

WM. S. SHARP, Printer, 23 East State St., Trenton, N. J.

New Jersey Supreme Court.

*The State, the NICHOLSON PAVE-
 MENT COMPANY, Relators,
 vs.
 FREDERICK W. RICORD, Mayor
 of the City of Newark.*

On Rule
 to
 Show Cause.

Writ of Error.

New Jersey, to wit:—The State of New Jersey to the Jus-
 tices of our Supreme Court of Judicature, *Greeting:*

Because in the record and proceedings, and also in the
 giving of judgment, in a certain action which was in our
 Supreme Court of Judicature, before the Justices thereof,
 wherein the State of New Jersey (The American Nicholson
 Pavement Company, prosecutors,) is plaintiff, and Frederick
 W. Ricord, Mayor of the City of Newark, is defendant, in a
 matter of *mandamus*, manifest error hath intervened, as is 10
 said, to the great damage of the said plaintiff and prosecutors,
 as by their complaint we are informed; we, being willing
 that the error, if any there be, should in due manner be con-
 sidered, and full and speedy justice done to the parties in
 this behalf, do command you that if judgment be given there-
 upon, that you distinctly and openly send, under your seals,
 the record and proceedings aforesaid, with all things touch-

ing and concerning the same, to the Court of Errors and Appeals in the last resort in all causes, to be held at Trenton, on the third Tuesday of June next, together with this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to law ought to be done.

10 [L. S.] Witness Abraham O. Zabriskie, Esquire, our Chancellor, at Trenton, the twenty-fifth day of May, in the year of our Lord one thousand eight hundred and seventy-two.

H. C. KELSEY, *Cl'k.*

PARKER & KEASBEY, *Att'ys.*

The answer of the Justices of the Supreme Court of New Jersey within named.

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

20 M. BEASLEY, [L. S.]
Chief Justice.

The court having heard the argument of counsel on the rule to show cause why a *mandamus* should not issue, and duly considered the same, it is ordered that said rule to show cause be discharged, with costs to defendant.

Entered March 8th, 1872.

On motion of

JOHN W. TAYLOR.

I, Chas. P. Smith, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of
30 an order made in the above stated cause, and entered in the minutes thereof.

[L. S.] In testimony whereof, I have hereto set my hand, and the seal of said court, at Trenton, this thirteenth day of June, A. D. eighteen hundred and seventy-two.

CHAS. P. SMITH, *Cl'k.*

Affidavits in Support of Application for Writ of Mandamus.

To the Honorable Frederick W. Ricord, Mayor of the City of Newark :

SIR :—Please take notice, that on behalf of the Nicholson Pavement Company, we shall apply to the Judges of the Supreme Court of Judicature of the State of New Jersey, at Trenton, on the first Tuesday of November instant, at ten o'clock of the forenoon, or as soon thereafter as the said court can attend to the same, for a writ of *mandamus*, to be by said court issued to you, directing and commanding you as Mayor of the said City of Newark, to execute a certain contract for the paving of South Broad street, Newark, from the terminus of the present stone pavement, to a point one hundred and fifty feet south of Vanderpool street, awarded by the Street Committee of the City of Newark, and afterwards approved and affirmed by the Common Council, bearing date the 12th day of August, 1871, which contract is now in your possession ; and that in support of said application, we shall use and file the affidavit, a copy of which is hereto annexed, together with the papers therein mentioned and thereto appended, copies of which are also herewith to you furnished.

Dated the 3d day of November, 1871.

Very respectfully yours,

PARKER & KEASBEY,

Attorneys for the Nicholson Pavement Company.

New Jersey, Essex County, ss.—Timothy W. Lord, of the city of Newark, county of Essex, and State of New Jersey, being duly sworn, saith—I am agent in Newark of the corporation known as the Nicholson Pavement Company, organized and existing under the laws of the State of New York, and doing business in the State of New Jersey, in the laying down of wooden pavement in Newark, and various other places ; the said corporation have entered into a certain contract for the laying down of wooden pavement in a certain section of Broad street, Newark, to wit : so much of the line of said Broad street as extends from the southerly termi-

nus of the present stone pavement therein, (being a point at or near Chestnut street), to a point one hundred and fifty feet south of Vanderpool street, said Chestnut street and Vanderpool street crossing Broad street at a distance from each other of about twenty-five hundred feet; said contract bears date the 12th day of August, 1871, and was drawn by the City Counsel, or under his supervision; was duly executed by said company under the signature of their president, and their common seal, on the 12th day of August last, and
10 security to the satisfaction of the Street Committee of said Common Council was duly given to said Street Committee, to wit: by the bond of said company, with Michael Shandley and John M. Randell, as sureties, in the penal sum of \$100,000; the said contract was thereupon presented to the Honorable Frederick W. Ricord, Mayor of the City of Newark, for his signature, on behalf of said city, and for the imposition of the seal of said city, and he not having signed the same, the contract aforesaid now remains in his hands, awaiting the signature and delivery thereof, which he has
20 refused, and still declines to make.

And this deponent further saith, that on the 1st day of June, 1871, a certain petition was filed in the office of the Clerk of the City of Newark, addressed to the honorable the Common Council of the City of Newark, and whereby numerous petitioners, whose names are thereto subscribed, made petition in the following words: "The undersigned, property owners on the line of Broad street, between points hereinafter named, respectfully petition your honorable body to cause said Broad street, from the southerly terminus of
30 the present stone pavement, to a point one hundred and fifty feet south of Vanderpool street, to be paved with wood block pavement;" a copy of which petition, as the same remains on file, together with copies of the statement of the City Surveyor therewith filed, and certifying that the number of feet signed for in the said petition are a majority of the total front between points described in said petition, signed by P. Witzel, then City Surveyor of Newark, is hereto annexed.

And this deponent further saith, that on the 7th day of July, 1871, the Common Council of the City of Newark
40 passed an ordinance, which was on the 17th day of the same

month approved by the Mayor of said city, providing for paving said portion of Broad street, a copy of which, duly certified, is hereto annexed.

And this deponent further saith, that thereupon the Common Council, by resolution passed the 21st day of July, 1871, and approved by the Mayor of the City of Newark, on the 24th day of said month of July, directed the Street Commissioner to advertise for proposals to furnish all materials and labor necessary to prosecute and complete the improvement authorized by the ordinance providing for the paving of 10 Broad street, as authorized by the said ordinance heretofore mentioned, a copy of which resolution, duly certified, is hereto annexed; and that advertisements were thereupon inserted in four certain newspapers published and circulated in the City of Newark, of which a copy is hereto annexed.

And this deponent also saith, that due advertisement in such newspapers, according to law, was also made of the intention of said Common Council to order said paving, of the introduction of the ordinance passed therefor, and of the ordinance itself after the passage thereof; of each of which 20 advertisements true copies, under the certificate of the City Clerk, and the seal of said city, are hereunto annexed.

And this deponent further saith, that thereupon sealed proposals for paving according to said ordinance, were duly made in writing by said The Nicholson Pavement Company, and delivered to the city Street Commissioner, and by him laid before the Committee on Streets and Highways of the City of Newark, who held various meetings, at which the same, together with other proposals for the same work, which had been duly opened according to law, were considered; 30 and such proceedings were thereupon had, that the said Committee on Streets and Highways did award the contract for such paving, as aforesaid, to the said Nicholson Pavement Company, and did declare that they awarded the same to said corporation, although not the lowest bidder for such paving, but because it appeared to the committee—and they declared themselves to be still of opinion—that the interest of the city and of the property owners, would not be advanced by awarding the same to the lowest bidder, nor to any other bidder excepting the Nicholson Pavement Com- 40

pany, upon the proposal by them made, and which was afterwards embodied in said contract; and this deponent appends to this affidavit, duly certified copies of the proceedings of said Committee on Streets and Highways, and likewise of said resolution directing advertisement for proposals heretofore referred to.

And this deponent further saith, that after the proceedings aforesaid, and under and by virtue of the charter and ordinances of the city of Newark, it became, and was the
10 duty of the said the Honorable Frederick W. Ricord, Mayor of the said city, to sign and execute the said contract on behalf of the said city, and this deponent refers to an ordinance of said city, entitled "An ordinance in relation to the Mayor," approved November 10th, 1857, whereby in the third section thereof it is provided as follows:

"He shall execute all contracts made on behalf of the city, unless the Common Council shall otherwise direct; and before executing the same, he shall advise with the City
20 Counsel in relation to the proper legal form and sufficiency thereof;" and this deponent saith that the City Counsel himself drew up the said contract, according to the requisition of said ordinance, in proper legal form, and in such a manner as to be sufficient, which fact was well known to the said Mayor.

And this deponent further saith, that notwithstanding the premises, the said the Honorable Frederick W. Ricord, Mayor as aforesaid, refused to execute the said contract, execution thereof of him being formally demanded.

And this deponent further saith, that afterwards, and on
30 the 25th day of August, 1871, a certain preamble and resolution were passed by the Common Council of the City of Newark, a copy of which is hereto annexed, and whereby the Mayor was requested and directed to execute the said contract without further delay; that on or about the 31st day of August, 1871, the said Mayor addressed to the Common Council a message, of which a copy is hereto annexed, returning the said preamble and resolution without his approval; and that thereupon, on the 13th day of October, 1871, the said resolution of the 25th day of August, 1871,
40 and the said message of the said Mayor, were by the said

City Council, at a regular meeting thereof, duly considered, and the question, "Shall the resolution pass, notwithstanding the objection of the Mayor?" being duly put, the same was carried by a two-thirds vote of said City Council, *viz.* : by eighteen votes therefor and eight votes against the same, all which appear by certified copies of the said proceedings hereto annexed.

And this deponent further saith, that notwithstanding the premises, the said the Honorable Frederick W. Ricord, Mayor of the City of Newark, still neglects and refuses to execute and deliver the said contract, execution of which, since the last mentioned proceedings, has been formally demanded of him; and he further saith, that the performance of said contract will be profitable to said company, and further saith not.

TIMOTHY W. LORD.

Sworn and subscribed this 3d day of November, A. D. 1871, before me.

JOHN W. TAYLOR, *M. C.*

FROM PROCEEDINGS OF THE STREET COMMITTEE OF JUNE 1st, 1871. 20

"The matter of Broad street paving was then considered.

"The Clerk presented a new petition for wood block pavement on said street, filed June 1st.

"A motion was carried that the petition be referred to the City Surveyor, to ascertain whether a majority of the feet was represented in favor of wood, and that if so, a resolution of intention be reported to pave the street with wood block pavement from a point sixty feet north of Camp street. 30

"It was also decided to report a resolution of intention to pave the small gore left between the pavements with round stone."

I hereby certify that the foregoing is a correct transcript from the record of the proceedings of the Committee on Streets and Highways, of June 1st, 1871.

In testimony whereof I have hereto set my
[L. S.] hand, and the seal of the City of Newark, this
27th day of October, A. D. 1871.

JAMES GILLIN, *City Clerk.*

COPY OF PETITION FILED IN THE CITY CLERK'S OFFICE JUNE
1st, 1871.

"To the Honorable the Common Council of the City of Newark:

"GENTLEMEN:—The undersigned property owners on the line of Broad street, between the points hereinafter named, respectfully petition your honorable body to cause said Broad street, from the southerly terminus of the present stone pavement to a point one hundred and fifty feet south of Vanderpool street, to be paved with 'Wood block pavement.'

"And your petitioners will ever pray, &c., &c.

	NAME.	NO. OF FEET AND INCHES.	
	N. Perry.....	30	
	Samuel Atwater.....	102	
	Francis Mackin.....	60	
	“ “	107	
	Francis Mackin, Wm. H. & E. W. McClave, }	381	6
20	A. Q. Keasbey,		
	Jas. A. Arnold.....	25	
	“ “	70	
	Wm. Robotham.....	48	
	C. I. Langstroth.....	35	
	Andrew Johnston.....	192	
	Geo. Neefus.....	28½	
	John Barnett.....	38	
	Margaret R. Ward.....	47	9
	P. M. Arbuckle... ..	59	2
	Horace Bedell.....	15	
30	Amelia B. Gilmore.....	32	
	Wm. H. and E. W. McClave.....	50	
	R. Backus.....	78	2
	Marcus L. De Voursney.....	128	5
	Theophilus Bond.....	30	
	Emma A. Bond.....	45	
	Stevens & Patterson.....	30	
	W. S. Cannon.....	100	
	I. H. Masker.....	100	
	Robert Drake.....	28	
40	States O. Mead.....	51	6

J. S. Mead, pr. S. O. Mead, Attorney,	26		
Harriet Young.....	95	5	
Harriet Young.....	118	7	
Francis L. Miller.....	25		
Nathaniel P. Marsh.....	30		
Mrs. M. A. Halsted.....	85		
Chas. A. Lent.....	62		
Edw. A. Condit.....	100		
Phebe M. Annin.....	25	6	
Charles W. Reeves.....	200	6	10
Sewall Moody.....	67		
John Watts Kearney, by written authority to Jos. C. Young.....	60		
M. A. Stainsby.....	38	9	

ENDORSEMENT.

"Petition for 'Wood block pavement' on Broad street.

"Received June 1st, 1871.

"JAMES GILLIN, *City Clerk.*"

COPY OF CITY SURVEYOR'S STATEMENT.

"City Surveyor's Office, June 2, 1871. 20

"*Wm. Stainsby, Esq., Chairman Committee on Streets, &c.:*

"DEAR SIR:—I find upon examining the petition in favor of a 'wood pavement' in South Broad street, referred to me at your meeting last night, that the number of feet signed for in the same are a majority of the total front between the points described in the petition.

"Very respectfully yours, &c.,

"P. WITZEL, *City Surveyor.*"

I hereby certify that the foregoing are true and correct copies of the original papers, from which they purport to 30 have been taken, and which are on file in the City Clerk's office.

[L. s.] In testimony whereof, I have hereto set my hand
and the seal of the City of Newark, this 28th
day of October, A. D. 1871.

JAMES GILLIN, *City Clerk.*

FROM PROCEEDINGS OF THE STREET COMMITTEE OF JUNE 2d,
1871—RECORD, STREET COMMITTEE, PAGE 361.

“The Street Committee held a meeting and reconsidered its action of the previous meeting in relation to Broad street paving, and decided to report a resolution of intention to pave the street with wood block pavement, as petitioned for, *viz.*: from the southerly terminus of the present stone pavement to a point one hundred and fifty feet south of Vanderpool street.”

- 10 FROM THE MINUTES OF THE PROCEEDINGS OF THE COMMON COUNCIL OF THE CITY OF NEWARK, OF JUNE 2d, 1871.

“The Committee on Streets and Highways reported the following, which were adopted.”

* * * * *

- 20 *Resolved*, That it is the intention of the Common Council of the City of Newark, under and by virtue of the provisions of the act entitled ‘An Act to revise and amend the charter of the City of Newark,’ approved March 11th, 1857, and the supplements thereto, to order and cause Broad street, from the terminus of the present stone pavement to a point one hundred and fifty feet south of Vanderpool street, to be paved with ‘wood block pavement.’

“And the Street Commissioner is hereby directed to give public notice in four daily newspapers printed and published in the City of Newark, of the intention of the Common Council to order and cause such improvement to be made, requesting such persons as may object thereto, to present their objections in writing, at the Street Commissioner’s office, on, or before the expiration of twenty days from the date of such notice.

- 30 “DANIEL W. BAKER, *Pres’t of Common Council.*

“JAMES GILLIN, *City Clerk.*

“F. W. RICORD, *Mayor.*

“Approved June 3d, 1871.

“I hereby certify that a petition for wood block pavement on Broad street, as specified in this resolution, was filed in my office June 1st, 1871.

“JAMES GILLIN, *City Clerk.*”

FROM THE MINUTES OF THE PROCEEDINGS OF THE COMMON COUNCIL OF THE CITY OF NEWARK, OF JUNE 23^D, 1871.

“The same committee* reported the following ordinances, which were read twice under a suspension of the rules, and ordered to a third reading, *viz.*: An ordinance to provide for paving a portion of Broad street.

* * * * *

FROM THE MINUTES OF THE PROCEEDINGS OF THE COMMON COUNCIL OF THE CITY OF NEWARK, OF JULY 7TH, 1871.

“An ordinance to provide for paving a portion of Broad street with wood block pavement, was read a third time, and 10 lost, by the following vote:

“*Yeas*—Aldermen Baker, Bathgate, Budd, Malone, O'Connor, Radel, Scott, Starr, Steffens, Trandt, Westervelt, and Wilson—12.

“*Nays*—Aldermen Armstrong, Baldwin, Crane, Mains, Reynolds, Richard, Stainsby, and Mr. President—8.”

MISCELLANEOUS BUSINESS.

“Alderman Stainsby moved a reconsideration of the vote by which the ordinance to pave a portion of Broad street was lost; which was carried, as follows: 20

“*Yeas*—Aldermen Baker, Bathgate, Budd, Crane, Malone, O'Connor, Richard, Scott, Stainsby, Starr, Steffens, Trandt, Westervelt, Wiedenmayer, and Wilson—15.

“*Nays*—Aldermen Armstrong, Baldwin, and Mr. President—3.

“The ordinance, entitled as follows, was then passed, by the vote annexed:

“‘An ordinance to provide for paving a portion of Broad street.’

“*Yeas*—Aldermen Baker, Bathgate, Budd, Malone, O'Connor, Radel, Scott, Stainsby, Starr, Steffens, Trandt, Westervelt, Wiedenmayer, and Wilson—14.

“*Nays*—Aldermen Armstrong, Baldwin, Crane, Gurney, Mains, Reynolds, Richard, and Mr. President—8.”

* Committee on Streets and Highways.

I hereby certify that the foregoing are true and correct copies from the records from which they purport to have been taken.

[L. s.] In testimony whereof, I have hereto set my hand, and the seal of the City of Newark, this 28th day of October, A. D. 1871.

JAMES GILLIN, *City Clerk.*

AN ORDINANCE TO PROVIDE FOR PAVING A PORTION OF BROAD STREET.

10 *Be it ordained by the Common Council of the City of Newark, as follows:*

SECTION 1ST. Broad street, from the terminus of the present stone pavement to a point one hundred and fifty feet south of Vanderpool street, shall be paved with "wood block pavement."

SECTION 2D. The whole amount of the costs and expenses incurred in the prosecution and completion of the said improvement shall be duly assessed by the City Surveyor, according to the provisions of the act entitled "An act to
20 revise and amend the charter of the City of Newark," approved March 11th, 1857, and the supplements thereto.

SECTION 3D. Said improvement shall be made and completed under the supervision and direction of the Street Commissioner, according to the provisions of the city charter and ordinances.

Passed July 7th, 1871.

DANIEL W. BAKER,
President of Common Council.
JAMES GILLIN, *City Clerk.*

30 Approved July 17th, 1871.

F. W. RICORD, *Mayor.*

ENDORSEMENT.

"An ordinance to provide for paving a portion of Broad street."

Read twice in the Common Council, and ordered to a third reading, June 23d, 1871.

Passed July 7th, 1871.

Approved July 17th, 1871.

I hereby certify that the foregoing is a correct copy of the ordinance of the City of Newark, New Jersey, concerning the paving of Broad street.

[L. s.] In testimony whereof, I have hereto set my hand, and the seal of the City of Newark, this 28th day of October, A. D. 1871.

JAMES GILLIN, *City Clerk*,

FROM MINUTES OF THE PROCEEDINGS OF THE COMMON COUNCIL
OF THE CITY OF NEWARK, OF JULY 21ST, 1871.

“The Committee on Streets and Highways reported the 10 following, which were adopted.

* * * * *

“*Resolved*, That the Street Commissioner be directed to advertise for proposals to furnish the materials and labor necessary to prosecute and complete the improvement authorized by the ordinance providing for the paving of Broad street, from the terminus of the present stone pavement to a point one hundred and fifty feet south of Vanderpool street, with ‘wood block pavement,’ approved July 17th, 1871.

“DANIEL W. BAKER, *President*.

“JAMES GILLIN, *City Clerk*.

20

“Approved July 24th, 1871.

“F. W. RICORD, *Mayor*.”

FROM THE MINUTES OF THE PROCEEDINGS OF THE COMMITTEE
ON STREETS AND HIGHWAYS, OF AUGUST 4TH, 1871.

“The proposals for paving Broad street with wood pavements, were then considered.

“A long debate ensued, a number of gentlemen being heard in relation to their pavements.

“The merits of the different materials proposed were discussed, and also the matter of using treated wood or 30 otherwise.

“A motion by Alderman Radel to re-advertise and specify the kind of wood, was lost.

"Mr. Armstrong moved that in awarding the contract, the committee act only on the basis of Burnettized wood, which was carried by the following vote :

"*Yeas*—Ald. Mains, Armstrong, Budd, Gurney, Castle, Ruppel and Chairman—7.

"*Nays*—Ald. Scott, Westervelt, Radel and Wiedenmayer—4.

"Mr. Scott moved that twenty-five cents per yard be allowed on each bid for Burnettizing ; which was carried.

10 "Mr. Gurney moved to adjourn and report a resolution to Council, directing a re-advertising for proposals, specifying the kind of wood to be used and that it to be Burnettized ; which was carried by the following vote :

"*Yeas*—Aldermen Mains, Armstrong, Budd, Gurney, Radel, Ruppel and Chairman—7.

"*Nays*—Aldermen Malone, Castle, Scott, Westervelt and Wiedenmayer—5.

"Mr. Gurney then moved that the wood used be white pine ; which was carried."

20 FROM MINUTES OF PROCEEDINGS OF THE COMMON COUNCIL
OF THE CITY OF NEWARK, OF AUGUST 4TH, 1871.

"The same committee* reported a resolution directing the Street Commissioner to re-advertise for proposals for paving Broad street, specifying that the material to be used be white pine, treated with the Burnettizing process.

"Which Alderman Westervelt moved to refer back to the committee.

"The motion was lost by the following vote :

"*Yeas*—Aldermen Baker, Lynch, Malone, O'Connor, 30 Radel, Reynolds, Scott, Westervelt and Wiedenmayer—9.

"*Nays*—Aldermen Armstrong, Baldwin, Bathgate, Budd, Crane, Mains, Ruppel, Stainsby, Steffens, Trandt, Wilson and Mr. President—12.

"After debate upon the resolution, Ald. Westervelt moved to refer the resolution to the Street Committee ; which was carried by the following vote :

* Committee on Streets and Highways.

"*Yeas*—Aldermen Baker, Crane, Lynch, Malone, O'Connor, Radel, Reynolds, Scott, Westervelt, Wiedenmayer and Wilson—11.

"*Nays*—Aldermen Armstrong, Baldwin, Bathgate, Budd, Mains, Ruppel, Stainsby, Steffens, Trandt and Mr. President—10."

FROM MINUTES OF THE PROCEEDINGS OF THE COMMITTEE ON STREETS AND HIGHWAYS, OF AUGUST 8TH, 1871.

"The Chairman stated that as the Common Council had referred back to the committee the resolution which they 10 had decided at the last meeting to report, concerning Broad street paving, he had called them together for the purpose of taking further action.

"Mr. Gurney move to re-affirm the resolution.

"Ald. Scott moved as an amendment to substitute the word 'reconsider' for the word 're-affirm.'

"Which was carried by the following vote:

"*Yeas*—Aldermen Mains, Malone, Castle, Scott, Westervelt, Radel and Ruppel—7.

"*Nays*—Aldermen Armstrong, Starr, Gurney, and Mr. 20 Chairman—4.

"The motion as amended was then carried by the following vote:

"*Yeas*—Aldermen Malone, Castle, Scott, Westervelt, Radel, and Ruppel—6.

"*Nays*—Aldermen Mains, Armstrong, Starr, Gurney, and Mr. Chairman—5.

"Mr. Westervelt then moved the following amendment to the motion reconsidered: 'provided the City Counsel gives as his opinion, that such action would be legal.' 30

"The amendment was accepted, and the motion adopted unanimously.

"Mr. Scott then moved a reconsideration of the last vote for the purpose of offering a further amendment. Which was carried.

"Mr. Scott moved to amend 'that bidders be required to bid for white pine, simple treated by the Burnettizing pro-

cess, and by the Robbins process, and for spruce in the same manner.

"Which was carried, and the motion as amended was adopted."

FROM THE MINUTES OF THE PROCEEDINGS OF THE COMMITTEE
ON STREETS AND HIGHWAYS OF AUGUST 11TH, 1871.

"The Chairman stated, that in accordance with the action of the committee at their last meeting, he had requested an opinion in relation to the legality of the proposed proceedings 10 in relation to Broad street paving, and had also obtained an opinion from Courtlandt Parker, Esq., which he submitted to the committee.

"The opinions were then read by the Clerk, after which Mr. Westervelt moved that the proceedings of the Street Committee at their last meeting in relation to Broad street paving be reconsidered. Which was carried.

"The motion adopted at the last meeting was then lost.

"Mr. Westervelt then moved that the contract for paving the street be awarded to the Nicolson Pavement Company, 20 on their bid, numbered No. 2, at \$3.45 per sq. yard.

"Mr. Gurney moved to amend by striking out all relating to the Nicolson, and insert the Paul pavement at \$2.75 per sq. yard.

"Which was lost by the following vote:

"*Yeas*—Aldermen Armstrong, and Gurney—2.

"*Nays*—Ald. Mains, Starr, Budd, Malone, Castle, Scott, Radel, Westervelt, Wiedenmayer, Ruppel, and Chairman—11.

"Mr. Stainsby (Mr. Gurney in the chair), moved as a substitute, that the committee report a resolution to Council, 30 directing the Street Commissioner to re-advertise for proposals, specifying all the particulars heretofore debated in relation to wood pavement.

"Which was lost by the following vote:

"*Yeas*—Aldermen Mains, Armstrong, Starr, Gurney, and Chairman—5.

"*Nays*—Aldermen Budd, Malone, Castle, Scott, Westervelt, Radel, Wiedenmayer, and Ruppel—8.

"Mr. Armstrong moved to amend by striking out Nicolson and inserting Charles Parsons' bid at \$2.80.

"Which was lost by the following vote:

"*Yeas*--Aldermen Mains, Armstrong, Gurney, and Chairman--4.

"*Nays*--Aldermen Starr, Budd, Malone, Castle, Scott, Westervelt, Radel, Wiedenmayer, and Ruppel--9.

"Other amendments to strike out Nicolson and insert those hereafter named, were offered in the following order, and lost by the vote annexed to each, respectively:

"By Mr. Starr, to insert the Gardner, Warren & Co's bid.

"*Yeas*--Aldermen Mains, Armstrong, Starr, Gurney, and 10 Chairman--5.

"*Nays*--Aldermen Budd, Malone, Castle, Scott, Westervelt, Radel, Weidenmayer, and Ruppel--8.

"By Mr. Gurney, to insert Mr. Hill's bid for Ream pavement.

"*Yeas*--Aldermen Mains, Armstrong, Starr, Gurney, and Chairman--5.

"*Nays*--Aldermen Budd, Malone, Castle, Scott, Westervelt, Radel, Wiedenmayer, and Ruppel--8.

"By Mr. Gurney, to insert the bid for Paul pavement of 20 white pine:

"*Yeas*--Aldermen Mains, Armstrong, Gurney, Radel, and Chairman--5.

"*Nays*--Aldermen Starr, Budd, Malone, Castle, Scott, Westervelt, Wiedenmayer, and Ruppel--8.

"By Mr. Starr, to insert the bid for the Smith & Brown pavement:

"*Yeas*--Aldermen Mains, Armstrong, Starr, Budd, and Gurney--5.

"*Nays*--Aldermen Malone, Castle, Scott, Westervelt, Radel, Wiedenmayer, and Ruppel--7.

"By Mr. Gurney, to insert the bid for the Metropolitan pavement:

"*Yeas*--Aldermen Mains, Armstrong, Starr, Gurney, and Chairman--5.

"*Nays*--Aldermen Budd, Malone, Castle, Scott, Westervelt, Radel, Wiedenmayer, and Ruppel--8.

"The original motion, by Mr. Westervelt, was then carried, by the following vote:

“*Yeas*—Aldermen Budd, Malone, Castle, Scott, Westervelt, Radel, Wiedenmayer, and Ruppel—8.

“*Nays*—Aldermen Mains, Armstrong, Starr, Gurney, and Chairman—5.”

FROM THE MINUTES OF THE PROCEEDINGS OF THE COMMON COUNCIL COMMITTEE ON STREETS AND HIGHWAYS, OF AUGUST 17TH, 1871.

“Mr. Westervelt offered the following resolutions:

“*Resolved*, That this committee awarded, and do award
10 the contract for paving Broad street to the Nicholson Pavement Company—although not the lowest bidder for such paving—because it appeared to the committee, and they are still of opinion, that the interests of the city and of the property owners would not be advanced by awarding the same to the lowest bidder, nor to any other bidder, excepting the Nicholson Pavement Company.

“*Resolved*, That the award of said contract for paving Broad street to said Nicholson Pavement Company, be for the reason aforesaid, and the same is hereby re-affirmed.

20 “*Resolved*, That the contract of said Nicholson Pavement Company to keep the pavement laid in repair for five years, is, in the opinion of this committee, a strong additional reason why it is for the interest of the city and the property owners interested, that they should have the said contract.

“The resolutions were adopted, by the following vote:

“*Yeas*—Aldermen Budd, Malone, Castle, Scott, Westervelt, Radel, and Rippel—7.

“*Nays*—Aldermen Mains, Starr, and Stainsby—3.”

I hereby certify that the foregoing are correct copies from
30 the books from which they purport to have been taken.

In testimony whereof, I have hereunto set my
[L. s.] hand, and the seal of the City of Newark, this 28th
day of October, A. D. 1871.

JAMES GILLIN, *City Clerk.*

COPIES OF ADVERTISEMENTS IN RELATION TO THE PAVING
OF BROAD STREET.

Street paving—notice of intention. Public notice is hereby given that it is the intention of the Common Council of the City of Newark, under and by virtue of the provisions of the act entitled "An act to revise and amend the charter of the City of Newark," approved March 11th, 1857, and the supplements thereto, to order and cause Broad street, from the terminus of the present stone pavement to a point one hundred and fifty feet south of Vanderpool street, to be 10 paved with wood block pavement.

Also Elizabeth avenue, from Clinton avenue to Stanton street, to be paved with the Scharff patent pavement.

Such persons as may object thereto, are requested to present their objections in writing at the Street Commissioner's office, on or before the expiration of twenty days from the date of this notice.

By direction of the Common Council.

Dated Newark, June 3d, 1871.

PETER F. ROGERS, *Street Commissioner.* 20

Ordinances ordered to a third reading by the Common Council of the City of Newark.

The undersigned hereby certify that ordinances were read twice in the Common Council, June 23d, 1871, and ordered to a third reading, providing for the following improvements:

For opening North Ninth street from Seventh avenue to Third avenue, as follows: The easterly line of the same to commence at a point in the northerly line of Seventh avenue, distant therein easterly one hundred and forty feet 30 from the easterly line of Tenth street, as the same is laid out on a map filed in the office of the City Clerk by the Commissioners to lay out streets, avenues and squares; thence running southerly to a point in the northerly line of Sixth avenue, distant therein easterly sixty feet from the said easterly line of Tenth street; thence southerly parallel with and sixty feet from the said easterly line of Tenth street to the southerly line of Third avenue; the width of said street to be seventy feet.

For opening Oriental street from Belleville avenue to Passaic street, as follows: The centre line of the same to correspond with the centre line of Oriental street, as laid out on a map filed in the office of the City Clerk by the Commissioners to lay out streets, &c.; the width of said street to be fifty-four feet between Belleville avenue and Mount Pleasant avenue, and sixty feet from that point to Passaic street.

For opening the following named streets, as the same is laid out on a map filed in the office of the City Clerk by the Commissioners to lay out streets, avenues and squares:

Sixth avenue from the easterly side of the Morris Canal to Roseville avenue.

Second street from Orange street to sixth avenue.

Third street from Orange street to Sixth avenue.

Fourth street from Orange street to Sixth avenue.

Sixth street from Orange street to Sixth avenue.

Seventh street from Orange street to Sixth avenue.

Avenue H from Elm road to Vanderpool street.

20 For grading, curbing and flagging the following named streets:

Kearney street from Garside street to Belleville avenue.

Hunterdon street from Springfield avenue to the northerly line of the property of Emma R. Buchanan.

Wright street from Broad street to avenue C.

Somerset street from Montgomery street to Spruce street, and from Waverly place to Avon avenue.

For grading and curbing Taylor street from Belleville avenue to Garside street.

30 The easterly half of Frelinghuysen avenue from Earl street to a point 150 feet south of the same.

For grading, re-curbing and re-flagging Springfield avenue from Sixteenth avenue to the former city line.

Grading, curbing and flagging said avenue from the former Clinton line to the present Clinton line.

And paving said avenue with stone pavement from Belmont avenue to the Clinton line.

For paving Broad street from the terminus of the present stone pavement to a point 150 feet south of Vanderpool street, with "wood block pavement."

For the construction of sewers of such shape and dimensions as the Committee on Sewers and Drainage may hereafter direct, as follows:

Through Boyd street, Badger avenue and Peddie street, from the sewer in West Kinney street to Pennsylvania avenue.

Through Earl street and Pennsylvania avenue from the sewer at Frelinghuysen avenue to Bound Creek.

Newark, N. J., June 26th, 1871.

A. C. WESTERVELT, 10

Pres't of Common Council pro tem.

JAMES GILLIN, *City Clerk.*

An ordinance for paving a portion of Broad street.

Be it ordained by the Common Council of the City of Newark, as follows:

SEC. 1. Broad street, from the terminus of the present stone pavement to a point one hundred and fifty feet south of Vanderpool street, shall be paved with "wood block pavement."

SEC. 2. The whole amount of the costs and expenses incurred in the prosecution and completion of the said improvement shall be duly assessed by the City Surveyor, according to the provisions of the act entitled "An act to revise and amend the charter of the City of Newark," approved March 11th, 1857, and the supplements thereto.

SEC. 3. Said improvement shall be made and completed under the supervision and direction of the Street Commissioner, according to the provisions of the city charter and ordinances.

Passed July 7th, 1871.

30

DANIEL W. BAKER,

Pres't of Common Council.

JAMES GILLIN, *City Clerk.*

Approved July 17th, 1871.

F. W. RICORD, *Mayor.*

OFFICE OF THE STREET COMMISSIONER, }
NEWARK, N. J., July 24th, 1871. }

Sealed proposals will be received at this office until three o'clock P. M. of Thursday, August 3d, 1871, for paving South Broad street, from the terminus of the present stone pavement to a point one hundred and fifty (150) feet south of Vanderpool street.

The following is about the amount of work to be done, and the materials to be furnished in the construction and
10 completion of said work :

Twenty-six thousand (26,000) square yards wooden block pavement.

The price for paving to include excavation and re-setting curb.

The bridge, gutter and cobble stone to remain the property of the city, to be taken up by the contractor and removed by the Street Commissioner.

Bidders will state their prices in writing as well as in figures.

20 Bidders must specify in their proposals that, should the above work be awarded to them, they will bind themselves to finish and complete the same by or before the 1st day of December ensuing.

The plans and specifications of the work can be examined at the office of the Street Commissioner. Said proposals to be accompanied by the consent, in writing, of two sureties, who shall, at the time of putting in such proposals, qualify as to their responsibility in the amount of such proposal, and bind themselves that if the contract be awarded to the person
30 or persons making the proposal, they will, upon its being so awarded, become as his or their sureties for the faithful performance of said work ; and that if the person or persons omit or refuse to execute such contract, they will pay to the City of Newark any difference between the sums to which he or they would have been entitled upon the completion of the contract and that which the City of Newark may be obliged to pay the person or persons by whom such contract shall be executed.

The Committee on Streets and Highways reserve to them-
40 selves the right to accept or reject any or all proposals for

the above work, as they may deem best for the interest of the city.

By direction of the Common Council.

WILLIAM STAINSBY,

Chairman Committee on Streets and Highways.

PETER F. ROGERS,

Street Commissioner.

I hereby certify that the foregoing are correct copies of advertisements concerning the paving of Broad street, proofs of the publication of the first three of each are filed in my 10 office, according to law.

In witness whereof, I have hereto set my hand, and
[L. S.] the seal of the City of Newark, this 28th day of
October, A. D. 1871.

JAMES GILLIN, *City Clerk.*

FROM THE MINUTES OF THE PROCEEDINGS OF THE COMMON
COUNCIL OF THE CITY OF NEWARK, OF AUGUST 25TH, 1871.

“Alderman Westervelt, (Alderman Wilson in the chair)
offered the following:

“WHEREAS, the contract for paving Broad street has been 20
duly executed by the parties to whom the said contract
was awarded; and *whereas*, the Mayor has refused to affix
his signature thereto, notwithstanding the provisions of
the city charter and the ordinance approved November
10th, 1857, which said ordinance makes it his duty to sign
all contracts; and *whereas*, it is essential to the public wel-
fare that the prosecution of this work should not be fur-
ther delayed; it is

“*Resolved*, That the action of the Street Committee and of
the Common Council having been declared by the City 30
Counsel to be legal, be, and the same is hereby sustained
and concurred in; and the Mayor is hereby requested and
directed to execute the said contract without further delay.

“Alderman Gurney opposed the resolution, and submitted
as a substitute, a preamble and resolution “to rescind all
proceedings affecting said contract or award.

“After a lengthy debate by Aldermen Westervelt, Gurney,

Reynolds, Stainsby, Crane, Scott, and Budd, (Mr. Stainsby presenting a petition from property owners on Broad street, asking that the Nicolson pavement be laid without further delay), the President *pro tem.* decided Mr. Gurney's resolution out of order.

"The resolution by Mr. Westervelt was then adopted by the following vote :

"*Yeas*—Aldermen Baldwin, Bathgate, Budd, Castle, Crane, Lynch, Malone, O'Connor, Radel, Ruppel, Scott, Stainsby, Starr, Trandt, Westervelt, Wiedenmayer, and Wilson—17.

"*Nays*—Aldermen Gurney, Mains, Reynolds, and Steffens—4.

"A. C. WESTERVELT, *President pro. tem.*

"JAMES GILLIN, *City Clerk.*

"Approved.

"———, *Mayor.*"

FROM MINUTES OF THE PROCEEDINGS OF THE COMMON COUNCIL OF THE CITY OF NEWARK, OF OCTOBER 13TH, 1871.

"The regular order of business was resumed, and the President announced the following veto message from His Honor the Mayor :

"MAYOR'S OFFICE,
NEWARK, N. J., August 31st, 1871. }

"To the Honorable the Common Council of the City of Newark :

"A preamble and resolution, by you adopted August 25th, 1871, by which 'The Mayor is requested and directed to execute,' a contract therein referred to, for the paving of South Broad street, 'without further delay,' is herewith returned, without my approval.

30 "My reasons for withholding my signature from said contract were fully given in a communication to your honorable body, dated August 16th, inst. These reasons have been subsequently sustained by the most able counsel.

"I regret very much that any difference of opinion should exist between legislative and executive branches of the city government; but I see no reason for changing my opinion as expressed in the communication referred to above.

"I submit, with all respect, that your honorable body, by the preamble and resolution adopted August 25th inst., as-

sumes authority which belongs to the executive department of the city government, the creation of which department was intended only for the public welfare.

"You will, I trust, reconsider the preamble and resolution aforesaid, and certify by your action that the city has not only a legislative body, but an executive head.

"F. W. RICORD, *Mayor.*"

"On motion of Alderman Stainsby, action on the resolution referred to was postponed. * * *

* * * * *

"The resolution adopted August 25th, 1871, was then 10 considered, and the question, 'Shall the resolution pass, notwithstanding the objections of the Mayor?' was carried, by the following vote:

"*Yeas*—Aldermen Bathgate, Budd, Castle, Crane, Lynch, Mains, Malone, O'Connor, Radel, Reynolds, Ruppel, Scott, Stainsby, Starr, Steffens, Westervelt, Wiedenmayer, and Wilson—18.

"*Nays*—Aldermen Armstrong, Baker, Baldwin, Gurney, Littell, Richard, Trandt, and Mr. President—8.

"DANIEL W. BAKER, *President.* 20

"JAMES GILLIN, *City Clerk.*"

I hereby certify that the foregoing are correct copies from the books from which they purport to have been taken.

In testimony whereof, I have hereto set my hand,
[L. S.] and the seal of the City of Newark, this 28th day
October, A. D. 1871.

JAMES GILLIN, *City Clerk.*

To the Honorable Common Council of the City of Newark:

We, the undersigned property owners on the line of Broad street, from Chestnut street to Vanderpool street, ask that 30 your honorable body will take such action as shall cause the paving of said street with Nicolson pavement, in accordance with the contract awarded by the Street Committee, without further delay.

And your petitioners will ever pray.

Francis Mackin,	Joseph C. Young,
A. M. Reynolds,	Sewell Murdy,
S. O. Mead,	R. Backus,
Charles W. Reeves,	I. H. Masker,
W. S. Canon,	P. M. Arbuckle,
N. P. Marsh,	M. L. De Voursney,
Charles A. Lent,	C. I. Langstroth,
E. A. Condit,	Andrew Johnston.

10

ENDORSEMENT.

Petition from property owners on Broad street, that the Nicolson pavement to be laid without delay.

Presented to Common Council August 25th 1871.

To the Honorable the Common Council of the City of Newark :

We, the undersigned property owners on the line of Broad street, from Chestnut street to Vanderpool street, ask that your honorable body will take such action as shall cause the paving of said street with Nicolson pavement, in accordance with the contract awarded by the Street Committee, without
20 further delay.

Signed—

Francis Mackin,	C. I. Langstroth,
A. M. Reynolds,	Andrew Johnston,
S. O. Mead,	Samuel Atwater,
Charles W. Reeves,	S. T. Guerin,
W. S. Canon,	James R. Gilmore,
N. P. Marsh,	James A. Arnold,
Charles A. Lent,	William Stainsby,
E. A. Condit,	George Neefus,
30 Joseph C. Young,	Phebe M. Annin,
Sewell Moody,	William A. Howell,
R. Backus,	John Barnett,
I. H. Masker,	Robert Drake,
P. M. Arbuckle	John Watts Kearney.
M. L. Devoursney,	

ENDORSEMENT.

Petition of property owners on Broad street, that the Nicholson pavement be laid without further delay.

Presented to Common Council October 13th, 1871.

I hereby certify that the foregoing are correct copies of petitions presented to the Common Council as above stated, and now on file in my office.

[L. S.] In testimony whereof, I have hereto set my hand and the seal of the City of Newark, this 28th day of October, A. D. 1871.

10

JAMES GILLIN, *City Clerk.*

State of New Jersey, Essex county, ss.—Robert J. Castle, of full age, being duly sworn according to law, on his oath saith, that on the 3d day of November, 1871, on behalf of Parker & Keasbey, attorneys, &c., he served notice of application to the Supreme Court for a writ of *mandamus*, of which a copy is hereto annexed, upon the Honorable Frederick W. Ricord, Mayor of the City of Newark, together with a copy of the affidavit in support of such application, and the documents thereto annexed, by delivering the same, personally, 20 to the said Mayor.

ROB'T JOHN CASTLE.

Sworn and subscribed, before me, this 3d day of November, A. D. 1871.

CHARLES T. GLEN, [L. S.]
Notary Public of N. J.

Order to Show Cause.

On reading the notice and affidavits with accompanying papers served in this cause, it is ordered by the court that said Frederick W. Ricord, Mayor, &c., do show cause before 30 this court, at the Mercer Court House, in Trenton, on Thurs-

day, the 16th day of November instant, why an alternative or pre-emptory *mandamus* shall not issue according to said application, and that both parties have leave to take affidavits to be read on said notice.

Entered November 8th, 1871.

On motion of

PARKER & KEASBEY,
Attorneys.

Frederick W. Ricord, Mayor of the City of Newark,
10 saving to himself the right hereafter to deny the corporate existence of the so-called Nicholson Pavement Company and its capacity to answer unto any such contract as is supposed to have been made between it and the Committee on Streets and Highways of the Common Council or other authorities of the said City of Newark, as cause wherefor the State's writ of *mandamus* ought not to be awarded and served against him, as praying says:

1st. That the notice of motion, affidavits, and other documents on which said rule was granted do not show title in
20 the said relator to demand that a writ of *mandamus* be awarded as moved, and he prays leave to rely on all and singular the insufficiencies and defects therein in the same manner as if the said insufficiencies and defects were herein particularly enumerated.

2d. That by a general ordinance passed by the Common Council of the City of Newark, approved May 22d, 1858, and entitled "An ordinance relating to streets and highways, the construction and repair of sidewalks, and the public grounds of the city," it is, among other things, made the
30 duty of the Street Commissioner, whenever he shall be directed by the Common Council to advertise for proposals to furnish the materials and labor necessary to prosecute and complete any work or improvement duly authorized by any ordinance to provide for paving any street or section of a street, to cause an advertisement for proposals as aforesaid, signed by him, to be inserted and published not less than ten days successively in two daily newspapers printed and

published in the said City of Newark, and that such advertisement shall specify in general terms the nature of the work or improvement for which proposals are to be received, and shall request contractors and other persons intending to make proposals therefor, to examine the plans and specifications of such work or improvement, at the office of the Street Commissioner.

And this respondent is advised and insists that by force of the aforesaid in part recited ordinance, and of one other general ordinance of the said Common Council, approved 10 November 21st, 1857, and entitled "An ordinance in relation to the Street Commissioner," it is made the duty of the said Street Commissioner to prepare all such plans and specifications as may be required for the purpose of prosecuting and completing such work or improvement, and to deposit the same in his office of Street Commissioner before any advertisement for proposals as aforesaid shall be printed and published in manner as aforesaid, so that the same may be examined by persons intending or purposing to make proposals to furnish the materials and labor necessary to prosecute and complete such contemplated work or improvement. 20

And this respondent further avers on information received by him from the Street Commissioner, that he, the said Street Commissioner, did not, at any time before causing an advertisement for proposals for performing and completing said work or improvement for paving Broad street to be published as aforesaid, or at any time before the expiration of the term of time limited for receiving proposals by the terms of the advertisement which the said Street Commissioner did cause to be published, make, or cause to be made, and deposit, 30 or cause to be deposited, in his said office, any plans or specifications of the work or improvement proposed to be performed and executed as aforesaid, nor did he at any time cause any advertisement for proposals as aforesaid to be published, and therein or thereby request contractors and other persons intending to make proposals as aforesaid to examine the plans and specifications of such work or improvement in his said office, nor were there in the said office any plans and specifications of such contemplated work or improvement, which might or could have been examined by contractors or 40

other persons intending to make proposals as aforesaid at any time before the opening of the bids or proposals made for furnishing the materials and labor necessary to prosecute and complete said work or improvement as is supposed by the relators.

And although this respondent freely admits that the printed paper filed by said relator, and purporting to be a call for "Sealed Proposals" "for paving South Broad street," &c., &c., is extracted from one of the daily newspapers
10 printed and published in the City of Newark, he does not know and does not admit that the same or any like advertisement or any advertisement whatsoever, for proposals to furnish the materials and labor necessary to perform and execute the said work or improvement, was inserted and published for ten days successively in two daily newspapers printed and published in the said city, and he asks leave to suggest that it is not averred in the affidavits on which the said rule was granted that any advertisement as aforesaid was printed and published in manner and form as required
20 by the aforesaid first in part recited ordinance.

3d. That by an act of the General Assembly of New Jersey, approved March 21st, 1871, and entitled "A further supplement to the act entitled an act to revise and amend the charter of the City of Newark, approved March 11th, 1857," it is, amongst other things, enacted "that no pavement protected by letters patent of the United States, or by application thereto, shall be ordered to be laid (in any street in the City of Newark) unless a petition in writing therefor shall be first signed by the owners of a majority of the feet
30 of land fronting on the street or avenue or section thereof (so ordered to be paved) and filed in the office of the Clerk of the Common Council."

And this respondent avers that the said ordinance for paving a portion of Broad street does not order or authorize, or profess to order or authorize, any portion of the said street to be laid or paved with or by any pavement protected by letters patent of the United States, and that in execution of the aforesaid ordinance, the Committee on Streets and Highways had no power or authority to receive or consider pro-
40 posals or bids for laying or paving said street with any pave-

ment protected by letters patent of the United States; and he avers that the relator claims that the wood block pavement which it proposed to lay, and the proposal to lay which is supposed to have been accepted by the Committee on Streets and Highways, is protected by letters patent of the United States, and the acceptance of said bid was contrary to the form of the said act of Legislature.

4th. He further denies that at or before the time of the passage of the aforesaid ordinance by the Common Council of Newark any petition such as is supposed by the relator, 10 or paper asking that said street or section of said street should be paved by any form of wood block pavement, had been signed by the owners of a majority of the feet of land fronting on the said street, and filed in the office of the Clerk of the Common Council in manner and form as required by the said act of Assembly.

5th. And he is advised that upon the true construction of the said act, the Common Council has no power to order any street or section thereof to be paved with any form of pavement protected by letters patent of the United States, unless 20 a petition asking that said street or section of street shall be paved with that specific form of pavement shall have been first signed and filed in manner provided by the said act of Legislature.

6th. And he prays leave to deny the genuineness of all and singular the signatures to the said petition, and also the right or title of the persons whose names appear to have been signed to said petition in the character of owners of land fronting on said street as is therein pretended; and in the event that an alternative *mandamus* shall be granted, he 30 prays leave to put said question in issue in order that they may be found by a jury.

7th. That he is credibly informed and believes that on the trial of issues to be framed for the purpose, and by the examination of parties whose names purport to be signed to the said petition, that representations were made to them or some of them by persons in privity with the relator, to the effect or import that the said proposed pavement, if ordered, would be laid at a cost not exceeding \$2 a square yard, or that the cost of said pavement to the said persons should not 40

exceed said sum ; the said persons so making the said representations well knowing, at the time of making the same, that the said relator would not offer to perform and execute the same work at a less price than \$3.45 per square yard.

8th. That by the act of the Legislature aforesaid, already in part recited, it is provided likewise that all contracts for paving "shall be awarded to the lowest bidder therefor, unless it shall appear to the Street Committee that the interest of the city, or of the owners of the property interested, will not be advanced thereby." That on the occasion of the opening of proposals or bids for paving Broad street as alleged by the relator, it appeared there were no less than six bids or offers to perform and execute said work at prices lower than the price named or demanded by the said relator, some of whom, including the relator, proposed to perform said work according to certain specified plans and specifications peculiar to himself or itself; and others proposing agreeably to the printed forms to do the work according to the plans and specifications filed in the office of the Street Commissioner, there being in truth no plans or specifications for the said work in said office; and by endorsement on the envelope enclosing the bid for Nicholson No. 2, the said relator offers, as part of his proposal, to keep said pavement in repair for five years; and on the 11th day of August, 1871, the Committee on Streets and Highways resolved that the contract for paving the said street be awarded to the Nicholson Pavement Company on their bid No. 2, at \$3.45 per square yard; so it appears from the record of their own acts that the said committee did not, at or before the acceptance of said bid, consider the question whether or not the interests of the city or the property holders interested would be advanced by the acceptance of said bid, but did, in utter disregard of the injunctions of the said act of Legislature, and of their duty in the premises, reject all the bids for performing and executing said work at prices lower than the bid made by the relators and accepted by them.

9th. This respondent is advised and insists that the aforesaid resolution or act of acceptance is incapable of amendment or supplement, and that its defects cannot be supplied by averment or extraneous proofs, and especially after the

draft of the contract intended to give effect to the acceptance of said bid had been placed in his hands, and he had refused to execute the same. But if the relator is permitted to aver and to show, by proofs *aliunde*, matter in justification of the failure of the committee to accept the lowest of the aforesaid bids, the respondent will pray leave, and tenders himself ready to prove on the trial of the issue to be framed for that purpose, that in fact the committee did not decline to accept said lowest bid, and other bids lower than the bid made by the relator, because it appeared to them 10 that the interests of the city or of the property holders interested would not be advanced thereby.

10th. This respondent avers his own convictions and his belief in his ability to prove, to the satisfaction of a jury, that the interests of the city and of the owners of property on the line of the said street proposed to be paved were sacrificed by the acceptance of the Nicholson bid No. 2. He avers that the said bid was the least eligible of all the bids to which he has referred. This respondent further calls attention to the fact that the relator, by his bid, proposes to 20 lay the pavement and keep it in repair for five years, for the price named in its proposals; that by the act of the Legislature of New Jersey, approved March 11th, 1857, entitled "An act to revise and amend the charter of the City of Newark," the Common Council of the said city have power to order and cause any street or section of a street to be paved in such manner as they may deem advisable, at the expense of the owners of lands on the line thereof. But no power is conferred on them to charge the cost of keeping a paved street in repair to the said owners, and by the general ordinances of 30 the said city, the cost of repairing the paved streets is ordered to be defrayed out of the treasury of the said city, and that by the said ordinance for paving a portion of Broad street, a provision is made for assessing the costs and expenses incurred in the prosecution and completion of the improvement thereby ordered in manner as provided for by the aforesaid charter; therefore this respondent is advised and insists that the said committee had no authority to enter into any contract for the paving the said section of the said street and for keeping the same in repair for any space of time thereafter, 40

and therefore that their acceptance of the said bid termed Nicholson No. 2, was and is absolutely null and void.

That it is his duty as Mayor to see that all the laws and ordinances of the said city are observed and faithfully executed, and to supervise all inferior officials, and by a general ordinance, approved November 10th, 1857, and entitled "An ordinance in relation to the Mayor," he is required to execute all contracts made in behalf of the city unless the Common Council shall otherwise direct, and before executing the same

10 he is to advise with the City Counsel in relation to the form and sufficiency thereof; and by one other general ordinance hereinbefore in part recited, and entitled "An ordinance relating to streets and highways, the construction and repair of sidewalks, and the public grounds of the city," he is empowered to execute any contract on behalf of the city for the paving of a street or section thereof; and it is expressly provided that no materials or labor shall be furnished by the contractors for performing such work or compensation made therefor until such contract shall be duly signed and executed

20 by the contracting parties; and by the aforesaid act of the Legislature, approved March 21st, 1871, it is further enacted that no contract shall be entered into for the paving of any street or section thereof until after advertisement for proposals therefor shall have been published in the manner directed by the city ordinances, and therefore this respondent is advised and submits that whenever it is claimed that any bid for paving a street or section of a street has been accepted by the Committee on Streets and Highways, and an instrument of writing purporting to be a contract to carry into

30 effect said bid is laid before him for execution, it is his duty to examine and determine—

1st. Whether advertisements for proposals for doing said work have been published in manner directed by the city ordinances.

2d. Whether the said committee, in accepting said bid, have acted in conformity with law.

3d. Whether the said instrument of writing corresponds with said bid, and is sufficient in form and in legal effect to bind the party making the bid, and the city (the contracting

40 parties) and the owners of lots bordering on the street, who

are expected to repay to the city the moneys which the said city may be required to advance in the execution of said contract; and

4th. That until such formal contract shall have been signed by him, the bid accepted by the committee imposes no legal obligation on the city, and vests no legal right in the party making said bid.

This respondent herewith exhibits the draft of the supposed contract mentioned in the proceedings. He received this paper, as he believes, on the day it purports to bear date, 10 from the Street Commissioner. He can have no motive for suppressing said paper, since upon its face it is insufficient to oblige the American Nicholson Pavement Company, which is therein supposed to have made said offer or bid, to the performance thereof; and especially for that the party making said bid proposed to pave the said street and to keep the said pavement in repair for the space of five years after laying the same, for and in consideration of a certain sum of money for each and every square yard of pavement to be laid as aforesaid; the said sum being the compensation to 20 the said bidder as well for its future service of making repairs as for the more immediate service of laying down the said pavement; whereas, the said instrument professes to oblige the said bidder to no more than the duty of paving said street, and in consideration of the performance of that duty, obliges the said City of Newark to pay to the said bidder the aforesaid sum of money, and that by force of the said instrument, if it had been executed by the respondent, the said bidder would have been completely discharged from its duty proposed to be assumed by said bid of keeping said 30 pavement in repair for the term of time aforesaid.

Depositions.

Examination of witnesses, &c., in the above stated cause, taken before me, a Supreme Court Commissioner, at my office, No. 744 Broad street, in the City of Newark, commencing on Tuesday, 14th of November, A. D. 1871, on

notice by the relators, and on Wednesday, 15th November, 1871, on notice by the defendants, at ten o'clock A. M., in the presence of Parker & Keasbey, attorneys of the relators, and Stone & Jackson, and John W. Taylor and Thomas S. Alexander, attorneys for the defendants.

WILLIAM PATERSON,
Sup. Ct. Com.

For the purpose of facilitating the testimony and proceedings, the counsel for the defendants admitted the following
10 papers :

The ordinance entitled "An ordinance to provide for paving a portion of Broad street," approved July 17th, 1871, annexed to the affidavit of Timothy W. Lord, laid before the Supreme Court on the motion whereon the said rule was granted.

All and every the proceedings of Common Council, certified copies of which are also annexed to said affidavit.

That such proceedings and resolutions were had by the Street Committee, as are stated in any of the copies thereof
20 certified by the Clerk and annexed to said affidavit. These admissions in reference to the proceedings of the Common Council and Street Committee, are made subject to all legal exceptions to the legal authority to take such proceedings or pass such resolutions, or to the effect thereof.

That a paper was drawn by the City Counsel and sealed by the Nicholson Pavement Company, which purports to be a contract, and is marked *Exhibit R 1*, and that bonds were given, marked *Exhibits R 2, R 3*, and all objection to these papers is waived, because the Mayor has nothing to do with
30 the approval or rejection of any bond given for the paving of any street.

That the said paper, *R 1*, was presented to the said Frederick W. Ricord, Mayor of the City of Newark, defendant, immediately after its execution by the Nicholson Pavement Company in order to the delivery thereof, and that he did refuse, and still does refuse to execute the same, though such execution has been likewise demanded prior to this application by said company.

That previous to passing said ordinance for paving said

section of South Broad Street, approved 17th July, 1871, petitions were filed, copies whereof are marked *Exhibits R 4* and *R 5*, and also a certificate signed by the City Surveyor, a copy of which is marked *Exhibit R 6*.

That the pavement to be laid down by the Nicholson Pavement Company, the proposal of whom was accepted by the Street Committee, is a pavement the right to lay down which is protected by letters patent of the United States to said company.

State of New Jersey, county of Essex, ss.

10

Charles F. Duerr, being duly sworn, deposes and says—

I am employed in the office of the "Newark Daily Courier," a paper published and circulating in the City of Newark.

[Being shown a printed slip, annexed hereto, the witness says]—

I have examined the files of that paper, and find that said advertisement was inserted first therein on 25th July, 1871, and had ten successive insertions, at least, being published on July 25th, 26th, 27th, 28th, 29th, 31st, August 1st, 2d, 20 3d, 4th, and 5th, 1871.

CHARLES F. DUERR.

Sworn and subscribed, this 14th November, 1871, before me.

WILLIAM PATERSON, *Sup. Cl. Com.*

[The following is the slip above referred to:

OFFICE OF THE STREET COMMISSIONER, }
NEWARK, N. J., July 24th, 1871. }

Sealed proposals will be received at this office until three p. m., on Friday, August 4th, 1871, for paving South Broad 30 street, from the terminus of the present stone pavement to a point one hundred and fifty (150) feet south of Vanderpool street.

The following is about the amount of work to be done and the materials to be furnished in the construction and completion of said work:

Twenty-six thousand (26,000) square yards of wooden block pavement.

The price for paving to include excavation and re-setting curb.

The bridge, gutter and cobble stone to remain the property of the city, to be taken up by the contractor and removed by the Street Commissioner.

Bidders will state their prices in writing as well as in figures.

Bidders must specify in their proposals that, should the above work be awarded to them, they will bind themselves to finish and complete the same by or before the 1st day of December ensuing.

Said proposals to be accompanied with specifications and the consent, in writing, of two sureties, who shall, at the time of putting in such proposals, qualify as to their responsibility in the amount of such proposal, and bind themselves that, if the contract be awarded to the person or persons making the proposal, they will, upon its being so awarded, become as his or their sureties for the faithful performance of said work; and that if the person or persons omit or refuse to execute such contract, they will pay to the City of Newark any difference between the sum to which he or they would have been entitled upon the completion of the contract and that which the City of Newark may be obliged to pay the person or persons by whom such contract shall be executed.

The Committee on Streets and Highways reserve to themselves the right to accept or reject any or all proposals for the above work, as they may deem best for the interest of the city.

30 By direction of the Common Council.

WILLIAM STAINSBY.

Chairman Committee on Streets and Highways.

PETER F. ROGERS, *Street Commissioner.*]

State of New Jersey, county of Essex, ss.

Oba Woodruff, a witness for the relators, being duly sworn, deposes and says—

I am book-keeper and general manager of the business of the "Newark Daily Advertiser," a newspaper for many years published and circulating in Newark.

[Being shown a printed slip, hereto annexed, he says]—

I have examined the files of that paper for 1871, and find this advertisement printed first on 25th July, 1871, and continued every day but Sunday to and including 4th August, 1871, being ten successive insertions.

OBA WOODRUFF.

Sworn and subscribed, this 14th November, 1871, before me.

WILLIAM PATERSON, *Sup. Ct. Com.*

[The following is the slip above referred to: 10

OFFICE OF THE STREET COMMISSIONER, }
NEWARK, N. J., July 24th, 1871. }

Sealed proposals will be received at this office until three o'clock P. M., of Friday, August 4th, 1871, for paving South Broad street, from the terminus of the present stone pavement to a point one hundred and fifty (150) feet south of Vanderpool street.

The following is about the amount of work to be done, and the materials to be furnished in the construction and completion of said work: 20

Twenty-six thousand (26,000) square yards wooden block pavement.

The price for paving to include excavation and re-setting curb.

The bridge, gutter, and cobble stone to remain the property of the city, to be taken up by the contractor and removed by the Street Commissioner.

Bidders will state their prices in writing as well as in figures.

Bidders must specify in their proposals that, should the 30 above work be awarded to them, they will bind themselves to finish and complete the same by or before the 1st day of December ensuing.

Said proposals to be accompanied with specifications and the consent, in writing, of two sureties, who shall, at the time of putting in such proposals, qualify as to their responsibility in the amount of such proposal, and bind themselves that if the contract be awarded to the person or persons making the proposal, they will, upon its being so awarded,

become as his or their sureties for the faithful performance of said work ; and that if the person or persons omit or refuse to execute such contract, they will pay to the City of Newark any difference between the sums to which he or they would have been entitled upon the completion of the contract and that which the City of Newark may be obliged to pay the person or persons by whom such contract shall be executed.

10 The Committee on Streets and Highways reserve to themselves the right to accept or reject any or all proposals for the above work, as they may deem best for the interest of the city.

By direction of the Common Council.

WILLIAM STAINSBY,

Chairman Committee on Streets and Highways.

PETER F. ROGERS, *Street Commissioner.*]

State of New Jersey, county of Essex, ss.

Timothy W. Lord, a witness for the relator, being duly sworn, deposes and says—

20 I reside in Newark, and am an agent for the Nicholson Pavement Company ; I am acquainted to some extent with their business ; I am acquainted with the details of the contract made by that company with the City of Newark, marked *Exhibit R 1*, for paving South Broad street ; I am able to say that the execution of that contract will be beneficial to that company.

Cross-examined, the witness says—

1 *Quest.* Be pleased to state what amount of profit the said company may reasonably expect to realize from said
30 contract, if carried out ?

Ans. It would be impossible for me to state the exact amount, for there are some details which I cannot state now, but it would be some thousands of dollars.

2 *Quest.* What are the details to which you refer ?

Ans. There are various details about the whole contract ; the re-setting of curb when necessary, though I do not know how much it would be necessary to re-set, grading, and I am

not well enough acquainted with the cost of the different materials to say what the cost will be.

1 *Quest.* As agent of this company, were not you active in procuring the acceptance of the bid by the company, by the Street Committee?

Ans. I talked with different members of the Street Committee a number of times.

2 *Quest.* Was that the whole extent of the services you rendered the company as their agent?

Ans. I talked with a great many other people beside the 10 Council; I done a great deal of talking.

3 *Quest.* Among others did not you talk with a number of persons owning property on that part of Broad street proposed to be laid with Nicholson pavement?

Ans. I talked with some of the owners on that street, and on other streets too; I do not know how many of them.

4 *Quest.* Among other subjects, did you or not, converse with those owners or some of them, about the cost or probable cost of laying the street with Nicholson pavement?

Ans. Yes, I talked with some of them as to cost, that 20 it would not exceed \$4.

5 *Quest.* Did you or not state to more than one of those persons that the cost to them of laying said pavement, if ordered, should be less than \$4? [Objected to as improper cross-examination.]

Ans. I think very likely I said to a number of them the pavement would not cost as much as \$4; I did not think it would.

1 *Quest.* Will you affirm positively that you did not say to one or more of them, that the cost to that one or more 30 would not exceed \$3?

Ans. I don't think I did; I have no recollection now of saying so.

2 *Quest.* You have spoken to Mr. Andrew Johnson on the subject, have you not? [Objected for same reason as before.]

Ans. My impression is, that I never had a word of conversation with Mr. Andrew Johnson on wooden pavement on South Broad or any other street, till since the contract

was awarded to the Nicholson Pavement Company, and then not in regard to the price at all, in any way, shape, or form.

3 *Quest.* Have you any information in regard to any representations or statements on the subject made by any other agent of the company to Mr. Johnson? [Objected to as calling for illegal evidence.] I mean information derived by you from such other agent?

Ans. I have no knowledge of anything of the kind.

4 *Quest.* As preliminary to making said bid, was any estimate made by the company, or by you or any other agent of the company, of the cost to the company of paving the street according to the proposals of the company?

Ans. Not to my knowledge.

1 *Quest.* Have you ever heard from the President or working Superintendent of the company, what his or their estimate of the probable profit to the company of executing this work?

Ans. I have never had any detailed statement.

2 *Quest.* Have you ever heard them say what was their estimate of the aggregate profit?

Ans. I have heard the President say there would be a profit in it, but the exact amount I have not heard him say.

3 *Quest.* Is the President the only officer of that company whom you have heard talk about that matter?

Ans. I have had no estimate from any officer of the company.

4 *Quest.* When the President told you he expected the company would realize profit on this contract, did not he say what was the amount of that profit?

30 *Ans.* No, sir.

5 *Quest.* Did he say nothing from which you could fairly infer what was his estimate of such profit?

Ans. No, sir.

6 *Quest.* Before the bid was made, was there any examination made of the state of the curb of the street? [Objected to as no cross-examination, and as otherwise illegal.]

Ans. I presume there was.

1 *Quest.* Do you know?

Ans. I know that I looked at the curb myself; I know

there were officers of the company here who went on to the street different times.

2 *Quest.* The examination of the curb was with a view to making an estimate of the probable expense of re-setting the curb?

Ans. I did not make any examination of the curb for that purpose; I made no estimate.

3 *Quest.* Do you know of any estimate made of the cost of re-setting?

Ans. Not of my own knowledge. 10

4 *Quest.* Have you any information from any agent of the company who examined the street on behalf of the company?

Ans. No, sir.

5 *Quest.* And I am to understand that you know nothing whatever of any estimate made in detail or in the aggregate, of the probable cost to the company of executing that work?

Ans. No, sir.

6 *Quest.* I find by referring to the specifications annexed to what purports to be the draft of a contract between the company and the City of Newark for paving South 20 Broad street, they speak of blocks and of strips separating blocks, and those strips are proposed to be three inches wide, and from one inch to three-fourths of an inch thick—tell us, if you can, how these strips are to be laid? [Objected to as irrelevant, and the question withdrawn.]

TIMOTHY W. LORD.

Subscribed and sworn, this 14th November, 1871, before me.

WILLIAM PATERSON, *Sup. Ct. Com.*

Counsel for relators offer in evidence the papers referred 30 to in the admissions heretofore stated.

[Counsel for defendant objects to the admissibility of the papers thus offered, for any purpose or to have any other effect than as admitted by the agreement between the counsel.]

Counsel for the relators also offer in evidence the following documents:

Copy of petition to Common Council of Newark, filed 1st June, 1871, marked *Exhibit R 4* for relators.

Copy of petition to said council, purporting to have been filed 18th May, 1871, marked *R 5*.

Copy of City Surveyor's statement, purporting, by certificate of Clerk, to be on file in office of City Clerk, marked *Exhibit R 6*.

Paper under certificate and seal of City Clerk, marked *Exhibit R 7*, purporting to contain two petitions to Common Council for immediate action in relation to paving South Broad street.

- 10 Counsel further offers copy of notice for production of documents, the sense of which was acknowledged by defendant, and in conformity wherewith, *Exhibits 1, 2 and 3* have been produced.

[Counsel for defendant objects to the admissibility in evidence of *Exhibit R 4*, excepting in so far as it has been admitted already, by the agreement between the parties, and especially objects to the admissibility of said paper, in the absence of proof of the genuineness of the signatures to that paper, and of the ownership, by the persons whose names are signed to that paper, of land fronting on the street to be paved; to *Exhibit R 5* he objects—1st, because it is not one of the moving papers; and 2d, for the causes specially objected against *Exhibit R 4*; to *Exhibit R 6* he objects, as evidence of the matters of fact therein stated; to *Exhibit R 7* he objects, because of their irrelevancy to the subject matter in controversy, and for the reasons specially objected against *Exhibit R 4*.]

20 Counsel for defendant offer in evidence the following documents:

- 30 Message of the Mayor declining to sign the contract, marked *Exhibit D 1*.

Message vetoing resolution of request to sign, marked *Exhibit D 2*.

Extract from minutes of Common Council in relation to veto message, marked *Exhibit D 3*.

Copies of proposals laid before the Street Committee in response to advertisements laid before the committee 4th August, 1871, marked *Exhibit D 4, D 5, D 6, D 7, D 8, D 9, D 10*.

- 40 These papers are admitted to have the same effect as the original, but subject to all exceptions as to their legal effect.

It is agreed further, that the ordinances of the city and charter, and supplements to the charter, may be read from the printed book, printed by order of the Common Council.

State of New Jersey, county of Essex, *ss.*

Peter Witzel, a witness for the defendants, being duly sworn, deposes and says—

I am a resident of Newark, and have been City Surveyor for six years.

1 *Quest.* I find among the moving papers in this case, a paper purporting to be a letter addressed by you, as City 10 Surveyor, to Wm. Stainsby, Chairman of Street Committee, &c., which I will read. [Counsel reading it, then asks the witness whether he recollects addressing that letter to Mr. Stainsby on 2d June, 1871 ?]

Ans. Yes, I do.

2 *Quest.* Had you at any time before writing that letter, measured that section of the street proposed to be paved, to ascertain the number of feet of land fronting on that section of the street ?

Ans. The number of feet was ascertained partly from 20 official measurement, and partly from an inspection of official maps in my office.

3 *Quest.* What was the number of feet of land thus ascertained by you to be fronting on that street ?

Ans. I do not remember the exact number of feet, but according to my recollection they were five thousand three hundred and twenty-three feet.

4 *Quest.* Does, or not, Lincoln Park front on that section of the street proposed to be paved ?

Ans. Yes.

30

1 *Quest.* Now give us the precise location of that park ?

Ans. It begins at the intersection of Broad street with Clinton avenue, and extends south to Lagrange street.

2 *Quest.* What is the frontage of that park upon Broad street ?

Ans. Six hundred and forty-seven feet by actual measurement.

3 *Quest.* Is that the frontage of the enclosed park ?

Ans. It is; it does not include the sidewalks.

4 *Quest.* What can you tell us is the width of the sidewalks, that is to say, from the corners of the park to the curbs of the side streets? [Objected to.]

Ans. The width of the sidewalk of Lagrange street is twelve feet, and that of Clinton avenue is twenty-eight feet six inches at right angles to the curb, and forty feet along the line of Broad street.

10 *Quest.* Was the park included in your estimate of land fronting on the street, your estimate being five thousand three hundred and twenty-three feet?

Ans. It was not.

Quest. Am I, or not, to understand you to say, that the extent of the land fronting on that section of the street is to be ascertained by adding to your estimated quantity of five thousand three hundred and twenty-three feet, the actual frontage of the park? [Objected to as matter of law.]

Ans. Yes, if the park is to be included, certainly.

Being cross-examined, the witness says—

20 1 *Quest.* What is the total frontage, including the park?

Ans. It is five thousand nine hundred and seventy feet.

2 *Quest.* When you addressed the letter just spoken of to Mr. Stainsby, how many feet of frontage did you reckon to be represented by the signers of the petition mentioned in your letter?

30 *Ans.* I think the front represented in that petition was about two thousand eight hundred and forty-five feet and some inches; I think, however, that the actual number of feet owned by the signers was about two thousand eight hundred and forty feet, which was all I took in consideration. [Answer objected to as any evidence of ownership of land fronting on that street.]

3 *Quest.* I show you *Exhibit R 5*, being a copy of a petition of owners of land on the section of Broad street referred to, in which the name of H. M. Baldwin appears—did you, or not, take into account land owned by him on said street, in making up your estimate of two thousand eight hundred and forty-five feet?

Ans. I did not.

Quest. What is the frontage of land owned by him on that section?

Ans. He signs for one hundred and seventy-four feet; I think he only owns one hundred and seventy feet—at least that is what the city tax maps show.

1 *Quest.* If you add the amount of Baldwin's frontage to that already reckoned by you, will there, or not, be a majority of the frontage on that section, including the park?

Ans. There will, no doubt; there will be three thousand and nineteen out of five thousand nine hundred and seventy 10 by the petition; by my reckoning there will be three thousand and ten feet out of five thousand nine hundred and seventy feet.

[Counsel for defendants objects to the examination of this witness touching any matter relating to said paper *R 5*, and to the answers he has made to questions founded on that paper.]

2 *Quest.* Have you made a plan showing the relative position of lands and frontage credited to various owners on that section of said streets, and distinguishing those portions of 20 said frontage, the owners of which signed the petitions *R 4* and *R 5*?

Ans. Yes; I have the map here.

[Counsel for defendants objects to so much of this question as relates to *R 5*.]

[The witness here produces the said map, which is marked *Exhibit R 8* for the relators, and says]—

The lots colored blue show the property owners in favor of the wooden pavement—I mean those who signed the petition in favor of that pavement. 30

[Counsel for defendants objects to the admissibility of the map as being no part of the moving papers.]

1 *Quest.* Does this map represent, truly, the relative position of the various owners, the respective frontage on Broad street, and the respective widths of the various cross streets? 30

[Objected to.]

Ans. Yes.

2 *Quest.* In making up your estimate of the amount of frontage on Broad street, was the width of the streets or sidewalks included? 40

Ans. It was not.

PETER WITZEL.

Sworn and subscribed, this 15th November, 1871, before me.

WILLIAM PATERSON, *Sup. Ct. Com.*

State of New Jersey, county of Essex, *ss.*

Thomas S. Alexander, a witness for the defendants, being duly sworn, deposes and says—

That I am the owner of property fronting on Broad
 10 street, on the corner of Broad street and Pennington street,
 and have been so for years past; that feeling deeply inter-
 ested in defeating the project for paving the street with
 wood, I did, some two or three days before 22d May, 1871,
 write and deposit in the post-office at New York, a letter
 addressed to John Watts Kearney, attorney at law, Louis-
 ville, Kentucky, on that subject; and on 22d May, 1871, I
 received through the telegraph office in New York, the
 envelope and its enclosure, which are marked *Exhibit T S A 1*
 and *T S A 2*; a few days thereafter, I received through the
 20 post-office at New York, the envelope addressed to me,
 marked *T S A 3*, with the letter purporting to be addressed
 by said Kearney to me, marked *T S A 4*; I have never seen
 Mr. Kearney write, neither have I any personal acquaintance
 with him, but since the receipt of this letter, I have
 received other letters purporting to have been written by John
 Watts Kearney, dated Louisville, and in like handwriting,
 so that I have no doubt the letter offered in evidence was in
 his handwriting. [Offering to the Commissioner a paper,
 marked as *Exhibit T S A 5*, signed by Thomas S. Alexander,
 30 dated 22d June, 1871, and addressed to the Common Coun-
 cil of the City of Newark.] I state further, that said paper
 is in my handwriting; it was prepared by me on 22d June,
 1871, and between that date and before 7th July, it was
 placed by me in the hands of Alderman Gurney, to be laid
 before the Common Council at its next session; at the same
 time, I exhibited to him the telegram and letter I have
 offered in evidence, and desired him to state that those
 papers would be exhibited to any one who might desire to

see them ; on 24th or 25th July, 1871, I received the paper marked *T S A No. 6*, with *Exhibit T S A 5*, in an envelope addressed to Thomas S. Alexander, and which, by the printing thereon, purports to have been issued from the office of the City Clerk of Newark ; I know nothing of the handwriting of that officer, but have no doubt that was written and signed by him.

[NOTE.—This testimony of Mr. Alexander was taken subject to all exception.]

Cross-examined, the witness says—

10

1 *Quest.* Had you any authority from John Watts Kearny but the letter and telegram above mentioned ?

Ans. No, but I have received some two, and if I mistake not, three letters from Mr. Kearny, subsequent to his telegram and letter, recognizing and confirming, but not in any manner enlarging my authority ; I have never seen Mr. Kearny.

2 *Quest.* Had you any ground for saying in your petition, on behalf of Mr. Kearny, to the Common Council, that his name had been subscribed to *Exhibit R 4* without his 20 authority, except the papers here offered in evidence ?

Ans. None at all ; my present impressions are, I did not know by whom his name had been signed.

TH. S. ALEXANDER.

Sworn and subscribed, this 15th November, 1871, before me.

WILLIAM PATERSON, *Sup. Ct. Com.*

Counsel for defendants here offers in evidence a paper, which is marked *Exhibit D 11*, the admissibility of which is objected to by the counsel for the relators, and it is marked 30 subject to all objections that could have been taken to the original paper.

State of New Jersey, county of Essex, ss.

Peter F. Rogers, a witness for defendant, being duly sworn, deposes and says—

I was Street Commissioner of Newark in 1871 ; I came

in that office on 9th June, 1871, and have been ever since; I remember that I advertised for proposals for paving South Broad street with wooden pavement.

1 *Quest.* Before or after the time of the advertisement, were there any plans or specifications showing the amount and nature of the work, deposited or filed in your office for examination? [Objected to as immaterial.]

Ans. There were no plans or specifications gotten up on the part of the city; there were several samples of wooden
10 pavement brought or sent to my office by the patentees or their agents.

Being cross-examined, the witness says—

There were such specifications accompanying the proposal of the Nicholson Pavement Company; I heard them read as such by the Clerk of the committee; I did not handle them then; I saw them afterwards, in the office of City Counsel, because they came to be part of the contract.

PETER F. ROGERS.

Sworn and subscribed, this 15th November, 1871, before
20 me.

WILLIAM PATERSON, *Sup. Ct. Com.*

State of New Jersey, county of Essex, ss.

Joseph C. Young, a witness for the relators, being duly sworn, deposes and says—

I am a resident of Newark, and own land on South Broad street—I mean my wife does; I am acquainted with John Watts Kearny, and have been for about three years; I signed his name to a petition for a wooden pavement; I had the written authority of Mr. Kearny for that purpose; I have his
30 letter; this is it; [letter marked *Exhibit R 9* and *10* for relators;] it was in answer to one I wrote to Mr. Kearny; Mr. Kearny was on here from Kentucky, and having some business with him, and he speaking of selling his property on Broad street, the subject of paving the street came up; I told him the paving of Broad street was being agitated, and what the result would be, I did not know; afterwards,

in consequence of that conversation, I wrote to Mr. Kearny, stating that the probability was the street would be paved, and on account of there being so many kinds of pavement talked of, and the subject of wooden pavement being new to me, I hardly knew what course I should pursue; and from what had been said to him, I wrote to him to ascertain his wishes on the matter, thinking that was due him, on account of my having possession and use of the premises ever since it was purchased by his father from me in 1858. 10

[Objection to proving the contents of letter, other than by producing it.]

The letter I now produce is his answer; the authority given by that letter to me has never been revoked to me; when I wrote to Mr. Kearny, I think I had not signed any petition.

Cross-examination.

I suppose I received that letter shortly after it bore date; I cannot say positive, but this was some few months after the conversation I had with Mr. Kearny—it might have 20 been three months; I know that letter to be in his handwriting, for I have seen him write on several occasions; I could not say now what was the first petition I signed, nor how many for wooden pavements; my impression is that I signed for a particular kind of wooden pavement; if I did for any, it was for the Holmes and Nicholson, general; my impression is, the petition for the Holmes pavement was presented first; my original preference was for Holmes over Nicholson, but this was long before the new law.

Jos. C. YOUNG. 30

Sworn and subscribed, this 15th November, 1871, before me.

WILLIAM PATERSON, *Sup. Ct. Com.*

EXHIBITS.

EXHIBIT D 4.

PROPOSALS FOR STREETS.

The undersigned hereby propose to pave South Broad street with Nicholson pavement from the terminus of the present stone pavement to a point one hundred and fifty feet south of Vanderpool street, in accordance with the plans and specifications thereof on file in the office of the Street Commissioner, (which plans and specifications form the basis of

10 this proposal) for the following prices, to wit :

- Excavation, per cubic yard,
- Embankment, per cubic yard,
- Curbing, per lineal foot,
- Re-setting curb, per lineal foot,
- Flagging side-walks, per square foot,
- Re-laying flag, per square foot,
- Cross-walks, per square foot,
- Corners, each,
- Paving, per square yard, (cobble stone),
- 20 Paving, per square yard, (Belgian stone),
- Paving, per square yard, (wood), Nicholson pavement, three dollars and forty-five cents (\$3.45) per square yard.
- Paving, per square yard, (Telford),

The above price to include whatsoever is requisite to a proper completion of the work, and also to include all charges and expenses for furnishing all material and labor, and in all respects completing the aforesaid work in the manner and conditions specified.

30 The undersigned do hereby agree that they will enter into such bonds for the faithful performance of said proposed contract as may be required by the Committee on Streets and Highways of said city, and under the direction and supervision of the Street Commissioner. All cobble, bridge, Belgian, gutter, and curb stone, on the line of the work, to remain the property of the city.

AMERICAN NICHOLSON PAVEMENT COMPANY,

By R. W. Adams, Pres't.

Residing at No.

street.

“ “ “

“

City of Newark, ss.—The above named being sworn, says—that he is a householder or freeholder in the City of Newark, and is worth the sum of one hundred thousand dollars, over and above all his debts and liabilities of every nature, and property exempt from execution, being the amount of the security required for the completion of the contract above referred to; that he has offered himself as a surety in good faith, and with an intention to execute the bond required by the City of Newark, or the proper 10 officers thereof.

J. W. RANDALL.

Sworn and subscribed to, before me, this 3d day of August, A. D. 1871.

F. H. DAWES,
Notary Public.

[Notarial Seal.]

EXHIBIT D 5.

PROPOSALS FOR STREETS.

The undersigned hereby propose to pave South Broad 20 street with De Golyer pavement, from the terminus of the present stone pavement to a point one hundred and fifty feet south of Vanderpool street, in accordance with the plans and specifications thereof on file in the office of the Street Commissioner, (which plans and specifications form the basis of this proposal), for the following prices, to wit:

- Excavation, per cubic yard,
- Embankment, per cubic yard,
- Curbing, per lineal foot,
- Re-setting curb, per lineal foot,
- 30 Flagging side-walks, per square foot,
- Re-laying flag, per square foot,
- Cross-walks, per square foot,
- Corners, each,
- Paving, per square yard, (cobble stone),
- Paving, per square yard, (Belgian stone),
- Paving, per square yard, (wood), De Golyer pavement, two dollars and ninety cents per square yard.
- Paving, per square yard, (Telford),

The above price to include whatsoever is requisite to a proper completion of the work, and also to include all charges and expenses for furnishing all material and labor, and in all respects completing the aforesaid work in the manner and conditions specified.

The undersigned do hereby agree that they will enter into such bonds for the faithful performance of said proposed contract, as may be required by the Committee on Streets and Highways of said city, and under the direction and supervision of the Street Commissioner. All cobble, bridge, 10 Belgian, gutter, and curb stone, on the line of the work, to remain the property of the city.

AMERICAN NICHOLSON PAVEMENT COMPANY,
By R. W. Adams, Pres't.

Residing at No.

“ “ “

street.

“

We, the undersigned, consent and agree, that if the contract for which the preceding estimate is made, be awarded to the person or person making the same, we will become bound as sureties for its faithful performance; and if the 20 said person or persons shall omit or refuse to execute such contract within three days from the time when the same shall be awarded to him or them, if so awarded, we will pay, without proof of notice, on demand, to the said City of Newark, any difference between the sum to which such person or persons would have been entitled, upon the completion of such contract, and the sum to which the next highest bidder to whom the contract shall be awarded would be entitled to receive upon such completion; the amount in each case to be calculated upon the estimated amount of work by which 30 the bids are tested.

In witness whereof, we have hereunto set our hands, this
day of one thousand eight
hundred and seventy

MICHAEL SHANLEY,
80 Washington St.
J. M. RANDALL,
East Orange.

City of Newark, ss.—The above named Michael Shanley, being sworn, says—that he is a householder or freeholder in the City of Newark, and is worth the sum of one hundred thousand dollars, over and above all his debts and liabilities of every nature, and property exempt from execution, being the amount of the security required for the completion of the contract above referred to; that he has offered himself as a surety in good faith, and with an intention to execute the bond required by the City of Newark, or the proper officers
10 thereof.

MICHAEL SHANLEY,

Sworn and subscribed to, before me, this 3d day of August, A. D. 1871.

FRANCIS H. DAWES,
Notary Public.

City of Newark, ss.—The above named being sworn, says—that he is a householder or freeholder in the City of Newark, and is worth the sum of one hundred thousand dollars, over and above all his debts and liabilities
20 of every nature, and property exempt from execution, being the amount of the security required for the completion of the contract above referred to; that he has offered himself as a surety in good faith, and with an intention to execute the bond required by the City of Newark, or the proper officers thereof.

J. M. RANDALL,
Notary Public.

Sworn and subscribed to, before me, this 3d day of August, A. D. 1871.

30 FRANCIS H. DAWES,
Notary Public.

[Notarial Seal.]

EXHIBIT D 6.

PROPOSALS FOR STREETS.

The undersigned hereby propose to pave South Broad street from the terminus of the present stone pavement to a point one hundred and fifty feet south of Vanderpool street, as advertised, with a wooden pavement, in accordance with the plans and specifications thereof hereto annexed (which plans and specifications form the basis of this proposal), for the following prices, to wit :

Excavation, per cubic yard,	10
Embankment, per cubic yard,	
Curbing, per lineal foot,	
Re-setting curb, per lineal foot,	
Flagging side-walks, per square foot,	
Re-laying flag, per square foot,	
Cross-walks, per square foot,	
Corners, each,	
Paving, per square yard (cobble stone),	
Paving, per square yard (Belgian stone),	
Paving, per square yard (wood), two dollars and eighty-	20
eight cents (\$2.88), with wood not preserved; or three and	
thirty-eight cents (\$3.38) with the wood all thoroughly pre-	
served by the Burnetizing process.	
Paving, per square yard (Telford),	

The above price to include whatsoever is requisite to a proper completion of the work, and also to include all charges and expenses for furnishing all material and labor, and in all respects completing the aforesaid work in the manner and conditions specified.

The undersigned do hereby agree that will enter 30 into such bonds for the faithful performance of said proposed contract, as may be required by the Committee on Streets and Highways of said city, and under the direction and supervision of the Street Commissioner. All cobble, bridge, Belgian, gutter and curb stone, on the line of the work, to remain the property of the city. And that he will bind himself to finish and complete said proposed contract by or before the first day of December next.

CHAS. H. GREEN,

Residing at Broadway and 42d streets, New York City. 40
Office, 319 Broadway.

We, the undersigned, consent and agree, that if the contract for which the preceding estimate is made, be awarded to the person or persons making the same, we will become bound as sureties for its faithful performance; and if the said person or persons shall omit or refuse to execute such contract within three days from the time when the same shall be awarded to him or them, if so awarded, we will pay, without proof of notice, on demand, to the said City of Newark, any difference between the sum to which such
 10 person or persons would have been entitled, upon the completion of such contract, and the sum to which the next highest bidder to whom the contract shall be awarded, would be entitled to receive upon such completion; the amount in each case to be calculated upon the estimated amount of work by which the bids are tested.

In witness whereof, we have hereunto set our hands, this fourth day of August, one thousand eight hundred and seventy-one.

WM. B. GUILD, JR.

A. T. COMPTON.

20

[Five cent revenue stamp, canceled.]

City of Newark, *ss.*—The above named William B. Guild, Jr., being sworn, says—that he is a householder or freeholder in the City of Newark, and is worth the sum of forty thousand dollars, over and above all his debts and liabilities of every nature, and property exempt from execution, being the amount of the security required for the completion of the contract above referred to; that he has offered himself as a surety in good faith, and with an intention to execute the
 30 bond required by the City of Newark, or the proper officers thereof.

WM. B. GUILD, JR.

Sworn and subscribed to, before me, this 4th day of August, A. D. 1871.

CHAS F. HILL, *M. C.*

City of Newark, *ss.*—The above named Alexander T. Compton, being sworn, says—that he is a householder or freeholder in the City of Newark, and is worth the sum of

forty thousand dollars, over and above all his debts and liabilities of every nature, and property exempt from execution, being the amount of the security required for the completion of the contract above referred to; that he has offered himself as a surety in good faith, and with an intention to execute the bond required by the City of Newark, or the proper officers thereof.

A. T. COMPTON.

Sworn and subscribed to, before me, this 4th day of August, A. D, 1871.

10

CHAS. F. HILL, *M. C.*

EXHIBIT D 7.

PROPOSALS FOR STREETS.

The undersigned hereby proposes to pave South Broad street with the "Ream Combination Sectional Wood-block Pavement," (as laid in Bank street,) in pursuance of the advertisement for same hereto attached, and to complete the same on or before December 1st, 1871, but in accordance with the plans and specifications thereof hereto attached, (which plans and specifications form the basis of this proposal), for the following prices, to wit:

Excavation, per cubic yard,	
Embankment, per cubic yard,	
Curbing, per lineal foot,	
Re-setting curb, per lineal foot,	
Flagging side-walks, per square foot,	
Re-laying flag, per square foot,	
Cross-walks, per square foot,	
Corners, each,	
Paving, per square yard, (cobble stone),	30
Paving, per square yard, (Belgian stone),	
Paving, per square yard, (wood), of white pine, two dollars and eighty-nine cents, (\$2.89); of Burnettized spruce, three dollars and thirty-nine cents, (\$3.39),	
Paving, per square yard, (Telford),	
The above price to include whatsoever is requisite to a	

proper completion of the work, and also to include all charges and expenses for furnishing all material and labor, and in all respects completing the aforesaid work in the manner and conditions specified.

The undersigned does hereby agree that he will enter into such bonds for the faithful performance of said proposed contract, as may be required by the Committee on Streets and Highways of said city, and under the direction and supervision of the Street Commissioner. All cobble, bridge, 10 Belgian, gutter and curb stone, on the line of the work, to remain the property of the city.

HENRY HILL,
Residing at Continental Hotel, Broad street.

We, the undersigned, consent and agree, that if the contract for which the preceding estimate is made, be awarded to the person or persons making the same, we will become bound as sureties for its faithful performance; and if the said person or persons shall omit or refuse to execute such contract within three days from the time when the same 20 shall be awarded to him or them, if so awarded, we will pay, without proof of notice, on demand, to the said City of Newark, any difference between the sum to which such person or persons would have been entitled, upon the completion of such contract, and the sum to which the next highest bidder, to whom the contract shall be awarded would be entitled to receive upon such completion; the amount in each case to be calculated upon the estimated amount of work by which the bids are tested.

In witness whereof, we have hereunto set our hands, this 30 first day of August, one thousand eight hundred and seventy one.

N. PERRY.
A. A. SMALLEY.

City of Newark, ss.—The above named Nehemiah Perry, being sworn, says—that he is a householder or freeholder in the City of Newark, and is worth the sum of fifty thousand dollars, over and above all his debts and liabilities of every nature, and property exempt from execution, being the

amount of the security required for the completion of the contract above referred to; that he has offered himself as a surety in good faith, and with an intention to execute the bond required by the City of Newark, or the proper officers thereof.

N. PERRY.

Sworn and subscribed to, before me, this 1st day of August, A. D. 1871.

G. N. ABEEL,

Notary Public, Essex county, New Jersey. 10

[Notarial seal.]

City of Newark, ss.—The above named Andrew A. Smalley, being sworn, says—that he is a householder or freeholder in the City of Newark, and is worth the sum of fifty thousand dollars, over and above all his debts and liabilities of every nature, and property exempt from execution, being the amount of the security required for the completion of the contract above referred to; that he has offered himself as a surety in good faith, and with an intention to execute the bond required by the City of Newark, or the proper 20 officers thereof.

ANDREW A. SMALLEY.

Sworn and subscribed to, before me, this 3d day of August, A. D. 1871.

G. N. ABEEL,

Notary Public, Essex county, New Jersey.

[Notarial Seal.]

EXHIBIT D 8.

PROPOSALS FOR STREETS.

The undersigned hereby propose to pave South Broad 30 street, from the terminus of present stone pavement to 150 south of Vanderpool street, as per specifications herein enclosed, and in accordance with the plans and specifications thereof on file in the office of the Street Commissioner,

(which plans and specifications form the basis of this proposal), for the following prices, to wit:

- Excavation, per cubic yard,
 - Embankment, per cubic yard,
 - Curbing, per lineal foot,
 - Re-setting curb, per lineal foot,
 - Flagging side-walks, per square foot,
 - Re-laying flag, per square foot,
 - Cross-walks, per square foot,
 - 10 Corners, each,
- For white pine blocks free from sap, with or without plank foundations, two dollars and ninety cents (\$2.90) per square yard. Bunnettised wood, if wanted, will be furnished at the additional cost of the Bunnettising.

The above price to include whatsoever is requisite to a proper completion of the work, and also to include all charges and expenses for furnishing all material and labor, and in all respects completing the aforesaid work in the manner and conditions specified.

- 20 The undersigned do hereby agree that they will enter into such bonds for the faithful performance of said proposed contract, as may be required by the Committee on Streets and Highways of said city, and under the direction and supervision of the Street Commissioner. All cobble, bridge, Belgian, gutter and curb stone, on the line of the work, to remain the property of the city.

SHANLEY & Co.,
Owners of Adams' Wood Block Pavement.

- 30 We, the undersigned, consent and agree, that if the contract for which the preceding estimate is made, be awarded to the person or persons making the same, we will become bound as sureties for its faithful performance; and if the said person or persons shall omit or refuse to execute such contract within three days from the time when the same shall be awarded to him or them, if so awarded, we will pay, without proof of notice, on demand, to the said City of Newark, any difference between the sum to which such person or persons would have been entitled, upon the completion of such contract, and the sum to which the next highest bidder to whom

the contract shall be awarded, would be entitled to receive upon such completion; the amount, in each case, to be calculated upon the estimated amount of work by which the bids are tested.

In witness whereof, we have hereunto set our hands, this third day of August, one thousand eight hundred and seventy-one.

THOMAS O'CONNOR,
92 Ferry street.
WM. A. RIPLEY, 10
90 Ferry street.

City of Newark, ss.—The above named Thomas O'Connor, being sworn, says—that he is a householder or freeholder in the City of Newark, and is worth the sum of fifty thousand dollars, over and above all his debts and liabilities of every nature, and property exempt from execution, being the amount of the security required for the completion of the contract above referred to; that he has offered himself as a surety in good faith, and with an intention to execute the bond required by the City of Newark, or the proper officers 20 thereof.

THOMAS O'CONNOR.

Sworn and subscribed to, before me, this 3d day of August, A. D. 1871.

THOMAS NUGENT,
Commissioner of Deeds.

City of Newark, ss.—The above named Wm. A. Ripley, being sworn, says—that he is a householder or freeholder in the City of Newark, and is worth the sum of fifty thousand dollars, over and above all his debts and liabilities of every 30 nature, and property exempt from execution, being the amount of the security required for the completion of the contract above referred to; that he has offered himself as a surety in good faith, and with an intention to execute the bond required by the City of Newark, or the proper officers thereof.

WM. A. RIPLEY.

Sworn and subscribed to, before me, this 3d day of August,
A. D. 1871.

THOMAS NUGENT,
Commissioner of Deeds.

EXHIBIT No. 9.

PROPOSALS FOR STREETS.

The undersigned hereby propose to pave South Broad street with the Paul wood pavement, with spruce at two dollars and seventy-five cents; with pine, at two dollars and
10 ninety-five cents; in accordance with the plans and specifications thereof on file in the office of the Street Commissioner, (which plans and specifications form the basis of this proposal), for the following prices, to wit:

- Excavation, per cubic yard,
- Embankment, per cubic yard,
- Curbing, per lineal foot,
- Re-setting curb, per lineal foot,
- Flagging side-walks, per square foot,
- Re-laying flag, per square foot,
- 20 Cross-walks, per square foot,
- Corners, each,
- Paving, per square yard, (cobble stone),
- Paving, per square yard, (Belgian stone),
- Paving, per square yard, (wood), with the Paul wood pavement, of spruce, at two dollars and seventy-five cents,
- Paving, per square yard, (Telford).

The above price to include whatsoever is requisite to a proper completion of the work, and also to include all charges and expenses for furnishing all material and labor,
30 and in all respects completing the aforesaid work in the manner and conditions specified.

The undersigned do hereby agree that will enter into such bonds for the faithful performance of said proposed contract, as may be required by the Committee on Streets and Highways of said city, and under the direction and supervision of the Street Commissioner. All cobble, bridge, Belgian, gutter and curb stone, on the line of the

work, to remain the property of the city, and that if the above work should be awarded to him, he will bind himself to finish and complete the same by or before the 1st day of December ensuing.

WM. H. McCLAVE,

Residing at No. 22 East Kinney street, Newark, N. J.

We, the undersigned, consent and agree, that if the contract for which the preceding estimate is made, be awarded to the person or persons making the same, we will become bound as sureties for its faithful performance; and if the said 10 person or persons shall omit or refuse to execute such contract within three days from the time when the same shall be awarded to him or them, if so awarded, we will pay, without proof of notice, on demand, to the said City of Newark, any difference between the sum to which such person or persons would have been entitled, upon the completion of such contract, and the sum to which the next highest bidder to whom the contract shall be awarded would be entitled to receive upon such completion; the amount in each case to be calculated upon the estimated amount of work by which 20 the bids are tested.

In witness whereof, we have hereunto set our hands, this fourth day of August, one thousand eight hundred and seventy-one.

A. Q. KEASBEY.

JOHN MCGREGOR.

City of Newark, ss.—The above named Anthony Q. Keasbey, being sworn, says—that he is a householder or freeholder in the City of Newark, and is worth the sum of one hundred thousand dollars, over and above all his debts and liabilities of every nature, and property exempt from execu- 30 tion, being the amount of the security required for the completion of the contract above referred to; that he has offered himself as a surety in good faith, and with an intention to execute the bond required by the City of Newark, or the proper officers thereof.

A. Q. KEASBEY.

Sworn and subscribed to, before me, this 4th day of August, A. D. 1871.

JOHN S. YOUNG, 40
Commissioner of Deeds.

City of Newark, ss.—The above named John McGregor, being sworn, says—that he is a householder or freeholder in the City of Newark, and is worth the sum of one hundred thousand dollars, over and above all his debts and liabilities of every nature, and property exempt from execution, being the amount of the security required for the completion of the contract above referred to ; that he has offered himself as a surty in good faith, and with an intention to execute the bond required by the City of Newark, or the proper
10 officers thereof.

JOHN MCGREGOR.

Sworn and subscribed to, before me, this 4th day of August, A. D. 1871.

JOHN S. YOUNG,
Commissioner of Deeds.

EXHIBIT D 10.

PROPOSALS FOR STREETS.

The undersigned hereby proposes to regulate, grade, and pave with wood block pavement, and re-set curb, as per
20 specifications hereto annexed, in accordance with the plans and specifications thereof on file in the office of the Street Commissioner, (which plans and specifications form the basis of this proposal) for the following prices, to wit :

- Excavation, per cubic yard,
- Embankment, per cubic yard,
- Curbing, per lineal foot,
- Re-setting curb, per lineal foot,
- Flagging side-walks, per square foot,
- Re-laying flag, per square foot,
- 30 Cross-walks, per square foot,
- Corners, each,
- Paving, per square yard, (cobble stone),
- Paving, per square yard, (Belgian stone),
- Paving, per square yard, (wood), two dollars and eighty cents, (\$2.80.)
- Paving, per square yard, (Telford),

The above price to include whatsoever is requisite to a proper completion of the work, and also to include all charges and expenses for furnishing all material and labor, and in all respects completing the aforesaid work in the manner and conditions specified.

The undersigned does hereby agree that he will enter into such bonds for the faithful performance of said proposed contract as may be required by the Committee on Streets and Highways of said city, and under the direction and supervision of the Street Commissioner. All cobble, bridge, 10 Belgian, gutter, and curb stone, on the line of the work, to remain the property of the city, and the same to be finished on or before the 1st of December, 1871.

CHARLES PARSONS,

Residing at No. 240 Mulberry street, Newark, N. J.

We, the undersigned, consent and agree, that if the contract for which the preceding estimate is made, be awarded to the person or persons making the same, we will become bound as sureties for its faithful performance; and if the said person or persons shall omit or refuse to execute such 20 contract within three days from the time when the same shall be awarded to him or them, if so awarded, we will pay, without proof of notice, on demand, to the said City of Newark, any difference between the sum to which such person or persons would have been entitled, upon the completion of such contract, and the sum to which the next highest bidder to whom the contract shall be awarded would be entitled to receive upon such completion; the amount in each case to be calculated upon the estimated amount of work by which the bids are tested. 30

In witness whereof, we have hereunto set our hands, this fourth day of August, one thousand eight hundred and seventy-one.

DAVID AYERS, [L. S.]
234 Mt. Pleasant Ave.

JAS. M. DURANT, [L. S.]
994 Broad St.

City of Newark, ss.—The above named David Ayres being sworn, says—that he is a householder or freeholder in the City of Newark, and is worth the sum of seventy thousand dollars, over and above all his debts and liabilities of every nature, and property exempt from execution, being the amount of the security required for the completion of the contract above referred to; that he has offered himself as a surety in good faith, and with an intention to execute the bond required by the City of Newark, or the proper
10 officers thereof.

DAVID AYERS.

Sworn and subscribed to, before me, this 4th day of August, A. D. 1871.

ABRAHAM MANNERS, *M. C.*

City of Newark, ss.—The above named James M. Durand being sworn, says—that he is a householder or freeholder in the City of Newark, and is worth the sum of seventy thousand dollars, over and above all his debts and liabilities of every nature, and property exempt from execution, being the
20 amount of the security required for the completion of the contract above referred to; that he has offered himself as a surety in good faith, and with an intention to execute the bond required by the City of Newark, or the proper officers thereof.

JAMES M. DURAND.

Sworn and subscribed to, before me, this 4th day of August, A. D. 1871.

ABRAHAM MANNERS, *M. C.*

EXHIBIT D 11.

30 *To the Honorable the Common Council of the City of Newark:*

GENTLEMEN—I am informed that some of the parties who have rendered bids for the paving of South Broad street, have recently modified their proposals. I ask permission (if the subject is still open for competition) to say that I am

willing to guarantee that my pavement shall be repaired and kept up at my expense for the term of five years, as proposed by other parties; and further, if the Council will permit me to change my specifications so as to reduce my blocks to the depth proposed of Nicholson No. 2, I will consent to reduce my bid from \$2.80 to \$2.60 a square yard.

Newark, September 1st, 1871.

CHARLES PARSONS.

I hereby certify that the foregoing is a correct copy of a paper on file in my office.

10

Witness my hand and the seal of the City of
[L. s.] Newark, this 11th day of November, A. D. 1871.

JAMES GILLIN, *City Clerk.*

EXHIBIT T S A 1.

Envelope marked Western Union Telegraph. Addressed to Thos. S. Alexander, 150 Broadway.

EXHIBIT T S A 2.

Telegraphic despatch received at 145 Broadway, May 22d, 1871.

Dated LOUISVILLE, KY., 22. 20

To THOS. S. ALEXANDER, 150 Broadway.

Sign my name to petition opposing contract for wooden pavement.

JOHN WATTS KEARNY.

EXHIBIT T S A 3.

Envelope, directed to Thomas S. Alexander, No. 150 Broadway, New York City, N. Y. On end—If not called for in ten days return to John W. Kearny, Louisville, Ky.

EXHIBIT T S A 4.

JOHN WATTS KEARNY,

ATTORNEY-AT-LAW,

Merchants Bank Building,

LOUISVILLE, KY., May 22d, 1871.

T. S. ALEXANDER, Esq. Dear Sir—Your favor of the 19th is at hand. I have just telegraphed you, authorizing my name to be added to the petition opposing the awarding of the contract for the paving of Broad street in wood. I hope
10 you may succeed in thwarting the ring.

Respectfully,

JOHN WATTS KEARNY.

EXHIBIT T S A 5.

To the Honorable the Common Council of the City of Newark:

The undersigned, attorney in fact for John Watts Kearney, whose name has been subscribed by some one, without his authority, to the petition asking that South Broad street may be paved with wood, respectfully asks that the name of his said principal may be stricken from said petition, and, in
20 behalf of his said principal, asks that said street may be paved with stone, after the Telford principle.

The undersigned is prepared to show his authority to act thus for the said John Watts Kearney, whenever he may be required so to do.

THOMAS S. ALEXANDER.

22d June, 1871.

EXHIBIT T S A 6.

[SEAL.]

OFFICE OF CITY CLERK,
Room No. 2, City Hall.
NEWARK, N. J., July 24, 1871. }

30 MR. THOMAS S. ALEXANDER:

SIR.—Enclosed please find your petition to the Common Council, presented July 7, 1871, and which was ordered returned to the petitioner, July 21, 1871.

Respectfully,

JAMES GILLIN, *Clerk.*

EXHIBIT T S A 7.

Envelope addressed to Thomas S. Alexander, Esq.
In upper left hand corner, "Office of City Clerk, Newark,
N. J."

EXHIBIT R 5.

To the Honorable the Common Council of the City of Newark:

We, the undersigned, property owners on the line of Broad street, formerly South Broad street, would respectfully petition your honorable body to cause said street to be paved with a wooden block pavement. And your petitioners would 10 ever pray, &c.

	FEET.	INCHES.
N. Perry.....	30	
States O. Mead.....	75	
Samuel Atwater.....	42	
Francis Mackin.....	70	
Francis Mackin.....	60	
Francis Mackin.....	} 381½	
W. H. and E. W. McClave.....		
A. Q. Keasbey.....		
Amelia Burnet Gilmore.....	32	
Theophilus Bond.....	75	
Wm. Robotham.....	74	
W. H. and E. W. McClave.....	50	
R. Backus.....	80	2
P. M. Arbuckle.....	59	2
Marcus L. DeVoursney.....	123	5
C. J. Langstroth.....	35	
Nathaniel P. Marsh.....	30	
Harriet Young.....	95	5
E. A. Conit.....	100	
J. Thompson, per W. S. C.....	100	
Francis L. Miller.....	25	
Chas. M. Reeves.....	200	
John Barnett.....	38	
Robert Drake.....	28	
Mrs. Thomas Orr.....	35	
George Neefus.....	28	6

	FEET.	INCHES.
H. M. Baldwin.....	174	
Stephen Lum.....	30	$\frac{3}{4}$
Stevens & Patterson.....	30	
Chas. A. Lent.....	62	
Horace Bedell.....	15	
S. O. Mead.....	26	
J. A. Arnold.....	25	
Andrew Johnston.....	192	
Harriet Young.....	118	7

10

ENDORSEMENT.

Petition for a wood pav't on Broad street.
Filed in Clerk's office, May 18th, 1871.

JAMES GILLIN, *City Clerk.*

I hereby certify that the foregoing is a correct copy of a petition on file in the office of the City Clerk.

In testimony whereof, I have hereto set my hand
[L. s.] and the seal of the City of Newark, this 11th
day of November, A. D. 1871.

JAMES GILLIN, *City Clerk.*

20

EXHIBIT R 9.

Envelope, directed to Jos. C. Young, Esq., Newark, N. Jersey.

EXHIBIT R 10.

LEXINGTON, Ky., March 14, 1870.

JOS. C. YOUNG, Esq. Dear Sir.—I am in receipt of your favor of the 8th instant. I do not care particularly to have the street paved at all; but if it must be done, I, of course, want the best kind of pavement, and as you are on the ground and have investigated the different patents, I will
30 give you authority to sign my name to the petition you have signed yourself. But as you say in your letter, "that is, if it is going to be done," I would sell my lots, at any time, that I can get a fair price.

I am, yours truly,

JOHN WATTS KEARNY.

EXHIBIT 1.

UNITED STATES OF AMERICA.

BY

JOHN T. HOFFMAN,

GOVERNOR OF THE STATE OF NEW YORK.

It is hereby certified, that Diedrich Willers, Jr., was, on the
day of the date of the annexed certificate,
Deputy Secretary of State of the State of New
York, and duly authorized to grant the same;
that the same is in due form, and executed by 10
the proper officer; that the seal affixed to said
certificate is the seal of office of the Secretary of
State of the State of New York; that the sig-
[L. S.] nature thereto of the said Deputy Secretary of
State, is in his proper handwriting, and is
genuine; and that full faith and credit may
and ought to be given to his official acts.

In testimony whereof, the great seal of the State is here-
unto affixed. Witness my hand at the City of Albany, the
fifteenth day of November, in the year of our Lord one 20
thousand eight hundred and seventy-one.

JOHN T. HOFFMAN.

Passed the Secretary's office, the 15th day of November,
1871.

H. A. NELSON, *Sec'y of State.*

State of New York, city and county of New York, ss.—
We, Russell W. Adams, Charles E. Jenkins and William T.
B. Milliken do hereby associate ourselves together and form
a company pursuant to the provisions of the act of the Legis- 30
lature of the State of New York, entitled "An act to author-
ize the formation of corporations for manufacturing, mining,
mechanical or chemical purposes," passed February 17th,
1848, and the several acts extending and amending said act,
and in compliance with the requisitions of the aforesaid acts,
we do hereby certify as follows, that is to say:

First. The corporate name of said company shall be
"The American Nicolson Pavement Company."

Second. The objects for which this company is formed, are

to acquire the right thereof, and to manufacture, lay and sell, in the City of Albany, State of New York, and in any and all other parts of the United States, in which the said company shall obtain the right so to do, a certain wooden block pavement, known as the "Nicolson Pavement," a patent for which has heretofore been issued to Samuel Nicolson, the inventor thereof, and to enter into, execute, and perform contracts for the manufacture, laying and selling of the same; also, to sell, assign, transfer and dispose of the
 10 whole, or any portion of the right which may be so obtained by the said company.

Third. The term of existence of said company shall be fifty years.

Fourth. The capital stock of said company shall be five hundred thousand dollars, and shall be divided into five thousand shares, of the par value of one hundred dollars each.

Fifth. The number of trustees who shall manage the concerns of said company shall be three, and the following named persons shall be such trustees for the first year:

20

RUSSEL W. ADAMS,
 CHARLES E. JENKINS,
 and WILLIAM T. B. MILLIKEN.

Sixth. The principal place of business in which the operations of the said company will be carried on, is the city and county of New York, and part of the business of said company will be carried on out of the State of New York.

Witness our hands, this eighteenth day of February, one thousand eight hundred and sixty-eight.

30

CHAS. E. JENKINS.
 R. W. ADAMS.
 W. T. B. MILLIKEN.

[5 cent internal revenue stamp, canceled.]

City and county of Newark, ss.—On this eighteenth day of February, one thousand eight hundred and sixty-eight, before me, came Charles E. Jenkins, R. W. Adams, and William T. B. Milliken, to me known to be the same persons described in, and who executed the foregoing certificate, and severally acknowledged that they executed the same.

40

ANDREW COMSTOCK,
 Notary Public N. Y. City and Co.

State of New York, office of the Secretary of State, ss.—
I have compared the preceding with the original certificate of incorporation of the "American Nicolson Pavement Company," with acknowledgment thereto annexed, filed in this office on the 19th day of February, 1868, and hereby certify the same to be a correct transcript therefrom and of the whole of said original.

Witness my hand and the seal of office of the Secretary of State, at the City of Albany, this
[L. s.] fifteenth day of November, one thousand eight 10
hundred and seventy-one.

DIEDRICH WILLERS, JR.,
Dep. Sec'y of State.

EXHIBIT 2.

Know all men by these presents, that we, the American Nicolson Pavement Company, of the State of New York, Russel W. Adams, of the City of Brooklyn, in the State of New York, and Abner H. Love, of the City of Elizabeth, in the county of Union, and State of New Jersey, are held and firmly bound unto The Mayor and Common Council of the 20
City of Newark, in said State of New Jersey, in the sum of ten thousand dollars, lawful money of the United States of America, to be paid to the said The Mayor and Common Council of the City of Newark, or to their certain attorney, successors or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents.

Sealed with our seals, and dated the twelfth day of August, in the year of our Lord one thousand eight hundred and 30
seventy-one.

The condition of the above obligation is such, that if the said The American Nicolson Pavement Company shall keep the pavement on Broad street, in said City of Newark, to be laid by said company, under and by virtue of a contract bearing even date herewith, in good repair, so that said street and pavement shall be kept in good condition, and safe for use and travel from ordinary wear, for and during

the term of five years from the date herewith, then this obligation to be void; else to remain in full force and virtue.

AMERICAN NICOLSON PAVEMENT COMPANY,

By R. W. ADAMS, Pres't.

[L. s.]

CHAS. E. ROGERS, Sec'y.

R. W. ADAMS. [L. s.]

A. H. LOVE. [L. s.]

Witness, C. S. TITSWORTH.

[25 cent revenue stamp, canceled.]

10

EXHIBIT 3.

STREET COMMISSIONER'S DEPARTMENT.

Bond for paving Broad street, from the terminus (southerly) of the present stone pavement, to a point one hundred and fifty feet south of Vanderpool street, with wood block (Nicolson) pavement.

Know all men by these presents, that we, The American Nicolson Pavement Company, Michael Shanley, and John M. Randall, of the City of Newark, in the county of Essex, and State of New Jersey, are held and firmly bound unto
 20 "The Mayor and Common Council of the City of Newark," in the sum of one hundred thousand dollars, lawful money of the United States of America, to be paid to the said "The Mayor and Common Council of the City of Newark," or to their certain attorney, successors or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated the twelfth day of August, eighteen hundred and seventy-one.

Whereas, the above bounden The American Nicolson Pavement Company have this day entered into a contract with
 30 the said "The Mayor and Common Council of the City of Newark," to pave Broad street, from the terminus (southerly) of the present stone pavement to a point one hundred and fifty feet south of Vanderpool street, with wood block (Nicolson) pavement, in strict and full compliance and accordance with the specifications in said contract contained, and forming a part thereof, and with all the conditions and

requirements in said contract contained, including excavation and re-setting curb, at and for the sum and price of three dollars and forty-five cents per square yard; said sum and price to include all the cost of labor and materials which are to be furnished by the said The American Nicolson Pavement Company, at their own expense, necessary and proper for the completion of said work; said street to be worked to the established grade, and the earth to be removed from such places as the Street Commissioner of said city shall direct, and the whole work to be done in a work- 10
manlike manner, and to the satisfaction and approval of the Street Commissioner of said city, and to be completed on or before the first day of December, eighteen hundred and seventy-one.

Now therefore, the conditions of the above obligations are such that if the said The American Nicolson Pavement Company shall well and truly perform and fulfill in all things their said agreement, according to the true intent and meaning thereof, and pay all and any damage which may result from failure on their part to perform their said con- 20
tract, and if they shall omit or refuse to execute such contract, they shall pay to the said "The Mayor and Common Council of the City of Newark," any difference between the sum to which they would have been entitled upon the completion of said contract, and that which "The Mayor and Common Council of the City of Newark" shall be obliged to pay to the person or persons by whom such contract shall be executed without any fraud or other delay, then said obligation to be void, or else to be and remain in full force and virtue. 30

AMERICAN NICOLSON PAVEMENT COMPANY,

By R. W. ADAMS, *Pres't.*

CHAS. E. ROGERS, *Sec'y.*

MICHAEL SHANLEY. [L. S.]

J. M. RANDALL. [L. S.]

Signed, sealed, and delivered in presence of—

"All" interlined before signing and sealing. Also, "and deposited at such places," erased.

[L. S.] Witness, C. S. TITSWORTH,

JOHN E. WARD, as to Shanley.

EXHIBIT 4.

NAMES OF BIDDERS.	NAMES OF PATENTS.	PINE.		SPRUCE.		REMARKS.
		Simple.	Burnetized.	Simple.	Burnetized.	
Henry Hill.....	Ream.....	\$2 89			\$3 39	Square yard.
Wm. H. McClave.....	Paul.....	2 95		\$2 75		" "
Gardner, Warren & Co.....					3 30	" "
Charles H. Green.....	Metropolitan	2 88	\$3 38	2 88	3 38	} To be sound pine or spruce.
" "	Side Groove.....	2 94	3 44	2 94	3 44	
Tabbs & Doyle.....	Brocklebank & Trainer	3 50				Square yard.
Shanley & Co.....	The Adams.....	2 90				" "
Thomas B. Decker.....	Smith & Brown's.....	3 35			3 35	" "
Nicholson Pavement Co., No. 1	Improved Nicholson...	3 70				" "
" " " 2	Nicholson	3 45				" "
" " " 3	DeGolyer.....	2 90				" "
Wilson Godfrey.....	A. Miller.....	3 75			4 00	" "
Charles Parsons.....	Wood Block.....	2 80				" "
John Bryan.....	Stow Foundation.....	3 90				" "

Contract awarded by the Committee on Streets and Highways, August 11th, 1871, to the "Nicholson Pavement Company," in bid numbered No. 2, at \$3.45 per square yard.

JAMES GILLIN, *City Clerk.*

I do hereby certify the foregoing to be a true and correct copy of the records of bids for the contract for paving Broad street with wood pavement, and that the same is truly taken from the Book of Records in the office of the Street Commissioner, known as the Book of Proposals.

Witness my hand and the seal of the City of Newark, this 11th day of November, A. D. 1871.

[L. S.]

JAMES GILLIN, *City Clerk.*

EXHIBIT 5.

PROPOSALS FOR STREETS.

The undersigned hereby propose to pave South Broad street with Nicolson pavement, from the terminus of the present stone pavement to a point one hundred and fifty feet south of Vanderpool street, in accordance with the plans and specifications thereof on file in the office of the Street Commissioner, (which plans and specifications form the basis of this proposal), for the following prices, to wit:

Excavation, per cubic yard,	10
Embankment, per cubic yard,	
Curbing, per lineal foot,	
Re-setting curb, per lineal foot,	
Flagging side-walks, per square foot,	
Re-laying flag, per square foot,	
Cross-walks, per square foot,	
Corners, each,	
Paving, per square yard, (cobble stone),	
Paving, per square yard, (Belgian stone),	
Paving, per square yard, (wood), Nicolson pavement, three	20
dollars and forty-five cents (\$3.45) per square yard.	

The above price to include whatsoever is requisite to a proper completion of the work, and also to include all charges and expenses for furnishing all material and labor, and in all respects completing the aforesaid work in the manner and conditions specified.

The undersigned do hereby agree that they will enter into such bonds for the faithful performance of said proposed contract, as may be required by the Committee on Streets and Highways of said city, and under the direction and supervision of the Street Commissioner.

AMERICAN NICHOLSON PAVEMENT COMPANY,

By R. W. Adams, Pres't.

Residing at No.

street.

“ “ “

“

We, the undersigned, consent and agree, that if the contract for which the preceding estimate is made, be awarded to the person or persons making the same, we will become

bound as sureties for its faithful performance; and if the said person or persons shall omit or refuse to execute such contract within three days from the time when the same shall be awarded to him or them, if so awarded, we will pay, without proof of notice, on demand, to the said City of Newark, any difference between the sum to which such person or persons would have been entitled, upon the completion of such contract, and the sum to which the next highest bidder to whom the contract shall be awarded would be entitled to receive upon such completion; the amount in each case to be calculated upon the estimated amount of work by which the bids are tested.

In witness whereof, we have hereunto set our hands, this
 day of _____ one thousand eight
 hundred and seventy

MICHAEL SHANLEY,
 80 Washington St.
 J. M. RANDALL,
 East Orange.

20 City of Newark, *ss.*—The above named Michael Shanley being sworn, says—that he is a householder or freeholder in the City of Newark, and is worth the sum of one hundred thousand dollars, over and above all his debts and liabilities of every nature, and property exempt from execution, being the amount of the security required for the completion of the contract above referred to; that he has offered himself as a surety in good faith, and with an intention to execute the bond required by the City of Newark, or the proper officers thereof.

30 MICHAEL SHANLEY.

Sworn and subscribed to, before me, this 3d day of August, A. D. 1871.

_____, *Commissioner of Deeds.*

City of Newark, *ss.*—The above named being sworn, says—that he is a householder or freeholder in the City of Newark, and is worth the sum of one hundred

thousand dollars, over and above all his debts and liabilities of every nature, and property exempt from execution, being the amount of the security required for the completion of the contract above referred to; that he has offered himself as a surety in good faith, and with an intention to execute the bond required by the City of Newark, or the proper officers thereof.

J. M. RANDALL,

Sworn and subscribed to, before me, this 3d day of August, A. D. 1871.

10

F. H. DAWES,
Notary Public.

[Notarial Seal.]

EXHIBIT 6.

CITY OF NEWARK, N. J.

STREET COMMISSIONER'S DEPARTMENT.

Contract for paving Broad street from the terminus (southerly) of the present stone pavement to a point one hundred and fifty feet south of Vanderpool street, with wood block (Nicolson) pavement, made and entered into the 12th 20 day of August, 1871, between the American Nicolson Pavement Company, of the city of New York, in the county of New York, and State of New York, of the first part, and "The Mayor and Common Council of the City of Newark," in the county of Essex, and State of New Jersey, of the second part, as follows, namely: the said party of the first part, for and in consideration of the payments to be made, as hereinafter mentioned, by the said party of the second part, hereby covenant and agree to pave Broad street from the terminus (southerly) of the present stone pavement 30 to a point one hundred and fifty feet south of Vanderpool street, with wood block (Nicolson) pavement, in strict and full compliance and accordance with the specifications hereinafter contained, and forming a part of this contract, and with all the conditions and requirements in this contract

contained, including excavation and re-setting curb, at and for the sum and price of three dollars and forty-five cents per square yard, (the strips and foundation boards mentioned in said specifications are to consist of sound white pine), said sum and price to include all the cost of labor and materials which are to be furnished by the said The American Nicolson Pavement Company, at their own expense, necessary and proper for the full completion of said work, according to the terms and conditions of this contract.

10

SPECIFICATIONS FOR THE NICOLSON PAVEMENT.

The road bed shall be shaped in conformity with stakes set by the City Surveyor.

Upon this bed shall be laid the foundation, to consist of sound common white pine or hemlock boards one inch thick, placed lengthwise with the street, their ends resting upon subsills of same material and same thickness. Each foundation board to be covered with a composition of pitch and coal tar. Upon the board foundation will be placed the pavement, which shall consist of sound common white pine 20 blocks three inches thick, six inches long, and five inches to eighteen inches wide.

These blocks will be set upon end, with fibre vertical, accurately in line at right angles with line of street, (except at intersections, where the rows shall be set at an angle of forty-five degrees with line of street), and before being placed in position, shall be dipped in the composition aforesaid, to a depth of at least three inches, the dipped end set in contact with the board foundation.

Each row of blocks shall be separated by a strip laid close 30 against the bottoms of the blocks and securely nailed to them, which strip shall be three inches wide, three-fourths of an inch to one inch thick, and four feet or more in length. The blocks as well as the strips are to be so placed as to break joints, and be laid compactly together.

The space between the rows of blocks and above the strip is to be filled with gravel and the composition aforesaid, thoroughly mixed and compactly rammed by means of a pavers' rammer, and an iron blade made to fit the joints, which blade shall not be moved more than three-fourths of

its length between the blows in the process of ramming. The gravel shall be dried and warmed so as not to chill the composition. The composition shall consist of coal tar and pitch mixed in such proportions as to be tough and fibrous when applied and cooled.

It shall be applied hot, and in sufficient quantity to penetrate the joints of the blocks and the interstices of the gravel.

After the blocks have been thus set and rammed, the entire surface of the roadway shall be slushed with the heated composition, and covered with sand to a depth of three-fourths of an inch. The strips shall consist of sound common white pine or hemlock. 10

AMERICAN NICOLSON PAVEMENT COMPANY,
By A. H. LOVE.

New York, Aug. 4th, 1871.

Said street to be worked to the established grade, and the earth to be removed from such places as the Street Commissioner of said city shall direct; and the whole work to be done and completed in a workmanlike manner, and to the satisfaction and approval of the said Street Commissioner, on or before the 1st day of December, 1871. And the said party of the second part hereby covenant and agree to pay to the said party of the first part, for doing and completing the said work, in the manner and according to the terms and conditions of this contract, the same having first been approved of by the said Street Commissioner, in writing, the prices aforesaid, in manner following, that is to say: seventy-five per centum of the same in monthly payments during the progress of said work, (the amount of such monthly payments to be determined by the City Surveyor of said city,) and the balance (twenty-five per centum thereof,) to be paid when said work shall have been fully completed and accepted by the said Street Commissioner. 20 30

To prevent all disputes, it is hereby covenanted and agreed by and between the said parties hereto, that the said City Surveyor shall, in all cases, determine the amount or quantity of the several kinds of work which are to be paid for under this contract, and the amount of compensation, at

contract prices, to be paid therefor; and further, that the said City Surveyor shall, in all cases, decide every question which may arise relating to the measurement of any work done under this contract, and his estimate and decision shall be final and conclusive.

And it is further covenanted and agreed by and between the said parties hereto, that if the said contractors, The American Nicolson Pavement Company, shall omit, fail, neglect, or refuse to commence the work under this contract, within
10 twenty days from the date hereof, and prosecute the same to completion without delay, or if the said contractors, The American Nicolson Pavement Company, shall omit, fail, neglect, or refuse to complete said work, in the manner specified in this contract, and according to the terms and conditions thereof, within the time above mentioned for said completion, they, the said contractors, shall, and they hereby covenant and agree (unless further time for said commencement and prosecution or said completion be granted to them by said party of the second part,) to forfeit and pay
20 to the said party of the second part, their successors and assigns, the sum of eighty-nine dollars per day, as liquidated damages for each day that they shall omit, fail, neglect, or refuse to commence and prosecute or complete said work as aforesaid. All penalties so incurred by the said contractors to be deducted by the said Street Commissioner from the estimate of the amount which may at any time be due to the said contractors on this contract, before the same is presented to the Common Council, and to be allowed accordingly. And if at any time there is not enough due to the
30 said contractors on this contract, to make up the amount of any penalty or penalties incurred by the said contractors as aforesaid, then the said contractors hereby covenant and agree to pay to the said party of the second part, on demand from the said Street Commissioner, whatever sum or sums of money may be necessary to make up the amount of said penalty or penalties.

And it is hereby further covenanted and agreed by and between the said parties hereto, that if the contractors shall omit, fail, neglect, or refuse to commence and prosecute
40 said work as aforesaid, or if the said contractors shall omit,

fail, neglect, or refuse to complete said work as aforesaid, or if said contractors shall cease operations, under this contract, at any time, for the space of ten days, (unless further time be granted as aforesaid); or, in case further time be granted as aforesaid, if the said contractors shall omit, fail, neglect, or refuse to commence, prosecute, or complete said work within the time granted as aforesaid, that then, in either case, the said party of the second part, or said Street Commissioner in their behalf, shall at once, or at any time after said omission, failure, neglect, or refusal, or ceasing of operations, have full privilege, authority, and power, if they shall so elect, to cause said work to be done and completed, without any interference, opposition, or hindrance of or by said contractors, party of the first part; *provided*, said Street Commissioner shall give to said contractors, or to the person directing or superintending said work for said contractors, notice, in writing, of the intention of said party of the second part, or of said Street Commissioner in their behalf, to do the same. 10

And upon the service of said notice as aforesaid, the said 20 contractors shall not only be liable for and forfeit and pay any penalty or penalties which may have been incurred by them as aforesaid, but all the rights and privileges of the said contractors under, in and by this contract, shall cease and be void, and said contractors shall receive no further benefit, pay or remuneration therefrom; and the said contractors shall be liable for, and they hereby covenant and agree to pay to said party of the second part, their successors and assigns, any and all sum or sums of money which they, the said party of the second part, may pay or expend 30 for fully completing said work, over and above the amount which they the said contractors would have been entitled to receive had they completed the work under this contract according to the terms and conditions thereof, and all loss or damage which may result to said party of the second part, by reason of the omission, failure, neglect or refusal of said contractors to commence, prosecute or complete said work as aforesaid.

And it is hereby further covenanted and agreed by and between the said parties hereto, that if the said contractors, 40

or any other person or persons, shall bring or cause to be brought on said street any materials which do not strictly conform to the requirements of this contract, or the ordinances of said city, the Street Commissioner of said city shall, on behalf of said city, have the right to order the same to be removed forthwith from said street; and in case of the neglect or refusal of the said contractors or those employed by them, to remove such materials, to cause the same to be removed at the expense of said contractors, and
10 to deduct the costs of such removal, and all other expenses thereon, from the amount which may be due to said contractors on this contract. And in case of the violation of this provision, the amount of said costs and expenses shall be deducted by said Street Commissioner from the final estimate of the amount due to said contractors on this contract before the same is presented to the Common Council, and shall be allowed accordingly.

And it is hereby further covenanted and agreed by and between the said parties hereto, that all curb-stone, cobble-
20 stone, and bridge-stone, or cross-walk material, or other material whatsoever which may be encountered, or be taken up by said party of the first part, in the prosecution of said work, whether re-laid or not, is to be and remain the sole property of said party of the second part, and none of the same is to be claimed, taken or appropriated by said party of the first part, or by any person or persons employed by them or in their behalf, but is to be taken up by said contractors and removed by said Street Commissioner, and the strips and foundation boards are to be of sound white
30 pine.

In witness whereof, the said the American Nicolson Pavement Company, party of the first part, have hereunto caused their corporate seal to be set, and this contract to be signed by their President. And the said "The Mayor and Common Council of the City of Newark," party of the second part, have caused their common seal to be hereunto affixed, and this contract to be signed by the Mayor, on the day and year first above written.

40

AMERICAN NICOLSON PAVEMENT COMPANY,

By R. W. ADAMS, *Pres't.*CHAS. E. ROGERS, *Sec'y.*

Signed, sealed and delivered in the presence of—

“Cobble stone” interlined, and “party of the first part
ha hereunto set hand and seal” erased before sign-
ing and sealing, “and deposited at such places” erased.

[L. s.] C. S. TITSWORTH.

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OPINION.

DALRIMPLE, J. If the Mayor refused to sign a contract made in pursuance of the charter and ordinances of the city, the relator is entitled to the writ of *mandamus*.

Chief Justice Parker, in the case of *Waldron vs. Lee*, 5 Pick. 328, says that there is a discretion in the court when applied to for the compulsory process of *mandamus*, to withhold or grant it, according to the justice of the case, and that if it should manifestly appear that a tax was illegally granted or assessed, so that the officer required to collect it would have no authority, or the persons taxed would have a right to restitution by action, without doubt the court would withhold the exercise of its power rather than throw the parties into an expensive field of litigation. In the case of *The People vs. Supervisor of Green*, 12 Barb. 220, it is held that the only proper ground for the allowance of the writ is, that without it there would be a defeat of justice; and that, though it issue in the name of the people, it is substantially a civil remedy granted to the relator, and that, to entitle him to this remedy, two things must appear: *First*. That he has a legal right to have something done by the party to whom he seeks to have the writ directed, and which has not been done; and, *Secondly*, that he has no specific legal remedy to which he can resort to compel the performance of this duty. In short, I think it must be acknowledged that the court is not obliged to issue the writ in all cases where it has the power to do so, but may exercise its discretion as well in refusing as granting the writ. *The People vs. Westchester*, 15 Barb. 617.

The true rule applicable to this case I think is, that the relator must clearly show not only that the defendant is bound, in the discharge of his official duty, to do the act in question, but that the relator's right to have it done is such as the law ought, at relator's suit, to enforce. 2 Johns. Cases, (Shepherd's ed.) 217; 4 Tapping on Mand. 27; 1 Cow. 512; 4 Hill 581.

If the contract, which the relator desires to compel the

Mayor to sign, has been made in violation of the city charter or ordinances, the writ should not be allowed. It, therefore, becomes necessary to inquire whether the contract in question is one which the law will uphold. We think it is not, for the following reasons :

- First.* No plans or specifications of the proposed improvement were ever filed in the Street Commissioner's office, as required by the city ordinances. By section five of the ordinance, on page 202 of Book of City Ordinances, it is required that the advertisement for proposals for grading, graveling, and paving streets shall specify, in general terms, the nature of the work or improvement for which proposals are to be received, and shall request contractors and other persons intending to make proposals, to examine the plans and specifications of such work or improvement, at the office of the Street Commissioner; and by the following section of the same ordinance it is provided that whenever any special ordinance shall be passed for regulating and grading any street, the proposals for the work shall, in all cases, contain bids for furnishing and setting or re-setting curb-stones, if the same be necessary, and the committee on streets shall award the contract for all the materials and labor, including curb-stones and setting or re-setting the same, as required in the specifications of such improvement, prepared and exhibited in the office of the Street Commissioner, to the same party or parties, and not otherwise. These sections of the ordinance referred to plainly show that proposals for paving, or for regulating and grading a street, are to be made in reference to plans and specifications of the work on file in the office of the Street Commissioner. If none are there, I do not see how any contract for the work can lawfully be made. The city authorities are to specify the plan and particulars of the work before proposals can properly be made, because such proposals must be to do the work in accordance with the plans and specifications adopted by the city. As decided in the case of *The People vs. The Board of Improvement of Union Street*, 43 N. Y. 227, such plans and specifications must be adopted and filed, though the pavement is patented, and there can, therefore, be no competition for the work.
- Second.* The relator's contract is as well for doing the work

necessary to lay the pavement as to keep it in repair for five years, whereas by the city charter the city has the power only to order a street or a section of a street to be paved at the expense of the owners of lands on the line thereof. The cost of keeping a paved street in repair is to be paid out of the city treasury. It is justly inferable from the papers before us, that the expenses of keeping this pavement in repair for the term of five years are included in the price to be paid to the relator for the work. If so, they will be assessed, together with the original cost of the work, on the land-owners on the line of the section of the street to be paved. This cannot lawfully be done. It does not vary the case that the cost of repairs is not specially mentioned in the relator's proposals for the work, nor in the contract proper. By a bond bearing even date with the contract, the relator is bound to keep the pavement in good repair, so that the street and pavement shall be kept in good condition and safe for use and travel from ordinary means, for the term of five years. The expenses of keeping the street in repair must have entered into the contract, and been included in the amount for which the relator proposed to do the work. How this adjunct to the contract was regarded by the city authorities is evinced by a resolution of the Street Committee of the 17th of August, 1871, in which they say, "the contract of said Nicholson Pavement Company, to keep the pavement laid in repair for five years, is, in the opinion of this committee, a strong and additional reason why it is for the interest of the city and property-owners interested that they should have the contract." It is understood that this committee, on behalf of the city, accepted the relator's proposals and awarded it the contract, and thereby undertook to bind the property-owners. In order to ascertain what was the previous contract, we must look at all contemporaneous writings between the parties relating to the subject matter. 1 Greenl. Ev., § 282. The real parties to this controversy are the relator on the one side, and the property-owners on the section of the street proposed to be paved, on the other. The object sought to be attained is, in effect, to bind these property-owners by a contract, to the validity of which it is contended the Mayor's signature is essential. But the proceedings, in the particulars

above specified, have not been in accordance with the charter and city ordinances, and for this reason the relator is not entitled to the contract it asks us, by this proceeding, to compel the Mayor to execute.

There was much discussion on the argument, whether the ordinance and petition therefor, being simply for wood-block pavement, were, under the act of 1871, (Laws of 1871, p. 600,) sufficient to authorize a contract for a patented pavement, and whether the duty of the Mayor, in respect to the
10 execution of the contract, was or not merely ministerial. After the view of the case already expressed, it is not necessary to discuss these questions, which we do not consider free of difficulty. If we should hold the ordinance and petition therefor sufficient in form, and that the duty of the Mayor, under the city charter and ordinances, to sign contracts for street paving, is ministerial, we should still be obliged to deny the relator the writ of *mandamus* for the reasons above set forth.

Let the rule be discharged, with costs.

20 Justices Bedle and Scudder concurred.