

COURT OF ERRORS AND APPEALS.

THE STATE—  
THOMAS D. HOSSEY AND  
DAVID B. BEAM,  
*Plaintiffs in Error.*

vs.  
THE MAYOR AND ALDERMEN  
OF THE CITY OF PATERSON  
& ABSALOM B. WOODRUFF,  
*Defendants in Error.*

In certari  
writ of error  
to Supreme  
Court.

The sections of the Charter of the City of Paterson, of March 23, 1871, necessary to the understanding of this cause, are 11, 12, 13, 15, 24, 28, 31, 34, 35, 171, 172.

SEC. 11. *And be it enacted,* That every person elected or appointed under this act shall, within fifteen days after such election or appointment, take and subscribe before the recorder of said city, or any other legal officer qualified to administer oaths, an oath or affirmation, faithfully and impartially to execute the duties of his office according to the best of his ability and understanding, which oath or affirmation shall be filed in the city clerk's office; and if any person so elected or appointed shall fail so to qualify, then his office shall be deemed vacant, and may be filled as provided in the next-preceding section.

SEC. 12. *And be it enacted,* That the Board of Aldermen at the first regular meeting in May in each year, or within three months thereafter, shall, by the vote of a majority of all its members, appoint a clerk of the Board of Aldermen, a comptroller, a city treasurer, a superintendent of streets and sewers, a city surveyor, a superintendent of out-door relief, a superintendent of in-door relief, a city physician, and a city counsel, who shall be a counsellor at law.

SEC. 13. *And be it enacted,* That all the officers of the corporation shall be governed by such general ordinances as the Board of Aldermen may from time to time adopt, not inconsistent with the provisions of this act; and every officer, except the mayor, may be removed from office for cause, by a two-thirds vote of all the members of the Board of Aldermen, but no such removal shall take place until the person sought to be removed shall have had an opportunity of being heard in his own defence; but the provisions of this section shall not apply to any member or officer of the department of public instruction.

SEC. 15. *And be it enacted,* That the salaries of all officers elected or appointed under or by virtue of the provisions of this act, shall be prescribed by ordinance or resolution of the Board of Aldermen, and the salary or compensation of any officer which has been fixed as aforesaid, shall not be increased or diminished during his term of office, and any fees paid to any officer for any service required of him by this act, or by any ordinance or resolution of the Board of Aldermen, shall immediately, on the receipt thereof, be paid by such officer into the city treasury.

SEC. 24. *And be it enacted,* That every legislative act of the Board of Aldermen shall be by ordinance, passed by a vote of the majority of all its members, and in case any ordinance involves the expenditure of money, the votes of two-thirds of all the members of said board shall be necessary to its passage, and no money shall be expended for any celebration, procession or entertainment of any kind, unless by the votes of four-fifths of all the members of said board. No additional allowance beyond the legal claim which exists under any contract with the corporation, or for any services on its account, or in its employment, shall ever be passed by the Board of Aldermen except by a unanimous vote thereof.

SEC. 28. *And be it enacted,* That the executive power of the corporation shall be vested in the mayor and in the departments and city officers hereinafter named; the mayor shall be a member of all standing committees of the board of aldermen, and shall be *ex-officio* member of the department of public instruction, but shall have no vote therein.

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SEC. 31. *And be it enacted*, That the coordinate executive departments shall be as follows: the department of finance, the department of public instruction, the department of streets and sewers, the department of charities and correction, the department of health, and the fire department.

SEC. 34. *And be it enacted*, That the fiscal affairs of the corporation shall be under the management and control of the department of finance. The said department shall prescribe the forms of keeping and rendering all city accounts, the manner in which all salaries shall be drawn, and the mode in which all creditors, officers and employees of the corporation shall be paid, and shall settle and adjust all claims in favor of or against the corporation, and all accounts in which the corporation is concerned as debtor or creditor; and no bill incurred by any other department or officer under the direction and control of the board of aldermen shall be paid without the approval of the said department of finance, except by a four-fifths vote of the board of aldermen.

SEC. 35. *And be it enacted*, That there shall be the following bureaus in the said department of finance, viz.: \* \* \*

I. A bureau of assessment and revision of taxes;

II. A bureau of collections;

III. A bureau of licenses;

IV. A bureau of auditing and accounts;

V. A bureau of disbursements.

SEC. 171. *And be it enacted*, That the annual salaries of the officers named below shall not exceed the sums set opposite their respective names, viz.: \* \* \*

The city counsel, fifteen hundred dollars.

SEC. 172. *And be it enacted*, That every person now holding any office in said city according to law shall be entitled to hold the same, and be required to perform all the duties thereof, with such additional duties, powers and restrictions, if any, as may be conferred or imposed by this act, for the full term for which he was elected, subject only to be removed according to law.

The eleventh section, provides for the appointment of a city counsel who shall be a counselor at law of this state, and who shall hold his office for one year. That the 171st section of the city charter, enacted that the annual salaries of the officers named below, shall not exceed the sum set opposite to their respective names, and then fifteen hundred dollars being the sum set opposite the office of the city counsel.

The eleventh section of the charter enacted that all the officers, including city counsel should within fifteen days from his appointment, take an oath or affirmation well and faithfully to execute the duties of his office.

The thirteenth section of the act provided that every city officer, other than the Mayor might be removed from office for cause by a two-thirds vote of the Board of Aldermen. And that an increase of the salary under section 15 is forbidden.

That the case shows that James Evans in 1873, and Henry A. Williams for 1874, counselors at law, each were appointed city counsel for those respective years.

They were then entitled to execute and perform the duties of the office, and were charged with the duties under the city charter and under the ordinance of the city, ordaining that the city counsel should defend all suits for and against the city, for the term of their official appointments, and was an officer of the city for one year unless removed under section 13 for cause.

By the thirteenth section they could have either of them have been removed for neglect of official duty or incompetency. There was no pretense of either neglect or incompetency, on the part—either Evans, city counsel for 1874, or Williams for 1875.

By the fifteenth section of the charter enacted that the salaries of all officers elected or appointed under the charter or the ordinances of the city, that the salary or compensation should not be uncertain or diminished during his term of office.

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By the twenty-fourth section of the city charter, it is enacted that no additional allowance beyond the sum and beyond the legal claim which exists under any contract with the corporation, or for any service on account of his employment, shall ever be passed by the Board of Aldermen, except by a unanimous vote.

From these sections of the city charter our contention before the court is that the city counsel thus receiving the appointment and taking the oath of office, and the law enacted that he should be a counselor at law of this state, with right to prosecute and defend for the city in all courts; he has the right the exclusive right, to exercise the duties of his office, and the obligation to perform its duties, and he could not be shut off from the discharge of the duties of his office except by removal for cause, more than any other officer of the city government, the Mayor or the Aldermen. That his right to execute the office was a contract even without the enactment of the city charter, Dillon sect.

That the acceptance of the office, the taking of the oath of office, and the reception of the annual salary ordered by ordinance and charter charged him with the legal defences of the city.

The committee on finance are designated under the twenty-eighth section of the city charter as *one of the executive departments of the city government*, under the thirty-first section as the department of finance, and under the thirty-fourth section enacting that the fiscal affairs of the corporation, should be under the management and control of the department of finance, consisting of the finance committee and endowed with the power of judicial settling, auditing, adjusting all claims for and against the city, and that no claims should be paid by order of the Board of Aldermen except by a four-fifth vote of this committee on finance. The department of finance by its refusing to authorize the payment of a bill had an absolute and unqualified veto upon the action of the rest of the Board of Aldermen.

The Board of Finance, though an executive department of the city government, with this veto power had no right or power, great as their power was over the finances, to employ an assistant city counsel to perform the duties; the ordinary, the ordinary familiar duties of the city counsel, Evans and Williams, without their request or consent to pass by them, to discharge them, and to employ even the learned and distinguished counsel, Mr. Woodruff, the defendant here, who brings in his bill for \$4,738.60 for defending four certioraris of street assessments, two of which assessments had been pronounced totally void *ad inelto*, 7 Vroom, 159, in a certiorari brought by him to set aside the same assessment as to his property.

The Board of Aldermen by their vote confirming this original unlawful appointment were without any power to confirm that unlawful employment. It was as much the right and duty of the city counsel, Evans and Williams, as it was the Aldermens to perform, their duty. And such employment by resolution raises precisely the unlawful action of the city government, which if lawful has imposed \$4,738.60, upon the city government in addition to the regular payment of the salary of the city counsel. I fail to see how if this unlawful resolution can raise the implied assessment to pay this \$4,738.60, the resolution being unlawful raising the obligation to pay, notwith-

standing the failure of the learned Justice of the Court to see it, that it comes directly within the decision of; *Taylor and Ald. Gregory vs. Jersey City*, 5 Vroom, p. 390

In that case an unlawful resolution was passed by the Board of Aldermen of Jersey City, and under it money was about to be paid, when the payment was stayed by the supreme Court, to purchase without adequate authority Dock property in Jersey City. The case stood upon the point that there was no authority to pass that resolution which would have taken money from the treasury of Jersey City. In our case we say there was no authority under the sections of the city charter to employ an associate city counsel, and that being with-

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out legal authority, no implied obligation can be raised to pay Mr. Woodruff, \$4,738.60, for doing what the city counsel says in his testimony, if he had not been superseded by the assumption of the finance committee he would have performed.

But the ground upon which the Supreme Court decided, that we were not entitled to our certiorari at this stage of the case, in the opinion of Justice Knapp, of the case does not seem to be warranted, after the same was originally granted under the rule to this cause. The writ was brought to stop the payment of \$3,758.60, of the bill of Mr. Woodruff of \$4,738.60; \$1,000 of which was paid upon the vote of the finance committee; the case shows that the finance committee without authority, employed Mr. Woodruff, as associate city counsel; if they can appoint one, they can appoint five hundred associate city counsels. But the same finance committee also without, or assent or vote of the Board of Aldermen paid him \$1,000 on this bill. If they had paid him by the vote of the finance committee \$1,000, on it what hindered the payment of the other \$3,738.60, by the same committee, and the case shows they had voted so to do. It is true that under the remonstrance of the owners of \$11,000,000 of property, including nearly all the property owners of the city, remonstrated against this payment, but the Board of Aldermen had not objected to pay it by a majority vote; they had twice sent it back to the finance committee, upon the ground that it was within their authority to pay it, evidently with the intention that the finance committee should pay the \$3,738.60, as they had already paid \$1,000, upon it, without the responsibility of a direct vote of the Board of Aldermen—who wanted to pay it but evaded the responsibility of voting it.

And what hindered the finance committee under the powers conferred by the 28 and 34 sections of the city charter, making the finance committee the executive branch of the city government, with power "to manage and control the department of finance," with the power "of prescribing how the creditors of the corporation shall be paid," and with the power to settle and adjust all claims in favor or against the city, and in accounts in which the corporation is debtor and creditor," and inhibiting the payment or all bills incurred by any other department of the city government, by the action of the finance committee. Is this court prepared to decide that a voluntary payment of Mr. Woodruff's bill, by the city for the remaining \$3,738.60, would not have been legal and bound the city. If so what show of justice is there in the decision of the Supreme Court that said to us under this show of our case, that we could not have our writ, our only remedy, manifestly our only remedy to stop the payment until after the Board of Aldermen should vote to pass the bill. It was not necessary that they should vote to pass it, at the state of the case showed that all the bills against the city government, under the same charter had been had for years, under and by authority of the finance committee and only by that committee, paid without the sanction of the Board of Aldermen.

But may it please by our Honors our writ granted in open court after testimony, voluminous testimony and argument upon this very point was granted and the court by their two decisions, the one adverse to the other as it seems to us delivered by different judges, gives us a right to come to this court on that and on other grounds.

That is, that the action of finance department and executive department of the city government, in the absolute control of the finances of the city in the language of the act under the management and control of the finances of the city, with power to prescribe "the mode in which all creditors of the city shall be paid, with power to settle, adjust all claims in favor or against the city, with the power to inhibit the payment of all bills contracted with or by any other department of the city government, and with the power to vote payment of any bill, as had been the common practice, without their consent of the Board of Aldermen, were a judicial tribunal or quasi judicial tribunal, not of record, and their votes or indorsement auditing adjusting and settling their bills...

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The writ of certiorari lays to all judicial tribunals or quasi judicial tribunals, not of record, to question the validity of their acts and the case before the supreme court showed that the finance committee had adjudicated, settled and paid without authority of the Board of Aldermen \$1,000, of this bill \$4,738.60. They could have paid the rest, and the tax-payers of the city could not have been heard, and the money so paid could not be recovered back. If this court sustains the decisions it will be paid and most unjustly and unlawfully paid before the tax payers can appeal to the court for relief.

By the 172nd section the city counsel, by the plain enactment of the charter, was entitled to hold his office, "and was re-

quired to perform all the duties thereof," yet Mr. Woodruff claims \$4,730.60 of which \$1,000 had been paid, and claims in the face of this section of the city charter, that the city could appoint an associate city counsel, that the regular city counsel should be passed by, and that such an employment inhibited, by public policy. Charging a public officer with the duties of his office, should raise an implied assumpsit to pay Mr. Woodruff an unreasonable and extortionate sum of \$4,730.60 which the city counsel was also paid for doing, the payment violates public policy which requires that the officer taking the oath of office endowed with the right and duties of office shall execute and perform the duties of that office—that an irresponsible interloper cannot be allowed to seize the office, superseding the official who acts under his oath, and who uses the office unrestrained by the obligations and duties of his oath, as we boldly insist has Mr. Woodruff in using this office under a bastard appointment for the purpose of malignaty, hatred and malice.

I now propose to re-argue and to show that by the pointed and strictly parallel decisions of the Court of Errors and Appeals, in *Gregory and Taylor* against *Jersey City*, 5 Vroom, 390. By the decision of *Camden vs. Mulford*, 2 Dutcher, 49, in the same court and the decision of *Carron vs. Martin*, 2 Dutcher, 594.

As briefly as possible I call attention of the court to the writ in this case granted in open court after full argument, as to our right to this writ.

The writ, case p. 87, line 18, calls upon the defendant, the city, to certify of a certain employment of *Absalom B. Woodruff*, by the finance committee, and their proceedings confirming such employment, and of his certain bill for \$1,000 paid him in December, 1874; and also all proceedings looking to the payment of his bill for \$3,730.60, and all the proceedings of said city, in relation to the payment of his bill for \$1000.

This then brings here, the proceedings of the finance committee, acting as an executive department of the city government, so designated, in the printed body of the law in capital letters as the department of finance, in employing and retaining Mr. Woodruff as associate city counsel, and the act of the city government endorsing and ratifying this, as we boldly contend, utterly illegal employment, voting that illegal act of employment, by three out of five of the committee on finance, and which they had under the charter no more authority to vote than any other three citizens of the City of Paterson. No one sentence of the city charter can be construed to authorize the finance committee to make this appointment. No one sentence of the city charter authorizes the Board of Aldermen to endorse and ratify that illegal employment. That neither the legislature nor the Board of Aldermen, can ratify and confirm the illegally used power of the committee on finance, in making this appointment. I cite *Dillon*, section 45 and 26, Maryland, 194; *Baltimore vs. Horn*, an act in itself, outside of the charter, and beyond the power of the Board of Aldermen, performed by a committee of the Board, can not be made good by the ratification of the Board.

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Growing out of that employment which superseded, passed by, ignored and set aside the regularly appointed city counsel Mr. Evans appointed from May, 1873 to May, 1874, and Mr. Williams, from May, 1874 to May, 1875, of their right to exercise their office, a right as well founded by them to exercise that office, under their appointment as an officer of the city government as that of the Mayor of the city, to exercise his appointment, or the Aldermen to exercise their office, or the city treasurer to exercise his duties. It took away from this officer a right, that he had, until removed under the 13th section of the act, to exercise his rights under this appointment, under his oath of office and under the other paramount oath as a counselor of law, to discharge with honesty and good faith the duty he owed to his client under his appointment to that office; and by which neither his appointment or oath to discharge his duties could be destroyed or invaded.

Under this appointment as associate counsel, this associate city counsel Mr. Woodruff, undertook in the latter part of the year of 1873, and nearly the whole of the year of 1874 by virtue of his bare appointment as associate counsel, to exercise and discharge the ordinary duties, the ordinary common and familiar duties, in the City of Paterson, of defending all the certioraris; one of the most familiar proceedings at law, that are instituted in the courts against the city. He so undertook this without an employment at a specific salary, or a fixed sum. The employment was naked and the city is responsible, then only under the implied liability to pay him for his services what they were worth. Under this implied liability for his service, which we shall show were not rendered in good faith, but for purposes dishonest and in derogation of his oath and duty and standing as a counselor-at-law in this court, he has presented two bills to the city; one of which for the sum of \$1,000 was paid in December, 1864, upon the naked order of the comptroller, as chief of the bureau of auditing accounts and the endorsement for payment, by the simple majority of the committee of finance. He has also presented a bill as shown by the plaintiffs in this case, pp. 75, 6, 7, for the sum of \$3,730.67, which has been endorsed for payment by the comptroller and the simple majority of the committee on finance, when the payment of the same was stopped by the order of this court.

This writ then orders the bringing up the act of the finance committee and the act of the Board of Aldermen, ratifying and endorsing the illegal employment of the finance committee.

These then are acts of unlawful and unauthorized employment, totally unlawful and unauthorized acts, by which services to be performed in consideration of the office and annual salary of \$1,500 per annum, that should have been performed by the counsel of the city, the only legal officer of the city government, who, as a counselor at law was bound to perform at least all of these ordinary and familiar duties, as the city counsel, under his annual appointment.

This proceeding alone gave us the right under the decision rendered by Justice Depue, in Gregory and al. vs. Jersey City, to have our writ and to stay the illegal employment, involving a payment therefor from the city treasury of \$3,730.60. And our right, as prosecutors, to resist the same, as tax-payers, are the same rights that this court so fully recognized in the prosecutors in that case.

Our standing in court, if that decision is good, is absolutely parallel to that of the prosecutors in that case. The prosecutors only brought up in that case, (using the language of Justice Depue,) "The certiorari in this case brings up for review, the resolution and proceedings of the Board of Aldermen, of Jersey City, in relation to the purchase of certain lands whereon, to build a dock on the Hackensack river.

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Simply then it was a resolution, no more, no less. Simply a legislative act of the Board of Aldermen, in which an inchoate power was about to be exercised to take full

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Simply then it was a resolution, no more, no less. Simply a legislative act of the Board of Aldermen, in which an *inchoate* power was about to be exercised to unlawfully take monies from the city treasury of Jersey City. That was also a power that seemed to have been authorized and warranted by a reading of the law, by those not well learned, even critically learned in the law. But the resolution bought up in this case, by which the Board of Aldermen resolved and ratified this appointment of associate counsel, had no shadow of warrant in our city charter, but rather an implied if not an absolute inhibition of this employment. The resolution in the Jersey City case, was to take \$42,000 for lands, the resolution of the City of Paterson now before the court was to pay \$1,730.60 for legal services not rendered in good faith, not rendered in any hope or expectation that the city could be benefited by them. But rendered and carried on in the gratification of private malice and malignity of the assistant city counsel. When the exercise of a legal and reasonable discretion would have shown and informed him that the proceedings of the city, sought to be sustained, were invalid upon the face of the papers, and in two of the cases where his charges exceed two thousand dollars they had been pronounced totally void in a previous prosecution in his own behalf, for the same assessments that he sought to sustain as against these prosecutors.

But the prosecutors in this case do not stand on the naked legislative act, where the prosecutors in that case of *Gregory & al. vs. Jersey* stood.

Because this illegal act of employment has already taken from the City Treasury, not by the vote of the Board of Aldermen, not by the sanction of the Mayor, not by virtue of any appropriation of the money of the city, and therefore in violation of section 70 of the charter by official malfeasance, one thousand dollars under that which is alleged to have been an implied obligation for this payment.

This payment of \$1,000 then was by virtue of one of the departments, or rather two departments of the city government, acting conjointly endowed with judicial power as an *executive* department of the city government, and which is composed of the City Comptroller, as chief of the "*Bureau of Auditing Accounts*," under the 67 section of the act, and the *Department of Finance*, under the 31st and 34th section of the city charter. And that same Comptroller and the majority of the Committee on Finance, under the power of their department organization, (the Comptroller being the executive officer,) and the conjoint action of the Comptroller, making "one of the co-ordinate executive departments" (see sect. 34,) in "the management and control of the Department of Finance.

That such department (sect. 34) "shall prescribe the forms of keeping and rendering city accounts, the manner in which all salary shall be paid, and the mode in which creditors, officers and employees shall be paid, shall settle and adjust all claims in favor of or against the city, and all accounts in which the corporation is concerned as debtor and creditor, and no bill incurred by any other department, or officer under the direction of the city government shall be paid without the approval of said Department of Finance.

Clearly then, there was in the Comptroller, as chief of the *Bureau of Auditing accounts*, and the Finance Committee having the power to settle and adjust accounts, as a co-ordinate executive department of city government, an *executive department* endowed, entrusted and charged with the executive powers above and independent of the Board of Aldermen as the legislative department of the city government.

The power to audit, adjust, and settle, conferred upon this department are strictly judicial power, the words adjust and settle, are equivalent to adjudicate and pay, and are judicial terms, that in their exercise involve judicial discretion and power, and by this authority alone \$1,000 of Mr.

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Woodruff's bill has been paid by that authority alone, the balance of his bill of \$3,723.60 had been endorsed by the department of Finance for payment and could have been paid as the \$1,000 was paid unless inhibited by the order of this court.

There is then before this court, in the resolution of the appointment of Mr. Woodruff as Associate City Counsel, an unlawful legislative act within the jurisdiction of this court to be inhibited, and restrained by the judgment of this court, and which restraint by setting aside this resolution, this concurrent act as beyond the power of the Board of Aldermen, The Department of Finance, and chief of the Bureau of Auditing Accounts, judgment of this court is then first asked, to declare this resolution of employment beyond the power of the Board of Aldermen, and the Finance Committee, and all payment of Mr. Woodruff's bill, under the implied obligation of the city to pay it is ended by such judgment of this court.

The judgment of this court is also asked to inhibit and forbid the city government, under the adjudication of the executive department of the Board of Finance, from paying the bill of \$3,730.60, that they have *adjusted and settled* as the inhibition of an unlawful judicial act, without authority, is clearly within the correcting power of this court under this writ of certiorari.

Thus much may it please your Honors, is a rediscussion of some of the points on which the court granted us this writ after argument in open court, and in answer to the inquiry as to what judgment this court could render under the matter brought up by this writ.

Supposing we are then lawfully in this court, upon this two-fold claim, for its decision of the law to correct this unlawful usurpation of power.

I now proceed to discuss the points upon which the prosecutors, as tax-payers rely, which impliedly if not strictly and plainly prohibit the city government, from this appointment employment, partial payment and contemplated payment of the bill for legal services to Associate City Counsel of Mr. Woodruff, for \$3,730.60.

Premising first that by the decision of the court in Gregory and al. vs. Jersey City, 5 Vroom 429, that it is the right of a tax-payer of the city to apply to this court to inhibit the unlawful legislature and judicial action of a city government or one of its departments to unlawfully or rather unauthorizedly, do these inhibited acts, I cite *Mulford vs. Camden*, 2 Dutcher 49, and *Canon vs. Marton*, i. d. 594.

The 12 section of the charter of the City of Paterson, of March 23, 1871, (and no law has changed it since,) provides for the Board of Aldermen, at the regular meeting of each year by vote of the majority of the Board to appoint a clerk of the board, comptroller, city treasurer, city engineer, and a *city counsel who shall be a counselor at law*, and who should hold their several offices for one year.

By section eleven of this charter, every person appointed under that act was required to take an oath, before some competent person entitled by law to administer it, to faithfully and impartially execute the duties of his office, and the person or persons failing to so qualify their office to be deemed vacant.

Section 13, provides that all the officers of the corporation shall be governed by such general ordinances as the Board of Aldermen shall from time to time adopt, and that any officer of the city government other than the Mayor, "may be removed from office for cause."

Section 15, provides that the salaries of all officers shall be fixed and prescribed by ordinance, and the salary or compensation of any officer shall not be increased or diminished during his term of office.

Section 21, that the legislative power is vested in the Board of Aldermen.

Section 24, provides that no additional allowance, beyond the legal claim which exists under any contract with the corporation, or for any services on its account or its employment, shall ever be passed by the Board of Aldermen, except by the unanimous vote thereof.

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The 31 section prescribes the *co-ordinate executive departments* of the city government, the first and chiefest of which is the Department of Finance under the direction and control of the Committee on Finance.

Section 34, makes or creates the Department of Finance with power to settle and adjust all claims in favor of and against the city, etc.

Sect. 69 inhibits the Comptroller from drawing upon the City Treasury for any money not appropriated, or in excess of any appropriation, and makes the doing of such act malfeasance in office and vacates the office.

The 171 section of the act unchanged to this time, provides "That the annual salaries of the officers named below, (and among them are the City Counsel whose salary is limited and restricted by this inhibition) shall not exceed the sums set opposite their respective names, the City Counsel's sum being \$1,500.

I call the attention of the court to the ordinance found on pages 85 86 of case, May 6th, 1872, which in pursuance of 15 section of the city charter ordains the salaries of the officers of the city, and fixes the salary of City Counsel at \$1,500 following the 171 section of the charter.

And to another ordinance on page 6 of the Book of Ordinance an exhibit in this case, which ordains that it shall be the duty of City Counsel, "to defend all actions which may be brought against the city, in its corporate name," "in which the city is interested in any court in this state.

Thus as briefly as possible, I have cited and quoted those sections of the city charter, and the ordinances of the city by which, as we shall insist in this court, an implied, if not a pointed and absolute inhibition is placed upon the city government, restraining it from the appointment of an Associate City Counsel, or an Assistant City Counsel or a Special City Counsel, to discharge those duties which the appointment, the oath office under the charter and ordinances, imposes on the City Counsel to discharge all the duties for defending and prosecuting as a counselor at law, in all the courts of this state for the city in its corporate capacity.

From the fourteenth section may be derived our authority for claiming that an office is created, which gives the incumbent of that office the right and enforces the obligation and duty of discharging all legal duties and defenses of the city, and prosecuting all action against it. It is a duty that follows the oath of office taken by the City Counsel under the form of oath prescribed in the "faithfully and impartially execute the duties of said office." I hold that by the law as stated in *Dillon* section 1871, that the employment of the City Counsel was under both the city charter and the city ordinance, under a fixed salary for the period of one year, that it became a contract and gave to the City Counsel the right and imposed the obligation and duty of making all the legal defenses for and against the city.

I quote *Dillon* on M.C., section 172, where his text, for the law is taken from *Evans vs. The City of Trenton*, 4 Zab. 766. "It is a well settled rule that a person accepting a public office, with a fixed salary is bound to perform the duties of the office for the salary. He cannot legally claim additional compensation for the discharge of these duties, though the salary may be an inadequate remuneration for the services. That the imposition of additional duties by subsequent statutes and ordinances, the duties bring within the chartered powers, are increased and not his salary. To allow additional charges for the duties that belong to the office, is to lay the foundation for extra compensation would soon introduce intolerable mischief. The rule should be rigidly enforced.

Unless a new rule is to be applied to Mr. Evans, the city counsel of Paterson, from 1873 to 1874, and Mr. H. A. Williams, who was the city counsel, from May, 1874 to May, 1875; and Mr. Woodruff's bill, see case p. 75, 6, 7, was for services rendered from

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January 1, 1874 to March 18, 1875, and that too upon the ground that the laws which apply and bind other officers is not applicable to them, they were bound to have discharged all of the duties of city counsel, but which the city government took away from them. Mr. Evans says in answer to question (No. 85,) that he received the papers and notices, as city counsel, to defend these certioraris, (89.) That he carried the notices to Mr. Woodruff who was employed by the city to defend *those cases*, they were ordinary certorari. The direct examination they, (91,) Mr. Woodruff employed to attend to them. 96 Mr. Woodruff ask Mr. Evans, if the amount of legal work would have prevented, and Mr. Evans answers nothing extraordinary; (97,) that Mr. Woodruff had so taken these cases out of his hand that he did not enter them upon his docket; all of this on direct examination.

The cross-examination (104,) that Mr. Hoxsey brought his writ, and served order of the court to stay the sale of his lands for vacated assessments, (107.) That after examining the decision of *Woodruff vs. The City*, decided in 7 Vroom, 159; if he would not, have *advised* or attempted to have sustained that assessment against any other person, under his oath of office; 109, That by reason of Mr. Woodruff's appointment as associate counsel, and his assumed defense of these suits. (Evans not Woodruff's duty,) he paid no attention to the defense, "because Mr. Woodruff was employed to do it; 110, That Mr. Evans objected to the appointment of Mr. Woodruff, to pass by him and supercede him, and "he had a little falling out about them employing an other attorney to do his duties; 112, That he neither solicited or requested the aid of other counsel, in making defense for the city; (113,) that Mr. Woodruff after his appointment never came to consult him, as city counsel or otherwise, about the cases he was defending; 116, That Mr. Evans, as city counsel, would have attended to the duty of defending assessment, had not Mr. Woodruff been employed; 117, after examining the

assessment, *He*, I, Mr. Woodruff at an expense of \$4,730.60, he informed, as city counsel, the city government that those assessments by reason of the absence of nearly every legal requirement, as shown upon the face of the city's proceedings, that those assessments could not be sustained; 175, I informed my clients, the city government, (acting under his oath of office), that the assessments would be set aside; 125. That *there was no press of business* to prevent his argument and attendance to those cases and all the duties of city attorney; 134, and exhibit, shows that the Mr. Woodruff attempted a defense of the assessment on North Straight street, for which he charges hundreds of dollars, and presses his own case in prosecution of the same assessment. Mr. Woodruff's redirect examination, questions 130 and 151 are grossly leading, and the little bearing they have on the case are to the effect, that he had superseded Mr. Evans, the witness, as city counsel, and he, Woodruff, must do the work.

I call attention to John Swinburne, a partizan and biased witness in behalf of the city, who employed Mr. Woodruff, and of course needs to defend his own act, who says in answer to question 8, that he thinks Evans could not attend to these cases, (what did he know about it anyhow?) Evans was as secure in his position under his office, as Swinburne as Alderman and Chairman of the Finance Committee in his; to question 19, that "I informed Mr. Woodruff, had voted to retain him as an associate city counsel, to defend the city in *these certioraris*; to question 16, the Finance Committee left the defense of the city in the hands of the city counsel, and his associate Mr. Woodruff; 28, shows that the City Finance Committee, regarded the assessments as totally invalid when they employed Mr. Woodruff, but they, this great Committee of Finance resolved on a vigorous prosecution of Mr. Hoxsey, to make an as-

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assessment valid as to him that the city had not attempted to make valid, as to Mr. Woodruff, and that Mr. Woodruff was to make it cost Mr. Hoxsey more than his as-

assessment valid as to him that the city had not attempted to make valid, as to Mr. Woodruff, and that Mr. Woodruff was to make it cost Mr. Hoxsey more than his assessments; 32. The Committee on Finance knew Woodruff was doing this (dirty) work; 34. Woodruff employed to defend the certioraris prosecuted by Mr. Hoxsey; 38. That the Chairman of the Finance Committee was informed that Mr. Woodruff was acting in bad faith in loading the case with impertinent and irrelevant testimony. And again Mr. Woodruff's re-direct examination of his witness, by its unfair and a leading character, to force this witness to answer in defense of his own act, in employing Mr. Woodruff, as associate counsel. To question 83, he states that James Evans, the regular city counsel, was a counselor at law, in good standing, and with large practice.

Q. 87 & 88 a. Mr. Evans had expressed no unwillingness to discharge all the duties of city counsel.

Henry A. Williams, the witness of Mr. Woodruff, in his direct examination says Q. 160, "That knowing Mr. Woodruff had been employed, and that he could be of no assistance to him he left those defenses entirely to Mr. Woodruff, except that upon one occasion he discharged the extraordinary duty as city counsel in walking across the hall and asking the adjournment of an examination of Commissioner Pennington; 171 shows that Mr. Williams, as to the only one of the cases he took pains to examine, and for which charges are made in Mr. Woodruff's bill, (Getty ave.,) that two dollars and fifty cents per cubic yard had been paid the contractor, when by his contract under the seal of the contractor and the city, he was entitled to but the twenty-two and one-half cents per cubic yard. 175, "That he informed his clients this assessment must be set aside." 190 was a question to Mr. Williams, why he, as city counsel, had not defended these suits, and he answers as did Mr. Evans, "~~because Mr. Woodruff had been employed~~ and he was able to defend for the city. 191. That by reason of such employment as (associate counsel) before his time of office, he left him to defend; 196, Mr. Woodruff conducted the cases, outside and without advising with City Counsel Williams, as he had with City Counsel Evans, the year before; 200 was a question to Mr. Williams as to what he would have done as City Counsel in defending these suits, he refuses to answer as to what he would have done as City Counsel, under his right of office, under his oath and his duty as a public officer, but he says that if he had been specially employed he would have made the best defense he could; 211. Is his version of his duties entirely correct that a defense of these suits was within the scope and duty of the City Counsel, and in case of legal defeat of all legal defenses it would have imposed no charges on the city, because the City Counsel was a salaried officer; 222. That the interest of the city did not require him as City Counsel to attempt any legal defenses of these cases; 225. Is his statement that the question as to re-assessment act having been prepared for the benefit of persons claiming damages, and that Mr. Woodruff had been awarded \$3,500 damages done him in grading Totowa avenue.

The evidence taken under the rule to show cause and which the court granted the prosecutors and defendants in this writ, exemption from printing but permitted by said rule its use unprinted by their concurrent agreement, and which agreement is reduced to writing by Commissioner Van Wagoner, see case page, and is to the effect that the same need not be printed, but might be used in the argument, by either party. I haer call attention to, as the testimony remains on file in the clerk's office.

Calling attention to the testimony on the part of the prosecutors before Isaac Van Wagoner, Supreme Court Commissioner to question No. 46 bill of A. B. Woodruff for \$1,000, is endorsed for payment by three out of five of the Committee on Finance. 48. That

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this endorsement of the Finance Committee was the only warrant he had to draw his warrant on the City Treasury in payment of that, Mr. Woodruff's bill. 50. That the Board of Aldermen took no other action upon that bill than that of referring it to the Finance Committee. 51. That it was the custom of Comptroller to pay on the simple endorsement of the Finance Committee. 53. That upon such endorsement by Finance Committee he drew his order upon the City Treasurer for the payment of this \$1,000 account of Mr. Woodruff. 54. That no action was taken by the Board of Aldermen for payment beyond the simple reference of it to the Finance Committee. 57. Shows the requisite endorsement on the bill of \$3,730.60 by the Finance Committee to pay that bill. 59. James Evans was counsel of the city from May '73 to '74, and received his salary as City Counsel under the charter and ordinance, to wit: \$1,500. 60. Shows Henry A. Williams was City Counsel from 1874 to 1875, and received his full salary of \$1,500. 61. And he acted as City Counsel.

This reference to testimony may it please the court is a long digression in the chain of my argument, necessary to be referred to somewhere in this case, to show in connection with the city charter and the authorities, I now propose to cite against the legality of such appointment, or employment.

I cite section 13 of the city charter which enacts that all the officers of the corporation shall be governed by the general ordinances of the Board of Aldermen; if so the Finance Committee, being officers as Aldermen, in the face of the ordinance of May 6th, 1872, p. 87-8 case, could not abrogate that ordinance which gave the City Counsel, salary \$1500 in consideration of his defense of the city and charged him under the other ordinance before quoted, with all the legal defenses of the city, and if that ordinance was not of sufficient force, then the 172 section of the city charter, still in force now as then, so charged him and required of him all the duties of his office with such additional duties, powers, and restrictions, if any as might be imposed by that act, or subsequent acts. And again the City Counsel was limited to a receipt of \$1,500 under the 171 section of the charter, and the Finance Committee could not in effect pay more than that sum for any ordinary work in the legal defense of the city, by employing Mr. Woodruff and paying him, if his claim set up is good, \$4,730.60 for fifteen months legal service as assistant counsel, for just the work the official counsel was charged with the duty of performing.

I then again cite the court to 11-2-3-5-8 21-24-28-31-34-67-171 and 172 sections of the city charter, the same being an act to provide for the more efficient government of the city of Paterson, approved Mar. 23, 1871, to show an implied, if not an explicit inhibition of the city government to employ any counsel for the ordinary legal defenses of the city within this county and state. The defense set up that an old by-law of the city in use for twenty-five years, made when the city employed attorneys as legal counsel who could not defend in the supreme court can not be held good against the ordinance charging him with all defenses, nor be set up against the 13th section of the city charter, nor set against the 171 section of the charter limiting the sum to be paid by the city for legal defenses, nor set against the 172 section of the city charter which charges every officer with the full discharge of every duty in law, incumbent upon the office that he may hold.

Upon the point above raised, that any tax-payer may have certiorari to set aside any contract, whether express or implied, in violation of the provisions of the city charter, whenever that contract shall affect or change his property.

I cite first as the leading case in this country. *Gregory and als vs. Jersey City*, 5 Vroom, 391, where the court held it to be a self evident proposition that a Board of Aldermen had not power or jurisdiction to pass any ordinance or resolution, which shall bind the city to a contract unauthorized by its charter. That any contract was illegal that was opposed to the general policy and interest of a statute, and that a contract as to the

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mode of making and entering upon it, is void if against the mode prescribed,

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mode of making and entering upon it, is void if against the mode prescribed, though that contract related to a subject matter with respect to which the corporate authorities have capacity to contract. In this case the illegal assumption of authority by the finance committee, to employ Mr. Woodruff, as associate city counsel. And that any tax-payer of a city had the right to all the remedies at law to prevent it. I cite on the same point *Carron vs Martin*, 2 Dutche, 594; *Camden vs. Mulford*, Id., 49, both of which hold that certiorari, by any citizen liable to be taxed by the action of an any tribunal, whether that tribunal was acting as a judicial or quasi-judicial capacity, such is now the established practice of this court. The same is the established practice of the courts of New York, see *Christopher vs. New York*, 13 Barbour, 567; *Fowler vs. The City of New York*, 5 Abbot, P. R., 325.

Upon the point that where a city charter provides for the employment of a city counsel, and his salary is fixed by charter or by ordinance or either of them. That it casts, upon the officer, whether city counsel, or city treasurer, or other city officer, the responsibility and burden of discharging all of the duties of that office, be they great or small, required at the time of his appointment and all those that may be subsequently imposed, without the right to additional compensation, and the corporation can not pass by, go beyond, or relieve the city counsel, or city treasurer, or other officer, by employing, one or more persons to perform his duty, which is indirectly, is giving him additional compensation.

The first and leading case on this subject, in point of date is *Ransom vs. The City of New York*, 24 Barbour, 226. Judge Davis's opinion in 1835. That was a case of the employment other than the city counsel, to discharge a defense of the city and charges under it, says the court are not unreasonable. The salary of counsel fixed by the Board of Aldermen, the office and appointment of corporation counsel designated by the city charter, the employment is unlawful. The court say "the manifest intent was to place the management of all the legal matters, of the city under the corporation counsel." "The charter created a legal city officer, gave him a fixed salary, which involved the discharge of all official duties for the compensation allowed." That the charter of the City of New York, placed this business in the hands of the corporation counsel, and he was bound by his oath of office, and by every obligation resting on a public officer, he was bound to discharge that duty. And that there is as much right of either branch of the common council of the City of New York, or a committee of the Board of Aldermen, to excuse or take away from the Mayor or the city chamberlain, his rights and duties, as to excuse or go beyond the city counsel in the employment of other counsel, to discharge or make the legal defenses of the city.

The second leading case is that of *Evans vs. The City of Trenton*, 4 Zabiskay, 766, before quoted, and referred to in section 172 of *Dillon* on corporations, the case in which Evans claimed additional compensation in acting as the banker of the City of Trenton, in the issue of fractional currency, from 1836 to 1842.

This like the case of *Ransom vs The City of New York*, is a leading case. In the New York case, the strict law was applied as against a counselor-at-law, who had with good faith and honestly accepted the unlawful employment, and charged the court say but a reasonable service in the discharge of his duty. This principle in *Evans vs. The City of Trenton*, was applied to a person acting as city treasurer.

Court say in *Ransom vs. New York*, 24 Barbour.

The salary of city counsel was fixed at \$3,000, and the city counsel cannot claim extra compensation for any duty imposed after his appointment, and the court say "that the single statement of this proposition carries with it its refutation." "There was no inability to perform this duty by the corporation counsel, who stood ready to perform his duty."

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The decision in the case of *Christopher vs. The Mayor of New York*, was a parallel decision.

*Wendall vs. The City Brooklyn*, was a claim by the health officer, a *salaried officer* for fees in examining, or inspecting the physical fitness of policemen to discharge their duty. The charge \$200 for each one ex'd. He sued the city, recovered a judgment as in the cases above quoted, and the Court of Appeals set it aside, "because he was one of the public functionaries receiving a salary of \$500 per year. The common council had the right to impose this new duty upon him without undertaking to pay him an increased salary." A person receiving a fixed salary implies that he shall not be compensated in any other form." And what we contend in this case is that the placing the ordinary city attorneys' duties, was a compensation of the Counsel Evans in 1874, and Williams in 1875, in another form.

*Palmer vs. The Mayor of New York*, 2 Sandford, 319. A public officer receiving a fixed salary cannot claim compensation beyond his salary.

*Heislip vs. Sacramento*, 2 California, 330; *Halch vs. Mann*, 15 Wendall, 44.

In *Hyde vs. The City of Brooklyn*; a section of a City Charter fixing a salary, is a bar to the increase of the salary. By the 171 section of the City Charter, of the City of Paterson, the language is such that it limits the city appropriation for the office and the service of city counsel not to exceed \$1,500, this sum was paid Evans; '73, Williams in '74, as salary fixed both by ordinance and by statute. Mr. Woodruff has been paid \$1,000, and claims the \$3,730.69 as an additional appropriation for one year and two months service in defending four certiorari suits; if he can be paid the legislative limitation as to payment of city counsel is overridden by the city authorities.

In *Lowler vs. the City of New York*, 5 Abbott P. R., 325 is a case showing that the city counsel like any other officer holds his office, subject only to the requirements of the statute as a trust for the whole body

of the city, and is not to be removed or compelled to act or deprived of his right to act in violation of his right. And that this obligation justifies him in discharging his official duties in his own way, and for so doing, he is not responsible to the Common Council beyond their right to remove him for cause under the section of the city charter, giving that power to the Board of Aldermen.

The case of *Carroll vs. St. Louis*, 12 Missouri 444, claimed services of \$2.00 per head for expelling free negroes from the state, commented upon and cited in *Dilod*, sect. 172; and *Comense vs. the United States*, 21 Howard, 463. That for services rendered by ordinances, (and the charter of the city of Paterson, requires all officers to be so governed. And an ordinance is a sham which commands the city counsel to prosecute and defend all action by and against the city,) the city attorney is entitled to the compensation fixed by ordinance, (and the ordinance fixed it at \$1,500, and the charter limited it to that sum) and no other. The Mayor, by virtue of his duty to see that the ordinances are duly enforced, cannot bind the corporation to pay more than the fixed salary or compensation, and this duty does not authorize that officer to employ assistant or independent counsel in any court at the expense of the corporation.

And the only exception to this rule is where the employment is clearly outside of the regular official duties as City Attorney. As in the case of *Smith vs. Sacramento*, 13 California, 532, the City of Sacramento employed a counsel as outside of the regular duties of their city counsel, to argue a case in the U. S. Supreme Court at Washington. And this was justified upon the ground that it did not require the city counsel to go to Washington to argue that case, as a duty not within the power of the city authorities. To the same effect was the decision of *Clough against Hart*, 11th Am. L. R. N. J., 95. This case holds that there is an implied restriction, *prima facie*

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upon the city and county corporations to employ other attorneys to perform the duties prescribed by law of the city and county attorneys, elected or appointed by the people, and provided for in the incorporation.

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upon the city and county corporations to employ other attorneys to perform the duties prescribed by law of the city and county attorneys, elected or appointed by the people, and provided for in the incorporating acts.

In this case the city attorneys, both Mr. Evans and Mr. Williams, were ready and willing to have performed their official duties, under their special oath of office, and their oaths as counselors at law in this court. Mr. Evans says there was no press of city business to prevent his attendance to it. That is superceding and passing him by—he was indignant and remonstrated with the Finance Committee against it. And farther, that in the three out of the four cases, Mr. Woodruff charges \$4,730.60 to defend, they had been in their proceedings for grading and assessment, pronounced totally invalid to sustain the assessments sought to be defended.

But admitting the original employment to have been legal by the simple majority of the Committee on Finance, and the legislative endorsement of it, by the Board of Aldermen and the payment of \$1,000 on account of this implied contract to have been lawful, still the bill cannot be paid upon the objection of any tax-payer of the city objecting.

FIRST. Because by the decisions of the supreme court of this state in *Shreve vs. Norris*, Pennington 663; *Serley vs. Crane*, 3 Green 35; *Van Natta vs. McKinsley*, 1 Harr. 235; that the balance of a counsel fee did not raise an obligation to pay such balance, and that the service of an advocate making up \$1,500 of this bill) is not a collectable demand, and that under the circumstances surrounding this case any tax-payer has the same right to raise that question here, on certiorari, that the city would in itself from Mr. Woodruff demand in a court of law.

SECOND. Because the charge of Mr. Woodruff's bill to wit: \$50 per day for taking masses of impertinent and irrelevant testimony in these cases, apparent from the printed states of the cases when carried up in his own behalf against the city, is a charge for pretended legal services that this court can not allow.

THIRD. Because his charge of \$300 for the argument of each one of these certiorari, or \$1,200 for a single day's service is a charge that this court can not endorse and establish as a legal charge without endangering the honor and good standing of the legal profession of this state.

The charges are first not collectable by law, and if not lawful the court should inhibit the payment of them, by the joint action of the board of audit and the department of finance, and in case they were lawful they are so exorbitant and unjust, coupled as we have fairly shown in the printed state of the case with a want of good faith, that the court must inhibit their payment.

And with this argument the judgment of the court, that we ask, is

FIRST. That under the restrictions of the act of incorporation of the city, that there is an inhibition, which estops the finance committee of the City of Paterson, from the appointment or employment of an associate city counsel, to attend to and upon the point that the employment of Mr. Woodruff, on the 15th of December, 1873, by the finance committee and the subsequent resolution endorsing this appointment of associate counsel, raised in the absence of any special contract, an implied obligation to pay him his bill for \$4,730.60. We insist that such unauthorized appointment by the Finance Committee, could not be subsequently endorsed to raise this implied obligation. I cite *Dillon*, section 83, who lays down this rule. That it is obvious that an implied contract can not be raised against a corporation, where by its charter it can only contract in a prescribed way. Except it be by a promise for money received or property appropriated, under the contract. In *Argentini vs. San Francisco*, 16 California, 265. The distinction is drawn on such implied contracts arising from the absolute drawing into the city treasury, money or other valuable property, which raises an implied

contract to pay it, as a distinction from services rendered, when the court say, "But with regard to services rendered the case is different from money obtained, if not originally authorized the service, no liability can attach upon the ground of implied contract. As a general rule undoubtedly a city corporation, can only be liable upon express contracts authorized by the charter or by ordinances, within the scope of the city charter. And the exception to this rule and when the liability arises from the use of money, which does not belong to her, and in such cases even not liable for money when obtained in disregard of positive provisions of the city charter, and this proposition would inhibit, that payment not only as to his services as advocate and counsel, which are not recoverable under the decisions of this state, but from his disbursements, made in pursuance of his attempted unlawful usurpation of the office duties and powers of the regular city council. The payment of his disbursements are in violation of the 172d section of the charter, and in violation of the public policy, which should hold an officer bound by his oath of office and charged with the duties of that office, from receiving the compensation for such service, and then permitting another to perform his trust and duty in that office.

To perform the ordinary and current duty of city counsel, and that any contract, express, or implied, arising from such employment is without authority of law, and must be set aside, and that all future payments under this employment are forbidden by this court.

SECOND. That the joint action of the department of finance and the board of audit, in paying \$1,000 for such service by reason of the legal inability to make the appointment of associate counsel, was an illegal appropriation of the moneys of the city of Paterson, raised for other purposes.

That the bill yet remaining unpaid for \$3,760.67, claimed by Mr. Woodruff for ~~costs incurred in services as legal advocate~~ are unsanctioned in law, and the payment is prohibited by this court.

That a charge of \$50 per day for taking testimony in these cases, to the exclusion of the city counsel appointed by law, was a charge unjust in amount and unauthorized in law.

That a charge of \$300 dollars for the argument of certain charges, was an illegal and charge, and that no promise implied in law can be raised, to pay such charge.

That it is the right of any tax-payer of the city of Paterson to bring this illegal employment by the Finance Committee and endorsed by the common council, before this court to pronounce the same invalid as an unwarrantable legislative act of the Board Aldermen of the city of Paterson.

That it is the right if the tax-payer and the city to bring the action of the executive department of the city government, composed of the Board of Audit, to set aside the payment of \$1,000, toward this illegal employment, and stop the payment of the bill of \$3,760.60 which the said executive department have adjusted and passed for payment when inhibited by order of this court.

*Wm D. Huxley  
ally pro se cond for D B Ream*

# Court of Errors and Appeals.

NEW JERSEY SUPREME COURT.

NOVEMBER TERM, 1876.

*The State,*

*Thos. D. Hoxie and David B. Beam,*  
*Prosecutors,*

*vs.*

*A. B. Woodruff and the Mayor and*  
*Aldermen of the city of Paterson,*  
*Defendants.*

*On Certiorari to*  
*remove proceed-*  
*ings for pay-*  
*ment of moneys.*

## Syllabus.

Under the charter of the city of Paterson—audit by the Comptroller and approval by the Committee of Finance, of a claim for services against the city is not an order of allowance of the bill by the corporation, and *certiorari* will not lie to review their action.

A resolution of the board of aldermen allowing the claim and ordering payment would be subject to such review.

Two bills were presented to the city of Paterson by Mr. Woodruff for legal services rendered by him under an 10 employment, as it is claimed, by the city authorities. One

bill for \$1,000 was paid, and the other for \$3,723.60 remains unpaid.

The return to the writ shows the proceedings had, touching the second mentioned bill, by the City Comptroller, the Bureau of Finance, and the Board of Aldermen, to be these:

In June, 1875, the Committee or Bureau of Finance reported the bill to the Board of Aldermen for instructions, which board referred the bill back to the committee. July 10 14th, the committee instructed their chairman to obtain, if he could, a reduction of the bill. August 14th, a resolution offered in the committee to approve the bill was disagreed to.

September 6th. A resolution offered in the Board of Aldermen to pay it, and authorizing Comptroller to draw a warrant on the Treasurer was negatived.

September 20th. The Comptroller in his monthly report to the board, of bills audited by him, included the one in question.

20 It was by order of the president stricken from the list as improper there. The board sustained the action of the president.

By a further resolution the bill was referred to the committee, and it was by the committee immediately reported to the board approved by them.

No further proceedings were had touching the bill, by the Board of Aldermen.

The cause was before the court for hearing, June term, A. D. 1876.

30 J. J. DEPUE, VAN SYCKEL and KNAPP, sitting.

For Plaintiff, GEN. HOXIE,

For Defendant, Messrs. HOPPER & WOODRUFF.

At the hearing the counsel for defendants moved to dismiss the writ of certiorari on the ground that no act or adjudication of the city was brought by the writ for review.

The opinion of the court was by

KNAPP, J.

The writ of certiorari in this cause directed to be sent here the proceedings of the city of Paterson, touching the payment of a certain bill for legal services presented against the city by Mr. Woodruff, and paid.

And all the proceedings looking to the payment of another bill for like services rendered by Mr. Woodruff, and presented to the city authorities for their action.

By the reasons filed objections are directed against the latter bill only.

The controversy sought to be raised in the cause is over the legal right of the corporation, under the provisions of the city charter, to employ and pay, for legal services such as are charged in the bill, any person other than the one who for the time holds the office of "City Counsel."

The position of the prosecutor being, that as the charter provides for the appointment of such officer for a term, under a salary to be prescribed by ordinance, and subjects the person holding the office to the work of prosecuting and defending all actions for or against the city, as part of his official duty; the city cannot lawfully employ and pay other counsel to perform or aid in performing any of those duties while the city has such City Counsel receiving his salary from the treasury.

This question would be fairly presented for settlement in this cause if any definite action had been taken by the city for its allowance or payment.

But as the case shows the question of its payment although under deliberation by those having power to decide upon the payment of bills against the city, before any conclusion was reached in favor of or adverse to its payment, their proceedings were stayed by the presentation of the writ which removes those proceedings here.

The allowance of the bill by the city required the report of audit by the Comptroller, the approval of the Bureau of Finance, and upon these the resolution of the Board of Aldermen ordering the payment by warrant on the Treasurer.

Sections thirty-four and thirty-seven of charter and supplements, city of Paterson.

The Bureau of Finance had approved it. The return of

the bill to the Board of Aldermen by the Comptroller had been declared irregular, and no new return had been made by the Comptroller, and all the action taken in the Board of Aldermen, so far as the record shows, had been, seemingly, adverse to the payment of the bill.

The case in its present position presents no final action of the city to be considered by us, and the writ of certiorari cannot be used to draw judicial opinions in advance, or to effect adjudications of subordinate tribunals.

- 10 “An order, judgment or determination affecting the rights of the prosecutor is necessary as a foundation for the use of the writ.”

*Watson v. Medical Society*, 9 Vr. 381.

It is not a proper use of the writ to intercept and remove for review the steps in a procedure preliminary to a decision or final resolution therein, except where the court issuing the writ can continue the proceedings to completion.

*Elder v. Medical Society*, 6 Vr. 202.

- 20 The Comptroller's audit and the approval of a bill by the Bureau of Finance, are, under the city charter, generally prerequisites to the action of the Board of Aldermen in ordinary payment, but standing alone they constitute no resolution or determination of the corporation and are without any conclusive force or effect.

They impose no duty upon the Board of Aldermen, except to consider the right or propriety of payment, and by their determinate act to allow or reject as their judgment prompts.

- 30 Until that board has passed upon the bill it cannot be said that the city has acted or resolved upon anything respecting it.

In this respect this case differs from the case of *State, Gregory & al. v. Jersey City*, 5 Vr. 390, cited and much relied on by counsel of the prosecutors.

In this case, the proceedings as shown by the return, presents no action or resolution of the defendant to be reversed or affirmed.

We are compelled therefore to grant the motion of the defendant and dismiss the certiorari.

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# Court of Errors and Appeals.

THE STATE,  
THOMAS D. HOXSEY, and  
DAVID B. BEAM,  
*Prosecutors in Error.*  
*vs.*  
THE MAYOR AND BOARD OF ALDERMEN OF  
THE CITY OF PATERSON, and  
ABSALOM B. WOORRUFF,  
*Defendants in Error.*

*In Certiorari.*  
*from*  
*The New Jersey*  
*Supreme Court.*

Afterward, to wit on the twenty-fourth day of December, A. D., eighteen hundred and seventy-six, in this same term before the judges of the Court of Errors and Appeals, in the last resort in all causes comes the said plaintiffs in error, in their proper person, the same being prosecutors in the certiorari before the Supreme Court, and say that in the record and proceedings aforesaid, and also in giving the judgment in dismissing the writ aforesaid, there is manifest error in this to wit: that by the record aforesaid it appears that the judgment in form aforesaid, was given for the said 20 defendant in certiorari, whereas by the law of the land judgment ought to have been given for the said prosecutors and plaintiffs in certiorari and against the said defendant in certiorari, which said plea, affidavits, papers, rules or orders

are not certified and returned with this writ of error, depending in this court. And the said Thomas D. Hoxsey and David B. Beam, prosecutors in the said certiorari and plaintiffs in error in this suit, pray that a writ of the State of New Jersey, to be directed by the judges of said Court, to certify to the said Court of Errors and Appeals the truth of the same, and it is granted to themselves and the said plaintiffs in error aforesaid may be reversed, annulled and altogether held for nothing, and that they may be restored  
10 to all things which they have lost by occasion of said judgment.

And now at this day the plaintiffs in error assign the following causes in error :

*First,* Because by the judgment of the court the said certiorari of the prosecutors in error, was dismissed by a judgment of the court which disaffirmed the former action and judgment of the same court, which said judgment under a rule to show cause why the writ dismissed by the judgment of the Court should not be allowed, and the same was so allowed after the full consideration of the testimony allowed  
20 to be taken under such rule and the argument thereon in open court.

*Second,* Because by the charter of the city of Paterson and the supplement thereto on the 15th day of April, A. D. 1873, enacted and provided that the Board of Aldermen of the city of Paterson, should appoint as City Counsel at the first meeting of their Board after each annual election of one person who should be a counsellor at law of this State, as city counsellor for the ensuing year, and that under such  
30 authority, one James Evans a counsellor at law of this State, was so appointed and that he signified his acceptance thereof and took the oath of office required by said charter, to well and faithfully perform the duties of his said office

which gave him the legal right to exercise the duties of said office, to receive the salary of \$1500 per annum stipulated by the charter, as the maximum of allowance for legal services, and charged him with the duties of prosecuting and defending the city of Paterson during the term of his official appointment of one year. That the charter of said city enacted that he should in consideration of his office and salary, make and perform all such legal services, which was also fully re-enacted by an ordinance of said city in existence at the time of his appointment and still unrepealed, again<sup>10</sup> charging him with such duty and that the resolution of the Board of Aldermen of the city of Paterson, passed on the fifteenth day of December, A. D., 1873, appointing the defendant in error, Absalom B. Woodruff associate city counsellor, was an unlawful appointment, in pursuance of an unlawful resolution of the finance committee of said city first so employing him in violation of the city charter, and the aforesaid city ordinance, that could not raise an assumpsit for the payment of the services of such associate counsel by which his bill rendered against the city of Paterson \$4730.60<sup>20</sup> could be lawfully paid, or even the sum of one thousand dollars paid thereon by the authority of the order of the finance committee of said city, was unlawfully paid on account thereof, therefore the supreme court erred in dismissing the said writ of certiorari upon the ground that the certiorari would not lie to review such unlawful action of the Board of Aldermen.

*Third,* That the payment of one thousand dollars on account of such unlawful and unauthorized employment, and the imminent and threatened payment of the balance of<sup>30</sup> said exorbitant and unreasonable bill of \$3730.60, having its foundation in the resolution of the Board of Aldermen of December 15th, A. D., 1873, in which resolution was the endorsement of an unlawful and unauthorized employment of defendant in certiorari, Absalom B. Woodruff as associate

city counsel, by the committee on finance in itself alone was an unlawful act of the city government clearly before the court, and which said act was one that should have been reviewed by the court under said writ and judgment given in favor of the plaintiffs in certiorari and against the defendants in certiorari to the effect that such employment of said Woodruff by the said finance committee, and the endorsement of such employment by the Board of Aldermen, the payment of \$1000 on account of such employment and the  
10 balance of said bill for \$8730.60 were all unlawful and reviewable by the writ of certiorari granted by the court and erroneously dismissed for want of jurisdiction of the same.

*Fourth*, That the board of audit of the city of Paterson, composed of the finance committee, by the city charter of the city of Paterson, at the time of said unlawful employment, and still in force and unrepealed, is defined as an executive department of the city government, with power to *audit, adjust* and *settle* claims against the city, created in said executive department a judicial, or at least a *quasi* judicial tribunal, whose action in employing said Woodruff  
20 associate city counsel and auditing, adjusting and passing the said bill of said defendant Woodruff of \$4730.60, and paying him \$1000 on account thereof, was an unlawful act of an inferior tribunal properly reviewable by said court, and that such action of such committee alone and by itself, and the action of the Board of Aldermen endorsing such employment, was a sufficient foundation for the granting of the writ of certiorari, and the court erred in dismissing the same.

30 *Fifth*, That neither the action of the finance committee appointing said defendant Woodruff, associate city counsel, or the act of the Board Aldermen endorsing the same, could lawfully supersede and set aside the lawfully appointed city counsel, James Evans, and charge the said Woodruff with

the duties that should and did obligate the said Evans to perform, by which the right of said Woodruff to lawfully charge the said city on any implied liability under the same that can justify or validate his charge of \$4730.60 for legal service in attending to four certiorari suits to test the validity of assessments for local improvements in grading the street of the said city of Paterson. And that such action was lawfully reviewable under the said writ, and the court erred in dismissing the said writ after the same had been lawfully allowed upon hearing testimony, argument thereon for 10 granting the same, and thereupon granting the same.

THOS. D. HOXSEY,

*For Plaintiffs in error.*

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NEW JERSEY, To Writ:

*The State of New Jersey to the Justices of our Supreme Court:*

Because in the record and proceedings, and also in the giving of judgment in a plaint which was in our Supreme Court, between the State of New Jersey, Thomas D. Hoxsey and David B. Beam, Prosecutors, and the Mayor and Aldermen of the City of Paterson and Absalom B. Woodruff, defendants, on a writ of certiorari issued out of our Supreme Court to the said Mayor and Aldermen of the City of Paterson directed, (and to which certiorari Absalom B. Woodruff was afterward by order and permission of said Supreme Court made defendant), as is said manifest error hath intervened to the great damage of the said Thomas D. Hoxsey and David B. Beam, Prosecutors, as by their complaint we are informed. We being willing that the error if any

there be should in due manner be corrected and full and speedy justice be done to the parties aforesaid, in this behalf do command that if judgment be thereupon given, that you send distinctively and openly under your seal the record and proceedings and plaint aforesaid, with all things touching and concerning the same to our Court of Errors and Appeals, before the judges thereof, on the Twenty Eighth day of November, instant, and this writ, and that the records and proceedings aforesaid being inspected we 10 may cause to be further done thereupon what of right and according to law ought to be done.

WITNESS :—

THEODORE RUNYON,

Chancellor and President of our said Court of Appeals, at Trenton aforesaid, the Ninth day of November, A. D., Eighteen Hundred and Seventy-six.

H. C. KELSEY, *Clerk.*

THO. D. HOXSEY, *Atty.*



Therefore it is considered that the said The State, Thomas D. Hoxsey and David B. Beam, take nothing by their said writ of certiorari, and that the said The Mayor and Aldermen of the City of Paterson and Absalom B. Woodruff do go thereof without day, &c. And it is further considered by the Court here that the said The Mayor and Aldermen of the City of Paterson and Absalom B. Woodruff do recover against the said The State, Thomas D. Hoxsey and David B. Beam, the sum of sixty-nine dollars and twenty-three cents for their costs and charges by  
10 them about their defence in this behalf laid out and expended, by the Court here adjudged to the said The Mayor and Aldermen of the City of Paterson and Absalom B. Woodruff, and with their assent, and that the said The Mayor and Aldermen of the City of Paterson and Absalom B. Woodruff have execution thereof, &c.

Judgment signed the eighth day of November, A. D. eighteen hundred and seventy-six.

M. BEASLEY, *Ch. Jus.*

I, Benj. F. Lee, Clerk of the Supreme Court of the State of  
20 New Jersey, do certify that the foregoing is a true copy of the judgment in above stated cause, as the same remains of record in my office.

In testimony whereof, I have hereto set my hand and the Seal of said Court, at Trenton, this fourth day of December, A. D. eighteen hundred and seventy-six.

[SEAL.]

BENJ. F. LEE, *Clerk.*

The answer of the Justices of the Supreme Court of New Jersey within named, the record and proceedings whereof mention is within made, with all things touching and concerning the  
30 same, we do certify to the Court of Errors and Appeals in a certain schedule to this writ annexed, as within we are commanded.

M. BEASLEY, *C. J.* [L. s.]

XX

# New Jersey Supreme Court.

THE STATE—  
THOMAS D. HOXSEY AND DAVID B.

BEAM,

*Prosecutors,*

*vs.*

THE MAYOR AND ALDERMEN OF THE  
CITY OF PATERSON AND ABSALOM B.

WOODRUFF,

*Defendants.*

On Certiorari.

Examination of witnesses taken before Isaac Van Wag- 10  
ner, Supreme Court Commissioner, at his office in the  
city of Paterson, at his office, this nineteenth day of  
April, 1876, in the above entitled cause, in the presence  
of Absalom B. Woodruff, of counsel for himself, and  
Thomas D. Hoxsey, of counsel for prosecutors.

A certified transcript of the minutes of the Board of  
Aldermen of the city of Paterson, is offered in evidence  
and marked exhibit W 1, on part of defendants.

Counsel for prosecutors here says that Mr. Woodruff 20  
has been made a party to this suit, without notice to the  
prosecutors, and that too after the court, Justice Scud-  
der presiding, had ordered the writ in this case to be  
issued without making Mr. Woodruff a party to this cer-  
torari. That the same was so ordered by the court, af-  
ter this prosecutor had presented the matter, as to wheth-  
er he should be made defendant, to Justice Dixon in per-  
son, and to Justice Scudder by letter, without any objec-  
tion to making Mr. Woodruff a party. That before Mr.  
Woodruff was so made a party, the court granted a rule 30  
that the testimony taken on the rule to show cause, why  
the above writ should not be granted, ordered that the  
parties to the suit, as it then stood, should agree upon the  
testimony taken under that rule to show cause, that  
should be printed and used in the argument of this  
case, and that upon failure so to agree that the prosecu-  
tors print the whole of that testimony, and the court

would exercise its discretion as to who should pay for the printing of certain portions thereof, not pertinent to that issue. The rule having been granted before the defendant, Woodruff, was made a party, the counsel for the prosecutors desires him here to place upon this record, just what he claims of that testimony shall be printed, if any, and also, if he wishes the whole to be printed, subject to the condition imposed by the court for such printing.

- 10 Mr. Woodruff, for himself, states that he has no doubt that the court in making him a party to this case did right and acted on the common sense principle, that when an attempt was being made to prevent the payment to him for services to an amount of over thirty-seven hundred dollars, that he ought to have something to say about it. He proposes now to take evidence in the ordinary way to be used on the argument of this certiorari, and will specify at the close of it what parts he wants  
20 to agree to any state of the case which will state truly the facts. He has never yet received from the prosecutors, or any person, any proposed statement of facts, and therefore has been unable to agree to any, and desires now to take evidence without further interruptions which uselessly consume time.

- Counsel for prosecutors here says that the action of the court in omitting to make him a party, was at its own volition, and we presume with him that the court is always right. But that his answer is not an answer to the  
30 question. We desire him to answer here, "does he express a wish that that testimony taken under that rule shall be printed?"

Mr. Woodruff says he does not.

JOHN SWINBURNE, a witness produced on the part of the defendant, Woodruff, being duly sworn according to law on his oath deposeth and saith:

1 Q. Exhibit W 1, being shown to witness he is asked:  
Were you a member of the Finance Committee referred to in that exhibit, on December fifteenth, 1873?

- 40 A. I was.

2 Q. Did the Finance Committee, before the endorsement by the Board of Aldermen as therein stated, pass such a resolution?

Objected to, as the action of the committee should be shown by the record of the committee, and not by the memory of this witness.

A. It did.

3 Q. What were the circumstances which led to the employment of A. B. Woodruff, as counsel at that time?

Objected to, because the committee had no legal right to employ Mr. Woodruff, either as counsel, or as associate counsel, as stated in Exhibit W 1, and the Board of Aldermen could not ratify and confirm their illegal act. 10

A. The court had granted a number of certioraris, and the Finance Committee felt that the interests of the city required additional counsel. They determined upon a vigorous prosecution of their claims and therefore employed Mr. Woodruff as counsel, as such additional counsel.

4 Q. A list of certioraris, or rather a list of statements of twenty-three certioraris is handed to witness and he is asked:

Whether he remembers which, if any of them had been brought before December 15th, 1873? 20

Objected to, because the list shown is a list made out in the handwriting of A. B. Woodruff; and because said list does not show the certiorari of North Straight street, in which Mr. Woodruff was prosecutor, in his own behalf and of others; neither does it show other suits in which Mr. Woodruff was employed at that time, as counsel against the city.

A. I cannot affirm positively, which of them were brought previous to that date. 30

5 Q. At the time Mr. Woodruff, was employed as you have stated, were the number of certioraris pending against the city so numerous that the Finance Committee regarded them as too many, or too difficult, for the City Counsel, at that time, to attend to alone?

Objected to, because it is leading. It furnishes the witness with an argument for the employment of the distinguished counsel and is otherwise improper.

A. They were.

6 Q. Do you know whether, before Mr. Woodruff was

so employed, the city had been in the habit of employing additional counsel to the City Attorney or City Counsel, when the Finance Committee, or Board of Aldermen deemed it proper so to do?

Objected to, because under the Charter of the City of Paterson of 1871, and the amendment of 1874, and the ordinance of the city defining the duties of City Counsel, they were inhibited from making such employment?

A. I believe they had.

10 Answer objected to by prosecutors' counsel.

7 Q. Who was City Counsel from May, 1873, to May 1874?

Objected to.

A. James Evans.

8 Q. In your judgment, would James Evans have been able to attend to the ordinary duties of City Counsel, and likewise to have attended to all the certioraris in reference to street assessments, from December, 1873 to May, 1874?

20 Objected to, because the law in consideration of his appointment, his oath of office and the payment of his salary, made him a city officer, and cast upon him the burthen of discharging all of the duties of City Counsel, be they more or less. Because the ordinance defining his duty, and the charter of 1871 and 1874, imposed upon him that duty; and if he had not performed it satisfactory, he could have been removed by the Board of Aldermen under the ——— section of the City Charter.

A. He could not.

30 9 Q. Was there, at the time of the employment of Mr. Woodruff in December, 1873, assessments for street grading and street improvements unpaid to the city and in arrear, and if so, to about what amount?

Objected to, as that is matter of record and cannot be shown by parol.

A. There were, in amount over one hundred and fifty thousand dollars, to the best of my recollection.

*Cross examination.*

10 Q. You have been examined before in this suit under the rule to show cause, have you not?

A. I have.

11 Q. In that examination, you swore that you employed Mr. Woodruff to more particularly defend the certioraris, that Thomas D. Hoxsey and David B. Beam, brought by them for setting aside the assessment on Fulton street, did you not?

Objected to, as what the witness then swore to is in writing and should be produced. 10

Counsel for prosecutors needs not remind any counsel-at-law, of a right of this kind to cross-examine a witness, without producing the original testimony.

Counsel for defendant, Woodruff, says: To which counsel for Mr. Woodruff, says, he does not deny the right; his objection was founded upon the propriety of the matter.

A. I do not remember that I did.

12 Q. Do you not know that Mr. Woodruff did not defend, but none other assessment other than those brought by Hoxsey and Beam? 20

A. I do not.

13 Q. Do you not recollect that before the employment of Mr. Woodruff, to defend the assessment of the city upon Fulton street, that Mr. Woodruff, in a certiorari, in his own behalf and as counsel for David Hampson, had procured that assessment to be set aside, by the decision of the court, which pronounced the whole assessment on that street not only "voidable," but "absolutely void"? 30

A. I do not know that I did.

14 Q. You were informed that Mr. Woodruff had in his suit, and as the counsel of David Hampson, succeeded in setting aside the assessment on Fulton street, before Mr. Hoxsey brought the certioraris on this street, for himself and David B. Beam, were you not?

A. I cannot speak as to the time when I knew that Mr. Woodruff was interested personally, and as counsel in a Fulton street certiorari against the city, and on that ground I objected to his appointment as counsel. 40

15 Q. Do you not recollect also that Mr. Woodruff, for himself and as counsel for others, had brought a certiorari to set aside the assessment for opening North

Straight street ; and do you not remember that he, when you stated your objection to his employment, agreed that during the time he was associate counsel, that his suits should be stayed or not prosecuted against the city ?

A. I cannot remember what particular cases he was interested in, but that he was interested in some. I do remember of such an understanding with Mr. Woodruff.

16 Q. Were you aware, that during the time Mr. Woodruff was so acting as City Counsel, and after the date of  
 10 his employment, he argued the certiorari brought by him on North Straight street ; that the city was totally undefended against his prosecution of that writ, and that at the February or June Term, A. D. 1874, of the Supreme Court, the said Woodruff entered a rule upon the decision of that case, by which the assessment against himself for about seventeen hundred dollars, and his clients, Fairbanks and the Hopper estate, for about four thousand dollars for assessments on North Straight street, for opening the same, were set aside ?

20 Objected to, as having nothing to do with this case.

A. I do not remember that I was aware of it. The charge of the certioraris was left in the hands of our counsel and his associate Mr. Woodruff, to be conducted as their judgment might approve.

17 Q. Would you have employed Mr. Woodruff as associate City Counsel, if you had supposed during his appointment he would have taken any proceedings at law, in a certiorari case against the city, in his own behalf or that of his clients ?

30 Objected to.

*First.* Because the witness has not said that Mr. Woodruff was employed as associate City Counsel, but that he was employed as additional counsel to assist a City Counsel.

*Second.* Because the witness has not said that the Finance Committee, or the Board of Aldermen made an appointment when they employed Mr. Woodruff.

A. I did not employ Mr. Woodruff. It was done by a majority vote of a committee of five. And when so employed, without any restrictions, I would have done any  
 40 thing in my power to protect the just claims of the city.

Adjourned to 2 o'clock, P. M.

2 o'clock, P. M.

18 Q. Question 17, repeated.

A. Personally, I would not.

19 Q. You, as chairman of the Finance Committee of the city of Paterson, informed him of his appointment as associate counsel, did you not?

Objected to, because the Finance Committee did not make an appointment. They simply employed counsel.

A. I informed Mr. Woodruff, as chairman of the Finance Committee, that the committee had voted to retain him as an associate of the City Counsel, to defend the city in these certiorari cases. 10

20 Q. And it was at the time of so informing him that you reminded him of his having suits against the city, and your objection to his employment by reason thereof, and at which time he made the agreement that, during the time of his appointment, he would take no action in his cases against the city, was it not?

Objected to, because the witness has not said that he reminded Mr. Woodruff of any such thing. 20

A. It was at that time that I stated to Mr. Woodruff that I had objected to his being retained on account of his having cases against the city, and he said that he would not move them while so acting. That he was perfectly willing to submit them to arbitration.

21 Q. In your direct examination at the time of taking testimony under the rule to show cause, why the writ in this case should not be granted, I have the minutes of your testimony in these words, in answer to question 102, of that examination, to wit: 30

"He was ('meaning Mr. Woodruff') employed as associate counsel in behalf of the city in the cases referred to in the latter part of 1873, or early in 1874, but during the fiscal year of 1873," was your answer as their stated correct?

Objected to, as what the witness swore to in answer to question 102, is nor correctly stated in this question.

A. It was correct. My understanding was then, as it was at the time Mr. Woodruff was employed, that he was

retained as additional counsel, to be associated with the regular City Counsel in the prosecution of those cases.

22 Q. You, in answer to question 105, of that direct examination to the question, "did Mr. Woodruff accept that appointment and did he act, and did he serve under it as such counsel on behalf of the city?" you answered, "he did." Is that answer correct?

10 Objected to, as the question as now put is not the same as then put, and the witness has already stated that the Finance Committee did not undertake to make an appointment. That part of the examination under the rules to show cause was taken in Mr. Woodruff's absence and that now appointment was the pure and unadulterated coinage of Thomas D. Hoxsey's brains.

Counsel for prosecutors here says that the question as propounded was on the direct examination, was asked and propounded by Mr. Hopper and cannot comprehend how Mr. Hopper's question could be coined, or made by Mr. Hoxsey.

20 A. That answer was correct, with this explanation of the word appointment, as expressed in the standing order of the Board of Aldermen, which empowers the Finance Committee to employ additional counsel.

23 Q. Then you appointed him as associate counsel, under the standing order, giving the Finance Committee power to employ additional counsel, did you not?

30 Objected to, as before Mr. Woodruff was retained, the Board of Aldermen endorsed or adopted the report of the Finance Committee in that respect, and the question therefore involves a pure question of law.

A. We did.

24 Q. Before you employed Mr. Woodruff, as assistant counsel, had Mr. Evans, the regularly appointed City Counsel, made a request for the appointment of additional counsel, to aid him in taking a care of the legal business of the city?

40 A. He had not to my knowledge. But the Finance Committee were unwilling to enter upon suits involving so large an amount, without the employment of additional counsel. They felt the public interest demanded it.

The answer is objected to as injecting into this examination the partizan bias of the witness.

25 Q. Will you explain how, when Mr. Woodruff argued his certiorari in the North Straight street case, that the Finance Committee allowed the city to be totally undefended against his eminent legal ability, against the city, as the matter involved assessments of about six thousand dollars, which was totally set aside as to him and his clients?

Objected to, as that North Straight street case of Hopper's executors, Woodruff and others, was argued at November Term, 1873, of the Supreme Court, and was so utterly devoid of either law or honesty, that James Evans, the City Counsel, declined to make any argument in its support, and the court in giving its decision said that they couldn't find anything right about it. 10

A. The case was in charge of the City Counsel, we assumed that he would, to the best of his ability, protect the city's interests. If he did not, the fault rests with him and not with the Finance Committee.

26 Q. In your former examination, you stated that Mr. Evans, the City Counsel, was competent to transact all of the city's business and had not to your knowledge declined to perform any duty that was asked of him, or to that effect, was that statement true? 20

Objected to, as it does not state correctly, what the witness formerly said.

A. It was true that he had not declined to do every thing that had been asked of him. I do not know how I could have said, with the opinion that I have, that he was competent to take charge of all the city's business; that is of the legal business. 30

27 Q. Did Mr. Woodruff successfully defend any one of the certioraris that he acted in, in behalf of the city?

Objected to, as whether getting a reassessment of the entire amount in every case argued, except the Fulton street case, for the entire amount of the assessment, and getting the certiorari in the Fulton street case dismissed, amounts to a successful defense, is a question of law.

The interjection here by defendants' counsel is improper, unfair, and for an unwarrantable purpose which is apparent, and the counsel for prosecutors say that Mr. Woodruff's attempted defense of those assessments, for 40

which he charged about five thousand dollars, not one of them was successful.

A. I believe he was as successful as the circumstances of the case would admit.

28 Q. Question 27, repeated.

Objected to, as it is already answered.

10 A. Well, I will repeat my answer and add, the Finance Committee was aware that there was very grave doubts whether they would be able to gain these suits, but failing to obtain the legislation they had sought, to enable the Board of Aldermen to compromise, where it was deemed advisable, and as the amounts standing as assets of the city were large, we determined to have it decided in the courts whether they were available to the city or not. Therefore, we determined to incur the expense of a vigorous prosecution of these cases.

The answer is objected to by counsel for prosecutors.

29 Q. Was any one of the assessments defended by Mr. Woodruff sustained?

20 Objected to, as the records of the Supreme Court will show what was done with them, and they should be produced by prosecutors. Second, because lawyers are not insurance companies, and their compensation for their services does not depend on the fact that their clients win.

A. Not to my knowledge.

30 Q. Are you aware that Mr. Woodruff's charges, for taking testimony and arguments, &c., in the Fulton street case, after the court by its decision had pronounced the whole assessment void, amounted to more than the sum of eighteen hundred dollars? Was that fact ever before the Finance Committee?

A. The prosecutors in this case has stated so to me. I am not aware, that it was ever formally stated to the Finance Committee.

31 Q. Were you not, as alderman of the city, frequently informed and remonstrated with, that Mr. Woodruff, was oppressively using his position as associate counsel of the city, in taking testimony not pertinent to the issue, and for the purpose of oppression and defamation

of the prosecutors, Hoxsey and Beam; and were you not solicited as alderman, to allow the City Counsel to defend those cases, because Mr. Woodruff, by reason of his personal hatred and malice, was using that position of counsel for that purpose?

Objected to, as such falsehoods retailed by tale bearers, have nothing to do with this case, even if thus propagated.

A. I was remonstrated with by General Hoxsey, not frequently, perhaps two or three times; but Mr. Woodruff having been employed as additional counsel, and the city counsel not confirming General Hoxsey's statement, we preferred to believe that our counsel was conducting the suits properly, and be guided by their action, rather than by the assertions of those who were opposed to us. I was never solicited to allow James Evans to defend those cases. 10

32 Q. You knew, during that examination, that James Evans, City Counsel in 1873, and Henry A. Williams, City Counsel in 1874, were neither of them, giving any attention to the certioraris prosecuted by Messrs Hoxsey and Beam? 20

A. I did not know that they were giving no attention to it. I was aware that Mr. Woodruff was doing most if not all the work.

33 Q. And Mr. Hoxsey, many times complained to you that that work was done not for the benefit of the city, but to serve his malignant hatred and venom against Thomas D. Hoxsey and his family, did he not? 30

A. He has told me so several times pending the case.

34 Q. Did not you testify in effect, under the rule to show cause, that Mr. Woodruff had been almost purposely and specially employed, to defend the certioraris of Mr. Hoxsey, or in which he was interested?

A. I think I did, and I think my explanation for it, was that Mr. Hoxsey was the one who was causing most of the difficulty, in the way of preventing the city from collecting the assessments, and if he was beaten in the courts, it would obviate the necessity of most of the rest of the prosecutions. 40

35 Q. Can you explain why, when the Finance Committee knew that Mr. Woodruff was prosecuting assessments successfully, by which he had destroyed assessments against him on Fulton street, in excess of four

thousand dollars, and on North Straight Street, for more than five thousand seven hundred dollars, for himself and his clients, that the Finance Committee had not reached a conclusion to make a "vigorous defence" against Mr. Woodruff, as the assessments by him vacated and destroyed, were more than twice the assessment against Mr. Hoxsey and Beam ?

Objected to, as embodying a statement of facts not true, and as irrelevant.

10 A. It is difficult for me to explain the conduct of the Finance Committee, of which I then had been a member a short time ; but when I found that there were so many certioraris granted, and I found from statements of a number of parties interested, that they were priming their hopes upon the vigorous prosecution on the part of Mr. Hoxsey, who could conduct the suits without incurring the expense of counsel fees that we decided to do as stated in the previous answer.

20 36 Q. But why apply this vigorous defense to Mr. Hoxsey, while the Finance Committee had stood by and allowed the assessments against Mr. Woodruff and his clients, on Fulton street and North Straight street, in excess of twelve thousand dollars, to be essentially in one case entirely undefended and another scarcely a show of defence ?

Objected to as totally irrelevant.

30 A. So far as I was concerned, as a member of the Finance Committee, I had but a short time before been appointed to that office, and knew comparatively little of the business routine. If the cases were entirely neglected as I have said before, it was the fault of the counsel in whose hands they were for prosecution.

37 Q. Were you not aware that Mr. Woodruff entered his rule for vacating the North Straight street assessment some 6 months later than the time the Finance Committee had appointed him, "Associate City Counsel," and after he had accepted his appointment and agreed as you have heretofore stated, to hold the prosecution of his suits against the city, until after the expiration of his appointment ?

40 Objected to.

*First.* Because the witness has not said that Mr. Wood-

ruff agreed to hold the prosecution of his suits against the city, until after the expiration of his appointment.

*Second.* Because Mr. Woodruff on or after December 15, 1873, had no suits pending against the city, which had not been argued, and therefore there were no suits to make any such agreement about.

Counsel for prosecutors alleges that the agreement of the North Straight street certiorari, as he is informed and believes, and by the time the same appears to have been decided, was argued at the February term, after Mr. Woodruff's appointment on December 15, 1873. 10

A. I believe that action of some kind in his suits, contrary to my expectation, was taken after his appointment as additional counsel. I speak of it as additional counsel, because there is a construction placed on the word associate, which was not intended by the committee.

The latter part of this answer objected to, by counsel for prosecutors.

38 Q. Do you recollect a conversation with you, in which Thomas D. Hoxsey complained that the conduct of Mr. Woodruff in these cases, were defamatory and cruelly injurious to said Hoxsey and his family; and that at such conversation, were not you as chairman of the committee remonstrated with, and patiently and mildly requested and begged to stop the tide of fraud and misrepresentation against him, and then by the utterly impertinent and irrelevant testimony then being taken? 20

Objected to.

A. That is true in part. He did remonstrate. I have no recollection of his ever speaking of any fraud against him. He did say that there was a great deal of irrelevant testimony being taken. I do not remember of ever being mildly and patiently remonstrated with. 30

39 Q. Were you at that time aware that Mr. Woodruff was charging the city fifty dollars per day, for each day taking testimony, that he charged three hundred dollars for the short and limited argument in each of these cases, and that his fees were in excess of the whole amount of the assessments he attempted to sustain against Hoxsey & Beam? 40

Objected to, as the question involves the absurdity of

the witness knowing what Mr. Woodruff charged for an argument of a case, before the evidence in it was closed.

A. We made no bargain with Mr. Woodruff. We did not know what his charges were till he presented his bill.

40 Q. Was there any complaint of the habits, or the legal ability of James Evans, while City Counsel from May, 1873, to May, 1874, or any complaint of Henry A. Williams, as City Counsel, from May, 1874, to May, 1875, that you heard of?

10 A. There were no formal complaints lodged against either of the counsel.

*Re-direct examination.*

41 Q. Do you recollect the first certiorari case that you spoke to Mr. Woodruff about, to defend it for the city, after December 15, 1873?

A. No, I don't think there was any one particular case that I spoke to him about.

42 Q. Were not the first ones brought to his notice, the certioraries relating to the paving of Getty avenue?

20 Objected to, as leading and improper.

A. I do not recall, as I said before, of any particular case being brought to Mr. Woodruff's notice by the Finance Committee.

43 Q. Do you know who was the City Counsel when the case of Woodruff vs. the City, and Hampson vs. the City, in regard to the grading of Fulton street was argued?

A. I do not, I think it was before I was a member of the Board of Aldermen.

30 44 Q. That certiorari case then was not one of those that Mr. Woodruff made, as you think, an agreement not to prosecute, was it?

A. I had supposed the agreement covered all of his suits against the city.

45 Q. Did you know on December 15, 1873, that the certiorari of Woodruff and Hampson had been argued and decided?

A. I did not.

40 46 Q. Did you know on December 15, 1873, that the certiorari of Hopper's executors, Woodruff and others, in regard to the opening, &c., of North Straight street, had before that time been argued?

A. I did not. Our agreement as I understood it, in that agreement there were no cases specified. I did not know at the time in what cases he was interested.

47 Q. Do you mean interested in personally, or as counsel for other parties?

A. Either.

48 Q. When you spoke to Mr. Woodruff, and when he made the agreement, whatever it was, you have spoken of, did you ask him if he was interested in any cases against the city, either personally or professionally?

10

A. I don't think I did.

49 Q. Did Mr. Woodruff then tell you that he had been retained by James Crooks, in regard to Redwoods avenue, and that he had himself, personally, a claim against the city for damages on Totowa avenue, and that the assessment on Falton street against him had been set aside, and yet had to be adjusted, but that he had always been ready and willing, and was then to have those matters between himself and the city adjusted by mutual agreement or arbitration?

20

Objected to because leading, not in cross-examination, because it is untrue that Redwoods avenue had ever before that time had an assessment made against it, until assessed by Commissioner Haines and others and because the scope of the examination is in manner and form a cross-examination of his own witness.

A. Mr. Woodruff made an explanation of the cases in hand in which he was interested either as counsel or personally, but what particular cases he then referred to, I can not now recall. He did express an entire willingness to have them settled by arbitration. I understood the agreement then made would preclude his doing anything in those cases that would be inconsistent with his new relationship to the city.

30

50 Q. Do you know of anything that he did do in regard to the Fulton street case, the North Straight street case, or the Totowa avenue case, after December 15, 1873, which was adverse to the city?

Objected to.

A. I do not.

51 Q. Are you acquainted with the handwriting of Absalom B. Woodruff and have you seen him write?

40

A. I am acquainted with it, and have seen him write.

52 Q. A book purporting to be a docket of Absalom B. Woodruff is shown to witness, and he is asked :

In whose handwriting are the entries on page 357 of that book ?

Objected to.

A. I believe it to be in the handwriting of Absalom B. Woodruff.

Page 357, of that book is offered in evidence on the part of defendant, Woodruff, and is marked exhibit W 2.

- 10 Objected to on the ground that this defendant cannot manufacture testimony for himself in that way, and that it is untrue as stated in that entry, that that cause was decided as stated there earlier than the February Term, A. D. 1874.

53 Q. A paper being shown witness purporting to be a bill for printing the state of the case in *Hopper vs. The City of Paterson* is shown witness, and he is asked :

Do you know in whose handwriting that is ?

A. I do not.

- 20 54 Q. Who constituted the Finance Committee of the City of Paterson, on December 15, 1873 ?

A. John Swinburne, chairman; Michael Harold, John E. Dunning, Samuel B. Fields and William Cook.

55 Q. Of those five persons, which were classed as republicans at that time ?

Objected to, as improper and grossly impertinent.

A. I would classify Dunning, Cook and myself as the republicans of that committee.

- 30 56 Q. Was there any partizanship that you ever knew, or heard of, in that committee's employment of Mr. Woodruff ?

Objected to, upon the ground that there are other than political passions governing the action of men.

A. I think there was none whatever.

57 Q. Do you remember how long it was after December 15, 1873, when the Board of Aldermen passed the resolution in exhibit W 1, before Mr. Woodruff was informed that the city had agree to retain him ?

Objected to, as leading and intended by such leading question to entrap this witness into a statement not strictly true. Exhibit W 1, is in this language :

"The Finance Committee report that in view of the numerous suits pending versus The City, they have resolved upon a vigorous defense and have therefore retained A. B. Woodruff as associate counsel; on motion the action of the committee was endorsed."

The question is further objected to, as an attempt to contradict his own testimony as shown in this exhibit, which shows Mr. Woodruff retained by the committee, and the Board of Aldermen endorse their action. 10

A. If my recollection serves me correctly, he was informed before that report was made to the Board of Aldermen.

58 Q. Do you mean by your last answer that he was informed before December 15, 1873, that the Finance Committee had agreed to retain him?

Objected to. To this attempt to falsify the record which shows that the Finance Committee had employed him by retaining him, which was a full information of his employment. The report is not that they had agreed to retain him in the language of the question, but that they had retained him. 20

A. I mean this, that the Finance Committee believed, under the standing order of the Board, that they had the power to employ additional counsel, and by a majority vote of that committee, they did resolve to employ Mr. Woodruff as such counsel. I think that Mr. Woodruff was informed of their action before the 15th of December, 1873. They reported the fact on that date to the Board so that they might be cognizant and the public might know that the Board of Aldermen were going to use their best endeavor to collect the assessments due the city. 30

59 Q. Do you remember the date when that majority vote was had in committee?

A. I do not, but think I informed Mr. Woodruff the day following it.

60 Q. Did the Finance Committee, or any of them either on the day that majority vote was taken, or upon any other day give Mr. Woodruff, a retainer before December 15th, 1873, to your knowledge? 40

Objected to, as Mr. Woodruff could accept the appointment on the vote of the committee without a retainer being absolutely paid. The promise of employment and acceptance was good, and the retainer coming from the City Treasury would necessarily follow the rule as to disbursements.

A. I think they did not.

10 61 Q. Was it your expectation, and that of the other members of the Finance Committee, and of the other Aldermen, so far as you know, when Mr. Woodruff was employed, as you have stated, that the city would pay him for the services that he rendered to them, his usual charges for similar services to other clients?

Objected to, as testimony deals with facts, not expectations. The witness can testify as to the conclusion of his own mind, not the conclusions or expectations of his associates.

20 A. That was the expectation of the Finance Committee. The question of costs was discussed, but we, the Finance Committee, concluded that the suits were of such a complicated nature that it would be impossible to make a bargain with regard to it.

62 Q. Do you mean by your last answer, in regard to the amount of compensation?

Objected to.

A. I mean in regard to the probable cost attending the suits.

30 63 Q. Do you not know that one of the assessments on Thomas D. Hoxsey, or on his and David B. Beam's lots on Division street was paid by him, while I was taking the evidence on certiorari in regard to it, and did he not come to you to get the money to pay it with?

Objected to, as not in cross-examination, irrelevant and impertinent, and because the city having sold my land in defiance of the order of this court for an assessment for paving, I did not care to have the blemish of a tax title against my land for an assessment of a little more than one hundred dollars, if I recollect right.

A. He did pay I think while the testimony was being

taken, and did apply for a loan temporarily to make the payment with.

64 Q. Do you know that the Supreme Court affirmed the assessment on the lands of Thomas D. Hoxsey and David B. Beam, for the opening of Union avenue, taken up by certiorari by them and argued by me for the City of Paterson?

Objected to, as not in cross-examination: that the assessment for opening Union avenue was not by reason of its being only, I think ten dollars, it was so small though totally illegal that the apparent and manifest objection to it were not urged, and the same went by default, because of the insignificance of the assessment. The assessment for opening and grading having been carried up by the same writ. 10

A. I cannot recall the action of the courts in any particular cases.

Adjourned to Thursday, April 20, 1876, 10 o'clock A. M., at same place.

THURSDAY, APRIL 20, 1876. Examination of witnesses continued in the presence of same counsel. 20

JOHN SWINBURNE, on *re-direct examination*.

65 Q. Did Mr. Woodruff in his intercourse with you, or the Finance Committee, so far as you know or saw, appear to be actuated by malignity, hatred, or venom, towards Thomas D. Hoxsey and his family, or did he appear desirous to have the matters between Hoxsey and Beam, and the City of Paterson settled by notes, or in some other amicable way, and did he advise such settlement, if it could be accomplished? 30

Objected to, as the animus of Mr. Woodruff, in those cases in which he charged in his argument in the Fulton street case, in the Supreme Court, that Thomas D. Hoxsey and David B. Beam were guilty of a conspiracy in procuring the ordinance relative to rock cutting, and guilty of a conspiracy to change the grade of Fulton street, in order that they might steal material to fill the low lots of Hoxsey & Beam, by the increased amount of

material caused by the deepening of the grade, and that for the purpose of this fraud and conspiracy, they had purchased a part of the low lands of the Wallis estate, as so charged in his argument before the court, added thereto the attempt to prove those charges true by testimony in the Fulton street case, in the argument of Fulton street case, by reams of impertinent testimony will sufficiently show the animus of Mr. Woodruff, when he thrust himself into the position of City Counsel without the illegal proof proposed by this question, which is to disclose conversations and secrets between counsel and client, which cannot be made in testimony in this case; and the question is further objected to as leading and improper on that account.

10 A. He never seemed to entertain any such feelings with us, with me or the committee. I told Mr. Woodruff that Mr. Hoxsey had, at one time, offered to pay his assessments and those of Hoxsey & Beam by their notes. He advised us, if they would do it to accept their proposition.

20 66 Q. You stated in answer to question number 37, as follows :

"I believe that action of some kind with his suits, contrary to my expectations was taken after his appointment as additional counsel."

Was that belief founded upon what some person had informed you Mr. Woodruff had done?

Objected to, because it suggests to the witness a line or manner of answer, and is improper and leading.

30 A. It was ; my belief was based upon information, hence I did not express it as positive.

67 Q. You stated in answer to question 39, as follows :  
"We made no bargain with Mr. Woodruff, did not know what his charges were, until he presented his bill."

Did you mean to be understood by that answer, to mean that the city made no bargain with Mr. Woodruff to take the evidence in and argue those certioraris?

40 Objected to, as his language should he left to explain itself. The witness is an intelligent man and as capable of measuring his language as Mr. Woodruff is.

A. I did not mean any such thing. I had stated that

he had employed him, the word bargain referred only to his rates of charges.

*Re-cross Examination.*

68 Q. Exhibit W 2, is shown witness and he is asked :

If he is able to explain the fact that the argument, as shown by Mr. Woodruff's docket memorandum of the North Straight street certiorari, was "argued at Nov. Term, 1873." How, if that was true, that the court did not make its decision until "Nov. Term, 1874, decided in Supreme Court, and assessment as to prosecutors set aside," can you explain how that decision was delayed for one year from the date of that argument? 10

A. I cannot.

69 Q. Were you present yesterday, and did you hear Absalom B. Woodruff say that Judge Bedle purposely withheld that decision for some political, or other improper purpose, and that it was not made until after his election as Governor, for reasons personal to the Judge, or to that effect?

Objected to, as simply devilish. 20

A. I was present and heard the remarks of Mr. Woodruff, but did not place that construction upon them.

70 Q. Mr. Swinburne, you heard the remarks of Mr. Woodruff yesterday.

Will you please state as near as you can what Mr. Woodruff did say with regard to Judge Bedle's reasons for delaying that decision?

Objected to.

*First.* As irrelevant.

*Second.* Because the witness has not said that Mr. Woodruff did say anything in regard to Judge Bedle's reasons for delaying that decision, nor that he said that Judge Bedle did delay the decision. 30

A. I don't think he said anything in relation to Judge Bedle delaying it. He said the decision was made, (referring to the docket,) a day or so after the election. He said that for nine months he had tried to get Mr. Evans and Mr. Williams to bring it to an argument, and as often as each term came, it had been postponed at their request.

71 Q. Did not you understand from his language, that that decision had been withheld because it would be, or would have been offensive to Mr. Hoxsey, and did he not speak of Mr. Hoxsey's chargin and mortification at the announcement of the decision of the court?

A. I did not so understand it. He did speak of that.

72 Q. Did he not speak of its having been delayed for some purpose or another, out of the usual course in such cases?

10 Objected to.

A. He simply referred to the fact that the decision was not rendered until that date, I have my own impressions as to what meant by his remarks.

73 Q. State then your understanding of the meaning of his remarks, as you can not recollect the exact language?

Objected to.

A. It was that Mr. Hoxsey was much disappointed with the decision, because he had been working for Gov. Bedle's  
20 election, while he was a political opponent.

74 Q. And did you not understand from Mr. Woodruff's remark that the decision would have been rendered earlier, had not Judge Bedle had political reasons to the contrary?

Objected to.

A. I did not.

75 Q. Mr. Hoxsey had not been, within your knowledge and belief, employed as counsel in the North Straight street case, had he?

30 A. He had not, within my knowledge.

76 Q. Mr. Evans was City Counsel from May 1873, to May 1874, was he not?

A. He was.

77 Q. Mr. Williams, the year after that, was he not?

A. Mr. Williams was counsel the year after that?

78 Q. Can you explain why Mr. Woodruff, as you say, implored Mr. Evans and Mr. Williams to consent to an argument in the North Straight street case, when it was nearly a year before Mr. Williams was appointed City  
40 Counsel, if Mr. Woodruff's entry is true that the argument was made at November Term, 1873?

Objected to.

*First.* Because no one has said Mr. Woodruff implied anybody to consent to an argument.

*Second.* Because the question misstates facts.

A. I supposed he was anxious to have the case closed, whatever the case referred to might have been, I don't know that he referred to the North Straight street case.

79 Q. Mr. Williams was not, to your knowledge, employed to argue the North Straight street certiorari, in the year 1873, and before his election as City Counsel, 10  
was he?

Objected to, as irrelevant.

A. He was not, to my knowledge. I knew nothing of city matters previous to May, 1873.

80 Q. Mr. Evans, being City Counsel by appointment, by the Board of Aldermen, and Mr. Woodruff, associate counsel, by the appointment of the Finance Committee, they were charged with all the legal business of the city for that year, were they not?

Objected to, as the witness has already stated that the Finance Committee did not undertake to make an appointment to an office, but simply undertook to employ such additional counsel as they thought the interest of the city required. Second, the question asks the witness not as to any matter of fact, but as to a conclusion of law. 20

A. Mr. Evans, by appointment, had charge of all legal business for 1873. Mr. Woodruff was employed as additional counsel for particular cases, on which we paid retaining fees.

81 Q. Did not Mr. Woodruff by the action and vote of the Finance Committee, on resolution, receive the appointment of Associate City Counsel, in conformity with the committee's report to the Board of Aldermen, as stated in Exhibit W 1,? 30

Objected to.

A. The Finance Committee did not intend to create an officer unknown to the city charter, whatever the mode of expression may seem to convey: we were reacting

under the standing order of the Board, which empowered us to employ additional when we thought it necessary.

82 Q. In negating the plain language of the report of the Finance Committee and of the resolution appointing Mr. Woodruff, when you speak of the intentions of that resolution, you speak for yourself only as one of the members of that committee, do you not?

A. No, sir; I do not. I speak for the committee.

J. SWINBURNE.

10 Examination adjourned to Friday, April 21st, 1876, 11 o'clock, A. M., at same place.

JAMES EVANS, a witness produced on the part of the defendant, Absalom B. Woodruff, being duly sworn, according to law, on his oath, deposeth and saith.

83 Q. Are you an attorney and counselor-at-law, and if so were you City Counsel of the City of Paterson, and if so, from what time to what time?

A. Yes; I was City Counsel of the City of Paterson, from 1869 to 1870, and from 1873 to 1874. I think, I  
20 have not looked lately but I think that is right.

84 Q. Did the year extend from May, 1873, to May, 1874, the last year you were City Counsel?

A. Yes.

85 Q. A list of certioraris, or statements thereof, being shown witness, he is asked.

Did you receive as counsel or attorney for the City of Paterson, any notices to take evidence in any certioraris, mentioned on that list, from Thomas D. Hoxsey, esquire, as attorney for the prosecutors in any of them, and if so,  
30 in which did you receive such notices?

88 Q. Objected as the list shown is a paper in Mr. Woodruff's handwriting, and he has no more right to talk to the witness on the stand, through or by that paper than to withdraw him for private conversation.

A. I presume I received notices of all certioraris against the city from May, 1873, to May, 1874, as they had to be served on me. Afterwards Mr. Woodruff was employed; I presume notices were all taken to him and I did not keep any list of them, except some notices which  
40 I have found in my office.

86 Q. Have you any notices for taking examinations with you, and if so, produce them?

A. Yes, seven. Here they are.

87 Q. When were those seven notices received by you?

A. February 6th, 1874.

88 Q. Are they all in the handwriting of Thomas D. Hoxsey, and are you acquainted with his handwriting?

A. I am acquainted with the handwriting of General Hoxsey, and I think they are all in his handwriting; I believe they are.

10

Said notices are offered in evidence on the part of the defendant, Woodruff. Exhibits W 3, W 4, W 5, W 6, W 7, W 8, and W 9.

Objected to.

89 Q. What did you do with those notices, when you received them, or did you not do anything with them?

A. I think I immediately carried the notices to Mr. Woodruff, who was employed by the city as counsel to attend to these cases, or by the Finance Committee whichever may you put it.

20

90 Q. Did you and Mr. Woodruff appear before William Pennington, Supreme Court Commissioner, on the day February 13th, 1874, fixed in those notices?

Objected to, as leading.

A. I believe we did.

91 Q. Do you know why it was that Mr. Woodruff attended principally to taking the evidence in those certiorari cases, while you were City Counsel, and likewise the next year, when Mr. Williams was City Counsel?

Objected to, because the charter and ordinances of the city define the duties of City Counsel, imposing upon such counsel the duty of prosecuting and defending the city during the term of the City Counsel's appointments. His oath of office and his salary, and his duties as a sworn city officer, make it incumbent upon him to discharge all the legal, or at least all the ordinary legal duties to be performed here in this city in the matter of taking testimony, and unless that duty is taken away from him, or he is superseded it arises as a matter of contract, of irrevocable contract, binding both the city and the legal counsel.

30

40

A. Mr. Woodruff was employed to attend to those cases and to argue them and of course he would have to take the testimony. That was the reason, he took the testimony while I was counsel, and when Mr. Williams became counsel, of course he had to go through with them.

92 Q. During the times that you were City Counsel, was it the practice of the city to employ additional counsel occasionally, and also, before and since?

10 Objected to, because the charter of the city for 1871, sections 11, 12, 13, 14, 15, provide for the appointment of but one counsel, and charges him with all legal defenses of the city. And any examination under the charters of the city earlier than that date, is objected to.

A. There was additional counsel when I was City Counsel, to attend to the large numbers of certioraris. And I have known additional counsel to be employed by the city before that time and since that time to carry on those certioraris.

20 93 Q. During the time, from June, 1872, to May, 1873, and when the case of The State, David Hampson, prosecutor and The State, Absalom B. Woodruff, prosecutor, was pending, do you know whether Henry A. Williams, Esquire, was employed as additional counsel to attend to those cases?

Objected to, as leading and irrelevant, upon the ground that such employment, then illegal, could not have justified the subsequent illegal employment, provided there was any.

30 A. I remember Mr. Williams arguing some case or cases in the Supreme Court, for the city, and I remember him arguing them, because I had heard him. And when I was appointed City Attorney in 1873, Mr. Williams' bill came to the Finance Committee for those services, and I, as City Counsel, was asked if it was a fair bill, and I said it was. That was the reason I remember it.

94 Q. Do you remember what case or cases those were, that you thus heard Henry A. Williams argue for the city?

40 A. From my memory I do not.

Counsel for prosecutors. It was the Fulton street case. A. B. Woodruff, prosecutor, reported 7 Vroom, 159, and

counsel for defendant agrees that it shall be so in evidence.

95 Q. Was Thomas D. Hoxsey present in the Supreme Court, when Henry A Williams made that argument?

A. I don't remember.

Mr. Hoxsey admits he was so present.

96 Q. From May, 1873, to May, 1874, was there a large amount of legal work, ordinary legal matters, for the City Counsel of Paterson to attend to?

Objected to, upon the ground that the acceptance of the office by Mr. Evans, or any other City Counsel involved the discharge of all the duties then incumbent, and all thereafter superadded. And it was the duty of City Counsel to have discharged those duties, were they more or less, so far as taking testimony in certiorari cases.

A. I don't remember of any, nothing extraordinary, except the large number of certiorari cases that were brought.

97 Q. Have you entered upon your docket the different certiorari cases that were brought respecting street assessments against the City of Paterson, while you were City Counsel from May, 1873, to May, 1874?

Objected to, as if the counsel wishes to show it, he must show it from the record, not from the private record of this witness' docket.

A. I have not.

98 Q. Can you state from memory what cases there were?

A. I could not.

99 Q. A paper being shown witness he is asked. Whether on looking over that list, he recognizes any, and if so which, as being brought during that time?

Objected to, as an indecent and improper conference in writing with this witness, by the writing offered, which is a statement or communication in the hand-writing of Mr. Woodruff, and it is objected to as fully as though the witness had been withdrawn from the stand, and a private conversation had with him touching all the certiorari cases in that list contained.

A. Yes, I do. I count up twenty-two that I remember

of. I think I remember every one, but one from circumstances, and that is *The State, Geiss & Romaine vs. The City of Paterson*. Williams, attorney, relating to Buffalo avenue.

Paper is offered in evidence and is marked Exhibit W. 10, on the part of defendant, Woodruff.

Objected to, as this defendant cannot manufacture testimony, improper and illegal in form, for his own benefit in this way.

10 100 Q. Which of the certiorari cases mentioned in Exhibit W 10, had you a distinct recollection of, before you saw Exhibit W 10?

Objected to.

A. The certiorari brought by William Graham ; all the Getty avenue cases as they are called, and seven cases wherein Mr. Hoxsey is attorney for the prosecutors ; and the case of the Passaic Water Company.

101 Q. Who was City Counsel from June, 1872, to May 1873, of the city of Paterson?

20 A. I think General Hoxsey.

*Cross Examination.*

102 Q. You have been examined touching the amount of the bill, which you as City Counsel approved, presented by Mr. Williams for arguing the certiorari of Woodruff, prosecutor, and Hampson, prosecutor, against the city, decided in 7 Vroom, 159 ; the bill that you so approved was for the sum of two hundred dollars, was it not?

30 Objected to, as no question was asked of the witness on that subject on his chief examination. This defendant has no desire to enter into the propriety of the charges of another member of the bar.

Counsel for prosecutors says question 93 asks this witness : "Do you know whether Henry A. Williams, Esq., was employed as additional counsel?" and the witness answers : "I remember Mr. Williams arguing some case in the Supreme Court against the city, and when I was appointed City Attorney in 1873, Mr. William's bill came

to the Finance Committee for the service, and as City Counsel was asked if it was fair bill, and I said it was."

A. My memory is that it was three hundred dollars.

103 Q. At the time Mr. Hoxsey served his certioraris on you as City Counsel, did he not, at the same time, serve a notice signed by Judge Bedle to stop the sale of his lands for the Fulton street grading assessment?

Objected to as no cross examination.

A. I don't remember.

104 Q. Were not the lands of Hoxsey and Beam, at the time they brought that Fulton street certiorari, advertised for sale for grading assessment, and do you not know that he served such notice to prevent the sale? 10

Objected to as no cross examination, and totally irrelevant.

A. I think that their lands were advertised for sale, and that notices were served stopping the sale.

105 Q. Was your attention at that time not called to the decision of the court which Mr. Hoxsey showed you, it then not having<sup>1</sup> been printed, and were you not asked if that decision had not set aside the whole assessment. The language of the decision declaring the assessment not only voidable but absolutely void"? 20

Objected to, as no cross-examination and as irrelevant.

A. I don't remember that he did.

106 Q. Were you not at that time aware of the fact, that the above mentioned decision had been made, and had you not somewhere seen it, or rather a certified copy of it?

Objected to as no cross-examination and irrelevant. 30

A. I don't know that I was. I cannot tell when I first knew of this decision.

107 Q. Would you, as City Counsel, being aware of that decision, have advised or attempted to have sustained that decision, by a defense of its validity against any other person or persons affected by the same assessment for grading?

Objected to.

A. No; I did not.

108 Q. You have sworn that you, at one time in the assessment cases, noticed as you have sworn by Mr. Hoxsey, said that you appeared in connection with Mr. Woodruff, at Commissioner Pennington's office to take testimony, was not that appearance, the only appearance and the only service by you, for the city, touching the taking of all the testimony on those certioraris in the  
10 Graham avenue case, the Fulton street case, and the Totowa avenue case?

Objected to.

A. I guess it was, except I would run in once and a while to see how the matter was getting on.

109 Q. From and after the date of your only appearance really in connection with the taking of testimony, did you give any bona fide attention to the taking of that testimony, or charge yourself with any responsibility touching it?

20 Objected to.

A. I did not; Mr. Woodruff was employed to do it, and I let him do it.

110 Q. You considered yourself superseded, and set aside or passed by, in the matter of those certioraris, by the employment of Mr. Woodruff, did you not?

Objected to.

A. Well in a measure so. The Finance Committee and I had a little falling out about it. I may state not  
30 Mr. Woodruff, particularly, but about their employing any attorney.

111 Q. Mr. Woodruff's bill in question, in this certiorari was for taking testimony and arguing from certioraris, or essentially all of it, to wit: The Fulton street case, the Graham avenue case, the Union avenue case, and the upper section of Totowa avenue, did you object to discharge your official duty, in regard to those certioraris, and was there anything in your judgment, involved in those arguments that required the eminent and expensive legal ability of Absalom B. Woodruff, esquire?

Objected to as no cross-examination and irrelevant.

A. Well no, I didn't object to it as I know of. I don't know how to answer the second question. The Finance Committee employed Mr. Woodruff, and that is all there was about it.

112 Q. Did you solicit or request the aid of additional counsel in these or any other certiorari, either of the Finance Committee or the Board of Aldermen of the city?

Objected to as no cross-examination and incompetent.

A. I did not.

10

113 Q. Did Mr. Woodruff, after his appointment, ever come to you, to consult with you as City Counsel touching the line of testimony to be taken, or the legal points to be raised, to maintain the validity of the assessments he was defending?

Objected to, as no cross-examination and incompetent.

A. I don't remember that he did.

114 Q. Exhibit W 2, is shown witness, and he is asked: If he had any knowledge that Mr. Woodruff intended to argue the certiorari of himself, Hopper's executors and others against the city, at the November Term, A.D. 1873?

20

Objected to, as no cross-examination and totally irrelevant.

A. Not that I remember of now.

115 Q. Did you know that it had been argued, and did Mr. Woodruff within your recollection for nine months previous to such argument, solicit and urge you to argue that certiorari, at the November Term, or any other term of 1873 or 1874?

30

Objected to, as no cross-examination and totally irrelevant.

A. No.

116 Q. Would you have attended to it, as City Counsel, had you known or been informed, that that certiorari was to have been argued, at the November term, 1873, or any other term?

Objected to, as no cross-examination and totally irrelevant.

A. I won't say but what I did know it, not now. I would have attended to it, as City Counsel, I suppose, if I had seen there was any chance of success. I can't remember about it at this time.

10 117 Q. Did you not inform the Finance Committee that the assessments on Fulton street, Union avenue, Graham avenue, Getty avenue and Totowa avenue, by reason of the absence of nearly every legal requirement in the grading of those streets, that the certioraris carrying up those assessments to the Supreme Court, would defeat those assessments, and that too both before and after employment of Mr. Woodruff, as City Counsel, and during your term of office?

Objected to, as no cross-examination and incompetent.

A. I did.

Adjourned to 2 o'clock P. M.

2 o'clock, P. M.

20 JAMES EVANS, on *cross-examination*.

118 Q. You speak of there being some twenty-one or two certioraris, the year you were City Counsel, do you not recollect that some six or seven of them brought by Mr. Hilton, was to carry up to the single assessment of the west section of Totowa avenue?

Objected to, because the witness has not said that only twenty-one or two certioraris existed during his year as City Counsel.

30 A. I have from certioraris brought by Mr. Hilton to set aside the assessment of Totowa avenue, that I have here, that I find among my papers.

119 Q. Were not several of those suits by Henry A. Williams, Esquire, to set aside assessments in behalf of his clients on Getty avenue?

A. There were a number.

120 Q. There were several suits in which Mr. Woodruff acted as attorney for the Prosecutors, other than on North Straight street, were there not?

Objected to, as not in cross-examination and totally irrelevant.

A. North Straight street and grading of Fulton street, I have among my papers here. That is all I remember about it, sir.

121 Q. You had one pending, brought before you was appointed City Counsel, in behalf of William Graham, to bring up the assessment for grading of Graham avenue, had you not?

A. No, I had some years ago a certiorari from Archibald Graham to bring up the assessment of Division street. 10

122 Q. Considering the number of these cases, that would have been reached by a single argument, if the Finance Committee had chosen to have allowed you to take charge and attend to them, under the usual and ordinary manner of defending such suits, would you have had any difficulty in attending to all of them?

Objected to, as no cross-examination and totally irrelevant. 20

A. Well, if there had been no other counsel employed, I would have done my best to have attended to them. I don't know how much difficulty I would have had as I did not experience it.

123 Q. Mr. Woodruff's bill for services in controversy is essentially all of it made up for alleged services in taking testimony in the Fulton street case, Union avenue, Graham avenue, and the west section of Totowa avenue; would you have found it difficult to have attended to those cases for which Mr. Woodruff presents his bill for more than four thousand seven hundred dollars? 30

Objected to, as stating facts not true, and as irrelevant.

Question withdrawn.

124 Q. Mr. Woodruff's bill for services in taking testimony and arguing the four cases, to wit: The Fulton street certiorari, the Graham avenue certiorari, the Union avenue certiorari and the west section of Totowa avenue, would you as City Counsel have found any essential difficulty in taking the testimony, and making the necessary

and usual legal defences to those four certioraris for which Mr. Woodruff has presented this bill in controversy, for more than four thousand seven hundred dollars?

Objected to.

*First.* Because what are necessary and usual legal defences are not defined in the question, nor in the evidence taken.

*Second.* Because it asks the witness hypothetically, what he would have found in doing a thing, which he says he did not do, or attempt to do.

*Third.* Because it is not in cross-examination and totally irrelevant.

*Fourth.* Because it assumes that the additional counsel which the Finance Committee, or the Board of Aldermen employ in any case is not entitled to compensation for his services, provided the regular City Counsel could by any exertion of his muscle and brain have accomplished what the additional counsel performed.

Counsel for prosecutor says this objection is made after dinner, and is loading this testimony with improper objections.

Defendant Woodruff says, and being after dinner is therefore made with his usual good nature and his benevolent intentions towards these prosecutors.

A. I don't know how to answer that. I state, as I stated before, I would have tried to have done it according to the best of my ability, I don't know how much difficulty I might have had about it.

125 Q. Mr. Evans, would there have been any press of other city business that you would have neglected, in taking the necessary time to have made a proper and legal defense to those four certioraris?

Objected to.

A. Not that I remember of.

226 Q. Can you conceive of any difference of defense in the care of taking testimony in the Fulton street case, that should have required the taking of five hundred printed pages of testimony in the case of the suit of Hoxsey and Beam, when but about fifty pages was taken under the suit of Hampson and Woodruff, and that too after the decision of the court which destroyed the whole assessment for grading that street?

Objected to, as irrelevant and no cross-examination.

A. I don't know of any reason.

127 Q. Mr. Williams was City Counsel during the time that the larger portion of this testimony in these cases was being taken, do you know or have you heard any reason why he, like yourself was superseded and passed by in the defense of these suits?

Objected to.

A. I don't know of any reason.

128 Q. In your judgment, he was legally competent to have discharged this duty as City Counsel, was he not? 10

Objected to.

A. Yes.

129 Q. Aside from these certioraris, four of which were really defended only by Mr. Woodruff, under his appointment as Associate City Counsel, was there that year any extraordinary amount of the usual routine legal business for the city?

A. I believe there was not?

*Re-direct examination.*

20

130 Q. Do you know whether a part of the bill referred to in question 102, was for a retainer of Henry A. Williams, as counsel for the city in the certiorari brought by the executors of Hopper and others, respecting the assessment on their lands for the widening and extending of North Straight street?

Objected to as leading, suggesting clearly an appointment or a retainer of Mr. Williams, which was never made.

A. I really can't tell. I only remember what I have told you about that. 30

131 Q. Do you remember, whether after that bill was rendered by Mr. Williams, he abandoned the case and declined to have any thing to do with it?

Objected to, because the question is leading, it is not in rebuttal, and because it assumes Mr. Williams having been retained, which is not proved.

A. I do not.

132 Q. Have you your docket with you for the year, 1873?

A. I have not.

133 Q. Have you looked at it to see if there were any entries in it, in the case of Hopper's executors, and others, versus The City, in the certiorari matter as to North Straight street, and if so, are there any or not?

Objected to.

10 A. I have examined, and there are no entries of that kind, because the writ was returnable long before I was City Attorney.

134 Q. Witness is shown, what purports to be a state of the case, in the case of

THE STATE--

PETER C. HOPPER, AND AL., executors of  
CORNELIUS P. HOPPER, AND AL., *Prosecutors.*

*vs.*

THE MAYOR AND ALDERMEN, OF CITY OF  
PATERSON, *Defendants.*

20

A. B. WOODRUFF, *Att'y for Prosecutors.*

JAMES EVANS, *Att'y for Defendants.*

On certiorari, in matter of widening and extending N. Straight street.

And he is asked :

Were you the City Counsel, of the City of Paterson, on the fourth Tuesday of February, A. D. 1873, when the writ of certiorari, a copy of which is on pages 1 and 2, of that state of the case, was made returnable?

A. Yes.

30 Said state of the case is offered in evidence on the part of the defendant, Woodruff, and is marked Exhibit W 11.

Objected to, by prosecutors' counsel, if the offer is made with any intention to have the same printed as a part of the state of the case, and said counsel suggests to the counsel that this state of the case, the Fulton street state of the case, Hampson and Woodruff, prosecutors, and the Fulton street case, Hoxsey & Beam, prosecutors, and the Graham avenue case, and the Union avenue case, may all be offered by him or myself, as exhibits without the obligation of printing.

40

A. B. Woodruff says that he will agree, provided the evidence taken in the Division street case, the North Bridge street case, and the North street case, and the

state of the case in the Getty avenue cases are admitted with them on the same conditions as to printing.

This is agreed to, with the qualification that no testimony was taken on the Straight street case and the other states of the case shall not be required to be printed, the Getty avenue cases, by counsel for prosecutors.

It is admitted by both counsel that all the affidavits, if on file in the North Straight street case, shall be admitted. And it is further agreed by said counsel that they are all in evidence. 10

135 Q. Exhibit W 11, being shown witness, and his attention called to page 13 and to page 14 of the same, he is asked :

Do you remember of appearing before William Pennington, Supreme Court Commissioner, as stated on page 13 of that exhibit, and of making the agreement stated on page 14, before said commissioner?

A. I have a remembrance of appearing before Mr. Pennington and taking testimony in these suits. I don't particularly remember about the agreement on 14, 20 although I have no doubt but what such an agreement was made.

136 Q. At the time the committee, Aaron E. King, James Hand and William Cole, made their report, was James Hand a student in your office?

A. I don't know that he was ever a student in my office. He came there once to be a student, but he was never there.

137 Q. Did not Thomas D. Hoxsey, just before or at the time that that report was being made, frequently 30 called in your office and confer with Mr. James Hand?

A. Well, I have seen Mr. Hoxsey call in there and talk with James Hand, but at what particular times I can't answer.

Mr. Hoxsey here says he does not object to Mr. Woodruff's showing if he can, any show of corrupt bargain as suggested by his question, and Mr. Hoxsey says Mr. Woodruff, show before the court if he can, that at any time within ten years, Mr. Hoxsey has even attempted to influence any person or persons, James Hand or 40 others, in a discharge of their official duties.

138 Q. Do you know where James Hand now is?

A. By reputation, yes.

139 Q. Where is he ?

A. In the New Jersey State Prison.

140 Q. Do you remember a conversation with A. B. Woodruff, when he was telling you about the assessment for the opening of North Straight street, shortly after it was made, in which you mentioned the fact to him that Thomas D. Hoxsey, had been in your office several times to see Mr. James Hand, about the time that report was made, but you did not know what it was for ?

10 Counsel for prosecutors will not object to this testimony farther than to say, that he takes it in its form and character subject to such objections as may be made in open court, after he has had his full liberty to travel this road, now started upon, to the fullest extent.

A. B. Woodruff says, that the counsel for prosecutors, does not seem to understand that this evidence is offered to show that this proceeding was going on, or probably did, at the time it was going on.

A. I do not.

20 141 Q. Did you say to him, that you thought at the time that it might be about Erie Railroad matters, but now after what I told you, you could see what it was, or what it might have been ?

A. I don't remember any such conversation. I can't get it in my head.

142 Q. A pamphlet, purporting to be an argument of A. B. Woodruff in a case thereon stated, witness is asked: Did you ever peruse a copy like that or have it in your office, or was one such served on you ?

30 A. Yes, I think I had one like that. I had one and have it now, whether it was served or not.

Said pamphlet is offered in evidence on the part of defendant, Woodruff, and marked exhibit W 12.

Objected to. The offer of this paper which appears to be a printed brief of Mr. Woodruff's, of his argument on the North Straight street certiorari in his own behalf, is objected to, because it is impertinent ; it is not proved when published, nor when served, and he cannot make testimony for himself in this way.

40 143 Q. When did you receive that copy of argument, exhibit W 12, state to the best of your knowledge and belief ?

Objected to, because the witness has said he had once seen a copy like it, but could not tell when it was served. He has no right to cross-examine his own witness.

A. I can't tell. I presume before the argument though.

144 Q. Did you not, as City Counsel, likewise receive a copy of the state of the case, marked exhibit W 11, and after investigating the case, determine that there was no use of making any argument in behalf of the city on the facts of the case, and the law applicable to them? 10

Objected to, unless it shall be shown the date of such service, and at the time Mr. Evans was City Counsel.

A. After hearing the evidence in this case, I concluded there was no use of making any argument therein.

145 Q. And did you so inform A. B. Woodruff?

A. I have no distinct recollection of doing so; but suppose of course that I did.

146 Q. Did you receive a copy of the state of the case at or before the time you received Exhibit W 12.?

Objected to. 20

A. I think I did before.

147 Q. A paper being shown witness he is asked: If that is in the handwriting of Thomas D. Hoxsey?

A. Yes.

Said paper is offered in evidence on the part of the defendant, Woodruff, and marked exhibit 12, 13.

148 Q. Another notice being shown to witness he is asked: Is that in the handwriting of Thomas D. Hoxsey?

A. It is not. General Hoxsey's signature is to it. The signature to it is his. 30

Said notice is offered in evidence on the part of defendant, Woodruff, and is marked exhibit W 14.

149 Q. Another notice being shown witness, he is asked: Is that in the handwriting of Thomas D. Hoxsey?

A. Yes.

Said notice is offered in evidence on the part the defendant, Woodruff, and is marked exhibit W 15.

Counsel for prosecutors says that in progress of these certioraris, he had some doubt, Mr. Evans and Mr. Wil-

liams having all been set aside and no one appearing in these matters except Mr. Woodruff, although not the attorney of record; as a precautionary matter he sent all these notices to Mr. Woodruff, as well as the same notice to the Mayor of the city, and another to the regular corporation counsel.

150 Q. Did A. B. Woodruff desire you to take the evidence in the Fulton street and other cases of Hoxsey and Beam, and inform you that he had not time to take  
10 it himself, and did you thereupon inform him, that, as he was already familiar with the Fulton street case and other matters connected with the certiorari cases, that he had better take it?

Objected to. The question is leading and very objectionably leading. It is an attempt to make his own witness contradict himself, and is not cross-examination.

A. I think there was such a talk, that as he had been employed by the committee he must attend to them.

151 Q. Do you remember a conference, which you and  
20 A. B. Woodruff had about the Fulton street, North Straight street cases, in which the question was discussed, whether we could probably get the Supreme Court to decide that inasmuch as A. B. Woodruff had filed a written objection within the time limited by the city charter to the assessments on those streets, and Hoxsey and Beam had not filed any, that therefore the court might consistently decide that the assessment against Woodruff was illegal and the ones against Hoxsey and Beam legal, because they had not taken their objection in time?

30 Objected to, because this counsel by this time should learn to tell the truth. There is no provision of the city charter as stated in his question which says that objections to a street grading assessment shall be filed in any time, but are utterly baseless and worthless city ordinance, which provided that unless remonstrance and objection was made within a limited time it should have an ordinance as now as the bill against the court; and this question is objected to, because it is an outrage upon every known rule for taking testimony. It suggests  
40 everything that he wants his own witness to swear, and embodies a falsehood in his question, in alleging that any provision of the city charter called for a remonstrance for an assessment for grading with a limited time.

A. I remember something said of Hoxsey and Beam not having taken their objection in time. I don't remember the particulars, I don't remember which one talked it; we were talking about the suit.

JAMES EVANS.

Sworn to and subscribed before )  
me, April 21, 1876. )

ISAAC VAN WAGONER,

*Master in Chancery, New Jersey.*

Counsel for defendant, Woodruff, requests an adjournment to Monday, April 24, 1876, 10 o'clock, A. M., at same place. 10

Counsel for prosecutors says that after Friday next, to meet almost any suggestion for the convenience of the counsel for Woodruff, but that the engagements are almost imperative, that he is the only counsel for the Acquackanonk Water Company in a case to be argued on Tuesday next, and that all his time will be required to get his exhibits and argument ready.

Mr. Woodruff says he is ready to go on to-morrow, 20  
or Monday, but that on Tuesday next our courts commence, and I will likely be constantly employed therein for at least six weeks.

Examination adjourned to Monday, May 1st, 1876, at 7 o'clock, P. M. at office of Woodruff & Savage, 231 Main street.

By consent of counsel, Mr. Williams, a witness now on the stand, being obliged to go into court, it is agreed by them that the cross-examination of Mr. John Swinburne, he here continued. 30

JOHN SWINBURNE, on *re-cross examination*.

82a Q. At the time you employed Mr. Woodruff, as associate counsel, as stated in your written report as Chairman of the Committee on Finance, on December 18, 1873, had any thing in the habits or the professional ability of James Evans, the official City Counsel, taken place that disqualified him, from attending to these duties as the regular official counsel of the city?

A. I do not wish to reflect upon Counselor Evans, but the Finance Committee, deemed it necessary for the public interests to employ additional counsel. 40

83a Q. The question 82 a, is repeated.

It is a question that may be answered yes or no, and should be so answered.

A. There was no change in his habits or professional ability.

84a Q. Then you employed Mr. Woodruff because of that which you have heretofore sworn, of his eminent legal ability, above that of Mr. Evans?

Objected to.

10 1st. Because it is asking the witness whether the counsel's logic is correct.

2d. It informs the witness that he has sworn to what counsel for Mr. Woodruff does not understand him to have sworn to.

A. He was employed because he was considered by the committee the best man for the purpose.

85a Q. But, Mr. Evans before this employment, had not expressed any unwillingness to attend to these certiorari cases, had he?

20 A. He had not.

86a Q. And he had not shown any incompetency in defending these or other certiorari cases, had he?

A. I do not recall that he did defend any other.

87a Q. Then he had manifested no inability to take charge of such cases, had he?

A. Not by defending any certiorari cases, if none had been defended.

88a Q. Mr. Evans, up to the time the Committee on Finance employed Mr. Woodruff as assistant or associate, in all things as a practicing counselor at law, stood as well as he had at any time before that employment, did he not?

30 A. Yes.

89a Q. Mr. Evans, in his testimony in this case, has testified that he had some words about the right and the propriety of the city's employing additional or assistant or associate counsel, with some one or more of the Committee on Finance, do you recollect it as chairman of this committee?

40 Objected to, as containing an incorrect statement of what Mr. Evans swore to.

A. I never had any intimation from Mr. Evans or any one else, that he disapproved of our action.

90a Q. But you knew that from the time of Mr. Woodruff's appointment, Mr. Woodruff was exercising the entire direction of these certiorari cases, and that Mr. Evans in his term, and Mr. Williams, who succeeded him, surrendered the whole of the legal direction of them to the eminent ability of Mr. Woodruff, do you not?

A. I know that Mr. Woodruff took the leading part, if not entire management, but considered that a matter of arrangement between him and the City Counsel.

91a Q. But do you know anything that leads you to believe that Mr. Williams or Mr. Evans were either them in conference with Mr. Woodruff, in the defense of these certioraris, or arranged with Mr. Woodruff in relation to them? 10

A. I know of nothing except that it was their duty. The committee left it entirely with their counsel.

92a Q. But you were informed by Mr. Hoxsey more than once or twice or thrice, were you not, that Mr. Woodruff was abusing his position of City Counsel, by taking irrelevant and incompetent testimony, and that you as Chairman of the Finance Committee should see that the City Counsel discharged these ordinary duties of City Counsel, were you not, and this both during the time of Counsellor Evans and Counsellor Williams' appointment? 20

Objected to, because no counsel has a right to go about to the clients of his opposing counsel, peddling such stories, and if he did, it is no evidence in this case.

Counsel for prosecutors says that the charge of im-professional conduct is unverified by the proof of the testimony taken, all of which by consent have been made exhibits in this case. 30

A. Mr. Hoxsey did on several occasions say that Mr. Woodruff was abusing his position. I have no recollection of having been advised by him to see that the City Counsel attended to these duties.

J. SWINBURNE.

Sworn to April 19, 1876, and sub- }  
scribed before me, May 20, 1876. }

ISAAC VAN WAGONER, 40

*Supreme Court Commissioner New Jersey.*

Saturday, May 20, 1876, examination of witnesses continued.

HENRY A. WILLIAMS, a witness produced on the part of the defendant, Absalom B. Woodruff, being duly sworn according to law on his oath deposeth and saith :

152 Q. Were you the counsel for the city of Paterson ; and if so from what time to what time ?

A. I was from the middle or latter part of May, 1874, and am still.

153 Q. While you were City Counsel in 1874, were there some certiorari cases, in which you were attorney  
10 and counsel against said Mayor and Aldermen of said city, before you were elected City Counsel, and if so, which were they ?

A. There were in reference to street grading ; there were two concerning Buffalo Avenue, the writs returnable November Term, 1873. There were seven I think concerning Getty avenue, and each returnable November Term, 1873, one in reference to Wayne avenue, writ also returnable November Term, 1873.

154 Q. Exhibit W 10, being shewn witness, he is asked:  
20 Does that exhibit give the names of the prosecutors correctly in the certioraris you have referred to in which you were concerned ?

Objected to, because a memorandum made by the defendant, Woodruff, and which this witness has held his hand during his whole testimony. Mr. Woodruff has no better right to dictate by writing than by oral instruction in this matter.

An agreement is here offered in evidence by consent of counsel for both parties, and is marked exhibit W 16.

30 A. To question 154. They do, except that numbers 4 and 5, are repeated.

155 Q. At the time you were elected City Counsel in 1874, how many certioraris were pending respecting street assessments, in which you were counsel against the Mayor and Aldermen of the city of Paterson ?

A. Two concerning Buffalo avenue, one Wayne avenue, seven Getty avenue.

156 Q. Was you City Counsel and did you act as such in 1875, when Daniel Haines, Theodore Little and  
40 Stephen B. Ransom, commissioners made their assessments ?

A. Yes.

157 Q. Eight copies of assessments being shewn witness, he is asked :

Did you bring the matters embraced in these copies before the said commissioners, and on behalf of the city submit them to said commissioners?

Objected to, as they can have no possible relation to this case.

A. I did. The parties assessed having brought by petition under the act, the original proceedings before the commissioners except where no assessment had previously been made. In those cases where petition were filed, I believe claiming damages. 10

Said copies are offered in evidence and marked exhibits W 17, W 18, W 19, W 20, W 21, W 22, W 23, and W 24.

Objected to as irrelevant and not legal testimony for any purpose and certainly not for this case.

158 Q. A copy of an award for damages, &c., on a part of Totowa avenue being shewn witness, he is asked:

Did you act as counsel for the city before Daniel Haines, Theodore Little, and Stephen B. Ransom, commissioners, on or about October 15, 1875, when they made the award mentioned in that paper? 20

Objected to, for the reasons last above stated, and prosecution counsel denies the right of the defendant, Woodruff, to bring this matter into this case as giving him any rights to sustain his bill for professional services against the city of Paterson, unless he is to claim services for prosecuting his own claim for the award mentioned to him in that paper, and prosecutors' counsel here says, it is the usual way in which this defendant, Mr. Woodruff, loads examinations taken before this and other commissioners. 30

A. I did in reference to the award of damages, but not at the time they actually made the award.

Said paper is offered in evidence on the part of defendant, Woodruff, and marked exhibit W 25.

159 Q. Were any of the certioraris on Fulton street, Union avenue, Graham avenue, Division street, North Straight street, North Bridge street, or section of Totowa avenue, brought against the city while you were City

Counsel, of the certioraris I mean which are mentioned in exhibit W 10?

Objected to as irrelevant.

A. No.

160 Q. Did you decline to take evidence in all of those cases and desire that Mr. Woodruff should do so, and if so for what reasons?

Objected to.

10 A. In several; I don't know but all of these certioraris, except those which I was attorney for; before my appointment, testimony was taken I knew, and being taken by Mr. Woodruff, as counsel for the city, having been employed before my appointment to defend them, and he asked me on several occasions to attend with him at the taking of testimony; knowing that he had been so employed and feeling that I could be of no real assistance to him in the taking of the testimony, I did not attend as I recollect on one occasion, except to  
20 get a postponement at his request, when he could not or did not for some reason attend.

161 Q. Were you in the summer of 1874, quite out of health, as well as in the fall of that year?

Objected to, because if so and even unable to attend to business, he had no right to put his official duties upon others while he drew the salary provided by the city ordinance and the city charter.

30 A. In the last part of August, or early part of September of that year, I had a very severe illness, which lasted until late in the fall, and for some time after my recovery, so as to leave my residence, I was not fit physically to attend to severe labor in business.

162 Q. Do you know, Mr. Williams, whether Mr. Woodruff, desired or expressed the desire to not take the evidence in those certiorari cases, for the reason that his time was so occupied with what was known as the Carr-Hopper case and other cases?

Objected to, as grossly leading, as an attempt to make testimony by his own declarations, and as untrue in substance, though leading.

A. I can't recollect now, whether he put it upon that ground, but I recollect as I have stated before on one or two occasions he desired me to assist, and I am very sure I heard him very frequently express his wish that the examinations were finished or through, or words to that effect. I cannot now profess to give the precise words.

The latter part of this answer objected to, not being in response to the question by prosecutors' counsel.

163 Q. Do you know whether it has, or has not been the practice for several years, for the Finance Committee of the city of Paterson to employ additional counsel to the City Counsel when they deemed that the interests of the city required it, and if so, what has been the practice? 10

Objected to

A. I know the Finance Committee has so employed counsel, prior to the employment of Mr. Woodruff. And when I was City Counsel prior to 1862, it was the practice of the Finance Committee so to employ additional counsel when they deemed it to be necessary. 20

*Cross-examination.*

164 Q. The certioraris by you, brought on Getty avenue, though in behalf of several prosecutors, were all to set aside the assessments for grading that avenue, were they not.

A. Yes.

165 Q. And before you were appointed City Counsel, they were all consolidated by the order of the court into one case or argument, were they not?

A. At the November Term, 1873, of the Supreme Court, by rule of that court, it was ordered that those certioraris be consolidated and that the return to one of the writs be considered, as the return to the whole. 30

166 Q. And the testimony was all taken before the appointment of Mr. Woodruff, as Assistant City Counsel, in 1873, and by the regular City Counsel, on the part of the city, was it not?

A. The testimony in those certioraris was taken in January and February, 1874, and Mr. Evans appeared before the Commissioner, at the taking of the testimony and he was at that time the City Counsel.

167 Q. As Mr. Woodruff was at that time attending to all the certioraris prosecuted by Mr. Hoxsey, are you able to state why his eminent ability, was not necessary in the taking of this testimony?

A. I don't know that it was not necessary. I think if he attended, it would have been better for the city, had not those certioraris been superseded by the adjustment act.

168 Q. And why better for the city?

10 A. Because in my opinion all the evidence, which would have been of advantage to the city, and which might have been, was not produced.

169 Q. In that case had not the Committee on Streets, in violation of a contract to grade the whole street, at  $22\frac{1}{2}$  cents per cubic yard for the whole excavation, paid James Bergen \$2.50 per cubic yard for a large part of such excavation?

A. I only know from what appears from the evidence and exhibits in that cause.

20 170 Q. Question 169 repeated.

A. I answer as I did before.

171 Q. Did not the proofs in that case clearly show that the Finance Committee paid James Bergen \$2.50 per cubic yard, when his contract compelled him to grade, at  $22\frac{1}{2}$  cents per cubic yard?

30 A. The exhibits and evidence in that case satisfied my mind that the contractor was paid for a large number of yards, called rock excavation, at \$2.50 per yard, and that his contract with the city was to grade Getty avenue to its full width, according to advertisements, for  $22\frac{1}{2}$  cents per cubic yard.

172 Q. And under such circumstances are you still of the opinion that the eminent ability of Mr. Woodruff, in taking the testimony in that case, had he done so, would have been the means of making the assessment for the whole cost of grading thus paid good, for that is what I understand you to say?

The latter part of this question objected to, as the witness is not responsible for that understanding.

40 A. I have never said that I was of that opinion.

173 Q. Explain how then and what you mean when you say, it would have been better for the city if Mr. Woodruff had taken this testimony in place of Mr. Williams?

A. I have not said so.

174 Q. What did you mean when you said, it would have been better for the city, if he had taken that testimony?

A. I meant that the evidence would have been on behalf of the city, obtained more fully. There was little cross examination. The evidence in the main being that which was taken on behalf of the prosecutor.

175 Q. In your judgment, was there any possible defense of that assessment under the circumstances above mentioned, and others that any legal professional skill could have been instrumental in saving it or confirming it? 10

Objected to as irrelevant.

A. I can't answer that question. I informed my clients, that in my opinion the assessments would be set aside. And I think it would, had it been argued before the Supreme Court, in part at least beyond all question.

176 Q. You hold in your hand the printed testimony and state of that case, do you not?

A. I do, in reference to the certiorari on Getty avenue. 20

The same is offered in evidence and marked exhibit P 1, on the part of the prosecutors.

177 Q. This certiorari was during your appointment, as City Counsel, suspended in the court, was it not?

A. It was not argued, but it and other certioraris with reference to streets in the City of Paterson, were suspended by the adjustment act.

178 Q. But before that act to adjust unpaid assessments, it remained suspended through the year 1874, and part of 1875, because you was City Counsel, did it not? 30

Objected to as irrelevant.

A. The certioraris in which I had been employed before I was appointed City Counsel, and which were pending in the Supreme Court at that time, were continued in consequence of my appointment for several terms.

179 Q. Mr. Woodruff, within your information or knowledge, never performed any service for the city, in relation to the Getty avenue certioraris did he?

A. I know he attended at the Supreme Court for the purpose of arguing them several days. 40

180 Q. Please explain how he could attend to argue

them when you say that they were continued, because you representing as attorney, the prosecutor did not move them?

Objected to, as the witness has not said so.

A. I refer to a time before I was appointed City Counsel. I have a charge in my book of attendance at Trenton, on these certioraris under the date of March 6, 1874, being of the February term of the Supreme Court of that year. And I know on that occasion Mr. Woodruff  
10 was there for the purpose of arguing those consolidated certioraris, had they come on.

181 Q. Mr. Evans was City Counsel at that time, was he not?

A. I believe so.

182 Q. Mr. Evans, at that time and for many years before that, had been a counsellor of law with large practice in the Supreme Court, Court of Chancery and Passaic Courts, had he not?

Objected to, as immaterial.

20 A. Mr. Evans, before that time for many years had been a counsellor at law, I believe of this State; I believe he had a very fair practice, of the extent of it I have no particular knowledge.

183 Q. Up to that time and before it, had there been any thing in the habits or standing of Mr. Evans that in your judgment, would have disqualified or taken away from his ability to fairly legally represent the city in that, the Getty avenue certiorari and all other certioraris of street assessments?

30 Objected to, as immaterial.

A. I can't answer that question.

184 Q. Had not Mr. Evans, up to the time you have mentioned, March 6, 1874, been a lawyer of good standing and irreproachable habits of sobriety for more than five years?

A. In 1874, and for several years prior to that, to the best of my recollection, and so far as I know, Mr. Evans was regular in his habits and attended to his business.

Adjourned to Tuesday, May 23, 1876, 10 o'clock A. M., at same place.

TUESDAY, MAY 23, 1876. By consent of counsel examination of witnesses adjourned to Friday, May 26, 1876, 10 o'clock A. M., at same place.

FRIDAY, MAY 26, 1876. Examination of witnesses continued in the presence of Thomas D. Hoxsey, of counsel for prosecutors, and John Hopper, of counsel for defendant, Woodruff.

HENRY A. WILLIAMS, on *cross-examination*.

185 Q. You have said that you were seriously ill in the fall of 1874. Were you so ill that you did not attend measurably if not entirely, to your professional business, with the exception of three or four weeks? 10

Objected to, as unmeasurably vague and unmeasurably uncertain.

A. I don't remember now the exact time I was confined to the house from that illness, but after I had so far recovered as to be able to attend to my business, I did so as well as I could.

186 Q. Do you not know that the great bulk of the charges of Mr. Woodruff were for taking testimony before September, 1874? 20

A. I cannot state with any certainty.

187. Q. You know, do you not, that these certioraris that Mr. Woodruff defended were all brought in the official term of Mr. Evans your predecessor in the office of City Counsel.

Q. I think there were, though I am not sure they were all through before my appointment in 1874.

188. Q. Do you not recollect that at a time when testimony in these certiorari cases were being taken that Mr. Hoxsey frequently notified you that the testimony being taken under the direction of Mr. Woodruff acting as Counsel for the City was not being taken as legitimate testimony in the case, and did he not say to you that he thought it to be your duty to take this testimony, and did not you answer that the Finance Committee had employed Mr. Woodruff, and that you would not interfere, or have anything to do with those cases? 30

A. I have often heard Mr. Hoxsey complain in very expressive language that the testimony was being im-

properly taken or for an improper purpose, but I have no recollection that he ever notified me otherwise than in the way of complaint, I have no recollection that he told me it was my duty to take the testimony, or that I used the language in reply as stated in the question.

Mr. Woodruff here appears for himself?

189. Q. Mr. Williams, I did not mean that I used the exact language of your reply, but when spoken to by me about those cases and Mr. Woodruff's abuse of the city  
10 in the taking of the testimony in those cases, do you not recollect that in effect you said to me Mr. Woodruff has been employed by the Finance Committee and I shall leave the cases with him.

Objected to.

A. If I ever did. I cannot now recall it.

190 Q. It being the duty of the City Counsel, under the charter and by the ordinance of the city, to defend the city in all suits at law brought against it, please inform us why the legal defense of the certioraris, upon  
20 which this testimony was taken, was left entirely to Mr. Woodruff?

Objected to.

*First.* Because it assumes that the duty of City Counsel was different from what was really the case.

*Second.* Because it does not appear that the taking of the testimony was left entirely to Mr. Woodruff.

A. Mr. Woodruff had been employed, as I understood it, by the city to defend certain certioraris in reference to street assessments, pending in the Supreme Court at the  
30 time of his employment, which employment was before my appointment and for a special purpose, in reference to those then pending certioraris. And as in my opinion, Mr. Woodruff was as well, if not a great deal better qualified to protect the interest of the city in those cases, as I was, I did not deem it my duty to interfere particularly.

191 Q. And for the reason of that employment, you left the defense of the city in those cases brought before your appointment entirely to him, did you not?

40 A. By reason of the employment of Mr. Woodruff, as I have before stated, I did not deem it to be my duty as City Counsel, appointed after the especial appoint-

ment of Mr. Woodruff, to interfere with that agreement or contract between him and the city in reference to those certioraris, otherwise than I did.

192 Q. Do you mean by the words, otherwise than I did, that you did interfere or act, or counsel with Mr. Woodruff, relative to the Fulton street, Union avenue, Graham avenue, North Bridge street, or Division street certioraris?

Objected to, as these prosecutors have no right to ask this witness to disclose his counsel with the associate counsel in those certioraris, either to gratify their curiosity or for any other purpose. 10

A. I cannot specify in reference to any particular avenue or street named. I cannot recall, at this time what was said between Mr. Woodruff and my self concerning the certioraris which he had been employed to defend. But he did speak to me more than once in regard to their defense, and did also ask me on one occasion, whether I would not go to Trenton to argue some motion in reference to an application made by Mr. Hoxsey for some costs, and I advised him, Mr. Woodruff, to go, and I declined as I was not prepared as he was, to argue any matter in reference to those certioraris. The last was the reason that operated upon my mind. I don't mean to say that I made use of those words to Mr. Woodruff. 20

193 Q. Do you recollect ever going to Mr. Woodruff, to hold legal conference or counsel over these certioraris, or his coming to you for that purpose?

A. Whatever conversation took place between Mr. Woodruff and myself occurred I think in my office. I have no recollection now of my going to his office for that purpose. 30

194 Q. Question 193, repeated.

A. Question 104, withdrawn.

195 Q. Did you ever hold with him any legal conference with him in the way of counsel for that purpose, touching the defenses then made or to be made to those certioraris?

A. I cannot now, from recollection, state more particularly than I have in relation to those matters. 40

196 Q. Do you not know that Mr. Woodruff conducted those cases all through without asking or seeking your counsel or advice, as to the matter and manner of legal defenses?

A. I cannot recollect that Mr. Woodruff specially asked my advice as to the matter and manner of defenses. Neither do I think it was necessary to have done so.

197 Q. Do you not know that Mr. Woodruff in managing and conducting those cases, did so entirely outside of any suggestion or advice, or consultation with you?

A. I can't say now that he did. Though he did chiefly.

10 198 Q. The witness is shown the printed state of the case, being the return to the writ and the testimony taken Fulton street, and he is asked: If after the court had decided that the assessment of the costs of grading of Fulton street, were not only voidable, but absolutely void, and the decision ordering a new assessment to be made at 24 cents per cubic yard, for the whole amount of excavation, as the only legal charge that could be assessed, would you acting for the city have attempted to have enforced that assessment for the same grading so set aside for the reasons in that opinion stated, and have  
20 taken the volume of testimony taken in that case?

Objected to, as no cross-examination. Second, as misstating a fact that a rule to appoint commissioners to make new assessment was made before the evidence was taken.

A. I cannot say what I would have done under the circumstances.

199 Q. Would you have attempted to have defended an assessment that the court had declared not only voidable, but absolutely void?

30 Objected to as no cross-examination.

A. Does the question mean in the same court?

200 Q. Yes; answer?

A. That would depend upon circumstances. If the prosecutors of a writ stood in a different relation to the assessment, than the prosecutors did in the certiorari under which the assessment was set aside, there might be good cause to defend the latter writ.

201 Q. You are acquainted with the decision in the case of *Woodruff vs. The City*, reported in 7th Vroom  
40 159, are you not?

Objected to, as no cross-examination, and all evidence objected to that is not strictly cross-examination.

A. I have seen the reported case referred to.

202 Q. Would you, knowing all of the case that you did know, having argued the certiorari in defense of the city, having seen the decision, have attempted as City Counsel to have defended the certiorari brought by Thomas D. Hoxsey and David B. Beam to set aside the same assessment as to them that had been set aside by the decision in favor of Mr. Woodruff?

Objected to.

A. Had the certiorari of Hoxsey and Beam referred to, 10  
been brought against the city after my appointment as City Counsel, I think I should have made a defense to it, to the best of my ability.

203 Q. Do you think there could have been urged any successful legal defense of that assessment after that decision?

Objected to.

A. I am not sufficiently acquainted with the difference in the relationship to that assessment between the former and the the latter prosecutors, to answer that question. 20

204 Q. On page 6, of that printed state of the case, the assessment is made at the same price per foot on each foot fronting on the street, do you not know that the courts under just such assessments as are shown by the face of those papers have always set such assessments aside?

Objected to.

A. I can't say that they have always set such assessments aside. I know there are more cases where assessments have been made by the lineal foot, without regarding benefits and damages that have been set aside. 30

205 Q. The opinion of the court in 7th Vroom 159, not only set aside that assessment because of the withdrawal of the rock excavation from competition, but also set it aside because of this pro rata or equal assessment per lineal foot, would you with that decision before you, and the fact apparent on the face of the assessment have attempted to have defended that assessment, as City Counsel?

Objected to.

A. As I stated before, there might have been such a difference in the relation of the prosecutors in the several cases that would have justified it.

206 Q. You, on the part of the city defended the certiorari cases of Woodruff *vs.* The City, and Hampson *vs.* The City, 7th Vroom 159, and in the argument of counsel, Mr. Woodruff for himself, charged that Thomas D. Hoxsey, David B. Beam, Thomas Franklin Hoxsey with the Committee on Streets, had conspired, to fetter, to  
10 cheat and defraud the city, in many ways set out in that argument.

Do you recollect that fact, and that you made no defense of them and I ask you now, if after all you knew of that case, whether they were justified in making that charge?

Objected to.

1st. As no cross-examination.

2d. As stating facts which never occurred.

A. I defended the certiorari cases referred to in the  
20 Supreme Court, had nothing to do in the preparation of the cases which was done by the then City Counsel, having been specially employed by the Finance Committee of the Board of Aldermen for that purpose, I do not now recollect that Mr. Woodruff, upon the argument of the case referred to, made such a charge as mentioned in the question.

207 Q. Was not there a charge made in the argument to that purport, and added thereto that it was a meaner swindle and a greater fraud, considering the amount, than  
30 had been perpetrated by the New York Ring?

Objected to.

A. I think Mr. Hopper in the argument of one of the certioraris characterized in severe language the manner in which the work had been done, and I think made comparisons between it and the great swindle in New York. I have no distinct recollection of his language, but my memory is that Mr. Hopper was much severer than Mr. Woodruff, in his language in imparting improper motives or conduct.

208 Q. Would you, as City Counsel, it appearing that  
40 Union avenue, in December, 1867, had not been laid out mapped, or defined, that it was then by a resolution of the Board of Aldermen, ordered, "That the Street Com-

"mittee, are authorized to make such agreements as they deem necessary for the grading of Union avenue," That the avenue before being so laid out was by the action of the Street Committee graded by the unemployed and needed labor of the city, and so graded by a grade established by the Street Committee, and which grade was changed as the grading proceeded, that the first ordinance to define a section of that street was not passed until December 8, 1868, a year after the city had graded it. That the first grade established by the city was the same date, also a year after the grading, by authority of the Street Committee only, and that when the assessment was made for such grading, it has made at a sum equal upon each lineal foot and added to that, that a portion of the avenue existed only by grant of sixty feet in width, yet graded to seventy-five feet in width, over such section. With these glaring defects appearing upon the face of the proceedings of the city, would you as City Counsel have attempted to defend an assessment for grading under such circumstances, lying at the foundation of the city's proceeding? 10

Objected to.

A. If a certiorari had been brought against the city on account of such an assessment while I was counsel for the city. I would have consider it to have been my duty to defend it.

209 Q. Do you believe with these glaring defects on the face of the city's proceedings, that it was right and a just exercise of legal discretion to take testimony charging, \$50 per day for taking it, taking large amounts of testimony to defend such an assesment? 30

Objected to.

A. If I am employed to defend a suit, I should charge just as much a day for taking testimony, as if I had been successful in the defence or not.

210 Q. In your judgment, is there any legal defence to an assessment thus made? And would you acting under your oath, put the city to large costs and charges to have defended such an assessment? 40

Objected to, as it has nothing to do with this case and is no cross-examination.

A. If I was specially employed to defend such an assessment, I would make the best defence I could. And if, in doing so, the city was put to large costs and charges, the blame, if any, should attach to the employers and not to the employee.

211 Q. Would you, acting under your appointment and oath of office as City Counsel, in the face of the decision of the court in 7th Vroom 159, and the apparent defects existing on the face of the city's proceedings on Union  
10 avenue, have put the city to more than \$2,700 of costs and charges in attempting to defend such assessment?

Objected to.

A. I don't think it would have cost that, as the City Counsel is a salaried officer, and the only costs to the city would have been the disbursements.

212 Q. Would you have attempted, or could you in  
pursuance of your oath of office and appointment put the prosecutors of those writs to the costs and charges of taking the two volumes of printed testimony, now before  
20 you, on those certioraris?

Objected to.

A. I would have put them to all the costs in taking  
and printing testimony, which I thought the interests of the city would have required me to do.

213 Q. Do you think that the charge of \$112.50 for  
an abstract of all grants and conveyances to Hoxsey & Beam, and an abstract of all grants made by them for property all through all sections of the city was pertinent  
30 testimony in these cases and therefore a legal charge?

Objected to.

Because it assumes that a charge of \$112.50 was made for a simple abstract, whereas the fact is that the  
08 charge of \$112.50 was made for a statement of the lots conveyed to and by Hoxsey & Beam, and also the dates when, and the prices at which the same were bought and sold, thereby furnishing the Special Counsel with the facts as to whether in particular cases, the lots of Hoxsey & Beam had been benefited by showing the prices at which they sold them, and at which they bought them.  
40 Such a statement being the cheapest way to get that information.

2d. Because the question is no cross-examination, and is irrelevant to this case.

A. I can't see now how those abstracts could be very pertinent testimony in those cases. But the counsel having the defence of those cases in charge, was then much abler to judge of that then than I am now.

Adjourned to 2 o'clock P. M.

2 o'clock P. M.

HENRY A. WILLIAMS, on *cross-examination*.

214 Q. Mr. Woodruff, as the counsel for himself, William W. Fairbanks, and the executors of Cornelius C. Hopper, brought a certiorari for setting aside the assessment on his own and his clients' property, for the assessment in opening North Straight street, amounting to \$5,750. The court giving its opinion in that case said that it was impossible to find any thing right about the proceedings in so opening and widening that street, and set aside the whole assessment as applied to him and his clients. 10

Would you as City Counsel, under your oath of office as City Counsel, after such a decision have expended large sums of money in attempting to sustain that assessment as a legal assessment against others, both assessments being for the same purpose? 20

Objected to, as containing a statement of facts not true. No cross-examination, and entirely irrelevant.

A. I can't tell what I would have done if such a state of things existed, but would have been controlled entirely by my judgment formed at the time when I was called upon to decide.

215 Q. Are you aware that Mr. Woodruff has charges in his bill for taking testimony in defense of the city, in this North Straight street assessment, as against the writ prosecuted by Hoxsey & Beam, when in sober truth no such testimony has been taken on or in behalf of that certiorari on either side. 30

Objected to, as the question states as sober truth what

is not so, as the affidavits taken are on file in the Supreme Court clerk's office.

2d. As no cross-examination and irrelevant.

Counsel for prosecutors say. There are charges in his bill for taking evidence in the North Straight street assessments, which Mr. Woodruff admits.

A. I am not.

A certified copy of a rule of the Supreme Court, November Term, 1868, made in the case of

10 THE STATE--

ARCHIBALD GRAHAM, *Prosecutor*,

*vs.*

THE MAYOR AND ALDERMEN, OF CITY OF  
PATERSON, *Defendants*.

} On certiorari to  
remove proceed-  
ings for straight-  
ening and wid-  
ening Division  
street.

"The court having heard the counsel and considered the reasons and testimony, and proceedings removed by the writ in this case, It is ordered that the said proceedings be set aside, made void and for nothing holden."

Said rule is marked exhibit P 2.

20 Objected to, as totally irrelevant and no cross-examination.

216 Q. You have heard read a rule of the court above offered in evidence, would you after that decision of the court have attempted to have sustained an assessment on that street, for the expenses in such case incurred by the city, under your oath and appointment as City Counsel?

Objected to, as the court had the legal power to set aside that rule and may have done, so and I believe did,

30 Second, as irrelevant and no cross-examination.

Counsel for prosecutor, says: It is untrue that that rule was set aside. The city submitted after the entry of that rule the claim of Mr. Graham, for damages to arbitration, and paid him \$2,200, for damages in filling in front of his property, which was precisely damaged as was the property of Mr. Hoxsey, and to-day there is no legal street in existence as Division street, if that rule and decision of the court is worth anything.

A. I can't tell now what I would have done had I

been acquainted with all the facts and circumstances attending the case at the time. I would have to form my judgment.

217 Q. I gather from your evasive answer a want of knowledge, by which you express yourself unable to answer the questions put, that you have not troubled yourself to obtain, as a legal counsel of the city, any knowledge or understanding of these certioraris on Fulton street, North Straight street, and Division street, where the courts have destroyed the assessments by which you are able to pass any opinion; is that supposition of mine true? 10

Objected to as insulting, irrelevant and no cross-examination.

A. I have troubled myself to obtain, as the legal counsel of the city, knowledge and understanding of all matters that have come to my consideration, so as to do justice to the city and to protect the rights of those interests with which I am entrusted as the city's counsel.

218 Q. And the reason that you have paid no attention and formed no opinion in these cases is it not, because you consider Mr. Woodruff under his appointment of Associate City Counsel in 1873, in charge of those cases? 20

Objected to.

A. I have not said that I paid no attention, and formed no opinion in the cases in which Mr. Woodruff was employed by the city to defend.

219 Q. Mr. Williams, will you say under oath, that you did pay any attention to those cases, and knew any thing about them after they were placed in Mr. Woodruff's hands? 30

A. Those cases were placed in Mr. Woodruff's hands sometime before I was appointed City Counsel, and I knew nothing of them except what I learned from Mr. Woodruff, and from the fact of his having them under his employment to defend.

220 Q. Can you recollect any time that you attempted or spent any time to learn the legal status of those cases? 40

Objected to.

A. I cannot now from present recollection say anything more than I have said in reference to that matter.

221 Q. Do you not know, and are you not satisfied, that you did not know anything about those cases, and did not trouble yourself with them to the last degree, because you considered Mr. Woodruff exclusively in charge of them.

Objected to.

10 A. I have already stated what I knew to the best of my recollection now about those cases, and as I have already stated that I knew Mr. Woodruff had been specially employed to defend them, and that I considered he had not only more knowledge concerning them, but was much abler to take care of them than I. I did not consider the interests of the city required me to trouble myself much, if any, about them ; that is their defense.

20 222 Q. You considered that the appointment of Mr. Woodruff as associate City Counsel, by the resolution of the Board of Aldermen, September 18, 1873, confirming the previous appointment by the Finance Committee, raised that obligation and duty on his part, did you not?

Objected to, as containing an untrue statement of fact, irrelevant and no cross-examination.

30 A. I never considered that resolution appointed Mr. Woodruff as associate counsel generally, but only employed him to defend particular suits, viz : the certioraris mentioned in this case, and that employment in my opinion did impose, he having accepted the same, an obligation to make a defense to said suits, to the best of his ability and judgment.

223 Q. You have been examined touching the assessments made by Messrs. Little, Ransom and Haines under the act to adjust unpaid street assessments. Have you not heard that Mr. Woodruff claimed great influence and use and benefit to the city in the preparation and procurement of the passage of that act.

Objected to as irrelevant and no cross-examination.

40 A. To the first part of the question, yes. To the latter part I have heard a good deal in reference to the passage of that act, but I have no recollection of ever having heard that Mr. Woodruff claimed great influence, use

and benefit to the City in the preparation and procuring the passage of that act.

224 Q. Do you not recollect that Mr. Woodruff, in some way in your presence at one or more times soon after the passage of that act, claimed to have been in some way instrumental in its preparation and passage?

Objected to as above.

A. I can't recollect that I have ever heard Mr. Woodruff so claim. I have heard a great many charges and counter charges, and insinuations in reference to the procuring of the passage of that act, but I do not know that there is any foundation to them. 10

225 Q. Did you not in a report to the city authorities July 9, 1875, in speaking of that act and its application to Totowa avenue, as one of the streets which had not yet been assessed for the expense of grading, use these words.

"It occurs to me that the provisions referred to in that act have been inserted with a view of meeting this particular case." 20

Did you not then, and at that time, regard that clause by which assessments were to be made for damages caused by the grading of that avenue, as having been inserted for the benefit of persons claiming damages on that avenue?

Objected to, as whatever opinion the witness might then have had, it would not alter the fact that that clause applied to Redwoods avenue, and all other streets in which no assessments had ever been made.

A. I did, if they are correctly printed in the book shewn to me. I did, as to the second question. 30

226 Q. Do you not recollect seeing it stated, in one or more of the city papers, that Mr. Woodruff had prepared this act and that it was to generally settle and regulate and adjust all street assessments, and that he was entitled to high consideration because as Associate City Counsel, he had accomplished the preparation and passage of this act?

Objected to.

1st. Because newspaper reports have never been considered by respectable lawyers legal evidence. 40

2d. Because the paper should be produced so that we

might see whether the facts suggested in the question have any foundation in truth.

3d. As irrelevant and no cross-examination.

A. I have no recollection of having seen such a communication. If such communication was published, the paper or papers produced would show it.

The latter part of this answer objected to, as being a Bunsbyism for prosecution.

10 Mr. Williams says if the counsel for prosecutors means that as an insult, and he wishes counsel to say whether he does or does not, Mr. Williams will decline to sit longer for cross-examination.

Counsel for prosecutors says, in order to relieve my friend from any idea of this kind, I did not intend it as an insult by any means.

20 227 Q. Was it not a matter frequently spoken of, or spoken of more than once by more than one of these commissioners, Little, Ransom and Haines that the provisions of that act allowing damages where no assessment had been made of the costs of grading, and the other provision of the act, which confined the assessment to the section of the street graded, was "*grossly unfair and inequitable*?"

Objected to as irrelevant and no cross-examination.

A. I have heard the commissioners, or one of them, speak disparagingly of that act in those two particulars. Mr. Little more than the other two.

30 228 Q. By that manner of assessment, Mr. Woodruff was allowed \$3,500 for damages caused in the grading of Totowa avenue, on his own petition, was he not?

Objected to as above.

A. I believe the commissioners awarded to Mr. Woodruff that sum for damages for the grading of that avenue.

229 Q. And did not Mr. Woodruff, by confining the assessment to the section of North Straight street opened, when before that time it could be by law assessed upon all property benefited, also escape by the provisions of that act all assessments upon his property?

Objected to.

1st. Because whether before the law referred to was passed, the cost of opening a street had to be assessed upon the land fronting on it only is a question of law.

2d. Because Mr. Woodruff did not own a foot of ground fronting on North Straight street, or within a quarter of a mile of it, or about that distance.

3d. Because the Supreme Court had before that law was passed set aside the assessment upon his property, saying as the counsel has quoted that "They could find nothing right about it." 10

A. The act referred to, assessed only upon the property in the case mentioned fronting on or adjoining the street. If Mr. Woodruff's property does not front on the street opened it could not be assessed under that act, the act will show by reference thereto the exact language, I give it only from memory.

230 Q. Was there not a general understanding that this act, to readjust unpaid street assessments, which as originally introduced into the legislature was a copy of the provisions of the Jersey City act, and that it had been altered to meet the Totowa avenue and North Straight street cases? 20

Objected to as irrelevant and no cross-examination.

A. I don't know what the general understanding was. I believe it was amended or changed from the original draft, but of that I am not sure as I did not prepare the act, but I know it did not pass as a draft of such a bill was, which I had seen. But when, where and by whom changed I have no knowledge. 30

231 Q. Mr. Woodruff was in attendance at Trenton nearly all that winter, that the act was passed, was he not?

Objected to as above.

A. I don't know.

*Re-direct examination.*

232 Q. Who was employed as special counsel or as associate counsel, to prepare and take the evidence in the Fulton street case, of Hampson and Woodruff, that you have referred to in your evidence, and which you argued?

A. I am not sure, but I believe it was Mr. Hilton.  
 233 Q. Who was the regular City Counsel at the time that case was argued by you?

A. I believe Thomas D. Hoxsey was.

*Re-cross-examination.*

10 234 Q. Do you not know that Mr. Hoxsey accepted the office of City Counsel, under the express provision that he should not be called upon to argue that case, because he might be charged with want of activity in the discharge of his duties, because the setting aside of Mr. Woodruff's assessment was tantamount to setting aside his assessment?

Objected to, as a person accepting office cannot at his volition limit and restrict the duties of the office.

A. I do not; I have only heard him say so, and I have no recollection that I have ever heard him give that reason before.

20 235 Q. At the time of Hilton's appointment he had not been admitted to the degree of a counselor-at-law, had he?

A. I don't know.

H. A. WILLIAMS.

Sworn to and subscribed, }  
 May 26th, 1876. }

ISAAC VAN WAGONER,  
*Supreme Court Commissioner.*

WILLIAM SWINBURNE, a witness, produced on the part of the defendant, Woodruff, being duly sworn, according to law, on his oath deposeth and saith:

30 236 Q. Are you Comptroller of the City of Paterson, if so, how long have you been Comptroller thereof?

A. Since May, 1872, I have been Comptroller.

237 Q. Do you know whether before December, 1873. The Mayor and Aldermen of the City of Paterson, employed Absalom B. Woodruff, as Special or Associated Counsel, in any case or cases as appears by the papers on file in your office, if so, in what cases and when?

Objected to, because there are no such papers showing that special appointment on file in his office, and if so, the papers should be produced.

A. There are papers filed in the Comptroller's office, and from book accounts and checks given, indicating Mr. Woodruff has received for counsel fees on two bills, amounting \$1,247.<sup>24</sup>/<sub>100</sub>. One was taxable costs, Division street and Godwin street, \$28.62 each; obtaining rules, setting aside judgment of Graham, \$100; retaining fees, Hays, \$50.00; retaining fees, Hatrick & Petry, \$50 00; trying cause Robert Hays, \$250; trying Hatrick & Petry's case, \$250; argument of motion in Hatrick & Petry's judgment, \$100; amounting to \$357.24.

10

238 Q. Have you the first bill of the two you have mentioned?

A. I have not.

239 Q. Have you looked for it and been unable to find it?

Objected to.

A. I have and could not find it.

240 Q. What was the amount of it and when was it paid?

Objected to, as Mr. Woodruff cannot make his present bill lawful, by showing the city may have paid him a previous bill under an entirely different city charter. 20

A. The amount was \$399, entered on the day book as paid January, 15th, 1870, stub No. 1514 of Comptroller's check book paid it.

241 Q. Have you the last one of the two bills paid him, if so please read it?

Objected to, as the evidence of the payment of one bill cannot legalize another bill.

A. The City of Paterson,

30

To A. B. Woodruff, Dr.

1870, June 13th. To taxable costs.....	}	
Graham (Divison street.).....	}	\$28.62
Do. (Godwin street).....		28.62
Obtaining rules, setting aside judgment of Graham.....	}	100.00
December 21st. Retaining fees ads., Hays....		50.00
Do. ads. Hatrick & Petry.....		50.00
1871, April 14. Trying cause ads., Robert Hays		250.00
Do. ads. Hatrick & Petry.....		250.00

June 10th. Argument of motion in arrest of }  
 Judgment in Hatrick & Petry case ..... } 100.00

-----  
 \$857.24

242 Q. Is that bill endorsed by the Finance Committee if so, please read their endorsement thereon?

Objected to.

A. Endorsed by W. W. Evans, A. S. Allen, C. McKiernan, J. V. Van Valkenburgh, Finance Committee.

10 243 Q. When was that bill paid?

Objected to.

A. October 14th, 1871.

WILLIAM SWINBURNE.

Sworn to and subscribed before }  
 me, May 26th, 1876. }

ISAAC VAN WAGONER,  
*Supreme Court Commissioner.*

ROBERT A. HALEY, a witness produced on the part of the defendant, Woodruff, being duly sworn according to law on his oath deposeth and saith.

20 244 Q. Are you Clerk of the City of Paterson?

A. Yes, I am.

245 Q. Are these five books the rules of the Board of Alderman of the City of Paterson and published by their authority and recognized by them as such?

A. They are.

Said five books are offered in evidence on the part of defendant, Woodruff, and are marked respectively exhibits W 25, W 26, W 27, W 28, and W 29,

*Cross examination.*

30 246 Q. Witness is shown five books purporting to be published by authority of the Mayor and Alderman of the City of Paterson, some of said books being charters and ordinances combined, and some of them being bound separately as ordinances and separately as charters.

Are those publications of ordinances and charters made by the City.

A. They are.  
The same are offered in evidence on the part of the  
prosecutors and marked exhibits P 10, P 11, P 12, P 13.  
and P. 14.

ROBERT A. HALEY.

Sworn to and subscribed before )  
me, May 26, 1876. )  
ISSAC VAN WAGONER,

*Sup. Ct. Commissioner.*

Testimony closed as stated by respective counsel.

## REASONS FOR REVERSAL.

## NEW JERSEY SUPREME COURT.

THE STATE— THOMAS D. HOXSEY AND DAVID B. BEAM,  <i>Prosecutors,</i>  <i>vs.</i> THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,  <i>Defendants.</i>	}	On certiorari, reasons, &c. To Inhibit, &c.
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- 10 And the said prosecutors in certiorari in their own proper persons, come and say, that the bill or account for legal services rendered and charged by Absalom B. Woodruff, against the said city for the sum of three thousand seven hundred and twenty-three dollars and sixty cents, ought not to be paid by the said defendants, because there is a want of all legal power of the said defendants to pay the same, and the payment of the said bill is a wrong and injury to the prosecutors, increasing the burden of taxation imposed or to be imposed upon
- 20 them, and appropriating the monies of the city raised for other and lawful purposes to this unwarranted and unlawful purpose.

30 FIRST. Because by the 12th section of the Act entitled An Act, "to provide for the more efficient government of the City of Paterson," provides for the appointment, by the Board of Aldermen, of a City Counsel, who shall be a Counselor-at-law, and that in pursuance of said section James Evans was appointed such Counsel, for the year beginning in May, 1873, and ending in May, 1874. And that the said James Evans, in pursuance of the 11th section of said act, took and subscribed an oath, within fifteen days of the time of such appointment, to faithfully and impartially execute the duties of that office of City Counsel, to the best of his ability and understanding, and the same was according to law and duly filed with the City Clerk of said city.

And that by virtue of an ordinance for that purpose passed, by the said Board of Aldermen, and signed by the Mayor of said city, the salary of the City Counsel was limited and prescribed, as, at and for the sum of fif-

teen hundred dollars per annum. Under the fifteenth section of said act it is provided that the compensation of the City Counsel, shall not be increased or diminished for the term of his appointment; James Evans was then a public officer, by virtue of his appointment and oath of office, charged with all the duties of such office. Another ordinance of said city imposed upon the said City Counsel, the prosecution of all actions at law in favor of the city, and the defense of the said City, from all suits and actions at law, for the term of his appointment. 10  
 Henry A. Williams, esquire, a Counselor-at-law of this State, was under and by authority of the city charter, duly appointed City Counsel for said city, for the year beginning in May, 1874, and ending in May, 1875, and took the oath of office, which was duly filed with the City Clerk.

James Evans, esq. and H. A. Williams, esq., each were entitled to and received the sum of fifteen hundred dollars per annum for the discharge of the duties of the office of City Counsel, during their respective terms, and thereby, the said James Evans and H. A. Williams, were bound and undertook, as sworn officers of the city government, under the said act, the discharge of all legal prosecutions by and against said city, and they were in law duly bound to perform the same. 20

By a supplement of said act passed in the year, A. D., 1874, by the 175th section of said act, the amount of money that the city could appropriate for the services of City Counsel, was limited and fixed at a sum not exceeding \$1500 per annum, therefore under the ordinance aforesaid, and under the 175th section of the amended act aforesaid, a limitation amounting to an inhibition as to the amount of money the city could appropriate to the payment of City Counsel. 30

By the 13th section of the act of A. D., 1871, the Board of Aldermen were empowered to remove from office for cause, the City Counsel, under this the said James Evans or Henry A. Williams, as public officers so charged with their public duty as City Counsel, could either of them have been removed for any neglect, infidelity, or incompetency in the discharge of said duties. 40

By the 24th of said charter of 1871, it was enacted, that no additional allowance beyond the legal claim which exists under any contract with the corporation, or for any services on its account or in its employment shall ever be passed by the Board of Aldermen; except by an

unanimous vote thereof. The said Evans, as City Counsel, from May, 1873 to May, 1874, and the said Williams, from May, 1874 to 1875, this being the time over which Mr. Woodruff's bill extends, were by their appointments and oaths officers of said city and by the receipt of the annual salary of \$1,500, were under a contract, clearly implied in law, to perform the duties of City Counsel in prosecuting and defending all actions at law by and against said city, but notwithstanding this obligation and duty on their part the Committee on Finance, a committee composed of members of the Board of Aldermen, without any authority to them delegated therefore, by the Board of Aldermen of said city, employed Absolom B. Woodruff, to undertake and discharge the duties of City Counsel, by appointing him Associate or Assistant City Counsel. In pursuance of this appointment they afterwards paid the said Woodruff, in retaining fees \$1,000 for the defense of their suits in certiorari to remove street assessments, and he now produces and presents his bill for allowance in defending four of those suits for the sum of \$3723.60 dollars additional. The adjudication and proceedings looking to the payment of this unlawful bill, had been taken when they were stopped by the order of this court in this suit.

SECOND. Because, there was no legal right of the Finance Committee of said city, to appoint said Woodruff, Associate or Assistant City Counsel, as they were inhibited from so doing by the city charter.

THIRD. Because, this bill should not be paid as his charges are unreasonable, extortionate, and unjust, and the said Finance Committee in their proceedings to audit and adjust the same, acted without a lawful discretion and inquiry in passing the same.

FOURTH. Because the Board of Aldermen had no power to ratify and confirm the unlawful appointment of the Finance Committee.

FIFTH. Because the charge of fifty dollars per diem for taking testimony, and which testimony was mostly impertinent and irrelevant, for the purpose of sustaining his client, and which should have been taken lawfully, and relevantly by the official City Counsel, who was passed by in the employment of Mr. Woodruff, was an unreasonable charge even had the same been lawful, which the Board of Aldermen and the Finance Committee should have refused to pay.

SIXTH. Because the charge of a retaining and counsel

fee of one hundred dollars each, upon the eleven certioraris, to remove street assessments, was not only an illegal charge for the want of competent authority to employ such counsel, but also because the amount charged, of which \$1,000 was paid by the Finance Committee, was unjust and illegal in itself.

SEVENTH. Because the charge of three hundred dollars each on four streets, to wit: on Fulton street, Tottowa avenue, Union avenue, and Graham avenue, as an advocate before the court is by virtue of three decisions of the Supreme Court of this State, wholly illegal and which the city cannot lawfully pay, and it is further illegal because the services rendered bear no just relation to the sum charged; the argument of the said counsel was limited by rule of the court to ninety minutes on the one argument he made, and the other three arguments were by short and unimportant briefs, submitted to the court, all covering the same narrow and limited line of defense, being duplicates of each other. 10

EIGHTH. Because a reasonable diligence and even limited application of legal judgment by Mr. Woodruff, would have shown him that the proceedings of the city, were by numerous decisions of the court, invalid upon their face, from the failure of the city to comply with the requirements of the charter. His services were therefore valueless to all intents and purposes, since an examination of the city's proceedings would have shown that by the decisions of the courts, the assessments attempted to be sustained by him were invalid. 20

## RETURN TO WRIT.

The Mayor and Aldermen of the city of Paterson :  
To A. B. Woodruff, Dr.

1873 Dec. 12.

Retaining fees in the following cases in certiorari in the  
Supreme Court.

	The State—The Paterson & Newark Railroad	
	Company, Pros't,	\$100 00
10	“ James Crooks & al, Pros't, (Buf- falo ave,)	100 00
	“ State Central Land Imp't Co., (Getty avenue,)	100 00
	“ Wm. Graham, & al, Pros't, (Gra- ham avenue,)	100 00
	“ Richard Van Houten, & al, (Sec- tion Totowa ave.,)	100 00
	“ Hoxsey & Beam, Pros., (Fulton street,)	100 00
20	“ Hoxsey & Beam, (York street,)	100 00
	“ “ (North Bridge street,)	100 00
	“ Hoxsey & Beam, ) Union avenue,)	100 00
	“ “ (North Straight street,)	100 00
		<hr/>
		\$1000 00

30 Comptroller's office. No. 396. PATERSON, N. J., October 17, 1876.  
Treasurer of the City of Paterson,  
Pay to the order of A. B. Woodruff, for legal ser-  
vices, one thousand <sup>00</sup>/<sub>100</sub> dollars, which place to  
account of contingent.  
\$1000.<sup>00</sup>/<sub>100</sub> Wm. SWINBURNE,  
Comptroller,

I hereby certify that the above is a true copy of check  
filed in the office of Comptroller.

Wm. SWINBURNE,  
Compt'.

No. 3518.

PATERSON, N. J., Oct. 17, 1874.

The First National Bank of Paterson,

Pay to the order of Hon. A. B. Woodruff, one thousand dollars.

A. A. HOPPER, Treasurer.  
per J. H. Westervelt, Atty.

\$1000.

Endorsed,

Pay A. S. Allen, Receiver of Taxes, or 10 order.

A. B. WOODRUFF,  
A. S. ALLEN,

Oct. 17, 1874.

The Mayor and Aldermen of the City of Paterson :  
To A. B. Woodruff, Dr.

1874. Jan'y 1. Written opinion as to right of city to give out work without contract .....	\$50.00	
Retaining fee in certiorari case of T. D. Hoxsey, as to Division street.....	100.00	
Feb'y 14. Paid for copy of certiorari returns in 2 cases and copies of reasons in 12 cases.....	24.38	20
Feb'y 21. Opinion in writing as to the power to make contracts for services payable in bonds. ....	50.00	
March 7. Attending at Trenton to argue Getty avenue case, (argt. postponed and leave given to take further proofs.....	50.00	
16. Taking evidence on 10 inst. as to Union avenue	10.00	
17. Attending to take evidence in Union avenue, (case adjourned Hoxsey not present.).....	50.00	
18. Taking evidence, Union avenue.....	50.00	30
19. " " " ".....	50.00	
24. " " Totowa ave., (section)....	50.00	
26. " " Union avenue.....	50.00	
April 1. Taking evidence, Fulton street.....	50.00	
" 7. " " Totowa ave., section $\frac{1}{2}$ day.....	25.00	
May 20. " " Graham ave.....	50.00	
	<u>\$659.38</u>	
Amt bro't over.....	\$659.38	40
May 21. Taking evidence, Fulton street $\frac{1}{2}$ day..	25.00	
25. " " Graham ave. ....	50.00	

	27.	"	"	Union ave.....	50.00
	29.	"	"	Fulton st.....	50.00
	June 9.	Paid	for copy of grade map.....		1.00
		"	deed Woodruff to Hoxsey, & al... ..		1.50
		"	for returns to certioraris in 7 other cases.		30.10
		"	copy of reasons filed in Getty ave., case.		5.68
10	11.	Argt of motion of T. D. Hoxsey, to set aside on affts. assessment against Hoxsey, Beam, & al., in Fulton st., (motion denied.)			100.00
	15.	Taking evidence in Fulton street case, (on June 1.).....			50.00
		Preparing affts and copies to use in motion made by Hoxsey, on June 11, and service of Hoxsey.....			50.00
		Paid witness fees to McKiernan, Osborne, Goetschius, Thrope, & al.....			9.00
	17.	Paid to Gillmore, Crooks, & al.....			1.50
20	24.	Taking evidence on 18, in Union av.			50.00
	"	"	on 22, Fulton st...		50.00
	"	"	on 23d, Union av..		50.00
	"	Attending to take evidence in Graham ave., case adj'd.....			5.00
	26	Taking evidence Totowa av, 25th...			50.00
	"	"	Graham av., (this day, $\frac{1}{3}$ day.		25.00
		Paid witnesses.....			2.00
30					\$1,315.16
		Amt. forward.....			\$1,315.16
	July 8.	Attending on 6, to take evidence in Union ave., (com'r absent.) .....			10.00
	"	Attending on this day, (do.).....			10.00
	Aug. 18.	Taking evidence Fulton st.. .....			50.00
	24.	Attending to take.....			
	Sept. 1.	Taking evidence, Fulton st.....			50.00
	2.	"	"		50.00
40	3.	Paid fees of J. H. Blauvelt, for abstract of deeds to and from Hoxsey and Beam in the city.			112.50
	"	for copies of deeds.....			5.00
	"	Clerk of Bergen for search.....			21.80
		Paid witness fees.....			4.50
	11.	Taking evidence, 4, 7, 10 and 11, on Fulton street case.....			200.00

	11. Attending to take .....			
Oct. 9 and 15.	Taking evidence 2 days, Union ave.		100.00	
20.	do do Totowa ave., section.		50.00	
21.	do do Graham ave.		50.00	
22.	do do Totowa ave., section.		50.00	
Nov. 12.	Preparing argument and argt. of Fulton street case.....		300.00	10
Dec. 18.	do Totowa av., sec. case.....		300.00	
	Paid for printing argument (4 certioraris and 14 prosecutors.....		20.00	
	do on Union ave., case.....		300.00	
	Paid for printing argt.....		18.00	
	Argt. &c., in Graham ave.....		300.00	
	Paid for printing, do.....		22.00	
			<hr/>	
			\$3,338.96	
Amt. bro't over.....			\$3,338.96	20
1875. Feb. 15.	Taking evidence in North Straight st., case .....		50.00	
	Paid witnesses.....		1.50	
Feb. 16.	Taking evidence Division st.....		50.00	
17.	do do North Straight st.....		50.00	
18.	do do North Bridge st.....		50.00	
27.	Argument of motion to dismiss certioraris in Division st., North Bridge and North Straight street.....		50.00	
	Draw'g aff'ts to use on above motions.....			30
	Paid J. S. Barkalow for copy of evidence.....		25.44	
March 6.	Argument of motion of Hoxsey before Sup. Court, to allow him and Beam costs in Fulton st., and Graham ave., (motion denied.) .....		50.00	
	do. of mo. of Hilton to allow his clients costs in Totowa av., and Graham av., cases, (denied as to Graham ave.).....		50.00	
March 18.	Paid for copy of courts opinion in 3 cases.		7.70	40
			<hr/>	
			\$3,723.60	

(Retaining fee in ten certiorari cases not included in above, already paid.)\*

\*Bill endorsed, contingent bill of A. B. Woodruff, Jan'y 1, 1874, to March, 1875, as within balance \$3723.36.

Approved, S. S. Sherwood, John Quin, August Fels.  
A true copy from the files.

Witness my hand and the seal of the city of  
[L. S.] Paterson, this 25th day of January, 1876.  
ROBERT A. HALEY,  
*City Clerk.*

December 15, 1873. The Finance Committee reported that in view of the numerous suits pending versus the City, they have resolved upon a vigorous defense, and have therefore retained A. B. Woodruff, Esq., as Associate Counsel.

On motion the action of the committee was endorsed.

June 21st, 1875. The Committee on Finance reported back a bill from Mr. A. B. Woodruff, for services rendered in certiorari cases, and asking for instructions.

Upon motion the bill was recommitted. From proceedings of Committee on Finance, July 14, 1875. The chairman stated that he had been requested by Mr. T. D. Hoxsey to ask the consent of the committee to appear before them concerning the bill of Mr. A. B. Woodruff. On motion of Ald. Day the consent of the committee was refused, and the clerk directed to inform Mr. Hoxsey accordingly.

Moved and seconded that the chairman be requested to wait upon Mr. Woodruff for the purpose of obtaining reduction on his bill.

Agreed to.

July 19, 1875. From A. B. Woodruff, Esq., presenting a statement of the condition of the certiorari cases as to the street assessments placed in his hands as counsel for the city of Paterson. Communication received and ordered published with the proceedings of the Board.

July 21st. Upon motion of Ald. Day, the City Counsel was requested to give to the committee an opinion in writing as to the legality of the employment of Mr. A. B. Woodruff, in accordance with a report of the Committee on Finance to the Board of Aldermen, which report was adopted by said Board Dec. 15, 1873, and as to the legal right for the city to pay the bill of Mr. Woodruff for services rendered pursuant to such employment.

August 4th, 1875. An opinion in writing from the City Counsel concerning the bill of Mr. A. B. Woodruff was received.

By Ald. Quin. *Resolved*, That the bill of Mr. A. B. Woodruff be paid. Not agreed to.

Ayes--Ald. Quin and Fels.

Nays--Ald. Sherwood, Day and Morehead.

By Ald. Day. *Resolved*, That the chairman of Committee on Finance, be requested to ascertain from Mr. Woodruff whether he will consent to submit the bill presented by him to arbitration, and if so that the proper papers be prepared to be submitted to the Board of Aldermen for approval. Adopted Sept. 6th, 1875. The Committee on Finance presented a reply from Mr. A. B. Woodruff in reference to a resolution passed by said committee concerning the bill presented by him. 10

By Ald. Quin. *Resolved*, That the Comptroller be directed to draw his warrant upon the City Treasurer for the amount of Mr. Woodruff's bill and the Treasurer be authorized to pay the same. Amended by Ald. Smith. That the matter be deferred for two weeks.

Ald. Graham, further amended that the matter be referred back to the Committee on Finance. On the adoption of the amendment the ayes and nays were called and lost by the following vote. Ayes Ald. Smith, Ryerson, Schoonmaker, Fullerton, Graham, Dyer. 20

Nays--Ald. Gillmor, Martin, Day, Sherwood, Fels, Morehead, Quin, Reilly, and Sweeney.

On the adoption of the amendment the ayes and nays were called and lost by the following vote. Ayes--Ald. Smith, Ryerson, Gillmor, Schoonmaker, Fullerton, Graham.

Nays--Ald. Martin, Day, Sherwood, Fels, Morehead, Quin, Reilly, Sweeney, and Dyer. 30

On the adoption of the original motion the ayes and nays were called and lost by the following vote. Ayes--Ald. Smith, Sherwood, Fels, Quin, Reilly, Sweeney.

Nays--Ald. Ryerson, Gillmor, Martin, Schoonmaker, Fullerton, Graham, Day, Morehead, Dyer.

Sept. 20, 1875. The Comptroller reported the bills passed by the Committee on Finance, and audited by him. Ald. Quin moved that the report be received and the Comptroller directed to draw his warrant upon the Treasurer in payment of the claims. The President ordered that the bill of Mr. A. B. Woodruff be struck off the list reported by the Comptroller, and decided that said bill was not regularly before the Board. 40

Ald. Quin appealed from the ruling of the President when the question was put, "shall the appeal be heard"

which was decided in the affirmative by the following vote. Ayes—Ald. Martin, Smith, Schoonmaker, Day, Sherwood, Fels, Morehead, Quin, Reilly, Sweeny, and Dyer.

Nays—Ald. Ryerson, Gillmor, and Graham.

The opinion of the City Counsel being asked for, he stated that the votes taken on the motion to pay the bill, to postpone, and to recommit at the last meeting of the Board must be first re-considered before the bill can be considered as the property of the Board.

The President then put the question shall the chair be sustained, which was in the affirmative by the following vote. Ayes—Ald. Smith, Ryerson, Martin, Schoonmaker, Sherwood, Graham, Fels, Morehead, Reilly, and Sweeney. Nays—Ald. Quin and Dyer.

- 10 By Ald. Dyer. *Resolved*, That the votes taken on the bill of Mr. A. B. Woodruff, at the last meeting of the Board be reconsidered. Agreed to.

Ald. Graham moved to refer the bill to a special committee of five. Ald. Dyer amended that the bill be referred to the Committee on Finance. Amendment agreed to by the following vote. Ayes—Ald. Smith, Schoonmaker, Morehead, Quin, Reilly, Sweeney and Dyer. Nays—Ald. Ryerson, Martin, Day, Sherwood, Graham, and Fels.

- 20 October 4, 1875. From citizens and tax-payers remonstrating against the payment of the bill of Absalom B. Woodruff.

Received and ordered placed on file.

The Committee on Finance reported the bill of Mr. A. B. Woodruff, approved, (signed by S. S. Sherwood, John Quin, August Fels.)

- 30 Mr. T. D. Hoxsey here served an order on the Board of Aldermen, from Hon. J. Dixon, Justice Supreme Court, returnable November Term, next, of the said court directing the Mayor and Aldermen and Mr. A. B. Woodruff to show cause why a certiorari should not issue in reference to said bill and ordering that until the discharge of the order, further proceedings looking to the payment of said bill be stayed.

In obedience to the annexed writ to the Mayor and Aldermen of the city of Paterson, directed the said Mayor and Aldermen, within mentioned, do hereby certify and send to the Honorable the Justices of the Supreme Court within mentioned, the bill of one thousand dollars, the bill of three thousand seven hun-

dred and twenty-three dollars and sixty cents; and all the proceedings for the payment of the first bill of one thousand dollars; and all the proceedings looking to the payment of the second bill of three thousand seven hundred and twenty-three dollars and sixty cents, as such proceedings remain on file in the office of the Comptroller, City Treasurer and City Clerk of said city, as fully and entirely as they remain, whereof mention is in said writ made with all things touching the same.

In witness whereof the Mayor and Aldermen of 10

[L. S.] the city of Paterson have caused their seal to be hereunto affixed, and signed by their clerk, this 1st day of February, 1876.

ROBERT A. HALEY, *City Clerk.*

New Jersey, ss.: The State of New Jersey to the Mayor and Aldermen of the City of Paterson, greeting: We being willing for certain

[L. S.] reasons, to be certified of a certain employment as associate or legal counsel, for the

City of Paterson, of Absalom B. Woodruff, by the Committee of Finance of said city, and of said Woodruff's bill for professional services rendered theretofore, against said city, and of your proceedings confirming such employment, in the month of December, A. D., eighteen hundred and seventy-three; and of his certain bill of one thousand dollars, for retaining fee, paid him in the month of December, A. D., eighteen hundred and seventy-four; and of the voucher or vouchers, issued in the payment of said bill, with the endorsements on said bill of one thousand dollars; and the endorsements in said vouchers, 30  
issued for the payment of the same, and also his bill for service as attorney, advocate and counsel, rendered by the said Absalom B. Woodruff against said City of Paterson, for the sum of three thousand seven hundred and twenty-three dollars and sixty cents (\$3723.60), together with the endorsements thereon, and the action and resolutions of the Committee of Finance of the Board of Aldermen of said city, relating thereto, and of the action of the Board of Aldermen of said city, looking to the payment of the same; and also of all the proceedings, 40  
votes, resolutions, references and action of the Board of Aldermen, relating thereto, with all of your proceedings relating to the payment and employment of said Woodruff, both by the action of said Finance Committee and said Board of Aldermen, for such legal or alleged legal

services, rendered as aforesaid against said city, by the said Woodruff.

We command you that the said bill of one thousand dollars, and the said bill of three thousand seven hundred and twenty-three dollars and sixty cents, (\$3,723.60) and all of your proceedings for the payment of the first bill of one thousand dollars, and all your proceedings looking to the payment of the second bill of three thousand seven hundred and twenty-three dollars and sixty cents, as such proceedings remain on file, in the office of the Comptroller, Collector and Clerk of said city, as fully and entirely as they remain with you, by whatever name or names, they may be designated, called or known in the same, to the Justices of our Supreme Court, at Trenton, on the fourth Tuesday, in February next, you certify and send together with this writ, that therein may be done what of right and according to the constitution and laws of this state, should be done.

Witness, Mercer Beasley, Esquire, Chief Justice of the Supreme Court, at Trenton, this 30th day of December, A. D. eighteen hundred and seventy-five.

THOMAS D. HOXSEY,  
*Att'y.*

BENJAMIN F. LEE,  
*Clerk.*

A true copy.

BENJAMIN F. LEE, *Clerk.*

13. That in addition to the City Counselor, the Finance Committee be authorized to employ counsel in all causes in which the city is interested when they deem it necessary to do so.

I hereby certify the foregoing, to be a true copy of rule 13, of the by-laws of the Board of Aldermen, of the City of Paterson, adopted by the Board of Aldermen, May 6, 1872.

ROBERT A. HALEY,  
*City Clerk.*

June 30, 1873. By Alderman Griffith. Resolved that the rules and by-laws of the Board of last year be adopted, so as to govern this Board.

I hereby certify the foregoing, to be a correct transcript from proceedings of the Board of Aldermen of the City of Paterson, of the above date.

ROBERT A. HALEY,  
*City Clerk.*

Exhibits 17 to 25 inclusive are assessments and awards by Messrs. Haynes, Littell and Ransom, which the defendant, Woodruff, has not signified a wish for them to be printed, are all duplicates of each other and printed matter, and the same are not printed.

Exhibit W 3 is a sample of six other like notices, pro at the same

### *Exhibit W 3.*

#### NEW JERSEY SUPREME COURT.

THE STATE—		10
THOMAS D. HOXSEY AND DAVID B. BEAM,	}	Certiorari in the matter of removing assessment.
<i>Prosecutors,</i>		
<i>vs.</i>		
THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,	}	
<i>Defendants.</i>		

Made by said city in the opening and grading of Fulton street.

Sir, take notice of the taking of testimony, to be used in the argument of the above certiorari, before William Pennington, esq., a Commissioner of the Supreme Court, on Friday, February 13th, 1874, at ten o'clock, A. M., at his office in the City of Paterson. 20

THOMAS D. HOXSEY & SON,  
*Att'ys for Plff's in Certiorari.*

To JAMES EVANS, ESQ.,  
*Att'y of Defendants in Certiorari.*

I acknowledge due service of the above notice, this 6th day of February, 1874. 30

(Endorsed.)

Notice of taking of testimony,  
THOMAS D. HOXSEY & SON,  
*Att'y's.*

*Exhibit W 13.*

## NEW JERSEY SUPREME COURT.

<p>THE STATE.—</p> <p>THOMAS D. HOXSEY, AND DAVID B. BEAM.</p> <p style="text-align: center;"><i>Prosecutors,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>THE MAYOR AND ALDERMAN OF THE CITY OF PATERSON.</p> <p style="text-align: center;"><i>Defendants.</i></p>	}	<p>On certiorari to remove assess- ments on Fulton Street.</p>
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10

Sir: Take notice that I shall proceed in the examination of witnesses in the above stated certiorari, before William Pennington, Esq, Supreme Court Commissioner, at his office on Monday next, August 17th, at ten o'clock in the forenoon.

THOMAS D. HOXSEY & SON,  
*Att'y for Prosecutors.*

To HENRY A. WILLIAMS ESQ.  
*City Counsel for the City of Paterson.*

20

(Endorsed.)

Rec'd Aug, 14th, 74.

*Exhibit W 14.*

To the Mayor and Aldermen of the City of Paterson:

30 Take notice that I shall apply to the Judges of the Supreme Court at the State House in Trenton, on Thursday the eleventh day of June, A. D. 1874, at ten o'clock A. M., or as soon thereafter as the Court shall be able to hear the same, for a rule of the Court to vacate and set aside the assessments made upon the lands of Thomas D. Hoxsey, David B. Beam and Thomas Franklin Hoxsey, for the grading of Fulton Street from Totowa Avenue to Union Avenue, upon the grounds that the decision of the Court in the certiorari of the State, David Hampson, Prosecutor, and the State, Absalom B. Woodruff, Prosecutor, for the purpose of removing the assessments made against their lands for such grading, has been in effect to set aside and vacate all assessment, made for that purpose, and that on such motion I shall

use the printed state of the case used in such arguments the maps, returns, deeds, and papers filed in that case, and the decision of the Court on such argument to sustain such motion.

THOMAS D. HOXSEY.

*Att'y Prose,*

and for David B. Beam and Thomas D. Hoxsey.

(Endorsed.)

Notice for rule. June 5th, 1874. Henry A. Williams Esq. handed this to me.

A. B. WOODRUFF.

10

*Exhibit W. 15.*

NEW JERSEY SUPREME COURT.

THE STATE—  
THOMAS D. HOXSEY AND DAVID B.  
BEAM.

*Prosecutors,*

*vs.*

THE MAYOR AND ALDERMEN OF THE  
CITY OF PATERSON,

*Defendants.*

On certiorari to  
Remove assess-  
ments on Fulton  
Street.

20

Sir:—Take notice that I shall proceed in the examinations of witnesses in the above stated certiorari, before William Pennington, Supreme Court Commissioner, at his office on Monday next, August 17th, at ten o'clock in the forenoon.

THOMAS D. HOXSEY & SON.

*Att'y for Prosecutors.*

30

To A. B. WOODRUFF.

*Att'y for Defendants.*

(Endorsed.)

Rec'd Aug 13, '74.— A. B. W.

An ordinance fixing the salaries of certain City Officers.  
The Board of Alderman of the city of Paterson do ordain as follows:

SEC. 1. The yearly salaries of the City Officers herein-after named shall be as follows.

- That of the Mayor, one thousand dollars ;
- That of each Alderman, four hundred dollars ;
- That of the City Clerk, fifteen hundred dollars ;
- That of the Clerk of the Board of Aldermen, eight
- 10 hundred dollars ;
- That of each Commissioner of Assessment and Revision of Taxes, twelve hundred dollars ;
- That of the Clerk to Commissioners, eight hundred dollars ;
- That of the Receiver of Taxes and Assessments, twenty five hundred dollars, and fifteen hundred dollars for Assistants ;
- That of the Comptroller, eight hundred dollars ;
- That of the City Treasurer, eight hundred dollars ;
- 20 That of the Superintendent of Streets and Sewers, twelve hundred dollars ;
- That of the Clerk of Superintendent of Streets and Sewers, six hundred dollars ;
- That of the City Surveyor, twenty five hundred dollars, and one thousand for Assistants ;
- That of the Superintendent of Out-Door Relief, seven hundred dollars ;
- That of the Superintendent of In-Door Relief, six
- 30 hundred dollars ;
- That of the Recorder, twelve hundred dollars ;
- That of the City Physician, seven hundred dollars ;
- That of the City Counsel, fifteen hundred dollars ;
- That of the Chief of Police, one thousand dollars ;
- That of the Janitor of City Hall, seven hundred dol-
- lars ;
- That of the Chief Engineer of Fire Department, five hundred dollars ;
- That of each of the Assistant Engineers of the Fire Department, three hundred dollars ;
- 40 That of each Sergeant of the Police Force, nine hundred dollars ; and of each patrolman on the Police Force, eight hundred and fifty dollars, the same to be in full for all services performed by them.

SEC. 2. All ordinances, parts of ordinances and resolutions inconsistent with this ordinance are hereby repealed.

SEC. 3. This ordinance shall take effect immediately.  
Passed May 6th, 1872.

W. W. EVANS,  
*President of the Board of Aldermen.*

Attest:—ROBERT A. HALEY, *City Clerk.*

Approved:—SOCRATES TUTTLE, *Mayor.*

I hereby certify the foregoing to be a true copy as taken from book "B" of Ordinances in my Office.

Witness my hand and the seal of the City of  
[L.S.] Paterson this 3d day of May, A. D., 1876. 10

ROBERT A. HALEY, *City Clerk.*





