

For the Records Desk

November 1864.

14.

IN THE COURT OF ERRORS AND APPEALS,

NOVEMBER TERM, 1863.

The State—Luther T. Hand, Albert Manvel,
Henry Fischer, John O. Magie, Richard
Frohwein, Jabez B. Cooley, Edward G.
Brown, William Hulskemper, Ridgeway
Thomas, Thomas S. Hough, Charles Patch,
Charles Holtz, Simon Arnhold, Louis
Braun, William Wimmer, Eliza Smith,
Henry Huff, Frederick McCloud, John
Meahen, Caroline F. Deakle, Philip Mohr,
William Bechtold, Thomas Gould, Henry
Aherns, James C. Stock and Hugh Wilson,
Prosecutors,

In error.

vs.

The City Council of the City of Elizabeth.

STATE OF THE CASE.

At a meeting of the City Council held May 2, 1859, the following petition was presented :

To the Honorable Mayor and City Council of the City of Elizabeth :

We the undersigned, respectfully petition your honorable body to have First street paved from Broadway to Elizabeth avenue, said pavement to be of the best of water cobble stone, and laid in sand sufficient to make it secure, said work to be done under the supervision of the Street Committee and

Street Commissioner, for which your humble petitioners will ever pray, &c.

Elizabeth, May 1, 1859.

CHARLES PATCH,
CHARLES HOLTZ,
POPE & THOMAS,
ANDREW EGAN,
PHILIP MOHR,
LOUIS BRAUN,
H. BUHOLD,

RICHARD FROHWEIN,
JOHN KREIG,
L. T. HAND,
ALBERT MANVEL,
W. H. ADAMS,
JABEZ B. COOLEY,
JOHN O. MAGIE.

The petition was received and referred to the Street Committee.

At a meeting of the City Council, held May 9, 1859, the Street Committee presented the following report :

The Street Committee, to whom was referred the petition of Charles Patch and others, to have First street paved between Elizabeth avenue and Broadway, would report in favor of the same, and would recommend that an ordinance be drawn to have the work done.

PHINEAS JONES,
L. W. OAKLEY.

On motion of L. T. Hand the report was accepted and recommendation was adopted.

At a meeting of the City Council held May 12, 1859, R. G. Rolston offered the following resolution, which was adopted :

Resolved, That all resolutions authorizing the drafting of ordinances for the paving and grading of streets, passed at the last meeting, be reconsidered.

At a meeting of the City Council held June 9, 1859, the Street Committee presented the following report :

The Street Committee, to whom was referred the petition of L. T. Hand and others, to have First street from Elizabeth avenue to Broadway paved, would report that a majority of the resident property owners upon said street are in favor of the same.

L. W. OAKLEY,
PHINEAS JONES,
W. P. MULFORD.

Report was accepted and the prayer of the petitioners granted.

W. A. Morrell offered the following resolution, which was adopted :

Resolved, That the Law Committee be instructed to draft an ordinance to cause the owner or owners of property on both sides of First street, between Elizabeth avenue and Broadway, in the First ward, to grade and pave the street.

At a meeting of the City Council held June 13, 1859, the Law Committee reported an ordinance entitled "An ordinance to cause the owners of property on both sides of First street, between Elizabeth avenue and Broadway, in the First ward, to grade and pave the street." The report was accepted, and on motion of Mr. Rolston, laid on the table.

At a meeting of the City Council held July 18, 1859, the ordinance entitled "An ordinance to cause the owners of property on both sides of First street, between Elizabeth avenue and Broadway, in the First ward, to grade and pave the street," and which had been once read at a previous meeting and laid on the table, was taken up and after having been read three times was passed by the following vote:

Ayes—Messrs. Crane, Hand, Jones, Morrell, Mulford, Oakley, Rolston, Smith, Tubbs and Woodruff—10.

Noes—None.

At a meeting of the City Council held August 1, 1859, a communication was received from his Honor the Mayor, stating that at a meeting of the Board held on the 18th of July last past, an ordinance was passed to cause the owners of property on both sides of First street, between Elizabeth avenue and Broadway, in the First ward, to grade and pave First street, &c., and having received the written opinion of the City Attorney upon this matter, and feeling assured that the large outlay which will accrue to the city for the fulfilment of the ordinance, and the difficulty by virtue of it to compel the property owners on the section of the street to pay for the assessment made against them for these improvements, he most respectfully returns the ordinance not ap-

proved to the Council for further consideration.

On motion of Mr. Oakley it was received and ordered to be placed on file.

Mr. Morrell offered the following resolution, which was adopted :

Resolved, That no further action be taken in regard to the ordinance relative to First street, vetoed by the Mayor, and that an ordinance be drafted to have First street paved in conformity with the supplement to the City Charter, and the ordinance entitled "An ordinance to regulate the manner of grading, graveling, paving or macadamizing any street or section of a street.

The ordinance entitled "An ordinance for paving First street was taken up, and after having been read three times was passed by the following vote :

Ayes—Messrs. Hand, Jones, Morrell, Mulford, Oakley, Rolston, Tubbs, and Woodruff—S.

Noes—None.

The following is a copy of the said ordinance.

An ordinance for paving First street.

Be it ordained by the Mayor and City Council of the City of Elizabeth, and it is hereby ordained by authority of the same.

Section 1—That the City Council hereby determine that First street, between Broadway and Elizabeth avenue, in the City of Elizabeth, shall be paved, the said paving to be of the best quality of water cobble stone, not over eight inches nor less than four inches in diameter, to be laid in sand at least eighteen inches deep, and in such manner that the top of the said pavement shall conform to the established grade of the street.

Sec. 2—Be it ordained that the Street Commissioner of the First ward be and he is hereby directed to have the said work done in conformity with the supplement to the city charter and the ordinance entitled "An ordinance to regulate the manner of grading, graveling, paving or macadamizing any street or section of a street.

Sec. 3—The said Street Commissioner is hereby authorized and empowered by, and with the advice and consent of the Mayor, to determine upon the terms of payment and penalties of non-performance and such other conditions as may be necessary for the best interest of the city in any contract to be entered into for the performance of said work.

Passed August 1, 1859. Approved August 4, 1859.

A. M. ELMER, Clerk.

ELIAS DARBY, Mayor.

At a meeting of the City Council held August 16, 1859, on motion of Mr. Crane the resolution offered by Mr. Morrell at the last meeting of the Board and adopted, that no further action be taken in regard to the ordinance relative to First street, vetoed by the Mayor, that an ordinance be drafted to have First street paved in conformity with the supplement to the City Charter and the ordinance entitled "An ordinance to regulate the manner of grading, graveling, paving or macademizing any street or section of a street," was reconsidered and the same ordered stricken from the minutes.

The following is an abstract of a communication of his Honor the Mayor, to the Board, stating that at the last meeting of the Board an ordinance was passed for paving First street, which has been approved and signed.

Mr. Morrell offered the following resolution :

Resolved, That the Mayor and City Attorney do direct the Street Commissioner of the First ward, in general terms, the nature of the work or improvement, for which proposals are to be received, the particulars in relation to the nature and quality of the materials to be furnished, and the work to be performed, the terms of payment, the penalties for non-performance, and such other conditions as they may deem for the interest of the city, for the paving of First street, in the First ward, under the ordinance.

On motion of Mr. Crane it was laid on the table.

The following notice was published in the New Jersey Journal, a weekly paper, four weeks :

Notice.

Sealed proposals will be received until September 30th instant, at the office of the Street Commissioner of the First ward, for paving First street between Broadway and Elizabeth avenue. The said paving to be of the best quality of water cobble stones, not over eight inches nor less than four inches in diameter, to be laid in sand at least eighteen inches deep, and in such a manner that the top of the said pavement shall conform to the established grade of the street. The payment for the said work will be made within sixty days after the work has been approved by the Street Committee and Street Commissioner. The contract to be taken under the penalties prescribed in "An ordinance to regulate the manner of grading, graveling, paving or macadamizing any street or section of a street." The contract will be awarded to the lowest bidder, and each proposal must be accompanied with the bond prescribed in the fifth section of the last named ordinance. A profile of the grade may be seen at the office of the subscriber.

September 5, 1859.

JABEZ B. COOLEY,
Street Commissioner First ward,
No. 96 Marshall street.

At a meeting of the Council held September 19, 1859, the following communication was received from Jabez B. Cooley.

To the Mayor and City Council.

GENTLEMEN—I wish to know from your honorable body, how high the centre of First street shall be above the grade of the gutters. The City Surveyor has made the survey but cannot tell the amount of dirt to be removed, unless the height of the centre of the street is determined upon. Your early answer is particularly requested. Yours truly,

JABEZ B. COOLEY,
Street Commissioner First ward.

Elizabeth, September 19, 1859.

On motion of Mr. Crane it was received and referred to the Street Committee.

The Street Committee, to whom was referred the matter of First street, would report in favor of having the rise in said street three quarters of an inch in a foot, from the gutter to the crown.

L. W. OAKLEY,	}	Committee.
PHINEAS JONES,		
WILLIAM P. MULFORD.		

On motion of Mr. Crane the report was accepted.

At a meeting of the City Council held October 1, 1859, proposals for paving First street, between Broadway and Elizabeth avenue, were received from Patrick Rehill, Michael Doyle and William H. Adams.

On motion of Mr. Morrell it was

Resolved, That William H. Adams, being the person who has sent in a proposal to do the work for the smallest sum which has been accompanied with an ample and legal bond that the contract be awarded to him, and that the contract be entered into immediately.

Copy of proposal.

To his Honor the Mayor and the Honorable the City Council of the city of Elizabeth :

The undersigned offers to pave First street between Broadway and Elizabeth avenue, according to the conditions set forth in a notice published by the Street Commissioner of the First ward, in the New Jersey Journal of the 5th of September, for the sum of seven thousand five hundred dollars, or at the rate of one dollar and ten cents per square yard, and herewith presents the bond directed to accompany his proposal.

Elizabeth, September 30, 1859.

WILLIAM H. ADAMS.

His Honor the Mayor presented to the Council for their consideration, the agreement with the specifications to be entered into between William H. Adams and the city for the contract awarded to the said W. H. Adams for the paving of First street, which was read.

The agreement and specifications were then entered into and signed by William H. Adams and his Honor the Mayor who also affixed the seal of the city to articles.

Mr. Morrell offered the following resolution, which was adopted :

Resolved, That the Street Commissioner of the First ward be directed and empowered to use such measures as may be necessary to carry on the work of paving First street.

The following is a copy of the agreement and specifications :

This agreement made this third day of October, eighteen hundred and fifty-nine, between the city of Elizabeth and William H. Adams, witnesseth, that the said William H. Adams doth hereby covenant and agree to, and with the said city of Elizabeth, that he shall and will within the space of one hundred days next after the date hereof, in good and workmanlike manner lay the pavement in First street, between Broadway and Elizabeth avenue, in the First ward of the city of Elizabeth, according to the specifications hereto annexed and forming part of this agreement.

And the said William H. Adams agrees and covenants that if he or any person under him shall bring or cause to be brought on said street any materials that do not strictly conform to the said specifications or city ordinances, he will on being ordered to do so by the Street Commissioner forthwith remove the same from such street, and on the neglect or refusal of the said William H. Adams so to do, the said Street Commissioner may cause the same to be removed at the expense of the said William H. Adams, and deduct the costs of such removal and all other expenses thereon from the amount of the contract.

And it is further agreed between the parties that for each day the said William H. Adams shall neglect to complete the work beyond the time herein fixed, he shall forfeit and pay the sum of seven dollars per day for each day.

The said the city of Elizabeth hereby agree to pay to the said William H. Adams for said work, the sum of one dollar

and ten cents for every square yard so paved—the said payment to be made as hereinafter specified.

WILLIAM H. ADAMS. [L. s.]

Signed, sealed and delivered in the presence of—the word “days” being written over the word “month” before execution.

A. M. ELMER.

Attest—A. M. ELMER, City Clerk.

Executed by the Mayor, by virtue of an ordinance, approved July 23, 1859.

ELIAS DARBY, Mayor, [L. s.]

Specifications.

First, The paving to be of the best quality of water cobble stone, not over eight inches, nor less than four inches in diameter, to be laid in sand in such manner that there shall be eighteen inches between the top of the stone and the bottom of the sand, and in such manner that the top of said pavement shall conform to the established grade of the street.

Second, The dirt or earth removed from the said street to be carted by the said William H. Adams into First street, below Elizabeth avenue, and into Marshall street, between First street and the church, or where he may be directed by the Street Commissioner.

Third, All crosswalks which are taken up shall be relaid by the said William H. Adams, and he shall lay one dished drain across First street at Marshall street; one at Franklin street, two at Fulton street, two at Clinton street, and two at Livingston street.

Fourth, The work to be completed in one hundred days, under a penalty of seven dollars per day for every day's neglect after the expiration of said time.

Fifth, The payment to be made in bonds of the said city of Elizabeth, payable in five years, with interest at the rate of seven per centum per annum, the said payment to be made in sixty days after the work has been approved of by the Street Committee and Street Commissioner.

Sixth, The whole to be done under the supervision of the Street Commissioner. WILLIAM H. ADAMS. [L. s.]

Signed, sealed and delivered in the presence of—the word “dollars” being erased and “days” inserted before execution, also the words “the” and “as” being stricken out, and the words “Elizabeth” and the words or “where” inserted before execution. A. M. ELMER.

Attest—A. M. ELMER.

Executed by virtue of an ordinance passed July 23, 1859, by the Mayor. ELIAS DARBY, Mayor. [L. s.]

At a meeting of the City Council held October 3, 1859, Michael Doyle presented to the Board the following communication:

To the honorable the City Council of the city of Elizabeth:

The subscriber represents to your honorable body that, in pursuance of the advertisement of Jabez B. Cooley, Street Commissioner of the First Ward, for sealed proposals for paving First street, between Broadway and Elizabeth avenue, your subscriber deposited in the office of the Street Commissioner of said ward his sealed proposal for paving said street, and at the same time deposited his bond, with two sufficient freeholders as security for the performance of the contract, under his said proposal, with said proposal in the said Street Commissioner's office.

Your subscriber has been informed that all the proposals for the said work have been opened before the competent authority, and that the said proposal of your subscriber made him the lowest bidder, and that the contract for paving said street has been awarded to William H. Adams, for a larger sum than that proposed by your subscriber, to the extent of three hundred dollars or thereabouts.

Your subscriber further represents that he has been informed that his proposal was rejected upon the grounds that his said bond was informal in some particular, and that his securities were not deemed sufficient. Your subscriber has

always been and still is, ready to remove any informality in the bond, if any such exists, and is ready to execute a bond in any legal form which the City Council or City Attorney may prescribe, within the requirements of the law.

Your subscriber is prepared to prove that his said securities are ample security for the performance of the contract, and he is willing, and always has been, to add additional security to his bond, if desired by the City Council.

Your subscriber further calls the attention of your honorable body to the fact, that one foot in width on each side of said street is already paved, and that the proposals upon which your subscriber is informed the contract has been awarded to William H. Adams, has made no allowance to the City Council for that part of said street already paved, and that upon his proposal the City Council will pay him for two feet of paving already done.

Your subscriber respectfully gives notice that he is entitled to the said contract in law, and is prepared to enter into and execute it on his part, and to execute a new bond prepared by the City Attorney, if desired by the City Council, and to add additional security for the performance of the said contract, if the City Council do not deem the present securities sufficient, and respectfully remonstrates against a contract for said work being executed by your honorable body with any other person than himself for the performance of said work. Very respectfully,

MICHAEL DOYLE,

Elizabeth, October 3, 1859.

At the same meeting Mr. Doyle presented the following;

ELIZABETH, October 26, 1859.

To the honorable the Mayor and City Council of the City of Elizabeth.

GENTLEMEN—~~I~~ I wish to have my estimate and bond returned to me, which I presented for the paving of First street.

MICHAEL DOYLE.

On motion of Mr. Morrell the above was received and the estimate and bond directed to be given up to him.

At a meeting of the city council held November 1, 1859, the following petition was presented.

To the Honorable Mayor and City Council of the City of Elizabeth :

The undersigned property owners on the line of First street, in the First ward, would respectfully request that the contract for paving said First street, be printed and that a copy of the same be delivered by your order to each of the property owners, on the line of said First street, where the paving is to be done.

Elizabeth, October 25, 1859.

HENRY FISCHER,
W. HULSKEMPER,
RICHARD FROHWEIN,
CHARLES PATCH,
T. L. HOUGH,
HENRY AHRENS,
A. MANVEL,

RIDGEWAY THOMAS,
ELIZA SMITH,
WILLIAM WIMMER,
CHARLES HOLTZ,
HENRY HUFF,
WILLIAM BUHTOLD,
CENTRAL RAILROAD Co.

E. Y. BROWN.

The two last names were written with a pencil.

On motion of Mr. Morrell, the above petition was received and referred to the Street committee.

At the same meeting the following communication from J. B. Cooley was received.

At a meeting of the Council held January 9, 1860, the Street committee presented the following report.

The Street committee would report that they have examined the paving of First street, and find the work done subject to the acceptance of the board.

L. W. OAKLEY,
PHINEAS JONES,
WILLIAM P. MULFORD.

On motion of Mr. Morrell, laid on the table.

At said meeting of January 9, 1860, the Law committee reported an ordinance, entitled "an ordinance for the issue of a bond of \$2,000, to William H. Adams, which was taken up and after having been read once, was laid on the table.

At a meeting of the Council held January 16, 1860, the following report of the Street commissioner was presented:

The undersigned, Street commissioner of the First ward, reports that First street, from Broadway to Elizabeth Avenue, has been graded and paved by William H. Adams, with materials according to contract, and that said work has been done in workman-like manner, and was completed on the fifth, (5th,) day of January, 1860. The work on the block between Elizabeth avenue and Marshall street, and Franklin street, was done while the ground and some of the sand was frozen, and inasmuch as Mr. Adams has agreed to put the above mentioned sections in good order, should he be required to do so, I hereby approve of the work, not before approved of, namely, from Fulton street to Elizabeth Avenue. There was 3520 cubic yards of dirt removed in the grading of First street, which was disposed of as follows:

One thousand three hundred and thirty cubic yards put in Livingston street, between Crescent and Second streets. Seven hundred and eleven cubic yards sold to the estate of Edward Kellogg at ten cents per cubic yard. Five hundred and fourteen cubic yards put in Marshall street, between First and Second street, nine hundred and sixty-five cubic yards in First street, west of Elizabeth avenue.

JABEZ B. COOLEY, Street Commissioner.

Elizabethport, January 9th, 1860.

L. W. OAKLEY,

PHINEAS JONES,

WILLIAM P. MULFORD,

} Committee.

On motion of Mr. Morrell, report accepted.

The bond of William H. Adams, indemnifying the city that he will keep the pavement on First street, between Elizabeth avenue and Marshall street, in repair, so that the same shall be in as good condition on the 1st day of May next as it was when completed, was reported by the City Attorney and accepted by the council.

The ordinance entitled, "An ordinance for issuing six bonds of five hundred dollars each, to William H. Adams," and which had been once read at the last meeting of the Board and laid on the table, was taken up, and after having been read three times was passed by the following vote:

Ayes—Messrs. Fairbank, Hand, Morrell, Mulford, Oakley, Rolston, Tubbs and Wendt—8.

Noes—None.

The following is a copy of the ordinance passed:

An ordinance for issuing six bonds of \$500 each, to William H. Adams.

Be it ordained by the Mayor and City Council of the City of Elizabeth.

SEC. 1. That six bonds of the city of Elizabeth, for five hundred dollars each, be issued to William H. Adams in part payment for his contract for paving First street—said bonds to bear date January 17th, 1860, and be payable on the 17th day of January, 1865, with interest at the rate of seven per cent per annum, to be paid semi-annually.

Passed January 16, 1860. Approved, January 16, 1860.

Attest—A. M. ELMER,
City Clerk.

ELIAS DARBY,
Mayor.

\$3000.

ELIZABETH, January 17, 1860.

Received from the city of Elizabeth six special city bonds of five hundred dollars each, on account of paving First street, in the First ward of this city.

WILLIAM H. ADAMS.

At said meeting of January 16, 1860, on motion of Mr. Morrell it was resolved, That the City Council proceed to appoint commissioners required in sec. 9 of the supplement in reference to First street, whereupon the City Council appointed Charles E. Moore of the First ward, Keen Pruden and William B. Tucker of the Second ward, F. W. Foote and Luke H. Higgins of the Third ward, commissioners for the purpose of making a just and equitable assessment of the costs and expenses of paving First street, from Broadway to Elizabeth avenue, upon the owner or owners of lands and

real estate in the line of the section of said street so paved.

At a meeting of the City Council, held February 1, 1860, Jabez B. Cooley reported the names of the persons and number of feet of land each owned on the line of First street, recently paved from Broadway to Elizabeth avenue.

On motion of Mr. Smith report accepted.

The following is a copy of the report.

The name and number of feet owned by each person on the line of First Street, recently paved from Broadway to Elizabeth avenue.

North side, commencing at Elizabeth avenue.

Block fifty-eight, W. H. Adams, one hundred feet.

Block fifty-eight, L. T. Hand, one hundred feet.

Block fifty-nine, John O. Magie, fifty feet.

Block fifty-nine, Richard Frohwein, twenty-five feet.

Block fifty-nine, Hugh Wilson, fifty-three feet six inches.

Block fifty-nine, City of Elizabeth, forty-six feet six inches.

Block fifty-nine, Lewis Braun, twenty-five feet.

Block sixty, Thomas Gould, one hundred feet.

Block sixty, John Meahen, twenty-five feet.

Block sixty John Conn, seventy-five feet.

Block sixty-one, Philip Mohr, fifty feet.

Block sixty-one, W. Baktold, fifty feet.

Block sixty-one, James C. Stock, fifty feet.

Block sixty-one, Jabez B. Cooley, fifty feet.

Block sixty-two, E. G. Brown, one hundred feet.

Block sixty-two, W. Hulskemper, one hundred feet.

Block sixty-three, Ridgway Thomas, twenty-five feet.

Block sixty-three, L. T. Hough, twenty-five feet.

Block sixty-three, Charles Patch, fifty feet.

Block sixty-three, Charles Holtz, twenty-five feet.

Block sixty-three, Simon Arnholdt, twenty-five feet.

Block sixty-three, Central Railroad Co., fifty feet.

South side, commencing at Elizabeth avenue.

Block seventy, David Smith, one hundred feet.

Block seventy, W. Wimmer, one hundred feet.

Block seventy-one, L. T. Hand, one hundred feet.

Block seventy-one, James Gilman, one hundred feet.

Block seventy-two, Albert Manvel, sixty-two feet.

Block seventy-two Lorana Manvel, thirty-eight feet.

Block seventy-two, Eliza Smith, fifty feet.

Block seventy-two, John Smith's estate, fifty feet.

Block seventy-three, Henry Huff, fifty feet.

Block seventy three, A. D. Gale, twenty-five feet.

Block seventy-three, Frederick McCloud, twenty-five feet.

Block seventy-three, Henry Ahrens, one hundred feet.

Block seventy-three, Henry Fischer, one hundred feet.

Block seventy-five, Central Railroad Co., two hundred feet.

Total, twenty-four hundred feet.

Five streets, sixty feet each, three hundred feet.

The said paving is fifteen hundred feet in length, and thirty-five feet six inches wide from curb to curb, making five thousand nine hundred and sixteen square yards.

January 31, 1860.

J. B. COOLEY, Street Commissioner.

At a meeting of the city council held March 1, 1860, Mr. Crane offered the following resolution :

Resolved, That the matter of paving First street be referred to the Street committee to ascertain the whole amount of costs and expenses for grading and paving said street, and the balance due W. H. Adams for doing the said work.

On motion of Mr. Jones, laid on the table.

At the same meeting, Mr. Morrell offered the following resolution :

Resolved, That the Law committee be instructed to draft an ordinance for the issue of bonds to W. H. Adams for the amount of \$3,567.60, being the balance due him for paving First street as per contract.

On motion of Mr. Crane, the ayes and noes were called, and the Mayor decided it was carried by the following vote :

Ayes—Messrs. Jones, Morrell, Smith, Tubbs and Wendt

Noes—Messrs. Crane and Oakley—2.

Mr. Crane appealed from the decision of the Mayor and called for the ayes and noes.

Ayes—Messrs. Jones, Morrell, Oakley, Smith, Tubbs and Wendt—6.

Nay—Mr. Crane—1.

At a meeting of the city council held March 15, 1860, the Law committee reported an ordinance entitled "An ordinance for issuing six bonds of five hundred dollars each, and one for five hundred and seven dollars and sixty cents, to William H. Adams," which was accepted, and after having been once read was laid on the table.

Mr. Crane offered the following resolution :

Resolved, That so much of the resolution passed at the last meeting, as relates to the paving of First street by W. H. Adams, and fixes the balance due him, be stricken from the minutes, it not being properly passed by the Board ; on which resolution the ayes and noes were called, and was passed by the following vote :

Ayes—Messrs. Crane, Fairbank, Hand, Mulford, Oakley, Rolston, Tubbs and Wendt—8.

Nay—Mr. Morrell—1.

Mr. Morrell offered the following resolution :

Resolved, That the contract for grading Livingston street, between Crescent and Second streets, be awarded to W. H. Adams, as per his proposal dated October 20, 1859, he being the lowest bidder, and that payment for grading one thousand three hundred and thirty yards be deducted from the amount of the contract, and placed to the credit of the account of paving First street.

Mr. Crane moved to lay it on the table.

On which motion the ayes and noes were called, and the motion to lay on the table was adopted by the following vote :

Ayes—Messrs. Crane, Fairbank, Mulford, Oakley, Rolston, Tubbs and Wendt—7.

Noes—Messrs. Hand, Jones and Morrell—3.

At a meeting held April 2, 1860, the street committee, to whom was referred the bill of W. H. Adams for resetting the curb on First street, would report that they have made enquiry at Newark of the contractors and street committee, and find the usual custom is to embody the resetting the curb in the contract, but where not so fixed, the price charged is about two cents per running foot. Two cents is the common price.

Your committee would recommend the payment of two cents per running foot.

L. W. OAKLEY,
PHINEAS JONES,
WILLIAM P. MULFORD.

The report was accepted and the recommendation adopted.

At a meeting held April 12, 1860, W. H. Adams presented the following communication :

To the honorable the Mayor and City Council of the City of Elizabeth :

The undersigned most respectfully would ask your honorable body to return to him the bond of five hundred dollars, given upon the understanding of the payment of contract of First street, said payment being past due, asks the return of the same. Respectfully, W. H. ADAMS.

ELIZABETH, March 23, 1860.

On motion of Mr. Woodruff, was received and on motion of Mr. Oakley laid on the table.

The following ordinance, entitled "An ordinance issuing six bonds of five hundred dollars each, and one of five hundred and seven dollars and sixty cents, to W. H. Adams," and which had been once read at a previous meeting of the board, and laid on the table, was taken up, and after having been read three times was passed by the following vote :

Ayes—Messrs. Fairbank, Hand, Morrell, Oakley, Rolston, Tubbs, Wendt and Woodruff—8.

Noes—None.

An ordinance for issuing seven bonds of five hundred dollars each, to W. H. Adams.

Be it ordained by the Mayor and City Council of the City of Elizabeth.

SECTION 1—That seven bonds of the city of Elizabeth, for five hundred dollars each, be issued to W. H. Adams, as payment for his contract for paving First street; said bonds to bear date March 9, 1860, and be payable on the 9th day of March, 1865, with interest at the rate of seven per cent per annum, to be paid semi-annually.

Passed April 12, 1860.

Approved April 16, 1860.

Attest, A. M. ELMER, Clerk. ELIAS DARBY, Mayor.

On motion of Mr. Rolston it was

Resolved, That the Mayor be authorized to draw his warrant for seven dollars and sixty cents, in favor of W. H. Adams, to close the amount due him on his contract for grading and paving First street.

At a meeting held April 19, 1860, a communication was received from his honor the Mayor, stating that an ordinance entitled "An ordinance for issuing seven city bonds of five hundred dollars each to W. H. Adams, for paving First street, which was passed at the last meeting of the board, was approved by him April 16, 1860.

On motion of Mr. Morrell it was ordered placed on file.
\$3500.

ELIZABETH, N. J., April 24, 1860.

Received of the city of Elizabeth seven city bonds of five hundred dollars each, dated March 9, 1860, for paving First street, in the First Ward.

WILLIAM H. ADAMS.

At a meeting of the city council held May 1, 1860, the street committee presented the following certificate:

This is to certify that William H. Adams has put the pavement in First street, between Elizabeth avenue and Marshall street, in as good condition and repair as the same was when completed by him and accepted by the street com-

missioner of the First ward, and the street committee of the city of Elizabeth, May 1, 1860.

PHINEAS JONES,

L. W. OAKLEY,

WILLIAM P. MULFORD,

Street Committee.

JABEZ B. COOLEY, Street Commissioner.

On motion of Mr. Rolston, it was resolved, whereas William H. Adams has presented a certificate from the street committee and street commissioner of the old board, certifying that William H. Adams has complied with the requirements of his bond, therefore resolved, that the bond be returned to him.

On motion of Mr. Crane it was resolved, that the street commissioner be directed to report to the next meeting of this board, the costs and expenses for grading and paving First street, with a view to a final assessment thereon.

At a meeting of the council held May 14, 1860, Mr. William B. Tucker, one of the commissioners for assessing the costs, expenses, &c., for grading and paving First street, in the First ward, tendered his resignation to the city council, which was accepted, and on motion, William Stiles was appointed a commissioner to fill the vacancy.

The street commissioner made his report as follows :

ELIZABETH, May 10, 1860.

To the Honorable Mayor and City Council of the City of Elizabeth :

The undersigned, in accordance with a resolution of the board passed May 1, 1860, would beg leave to report the expense of grading and paving First street, from Broadway to Elizabeth avenue, to be as follows :

William H. Adams's bill, per contract :

Five thousand nine hundred and sixteen square yards at \$1.10,	\$6507.60
To resetting 2400 feet curb, at 4 cents per foot,	96.00
Street Commissioner's bill,	26.00
Robert S. Green, City Attorney,	3.00
E. L. Meyer, Surveyor,	11.25
To Printing,	8.75
	\$6652.60

Cr. by 711 cubic yards of earth sold to the estate of Edward Kellogg at 10 cents per cubic yard,	
\$71.10,	71.10
	\$6581.60

All of which is respectfully submitted.

L. H. HIGGINS, Street Commissioner.

Mr. Crane offered the following resolution, which was adopted :

Resolved, that the city council fix the sum of \$6581.60, as the amount of the costs and expenses for grading and paving First street, between Broadway and Elizabeth avenue, the same being reported by the street commissioner, and that the city council request the commissioners heretofore appointed upon this street, to proceed to apportion and assess the said sum of \$6581.60, and the expenses of said assessment ratably upon the owners of the property upon the street so graded and paved.

Copy of Commissioners' oaths.

At a meeting of the city council held on the sixteenth day of January, A. D. 1860, Charles E. Moore, Keen Pruden, William B. Tucker, Frederick W. Foote and Luke H. Higgins were appointed by the said the city council of the city of Elizabeth, commissioners for the purpose of making a just and equitable assessment upon the owners of land and real estate in the line of First street, between Elizabeth avenue and Broadway, in the First ward of the city of Elizabeth, for all the costs and expenses of grading and paving said

First street, between Elizabeth avenue and Broadway. At a meeting of the city council held on the fourteenth day of May, A. D. 1860, William B. Tucker, one of said commissioners, tendered his resignation as such commissioner to said city council, which was by them accepted. Whereupon said city council appointed William Stiles as such commissioner to fill said vacancy.

Now we, the undersigned, the commissioners appointed as aforesaid, do severally swear, that we will make the estimate and assessments fairly and impartially according to the best of our skill and judgment.

CHARLES E. MOORE,
KEEN PRUDEN,
L. H. HIGGINS,
F. W. FOOTE,
WILLIAM STILES.

Sworn and subscribed before me, May 17, 1860.

JACOB SEIPLE, City Clerk.

Copy of Notice.

Notice.

The undersigned, commissioners appointed to make an assessment of the cost and expenses of grading and paving First street, from Broadway to Elizabeth avenue, hereby give notice to parties interested therein, that the report of the whole amount of the cost and expenses of such improvement have this day been filed in the office of the city clerk, for examination, and that said commissioners will meet at the office of the street commissioner in the Court House, on the fifth day of June next, at four o'clock in the afternoon, when and where parties will be heard by them.

KEEN PRUDEN,	} Commissioners.
L. H. HIGGINS,	
WILLIAM STILES,	
C. E. MOORE,	
F. W. FOOTE.	

May 17, 1860.

Copy of Commissioners' Proceedings, etc.

ELIZABETH, May 17, 1860.

The commissioners appointed to make an assessment of the cost and expenses of grading and paving First street, from Elizabeth avenue to Broadway, met at the Court-house and were duly sworn. Present—Keen Pruden, Charles E. Moore, William Stiles, Frederick W. Foote and Luke H. Higgins.

Charles E. Moore was appointed chairman, and L. H. Higgins secretary.

It was then resolved, that the expense of making the assessment be twenty dollars.

Amount determined determined by city council exclusive of the expenses of making the assessment,	\$6581.60
Expense of making assessment,	20.00
	\$6601.60

Resolved, that the above amount, six thousand six hundred and one dollars and sixty cents, be assessed as follows : upon the owners of all the land and real estate lying on cond street :

David Smith, two hundred and seventy five dollars and seven cents, one hundred feet on block seventy, lying between Elizabeth avenue and Marshall street.

William Wimmer, one hundred feet, block seventy, between Elizabeth avenue and Marshall street, two hundred and seventy-five dollars and seven cents.

Luther T. Hand, block seventy-one, one hundred feet between Marshall and Franklin street, two hundred and seventy-five dollars and seven cents.

James Gilman, one hundred feet, block seventy one, between Marshall and Franklin streets, two hundred and seventy-five dollars and seven cents.

Albert Manvel, sixty-two feet, block seventy-two between Franklin and Fulton street, one hundred and seventy dollars and fifty-four cents.

Lorano Manvel, thirty-eight feet, block seventy-two, between Franklin and Fulton street, one hundred and four dollars and fifty-three cents.

Eliza Smith, fifty feet, block seventy-two, between Franklin and Fulton street, one hundred and thirty-seven dollars and fifty-three cents.

Estate of John Smith, fifty feet, block seventy-two, between Franklin and Fulton street, one hundred and thirty-seven dollars and fifty-three cents.

Henry Huff, fifty feet, block seventy-three between, Fulton and Clinton street, one hundred and thirty-seven dollars and fifty-three cents.

Andrew D. Gale, twenty-five feet, block seventy-three, between Fulton and Clinton streets, sixty-eight dollars seventy-six and one-half cents.

Frederick McCloud, twenty-five feet, block seventy-three, between Fulton and Clinton street, sixty-eight dollars seventy-six and one-half cents.

Henry Ahrens, one hundred feet, block seventy-three, between Fulton and Clinton streets, two hundred and seventy-five dollars and seven cents.

Caroline Deckle, one hundred feet, block seventy-four, between Clinton and Livingston street (formerly Washington,) two hundred and seventy-five dollars and seven cents.

Henry Fischer, one hundred feet, block seventy-four, between Clinton and Livingston Street street (formerly Washington,) two hundred and seventy-five dollars and seven cents.

Central Railroad of New Jersey, two hundred feet, block seventy-five, between Livingston (formerly Washington,) and Broadway, five hundred and fifty dollars and fourteen cents.

W. H. Adams, one hundred feet, block fifty-eight between Elizabeth avenue and Marshall street, two hundred and seventy-five dollars and seven cents.

Luther T. Hand, one hundred feet, block fifty-eight, between Elizabeth avenue and Marshall street, two hundred and seventy-five dollars and seven cents.

John O. Magie, fifty feet, block fifty-nine, between Marshall and Franklin street, one hundred and thirty-seven dollars and fifty three cents.

Richard Frohwein, twenty-five feet, block fifty-nine, between Marshall and Franklin street, sixty-eight dollars and seventy-six and one-half cents.

Lewis Braun, twenty-five feet, block fifty-nine, between Marshall and Franklin street, sixty-eight dollars and seventy-six and one-half cents.

Hugh Wilson, fifty-three and a half feet, block fifty-nine, between Marshall and Franklin street, one hundred and fifty-seven dollars and sixteen cents.

City of Elizabeth, forty-six and one-half feet, block fifty-nine, between Marshall and Franklin street, one hundred and twenty-seven dollars and ninety cents.

Thomas Gould, one hundred feet, block sixty, between Franklin and Fulton street, two hundred and seventy-five dollars and seven cents.

John Meahen, twenty-five feet, block sixty, between Franklin and Fulton street, sixty-eight dollars and seventy-six and one-half cents.

George Conn, seventy-five feet, block sixty, between Franklin and Fulton street, two hundred and six dollars and twenty-nine and one-half cents.

Philip Mohr, fifty feet, block sixty-one, between Fulton and Clinton street, one hundred and thirty-seven dollars and fifty-three cents.

W. Bahtold, fifty feet, block sixty-one, between Fulton and Clinton street, one hundred and thirty seven dollars and fifty-three cents.

James C. Stock, fifty feet, block sixty-one, between Fulton and Clinton streets, one hundred and thirty-seven dollars and fifty-three cents.

Jabez B. Cooley, fifty feet, block sixty-one, between Fulton and Clinton street, one hundred and thirty-seven dollars and fifty-three cents.

Edward G. Brown, one hundred feet, block sixty-two, between Clinton and Livingston street, (formerly Washington,) two hundred and seventy-five dollars and seven cents.

William Hulskemper, one hundred feet, block sixty-two, between Clinton and Livingston street, (formerly Washington,) two hundred and seventy-five dollars and seven cents.

Ridgway Thomas, twenty-five feet, block sixty-three, between Livingston (formerly Washington,) street and Broadway, sixty-eight dollars seventy-six and one-half cents.

Thomas L. Hough, twenty-five feet, block sixty-three, between Livingston (formerly Washington) street and Broadway, sixty-eight dollars seventy-six and one-half cents.

Charles Patch, fifty feet, block sixty-three, between Livingston street, (formerly Washington,) and Broadway, one hundred and thirty-seven dollars and fifty-three cents.

Charles Holtz, twenty-five feet, block sixty-three, between Livingston street, (formerly Washington,) and Broadway, sixty-eight dollars seventy-six and one-half cents.

Simon Arnhold, twenty-five feet, block sixty-three, between Livingston street, (formerly Washington,) and Broadway, sixty-eight dollars seventy-six and one-half cents.

Central Railroad of New Jersey, fifty feet, block sixty-three, between Livingston street, (formerly Washington,) and Broadway, one hundred and thirty-seven dollars and fifty-three cents.

Resolved, That the commissioners, when they adjourn, adjourn to meet on the fifth of June next.

Resolved, That we adjourn.

Resolved, That the minutes be so amended as to read that the commissioners ordered the same to be published two weeks agreeable to the supplement to the city charter.

JUNE 5, 1860.

The commissioners met agreeable to the notice which had been previously given. Present—Charles E. Moore, William Stiles, Frederick W. Foote, Keen Pruden and Luke H. Higgins. The minutes of the last meeting were read, amended and approved. William J. Magie appeared for Hugh N. Wilson, and Joseph Alward for John O. Magie and others, and presented their objections in writing.

Resolved, That the commissioners sign the report, and that the Secretary present the same, together with the objections, to the city council.

CHARLES E. MOORE,
F. W. FOOTE,
L. H. HIGGINS.

W. STILES,
KEEN PRUDEN,

At a meeting of the city council held June 11th, 1860, the mayor presented the report of the commissioners' assessments for grading and paving First street, in the First ward. Also, the remonstrance of Hugh N. Wilson and others against the same.

On motion of Mr. Moore, the commissioners' report was received and referred to a special committee, consisting of Messrs. Tucker, Tubbs and Moore.

The following is a copy of the remonstrance:

Hugh N. Wilson, of the city of New Brunswick, in the State of New Jersey, one of the parties interested in the assessment of the costs and expenses of the grading of First street, in the First ward of the city of Elizabeth, makes the following objections to the report made by the commissioners appointed to make such assessment, now placed in the city clerk's office for examination, by the parties interested:

1. That the report does not specify the number of square yards or quantity paved, the amount paid for paving, by the contract, or for any other work done on the street, or the items of expense so as to enable "parties interested" to ascertain for what they have been assessed.

2. That the amount of \$6601.60, named in the report as being for the paving of said street, really includes items for

other work done on the street, such as resetting the curb, relaying crosswalks, &c., which was not petitioned for by the owners of property on the street, as required by the charter, and which cannot be charged on the property owners, at least in this proceeding, and by these commissioners. The petition in this case was for paving of this street, and not to reset the curb.

3. That the assessment is excessive and erroneous, because the property owners are assessed for paving from curb to curb, whereas the owners have already, by order of the authorities of the city, curbed and guttered at their own expense in front of their properties, by which a part of the street was then actually paved, and paid for by me and others, and because the contract was overpaid, because he has used the stone which belonged to us, to pave said street.

4. That the assessment is excessive and erroneous, because I am assessed for the paving of sixty feet square in each place where a street crosses said First street; that the assessment for the whole of said paving is not justly and equitably laid on the owner or owners of some land on said street; that the owner or owners of some land on said street, where said streets cross First street, have not been assessed at all, and that no assessment is made on the land and real estate on the cross streets which are paved in part by this work on First street.

5. That the assessment is excessive and erroneous, and has not been justly and equitably laid, because the earth removed from said street has been deposited on other streets, which have been thereby graded; and as the charter provides that the grading of streets shall be paid for by the owners of property on said streets, they should be charged for that earth and the same deducted from the expenses assessed on us.

6. That the contract for the paving of First street was not assessed to the lowest bidder, as required by charter.

7. That the petition is not sufficient to authorize the proceeding to pave First street.

To the Commissioners to assess the costs and expenses of paving First street.

Respectfully your obedient servant,

H. N. WILSON, per W. J. MAGIE, Attorney.

To the commissioners appointed to make an assessment of the costs and expenses of grading and paving First street, from Broadway to Elizabeth avenue :

We, the subscribers, parties interested therein, state that your report on file in the office of the city clerk mentions an amount of \$6581.60, determined by the city council,—but the report does not state what items compose the amount, nor the number of square yards for the paving of which we are assessed. To the amount above mentioned you have added \$20 for making the assessment. Then you have resolved that the amount of \$6601.60 be assessed in the manner therein stated upon the owners of all the land and real estate lying on said street. From your assessment it appears that we are taxed at the rate of \$2.75 per front foot, which is about one dollar per front foot more than we anticipated. We, therefore, insist upon our right to know for what purpose our money is to be used.

We shall therefore object to paying the assessments for the following reasons :

- 1st. Because your report is not sufficiently specific.
- 2nd. Because we have cause to believe that the city council did not award the contract for grading and paving said street to the lowest bidder.
- 3d. We believe that we are assessed for paving the said street from curb to curb, whereas we paid for paving part of the said street when we set the curb and paved the gutter, according to a city ordinance.
4. Because we are assessed for resetting the curb.
- 5th. Because we believe that we are assessed for relaying crosswalks.
- 6th. Because we are assessed to pay for paving the intersections of the streets.

ELIZABETH, June 4th, 1860.

JOHN O. MAGIE,	LOUIS BRAUN,
FREDERICK McCLOUD,	PHILIP MOHR,
HENRY FISCHER,	RICHARD FROHWEIN,
HENRY HUFF,	WILLIAM BUHTOLD,
JOHN MEEHAM,	WILLIAM WIMMER,
ELIZA SMITH,	R. THOMAS,
T. L. HOUGH,	SIMON ARNOLD,
CHARLES HOLTZ,	F. GARTZ, Agent for C.
ALBERT MANVEL,	F. DICKEL,
ALBERT MANVEL, Agent	L. T. HAND, Agent for
L. MANVEL's estate,	THOMAS GOULD,
CHARLES PATCH,	HENRY AHRENS,
JABEZ B. COOLEY,	W. HULSKEMPER,
for JAMES C. STOCK.	

The property owners hereby represented and interested in grading and paving First street, between Broadway and Elizabeth avenue, object to paying the assessments of the costs and expenses, as reported by the commissioners.

1st. Because the report of the commissioners is not sufficiently specific, in designating the number of yards, or the space graded and paved, and the items for which the costs and expenses of said assessment were incurred.

2d. Because the city council did not award the contract for grading and paving said street to the lowest bidder, and thereby the assessment is increased and unjust.

3d. Because they are assessed for paving said street from curb to curb, when they had already paid for paving part of the street, when they set the curb, and paved the gutter according to a city ordinance.

4th. Because they are assessed for resetting the curb and relaying the crosswalks.

5th. Because they are assessed for grading and paving the intersection of the streets, and for grading and paving in front of property which they did not own. Because the owners of the land and real estate lying on said street are not included in the assessment.

Because in this assessment they are assessed to pay for grading and paving other streets, and for the section of street not included between Broadway and Elizabeth avenue.

6th. Because the dirt that was taken from this street was used for filling up and grading another section of this street, and for grading Marshall and Livingston streets, and the property owners of First street have received no compensation for the same, whereby said streets and section were graded without cost and at the expense of the said owners on First street.

7th. Because the city council were not authorized to order said grading and paving done.

8th. Because the work was not properly done.

The above objections are presented to the commissioners by Joseph Alward, Attorney for Luther T. Hand and Jabez B. Cooley, and those whose signatures are to the annexed objections.

ELIZABETH, January 5, 1860.

Notice.

The undersigned, committee of the city council, to whom was referred the report of the commissioners appointed to make the assessment for grading and paving First street, in the First ward, would hereby give notice to all persons owning property on said street that they will meet at the street commissioner's office in the Court-house, on Friday, the 6th of July next, at two o'clock, P. M. at which time and place all persons interested may be heard.

W. B. TUCKER,

G. W. TUBBS,

SAMUEL L. MOORE.

At a meeting of the city council held July 9th, 1860, the committee to whom was referred the report of the commissioners appointed to assess the costs, &c. of paving First st. presented the following report :

ELIZABETH, July 6, 1860.

To the Mayor and City Council of the City of Elizabeth :

Your committee, to whom was referred the report of the commissioners appointed to assess the amount of paving of First street upon the owners of property along the line of the said street, met at the Court-house pursuant to notice previously given as required by the charter, and proceeded to examine said report and objections and to hear counsel on the same.

1. The first objection was that the report of the commissioners was not specific in stating the amount of square yards so paved. Your committee find that the commissioners were specific in assessing the amount pro rata according to the number of feet owned on line of said street, so paved, in accordance with the amount of assessment ratified by this board, upon the report of the street commissioner.

2. That the bid for paving was not awarded to the lowest bidder. Your committee find that the bid was awarded to the lowest legal bid, so determined by the city attorney.

3 and 4. That assessment was made for resetting the curb and paving the gutter, which had already been paid for according to a city ordinance. Your committee deem the objection invalid. The petition calls for paving the street, and in our opinion it could not be done in a proper manner without the curb and gutter being taken up and re-laid, and if so done the parties so benefited by it should pay for the same.

5. That assessment was made for laying crosswalks. Your committee have the same opinion as in objections 3 and 4.

7. That the excess of streets at crossings of other streets is unjust and not equitable, and should be assessed upon property owners along the line of said streets, which intersect First street. Your committee are of the opinion that the commissioners could make no assessment, except to property owners along the line of First street, and the said

assessment is just and equitable and in accordance with the charter, and the prayers of the petitioners for the paving of said street ; and your committee would recommend that the report of the commissioners be ratified. Your committee would call the attention of your honorable body to the fact that the commissioners have not had in view the interest accruing upon the bonds issued by the city for the payment of paving First street.

All of which is respectfully submitted. [Signed by the committee.]

W. B. TUCKER,

SAMUEL L. MOORE.

GEORGE W. TUBBS.

Mr. Rolston offered the following resolution, which was adopted :

Resolved, That this board do hereby ratify the assessment made by the commissioners appointed for that purpose, of the costs, damages and expenses of grading and paving First street.

Notice of Assessment.

In pursuance of the fourteenth section of an act entitled a "Supplement to an act entitled 'An act to establish the city of Elizabeth,' " the undersigned, City Treasurer of the city of Elizabeth, hereby gives notice that the following assessment has been made and ratified for the expenses, &c., for paving First street, between Elizabeth avenue and Broadway, upon persons hereinafter named, being owners of land and real estate assessed for said expenses, &c., each of whom is hereby required to pay the amount annexed to his, her, or their name, to the subscriber, at his office in the State Bank at Elizabeth, within sixty days from the seventeenth day of July instant, or within the said time to enter into bond to said city conditioned to pay such assessment in five years from the date thereof, with interest at the rate of eight per cent per annum, payable semi-annually.

On Block Seventy.

David Smith, two hundred and seventy-five dollars and seven cents.

William Wimmer, two hundred and seventy-five dollars and seven cents.

On Block Seventy-one.

Luther T. Hand, two hundred and seventy-five dollars and seven cents.

James Gilman, two hundred and seventy-five dollars and seven cents.

On Block Seventy-two.

Albert Manvel, one hundred and seventy dollars and fifty-four cents.

Lorana Manvel, one hundred and four dollars and fifty-three cents.

Eliza Smith, one hundred and thirty-seven dollars and fifty-three cents.

Estate of John Smith, one hundred and thirty seven dollars and fifty-three cents.

On Block Seventy-three.

Henry Huff, one hundred and thirty-seven dollars and fifty-three cents.

Andrew D. Gale, sixty-eight dollars and seventy-six and one-half cents.

Frederick McCloud, sixty-eight dollars and seventy-six and one-half cents.

Henry Ahrens, two hundred and seventy-five dollars and seven cents.

On Block Seventy-four.

Caroline Deakle, two hundred and seventy-five dollars and seven cents.

Henry Fischer, two hundred and seventy-five dollars and seven cents.

On Block Seventy-Five.

The Central Railroad Company of New Jersey, five hundred and fifty dollars and fourteen cents.

On Block Fifty-eight.

W. H. Adams, two hundred and seventy-five dollars and seven cents.

Luther T. Hand, two hundred and seventy-five dollars and seven cents.

On Block Fifty-nine.

John O. Magie, one hundred and thirty-seven dollars and fifty-three cents.

Richard Frohwein, sixty-eight dollars and seventy-six and one-half cents.

Lewis Braun, sixty-eight dollars and seventy-six and one-half cents.

Hugh N. Wilson, one hundred and forty-seven dollars and sixteen cents.

City of Elizabeth, one hundred and twenty-seven dollars and ninety cents.

On Block Sixty.

Thomas Gould, two hundred and seventy-five dollars and seven cents.

John Meaher, sixty-eight dollars and seventy-six and one-half cents.

George Conn, two hundred and six dollars and twenty-nine and one-half cents.

On Block Sixty-one.

Philip Mohr, one hundred and thirty-seven dollars and fifty-three cents.

William Bechtold, one hundred and thirty-seven dollars and fifty-three cents.

James C. Stack, one hundred and thirty-seven dollars and fifty-three cents.

Jabez B. Cooley, one hundred and thirty-seven dollars and fifty-three cents.

On Block Sixty-two.

Edward G. Brown, two hundred and seventy-five dollars and seven cents.

William Hulskemper, two hundred and seventy-five dollars and seven cents.

On Block Sixty-three.

Ridgway Thomas, sixty-eight dollars and seventy-six and one-half cents.

Thomas L. Hough, sixty-eight dollars and seventy-six and one-half cents.

Charles Patch, one hundred and thirty-seven dollars and fifty-three cents.

Charles Holtz, sixty-eight dollars and seventy-six and one-half cents.

Lenion Arnhold, sixty-eight dollars and seventy-six and one-half cents.

The Central Railroad Company of New Jersey, one hundred and thirty-seven dollars and fifty-three cents.

The number of blocks refers to the Commissioners' map, now on file in the Clerk's office of the city.

July 16, 1860.

A. S. WOODRUFF, City Treasurer.

blk 70 Elizabeth

Avenue

blk 58

blk 71 Marshall

Street

blk 59

blk 72 Franklin

Street

blk 60

blk 73 Fulton

Street

blk 61

blk 74 Clinton

Street

blk 62

blk 75 Livingston

Street

blk 62

Broadway

First Street

NEW JERSEY SUPREME COURT.

*The State, Luther T. Hand,
et. al. Prosecutors,*

vs.

*The City Council of the City
of Elizabeth.*

The following are the reasons for setting aside the assessments against the owners of property lying along the line of First street :

1st. That it does not appear by the record of the proceedings of the city council, that before orderingsaid work done, they complied with the requirements of the charter of the city of Elizabeth, by giving notice in a newspaper, printed and published in the city of Elizabeth, by advertisement for two weeks, describing the work or paving to be done, and requesting all persons who may object thereto, or be interested therein, to appear in person or by agent, before the city council, or their committee, at a time and place to be designated therein, to be heard in reference thereto, and that thelike notice was served on each owner of land upon or before which said improvement was to be made, or work done, or a copy left at his or her residence, of those residing within the city of Elizabeth, ten days before the time appointed, or on the non-residents, by placing the said notice in the post-office, directed to their addresses, if known, ten days before the time appointed.

2d. That the city council, before ordering the said First street paved, did not give the notice mentioned in the first reason, by advertisement and by service, as required by the charter of the city of Elizabeth.

3d. That the city council, before ordering said First street

paved, did not give notice to the property owners, and persons interested in said paving, as required by the charter of the city of Elizabeth.

4th. That the city council were not authorized to order said street paved, and to assess the costs and expenses of said work upon the owners of property lying along the line of said street.

5th. That the city council did not award the contract for the said paving to the lowest bidder, as they were in duty bound to do.

6th. That by the proceedings of the city council, it appears that the amount fixed to be assessed upon the property owners along the line of said street was for grading and paving said street; whereas, the petition of the property owners only authorized the paving of said street.

7th. That the prosecutors, with other owners of property lying along the line of said street, were assessed for resetting the curb, which was not petitioned for.

8th. That the prosecutors, with other owners of property lying along the line of said street, were assessed for paving said street, from curb to curb; whereas, they had already by an order of the city council, curbed and guttered at their own expense in front of their properties, by which a part of the street was already paved and paid for by the prosecutors and other property owners.

9th. That the prosecutors and the other property owners, were assessed for the costs and expenses of work for which they had not petitioned, and for work not necessary to paving said street.

10th. That the prosecutors and other owners of property lying along the line of said street, were assessed for paving the intersections where other streets crossed said First street; whereas the city of Elizabeth ought to have been assessed for paving said intersections.

11th. That the prosecutors, and other owners of property lying along the line of said First street, were assessed pro rata for paving the whole intersections where other streets

cross said First street, whereas these intersections should have been assessed to owners of property lying along cross streets, as much as to the owners of property lying along said First street.

12th. That the assessment for the whole of said paving is not justly and equitably laid on the prosecutors and other owners of land lying along the line of said street, for that, the owners of some land lying along the line of said street have not been assessed at all, and that no assessment is made on the owners of land at the intersections of said streets.

13th. That the commissioners, who made the assessments, were not appointed according to the provisions of the charter of the city of Elizabeth, and the ordinances of said city council, and were not duly authorized to make said assessment.

14th. That the costs and expenses of paving said street were fixed by the city council at \$6581.60, and the commissioners assessed the prosecutors and other property owners for the sum of \$6600.60.

15th. Because the city council did not proceed according to the city charter and their ordinances, in ordering the paving of said street, and in ordering said assessment.

16th. Because the proceedings of the city council in the matters aforesaid were in other respects illegal, contrary to their charter, and in violation of their ordinances.

NEW JERSEY SUPREME COURT.

<i>The State, Luther T. Hand, et. al. Pro.</i>	} <i>Certiorari</i> <i>on rule and notice.</i>
<i>vs.</i>	
<i>The City Council of the City of Elizabeth.</i>	

Examination of witnesses as taken in the above stated cause, pursuant to a rule of said court, made in the February term of 1862, before William F. Day, a Supreme Court Commissioner, at his office in the city of Elizabeth,

in the county of Union, New Jersey, this twenty-first day of May, A. D. 1862, in the presence of Robert S. Green, Esquire, for the defendants, and Joseph Alward, Esquire, for the plaintiffs, the former of whom produced a copy of said rule, with an acknowledgment of service of a copy thereof by said Alward, and also a notice of said examination, with said Alward's acknowledgment of service endorsed thereon. By consent of the said respective counsel the said examination was adjourned until Friday, the 23d day of May, 1862, at nine o'clock, A. M., at the same place, at which time and place said examination was proceeded with in presence of Robert S. Green, Esq., for defendant, no one appearing for plaintiff.

William Stiles, being duly sworn according to law, on his oath saith: I was one of the commissioners for assessing the expenses of paving First street, between Elizabeth avenue and railroad, in the city of Elizabeth. I think I was appointed to fill the vacancy of William B. Tucker. I am a freeholder and was at that time. I resided in the Third ward of this city, at the time of my appointment. I was not in any way interested or affected by that assessment. Mr. Tucker resided in the Second ward. The expenses were assessed by the commissioners on the owners along the line of improvement, and Keen Pruden, who acted as one of the commissioners, was not assessed anything, on account of that work, and he was not interested therein. He resided in the Second ward.

WILLIAM STILES.

Sworn and subscribed this 23d day of May, A. D. 1862,
before me,

WILLIAM F. DAY,

Supreme Court Commissioner.

Luke H. Higgins, being duly sworn according to law, on his oath saith: I was one of the commissioners to assess the expenses of paving First street, in the city of Elizabeth, between Elizabeth avenue and the railroad. I was at the time of my appointment a freeholder. I resided in the Third ward of this city. I was not in any way interested

in property affected by that assessment. I was acquainted with the condition of First street at the time, or about the time, the petition was presented for the paving of said street. It was necessary to grade the street, in order that the pavement, when laid, should correspond with the grade as established. Elm street had formerly been paved, but was left rather fuller and rounder than the grade than it is at present. I have been Street Commissioner in the city of Elizabeth, and as such I have served five or six years.

LUKE H. HIGGINS.

Sworn and subscribed this 23d day of May, A. D. 1862,
before me,

WILLIAM F. DAY,

Supreme Court Commissioner.

At the request of Robert S. Green, Esq. this examination was further adjourned to Saturday, May 24, 1862, at two o'clock P. M. at the same place, of which Joseph Alward, Esq. counsel for the plaintiff, was duly notified by the commissioner.

May 23 1862.

WILLIAM F. DAY,

Supreme Court Commissioner.

May 24, 1862, this examination was resumed at the request of Robert S. Green and Joseph Alward, counsel for the respective parties.

WILLIAM F. DAY, Supreme Court Commissioner.

John Drake, being duly sworn according to law, on his oath saith :

" I was one of the owners and publishers of the New Jersey Journal, a newspaper published in the city of Elizabeth. It was then published once a week," and being shown a paper marked exhibit " A," says, " it is a copy of an advertisement that appeared in the New Jersey Journal. It was published therein on the 24th and 31st days of May, 1859."

JOHN DRAKE.

Sworn and subscribed this 24th day of May, A. D. 1862,
before me.

WILLIAM F. DAY,

Supreme Court Commissioner.

William H. Adams, being duly sworn according to law, on his oath, saith :

In 1859 I resided at Elizabethport, in this city. I was the contractor who did the work of paving First street. A majority of the earth in the centre of the street, before the paving was done, was too high. I mean what is called the crown of the street was too high. The whole rounding between the curbs was too high. I was required to lay a cobble pavement of stone, nothing less than four inches, nothing more than eight inches in diameter. It was to be laid in sand, twelve inches deep. The surface of the street, when the pavement was laid, was to correspond with the grade established. It was necessary to grade the street before the pavement was laid. The curb and gutter along the street, where the pavement was laid, was in a bad condition; so that in order to make a good job of it, it was necessary to be laid over. The street could not properly be paved without resetting the curb and relaying the gutter.

It could possibly have been done without resetting the curb, but it could not have been done without relaying the gutter. The curb was not reset the entire length. It was reset only where it was necessary. Charles E. Moore, in 1859, resided in the First ward of the city of Elizabeth. I am not positive whether he was one of the commissioners to assess the expenses of paving First street. I think he was not interested in property on that street, between Elizabeth avenue and Broadway.

Being cross examined, says :

Previous to the paving being done, the street had been curbed and guttered. I did part of it and some persons did the rest. It was done at the expense of the property owners. It was done, I think, under an ordinance of the common council. I think it was done in the year 1856 or 1857, I am not certain. It was done to the grade established by the city. I think the grade of the street has not been altered since that work was done. When I speak of the crown

of the street being too high, I mean between the gutters. When the gutters were laid, they were laid to the grade, the same grade to which it is paved. It was necessary to relay the gutter for two or three reasons. One is, in order to put down the quantity of sand necessary to lay the pavement, the street had to be graded, and it could not be so graded without taking up the gutter. The gutters were laid in about four inches of sand, and the specifications called for twelve inches of sand. Another reason was, the paving stone formerly used in the gutters, were not such as called for in the specifications, and were not suitable. I used some of those stones, and what I did use I bought of the property owners. The street could not be paved without taking up the gutters. The curb had settled and was out of line, and it was necessary therefore to be reset. It was not necessary to enable me to pave the street, but it was necessary to enable me to make a good job.

WILLIAM H. ADAMS.

Sworn and subscribed before me this 24th day of May,
A. D. 1862.

W. F. DAY, Supreme Court Commissioner.

Frederick W. Foote, being duly sworn according to law,
on his oath, saith :

In 1859 I resided in the Third ward of this city. I think I was one of the commissioners to assess the expenses of paving First street. I was not in any way interested in property affected by that assessment. I was a freeholder at that time. That assessment was made upon the property upon that street, between the points where the pavements were laid. (This answer was objected to by the counsel on the part of the State.) Charles E. Moore was not assessed for any part of that expense. He was not assessed, because he had no property on that street between those points. I know he is a freeholder and was at that time.

And being cross examined, says :

I know that Mr. Moore was not a property holder on that street, because when the assessment was made we were fur-

nished with a list of the property owners affected by the assessment, and his name was not on the list. This is the only evidence I have on that point. F. W. FOOTE.

Sworn and subscribed before me this 24th day of May, A. D. 1862.

WILLIAM F. DAY, Supreme Court Commissioner.

The examination was further adjourned, by consent of the respective counsel, until Saturday, May 31, 1862, at nine o'clock A. M.

Saturday, May 31, 1862, at nine o'clock A. M., the respective counsel, Robert S. Green and Joseph Alward, Esqs., appeared and consented that the affidavit of Lewis Bacon, hereto annexed, shall be considered and taken to be a part of the examination in the foregoing case, as if the same were taken before me in pursuance of the rule hereto annexed, and under which the foregoing examination was taken.

WILLIAM F. DAY, Supreme Court Commissioner.

NEW JERSEY SUPREME COURT.

<i>The State, Luther T. Hand, et. al. Pro.</i>	} <i>Certiorari</i> on rule and notice.
<i>vs.</i>	
<i>The City Council of the City of Elizabeth.</i>	

To Joseph Alward, Esq. Attorney of plaintiffs in certiorari :

DEAR SIR—Take notice of the examination of witnesses under a rule of said court in the above entitled cause before W. F. Day, Esq., a Supreme Court Commissioner, at his office in the city of Elizabeth, on Wednesday, the 21st day of May, instant, at eleven o'clock in the forenoon.

Yours, &c,

R. S. GREEN.

ELIZABETH, May 14, 1862.

PUBLIC NOTICE

Is hereby given that a petition has been presented to the City Council of the city of Elizabeth, by Charles Patch and others, to have First street in said city, from Broadway to Elizabeth avenue, paved ; said pavement to be of the best water cobble stone, and laid in sand sufficient to make it secure ; said work to be done under the supervision of the Street Committee and Street Commissioner. All persons interested therein are requested to appear in person, or by agent, before the Street Committee of the said Council, at the Court House in said city, on the eighth day of June next, at three o'clock, P. M., to be heard in reference thereto.

Dated May 17, 1859.

By order of the City Council.

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A. M. ELMER, Clerk.

NEW JERSEY SUPREME COURT.

February Term, 1862.

The City Council of the City of Elizabeth, and the State (Grand et al. vs. The City of Elizabeth, et al. (Plaintiffs). It is ordered that the said city council have leave to examine witnesses upon the following points: 1. Whether the required advertisements were published and notices given. 2. Whether it was necessary to grade said street in order to have. 3. Whether it was not necessary to reset the curb and gutter in said street, in paving the same. 4. Whether the commissioners were properly appointed and authorized, and possessed the legal qualifications. On motion of

Robert S. Clark, Attorney for Defendants.

A true copy from the minutes, A. M. ELMER, Clerk.

(Signed) CHARLES P. SMITH, Clerk.

Service of a copy of the above admitted, May 21, 1862.

JOSEPH ALWARD, Attorney for Prosecutors.

NEW JERSEY SUPREME COURT.

The City Council of the City of Elizabeth, and the State (Grand et al. vs. The City of Elizabeth, et al. (Plaintiffs). Questions to be answered by Louis Bacon, Esq. under oath, taken by consent of counsel.

NEW JERSEY SUPREME COURT,

November Term, 1862.

*The State, Luther T. Hand
and others, Prosecutors,
and
The City Council of the City of
Elizabeth, Defendants.*

*} On Certiorari
in matter of
assessment.*

It appears by the papers sent to this court, in the return of the city clerk to writ of certiorari directed to the city council of the city of Elizabeth, that upon an application in writing to the council, made by Luther T. Hand and others, in May 1859, proceedings were had in the council whereby First street at Elizabethport, from Broadway to Elizabeth avenue, was paved under the superintendence of the street committee and street commissioner. After the execution of the work, and an assessment of the costs and expenses thereof made by commissioners and laid upon the owners of the land and real estate upon the street, between the designated points, several of the petitioners and others interested applied for and obtained the certiorari, which removed into this court all the proceedings had by the council in the matter of paving said street and making the assessments.—Fifteen special reasons were assigned, why the assessments should be set aside, but the arguments were confined principally to three objections. The petitioners asked that the street might be paved, and it appears that the estimate made of the costs of the work, included the expenses of grading the street, preparatory to paving. It is clear that the paving could not have been properly done, without so regulating the surface of the street, by filling and excavating, as to form a proper level for putting down the stones.

What municipal office did you hold in the city of Elizabeth, in the year 1859 ?

Did you or not, as such officer, give notice of the application to the City Council for the paving of First street ?

How was such notice given ?

What was the notice ?

It is hereby agreed by the counsel of the respective parties, that the above questions be answered under oath by the said Lewis Bacon, before any person authorized to administer an oath or affirmation in the State of New Jersey, and the same to be used on the argument of the said certitari, as if taken before a commissioner of the court.

ROBERT S. GREEN,

JOSEPH ALWARD,

Attorney for defendant.

Attorney for plaintiff.

Messrs. Green and Alward :

GENTLEMEN :—In answer to your first question, of what municipal office I held in 1859, in the city of Elizabeth, I answer :

I was street commissioner of First ward of the city of Elizabeth, a portion of the year 1859.

As such commissioner, I gave notice to the owners of property lying along First street, from Broadway to Elizabeth avenue, stating that a petition had been presented to the city council to have the same paved, and that all persons interested might appear before the committee of the city council, in person or by agent, (or words to that effect,) at the time fixed and at the place designated ; I think the Court-house.

I gave the notice to the resident owners, by either serving it personally on them, or leaving it at their houses, more than ten days, or the time required by the city ordinance named in the notice, and upon the non-residents by placing the notice in the Post-office, (postage paid,) and directed to their address, when I could ascertain it, at least ten days before the said time. The notice was, as before stated, as near as I can recollect, describing the work to be done, and re-

questing the party addressed to appear before the committee in person, or by agent at the time and place appointed for their meeting. I cannot give the exact wording of the notice, but the above is correct to the best of my belief.

LEWIS BACON.

Sworn and subscribed before me, this twenty eighth day of May, A. D. 1862.

E. —, Justice of the Peace.

We agree not to take exception to the justice omitting to specify in the above, the name of state and county in which he was justice of the peace, and where the same was taken and saving and reserving all other exceptions.

JOSEPH ALWARD, Attorney for plaintiffs.

ROBERT S. GREEN, Defendants' Attorney.

The expenditure made in the grading was a necessary incident to the paving, and it was properly assessed as a part of the costs of the work petitioned for. That objection to the proceeding cannot prevail. Another untenable objection was, that *all* the costs were assessed upon the property holders on First street, whereas they contend that a proportion of the expenses for paving the intersections, should either have been placed upon owners of lots on the intersecting streets, or have been assumed by the city. The application for paving First street could not have been complied with by leaving the half of each cross street without pavement, and as the property holders on those streets did not *apply* for the improvement, the council had no power to make them contribute to the expenses of doing it. The first reason assigned, and the one on which the argument was chiefly made, is that it does not appear by the return that, before ordering the work to be done, the council had complied with the requirements of the charter of the city. The power to make improvements by grading, paving and otherwise, is conferred upon the council, by the second section of a supplement to the charter approved March 15th, 1859. The section directs, that the improvement asked for shall be made at the expense of the owners of lands and real estate, on the street or section of the street where made. It contains a proviso that before the council shall determine that the improvement shall be made or work be done, they shall give notice in a newspaper, by advertisement, for at least two weeks, briefly describing such road work or improvements, and requesting all persons, who may object thereto, or be interested therein, to appear in person or by agent before the council or their committee at a time and place designated therein, to be heard in reference thereto. Another proviso directs that a like notice shall be served upon each owner of land upon or before which the improvement is to be made, if resident within the city, at least ten days before the time appointed; and if non-residents by placing the notice in the post office, directed to their address

if known. The application was made to the council in May, 1859, the certiorari is tested November 30th, 1860, and in the interval the city clerk had died ; and the street commissioner who gave the notice had removed from the state. A rule was granted by the court, upon an application in behalf of the council, that they might examine witnesses upon several points, one of which was, whether the required advertisements were published and the notices given. One of the proprietors of the newspaper published in Elizabeth, testified that a paper shown to him is the copy of an advertisement which appeared in that paper, on the 24th and 31st of May, 1859. The paper thus identified is a public notice drawn in compliance with the proviso of the section already referred to, dated May 13, 1859, and signed "By order of the city council, A. M. Elmer, Clerk." It was insisted that it should appear from the minutes of the council, that they had appointed the day for hearing and that such proof was necessary to give them jurisdiction. The case of *Durant vs. Jersey City* was cited in support of the position, but I do not think that the ruling then made by the court is conclusive against the regularity of the proceedings in this case. By the language of the charter of Jersey City the council were directed to appoint a time and place, and give notice of the nature of the application and of the time and place for hearing. In the charter of Elizabeth, the proviso requires that they shall give notice in the Elizabeth paper, by advertising, for at least two weeks, briefly describing the improvement, and requesting parties interested to appear at a time and place to be designated therein, to be heard. The advertisement proved is a literal compliance with the proviso, and was made by their clerk, who is the official executive agent of the council. The advertisement could not legally have been given in any other way. It appears from the affidavit of Lewis Bacon taken on commission that he was the street commissioner at the time, and that he gave the notices to the land holders required in the proviso of the section of the act. The fact that the street committee met

on the day designated in the notices, and heard parties interested, is sufficient to show that the clerk in publishing the advertisements acted in furtherance of an appointment and order of the council. I am satisfied, that it sufficiently appears from the return and the proofs, that the power delegated to the council was pursued with sufficient strictness, and that they were authorized by the laws to pass the ordinance which underlies their subsequent proceedings. The proceedings of the council should in all things be affirmed.

Upon error the same reasons are filed as above printed in certiorari.