

New Jersey Court of Errors and Appeals.

NEW JERSEY SUPREME COURT,
November term, 1858.

THE STATE (WILLIAM B. OGDEN, CHARLES
G. SISSON, and ABRAHAM O. ZABRISKIE,
prosecutors,)

vs.

THE MAYOR AND COMMON COUNCIL OF THE
CITY OF HUDSON,

Rule for

certiorari.

On application in behalf of the above named prosecutors, it is ordered by the court, that the above *certiorari* be allowed, to be directed to the Mayor and Common Council of the City of Hudson, to remove into this court the proceedings of said mayor and common council in the matter of the grading and regulating Palisade avenue, in said city, and all assessments made by them, in said proceedings, upon the property of said prosecutors, or of any or of either of them, and all matters touching or concerning the same; and it is further ordered, that until the further order of this court thereon, the said mayor 10 and common council, their officers or agents, do desist from enforcing or collecting the said assessments against said prosecutors, or either of them, or the property of any or either of them, by sale or otherwise, and that both parties have leave to take affidavits in support of or against the reasons for reversal, to be filed.

On motion of

A. O. ZABRISKIE,

Att'y for prosecution.

New Jersey, *ss.*—The State of New Jersey to the Mayor and Common Council of the City of Hudson, greeting: We 20 being willing, for certain reasons, to be certified of the proceedings had by you in the matter of grading, regulating, curbing, guttering, and planking sidewalks, on Palisade avenue, in the City of Hudson, and of the assessment of the costs and expenses of the same upon the lands of William B. Og-

den, Charles G. Sisson, and Abraham O. Zabriskie, or of any or either of them, do command you that said proceedings and assessments, and all matters touching and concerning the same, as fully as the same remain before you, you certify and send to the Justices of our Supreme Court, at Trenton, on the fourth Tuesday in February next, together with this writ, that we may cause to be done touching the same what of right ought to be done.

Witness Henry W. Green, esq., Chief Justice of our said
10 court, at Trenton aforesaid, this fifth day of November, in the year eighteen hundred and fifty-eight.

CHAS. P. SMITH, *Clk.*

A. O. ZABRISKIE.

Endorsements on the foregoing.

NEW JERSEY SUPREME COURT,
Hudson county.

	The State (Wm. B. Ogden, Charles G. Sisson, and A. O. Zabriskie, prosecutors),	} <i>Certiorari</i> } <i>on Palisade</i> } <i>avenue.</i>
	<i>vs.</i>	
20	The Mayor and Common Council of the City of Hudson,	

A. O. ZABRISKIE, *Att'y.*

Ret'ble Feb'y term, 1859.

Filed Feb'y 24th, 1859.

CHAS. P. SMITH, *Clk.*

This writ was allowed in open court, November 3d, A. D. 1858.

L. Q. C. ELMER, *Just. S. C.*

The Mayor and Common Council of the City of Hudson
30 herewith send to the Supreme Court of the State of New Jersey the proceedings and copies of all papers in their possession, as within they are commanded, as by the certified copies, under the hand of the city clerk of the said City of Hudson, and the corporate seal of said "the Mayor and Common Coun-

cil of the City of Hudson," hereto annexed, more fully appears.

In testimony whereof, the corporate seal of the Mayor and Common Council of the City of Hudson is hereunto affixed, and these presents are signed by our mayor and city clerk this first day of November, one thousand eight hundred and fifty-eight.

EDMUND I. CARPENTER, *Mayor*.

Attest.—CHARLES J. ROE, *City clerk*.

At a regular meeting of the common council of the City of 10 Hudson, his Honor the mayor, having reported the service on him of a writ of *certiorari* on Palisade avenue assessment, at suit of William B. Ogden, Charles G. Sisson, and A. O. Zabriskie—

The report of his Honor was received, and the following resolution adopted :

Resolved, That the said writ of *certiorari* be referred to the corporation attorney to defend the suit, and the city clerk be directed to make return to the same, under the direction of the said attorney. 20

At a meeting of the common council of the City of Hudson, held August the 9th, A. D. 1855, a paper, of which the following is a copy, was presented, and referred to the committee on streets of said common council.

To the Honorable the Mayor and Common Council of the City of Hudson.

The petition of the undersigned respectfully, that they are the owners of the several lots of lands, situate, lying on both sides of Palisade avenue, at a point commencing in said avenue where the same is intersected by the water pipes, or 30 mains, of the Jersey City Water Works, and running thence southerly, along the said avenue, to where the same is intersected by the Newark avenue, and that they desire to have that portion of Palisade avenue, as above described, graded and repaired, and that the same be done under the direction

and superintendence of the street commissioner. And your petitioners, in duty bound, will ever pray, &c.

Dated June 29th, 1855.

(Signed) Jesse West, Thomas Harrison,
 Jacob Bom, Louis Ginnochio,
 Nath. Orr.

On the 16th day of June, A. D. 1858, a paper, of which the following is a copy, was filed in the city clerk's office of the City of Hudson.

- 10 State of New Jersey, Hudson county, ss.—William H. Hem-
enover, of full age, being duly sworn according to law, on
oath deposeth and saith—that he is the publisher of “the
Hudson County Democrat,” a newspaper printed and pub-
lished in the city of Hoboken, in said county and state, and
that he caused the advertisement, of which the annexed is a
true copy, to be published in said paper for three weeks suc-
cessively, at least once in every week.

WM. H. HEMENOVER.

Subscribed and sworn, at Hoboken aforesaid, the 16th day
20 of June, A. D. 1858, before me.

P. H. MULFORD.

- NOTICE.—Notice is hereby given, that a petition has been
presented to the Mayor and Common Council of the City of
Hudson, by certain owners of property on Palisade avenue,
praying that the same may be properly graded and repaired
from a point on said avenue, where the same is intersected by
the water pipes, or mains, of the Jersey City Water Works;
running thence southerly along the said avenue to where the
same is intersected by the Newark avenue. And notice is fur-
30 ther given, that all parties interested may, if they desire, have
an opportunity of being heard thereon before the subscribers,
at the mayor's office in the City of Hudson, on Friday, the
29th day of September, at eight o'clock in the evening.

NATHANIEL ORR,
THOMAS ALDRIDGE, JR.,

Committee on roads and streets.

September 15th, 1855.

At a regular meeting of the common council, held October the 11th, A. D. 1855, the committee on streets and roads reported as follows :

The committee would also report, that they met at the mayor's office on Friday evening, September 29th, to receive remonstrances against the improvement of Palisade avenue and Beacon avenue—having received none, they adjourned.

(Signed)

NATHANIEL ORR,
THOS. ALDRIDGE, JR.,
Committee on streets. 10

The committee herewith present the ordinance for the improvement of Beacon avenue and Palisade avenue.—October 11th, 1855.

At a regular meeting of the common council, held November 15th, A. D. 1855, the said ordinance, of which the following is a copy, was passed unanimously.

An ordinance to provide for the regulating and grading of a part of Palisade avenue.

The Mayor and Common Council of the City of Hudson do ordain as follows : 20

Sec. 1st. That Palisade avenue, from a point where the same is intersected by the pipes of the Jersey City Water Works to the north side of Newark avenue, be graded, curbed, guttered, and regulated.

Sec. 2d. That all the costs, charges, and expenses be assessed upon and paid by the real estate benefited thereby, according to the requirements of the city charter.

Sec. 3d. That the said improvement be done under the direction of the street committee and street commissioner, and that they be authorized to advertise for proposals. 30

The foregoing ordinance was approved by the mayor of the City of Hudson, Edwin R. V. Wright, on the 16th day of November, A. D. 1855.

On the 16th day of June, A. D. 1858, a paper, of which the following is a copy, was filed in the city clerk's office of the City of Hudson.

State of New Jersey, Hudson county, *ss.*—Wm. H. Hemenover, of full age, being duly sworn according to law, on oath deposeth and saith—that he is the publisher of “the Hudson County Democrat,” a newspaper printed and published in the City of Hoboken, in said county and state, and that he caused the advertisement, of which the annexed is a true copy, to be published in said paper three weeks successively, at least once in each week.

WILLIAM H. HEMENOVER.

10 Subscribed and sworn, at Hoboken aforesaid, the 16th day of June, A. D. 1858.

P. H. MULFORD, *M. C. C.*

An ordinance to provide for the regulating and grading of a part of Palisade avenue.

The Mayor and Council of the City of Hudson do ordain as follows :

Sec. 1st. That Palisade avenue, from a point where the same is intersected by the pipes of the Jersey City Water Works, to the north side of Newark avenue, be graded, curbed, 20 guttered, and regulated.

Sec. 2d. That all the costs, charges, and expenses be assessed upon and paid by the real estate benefited thereby, according to the requirements of the city charter.

Sec. 3d. That the said improvement be done under the direction of the street committee and street commissioner, and that they be authorized to advertise for proposals.

Passed November 15th, 1855.—Approved November 16th, 1855.

30 At a regular meeting of the common council, held October 11th, 1855, a petition, of which the following is a copy, was presented, and referred to the street committee.

To the Honorable the Mayor and Aldermen of the City of Hudson, in common council convened.

We, the undersigned freeholders of the northern part of said city, do earnestly pray that your honorable body will take immediate action in the matter of grading and regulating Palisade avenue, and lay sidewalks with one and a quarter inch plank,

on sleepers not less than four feet wide, on both sides of the aforesaid avenue, from the Paterson plank road to the residence now occupied by Mr. Philip Scott, on the estate formerly occupied by John Van Vorst.

(Signed)	John M. Wilson,	Charles Gordon,	
	Edgar M. Eoff,	Charles Luxton,	
	His	Thomas Adams,	
	Dennis ✕ Yeo,	Nimrod Baulier,	
	mark.		
	Peter F. Wortendyke,	Samuel H. Dewint,	
	Thomas Bennet,	James Osborn,	10
		John Hague.	

On the 16th day of June, A. D. 1858, a paper, of which the following is a copy, was filed in the city clerk's office of the City of Hudson :

State of New Jersey, Hudson county, *ss.*—Wm. H. Hemenover, of full age, being duly sworn according to law, deposeth and saith—that he is the publisher of “the Hudson County Democrat,” a newspaper printed and published in the City of Hoboken, in said county and state, and that he caused an advertisement, of which the annexed is a true copy, to be published in said paper three weeks successively, at least once in every week. 20

WM. H. HEMENOVER.

Subscribed and sworn at Hoboken aforesaid, the 16th day of June, A. D. 1858, before me.

P. H. MULFORD, *M. C. C.*

NOTICE.—Whereas a petition has been presented to the Mayor and Common Council of the City of Hudson, by the owners of property on Palisade avenue, praying that said avenue, from a point where the same is intersected by the Paterson plank road, extending thence, on said avenue, to the residence of Philip Scott, be regulated and graded, and plank sidewalks be laid on both sides of said avenue with one and a quarter inch plank on sleepers, not less that four feet wide. 30

Notice is hereby given, pursuant to the provisions of the charter of the City of Hudson, that the undersigned, the committee on streets and roads, will meet at the city-hall of said

city on Monday, the 26th of November, inst., at 7½ o'clock, P. M., for the purpose of hearing and receiving objections against the same.

NATHANIEL ORR,
THOMAS ALDRIDGE,

Committee on streets and roads.

Thomas Harrission, city clerk.

Dated City of Hudson, Nov. 2d, 1855.

At a regular meeting of the Board of Aldermen of the City
10 of Hudson, held December 6th, A. D. 1855, Alderman Orr, of the committee on streets and roads, reported in writing as follows: that the committee met at the city clerk's office, on the evening of November 26th, for the purpose of hearing and receiving objections or remonstrances against the improvement of Palisade avenue; that they received no objections to the above proposed improvement, and respectfully submit ordinances for the same.

The report of the committee was received, and the ordinances were referred to the appropriate committee.

20 At a regular meeting of the Common Council of the City of Hudson, held December 20th, 1855, an ordinance, of which the following is a copy, was reported by Alderman Orr, chairman of committee on laws and ordinances, for final passage.

An ordinance for the improvement of Palisade avenue.

The Mayor and Common Council of the City of Hudson do ordain as follows:

Sec. 1st. That Palisade avenue, from a point where the
30 same is intersected by the Paterson plank road, extending thence, on said avenue, to the residence of Philip Scott, be regulated and graded, curbed, guttered, and plank sidewalks laid on both sides of said avenue.

Sec. 2d. That the above improvement be done under the direction of the committee on streets and roads and street commissioner.

Sec. 3d. That the costs, charges, and expenses incurred in completing said improvement be assessed upon, and paid by the real estate benefited thereby, according to the provisions of the city charter.

Sec. 4th. That the committee on streets be authorized and directed to advertise for proposals for doing said work.

The foregoing ordinance was passed by the following vote, on ayes and noes :

Ayes—President Dunham, Aldermen Orr, Grischele, Eoff, Wilson, Van Reiper, Beatty, and Aldridge.—Nays, none.

The said ordinance was approved by the mayor of said city, E. R. V. Wright, on the same day, to wit, the 20th day of December, A. D. 1855.

On the 16th day of June, A. D. 1858, a paper, of which 10 the following is a copy, was filed in the office of the city clerk of the City of Hudson.

State of New Jersey, Hudson county, *ss.*—Wm. H. Hemenover, of full age, being duly sworn according to law, on oath deposeth and saith—that he is the publisher of “the Hudson County Democrat,” a newspaper printed and published in the City of Hoboken, in said county and state; and that he caused the advertisement of which the annexed is a true copy to be published in said paper for three weeks successively, at least once in every week. 20

(Signed)

WM. H. HEMENOVER.

Subscribed and sworn, at Hoboken aforesaid, the 16th day of June, A. D. 1858, before me.

P. H. MULFORD, *M. C. C.*

An ordinance for the improvement of Palisade avenue.

The Mayor and Common Council of the City of Hudson do ordain as follows :

Sec. 1st. That Palisade avenue, from a point where the same is intersected by the Paterson plank road, extending thence, on said avenue, to the residence of Philip Scott, be 30 regulated and graded, curbed, guttered, and plank sidewalks laid on both sides of said avenue.

Sec. 2d. That the above improvement be done under the direction of the committee on roads and streets and street commissioner.

Sec. 3d. That all the costs, charges, and expenses incurred in completing said improvements be assessed upon and paid

by the real estate benefited thereby, according to the provisions of the city charter.

Sec. 4th. That the committee on streets be authorized and directed to advertise for proposals for doing said work.

Passed December 20th, 1855.

Approved December 20th, 1855.

At a regular meeting of the Common Council of the City of Hudson, held December the 20th, A. D. 1855, a petition, of which the following is a copy, was presented, and referred to
10 the committee on streets and roads.

To the Honorable the Mayor and Common Council of the City of Hudson.

The undersigned, owners of property on Palisade avenue, respectfully petition your honorable body that the said avenue, from a point where the same is intersected by the Jersey City water pipes, extending thence northerly, on the same avenue, to the residence of Philip Scott, be regulated and graded, and that a plank sidewalk, not less than four feet in width, curbed and guttered with three inch plank, and cross-walked at
20 per intervals with four inch plank, and laid diagonally; that the said walk, curb, and gutter be laid on both sides of said avenue.—And your petitioners will ever pray, &c.

(Signed)	John H. Grischele,	C. L. Miller,
	George Bell,	John Niebuhr,
	Wm. J. Meyer,	Charles Stribeck,
	Herman Kohlbush,	Peter Wengle,
	A. Wiess,	G. Perry,
	Mr. Guin P. Kraunilna,	Ernest Planer,
	Ch. Backer,	Ed. Wortman,
30	Daniel Haverly,	Wm. Knostman,
	Thos. Huinan,	Julius Grischele,
	H. Spillner,	O. Davy, } by N. Orr.
	Nath. Orr,	B. Mills, }

On the 16th day of June, A. D. 1858, a paper, of which the following is a copy, was filed in the clerk's office of the City of Hudson.

State of New Jersey, Hudson county, *ss.*—William H. Hem-enover, of full age, being duly sworn according to law, on

oath deposeth and saith—that he is the publisher of “the Hudson County Democrat,” a newspaper printed and published in the City of Hoboken, in said county and state, and that he caused the advertisement, of which the annexed is a true copy, to be published in said paper for three weeks successively, at least once in every week.

WM. H. HEMENOVER.

Subscribed and sworn, at Hoboken aforesaid, the 16th day of June, A. D. 1858, before me.

P. H. MULFORD, *M. C. C.* 10

NOTICE.—Whereas a petition has been presented to the Mayor and Common Council of the City of Hudson, by the owners of property on Palisade avenue, praying that said avenue, from a point where the same is intersected by the Jersey City Water Works, extending thence northerly, on said avenue, to the residence of Philip Scott, be regulated and graded, and that a plank sidewalk, not less than four feet in width, curbed and guttered and cross-walked at proper intervals; that said walk, curb, and gutter be laid on both sides of said avenue. 20

Notice is hereby given, pursuant to the provisions of the charter of the City of Hudson, that the committee appointed by the said common council will meet at the city-hall of said city, on Monday, the 18th day of February, at seven and a half o'clock, P. M., for the purpose of hearing and receiving objections in writing against the prayer of said petition by such owners of property in the street or road above described as may disapprove of said improvement.

Dated, City of Hudson, January 22d, 1856.

NATHANIEL ORR, 30

THOMAS ALDRIDGE,

Committee on roads and streets.

At a regular meeting of the Common Council of the City of Hudson, held March 6th, 1856, an ordinance, of which the following is a copy, was taken up and passed unanimously on yeas and nays.

An ordinance for laying sidewalks on both sides of Palisade avenue, from the pipes of the Jersey City Water Works to the residence of Philip Scott.

The Mayor and Common Council of the City of Hudson do ordain as follows :

Sec. 1st. That Palisade avenue, from a point where the same is intersected by the pipes of the Jersey City Water Works, extending thence northerly, on said avenue, to the residence of Philip Scott, be regulated and graded, and a plank
10 sidewalk, four feet wide, curbed and guttered, and cross-walks at proper intervals be laid ; that said walk, curb, and gutter be laid on both sides of said avenue.

Sec. 2d. That all expenses incurred in completing said improvement be assessed upon and paid by the real estate benefited thereby, according to the provisions of the city charter.

Sec. 3d. That said improvement be made under the direction of the street committee and street commissioner.

Adopted as follows.—Yeas—President Dunham, Aldermen Orr, Wilson, Van Reiper, Aldridge, and Beatty.—Absent, Aldermen Eoff and Grischele.
20

The foregoing ordinance was approved and signed by the mayor of the City of Hudson, Edwin R. V. Wright, March 10th, A. D. 1856.

On the 16th day of June, A. D. 1858, a paper, of which the following is a copy, was filed in the city clerk's office of the City of Hudson.

State of New Jersey, Hudson county, ss.—Wm. H. Hemenover, of full age, being duly sworn according to law, de-
30 poseth and saith—that he is the publisher of “the Hudson County Democrat,” a newspaper printed and published in the City of Hoboken, in said county and state, and that he caused an advertisement, of which the annexed is a true copy, to be published in said paper three weeks successively, at least once in every week.

WM. H. HEMENOVER.

Subscribed and sworn at Hoboken aforesaid, the 16th day of June, A. D. 1858, before me.

P. H. MULFORD, M. C. C.

An ordinance for laying sidewalks on both sides of Palisade avenue, from the pipes of the Jersey City Water Works to the residence of Philip Scott.

The Mayor and Common Council of the City of Hudson do ordain as follows :

Sec. 1st. That Palisade avenue, from a point where the same is intersected by the pipes of the Jersey City Water Works, extending thence northerly, on said avenue, to the residence of Philip Scott, be regulated and graded, and a plank sidewalk four feet wide, curbed and guttered, and cross-walks 10 at proper intervals be laid. That said walk, curb, and gutter be laid on both sides of said avenue.

Sec. 2d. That all expenses incurred in completing said improvement be assessed upon and paid by the real estate benefited thereby, according to the provisions of the city charter.

Sec. 3d. That said improvement be made under the direction of the street committee and street commissioner.

Passed March 6th, 1856.

Approved March 10th, 1856.

At a regular meeting of the Board of Common Council of 20 the City of Hudson, held February the 21st, A. D. 1856, a petition was received, signed by property owners on Palisade avenue, for an amendment to the ordinance passed for regulating Palisade avenue (first section), and on motion, the same was referred to committee on streets.

[Said petition, on application as above mentioned, was lost or mislaid, and cannot now be found, it never having been in the possession of the party at present city clerk of the City of Hudson. But the contents and meaning of said petition, or application, can be proved, if necessary, by affidavits of the 30 parties who signed the same.]

On the 16th day of June, A. D. 1858, a paper, of which the following is a copy, was filed in the city clerk's office of the City of Hudson :

State of New Jersey, Hudson county, *ss.*—William H. Hem-over, of full age, being duly sworn according to law, on oath deposeth and saith—that he is the publisher of “the Hudson County Democrat,” a newspaper printed and pub-

lished in the City of Hoboken, in said county and state; and that he caused the advertisement, of which the annexed is a true copy, to be published in said paper three weeks successively, at least once in every week.

WM. H. HEMENOVER.

Subscribed and sworn, at Hoboken aforesaid, the 16th day of June, A. D. 1858, before me,

P. H. MULFORD, *M. C. C.*

NOTICE.—Whereas a petition has been presented to the
10 Mayor and Common Council of the City of Hudson by the owners of property on Palisade avenue, praying that a plank sidewalk be laid on both sides of said Palisade avenue, from a point where the same is intersected by the pipes of the Jersey City Water Works to the north side of Newark avenue, notice is hereby given, pursuant to the provisions of the charter of the City of Hudson, that the undersigned committee on streets and roads will meet at the city-hall of said city on Monday, the 13th day of April next, at eight o'clock, P. M., for the purpose of hearing and receiving objections against
20 the same.

NATHANIEL ORR,

THOMAS ALDRIDGE,

Committee on streets and roads.

March 22d, 1856.

At a regular meeting of the Common Council of the City of Hudson, held on the 24th day of April, A. D. 1856, the committee on streets and roads reported that they met on Monday evening, 21st inst., to hear remonstrances against the improvements on Palisade avenue. No remonstrances being presented,
30 they recommended the passage of an ordinance for the same, which said ordinance was referred to the committee on laws and ordinances.

At a regular meeting of the Board of Common Council of the City of Hudson, held on the 1st day of May, 1856, an ordinance, of which the following is a copy, was taken and read, as follows:

An ordinance amendatory of an ordinance for the improvement of Palisade avenue, passed November 15th, 1855.

The Mayor and Council of the City of Hudson do ordain as follows :

Sec. 1st. That Palisade avenue, from a point where the same is intersected by the pipes of the Jersey City Water Works to the north side of Newark avenue have a plank sidewalk laid on said Palisade avenue.

Sec. 2d. That the costs, charges, and expenses incurred in completing said avenue improvements be assessed upon and paid by the real estate benefited thereby, according to the provisions of the city charter. 10

Sec. 3d. That the said improvements be made under the direction of the street committee and street commissioner.

The said ordinance was passed at the said meeting, May 1st, 1856, on yeas and nays, as follows : Yeas, President Dunham, Aldermen Wilson, Orr, Aldridge, Eoff, Grischele, and Van Reiper—Nays none—Absent, Alderman Beatty.

The said ordinance was approved by the mayor of the said City of Hudson, on May 1st, A. D. 1856. 20

On the 16th day of June, A. D. 1858, a paper, of which the following is a copy, was filed in the city clerk's office of the City of Hudson.

State of New Jersey, Hudson county, *ss.*—Wm. H. Hemenover, of full age, being duly sworn according to law, on oath deposes and saith—that he is the publisher of "the Hudson County Democrat," a newspaper printed and published in the City of Hoboken, in said county and state, and that he caused the advertisement, of which the annexed is a true copy, to be published in said paper three weeks successively, at least once in each week. 30

WILLIAM H. HEMENOVER.

Subscribed and sworn, at Hoboken aforesaid, the 16th day of June, A. D. 1858, before me.

P. H. MULFORD, M. C. C.

An ordinance amendatory of an ordinance for the improvement of Palisade avenue, passed November 15th, 1855.

The Mayor and Common Council of the City of Hudson do ordain as follows :

Sec. 1st. That Palisade avenue, from a point where the same is intersected by the pipes of the Jersey City Water Works to the north side of Newark avenue, have a plank sidewalk laid on said Palisade avenue.

10 Sec. 2d. That the costs, charges, and expenses incurred in completing said avenue improvement be assessed upon and paid by the real estate benefited thereby, according to the provisions of the city charter.

Sec. 3d. That said improvement be done under the direction of the street committee and street commissioner.

Passed May 1st, 1856.

Approved May 1st, 1856.

At a regular meeting of the Common Council of the City of Hudson, held June 5th, 1856, the following resolution was adopted :

20 *Resolved*, That the grade maps adopted by the board of supervisors of the old township (of Hudson) regulation (Palisade avenue and all other) be and the same are hereby repealed.

Also resolved, That the grade maps of Palisade avenue, made by William Hexamer, be adopted as the proper grade of Palisade avenue.

The aforementioned resolution was approved by the mayor of said city, June 6th, A. D. 1856.

At a regular meeting of the common council of the City of Hudson, held June 26th, A. D. 1856.

30 *Resolved*, That the street committee be authorized to advertise for proposals for grading, curbing, guttering, and laying sidewalks, &c., on Palisade avenue in conformity with the amended grade, as adopted by the board.

Said resolution was approved by the mayor of said City of Hudson, June 27th, A. D. 1856.

At a regular meeting of the common council of the City of Hudson, held July the 17th, A. D. 1856, an ordinance, of which

the following is a copy, was taken up from the table and read, as follows:

An ordinance to provide for the regulation of Palisade avenue.

Be it ordained by the Mayor and Common Council of the City of Hudson:

Sec. 1st. That Palisade avenue, from a point where the same is intersected by the Paterson plank road to the northerly side of Newark avenue, be regulated, graded, curbed, and guttered, and sidewalks laid on both sides thereof; the said regulating to be done according to the established grade map of said 10 avenue.

Sec. 2d. That all the costs, charges, and expenses be assessed upon, and paid by the real estate benefited thereby, according to the provisions of the city charter.

Sec. 3d. The said improvement to be done under the direction of the street committee and street commissioner.

Sec. 4th. All ordinances heretofore passed concerning the regulating or grading sidewalks, curb and gutter laying, for Palisade avenue, or any part or parts thereof, be and the same are hereby repealed. 20

The aforesaid ordinance was then adopted as read, by the following vote:

Yeas—President Dunham, Aldermen Beatty, Eoff, Grischele, Newkirk, Wilson, Allen, and Gies.—Absent, none.

The said ordinance was approved by the mayor of the City of Hudson July 18th, A. D. 1856.

On the 16th day of June, A. D. 1858, a paper, of which the following is a copy, was filed in the clerk's office of the City of Hudson.

State of New Jersey, Hudson county, *ss.*—William H. Hem- 30 enover, of full age, being duly sworn according to law, on oath deposeth and saith—that he is the publisher of “the Hudson County Democrat,” a newspaper printed and published in the City of Hoboken, in said county and state, and that he caused the advertisement, of which the annexed is a true copy, to be published in said paper for three weeks successively, at least once in every week.

WM. H. HEMENOVER.

Subscribed and sworn, at Hoboken aforesaid, the 16th day of June, A. D. 1858, before me.

P. H. MULFORD, *M. C. C.*

An ordinance to provide for the regulation of Palisade avenue.

Be it ordained by the Mayor and Common Council of the City of Hudson :

Sec. 1st. That Palisade avenue, from a point where the same is intersected by the Paterson plank road to the northerly side of Newark avenue, be regulated, graded, curbed, guttered, and sidewalks laid on both sides thereof; the said regulating to be done according to the established grade map of said avenue.

Sec. 2d. That all the costs, charges, and expenses be assessed upon and paid by the real estate benefited thereby, according to the requirements of the city charter.

Sec. 3d. That said improvement be done under the direction of the street committee and street commissioner.

Sec. 4th. All ordinances heretofore passed concerning the regulating or grading sidewalks, curb and gutter laying for Palisade avenue, or any part or parts thereof, be and the same are hereby repealed.

Passed July 17th, 1856.

Approved July 18th, 1856.

On the 16th day of June, A. D. 1858, a paper, of which the following is a copy, was filed in the city clerk's office of the City of Hudson.

State of New Jersey, Hudson county, ss.—Wm. H. Hemenover, of full age, being duly sworn according to law, on oath deposeth and saith—that he is the publisher of “the Hudson County Democrat,” a newspaper printed and published in the City of Hoboken, in said county and state; and that he caused the advertisement, of which the annexed is a true copy, to be published in said paper for three weeks successively, at least once in every week.

WM. H. HEMENOVER.

Subscribed and sworn, at Hoboken aforesaid, the 16th day of June, A. D. 1858, before me.

P. H. MULFORD, *M. C. C.*

STREET IMPROVEMENT.—Notice is hereby given, that proposals will be received at the city-hall, in the City of Hudson, for grading of Palisade avenue, and laying sidewalk, curb, and gutter on said avenue, from the Paterson plank road to Newark avenue, in said city. Maps and specifications of the work can be seen at the city clerk's office.

JOHN P. NEWKIRK,
HENRY B. BEATTY,
Committee on streets.

City of Hudson, July 11th, 1856.

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At a regular meeting of the board of common council of the City of Hudson, held July 31st, A. D. 1856, Alderman Newkirk, of street committee, reported four proposals for Palisade avenue improvement. On motion, the proposals were opened and read, and referred to the street committee.

At a regular meeting of the Common Council of the City of Hudson, held August 7th, A. D. 1856, Alderman Newkirk, of street committee, reported favorably on awarding contract for Palisade avenue improvement to Shaler, Gardner & Co.

On motion, the report was received, and the contract awarded 20 to the said Shaler, Gardner & Co. by the adoption of the following resolution:

Resolved, That the mayor be authorized to enter into contract with Shaler, Gardner & Co. for improvement of Palisade avenue.

A copy of the profile or working plan of said Palisade avenue is hereunto attached, connected with the assessment map.

At a regular meeting of the Common Council of the City of Hudson, held November the 5th, 1857, the street committee reported Palisade avenue as completed. 30

At a regular meeting of the common council of the City of Hudson, held January the 14th, A. D. 1858, the following resolution was unanimously adopted:

Resolved, That the street committee be authorized to employ the city surveyor, J. B. Culver, to make a proper survey of Palisade avenue, so that the commissioners of assessment can make out their assessment list.

Said resolution was approved by the mayor of said City of Hudson, January 15th, 1858.

At a regular meeting of the common council of the City of Hudson, held March 19th, A. D. 1858, the commissioners of assessment reported the assessment list of Palisade avenue, said report being made through the street committee.

The following resolution was also unanimously adopted.

Resolved, That the clerk be directed to advertise the filing of the report of the committee on Palisade avenue improvement, and that objections will be received at the meeting of the board, to be held April 8th, 1858.

On the 16th day of April, A. D. 1858, a paper, of which the following is a copy, was filed in the city clerk's office of the City of Hudson :

State of New Jersey, Hudson county, ss.—John A. Ryerson, being duly sworn, on his oath says—that he has examined the files of “the Daily Telegraph,” a newspaper printed and published in Jersey City, in the county of Hudson aforesaid, and that a notice, of which the annexed is a true copy, was published daily (Sundays and holidays excepted) in said newspaper, from and after the 20th day of March, A. D. 1858, the date of the first insertion, to and including the 8th day of April, A. D. 1858.

JOHN A. RYERSON.

Subscribed and sworn to before me, at Jersey City, this 16th day of April, A. D. 1858.

W. T. RODGERS, JR.,
Justice of the Peace.

ASSESSMENT NOTICE.—Public notice is hereby given, that the commissioners of assessments for the proper valuation of the improvement in the street or road known as Palisade avenue, in this city, have regularly filed their report and assessment map of said improvement in this office.

Now, therefore, all parties owners of lands interested in said improvement and assessment are hereby notified that the common council of the City of Hudson will meet at the city-hall, on Thursday, April 8th, 1858, at seven and a half o'clock,

P. M., for the purpose of hearing and receiving all objections that may be presented in writing: and if the common council shall confirm said assessment, it will constitute a lien on the property assessed for the amount of said assessment.

CHARLES J. ROE, *City clerk.*

At a regular meeting of the common council of the City of Hudson, held April 8th, A. D. 1858, the following resolution was adopted:

Resolved, That whereas there appears no objection to the assessment list and map of Palisade avenue, as made under the direction of the commissioners, *resolved*, that the assessment list of Palisade avenue be confirmed.

Yeas—President Demott, Aldermen Wilson, Cumming, Shoemig and Aldridge.—Nays, none.—Absent, Aldermen Talson and Monroe.

The aforementioned assessment list and map are hereunto annexed, as copied from the originals, as on file in the city clerk's office of the City of Hudson.

AGREEMENT.

It is admitted, as part of the case to be used on the argument— 20

First. That on that part of Palisade avenue which was within the old township of Hudson there were, prior to the 6th day of June, A. D. 1856, eleven dwelling houses built.

Secondly. That the expense of grading and regulating Palisade avenue was largely and materially different in different sections of it; that the amount of grading required in front of some lots was much greater than that in front of others, which in some places were near the established grade, while some lots, as above mentioned, required much greater filling in and cutting down in front of them. 30

A. O. ZABRISKIE,
Att'y for plaintiffs.

JOHN P. VROOM,
City Att'y.

NEW JERSEY SUPREME COURT,
February term, 1859.

<p>The State (Wm. B. Ogden, Charles G. Sisson, and A. O. Zabriskie, prosecutors,)</p>	}	<p><i>On certiorari to remove proceedings to improve Palisade avenue.</i></p>
<p><i>vs.</i></p>		
<p>The Mayor and Common Council of the City of Hudson,</p>		

And the said plaintiffs come, by Abraham O. Zabriskie, and assign as reasons why the ordinances and proceedings of the Mayor and Common Council of the City of Hudson, and the assessment removed by the *certiorari* in this cause should be reversed and set aside.

First. Because the ordinance under which said improvements on Palisade avenue were made was passed without the requisite notice of the applications, and without complying with the requisites required by law and by the charter of the City of Hudson.

Secondly. Because the assessments were made by the commissioners without regard to the benefit derived by each parcel of land, and without taking into consideration the benefits derived by other parcels of land not assessed, and were not made upon the principles required by law.

Thirdly. Because the proceedings of the common council, in passing the said ordinance, in appointing said commissioners, and in confirming said assessment act, are in all things irregular, without notice, and not according to law.

Fourthly. Because the said commissioners were not properly qualified, and because they proceeded without notice, and did not make an estimate of the said expenses, nor assess them upon the lots or parcels of land, as required by law; nor did they make any map or return of such assessments, as required by law; and because their proceedings are in all things irregular and void.

Fifthly. Because the proceedings of said common council and commissioners are in divers other respects illegal and void.

A. O. ZABRISKIE,
Att'y for pl'ffs in certiorari.

SUPREME COURT OF NEW JERSEY,
February term, 1860.

<p>The State (Wm. B. Ogden, Charles G. Sisson, and Abraham O. Zabriskie, prosecutors,)</p> <p style="text-align: center;"><i>vs.</i></p> <p>The Mayor and Common Council of the City of Hudson,</p>	}	<p><i>On certiorari to remove assessment and ordinances for regulating Palisade avenue.</i></p>
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The court having heard this cause upon the reasons assigned for the reversal, and having duly considered the same, and 10
being of the opinion that the ordinances directing the improvements on Palisade avenue are valid and lawful, do order that the same be affirmed as valid and effectual in law.

And it appearing to them that the appointment and proceedings of the commissioners of assessment, and the assessments made by them, are illegal and void, do order that the same be set aside and declared void in all things, and the same are hereby reversed, set aside, and for nothing holden.

And it is ordered, that the defendants do pay the costs of the plaintiffs in this matter to be taxed. 20

On motion of

A. O. ZABRISKIE,
Att'y for plff's.

NEW JERSEY SUPREME COURT,
February term, 1860.

<p>The State (William B. Ogden <i>et al.</i>, prosecutors,)</p> <p style="text-align: center;"><i>vs.</i></p> <p>The Mayor and Common Council of the City of Hudson,</p>	}	<p><i>On certiorari.</i></p>
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A writ of error to remove the judgment and proceedings in 30
this cause to the Court of Errors and Appeals being presented in open court, it is ordered that return be made thereto.

On motion of

A. O. ZABRISKIE,
Att'y for plaintiffs.

I, Charles P. Smith, clerk of the Supreme Court of the State of New Jersey, do hereby certify that the foregoing is a true copy of the record and proceedings and judgment in the foregoing cause, as fully as the same remain of record and on file in my office.

In testimony whereof, I have hereto set my hand and affixed the seal of said court, at Trenton, this eleventh day of May, A. D. 1860.

CHAS. P. SMITH, *Clerk.*

ASSIGNMENT OF ERRORS.

10 Afterwards, to wit, of the term of June, in the year 1860, before the Judges of the Court of Errors and Appeals, at Trenton, came the above named plaintiffs in error, by Abraham O. Zabriskie, their attorney, and say—that in the record and proceedings aforesaid there is manifest error in this, to wit:

That the said Supreme Court adjudged and determined that the ordinances of the defendants in error, directing the improvements on Palisade avenue, are valid and lawful, and did affirm the same as valid and effectual in law; whereas the
20 same were invalid and unlawful, and should be set aside.

And the said plaintiffs in error pray that so much of said judgment of said Supreme Court as adjudges said ordinances to be valid and lawful, and affirms the same as valid and effectual in law for the error aforesaid, and for other errors in said record and proceedings being, may be reversed, annulled, and altogether holden for nought, and that they may be restored to all things that they have lost by reason of said judgment and affirmance.

A. O. ZABRISKIE,

Att'y for plaintiffs in error.

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Filed July 23d, 1860.

Common joinder in error.

JOINDER IN ERROR.

NEW JERSEY COURT OF ERRORS AND APPEALS.

THE MAYOR AND COMMON COUNCIL OF THE
CITY OF HUDSON, defendants in error,

ads.

THE STATE (WILLIAM B. OGDEN, CHARLES
G. SISSON, and ABRAHAM O. ZABRISKIE,
plaintiffs in error),

In error.

Joinder in

error.

And hereupon afterwards, to wit, on the seventeenth day of August, in the term of June, for the year 1860, before the 10 Judges of the Court of Errors and Appeals, at Trenton, come the above named defendants, by John P. Vroom, their attorney, and say, that there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid; and they pray that the said Court of Errors and Appeals may proceed to examine, as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c., but because, &c.

J. P. VROOM, 20

Att'y for defendants in error.

Filed August 16, 1860.

D

O P I N I O N .

OGDEN, J. Upon the return of the writs in these cases, which purported to bring before the court the proceedings and copies of all papers in the possession of defendants touching the matters in controversy, two classes of objections were argued by counsel, which it was insisted, in behalf of the prosecutors, are fatal to the assessments—one, involving the proceedings anterior to those which particularly regard the assessments, the other directed against the legality of the assessments themselves.

- 10 Upon a careful examination of the points which were made against the validity of the *ordinances* respecting the regulation and grading of Palisade avenue, the first approved the 16th of November, 1855, the second approved the 20th of December, 1855, the third approved the 10th of March, 1856, the fourth approved on the first of May, 1856, and the fifth approved on the 18th of July, 1856, I am of the opinion that the attention of property holders interested in the improvement of the avenue, from the Paterson plank road intersection to the northerly side of the Newark avenue, were sufficiently
- 20 called to the subject by legal advertisements of the propositions for regulating, &c., the different sections or parts of the avenue which are embraced within the lien of the assessment, to enable those who were disposed to object to be duly heard before an appropriate committee, appointed by the mayor and common council of the city. The committee met from time to time at the places designated in the several notices, and no person appearing before them to make objections, ordinances were passed for the improvement of the respective sections to which the several petitions applied.
- 30 The work had not been commenced on the 17th of July, 1856, and at a regular meeting of the common council, held on that day, they passed one general ordinance "to provide for the regulation of the whole avenue" between the limits which were fixed in the proceedings upon the several petitions, and thereby repealed the ordinances which had been passed concerning the regulating, grading, &c., of the different parts thereof. There does not appear to have been a petition

covering the whole line, nor any fifth notice or advertisement published before the said ordinance was passed.

The object of an advertisement was the giving of information that an improvement was asked for which would affect the interests of the owners of real estate that would be benefited by the same, so that they would appear before the council, or its committee, and make objections or suggestions. It would be an unfair interpretation of the intent of legislature, as indicated in the 42d section of the charter, to say that the petitioners for improvements, in opening and in grading and paving streets, can confine the common council to the particular manner of improvement which they may choose to ask for. If such is a fair construction of the section, and several combinations of property holders should present to the council their separate applications for the improvement of a street from one given point to another, but each naming a particular and distinct mode of improvement, the common council could not act, because they could not adopt *each* plan, and thus all improvement could be prevented. 10

The proposition should be for some class or classes of improvement, which must be advertised; but the mode in which the improvement shall be made, and its extent, should be left to the discretion of the common council; therefore the fact, that some of the petitions asked for plank sidewalks of a given width and description, and others did not, cannot invalidate the last general ordinance, which provides for the laying of sidewalks on both sides of the avenue. The right of the common council to alter the grade for the avenue, as established by supervisors under the former charter, was discussed under this branch of objection; but I do not think that the ordinance, which repealed the former grade, and adopted one made by Mr. Hexamer, should be brought in question in a collateral manner. It was not introduced nor passed at any of the meetings of the board when the question of the improvements were acted on, and is not necessarily involved in the determination of the validity of those ordinances. No grade is referred to in the petitions; and if the substitution of a new grade for the old one tended materially to affect the rights of the property holders on the avenue, they should have questioned that ordinance in a legal manner before the sum of over \$22,000 had 30 40

been expended by the public authorities in improving the avenue in conformity with that grade. Knowing, as they were bound to know, that all the expenses for the improvements were required by the charter to be assessed upon and paid by the owners of the lands and real estate to be benefited by the same, in proportion to the benefit received, it would be a fraud upon the public authorities, and through them upon the taxpayers in the city, if after an improvement had been made at a great expense upon a particular grade, without objection
 10 from or suggestion made by any of the parties to be benefited, that those upon whom the charter fixes the payment of the costs of such improvement could throw off their liability, and make the expenses thereof a public burthen. If they were dissatisfied with the change of the grade, they should have had the ordinance which effected it brought up for review before it became too late for the authorities to correct any mistake which they may have made in their proceedings. Some seventeen months elapsed between the time of the passage of that resolution or ordinance and the meeting when the street
 20 committee reported to the common council that the improvements upon the avenue were completed, and were accepted by them, and two years elapsed before the allowance of these *certioraris* were applied for. I am clearly of opinion that the parties acquiesced in the alterations too long to be permitted to impeach the ordinance in a collateral manner. Such a practice would unsettle all proceedings of municipal authorities, and would involve their acts in inextricable difficulties and embarrassments.

Under the second class of objections, several matters were
 30 urged as invalidating the assessments, which I will consider *seriatim*, because the views of the court upon each that is tenable may be of value to the parties in their subsequent action.

First. Were the commissioners of assessment appointed in conformity with the charter?

It is provided, in the 42d section of the charter, "that the expenses of such improvements, when completed, shall be ascertained and assessed by three impartial commissioners, not interested therein, who shall be appointed by the common
 40 council from the residents of the city." It appears, from the

returns in these cases, that on the first day of July, 1857, the common council passed "An ordinance to establish a board of commissioners of assessments," who should act in all cases of assessments; and that, on the 1st of October, 1857, the mayor nominated, and the council elected, John G. Ackerman, Jacob Newkirk, and Adolph W. Martin such commissioners. Two objections are raised against the legality of the acts of those persons as commissioners—one that they were appointed before the work was reported as completed, not as commissioners in the particular case, but as a board to act in all cases 10 which might occur; the other, that it does not appear that they were residents of the city, impartial and not interested in the work.

If these commissioners had been appointed by the common council for this particular duty by two resolutions setting out their qualifications and appointment, in the language used in the two ordinances before us, I should determine that all which was requisite did sufficiently appear; but no such inference can be made from the resolutions appointing a board of commissioners. How was it possible for the common council 20 to say beforehand or to assume that the three gentlemen whom they then appointed would be disinterested in all the assessments for improvements which might thereafter be made in the city? The council probably fell into the error from reference to the proceedings had in Jersey City, the charter of which originally was similar to that of the City of Hudson in this particular. But in 1854, a supplement was passed repealing so much of the 52d section of the charter as required the appointment of commissioners from time to time, and substituted, in lieu of them, a board of commissioners for assess- 30 ments, to be composed of one resident freeholder in each ward of the city, with a provision, that if one or more of the board should be interested in any assessment which might be ordered, the common council should appoint some impartial and discreet freeholder or freeholders, residents of those wards, to serve in place of those so interested.

In the charter of Hudson city no such power of substitution is provided for, which omission is a conclusive argument that the legislature did not mean to authorize the appointment of a general board, but contemplated appointments, from time to 40

time, of three impartial disinterested resident commissioners to make such assessment as it might be ordered.

The objection to the legality of the appointment is well taken.

Another reason urged for setting aside the assessments (and it is the last which I shall notice) is, that the commissioners did not examine into the whole matter, and determine and report in writing to the common council what real estate ought to be assessed for the improvement, and what proportion of
 10 the expenses ought to be assessed to each parcel or lot of land benefited by the improvement.

The soundness of this objection against the present assessment must be tested by the report that has been made.

The only document which the commissioners have returned to the common council is a map elaborately made by a surveyor, showing a profile of the part of the avenue which was improved, containing tabular statements of the names of landholders and the numbers of their lots, with the quantities of cubic yards of earth, &c., removed—the prices for the same—
 20 the number of feet of curbing, guttering, and sidewalk, with prices, and a total sum at the end of the line opposite to each name and lot. A grand total is made of twenty-two thousand nine hundred and thirteen dollars and forty-four cents.

Under this statement is placed a certificate, made by the city surveyor of Hudson city, that the quantities were correct, and on another part of the map the following appears—"Certified correct."—"John G. Ackerman, Adolph W. Martin, Jacob Newkirk, commissioners of assessments."

Does this constitute a report of the performance of the du-
 30 ties required by the charter from the commissioners?

The paper returned by the commissioners is a sufficient fulfilment of their duty in furnishing a map containing each lot assessed, and the name of the owner thereof; but it possesses none of the properties of the report which was required of them. It was their duty to report in terms, by a writing with their signatures, upon all the several matters specified in the section defining their duties, so that their report and the accompanying map would have been two distinct instruments.

The whole thing is manifestly the work of the engineers,
 40 bearing no impress of the exercise of judgment by the com-

missioners. In this proceeding there has been a total failure on the part of the commissioners to execute the duties required by the charter.

The case, in this respect, is on all fours with that of *The State (The Water Commissioners of Jersey City, prosecutors,)* and *The Mayor and Common Council of the City of Hudson*, defendants, in which Justice Vredenburg delivered the opinion of the court, reviewing the proceedings of commissioners of assessments for the expenses in improving Bergen-wood avenue.

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That investigation brought up the proper construction of the same section of the charter which we have been considering, and the opinion expressed for the court maintained that distinct and positive duties were required from the commissioners beyond their certifying to the map of the surveyor.

It was also urged, on the argument of these cases, that the lots were not assessed according to the benefits received. The principle which controlled the judgment of the commissioners is not stated by them. If they adopted an arbitrary scale for the whole line of the avenue which came under the improvement, their assessment is manifestly erroneous for that cause. It can hardly be assumed that in the length of more than a mile of street no lots were benefited more than others, and that the quantity of earth and rock removed from the front of each lot, or of earth placed before it, can be the proper criterion of the estimate of benefit which such lot would receive from so expensive an improvement.

The assessment is so erroneous, and has been made upon so many illegal principles and rules of action in each case, that they all must be set aside.

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The court will appoint new commissioners, under the 47th section of the charter, to examine into and report, according to the requirements of the 42d section, an assessment for the payment of the expenses of the said improvement.

A rule to that effect should be entered in each of the cases in which *certioraris* were allowed by the court, it having been agreed, before the argument, that the opinion of the court in these two cases should decide all of the others.

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