

N. J. Court of Errors and Appeals.

Between

GEORGE STOUNDINGER, *and als.*,

Complainants.

and

THE MAYOR AND COMMON COUNCIL
OF THE CITY OF NEWARK,

Defendants.

On Bill, &c.

On Appeal.

IN CHANCERY OF NEW JERSEY.

1

To the Honorable THEODORE RUNYON, *Chancellor of the
State of New Jersey :*

Humbly complaining, shows unto your Honor your orators, David M. Meeker, Stephen J. Meeker and George Stoudinger, of the city of Newark, in the county of Essex and State of New Jersey :

1. That your orators, David M. Meeker and Stephen J. Meeker, are the owners in fee simple of a tract of land on the south side of Clay street, in the city of Newark, aforesaid, fronting one hundred and twenty-eight feet on Clay street, and lying between Spring street and Ogden street, and along the line of the proposed sewer, as hereinafter described, the location of which is shown on the diagram marked Exhibit number one. 10

2. That your orator, George Stoudinger, resides on the corner of Broad and Clay streets, in said city, and is the owner of a large and valuable lot fronting on Broad street, for a distance of one hundred feet, and running back along the southerly line of Clay street, in the direction of High street, a distance of two hundred and twenty-seven feet, on which your orator's dwelling is located ; besides which he 30

owns lots fronting on Clay street, extending along said street a further distance of four hundred and three feet in frontage.

3. That your orator, George Stouinger, was the owner in fee simple of the land lying between Broad street, aforesaid, and High street, over which what is now known as Clay street, has been opened, and that being the owner of lands on both sides of what is now known as Clay street, he opened the same for the improvement of his adjoining
 10 lands, and dedicated to the public for the purposes of a highway that portion of his lands now taken by the said street, and from time to time thereafter sold portions of the land lying on either side of the street to the lines thereof, reserving, however, to himself the land taken for the said street, subject to the public right acquired by his dedication thereof to public use.

4. That from Broad street to High street, a distance of about seven hundred and forty-feet, the ground rises rapidly, so that while the surface of the ground at Broad street is
 20 only about seventeen feet above ordinary high water mark in the Passaic river, the surface of the ground at High street is about forty feet above the same.

5. That since the dedication by your orator of the land over which Clay street passes for street purposes, the city of Newark has accepted the same as a public street, and caused the same to be graded, curbed and flagged, and the same is now used as a public highway.

6. That running nearly parallel with Clay street aforesaid, is a living, well defined stream of water, known as "First
 30 river," or "Mill brook," which stream rising on the flat lands above the city of Newark, descends therefrom and empties into the Passaic river, passing within one hundred feet of the line of Clay street aforesaid, and running nearly parallel therewith in a ravine or gully, which the stream has worn in the hill by its descent.

7. That this stream of water, which is at all times considerable, is frequently, when heavy rains occur, a large and turbulent stream flowing over and outside of its accustomed channel, and flowing over the streets under which it passes,
 40 the culverts built to conduct the water under the same being

wholly insufficient to allow it to pass; the stream which is usually not more than twelve feet wide when the water therein is at its usual height, spreading out over its banks to the width of one hundred feet.

8. That the map or diagram hereto annexed, marked Exhibit number one, correctly represents the location and situation of your orator's said property with reference to the said stream, from High street to the Passaic river, the location of Clay street aforesaid, from High street to Ogden street, and the streets crossed by the said stream, and the streets intersecting Clay street, and also the property over and across which said stream passes from High street aforesaid, to the Passaic river; and your orators pray that the same may be taken as a part of this their bill of complaint. 10

9. That for sometime past some of the property owners along the line of the said stream, as your orators are informed and believe and charge, have been anxious to have all the waters of the same diverted into some other channel, in order that their property over which the said stream passes, and which at times is overflowed by it, may be improved and rendered more valuable; and that they have from time to time endeavored to have the city of Newark construct an artificial channel into which the water of the same might be diverted, in order to accomplish the purposes aforesaid. 20

10. That on or about the tenth day of April last, William W. Morris, the Street Commissioner of the said city of Newark, by the order and direction of the Common Council of said city, caused a notice to be published, of which the following is a true copy:— 30

“ CONSTRUCTION OF SEWERS.

“ *Notice of Intention.*

“ Public notice is hereby given, that it is the intention of the Common Council of the city of Newark, under and by virtue of the provisions of the act entitled ‘ An Act to revise and amend the charter of the city of Newark, approved March 11, 1857, and the supplements thereto, ’ to order and cause a sewer to be constructed through Clay street, Mount Prospect avenue, along the line of Mill brook and in Passaic

street, from the westerly line of High street to the Passaic river, and to take and appropriate for this purpose, all the land and real estate necessary, as shown upon a plan filed in August, 1875, in the office of the City Surveyor, entitled 'Plan of Mill brook Sewer, from High street to the Passaic river,' and to divert Mill brook between High street and the Passaic river, from its present location into said sewer, so to be constructed. Such persons as may object thereto are requested to present their objections in writing at the Street
 10 Commissioner's office, on or before the expiration of twenty days from the date of this notice.

"By direction of the Common Council.

"WM. W. MORRIS,

"Street Commissioner.

"Newark, N. J., April 10, 1876."

And your orators charge and insist that the said notice was given by order and direction of the municipal government of the said city, and in accordance with the statute made and provided, regulating the opening of sewers in said city,
 20 and that afterwards and on or about the seventh day of July last, an ordinance was passed by the Common Council of the said city, which on the thirteenth day of July last was duly approved by the Mayor of the said city, providing for the construction of the said sewer, of which the following is a true copy :

"AN ORDINANCE to provide for the construction of the Mill brook sewer from High street to Passaic river.

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

30 "Sec. 1. A sewer shall be constructed through Clay street, Mount Pleasant avenue, along the line of Mill brook and in Passaic street from the westerly line of High street to the Passaic river.

"Sec. 2. The Common Council doth hereby determine to take and appropriate the lands and real estate necessary to be taken and appropriated for the construction of the said sewer, as shown upon a plan filed in the office of the City

Surveyor, entitled, ' Plan of Mill brook Sewer from High street to the Passaic river,' and to divert Mill brook from its present location into the said sewer so to be constructed; and the commissioners hereafter to be appointed shall make an estimate and assessments of the damages occasioned by the said improvements and assessment of the benefits received, upon the owners of all the lands and real estate intended to be benefited thereby.

"Sec. 3. Said improvements shall be made and completed under the supervision and direction of the City Surveyor and Street Commissioner, according to the provisions of the city charter and ordinances. 10

"Adopted July 7, 1876.

" WILLIAM STAINSBY,
" *President Common Council.*

"J. L. SUTPHEN,
" *City Clerk.*

"Approved July 13, 1876.

" H. J. YATES,
" *Mayor.*" 20

That the Mayor and Common Council of the said city have directed the chairman of the Sewer Committee and the Street Commissioner of the said city to advertise for proposals for the construction of the said sewer, and that advertisement has accordingly been made, of which the following is a true copy:

" OFFICE OF THE STREET COMMISSIONER, }
NEWARK, N. J., Nov. 18th, 1876. }

"Sealed proposals will be received at this office until 4 P. M. Wednesday, November 29th, 1876, for building sewer through Clay street and along the line of Mill brook from the westerly line of High street to the easterly line of Passaic street. 30

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

"Two hundred (200) lineal feet of double sewer on piles, timber and plank foundation.

" Four hundred (400) lineal feet of double sewer on timber and plank foundation.

" Four hundred and forty (440) lineal feet of double sewer, on rubble and concrete foundation.

" Fifty (50) lineal feet of cone-shaped sewer.

" Seven hundred and seventy-five (775) lineal feet of circular sewer, nine feet diameter.

" One hundred (100) lineal feet of circular sewer, four feet diameter.

10 " Forty (40) lineal feet of egg-shaped sewer, equal to a circle of three feet diameter.

" Seventeen (17) manholes.

" Three (3) street basins, with connecting shoots, granite heads and mud sills.

" Four (4) street basins, with connecting shoots, iron heads and mud sills.

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

20 " Bidders must specify in their proposals that should the above work be awarded to them they will bind themselves to finish and complete the same by or before the first day of September, 1877.

" The plans and specifications of the work can be examined at the office of the City Surveyor.

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

" The Committee on Sewers and Drainage reserve to themselves the right to accept or reject any or all proposals

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

“By direction of Common Council.

“DAVID YOUNG,

“*Chairman Committee on Sewers and Drainage.*

“W. W. MORRIS,

“*Street Commissioner.*”

And that on the day named in the said advertisement, it is the intention of the said officers to receive proposals therefor, to wit: on the twenty-ninth day of November, instant, 10 and as your orators are informed and believe, and therefore charge, it is the intention of the Mayor and Common Council of the said city to proceed to make a contract with some person or persons who may make proposals for the said work, to build and construct the said sewer.

12. That when it became known to your orators that the project of constructing a sewer through Clay street for the purpose of diverting into the said sewer the water of the said stream was entertained by the said city, your orators and many other persons who reside along the line of the 20 proposed sewer, and in that immediate vicinity, and who are the owners of and interested in property along the line of Clay street, prepared and signed a remonstrance against the construction of the said sewer, and had the same presented to the Mayor and Common Council of the said city, and that your orators and the said persons strongly objected to the construction of the said sewer, and to the passage of any ordinance therefor; and that a copy of the written remonstrance so made, signed and presented by them, is hereto annexed and marked Exhibit number two, which your ora- 30 tors pray may be deemed a part of this their bill of complaint.

13. That Exhibit number three, annexed hereto, is a diagram showing the manner in which the proposed sewer so called is to be constructed in Clay street; that the said diagram is made, as your orators are informed and believe, from the drawings and plans made by the City Surveyor of the city of Newark for the construction thereof, and to be used

in building the same; and they pray that the same may be taken as a part of their bill of complaint.

14. That in constructing the said sewer so called, the main purpose and object to be accomplished, and as your orators charge, the only purpose and object now designed to be accomplished, is the diversion of all the waters of Mill brook or First river, from their accustomed bed or channel into an artificial water-way, which the so-called sewer is in truth and fact designed for; that there is no present necessity for
 10 a sewer in Clay street for any other purpose, and that there has been and is no desire on the part of the property owners and those interested to have a sewer constructed through the said street, and that if a sewer is now or shall hereafter be necessary, one of small dimensions and of little comparative cost will be all that is or will be required; that the so-called sewer proposed to be constructed is at some points along the line of the property of your orator, George Stou-
 20 dinger, to be placed at great depth, much more than is usual in the construction of sewers beneath the surface of the street, so that it will be difficult and expensive to make connections therewith, and that a large part of the width of the said street will be used in constructing the same, in order to make the same of sufficient size to carry off the waters of the said stream which it is proposed to divert and carry through the said sewer.

15. That in constructing the said so-called sewer through the said street and through the property of your orator, George Stou-
 30 dinger, for the purpose aforesaid, not only will much more land be taken than would be necessary for the construction of a sewer for the purpose of drainage for the ordinary purposes for which sewers are constructed, but on account of the great depth at which the said sewer is to be placed in the ground between High street and Broad street, the whole street will necessarily be used in constructing the same, and that during the construction thereof the said street will be rendered useless and impassable.

16. That in order to divert all the waters of the said stream into the said so-called sewer when constructed, it will be necessary, and that it is the purpose and intention of the
 40 said city to change the course of the said stream west of

High street, thus bringing all the waters of the said stream into the said so-called sewer on a line with Clay street; and that the said so-called sewer so to be constructed, although as large as can be laid in the said street, in some parts thereof, is wholly inadequate to carry off the waters which at times flow down the channel of the said stream, and that as a consequence the surplus water thus diverted will flow over and on to the lands of your orator, both in the said street and lying along the same, to their great damage and annoyance.

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17. That the fall in the said stream from the "reservoir," a distance of about four thousand feet west of High street aforesaid, to Broad street aforesaid, is seventy feet; and that as your orators believe and charge the large quantity of water passing through the said so-called sewer, if constructed, with the great velocity which so great a fall will give it, renders the construction of the said so-called sewer exceedingly dangerous to the property through which and over and along which it will pass; that the mouth of the said so-called sewer as proposed to be constructed, as shown on Exhibit 20 No. 3, at the Passaic river, will be at all times three or four feet below ordinary high water mark, and that at times the waters of the Passaic rise to such a height that more than one-half the entire so-called sewer will be filled thereby as far back as Ogden street; and that the great pressure which will be brought to bear upon the sewer necessary to displace so large a quantity of water and force a passage for the stream passing through the same, renders the so-called sewer so to be constructed dangerous to all the property over and through which it passes, and that your orator's said prop- 30 erty will be greatly injured and lessened in value thereby.

18. That no compensation or offer of compensation has been made to your orator, George Stouinger, by the said city, nor by any person or persons for it for the property of your orator proposed to be taken in making and constructing the said artificial water course, nor for the damages which your orator will suffer by reason thereof; and your orator is informed that the said city claims the right to construct the said so-called sewer without making such compensation. Your orator charges and insists, however, that the 40

said city has no such right or power; that it cannot construct an artificial water course over and through the property of your orator under the pretense of building a sewer to receive and carry off the ordinary drainage along the said street, and that any such appropriation of your orator's property without first making compensation therefor, is unjust, unlawful and unconstitutional.

19. That the construction of the said so-called sewer through the said street is not for the public benefit, and is not demanded by the public good; that if it be necessary for the public health, or for any purpose, to have the waters of the said stream covered or confined, that the bed of the said stream can be used for that purpose much more cheaply and much more safely than the said street; that some five hundred feet or more of the same is already covered at the expense of the city, at and below the point on High street, where the said so-called sewer or artificial water-course will commence, at a cost of many thousands of dollars, and that to procure the right and cover the balance, will, as your orators are advised and believe, cost much less than the construction of the said so-called sewer, which as your orators charge, is a work of great cost and expense, and will cost the city a very large sum of money.

20. That although your orator, George Stouinger, dedicated his property in said Clay street for a public highway, yet that, subject to the public use for street purposes, the title remained and still remains in him, and that the said city has no right to take or use the same for the purpose aforesaid, which your orator charges and insists is not the legitimate scope of its powers over streets, without just compensation be first made to your orator.

21. That the land of your orators, David M. Meeker, and Stephen J. Meeker, on Clay street aforesaid, is occupied and used by them in their business of foundrymen, and their foundry buildings are located thereon; that the grade of Clay street was established by the municipal authorities of the city of Newark, after the said foundry buildings were built, and is about two feet above the floor of the said buildings, and that as appears by the annexed diagram and place of the said proposed sewer, the same will come within eigh-

teen inches of the surface of the said street in front of their foundry buildings, which will make it impossible for your orators to tap or use the said so-called sewer, as in times of high water when the said sewer will be full the water would overflow into the buildings of your orators, and that the water in case the said so-called sewer should burst, would flow down Clay street and along in front of and through your orators' buildings, greatly to their damage.

22. And your orators, David M. Meeker and Stephen J. Meeker, further show that the water now runs along Mill brook, through a natural gully or water-course, which is sufficient in ordinary times of high water to carry the same without injury to the adjacent property, but if the water which now runs there should be diverted into the said proposed sewer, and the bed of said Mill brook filled up, there will be no way for the escape of the accumulations of water above High street as aforesaid except through Clay street, and in times of extraordinary high water, your orators fear that the same will run down Clay street and damage your orators' said lands and buildings; that your orators' belief respecting the same is founded on their knowledge of the previous character of the said stream, of the quantity of water which collects in the natural flats or basin above High street, and of the damage which the said stream in such times of high water has formerly done. That this result will very naturally be caused by the filling in of the said bed of Mill brook, because the land along the said brook naturally slopes southerly toward the easterly end of Clay street aforesaid.

In tender consideration whereof, and for as much as your orators are without adequate relief in the premises, by the strict rules of the common law, and can only have adequate relief in a Court of equity, where matters of this nature are properly cognizable and relievable;

To the end, therefore, that the said The Mayor and Common Council of the City of Newark may without oath, true, full and perfect answer make to all and singular, the matter herein stated and charged, as fully and particularly as if they were herein again repeated, and they thereunto distinctly interrogated paragraph by paragraph; and that the

said The Mayor and Common Council of the City of Newark may, by the order and decree of this Court, be enjoined and restrained from making and constructing the said proposed sewer, and from making or entering into any contract or contracts therefor, and from diverting the waters of the said Mill brook or First river in the manner proposed as hereinbefore stated and set forth ; and that your orators may have such further and other relief in the premises as to your Honor may seem meet, and as shall be agreeable to equity
10 and good conscience.

May it please your Honor to grant unto your orators not only the State's writ of injunction issuing out of and under the seal of this Court to be directed to the said The Mayor and Common Council of the City of Newark, the corporation defendant, enjoining and restraining it, its officers, servants, agents or attorneys, and each and every of them, from making and constructing the proposed sewer through Clay street, and from making or entering into any contract or contracts therefor, and from diverting the waters of Mill
20 brook or First river as proposed by it ; and also the State's writ of subpoena to be directed to the said corporation defendant, commanding it on a certain day and under a certain penalty therein to be named, to be and appear before your Honor in this Honorable Court, and there to stand to, abide and perform such order and decree in the premises as to your Honor shall seem meet.

And your orators as in duty bound will ever pray, &c.

COULT & HOWELL,

Sol'rs of Complainants.

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JOSEPH COULT,

Of counsel.

STATE OF NEW JERSEY, {
ESSEX COUNTY, } ss.

GEORGE STODINGER, one of the complainants in the annexed bill of complaint, being duly sworn, on his oath says: that he has heard the above bill read to him, and that the matters and things therein stated so far as they relate to his own acts are true, and so far as they relate to the acts of others, he believes them to be true.

And deponent further says that the allegations contained in paragraph number *two* of said bill, that deponent is the owner of a large and valuable lot in Newark in the county aforesaid, situate as in said bill stated, are true; that the allegations in the *third* paragraph, that deponent had been the owner of the lands over which Clay street had been opened, that he dedicated the portion of his land taken by said street to the public for a highway with the reservation in said paragraph mentioned, are true; that the allegations in the *fifth* paragraph of said bill, that the city of Newark 10
accepted the land so dedicated to the public use as aforesaid as a public street, and caused the same to be graded, curbed and flagged, and that said street is now used as a public highway, are true.

That the allegations in paragraph *fourth* are true.

That the allegations in paragraph *sixth*, that there is a stream known as Mill brook or First river running nearly parallel with said Clay street, in the manner stated in said bill, are true.

That the allegations in paragraph *seventh*, that the said 20
stream by reason of heavy rains becomes swollen, and overflows the street through which it passes, that the culverts intended for carrying off said water are insufficient for that purpose, and as to the usual size of the said stream, are true.

That the allegations in the *eighth* paragraph of said bill, that the map attached to said bill is correct in its showings as therein stated, are true.

That the allegations in the *ninth* paragraph of said bill, that for some time past a few of the property owners on the line of the said stream have been anxious to have the same 30
diverted in order that the property which the said stream at times overflows may be improved, and that they have endeavored from time to time to have the city of Newark divert the said stream for that purpose, he believes to be true.

That the allegations in the *tenth* paragraph of said bill, that the said city caused a notice of their intention, as in said bill set out, to be published, that thereafter the said city caused an ordinance by said city theretofore passed to be published as set out in said bill, are true. 40

That the allegations in paragraph *eleven* of said bill, that the said city advertised for proposals to construct a sewer for the diversion of the stream aforesaid, are true as set out in said bill; that on the day in said bill mentioned it is the intention of said city to proceed to make such contract as is in said bill stated, he believes to be true.

That the allegations in the *twelfth* paragraph of said bill, that when deponent learned what the intention of said city was in respect to the diversion of said stream, he and other
 10 property owners along the line of Clay street aforesaid signed and presented a written remonstrance to said city, objecting and protesting as in said bill stated, are true, a true copy of which remonstrance is hereto annexed.

That the allegations in paragraph *thirteenth* of said bill, that the diagram number three annexed to the said bill is correct in its showings, and was made in the manner therein stated, are true.

That the allegations in paragraph *fourteenth* in relation to the proposed sewer, are true.

20 That the allegations in paragraph *fifteenth* of said bill, with regard to the laying of the proposed sewer, are true.

That the allegations in paragraph *sixteenth* of said bill, that it will be necessary for said city, if said sewer be constructed to divert said stream west of High street, and also the allegations in respect to the inadequacy of the proposed sewer to carry off the water of said stream and the consequent damage that will arise therefrom, are true.

That the allegations in the *seventeenth* paragraph of said bill, as to the fall of said stream and the velocity thereof,
 30 causing much damage to deponent's property if said proposed sewer be constructed; and as to the construction of the mouth of said sewer in the Passaic river and the danger arising therefrom, he believes to be true.

That the allegations in paragraph *eighteenth*, that no compensation or offer thereof has been made to deponent by said city for the property proposed to be taken in the construction of the proposed sewer are true, as in said bill stated, and that the said city claims the right to construct said sewer without compensating this deponent for his dam-
 40 age, he is informed and believes to be true.

That the allegations in paragraph *nineteenth*, that the construction of said proposed sewer is not for the public benefit or demanded by the public, that the natural bed of said stream could be used for that purpose to a much greater advantage, are true.

That the allegations in paragraph *twentieth*, in respect to the title to the land so dedicated by deponent for Clay street remaining in deponent subject to the public use, and the other allegations in said paragraph, are true.

Subscribed and sworn to before
me this 27th day of Novem- } GEORGE STOUNDINGER. 10
ber, A.D. 1876,

CHAS. K. WESTBROOK,

Mastery in Chancery of N. J.

NEW JERSEY, }
ESSEX COUNTY, } SS.

HARRISON VAN DUYNE, being duly sworn, upon his oath says: that the diagrams hereto annexed and marked exhibits, one is a copy of a map, and exhibit number three is a map made in his office, and are correct delineations of what they purport to delineate; that he is a surveyor and civil engineer, and has been engaged for some time past in the practice of his profession as such in the city of Newark, New Jersey; that he is acquainted with the location and situation of the property shown on the said map or diagram, and that the same is correctly given thereon; that the red line on exhibit number one shows the location of the proposed sewer about to be constructed through Clay street, called the Mill brook sewer, and that the same is taken from the map of the City Surveyor made for the purpose of constructing the same; that the natural channel or bed of the stream called Mill brook or First river is correctly shown on the said map or diagram exhibit number one, by the blue lines marked thereon; and that the said map or diagram shows correctly the streets and avenues in said city crossed by the said stream and proposed sewer, easterly from High street to the Passaic river.

And deponent further says that the map or diagram marked exhibit number three is taken from the plans of said

proposed sewer as published by the city of Newark, and it shows a profile of the said sewer as it is proposed to be constructed from High street to Passaic street; that it gives the surface of the ground, and the depth at which the said sewer is to be placed at different points along the line of the same, the size of said sewer, the line of the ordinary high water mark from the Passaic river westerly along the line of the proposed sewer to High street; that the scale of diagram number one is two hundred feet to the inch, and the scale of diagram number three is as follows: two hundred feet to the inch on the horizontal scale, and twenty feet to the inch on the vertical scale; that the said diagram also shows the relative location of the sewer, the point where the said double sewer commences, and a cross section of such double sewer.

Subscribed and sworn to }
 before me this 28th day } HARRISON VAN DUYNÉ.
 of November, 1876, }

CHAS. K. WESTBROOK,

Master in Chancery of N. J.

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

DAVID M. MEEKER, one of the above named complainants, maketh oath and saith, that he has inspected the map marked exhibit number one, annexed hereto, and he says in relation thereto that the same is a correct delineation of Clay street and the adjacent streets and avenues, of the stream known as Mill brook or First river, and of the location of the foundry buildings owned by himself and Stephen J. Meeker, one of the complainants above named; that he has read the affidavit of George Stouinger, hereto annexed, and that he knows of his own knowledge that the statements therein made as to the character of the land adjacent to Mill brook, the character of the said stream at high and low water, and the liability of the said proposed sewer to damage the adjoining property, are true; and he further says that if the bed of the said Mill brook is filled up, there will be a slope to the land from the line of said stream southward toward Clay street, and in times of high water,

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and during the spring freshets, he believes the said proposed sewer will not be large enough to carry all the water which naturally flows through Mill brook; that the same will consequently overflow, and when it reaches the lower end of Clay street will be forced by the slope of the land over on, to and through the foundry buildings of deponent and said Stephen J. Meeker, causing them great damage.

Subscribed and sworn to before }
me, this twenty-eighth day of } DAVID M. MEEKER. 10
November, A.D. 1876, }

CHAS. K. WESTBROOK,
Master in Ch'y of N. J.

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

The undersigned, citizens of Newark and residents of the Eighth ward of said city, living on or near the line of the proposed sewer to be constructed through Clay street for the purpose of diverting the waters of Mill brook or First river, and owners of property to be affected thereby, do hereby earnestly remonstrate against the passage of an ordinance authorizing the construction of said sewer for the following, among other reasons: 20

1st. A sewer through Clay street, for sewage purposes, is not demanded by the property owners, and is not needed.

2d. If a sewer, or covered water course, is needed for Mill brook it should be made in the line of the present water course, part of which is already covered at considerable expense to the city.

3d. Because the construction of the sewer as proposed will be enormously expensive, and will entail upon the city expensive litigation in settling the rights of the parties owning property along Mill brook, and through which the proposed sewer will pass. 20

Dated Newark, N. J., April 17th, 1876.

D. M. Meeker & Son, 128 feet on Clay street.

George Stoudinger, 630 " " "

Levi H. Sandford, 100 " " "

Alex. Sturgis, 60 " " "

	J. A. Adams,	25 feet on Clay street.		
	William Erb,	77	"	"
	William & Thomas Erb,	60	"	"
	P. T. Doremus,	60	"	"
	Thomas Wolfe, agent,	20	"	"
	T. & I. C. Wolfe,	75	"	"
	Nichols, Mason & Co.,	75	"	"
	Benedict Albinger,	26	"	"
	Ann Latimer,	60	"	"
10	Catherine Doyle, Ex'rx of J. Doyle,	255	"	"
	S. A. Davis,	25	"	"
	Anthony H. Carter,	24	"	"
	William Van Roden,	31 ft. 4 in.	"	"
	David Gerhard,	25 feet on	"	"
	Ernest Hartwick,	35	"	"
	Alfred W. Killick,	24	"	"
	James A. Bruen,	25	"	"
	Lucas Carter,	50	"	"
20	Martin Bergen,	75	"	"

1965 feet 4 inches on Clay street.

[Clay street is 1213 feet long, from High to Ogden street, and remonstrance on said street shows 1965 feet.]

E. F. Baldwin, Ex'r, over 1200 feet on Ogden, Mt. Pleasant and Broad streets.

Thomas Wolfe, 100 feet on Broad street.

do. 100 feet on Belleville avenue.

T. & I. C. Wolfe, 25 " " "

do. 25 " Broad street.

30 Thomas Erb, 25 feet on " "

do. 25 feet on Mt. Pleasant avenue.

Fred. Bimble, 75 feet on Broad street.

do. 100 feet on Mt. Pleasant avenue.

Luther Macomber, 25 feet on Broad street.

George M. Cobb, 116 " " "

do. 122 " Seventh avenue.

do. 96 " Spring street.

Executor of E. W. Cobb, 78 feet on Broad street.

S. J. Meeker, 95 feet on Broad street.

- G. R. Buchanan, 98 feet on Spring street.
 E. A. Campbell, 184 feet on Broad street.
 M. G. Baldwin, 70 feet on Broad st., Nos. 276 and 278.
 Samuel Walter, 25 feet on Broad street.
 Simon Walter, 125 feet on Broad street.
 do. 86 feet on Belleville avenue.
 Watts, Campbell & Co., 87 feet on Ogden street.
 do. 277 feet on Passaic street.
 James McLaren, 75 feet on Ogden street.
 George Brown, 30 feet on Broad street. 10
 D. M. Meeker, 92 " " "
 J. T. Budd, 18½ " " "
 Joseph M. Smith, 25 " " "
 Mrs. Wm. F. Reeve, 25 ft. on " "
 Marcus Chandler, 50 " " "
 James Crowell, 25 " " "
 Jacob Brown, 70 " " "
 Henry Colyer, 43 feet on Seventh avenue.
 William Selby, 42 feet on Broad street.
 Michael Gillen, 25 feet on Belleville avenue. 20
 John W. E. Davidson, 25 feet on Belleville ave., No. 97.
 Robert McCurdy, 26 feet on Belleville ave., No. 27.
 David Ayers, foot of Clay st., 300 feet on Passaic river.
 Mrs. Hofacken, 27 feet on Broad street.
 John Early, 40 feet on Belleville avenue, No. 58.
 Frederick Breithut, 40 feet on Belleville avenue, Nos. 61
 and 63.
 Christian Ahbe, 25 feet on Belleville avenue, No. 59.
 Jacob Young, 25 feet on Belleville avenue, No. 52.
 do. 40 feet on Seventh avenue. 30
 Patrick Walsh, 50 feet on Belleville ave., Nos. 29 and 31.
 Jacob G. Doremus, 50 feet on Broad st., Nos. 376 & 378.
 George Nugent, 25 feet on Belleville ave., No. 115.
 Christopher Stimis, 40 feet on Belleville avenue.
 Ralph Satchwell, 25 " " "
 John Collins, 35 " " "
 Thomas J. Doremus, 25 feet on Eighth avenue.
 Catherine Doyle, Executrix J. Doyle, 25 feet on Belleville
 avenue, No. 81.
 Kittie Muldoon, 25 feet on Belleville avenue, No. 79. 40

William R. Vanderhoof, 25 feet on Broad street.
 Peter Vanderhoof, 50 feet on Broad st., Nos. 283 & 285.
 John H. Osborn, 245 feet on Belleville avenue.
 do. 55 feet on Seventh avenue.
 John H. Baldwin, 25 feet on Belleville avenue.
 Theodore Rhodes, 25 " " "
 Marcus Sayre, 150 " " "
 Mecker & Hedden, 98 " Ogden street.
 W. Rhodes, Pres. Board of Trustees C. M. E. Church, 125
 10 feet on Belleville avenue, and 125 feet on Bloomfield ave.
 Edward Donnelly, 51 feet on Broad street.
 do. 50 feet on Belleville avenue.
 James Perry, 83 feet on Belleville avenue.
 do. 100 feet on Seventh avenue.
 S. R. W. Heath, 93 feet on Seventh avenue.
 James Sloan, 25 " " "
 William Sloan, 25 " " "

 Total, 7,842 feet and 10 inches.

In Chancery of New Jersey.

Between

GEORGE STOUNDINGER, *and als.*,

Complainants,

and

THE MAYOR AND COMMON COUNCIL
OF THE CITY OF NEWARK,

Defendants.

*On Bill for
Injunction.*

Answer.

The answer of The Mayor and Common Council of the city of Newark to the bill of complaint of David M. Meeker, Stephen J. Meeker and George Stoudinger. 1

These defendants now, and at all times hereafter, saving and reserving to themselves all manner of benefit and advantage of exception to the many errors, uncertainties and insufficiencies, in the said complainants' said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as these defendants are advised it is material for them to make answer unto, they answer and say, that they admit that the said complainants, David M. Meeker, Stephen J. Meeker and George Stoudinger are the owners in fee simple of the tracts of land situate on Clay street in the said city of Newark, and more particularly described in their said bill. 10

And these defendants, further answering, say that it is true as stated in the said bill, that the said complainant, George Stoudinger, was formerly the owner in fee simple of the land lying between Broad street and High street in said city, what is now known as Clay street, has been opened, and that being the owner of lands on both sides of what is now known as Clay street, the said George Stoudinger opened 20

the same and dedicated to the public use, for the purposes of a highway, that portion of the land now taken by the said street, and from time to time thereafter sold portions of the land lying on either side of the street, to the line thereof, reserving to himself the fee simple in the said land so dedicated as aforesaid, subject, however, to the public right acquired by his dedication thereof as aforesaid to the public use.

And these defendants, further answering, say that it is
 10 true, as stated in said bill, that after the dedication by the said complainant, George Stoudinger, of the land over which Clay street passes for street purposes, the said city of Newark, the defendants herein, accepted the same as a public street, and caused the said street, about the year eighteen hundred and fifty-five, to be graded, curbed and flagged at their expense, and further caused a survey thereof to be made and the same to be filed in the office of the Clerk of the county of Essex, and recorded in the book of records of roads and highways for the said county; and these defend-
 20 ants say, that in consequence of the said acceptance of the said property so as aforesaid dedicated by the said George Stoudinger, in the manner specified, the said Clay street between Broad street and High street in the said city, became a public street of the said city of Newark, and subject to the uses and servitude to which public streets of the said city may be subjected.

And these defendants, further answering, say that ever since the said dedication of the said property by the said
 01 complainant, George Stoudinger, and the acceptance of said
 30 dedication by the said city of Newark, by grading, curbing and flagging the same, the said Clay street within the limits hereinbefore specified has been used as a public street of the said city.

And these defendants, further answering, admit as stated in said bill, that from Broad street to High street, a distance of about seven hundred and forty feet, the ground rises rapidly, so that while the surface of the ground at Broad street is only about seventeen feet above ordinary high water mark at the Passaic river, the surface of the ground
 02
 40 at High street is about forty feet above the same.

And these defendants, further answering, say that running nearly parallel with Clay street aforesaid, and passing within about one hundred feet of the north line of Clay street, is a living well-defined stream of water known as First river or Mill brook, and that said stream rises, runs, descends and empties substantially in the manner stated in the said bill; and that the said stream of water, when heavy rains occur, is frequently a large and turbulent stream, flowing over its accustomed channel, and over the street under which it passes, and that the culverts at present constructed to conduct the water under the said streets, are not in all cases sufficient to carry off the volume of water accumulating. 10

And these defendants, further answering, admit that the map or diagram annexed to said bill, and marked Exhibit No. 1, correctly represents the location and situation of the said complainants, with reference to the said stream from High street to the Passaic river, the location of Clay street aforesaid from High street to Ogden street, and the streets crossed by the said stream, and the streets intersecting Clay street, and also the property over and across which said stream passes from High street aforesaid to the Passaic river. 20

And these defendants, further answering, say that the properties of the said complainants, David M. Meeker, Stephen J. Meeker and George Stoudinger, described in said bill, and designated on said map, do not abut or border on the line of the stream known as First river or Mill brook; and that they, the said complainants, have no rights or privileges as riparian proprietors in said stream, and that they do not use the said stream for any lawful or any other purpose, nor is the said stream of water used for manufacturing or any other lawful use by any person or persons living and owning property upon or near the line of the said stream. 30

And these defendants, further answering, say that if the said Mill brook be diverted in the construction of the sewer mentioned in the said bill of complaint, no injury or loss will arise to either of the said defendants by reason thereof, and that in consequence the said complainants are not entitled to the relief prayed for in their said bill of complaint in this respect.

And these defendants, further answering, say that for a 40

long time past, some of the property owners along the line of the said stream have complained that the said stream, by reason of its being a repository of filth, garbage and other noxious and offensive matter, and by reason of its being an outlet for sewers, constructed by the said city of Newark, west of the line of High street in said city, as hereinafter more particularly stated, was a public nuisance, and promotive of disease and destruction of the public health, and in consequence thereof have been anxious, as stated in said

10 bill of complaint, to have the water of the said stream diverted into some other channel, or some other means adopted by which the said nuisance might be abated; but these defendants state that they have no knowledge, save from the said bill, that the purpose of the said property owners, in their said action, was to improve and render more valuable their property, over which the said stream passed, except so far as the removal of the said nuisance would necessarily increase the value thereof.

And these defendants, further answering, say that the said

20 property owners, so as aforesaid desiring to have the said nuisance abated, petitioned these defendants for a sewer to divert the water of the stream known as Mill brook, and in said petition represented to the said defendants that the waters of the said brook were foul and emitted a stench which was injurious to the public health.

And these defendants, further answering, say that frequent complaints have been made before the Board of Health of the said city of Newark, of the condition of the said stream, and it giving rise to sickness in the neighborhood of a malarial character; and that the said complaints so as aforesaid

30 made, were communicated to the Mayor and Common Council of the said city by said Board of Health or some of its officers.

And these defendants, further answering, say that in the exercise of the power conferred by the Legislature of the State of New Jersey, to provide for the protection and maintenance of the health of the city, and especially believing that the interests of the citizens of Newark demanded, not merely that the said nuisance arising from the said stream

40 should be abated, but also that a large trunk sewer should

be constructed through Clay street and along the line of Mill brook, from High street to the Passaic river, into which the connecting sewers already constructed, and hereafter to be constructed, might flow, they ordered the Street Commissioner of the said city, as stated in the said bill, to give the notice of intention in said bill particularly set forth; and that the said Street Commissioner, on the day stated in said bill, did give the said notice in conformity with the order and direction of the municipal government of the said city; and that subsequently, on the day stated in said bill, an ordinance was passed and approved by the Mayor and Common Council of the said city, of which a true copy is correctly set forth in said bill. 10

And these defendants, further answering, admit that they directed the chairman of the Sewer Committee, and the Street Commissioner of the said city, to advertise for proposals for the construction of the said sewer, and that advertisement was accordingly made, of which a copy is truly set forth in the said bill.

And these defendants, further answering, admit as stated in said bill, that it is the intention of the Mayor and Common Council of the city of Newark, unless restrained by the order of this honorable Court, to proceed to make a contract with some person or persons, to build and construct the said sewer in conformity with the plans and specifications hereinafter referred to. 20

And these defendants, further answering, say that it is true, as stated in said bill, that the said complainants and other persons interested who reside along the line of the proposed sewer, and in the immediate vicinity, and interest in property along the line of Clay street, prepared and presented to the Mayor and Common Council of the city of Newark, a remonstrance against the construction of the said proposed sewer, and that the copy of the remonstrance attached to the said bill is a true copy thereof. 30

And these defendants, further answering, say that notwithstanding the remonstrance referred to, the Mayor and Common Council of the said city, in the exercise of the power conferred upon them by the Legislature, ordered and directed the construction of the said sewer, on the line specified 40

in said ordinance; but these defendants say, that before any notice of intention of the Mayor and Common Council of the said city to construct the said sewer, on the line afterwards adopted was given, and before the passage of the ordinance providing for the construction of the same, in order to build a proper sewer to the best advantage for the people of the city, and at the least possible expense, consistent with the construction of a suitable and strong sewer, due regard being had to the future interests of the said city in this behalf, these defendants appointed a committee, by resolution of the Common Council of May fifth, eighteen hundred and seventy-six, to examine the various proposed lines for the construction of a sewer through Clay street and vicinity to the Passaic river, and to estimate the value of the land necessary to be taken and appropriated for that purpose, and to report the probable cost of each route to the Committee on Sewers and Drainage; and these defendants say, that the said committee so appointed, on the thirty-first day of May, eighteen hundred and seventy-six, made their report to the Committee on Sewers and Drainage of said city, and that said committee reported the same subsequently on the thirty-first day of May, eighteen hundred and seventy-six, to the Common Council of the said city, and that a copy of said report of said committee is attached to this answer, and marked Exhibit A; and these defendants pray that the same may be taken and regarded as a part of this answer.

And these defendants, further answering, say that the said committee reported that the plan subsequently adopted by the Common Council was the least expensive of any route that could be chosen for the construction of the said sewer.

And these defendants, further answering, say that the diversion of the said Mill brook, by the construction and use of the proposed sewer, is merely incidental to the construction of a work of great public importance, and that its diversion will cause no injury or loss to the said complainants, and in consequence thereof the said complainants are not entitled to demand the relief prayed for in their said bill.

And these defendants further say that although the sewer proposed to be constructed is a costly and expensive work, yet that the persons owning property along the line of the

said sewer, after its construction, will be liable to no other or greater assessment for the benefit arising from the said construction than they would be liable to, if a merely local sewer constructed at very much less expense should be built by the city.

And these defendants, further answering, say that the diagram hereto attached, marked Exhibit B, and which they pray may be considered as a part of this answer, shows the area of territory proposed to be drained by the said sewer, and the sewers already constructed in the said city 10 which empty thereinto.

And these defendants, further answering, say that the exhibit marked No. 3, annexed to the complainants' said bill, is a diagram showing the manner in which the proposed sewer is to be constructed in Clay street; that the same was made by the City Surveyor of the city of Newark, and that it is in all respects correct.

And these defendants, further answering, deny that the main purpose and object to be accomplished in the construction of the said sewer, as hereinbefore stated, is the 20 diversion of all the waters of Mill brook or First river from their accustomed channel into an artificial water-way, and that there is no present necessity for a sewer in Clay street, and that there is no desire on the part of the property owners interested to have the sewer constructed through the said street.

And these defendants further deny, in view of the allegations hereinbefore made, and the necessity in their judgment for a large trunk sewer in that portion of the said city, that a sewer of smaller dimensions and little comparative cost 30 will be all that is required for the best interests of the city; and they further say that if in the construction of the sewer along the line of the property of the said complainant, George Stouder, the said sewer is placed at a greater depth than is usual in the construction of sewers beneath the surface of the street, so that it will be difficult and expensive to make connections therewith, or that the whole width of the street will be used in constructing the same as stated in said bill in order to make the said sewer of sufficient size to carry off the water accumulating therein, that the inconvenience occasioned 40

thereby is incidental to the construction of all public works, and does not afford ground for the relief prayed for in the said bill.

And these defendants, further answering, deny the statement in the said bill, that it is the present purpose and intention of the defendants to change the course of said Mill brook west of High street; on the other hand they say that a sewer has already been constructed by the said defendants from Factory street to High street, on the line of the brook, and they further deny that the said sewer proposed to be constructed will be wholly made to carry off the water which will accumulate therein, and that as a consequence the surplus water thus diverted will flow over and on to the lands of the said complainants, to their damage and annoyance.

And these defendants, further answering, admit that the fall in the said brook from the reservoir, a distance of about four thousand feet west of High street, to Broad street, is about seventy feet; but these defendants deny the statement of the said bill that the large quantity of water passing through the said proposed sewer, if constructed upon the plans provided for that purpose, (a copy of which is hereto attached, marked Exhibit C, and which the defendants pray may be taken as a part of this answer,) with the great velocity which so great a fall will give it, will render the construction of the said sewer dangerous to the property through which and over which and along which it will pass; on the contrary thereof, these defendants say that the said sewer as proposed to be constructed, at its outlet will drain an area of about sixteen hundred acres, the outlines of which district are shown by a red line on the map attached hereto, and marked Exhibit B.

And these defendants further say that the area of cross section of the lower part of the sewer is equal to one hundred square feet, and that the sewer will be capable of discharging about seven thousand gallons of water per second; and these defendants say that the said amount of water which the said sewer, if constructed on the plans and specifications as adopted, is capable of discharging, is larger than the amount which would accumulate in the said sewer, by

the flowing of all the water of Mill brook through the same, and the drainage of all sewers now constructed or that could hereafter be constructed, connecting with the same, and also the drainage of all the houses constructed or that might be constructed upon all the lots on the streets included within the area drained by the said sewer.

And these defendants, further answering, say that in order to carry off the large volume of water which would accumulate in said sewer, special attention has been given and calculation made with reference to the strength of the walls of the said proposed sewer; and that said sewer, if constructed according to the specifications attached hereto, will be sufficient in strength to carry off the said water without danger of breakage; and these defendants further say that the lower section of the said sewer is to be built on piles, timber and plank foundation, on the top of which is to be placed a rubble and concrete foundation to the depth of six inches, on which the arches of the same will rest—which arches will be sixteen inches in thickness, and surrounded by rubble masonry of the thickness of two feet and over; that the upper section of the sewer below Broad street will rest on a rubble and concrete foundation, of the thickness of sixteen inches, on which will be laid the arches of the sewer, of the thickness before designated, and surrounded by rubble masonry of a thickness of two feet and over; that the upper section of the said sewer between Broad and High streets will be of a circular shape, nine feet in diameter, with twelve inch brick walls resting on a rubble and concrete foundation, of a thickness of twelve inches, and surrounded with rubble masonry of a thickness of fifteen inches and over.

And these defendants, further answering, deny that the mouth of the sewer, if constructed as proposed, will be at all times three or four feet below ordinary high water mark, and that at times the waters of the Passaic rise to such a height that more than one-half of the entire sewer, if constructed on the plans suggested, will be filled thereby as far back as Ogden street, and that the pressure which will be brought upon the sewer necessary to displace so large a quantity of water, and force a passage for the stream passing through

the same, will render the proposed sewer, so to be constructed, dangerous to the property over and through which it passes, and that the property of the said complainants will be injured in value thereby; on the contrary thereof, these defendants say that the said sewer will be large enough in capacity and strong enough in construction, as hereinbefore particularly set forth, to answer all emergencies; that at mean high water the bottom of the sewer at the outlet at Passaic street will be two feet six inches below
 10 the same, and the surface of the water at high tide will extend through the sewer at a decreasing depth, to Ogden street; that in making the specifications hereto attached for said sewer, the matter last suggested in the said bill was considered, and the conclusion mathematically reached, that the said sewer, if constructed upon the plans and specifications adopted for its construction, will be of sufficient capacity and strength to carry off all the accumulated water without injury to the property owners, as hereinbefore stated.

And these defendants, further answering, say that in
 20 pursuance of the ordinance of the Common Council of the city of Newark, providing for the construction of the said sewer, application was made to the Circuit Court of the County of Essex, on the fourteenth day of August, eighteen hundred and seventy-six, in conformity with law, for the appointment of commissioners to make an estimate and assessment of the damages sustained by any owner or owners of land and real estate taken and appropriated, and necessary to be taken and appropriated in the construction of the sewer, and by the diversion of Mill brook from its present
 30 location into said sewer.

And these defendants, further answering, say that under and by virtue of the supplement to the act entitled "An act to revise and amend the charter of the city of Newark, approved March eleventh, eighteen hundred and fifty-seven," which said supplement was approved March twenty-seventh, eighteen hundred and seventy-four, it was provided that whenever it should be deemed expedient or necessary by the Common Council of the city of Newark, to take and appropriate or divert, or make any use of any body of water or stream,
 40 or portion of water in or for the construction or use, or outlet of

any sewer or drain in said city, or in connection with any such construction or use, or outlet, that the Mayor and Common Council should appoint five disinterested freeholders to make an estimate and assessment of the damages sustained by the owner of land taken, or persons having any legal right or claim to the use or enjoyment of the said stream or portion of water; and further, that the commissioners appointed by the Common Council to make an estimate and assessment of the damages which any owner of land and real estate taken for any sewer or drain in said city would sustain by such taking, may also estimate and assess the damage which any owner of or person having any legal claim or right to the use or enjoyment of any body or stream or portion of water in said city would sustain by the taking and appropriating or diversion or use of such body or stream, or portion of water, in or for the construction or use or outlet of such sewer or drain, or in connection with such sewer, drain or outlet, and the sum so estimated as damages should be a portion of the amount of the costs, damages and expenses of the construction of the sewer.

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And these defendants, further answering, say that by an act entitled "A further supplement to the act entitled 'An act to revise and amend the charter of the city of Newark,'" approved March eleventh, eighteen hundred and seventy-five, the Circuit Court of the County of Essex, on application on behalf of the Mayor and Common Council of the city of Newark, were authorized to appoint commissioners to estimate and assess damages and benefits in all cases in which such commissioners had been previously appointed by the Common Council; and that by a further supplement to the act entitled "An act to revise and amend the charter of the city of Newark," approved April sixth, eighteen hundred and seventy-five, it was provided that the commissioners to be thereafter appointed to estimate and assess damages and benefits under the act to which such act was a sufficient or any supplement thereto, should be only three in number; that all the said acts last referred to are public acts, and these defendants claim the benefit of all of them to the extent they are herein referred to as if they were fully herein set forth.

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And these defendants, further answering, say that the said Circuit Court, on the day of the application for the appointment of commissioners to make the assessment hereinbefore recited, appointed three commissioners to make an assessment of damages in conformity therewith; and that the said commissioners after being duly qualified, examined said matter submitted to them, and have made their report to the said Court, of damages sustained by any owner of lands and real estate taken, by the construction of the said sewer,
 10 and by the diversion of the waters of the said Mill brook, and that notice of the confirmation of the said report by the said Court, has been advertised for the eighteenth day of December, eighteen hundred and seventy-six; and that although no compensation appears from the said report, to have been awarded to the said complainants, yet these defendants insist that by reason of the fact that no land of either of the said complainants that has not already been dedicated to the public use, and accepted by the said city, is necessary to be taken in the construction of the said
 20 sewer, and that no injury will accrue to either of the said complainants by the diversion of the waters of the said Mill brook, the said complainants are not entitled to compensation.

And these defendants deny that the said proposed sewer will be an artificial water course over and through the property of the said George Stoudinger, to be constructed under the pretence of building a sewer to receive and carry off the ordinary drainage of the land in the vicinity thereof; but they say that the contrary of said statement sufficiently
 30 appears from the foregoing parts of this answer.

And these defendants deny that the construction of the said sewer through the said street in the manner and for the purpose specified herein, is not for the public benefit, and is not demanded by the public good; and that if it be necessary for the public health, or for any other purpose, to have the water of the said stream covered or confined, that the bed of the said stream could be more cheaply and safely used for that purpose than the said street, as appears from the statements hereinbefore made in this answer.

40 And these defendants, further answering, say that although

the said complainant, George Stouinger, dedicated his property in Clay street for a public highway, and the title may still remain in him subject to the public easement, yet they deny that the said city has no right to take and use the same for the purpose of the construction of the said sewer, without first making compensation to the said complainant, George Stouinger.

And these defendants, further answering, say that it may be true as stated in said bill, that the said complainants, David M. Meeker and Stephen J. Meeker, occupy and use the premises in said bill stated for the purposes therein stated; that the grade of Clay street as established by the municipal authorities of Newark, was established after the said foundry building was erected, and is about two feet above the floor of said building, but they have no knowledge thereof, save from the said bill, and leave the said complainants to make such proof thereof as they shall deem proper; but these defendants deny that the said proposed sewer will come within eighteen inches of the surface of the said street in front of the foundry building of the said complainants last named, which will make it impossible for them to tap or use the said sewer; and they say that the said sewer as proposed to be constructed will not pass within sixty feet of the property of the said complainants, David M. Meeker, and Stephen J. Meeker, as appears by the map attached to the complainants' said bill marked Exhibit No. 1, and that if they desire to connect at the northeast corner of Mount Pleasant avenue, the only point at which they can connect therewith, the distance being sixty or seventy feet from the property of the said complainants, Meeker, a sufficient descent could be obtained to prevent the water backing up upon their property, as they charge in their said bill.

And these defendants, further answering, say that it is true that if the water which now runs along Mill brook should be diverted into the said proposed sewer, and the bed of the said Mill brook filled up, there would be no way for the escape of the accumulation of the water, except through Clay street; yet these defendants say, as hereinbefore stated, that the sewer proposed to be constructed will be of sufficient dimensions and capacity to carry off all the water accumu-

lated therein, and that without injury to the property of the said complainants, and that water flowing into Clay street will be carried into the sewer, and so conducted into the river, and that the fear of the said complainants as stated in said bill, that any injury may arise to his property by means of the said water overflowing the property of the said complainants, is entirely supposititious and improbable, and affords no grounds for equitable relief; and these defendants deny all combination and confederacy in the said bill charged without this, that any other matter or thing in the said bill of complaint contained, material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed and avoided, traversed or denied, is true to the knowledge and belief of these defendants. All which matters and things these defendants are ready to aver, maintain and prove, as this Honorable Court shall direct, and they humbly pray that they may be hence dismissed, with their reasonable costs and charges in this behalf, most wrongfully sustained.

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HENRY YOUNG,
Sol'r and Counsel with Defendants.

NEW JERSEY, }
ESSEX COUNTY. } *ss.*

HENRY J. YATES, being duly sworn according to law, on his oath saith, that he is Mayor of the city of Newark, the defendants in the foregoing answer named; that the facts, matters and things therein set forth so far as they relate to the acts and deeds of the said defendants, are true, and so far as they relate to the acts and deeds of any other person or persons, he believes them to be true.

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Sworn and subscribed before }
me, this 11th day of De- } HENRY J. YATES,
cember, 1876, } *Mayor.*

FRED'K T. JOHNSON,
Notary Public, Newark, N. J.

NEW JERSEY, }
ESSEX COUNTY. } *ss.*

HENRY YOUNG, being duly sworn according to law, on his oath says, that he is City Counsel of the city of Newark,

and has been such since on or about the first day of January, 1876; that on or about the fourteenth day of August, eighteen hundred and seventy-six, by instruction of the Mayor and Common Council of the city of Newark, he applied to the Circuit Court of the county of Essex, for the appointment of commissioners to estimate and assess the damages sustained by any owner of land and real estate taken and appropriated, and necessary to be taken and appropriated, in the construction of the sewer known as Mill brook sewer, and by the diversion of Mill brook from its present location into said sewer; that said Circuit Court on the day of said application, appointed as such commissioners, Aram G. Sayre, Henry N. Parkhurst and Hiram M. Rhodes, and that commissioners were duly qualified to act as such; that said commissioners have made their report of damages in conformity with the order of said Court, and that said report has been filed in the office of the Clerk of the county of Essex, in conformity with law and notice given of the application to the said Court, on the eighteenth day of December, 1876, for confirmation of the same.

Sworn and subscribed before
me, this 11th day of Decem-
ber, A.D. 1876, } HENRY YOUNG.

DANIEL W. BAKER, *M. C. C.*

NEW JERSEY, }
ESSEX COUNTY. } *ss.*

HENRY N. PARKHURST, of full age, being duly sworn according to law, on his oath saith, that he was one of the commissioners appointed by the Circuit Court of the county of Essex, to make an estimate and assessment of the damages sustained by the owners of land taken in constructing Mill brook sewer, and also by reason of the diversion of the said brook; that Aram G. Sayre and Hiram M. Rhodes were also appointed commissioners with him; that the said commissioners made an examination on the ground of the proposed line of the sewer, and considered the damages, if any, suffered by each owner of property by reason of land taken or water diverted by the construction of the said

sewer, and made their report of damages sustained by all the owners of the construction of the said sewer on the day of ~~the~~ eighteen hundred and seventy-six, and caused the same to be filed in the office of the Clerk of the county of Essex; that no award of damages was made to either George Stoudinger, David M. Meeker or Stephen J. Meeker, for the reason that the said commissioners, after careful examination of all the property that would be damaged by the said proposed sewer, concluded that neither of the said individuals was injured thereby, either by the diversion of the water of said brook, or the taking of land for the construction of said sewer.

Sworn and subscribed before
me, this ninth day of December, A. D. 1876, } HENRY N. PARKHURST.

FRANK B. ALLEN, *M. C. C. of N. J.*

NEW JERSEY, }
ESSEX COUNTY, } *ss.*

PETER WETZEL, being duly sworn according to law, on his oath says, that he is City Surveyor of the city of Newark and has been such from about the first of January last; that he is well acquainted with the line adopted by the Common Council of said city for the construction of the Mill brook sewer, and was one of the committee to whom the question of the route for the sewer in the neighborhood of Mill brook was submitted.

Deponent further says, that as such City Surveyor he drew the plans and specifications for the construction of the contemplated work, and that the specifications attached to the foregoing answer are the specifications which deponent drew for the construction of the said work; deponent further says, that he is now and for many years past has been acquainted with the condition of Clay street in the city of Newark, between High and Ogden streets, and that to deponent's knowledge the said street has for a number of years past been used by the public as a public highway of the city; deponent further says, that in the year eighteen hundred and fifty-five, the said street between High and Broad streets had been dedicated by George Stoudinger in the foregoing

answer named to the city of Newark, and that in said year a contract was made by authority of the city to grade said Clay street between High and Broad streets, and that the city paid the costs of the said gradings; and that on or about the fifth day of August, 1876, deponent in conformity with the statute in such case made and provided, and by the direction of the Common Council, caused a survey of the said street between Broad and Ogden streets to be made and filed in the office of the Clerk of the county of Essex, and recorded in the book of records of roads and highways 10 for the said county; and deponent further says, that he has examined the map marked Exhibit No. 1, attached to the complainants' said bill, and which said complainants state in their bill exhibits correctly the location of their said properties on Clay street in said city, and that from an examination of said map it appears that the properties of David M. Meeker, Stephen J. Meeker and George Stouddinger, in the foregoing answer named, do not abut or border on the line of the stream known as First river or Mill brook, and that the said complainants have no rights or 20 privileges as riparian proprietors in said stream; and that to deponent's knowledge the said David M. Meeker, Stephen J. Meeker and George Stouddinger do not use the said stream of water for manufacturing or any other lawful purpose; nor to deponent's knowledge is the said stream used in manufacturing or for any other purpose by any person owning property upon the line of the said stream; deponent further says, that he knows that frequent complaint has been made to the Common Council of the city of Newark of the foul and unwholesome condition of the waters of Mill brook in 30 consequence of their being a repository for garbage, dead animals and other offensive matter; deponent further says, that several sewers constructed in the said city empty their contents into said stream, especially the Orange, Plane and Broad street sewer, which empties into the stream at Broad street at the stone bridge; also the West Monroe and Dickerson street sewer, which empties into the brook near West Monroe street; the Seventh avenue and High street sewer, which empties into the stream at High street; and that the deposits flowing into said brook from the said sewers flow 40

through the stream to the Passaic river; and deponent further says, that he knows from the statements and proceedings of the Common Council of the city of Newark, that while one purpose in constructing the proposed sewer was to remove the nuisance at present occasioned by the said stream, yet that the cogent reason was to construct a large trunk sewer with which other sewers than those above specified already constituted, and sewers to be afterwards constructed, would connect; deponent further says, that a
10 copy of the report of the Special Committee appointed by the Common Council to examine as to the best route for the proposed sewer, and to report the probable cost of the different routes, is attached to the answer filed in this cause, and is a correct copy, and from said report it appears that the plan adopted by the Common Council was the least expensive route suggested by the committee; deponent further says, that he is well acquainted with the location and ownership of the property in the line of the said brook, and from his knowledge thereof he is able to state that no injury or loss can
20 occur to the said George Stoudinger, David M. Meeker and Stephen J. Meeker, by reason of the diversion of the waters of the said stream into the proposed sewer, or by the construction of a sewer through Clay street, in the manner proposed, the said George Stoudinger, David M. Meeker and Stephen J. Meeker, having no water rights in the said stream. Deponent further says, that the diagram hereto attached, marked Exhibit B, exhibits truly the area of the territory proposed to be drained by the said sewer, and sewers already constructed in the said city which empty
30 thereinto; that the red line on said map shows the district drained by the Mill brook sewer, and the blue lines show the sewers already constructed, and that the area of territory that will be drained by the said sewers, is about sixteen hundred acres. Deponent further says, that the said sewer, if constructed on its present plan, will not change the course of Mill brook, west of High street; on the other hand, he says that a sewer has already been constructed by the Mayor and Common Council of the city of Newark, from Factory street to High street, on the line of Mill brook;
40 and deponent further says, that the sewer proposed to be

constructed will be entirely adequate, and more than adequate to receive and carry off all the water that will be drained into the sewer within the said district. Deponent further says, that he has made it a matter of careful mathematical calculation as to the quantity of water that will flow from the area proposed to be benefited by the said sewer into the same, and that the sewer as proposed to be constructed will be amply sufficient to carry off all the water accumulated therein; that the calculation is based upon the amount of rainfall, and from the amount of house drainage and household drainage; that as a basis of calculation it has been estimated that the maximum amount of rainfall in one hour will be one inch, which is above the maximum amount of rain which the records show falls during the heaviest storms; that taking this as a basis, deponent has estimated the possible amount of rain that might be drained into the said sewer, at any time together, with the house drainage, and has estimated that the sewer as proposed to be constructed, will be more than sufficient to carry off the water flowing into the said sewer from these sources. Deponent further says, that the area of cross section of the lower part of the sewer is equal to one hundred square feet, and that the sewer is capable of discharging about seven thousand gallons of water per second; which amount as already stated is larger than the amount which could accumulate in said sewer by the flowing of all the waters of Mill brook through the same, and the drainage of all the sewers now constructed, or hereafter to be constructed, connecting with the same, and also the drainage of all houses constructed, or that may be constructed upon the lands within the district proposed to be drained, and the surface drainage of the same. And deponent further says, that he has calculated mathematically the strength of the walls of the proposed sewer, capable of resisting the pressure that will be brought to bear upon them, and that the walls of the proposed sewer will be amply adequate to prevent any injury or loss from breakage of the same; that this calculation is founded upon mathematical formulas used in the construction of such works. Deponent further says, that the lower section of the proposed sewer is to be built of piles, timber and plank

foundation, on the top of which will be placed a rubble and concrete foundation to the depth of six inches, on which the arches of the sewer will rest, which said arches will be sixteen inches in thickness, and surrounded by rubble masonry of the thickness of two feet and over; that the upper section of the sewer below Broad street, will rest on a rubble and concrete foundation of a thickness of sixteen inches, on which will be laid the arches of the sewer of the thickness before designated, and surrounded by rubble masonry of a

10 thickness of two feet and over; that the upper section of the said sewer between Broad and High streets will be of a circular shape, nine feet in diameter, with twelve inch brick walls, resting in a rubble and concrete foundation of a thickness of twelve inches and surrounded by rubble masonry of a thickness of fifteen inches and over. Deponent further says, that at mean high water mark the bottom of the sewer at the outlet at Passaic street, will be two feet six inches below the same, and that the surface of the water at high tide will extend through the same at a decreasing depth to

20 Ogden street; that in making the specifications attached to the foregoing answer for the said sewer, the conclusion was mathematically reached, that the sewer if constructed upon the plans and specifications adopted for its construction, would be of sufficient capacity and strength to carry off all the accumulation of water without injury to the property owners along or near the line of the sewer. Deponent further says, that if the said sewer is constructed on the plan suggested by the Common Council and in the manner proposed, it will drain a large extent of territory needing drainage, and

30 will be in all respects an improvement of great public benefit. Deponent further says, that from an examination made of the property of the said David M. Meeker and Stephen J. Meeker, on Clay street, with reference to the proposed sewer, it appears that the sewer will not pass in front of the foundry building of the said David M. Meeker and Stephen J. Meeker within a distance of sixty or seventy feet, and that even if the floor of their foundry is now placed two feet below the present grade of the street, it will still be above the top of the arch of the sewer proposed to be constructed; and that if the

40 said David M. Meeker and Stephen J. Meeker desire to

connect with the said sewer at the northeast corner of Mount Pleasant avenue, which is the nearest point at which they could connect therewith, the distance being sixty or seventy feet from their property, a sufficient descent can be obtained to prevent the water backing upon their property and damaging them; and deponent further says, that the sewer as proposed to be constructed as already stated will be more than sufficient to carry off all the accumulation of water in Clay street and High street within the district drained, and that there is no possibility that any water by 10 reason of the insufficiency of the sewer will flow through Clay street, and so on to the property of the said David M. Meeker and Stephen J. Meeker, but that all water flowing into the said street will be carried through said sewer into the Passaic river.

Sworn and subscribed before me, }
 this ninth day of December, A. } PETER WITZEL.
 D. 1876, }

DANIEL W. BAKER, *M. C. C. of New Jersey.*

STATE OF NEW JERSEY, } 20
 COUNTY OF ESSEX. } ss.

WILLIAM A. SMITH, being duly sworn according to law, on his oath says, that he is a practicing physician of the city of Newark, and has been such for eleven years past; that he is an alderman of the said city from the Eighth ward, and also a member of the Board of Health of said city; that he is well acquainted with the sanitary condition of Mill brook in said city; that the said brook is used by the inhabitants of the city residing along the line thereof as an emptying place for filth, garbage, dead animals and other 30 noisome and offensive matter, and that several sewers of the said city empty into the said stream, the result of which is that a disagreeable and unhealthy stench is emitted therefrom; that from his knowledge of the sanitary condition of the people living in the said ward through which the said brook passes, he is satisfied that the brook in its present condition greatly imperils the health of the people living along its bank; that complaints have been made before the

Board of Health of said city by persons living near the said brook ; that the said brook for the reason above stated was a great nuisance and annoyance to them, and the said complaint to deponent's knowledge communicated to the members of the Common Council of said city.

Sworn and subscribed before me, }
 this ninth day of December, A. } WM. A. SMITH, M.D.
 D. 1876, }

THOMAS C. PROVOST,

Master in Chancery of N. J.

10

NEW JERSEY, }
 ESSEX COUNTY. } SS.

THEODORE F. BALDWIN, being duly sworn according to law, on his oath saith, that he is the owner of the tract of land in the city of Newark, on Mount Pleasant avenue, running back and along the line of Mill brook ; that he is well acquainted with the character of the stream and the property adjacent thereto ; that the said brook is used by the people living along the line of the stream as a repository
 20 of filth, garbage, offal, dead animals and other noxious and noisome matter ; deponent further says, that several sewers of the city of Newark empty into the said brook above High street and flow through the brook to the Passaic river, and that a large number of privies are situated over the said brook, the contents of which are emptied into the stream, and that in consequence thereof the waters of the same, especially in warm weather, are foul and emit a disagreeable stench disastrous to the health of the people living in the neighborhood ; that the house upon his prem-
 30 ises has been occupied by the same tenant for over three years past, and by reason of the disagreeable odors arising from the said stream, the said tenant and his family are obliged during the warm weather to remove from the premises and leave the same unoccupied, and in consequence of the said nuisance the rental value of the said property is largely diminished ; deponent further says, that he and other persons owning property in the vicinity of the said brook, on March 12th, 1875, presented to the Common

Council a petition for a sewer to divert the said stream and abate the nuisance occasioned thereby to the said property owners.

Sworn and subscribed before me, }
this ninth day of December, A. } T. F. BALDWIN.
D. 1876,

ALBERT P. CONDIT,

Master in Chancery of N. J.

E X H I B I T S .

[Exhibit A, for Defendants.]

Newark, May 31, 1876. *

To the Committee on Sewers and Drainage :

Gentlemen—The committee appointed by resolution of the Common Council of May 5th, 1876, to examine the various proposed lines for the construction of a sewer through Clay street and the vicinity to the Passaic river, and to estimate the value of the land necessary to be taken and appropriated for that purpose, and to report the probable
 10 cost of each route to the Committee on Sewers and Drainage, beg leave respectfully to report as follows :

They find upon examination three practicable routes.

1. *The first route* proposed follows the line of Mill brook from High street to the river.

Your committee regard this as the most expensive of the routes contemplated. Its adoption will occasion the removal of buildings erected at large cost and the condemnation of a considerable tract of valuable land.

Your committee have considered the feasibility of obtain-
 20 ing the mere right of way over the land necessary to be entered upon for the construction of the sewer if this route were adopted. The tortuous character of the route proposed with the accompanying liability to breakage, and the necessity of free access, renders it imperative that the land taken for this route, if adopted, should be condemned. Further, the bridges at the street crossings on the suggested route are not adapted to sewer construction, and their use in that respect is regarded as impracticable.

The objections to this route as suggested to the minds of
 30 your committee in addition to the expense, are—

First. The number of curves that would necessarily exist in a sewer constructed on the line of the brook. These would impede the free flow of water and endanger the durability of the sewer.

Second. The remoteness of the sewer from dwellings on parallel streets, and the consequent heavy expense to property owners in making connections therewith, if at all practicable.

The estimated cost of the route is—

For buildings and lands,	\$59,000	10
Cost of construction of sewer,	61,000	
	<hr/>	
Total,	\$120,000	

A further objection to the adoption of this route is, that the frontage on the line thereof liable to a direct assessment for benefit is inconsiderable. Your committee are of the opinion that a small part only of the cost of the sewer on this route could be assessed upon property fronting on the line thereof.

2. *The second route* considered, contemplated the construction of a sewer through Clay street, Mount Pleasant 20 avenue, Mill brook and Passaic street.

The adoption of this route would require the condemnation of land from the corner of Mount Pleasant avenue and Clay street to Ogden street, and from Passaic street to the river, at an estimated cost of \$10,000

Cost of sewer,	60,000
	<hr/>
Total	\$70,000

The frontage liable to an assessment for benefits by the construction of a sewer along the line of this route has been estimated to be about 2,400 feet. 30

Your committee have calculated that the cost of a sewer constructed on this line might be reduced by direct assessment on property fronting on the same to the amount of about \$3,600.

3. *The third route* suggested, is through Clay street, from High street to the river. The adoption of this route

would require the opening of Clay street from Ogden street to the river at an estimated cost of . . .	\$18,000
Cost of sewer,	56,000
Total,	<u>\$74,000</u>

The frontage along the line of this route liable to an assessment for benefits for the construction of the sewer, has been estimated to be about 3,500 feet.

Your committee have estimated that the cost of a sewer on this route would be reduced by assessments for benefits
 10 by the opening of Clay street to the river, and the construction of the drain to the amount of at least \$11,000.

The directness of this line, its freedom from curves and the cost of its construction, commend it to your committee as the most desirable and advantageous.

Your committee beg leave further to say, that the surface drainage for which an assessment for benefits might be imposed, would be the same whichever route is adopted.

Your committee beg leave to summarize the cost to the city by the construction of a sewer on the proposed routes,
 20 after deducting possible assessments for benefits, as follows :

The cost of construction on the first route suggested,	\$120,000
The cost of construction on the second route suggested,	66,400
The cost of construction on the third route suggested,	63,000

This estimate does not include possible reductions for benefits from surface drainage, which would be the same in the judgment of your committee in each case.

30 Your committee have further considered the possible cost to the city by the diversion of Mill brook, and are of opinion that the waters of this brook would be practically diverted by the construction of a sewer on either of the routes suggested, and the cost to the city consequently the same in each case.

They have not considered the question of the diversion of this brook, an important element of cost in their calculation. The brook is now mainly useful as a channel for the flow of surface water drained from the surrounding country.

40 Your committee are further informed that several sewers

are emptied into the brook above High street. It is not, so far as we have been able to learn, at present used or useful for manufacturing purposes. We have considered that its diversion would be of little loss or injury to the neighboring property owners.

The examination made by your committee has led them to the conclusion that the property owners along the line, and in the vicinity of Mill brook, are entitled to relief, and they respectfully suggest, should the cost of the proposed sewer determine your honorable body to delay its construction to more prosperous times, when the financial burden might be more easily borne, both by the property owners and the city at large, that the banks of the brook should be raised and the channel deepened, so that the flow of the stream through the brook might be more rapid, and the foul and stagnant water thereby removed. 10

Respectfully submitted,

J. C. LUDLOW,

WM. A. RIGHTER,

HENRY YOUNG, *City Counsel.* 20

PETER WITZEL, *City Surveyor.*

NEW JERSEY, }
ESSEX COUNTY. } ss.

FARRAND KITCHELL, being duly sworn according to law, on his oath saith, that he is the owner of a lot of land on the northerly side of Clay street, in the city of Newark, running back to, and along the line of Mill brook, and has occupied a dwelling house on the north side of said street, distant from said brook about fifty feet, and located on a lot running back to said brook, since the year eighteen hundred and forty-nine; that when he first took up his residence in said dwelling, the waters of said brook were sweet and pure and remained so up to about twelve or fifteen years since; that at or about that time the said stream began to be contaminated, by reason of the filth and impurities therein and turned into it by persons residing along the line of the stream and from the sewers constructed by the city authorities, and has from such causes from year to year become 30

more foul, impure and contaminated, until at present the same in the opinion of deponent is injurious and prejudicial to the comfort and health of the persons residing in the neighborhood of the same; and deponent further saith, that the foul and offensive odors and stench arising from said stream in the warm weather are frequently such, as to render it necessary to close the windows and doors of the dwellings along the line of the stream; and deponent further saith, that he believes the construction of a sewer whereby the

10 waters of said stream can be carried off, will add materially to the value of the property in the vicinity thereof, and will greatly promote the health and comfort of residents in that part of the city.

Sworn and subscribed before }
 me, at Newark, this 9th day } FARRAND KITCHELL,
 of December, A. D. 1876, }

ALBERT P. CONDIT,

Master in Chancery of N. J.

[Exhibit D, for Defendants.]

SPECIFICATIONS

FOR CONSTRUCTING SEWER THROUGH CLAY STREET AND ALONG THE LINE
OF MILL BROOK, FROM THE WESTERLY LINE OF HIGH STREET
TO THE EASTERLY LINE OF PACIFIC STREET.

- (1.) The work to be commenced on the first day of Time.
April, 1877, or such time as may be designated by the
City Surveyor and Street Commissioner; to be carried
on in such sections as these officers may direct, and to
be completed by or before the first day of September,
1877.
- (2.) The size, form and dimensions of the sewer, its Location,
size, and
dimensions.
location, the depth of excavation, the location of the
street basins, with connecting shoots, and of the man-
holes to correspond with the plan on file in the office of
the City Surveyor.
- (3.) The ground shall be excavated in open trenches Excavation.
to the necessary width and depth, as shown on plan.
In rock cuttings the trenches are to be excavated at
least four inches wider than the exterior diameter of
the sewer, and filled with concrete to the exact form
and grade of the sewer.
- (4.) For the foundation of the lower section of the Foundation
piles.
double sewer, white oak piles, ten inches on the head
(when sawed off to the proper grade,) and six inches
at the point, are to be driven firmly in the solid ground,
and at such distances apart as shown on the plan.
The hammer used to weigh not less than fifteen hundred
pounds. The cap pieces are to be ten by twelve inches Capping.
yellow pine, laid transversely to the line of the sewer,
and bolted to the piles with twenty-four inch spikes, or
by mortice and tenon joints. The area between the
piles and caps, to be filled with clay or gravel to the
top of the caps, and thoroughly rammed. The whole
surface thus formed to be planked with four inch yellow Planking.

pine plank, ordinary width, free from sap and bad knots, to be laid longitudinally. Ten by twelve inch timbers extending the full width of the foundation and planked with four inch material as above, will be laid from the point where the piling ends, as shown on the drawing.

Rubble stone masonry.

(5.) Rubble stone masonry, of thickness shown on plan, with compact joints of cement mortar and six inches of good concrete, is to form the foundation and bed for the brick work, (except in rock cuttings,) and the filling between the double sewer.

Trenching.

At the westerly end of the piling a trench is to be excavated transversely to the line of sewer, and three feet on either side of same; two feet wide, and to a depth of two feet or more in solid ground, and filled with concrete to the under side of the planking.

Sewer Outlet.

(6.) The outlet of the sewer to be built of sand stone, as shown on the drawings; with cut beds and joints to the spring of the arch. The point of the division wall of the double sewer, at the westerly end of the same, also to be built of sand stone, cut with smooth face to the proper bevel, and laid with three-eighth inch joints. The blocks to be not less than three feet long and properly anchored with iron bolts.

Point of Division wall.

Back-filling.

(7.) Back filling to be three feet in depth above the top and on either side of the sewer, between the outlet and the easterly line of Mount Pleasant avenue.

Rock Excavation.

(8.) In all cases of rock blasting, the blast to be carefully covered with heavy timber. Where a line of main water pipe intersects the line of the trench, any rock necessary to be excavated for a width of five feet in the clear, on each side of the said pipe, is in all cases to be removed without blasting.

Whenever hard stratified rock in natural beds shall be encountered in excavating the trench, it shall be stripped in sections of not less than fifty lineal feet, and the City Surveyor shall then measure the actual amount of excavation required for the sewer. The sum of two dollars and fifty cents per cubic yard will be allowed for rock excavation. No soft or disintegrated rock which can be removed with a pick, or boulders, or loose rock in rock fillings or elsewhere, and no rock whatsoever, outside the exterior lines of the required

limits which may become detached or loosened, or may fall into the trench, will be allowed for.

(9.) The sides of the excavations shall be supported with suitable plank and shoring, whenever necessary, but no allowance will be made therefor; in all cases the sheet piling to be drawn up as the work progresses unless otherwise ordered by the City Surveyor or Street Commissioner.

(10.) The materials used in the construction, as also the earth excavated, shall be laid compactly on the line of the works and kept trimmed up, so as to be of as little inconvenience as possible to the public travel or adjoining tenants. In narrow streets, the contractor, shall, at his own expense, erect a board fence, and keep a passage way of at least two feet six inches open on the sidewalk.

(11.) In the construction of the brick masonry, none but the best quality of whole North River or Jersey bricks burnt hard entirely through, shall be used, which are to be thoroughly wet immediately before being laid. Every brick is required to have full cement joints under bottom, sides and ends, which for each brick is to be formed at one operation, and in no case is it to be made by working in the cement after the brick is laid; every course of brick is to be laid with a line, the bricks to be culled as they are brought upon the ground, after which all bricks found on inspection of an improper quality, shall be immediately removed from the same.

(12.) The cement mortar is to be composed of the best quality of fresh hydraulic cement, mixed in the proportion of one barrel of cement to two barrels of clean, sharp sand, free from loam. The materials shall be carefully mixed as wanted, fresh for the work in hand, and no mortar used which shall be found to be weak or imperfect from whatever cause.

(13.) The walls of the brick sewer to be of the thickness shown on plan. The bricks of the inverted arch to be carefully and neatly laid in full beds of mortar, to the required curve, and so as to connect properly with the upper arch. The crown of the arch to be properly keyed with stretcher, the joints to be well filled with cement mortar. The earth under and

around the sewer to be solidly rammed and packed with proper tools where the foundation is not otherwise provided for.

Connections.

(14.) All connections necessary to be made with other sewers and culverts shall be made in a substantial and workmanlike manner.

House
Connections.

(15.) Vitrified drain pipes, of six inches interior diameter, are to be worked in the walls of the main sewer, at least one opposite each house or lot, according to the street number. These pipes are to be so set that the inner end will be flush with the inside of the sewer and below the arch. Each is to be closed by inserting an earthen cover therein at the hub end.

Manholes.

(16.) Manholes with iron steps (one-half by three-quarters of an inch in thickness, twenty eight inches long and set eighteen inches apart,) and with cast iron manhole head and cover, weighing not less than four hundred pounds, and free from imperfections, to be built in conformity to the plan in the City Surveyor's office. The top surface of said head to conform to the grade of the street. The outside of all the manholes to be neatly plastered with cement mortar.

Street basins.

(17.) Street basins with stone-ware traps and connecting shoots to be built at the places designated, and to correspond with the plan of the same in the office of the City Surveyor. The basin-heads and mud-sills to be of granite, except at Mount Pleasant avenue and Spring street, where iron heads and mud-sills shall be used; the same to be equal in quality and weight to specimens in the office of the Street Commissioner; the whole to be laid in cement mortar of the quality heretofore described, and shall be made water tight. The curb stone to be re-set so as to form a good curve and connection with the head. The flagstones to be re-laid and carefully cut and fitted to the curb and head. The shoots to connect the street basins with the main sewer to be of stone-ware pipe of twelve inches diameter; and to be in quality the same and laid in the manner as described below. The openings in the sewer for connecting shoots to be made and finished as the work progresses. In unpaved streets a space of such dimensions as the City Surveyor or Street Commissioner may direct shall be paved in front of and on each side

of the basin with trap blocks. The sum of two dollars per square yard will be allowed for such pavement. For furnishing and laying twelve inch pipes to connect old street basins with the sewer the sum of one dollar per running foot will be allowed.

(18.) The pipe used for basin connections shall be of the best quality stone-ware, sound and well burnt throughout their thickness; impermeable to moisture and of smooth interior glazed surface; the joinings sound and true, and the whole free from cracks, flaws, blisters and all other imperfections; circular in the bore of uniform thickness, and internally of the full specified diameter. The twelve inch pipe to be not less than one inch thick. The sleeves to be five inches wide and one and one-half inches thick, and all sleeves to have an interior diameter of at least one inch greater than the exterior diameter of their respective pipes. The sleeves to be sound and well burnt, and of true figure, but need not be glazed.

Stone-ware
pipe.

The pipes shall be laid truly in line and gradient throughout, and carefully cemented at joinings. The interior of the pipes shall be carefully freed from all dirt and superfluous cement as the work proceeds, for which purpose a proper implement, sufficiently long to pass two joints shall be used. The earth under and around the pipes to be carefully and solidly rammed with proper tools.

Laying pipe.

(19.) In refilling over brick sewers, the earth or sand is to be well and faithfully rammed as the work progresses with pavers' rammers. But the contractor may puddle the re-filled earth whenever the city hydrants are within reach, for which he will pay one dollar and fifty cents per hundred lineal feet to the Newark Aqueduct Board.

Refilling.

(20.) In the progress of the work, the contractor will be required to preserve from obstructions all rail tracks which may be affected by the prosecution of the works herein described; and also to afford the necessary facilities to the company or companies owning said tracks, or their agents, in their preservation of the same from injury, without extra charge therefor.

Rail tracks.

The contractor shall do everything necessary to protect, support and sustain the water pipes, gas pipes,

Water pipes
and gas pipes.

Protection to
property.

and other gas fixtures which may be liable to injury during the progress of the work; also all buildings, walls, fences or other properties liable to be injured; he shall erect and keep a fence or railing across the ends and sides of the excavation, and place sufficient lights on or near the work and keep them burning from twilight in the evening till sunrise, and shall employ a watchman as an additional security whenever the same may be needed. All loss or damage arising from neglect of these precautions, or from accidents, or from the action of the elements to such buildings, walls, fences or other properties, or to the water and gas pipes to be sustained by the contractor.

Monument
stones.

(21.) If during the progress of the work it becomes necessary to remove or displace any of the monument-stones designating the streets and highways of the city, the contractor shall give three days' notice thereof in writing to the City Surveyor, or before such removal takes place; and in case of his failing to do so, or refusing or neglecting to re-place such monument stone under the direction of said City Surveyor, he shall forfeit and pay the sum of fifty dollars for each offence.

Permits to
make house
connections.

(22.) The Street Commissioner shall have the right to grant permits to any person or persons to make house connections with the sewer at any time before it is finally completed; and the contractor shall not interfere with or place obstructions in the way of such persons as may be employed in making such connections.

Restoring
connections.

(23.) The contractor shall provide for the flow of sewers, drains, or water courses interrupted during the progress of the works, and shall restore or make good all connections, without any extra charge therefor.

Pumping, &c.

(24.) The contractor shall at his own expense, pump out, or otherwise remove any water which may exist in the trenches, and shall form all dams or other works necessary for keeping the excavation clear of water during the progress of the works.

Cleaning
sewer, &c.

(25.) The sewer, street basins and shoots to be thoroughly cleaned out and left clean before the completion of the works in this agreement.

Re-grading
streets,
re-paving, &c.

(26.) The streets to be re-graded or re-paved, as the case may be, to the extent which the aforesaid work may render necessary; the cross gutters which

may become unnecessary by the construction of street basins to be taken up, re-graded or re-paved, and cross walks to be re-laid; the gutter stone, flagging or curb stone, to be re-laid or re-set, and any stones broken during the progress of the work to be re-placed by new material of equal quality; all of which shall be done to the satisfaction of the Street Commissioner, and shall be considered as part of the work to be done under this contract, and no extra charge made for the same.

(27.) As the trenches are filled in and work completed, the contractor shall cart away all superfluous earth, boulders, and other materials, and leave all roads and places clear and in good order, or the said materials will be removed at the contractor's expense after one day's notice from the Street Commissioner. Clearing up.

(28.) The Committee on Sewers and Drainage reserve to themselves the right, and it is expressly agreed by the said party of the second part, that the said Committee may change at their discretion the amount of all the various kinds of work and materials and structures, and may increase or decrease the amount of money to be paid the said party of the second part, under this contract, according to the several prices hereinafter stated. Any work which may be accidentally omitted herein, and which may be fairly implied as included in the contract, shall be executed at the expense of the contractor. Alterations and omissions.

(29.) The contractor will be required to observe all the ordinances of the Common Council in relation to obstructing the streets, keeping open passage ways, and protecting the same where they are exposed, and would be dangerous to the public travel. Obstructing streets.

(30.) If any person employed by the contractor on the works should appear to be incompetent or disorderly he shall be discharged immediately on the requisition of the Street Commissioner; and such person shall not again be employed upon them without permission. Dismissal of incompetent persons.

(31.) The contractor shall have charge of, and be responsible for, the entire line of works until their completion and acceptance. Responsibility of contractor.

(32.) In the construction of the sewer at the Broad street crossing, the contractor shall prosecute the work Broad street crossing.

in such a manner as to be of as little inconvenience to the public travel as possible. In order to expedite the work at that point, the contractor shall employ such additional help as may be necessary; and in case of the contractor's failing or refusing to comply herewith, such help will be placed upon the work by the proper authorities, and the amount of the costs of the same deducted from the final estimate.

Contractor to keep works in good order.

(33.) The contractor shall be liable for keeping in repair and good order the whole of the work executed by him, for six months after date of completion.

Work to be done in workmanlike manner.

(34.) The whole work to be done and completed in a workmanlike manner, and to the satisfaction and approval of the City Surveyor and Street Commissioner.

A true copy,

H. S. LITTLE, *Clerk.*

In Chancery of New Jersey.

Between

GEORGE STOUNDINGER, *and als.*,

Complainants,

and

THE MAYOR AND COMMON COUNCIL
OF THE CITY OF NEWARK,

Defendants.

On Bill, &c.

Upon reading and filing the bill of complaint in this cause, 1
and the affidavits thereunto annexed, and upon motion of
Joseph Coult, of counsel with the complainants,

It is ordered that the defendants, The Mayor and Common
Council of the city of Newark, do show cause before His
Honor the Chancellor, at his chambers in the city of New-
ark, on Monday, the eleventh day of December next, at ten
o'clock in the forenoon, why an injunction should not issue
according to the prayer of the said bill.

And it is further ordered that a copy of the said bill and 10
of the affidavits and exhibits thereto annexed shall be served
on the said defendants, within three days from the signing of
this order, and that in the meantime and until the hearing of
this rule the said defendants be restrained and enjoined from
making any contract for the construction of a so-called sewer
or artificial water course along Clay street and Mount
Pleasant avenue, from High street to Passaic street, in the
city of Newark.

Dated November 29, 1876.

THEODORE RUNYON, C. 20

I respectfully advise the making of the foregoing order.

A. V. VAN FLEET, V. C.

A true copy :

H. S. LITTLE, *Clerk.*

In Chancery of New Jersey.

Between

GEORGE STODINGER, *and als.*,

Complainants,

and

THE MAYOR AND COMMON COUNCIL
OF THE CITY OF NEWARK,

Defendants.

On Bill, &c.

1 NEW JERSEY, }
ESSEX COUNTY. } SS.

JAMES E. HOWELL maketh oath and saith, that on the twenty-ninth day of November, eighteen hundred and seventy-six, he served the annexed order on David Young, Chairman of the Committee of Sewers of the Common Council of the city of Newark, by reading the same to him, showing him the original and delivering to him a copy thereof.

10 Sworn and subscribed to before me } J. E. HOWELL,
this second day of December, 1876, }

CHAS. K. WESTBROOK,

Master in Chancery of N. J.

ESSEX COUNTY, SS.

20 JOHN CAMERON maketh oath and saith that on the twenty-ninth day of November, eighteen hundred and seventy-six, he served the annexed order on Henry J. Yates, the Mayor of the city of Newark, by showing the same to him and delivering him a copy thereof, and at the same time he served upon the said Henry J. Yates, Mayor as aforesaid, a true copy of the bill of complaint, filed in this cause, by delivering the same to him personally.

Sworn and subscribed to before }
me this 4th day of December, } JOHN CAMERON.
1876, }

CHAS. K. WESTBROOK,

Master in Chancery of N. J.

In Chancery of New Jersey.

Between

GEORGE STODINGER,
DAVID M. MEEKER, AND
STEPHEN J. MEEKER,

Complainants,

and

THE MAYOR AND COMMON COUN-
CIL OF THE CITY OF NEWARK,

Defendants.

*On Bill for
Injunction.*

This cause coming on to be heard before the Court in the 1
presence of Joseph Coult, of counsel with the complainants,
and Henry Young, of counsel with the defendants, and the
pleadings and depositions being read and the arguments of
the respective counsel being heard and considered, and the
Court having taken time to advise thereon, and now on this
nineteenth day of December, 1876, it appearing to the Court
that the complainants are not entitled to a preliminary in-
junction as prayed for by them in their said bill of com-
plaint,

It is ordered, adjudged and decreed, that the rule to show 10
cause heretofore granted in this cause be, and the same is
hereby discharged, and the injunction prayed for by the said
complainants refused.

THEODORE RUNYON, C.

Dated December 19, 1876.

I respectfully advise the foregoing order.

A. V. VAN FLEET, V. C.

A true copy,

H. S. LITTLE, *Clerk.*

Court of Errors and Appeals,

IN THE LAST RESORT, &c.

Between

GEORGE STOUDINGER, *and als.*,

Complainants,

and

THE MAYOR AND COMMON COUNCIL
OF THE CITY OF NEWARK,

Defendants.

On Bill, &c.

*Petition of
Appeal.*

1 *To the Honorable the Court of Appeals in the last resort in
all causes of law :*

The petition of George Stoudinger, David M. Meeker and Stephen J. Meeker, the appellants in the above stated cause, respectfully show that your petitioners find themselves aggrieved by an interlocutory order made in the Court of Chancery by His Honor Theodore Runyon, Chancellor of New Jersey, upon the advice of his Honor Abraham V. Van Fleet, the Vice Chancellor, which order bears date the nine-
10 tenth day of December last, and was made in a cause wherein your petitioners are complainants and the Mayor and Common Council of the city of Newark are defendants; that your petitioners consider themselves aggrieved in this respect, to wit: in that the said order adjudges and decrees that the rule to show cause why an injunction should not issue in the cause against the said defendants should be discharged, and that the said injunction prayed for in the complainants' bill should be refused.

20 And your petitioners appeal from the said order and decree upon the ground that the same is erroneous, for that the

said injunction should have been granted according to the prayer of the complainants' bill.

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

COULT & HOWELL,
Solicitors of Complainants.

JOSEPH COULT, 10
Of Counsel with Complainants.

Dated January 25, 1877.

A true copy :

HENRY C. KELSEY, Clerk.

Due and legal service of a copy of the within petition is hereby acknowledged this 30th day of January, A.D. 1877.

HENRY YOUNG,
Solicitor of Defendants.

In Chancery of New Jersey.

<p style="text-align: center;"><i>Between</i> GEORGE STODINGER, and als., <i>Complainants,</i> <i>and</i> THE MAYOR AND COMMON COUNCIL OF THE CITY OF NEWARK, <i>Defendants.</i></p>	}	<i>Opinion.</i>
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On order to show cause why an injunction should not issue.
Hearing on bill, answer and affidavits.

Mr. JOSEPH COULT for motion.

Mr. HENRY YOUNG, contra.

THE VICE CHANCELLOR:

The government of the city of Newark, by an ordinance duly adopted on the seventh day of July, 1876, ordained that a sewer should be constructed from the westerly line of High street to the Passaic River; and that the waters of

10 Mill Brook, or First River, should be diverted from their present channel into the sewer and carried by it to the Passaic River. The sewer for most of the distance between the termini named is to be laid in Clay street. The charter gives the municipal government full power to lay out, regulate and repair streets, to construct sewers and drains in any part of the city, and in the construction of any sewer or drain to take and appropriate, or divert any stream of water it may deem expedient and necessary. Compensation is, of

20 course, to be made to the persons entitled to the water diverted or whose lands may be taken for sewerage purposes. Clay street was dedicated by the complainant many years

ago to the public for the purposes of a highway, and has been accepted by the city, graded, flagged and curbed. The complainant owns and resides on a lot extending along the southerly line of Clay street, a distance of two hundred and twenty-seven feet. He seeks to have the construction of the sewer in Clay street enjoined, because such use of the street is not within the rights or powers conferred upon the public by the dedication. He contends that the fee of the street is still in him, that by the dedication the public merely acquired a right of free passage, and as an incident of this 10 right, to make such repairs as were necessary to render travel safe and convenient, and that any other use of it is unauthorized and cannot be made lawfully without compensation to him. On the argument the application was put distinctly and exclusively on the ground that the city authorities were seeking to appropriate the street to a use not within the purposes of the dedication, and therefore they should be restrained until they acquire by grant or condemnation, the right they intend to exercise.

The location of sewers, their size and capacity, and the material of which they shall be constructed, are matters which, 20 by the charter, are committed to the judgment of the municipal authorities, and so long as they keep within their power, and do not abuse it, their acts are not subject to judicial revision. When the Legislature grants to a municipal corporation the power to control and regulate the use of its streets, it invests it with a part of its sovereign power, and any regulation adopted by the corporation, in the proper exercise of its powers, is as much beyond the control of the Courts as a valid enactment of the Legislature of the State. 30

Millan vs. Sharp, 17 Barb., 435. It is only when it transcends its power that the Courts are authorized to interfere.

Weil vs. Ricord, 9 C. E. Green, 169.

To entitle the complainant to the aid he asks, the Court must hold, as a sound proposition of law, that a city government, having authority to control the use of its streets and construct sewers, cannot lawfully use them, whether acquired by condemnation or dedication, for the construction of sewers, without first having them specially condemned for that purpose. Whether the public right is acquired by con- 40

demnation or dedication is quite immaterial. If land is dedicated to the public for the purposes of a street, and there is an acceptance, either by formal act or uses, the public right is complete, and the land may be appropriated to any use to which a street, acquired in any other mode, can lawfully be put. The public have the same rights now in Clay street they would have had, had the public easement been acquired by condemnation. The bill expressly declares Clay street was dedicated to the public for the purposes of a
 10 street; the public right in it is just as extensive as it would have been if it had been acquired by grant. It is a public street for all purposes, and may be so used and appropriated.

The authorities upon this subject seem to stand with entire uniformity against the rule it would be necessary to adopt to give the complainant the aid he asks. *Cone vs. Hartford*, 28 Conn., 362—the only case cited on the argument in support of the complainant's theory—I understand to declare distinctly that a power granted to a municipality to make
 20 and repair streets confers authority to construct sewers in the streets, which may be exercised whenever the condition of the streets or the protection of the public health renders it expedient in the judgment of the local government. It is further held, that such use of the highway is clearly within the purposes for which they are established, and that the compensation made to the land-owner for his land includes damages for such use. Equally decisive are the utterances of Judge Gray (now Chief Justice) of Massachusetts, and Judge Harris, of the Supreme Court of New York.

30 The first says, in *Boston vs. Richardson*, 13 Allen, 146, "whenever land is taken for public use as a highway, and due compensation made, the public have a right to make any use of the land, directly or incidentally, conducive to the enjoyment of the public easement, and such uses clearly include the making of culverts, drains and sewers under the highway for the cleansing of the streets and the accommodation of the inhabitants on either side." And Judge Harris, in *Chapman vs. Albany and Schenectady R. R.*, 10 Barb., 360, says: "A street may be used in any way which shall
 40 best promote the interest and business of the city. What

will so promote those interests and business is to be determined by the municipal authorities to whom the control of the streets is committed. Sewers and drains may be constructed, and water and gas pipes laid in them. The only restriction upon the power of the municipal authorities is, that they cannot appropriate them to a purpose incompatible with the ends for which they were established. The same doctrine is declared in *Milhan vs. Sharp*, 15 Barb., 210. And Judge Dillon declares it to be his judgment that a municipality may lawfully use its streets for the construction of sewers, and that such use is clearly within the public easement. *Dillon's Mun. Cor.*, § 544. The same view is expressed by Mr. Angell. *Angell on Highways*, § 216. And this Court has twice declared that the building and operation of a horse railroad in the streets of a city, with the consent of the governing power, is a legitimate use of the highway for the purposes of public travel, and not a taking of private property for public use, within the meaning of the constitution, so as to entitle the owner of the fee to compensation. *Hinchman vs. Paterson Horse R. R. Co.*, 20 C. E. Green, 75; *Paterson and Passaic Horse R. R. Co. vs. City of Paterson*, 9 C. E. Green, 158.

Were it necessary for the city authorities to justify their action before the Courts, their answer, I think, gives a highly satisfactory reason for the diversion of the waters of Mill Brook, and also shows they proceeded cautiously and prudently in locating the route of the sewer, but their action in these matters, in my judgment, cannot be reviewed here. The question I am to deal with, is, has the city of Newark power to construct this sewer in Clay street without making further compensation to the complainant? I think it has. The injunction must therefore be denied and the order to show cause discharged.





