

N. J. Court of Errors and Appeals.

THE MAYOR AND ALDERMEN OF
JERSEY CITY,

Plaintiffs in Error.

vs.

JOHN S. EDWARDS,

Defendant in Error.

In Error.

*Brief for Jersey
City.*

STATEMENT OF CASE.

This is a suit to recover from Jersey City the difference between an assessment made March 23, 1870, by the Mayor, 10 &c., of Hudson City, for grading, flagging, &c., of Webster avenue, and a re-assessment for the same improvement made by Dan'l Haines, Jesse Williams and Theo. Little, Sept. 19, 1874, under the act of March 26, 1873, (Laws 1873, p. 442). The first assessment against the property of plaintiff was for \$1,311.20, and the re-assessment under the act of 1873 was for \$640.99. The case was tried before Judge Knapp without a jury, and he found for the plaintiff \$962.08.

After the first assessment was confirmed, the plaintiff 20 sued out a writ of certiorari to remove the first assessment into the Supreme Court, (pp. 86 to 91) and the Court at the November Term, 1871, after argument, upon motion of Mr. Dixon, the attorney for Jersey City, decided "that none of the reasons assigned, whether of fact or of law, are sufficiently sustained," and "ordered that *said assessment*

be affirmed." (See Rule, p. 91 of case). This judgment in certiorari was never reversed, and anticipated proceedings on a writ of error to be brought by plaintiff were abandoned by him. Plaintiff says he abandoned all idea of a writ of error after the passage of the act of 1873.

Mr. Edwards testifies (page 9) that after he had heard from his attorney that the certiorari proceedings had gone against him, that he paid the assessment bills. The bills were paid by plaintiff June 1, 1872, June 29, 1872, and 10 August 7, 1872, (page 7). Each of these bills were paid just the same as any other bill, except that plaintiff said as he paid each bill, "I pay it under protest," (page 8 of case).

POINTS FOR JERSEY CITY.

I. The learned Judge who tried the case found for the plaintiff under the authority of the case of *Mayor, &c., of Jersey City ads. Riker*, 9 Vroom, p. 225, notwithstanding the Supreme Court had affirmed the assessment on certiorari, because the tribunal set up by the act of March 26, 1873, (Laws 1873, p. 442), "did effectually annul the first assessment, and set up another which is now ostensibly in full 20 force." (Opinion of Judge.)

II. The city, asks the Court to reverse the doctrine stated in the case of *Mayor, &c., ads. Riker*, on the ground that the law is otherwise than as stated in the able opinion written in that case. The decision admits the doctrine as held by Chief Justice Shaw in the case of *Lincoln vs. Worcester*, 8 Cush. 55, (see page 226 of 9 Vroom), but the Court held that the doctrine thus established was not applicable to the Riker case, because the tax paid had been set aside, and they 30 said the case was analagous to that of a judgment, where on reversal the defendant is restored as nearly as practicable to his original condition and for that purpose a writ of restitution goes. I would suggest to the Court that there is a great difference between a judgment and an assessment for a public improvement. When a judgment is reversed it is

upon the ground that as the case stood there was no right whatever to any recovery at all, and therefore the payment had no basis whatever to rest upon—no portion whatever was due—but in the case of an assessment for a public improvement, when the Court sets it aside, a new assessment is ordered. There is left the basis of a just and legal claim. The party is fairly called upon to pay whatever benefit his property has received from the improvement—the amount thereof may be a subject of dispute, but the setting aside of the assessment is merely for the purpose of making a re-assessment upon legal principles. The plaintiff when he paid was legally bound to pay the benefit his property had received. If the subsequent re-assessment proceedings were right, then he was charged too much, and he paid too much, but as he was bound to pay something and the city under a claim of right received from him voluntarily more than he ought to pay, was it not in law a voluntary payment? Is not the case of a judgment reversed entirely different from that of an assessment set aside and a new assessment ordered? I respectfully ask the Court to carefully reconsider the doctrine laid down in the Riker case, as the question is one of great practical importance to all the cities in this State. 10 20

III. If the Court holds that the doctrine in the Riker case is the law, then I suggest that the present case is distinguished therefrom, because the assessment in this case that was paid has been judicially affirmed (p. 91 of case), and therefore as Riker was permitted to recover because "the tax which was paid has been set aside," and that element is wanting in this case, the doctrine of the Riker case is not applicable to the plaintiff in this suit. 30

IV. The Judge who tried the case holds that "*the fact of vacation* is the condition upon which one having made payment while the assessment was in force is permitted to have restitution." He also holds that such vacation was actually made under the act of March 26, 1873, by the tribunal therein referred to. He gives to the acts of this tribunal the same force and effect that the Supreme Court in

the Riker case gave to a judicial decree setting aside an assessment.

The answer to this view is that even if such vacation would be as effectual as a judicial decree, which I contend it is not, yet as matter of fact there was no vacation of the original assessment.

First. The preamble of the act shows that it was not intended to apply to assessments that had been confirmed upon certiorari.

10 *Second.* The first section of the act is confined to *unpaid* assessments. This assessment was paid in 1872. The authority given to the Judges of the Supreme Court was to "appoint three discreet and impartial persons, who shall constitute a board to examine, revise, alter and adjust as hereinafter provided, all UNPAID assessments, &c."

Third. Under Section 5 of the act of March 26, 1873, the new assessment, when lawfully made, is final and conclusive, but even if this is a case where a new assessment could have been made, yet the old assessment is not extinguished, 20 vacated or set aside, as I understand the act of 1873, until a new assessment is lawfully made. The alleged new assessment by Messrs. Haines *et. al.*, is *void on its face* and is in no sense a legal assessment. It is liable to be expunged from the record under a decree in chancery declaring it a cloud upon the title under act of March 2, 1870. (Laws 1870, p. 20), *Bogert vs. City of Elizabeth*, 12 C. E. Green, p. 568. It is void among many other reasons because it does not affirmatively appear that the assessment (the new one) does not exceed the benefits. (*Village of Passaic vs.* 30 *State, &c.*, 8 Vroom, 538).

Respectfully submitted,

LEON ABBETT,
Counsel for Jersey City.

N. J. Court of Errors and Appeals.

JOHN S. EDWARDS, Defendant in Error, <i>ads.</i>	} <i>In Case.</i> <i>Brief and</i> <i>Points of De-</i> <i>fendant in Er-</i> <i>ror.</i>
THE MAYOR and ALDERMEN of JERSEY CITY, Plaintiffs in Error.	

The facts are that on March 23, 1870, the Mayor and Common Council of the city of Hudson confirmed an assessment on the property of defendant for grading and flagging Webster avenue, amounting to \$1,550.06 [Ex. P, 1, 2 and 3 on pages 35, 36 and 37].

This assessment was made under and by virtue of a statute which was unconstitutional, in that the whole expense of the improvement was to be assessed upon the lands fronting on the improvement, although the expenses might exceed the benefits [Charter of Hudson, Laws of 18 , page].

This assessment in 1870 was taken by defendant by *certiorari* to the Supreme Court of this State, where the assessment was confirmed, November 29, 1871 [page 91].

This decision was carried by the defendant by writ of error to this Court, in March, 1872 [John Linn, pp. 32, 33].

Pending said writ of error, defendant paid said assessment under protest [p. 35; and Love, p. 17].

Pending said writ of error, the act, entitled "An act to adjust unpaid assessments in Jersey City" [Pamp. L., p. 442], approved March 26, 1873, was passed (*ib.*).

That under said act, the defendant's petition, in accordance with the terms of said act by written objection, objected to said assessment [p. 40, and p. 45].

The Commissioners, appointed under said act, after the presentation of said objection, duly considered the same, calling the respondent as one of the witnesses [p. 46, l. 13, l. 32], and finally determined to assess the defendant for the same lots but \$640.99, and that that was all the benefits received by him, or by his lots, for said improvement [Ex. P, 5, p. 39; Ex. P, 7, pp. 42, 43; Love, p. 24, l. 38, to p. 25, line 2].

And they, the said Commissioners, actually did re-assess defendant for the same improvement, the said sum of \$640.99.

This is an action for money had and received, to recover the amount paid under the assessment of March 23, 1870, allowing, as a set-off therefrom the amount which said Commissioners, under the act of 1873, said these lots were benefited by said improvement.

The proper construction of the act of 1873 [Pamp. L., p. 442], would require that in such cases, as this case presents, the city should re-pay to the persons who have paid the assessment previously assessed upon their property the amount of such former assessment.

This act is entitled "An act to adjust *unpaid* assessments in Jersey City."

This might be understood to mean to adjust *unpaid individual* assessments, but upon reading the whole

act it is very clear that the meaning is to adjust assessments where the whole assessment for the improvement has not been paid in full; that is, where some of the individuals assessed for the improvement have paid no part of their assessment; for section third, the section upon which their jurisdiction must be founded, provides that any person aggrieved by any assessment may present a petition stating his objection, and praying for relief, and upon presenting such petition the assessment so objected to shall be considered a disputed assessment, so as to give said board (created by the act) full jurisdiction "to revise, alter and adjust." What? why, "the whole of the said assessment and re-assess such amount as would have been a reasonable sum for such improvement, upon the lands benefited in proportion," &c.

Can this possibly be construed to mean merely the individual assessment of this one individual presenting his petition?

This Court has construed an assessment to mean the whole assessment, and not an individual assessment; *Van Winkle v. West Hoboken*, 8 Vroom, p. 407.

Does it not mean, as it says, *the* whole assessment for a certain improvement? The Board itself so construed it, for in this case they did re-assess the whole assessment upon the petition of a few.

Ex. 6, page 40, Ex. 7, page 42.

So construed by City Attorney, for he was present and did not object [p. 46, fols. 20, 40]. Mr. Douglass was City Attorney.

So, too, the next section provides "that shall give public notice of the time and place of holding their first meeting for the consideration of *each assessment*;" will it be contended that this means each individual assessment, or does it mean the assessment for each improvement. If it don't mean that, then the board have not given a legal

notice, for they only gave notice of the improvement, never to the individuals. Upon whom was this assessment to be served? Why, upon "the owners of property subject to the assessment." And so on through this act, every time the word assessment is used it is clear from the context that it means the assessment for the whole improvement and not the individual assessment.

If this act is construed with this meaning for the word "assessment," it is evident that the intention of the Legislature was that when this Board *had once obtained control over an assessment, and which thereby became a disputed assessment, that they would give relief, not only to those who had not paid the amount assessed, but also those who had;* and they did not intend that the owner of property, assessed by such disputed assessment, who had promptly paid his assessment, as a good citizen should, could have no relief; but his neighbor, who had failed to pay his assessment, might not only have his assessment reduced, but compel such owner, who had paid, in addition to the unjust assessment already paid, to pay a portion of this reduction.

The preamble shows that the intent of the law was to have examined certain assessments in Jersey City, the justness of which were disputed, and such assessments (meaning assessments as a whole, and not individuals) corrected and adjusted. Nothing here to imply but what if the assessment should be found to be unjust, it would be corrected, as well for those who have paid as for those who have not paid.

The first section provides for the appointment by the Supreme Court of three persons to form a board "to examine, revise, alter and adjust all *unpaid assessments*, whether heretofore set aside or not."

These words, "*unpaid assessments*," are used here in the same sense as in the title, for the same reason.

We could speak of an unpaid assessment after it was

set aside, if we meant an assessment for the whole improvement; but we would not speak of an assessment upon an individual, which had been set aside by the Court, as an unpaid assessment.

Does not the words, "adjust an unpaid assessment" mean the division of a whole among several?

What meaning do you attach to the last words of this section: "which are or may be disputed," if by unpaid assessment you understand an individual assessment?

Does an individual, after his assessment has been set aside, dispute any further about that assessment? How can there be any dispute about what was once an assessment, but which, as to the individual, no longer exists? About those assessments which have been set aside by order of the Court, there may be a dispute.

1. Those who have paid may dispute.
2. As to the power of re-assessing others, may be a dispute.

Taking, therefore, the words themselves, "examine, revise, alter and adjust all unpaid assessments, whether heretofore set aside or otherwise, which are or may be disputed," we urge the reasonable construction of the words "unpaid assessment" is that it means assessment upon which all the property assessed have not paid the amount assessed upon it. It means the assessment as a whole, and not a subdivision of it.

That this is the construction, is shown by the following section:—

Section two provides that said Board shall determine and adjudge.

- 1st. Fair cost of the improvement.

2d. What lands are benefited by the improvement.

3d. Proportion of the benefits for each lot.

4th. Assessment on each lot—its proportion.

The remainder of cost of said improvement to be paid by the city at large.

If they were only to deal with that portion of the assessment which was unpaid, why ascertain the proportion for *each* lot? Why take this trouble? Why ascertain more than the proportion of the lots remaining unpaid?

And if they did ascertain the proportion of each lot, why compel them to assess the same on *each* lot benefited?

How can you escape the force of the language "What lands are benefited, the proportion of benefits received by each lot of land, and assess on each lot such proportion," unless you say that no attention whatever was to be paid to the question whether some of the lots had paid the amount previously assessed upon them or not; and if that be the meaning, what can *unpaid assessment* in the previous section mean, except an assessment of which all the property assessed has not paid its assessment?

What authority would the Board have to assess all the lots, paid and unpaid, unless you give to them this meaning?

The proviso to this section is consistent with this construction.

The third section provides the manner in which this Board is to obtain jurisdiction over an assessment. It is

to be by petition. By whom? Is it limited to the party who has not paid his assessment? If it were, this Board would have had a great deal less business. Would the party whose assessment had been set aside, ever have applied? How was he interested? There was nothing against his property, and there was no way provided by which there could be. This section says, the petition must be by a person aggrieved by an assessment. In a case where, after some one assessed has paid, the assessment has been set aside, on the application of some one assessed by the same assessment, who has not paid; who is the party aggrieved? These are the only two parties who can be aggrieved. Which one is it? Certainly not the one who has not paid anything, and yet has had the assessment set aside as to him. That assessment so set aside, and thus taken off his property, would not grieve men, in Hudson county, much.

It must be then the one who has paid his assessment before the same was set aside. How is he aggrieved by the *assessment*? Why, because he has had to pay too much, he thinks. And if there be any way by which his assessment can be set aside or reduced, he is aggrieved, otherwise not. But what benefit is it to him to have this assessment set aside or reduced, unless the city will repay him this amount back. But by the construction put upon this act by the city, if he is foolish enough to think himself aggrieved and to petition, and thus give the Board jurisdiction, the Board may say to him as they actually did to the plaintiff here: Yes, you have been aggrieved; you have been treated outrageously; you have been compelled to pay \$909.07 more than in justice you ought to have paid; you have acted as a good citizen in paying promptly your assessment when first assessed on your property; you have acted as a good citizen in coming forward promptly to petition, so that we could obtain jurisdiction over this assessment. Yet the law is so drawn that we are compelled to assess you \$640.99 more, in addition to what you have already paid, which we never could have done unless you had yourself petitioned us.

Well, but we say, can't we have our first payment back? *No; because that was paid voluntarily.* But can't we have the difference back? No; statute don't provide for that. But, surely, we can have this last assessment removed? Yes, if you pay it; no other way which we know of.

This is sought to be met by the assertion that collector has set this last assessment aside. But where is any authority in the act for him to set it aside?

Proceeding with the section it will be seen that upon this petition being filed with the Board, it became a disputed assessment and the Board have *full* jurisdiction to revise, alter and adjust the *whole* of the said assessment. Not only the part paid, but the part unpaid, and re-assess the reasonable cost of the whole improvement upon the land benefited, without any regard to whether any portion of the land benefited had paid a former assessment or not.

The first part of section four has already been referred to. The latter part of that section the language the Board, may after a general examination of any assessment, without doubt means the assessment as a whole for the whole improvement and not to the portion of the assessment assessed on any particular lot.

The fifth section provides that this re-assessment shall be a new assessment and shall be final and conclusive upon all parties. So that, if the plaintiff has been so re-assessed, as he admittedly has, where can he get relief from this last assessment.

But in order that he should have no loop-hole through which to escape, the seventh section provides that this assessment so laid shall be a lien on the property on which they are laid, and shall be collected by sale, &c.

The plaintiff claimed below and claims here that by

this act of 1873, when any assessment became a disputed assessment as defined by that act, from *that minute the former assessment became as if it never had existed*, and that those owners of property assessed by said former assessment, who had paid such former assessment had the legal claim to have money so paid returned to them, or at farthest retained only for the purpose of having it set off against the assessment which this Board would make upon the same property.

The defendants say, "No ; this act merely relates to such lots of land upon which assessment remain unpaid.

How can we relieve our property from the lien of this assessment?

Have the city authorities the power to do it ; where do they find it, in the face of the act saying it shall be final and conclusive ?

Even if they have the power, have they the will ?

Must we be put at their mercy ?

If the construction be as contended for by plaintiff in error, the city will make money by every assessment ; instead of a portion of the cost being thrown upon the city at large, as is mentioned in several places in this act, the city will receive from the person along the line of the improvement a much larger amount than the improvement cost.

There seems to be no other reasonable construction than that as soon at least as the new assessment is made the old one is set aside, root and branch, as if it never existed, and the city be regarded as having the money of the persons who have paid for their use.

Is not the implication irresistible that the money of those who had already paid was to be treated as money held on trust.

Could the Legislature have intended to tax double those who had promptly paid their assessment?

It is not unusual to treat such implications as if they had been expressed in the law.

In *Hannibal and St. Jo. v. Shacklett*, 30 Missouri, pp. 550-9, it is held that a double taxation is an absurdity, and it will not be implied that the Legislature intended so, although they say so.

In that case a special mode of taxation required by the charter of plaintiff, and no exemption from ordinary tax, held that the one was a repeal *pro tanto* of the other by implication, and that money paid by plaintiff, under that, could be recovered back.

What is an assessment?

It is included by writers within the taxing powers of the State.

2 Dil. Ins. Co., § 587.

The taxpayer is supposed to be compensated for the taxes he pays by the protection afforded him and his property.

Ib.

- In assessments for local improvement, the property is supposed to increase in value to the amount of the assessment.

State Agent. Prost. v. city of Newark.

In other words, the city authorities, for the benefit of certain lands, as agent of the owners, cause certain improvements to be made, for which the lands are to be liable, as soon as a certain tribunal, fixed by the Legislature, shall determine what lands are benefited, and to what amount.

For all authority thus to tax, the Legislature must be the only source. Is it not analogous to a suit in court, in which the city is plaintiff, the suit *quantum valebant*, the property supposed to be benefited defendants, the commission of assessment the Court, the assessment the judgment, and the legislature the Appellate Court?

The division of the assessment, so as to show the amount to be paid by each lot, is, in substance, an agreement that if this amount is paid this lot will be forever free from the payment of the costs of this improvement.

But if the judgment is opened and set aside because it is too much, and a judgment entered for a smaller amount, and the lot be subjected to this second judgment, has not the consideration upon which this judgment was paid totally failed?

The money was paid to free the land of a lien; yet the land is still encumbered by this lien. The judgment was set aside by the defendants, with the consent of the plaintiffs, and a new judgment entered for the amount corrected.

But they say it is a voluntary payment, and cite
Marriot v. Hampton, 2 S., L. C. 399.

If in that case, instead of bringing a new suit, Marriot had, either by consent, had that judgment annulled, and there had been a judgment in Hampton's favor for a smaller amount, would not Marriot's suit then have been well founded for this smaller amount at least; or, if he had paid this second judgment, could he not have recovered the whole amount of first judgment from Hampton?

So to the corolary growing out of this, as established in *Brisbane v. Dacre*, 5 *Jewett*, 143, that when a man gives judgment in his own case, against himself—that is,

with full knowledge of the fact—he cannot recover back, may be admitted without preventing the recovery of the plaintiff.

Here the claim, upon judgment, was paid by the plaintiff, because he had to; and afterwards this judgment set aside, and a new judgment entered, intending to be in the place of the old, and he is compelled to pay that also.

This tribunal was instituted by the Legislature to try certain questions when properly submitted to it.

The defendant in error petitioned to have this assessment reviewed. Notice was given to the plaintiffs in error. They appeared by attorney before this tribunal. They raised no question as to the right of defendant in error to be there. They do not say, this defendant in error has estopped himself by paying the old assessment. But they proceed to the trial, the defendant, himself, is called and sworn as a witness, and the case is submitted to this tribunal, who, after consideration, determine that the property of defendant was benefited only to the extent of \$640.99, which was, in substance, saying that the plaintiffs had no constitutional warrant to collect from defendant any larger sum [page 45, 46 and 47].

The plaintiffs in error are now estopped from claiming that the payment of the old assessment is voluntary payment and cannot be recovered back. They have submitted themselves to the jurisdiction of this tribunal; they are bound by its decision. But even if the defendant in error would not be entitled to recover previous to the passage of the act entitled "An Act relating to the refunding by Municipal Corporations in this State, of Moneys paid to said Corporation by owners, &c.," approved February 27, 1877. [Pamp. Laws of 1877, p. 23]. That act in express terms authorizes a judgment in favor of defendant in error.

The defendant presents a case which is an assess-

ment for local improvement set aside by a competent authority, under which, before the same was set aside, defendant has paid, and in which there has been a re-assessment by the same commissioners who are by the act creating them legally authorized for that purpose.

Bradford *v.* City of Chicago, 25 Ill., p. 411.

Action to recover money paid upon an illegal assessment.

The original assessment for the opening and extending La Salle street, from Madison avenue to Jackson street, October 15, 1855. Order of confirmation of the assessment, June 9, 1856. Warrant of assessment dated June 17, 1856, shows plaintiff paid \$2.80.

It appeared that the city had spent all the money it had collected. That the further prosecution of the work had been stopped by suit upon the other assessment, which the owners had refused to pay, and that nothing had been done towards carrying in effect the improvement contemplated.

Held, Bresse, J., delivering the opinion, says:—The Court is of the opinion that if the city now treat the assessment as invalid that the legal position of the respective parties is:—

1. If the city should take no further steps, and should abandon the opening of the street, those who have obtained damages from the city would be entitled to hold it, and the city own the land condemned.
2. That those to whom the money was awarded and not yet paid could not collect, by reason of the invalidity of the assessment.
3. That those who have not paid could successfully resist for like reason.

4. Those who have paid their money would be entitled to recover it back, as money collected to their use.

In the case of the assessment, the money raised by them is held *on trust* by the public, to be devoted to the particular purpose of benefited intended. It does not become a part of the general revenue, and may not be devoted from the improvement in view. It is clear, therefore, if the object in view be abandoned, an action for money had and received would be to recover back the money paid on the assessment.

In case a new assessment should be made, and the parties be assessed a greater or less amount than before, doubtless, the difference would have to be paid or recovered by the city, and in such case those that had paid would be entitled to recover such difference by suit or otherwise.

Here it is clear then there is a total failure of consideration for which the money was paid.

The plaintiff may well contend he has paid his money in a total failure of consideration.

The brief of the plaintiffs in error has not been submitted to me, but as, at the trial, it claimed the result would be financially injurious to it, I have had the collector of Jersey City make out the amount which the plaintiffs could be compelled to pay if this judgment is sustained.

If all the old assessments in the whole of Jersey City had been paid in full by every individual assessed, and every one of those should compel the city to repay the amount overpaid, it would amount to \$49,409.06; but notoriously not over one-half of those assessments have been paid, and of those who have paid, not over one-half have paid sufficiently large amounts to justify any trouble to collect back from the city.

3. The meeting and hearing evidence thereon
[Scott, p. 14, l. 1-20].

Exhibit P 11, p. 45.

4. The decision reversing it [Scott, p. 14].

Exhibit P 7, p. 42.

5. Plaintiffs had previously paid, by reason of this assessment of March 23d, 1870, \$1,550.06.

Exhibit P 20, p. 53.

6. This assessment having been set aside, reversed and annulled by said tribunal, under Act of March 26, 1873, and the subsequent action of the tribunal appointed therewith, as before shown.

Defendant in error was entitled to recover the whole amount so paid. Yet as he sues for moneys had and received, and as he owes the plaintiffs the amount which the above tribunal assessed as a proper amount for him to pay, viz., \$640.99. If this amount be deducted from assessment paid, it will leave the amount allowed by the Justice before whom the same was tried, viz. \$909.07.

9. Defendant in error can recover this balance in this action.

Riker v. Jersey City, 9 Vroom, 225.

Hill v. City of Elizabeth; opinion read Nov. Term, 1877, by Judge Depue.

10. That by the act entitled "An Act relating to the Refunding, &c.," passed April 7, 1877, [Pamp. Laws, p. 23], defendant in error was entitled to recover.

JAMES B. VREDENBURGH,

Of Counsel with Def't in Error.

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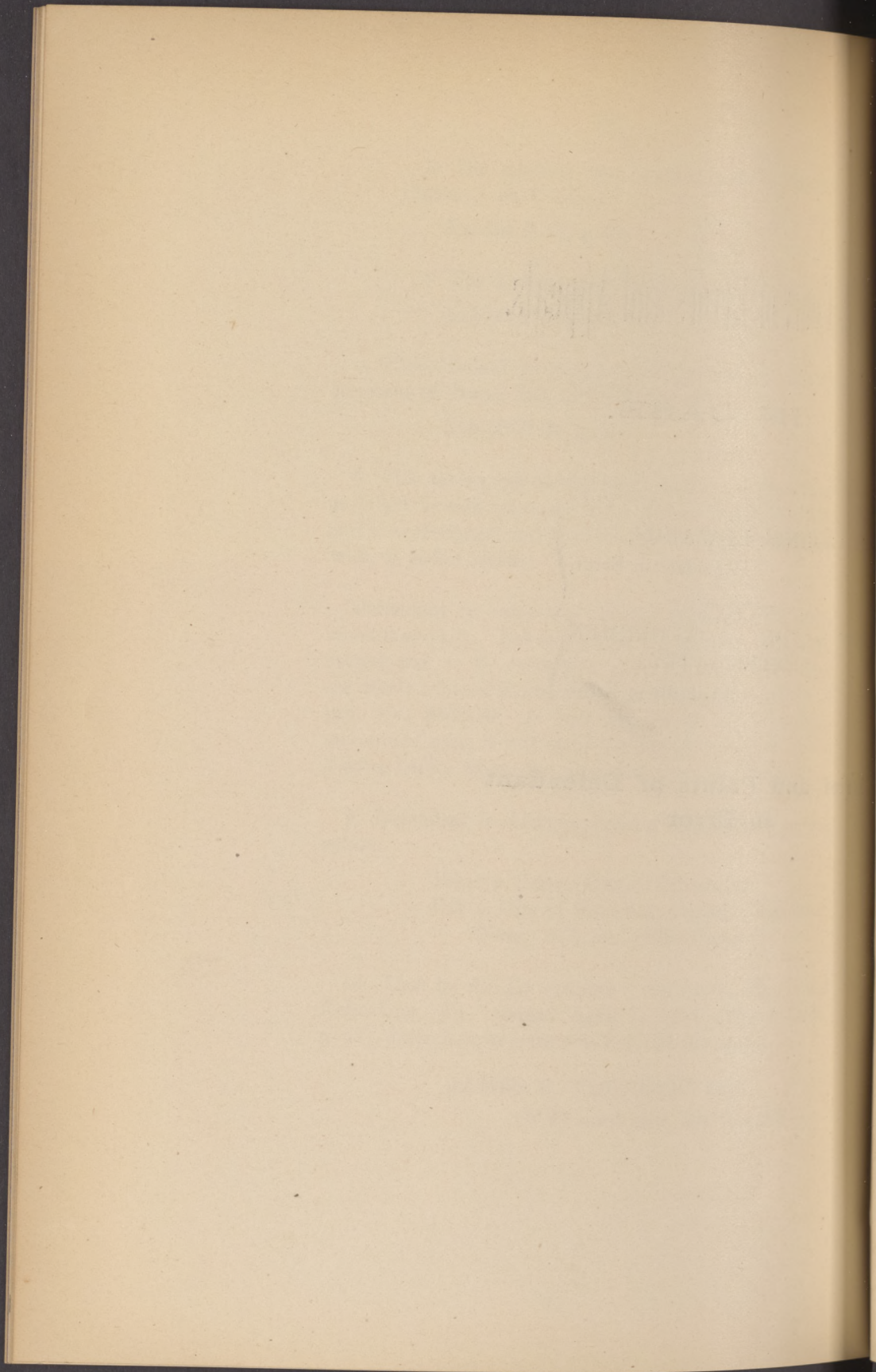
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IN CASE.
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JOHN S. EDWARDS,
Defendant in Error,

—*ads.*—

THE MAYOR AND ALDERMEN
OF JERSEY CITY,
Plaintiffs in Error.

Brief and Points of Defendant
in Error.



New Jersey Supreme Court. 10

*Of the tenth day of July, in the year of our Lord
one thousand eight hundred and seventy-six :*

MERCER BEASLEY, *Chief Justice.*

BENJ. F. LEE, *Clerk.*

SCUDDER & VREDENBURGH, *Plaintiff's Attorneys.* 20

HENRY TRAPHAGEN, *Defendants' Attorney.*

Hudson County, ss :

The Mayor and Aldermen of Jersey City, the defendants in this suit, were summoned to answer unto John S. Edwards, the plaintiff therein, of a plea of trespass on the case upon promises, and thereupon the plaintiff, by Scudder & Vredenburg, his attorneys, complain. For that whereas, the said defendants heretofore, to wit, on the twenty-eighth day of June, A. D. eighteen hundred and seventy-six, at Jersey City in the county aforesaid, to wit : at Jersey City, in the county of Hudson, were indebted to the plaintiff in the sum of two thousand dollars for goods, wares and merchandise before that time sold and delivered by the plaintiff to the defendants at its request ; and in two thousand dollars for work and labor before that time done and performed, and materials furnished by the

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plaintiff for the defendants at its request; and in two thousand dollars for so much money by the plaintiff before that time lent and advanced to the defendants at its request; and in two thousand dollars for so much money by the plaintiff, before that time paid for the use of the defendants at its request; and in two thousand dollars for so much money by the defendants before that time, had and received for the use of the plaintiff; and in two
 10 thousand dollars for interest upon, and for the forbearance by the plaintiff to the defendants at its request of divers large sums of money before that time due and owing from the defendants to the plaintiff; and in two thousand dollars for so much money then and there found to be due from the defendants to the plaintiff on an account stated between them; and being so indebted, the defendants, in consideration thereof, then and there promised the plaintiff to pay him the said several sums of
 20 money on request; yet, the defendants disregarded said several promises, and have not paid the said several sums of money, nor any of them, or any part thereof, although often requested so to do, but to do so have hitherto wholly refused, and still do refuse, to the damage of the plaintiff two thousand dollars, and therefore he brings his suit, etc.

And the said defendants, the Mayor and Aldermen of Jersey City, by Herbert Stout, their attorney, come and defend the wrong and injury, when,
 30 etc., and say that they did not undertake or promise in manner and form as the said plaintiff John S. Edwards hath above thereof complained against them, and of this they put themselves upon the country, etc.

And the said plaintiff doth the like.

I, BENJ. F. LEE, clerk of the Supreme Court of
 40 the State of New Jersey, hereby certify that the

foregoing is a true transcript of the pleadings in above-stated cause, now on file in my office.

In witness whereof, I have hereunto set my hand and the seal of said Court, at Trenton, this tenth day of July, A. D. eighteen hundred and seventy-six.

BENJ. F. LEE,

Clerk. 10

Afterwards, to wit, at a Circuit Court holden at Jersey City, in and for the County of Hudson, before Manning M. Knapp, Esquire, one of the Justices of the Supreme Court, on the sixth day of December, in the year one thousand eight hundred and seventy-six, according to the form of the statute in such case made and provided, comes as well the said plaintiff as the said defendant, by their respective attorneys within mentioned, and the jurors of the jury whereof mention is made, being summoned, also come; and thereupon, by consent of the respective parties aforesaid, the trial of the said cause is tried by the Justice of the said Court aforesaid, by consent of the respective parties aforesaid, and thereupon the said Justice doth determine and report that the said defendant did undertake and promise in manner and form as the said plaintiff hath in his said declaration alleged, and he assesses the damages of the said plaintiff by reason of the not performing said promises and undertakings, over and above the costs, and charges by him about his suit in this behalf expended, at the sum of nine hundred and sixty-two dollars and eight cents.

M. M. KNAPP,

J. S. C.

A true copy.

BENJ. F. LEE,

Clerk.

40

N. J. SUPREME COURT,
HUDSON CIRCUIT—SEPTEMBER TERM, 1876.

NOVEMBER 11TH.

JOHN S. EDWARDS

vs.

In case.

10

THE MAYOR, &C., of Jersey City.

Before Hon. M. M. KNAPP, *Justice.*

Jury waived.

JOHN S. EDWARDS, plaintiff, sworn, testified :

20 I reside at 337 Webster avenue, Jersey City Heights; I own this property assessed in my own name; have owned it seven or eight years.

(Plaintiff offers in evidence record of deeds found in Liber 148, page 455, and Liber 155, page 599, and Liber 179, page 561, and another deed from Mr. DeArcy, which will be produced.)

There is no dispute as to the identity of the property.

30

WITNESS: My property is on Webster avenue, west side, between Congress and North streets, seven lots adjoining each other, 25x100.

Webster avenue was graded and flagged, etc., in 1869 or 1870.

Q. Subsequent to the work being done, do you know whether your lots were assessed for that work, and, if so, how do you know?

40 A. They were; there was a map made out and bills sent us for the work, and I paid the bills; these

are the bills that was assessed upon my property for the grading and flagging of Webster avenue.

(Plaintiff offers the bills in evidence, and the Court marks them as Exhibits, Nos. 1, 2 and 3.)

Q. After those bills were served upon you did you pay them immediately?

A. No.

Q. What did you do? 10

A. We certioraried it.

Q. (By COURT.) Before you paid them?

A. Yes, sir.

Q. What position did you then occupy in City Council of Jersey City?

A. I was a member of the Board of Aldermen at that time, in 1872, I think.

Q. (Showing witness paper.) Were you a member at the time this resolution was passed? 20

A. I couldn't say certainly.

Q. Have you any recollection that there was any resolution passed as to the sale of these lots for this assessment?

A. There was a resolution passed by the Board of Finance; I heard of it about the time it was passed.

Q. (By COURT.) Before you paid?

A. Yes, sir.

Q. After you had knowledge of the passage of this resolution what did you do about these assessments? 30

A. I paid them supposing—(interrupted by objection.)

(The Court thinks it competent on the question of coercion.)

Q. You say you paid those bills supposing something; state what that was?

A. I paid them supposing that resolution of the 40

Board of Finance would be carried into effect, and that if it was there would be additional expense connected with it, and I paid them under protest, which I supposed at the time amounted to something; I wasn't in a position to pay them all at once, but paid them as fast as I could at different times, before anything should be done with my property.

Q. Whose writing is that "under protest" on the
10 bills?

A. James H. Love's, I suppose, the party who took the money at the City Hall, in the Collector's office; Mr. Love was City Collector at that time; that was endorsed on at the time of the first payment.

Q. Did you understand at that time that your property would be sold unless these assessments would be paid?

(Objected to. Admitted. Exception.)
20

A. I supposed as the Board of Finance had passed a resolution to that effect, that as a matter of course it would be carried out.

Q. The amount you paid is correctly represented on those three bills?

A. Yes, sir.

Q. After that assessment was paid do you know whether the Board for the equalization of taxes took jurisdiction of these assessments?
30

A. Yes, sir.

Q. What do you know about that?

(Objected to as not the best evidence; it is a matter of record.)

THE COURT: Objection may be entered and I will control the testimony at the close of the case, and I will indicate what I accept and act upon and what I reject.
40

A. I was a witness before the commissioners for

reassessment ; they examined into it, and my property was reassessed by them, and I received a bill of the new amount at the collector's office, Jersey City; it covers the same lots as the other assessment.

Q. Have you been paid back any portion of this amount ?

A. No, sir.

Q. So far as you know, this is still a lien upon your property ?

A. I received that bill from the collector's office. 10

Q. Have you been informed of any change with regard to it since you received that bill ?

A. No, sir ; I called for a bill, and received that.

MR. VREDENBURGH : I caused to be served out of our office a petition upon the Board of Finance to pay it back.

MR. ABBETT : I have not seen any such notice.

MR. VREDENBURGH : I will have to bring my boy 20 to prove the service.

MR. ABBETT : Suppose you put it in, subject to such proof as you may give as to service.

(Mr. Vredenburgh reads it.)

Cross-examination by MR. ABBETT :

Q. You paid the first bill June 1st, 1872 ?

A. I can only say from the bill ; I suppose that is correct ; and the same as to the second bill, June 30 29th, 1872, and the third bill, August 7th, 1872.

Q. How long before June 1st, 1872, had you brought your writ of *certiorari* to review this assessment ?

A. I don't remember.

Q. You know you brought your writ of *certiorari* before you paid them bills ?

A. Yes ; but I can't tell how long before.

Q. Did you pay the first bill at the time you received it ? 40

A. I had had the bill before I paid it.

Q. How long?

A. The date calls for May 27th; I don't know how long; I don't remember whether the bill was sent to me, or whether I went for it; but I think I had the bill at the time I paid it, but I don't remember whether I went and got the bill, or whether it was sent to me.

10 Q. When you paid the money, what did you say to the person to whom you paid it?

A. I don't remember that anything was said particularly.

Q. Was anything said?

A. I don't remember anything about it.

Q. (BY COURT.) Do you remember the substance of what was said?

A. No, sir.

20 Q. Do you remember the substance of what was said when you paid the second bill?

A. Nothing definite; no, sir.

Q. Do you remember anything at all?

A. I suppose I said I want to pay it under protest; that is all I can say.

Q. (BY COURT.) Have you any impression about it?

A. I think I did.

30 Q. You think you said those words, "I pay it under protest?"

A. Yes, sir.

Q. And you think that is all you said?

A. I think that is all, but I have no positive recollection about it.

Q. Can you remember what you said, or the substance of what you said when you paid the third bill?

A. The same as the others.

Q. You have no recollection about it?

40 A. Nothing, with the exception of paying it under protest, probably.

Q. Do you mean to say that you recollect now that you did say that you paid it under protest ?

A. I can't recollect the words that were used at the time.

Q. Have you any recollection of the substance of the words that you used ?

A. Nothing but what I have said in regard to paying it under protest.

Q. Who were your attorneys in the certiorari to review this assessment ?

10

A. Linn & Babbitt.

Q. Did you make any communication to them with reference to the payment of it ?

A. I told Mr. Linn I had paid it.

Q. Was the certiorari still pending at the time you paid it ; you had heard nothing of the discontinuance of these proceedings at the time you paid it ?

A. I don't remember ; the case had been settled when I paid these bills, if I remember right.

20

Q. Had you received any communication from him as to the discontinuance at the time you paid those bills ?

A. Not that I remember.

Q. Did you make any inquiries as to what was the condition of the certiorari proceedings previous to the time you paid the bills ?

A. I had understood that the suit had gone against us ; that it had been decided against us.

Q. From whom did you understand that ?

30

A. From our attorney, I suppose, Mr. Linn.

Q. Have you any recollection as to whether you had received, prior to your paying the bills, any communications from your attorney, at all ?

A. I had seen him, but had received no communication from him.

Q. Did he tell you anything about it ?

A. Yes, sir.

Q. Did you go to the clerk's office and get this bill, P. No. 4 ?

40

A. I did ; yes, sir.

Q. It was given you at your request ?

A. Yes, sir.

Q. Did you get it at its date September 23d, 1874 ?

A. I don't recollect ; I suppose I did.

Q. How long after this resolution of the Board of Finance of July 18th, 1871, was it that you found out that such a resolution had been passed ?

10 A. I don't remember.

Q. Can you give us any idea ?

A. I cannot.

Q. Why did you suppose, in June 1872, that property would be sold out under a resolution passed in July 1871, when nothing had been done under it for nearly a year ?

A. Because such a resolution was passed by the Board of Finance.

20 Q. Did you take into consideration the fact that eleven months had elapsed and nothing had been done under it ?

A. I don't remember.

Q. (BY COURT.) Do you remember when you first knew of the passage of such a resolution ?

A. I do not remember.

Q. Didn't you pay those bills because your attorney had told you that the certiorari proceedings had been determined against you ?

30 A. No, sir ; we proposed to go on up with it ?

Q. Then why did you pay it ?

A. I paid it on the strength, if I remember right, of that resolution, and at the time our attorney told me—at least I understood to say that Mr. Linn—by paying it under protest we could recover it.

Q. State distinctly what you understood Mr. Linn to say ?

A. That we could recover if we paid under protest; Mr. Linn has told me since that he did not tell me so.

Q. Have you ever carried up these certiorari proceedings ?

A. No ; we brought it before this commission that was appointed.

Q. Who brought it there ?

A. The property owners of the street.

Q. You don't mean to say you brought it there ?

A. No, not that exactly.

Q. It was brought there by the property owners who had not paid ?

10

A. I don't remember that.

Q. When did it first come before that commission ?

A. I don't remember.

Q. It appears it did not come before that commission till September, 1873 ; why did you take no proceedings on your certiorari from 1872 to September, 1873 ?

A. I don't remember, unless it was adjourned from time to time ; I don't remember anything about it ; I am not sure, but what there was something done, I don't remember.

20

Q. Is this case of Peter A. Bailey and others, prosecutors against the city, on Webster avenue, the case in which you was one of the prosecutors ?

A. I don't remember that name, Peter A. Bailey.

Q. It appears this assessment was confirmed in November, 1871 ; do you know why nothing was done by you to take it up up June, 1872, the time you paid these bills ?

30

A. I think we did commence soon afterwards taking some action in regard to the matter, I can't tell what.

Q. Was that something, which you think was done, done between November 29th, 1871, and June, 1872, or was it after the latter date ?

A. It was paid before we paid our bills.

Q. You think there was something done before you paid your bills ?

A. Yes, sir.

40

Q. Between the time the Supreme Court confirmed the assessment on certiorari, which was November 29th, 1871, and June 1st, 1872, when you went and paid the money on the assessments, I want to know whether between those dates you did anything with the certiorari proceedings or gave any orders?

A. We intended to, yes, I think we took steps to carry it on up.

10 Q. When did you abandon those steps; when you paid the money?

A. I don't remember.

Q. Had you abandoned the steps when you paid the money?

A. I don't think we had.

Q. Do you mean to say that anything at all had been done after November, 1871, in reference to those certiorari proceedings?

20 A. We didn't do anything; we thought we were doing something, I think.

Q. Had you given any directions to your attorney with reference to the matter, November, 1871.

A. I don't remember about that; there were others interested in the matter; I don't remember doing it personally.

Q. This notice that you gave to the Board of Finance is a mistake, isn't it, as to the amount; it says you were assessed \$1,550.06, on the 23rd of March, 1870; it ought to be \$1,311.20?

30 A. That \$1,550.06 includes interest and penalties paid.

Q. This notice says it was on the first of June; that is a mistake, isn't it? It was paid on these different dates as shown by the bills?

A. Yes, sir.

Re-direct examination:

Q. Do you recollect whether or not the testimony was lost by one of the Supreme Court Justices?

40 A. Yes, it was; the papers in the *certiorari* suit

we never could find ; we never knew how or why the case was decided against us.

Q. Did you go to Trenton after it ?

A. Yes.

Q. Who did you go to see ?

A. I have forgotten.

Q. Was that one of the causes of delay, as you understood it ?

A. Yes, sir.

Q. Did you abandon any idea of appeal till after the passage of this act of 1873, which provides for a re-assessment and creating this commission ?

A. No, sir ; we did not.

JOHN E. SCOTT, for plaintiff, sworn, testifies as follows :

I am city clerk of Jersey City ; have been for several years ; I have here the papers in the Webster avenue assessment.

At request of Mr. Vredenburgh witness produces the petition of Mary Van Tassel and others, filed September 18th, 1873.

MR. VREDENBURGH : Among the petitioners is this plaintiff, John S. Edwards.

MR. ABBETT : It is not his handwriting ; he never signed the petition, I am informed.

Plaintiff offers petition in evidence. Court marks it Exhibit P 6.

Q. What is the next paper you have in the matter ?

A. I have brought the minutes of the proceedings of the commissioners. The commissioners met pursuant to published notice ; the notice was published beginning July 26th, 1873, once a week for eight weeks, that the commission would meet at the council chamber in the City Hall, on Thursday, the 18th of September, for the purpose of hear-

ing all objections to unpaid assessments, and at that meeting of September 18th, 1873, this petition was presented.

On request of Mr. Vredenburg witness reads from minutes :

Page 28, meeting of Sept. 18th, 1873.

Page 106, meeting of April 14th, 1874.

Page 110, meeting of April 16th, 1874.

Page 118, meeting of April 23d, 1874.

10 Page 150, meeting of Sept. 17th, 1874.

Q. Is this book in your custody ?

A. Yes sir.

Q. What is that book ?

A. The reports of the commissioners to adjust unpaid assessments ; this before me is No. 63, filed in the city clerk's office, Sept. 17th, 1874—the assessment for grading, flagging and cross-bridging Webster avenue, from South street to the north side
20 of North street.

(Plaintiff offers it in evidence.)

(Witness on being shown a map). This is the assessment map, filed in my office, Sept. 17th, 1874, by direction of Mr. Lewis, the then corporation counsel, and filed by me in the city collector's office, same date.

30 These papers before me, which I have brought from my office, are the papers showing the previous assessment for grading Webster avenue, made by the Common Council of Hudson City ; I have not the map here ; I have the minute book here ; I think the map of the first assessment is with Mr. Love ; it may be in my office ; it belongs in my office.

(Plaintiff offers in evidence the petition for the improvement, marked P. 9, and the notice P. 10.)

40 Adjourned for one week.

JOHN S. EDWARDS

vs.

MAYOR and ALDERMEN of Jersey
City.

Examination of witnesses, &c., before me, JOHN 10
A. NUGENT, a Supreme Court Commissioner, at the
office of Leon Abbett, Esq., in Jersey City, on Sat-
urday, November 25th, A. D. 1876, in presence of
J. B. Vredenburgh, Esq., attorney for plaintiff, and
Leon Abbett, Esq., attorney for defendants.

(Exhibits 1, 2, 3, 4, 5, 6, are offered in evi-
dence, and all the minutes in the book of min-
utes, of the commissioners to adjust unpaid
assessments, that relate to this matter, and the 20
map filed by them, and the report filed by them,
and the petition for the improvement, and a
notice for the assessment for that improvement,
that is the old one and the report assessing and
the map; also four deeds of property, one
from M. R. Applegate, and her husband to
John S. Edwards, dated Nov. 27th, 1868, re-
corded December 5th, 1868, book 179, 561, &c.,
and one from Theodore Edwards and wife to 30
John S. Edwards, dated May 29th, 1867, re-
corded June 8th, 1867, Liber 148, page 445.
Also a deed from John S. Edwards and wife to
John S. Edwards, second, dated June 4th, 1866,
recorded same date, Book 134, page 155, &c.
Also deed from Margaret Dorsey and husband
to John S. Edwards, dated November 13th,
1866, recorded same date, Book 139, page 357,
&c. Also the three bills that he paid.)

JAMES H. LOVE, for plaintiff, sworn, testified as follows :

I am City Collector of Jersey City ; have been since May, 1871 ; this is the map or assessment-roll brought by me from my office in the City Hall ; it is supposed to be a tracing of the original map for the improvement of Webster avenue, styled "grading and flagging, cross-bridging, &c., of Webster avenue from South street to the north side of North street ;" those are the limits of Webster avenue which was improved ; I suppose it was filed in the Collector's office of the City of Hudson, for the purpose of collecting the amount assessed against the lot and plots as laid down upon it ; it came into my possession from the former City Collector of Jersey City, together with the other city books ; I do not collect by the map exactly ; I collect by a book which was copied from the map which my predecessor in office made.

(Plaintiff offers the map in evidence, which is marked "Confirmed March 23d, 1870, (signed) J. J. Gaffney, Clerk.")

On page 38, &c., on the book marked "Record of Assessments, A Collector of Revenues, Hudson City," is a copy of the amounts made from this map and the lots, names, and block-numbers, and a column of remarks. This book formerly belonged to Hudson City ; it now belongs to Jersey City.

(Plaintiff offers the book in evidence.)

Q. The assessment to John Edwards, on page 38, are they the same lots as are in these bills, Exhibits 1, 2, and 3 ?

A. Yes, sir.

Q. The bills are marked John S. Edwards ; are they the same lots ?

A. The lots are the same ; I don't know anything about the names.

Q. The bills are marked "paid under protest;" who wrote that on?

A. I wrote it on No. 1, and Alexander Hamilton, my assistant at that time, wrote it on Nos. 2 and 3.

Q. Why did you write it on No. 1?

A. Because Mr. Edwards requested it to be done; offered money in that way; Mr. Edwards and all the rest of the gentlemen on that assessment that is marked on the margin as "paid under protest," made the same remark, that they thought the assessment was not right; that the amounts were too great, and they objected to paying it, and therefore they paid under protest; the conversation that generally passed between me and the parties who paid in that manner, was that I generally told them there was little use in paying under protest; that they had better not pay at all; I never considered the protest amounting to anything. 10

Q Do you recollect saying any such thing as that to Edwards?

A. I recollect the conversation with Edwards; it had been before the Supreme Court at that time, and the Court had confirmed the assessment as laid, and that's about all the conversation I had with him; I think he said something about his lawyer had not attended to the case as he ought to have done; he complained about his lawyer neglecting their suit. 20

Q. At the same time that you marked it on his bill, you marked it also in this book?

A. That is usual with all cases of that kind; the book is so marked. 30

Q. Is there any mark on this book to show that any resolution was passed to collect these amounts?

A. There is a remark in the column for remarks:

"This assessment was carried to the Supreme Court by the property-holders, and the assessment was approved by the Court, and ordered collected by the 40

Board of Finance and Taxation, December 12th, 1871."

Q. Was anything done by you towards collecting in the way of advertising?

A. No; a resolution of that kind has no weight and no effect at all; it stands a lien, and we collect it without any resolution; we must obey the law without a resolution of that kind; it's of no use.

Q. Did you do anything towards collecting it that
10 you know of?

A. No, sir; nothing, only to follow the law strictly; I am only authorized to receive money from parties offering to pay.

Q. (Showing witness map). What is this map?

A. A map that was made by the Commissioners to adjust unpaid assessments of the same improvement; they re-assessed it over again; it comes from my office; it is filed in my office, as the amounts due upon that assessment for flagging and cross-
20 bridging Webster avenue from South street to the north side of North street; it is in the same condition as when I received it, with the exception of putting on the date when I received it; that was September 18th, 1874, at eleven o'clock, A. M., which is in my handwriting.

Cross-examined by MR. ABBETT:

The Edwards' assessments, as appears by this book of Hudson City assessments, of lots 16, 17 and 18
30 were paid August 7th, 1872; lots 19 and 20 were paid June 29th, 1872; lots 21 and 22 were paid June 1st, 1872; lots 16 to 20, inclusive, are assessed to "owner's name, John Edwards;" lots 21 and 22 are assessed to "owner's name;" at first it was W. H. Applegate, and afterwards corrected to John S. Edwards, in pencil—that lead pencil alteration was made by a clerk in my office; any owner has got a right to locate his property, and by him asking for a certain piece of property, we suppose no person
40 would pay upon property that don't belong to him;

the change is made when anybody requests it, when they want to pay a bill.

Q. Look at the book in which the new Commissioner's assessment map is entered ; does not that book show that these assessments upon these lots have been paid ?

(Question objected to as not a cross-examination, the book not having been offered in evidence, and also because question ought to be asked so as to show what the book contains.) 10

A. Yes, sir.

Q. Read all the entries in this book with reference to the Edwards' lots ?

(Question objected to for same reason as last question.)

A. Page 141 of the book, marked "Record of Assessments, B, City Collector, Hudson City District," on block 794, lots 93, 94, 95, 96, 97, I find assessed to John Edwards ; same block, lots 91 and 92, are assessed to W. H. Applegate. 20

(Defendant offers in evidence a copy of page 141, which he instructs the witness to make.)

Q. With reference to these assessments of Webster avenue, where the parties had paid their assessments prior to the new assessments having been made by the new Commissioners, did you invariably make the assessment of such parties as had paid under the old assessment as paid under the new assessment ? 30

A. I don't understand the question.

Q. After these men had paid their assessments and the commissioners had made their new assessment, and you had put them down in this book, now whether when you found them marked paid in one book, you marked them paid in this book ? 40

A. Yes ; I transferred the credit to show exactly what was paid without regard to the amount of the new assessment ; I done that under an opinion I formerly had from the corporation counsel, both Mr. Dixon and Mr. Lewis.

Q. Does this book of Hudson City, B, show any unpaid assessments against Edwards' property ?

A. All the assessments I find on it assessed to Edwards are marked paid on this book.

10 Q. Was there ever an advertisement of sale, so far as you know, for unpaid assessments of property for improvement of Webster avenue ?

A. No, sir.

Q. Did you ever hear of any proceedings looking to such a sale for any unpaid assessment for that improvement ?

A. Not officially.

Q. State the course of official business in relation to sales for unpaid assessments ?

20 A. In case assessments were ordered to be sold under the present law, the Board of Finance and Taxation would order a sale, and also pass a resolution authorizing me to proceed according to the law as laid down in the charter to prepare a list for the newspapers of assessments, or certain assessments ; there is a law provides that some assessments could not be sold under five years ; they could not pass a general resolution because they would have to specify assessments, that I would be able to sell.

30 Q. Did you ever receive any such order from the Board of Finance, or from anybody else, in reference to selling any property for unpaid assessments of Webster avenue ?

A. I never received any order from the Board of Finance to sell for assessments Webster avenue ; I remember once there was a resolution passed in regard to taxes, intended to be a tax sale, and the member who drew the resolution was a new member and he added assessments ; the most of the assess-
40 ments in my office at that time were five-year

assessments and I couldn't sell them any way ; they found the resolution was wrong, and they ordered me to proceed with taxes, and have nothing to do with the assessments ; I have never taken any action whatever about assessments as to sale ; I never received any instructions to proceed as to assessments with reference to a sale.

Re-direct examination :

Q. Was not that resolution that you speak of in substance thus ; “the city collector is hereby directed to report to this board a full and complete list of all property upon which taxes and assessments were due and unpaid prior to May 1st, 1871, except assessments for which five years are allowed for payment, to the end that the board may order and direct the advertisement and sale of said property in the manner defined by law.” 10

(Defendants object to the witness stating what the resolution was as it was, a matter of record.) 20

A. I suppose that is the resolution that I speak of; I remember something about a resolution being drawn in error—what I mean by an error was this—that the resolution was drawn by a board that was new in the city affairs, and did not understand the magnitude of the work they had ordered; there was not only five years of taxes, but there was six years of sewerage tax, one dollar a lot on every lot in the city, and the same number of years for water rents, without the assessments. 30

Q. Who made up this book, “Hudson City, District B?”

A. My clerks, by my authority.

Q. How long after this map, which was filed in your office in September, 1874, was that book made up?

A. I suppose that book was made just as soon as we could get to work at it ; we never let a thing 40

of that kind lay an hour if we can help it; it would depend upon how much work we had ahead of us; I should judge in a few days afterwards.

Q. The amounts which had been paid upon the original assessment were marked in this work by you in what colored ink?

A. In red ink; those that had not been paid were not marked at all, when they were paid we then marked them in black ink; the total amounts were
10 all put in black ink; the credits were put in red ink, of the former payments to make a distinction between the two.

Q. Do you recollect when those that had been paid previously were marked in that book?

A. I don't recollect the date.

Q. It was after advice from the city council?

A. I cannot say it was upon that special assessment; it was when we received our assessment from that board; that was the first occasion that we took
20 to find out how to mark up credits; we found out they were making new assessments and we would have to give credits; I recollect that I did not ask any advice about this particular assessment for the reason that I had had advice as to prior assessments and he advised me to cancel in that manner sometime before that.

Q. (By MR. ABBETT.) Were those cancelations that were made in that manner made at the same
30 time that the assessment was entered in the book?

A. Yes, sir; it might have been a day or two after.

Q. Do you recollect that those entries in red ink of the sums which had been paid on the previous assessment were written in that book the same time
the number was written in?

A. No, that is not the way we enter; we write all the numbers first before we write anything else; we write in columns, write down, not in lines extended.
40

Q. Do you recollect that this column marked "Total" of red ink numbers were put there simultaneously with the entry of the assessments on the other columns of the page?

A. No, it was not, because we could not enter it in that way and do our work right.

Q. The question is what you recollect about this assessment?

A. I judge only from the custom; I don't recollect any more about this than I do about any other assessment, that that is the manner of doing it. 10

Q. The question is whether you recollect the time of entering the figures in red ink in the column marked "Total"?

A. I can tell you nothing but what I have told you, that it is my orders to do it in that way, and I was particular to have it done in a certain way, and I superintended most of that work myself and seen it done; that is the custom and rule in all these cases to do it in that manner; I have no recollection of that particular case, but I know it was done in that way; could not do it any other way. 20

Q. That was among the first assessments, was it not, upon which money had been previously paid, which was re-confirmed?

A. I know there was some before this; the Bergen books were earlier than this book; I know quite a number of the Bergen assessments were paid before they were re-confirmed by the Commissioners; I know there was some before September 18th, 1874, in Bergen, of that kind; I expected that these commissioners would revise most of the assessments then in my office, and to provide against a contingency of that kind, I asked advice of counsel about how I should credit former payments, how it ought to be done; I did not wish exactly to follow my predecessor's rule, that was to take out the remaining items, and I wanted to know whether that was right or not, and Mr. Lewis, Corporation Counsel, decided against it. 30 40

Q. If you collect the amount which the commissioners to adjust unpaid assessments fix upon the lots upon which assessments have not been paid you find a surplus in your hands, do you not, over the total amount of the assessment as confirmed by these commissioners to adjust unpaid assessments?

MR. ABBETT: I object to the question as ambiguous.

10 A. I think that would be a question for the city Comptroller to answer rather than the city collector because he has the "balance of assessment account;" I haven't anything to do with the "Balance of Assessment Account;" I collect items from time to time, and the Comptroller is supposed to balance the assessment account; with that I have nothing to do.

20 Q. I did not ask you whether you would have a surplus; I say if you collect it would you not have a surplus; would not your books show a surplus?

(Question objected to as hypothetical.)

30 A. The books in my office I never balanced in that manner so that they would never show it; the books are never balanced at the end of the assessment; there is a balance struck; that is the total amount for which I give a receipt; I have receipted for that amount; I receipt to the Comptroller, and it is his duty to balance that assessment when it is all paid in; therefore the books would never show anything more than the total amount as assessed by the commissioners to adjust unpaid assessments in the total columns.

Q. What does your books show as the amount assessed by these commissioners to adjust unpaid assessments upon these lots of Edwards'?

A. At \$91.57 a lot.

40 Q. And the amount actually collected is how much?

A. He paid \$173.80 per lot, with some interest.

Re-direct examination:

Exhibit No. 4 is in the handwriting of Samuel Dickerson, a clerk in my office.

Q. Did you ever send out any bills on Webster avenue for assessments that had been previously paid, and that were shown to be paid on "Book of Hudson City, District B"?

A. Not unless it was done in error. 10

Q. Was there any claim made from your office, so far as you know against Edwards for those new assessments?

A. We never made a new claim, so far as I am aware, against Mr. Edwards for that assessment.

Q. Would this bill ever have been issued with your knowledge or consent?

A. No, sir.

(Plaintiff's objection previously taken to a question as not being a cross-examination of this witness, is withdrawn.) 20

JOHN M. VAN TASSEL, for plaintiff, sworn, testified as follows:

I live at 352 Webster avenue, Jersey City, the street in which this assessment was made; my wife's property was assessed for this improvement; there was a meeting of property-holders for the purpose of contesting that assessment; I attended the meeting and John S. Edwards attended the meeting; the assessment was afterwards certioraried; at that meeting a committee was appointed to attend to the matter and certiorari; myself and Mr. Edwards, and I think a gentleman named De Witt was the committee appointed; the work of that committee was done mostly by myself and Mr. Edwards. 30

Q. Do you recollect what the result of the certiorari was as determined by the Supreme Court? 40

(Question objected to as a matter of record.)

A. The only thing we had was what our counsel showed us, that the assessment was confirmed without costs to the defendant; there was no opinion written, I believe.

Q. When were you informed that by your counsel?

A. A short time after the assessment was confirmed by the Court; I think it was in the June Term of 1871 it was decided; I am not sure about that.

10 Q. Did you bring a writ of error to the decision of the Supreme Court?

A. I directed counsel to do so; yes, sir.

Q. Was there any writ of error brought?

(Question objected to as a matter of record.)

Q. Did you hear of any?

(Objected to as hearsay.)

20 A. I think there was not.

Q. Did you ever hear of any writ of error having been brought?

(Objected to.)

A. I don't exactly understand what you call a writ of error, whether a notice given to your attorney that would be one or an actual writ.

Q. I now refer to an actual writ?

30 A. I should think not for reasons that he had at the time.

Q. Why not?

(Objected to as immaterial.)

A. The evidence of a former writ of certiorari was lost.

Q. Did you make any effort to find it?

40 A. Yes; our counsel was instructed to see if he could get it from Trenton; I also went myself to Trenton to look for it, but could not find it; we asked Judge Scudder about the matter, and he looked

for it among papers in our presence, but he couldn't find it; it has never been found.

Q. Did the property-holders abandon their idea of having a writ of error?

(Question objected to so far as it relates to other parties than the witness, as hearsay.)

A. No, sir.

Q. Why didn't they bring it?

10

(Same objection as to last question.)

A. We were informed by the gentleman we asked about the evidence, that he had no doubt it would come to light in due time.

Q. Do you recollect of an act being passed entitled "An Act to adjust unpaid assessments?"

A. Yes.

Q. Had your time for bringing your writ of error expired at the time that act was passed?

20

A. I don't know what time is allowed for bringing a writ of error; our counsel had that matter in charge, and when that evidence turned up, of course he was to proceed.

Q. After that Act was passed, what did you, as one of the committee for the property-holders, do in relation to this assessment?

(Objected to as immaterial.)

A. I instructed our counsel to bring the matter before the commissioners appointed under the Act; Mr. Linn was our counsel.

Q. Who instructed him?

A. I think, I did.

Q. Was Edwards with you?

A. I presume he was; I could not say; it was with his knowledge.

Q. Were all these proceedings which you speak of with reference to your counsel with the knowledge or approbation of Edwards the plaintiff?

40

A. Yes, sir.

Q. Were you informed of what effect the passage of the Act had upon your right to bring your writ of error?

(Objected to as immaterial.)

A. No, sir.

Q. Do you know whether Mr. Edwards paid this assessment or not?

10 A. I have seen his receipted bills; I suppose he paid it, of course.

Q. Were you present when he was advised to pay it?

(Objected to as leading and suggesting an answer.)

A. Yes, sir.

Q. What occurred?

20 (Objected to.)

A. The question was brought before Mr. Linn, on the supposition that the Board—

(Interrupted.)

BY MR. ABBETT:

Don't tell us suppositions; tell us what was said and done?

30 WITNESS:

Our business to Mr. Linn was for that purpose; his advice was to pay the assessment under protest, and he had no doubt but what the city could be compelled to pay it back.

Mr. ABBETT asks that that part of the answer as to Mr. Linn's advice be stricken out.

40 Q. Was that before Mr. Edwards paid the assessment?

A. Yes, before any body was paid.

Q. Up to the time of the passage of this Act to adjust unpaid assessments had the property-holders abandoned the idea of bringing a writ of error?

A. No, sir.

Cross-examined :

John S. Edwards most always went with me to Mr. Linn's ; I can't tell how many times, as many as eight or ten times, both before 10 and after the decision of the certiorari ; I think we were there two or three times after the certiorari ; I can't recollect particularly anything that occurred there, but the usual conversation in such cases ; I recollect having witnesses there and having a surveyor there, and taking evidence and posting Mr. Linn as to the facts of the case ; after the certiorari was determined, I recollect Mr. Linn showed us a paper that he had from the clerk of the Court, or Mr. Dixon, or somebody, I can't tell who, showing 20 the decision, and he expressed himself very much dissatisfied with it, and we then concluded between us to prosecute the matter further ; I never gave Mr. Linn any retainer to prosecute the matter on a writ of error ; I don't know that anybody did ; I went as many as three or four times to make inquiries about the writ of error, as to what was being done under it after it, had been suggested that there should be one.

Q. About what was the last date when you saw 30 Mr. Linn with reference to the writ of error?

A. It must have been along in the early part of 1873 ; I saw him as often as once in three months after the decision, it must have been in the spring of 1873 when I saw him last about the writ of error

Q. Why did you wait two years before bringing a writ of error ?

A. Because we had no evidence to bring it on ; he said he could not proceed without the evi- 40 dence.

Q. Have you stated all the efforts you made to get the evidence ?

A. Yes, all I made personally ; he had written to the clerk several times ; our going to Trenton was the last effort.

Q. Wasn't the testimony printed ?

A. Not to my knowledge.

Q. Have you stated all that you know that was said to Mr. Edwards or by Mr. Edwards in your
10 presence about this matter ?

A. I should think not ; I can't recollect all that's been said between us ; I don't call to mind any particular conversation now ; we were in conference very often, and there may have been a good deal said that I don't recollect ; we were engaged in this thing about two years and there was a good deal said.

Q. Have you stated all that was said by or to Mr. Edwards at any of the times testified to by you ?

20 A. All that occurs to my mind.

Re-direct examination :

Q. Was it the custom of Hudson City to sell the property every year for unpaid assessments and taxes yearly ?

30 (Question objected to as immaterial, and also on the ground that at the time this assessment was confirmed was after the passage of the Act of Consolidation and there was no Hudson City, and also there is no proof of any custom, and this is not the proper way to prove a custom.)

A. Yes, sir.

Q. Did they do so ?

(Objected to as a matter of record.)

A. Yes, sir.

Q. Was there any reason that you know of for supposing that Jersey City would not do the same?

(Objected to as irrelevant, and also calling for a conclusion.)

A. We had no reason to think but what they would do the same; the laws were the same.

JOHN E. SCOTT, for plaintiff, sworn, testified as follows :

10

I am city clerk of Jersey City, and have been since 1870.

(Plaintiff offers in evidence Resolutions of July 14th, 1871, page 33, and September 26th, 1871, page 49, and October 20th, 1871, page 55, Book A., Resolutions of the Board of Finance and Taxation.)

Cross-examination :

Q. Are those all that relate to this matter? 20

A. Those are all that I remember.

Q. What was done under this resolution of September 26th, and as modified by October 21st?

A. The city clerk prepared a list of all unpaid taxes and water rents and sewerage taxes then in his office, which list was advertised in the corporation papers, I think for sixty days, I cannot tell the time of the commencement, which would bring it up to December 14th, 1871, the time fixed for the sale; the property mentioned in the list unpaid at 30 that time, that is December 14th, 1871, lists were prepared in schedules by the city collector, and filed in my office on that day; I acted as auctioneer, and sold all the property to anybody who would take it for the shortest term and pay the taxes.

Q. Were there any assessments included in that?

A. No, there were no assessments; assessments are never advertised.

(Plaintiff offers in evidence Acts April 2d, 1869, Act of 1870, consolidating Hudson City with Jersey 40

City, page 1,170, Act 1871, re-organizing local government of Jersey City, Act of 1873, to adjust unpaid assessments.)

JOHN LINN, sworn for plaintiff, testified as follows:

The certiorari, or several certioraries were brought to set aside an assessment made for the improvement of Webster avenue, and the questions were argued in June Term, 1871; the Court gave no decision until the November Term of that year and then they announced that they had determined not to set aside the assessment but to dismiss the certiorari.

(Defendant objects to witness stating what was the judgment of the Court.)

WITNESS: There was no written opinion given, merely an announcement that such was the judgment of the Court. From that judgment a writ of error was taken to the Court of Errors and no return was made to the writ because one of the judges had taken the papers and they never could afterwards be found. I made search and inquiry and had the clerk make the same; it was said that Judge Scudder had the papers and I spoke to him about it, but the papers never could be found and they were never forthcoming, and therefore no return had been made to the writ of error. During the pendency of that thing this statute in regard to the adjusting unpaid assessments was passed, and it was supposed that that would enable the parties to get the relief which they had sought for by the writ of error, and no further proceedings were taken in that matter.

Cross-examination by MR. ABBETT?

Q. What papers were lost?

A. I think all the papers in the proceedings;

certainly the evidence which had been taken and the exhibits, if not the writs of certiorari.

Q. What were the exhibits?

A. I don't recollect them all; there was two or three maps which had been prepared by the parties interested, or at their instance, showing the condition of the street and the amount of grading that had been done, and the amount of rock and excavation, and rock and earth filling and things of that kind; I don't recollect particularly all the exhibits. 16

Q. What search was made so far as your personal knowledge goes for these papers which you say were lost?

A. I inquired of the clerk of the Supreme Court and of the subordinates in his office a number of times for those papers, and was told they could not be found there; that the Judges had not returned them; I inquired of Judge Scudder, who, I think, said he had had them, and he thought he had returned them to the office, and would examine his papers at his house and see whether they had been left there, and he told me he did look at his house and could not find them; I made those inquiries from time to time, hoping and expecting that the papers would be found among some of the Judges or clerks. 20

Q. When did you bring your writ of error, to what term? 30

A. I don't recollect, but I think the March Term, 1872, yet I am not positive; I don't recollect the year.

Q. Has anything ever been done with that writ of error?

A. Nothing has ever been done; no formal motion has ever been made to dismiss it; it was in a manner abandoned, not prosecuted; the papers could not be found. 40

Q. You mean by abandoned, that it was not prosecuted?

A. Yes, not prosecuted.

Q. But it is in a condition to prosecute?

A. I don't know.

Defense.

10 (Defendants' offer in evidence the certiorari of the assessment and the return in the matter of the State; John S. Edwards *et al*, pros., v. The Mayor and Aldermen of Jersey City. Marked Exhibit D. 1, January 17, 1877.)

(Also the reasons for the certiorari. Marked Exhibit 2 D, J. A. N.)

(Also affidavit to obtain certiorari. Marked Exhibit 3 D, J. A. N.)

20 (Also certified copy of the rule. Marked Exhibit 4 D, J. A. N.)

Case closed.

30

40

EXHIBIT P. 1.

CITY COLLECTOR—OFFICE, CITY HALL.

Jersey City, May 27th, 1872.

MR. JOHN S. EDWARDS,

TO THE MAYOR & ALDERMEN OF JERSEY CITY, DR.

Assessment—Grading, Flagging, &c., Webster
avenue.

10

Confirmation approved March 23d, 1870.

NOTE.—Upon all assessments paid within thirty days from the date of the approval of confirmation, no interest will be charged. If not paid within thirty days, 12 per cent. will be collected from date of approval of confirmation.

Office hours from 9 A. M. to 4 P. M.

JAMES H. LOVE,
City Collector.

20

Block No.	Lot No.	Assessor's No.	Street.	Amount Assessed.	
24	21		Webster Avenue	\$173 80	30
			"	173 80	
			\$347 60		
	<i>Int. May 27..</i>		90 72		
				\$438 32	

Paid under protest.

Received payment,

[City Collector's stamp, June 1, 1872.]

JAMES H. LOVE,
City Collector.

40

Bring this bill when payment is made.

EXHIBIT P 2.

CITY COLLECTOR—OFFICE, CITY HALL.

Jersey City, June 29th, 1872.

MR. JOHN S. EDWARDS,

TO THE MAYOR & ALDERMEN OF JERSEY CITY, Dr.

Assessment—Grading, &c., Webster ave., from
 10 South street to North street.

Confirmation approved March 23d, 1870.

NOTE.—Upon all assessments paid within thirty days from the date of the approval of confirmation, no interest will be charged. If not paid within thirty days, 12 per cent. will be collected from date of approval of confirmation.

Office hours from 9 A. M. to 4 P. M.

20

JAMES H. LOVE,
City Collector.

Block No.	Lot No.	Assessor's No.	Street.	Amount Assessed.
24	20		Webster Avenue	\$173 80
			"	173 80
			<i>Int..</i>	\$347 60
				94 60
			\$442 20	

30

Paid under protest.

Received payment,

[City Collector's stamp, June 29, 1872.]

JAMES H. LOVE,
City Collector.

40

Bring this bill when payment is made.

EXHIBIT P. 3.

CITY COLLECTOR—OFFICE, CITY HALL.

Jersey City, Aug. 7th, 1872.

MR. JOHN S. EDWARDS,

TO THE MAYOR & ALDERMEN OF JERSEY CITY, DR.

Assessment—Grade, Flagg., &c., Webster ave.,
from South to North streets.

Confirmation approved March 23d, 1870. 10

NOTE.—Upon all assessments paid within thirty days from the date of the approval of confirmation, no interest will be charged. If not paid within thirty days, 12 per cent. will be collected from date of approval of confirmation.

Office hours from 9 A. M. to 4 P. M.

JAMES H. LOVE,
City Collector. 20

Block No.	Lot No.	Assessor's No.	Street.	Amount Assessed.
24	16		Webster Avenue	\$173 80
	17		“	173 80
	18		“	173 80
			<i>Int. . .</i>	\$521 40
				148 14 30
				\$669 54

Paid under protest.

Received payment, Check,

[City Collector's stamp, Aug. 7, 1872.]

JAMES H. LOVE,
City Collector.
HAMILTON. 40

Bring this bill when payment is made.

EXHIBIT P. 4.

CITY COLLECTOR—OFFICE, CITY HALL.

Jersey City, Sept. 23d, 1874.

MR. J. S. EDWARDS,

TO THE MAYOR & ALDERMEN OF JERSEY CITY, DR.

10 Assessment—For Imp't of Webster ave. from
South to North St.

Re-confirmed Sept. 17th, 1874.

NOTE.—Upon all assessments paid within thirty days from the date of the approval of confirmation, no interest will be charged. If not paid within thirty days, 12 per cent. will be collected from date of approval of confirmation.

Office hours from 9 A. M. to 4 P. M.

20 JAMES H. LOVE,

City Collector.

30

Block No.	Lot No.	Assessor's No.	Street.	Amount Assessed.
794	91	49	Webster Avenue	\$91 57
	92	50	"	91 57
	93	51	"	91 57
	94	52	"	91 57
	95	53	"	91 57
	96	54	"	91 57
	97	55	"	91 57
			<i>Int. from Mch.</i> 23, '70, to <i>at 7 per cent.</i>	\$640 99

*Received payment,**City Collector.*

40

Bring this bill when payment is made.

EXHIBIT P. 5.

TO THE BOARD OF FINANCE AND TAXATION
OF JERSEY CITY.

Gentlemen: Your petitioner John S. Edwards, of Jersey City, respectfully shows :

1. That on the 23d day of March, 1870, an assessment for grading, flagging, &c., Webster avenue was confirmed, by which the lots of this petitioner were assessed to the amount of fifteen hundred and fifty dollars and six cents, including interest to June 1st, 1872. 10

2. That on that date your petitioner paid the said amount to the City.

3. That on the 17th day of September, 1874, the commissioners appointed under the Act entitled "An Act to adjust unpaid Assessments," decided and adjudged what would have been a reasonable and fair cost of the improvement, and what proportion the lots of your petitioner were benefited by said improvement, and re-assessed as such proportion upon the same lots upon which the assessment first above mentioned had been assessed the sum of \$640.99. 20

4. That your petitioner therefore prays that you will repay to him the difference, viz. : \$909.07, and interest thereon from the 27th day of May, 1872. 30

And your petitioner will ever pray.

May 25th, 1876.

JOHN S. EDWARDS,

By SCUDDER & VREDENRURGH,

His Attorneys.

EXHIBIT P. 6.

To the Honorable the Board for the adjustment of unpaid assessments in Jersey City :

The undersigned, owners of property on Webster avenue subject to the assessment for grading, flagging, &c., of Webster avenue from the north side of North street southerly to South street, by virtue of an ordinance of the Mayor and Common Council of Hudson City, approved December 5th, A. D. 1867, which assessment was confirmed March 23d, A. D. 1870, respectfully object to said assessment for the following reasons, viz :

1st. Because the contract for doing said work was not awarded to the highest bidder.

2d. Because the proceedings under which said assessment was made, were not in conformity with the law.

3d. Because the contractor was allowed and paid for more work than he actually performed under said contract.

4th. Because the contractor was allowed and paid for excavating and removing rock which he did not excavate or remove.

5th. Because the contractor was allowed and paid for doing work which under and by the terms of his contract he was not entitled to receive.

6th. Because the property owners were not allowed any opportunity of contesting and disproving the correctness of said assessment before it was confirmed.

And your petitioners request that the assessment may be reduced accordingly.

Mary J. Van Tassel,
John S. Edwards,

John J. Varick,
 Theo. W. Edwards,
 George Culver,
 J. H. DeWint,
 Herman Herschel,
 Wm. H. Collard,
 Michael A. Driscoll,
 Ernest H. Kessler and others,
 Harmon Sell,
 John A. Sell, 10
 Elijah V. Myers,
 Henry S. Lord,
 John Pennington,
 Robert Campbell,
 John Whiteman,
 Andrew W. Rochester,
 G. Bancher,
 Charles Clinton,
 Heirs of Catharine Nathan,
 Fred Hoffen, 20
 Lizzie Stout,
 John Haughey,
 Matthew Fallan,
 Andrew Patschell,
 F. J. Dominick,
 Christian Garhardt,
 Daniel Roberts,
 Wm. B. Forman,
 John D. Ackerman,
 Peter Edsall, 30
 Andrew Whiteman,
 Peter Jackson,
 Joseph Chaddock,
 Charles Hall,
 Michael Tullmers,
 Alexander Smith,
 John Fallmer,
 Mary McMannus,
 Peter A. Bailly,
 Thomas Foster. 40

EXHIBIT P. 7.

ASSESSMENT FOR IMPROVEMENT.

By grading, flagging and cross-bridging of Webster avenue from South street to the north side of North street.

We, DANIEL HAINES, JESSE WILLIAMS and THEODORE LITTLE, having been appointed by the
 10 Judges of the Supreme Court of the State of New Jersey, under and by virtue of an act entitled "An act to adjust unpaid assessments in Jersey City," approved March the twenty-sixth, eighteen hundred and seventy-three, and constituted a board to examine, revise, alter and adjust, as therein provided, all unpaid assessments within a period of five years prior to the approval of the said act, for city improvements theretofore made in Jersey City and in the former cities of Hudson and Bergen, which are
 20 or may be disputed; and having each taken an oath faithfully and impartially to perform the duties imposed upon us by the said act;

And having caused notice of the time and place of hearing to be given to the owners of property subject to assessment pursuant to the provisions of the said act; and also to the attorney of the said city of Jersey City; and having examined the assessment for the improvement hereinafter mentioned, and having viewed the premises and lots of
 30 land assessed, and heard the testimony and proofs relating thereto, and the allegations and arguments of the parties complaining, and of their counsel, and also of the counsel of the said city, and maturely considered the same:

We, the said board, do determine and adjudge that the reasonable and fair cost of the improvement by grading, flagging and cross-bridging of Webster avenue from South street to the north side of North street would have been the sum of nine
 40

thousand three hundred and ninety-seven dollars and ninety-eight cents (\$9,397.98), and we do and have assessed the amount of such reasonable costs and expense of the said improvement upon the lands benefited thereby in proportion of the benefits received by each lot of land ; and have caused to be made a map of the said lands, and the schedule of the said assessments, and filed the same in the office of the clerk of Jersey City, as in and by the said map and schedule of assessment signed by us, and made a part of this our determination and adjudication, will more fully appear. 10

And we do further determine and adjudge that the remainder of the costs, charges and expenses of the said improvement, as fixed by the original assessment, confirmed on the 23d of March, A. D. 1870, and which by the said act is required to be paid by the city at large, is the sum of five thousand three hundred and ninety-three dollars and seventy-eight cents (\$5, 393.78). 26

In testimony whereof, we have hereunto set our hands and seals the 17th day of September, in the year of our Lord one thousand eight hundred and seventy-four.

DANL. HAINES, [L.s.]
 JESSE WILLIAMS, [L.s.]
 THEO. LITTLE, [L.s.]

EXHIBIT P. 9.

CITY OF HUDSON, Aug. 31, 1867.

To the Hon. the Common Council :

10 GENTLEMEN :

The undersigned, owners of lands in this city would respectfully ask for the grading and regulating of Webster avenue, in this city, as laid down on map of estate of Cornelius Van Vorst, deceased, from the north side of North street, south to South street and that blue stone flag sidewalks four feet wide be laid on both sides of said street, with bridge stone cross-walks over intersecting streets and with such necessary drains and receiving basins or
 20 openings as may be needed.

F, Luxton, 2 lots.

William H. Collard, 1 lot.

John Fullam, 3 lots.

M. A. Fullam, 2 lots, 50 feet.

Matthew Fullam, 5 lots, 125 feet.

Alex. Smith, 2 lots.

M. A. Driscoll, 2 lots.

John Mogridge, 2 lots.

30 Dan'l Roberts, 2 lots.

Peter Jackson, 9 1-12 lots.

Herman Heschel, 4 lots.

John M. Wilson, 2 lots.

M. J. Van Tassel, 2 lots.

EXHIBIT P. 10.

Old notice given for the assessment for improve-
 40 ment.

EXHIBIT, P. 11.

Abstracts from minutes of Board to adjust unpaid assessments.

Page 28. Assessment for grading and flagging Webster avenue, from the north side of North street, southerly to South street :

Mary J. Van Tassel, John S. Edwards, John J. Varick, Theo. W. Edwards, George Culver, S. H. De Wint, Herman Herschel, Wm. H. Collard, Michael A. Driscoll, Ernst. H. Kessler and others, Fred. Hoffen, Lizzie Stout, John Haughey, Mathew Fallerm, Andrew Patschell, F. J. Dominick, Christopher Garhardt, Daniel Roberts, Wm. B. Foreman, John D. Ackerman, Harman Sill, John A. Sill, Elijah V. Meyers, Henry S. Lord, John Pennington, Robert Campbell, John Whiteman, Andrew Rochester, G. Baucher, Charles Clinton, Peter Edsall, Andrew Whiteman, Peter Jackson, Joseph Chad-dock, Charles Hall, Michael Tulmer, Alexander Smith, John Falloner, Mary McManus, Peter A. Bailey, Thomas A. Foster, Heirs of Catharine Nathan.

April 14th, 1874.

Page 106. The Board to adjust unpaid assessments in Jersey City met at the Council Chamber, City Hall, Jersey City, at 11 o'clock, A. M., pursuant to notice given. All the Commissioners being present. The matters postponed till to-day were again postponed, by order of the Board, till the second Tuesday of June next.

The following assessments were advertised for this day.

No. 107. Grading Washington avenue ; grading, flagging, &c., Webster avenue, from north side of North street, southerly to South street.

The Board then adjourned to meet at the same

place, on the fifteenth day of April, A. D. 1874, at ten o'clock in the forenoon.

April 16th, 1874.

Page 110. The Board to adjust unpaid assessments in Jersey City, met pursuant to adjournment, all the Commissioners being present.

10 No. 107. Assessment for grading, flagging, &c., Webster avenue, from north side of North street, southerly to South street called, and on motion of Mr. Babbitt, went to the foot of the list.

The following persons were sworn and examined :

Edwin Van Houten, John M. Van Tassell, John W. Baker, Thomas Dorsey and John S. Edwards.

The Board then adjourned to meet at the same place, April 17th, 1874. at 10 A. M.

30

April 23d, 1874.

Page 118. The Board to adjust unpaid assessments in Jersey City, met at the Council Chamber, City Hall, Jersey City, pursuant to adjournment. All the Commissioners being present.

No. 107. Assessment for grading, flagging, etc., Webster avenue from north side of North street, southerly to South street, taken up.

30 Mr. Douglass, for city.
Mr. Babbitt, for petitioners.

The following witnesses were sworn and examined : James Moy, John M. Van Tassel and John S. Edwards.

The Board then adjourned to meet at the same place, on April 24, 1874, at ten A. M.

September 17, 1874.

40 Page 150. The Board to adjust unpaid assess-

ments in Jersey City, met at the Council Chamber, City Hall, Jersey City, pursuant to adjournment. All of the Commissioners were present.

For grading, flagging and cross-bridging Webster avenue from South street to north side of North street.

The Commissioners spent the day in conference, and adjourned to meet at the same place, on Tuesday, the first day of December, eighteen hundred and seventy-four, at eleven o'clock in the forenoon. 10

EXHIBIT P. 12.

NOTICE.

In pursuance of the requirements of the Act entitled "An Act to adjust unpaid assessments in Jersey City," the subscribers, who have been appointed by the Supreme Court "to examine, revise, alter and adjust," as provided in said Act, all unpaid assessments, whether heretofore set aside by order of any Court of this State, or otherwise within a period of five years prior to the approval of said Act on the 26th day of March, 1873. "For city improvements heretofore made in Jersey City, and in the former cities of Hudson and Bergen, which are or may be disputed" hereby give notice that all persons aggrieved by any assessments heretofore made as aforesaid; must present to the subscribers at the Council Chamber in the City Hall of Jersey City, on Thursday, the eighteenth day of September next, at 11 o'clock in the forenoon, their petition stating their objection to such improvement. 20 30

Such petition may, before the day above-mentioned, be presented to Henry S. White, or to Charles H. Hartshorne, of Jersey City, who have been appointed our agents in accordance with the provisions of said Act, with whom also blank petitions may be found. 40

By the provision of said Act, all persons neglecting to file their petition as above required, are considered as waiving their objections to said assessment.

Dated, Jersey City, July 23, 1873.

DANIEL HAINES,
JESSE WILLIAMS,
THEO. LITTLE.

Office of Henry S. White, 125 Washington street,
10 cor. Montgomery street.

Office of C. H. Hartshorne, 21 Montgomery
street.

EXHIBIT P. 13.

Map filed by commissioners to adjust unpaid assessments, relating to grading, &c., of Webster
20 avenue.

EXHIBIT P. 14.

To the Honorable, the Mayor and Common Council of the City of Hudson :

The undersigned the Board of Commissioners of Assessments of the City of Hudson, to whom has
30 been referred the matter of ascertaining the assessing the expenses of

would respectfully report that we have examined into the whole matter of said

and that we are satisfied from a personal inspection of the same that the said work has been completed in accordance with the ordinance authorizing the the same.

40 We further report that we have ascertained the

expenses incident to said improvements and find that the costs and expenses of such

amount to the sum of fourteen thousand and two hundred and forty-three dollars and sixty-eight cents, and that the incidental expenses amount to the sum of five hundred and forty-seven dollars and ninety-eight cents, making the total of such costs and expenses, the sum of fourteen thousand seven hundred and ninety-one dollars and sixty-six cents-

We further report that we have determined what real estate ought to be assessed for said improvements, and that the map and schedule accompanying this report embrace all the real estate which in our judgment should be assessed for said improvements, with the name of the owner or owners of each lot marked in said schedule; and that the lot and block numbers opposite each name on the said schedule, show the particular lot or parcel of land on said maps owned by each person assessed; and that the said schedule shows the proportion of the said expenses assessed to each lot or parcel of land on the said map, which schedule we pray may be taken as part of this, our report.

We further report that we have together personally examined each of said lots or parcels of land with reference to said improvements, for the purpose of ascertaining the proportion of benefit each lot or parcel of land has received therefrom in proportion to the whole expense of said improvements, in order to determine the proportion which each lot or parcel should bear to the whole expense.

That in determining the amount to be assessed to each lot or parcel of land, we have considered, among other things, the position and size of each lot, and its probable increase in value by reason of said improvements. And after a careful examination, we have determined that the proportion of the

whole expense to be assessed to each lot or parcel, in proportion to the benefits received by the same, to be the amounts set forth in the said schedule, as the same be found thereon opposite the name of each lot owner.

We further report that we all acted together in making said assessment, and that before making the same we caused notices to be served on the 26th day of January, 1870, on all persons residents of the city of Hudson, owning any of the lands by us 10 assessed, personally, if they could be found, and if not, caused the same to be left at their dwelling-houses ; and also, on the same day, sent by mail to the address of all such persons, not residing in said city, notifying them that we would meet at the office of John Camp, Jr., City Surveyor, cor. Palisade avenue and VanVorst street, on Wednesday, February 2, 1870, between 3 and 4 o'clock P. M., for the purpose of examining into the matter of 20 grading, flagging, draining, &c., Webster avenue. And that on said day we met pursuant to such notice, and heard all such persons as appeared before us in relation to the same.

And we further report that after our appointment as members of the board of commissioners for assessments, and before proceeding to the duties of our office, we did each of us, subscribe and take oath before the clerk of said city, faithfully, honestly and impartially, to perform the duties required 30 of us as such commissioners by the Charter of said City ; and that each of us is now, and was at the time of performing the duties aforesaid, and of making the said assessment, a resident of, and freeholder in said city of Hudson, and not interested in said improvement.

All of which is respectfully submitted.

JOHN H. PLATT,
FRANCIS N. MITCHELL,
MICHAEL MAGEE.

EXHIBIT P. 15.

M. R. APPLGATE and husband

to

JOHN S. EDWARDS.

Deed—date Nov. 27, 1868. Recorded Dec. 5, 10
1868. Book 179, page 561.

EXHIBIT P. 16.

THEODORE EDWARDS and Wife

to

JOHN S. EDWARDS.

20

Deed—date May 29, 1867. Recorded June 8,
1867. Liber 148, page 445.

EXHIBIT P. 17.

JOHN S. EDWARDS and wife

to

JOHN S. EDWARDS (Second).

30

Deed—date June 4, 1866. Recorded June 4, 1866.
Liber 134, page 155, &c.

40

EXHIBIT P. 18.

MARGARET DORSEY and husband

<i>to</i>

JOHN S. EDWARDS.

- 10 Deed—dated Nov. 13, 1866. Recorded Nov. 13, 1866. Liber 139, page 357, &c.

EXHIBIT P. 19.

Assessment map filed in office of Clerk of Hudson City, confirmed March 23, 1870.

20

30

40

Exhibit P 20.

ating for grading, flagging, cross-bridging Webster avenue from South street to the north side of North street ;
confirmation approved March 23d, 1870.

Names.	Block Nos. Lot Nos. Assess- or's Map.	Lot Nos.	Size of Lot.	Street.	Amount Assessed.	Interest.	Cost of Advertising.	Total.	When Collected.	Remarks.
ards.....	21	16	25x100	Webster av.	\$173 80			\$173 80	Aug. 7, '72	This assessment was carried to Supreme Court by the property-holders, and the assessment was approved by the Court, and ordered collected by the Board of Finance and Taxation Dec. 12th, 1871.
		17	"	"	173 80			173 80	"	
		18	"	"	173 80	\$148 14		321 94	"	
		19	"	"	173 80			173 80	June 29, '72	
		20	"	"	173 80	94 60		268 40	"	
oplegate, } wards, } oplegate, } wards, }		21	"	"	173 80			173 80	June 1, '72	
		22	"	"	173 80	90 72		264 52	"	

Exhibit P 21.

at for grading, flagging and cross-bridging Webster avenue from South street to the north side of North street ;
confirmation approved Sept. 17th, 1874 (March 23d, 1870).

Names.	Block No.	Lot Nos. City Map.	Assessor's Nos.	Size of Lot.	Street.	Amount Assessed.	Interest.	Cost of Advertising.	Total.	When Collected.	Remarks.
legate...	794	91	49		Webster av.	\$91 57	\$90 72		\$264 52	June 1, '72	Paid under protest.
		92	50		"	91 57			173 80	"	"
s.....		93	51		"	91 57	94 60		268 40	June 29, '72	"
		94	52		"	91 57			173 80	"	"
		95	53		"	91 57	148 14		321 94	Aug. 7, '72	"
		96	54		"	91 57			173 80	"	"
		97	55		"	91 57			173 80	"	"

EXHIBIT P. 22.

[*Extracts from Resolutions of Board of Finance and Taxation.*]

July 14, 1871.

Page 33.

Resolved, That the city collector is hereby directed to report to this Board a full and complete list of all property upon which taxes, assessments and water rents were due and unpaid, prior to the first day of May, 1871 (except assessments for which five years are allowed for payment), to the end that this Board may order and direct the advertisement and sale of said property in the manner defined by law. 10

President.

ROBERT HUTTON,
Clerk.

September 26, 1871.

Page 49.

20

Resolved, That all lands, tenements assessed for taxes, water rents and assessments for the years 1865, 1866, 1867, 1868, 1869 and 1870, on which such taxes, water rents and assessments have not been paid, be sold in the manner provided by the City Charter, under the direction of the Committee on Taxation and Assessments of this Board on the sixth day of December next, at one o'clock in the afternoon, and that said committee do first cause said sale to be duly advertised according to law, and provided that if the taxes, water rents and assessments against any property to be advertised for sale, be paid before the sale thereof, together with all penalties, interest and expenses therefor, such property shall not be sold. 30

President.

ROBERT HUTTON,
Clerk.

40

October 20, 1871.

Page 55.

Resolved, That so much of the resolution adopted September 26, 1871, as provides for sale December 6, 1871, for unpaid taxes and water rents, be so amended as to alter the time for said sale to Thursday, December 14, 1871, at 10 o'clock in the forenoon.

President.

10 ROBERT HUTTON,
Clerk.

EXHIBIT P. 23.

Act of Legislature of the State of New Jersey.
Passed April 2, A. D. 1869.

20 Act of Legislature of the State of New Jersey,
consolidating the cities of Jersey City, Hudson City
and Bergen. Passed March 17, A. D. 1870.

An Act to Reorganize the Local Government of
Jersey City. Passed March 31, A. D. 1871.

An Act to adjust unpaid assessments in Jersey
City. Passed March 26, A. D. 1873.

30

40

EXHIBIT D. 1.

New Jersey, ss :

[SUP. CT. SEAL.] *The State of New Jersey to the
Mayor and Aldermen of Jersey
City :*

We being willing for certain reasons to be certified of the acts and proceedings of the Mayor and Common Council of the City of Hudson in grading and improving Webster avenue in the said city of Hudson and assessing the costs of the same, We command you, that the ordinance of the Mayor and Common Council of said City of Hudson made in reference to the grading and improving of said avenue, together with all acts and proceedings, touching and concerning the same from the fifth day of December, eighteen hundred and sixty-seven (1867) to the first day of May, eighteen hundred and seventy (1870) and the assessment and assessments of the costs of the same, and all acts and proceedings touching said assessments, as the same remains among the records of said city of Hudson, to our Supreme Court to be holden at Trenton on the first Tuesday of November 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 the State ought to be done.

Witness, MERCER BEASLEY, Esquire,
Chief Justice of our said Supreme
Court at Trenton the first Tuesday
of June, eighteen hundred and
seventy.

C. P. SMITH,
Clerk.

JNO. LINN, *Att'y.*

The Mayor and Aldermen of Jersey City, herewith send to the Supreme Court of New Jersey, the proceedings and copies of all papers in their possession as commanded in the writs hereto annexed as

by the certified copies under the hand of the City Clerk of Jersey City, and the corporate seal of said "The Mayor and Aldermen of Jersey City" hereto annexed more fully appears.

In testimony whereof, the corporate seal of the Mayor and Aldermen of Jersey City, is hereto affixed and these presents are signed by our Mayor and City Clerk, this twenty-ninth day of September, eighteen hundred and seventy.

[L. s.]

10

CHAS. H. O'NEIL,
Mayor.

JOHN E. SCOTT,
City Clerk.

At a regular meeting of the Common Council of the City of Hudson, held December 4th, 1867, the
20 ordinance to provide for the grading, &c., of Webster avenue, from North street, south to South street, was taken up, the same having been introduced at last regular meeting, read and laid over.

The said ordinance having been read a second and third time, was placed upon its final passage, and passed by the following vote, on yeas and nays, the same having been ordered and taken :

30 Yeas—President McNulty, Ald. Goetze, Benjamin Leitz, McPherson, Martini, Pattberg and Stanton.

UNANIMOUS.

Said ordinance being as follows :

An ordinance to provide for the grading, flagging, &c., of Webster avenue, from the north side of North street, southerly to South street.

40 The Mayor and Common Council of the City of Hudson, do ordain as follows :

SECTION FIRST.—That Webster avenue from the north side of North street, southerly to South street, be regulated and graded the full width thereof, as laid down on the map of estate of Cornelius Van Vorst, and that bluestone flag sidewalks, four feet wide, be laid on both sides of said street, with bridge stone cross-walks over all intersection streets, and such necessary drains and receiving basins or openings as may be needed, in the opinion of the surveyor or engineer having charge of such work. 10

SECTION SECOND.—That all the costs, charges and expenses incurred in completing the said improvement be assessed upon and paid by the land and real estate, benefitted by the same in accordance with the Charter of said city.

SECTION THIRD.—That said work be done under the direction of the street commissioner, and a superintendent for said work, to be appointed by the Common Council. 20

The foregoing ordinance was approved by the Mayor, December 5th, 1867.

At a meeting of said Common Council, held December 18th, 1867, the City Clerk's report of the signing by the Mayor of said ordinance was received and ordered filed.

The following is a copy of a paper on file among the records of the former city of Hudson.

STATE OF NEW JERSEY, }
Hudson County. }

30

WM. D. MCGREGOR, being duly sworn, according to law, upon his oath saith, that he is one of the publishers of the "*Hudson City Gazette*," a newspaper printed and published in the city of Hudson, county and state aforesaid, and that he caused the ordinance for Webster avenue grading, &c., of which the annexed is a true copy, to be published in his said newspaper for four weeks successively, 40

at least once in each week, commencing on the 18th day of January, 1868.

“An ordinance to provide for the grading and flagging of Webster avenue, from the north side of North street, southerly to South street.

The Mayor and Common Council of the City of Hudson, do ordain as follows :

SECTION 1.—That Webster avenue, from the north
10 side of North street, southerly to South street, be regulated and graded, to the full width thereof, as laid on the map of estate of Cornelius Van Vorst, and that blue stone flag sidewalks, four feet wide, be laid on both sides of said avenue, with bridge stone cross-walks over all intersecting streets, and such drains or receiving basins, or openings as may be needed in the opinion of the surveyor or engineer having charge of said work.

SECTION 2.—That all costs, charges and expenses
20 incurred in completing said improvement, be assessed upon and paid by the lands and real estate benefited thereby, according to the City Charter.

SECTION 3.—That said work be done under the direction of the Street Committee, and a superintendent for said work to be appointed by the Common Council.”

At a meeting of said Common Council, held De-
30 cember 18th, 1867, a petition of which the following is a copy, was presented and referred to the Street Committee.

CITY OF HUDSON, Dec. 16th, 1867.

TO THE HONORABLE THE COMMON COUNCIL.

Gentlemen : The undersigned, representing more
40 than three-fourths of the land affected, respectfully ask for the alteration of the grade of Webster ave., from Warren street to North street (north side), to

conform with the profile map or plan herewith submitted, and forming a part of this our petition.

J. M. Van Tassel, 50 feet.
 John Varrick, 25 feet.
 Wm. B. Forman, 25 feet.
 Peter Jackson, 200 feet.
 Ernst H. Kepler, 150 feet.
 Edward Gorenflo, 100 feet.
 Dan'l Roberts, 50 feet.
 John Mogridge, 50 feet.
 W. H. Applegate, 50 feet.
 T. W. Edwards, 50 feet.
 Thomas Dorsey, 50 feet.
 J. Dominick, 25 feet.
 Chas. Clinton, 50 feet.
 Christian Gerhardt, 34 feet.
 Mrs. C. Nattenus, 16 feet.

10

At a meeting of said Common Council, held January 15, 1868, the Committee on Streets reported favorably on petition for alteration of grade of Webster avenue, and introduced an ordinance therefor, which was read and laid over for future action. 20

At a meeting of said Common Council, held February 5, 1868, the ordinance to provide for an alteration of the established grade of Webster avenue was taken up, the same having been introduced at regular meeting, January 4th (15th), 1868, read and laid over. 30

The said ordinance having been read a second and third time, was placed upon its final passage, and passed by the following vote, on yeas and nays, the same having been ordered and taken:

Ayes—Pres. McNulty, Ald. Benjamin Leitz, McPherson, Martini, Pattberg and Stanton.

Nays—None. Absent, Ald. Goetze.

The said ordinance was approved by the Mayor, February 7th, 1868, and is as follows:

An ordinance to provide for an alteration of the 40

established grade of Webster avenue from the north side of North street, southerly to Warren street.

Whereas, The owners of more than three-fourths of land fronting on Webster avenue, between the north side of North street, south to Warren street, have applied for an alteration of the established grade of said street, according to a map duly filed with their application in the City Clerk's office,

Therefore,

- 10 The Mayor and Common Council of the City of Hudson do ordain as follows :

SECTION FIRST.—That the established grade of Webster avenue from the north side of North street southerly to Warren street be altered to conform to the map or plan for said alteration duly filed in the office of City Clerk of the City of Hudson, and entitled "Map of proposed alteration of grade Webster avenue, made by L. W. Post, City Surveyor."

- 20 SECTION SECOND.—That said alteration of grade be marked on the city maps of grade and sewerage under the direction of the Street Committee.

Passed February 5, 1868.

CHARLES J. ROE,
City Clerk.

Approved February 7, 1868.

G. D. VAN RIPER,
Mayor.

- 30 At a meeting of the Common Council, held February 19, 1868, the City Clerk reported that the Mayor had signed the ordinance for altering the grade of Webster avenue.

- 40 At a meeting of the Common Council held March 18, 1868, the Committee on Streets, by Ald. Martini, reported two bids for work of grading, &c., of Webster avenue, which were, on motion, opened by the President, read by the Clerk, and referred back to the committee for adjudication.

Said bids being from P. Reilly and Whyte & Rowland.

At a meeting of the Common Council, held April 1, 1868, the Street Committee reported back bids for the grading of Webster avenue with the following resolution, which was adopted :

Resolved, That the contract for the improvement of Webster avenue be awarded to P. Reilly, at the prices stated in his proposal, he being the lowest bidder for the same ; that the Corporation Attorney be directed to draw said contract, and the Mayor be directed, and Clerk directed, to sign and seal the same. 10

The following are copies of the bids presented March 18, 1868 :

To the Mayor and Common Council of the City of Hudson :

I propose to regulate and grade Webster avenue, according to plan and specifications, for the following prices, to wit : 20

Sand filling, per cubic yard,	\$1 75	
Earth excavation, "	35	
Rock " "	2 00	
Earth filling, "	15	
Extra earth filling, "	50	
Flagging, new, per square foot,	23	
" relaid, "	02	30
Cross-bridging, new, "	40	
" relaid, "	04	
Curb, new, per lineal foot,	60	
Curb, reset, "	05	
Masonry in retaining wall, per cubic foot,	26	
Building and furnishing all material of three receiving basins, all complete, and laying the necessary cement pipe, and building bridge forty (40) feet long, according to plans and specifications	1,150 00	40

If I meet any rock in sinking pipes, I will excavate the same for four dollars (\$4) per cubic yard.

Dated March 18, 1868.

PATRICK RILEY.

I offer the name of Patrick Long as security.

PATRICK RILEY.

JERSEY CITY, 18-3, '68.

10 *To the Honorable, the Mayor and Common Council :*

Gentlemen :

We propose to grade and regulate Webster avenue, at the following prices :

	Earth excavation,	at \$0	28 a yard.
	Rock "	"	02
	Earth filling,	"	28
	Extra "	"	60
20	Flagging,	"	23 a foot.
	" relaid,	"	04 "
	Cross-bridging,	"	45
	" relaid,	"	08
	Curb,	"	57
	" relaid,	"	10
	Cement masonry,	"	28 cubic ft.
	Receiving basins,	"	33 00 each.
	Bridges, per lineal foot,	"	8 20
	15 in. drain,	"	1 90
30	9 " "	"	1 00
	Sand filling,	"	1 75

We will also forfeit the sum of ten dollars for every day after the first day of October, 1868.

Yours respectfully,

WHYTE & ROWLAND.

Per G. NAISMITH.

Security,

WM. ATCHISON.

The following is a copy of the contract executed by Patrick Riley, and bond for fulfillment :

This agreement, made this sixth day of April, in the year one thousand eight hundred and sixty-eight, between the Mayor and Common Council of the City of Hudson, of the first part, and Patrick Riley, of the city of Hudson, in the county of Hudson and State of New Jersey, of the second part.

Witnesseth, That the said party of the second part, for himself, his executors and administrators, *do* hereby, in consideration of the payments to be made to him by the said parties of the first part, as hereinafter mentioned, covenant, promise and agree to and with the said parties of the first part, and their successors, to improve Webster avenue from South street northerly to North street, in said city, according to the specifications, a copy of which is hereto annexed, at the prices following, that is to say :

For Sand filling, per cubic yard,	\$1 75	
“ Earth excavation “	35	
“ Rock “	2 00	
“ Earth filling, “	15	
“ Extra earth filling, “	50	
“ Flagging (new), per square foot,	23	
“ “ (relaid), “	02	
“ Cross Bridging (new), “	40	
“ “ (relaid), “	04	30
“ Curb (new), per lineal foot,	60	
“ “ (reset), “	05	
For Masonry in retaining wall, per cubic foot,	26	
For Building and furnishing all materials for three receiving basins, all complete, and laying the necessary cement pipe for drain and building bridge forty-six feet long,	1,150 00	
For Rock excavation, if any found, in excavating to sink pipes, per cubic yard,	4 00	40

And the said party of the second part hereby agree to allow to the owners of lots for surplus earth the sum of _____ cents per cubic yard ; and to furnish good and sufficient materials, and do the said work in a workmanlike manner according to the plan and specifications under the direction of the Street Commissioner, or such other person as the Common Council may employ for the purpose, and to the satisfaction of the Committee on Streets

10 of the Common Council, and to put up, and keep up during the night time, proper guards and lamps at or near any excavations or embankments that may be necessary, or caused in the progress of said work, to prevent accidents to travellers. And to indemnify and save harmless the said parties of the first part against any and all costs, charges, damages or liabilities that may be incurred or suffered by the said parties of the first part, by reason of

20 any neglect, omission, or default, on the part of the party of the second part, in the performance of the said work, whether occasioned by blasting rock, or otherwise howsoever. And to complete the said work, in manner aforesaid, by the first day of September next. And to receive in payment for the same, "improvement certificates," in sums of not less than five hundred dollars each, as the work progresses, bearing interest from the date of the confirmation of the assessment, to be made by the Common Council for said work, and the balance in like

30 manner, when the whole work is completed and accepted by the Common Council. Provided, however, that one-third part of the money that shall accrue due upon this contract, for materials furnished and work done, shall be retained by the said parties of the first part (and for which certificates shall not be issued), as security for the completion of the said work, until the work is completed and accepted by the Common Council. And provided, also,

40 that if the said party of the second part, his executors, administrators or assigns, shall neglect to fur-

nish the said materials, and to do the said work, and hold the said party of the second part liable for all damages sustained by reason of the non-performance of the contract.

And it is hereby especially agreed by and between the said parties, that the said party of the second part shall pay such Superintendent as is or may be hereafter appointed by the said Mayor and Common Council, for every day he may be employed on the work after the time stipulated to complete the work shall have expired. 10

And also that the said party of the second part shall suffer to be deducted from such sums of money as may become due to him upon this agreement, for each and every day the completion of the work shall be delayed after the expiration of the time agreed upon, the sum of ten dollars.

And the said parties of the first part, for themselves, and their successors, in consideration of the materials to be furnished and work done, as aforesaid, *do* hereby hereby covenant, promise and agree to and with the said party of the second part, his executors, administrators or assigns, to pay unto the said party of the second part, his executors, administrators, or assigns, for furnishing the said materials, and for doing the said work the prices hereinbefore stated in the "Improvement Certificates" to be issued by the Common Council, under the seal of the city, upon the certificate of the surveyor having charge of the said work, and upon the approval of the Street Committee, for the amount and in the manner hereinbefore mentioned. 20 30

In witness whereof, the said parties of the first part have hereunto affixed their corporate seal, attested by the signature of the Mayor and Clerk of said city, and the said party of the second part has set

his hand and seal the day and year
first above written.

PATRICK RILEY. [SEAL.]

G. D. VAN RIEPEN. { Seal of the city }
 { of Hudson, }
 { New Jersey. }

10 *Know all men by these presents :*

That we, Patrick Riley, Patrick Long and Patrick Ribets, all of the city of Hudson, in the county of Hudson, and State of New Jersey, are held and firmly bound unto the Mayor and Common Council of the city of Hudson, in the sum of one thousand dollars, good and lawful money of the United States of America, to be paid to the said Mayor and Common Council of the city of Hudson, their successors and assigns, for which payment well
20 and truly to be made, we bind ourselves and each of us by himself, our and each of our heirs, executors and administrators jointly and severally firmly by these presents.

Sealed with our seals. Dated the sixth day of April, one thousand eight hundred and sixty-eight.

The condition of the above obligation is that whereas the above bounden Patrick Riley has entered into a contract with the said the Mayor and
30 Common Council, bearing even date herewith under his hand and seal, whereby he has agreed to improve Webster avenue, from South street northerly to North street, according to printed specifications, a copy of which is hereto annexed. Now, therefore if the said Patrick Riley shall faithfully perform and carry out the said contract according to said specification in case the same should be accepted by the said Mayor and Common Council then the above

obligation to be void, else to be and remain in full force and virtue.

PATRICK RILEY, [SEAL.]
PATRICK LONG, [SEAL.]

Sealed and delivered in the presence of

At a meeting of said Common Council held May 6th, 1868, a certificate of City Surveyor Beyer, in favor of P. Riley, for \$500, for work on Webster avenue, as per contract, was presented and referred to the Street Committee. At said meeting Improvement certificates were ordered for \$500. 10

At a meeting of said Common Council held May 20th, 1868, a certificate of City Surveyor Beyer, in favor of P. Riley, for \$500, for work on Webster avenue, was presented and referred to the Street Committee. 20

(Certificate is \$1,000.)

At said meeting Improvement Certificates were ordered for \$1,000.

At a meeting of said Common Council held June 24th, 1868, a certificate of Surveyor Beyer, in favor of P. Riley, for \$1,000, for work on Webster avenue, was presented, and referred to the Street Committee. 30

At said meeting Improvement Certificates were ordered for \$1,000.

At a meeting of the said Common Council held July 29th, 1868, a certificate of City Surveyor Beyer, in favor of P. Riley, for \$1,000, for work on Webster avenue, was presented and referred to the Committee on streets.

At said meeting Improvement Certificates were ordered for \$1,000. 40

At a meeting of said Common Council, held July 29th, 1868, on motion of Ald. Pattberg, John Ellwood, was appointed Superintendent of Webster avenue improvement works.

At a meeting of said Common Council, held September 16th, 1868, certificates of Surveyor Beyer, in favor of P. Riley, for \$2,225.17 (\$2,223.19) for work on Webster avenue, and in favor of J. Ellwood for \$105, for work on Webster avenue, were presented and referred to the Street Committee.

At said meeting certificates were ordered drawn in favor of P. Riley, for \$2,223.19, final payment before confirmation of work on Webster avenue, improvement, and in favor of Ellwood, \$105, superintending Webster avenue.

At a meeting of said Common Council, held September 30th, 1868, the Committee on Streets, by Ald. Martine offered the following resolution :

Whereas, Mr. John M. Wilson, one of the Commissioners of Assessment is according to law disqualified to act as one of the commissioners, he being interested in the improvement of Webster avenue,

Therefore, be it

Resolved, That Mr. Charles Lockle be and is hereby appointed as one of the commissioners in place of said Wilson disqualified,

On motion rule 12 was suspended, the resolution adopted, and the said Charles Lockle declared duly appointed.

At a meeting of said Common Council, held January 27th, 1869, a petition of owners on Webster avenue, north of Warren street, for alteration of grade of same was referred to the Street Committee.

At a meeting of said Common Council, held February 3d, 1869, the Committee on Streets by Ald.

Martini reported favorably an application for alteration on part of Webster avenue, with the following ordinance, which was read and laid over,

“An ordinance to provide for an alteration of the established grade of Webster avenue, or a part thereof.

At a regular meeting, held February 17th, 1869, the ordinance to provide for an alteration of the established grade of Webster avenue was taken up read, and afterward on motion laid over. 10

At a regular meeting, held March 3d, 1869, the ordinance to provide for an alteration of the established grade of Webster avenue, 350 south of North street, was taken up, the same having been introduced at last regular meeting, read and laid over. The said ordinance having been read second and third time was placed by its final passage by the following vote in yeas and nays, the same having been ordered and taken. 20

Yeas, Prs. McPherson, Ald. Ellwood, Goetze, Leicht, McNultz, Martini, Pattberg and Stanton, Unanimous.

The following is a copy of the ordinance as passed:

An ordinance to provide for the alteration of the established grade of Webster avenue, from North street to a point 350—south thereof,

Whereas, The owners of more than three-fourths of the land fronting on Webster avenue, from North street to a point 350 feet south thereof have asked for an alteration of the established grade of said street, between the aforementioned parts thereon, 30

The Mayor and Common Council of the city of Hudson do ordain as follows :

SECTION FIRST.—That the established grade of Webster avenue from North street south to a point three hundred and fifty feet south of said North 40

street be altered to conform to a grade map or plan of said alteration duly filed in the City Clerk's office of the city Hudson, made by A. Beyer, City Surveyor, marked profile of Webster avenue, and that said map or plan be the establish grade of said street between the aforementioned points.

Passed March 3d, 1869,

CHARLES J. ROE,

City Clerk.

10 Approved March 5th, 1869,

G. D. VAN RIEPEN,

Mayor.

At a regular meeting, held March 17th, 1869, Ald. Goetze introduced an ordinance to repeal ordinance altering the grade of Webster avenue. Read and laid over for further action.

20 At a regular meeting, held April 7th, 1869, the matter of assessment map and report of the Commissioners of assessment in the matter of the improvement of Webster avenue was taken up, the same having been duly filed, and due notice given of such filing according to law. The president gave notice, that any objector would be heard, when a remonstrance signed by Edwards and others was read, and with note from E. Kessler, were referred to the Street Committee.

30 At said meeting the ordinance to repeal ordinance to alter grade of Webster avenue was taken up; the same having been introduced at last regular meeting was read and laid over.

At an adjourned regular meeting, held April 14th 1869, on motion of Ald. Martini, the assessment maps matter of alteration of grade, &c., on Webster avenue, were referred to the Street Committee.

40 At a regular meeting, held April 21st, 1869, the ordinance to repeal the ordinance altering the grade of part of Webster avenue was taken up and read;

the same having been introduced at last regular meeting, read and taid over.

The said ordinance having been read, the second and third, was placed upon its final passage and passed by the following vote on Yeas and Nays :

Yeas—Pres. McPherson, Ald. Elwood, Goetze, Leitz, McNultz, Martini, Pattberg and Stanton.

On motion of Ald. Martini, the Committee on Streets were directed to notify the surveyor and contractor to complete said Webster avenue, according to grade map, plan and specifications. 10

The following is the ordinance passed April 21, 1869 :

An ordinance to provide for alteration of grade of Webster avenue, or a part thereof.

The Mayor and Common Council of the city of Hudson, do ordain, as follows :

SECTION FIRST.—Be it ordained, that the ordinance entitled an ordinance to provide for an alteration of the established grade of Webster avenue, south of North street, passed March 3, 1869, be, and the same is hereby repealed and declared of no effect. 20

Passed April 21, 1869.

CHARLES J. ROE,
City Clerk.

Approved April 22, 1869.

G. D. VAN RIEPEN, 30
Mayor.

At a regular meeting held June 2, 1869, a notice of demand from C. V. Traphagen, for payment of over-due improvement certificate, \$500, on Webster avenue improvement, was referred to the Committee on Assessments.

At a regular meeting held June 9, 1869, a notice of demand from H. M. Traphagen, for payment of over-due improvement certificates on Webster ave- 40

nue improvement was read, and referred to the Finance Committee.

At said regular meeting, on motion of Ald. McNulty, certificate held by H. M. Traphagen, for \$500, on Webster avenue grading, was ordered cancelled by warrant, on requisition of Finance Committee.

At a regular meeting held June 23, 1869, a certificate of Surveyor Beyer, in favor of P. Riley, for \$1,000, for work on Webster avenue, was referred to the Street Committee.

At a regular meeting held July 30, 1869, a notice of demand from H. M. Traphagen, for payment of improvement certificates, \$500, on Webster avenue, was referred to the Committee on Assessments.

At said regular meeting, the Committee on Streets reported correct certificate in favor of P. Riley, for \$1,000, for work on Webster avenue, and on motion, improvement certificates was ordered for the amount.

At said regular meeting, the following resolution was adopted :

Resolved, That interest be allowed to H. M. Traphagen, on improvement certificates ordered on Webster avenue, from date of notice to Common Council.

At said regular meeting, on motion of Ald. McNulty, warrants were ordered in favor of H. M. Traphagen, for \$1,000 and \$500, on Webster avenue grading over due.

At a regular meeting held July 28, 1869, a communication from P. Riley, on Webster avenue improvement, was referred to the Street Committee.

At said regular meeting the Committee on Assessments, by Ald. McNulty, reported back the communication of Messrs. Franck & Lockle, Commissioners Webster avenue, and moved that the same be referred back for further information. Adopted.

At said regular meeting, on motion of Ald.

Martini, the matter of the complaint of Contractor Riley, on Webster avenue improvement, was referred to the Street Committee and Street Commissioner with the City Attorney.

At a regular meeting held August 11, 1869, Ald. McNulty brought up the matter of Webster avenue improvement, and moved that warrants on the contingent fund be drawn in favor of the Commissioners Messrs. Platt, Lockle and Franck. Adopted 10
unanimously.

At a regular meeting held August 18, 1869, the following resolution was adopted :

Resolved, That the Street Commissioners be directed to remove all obstructions on Webster avenue, as per advice of Corporation Attorney, so that the Contractor, Mr. P. Riley, is able to grade the street to its proper width.

At said regular meeting the Committee on Assessments by Ald. McNulty reported favorably on demand of C. V. Traphagen, and moved that a warrant be ordered in his favor for \$500, for payment of overdue improvement certificate, Webster avenue ; adopted. 20

At a regular meeting held August 25th, 1869, a certificate of Surveyor Beyer, in favor of P. Riley, for \$700, for work on Webster avenue, was referred to the Street Committee. 30

At said regular meeting, the following resolution was adopted.

Resolved, That improvement certificates be ordered in favor of J. Donohue, for \$1,000, on Grand avenue improvement, and in favor of P. Riley, for \$700, for work on Webster avenue, both according to surveyor's certificates.

At a regular meeting, held Sept. 8th, 1869, the 40

Finance Committee, on Ald. Hogan, reported a notice of demand from H. M. Traphagen, with the following resolution which was adopted.

Resolved, That warrants be ordered in favor of H. M. Traphagen, for \$1,000, with interest from date, due on certificates ordered on Webster avenue.

- 10 At a regular meeting, held Sept. 22d, 1869, a notice of demand from A. Z. Terhune, for payment of ordered improvement certificates, for \$500, issued on Webster avenue grading, was referred to the Committee on Assessments.

At a regular meeting, held October 20th, 1869, a certificate of Surveyor Beyer, in favor of Riley, for \$500, work on Webster avenue, was referred to the Street Committee.

- 20 At said regular meeting, improvement certificate for \$500 was ordered issued.

At a regular meeting, held November 10th, 1869, a notice of demand from C. Whitehead, for payment of overdue improvement certificate, \$500, on Webster avenue grading was referred to the Finance Committee.

- 30 At a regular meeting, held November 17th, 1869, a certificate of Surveyor Beyer, in favor of Riley \$800, for work on Webster avenue, was referred to the Street Committee.

At said regular meeting improvement certificates for \$800 were ordered issued.

At a regular meeting, held Dec. 29th, 1869, a notice of demand from Second Nat. Bank, for payment of overdue improvement certificates on Webster avenue was referred to the Finance Committee.

At a regular meeting, held January 5th, 1870, a certificate of Surveyor Beyer, in favor of P. Riley, for \$656, for work on Webster avenue, was referred to the Street Committee.

At said regular meeting improvement certificates for \$656 were ordered issued.

At a regular meeting, held January 19th, 1870, a communication from Surveyor Beyer, of Webster avenue work, was referred to the Committee on Assessments. 10

At said regular meeting, Ald. Meeting, Ald. Martini, of Street Committee, moved that the matter of Webster avenue grading, be referred to the Board of Commissioners of Assessments, the same having been referred to the Street Committee, and the Street Commissioner—adopted.

At a regular meeting, held Feb. 25th, 1870, a petition of Daniel Roberts, for restoration of his property on Webster avenue to its condition prior to the grading, was referred to the Street Committee. 20

At a regular meeting, held January 19th, 1870, a report, of which the following is a copy, was presented and referred to the Street Committee.

CITY OF HUDSON, Jan. 19, 1870.

I hereby certify, that Mr. Patrick Riley has completed the grading, &c., of Webster avenue, according to contract, and the street is now ready for acceptance by the Council, if such a course is in accordance with the legal requirements. 30

JEROME J. COLLINS,
TOBIAS MARTINI,
JOHN HOGAN,

Street Com.

On the 19th day of February, 1870, at 10 o'clock, 40

A. M., a report and map of the Commissioners of Assessments were filed in the office of the City Clerk of the city of Hudson.

The following is a copy of said report :

TO THE HONORABLE, THE MAYOR AND COMMON
COUNCIL OF THE CITY OF HUDSON :

The undersigned, the Board of Commissioners for Assessments of the city of Hudson, to whom has
10 been referred the matter of ascertaining and assessing the expenses of

would respectfully report, that we have examined into the whole matter of said

and that we are satisfied from a personal notification of the same, that the said work has been completed in accordance with the ordinance authorizing the same.

20 We further report, that we have ascertained the expenses incident to said improvements, and find that the costs and expenses of such

amount the sum of fourteen thousand two hundred and fifty-three dollars and sixty-eight cents, and that the incidental expenses amount to the sum of five hundred and fifty-seven dollars and ninety-eight cents, making the total of such costs and expenses the sum of fourteen thousand seven hundred and
30 ninety-one dollars and sixty-six cents.

We further report, that we have determined what real estate ought to be assessed for said improvements, and that the map and schedule accompanying this report embrace all the real estate which in our judgment should be assessed for said improvements, with the names of the owner or owners of each lot marked on said schedule, show the particular lot or parcel of land on said map owned by each person assessed, and that the said schedule shows
40 the proportion of the said expenses assessed to each

lot or parcel of land on the said map, which schedule we pray may be taken as part of this our report.

We further report that we have together personally examined each of said lots or parcels of land, with reference to said improvements, for the purpose of ascertaining the proportion of benefit each lot or parcel of land has received therefrom in proportion to the whole expense of said improvements, in order to determine the proportion which each lot or parcel should bear to the whole expense. 10

That in determining the amount to be assessed to each lot or parcel of land, we have considered, among other things, the proportion and size of each lot, and its probable increase in value by reason of said improvements. And after a careful examination, we have determined that the proportion of the whole expense to be assessed to each lot or parcel in proportion to the benefits received by the same, to be the amounts set forth in the said schedule, as the same may be found thereon opposite the name 20 of each lot owner.

We further report that we all acted together in making said assessment, and that before making the same we caused notices to be served on the 26th day of January, 1870, on all persons residents of the city of Hudson, owning any of the lands by us assessed, personally, if they could be found, and if not, caused the same to be left at their dwelling-houses; and also, on the same day, sent by mail to the address of all such persons, not residing in said city, notifying them that we would meet at the office of John Camp, Jr., City Surveyor, cor. Palisade avenue and VanVorst street, on Wednesday, February 2, 1870, between 3 and 4 o'clock P. M., for the purpose of examining into the matter of grading, flagging, draining, &c., Webster avenue, and that on said day we met pursuant to such notice, and heard all such persons as appeared before us in relation to the same. 30

And we further report that after our appointment 40

as members of the board of commissioners for assessments, and before proceeding to the duties of our office, we did each of us, subscribe and take oath before the clerk of said city, faithfully, honestly and impartially, to perform the duties required of us as such commissioners by the Charter of said City; and that each of us is now, and was at the time of performing the duties aforesaid, and of making the said assessment, a resident and
 10 freeholder in said city of Hudson, and not interested in said improvement.

All of which is respectfully submitted.

JOHN H. PLATT,
 FRANCIS W. MITCHELL,
 MICHAEL MAGEE.

The following is a copy of the assessment map, and is marked letter A.

20

A.

[Assessment map of Webster avenue, grading, flagging, cross-bridging from South street to the north side of North street.]

Filed February 19, 1870.

The following is a copy of a map on file in the office of the City Clerk of Jersey City, bearing date March 16, 1870, and is marked letter B.

30

B.

[Profile map of Webster avenue, showing work done since re-grading from a point 348 feet south of the centre line of North street.]

At a regular meeting held March 2, 1870, the Clerk laid before the Board matter of report and map of the Board of Commissioners of Assessment, in the matter of Webster avenue grading, &c., the same having been duly filed February 19, 1870, and
 40 proper notice given of such filing according to law,

Remonstrance signed by Roberts and others, owners of lands on said Webster avenue, was read against confirming the said assignment and alleging overcharges and blunder in the work.

The President gave notice that any other objection would be heard; none appeared whereupon the whole matter was referred to the Street Committee.

At a regular meeting held March 16, 1870, a report of which the following is a copy, was presented, 10
read, accepted and ordered filed.

REPORT OF STREET COMMITTEE.

Your Committee would report that agreeably to advertised notice, they met at the City Hall, on Thursday, March 10, 1870, to hear the views of the owners assessed for the improvement of Webster avenue.

The full Committee present. 20

Mr. J. Linn appeared on behalf of the owners.

The map and report with final estimate of the surveyor were exhibited. The owners claimed that only about \$2,000 of work was done since the first acceptance of the street last year.

Mr. JOHN CAMP was sworn. His affidavit hereto annexed, marked A, was verified. He testified he made accurate and careful measurement, and work was resumed to determine the amount of cutting and filling, determined the same, according to a diagram shown; the committee's excavation, 1431 yards to grade, 764 to sub-grade; he then explained the diagram and mode of the measurement; testified that surveyor Beyer obtained the figures from him for 2d grading; it was graded according to those figures though the surveyor at one time made a mistake, which he corrected. 30

JOHN M. VAN TASSEL was then sworn :

He testified that he was one of the property owners complaining ; that the contractor sold about 500 yards of earth from the avenue ; showed diagram made by him and explained same ; diagram was made from actual measurement and showed rock as left at first grading ; measurement the same as Mr. Camp's ; no property above North street was assessed for the improvement, while in the opinion of deponent,
 10 ent, such lots were increased about \$400 each in value, they getting a graded street, city lights and a sewerage way which they had not before.

Mr. E. Kesler was examined ; bought earth of the contractor Riley ; don't know whom it came from ; filled in two lots on Webster avenue, and paid \$150 ; lots were filled adjoining mine ; don't know who filled them ; considered property north of North street, greatly benefited, giving the same
 20 reasons as Mr. Van Tassel.

After hearing all the evidence the committee adjourned.

T. MARTINI,
 J. HOGAN,
 G. J. ELWOOD.

At said regular meeting held March 16th, 1870, an estimate of which the following is a copy, was presented and ordered filed.

30

CITY OF HUDSON, March 16th, 1870.

TO THE HON. THE MAYOR AND COMMON COUNCIL.

Gentlemen: I would respectfully submit the accompanying and specified bill, subjoined, of this work which was done since regrading the northerly part of Webster avenue.

The work done since rendering the detailed account in the fall of 1868 is specified as follows :
 40

Amount of bill in fall 1868	\$8,667 38
Rock Excavation 2,550 cub. yds. at \$2,	5,100 00
Earth " 350 " " " 35c.	122 50
Earth and Rock Filling, 750 cub. yds. at 15c.	112 50
Extra Earth Filling, 48.26 cub. yds. at 50c.	241 30
	\$14,243 68
Total of Contractor's Bill,	\$14,243 68

10

A. BEYER,
Surveyor.

STATE OF NEW JERSEY, { ss:
Hudson Co. }

Before me personally appeared the above-named A. BEYER, who made oath the above claim is just and true, according to his best knowledge and belief.

A. BEYER. 20

Sworn and subscribed before me, {
this 16th day of March, 1870. }

CHARLES HESPE,
Commissioner of Deeds.

At a regular meeting, held March 23d, 1870, the following resolution was offered by Ald. Hogan, of the Street Committee and read.

Whereas. The Board of Commissioners of As-³⁰
signments have duly filed their report and maps of assessment, in the matter of Webster avenue grading, and due publication has been made of such filing according to law, and all objections heard thereon, therefore,

Resolved, That said reports and maps of assessments be confirmed, and a copy of said assessment list be handed to the Collector of Revenue for collection.

40

Adopted as follows on yeas and nays.

Yeas.—Pres. McPherson, Ald. McNulty, Hogan, Martini and Harrington, Ald. Dakin.

Absent.—Ald. Elwood and McFadden.

At said regular meeting the following resolution was presented and adopted.

Resolved, That improvement certificates be ordered in favor of the contractor, for balance due, and to Commissioners of Assessment on Webster avenue grading now confirmed.

At a regular meeting, held March 30th, 1870, a communication from A. Beyer, on Webster avenue, was referred to the Street Committee.

At a regular meeting, held April 20th, 1870, a communication from J. Linn, Esq., on behalf of D. Roberts, owner on Webster avenue, was referred to the Committee on Laws.

At a regular meeting, held April 27th, 1870, the Committee on Streets reported by Ald. Martini on case of Daniel Roberts, complainant, and moved that a warrant be ordered in favor of said Roberts, for \$200, the same to be deducted from the Surveyor's account.

Ald. McNulty moved to amend by making the amount \$150, the same to be taken from the City Treasury.

The amendment was lost. The original motion was then adopted by the following vote on yeas and nays, the same having been ordered and taken :

Yeas—Pres. McPherson, Ald. Elwood, Dakin, Hogan, Harrington, Martini and McFadden.

Nays—Ald. McNulty.

At said regular meeting on motion of Ald. Martini the balance of his bill was ordered paid to Beyer by improvement certificate on Webster avenue, by the following vote on yeas and nays, the same having been ordered and taken.

Yeas—Ald. Elwood, Hogan, Harrington, McPherson, McNulty, Martini and McFadden.

Nays—Ald. Dakin.

I, JOHN E. SCOTT, City Clerk, of Jersey City, New-Jersey, do hereby certify that the foregoing is a true copy of the papers on file in my office, and in the comptroller's office in said city, and of those portions of the minutes of proceedings of the Common Council of the former city of Hudson, touching the assessment by the Mayor and Common Council of the city of Hudson, for grading and improving Webster avenue, from the fifth day of December, 1867, to the 1st day of May, 1870. 10

In testimony whereof, I have hereunto set my hand as City Clerk of Jersey City, and have affixed the corporate seal of "The Mayor and Aldermen of Jersey City," this (Corporate seal.) twenty-ninth day of September, 20 eighteen hundred and seventy.

JOHN E. SCOTT,
City Clerk.

EXHIBIT D. 2.

NEW JERSEY SUPREME COURT.

THE STATE

JOHN S. EDWARDS and another,
Prosecutors,

vs.

10

THE MAYOR AND ALDERMEN OF
JERSEY CITY.

On certiorari. In matter of assessment for improving Webster avenue, in Jersey City (late Hudson City).

20 And the said relators, by John Linn, their attorney, come and pray that the assessment made and confirmed by the Mayor and Common Council, of the city of Hudson, against the lands of the relators for alleged costs, charges and expenses in grading, &c., Webster avenue, under color of an ordinance passed by the Mayor and Common Council of Hudson city, entitled "An ordinance to provide for the grading, flagging, &c., of Webster avenue, from the north side of North street, and southerly to South street" be reversed, set aside,
30 for nothing holden.

1. Because said assessment was made and confirmed without the City Surveyor having made and caused to be presented to the Common Council temporary and final estimates of the amount due to the contractor for grading and improving said said as required by law and the ordinances of said city of Hudson.

2. Because said assessment was made and confirmed without the City Surveyor having made and
40

filed with the City Clerk. the grade map of said avenue as required by the laws and ordinances of said City of Hudson.

3d. Because no estimate was made by the City Surveyor, and presented to and acted upon by the Common Council showing the whole cost of said improvements.

4th. Because no estimate was made by the City Surveyor, and presented to and acted upon by the Common Council, showing the balance due to the contractor for said improvements before said assessment was made. 10

5. Because the Common Council refused to hear and consider the objection made by said relators against confirming said assessment.

6. Because said relators were denied a hearing in opposition to said assessment before the commissioners making the same. 20

7. Because said assessment was not made upon all the lands and real estate benefited by the same.

8. Because the contract for making said improvements was not given to the lowest bidder, ready and willing to comply with the requirements of the Common Council, and give security as required by law and the ordinances of said city of Hudson.

9. Because after the contract or making said improvements had proceeded with his work, and he and the City Surveyor had reported the work to be done under said contract finished, and the same had been accepted by the Common Council, and an assessment of the expenses of said improvements had been ordered by said Common Council and made by the commissioners in the manner prescribed by law, the said Common Council without any new contract or any other preliminary steps to legalize their 30 40

action directed said contractor to proceed and do more work on said avenue under the terms of the original contract, the alleged expenses of which have been added to the first assessment, and a new assessment made for the whole amount, which is the assessment complained of in these proceedings.

10 10. Because a much larger amount of money has been raised by said assessment than was sufficient to pay all the cost of said improvements, in accordance with the terms of said contract, and other incidental expenses of the same.

11. Because said assessment is in divers other respects illegal, unjust, and without authority of law.

JNO. LINN,
Attorney of Relators.

20

EXHIBIT D 3.

NEW JERSEY, } ss :
Hudson County,

JOHN S. EDWARDS, being duly sworn, on his oath saith that he is a resident and property owner in Webster avenue in Jersey City (late Hudson City), in the county of Hudson ; that on or about the 1st day of March, eighteen hundred and seventy, an
30 assessment was made upon the property and property owners in said avenue for the grading and improving of the same, which improvement was confirmed by the Common Council of Hudson City, and warrants have been issued for the collection of the same ; that among the persons thus assessed are the deponents Mary J. Van Tassel, John J. Varick, Theodore W. Edwards, George Colren, Samuel H. De Wint, Herman Herschel, William H. Collard, Michael A. Driscoll, Ernest H. Kessler, Edward
40 Gornflo and Frederick Oligier, Frederick Hoffen,

Lizzie Stout, John Haughey, Matthew Fullum, Andrew Patchel, F. J. Dominick, Christian Garhardt, Daniel Roberts, William B. Forman, Ernest H. Kessler, John D. Ackerman, Harmon Sell, John A. Sell, Elijah V. Miers, Henry S. Lord, John Pennington, Robert Campbell, John Whiteman, Andrew Rochester, G. Bancker, Peter Edsall, Andrew Whiteman, Peter Jackson, Joseph Chaddock, Charles Hall, Michael Fullum, Alexander Smith, John Fullum, Mary McMannus, Peter A. Bailey, Charles Clinton, Thomas Forster, and heirs of Catherine Nathan; and deponent saith that he and the persons above named, feeling themselves aggrieved by said assessment desire to unite in the prosecution of a writ of certiorari out of the Supreme Court of New Jersey, for the purpose of setting aside said assessment as to them, and having therein done what law and justice may require; and deponent saith that the said parties are advised by their counsel, and verily believe that the validity of said assessment, as to each and every of said parties, depends upon the determination of the same questions, and that their interests in the prosecution of said writ of certiorari are precisely identical.

And deponent further saith that said assessment is illegal and unjust, as deponent and the persons above named are advised by their counsel, for the following reasons, which are true.

1st. Because said assessment was made for a much larger sum than the work of the contractor amounted to according to his contract.

2d. Because the City Surveyor did not make and present to the Common Council temporary or final estimates of the amount due to the contractor for grading and improving said avenue as required by law.

3d. Because the City Surveyor did not make and

file with the city clerk the grade map of said avenue at the time and in the manner required by law.

4. Because in making said assessment the commissioners of assessment did not include all of the land and real estates benefited by the same.

5. Because the said parties aggrieved were not allowed to be heard with their objections and proofs as to the unfairness and illegality of said assessment before the Common Council of the City of Hudson, as required by law.

JOHN S EDWARDS, [L.S.]

Subscribed and sworn this }
4th June, 1870. }

W. A WEEKS,
Comr. of Deeds.

Hudson County, ss :

20 J. M. VAN TASSEL, being duly sworn, on his oath saith, that he has read the foregoing affidavit of John S. Edwards, and is acquainted with the contents thereof, and he knows the facts therein stated to be true.

JOHN M. VAN TASSEL, [L.S.]

Subscribed and sworn this }
4th June, 1870. }

W. A. WEEKS,
Comr. of Deeds.

30

EXHIBIT D. 4.

NEW JERSEY SUPREME COURT,

NOVEMBER TERM, 1871.

THE MAYOR AND ALDERMEN OF
JERSEY CITY

*ads*JOHN S. EDWARDS, *et al.*

} *On Certio-*
} *rari.* 10

The Court having heard the argument of counsel in this cause, and duly considered the matters removed into the Court by the writ of certiorari, issued in this cause, and the reasons assigned, and being of opinion that none of the reasons assigned, whether of fact or of law, are sufficiently sustained, it is ordered that said assessment be affirmed but without costs. 20

Entered November 29, 1871.

On motion of

J. DIXON JR.,

Attorney.

JOHN S. EDWARDS
v.
 THE MAYOR and ALDERMEN of JER-
 SEY CITY.

In Case.

MR. VREDENBURG, *for plaintiff.*

10 MESSRS. ABBOTT & TRAPHAGEN, *for defendant.*

KNAPP, *J.*

In this suit the plaintiff asks to recover from the defendant the difference between the first and second assessments laid upon five certain lots owned by him in Jersey City (formerly Hudson City) for an improvement made upon Webster avenue, between South street and North street.

20 The first assessment was confirmed March the 23d, A. D. 1870, imposing upon the lots of the plaintiff as the amount of benefits resulting to him the sum of \$1,311.20. This sum together with the additional sum of \$238 86, claimed by the defendant for interest and penalties for delays in making payment, was paid by the plaintiff to the city treasurer in three several sums between June 1st and August 7th, 1872. These payments, as the minutes of the city treasurer and other evidence show, were made

30 under protest.

The second assessment was made by the Board appointed by the Supreme Court, to "revise, alter and adjust" unpaid assessments in Jersey City, pursuant to the provisions of the Act of March 26th, 1873.

Petition was filed with that board by most if not all the lot owners whose lands were made liable to pay under the first assessment, among whom the plaintiff was included. The Board entered upon

40 the review of the assessment for the Webster

avenue improvement, the parties were heard before them, and on the 19th day of September, 1874, a new assessment was made, imposing \$5,393.78 of the cost upon the city at large ; and assessing upon lands especially benefited the sum of \$9,397.98 as the reasonably fair cost of the improvement. Upon this assessment the plaintiff's share of the costs for said lots was reported at \$640.99. The plaintiff's payments to the city are in excess of this latter amount \$909.07. This sum with interest he de- 10
mands that the city shall repay to him.

The plaintiff must recover in the suit unless this case can be distinguished from *Ryker v. Jersey City*, 9 Vr., 225. It seems to me exceedingly difficult to deny to this case the application of the same principles which controlled in that.

The objection that the payment in this case was voluntary, that the plaintiff had waived his right to dispute the city's claim and acquiesced in it by his payment was earnestly urged in the case cited, and held not to have any effective force against the justice of the claim. The first assessment having been made under color of law and the payment made in the manner that it was, waiving the question whether these parties, the one with what was equivalent to a judgment and which could be enforced against the lands of the other, were upon equal terms, the plaintiff might not be able to recover back the payment so long as the assessment remained to support the claim made against the plaintiff for payment, and which he had acceded to. But like the *Riker* case the adjudication of those who made the finding under which the plaintiff paid his money has been (if the Board to adjust unpaid assessments had power to do so) annulled and reversed, and no longer has any existence to support a claim to demand payment under it or to retain what has been paid. True it is, that it was not set aside upon certiorari or other proceeding in the Supreme Court ; but on the contrary that Court re- 40

fused for the reasons that were presented therefor to do so. But the Legislature having full control in the matter set up another tribunal by the act of 1873, with power to examine, revise, alter and adjust *unpaid* assessments. And so far as that body had jurisdiction of the case, it did effectually annul the first assessment; and set up another in its stead which is now ostensibly in full force. It can be of no moment that the assessment is vacated in one
 10 way or another.

The *fact of vacation* is the condition upon which one having made payment while the assessment was in force is permitted to have restitution.

The plaintiff demands to be allowed interest upon the money paid in excess of the final assessment, from the time of such payment. This claim I cannot accede to. His right to recover this difference arose for the first when the Board to adjust unpaid assessments had by their adjudication reduced the
 20 assessment first made against the plaintiff, and to put the city in default in respect to the overpayment. The plaintiff should have made demand upon the city for the money, this was not done until about the time of the commencement of the suit. From that time interest may be recovered. I will sign the Postea for plaintiff for the excess of payment over the present assessment, and interest thereon from the time of the demand.

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF
JERSEY CITY

ads.

JOHN S. EDWARDS.

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And thereupon the defendants by their counsel, pray an exception to the determination of the Justice who tried the cause upon the facts proved before him, that the plaintiff was entitled to recover, and defendants by their counsel pray that this their bill of exceptions might be sealed, and it is sealed accordingly.

M. M. KNAPP. [L. s.]

And thereupon defendants by their counsel also pray an exception to so much of the determination of the Justice, wherein he says: "The plaintiff must recover in this suit unless this case can be distinguished from *Riker v. Jersey City*, 9 *Vroom*, 225," and the defendants by their counsel pray that this their bill of exceptions might be sealed, and it is sealed accordingly.

M. M. KNAPP. [L. s.]

And thereupon the defendants, by their counsel, also pray an exception to so much of the determination of the Justice wherein he says: "But like the *Riker* case the adjudication of those who made the finding under which the plaintiff paid his money has been (if the Board to adjust unpaid assessments had power to do so) annulled and reversed and no longer has any existence to support a demand for payment under it or to retain what has been paid. True, it is that it was not set aside upon certiorari or other proceedings in the Supreme Court; but on

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the contrary that Court refused for the reasons that were presented therefor to do so. But the Legislature having full control in the matter set up another tribunal by the act of eighteen hundred and seventy-three, with power to examine, revise, alter and adjust unpaid assessments and so far as that body had jurisdiction of the case, and I think it had such jurisdiction, it did effectually annul the first assessment and set up another in its stead which is now
 10 ostensibly in full force," and the defendants by their counsel pray that this their bill of exceptions might be sealed, and it is sealed accordingly.

M. M. KNAPP. [L. s.]

And thereupon the defendants, by their counsel, also pray an exception to so much of the determination of the Justice, wherein he says: "It can be of no moment that the assessment is vacated in one way or another. The *fact* of *vacation* is the condition upon which one having made payment while
 20 the assessment was in force, is permitted to have restitution," and the defendants by their counsel pray that this their bill of exceptions might be sealed, and it is sealed accordingly.

M. M. KNAPP. [L. s.]

And thereupon, the defendants by their counsel, also pray an exception to so much of the determination of the Justice, wherein he says: "I will sign
 30 the Postea for plaintiff for the excess of the payment over the present assessment and interest thereon from the time of the demands," and the defendants by their counsel pray that this their bill of exceptions might be sealed, and it is sealed accordingly.

M. M. KNAPP. [L. s.]

NEW JERSEY COURT OF ERRORS AND
APPEALS.

THE MAYOR AND ALDERMEN of Jer-
sey City,

Plaintiffs in Error,

vs.

JOHN S. EDWARDS,

Def't in Error.

*In Error—
Assignment
of Error.*

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Afterwards, that is to say, on the third Tuesday of November, one thousand eight hundred and seventy-seven, in the Court of Errors and Appeals, in the last Court in all causes in the State of New Jersey, come the said The Mayor and Aldermen of Jersey City by Henry Traphagen, their attorney, and say, that in the record and proceedings aforesaid, and also in the matters recited and contained in the said bill of exceptions, and in the verdict and judgment aforesaid there is manifest error in this, to wit:

Because the declaration aforesaid, and the matters and things therein contained are not sufficient in law for the said John S. Edwards to have or maintain his aforesaid action against the Mayor and Alderman of Jersey City.

There is also manifest error in this, to wit: That the Justice before whom said cause was tried at the said issue joined as aforesaid, after the evidence was in on both sides, determined that upon the facts proved before him the plaintiffs were entitled to recover, whereas by the law of the land, said Justice should not have so determined; therefore, in that there is manifest error.

There is also manifest error in this, to wit: that the said Justice before whom, &c., at the trial, &c.,

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after, &c., determined as follows: "That the plaintiff must recover in this suit, unless this cause can be distinguished from *Riker v. Jersey City*, 9 Vroom, 225, whereas, by the law of the land, said Justice should not have so determined; therefore, in that there is manifest error.

There is manifest error in this, to wit: that the said Justice, before whom, &c., at the trial, &c., after, &c., determined as follows: "But like the
 10 *Riker* case, the adjudication of those who made the finding under which the plaintiff paid his money has been (if the Board to adjust unpaid assessments had power to do so) annulled and reversed and no longer has any existence to support a demand for payment under it, or to retain what has been paid; true it is, that it was not set aside upon certiorari or other proceedings in the Supreme Court, but on the contrary, that Court refused for the reasons that were presented therefor to do so,
 20 but the legislature having full control in the matter set up another tribunal by the Act of eighteen hundred and seventy-three, with power to examine, revise, alter and adjust unpaid assessments, and so far as that body had jurisdiction of the case, and I think it had such jurisdiction, it did effectually annul the first assessment, and set up another in its stead which is now ostensibly in full force." Whereas by the law of the land said Justice should not have so determined: therefore, in that there is
 30 manifest error.

There is also manifest error in this, to wit: that the said Justice, before whom, &c., at the trial, &c., after, &c., held as follows: "It can be of no moment that the assessment is vacated in one way or another, the fact of vacation is the condition upon which one having made payment while the assessment was in force is permitted to have restitution;" whereas by the law of the land, said Justice should not have so determined; therefore, in that there is
 40 manifest error,

There is also manifest error in this, to wit : That that the said Justice, before whom, &c., at the trial &c., after, &c., determined as follows : I will sign the Postea for plaintiff for the excess of the payment over the present assessment, and interest thereon from the time of the demand, whereas by the law of the land, said Justice should not have so held, wherefore in that there is manifest error.

There is also manifest error in this, to wit : Because it appears that the judgment in 10 form aforesaid was given for the said John S. Edwards against The Mayor and Aldermen of Jersey city. Whereas, by the laws of the land, judgment ought to have been given for the said The Mayor and Aldermen of Jersey City against the said John S. Edwards.

Therefore, the said The Mayor and Aldermen of Jersey city pray that the judgment aforesaid by reason of the aforesaid errors and of other errors appearing in the record and proceedings aforesaid be 20 reversed, annulled and held for nothing, and that the said The Mayor and Aldermen of Jersey City may be restored to all things, they have lost on occasion of the said judgment and that the prosecutor of the said plea in the name of the said John S. Edwards may rejoin to the said errors, &c.

HENRY TRAPHAGEN,
Attorney for Plaintiff's in error.

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The first part of the book is devoted to a description of the various species of plants which are found in the neighbourhood of the city of London. The second part contains a list of the names of the plants which are cultivated in the gardens of the city, and a description of the various species of animals which are found in the neighbourhood of the city.

HENRY THOMAS

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