

New Jersey Court of Errors and Appeals.

HUGH F. McDERMOTT AGAINST THE MAYOR AND ALDERMEN OF JER- SEY CITY.	}	In Debt. In Error.	20
---	---	-----------------------	----

J. H. LIPPINCOTT, for plaintiff.

E. T. PAXTON, for defendants.

30

This was an action of debt brought by the plaintiff in error in the Supreme Court.

The summons, transcript, postea and judgment are as follows :

Summons.

NEW JERSEY, SS.:

The State of New Jersey to our Sheriff of our County of Hudson, Greeting: We command you to summon the Mayor and Aldermen of Jersey City to be and appear before the Supreme Court of the State of New Jersey, to be held at Trenton in and for said State on the second day of August, A. D. 1883, to answer unto Hugh F. McDermott of a plea that they render unto him seventeen thousand five hundred dollars, which to him they owe and from him unjustly detain. And have you then there this writ: Witness, Honorable Mercer Beasley, Chief Justice at Trenton, aforesaid, the second

40

10 day of July, A. D. one thousand eight hundred and eighty-three.

[SEAL.]

B. F. LEE,
Clerk.

J. H. LIPPINCOTT,
Attorney.

20 **Transcript, Postea and Judgment.**

Pleas before the Justices of the Supreme Court of the State of New Jersey of the second day of August, A. D. eighteen hundred and eighty-three.

Witness:

MERCER BEASLEY, Esq.,
Chief Justice.

B. F. LEE,
Clerk.

30 J. H. LIPPINCOTT, attorney of plaintiff.
E. T. PAXTON, attorney of defendants.

New Jersey Supreme Court of the second day of August, in the year one thousand eight hundred and eighty-three.

40 HUDSON COUNTY, ss.:

The Mayor and Aldermen of Jersey City, a body corporate of the State of New Jersey, the defendant in this suit, was summoned to answer Hugh F. McDermott, the plaintiff therein, of a plea they render unto him seventeen thousand five hundred dollars which to him they owe and from him unjustly detain, and thereupon the plaintiff, by J. H. Lippincott, his attorney, complains; for that whereas it was enacted by the first section of an act of the Legislature of the State of

New Jersey, entitled "supplement to the act entitled 10
 'An Act relative to the publication of the minutes and
 proceedings of the several municipal boards of the
 cities of this State, approved February 27th, 1879,
 which supplement was approved March 12th, 1880 ;'"
 "that the first section of the act entitled 'An Act rela-
 tive to the publication of the minutes and proceed-
 ings of the several municipal boards of the cities of
 this State,' which reads as follows, to wit :

"1. Be it enacted by the Senate and General Assem- 20
 bly of the State of New Jersey, that in any city of this
 State the minutes and proceedings of the municipal
 boards of which, were authorized by act of the Legisla-
 ture to be published, and the official newspapers for
 such publication were to be designated by one or more
 of said boards, if the said board or boards or any or
 either of them so having the right to designate as
 aforesaid shall have designated a newspaper or news-
 papers as official to publish all legal notices required
 by the city charter, and the newspaper or newspapers 30
 so designated shall have published the official minutes
 or proceedings of said board or boards, although not
 designated as official newspapers for that especial pur-
 pose, said newspaper or newspapers having been desig-
 nated as official, to publish the minutes and official
 proceedings previously to the designation to publish
 said legal notices, and having published said previous
 minutes and official proceedings and received compen-
 sation for such publication, it shall be lawful for the
 proprietor or proprietors of said official newspaper or 40
 newspapers to receive and recover from the city the
 board or boards of which shall have made the desig-
 nation to publish all legal notices aforesaid, compensa-
 tion for the publication of said official minutes and
 proceedings subsequent to said designation, according
 to the rates fixed by said board or boards for such
 publication, or paid by them to such newspaper or
 newspapers as were specially designated for that pur-
 pose ; *provided*, that the provisions of this act shall
 not apply except to cities of this State having over fifty

10 thousand inhabitants at the last State census," be amended so as to read as follows :

“1. Be it enacted by the senate and General Assembly of the State of New Jersey, that in case any newspaper appointed as an official newspaper of any city of this State shall have published the official minutes of the proceedings of the municipal boards of said city, and such publication was not duly ordered, in the manner prescribed by law, then the Justice of the Supreme Court holding the Circuit Court in the county
20 where such newspaper is published shall, upon application made to him for that purpose, appoint a referee, who shall ascertain and report to said Judge what amount of compensation the publisher of said official newspaper would have been entitled to receive if the publication of said minutes had been duly ordered according to law, and the amount so reported shall thereupon be paid by the proper municipal authorities of said city.”

30 And the plaintiff avers that on the fourth day of December, in the year one thousand eight hundred and eighty, he made application in writing to His Honor Manning M. Knapp, Justice of the Supreme Court, holding the Circuit Court of the County of Hudson, in which application it was set forth that the said plaintiff was, on the first day of May in the year eighteen hundred and seventy-four, and for some time previous to said last-mentioned date had been, the editor and proprietor of the “Jersey City Herald,” a weekly
40 newspaper printed, published and circulated in the city of Jersey City, in the County of Hudson, and the other portions of the State of New Jersey, and that he continued to be editor and proprietor of said “Jersey City Herald,” up to and about the first day of June, in the year eighteen hundred and seventy-seven, when the editorship and proprietorship ceased, but that the said plaintiff again on the first day of May, in the year eighteen hundred and seventy-nine, became the editor and proprietor of the said newspaper, and had continued such up to the time

of said application ; and that for a long time previous 10
to the first day of May, in the year eighteen hundred
and seventy-four and up to the present time, the said
the " Jersey City Herald," the weekly newspaper afore-
said, had been printed and published in Jersey City,
and circulated throughout Jersey City, the County of
Hudson and other portions of the State of New Jer-
sey ; that for a long time previous to the first day of
May, in the year one thousand eight hundred and sev-
enty-four, the said " Jersey City Herald " had been by
proper designation duly and legally made an official 20
newspaper of the City of Jersey City, and duly and
legally designated as such by the Board of Finance and
Taxation of Jersey City, and as such official newspaper
had printed and published all legal notices required to
be printed and published by the provisions of the char-
ter of the city of Jersey City, and also printed and
published the official minutes of the proceedings of the
Board of Finance and Taxation of Jersey City, the
Board of Public Works of Jersey City, the Board of
Fire Commissioners, the Board of Police Commission- 30
ers, the Board of Aldermen and the Board of Educa-
tion of Jersey City, they being the several municipal
boards of Jersey City, and for such publication the said
plaintiff was paid the price, salary and compensation
provided to be paid by the Board of Finance and Tax-
ation of Jersey City, and that at a meeting of the Board
of Finance and Taxation of the City of Jersey City, held
on the twenty-ninth day of May, in the year one thou-
sand eight hundred and seventy-four, the said board by
resolution of the last-named date, designated the " Jer- 40
sey City Herald " as an official paper of the City of
Jersey City, which resolution is in the following words :

Resolved that the " American Standard," the " Eve-
ning Journal," the " Jersey City Herald " and the
" Wacht am Hudson " be, and they are hereby desig-
nated as the official newspapers of the city, for the pub-
lication of all legal notices required by the city charter,
the compensation to be at the following rates, viz :

10 Fifty cents per folio for first insertion, and thirty cents per folio for each subsequent insertion.

Resolved, that the "American Standard" and the "Evening Journal" be, and they are hereby, designated to publish the official minutes of the various boards of the city department, the compensation to be one hundred and fifty dollars per month for each paper."

That on the second day of July, in the year one thousand eight hundred and seventy-four, the Board of Finance and Taxation passed the following resolutions,
20 to wit :

"Resolved, that whereas the official newspapers of Jersey City have declined and refused to publish legal notices and matters required by the charter of Jersey City, to be published in such papers, at the compensation per folio fixed by this board by resolution of May 29th, 1874 ;

And whereas, by the provisions of the city charter, this board cannot lawfully designate any official papers
30 than those already designated ;

And whereas, the city charter requires legal advertising to be done in those official newspapers and none others, and it being found impracticable, if not impossible, to compel publication at the compensation last fixed by this board ;

Therefore, in consideration of the premises aforesaid this board feels constrained to restore the former rates for legal advertising required by the charter and in conformity therewith, does hereby fix the compensation
40 of the official newspapers of Jersey City for the publication when duly ordered, of such notices and matters as are expressly required by the city charter to be published in the official newspapers at the rates following, to wit :

Sixty cents per folio for first insertion and forty cents per folio for each subsequent insertion ; That at a meeting of the Board of Finance and Taxation held on the sixteenth day of July, in the year one thousand

eight hundred and seventy-four, the following resolution was passed, to wit: 10

“Whereas, it appears by the communications addressed to this board by the journals designated to publish the official proceedings of the various boards of the city government, that such publication cannot be done at the price named in the resolution passed by this board May 29th, 1874, without loss to the proprietors of said journals.

Resolved, that the price hereafter to be paid for publishing the official proceedings of the various Boards of the City Government in the journals designated in the resolution passed May 29th, 1874, be fixed at the sum of two hundred and fifty dollars per month each, and that so much of said resolution passed May 29th, 1874, as conflicts herewith be rescinded: 20

And said application further sets forth that the said the “Jersey City Herald” was by said resolution designated as an official newspaper of Jersey City, and that by the fourth section of an Act of Legislature of the State of New Jersey entitled.” 30

“A supplement to an act to reorganize the Local Government of Jersey City, passed March 31st, 1871, which supplement was approved March 27th, 1874, it was provided “that hereafter the official papers of Jersey City shall be designated by the Board of Finance and Taxation from time to time and said official papers shall not be more than four in number, and shall be the two daily newspapers published and circulated in said city, *provided*, the two daily newspapers shall not belong to the same political party, which shall have had for the period of six months prior to their designation as official newspapers the largest *bona fide* average daily circulation in said city. The third shall be a weekly newspaper published in that portion of Jersey City, formerly known as Hudson City, at least two years prior to and immediately preceding its designation as an official newspaper, and one weekly newspaper published in said city and printed in the German language, which shall have been in existence and so 40

10 published for at least the period of one year prior to its designation as an official paper, *provided* that the newspapers heretofore designated and now being the official papers in said city shall continue under such designation to be the official papers of said city, until a new designation is made under the provisions of this section of this act."

And the said application further sets forth that the "Jersey City Herald," at the time of the passage of the Act of Legislature last above referred to, and up
 20 to the first day of June, A. D. 1877, was the only weekly newspaper published in that part of Jersey City, formerly known as Hudson City, and had been the only weekly paper so published in that part of Jersey City for several years prior to and preceeding the passage of last mentioned Act of the Legislature, and that by force of the provisions of said Act of the Legislature the "Jersey City Herald" was *ipso facto* one of the official papers of said Jersey City, and further, that
 30 of the Legislature, entitled "An Act to reorganize the Local Government of Jersey City," approved March 31st, 1871, and still in force at the time of the passage of the Act of Legislature last above referred to and in force at the time of the passage of the resolutions of the Board of Finance and Taxation above set forth, it was provided, "That the proceedings of the several boards provided for in the act shall be published and their minutes may in the discretion of each of said several boards be published in the official newspapers
 40 of the city;" and that by the Act of the Legislature of the State of New Jersey, entitled, "A supplement to an act entitled an act to reorganize the Local Government of Jersey City," approved March 24th, 1873, it was provided, "That all matters required by this act to be published in one or more newspapers shall be published in the official newspapers and none others except when by the act expressly directed."

And said application further sets forth that by the resolutions above set forth the Board of Finance and Taxation, under the provisions of the charter of Jersey

City, directed that the official minutes of the proceedings of the various boards of the City Government of Jersey City should be published in the "American Standard" and the "Evening Journal," and that the plaintiff as the editor and proprietor of the "Jersey City Herald," the official paper of the City of Jersey City, claimed to be an official paper for all the purposes of the city charter and the laws of the State governing said matter, and claimed to have the right and power to publish in the "Jersey City Herald" the official minutes of the various boards of the City Government of Jersey City, and all legal notices provided or required to be published by the provisions of the city charter, and to be as such editor and proprietor entitled to receive of and from the City of Jersey City such compensation as was or should be provided for such publication by the Board of Finance and Taxation of said Jersey City and relying upon such claim and understanding, the said plaintiff did, as the editor and proprietor of the "Jersey City Herald" publish in the said "Jersey City Herald" the official minutes of the various boards as hereinafter stated, and presented his bills therefor to the Board of Finance and Taxation, at the rates established by said board ; but the said the Board of Finance and Taxation refused to pay the same upon the ground that while the "Jersey City Herald" was the official newspaper of said Jersey City, duly and legally designated as such, yet the minutes of the various boards of the city government had never been ordered to be printed in said newspaper by the Board of Finance and Taxation aforesaid, or by the other boards of city government, and that the "Jersey City Herald" had no power or authority to publish anything but the legal notices required to be published by the city charter, and upon this ground and this ground alone, refused to pay to the said plaintiff compensation for the publication of the minutes aforesaid.

And said application further sets forth that the plaintiff as the editor and proprietor of the "Jersey City Herald" aforesaid printed and published in the "Jer-

- 10 sey City Herald" the official minutes of the proceedings of the Board of Finance and Taxation, the Board of Aldermen, the Board of Fire Commissioners, the Board of Education, the Board of Police Commissioners and the Board of Public Works, the same being the various boards of the city government of Jersey City, continuously from the first day of June in the year one thousand eight hundred and seventy-four to the first day of May, one thousand eight hundred and
- 20 seventy-seven, being a period of thirty months, which at the rates established and provided by the Board of Finance and Taxation of Jersey City of two hundred and fifty dollars a month, amounted to the sum of eight thousand seven hundred and fifty dollars, bills for which which from time to time were, by the said plaintiff, presented to the Board of Finance and Taxation of Jersey City for payment, which payment was refused by them on the ground that the publication of the minutes aforesaid had not been duly ordered as prescribed by law. And said application further sets
- 30 forth that by the Act of the Legislature, first in this declaration above referred to, of the State of New Jersey entitled "A supplement to an act entitled An Act relative to the publication of the minutes and proceedings of the several municipal boards of the cities of this State, approved February 27th, 1879, which supplement was approved March 12th, 1880, it was provided: That in case any newspaper of any city of this State shall have published the official minutes of the proceedings of the municipal boards of said city, and
- 40 such publication was not duly ordered in the manner prescribed by law, then the Justice of the Supreme Court holding the Circuit Court in the county where such newspaper is published shall, upon application made to him for that purpose, appoint a referee, who shall ascertain and report to said Judge what amount of compensation the publisher of said official newspaper would have been entitled to receive if the publication of said minutes had been duly ordered according to law, and the amount so reported shall be thereupon paid by the proper municipal authorities of said city.

And said application further sets forth that the City of Jersey City, by reason of the facts set forth in said application, is indebted to the said plaintiff in the sum of eight thousand seven hundred and fifty dollars for the publication of the minutes aforesaid, and that the said plaintiff was entitled to have and receive said sum from said city, the same as if the publication had been duly ordered according to law, and in said application prayed for the appointment of a referee in that behalf by whom the matter might be examined and a report made by him in accordance with the statute in such case made and provided, which said application was duly sworn to by the said plaintiff and presented to said Justice of the Supreme Court hereinbefore mentioned at the Court House in Jersey City, in the County of Hudson, on the fourth day of December, A. D. 1880, at the hour of ten o'clock in the forenoon, of which application and the time of making the same the said defendant had due and legal notice.

And the said plaintiff avers that afterwards, to wit: On the fourth day of December, in the year one thousand eight hundred and eighty, at the Court House in said Jersey City, at the hour of ten o'clock in the forenoon, the said Manning M. Knapp, Justice of the Supreme Court, holding the Circuit Court in the County of Hudson, after due consideration made an order appointing Theodore Ryerson as such Referee as aforesaid, and which said order of appointment recites as follows, that it appearing to the said Justice of the Supreme Court that Hugh F. McDermott, the plaintiff herein, of the City of Jersey in the County of Hudson and State of New Jersey, had duly presented to said Justice under oath his application of petition, setting forth that the said Hugh F. McDermott was from the first day of June, in the year eighteen hundred and seventy-four, to the first day of June, in the year eighteen hundred and seventy-seven, the editor, publisher and proprietor of the "Jersey City Herald," a weekly newspaper printed, published and circulated in said City of Jersey City, and that the said "Jersey City Herald" had been, by resolution of the Board

- 10 of Finance and Taxation of Jersey City, passed on the twenty-ninth day of May, in the year one thousand eight hundred and seventy-four, designated as one of the official papers of the Government of Jersey City; and said order further recites that it further appearing to said Justice of the Supreme Court, that the said Hugh F. McDermott, the plaintiff herein, as the editor, publisher and proprietor of the said "Jersey City Herald," published and printed in said "Jersey City Herald" the official minutes of the Board of
- 20 Finance and Taxation of Jersey City, the Board of Aldermen of Jersey City, the Board of Fire Commissioners of Jersey City, the Board of Education of Jersey City, the Board of Police Commissioners of Jersey City, and the Board of Public Works of Jersey City, the same being the various municipal boards of the Government of Jersey City, from the first day of June, in the year one thousand eight hundred and seventy-four, to the first day of May, in the year one thousand eight hundred and seventy-seven, con-
- 30 tinuously, being a space of thirty-five months; and that such publication was not duly ordered by the Board of Finance and Taxation of Jersey City in the manner prescribed by law, by said order reciting, and that application being made to him the said Manning M. Knapp, Justice of the Supreme Court, holding the Circuit Court in the County of Hudson, in which said "Jersey City Herald" was and is published by virtue of the provisions of the Act of the Legislature last above referred to, did appoint Theodore Ryerson, Referee,
- 40 and directed said Referee in and by said order to proceed to examine the whole matter, and to ascertain and report to said Justice what amount of compensation the said Hugh F. McDermott, the plaintiff herein, the publisher of the said "Jersey City Herald," an official newspaper as aforesaid, would have been entitled to receive if the publication of said minutes had been duly ordered according to law, and that the report of said Referee and all testimony taken by him, be presented to said Justice and the said plaintiff refers to said application in writing presented to said Justice

and the order of the said Justice thereon as herein mentioned, copies of which are hereto annexed and made a part of this declaration. 10

And the said plaintiff avers that afterwards, to wit, on the fifth day of April, in the year one thousand eight hundred and eighty-one, the said Theodore Ryerson, the Referee so as aforesaid appointed, took and subscribed an oath before Herbert Stout, Master in Chancery of New Jersey, to examine the whole matter in question and make a just and true report to the said Justice what amount of compensation the said Hugh F. McDermott, the publisher of the said "Jersey City Herald," an official newspaper, as aforesaid, would have been entitled to receive if the publication of said minutes had been duly ordered according to law, to the best of his skill and understanding, and that afterwards, to wit, at the time and place aforesaid, gave notice in writing to the defendant, the Mayor and Aldermen of Jersey City, of the time and place, to wit, Tuesday, the twelfth day of April, in the year one thousand eight hundred and eighty-one, at nine o'clock in the forenoon of that day, at the office of the City Clerk of Jersey City at the City Hall in said Jersey City, as the time and place at which he, the said Theodore Ryerson, Referee, would proceed to examine into the whole matter in accordance with the order of the said Justice of the Supreme Court aforesaid, and at which said last named time and place the defendants were notified to attend before said Referee and be heard before and by him in relation to said matter, at which said last mentioned time and place the said Referee did proceed according to said order, and that he was attended by the said plaintiff and the said defendant, and did thereupon proceed to hear and examine said matter in the presence of the parties, and the witnesses of the respective parties were duly sworn and examined before him, and the proofs of the said parties were offered and submitted in evidence, and the said matters in issue were fully debated and presented by counsel and the said Referee having considered of the same afterwards, to wit, on the 7th day 20
30
40

10 of July, in the year eighteen hundred and eighty-one, made a report in writing under the hand of the said Referee, which said report was afterwards, to wit, on the tenth day of September, in the year eighteen hundred and eighty-one, presented with all the testimony taken by the said Referee to his Honor Manning J. Knapp, the Justice of the Supreme Court, holding the Circuit Court of the County of Hudson, which said Justice, by his certificate, under his hand, dated the day and year last aforesaid, did certify that said report
 20 had been presented to him according to the statute in such case made and provided, and the said Justice did further order that the said report, together with the petition, orders and proceedings relating to said matter be filed.

And the said plaintiff says that by said report the said Referee did report that the said matter having been referred to him by an order made therein by his Honor, Manning M. Knapp, Justice of the Supreme Court, holding Circuit Court in the County of Hudson,
 30 bearing date the fourth day of December, in the year one thousand eight hundred and eighty, to examine the whole matter and ascertain and report what amount of compensation the said Hugh F. McDermott, the publisher of the said "Jersey City Herald," would have been entitled to receive if the publication of the minutes had been duly ordered according to law. That he had been first duly sworn according to the form of the statute in such case made and provided, did thereupon appoint in writing under his hand the time
 40 and place, to wit, Tuesday, the twelfth day of April, in the year one thousand eight hundred and eighty-one, at nine o'clock in the forenoon of that day, at the office of the City Clerk of Jersey City Hall, in said Jersey City, as the said time and place, at which time and place he, the said Referee, would proceed to hear the said matter aforesaid, and did thereupon cause all the parties interested to be notified thereof so that they might appear before him and be heard thereon.

And that the said Referee, in and by said report,

further reports that at the said time and place so as 10
aforesaid appointed he was attended with Hugh F.
McDermott with his counsel and by the Hon. Leon
Abbett, counsel of the Mayor and Aldermen of Jersey
City, and did thereupon proceed to hear and examine
the said matter in the presence of the said parties, and
the witnesses of the respective parties were duly sworn
and examined before him, and the proofs of the said
parties were ordered and submitted in evidence and
matters in issue were fully debated and presented by
counsel. And the said Referee did further report that 20
he having considered of the same, did further report
that he found that the said Hugh F. McDermott, did
publish in the said newspaper the "Jersey City
Herald," all the minutes and proceedings of the several
municipal boards of the city of Jersey City, to wit, the
minutes and proceedings of the Board of Finance and
Taxation of Jersey City; the minutes and proceedings
of the Board of Fire Commissioners of Jersey City;
the minutes and proceedings of the Board of Educa- 30
tion of Jersey City; the minutes and proceedings
of the Board of Police Commissioners of Jersey City;
the minutes and proceedings of the Board of Aldermen
of Jersey City; and the minutes and proceedings of
the Board of Public Works of Jersey City, from and
including the month of June, A. D. 1874, continuously
to and including the month of April, A. D. 1877, the
same being a period of thirty-five months.

And the said Referee did, in and by said report,
further report that he found that the said Hugh F.
McDermott, if the publication of the said minutes and 40
proceedings of the said several municipal boards dur-
ing the said thirty-five months aforesaid had been duly
ordered according to law, would have been entitled to
receive compensation therefor from the said the Mayor
and Aldermen of Jersey City, at and after the rate of
two hundred and fifty dollars per month, payable on
the first day of each and every month succeeding the
publication of the same respectively, that is to say,
that the said Hugh F. McDermott would for the pub-
lication be entitled to receive from the Mayor and Al-

10 dermen of Jersey City, on the first day of August, 1874, the sum of five hundred dollars for the publication of said minutes and proceedings for the months of June and July, 1874, and thereafter on the first day of each succeeding month the sum of two hundred and fifty dollars for the publication of said minutes and proceedings of said boards for the month prior thereto until and including the last payment of two hundred and fifty dollars on the first day of May, 1877, making a total of eight thousand, seven hundred and fifty dol-
 20 lars, which said Hugh F. McDermott would have been entitled to receive from the said the Mayor and Aldermen of Jersey City for the said publication if said publication had been duly ordered according to law, which said report is annexed to this declaration and made a part thereof.

And the said plaintiff in fact saith that said report was on the tenth day of September last past, at the County Court House in Jersey City, duly presented to said Justice in accordance with the order of said Jus-
 30 tice, and the statute in such case made and provided and such presentation certified upon said report by said Justice, of which presentation and of the time and place of presenting the same to said Justice, the said defendant had reasonable, due and legal previous notice, and attended at the time and place of such presentation.

And the said plaintiff avers that by an Act of the Legislature of the State of New Jersey, approved March 23d, 1883, entitled "A further supplement to
 40 an act relative to the publication of the minutes and proceedings of the several municipal boards of the cities of this State," approved February twenty-seventh, one thousand eight hundred and seventy-nine, it is provided as follows:

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, that the provisions of the act to which this is a supplement shall be held to apply only to publications made prior to the approval of such act.

TUESDAY

2. And be it enacted that this act shall take effect 10
immediately.

And the said plaintiff saith that the said defendants, by force of the statute first above herein in this declaration referred to, in such case made and provided, and the statute lastly above referred to, became liable to pay to the said plaintiff the said sum of eight thousand seven hundred and fifty dollars, the amount of money mentioned in the report of the Referee as aforesaid, when requested; and being so liable the said plaintiff heretofore, to wit, on the first day of May, A. D. 1883, 20 presented the said report of said Referee to the said defendant, and the Board of Finance and Taxation of the said City of Jersey City, the proper municipal authority of the said City of Jersey City, and demanded immediate payment of the amount of money so as aforesaid reported, to wit, the sum of eight thousand seven hundred and fifty dollars, with interest thereon. Yet the said defendants did not and would not, on the day last aforesaid or at any time since, although often requested so to do, pay to the said plaintiff the sum of 30 eight thousand seven hundred and fifty dollars and interest thereon, or any part thereof, but have hitherto wholly neglected and refused so to do, to wit, at Jersey City, in the County of Hudson aforesaid. By means of the neglect and refusal of the said defendants to pay to the said plaintiff the several sums of money aforesaid, and the same remaining wholly unpaid, an action hath accrued to the said plaintiff to have of and demand from the said defendant the sum of eight thousand seven hundred and fifty dollars, and interest 40 thereon, parcel of the said sum of seventeen thousand five hundred dollars above demanded.

And whereas also the said defendant afterwards, to wit, on the day and year last aforesaid, at Jersey City aforesaid, was indebted to the said plaintiff in the sum of eight thousand seven hundred and fifty dollars for goods, wares and merchandise before that time sold and delivered by the plaintiff to the defendant at its request; and in eight thousand seven hundred and fifty dollars for work and labor before that time done

10 and performed, and materials furnished by the plaintiff for the defendant at its request; and in eight thousand seven hundred and fifty dollars for so much money by the plaintiff before that time lent and advanced to the defendant at its request; and in eight thousand seven hundred and fifty dollars for so much money by the plaintiff before that time paid for the use of the defendant at its request; and in eight thousand seven hundred and fifty dollars for so much money by the defendant before that time had and received for
 20 the use of the plaintiff; and in eight thousand seven hundred and fifty dollars for interest upon, and for the forbearance by the plaintiff to the defendant at its request, of divers large sums of money before that time due and owing from the defendant to the plaintiff; and in eight thousand seven hundred and fifty dollars for so much money then and there found to be due from the defendant to the plaintiff on an account stated between them; and to be paid by the said defendant to the said plaintiff when it, the said defendant, should
 30 be thereunto afterwards requested, whereby and by reason of the said last-mentioned sum of money being and remaining wholly unpaid, an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said sum last mentioned, residue of the said sum above demanded.

Yet the said defendant, although often requested so to do, hath not as yet paid the said sum of seventeen thousand five hundred dollars above demanded, or any part thereof, to the said plaintiff, but it to do this
 40 hitherto wholly refuse, and still do refuse, to the damage of the plaintiff five thousand dollars, and therefore he brings his suit, &c.

“The following is a true copy of the petition of Hugh F. McDermott, as referred to in the foregoing declaration, to wit :

To the Honorable MANNING M. KNAPP, the Justice of the Supreme Court, holding the Circuit Court of the County of Hudson.

Your petitioner, Hugh F. McDermott, of the City of

Jersey City, in the County of Hudson and State of New Jersey, respectfully showeth : 10

That your petitioner was on the first day of May, A. D. 1874, and for some time previous to said date, had been the editor and proprietor of the "Jersey City Herald," a weekly newspaper, printed, published and circulated in the City of Jersey City, and in the County of Hudson and the other portions of the State of New Jersey, and continued to be editor and proprietor of said "Jersey City Herald" up to and about the first day of June, A. D. 1877, when the editorship and proprietorship of your petitioner ceased, but that your petitioner again, on the first day of May, A. D. 1879, became the editor and proprietor of the said newspaper, and has continued as such until the present time. 20

2. That for a long time previous to the first day of May, A. D. 1874, and continuously up to the present time, the Jersey City "Herald," the weekly newspaper aforesaid, has been printed and published in Jersey City, and circulated throughout Jersey City, the County of Hudson and other portions of the State of New Jersey. 30

3. That for a long time previous to the first day of May, in the year eighteen hundred and seventy-four, the said "Jersey City Herald" had been, by proper designation, duly and legally made an official newspaper of the city of Jersey City, duly and legally designated as such by the Board of Finance and Taxation of Jersey City, and as such official newspaper had printed and published all legal notices required to be printed and published by the provisions of the charter of the city of Jersey City, and also printed and published the official minutes of the proceeding of the Board of Finance and Taxation of Jersey City, the Board of Public Works of Jersey City, the Board of Fire Commissioners, the Board of Police Commissioners, the Board of Aldermen and the Board of Education of Jersey City, they being the several municipal 40

10 boards of Jersey City, and for such publications your petitioner, as the editor and proprietor of said "Jersey City Herald," was paid the price, salary and compensation provided to be paid by the Board of Finance and Taxation of Jersey City.

And your petitioner further shows that at a meeting of the Board of Finance and Taxation, held on the twenty-ninth day of May, in the year eighteen hundred and seventy-four, by resolution of the last named date, designated the "Jersey City Herald" as an official
20 paper of the city of Jersey City, which resolution is in the following words, to wit:

"Resolved, that the 'American Standard,' the
" 'Evening Journal,' the 'Jersey City Herald' and the
" 'Watch' and 'Hudson,' be and they are hereby
" designated as the official newspapers of the city for
" the publication of all legal notices required by the
" city charter, the compensation to be at the following
" rates, viz :

30 " Fifty cents per folio per first insertion, and thirty
" cents per folio for each subsequent insertion.

" Resolved, that the 'American Standard' and the
" 'Evening Journal' be and they are hereby desig-
" nated to publish the official minutes of the various
" boards of the city departments, the compensation to
" be \$150 per exhibit for each paper."

6. And your petitioner further shows that on the
40 second day of July, in the year one thousand eight
hundred and seventy-four, the Board of Finance and
Taxation passed the following resolutions, to wit:

" Resolved, that whereas the official newspapers of
" Jersey City have declined and refused to publish
" legal notices and matters required by the charter of
" Jersey City to be published in such papers at the
" compensation per folio fixed by this board, by reso-
" lution of May 29, 1874 ;

" And whereas, by the provisions of the city charter,
" this board cannot lawfully designate any official
" papers than those already designated;

“ And whereas, the city charter requires legal advertising to be done in these official newspapers and none others, and it being found impracticable, if not impossible, to compel publication at the compensation last fixed by this board, 10

“ Therefore, in consideration of the premises aforesaid, this board feels constrained to restore the former rates for legal advertising, required by the charter, and in conformity therewith does hereby fix the compensation of the official newspapers of Jersey City for the publication when duly ordered, of such notices and matters, as are expressly required by the city charter to be published in the official newspapers at the rates following, to wit: sixty cents per folio, for the first insertion, and forty cents per folio for each subsequent.” 20

7. And your petitioner further shows that at a meeting of the Board of Finance and Taxation, held on the sixteenth day of July, in the year one thousand eight hundred and seventy-four, the following resolution was passed, to wit: 30

“ Whereas, it appears by the communication addressed to this board by the journals designated to publish the official proceedings of the various boards of the city government, that such publication cannot be done at the price named in the resolutions passed by this board May 29th, 1874, without loss to the proprietors of said journals.”

“ Resolved, that the price to be paid hereafter for publishing the official proceedings of the various boards of the city government, in the journals designated in the resolution passed May 29th, 1874, be fixed at the sum of \$250 per month each, and that so much of said resolution passed May 29th, 1874, as conflicts herewith be rescinded.” 40

8. That your petitioner further shows that the “ Jersey City Herald ” was, by the resolution above set forth,

10 designated as an official newspaper of the said City of Jersey City.

9. That by the fourth section of an act of the Legislature of the State of New Jersey, entitled "A supplement to an act to reorganize the local government of Jersey City," passed March 31st, 1871, which supplement was approved March 27th, 1874, it is provided as follows, to wit: "And be it enacted, that hereafter, the
 20 "official newspapers of Jersey City shall be designated
 "by the Board of Finance and Taxation, from time to time, and said official newspapers shall not be more
 "than four in number, and shall be the two daily newspapers published and circulated in said city—provided the said two daily newspapers shall not belong
 "to the same political party—which shall have had
 "for the period of six months prior to their designation as official newspapers, the largest *bona fide*
 "average circulation in said city; the third shall be a
 30 "weekly newspaper published in that part of Jersey
 "City, formerly known as Hudson City, at least two
 "years prior to and immediately preceding its designation as an official newspaper, and one weekly newspaper published in said city and printed in the German language, and which shall have been in existence and so published for at least the period of one
 "year prior to its designation as an official paper; provided, that the newspaper heretofore designated
 "and now being the official papers of said city shall
 40 "continue under such designation to be the official
 "paper of said city until a new designation is made
 "under the provisions of this section of the act."

10. That the "Jersey City Herald," at the time of the passage of the act of the Legislature above referred to, and up to the 1st day of June, A. D. 1877, was the only weekly newspaper published in that part of Jersey City formerly known as Hudson City, and had been the only weekly paper so published in that part of Jersey City, for several years prior to and preceding the passage of said last-mentioned act of the Legisla-

ture, and that by the force of the provisions of said act of the Legislature was *ipso facto* one of the official papers of the said city of Jersey City. 10

11. That by the one hundred and fifty-eighth section of the act of the Legislature entitled: "An Act to reorganize the local government of Jersey City." Approved March 31st, and still in force at the time of the passage of the act of the Legislature last above referred to, and in force at the time of the passage of the resolutions of the Board of Finance and Taxation above set forth, it was provided: 20

"That the proceedings of the several municipal boards provided for in the act shall be public, and their minutes may, in the discretion of each of said several boards, be published in the official newspapers of the city;" and that by an act of the Legislature of the State of New Jersey, entitled: "A supplement to an act entitled 'An act to reorganize the local government of Jersey City,'" approved March 24th, 1873, it was provided: "That all matters required by this act to be published in one or more newspapers, shall be published in the official newspapers of the city and none others, except when by this act expressly directed." 30

12. That by the resolution above set forth, the Board of Finance and Taxation, under the provisions of the charter of Jersey City, directed that the official minutes of the proceedings of the various boards of the city government should be published in the "American Standard" and the "Evening Journal," and your orator, as the editor of the "Jersey City Herald," the official paper of the city of Jersey City, claimed to be an official paper for all the purposes of the city charter and the laws of this State governing said matter, and claimed to have the right and power to publish in the "Jersey City Herald," the official minutes of the various boards of the city government of Jersey City, and all legal notices provided or required to be published by the provisions of the city charter, and to be, as such edi- 40

10 tor and proprietor, entitled to receive of and from the
city of Jersey City such compensation as was or should
be provided for such publication by the Board of
Finance and Taxation of said Jersey City; and relying
upon such claim and understanding, your petitioner
did, as the editor and proprietor of the "Jersey City
Herald," publish in said "Jersey City Herald" the
official minutes of said various boards, as hereinafter
stated, and presented his bills therefor to the Board
of Finance and Taxation at the rates established
20 by said board, but the Board of Finance and
Taxation refused to pay the same upon the
ground that while the "Jersey City Herald" was an
official newspaper of the said Jersey City, duly and
legally designated as such, yet the minutes of the va-
rious boards of the city government had never been
ordered to be printed in said newspaper by the Board
of Finance and Taxation aforesaid, or by the other
boards of the city government, and that the "Jersey
City Herald" had no power or authority to publish
30 anything but the legal notices required to be published
by the city charter, and upon this ground and this
ground alone, refused to pay to your petitioner the
compensation for the publication of the minutes afore-
said.

13. And your petitioner shows, that as the editor
and proprietor of the "Jersey City Herald," the official
minutes of the proceedings of the Board of Finance
and Taxation, the Board of Aldermen, the Board of
40 Fire Commissioners, the Board of Education, the Board
of Police Commissioners and the Board of Public
Works, the same being the various Boards of the City
Government of Jersey City, continuously from the first
day of June, one thousand eight hundred and seventy-
four, to the first day of May, one thousand eight hun-
dred and seventy-seven, being a period of thirty-five
months, which at the rate established and provided by
the Board of Finance and Taxation of Jersey City of
two hundred and fifty dollars a month, amounted to
the sum of eight thousand seven hundred and fifty

dollars, bills for which, from time to time, were, by your petitioner, presented to the Board of Finance and Taxation of Jersey City for payment, which payment was refused by them on the ground that the publication of the minutes aforesaid, had not been duly ordered as prescribed by law. 10

14. And your petitioner further shows, that by Act of the Legislature of the State of New Jersey, entitled :
 " A supplement to an act entitled : An act relative to
 " the publication of the minutes and proceedings of
 " the several municipal boards of the cities of this
 " State, approved February 27th, 1879, which supple- 20
 " ment was approved March 12th, 1880, it was pro-
 " vided, that in case any newspaper appointed as an
 " official newspaper of any city of this State, shall have
 " published the official minutes of the proceedings of
 " the municipal boards of said city, and such publica-
 " tion was not duly ordered in the manner prescribed
 " by law, then the Justice of the Supreme Court, hold-
 " ing the Circuit Court in the county where such news- 20
 " paper is published, shall, upon application made to
 " him for that purpose, appoint a referee, who shall
 " ascertain and report to said Judge what amount of
 " compensation the publisher of said official newspaper
 " would have been entitled to receive, if the publica-
 " tion of said minutes had been duly ordered accord-
 " ing to law, and the amount so reported shall thereupon
 " be paid by the proper municipal authorities of said
 " city." 40

15. And your petitioner further shows by reason of the facts above set forth in the foregoing petition, the City of Jersey City is indebted to your petitioner upon and by virtue of said last enactment set forth, in the sum of eight thousand seven hundred and fifty dollars, for the publication of the minutes aforesaid, and that your petitioner is entitled to have and receive said sum from said city the same as if the said publication had been duly ordered according to law. And your petitioner prays your Honor to appoint some fit and com-

10 petent person by whom the matter in this behalf set forth may be examined and report by him made to you in accordance with the statute in such case made and provided."

HUGH F. McDERMOTT.

20 "STATE OF NEW JERSEY, }
Hudson County, } ss.:

HUGH F. McDERMOTT, of full age, being duly sworn according to law, on his oath, saith, that the facts, matters and things set forth in the foregoing petition are true.

HUGH F. McDERMOTT.

Sworn and subscribed before }
me at Jersey City this No- }
vember 9th, A. D. 1880. }

30 E. T. PAXTON,
Master in Chancery of New Jersey."

The following is a true copy of the order of Manning M. Knapp, Esquire, Justice of Supreme Court, referred to in this foregoing declaration, to wit:

40 "Before MANNING M. KNAPP, ESQ., the Justice of the
"Supreme Court of the State of New Jersey, holding
"the Circuit Court of the County of Hudson.

It appearing to me, by the petition or application, in writing of Hugh F. McDermott, of the City of Jersey City, in the County of Hudson, and State of New Jersey, duly presented to me under oath, that the said Hugh F. McDermott was, from the first day of June, in the year one thousand eight hundred and seventy-eight hundred and seventy-four, to the first day of June, in the year one thousand seven, the editor, publisher and proprietor of the

“Jersey City Herald,” a weekly newspaper, printed, 10
 published and circulated in said city of Jersey City,
 and that the said the “Jersey City Herald” had been,
 by resolution of the Board of Finance and Taxation of
 Jersey City, passed on the twenty-ninth day of May,
 in the year one thousand eight hundred and seventy-
 four, designated as one of the official newspapers of
 the government of Jersey City.

And it further appearing to me, that the said
 Hugh F. McDermott, as the editor, publisher
 and proprietor of the said the Jersey City “Herald,” 20
 published and printed in said the “Jersey City Her-
 ald,” the official minutes and proceedings of the Board
 of Finance and Taxation of Jersey City, the Board of
 Aldermen of Jersey City, the Board of Fire Commis-
 sioners of Jersey City, the Board of Education of Jer-
 sey City, the Board of Police Commissioners of Jersey
 City, and the Board of Public Works of Jersey City,
 the same being the various municipal boards of the
 government of Jersey City from the first day of June,
 in the year one thousand eight hundred and seventy- 30
 four, to the first day of May, one thousand eight hun-
 dred and seventy-seven, continuously, being a space
 of thirty-five months; and that such publication was
 not duly ordered by the Board of Finance and Taxa-
 tion of Jersey City in the manner prescribed by law.
 And the application now being made to me in writing
 by the said Hugh F. McDermott for that purpose, I,
 Manning M. Knapp, Esq., Justice of the Supreme
 Court, holding the Circuit Court of the County of Hud-
 son, the county in which said newspaper was and is 40
 published, by virtue of the provisions of an Act of the
 Legislature of the State of New Jersey, entitled “A
 “supplement to the act entitled ‘An Act relative to
 “the publication of the minutes and proceedings of
 “the several municipal boards of the cities of this
 “State.’” Approved February 27th, 1879, which sup-
 plement was approved March 12th, 1880, do hereby
 appoint Theodore Ryerson Referee, who shall proceed
 to examine the whole matter, and ascertain and report
 to me what amount of compensation the said Hugh F.

10 McDermott, the publisher of the said "Jersey City Herald," an official newspaper as aforesaid, would have been entitled to receive if the publication of said minutes had been duly ordered according to law, and that the said report of the said Referee and all testimony taken by him be presented to me.

Ordered December 4th, 1880.

M. M. KNAPP,
Jud. Sup. Ct."

20

The following is a true copy of the report of the Referee referred to in the foregoing declaration, to wit :

"Before Manning M. Knapp, Justice of Supreme Court of the State of New Jersey, holding the Circuit Court in and for the County of Hudson."

30

IN THE MATTER

OF

The application of HUGH F. McDERMOTT, editor and publisher of the "Jersey City Herald," against the MAYOR AND ALDERMEN OF JERSEY CITY, under an Act of the Legislature of the State of New Jersey, entitled "A supplement to an act entitled 'An Act relative to the publication of the minutes and proceedings of the several municipal boards of the cities of this State.'" Approved March 12th, 1880.

40

} Report of Referee.

This matter having been referred to me, Theodore Ryerson, as Referee, by an order made therein by his

Honor, Manning M. Knapp, Justice of the Supreme Court of the State of New Jersey, holding the Circuit in and for the County of Hudson, and bearing date the fourth day of December, in the year eighteen hundred and eighty, "to examine the whole matter and ascertain and report what amount of compensation the said Hugh F. McDermott, the publisher of the said "Jersey City Herald," would have been entitled to receive if the publication of said minutes had been duly ordered according to law," do most respectfully report as follows: That I, the said Theodore Ryerson, having been first duly sworn as such Referee according to the form of the statute in such case made and provided, did thereupon appoint in writing, under my hand, the time and place, to wit, Tuesday, the Twelfth day of April, in the year eighteen hundred and eighty-one, at nine o'clock in the forenoon of that day, at the office of the city clerk of Jersey City, at the City Hall, in said Jersey City, as the time and place at which time and place I would proceed to hear and examine the said matter in accordance with the said order aforesaid, and did thereupon cause all the parties interested in said matter to be notified thereof, so that they might appear before me and be heard therein.

And I do further report that at the said time and place so as aforesaid appointed, I was attended by the said Hugh F. McDermott with his counsel, Job H. Lippincott, Esquire, and by the Hon. Leon Abbett, counsel for the Mayor and Aldermen of Jersey City, and did thereupon proceed to hear and examine the said matters in the presence of the said parties; and the witnesses of the respective parties were duly sworn and examined before me, and the proofs of the said parties were offered and submitted in evidence, and the said matters in issue were fully debated and presented by counsel; and I having thereupon considered of the same, do further report that I find that the said Hugh F. McDermott did publish in the said newspaper, "The Jersey City Herald," all the minutes and proceedings of the several municipal boards of the City of Jersey City, to wit, the minutes and proceedings of

10 the Board of Finance of Taxation of Jersey City, the minutes and proceedings of the Board of Fire Commissioners of Jersey City, the minutes and proceedings of the Board of Education of Jersey City, the minutes and proceedings of the Board of Police Commissioners of Jersey City, the minutes of the Board of Aldermen of Jersey City, and the minutes and proceedings of the Board of Public Works of Jersey City, from and including the month of June, 1874, continuously to and including the month of April, 1877, the same being a period of thirty-five months.

20 And I further report that I do find that the said Hugh F. McDermott, if the publication of the said minutes and proceedings of the said several municipal boards during the said thirty-five months aforesaid had been duly ordered according to law, would have been entitled to receive compensation from the said the Mayor and Aldermen of Jersey City at and after the rate of two hundred and fifty dollars per month, payable on the first day of each and every month succeeding the publication of the same respectively, that is to say, that I do find that the said Hugh F. McDermott would, for the publication, be entitled to receive from the Mayor and Aldermen of Jersey, on the first day of August, 1874, the sum of five hundred dollars for the publication of said minutes and proceedings for the months of June and July, 1874; and thereafter, on the first day of each succeeding month the sum of two hundred and fifty dollars for the publication of the said minutes and proceedings of the said boards for the month prior thereto, until and including the last payment of two hundred and fifty dollars on the first day of May, 1877, for the said publication of the month of April, 1877, making a total of eight thousand seven hundred and fifty dollars which Hugh F. McDermott would have been entitled to receive from the said the Mayor and Aldermen of Jersey City for the said publications if said publications had been duly ordered according to law.

In regard to the questions raised by counsel as to the constitutionality of the Act of March 12th, 1880;

and as to whether said act applies to the case of the petitioner, and as to whether said act was intended by the Legislature to apply only to the future, and is not retrospective ; and as to all questions involved in said matter and discussed before me by counsel, beyond the simple question as to what amount of compensation the said petitioner would have been entitled to receive for said publications, if the same had been duly ordered according to law, I am of opinion that under the law and under the order of his Honor Justice Knapp, the Referee has no authority to consider or decide them.

All of which is most respectfully submitted this, July 7th, 1881.

THEODORE RYERSON,
Referee."

And the said defendants, by E. T. Paxton, their attorney, comes and defends the wrong and injury, when, &c., and say that they do not owe the said sum of money above demanded, or any part thereof, in manner and form as the said plaintiff hath above thereof complained against them, and of this they put themselves upon the country, &c.

I, B. F. LEE, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true transcript of the pleadings in the above cause as the same remain on file in my office.

In testimony whereof, I have hereto set my hand and the seal of said Court this first day of September, in the year one thousand eight hundred and eighty-three.

B. F. LEE,
Clerk.

- 10 Afterwards, to wit, at a Circuit Court holden at Jersey City, in and for the County of Hudson, before Manning M. Knapp, Esquire, one of the Justices of the Supreme Court, on the fifteenth day of October, in the year of our Lord one thousand eight hundred and eighty-three, according to the form of the statute in such case made and provided comes as well the said plaintiff as the said defendant, by their respective attorneys within named. And the said parties having then and there waived a trial by jury, and
- 20 the evidence on both sides having been produced and submitted. And counsel on both sides having made their arguments to the said Justice holding said Circuit, and the said Justice having duly considered the said evidence, arguments and matters, finds that the said defendant doth not and did not owe to the said plaintiff the within mentioned sum of seventeen thousand five hundred dollars, or any part thereof, as the said plaintiff hath above demanded and alleged in this behalf.
- 30 And, therefore, it is considered that the said plaintiff take nothing by his said writ, and that judgment be entered in favor of the defendants and against the said plaintiff.

And it is further considered and ordered by the Court that the said defendants do recover their costs against the said plaintiff to be taxed *nisi*.

The above cause came on for trial before Justice Manning M. Knapp, at Hudson Circuit.

- 40 MR. LIPPINCOTT appeared for plaintiff.
MR. PAXTON appeared for defendant.

Mr. LIPPINCOTT, for plaintiff, offered in evidence :
Petition of Hugh F. McDermott to Justice Knapp.
(Copy annexed to declaration.)

Order of Justice Knapp upon presentation of the petition, dated December 4, 1880, appointing Theodore Ryerson, Esq., referee.

(Copy annexed to declaration.)

Report of Referee, dated July 7, 1881.
(Copy annexed to declaration.)

Also all notices, testimony and proceedings had by and before said Referee, produced and read to the Court. 10

They are as follows :

Before Manning M. Knapp, Esq., the Justice of the Supreme Court of the State of New Jersey, holding the Circuit Court of the County of Hudson.

20

IN THE APPOINTMENT

OF

Referee in behalf of HUGH F. McDERMOTT, editor and proprietor of the "Jersey City Herald," against JERSEY CITY, under an act of the Legislature of the State of New Jersey, entitled "A supplement to an act relative to the publication of the minutes and proceedings of the several municipal boards of the cities of this State, approved March 12th, 1880.

On Petition.

30

STATE OF NEW JERSEY, }
 Hudson County, } ss.:

40

THEODORE RYERSON, the Referee appointed by the Hon. Manning M. Knapp, Justice of the Supreme Court, in the above-entitled matter, being duly sworn according to law, says that he will, as said Referee, examine the whole matter in question, and make a just and true report to the said Justice what amount of compensation the said Hugh F. McDermott, the publisher of the said "Jersey City Herald," an official newspaper as aforesaid, would have been entitled to receive if the publication of said minutes had been

10 duly ordered according to law, to the best of his skill
and understanding.

THEODORE RYERSON.

Sworn and subscribed before }
me at Jersey City, this }
5th April, A. D. 1881. }

HERBERT STOUT,
Master in Chancery of N. J.

20

Notice.

Before MANNING M. KNAPP, Esq., Justice of
the Supreme Court, holding the
Hudson County Circuit Court.

IN THE MATTER

30

OF

The application of HUGH F. McDER-
MOTT, editor and proprietor of the
"Jersey City Herald, for appoint-
ment of Referee, &c., against Jer-
sey City, under an act of the Leg-
islature of the State of New Jer-
sey, entitled "A supplement to an
act entitled 'An Act relative to the
publication of the minutes and
proceedings of the several municip-
al boards of the cities of this
State, approved March 12, 1880.

On Order—Notice.

40

To Allan L. McDermott, attorney of the Mayor and
Aldermen of Jersey City; the Board of Finance and
Taxation of Jersey City; the Board of Education of
Jersey City; the Board of Fire Commissioners of Jer-
sey City; the Board of Public Works of Jersey City;

the Board of Aldermen of Jersey City, and to Leon 10
Abbett, counsel of the Mayor and Aldermen of Jersey
City :

I, THEODORE RYERSON, Referee, appointed in the
above matter by an order herein made and signed by
his Honor Manning M. Knapp, Esq., the Justice of the
Supreme Court holding the Hudson County Circuit
Court, bearing date the fourth day of December, in the
year one thousand eight hundred and eighty, do, by
notice of said order and of the laws of this State, 20
hereby appoint Tuesday, the twelfth day of April, in
the year one thousand eight hundred and eighty-one,
at nine o'clock in the forenoon of that day, at the
office of the City Clerk of Jersey City, New Jersey, as
the time and place, at which time and place I will pro-
ceed to examine the whole matter, in accordance with
such order aforesaid, and at which time and place you
and all parties interested in said matter may appear
before me and be heard thereon.

Dated April 5th, A. D. 1881.

THEO. RYERSON, 30
Referee as aforesaid.

This notice is indorsed as follows :

" Service of the within notice and order acknowl-
edged this April 5th, 1881.

" ALLAN L. McDERMOTT,
" Corporation Attorney of
" Jersey City,

" LEON ABBETT, 40
" Corporation Counsel of
" Jersey City."

Service of said notice and order of Justice Knapp on
the different municipal boards of Jersey City named
in said notice, and to whom the same was directed, on
April 5th, 1881, is also admitted.

10

Before MANNING M. KNAPP, Justice of the
Supreme Court, holding the Hudson
County Circuit Court.

IN THE MATTER

OF

20 The application of Hugh McDermott
against the Mayor and Aldermen
of Jersey City, under an Act of the
Legislature of the State of New
Jersey, entitled "a supplement to
an Act entitled 'a supplement to
an Act relative to the publication
of the minutes and proceedings of
the several municipal boards of
the cities of this State, approved
March 12th, 1880.'"

30

An order having been made in the above entitled
matter by the HON. MANNING M. KNAPP, Justice of the
Supreme Court of the State of New Jersey, holding the
Hudson County Circuit Court, bearing date the fourth
day of December, 1880, appointing me, Theodore Ryerson,
Referee in the above stated matter, to examine and
report thereon, in accordance with the terms of said
order (which said order is hereto annexed), and I, the
40 said Theodore Ryerson, having thereupon, on the 5th
day of April, A. D. 1881, taken and subscribed the oath
as such Referee, as requested by statute (the said oath
so subscribed and sworn to as aforesaid being also
hereto annexed), and I thereupon, at the application
of the counsel of the petitioner Hugh F. McDermott,
to wit, counsellor Job H. Lippincott, did, in writing,
appoint Tuesday, the 12th day of April, 1881, at nine
o'clock in the forenoon, at the office of the City Clerk
of Jersey City, at the City Hall in said City of Jersey
City, at the time and place at which I should proceed

to examine the said matter, in accordance with said order, and therein notifying all the parties, then and there to appear before me to be heard thereon (which said appointment in writing is and notice is also hereto annexed). 10

Whereupon, on April 12th 1881, at 9 o'clock A. M., at said City Hall, in pursuance of said notice of said hearing, appeared before me, the said petitioner, Hugh F. McDermott, with his counsel, Job H. Lippincott, Esq., and Hon. Leon Abbett, corporation counsel of the said the Mayor and Aldermen of Jersey City. 20

Job H. Lippincott presented and filed with me two copies of said order appointing said time and place of hearing, with due service thereof acknowledged thereon in writing thereon by Hon. Leon Abbett, corporation counsel of Jersey City, and by Allan L. McDermott, corporation attorney of Jersey City, under date of April 5th, 1881.

Whereupon, at the request of the counsel of said parties, I did adjourn the further hearing of said matter to the 15th day of April, 1881, at 9 o'clock A. M., at the same place, to wit, the City Hall, City Clerk's office, Jersey City, N. J. 30

THEO. RYERSON,
Referee.

10

Before HON. MANNING M. KNAPP, Justice
of the Supreme Court, holding the
Hudson County Circuit Court.

IN THE MATTER

OF

20 The application of Hugh F. McDermott against Jersey City, under an Act of the Legislature of the State of New Jersey, entitled "a supplement to an Act relative to the publication of the minutes and proceedings of our several municipal boards of the cities of this State," approved March 12, 1880.

30

Testimony taken before me, Theodore Ryerson, Referee, duly appointed in the above entitled matter, on this 15th April, 1881, in the presence of Job H. Lippincott, of counsel for applicant, and Hon. Leon Abbett, of counsel for the City of Jersey City.

HUGH F. McDERMOTT, a witness produced in his own behalf, being duly sworn, says :

40

I am the editor and proprietor of the "Jersey City Herald," a newspaper printed, published and circulated in Jersey City, in the County of Hudson, and State of New Jersey.

The "Jersey City Herald" has been published in Jersey City continuously, from May, 1870, to the present time. It is a weekly newspaper, and has been during said time published as such. I was the editor and proprietor of the same from May, 1870, until about the first day of June, 1877. It was an official newspaper of Jersey City previous to the year 1871, when the city was governed principally by the Mayor and a

Board of Aldermen. It was appointed an official newspaper by a resolution of the Board of Aldermen, passed May 3, 1870 (I refer to page 48 of the resolution book of that board, and also to a copy of the resolution, contained in the statement of laws, resolutions, &c., in this case). After the charter of 1871 was passed, the city printing was taken away from "Jersey City Herald," and it was no longer an official newspaper until June, 1873. 10

The "Jersey City Herald" was again designated and appointed as an official newspaper of Jersey City, by resolution of the Board of Finance and Taxation, adopted on the twelfth day of June, A. D. 1873. This resolution was offered by Mr. Bumsted on June 5th, 1873, and laid over; on June 12th, 1873, the resolution was taken up and adopted by the board. 20

See copy of this resolution in the statement referred to.

Under this resolution the "Jersey City Herald" published the official minutes of the proceedings of the different municipal boards of Jersey City, and for such publication I received, as its editor and proprietor, the sum of two hundred and fifty dollars per month, as fixed by the resolution of June 12, 1873. 30

The "Jersey City Herald" also printed and published the official notices of the city, and all other matter required to be published by the Jersey City charter.

The "Jersey City Herald" has ever since that, that is, ever since June 12, 1873, and up to the first day of May, A. D. 1877, published the official minutes of the different municipal boards of Jersey City, and also the official notices, and other matter required to be published by the city charter. I have been paid for printing the official notices, and other matter required to be published, in full to the present time. 40

I have been paid for printing the official minutes as aforesaid, from June 12, 1873, up to the first day of June, A. D. 1874, and during that time was paid at the rate of two hundred and fifty dollars per month.

10 In the year 1874 the Board of Finance and Taxation of Jersey City attempted to take away from the "Jersey City Herald" the publication of the official minutes of the proceedings of the different municipal boards of Jersey City. This was attempted by resolution of May 29th, 1874 (this resolution is contained in the statement of laws, resolutions, &c., in this case). The different boards of the city at that time were the Board of Finance and Taxation, the Board of Aldermen, the Board of Education, the Board of Fire Commissioners, the Board of Police Commissioners, and the Board of Public Works of Jersey City.

20 From June 12, 1873, to the passage of these resolutions of May 29, 1874, the "Jersey City Herald," of which I was the editor and proprietor, had published the official minutes of the proceedings of these boards, and at the time of the passage of the resolutions of May 29, 1874, it was publishing the same at the rate of \$250 per month.

30 Under the resolutions of May 29th, 1874, I claimed that the "Jersey City Herald" was designated as one of the official newspapers of Jersey City for the purpose of publishing the official minutes of the proceedings of the several municipal boards of Jersey City, as well as for other purposes.

40 The editors and proprietors of the other journals named in the resolutions and myself, as the editor and proprietor of the "Jersey City Herald," by communication presented to the Board of Finance and Taxation, refused to publish the official minutes and notices and other matter, at the prices or rates fixed by the resolutions of May 29, 1874, the same having been materially reduced by that resolution.

On July 2, 1874, by resolution of the Board of Finance and Taxation, the former rates were restored, for the publication of official notices and matters required to be published by the provisions of the city charter (I refer to copy of resolutions in statement).

On July 16, 1874, by resolution of the same board, the former rate of \$250 per month for publishing the minutes of the different departments of Jersey City in

the official papers was also restored (I refer to resolution in the statement). 10

These last two named resolutions ended the differences as to prices of publication between the Board of Finance and Taxation and the different official newspapers, and the publication of the minutes and legal notices, and other matters required to be published by the city charter was resumed, and all minutes and official notices and other matters, from May 29, 1874, was then published.

These publications had been suspended from May 29, 1874, until after the passage of the resolutions of July 2, 1874, and July 16, 1874. 20

I, as editor and proprietor of the "Jersey City Herald," continued to publish the official minutes of the different boards of Jersey City, including all the boards above named, in the "Jersey City Herald." I claimed I had the legal right to do so, and, acting in accordance with the opinion of my counsel, which was communicated to the Board of Finance and Taxation.

See communication of counsel of McDermott to board in the statement. 30

I claimed I had the right to publish the official minutes of the proceedings of the different municipal boards of Jersey City in the "Jersey City Herald," because I claimed the "Jersey City Herald" had been designated by the Board of Finance and Taxation for that purpose by the resolutions of that body of May 29, 1874.

I also claimed that the "Jersey City Herald" was the official newspaper of Jersey City outside of and beyond any designation as such by the Board of Finance and Taxation. 40

This contention of mine was founded upon the Act of the Legislature passed 1874, entitled, "A supplement to an Act entitled, 'An Act to reorganize the local Government of Jersey City. Approved March 27, 1874.'" "

See statute as contained in statement of resolutions and laws on this matter.

10 The "Jersey City Herald" was the only weekly newspaper published in that part of Jersey City, at least two years prior to and immediately preceding the resolution of May 29th, 1874.

The "Jersey City Herald" at the time of the passage of this Act of March 27, 1874, just referred to, was the only weekly newspaper published for two years preceding its passage in that portion of Jersey City formerly known as Hudson City. It had been published since 1870, at one place, No. 29 Hoboken avenue,
 20 Jersey City, in that portion of Jersey City formerly known as Hudson City, and my claim was, that the "Jersey City Herald" had the right to publish the minutes of the different boards, and that I, as its editorial proprietor, had the right to demand and receive from the city the compensation provided for the publication of the official minutes of the different municipal boards of Jersey City.

In April, 1875, I, as editor and proprietor of the "Jersey City Herald," commenced an action at law, in
 30 the Supreme Court of the State of New Jersey, against the Mayor and Aldermen of Jersey City, for the compensation for such publication of the minutes from and including June, 1874, to and including March, 1875, being ten months publication of the minutes, at the rate of \$250 per month, the rate fixed by the resolution of the Board of Finance and taxation of July 16, 1874, and making in all the sum of twenty-five hundred dollars. To this action the city pleaded, and a jury being waived, the case came on to be tried before
 40 Justice Knapp, on June 12, 1875. It was tried by him. After hearing the cause Justice Knapp reserved his decision. He decided the case in favor of the city and against me.

I refer to pleadings and testimony in that case for a fuller statement.

Judgment *nisi* was entered against me, and a rule to show cause was granted by Justice Knapp, why the judgment *uisi* should not be set aside.

The cause was submitted to the Supreme Court, on printed briefs of counsel. Thomas N. McCarter, Esq., and Mr. Lippincott submitted briefs for me, and Mr. Wm. A. Lewis, Esq., who was then Corporation Counsel of Jersey City, submitted briefs on the part of the city. 10

I refer to the briefs for a better statement of the views of opposing counsel.

The Supreme Court at the Term decided the cause against me and dismissed the rule to show cause. 20

In 1877, and before the argument was had on this rule to show cause, the Legislature passed an act entitled "An Act relative to the publication of the minutes and proceedings of the several municipal boards of the cities of this State."

Approved March 9, 1877, Laws 1877, pages 297, &c.

See statement also.

This Act of the Legislature is referred to in the brief of Mr. McCarter. 30

I had during this litigation continued the publication of the official minutes of the proceedings of the various boards of Jersey City, in the "Jersey City Herald." The Board of Finance and Taxation taking no action subsequent to that of July 16, 1874, in the matter, my bills were presented regularly every month for the preceding month's publication of the official minutes, and payment of them refused by the Board of Finance and Taxation. 40

In 1877, and after the passage of this last mentioned act, I commenced another suit, in the Supreme Court, against the City of Jersey City, to recover the compensation for publishing the minutes of the different boards of the city, from and including April, 1875, to and including April, 1877, a space of twenty-five months; during which time I had published said minutes at the rate of \$250 per month, or the sum, on the whole, of \$6,250.

In this action the city again pleaded, and it came on

10 for trial before Justice REED, holding the Hudson Circuit. A jury was waived, it being a question of law, wholly; and the construction of this latter act of the Legislature was such that it gave me no relief whatever.

The Court, after hearing the cause and argument of counsel, rendered a decision in favor of the city, the defendant, and judgment was so entered.

This suit ended the litigation in this matter.

20 In 1879 the Legislature passed another act entitled "An Act relative to the publication of the minutes and proceedings of the several municipal boards of the cities of this State," approved February 27, 1879.

Laws 1879, pages 62, &c.

This act was limited, in its application, to cities containing over fifty thousand inhabitants. The statute is fully set forth in the schedule, or statement of laws, resolutions and minutes pertaining to this matter.

30 Under this act I made demand upon the Board of Finance and Taxation of Jersey City, for the payment of my claim, setting out the claim.

The matter was referred to the Corporation Counsel, who advised the Board of Finance and Taxation that the Board has no power to pay the claim, the act being unconstitutional.

Claim and petition of Mr. McDermott and opinion of counsel offered in evidence.

40 During the winter of 1880 the Legislature passed another statute, which is fully set out in the schedule above referred to.

Laws 1880, pages 263, &c.

Under this last act the proceedings before Justice Knapp, and the Referee by him appointed, have been taken.

This is a brief history of the whole matter.

My claim against Jersey City is, for the publication in the "Jersey City Herald," in full, of the official

minutes of the proceedings of the different municipal boards of Jersey City—the boards being, during the period for which I claim, as follows, viz.: the Board of Finance and Taxation, the Board of Public Works of Jersey City, the Board of Aldermen of Jersey City, the Board of Education of Jersey City, the Board of Police Commissioners of Jersey City and the Board of Fire Commissioners of Jersey City—for the time and at the rates as follows:

For the month of June, 1874.....	\$250	20
“ “ July, “	250	
“ “ August, “	250	
“ “ Sept., “	250	
“ “ Oct., “	250	
“ “ Nov., “	250	
“ “ Dec., “	250	
“ “ Jan., 1875.....	250	
“ “ Feb., “	250	
“ “ March, “	250	
“ “ April, “	250	30
“ “ May, “	250	
“ “ June, “	250	
“ “ July “	250	
“ “ August “	250	
“ “ Sept., “	250	
“ “ Oct., “	250	
“ “ Nov., “	250	
“ “ Dec., “	250	
“ “ Jan., 1876.....	250	
“ “ Feb., “	250	40
“ “ March, “	250	
“ “ April, “	250	
“ “ May, “	250	
“ “ June, “	250	
“ “ July, “	250	
“ “ August, “	250	
“ “ Sept., “	250	
“ “ Oct., “	250	
“ “ Nov., “	250	
“ “ Dec., “	250	
“ “ Jan., 1877.....	250	

10	For the month of Feb., 1877.....	\$250
	“ “ March, “	250
	“ “ April, “	250
	Making in all the sum of \$8,750 principal.	

And I also claim that I am entitled to interest on each of the above items from the first day of every month succeeding, and in which the publication was made and bill rendered.

20 On the months of June and July, 1874, I claim interest from August 1, 1874, and on each of the others from the first day of the month succeeding that on which the publication was made and bill rendered, as each claim was presented at the end of each month in which the publication took place.

The price charged by me, and as fixed by the Board of Finance and Taxation, was a reasonable one, that is, the sum of two hundred and fifty dollars per month. It was worth all that sum to publish these minutes during the period named.

30 The legal rates for printing during this period was sixty cents per folio for the first insertion, and thirty cents for the second or subsequent insertion. There was of these minutes but one insertion.

My claim is not based upon the rates per folio, but upon the rates fixed at \$250 per month as aforesaid.

At the rate of sixty cents per folio it would amount to more than I claim.

40 Files of “ Jersey City Herald,” from June 1st, 1874, to May 1st, 1877, offered in evidence and admitted. They show the publication of these minutes in full.

The original claims or bills of McDermott against the city, as presented to the Board of Finance and Taxation, for the publication of these minutes from June 1st, 1874, to May 1st, 1877, offered in evidence and admitted.

AND BEING CROSS-EXAMINED :

Q. Was there any resolutions passed by any of the boards except the resolution of the Board of Finance

and Taxation of May 29th, 1874, which ordered or directed any of the minutes of any of the boards to be published in your paper, in the "Jersey City Herald." 10

Answer. There is no resolution of any of the boards of the city. No resolution that I know of, except this resolution of the Board of Finance and Taxation of May 29, 1874. There are no resolutions of any of the city boards directing any publication of the official minutes of any of the Boards which I know of, except this resolution of May 29, 1874.

A copy of resolution of May 29, 1874, was sent to each of the city boards and the same with other resolutions of said Board of Finance and Taxation. 20

There was no publication in the month of June, 1874, of the minutes of that month, and I did not publish them till after July 16, 1874.

There was no publication in the month of July, 1874, of the minutes of that month, until after July 16, 1874,

After July 16, 1874, I commenced to publish the back minutes from June 1, 1874. 30

There was no notice published of the intentions to apply to the Legislature for the passage of the Act of March 12, 1880, or of the subject matter of that act, nor of any of the former acts relating to the matter.

I know of another case in addition to my own, in this State, to which the Act of March 12, 1880, applies, as I am informed; that is the case of the Hudson County "Democrat" against the City of Hoboken; that paper has a claim against the City of Hoboken for \$1,800 or \$1,900, so I am informed. 40

I know of no other case of my own knowledge. I have heard that there was a case in Elizabeth or Trenton, but I know nothing about it.

HUGH F. McDERMOTT.

Sworn and subscribed before me this April 15th, 1881. }

THEO. RYERSON,
Referee.

10 Whereupon the further taking of testimony was adjourned by me to May 26th, 1881, at 9 o'clock in the morning, at the office of Leon Abbett, 250 Washington street, Jersey City, with the consent and at the request of the counsel of the respective parties.

THEO. RYERSON,
Referee.

Dated April 15th, 1881.

20

At which time and place, to wiz, on May 26th 1881, at 9 o'clock in the forenoon, at Mr. Abbett's office, No. 250 Washington street, Jersey City, the further taking of testimony in said matter was resumed before me in the presence of Mr. Lippincott and Mr. Abbott, counsel of the parties aforesaid.

30 And, thereupon, counsel of petition offers in evidence as follows, to wit :

1. Communication from Pangborn Dunning and Dean, John H. Lyon and Hugh F. McDermott, to the Board of Finance and Taxation of Jersey City, dated June 4, 1873, as on file with the Clerk of the Board of Finance and Taxation. This was admitted, and copy to be furnished to Referee.

40 2. Communication of J. H. Lippincott, counsel of Hugh F. McDermott, to Board of Finance and Taxation, Aug. 6th, 1874, on file as aforesaid. Copy to be furnished Referee.

3. Petition of Hugh F. McDermott, Oct. 5, 1879, to Board of Finance and Taxation on file. Copy to be furnished as aforesaid.

4. Opinion of W. A. Lewis, Corporation Counsel to Board of Finance and Taxation, July 8, 1874, on file, Copy to be furnished.

5. Certificate of Treasurer of Jersey City, as to the amount compensation paid to the "Evening Journal," "Standard," and "Argus," during years 1874 to 1877, inclusive; inclusive is offered in evidence to be taken as proof of the amount paid to those papers for publication of the minutes of the various boards of Jersey City for those years. 10

This compensation is admitted to be at the rate of \$250 per month for each newspaper.

The above were all admitted in evidence by counsel of respondents. 20

The petitioner thereupon rested his case.

ALBERT HOFFMAN was called by counsel of respondents, and being duly sworn according to law, says:

I am the editor of the Hudson County "Democrat," and I am familiar with an Act of March 12, 1880. The Hudson County "Democrat" has one or two claims against the City of Hoboken. None of them, as I understand, come under the Act of March 12, 1880. 30

We did have a claim in 1876 that would have come under this act if the act had been in existence at that time, but it was settled before the passage of the act, in 1876 or 1877. I think this is the way Mr. McDermott got the impression that we still had a claim under this act. We have other claims against the City of Hoboken, but none of them, as I understand, come under this act. 40

Our paper has never made any claim under this act whatever.

Being cross-examined, says:

I have conversed with Mr. McDermott, but not recently, about these claims.

The claims which we now have are for publication of the minutes of the Board of Councilmen of the City

10 of Hoboken, and at the time of the publication of these minutes, we claim that the Hudson County "Democrat" was an official paper of the City of Hoboken. The city disputed this, and that is just where the difficulty comes in. We claim that we have always been an official newspaper of the city. The city appointed another paper, and the question is now pending in the Courts. Again, I undersand if the question now pending be decided in favor of the Hudson County "Democrat," we then will have a claim that would have to be settled under this act, because then the revocation of the designation of the Hudson County "Democrat" as the official newspaper by the Council of the City of Hoboken would be illegal and the previous designation would stand.

20

In Hoboken, by the Law of 1872, the Board of Councilmen have no discretion as to the publication of the minutes. They must publish in two newspapers, and only have the discretion as to publishing in a third paper in the German language.

30 There is no discretion in the board as to the publication in two newspapers. It is compulsory if it be possible for the council to comply with the act.

In one of our claims against Hoboken for the publication of these minutes the City of Hoboken insisted that the publication had not been ordered to be published in the "Democrat." This insistent is made by Hoboken in the suit now pending.

The Hudson County "Democrat" was last appointed an official newspaper of Hoboken in the year 1877.

40 The Council have appointed since that date another paper, the Hoboken "Advertiser," as the official newspaper of the City of Hoboken. The Council made the payments to the Hoboken "Advertiser" upon this appointment. We sued out a *certiorari* and carried the resolutions making the appointment into the Supreme Court, and that suit is now pending.

ALBERT HOFFMAN.

Sworn and subscribed }
before me this May }
26th, 1881. }

THEO. RYERSON,
Referee.

Whereupon the taking of testimony was closed on both sides, and the further hearing of said matter was adjourned by me, at the request and with the consent of the counsel of the said parties, to the 20th day of June, 1881, at 9 o'clock A. M., at Mr. Abbett's office, No. 250 Washington street, Jersey City. 10

THEO. RYERSON,
Referee.

20

MONDAY MORNING, June 20, 1881,
At Leon Abbett's Office,
No. 250 Washington street, Jersey City,
At 9 o'clock, A. M. }

In the presence of the said counsel, to wit :

MR. LIPPINCOTT, in behalf of Mr. McDermott, the petitioner ; and HON. LEON ABBETT, in behalf of the City of Jersey City. 30

The testimony being closed counsel proceeded to sum up.

Mr. Lippincott opened for petitioner and claimed that Referee should report what amount petitioner would be entitled to if he had been duly ordered to publish, &c., and that his compensation should not be less than \$250 per month.

Claims for and including month of June, 1874, to and including month of April, 1877, and interest on each month from 1st day of preceding month. 40

Mr. Abbett, for Jersey City, claims :

1. That petitioner is not entitled to interest even if entitled to receive for the publication.
2. Act of March 12, 1880, is unconstitutional.
1. Was not published, that is, notice of intention to introduce, &c.

10 2. Title to act does not express the object of the act.

3. Act relates to cities and is not general, but special in its application.

3. That the petitioner has not brought himself within the provisions of March 12, 1880.

20 The proper construction of the act is, that this paper was never appointed an official newspaper only for a particular purpose.

4. The act relates to the future and not to the past, and cannot apply to the past, only to what has occurred since the passage of the act. It is not retro-active.

30 5. There is no compensation to which petitioner would be entitled; compensation would have to be fixed by the board making the appointment.

6. Act does not apply to any case where the Legislature has fixed an official paper.

THEODORE RYERSON,
Referee.

Statement or schedule of laws, resolutions and communications in the above cause and as referred to in the testimony of Mr. McDermott and produced and offered in evidence before the Referee.

40 Communication of Pangborn, Dunning & Dear, John H. Lyon and Hugh F. McDermott.

Extract from Minutes :

AT A REGULAR MEETING OF SAID BOARD, JUNE 4, 1874.

Communications were received from Pangborn, Dunning & Dear, John H. Lyon and Hugh McDermott

refusing to print official matter relating to the City Government at the rates now established, and giving their reasons for said refusal. 10

Communication of J. H. Lippincott, attorney of H. F. McDermott. Original communication mislaid in office of the Clerk of the Board of Finance and Taxation.

See substance below in proceedings of board of Aug. 6, 1874.

CORPORATION COUNSEL'S OFFICE, }
JERSEY CITY, July 1, 1874. }

20

TO THE HONORABLE THE BOARD OF FINANCE AND TAXATION :

GENTLEMEN—In compliance with the action of your board of June 25, last, copy of which I have received from the clerk of the board, as follows, to wit.: “Moved that the Corporation Counsel be requested to furnish this board with a *written* opinion as to the legality of the claim of the official newspapers for compensation for advertising expiration of time for redemption of lands sold for taxes.” 30

I respectfully submit opinion thereon as follows :

In determining the legality of these claims it will be appropriate to consider *these* questions :

1. Were the papers claiming compensation the official newspapers of Jersey City? 40

2. Did the charter of Jersey City provide for publication in the official newspapers notices of expiration of time of redemption, &c., for which compensation is claimed?

3. Was such publication duly authorized and ordered?

4. Have the official newspapers made the publica-

10 tion and done the advertising provided for and ordered?

5. Was there a standard or rate of compensation and, if so, what *rate* of compensation was there?

As to the first question submitted for consideration, it is admitted, and properly so, that the papers for which compensation aforesaid is claimed *were* the *official newspapers* during the time the proprietors of them respectively claim to have done the advertising in
20 question.

As to the second question in order, section 152, page 83, of the city charter, provides in the language: "*That it shall be the duty of the Board of Finance and Taxation to give notice of the expiration of the time limited for the redemption of all lands sold for assessments or taxes, by virtue of this act, by advertisement as (therein) aforesaid once a week for sixty days next preceding the expiration of the time limited for redemption, specifying the property unredeemed and the amount due thereon.*"
30 By this express provision of the charter, whatever the wisdom of it may have been, the Board of Finance was directed to give the notice therein required.

Next in the order of the questions considered, *did* the Board of Finance and Taxation give such notice or authorize its publication?

By referring to the proceedings of the board at a meeting held December 29, 1873 (see minutes of 1873-4, page 76), I find this record, to wit: "On communication from the City Clerk, concerning publication of redemption list of March 13, 1872, recommending the
40 adoption of the following resolution:

Resolved, That the City Clerk is hereby directed to publish in the corporation papers, commencing January 13, 1884, a list of property sold by the Corporation of Jersey City, March 13, 1872, for unpaid taxes, water rents and sewerage taxes, and to *continue said publication* for the length of time required by law.

The said resolution, on the call of the yeas and nays, 10
was unanimously adopted and, as I am informed, was
duly approved by the Mayor.

Thereupon, the City Clerk sent the notice thus pro-
vided for and authorized to the official newspapers for
publication, as contemplated by the charter, embracing
in such notice, as required by charter, *a specification of*
the property unredeemed and the amount due thereon.
The notice bears date *January 13, 1874*, and *on the face*
of it appears "By order of the Board of Finance and
Taxation." The limitation of time of redemption, as 20
stated in the notice, was March 13, 1874.

It appears then that the papers claiming compensa-
tion *were* the official newspapers.

That the charter authorized publication of such
notice.

That the Board of Finance and Taxation ordered
the publication.

That this action of the board was approved by the
Mayor, and that the City Clerk prepared such notice 30
and sent it to the official newspapers for publication.

This brings me to the consideration of the 4th ques-
tion, have the official papers made the publication
ordered and as required?

By the claims as sworn to it appears publication
of the notice was made in each paper, *nine times*.

By additional affidavits it appears that said notice
was published *for sixty days once a week*.

The claims, as prepared, being for *nine* publications,
which were in excess of the requirements of the char- 40
ter the last Board of Finance and Taxation, in acting on
the claims deducted from each claim the compensation
for one extra insertion, amount \$586.40 making on the
four claims a total reduction of \$2,345.60 and ordered
the balance of the claims paid.

Whether such publication was made as is claimed, is
purely a question of *fact*; and if the affidavits accom-
panying the claims and those subsequently submitted
are not satisfactory evidence of the correctness of the
statements they contain it is proper your board, (or its
appropriate committee), should satisfy itself as to the

10 facts of publication. Judging by the affidavit in question, and assuming the *facts sworn* to as correct, it appears from the foregoing that the city is *liable* and *legally bound* to pay for the advertising thus ordered and done.

The fifth inquiry to be considered is the *rate* of compensation for that publication. This is determined neither by the costs and expense to the proprietors of the papers, whether much or little, nor by the resulting benefit to the city whether great or small. The rate of
 20 compensation as I understand it, was *fixed* by the proper city authority, and for legal advertising or for such matters as were by the charter *required* to be published, the rate as then fixed when such publication was made was sixty (60) cents per folio for the first insertion, and forty (40) cents per folio for subsequent insertions. These rates will appear by reference to the proceedings of the Finance Board, May 26, 1871, on page 22 of the printed minutes of that year and which rates so far as I can discover from the minutes, have not
 30 been altered until altered by the present board.

Such *alteration subsequent* to the advertising said notice, could not affect the compensation to which the official papers were entitled at the time of *making* the publication.

A question not applicable to three of the official papers has been raised respecting the "Wacht am Hudson" a newspaper in the German language, being one of the official newspapers, and that is whether the publication in *this* paper of such notice was in all respects in accordance with the requirements of the
 40 charter. The charter does not expressly state that the *publication* to be made in this paper shall be in the German language, but the fair and reasonable *inference* is that it shall be in the German language. I think it safer to advise the board that the charter requirement in this respect reasonably considered is that the publication shall be in the German language. If there is error in this conclusion and it should work injury to the claimant, the question can be tested and the right settled by an action, but if the city should pay through

misapprehension of its liability, there would be embarrassment in recovering it back if perchance it could recover at all. 10

In reference to this question, I find that the best German print and the leading German newspaper in the United States, published in N. Y., is in the Roman or Latin letter which letter corresponds to the letter used in the *English* print. There is no difference in figures nor necessarily any difference in the names of persons and many other proper names or nouns and upon inquiry I learn that by the modern German standards a very large part of this notice as published in the "Wacht am Hudson" will pass for good German print. In my opinion the proprietor of the German paper is entitled to be paid by the city for so much of that publication and for so many folios thereof as come fairly within the requirements of the charter as above considered. It may be that the claimant can satisfy the board by such evidence as he may produce, that nearly, if not quite *all* of the publication of that notice is sufficiently German within the limit of modern standards, especially as it consists largely in names and figures, *the notice proper being* in the old German type. 20 30

In my opinion the city is liable to the official papers for services in publishing the notices in question, and that it is competent and proper for this board to order payment. The board should first consider and determine what deductions, if any, are proper to be made in the respective claims, according to the facts as they may appear and upon the principle suggested. 40

Respectfully submitted,

WILLIAM A. LEWIS,
Corporation Counsel.

June 3, 1870. Resolution of the Board of Aldermen, passed May 31, 1870. Approved June 3, 1870.

Resolution Book of Board of Aldermen,
page 48, &c.

"Resolved, that the "Jersey City Herald" be and

10 " it is hereby appointed one of the official papers of
 " the city of Jersey City."

March 31, 1871. An Act to reorganize the Local Government of Jersey City. Section 20, page 17, of charter.

And be it enacted, that the official newspapers of said city shall be designated by the Board of Finance and Taxation from time to time and shall be three papers therein, which for three months next preceding the designation, have had the largest daily average
 20 *bona fide* circulation. Provided, that said three papers shall not belong to the same political party, and provided further, that a newspaper published therein in the German language may also be designated by said board as an official newspaper, and all matters required by this act to be published in one or more newspaper shall be published in the official newspapers of the city, and none others, except where by this act expressly directed. The compensation of said newspapers shall be fixed by the said Board of Finance
 30 and Taxation.

March 31, 1871. An Act to reorganize the Local Government of Jersey City. Section 158, page 84 of charter.

And be it enacted, that the proceedings of the several boards provided for in this act, shall be public, and their minutes may in the discretion of each of said boards be published in the official newspapers of the City, and each Board, except the Board of Aldermen, shall annually, in the month of January,
 40 present to the Board of Aldermen a general statement of its proceedings.

April 10, 1871. Minutes of the Board of Finance and Taxation.

" The following named papers were designated as official newspapers for the publication of all minutes, notices and ordinances as required by the charter, viz., "The Evening Journal." "Standard" and "Times," and also that the Corporation Attorney be changed to City Attorney."

May 2, 1871. Resolution of Board of Aldermen. 10
Minutes of 1871-2, page 8.

Resolved, that the annual message of his Honor the Mayor be published in "The Daily Times," "The Evening Journal," "American Standard" and "Hudson County Volksblatt."

May 9, 1871. Resolution of Board of Aldermen. Minutes, page 15.

Resolved, that the action had on the 2d inst., in ordering publication of annual message of Mayor in "Hudson County Volksblatt" be rescinded, for the reason *that the publication of all papers is confined by the charter to the newspapers selected by the Board of Finance and Taxation*, and that said Board be requested to order publication of said message in said excepted paper. 20

April 4, 1872. Supplement to an act to reorganize the local government of Jersey City. Section 1, page 99 of charter.

Be it enacted by the Senate and General Assembly of the State of New Jersey, that section twenty (20) of the act to which this is a supplement, be and the same is hereby amended by striking out the word "three" (3), where the same occurs in said section, and inserting in lieu thereof the word "two" (2). 30

February 24, 1873. Supplement to an act to reorganize the local government of Jersey City. Preamble and section 1, page 102 of charter.

Whereas the act of the above title purporting to be approved April 4, 1872, never passed the House of Assembly of this State, but the signatures of the Speaker of the said House and the Governor were procured to such act by practice, and the operation of said act was to force the Board of Finance of said city to discontinue the "Jersey City Times," a newspaper before then, and then and thence hitherto, published in said city, as one of the official papers of said city, to the injury of James A. MacLaughlin, the proprietor thereof. 40

And whereas, the said MacLaughlin still esteeming it his right to publish in said newspaper all matters

10 which were proper to be published in the official newspapers of said city, has, notwithstanding said act, published in his said newspaper said matters, and is justly entitled to compensation therefor ; therefore

Be it enacted by, etc., That the said act so purporting to be approved April 4, 1872, be, and the same is hereby repealed; and that the several boards of said city and all the officers thereof shall act upon the claim of said MacLaughlin for said services, in the same manner as if said act had never been passed, or any
20 action taken by such boards or officers under the same.

March 24, 1873. Supplement to an act entitled an act to re-organize the local government of Jersey City, Sec. 62, page 128, of charter.

And be it enacted, That section twenty of the act to which this is a supplement is hereby repealed and that the following is hereby substituted in the place and stead thereof ; that the official newspapers of said city shall be designated by the Board of Finance and Taxation from time to time, and shall be three papers published therein which for three months next preceding
30 the designation have had the largest daily average *bona fide* circulation provided that the said three papers shall not belong to the same political party ; and provided further, that a weekly newspaper published therein for at least two years, each week successively may also be designated by said board as an official newspaper ; and also one newspaper in the German language, and all matters required by this act to be published in one or more newspapers, shall be published
40 in the official newspapers of the city, and none others, except where by this act expressly directed, the compensation shall be fixed by said Board of Finance and Taxation.

3
June 5, 1873. The following resolution was offered at a meeting of the Board of Finance and Taxation, held June 5, 1873, and laid over :

“ Resolved, That the following papers are hereby designated as the official newspapers of the city as provided for in the supplement to the city charter, passed March 31, 1873, “The Evening Journal,” “American

Standard," "Jersey City Times," "The Jersey City Herald," "Wacht am Hudson," and that the compensation for publishing the minutes of the different boards of the city government be fixed at two hundred and fifty dollars per month to each of said newspapers. 10

June 12, 1873. Resolution was adopted at meeting June 12, 1873, and approved 1873.

March 27, 1874. An Act entitled "An Act to re-organize the local government of Jersey City," Section 4:

And be it enacted, that hereafter the official papers in Jersey City shall be designated by the Board of Finance and Taxation from time to time, and said official papers shall not be more than four in number and shall be the two daily newspapers published and circulated in said city (provided that said two daily newspapers shall not belong to the same political party), which shall have had for the period of six months prior to their designation as official papers, the largest *bona fide* average daily circulation in said city; the third shall be a weekly newspaper published in that part of Jersey City formerly known as Hudson City, at least two years prior to and immediately preceding its designation as an official paper; and one weekly newspaper published in said city and printed in the German language, and which shall have been in existence and so published for at least the period of one year prior to its designation as an official paper. Provided, that the newspapers heretofore designated and now being the official papers of said city, shall continue under such designation to be the official papers of said city until a new designation is made under the provisions of this section of this act. 20 30 40

May 29, 1874. Resolution of Board of Finance and Taxation:

Resolved, That the "American Standard," "The Evening Journal," "The Jersey City Herald" and the "Wacht am Hudson," be and they are hereby designated as the official newspapers of the city for the publication of all legal notices required by the city charter, the compensation to be at the following rates, viz, fifty cents per

- 10 folio for the first insertion, and thirty cents per folio for each subsequent insertion.

Resolved, That the "American Standard" and the "Evening Journal" be, and they are hereby designated to publish the official minutes of the various boards of the city departments, the compensation to be one hundred and fifty dollars per month for each paper. (See minutes, page 30.)

- 20 June 3, 1874. Minutes of Board of Fire Commissioners, page 25. Communication from John H. Lyon, of the "Standard," that the rates were too low; declining to publish.

Resolution from Board of Finance and Taxation designating "American Standard" and "American Standard" to publish official minutes, and that "Journal," "Standard," "Jersey City Herald" and "Wacht am Hudson" were official papers in which to put legal notices required by the charter. Received and ordered filed.

- 30 June 4, 1874. Minutes of Board of Finance and Taxation—page 31. Communications were received from Pangborn, Dunning & Dear, John H. Lyon and Hugh F. McDermott, refusing to print official matter relating to the city government at the rate now established and giving their reasons for said refusal.

June 8, 1874. Minutes of Board of Education—page 11.

Resolution of Board of Finance and Taxation, passed May 29, entered on minutes of this board.

- 40 June 10, 1874. Minutes of Board of Fire Commissioners—page 23. Communication "Evening Journal" declines on account of low rates; received and filed.

Resolutions referring to counsel, the question whether or not the board can have proceedings published.

Opinion (not entered in minutes). Board have not power. Finance cannot compel papers to publish except for a reasonable compensation.

Compensation cannot be arbitrarily fixed; as to publication of proceedings of board they can fix this as they deem proper. City charter, page 84, sec. 158.

July 2, 1874. Minutes of the Board of Finance and Taxation—page 47. Resolution, page 47. 10

Resolved, That whereas the official newspapers of Jersey City have declined and refused to publish legal notices and matters required by the charter of Jersey City to be published in such papers at the compensation per folio fixed by this board by resolution of May 29, 1874, and

Whereas, by the provisions of the city charter this board cannot lawfully designate any other official papers than those already designated, and whereas the city charter requires legal advertising be done in these official papers and none others; and it being found impracticable, if not impossible, to compel publication at the compensation as last fixed by this board, therefore, in consideration of the premises aforesaid, this board feels constrained to restore the former rates for legal advertising required by the charter, and in conformity therewith does hereby fix the compensation of the official newspapers of Jersey City, for the publication, when duly ordered, of such notices and matters as are expressly required by the city charter to be published in the official newspapers, at the rates following, to wit, sixty cents per folio for the first insertion and forty cents per folio for each subsequent insertion. 20 30

July 8, '74. Opinion of counsel referred to in minutes of this date, page 28.

July 16, 1874. Minutes of Board of Finance and Taxation, page 51.

Resolution—Whereas, it appears by communications addressed to this board by journals designated to publish the official proceedings of the various boards of the city government, that such publication cannot be done at the price named, in the resolution passed by this board May 29, 1874, without loss to the proprietors of said journals. 40

Resolved, That the price to be paid hereafter for publishing the official proceedings of the various boards of the city Government in the Journals designated in the resolution passed May 29, 1874, be fixed at the sum of \$250 per month each, and that so much

10 of said resolution passed May 29, 1874, as conflicts herewith is hereby rescinded.

(Copy of above sent to "Journal" and "Standard.")

July 17, 1874. Above resolution approved by Mayor.

August 6, 1874. Minutes of Board of Finance and Taxation, page 56. Communication from Hugh F. McDermott, through his counsel, reminding the board that it had designated the "Jersey City Herald" as one of the official papers, and that it was entitled to publish the official minutes, and that the board could use no such discretion in restricting publication of minutes by restricting compensation, &c., and asking board to rescind its action.

20

Referred to Committee on Printing and Stationery.
Report of Committee :

" 1. The charter does not require the publication of the minutes of the several boards of the city Government but leaves the publication thereof discretionary.

30

" 2. In the exercise of such discretion it is competent and alike discretionary to limit such publication.

" 3. The publication of the minutes not being required by charter cannot affect the legality or validity of such matters as are advertised by express agreement.

40

" 4. Under charter provisions newspapers become official papers by designation of the Board of Finance and taxation, and not by what is advertised or required to be advertised or published in them, and when once designated as official papers no amount or restriction of the advertisements therein can make less official or semi-official.

5. The compensation of officials the charter author-

izes this board to fix, and in the exercise of that reserved right and authority this board has refused to allow any compensation to the two weekly newspapers for publishing the minutes by restricting such publication to the two daily papers, thereby disallowing compensation to the two weekly papers for such matters as said weekly papers were neither required, requested or directed to publish. 10

6. Because the action of the board heretofore in fixing compensation for the two dailies, for publication of the minutes and restricting such publication for which compensation would be paid to the two dailies, was with a view of saving considerable expense to the city by avoiding an unnecessary publication, at the same time providing for a publication which was and is deemed suitable for the reference, information and convenience of the several boards and departments of the city government, and quite adequate to satisfy and fulfill all reasonable requirements of a *tax*-paying public. Therefore, your committee report adverse to the petition and recommend the clerk of the board be instructed to send to the "Jersey City Herald," and also to "The Wacht am Hudson," each, a copy of this report, with the action of the board thereon, and to notify the proprietors of each of said weekly newspapers, that no compensation has been fixed or will be allowed them for the publication of the minutes and proceedings of the boards since such publication was restricted to the two daily papers, and that any claim the said two weekly papers may make therefor will be registered as illegal and unjust, and for which the Mayor and Aldermen of Jersey City "are not liable. 20 30 40

Signed by the committee,

"G. D. VAN REIPEN,
"R. C. BACOT,
"Committee."

- 10 Sept. 10, 1874. Minutes of Board of Finance and Taxation, page 66.

Claim. Hugh F. McDermott, printing minutes for July, 1874, \$250, and for August, 1874, \$250. See Presentation of Claims, page 66.

Report. The Committee on Printing and Stationery reported adverse to paying the claims of the "Jersey City Herald" for printing the official minutes. On motion, the report was received and adopted.

- 20 Sept. 17, 1874. Minutes of Board of Finance and Taxation, page 69: "The same committee reports adverse in the claim of Hugh F. McDermott for publishing official minutes. On motion, report was received and adopted."

April 2, 1875. Suit brought by McDermott in Supreme Court for \$2,500, for printing minutes and official proceedings, &c., from June, 1874, to March, 1875, inclusive, at \$250 per month.

- 30 Set down June 12, Hudson Circuit. Tried before M. M. Knapp, Justice. Jury waived.

Sept. 7, 1875. Decision in favor of city.

Feby. 10, 1876. Rule to show cause why judgment "*nisi*" in the action should not be set aside.

March 8, 1877. An Act for the government of cities. Pam. Laws 254, Sec. 1.

- 40 Be it enacted by the Senate and General Assembly of the State of New Jersey, that whenever the Board of Aldermen, Council or Common Council of any city, is required by the provisions of its charter to designate one or more newspapers to publish the proceedings of such Board of Aldermen, Council, or Common Council and to publish the proceedings of any of the other boards in said city in a newspaper or newspapers printed and published in said city, and authorized to publish the laws of the State, at the date of the passage of such city charter, or any supplement thereto, that

in every such case such city may hereafter publish the proceedings in a newspaper or newspapers published and printed in said city for over two years. 10

March 9, 1877. An Act relative to the publication of the minutes and proceedings of the several municipal boards of the cities of this State.

Be it enacted by the Senate and General Assembly of the State of New Jersey, that in any city in this State, the municipal boards whereof are authorized by special act of the Legislature to publish the minutes and proceedings of said board or boards, the proprietor or proprietors of the official newspaper or newspapers so designated by said board or boards, which said official newspaper or newspapers have heretofore published said minutes in full, and not an abstract or synopsis thereof, shall be entitled to receive and recover from said city or cities, payment therefor, according to the rates fixed by said municipal board or boards. 20

Under these acts suit was brought a second time, in the year 1877, for compensation for printing the minutes from April 1, 1875, to and including April, 1877, amounting in all to the sum of \$6,250. 30

This cause was tried before Justice Reed, at the Hudson Circuit, on the pleadings therein, and judgment rendered by the said Justice in favor of the defendant, the city; and the judgment entered accordingly in the Supreme Court.

Feb. 27, 1879. An Act relative to the publication of the minutes and proceedings of the several municipal boards of the cities of this State, Sec. 1, page 62, Laws of '79. 40

Be it enacted by, &c., that in any city in this State the minutes and proceedings of the municipal boards of which were authorized by act of the Legislature to be published, and the official newspapers for such publication were to be designated by one or more of said boards, if the said board or boards, or any or either of them so having the right to designate as aforesaid shall have designated a newspaper or newspapers as

- 10 official to publish all legal notices required by the city charter and the newspaper or newspapers so designated shall have published the official minutes or proceedings of said board or boards, although not designated as official for that special purpose, said newspaper or newspapers having been designated as official to publish the minutes and official proceedings previously to the designation to publish said legal notices, and having published said previous minutes and official proceedings, and received compensation for such
- 20 publication, it shall be lawful for the proprietor or proprietors of said official newspaper or newspapers to receive and recover from the city the board or boards of which shall have made the designation to publish all legal notices as aforesaid, compensation for the publication of said official minutes and proceedings subsequent to said designation according to the rates fixed by said board or boards for such publication or paid by them to such newspaper or newspapers as were especially designated for that purpose.
- 30 [Act to apply only to cities having over fifty thousand inhabitants at last State census.]

October 28. '79. Opinion of Leon Abbett, Corporation Counsel, to Board of Finance and Taxation, on McDermott's claim. (See Opinion, Book 4, page 7, C. C. office.)

40

JERSEY CITY, Oct. 28, 1879.

To the Hon. the Board of Finance and Taxation of Jersey City :

GENTLEMEN—The petition of Hugh F. McDermott, for the payment of \$8,750 for publishing the minutes of the different city boards from May 29, 1874, to May 1, 1877, being at the rate of \$250 per month, has been presented to me for my opinion, I have also had submitted to me by Job H. Lippincott, Esq., attorney for Mr. McDermott, a very able and elaborate

brief, reviewing the proceedings and stating the views of claimant and of counsel as to the legal status of this matter. 10

I have carefully considered the petition and the the views of counsel, and the act under which the claim is made. The act is entitled "An Act relative to the publication of the minutes and proceedings of the several municipal boards of the cities of this State," approved February 27, 1879.

Independent of any other objection which might be raised to this act, it seems to me that the proviso that "this act shall not apply except in cities of this State having over fifty thousand inhabitants at the last State census," is fatal to it, and that this proviso, together with the body of the act, is unconstitutional as a specification, and not a classification under the decision of the Supreme Court, rendered by Justice Scudder, in reference to the law attempting to create a board of excise in Jersey City. 20

Respectfully submitted.

LEON ABBETT, 30
C. C.

March 12, 1880. Supplement to the act entitled "An Act relative to the publication of the minutes and proceedings of the several municipal boards of the cities of this State." Approved February twenty-seventh, one thousand eight hundred and seventy-four. 40

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, that the first section of the act entitled "An Act relative to the publication of the minutes and proceedings of the several municipal boards of the cities of this State, which reads as follows, to wit:

"1. Be it enacted by the Senate and General Assembly of the State of New Jersey, that in any city in this State the minutes and proceedings of the municipal

- 10 boards of which were authorized by act of the Legislature to be published and the official newspapers for such publication were designated by one or more of said boards, if the said board or boards, or any or either of them so having the right to designate as aforesaid shall have designated a newspaper or newspapers as official to publish all legal notices required by the city charter, and the newspaper or newspapers so designated shall have published the official minutes or proceedings of said boards, although not designated
- 20 as official newspapers for that especial purpose, said newspaper or newspapers having been designated as official to publish the minutes and proceedings previously to the designation to publish said legal notices and having published said previous minutes and official proceedings and received compensation for publication, it shall be lawful for the proprietor or proprietors of said official newspaper or newspapers to receive and recover from the city, the board or boards of which shall have made the designation to publish all legal
- 30 notices as aforesaid, compensation for the publication of said official minutes and proceedings subsequent to said designation, according to the rates fixed by said board or boards for such publication, or paid by them to such newspaper or newspapers as were especially designated for that purpose, provided that the provisions of this act shall not apply except in cities of this State having over fifty thousand inhabitants at the last State census," be amended so as to read as follows :

- 40 1. Be it enacted by the Senate and General Assembly of the State of New Jersey, that in case any newspaper appointed as an official newspaper of any city of this State shall have published the official minutes of the proceedings of the municipal boards of said city, and such publication was not duly ordered in the manner prescribed by law, then the Justice of the Supreme Court holding the Circuit Court in the County where such newspaper is published shall, upon application made to him for that purpose, appoint a Referee, who shall ascertain and report to said Judge what amount

of compensation the publisher of said official newspaper would have been entitled to receive if the publication of said minutes had been duly ordered according to law, and the amount so reported shall thereupon be paid by the proper municipal authorities of said city.

Approved March 12, 1880.

THEO. RYERSON,
Referee.

Upon this evidence Referee made his report dated July 7, 1881.

(See copy of report annexed to declaration.)

The counsel for plaintiff offers in evidence supplement to the statute of March 12, 1880, approved March 23, 1883 (Laws 1883, page 238).

It is admitted by counsel of the respective parties; that after the report of the Referee was made a copy of it was served on the Board of Finance and Taxation, and formal demand was made for the payment of the amount to the plaintiff.

Also that demand of payment has been made on that board since the passage of the Act of March 23, 1883, and before the commencement of this suit.

10

20

30

40

10 The following agreement was offered by counsel for the plaintiff and admitted by the defendant :

NEW JERSEY SUPREME COURT.

HUGH F. McDERMOTT vs. THE MAYOR AND ALDERMEN OF JER- SEY CITY.	}	In Debt. Agreement.
---	---	------------------------

20

It is hereby agreed between the parties in the above-entitled cause as follows :

1. That the report or award made July 7, 1881, by, and the testimony taken before Theodore Ryerson, the Referee named in the order of Justice Knapp, dated December 4, 1880, shall be admitted in evidence in this cause.

30

2. That the publication of the minutes and proceedings of the several municipal boards of Jersey City stated in the said plaintiff's declaration, and in the petition therein referred to, and as found by said Referee in his award or report made herein dated July 7th, 1881, was made and published by the plaintiff in this cause, and that the price charged by him of two hundred and fifty dollars per month was a reasonable price.

40

3. That the report or award made by said Theodore Ryerson, Referee, appointed by order of Justice Knapp, dated December 4, 1880, by virtue of the statute of 1880 (Laws of 1880, pages 263 and 264), as recited in the plaintiff's said declaration herein, which report or award is dated July 7th, 1881 (and in evidence in this cause), shall be considered and taken by this Court, and in all other courts and places, and shall have the same legal value and effect as if the petition of the plaintiff to

said Justice, the order of said Justice appointing said Referee, and the proceedings thereunder, and the report or award of the Referee, had been had, taken and made subsequent to the passage and approval of an act entitled "A further supplement to an act entitled 'An Act relative to the publication of the minutes and proceedings of the several municipal boards of the cities of this State, approved February twenty-seventh, one thousand eight hundred and seventy-nine,'" approved March 23d, 1883, Laws of 1883, page 238. 20

4. That said report or award of said Referee was presented to the Board of Finance and Taxation of Jersey City, and payment of the amount therein, ascertained and found (\$8,750), with interest, demanded of said Board of Finance and Taxation subsequent to March 23, 1883, and before the commencement of this suit.

5. That the petition under the statute of March 12th, 1880, to Manning M. Knapp, Esq., Justice, &c., notices, orders, proceedings, testimony, and notes of testimony before the said Referee, the report or award of the Referee, and the certification of said Justice endorsed upon said report, be offered and admitted in evidence in this cause both as evidence generally and as the truth of the statements therein made and contents thereof, and of the truth of the matters, facts therein stated and contained. 30

Dated August 2, 1883. 40

J. H. LIPPINCOTT,

Attorney of Plaintiff.

E. T. PAXTON,

Attorney of Defendants.

10 Certificate of Justice KNAPP, endorsed on the report of Referee, is as follows :

“ I hereby certify that the within report has been
 “ this day presented to me according to the statute in
 “ such case made and provided, and I do order that
 “ the same, together with the petition, orders and pro-
 “ ceedings relating to said matter and report, be filed.
 “ Dated September 10, 1881.

20 “ M. M. KNAPP,
 “ Justice of the Supreme Court holding the
 “ Circuit Court in and for the County of
 “ Hudson.”

Testimony closed on both sides.

Cause tried December 6, 1884.

30 The following is the opinion of Justice KNAPP in the cause :

HUDSON CIRCUIT COURT.

40

HUGH F. McDERMOTT AGAINST THE MAYOR, &C., OF JERSEY CITY.	}
---	---

Memorandum of Decision announced July 26th, 1884.

On a former trial of this same matter in another cause, founded upon the provisions of the Act of 1880, I held, in construing that act, that it was not retroactive in its operation, and, therefore, could not support the plaintiff's claim, and ordered judgment to be

entered for the defendant. Since then, and before the commencement of this suit, on March 23d, 1883 (pam. 1, 238), an act was passed by the Legislature entitled, "A Supplement to An Act relative to the Publication of the Minutes and Proceedings of the several Municipal Boards of the Cities of this State, approved February twenty-seventh, one thousand eight hundred and seventy-nine," by which it was enacted "that the provisions of the act, to which this is a supplement, shall be held to apply only to the publications made prior to the approval of such act." It purports to be a statute of construction, and plaintiff's counsel regards it as construing the Act of 1880. Respect is paid by Courts to the interpretations given by the Legislature to statutory law; they are not binding on Courts, but are entitled to their respect in determining the construction of statutes. But the exercise of that power is delegated to Courts, and is peculiarly within the province of the judicial department, and does not belong to the Legislature.

Where the provisions of an act are plain and admit of no doubt, subsequent legislation on the same subject which gives to such enactment a different interpretation from that which its terms plainly imports, is simply new legislation, and is only thereafter binding upon the community in which it has force. The cause here has proceeded, on this branch of it, upon the idea that this enactment does away with the force of the former adjudication on this same matter by which the defendant was allowed to prevail in the suit. It is alleged by counsel for the plaintiff that this supplement makes the Act of 1880, under which these proceedings are, retroactive. Now, if we assume that it was entirely competent for the Legislature to so interpret the act, and its interpretation was either conclusive or accepted by the Court, it seems to me that this provision has been misread, and it does not, in terms or effect, give any force or construction to the Act of 1880. The language is as I recite: "The provisions of the act, *to which this is a supplement*, shall be held to apply only to the publications made prior to the approval of such act." Now, it

10 is a supplement, as appears by the title, to an act relative to the publications of the minutes and proceedings of the several municipal boards of the cities of this State, approved February 27th, 1879. It is the Act of 1879 that is construed. When you refer to that Act of February 27th, 1879, you are brought in contact with a legislation that is clearly unconstitutional, conceded to be so by counsel of plaintiff, and, I think, by every one who has looked at the legislation. There is a provision limiting it in its application to certain cities of
20 not less than fifty thousand inhabitants. Plainly the interpreting act applies to this and not to the Act of 1880. And the latter act has already, in this Court between these parties, been held prospective only.

It is also suggested, that if the Act of 1883, applied to that of 1880, the latter act would thereby be made a special law, for the reason that it has no general application so construed, but applies only to particular past and concluded events, and must relate to particular, special persons. Whether legislation relating only
30 to certain persons who must, in the nature of things, be fixed and determined at the time is necessarily special, is not necessary to consider. For the reasons above given, in my judgment, the act has no force or application to the legislation of 1880, upon which this suit must necessarily rest, if supported at all. My conclusion, therefore, is that there should be judgment entered for the defendant. If the parties desire a review, I will lend them every facility to obtain it.

I have not looked at the question discussed as to the propriety of this action, whether founded upon the
40 statute or the award. The parties cannot be prejudiced by that. I would allow an amendment had I determined that the suit was wrongly brought. If the award is good, suit should lie, and whether it is or not, I think is to be determined by the validity of the legislation upon which it rests, so that the defendant is in no wise injured by the shape in which the suit is brought. If it excluded inquiry into the force of that statute, then it might present a different question.

Judgment was entered in favor of the defendants 10
and against the defendants at the November Term of
the Supreme Court by attorney of defendants. And
thereupon a writ of error was sued out removing
cause into this Court.

The following are the briefs, pleadings, &c., referred 20
to in the testimony of Hugh F. McDermott, and as
produced and offered in evidence before me as Referee
in this matter.

NEW JERSEY SUPREME COURT.

<p>HUGH F. McDERMOTT</p> <p>AGAINST</p> <p>THE MAYOR AND ALDERMEN OF JERSEY CITY.</p>	}	In Case.	30
---	---	----------	----

This action is brought to recover the sum of \$6,250,
for publishing in the "Jersey City Herald" the minutes
of all the Boards of the City of Jersey City, from April
1, 1875, to and including April, 1877, being twenty-
five months, at \$250 per month, making the sum of
\$6,250. 40

The plaintiff during said time was the editor and
proprietor of the "Jersey City Herald," and during
said time published the official minutes of the Board
of Finance and Taxation, the Board of Aldermen, the
Board of Fire Commissioners, the Board of Education,
the Board of Police Commissioners and the Board of
Public Works.

For the publication of these minutes in full, and not
a synopsis thereof, the plaintiff has charged two hun-
dred and fifty dollars per month.

10 This action proceeds, as I understand it, so far as price is concerned, upon two grounds :

First. That the rate of \$250 per month is the rate heretofore established by the city authorities.

Secondly. That such compensation is fair and just, and such as the plaintiff would be entitled to receive upon a *quantum meruit*.

20 In 1874 the "Jersey City Herald" was an official paper by designation of the Board of Finance and Taxation, and has continued from that time to the present to print and publish the minutes of the official Boards of Jersey City.

In 1875 Mr. McDermott brought suit to recover for printing these minutes for ten months of June, 1874, to March, 1875, inclusive, the months at the rate of \$250 per month, or \$2,500 in all.

30 That suit was determined by this Court in favor of the city, and upon being taken to the Supreme Court, on rule to show cause, the Supreme Court affirmed the judgment of this Court.

Up to June, 1874, or May 29, 1874, the "Jersey City Herald" was admittedly an official paper—not only an official paper, but the minutes were printed in it in full and paid for by the city.

40 As a history of this case, and to show the course of legislation in this manner, and also as bearing upon the construction of the Statute of 1877, under which this action is brought, I refer to the Laws of 1871, approved March 31, 1871, entitled "An Act to reorganize the Local Government of Jersey City."

Laws of 1871, pages 1094–1104.

Section 20 is as follows :

"*And be it enacted,* That the official newspapers of said city shall be designated by the Board of Finance and Taxation from time to time, and shall be the (three) papers published therein, which for (three) months next preceding the designation

have had the largest daily average *bona fide* circulation ; *provided*, that said three papers shall not belong to the same political party ; *and provided, further*, that a newspaper published therein in the German language may also be designated by the said board as an official newspaper ; and all matters required by this act to be published in one or more newspapers shall be published in the official newspapers in the city, and none others, except where by the act expressly directed ; the compensation of said newspapers shall be fixed by the said Board of Finance and Taxation.” 10

By the same act, section 158, it is provided “that the proceedings of the several boards provided for in this act shall be public, and their minutes may, in the discretion of each of said boards, be published in the official newspapers of the city,” except the Board of Aldermen shall annually, “in the month of January, present to the Board of Aldermen a general statement of its proceedings.” 20

I also refer to “A Supplement to an act entitled ‘An Act to reorganize the local government of Jersey City.’” 30

Laws of 1872, page 1237.

It provides in its first section as follows : “That section twenty (20) of the act to which this is a supplement be and the same is hereby amended by striking out the word ‘three’ where the same occurs in said section, and inserting in lieu thereof the word ‘two.’”

I also refer to laws of 1873, March 24th ; laws of 1873, pages 400-417. 40

“A supplement entitled, ‘An Act to reorganize the local government of Jersey City, passed March 31, 1871.’”

Section 62 provides as follows :

“*And be it enacted*, That section twenty of the act to which this is a supplement is hereby repealed, and that the following is hereby substituted in the place and stead thereof ; that the official newspapers of said

- 10 city shall be designated by the Board of Finance and Taxation from time to time, and shall be the three papers published therein which, for the three months next preceding the designation, have had the largest daily average *bona fide* circulation, provided that the said three papers shall not belong to the same political party; and provided further, that a weekly newspaper, published therein for at least two years, each week successively, may also be designated by said board as an official newspaper; and also one newspaper in the
- 20 German language; and all matters required by this act to be published in one or more newspapers, shall be published in the official newspapers of the city, and none others, except when by this act expressly directed. The compensation of said newspapers shall be fixed by the said Board of Finance and Taxation."

I also refer to the laws of 1874, page 504, section 4, which provides as follows:

- 30 "And be it enacted, That hereafter the official papers in Jersey City shall be designated by the Board of Finance and Taxation, from time to time; and said official newspapers shall not be more than four in number, and shall be the two daily newspapers printed and published and circulated in said city (provided that said two daily newspapers shall not belong to the same political party) which shall have had for the period of six months prior to their designation as official newspapers the largest *bona fide* average daily circulation in said
- 40 city; the third shall be a weekly newspaper published in that part of Jersey City formerly known as Hudson City, at least two years prior to and immediately preceding its designation as an official newspaper; and one weekly newspaper published in said city and printed in the German language, and which shall have been in existence and so published for at least the period of one year prior to its designation as an official paper; provided, that the newspapers heretofore designated and now being the official papers of said city shall continue under such designation to be the

official papers of said city until a new designation is made under the provisions of this act." 10

I also refer to an act of the Legislature entitled "An Act relative to the publication of the minutes and proceedings of the several municipal boards of the cities of this State," approved March 9, 1877.

Laws of 1877, page 297.

"1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That in any city in this State the municipal boards whereof are authorized by special act of the Legislature to publish the minutes and proceedings of said board or boards, the proprietor or proprietors of the official newspaper or newspapers so designated by said board or boards, which said official newspaper or newspapers have heretofore published said minutes in full, and not an abstract or synopsis thereof, shall be entitled to receive and recover from said city or cities payment therefor according to the rates of said municipal board or boards." 20

"2. *And be it enacted*, That this act shall take effect immediately." 30

Approved March 9, 1877.

Up to May 29, 1874, the "Jersey City Herald" had been an official paper, and had printed the minutes of the different boards, for which he had been paid at the rates established by the Board of Finance and Taxation.

It may be well now to look at the legislation of the city boards upon this matter. 40

At a regular meeting of the Board of Finance and Taxation, May 29, 1874, the following resolutions were adopted :

Resolved, That the "American Standard," the "Evening Journal" the "Jersey City Herald" and the "Wacht am Hudson" be and they are hereby designated as the official newspapers of the city for the publication of all legal notices required by the City Charter, the com-

- 10 pensation to be at the following rates, viz: Fifty cents per folio for the first insertion, and thirty cents per folio for each subsequent insertion.

Resolved, That the "American Standard" and the "Evening Journal" be and they are hereby designated to publish the official minutes of the various boards of the city department, the compensation to be \$150 per month for each paper.

- 20 See page 30 of the minutes of Board of Finance and Taxation, May 29, 1874.

At a regular meeting of said board, June 4, 1874:

Communications were received from Pangborn, Dunning & Dear, John H. Lyon and Hugh McDermott, refusing to print official matter relating to the City Government at the rates now established, and giving their reasons for said refusal.

See page 31 of minutes of Board of Finance and Taxation, June 4, 1874.

- 30 At a regular meeting of said board, July 2, 1874:

Resolved, That whereas the official newspapers of Jersey City have declined and refused to publish legal notices and matters required by the Charter of Jersey City to be published in such papers at the compensation per folio fixed by this Board, by resolution of May 29, 1874.

- 40 *And whereas*, By the provisions of the City Charter this Board cannot lawfully designate any official papers other than those already designated.

And whereas, The City Charter requires legal advertising to be done in these official newspapers, and none others; and it being found impracticable, if not impossible, to compel publication at the compensation as last fixed by this Board,

Therefore, in consideration of the premises aforesaid, this Board feels constrained to restore the former rates for legal advertising required by the charter, and

in conformity therewith does hereby fix the compensation of the official newspapers of Jersey City, for the publication, when duly ordered, of such notices and matters as are expressly required by the city charter to be published in the official newspapers, at the rates following, to wit: Sixty cents per folio for the first insertion, and forty cents per folio for each subsequent insertion. 10

See page 47, of minutes of Board of Finance and Taxation, July 2, 1874.

At a meeting of said board, July 16, 1874: 20

Whereas, It appears by the communication addressed to this board by the journals designated to publish the official proceedings of the various boards of the City Government, that such publication cannot be done at the price named in the resolution passed by this board, May 29, 1874, without loss to the proprietors of said journals.

Resolved, That the price to be paid hereafter for publishing the proceedings of the various boards of the City Government in the journals designated in the resolution passed May 29, 1874, be fixed at the sum of \$250 per month each, and that so much of said resolution passed May 29, 1874, as conflicts herewith, is hereby rescinded. 30

See page 51, minutes of Board of Finance and Taxation, July 16, 1874. 40

10

NEW JERSEY SUPREME COURT.

 HUGH F. McDERMOTT

AGAINST

 THE MAYOR AND ALDERMEN OF JER-
 SEY CITY.

} In Case.

20

State of facts agreed upon between the parties.

J. H. LIPPINCOTT, Att'y of Pl'ff.

W. P. DOUGLASS, Att'y of Def't.

AT A REGULAR MEETING OF THE BOARD OF FINANCE AND
 TAXATION, MAY 29, 1874.

30 *Resolved*, That the "American Standard," the "Evening Journal," the "Jersey City Herald" and the "Wacht am Hudson," be, and they are hereby, designated as the official newspapers of the city for the publication of all legal notices required by the city charter, the compensation to be at the following rates, viz: Fifty cents per folio for the first insertion, and thirty cents per folio for each subsequent insertion.

40 *Resolved*, That the "American Standard" and the "Evening Journal" be, and they are hereby, designated to publish the official minutes of the various boards of the City Departments, the compensation to be \$150 per month for each paper.

AT A REGULAR MEETING OF SAID BOARD, JUNE 4, 1874.

Communications were received from Pangborn, Dunning & Dear, John H. Lyon and Hugh McDermott refusing to print official matter relating to the City Government at the rates now established, and giving their reasons for said refusal.

AT A LEGULAR MEETING OF SAID BOARD, JULY 2D, 1874. 10

Resolved, That whereas the official newspapers of Jersey City have declined and refused to publish legal notices and matters required by the charter of Jersey City to be published in such papers, at the compensation, per folio, fixed by this board, by resolution of May 29, 1874.

And whereas, By the provisions of the city charter, this board cannot lawfully designate any official papers, other than those already designated. 20

And whereas, The city charter requires legal advertising to be done in these official newspapers, and none others; and it being found impracticable, if not impossible, to compel publication at the compensation as last fixed by this board,

Therefore, in consideration of the premises aforesaid this Board feels constrained to restore the former rates for legal advertising required by the charter, and in conformity therewith, does hereby fix the compensation of the official newspapers of Jersey City, for the publication, when duly ordered, of such notices and matters as are expressly required by the city charter to be published in the official newspapers, at the rates following, to wit, sixty cents per folio for the first insertion, and forty cents per folio for each subsequent insertion. 30

AT A MEETING OF SAID BOARD, JULY 16TH, 1874. 40

Whereas, It appears by the communication addressed to this Board by the journals designated to publish the official proceedings of the various Boards of the City Government, that such publication cannot be done at the price named in the resolution passed by this Board, May 29, 1874, without loss to the proprietors of said journals.

Resolved, That the price to be paid hereafter for pub-

10 lishing the official proceedings of the various Boards of the City Government in the journals designated in the resolution passed May 29, 1874, be fixed at the sum of \$250 per month each, and that so much of said resolution passed May 29, 1874, as conflicts herewith, is hereby rescinded.

It is admitted by defendant that the plaintiff has presented to the Board of Finance and Taxation bills for publishing the official minutes of the different Boards of the City Government since May 29, 1874,
20 and that payment thereof has been refused.

It is agreed that none of the Boards of the City Government have ever ordered the printing of their minutes, except the Board of Finance and Taxation.

It is also agreed that this case be presented to the Associate Justice of the Supreme Court, holding the Hudson Circuit, for adjudication, without the issuing of process or the filing of any pleadings.

30

NEW JERSEY SUPREME COURT.

HUGH F. McDERMOTT

AGAINST

40 THE MAYOR AND ALDERMEN OF JERSEY
CITY.

} In Case.

Depositions of witnesses on the part of the plaintiff, taken by consent of counsel of respective parties before, me, GEORGE VAN HORN, a Supreme Court Commissioner of New Jersey, at the office of J. H. Lippincott, in Jersey City, in presence of Job H. Lippincott, counsel for plaintiff, and of William P. Douglass, counsel for defendants, at 10 o'clock in the forenoon of October 17th, 1874.

HUGH F. McDERMOTT, a witness on the side of the plaintiff, being by me duly sworn, was examined by Mr. Lippincott, and testified as follows : 10

I am the editor and proprietor of the "Jersey City Herald," a newspaper printed and published and circulating in Jersey City, and which has been designated by the Board of Finance and Taxation of Jersey City, as one of the official newspapers of said city. I have published in said newspaper the minutes of the different Boards of the City of Jersey City, from June 1st, to the 31st day of September, 1874. The issues of the paper offered in evidence, and marked Exhibits one (1) to twelve (12) inclusive, on the part of the plaintiff. They contain the publication of the minutes of the different Boards, from June 4th to September 30th, 1874, so far as they have come to the office ; some may have possibly been delayed, but I am not aware of any, they are all published as soon as they come to hand ; they had been published in the usual way, as formerly under the former Board of Finance and Taxation. My claim is two hundred and fifty dollars a month for the publication of these minutes ; it has not been paid. 20

HUGH F. McDERMOTT. 30

Sworn and subscribed to before }
me, at Jersey City, this Oc- }
tober 17th, 1874.

GEORGE VAN HORN,
Supreme Court Commissioner.

10 NEW JERSEY SUPREME COURT.

 HUGH F. McDERMOTT

AGAINST

 THE MAYOR AND ALDERMEN OF JER-
 SEY CITY.

 Brief for Plaintiff.
 On motion for new
 trial.

20

I.

In addition to the views presented by Mr. Lippincott's brief, the following is respectfully submitted :

This action is brought to recover the compensation (after a rate fixed according to law) due to plaintiff for publishing the proceedings of the several official boards of the city.

30 There is no dispute about the fact of publication, nor as to the amount of compensation due if the publication was authorized, but it is claimed for the city that the respective boards had power to select among the official papers those in which their proceedings should be published, and that only those thus selected were entitled to compensation for publishing, and that plaintiff's paper not having been thus selected, but omitted, plaintiff, if he published the proceedings, did so as a volunteer and it was in his own wrong, and therefore is not entitled to the compensation.

40 The twentieth section of the charter of Jersey City (Laws of 1871, page 1104), directs that the official newspapers of the city shall be designated by the Board of Finance, defines their qualifications, and then provides "that *all matters required by this act to be published in one or more newspapers, shall be published in the official newspapers of the city and none other, except where by this act expressly directed.*"

Section 158 (page 1160) directs that the proceedings of the several boards provided for in this act shall be public, and their minutes *may*, in the discretion of each

of said boards, be published *in the official newspapers of the city.* 10

My construction of these acts is that each board has a discretion as to whether its minutes shall or shall not be published ; when that discretion is exercised *in favor of publication*, the minutes then became "*matters required by this act to be published*" in the language of the twentieth section, and by force of that section must necessarily be published in the official newspapers.

The several boards have only a discretion as to whether their proceedings shall be published at all or not. The act directs how the publication shall be made, and even in the 158th section it is directed that the minutes, when published, shall be published *in "the official newspapers of the city,"* not in one or more, as the former law was. 20

Under this legislation the boards have no authority to select out one or two of the four official papers, and confer the patronage upon them to the exclusion of the others. The act seems to me clearly to prevent that sort of favoritism ; such a selection is in direct conflict with the provisions of the 20th section. 30

This view of the law becomes the more apparent in the light of the subsequent Act of 1874. This act (section 5, page 505) directs that the official newspapers shall be designated by the Board of Finance and Taxation ; directs how they shall be selected, two by their circulation—"the third shall be a weekly newspaper, published in that part of Jersey City, formerly known as Hudson City, at least two years prior to and immediately preceding its designation, as an official newspapers, and one German paper." 40

Now, as the proof shows (Case, page 2, line 10) that the plaintiff's paper was the only one possessing the requisites for the third official paper, the Board of Finance must of necessity designate it as one of the "official papers."

The board did so designate it ; but in making such designation, it attempted to limit its duties to the publication of legal notices. (Resolution of May 29, 1874.)

(Defendants' brief in printed case, page 26.)

10 Now, it is quite clear that the Legislature, by fixing one of the official papers by its locality, intended that whatever was published should be published in that locality, it left no discretion in any board to determine in which of the official papers any of the public proceedings should be published.

The designation of a paper by its location is evidence that the Legislature intended that the portion of the community served by a paper in that locality should have all the information that would be afforded
20 by any other paper.

The Board of Finance, in appointing an official paper, could not limit its duties nor repeal the charter which directed that all proceedings which were to be published shall be published in all the official papers.

No such power of selection as to the matters which the official papers should publish was vested in the Board of Finance.

Again : It is quite clear that prior to the passage of the resolution of May 29th, 1874, all the official boards
30 had finally exercised their discretion and directed their minutes to be published.

It does not appear that they ever revoked such action. Now, the Board of Finance had no authority to act for any other board in determining as to the publication of the minutes, therefore the orders to publish previously adopted remained in force, and such minutes were required to be published notwithstanding the illegal and unwarranted action of the Board of Finance, so even if the action of the Board of Finance by the
40 resolution of May 29th may be effectual to prevent plaintiff from recovering for publishing the minutes of that board (which we deny), it can have no such effect as to the minutes of the other boards, over the publication of whose minutes the Board of Finance had no discretion whatever.

It is therefore respectfully urged, that even as the case stood before Mr. Justice Knapp, the finding was erroneous, and a new trial should be granted.

II.

But if the decision of Mr. Justice Knapp was right as the law then stood, subsequent legislation has placed plaintiff's right to compensation beyond all question.

The Act of March 9, 1877 (*Pam. Laws of 1877, page 297*), expressly directs that in a case like plaintiff's *he shall be entitled to receive and recover* from the city payment according to the rates fixed.

The Court, when the motion is before them, will certainly grant a new trial in order that the legislative will may have effect on plaintiff's case. 20

For this Court to refuse a new trial, and give judgment for defendants in the face of such a law would be to nullify the legislative will on a subject over which there can be no doubt the Legislature had full power.

It is a well settled and familiar principle that a court of review must decide a case according to the law existing at the time of its decision, so that if the law is changed between the time of rendering the decision, being reviewed, and the time of deciding on review, the Court of review must decide the case according to the law in force at the time of its decision. 30

Judgment would be arrested under such circumstances on a motion in arrest of judgment.

See *Hartung vs. People*, 22 N. Y., 108, 109, and the cases there cited by Judge Denio.

The Act of 1877 is clearly applicable to past as well as future case, it including the work done by plaintiff, and declares that he shall be entitled to receive and recover his compensation. 40

THOMAS N. McCARTER,
Of Counsel with Plaintiff.

10

NEW JERSEY SUPREME COURT.

HUDSON CIRCUIT.

JUNE 12TH, 1875, AS YET OF THE APRIL TERM, 1875.

 HUGH F. McDERMOTT

AGAINST

 THE MAYOR AND ALDERMEN OF JERSEY
 CITY.

} In case.

20

MR. LIPPINCOTT for Plaintiff.

MR. LEWIS for Defendant.

BEFORE HON. M. M. KNAPP (JURY WAIVED).

MR. LIPPINCOTT—The action to recover \$2,500, for public printing for ten months at \$250 per month. Our contention is, briefly, that the “Jersey City Herald,” of which the plaintiff is editor and proprietor, was designated by the Board of Finance and Taxation as one of the official newspapers of Jersey City. Our claim for publication is from June 1, 1874, to the commencement of this action, April 1, 1875, being ten months.

30 We are entitled to this by virtue of the city charter and the resolutions of the Board of Finance and Taxation.

I refer to the charter, p. 17, Sec. 20, to show the course of legislation in respect to printing. That section is in the original act, passed March 31, 1871. I also refer to Sec. 1 of a supplement, p. 99, striking out the word *three* and inserting the word *two*; also, p. 128, Sec. 62; also p. 84, Sec. 158. I also refer to the Act of 1874, p. 504, etc., of the laws of that year, section 4—the “Jersey City Herald” being the only weekly published in that part of Jersey City formerly known as Hudson City.

40 It is admitted for the purposes of this case that the “Jersey City Herald” is the only weekly paper published in that part of Jersey City formerly known as

Hudson City, and that it has been published more than two years immediately preceding its designation as an official newspaper of Jersey City. 10

CORNELIUS S. SEE, for plaintiff, sworn, testified as follows :

I am Clerk of the Board of Finance and Taxation of Jersey City.

These (a book) are the minutes of that board for 1874. 20

The minutes relating to this matter are on p. 30, meeting of May 29th, 1874 ; p. 31, meeting of June 4th, 1874 ; p. 47, meeting of July 2d, 1874 ; p. 51, meeting of July 16th, 1874 ; p. 56, meeting of August 6th, 1874 ; p. 66, meeting of September 10th, 1874 ; p. 66, meeting of September 10th, 1874 ; p. 69, meeting of September 17th, 1874.

Since that time the claims of Mr. McDermott have been regularly presented, monthly, at \$250 per month, and payment refused by the board. 30

AND BEING CROSS-EXAMINED, TESTIFIED :

The resolution, p. 30, was approved by the Mayor, and a copy of it sent to Mr. McDermott, that is, as to both of those resolutions.

As to the communications referred to on p. 31, the reason given in those communications for their refusal to print official matter was that they could not afford to do it at that rate established in the previous resolution, and they declined to print at that rate, and did not print. 40

Resolution on p. 47, July 2d, 1874, was approved by the Mayor, and copies of that sent to the official papers.

Preamble and resolution on p. 51, July 16, 1874, was passed and approved by the Mayor, and copies sent to the "Evening Journal" and "American Standard," because I thought they were the only papers that were affected by it.

This (Exhibit D 1) is the communication received

10 from Mr. McDermott, referred to on p. 31. (Defendant offered it in evidence.)

This (Exhibit D 2) is the communication received from Mr. McDermott, referred to on p. 86, at meeting of August 6th. (Defendant offers it in evidence.)

This (Exhibit D 3) is the report of the Committee on Printing and Stationery, referred to on p. 66, adverse to the claim of "Jersey City Herald." (Offered in evidence.)

20 The Board of Finance have not directed the publication of the minutes in the "Jersey City Herald" since, and I have not sent the minutes to Mr. McDermott since the new designation.

The board have not required the minutes to be sent to Mr. McDermott's paper.

I caused service to be made as directed by Exhibit D 3, of a copy of the report and of the action of the board thereon within a day or two after it was passed.

AND BEING EXAMINED-IN-CHIEF, TESTIFIED :

30

The "Jersey City Herald" was an official paper in 1873-4.

I made four copies of the minutes and sent a copy to each of the official papers of the board, that is, previous to this new designation; after the new designation; I sent them only to the "Standard" and "Journal."

HUGH F. McDERMOTT, the plaintiff, sworn in his own behalf, testified as follows :

40

I am editor and proprietor of the "Jersey City Herald," referred to in these resolutions; it is a weekly newspaper; I have published the minutes of the different boards of Jersey City in my paper, from June 1st, last, to the present time; I think the issue of June 4th, was the first; I have rendered bills to the Board of Finance and Taxation at the rate of \$250 monthly, and payment has been refused.

My paper is a weekly; has been published in Jersey City over five years.

I have printed the minutes of all the boards for all the time mentioned in the declaration; some of the boards have not been in the habit of sending me the minutes, this year nor last year, but left it to me to take a copy out of the dailies to save them the trouble of copying them off; my paper is published Saturday morning; some of the boards have not sent me the legal advertisements, but left it to me to copy them from the afternoon papers; that has been the course of doing business last year and this for legal notices and in some cases the minutes. 10

The minutes of the Board of Public Works were furnished me in writing; sometimes there would be an omission for a week or two and then they would come again; I never paid much attention to the manuscript coming from any of the boards as I always copied the proceedings from the afternoon papers; it was easier for the printer. 20

My paper is printed in Jersey City and circulated here. 30

AND BEING CROSS-EXAMINED, TESTIFIED AS FOLLOWS:

I published the matter from the other papers, just as I did the year before; I don't know anything about their mistakes, I published it as I found it printed.

After June 1st, 1874, the Board of Finance did not send me any official copy of their minutes that I know of; neither did the Board of Fire Commissioners, neither did the Board of Police Commissioners that I know of; I don't remember whether the Board of Aldermen did or not; the Clerk of the Board of Public Works did; the Board of Works never took any action that I know of in regard to sending the minutes to me or to any paper that I know of; they always left that to the clerk. 40

I did not request the Clerk of the Board of Works to send me the minutes as a personal favor, nor as a matter of courtesy, because I had no use for the manuscript. I took them from the dailies. The Board of

10 Education, neither before nor after June 1st, ever sent me manuscript copies of their minutes that I know of. Many of those boards never sent me the manuscript copies of their minutes, but left it to me to copy from the afternoon papers. Nor did they send me the advertisements regularly.

I could not swear that the Clerk of the Board of Finance, previous to June, 1874, always sent me his minutes. I could not swear the Clerk of the Board of Works always did. It was not customary for the clerks
 20 of the different boards to send me copies of their minutes previous to June, 1874. So far as I remember the Police Board and the Fire Board often omitted sending their minutes, and their legal advertisements also. I think there are within the last couple of weeks legal advertisements in the "Jersey City Herald," cut from the afternoon papers, which printing was authorized by the Board of Works, and which did not come from the Clerk of the board.

A copy of the resolution of the Board of Finance of
 30 May 29th was served on me.

I don't remember a copy of the report of the committee meeting of September 10th being served on me. I remember seeing a copy of it (on being shown a paper). I remember, about six weeks ago, showing you (Mr. Lewis) a copy of this paper, which I then said was served on me.

The price for publishing the minutes was in debate for several weeks by the Board of Finance and Taxation, and I published the minutes the same week that
 40 the dailies published them; copies of the "Herald" will show the date. I published the minutes of the meeting, which was held on June 4, as soon as the price for publishing the minutes was established, and as soon as the dailies published them. I published them the same week. I don't remember the date I first published them after that dispute as to price. It may have been after the middle of July, it may have been in August; I don't remember the date; the "Herald" will show.

There were weeks that I published no minutes or

legal notices at all. I refused to publish them. I was not asked during those weeks to publish the minutes nor the legal notices. I never have been asked to publish the minutes by the Board of Finance. 10

Some of the boards met once a week, some once in two weeks, I believe. In the summer time, I believe, they adjourned over for three or four weeks.

I published no official minutes from the time of the passage of the resolution of May 29th till after the Board of Finance had restored the price to \$250 a month. 20

MR. LIPPINCOTT: August 1st is the date of the first publication.

Then there were two months that I did not publish them, and since that time I have published all the minutes that were passed during that time.

I sent Exhibit D 1 to the Board of Finance.

RE-DIRECT: 30

I had freely criticized the official action of the Board of Finance before May 29, 1874.

PLAINTIFF RESTS.

DEFENSE. 40

CORNELIUS S. SEE, called for the defense :

Previous to May 29th I always made five copies of the minutes of each meeting, and sent one copy to each of the official papers. I made my copies on manifold paper. Since May 29th I have sent only to the "Journal" and the "Standard," till it changed its name to the "Argus," and continued to send to the "Argus" after it had assumed that name. There is no direction

10 in the minutes anywhere directing the minutes to be published in the "Herald" since May 29th.

A copy of this action of the Board of Finance, making the new designation of four official papers and designating two of them to publish the minutes, was sent to the different boards of the city government, a copy to each. No doubt about that. I did not serve them; I had them served.

20 JOHN E. SCOTT, for defense, sworn, testified as follows :

I am and have been for a number of years City Clerk and Clerk to the Board of Aldermen.

Since May 29th I have not sent any official minutes to the "Jersey City Herald."

30 There is no record in the minutes of the Board of Aldermen directing their minutes to be published in the "Jersey City Herald" since May 29. I have had no instructions from the Board of Aldermen to publish their minutes in the "Jersey City Herald."

I received a copy of the resolution of the Board of Finance, passed May 29, 1874. It was a certified copy from the Clerk of that board, left at my office by Mr. See's clerk. I have it with me (witness produces it). On account of the receipt of that I discontinued sending the minutes to the "Jersey City Herald." Previous to that I always sent a manifold copy to the "Jersey City Herald."

40 AND BEING CROSS-EXAMINED, TESTIFIED AS FOLLOWS :

There is no reference in the minutes of the Board of Aldermen in relation to the printing of their minutes. The Board of Finance and Taxation direct the printing of our minutes. The Board of Aldermen make no order in relation to the printing of their minutes. There is no entry in the minutes of the Board of Aldermen in relation to printing their minutes at all. That matter has been left to the Board of Finance, because they had jurisdiction over it. The Board of Aldermen

have exercised no discretion about it at all. We get 10
our information as to where to publish our minutes
from the Board of Finance.

RE-DIRECT EXAMINATION:

Since May 29th I have published legal notices
and ordinances in the "American Standard," now
the "Argus," "Evening Journal," "Watcht am Hud-
son" and "Jersey City Herald." Because of the notice
I got from the Board of Finance I published the min- 20
utes in only two papers, which they designated—the
"Journal" and "Standard."

I sent copies of legal notices and ordinauces to the
"Jersey City Herald" directly in every case up to the
present time.

That was by reason of my understanding of that reso-
lution of May 29th.

JOHN T. DENMEAD, sworn for defense, testified as
follows: 30

I am Clerk to the Board of Fire Commissioners ;
have been Clerk since April, 1871.

Previous to May 29th, 1874, I sent a copy of our
minutes every week to the official papers, including
the "Jersey City Herald." Since May 29th, '74, I
have sent to only two papers, not including the "Jersey
City Herald." At that date a communication was
received by our board from the Board of Finance, des-
ignating the "Journal" and "Standard" and none 40
others to print the minutes, and I was directed to com-
ply with that communication.

Witness produces the communication and de-
fendant offers it in evidence.

All advertisements are still sent to four papers.

At request of Mr. Lewis witness reads aloud,
p. 20, printed minutes of Fire Commissioners
Board, meeting of June 3d, 1874.

10 I don't think I ever received any instructions in regard to publishing minutes before that.

We received a communication from Mr. Lewis in reference to the printing of our minutes which was in answer to a communication sent to him by our board; it is referred to on page 23, meeting of June 10th, 1874.

Defendant offers page 23 in evidence.

20 AND BEING CROSS-EXAMINED, TESTIFIED AS FOLLOWS :

Our board never has since the reorganization of the city government adopted any resolution directing the printing of our minutes; that has been left to the Board of Finance and Taxation; our board has exercised no discretion in that matter; the communication from Mr. Lewis is not published in our minutes; it is referred to in the meeting of July 8th, page 28.

30 Previous to that communication from the Board of Finance, I sent the minutes to the "Jersey City Herald" and they printed them.

I have never sent any since.

MARTIN FINCKE, for defendant, sworn, testified as follows :

I am Clerk of the Board of Education; have been such since May 13, 1873.

40 About May 29, 1874, I received a communication from the Board of Finance in regard to printing our minutes; I have a copy of that resolution in our minutes of June 8.

Previous to May 29th I prepared five copies of our official minutes, four of them were sent; one each to the official newspapers, and one kept in my office; they were sent regularly to the papers weekly, one of them being the "Jersey City Herald;" since receiving that notice I have not sent our minutes to the "Jersey City Herald," because of receiving that notice.

I never received any instructions from our board in

relation to printing our minutes, either before or since 10
May 29th.

Previous and since May 29th, I have sent the official
advertising to all four of the official papers.

AND BEING CROSS-EXAMINED, TESTIFIED :

There is nothing in our minutes except that com-
munication from the Board of Finance in respect to
the printing of the minutes; that is, since May 12,
1873; I was not Clerk before that time; since I have 20
been Clerk there has been no action taken in reference
to printing the minutes by our board, except the adop-
tion of the resolution sent to us from the Board of
Finance, to which I have referred.

On page 15 of our minutes is a resolution asking the
Board of Finance to allow our board to publish their
minutes (witness reads it); that was sent to the Board
of Finance and no reply was ever received to it that I
know of.

The matter of printing the minutes has been left 30
entirely to the Board of Finance.

GEORGE WARREN, for defendant, sworn, testified as
follows :

I have been Clerk of the Board of Police Commis-
sioners since April 15th, 1871.

Previous to May 29th, 1874, I prepared five copies
of the minutes of our board, four were sent, one each,
to the four official papers, and one copy was kept in 40
the office; since that time I have only sent them to the
"Standard" and "Journal," because our board received
a communication from the Board of Finance, directing
us to publish the minutes in certain papers; (producing
a paper) this is the communication.

Offered in evidence.

Before and ever since May 29, 1874, legal notices
have been published in the four official papers.

10 I have never received any instructions from our board in regard to publishing our minutes; our board has never taken any action in the matter at all.

AND BEING CROSS-EXAMINED :

That matter has been left entirely to the Board of Finance and Taxation.

20 HENRY H. NEWKIRK, for defendant, sworn, testified as follows :

I was Clerk of the Board of Public Works from April 3d, 1871, to April 14th, 1875.

30 Previous to May 29th, 1874, I sent all legal notices to each of the different official papers in manifold by the janitor, and as to the minutes I followed the same course ; after May 29th I sent all legal notices to the official papers, excepting during the time they would not print them at the price set by the Board of Finance.

40 I received a copy of the communication the same as referred to by the other boards designating four papers as official for the notices, and the "Journal" and "Standard" as official for the minutes ; after that I did not send our minutes to "Die Wacht am Hudson" in consequence of the communication from the Board of Finance ; our board never requested me to send the minutes to that paper ; they never requested me to send them to the "Jersey City Herald," but I did send them to Mr. McDermott after that time because I found he was publishing them and I asked him if it was any accommodation to him to have a copy of them, as it was no trouble for me to write them as I was writing them on manifold, and he said it was and so I sent them to him ; at that time he was pitching into the Board of Finance pretty lively in each issue, and there was at that time an issue between the Board of Finance and Board of Works as to the clerk's salaries.

AND BEING CROSS-EXAMINED, TESTIFIED :

10

There was no direction from our board to send to any paper, but that matter was left to the Board of Finance.

I think it was some two or three months that the papers would not publish ; it stopped all proceedings on street improvements.

Defendant offers in evidence the papers and minutes referred to in each case and rests.

20

CASE CLOSED.

NEW JERSEY SUPREME COURT.

HUGH F. McDERMOTT

AGAINST

THE MAYOR AND ALDERMEN OF JERSEY CITY.

} In Case.

30

Pleas before the Justices of the Supreme Court of the State of New Jersey, of the first day of May, A. D. eighteen hundred and seventy-five.

40

Witness :

MERCER BEASLEY, Esq., Chief Justice.

BENJAMIN F. LEE, Clerk.

J. H. LIPPINCOTT, Atty. of Plaintiff.

W. P. DOUGLASS, Atty. of Defendant.

HUDSON COUNTY, ss.:

The Mayor and Aldermen of Jersey City, a body corporate of the State of New Jersey, the defendant in this suit, was summoned to answer Hugh F. McDer-

10 mott, the plaintiff therein, of a plea of trespass on the case upon promises, and thereupon the plaintiff, by J. H. Lippincott, his attorney, complain. For that whereas the defendant heretofore, to wit, on the first day of April, in the year of our Lord one thousand eight hundred and seventy-five, at Jersey City, in the County of Hudson, was indebted to the plaintiff in the sum of five thousand dollars for goods, wares, merchandise, before that time sold and delivered by the plaintiff to the defendant at its request; and in five
20 thousand dollars for work and labor before that time done and performed and materials furnished by the plaintiff for the defendant at its request; and in five thousand dollars for so much money by the plaintiff before that time lent and advanced to the defendant at its request; and in five thousand dollars for so much money by the plaintiff before that time paid for the use of the defendant, at its request; and in five thousand dollars for so much money by the defendant before that time had and received for the use of the plaintiff; and in
30 five thousand dollars for interest upon and for the forbearance by the plaintiff to the defendant at its request of divers large sums of money before that time due and owing from the defendant to the plaintiff; and in five thousand dollars for so much money then and there found to be due from the defendant to the plaintiff on an account stated between them, and being so indebted the defendant, in consideration thereof, then and there promised the plaintiff to pay him the said several sums of money on request. Yet the defendant has disregarded its said several promises and has not paid the
40 said several sums of money, nor any of them or any part thereof, although often requested so to do, but to do so he hath hitherto wholly refused, and still doth refuse, to the damage of the plaintiff five thousand dollars, and therefore he brings his suit, etc.

Notice is hereby given that this action is brought 10
to recover the amount due on a bill of particulars,
of which the following is a true copy :

THE MAYOR AND ALDERMEN OF JERSEY CITY,

To HUGH F. McDERMOTT, DR.

1875, April 1.

To publishing in the Jersey City "Herald" one
of the official newspapers of Jersey City, the official
minutes of the Board of Public Works of Jersey 20
City, the official minutes of the Board of Aldermen
of Jersey City, the official minutes of the Board of
Education of Jersey City, the official minutes of the
Board of Police Commissioners of Jersey City, the
official minutes of the Board of Finance and Taxation
of Jersey City, and the official minutes of the
Board of Fire Commissioners of Jersey City, for the
months June, July, August, September, October, No-
vember and December in the year 1874, and the 30
months of January, February and March in the year
1875, being ten months, at the rate established by
the said Board of Finance and Taxation, being at
the rate of \$250 per month..... \$2,500

For which said amount of \$2,500, with interest
from April 1, 1875, the said plaintiff, as editor and
proprietor of said Jersey City "Herald," prays judg-
ment with the costs of suit.

And the said defendant, by William P. Douglass,
its attorney, comes and defends the wrong and in- 40
jury, when, etc., and says that it did not undertake
and promise in manner and form as the said plaintiff
hath above thereof complained of it and of this, the
said defendant puts itself upon the country, etc., and
the plaintiff doth the like.

I, Benjamin F. Lee, Clerk of the Supreme Court of
the State of New Jersey, do certify that the foregoing
is a true transcript of the pleadings in the above-
stated cause, as the same remains on file in my office.

In testimony whereof, I have hereto set my
[L. s.] hand and the seal of said Court at

10 Trenton, this twenty-ninth day of
February, A. D. eighteen hundred
and seventy-six.

BENJ. F. LEE,
Clerk.

20 Afterwards, that is to say, on the first Tuesday of
September, A. D. eighteen hundred and seventy-five,
at a Circuit Court holden at Jersey City, in and for
the County of Hudson, by his Honor Manning M.
Knapp, one of the Judges of the Supreme Court of
jurisdiction of the State of New Jersey, according to
the form of the statute in such case made and provided,
come as well the said plaintiff as the said defendants,
by their respective attorneys within mentioned, and
the said parties respectively having consented that the
within issues be tried by the said Justice, without a
jury, and the said Justice having heard and considered
the same, finds and determines that the said defend-
ants, the Mayor and Aldermen of Jersey City, did not
30 undertake or promise in manner and form as the said
plaintiff, Hugh F. McDermott, hath within complained
against them.

M. M. KNAPP,
Justice Sup. Court.

(A true copy.)

BENJ. F. LEE,
Clerk.

40 NEW JERSEY SUPREME COURT.

HUGH F. McDERMOTT	}
AGAINST	
THE MAYOR AND ALDERMEN OF JERSEY CITY.	

It is hereby agreed and stipulated between the re-

spective parties in the above cause, that under the general issue to be pleaded therein by the said defendant any matter of defense whatever can be offered and given in evidence, the same as if such matter had been sufficiently specially pleaded therein, and that the stipulation and agreement be made a part of the transcript record in the above cause. 10

J. H. LIPPINCOTT,
Attorney of Plaintiff.

WILLIAM P. DOUGLASS,
Attorney of Defendant. 20

(A true copy.)

BENJ. F. LEE,
Clerk.

Hereupon the Court ordered judgment *nisi* for defendant, and granted the following rule to show cause : 30

NEW JERSEY SUPREME COURT.

FEBRUARY TERM, 1876.

<p>HUGH F. McDERMOTT</p> <p style="text-align: center;">AGAINST</p> <p>THE MAYOR AND ALDERMEN OF JERSEY CITY.</p>	}	<p>In Case.</p>	40
---	---	-----------------	----

Good and sufficient reason being alleged, it is on this tenth day of February, A. D. 1876, ordered by Court that the defendants show cause before the Supreme Court in Trenton, on the fourth Tuesday of February,

10 A. D. 1876, why the judgment *nisi* in the above cause should not be set aside and for nothing holden.

Entered March 4, 1876.

M. M. KNAPP,
Justice Sup. Court.

On motion of J. H. Lippincott,
Attorney.

(A true copy.)

BENJ. F. LEE,
Clerk.

20

HUDSON COUNTY CIRCUIT COURT.

HUGH F. McDERMOTT

AGAINST

THE MAYOR AND ALDERMEN OF JERSEY
CITY.

} In Case.

30

PLAINTIFF'S BRIEF.

This suit is brought to recover the price of ten months' printing of the minutes of the different City Boards of Jersey City, at the rate of \$250 per month.

I first refer to the statutes bearing upon this question:

40

1. Charter of Jersey City, bound, page 17, section 20, provides for designation by Board of Finance of three daily papers and one German newspaper.

2. The above section (20) repealed by law, *charter, page 128, section 62*, and in its place, three papers (daily) shall be designated as an official newspaper; *also, a weekly paper published for two years* may be designated; and one German news-

paper. It also directs that all matters required to be published shall be published in the official newspapers. 10

3. Laws of 1874, page 505, section 4. This provides for four official newspapers, two daily newspapers of different political faith.

Also one weekly newspaper printed and published in that part of Jersey City, formerly known as Hudson City; also one German newspaper. 20

They shall be designated by the Board of Finance. Act approved March 27, 1874.

4. *Charter*, page 84, section 158. Minutes "to" be published in the official papers.

The "Standard" and "Journal" are the two daily papers designated under the resolution of the Board of Finance and Taxation of May 29, 1874, as official newspapers. 30

Also Die Wacht am Hudson, the German newspaper.

The "Jersey City Herald" being the paper published in that part of Jersey City, formerly known as Hudson City.

These papers are designated by the Board of Finance and Taxation as official newspapers.

1. Under an act of 1874, the "Jersey City Herald," being the only weekly newspaper printed and published in accordance with that statute, and being in that part of Jersey City, known as Hudson City, was an official newspaper of the City of Jersey City, without any designation whatever by the Board of Finance and Taxation. The act makes it (its location being established) an official newspaper. The Board of Finance would be bound to designate it as an official newspaper. 40

10 The act places the paper in such a position as compels the city to recognize its official capacity.

Its official capacity does not depend upon the resolution or designation of the Board of Finance and Taxation.

2. But resolution of the Board of Finance and Taxation did designate the "Jersey City Herald" as one of the official newspapers of the city.

20 Here the power of the Board of Finance ended, except to fix compensation. It could no more limit what these official papers should or should not publish than it could have altogether ignored the claim of the "Jersey City Herald" under the law of 1874.

They designated the official papers, and under the law of 1874 the "Jersey City Herald" had to be one of them. Here their power ended.

30 They could not select of those papers one or two of the official newspapers to print the minutes and leave out the others.

3. Section 158 of Charter expressly declares that the proceedings of the different boards shall be public, and may, in the discretion of each of said boards, be published in *the official newspapers* of the city. Not in one, or any particular one, not in two or three, but in "the official newspapers" of the city. There may be here a discretion *to not publish*, but if the *discretion is to publish*, then the proceedings are to be published in "*the official newspapers*" of the city.

40

4. We contend that the discretion of the different city boards was "*to publish*." The resolution and designation of the Board of Finance was received, filed and assented to by the different boards; the discretion was "*to publish*," *to publish* in the official newspapers. The act directed it, if pub-

lished at all, the publication must be in the official 10
newspapers.

And so far as this is concerned it would make no difference if the different boards evinced a disposition to publish the proceedings, or did publish them at all, as in this case there can be no dispute but what they did. Then the "Jersey City Herald" being an official newspaper by virtue of the Statute of 1874, the proceedings would have to be published in it.

3. The different boards did publish their proceedings, because they have *been printed* by their assent or order, at least in the "Standard" and "Journal;" besides in the matter of printing the proceedings of the different boards, the different boards have accepted and filed the resolution of the Board of Finance and Taxation to print minutes and proceedings. The Board of Finance and Taxation designated the official newspapers, and resolved to print the minutes, the matter being 20
left to them to determine. If this binds the city 30
at all, it binds them to pay for printing the proceedings in the "Jersey City Herald" as well as in the other papers.

It certainly would bind them to pay for printing *their own* proceedings in the "Jersey City Herald."

It would bind the city to pay for printing proceedings in all the official papers.

If it does not, then the payments already made to the "Standard" and "Journal" have been illegal, and they are now being illegally and fraudulently paid from the City Treasury. 40

4. The second part of the resolution of May 29, 1874, providing the proceedings of the different boards should only be published in the "Standard" and "Journal," is entirely repugnant to the former part of the resolution.

It is illegal and void.

It is contrary to the 158th section of the charter.

10 It is contrary to the 4th section of the law of 1874, being the supplement to reorganize the local government of Jersey City.

 It is therefore of no effect, and the publication of the proceedings should be in "the official papers."

20 5. This attempted distinction between the official papers is invidious; it gives an undue advantage of one official paper over another; it forces and compels, in an unfair and ungenerous manner, one part of the public to patronize an organ not of their choice, in order that they may find that which should be in an organ which has been chosen by them as their mouth piece and dispenser of the acts of their public officials.

30 It would seem that these acts under which these official newspapers were created never contemplated this undue, unfair, unjust and fraudulent advantage. It was not the intention of the legislator.

 6. There was a contract, clearly, between McDermott and the city, made by the agents and proper officers of the city with McDermott for the printing. See Dillon on Corporations, 2d edition, chapter 14, page 460, sec. 370, *et seq.*

J. H. LIPPINCOTT,

Attorney of Hugh F. McDermott.

NEW JERSEY SUPREME COURT,
HUDSON COUNTY.

10

THE MAYOR AND ALDERMEN OF JERSEY
CITY

AGAINST

HUGH F. McDERMOTT.

In Case, &c.

20

DEFENDANTS' BRIEF.

Plaintiff's claim to be compensated for publication of minutes or official proceedings of the several boards of the city government, brings up for consideration three general questions.

1st. A question of construction.

2d. A question of fact, and

30

3d. If entitled to compensation, *then* at what rate and how fixed, and as to jurisdiction of the Court to fix rate in this case and determine specific amount of recovery.

Plaintiff's claim is for \$250 per month for publishing minutes from June 1, 1874, to April 1, 1875.

The claim is resisted by the city as not having been authorized by any competent municipal authority, as being illegal, and for the payment of which the city is not liable.

40

First then as to the charter provisions respecting the official newspapers, their designation, and compensation.

JERSEY CITY CHARTER—

Page 17, section 20 (Act of 1871), provides for designation and fixing compensation.

10 Page 99, section 1 (Act of 1872), reduces the number. But this act not having *really* passed, the matter was set right by Act of 1873, found on

Page 102, preamble and section 1.

Page 128, section 62 (Act of 1873); this section (62) embraced the three dailies in Jersey City—"Journal," "Standard" and "Times," and permitted the designation of the "Herald" and the "German paper."

20 The designation was, by *that* section, left where it was by section 20, *with* the Finance Board, and likewise the compensation was left to be fixed by said board.

Page 208, section 4 (Act of 1874), by its requirements made it obligatory to appoint the two dailies "Journal" and "Standard" (the latter name since changed to "Argus" by act of Legislature), and the two weeklies, "Herald" and "Watch-am-Hudson."

30 (The daily "Times" then had no existence in law or in fact, its proprietor having failed).

This said section 4 leaves the *designation* of papers with the Finance Board as before *and leaves the compensation likewise to be fixed by said board*, as provided in said section 62, on page 128.

40 Page 84, section 158, provides for publication of minutes of the several boards, but does not *require* their publication.

This publication, as I understand the legislation, is left *optional* with the boards of the city, and is *not* at the option of the official papers.

If the official papers (or their proprietors rather) could *exact* this printing, *then there would be no option left to the several boards in the premises.*

This printing is by section 158 aforesaid left entirely discretionary on part of the municipal boards, and is to be distinguished from such matters as are *expressly*

required to be published, without any discretion, by the 10
 mandatory terms of the charter. (See the language
 used in said section 62, on page 129).

1874, May 29, the Board of Finance passed the fol-
 lowing resolutions :

By Mr. Ogden :

“Resolved, That the ‘American Standard,’ the
 ‘Evening Journal,’ the ‘Jersey City Herald’ and the 20
 ‘Watch-am-Hudson,’ be and they are hereby desig-
 nated as the official newspapers of the city for the pub-
 lication of *all legal notices required by the city charter,*
 the compensation to be at the following rates, viz. :
fifty cents per folio for the first insertion and *thirty*
cents per folio for each subsequent insertion.

“Resolved, That the ‘American Standard’ and the
 ‘Evening Journal’ be and are hereby *designated* to
 publish the *official minutes* of the *city departments,*
 the compensation to be \$150 per month for each 30
 paper.”

The evidence is that the above resolutions were ap-
 proved by the Mayor *June 1, 1874,* and that copies
 were sent to all the boards, and also to the “Evening
 Journal,” “American Standard,” “Jersey City Herald”
 and “Die Watch-am-Hudson.”

At a regular meeting of said Finance Board, June 4,
 1874 :

Communications were received from Pangborn, Dun-
 ning & Dear, John H. Lyon and Hugh McDermott re- 40
 fusing to print official matter relating to the city govern-
 ment at the rates then established and giving their
 reasons for said refusal.

See McDermott’s communication, *Exhibit D 1,* in
 which he declines to publish legal notices at the prices
 fixed, and protests against the action of the board in
 designating certain papers to print the minutes. This
 communication to the board is more forcible than
 polite, in which he betrays deep feeling, adding at the
 close :

10 "I may be permitted to further remark that there is a general hope of your early resignation."

Why? Because the board was trying to save the city an expense of \$6,000 a year, for the printing in two weeklies, unnecessarily?

At \$250 per month, or \$3,000 per year, to each paper for printing minutes, made a total yearly expense for *that one purpose* of \$12,000, and because the Finance Board, with the acquiescence of the remaining boards, exercised a prudent discretion and reduced that expenditure *one half*, by restricting publication of the minutes to the two daily papers, that act of economy on the part of the Board in the interest of the public, seems not to have met the approval of Mr. McDermott, because the "head and front of their offending," and naturally provoked the prayer from Mr. McDermott for their "early resignation."

20

To save \$6,000 a year in the one item of printing the minutes, by withholding public patronage from the papers, was not to be tolerated by the editor, even if

30 the public approved.

The weekly German paper, the "Watch-am-Hudson," concedes the claim of the city to *restrict* the printing of the minutes, by making no issue with the city and no claim to publish the minutes for compensation.

Even the "Jersey City Herald" withheld any publication of the minutes *for over two months*, from the date of the resolution reducing the price to be paid for printing minutes until, by subsequent resolution, the former price was restored, that is, from May 29, 1874,

40 until after the first of August following, and *then ignoring the action of the Board* in restricting publication of the minutes, published these minutes, the publication of which it had withheld for two months and upwards, and thereafter published minutes and now claims compensation.

In the matter of this publication Mr. McDermott can urge no surprise of facts, for he was cognizant of *all the facts* governing or affecting his case. And he was familiar, too, with the provisions of the charter respect-

ing the official papers, and was bound to *know* the law, 10
both as to its proper construction and legal effect.

If he succeeds it must be by the *strictest legal right*.

If he fails and is damaged or suffers loss, it is "*damnum absque injuria*," and for which he has himself "*to thank*," and no one *but himself to blame*.

The proprietors of the several official papers having declined to publish "*legal notices*" and matters "*required by the charter*" to be published, at the rates per folio as fixed by resolution of May 29, 1874, the municipal authorities were embarrassed in not being able to give in particular instances the required legal notice, and the Board of Finance therefore felt constrained to take the following action, to wit: 20

At a regular meeting of said Board, July 2, 1874, the following preamble and resolution were passed:

Resolved, That whereas the official newspapers of Jersey City have declined and refused to publish *legal notices and matters required by the charter of Jersey City to be published in such papers*, at the *compensation, per folio, fixed by this Board*, by resolution of May 29, 1874; and 30

Whereas, By the provisions of the city charter, this board cannot lawfully designate any official papers other than those already designated; and

Whereas, The city charter requires *legal advertising* to be done in these official newspapers, and none others; and it being found *impracticable*, if not impossible, to compel publication at the compensation as last fixed by this board; 40

Therefore, in consideration of the premises aforesaid, this Board feels constrained to restore the *former rates for legal advertising required by the charter*, and in conformity therewith, does hereby fix the compensation of the official newspapers of Jersey City, for the publication, *when duly ordered*, of such *notices*, and *matters* as are *expressly required* by the city charter to be published in the official newspapers, at the rates following,

10 to wit: *sixty cents per folio* for the *first insertion*, and
forty cents per folio for each *subsequent insertion*.

The above resolution, last stated, while forming a part of the history of the printing contest between the city and the official papers, and to that extent explanatory, does not, it will be observed, embrace within it, either by express terms or by inference, the publication of the minutes of the different boards.

Observe that the publication of the *minutes*, and the *price* of such publication, are studiously and carefully,
 20 by selection of unmistakable language, *excluded* from the provisions of said resolution last above stated.

The two dailies, "Journal" and "Standard," having refused to publish the minutes at the compensation last fixed, to wit: at \$150 per month, the Board of Finance took action respecting publication of official minutes, as follows:

At a regular meeting of the said Board, held July 16, 1874, the following preamble and resolution was passed and approved by the Mayor July 17, 1874, and copies
 30 sent to the "Journal" and "Standard," the two dailies designated to publish the minutes, to wit:

BY MR. BACOT:

Whereas, It appears by the communications addressed to this board by journals designated to publish the *official proceedings* of the various boards of the city government, that such publication cannot be done at the price named in the resolution passed by this Board
 40 May 29, 1874, without loss to the proprietors of said journals;

Resolved, That the price to be paid hereafter for publishing the *official proceedings* of the *various boards* of the city government in the *journals designated* in the *resolution passed May 29, 1874*, be fixed at the sum of \$250 per month each, and that so much of said resolution passed May 29, 1874, as conflicts herewith is hereby rescinded.

By the above resolution the compensation for pub-

lishing the minutes was enlarged, but the restriction by which the publication was limited to *two* papers was not altered. 10

In other words, so much of the resolution of May 29, 1874, as restricted publication of minutes for which compensation would be allowed and paid, to the two daily papers, remained and continues unchanged and in force.

The evidence on the trial is that the action of the Finance Board, restricting the publication of the minutes and fixing the compensation that would be paid was communicated by the Clerk of the Finance Board to each of the other boards of the city government, which several boards received and filed the same, and so far as appears *acquiesced* therein fully. 20

It will be seen by reference to the *Board of Education minutes* (printed minutes) on page 11, meeting June 8, 1874, that board received the two resolutions of May 29 (one respecting the legal notices and the other the minutes), and ordered them entered IN FULL on the minutes of the Board of Education. 30

The *Board of Fire Commissioners'* minutes show a record, as follows, respecting the action of the Finance Board, to wit (Fire Commissioners' minutes) page 20 (as printed), meeting June 3, 1874: "Communication received from the Board of Finance containing copies of resolutions passed them, to wit: That the 'Evening Journal' and the 'American Standard' newspapers were designated to publish the *official minutes* of this board.

"Also, that the 'Evening Journal' and the 'American,' 'Jersey City Herald' and 'Wacht-am-Hudson' newspapers were designated as the official newspapers for publishing all *legal notices* required by the charter. 40

"On motion of Commissioner Stilsing, the communication was *received* and *ordered filed*, and the Clerk instructed to comply with the same, if the opportunity offered."

That action of the Board of Fire Commissioners was an *official direction* to the Clerk of the Board to have

10 the minutes of the board published in the *two dailies* named in the Finance Board resolution.

“If the opportunity offered” means this and nothing more, to wit: the newspapers, consequent upon the action of the Finance Board, had published their intention not to print, &c., and at this very meeting of the Board of Fire Commissioners the latter board had received formal communications from the proprietors of the two dailies, the “Journal” and “Standard,” informing the latter board they declined and refused to
20 print the minutes or publish the notices at the rates and compensation fixed by the Finance Board.

If, then, the opportunity should offer, and the two dailies named should consent to publish the minutes, the Fire Board *thus expressly orders and directs* the minutes to be published in said two daily papers, but it *does not* order publication in the “Jersey City Herald.”

It does not appear from the evidence in the case or by the records that Mr. McDermott, of the “Jersey City Herald,” communicated with any or either of the
30 boards (than the Finance Board) respecting the minutes (or the legal notices).

His communications were made *to* the Finance Board, and *to that Board confined*.

After the resolution of May 29, 1874 (passed by the Finance Board), Mr. McDermott refused to publish the *legal notices* until former rates therefor were restored by said board.

40 He likewise ceased publication of the minutes when the Finance Board *reduced* the compensation, thereby *recognizing* the jurisdiction of that board in the premises; but when that board *fixed* the compensation to \$250 per month for the *two dailies*, then Mr. McDermott *ignores* the jurisdiction and right of the board to fix compensation in the premises by assuming the right to publish the minutes for pay, and *fixing his own compensation* therefor at \$250 per month, and this he justifies under the plea of “*invidious distinction*,” and claiming that restricting the publication of the min-

uties to the two dailies would make his paper *semi-official*. 10

It is difficult to appreciate the force of his logic in this particular, inasmuch as the charter, by its qualifications and as claimed in plaintiff's brief, makes it *impossible not* to designate the "Jersey City Herald" as *one* of the official newspapers. Of course it is not to be presumed that these newspapers shaped this legislation in their particular interest, but rather that a generous public (not without "invidious distinction," however,) *fixed* and *fashioned* legislation in the interest of the particular papers named! 20

By the *qualifications* specified, the "Jersey City Herald" became one of the *elect papers*, and the *designation* merely a formal matter. But therein was the *modesty* of this special legislation, that the official papers were "from time to time to be *designated*" by the Finance Board.

And that "*designation*" constitutes them the *official papers*. Their official character or status is not affected or changed by what they publish or do not publish, and though they may publish *nothing* for the city, from the time of their "*designation*" they become the official newspapers. 30

Is the "Wacht-am-Hudson" any the less an official paper because it was not required or desired to publish for pay the minutes and did not publish them?

Did the "Jersey City Herald" cease to be an official paper while it ceased to publish the minutes and refused to publish the legal notices? If it did, how did it again become an official paper, as there has been no new designation since May 29, 1874? 40

If Mr. McDermott's insistent is correct, that not to publish the minutes makes an official paper *semi-official*, and therefore invalidates the legal notices published in such paper, then there has been no "legal notice" sufficiently advertised under the charter since the German paper ceased to print the minutes for compensation.

Such logic is sheer nonsense. The "*designation*"

10 under the charter *constitutes the official newspapers*, and not what is published in them.

At the meeting of the Finance Board held August 6, 1874, there was received from Mr. McDermott, through his counsel, a communication addressed to said board (*see Exhibit D 2*), reminding the board they had designated the "Jersey City Herald" as one of the official papers, and that it was entitled to publish the minutes, &c., that not to publish them would make it semi-official, and that the board could use no such discre-
 20 tion in restricting publication of minutes by restricting compensation, &c., and asking the board to rescind its action. *Communication referred to Committee.*

The committee to whom last above communication was made petitioning the board to *rescind action* by which publication of minutes was restricted, reported *adverse* to the petition for the following reasons (assigned in the report), to wit (Exhibit D 3):

30 "FIRST. The charter does not *require* the publication of the minutes of the several boards of the city government, but leaves the publication thereof discretionary.

"SECOND. In the exercise of such discretion it is competent and alike discretionary to *limit* such publication.

"THIRD. The publication of the minutes not being required by charter cannot affect the *legality* or *validity* of such matters as are advertised by *express requirement*.

40 "FOURTH. Under charter provisions, newspapers become *official papers* by *designation* of the Board of Finance and Taxation, and not by what is advertised or required to be advertised or published in them; and when once *designated* as the *official papers*, no amount or restriction of advertisements therein can make them *less official* or *semi-official*.

"FIFTH. The *compensation* of official newspapers the charter authorizes this board to *fix*, and in the exercise of that reserved right and authority this board has refused to allow any compensation to the two weekly

official newspapers for publishing the minutes, by re- 10
 stricting such publication to the two daily papers;
 thereby disallowing compensation to the two weekly
 papers, for such matters as said weekly papers are
 neither required, requested or directed to publish.

“SIXTH. Because the action of the board heretofore
 in fixing compensation for the two dailies, for publica-
 tion of the minutes, and restricting such publication
 for which compensation should be paid to the *two dai-* 20
lies, was with the view of saving considerable expense
 to the city by avoiding an unnecessary publication, at
 the same time providing for a publication which was
 and is deemed suitable for the information, reference
 and convenience of the several boards and depart-
 ments of the city government, and quite adequate to
 satisfy and fulfill all reasonable requirements of the *tax-*
paying public.

“Therefore, your committee report adverse to the
 petition, and recommend the Clerk of the Board be 30
 instructed to send to the ‘Jersey City Herald’ (and also
 to the ‘Wacht-am-Hudson,’ each) a copy of this report
 with the action of the board thereon, and to notify
 the proprietors of each of said two weekly papers that
 no compensation has been fixed or will be allowed
 them for the publication of the minutes and proceed-
 ings of the boards, since such publication was re-
 stricted to the two daily papers, and that any claim
 the said two weekly papers, or either of them, may
 make therefor will be resisted as illegal and unjust and
 for which ‘The Mayor and Aldermen of Jersey City’ 40
 are not liable.

“Signed by the Committee.

“G. D. VAN REIPEN,

“R. C. BACOT,

“Committee.”

This said report the Board *adopted*.

Mr. McDermott was notified of the action of the
 board on his petition, and he was also served by the

- 10 Clerk of the Board with *copy* of the committee's report.

Mr. McDermott, when on the witness stand, also admits receipt by him of copy of said report and notice of the action of the board thereon.

Notwithstanding *all this*, Mr. McDermott ignores the action of the board, denies its authority, and claims compensation, where none has been fixed or allowed, for the publication of what *no board* of the city government has directed him to publish.

- 20 Such claim is clearly illegal, and the city is bound to contest it to the uttermost.

But look further at the evidence :

C. S. See, Clerk of Finance Board ;

John E. Scott, City Clerk and Clerk of Board of Aldermen ;

John T. Denmead, Clerk of Board of Fire Commissioners ;

- 30 George Warrin, Clerk of Board of Police Commissioners ;

Martin Fink, Clerk of the Board of Education, and

- H. H. Newkirk (then), Clerk of Board of Works, each and all testified that they respectively sent to Mr. McDermott all the *legal notices* of their respective Boards, for publication, but (*with the exception* of Newkirk, Clerk of the Board of Works) they each and *all explicitly* testify that since the resolutions of the Finance Board of May 29, 1874, they have not sent to the "Jersey City Herald," or to Mr. McDermott, 40 the proprietor of that paper, the minutes of their respective boards, for publication.

And each of said clerks testify that the boards for which they are clerks respectively, have not, nor have either of them, since May 29, 1874, ordered, authorized or directed the publication of their minutes respectively in the "Jersey City Herald," or directed the same to be sent to the "Jersey City Herald."

The fact, then, established *is*, that after the resolution of May 29, 1874, *no* "*minutes*" were sent to Mr. McDermott, of the "Herald," except in

the instance of H. H. Newkirk, then Clerk of the Board of Works, who testified that at the request of Mr. McDermott, and as a matter of courtesy, but *without any instructions or authority of the Board of Works*, he furnished Mr. McDermott with copy of proceedings of Board of Works. There was further reason, than the request of Mr. McDermott, for this act of courtesy on the part of Mr. Newkirk, and that was found in the fact that Mr. McDermott was giving the members of the Finance Board *gratuitous and prominent notices* in his paper, which was peculiarly pleasing to Clerk Newkirk, whose salary had not been concurred in by the Finance Board. 10

Another fact established is, that after the new "*designation*," and passage of the resolutions of Board of Finance of May 29, 1874, *neither of the Boards* of the city government authorized or directed the publication of the minutes in the "*Jersey City Herald*." 20

On the contrary, the Finance Board directed the minutes should be published in the two daily papers, *and in them only*. 30

The Board of Fire Commissioners virtually made the same order, by instructing its Clerk to comply with the directions of the Finance Board, and to conform to its "*designation*" as to publication of minutes.

Each of the boards acquiesced in the action of the Finance Board by *not* directing the minutes to be published in the "*Herald*" and the "*German paper*," and in not publishing minutes in those two papers, but sending them to the two daily papers for publication.

With the exception of the Board of Works' minutes, sent him by courtesy of Clerk Newkirk, Mr. McDermott copied the minutes he published from the daily papers, as the same appeared therein (and with the mistakes therein appearing). 40

Section 158 of the charter leaves the publication of the minutes entirely discretionary.

The proceedings *may be* published in the official newspapers; *not shall* be, but *may* be.

Now the insistent on the part of the city is, that if the proceedings *may*, at the option of the Board, be

- 10 published in the official newspapers, they may be published in *all the official* papers, or in any number *less than all*.

For example, suppose *one* board ordered its minutes published in *all* the official papers, and *another* board did not direct the publication of its minutes, or rather directed its minutes should not be published. This, it must be admitted, would be competent under this 158th section.

- 20 Such would be the free exercise of the discretion left with the boards.

The insistent on the part of the city is this, that it is not required to publish the minutes, and that it may publish its minutes. And that the boards, or either, are at liberty to publish their minutes in all the official papers, or in either of the official papers.

As the greater includes the less, so the liberty and discretion to publish in all the official papers necessarily carries with it the liberty to publish in *less* than all, at discretion.

- 30 If the Court should otherwise construe this section and hold differently, then on what basis can plaintiff recover?

And how shall the amount of his recovery be determined?

For the "Herald" no compensation has been fixed for publication of the minutes.

- 40 The Court has no power to fix that compensation, as the Legislature has *expressly reserved* that to the Finance Board to fix. And if the Court had the power, there is no evidence before it of the *quantum meruit*.

The Finance Board has fixed the compensation to be paid the "Journal" and "Standard" for publishing the minutes of *all* the boards, not a part of them, and has directed that the said last two papers named publish the minutes. Plaintiff cannot fix his own compensation, neither has the Court jurisdiction to fix it, any more than it has to control the boards in the exercise of their discretion in publishing their minutes. No compensation has been fixed for the "Herald" as to the minutes. Their publication has not been author-

ized in the Jersey City "Herald," and the plaintiff is, 10
therefore, not entitled to recover.

WM. A. LEWIS,
Counsel of Defendant.

It should also be stated

That Mr. McDermott's claims for compensation for publishing minutes since June 1, 1874, as often as the same have come before the board have uniformly been reported on adversely and payment refused.

WM. A. LEWIS, 20
Counsel.

REPLY TO DEFENDANT'S BRIEF.

1. Section 4 of Act of 1874, Pamphlet Laws, pages 505 and 506, entirely changes the method of designation of official papers, and does not leave the designation of the same with the Finance Board as before, but expressly creates the "Herald" an official, and without any designation of the Board whatever, the "Herald" would be constituted under the act an official paper. 30

2. The question of economy, as introduced in the brief of defendant's counsel, is in no wise pertinent, nor can it in any manner aid the Court in the construction of these statutes. It was undoubtedly intended by the Legislature that the patronage of printing the minutes should be divided between the different sections of Jersey City. The "Argus," "Journal," and "Wacht am Hudson," were all papers printed, published and circulated in only one portion of the city, and the publication did not reach a great portion of the inhabitants of said city. The publication of the proceedings of such bodies as the Board of Finance, is for the purpose of informing the people and making public the proceedings of the Board, that the people and taxpayers may watch their servants, and from time to time prevent any unnecessary, extravagant or fraud- 40

10 ulent expenditure of public money which may be contemplated; and the Board in their attempt to exclude the "Herald" from the publication of the minutes, were acting not in the interest of economy, but clearly in violation thereof, and contrary to the intention of the Legislature; and in saving an expense of publishing in one weekly there might result in certain event great loss to the taxpayers of the city.

It was not an act of economy on the part of the Board; but manifestly a personal feeling towards the
20 plaintiff, for reflecting in the "Herald" on the rectitude of some of its members.

The previous Board of Finance always paid the "Herald" for printing the official minutes, knowing that they had no authority to do otherwise so long as the minutes were printed in any of the official newspapers.

The people of the Hudson City division of Jersey City, almost without exception, among whom is Mr. Van Reipen, one of the members of the Board, signed
30 a petition to make the "Herald" an official paper.

The "Wacht-am-Hudson" did not concede the claim of the city to restrict the printing, but its claim would not seem valid, being published only occasionally, sometimes weekly, sometimes daily, and sometimes it is suspended.

The publication of the minutes by the proof was made in the "Herald" so soon as a proper price was agreed upon between the city and the official papers, and the same fixed by resolution of the board, and at
40 the same time that the other official papers published the same.

Mr. McDermott recognized the jurisdiction of the board to fix the price, and that jurisdiction only; he never—as shown by the proof in this case—recognized or acquiesced in any jurisdiction of the board to restrict the publication of the minutes in one or more, and not all of the official papers.

He recognized their jurisdiction or their exercise of discretion "to publish or not to publish," and that is all.

The refusal to publish the notices required by the charter, was simply because all the official papers deemed the price offered by the city to be grossly inadequate, and they all stood together in this opinion. But if the "Herald" had so chosen it could have published these notices, notwithstanding the action of the Board of Finance, and could have recovered from the city a reasonable price therefor, as the "Herald" was made an official paper by the statute, and the charter required these notices to be published in the official newspapers. 10

It was the intention of the Legislature to take away appointing power from the board, to prevent fraud in its exercise. It was well known, that heretofore, that bribery had been committed in appointing official papers; that the appointments of official papers had been made the subject of barter and sale, and the official patronage had been traded out to the mouthpieces of individuals, cliques and rings, until the whole dispensation of public printing had become corrupt. It left the door open to corruption; and these acts of the Legislature were passed as a remedy to this great mischief. 20

The construction contended for in the defendant's brief would again open the whole matter of official printing to this shamelessness of former times, and wholly annul the intention of the Legislature. 30

J. H. LIPPINCOTT,
Attorney of Plaintiff.

THEODORE RYERSON,
Referee, &c.

40

10

The following bill of exceptions was duly sealed :

NEW JERSEY SUPREME COURT.

20	HUGH F. McDERMOTT AGAINST THE MAYOR AND ALDERMEN OF JERSEY CITY.	}	In Debt.
----	---	---	----------

J. H. LIPPINCOTT, attorney of plaintiff.

E. T. PAXTON, attorney of defendants.

30 Be it remembered, that on the _____ day of _____, in the year one thousand eight hundred and eighty-four, at a Supreme Court Circuit, holden at Jersey City, in and for the County of Hudson, before his Honor Manning M. Knapp, Esquire, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, the issue joined in the above-stated cause, between the said parties (*pro ut* the pleadings), came on to be tried at the September Term of said Circuit Court, and the parties having offered and produced their _____, on both sides, in support of the issues in this cause on their behalf, and the evidence offered and documentary

40 offered, having been heard or read, and both sides having rested, and the said Justice did then and there give his opinion, and decide that judgment be entered in favor of the defendants and against the plaintiff, and to which said opinion and decision of the said Justice the said plaintiff, by his counsel, did then and there except, and pray that such exception be sealed, and it is sealed accordingly.

M. M. KNAPP, [SEAL.]

J. S. C.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

HUGH F. McDERMOTT AGAINST THE MAYOR AND ALDERMEN OF JERSEY CITY.	}	In Debt. — Assign- ment of Errors.	20
---	---	---------------------------------------	----

Afterwards, that is to say, on the twenty-fourth day of February, in the year one thousand eight hundred and eighty-five, in the Court of Errors and Appeals in the last resort in all causes of the State of New Jersey come the said Hugh F. McDermott by J. H. Lippincott, his attorney, and say that in the record and proceedings aforesaid, and also in the matters recited and contained in the bill of exceptions, and also in giving the verdict and judgment aforesaid, there is manifest error in this, to wit :

That the pleas aforesaid of the said the Mayor and Aldermen of Jersey City are not sufficient in law for it to come and defend in manner aforesaid in the said plaintiff's action against it.

There is also error in this, that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid, was given for the said the Mayor and Aldermen of Jersey City, against the said Hugh F. McDermott, whereas by the law of the land judgment ought to have been given for the said Hugh F. McDermott against The Mayor and Aldermen of Jersey City.

And the said Hugh F. McDermott prays that the judgment aforesaid for the error aforesaid, and other

10 errors in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he had lost by occasion of said judgment.

J. H. LIPPINCOTT,

Attorney for and of Counsel with Plaintiff in Error.

Ordinary joinder in error filed February 24, 1885.

20

30

40

N. J. Court of Errors and Appeals.

HUGH F. McDERMOTT

vs.

THE MAYOR AND ALDERMEN OF
JERSEY CITY.

*In Debt.—In Er-
ror to Supreme
Court.*

Plaintiff's Brief.

This action was brought to recover the sum of \$8,750 and interest on that sum for printing the minutes of the different municipal boards of the city of Jersey City in the *Jersey City Herald*, a newspaper owned by the plaintiff. Trial was had before Justice Knapp and judgment entered for the defendants which judgment is brought into this Court by writ of error. (Decision, page 74, 75, 76, 77, printed case.)

The earliest statute on this subject of public printing in Jersey City is the statute of 1871, page 1094, approved March 31, 1871. This was the act to reorganize the local government of Jersey City, and is known as the Charter of 1871.

By section 158, it is provided "That the proceedings of the several boards provided for in this act shall be public, and their minutes may, in the discretion of each of such boards, be published in the official newspapers of the city, and each board, except the Board of Aldermen, shall annually, in the month of January, present to the Board of Aldermen a general statement of its proceedings."

This act provided for the publication of the minutes of the different boards. (Page 58, printed case.)

Previous to the passage of this act Mr. McDermott, as the editor and proprietor of the Jersey City *Herald*, was appointed an official newspaper of Jersey City.

See resolution of Board of Alderman of Jersey City, May 31, 1870 (page 51 of printed case.)

This was under the first charter of Jersey City, by which nearly all the powers of Jersey City were vested in a Board of Aldermen elected from the different wards of the city.

The act was entitled "An act to consolidate and make into one city, to be called Jersey City, the cities of Jersey City, Hudson and Bergen, in the county of Hudson."

Laws 1870, p. 1170, approved March 17, 1870.

Under this resolution Mr. McDermott published in the Jersey City *Herald* the minutes of the Board of Aldermen, Water Commissioners and Police Commissioners, the three boards of Jersey City, under an act of 1870.

By the act of 1871, above cited, it was also provided by section 20 "That the official newspapers of said city shall be designated by the Board of Finance and Taxation from time to time, and shall be three papers published therein, which for three months next preceding the designation have had the largest *bona fide* circulation; *provided*—that the said three papers shall not belong to the same political party, and provided further that a newspaper published therein, in the German language, may also be designated by said board as an official newspaper, and all matters required by this act to be published in one or more newspapers shall be published in the official newspapers of the city, and none others, except when, by this act expressly directed, the compensation of said newspapers shall be fixed by said Board of Finance and Taxation." (Page 58 of printed case.)

Under these laws, immediately following on April 10, 1871, the *Journal, Standard* and *Times* were designated as official papers for the publication of all minutes, etc. (Page 58, printed case.)

By supplement to act to reorganize, etc., passed April 4, 1872 (Laws 1872, p. 1239), it is provided that in section 20, of an act of 1871, the word "three" be struck out and the word "two" be inserted, thus making only two official papers instead of three. In 1873 a supplement was passed repealing the supplement of 1872, alleging that supplement of 1872 had never passed but was included in the passed bills by mistake.

Laws 1873, page 216.

Under the act the *Times* was paid for the publication of the minutes during the year. (Page 59, etc.)

By supplement approved March 24th, 1873, Laws 1873, page 417, Sec. 62, it is provided :

"That Section 20, of the act to which this is a
 "supplement, is hereby repealed, and that the fol
 "lowing is substituted in the place and stead
 "thereof : That the official newspapers of said city
 "shall be designated by the Board of Finance and
 "Taxation from time to time, and shall be the
 "three papers published therein which for three
 "months next preceding the designation have had
 "the largest daily average *bona fide* circulation ;
 "PROVIDED, that said three papers shall not be-
 "long to the same political party ; and *Provided*
 "further, that a weekly newspaper, published
 "therein for at least two years each week succes-
 "sively, may also be designated by said board as
 "an official newspaper ; and also one newspaper in
 "the German language, and all matters required
 "by this Act to be published in one or more news-
 "papers shall be published in the official newspa-
 "pers of the city and none others, except where by
 "this act expressly directed. The compensation
 "of said newspapers shall be fixed by the said
 "Board of Finance and Taxation." (Page 60.)

On June 5, 1873 (see page 60), the following resolution was offered at a meeting of the Board of Finance and Taxation, and laid over :

“ *Resolved*, That the following papers are hereby designated as official newspapers of the city as provided for in the supplement of the city charter passed March 31, 1873: the *Evening Journal*, *American Standard*, *Jersey City Times*, the *Jersey City Herald*, and *Wacht am Hudson*, and that the compensation for publishing the minutes of the different boards of the city government be fixed at two hundred and fifty dollars per month to each of said newspapers.”

On June 12, 1873, the resolution was adopted and approved. (Page 61.)

From June 12th, 1873, to July 1st, 1874 (see page 39, *McDermott's testimony*), Mr. McDermott, as the editor and proprietor of the *Jersey City Herald*, published in that paper the minutes of the different boards of Jersey City, and received compensation therefor at the rate of two hundred and fifty dollars per month.

March 27, 1874, a further supplement was passed (Laws 1874, page 504, Section 4), which provides :

“ That hereafter the official papers in Jersey City shall be designated by the Board of Finance and Taxation from time to time, and said official papers shall be not more than four in number, and shall be the two daily newspapers published and circulated in said city (provided that said two daily newspapers shall not belong to the same political party), which shall have had for the period of six months prior to their designation as official newspapers the largest *bona fide* average daily circulation in said city; the third shall be a weekly newspaper published in that part of Jersey City formerly known as Hudson City, at least two years prior to its designation as an official paper, and one weekly newspaper pub-

“lished in said city and printed in the German
 “ language, and which shall have been in existence
 “ and so published for at least the period of one
 “ year prior to its designation as an official paper ;
 “ *Provided*, that the newspapers heretofore desig-
 “ nated and now being the official papers of said
 “ city shall continue under such designation to be
 “ the official papers of said city, until a new desig-
 “ nation is made under the provisions of this sec-
 “ tion of this act.” (Page 61.)

This act made the Jersey City *Herald* an official newspaper, it being the only paper published in that portion of Jersey City known as Hudson City. *It is imperative in its character*, and clearly within the limits of legislative power.

By resolution of May 29th, 1874, of the Board of Finance and Taxation (page 61), the *Standard*, *Journal*, Jersey City *Herald* and *Wacht am Hudson*, were appointed the official papers of the city, “for the publication of all legal notices required by the city charter,” and the *Standard* and *Journal* were designated to “publish the official minutes of the various boards of the city departments” (pages 61 and 62).

The compensation fixed by these resolutions was a source of contention for about a month, but was finally settled by resolutions July 2, 1874, July 8, 1874, and July 16, 1874 (page 63).

Notwithstanding these resolutions Mr. McDermott continued to publish the minutes, contending that the Act of March 27, 1874, made him *ipso facto* an official paper ; that he also was designated an official paper, that he had the right to publish the minutes. That if the Board of Finance and Taxation exercised the discretion to publish the minutes of the different boards, they must be published in all the official papers.

This, in brief, was his contention (page 64).

Under this contention be printed in the minutes, and rendered bills for same.

On April 2, 1875, having published the minutes up to that time, he commenced suit in the Supreme Court for the compensation for publishing minutes from June, 1874, to March, 1875, inclusive, ten months at \$250 per month, amounting to \$2,500. On June 12 that cause was tried before Justice Knapp, a jury being waived, which cause was on September 7th, 1875, decided in favor of the city.

A rule to show cause was granted, and the cause was argued in Supreme Court, and the rule discharged, and judgment final rendered in favor of the city.

See statement of that case in printed book, pages 92 to 129; also page 66. McDermott's testimony, page 42.

March 9, 1877, an act was passed by the Legislature, at the instance of Mr. McDermott, which was intended to give relief to him.

Laws 1877, page 297.

It is entitled "An Act relative to the publication of the minutes and proceedings of the several municipal boards of the cities of this State."

"That in any city of this State the municipal boards whereof are authorized, by special act of the Legislature, to publish the minutes and proceedings of said board or boards, the proprietor of the official newspaper or newspapers so designated by said board or boards, which said official newspaper or newspapers have heretofore published said minutes in full, and not an abstract or synopsis thereof, shall be entitled to receive and recover from said city or cities payment therefor according to the rates fixed by said municipal board or boards." (Pages 66 and 67.)

After the passage of this latter act, suit was commenced for the publication of the minutes from April, 1875, to April, 1877 inclusive, amounting to \$6,250.

This cause was tried May 1, 1878, before Justice Reid and jury, and verdict directed for the defendant.

McDermott's testimony, pages 43 and 44-67.

Feb. 27, 1879, an act was passed entitled "An Act relative to the publication of the minutes and proceedings of the several municipal boards of the cities of this State." Laws 1879, page 62, section 1.

The act is as follows :

"Section 1. Be it enacted etc. That in any city of this State, the minutes and proceedings of the municipal boards of which were authorized by act of the legislation to be published, and the official newspapers for such publication were to be designated by one or more of said boards, if the said board or boards or any or either of them so having the right to designate as aforesaid, shall have designated a newspaper or newspapers as official to publish all legal notices required by the City Charter, and the newspaper or newspapers so designated, shall have published the official minutes or proceedings of said board or boards, although not designated as official for that special purpose; said newspaper or newspapers having been designated as official to publish the minutes and official proceedings, previously to the designation to publish said legal notices, and having published said previous minutes and official proceedings, previously to the designation to publish said legal notices, and having published said previous minutes and official proceedings, and received compensation for such publication it shall be lawful for the proprietor or proprietors of said official newspaper or newspapers, to receive and recover from the city, the board or boards of which shall have made the designation, to publish all legal notices as aforesaid, compensation for the publication of said official minutes and proceedings, subsequent to said designation, according to the rates fixed by

“said board or boards for such publication, or paid
 “by them to such newspaper or newspapers as were
 “especially designated for that purpose, *provided*
 “*that the provisions of this act shall not apply ex-*
 “*cept in cities of this State having over fifty thou-*
 “*sand inhabitants at the last State census.* (Pages
 “67 and 68.)

Under this act Mr. McDermott again made claim for the payment of the compensation for the printing of these minutes, and for that purpose presented a petition to the Board of Finance and Taxation.

Under the advice of Corporation Counsel they refused to pay him, holding that by the proviso of the act that it was unconstitutional.

Opinion Leon Abbett, Corp. Coun., pages 68 and 69.

March 12, 1880, the Legislature passed another act, which is a supplement to the last act above cited, and provides that that act or section shall be amended so as to read as follows :

“1. Be it enacted by the Senate and General Assembly of the State of New York : That in case
 “any newspaper appointed as an official newspaper, of any city of this State, shall have published the official minutes of the proceedings of
 “the municipal boards of said city, and such publication was not duly ordered, in the manner
 “prescribed by law, then the justice of the Supreme Court holding the Circuit Court in the county
 “where such newspaper is published, shall upon application made to him for that purpose, appoint a referee, who shall ascertain and report to
 “said judge what amount of compensation the publisher of said official newspaper would have
 “been entitled to receive, if the publication of said minutes had been duly ordered according to law,
 “and the amount so reported shall thereupon be paid by the proper municipal authorities of said
 “city.” (Pages 69 and 70.)

Under this act a petition was presented to Justice Knapp holding the Circuit in Hudson County and an order of reference made to Theodore Ryerson. He heard the parties upon due notice, witnesses, &c., and made his report that Mr. McDermott would have been entitled if the publication had been ordered according to law, to the sum of \$8,750—and such proceedings was presented to said Justice and marked by him.

This report was presented to the Board of Finance and Taxation, and demand made upon them for the payment of the same.

The payment thereof was refused by said Board of Finance and Taxation, and thereupon an action of debt was brought upon the award or report of the referee in the Supreme Court, and the cause was tried before Justice Knapp (a jury waived). All the proceedings and testimony before the referee and award of referee were offered in evidence, and admitted.

Justice Knapp decided that the Act of 1880, being the supplement above referred to, was not retroactive. See objections to recovery before referee on page 51, printed case, and which were substantially the same on the trial. (See also page 52.) See reference to opinion under this act, in Justice Knapp's opinion, page 75.

In 1883. Laws 1883, page 238, another statute was enacted, as follows:

“ A further supplement to ‘an act relative to the
“ publication of the minutes and proceedings of
“ the several municipal boards of the cities of this
“ State,’ approved February twenty-seventh, one-
“ thousand eight hundred and seventy-nine.”

1. Be it enacted by the Senate and General Assembly of the State of New Jersey, that the provisions of the act to which this is a supplement, shall be held to apply only to the publications made prior to the approval of such act.

2. And be it enacted, that this act shall take effect immediately.

Approved March 23, 1883.

Under this act suit was again commenced, upon the award of the Referee, which is the suit now pending in error.

The cause was tried before Justice Knapp (a jury being waived). The proceedings before the Referee and the award being considered of the same force and effect as if they had been taken and made after the passage of the act (page 32 to 77).

After that, Justice Knapp again gave judgment in favor of defendants (see opinion, page 74, etc.)

Upon this judgment the ~~Court~~^{Case} of Error was sued out.

The above is a brief history of the cause.

Pleadings in cause, page 1 to 31.

Judgment, page 32.

Proceedings before referee and at trial, pages 32 to 74.

Opinion of Justice Knapp, page 78 and 75, and 76.

Briefs, etc., in former causes, page 77 to 129.

Statements and schedule of statutes, opinions of counsel, resolutions of Board of Finance and Taxation, etc., pages 52 to 71.

Bill of Exceptions, page 130.

Assignment of Error, page 131.

Joinder in Error, page 132.

The plaintiff in error contends that the judgment is erroneous.

I.

Because the Act of March 12, 1880, laws of 1880, page 263, is retroactive in its terms and effect, and the Court below erred in holding it to be prospective only.

Upon this point, it may be remarked that the defendant seems to be driven to desperate stratagems to defeat the justice which the plaintiff asks.

This statute only applies to any newspaper which "*shall have published,*" etc., clearly referring to papers heretofore appointed, and which in the past "*shall have published,*" etc.

It also provides that, "and such publication '*was not duly ordered according to law,*'" referring to the law in existence (in the past) at the time of the publication, not referring to laws which may hereafter be in force, but to the law in force at the time that the "*publication was ordered.*"

Then again at the close of the section directing the Referee to report "*what amount of compensation the publisher would have been entitled to receive if the publication had been duly ordered according to law.*"

If this means anything about the future, it is very hard to understand what language would affect the past.

I consider it express as to its retrospective effect.

It is plain, express and clear, and the contention that this statute is prospective is specious and a subterfuge, and is only raised as an experiment to defeat the claim of the plaintiff.

This statute clearly creates a new obligation or a new duty, growing out of public transactions, and that this is a power which our Legislature can exercise, is now too well established to be the subject of dispute and a fair and reasonable construction must be placed upon such a statute, and

only the ordinary rules of construction are to be applied.

And neither in the State or Federal courts is it held that statutes must contain any express declarations that they are retrospective in order for them to be so construed.

Hepburn *v.* Griswold, 8 Wall., 603.

When they impair vested rights, in private individuals they cannot be construed retrospective, after a right has attached it cannot be taken away by a retrospective statute, but even in cases of the statute of limitation, statutes may act retrospectively if they do not destroy or unreasonably impair rights of actions.

Remedial statutes (as in this case) are to be and can be construed to be retrospective.

Haskel *v.* Burlington, 30 Iowa, 332.

Sully *v.* Ruehl, 39 Iowa, 374.

So in matters of procedure in case pending.

Kimbray *v.* Draper, Law R. 32 B., 60.

Hoag *v.* Lefranc, 18 La. Am., 393.

Donner *v.* Palmer, 23 Cal., 40.

Bensby *v.* Ellis, 39 Cal., 309.

McNamara *v.* Minnesota, 12 Minn., 338.

It is clearly settled in England, "that the rule to give statutes a prospective operation is one of construction merely; that it will yield to the intention of the Legislature, if clear beyond doubt, and that the only question is whether the retroactive intention is clearly expressed." The will of the Legislature in the absence of constitutional restriction is sufficient.

Sedgwick on Statutory Construction, 164.

In this country there are only two classes of retroactive laws forbidden: an *ex post facto* law relating to criminal cases, the other a law which impairs the obligation of contracts.

The Legislature has power to pass laws retrospec-

tive in their effect, and they are to be given that effect if the intention of the Legislature is clearly expressed.

See rules to be applied

Sedgwick on Statutory Construction

page 170 to 173.

I claim that a retrospective intention appears on the face of this statute, and the Court will give it effect.

Baldwin v. Newark, 9 Vroom., 158.

Baker v. Scudder, 3 Vroom., 203,

4 Vroom., 424.

In this State a retrospective statute is not invalid unless it be an *ex post facto* law or impairs the obligation of a contract.

Same authorities.

For illustrations of retrospective statutes in New Jersey, see Stewart, N. J., Digest., bills, statues, retrospective statutes (7), pp. 1020, 1021.

This statute only gives a remedy where none existed before. It acknowledges a right against the public for services, etc., and only gives a remedy to provide for the proper compensation.

II.

The Court below erred in deciding that the Act of the Legislature of 1883, P. L., 238, did not in terms and effect give any force or construction to the Act of 1880, and that it had no force or application to the legislation of 1880.

The contention of the plaintiff in error is that the Act of 1880, was ~~not~~ retroactive; ^{also} that the Act of 1883 gave such legislation, such force and effect,

and that the Act of 1883 did apply to and effect the Act of 1880 in such manner that the Court could not say that the Act of 1880 was not retroactive.

By the Act of 1883 it is provided, "that the provisions of the Act to which this is a supplement *shall be held to apply only to the publications made prior to the approval of such Act.*"

This is a plain enactment that the Act of 1880 should have a retroactive effect.

The contention of the plaintiff is that it had that effect as it stood; but if not then this enactment clearly effected that purpose.

An objection is made that the Legislature has no power to give exposition to statutes by subsequent legislation; but this doctrine has long since been exploded, and it is clear that at the present time that such legislation is entirely within the province of the Legislature, and that it will be regarded and given effect by the Courts.

Sedgwick on Construction of Statutes, pages 214-217 and note.

And this, as it would seem, is admitted in terms by the Court below in its opinion, and that this legislation has the effect claimed for it, either as an act of interpretation, or as new legislation upon the same subject matter. It plainly has the effect of making the former act retroactive in either view.

But the Court avoids this operation of the statute by deciding that this supplement does not apply to the act of 1880, but to the act of Feb. 27, 1879, which latter act was unconstitutional.

But it must be remembered that the act of 1880 wiped out the Act of 1879, and substituted entirely new legislation. It is true it was done under the title of the Act of 1879, but still the Act of 1879 had no longer any force or existence either as an unconstitutional act or otherwise, the Act of 1880 was a supplement, and the supplement became the law, and the original act null and void, by the very

terms of the act of 1880. The act of 1883 was "*a further supplement*" by its title, and by its title and text applied to the act which was substituted for the act of 1879, to wit, the act of 1880. We have then as the legislation on this subject the act of 1880 and the act of 1883, and plainly, the interpreting act of 1883 applies to the act of 1880.

Besides, a "further supplement" applies to affects, and controls all legislation under the title of the act, to which it can be fairly and rationally applied, in order to give clear construction to the legislation and effect the remedy sought.

The act of 1880 was amendatory. It set forth the entire section to be amended, and under the rules of construction it is to be construed as introduced into the place of the repealed section, and fully takes its place, and therefore, the act of 1879 became, in language, force and effect, the act of 1880, except that the title remained. The amended section took the place of the original one. The amendment operated as though the amendment had been a part of the original statute, and if the Act of 1883 did refer to the act of 1879, it referred to it by the title of the act of 1879, but it is the act of 1880 which is affected; besides it is a further supplement, and affects all existing legislation.

Sedgwick on Construction of Statutory Law, page
110; note, "Amendatory Statutes."

In the opinion of the Court below, the above were the only points considered, and the judgment should be reversed if the Court was in error upon these points.

But, in the trial, other objections to the recovery were made, which it is proper should be considered although not touched upon in the opinion of the Court below.

The objection made to the recovery as shown on pages 51 and 52.

The objections made to the recovery by Mr. McDermott are as follows:

III.

Because an action on the report, or award, is not the proper remedy, it should be either by mandamus or an action on the statute.

The answer is very easy to this objection. Mandamus does not lie when the party has any other adequate remedy, and certainly, in this case, the action should be either upon the report or award of the referee, or by action upon the statute.

So that, I think, the objection that the remedy should be by mandamus may be laid aside.

The State ex rel. Cleveland v. The Board of Finance and Taxation, 10 Vroom, 629.

The Court say, in that case, "That there is a proper and adequate remedy for its enforcement cannot be doubted, for actions on awards are the usual methods of correction, where the submissions are not made rules of Court."

Now, as to whether this should be an action on the award or report of the referee, or an action upon the statute, it can make no material difference. In either case the action is debt; if the action is upon the award or report of the referee it is debt, and debt is the remedy if the action is based specifically on the statute.

Actions are upon statutes

1. When an action of debt is expressly given by the statute (which is not the case here).

2. Where the statute provides for the payment of a sum of money, or gives a penalty or forfeiture on the doing of a forbidden act, but does not mention any mode of recovering it.

I refer to the following cases upon these points :

Van Hook v. Whitlock, 3 Paige, 409.

Blackburn v. Baker, 7 Port. (Ala.), 284.

Rice v. Barre Turnpike, 4 Pickering, 130.

Adams v. Wood, 3 Crand., 341.

Kelley v. Davis, 1 Head (Tenn.), 71.

Wait's Actions and Defenses, Vol. 2, page 485, § 5.

Now, applying these principles to this case, it seems to me that this statute certainly provides a method by which the amount to be paid shall be determined and adjudicated upon, and that is by the reference and report, and then a direction that that amount shall be paid by the property municipal authorities. The statute provides a special method by which the matter or suit shall be set in motion so far as to determining the amount to be paid, leaving the method by which that amount shall be recovered from the city open.

And it seems to me that the action of debt upon this award is the proper remedy.

But if it is held not to be the proper remedy, but that the action should be based upon the statute, the action is debt, which is the proper action in either case; the declaration here consists of a special count on the award, and on common counts, the only thing necessary to be done is to change or amend the special count to one upon the statute. The award or report of the referee fixes the amount to be paid under the statute. No further proof is required, nor can there be any different defense interposed than what is here interposed. The testimony upon which the referee made his report is before the Court, and the amount of the referee's award is indisputable. Therefore a slight amendment is all that is necessary, if this should be the opinion of the Court that the action should be based upon the statute.

The Court on their opinion in this case disposed of this objection, and determined that as no inquiry into the force of the statute was excluded, it was immaterial as to the form of action whether it be on the award or upon the statute.

IV.

The second objection is that the act is unconstitutional.

1. Because it is a special act.
2. Because it was not advertised.
3. Because the title does not express the object of the act.
4. Because it regulates the internal affairs of cities and creates a class to which it only applies, and is therefore special.

We will take up these objections in the order in which they are made.

1. The act is not special, and this is certainly proved by the defendants' own assertions in the fourth objection under this head, where it is alleged to be general in its form. It is general in its form. It applies to every city in this state, and it is mere speculation for the defendant to say that it does not practically apply to every city in this state. On its face it is as general as any act could possibly be.

2. I do not understand that any act relative to cities requires publication. Every act applicable to cities regulates their internal affairs. It must be general in form, and advertisement would be of no benefit whatever to an act of this character. If it does regulate the internal affairs of cities, then no publication would be of any avail. Whether it does regulate the internal affairs of any city will be a matter of discussion hereafter, but certainly an act of this character requires no advertisement of notice of intention to introduce it. It is general in its form, in its effect and a public law, not a private act.

3. The objection is that the title does not express an object of the act.

Taking the title and comparing the act with it, it will at once be seen how strained this point is, and it seems to be made either in pursuance of a plan simply to heap up objections, or else by a drag net system, that it is best to catch at everything, in hopes that there may possibly be something to hold fast to.

The Constitution of the State, Sec. 7, Article 4, provides that every law shall embrace but one object, and that shall be expressed in the title.

Now, in this statute the contention is that there is but one object, and that is to secure payment for certain minutes of official proceedings of certain public board which have heretofore been published by the plaintiff in his official paper. That is but one object, and certainly that is expressed in ^{the} law in the title. It is a supplement to an act relative to the publication of certain minutes, relative to the payment for the publication of the same.

The original act of 1879 is, "An act relative to the publication of the minutes and proceedings of the several municipal boards of the cities of this State."

The act of 1880 is a supplement to (giving the title of the act of 1879).

Certainly the law has but one object—certainly the title to the act relates to and has a natural connection with the body of the act and the subject matters thereof.

For instance, "An act for the settlement and relief of the poor" gives the boards of chosen freeholders, or in certain cases township authorities, the right to raise taxes to build poorhouses with.

A supplement to the act gives them the right to issue bonds.

The Constitution of the State itself furnishes the true principle to be applied as a test as to whether the title expresses the object of the act.

It is to avoid "the improper influences, which may result from intermixing in one and the same act such things as have no proper relation to each other."

Here the object is to pay for the publication of the minutes of the proceedings of the several municipal boards of the cities of this State, and the title refers to these same minutes, one object, and that expressed in the title.

Neither the members of the Legislature, nor the people, could be misled by this title.

Sun Mutual Ins. Co. v. Mayor, &c., N. Y., 8 N. Y. 253.

The constitutional provision was enacted for the purpose of—

1. To prevent hodge-podge legislation.
2. To prevent surprise or fraud on the Legislature.
3. To fully apprise the people of the subjects of legislation being considered.

Here in this case, by the title, both the Legislature and the people would be apprised of the subject of legislation.

The general purpose of these provisions is accomplished, when a law has but one general object, which is fairly indicated by its title. To require every end and means necessary or convenient for the accomplishment of the general object, to be provided for by a separate act, relating to that alone, would not only be unreasonable, but would render legislation impossible.

Cooley on Constitutional Limitations, &c., page 143.

"An Act to establish a police government for the City of Detroit," included all matters properly connected with the establishment and efficiency of such a government, including taxation for its support and courts, &c.

I suppose, under a title of "An Act relative to the publication of the minutes of and proceedings of the several municipal boards of the cities of this State," an act could provide both for the publication of such minutes and compensation for such publication.

The generality of a title is no objection to it, so long as it is not made a cover to legislation incongruous in itself, and by which by no fair intendment can be considered as having a necessary or proper connection.

The Legislature must determine for itself how broad and comprehensive shall be an object of the statute, and how much particularity shall be employed in the title in ~~defending it.~~ *defining it*

Cooley, page 144, and cases cited.

For instance, the title was "An Act in relation to certain State roads therein named." The Act contained sixty-six sections, in which it established some forty-six roads, vacated some, and provided for the relocation of others." The Court sustained the Act.

State v. Country Judge, &c., 2 Iowa, 280.

The repeal of another statute on a given subject is properly connected with the subject matter of a new statute on the same subject, and therefore a repealing section in the new statute is valid, notwithstanding the title is silent on that subject.

Gobbert v. Railroad, 11 Ind., 365.

Guilford v. Cornell, 18 Barbour, 640.

See Cooley, pages 145 and 146, as to other instances, and the cases in the notices thereto.

Certainly compensation for the publication is properly connected with the publication of these minutes in this statute.

I suggest to the Court the principle that this provision of the Constitution is not mandatory.

Washington v. Mornas, 4 Cal., 388.

Miller v. State, 3 Ohio N. S., 475.

Pim v. Nicholson, 6 Ohio N. O., 177.

See illustrations: Sedgwick on the Construction of Statutory and Constitutional Law, pages 39 to 42.

These constitutional provisions were intended "to prevent the uniting of various objects" having no necessary or natural connection with each other in one bill for the purpose of combining various pecuniary interests in support of the whole, which could not be combined in favor of either by itself."

This was the mischief.

If there be anything more natural in connection than that compensation should follow the publication of these minutes, I shall be compelled to confer upon the astute counsel on the other side the task of discovering it.

4. Upon the fourth claim of the unconstitutionality of this act, it is claimed, that, it regulates the internal affairs of cities; it is general in its form, but special in its character because it creates a class and on its application is specially applicable to such class, and then a special act and within the prohibition of the Constitution. That is, it is a special act regulating the internal affairs of cities.

Under the *fourth claim* it is concluded that this act is unconstitutional because it violates the inhibitions of

Article 4, Section 7, Clause 11, of the amended constitution of the State of New Jersey, which provides that

"The Legislature shall not pass, private, local or special laws, in any of the following enumerated cases, that is to say" * * * *

"Regulating the internal affairs of towns and counties."

It is contended that this act is in violation of this provision of the Constitution, because it creates a

classification which is illusive, and again because it is specially applicable to but one locality.

As I understand this is the contention of counsel for defendants, but certainly on examination of the statute, both without and with the light which recent judicial decisions have thrown upon this question, will clearly demonstrate the fallacy of this view.

The statute creates no special class whatever. It creates no illusive classification. I contend that it finds in existence a class of persons in this State, in the cities of this State, who have performed public labor and service, and expended money in such work under the then understanding and construction of the law, and which afterwards it was ascertained could not be compensated for such public service, labor and expense. The Legislature recognizing the value of such service and expense, provides for compensation to all persons who may come within such a state of facts, and this provision is a general law which covers and includes *all* persons who may come within it; it covers and includes all persons who are included in the class. It makes no distinction whatever. It is applicable to every city of this State in which persons have performed such service, labor and expense; there is no classification whatever created by the statute. The natural order of things created the class, the Legislature by general law takes hold of this class and provides that relief, and in so doing it makes no distinction between one and another of the class, and it makes no distinction between one and another of the cities to which it applies. It may be applicable to every city of the State.

And again it is general in its form, neither from its face, nor from anything incidentally or necessarily connected with it, can it be gathered that it is a special or local law. It cannot be said from its face that it does not apply to every city in this

State. It is mere speculation to say that it does not.

The statute, certainly, in the consideration of these objections is not a special or local law.

“It imparts generality in all its parts. Its title is general, the body of the act is general.”

This statute is much more general than the one commented upon in *Van Riper v. Parsons*, 11 *Vroom*, 1.

This act clearly comes within the definition here given as a general law.

This object that is the payment for these services can only be accomplished by general law. If it was a special law, and enacted under advertisement or notice of intention to introduce it, it would be clearly unconstitutional under this provision of the constitution; it would then be special and be unconstitutional. It would then distinguish one of a class from another of the same class.

This thing could be done by general law, though a local or special act; even if adapted would be unconstitutional.

Pell v. Newark, 11 *Vroom*, 71.

Even if this statute does apply to but a city and one person, yet it is constitutional.

11 *Vroom*, page 123.

Rutgers v. New Brunswick, 13 *Vroom*, p. 51.

Case of *Van Riper v. North Plainfield*, 14 *Vroom*, 349.

In view of the reason of the matter, and as the light of the decisions on this matter, it follows :

That the act does regulate the internal affairs of cities. That the object and substance of the act is clearly of that character which calls for general legislation, and that special legislation under advertisement would be unconstitutional, that it is a general act in its form and frame; that it embraces the whole of a class of subjects and places and does not omit any subject or place naturally belonging to such class, that if it was so framed, general in

form, that it applied to but one individual or one place, yet it would be constitutional and operative.

It is alleged that this act affects but one person or one individual, as a matter of fact.

This is not so by the proof. The allegation is based upon mere speculation. The act is general in its form and applies to every individual of the class stated in the act and to every city in the State.

Yet even if it did but apply to one city only, yet such an act being general in its form is constitutional.

Van Riper *v.* Parsons, 11 Vroom, page 11.

Van Riper *v.* Parsons, 11 Vroom, 125.

Rutgers *v.* New Brunswick, 13 Vroom, p. 50.

VI.

Another class of objections is included within the allegation, and the plaintiff has not brought himself within the provisions of that.

1. That the newspaper must have been appointed or designated as an official newspaper for the publication of the minutes.

2. That the publication of these minutes were duly ordered according to law.

3. That the newspaper must have been appointed or designated, and the minutes duly ordered to be published therein according to law.

4. That a compensation must have been fixed for the publication in the paper.

It is difficult indeed if these allegations or propositions be considered correct, to understand what object there could be for the act. If the paper was

designated to publish these minutes, and did publish them, at a fixed compensation, of what earthly use would this statute be, for in that case there would be clearly a contract upon which the plaintiff could recover, a result for which the courts have already determined there was no ground.

The courts have already decided that he was not appointed or designated to publish the minutes, but that he was appointed an official newspaper, but not for the purpose of the publication of the minutes, and that there was no contract between the paper and the city.

The plain reading of this act is: And where a paper has been appointed an official newspaper, for any purpose, and has published the minutes, &c., and that *such publication* was not duly ordered according to law, then these proceedings shall be had, and this report to be made of a real amount of compensation the publisher of said *official newspaper* would have been entitled to recover, if the publication of said minutes had been duly ordered according to law, and the amount so reported shall be paid, &c.

Now the Jersey City *Herald* was appointed an official newspaper by resolution of May 24, 1874, and that resolution has never been rescinded to this day. The plaintiff has heretofore contended that he was appointed to publish the minutes as well as other matters, and that he was entitled to compensation for the publication of the minutes.

The courts have said, "No, you were appointed an official newspaper, but not for the publication of the official minutes, and you cannot recover compensation therefor. The publication therefore in your paper was not duly ordered in the manner provided by law," and the latter part of section one makes this much stronger for there the report is directed to be what amount of compensation the paper would have been entitled to recover if the publication of said minutes had been duly ordered according to law *in that paper*.

If the publication of the minutes had been ordered to be made in this paper, at a fixed compensation according to law, at the time the paper was appointed, I would like to know why recovery could not be had, not under this statute, but by ordinary suit.

But counsel says, the publication and compensation was ordered according to law, but not in this paper. This act refers them to this paper and others similarly situated, in which publication was not ordered according to law, and requires compensation to be paid therefor, the same as if compensation had been ordered in this paper according to law.

The testimony of Mr. McDermott, and all the facts of the case brings him within the provisions of this statute.

And I also distinctly claim that the statute of 1874 does lend additional force to this argument. It is sufficient to simply say that the act of 1874 (which was constitutional and operative) appointed the Jersey City *Herald* an official newspaper of Jersey City. It made it impossible for the Board of Finance not to appoint it as an official newspaper. If there is any force in language this statute of 1874 made it imperative on the Board of Finance and Taxation to appoint the Jersey City *Herald* an official newspaper. They exercised what the courts have decided to be a discretion not to publish the minutes in that paper.

I cannot perceive how, by any fair or reasonable construction the Jersey City *Herald*, and other papers in like situation, do not come under the provisions of this statute.

In conclusion, it seems to me proper to say, that by the Statute of 1874 the Jersey City *Herald* was made an official paper of Jersey City, with all the rights and privileges of an official paper, the only paper published in that part of Jersey City in that portion of the new city of Jersey City comprised in what is known as the old Hudson city and Bergen section. The statutes made it an official newspaper,

and Mr. McDermott claimed to have the right to publish these official minutes. He did publish them, and sought to recover the compensation fixed for such publication. The Legislature has in every possible manner recognized his right to compensation for the labor and expense of such publication, and sought to aid him by bestowing upon him the right of recovery.

By construction merely his claim has heretofore been defeated. The justice of his claim has been repeatedly recognized by the Legislature, and it is but right that the public obligation be now enforced.

For these reasons the judgment for the defendant should be reversed, and judgment for the plaintiff for his claim and interest be rendered.

J. H. LIPPINCOTT,
Counsel for Plaintiff in Error.

New Jersey Court of Errors and Appeals.

HUGH F. McDERMOTT, <i>Plaintiff in Error,</i>	}	<i>In Debt.</i>
<i>and</i>		
THE MAYOR AND ALDERMEN OF JERSEY CITY, <i>Defendants in Error.</i>	}	

Defendants' Brief.

This action was brought by the plaintiff to recover the sum of eight thousand seven hundred and fifty dollars upon the award of the referee, p. 28.

Tried before Justice Knapp, a jury being waived, and judgment rendered in favor of the defendant.

The origin of the alleged claim, suits thereon and the laws relating to the designation of the official newspapers in Jersey City are fully set forth in the printed case.

The brief of respective counsel on proceedings in Court prior to the present suit may be found on pages 88, 108, 113, 127.

Opinions of the Corporation Counsel of Jersey City may be found on pages 53, 68.

The three acts of the Legislature which relate to and affect the questions under consideration are :

1. "An Act relative to the publication of the minutes and proceedings of the several municipal boards of the cities of this State," approved Feb. 27, 1879.

Pamp. Laws, 1879, p. 62.

2. Supplement to the act entitled "An Act relative to the publication of the minutes and proceedings of the

several boards of the cities of this State," approved Feb. 27, 1879.

Pamp. Laws, 1880, p. 263.

3. A further supplement to "An Act relative to the publication of the minutes and proceedings of the several municipal boards of the cities of this State," approved Feb. 27, 1874 (intended for 1879).

Pamp. Laws, 1883, p. 238.

The proviso contained in the Act of 1879 limited its operation to "*cities of this State having over fifty thousand inhabitants at the last State census,*" i. e., to the cities of Newark and Jersey City.

This act is clearly unconstitutional. I shall not dwell upon it, but simply refer to the memorandum of decision of Justice Knapp in this case at the Circuit (page 76).

"When you refer to that act of February 27, 1879, you are brought into contact with a legislation that is clearly unconstitutional, conceded to be so by counsel of plaintiff, and, I think, by every one who has looked at the legislation. There is a provision limiting it in its application to certain cities of not less than fifty thousand inhabitants."

The Act of 1880 amends the first section of the act of 1879, and directs that the Justice of the Supreme Court * * * shall, upon application, appoint a referee who shall ascertain and report to said Judge what amount of compensation the publisher of the official newspaper would have been entitled to, if the publication of said minutes had been *duly ordered according to law*.

This act was held by Justice Knapp "not to be retroactive in its operation," (page 74).

Upon that branch of the case I refer the Court to
 Sedgwick on Statutory and Constitutional
 Law, Ed. 1857, pp. 252, 195.
 Sedgwick on Construction of Statutory Law,
 pp. 114, 144, 151, 161.
 Cooley's Constitutional Limitations, p. 369,
 p. 90, note 6.
 Potter's Dwaris on Statutory and Constitu-
 tional Law, p. 162, etc., and notes 164.
 Citizens' Gas Light Co. *vs.* Allen, 15 Vroom,
 648.
 McGovern *vs.* Connell, 14 Vr., 107.
 State, Alden, *pros., vs.* Newark, 11 Vr., 92.
 Deegan *vs.* Morrow, 2 Vr., 126.
 Boylan *vs.* Kelly, 9 Stew., 331.

The *Jersey City Herald* was not designated as one of the papers to print the official minutes (page 61, brief of Corporation Counsel, p. 113), and it is so admitted in the Act of 1880. "That in case any newspaper appointed as an official newspaper of any city of this State (the *Herald* was designated for a special purpose only) shall have published the official minutes of the proceedings of the municipal boards of said city, and such publication was not duly ordered in the manner prescribed by law," etc.

As the plaintiff was a mere "voluntæer" in the publication of the minutes, in no wise employed by the city, and the Act of 1880 being intended to apply to the publication of minutes "which had been ordered" but "not duly ordered in the manner prescribed by law," the act in no wise applied to the case of the plaintiff, and the Justice should not have entertained an application for the appointment of a referee.

4

The Act of 1880 is unconstitutional.

Because the object of the law is not embraced in its title.

The title of the act is in relation to the publication of the minutes *and proceedings* of the several municipal boards of the cities of this State, but the sole object of the act is, not the publication of minutes *and proceedings*, but a scheme to secure payment *for unauthorized publications of the past*.

The title should have been "An Act to secure payment for the publication of the *minutes* of the municipal boards of the cities of this State where the same has been done by the publisher without authority."

The title of the act was deceptive.

Who would imagine upon reading the title of the act that its sole purpose was to manufacture machinery and place it in motion, to enforce the payment of a claim which had no legal foundation or effect.

Does the title of the act convey an intelligible intimation of the project in contemplation?

It is a special act.

In passing upon the constitutionality of legislative acts, the Courts scrupulously regard the substance of the legislative provision, *giving it only a secondary consideration to the form in which it is expressed*.

Rutgers *vs.* New Brunswick, 13 Vr., 54.

The legal effect of this law is the same as if the *Jersey City Herald* had been named as *the* newspaper.

To attempt to do by indirection what it is apparent could not be done by a direct and specific description of the purpose of the act must fail.

Zeigler *vs.* Gaddis, 15 Vr., 363.

The provisions of the constitution which prohibits special or local laws was designed to put it out of the power of the Legislature to make any changes in the system of government of any particular municipality by separate legislation.

Hammer *vs.* Richards, 15 Vr., 669.

How does the fact that a newspaper which has published the official minutes of a city, and such publication was not duly ordered in the manner prescribed by law, so far constitute *a class* as to justify the Legislature in providing for a different mode of payment than that directed by the city charter?

Distinctions which do not arise from substantial differences—differences so marked as to call for separate legislation—constitute no ground for supporting such legislation.

Hammer *vs.* Richards, 15 Vr., 667.

The true principal requires something more than a mere designation by such characteristics as will serve to classify, for the characteristics which thus serve as the basis of classification must be of such a nature as to make the objects so designated as peculiarly requiring exclusive legislation. There must be substantial distinction, having a reference to the subject matter of the proposed legislation between the objects or places embraced in such legislation and the objects or places excluded. The marks of distinction, on which the classification is founded, must be such, in the nature of things, as will in some reasonable degree at least account for or justify the restriction of the legislation.

State, Richards *vs.* Hammer, 13 Vr., 440.

There must be a true, substantial classification, and not a hidden specification.

Ziegler *vs.* Gaddis, 15 Vr., 365.

Upon the subject of false and deceptive titles, in order to give the law the appearance of a general act, see

Contieri *vs.* New Brunswick, 15 Vr., 58.

It is improper, in dealing with the publication of minutes of municipal corporations, to distinguish and form into classes.

1. Work done by direction of competent authority, and which is to be ordered paid by the proper department upon presentation of the claim, accompanied with an affidavit, as required by law.

2. Work done without authority before the passage of an act (Act of 1883), the amount to be ascertained by a referee.

3. Work done without authority after the passage of the act.

The Act of 1883 is a supplement to the unconstitutional Act of 1879, and not to the Act of 1880; therefore its provisions, which were intended to express more clearly a legislative intent upon the retroactive effect of a law, lies harmless, so far as relates to the plaintiff's claim, in connection with the Act of 1880; therefore, if the Act of 1880 was not retroactive in its operation at the time of its passage, it remained so at the time of the trial below.

If the Court hold that the Act of 1883 is a supplement to the Act of 1879, as amended by the Act of 1880, then I insist that the Act of 1883 is unconstitutional, in that it is, in effect, *an amendment to the act of 1879 by reference to its title only.*

It is not a perfect and complete act of legislation.

There is no such reference to the old law as will show for what the new law is substituted.

The act simply *refers* to the old law, and requires that its provisions *shall be held* to apply to publications made prior to its approval.

Close the Pamphlet Laws of 1879, read the Act of 1883, and we remain ignorant of its purpose. The subject matter is not there. The "kernel" is in another shell.

The Act of 1883 was a direction to the Court "to hold" that the provisions of another act should not apply beyond a certain period.

This act was an interference by the Legislature with the judicial department of government.

A Legislature cannot authoritatively interpret or declare what the law is, or has been, but only what it shall be. It is the province of the Court to declare the law of an existing statute.

Ogden *vs.* Blackledge, 2 Cranch, 272.

Sedgwick on Statutory and Constitutional Law, pp. 167, 177.

See remarks of Justice Knapp, p. 75.

The Act of 1883 adds to the unconstitutional feature of the Act of 1880. "*It has no general application, but applies only to particular past and concluded special persons.*"

The Act of 1879 was void, because unconstitutional. Rights could not be built up under it. It was not unconstitutional in part only, but the proviso of the first section of the act made it void *in toto*. It constituted a protection to no one who acted under it. It must be regarded as having never been possessed of any legal form.

How could the Legislature of 1880 and 1883 supplement or build upon that which did not exist?

Pages 62 and 63 of the Pamphlet Laws of 1879 are blank pages—the bill filed in the office of the Secretary of State is waste paper.

The Act of 1879 was intended as the foundation upon which to rest the Acts of 1880 and 1883.

The defendant does not deny the right of the Legislature to correct irregularities in the execution of power by municipalities, but considers it against public policy, and going too far in the interference of rights vested in those

bodies, by attempting to validate a premeditated illegal act of an individual, and to bind the municipality in the payment of moneys for that which was of no service to it, without its consent.

In this case there was no defective execution of power, no omission to be supplied, but the act is simply an attempt to punish the city for withholding an extravagant and useless expenditure of money; to breathe life into a claim which the Courts had twice rejected as being illegal.

The public treasury should be as secure from the attack of illegal claims as the bank accounts of an individual.

Substitute in this case an individual for the city, and tell me, brother Lippincott, would there have been as much time spent in securing legislation to make the individual pay for that which he had not contracted for, received or obligated himself to pay, as there has been in attempting to secure \$8,750 from the taxpayers' treasury for the pretended claim which you, by the Acts of 1879, 1880 and 1883, impliedly admit had no inception."

March Term, 1885.

WM. BRINKERHOFF,
Att'y for Def'd't.