

NEW JERSEY  
Court of Errors and Appeals.

Between

CHRISTIAN SCHUMM,  
*Complainant and Appellee,*

and

JAMES H. ELMENDORF, *et al.*,  
*Defendants' and Appellants.*

**APPELLANT'S POINTS.**

**I.**

The portion of the decree appealed from (p. 66 of case) disallows all payment for the \$10,971.91 of work done and materials furnished which are mentioned in the stipulation (p. 48 of case). It also perpetually enjoins the Mayor, &c., of Jersey City, from ever paying the contractor anything for this work, on the ground that it is extra and illegal work, for which no allowance should be made.

**II.**

The stipulation (p. 49) shows that this work and material were used by the contractor in completing the New

Bergen Road, by the direction of the Street Committee and Engineer in charge of the work. That they were deemed essential by said committee and engineer to preserve the road or its road-bed from being washed away or seriously injured by heavy rains. That all of said work was inspected and done in a manner satisfactory to the committee, engineer and inspector. That all was done and furnished before this suit was commenced, without any objection ever being made by anybody, and evidence was given of its reasonable worth and value.

### III.

The Legislature, by a public act, (supplement to Jersey City charter hereto annexed) approved April 9, 1875, directs the payment by Jersey City of such sum as shall be just and reasonable for said work, the amount to be ascertained as therein stated, and the amount awarded to be included in the cost of and assessment for said improvement.

### IV.

The decree in this case is different from the relief prayed for. The bill prays (p. 10) :

1. That the contractor be restrained from further prosecuting his work in any manner other than that specified in the contract.
2. That if it appears that said work cannot now be so completed, then that a reference be had to ascertain a *reason-*

able value of the work and material done and furnished as aforesaid.

3. That the contractor be paid no more than said work be reasonably worth.

4. That the contractor pay the municipality the amount received (if any) exceeding the reasonable value of said work and materials.

5. That the municipality be restrained from paying said contractor any further money or other thing of value on account of said work, including the retained percentage, and from issuing any bonds, &c., until further order or decree.

6. That the municipality be restrained from levying and collecting any assessments for said street improvement.

## V.

It is inequitable to allow this complainant to interpose by injunction to prevent the city paying the contractor what his work and materials were worth. He who seeks equity should do equity. This party stood by and saw the contractor expend his money for the benefit of his property without a word of remonstrance, and he ought not be allowed to come in now and restrain the city from paying the contractor what the work ordered by its agents is reasonably worth.

## VI.

Since the act hereto annexed, it is clearly improper that an injunction should stand restraining the city from pay-

ing as directed in said act and assessing as therein required. It is true this act is retrospective, but such acts have been held valid, even when passed pending litigation, or after it has been decided adversely against the party.

*State v. Newark*, 3 Dutcher, 185, 196.

*State v. Town of Union*, 4 Vroom, 350, 355.

*Sedgwick Stat. & Con. Law*, (ed. 1857) p. 201, 413.

*Town of Guilford v. Sup. Chenango Co.*, 3 Kern. 147.

## VII.

The complainant has no such special interest as entitles him to maintain this suit. He cannot be legally assessed beyond the amount he is benefitted, and this amount does not depend upon what the city pays, but only upon the special benefit he receives. He has therefore no other interest than any tax-payer. His relief, if improperly assessed, is at law. He can under the act of 1869 or 1872 *certiorari* the assessment at any time within three months of its confirmation. Under the old idea that you could assess the entire costs on the property owner, complainant might have special interest enough to maintain a suit, but now he is not affected by the cost of the work any more than an ordinary tax-payer, assessments now being based on benefits and not cost.

## VIII.

I submit that the doctrine that the corporation is simply the agent of the landowner to be assessed, quoted in *Bond*

v. *Newark*, 4 C. E. Green, 383, approving 4 Denio, 523, is not sound.

### IX.

That even if sound in ordinary cases, such as that in Denio, it cannot be applied to this case. The municipality in this case, under the act of 1869, has to raise all the money to pay the contractor, and the whole township is liable by taxation to pay the bonds they issue. The property owner is only liable to be assessed for special benefits—the whole amount at first, and finally the surplus of cost over the amount collected by assessment, is paid by all the tax-payers, as such. It is not the case of an agent simply disbursing money for his principal. This is a case of original liability, and being such the doctrine of agency does not apply.

### X.

The interlocutory decree should be reversed or modified so as to permit the contractor and the city to do what is authorized by the act of 1875.

LEON ABBETT,  
*for Appellant.*

*A Supplement to an act entitled "An Act to re-organize the local government of Jersey City," passed March thirty first, one thousand eight hundred and seventy one.*

1. *Be it enacted by the Senate and General Assembly of the State of New Jersey; That in case any work has been done or materials have been furnished for the improvement of New Bergen Road, from Myrtle Avenue to the Morris Canal, in any township now included within the limits of Jersey City, and such work or materials were not duly advertised and contracted for in the manner prescribed by law, then the Justice of the Supreme Court, holding the Circuit Court for the County of Hudson, shall appoint a referee who, if it appears to his satisfaction, that such work and materials were furnished on such road by the order of any lawfully constituted Board in any such town or township, or by the engineer of such Board having charge of the work on any such road, shall order paid to the person or persons who may have done or furnished the same, such sum of money in payment thereof as shall be just and reasonable, and the money so ordered to be paid, shall upon confirmation of the report of said referee by said judge, be paid by said City of Jersey City, in like manner as if due advertisement and contract had been made in the premises: provided, that the award may be made at any time, but payment thereof shall not be made until after the completion of the litigation in a certain cause in the Court of Chancery of New Jersey, wherein Christian*

Schumm is complainant, and the Street Commissioners of Greenville, or their successors in power and others are defendants; and, if in said litigation, the contractor on said road is directed to pay back to the City any money heretofore received by him on the ground that he was not entitled thereto, then such amount so directed to be paid back, shall be deducted from said award.

2. *And be it enacted*, That the sum so ordered shall be included in the cost of the improvement above mentioned, and assessed and collected as the other parts of the costs and expenses of such improvement shall be assessed and collected.

3. *And be it enacted*, That this act shall take effect immediately.

APPROVED APRIL 9, 1875.

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# In Chancery of New Jersey.

Between

CHRISTIAN SCHUMM,

*Complainant,*

and

JACOB O. SEYMOUR, PETER ROWE, FRED-  
ERICK THAU, SAMUEL BOSTWICK, "THE  
STREET COMMISSIONERS OF GREENVILLE,"  
and JAMES H. ELMENDORF, CONTRACTOR,

*Defendants.*

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To the Honorable Abraham O. Zabriskie, Chancellor of the State of New Jersey, humbly complaining, showeth unto your Honor your Orator, Christian Schumm, of Greenville, Hudson County, New Jersey, as well for himself as for all others similarly interested who may come in. 20

That by an Act of the Legislature of the State of New Jersey, entitled: A further supplement to an Act entitled "An Act to create from the town of Bergen, in the County of Hudson, a new Township, to be called the Township of Greenville," approved March 18th, 1863; approved March 27th, 1868; the said Jacob O. Seymour, Peter Rowe and John H. Midmer, John Taylor and Robert Drake, of the said Township of Greenville, were appointed Street Commis- 30

sioners of Greenville aforesaid, and that by an Act of the Legislature of the State of New Jersey entitled "An Act relating to the Street Commissioners of Greenville, Hudson County, New Jersey," approved March 2, 1870, said Street Commissioners were authorized to improve the Streets and Avenues laid down on the re-filed map of said Township.

And that said Commissioners should have power to issue  
 10 Improvement Certificates to contractors in payment for work and materials done and furnished on any Street or Avenue, and to issue them at such times during the progress of the work, and after it has been finished, for such amounts, payable at such periods and executed in such manner as they deem best; said Improvement Certificates should be paid out of the proceeds of the sale of the bonds mentioned in Section Four of this Act, to wit.:

"That it shall be lawful for the Street Commissioners to borrow such sums of money as they may deem necessary in anticipation of the collection of assessments of Street  
 20 improvements, the payment of said sums thus borrowed to be provided for by the issue of either registered or coupon bonds, as said Commissioners may from time to time direct, and in such amounts as may be required to meet the contract and obligations of said Commissioners, falling due or to fall due thereafter for any Street improvements. That said bonds shall bear interest at the rate of seven per centum per annum, payable half-yearly, and the principal of said bonds shall be payable at such times as said Commissioners may designate on the face thereof, and said bonds  
 30 may be sold at public or private sale at such times as the Commissioners may direct, at a rate not less than ninety-five per centum of their par value. The Township Committee of the Township of Greenville shall have power and authority, and are hereby required to provide by taxation for the payment of said bonds, and the interest thereon, as the same shall become due. The assessments for Street improvements shall be collected by the said Commissioners and paid over to the Township Committee."

That said improvements should be made by contract with  
 40 the lowest bidder, after due advertisement for proposals,

as by reference to the Act will more fully appear, and that the said Robert Drake, during the summer of 1870, but at what time your orator is unable to state, resigned his office as said Commissioner, and that the remaining members of said commission thereafter proceeded to and did appoint said Frederick Thau, of said Township of Greenville, a Commissioner to fill such vacancy.

That thereafter the said Street Commissioners of the Township of Greenville, caused to be published "Notice to Contractors," that proposals would be received until 12 o'clock, M., Wednesday, September 6th, 1871, by the Street Commissioners of the Township of Greenville, for work to be done and materials to be furnished for the improvements of the new Bergen Road, from the Township line on the North to the Morris Canal, in accordance with the specifications therein contained, and that all work and materials must conform to the said specifications. That said specifications require among other things that the flagging should be of the best quality of North River Blue Stone; that no stone should be less than two inches thick, or contain less than eight superficial feet, and be laid on a bed of clean, coarse sand, six inches in depth. That the curbing should be of the best quality of North River Blue Stone, not less than four feet long, twenty inches wide and four inches thick, properly jointed and dressed.

That after the road bed had been brought to the proper grade or surface to receive the McAdam the contractor would be required to cover the same with broken stone to the depth of six inches, placing the same with regularity, so as to preserve an even surface, and when so placed to be thoroughly rolled with an iron roller, weighing not less than five tons. That he should then cover the same with earth two inches deep, which must likewise be rolled; the whole must then be covered with clean, coarse gravel, six inches deep, and thoroughly sprinkled and rolled. That the bridge stone should be of the best quality of North River Blue Stone, not less than four feet long, two feet wide, and six inches thick, to be laid in two courses, on a bed of clean, coarse sand, one foot in depth, and to be evenly jointed and faced, and that payments would be made as follows:

Improvement Certificates, bearing interest from date of issue, will be given upon the estimate of the engineer for four-fifths in value of the work done, in sums not less than \$500.00, as the work progresses, and the balance due, when the work is completed and accepted, will be paid in like manner.

10 That thereafter, to wit.: on said sixth day of September, 1871, said Street Commissioners of the Township of Greenville, executed a contract with said James H. Elmdorf, as your orator is informed and believes is the name of the contractor, for the performance by him of said work, and the furnishing by him of said materials, in accordance with said notice and specifications, and that the said contractor thereupon entered upon the execution of said work. That your orator is an inhabitant of said Township, a tax payer therein, and a large property owner on the line of said New Bergen Road, the line of said improvement which property is benefitted by and liable to be taxed and assessed to pay for said improvement.

20 That by an Act of the Legislature of the State of New Jersey, entitled "An Act for the laying out and improvement of the Streets, Roads and Avenues in the Township of Greenville, Hudson County, New Jersey," approved March 13, A. D. 1872, it was provided among other things that at the election to be held in said Township of Greenville, on the second Tuesday of April, 1872, it should be lawful for the inhabitants thereof to elect five Street Commissioners, who should enter upon the duties of their office upon the first day of May next, as successors of the then present Street Commissioners, in said Township of Greenville, which said several Acts therein mentioned, and the Acts in said several Acts mentioned.—your orator begs leave to refer when necessary, and embraces as part and parcel of this, his bill of complaint, as also chapter 395 of the laws of 1866, and chapters 105 and 507 of the laws of 1869.

40 That after said election said Jacob O. Seymour, Peter Rowe, Frederick Thau and Samuel Bostwick, and the aforesaid John H. Midmer, succeeded the preceding Street Commissioners, being the same persons, except said Samuel



evenly jointed and faced, but that they were of an inferior quality of blue stone bridging known as rough flagging, and were, many of them, less than the aforesaid dimensions required by contract, and were laid with no sand bed and were laid without being evenly faced. And that the said work has not been done in a good substantial and workmanlike manner as required by said contract. That the said Commissioners have made payments for more  
 10 work than has been done on said road, that is to say, they have paid the four-fifth payment of contract price for 25,447 cubic yards of earth excavation, and your orator alleges and charges that the above greatly exceeds the quantity of earth excavated on said road, and they have paid the four-fifths payment of contract price for 5,009 cubic yards of earth filling. And your orator alleges and charges that 5,009 cubic yards greatly exceeds the quantity of earth filling on said road, and they have paid  
 20 the four-fifths payment of contract price for 1,094 cubic yards of sand filling; and your orator alleges and charges that 1,094 cubic yards greatly exceeds the quantity of sand filling upon said road.

That said materials are furnished and said work done as aforesaid, under and with the cognizance and connivance of said Street Commissioners of Greenville, who pay for the same as the work progresses; the full contract price for work as called for by said specifications to be paid for as aforesaid to the damage of your orator and others similarly interested who are to be assessed to pay therefor.

30 And your orator hath accordingly both by himself and his agents, frequently and in a friendly manner, applied to and requested the said contractor, James H. Elmendorf, and said William B. Reynolds to have said work performed in accordance with said contract, and the said Jacob O. Seymour, Peter Rowe, Frederick Thau, Samuel Bostwick and Michael De Mott Vreeland, to have the said work so performed, or in default thereof to withhold the contract money and payments from said contractor, and do the things which would be equitable and just between the said contractor and the property owners to be assessed to pay  
 40 for said improvement; and your orator well hoped that

such, his just and reasonable requests, would have been complied with, as in justice and equity they ought to have done.

That the said Commissioners have paid the said contractor for work said to have been done which was not embraced in said contract, nor was ever contracted for by said Commissioners by advertising for or by receiving proposals therefor, or in any other competitive way; that is to say, they have paid a four-fifths payment, intending to pay 10 another fifth for 173 cubic yards of rock excavation, and they have made a like four-fifth payment for 604 lineal feet of gutter stone, and they have made a like four-fifths payment for 4,134 cubic yards of dry masonry for drains; and they have made like four-fifths payment for 13,167 square yards extra broken stone, 6 inches deep; and they have made a like four-fifths payment for 32 stone and cement basins; and they have made a like four-fifths payment for 851 lineal feet of wooden box drains, and your orator alleges and charges that no rock excavation and that no gutter 20 stones, and that no dry masonry for drains, and that no stone and cement basins, and that no extra broken stone, and that no wooden box drains were mentioned in the aforesaid specifications, or embraced within the aforesaid original contract, and that no advertisement for proposals to do said work not embraced in the original contract was ever had, and that no legal and no competitive contract for doing said work was ever made; and your orator further alleges and charges that 4,134 greatly exceeds the 30 number of cubic yards of dry masonry for drains made on said road, and that the dry masonry for drains that was done was of such small and irregular dimensions, and so imperfectly built that they are, and ever have been, worthless; and that no extra broken stone six inches deep has been put on said road.

And your orator further alleges and charges that the price paid for the work last aforesaid is not only exorbitant but extortionate, that the usual price for such rock excavation there, is from \$1.50 to \$2.00 yer cubic yard, and that the said Commissioners have paid at the rate of \$5.00 per 40 cubic yard; that the reasonable value of the gutter stone

laid is 25 cents per lineal foot, and that the said Commissioners have paid 35 cents; that \$2.00 per cubic yard would be a reasonable compensation for the dry masonry for drains, which said drains are and never have been of any value whatever to the property or road, and were never called for or desired by the property owners, and who did not know that they were going to be put there until the work was being done, and that the Commissioners have paid therefor at the rate of \$4.50 per cubic yard. That the reasonable cost of said stone cement basins is ten dollars each, and that said Commissioners have paid therefor \$50.00 each; and that a fair reasonable price for said wooden box drains is 25 cents per foot, and that said Commissioners have paid therefor 70 cents per foot, that said Commissioners have made said payments in the same manner as for said contract work, and intend to assess the property of your orator and that of all others similarly interested to pay therefor, and that the contract with said Elmendorf far exceeded that of other responsible bidders; that other well known contractors of our County, namely, John English, of Bayonne, Hudson County, New Jersey, and McConnell & Christie, of Jersey City, County aforesaid, C. De Clark, Thomas Gafney, C. B. Harris and James Sherry, and divers others, responsible men, with responsible freeholders surety, proposed to do said work for a much less price, namely, for

That said Commissioners made said contract with said Elmendorf surreptitiously, at the City of New York or at some other place not in the said Township of Greenville, for fear the Court would interfere and prevent its execution, with an understanding and agreement with the contractor to share with him the profits thereof, and that said work not embraced in said contract was done with a like agreement to share in the profits thereof; that the said contract was given to the said Elmendorf not only at said high rates but without legal or ample security, and said contractor was himself a non-resident and irresponsible person, and your orator charges that said Commissioners colluded with said contractor to pay him said large amounts

of money, and to receive the said work done in the manner aforesaid, and to divide and share with him the profits arising therefrom.

That on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 1871, said James H. Elmendorf assigned said contract to William B. Reynolds, of the town of Rye, County of Westchester, and State of New York.

But now so it is may it please your Honor, the said Jacob O. Seymour, Peter Rowe, Frederick Thau, Samuel Bostwick and Michael De Mott Vreeland, James H. Elmendorf and William B. Reynolds, combining and confederating together, and with divers other persons at present unknown to your orator, but whose names when discovered your orator prays he may be at liberty to insert in this his bill with apt and proper words to charge them as parties defendants hereto, and contriving how to injure and oppress your orator in the premises; the said Jacob O. Seymour, Peter Rowe, Frederick Thau and Samuel Bostwick, Michael De Mott Vreeland, and William B. Reynolds and James H. Elmendorf absolutely refuse to comply with your orator's aforesaid reasonable requests.

All which actings and doings of the said defendant are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator, and all others similarly interested in the premises; in tender consideration whereof and for as much as your orator is without adequate remedy in the premises by the strict rule of the common law and can only have relief in a court of equity where matters of this nature are properly cognizable and relieveable.

To the end therefore that the said Jacob O Seymour, Peter Rowe, Frederick Thau, Samuel Bostwick, Michael De Mott Vreeland, James H. Elmendorf and William B. Reynolds may, upon their several and respective corporal oaths and affirmations, full, true, direct and perfect answer make to all and singular the charges and matters aforesaid as fully and particularly as if the same were here again repeated, and they thereunto particularly interrogated, and that the injunction heretofore granted on the original bill be continued against the parties thereto and therein said

injunction named, and further be extended to said Michael De Mott Vreeland and William B. Reynolds, parties added in this amended bill; the said James H. Elmendorf and William B. Reynolds be restrained from further prosecuting said work in any manner other than that specified in said contract, and if it appear that said work cannot now be so completed, then that a reference be had to ascertain a reasonable value of the work and material, done and furnished as aforesaid, and that the said contractor be paid no more than said work be reasonably worth, and to pay the said Township the amount received, if any, exceeding the reasonable value of said work and materials; and further, that the said Street Commissioners, their successors and agents, be restrained from in any manner paying said contractor any further money or other thing of value on account of said work, including the retained per centage, and from issuing any bonds for the purpose of borrowing money in anticipation of the collection of any assessments for said improvement until further order or decree, and from levying and from collecting any assessments for said street improvement, and that your orator, and all others similarly situated who may come in, may have such further and other relief as the nature and consideration of the case may require, and as to your Honor shall seem meet and proper, together with the costs and charges of your orator in this behalf sustained.

May it please your Honor the premises considered to grant unto your orator an order amending the original bill filed herein, as the same is hereby amended without prejudice to the injunction already granted on said original bill containing said injunction against the parties to said original bill, and the persons in said injunction named, and extending said injunction to the parties added hereby; said Michael De Mott Vreeland and William B. Reynolds enjoining and restraining them, their successors and agents, each and every of them, from paying to said James H. Elmendorf, said William B. Reynolds, or to any one, the one-fifth, being the retained per centage of said contract price, or any further sum whatever on said contract by improvement certificates, bonds, money, or in any other manner whatever,

and from issuing any improvement certificates for said work and materials, and from issuing and from negotiating any bonds to borrow money in anticipation of the collection of any assessments for said improvement, and from paying any such bond or bonds, if any there be issued, except by the order and decree of this honorable court, and be further restrained from in any manner levying and from collecting any assessments upon the property of your orator, as well as upon that of others similarly interested, by reason of any work done, materials furnished, improvement certificates or bonds issued, or by reason of any thing done or to be done by reason of said contract, except by the order and decree of this honorable court, and that the said James H. Elmendorf and William B. Reynolds be restrained from further prosecuting said work except in conformity with said contract, and that the said parties to the original bill answer this amended bill, and also grant to your orator the writ of subpoena of the State of New Jersey, to be directed to the said Michael De Mott Vreeland and William B. Reynolds, commanding them and each of them on a certain day and under a certain penalty therein to be expressed, personally to be and appear before your Honor in this Honorable Court, then and there to answer the premises, and to stand to and abide and perform such decree therein as to your Honor shall seem meet.

And your orator will ever pray, &c.

S. C. MOUNT,  
*Solicitor for Complainant.* 30

THOMAS N. McCARTER,  
*of Counsel.*

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

Christian Schumm, of the Township of Greenville, County of Hudson, New Jersey, being duly sworn according to law, on his oath saith, that he is complainant herein, that he has read the foregoing bill of complaint and knows the contents thereof, that the same is true of his own knowledge, 10 except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

That he has personally inspected the materials furnished and the work performed aforesaid, that said flagging was generally laid on the original bed of earth, with no sand filling, and was not two inches thick in many cases; that said curb were, as to a large number of them, less than four inches thick, and they were from sixteen to eighteen inches wide only, and many of them were but about three feet long, nearer three feet than four feet long, that in 20 McAdamizing the road bed boulders and large pieces of stone were irregularly thrown in imperfectly covering the road bed, and then were covered with earth, without being rolled at all.

Sworn and subscribed this 21st day of December, A. D. 1872, at Greenville, in said County, before me.

ISAAC S. TAYLOR,

*Master in Chancery.*

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

Thomas Anderson, of the Township of Greenville, in the County of Hudson and State of New Jersey, being duly sworn according to law, on his oath saith, that he has compared the said notice and specifications with the recitals therefrom in the foregoing bill, and that said recitals are true copies of the original; that deponent has personally inspected said materials and observed the manner of doing of said work in front of his own premises and also in front of the premises of others, that many of the flags put down were less than two inches thick, and that the whole flagging was mostly put down on the original bed of earth and sometimes a sprinkling of sand, but that he was nowhere able to observe a bed of clean, coarse sand, six inches deep; that for over two thousand feet of curb stone which he examined they were not twenty inches wide, but were what is called sixteen inch curb, and that a large proportion of them were less than four inches thick, and a great number of them were less than four feet long, being nearer three feet long than four; that in McAdamizing the road bed the first layer of stone were not six inches deep in very many places, that said stone were large and were thrown in with great irregularity so that in many places he could run both hands down between the stone to the road bed, that he called the contractor's attention to the specifications and to the manner of his doing the work, and expostulated with him for so doing but without avail; that when said layers of stone were so placed they were not rolled as required by said specifications, but the earth was thrown over them without their first being rolled at all, and were then covered with a loamey cement like material, not clean, coarse gravel, and that he observed a large number of the bridge stone put down, and many of them were not of the dimensions mentioned in said specifications.

WILLIAM P. DOUGLAS,  
*Master in Chancery*  
 Of New Jersey.

A true copy,

H. S. LITTLE, Clerk.

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# In Chancery of New Jersey.

Between

CHRISTIAN SCHUMM,  
*Complainant,*

and

JACOB O. SEYMOUR, PETER ROWE, FREDERICK THAU, SAMUEL BOSTWICK MICHAEL DEMOTT VREELAND, "The Street Commissioners of Greenville," JAMES H. ELEMNDORF, Contractor, and WILLIAM B. REYNOLDS,  
*Defendants.*

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The joint and several answer of Jacob O. Seymour, Peter Rowe, Frederick Thau, Samuel Bostwick, Michael DeMott Vreeland, "The Street Commissioners of Greenville," and James H. Elmendorf, contractor, and William B. Reynolds, defendants, to the amended bill of complaint of Christian Schumm, complainant, who complains as well for himself as for all others similarly interested who may come in. These defendants now, and at all times hereafter, saving and reserving to themselves all and all manner of benefit and advantage of exception or otherwise, to the many errors, uncertainties and imperfections in the said amended bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer unto, answering, say: 30

I. They admit that by an act of the Legislature of the State of New Jersey, entitled "A further Supplement to an Act entitled 'An Act to create from the town of Bergen, in the County of Hudson, a new township, to be called the Township of Greenville,'" approved March 18, 1863; approved March 27th, 1863. Jacob O. Seymour, Peter Rowe, John H. Midmer, John Taylor and Robert Drake, of the said Township of Greenville, were appointed Street Commissioners of Greenville aforesaid, and that by 10 an act of the Legislature of the State of New Jersey, entitled "An Act relating to the Street Commissioners of Greenville, Hudson County, New Jersey," approved March 2, 1870, said Street Commissioners were authorized to improve the streets and avenues laid down on the refiled map of said township, to issue improvement certificates, borrow money, issue and sell bonds substantially as stated in said amended bill of complaint; but for greater accuracy and certainty, they pray leave to refer to said act.

20 II. They admit that the Township Committee of the Township of Greenville in and by said act of March 2, 1870, have power and authority, and are thereby required to provide by taxation for the payment of said bonds and the interest thereon as the same shall become due, and that the assessments for street improvements are to be collected by the said Commissioners and paid over to the said Township Committee.

30 III. They deny that there is any provision contained in said act of March 2, 1870, in relation to contracts being required to be made with the lowest bidder, as stated in said amended bill of complaint; that the provision to which reference is made, and which is only partially set forth in the amended bill of complaint, is contained in the eighteenth section of an act, entitled "A further Supplement to an act, approved March eighteenth, eighteen hundred and sixty-three, entitled 'An Act to create from the Town of Bergen, in the County of Hudson, a new township, to be called the Township of Greenville,'" which 40 said supplement was approved March 9, 1869.

IV. They aver that the power and authority of the Street Commissioners and of the Township Committee in relation to the improvement of streets in said township, and the other matters referred to in the bill of complaint, are contained in the following acts of the Legislature of the State of New Jersey, to which they crave leave to refer, to-wit:

1. "A supplement to an act to create from the Town of Bergen, in the County of Hudson, a new township, to be called the Township of Greenville," approved March 18, 1863; approved April 2, 1866. 10

2. A further supplement to an act, entitled "An Act to create from the Town of Bergen, in the County of Hudson, a new township, to be called the Township of Greenville," approved March 18, 1863; approved March 27, 1868.

3. A further supplement to an act, approved March 18, 1863, entitled "An Act to create from the Town of Bergen, in the County of Hudson, a new township, to be called the Township of Greenville," approved March 9, 1869. 20

4. A further supplement to an act, entitled "An Act to create the Township of Greenville," approved March 18, 1863; approved April 2, 1869.

5. An act relating to the Street Commissioners of Greenville, Hudson County, New Jersey, approved March 2, 1870.

6. An act to provide for the laying out and the improvement of the streets, roads and avenues, in the Township of Greenville, Hudson County, New Jersey, approved March 13, 1872. 30

V. They admit and aver that Robert Drake resigned his said office of Street Commissioner in the summer of 1870, and that said vacancy was duly filled by the unanimous vote of the remaining Commissioners, under the 23d section of said supplement of March 9, 1869, by the appointment of Frederick Thau of said Township, to fill said vacancy. 40

10 **VI.** They admit and aver that thereafter a notice to contractors was duly published, stating that proposals would be received until 12 o'clock M., Wednesday, September 6, 1871, by the said Street Commissioners, for work to be done and materials to be furnished for the improvement of the New Bergen Road, from the township line on the North, to the Morris Canal, in accordance with specifications therein given, but they deny that said notice and specifications are fully or accurately set forth in said amended bill of complaint, and they annex to their amended answer, and as a part thereof, a copy of said specifications marked Exhibit A.

20 **VII.** They admit and aver that on the 28th of September, 1871 (inaccurately stated in bill as September 6, 1871) the said Street Commissioners of Greenville made a contract with James H. Elmendorf for the performance of the work and furnishing of the materials, in accordance with said specifications set forth in Exhibit A. They admit and aver that said contractor entered upon the execution of his work about October, 1871, and fully completed and finished the same.

30 **VIII.** They admit that said complainant is an inhabitant of said township of Greenville, and a tax-payer therein, and owns                    feet of property fronting on the line of said New Bergen Road, which said property is benefited by said improvement and liable to be assessed to pay for said improvement in proportion to the benefit received thereby.

40 **IX.** They admit that by said act of March 13th, 1872, it was provided among other things, that at the election to be held in said Township of Greenville, on the second Tuesday of April, 1872, it should be lawful for the inhabitants thereof to elect five Street Commissioners, who should enter upon the duties of their office on the first day of May, 1872, as successors to the then Street Commissioners of said Township. That at said election, Jacob O. Seymour, Peter Rowe, Frederick Thau, Samuel Bostwick, and

John H. Midmer were elected as successors to the then Street Commissioners.

X. They admit that John H. Midmer died on the 17th day of September, 1872, at Greenville, aforesaid, and that Michael DeMott Vreeland was appointed to fill the vacancy caused by his death, and still fills the same.

XI. They deny that the said contractor, in the execution of said work and in the furnishing of said materials has not conformed to the requirements of said specifications, and on the contrary they aver "that said contractor did conform to said specifications as it is therein stated; that the work and materials are at all times to be subject to the direction of the Committee on Streets or the Engineer in charge;" and said clause as understood by these defendants, and as generally understood by contractors, authorizes any slight modification that the Engineer may deem necessary or advisable to be made in the progress of the work to be made by said Engineer; provided, such change does not change the general character of the work to be done and the materials to be furnished. 10 20

XII. They deny that a large proportion of said flagging is less than two inches thick; they deny that it was generally laid on the earth-bed without any sand filling, or but very little, and not of clean, coarse sand, six inches deep; they deny that the curbing furnished and set by said contractor is not twenty inches wide, but is only sixteen inches wide, and is not four inches thick, and that large proportions thereof is but three inches thick, and deny that it is not four feet long, and deny that great numbers of curb are but three inches thick and only three feet long, and three feet two and three inches in length. They deny that in Macadamizing said road, said contractor has not placed the broken stone with regularity six inches deep, but has covered the road-bed with great boulders and large pieces of rock, that leaves large portions of the road-bed with much less than six inches of stone covering; they deny that he has not placed the same so as to preserve an even sur- 30 40

face; they deny that when placed, he has not thoroughly rolled the same with an iron roller weighing not less than five tons, as required by said specifications, and also deny that he has not then rolled the same at all.

10 **XIII.** And these defendants deny that the stone and earth upon the road-bed was not and never has been covered with clean coarse gravel, according to sample shown, nor with gravel at all, but with a clayey loam or with other cement like earthy matter, not gravel, and of no value whatever; and they aver the contrary thereof, and state that the gravel shown and accepted as a specimen was taken from the same gravel bank from whence all the gravel used on said road has been taken.

20 And these defendants deny that the bridge-stone were not of the best quality of North River blue stone, and many of them were less than four feet long, two inches wide and six inches thick, and were not laid on a bed of clean, coarse sand one foot in depth, and were not evenly jointed and faced; and they aver the contrary thereof. And they deny that said bridge-stone were of an inferior quality known as rough flagging, and less than the dimensions required by the contract; and they deny that they were laid with no sand-bed, and were laid without being evenly jointed and faced, and that the work has not been done in a good and substantial like manner as required by said contract; and they aver the contrary thereof. They deny that  
30 said Commissioners have made payment for more work than has been done on said road; on the contrary they aver that over \$20,000 is still due the contractor for said work; and they further aver, that the four-fifths payment referred to in said amended bill was made upon quantities as estimated by the Engineer—the exact amounts not being ascertainable until after the work was done—and that the exact amounts of work done only being shown in the final estimate of said Engineer, which has not yet been delivered to said Street Commissioners, but which will show, as these defendants are informed and believe, that over \$20,000 is  
40 still due the contractor. The quantities of work done, as

stated in the amended bill of complaint, were the estimated amounts upon which the four-fifths payments were made, and in some cases exceed and in some cases are less than the amount of work actually done as since ascertained by exact measurement.

XIV. These defendants further answering, say that, the flagging used was one of the very best lots of flag that could be obtained in the market, being North River blue stone of the best quality; that only a very small portion thereof was less than two inches thick, and this portion was a tough, solid good stone, as strong and better than many stones three inches thick, and is as good as and costs the contractor just so much as flagging two, three or four inches thick; that it is practically impossible to ever get flag from the quarry exactly two inches thick, and if the stone is as good and tough as flag two inches thick, it is always accepted on all work of this character as a compliance with the specification for two inch flag. That all the flags on the street now there were inspected by the Engineer and Inspector in charge of the work, and were approved by them, the contractor removing all stones rejected by said Engineer or Inspector. That in all cases, sand filling as specified, was brought from other places and put on the work, except where the excavation on the line of the road developed a natural sand or gravel bed, and in these cases when the Engineer and Inspector so directed, and only when they approved of the same, the sand or gravel was spaded up and then levelled down, the Engineer directing that it should be so done, as this said sand or gravel was preferable in every respect to that brought from a distance, as it made a firmer and better bed for the flags to rest on, and one that was less likely to be affected by the washings of heavy rains or surface water running down said streets, and these flags where this natural bed has been spaded up, rolled and used, will remain in a better condition for a longer time than flags where it was necessary to fill in with sand brought from another place. The first lot of curb furnished and used by the Contractor, about four thousand feet, was twenty inches wide, this was at the commence-

ment of the work. The Engineer originally intended to have a gutter eight inches high, but after the first lot of curb was laid he concluded that it would look better and make just as good a job of work if the gutter was only six inches deep, and that he could therefore use a sixteen or eighteen inch curb instead of a twenty inch curb, and thereby save several hundred dollars in the cost of the work. And said Engineer thereupon informed said Contractor that he might use what is commonly known as sixteen inch curb, (running from sixteen to eighteen inches wide), if he would consent to a reduction of eight cents per foot for all such curb furnished less than twenty inches in width. And the effect of such reduction was to save on the cost of work eight hundred and eighty-one dollars and ninety-two cents, and yet leave the work in just as good condition as if twenty inch curb had been used on the whole line of the work, and by this change the Contractor was in no way benefited whatever, and the only parties in any way benefited were the property owners who thus saved a large sum on the cost of the work. The curb used on this street was of a superior quality of North River blue stone, and no better stone is used on any of the streets in this State. That in Macadamizing the said road the bed of stones was placed by hand as regularly as possible across the road bed, and made as perfect and even a surface as could be made by broken stone. There were no large boulders or pieces of rock used, and all stones too large were broken up on the street, and the surface in all cases made even and level, and the specifications were fully and faithfully carried out in these particulars, the Engineer and Inspector approving of the same. After the stones were packed, two inches of clean dirt or sand or gravel was laid on the top of these stones, so that the roller with the horses to draw it could be used on the street. The dirt was necessary for the horses to walk on, and also necessary to keep the stones from sliding away under the pressure of the five ton roller used to pack down these stones. The effect of the rolling was to press the dirt into the interstices between the broken stone, and pack the whole into a compact mass. After this rolling the Contractor put six

inches of Twaalfskill gravel on the top thereof, and this was then rolled until it became a solid and compact mass, almost like stone. The road was then dressed up in any place necessary, and was ready for acceptance.

**XV.** They deny that any work has been done or accepted by the Street Commissioners of Greenville, so far as they have any knowledge thereof, not done in accordance with said specifications; that said Street Commissioners have not yet accepted said work, nor do they intend to pay the full contract price where it is proper or right to make any deduction therefrom, and upon proof to said Commissioners that any deduction should be made, they will make the same. 10

**XVI.** They deny that the complainant, either by himself or his agents, ever complained to any of the defendants that said work was not being done in accordance with the contract and specifications, or ever requested them to have the work so done and performed, and in default thereof to withhold the contract moneys and payments from said contractor, and to do what was equitable and just between the said contractor and the property owners to be assessed to pay for said improvement. On the contrary, they aver that the complainant saw the materials and the work daily during the progress of the improvement, and made no complaint whatever, but quietly laid by and permitted the work to progress towards completion without notice or complaint to said commissioners or contractor, until the filing of the bill of complaint in this case, when the expenditure of four hundred dollars by the contractor, for rolling one hundred and eighty feet of gravel, and some other trifling matter, was all that was necessary to complete the work. These defendants suggest and insist that the complainant should be estopped from setting up that the work was not done in accordance with the contract, by reason of their having laid by without complaint to the commissioners or contractor during the progress thereof. 30

**XVII.** These defendants further answering, deny that the commissioners have paid the said contractor for work not 40

embraced in said contract and not contracted for by said Commissioners. They deny that the payments for rock excavation and gutter stone dry masonry for drains and culverts, open box drains and other matters referred to in the bill of complaint, were not embraced in said contract, and allege that said matters were ordered by the engineer and done under his direction — the engineer acting as the agent of the commissioners — with their sanction and approval. That all of said work referred to in the amended bill of complaint was necessary to put the street in proper condition for use, in the judgment of said engineer, and that the commissioners believed, and still believe, that wherever it was found necessary in the progress of the work to do any matter or thing necessary or proper to put the street in the best condition for travel, or protect the work from injury or destruction, they had a right to order said extra work to be done, and to pay for the same. And these defendants insist that it is inequitable and unjust to refuse to pay the contractor a fair price for any such work beyond the contract, if any such there be, said work having been ordered to be done, and having been finished in good faith, both parties believing it was proper and right so to do.

**XVIII.** And these defendants further say, that the quantities stated in the bill as to work done were only estimated quantities, and that the final estimate of the Engineer alone will show by exact measurement the quantities of work done; these estimated quantities in some cases exceeding and in some being less than the exact amounts as shown by actual measurement. They deny that the dry masonry for drains was small and irregular in dimensions and imperfectly built and worthless, and that no extra broken stone has been put on said work, and they aver the contrary thereof.

**XIX.** And these defendants deny that the prices for rock excavation, gutter stone, dry masonry for drains and culverts, stone for cement basins, wooden box drains allowed to the contractor were exorbitant, and on the contrary,

they allege that they were reasonable, fair and just prices; and they deny that the prices of said work stated by the complainant are fair or just, and on the contrary they allege that they are not reasonable or fair, and would not pay for the cost of said work, let alone allowing a reasonable profit thereon. They deny that other contractors with responsible freehold security offered to do said work for a less sum than said James H. Elmendorf; but on the contrary, they aver that said James H. Elmendorf was the lowest responsible bidder, with sufficient surety, and they aver that said J. H. Elmendorf had no knowledge whatever that any one had offered to do said work for a less sum than offered by him, and they aver that he was informed that he was the lowest bidder, and as such he made the contract for and entered on the performance of said work. These defendants deny that the contract for said work was made in the city of New York, and they allege that it was made in the Township of Greenville, and they deny that there was ever any understanding or agreement, so far as they had any knowledge or belief, whereby the contractor was to share any of the profits or money to be paid to him with any of the Commissioners. They deny that the same was awarded without legal or ample security, and that the contractor was an irresponsible person, or that the Commissioners colluded with the contractor to receive a large amount of money and to receive the said work done, to divide and share with him the profits arising therefrom, and they allege that said statements are maliciously false and untrue. And these defendants further answering say that they admit that an assignment of said contract was made by said Elmendorf to said Reynolds, but they deny that the same was ever accepted or approved by the Street Commissioners of Greenville, and that the same ever had any legal validity on that account. They aver that the said Street Commissioners refused to recognize any person as contractor except said Elmendorf. They aver that said assignment was executed solely and only as collateral security to said Reynolds for moneys that he had agreed to advance to said Elmendorf, and they aver that it is therefore a matter in which no person has any interest whatever

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except said Elmendorf and said Reynolds, and that they have not treated the said assignment as of any force or validity whatever, since the failure of said Reynolds to procure the assent of the Street Commissioners thereto as provided in the contract for said work.

10 **XX.** They deny all combination and conspiracy as set forth in said bill of complaint, or of any other kind what-  
 20 ever, with any person in reference to the matters referred to in said bill; on the contrary, they aver that in all things in reference to said work both the Commissioners and the contractor having in all things acted in a fair, equitable and honest manner; that the work has been fully completed in the best manner, and the street as it stands to-day is one of the best in the County of Hudson, and is more extensively used than any other street in the southern part of said County. That the Commissioners still owe the contractor over twenty thousand dollars, and they intend to  
 30 do in the future what they have done in the past, only what is equitable and just as between the contractor and the property owners.

**XXI.** They insist that the said Commissioners have full power and authority under the said acts set forth in paragraph four of this answer, to do all acts that they have done or that they propose to do in reference to said New Bergen Road. That they have done in all things and acted  
 30 as set forth and required by said acts, and in conformity with the provisions thereof; and they further submit to this court that the necessity or expediency of any change in the work to be done under said contract is to rest solely in the judgment of the Engineer or Committee on Streets, and is not a matter proper for this court to inquire into the absence of the proof of any fraud whatever.

**XXII.** They submit that all and every the matters in the said complainant's amended bill mentioned and complained of are matters that can be tried and determined by law, upon a *certiorari* from the Supreme Court, directed to the  
 40 said Street Commissioners, and with respect to which the

said complainant is not entitled to any relief from a court of equity; and these defendants hope they shall have the same benefit of this defense as if they had demurred to the complainant's said bill. And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said amended bill charged without this; that there is any other matter, cause or thing in said complainant's said amended bill of complaint contained material or necessary for these defendants to make answer unto and not herein, and hereby well and sufficiently answered, traversed and avoided or denied, is true to the knowledge or belief of these defendants, and which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

LEON ABBETT,

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*Solicitor and of Counsel with Defendants.*

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

Jacob O. Seymour, Peter Rowe, Frederick Thau, Samuel Bostwick and Michael De Mott Vreeland, the Street Commissioners of Greenville, and James H. Elmendorf and W. B. Reynolds, defendants, in the foregoing answer named, being each duly and severally sworn according to law, do  
 10 each for himself, on his oath, depose and say that the facts, matters and things set forth in the foregoing answer, so far as they relate to said defendants' own acts and deeds, are true, and so far as they relate to the acts and deeds of any other person or persons, they each believe them to be true.

Sworn to and subscribed before me this \_\_\_\_\_ day of  
 January, A D. 1873, at

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JACOB O. SEYMOUR,  
 PETER ROWE,  
 FREDERICK THAU,  
 SAMUEL BOSTWICK,  
 JAMES H. ELMENDORF,  
 W. B. REYNOLDS.

Sworn to and subscribed before me at Greenville, this  
 30 21st day of January, A. D. 1873.

C. H. WINFIELD,

*Master in Chancery of New Jersey.*

As to W. B. REYNOLDS.

Sworn and subscribed before me, this 22d day of January, A. D. 1873.

JOB. H. LIPPENCOTT,

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*Master in Chancery of N. J.*

NEW JERSEY, }  
 HUDSON COUNTY, } ss.

Michael De Mott Vreeland, one of the above named defendants, being duly sworn, on his oath saith, that the injunction in the above entitled cause was granted before this deponent became a Street Commissioner of Greenville, and of his own knowledge knows nothing as to the truth or falsity of the matters and things set forth in said bill of complaint, or in the foregoing answer; but so far as the matters in the foregoing answer relate to this deponents' acts they are true, and so far as they relate to the acts and doing of others, he believes them to be true. 10

M. D. M. VREELAND

Sworn and Subscribed before me at Greenville, January 21st, 1873.

C. H. WINFIELD,

*Master in Chancery, N. J.* 20

NOTICE TO CONTRACTORS.

Proposals will be received until 12 o'clock M., Wednesday, September 6, 1871, by the Street Commissioners of the Township of Greenville, for work to be done, and materials to be furnished in accordance with the following

SPECIFICATIONS:

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For the improvement of the New Bergen Road from the township line on the north, to the Morris Canal, embracing the following work and material:

Earth excavation . . . . .	about 13,009 cubic yards.	
"    Filling . . . . .	"    6,000    "    "	
Flagging . . . . .	"    56,872 square feet.	
Bridge Stone . . . . .	"    4,300    "    "	
Curb . . . . .	"    15,000 lineal feet.	
McAdam . . . . .	"    27,000 square yards.	
Sand filling . . . . .	"    900 cubic    "	40

All work and materials must conform to the following specifications:

REGULATING AND GRADING.—The side-walks are to be brought to the established grade by excavating or filling the same, the full width. The carriage way to be graded to a regular surface, one foot below the line of the established grade, giving the same the proper crown. All filling to be of good clean earth, free from garbage or other perishable matter. The side-walks will have a rise of a half inch to the foot from the curb to the line of the street.

10 FLAGGING.—To be of the best quality of North River blue stone, and laid in a course four feet wide. No stone to be less than two inches thick or contain less than eight superficial feet; and every fourth stone to contain twelve superficial feet. To be laid on a bed of clean coarse sand, six inches in depth.

20 BRIDGE STONE.—To be of the best quality of North River blue stone, not less than four feet long, two feet wide, and six inches thick; to be laid in two courses, on a bed of clean coarse sand, one foot in depth, and to be evenly jointed and faced.

30 CURBING.—To be of the best quality of North River blue stone, not less than four feet long, twenty inches wide, and four inches thick, properly jointed and dressed, and set with the proper inclination. The circular corners will be the same in every respect as other curb, set with a true sweep, and will be classified and estimated the same as other curb.

40 McADAMISING.—After the road-bed has been brought to the proper grade or surface to receive the McAdam, the contractor will be required to cover the same with broken stone to the depth of six inches, placing the same with regularity, so as to preserve an even surface; when so placed to be thoroughly rolled with an iron roller weighing

not less than five tons. He will then cover the same with earth two inches deep, which must likewise be rolled; the whole must then be covered with clean coarse gravel, six inches deep, and thoroughly sprinkled and rolled in accordance with the directions of the engineer.

Persons estimating will accompany their proposals with specimens of the gravel they propose to furnish. All the above work will be done in a good, substantial and workmanlike manner, and the work and materials at all times to be subject to the directions of Committee on Streets, or the Engineer in charge; and if any work shall be done or materials furnished which may not be satisfactory, said work and materials shall be substituted to the satisfaction of said Committee or Engineer. 10

LEVELS, GRADES, &c., will be given by the Engineer in charge, and the quantity of work done will be estimated by him. 20

All persons estimating will accompany their offer with the written consent of two responsible freeholders (to be approved by the Commissioners) that they will become security in double the amount of the contract price for the faithful performance of the contract, if awarded to said contractor.

Bidders will state the price per cubic yard for any stone culverts to be laid dry, and the price per lineal foot for any twelve and eighteen inch drain-pipe that they may be required to furnish by the Engineer in charge. 30

All the above work to be completed within three months from the date of the execution of the contract.

PAYMENTS.—Improvement certificates, bearing interest from date of issue, will be given upon the estimate of the Engineer for four-fifths in value of the work done, in sums not less than \$500, as the work progresses; and the balance due when the work is completed and accepted, will be paid in like manner. 40

## ITEMS TO BE ESTIMATED ON.

- Earth excavation, per cubic yard.  
 Earth filling,       "       "       "  
 Sand       "       "       "       "  
 Flagging, per square foot.  
 Bridge Stone, per square foot  
 Curbing, per lineal foot.  
 10 Dry Masonry for Culverts, per cubic yard.  
 Twelve and eighteen inch Drain Pipe, per lineal foot.  
 McAdamising, per square yard.

Proposals to be sealed and endorsed "Proposals for the Improvement of the New Bergen Road," and directed to "J. O. Seymour, Chairman of the Board of Street Commissioners of the Township of Greenville, New Jersey."

- 20 No contractor will be permitted to sub-let any portion of the work without the consent of the Board of Commissioners.

The Commissioners reserve the right to reject any or all proposals, if they deem it to the interest of the Township to do so.

REPLICATION.

In Chancery of New Jersey,

MAY TERM, 1873.

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Before Hon. AMZI DODD, Vice-Chancellor.

*Between*

CHRISTIAN SCHÜMM, who sues as well for himself as for all others similarly interested who may come in,

*Complainant,*

*and*

JACOB O. SEYMOUR, PETER ROWE, FREDERICK THAU, SAMUEL BOSTWICK and MICHAEL DE MOTT VREELAND, Street Commissioners of Greenville, and JAMES H. ELMENDORF, contractor.

*Defendants.*

ON BILL

AND

PROOFS.

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Opinion.

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THE VICE-CHANCELLOR:

This suit is against the Street Commissioners of Greenville, together with the contractor whom the commissioners employed to do work and furnish materials for the improvement of a street in said township, called the New Bergen Road. The complainant is an owner of land on the line of the road, and became liable to a special assessment 40

for the expense of the improvement, has exhibited his bill, as well for himself as for all others similarly interested who may come in. He asks relief on the ground that the improvement has been improperly and illegally made.

At the filing of the bill in September, 1872, the work in question was alleged by the defendants to be substantially completed, and about four-fifths of the total sum claimed by the contractor for the whole had been paid. A temporary injunction was issued, restraining the commissioners from further payments and from levying any assessment for the moneys which the contractors had already received. The defendants have answered, and the cause has been argued upon the pleadings and proofs.

By an act of March 27th, 1868, supplemental to the Township Act of Greenville, five persons were appointed commissioners to complete a map of said township with reference chiefly to streets, and by a further supplement of March 9th, 1869, were constituted "Street Commissioners of Greenville." The powers conferred upon them are unusually large. They are authorized to sue and be sued by their corporate title, to issue township bonds or certificates of debt, and contracts made by, and judgments recovered against them, pursuant to their powers, are of like effect as if made by or recovered against the inhabitants of the township. They are exclusively authorized to lay out, open and regulate public avenues and streets, and may at their discretion improve any streets or avenues, by any method, including paving, curbing and guttering, and with any kind of material, and may make sidewalks of plank or other material, and build drains and sewers in any streets or any parts of them. The expenses thereby incurred are to be assessed by three persons appointed by the commissioners, said persons to determine and report to the commissioners what real estate ought to be assessed, and what proportion to each lot.

By the 18th section, of the act of 1869, all contracts for work or materials are to be given to the lowest bidder, complying with the requirements prescribed by the commissioners upon giving adequate security for the performance of the contract. It is further provided, that "no work or

materials shall be contracted for unless specifications therefor, and proposals for doing such specified work or furnishing such specified materials have been fully advertised by the commissioners, both by posting in five public places in the township, and by notice in a newspaper circulated therein."

The street in question in this suit, is about a mile and one-third in length, beginning on the north at the late southerly line of Jersey City, and running thence south in Greenville to the Morris Canal. Proposals for work and materials were advertised by the commissioners, and bids received in pursuance of them on the 6th of September, 1871. The street was to be graded, its sidewalks curbed and flagged, and the road bed covered with McAdam. The contract was awarded to James H. Elmendorf, a defendant in the suit. Payments were agreed to be made upon the estimates of the Engineer as the work went on and the balance certified by the Engineer as the work was to be paid when the work should be completed and accepted. The final certificate of the Engineer was made on the 29th of October, 1872, when the whole improvement is said by the defendants to have been fully completed. By this certificate the total cost of the improvement is shown to be \$124,708.68, of which \$104,434 88 is certified to have been previously paid, leaving a balance of \$20,273.80, then due.

Included in this total cost are certain materials and work not specified in the proposals or bids, or in the contract pursuant to them, but subsequently ordered by the commissioners during the progress of the contract work. Both portions of the total work and materials, that is to say, the portions included in the proposals and bids, and the portion not included are matters of dispute in the cause. In respect to the first, the complainant insists that they are not in substantial fulfillment of the contract, and that large deductions should therefore be made from the certified cost. In respect to the second, he insists that the commissioners had no lawful authority to procure them at all; that their subsequent contract for such work and materials was illegal and void, because entered into without previous proposals and bids as required by the act, and that for this

reason the amount of the certified cost of them should be wholly disallowed.

10 First, as to that portion included in the proposals or bids. The principals on which it must be disposed of, are well settled in this State and in others, and were clearly stated by CHANCELLOR ZABRISKIE, in the case of *Bond vs. The City of Newark*, (4 C. E. G., 376). Municipal authorities in the making of street improvements authorized by the law to be made at the expense of the owners of lands to be benefited thereby, are to a certain extent the agents of  
 20 such owners. Contracts lawfully made at the discretion of the authorities are binding upon the land owners, though injudiciously made, but the owners are entitled to have such contracts performed substantially in all things according to their terms, and the authorities have no power to dispense with such performance, to the gain of the contractor and the loss of the property owners. If official authorities are about to accept and pay under a contract, for what in substantial and important respects is not according to the  
 30 contract, so that the difference enures to the benefit of the contractor at the expense of the owners, the authorities in so doing are sacrificing the interests of those for whom they are acting, and are guilty of a breach of trust which amounts to a fraud. The proper and only remedy in such case is in equity. If the land owners stand by and see the officials pay the contractor they can have no relief against the assessment. Courts of equity will enjoin such wrongful payments, and in so doing do not interfere with the exercise by municipal corporations of the legislative or discretionary powers conferred by their charters. In the exercise of such powers they are beyond the control of the Courts, but after such powers have been exercised and the authorities are about fulfilling a contract by paying for its performance with the money of the lot owners they are not acting in a legislative capacity but in the capacity of agents amenable to the Courts.

In the case of *Bond vs. The City of Newark*, the preliminary injunction was granted in 1863 by CHANCELLOR GREEN, and was brought to a final hearing and decision before the  
 40 late CHANCELLOR in 1869. The street which had been

worked under the contract in that case had then been for years in public use, and it was deemed inequitable to compel the contractor to put his work in such condition as the contract required. It was referred to a Master to ascertain and report what additional cost the contractor would have been at if he had substantially and fully complied with every express requisition of his contract, and in so doing the Master was to have no regard to the question whether the work if so performed would have been materially better than the work as actually done.

In the present case the street as worked has been in use ever since the alleged completion of it, and the proper inquiry therefor is whether any substantial departures from the contract took place by virtue of which a deduction ought to be made from the amount of the certified cost. 10

Several such departures are alleged; the first of which is in the construction of the road bed. By the proposals and contract the road was to be McAdamized from curb to curb as follows: After the road bed has been brought to the proper grade or surface to receive the McAdam, the contractor will be required to cover the same with broken stone to the depth of six inches; placing the same with regularity so as to preserve an even surface; when so placed to be thoroughly rolled with a roller weighing not less than five tons. He will then cover the same with earth two inches deep, which must likewise be rolled; the whole must then be covered with clean coarse gravel six inches deep and thoroughly sprinkled and rolled in accordance with the directions of the Engineer. 20

A great deal of the evidence relates to this part of the contract; as to whether the broken stone was in fact six inches deep and properly laid; as to whether it was sufficiently rolled, and as to the proper nature and depth of the earth and gravel with which the stone foundation was required to be covered. Numerous witnesses were examined on both sides, and their testimony as to some of the important particulars is variant and contradictory, but upon one point no conflict exists. It is admitted that when the stone was laid down it was not rolled before being covered with earth. The reason assigned is that it was impassable 30 40

for horses, the rough character and uneven surface of the stone preventing them from passing over it. The testimony shows that the broken stone, so called, consisted of spralls or slips from the quarry, of cobble stones or boulders varying in size from six inches to a foot or more in length, and of varying thicknesses and shape. These stones were laid down by hand, and are claimed to have been six inches deep. But spaces between them necessarily existed by which the depth, when attempted now to be ascertained by measurement, must obviously vary, and by this fact the contradictory statements of witnesses in regard to the depth may be well enough explained. The defendants admit that the stone, as laid down, could not have been advantageously rolled, because their size and shape were such that the pressure of roller five tons in weight, would have unequally and injuriously affected them, pressing some into the earth, others upon their sides, and leaving the whole foundation uneven. On account of these difficulties the stone were first covered with earth, two or three inches thick, and then rolled, and the defendants allege that by this rolling the interstices were filled up, the stone kept in position and braced, regularity of the surface preserved, and a road bed secured as good and durable, at the least, as if the terms of the contract had been complied with. I am of opinion that this view of the matter is altogether inadmissible to justify a departure from the contract, and entitle the contractor to the stipulated price. I think it plain from the evidence, and from the nature of the work, that this departure was a large saving to the contractor, and on this ground admitting the substituted work to have been equally good with what the contract required, an admission, however, that cannot be true, still the commissioners in paying him, as they propose to do, the full contract price of the work would be wasting the money of their constituents, and would be guilty in the eye of the law of a fraud. That the amount of saving to the contractor from this departure, would be considerable is easy to be seen. The road being about a mile and one-third in length and thirty feet wide between the curbs presents a surface for the McAdam of about 27,000 square yards.

This is the number specified in the contract. The price is \$2.00 per square yard, making the cost of the McAdam alone more than half the cost of the whole original improvement. By the departure, the expense of breaking the stone over the whole of this surface and of rolling it when broken were saved. The defendants insist that the stone as furnished was broken stone within the meaning of the contract, and that only the cost of rolling was saved. But the contrary of this is clearly the truth. The stone was to be so broken as to be capable of being placed with regularity, of presenting an even surface, and this for the very purpose of being rolled with the weight of five tons. The character of the broken stone required is determined by what was to be done on it, and there can be no doubt that the road bed if so made would have been materially better. My opinion is that the variation from the contract in this particular was a substantial one in the interest of the contractor, and against the interest of the property owners, and that the contractor is not entitled to be paid for it at the rate of \$2 per square yard.

Departures from the contract specifications, are also alleged to have been made, in the flagging, the bridge stone and the curbing. It is also charged that the road was not graded, and the excavations filled in as the specifications require; that the sand filling allowed for in the final certificate, was not in fact furnished, and that the covering of six inches to be put on the top of the road bed was not clear coarse gravel of such quality as the contract requires.

The flagging was to be laid on a course four feet wide, no stone to be less than two inches thick, or contain less than eight superficial feet, and every fourth stone to contain twelve superficial feet. The bridge stone were to be not less than four feet long, two feet wide and six inches thick. The curbing to be not less than four feet long, twenty inches wide and four inches thick.

The proofs show that these three classes of stone as furnished by the contractor, are not up to the above requisitions. To a large and important extent, they are of less dimensions, and the evidence on the part of the defendants,

tending to show that the difference in dimensions, is such as often occurs, will not avail to show that they are in substantial fulfillment of the contract. About 15,000 lineal feet of curb stone are called for by the contract, to be not less than four feet long, twenty inches wide and four feet thick. It is admitted that these were not in fact furnished. More than 11,000 feet are admitted to be only sixteen inches wide, and in other measurements correspondingly deficient. In the early part of the work, the contract requirements in respect to the curb appear to have been  
 10 waived, and though nothing was then agreed on as a reduction of the price, eight cents per lineal foot has been deducted in the final certificate. It is not clear in my view, on what legal basis this charge as reduced, can be supported at all, but I am satisfied if a legal item, it must be still further reduced.

Sand filling, for the laying down of the flagging and bridge stone, was contracted to be furnished at one dollar and a half a cubic yard. The specifications call for about  
 20 nine hundred cubic yards. This was the approximate amount needed for the whole flagging and bridge stone, if laid down as required. It appears from the proofs that in point of fact, the stone were laid for the most part, upon the sand or sandy loam of the sidewalks or streets, by simply spading it up. The sand was in no sense filled in by the contractor, as was evidently contemplated, and as the specifications evidently assumed would be necessary, but if sand at all, was sand already there, and already filled  
 30 in. The quantity of sand filling allowed by the final certificates, is nevertheless 1,160 cubic yards. It is difficult to suppose that this item would have been allowed by the commissioners, or even claimed by the contractor, if the commissioners had been the parties, at whose exclusive personal expense the work was being done. My opinion is, that in the five several particulars mentioned above, deductions must be made from the sums allowed in the final certificate.

*Second:* As to that portion of the improvement, not included in the proposals and bids. It is made up as follows:  
 40 40 stone and cement basins \$2,000; 3,000 square yards

extra broken stone, averaging one foot in depth \$6,000: 277  
 14-100 cubic yards of stone in blind drains \$1,110 96: 869  
 lineal feet wooden box drains, \$608 30: 888 feet of gutter  
 stone, \$310 80: 189 97-100 cubic yards of rock excavation,  
 \$949 85: making a total of \$10,979 91.

The work and materials in these several items, appear to  
 have been bargained for, or directed to be furnished at  
 different times, by some of the individual commissioners,  
 or by the engineer acting for them. No action respecting  
 them was taken by the commissioners as a collective or cor- 10  
 porate body. There was no written or definite bargain, as  
 to price or other particulars, between the commissioners  
 in their lawful capacity, on the one side, and the contractor  
 on the other, and no advertisements or competitive bids.  
 As a necessary consequence of this absence of any contract  
 by the commissioners, either directly or through an author-  
 ized agent, this part of the alleged improvement, is alto-  
 gether without authority of law, and I can discover no  
 grounds on which any part of the cost of it can be assessed  
 upon the lands of complainant. 20

The affairs of a corporate body can be transacted only at  
 a corporate meeting. Its legislative and discretionary  
 powers can be exercised, only by the coming together of  
 the members who compose it, and its purposes or will can  
 be expressed, only by a vote embodied in some distinct and  
 definite form. As was said of the Mayor and Common  
 Council, in *Day vs. Jersey City*, (4 C. E. G., 412), their only  
 existence is as a board, and they can do no valid act except  
 as a board, and such act must be by ordinance, or resolu-  
 tion or something equivalent thereto. 30

A resolution is shown to have been regularly passed, di-  
 recting the execution of the original contract, according to  
 the bids, but all the work and materials now in question,  
 appear to have been ordered by no person lawfully em-  
 powered to do so, by the commissioners as a corporate  
 body.

But if ordered by the commissioners as a corporate body,  
 I think it equally clear, that their action was in open and  
 direct contravention, of the charter by which the cor- 40  
 porate body was created, and its powers and duties pre-

scribed. As before stated that charter expressly enacts, that no work or materials for the improvement of streets shall be contracted for, unless specifications therefor and proposals for doing such specified work or furnishing such specified materials, have been fully advertised. This enactment is the chief if not the only limitation, of the extraordinary powers for the improvement of streets, with which the commissioners were clothed. It cannot be regarded as  
 10 directory, or as any thing less than a positive peremptory restriction of power. Unless in pursuance of its terms, a contract for material or work is utterly void. Upon authority and principle, there can be no other conclusion. A different construction would give unrestrained license to the collusive and fraudulent practices, which this provision is designed to prevent. Public policy requires such restrictive enactments to be rigidly enforced, and the consequences resulting from the void character of the contracts they prohibit, must be the same in equity as at law. There was  
 20 nothing in the circumstances or condition of the street, to render it impracticable or difficult for the commissioners to make the advertisement required. No necessity for immediate action can be said to have arisen, and their conduct in disregarding the plain letter and spirit of the law, must be regarded as an indefensible assumption of power.

It is scarcely necessary to observe, says *Dillon on Municipal Corporations*, (Section 372), that no contract can be made by a corporation, which is prohibited by its charter, or by the statute law of the State. And it is a general and fundamental principle of law, that all persons contracting  
 30 with a municipal corporation, must at their peril inquire into the power of the corporation or its affairs, to make the contract; and a contract beyond the scope of the corporate powers, is void. This is certainly so, in all cases where this authority is special, and of record or conferred by statute. The numerous authorities referred to by that writer, establish beyond question the doctrine thus stated. This doctrine is said in section 381 of the same text book, to grow out of the nature of such institutions, and to rest  
 40 upon reasonable and solid grounds. Their duties and powers are prescribed by state or charter, which all per-

sons not only may know, but are bound to know. The opposite doctrine, would be fraught with such danger, and accompanied with such abuse, that it would soon end in the ruin of municipalities, or be legislatively overthrown.

In the present case, it was urged on behalf of the defendants, that the complainant and others similarly interested, cannot be permitted in equity, to avail themselves of the illegality of the contract, after permitting the improvement to go on, and receiving its benefits. The doctrine of equitable estoppel, is a familiar one, and of frequent application, but it has no place in transactions like the present, where usurped powers have been exercised by municipal officers, who in so doing were contravening public policy as well as known positive law. There can be no pretence of ignorance, or accident or mistake, or of having been misled by the party to whom the alleged benefit would accrue. In their illegal assumption of power, they were in no sense agents or representatives of property owners, and no liability attached to the latter, from mere inaction or silence. 10 20

The effect in equity, of the violation or disregard by municipal authorities, of statutory conditions and limitations is exhibited in *Brewster vs. City of Newark*, (3 *Stockton* 114). In that case the street in front of complainant's land had been guttered and paved, under an ordinance of the city, and a sale of the land for non-payment by complainant of the amount of his assessment, for benefits, was enjoined by Chancellor WILLIAMSON, on the ground that the complainant was entitled by the charter to be notified that the guttering and paving were required to be done, and to have the same done, at his own direction and expense. The City did the work, and the complainant looked on, but no equitable estoppel arose from his inaction or silence, notwithstanding the special benefit received. It was held that the City could acquire no lien upon his property for doing the work. In that case, the power was conditioned on previous demand and notice. In this case it is conditioned on public advertisement and bids. In both cases, the reason and object of the enactments are the same, and of indispen- 30 40

sible importance. They will be enforced in equity equally as at law.

The case is different where officials are acting within the terms of their delegated powers, though they may be acting carelessly, negligently or in culpable betrayal of their trust. They are then the agents of those whose property is liable to be charged, and if the latter acquiesce in, or fail to interpose, when the negligent or culpable conduct of their agents is open to their view, they may not afterwards be allowed  
10 to set it up, when the effect of so doing, will be to subject innocent parties to the burden that would otherwise fall upon themselves.

This principal was enunciated and applied by the Court of Errors, in the *State vs. Jersey City*, (5 *Dutcher*, 441). It was said by Chancellor GREEN in that case, that no misconstruction or malconstruction of the work arising from the incapacity, the honest mistake, or the fraud of the contractor, would invalidate the assessment, or relieve the party assessed from the obligation to pay it. In this re-  
20 spect the property owners assessed for the cost of a sewer, must stand upon the same footing, with parties assessed for taxes for public benefit. In cases like the present, where public moneys have been paid out or public obligations been issued, for the whole or a part of the work, the burden of such payments, must fall upon the tax-payers at large, if property owners are permitted to escape from special assessments. As against the tax-payers at large, such owners must suffer the loss resulting from the incapacity or breach of trust of their agents. This is the rea-  
30 son why, if the municipal authorities are about wrongfully to pay the contractor, the only adequate remedy for the owners, is in equity. (*Bond vs. Newark*, 4 *C. E. G.*, 385).

The disposition to be made of the case, in accordance with the foregoing views, is this. The sum of \$10,979 91 certified as the cost of the extra and illegal work, must be disallowed and its payment enjoined. The remaining balance unpaid, is \$9,293 89. The payment of it must be en-  
40 joined, till proper deductions have been made from the sums certified to be due for sand filling, for McAdam, for bridge stone, for flagging and for curbing. The evidence

has left me in doubt whether other parts of the work, were in substantial compliance or not, with the terms of the contract. The charge of collusion between the contractor and the commissioners, made in the bill and endeavored to be proved, has not been established. But the lax conduct of the commissioners, in the management of the work, and their readiness to pay for what was inadequately done, or not done at all, are well fitted to engender suspicion. They amount to legal if not actual fraud. Following however the rule that the departures from the contract, must be clearly substantial, and clearly proven; my conclusion is that the deductions should be limited to the items I have named. From the evidence as it stands, no sufficient data exists, from which the deduction for not properly breaking, placing and rolling the stone for the McAdam, can be computed. A reference must be had to ascertain this amount, and additional proofs may then be taken, if either party desires it, upon the other items from which deductions are directed to be made. The difference between the certified cost of work and materials, and their fair cost, must be the measure of the respective deductions. 10 20

I respectfully advise a decree as above.

# In Chancery of New Jersey.

10 Between

CHRISTIAN SCHUMM. &c.,

and

JACOB O. SEYMOUR, *et al.*,

*Complainant,*  
*Defendants.*

On Bill, &c., Injunction, &c. Order substituting parties defendants.

It being suggested to the Court by THOMAS N. McCARTER, Esq., of counsel for the complainant, that since the commencement of this suit, and since the making of the last order or direction therein, the said Townsnip of Greenville has been consolidated with and has become a part and parcel of the corporation of The Mayor and Aldermen of Jersey City, with all rights, remedies and suits against said late Township of Greenville, surviving against and to be continued against said The Mayor and Aldermen of Jersey City, now on motion of THOMAS N. McCARTER, Esq., of counsel with complainant, it is

Ordered that the said suit stand revived, and that the said The Mayor and Aldermen of Jersey City be made defendants thereto, in the place and stead of the said JACOB O. SEYMOUR, PETER ROWE, FREDERICK THAU, SAMUEL BOSTWICK, and MICHAEL DE MOTT VREELAND, late the Street Commissioners of Greenville aforesaid, and it is further

Ordered that the said The Mayor and Aldermen of Jersey City appear and put in their answer or signify their disclaimer of this suit and the matters in controversy therein, at or before the second day of June next, and in case they fail to do so, that the said complainant may cause their appearance to be entered and the answer of the said

The Street Commissioners of Greenville heretofore put in, shall be deemed and taken as and for the answer of the said The Mayor and Aldermen of Jersey City, and it is further

Ordered that the complainant cause a true copy of this order to be duly served on the said The Mayor and Aldermen of Jersey City aforesaid, within Ten Days from the date hereof.

THEODORE RUNYON, *C.*

10

I respectfully advise the above order. May 2, 1873.

AMZI DODD, *V. C.*

A true copy.

## In Chancery of New Jersey.

	Between	
10	CHRISTIAN SCHUMM, who sues as well for himself as for all others similarly interested,	}
	<i>Complainants,</i>	
	and	
	THE MAYOR AND ALDERMEN OF JERSEY CITY, JAMES H. ELMENDORF, WILLIAM B. REYNOLDS and THOMAS K. DOWNING,	}
	<i>Defendants.</i>	
		On Bill, &c.

20

The Chancellor having made a decree in this case, from a portion of which decree an appeal has been taken to the Court of Errors and Appeals, it is hereby stipulated between the counsel for the respective parties in the above cause that for the purpose of said appeal the following statement of facts is agreed upon, viz.:

That on the 28th day of September, 1871, a contract was duly made and entered into between the Street Commissioners of Greenville and James H. Elmendorf, which is hereto annexed.

That in completing the New Bergen Road mentioned in said contract, the following work was done and materials furnished by said Elmendorf, to wit.: 40 stone and cement basins, 3,000 square yards of extra broken stone, averaging one foot in depth, 277 14-100 cubic yards of stone in blind drains, 869 lineal feet of wooden box drains, 888 feet of gutter stone, 189 91-100 cubic yards of rock excavation, by the direction and requirement of the Committee on Streets of the Street Commissioners of Greenville, and the engineer in charge of said work, at prices fixed by the engineer

in charge of the work, H. D. Betts, and agreed upon by and between the Committee on Streets and the contractor.

That said work and materials were deemed essential by said committee and engineer in order to preserve the said New Bergen Road or its road-bed from being washed away or seriously injured by heavy rains. That all of said work was inspected by and done in a manner satisfactory to said committee and said engineer, and the inspector appointed by said Street Commissioners of Greenville to see that said work was properly done under the contract hereto annexed, and certificates for said work were given by the said engineer which are hereto annexed. That the whole of said work and materials hereinbefore specifically enumerated was done and furnished before the above entitled suit was commenced, and no objection was ever made to the doing of said work, or the furnishing of said materials, by any of the parties to this suit, or any persons interested therein, until the commencement of this suit. 10

That on the trial before the Vice-Chancellor the defendants gave evidence of the agreed price of said work and materials, also evidence of what it was reasonably worth to perform it, and to furnish said materials, and that the complainants introduced no evidence of its value, claiming that there was no lawful contract warranting it, and that no allowance for it could be made. 20

LEON ABBETT,

*Solicitor for Appellants.*

SAMUEL C. MOUNT, 30

*Sol. for Compls. Resp's.*

#### CONTRACT.

MEMORANDUM OF AN AGREEMENT made this 28th day of September, eighteen hundred and seventy-one, between the Street Commissioners of Greenville, parties of the first part, and James H. Elmendorf, of Morrisania, County of Westchester, State of New York, party of the second part, agrees: 40

*First.*—That he will regulate and grade the New Bergen Road from the Township line on the North to the Morris Canal, in the Township of Greenville, County of Hudson, State of New Jersey. Macadamise the carriage way, flag and curb the sidewalks of the said road, and do all the work and furnish all materials mentioned in the annexed specifications, and furnish all the work, labor and materials therefor in accordance with the specifications hereto annexed, and which are hereby made as part of this contract.

*Second.*—He agrees that every requirement and stipulations in said specifications (except those to be performed by the Street Commissioners) shall be and it is hereby made binding upon him as a part of this contract, the same as if he had specifically covenanted to carry out and fulfil the same and be bound thereby.

*Third.*—He agrees that if in the judgment of the said Street Commissioners of Greenville, said work, or any part thereof, is at any time unduly delayed, that said Street Commissioners may, by contract or otherwise, cause said work to be at once completed, and the expense thereof shall be deducted from any amount due to him under this contract.

*Fourth.*—He agrees that he will be responsible for and will pay all damages that may occur to any person or property by want of skill or caution, or by any negligence or any wrongful action on his part in the prosecution of said work, and he agrees to permit the said Street Commissioners of Greenville to retain the amount of said damages (if any) out of any monies due or to grow due to him under this contract.

*Fifth.*—He agrees he will fully and finally complete said work on or before the 28th day of December, A. D. eighteen hundred and seventy-one.

*Sixth.*—He agrees that the foregoing covenants shall extend to and bind his heirs, executors, administrators and assigns.

The Street Commissioners of Greenville agree to pay said party of the second part for doing said work, and furnishing said materials, and for the due and faithful performance of all the foregoing covenants and agreements on his part the prices shown in the proposals of the said James H. Elmendorf hereto annexed, and said sums shall be in full payment of all the claims and demands of said James H. Elmendorf under this contract. And said sums shall be paid in Improvement certificates at the times and in the mode and manner set forth in the specifications hereto annexed. 10

In witness whereof, the Chairman and secretary of the Street Commissioners of Greenville, County of Hudson, State of New Jersey, have hereunto set their hands and affixed the corporate seal of said Commissioners, and said party of the second part has hereunto set his hand and seal the day and year first above written.

JACOB O. SEYMOUR, [L. s.]

*Chairman Street Commissioners Greenville.* 20

JOHN MORRELL, *Secretary.* [L. s.]

Signed, sealed, stamped and }  
delivered in the presence of }

The words "and Secretary" interlined over 12th line before execution, and the word December interlined over 19th line after signature.

WM. G. MORGAN. 30

*To the Street Commissioners of the Township of Greenville :*

The undersigned hereby propose to do and perform all the work and labor, and to furnish all the stone and material required, according to the specification issued by you for the improvement of the New Bergen Road, from the town line to the North of the Morris Canal, according to the specifications and the conditions and terms therein. A copy of such specification is hereto annexed. I hereby furnish as specimen of Twaalfskill gravel. 40

	Earth excavation, per cubic yd.....	50c.
	Do. filling.....	30c.
	Sand ".....	1.50
	Flagging, per square ft.....	30c.
	Bridge Stone ".....	78c.
	Curb Stone, per lineal ft.....	78c.
	Dry Masonry for Culverts, cubic yd.....	4.50
	12 inch Drain Pipe.....	40c.
	18 " ".....	60c.
	McAdamize, per square yd.....	
10	Twaalfskill Gravel, as specimen.....	2.00

We hereby consent to become bondsmen, providing the contract is awarded to J. H. Elmendorf.

KNOW ALL MEN BY THESE PRESENTS, that we, James H. Elmendorf, of the Town of Morrisania, New York, William B. Reynolds, of the Town of Rye, New York, and Thomas K. Downing, also of said Town of Rye, are held and firmly bound unto the Street Commissioners of Greenville in the sum of Two Hundred and Five Thousand Dollars, good and lawful money of the United States, to be paid to the said  
 20 Street Commissioners, their successors and assigns, for which payment well and truly to be made we bind ourselves, our heirs and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 28th day of September, A. D. eighteen hundred and seventy-one.

Whereas, the above bounden James H. Elmendorf this date made an agreement with the Street Commissioners of Greenville which is hereto attached. Now, the condition of  
 30 this obligation is such that if said James H. Elmendorf shall well and truly perform all the agreements and covenants contained in said agreement on his part, then this obligation shall be void, otherwise to be and remain in full force, effect and virtue.

JAMES H. ELMENDORF, [L. s.]

W. B. REYNOLDS, [L. s.]

THOMAS K. DOWNING, [L. s.]

Signed, sealed, stamped and }  
 delivered in the presence of }

WM. G. MORGAN.

40 The specifications referred to in the foregoing contract will be found on pages 29, 30, 31 and 32.

(COPY.)

ENGINEER'S OFFICE,  
TOWNSHIP OF GREENVILLE, HUDSON COUNTY, N. J.  
CERTIFICATE.

Estimate No. One. Contract.....  
Dated Nov. 24th, 1871. Dated.....

JAMES H. ELMENDORF, contractor for the improvement of  
the New Bergen Road. 10

To the Street Commissioners of Greenville:

GENTLEMEN,—I hereby certify that James H. Elmendorf,  
the contractor on above improvement, is entitled to receive  
for work done and materials furnished in prosecution of  
contract with the Street Commissioners of Greenville for  
the above named improvement, Improvement Certificates  
to the amount of twelve thousand nine hundred and twenty-  
six 34-100 dollars, as appears from the following estimate:

H. D. BETTS,  
*Engineer.* 20

## ESTIMATED QUANTITIES.

9,500 cubic yards	Earth Excavation . . .	@\$0.50	\$4,750.00	
"	Rock " . . . "	"	"	
1,500 "	Earth Filling . . . . .	" 0.30	450.00	
236 "	Sand " . . . . .	" 1.50	354.00	
square yards	Belgian Paving . . .	"		
"	Improved McAdam. "	"		
352 square feet	Bridge Stone . . . . .	" 0.78	274.66	
12,747 "	Flagging . . . . .	" 0.30	2,824.10	
3,954 lineal feet	Curb Stone . . . . .	" 0.78	3,084.12	30
38 "	Gutter Stone . . . . .	" 0.37	14.06	
39 cubic yds.	Dry Masonry for Drains	" 4.50	175.50	
	Total . . . . .		12,926.34	
	Less 20 per cent. retained . . .		2,585.27	
	Amount . . . . .		10,341.07	
	Less former payments . . . . .			
	Amount due contractor . . . . .		10,341.07	

A true copy.

H. S. LITTLE, Clerk.

40

(COPY.)

ENGINEER'S OFFICE,  
TOWNSHIP OF GREENVILLE, HUDSON COUNTY, N. J.

CERTIFICATE.

Estimate No. 2.  
Dated Dec. 12th, 1871.

Contract.....  
Dated.....

JAMES H. ELMENDORF, contractor for the improvement of  
the New Bergen Road.

10 To the Street Commissioners of Greenville.

GENTLEMEN,—I hereby certify that James H. Elmendorf,  
the contractor on above improvement, is entitled to receive  
for work done and materials furnished in prosecution of  
contract with the Street Commissioners of Greenville for  
the above named improvement, Improvement Certificates  
to the amount of three thousand four hundred and twenty-  
four and 20-100 dollars, as appears from the following esti-  
mate:

H. D. BETTS,

20

Chief Engineer.

ESTIMATED QUANTITIES.

	10,500 cubic yards Earth Excavation . . .	@ \$0 50	\$5,250.00
	“ “ Rock “ . . .		
	3,000 “ Earth Filling . . . . .	0 30	900.00
	300 “ Sand “ . . . . .	1 50	450.00
	square yards Belgian Paving . . .		
	“ Improved McAdam.		
	716 square feet Bridge Stone . . . . .	0 78	558.48
30	15,408 “ Flagging . . . . .	0 30	4,622.40
	4,530 lineal feet Curb Stone . . . . .	0 78	3,533.40
	68 “ Gutter Stone . . . . .	0 35	23.80
	67 cubic yds. Dry Masonry for Drains	4 50	301.50
	1,567 square “ Stone for McAdam . . .	1 00	1,567.00
	Total . . . . .		17,206.58
	Less 20 per cent retained . . .		3,441.31
	Amount . . . . .		13,765.27
	Less former payments . . . . .		10,341.07
40	Amount due contractor . . . . .		3,424.20

(COPY.)

ENGINEER'S OFFICE,

TOWNSHIP OF GREENVILLE, HUDSON COUNTY, N. J.

CERTIFICATE.

Estimate No. 3. Contract.....  
 Dated February 27th, 1872. Dated.....

JAMES H. ELMENDORF, contractor for the improvement of  
 the New Bergen Road. 10

To the Street Commissioners of Greenville:

GENTLEMEN,—I hereby certify that James H. Elmendorf,  
 the contractor on above improvement, is entitled to receive  
 for work done and materials furnished in prosecution of  
 contract with the Street Commissioners of Greenville for  
 the above named improvement, Improvement Certificates  
 to the amount of seven hundred and fifty-one 60-100 dol-  
 lars, as appears from the following estimate:

H. D. BETTS, 20  
 Chief Engineer.

ESTIMATED QUANTITIES.

11.025 cubic yards	Earth Excavation...	@\$0.50	\$5,512.50	
"	Rock " ...			
3,300	" Earth Filling.....	0.30	990.00	
300	" Sand " .....	1.50	450.00	
square yards	Belgian Paving...			
"	Improved McAdam.			
716 square feet	Bridge Stone.....	0.78	558.48	30
15,408	" Flagging.....	0.30	4,622.40	
4,530 lineal feet	Curb Stone.....	0.78	3,533.40	
68	" Gutter Stone.....	0.35	23.80	
67 cubic yds.	Dry Masonry for Drains	4.50	301.50	
2,145 square	" Stone for McAdam....	1.00	2,154.00	
Total.....			18,146.08	
Less 20 per cent.....			3,629.21	
Amount.....			14,516.87	
Less former payment.....			13,765.27	
Amount due contractor.....			751,60	40

(COPY.)

ENGINEER'S OFFICE,  
TOWNSHIP OF GREENVILLE, HUDSON COUNTY, N. J.

CERTIFICATE.

Estimate No. 4. Contract.....  
Dated April 15th, 1872. Dated.....

JAMES H. ELMENDORF, contractor for the improvement of  
10 the New Bergen Road.

To the Street Commissioners of Greenville:

GENTLEMEN,—I hereby certify that James H. Elmendorf, the contractor on above improvement, is entitled to receive for work done and materials furnished in prosecution of contract with the Street Commissioners of Greenville for the above named improvement. Improvement Certificates to the amount of eight thousand four hundred and eighty dollars, as appears from the following estimate:

20 H. D. BETTS,  
Chief Engineer.

ESTIMATED QUANTITIES.

	11,875 cubic yards	Earth Excavation . . .	@ \$0.50	\$5,937.50
	"	Rock " . . . . .	"	"
	3,300	Earth Filling . . . . .	" 0.30	990.00
	300	Sand " . . . . .	" 1.50	450.00
		square yards Belgian Paving . . .	"	"
		" Improved McAdam. "	"	"
30	716 square feet	Bridge Stone . . . . .	" 0.78	558.48
	15,408	Flagging . . . . .	" 0.30	4,622.40
	4,530 lineal feet	Curb Stone . . . . .	" 0.78	3,533.40
	68	Gutter Stone . . . . .	" 0.35	23.80
	497 cubic yds.	Dry Masonry for Drains " 4.50		2,236.50
	10,304 square	Stone for McAdam . . .	" 1.00	10,304.00
		Total . . . . .		28,656.08
		Less 20 per cent . . . . .	5,731.21	
		Amount . . . . .		22,924.87
		Less former payments . . .	14,516.87	
40		Amount due contractor . . . . .		8,408.00

(COPY,)

ENGINEER'S OFFICE,  
TOWNSHIP OF GREENVILLE, HUDSON COUNTY, N. J.

## CERTIFICATE.

Estimate No. 5.  
Dated April 29th, 1872.

Contract.....  
Dated.....

JAMES H. ELMENDORF, contractor for the improvement of  
the New Bergen Road.

To the Street Commissioners of Greenville:

10

GENTLEMEN,—I hereby certify that James H. Elmendorf,  
the contractor on above improvement, is entitled to receive  
for work done and materials furnished in prosecution of  
contract with the Street Commissioners of Greenville for  
the above named improvement, Improvement Certificates  
to the amount of four thousand nine hundred and sixty-  
three and 72-100 dollars, as appears from the following  
estimate:

H. D. BETTS,

Chief Engineer.

20

## ESTIMATED QUANTITIES.

15,160 cubic yards	Earth Excavation . . .	@ \$0.50	\$7,580.00	
"	Rock " . . .			
3,800 "	Earth Filling . . . . .	0.30	1,140.00	
300 "	Sand " . . . . .	1.50	450.00	
square yards	Belgian Paving . . .			
"	Improved McAdam.			
716 square feet	Bridge Stone . . . . .	0.78	558 48	
15,408 "	Flagging . . . . .	0.30	4,622.40	
4,530 lineal feet	Curb Stone . . . . .	0.78	3,533.40	
68 "	Gutter Stone . . . . .	0.35	23.80	30
3,054 "	Curb Reset . . . . .	0.15	456.75	
556 square feet	Bridge Reset . . . . .	0.15	83.40	
1,313 cub. yds.	Dry Masonry for Drains	4.50	5,908.50	
10,304 sq. yds.	Broken Stone for McAdam	1.00	10,304.00	
Wooden Box	Drains . . . . .		200.00	
Total . . . . .			34,860.73	
Less 20 per cent . . . . .	\$6,972.14			
Amount . . . . .			27,888.59	
Less former payments . . .	22,924.87			40
Amount due contractor . . . . .			4,963.72	

(COPY.)

ENGINEER'S OFFICE,  
TOWNSHIP OF GREENVILLE, COUNTY OF HUDSON, N. J.

CERTIFICATE.

Estimate No. 6. Contract.....  
Dated May 14th, 1872. Dated.....  
JAMES H. ELMENDORF, contractor for the improvement of  
the New Bergen Road.

10 To the Street Commissioners of Greenville:

GENTLEMEN,—I hereby certify that James H. Elmendorf, the contractor of above improvement, is entitled to receive for work done and materials furnished in prosecution of contract with the Street Commissioners of Greenville for the above named improvement, Improvement Certificates to the amount of ten thousand two hundred sixty-three and 99-100 dollars, as appears from following estimate:

H. D. BETTS,  
*Chief Engineer.*

		ESTIMATED QUANTITIES			
20	16,760 cubic yards	Earth Excavation . . .	@ \$0.50	\$8,380.00	
	"	Rock " . . .			
	3,800 "	Earth Filling . . . . .	0.30	1,140.00	
	300 "	Sand " . . . . .	1.50	450.00	
	square yards	Belgian Paving . . .			
	2,000 "	Improved McAdam.	2 00	4,000.00	
	716 square feet	Bridge Stone . . . . .	0.78	558.48	
	15,408 "	Flagging . . . . .	0.30	4,622.40	
	6,530 lineal feet	Curb Stone . . . . .	0.78	5,093.40	
30	68 "	Gutter Stone . . . . .	0.35	23.80	
	3,845 "	Curb Reset . . . . .	0.15	576.75	
	556 square feet	Bridge " . . . . .	0.15	83.40	
	1,813 cub. yds.	Dry Masonry for Drains	4.50	8,158.50	
	14,304 sq. yds.	Broken Stone for McAdam	1 00	14,304.00	
	2 Stone Basins . . . . .		50.00	100.00	
	Wooden Box Drains . . . . .			200.90	
	Total . . . . .			47,690.73	
	Less 20 per cent. . . . .	\$9,538 15			
	Amount . . . . .			38,152.58	
40	Less former payments . . . . .	27,885.59			
	Amount due contractor . . . . .			10,266.99	

(COPY.)

ENGINEER'S OFFICE,

TOWNSHIP OF GREENVILLE, HUDSON COUNTY, N. J.

## CERTIFICATE.

Estimate No. 7.

Contract.....

Dated June 4th, 1872.

Dated.....

JAMES H. ELMENDORF, Contractor for the improvement of  
the New Bergen Road.

To the Street Commissioners of Greenville:

10

GENTLEMEN,—I hereby certify that James H. Elmendorf,  
the contractor on above improvement, is entitled to receive  
for work done and materials furnished in prosecution of  
contract with the Street Commissioners of Greenville for  
the above named improvement, Improvement Certificates  
to the amount of sixteen thousand seven hundred seventy-  
eight and 18-100 dollars, as appears from the following  
estimate:

H. D. BETTS,

*Chief Engineer.*

## ESTIMATED QUANTITIES.

20

20,760 cubic yards	Earth Excavation... @ \$0.50	\$10,380.00	
"	Rock " " "		
4,800	" Earth Filling.....	0.30	1,440.00
690	" Sand " " " " " "	1.50	1,035.00
	square yards Belgian Paving....		
6,700	" Improved McAdam.	2.00	13,400 00
1,740 square feet	Bridge Stone.....	0.78	1,357.00
25,408	" Flagging.....	0.30	7,622.40
9,030 lineal feet	Curb Stone.....	0.78	7,043.40
68	" Gutter Stone.....	0.35	23.80
3,845	" Curb Reset.....	0.15	576.75
556 square feet	Bridge " " " " " "	0.15	83.40
2,355 cub. yds.	Dry Masonry for Drains	4.50	10,597.50
14,304 sq. yds.	Broken Stone for McAdam	1.00	14,304 00
8	Stone Basins.....	50.00	400.00
	Wooden Box Drains.....		400 00
	Total.....		68,663.45
	Less 20 per cent.....	13,732.69	
	Amount.....		54,930.76
	Less former payments....	38,152.58	
	Amount due Contractor.....		16,778.18

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(COPY.)

ENGINEER'S OFFICE,  
TOWNSHIP OF GREENVILLE, HUDSON COUNTY, N. J.  
CERTIFICATE.

Estimate No 8.

Contract.....

Dated June 18th, 1872.

Dated.....

JAMES H. ELMENDORF, contractor for the improvement of the New Bergen Road.

10 To the Street Commissioners of Greenville:

GENTLEMEN,—I hereby certify that James H. Elmendorf, the contractor on above improvement, is entitled to receive for work done and materials furnished in prosecution of contract with the Street Commissioners of Greenville for above named improvement, Improvement Certificates to the amount of nine thousand four hundred and sixty dollars and 80-100 dollars, as appears from the following estimate:

H. D. BETTS,

Chief Engineer.

		ESTIMATED QUANTITIES.			
20	22,760 cubic yards	Earth Excavation...	@\$.50	\$11,380.00	
	"	Rock	"	"	
	5,300	Earth Filling .....	" 0.30	1,590.00	
	690	Sand .....	1.50	1,035.00	
	square yards	Belgian Paving....			
	10,050	Improved McAdam.	2.00	20,100.00	
	2,190 square feet	Bridge Stone.....	0.78	1,708.20	
	25,408	Flagging.....	0.38	7,622.40	
	9,030 lineal feet	Curb Stone.....	0.78	7,043.40	
30	68	Gutter Stone.....	0.35	23.80	
	3,845	Curb Reset.....	0.15	576.75	
	556 square feet	Bridge " .....	0.15	83.40	
	3,105 cub. yds.	Dry Masonry for Drains	4.50	13,972.50	
	14,304 sq.yds.	Broken Stone for McAdam	1.00	14,304.00	
	13 Stone Basins,	Cement.....	50.00	650.00	
	Wooden Box Drains.....			400.00	
	Total.....			80,489.45	
	Less 20 per cent.....	\$16,097.89			
	Amount.....			64,391.56	
40	Less former payments....	54,930.76			
	Amount due contractor.....			9,460.80	

(COPY.)

ENGINEER'S OFFICE,  
TOWNSHIP OF GREENVILLE, HUDSON COUNTY, N. J.

## CERTIFICATE

Estimate No. 9. Contract.....  
Dated July 2d, 1872. Dated.....  
JAMES H. ELMENDORF, contractor for the improvement of  
the New Bergen Road.

To the Street Commissioners of Greenville:

GENTLEMEN,—I hereby certify that James H. Elmendorf, 10  
the contractor on above improvement, is entitled to receive  
for work done and materials furnished in prosecution of  
said contract with the Street Commissioners of Greenville  
for the above named improvement, Improvement Certifi-  
cates to the amount of fifteen thousand eight hundred and  
eighty-eight 69-100 dollars, as appears from the following  
estimate:

H. D. BETTS,

Chief Engineer.

## ESTIMATED QUANTITIES.

23,846 cubic yards	Earth Excavations...	@ \$0.50	\$11,923.00	20
"	Rock " " "	"	"	"
5,300 "	Earth Filling.....	" 0.30	1,590.00	
877 "	Sand " " " "	" 1.50	1,315.50	
square yards	Belgian Paving....	"	"	"
15,617 "	Improved McAdam.	" 2.00	31,234.00	
2,298 square feet	Bridge Stone.....	" 0.78	1,792.44	
34,648 "	Flagging.....	" 0.30	10,394.40	
10,434 lineal feet	Curb Stone.....	" 0.78	8,138 52	
68 "	Gutter Stone.....	" 0.35	23.80	
3,845	Curb Reset.....	" 0.15	576.75	30
556	Bridge " " " "	" 0.15	83.40	
3,761 cub. yds.	Dry Masonry for Drains	" 4.50	16,924.50	
14,304 sq. yds.	Broken Stone for McAdam	" 1.00	14,304.00	
25	Cement Stone Basins, each....	" 50.00	1,250.00	
	Wooden Box Drains.....	"	600.00	
40 yds. of	Rock.....	" 5.00	200.00	
	Total.....		100,350.31	
	Less 20 per cent.....	\$20,070.06		
	Amount.....		80,280.25	40
	Less former payments....	64,391.56		
	Amount due contractor....		15,888.69	

(COPY.)

ENGINEER'S OFFICE,  
TOWNSHIP OF GREENVILLE, HUDSON COUNTY, N. J.  
CERTIFICATE.

Estimate No. 10.  
Dated July 30th, 1872.

Contract.....  
Dated.....

JAMES H. ELMENDORF, contractor for the improvement of  
the New Bergen Road.

10 To the Street Commissioners of Greenville:

GENTLEMEN,—I hereby certify that James H. Elmendorf,  
the contractor on above improvement, is entitled to receive  
for work done and materials furnished in prosecution of  
contract with Street Commissioners of Greenville for the  
above named improvement, Improvement Certificates to the  
amount of eleven thousand nine hundred and ninety-eight  
30-100 dollars, as appears from the following estimate:

H. D. BETTS,  
*Chief Engineer.*

ESTIMATED QUANTITIES.

20	24,692 cubic yards	Earth Excavation . . .	@ \$0.50	\$12,346.00
	40 "	Rock " . . .	" 5.00	200.00
	6,000 "	Earth Filling . . . . .	" 0.30	1,800.00
	1.147 "	Sand " . . . . .	" 1.50	1,720.50
		square yards Belgian Paving . . .	"	
	18,841	" Improved McAdam . . .	" 2.00	37,682.00
	3,004 square feet	Bridge Stone . . . . .	" 0.78	3,903.12
	38,995	" Flagging . . . . .	" 0.30	11,698.50
	11,234 lineal feet	Curb Stone . . . . .	" 0.78	8,762.52
	604	" Gutter Stone . . . . .	" 0.35	211.40
30	3,845	Curb Reset . . . . .	" 0.15	576.75
	556 square	" Bridge " . . . . .	" 0.15	83.40
	4,480 cubic yards	Masonry Drains . . .	" 4.50	20,160.00
	14,304 square	" Broken Stone McAdam " 1 00		14,304.00
	26	Cement Stone Basins . . . . .	" 50.00	1,300.00
		Wooden Box Drains . . . . .		600.00
		Total . . . . .		115,348.19
		Less 20 per cent . . . . .	23,069.54	
		Amount . . . . .		92,278.55
40		Less former payments . . .	80,280.25	
		Amount due contractor . . . . .		11,998.30

(COPY.)

ENGINEER'S OFFICE,  
TOWNSHIP OF GREENVILLE, HUDSON COUNTY, N. J.

CERTIFICATE.

Estimate No. 11. Contract.....  
Dated September 10th, 1872. Dated.....  
JAMES H. ELMENDORF, contractor for the improvement of  
the New Bergen Road.

10

To the Street Commissioners of Greenville :

GENTLEMEN,—I hereby certify that James H. Elmendorf, the contractor on above improvement, is entitled to receive for work done and materials furnished in prosecution of contract with the Street Commissioners of Greenville for the above named improvement, Improvement Certificates to the amount of twelve thousand one hundred and fifty-six and 33-100 dollars, as appears from the following estimate:

H. D. BETTS,

Chief Engineer.

20

ESTIMATED QUANTITIES.

25,447 cubic yards	Earth Excavation....	@\$0.50	\$12,723.50	
173 "	Rock	"	865.00	
5,009 "	Earth Filling.....	" 0.30	1,502.70	
1,094 "	Sand	" 1.50	1,641.00	
	square yards Belgian Paving....	"		
25,021 "	Improved McAdam	" 2.00	50,042.00	
4,904 square feet	Bridge Stone.....	" 0.78	3,825.12	
49,267 "	Flagging.....	" 0.30	14,780.10	
14,086 lineal feet	Curb Stone.....	" 0.78	10,987.08	30
604 "	Gutter Stone.....	" 0.35	211.40	
4,134 cubic yds	Dry Masonry for Drains	" 4.50	18,603.00	
13,167 square "	Extra Broken Stone, 6			
	inches deep.....	" 1.00	13,167.00	
32	Stone and Cement Basins.....	" 50.00	1,600.00	
851 lineal feet	Wooden Box Drains...	" 0.70	595.70	
	Total.....		130,543.60	
	Less 20 per cent.....	26,108.72		
	Amount .....		104,434.88	
	Less former payments....	92,278.55		40
	Amount due contractor.....		12,156.33	

(COPY.)

ENGINEER'S OFFICE,  
TOWNSHIP OF GREENVILLE, HUDSON COUNTY, N. J.

## FINAL CERTIFICATE.

Estimate No. 12. Contract.....  
Dated October 29th, 1872. Dated Sept. 28, 1871.

JAMES H. ELMENDORF, contractor for the improvement of  
10 the New Bergen Road.

To the Street Commissioners of Greenville:

GENTLEMEN,—I hereby certify that James H. Elmendorf, the contractor on above improvement, is entitled to receive for work done and materials furnished in prosecution of contract with the Street Commissioners of Greenville for the above named improvement, Improvement Certificates to the amount of twenty thousand two hundred seventy-three and 80-100 dollars, as appears from the following estimate:

H. D. BETTS,  
Engineer.

20

## ESTIMATED QUANTITIES.

	24,167.12 cubic yards Earth Excavation @ \$0.50	\$12,083.56
	189.97 " Rock " " 5.00	949.85
	3,413.32 " Earth Filling.... " 0.30	1,024.00
	1,160 " Sand " " 1.50	1,740.00
	sq. yds. Belgian Paving..... "	
	26,894.44 " Improved McAdam... " 2.00	53,788.88
	5,802 square feet Bridge Stone..... " 0.78	4,525.56
	625 " " " " " 0.30	187.50
30	56,235 " Flagging..... " 0.30	16,870.50
	3,692 lineal feet Curb Stone..... " 0.78	2,879.76
	11,024 " " " " " 0.70	7,716.80
	888 " Gutter Stone..... " 0.35	310.80
	2,869.38 cubic yds. Culvert Masonry for Drains..... " 4.50	12,912.21
	277.14 cubic yds. Stone in Blind Drains..... " 4.00	1,110.96
	3,000 square yds. Extra Broken Stone averaging 1 foot deep..... " 2.00	6,000.00
04	40 Stone and Cement Basins..... " 50.00	2,000.00
	869 lineal feet Wooden Box Drains.. " 0.70	608.30

Total.....	124,708.68
Less per cent.....	
Amount.....	124,708.68
Less former payments..	104,434.88
Amount due contractor.....	20,273.80

STATE OF NEW JERSEY, }  
 HUDSON COUNTY. } ss. 10

Henry D. Betts being duly sworn, on his oath says, that the statements made in the within estimate are true and correct, according to the best of his knowledge, information and belief.

HENRY D. BETTS.

Sworn and subscribed to before me }  
 this 26th day of November, 1872, } 20  
 at Jersey City,

P. BENTLEY, JR.,

*M. C. C. of N. J.*

# In Chancery of New Jersey.

Between	}	On Bill, answer, replication and final proofs.
CHRISTIAN SCHUMM, who sues as well for himself as for all others similarly interested, who may come in,		
Complainants,		
and		
THE MAYOR AND ALDERMEN OF JERSEY CITY, JAMES H. ELMENDORF, WILLIAM B. REYNOLDS and THOMAS K. DOWNING,	}	Defendants.
Defendants.		

James H. Elmendorf, William B. Reynolds, and Thomas K. Downing hereby appeal from so much of the interlocutory decree of the Chancellor in the above cause, made on the twenty-sixth day of December, eighteen hundred and seventy-three, as adjudges that the sum of ten thousand nine hundred and seventy-nine dollars and ninety-one cents, certified as the cost of the extra and illegal work, be disallowed and its payment perpetually enjoined and restrained, and adjudges that the work for which such sum was allowed the contractor, James H. Elmendorf, is extra and illegal work for which no allowance should be made, to the Court of Errors and Appeals, in the last resort in all causes.

Dated February 3, 1874.

LEON ABBETT,

*Solicitor and Counsel with Appellants.*

I conceive there is good cause for appeal in the above stated cause.

LEON ABBETT,

*Of Counsel with Defendants, JAMES H. ELMENDORF, et al.*

A true copy.

40

H. S. LITTLE, Clerk.

**Court of Errors and Appeals in the Last  
Resort, &c.**

Between

CHRISTIAN SCHUMM, who sues as well for himself, as for all others similarly interested who may come in,

*Complainant,*

and

THE MAYOR AND ALDERMEN OF JERSEY CITY,  
JAMES H. ELMENDORF, WILLIAM B. REYNOLDS, and THOMAS K. DOWNING,

*Defendants.*

10

On Bill. Answer  
replication and  
final proofs.

*To the Honorable the Court of Errors and Appeals in the last resort in all causes:* 20

The humble petition of James H. Elmendorf, William B. Reynolds and Thomas K. Downing, the appellants in the above stated cause, respectfully shew that your petitioners find themselves aggrieved by an interlocutory decree made in the Court of Chancery by His Honor Theodore Runyon, Chancellor of New Jersey, bearing date December twenty-sixth, eighteen hundred and seventy-three, in a cause wherein Christian Schum, who sues as well for himself as for all others similarly interested who may come in, is complainant, and the Mayor and Alderman of Jersey City, James H. Elmendorf, William B. Reynolds and Thomas K. Downing, are defendants, in this respect, to-wit: 30

That the said interlocutory decree adjudged that the sum of ten thousand nine hundred and seventy-nine dollars and ninety-one cents, certified as the cost of the extra and illegal work, be disallowed and its payment perpetually enjoined and restrained; and also adjudges that the work for which said sum was allowed the contractor, James H. Elmendorf, is extra and illegal work, for which no allowance should be made. 40

And your petitioners humbly appeal from that part of the said interlocutory decree of the Chancellor which decrees as aforesaid, on the ground that the same is erroneous, and that the Chancellor should have decreed that all, or at least a portion of said sum, or a reasonable sum for said work done, should have been allowed to the contractor, James H. Elmendorf, or to his assigns or legal representatives.

10 Your petitioners therefore pray that the said interlocutors decree of the said Chancellor may be in the particulars aforesaid reversed, set aside, and for nothing holden, and that your petitioners may have such relief in the premises as to this Honorable Court shall seem meet.

LEON ABBETT,

*Solicitor and Counsellor with Appellants.*

A true copy.

HENRY C. KELSEY, *Clerk.*

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