?

Mr. Chambliss: I do not believe the date is shown on the copy I have, sir.

Mr. Howard: Are these ordinances in evidence that you are talking about, now, Mr. Chambliss?

Mr. Pancoast: No, they are not in evidence.

Mr. Chambliss: No.

By Mr. Chambliss:

Q. Ordinance No. 512 likewise speaks in paragraph 66 } graph number eight: “(8) 400 through 418 East Calvert Avenue, known as Lot 5001 of parcel B of the Oakville tract, located on the north side of Calvert Avenue 468.98 feet west of River Road, having a frontage of 243.20 feet and a maximum depth of 109.99 feet, to E-industrial.”

Mr. Pancoast: I want to object to your Honor unless he can show that is enacted prior to the issuance of this warrant.

The Court: I think that is reasonable to ask.

Mr. Chambliss: I will limit my question to this. I will ask Mr. Giammittorio if he does not know of his own personal knowledge that that parcel has been rezoned recently to industrial.

Mr. Pancoast: What is the materiality of that?

Mr. Chambliss: He has testified to the residential character of the neighborhood.

Mr. Pancoast: All right.

Mr. Budwesky: He says that it is all residential.

The Court: He claims it is across the street and slightly to the east of where he lives.

Mr. Chambliss: Just across the street and slightly to the east of where he lives.

The Court: We just went through that.

Mr. Chambliss: There are two parcels.

page 67 } The Court: All right. If he knows of his own knowledge, he can say so.



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The Witness: If your Honor please, I do not know what Mr. Chambliss has reference to. There is only one plot of land that have the warehouses on it. I know from my own personal knowledge that for some unforeseen reason that land was not rezoned until, when the whole piece was rezoned, recently rezoned, a small strip of it—still in the same warehouse area. It doesn't even occur on the residential area.

By Mr. Chambliss:

Q. Do you know, Mr. Giammittorio, that across the street from where your house and east—that is in the direction of the Potomac Yards—they have recently, they are separate parcels, been rezoned to industrial?

A. Two parcels—separate parcels?

Q. Yes, sir.

A. No, I am only familiar with only one rezoning.

Q. Very well. Now, Mr. Giammittorio, in connection with the embankment that leads up to the trestle, you are, of course, familiar with that embankment?

A. Yes.

Q. As a matter of fact, it comes up almost to the second-story window of your father's dwelling, does it not?

A. Well,—

page 66 { Q. I do not want to exaggerate. Correct me if I have misstated anything.

A. About that, yes.

Q. About that?

A. Well, I don't—I would say it was ten or twelve feet higher.

Q. There is a spur track that runs up that embankment, up to where the new structures are being put in?

A. Spur track?

Q. Yes, from the main line of the railroad?

A. Yes.

Q. You have been up on the embankment yourself, have you not?

A. Yes, many times.

Q. Many times?

A. That's correct.

Q. Do you know the distance from the end of that embankment—that is, where those new concrete piers are going in—do you know the distance from that point to where you hit high grade, the same grade as the railroad?

In other words, how long is that embankment?

A. I don't know.

*George M. Giammittorio.*

Q. What is your best estimate?

A. I would say that the length of the whole thing, from the switch to the northern end of the bins, is about page 69 } 435 feet—that is what somebody quoted.

Q. You have never taken an estimate of the distance of the embankment?

A. No.

Q. And you leave the embankment and go towards where the old bins still are—do you still follow me? Going in that direction.

A. Yes.

Q. How far is it from the end of that embankment to the end of the old bins that are still standing? Have you ever measured that distance?

A. No. I am not prepared to testify on the exact distance.

Q. You never made any measurements, I take it, of the distance covered by the new work itself?

A. I—

Q. Any actual measurements?

A. —couldn't. He had the piers, the walls—whatever you want to call them, six of them.

Q. I think you testified on direct examination that you did not measure them. You testified they were 18 inches thick, for example. You did not actually measure them, did you?

A. That's right.

Q. You testified as to the width. You never measured them?

page 70 } A. That's right.

Q. So, you can not testify what the distance is covered by the old trestle and by the concrete bins, since you never measured them?

A. I can only by approximation.

Q. So that the figures you gave on direct examination, two-thirds or three-fourths of it had been removed, was just an approximation?

A. An approximation.

Q. Is that correct?

A. That is correct.

Q. Now, the Washington and Old Dominion Railroad and the Washington and Old Dominion Railway, its predecessor, have operated the coal trestle there for as long as you can remember, have they not, Mr. Giammittorio?

*George M. Giammittorio.*

A. Yes, sir.

Q. That is one of your earliest memories, is it not?

A. Yes, sir; that is correct.

Q. And there was no interruption in the use of that trestle by the railroad, was there?

A. In recent years it has practically been out of business.

Q. It has practically been out of business?

A. Yes, sir.

Q. Did you hear Mr. Baggett testify this morning? page 71 }

A. I did.

Q. That 17 cars had been dumped there since January 1, 1948?

A. I think that prior to that he would have to testify that there were very few cars dumped there.

Q. You cannot deny since January 1, 1948, that there were seventeen, can you?

A. I can not.

Q. Now, you also testified that there was no coal dumped under the trestle. Did you mean by that that you never saw any dumped under there?

A. I testified that they had this little arrangement where a little car would go under a large car and coal was dumped there and taken up to the bins and redumped.

Q. But, now, you know he had a trestle approach up to the old bins; do you remember that?

A. Yes.

Q. Did you ever notice whether the coal was dumped down into the trestle?

A. In the trestle? Nothing other than what I have testified to now.

Q. Of course it could have been dumped and you couldn't have seen it?

A. Not likely. I don't think that it could have happened and I couldn't see it. I am just that close to it.

page 72 }

A. Yes.

Q. It could have been dumped there and you could not have seen it?

A. If it was dumped and removed in fifteen minutes or twenty minutes, it could have been.

Q. Can you not answer my question?

The Court: He has answered the question. Not likely.

Mr. Chambliss: Not likely.

*George M. Giammittorio.*

By Mr. Chambliss:

Q. Now, returning to that spur track for a minute, Mr. Giammittorio, the only purpose of that spur track was, of course, to get up to the trestle which went on down to the bins, is not that so?

A. I don't know.

Q. Went up to the embankment?

A. I assume it was for that purpose.

Q. You never saw it used for any other purpose, did you?

A. They used it for shifting cars when they have a lot of cars.

Q. The spur track up there?

A. Yes.

Q. But are there not two spur tracks that you are speaking of?

page 73 } A. I don't know.

Q. I shown you Washington and Old Dominion Railroad Exhibit No. 1. This is a picture of the Railroad track as it approaches your father's house, which is shown on the left—middle of the picture; do you see the two spur tracks there? One of them is parallel to the main line of the railroad and one going up the embankment.

A. Yes, I see them. I assume that they were both main tracks. One track at one time going over to the Potomac Yards.

Q. Now, the spur track goes up the embankment, that was only used for hauling coal up there and later getting on the trestle, is not that right?

A. I testified that I have seen it used for the purpose of shifting cars, and I have.

Q. Do you mean the spur track that goes up the embankment?

A. Yes.

Q. For the purpose of shifting cars?

A. Yes,—you see—talking about the embankment, almost level, I would say, for about half-way up to the trestle. It is actually not an embankment. It is level with the ground on the other side.

Q. Do you mean up to where the grade starts?

A. Yes.

Q. And then the grade does start, and the embankment gets as high as the second-story window of your father's house, approximately?

page 74 } A. Yes, you said that, and I said ten or twelve feet.

*George M. Giammittorio.*

Q. Ten or twelve feet. All right.

A. Yes.

Q. At that point they certainly did not use the track up in that area for switching cars, did they—up to the embankment?

A. You asked if this spur was used for that purpose, and I said it was, and in addition—

Q. I see what you mean. Beginning at where the grade starts on the embankment and going up that rise, that was not used for switching cars?

A. I haven't—

Q. You never saw it used as such?

A. I haven't observed it so close.

Q. So the only thing—the only purpose the embankment was used for was in connection with the coal trestle, is not that correct?

A. I would say that is its chief purpose.

Q. Its only purpose so far as you know?

A. No, I have testified that I have seen it used for other purposes.

Q. You have testified that you saw the spur track leading to the embankment being used for other purposes, page 75 } but so far as the track on the embankment is concerned its only purpose was to reach the coal trestle, is not that right?

A. At what point do you want?

Q. Where the grade of the embankment leaves the grade of the railroad.

A. Well, that could be at the switch and it could be half-way up of the approach of the trestle.

Q. As far as the embankment is concerned, you never saw it used for any other purpose except reaching the coal trestle, is not that correct?

A. I still don't know whether you are referring to the embankment. There is a switch there. That spur track leaves—now, I definitely seen that spur track used for the purpose of shifting cars around.

Q. Well, you know the embankment that I speak of, that is outside on the railroad's right-of-way, just beyond your father's house?

A. If you will hand me the photograph I can speak in relation to the switch that leaves the main line.

Mr. Pancoast: Has that photograph been placed in evidence?

*John William Varney*

Mr. Chambliss: Yes.

Q. You are now looking at Washington and Old Dominion Railroad's Exhibit No. 1. Now, pointing at this switch—

A. You say the embankment begins at this page 76 } switch, here?

Q. No, I have not said that, Mr. Giammittorio.

The Court: Gentlemen, we are wasting an awful lot of time.

Point out how much of that spur you have seen used for shifting purposes.

The Witness: It is covered by grass, if your Honor please,—about half-way up from this switch, here. It doesn't become an embankment until about one hundred feet up here, along in there.

By the Court:

Q. One hundred feet beyond the switch?

A. Yes, sir.

Q. Where is the switch?

A. Here is the switch that we are referring to.

The Court: Mr. Giammittoria says for one hundred feet beyond that switch.

Mr. Chambliss: That has been used for switching purposes either on the grade—I see. That is all, sir. Thank you.

Mr. Pancoast: That is all. Thank you.

The Court: Who do you want next, Mr. Pancoast?

Mr. Pancoast: Mr. John Varney.

Thereupon,

JOHN WILLIAM VARNEY

was called as a witness by counsel for the City of Alexandria and, having been duly sworn, was examined and page 77 } testified as follows:

DIRECT EXAMINATION

By Mr. Pancoast:

Q. Will you state your name, Mr. Varney?

A. John William Varney.

Q. Mr. Varney, have you ever worked on the coal trestle at what is known as the Potomac Coal Yard?

*John William Varney*

A. Yes, I have.

Q. And for whom did you work?

A. The Potomac Coal Company.

Q. Who engaged you to do the work?

A. Mr. Campbell.

Q. What work was done by you and others so far as you know?

A. Well, I have answered the 'phone, unloaded the cars of coal; delivered the coal, and I helped tear down a section.

Q. Did you help erect the piers that are now there, the concrete piers?

A. No. One day I was over painting the forms, and Mr. Giammittorio came over there while I was painting the forms.

Mr. Pancoast: That is all.

### CROSS EXAMINATION

By Mr. Chambliss:

Q. Mr. Varney, were you there when the old page 78 } trestle was standing?

A. Yes, sir.

Q. You were?

A. Yes.

Q. Did you ever see any coal unloaded there at that time?

A. Yes, sir. I unloaded two carloads of—one of Pocahontas Stove—and, also we used the trestle there. I put a screen up there underneath the trestle where I could back a truck under there. We used to get a slack out of the coal, a lot of it from the coal that we put in.

Q. Where was that coal dumped, do you remember?

A. The coal was dumped there—if I had a picture here I could show you.

Q. All right. I show you Washington and Old Dominion Railroad's Exhibit No. 2, which shows certain concrete piers. Now, was there an old trestle where those concrete piers are?

A. The old trestle? They ran right on up to the top.

Q. Up to what is known as the old bins?

A. Yes.

Q. Now, was coal ever dumped in that area where the coal trestle is?

A. At the end of the bins—there is a bin that is torn down, that is not shown here—big bin that we used for stoker Pea,

*John William Varney*

in a bucket—those bins are torn down, and right  
page 79 } north of that bin we dumped carloads of Pocahon-  
tas, which is a large coal.

Further down we dumped a carload of Pocahontas Stove, and still further down from there—we used the trestle by fitting a screen underneath the trestle—we used to back the truck underneath to load the coal.

Q. Excuse me. When you say further down, you were pointing at which of those concrete pillars?

A. There, at about the edge there. That is the best as I can tell. There is a path there that we used to go over in here by men and people that live over there. That is where we loaded and used to back the truck underneath and we used a screen. That was where the paths were. That is where the slack coal would fall on the ground.

Q. And coal was actually dumped in that area?

A. I dumped two cars.

Q. In the trestle portion itself?

A. That's right; always loaded from the car there on the trestle.

Q. You are familiar with that embankment, too, Mr. Varney, that approaches that trestle, are you not?

A. It comes up from Raymond Avenue. There is a switch down—I think north of Raymond Avenue, where it comes up on the incline all the time.

Q. What is your best judgement of the length of  
page 80 } that embankment, that is, from where the trestle  
begins to where the grade of the railroad is? Do  
you know that distance?

A. Not that measurement. But it is a right good distance. I would say over three hundred feet.

Mr. Chambliss: That is all.

Mr. Pancoast: Thank you. That is all, Mr. Varney.

The Court: Thank you very much.

Anyone else, Mr. Pancoast?

Mr. Pancoast: I have one witness, sir, who is an expert. He is a civil engineer and it will not take me more than the time that we have left. Shall we go ahead?

The Court: About how long will it take, Mr. Pancoast?

Mr. Pancoast: I could not tell you about the cross-examination, but I will be very short.

The Court: All right.

Mr. Pancoast: Mr. Reed!



Thereupon

LINWOOD E. REED

was called as a witness by counsel for the City of Alexandria and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Pancoast:

Q. State your name, please, Mr. Reed.  
page 81 } A. Linwood E. Reed.

Q. And your residence?

A. 2612 Terrett Avenue.

Q. And your occupation?

A. I profess to be a civil engineer.

Q. And are you certified in the State of Virginia?

A. Yes, sir, I have a registration in the State of Virginia, and the State of New York. That is for some ten years.

Q. How close is your residence to the Potomac Coal Company side?

A. Oh, about two blocks.

Q. How long have you lived there, Mr. Reed?

A. A little over twenty years.

Q. Now, what kind of work have you done since you have been an engineer?

A. Well, in general, civil engineering work of larger and heavy structures. I have been on the engineering staff of the Potomac Electric Power Company and the Braddock Light Company for twenty-six years.

Q. Do you have anything to do with the construction that is going on now?

A. Yes, sir.

Q. And what is the size of the project?

A. Well, this project when it is completed will  
page 82 } probably cost forty-eight million dollars.

Q. And have you ever had any experience with coal trestles and railroad buildings?

A. Yes, sir. The company with whom I am associated handles about three thousand tons of coal a day. We have been doing this sort of thing probably for the last eighteen years or twenty years. We anticipate probably 135 or 150 tons of coal per hour with the new station.

I am familiar with the type of structure necessary to handle those loads.

*Linwood E. Reed*

Q. And are you familiar with the type of construction that formerly existed at the Potomac Coal Yards?

A. Yes, sir; I have observed that structure many times.

Q. All right, sir. Can you tell his Honor what personal knowledge you have of the trestle that has been damaged or depreciated at the time, say, June 30, 1948, or right around June 30, 1948?

Mr. Chambliss: Did he examine it then?

Mr. Pancoast: I think he did.

Mr. Chambliss: Ask him if he examined it then.

By Mr. Pancoast:

Q. The counsel has asked me to ask if you had examined it at that time. I think I had asked you that.

A. I have observed the condition of the structure for several years.

pag 83 } The Court: You had said many times.

The Witness: Many times.

By Mr. Pancoast:

Q. Can you answer that question, now? Will you read that back, please?

A. I think I can recall the substance of it.

Q. All right, sir.

A. The fact is that strictly from experience and my knowledge, that such structures are only good for from twelve to fifteen years, without extensive maintenance. I know that there has been a minimum of maintenance on this structure. I often wondered what held it up as well as it did, that if any work was to be done or any heavy load was to be handled over this in the future I thought that an entire structure should be remodded, or that the existing structure be removed and a new one installed in its place.

Q. Well, now, say, for instance, that the embankment constituting the approach and the entire trestle southeasterly to the end of the bins, of the old bins, if you include the whole thing as one unit, what could you say about the per cent of depreciation or damage?

A. I would say approximately seventy-five per cent. I base that on the fact that if that structure there had been of any structural ability they would not have gone in between

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*Linwood E. Reed*

to put new footings and new piers to build a new  
page 84 } one. They would have used that which was there.  
However, it appears to me, now, that this structure —

Mr. Chambliss: If your Honor please, I think this witness is going beyond the question asked him and arguing the question. I believe the question was: What percentage including the embankment, had been replaced.

The Witness: I attempted to substantiate my statement on the percentage.

The Court: You said about seventy-five per cent?

The Witness: Seventy-five per cent.

By Mr. Pancoast:

Q. Mr. Reed, from your personal knowledge of the approach to the old trestle, is it made or filled land or is it natural grade land?

A. Well, it is a combination of both. However, I have noted that there has been considerable erosion in the fill and in the old part, and prior to the beginning of this new construction work it was, there was considerable vegetation in the form of weeds and stuff, there, that indicates that it has been misused.

Q. What was the condition of the trackage on that filled part?

A. I couldn't say to the exact condition of the trackage.

Q. The part that constituted the trestle, then. What was the condition of that?

page 85 } A. The part that constituted the trestle was in very poor condition.

Q. And the bins, as indicated by these photographs?

A. I haven't seen the photographs, but I imagine that they were also in very poor condition, structurally.

Q. All right, sir. Mr. Reed, could you tell the jury how much of the structure was standing there, say, in January 1948, and how much of the structure is standing there now, constituting the trestle as the whole unit, if you know?

A. I don't believe I could answer that as directly as that.

Q. What proportion of the whole structure has been taken away, if you know?

A. I would say around twenty-five per cent of it, that is, approximately. Now, there has been considerable amount of this structure forming a part of the incline or approach,

*Linwood E. Reed*

which obviously had to be removed to substitute the new concrete structures. It looks to me to be about twelve or thirteen bases.

Q. How much of it has been removed, if you know?

A. I don't know.

Mr. Pancoast: Your witness.

### CROSS EXAMINATION

By Mr. Chambliss:

Q. What is your statement to the last question, page 86 } Mr. Reed? About twenty-five per cent has been taken away?

A. That is just an approximation, yes, sir, from my observation, not by measurement.

Q. Is that taking the area with the concrete piers?

A. No.

Q. It does not take that into consideration?

A. No.

Q. What area do you speak of?

A. The area under the trestle, where the bins were removed and the new walls were poured in their places.

Q. That is the area I am speaking of. You say twenty-five per cent?

A. About twenty-five per cent of that was removed in order to make way for the new structure.

Q. You did not take any measurements over there?

A. No, I said it was approximately, just from observation.

Q. You are interested in this prosecution because you live over in that neighborhood, is not that right, Mr. Reed?

A. Perhaps.

Q. Well, are you or are you not?

A. Yes.

Q. You would like to see that trestle come down, personally?

A. Absolutely, from the nuisance that I have had from it.

page 87 } Q. That has been there as long as you have lived there, has it not?

A. I have to contend—

Q. Just answer my question, sir. I am entitled to a direct answer.

A. And I am entitled to qualify my answers, too, sir.

*Linwood E. Reed*

Q. I do not believe so. I believe the Court will instruct you otherwise.

The Court: I do not believe that a qualification is necessary, Mr. Reed.

The Witness: Thank you, sir.

By Mr. Chambliss:

Q. How long did you say that you lived there?

A. About twenty years.

Q. The trestle has been there, of course, for all that period?

A. Yes, sir.

Q. Now, you say that you are a civil engineer?

A. I purport to be; yes, sir.

Q. Of course you know that for accurate testimony in matters of this kind accurate measurements are necessary, do you not, Mr. Reed?

A. I haven't given any accurate testimony as yet.

Q. You do not consider any of your testimony accurate?

A. I have made them in approximation, sir,  
page 88 } from observation.

Q. You could not call it an accurate engineer's statement?

A. I haven't been asked to make a report.

Q. You have not taken actual measurements, have you?

A. I have read some of the drawings.

Q. But you did not make them?

A. No, sir.

Mr. Chambliss: All right. That is all.

The Court: Recess for an hour.

(Whereupon, at one o'clock p.m., a recess was taken, to reconvene at two o'clock p.m. of the same day).

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#### AFTER RECESS

The hearing was resumed at two o'clock p.m. following the recess.

The Court: All right, Mr. Pancoast.

Mr. Pancoast: I would like to recall Mr. Reed to the stand, please.

Thereupon

LINWOOD E. REED

was recalled to the witness chair by counsel for the City of Alexandria and, having been previously duly sworn, was examined and further testified:

RE-DIRECT EXAMINATION (Continued)

By Mr. Pancoast:

Q. Mr. Reed, on cross examination you testified that twenty-five per cent of some structure—I am not sure what you meant—had been taken down. I show you a map that has been referred to in prior question, and in which I now mark as City of Alexandria's Exhibit No. 1, and which purports to show the trestle, coal bins, and approach that existed in 1923.

I will ask you to indicate to the jury just what you mean by twenty-five per cent; twenty-five per cent of what?

Mr. Chambliss: Is this map in evidence?

Mr. Pancoast: It is not but I would like to put it in evidence.

The Court: Any objections?

page 90 } Mr. Chambliss: I do not think it should be introduced at this time. I think the proper time to introduce any map is at the time the map is indentified, and if not introduced at that time the right to introduce it is waived. I object to it, if your Honor please.

The Court: Let me see it.

Who testified in reference to this map?

Mr. Pancoast: No one has testified to it except that I referred to it once before in examining a witness and showed it to the counsel for the defendant, but did not introduce it at that time. They had no objections to it at that time. I believe it was Mr. Baggett that I was questioning at the time that I showed him that map.

Mr. Chambliss: If your Honor please, no proper foundation has been laid with respect to identifying the map.

The Court: At this time you just offer the map?

Mr. Pancoast: Yes, sir, and wanted to use it in questioning Mr. Reed in regards to what he meant as to the twenty-five per cent.

The Court: The objection is made in the manner of its offering?

*Linwood E. Reed.*

Mr. Chambliss: Objection as to its going into evidence or questioning this witness in respect to having this map so that it can be exhibit to the jury.

page 91 } I do not think it is proper for the reason that I that it can be exhibited to the jury.

The Court: I will rule it is not properly offered in evidence.

Mr. Pancoast: All right, sir.

By Mr. Pancoast:

Q. Mr. Reed, I show you Washington and Old Dominion Railroad's Exhibit No. 2, that has been introduced in evidence, and ask you if you will indicate on that map what twenty-five per cent of what was removed—when you used the figure twenty-five per cent?

Mr. Howard: I was going to suggest that he hold the picture and face the jury so that they can see what he is going to say.

The Witness: When I refer to twenty-five per cent of the structure, I mean structure beyond the incline approach.

By Mr. Pancoast:

Q. Will you indicate it on the map?

A. From these piers, which would support this incline, up to the old timber trestle under which the two preliminary bins were as the approach, I did not include any of that in my figure. I would like you to understand that this structure is in two parts. There is an approach on a incline and then a flat piece for the trestle.

My estimate as to the twenty-five per cent was page 92 } of the flat piece along here. All of the approach has been removed, as you will see here.

Q. Well, now, will you point your finger to the part that you referred to when you mentioned the twenty-five per cent?


A. This portion up here. That portion.

Q. Indicating what? The bins?

A. The bin portion or the level part of the trestle.

Juror No. 3: How long a space from the incline to the bins, is it, that you think?

The Witness: That space is one hundred and ninety-three feet.



*Linwood E. Reed.*

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(93)  
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Juror No. 3: Twenty-five per cent of that?

The Witness: No, twenty-five per cent of the ~~seventy-five~~ feet distance. This sketch is something that I have used before and I am somewhat familiar with the station identification on that, meaning railroad points or stations.

It is two hundred and sixty-eight feet between the apparent beginning—

Mr. Chambliss: If the Court please—just a moment!

I believe that this witness has testified that he had taken no measurements.

The Witness: I have taken no measurements.

Mr. Chambliss: I object to any testimony that he has picked up from somebody else.

page 93 } The Court: Did you get this two hundred and sixty-eight foot measurement from somebody else?

The Witness: Yes, sir.

The Court: Sustain the objection.

The Witness: From the map I guess the bin is about seventy-five feet—

Mr. Chambliss: Again I object, if the Court please, and this witness has stated figures and he has not taken any measurements.

I ask your Honor to instruct the jury to ignore any such measurements.

The Court: Where did you get this seventy-five figure?

The Witness: From the horizontal part, or portion, and my acquaintance of that particular picture.

The Court: We have already ruled, Mr. Reed, that you can not testify to the jury on the drawing or from anything connected with the drawing. You have to testify as to what you know of your own personal knowledge.

The Witness: About twenty-five per cent of that horizontal structure which was separated from the incline portion, whatever size that is, that had nothing to do with the entire structure. It is the combination of the horizontal part and the incline portion.

Mr. Chambliss: If the Court please, I would like  
page 94 } the Court to instruct the jury to ignore his remarks in regard to other distances he has testified to.

The Court: Gentlemen of the Jury: I will ask you, please, to disregard any testimony as to distances that the witness has made with reference to any plat. He did not make any



*Linwood E. Reed.*

measurements on the plat, as he said, and it would be second-hand, or hearsay information, so far as he is concerned with you. I will ask you to disregard any testimony that he has given with reference to the plat or the map.

By Mr. Pancoast:

Q. Mr. Reed, from your inspection of the structure as it existed before it was torn down, not including the fill or the dirt fill upon which the spur track runs, but beginning with where the wooden trestle started and ending at the southerly end, where the bins end, what proportion of that had depreciated before it was taken down?

Mr. Chambliss: If the Court please, I object to any testimony of the witness on that point because he, himself, has testified that he could not give any accurate testimony in respect to measurements.

I think he has disqualified himself out of his own mouth.

The Court: He could say what percentage.

The Witness: I could give a percentage.

The Court: Objection overruled.

page 95 } Mr. Chambliss: I would like to note an exception.

By Mr. Pancoast:

Q. What percentage of that, Mr. Reed?

A. About sixty to seventy-five per cent.

The Court: What distance is this, Mr. Pancoast?

Mr. Pancoast: Will you re-read the question, please?

(The question was re-read).

Mr. Pancoast: I believe that is all, sir.

The Court: Let me ask one question.

By the Court:

Q. Mr. Reed, you said that beginning with the wooden trestle and ending with the bins—did you mean including the bins or excluding the bins in that percentage?

A. For the seventy-five per cent?

Q. Yes.

*Linwood E. Reed.*

A. That is the entire structure from one end to the other, including the bins, sir.

Q. Including the bins?

A. Yes, sir.

The Court: All right, sir.

RE-CROSS EXAMINATION

By Mr. Chambliss:

Q. Mr. Reed, when did you make these estimates that you have testified to this morning? When did you first make them in your own mind?

page 96 } A. Oh, perhaps I made them a month or so ago.

Q. That was in connection with the litigation of this case?

A. Yes, inspired by the same.

Q. And you did not have occasion to go out and make these estimates before then?

A. Well, it would be rather unethical to go on another man's property. I did not.

Q. As a matter of fact, you did not make any inspection of the property before these bins were torn down, did you?

A. Oh, yes, casual inspection all the time. I ride by that street. I live within two blocks, and since they put one residential structure in front of my house it has completely obscured my view of it. Prior to that time I could see the trestle in operation from my front porch.

Q. So far as the area covered by the bins, before they were torn down, you are testifying to your recollection of what the area was, is not that correct?

A. Yes.

Q. You did not actually go on the premises to make an estimate for that particular purpose, did you?

A. No, I answered that before; no, sir.

Mr. Chambliss: All right. That is all.

Mr. Pancoast: That is all.

The Court: That is all. Thank you.

page 97 } Mr. Pancoast: Is Mr. Miller in the court room?

Thereupon

**HARRY F. MILLER**

was called as a witness by counsel for the City of Alexandria and, having been duly sworn, was examined and testified as follows:

**DIRECT EXAMINATION**

By Mr. Pancoast:

Q. State your name, please, sir.

A. Harry F. Miller.

Q. And what is your occupation?

A. Field Building Inspector.

Q. Do you work under the building inspector of the City of Alexandria?

A. Yes, sir.

Q. As a part of work, do you have occasion to be familiar with the zoning map that is located to your left?

A. Yes, sir.

Q. Is it a part of your work to record changes of the zoning as the Council makes to the zoning?

A. Yes, sir.

Q. Where do you get your information for those changes?

A. From the Council Minutes.

Q. Are you familiar with the location of the land involved in this action, known as the site of the Potomac page 98 } Coal Company?

A. Yes, sir.

Q. Can you tell his Honor and the gentlemen of the jury whether or not any changes had been made or any amendments have been made to this map since its date—in March, I believe, or May 1946—with respect to the land known as the Potomac Coal Company?

Mr. Chambliss: I object to the question, if your Honor please, because the site has not been proved so far by any competent testimony that the railroad's right-of-way is zoned.

The only testimony on that point is that all the streets are white, the railroad is white, and A-residential is white, and the one who identified that map, over there, stated that he did not know whether—he could only say that A-residential was white, but whether or not the streets and the others, and the right-of-way of the railroad was A-residential, he could not say.

*Harry F. Miller,*

Mr. Pancoast: He was attempting to have the Clerk interpret that map, if your Honor please. The map speaks for itself. It is a matter of defense. If they do not believe it is zoned A-residential, as indicated by that map that is in evidence, why, then, that is up to them.

Now, I am trying to find out by this question, if your Honor please—I am trying to show fairly and page 99 } justly whether or not there has been any change in this particular land, any amendment to the map. The map is the controlling evidence, and the principal evidence, and the most important evidence, and the only evidence that indicates the action of the Council in laying off the zones of the City.

Mr. Chambliss: If your Honor please, may I answer that, please?

The Court: All right.

Mr. Chambliss: Mr. Pancoast says it is a matter of defense.

It is the problem of the City in this case to prove beyond a reasonable doubt that the right-of-way of the Washington and Old Dominion Railroad is in fact zoned A-residential.

At this point the evidence on that is most unsatisfactory, and Mr. Pancoast is now belatedly remedying his case through Mr. Miller.

We are perfectly willing for that map to speak for itself, and we agree that is a rule of evidence, but he can not remedy the map with the testimony of Mr. Miller.

I object to the leading question which he had just put to Mr. Miller on those grounds.

The Court: You asked Mr. Miller if he is supposed to change this map in accordance with the minutes of the Council?

Mr. Pancoast: To note the changes in accordance with the minutes of the Council.

I asked if this map has been changed in so far as it relates to the zoning of this particular area of ground.

Mr. Budwesky: That question, your Honor, assumes that it is already zoned. Is assumes that it has been already zoned.

Mr. Chambliss: And they have not proved it.

Mr. Pancoast: It has.

Mr. Budwesky: We contend that it has not been zoned.

Mr. Howard: I do not know how to prove the zoning qualifications of the City of Alexandria unless you bring before the Court and the jury the master zoning map itself.

*Harry F. Miller.*

Now, that purports to be a correct and true map, until such time as it is proven otherwise by the defense. The only thing we are trying to do at this time is to show that as of the date of this map, the date this map was prepared—it was prepared, of course, by virtue of the orders passed by the City Council—and is a true map until otherwise disproved. We are trying, now, to establish that as of the date this map was prepared, according to the legends that they speak so much about, this right-of-way of the Washington and Old Dominion Railroad was A-residential.

This witness, as I understand, would testify that it is a part of his duty to make changes on the master zoning map as the ordinances of the City Council directed.

page 101 } All Mr. Pancoast is asking is if there has been any change in the status of this particular property since that map was prepared.

Mr. Pancoast: And this map is part of the ordinance itself.

Mr. Budwesky: And the ordinance specifies that the streets are not zoned at all. They are white on the map so you are assuming that this right-of-way—

Mr. Pancoast: We are not involved by the streets in this case.

Mr. Budwesky: You treated that right-of-way the same as you have the streets.

Mr. Pancoast: That is a matter for the Court—

The Court: All right; Mr. Miller can testify to this, that is, as to whether or not he had made any changes in the map since the map was prepared in so far as it relates to this property.

Mr. Pancoast: That is all I wanted to ask him.

The Witness: No, sir.

The Court: He said he has made no changes to the map. He is the man who makes the changes to the map.

Mr. Budwesky: He must have made four hundred changes to the map.

The Court: He says he made no changes to this particular piece of property since the map was prepared.

page 102 } That is good testimony.

Mr. Budwesky: What particular piece of property?

The Court: The piece of property in question.

Mr. Budwesky: What does he know about that?

*Harry F. Miller.*

The Court: He has already told us about it. He has not made any changes.

Mr. Budwesky: He has not laid the foundation.

The Court: He said he is the man that takes care of this map and he has made no changes to the map on that particular part of the map.

The Witness: I do not think I made any changes on that map.

Mr. Budwesky: Have you made a single change on that map since it has been prepared?

The Witness: No.

The Court: Just a minute, Mr. Budwesky. Had you finished with the witness, Mr. Pancoast?

Mr. Pancoast: Yes, sir.

#### CROSS EXAMINATION

By Mr. Budwesky:

Q. Have you made any changes to that map since it has been prepared?

A. Not on this map.

Q. Have there been any changes to the, or in the zoning classifications in the area of the City since this page 103 } map has been prepared?

A. Yes, sir.

Q. Are they recited on that map?

A. Not on this map.

Mr. Budwesky: That is all.

Mr. Chambliss: If your Honor please, may I ask him a couple of questions?

The Court: All right.

By Mr. Chambliss:

Q. Mr. Miller, when this map was prepared the streets, of course, were left blank.

Mr. Howard: If your Honor please, we are going to object to any questions along this line about the streets because we feel it is beyond the scope of the direct examination and on cross examination, as far as I know, they are confined to what is brought forth on the direct examination.

This witness was put on the stand for one purpose and

*Harry F. Miller.*

one purpose only. It is a part of his duties in the building inspector's office, when ordinances come from the City Council designating a change in the status of any particular piece of property that is zoned or rezoned in Alexandria, to make the necessary changes.

He has testified that there has been no change in the zoning of the particular property in question since that map was made.

page 104 } The Court: He said that he has not made any changes to the map. He has not said whether or not there have been any changes in the zone.

Mr. Howard: We certainly thought that had been developed. We certainly want to develop that.

The Court: He said that he made no change on this map of this particular property.

Mr. Howard: I still insist that this question would not be proper because he is now attempting to talk about the streets, and certainly that would be beyond the scope of cross examination.

The Court: They can make him their witness for that part.

Mr. Howard: They would be bound by his answer.

By Mr. Chambliss:

Q. The streets on this map are white, are they not?

A. Yes, sir.

Q. And so is the coal yard down there, is it not, white?

A. Yes, sir.

Q. The Potomac Coal Yard is A-residential—is zoned A-residential?

A. I don't know.

Q. How about the streets, all the streets? You do not know whether it is A-residential or not?

A. No.

page 105 } Q. As a matter of fact, there have been two changes on the map in the immediate neighborhood of it?

A. Not on this map.

Q. I mean on the map you have in your office. You make the change on this map in your office as soon as you learn of the change and that is supposed to be posted to the master map, is that correct?

A. It hasn't been posted.

Q. Is it not true that Calvert Avenue, "436 through 446

*Harry F. Miller.*

Calvert Avenue known as Lots 22 (a) and 22 (b), Block 18, assessment map 206 located on the north side of Calvert Avenue, 118.98 feet west of River Road having a total frontage of 150 feet and a depth of 110 feet from B-residential to E-industrial," on June 1948—

Mr. Howard: Just a moment, if your Honor please. We object to the question. It is immaterial, irrelevant, and has no bearing whatsoever on the issue, and Mr. Chambliss, himself, pointed out in the beginning of this trial that the only thing the Court and the Jury is concerned with is whether or not the property in question, that is the Potomac Coal Yard's property, is A-residential zone.

I do not know what fifty feet from that particular spot is. The only spot that we are concerned with is that occupied by the particular structure.

Mr. Chambliss: If your Honor please, may I page 106} answer that?

The Court: I am going to let it in.

Mr. Chambliss: All right, sir.

By Mr. Chambliss:

Q. Was not that so re-zoned Mr. Miller?

A. That is correct.

Q. I show you ordinance No. 542, and that is so marked on your map?

A. That's right.

Q. Could you point out to the jury just where that parcel is?

A. I think I can. The parcel is down here somewhere.

Q. Where that orange portion is? It is on Calvert Avenue and just west of that River Road, I believe it is called.

A. It is on the north side of Calvert Avenue and it is west of River Road.

Q. And east of the Washington and Old Dominion Railroad?

A. Yes, sir.

Q. Now, there was a further change from B-residential to industrial by Ordinance No. 512 in that vicinity, was there not, Mr. Miller?

A. That's right; in that area there were the both changes, on the same side of the street.

Q. Did not that include "400 through 418 East Calvert



*Harry F. Miller.*

Avenue, known as Lot 5001 of parcel B of the page 107 } Oakville tract, located on the north side of Calvert Avenue 468.98 feet west of River Road, having a frontage of 243.20 feet and a maximum depth of 109.99 feet, to E-industrial?

A. That's correct.

Q. Mr. Miller, do you happen to know whether you have ever required the R. F. and P. Railroad, that is located east of River Road, shown white on that map, to comply with the requirements of the A-residential district?

A. I couldn't answer that question.

Q. You can not answer that?

A. No.

Q. As far as you know they were never required to comply with the requirements of an A-residential district?

A. I can't say.

Q. Can you say whether or not the property shown on this map as "George Washington High School" is, in fact, zoned A-residential? Can you answer that question?

A. That's correct.

Q. It is zoned A-residential?

A. Yes.

Q. How about the City of Alexandria property shown just east of East Braddock property, which is shown there as white?

A. It is colored white on there and I assume it is.

Q. You assume only for that reason?

page 108 } A. Yes.

Q. Was that intended to limit the City of Alexandria with respect to what is shown on there, do you know?

A. That I don't know.

Mr. Chambliss: That is all.

#### RE-DIRECT EXAMINATION.

By Mr. Pancoast:

Q. I would like to clarify one thing. I want to ask you, Mr. Miller, if the zoning classification of the land embraced by the Potomac Coal Company has been changed since that map—

Mr. Budwesky: I object.

*Harry F. Miller.*

The Court: Sustain the objection. All he does is prepare this map.

Mr. Pancoast: I meant to say, in so far as the Council Minutes are concerned. The man has testified that he does the markings or makes the notations of the changes, according to the Council Minutes. I want to ask him if it has been changed.

The Court: All right.

Mr. Budwesky: The question pre-assumes that there already is a zone classification on that ground, which we do not admit. On the basis of the map that is in evidence and on the basis of the ordinances that are in evidence page 109 } we deny that there has ever been any zoning qualification put to that property. So when he says: "Has there been any change?" There is an assumption that there already has been a classification upon it.

Mr. Chambliss: It is assuming, if your Honor please, that something has been proved, which is up to the jury to pass on. I think the question is improperly framed, to say the least.

Mr. Pancoast: They are trying to interpret the map. It is up to the Court to interpret the map, which is part of the law, and all I want to know is if there have been any changes according to the minutes of the Council, of that land.

The Court: Since when, Mr. Pancoast?

Mr. Pancoast: Since the date of that map, sir.

The Court: Any changes in the zoning?

Mr. Pancoast: Zoning classification of the land here involved.

The Court: I think it is a proper question.

Mr. Chambliss: Exception.

Mr. Budwesky: Exception.

By Mr. Pancoast:

Q. Will you answer that question, Mr. Miller?

A. I thought I answered that. I thought that was the same question.

page 110 } Q. Answer it again.

A. No, sir, there hasn't been any.

The Court: Is that all?

Mr. Pancoast: Yes, sir. Thank you, sir. The City rests, sir. We may have some rebuttal.

Mr. Chambliss: We would like to make a motion, if your Honor please.

The Court: All right. Gentlemen, recess for about twenty minutes.

(Whereupon, a short recess was had and the Court and counsel for respective parties retired in the Chambers where the following occurred:)

The Court: All right. Who has a motion?

Mr. Chambliss: Judge, I move to strike the evidence of the City of Alexandria on the ground that it is insufficient in law and then on the following specific grounds:

First, the City has failed to prove, even by the preponderance of the evidence, that the right-of-way line of the Washington and Old Dominion Railroad located at Randolph Avenue, near Calvert Avenue, is zoned in any fashion, either A-residential or B-residential, or any other zone.

All the City has shown by the evidence is that the area there is white, but so are all the streets on the map white. The map, which the City has put into the evidence shows that on each side of that right-of-way in the vicinity in question, it is B-residential or industrial, an entirely different color than the white of the Washington and Old Dominion Railroad.

Now, to permit this case to go to the jury, if the Court please, the Court would have to assume that the right-of-way of the Washington and Old Dominion Railroad is zoned A-residential where it is surrounded on one side by B-residential and then very nearby industrial property.

Furthermore, we feel that the City has—that the map shows that the streets are not zoned A-residential or anything else. It is unthinkable to suppose that the streets of City are subject to any zoning classification at all, and they similarly are white on the map.

We feel, therefore, that the City has failed to prove the essential ingredient, namely, that the right-of-way of the Washington and Old Dominion Railroad is zoned in any fashion unless it is zoned, and unless that factor is proved, why, the rest of the prosecution, here, falls to pieces.

We renew the motion that we made earlier, rather, as further ground for this motion to strike.

We submit this to your Honor, that the evidence shows that the Washington and Old Dominion Railroad is a public service corporation, and that under the Statute law of this

State, which the Court will take judicial notice, the railroad is compelled to carry freight and passengers as a page 112 } common carrier and even assuming, but not conceding, that the property is zoned, we feel that it does not affect the rights of the railroad company there to put such structures on its right-of-way as is necessary and incidental to the operation of its business.

The Court: All right, sir.

Mr. Pancoast: If your Honor please, on the motion to strike, the defendant must necessarily admit all of the facts fairly proven and also all just inferences that may be drawn from those facts. Now, the evidence that is in is the map, and that is the best evidence because it is a part of the zoning ordinance and referred to in Section Three of the Zoning Ordinance. That map gives a legend and the legend shows that white means A-residential.

Now, certainly they have to admit that. What the explanation of the streets, or why the streets are also white is something that is not shown upon the map other than they are A-residential, and why the Council and the drafters of that ordinance left this property A-residential and made other property B-residential is something that can only be shown by the acts of the legislative body of the City, which we have before your Honor.

They did not object to the introduction of the map. I do not know of any grounds that they could object page 113 } to it. The map is there and it is the best evidence, and you can read the ordinances. What the streets may be does not have any bearing upon what the public utilities may be.

It is true that the public utility property uses may or may not be permitted in A-residential zone with the assent, the special assent of the Council. But we are here involved not with just the public utilities use, we are also involved with the use of a fuel yard, a coal yard, which the ordinances that are in evidence, require to be located and operated in an industrial zone.

The Court: All right, Mr. Budwesky.

Mr. Budwesky: In connection with the first ground, again, to strike the evidence, an examination of the ordinances and the map, itself, indicates that the Council has never placed any zoning classification upon the right-of-way of the Washington and Old Dominion Railroad.

I call your attention to sub-paragraph 1, Section 23, Chapter 28 of the Code, which specifically says: "That the zone boundaries are either streets or alleys," and the reason that

you find streets shown there in white is because you get a square ground available for a development, or a parcel of land, and it has a classification on it according to the coloring or the platting. That depends upon the type of map that you use. When it hits the street or alley, either that ends that zone classification or then it starts again on page 114 } the other side of the street. Now, those streets are white. They are not intended to be any residence zone.

Mr. Chambliss: Mr. Budwesky, please show the Court that language.

Mr. Budwesky: The zone boundaries are either streets or alleys, and the streets, therefore, are not within the areas that are zoned by the ordinance because the sides of the streets—it does not say that the thing shall run to the extent of the street—"the streets shall be the boundaries of the zones."

Your Honor's attention is invited to this map. The Washington and Old Dominion Railroad's right-of-way goes through industrial property and it goes through row house property, A-residence property, B-residence property, and apartment houses, but the colors spread all out on either side. But as you go along the right-of-way you find it is white. It is treated exactly the same as a right-of-way of a street, and, therefore, there was never anything explaining what was in the minds of the Council, or the Planning Commission, when they submitted that ordinance adopting that right-of-way and a zoning classification.

If you will analyze the map to determine something, you are going to have a hundred-foot strip of land, or ground going through commercial property, industrial property; A-residence zone property, B-residential property, C-residential property, and then when you hit this one piece of ground it is all going to be "A."

So you are going to put a ridiculous interpretation upon the map. If you look at the map, you can see that that right-of-way runs clear through the City, just like King Street, just like Wilson Road, just like every other street in the City. You have a reasonable interpretation of that map, and that is that it was treated as a right-of-way and no zone classification was ever attempted to be placed upon it.

It is our contention that it is in a sense distinct proof of a zone classification. The City's case falls because absence of a zoning law or a restriction under the terms of the zoning

law, why, then the public, the Government has no control over the use of the property.

Now, then, as to the other question, and that is, the permitted use. There has been a lot injected into the picture, here, if your Honor please, by the City about the question of non-conforming use.

This trestle is not a non-conforming use. A non-conforming use under the ordinance is interpreted as a building, and a building—and I call your Honor's attention—include the words, "structure".

Mr. Chambliss: Let me interrupt you at this point, Mr. Budwesky. I do not want to be bound by Mr. page 116 } Budwesky's remarks on non-conforming use, since I represent the railroad.

The Court: All right.

Mr. Budwesky: I understand.

"A building or premises occupied and used for a purpose other than the use authorized by the regulations in the zone in which it is located—" In other words, a non-conforming use—"is a use that is prohibited in that zone."

Now, when you examine the uses permitted in an A-residence zone, you will find that it says, "public building utilities are structures constructed and used for non-manufacturing purposes." They are permitted in an A-residence zone. As a matter of fact—and here you have a use that was in existence many, many many years before this zoning ordinance was ever thought or dreamed of. To say that the Washington and Old Dominion Railroad Company would have to come in and have to get a permit to repair a support to that trestle, which has been in existence long before this ordinance was adopted, which is not a non-conforming use because it is a use that is permitted in an A-residence zone, would be tantamount to say that the R. F. and P. Railroad could not repair the roof on the Union Station.

Look at the map. It is zoned A-residence. Do you mean to say that the R. F. and P. Railroad would have to come in and see the Council and seek a special permit to page 117 } repair the roof on the Union Station?

What this ordinance means when they say that you have to come before the Council before you can get a permit to erect, alter, or repair a structure, for one of these particular uses, it means, if you want to construct, alter, or repair a structure or building not then used for that purpose, but which you want to alter or repair for this purpose.

A proposed use—and the ordinance here specifically says,

“for the desired use”, in each instance, and not the existing use, but the “use desired”.

Our contention is, if the Court please, if you take the City’s interpretation of this classification clause on these permitted uses in the A-residence zone—where they say you have to have special consent of the Council—suppose someone came in and got the special consent of the Council to put a Foundling Home in there, there are many, many number of things which you have to get a special consent from the Council for.

Suppose after a hearing the Council granted the permit for a Foundling Home, or else later on it becomes necessary to make an absolute alteration or to repair, do you mean to say they have to get the consent of the Council to repair that Foundling Home? Of course, that is obscure.

This ordinance contemplates this type of use in an A-residence zone. This one has been here for years, and it is absurd to say that it can not be repaired, to be page 118 } maintained, and that we have to come in here.

Now, if it were a non-conforming use—it is not as though we were asking for a rezoning of the property in order to enable us to continue the use that is permitted in that zone, and has been there for years and years.

Mr. Pancoast: I would like to reply.

The Court: I do not think it is necessary, Mr. Pancoast. I will overrule your motion, Mr. Chambliss.

Mr. Chambliss: I note an exception.

The Court: And yours, Mr. Budwesky. Let’s see, you have moved to strike? Do you want to go ahead with the evidence, Mr. Chambliss?

Mr. Chambliss: Yes, sir.

(Whereupon, the following proceedings were had in the court room.)

The Court: All right, Mr. Chambliss.

Mr. Chambliss: Mr. Dorsey.

Thereupon

THOMAS C. DORSEY

was called as a witness by counsel for Defendant Railroad and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Chambliss:

page 119 } Q. Mr. Dorsey, will you state your name and occupation, please, sir?

A. Thomas C. Dorsey, Superintendent of Maintenance of Ways, Washington and Old Dominion Railroad.

Q. How long have you been with the railroad?

A. I have been with the Washington and Old Dominion Railroad for five years.

Q. Are you familiar with the right-of-way of the Washington and Old Dominion Railroad at the Alexandria Junction?

A. Yes, sir.

Q. That is the area where the trestle, which is involved in this proceeding, is located?

A. Yes, sir.

Q. Have you had occasion to visit that locality in the last few days?

A. I have.

Q. When did you go there, sir?

A. The last time, early this morning.

Q. Did you take certain measurements while you were there?

A. I did.

Q. What did you use to measure?

A. A fifty-foot tape.

Q. Now, with respect to the layout of the coal trestle, there, will you describe to the jury the approach which  
page 120 } the spur track takes to the coal trestle?

Mr. Howard. If your Honor please, I do not quite understand the question, I mean, the materiality of the testimony at all. If this man went out there this morning and made certain measurements—the situation today is certainly not the same as it was when this work out there was commenced, and I do not see how—unless he knows just where the old structure was—how his testimony at this time would even be relevant or material.



*Thomas C. Dorsey.*

The Court: I am willing to listen. Let's see what his testimony is.

By Mr. Chambliss:

Q. You are familiar with the location of the old structure, are you not, Mr. Dorsey?

A. Yes, sir.

Q. Before any repair work was done out there?

A. That is true.

Q. You passed that, did you, frequently in your work as maintenance man?

A. Many times.

Q. Yes. You went out there to take those measurements. Did you measure the distance of the embankment on which the rails run to approach the trestle?

A. Yes, sir.

Q. Now—

page 121 } Mr. Howard: I do not want to keep on hopping up and down. I do not know what the embankment is. It seems to me, and again I repeat, here we are concerned with the structure itself as it existed at the time this new work was undertaken. Now, whether the embankment he is talking about forms any part of this structure or not, I do not know.

The Court: It is their contention that it does.

Mr. Chambliss: It has come out in the evidence that it does, Mr. Howard.

Mr. Howard: That the embankment itself is part of the wooden structure?

Mr. Chambliss: It is part of the earth which includes the trestle and bins, and embankment. Mr. Giammittorio admitted as much as that, himself.

Mr. Howard: If your Honor please, as I understand the Code, the building is a structure, and the structure is a building. It does not say anything about an embankment. Do you mean to say that you are trying to hook up to the structure some land, just ordinary land, nothing but land—

Mr. Chambliss: If the Court please, apparently Mr. Howard has not been out there. There is an artificial embankment that is constructed, if your Honor please—as

Mr. Giammittorio testified—that approaches the  
page 122 } trestle itself, or what used to be the trestle.

The Court: Wait a minute! He did not say there was a—

*Thomas C. Dorsey.*

Mr. Chambliss: An embankment there above, to the left of the grade of the main track.

The Court: That is right.

Mr. Pancoast: Not all the way. He did not say all the way.

The Court: As high as twelve feet.

Mr. Chambliss: Yes, as high as twelve feet.

Mr. Howard: May I say this? Do I understand that counsel contemplates as to what percentage of this structure has been destroyed within the meaning of the ordinance, and that he would have the witness take into consideration the embankment, just ordinary piece of ground out there?

Mr. Chambliss: I think that is up to the jury to pass on, and I do not think it is the proper time for Mr. Howard to argue.

The Court: That is their theory of their case, I think.

Mr. Howard: I understood it was confined to the structure alone.

Mr. Budwesky: Suppose you had it all filled up to the bins?

Mr. Howard: But you do not have that. The page 123 } evidence shows that you had a very definite structure, and you had bins, and you had a trestle.

Mr. Budwesky: Sure.

Mr. Howard: And that after you try to move the trestle back seventy-five feet, an additional amount, that is not part of the structure.

Mr. Budwesky: Well, we will see.

Mr. Howard: I am interested in the structure alone.

Mr. Budwesky: It costs just as much—

Mr. Howard: I am interested in the one structure, if your Honor please, from tip to tip. What was there before they got to the structure, or how much land was filled or not filled—a half acre or ten feet—I do not see, if your Honor please, how the jury would have the right to know what the theory of the defendant is. I do not take into consideration any land adjoining the structure itself. We are talking about the structure.

The Court: Let me suggest that we get through with the evidence and then we can discuss what the law is and then instruct the jury.

Mr. Howard: All right, sir.

By Mr. Chambliss:

Q. Now, with respect to the embankment that runs, on

*Thomas C. Dorsey.*

which the rails run as they approach the trestle, Mr. Dorsey, are you familiar with what I am talking about?  
page 124 } A. Yes, sir.

Q. Now, is there a spur track that runs over on that embankment?

A. Yes, sir.

Q. For how long a distance does the spur track run on the grade with the railroad?

A. On the grade of the railroad?

Q. The same grade with the railroad.

A. It is, roughly, two hundred feet to the switch point, to where it starts to be up grade.

Q. That embankment from that point up to where the old trestle used to be, where the concrete piers begin now, what is the distance of that?

A. Three hundred and thirty-five feet.

Q. Is that an artificial embankment there, Mr. Dorsey?

A. Yes, sir, I would say it is.

Q. Is it level with the ground, that is, the natural level of the ground, or lower on both sides of it?

A. Lower on both sides of it.

Q. Now, what distance did you measure, incidentally, the distance from the end of that embankment to the end of the old bins that are still standing?

A. To the end of the old structure; yes, sir. That is two hundred and eighty-nine feet.

Q. Now, how much of that has been taken  
page 125 } down, according to your measurements?

A. One hundred and eighty-three.

Q. One hundred and eighty-three feet?

A. Yes, sir.

The Court: What was that 289?

Mr. Chambliss: Two hundred and eighty-nine is the distance from the end of the embankment to the end of the bin.

The Court: All right.

By Mr. Chambliss:

Q. That last measurement would be going south, is that correct?

A. That is right.

The Court: That is the end of the embankment?

Mr. Chambliss: From the end of the embankment to the end of the bin.

*Thomas C. Dorsey.*

The Court: Does it include any part of the embankment?

Mr. Chambliss: It does not include any part of the embankment. That is all.

### CROSS EXAMINATION.

By Mr. Pancoast:

Q. Now, what is your name?

A. Mr. Dorsey.

Q. Mr. Dorsey, the 289 feet that you testified to, does that include the old structure or the new structure  
page 126 } that is going up there?

A. That would now include what is left of the old structure and the new work. That would include both items.

Q. You excavated—or rather Mr. Campbell excavated some of the embankment, did he not, about twenty-five feet of that?

A. Not much of the embankment. Just enough to put a wing-wall around the first pier.

Q. Now, was a part of the bins taken down, the north-westerly part of the bins, to the extent of twenty-five per cent, or so?

A. Part of the bins were taken down, yes, sir.

Q. Now, is it not a fact, Mr. Dorsey—strike that. You say that the grade starts 335 feet from the trestle?

A. That is right.

Q. Do you mean by that it is an artificial fill back from the trestle and northwesterly to the extent of 335 feet?

A. Yes, sir.

Q. And at the trestle's end it merely comes up to what? How high above grade, would you say?

A. That is—

Q. In other words, how was the artificial filled?

A. The piers are about, on top of the grade about eleven foot. The present piers are eleven foot high. They tie in with the top of the embankment.

page 127 } Q. All right. Now, do you notice where they tore away some of the embankment, right at the last piers on the nearest end?

A. Yes.

Q. Do you notice that? Take a look at it.

A. I do, where the new wing-wall is; yes, sir.

Q. Do you notice where that wing is? Do you see that cinder that has been used to make a fill in that end?

*Thomas C. Dorsey.*

A. No, I haven't; no.

Q. You did not know that?

A. No.

Q. Would you deny that the depth of the cinders there, indicating a fill, was any more than five feet?

A. As I recall that place, there was an earth fill, and the cinders you are referring to—

Q. Are you familiar with—

A. —you are talking about the ties in ballast.

Q. I am.

A. That is at the top of the embankment.

Q. I am now referring to the end view of the embankment, such as this, and I am asking you, if you deny that from the top of that embankment down—say a distance of fifty feet—is made out of cinders, indicating an artificial fill of cinders to a depth of five feet at the end where the head wing is?

Is that what you are speaking about?

page 128 } A. I didn't know it, I didn't notice it.

Q. Mr. Dorsey, does the 289 feet represent the distance of the old structure?

A. It represents the distance where the old structure was. Of course there is part of it up—

Q. And one hundred and eighty-three feet of it has been taken down?

A. That is a point, of the end of the embankment, to what is left of the old structure.

Q. How much of the old structure has been taken down, then?

A. Well, it would be approximately 183 feet.

Mr. Pancoast: That is all, sir.

#### RE-DIRECT EXAMINATION.

By Mr. Chambliss:

Q. Mr. Dorsey, do you know whether or not that embankment was used to approach that coal trestle?

A. That was an approach embankment, to approach the trestle.

Q. Was it used for any other purpose, to your personal knowledge?

A. Not that I know of.

Mr. Chambliss: That is all.

*Raymond M. McNamara.*

RE-CROSS EXAMINATION.

By Mr. Pancoast:

page 129 } Q. How about the switching of cars?

A. That matter is entirely in the hands of the conductor. No one conductor will switch a car like another one.

Q. You do not deny that the embankment and the spur track were used for switching cars?

A. It would be a very poor operation.

Q. You would not deny it, would you?

A. I have never seen them switch it. I am not a conductor.

Mr. Pancoast: That is all.

Mr. Chambliss: All right, Mr. Dorsey. Mr. McNamara, please!

Thereupon

RAYMOND M. McNAMARA

was called as a witness by counsel for the Defendant Railroad and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Chambliss:

Q. State your name and occupation, please, Mr. McNamara.

A. Raymond M. McNamara, Treasurer, Washington and Old Dominion Railroad.

Q. Mr. McNamara, calling your attention to September 13, 1948, did you have occasion to go out to the Alexandria Junction on the Washington and Old Dominion right-of-way?

page 130 } A. I did.

Q. That is the place where the trestle that is involved in this proceeding is located?

A. It is.

Q. Who was with you at that time?

A. Mr. Saulsbury, of the Capital Photo Company.

Q. Did he take some photographs while you were there?

A. Yes.

Q. Were you with him when the photographs were taken?

A. I was.

*Raymond M. McNamara.*

Mr. Pancoast: If your Honor please, if the purpose is to introduce those photographs, I want to object to them on the ground that they are taken in a manner that does not show the whole situation.

It is a—as has been stated by one witness—biased or prejudicial view-point of the situation.

Now, if they want to show both sides, the residential and the industrial zone that is to the east of this property, or some distance to the east, that is all right.

We are not concerned here with the fact that there is industrial property some distance to the east.

We are concerned with this particular property, here. That picture—both of those pictures—are designed to emphasis that particular phase of it, which does not concern this case.

Mr. Chambliss: If your Honor please, Mr. page 131 } Pancoast in his examination of Mr. Giammittorio went to great pains to bring out the allegedly residential character of that neighborhood.

The Court: All right, then.

Mr. Chambliss: I think, if your Honor please, that we are entitled to have this in.

The Court: I will deny all photographs and let the jury have a view, and let them go out and see for themselves. Mr. Fletcher has made arrangements to have the jury go out.

Mr. Chambliss: I would like to have, if your Honor please, these photographs—

The Court: That is what Mr. Pancoast is objecting to and I have sustained the objection.

Mr. Chambliss: I would like to note an exception. That is marked “Washington and Old Dominion Railroad’s Exhibit No. 4 for identification.” I likewise offer this, Mr. Pancoast, which I imagine you will object to?

Mr. Pancoast: The same objection on the same ground.

The Court: Sustain the objection.

Mr. Chambliss: I note an exception. Will you make that “Washington and Old Dominion Railroad’s Exhibit No. 5 for identification?” That is all.

page 132 } The Court: All right.

Mr. Budwesky: Mr. Campbell!

Thereupon

ARTHUR F. CAMPBELL

was called as a witness on his own behalf and, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Budwesky:

Q. Your full name, please?

A. Arthur F. Campbell.

Q. Where do you live?

A. 2000 Russell Road.

Q. You are familiar with the area known as the Alexandria Junction on the Washington and Old Dominion Railroad near Raymond Avenue?

A. I am.

Q. Are you connected with the Northern Virginia Construction Company?

A. Yes, sir; I am President.

Q. You are President?

A. Yes.

Q. As President of the Northern Virginia Construction Company, have you had an occasion to have negotiations with the Washington and Old Dominion Railroad  
page 133 } Company with reference to any work at the  
Alexandria Junction?

A. I did.

Q. What were you employed to do?

A. We were employed to remove some of the old structure and replace the bins, the wooden bins that support the railroad track with concrete piers.

Q. Did you ever live in the neighborhood where the Alexandria Junction is?

A. Oh, yes. I lived on Clifford Avenue, which is very close.

Q. How long?

A. Almost a stone's throw.

Q. How long?

A. Oh, for forty-five years.

Q. Forty-five years?

A. Yes.

Q. Do you have any recollection of that area? Has this trestle been in existence?

A. Oh, yes; yes, sir.

Q. And in use?



*Arthur F. Campbell.*

A. In use.

Q. In connection with the work that you were undertaking to do for the Washington and Old Dominion Railroad, did you have occasion to confer with the officials of the City with regard to doing this work?

A. Yes, sir, I did.

page 134 } Q. Did you confer with the building inspector?

A. Yes, sir. I had him out there. I had him out there.

Q. Took him out?

A. Yes.

Q. Did you explain to him what you had in mind?

A. I explained to him fully what I wanted to do, so that I could ascertain if a permit or any other regulation was necessary.

Mr. Pancoast: If your Honor please, I object to any conversation with the building inspector. That is entirely hearsay, and in addition to that, the conversation would not be relevant to the issue here.

Mr. Budwesky: This is a criminal prosecution charge, that Mr. Campbell, individually, is charged, and also as President of the Northern Virginia Construction Company with the construction of a trestle in violation of the City's regulations.

This is a criminal prosecution, your Honor, and I am undertaking to show what Mr. Campbell did do before he undertook to do this work. I want to show to the Court, and the jury may ascertain whether or not there is any criminal intent upon this proceeding.

Mr. Howard: In other words, do I understand that you just want that to go in by way of—what do you mean?

I do not see how the building inspector would  
page 135 } have any right to give Mr. Campbell, or anybody else, the authority to violate the law, if it is a violation.

Mr. Budwesky: That is neither here nor there.

If your Honor please, now, then, I will tell Mr. Howard the purpose of this testimony.

The Court: He is ready to make an objection. He wants to know the purpose of the testimony.

Mr. Budwesky: The purpose of the testimony is to show to the Court that Mr. Campbell was advised by proper offi-

*Arthur F. Campbell.*

cials of the City of Alexandria that a permit was not necessary to do the work. Under the law—

Mr. Howard: That could be perfectly true, if your Honor please—I do not say it is not true—but it would have no justification for the violation, if there be a violation.

Mr. Chambliss: If your Honor please, I think that because of the serious doubt with respect to whether or not that property is zoned at all—

The Court: Now, Mr. Chambliss, wait a minute!

Mr. Chambliss: If your Honor please—

The Court: You are not in this phase of the case.

Mr. Chambliss: I am associated with Mr. Budwesky with the trial of the action.

The Court: Mr. Campbell is very ably represented so let's hear from him.

Mr. Chambliss: All right.

page 136 } The Court: I have decided to let it go in for now.

Let it be admitted.

Mr. Howard: All right, sir.

The Court: The jury will be instructed on that.

By Mr. Budwesky:

Q. You say you took Mr. Lash, the building inspector, out to the grounds and showed him what you proposed to do?

A. That is right.

Q. And for what purpose did you take him out?

A. To find out if I needed a building permit or—

Mr. Pancoast: If your Honor please, there is a difference between a building permit under the building code and this zoning matter.

Mr. Budwesky: The building inspector, under the zoning law, is the official who is charged with the enforcement of that regulation.

The Court: Now, gentlemen, the jury will be instructed on that phase of it at the proper time.

Mr. Campbell can tell the jury what he did in connection with the work. Go ahead, Mr. Budwesky.

By Mr. Budwesky:

Q. What did Mr. Lash tell you?

A. He told me he didn't see why a permit was necessary or whether there was any violations so that we needed the permit to do the work on the railroad property.

*Arthur F. Campbell.*

page 137 } Q. And on this basis, then, did you confer with  
any other city official?

A. Yes, two or three days later I came into the City Manager's Office and talked to him.

Q. And what did he tell you?

A. He told me that he didn't see any violation or need for it either.

Q. And upon that basis, did you proceed with the work?

A. About thirty days later we proceeded with the work.

Q. Are you also connected with the Potomac Coal Company?

A. Yes.

Q. What is that? Is it a corporation or a partnership?

A. Partnership.

Q. You are one of the partners?

A. That is right.

Q. How long has the Potomac Coal Company belonged to you and your partner?

A. Since July 1, 1947.

Q. From July 1, 1947, until the end of your season—in the Spring of 1948—about how many tons of coal were handled by you, there?

A. I would guess, approximately three thousand tons.

Q. Approximately three thousand tons?

A. Approximately, yes.

Q. The trestle in question is on the east side  
page 138 } of the trackage of the Washington and Old  
Dominion Railroad, is not that right?

A. That's right.

Q. And in connection with the operation of the Potomac Coal Company in that area, is there any structure—any other structure—used by you?

A. Oh, yes, we have an office and scales.

Q. You have an office and scales?

A. Yes, scales and storage.

Q. And that office and scales are located on what side of the track?

A. On the west side.

Q. On the west side?

A. On the opposite side.

Q. Is that covered by your lease from the Washington and Old Dominion Railroad?

A. That is what we are leasing.

Q. That is what you are leasing?

*George C. Baggett.*

A. Yes.

Q. When—approximately when—was the last time that any coal was delivered to and from that place?

A. Oh, sometime in May.

Q. Sometime in May?

A. Cleaned up what they had there.

Q. Of what year?

page 139 } A. 1948.

Q. You have not handled any—

A. I would like to amend that because there was three tons delivered after, at the time this work was going on, which would have been in June, which was the beginning of digging out—that was the last of it.

Q. You ceased operations at that time in order to make these changes, is that right?

A. That's right.

Q. And you have not done any work this fall, why?

A. Because we are held up by litigation.

Q. By this proceeding?

A. Yes.

Mr. Budwesky: You may have the witness.

Mr. Pancoast: No questions.

Mr. Chambliss: No questions. Mr. Baggett.

Thereupon

#### GEORGE C. BAGGETT

was called as a witness by counsel for Defendant Railroad and, having been previously sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

By Mr. Chambliss:

Q. You are Mr. George C. Baggett?

A. That's right.

page 140 } Q. You are the Vice-President and General  
Manager of the Washington and Old Dominion  
Railroad, Mr. Baggett?

A. That's right.

Q. Mr. Baggett, when was the Washington and Old Dominion Railroad chartered?

A. Chartered?

*George C. Baggett.*

Q. Yes.

A. 1935.

Q. In what State was it incorporated?

A. State of Virginia.

Q. And you testified earlier, today, that it has been operated as a common carrier of inter-state and intra-state since that time?

A. That's right.

Q. Now, with respect to the Alexandria Junction, where the trestle that is involved in this matter is located, state whether or not that is one of your regular unloading stations?

A. That is a regular public delivery track for coal shipments.

Q. And under what regulation is that a public delivery track?

A. Under tariffs on file with the Interstate Commerce and the State Corporation Commission of Virginia.

Q. And it is scheduled on those schedules as a regular unloading platform?

page 141 } A. It is a regular unloading station for car-load shipments.

Q. On the question of the public character of the railroad, Mr. Baggett, what are some of the industries that you serve along the track from Rosslyn to Purcellville?

A. We handle anything that is covered by the classification under the tariffs.

Q. Can you tell us some of the important items that you serve?

A. Live-stock, cement, lumber, brick, coal; that is just a few of the many and various commodities that we handle.

Q. How many tons of freight has the railroad carried over that particular line in the last year, do you know?

A. About a thousand tons a day.

Q. A thousand tons a day?

A. Yes.

Mr. Chambliss: Your witness.

### CROSS EXAMINATION

By Mr. Pancoast:

Q. Mr. Baggett, you said that something was covered by I. C. C. and by S. E. C. regulations—State Corporation Com-

*George C. Baggett.*

mission and Interstate Commerce—just what was it, now? I want to get the record clear.

A. The railroads issue a tariff which not only provides for the rates from various points but also the character of the stations as to just what their facilities provide and whether it is a carload or less than a carload, or whether it is prepaid or agency.

Q. What do you call the station now?

A. What do we call a station?

Q. Yes.

A. That is a name of a point, Alexandria Junction.

Q. Alexandria Junction. But does that include the trestle that you leased out to the Potomac Coal Company, as acting through Mr. Campbell?

A. Any part of the Alexandria Junction facility would be; any unloading tracks that we may have would be included within the jurisdiction of that station, just like on any other station or any other railroad.

Mr. Pancoast: That is all, sir.

The Court: All right, sir.

Mr. Chambliss: Thank you, Mr. Baggett.

That is our case.

The Court: Do you have anything further? Any rebuttal?

Mr. Pancoast: I believe not, sir.

The Court: All right.

Gentlemen of the Jury: I will ask you to view this premises. You have heard the testimony in connection with each phase of it, the flat part of it, the elevated part, the inclined part, and the trestle, and the surrounding country out there; that is, any industrial property in the neighborhood, any residential property in the neighborhood.

Would you, gentlemen, go out there and look that situation over. Mr. Moriarity will take you out. While you are there just observe the different parts of it that have been testified to today.

Do not let anybody discuss it in your presence and do not let them discuss it with you, please.

(Whereupon, a brief recess was had for the jury to view the premises, and at the same time the Court and counsel for respective parties retired in the Chambers where the following occurred:)

The Court: All right, sirs, are you all ready?

Mr. Chambliss: Yes, sir.

Mr. Pancoast: Yes, sir.

The Court: We will take the City's instructions first.

#### CITY OF ALEXANDRIA'S INSTRUCTION NO. 1

"The Court instructs the jury that under the zoning regulations of the City of Alexandria, the land use consisting of the operation of a fuel yard is assigned to a E-industrial zone."

The Court: Any objections to this one?

Mr. Chambliss: I would like to suggest an  
page 144 } amendment to this instruction.

The Court: All right.

Mr. Chambliss: "Or to such area that is not zoned at all. And the Court further instructs you that such use may be lawfully carried on in any area of the City not zoned in any way".

The Court: Any objection to that amendment?

Mr. Pancoast: Is there any evidence here that any land of the City is not zoned other than the streets?

The Court: The jury might believe that it is not zoned, and if they do believe it is not zoned then—

Mr. Pancoast: Whether it is zoned or not it would be a matter of interpretation.

Mr. Howard: It does not seem to me that the jury would have a right to speculate whether it has been zoned.

Mr. Chambliss: It is a matter of fact which the City has to prove in this case, if the Court please, and within the province of the jury to pass on it.

Mr. Pancoast: That is an interpretation of the law.

Mr. Chambliss: It is not; it is a matter of fact.

Mr. Pancoast: There is no evidence that no land is not zoned.

Mr. Chambliss: That is your interpretation, but our inter-

pretation is that not only the streets are exempt  
page 145 } from that zoning map but the Potomac Coal Yard  
and the Washington and Old Dominion right-of-  
way are exempt from it.

Mr. Howard: Is there any evidence to support that?

Mr. Chambliss: The map itself.

Mr. Budwesky: You only have to put an unusual interpretation on the map to come to any other conclusion and that is all.

Mr. Chambliss: We are merely contending this, that the jury might well find that area included in the right-of-way is not zoned, under the general law, why, the Washington and Old Dominion Railroad may lawfully erect any structure on that right-of-way so far as the criminal prosecution is concerned.

I think we are entitled to the amendment, accordingly.

Mr. Howard: We would be entitled to an instruction in that we put the map in evidence and the map shows it is residential. It is an admitted fact that it is a proper classification until you put in evidence to overcome that.

Mr. Chambliss: Even your own witness does not admit it.

Mr. Howard: That legend is all they have to go by. The legend says that anything white is residential.

Mr. Chambliss: Mr. Pancoast says the streets are not residential.

page 146 } Mr. Howard: I do not know that.

Mr. Pancoast: I think it is the function of the Court to interpret the law, the ordinance, and if there is any evidence in, or if there is any part of the ordinance that shows that there is un-zoned land in the City of Alexandria, other than the streets, and alleys, then that amendment would be proper. But until the Court can find that I do not believe that the amendment would be proper. I still insist that it is the Court's right to interpret the law.

The Court: Is not that Potomac Yard itself uncolored? I did not see the map.

Mr. Chambliss: Yes, sir.

Mr. Howard: We found out during the lunch recess that that is A-residential. That is what they told us out there. It is shown as residential on the map, sir.

Mr. Chambliss: Here is my point on that, if your Honor please, I think if the railroad's right-of-way was left out, as we contend it was, from the map, it may be they lease a part of that property for use as a public carrier and it then become *quasi public* or even private in character, but still that would not cause it to become subject to a zoning regulation



which did not include that right-of-way in the areas zoned.

Bassett in his work on zoning mentioned that very possibility and says that the railroad yards should not page 147 } be—principal right-of-way—be rezoned since if they lose their public character they can use the right-of-way in any fashion they see fit.

Here we have a situation that falls within the very case that Bassett has in mind; namely, where the railroad's right-of-way is apparently out of the zoning originally and all that they have diverted—conceding for a moment—diverted in making this lease to the Potomac Coal Company, still it does not make them subject to the zoning law, because in the first place it is our contention it was never zoned for the very reason that the City Council can not lawfully zone their public properties, by City Ordinance, to interfere with the public character of the railroad.

I think the same observation applies to a public utility line. The Court: I think we are going around in circles.

Mr. Pancoast: Can you produce any Virginia authorities that the Council does not have the power to zone property to be used by public utilities?

Mr. Chambliss: There isn't any, because I had occasion to look into that once before.

I can call your attention to a lower court in Maryland, where the lower court held that the City could not lawfully zone railroad property.

If the Court please, may I make another observation please, sir?

The Court: Yes.

Mr. Chambliss: If we concede that the City did not have the power originally to zone this railroad's right-of-way A-residence, or anything else—

The Court: If you concede they did not have the power?

Mr. Chambliss: Yes, originally.

The Court: You are not conceding anything like that.

Mr. Chambliss: I thought that you had said that the railroad, because of the public character of the railroad the City could not zone that because of its public use, is that correct?

Mr. Pancoast: He overruled you on that.

The Court: Could not interfere with its operation as a railroad because they started to do that.

Mr. Chambliss: Yes, sir, if that be true, the original zoning regulations would not apply to the railroad, does not that follow?

The Court: Looks like it should.

Mr. Chambliss: If the original zoning regulations do not apply to the railroad's right-of-way they do not apply today, and they would not apply even though the railroad had leased part of this property to someone else, to a private party, because they were never restricted by an invalid zoning regulation.

The Court: Under that point, now, the City would have no right to adopt a zoning ordinance, would it, if that were so?

If the railroad was using soft coal and it chugged through the heart of the City spurting it out here and there, the City would have no control over that, under that theory.

Mr. Chambliss: No, sir. I do not go that far because the City has a right to regulate but not to interfere with the railroads, and under the power of the regulation comes the smoke ordinance and also the spark arrest ordinance, which we are all familiar with, your Honor. But here is an attempt made by the City to actually impair and put an impediment in the way of the railroad to carry on its lawful public business, and which the statutes require it to carry on.

Now, if the City did not do that lawfully originally when the ordinance was originally enacted, then that zoning law never affected the right-of-way and it does not affect it today, and the railroad is exempt.

Mr. Pancoast: I can not see that at all. The City is not impairing or placing an impediment there. The zoning law fully recognizes—

Mr. Chambliss: You say it is not placing any impediment on the railroad? You claim it is zoned A-residential. page 150 } denial.

Mr. Pancoast: They are permitted to go in A-residence but they say you—probably could have the right to say—you can go through an A-residential zone when you can go around there, and that is the reason the Council has the right to give those special permits.

Mr. Chambliss: According to your interpretation of the zoning law, we are zoned A-residence. We can not maintain an unloading platform in an A-residence zone, is that correct, on our right-of-way. We couldn't construct an unloading platform.

Mr. Pancoast: I did not say that.

Mr. Chambliss: Then we have a right to construct a building.

Mr. Baggett testified to this unloading platform, and it was one of the regular platforms—an unloading platform—on their I. C. C. schedule.

I do not want to digress from my main and central point, which is, if the City could not voluntarily zone this property originally because of the public character of the railroad this zoning ordinance has not a—

Mr. Pancoast: I did not understand the Court to say that, otherwise the Court would not have overruled your motion in the first place, in the first motion to quash.

Mr. Chambliss: That is not what the Court says.

(At this point in the hearing a discussion was  
page 151 } had off the record).

Mr. Chambliss: I have this to say about the lease. I do not want for a moment to digress from the private character of the lease; that is true. But, mind, you the Potomac Coal car is there unloading, acting as a distributing agent. Somebody has to do that unless they dump it on the ground and let there be a general scramble for the coal.

The Court: There is no evidence of that.

Mr. Chambliss: Of that the coal company is a distributing agent for the railroad? No, I said somebody has to distribute the coal. The railroad furnishes as to the delivering it to the bins from the trestle, or from the proposed trestle, as the case may be, and certainly as far as that trestle is concerned and up to the point where they actually dump that coal, the railroad is actually acting in its capacity as a railroad.

It may be that under the lease—as was brought out in the testimony—the railroad's duties included the delivery of the coal and the dumping of it in the trestle.

The Court: Right there.

Mr. Chambliss: Yes, sir.

The Court: Under that theory, the railroad could put a fuel plant on the right-of-way and deliver whatever they wanted delivered to the industrial plant, could they not, and still have the right-of-way?

page 152 } Mr. Chambliss: If you carried it to that extreme, that is true, your Honor.

What was I trying to cover is this thought, that the railroad by means has lost—that the trestle has not lost its public character entirely because the railroad is still carrying on its function as a public carrier when it delivers the coal and furnishes it.

The Court—as I understood the Court to say—has a very serious doubt in the Court's mind if the City had the power to zone that property A-residence, if it were strictly a public undertaking; is that correct, your Honor?

The Court: Let's see what Mr. Baggett said, that at the beginning they had it up and that they discontinued the coaling station and leased the property to Arthur Campbell; that it had an office, scales, and bins, and everything else; that they got Arthur Campbell to build the place again and repay him for building, and extended the use for ten years with an extra ten years—or something of that sort—twenty years. It is going outside the purpose of its original right.

Mr. Chambliss: That does not make the zoning ordinance attach or become revived, Judge.

The Court: I do not think that a coal man or anybody else could get in there and operate on the right-of-way over and above the City's zoning just because it happens to be the railroad's right-of-way.

page 153 } Mr. Budwesky: The Court does not take the position that a facility of the railroad company's use loses its public character merely because its consignee uses it, because I can give you decisions on that.

The Court: But if they discontinue it and then lease it all to some private individual they certainly discontinued it.

Mr. Budwesky: They are not leasing the tracks. There are tracks there. Certainly other stuff runs through there day in and day out.

Mr. Chambliss: The railroad still serves the trestle.

The Court: Mr. Baggett said he delivered 17 tons since the first of the year.

Mr. Chambliss: Seventeen carloads.

Mr. Pancoast: If your Honor please, for the basis of instruction one I submit that the ordinance in that A1-residence—the highest—does not permit that use, A-residence does not permit that use, and under Section 13, "Commercial", does not permit that use.

(Discussion at this point was had off the record).

Mr. Chambliss: Is No. 1 granted with the amendment?

The Court: No, sir.

Mr. Chambliss: I except to the granting of No. 1. I have already stated the grounds for my objection, your  
page 154 } Honor.

The Court: All right.

City's Instruction No. 2.

## CITY OF ALEXANDRIA'S INSTRUCTION NO. 2

"The Court instructs the jury that public utility buildings not used for manufacturing purposes may be erected, altered or repaired in A-residence zone of the City only after the application for the permit has first been presented to the City Council and that body has given its assent by adoption of a regulation after it has determined whether or not such use will be for the best interest of the health, safety and general welfare of the public."

The Court: Any objections to this?

Mr. Chambliss: I have three objections on that instruction.

One: The instruction is immaterial to the issues involved in this case;

Two: We are not charged with lack of a permit. That is not the question before the Court. The question involved is the propriety of the structure, trestle, that is being built out there; and

Three: It assumes—and most importantly—the fact that the City has actually proved the property is zoned A-residence, and again we submit, that it is a question to be passed on by the jury, particularly under the peculiar facts of this case, and it can not be assumed or predicated in page 155 } an instruction.

The Court: There is nothing wrong with this instruction, is there, in saying that "public utility buildings not used for manufacturing purposes may be erected, altered or repaired", after a permit has been obtained?

Mr. Chambliss: Having proved it is an A-residence, and we submit they have not established that.

Mr. Budwesky: That, of course, presupposes that it is applicable to a new proposed use and, also, to a use that has been in existence long before the ordinance was adopted, and which is permitted in the zone by the ordinance itself.

Mr. Pancoast: You have an instruction, or will have an instruction on non-conforming use.

Mr. Budwesky: This is entirely aside from non-conforming use. My position, of course, is that the structure is not a non-conforming use. It is a utility structure authorized to be maintained in A-residence zone.

Mr. Chambliss: My objection to it have already been stated. It presupposes that the City has proved this right-of-way is in an A-residence zone. I think that is a question

that ought to be passed on by the jury and for the other reasons that I have stated.

The Court: I am granting this instruction.

Mr. Chambliss: I note an exception to it on the grounds that I have stated.

page 156 } The Court: All right. City's Instruction No. 3.

### CITY OF ALEXANDRIA'S INSTRUCTION NO. 3

"The Court instructs the jury that a non-conforming use is a building or premises occupied and used for a purpose other than the use authorized by the regulations in the zone in which it is located at the time the regulations are adopted, and you are further instructed that in case a non-conforming structure be damaged to the extent of fifty per cent of its value, then such non-conforming use is terminated and reversed to the conforming use of the zone in which it is located. When the non-conforming use is industrial and the non-conforming industrial plant consists of two or more buildings or structures all under single ownership and operation and on one tract of land at the time which any such building or structure first becomes non-conforming, all said buildings and structures shall be treated as a single non-conforming structure. The meaning of the word 'damage' includes depreciation in value, and a fuel yard is an industrial use."

The Court: What have you to say about that?

Mr. Chambliss: We object to that on the ground it assumes the fact that the City has proved here, namely, that the railroad is in an A-residence zone, a question that has to be passed on by the jury.

I object to it further, if the Court please, because of the last sentence in the instruction, "Fuel yard is an industrial use."

I object on the ground that the railroad's right-of-way—that it is not adequately proved that the railroad's right-of-way is located in any zone, and that it pre-supposes, and that is a fact to be proved; it is up to the jury to pass on it.

Mr. Budwesky: This, of course, pre-supposes that the

trestle is part of the coal yard rather than a part of the railroad operation, therefore, objectionable on that ground.

The Court: I will grant that instruction.

Mr. Chambliss: Exception.

The Court: All right. Instruction No. 4.

#### CITY OF ALEXANDRIA'S INSTRUCTION NO. 4

"The Court instructs the jury that if you believe beyond a reasonable doubt that the defendant, or either one of them, did, in the City of Alexandria, between June 30th and July 2, 1948, erect a coal trestle for operation and use in the conduct of a fuel yard, in violation of the zoning regulations of the City of Alexandria as charged, you shall fix the punishment by a fine of not less than ten dollars and not more than one hundred dollars if the offense be not wilfull, or not more than two hundred and fifty dollars if the offense be wilfull."

The Court: Any objection to that?

page 158 } Mr. Chambliss: Personally I have no objections to it, if that is correct. No objections.

The Court: All right. Granted. Next instruction.

#### CITY OF ALEXANDRIA'S INSTRUCTION NO. 5

"The Court instructs the jury that if from the evidence you believe beyond a reasonable doubt that the area in question is A-residential and that the defendants violated the provisions of the zoning regulations in erecting or attempting to erect or rebuild a structure, which said structure had been damaged or otherwise destroyed to the extent of fifty per cent of the original value, then you are to find the defendants guilty notwithstanding the fact that the work was commenced as a result of authorization by either the City Manager or City Inspector."

The Court: Any objections?

Mr. Chambliss: If your Honor please, I object to that instruction. If Mr. Howard wants to offer an instruction that the mere authorization of the City Manager and the Building Inspector would not in itself entitled the defendants to violate the ordinance, or something of that sort—

The Court: This instruction is refused as offered.

All right. Now, the defendants.

DEFENDANT RAILROAD'S INSTRUCTION A

“The Court instructs the jury that the criminal warrant in this case charges that the Washington and Old  
page 159 } Dominion Railroad ‘did unlawfully erect a structure in A-residence zone, to-wit, a coal trestle for operation and use of a fuel yard on the Washington and Old Dominion Railroad’s right-of-way near Randolph Avenue in violation of Section 4, Sub-section (b), Chapter 28 of the Code of the City of Alexandria, as amended by ordinance No. 463.’

“And the Court instructs the jury that before you can find the defendant guilty, you must find that the City of Alexandria has proved beyond reasonable doubt that the right-of-way of the Washington and Old Dominion Railroad near Randolph Avenue, is, in fact, zoned as A-residence zone: And even if you find that the right-of-way of the defendant railroad is zoned A-residence, still you can not find the defendant railroad guilty if you find that it is exempt from the operation of the ordinance. And in this connection, the jury are instructed that the City of Alexandria must prove beyond a reasonable doubt that the defendant railroad is not exempt from the operation of said ordinance.”

The Court: Any objection to that?

Mr. Pancoast: I will have to object to the last part of that instruction. There is no evidence; there is no law here showing that it is exempt.

Mr. Chambliss: Exempt of the non-conforming use—assuming they did find it is zoned A-residence.

Mr. Pancoast: You have not put that in here.  
page 160 } Mr. Chambliss: Non-conforming use or as a public utility. I have an instruction on non-conforming use.

All right, maybe this will answer Mr. Pancoast’s objection.

After the word “ordinance”, “as defined in other instructions herein”.

The Court: Is that all right?

Mr. Pancoast: Where in other instructions?

Mr. Chambliss: With Instruction No. 2. Is not No. 1 on public utilities?

Mr. Pancoast: I do not think it is with Instruction No. 2, as corrected. It is, as I understand it, inconsistent with one



that is already proposed by the City, and it does not correctly state the law. Whether it is exempt is a matter of law, and I do not see any authority to support the proposition.

Mr. Chambliss: That is our very contention. Assuming that they did find it is zoned A-residence, they are exempt for two reasons. First, it is a public utility building, and exempt in any event; and second, that it is a non-conforming use and exempt under that provision of the ordinance.

Mr. Pancoast: I still say that you still can not find the defendant railroad guilty if you find it is exempt from the operation, if you find its property is non-conforming and has not reverted to its true zone.

page 161 } Mr. Chambliss: Then we have a public utility feature in there.

Mr. Pancoast: I do not know of any authority to support your public utilities feature.

(Whereupon, at this point in the hearing a discussion was had off the record).

Mr. Chambliss: If your Honor please, on that we say that conceivably assuming first that the jury finds that it is an A-residence zone, we should, if that be true, apply to the Council for a permit. That is true. But we are not violating the ordinance as set forth in the warrant, which we are trying today.

The Court: Well, you are if you are in an A-residence, are you not?

Mr. Chambliss: No, sir, as we understand that provision, we are exempt as a public utility building.

The Court: You are if you have the building up. In other words, if you had not done anything to repair it and the City asked you to move and interfered with your use of it, then you would be right.

You do not have a building out there and you are erecting one, and to erect or alter or repair is what comes under this.

Mr. Chambliss: That covers items of erect, alter, use, or repair.

page 162 } (Discussion at this point in the hearing was had off the record).

The Court: All right.

Mr. Chambliss: We may be violating the law in that we did not get a permit but the City has never taken that position in the lower court.

The Court: You are charged with doing it, not doing it with a permit or without a permit.

Mr. Chambliss: We are charged, if your Honor please, with the violation of sub-section (b) of Section 4 of Article 3, of this ordinance No. 463.

The Court: Erecting?

Mr. Chambliss: On the ground that we are entitled to put up that structure in this zone under any condition with or without a permit.

The Court: Yes.

Mr. Chambliss: And I think under the exception set forth under sub-section (b), we are entitled to put it up, if we get a permit; as I understand it, it is a public utility building.

Mr. Pancoast: I would agree to that contention that if you get a permit and use it for a public utility building you would be able to do that, if you get the special assent of the Council, and I believe that they would give it if you did not lease it as a fuel yard.

They are not objecting to your conduct of the page 163 } business out there.

Mr. Chambliss: You have not taken that position before. It comes as a surprise to me.

The Court: He is not offering anything to you now.

Mr. Pancoast: It is the fuel yard. We want the Washington and Old Dominion Railroad to do all the business they can. It is the fuel yard that we are objecting to.

The Court: All right. I am going to deny this as offered. I will grant it with this sentence out. I think it is all right down to the last sentence.

I am refusing as offered and granting it with the last sentence out.

Mr. Chambliss: If your Honor please, I object to the deletion of the last sentence in this instruction on the ground that the burden is on the City of Alexandria to prove "beyond a reasonable doubt" not only that the property is zoned A-residence but that the railroad is not exempt from the operation of other provisions of the ordinance.

The Court: All right. We have already taken up B.

#### DEFENDANT RAILROAD'S INSTRUCTION NO. B

"The Court instructs the jury that under the provisions of the zoning ordinance of the City of Alexandria, on which this prosecution is based, the following structures are expressly permitted in an A-residence zone:

page 164 } 'Public utility buildings constructed and used  
for non-manufacturing purposes.'

"And the Court instructs the jury that if you find that the coal trestle erected on the right-of-way of defendant railroad is adapted to the carrying on of the business of the railroad as a public service corporation, then such structure is a public utility building and expressly exempt from the operation and effect of the said zoning ordinance."

The Court: Instruction B is refused.

Mr. Chambliss: Except.

The Court: All right, the next one.

#### DEFENDANT RAILROAD'S INSTRUCTION C

"The Court instructs the jury that although it is the duty of a juror to discuss and consider the opinions of the other jurors, he must decide the case upon his own opinion of the evidence, and upon his own judgment and conscience."

The Court: Any objection?

Mr. Pancoast: That is a new one on me.

The Court: I guess it is all right. Granted.

Next.

#### DEFENDANT RAILROAD'S INSTRUCTION D

"The Court instructs the jury that the defendant, the Washington and Old Dominion Railroad, is entitled to every inference in its favor which can be reasonably drawn from the evidence and where two inferences may be drawn from the same facts, one consistent with guilt and one consistent with innocence, the defendant is entitled to the inference which is consistent with its innocence."

The Court: Any objections?

Mr. Pancoast: No, sir.

The Court: All right. The next instruction.

#### DEFENDANT RAILROAD'S INSTRUCTION E

"The Court instructs the jury that the law presumes every person or corporation charged with crime to be innocent until his or its guilt is established beyond all reasonable doubt, and this presumption of innocence goes with the accused

through the entire case, and applies at every stage thereof; and if, after having heard all of the evidence in the case, the jury have a reasonable doubt of the guilt of the accused upon the whole case, or as to any fact essential to prove the charge made against the accused, it is their duty to give the accused the benefit of the doubt and return a verdict of not guilty."

The Court: Any objections?

Mr. Pancoast: No objections on that.

The Court: All right.

### DEFENDANT RAILROAD'S INSTRUCTION F

"The Court instructs the jury that under Section 19, Sub-section 8 of the Zoning Ordinance, introduced in evidence, the railway embankment, the tracks laid thereon and the piers used for the transportation and dumping of page 166 } coal by the railroad company are a single structure, and unless the jury believe from the evidence beyond reasonable doubt that (1) such single structure for the transportation and dumping of coal has not been used for such purpose and has remained vacant for twelve consecutive months; or (2) that the damaged piers proposed to be replaced, represent fifty per cent of the value of such single structure, then they can not find the defendant guilty."

The Court: Any objections to that?

Mr. Pancoast: I object to that because, as you will recall, I drew out from Mr. Bagett that the non-conforming use in 1931, between the years 1931 and 1940—when this Code was produced in evidence—was enacted, the railroad owned the structure and that the use and operation was carried on as a fuel yard by the Potomac Coal Company. In other words, not Mr. Campbell but his predecessor were the ones that operated it at that time, and the ordinance here says that they must be owned and operated in the conjunctive and not in the disjunctive at the time the relation went into effect in order to have it considered as one unit.

Mr. Chambliss: It was owned and operated—I think the evidence shows that the railroad still owns and is still using and operating the trestle.

Mr. Budwesky: The railroad owns it from one angle and the Potomac Coal Company leases it.  
page 167 } Mr. Chambliss: For unloading purposes.

Mr. Howard: Could the embankment be part of the structure?

Mr. Chambliss: Very easily.

Mr. Budwesky: Did he ever try to build an embankment?

The Court: No evidence that this was built. The other could be cut away so far as this case is concerned. It may not have been cut away by the railroad.

Mr. Budwesky: The jury can determine that by looking out there.

The Court: I am not going to tell them it is a single unit.

Mr. Chambliss: I would like to note an exception.

The Court: Defendant's Instruction No. F is refused.

Mr. Chambliss: Exception to the refusal of No. F, on the ground that the embankment and trestle are one unit, as appears from the evidence, and there is no dispute that the embankment is used solely for the purpose of serving the coal trestle and the only evidence that it is not so used is that it might have been occasionally used for switching cars, and that its primary purpose is for the use of the coal trestle.

Now, if your Honor please, since you have refused F, I have F-a to offer as an alternative.

The Court: All right.

page 168 { DEFENDANT RAILROAD'S INSTRUCTION  
NO. F-a

“The Court instructs the jury that if they believe from the evidence either (1) that the railway embankment, the track laid thereon and piers used for the transportation and dumping of coal have not remained vacant and have been used for such purpose within 12 consecutive months preceding the issuance of the warrant herein; or (2) that the railway embankment and tracks thereon and piers proposed to be replaced for the transportation and dumping of coal, constitute a single structure under Section 19, sub-paragraph 8, of the ordinance introduced in evidence and that the repairs proposed to be made thereto do not represent fifty per cent of the value of the original structure, then the Commonwealth has failed to prove its case and they can not find the defendant guilty.”

The Court: This is a jury finding.

Mr. Chambliss: It leaves it up to the jury to pass on this question.

The Court: Let's see what the evidence is on that.

(Discussion was had off the record).

The Court: Do you have any objections to this, Mr. Pancoast?

Mr. Pancoast: Yes, sir.

The Court: What is your objection?

Mr. Pancoast: My objection is that under the evidence the structure here, or parts of this structure, or this page 169 } part that they attempt or seek to say the structure is composed of, do not constitute a single structure because at the time the regulations went into effect they were not under single ownership and operation.

Mr. Chambliss: There is no evidence that the use of those tracks ever left the operation of Washington and Old Dominion Railroad over the trestle.

Mr. Pancoast: There is evidence that it was leased to the Coal yard people at the time it went into operation.

Mr. Chambliss: For the purpose of getting coal from under the trestle or from the bins. Mr. Baggett said himself it was an unloading station, on his testimony this afternoon, and one of the scheduled stations under the I. C. C. regulations.

Mr. Pancoast: That would be—I think this is correctly covered by my instruction, the one that I had.

The Court: Which one?

Mr. Pancoast: Number 3.

Mr. Budwesky: Suppose he had the trestle and bins there and did not have an embankment to it?

Mr. Pancoast: They claim it does not revert to A-residence zone; this is taken word by word out of the ordinance. If they take out the words, "railroad embankment", I would have no objection to it, and substitute the word "trestle".

Mr. Chambliss: No, sir. We do not tell them, page 170 } we are asking the Court to tell them it is a part of the single structure. You are certainly entitled to argue that it is not. I know that is the position that you all take and we take the other position. I think there is some evidence that it is one structure.

Mr. Howard: Under the ordinance I do not see that the embankment can be a part of the structure. It is just a question whether that is a structure.

Mr. Budwesky: You do not think that that fill of earth could be a structure?

Mr. Howard: Not within the meaning of that ordinance.

Mr. Chambliss: If a fill is not a structure then these piers are not a structure; then we should not be subjected to any prosecution.

Mr. Howard: Why wouldn't they?

Mr. Chambliss: Why would the piers be a structure and

the artificial embankment not; different methods to support the track?  
it.

(Discussion off the record.)

The Court: You left this ownership and operation out of this section.

Mr. Chambliss: If your Honor please, we offer instruction F-a as is on the ground that there is no competent page 171 } evidence that the ownership and operation of the tracks on the trestle ever left the operation of the railroad.

The Court: I will deny this one.

Mr. Chambliss: We take an exception and we offer it amended with that in there.

The Court: All right. I refuse this instruction because you have me tell the jury they are single structures.

Mr. Chambliss: Exception.

The Court: All right.

#### DEFENDANT RAILROAD'S INSTRUCTION G.

"The Court instructs the jury that under the ordinance introduced in evidence, a non-conforming use is defined as a building or premises occupied and used for a purpose other than the use authorized by the regulations in the zone in which it is located, and that in this case, if the jury believe from the evidence, beyond all reasonable doubt, that the property in question owned by the railroad is zoned as residence-A and that the railroad, prior to the enactment of said ordinance was using such property for the transportation and dumping of coal, that such use would, under the language of the ordinance, be a non-conforming use."

The Court: Any objections to that?

Mr. Pancoast: That is all right as far as it goes. It does not go far enough.

page 172 } The Court: I do not think that is pertinent.

Mr. Chambliss: Instruction G?

The Court: Yes.

Mr. Chambliss: I note an exception to the refusal on the ground that it properly states the facts and the law.

The Court: As far as it goes, but it does not state the law of the facts in this case.

Mr. Chambliss: You said it would have to be amended to

include ownership and operation under one person or corporation, I believe.

The Court: You recited the ordinance but you have not completed the ordinance; you have only part of it.

Mr. Chambliss: I think we are entitled to an instruction predicated that the jury does find that it is all one structure since the embankment is there only for the purpose of serving the trestle.

Mr. Pancoast: Only if you got the evidence there to support ownership and operation.

(Discussion off the record.)

The Court: I do not think it fits the case. I refuse it as offered.

Mr. Chambliss: We will note an exception.

The Court: All right.

#### DEFENDANT CAMPBELL'S INSTRUCTION C-1.

"The Court instructs the jury that the area of page 173 } streets and alleys as shown on the zoning map are not placed in zone classifications, and if you believe the right-of-way of the Washington and Old Dominion Railroad was treated in the preparation of said map the same as a street, then the area in question has no zone classification and the regulations of the ordinance would not control."

The Court: Any objections?

Mr. Pancoast: I object to that.

The Court: You do not have any evidence to support that.

Mr. Chambliss: You have an admission of Mr. Pancoast that the streets are not zoned in any way.

Mr. Budwesky: You have the ordinance itself which says that the streets constitute the boundary.

Mr. Chambliss: We certainly could argue that admission to the jury and I propose to.

Mr. Budwesky: Is the Court going as a matter of law to rule that the right-of-way is zoned A-residence?

The Court: No one has asked me to. You have some instructions here on that submitted to the jury. I will refuse this instruction.

Mr. Budwesky: All right. How about this one, Judge?



## DEFENDANT CAMPBELL'S INSTRUCTION C-2.

“The Court instructs the jury that streets and  
page 174 } alleys as shown on the zoning map are not zoned  
in any classification.”

Mr. Howard: We object to that because we are not concerned with the streets here.

The Court: This one is denied.

Mr. Chambliss: I think, if your Honor please, that since the City's Attorney has admitted that the streets are not zoned, and I believe that the rule is that when an admission is made you are entitled to an instruction on it as an established fact.

The Court: Not in a case of this kind.

Mr. Chambliss: I would like to note an exception.

Mr. Budwesky: I would like to note an exception to the action of the Court in refusing to grant this instruction on the ground that the zoning ordinance itself in sub-paragraph 1, Section 23, Chapter 28, of the Alexandria City Code, specifically designates that streets and alleys shall constitute boundaries between zoning classifications and, therefore, are not within zoning classifications.

The Court: Refused because it is immaterial to the issue involved.

(Whereupon, at 6:30 o'clock p. m. the proceedings in the above-entitled matter were concluded.)

Virginia:

City of Alexandria:

I, Wm. P. Woolls, Judge of the Corporation Court of the City of Alexandria, certify the foregoing to be the testimony taken.

Given under my hand this 19th day of November, 1948.

WILLIAM P. WOOLLS,  
Judge.

page 175 } Teste: This 28th day of September, 1949.

WILLIAM P. WOOLLS,  
Judge. (Seal)

page 176 } CRIMINAL WARRANT.

City of Alexandria, Virginia: To all or any of the Police Officers of said City:

WHEREAS Joseph M. Pancoast, City Attorney, has this day made complaint and information on oath, before me, Douglas W. Stanton, Jr., Clerk, Civil & Police Court of said city, that Washington and Old Dominion Railroad between 30th day of June and 2nd day of July, 1948, at said City, did unlawfully erect a structure in an A-residence zone, to-wit, a coal trestle for operation and use of a fuel yard on the Washington and Old Dominion Railroad right of way near Randolph Avenue in violation of Section 4 sub section (B), Chapter 28, of the Code of the City of Alexandria, as amended by Ord. No. 463.

These are therefore, in the name of the said City of Alexandria, to command you forthwith to summon to appear before the Civil and Police Justice of said City, the body of the above accused to answer said complaint and be further dealt with according to law on July 7th, 1948 at 10 o'clock A. M. E. D. S. T.

And, moreover, upon the arrest of the above accused by virtue of this Warrant, I command you in the name of the City of Alexandria to summon the following witnesses: Joseph M. Pancoast, City Attorney; Nicholas Colasanto, City Manager; Jack Varney, Hdqts., to appear at the Civil and Police Court as witnesses to testify in behalf of the City of Alexandria against the said Washington and Old Dominion Railroad.

And have then and there this Warrant, with your return thereon.

Given under my hand and seal this 3rd day of July, 1948.

(s) DOUGLAS W. STANTON, JR.,  
Clerk, Civil and Police Court. (Seal)

THE WITHIN NAMED Washington & Old Dominion Railroad, was brought before me this 27th day of July, 1948, and on the evidence of Joseph M. Pancoast, he is found guilty of erecting a structure in an A residential zone, to-wit a coal trestle for operation and use as a fuel yard as charged in the within Warrant, and I do adjudge that he be confined in the

jail of the City of Alexandria for ..... days, and pay a fine of \$50.00 and \$. .... costs and in default of fine that he be committed.

(s) JAMES R. DUNCAN,  
Civil and Police Justice.

### WARRANT.

Docket No. 4228G.

City of Alexandria, Virginia

*v.*

Washington and Old Dominion Railroad, (Raymond M. McNamara) Asst. Gen. Mgr., Rosslyn, Virginia

Executed this 6th day of June, 1948 by summonsing the above and by summoning the witnesses checked on the other side for ....., 19...

INSPECT. HAWES,  
Police Officer.

H. Chambliss, p. d.  
Appeal noted 7/27/48, 19...  
Bond: \$100.00.

page 177 } Corporation Court of the City of Alexandria,  
on Thursday the 28th day of October, in the year  
of our Lord, one thousand nine hundred and forty-eight:

Present: The Honorable William P. Woolls, Judge.

City of Alexandria

*v.*

Arthur F. Campbell

Crim. Appeal 4776.

Washington and Old Dominion Railroad. Crim. Appeal 4775.

Violating Sec. 4. Sub-section (b) Chapter 28 of the Code of City of Alexandria, as amended by Ord. No. 463.

This day came the City of Alexandria, by J. M. Pancoast,

its Attorney, and the defendants, Arthur F. Campbell and the Washington and Old Dominion Railroad, appeared in person, in pursuance of their recognizances, and accompanied by their counsel, and the accused being charged with a violation of Sec. 4, Sub-section (b), Chapter 28 of the Code of the City of Alexandria, Va., as amended by Ordinance No. 463, through their counsel, entered a plea of not guilty.

And thereupon came a jury to-wit: Byron M. Irwin, Charles M. Robey, Frederick H. Foreshaw, Harry L. Leach and William H. Thomas, who were duly elected, tried and sworn in the manner prescribed by law, and after having fully heard the evidence presented by the City and the Defendants, arguments of counsel and instructions of the court, retired to their room to consult of their verdict, and after a time returned into court and presented the following verdict to-wit: "We the Jury on the issue joined find the Defendants, Arthur F. Campbell and the Washington and Old Dominion Railroad guilty and fix the fine at ~~(\$10.00) ten~~ dollars in each case. Frederick H. Foreshaw, Foreman".

Whereupon, on motion of counsel for Defendants the jury was duly polled by the Clerk, after which the Defendants, by counsel, moved the Court to set aside the verdict as being contrary to the law and evidence and enter judgment for Defendants and requested two weeks to present  
page 178 } a brief in support of said motion and to argue  
said motion, which time was allowed by the court.

(s) WILLIAM P. WOOLLS,  
Judge.

page 179 } Corporation Court of the City of Alexandria,  
on Wednesday the 3rd day of August, in the year  
of our Lord, one thousand nine hundred and forty-nine:

Present: The Honorable, Wm. P. Woolls, Judge.

City of Alexandria

v.

Washington and Old Dominion Railroad Co.

v.

Arthur F. Campbell

## CRIMINAL APPEAL NO. 4775.

## CRIMINAL APPEAL NO. 4776.

The City of Alexandria came by *it* attorney, the defendant Washington and Old Dominion Railroad Company also came by its attorney and the defendant Arthur F. Campbell came in person and by his attorney; and by agreement between all the parties these two actions were tried together by the same jury.

And each defendant having pleaded not guilty, thereupon came a jury, to-wit, Frederick H. Foreshaw, Byron M. Irwin, Charles M. Robey, Harry L. Leach, and William H. Thomas, who being duly elected, tried and sworn the truth to say upon the issues joined, and having fully heard the evidence and argument of counsel, and having received the instruction of the court, retired to their room to consult of their verdict; and after some time they returned into court and rendered this verdict: "We the jury on the issue joined find the defendants Arthur F. Campbell and the Washington and Old Dominion Railroad guilty and fix the fine at (\$10.00) ten dollars in each case. Frederick H. Foreshaw, foreman"; and the jury was then discharged.

And thereupon the defendants by counsel moved the court to set aside the verdict of the jury and enter judgment for the defendants, or grant a new trial, upon the page 180 } following grounds: (1) error of the court in overruling the Railroad's motion to quash and dismiss the warrant against it, because it is a public service corporation and the City of Alexandria could not lawfully zone its right of way, and because under the express terms of Ordinance No. 463, public utility buildings of the character complained of in the warrant are expressly exempt from the provisions of the ordinance; (2) error of the court in overruling the motion made in behalf of the Railroad at the conclusion of the taking of the evidence in behalf of the City of Alexandria to strike the evidence on the ground that the City had failed to prove beyond a reasonable doubt that the right of way of the defendant at the point complained of in the warrant had been zoned in any fashion; (3) error in the rulings of the court in admission and exclusion of evidence; and (4) error in the rulings of the court granting and refusing instructions. And said motion was continued and set down for argument.

The court having heard the arguments of counsel and hav-

ing maturely considered the said motion to set aside the verdict of the jury, is of opinion that the same should be and the same hereby is overruled; it is therefore this day adjudged and ordered that the defendant Washington and Old Dominion Railroad Company be and it hereby is sentenced to pay a fine of ten dollars for the use of the City of Alexandria, and that the defendant Arthur F. Campbell be and he hereby is sentenced to pay a fine of ten dollars for the use of the City of Alexandria; to which opinion and judgment of the court the said defendants and each of them duly objected and excepted.

Each of the said defendants *having* indicated intention to apply to the Supreme Court of Appeals for a writ of error and *supersedeas*, it is therefore further ordered that execution of the aforesaid sentence against each of  
page 181 } said defendants be and the same hereby is suspended for a period of sixty days for the purpose of permitting defendants to make such application; and the defendant Arthur F. Campbell shall be let to bail on his personal recognizance during the period the execution of sentence against him is so suspended.

(s) WM. P. WOOLLS,  
Judge

page 182 } BILL OF EXCEPTION NUMBER 3.

Be it remembered, that at the trial of this case, after the Court had overruled the motion made by the Washington and Old Dominion Railroad to quash and dismiss the warrant issued against it in this case, as set out in Bill of Exception Number 1 and after the evidence had been concluded, which evidence is set out in Bill of Exception Number 2, to which ruling of the Court, Washington and Old Dominion Railroad and Arthur F. Campbell, by their respective counsel, duly excepted, the City of Alexandria moved the Court to instruct the jury as follows:

(1)

The Court instructs the jury that under the zoning regulations of the City of Alexandria, the land use consisting of the operation of a fuel yard is assigned to a E-industrial zone.

(2)

The Court instructs the jury that public utility buildings not used for manufacturing purposes may be erected, altered or repaired in an A-residence zone of the City only after the application for the permit has first been presented to the City Council and that body has given its assent by adoption of a resolution after it has determined whether or not such use will be for the best interests of the health, safety and general welfare of the public.

page 183 }

(3)

The Court instructs the jury that a non-conforming use is a building or premises occupied and used for a purpose other than the use authorized by the regulation in the zone in which it is located at the time the regulations were adopted, and you are further instructed that in case a non-conforming structure shall be damaged to the extent of fifty per cent of its value, then such non-conforming use is terminated and reverts to the conforming use of the zone in which it is located. When the non-conforming use is industrial and the non-conforming industrial plant consists of two or more buildings and structures all under single ownership and operation and on one track of land at the time which any such buildings or structures first became non-conforming, all said buildings and structures shall be treated as a single non-conforming structure. The meaning of the word, 'damage' includes depreciation in value and a fuel yard is an industrial use.

(4)

The Court instructs the jury that if you believe beyond a reasonable doubt that the defendants, or either one of them, did, in the City of Alexandria, between June 30th and July 2nd, 1948, erect a coal trestle for operation and use in the conduct of a fuel yard, in violation of the zoning regulations of the City of Alexandria, as charged, you shall fix the punishment by a fine of not less than \$10.00 and  
page 184 } not more than \$100.00 if the offense be not wilful or not more than \$250.00 if the offense be wilful.

To the giving of which instructions Nos. 1, 2, and 3, the Washington and Old Dominion Railroad and Arthur F.

Campbell, by their respective counsel, objected and assigned the following grounds of objection:

To instruction No. 1.

(a) Because the question as to whether or not the point on the right of way of the Washington and Old Dominion Railroad involved in this case was zoned, was a question of fact to be determined by the jury under the evidence and that the instruction as offered and as granted by the Court, erroneously withdrew from the jury the determination of such question of fact; and that said instruction invaded the province of the jury.

After making such objection and stating grounds thereof, the Washington and Old Dominion Railroad offered the following amendment to said instruction:

“Or to such area that is not zoned at all. And the Court further instructs you that such use may be lawfully carried on in any area in the City not zoned in any way.”

Which proposed amendment to said instruction so offered, the Court refused and gave and granted said instruction as originally offered by said City; and to the refusal of the Court to give said amendment, the Washington and Old Dominion Railroad, by counsel objected and assigned the following grounds for said objection:

(b) Because the instruction as offered and as granted by the Court left the jury to believe that as a matter  
page 185 } of law, and so determined by the Court, the City  
of Alexandria had zoned the right of way of the  
Washington and Old Dominion Railroad to A residence  
whereas the jury might well find, as a matter of fact, that the  
area included in the right of way was not zoned and that,  
accordingly, the Washington and Old Dominion Railroad  
could lawfully erect any structure on that right of way.

To Instruction No. 2.

(a) Because the instruction is immaterial to the issues involved in the case.

(b) Because the warrant issued and upon which warrant the case was tried, did not charge either the Washington and Old Dominion Railroad or Arthur F. Campbell with the failure to obtain a permit.



(c) Because the instruction presupposes that the City has proved that said railroad right of way is in a A-residence zone which question, on the contrary, should be passed on by the jury.

To Instruction No. 3.

Because the said instruction erroneously determined as a matter of law that said portion of the right of way of the Washington and Old Dominion Railroad had been zoned A-residential by the City; that the Court thereby erroneously withdrew from the jury the determination of the question of fact as to whether or not said portion of said right of way had been so zoned.

To which ruling of the Court in granting said instructions 1, 2, and 3, as originally offered and in refusing the amendment offered by the Washington and Old Dominion Railroad and Arthur F. Campbell to Instruction Number 1, said Railroad and said Arthur F. Campbell by their page 186 } respective counsel, excepted on the grounds above assigned and said Railroad now tenders this Bill of Exception Number 3, which it prays may be signed, sealed, enrolled and made a part of the record in this case.

Teste: This 28th day of September, 1949.

WM. P. WOOLLS (Seal)  
Judge

page 187 } BILL OF EXCEPTION NUMBER 4.

Be it remembered, that upon the trial of this case, after the Court had overruled the motion made by the Washington and Old Dominion Railroad to quash and dismiss the warrant issued in this case against it as set out in Bill of Exception Number 1, after the evidence had been concluded, and after the Court had announced that it would grant and give Instructions Numbered 1, 2, and 3 offered by the City of Alexandria, to which rulings the said Railroad and the said Arthur F. Campbell, by their respective counsel, objected and excepted, as set forth in Bill of Exceptions Numbered 3, the said Railroad and the said Arthur F. Campbell, without waiving such objections and exceptions, but expressly relying thereon, moved the Court to instruct the jury as follows:

Instructions offered by the Railroad.

A.

The Court instructs the jury that the criminal warrant in this case charges that the Washington and Old Dominion Railroad 'did unlawfully erect a structure in A-residence zone, to-wit, a coal trestle for operation and use of a fuel yard on the Washington and Old Dominion Railroad's right-of-way near Randolph Avenue in violation of Section 4: Subsection (b), Chapter 28 of the Code of the City of Alexandria, as amended by ordinance No. 463.'

And the Court instructs the jury that before you can find the defendant guilty, you must find that the City page 188 } of Alexandria has proved beyond reasonable doubt that the right-of-way of the Washington and Old Dominion Railroad near Randolph Avenue, is, in fact, zoned as A-residence zone. And even if you find that the right-of-way of the defendant railroad is zoned A-residence, still you cannot find the defendant railroad guilty if you find that it is exempt from the operation of the ordinance. And in this connection, the jury are instructed that the City of Alexandria must prove beyond a reasonable doubt that the defendant railroad is not exempt from the operation of said ordinance.

B.

The Court instructs the jury that under the provisions of the zoning ordinance of the City of Alexandria, on which this prosecution is based, the following structures are expressly permitted in an A-residence zone:

'Public utility buildings constructed and used for non-manufacturing purposes.'

And the Court instructs the jury that if you find that the coal trestle erected on the right-of-way of defendant railroad is adapted to the carrying on of the business of the railroad as a public service corporation, then such structure is a public utility building and expressly exempt from the operation and effect of the said zoning ordinance.

## C.

The Court instructs the jury that although it is the duty of a juror to discuss and consider the opinions of page 189 } the other jurors, he must decide the case upon his own opinion of the evidence, and upon his own judgment and conscience.

## D.

The Court instructs the jury that the defendant, the Washington and Old Dominion Railroad, is entitled to every inference in its favor which can be reasonably drawn from the evidence and where two inferences may be drawn from the same facts, one consistent with guilt and one consistent with innocence, the defendant is entitled to the inference which is consistent with its innocence.

## E.

The Court instructs the jury that the law presumes every person or corporation charged with crime to be innocent until his or its guilt is established beyond all reasonable doubt, and this presumption of innocence goes with the accused through the entire case, and applies at every stage thereof; and if, after having heard all of the evidence in the case, the jury have a reasonable doubt of the guilt of the accused upon the whole case, or as to any fact essential to prove the charge made against the accused, it is their duty to give the accused the benefit of the doubt and return a verdict of not guilty.

## F.

The Court instructs the jury that under Section 19, Subsection 8 of the Zoning Ordinance, introduced in evidence, the railway embankment, the tracks laid thereon, and the piers used for the transportation and dumping of coal by the railroad company are a single structure, and page 190 } unless the jury believe from the evidence beyond reasonable doubt that (1) such single structure for the transportation and dumping of coal has not been used for such purpose and has remained vacant for twelve consecutive months; or (2) that the damaged piers proposed to be replaced, represent fifty per cent of the value of such single structure, then they cannot find the defendant guilty.

G.

The Court instructs the jury that under the ordinance introduced in evidence, a non-conforming use is defined as a building or premises occupied and used for a purpose other than the use authorized by the regulations in the zone in which it is located, and that in this case, if the jury believe from the evidence, beyond all reasonable doubt, that the property in question owned by the railroad is zoned as residence-A and that the railroad, prior to the enactment of said ordinance was using such property for the transportation and dumping of coal, that such use would, under the language of the ordinance, be a non-conforming use.

Of such instructions A to G, both inclusive, so offered by it, the Court amended instruction A by striking therefrom the last sentence thereof and granting said instruction as so amended; refused Instruction B as offered; granted Instruction C, as offered; granted Instruction D as offered; granted Instruction E as offered; and refused Instruction F and G as offered. Thereupon, said Railroad without waiving its objections and exceptions to such amendment and refusal of instructions offered by it, offered instruction F-a as follows:

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F-a

The Court instructs the jury that if they believe from the evidence either (1) that the railway embankment, the track laid thereon and piers used for the transportation and dumping of coal have not remained vacant and have been used for such purpose within 12 consecutive months preceding the issuance of the warrant herein; or (2) that the railway embankment and tracks thereon and piers proposed to be replaced for the transportation and dumping of coal, constitute a single structure under Section 19, sub-paragraph 8, of the ordinance introduced in evidence and that the repairs proposed to be made thereto do not represent fifty per cent of the value of the original structure, then the commonwealth has failed to prove its case and they cannot find the defendant guilty.

Which instruction, the Court, over the objection and exception of said Railroad, likewise refused.

Instruction offered by Arthur F. Campbell.

## C-2

The Court instructs the jury that streets and alleys as shown on the zoning map are not zoned in any classification.

To which action of the Court in so refusing as originally offered its Instruction A and amending and granting same as so amended and in refusing its Instruction D; F-a G, and C-2 the Washington and Old Dominion Railroad by its counsel objected and excepted and assigned the following grounds of exception:

Grounds assigned by the Washington and Old Dominion Railroad:

To the refusal to give Instruction A as offered page 192 } and amending the same by striking therefrom the last sentence thereof.

Because the amendment so made by the Court made the instruction meaningless. The last sentence of the instruction, erroneously stricken therefrom by the Court, told the jury that the law imposed the burden upon the City to prove beyond a reasonable doubt that the Railroad right of way at the point in question was in fact, zoned A-residence; and further properly told them that even if they believed that the right-of-way had been so zoned, the Railroad could not be found guilty if they believed that under the terms of the ordinance, the spot in question was exempt from the operation thereof.

Because Instruction F was supported by the law and the evidence and presented the Railroad's theory of its case and properly told the jury as a matter of law that the railway embankment and trestle constituted a single unit and that unless they believed from the evidence beyond a reasonable doubt that such single unit had not been used for the purpose of transporting coal for a period of twelve consecutive months, then they could not find the Railroad guilty.

Because Instruction F-a was supported by the evidence, presented the Railroad's theory of its case and on the further ground that there was no evidence that the use of the tracks ever left the operation and ownership of said railroad.

Because Instruction G properly told the jury that if they believed from the evidence that the property in question, owned by the railroad, constituted one structure and had been used by the railroad prior to the enactment page 193 } of the ordinance, then such use constituted a non-conforming use under the terms of the ordinance.

Because Instruction C-2 correctly told the jury that the

streets and alleys as shown on the zoning map were not zoned in any classification, and that counsel for said City had so admitted.

To which ruling of the Court, in refusing to grant to the jury its Instruction A and in amending and granting said instruction, and refusing its Instruction B, F, F-a G and C-2, Washington and Old Dominion Railroad, by its counsel, duly excepted on the grounds above set forth, and said Railroad prays that this, its Bill of Exception Number 4, may be signed, sealed and enrolled and made a part of the record in this case, which is accordingly done.

Teste: This 28th day of September, 1949.

Wm. P. WOOLLS (Seal)  
Judge

page 194 } BILL OF EXCEPTION NUMBER 5.

Be it remembered, that on the trial of this case, when Harry F. Miller, a witness called on behalf of the City of Alexandria, was being examined on re-direct examination, and after he had testified that he did not know how the portions of the right-of-way of the Washington and Old Dominion Railroad in question designated as the Potomac Coal Yard, were zoned, was asked the following question:

Q: I would like to clarify one thing. I want to ask you, Mr. Miller, if the zoning classification of the land embraced by the Potomac Coal Company has been changed since that map—

Thereupon, Arthur F. Campbell, by his counsel, objected to said question, in which objection, Washington and Old Dominion Railroad, by its counsel, united.

The Court sustained the objection and thereupon the following colloquy took place and the following question was propounded and answered by the witness over the objection and exception of the said Campbell and the said Railroad Company, to-wit:

Q: Mr. Pancoast: I mean to say, insofar as the Council Minutes are concerned. The man has testified he does make the markings or make the notation of the changes, according to the Council Minutes. I want to ask him if it has been changed.

The Court: All right.

Mr. Budwesky: The question pre-assumes that there already is a zoned classification on that ground page 195 } which we do not admit. On the basis of the map that is in evidence and on the basis of the ordinances that are in evidence we deny that there has ever been any zoning classification put to that property. So when he says: "Has there been any change?" There is an assumption that there has already been a classification upon it.

Mr. Chambliss: It is assuming, if your Honor please, that something has been proved, which is up to the jury to pass on. I think the question is improperly framed, to say the least.

Mr. Pancoast: They are trying to interpret the map. It is up to the Court to interpret the map, which is part of the law, and all I want to know is if there have been any changes according to the minutes of the council, of that land.

The Court: Since when, Mr. Pancoast?

Mr. Pancoast: Since the date of that map, sir.

The Court: Any changes in the zoning?

Mr. Pancoast: Zoning classification of the land here involved.

The Court: I think it is a proper question.

Mr. Chambliss: Exception.

Mr. Budwesky: Exception.

By Mr. Pancoast:

Q. Will you answer that question, Mr. Miller?

A. I thought I answered that. I thought that was the same question.

Q. Answer it again.

A. No, sir, there hasn't been any.

page 196 } To which question and answer, Washington and Old Dominion Railroad by its counsel, and the said Arthur F. Campbell, by his counsel, objected and moved to strike out and exclude the same from the jury, but the Court overruled said objection and refused to strike out and exclude said question and answer from the jury, to which action of the Court, the said Railroad and the said Campbell by their respective counsel, then and there excepted on the ground that the question pre-supposed that the area in question had been zoned A-residential without proof of that fact and the Court's ruling on the question and admitting the answer led the jury to believe that the City had carried the burden and proved that the territory in question had been originally zoned A-residential by the City

and that there had been no change in such zoning and said Railroad prays that this, its Bill of Exception No. 5 may be signed, sealed, enrolled and made a part of the record in this case, which is accordingly done.

Teste: This 28th day of September, 1949.

WM P. WOOLLS (Seal)  
Judge

page 197 } BILL OF EXCEPTION NUMBER 6.

Be it remembered that at the trial of this case, after the jury had been sworn, and all the evidence introduced, and after it had received instructions from the Court, and after the jury had rendered its verdict in words and figures as follows, to-wit:

"We, the jury, on the issue joined, find the defendants, Arthur F. Campbell and the Washington and Old Dominion Railroad, guilty and fix the fine at (\$10.00) Ten Dollars in each case.

(Signed) FREDERICK H. FORESHAW,  
Foreman."

That thereupon, the defendants, Washington and Old Dominion Railroad and Arthur F. Campbell, by their respective counsel, moved the Court to set aside the aforesaid verdict of the jury so returned, and to enter final judgment for them and each of them, finding each one of them not guilty upon the following grounds, to-wit:

(1) error of the Court in overruling the Railroad's motion to quash and dismiss the warrant against it, because it is a public service corporation and the City of Alexandria could not lawfully zone its right of way, and because under the express terms of Ordinance No. 463, public utility buildings of the character complained of in the warrant are expressly exempt from the provisions of the ordinance; (2) error of the court in overruling the motion made in behalf of the Railroad at the conclusion of the taking of the evidence in behalf of the City of Alexandria to strike the evidence on the ground that the City had failed to prove beyond a reasonable doubt that the right-of-way of the defendant at the point complained of in the warrant

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had been zoned in any fashion; (3) error in the rulings of the Court in admission and exclusion of evidence; and (4) error in the rulings of the court in granting and refusing instructions.

Thereupon, the Court adjudged and ordered that said motions be denied and overruled and that each of the defendants, to-wit, Washington and Old Dominion Railroad Company and Arthur F. Campbell be, sentenced to pay a fine of \$10.00 for the use of the City of Alexandria.

To which action of the Court, in overruling said motion, and entering final judgments on the verdict of the jury and in so sentencing, as aforesaid, each of the said defendants, they by their respective counsel, duly excepted and assigned the following grounds of exception; because,

(a) The Court erred in overruling the Railroad's motion to quash and dismiss the warrant issued against it in this case, because it is a public service corporation and the City of Alexandria could not lawfully zone its right-of-way, and because under the express terms of Ordinance No. 463, public utility buildings of the class complained of in the warrant are expressly exempt from the provisions of the ordinance.

(b) The Court erred in its ruling on the admissibility and exclusion of the evidence as set forth in Bill of Exception Number 5.

(c) The Court erred in granting sundry instructions offered by the City of Alexandria over the objections and exceptions of said defendants, and in refusing sundry instructions offered by the said defendants and amending and granting, as so amended, an instruction offered by the Washington and Old Dominion Railroad, over the objections and exceptions of the said defendants as set forth in Bills of Exceptions Numbered 3 and 4.

And said railroad prays that this, its Bill of Exception Number 6, may be signed, sealed, enrolled and made a part of the Record in this case, which is accordingly done.

Teste: This 28th day of September, 1949.

WM. P. WOOLLS (Seal)  
Judge

STIPULATIONS

Filed Sept. 28, 1949.

*Re: City of Alexandria v. Washington and Old Dominion Railroad & Campbell.*

Mr. Hoffman: Mr. Pancoast, Mr. Williams and I have agreed that an agreed colored copy of the second revised zoning map of the City of Alexandria will be made at Mr. William's direction and substituted for the original map as an exhibit 1 (C) in the criminal case of City of Alexandria v. Washington & Old Dominion Railroad and Arthur F. Campbell. Otherwise, the original map would have to be sent to Richmond.

H. CHAMBLISS, JR.

Mr. Pancoast, Mr. Williams and I have agreed that the record shall include:

The Criminal warrant.

The Verdict.

The final judgment Order.

The Transcript of the evidence & B/E which are attached in duplicate.

The exhibits offered by the City that is Exh. 1 (a) City Code of City of Alexandria Exh 11 (b) Ordinance 463; and 1 (c) the second revised zoning map of the City of Alexandria (see above on this last Exh)

H. CHAMBLISS, JR.

page 201 } I, William P. Woolls, Judge of the Corporation Court of the City of Alexandria, Virginia, who presided over the trial on October 28, 1948, in said Court of the action entitled City of Alexandria v. Washington and Old Dominion Railroad and Arthur F. Campbell, do certify that reasonable notice in writing was given the Attorneys for the City of Alexandria of the time and place at which these bills of exception were to be tendered. In accordance with that notice, the bills of exception were tendered to me on the 28th day of September, 1949.

Witness my hand this 28th day of September, 1949.

Wm. P. WOOLLS  
Judge of the Corporation Court  
of the City of Alexandria, Virginia

The foregoing and hereunto annexed papers constitute a true and correct transcript of the record in the case of City of Alexandria *v.* Washington and Old Dominion Railroad and Arthur F. Campbell; and the foregoing bills of exception certified by the Judge of this Court were received by me on the 28th day of September, 1949.

ELLIOTT F. HOFFMAN  
Clerk of the Corporation Court of  
the City of Alexandria, Virginia.

A Copy—Teste:

M. B. WATTS, C. C.

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