

Secy of State

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N. J. Court of Errors and Appeals.

Between
THE NEW JERSEY AND NEW ENGLAND
TELEGRAPH COMPANY,

Appellants,

and

THE BOARD OF FIRE COMMISSIONERS
OF JERSEY CITY,
Respondents.

On Appeal.

Brief of Counsel for Appellants.

The facts of the case sufficiently appear in the bill of complaint.

I.

The respondents had power to make the contract set out in the bill.

The Court below so held. Case, pp. 58 and 59.

As the respondents have not appealed from the decision, and as the appellants do not question this part of it, it stands for the law in this case.

If any question should arise in the case regarding it,

the Court is referred, for authority to the city charter as follows :

Laws 1871, pp. 1094-1164 inclusive, sections 5, 7, 16, 114, 115, 116.

Laws 1872, p. 665, section 1.

II.

They did make a contract with the appellants by which they agreed, for a valuable consideration, to grant permission to the appellants to place their wires on the poles mentioned in the bill of complaint.

A.

Such contract was complete without reference to the resolution of September 22.

1. The work was all done at the expense of the respondents.

Case, pp. 11, 12, 15, 16, 17, 46.

2. It was all done under the command and direction of the superintendent of telegraph of the defendants, who was an officer of the respondents and in charge of that branch of the department.

The poles were placed where, and in the manner directed by him.

pp. 15, 16, 46.

3. The fact that the poles were being erected was from the beginning known to the president of the board, who was ex-officio a member of the committee on telegraph, to Commissioner Speck the chairman of that committee, and to the superintendent of telegraph, so that all the responsible officials in control of the telegraph department of the board knew of what was being done, and with that knowledge permitted the

appellants to advance money, materials, and men for the erection of the poles and their appurtenances, pp. 44, 45, Rule IX, page 8 of fire department rules.

“Rule IX. The president of the board shall be ex-officio a member of all committees, but a majority of the members of such committees, exclusive of the president, shall be sufficient to agree upon a report.”

4. The appellants expended these moneys on the representation made to them by the superintendent of telegraph, that the bargain on which they advanced it was agreed to by the authorities.

p. 11, lines 30-40, and p. 12, lines 1-12.

Under the circumstances the appellants were authorized to rely on this statement for the following reasons :

It came from the proper official.

The work was done publicly under his command.

The locations were all selected by him.

They knew that the other leading officials were cognizant of what was being done.

All these concurrent circumstances justified them in believing that the board had accepted their proposition, and were acting on it.

5. The board having permitted the erection of the poles in the manner indicated, and the expenditure of appellant's money in their erection are charged with acquiescence therein, and estopped from now removing them.

The appellants therefore contend that there was a contract between the board and themselves, independently of the resolutions and letters in evidence ; that it was an executed and completed contract, and that it was upon sufficient valuable consideration actually given by appellants, and can not be repudiated by the respondents.

B.

But whether so or not, there can be no doubt that the circumstances above referred to taken in connection with the resolution of the board of September 22d, and the acceptance thereof by the appellants constitute a contract.

Exhibit A. 4, p. 67.

Exhibit 1, p. 18.

Exhibit 2, p. 20.

Exhibit A. 5, p. 68.

Exhibit 3, p. 20.

It is said by the Vice-Chancellor that this resolution, Exhibit A. 5, was only a proposal to enter into a contract, which was subject to withdrawal by respondents.

A little reflection, I think, will expose the fallacy of this reasoning.

Bear in mind that the question at issue was not whether the appellants should be permitted to erect and use the poles, but whether they should retain the ownership of the poles. It was this and this only on which the board raised an issue.

The gravamen of the resolution was that this point must be yielded.

With this in view the status is clear. The company acting on a contract as they believed, and had authority to believe, erect the poles.

The board say we didn't agree that you should own the poles, but that you should erect them for us, and we would concede you the right to the joint use of them.

The company accede to the condition and the contract is complete.

C.

But there was a proviso in the resolution: "Providing that there is no interference with the wires of this department."

This proviso the Vice-Chancellor says, reserves a power of discretion for the defendants' own determination.

I answer not so, because

1. The proviso was not a matter the determination of which was a condition precedent to the contract. It was on the contrary a mere restriction laid upon the manner of its execution. The contract was complete. It was merely a provision as to the method of the use of the poles.
2. It was not a matter of opinion; it was a matter of fact. It was a question to be determined by proof.
3. It is not anywhere in the evidence of the respondents alleged that the appellants' wires have interfered or will interfere with the wires of the department, but that is the only reservation contained in the resolution; all that they allege is that they will interfere with the working of the telephones of the department.

But this difficulty was not provided against in the resolution.

4. If we grant, for argument's sake, that this alleged interference with the telephones is within the spirit of the resolution, and that it governs, still the testimony is that appellants' wires do not in fact interfere with the telephones.

Chinnock, the only expert produced by respondents, pp. 33-36, does not say that they would, he only says that they "could." It is interesting to note how very carefully he was examined; on cross-examination he admits that very many of the telephone wires now in daily use are hung on the same poles with telegraph wires, and that in every city where there are telephones in use, some of the wires are actually hung on the same poles with telegraph wires, and so in the country.

Leather shows by his testimony that he has no scientific knowledge on the subject, but he admits that in practice both wires are constantly hung on the same poles, p. 38.

Farrier, the superintendent of telegraph, and who has had considerable experience in telegraph matters says that there will be no interference, pp. 45 and 46, but that it will, in his opinion, be an improvement, and on page 51 he says he knows that it would not interfere "from the fact that fully one-third if not more, of the fire-alarm wires are on the poles of the Western Union Telegraph Company, The Atlantic and Pacific Company and other telegraph companies, and we have no trouble where our lines run on those poles."

Mr. Shaw, a man of large experience in such matters, says that they will not interfere, p. 12, and Mr. Cary, whose sole business for twenty-

six years has been the management of telegraph lines, says that the use of the wires together will not interfere. p. 16.

It may then be considered as clearly proven that in fact the placing of these wires on the poles does not interfere with the wires of the department.

This being so, it can not be that any whim of the commissioners, or a majority of them, can avail to defraud the company of the moneys they have expended, In the absence of evidence of any injury to the city by the use of the poles by the appellants jointly with the board.

III.

The respondents having power to make this contract, and having made it, and the appellants having parted with the consideration, the respondents have no right to destroy the poles, and if they do so will work injury to the appellants of such character as to be irreparable.

One of the wires involved, is the stock wire of the company between New York and Philadelphia, and over it business involving very large amounts is transacted every day, so that if these poles be cut down the whole route will be stopped, and the loss and damage to the company will be irreparable.

To prevent this, equity will interfere.

I therefore respectfully submit that the order of the Court of Chancery should be reversed, and the injunction prayed should be ordered.

FLAVEL MCGEE.

Court of Errors and Appeals.

BETWEEN
THE NEW JERSEY AND NEW ENGLAND
TELEGRAPH COMPANY,
Appellants, } *On Appeal, &c.*
AND
THE BOARD OF FIRE COMMISSIONERS OF
JERSEY CITY,
Appellees.

POINTS FOR APPELLEES.

The application of the appellants is for a reversal of the order dismissing the bill of the New Jersey and New England Telegraph Company, the prayer of which is that the Fire Commissioners of Jersey City be restrained from displacing certain telegraph poles erected on the streets of Jersey City. These poles were erected without the consent of any proper municipal authority; which fact, together with actions of both parties subsequent to such erection, are fully set forth in the opinion of the Vice Chancellor—7 Stewart, 118. The Board of Fire Commissioners of Jersey City was created and its powers defined by Sections 113 to 122, inclusive, of an act entitled "An Act to reorganize the local government of Jersey City," P. L., 1871, page 1142. The 114th section provides that "Said Board shall have the entire control and management of all (among other things) fire telegraph, fire bells and other ap-

paratus of every description belonging to said city." This power the Board must exercise; it is not a subject of delegation. The proposition of the appellants is to take from the city authorities, to some extent, at least, the control of the fire telegraph.

Davis *vs.* the Mayor, &c., of New York, 14 N. Y., 506-532.

Dillon on Municipal Corporations, Sections 60, 61, 567.

The poles were erected by the complainants without permission from the Board of Fire Commissioners, and the President of the complainants, in his letter to the Board, admits that the arrangements were made with the "officers" of the Board. All the moneys which the complainants claim that they will be put to the loss of were expended before they had entered into communication with defendants. This is clearly admitted in the bill of complaint. So that the complainants are without the equity to be derived from a proposition that they had been misled to expenditure by any action of the defendants. After the attention of the Fire Commissioners had been called to the actions of the complainants, a resolution was adopted by the Board to "grant permission to the said N. J. and N. E. Telegraph Company to place their wires thereon (*i. e.*, upon the poles which were erected by the complainants and were to be transferred to the Fire Department), provided that there is no interference with the wires of this department." This is the first and only act of concession by the defendants. Before considering whether or not it is such an offer as will create a contract upon acceptance, it is well to look at the effect of such a contract. It would be neither more nor less than the granting of a license to the complainants to erect poles and wires in the streets of Jersey City, the consideration being that the "right and use" of said poles should be "transferred to the Fire Department." (See Exhibit 2, page 20, printed case.) This was an assumption by the Board of Fire Commissioners of a power devolved upon the

Board of Aldermen by both Section 8 of "An Act to incorporate and regulate Telegraph Companies," R. S., pp. 1175-6, and a supplement to said act approved March 11, 1880, P. L., 1880, p. 20. The Common Council or other legislative body is required, by the acts cited, to designate the routes of Telegraph companies within incorporated cities, and to impose restrictions and regulations. In this case it is claimed that another department of the municipal government can assume functions of the Council, and say, "We will grant you the privilege, provided you render a service to this department." As well might the Fire Commissioners say to a railroad company, "We will grant you the use of the city's highways if you will give free transportation to employes of this Department when on duty." I respectfully submit that the action of the defendants, in offering to the complainants certain privileges within Jersey City, was *ultra vires*.

The offer was conditional, and was revoked.

As will be seen by reference to "Exhibit 2," page 30, of case, the offer, upon the acceptance of which the complainants must rest, was conditional that there should not be any interference with the wires of this Department. Before the complainants had acted under this resolution, or had been induced to the slightest expense thereby, the defendants concluded that the complainants' project would interfere with the efficiency of the Fire Department. Unless that conclusion was reached upon untenable grounds it became not only the right, but the imperative duty, of the defendants to have the poles removed. I submit that the official conclusion of the defendants upon this point is not a proper subject of review; but, for the purpose of showing that the fears of the Board were well founded, would respectfully call the attention of the Court to the testimony of witnesses versed in the science of telegraphy.

Charles E. Chinnoek (page 23 of case) testifies emphatically that the placing of telegraph wires upon poles whereon are wires for telephonic purposes interfere with the latter as to accuracy of reception and transmission. The complainants say that their business will be interfered with if the defendants are allowed to proceed. Undoubtedly it

will be temporarily. But this inconvenience should not be placed in the balance and outweigh the possibility of a conflagration, having its inception in a mistaken communication between the stations of the fire department of a large city.

Thomas Leather, the President of the defendants, and connected with the Fire Department twenty-three years (see page 37 of case), testifies that the wires and poles erected by the complainants interfere with the alarm telegraph lines of the Department by rendering them "liable to break at any moment." (See page 41 of case.)

The complainants were not misled by the defendants; they acted at their peril, and the fact that the defendants were desirous of accommodating, if they could do so without injuring the city, should not be construed to their disadvantage.

ALLAN L. McDERMOTT,
Attorney of Defendants.

Secy of State

In Chancery of New Jersey.

Between THE NEW JERSEY AND NEW ENGLAND TELEGRAPH COMPANY, Complainants, and THE BOARD OF FIRE COMMISSIONERS OF JERSEY CITY, Defendants,	}	10 Bill of Complaint. Filed 24 Nov. 1880.
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Humbly complaining showeth unto your Honor, 20
your orators The New Jersey and New England Tele-
graph Company, that they are a corporation created
under and by virtue of an act of the Legislature of New
Jersey, entitled An Act to incorporate The New Jersey
and New England Telegraph Company, approved
March 25th, 1875, that they are thereby made and
constituted a body politic and corporate, for the pur-
pose of making, using and maintaining telegraph lines
and communications through the Counties of Hudson, 30
Bergin, Essex, Union, Middlesex, Mercer, Monmouth,
Ocean, Burlington, and Camden, and that they are,
by said act, authorized to erect, construct and main-
tain lines of telegraph as provided in said act, over or
under any of the public roads, streets and highways
in this State.

They further show, that in the progress of the con-
struction of their telegraph lines through the County
of Hudson, and the City of Jersey City, they were
about to erect telegraph poles and telegraph wires 40

thereon, through that portion of Grand street in the City of Jersey City, which runs from Pacific avenue to Grove street, and thus through Grove street to Mercer street, and through Mercer street to Henderson street, and through Henderson street to Gregory street, and through Gregory street to York street. And that at the time they were about to erect such poles and wires, they discovered that the Fire Department of the City of Jersey City had a line of poles and
10 telegraph wires thereon, through the streets and over the route just mentioned, and on which these complainants were proposing to erect their line, and that it seemed to them that it would be wiser and more for the convenience of all parties if an arrangement could be had by which, instead of having two sets of telegraph poles and wires through the same streets, one set could be made to answer for both lines. That the poles of the Fire Department were not large
20 enough to accommodate the wires of this company, and especially not large enough to accommodate the wires of this company and the wires of the Fire Department, and that in addition thereto the old poles were many of them very much worn and out of repair, and would need soon to be replaced with new poles. And that they therefore made a suggestion to the Superintendent of Telegraph of the Fire Department, that that board should agree with these complainants for a joint use of a new set of poles to be erected
30 on the line of the old Fire Department poles through the streets above mentioned, and to that end suggested that they, these complainants, would, if the Fire Department were willing, remove the old worn out poles theretofore in use on the line above mentioned by the Fire Department, and that they should replace them with new poles of a size sufficient to accommodate both the uses of the Fire Department and themselves, and that thereafter they would keep the poles in repair, replace them when worn out, and in all respects be charged with their care, and on those poles they were to place
40 their own wires, and permit the Fire Department to place

theirs, the poles at all times thereafter to be subject to the joint use of complainant's company and the Fire Department, and be maintained of sufficient size for that purpose, and that in addition to that, the Fire Department was to have the right to place its wires on any other poles which they, these complainants, should erect in any other part of the city. That the Superintendent of Fire Telegraph, Mr. Henry E. Farrier, was favorably disposed to the proposition, and said he would submit it to the committee of the Board of Fire Commissioners, which had that matter in charge. That shortly after he reported to Mr. G. Ross Cary, who had the matter in charge for the complainants, that the committee were satisfied, and as these complainants always understood it, that the matter had been passed upon by the committee in charge, and that it was duly authorized by the committee having competent charge of the matter. That thereupon, these complainants placed their men in charge of the Superintendent of the Fire Department, and under his directions. The old poles of the Fire Department were removed on the line heretofore mentioned, excepting that part of it which is between the junction of Gregory and Montgomery streets, and the junction of Gregory and York streets, and in their stead placed new poles, which were the property of the complainants, furnished by them to the workmen of these complainants under the charge and direction of the Superintendent of Fire of the Board of Fire Commissioners of Jersey City, and erected over the line above mentioned, an entirely new set of telegraph poles, and placed thereon telegraph wires of these complainants and also the telegraph wires of the Board of Fire Commissioners of Jersey City.

These new poles were not placed in the holes filled by the old poles, but were placed either near to the old holes, or some distance from them, according as the Superintendent of Fire deemed wisest for the convenience of the department and of all concerned. The construction of the line was entirely under his charge, but the workmen to do it, and the materials

used, both poles and wires, were furnished by these complainants. After the work had been completed, and the new poles were all in and the wires up, one of the members of the Board of Fire Commissioners raised an objection on the ground that by the agreement between the board and these complainants the poles were to belong to the city or to the Board of Fire Commissioners. That these complainants protested that that had not been the agreement upon which
 10 they had furnished the poles for erection of the line.

That thereupon the board desired that there should be some statement in writing from these complainants as to what the contract was, and in pursuance of that request these complainants caused to be prepared and sent to the Fire Department a letter in writing setting forth the agreement under which the work had been done, similar in terms to that heretofore stated, which letter was dated Jersey City, September 2d, 1880, and was addressed to the Honorable, The Board of Fire
 20 Commissioners of Jersey City, and was signed by these complainants by the hand of James L. Shaw, their president, a copy of which letter is hereto annexed and marked Exhibit 1, and was delivered to the Board of Fire Commissioners at their next meeting, on or after September 2d, 1880, what day, these complainants can not now remember, but within a few days after that day.

After the receipt of that latter, Mr. Carey, the person in charge of the matter, on behalf of these complainants, as above stated, was seen by one or more
 30 members of the Fire Department, and told that the department were dissatisfied with the arrangement, because the property of the poles was claimed by the complainants. And on the 22d of September a resolution was passed by the Board of Fire Commissioners, a copy of which was furnished to these complainants on the next day by a letter dated September 23d, 1880, and addressed to the officers of The New Jersey and New England Telegraph Company, and signed by J. I.
 40 Van Alst, Jr., the Clerk of the Board. A copy of the letter is hereto annexed and marked Exhibit 2.

The resolution therein reported was in these words :
 " That the right and use of the poles erected by The
 New Jersey and New England Telegraph Company
 touching our line be transferred to the Fire Depart-
 ment, and in return this board will grant permission
 to said New Jersey and New England Telegraph Com-
 pany to place their wires thereon, providing that there
 is no interference with the wires of this department."

Your orators further show unto your Honor that
 this resolution was a departure from the agreement ¹⁰
 under which these complainants had furnished the
 poles and the men to erect them, and was asking of
 these complainants more than they had agreed to give.
 But that after considering the matter carefully they
 came to the conclusion that it would be better to yield
 the point rather than to have any misunderstanding
 with the Board of Fire Commissioners, and that
 inasmuch as they had already furnished the poles and
 been at the expense of their erection, and as there
 was no apparent misunderstanding between the author- ²⁰
 ities of the Fire Department and themselves as to the
 agreement excepting in the matter of the ownership
 of the poles, they decided, although they deemed they
 were not compellable so to do, to waive that point.

And they thereupon caused to be prepared another
 letter in which they conceded the demands of the Fire
 Department and accepted their version of the agree-
 ment, which letter was dated Jersey City, New Jersey,
 September 29th, 1880, and was addressed to the Hon-
 orable the Board of Fire Commissioners of Jersey ³⁰
 City, and was signed by James L. Shaw, the president
 of these complainants, a copy of which letter is hereto
 annexed and marked Exhibit 3. And thereupon your
 orators supposed that the matter was finally set at
 rest.

Your orators further show, that after their said let-
 ter of acceptance of the Fire Department's view of
 the agreement, they received no further communica-
 tion from the Board of Fire Commissioners regarding
 the matter until on or after the 28th of October, 1880, ⁴⁰

and that during that time both the Fire Commissioners and your orators continued to use the said poles and wires, each for their own purpose, and without any interference with the wires of the said department.

That on the 28th day of October, 1880, or within a day or two after, another letter was received addressed to James L. Shaw, Esquire, dated October 28th, 1880, and signed J. I. Van Alst, clerk, in which your orators' attention was called to a report of the committee of the whole, of the Board of Fire Commissioners, in which it was stated that in the judgment of the committee the use of the poles of the Fire Department by your orators would interfere with the working of the telephones now in use in the Fire Department, and would therefore recommend that the committee on telegraph and fire be, and they were thereby directed to have removed all poles of your orators on the line of the Fire Department wires, and that your orators were directed to replace the poles of the Fire Department removed by them; a copy of which letter is hereto annexed and marked Exhibit 4.

Your orators further show, that these telephones referred to in the resolution, were not the telephones of the Fire Department or of the Board of Fire Commissioners, but were telephones belonging to a private company known as the Bell Telephone Company, and that they were not a part of the official telegraph apparatus of the city, nor were they owned by the city nor the Board of Fire Commissioners, but were the property of this private company, and were merely in use by The Fire Department under some arrangement made by them with this Bell Telephone Company, but what your orators can not state.

Your orators further show, that after the date and receipt of that letter, the Board of Fire Commissioners and your orators continued to use the poles as before, without interference with the wires of the Fire Department, until the 18th of November instant, at which time another letter was received by your orators, signed by the said J. I. Van Alst, Jr., clerk of the said board,

addressed to the officers of The New Jersey and New England Telegraph Company, and dated November 18th, 1880, a copy of which letter is hereto annexed and marked Exhibit 5, the body of which letter was in these words: "Your company not having complied with the decision of the Board of Fire Commissioners relative to the removal of telegraph poles erected by your company without authority from this board, you are hereby notified that unless said poles are removed at once, measures will be taken by this board 10 to remove them."

And your orators further show that they are informed and believe that it is the intention of the Board of Fire Commissioners of Jersey City, the said defendants, unless they shall be enjoined by this Honorable Court, to remove said poles so erected at the expense of your orators, and to deprive your orators of all benefit from the moneys that they have so laid out, and the poles they have erected, and the wires thereon placed. 20

Your orators further show that the said poles were erected at a very considerable expense to your orators; that there are thirty-three poles, and that they cost your orators an average of twenty dollars apiece delivered, and that the cost of erecting them—that is, the wages of the men, the hire of a team, and the time spent—would average about ten dollars apiece for each pole, for the erection, making a cost of six hundred and sixty dollars for the poles, and three hundred and thirty dollars for their erection, and that the wires, 30 cross-arms and insulators have cost at least two hundred and fifty dollars more. And your orators show that this expense was incurred and this money laid out with the consent of the Fire Department, and that it was not until after all this outlay had been made that any objection was raised, and that then no objection was raised by the department against the thing itself, but it was treated, as this company had always understood and believed it to be, a contract between them, with the single exception that they differed on the ques- 40

tion of proprietorship of the poles so erected, and that this company in the interest of peace waived the question rather than make a point of it, although they then considered, and still considered it to have been their right if insisted upon, and that they submit to the Court that the resolution of the Board of Fire Commissioners of the 22d of September, 1880, and the acceptance thereof by these complainants by their letter of the 29th of September, 1880, constituted a
 10 contract which, together with the erection of the poles and the outlay of the money which had been made upon the verbal contract entered into between your orators and the Superintendent of Fire of the Board of Fire Commissioners, constitute a contract for a valuable consideration, which has been consummated.

And they further submit to your Honor, in view of the fact, and of the outlay by these complainants, and of the premises set forth in this bill, that the said Board of Fire Commissioners of Jersey City cannot
 20 now, and are, so far as they are concerned, hereby estopped from taking any proceeding to, to deprive your orators of the use of said poles, cross-arms, insulators, and other appurtenances of said telegraph line, and that they have no power or authority to remove any of said poles, or in any wise to interfere with the line of telegraph above mentioned.

Your orators further show that said line of telegraph is part of a line of telegraph owned and operated by your orators across the State of New Jersey, between
 30 the great cities of Philadelphia and New York, which, with the link in question, forms a continuous line between said cities. That said line now is, and ever since the completion of said link has been in operation and continuous use; and they aver that, if said poles are removed, not only will the business of your orators be seriously interfered with, and they be put to great loss and inconvenience, as above alleged, but in addition thereto the business and correspondence of the public will be seriously interfered with and wholly
 40 interrupted thereby.

Your orators further show, that the said line is so constructed as not to interfere with the safety or convenience of persons traveling on or over the said streets ; that said poles are tall, with wide cross-arms, and so placed as not to interfere with the full and complete use of the streets over which they pass, and that the poles selected were purposely taller than the old poles of the Fire Department, with a strict regard to the prevention of any obstruction to the use of the streets for every purpose for which the streets of the city could be used. 10

And your orators charge, that the said Board of Fire Commissioners have no authority or right, legal or otherwise, to interfere with said poles or the use thereof by your orators ; all which actings and doings of said the Board of Fire Commissioners of Jersey City are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators in the premises. In tender consideration whereof, and inasmuch as your orators are without adequate remedy in the premises, at and by the strict rules of the common law, and can only obtain relief in this Honorable Court, where matters of this nature are properly cognizable and relievable, to the end, therefore, that the said defendants may, without oath, full, true, and perfect answer make to all and singular, the matters aforesaid, and that as full and particularly as if the same were here repeated, and they and every of them strictly interrogated thereto, and that they, the said Board of Fire Commissioners of Jersey City, may be enjoined by the Writ of Injunction of the State of New Jersey, issuing out of and under the seal of this Honorable Court, from removing said telegraph poles so erected at the expense of your orators, as aforesaid, and from in any wise interfering with the use of said poles and the wires thereon placed, and the cross-arms and insulators and other appurtenances thereof, by your orators, and from in any wise interfering with your orators in their free and full use of said line of telegraph, and that your orators may have such further 40 20 30

and other relief in the premises as the nature of the case may require, and as shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your orators not only the State's writ of injunction issuing out of and under the seal of this Honorable Court, to be directed to the said the Board of Fire Commissioners of Jersey City, their superintendents, agents, counsellors, attorneys, employees and
 10 servants, restraining them and every of them, from removing the telegraph poles erected at the expense of your orators in Jersey City, New Jersey, in that portion of Grand street in the said city, which runs from Pacific avenue to Grove street; thence through Grove street to Mercer street; thence through Mercer street to Henderson street; thence through Henderson street to Gregory street, and thence through Gregory street to York street in said city, and the wires thereon placed, and the cross-arms and insulators and
 20 other appurtenances of said telegraph line, and which poles, together with said cross-arms, insulators and appurtenances and the wires thereon placed were furnished by your orators, and were erected by their employees and at their expense, but under the direction of the Superintendent of Fire of the Board of Fire Commissioners of Jersey City, and from in anywise interfering with the use of said poles and the wires thereon placed, and the cross-arms and insulators and other appurtenances thereof by your orators, and
 30 from in anywise interfering with your orators in their free and full use of said line of telegraph, and the poles, wires, cross-arms, insulators and appurtenances thereof, but also the State's writ of subpoena issuing out of and under the seal of this Honorable Court, to be directed to the said Board of Fire Commissioners of Jersey City, commanding them by a certain day, and under a certain penalty therein to be expressed, to be and to appear before your Honor in this Honorable Court, then and there to answer all and singular
 40 the premises, and to stand to, abide by and perform

such order and decree therein as to your Honor shall seem meet, and as shall be agreeable to equity and good conscience, and your orators as in duty bound will ever pray, &c.

BEDLE, MUIRHEID & MCGEE,
Solicitors for and of Counsel
with Complainants.

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

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James L. Shaw, of full age, being duly sworn, on his oath saith, that he is President of the New Jersey and New England Telegraph Company, the complainants in the foregoing bill named. That the allegations contained in said bill, so far as they relate to his own doings and the doings of the said complainants, are true, and that so far as they relate to the doings of others he believes them to be true. That G. Ross Cary, of the City of Jersey City, was the person in charge of the erection of said telegraph line in Jersey City, Hud-²⁰son county, New Jersey, and that so far as the allegations in said bill refer to his doings deponent's knowledge thereof is derived from the statements of said G. Ross Cary. That all the correspondence mentioned in said bill was as stated in said bill, and that the copies thereof annexed to the bill are true copies of the communications of which they purport to be copies. That the poles which were erected by the complainants on the line of the streets in Jersey City,³⁰ named in said bill, were erected together with the cross-arms and insulators and other appurtenances thereto, and the wires thereon placed at the expense of the complainants, and not at all at the expense of the defendants in said bill named. That this company would not have erected the poles in the way they did and in the places where the poles of the Board of Fire Commissioners of Jersey City had formerly stood, and would not have removed the old poles of the said The Board of Fire Commissioners of Jersey City had they not understood that they were doing so by the agree-⁴⁰

ment with that board, and that they laid out their money and furnished their materials under the agreement as they understood it with said defendants.

He further says that said work was all completed, said poles furnished and said moneys expended by them under the control and direction of the Superintendent of Telegraph of the said Board of Fire Commissioners, which person is an officer of the said Board of Fire Commissioners of Jersey City, and is the officer
 10 in charge of the telegraph department of said Board of Fire Commissioners. That the poles erected and the cost of said poles and of the insulators, cross-bars and wires thereon placed was as stated in the bill.

He further says, that the use of said poles jointly by the Board of Fire Commissioners and by the complainants in no wise interferes with the wires of either party, but that the two can be used jointly without interfering with or obstructing the wires of each other, and have been so used and are now being so used.

20 He further says, that the telephones referred to in the resolution of the Board of Fire Commissioners and referred to in said bill, are not the property of the said Board of Fire Commissioners, but are the property of a private company, known as the Bell Telephone Company, and are being used by the Board of Fire Commissioners under some arrangements with that company.

And he further saith that said poles so erected by this company, under the direction of the said Board of Fire
 30 Commissioners, were so constructed as not to interfere with the safety or convenience of persons traveling on or over said streets, but were purposely and carefully so constructed as not to interfere with the use of said streets for any purpose for which they may be lawfully used ; that they were purposely made taller than the old poles of the Fire Department ; that the cross-arms were made longer so as to allow the free use of the streets, and not to interfere with trees and shrubbery or buildings, or any of the things along the line of the
 40 streets.

He further saith that no objection to the erection of said poles was made by the Fire Department until after they were erected and the expense had been incurred; that, after that time, the only objection raised by the Fire Department was that the property in said poles had not been transferred to the Board of Fire Commissioners. And he saith that that was not a part of the bargain or agreement upon which the complainants agreed to furnish said new poles and to be at said expense, but that complainants, rather than 10 have any misunderstanding with said defendants, yielded the point, and, in their letter of the 29th of September, referred to in the bill of complaint, they yielded that point, and acceded to the agreement as stated by the resolution of the said Board of Fire Commissioners.

And he further saith that if said poles should be removed now by the Board of Fire Commissioners, it would be a very great loss and detriment to the complainants in their property and in their business, and 20 would cause them much loss of time and money and custom, and would annoy and interfere with them, and harass them very greatly.

He further saith that said line of telegraph constitutes a link in a continuous line of telegraph across the State of New Jersey, between the cities of Philadelphia and New York, and that the same has been in continuous operation and public use between said cities ever since the completion of said link, and that, if said poles are permitted to be now removed, such 30 removal will seriously interfere with the public business and correspondence of the public, and will wholly interrupt and stop the same, and will cause great inconvenience, annoyance, and loss to the general public, and to the business of the mercantile community in both cities and throughout the whole line across the State of New Jersey, and that no part of said line can be destroyed without interrupting the whole line.

He further saith that one of the wires on said line, known as number five, is the stock wire, running be- 40

tween the Stock Exchanges of New York and Philadelphia, and that no wire in the United States is of more commercial importance than it.

JAMES L. SHAW.

Sworn and subscribed before me, this twenty-third day of November, 1880.

ALBERT SIMON,
Notary Public, N. J.

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

G. Ross Cary, of full age, being sworn, saith that he is the person referred to in the foregoing bill of complaint, as the person in whose charge the erection of the telegraph line of The New Jersey and New England Telegraph Company, therein referred to, was placed, and that the allegations in said bill, so far as they relate to his actions and doings, are true. That
20 in the construction of the telegraph line of the complainants, through the County of Hudson and the City of Jersey City, they were under the superintendency of this deponent, about to erect telegraph poles through the streets mentioned in the said bill, viz : Grand street from Pacific avenue to Grove street ; thence through Grove to Mercer, thence through Mercer to Henderson, thence through Henderson to Gregory, and thence through Gregory to York street. And that this deponent at that point discovered that the Fire Department
30 had a line of poles and telegraph wires thereon through the streets above mentioned, and that these poles were insufficient in size, and were nearly worn out, and it occurred to him that it would be wiser and more for the convenience of the complainants, and also of the Board of Fire Commissioners if an arrangement could be made by which, instead of having two sets of telegraph lines through the same streets, one set could be made to answer for both lines. And that he thereupon suggested to Mr. Henry E. Farrier, the
40 Superintendent of Telegraph of the said board, that that

board should agree with the complainants for the joint use of a new set of poles to be erected on the line of the old Fire Department poles, through the streets above mentioned, and he suggested that they, the complainants, would, if the Fire Department were willing, remove the old poles then in use on the line above mentioned by the Fire Department, and would replace with them new poles of a size sufficient to accommodate both the uses of the Fire Department and the complainants, and that thereafter the complainants would keep the poles in repair, replace them when worn out, and in all respects be charged with their care, and that on those poles the complainant's should place their own wires, and permit the Fire Department to place theirs, and that the poles at all times thereafter should be subject to the joint use of the complainants' company and the Fire Department, and be maintained of sufficient size for that purpose, and that the Fire Department should have the right to place its wires on any other poles which the complainants should erect in any other part of the city of Jersey City, which suggestion was made by this deponent in good faith, and with the consent of the complainants; that the Superintendent of Fire Telegraph, Mr. Farrier, was favorably disposed to the proposition, and said he would submit it to the committee of the Board of Fire Commissioners, which had that matter in charge, and that shortly afterwards he told this deponent that he had referred it to the chairman of the committee, and that he said go ahead, and as deponent understood it that it was satisfactory to all concerned.

That thereupon, this deponent relying upon the statement of said superintendent of telegraph, and believing that the matter was thoroughly understood and agreed upon by both parties, placed his force of men under the control of said Superintendent of Telegraph of the Board of Fire Commissioners, and furnished to him poles, cross-arms, insulators, wires and other appurtenances necessary to erect said line of telegraph,

and said line of telegraph was thereupon erected through the streets mentioned above, by the men and with the materials of the complainants, and at their expense, but under the superintendency and direction of the said Henry E. Farrier, the Superintendent of Telegraph as aforesaid, of the Board of Fire Commissioners of Jersey City.

10 He further saith that these new poles were placed at such places and at such distance as was deemed wisest by the said superintendent of telegraph for the convenience of the Fire Department and of all concerned, and that the line was constructed entirely under his charge, but at the expense of the complainants, and that there was no objection raised thereto by the Board of Fire Commissioners until after the work had been completed, and that then the objection which they raised, and the only one so far as deponent has ever heard of, was the one referred to in their resolution, Exhibit 2, viz. : that the property in said poles ought to be transferred to the city.

20 He further says that he is a practical telegraph man, and has been engaged actively in business of managing telegraph lines for twenty-six years, and is thoroughly conversant with the whole subject, and that the use of the said lines by this company and the Fire Department is not inconsistent; that the two can use them together without the wires of either interfering with those of the other, and that from the time they were so constructed, viz., in the month of August last, until the present time, they have been so used without the one interfering with the other, and that the wires of the complainants do not in any way interfere with the wires or with the business of the Fire Department.

30 He further says that the telephones referred to in the resolution of the Board of Fire Commissioners are not the property of the Board of Fire Commissioners, but are the property of the Bell Telephone Company, a private corporation, which are allowed to be used

by the Fire Department by some arrangement with that company.

He further says that said poles would not have been erected in the location and manner that they were but for the understanding and belief, on his part and that of the complainants, that they were acting under the authority of the Board of Fire Commissioners, and that the objection which is now raised by the defendants was not raised until after all the moneys had been expended, and the line completed. 10

He further says that he fears greatly that, unless the defendants are enjoined by this Honorable Court, that they will at once attempt to remove said poles, and the appurtenances thereto, and he says that, if they are allowed to do so, the complainants will be greatly annoyed and damaged thereby, and put to great loss and expense in their business and in their property, in the loss of materials, in the loss of time, in the loss of custom, and in all respects, and that, in addition thereto, the public business will be seriously interfered 20 with, and wholly interrupted.

Deponent further saith that as he is informed and believes the telephones referred to in the resolution of the Board of Fire Commissioners, a copy of which is annexed to the bill of complaint, and marked Exhibit 4, are not connected with the wires of the Fire Department, but are connected with the wires of the Bell Telephone Company, and that the wires of that company are placed upon the poles so erected by the complainants, as set forth in the bill, and that there 30 are now upon said poles not only the wires of the complainants and of the Fire Department, but also the wires of said Bell Telephone Company, and that the source of his said information is the members of the said Board of Fire Commissioners, several of whom have so stated to deponent, and that said telephones are merely used by said Fire Department under some arrangement with said telephone company.

Sworn and subscribed before me, at Jersey City,
this 23d day of November, 1880.

ALBERT SIMON,
Notary Public, N. J.

("EXHIBIT 1.")

JERSEY CITY, September 2, 1880.

To the Honorable, The Board of Fire Commissioners
10 of Jersey City:

Gentlemen—It has come to our hearing that unfriendly criticism has been made regarding the recent erection by us of telegraph poles under the direction of the officers of your board, and for the joint use of the Fire Department and our company, and that it has been said that some arrangement had been made detrimental to the interests of the city.

In order, therefore, that there may be no misunderstanding as to the facts in the case, and to prevent any
20 misunderstanding permit us to state briefly the arrangement that was entered into between us and the officers of your board.

It was agreed that we should remove the old worn out poles heretofore in use by the Fire Department in the streets along which our route lay, and that we should replace them with new poles of a size sufficient to accommodate both the wires of the Fire Department and our company, and that hereafter we were to keep the poles in repair, replace them when worn out, and
30 in all respects be charged with their care.

On these poles we were to place our own wires and permit the Fire Department to place theirs, the poles at all times hereafter to be subject to the joint use of our company and the Fire Department, and to be maintained of sufficient size for that purpose.

In addition to this the Fire Department was to have the right to place its wires on any other poles which we should erect in any other part of the city.

40 In strict conformity with this agreement, we have

removed the old, worn-out poles that were formerly planted, and have replaced them with larger, handsome ones.

We have done this under the direction, as to location, of the officers of the Fire Department, and when it was necessary for their accommodation, we have deviated from our proposed course and have considered the present and prospective necessities of the department in the size of the poles.

We have made the poles very long, so as to raise 10 the wires well above the shade trees and shrubbery, and have put thereon long cross-arms to avoid entanglement with foliage in front of private residences, and, lest the poles should be deemed unsightly, we are now engaged in painting them.

In short, for the privilege of erecting our line through the city, we have given the city an entirely new set of telegraph poles, much handsomer and more commodious than they would have erected, and have taken upon ourselves the cost of keeping them in 20 repair, and replacing them when worn out, and this, too, without erecting poles in places other than where they already existed or must have been placed by the city.

In view of these facts, it seems to us that no fair man can object to our arrangement, or criticize the officers of your board for making it.

Respectfully yours,

THE NEW JERSEY AND NEW ENGLAND
TELEGRAPH COMPANY.

30

JAMES L. SHAW,
President.

(" EXHIBIT 2.")

BOARD OF FIRE COMMISSIONERS,

JERSEY CITY, N. J., Sept. 23d, 1880.

To the Officers of The New Jersey and New England
Telegraph Company :

Gentlemen—At a regular meeting of the Board of
Fire Commissioners, held last evening, the following
10 recommendation was offered and unanimously adopt-
ed: That the right and use of the poles erected by
"The New Jersey and New England Telegraph Co.,"
touching our line, be transferred to the Fire Depart-
ment, and, in return, this board will grant permission
to the said N. J. & N. E. Telegraph Co. to place their
wires thereon, providing that there is no interference
with the wires of this department.

Yours very respectfully,

J. I. VAN ALST,

20 [SEAL.]

Clerk.

(" EXHIBIT 3.")

JERSEY CITY, N. J., Sept. 29, 1880.

To the Hon. The Board of Fire Commissioners of Jer-
sey City :

Gentlemen—Your communication of September 23d
inst., containing a copy of the resolution passed by
your "Honorable Board," on the evening of the 22d
30 inst., relative to the replacing of the fire telegraph
poles by our company, and the joint use thereof by
the Fire Department & our Co., has been received.
The terms of the agreement as there stated are not as
we understood them originally, but our understanding
thereof was expressed in our letter to your "Honor-
able Board," of Sept. 2nd inst. Upon careful consid-
eration, however, we see no good reason why we should
not accept of the terms contained in the resolution of
40 your "Honorable Board" above referred to, and we

accordingly do hereby accept of the terms of that resolution, instead of those set forth in our letter to your "Honorable Board," above referred to.

Very respectfully,

THE NEW JERSEY & NEW ENGLAND,
TELEGRAPH COMPANY.

JAMES L. SHAW,
President.

("EXHIBIT 4.")

10

BOARD OF FIRE COMMISSIONERS,
JERSEY CITY, N. J., Oct. 28, 1880.

JAMES L. SHAW, Esq.,

President of New Jersey and
New England Tel. Co. :

Dear Sir—Herewith please find report of the Board of Fire Commissioners as a committee of the whole, which report was adopted by the board.

Yours, &c.,

20

J. I. VAN ALST, Jr., Clerk.

JERSEY CITY, Oct. 20, 1880.

TO THE BOARD OF FIRE COMMISSIONERS :

Gentlemen—The committee of the whole, to whom was referred the communication from James L. Shaw, President of the New Jersey and New England Telegraph Co., also the communication from Bedle, Muir-³⁰heid & Co., in reference to the telegraph poles erected on the lines of the Fire Department wires, respectfully beg leave to report, that in their judgment the use of the poles of the Fire Department by said New Jersey and New England Telegraph Co. would interfere with the working of the telephones now in use in this department, and would therefore recommend that the committee on telegraph and fuel be, and they are hereby directed, to have removed all poles erected by said New Jersey and New England Telegraph Co., on ⁴⁰

the line of the Fire Department wires, and to direct said company to replace all poles belonging to this department removed by them, they having been removed without authority of this board.

(Signed)

T. LEATHER,
CHARLES A. ROE.
MICHAEL KUNTZ,
JOHN BRENNAN,
BERNARD McCARTY,
C. J. SPERK.

10

I am directed by the committee on telegraph and fuel to call your attention to the above report, and request you to comply thereto.

Yours, &c.,

[SEAL.]

J. I. VAN ALST, Jr.

(" EXHIBIT 5.")

20

JERSEY CITY, N. J., Nov. 18, 1880.

TO THE OFFICERS OF

The New Jersey and New England Telegraph Co.

Gentlemen—Your company not having complied with the decision of the Board of Fire Commissioners, relative to the removal of telegraph poles erected by your company without authority from this board, you are hereby notified that unless the said poles are removed at once, measures will be taken by this board to remove them.

30

Yours very respectfully,

J. I. VAN ALST, Jr.

[SEAL.]

Clerk.

IN CHANCERY OF NEW JERSEY.

<p style="text-align: center;">Between</p> <p style="text-align: center;">THE NEW JERSEY AND NEW ENGLAND TELEGRAPH COMPANY,</p> <p style="text-align: center;">Complainants.</p> <p style="text-align: center;">and</p> <p style="text-align: center;">THE BOARD OF FIRE COMMISSIONERS OF JERSEY CITY.</p>	}	<p>On Bill &c. 10</p>
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On reading and filing the bill of complaint in the above entitled cause, and the proofs thereto annexed.

It is on this twenty-fourth day of November, eighteen hundred and eighty, on motion of Bedle, Muirheid & McGee, the complainant's solicitors, ordered that the defendants do show cause before the Chancellor at the chambers of the Vice-Chancellor, No. 828 Broad street, in Newark, on Monday, the 29th day of of November, instant, at 10 A. M., why an injunction should not issue pursuant to the prayer of the bill, and that a copy of said bill with the proofs thereto annexed and of this order be served on the President of the Board of Fire Commissioners of Jersey City, on or before Friday next.

And that pending the hearing of this order, and until the further order of this Court, the defendants, their superintendents, agents, counsellors, employeés and servants do refrain from removing the telegraph poles erected at the expense of the complainants in Jersey City, New Jersey, in the following streets, namely: Grand street, from Pacific avenue to Grove street; thence through Grove to Mercer; thence through Mercer to Henderson; thence through Henderson to Gregory, and thence through Gregory to York street, and also from removing the cross-arms

thereon, and the insulators and wires of the complainants thereon placed, and from in anywise interfering with or depriving the complainants of such use of said poles, wires, cross-arms, insulators and telegraph line as they have heretofore had.

THEODORE RUNYON,
C.

Respectfully advised.

A. V. VAN FLEET,
V. C.

10

ORDER.

It is ordered that this cause be referred to the Vice-Chancellor to hear and determine, &c.

Dated 27 December, 1880.

20

THEODORE RUNYON, C.

IN CHANCERY OF NEW JERSEY.

Between	}	On order to show cause why injunc- tion should not issue. 10
THE NEW JERSEY AND NEW ENGLAND TELEGRAPH COMPANIES,		
Complts.,		
and		
THE BOARD OF FIRE COMMISSIONERS OF JERSEY CITY,		
Defts.		

BEDLE, MUIRHEID & MCGEE,
Solicitors for Complainants.

ALLAN L. McDERMOTT,
Solicitor for Defendants.

Examination in the above stated matter, taken before me, THEODORE RYERSON, one of the Masters of the Court of Chancery of the State of New Jersey, at the headquarters of the Board of Fire Commissioners of Jersey City, at two o'clock in the afternoon of this fourth day of December, in the year eighteen hundred and eighty. FLAVEL MCGEE appearing as counsel for the complainants, and ALLAN L. McDERMOTT appearing for the defendants. 20

John J. Van Alst, a witness produced on the part of the defendants, being duly sworn, deposes and says— 30

I am the Clerk of the Board of Fire Commissioners of Jersey City, and have been such since last April; as such I have charge and custody of the minutes and proceedings of the board.

I have the minutes of September 1, 1880, and now produce them. (Minute book produced.)

Q. Will you compare the preamble and resolution adopted with reference to The Continental Telegraph 40

Company with the paper which I hand you marked for identification, Exhibit A 1 ?

A. This is a true copy of the minutes.

This preamble and resolution was referred to committee of telegraph and fuel for their report.

Prior to the adoption of that preamble and resolution there had been no presentation of an application or communication concerning the management of their business in Jersey City.

10 There had been no action to my knowledge taken by the board prior to that with reference to the erection of telegraph wires upon poles used by the department.

The minutes do not show any such action by the board.

The committee reported September 15, 1880.

Exhibit A 1, marked for identification, offered in evidence

(Objected to by solicitor for complainants as irrelevant.)

20 *Q.* Turn to the minutes of September 8, 1880?

Paper marked Exhibit A 2 shown to witness, and witness is asked to compare this paper with record, and is it a true copy of the record?

(Objected to by solicitor of complainants, because paper does not appear to be relevant to this case.)

A. I have compared this paper Exhibit A 2 with the minutes of September 8, 1880, and it is a true copy.

(Exhibit A 2 offered in evidence objected to as irrelevant by solicitor of complainants.)

30 *Q.* Up to September 8, 1880, had there been any communication received by the Board of Fire Commissioners from the New Jersey and New England Telegraph Company?

A. No. There had not prior to September 8, 1880?

Q. Prior to September 8, 1880, had there been any action taken by the Board of Fire Commissioners in the official record, of which action The New Jersey and New England Telegraph Company was mentioned?

(Objected to by solicitor of complainants, because it does not clearly state a proposition, and does not define what record is meant, whether the minutes or something else.)

A. I find no action of the board where The New Jersey and New England Telegraph Company is mentioned prior to September 8, 1880.

When I speak of the records of the board I mean the minutes and proceedings of the Board of Fire Commissioners of Jersey City. 10

Q. Paper marked Exhibit A 3 shown to witness, is asked when was that communication received by your board?

A. September 8th, 1880.

That is the first communication from the complainants received by the board.

Q. What was done with it?

A. It was referred to committee on telegraph and fuel.

Exhibit A 3 offered in evidence. 20

That committee reported on the 15th September, 1880.

Q. Turn to the minutes of September 15th, 1880, and compare paper now shown you and marked Exhibit A 4 with the minutes of that date?

A. This is a true copy of the minutes of that date.

Exhibit A 4 is offered in evidence by defendants.

There was no further action taken upon this matter at that meeting of the board; that is September 15th, 1880. 30

The next meeting of the board was September 22, 1880.

Q. Turn to the minutes of that meeting and compare paper now shown you and marked Exhibit A 5, with the minutes of that date?

A. This paper is a true copy of the minutes of that date.

Exhibit A 5 offered in evidence.

Q. In the minutes of that meeting does there appear any other action concerning complainants? 40

A. No, sir,

Q. Mr. Van Alst, you have a resolution book, have you not?

A. Yes, sir.

Q. That book is used for what?

A. For the purpose of entering resolutions passed by the board, where moneys are involved.

Those resolutions are signed by the Mayor on that book.

10 Q. Has there been any resolution adopted by the board with reference to complainants, which has been signed by the Mayor of Jersey City?

(Objected to, because irrelevant to the issues set up in the bill.)

A. No, sir.

Q. Has there ever been a resolution adopted by your board with reference to the complainants?

20 A. There has.

Q. On what date?

A. October 20th, 1880. No, that is a mere report. I am mistaken; there has been no resolution adopted by the board with reference to the complainants.

Q. Then has all the action taken by the board been the reception and adoption of reports of committees?

A. Yes, sir, that is all.

Q. Besides that you have received and sent certain letters between the parties?

30 A. Yes, sir.

Q. Has any action of the board with reference to the reception or adoption of the reports of the committees been submitted to the Mayor of Jersey City for his approval?

A. No, sir

Q. Will you turn to the minutes of September 29, 1880. Was there any action taken with reference to complainants?

40 A. Nothing more than the reception of these two communications. (Papers produced and marked Ex-

hibit A 6 and Exhibit A 7.) These communications were referred to the board as a committee of the whole.

Papers marked Exhibit A 6 and Exhibit A 7 offered in evidence on the part of defendants.

That committee reported October 20, 1880.

Paper marked Exhibit A 8 is shown to witness, and witness is asked :

Q. Have you compared this paper marked Exhibit A 8 with the minutes of the board of October 20, 1880?

A. I have compared it and it is a true copy of the minutes of that date. 10

Q. What was done with that report?

A. Report was received and recommendation was adopted.

Q. Between October 20, 1880, and the time the order to show cause made in this case was served, was there any action taken by the board as to wires, poles or other property of the complainants?

A. There was not. 20

Q. Did you write a letter to complainants on September 30, 1880?

A. I did write a letter about that time to the complainants.

Paper marked Exhibit A 9 is shown to witness, and witness is asked :

Q. Is that a copy of that letter?

A. It is. The original of that letter I delivered at the office of The New Jersey and New England Telegraph Company, to a clerk in their office. 30

Exhibit A 9 offered in evidence on the part of defendants.

(Objected to, because it does not appear to have come in the possession of complainants, and it is not the best evidence.)

Q. Did you receive any answer to this letter?

A. No, sir. I delivered it at the office of The Western Union Telegraph Company, Exchange place, Jersey City. 40

Q. Had you ever delivered letters there before for the complainants?

(Objected to.)

A. I think I have, but am not positive; I wrote a letter to the complainants on November 18, 1880, by the instruction of the chairman of the committee on telegraph and fuel.

10 Paper shown witness, marked Exhibit A 10, and he is asked—

Q. Is that a copy of that letter?

A. It is.

Exhibit A 10, offered in evidence by defendants.

Q. Have you now stated all the official action taken by the board with reference to the complainants?

A. I have, sir.

• I have a copy of the rules of the Board of Fire Commissioners of Jersey City, and now produce a copy of the said rules.

20 Book produced and marked Exhibit A 11.

Q. Are there any other rules?

A. Yes, there are certain minor rules.

Q. Are there any other rules conferring power upon the Chief of the Fire Department?

A. None that I think of—beyond those contained in Exhibit A 11.

Exhibit A 11, offered in evidence.

30 *Q.* Does there appear upon the minutes of the board, or is there in the papers in your possession, any communication from the Chief Engineer of the Fire Department, or from the Superintendent of the Telegraph, with reference to complainants or their business?

A. Not to my recollection; I have examined the minutes, and do not find any such communications.

40 *Q.* Has there ever been any special committee appointed by your board to confer with complainants, or any committee or officer of the board directed or empowered by the board to confer with complainants, or make any agreement with them?

(Objected to, on the ground that witness can't testify to that, it must appear by the minutes, and this is not the best evidence.)

A. No.

At which time the further examination was adjourned to Thursday, December 9th, at 7 P. M., at same place.

At which time and place the examination was continued in the presence of the counsel of the respective parties. 10

Mr. Flavel McGee for complainants and Mr. Allan L. McDermott for defendants.

Mr. Van Alst being cross-examined by Mr. MCGEE,
says :

The letter Ex. A 3, actually came into my possession a day or two before the board met ; about the 6th or 7th of September, 1880 ; that is my impression. When I said the eighth I meant that was the day the board met, after its receipt ; first meeting of the board after its receipt. The office is open all day, and I am here every day the office is open. 20

Q. Now, at the meeting of September 22d, when resolution Exhibit A 4 was passed, was there not before the resolution was acted upon, a conference of all the members of the board and their counsel, Hon. Leon Abbett and Mr. McGee the counsel of the complainants ?

(Question objected to.) 30

A. I know those two gentlemen were here, but I do not know what the subject of the conference was ; but there was a conference ; you have the date wrong ; it was the 15th, instead of the 22d.

Q. This resolution book of which you speak ; do you put into it any resolutions except such as relate to the disbursements of money ?

A. I never have ; no, sir.

Q. Then such a resolution as Exhibit A 4 would not go into that book ? 40

A. That is not a resolution ; it is merely a report of a committee ; it would not go into that book.

Q. Look at it and see if it is not more than a report of a committee ?

(Witness looks at the Exhibit A 4.

A. No, sir ; I should not consider it so.

By Mr. MCGEE. You have the wrong exhibit ; I mean Exhibit A 5 ?

A. It is an adoption of the report and recommend-
10 ation of the committee.

Q. Is that not the usual way in which such matters are passed by the board ?

A. Yes, sir ; it is.

The Mayor does not sign any but the money resolutions.

Q. You say you delivered Exhibit A 9 to a clerk in the office of The New Jersey and New England Telegraph Company. How do you know he was in their office ?

20 A. I told a young man that I had a communication for that company, and asked if this was the right place ; he said he would receive it for them ; I do not know that the company have an office in another part of the city or not.

JOHN I. VAN ALST, JR.

Sworn to and subscribed before before me this ninth day of December, 1880.

30 THEO. RYERSON,
Master in Chancery of N. J.

Henry E. Farrier, a witness produced on the part of the defendants, being duly sworn deposes and says :

I am the superintendent of the telegraph department of the Board of Fire Commissioners of Jersey City, and have been so since June 3d, 1880.

Q. Have you ever been empowered by the board,
40 or instructed by the board, to permit the complainants

to erect wires upon the same poles that are used by the Fire Department?

(Question objected to as leading and irrelevant, and calling for oral testimony—secondary evidence.)

A. No, sir; not by the board.

And upon *cross-examination* by Mr. MCGEE, says :

Q. By whom have you been empowered?

10

(Question objected to.)

A. No company has put any wires upon the Fire Department poles since I have been Superintendent of Telegraph; no wires have been put upon the Fire Department poles since that time.

It is consented by counsel on both sides that the further cross-examination of this witness be intermitted for the present, with permission to counsel for complainants to resume it hereafter if he so desires.

20

By defendants' counsel :

Q. Were you ever directed or empowered by the Board of Fire Commissioners to make any agreement or arrangement with the complainants or any other telegraph company? I speak of the board as a board?

(Question objected to for same reasons as before.)

A. Not by the board, as a board.

Charles E. Chinmook, a witness produced by the defendants, being duly sworn testifies as follows :

30

My business is electrician of The Metropolitan Telephone and Telegraph Company; I have made a study of the transmission of electric despatches; I have also made a study of the transmission of telephonic despatches; as to electric despatches for fourteen years, and as to telephonic despatches, from two and a half to three years.

Q. Will you state, in your opinion, whether or not the transmission of telegraphic despatches over wires

40

placed upon the same poles whereon are erected wires used for telephonic communication can interfere with the use of the telephone wires in the matter of accuracy of transmission ?

Objected to by Mr. McGee, because—

- 1st. It calls for a theoretic, and not a practical opinion.
- 2d. It is irrelevant.
- 10 3d. It is a subject not yet open to investigation, inasmuch as it does not appear that the Fire Department possess any telephone wires.
- 4th. Because the witness does not appear to be a practical expert.

A. It can.

- Q. In your opinion, would the erection of telegraph wires upon poles whereon are erected wires for the transmission of telephonic despatches between the different buildings of a fire department endanger, in any
20 degree, the transmission of telephonic messages as to accuracy of reception or transmission ?

(Same objection as before, and also the question is leading).

A. They would.

And being *cross-examined* by Mr. MCGEE, the witness testifies :

- 30 Q. In point of fact, Mr. Chinnock, are not very many of the telephone wires now in daily use, hung on the same poles with telegraph wires, either wholly or partially ?

(Objected to by Mr. McDermott.)

- A. We have in New York City such telephone wires on telegraph poles that are practically useless ; there are others in use ; I can add to the answer already given, yes—that is, I can answer yes to the
40 question.

Q. Is it not a fact that, in every city where there are telephones in use, some of the wires are actually hung on the same poles or fixtures with telegraph wires, so far as your knowledge extends?

A. It is a fact that, in all telephone companies that I am acquainted with, including New York, the plan of running telephone wires on the same poles or cross on them with telegraph wires, has been abandoned as impracticable.

Q. Question repeated.

10

A. Yes, it is a fact; that is, they are so hung; but we are not hanging new ones in that way; we are remedying the evil where it is possible to do so.

Q. Is it not a fact that, in every city where telephones are used, so far as your knowledge extends, that telephone wires hung on the same poles with telegraph wires are in actual use every business day?

A. Yes.

Q. In the country, between cities and towns, are not most of the telephone wires hung on the same poles with telegraph wires? 20

A. I believe they are.

Q. Is the American Speaking Telephone Company a part of your company, or connected with your company?

A. Yes, it is consolidated with our company.

Q. Are you sufficiently well acquainted with that company to know what wires they are actually using?

A. Yes.

Q. And what poles they are using?

30

A. I believe I do.

Q. What poles are your company using between New York City and Elizabeth, New Jersey?

(Objected to by Mr. McDermott.)

A. I will say, three or four days ago we were using, and may be using now, a wire rented from the Western Union, or A. & P., I don't know which, but we have a special pole route running out from Jersey City, taking Paterson, Newark, Orange, Elizabeth, and 40

it is intended to use that route for communication between Elizabeth and New York; heretofore we have used the poles of some telegraph company, and heretofore we have rented not only the poles, but also the wires of some telegraph company; on those same poles there were stretched telegraph wires used by the telegraph company.

Re-direct examination by MR. McDERMOTT.

10 Q. You speak of a contemplated change in the formation of the connection by wire between New York and Elizabeth. What is that?

A. Use a wire running on pole, route constructed by the Metropolitan T. & T. Company, for telephone purposes.

Q. Do you know whether it is contemplated to erect or to allow the hanging of any other wires on those same poles?

20 Objected to by MR. MCGEE.

A. As far as my knowledge goes, I believe it is the intention of the company not to allow any wires on the same poles, that will in any way interfere with them.

Re-cross by MR. MCGEE.

Q. Is the Bell Telephone Company consolidated with your company?

A. The Bell Telephone Company of New York is.

C. E. CHINNOCK.

30

Sworn to and subscribed before me, this ninth day of December, 1880.

THEO. RYERSON,

Master in Chancery of New Jersey.

Thomas Leather, a witness produced on the part of the defendant, being duly sworn, testifies:

40 I am President of the Board of Fire Commissioners of Jersey City. I have been connected with

the Fire Department of Jersey City for 23 or 24 years about.

Q. When the fact that the complainants were erecting poles and wires, after the adoption of the resolution Exhibit A 8, by your board, came to your knowledge, what did you do?

A. I can't call to mind any individual act after the adoption of this?

Q. Did you order the arrest, or procure the arrest, of the workmen engaged in the erection of the poles 10 and wires of the complainants, and mentioned in the bill of complaint in this cause?

A. I did. I have been a member of the board since April 24, 1879.

Q. The wires used by the Fire Department to communicate telephonic dispatches, are they owned by the department or not?

A. They are.

Q. Is it necessary in the management of the Fire Department that those wires should be free from all 20 interference of any kind?

(Objected to on the ground that it does not appear that witness is an expert in this matter.)

A. It is necessary.

Q. What are those wires used for by the Fire Department—in cases of fire in the city?

A. For calling companies, and giving orders to companies to proceed to a fire, and other orders necessary to the working of the department. 30

Q. Are there telephone boxes in each engine house?

A. They are.

Q. Are they used to communicate between the companies and headquarters in case of a fire?

A. These are, and between individual companies.

Q. Who receives and send dispatches from the houses of the department?

A. The man in charge of the house, of the company at that time.

Q. Does the department employ at any of the engine 40

houses men who are especially learned in telegraphy ; that is, operators who understand the sending of messages, and the management of telegraph apparatus ?

A. They do not.

Q. Before the interference of the complainants with the poles used by the department over the route described in this bill of complaint, were there any other wires upon those poles except those owned and controlled by the Mayor and Aldermen of Jersey City ?

10 A. They were not, to the best of my knowledge.

And being *cross-examined*, the witness says :

The Fire Department use the telephone of the Bell Telephone Company. Those telephones belong to the Bell Telephone Company, I believe.

Q. And do not that company give the Fire Department the use of those telephones under some arrangement by which they are allowed to hang their wires on the department's poles ?

20 (Objected to by Mr. McDermott on the ground that the department can only act through the Board of Fire Commissioners as a board, and that the record of the board is the best evidence what has been done by the department.)

A. They do.

Q. Are not their wires now hung on the department's poles very generally throughout the city ?

A. They are using the department's poles wherever
30 they find it necessary.

Q. Not only for the telephones used by the department, but for the general customers ?

(Objected to, upon the ground that there has been no connection shown between the witness and the telephone company, which justifies a belief that he knows anything about what the telephone company has done.)

A. I believe that they are. I have no positive
40 knowledge how generally they are so using them, but so far as my knowledge goes, I believe they are.

Q. Are not the department's wires hung on the same poles?

A. I believe they are.

Q. And the department's wires are the fire alarm telegraph wires?

A. Yes, sir.

Q. These fire alarm telegraph wires are the wires used to strike the alarms of fire in the fire houses, and to strike the numbers of the fire boxes, are they not?

A. They are.

Q. Have you not a son in the employ of the Bell Telephone Company? 10

(Objected to—counsel for defendants objects to witness answering, as the question is irrelevant and impertinent to the cause.)

A. Unless the law compels me to answer I decline to answer the question. If I am compelled to answer I shall not hesitate to do so—that is if I have a right to refuse to answer I wish to take the advantage of my 20 right to do so.

Q. Do you mean to say that all the wires to which the telephones used by the department are attached belong to the department?

A. I mean to say so generally—there may be short stretches erected by the Bell Telephone Company; the wire originally used for the telephones was the old wire used by the department connection with the conversation dial instruments used by the department previous to the introduction of the telephones. 30

Q. Then, do I understand you that the Bell Telephone Company are generally using your wire, with the exception of short stretches erected by them recently?

A. For department purposes, yes.

Re-direct:

Q. The wires that are used by the department, are they exclusively used for the use of the department, 40

or are there private messages sent over them by the telephone company?

A. They are supposed to be used exclusively for Fire Department purposes; I will not say that the telephone wire has not been used for other purposes; I don't know but that it has been used for other purposes.

10 Q. Except in the sending of messages between the different houses of the department, are these wires used at all?

A. I believe not.

We have in the department nineteen telephone boxes; the telephone company keep those boxes in repair; the company does not charge the city anything for the use and repair of those boxes; I do not know what the rent is that is charged by the company to private parties for these boxes.

It is admitted that it is \$5 per month to private houses, and \$7.50 per month for business purposes.

20 Q. Except from hearsay, that is what your son or some one else has told you. Do you know by whom he is employed?

A. My son is employed by me working for me in my own shop.

Q. Outside of any employment by yourself?

A. I do not, only as I have been told by him or some one else.

THOMAS LEATHER.

30 Sworn to and subscribed before me, this ninth day of December, 1880.

THEO. RYERSON,

Master in Chancery of New Jersey.

Mr. Leather recalled by consent for further testimony:

Q. Have you examined the wires and poles erected by the complainants, and mentioned in the bill of complaint in this cause?

A. I have.

40 Q. Do they interfere with the efficiency of the fire

alarm telegraph line of the Fire Department, in your judgment?

(Objected to because it is indefinite, and because the witness is not an expert.)

A. They do.

Q. How do they so interfere from your observation?

(Objected to because witness is not an expert.)

A. By being erected between the fire alarm wires, forcing them out of place, straining them in such way as to make them liable to break at any moment, and lying up against our wires. 10

Cross-examination:

Q. Are not your wires on the new poles?

A. They may be on four or five of them, on all the others named in the bill they are not. They were not at the time of my observation, about a week ago. The erection of the new line of wires is not completed. 20

Q. When it is completed, that difficulty of which we have spoken will not be obviated, will it?

A. Not unless our wires are taken off the old poles and put upon the new ones.

Q. Well, that was the original intention, was it not?

(Objected to.)

A. I do not know what the intention of the complainants was. 30

Q. Wasn't it the understanding that the wires of the department were to be transferred to the new poles, and the old poles removed?

A. It was, if we entered into the agreement to that effect with this company.

Q. Wasn't that what the resolution Exhibit A 5, meant?

(Objected to, on the ground that the meaning of the resolution is a question of law.) 40

A. That was the intention, if the transfer did not interfere with the working of the defendants wires.

Q. Now, when that transfer of wires has been made, will these, the new poles, be between your wires, or force them out of place, or strain them in such way as to make them liable to break?

A. If our wires were transferred to the new poles they would not.

Q. Are not the new poles better than the old—the
10 cross-arms longer, and the poles greater in diameter?

A. They are?

By MR. McDERMOTT.

Q. In your opinion formed as a member of the Board of Fire Commissioners will the erection of these new poles, the work of transferring the wires, and the management of those wires upon poles where other wires are placed, interfere with the efficiency of the fire alarm of the department?

20 (Objected to, because witness is not an expert.)

A. It will interfere.

Q. In your opinion as a member of the board will the efficiency of the fire alarm be decreased by the work contemplated by the complainants, and mentioned in their bill, even after the transfer has been made to the new poles?

(Objected to, as not a proper matter of re-direct examination, and because witness is not an expert.)

30 A. It will.

Re-cross-examination:

Q. Who prevented the completion of the work, did you?

A. I believe I did.

Q. How long would it take to complete the work of transfer to the new poles, and the removal of the old poles?

(Objected to, because witness not an expert.)

A. I should judge four or five days.

THOMAS LEATHER.

Sworn to and subscribed before me this 9th day of December, A. D. 1880.

THEO. RYERSON,

Master in Chancery of New Jersey.

At which time the further examination was adjourned to seven o'clock in the evening of December 14th, 1880, at the Head-quarters of the Jersey City Fire Department. 10

At which time and place, to wit, on Tuesday evening, December 14th, 1880, at seven o'clock, at the Head-quarters of the Fire Department of Jersey City, in the presence of FLAVEL MCGEE, Esquire, counsel of the complainants, and of ALLAN L. McDERMOTT, Esquire, the counsel of the defendants, the said examination was proceeded with as follows : 20

Henry E. Farrier, recalled by Mr. MCGEE for cross-examination, testifies :

Q. What did you mean in the answer given by you when on the stand before, when you said no company has put any wires on the Fire Department poles since I have been superintendent of telegraph ; no wires have been put on the Fire Department poles ? 30

A. Perhaps I can explain that better by giving a little explanation of that matter. Mr. Cary came to me and made a proposition to take up certain Fire Department poles, and replace them with new ones, and those poles to be transferred to the Fire Department as their property, and in return they would have the privilege of running their wires on the new poles. I told him I had no authority in the matter, but would refer the proposition to the President of the Board, 40 and Commissioner Speck, chairman of the committee

on telegraph. I saw the president of the board Mr. Leather ; he thought well of the matter.

(Defendants counsel objects to witness telling what Mr. Leather thought, and also to any conversation with the president or any member of the board, as to the granting of permission to the complainants for the erecting of poles in the city.)

Witness proceeds :

10 —but referred me to Commissioner Speck as the matter properly belonged to that committee. I saw Commissioner Speck and he was favorable to the proposition, and told me I could so tell Mr. Cary : I showed Mr. Speck over the line, or proposed route, on the next morning after I had seen the president, and it was then that he told me to tell Mr. Cary, (Mr. G. Ross Cary) to go ahead. The work was started, and then stopped by the president of the board. Mr. Leather said he thought the work ought to be stopped, as he thought
20 the proposition ought to come directly before the board —the transfer of the poles.

Q. At that time had any of the department wires been put on the new poles?

A. They had from the station house through Gregory street, Henderson street to Mercer street, and Mercer street to near Grove street.

Q. Since the transfer of the poles by the complainants to the department have any more wires been transferred?

30 (Objected to by Mr. McDermott, because of the assumption of any transfer.)

A. No, not to my knowledge.

Q. Then do I correctly understand you to mean by your former answer when you said no company has put any wires on the Fire Department poles since you have been superintendent of telegraph, that you take a distinction between the ownership of the new poles
40 before and after their transfer to the department?

A. I mean by that that the poles belonged to the company until they were regularly transferred to the department as per the agreement.

Q. Were the new poles all up at the time the work was stopped, and the wires being hung?

A. Yes, sir.

Q. You also said that you were not authorized by the board as a board to make any agreement or arrangement, do I understand correctly that your answer just given this evening states the authority you acted 10 under?

A. Yes, sir.

Q. How many of the commissioners of the Fire Department were aware of what was being done, if you know?

(Objected to.)

A. I don't know of any of the others except the president of the board and Mr. Speck, the chairman of the committee on telegraph. 20

Q. Who in the board has charge of such matters?

A. The chairman of the committee on telegraph, generally—what I mean by that is everything in relation to telegraph is referred by the board to that committee.

I have been superintendent of telegraph since last June; before that I was in the telegraph business for the three years next preceding—manager of the American District Telegraph of Jersey City; I have been connected with the Fire Department of Jersey City before; I was chief-engineer for six years, all but about two months; during that time the department had fire alarm telegraph; they had a conversation telegraph that was built either in 1872 or 1873; my time as chief-engineer covered from June, 1871, to April, 1877; there was then a superintendent of telegraph; he was not under my charge after 1873; about— 30

Q. Will the placing of the complainants' wires on the same poles with the department's wires interfere 40

with the wires of the department ; I refer to the new poles erected at the expense of the complainants ?

(Objected to upon the ground that there is no evidence showing that the witness has any knowledge of telegraphy.)

A. No, sir ; in my opinion, it will be an improvement.

10 (Counsel for defendant objects to the last question and answer.)

Q. Under whose superintendency were these new poles put up ; who superintended the work ?

A. Under mine.

Q. The poles and the men to put them up were furnished by the complainants, were they not ?

A. They were to pay all expenses ; yes, they furnished everything.

20 *Re-direct* by Mr. McDERMOTT :

Q. Who told you to superintend the work :

A. I consider that to be part of my duty—anything that has relation to the fire alarm telegraph.

Q. Were you instructed by the board, by any committee of the board, or by any member of the board, to superintend the putting up of these poles ?

(Question objected to as irrelevant.)

30 *A.* I supposed that was the order of the chairman of the committee when he told me to go ahead with the work.

Q. In what month did you receive that order ?

A. I think it was in August ; I kept no memorandum, so I cannot tell precisely.

Q. How long afterward did you superintend the erection of the first pole ?

A. I don't know what length of time it was.

40 *Q.* When did you first learn that any action had been taken by the board with reference to the complainants ?

A. In the report of their committee, as a board.

Q. At that time how many poles, if any, had the complainants erected in Jersey City along the line described in the bill of complaint?

A. I never counted them, so I don't know.

Q. About how many?

A. Perhaps twenty-five or thirty; may be more.

Q. When you went to President Leather what telegraph company did you mention to him as desiring the right to erect poles?

A. I mentioned The Continental Telegraph Company. 10

Q. Did you mention The New Jersey and New England Telegraph Company?

A. I did not.

Q. What did Mr. Cary say in making his proposition to you in the first place, as to who should own the poles after they were erected?

A. My understanding was that they were to be the property of the Fire Department. 20

Q. What did he say, as to that?

A. He said that the whole work was to be done by their company; that no expense would be to the department whatever.

Q. What about the ownership of the poles?

A. He said the property was to be the property of the Fire Department, and I so represented it to the committee.

Q. What did Mr. Cary say to you, giving his words as near as you can, about who should be the owners of the poles? 30

A. In the conversation between us that was what I understood the proposition to be; I can't give his words, exactly, but I understood that the poles were to belong to the department.

Q. Can you remember any of the conversation accurately, as to that point, which you had with Mr. Cary?

A. I cannot, because I never thought it would be the subject of dispute. 40

Q. Did you tell Commissioner Leather that The Continental Telegraph Company desired to erect about eight or ten poles?

A. I did not, the number of poles.

Q. Give us the route over which you took Commissioner Speck?

A. I came with him from 8 engine house on Ege avenue near Ocean avenue, down Ocean avenue through Grand street, I think, to Jersey avenue; then
10 we came through Jersey avenue, and went to Porret's shop on Jersey avenue, and from there to Headquarters.

Q. Over how much of the route in which poles have been erected by the complainant did you take Commissioner Speck?

A. At that time, from Pacific avenue to Jersey avenue, through Grand street.

Q. How many blocks did that cover?

A. I think that is four blocks—four blocks on the
20 city map.

Q. Over how many blocks do the wires on these poles mentioned in complainants bill run?

A. Ten blocks, I think.

Q. Did you have any conversation with President Leather, except what you have stated, from which you can say that he knew what was doing?

A. Nothing that I know of, except—and that I can't say positively whether I spoke to him of one of the poles falling down at the corner of Grove and Grand
30 streets; I think I had a conversation with him in regard to the transfer of the poles, but of that I am not positive.

Q. Was it after you had gone over the route that you have described, with Commissioner Speck, that he told you to tell Cary to go ahead?

A. Yes, sir.

Q. Did you have any conversation with him (Speck) about the route?

A. Yes, sir.

40 *Q.* Give us that conversation?

A. I can't in the exact words.

Q. Well, the substance of it?

A. I told him of the proposition that had been made by Mr. Cary, and what they proposed to do.

Q. Did you tell him that you had taken him over the route?

A. Yes; that was my object in going up there.

Q. Did you tell him that the route extended to the first precinct station house?

A. No, sir.

10

Q. Did you tell him that the route extended east of Jersey avenue at all?

A. No, sir; not at that time.

Q. Is not more than one-half of the route east of Jersey avenue?

A. Yes.

Q. How long after that day did you have another conversation with Commissioner Speck about this matter?

A. I can't say just how long; it might have been a 20 week, more or less; I do not remember.

Q. At the time you took Commissioner Speck over a portion of the route, had the complainants erected any poles in the place of the department poles?

A. Not to my knowledge.

Q. Did you speak to Commissioner Speck again in relation to the matter, until after some action had been taken by the board, as a board?

A. Yes, sir.

Q. What did you say to him?

30

A. I could not tell the exact words that I did say to him.

Q. As to your knowledge of telegraphy—do you understand the Morse system of telegraphy?

A. Not as an operator, that is, I can't use, operate, the Morse system, can't read, transmit or receive messages by that system.

Q. Can you tell whether a telegraph wire is in a negative or positive state of electricity, and if so, how do you tell?

40

A. Do you mean by that can I tell whether a telegraph wire is charged or not?

Q. Question repeated?

A. I can. I can tell by testing.

Q. What is meant by being in a negative state of electricity?

(Objected to.)

A. My understanding of that is, when a wire is not 10 in use, and is not charged, you might leave out "not in use." I mean when a wire is not charged it is in a negative state.

Q. Is a telegraph wire ever in a negative state?

A. I want it understood that I do not claim to be an expert.

Q. Question repeated.

A. I suppose it is.

Q. Do you know whether it is so or not, from your knowledge of telegraphy?

20 *A.* I suppose I do know.

Q. A telegraph wire is not charged unless it be in use, is it?

A. Oh, yes.

Q. Are not telegraph wires frequently charged by lightning?

A. Yes.

Q. If a wire of a telegraph company was placed upon the same pole as the wire of the Fire Department would not the surcharge of electricity emitted during 30 a thunder storm naturally seek a conductor in the wire used by the department, provided the wire of the telegraph company, became surcharged with that electricity.

(Objected to.)

A. It might, or it might not—the chances are that it would.

Q. In order for it not to do so, it would be necessary that there should be a better conductor of elec- 40 tricity in proximity to the wire?

A. I should judge that it would.

Q. Does not the placing of many wires upon a pole increase the danger to each wire of attracting the electric current during a thunder storm?

A. Of course the more points of attraction there are the more danger there is.

Q. When a wire receives the electric current during a thunder storm, does not the reception of that current interfere with the transmission of messages more or less, amounting in some cases to a total stoppage of 10 work on the wire?

A. Do you want to know my opinion of that, or my knowledge?

Q. Your knowledge.

A. I don't know anything about it. I don't know anything about the transmission of messages at all.

Q. Upon what then do you found your assertion that the arrangement proposed by the complainant would not interfere with—

20

(Question withdrawn before being completed by defendants' counsel.)

Q. Can you state whether the placing of the complainants' wires upon the same poles with the department's would interfere with the transmission or reception of telegraphic communication with the different stations of the department as to accuracy?

(Objected to.)

30

A. I don't think it would interfere with them.

Q. Do you know whether it would or not?

A. I don't know that it would not.

Q. How do you know?

A. From the fact that fully one-third, if not more, of the fire alarm wires are on the poles of The Western Union Telegraph Company, The Atlantic and Pacific Company, and other telegraph companies, and we have no trouble where our lines run on those poles.

Q. Is that the only reason that you have upon which to base your assertion?

40

A. I think that is sufficient reason.

Q. Is that your only reason. I use the word only?

A. That is my only reason.

Q. Did you ever mention the name of the complainants to the board as a board, or to any member of the board, before poles or wires had been erected by The New Jersey and New England Telegraph Company along the route mentioned in the bill?

A. That I could not tell, because I do not know
10 whether The Continental Company and The New Jersey and New England Company are one and the same company or not.

Q. Did you ever mention The New Jersey and New England Telegraph Company, using that title?

A. No, sir; not to my knowledge.

Re-cross examination by Mr. MCGEE:

Q. Counsel seems to have made a point about your falling into an error over the name of the company
20 which proposed to erect the poles; did you intend to deceive the president or any member of the board, as to the board?

A. I did not intend to deceive any one.

Q. How did you happen to fall into that error?

(Objected to.)

A. I don't know how that did occur, unless it could have been that the tools and the wagon were all marked "Continental Telegraph Company."

30 Q. And from that fact you assumed that it was that company.

A. I don't see otherwise how I could have fallen into that error, if it is an error, if Mr. Cary did not mention to me the name of that company; I don't see how I could have got hold of it.

Q. There has been only one set of poles erected through that loop?

A. That is all.

40 Q. In your re-direct, in speaking of the route you showed Commissioner Speck, you say that is all you

showed him at that time, and you further say that you did not at that time tell him the route extended further; did you afterwards?

A. Only to Grove street.

Q. Who selected the places and the route for the poles to go?

A. I selected one part of the route, and the company selected the other part; the company selected from Pacific avenue to Jersey avenue, on Grand street, and I the rest; and the poles were all put up under 10 my direction.

Q. At the time of the meeting of the board, on September 22d, when the board passed the resolution of that date, were the new poles all up?

A. Yes, sir. They were all up at that time. When I said that I first learned that any action had been taken by the board in the report of the committee as a board, I refer to to the action of the board on September 22d.

Q. Do not all commercial telegraph wires have 20 lightning arresters?

A. Yes, sir, if they don't, they ought to; they are used on all I have seen.

Q. What are these lightning arresters; what do they do?

A. They are for conducting lightning off the main wires into the ground.

Re-direct by Mr. McDERMOTT:

Q. Notwithstanding the use of these lightning ar- 30 resters, is it not a fact that telegraphic apparatus is frequently ruined by the electricity of a thunder storm?

(Objected to.)

A. Yes, very often.

Q. How long before September 22d, was the last pole on this route erected by the complainants?

A. I guess three weeks or more.

Q. Was it four weeks; was it before or after the 40

adoption of the resolution of September 1st, in reference to The Continental Telegraph Company?

Exhibit A 1 shown to witness.

A. I could not say whether it was before or after this resolution.

Q. You remember whether it was before or after the men were arrested?

A. It was before that man was arrested.

It is admitted that all the poles mentioned in complainants bill of complaint were erected before September 1st, 1880.

Re-re-cross—Witness says :

This man who was arrested was one of the complainant's men that was working at the wires under my charge ; I believe he was arrested by the order of President Leather ; Mr. Leather told me so afterwards ; that is what I had reference to when I said in my cross-examination that President Leather stopped the work.

By Mr. McDERMOTT :

The men were to be under my charge until the work was completed ; that is, the work that was to be done for the department.

HENRY E. FARRIER.

Sworn to and subscribed before me, this 14th day of December, A. D. 1880.

THEO. RYERSON,
Master in Chancery of New Jersey.

OPINION.

Filed May 24, 1881.

On application for an injunction heard on bill and affidavits and depositions taken on notice.

Mr. FLAVEL MCGEE, for motion.

Mr. ALLAN McDERMOTT, contra.

VAN FLEET, V. C.

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The complainants are the owners of a line of electric telegraph, extending from the City of New York to the City of Philadelphia. One of their wires is used for the transmission of messages between the Stock Exchanges of the two cities. The complainants aver that no telegraphic wire in the United States is of greater commercial importance than this one. The object of their bill is to prevent the defendants from destroying a part of their line. The facts material to the question submitted for judgment, may be summarized as follows: 20
 Prior to the erection of the complainants line through Jersey City, the defendants had erected a telegraph in Jersey City, which they used for the purposes of their department. Some of their poles were out of repair and required to be replaced by new ones. The complainants intended to construct a part of their line through the same streets in which the defendants line had been constructed. The complainants do not say in their bill, that they had obtained permission from the Common Council of Jersey City, to erect their line through these streets. The complainants proposed to an officer of the defendants, known by the name of Superintendant of Telegraph, that they would remove such of the defendants poles as were worn out, and put in their places poles large enough for the use of both parties, and would thereafter keep the poles in repair, replace them when worn out, and be charged in all respects with their care; and would also give the defendants the right to hang their wires on any other poles which they might erect in any other part 40

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of the city, on condition that they should have the right to hang their wires on the defendants poles. The Superintendent told the complainants that he had no authority to accept their proposal, but he promised them that he would report it to the proper committee of the defendants. It was not reported to the board, nor to any committee of the board, but the superintendent reported it to two members of the board; first to the president of the
10 board, who directed him to report it to Commissioner Speck, and he did so accordingly. Commissioner Speck after going over part of the route directed the superintendent to accept the offer. The complainants immediately after being informed of Commissioner Speck's direction, furnished the necessary men and material, and the old poles were removed and new ones erected, and the wires of both lines were hung upon them. The work was all done at the complainants cost, but under the direction of defendants' superin-
20 tendent. The complainants say their expenditure exceeded \$1200. At this point it is important to state that while the Board of Fire Commissioners consisted of six members, but a single member assented to the complainants' interference with their telegraph. Four of its members so far as the bill shows, never heard of the complainants proposition until after the work had been completed. It is certain the complainants' proposition was never laid
30 before the board as a body. It is equally clear that the board could only act when duly convened as a body. It is therefore almost needless to say that the action of the complainants in removing the old poles and substituting new ones was wholly unauthorized. The events just described all occurred before September 1, 1880; on that date a permanent committee of the board called the committee on telegraph and fuel, were directed to investigate the action of the complainants. The resolution giving this direction stated that the complainants had acted without authority; the
40 next day (September 2) the complainants wrote a letter

to the defendants explaining their conduct, and on the fifteenth of the same month, the board in conformity to the recommendation of the committee having the matter in charge, invited the corporation attorney and the officers of the complainants to meet with them at their next meeting. That meeting was held September 22, and the action of the board in relation to the matter under consideration is recorded on their minutes as follows :

“Commissioner Speck reported that the committee 10
on telegraph and fuel recommended that the right and use of the poles erected by The New Jersey and New England Telegraph Company touching our line, be transferred to the Fire Department, and in return this board will grant permission to the said New Jersey and New England Telegraph Company to place their wires thereon, provided there is no interference with the wires of this department. On motion the report was received and adopted, and the clerk was directed 20
to notify The New Jersey and New England Telegraph Company.” A copy of this minute was sent to the complainants the next day, (September 23), and in six days afterwards (September 29), they wrote to the defendants stating that while the terms of the agreement set forth in their communication were not as they understood them originally, yet they saw no good reason why they should not accept them, and they did thereby accept them. The next day (September 30), the clerk of the defendants wrote to the complainants, stating that their letter of the 29th had been laid be- 30
fore the board, and that the board had directed him to say in reply, that the board would not enter into a contract with the complainants until they were convinced that the complainants’ wires would not interfere with the telephone wires of the department. No further communication passed until October 20, 1880, when the complainants were informed, that the board sitting as a committee of the whole were of opinion that the use of the poles by the complainants would interfere with the working of the telephones of the 40

department, and by the same communication they were notified that the committee on telegraph and fuel had been ordered to have the poles erected by the complainants removed, and the poles belonging to the department restored. Nothing further was done by either party until November 18, 1880, when the defendants notified the complainants that unless the poles erected by them were removed at once the department would take measures to have them removed. There-
 10 upon the complainants asked this Court to protect them against the consequences of the acts threatened by the defendants.

The complainants put their right to protection upon a contract; they contend that the defendants have made a contract with them, giving them the right to hang their wires on the defendants' line, while the defendants deny both the fact of the contract and their capacity to make one of the character claimed. There can be no doubt that the injury threatened belongs to the
 20 class which it is the duty of this Court to prevent *in limine*. If the complainants wires be severed at a single point it is obvious that their line between its principal termini will be rendered utterly useless. The mischief threatened will, if committed, occasion serious and irreparable loss. It is equally clear that if the contract affirmed by the complainants is one which the defendants were not authorized to make it is void. They are public agents and can only bind the municipality which they represent when they act within the
 30 limits of their chartered authority. A municipal corporation may always interpose successfully the defence of *ultra vires* to a contract not within the scope of its chartered powers.

The complainants' right to an injunction must depend, I think, entirely upon whether or not they have shown a valid contract. The power of the defendants to make a contract I do not think can be the subject of much doubt.

By the charter of Jersey City they are given the
 40 entire control and management of the fire telegraph

and other apparatus appertaining to the Fire Department, Pam. L. 1871 p. 1142, § 114, and also power to purchase and hold any personal property they may deem necessary for the purpose of extinguishing fires. Id. 1144, § 117. These provisions, I think, give them power to repair and rebuild their line of telegraph. This necessarily involves authority to make contracts for material and labor whether they can lawfully agree to pay by a concession of privileges, which will confer upon some other person authority to erect telegraph poles in the streets without the permission of the Common Council is quite another question. I shall, however, for the purposes of this discussion, assume that the defendants have power to make such contract as that which the complainants claim was made in this case.

The test, then, by which the complainants' claim must be tried is, Have they shown a contract? The facts are free from dispute. The complainants cannot claim that they expended their money upon the faith of a promise. They had no promise from the defendants. Their acts in removing the defendants' poles, and substituting their own, were entirely unauthorized; they were, in fact, acts of unlawful interference. That they were done under the superintendence of one of the defendant officers does not at all change their legal character. He acted without authority, entirely outside of his powers, and his acts were therefore those of an unlawful intermeddler. The complainants are, in my opinion, without a particle of equity, unless it can be found in the action of the defendants on the 22d of September, 1880. On that date the defendants did inform the complainants that they would be willing, in a certain contingency, to make a contract with them. Their action, as I interpret it, amounts to this:

They said to the complainants that, if the complainants would transfer to them the poles which they had erected, they would grant to the complainants the right to place their wires on them, provided the placing of

their wires on them did not interfere with the efficiency of the telegraph for the uses of their department. This, in my opinion, was the only contract for a joint use of their line the defendant had any authority to make. They were public agents, charged with important public duties. Emergencies were possible, when the safety of the public would depend largely upon the celerity and thoroughness with which they performed their duties. They were given the control of the telegraph as a means to enable them to do their duty.

10 All this the complainants knew. They also knew that the defendants could make no arrangements with them or with any other person, by which they surrendered the control of the telegraph, or allowed it to be used for any purpose which might impair its efficiency as an arm of the public service, and that, if they should attempt to do so, even by a contract executed with the utmost solemnity, their act would be plainly *ultra vires*. When the complainants were informed what kind of a contract the defendants were willing to enter into, they

20 at once assented to its terms, and this the complainants insist completed the contract, and from thenceforth both parties were bound by it. But is this true as a matter of fact? In other words, did the parties understand that the defendants by their action of September 22d, meant to propose a contract which should have binding force from the moment the complainants assent to it? So far as the defendants are concerned they give a conclusive answer to this question by their

30 conduct. Immediately upon being informed by the complainants, that they were willing to agree to the terms mentioned, the defendants notified them that they were not yet ready to conclude a contract, and would make none until they were satisfied, that they could do so without impairing the efficiency of the telegraph for the public service. The complainants did not dissent, they said nothing. Their conduct in this respect is important, when we remember that the contract was entirely their project, and that they were so

40 eager to make it that they actually proceeded to exe-

cute it before the defendants had commenced its negotiation. It must also be remembered, that the complainants were endeavouring to induce the defendants to condone a trespass. The defendants were willing to grant condonation conditionally. They were willing to overlook the trespass, and give the complainants the right to use the poles which they had erected, but only in the event such use did not in their judgment interfere with the use of the telegraph by the department. This the complainants were bound to understand from the language of the resolution. 10

But aside from all other matters, I think the complainants were bound to understand from the nature of the defendants' powers and duties, that the question whether the complainants' wires could be put upon the defendants' poles without danger of injury to the public service, was one that the defendants were bound to reserve for their own determination. They knew they were dealing with public officers, who were charged with delicate and important duties, and that they had been given control of the telegraph for the protection of the public, and that they could neither use it themselves, nor allow it to be used for any purpose which involved the slightest risk or hazard to the public, when therefore the defendants proposed to allow them to use their lines, provided no interference occurred, they were bound to understand that the question whether the public safety would be imperilled by granting them what they wanted or not, was one that the public welfare would not permit to be decided by experiment or trial, but must be left to the judgment of the defendants. That judgment having been exercised it must be assumed that it has been fairly exercised. It finds that the complainants' wires, if maintained on the defendants' poles, will interfere with the working of the telephones of the department. Such finding is in my judgment conclusive against the complainants. The order to show cause must be discharged and the complainants' bill dismissed with 40 costs.

**Order discharging Rule to Show Cause and
denying Injunction.**

This matter coming on to be heard in the presence of Allan L. McDermott, of counsel with the defendants, and after hearing Flavel McGee of counsel with complainants, and upon reading the bill of complaint in this cause, and the affidavits thereto annexed ;

10 It is on the seventh day of June, A. D. eighteen hundred and eighty-one, ordered, that the order to show cause why an injunction should not issue, heretofore granted in this cause be, and the same is hereby discharged, and that the injunction sought in this cause be and the same is hereby denied with costs.

THEODORE RUNYON, C.

Respectfully advised.

A. V. VAN FLEET,
V. C.

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ORDER.

30 It appearing to the Chancellor that an appeal is about to be taken from the final decree in this cause to the Court of Errors and Appeals in the last resort in all causes, and it being stated by complainants that a dissolution of the injunction in said suit, if it take place now, will in case of the reversal of said decree on appeal, be likely to work irreparable damages to the complainants ;

It is on this seventh day of June, eighteen hundred and eighty-one, on motion of Bedle, Muirheid & McGee, solicitors of the complainants, ordered that said injunction do stand and continue, and that it be not dissolved for one week from this date, to the end that the complainants may have an opportunity to apply to Vice-Chancellor Van Fleet who heard the case, for a continuance thereof pending said appeal.

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THEODORE RUNYON, C.

APPEAL.

Filed, June 15, 1881.

The complainants hereby appeal from the order in the above entitled cause discharging the order to show cause therein made and refusing the injunction therein prayed the seventh day of June, eighteen hundred and eighty-one, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in all causes in New Jersey. 10

Dated 14th of June, 1881.

BEDLE, MUIRHEID & MCGEE.
Solicitors and of Counsel with Complainants.

We conceive that there is good cause for appeal in the above entitled cause.

BEDLE, MUIRHEID & MCGEE
of Counsel with Complainants. 20

N. J. COURT OF ERRORS AND APPEALS.

<p style="text-align: center;">THE NEW JERSEY AND NEW ENGLAND TELEGRAPH COMPANY, Appel'ts,</p> <p style="text-align: center;">and</p> <p style="text-align: center;">10 THE BOARD OF FIRE COMMISSIONERS OF JERSEY CITY, Respond'ts.</p>	}	<p>On appeal. Order filed June 21, 1881.</p>
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It appearing to the court that the order made in above entitled cause in the Court of Chancery on the seventh day of June, instant discharging the order to show cause therein made and refusing the injunction therein prayed, has been appealed from and sufficient
20 cause for this order appearing to the court.

It is on this twenty-first day of June, eighteen hundred and eighty-one, ordered that the stay granted in said order to show cause be continued pending said appeal in this court, and that the defendants do refrain from interfering with the poles, wires and other telegraph apparatus of the complainants' mentioned in the bill of complaint in said cause until the determination of said appeal and the further order of this Court to the contrary.

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On motion of

BEDLE, MUIRHEID & MCGEE.

Solicitors of Apellants.

PETITION OF APPEAL.

Filed June 24, 1881.

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

The humble petition of The New Jersey and New
England Telegraph Company, appellants in the above
stated cause respectfully shows: That your petitioners
find themselves aggrieved by an order made in the
Court of Chancery by his Honor, Theodore Runyon,
Chancellor of the State of New Jersey, bearing date
the seventh day of June, A. D. eighteen hundred and
eighty-one, in a cause wherein your petitioners were
complainants and the said The Board of Fire Com-
missioners of Jersey City were defendants, in this
respect, to wit: That the said order directs that the
order to show cause why an injunction should not
issue, theretofore granted in said cause be discharged.

And your petitioners appeal from said part of said
order which decrees as aforesaid, upon the ground that
the same is erroneous, for that the said order to show
cause should not have been discharged.

And also in this respect, that the said order of the
Chancellor decrees that the injunction sought in said
cause be denied.

And your petitioners appeal from that part of said
order which decrees as last aforesaid, on the ground
that the same is erroneous, for that the Chancellor
ought to have granted said injunction and made the
same perpetual.

And also in this respect, that said order of said
Chancellor decrees that said discharge and denial be,
with costs.

And your petitioners appeal from that part of said
order which decrees as last aforesaid, on the ground
that the same is erroneous, for that the said Chancellor
ought not to have decreed costs in said cause against
your petitioners, but ought to have decreed costs in
their favor.

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

Dated 24 June, 1881.

BEDLE, MUIRHEID & MCGEE,
Solicitors of Appellants.
BEDLE, MUIRHEID & MCGEE,
Of Counsel.

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Answer to Petition of Appeal.

Filed November 8, 1881.

The answer of the Board of Fire Commissioners of Jersey City, respondents, to the petition of appeal of The New Jersey and New England Telegraph Company, appellants :

20 These respondents, not acknowledging any or all of the matters, which in the said petition of appeal are contained, to be true, for answer thereto, nevertheless say and admit that, on the seventeenth day of June, A. D. eighteen hundred and eighty-one, an order was made and entered in the Court of Chancery, as is stated in said petition of appeal; but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced.

30 And these respondents are advised and believe that the said order is agreeable to equity, and they pray that the same may be affirmed, with costs, to be adjudged to these respondents.

ALLAN L. McDERMOTT,
Solicitor and of Counsel
with Respondents.

The complainants' exhibits will be found annexed to the bill of complaint, and on pages 18 to 22 inclusive.

The exhibits which the defendants desire to have printed are as follows :

EXHIBIT "A 1."

Copy of Preamble and Resolution adopted Sept. 1, 1880 :

Whereas, It appears that a company known as the Continental Telegraph Co. have been erecting poles and running wires through the streets of this city, in the name of the Jersey City Fire Department, and

Whereas, Said company have no authority from this Board to do so, therefore be it

Resolved, That the Committee on Telegraph and Fuel be directed to investigate the circumstances connected with the erection of such poles, &c., and report to this Board at its next meeting.

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EXHIBIT "A 2."

Sept. 8th, 1880. The Committee on Telegraph and Fuel were granted another week to report upon the action of The Continental Telegraph Co. in erecting poles without authority from this Board.

EXHIBIT "A 4."

Sept. 15th, 1880. The Committee on Telegraph and Fuel reported that they had been in communication with The New Jersey and New England Telegraph Co., who informed the Committee that the company were willing to enter into a contract with this Board for the erection of telegraph poles, based upon the letter received from them, and read before the Board Sept. 8th, 1880.

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EXHIBIT "A 5."

Sept. 22d, 1880. Commissioner Speck reported that the Committee on Telegraph and Fuel recommended that the right and use of the poles erected by The New Jersey and New England Telegraph Co., touching our line, be transferred to the Fire Department, and, in return, this Board will grant permission to the said
 10 New Jersey and New England Telegraph Co. to place their wires thereon, providing that there is no interference with the wires of this Department.

On motion, the report was received, recommendation adopted, and the Clerk directed to notify The New Jersey and New England Telegraph Co.

EXHIBIT "A 8."

20 Oct. 20th, 1881. The following report of the Board as a Committee of the Whole was submitted :

JERSEY CITY, October 20th, 1880.

To the Board of Fire Commissioners :

Gentlemen—The Committee of the Whole, to whom was referred the communication from Mr. James L. Shaw, Prest. of the New Jersey and New England Telegraph Co., also the communication from Messrs. Bedle, Muirheid and McGee, in reference to the tele-
 30 graph poles erected on the line of the Fire Department wires, respectfully beg leave to report :

That, in their Judgment, the use of the poles of the Fire Department, by said New Jersey and New England Telegraph Co. would interfere with the working of the telephones now in use in this Department, and would therefore recommend that the Committee on Telegraph and Fuel be, and they are hereby, directed to have removed all poles erected by the said New Jersey and New England Telegraph Co. on the line of
 40 the Fire Department wires, and to direct said com-

pany to replace all poles belonging to this Department removed by them, they having been removed without authority of this Board.

(Signed) T. LEATHER,
CHAS. A. ROE,
MICHAEL KUNTZ,
JOHN BRENNAN,
BERNARD McCARTY,
C. J. SPECK.

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On motion, the report was received, and recommendation adopted.

EXHIBIT "A 11."

It is agreed that the following extract from Exhibit "A 11" is the only clause in the regulations of the Fire Department conferring powers upon the Chief Engineer :

DUTIES OF CHIEF.

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Sec. 2. The chief engineer shall have and exercise supreme command of all fires, over the engineers, officers, and members of the Department, but shall, at all times and under all circumstances, be subordinate and subject to the orders of the commissioners. He shall make a weekly and monthly report of all fires occurring in the city, and see that proper discipline is observed by the officers and men. He shall carefully examine into all requisitions, and promptly transmit the same to the Board. Requisitions for materials and supplies for the use of various companies shall be made upon form No. 1, by the foreman of each company, and forwarded to the chief engineer.

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