

New Jersey Court of Errors and Appeals.

PATRICK L. REHILL, *et al.*,
Prosecutors below,
Defendants-in-Error,

vs.

MAYOR AND COUNCIL OF THE
BOROUGH OF EAST NEWARK,
and Mayor and Aldermen of
Jersey City,

Defendants below,
Plaintiffs-in-Error.

On Writ of Error to
Supreme Court.

NEW JERSEY SUBURBAN WATER
COMPANY, and New York and
New Jersey Water Company,
Prosecutors below,
Defendants-in-Error,

vs.

MAYOR AND COUNCIL OF THE
BOROUGH OF EAST NEWARK,
and Mayor and Aldermen of
Jersey City,

Defendants below,
Plaintiffs-in-Error.

On Writ of Error to
Supreme Court.

**Brief of Collins and Corbin of Counsel
for New Jersey Suburban Water
Company and New York and New
Jersey Water Company, and of
Herbert Boggs of Counsel for Pat-
rick L. Rehill, and of Ellen M. Re-
hill, Defendants-in-Error.**

It was agreed that the returns to the writs of

error should be consolidated in one return, and that the cases should be argued together.

CASE, pp. C. & D.

The writs of *certiorari* in these cases were allowed to review the action of the authorities of the Borough of East Newark and of the City of Jersey City, in making a certain alleged contract between the Mayor and Aldermen of Jersey City and the Mayor and Council of the Borough of East Newark, for a supply of water to be furnished by Jersey City to East Newark. The contract was dated December, 9, 1903, and executed about December 17, 1903. The contract was to become immediately operative and was to continue for five years from its date.

For Contract, see CASE, page 4.

Separate writs were allowed, in each case, against Jersey City and East Newark. In the first case, the writs were issued at the prosecution of Thomas Hewitt, Sons and Company, an East Newark tax payer, and of Patrick L. Rehill and Ellen M. Rehill, tax payers of Jersey City. In the second case, the writs were issued at the prosecution of New Jersey Suburban Water Company and New York and New Jersey Water Company, both New Jersey corporations.

For Writs and Returns in first case. See CASE, pp. 2 11, inclusive.

For Writs and Returns in second case. See CASE, pp. 16 21, inclusive.

After Jersey City and East Newark had made their returns to the writs in the first case, and after the reasons of the prosecutors of these writs had been filed and served, an order was made January 30, 1904, permitting the East Newark prosecutor, Thomas Hewitt, Sons and Company, to withdraw as prosecutor, and that all further proceedings under said Writs be had in the names of

Patrick L. Rehill and Ellen M. Rehill, the Jersey City taxpayers.

CASE, page 15.

The Supreme Court decided in favor of the prosecutors of the writs. It held the alleged contract invalid and beyond the power of either Jersey City or East Newark to make, and made an order setting aside the contract in question.

For Opinion of Supreme Court see CASE, pp. 60-68.

The main question before this Court is as to the validity of this alleged contract of December 9, 1903, between Jersey City and East Newark.

Neither Jersey City nor East Newark had power to make the contract. Their action was *ultra vires* and void as to both.

The Acts of 1897 do not authorize the contract.

There are two statutes controlling the power of a city to supply water to a borough or other municipality and of a borough to obtain a water supply from a city. Both were passed in the year 1897. They are in harmony with each other, and, as we contend, supersede all previous statutes upon the subject.

The first, approved April 19, 1897 (P. L. 1897, p. 232), is the Act to "authorize municipal corporations owning or controlling *water-works* to make contracts to furnish water for public or private uses with any *adjoining municipality* or with any private corporation therein."

The second, approved April 24, 1897 (P. L. 1897, p. 285, Sec. 76, p. 323), is the General Borough Act (Revision) of that year. The 76th Section of this Act (p. 323) authorizes any borough to enter into and make a contract with the governing body of any *adjoining municipality* for a supply of water.

It is clear that these Acts of 1897 do not confer power to make the contract under review.

1st. Because the city and the borough are not *adjoining municipalities*, as both of these Acts require.

The word "adjoining" in its primary and natural significance means contiguity of territory. It is defined by the Court as "touching," "in contact with." It implies a closer relationship than "adjacent." Its primary meaning is "to be next to," "to be in contact with, excluding the idea of any intervening space."

Akers vs. United N. J. R. R. Co., 43 N. J. L., 110-112.

Yard vs. Ocean Beach Assn., 49 N. J. L., 306-312.

McCullough vs. Absecon Beach Co., 48 N. J., Eq., 170.

1 Am. & Eng. Encyc. Law (2d Ed.) p. 635. 1 Cyc., 765.

State vs. Brown, 3 Dutch. 13.

Johnston vs. Dist. Columbia, 9 Cen. Rep., 653-655.

People vs. Schemerhorn, 19 Barb., 540-556.

In re Ward, 52 N. Y., 295.

The territory of East Newark is not contiguous to that of Jersey City. They do not, anywhere, come in contact. The towns of Kearny and of Harrison everywhere intervene between East Newark and Jersey City.

CASE, page 25, line, 10.

There is nothing in either of these Acts from which we can infer that the word "adjoining" was therein used in any loose or uncertain sense, or in any other than its legal meaning as defined in the cases above cited. Contiguity of territory is a

rational basis upon which to treat the subject matter of the legislation. Even in its ordinary significance the word "adjoining" is never used in the sense of "near to." Adjacent may mean both "contiguous" or "adjoining," and also "near to," but "adjoining" is always contiguous to. The fact also that no power is given in either of these Acts to cross the territory of an intervening municipality is enough to show that any such violation of the settled meaning of the word "adjoining" was not contemplated.

The argument, that the title and enactment of the first of the Statutes of 1897, may be interpreted as importing the contiguity of the territory of the municipality receiving the supply with the *water-works* of that furnishing the supply is not admissible. The plain intendment is that the municipalities must adjoin. Any other interpretation is forced and unnatural. The words "water-works" cannot fairly be made to do the double duty, first of forming part of a modifying phrase and next of describing the contiguity intended. The first is their only office. To add the second would lead to an absurd result; for, on that theory, unless the *water-works* adjoin the territory to be supplied, no contract can be made. Even if a water main be held to constitute "water-works," within the meaning of the act, still the main must be laid, perhaps at great expense, before a contract can be made. It cannot be possible that such was the legislative intent. But even if the interpretation suggested was admissible it would not help the plaintiffs in error, for the outlying mains in alien territory, through which East Newark was directly supplied, are in no sense a part of any water-works of Jersey City, within the purview of the Act.

Nor could this interpretation be applied to the second Act of 1897. The Borough Act, Section 76,

gives a borough power to contract with the governing body of any *adjoining municipality*.

2nd. A second reason why these Acts of 1897, cannot be construed to confer power to make this contract, is because Jersey City does not *own or control water-works*. The first act, that conferring power to contract to supply water, authorizes any municipality *owning or controlling water-works* to contract, etc.

It is manifest that Jersey City did not own or control water-works. When this alleged contract was entered into, Jersey City was and had been for several years purchasing all its water supply from the East Jersey Water Company. It received no water whatever from its own works or from works controlled by it. It did not own its source of supply or the reservoirs, or aqueduct or pipe lines from and through which the supply was taken and received. Jersey City had, when the contract was executed, and now has a contract with one Patrick H. Flynn and the Jersey City Water Supply Company executed in 1899, by which works have been constructed in the Rockaway Valley, New Jersey, with a pipe line thence to Jersey City. When the contract under review was executed these works had been partially completed, but Jersey City was still drawing its whole supply from the East Jersey Water Company, paying a fixed rate per million gallons therefor. Jersey City, had under the Flynn contract, the option to purchase these works and pipe line for a price fixed therein. It has given notice of its intention to exercise this option *but has not yet done so*, nor has it paid the contract price, or any part thereof.

It does not own these works or exercise any control over them.

Jersey City still, it is true, owns the old works or pumping station on the Passaic River, from

which it originally drew its water supply, but it has not used them in any way since 1896, and ever since that date has completely abandoned them as a source of supply, because the water became polluted and unfit for use.

CASE, page 28, lines 36-40.

The contract under review does not contemplate a supply to East Newark, from these abandoned works on the Passaic, or from this polluted and unfit source.

Any water Jersey City might supply East Newark under this contract would necessarily be water purchased from the East Jersey Water Company, or under the Flynn contract above referred to. *It would be selling water purchased for its own use, or buying water to sell again to East Newark. It would be engaging in a business of buying and selling water for profit, as a business venture.* Certainly these Statutes of 1897 do not contemplate this; do not authorize so extraordinary a venture by a municipal corporation.

The intent of all the legislation authorizing one municipality to supply another municipality, is to permit the municipality owning or controlling water-works from which it derives its own supply, to dispose of its surplus water, instead of allowing it to run to waste.

The contract under review is also void for still a third reason.

The second section of the first 1897 Act, (P. L., 1897, p. 232) authorizing a municipality to supply water, provides that "where said water-works are under the control of a Board of Water Commissioners, no contract shall be made for a term exceeding *three* years without the consent of the *governing board* of the city owning or controlling the water-works."

If Jersey City owned or controlled any water-works, they were under the control of a Board of Water Commissioners, by virtue of the Act of 1891, creating Boards of Street and Water Commissioners in cities of the first, class. Section Two of this act (Gen. Stat., p. 468, Sec. 2) vests in this Board complete control of the water supply, its distribution, sale and the use of the water. The Board thus created is by name a Board of Water Commissioners, and is clearly such a Board of Water Commissioners as is intended by Section 2 of this Act of 1897.

The contract under review with East Newark is for *five* years. It was approved by the Finance Board of Jersey City, but not by its Board of Aldermen. Jersey City contends that under its charter, its Finance Board is its Governing Board, because it exercises many of the powers of the Common Council.

It is clear, however, that the Governing Board referred to in this Act, is the Common Council, under the Jersey City Charter known as the Board of Aldermen.

Fitzgerald vs. Jersey City, 40 Vroom, 152, 156.

Jersey City vs. Keogh, 24 Vroom, 520.

This Act of 1897, applies to all kinds of municipalities. A Governing Board, whether a Council, a Board of Aldermen, or a Town or Township Committee, is elective. Administrative Boards are usually appointive. The design of this Act of 1897, is to place extended contracts of this nature under control of the body that directly represents and is directly responsible to the people. An earlier Act of 1885, authorizing cities owning or controlling water-works to contract to supply water to cities, towns or townships, requires such contracts to be concurred in by the Board having

charge of the finances of the City. But when by this Act of 1897, the power to make such contracts is extended to all municipalities owning or controlling water-works, the phraseology is changed and the power to concur in or approve of an extended contract, is vested in the *Governing Board* instead of in the Board or body having charge of the finances. This change of phraseology in the later Act of 1897, is significant of the legislative intent.

The plaintiffs in error, however, contend that certain acts prior to those of 1897, above referred to and discussed, confer power to enter into the contract in question. These acts, as we will show hereafter, are all repealed and superseded by the said Acts of 1897, but they may now be severally considered.

1. *The Jersey City Charter of 1871* (P. L., 1871, p. 1128, Secs. 75 and 76).

This gives Jersey City power to take water from the Passaic between Acquackanonk and Belleville and convey the same to Jersey City and other places "and may distribute water through Jersey City and through such portions of the Counties of Hudson and Bergen as the inhabitants may desire." This act does not give the power contended for, for the following reasons:

(a) It only gives power to distribute to individual consumers. It does not authorize a contract with a municipality.

(b) It gives no power to the borough to contract for water for distribution.

(c) The water is limited to that from the Passaic at Belleville, which the city has abandoned as a source of supply.

(d) It is repealed in so far as it may confer any

power in this respect, by the later and repugnant general Acts of 1897.

2. *The Act of 1882 (G. S., p. 654, Sec. 936)*, giving power to cities to extend their mains *four* miles beyond the city limits, and to sell water at rates not less than those charged for the same service in the city.

This act fails to give the power for the following reasons:

(a) It only gives power to extend the mains beyond the city limits to supply *individual consumers*.

It does not authorize a contract with another municipality.

(b) The contract under review requires an extension of mains of *more than four* miles and fixes a rate of sixty dollars per million gallons, which is less than the lowest city rate, namely, ninety dollars per million gallons.

CASE, page 36, lines 10-20.

3. THE ACT OF 1881, entitled "An Act to authorize municipal corporations to contract for a supply of water for public uses." It was twice amended in 1884. The first amendment was by a supplement approved April 17, 1884 (G. S., p. 2207, Sec. 389), providing that "any city, town or township" may contract with "any city of this state or with any aqueduct or water company having water-works for the supply and distribution of water for public and private use in any city, town or township."

This act fails to sustain this contract for several reasons.

(a) Its title relates solely to a supply for public uses and the original act was so limited, and the

provision of the supplement permitting a contract for a supply for private uses is void, because not within the title.

(b) The act does not apply to boroughs. Authority is not given to boroughs to contract, but only to a city, town or township. The presumption is that the word "town" is here used in its narrow sense. The term is here used in contradistinction to other classes of municipalities, viz., cities and towns: If used in its broadest sense, it would necessarily apply to cities and townships and all municipalities, and the words cities and townships would be mere surplusage. In the first section of the Act certain powers, not those in question, are conferred upon any city, town, township or other municipal corporation. In the fifth section, where it is claimed the power to make the contract in question is to be found, the words "or other municipal corporations" are omitted. This change of phraseology in the fifth section is significant and cannot be ignored. The word "town" ordinarily means a town corporate, and not a borough.

Herman vs. Guttenburg, 63 N. J. L., 616,
620.

Bellis vs. Flemington, 69 N. J. L., 349,
352.

And when this act was passed, boroughs had no power to provide water except to extinguish fires. (G. S. p. 182, Sec. 12).

(c) This act only authorizes a contract for a supply of water for distribution by the party furnishing it, and not for a sale to and distribution by the municipality contracting to receive the water, as the contract under review. No power is given by the act to any municipality to purchase and resell the water, so that unless they had power

from some other act, they could under this act only permit the purveyor to sell to consumers.

(d) The municipality contracting to supply the water must *own or control water-works*, and as we have already shown, Jersey City did not own or control water-works, and therefore, could not contract under this act.

(e) The power to contract, given by the section in question (G. S. 2207, Sec. 389) is modified by the later amendment passed the same year, May 9, 1884 (G. S. p. 2205, Sec. 384), which limits a contract to a supply for "public purposes" and the contract price to one dollar for each inhabitant in each year, unless first approved by a vote of a majority of the legal voters.

The stipulation of facts shows that the population of East Newark was 2,500, and that the annual consumption was 109 million gallons (CASE, p. 35, line, 40), which at sixty dollars per million gallons, the contract price, would be \$6,540 per year, and the contract was not submitted to the legal voters. Therefore, if the term "public purposes" covers water bought for private supply, then the borough is agreeing to pay more than one dollar per inhabitant without ratification by the legal voters, while if the term "public purposes" does not cover water for private supply, then the borough had no authority from this act, to purchase water for such private supply.

4. *The Act of 1885, relating to cities*; entitled: "An Act to authorize and empower cities owning and controlling water-works to make a contract with any city, town or township in this State for the distribution and use of water" (G. S. p. 655, Sec. 940).

This provides that any city owning and controlling its own water-works is authorized to make

a contract with any city, town or township in this State to distribute to and supply such city, town or township in this State with water for its use and that of its residents or inhabitants, in such manner and on such terms as the Board having control of the Water Department of said city may deem proper.

This act does not confer power to make the contract in question, for several reasons:

(a) The Borough of East Newark is not a city, town or township, and the Act in question only applies to a city, town or township.

(b) This act does not authorize the purchase of water for distribution, but merely authorizes a contract with the city to make the distribution to the consumers, and the title as well as the body of the act shows this to be the intent.

(c) Jersey City did not, at the time the contract in question was made, own and control water-works, from which it was supplied. This is clearly shown by the argument on the preceding point in this Brief.

(d) This Act of 1885 is superseded by the later General Municipal Act of 1897.

The later Act of 1897 is *repugnant to and inconsistent with* the above mentioned Act of 1885, and necessarily repeals it to the extent of such repugnancy and inconsistency.

The Act of 1885 applies only to *cities*. The Act of 1897, to *all municipalities*. The Act of 1885, gives power to cities to contract with *any* city, town or township in the State; the Act of 1897, with *adjoining municipalities*. The later act is then narrower than the earlier—it circumscribes the broader power of the earlier act and is to that extent repugnant to and inconsistent with it. The

exercise of the powers given by the earlier act, would directly violate the terms of the later act. Then, too, if the earlier act is still in force, the later Act is meaningless. Why give power to contract with *adjoining municipalities*, if the power to contract with *all municipalities* is still retained? Nor can it be argued that the act of 1885 is still in force as to cities. The later act of 1897 applies to all municipalities including cities. Again, the later Act of 1897, is a complete and comprehensive scheme of legislation. It is intended to take the place of pre-existing legislation on the same subject, and therefore supersedes the Act of 1885, even if not expressly repugnant to or inconsistent with it. It is intended as a substitute for the Act of 1885, and affords decisive evidence of an intent to abrogate and repeal the older legislation.

Haynes vs. Cape May, 23 Vroom, 182.

Mersereau vs. Mersereau, 6 Dick., 385.

The rules of statutory construction upon this question are well settled in this State.

Roche vs. Jersey City, 11 Vroom, 261.

Trustees of Pub. School vs. Trenton, 3 Stew., 676.

Bracken vs. Smith, 12 Stew., 172.

Haynes vs. Cape May, *supra*.

Mersereau vs. Mersereau, *supra*.

Golding vs. Chambersburg, 8 Vroom, 260.

Rachman vs. Ramson, 6 Vroom, 567.

Industrial School Dist. vs. Whitehead, 2 Beas., 291.

The Borough of East Newark was organized in the year 1895, but the general Act of 1897, by Section 96 (P. L., 1897, p. 329), provides that any borough theretofore existing shall be governed by the provisions of the Act of 1897; shall have all

the powers conferred by that act and be subject to all the duties imposed by that act. The effect of this general revision of 1897 is to exclude boroughs from exercising other corporate powers than those contained in this act. This necessarily limits the power of East Newark to make a water contract to the provisions of Section 76 of this general borough Act of 1897. And it also necessarily repeals all pre-existing legislation on the same subject, so far as such legislation may relate to boroughs.

So the Act of 1897, authorizing municipalities to supply water, being a general municipal act, complete and comprehensive in terms, not only supersedes the Act of 1885, as we have shown, but,—on the same grounds and for the same reasons, necessarily supersedes and takes the place of all the earlier acts upon the same subject. It appears, then, that for the reasons stated, the above cited Acts of 1871 (J. C. Charter), 1882, 1881, with its amendments of 1884 as well as the Act of 1885, are superseded by the later Acts of 1897, and do not confer the power to make the contract under review, upon either Jersey City or East Newark. The power to make a contract of this nature between municipalities, is only to be found in the Acts of 1897, and these acts do not confer the power to make the contract in question, because Jersey City and East Newark are not adjoining municipalities, and because Jersey City does not own or control water-works.

5. There are no statutes which authorize the contract under review. It would be strange if it were otherwise. On the contention of the plaintiffs in error, any city could embark in the business of supplying water to towns or municipalities anywhere in the State. Jersey City could con-

tract with Plainfield, or with Trenton, or with private consumers and could set up works for the purpose of carrying on said supply anywhere in the State. The city could enter upon a costly business venture, wholly outside the scope of municipal government and business.

The purpose of the various statutes authorizing a municipality to supply water outside its own territory, is to permit it to dispose of the surplus obtainable from its own works. It is not intended that the city shall buy water to re-sell it, or shall set up water-works for the purpose of supplying other municipalities.

The fact that in this case the City of Jersey City happens to own the abandoned mains through which it formerly received its supply, and that these mains are but one or two miles from East Newark, might be a reason why the Legislature should give a special authority to Jersey City to supply the towns near the mains, in order to make the old mains available, but the Legislature has not done so and the power is of such an unusual character that general laws cannot be stretched to cover it.

It is very apparent from the facts of the case, that Jersey City could not, by any possibility, perform the contract in question which it has undertaken. It has no water to sell to East Newark. It has no water of its own other than Passaic water. There is no certainty that it will ever have water of its own to sell. There is no certainty as to when it will receive a supply for itself from the Rockaway works, nor, under its contract with Flynn, will it, even when it begins to receive a supply, have the right to divert one gallon to any other municipality. It has agreed to purchase, but it has not purchased the works, nor is any time fixed when it will exercise its option. It may do so at any time within several years.

Until then it will neither own or control water-works. It is absurd to contend that under its contracts with East Jersey Water Company, that corporation is under any obligation to deliver to Jersey City, water, that Jersey City may again sell to East Newark. The East Jersey Water Company contracted with Jersey City to sell it water for its own use, the contracts will bear no other rational construction.

In the case of East Newark vs. N. Y. & N. J. Water Co., 67 N. J. Eq. (1. Robb.) 265, Vice-Chancellor Stevens held that Jersey City and East Newark had no power to contract for a water supply (pp. 269, 271) and this decision was recently affirmed by this Court, for the reasons set forth by Vice-Chancellor Stevens in his opinion. S. C. 68 N. J. Eq. (2 Robb.), 783.

From the foregoing review of the legislation, it is apparent that neither Jersey City nor East Newark had the power to contract for a water supply to be furnished to East Newark by Jersey City, and that this contract, now under review, is *ultra vires* and void as to both municipalities.

But it is contended by the plaintiffs in error, that if these Acts of 1897 be construed to apply only to municipalities whose territories actually adjoin, the acts are unconstitutional on the ground that the classification is arbitrary and insignificant.

But this argument is unsound and without merit. Contiguity of territory is a very sound and intelligent basis of classification in legislation of this character. It was only reasonable for the legislature to place a limit upon the power of one municipality to contract with another municipality with respect to buying and selling a supply of water. To confine the power to cases where the two municipalities adjoin and one has a water supply and the other needs water, is rational and

pertinent. Another reason for confining the power to adjoining municipalities is that contracts made in pursuance of such power, may be fulfilled without using or invading the territory of a third municipality.

The argument, if sound, is fatal and suicidal to plaintiffs in error. If these Acts of 1897 fail, then the power to contract is wanting, even where the municipalities adjoin. Counsel have not been able to specify any other acts conferring the power to contract, and we have already shown that there are none.

In the argument before the Supreme Court. the defendants raised two questions as to the standing of the prosecutors of the writs, which, this Court will probably not consider, as they were most effectually disposed of by the Supreme Court in its opinion in these cases.

1st. *That the status of the prosecutors is not shown by the proofs.*

As to this point, it was too late to raise it first at the hearing. It was not disputed by the defendants below and must be taken to be true as a matter of fact. It will be presumed that this fact was sufficiently established when the writs were allowed. The prosecutors Rehill and wife, claim to be tax payers of Jersey City. The water companies are assignees of an unexpired contract made in 1895, by Kearny with the East Jersey Water Company for a supply of water, and East Newark was then part of Kearny. This was not disputed until the hearing and then only negatively. But the rule is well settled that where the truth of the status claimed by the prosecutors is

not seasonably disputed by the defendants, it must be taken to be true.

Avon vs. Neptune City, 57 N. J. L., 701.

Biddle vs. Riverton, 58 N. J. L., 289.

Dickinson vs. Jersey City, 68 N. J. L.,
99.

Lantry vs. Sage, 69 N. J. L., 560.

2nd. *The second question is that the prosecutors have not such a special interest as will give them standing to contest the validity of this contract.*

The cases upon which the plaintiffs in error rely, namely, Jersey City vs. Traphagen, Fallon vs. Hoboken, and Oliver vs. Jersey City, and the later cases of Morris & Cummings Dredging Co. vs. Jersey City, and Beecher vs. Newark, do not apply. They are all cases involving ordinances relating to streets where the rights of the general tax payers could not be effected. No municipal obligation was proposed to be incurred, by which tax payers could possibly be affected.

The contract in question assumed to bind Jersey City to furnish water to East Newark for a term of years at a fixed price. To perform this contract Jersey City must purchase water from some source. It must pledge its credit and incur liability to fulfill its contract, so that if the contract is beyond the corporate powers of Jersey City, the Rehills as tax payers are legally aggrieved and entitled to prosecute their writ. The Water Companies have a special interest as prosecutors, because the Kearny contract was assigned to them, and is claimed by them to be binding upon East Newark. The status of the Water Companies was not challenged and cannot now be raised.

The rule is settled in this State that where a municipal corporation by action *ultra vires* or otherwise attempts to make a contract or to take

action that will or may result in the unlawful expenditure of public funds, any tax payer has standing to prosecute a writ of certiorari to review such action.

State, Gregory, Pros. vs. Jersey City, 34 N. J. L., 390-399.

State, Danforth, Pros. vs. Paterson, 34 N. J. L., 163-171.

Siedler vs. Freeholders of Hudson, 39 N. J. L., 632.

State vs. Paterson, 39 N. J. L., 489.

Conover vs. Davis, 48 N. J. L., 112.

Read vs. Atlantic City, 49 N. J. L. 558-561.

Middleton vs. Robbins, 54 N. J. L., 566.

Lewis vs. Freeholders of Cumberland, 56 N. J. L., 416.

Platt vs. Englewood, 68 N. J. L., 231.

The cases cited by the plaintiffs in error cannot be construed so as to overturn this long established rule or, to reverse the principle of these decisions.

Nor can these two questions be raised before this Court on these writs of error, for the reason that no error is assigned thereon. The first reason assigned, namely, that the Supreme Court gave judgment for the prosecutors, is too general and altogether too vague. The other two assignments of error are specific and do not apply to these two points.

In conclusion, we urge upon the Court the extravagant nature of the power contended for on the part of Jersey City. This city claims a right to use the money of the tax payers, raised by taxation, to go into the business of supplying water, at prices much less than are charged to its own consumers. It is proposed to pledge the credit of the city, and to incur a liability—which rests upon

the tax payers—for the benefit of the citizens of the Borough of East Newark.

We submit that the Legislature itself could not clothe Jersey City with any such power. Taxation must be exercised for the benefit of the inhabitants of the taxing district, and not for the benefit of those in another taxing district.

Cooley's Const. Lim., 7th Ed. (1903), 704.

Judson on Taxation, (1903), Sec. 354.

Cooley on Taxation, 3d Ed. (1903), p. 225.

The possibility that the city may make a profit out of the proposed expenditure in the laying of mains and in the purchase of water, will not suffice.

In a case in Massachusetts, the Legislature proposed to authorize towns to establish coal yards, and to buy coal at wholesale to be re-sold to the inhabitants of the town. It was contemplated that the business would be carried on without loss, but, as the initial must be borne out of public funds, and as the foundation of the town's credit, must be its power to tax, the Court held that the act was void, because the purposes for which the power to tax might be exercised were not public purposes.

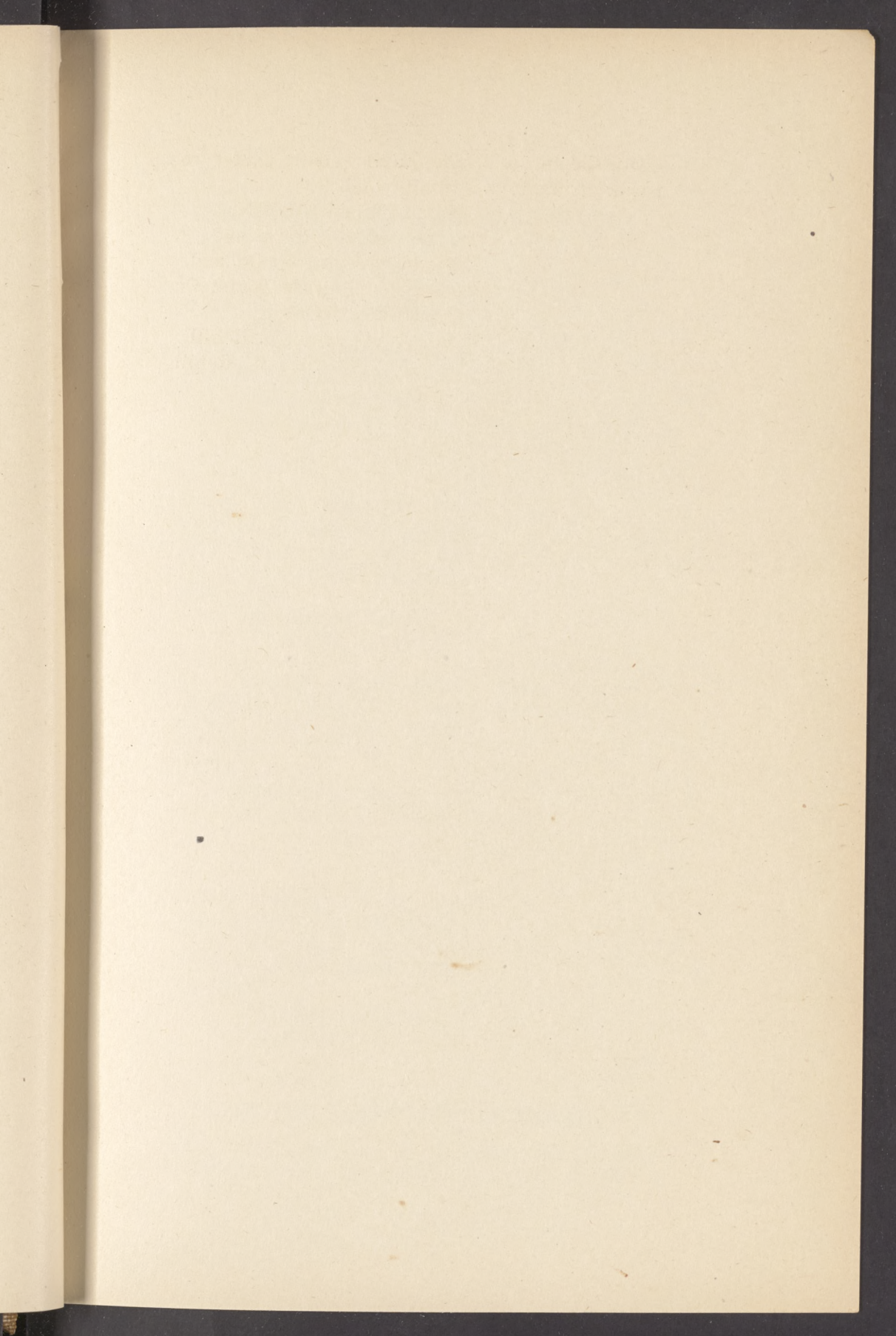
Opinion of Justices, 155 Mass., 598.

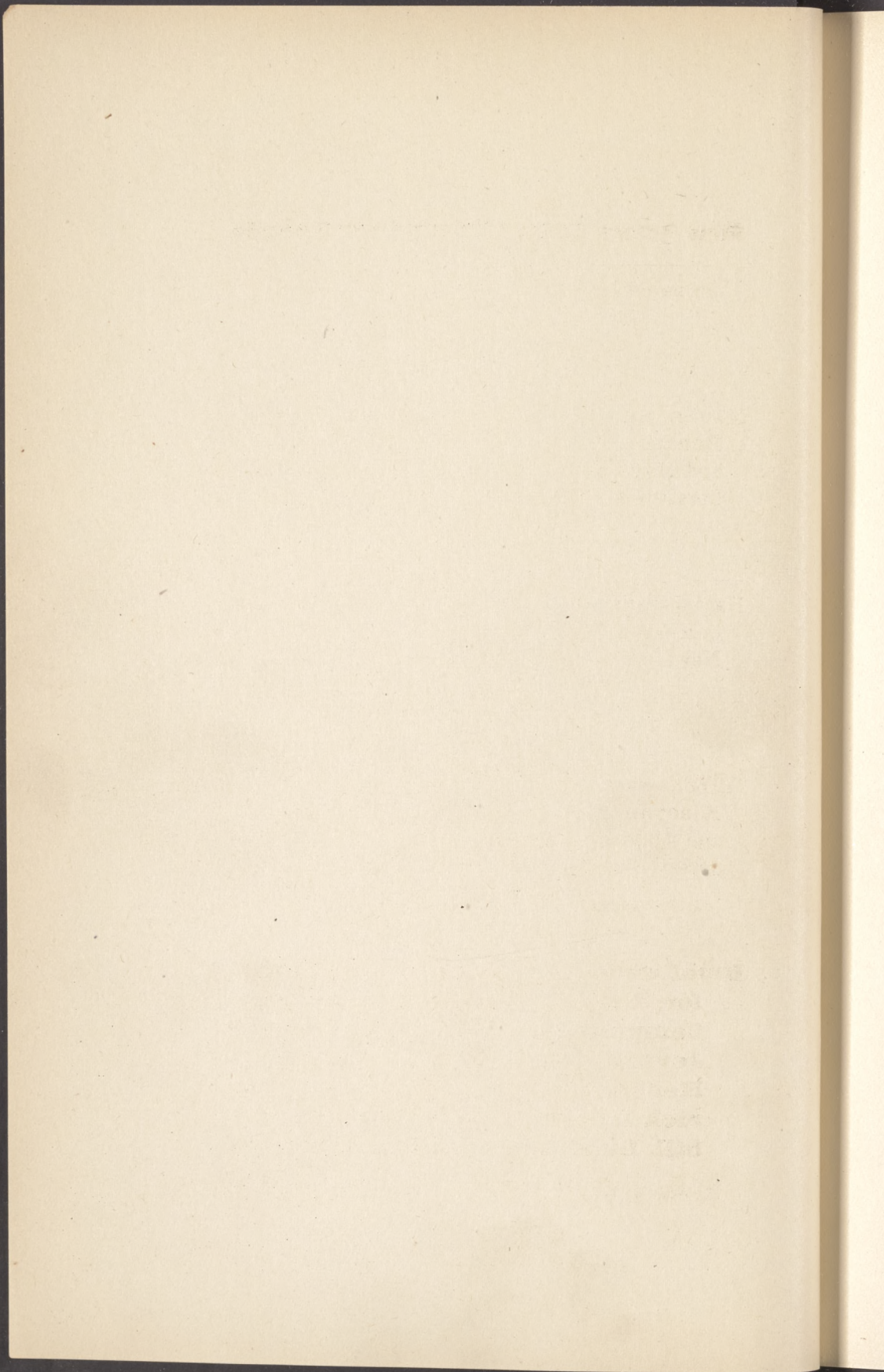
Here, the purpose is public, but is not for the benefit of the people of Jersey City, and they cannot be taxed to promote the public purposes of another taxing district. So far as Jersey City is concerned, the proposition is that they shall carry on a business of a purely private character, involving the investment of capital, with the expectation of profit, which may not be realized.

On the authorities found in the text books above

cited, such a use of the public credit under the power of taxation is wholly void.

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

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)
PATRICK L. REHILL and)
ELLEN M. REHILL,)
Prosecutors Below,)
Defendants in Error,)

vs.)

MAYOR AND COUNCIL OF)
THE BOROUGH OF EAST)
NEWARK, and MAYOR)
AND ALDERMEN OF JER-)
SEY CITY,)
Defendants Below,)
Plaintiffs in Error.)

-----)
NEW JERSEY SUBURBAN)
WATER COMPANY and)
NEW YORK AND NEW)
JERSEY WATER COM-)
PANY,)
Prosecutors Below,)
Defendants in Error,)

vs.)

MAYOR AND COUNCIL OF)
THE BOROUGH OF EAST)
NEWARK and MAYOR)
AND ALDERMEN OF JER-)
SEY CITY,)
Defendants Below,)
Plaintiffs in Error.)

On Writ of
Error to
Supreme Court.

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)
BRIEF FOR PLAINTIFFS IN ERROR.

The Brief submitted in the Supreme Court
completely covers the points involved in this

case and it is herewith re-printed and submitted for the consideration of this Court.

The points therein made warrant a reversal of the decision of the Supreme Court.

Respectfully submitted,

GEORGE L. RECORD,
ROBERT CAREY,
Attorneys for Plaintiff in Error.

NEW JERSEY SUPREME COURT.

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)
 PATRICK H. REHILL and)
 ELLEN M. REHILL,)
 Prosecutors,)
)
 vs.)
)
 MAYOR AND COUNCIL OF)
 THE BOROUGH OF EAST)
 NEWARK and MAYOR)
 AND ALDERMEN OF JER-)
 SEY CITY,)
 Defendants.)
)
 -----) On Certiorari.
 NEW JERSEY SUBURBAN)
 WATER COMPANY and)
 NEW YORK AND NEW)
 JERSEY WATER COM-)
 PANY,)
 Prosecutors,)
)
 vs.)
)
 MAYOR AND COUNCIL OF)
 THE BOROUGH OF EAST)
 NEWARK and MAYOR)
 AND ALDERMEN OF JER-)
 SEY CITY,)
 Defendants.)
)
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BRIEF FOR DEFENDANTS.

This case is one of a series of suits between Jersey City, the Town of Harrison, the Town of Kear-

ney, the Borough of East Newark, and New York and New Jersey Water Company and the New Jersey Suburban Water Company, and in which is involved the right of Jersey City to supply these different towns with water.

To understand the case the Court is respectfully urged to read the stipulation between the parties. It gives a comprehensive view of the situation.

Prior to 1885, Jersey City had constructed a pumping station upon the Passaic River at Belleville, from which water was pumped to a reservoir on the hill near the corner of the Belleville Turnpike and Kearney Avenue in the present Borough of North Arlington. From this reservoir three pipes or mains were constructed along the Belleville Turnpike across the meadows to the high service reservoir in Jersey City, by means of which pumping station, reservoir and mains Jersey City was supplied with water.

In 1885, Jersey City made a contract with the Town of Harrison for a supply of water for ten years and to carry out the same laid a pipe from its large main in Belleville Turnpike at the junction of Kearney Avenue, through said Kearney Avenue in the Town of Kearney to the limits of the Town of Harrison, and thereafter supplied water to the Town of Harrison from its Belleville Pumping Station through said Kearney Avenue pipe.

In 1887, Jersey City made a similar contract for ten years with the then Township (now Town) of Kearney, and thereafter supplied Kearney from said 20-inch Kearney Avenue main.

In 1895, Jersey City was planning for a new water supply system in lieu of the Belleville pumping system, and pending the construction of the same made a contract, in October, 1895,

with the East Jersey Water Company for a temporary supply of water. (Case, Contracts, &c., p. 18). This company laid a 42-inch main across the Passaic River, and in the Spring of 1896 connected the same with the three pipe lines in Belleville Turnpike leading to Jersey City, and also made a separate connection with Jersey City's 20-inch main in Kearney Avenue. Thereafter Jersey City purchased water from the East Jersey Water Company for the use of its own inhabitants and also for the use of Harrison and Kearney.

On June 29th, 1895, the East Jersey Water Company made a contract with the Town of Kearney to supply said town with water. (Case, Contracts, &c., p. 9). This contract contemplated the construction by Kearney of a main up to the 42-inch water main of the water company in Belleville Turnpike, which was never done. Said contract was extended by both parties until July 1st, 1900, but no attempt has ever been made by the Water Company to carry out its contract until July, 1903, and no main has ever been laid by the Town of Kearney.

On the second day of July, 1895, the Borough of East Newark was set off from the Town of Kearney. Kearney continued to supply the Borough of East Newark and the inhabitants thereof with water until July 1st, 1897, at which time it shut off the water supply to the said borough and refused to continue the same. This supply therefore had been made through Jersey City's 20-inch pipe into a tap or branch owned and maintained by the Town of Kearney and thence by a connection to the water mains in the territory of East Newark. When this connection was cut off on July 1st, 1897, the Borough of East Newark made a contract with Jersey City for five years for a supply of water, and made a separate and new connection with the 20-inch Kearney Avenue

main, near the point where the Harrison supply was delivered.

When the contract of 1885 with Harrison ran out, both parties continued to act under it until July 7th, 1903, when resolutions were passed by the Town Council of Harrison, authorizing a contract for ten years with Jersey City. Similar resolutions were passed by Jersey City and delivered to the authorities of the Town of Harrison for execution by them. (Case, Contracts, &c., pp. 45, 46, 47, 48).

On September 15th, 1903, the Town Council of Harrison passed resolutions rescinding the contract of July 7th, 1903, with Jersey City, and further resolutions authorizing a contract with the New Jersey Suburban Water Company. These resolutions are now in litigation on certiorari brought by Jersey City in this Court.

When the contract of 1887 with the Town of Kearney ran out, both parties continued to act under it until said July 7th, 1903. At that time the East Jersey Water Company notified Jersey City that it would discontinue supplying water into the 20-inch Kearney Avenue main on behalf of Jersey City, and claims from that time to have supplied water at that point into the said main to the New Jersey Suburban Water Company, which in turn claims to have supplied it to the two towns and the borough. Jersey City claims that such delivery being in its own pipe has been to it and not to the suburban company, and that it has made delivery to the two towns and the borough, and is continuing to make such delivery.

When the East Newark contract with Jersey City of 1897 ran out, both parties continued to act under it until the 9th day of December, 1903, when a new contract was made between said mu-

municipality and the borough, which contract is the subject of this litigation.

POINT I.

The first and sixth reasons assigned by the prosecutors are that East Newark cannot make a contract for water supply with Jersey City, because said municipalities are not adjoining. In support of this point the prosecutors rely upon the provisions of the borough act (P. L., 1897, p. 285), which provides that the borough can only make a contract for a supply of water with an adjoining municipality; and also the provisions of an act (P. L., 1897, p. 232), which is an act to authorize municipal corporations owning or controlling water works to make contracts to furnish water for public and private uses, with any adjoining municipality or with any private corporation therein. In the first place, we contend that the word "adjoining" in these acts is used in the sense of "adjacent" or "near to," or "in the vicinity of." We contend that the word adjoining should be interpreted with reference to the context of the act and the subject matter to be regulated by it. The word "adjoining" has, according to the dictionaries and the decisions, various meanings. Its primary and technical meaning is undoubtedly "touching" but its secondary meaning as given by the dictionaries and the cases is "near to" or "in the vicinity of" or "adjacent," and the dictionaries all give it as a synonym for these words and phrases. Whether the word is used in its primary or technical or in its secondary or more popular sense, is to be determined from the context and from the subject matter. The Legislature must be presumed to have used this language with a full knowledge of the facts. It is well known that Newark has within ten years constructed a magnificent and enormous system of water works, that Jersey City is about to take over a still larger water works system now nearing completion, constructed at a cost of many

millions of dollars. Both of these systems consist of gathering grounds and storage reservoirs twenty-five or thirty miles away, and large conduits leading therefrom, through many intervening municipalities, to the distributing reservoirs respectively of Jersey City and Newark. Newark has been for many years supplying municipalities with water, like Montclair, which is not immediately contiguous with its boundaries. Jersey City has been for twenty years supplying the West Hudson towns with water, and has water pipes running thereto.

These water supply systems are necessarily constructed to meet the needs of many years to come, and therefore must contain for many years a surplus amount of water which is of no use to anybody, but the cost of gathering which has been actually paid by these great municipalities. To allow five year contracts with the small municipalities through which these pipe lines are laid, or with these places to which these cities already have pipe lines, is obviously to the immense pecuniary advantage of the municipalities owning the works and having the idle surplus of water, as well as to the small communities in question, which have not the financial resources to go a long distance for a water supply.

The Legislature must be presumed to have passed this legislation with full knowledge of these well known facts. It is incredible, therefore, that the Legislature could have deliberately intended to have confined these great and obvious benefits to those communities whose territory happen to "adjoin" the city owning the water works.

It might be contended that the Legislature intended by this legislation to limit the powers of the municipalities affected upon the principle that it would be unwise to allow municipalities to go into the water business and to build mains across intervening territory for the purpose of becoming water merchants. But this purpose is effectuated

by our construction of the word "adjoining" even more than would be the case if the word is given its narrower meaning. For instance, under the construction of the word contended for by the prosecutors, Jersey City, even if it had no pipe line over to the West Hudson towns, could contract with the Town of Kearney and could build a pipe line across the meadows, which would cost \$500,000 or \$600,000, to the settled portion of Kearney, and this would be legal; but it could not contract with the Town of Harrison, although the settled portion of that town is actually closer to Jersey City than is the settled portion of the Town of Kearney. Therefore, such a construction of the act as would bring about this anomalous condition of affairs could not have been contemplated by the Legislature. The theory that the Legislature intended to discourage the building of water mains to long distances for the mere purpose of merchandising water is protected and subserved by holding to our construction of the word "adjoining."

If, however, the word "adjoining" is held by the Court to have been used in its primary sense, we contend that the word itself refers to the subject matter of the legislation, to wit, property, that is, water supply or water works, rather than territory governed and that the true meaning of the act is that any municipality which is adjoining the actual water works of the municipality owning the same, or through which the same are laid, has power to contract. This construction of the word "adjoining" answers every possible motive which can be imagined as moving the Legislature to the passage of this legislation. It fits in with the conditions as they actually exist, and would prevent any municipality from constructing water mains for any great distance for the mere purpose of merchandizing water. It recognizes, however, the facts before stated, as to the existence of enormous mains running long distances through different municipalities, which can be

tapped for the use of such municipalities with great resulting advantage to the cities owning the great plants and the small communities through which they run. It recognizes also that Newark already has mains laid to supply towns not contiguous, and that Jersey City has for twenty years been supplying such towns. It is therefore strongly insisted that the Court should interpret the word "adjoining" either in its secondary or more popular sense, as "adjacent," or that it should interpret it as referring to the subject matter of the legislation, namely, the water works systems and needs of municipalities. By such an interpretation every possible benefit to accrue from this legislation is secured, and no hardship is entailed upon any person or community.

Consider for a moment the predicament in which the Borough of East Newark would have been placed in 1897 if any such construction of the acts of that year as that now contended for had then obtained.

On July 1st, 1897, after several weeks' notice, Kearney arbitrarily cut off the main connecting the town's distributing mains with the Borough of East Newark's system of mains, thereby leaving the borough, but for Jersey City, absolutely without a water supply. Kearney was under no obligation to supply water to the Borough of East Newark. The next adjoining town, Harrison, was itself obtaining its water supply from Jersey City, through this Kearney Avenue main. There was no other town contiguous except Newark across the river, which was under no obligation to supply said borough. For the borough itself to go to a distance and condemn land and buy water rights and build its works would have been a tedious undertaking; and the cost would have been prohibitive. An artesian well in the borough limits would have been costly and uncertain.

A connection with the Kearney Avenue main belonging to Jersey City where the same touches the

limits of the borough of East Newark, was not only a convenient, inexpensive, and altogether appropriate means of obtaining a water supply, but was the only practicable means then open to the borough. Without this resource the borough would have been practically ruined, and its industries would have been forced to shut down, and its inhabitants subjected to hardship and disease. It is inconceivable that the Legislature could have ever intended to pass an act which would result in putting a thriving borough in such a dreadful predicament. No possible motive of public policy can be imagined to justify such an intent. We submit, therefore, that the Legislature could never have contemplated such a meaning of the word "adjoining," and that if it has carelessly passed an act capable of such an interpretation, such an act is manifestly opposed to the principles of our Constitution, is special legislation, and therefore void, as hereinafter shown.

POINT II.

If, however, the Court holds that under the said Act of 1897 and Section 76 of the Borough Act of that year, only municipalities whose territory actually adjoins can contract with each other for a water supply, we submit that the said act and section are unconstitutional. Upon the face of the acts they are apparently general. They deal, seemingly, with all municipalities, and the Borough Act deals with all boroughs. But a little consideration will show that this is not the real classification.

Consider first the general Act of 1897, which precedes the Borough Act. By the classification embodied in this act municipalities are divided into groups, to wit, any municipality owning water works and any other municipalities which happen to join the same. To municipalities thus grouped together is given a special power, or upon them a special limitation is imposed, distinct

from that given to or imposed upon other groups. Good reasons for including in each group a municipality owning water works and contiguous municipalities can be imagined, viz., that the contiguous municipalities might have the benefit cheaply of water resources of the municipality owning water works, and that such latter municipality might have the benefit of an opportunity to sell its surplus water, or that the Legislature wished to restrict the power of a municipality owning water works so as to prevent such municipalities from entering into large expense from laying water mains across intervening spaces to supply more distant places. But while these reasons justify the forming of municipalities into groups, they by no means justify, nor can any reason be imagined which will justify, the exclusion from those groups of other municipalities to which the reasoning underlying the grouping or classification equally applies. It is a settled principle that any attempt to classify must include in the classification all municipalities to which the characteristics of the classification attaches. The rule is admirably stated in the case of *Hammer vs. State, ex rel Richards*, 15 Vr., 669:

“The municipalities in which the peculiarity exists would constitute a class and the legislation would in fact be general, because it would apply to all to which it would be appropriate, but distinctions which do not arise from substantial differences so marked as to call for special legislation, constitute no ground for supporting such legislation.”

The rule is also stated in *Van Giesen vs. Bloomfield*, 18 Vr., 446:

“It is thus apparent, I think, that in the judicial mind the distinction necessary to mark a class must be something in the situation or circumstances of the places embraced by the legislative enactment,

“which would render like powers, if granted, inappropriate to and unavailable for other townships. Within this rule of interpretation the validity of the law of 1897 cannot be vindicated. It does not appear why legislation enabling other townships to light lamp districts at the expense of the general tax levy would not be equally appropriate.

“The right to legislate for cities as a class is not involved in this controversy. *but* the attempt to bestow upon one township, to the exclusion of others, special powers by associating it with cities, cannot be successful without overriding the barrier which has been erected against special legislation. The legislative act in this respect is without the force of law.”

The facts hereinbefore stated with reference to the great water supply plants of Newark and Jersey City are well known, and must be presumed to have been within the knowledge of the Legislature. Upon the basis of the foregoing supposed reason for passing this legislation, or upon the basis of any other imaginary reason therefor, how can a classification be upheld which would put Jersey City and Kearney into a group, and give them powers or impose upon them limitations in reference to contracting for a water supply, which would not equally apply to Jersey City and Harrison or to Jersey City and East Newark as a group? Upon what possible theory can East Newark or Harrison be excluded from such a group or classification? It costs practically nothing to either Jersey City or East Newark to contract for a water supply. It would cost nothing for Jersey City to contract with any one of the numerous towns or villages or boroughs through which its new pipe line runs for twenty-six miles to Boonton. It would cost nothing for either New-

ark or the numerous cities, towns or villages through which is laid its thirty-mile pipe to the mountains of North Jersey. Why should not either of these great cities be allowed to group themselves for the purpose of water supply with any or all of these municipalities through which their pipe lines run, as well as with any municipality which happens to be contiguous to their city limits? The grouping, to be within the constitutional rule, should be a municipality owning water works and any other municipality through which the plant of the first municipality extends or which was within a mileage limit of adjacency stated in the act.

If the test is the expenditure of money, then the classification should be any city owning water works grouped with any other municipality which was so situated as to be able to reach the water supply of the first municipality within a scale of expenditure, or within a distance of miles, named in the act. The mere fact that this legislation, construed according to the contention of the prosecutors, brings about the astonishing condition of things which we have mentioned, to wit, the denial of a right or power to East Newark which is accorded to Kearney, without any imaginable reason therefor, is sufficient to show that it is special and not general legislation. The simple fact that the Town of Kearney would be able to contract to take water out of this 20-inch Kearney Avenue main under this legislation, but that the Town of Harrison, next door, would be prohibited from taking water from the same pipe line from which it has been taking it for twenty years, simply because one town happened at some point to touch the confines of Jersey City and the other did not, is so absolutely ridiculous and unjustifiable as to expose in the plainest light the special character of the legislation.

The same reasoning applies to Section 76 of the Borough Act. Under that section if the first act

of 1897 was stricken out, the borough would be authorized only to contract with an adjoining municipality, which, of course, by necessary inference would also be authorized to make the contract. The grouping or class there is the borough and any adjoining municipality. It is not even there required that the adjoining municipality should have any water works, and in that respect the utterly unreasonable character of the classification is more apparent than in the first Act of 1897, but special character of the act is the same. No reason can be given for the grouping of a borough and an adjacent municipality into a class, and conferring upon that class powers, or imposing upon it restrictions, which would not apply equally to a borough and another municipality which, although not contiguous, had a water supply system which ran through the borough or was situated upon its border.

We submit, therefore, that if the word "adjoining" is to have the limited meaning ascribed to it by the prosecutors in these two statutes, the first statute and Section 76 of the second statute, are both unconstitutional. It is provided by Section 97 of the Borough Act that any section of that statute, if held unconstitutional by the Court, may be dropped without destroying the validity of the remainder of the act.

POINT III.

The Borough Act of 1897 in section 96 (P. L. 1897, p. 329), provides that every borough theretofore established (the Borough of East Newark was established in 1895) shall come under said act, and further that it "shall have all the powers conferred by this act upon boroughs, and shall be subject to all the duties imposed by boroughs by this act. They shall retain, hold, possess and enjoy and be absolutely invested with all the rights and property heretofore possessed and enjoyed by the said borough."

It is claimed on behalf of the defendants that this section is contrary to the construction of section 76 of the said act which limits the power of a borough to make a contract with an adjoining municipality, or for a period of five years.

The Borough of East Newark was formed in 1895, and prior to the passage of the Act of 1897 it had the unquestionable right to buy water from Jersey City for a year or for any term of years up to ten, and it had the right to contract with any water company for twenty-five years. It had laid a system of mains and had extended the same, and had raised money by taxation, relying upon that right. It is submitted, therefore, that this borough, having possessed that right at the time of the passage of the Borough Act of 1897, is confirmed therein by the language of section 96. The reading of the two sections, 76 and 96, together, if 76 can be held valid, would therefore mean that any new borough should thereafter have the right to contract only with an adjoining municipality and with a water company, for a term of five years, but that boroughs already incorporated which possessed wider powers of rights, should retain those rights. Such a construction would uphold the contract in question here.

POINT IV.

The second reason of the said prosecutors is that the Borough of East Newark at the time the contract in question was entered into, was being supplied with water under an existing contract theretofore made between the Town of Kearney and the East Jersey Water Company, and then binding upon the said Borough of East Newark. This is a complicated point and to be understood requires a careful statement of the facts in evidence.

The Town of Kearney was originally supplied by Jersey City under a contract made in 1887, as

above stated, through the Jersey City Kearney Avenue main, which was connected to the city's 36-inch cement main in Belleville Turnpike, running from the reservoir in that neighborhood to the city.

In 1895, the Town of Kearney made a contract with the East Jersey Water Company (Case, Contracts, &c., p. 9), whereby the East Jersey Water Company agreed to deliver water from its 42-inch main at or near the junction of Kearney Avenue and the Belleville Turnpike, the town to furnish a main into which such delivery should be made. Later in the same year the water company made a contract with Jersey City for a temporary supply of water, and early in 1896 commenced delivery to Jersey City through connections made between the said Water Company's 42-inch main, which had been built across the river, and the three city mains in the Belleville Turnpike. In the beginning the water introduced from the East Jersey Water Company main into the city's 36-inch cement main was in part diverted by the city into the 20-inch Kearney Avenue main, and thereby to the Town of Kearney, and the Town of Harrison, and the Town of Kearney in turn delivered a portion of this water into the distributing mains lying in the then newly created Borough of East Newark, paying Jersey City for the water used by it and East Newark, and collecting in turn from the borough for the water used by it.

A little later, about April 8th, 1896, the East Jersey Water Company, at the request of Jersey City, made a separate connection between the water company's 42-inch main and the Jersey City Kearney Avenue 20-inch main, and thereafter the water for these three towns flowed directly from the East Jersey Water Company's 42-inch main into the Jersey City 20-inch Kearney Avenue main; but from that time until July 8th, 1903, the East Jersey Water Company rendered bills for water to Jersey City, including therein not only

the water delivered into the three mains running to Jersey City, but also the water delivered to these three towns by the connection between the company's 42-inch main and the city's 20-inch Kearney Avenue main, at the rate of about \$36 per million gallons. Jersey City in turn continued to render bills for this water delivered through the 20-inch Kearney Avenue main to Kearney and Harrison and East Newark at the rate of \$90 per million gallons, which were by said towns and borough duly regularly paid to Jersey City until July 8th, 1903.

On July 2nd, 1895, three days after the making of the contract between Kearney and the East Jersey Water Company, the Borough of East Newark was formed; and thereafter and until July 1st, 1897, the Borough of East Newark received its water from the Town of Kearney and paid the town for the same, the town in turn paying Jersey City at the rate of \$90 per million gallons.

In the Spring of 1897, the Town of Kearney notified the Borough of East Newark that on the first day of July it would shut off the water flowing into the mains of the said borough, and on said date this threat was carried out and the water actually shut off. In the meantime the borough had negotiated a contract with Jersey City (Case, &c., p. 78), and on said first day of July made another connection with the Jersey City Kearney Avenue 20-inch main at the lower end thereof, and thereafter the borough received its water from Jersey City and paid Jersey City therefor.

It is conceded that no attempt was made to carry out the contract between the East Jersey Water Company and Kearney, dated June 29th, 1895, until July 8th, 1903. On page 14 of the printed documents annexed to the state of the case, appears the first extension to this contract, under date of February 14, 1896, which recites that the township has no water main in which to receive the water and must make provision for such a main, and then extends the time for the town to

get ready to take water until June 29th, 1897. On June 17th, 1897, (contracts and documents, p. 15), appears the next extension, which was to September 29th, 1897. On page 16 of the documents appears the last extension to this contract, which was until June 29th, 1900. Nothing further was ever done by either party until July, 1903. In the meantime the East Jersey Water Company continued to deliver water into said 20-inch Kearney Avenue main at the request of Jersey City, for which Jersey City paid at the rate of \$36 per million gallons, and Jersey City continued to furnish this water to Kearney as well as to Harrison and East Newark at the rate of \$90. No demand was ever made upon the Borough of East Newark by the East Jersey Water Company to carry out the contract of June 29th, 1885, with the Township of Kearney. The company never tried to enforce it as against the Township of Kearney, but on the contrary, during all these years, has acquiesced in the abandonment of the contract with Kearney, and has even gone so far as to supply water to Jersey City, with which Jersey City has supplied these very towns.

Under the circumstances it is submitted that the East Jersey-Kearney contract of June 29th, 1895, has been abandoned by the water company as to the Township of Kearney, and certainly as to the Borough of East Newark.

It is submitted that as a matter of law the Borough of East Newark cannot be held to this contract with the Town of Kearney. The contract was with the corporate entity known then as the Township of Kearney. At the time it was made that entity was in process of division and the water company is charged with notice that such partition of territory was about to take place. The contract was signed on June 29th, 1895, and the actual incorporation of East Newark as a borough was actually consummated some three days later. Therefore, the water company was not only

charged with notice that this was about to take place, but in three days could have expended no money in carrying out the contract in ignorance of the fact that this separation was about to take place.

Upon July 8th, 1903, the situation is claimed to have changed. On that day the East Jersey Water Company made an assignment of its Kearney contract to the New Jersey Suburban Water Company and the New York and New Jersey Water Company, and it also made a contract with these water companies to deliver water to them for use in fulfilling such contracts as they might obtain in Hudson County, outside of Bayonne. (This assignment and contract appears in case, contracts and documents, p. 36). These assignee water companies thereupon served notice upon the Borough of East Newark that after the said date the water received by East Newark would be delivered by these two water companies, and the water companies claim that East Newark has since that time received water from them. We deny this proposition as a matter of fact and as a matter of law. It is conceded by the stipulation (case, p. 36), that no interruption in the flow of water from the 42-inch main of the East Jersey Water Company into the 20-inch main of Jersey City took place on or about July 8th, 1903, or at any other time. The only claim is that by virtue of the notices served on Jersey City and by virtue of the assignment to the water companies and their notices served upon East Newark, that the East Jersey Water Company ceased delivery to Jersey City at that point and commenced delivery to the water companies, which in turn delivered to the Borough of East Newark. The claim of Jersey City and East Newark is that on and after July 8th, 1903, the East Jersey Water Company continued to deliver water exactly as theretofore, and that therefore the delivery into Jersey City's pipe at that point was a delivery to Jersey City as a matter of fact and of law. It is also claimed

as a matter of law, because the East Jersey Water Company was bound by its contract so to deliver the water.

The original contract between Jersey City and the East Jersey Water Company, dated October 12th, 1895, (case, contracts and documents, p. 18), was a contract to deliver water to Jersey City for its needs, which legal municipal uses we claim were not only the needs of the inhabitants of the city itself but the needs of such outside customers as the city at that time had, to wit: The Pennsylvania Railroad shops on the meadows in Kearney, the then Township of Kearney, and the Town of Harrison, and subsequently the Borough of East Newark. The first delivery under this contract was into the three mains of Jersey City, from one of which Jersey City made delivery to these towns and borough, and subsequently a separate connection was made with the water company's pipe and the Jersey City pipe for convenience and for greater security. This was made at the request of Jersey City. This delivery to Jersey City continued from the Spring of 1896 until at least July 8th, 1903. This method of delivery was, therefore, an interpretation of the meaning of the temporary supply contract, by both parties, because the water company rendered its bills and the city paid them under and by virtue of said contract. The supplemental temporary contract of March 31st, 1902, (case, contracts and documents, p. 30), provided that after the completion of the new water main of Jersey City's new plant as far as Upper Montclair, where the same crosses the pipe line of the East Jersey Water Company the East Jersey Water Company should thereafter turn the temporary supply of water for Jersey City into the new main at that point. This pipe line was completed about the first day of July, 1903, and on or about the 8th day of July the water company turned the water into said main, and thereupon notified Jersey City that it would make no further delivery into the

Kearney Avenue main for Jersey City, claiming the right to discontinue the same under the said supplemental contract. Jersey City, however, claims that an inspection of this supplemental contract will show that the true meaning of it was that the water company should only turn into the new main at Upped Montclair that portion of the water supply which Jersey City needed for its customers in Jersey City. The reason for this appears in the recitals in the said contracts to the effect that the reason for making this connection at Upper Montclair was that the pipes running across the meadows were some of them old, and were already up to their limit of carrying capacity, and that the introduction of the water by the new main would enable Jersey City to dispense with pumping, and also enable it to get a longer test of the new main before purchasing the same. That this was the true intent of the parties is undeniable, and Jersey City claims that the East Jersey Water Company is bound to deliver the water into the 20-inch main in Kearney Avenue, until such time as the new plant should be completed to such an extent that water could be delivered therefrom to Jersey City; and Jersey City claims that as a matter of fact such delivery continued to be made. We contend that a delivery into the pipe of Jersey City at Kearney Avenue on and after July 8th, under precisely the same conditions, physically, as existed before, continued to be a delivery to Jersey City as it had theretofore been. This seems too plain for argument. If a corporation, municipal or otherwise, owns a pipe or receptacle or reservoir, and another corporation pours water into it, they do it either under contract or as a volunteer, and at all events such pumping of water into said receptacle or reservoir constitutes in law or in fact a delivery of water to the owner of the receptacle, reservoir or pipe. The delivery at that point could not be made by the East Jersey Water Company to the prosecuting water companies, because these water companies, as admitted by the stipulation, had no

property at that point. They owned no reservoir, pipe or receptacle, and concededly had no vestige of interest in or ownership or title to the Kearney Avenue 20-inch pipe of Jersey City, nor had the East Jersey Water Company. This pipe was the sole property of Jersey City. It cannot be claimed that these water companies made delivery by using Jersey City's pipe, to the Borough of East Newark. They could not do this without getting legal possession of Jersey City's pipe, which they have not done. They could not do it by adverse possession, because in the first place the courts will not lend their sanction to taking possession of other people's property by adverse possession, which is in plain language, stealing; nor is it possible to obtain adverse possession of a pipe buried in a street by serving notice upon the owner or by introducing water into it. On the contrary, the introduction of water into this pipe is either a voluntary act or is a delivery to Jersey City.

It therefore appears that the prosecuting water companies have no contract relation with the Borough of East Newark whatsoever, and that they have not delivered to the borough any water and are not now delivering water to it, and therefore the claim that the borough is now being supplied with water under the Town of Kearney-East Jersey Water Company contract falls to the ground. Besides if East Newark was now in fact getting water from the prosecuting companies as claimed this fact would not deprive it of the right to contract with Jersey City because such an arrangement would be plainly terminable at will.

POINT V.

The third and fifth reasons advanced by the prosecutors are that Jersey City has not, or does not own or control, water works, and therefore could not contract to furnish a water supply to the Borough of East Newark. This involves a consideration of the power of Jersey City to make

this contract. It is submitted that both East Newark and Jersey City were legally competent to contract. In the original charter of Jersey City (Laws of 1871, p. 1094, Sec. 76), Jersey City is authorized to take water for its own use from the Passaic River at Belleville, and to construct a water works plant, and is further authorized to supply water from said point to the inhabitants of any town in the limits of Hudson County. By the Act of 1888 (Gen. Stat., p. 210, Sec. 405), any municipality is authorized to acquire water by contract with a private corporation, which contract may contain an option of purchase, and the proofs show that under this act Jersey City made a temporary contract with the East Jersey Water Company, and also a contract with P. H. Flynn for a new and permanent supply, and Jersey City has agreed to buy this new plant when completed. It is submitted, therefore, that in the Statute of 1871, empowering Jersey City to supply any town in Hudson County with water from the Passaic River at Belleville, the location of the source of supply was not of the essence of the power granted, but it was a deliberate grant on the part of the State to the city for the benefit of the other towns of the County, so that they might avail themselves of the works which would be constructed for Jersey City. When Jersey City's power to obtain water from the Passaic was enlarged by the Act of 1888, authorizing it to obtain water from a temporary source and to contract for a new water works plant from another permanent source, the power granted by the Statute of 1871 to supply any towns with water in Hudson County travels along with and is supplemented by the new grant of power, and Jersey City is therefore authorized by the fair interpretation of all these acts together, to acquire water for its own purposes and as a part of its plans for such supply to provide for the supply of any town within the County of Hudson. The Act of 1888 authorizes cities "to contract with a water company for a supply of water for extinguishing fires, ect. * * * and for

such other lawful purposes as may be deemed convenient."

In October, 1895, when the East Jersey-Jersey City temporary contract was made, Jersey City was under contract with Harriss and Kearney, of which latter East Newark was then a part. To carry out these contracts was a "lawful purpose," for which it could contract with a water company, and to renew said contracts or make others like them would otherwise be a lawful purpose for which it could obtain a temporary or permanent water supply. The power of Jersey City to contract with any town or borough in this matter would, of course, impliedly empower any town or borough thus contracting to make such a contract. Jersey City is also authorized to make a contract with the borough by virtue of the Law of 1885 (Gen. Stat., p. 655, Sec. 940). This act gives the power to every city owning and controlling its own water works to make contracts with any city, town or township in the State. Adequate power is also given in the law of 1884 (Gen. Stat., p. 2207, Sec. 385).

Section 5 of this act authorizes any "city having water works" to contract with any "city, town or township." We contend that city, town or township is intended to include boroughs or other municipalities, because in the first section of the act, and in its title, these words are several times followed by the words "or other municipality"; and in these sections powers of issuing bonds and laying mains are specifically given to all these "other municipalities" which were useless unless such municipalities were to be the beneficiaries of the power to contract given in the later section—Section 5 of the act.

The reasoning of the Court in *Van Riper v. Parsons*, 11 Vr., p. 1, is exactly in point. It is there held that the word "town" in clause 2, paragraph 7, of Article 4 of the Constitution, which provides that the Legislature shall not pass special laws regulating the internal affairs of towns and counties, should be construed to include cities. The Court says, on page 4:

"The contention is, that the word 'towns' does not embrace cities. But this argument is founded on the false basis of looking only at the letter of the law and turning away from its spirit. It is true that if the letter of the law were absolutely unambiguous and definite, and were susceptible of but a single meaning, the clause would have to be read in such a sense, no matter to what futility it might lead. But such is not this case; the word 'town' has no such fixed signification as this, for though in its narrower sense it denotes something other than a city, in its broader scope it comprehends such a municipality. Mr. Tomlyn, in his law dictionary, under the title 'Town' says: 'Under the name of a town or village, boroughs, and it is said, cities are contained for every borough or city is a town.' * * * * But this uncertainty obtains only so long as we yield our minds to the rigor of verbal definitions; for when once we emancipate ourselves from such bondage, and look at the purpose of this law, all doubt is at an end. When we find that the adoption of the narrow signification of the term used will lead to positive absurdity, and that the reception of the word in its wider import is attended with the establishment of a rule of public policy, both wise and salutary, it is not difficult to make choice between the alternatives."

This reasoning is exactly in point. The obvious intention of this statute is to apply to all classes of municipalities. What reason can be imagined for applying this legislation to cities, towns and townships and excluding therefrom boroughs. The borough is of all these municipalities the particular class which needs this legislation. A borough is a small community and that it should have the right to obtain a water supply from the surplus of some larger neighboring community and not be subjected to the prohibitive expense of going a long distance and constructing a water supply for its comparatively small means is apparent. Consider also the absurdity involved in excluding boroughs from this legislation. Jersey City has a pipe line running down Kearny Avenue and ending at the point where the towns of Harrison and Kearny and the Borough of East Newark all join. It has supplied all of these towns for upwards of twenty years with water. How perfectly absurd it is to give a definition to the words "cities, towns and townships" which would authorize Jersey City to supply Harrison and Kearny from this pipe line but would forbid it from supplying the Borough of East Newark. Every consideration of public policy requires that the rule in *Van Riper v. Parsons* should be followed in this case.

We also contend that this supplemental act is not governed by the amendment to the original Act of 1881, approved May 9, 1884, (Gen. Stat., p. 2205, Sec. 384), because this amendment refers

specifically only to contracts between the town or township and water company or aqueduct board, and does not deal with the much broader power to contract with any city having water works, conferred by Section 5 of the supplementary act.

It may be further objected that the acts of 1884 and 1885 only authorized towns to contract with cities owning water works and that Jersey City is not a municipality that comes within that description. It is submitted that this contention cannot be maintained. Jersey City is a city which "owns or has" water works. The stipulation and proofs show that a generation ago Jersey City established its water works by building a pumping station at Belleville and pumped water from the river to a reservoir at the junction of Kearney Avenue and Belleville Turnpike, from which the water flowed by gravity in three pipes across the meadows to another reservoir in Jersey City, and that it has certain reservoirs in Jersey City, where were situated other pumping machinery, reservoirs and distributing mains. It also appears that Jersey City constructed and owns the main in Kearney Avenue, from which Kearney, Harrison and East Newark is supplied. (Stipulation, par. 2; Case, p. 25). It also appears that after the execution of the temporary contract between the East Jersey Water Company and Jersey City, and the discontinuance by Jersey City of the taking of water out of the Passaic River at Belleville, Jersey City has maintained its water supply plant at Belleville intact and ready for instant use. (Stipulation, Case, p. 28). When the Passaic River began to be polluted by sewage in the early nineties, Jersey City was confronted with the necessity of furnishing a filtration system at Belleville or obtaining a new supply. It elected to obtain a temporary supply from the East Jersey Water Company, and to obtain a supply, permanently, by contract with P. H. Flynn. It is submitted that this action did not make Jersey City pass from the category of a municipality "having waterworks" to a municipality

that has no waterworks. The true interpretation of the term "a municipality having water works" is that of a city which has a supply of water and a water works plant, by which it can carry on the business of supplying water either to its inhabitants or to other municipalities with which it may have contracts. What difference does it make whether Jersey City buys coal, installs machinery and hires men and pumps water from the Passaic River for the use of East Newark and its own people, or whether it lets out the actual pumping at Belleville by contract at so much per million gallons? What difference does it make, to carry the illustration a step further, if Jersey City, instead of letting out the pumping at Belleville, actually buys the water by the million gallons from some person or corporation authorized to pump and sell the same? The test is, when applied to the question of power to contract, has Jersey City the water works plant and has it the water supply which will enable it to carry out this contract? On December 9th, 1903, Jersey City had a contract with the East Jersey Water Company by which it was enabled to buy all the water it required, until March 1, 1904, when its new supply will be ready under contract with P. H. Flynn. Therefore, as far as East Newark is concerned, Jersey City was a municipal corporation owning water works, to wit, the necessary mains to reach the limits of East Newark and the necessary water. In that respect it was precisely in the same condition that it had been for many years prior to said date, during which time it had sold and delivered water to East Newark and received pay therefor. After March 1st, 1904, the water will be delivered to Jersey City from its new reservoirs, and the city will have such an equitable interest in the new plant that, so far as East Newark is concerned, it could be considered a municipality owning water works. It is submitted, therefore, that Jersey City is a municipality owning water works, within the meaning of the act.

But even if Jersey City does not to-day own its

own water works, the contract under review in this case expressly provides (Case, p. 5), that if it shall be held by the Court in any proceedings involving the legality of the contract that Jersey City has no power to deliver water under the contract until it shall acquire the additional water works plant now under construction for Jersey City, then the contract shall be operative from the time of the acquirement of such plant, which shall not be later than January 1st, 1905. The stipulation shows that such new water works plant is under construction and is rapidly nearing completion, and that the East Jersey Water Company has guaranteed that it shall be so far advanced as to deliver water therefrom on March 1st of the present year. Therefore, it is not only possible but entirely probable that on or before January 1st, 1905, Jersey City will be in full legal possession and ownership of the new water works plant, and therefore will be in a position to carry out this contract, even if it is not now in such position.

POINT VI.

The fourth reason advanced by the said prosecutors is that the said contract was not approved by the voters of the Borough of East Newark. Under the law cited in the foregoing pages it is submitted that no such requirement exists and that the contract is legal without being passed upon by the voters of the borough.

POINT VII.

The seventh reason advanced by said prosecutors is that said contract was executed without the consent of the Board of Aldermen of Jersey City, which prosecutors claim is the governing body of said city. It is submitted in reply that the Board of Aldermen is not the governing body of Jersey City in any respect, and certainly not in relation to matters of water supply. The whole subject of water supply and all control over the same is vest-

in the Board of Street and Water Commissioners, by virtue of the Act of 1891 (P. L., 1891, p. 249), The only requirement is that the water contract shall be approved by the Board of Finance and by the Mayor, which was done.

POINT VIII.

The eighth reason advanced by the prosecutors is that the rate charged East Newark by this contract is less than the rates charged for the same service to consumers within the limits of Jersey City. It is submitted that this has no bearing upon the validity of this contract. As a matter of reason it is proper for Jersey City to deliver water at the wholesale to the Borough of East Newark, which involves no cost or expense for care and maintenance of plant, at a less figure than it charges for the same service in Jersey City, where it is obliged to maintain an expensive force to administer the local system. As a matter of law, there is no requirement that compels Jersey City to charge East Newark the same price that it charges the consumers in Jersey City. As a matter of fact the rates in Jersey City vary, and if there is any legal right in the premises it is on the part of any customer in Jersey City to compel Jersey City to supply water to Jersey City's customers at the same rate as they have agreed to supply East Newark. The whole point is immaterial in the consideration of this case.

POINT IX..

The ninth reason advanced by the prosecutors is that Jersey City is now and will be wholly unable to perform its part of the contract to supply the Borough of East Newark with water as provided in the said contract. It is submitted in answer that the facts recited in the foregoing pages show that Jersey City has been supplying the Borough of East Newark with water since July 1st, 1897; that it is now supplying water to the said borough and that it will be able to supply

water to the said borough from its new water works system by making a short connection referred to in the stipulation as soon as the East Jersey Water Company shall cease to deliver water to Jersey City at the junction of Kearney Avenue and Belleville Turnpike. The acts heretofore referred to give Jersey City and East Newark the right to make such a connection, and East Newark has assigned its right to Jersey City in the contract in question.

POINT X.

All of the reasons submitted by the prosecutors, the New Jersey Suburban Water Company and the New York and New Jersey Water Company, cover substantially the same points as the reasons filed by the other prosecutors, and which have been considered in the foregoing pages.

POINT XI.

Defendants contend that under the decisions in our State the prosecutors have failed to show any interest in the subject matter of this suit which would justify the Court in setting aside the contract upon their application. The principle laid down in the cases is that where an act is alleged to be beyond the power of the municipal corporations making the contract, the Court will not entertain an application to set aside a contract upon certiorari sued out by the prosecutor unless he can show some special injury to his property distinct from and greater than the injury to be suffered by other tax-payers or by the public at large. The cases upon this point are well summed up and reviewed in the case of Beecher vs. Newark, 25 Vr., 475:

“The reasons filed for setting aside the ordinance, all, with one exception, assign the lack of power in the board to authorize such an encumbrance of the public

“street, and a preliminary question there-
 “fore arises whether these prosecutors can
 “prevail on reasons of that nature.

“The latest judgments on this subject,
 “delivered by the Court of Last Resort, are
 “to be found in Tallon v. Hoboken, 31
 “Vroom, 212, and Oliver v. Jersey City, 34
 “id., 634. In the Tallon case an ordinance
 “beyond the power of municipality, and
 “which attempted to sanction a special oc-
 “cupation of a street, was assailed by a
 “prosecutor who had a right in the street
 “different from the right of the public, and
 “therefore would suffer a special injury be-
 “yond that sustained by the public, and
 “also by prosecutors who had no such right
 “and would suffer no such injury. The
 “Court adjudged that only the prosecutor
 “suffering the special injury could main-
 “tain a certiorari to question the ordinance.
 “In the Oliver case, where also a special
 “occupation of a street was the matter
 “complained of, the prosecutor was said to
 “have no interest differing in character
 “from that of other citizens using the high-
 “way, but the ordinance was attacked on
 “the ground that it had not been adopted
 “in accordance with the municipal law, and
 “the Court concluded that the prosecutor
 “had a legal standing for the maintenance
 “of the writ.

“Mr. Justice Van Syckel, delivering the
 “opinion of the Supreme Court in the Oli-
 “ver case, which on this point was approv-
 “ed by the Court of Errors, declared the
 “basis of these adjudications to be, that
 “when the ordinance is beyond the power
 “of the municipality, so that it would af-
 “ford no legal protection to the acts done
 “under it, even against a collateral attack,
 “then the prosecutor must show a private

“interest different in kind from that of
 “the public; but when the illegality of the
 “ordinance consists only in the mode of its
 “adoption, then a private prosecutor with-
 “out such an interest as may maintain a
 “certiorari in defense of the public rights.

“The test to be applied in determining
 “whether that private interest exists or
 “that special injury may be suffered, which
 “is necessary to entitle a private prose-
 “cutor to question by certiorari the power
 “of a municipality, has not hitherto been
 “clearly defined. But light is thrown upon
 “it by the very recent decision of this Court
 “in *Morris & Cummings Dredging Co. v.*
 “*Jersey City*, where resolutions of a mu-
 “nicipal board, providing for certain al-
 “terations in Chapel Avenue, west of the
 “Morris Canal, were set aside as being ul-
 “tra vires, at the instance of the prosecu-
 “tor owning land on the avenue east of
 “the canal. This decision appears to have
 “been concurred in by Mr. Justice Van
 “Syckel, whose statement of the doctrine
 “was approved in the *Oliver* case, and by
 “Mr. Justice Gummere, who delivered the
 “final opinion in the *Tallon* case. It may
 “therefore, be deemed consistent with the
 “rule laid down by the Court of Errors.

“This decision indicates that the neces-
 “sary private interest or special injury
 “may be found, even though the acts to be
 “done under the invalid ordinance will not
 “invade the property of the prosecutor or
 “change the street in front of his property.
 “On this footing, the question whether the
 “requisite interest or injury appears when
 “alteration of a highway is intended, seems
 “to be one of fact, to be answered on con-
 “sideration of all the circumstances of each
 “case, as commissioners or a jury, selected

"to award damages for the carrying out
 "of the municipal plan, might answer it.
 "But as such damages are usually allowed
 "by our statutes only to persons part of
 "whose property is taken, the question in
 "each case affecting a public street may be
 "come more definite and intelligible, if,
 "without changing its substance, it be cast
 "in more familiar form, thus: If the con-
 "dition of Bank Street, contemplated by
 "the municipal proceedings, already exist-
 "ed and the public authorities should de-
 "termine to alter the street to its present
 "state, thereby incurring public expense,
 "would the property of the prosecutors be
 "assessable for special benefit derived from
 "such alteration? Evidently, if the abate-
 "ment of the proposed change, when effect-
 "ed, would confer a special benefit on the
 "property of the prosecutors, the execu-
 "tion of the proposed plan would cause a
 "special injury to them.

"We are, therefore, brought to the ques-
 "tion of fact, whether the evidence in this
 "case shows that the property of the prose-
 "cutors will be injuriously affected by the
 "proposed structure."

This rule was followed by the Court in a recent case of Robert G. Smith, prosecutor, vs. the Mayor and Aldermen of Jersey City, decided December 31, 1902, in denying which the Court assumes as law the rule for which we are here contending, saying the only special interest of the prosecutor in the case beyond that of any citizen and taxpayer is that of membership in a public board whose functions would have been superseded by the act if constitutional and accepted by the voters, on rejection he no longer has any interest.

In this case we are not even brought to the question of considering the proofs to ascertain

whether any special injury will be entailed upon these prosecutors. There is no attempt made to show any special injury at the hands of either of these prosecutors distinct from that of the other taxpayers or the public at large; and a brief consideration of the facts will show, first, that nothing but benefit and not injury can come to the prosecutors or other taxpayers or to the public at large from upholding this contract; and, second, if any injury could come it would fall upon the public at large or the taxpayers and upon the prosecutors only in common with the other taxpayers of the city. The water company makes no pretense of being in this case as a taxpayer, although it appears that one of the water companies has a right of way running through a corner of Jersey City on the way to Bayonne which is subject to local taxation in Jersey City. The only interest seriously claimed on behalf of the water companies as prosecutor is their alleged interest in the contract between the Town of Kearney and the East Jersey Water Company, and since assigned to the water companies by virtue of their claim to be now supplying the Borough of East Newark under said contract. This claim has been answered elsewhere in this brief and is not worthy of serious notice.

The Rehills are property owners of Jersey City, and own no property whatsoever in East Newark. The East Newark prosecutor has withdrawn from the case. The extent of the interest of the Rehills as property owners of Jersey City does not appear, it is presumptively that of the ordinary small taxpayer.

If this contract is set aside by the Courts then Jersey City will lose at least \$6,000 a year, one-half of which will be clear profit even on the theory that Jersey City in the execution of the contract should obtain the water supplied to East Newark from under the Flynn contract, the price named in the latter contract being only \$35, while

the price realized from East Newark is \$60, and it is in the case that Jersey City can carry out the contract without any expense to it through one of its pipes and by a connection not exceeding a hundred feet through another of its pipes, which connection would be trifling in cost; and if Jersey City should carry out this contract, as it expects to do during the bulk of its term after it has acquired the new water works plant now under construction for it by the Flynn Company, the whole amount of money received from East Newark will be all profit to Jersey City because it will have the idle surplus water which would otherwise be undisposed of and delivery to East Newark will be without expense to Jersey City.

The only possible chance of any loss being inflicted upon the prosecutors even in common with the public at large or other taxpayers is, that Jersey City might temporarily in carrying out this contract become obligated to the Flynn Company at the rate of \$35 per million gallons, for water supplied to East Newark pending the taking over of the new water works plant, and that East Newark after taking this water might repudiate the contract *ultra vires* and fail to make compensation to Jersey City. The common sense answer to this is that it is a pure figment of the imagination. No conceivable reason can be imagined why East Newark should repudiate a contract by which it obtains water at one-third less price than surrounding towns are paying. To do so would put it at the mercy of the private water companies who are the real prosecutors in this case. But if it is assumed that East Newark can legally repudiate this contract, after receiving water under it, on the ground that it is *ultra vires*, and also that the municipality would do such a dishonorable thing, it follows then as a matter of law that the Flynn Company would have supplied the water to Jersey City without authority of law, because if the contract has no validity, then it is not in existence and the Flynn Company are delivering to Jersey City at their peril, and the prosecutors

would have their remedy by taking up on certiorari any resolution by Jersey City ordering money paid to the Flynn Company for water supplied to Jersey City and by Jersey City delivered to East Newark under this ultra vires contract. The contingency therefore is in the first place imaginary, and if it ever assumes substance, the prosecutors as taxpayers of Jersey City can protect themselves from loss by preventing Jersey City from incurring any expense on account of the contract.

The same reasoning would apply if Jersey City should undertake the construction of a filtering plant at Belleville for the purpose of making delivery of water from that point to East Newark under this contract. It is time enough for the Courts to protect these prosecutors when danger to their property interests is shown to be imminent. In this case the proofs are overwhelming that this contract is greatly to their pecuniary interest as owners of property and as citizens of Jersey City.

The whole subject of certiorari is within the discretion of the Court. We submit that the case made out by the municipalities shows that this contract is greatly to the public interest of the people of both places. It enables East Newark to obtain water without additional expense in the way it has been obtaining it for many years at a price much lower than has ever been enjoyed by any other municipality in North Jersey. It is of great advantage to Jersey City because it furnishes an outlet for the surplus supply of water which it has gathered at vast expense, and for which for many years it will have no other use.

The motive of the prosecutors as rival purveyors of water in having this contract set aside is obvious. The want of interest of the Rehills is so plain that the inference is justifiable that they are put forward at the instigation of the water companies not in good faith because they fear

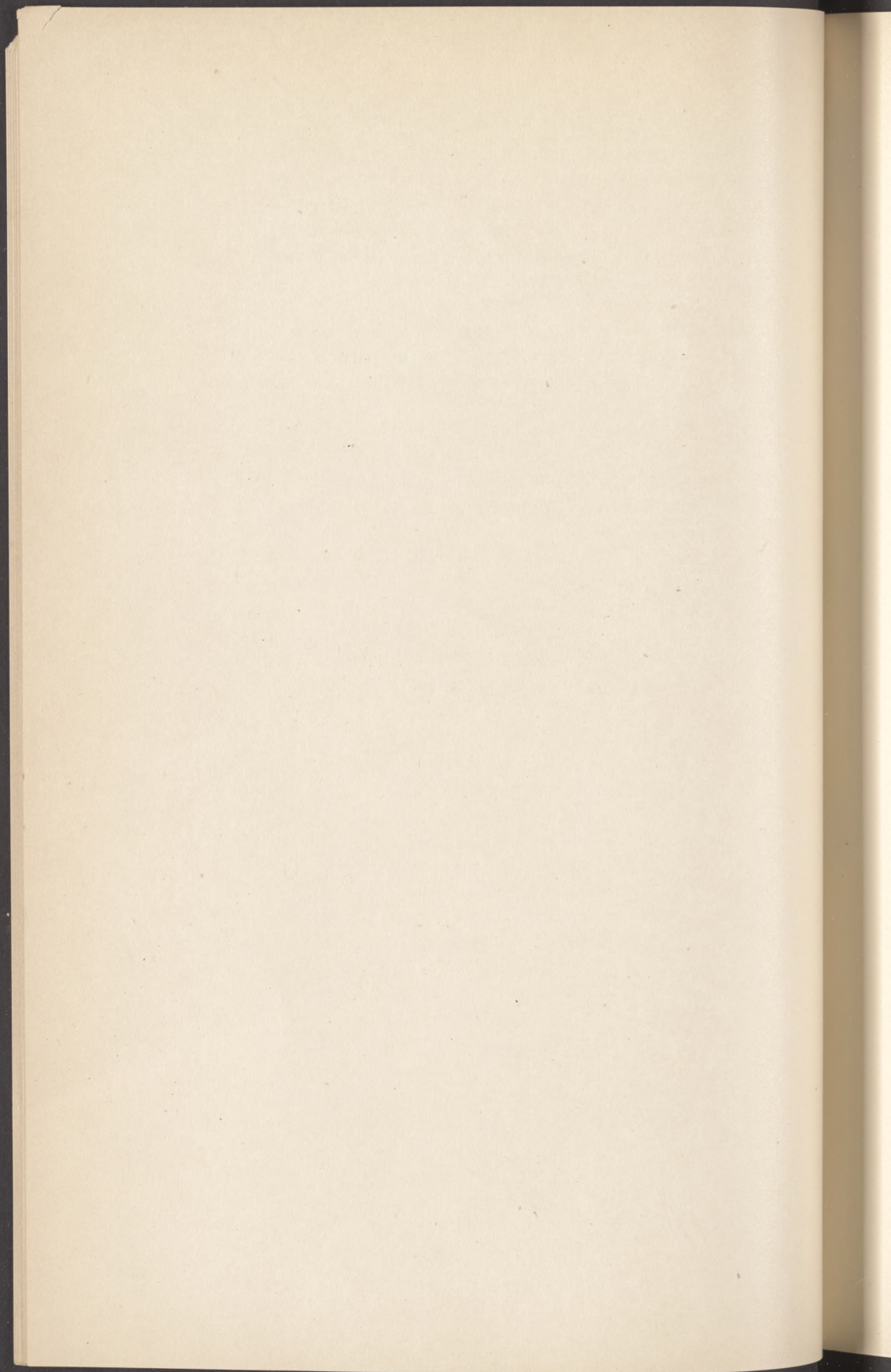
that their property interests will be jeopardized by this contract, but in the hope that the contract may be set aside to the resulting advantage not of the Rehills as property owners, but to the water companies as rivals to Jersey City for the business of supplying East Newark with water.

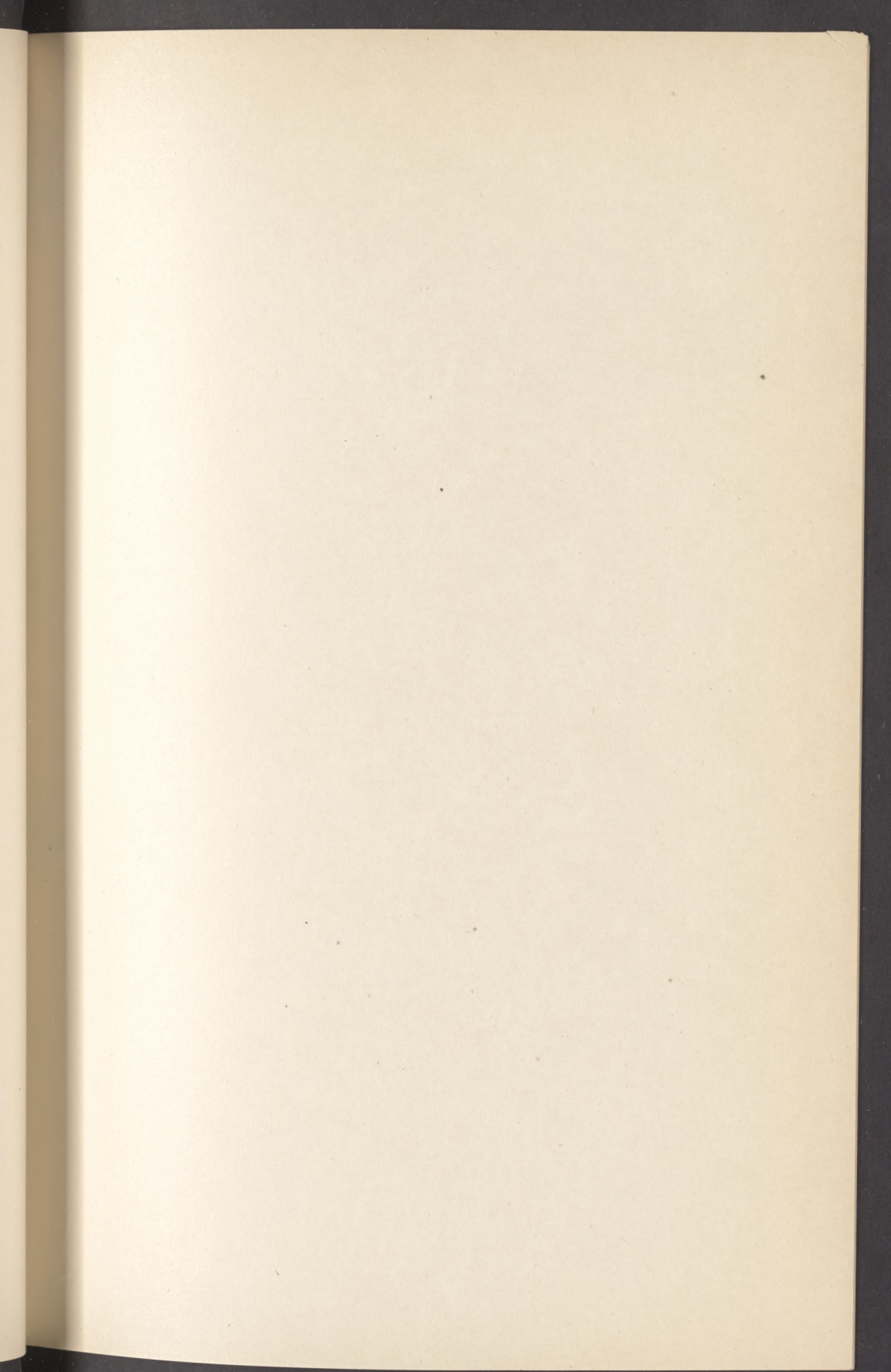
Under these very patent circumstances we submit that the Court should exercise a wise discretion in the public interest and dismiss the application of the prosecutors.

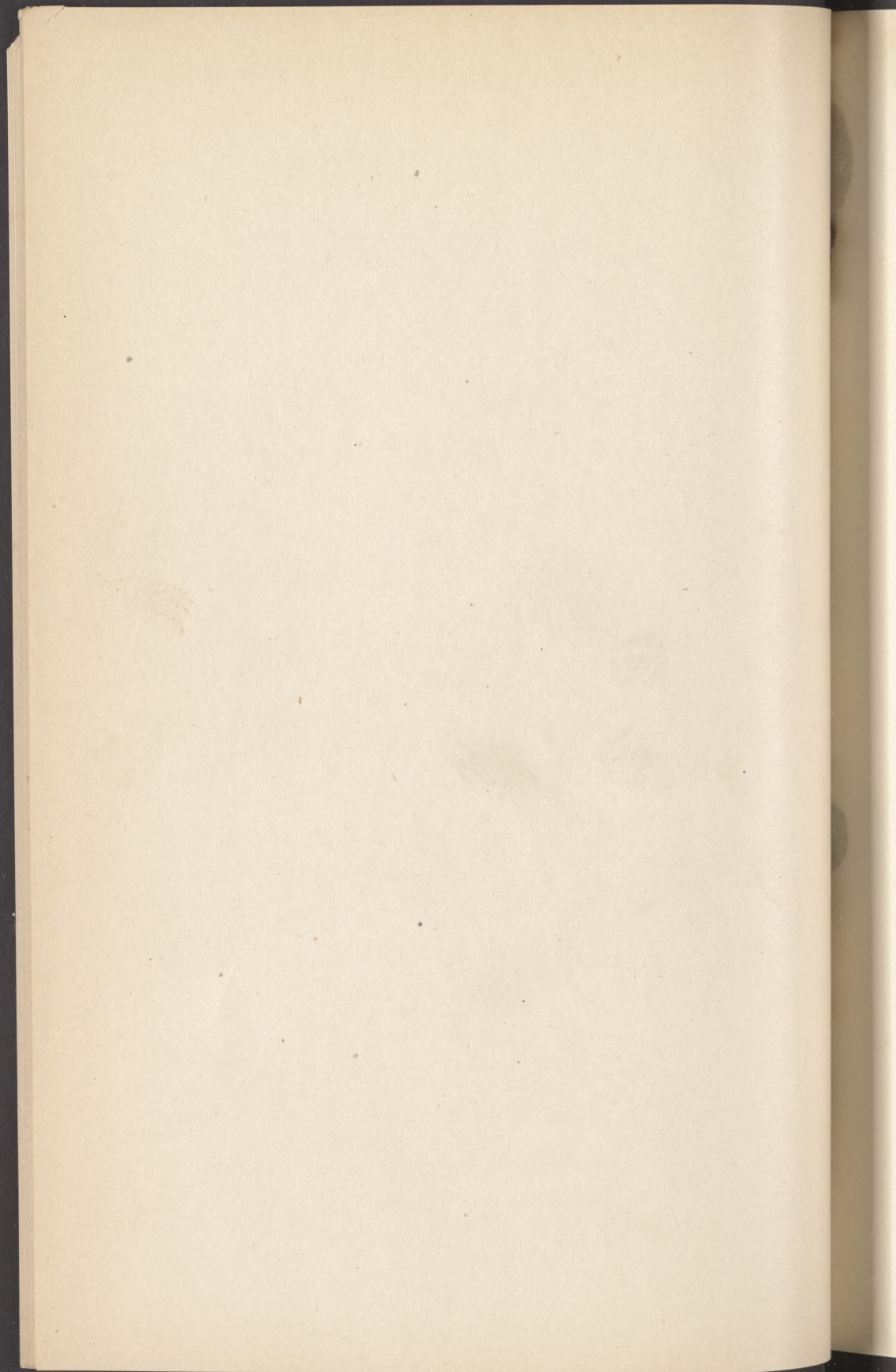
EDWARD KENNY,
Attorney for Defendants, The Mayor and
Council of the Borough of East Newark.

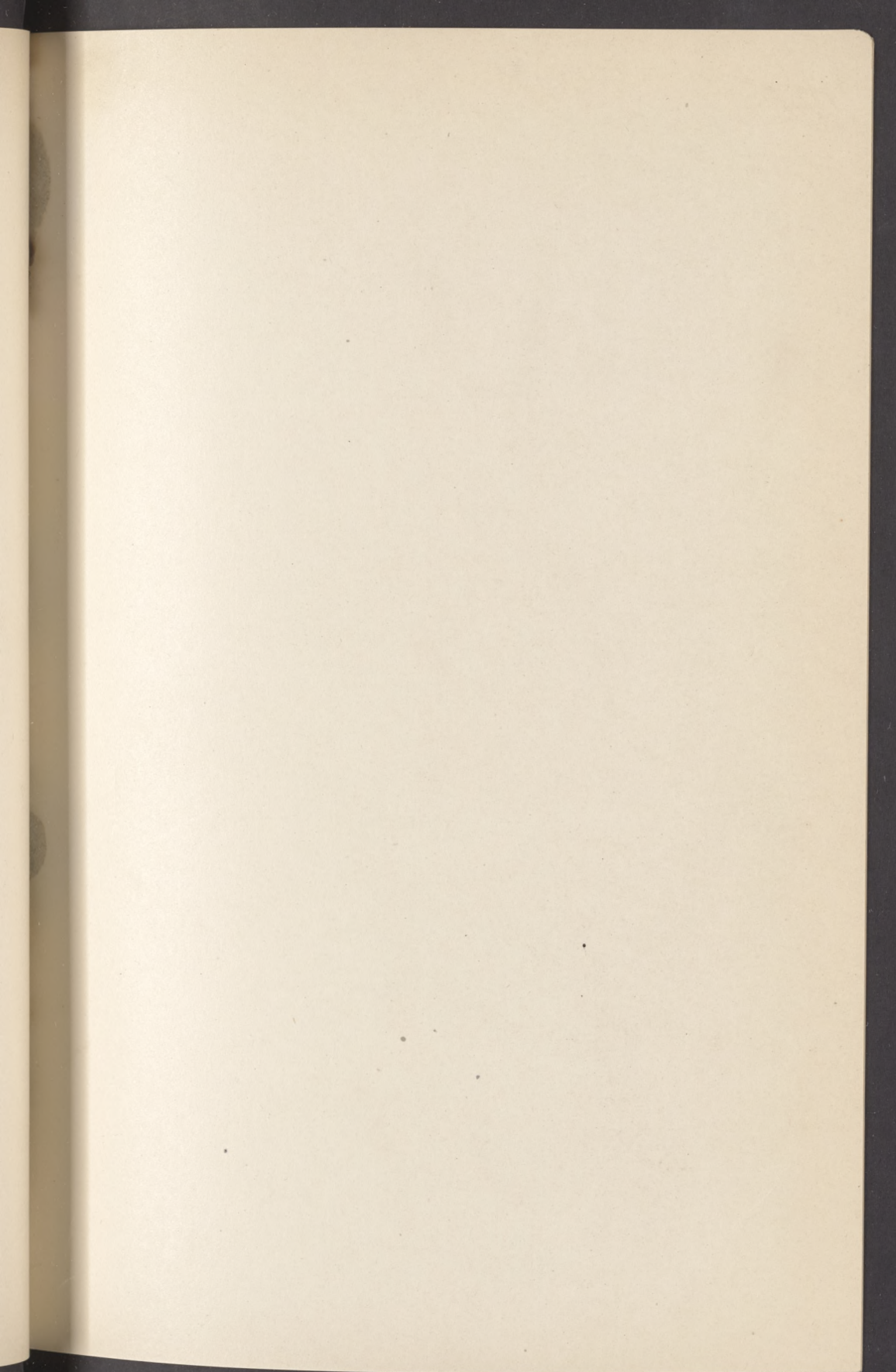
R. V. LINDABURY,
Of Counsel.

GEORGE L. RECORD,
Attorney for Defendants, The Mayor and
Aldermen of Jersey City.









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A.

NEW JERSEY, ss.:

The State of New Jersey to the Chief
(Seal) Justice and other Justices of our Supreme Court of Judicature, GREETING:

For as much as in the record and proceedings, as also in the giving of a judgment in a certain plaint, which was in our said Supreme Court of Judicature, before you, between Patrick Rehill, et al., Prosecutors, and The Mayor and Council of the Borough of East Newark, and the Mayor and Aldermen of Jersey City, Defendants, in an action on Certiorari, manifest error has intervened, to the great damage of the said defendants, as is said; we being willing that the error, if any there be, should, in due manner, be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be thereupon given and affirmed, then you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same to our Judges of our Court of Errors and Appeals in the Last Resort in all Causes, at Trenton, on the second day of April, next, together with this Writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right, according to the law and custom of the State of New Jersey, ought to be done.

Witness, Our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, aforesaid, the sixteenth day of March, A. D. nineteen hundred and six.

S. D. DICKINSON,
Clerk.

ROBERT CAREY,
Attorney.

NEW JERSEY, ss.:

The State of New Jersey to the Chief
(Seal) Justice and other Justices of our Supreme Court of Judicature, GREETING:

For as much as in the record and proceedings, as also in the giving of judgment in a certain plaint, which was in our Supreme Court of Judicature, before you, between The New Jersey Suburban Water Company and the New York & New Jersey Water Company, Prosecutors, and The Mayor and Council of the Borough of East Newark and The Mayor and Aldermen of Jersey City, Defendants, in an action on Certiorari, manifest error has intervened, to the great damage of the said defendants, as is said; we being willing that the error, if any there be, should, in due manner, be corrected and full and speedy justice done to the parties aforesaid in this behalf, do command
you, that if judgment be thereupon given and affirmed, then you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same to our Judges of our Court of Errors and Appeals in the Last Resort in all Causes, at Trenton, on the eighteenth day of June, 1906, together with this Writ, that the record and proceedings aforesaid, being inspected, we may cause to be further done thereupon, for correcting that error, what of right, according to law and custom of the State of New Jersey, ought to be done.

Witness, Our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton, aforesaid, the seventh day of June, A. D. nineteen hundred and six.

S. D. DICKINSON,
Clerk.

GEORGE L. RECORD,
ROBERT CAREY AND
EDWARD KENNY,
Attorneys.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

PATRICK L. REHILL AND)
ELLEN M. REHILL,)
Prosecutors below and)
Defendants in Error,)

vs.)

10

THE MAYOR AND COUN-)
CIL OF THE BOROUGH)
OF EAST NEWARK, AND)
THE MAYOR AND AL-)
DERMEN OF JERSEY)
CITY,)

Defendants below and)
Plaintiffs in Error.)

) On Writ of Error.

—)

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THE NEW JERSEY SUBUR-)
BAN WATER COMPANY)
AND THE NEW YORK &)
NEW JERSEY WATER)
COMPANY,)

Prosecutors below and)
Defendants in Error.)

) Stipulation.

vs.)

THE MAYOR AND COUN-)
CIL OF THE BOROUGH)
OF EAST NEWARK, AND)
THE MAYOR AND AL-)
DERMEN OF JERSEY)
CITY,)

Defendants below and)
Plaintiffs in Error.)

30

WRITS having been issued out this Court directed
to the New Jersey Supreme Court, in the above en-
titled causes;

40

D.

IT IS, on this ninth day of June, A. D. nineteen hundred and six, STIPULATED AND AGREED, by and between the respective Attorneys for the Plaintiffs and the Defendants, that the return of the writs herein be consolidated in one return, and that both cases be argued together.

10

GEORGE L. RECORD,
ROBERT CAREY AND
EDWARD KENNY,

Attorneys for Plaintiffs in Error,
The Mayor and Council of the
Borough of East Newark, et al.

HERBERT BOGGS,

Attorney for Defendants in Error,
Patrick M. Rehill, et al.

20

COLLINS & CORBIN,

Attorneys for Defendants in Error,
The New Jersey Suburban Water
Co., et al.

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NEW JERSEY SUPREME COURT.

The State of New Jersey to the Mayor
and Council of the Borough of East New-
(L. S.) ark: Greeting. We being willing for cer- 10
tain reasons to be certified of and concern-
ing a certain alleged contract between the
Mayor and Council of the Borough of East Newark
and the Mayor and Aldermen of Jersey City, dated
December ninth, nineteen hundred and three, provid-
ing for water supply, and concerning certain resolu-
tions of the Council of the Borough of East Newark
authorizing said contract, do command you that the
said contract and resolutions, and all things touch- 20
ing and concerning the same, to our Supreme Court,
to be holden at the City of Trenton on the Four-
teenth day of January, nineteen hundred and four,
you do certify and send, together with this writ, that
therein may be done what, according to law, ought
to be done.

Witness, William S. Gummere, Chief Justice of our
said court, at Trenton, this twenty-sixth day of
December, nineteen hundred and three.

30

WILLIAM RIKER, JR.,
HERBERT BOGGS, Clerk.
Attorney for Prosecutors.

40

(ENDORSED.)

NEW JERSEY SUPREME COURT.

10 THOMAS HEWITT SONS &)
 COMPANY, PATRICK L.)
 REHILL AND ELLEN M.)
 REHILL, HIS WIFE,)
 Prosecutors,)
 vs.)
 MAYOR AND COUNCIL)
 20 OF THE BOROUGH OF)
 EAST NEWARK, AND)
 THE MAYOR AND AL-)
 DERMEN OF JERSEY)
 CITY.)
 Defendants.)

30

WRIT OF CERTIORARI.

Returnable January 14, 1904.

Herbert Boggs, Attorney for Prosecutors, 160
Market Street, Newark, N. J.I allow this writ. Let it be sealed. This writ is
not to interfere with existing conditions as to the
supply of water, or with obligations arising there-
from.

December 26, 1903.

40

JONATHAN DIXON,
 Jus. Sup. Ct.

RETURN OF BOROUGH OF EAST NEWARK.

STATE OF NEW JERSEY,)
) ss.
 COUNTY OF HUDSON,)

The Mayor and Council of the Borough of East Newark in obedience to the annexed writ of certiorari, do certify and return to the Supreme Court of the State of New Jersey, that the annexed is a true **10** copy of a certain contract between the Mayor and Council of the Borough of East Newark and the Mayor and Aldermen of Jersey City dated December ninth, nineteen hundred and three, providing for water supply, and the resolution of the Council of the Borough of East Newark authorizing said contract, and all things touching and concerning the same as fully as the same appears of record or in the possession and control of the said Mayor and Council of the Borough of East Newark. **20**

I further certify that the following return is a true copy of all the papers in any way touching the said matter now in the possession of the said the Mayor and Council of the Borough of East Newark or on its records or in the custody of its clerk.

Witness my hand and the seal of the said Borough of East Newark this eighth day of January, nineteen hundred and four.

(L. S.)

WM. HEALEY,
 Borough Clerk. **30**

Be it resolved, by the Mayor and Council of the Borough of East Newark, that an agreement be entered into by and between, The Mayor and Council of the Borough of East Newark, in the County of Hudson and The Mayor and Aldermen of Jersey City, for a supply of pure and wholesome water for the term of five years at the rate or price of six cents a thousand gallons, such water to be the same as that delivered to and received by the City of Jersey City, and in accordance with the terms and conditions of **40**

contract hereto annexed, and that the Mayor of the Borough of East Newark sign the said contract on behalf of the Mayor and Council of the Borough of East Newark, and that the borough clerk attest the same and affix the corporate seal of the borough thereto.

Approved December 9th, 1903.

10

EDWARD KENNY,

Attest: Mayor of East Newark.

(SEAL) WILLIAM HEALEY,
Borough Clerk.

This agreement, made this ninth day of December, nineteen hundred and three, between the Mayor and Aldermen of Jersey City, party of the first part, and the Mayor and Council of the Borough of East Newark, party of the second part, Witnesseth:

20

1. That the party of the first part, in consideration of the payments hereinafter reserved to be made by the party of the second part, and of the covenants and agreements on the part of the party of the second part herein contained, hereby agrees to furnish to the party of the second part, a good and sufficient supply of water from the reservoir and water pipes of the party of the first part at the corner of Belleville Turnpike and Kearney Avenue at a pressure equal to that heretofore or now obtained by the party of the second part. The water to be supplied under this contract shall be the same as that supplied to Jersey City.

30

2. And the parties hereto further agree that such water shall be delivered by the party of the first part to the party of the second part at the same point in said borough and through the same pipe and through the same meter as the supply of water is now being delivered by the party of the first part to the party of the second part under a certain contract made by and between said parties on July first, eighteen hundred and ninety-seven, which said contract has been continued by mutual consent to the present time; said

40

meters are to be furnished and kept in repair at the cost and expense of the party of the second part.

3. And the party of the second part agrees to pay to the party of the first part, for all water which passes through such meters, the prices hereinafter named, and at the times hereinafter specified, and further, that it, the said party of the second part, will not receive water from any other corporation or individual 10 during the time of this contract, and that it will not receive any water except such as passes through the meters before mentioned, and then only when said meters are in a proper condition to register the water passing through them or either or any of them, and all meters to be used are to be first approved by the party of the first part, or by its board of street and water commissioners acting for it.

4. And the party of the second part further agrees 20 to pay to the party of the first part, for all water received by the party of the second part, as shown and registered by said meters, at the rate of six cents per thousand gallons, and to make such payments to the party of the first part on the fifteenth days of January and July in each year during the continuance of this contract, such payments to include the amount due for measured water as shown by said meters, to the first days of said months, respectively. If the half-yearly bills shall be paid within thirty days from the 30 receipt thereof by the party of the second part a discount of five per cent. will be allowed by the party of the first part for such prompt payment. If not so paid a penalty of one per cent. per month shall be paid by the party of the second part for such delinquency. The first payments may, at the option of the party of the second part, be deferred until the first day of December, nineteen hundred and four.

5. And it is further mutually agreed, that this contract shall be operative from the date hereof, and shall continue for five years from that date. If, however, it shall be held by the court in any legal proceedings in- 40

volving the validity of this contract that the party of the first part has no power to deliver water under this contract until it shall acquire the additional water works plant now under construction for said party of the first part, then it is agreed that this contract shall be operative from the time when such water works plant is acquired by the party of the first part, which time however shall not be later than January first,
 10 nineteen hundred and five.

6. And the party of the first part further agrees that should it, at any time hereafter contract to supply any other city, town or borough with water, at a lower rate than six cents per thousand gallons, during the continuance of this contract, the party of the second part shall be entitled to receive water from the party of the first part under this contract, at the lowest rate paid to the said party of the first part by any
 20 other city, town or borough supplied by it.

7. The party of the second part covenants that it will, at any time, upon the request of the party of the first part, exercise or put in force any power or rights which it may now or hereafter hold or possess, for the condemnation of lands, waters, water rights, or to excavate streets, highways and public places of the said party of the second part, or of any other borough, town, township, city, county or municipality;
 30 and that the said party of the second part will permit and hereby permits and authorizes the party of the first part to exercise such rights and to put such powers in force, either in the name of the party of the second part, or in the name of the party of the first part but at the expense in all such cases of the party of the first part.

In witness whereof, the said party of the first part has caused these presents to be signed by its Mayor and the President of its Board of Street and Water Commissioners, and has caused its common seal to be hereto set, attested by its city clerk, and the party of
 40 the second part has likewise caused these presents to

be signed by its Mayor and its common seal to be hereto set and attested by its borough clerk, the day and year first above written.

Signed, sealed and delivered in the presence of

MARK M. FAGAN, (Seal)
Mayor of Jersey City.

W. C. J. O'DONNELL,
City Clerk. 10
(Seal)

R. G. SMITH, (Seal)
President of Board of Street
and Water Commissioners.

Attest:

GEO. T. BOUTON,
Clerk.

JACOB RINGLE, 20
President of the Board of Finance.

Attest: (Seal)

Witness: FORREST R. HEATH,
Clerk.

EDWARD KENNY, (Seal)
Mayor Borough of East Newark.

WILLIAM HEALEY, 30
Borough Clerk.

(ENDORSED.)

Dated December ninth, 1903.

The Mayor and Aldermen of Jersey City,
and

The Mayor and Council of the Borough of East Newark.

AGREEMENT. 40

NEW JERSEY SUPREME COURT.

The State of New Jersey to the Mayor
(L. S.) and Aldermen of Jersey City, Greeting:

We, being willing for certain reasons,
to be certified, of and concerning a certain contract
10 relating to a supply of water by you to the Mayor and
Council of the Borough of East Newark, dated De-
cember ninth, nineteen hundred and three, and cer-
tain resolutions passed by you authorizing the same,
do command you that the said contract and resolu-
tions, and all things touching the same, to our Su-
preme Court, to be holden at the City of Trenton on
the fourteenth day of January, nineteen hundred and
four, you do certify and send, together with this writ,
that therein may be done what, according to law,
20 ought to be done.

Witness, William S. Gummere, Esquire, Chief Jus-
tice of our Court at Trenton, this twenty-sixth day of
December, nineteen hundred and three.

WM. S. RIKER, JR.,
HERBERT BOGGS,
Attorney for Pros.

(ENDORSED.)

NEW JERSEY SUPREME COURT.

THOMAS HEWITT SONS)	
& COMPANY, PATRICK)	
L. REHILL AND ELLEN)	
M. REHILL, HIS WIFE,)	
Pros.,	)	10
vs.)	
THE MAYOR & ALDER-)	
MEN OF JERSEY CITY)	
AND THE MAYOR &)	
COUNCIL OF THE BOR-)	
OUGH OF EAST NEW-)	
ARK,)	
Defendants.)	

WRIT OF CERTIORARI.

Returnable January 14, 1904.
Herbert Boggs, attorney for pros., 160 Market street, Newark, N. J.

I allow this writ. Let it be sealed. This writ is not to interfere with existing conditions as to the supply of water or with obligations arising therefrom.

Dec. 26, 1903. JONATHAN DIXON,
Jus. Sup. Ct.

RETURN OF CITY OF JERSEY CITY.

Return by George T. Bouton, Clerk of the Board of Street and Water Commissioners:

Jersey City, January 21, 1904.

To whom it may concern—

The following is a copy of a resolution adopted by the Board of Street and Water Commissioners at its meeting held December 17th, 1903, concurred in by the Board of Finance December 18th, 1903, and approved by his Honor, the Mayor, December 18th, 1903.

GEORGE T. BOUTON,
Clerk. 40

(Here follows printed copy of resolution, a duplicate of which is embraced in the following resolution of the Board of Finance):

OFFICE OF THE BOARD OF FINANCE.

Jersey City, January 21, 1904.

Hon. Board of Street and Water Commissioners:

- 10 Gentlemen—The following resolution was adopted by the Board of Finance of Jersey City, at its meeting December 18, 1903, and was approved by the Mayor December 18, 1903.

Yours respectfully,
 FOREST A. HEATH,
 Clerk.

- Resolved, That the Board of Finance hereby concurs in the following resolution adopted by the Board of Street and Water Commissioners, December 17, 1903, to wit:

Whereas, There has been presented to this Board for its consideration a form of contract for water supply, which same has been heretofore entered into by the Mayor and Council of the Borough of East Newark, and which is in manner and form as follows:

(Here follows printed copy of contract in all respects the same as the contract in the return of the Borough of East Newark, supra, pp. 4-7.)

- 30 Whereas, This Board after due consideration has determined that the best interests of the City would be conserved by the entering into of such a contract:
 Resolved, That a contract in manner and form as afore indicated be entered into between the Mayor and Aldermen of Jersey City and the Mayor and Council of the Borough of East Newark, and

- Resolved, That the President of this Board, the President of the Board of Finance and his Honor, the Mayor, be authorized and directed to execute said
 40 contract on behalf of this city and that the City Clerk

be directed to attach thereto the seal of the city and to attest the same.

(Then follows contract as executed identical in all respects with contract in the return of the Borough of East Newark, case, pp. 4-7.)

Signed,
 MARK M. FAGAN, 10
 Mayor of Jersey City.

R. G. SMITH,
 President of the Board of Street
 and Water Commissioners.

(Seal.) JACOB RINGLE,
 President of the Board of Fi-
 nance.

Attest: 20
 M. J. O'DONNELL,
 City Clerk.

(Seal.) EDWARD KENNY,
 Mayor Borough of East New-
 ark.

Attest:
 WILLIAM HEALY,
 Borough Clerk. 30

ing the said alleged agreement or contract, and directing the execution of the same, approved the ninth day of December, A. D. 1903, may be set aside and for nothing holden for the following reasons:

First. Because the said Mayor and Council of the Borough of East Newark can make a contract for a supply of water only with an adjoining municipality and the said Borough of East Newark and the City of Jersey City are not now and were not at the time said alleged contract was entered into adjoining municipalities. 10

Second. Because the said Mayor and Council of the Borough of East Newark, at the time said alleged contract was entered into, was being supplied with water under an existing contract, theretofore made between the Town of Kearny and the East Jersey Water Company, and then binding upon the said Borough of East Newark.

Third. Because the said Mayor and Council of the Borough of East Newark can make a contract for a supply of water only with a city having water works, and the said City of Jersey City has now no water works, and had none at the time said contract was entered into. 20

Fourth. Because the said alleged contract was not approved by the voters of the said Borough of East Newark, at an annual or special election. 30

Fifth. Because the said Mayor and Aldermen of Jersey City does not now, and at the time said alleged contract was entered into, did not own or control water works, and, therefore, could not contract to furnish or supply water to another municipality. 30

Sixth. Because the said Mayor and Aldermen of Jersey City has power to contract to supply water only to an adjoining municipality, and said City of Jersey City and said Borough of East Newark are not now, and at the time said alleged contract was entered into, were not adjoining municipalities. 40

Seventh. Because the said alleged contract was executed without the consent of the Board of Aldermen of the City of Jersey City, the governing body of said city, and has not been consented to by said board.

Eighth. Because the rate charged to the Borough of East Newark in and by said alleged contract for the water to be furnished thereunder is less than the rates charged for the same service to consumers within the limits of Jersey City.

Ninth. Because the said Mayor and Aldermen of Jersey City is now and will be wholly unable to perform its part of said alleged contract and to supply the said Mayor and Council of the Borough of East Newark, with water as provided for in said alleged contract.

Tenth. Because the said alleged contract and the said resolutions of the said board of street and water commissioners and said board of Finance of said City of Jersey City and said resolutions of said Council of said Borough of East Newark, are in divers other respects illegal and void, and should be set aside and for nothing holden.

HERBERT BOGGS,

Attorney for Prosecutors.

NEW JERSEY SUPREME COURT.

_____o		
THOMAS HEWITT SONS &)	
COMPANY, PATRICK L.)	
REHILL AND ELLEN M.)	
REHILL,)	
Proseutors,	)	10
vs.	)	On Certiorari.
MAYOR AND COUNCIL)	
OF THE BOROUGH OF	)	Order.
EAST NEWARK, AND)	
THE MAYOR AND AL-)	
DERMEN OF JERSEY)	
CITY,)	
Defendants.)	
_____o		

It appearing that Thomas Hewitt Sons and Company, one of the prosecutors of above entitled writs of certiorari, desire to withdraw as such prosecutors, it is ordered, that said Thomas Hewitt Sons and Company be permitted to withdraw as prosecutors, and that all further proceedings under said writs of certiorari be had in the names of Patrick L. Rehill and Ellen M. Rehill as prosecutors.

Dated January 30, A. D. 1904.

JONATHAN DIXON,

Jus. Sup. Ct.

On motion of

HERBERT BOGGS,

Attorney of Prosecutors.

NEW JERSEY SUPREME COURT.

The State of New Jersey, to the Mayor
and Council of the Borough of East New-
(L. S.) ark: Greeting. We being willing for cer-
tain reasons to be certified of a certain al-
10 leged contract between you and the
Mayor and Aldermen of Jersey City, dated Decem-
ber ninth, nineteen hundred and three, providing for
water supply and concerning certain resolutions of
the council of said borough authorizing said contract,
do command you that the said contract and resolu-
tions and all things touching and concerning the
same, to our Supreme Court, to be holden at the
City of Trenton on the twenty-fifth day of January,
A. D. nineteen hundred and four, you do certify and
20 send, together with this writ, that therein may be
done what according to law ought to be done.

Witness, William S. Gummere, Esq., Chief Justice
of our said court, this 5th day of January, nineteen
hundred and four.

WILLIAM RIKER, JR.,
Clerk.

30 COLLINS & CORBIN,
Attorneys.

(ENDORSED.)

NEW JERSEY SUPREME COURT.

_____ 0
 THE NEW JERSEY SU-)
 BURBAN WATER COM-)
 PANY AND THE NEW)
 YORK AND NEW JER-)
 SEY WATER COMPANY,)
 Prosecutors,)
 vs.)
 MAYOR AND COUNCIL OF)
 THE BOROUGH OF EAST)
 NEWARK, AND THE)
 MAYOR AND ALDER-)
 MEN OF JERSEY CITY.)
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10

 WRIT OF CERTIORARI.

Returnable January 25, 1904.

Collins & Corbin, Attorneys for Pros., 243 Wash-
 ington Street, Jersey City, N. J.

I allow this writ. Let it be sealed. This writ is
 not to interfere with existing conditions as to the
 supply of water or with obligations arising there-
 from. 30

JONATHAN DIXON,
 Justice Supreme Court.

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RETURN OF BOROUGH OF EAST NEWARK.

STATE OF NEW JERSEY,)
 COUNTY OF HUDSON,) ss.

The Mayor and Council of the Borough of East Newark, in obedience to the annexed writ of certiorari, did certify and return to the Supreme Court of the State of New Jersey, that the annexed is a true copy of a certain contract between the Mayor and Council of the Borough of East Newark, and the Mayor and Aldermen of Jersey City, dated December ninth, nineteen hundred and three, providing for water supply, and the resolution of the Mayor and Council of the Borough of East Newark authorizing said contract, and all things touching and concerning the same, as fully as the same appears of record in the possession and control of the said Mayor and Council of the Borough of East Newark.

And further certify that the following return is a true copy of all the papers in any way touching the said matter, now in the possession of the said The Mayor and Council of the Borough of East Newark, or on its records, or in the custody of its clerk.

Witness my hand and the seal of the said Borough of East Newark this eighth day of January, nineteen hundred and four.

(Signed) WM. HEALEY, (Seal)
 Borough Clerk.

Be it resolved by the Mayor and Council of the Borough of East Newark, that an agreement be entered into by and between the Mayor and Council of the Borough of East Newark in the County of Hudson, and the Mayor and Aldermen of Jersey City, for a supply of pure and wholesome wate. for the term of five years, at the rate or price of six cents per thousand gallons, such water to be the same as that delivered to and received by the City of Jersey City and in accordance with the terms and conditions of contract hereto annexed, and that the Mayor of the

Borough of East Newark signed the said contract on behalf of the Mayor and Council of the Borough of East Newark, and that the borough clerk attest the same, and affix the corporate seal of the borough thereto.

Approved December 9th, 1903.

EDWARD KENNY, (Seal)
Mayor of East Newark. 10

(Seal) Attest:
WILLIAM HEALEY,
Borough Clerk.

(Here follows contract December 9th, 1903, between Jersey City and East Newark, signed as follows:)

MARK M. FAGAN, (Seal)
Mayor of Jersey City. 20

(Seal) W. C. J. O'DONNELL,

R. G. SMITH, (Seal)
President of Board of Street
and Water Commissioners.

Attest:
GEO. F. BOUTON,
Clerk.

JACOB RINGLE, 30
President Board of Finance.

Attest: (Seal)
Witness: FORREST R. HEATH,
Clerk.

EDWARD KENNY, (Seal)
Mayor Borough East Newark.

WILLIAM HEALEY,
Borough Clerk. 40

NEW JERSEY SUPREME COURT.

The State of New Jersey, to the Mayor
and Aldermen of Jersey City: Greeting.

(L. S.) We being willing for certain reasons to
be certified of and concerning a certain
contract relating to a supply of water by
10 you to the Mayor and Council of the Borough of
East Newark, dated December 9th, 1903, and certain
resolutions passed by you authorizing the same, do
command you that the said contract and resolutions
and all things touching and concerning the same to
our Supreme Court to be holden at the City of Tren-
ton on the twenty-fifth day of January, nineteen hun-
dred and four, you do certify and send together with
the writ, that therein may be done what according to
law ought to be done.

20

Witness, William S. Gummere, Esquire, Chief Jus-
tice of our court at Trenton, this fifth day of January,
nineteen hundred and four.

WILLIAM RIKER, JR.,

Clerk.

COLLINS & CORBIN,

Attys. for Pros.

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(ENDORSED.)

NEW JERSEY SUPREME COURT.

THE NEW JERSEY SU-)
 BURBAN WATER COM-)
 PANY AND THE NEW)
 YORK AND NEW JER-)
 SEY WATER COMPANY,)
 Pros.,)

10

vs.)

THE MAYOR AND ALDER-)
 MEN OF JERSEY CITY)
 AND THE MAYOR AND)
 COUNCIL OF THE BOR-)
 OUGH OF EAST NEW-)
 ARK.)

20

WRIT OF CERTIORARI.

Returnable January 25, 1904.

Collins & Corbin, Attys. for Pros., 243 Washing-
ton Street, Jersey City, N. J.

I allow this writ. Let it be sealed. This writ is
 not to interfere with existing conditions as to the
 supply of water or with obligations arising there-
 from. 30

JONATHAN DIXON,
 Justice Supreme Court.

The return of the City of Jersey City to the above
 writ, The New Jersey Suburban Water Company, et
 al., prosecutors, is in all respects the same as its re-
 turn to the writ, Thomas Hewitt Sons & Company
 and Patrick L. Rehill et al., prosecutors, supra, pp.
 9-11, and is therefore not again printed. 40

NEW JERSEY SUPREME COURT.

		0	
	NEW JERSEY SUBURBAN))	
	WATER COMPANY, AND))	
	OTHERS,))	
		Pros.,)	
10	vs.)	On Certiorari.
	THE MAYOR AND ALDER-))	
	MEN OF JERSEY CITY,))	
	AND OTHERS,))	
		Defendants.)	
		0	

REASONS.

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i. The Mayor and Aldermen of Jersey City had no power to make the contract under review.

(a) Because the city did not own or control water works.

(b) Because the city had no water supply which it had power to deliver to the borough.

30 (c) Because the conditions did not exist under which authority is conferred on the city to contract to supply water to the Borough of East Newark.

(d) Because the Borough of East Newark is not a municipality adjoining Jersey City.

(e) Because the contract was executed without the consent of the Board of Aldermen of Jersey City.

(f) Because the city is unable to perform its part of the alleged contract.

40 (g) Because the rate fixed in the contract is less than the rates charged to takers within the city for the same service.

2. The Mayor and Council of the Borough of East Newark had no power to make the contract under review.

(a) Because the contract is not made with an adjoining municipality.

(b) Because the city has no water works which can be used for the supply of the borough under the **10** contract.

(c) Because the contract was not submitted to the voters of the borough and the borough council **11** undertook to contract without such submission.

(d) Because at the time of the contract the borough was supplied with water by the New Jersey Suburban Water Company and the New York & New Jersey Water Company. **20**

(e) Because at the time of the contract the borough was being supplied with water by a private corporation.

(f) Because the borough formed part of the Township of Kearny on June 29th, 1895, when a contract for water supply was made with the East Jersey Water Company to continue until June 29th, 1910, and the borough was receiving its water supply under said contract at the time of the making of the **30** contract now under review.

COLLINS & CORBIN,
Attorneys for Pros.

STIPULATION OF FACTS.
NEW JERSEY SUPREME COURT.

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		PATRICK L. REHILL AND)	
		ELLEN M. REHILL,)	
		Prosecutors,)	
10		vs.)	
		THE MAYOR AND COUN-)	
		CIL OF THE BOROUGH)	
		OF EAST NEWARK AND)	
		THE MAYOR AND AL-)	
		DERMEN OF JERSEY)	
		CITY.)	
		—)	
		THE NEW JERSEY SU-)	
		BURBAN WATER COM-)	
		PANY, AND OTHERS,)	
		Prosecutors,)	
20		vs.)	
		THE MAYOR AND COUN-)	
		CIL OF THE BOROUGH)	
		OF EAST NEWARK AND)	
		THE MAYOR AND AL-)	
		DERMEN OF JERSEY)	
		CITY.)	
			0

On Certiorari.

30 The following statement of facts is agreed to by the attorneys for the parties in the above entitled suits—one writ being addressed to the defendant city, and another to the defendant borough in each suit—to be used on the hearing under said writs, together with the exhibits therein referred to:

1. In the year 1885, Jersey City was supplied with water pumped by the city from the intake and works owned by the city on the Passaic River at Belleville into a reservoir near the junction of Belleville Turn-
40 pike and Kearny Avenue, from which three paral-

lel water mains were constructed in the Belleville Turnpike to another reservoir on Jersey City Heights. The Belleville Turnpike runs along the northerly line of the Township (now Town) of Kearny, which, until July 2nd, 1895, embraced within its limits all the territory of the present Borough of East Newark, said borough having been formed July 2nd, 1895, and being bounded on the north and east by the present Town of Kearny, on the south by the 10 Town of Harrison, and on the west by the Passaic River, and at no point touching or coming in contact with the territory of Jersey City.

2. The Town of Harrison is situated on the west shore of the Passaic River next south of the Township of Kearny, and on July 31st, 1885, the town council made a contract with Jersey City, for a water supply, which was to last for ten years from the date thereof, at ninety dollars per million gallons to be delivered at a point in the Town of Harrison near 20 the Kearny boundary line, the town undertaking the distribution from that point, and in order to fulfill this contract, the authorities of Jersey City constructed and paid for a water main twenty inches in diameter, beginning at one of its mains in Belleville Turnpike and thence extending southerly along Kearny Avenue, through the territory of the Township of Kearny, to the point of delivery in the Township of Harrison, and upon the completion of this main began the delivery of water to the Town of Harrison. 30 A copy of this contract is hereto annexed, marked Exhibit "A." (See pamphlet entitled "Contracts and Documents relating to Water Supply of Kearny, Harrison and East Newark," p. 3.) After the expiration of the ten years mentioned in the said contract Jersey City continued to supply the water to the town and to render bills therefor, obtaining the water from the East Jersey Water Company after January, 1896, as hereinafter stated, and the town continued to receive the water from Jersey City and to pay the said bills to the city until July 8th, 1903. After said 40 date Jersey City, and the New Jersey Suburban

Water Company and the New York and New Jersey Water Company both claim to have delivered the said water as hereinafter set forth.

3. In the year 1887, a contract was made between Jersey City and the Township of Kearny, whereby the city agreed to supply water to that township for the term of ten years, at ninety dollars per million gallons, the water to be distributed by the township.
- 10 This water was supplied through the said main, the supplies for both towns being metered at the junction of Belleville Turnpike and Kearny Avenue, and the supply for Harrison being metered at the south terminus of the main in Kearny Avenue, the difference between the two measurements being the supply of Kearny. The contract contained a provision that it should last for the term of ten years from the date thereof. A copy of said contract with Kearny is hereto annexed, marked "B," (Pamphlet, p. 6).
- 20 Jersey City continued to supply water to the town and to render bills therefor, obtaining the water from the East Jersey Water Company after January, 1896, as hereinafter stated, and the town continued to receive the water from Jersey City and to pay said bills to the city until July 8th, 1903. After said date the city and the New Jersey Suburban Water Company and the New York and New Jersey Water Company both claim to have delivered the said water as hereinafter set forth.
- 30 4. The township committee of Kearny made a contract with the East Jersey Water Company, dated June 29th, 1895, for a water supply for a term of fifteen years from the date of the contract, to begin six months from that date, and to be delivered at the junction of Belleville Turnpike and Kearny Avenue. A resolution awarding the contract to the East Jersey Water Company, the lowest bidders, and instructing the counsel to prepare the contract and bond, was passed by the council of the town, June 11th,
- 40 1895. A copy of that contract is hereto annexed,

marked Exhibit "C," (Pamphlet, p. 9). The validity of this contract at the time of its execution, is not admitted by Jersey City. On June 29th, 1895, the territory now constituting the Borough of East Newark was a part of the Township of Kearny and its inhabitants were served with water through mains connected with the Kearny Avenue main.

5. At the time when this contract of the East Jersey Water Company was made, that company controlled the pipe line from the Pequannock River, which it had constructed for the City of Newark, and had the right to sell the waters from that supply not required for the City of Newark, until September 24th, 1900, and had also under construction water works at Little Falls, and on July 12th, 1895, the East Jersey Water Company executed a contract with the New York and New Jersey Water Company to deliver them water at or near the same point for the supply of Bayonne, and the East Jersey Water Company began the construction of a forty-two inch main from its pipe line in Essex County to the point of delivery in Kearny at the junction of Belleville Turnpike and Kearny Avenue, laying its pipes under the channel of the Passaic River, and along the Belleville Turnpike, to Kearny Avenue, parallel with the old mains of Jersey City.

6. In 1895 the authorities of Jersey City were planning for a new system for the supply of the city, the construction of which would continue for a period of years, and in order to obtain a new and better supply for the interval, the city made a contract with the East Jersey Water Company, dated October 12th, 1895, for a temporary supply, to be delivered into the Jersey City mains, near the junction of Belleville Turnpike and Kearny Avenue. A copy of said contract is hereto annexed marked Exhibit "E," (Pamphlet, p. 18). The time for the commencement of delivery of water under contract Exhibit "C," was extended from time to time in writing by the township

and the East Jersey Water Company, and copies of such extensions are hereto annexed marked Exhibits "D," 1, 2 and 3, (Pamphlet, pp. 14, 15, 16). The validity of these extensions is not admitted by Jersey City. It was contemplated that the township would provide another main in Kearny Avenue for the reception of the water supplied by the East Jersey Water Company, but the township never did provide such main.

- 10 7. The forty-two inch main of the East Jersey Water Company was completed across the Passaic River and along Belleville Turnpike to Kearny Avenue, on or about January 1896, and three connections were made with said forty-two inch main; first, a connection with a main beginning at that point belonging to the New York and New Jersey Water Company, which company supplied the City of Bayonne, second, a connection with the three mains of Jersey City, and third, a connection with the said
- 20 Kearny Avenue main. And said supply by the East Jersey Water Company to the New York and New Jersey Water Company for the use of Bayonne, has continued up to the present time, and the supply into the old mains of Jersey City, extending along Belleville Turnpike was continued until July 7, 1903, when it ceased, and the supply by the East Jersey Water Company into the Kearny Avenue main has continued until the present time under the circumstances hereafter stated. The delivery of the temporary
- 30 supply to Jersey City was at first only a part of the amount required by the city, but a complete delivery under said temporary supply contract was made about the year 1898, and since that time Jersey City has received all of its water from the East Jersey Water Company under said contract.

After the East Jersey Water Company commenced delivery to Jersey City, in the spring of 1896, Jersey City ceased to operate its pumping plant at Belleville and to take water therefrom. The pumping station

40 at Belleville, however, has been since that date main-

tained by Jersey City, and two employees are constantly in charge of the same.

8. The supply to Jersey City under the contract for a temporary supply dated October 12th, 1905, was to be from the Pequannock River only. A supplemental contract was made between the city and the East Jersey Water Company, dated April 22nd, 1897, whereby that company undertook to furnish from Little Falls all the additional water necessary for the full supply of the city, and the entire supply after September 24th, 1900, when the Pequannock supply would all be appropriated by the City of Newark, at \$35.00 per million gallons, and to continue until termination by Jersey City, on one year's notice, or by the East Jersey Water Company on two years' notice, and the Water Company gave such notice to the city October 22nd, 1900, to terminate the contract October 23rd, 1902, but the supply was continued after that date as hereinafter stated. Copy of such supplemental contract is hereto annexed, marked Exhibit "F," (Pamphlet, p. 24).

9. In the year 1895, Jersey City attempted to make a contract for the construction of a new water works system for a new supply of water, but said contract was set aside on certiorari and proposals were several times afterwards received but not accepted. Finally, on February 28th, 1899, Jersey City made a contract with Patrick H. Flynn, for the construction of water works for a permanent supply to Jersey City from the Rockaway River. A statement of the terms of said contract, containing such provision thereof as are material in this case, is hereto annexed, marked Exhibit "G," (case, p. 39). Said Flynn assigned this contract to Jersey City Water Supply Company, which company entered upon the construction of the works, but became embarrassed while the work was incomplete, in the spring of 1902. The city elected to exercise the option to purchase the works when completed and tested, but the same have not yet been completed and the price has not

been paid, and the works have not yet been turned over by the contractor to the city, and by supplemental agreement the time to test the works has been extended to October 1st, 1905. A third contract was made by Jersey City with the East Jersey Water Company, dated March 31st, 1902, whereby the company agreed, among other things, to provide a large sum of money for the Jersey City Water Supply Company, to complete the Flynn contract, and further agreed to continue the temporary supply until such completion, and guaranteed that the water would be turned on from Rockaway supply on or before March 1st, 1904. At the time of making this contract it was known that the new main for the Rockaway supply would cross the mains of the East Jersey Water Company at Upper Montclair in Essex County, and would extend thence to Jersey City along a route about two miles north of the mains in Belleville Turnpike, and it was expected that this new main, constructed by the Jersey City Water Supply Company, would be completed from Upper Montclair to Jersey City Heights, some time earlier than the residue of the works for the Rockaway supply. Accordingly it was further provided in said agreement dated March 31st, 1902, that as soon as this new main should be completed from Upper Montclair to the reservoir on Jersey City Heights, a connection should be made between this new main and the mains of the East Jersey Water Company at Upper Montclair, and thereafter the East Jersey Water Company should make delivery as called for in said contracts. A copy of said contract dated March 31st, 1902, is hereto annexed, marked Exhibit "H," (Pamphlet, p. 30.)

10. The East Jersey Water Company and the Jersey City Water Supply Company entered on the performance of said contract dated March 31st, 1902, and early in June, 1903, the new main was completed from Upper Montclair to the reservoir on Jersey City Heights, and the East Jersey Water Company connected its mains therewith at Upper Montclair, and

began to turn the water into the new main, increasing the quantity from day to day so as to test the new main, and finally on July 7th, 1903, turned the whole supply of Jersey City, which had previously been delivered into the Belleville Turnpike mains, into this new main, and from that date has delivered all the water consumed in Jersey City at that point.

11. The contract made between the Township of Kearny and the East Jersey Water Company dated June 29th, 1895, was assigned by the East Jersey Water Company to the New Jersey Suburban Water Company, and the New York and New Jersey Water Company, by assignment dated July 1st, 1903, a copy of which is hereto annexed marked Exhibit "I," (Pamphlet, p. 36). On the eighth day of July, 1903, the East Jersey Water Company served notice upon Jersey City that the company had ceased the delivery of water at the junction of Kearny Avenue and Belleville Turnpike, and was delivering all its water to the city through the new main; a copy of said notice is hereto annexed, marked Exhibit "J," (Pamphlet, p. 38), and on the same date said company gave notice to the Town of Kearny of the assignment by that company of the said Kearny contract, and setting forth that the water was being delivered to the Town of Kearny by the assignees; a copy of which notice is hereto annexed marked Exhibit "K," (Pamphlet, p. 39); and on the same date, July 8th, 1903, the said assignees gave notice to the Town of Kearny, to the Town of Harrison and to the Borough of East Newark, that they were supplying the water used by the said towns and borough, and would look to them for payment, at the contract price of ninety dollars per million gallons. A copy of said notices are hereto annexed marked Exhibits "L," "M," "N," (Pamphlet pp. 41, 42, 43). Water is delivered into the Borough of East Newark, by a connection with the Kearny Avenue main, and water delivered into said main will flow into the Borough of East Newark, unless the gate into the borough mains is closed. The said borough

has continued to receive water since July 7th, 1903, as before, through this main.

12. In the spring of 1896, the East Jersey Water Company, at the request of the authorities of Jersey City, made a connection of the forty-two inch main of the East Jersey Water Company with the Kearny Avenue main, and turned water into it; at that time a communication was addressed by the superintendent of the East Jersey Water Company to the clerk of the Township Board of Kearny, dated April 8th, 1896, a copy of which is hereto annexed, marked Exhibit "O," (case, p. 40.)

After April 8th, 1896, when the water supply from the East Jersey main into the Kearny Avenue main began, the East Jersey Water Company charged to Jersey City for all the water delivered into said main, as well as for all the water delivered into the Jersey City mains, at the same point, and at the rate named in the Jersey City contract for temporary supply, and Jersey City continued to collect at ninety dollars per million gallons from the Towns of Kearny and Harrison and the Borough of East Newark until July 7th, 1903. Since that time no payments have been made by either of these three towns for water supply either to Jersey City or to the Water Company, except a payment by Kearny under the circumstances hereinafter mentioned, and no charge has been made by the East Jersey Water Company against Jersey City for the water supplying said three towns; and the New Jersey Suburban Water Company and the New York and New Jersey Water Company claim to have purchased under contract with the East Jersey Water Company all the water delivered by that company into the Kearny Avenue main at the junction of Belleville Turnpike and Kearny Avenue, since July 7th, 1903, and has rendered bills therefor to the said three municipalities. A copy of said contract is hereto annexed, marked Exhibit "P," (case, p. 41.) Jersey City also claims to have purchased this water from the East

Jersey Water Company under said contract of April 22nd, 1897, and to have delivered the same to the said towns, and has rendered bills therefor to said towns. The Town of Kearny has paid the New Jersey Suburban and the New York and New Jersey Water Companies for water delivered by them to October 1st, 1903, on being indemnified by them from all claim of Jersey City, and upon a stipulation that said payment should not waive "any right which the Town of 10 Kearny might have in the matter of its contracts relations with said companies or with Jersey City," and the Borough of East Newark has paid into Court of Chancery the amount claimed up to the same date, under a bill of interpleader against Jersey City and against the New Jersey Suburban Water Company, and the New York and New Jersey Water Company; and a suit at law is now pending by the New Jersey Suburban Water Company and the New York and New Jersey Water Company, and also by Jersey City 20 against the Town of Harrison for water supplied since July 7th, 1903.

13. On the 10th day of July, notice was given by the New Jersey Suburban Water Company and the New York and New Jersey Water Company to the authorities of Jersey City that they were supplying water for the Town of Kearny and Harrison, and the Borough of East Newark, and offering to purchase the main constructed by Jersey City in Kearny Avenue in the year 1885, at a fair price, a copy of which notice is hereto annexed marked Exhibit "Q," (Pamphlet, p. 44). 30

14. On July 28th, 1903, the Street and Water Commissioners of Jersey City adopted resolutions demanding that the East Jersey Water Company should deliver water at the junction of Kearny Avenue and Belleville Turnpike sufficient to enable the city to supply the said towns and borough, and on the same day directed that a pipe should be constructed from said junction to the new water main of Jersey City 40

near Kingsland, by resolution, to test which a suit on certiorari is pending, and on the fourth day of August, 1903, the Jersey City Water Supply Company gave notice to the Mayor and Aldermen of Jersey City that they could not permit their main to be tapped at Kingsland, and on the same date the East Jersey Water Company gave to the city a written refusal to supply water at the junction of Kearny Avenue and Belleville Turnpike to the city. A copy of said resolution and notices are hereto annexed, marked Exhibits "X," "Y" and "Z," (Pamphlet, pp. 54 to 58.)

Thereafter, on the fourth day of September, nineteen hundred and three, the Jersey City Water Supply Company offered to permit its main to be tapped at Kingsland by the city, on certain conditions concerning which negotiations are still pending between Jersey City and said Jersey City Water Supply Company.

15. On July 7th, nineteen hundred and three, a resolution was passed by the council of the Town of Harrison, authorizing its chairman to execute a contract with Jersey City for a water supply, a copy of which resolution is hereto annexed, marked Exhibit "R," (Pamphlet, p. 45), and on July tenth, 1903, the board of street and water commissioners of Jersey City adopted resolutions purporting to accept the terms of the said Harrison council resolutions, and authorizing the proper authorities to execute said contract with the Town of Harrison; which was done on the part of the city, under date of July 10th, 1903; a copy of which is hereto annexed, marked Exhibit "S," (Pamphlet, p. 46), and Jersey City claims to have delivered the same to the authorities of the Town of Harrison, but the said contract has not been signed by the president of the council or the town clerk, nor has the seal of the said town been affixed thereto, and Jersey City claims to have expended money in the performance of the said contract. On September 15th, 1903, the council passed a resolution to rescind the resolution of July 7th, 1903, and at the same time

passed another resolution awarding a contract to the New Jersey Suburban Water Company, which contract was executed by the president of the town council, and was executed by the company on the same day, which resolutions and contract are under review on certiorari; a copy of said resolutions and contract of September 15th, 1903, is hereto annexed, marked Exhibits "T" and "U," (Pamphlet, pp. 49, 50, 51). The report of the water committee mentioned in said resolution, dated and presented August 4th, 1903, is hereto annexed, marked Exhibit "V," (case, p. 43-77).

On September 22nd, 1903, a written offer to purchase the rights of Jersey City in the twenty-inch main in Kearny Avenue was served upon the clerk of the Jersey City board of street and water commissioners, a copy of which is hereto annexed, marked Exhibit "W," (case, p. 77).

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16. On the 9th day of December, 1903, a resolution was passed by the Mayor and Council of the Borough of East Newark authorizing the execution of a contract between the borough and Jersey City for a water supply, which contract was executed on the part of the borough and of the city and is under review on these certiorari proceedings; (see return of East Newark case, pp. 4-7).

17. Prior to the resolutions of rescission and contract of September 15th, 1903, the Town of Harrison passed no resolutions and gave no notice notifying Jersey City or any of the authorities thereof of any intention to pass such resolutions of rescission and contract, other than as appears in the return and proofs.

18. The population at the last census and the present daily average consumption of water in said municipalities are as follows:

Population.	Daily Consumption in Gallons.
Harrison 10,596	About 750,000 gals.
Kearny 10,876	" 600,000 "
East Newark 2,500	" 300,000 " 40

The shops of the Penn. R. R. Co. in the Hackensack Meadows in Kearny have been supplied for many years past from the Jersey City mains, which cross the meadows near those shops, the water being originally that which was pumped by the city from the Passaic River and afterwards was supplied by the East Jersey Water Company at the junction of Belleville Road and Kearny Avenue in to the Jersey City mains. Since July 7th, 1903, the supply for the shops has been sent by the city from the reservoirs on Jersey City Heights, westward, through these mains to the shops, the point of delivery at the shops being about 22,000 feet from Belleville Turnpike and Kearny Avenue and about 34,500 feet from the point of delivery to East Newark, measured along the present main. The price paid by the Penn. R. R. Co. to the city for water delivered at this point is ninety (\$90.00) dollars per million gallons, and the average daily consumption is about two million gallons. The price of ninety dollars per million gallons is the lowest rate for measured water charged by the city to consumers in Jersey City, some of whom take more water than any one of the said three municipalities.

19. The delivery of water from the forty-two inch main of the East Jersey Water Company in Belleville Turnpike into the twenty inch main in Kearny Avenue through the connection between the two mains at the junction of Kearny Avenue and the Belleville Turnpike, has not been interrupted since July 1st, 1903.

20. On June 21st, 1895, a petition for the formation of the Borough of East Newark was filed, and the order for an election to vote upon the question of the formation of such borough was filed upon the same day. On July 1st the affidavit of publication and posting of the notices of such election were filed. On July 2nd, 1895, the citizens voted in favor of establishing said borough, and on July 3d, the certificate of the result of said election was filed. At the

time of the establishment of said borough, the borough acquired the ownership of the distributing mains within its territory, but continued to take water from the Town of Kearny and to pay the said town therefor, until the making of the said contract between the said borough and Jersey City hereinafter mentioned. On March 10th, 1897, the common council of the said borough received communication from the Kearny township committee, that the township would not supply water to the borough after July 1st, 1897. On June 9th, 1897, said common council received another communication from the township committee, stating that the water service to the inhabitants in the borough would be discontinued by the township after July 1st, 1897, which notice was published in the Kearney papers, and the authorities of the Township of Kearny did cut off the water communication with East Newark. On the first day of July, 1897, the Borough of East Newark made a contract with Jersey City for a water supply. The term mentioned in the said contract was five years, and a copy is hereto annexed, marked Exhibit "BB," (case, pp. 78-80). Delivery was made by Jersey City under this contract, through a connection with the twenty inch Kearny Avenue main, and the water supplied was a part of the water received into said twenty inch main at the junction of Kearny Avenue and Belleville Turnpike from the East Jersey water company. The bills for this supply were rendered by Jersey City to the Borough of East Newark, and by said borough paid to Jersey City up to the 8th day of July, 1903. No notice was ever given by either party by resolution of any intention to discontinue the supply.

21. The East Jersey Water Company has never made any demand upon the Borough of East Newark for payment for the water supplied to said borough prior to July 8th, 1903, nor has the said company ever made any demand upon the Town of Kearny or upon the Borough of East Newark to carry out the contract of June 29th, 1895, between said Water Com-

pany and the Town of Kearny, after the termination of the last extension and before July 8th, 1903.

Any private or special act may be used on the argument as if it had been offered in evidence.

Dated February 8, 1904.

HERBERT BOGGS,

Attorney for Prosecutors, Patrick L. Rehill and Ellen M. Rehill.

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EDWARD KENNY,

Attorney for the Borough of Newark

GEORGE L. RECORD,

Attorney for Mayor and Aldermen of Jersey City.

COLLINS & CORBIN,

Attorneys for N. J. Suburban Water Co. and N. Y. & N. J. Water Co.

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EXHIBITS.

EXHIBIT A.

See Pamphlet, "Contracts and Documents," page 3.

EXHIBIT B.

See Pamphlet, page 6.

EXHIBIT C.

30 See Pamphlet, page 9.

EXHIBITS D 1, D 2 and D 3.

See Pamphlet, pages 14 to 16.

EXHIBIT E.

See Pamphlet, page 18.

EXHIBIT F.

40 See Pamphlet, page 24.

EXHIBIT G.

Agreement dated February 28, 1899, between the Mayor and Aldermen of Jersey City and Patrick H. Flynn. Recites advertisement and proposals for water supply and award of contract to Flynn, December 21, 1898, by the Board of Street and Water Commissioners, concurred in by the Board of Finance and approved February 1, 1898, by the Mayor. The said Flynn agrees to construct a system of water works for Jersey City under plans annexed, and to supply the city therefrom with pure and wholesome water. Jersey City agrees to take the water and use the same for its water supply when the works are completed as soon as the contractor is ready to deliver pure and wholesome water from the supply. Jersey City agrees to pay for such water \$36. per million gallons for each million furnished up to 25,000,000 gallons daily; further provisions for price in excess of 25,000,000 gallons daily.

5. "The said contractor hereby covenants and agrees that he will, upon the receipt of notice as provided in the specifications and the payment of the purchase price, sell and convey the said water supply with the appurtenances to Jersey City upon any of the following options."

For the water works necessary to supply 50,000,000 gallons, together with water rights necessary to supply 70 millions, \$7,595,000, to be paid by the city when the water works are completed and accepted, the city to give notice of its intention to purchase within one year after the date of the contract.

6. If the city shall give notice of intention to purchase, the city shall have reasonable time to test the works and the supply after completion and before acceptance thereof, not extending beyond four years and eleven months from the date of the contract.

10. Nothing herein contained shall be construed as an abandonment by Jersey City of its rights in the Passaic River, or elsewhere.

Specifications annexed to contract.

EXHIBIT H.

See Pamphlet, page 30.

EXHIBIT I.

See Pamphlet, page 36.

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EXHIBIT J.

See Pamphlet, page 38.

EXHIBIT K.

See Pamphlet, page 39.

EXHIBITS L, M. N.

See Pamphlet, pages 41 to 43.

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EXHIBIT O.

April 8, 1896.

Gabriel B. Reid, Esq.,

Clerk of Township of Kearny, N. J.

Dear Sir:—Referring to your letter of March 25th, we beg to point out that the Township of Kearny can at present receive water into its distribution pipes only by way of a 20 inch main laid in Kearny Avenue, and owned by Jersey City.

30 This main has not yet been made available for the purpose of the contracts of this Company with the Township; nor has the Township laid a separate main to the corner of Kearny Avenue and Belleville Avenue at which point this Company has long stood ready and still stands ready to deliver water in conformity to its contract with the Township.

Having however been requested by Jersey City to supply water directly into Kearny Avenue main above referred to, we have made a connection with it and have this day at four o'clock turned the water into it. As the Kearny Avenue main belongs to
40 Jersey City and is not under our control we cannot,

of course, guarantee its use to you for any specified length of time, and we have made the connection with it as a matter of accommodation and at the request of Jersey City.

Yours truly,
 CLEMENTS HERSCHEL,
 Sup't East Jersey Water Company.

EXHIBIT P.

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This agreement, made this first day of July, Nineteen hundred and three, between The East Jersey Water Company, of the first part, and New Jersey Suburban Water Company and the New York and New Jersey Water Company, of the second part, all corporations of New Jersey.

Whereas the party of the first part has this day assigned to the party of the second part the right to supply water to the Township of Kearney under the contract between the party of the first part and said Township dated June 29, 1895, and to receive the moneys accruing under said contract.

Now, in consideration of said assignment, it is agreed:—

First. The party of the second part shall take all their supply of water required for all their present and future uses and purposes in that part of Hudson County, New Jersey, lying west of the Hackensack River, from the party of the first part at the corner of Kearney Avenue and Belleville Turnpike Road in the Township of Kearney; and the party of the first part agrees to supply the same.

Second. The water to be supplied to the Township of Kearney under said contract of June 29, 1895, is to be received by the party of the second part through the gates and meter now established at the point aforesaid by the party of the first part for the supply of Kearney; and the party of the second part agrees to pay for all water passing through said gates and meter at said point, whether consumed by the Town-

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ship of Kearney or its inhabitants, or otherwise, at the price of sixty dollars (\$60.00) per million gallons, payable half yearly until they or either of them shall by some contract with any person, corporation or municipality in said County agree to supply water at some other price than that of ninety dollars per million gallons; after which contract or contracts the price to be paid under this contract to the party of the first part for the amount of water thereafter supplied under said new contracts shall be thirty dollars (\$30.00) per million gallons, plus one half of all that shall be received under such contracts in excess of said thirty dollars (\$30.00) per million gallons; settlements and payments to be made quarterly or semi-annually, according to the manner of payment, under said contract.

In Testimony Whereof, the parties hereto have caused their separate corporate seals to be hereto affixed and these presents to be executed the day and year first above written.

THE EAST JERSEY WATER COMPANY,
by EDMUNM LE B. GARDINER,
Vice-President.

(L. S.) Attest:
ALBERT P. FISHER,
Secretary.

NEW YORK & NEW JERSEY WATER
COMPANY,

by T. A. BEALL,
Pres't.

(L. S.) Attest:
J. WILLIAM GRIFFIN,
Secretary.

NEW JERSEY SUBURBAN WATER
COMPANY,

by T. A. BEALL,
Pres't.

(L. S.) Attest:
J. H. BEALL,
Secretary.

EXHIBIT Q.

See Pamphlet, page 44.

EXHIBIT R.

See Pamphlet, page 45.

EXHIBIT S.

See Pamphlet, page 46.

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EXHIBITS T and U.

See Pamphlet, pages 49 to 51.

EXHIBIT V.

Report of Water Committee to the Town Council of Harrison, with Exhibits, Presented at a Meeting of the Council, held August 4, 1903.

Your Water Committee, to whom has been referred for report the matter of the making of a contract for a supply of water for the town, beg to state that they have given this subject careful study and have consulted with and referred to the most eminent available authorities upon the questions involved. 20

I. The committee are advised by competent legal authority that the action taken at the meeting of the Council held on July 7, 1903, in the adoption of a resolution purporting to award a contract to Jersey City "on the same terms and conditions and for a similar period of time as are contained in a contract made on the 31st day of July, 1885" (except as to certain modifications in price), was improper and irregular, and that the execution of a contract thereunder would be illegal, because the contract so purported to have been adopted and awarded was not presented or read to the Council at the time of the passage of the resolution relating thereto, or at that or at any previous or subsequent meeting of the Council, and that the said contract having been made eighteen years ago and having expired eight years ago, the members 30 40

of this Council were not fully or properly acquainted with the terms and conditions thereof.

II. Subsequent examination by this committee of the said contract of 1885, since the matter was referred to the Water Committee of July 21, 1903, satisfies this committee that the terms and conditions of said contract of 1885 are not such as fully and properly protect the interests of the town of Harrison if the said contract were renewed, and are not in accordance with the representations made to the members of this committee and other members of the Council by the representatives of Jersey City, which induced us to vote for the aforementioned resolutions of July 7, 1903.

III. We therefore recommend the said resolutions of July 7, 1903, be reconsidered and rescinded by this Council.

As to the general merits of the proposals now before your Council for consideration for a water supply, we beg to state that at a conference of members of the Council with representatives of Jersey City held on the evening of July 21, Mr. Bouton, the clerk of the Street and Water Board of Jersey City, presented a contract, signed by certain officers of that municipality, and requested the signature thereof by the officers of this town, which contract was substantially that of 1885, with the modifications of price referred to in the resolution of July 7th. At the same meeting a draft of a proposed agreement with Jersey City, purporting to conform with the representations above referred to, was presented by the attorney who has represented Jersey City in these negotiations, but Mr. Bouton declined to agree to have the same signed by his Board or by the other Jersey City authorities, and stated that he would not even present it to Jersey City unless it was first signed and executed by the authorities of Harrison, and that he could not assent to or guarantee any modification by the Jersey City authorities of the form of agreement of 1885.

Your committee are satisfied that if the contention and request of Jersey City for a renewal of the contract of 1885 were to be granted, it would permit that city to furnish this town with water from the old mains across the meadows back from Jersey City, a plan to which this committee believes that the intelligent sentiment of this town is entirely opposed—

First, Upon the ground that the water so deliverable would necessarily be impure and unfit for household 10 or domestic use, as will be shown in the analysis of the same made by Professor Charles F. Chandler, of Columbia College, whose certificate is hereto attached, and who states in regard to the said water that “This water is very bad and is wholly unfit for drinking purposes. The ammonias, both free and albuminoid, are enormous. I should by all means avoid using it as a potable water.” This estimate of the impurity of the water referred to, after passing through these old and encrusted pipes, is confirmed 20 by the action of the Health Boards of North Arlington, Kearny and Harrison, copies of which are hereto attached, and which resolutions were based upon examination made by Doctors Allers, Exton, Goldberg Marks, Lightfoot and others, all of whom agree as to the condition of impurity arising from the foul encrustations and deposits of the old Passaic sewerage in the said pipes, and which encrustations and fouling are shown in a photograph taken of one of the said pipes when it was broken, and which photograph is 30 also hereto attached and made a part of this report.

Second—Your Committee deem that any supply of water to this town through the said old mains would be entirely unsatisfactory and irregular, by reason of the great age and infirmity of the said mains and the impossibility of securing a proper pressure for fire protection and manufacturing purposes through the same. The evidence of this infirmity is shown by the fact that breaks necessitating the closing down of one or more of said mains occurred nine times during the year 1902 and several times during the early part of 40

the present year. The pressure heretofore borne by these mains in carrying water from Belleville and Kearny Avenues to Jersey City has been light because the water has been pumped when it arrived in Jersey City into the high service reservoir. To return the water through these mains in Belleville and Kearny avenues by pumping or gravity would require that they should carry a much heavier pressure than
 10 they have ever been subjected to. Their inability to carry this pressure is shown by the accompanying photograph taken within the past week showing the condition of one of the said mains which has been broken on the meadows under comparatively light pressure, when there has been practically no draft of water from it and practically no pressure on it west of the Hackensack River.

The committee cannot refrain at this time from expressing the obligation under which this town rests to
 20 the authorities in Kearny for refusing permission to Jersey City to tap into the 20-inch Kearny Avenue main and connect it with these old mains returning from Jersey City.

We understand that Jersey City has taken the town authorities of Kearny into court and has tried to legally restrain Kearny from interfering in this regard, and that at the hearing upon these proceedings, held in Newark on Wednesday last, the representatives of
 30 Jersey City stated that they had a contract with and were delivering water to Harrison, and that it was necessary to make these connections to carry out the said contract; and that these representations were concurred in by the attorney who has heretofore represented Jersey City in its negotiations with Harrison.

The protection of the interests of the property owners and the healthfulness of this town requires that this Council should immediately and formally disclaim the correctness of these representations.

Third.—In order that there may be no mistake
 40 made by this Council regarding the proposed draft of contract submitted by the attorney representing Jer-

sey City, but which Mr. Bouton was unwilling to submit to his Board, and which contains provision for the tapping of the new main of the Jersey City Water Supply Company at Kingsland, this committee are advised by eminent legal authority, Messrs. Collins and Corbin, of Jersey City, whose opinion is hereto attached, that Jersey City has no right to make such tap or connection, and we have also had submitted to us an assurance in writing, signed by a duly authorized officer of the East Jersey Water Company and the Jersey City Water Supply Company, to the effect that "We shall prevent as far as possible, 'even by applying to the Court for an injunction,' the connection with our mains."

In view of these facts, the Committee cannot recommend to the Council to enter into any contract with Jersey City, (even if Mr. Bouton and his Board might finally consent thereto), which provides for the performance by Jersey City of an act which, we are advised, would be illegal, or the legality of which would depend upon the prior payment by Jersey City of the sum of \$7,595,000.

Fourth—Assuming, however, for the moment, that the contention of Jersey City that she intends to lay a main from Kearny and Belleville Avenues to Kingsland is made in good faith, and that the legal rights of the owners of the Kingsland main could be invaded by Jersey City and a tap made therewith, there are three questions to be considered as the determining factors in the question of awarding a water contract, the three elements of price, pressure and quality.

As to the question of price, this Committee are of the opinion, after careful analysis and comparison, that the figures presented at the competition held at the meeting of this Council, July 7, 1903, by the New Jersey Suburban Water Company are more favorable to the Town of Harrison than the figures presented by Jersey City, as will be shown by annexed editorial from the Kearny Record.

As to the question of pressure, we are thoroughly satisfied with the pressure now being received by the Town of Harrison under delivery of water now being made to us by the Suburban Company, and are satisfied that no equal pressure could be expected from Jersey City from its old mains nor could a better pressure be produced from Kingsland avenue.

This leaves open simply the question of quality.

- 10 On the one hand, we have Jersey City seeking to force upon this Town a contract without any guaranty as to pressure or quality and going into the Courts to compel the Towns of Kearny and Harrison to take delivery from the old mains, which we know to be water of an inferior quality. The only modification which Jersey City has made in this position has been her recent efforts to create the impression that she would lay a main from Kingsland, but we do not believe these representations to be made in good faith,
- 20 because we are informed by the leading pipe manufacturers of the country that the only inquiries Jersey City has made for the sizes proposed to be laid from Kingsland Avenue, are for from one to two thousand feet, whereas the main referred to would require from ten to twelve thousand feet, would cost approximately \$100,000, and would undoubtedly be successfully enjoined by Jersey City taxpayers. Even if it were laid from Kingsland, Jersey City would give us only the raw water from the Rockaway River. Is it our
- 30 duty to accept this supply or to seek to obtain the best supply obtainable?

We have before us a proposal from the New Jersey Suburban Water Company for a contract to supply the Town of Harrison for fifteen years with pure and wholesome water (which after one year is to be filtered water), which proposal is herewith submitted to the Council for its action.

The Committee have studied this question of filtered water and consulted authorities thereon. Mr. C. C. Vermeule for many years engineer to the Geological Survey of New Jersey and one of the highest au-

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thorities on water supply in this State, has advised this Committee as follows:

"I have been requested to express to you my opinion of the merits of the water from the works at Little Falls, purified by the filtration plant recently erected at that point, as compared with the merits of raw stream water. I am familiar with all the stream waters in the northern part of the State of New Jersey, and am convinced that, with the exception of a few small streams, practically all of them at the present time have become unsafe for use unless treated in one of two ways.

"First, all of the land near the stream lines must be acquired outright by the municipality or company using the waters, and all human habitations, stables, pig-sties, etc., removed therefrom, and the water protected by absolute ownership of a large portion of the watershed; or second, in the event that the first course above is impracticable, then the water must be purified by filtration. As you know, the city of Newark is attempting, with more or less success, to protect the Pequannock by the purchase of property, but in the case of many of the other branches of the Passaic, the cost of such a course would be absolutely prohibitive, and the streams are therefore more or less subject to pollution. I do not consider at the present time the waters of Rockaway below Boonton are materially better or safer from infection than are the waters of the main stream at Little Falls, and the course of the East Jersey Water Company in installing a modern, up to date system of filtration at Little Falls is to be heartily commended. The system there introduced is in accordance with the latest and best practice in mechanical filtration, so-called, and, so far as I can judge, everything possible has been done to make the effluent from that filter a safe and satisfactory supply for domestic purposes. That filtered water is unquestionably very much safer and more desirable for use than any raw stream water taken from the stream at points below the towns and vil-

lages. Recent experience at Ithaca has fully demonstrated the danger of using stream waters which have passed through such towns and villages; and there has been a rapid growth of knowledge and experience as to the dangers lurking in such waters, during the past few years.

“Very truly yours,

“C. C. VERMEULE,

“Consulting Engineer.”

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Mr. B. S. Church, formerly for many years Chief Engineer of the City of New York, has advised the Committee as follows:

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“In reply to your inquiries in regard to the comparative desirability of filtered and unfiltered river waters for domestic use in towns and villages, I beg to state that in my judgment from a professional point of view filtered water is always to be preferred for direct consumption. Even where the supply is taken from such a watershed as that of the Croton, or on upper Rockaway, it is improved for potable purposes by filtration.

“The present state of the arts as to methods of filtration have been so improved within the last fifteen years that by filtration waters from streams are rendered acceptable for domestic use which unfiltered would be condemned by State Boards of Health.

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“In cities where the best quality of natural unfiltered waters is supplied, the practice is on the increase of using the water for drinking and cooking only after it has passed through small house filters to make assurance doubly sure as to its quality.

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“So little effort has been made to pass laws to prohibit the contamination of streams that almost without exception the yield of our best watersheds is being more or less injured, and this evil will rapidly increase in the Eastern States proportionate to growth of population; hence the value of a well filtered water supply which eliminates disease germs of all kinds. This has been fully proven by the Providence experi-

ments on a large scale. Filters will not take out deleterious matter which chemically combines with water should such pollution occur. But it rarely happens in such quantity that the principle of dilution will not dissipate injurious results. These existing to any serious extent, like discharges from manufacturers, the conditions are readily detected and checked. Disease germs are the main danger of a water supply and these filters intercept.

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"Very respectfully,
"B. S. CHURCH,
"Consulting Engineer."

In addition to these eminent authorities, we attach hereto an extract from the discussion before the American Society of Civil Engineers, relative to filtration plant at Little Falls, N. J., which bears abundant evidence of the high opinion in which this filtered water is held by Messrs. C. L. Harrison, George 20 G. Whipple, Wm. B. Fuller, Rudolf Hering, L. L. Tribus, John H. Gregory and others, being the leading members of the engineering professions in the United States.

In the face of such an overwhelming mass of testimony and expert opinion relating to the desirability of filtered water as against unfiltered water, this committee cannot assume that public opinion would warrant them in advising this Council to accept any but the very best water procurable as to quality, especial- 30 ly when the same is stated by the public press of our town to be the cheapest supply obtainable.

The committee append hereto a petition signed by the General Electric Company, the International Pump Company, the Marine Engine Company, and other manufacturers and employers of labor in this town, asking the Council to make no contract except with ample provision for pressure and purity, and not to contract for unfiltered water if filtered water is obtainable.

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In view of the above consideration, the committee recommend the adoption by the Council of the annexed resolutions.

Signed:

THOS. F. BULGER,
EDWARD J. RICE,
JOHN J. LEEN,

Harrison, Aug. 4, 1903.

Water Committee.

10 Resolutions Offered by the Water Committee, with Report, August 4, 1903.

Resolved, That the action taken by this Board on July 7, 1903, in the adoption of a resolution providing for a contract for the purchase of a water supply from Jersey City for ten years, be reconsidered.

Resolved, That the report of the Water Committee which has been read be received and approved, and ordered spread in full upon the minutes of this Board, with the documents thereto attached, and that the recommendations contained in said report be, and they are hereby adopted as the action of this Board; and that the President of this Board and the Town Clerk be, and they are hereby authorized and directed to sign and attach the town seal thereto, execute and deliver a contract with the New Jersey Suburban Water Company for a supply of water for this town for a period of fifteen years, in the words and figures and upon the terms and conditions as follows:

30 (Here follows draft of contract afterwards executed with N. J. Suburban Water Co., and which appears in the minutes of Sept. 15th, stated in the Return; being also Exhibit U.) Pamphlet, page 51.

Certificate of Analysis of Prof. Charles F. Chandler.

New York, July 21, 1903.

Sir—The sample of water from George Bayliss, Esq., marked "Drawn from the house of Jno. A. Bayliss, of Borough of North Arlington, July 16,

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1903, in the presence of Geo. Bayliss, Mayor," submitted to us for examination, gives on analysis the following results:

Appearance, slightly turbid.

Color, faintly yellow.

Odor, tested to 100 Fahr., strong marshy.

Taste, slightly marshy.

	Results expressed in grains per U. S. gallon of 231 cubic inches.	Results expressed in parts by weight in one hundred thousand.	10
Chlorine in Chlorides	0.2915	0.5000	
Equivalent to Sodium Chloride.	0.4810	0.8251	
Phosphates (as P ₂ C ₅)	none	none	
Nitrogen in Nitrites	none	none	
Nitrogen in Nitrates	0.0037	0.0064	
Free Ammonia	0.0747	0.1282	
Albuminoid Ammonia	0.0398	0.0684	20
Total Nitrogen	0.0979	0.1680	
Hardness equivalent to Carb. Lime:			
Before boiling	1,7058	2.9260	
After boiling	1.7058	2.9260	
Organic and Volatile (loss on ignition)	1.8947	3.2500	
Mineral matter (non-volatile)			
CO ₂ restored with Ammonium Carbonate	2.2737	3.9000	
Total Solids (by evaporation) dried at 110 C.	4.1684	7.1500	30

Remarks: This water is very bad and is wholly unfit for drinking purposes. The ammonias, both free and albuminoid, are enormous. I should by all means avoid using it as a potable water.

Respectfully, your obedient servants,

C. F. CHANDLER, per F. J. METZGER.

To Geo. Bayliss, Esq.,

Mayor of North Arlington, N. J.

Communications Accompanying Report of Water
Committee.

To the Board of Health, Borough of North Arling-
ton.

Gentlemen—The samples of water drawn by me
July 15, 1903, at 5 P. M., from a faucet corner of
Belleville Turnpike and Elm Street, North Arlington,
10 is impure and unwholesome in that it contains decayed
animal and vegetable matter, as evidenced by its
putrid odor and disgusting taste, both before and
after boiling. Should this water be used indiscrim-
inately, sickness is likely to occur. I therefore rec-
ommend that its use be discontinued.

JAMES O. EXTON, M. D.,
Health Officer,
Borough of North Arlington.

20 Certified copy,
A. G. CRAWFORD,
Sec'y Board of Health.
Arlington, N. J., July 16, 1903.

To all whom it may concern:

This is to certify that I, Edward G. Marks, this day
drew water from the faucet at the house of Robert
30 Benkert of North Arlington, Bergen Co., New Jer-
sey, that the said water was foul-smelling and liable
in my opinion to cause diarrhoeal troubles to persons
drinking it.

EDWARD G. MARKS, M. D.,
655 Kearny Av.,
Arlington, N. J.

Certified copy,
A. G. CRAWFORD,
Sec'y Board of Health.
40 July 16, 1903.

NORTH ARLINGTON: Whereas, there have been numerous complaints by the residents of the Town of North Arlington to the Board of Health of the said town relative to the condition of the water now being furnished to the said town by the city of Jersey City; and

Whereas, the Board of Health did on the 15th day of July, 1903, meet and take samples of the said water from the houses of several citizens, and found the said water to be vile in odor and taste and color, ¹⁰ and filled with living organisms visible to the naked eye; and

Whereas, samples of the said water have been drawn, at the request of the Board of Health, by Doctors Goldberg, Exton, Marks and Allers, all of whom pronounce the same to be vile and unfit for domestic use; and

Whereas, it is well known that the mains from Jersey City to Arlington were laid, one in 1854 and two ²⁰ in the early 70's, and said mains have been repeatedly shown, when tapped or broken, to be thoroughly encrusted with sewage and impurities from the old water supply formerly taken by Jersey City from the Passaic River at Belleville; and

Whereas, several cases of serious illness have already resulted from the use of said water, and have been reported by the families and physicians to the Board of Health as having arisen therefrom;

Now, therefore, be it resolved, That the Board of ³⁰ Health of the Borough of North Arlington hereby condemns the water now being supplied by the city of Jersey City to the said borough through the mains of said city running from Jersey City to Arlington, as being dangerous to the health of the community, and hereby notifies the inhabitants of the said borough to refrain immediately from using the said water for drinking, cooking or any other domestic purposes.

Resolved, That the Mayor and proper officers of the Borough of North Arlington be, and they are ⁴⁰ hereby requested to discontinue the use of the said

supply of impure and unwholesome water within the said borough.

Dated, North Arlington, N. J., July 16, 1903.

WM. BRANDENBURG, JR., Prest.

LOUIS KOCH,

JOHN BEAVER,

GEORGE FLEMING,

A. G. CRAWFORD, Sec'y,

10

Board of Health.

I hereby certify that the above is a true copy of resolution passed by the Board of Health at a meeting held July 16, 1903.

A. G. CRAWFORD,

Sec'y Board of Health,

July 30, 1903.

KEARNY: Whereas, it is stated in the public
 20 press that the authorities of Jersey City propose to connect the 20-inch main in Kearny avenue with the mains running back from Jersey City, through Kearny and Belleville avenues, and through such mains and connections to furnish a supply of water to the Town of Kearny; and

Whereas, numerous complaints have been made of the quality of the water so to be furnished; and

Whereas, the Board of Health of the Town of
 30 Kearny did, on the 22d day of July, 1903, meet and take samples of the said water from the said mains of Jersey City, and found the same, as stated in certain certificates of analysis made on July 21st, 1903, by Professor Charles F. Chandler, of Columbia College, to be "very bad and wholly unfit for drinking purposes, the ammonia being enormous," and

Whereas, it is well known that the mains from Jersey City to Arlington were laid, one in 1854 and two in the early 70's, and said water mains have been repeatedly shown, when tapped or broken, to be thoroughly encrusted with sewage and impurities from the old water supply formerly taken by Jersey City
 40 from the Passaic River at Belleville; and

Whereas, this Board of Health is informed that several cases of serious illness have already resulted from use of said waters in North Arlington;

Therefore be it resolved, That the Board of Health of the Town of Kearny hereby condemns the water now proposed to be supplied by the city of Jersey City to the said town through the mains of said city, as being dangerous to the health of the community, and hereby notifies the inhabitants of said town to refrain from the use of said water for drinking, cooking or any other domestic purposes. 10

Resolved, That the Councilman-at-Large and Council of the Town of Kearny be requested to prohibit and forbid the use of said supply of impure and unwholesome water.

Adopted July 22d, 1903.

NEVIN KENNEDY, President,
JOSEPH SMITH, Secretary,
G. F. LIGHTFOOT, M. D., Health Officer. 20

Kearny, N. J., July 25th, 1903.

I hereby certify that the above is a true copy of a report submitted to the Town Council of the Town of Kearny by the Board of Health of the Town of Kearny at a meeting of said Council held July 22nd, 1903.

(L. S.) THEO. C. WILDMAN,
Town Clerk.

(Newark News, 7, 30, 1903.) 30

CONDEMNS THE OLD MAIN PLAN.

Harrison Health Board Takes a Hand in Water Supply Trouble.

CALLS ON PUBLIC FOR HELP.

The Harrison Board of Health, at a special meeting called last night by President John T. Malone, went unanimously on record as opposed to the town's taking its water supply from Jersey City, if the mains that formerly supplied Jersey City with water from 40

the Passaic River were to be used in transmitting it. The resolution adopted was as follows:

“Whereas, We learn that application has been made to the Court of Chancery to compel the town of Kearny to permit the Jersey Water Board to connect the old, unused mains that formerly supplied Jersey City with water from the Passaic River with the present main that supplies Harrison with water; and whereas the said mains have been shown, when tapped or broken, to be encrusted with sewage and impurities from the old water supply, taken from the Passaic River at Belleville, and, being old, could not stand sufficient pressure, would be liable to break, and shut off our entire water supply.

“Resolved, That as the Board of Health of North Arlington, after an experience with the water in the said meadow mains, found it necessary to order its discontinuance for being dirty and filthy and unfit for domestic use, that the Board of Health of Harrison hereby condemns the water proposed to be supplied through the meadow mains from Jersey City to Harrison, as being dangerous to the health of our community, and hereby asks the Common Council to positively refuse to accept the water delivered from Jersey City through the meadow mains; and we call upon the inhabitants of our town to openly oppose any contract with Jersey City that does not give us a direct pipe connection with their mains at Kingsland.

“Resolved, That the Board of Health and taxpayers of this town do hereby place themselves on record as being opposed to any contract, either with Jersey City or the Suburban Water Company, for a longer period than ten years, as being unwise and injudicious.”

JOHN T. MALONE, President.
JOHN J. DALY, Vice-President.
DR. HENRY ALLERS.
NATHANIEL COMEY.

Attest:

JOHN J. SCANNELL,

Secretary.

Report of State Board of Health on Jersey City
Water.

A report of an analysis of a sample of water which was collected on behalf of the State Board of Health by Dr. A. C. Hunt, at 9.40 A. M., July 29, 1903, and which was taken from a tap in the dwelling of Geo. Roll, Belleville Turnpike, North Arlington, who is receiving his supply from Jersey City shows (parts ¹⁰ per million), total solids, 208; chlorine, 3.5; nitrogen as nitrites, trace; nitrogen as nitrates, none; free ammonia, 2.7; albuminoid ammonia, .38; iron, 3.2; color, dark yellow; odor, strong and disagreeable. A qualitative microscopical examination shows the presence of Crenothrix in large quantity. Oacillaria was fairly plentiful and was apparently dead and decaying. A considerable amount of iron bearing amorphous matter was also present. The analysis shows that the water is unfit for potable use on ac- ²⁰ count of its disagreeable taste and odor. The large amount of iron in suspension renders it unfit for laundry purposes. The absence of nitrates and the abnormally high free ammonia indicates that an active decomposition of vegetable matter is taking place.

Very truly yours,

HENRY MITCHELL,
Secretary. ³⁰

Petition to the Water Committee Not to Make Con-
tract for Unfiltered Water.

Harrison, N. J., July 27, 1903.

To the Water Committee of the Town Council:

Gentlemen—The undersigned manufacturers and owners of property in the Town of Harrison, many of us employers of labor, hereby respectfully petition your honorable body not to make any contract which will not protect the town in the matter of pressure for manufacturing and fire protection, nor to award ¹⁰ or recommend any contract for a supply of unfiltered

water to this town, provided a supply of filtered water can be had and obtained.

- New Jersey Tube Co.,
 Jas. Clove, Pres.
 General Electric Company,
 G. F. Morrison, Mgr.
 International Steam Pump Co.,
 J. W. Dunn, Pres.
 10 Marine Engine & Machine Co.,
 F. S. Scheffler, Gen. Mgr.
 W. G. & G. Greenfield.
 People's Building & Loan Association,
 By George W. Smith, Pres.
 Stewart Hartshorn Co.,
 E. L. Durgin, Treas.
 Louis Hartung Boiler Works.
 Carr & Ball.
 Staniar & Laffey Wire Co.,
 20 The Crucible Steel Co. of America,
 Mgr.
 Hyatt Roller Bearer Co.,
 Alfred T. Sloan.
 Driver Harris Wire Co.,
 F. L. Driver, Treas.
 Headley & Farmer Co.,
 A. O. Headley, Pres. and Treas.
 J. J. Spurr & Son,
 Per W. H. Richman.
 30

Letters from C. C. Vermeule and B. S. Church:
 Common Council of Harrison, Committee on Water:

Gentlemen—I have been requested to express to you my opinion of the merits of the water from the work at Little Falls, purified by the filtration plant recently erected at that point, as compared with the merits of raw stream water. I am familiar with all of the streams of water in the northern part of the State of New Jersey, and am convinced that, with the
 40 exception of a few small streams, practically all of

them at the present time have become unsafe for use unless treated in one of two ways.

First, all of the land near the stream lines must be acquired outright by the municipality or company using the waters, all human habitations, stables, pigsties, etc., removed therefrom and the water protected by absolute ownership of a large portion of the watershed; or, second, in the event that the first course above is impracticable, then the water must be purified by filtration. As you know, the City of Newark is attempting, with more or less success, to protect the Pequannock by the purchase of property, but in the case of many of the other branches of the Passaic, the cost of such a course would be absolutely prohibitive, and the streams are therefore more or less subject to pollution. I do not consider that at the present time the waters of the Rockaway below Boonton are materially better or safer from infection than are the waters of the main stream at Little Falls, and the course of the East Jersey Water Company in installing a modern, up-to-date system of filtration at Little Falls is to be heartily commended. The system there introduced is in accordance with the latest and best practice in mechanical filtration, so-called, and, so far as I can judge, everything possible has been done to make the effluent from that filter a safe and satisfactory supply for domestic purposes. That filtered water is unquestionably very much safer and more desirable for use than any raw stream water taken from the stream at points below towns and villages. Recent experience at Ithaca has fully demonstrated the danger of using stream waters which have passed through such towns and villages, and there has been a rapid growth of knowledge and experience as to the dangers lurking in such waters, during the past few years.

Very truly yours,
 C. C. VERMEULE,
 Consulting Engineer. 40

July 30, 1903.

Water Committee. Council of Harrison, N. J.:

Gentlemen—In reply to your inquiries in regard to comparative desirability of filtered and unfiltered river waters for domestic use in towns and villages, I beg to state that in my judgment from a professional point of view filtered water is always to be preferred for direct consumption. Even where the supply is
 10 taken from such a watershed as that of the Croton, or the upper Rockaway, it is improved for potable purposes by filtration.

The present state of the arts as to methods of filtration has been so improved within the last fifteen years that by filtration waters from streams are rendered acceptable for domestic use which unfiltered would be condemned by State Boards of Health.

In cities where the best quality of natural unfiltered waters is supplied, the practice is on the increase
 20 of using the water for drinking and cooking only after it has passed through small house filters to make assurance doubly sure as to its quality.

So little effort has been made to pass laws to prohibit the contamination of streams that almost without exception the yield of our best watersheds is being more or less injured, and this evil will rapidly increase in the Eastern States proportionate to growth of population; hence the value of a well filtered water supply which eliminates disease germs of all kinds.
 30 This has been fully proven by the Providence experiments on a large scale. Filters will not take out detri-erious matter which chemically combines with water should such pollution occur. But it rarely happens in such quantity that the principle of dilution will not dissipate injurious results. These existing to any serious extent like discharges from manufacturers, the conditions are readily detected and checked. Disease germs are the main danger of a water supply and these filters intercept.

Very respectfully,

B. S. CHURCH,

Consulting Engineer.

Extract from discussion of Paper of Geo. W. Fuller
on Filtration Plant of East Jersey Water
Company at Little Falls, N. J., before the
American Society of Civil Engineers.

Mr. C. L. Harrison says: The construction is substantial and cleanly, and the design is in accordance with the best recent knowledge of this subject.

George C. Whipple: The speaker has been privileged to follow the construction of the Little Falls filter plant from the beginning, and to witness its successful operation. To say simply that it is a success would be faint praise, indeed. It is the first adequate demonstration of the principles of mechanical filtration applied on a large scale, and its many unique features distinguish it sharply from the conventional type of mechanical filters used heretofore. 10

William B. Fuller: As Mr. Hering has well stated, the completion of this plant stands as a milestone marking a distinct progress in the art of mechanical filtration. 20

L. L. Tribus: It seems that the past has demonstrated that filtration can be effective for the almost absolute removal of sedimentary and deleterious organic matters in public water supplies, and it is also fully evident that many surface-water and some ground-water supplies, as well, will soon have to be filtered.

John H. Gregory: The writer visited the construction work several times during the early stages, and was fortunate enough to be located so that he could visit the plant frequently during the latter part of the construction, as well as since it has been put in service, and he has made the most of these opportunities to study the construction and operations in detail. The type of construction adopted at Little Falls is radically different from that used heretofore for mechanical filter plants, and, in the opinion of the writer, is a great improvement over that used for certain other plants built recently. The design of me- 30 40

chanical filter plants in the future will, it is to be hoped, be remodeled, in general, closely after the Little Falls work.

Opinion by Collins & Corbin, Counsel, as to Right of Jersey City to Tap Mains at Kingsland.

July 20, 1903.

Joseph P. Reardon, Esq., Member of the Council of
 10 the Town of Harrison:

Dear Sir—You have asked our opinion as to whether the authorities of Jersey City have a right to tap at Kingsland the new six-foot steel main recently built by the Jersey City Water Supply Company for the purpose of supplying water to West Hudson towns and others.

Clearly, they have no such power. That water-
 20 main is the property of the Jersey City Water Supply Company, and will always continue to be their property unless Jersey City exercises its option to purchase the same and does actually purchase and pay for the same the sum of about \$7,595,000.

Jersey City has no interest in the main whatever, except a contract to receive water through it by the million gallons for twenty-five years, with the option to purchase after certain years. Its right to receive water is only to receive it at high service in Jersey City, the main being in the meantime in the owner-
 30 ship, management and control of the Jersey City Water Supply Company.

As the Company is compelled to deliver the entire supply of water at an elevation of 210 in Jersey City, you can see at once that it would not do to allow anybody to tap it at intervening points between Boonton and Jersey City, for such taps would reduce the pressure and flow, and make it impossible to fully carry out the contract to deliver the full fifty million gallons to Jersey City.

Not only has Jersey City no power to tap the new
 40 main at intervening points, but certainly will not be

allowed to do so, for such tapping of any considerable size would destroy the utility of the works.

Very truly yours,

COLLINS & CORBIN.

Letters from Jersey City Water Supply Company and East Jersey Water Company to Jersey City, Refusing Permission to Tap the New Main at Kingsland. 10

To the Mayor and Aldermen of Jersey City:

Our attention has been called to resolutions passed by your Board of Street and Water Commissioners on July 28th last, whereby it appears that you are contemplating the construction of a main through Kingsland avenue for about two and one-half miles from the Town of Kearny to Kingsland for the purpose of what is called "a connection with the new water main built for Jersey City at or near Kingsland." 20

We assume that you intend to tap the water main belonging to this company at Kingsland. Jersey City has at present no interest in this main, except a contract to receive water through it, to be delivered at Bergen reservoirs, with an option to purchase it under certain conditions at the price of seven million five hundred and ninety-five thousand dollars (\$7,595,000.)

We respectfully notify you that we cannot allow this main to be tapped at Kingsland or elsewhere by anybody while it remains in our ownership and control. 30

The size of the main, its gradients and all hydraulic conditions have been carefully calculated with a view to deliver at the Bergen reservoirs, at a given height, fifty millions of gallons of water per day, and not for any additional service.

It is quite obvious that if we should allow water to be drawn from this main at intermediate points between Boonton and Jersey City, not only would its sufficiency be reduced, but questions would at once be raised as to the total capacity of the main, and 40

whether it really did come up to contract requirements. The contract provides for an extended trial use of this main, and its capacity will be a matter of very great importance.

We are, therefore, compelled to say that we shall refuse to allow the main to be tapped by anyone at any intermediate point while it remains in our ownership and control.

10 JERSEY CITY WATER SUPPLY COMPANY,
By E. LeB. GARDINER, President.

Jersey City, Aug. 14, 1903.

To the Mayor and Aldermen of Jersey City:

This company has received a copy of the preambles and resolutions passed by your Board of Street and Water Commissioners on July 28th, 1903, giving sundry notices to this company and demanding that this company continue to deliver water at the junction of
20 Kearny avenue and Belleville turnpike road in the township of Kearny.

We are much surprised at this notice.

By the agreement of March 31st, 1902, between this company and the New Jersey General Security Company, Patrick H. Flynn, the Jersey City Water Supply Company and your Honorable Body, this company agreed to continue its temporary water supply for the accommodation of the city, and, at the
30 request of the city agreed to make delivery at Upper Montclair as soon as the new main, provided for in the Flynn contract, should be sufficiently completed to allow of such delivery. At the same time this company undertook, at the special request of the city, very heavy expenditures and obligations to hasten and forward the completion of the new main under the Flynn contract. This company pursued the matter with the utmost diligence, and began an experimental delivery of water at Upper Montclair
40 early in June last, and gradually increased the quantity until on July 8th the entire flow was sent through

hearing in said cause before Vice-Chancellor Stevens, on August fourth, A. D. 1903, on the return of an order to show cause, granted in said cause, why an injunction should not issue.

HERBERT BOGGS.

Sworn and subscribed before me this 5th day of August, A. D. 1903.

CECIL H. McMAHON,

10

A Master in Chancery of New Jersey.

STATE OF NEW JERSEY,)
) ss.:
 COUNTY OF HUDSON,)

Peter Sullivan, being duly sworn according to law, on his oath deposes and says: "That he is president of the Common Council of the Town of Harrison, New Jersey; that as such president he has presided at all meetings of the Council at which the matter of a water supply has been discussed, during the present year; that the town has no contract for a supply of water from Jersey City, but on the contrary is receiving its water supply from the New Jersey Suburban Water Company, which is ample in quantity and pressure and of satisfactory quality; that on July 7, 1903, the Council passed a resolution purporting to authorize a contract between Harrison and Jersey City, upon the same terms and conditions as a certain contract dated July 31, 1885, which expired in July, 1895; that deponent has not signed such resolution or contract, being advised by competent legal authority that the proceedings relating to same were irregular and illegal; that the regularly elected Town Attorney or Counsellor, Col. M. T. Barrett, is in Europe and the Council have not elected or appointed anyone to take his place; that deponent is informed that at a hearing in Chancery before Chancellor Stevens on Wednesday, July 29, 1903, certain statements were made that Jersey City "had a duly executed contract with Harrison to supply water and was delivering water under such con-

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STATE OF NEW JERSEY,)
) ss.:
 COUNTY OF HUDSON,)

John J. Leen, being duly sworn according to law, on his oath deposes and says: That he is a member of the Council and Water Committee of the Town of Harrison; that said town has no contract for a water supply with Jersey City, but is receiving its water
 10 from the N. J. Suburban Water Company, that when he voted for a resolution on July 7, 1903, purporting to give a contract to Jersey City, he was induced so to do by the representations of Jersey City officials and the attorney representing Jersey City, that said city had the legal right to tap the new mains of the Jersey City Water Supply Co. at Kings-
 20 land, which deponent is now advised was untrue; that the contract so purporting to have been approved was not read or discussed in said Council meeting; that the Council has appointed no attorney to represent it, in the absence abroad of Col. Barrett, and no attorney is authorized to speak for the Council at any hearing on the proceedings between Jersey City and Kearny.

JOHN J. LEEN.

Sworn and subscribed to before me, the first day of Aug., A. D. 1903.

GEORGE S. SEYMOUR,

Justice of the Peace.

30 Affidavit Showing Impossibility of Removing In-
 crustation from Old Mains.

STATE OF NEW JERSEY,)
) ss.:
 COUNTY OF HUDSON,)

Emmet Smith, being duly sworn according to law, on his oath says that he is a civil engineer, and has been in the practice of his profession for a period of upwards of thirty-five years; that he is now the City Engineer of the city of Bayonne, and has occupied that position for the majority of the time since the
 40 incorporation of the city; that he resides in the ex-

treme southerly end of the city of Bayonne, and that the water supply of the said city is received at the northerly boundary of the city; that during the construction of the water works now delivering water to Bayonne at said northerly line of the city deponent was engaged in the examination and inspection of the said works, and from his own knowledge and belief, and from his knowledge as to the same, and from his knowledge of the character of the water supplied to the said city, deponent is satisfied that the water so delivered is pure, clear and wholesome; deponent further states that the distribution pipes within the city of Bayonne, through which the said water is distributed after its receipt, are, in greater part, old, and were in use all of the years when the city was receiving Passaic water from Jersey City through the mains of the latter city across the meadows from Belleville and Kearny avenue; that the said supply of Passaic water received from Jersey City resulted in the incrustation and depositing of large amounts of filth and slimy substance on the interior surface of the distribution mains in Bayonne, the evidence of the presence of which has come repeatedly to the knowledge of the deponent when he has had occasion to have said mains broken or examined for repairs and other purposes.

Deponent states that this incrustation is so permanent and tenacious in its character that although the city has been receiving a supply of pure and wholesome water for about seven years, the evidence of such incrustation and impurity in the distributing pipes are constantly present, as shown by the pollution of the water when drawn therefrom, especially in cases where it becomes necessary to shut down a valve and change the direction of a circuit in the street mains, thereby disturbing the direction and uniformity of the flow of the water.

Deponent further states that he has examined the photograph taken, as shown by the affidavit of Weldon D. Griffin, of the interior of one of the water

pipes of Jersey City, showing the incrustation thereof caused by the Passaic river water supply, and from his knowledge and experience this deponent is satisfied that the said incrustation could not be removed by any amount of blowing out or letting off of the water from said pipes, especially in view of the known condition of the Bayonne pipes after seven years' continual flowage there through of pure water in the same direction in which the water flowed which deposited the said impurities.

Deponent states further that to reverse the flow of water in the Jersey City pipes, as now proposed, to supply Harrison and Kearny, would so stir up and develop such impurities that in deponent's judgment it would be impossible to receive a supply of pure and wholesome water from the said pipes.

EMMET SMITH.

Subscribed and sworn to at Bayonne, N. J., this 30th day of August, A. D. 1903, before me.

(Seal.) WALTER L. CLARKSON,
Notary Public, N. J.

Editorial from Kearny Record.

To Accompany Report of Water Committee, August 1st, 1903. The Kearny Record, Harrison, N. J., Saturday, July 25, 1903.

30 IMPRESSIONS ABOUT WATER.—Probably about no subject that has ever come before the people of the West Hudson towns has there been so much misunderstanding than prevails regarding the issue of a new water supply. The confused or conflicting opinions entertained among the people generally find their counterpart in the confident and positive claims of two water sellers whose interests are diametrically opposed. Is it to be wondered, then, that popular impressions are so various, and that
40 misconceptions regarding the aims, powers and pos-

sessions of Jersey City and the Suburban Water Company should be so numerous?

As the case now stands, to take the situation in Harrison as an instance, Jersey City, anxious to retain the town as a customer, offers to supply Rockaway River water for a term of ten years at the following rates: \$84 for a million gallons or for any part thereof; when the consumption shall increase 500,000 a day above the consumption on the day of signing the contract the rate shall be lowered to \$83. Assuming that the present consumption of water is 800,000 gallons a day, it would be necessary to use 1,300,000 gallons a day before the town would get the benefit of the \$83 rate. When the town would use 3,000,000 gallons a day it would get a rate of \$75. 10

The Suburban Water Company has a proposition now pending before the water committee wherein it seeks a fifteen-year contract to supply filtered water from the upper Passaic Valley at the following rate: \$84 for a million gallons or for any part thereof. In this respect its bid and that of Jersey City are identical as to price, and the town would derive no more advantage in buying from one than from the other, so long as Harrison consumed no more than a million gallons or less a day. When, however, the town would use even one single gallon over the million mark in a day the Suburban Company would charge but \$82 a million gallons, while Jersey City would not grant even the \$83 rate until the distant date when Harrison would be using approximately 1,300,000 gallons a day. In this respect the offer of the Suburban Company is therefore immeasurably better than that of Jersey City. When the consumption reaches 3,000,000 gallons a day the Suburban Company, like Jersey City, would charge \$75. 30

These are the plain unvarnished facts as to the cost of water. Then there is the question of quality, which many communities consider is paramount to that of price. Jersey City offers "pure, wholesome water." Water sellers the world over offer "pure, 40

wholesome water," otherwise their propositions would not be given a moment's consideration. But when comparisons are made, differences are noted, as in the present case. Jersey City has contracted for a water plant of its own and the same is being provided by the Jersey City Water Supply Company at a cost approximating \$8,000,000. This sum Jersey City must pay before it owns even one foot of
 10 pipe in the new plant; and it may be twenty years before the city can raise such a huge sum. Meanwhile, it is held, that it will virtually be in the power of the corporation mentioned and in all likelihood be estopped from tapping any of that company's mains in order to supply water to another municipality and thereby put that company or an allied concern at a disadvantage.

Possibly Jersey City could have gotten a better supply than that afforded by the Rockaway River, or
 20 it may be that it was the best that could be had after all the more desirable watersheds had been sequestered. In any event the people of Jersey City cannot be blamed for trying to make the best of their bargain and seeking to convey the impression that the water they are going to receive in the course of a few months will be of a high grade. Nor must we be offended when they say, "What is good enough for our big city ought to be good enough for your little towns." They are water sellers and are putting forth their best arguments. Like many another
 30 private or municipal corporation they need money to carry on their business and meet the interest on large funded debts, and they are going to get all the money possible from the West Hudson towns. At first they would come down only \$1, from \$90 to \$89, but competition has forced them to offer water for less money. As it is, they want more than the Suburban Company.

The latter corporation plainly has the better of the argument with regard to quality. It offers not fairly good water, but water that is as pure and clean as chemists and engineers can make it by mechanical fil-
 40 trations and the precipitation of bacterial growths.

The resulting product is probably unsurpassed in the country. It matters not whether it be Suburban water or not that Harrison, Kearny and East Newark receive, it should be something that will equal it. There is no water too good for the towns, even were it to cost more than the common, unstrained and untreated fluid.

As to degree, uniformity, and permanency of pressure, we should insist upon the utmost, requiring positive demonstrations of all claims made by competing concerns, and taking nothing for granted. The question of pressure involves chiefly the ever imminent peril of fire. No consent should be given to any water seller for even the shortest space of time to supply water to these towns through a main which by reason of its age, fragility, or other adverse condition might diminish present pressure or perhaps require complete shutting off of water in order to repair frequent breaks. Nothing short of new, large, and direct mains will give lasting satisfaction, and completely allay the fear of being unable to get control of fires, not to speak of possibly higher insurance rates or the necessity of buying fire engines and their expensive maintenance. If Jersey City can immediately meet every requirement it should receive the contract without further delay, for, on general principles, the politicians of a municipal corporation are much easier to get on with than the officers of a private corporation; but if only the latter can fully meet our needs it merits the award, at once, despite all foolish prattle about the shortcomings of private corporations.

To do nothing at all means to pay \$90 a million gallons indefinitely. To award a contract to either bidder now would be to get an immediate reduction in price of at least \$6 on the million gallons. Evidently there is little to be gained by delay.

Editorial from a Leading Health Journal Relative to
Necessity for Filtration of Public Water
Supplies.

“Water epidemics have been still more numerous and of more serious dimensions. At Lowell, Mass., for example, in 1890-91, nearly 1,000 cases of typhoid fever were due to the pollution by four mill operatives of a little brook at North Chelmsford which emptied into the public water supply. In this year, as to a lesser extent in other years, the Lowell epidemic was followed by a secondary one in Lawrence, whose citizens drank from the river still further below. The public at last realized that these supplies from a polluted river, installed fifteen years before with the approval of the best sanitarians, furnished an ideal condition for the widest distribution of the agents of disease. In Lawrence a filter was constructed in 1893 to purify the water by passage through a layer of sand, and the deaths from typhoid fever, averaging fifty-three a year during the period 1887-92, fell to fourteen a year from 1894 to 1899. In Lowell the abandonment of the river water for that obtained from a system of driven wells caused a similar decline in the death rate.

“Nothing is clearer from the facts than that typhoid fever is indeed a perfectly preventable plague. Indeed, it has been said by one zealous sanitarian, that ‘for every case of typhoid fever some one should be hanged.’ Yet great cities in the United States, Pittsburg, Philadelphia, even Washington, have not ceased to furnish their citizens with polluted water containing the germs of this deadly disease. Year after year the early months are marked in Philadelphia by an outbreak of typhoid fever due solely to the washing of infectious material into the stream by the spring floods—the same phenomenon which used to occur in Newark and Chicago, the same phenomenon which still occurs in Paris. Between 1890 and 1898 there died from typhoid fever an annual average of over 175 persons in Washington, of over 200 persons in Pittsburg, and of over 475 per-

sons in Philadelphia, nearly 8,000 men and women perishing of this preventable plague in those three cities during nine years. Allowing for all other possible causes it is certain that more than half of them were condemned to death solely by the corruption or the incapacity of those municipal officials who permitted the continuance of the existing water supplies."

10

EXHIBIT W.

Jersey City, N. J., September 21, 1903.
To the Mayor and Aldermen of Jersey City and to
the Board of Street and Water Commissioners
of Jersey City:

Gentlemen—On behalf of the Council of the Town of Harrison in the County of Hudson, I present hereby an offer to buy the rights of Jersey City in the water-main now constructed and extending from the intersection of the Belleville Turnpike and Kearny Avenue, in the Town of Kearny, through Kearny Avenue to a meter-vault at the junction of Sherman Avenue and Fourth Street in the Town of Harrison; and I offer to pay to the City the sum of Fifty Cents (\$.50) per running foot for the City's interest in said main. 20

This offer is made under the authority of a Resolution of the Council of the Town of Harrison, adopted September 15th, 1903, a copy of which is hereto annexed. 30

Very respectfully,

TURNER A. BEALL.

COLLINS & CORBIN,

Attorneys.

EXHIBITS X, Y AND Z.

See Pamphlet, pages 54 to 58.

40

EXHIBIT B.B.

THIS AGREEMENT, made this first day of July, one thousand eight hundred and ninety-seven, between the MAYOR AND ALDERMEN OF JERSEY CITY, party of the first part, and the MAYOR AND COUNCIL OF THE BOROUGH OF EAST NEWARK, party of the second part, Witnesseth,

1. That the party of the first part, in consideration
10 of the payments hereinafter reserved to be made by the party of the second part, and of the covenants and agreements on the part of the party of the second part herein contained, hereby agrees to furnish to the party of the second part, a good and sufficient supply of water from the reservoir and water works of the party of the first part, unless prevented by accident to said reservoir or water works, or the inability of the party of the first part to supply water by
20 reason of the quantity thereof being insufficient, provided such insufficiency arises from an inadequate supply only.

2. And the party of the first part further agrees, that such water shall be delivered to the party of the second part at such point in said Borough as may be designated by the party of the second part, through the present pipe, and through one or more water meters of proper size, placed at such points as the party of the second part shall direct and specify, which
30 meters are to be furnished and kept in repair at the cost and expense of the party of the second part.

3. And the party of the second part agrees to pay to the party of the first part, for all water which passes through such meters, the prices hereinafter named, and at the times hereinafter specified, and further, that it, the said party of the second part, will not receive water from any other corporation or individual during the time of this contract, and that it will not receive any water except such as passes through the meters before mentioned, and then only when said meters are in proper condition to register
40 the water passing through them or either or any of

them, and all meters to be used are to be first approved by the party of the first part, or by its Board of Street and Water Commissioners, acting for it.

4. And the party of the second part further agrees to pay to the party of the first part, for all water received by the party of the second part, as shown and registered by said meters, at the rate of nine cents per thousand gallons, and to make such payments to the party of the first part, on the fifteenth days of 10 January, April, July and October in each year during the continuance of this contract, such payments to include the amount due for measured water as shown by said meters, to the first days of said months, respectively.

5. And it is further mutually agreed, that this contract shall be operative from the first day of July, one thousand eight hundred and ninety-seven, and shall continue for five years from that date; provided, however, that should the party of the first part during 20 said term terminate its present contract for water supply, it may, on one year's notice in writing after September twenty-fourth, nineteen hundred, terminate this contract.

6. And the party of the first part further agrees that should it, at any time hereafter contract to supply any other city, town or borough with water, at a lower rate than nine cents per thousand gallons, during the continuance of this contract, the party of the second part shall be entitled to receive water from the 30 party of the first part under this contract, at the lowest rate paid to the said party of the first part by any other city, town or borough supplied by it.

In witness whereof, the said party of the first part has caused these presents to be signed by its Mayor and the President of its Board of Street and Water Commissioners, and has caused its common seal to be hereto set, attested by its City Clerk, and the party of the second part has likewise caused these presents to be signed by its Mayor and its common seal to be 40

hereto set and attested by its Borough Clerk, the day
and year first above written.

Signed, sealed and delivered in the presence of:

(Seal.) EDWARD HOOS,
Mayor of Jersey City.

Attest:

10 M. J. O'DONNELL,
City Clerk.

THOS. BOLTWOOD,
Pres't Board of Street and Water Commrs.

Attest:

GEO. T. BOUTON,
Clerk.

20 (Seal.) EDWARD KENNY,
Mayor Borough of East Newark.

HENRY J. HORSTMAN,
Borough Clerk.

30

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CONTRACTS AND DOCUMENTS

Relating to

WATER SUPPLY OF KEARNY, HARRISON
AND EAST NEWARK.

COLLINS & CORBIN, Attorneys.

January, 1904.

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CONTRACTS AND DOCUMENTS.

Jersey City—Harrison Contract, July 31, 1885.

THIS AGREEMENT, made this thirty-first day of July, in the year of our Lord one thousand eight hundred and eighty-five, between THE MAYOR AND ALDERMEN OF JERSEY CITY, of the first part, and the TOWN OF HARRISON, of the 10 second part, witnesseth:

That the party of the first part in consideration of the water rents hereinafter reserved to be paid, and of the covenants and agreements on the part of the party of the second part, hereby agrees to furnish the party of the second part, a good and sufficient supply of water from the reservoir and water works of the party of the first part, unless prevented by accident to said reservoir or water works or the inability of the party of the first part to supply water by reason of 20 the quantity thereof being insufficient, provided that insufficiency arises from the inadequacy of the source of supply only.

And the party of the first part further agrees to and with the party of the second part that in case they, the party of the first part, at any time during the existence of this contract should receive from any source whatever a better and purer supply of water, both as to quantity and quality, that the party of the 30 second part is to receive all the benefits and privileges of the same, and upon the same terms as hereinafter stated and agreed upon.

And it is further agreed upon by the said party of the first part that the said water is to be delivered at the town line south of The Newark and Hudson Railroad bridge at Fourth street, through a twenty-inch pipe; the same to be delivered through one or more ten-inch meters, placed at such points as the Town Council of Harrison shall direct or specify; and

4. Jersey City-Harrison Contract, July 31, 1885.

meters are to be furnished and kept in repair by the party of the second part at its own cost and expense.

And it is further agreed by the said party of the second part that they will pay to the party of the first part the prices hereinafter named and at the times hereinafter specified for all water which passes through the meters to be provided as aforesaid, and that they will not receive water from any other corporation or individual during the terms of this contract, and that they will not receive any water except such as passes through the meters hereinbefore mentioned and then only when the said meters are kept in proper condition to register the water passing through them or any of them, and all meters to be used are to be first approved by the said party of the first part or by their Board of Public Works acting for them.

And the said party of the second part further agrees to pay to the said party of the first part for all water received by them, the said party of the second part, and which passes through and is registered by said meters, at the rates of nine cents per thousand gallons for all water used; and for which water the party of the second part agrees to pay to the party of the first part every six months on the tenth days of August and February in each year during the continuance of this contract the amount due for measured water up to the first of said months.

And it is further mutually understood and agreed that this contract shall last for a term of ten years from the date hereof.

And it is further agreed by and between the parties hereto that in case the party of the first part contract with any other city, town or borough, for a lower rate than nine cents per thousand gallons for water during the continuance of this contract that the Town of Harrison shall be supplied with water by the party of the first part at such reduced rates and upon the same terms in every particular.

In witness whereof the said party of the first part has caused these presents to be signed by the Mayor of the city of Jersey City and the President of the Board of Public Works aforesaid, and have caused the official seal of said city to be affixed hereto, and the said Town of Harrison have caused these presents to be signed by the President, the Common Council and the Clerk thereof to affix the official corporate seal hereto the day and year first above written. 10

Signed, sealed and delivered in presence of:

The written words "February" and "to" on second page and the words "the" and "to affix the" on last page before execution.

GILBERT COLLINS,
Mayor of Jersey City.

J. SCHWEILY,
President of the Board of Public Works. 20

(Seal.) Attest:

JOHN SCOTT,
City Clerk.

EDWARD J. RICE, (Seal.)
President of the Common Council, Town of Harrison.

Attest:

EDWRAD J. GRACE, JR.,
Town Clerk.

30

40

JERSEY CITY-KEARNY CONTRACT, JULY
12, 1887.

THIS AGREEMENT dated this 12th day of July in the year of our Lord 1887 between THE MAYOR AND ALDERMEN OF JERSEY CITY, of the first part and "THE BOARD OF TOWNSHIP COMMITTEE OF THE TOWNSHIP OF KEARNEY," in Hudson county, New Jersey, party of the second part, witnesseth:

10 That the party of the first part in consideration of the water rents hereinafter reserved to be paid, and of the covenants and agreements on the part of the party of the second part, hereby agrees to furnish the party of the second part a good and sufficient supply of water from the reservoir and water works of the party of the first part, unless prevented by accident to said reservoir or water works or the inability of
20 the party of the first part to supply water by reason of the quantity thereof being insufficient, provided that insufficiency arises from the inadequacy of the cause of supply only.

And the party of the first part further agrees to and with the party of the second part that in case they, the party of the first part, at any time during the existence of this contract shall receive from any source whatever a better and purer supply of water, both as to quantity and quality, that the party of the
30 second part is to receive all the benefits and privileges of the same, and upon the same terms as hereinafter stated and agreed upon.

And it is further agreed upon by the said party of the first part that the said water is to be delivered to the said party of the second part from the main of the said party of the first part in the township of Kearney through one or more water meters; said meters are to be furnished and kept in repair by the party of the second part at its own cost and expense.

And it is further agreed by the said party of the
40 second part that they will pay to the party of the first

part the prices hereinafter named and at the times hereinafter specified for all water which passes through the meters to be so provided as aforesaid, and that they will not receive water from any other corporation or individual during the term of this contract, and they will not receive any water except such as passes through the meters hereinbefore mentioned and then only when the said meters are kept in proper condition to register the water passing through them 10 or any of them, and all meters to be used are to be first approved by the said party of the first part or by their Board of Public Works acting for them.

And the party of the second part further agrees to pay to the said party of the first part for all water received by them, the said party of the second part, and which passes through and is registered by said meters, at the rate of nine cents per thousand gallons for all water used; and for which water the party of the second part agrees to pay to the party of the first 20 part every six months, on the tenth day of August and February in each year during the continuance of this contract, the amount due for measured water up to the first of said months.

And it is further mutually understood and agreed that this contract shall last for a term of ten years from the date thereof.

And it is further agreed by and between the parties hereto that in case the party of the first part contract with any other city, town or borough, corporation or individual for a lower rate than nine cents 30 per thousand gallons for water, during the continuance of this contract, that the Township Kearney shall be supplied with water by the party of the first part at such reduced rates and upon the same terms in every particular.

It is hereby further agreed that the Soldiers' Home shall be supplied with water by the Township of Kearney at a rate not to exceed ninety dollars per one hundred thousand cubic feet, and further that 40

the said party of the second part shall have control of and over all private pipes heretofore laid in said Township of Kearney and through which water is to be supplied under this contract.

In witness whereof the said party of the first part have caused these presents to be signed by the Mayor of the City of Jersey City and the President of the Board of Public Works aforesaid, and have
10 caused the official seal of said City to be affixed hereto, and the said Township of Kearney has caused these presents to be signed by the Chairman of the Board of Township Committee of the Township of Kearney and the Clerk thereof to affix the corporate seal of said Township the date and year first above written.

Signed, sealed and delivered in the presence of:

ORESTES CLEVELAND,

Mayor.

20

BENJ. VAN KEUREN,

Pres. of the Board of Public Works.

Attest:

JOHN E. SCOTT,

City Clerk.

JONATHAN WOODS,

Chairman Board of Township Committee
of the Township of Kearney.

Attest:

30

STEWART KERR,

Township Clerk.

40

EAST JERSEY-KEARNEY CONTRACT, JUNE
29, 1895.

THIS AGREEMENT made this 29th day of June, 1895, between THE EAST JERSEY WATER COMPANY, a corporation duly organized and existing by virtue of the laws of the State of New Jersey, party of the first part, hereinafter referred to as the Company, and THE BOARD OF TOWNSHIP COMMITTEE OF THE TOWNSHIP OF KEARNEY, being the Board having charge and control of the water-supply of the inhabitants of the Township of Kearney, in the County of Hudson, and being a municipal corporation of the State of New Jersey, party of the second part, hereinafter referred to as the Township, witnesseth as follows: 10

That in consideration of the moneys hereinafter agreed to be paid, and the water hereinafter agreed to be furnished, and all the covenants hereinafter set forth, the said parties for themselves, their successors and assigns, do mutually covenant, contract and agree as follows: 20

(1) The Company agrees to obtain and supply to the Township, and the Township agrees to take from the Company, for and during the continuous term of fifteen years commencing six months from and after the date hereof, or at such earlier date as the Company may be able to furnish said water, an entire and adequate supply of water, which shall be good and wholesome and shall be supplied in quantities sufficient for the purposes of domestic use, for the extinguishment of fires and for such other lawful uses and purposes in the township as may be necessary or convenient, and for which the township may lawfully use, sell or supply water; all the water required shall be delivered by pumping or gravity at the junction of Kearney avenue and the Belleville Turnpike road in the Township of Kearney, County of Hudson and State of New Jersey, at a head equal to at least seventy-five feet above the elevation of the present 30 40

water pipe now supplying the Township of Kearney at the said point.

(2) The Company agrees to furnish and deliver and the Township agrees to take and pay for, as stipulated in this contract, all the water necessary and convenient for the uses and purposes aforesaid.

(3) Payments by said Township for water supplied under this contract shall be made by the proper
10 disbursing officer or officers of the Township in lawful money, quarter-yearly, on Thursday of the second week of each and every quarter after the delivery of water has commenced, for all the water so delivered during the preceding quarter, according to meter register, upon the certificate of the superintendent of the Company certifying to the quantity of water delivered, and also certified to by the water purveyor of the Township of Kearney. In case of dispute the Township is to pay a sum equal to the amount which
20 it paid for the corresponding quarter of the year last past and the disputed amount is to be settled by arbitration, one arbitrator being named by the Township, one by the Company and a third to be selected by the two so chosen, and the decision of a majority of these arbitrators shall be final. The Company is to carefully measure all water delivered under this contract, and the Township, by its engineers and proper officers, shall at all times have reasonable opportunity to inspect and examine the meters and ap-
30 pliances for measurement.

The price to be paid for said water shall be at the rate of ninety dollars per million gallons for all water delivered by the Company to the Township as aforesaid.

(4) The Company agrees to put into the water mains of the Township pressure valves which will maintain a head of water at any one point designated by the Township of not less than seventy-five feet nor more than one hundred and fifty feet.

(5) The standard of water offered is in all respects to be in accordance with the specifications hereto
40 attached.

(6) The Township agrees to place at the disposal of the Company all powers which it now has or may hereafter acquire or which may be necessary to enable the Company to acquire by condemnation or otherwise, the necessary rights of way in streets and highways or lands, storage reservoirs, and also water rights and other property whether within or without the Township of Kearney, which rights and powers may be exercised in the name of the Township, but 10 at the expense of the Company, and the Company agrees to hold the Township harmless of and from all claims and demands of all persons by reason of the taking and acquiring for the purposes of this contract of all lands, rights, waters, water rights and other property. The Township hereby gives and guarantees to the Company rights of way through its streets for laying pipes and water mains to supply the Township of Kearney and other consumers outside of Kearney Township. 20

The Township covenants that if it should be found that any powers or rights held or possessed or that may hereafter be held or possessed by it, whether in respect to the prevention of the pollution of waters or the prevention of injury to any portion of the works constructed for the supply of water or for the punishment of such injury, or otherwise, or for the condemnation of lands, waters or rights, may be advantageously used or exercised for the purposes of this contract, that then the Township will, so far as 30 it has or may acquire the power so to do, put such rights and powers in force and permit the Company, its successors and assigns, so to do in the name of the Township; provided, however, that in all instances in which said use shall be made at the request of or for the benefit of the Company, its successors or assigns, the expense thereof shall be paid by the Company, and the Township shall be lawfully indemnified from any loss or damage by reason thereof.

And the Township hereby designates the following public highways and roads wherein may be laid the Company's water mains for the supply of consumers outside of Kearney Township, to wit: 40

I. Kearney avenue from the north to the south line of Kearney Township.

II. The Newark and Belleville Road from the thread of the Passaic River to the junction of said road with the Newark and New York Turnpike.

III. The Newark and New York Turnpike from the thread of the Hackensack River to the Harrison town-line so far as the Township now has or may
10 hereafter have power to grant rights in the same.

And the Township grants to the Company the right, license and privilege, irrevocable, to lay and place under the surface of said avenue and roads (so far as the Township has power to do so) one or more water mains for the purpose aforesaid, the said mains to be placed not less than three feet below the surface of said avenue and roads respectively; on Kearney avenue the same to be laid under the roadway and within ten feet of the easterly curb-line; on the New-
20 ark and Belleville road and on the Newark and New York Turnpike, to be laid on the southerly side of the road and within the southerly third of the width thereof respectively; said mains to be so laid as not unnecessarily to interfere with existing pipes; and the Company in laying the same to promptly restore the surface of the avenue and roads to as good conditions as the same was before the laying of the mains, and shall always maintain said mains in good condition and promptly repair the surface whenever
30 they have occasion to disturb the same for access to said mains.

(7) The Company agrees to furnish the Township with all plans, details and working drawings as the work progresses under this contract, and the Township, through its township surveyor, shall have the right to inspect all work performed and materials furnished by the Company.

(8) The Company agrees to complete the work and begin the delivery of water within six months from the date of this contract, but any time lost by
40 reason of strikes, accidents, litigations or other

causes unavoidable or beyond the control of the Company shall not be computed within said six months, but shall be added thereto.

(9) For every day's delay in the completion of the work beyond the term of the contract, the Company shall pay to the Township the sum of \$100 per day as liquidated damages and not by way of penalty. It being understood that time lost as above stated, by strikes, accidents, litigations or other delays unavoidable or beyond the control of the Company are not to be computed within said six months. 10

(10) The Company hereby guarantees a continuous supply of good and wholesome water for all the terms for which the contract shall be made, suitable and sufficient for the purposes aforesaid.

(11) The parties hereto agree that the specifications hereto annexed and upon which the Company made its proposal to the Township for the supply of water shall be and are hereby made a part of this 20 contract.

In testimony whereof the said Township has caused these presents to be signed by the Chairman of its Board of Township Committee and its seal to be hereto affixed and attested by its Clerk, and said Company has caused these presents to be signed by its Vice-President and its common seal to be hereto affixed and attested by its Clerk, and said Company has caused these presents to be signed by its Vice-President and its common seal to be hereto affixed 30 and attested by its Secretary the day and year first above written.

CHAS. ENGELSTADTER,
Chairman.

(Seal.)
Attest:

GABRIEL B. REID,
Township Clerk.

THE EAST JERSEY WATER COMPANY,
(Seal.) by HENRY S. DRINKER,
Vice-President.

Attest:

D. G. BAIRD,
Secretary.

EAST JERSEY-KEARNEY EXTENSION, 1896.

SUPPLEMENTAL CONTRACT made this fourteenth day of February eighteen hundred and ninety-six, between the EAST JERSEY WATER COMPANY, party of the first part, and the BOARD OF TOWNSHIP COMMITTEE OF THE TOWNSHIP OF KEARNY, party of the second part, witnesseth:

Whereas, The parties hereto entered into a written contract dated June 29th, 1895, whereby the Company was to furnish to said Township a supply of water and begin to deliver the same within six months after the date of the contract, and to continue the delivery for a term of fifteen years thereafter;

And Whereas, The Company has given the Township notice that it has obtained a supply of water and has the same now ready to deliver to the Township;

And Whereas, The Township has no water main of its own into which to receive the said water at the corner of Kearny and Belleville avenue as provided in said contract, but must hereafter make provision for such a main;

Now it is mutually agreed between the parties that the time for the commencement of the delivery of said water shall be June 29th, 1897, and the delivery thereof shall continue thereafter for thirteen and a half years, that is to say, until the 29th day of December, nineteen hundred and ten.; provided, that if said Township shall before June 29th, 1897, build a water main or a water main shall be built by said Company available for the purpose or a water main shall otherwise be constructed which shall be available to the Township for the purpose, then the delivery of water shall commence as soon as such main is completed and available and shall continue until December 29th, 1910; in all other respects the said contract is hereby ratified and confirmed.

If the Company shall on or before June 29th, 1897, make a contract with the Town of Harrison to supply that town with water whereby the Company is to provide a water main for the Town of Harrison that the Company can control, then the township of Kearny, may, at its option, receive the water through that main instead of receiving the same at the corner of Kearny and Belleville avenue as above mentioned; such option to be exercised on or before June 29th, 10 1897.

In witness whereof, the said Township has caused these presents to be signed by the chairman of its Board of Township Committee and its seal to be hereto affixed and attested by its Clerk and said Company has caused these presents to be signed by its Vice-President and its common seal to be hereto affixed and attested by its secretary the day and year first above written.

(Signed) CHAS. F. ENGELSTADTER, 20
Chairman, Board of Township Committee, Kearny
Township, Hudson Co., N. J.

Attest:

GABRIEL B. REID,
Township Clerk.

EAST JERSEY WATER COMPANY,
By HENRY S. DRINKER,
Vice-President.

(Seal.)

Attest:

D. G. BAIRD,
Secretary. 30

June 17th, 1897.

It is hereby mutually agreed that the time for the commencement of the delivery of water under the contract of June 29, 1895, be further extended to September 29, 1897, and that the delivery shall continue thereafter until December 29, 1910.

WM. BARDSLEY,
Chairman, Township Comm.

Attest:

DAVID DAVIES,
Clerk. 40

(Seal.)

EAST JERSEY-KEARNY EXTENSION, 1898.

SUPPLEMENTAL CONTRACT made this fourteenth day of June, A. D. 1898, between the EAST JERSEY WATER COMPANY, party of the first part, and THE BOARD OF TOWNSHIP COMMITTEE OF THE TOWNSHIP OF KEARNY, party of the second part, witnesseth:

10 Whereas, The parties hereto entered into a written contract dated June 29th, 1895, whereby the Company was to furnish to the Township a supply of water and begin to deliver the same within six months after the date of the contract, and to continue the delivery for a term of fifteen years thereafter; and whereas, notwithstanding the Company had the water ready for delivery and gave the Township due notice thereof, yet the Township not being ready to take the same, requested a postponement of the time
20 of the beginning of the delivery of said water, to which the Company consented and a supplemental agreement was accordingly made on February 14th, 1896, and a still further extension was made by endorsement thereon; and whereas, the township has no water main of its own into which to receive said water, at the corner of Kearny and Belleville avenues as provided in said original contract, but must hereafter make provision for such a main;

30 It is hereby mutually agreed between the parties that the time for the commencement of the delivery of said water shall be June 29th, 1900, and the delivery thereof shall continue thereafter until the 29th day of December, 1910, provided, that if the Township shall before said twenty-ninth day of June, 1900, build a water main, or a water main shall be built by said Company available for the purpose, or a water main shall otherwise be constructed which shall be available to the Township or the purpose, then the delivery of water shall commence as soon as such
40 main is completed and available and shall continue

until December 29th, 1910. In all respects the original contract of June 29th, 1895, is hereby ratified and confirmed.

If the Company shall on or before June 29th, 1900, make a contract with the Town of Harrison to supply that town with water whereby the Company is to provide a water-main for the Town of Harrison that the Company can control, then the Township of Kearny may, at its option, receive the water through that main instead of receiving the same at the corner of Kearny avenue and Belleville avenue as above mentioned; such option to be exercised on or before June 29th, 1900. 10

In witness whereof the said Township has caused these presents to be signed by the chairman of its board of Township Committee and its seal to be here- 20
to affixed and attested by its Clerk and said company has caused these presents to be signed by its Vice President and its common seal to be hereto affixed and attested by its Secretary the day and year first above written.

(Signed) WILLIAM J. GORSUCH,
Chairman Board of Township Committee, 30

Attest: Kearney Township, Hudson Co., N. J.
JAMES F. KELLY,
Township Clerk.

EAST JERSEY WATER COMPANY,
by HENRY S. DRINKER,

Attest: Vice-President.

ALBERT P. FISHER,
(Seal.) Secretary. 40

JERSEY CITY TEMPORAY CONTRACT, OCTOBER 12, 1895.

THIS AGREEMENT, made this 12th day of October, 1895, between the MAYOR AND ALDERMEN OF JERSEY CITY, a municipal corporation of the State of New Jersey, party of the first part, hereinafter called the City, and THE EAST JERSEY WATER COMPANY, a corporation of the State of New Jersey, party of the second part, hereinafter called the Company, Witnesseth:

(1) The Company agrees to provide a new water supply for Jersey City, for the term of one year from the beginning of delivery of water hereunder, of Pequannock water taken from the Pequannock pipe line now carrying water from the Pequannock river to Newark, that is to say the water available is the Pequannock water to the capacity of said pipe above the requirements of the City of Newark and other consumers to the extent of their contract requirements at the time of the making of this contract.

(2) The Company will deliver said water by a pipe line or lines, which they will construct from a point on the said Pequannock pipe line in the Township of Belleville, Essex County, N. J., across the Passaic River to a point at or near the reservoir belonging to the City in the Township of Union, Bergen County, N. J., and will there deliver the water into existing water mains belonging to the City, near the corner of Kearney avenue and the Belleville Turnpike, the Company, for the performance of this contract is to have the right to make use of the existing pipes and mains and lands of the City in the neighborhood of the City's said reservoir so far as the same are appropriate and available for the purpose; and upon the termination of the contract such use shall terminate and the City's said pipes, mains and lands shall be restored by the Company as far as the same can be done to their present condition. The Company will give to the City the advantage of the

full pressure and head which now exists in said Pequannock pipe at or near Belleville, being a head of about 350 feet above tide water, which will average a head of about 335 feet at the point of delivery at the corner of said Kearney avenue and Belleville Turnpike. The Company will deliver water under this contract within six months from signing of this contract, unless delayed by litigations, strikes or other unavoidable accidents, and in case of such delays, the time lost thereby shall be added to said term of six months. 10

(3) The City agrees to take the water aforesaid as soon as the Company is ready to deliver the same and to use the same for a new water supply for the term of one year from the beginning of the delivery of water hereunder, it being understood that the City is to take only so much of said water as the City may require, and pay for only so much as it takes, the City to use no other supply except to supplement the deficiency, if any, of this supply from the Pequannock, to answer the needs of the City during the term of this contract, and the city will pay for so much of said water as it takes at the following rates per million gallons: 20

For each million galls. daily	up to 20 million			
	galls. daily	.....		\$43.00
For twenty-one million gallons daily		.....		42.80
For twenty-two	" " " "	.....		42.60
For twenty-three	" " " "	.....		42.40
For twenty-four	" " " "	.....		42.20
For twenty-five	" " " "	.....		42.00
For twenty-six	" " " "	.....		40.50
For twenty-seven	" " " "	.....		39.10
For twenty-eight	" " " "	.....		37.70
For twenty-nine	" " " "	.....		36.30
For thirty	" " " "	.....		35.00
For thirty-one	" " " "	.....		33.90
For thirty-two	" " " "	.....		32.80
For thirty-three	" " " "	.....		32.00
For thirty-four	" " " "	.....		31.20
For thirty-five	" " " "	.....		30.40

20 Jersey City Temporary Contract, Oct. 12, 1895.

	For thirty-six	"	"	"	.....	29.60
	For thirty-seven	"	"	"	.....	28.90
	For thirty-eight	"	"	"	.....	28.20
	For thirty-nine	"	"	"	.....	27.45
	For forty	"	"	"	.....	26.80
	For forty-one	"	"	"	.....	26.20
	For forty-two	"	"	"	.....	25.60
	For forty-three	"	"	"	.....	25.00
10	For forty-four	"	"	"	.....	24.50
	For forty-five	"	"	"	.....	24.00
	For forty-six	"	"	"	.....	23.60
	For forty-seven	"	"	"	.....	23.20
	For forty-eight	"	"	"	.....	22.80
	For forty-nine	"	"	"	.....	22.40
	For fifty	"	"	"	.....	22.00

And for each fractional portion of a million gallons (above twenty millions) a pro rata price according to that rate per million gallons, which the fractional part
 20 exceeds, and in case the water consumed is less than twenty millions, then the price shall be at the rate of \$43.00 per million gallons.

Quarterly bills shall be made up as follows: The entire quantity of water delivered in any one week shall be ascertained and divided by seven, which will give the daily consumption for that week, and the price shall be reckoned on that daily average.

30 Payments shall be made by warrant to the order of the East Jersey Water Company, delivered at the City Hall in Jersey City within 15 days from the receipt by the city of each quarterly bill as aforesaid.

(4) The Company will measure and keep a record of the water at his own expense upon the Company's property east of the Passaic river and the representatives of the City shall at all times have access to the meters measuring the water for the purpose of inspection and supervision.

(5) The quarterly bills shall be rendered as of the first day of January, April, July and October of any
 40 year. If the water is first delivered between such

aforesaid named quarter days, then the first bill shall be for the fractional part of a quarter up to the first of said days following such first delivery, and in case the term of one year of this contract terminates between such aforesaid quarter days, then the bill shall be from the quarter day preceding the termination of such term to the end of such term.

(6) It is further agreed and understood that the Company, until the 24th day of September, 1900, will have a surplus of Pequannock river water to dispose of from said Pequannock pipe, and in case the taking of water under this contract is not terminated by the City at the end of the one year above specified then all the terms and conditions of this contract shall continue in force until the City shall terminate the same by giving the Company three months notice in writing that the City will cease to take water at the quarter day next after the expiration of said three months, it being understood that the Company cannot in any case furnish any water under this contract from said Pequannock pipe line after the 24th day of September, A. D. 1900, at which time this contract will terminate unless sooner terminated as above provided. All appliances on the lands of the City necessary to carry out this contract must be of a pattern to be agreed on and approved by the chief engineer of the City and the chief engineer of the Company, and applied only as directed by them; all such appliances are to be removed by the Company at the termination of this contract or left in the possession of the City in case the City desires to purchase the appliances at the cost price thereof, and for the purpose of ascertaining the cost price thereof the Company shall file sworn statements of the cost of the same with the Board of Street and Water Commissioners.

(7) And it is further agreed that in case the Company should require to exercise the power of condemnation to secure a right-of-way for the pipe line which it is to construct as aforesaid between the Pequannock pipe line in the Township of Belleville and a

point at or near the City Reservoir in Union Township aforesaid, or to secure any lands or rights therefor, in order to fulfill the terms of this contract, or any renewal thereof, or any part thereof, as above provided, the City will permit and allow such proceedings to be taken in the name of the Mayor and Aldermen of Jersey City under their powers of condemnation for that purpose; all costs, damages, expenses and other disbursements whatsoever connected with such proceedings to be paid and satisfied by the Company and the City to be held free and harmless therefrom. And the City agrees that after obtaining title by such condemnation proceedings they will convey the same to the Company to enable the Company to carry out this contract and any renewals thereof, and to furnish said water-supply.

In witness whereof, the said party of the first part hath caused these presents to be signed by the Mayor of the City and the President of the Board of Street and Water Commissioners, and hath caused the seal of the City to be affixed hereto, and the East Jersey Water Company have caused their corporate seal to be hereto affixed and attested by their secretary and these presents to be signed by their vice-president the day and year first above written.

The Mayor and Aldermen of Jersey City,

(Seal.) P. F. WANSER, Mayor.

President of the Board of Street and Water Commissioners,

Attest: RICHARD F. BROWN.

E. W. WOOLLEY, City Clerk.

THE EAST JERSEY WATER COMPANY,

Attest HENRY S. DRINKER, Vice-President.

D. C. BAIRD,

(Seal.) Secretary.

East Jersey to Jersey City. Notice Oct. 19, 1895. 23

EAST JERSEY TO JERSEY CITY. NOTICE,
OCTOBER 19, 1895.

Jersey City, October 19th, 1895.

To the Board of Street and Water Commissioners of
Jersey City:

Gentlemen—Referring to the contract dated Oc-
tober 12th, 1895, between the Mayor and Aldermen
of Jersey City and the East Jersey Water Company, 10
this day delivered to the East Jersey Water Com-
pany, we think it well to give you now in writing
what has heretofore been communicated to you and
the other officers of the City verbally, the names of all
the parties with whom the East Jersey Water Com-
pany has contracts to supply water from the Pequan-
nock pipe referred to in the contract. They are the
following:

- (1) The City of Newark.
- (2) The Montclair Water Company. 20
- (3) The Nutley Water Company.
- (4) The New York and New Jersey Water Com-
pany.
- (5) The Township of Montclair.
- (6) This Company has made a bid in pursuance
of public advertisements to supply the Town of Har-
rison with water, but the bid is still pending before
the town officers, the company not yet having been
notified of its acceptance.

Respectfully,

COLLINS & CORBIN, 30

Att'ys of the East Jersey Water Company.

Jersey City, October 23d, 1895.

Board of Street and Water Commissioners, City
Hall, Jersey City, N. J.:

Gentlemen—Referring to our letter of October
19th, notifying you of the contracts which the East
Jersey Water Company has, we beg to say that in the
5th item there is an error. "The Township of Mont-
clair" should read "The Township of Kearney."

Respectfully,

COLLINS & CORBIN. 40

JERSEY CITY TEMPORARY CONTRACT,
SUPPLEMENT, APRIL 22, 1897.

(Supplemental Contract.)

THIS AGREEMENT, made this 22d day of April, 1897, between the MAYOR and ALDERMEN of Jersey City, a municipal corporation of the State of New Jersey, party of the first part, hereinafter called
10 the City, and the EAST JERSEY WATER COMPANY, a corporation of the State of New Jersey, party of the second part, hereinafter called the Company, is supplemental to the agreement between the same parties made the 12th day of October, 1895, and witnesseth as follows:

WHEREAS, the Company has been furnishing to the City of Pequannock water under said original contract from January 10, 1896, until the present time, and has enlarged its Pequannock works by add-
20 ing another water main thereto, and for several months past has been furnishing to the City a supply of water for all purposes, and is now supplying the same:

AND WHEREAS, it is apparent that the full amount of water available from the Pequannock works after supplying the other municipalities and consumers who had at the date of the said original contract between the parties hereto dated October
30 12th, 1895, the paramount right to draw thereon, will soon be insufficient for a complete supply for Jersey City:

AND WHEREAS, the City is desirous to obtain a full and complete supply from the Company of pure and wholesome water so that the necessity of thereafter pumping water at Belleville will be entirely obviated:

Now therefore, it is agreed between the said parties hereto as follows:

(1) The Company agrees that it will forthwith proceed to construct and within 180 days from the delivery of this contract, will complete and put in use
40 works for the supplying to the city of additional water

so that thereafter until the expiration of this contract, the city shall have a full and sufficient supply for all its requirements. Such additional water shall be taken from the Passaic river above the Great Falls thereof and delivered through mains now or hereafter controlled by the Company, into the City's mains with the Pequannock water at the corner of Kearney and Belleville avenues, Bergen county, New Jersey, as provided in said contract of October 12th, 10
1895, or in the City's mains or pipes at some point east thereof or at both places, at a head and pressure sufficient to enable the City with its present mains to receive said water-supply on Bergen Heights, one-quarter thereof at an elevation of 210 feet and three-quarters thereof at an elevation of 127 feet above sea level, the City however maintaining its own mains and pipes.

After said works are completed the water to be furnished by the Company to the City shall all be either 20
Pequannock water, as at present, or water taken from the Passaic river above Great Falls as aforesaid, or both, and the Company agrees on its part that it will draw from the Pequannock works until September 24, 1900, the full annual average quantity of 50 million gallons per day through its two existing mains through which the City is supplied, for the use of the City and the Company's other customers.

It is agreed that if the Company should fail to have said works above first mentioned in use at the expira- 30
tion of said 180 days or such extension thereof as is mentioned in paragraph 8, it shall, as a penalty, thereafter do at its own cost all the pumping required at the City's pumping station in Union Township, Bergen County, N. J., to make up a full supply for the City until such works are complete and in use, the City giving the Company possession of said pumping station for that purpose under the supervision of the City's engineer, and the Company to relinquish the possession when said new works are in use, leaving said station in good order reasonable wear and tear excepted.

It is agreed that the Company shall draw no water from its Pequannock mains for use in Paterson except it be on days when Jersey City is receiving its supply exclusively of Pequannock water. It is also agreed that the Company shall supply no customers other than those having contracts on October 12, 1895, from its Pequannock main No. 1, and all surplus available water in that main shall be sent across
10 the Passaic river in the main through which the water is delivered to Jersey City.

(2) Said Company will within 18 months from the date of the delivery hereof, establish and complete works for the taking of water from the Passaic river at or near Little Falls, and after said works are completed and ready for use all the waters thereafter furnished to the City under this contract shall be from the Pequannock works as above provided, or from Little Falls or from both; the Company agreeing to
20 still continue until September 24, 1900, and not thereafter, to draw from the Pequannock works said full annual average quantity of 50 million gallons per day through its two existing mains, through which the city is supplied.

(3) The City on its part in consideration of the premises and of the other matters stated in this contract, agrees to take its entire supply of water from the Company, subject however to the City's right to terminate prior to September 24, 1900, the said con-
30 tract of October 12, 1895, by giving three months notice as therein provided and such termination shall also terminate this contract.

(4) The City agrees at the time of the delivery hereof to pay the Company's four bills heretofore rendered for water, deducting however therefrom the sum of \$10,432.83, being the amount charged for water tendered and not accepted, leaving the net amount to be paid \$318,867.69.

(5) It is mutually agreed that from and after March 27, 1897, the price to be paid for water shall
40 be at the following rates and no more; which shall be

paid by the City and accepted by the Company in full satisfaction thereof in lieu of the rates mentioned in the contract of October 12, 1895, to wit:

For all water delivered from March 27, 1897, \$37 per million gallons.

For all water delivered after April 1st, 1898, \$36 per million gallons.

Provided that the aggregate amount payable in any one year under this supplemental contract shall not exceed the amount that would have been payable under the original contract for the same deliveries of water; the adjustment, if any be necessary, to be made in the quarterly bill rendered at the end of each calendar year. 10

(6) To afford the City ample time to arrange for a permanent supply of water, the Company further hereby gives to the City the right and option to continue to take a full supply of water as aforesaid from the Company after September 24, 1900, until the City shall have terminated this agreement by one year's notice of its intention to cease taking water, provided that the Company may at its option terminate such taking by giving to the City two years' notice of its intention to cease supplying said water, which notice by the Company may be given at any time after September 24, 1900. 20

The Company agrees that it will furnish a full supply of said water, after Sept. 24, 1900, at the price of \$35 per mil. gals. payable as provided in said contract of Oct. 12, 1895; and the City agrees if it shall take said water to pay for the same accordingly. 30

(7) It is agreed that in case it should be found that any powers or rights held or possessed or that may hereafter be acquired by the City, whether in respect to the prevention of the pollution of any waters or the prevention of injury to any portion of the works constructed for the supply of water, or the punishment for such injury or otherwise, or for the condemnation of lands, waters or water rights, may be advantageously used or exercised for the purposes of this contract, the City hereby agrees so far as it has or may 40

acquire the power so to do, to put such powers and rights in force, or to permit the Company, its successors or assigns so to do, in the name of the City; provided, however, that in all instances in which such use shall be made at the request of and for the benefit of the Company, its successors or assigns, the cost and expense thereof shall be borne and defrayed by the Company and the City shall be properly and fully
10 indemnified against loss or damage by reason thereof.

And the City agrees that upon obtaining title by such condemnation proceedings, they will place the same at the disposal of the Company to enable the Company to carry out this contract and any renewals thereof, and to furnish said water supply, provided that no rights of the City to acquire by condemnation
20 or otherwise a new or other water supply in its own name or otherwise, shall be affected, abridged or limited by this contract or any of its terms.

(8) All time lost by the Company by reason of strikes, injunctions, litigations, legal proceedings or unavoidable accidents, shall be added to the said term of 180 days within which the Company is to construct and put in use works and commence the delivery of additional water and shall also be added to the
30 said term of 18 months within which the Company is to establish and complete works from Little Falls as above provided.

In witness whereof the said party of the first part has caused these presents to be signed by the Mayor of the City and the President of the Board of Street and Water Commissioners and hath caused the seal of the City to be affixed hereto, and the East Jersey Water Company have caused their corporate seal to
40 be hereto affixed and attested by the ir Secretary and

Jersey City Temporary Contract, Apr. 22, 1897. 29

these presents to be signed by their Vice-President
the day and year first above written.

THE MAYOR AND ALDERMEN OF JERSEY-
CITY,

By PETER F. WANSER, Mayor.

Attest:

JOHN J. NEVIN,
Private Sec'y to Mayor.

10

PRESIDENT OF THE BOARD OF STREET &
WATER COMMISSIONERS,

By RICH'D BROWN.

EAST JERSEY WATER COMPANY,
By HENRY S. DRINKER, V. P.

Attest:

City Clerk

Attest: GEO. T. BOUTON, Clerk.

Attest: D. G. BAIRD, Sec'y.

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30 Jersey City Temporary Supply, Mar. 31, 1902.

JERSEY CITY TEMPORARY SUPPLY, SUPPLEMENT, MARCH 31 1902.

THIS AGREEMENT, made the thirty-first day of March, Nineteen Hundred and Two, between the EAST JERSEY WATER COMPANY, a corporation of the State of New Jersey, party of the first part; the NEW JERSEY GENERAL SECURITY COMPANY, a corporation of the State of New Jersey, party of the second part; PATRICK H. FLYNN, of Brooklyn, New York, and the JERSEY CITY WATER SUPPLY COMPANY, a corporation of the State of New Jersey, parties of the third part, and THE MAYOR AND ALDERMEN OF JERSEY CITY, party of the fourth part, Witnesseth:

WHEREAS, The Mayor and Aldermen of Jersey City, at the request of the parties of the first and second parts, have granted to the parties of the third part an extension of the time to complete the work and furnish the water specified in the contract dated February twenty-eighth, eighteen hundred and ninety-nine, between said city and Patrick H. Flynn, as by reference to an agreement bearing even date herewith between The Mayor and Aldermen of Jersey City of the one part, and Patrick H. Flynn and the Jersey City Water Supply Company, of the other part, will more fully appear; and

WHEREAS, the party of the fourth part are at present obtaining their public water supply from the party of the first part under a temporary contract, which will expire on October twenty-third, nineteen hundred and two; and it is now apparent that the new water works cannot be completed and a supply obtained therefrom until long after that date, and the City is desirous of providing and continuing such temporary supply until the said new supply can be obtained, and also of obtaining the use as soon as possible of the easterly portion of the new main, in lieu of the old mains, now being used between Belleville and Jersey City, so that the temporary supply of water may be delivered in Jersey City more copious-

ly and at a sufficiently high pressure to answer the High Service requirements of the said Flynn contract, and to relieve the City from the necessity of pumping; and the City is desirous to obtain the other advantages of this contract, hereinafter set forth.

Now this agreement witnesseth:

First. That the party of the first part has agreed and hereby doth agree to continue its said temporary supply of water to Jersey City, which it is now furnishing under its contract with said City, dated April twenty-second, eighteen hundred and ninety-seven, at the present price of thirty-five dollars (\$35) per million gallons (1,000,000) until the 25th day of December, nineteen hundred and three, and thereafter, until the City shall have obtained and put in use the new supply from the Rockaway river by means of the water-works which are being constructed under said contract with said Patrick H. Flynn, the terms and conditions of said contract of April twenty-second, eighteen hundred and ninety-seven, being continued in force accordingly, but not beyond March first, nineteen hundred and seven.

Second. And the party of the first part further agrees that as soon as the new main, now being constructed under said Flynn contract by the Jersey City Water Supply Company, shall be completed from the High Service Works at Jersey City, to the point in Upper Montclair, where the same crosses the existing main of the party of the first part, it will permit and allow, under its direction, the Jersey City Water Supply Company to connect the two mains at that point with proper pipes, connections, valves, meters and other appliances, and will thereafter, as soon as the said new main is ready for use, deliver the said temporary supply of water into said new main at Upper Montclair so that the City may receive the same through said new main at High Service Works in Jersey City, instead of through the old main from Belleville to Jersey City as heretofore, and will deliver the same into said new main at a pressure sufficient to answer all the High Service conditions of

the said Flynn contract of February twenty-eighth, eighteen hundred and ninety-nine, the said water to be metered at the connection between said mains at Upper Montclair; the said new main while so used for the carriage of said temporary supply is to be maintained and kept in order by and at the expense of the Jersey City Water Supply Company. The said connections, valves, meters and other appliances
10 at Upper Montclair, which are to be installed as aforesaid by the Jersey City Water Supply Company, shall, in case of the purchase of the water-works by the party of the fourth part, be transferred to them as a part of the works, without additional charge. The Mayor and Aldermen of Jersey City hereby consenting to receive such delivery in lieu of delivery at Belleville, as provided in the contract of April twenty-second, eighteen hundred and ninety-seven; and agreeing also to the continuance of said temporary
20 supply in the manner and at the price and under the conditions aforesaid.

Third. And the parties of the first and second parts for the consideration aforesaid hereby further covenant and agree to and with the party of the fourth part that they will forthwith acquire a controlling interest in the shares of stock of the Jersey City Water Supply Company, and through such controlling interest, will take control of the offices and management of that Company and will provide the
30 treasury of that Company, from time to time as fast as may be needed by it for the construction of the said new water-works and the carrying out of the said Flynn contracts with Jersey City, with money to the amount of three million two hundred and eighty thousand (\$3,280,000) dollars in cash, and will see to it that said moneys are promptly and efficiently applied by the Jersey City Water Supply Company in the construction of the said water-works, and that the construction of the portion of the new main between Upper Montclair and Jersey City High Service Works shall be undertaken and pushed to completion
40 with all practicable dispatch so that the delivery of

said temporary supply of water through said new main may commence at the earliest practicable date, which it is estimated will be on or before December first, nineteen hundred and two, the parties of the first and second part being of opinion that the work under said contracts and the furnishing of water therein specified can be fully completed for the said sum of three million two hundred and eighty thousand dollars (\$3,280,000).

Fourth. The party of the first part guarantees that the Jersey City Water Supply Company shall construct and complete Jersey City's new water-works to such an extent that the water from the new source can be turned on, on or before March first, nineteen hundred and four, and that the same shall be turned on by said Company on or before that date so that the City shall thereafter receive the same to the full extent of its then current requirements; and if said water-works are not sufficiently constructed and completed and said water so turned on by that date, the East Jersey Water Company agrees that it will continue to deliver the temporary supply of water to Jersey City from March first, nineteen hundred and four until said new supply is so turned on, at the rate of three hundred and fifty-three thousand eight hundred (\$353,800) dollars per annum, payable quarterly, but the agreement of the East Jersey Water Company relative to said temporary supply shall not extend beyond March first, nineteen hundred and seven.

Upon the turning on of the water from the new source as hereinbefore provided, then all the obligations of the East Jersey Water Company to furnish a temporary supply shall forthwith cease.

Fifth. The parties of the first part, second and third parts as a further consideration for this agreement agree that at the time of the execution and delivery of this agreement they will cause to be delivered to the Mayor and Aldermen of Jersey City a Bargain and Sale Deed conveying to them the title, free and clear of encumbrances, of about five hun-

dred and two (502) acres of land situate in Longwood Valley, in the Township of Jefferson, in the County of Morris, and commonly known as the Longwood Valley Reservoir site, being property now or lately owned by the Society for the Establishment of Useful Manufactures at Paterson; and that on or before June 1st, 1902, they will turn over and deliver to said City, searches, abstracts and guarantees of title for said lands made by the New Jersey Title
10 Guarantee and Trust Company, of Jersey City, or by approved counsel; which abstracts and guarantees of title shall be continued and guarantees down to the date hereof without expense to such City.

And the parties of the third part have joined in this agreement to signify their assent to and concurrence in the terms hereof; and they undertake on their part to do all things necessary to be done by
20 them to enable the parties of the first and second part to carry out the provisions of this agreement.

In witness whereof, the several parties to this agreement who are corporations have caused their respective corporate seals to be hereto affixed and duly attested by the signatures of their appropriate Executive Officers, and the said Patrick H. Flynn has hereunto set his hand and seal the day and year first above written.

30 EAST JERSEY WATER COMPANY,
(L. S.) By EDMUND LeB. GARDINER,
Attest: Vice-President.

ALBERT P. FISHER,
Secretary.

NEW JERSEY GENERAL SECURITY
COMPANY,
(L. S.) By EDMUND LeB. GARDINER,
Attest: Vice-President.

ALBERT P. FISHER,
Secretary.

Jersey City Temporary Supply, Mar. 31, 1902. 35

Witness: PATRICK H. FLYNN, (L. S.)

JERSEY CITY WATER SUPPLY
COMPANY,

(L. S.) By JOHN McCARTY,

Attest: President.

M. J. KENNEDY,
Treasurer.

10

THE MAYOR AND ALDERMEN OF
JERSEY CITY,

(L. S.) By MARK M. FAGAN,

Attest: Mayor.

M. J. O'DONNELL,
City Clerk.

ROBERT G. SMITH,
President Board of Street and Water
Commissioners.

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Attest:

GEO. T. BOUTON,
Clerk.

JACOB RINGLE,
President Board of Finance.

Attest:

M. F. KELAHER,
Clerk.

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EAST JERSEY ASSIGNMENT OF KEARNEY
CONTRACT, JULY 1, 1903.

THIS INDENTURE OF ASSIGNMENT, made the First day of July, Nineteen Hundred and Three, between EAST JERSEY WATER COMPANY, a corporation of the State of New Jersey, party of the first part, and NEW JERSEY SUBURBAN WATER COMPANY and NEW YORK & NEW JERSEY WATER COMPANY, corporations of said State, party of the second part.

Whereas, the East Jersey Water Company entered into a contract with the Board of Township Committee of the Township of Kearney, a municipal corporation of New Jersey, bearing date June Twenty-Ninth, Eighteen Hundred and Ninety-Five, providing, among other things, for a supply of water by the East Jersey Water Company to said Township for the term of fifteen years, the same to be delivered at the corner of Kearney Avenue and Belleville Turnpike Road in the Township of Kearney, Hudson County, New Jersey, as by reference thereto will more fully appear.

Now this indenture witnesseth, that the party of the first part in consideration of One Dollar and other valuable consideration paid by the party of the second part, the receipt whereof is acknowledged, hath assigned, transferred, conveyed and set over unto the party of the second part, their successors and assigns, the right and privilege in said contract contained to obtain and supply to said Township water for the portion of the term of fifteen years therein mentioned, which now remains unexpired, and the right to receive from the Township payment therefor at the time and in accordance with the terms of said contract, and subject to the conditions therein mentioned; together with all the rights contained in said contract hereafter to construct, lay and maintain any further water mains and other fixtures and appliances necessary for the supply of said water to said Township under the terms of said contract.

And the party of the second part, jointly and severally, do covenant and agree to and with the party of the first part, that they will carry out and fulfill the terms of said contract for the supply of water to said Township, and will indemnify and hold harmless the Township as therein provided and set forth, as fully as the party of the first part is, by the terms of said contract, bounden.

It being understood, however, That they may consent to a cancellation of all their right, title and interest in said contract and all the terms thereof, by agreement with the Town of Kearney, on the making of a new contract between either of them and said Town for a supply of water for a longer term of years. 10

In testimony whereof, the parties to these presents have caused their respective common seals to be hereto affixed and duly attested and these presents to be signed and delivered by their appropriate executive officers, the day and year first above written. 20

EAST JERSEY WATER COMPANY,
(L. S.) By EDMUND LeB. GARDINER,
Attest: Vice-President.
ALBERT P. FISHER,
Secretary.

NEW JERSEY SUBURBAN WATER
COMPANY, 30
(L. S.) By T. A. BEALL,
Attest: President.
J. WILLIAM GRIFFIN,
Secretary.

NEW YORK & NEW JERSEY WATER
COMPANY,
(L. S.) By T. A. BEALL,
Attest: President.
JOSEPH H. BEALL,
Secretary. 40

38 East Jersey Notice to Jersey City, July 8, 1903.

EAST JERSEY NOTICE TO JERSEY CITY,
JULY 8TH, 1903.

To the Mayor and Aldermen of Jersey City:

As you are aware the East Jersey Water Company has been delivering the principal part of the temporary supply of water to your city for several weeks past, into the new main constructed by the Jersey City Water Supply Company, the same being delivered therein at Upper Montclair in accordance with the contract of March 31st, 1902. A small portion has been allowed to run by way of Belleville through the old main, but all deliveries of the temporary supply of water under our contracts with you will hereafter be made through the new main and the water will be metered at Upper Montclair, as required by the contract.

Yours very truly,

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EAST JERSEY WATER COMPANY,
(Signed.) by EDMUND LeB. GARDINER,
Vice-President.

Dated July 8th, 1903.

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EAST JERSEY NOTICE TO KEARNEY, JULY
8TH, 1903.

To the Town of Kearny:

On June 29th, 1895, the East Jersey Water Company entered into a contract with your municipality, then known as the Board of Township Committee of the Township of Kearny, for a supply of water to your Town for a period of fifteen years to begin with-
in six months from that date. Pursuant thereto, the
Company laid mains across the Passaic River and
through your Township to the point of delivery at
the corner of Kearny avenue and Belleville Turnpike
Road, and had the water there under required pres-
sure ready for delivery, and so notified the Township.
The Township repeatedly requested extensions of
the time, alleging that they were not ready to receive
the water, not having laid a main from the point of
delivery to your distributing system—some distance
south thereof, and extensions were granted accord-
ingly. At about the expiration of the six months the
Company began to furnish water to your Town at
the required point of delivery, turning it into the main
which you had before been using, under some ar-
rangement with Jersey City, so that without fulfill-
ing your contract with us and without providing any
main, you obtained the new supply of wholesome
water and have continued thus to receive it directly
from us for about seven and one-half years, paying
Jersey City therefor at ninety dollars per million gal-
lons, although you had contracted to pay us for the
same at that price, and we have, in fact, furnished the
water and have received no pay therefor, except as
Jersey City has paid us about thirty-five dollars per
million gallons for all water delivered by us at that
point.

We have allowed this singular situation to con-
tinue until the present time, without waiving our con-
tract rights. We have assigned to the New Jersey
Suburban Water Company and the New York & New

40 East Jersey Notice to Kearney, July 8, 1903.

Jersey Water Company the contract of June 29th, 1895, for supplying your Town with water, and are now furnishing them with water for that purpose at the corner of Kearny avenue and Belleville Turnpike Road, and the water which is now flowing to your Town is the water supplied by us to them for that purpose.

Your obedient servants,

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EAST JERSEY WATER COMPANY,
By EDMUND LeB. GARDINER,
Vice-President.

Dated Jersey City, July 8th, 1903.

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N. J. SUBURBAN CO. NOTICE TO HARRISON, JULY 8TH, 1903.

To the Town of Harrison:

The New Jersey Suburban Water Company and the New York & New Jersey Water Company respectfully notify you that the water supply which you are receiving through meters and using in your municipality comes from the corner of Kearny avenue and Belleville Turnpike Road in the Town of Kearny and belongs to us, having been purchased by us from the East Jersey Water Company, and is no longer being supplied to you by the Mayor & Aldermen of Jersey City, and if you continue to use said water, we shall expect you to pay us for it, quarterly, and shall render you bills therefor at the rate of ninety dollars per million gallons. 10

Please let us know your pleasure with respect to it at an early day. 20

NEW JERSEY SUBURBAN WATER
COMPANY,

By T. A. BEALL,
President.

NEW YORK & NEW JERSEY WATER
COMPANY,

By T. A. BEALL,
President. 30

Dated Jersey City, July 8th, 1903.

N. J. SUBURBAN CO. NOTICE TO KEARNEY,
JULY 8TH, 1903.

To the Town of Kearny:

The New Jersey Suburban Water Company and the New York & New Jersey Water Company respectfully inform you that they have acquired, by assignment, the contract made by your municipality with the East Jersey Water Company for a supply of water, dated June 29th, 1895, and to receive the payments provided by that contract.

We notify you that the water delivered at the corner of Kearney avenue and Belleville Turnpike Road in your Town, and which is now running through the meter at that point and is being taken and used in your Town, belongs to us, and we look to you to pay us for the same from this day forth at ninety dollars per million gallons under the terms of said contract, and we call upon you to provide the necessary mains to receive the same.

We are aware that you have been taking said water and are now receiving the same through a main belonging to the Mayor and Aldermen of Jersey City, but we notify you that that City is not furnishing the water, but we are furnishing it, and shall look to you for payment, whether you receive it through that main or any other main. We are prepared to strictly fulfill and are now fulfilling the terms of the contract of June 29th, 1895, with your Town.

We hand you herewith copy of assignments of contract, above mentioned, to us. We shall render bills to your Town quarterly under the terms of that contract.

NEW JERSEY SUBURBAN WATER
COMPANY,

By T. A. BEALL,
President.

NEW YORK & NEW JERSEY WATER
COMPANY,

By T. A. BEALL,
President.

40 Dated Jersey City, July 8th, 1903.

N. J. SUBURBAN CO. NOTICE TO EAST
NEWARK, JULY 8TH, 1903.

To the Borough of East Newark:

The New Jersey Suburban Water Company and the New York and New Jersey Water Company respectfully notify you that the water supply which you are receiving through the meters and using in your municipality comes from the corner of Kearney avenue and Belleville Turnpike Road in the Town of Kearney and belongs to us, having been purchased by us from the East Jersey Water Company, and is no longer being supplied to you by the Mayor and Aldermen of Jersey City, if you continue to use said water, we shall expect you to pay us for it, quarterly and shall render you bills therefor at rate of ninety dollars per million gallons. 10

Please let us know your pleasure with respect to it at an early day. 20

NEW JERSEY SUBURBAN WATER
COMPANY,

By T. A. BEALL,
President.

NEW YORK & NEW JERSEY WATER
COMPANY,

By T. A. BEALL,
President. 30

Dated Jersey City, July 8th, 1903.

N. J. SUBURBAN CO. NOTICE TO JERSEY
CITY, JULY 10, 1903.

To the Mayor and Aldermen of Jersey City:

The New Jersey Suburban Water Company and the New York & New Jersey Water Company respectfully inform you that they have acquired by assignment, the contract made between the municipality of the Town of Kearny and the East Jersey Water
10 Company dated June twenty-ninth, eighteen hundred and ninety-five, for a supply of water for fifteen years to that Town at the corner of Kearny avenue and Belleville Turnpike Road in the Town of Kearny, and they are now supplying at that point the water which is being used by the Town of Kearny, the Town of Harrison and the Borough of East Newark.

It is the duty of the Town of Kearny to provide a main, but to save any question about the matter, we
20 offer to buy the main which Jersey City owns in Kearny avenue in the Town of Kearny and pay for it a fair price, to be agreed on, or in case of failure to agree, then at a price to be fixed by arbitration.

In the meantime we notify you that all water which is being delivered by the East Jersey Water Company at the point above-mentioned, is being delivered to and purchased by us, and we have duly notified the Town of Kearny and the Town of Harrison and the Borough of East Newark that the water now being
30 furnished to them and which they are using is our water, and that we shall look to them for payment of the same, whether they receive it through your said main or any other main.

We also notify you that if you take any water at that point through our meter we shall charge you therefor, the same price that is charged to said municipalities, to wit, ninety dollars per million gallons.

Yours respectfully,

NEW JERSEY SUBURBAN WATER
COMPANY,

By T. A. BEALL,

40 Dated Jersey City, July 10th, 1903. President.

RESOLUTION OF THE COUNCIL OF THE
TOWN OF HARRISON, PASSED JULY 7, 1903.

Resolved, That the President of the Common Council of the town of Harrison and the Town Clerk of the said town be and they are hereby authorized to execute on behalf of the said town and in common with the municipal authorities of Jersey City for a new water supply for the said town to be furnished by the said Jersey City on the same terms and conditions and for a similar period of time as are contained in a certain contract made on the 31st day of July, 1885, between the Mayor and Aldermen of Jersey City and the said town of Harrison, with the following exceptions:

First: That the price for the water to be supplied under the contract hereby authorized shall be at the rate of the sum of \$84 per million gallons per day for that quantity of water shown to be consumed on the date of contract, and at the rate of \$83 per million gallons when such consumption shall have increased to an average of 500,000 gallons daily above that consumption indicated on the day of the date of contract, and at the rate of \$78 per million gallons when the consumption shall have indicated a daily average increase of a second additional 500,000 gallons, and at the rate of \$75 per million gallons for all water consumed in excess of three (3) million gallons daily.

The above is a true copy of the resolution passed by the common council of the town of Harrison, N. J., at a regular meeting held in the council chamber on July 7th, 1903.

B. S. WALSH,
Town Clerk.

PROPOSED CONTRACT, EXECUTED BY JERSEY CITY BUT NOT EXECUTED BY TOWN OF HARRISON, JULY 10, 1903.

THIS AGREEMENT, made this Tenth day of July, in the year of our Lord one thousand nine hundred and three, between THE MAYOR AND ALDERMEN OF JERSEY CITY of the first part, and the TOWN OF HARRISON, of the second part,
10 witnesseth:

That the party of the first part in consideration of the water rents hereinafter reserved to be paid and of the covenants and agreements on the part of the party of the second part hereby agrees to furnish the party of the second part a good and sufficient supply of water from the reservoir and water works of the party of the first part, unless prevented by accident to said reservoir or water works, or the inability of
20 the party of the first part to supply water by reason of the quantity thereof being insufficient, provided that insufficiency arises from the inadequacy of the source of supply only.

And the party of the first part further agrees to and with the party of the second part that in case they, the party of the first part, at any time during the existence of this contract should receive from any source whatever a better and purer supply of water, both as to quantity and quality, that the party of the
30 second part is to receive all the benefits and privileges of the same, and upon the same terms as hereinafter stated and agreed upon.

And it is further agreed upon by the said party of the first part that the said water is to be delivered at the Town line South of the Newark and Hudson Railroad bridge at Fourth Street, through a twenty-inch pipe; the same to be delivered through one or more ten-inch meters, placed at such points as the Town Council of Harrison shall direct or specify; and meters are to be furnished and kept in repair by
40 the party of the second part at its own cost and expense.

And it is further agreed by the said party of the second part that they will pay to the party of the first part the prices hereinafter named and at the times hereinafter specified for all water which passes through the meters to be provided as aforesaid, and that they will not receive water from any other corporation or individual during the term of this contract and that they will not receive any water except such as passes through the meters hereinbefore mentioned and then only when the said meters are kept in proper condition to register the water passing through them or any of them, and all meters to be used are to be first approved by the said party of the first part or by their Board of Street and Water Commissioners acting for them. 10

And the said party of the second part further agrees to pay to the said party of the first part for all water received by them, the said party of the second part, and which passes through and is registered by said meters, at the following rates; at the rate of the sum of Eighty-four (\$84.00) dollars per million gallons per day for that quantity of water shown to be consumed on the date of contract, and at the rate of Eighty-three (\$83.00) dollars per million gallons when such consumption shall have increased to an average of five hundred thousand (500,000) gallons daily above that consumption indicated on the day of the date of contract, and at the rate of Seventy-eight (\$78.00) dollars per million gallons when the consumption shall have indicated a daily average increase of a second additional five hundred thousand (500,000) gallons, and at the rate of Seventy-five (\$75.00) dollars per million gallons for all water consumed in excess of three (3) millions gallons daily; and for which water the party of the second part agrees to pay to the party of the first part every six months on the Tenth days of August and February in each year during the continuance of this contract the amount due for measured water up to the first of said months. 20 30 40

And it is further mutually understood and agreed that this contract shall last for a term of ten years from the date hereof.

And it is further agreed by and between the parties hereto that in case the party of the first part contract with any other city, town or borough, for a lower rate than the rate herein fixed for water during the continuance of this contract that the Town of Harrison
10 shall be supplied with water by the party of the first part at such reduced rates and upon the same terms in every particular.

In witness whereof, The said party of the first part have caused these presents to be signed by the Mayor of the City of Jersey City and the President of the Board of Street and Water Commissioners aforesaid, and have caused the official seal of said City to be affixed hereto, and the said the Town of Harrison have
20 caused these presents to be signed by the President of the Common Council and the Clerk thereof to affix the official corporate seal hereto the day and year first above written.

MARK M. FAGAN,
Mayor of Jersey City.

30 R. G. SMITH,
President of the Board of Street and
Water Commissioners.

JACOB RINGLE,
Attest: President of the Board of Finance.
M. J. O'DONNELL,
(Seal.) City Clerk.

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President of the Common Council of
the Town of Harrison.

Harrison Rescinding Resolution, Sept. 15, 1903. 49

HARRISON RESCINDING RESOLUTION,
SEPT. 15, 1903.

Resolution of the Council of the Town of Harrison,
passed September 15th, 1903.

Resolution by Alderman Rice:

Resolved, That the action taken by this board on ¹⁰
July 7th, 1903, in the adoption of a resolution pro-
viding for the execution by the President of the coun-
cil and the Town Clerk of a contract for the purchase
of a water supply from Jersey City for ten years be,
and the same is hereby rescinded.

Roll call on the adoption of the resolution and so
ordered, Aldermen Bulger, Rice, Henry, Leen and
President Sullivan voted aye; Aldermen Witt, Van
Deren and Riordan voted nay. ²⁰

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N. J. SUBURBAN—HARRISON CONTRACT,
Sept. 15, 1903.

Resolution passed September 15th, 1903, by the
Common Council of the Town of Harrison.

Resolved, That the report of the water committee
which was read at the meeting of the council held
10 August 4, 1903, be received and approved, and or-
dered spread in full upon the minutes of this board,
with the documents thereto attached, and that the
recommendations contained in said report be, and
they are hereby adopted as the action of this board;
and that the president of this board and the town
clerk be, and they are hereby authorized and direct-
ed to sign and attach the town seal thereto, execute
and deliver a contract with the New Jersey Suburban
20 Water Company for a supply of water for this town
for a period of fifteen years in the words and figures
and upon the terms and conditions as follows: (Here
follows copy contract next stated.)

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CONTRACT BETWEEN TOWN OF HARRISON AND N. J. SUBURBAN WATER CO.,
SEPT. 15, 1903.

THIS AGREEMENT, made this 15th day of September, nineteen hundred and three, oy and between the New Jersey Suburban Water Company, a corporation duly organized and existing by virtue of the laws of the state of New Jersey, party of the first part, hereinafter referred to as the company, and the town of Harrison in the county of Hudson, being a municipal corporation of the state of New Jersey, party of the second part, hereinafter referred to as the town, witnesseth:

First—The company agrees to obtain and supply to the town, and the town agrees to take from the company, for and during the continuous term of fifteen years, commencing six months from and after the date hereof, or at such earlier date as the company may be able to furnish said water (with the option to the town to extend this contract for a second period of ten years), an entire and adequate supply of water for the inhabitants of said town, which shall be pure and wholesome and shall within one year be filtered water, and to be supplied in quantities sufficient for the purposes of domestic use in said town, for the extinguishing of fires, and for all other lawful uses and purposes for which the town may require or desire to have water and for which the town may lawfully use, sell or supply water; all the water required shall be delivered by pumping or gravity at the junction of Sherman avenue and Fourth street, in the town of Harrison, county of Hudson and state of New Jersey, at a head equal to that under which the said town is now receiving its water supply.

Second—The Company agrees to furnish and deliver and the town agrees to take and pay for, as stipulated in this contract, all the water necessary and convenient for the uses and purposes aforesaid.

Third—Payments by such town for water supplied under this contract shall be made by the proper dis-

bursing officer or officers of the town in lawful money, quarter-yearly on Thursday of the second week of each and every quarter after the delivery of water has commenced, for all the water so delivered during the preceding quarter, according to meter register, upon the certificate of the superintendent of the company certifying to the quantity of water delivered and also certified to by the water purveyor of

10 the town of Harrison. In case of dispute the town is to pay presently a sum equal to the amount which it paid for the corresponding quarter of the year last past, and the disputed amount is to be settled by arbitration, one arbitrator being named by the town, one by the company, and a third to be selected by the two so chosen, and a decision of a majority of these arbitrators shall be final. The company is to carefully measure all water delivered under this contract by meter set for that purpose and the town, by its

20 engineers and proper officers, shall at all times have reasonable opportunity to inspect and examine the meter and appliances for measurement.

The price to be paid for all water delivered by the company to the town during the existence of this contract shall be at the rate of \$82.50 per 1,000,000 gallons.

Fourth—The town covenants that, if it should be found that any powers or rights held or possessed, or that may hereafter be held or possessed by it, whether

30 in respect to the prevention of injury to any portion of the works constructed for the supply of water, or for the punishment of such injury, or otherwise, or for the condemnation of lands, waters or rights, may be advantageously used or exercised for the purpose of this contract, that then the town will, so far as it has or may acquire the power to do so, put such rights and powers in force, or permit the company, its successors or assigns, so to do in the name of the town; provided, however, that in all instances in which said use shall be made at the request of or for

40 the benefit of the company, its successors and as-

signs, the expenses thereof shall be paid by the company and the town shall be lawfully indemnified from any loss or damage by reason thereof.

The town hereby grants to the company such rights of way through its streets, for a water main, as may be necessary to supply the town of Harrison under this contract, said main to be so laid as not unnecessarily to interfere with existing pipes, and the company, in laying the same, to promptly restore the surface of the streets to as good condition as the same was before the laying of the main, and shall always maintain said main in good condition and promptly repair the surface whenever they have occasion to disturb the same for access to said main. 10

Fifth—The company agrees to complete the work and begin the delivery of water within six months from the date of this contract, but any time lost by reason of strikes, accidents, litigation or other cause, unavoidable or beyond the control of the company, shall not be computed within the six months, but shall be added thereto. 20

Sixth—The provisions of this contract shall be binding upon and apply to the successors and assigns of the parties hereto.

NEW JERSEY SUBURBAN WATER
COMPANY,

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(Seal.) TURNER A. BEALL,
Attest: President.
J. WILLIAM GRIFFEN,
 Secretary.

THE TOWN OF HARRISON,

(Seal.) PETER SULLIVAN,
Attest: President.
B. P. WALSH,
 Town Clerk.

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JERSEY CITY RESOLUTIONS, JULY 28, 1903.

Resolution of Jersey City Board of Street and Water Commissioners, passed July 28, 1903.

“Whereas, Notice has been served upon the Mayor and Aldermen of Jersey City by the East Jersey Water Co. under date of July 8, 1903, to the effect that the said water company will after said date make
10 delivery of the water for Jersey City under a contract between Jersey City and the said water company through the new water main at Upper Montclair; and

“Whereas, Part of the consideration of the said contract between Jersey City and the said water company was an agreement on the part of the said water company that it would not attempt to supply any of the customers of Jersey City, and particularly the
20 Township of Kearny and the Town of Harrison; and

“Whereas, The refusal of the water company to deliver water to Jersey City for the use of the Township of Kearny and the Town of Harrison at the junction of Kearny Avenue and the Belleville Turnpike will result in general loss and damage to Jersey City; therefore

Resolved, That demand is hereby made upon the East Jersey Water Company to continue the delivery of water to Jersey City at the junction of Kearny
30 avenue and Belleville Turnpike, in the Township of Kearny, in such quantity at least as shall be sufficient to enable Jersey City to supply the said township of Kearny and the town of Harrison until such time as Jersey City shall be able to make delivery of water to the said towns from its new mains, and that in the meantime said company shall refrain from any action which shall hinder or obstruct Jersey City in supplying water to Harrison and Kearny; and further

Resolved, That the East Jersey Water Company is
40 hereby notified that the said company will be held re-

sponsible by Jersey City for any loss of income, and for any and all damages incurred by reason of the failure of the said water company to comply with the foregoing demand; and be it further

Resolved, That the clerk of this Board cause to be served a copy of the foregoing preamble and resolutions upon the said East Jersey Water Company.

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The Board also adopted this:

Whereas, The Mayor and Aldermen of Jersey City have entered into a contract to supply water in the Town of Harrison, and that for the purpose of carrying out such contract, a water main should be constructed from a point near the junction of Kearny avenue and Belleville Turnpike, to a connection with the new water main built for Jersey City at or near Kingsland; and

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Whereas, It is for the interest of Jersey City that this pipe should be laid as quickly as possible; and

Whereas, The advisability of laying the said pipe at once is an exigency or an emergency within the meaning of the law; now therefore

Resolved, That such an exigency is hereby declared to exist and the Committee on Pumping and Reservoirs of this Board, together with the Chief Engineer of this Board, be and they are hereby authorized and instructed to lay the necessary pipe from the junction of Kearny avenue and Belleville Turnpike to a point of connection with the new water main of Jersey City at or near Kingsland, as quickly as possible, and to that end they are authorized and empowered to procure such pipe and make such contract as it may be necessary to procure or make, without advertisement therefor, pending the preparation of specifications and the reception of bids therefor.

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JERSEY CITY WATER SUPPLY CO. NOTICE,
AUG. 4, 1903.

To the Mayor and Aldermen of Jersey City:

Our attention has been called to Resolutions passed by your Board of Street and Water Commissioners on July 28th last, whereby it appears that you are contemplating the construction of a main through Kingsland avenue for about two and one-half miles from the Town of Kearny to Kingsland for the purpose of what is called "a connection with the new water main built for Jersey City at or near Kingsland."

We assume that you intend to tap the water main belonging to this Company at Kingsland. Jersey City has, at present, no interest in this main, except a contract to receive water through it, to be delivered at Bergen Reservoirs, with an option to purchase it under certain conditions, at the price of seven million five hundred and ninety-five thousand dollars (\$7,595,000.)

We respectfully notify you that we cannot allow this main to be tapped at Kingsland or elsewhere by anybody while it remains in our ownership and control.

The size of the main, its gradients and all hydraulic conditions have been carefully calculated with a view to deliver at the Bergen reservoirs, at a given height, fifty millions of gallons of water per day, and not for any additional service.

It is quite obvious that if we should allow water to be drawn from this main at intermediate points between Boonton and Jersey City, not only would its sufficiency be reduced, but questions would at once be raised as to the total capacity of the main, and whether it really did come up to contract requirements. The contract provides for an extended trial use of this main, and its capacity will be a matter of very great importance.

We are, therefore, compelled to say that we shall refuse to allow the main to be tapped by anyone at

any intermediate point while it remains in our ownership and control.

JERSEY CITY WATER SUPPLY
COMPANY,

By EDMUND LeB. GARDINER,

August 4, 1903.

President.

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EAST JERSEY TO JERSEY CITY, AUG. 4, 1903.

To the Mayor and Aldermen of Jersey City:

This Company has received a copy of the Preambles and Resolutions passed by your Board of Street and Water Commissioners on July 28th, 1903, giving sundry notices to this Company and demanding that this Company continue to deliver water at
10 the junction of Kearny avenue and Belleville Turnpike Road in the Township of Kearny.

We are much surprised at this notice.

By the Agreement of March 31st, 1902, between this Company and the New Jersey General Security Company, Patrick H. Flynn, the Jersey City Water Supply Company and your Honorable Body, this Company agreed to continue its temporary water supply for the accommodation of the city, and, at the request of the City, agreed to make delivery at
20 Upper Montclair as soon as the new main, provided for in the Flynn contract, should be sufficiently completed to allow of such delivery. At the same time this Company undertook, at the special request of the City, very heavy expenditures and obligations to hasten and forward the completion of the new main under the Flynn contract. This Company pursued the matter with utmost diligence and began an experimental delivery of water at Upper Montclair early in June last, and gradually increased the quantity until on July 8th the entire flow was sent through
30 the new main, as required by the contract, of which you had immediate notice.

The recital in your Resolutions that a part of the consideration of the contract between Jersey City and the Water Company was an agreement by the Company that it would not attempt to supply any of the customers of Jersey City, and particularly the Township of Kearny and the Town of Harrison, is utterly at variance with the facts, as an examination
40 of the contracts will show.

Your demand that this Company continue the delivery of part of the water at the corner of Kearny avenue and Belleville Turnpike Road cannot be complied with, not only because you have no legal right to make such demand, but because our other contract obligations will not now allow of it, and there are, in addition, physical reasons in the actual operation of the works against such a divided delivery.

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EAST JERSEY WATER COMPANY,

By EDMUND LeB. GARDINER,

Vice-President.

Dated August 4th, 1903.

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REHILL et al. v. MAYOR, ETC., OF BOROUGH
OUGH OF EAST NEWARK, et al.

NEW JERSEY SUBURBAN WATER CO. et.
al. v. SAME.

(Supreme Court of New Jersey, Feb. 26, 1906.)

10 1. MUNICIPAL CORPORATIONS—ILLEGAL
CONTRACTS—CERTIORARI BY TAX-
PAYER.

Where a municipal corporation by action ultra vires or otherwise embarks in a scheme which will result in an unlawful expenditure of public funds, any ordinary taxpayer may be admitted to prosecute a certiorari to review such action.

20 2. CERTIORARI—MOTION TO DISMISS.

Where respondent in certiorari does not challenge the status of the prosecutor until the argument of the cause, matters of fact upon which such status depends will be taken as admitted for purposes of a motion then made for dismissal of the writ.

3. WATERS AND WATER COURSES—PUB-
LIC WATER SUPPLY.

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In P. L. 1897, p. 232, and in P. L. 1897, p. 323, § 76, as amended P. L. 1899, p. 159, the phrases "any adjoining municipal corporation," and "any adjoining municipality," refer only to the municipalities whose corporate territories are continuous.

(Syllabus by the Court.)

Certiorari by Patrick L. Rehill and others against
the Mayor and Council of the Borough of East New-
40 ark and the Mayor and Aldermen of Jersey City, and

by the New Jersey Suburban Water Company and the New York and New Jersey Water Company against the same respondents to review a contract between them for water supply. Contract set aside.

Argued before FORT AND PITNEY, JJ.

Herbert Boggs and Collins & Corbin, for prosecutors. Robert Carey, George L. Record, Edward Kenny and Richard W. Lindabury, for respondents. 10

PITNEY, J. These writs of certiorari were issued for the purpose of determining the validity of a contract made December 9, 1903, between the Mayor and Aldermen of Jersey and the Mayor and Council of the Borough of East Newark, providing for a water supply to be furnished by the city to the Borough for the term of five years at a specified rate of compensation.

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Before considering the merits, we must dispose of a motion made by respondent for a dismissal of the writs, which is based upon the ground that the prosecutors have no such interest in the subject-matter as will warrant the court in setting aside the contract upon their application. The prosecutors Rehill and wife are, or claim to be, taxpayers of Jersey City. The water companies are assignees of an unexpired contract made in the year 1895 by the Township of Kearny with the East Jersey Water Company for the supply of water to the township; East Newark being at that time a part of Kearny. That such is in truth the status of the prosecutors was not seasonably disputed by the respondents, and must be taken to be true as matter of fact. *Avon v. Neptune City*, 57 N. J. Law, 701, 32 Atl. 220; *Biddle v. Riverton*, 58 N. J. Law, 289, 33 Atl. 279; *Dickinson v. Jersey City*, 68 N. J. Law, 99, 52 Atl. 278; *Lantry v. Sage*, 69 N. J. Law, 560, 55 Atl. 34. Conceding it to be true, however, respondents insist that this court will not 40

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entertain an attack upon such a municipal contract unless the prosecutor in certiorari can show some special injury to his property distinct from and greater than the injury suffered by other taxpayers or by the public at large. Upon this point we are referred to three recent cases in the Court of Errors and Appeals: *Jersey City v. Traphagen*, 53 N. J. Law, 434, 22 Atl. 190; *Tallon v. Hoboken*, 60 N. J. Law, 212, 10 37, Atl. 895, and *Oliver v. Jersey City*, 63 N. J. Law, 634, 44 Atl. 709, 48 L. R. A. 412, 76 Am. St. Rep. 228, approving upon this point the decision of this court in the same case, 63 N. J. Law, 96, 42 Atl. 782. Also to two recent decisions in this court, *Morris & Cummings Dredging Co. v. Jersey City*, 64 N. J. Law, 142, 147, 45 Atl. 917, and *Beecher v. Newark*, 64 N. J. Law, 475, 477, 46 Atl. 166. All these cases, however, related to ordinances or other municipal proceedings whose effect was to authorize constructions in the public streets that without legal authorization would amount to public nuisances. We do not understand that in these decisions it was intended to subvert the rule, long recognized and of frequent application, that where a municipal corporation by action ultra vires or other wise embarks in a scheme which will result in the unlawful expenditure of public funds, any ordinary taxpayer may be admitted to prosecute a certiorari to review such action. State.

30 *Gregory Pros., v. Jersey City*, 34 N. J. Law, 390, 399, 429; *State, Danforth Pros., v. Paterson*, 34 N. J. Law, 163, 171; *Siedler v. Freeholders of Hudson*, 39 N. J. Law, 632; *State v. Paterson*, 39 N. J. Law, 489; *Conover v. Davis*, 48 N. J. Law, 112, 2 Atl. 667; *Read v. Atlantic City*, 49 N. J. Law, 558, 561, 9 Atl. 759; *Middleton v. Robbins*, 54 N. J. Law, 566, 25 Atl. 471; *Lewis v. Freeholders of Cumberland*, 56 N. J. Law, 416, 420, 28 Atl. 553; *Platt v. Englewood*, 68 N. J. Law, 231, 52 Atl. 239.

40 The contract now under review assumes to bind Jersey City to furnish water to the Borough of East

Newark for a term of years at a fixed price. In order to provide the water supply the public moneys of Jersey City would necessarily be, to some extent, expended or put at stake. If the contract is beyond the corporate powers of the city, the Rehills as taxpayers of the city are legally aggrieved, and are entitled to prosecute the writ of certiorari. The water companies, prosecutors in the other writs, have a special interest because of the Kearny contract of 1895, which had been assigned to them, and which is claimed by them to be obligatory upon East Newark. It is argued that this contract has no living force at the present time, because it was abandoned by the East Jersey Water Company prior to its assignment to the present companies. This objection, however, raises a doubtful question of fact, and since no challenge of the status of the water companies as prosecutors was interposed prior to the argument, the facts upon which their status is rested must be taken to be admitted for the purposes of the motion to dismiss. This brings us to the merits. The contract of December 8, 1903, made between Jersey City and the Borough of East Newark, is questioned on grounds that relate to the legal power of Jersey City to make such a contract, and also upon grounds that relate to the legal power of the Borough in the premises. For the source of Jersey City's power we are referred to the following legislation: Charter of Jersey City, § 76 (P. L. 1871, p. 1129), authorizing the city to acquire water works and to "distribute water through the corporate limits of Jersey City, and through such portions of the counties of Hudson and Bergen as the inhabitants may desire." Assuming this section is still in force, and that it applies to the water supply that Jersey City now claims to control, in our view it gives the city, no power to make a contract with another municipality, but merely authorizes it to distribute the water to the water takers.

Act of March 10, 1882, (P. L. 1882, p. 83: Gen. St. p. 654), entitled "An act concerning cities," de-

clares that in every city in which water works are owned and controlled by the city authorities, the city may extend the water mains beyond the city limits to a distance not exceeding four miles in any single direction; provided that the rates charged to water takers outside of the city limits shall not in any case be less than the charge for the same service within the city. The contract under review exceeds these limitations. Moreover, the act of 1882 contemplates that the city exercising the power thereby conferred shall deal directly with the water takers, and not with another municipality, so far as relates to supply for ordinary consumption. This is manifest from the second section, which expressly authorizes the city to make a contract with the proper authorities of any municipalities within which the water mains shall be extended for the maintenance and use of fire hydrants; an implied exclusion of a contract with a municipality for any other purpose.

The act of April 17, 1884, supplementary to an act of 1881 for authorizing municipal corporations to contract for a supply of water for public uses (P. L. 1884, p. 194; Gen. St. p. 2206), by its fifth section authorizes any city, town, or township to make a contract with any city, or with any aqueduct or water company having water works, for the supply and distribution of water for public and private use in any city, town, or township which at the time of such contract shall not be supplied with water by any municipal or private corporation. In the first section of this supplement, certain powers are conferred upon any "city, town, township or other municipal corporation." In the fifth section the words "or other municipal corporation," are omitted. Although the reason for this change of phraseology may not be entirely clear, we are not at liberty to ignore it. And upon the whole of the act we deem it quite clear that the word "town" (certainly as used

in section 5) does not include boroughs. Indeed, had the word been intended to convey its broadest meaning the words "city" and "township" would have been needless; likewise the words "or other municipal corporation" in section 1. The word "town" ordinarily means a town corporate, and not a borough. *Herman v. Guttenburg*, 63 N. J. Law, 616, 620, 44 Atl. 758; *Bellis v. Flemington*, 69 N. J. Law, 349, 352, 55 Atl. 300.

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A second act of 1884, amendatory of the same act, of 1881 (P. L. 1884, p. 324; Gen. St. p. 2205), contains a proviso that excludes it from consideration under the facts of the present case.

The act of April 20, 1885, (P. L. 1885, p. 267; Gen. St. p. 655), authorizes any city of this state owning and controlling its own water works, to contract with any city, town, or township to supply the latter with water; subject to a proviso. This act does not justify the contract in question, because a borough is not within the terms of the enactment.

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Upon the argument the authority of the city was principally rested upon the act of April 16, 1897, (P. L. 1897, p. 232), which authorizes any municipal corporation owning or controlling water works to make a contract with "any adjoining municipal corporation or with any private corporation therein" to furnish a supply of water for public or private use for a term of years. But the word "adjoining" in its primary and natural signification indicates a contiguity of territory (1 Am. & Eng. Enc. Law, [2nd Ed.] p. 635; 1 Cyc. 765; *Akers v. United N. J. R. R. Co.*, 43 N. J. Law, 110, 112; *McCullough v. Absecon Beach Co.*, 48 N. J. Eq. 170, 21 Atl. 481; *Yard v. Ocean Beach Ass'n*, 49 N. J. Eq. 306, 312, 24 Atl. 729), and since the territory of East Newark is not contiguous to that of Jersey City, it seems clear to us that this act

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cannot authorize the contract under review. We have found nothing in the situation with which presumably the Legislature of 1897 was confronted, that at all tends to convince us that the word "adjoining" in this act was used in any loose or uncertain meaning. Contiguity of territory is a perfectly rational basis upon which to treat the subject-matter of the legislation, and it is to be presumed that the Legislature meant simply what the statute says. It is most ingeniously argued by the learned counsel for Jersey City that if the word "adjoining" is used in its primary sense it refers not to the territory of the municipality but to the property, that is to say, the water supply or waterworks, rather than the territory governed. This view seems to fit in very nicely with the supposed necessities of the present occasion, but we cannot believe that the Legislature used the plain English words "adjoining municipal corporation" with any such significance. We hold, therefore, that none of the foregoing statutes authorize Jersey City to make the contract in question. For the authority of the borough we are referred first to the two acts of 1884 above mentioned, which, for reasons already given, do not apply, and to the provisions of the general borough act of 1897 (P. L. 1897, p. 285.)

Its seventy-sixth section (page 323) as amended two years later (P. L. 1899, p. 159), empowers the mayor and council of a borough to make a contract with the governing body of "any adjoining municipality," for a term not exceeding ten years, for obtaining and furnishing a supply of water to be used in the borough for domestic and public uses. It appears in the case that the borough of East Newark was organized in the year 1895, presumably under the general borough act of April 5, 1878, (Gen. St. p. 179). The borough act of 1897, in its ninety-sixth section (page 329) declares that the inhabitants of any borough theretofore established under the pro-

visions of any law, and which thus became a de facto corporation, shall be governed by the provisions of this act, shall have all the powers conferred by this act upon boroughs, and shall be subject to all the duties imposed upon boroughs by this act. In our opinion, the effect of the revision of 1897 is to exclude boroughs from exercising other corporate powers than those contained in this act. It results that the power of East Newark to make a water contract is limited by section 76. For reasons already mentioned, we think this section does not authorize the present contract, because the territory of the borough does not adjoin the territory of Jersey City. In our opinion, the act of April 16, 1897, already referred to (P. L. 1897, p. 232), and section 76 of the borough act of the same year (P. L. 323) are to be construed together. They have, as we think, the effect of excluding any other sort of water contract between a city and a borough saving such as is authorized by their terms. Contiguity of territory is one of the essential terms, and since this is lacking in the present case there is no legal authority for the making of the contract. A similar view was held by Vice-Chancellor Stevens in *East Newark v. N. Y. & N. J. Water Supply Co.* (N. J. Ch.) 57 Atl. 1051.

It is argued by counsel for the defendant that if these acts of 1897 be construed as applying to municipalities whose territories actually adjoin, it results in rendering the legislation unconstitutional on the ground that the classification is based upon an insignificant attribute, arbitrarily selected. With this view we cannot agree. It was reasonable for the Legislature to place some limit upon the power of one municipality to contract with another municipality with respect to buying and selling a supply of water. To confine that power to cases where the territories of the two municipalities adjoin, and where the one municipality has a water supply and the other

needs a supply, seems to us quite rational, and furnishes a basis of classification entirely pertinent to the purposes of the legislation.

It results that the contract under review should be set aside.

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RULE FOR JUDGMENT.

Rules for Judgment were duly entered in both cases in the usual form, setting aside the contract under review and referred to in the writs of certiorari.

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

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PATRICK L. REHILL AND)	
ELLEN M. REHILL,)	
Prosecutors below and)	10
Defendants in Error,)	
vs.	)	On Certiorari.
THE MAYOR AND COUN-	)	On Error to Su-
CIL OF THE BOROUGH	)	preme Court.
OF EAST NEWARK, AND	)	Assignment of
THE MAYOR AND AL-)	Errors. 20
DERMEN OF JERSEY)	
CITY,)	
Defendants below and)	
Plaintiffs in Error.)	
—————o		

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AFTERWARDS, that is to say, on the fifth day of June, nineteen hundred and six, in the Court of Errors and Appeals in the last resort in all causes, comes the said The Mayor and Council of the Borough of East Newark and The Mayor and Aldermen of Jersey City, by George L. Record, Robert Carey and Edward Kenny, attorneys for the said Defendants, and say that in the record and proceedings aforesaid, and also in the giving of the judgment aforesaid, there is manifest error in this, to wit: 40

FIRST: That the Supreme Court gave judgment for the Prosecutors,

Whereas, by the law of the land, it ought to have given judgment for the Defendants, and therefore in this there was manifest error.

SECOND: That the said Supreme Court in the giving of the judgment aforesaid, held that the contract made between the Mayor and Aldermen of Jersey City, and the Mayor and Council of the Borough of East Newark, bearing date December ninth, nineteen hundred and three, was not a valid and legal contract binding between the parties;

Whereas, by the law of the land, it ought to have held that said contract was a legal, valid and binding contract, and therefore in this there was manifest error.

THIRD: That the said Supreme Court in the giving of the judgment aforesaid, held that the municipality, the Mayor and Aldermen of Jersey City, and the municipality, the Mayor and Council of the Borough of East Newark were not adjoining municipal corporations within the intent and meaning of Chapter 128 of the Laws of 1897;

Whereas, Said Court should have held that said municipalities were adjoining municipalities within the meaning and intent of said statute; and therefore in this there was manifest error;

Wherefore, The said Mayor and Council of the Borough of East Newark, and the Mayor and Aldermen of Jersey City pray, that the judgment aforesaid, by reason of the aforesaid errors, and all other errors appearing in the record and proceedings aforesaid, be reversed, and held for nothing, and that the said

The Mayor and Council of the Borough of East Newark, and the said The Mayor and Aldermen of Jersey City, may be restored to all things they and each of them have lost on occasion of said judgment.

GEORGE L. RECORD,
ROBERT CAREY,
EDWARD KENNY,

Attorneys for Plaintiffs in Error. 10

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

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	THE NEW JERSEY SUBUR-)
	BAN WATER COMPANY,)
10	AND THE NEW YORK &)
	NEW JERSEY WATER)
	COMPANY,)
	Prosecutors below and)
	Defendants in Error,)
	vs.)
	THE MAYOR AND COUN-)
20	CIL OF THE BOROUGH)
	OF EAST NEWARK, AND)
	THE MAYOR AND AL-)
	DERMEN OF JERSEY)
	CITY,)
30	Defendants below and)
	Plaintiffs in Error.)
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On Certiorari.
On Error to Su-
preme Court.
Assignment of
Errors.

AFTERWARDS, that is to say, on the ninth day
of June, nineteen hundred and six, in the Court of
Errors and Appeals in the last resort in all Causes,
comes the said The Mayor and Council of the Bor-
ough of East Newark and The Mayor and Aldermen
40 of Jersey City, by George L. Record, Robert Carey

and Edward Kenny, attorneys for the said Defendants, and say that in the record and proceedings aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, to wit:

FIRST: That the Supreme court give judgment for the Prosecutors;

Whereas, By the law of the land, it ought to have given judgment for the Defendants, and therefore in this there was manifest error. 10

SECOND: That the said Supreme Court in the giving of the judgment aforesaid, held that the contract made between the Mayor and Aldermen of Jersey City, and the Mayor and Council of the Borough of East Newark, bearing date December ninth, nineteen hundred and three, was not a valid and legal contract binding between the parties; 20

Whereas, By the law of the land, it ought to have held that said contract was a legal, valid and binding contract, and therefore in this there was manifest error.

THIRD: That the said Supreme Court in the giving of the judgment aforesaid, held that the municipality, the Mayor and Aldermen of Jersey City, and the municipality, the Mayor and Council of the Borough of East Newark were not adjoining municipal corporations within the intent and meaning of Chapter 128 of the Laws of 1897. 30

Whereas, Said Court should have held that said municipalities were adjoining municipalities within the meaning and intent of said statute; and therefore, in this there was manifest error; 40

Wherefore, The said Mayor and Council of the Borough of East Newark, and The Mayor and Aldermen of Jersey City pray, that the judgment aforesaid, by reason of the aforesaid errors, and all other errors appearing in the record and proceedings aforesaid, be reversed, and held for nothing, and that the said The Mayor and Council of the Borough of East Newark, and the said The Mayor and Aldermen of Jersey City, may be restored to all things they and each of them have lost on occasion of said judgment.

GEORGE L. RECORD,
ROBERT CAREY,
EDWARD KENNY,

Attorneys for Plaintiffs in Error.

JOINDER IN ERROR.

Joinders in Error in usual form.

