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NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY, ss.

The State of New Jersey to John S. Horton, City Clerk, City of Millville, Greetings:

We being willing for certain reasons to be certified of a certain contract 10
(Seal) and agreement made between the City of Millville by its Board of Commissioners and the Peoples' Water Company of Millville, N. J., for the acquisition by the City of Millville of the water works of said Peoples' Water Company:

We do command you that the aforesaid contract and agreement with the records of the meetings of the Board of Commissioners at which said contract and agreement was authorized, entered into and 20 adopted, together with all things touching and concerning the same, and the passing, approving and enacting of any ordinance or resolution of the said Board of Commissioners authorizing or ratifying said contract or agreement, as fully and entirely as before you they remain, to our Justices of the Supreme Court of Judicature at Trenton, on the fifteenth day of January, nineteen hundred and twenty-one, you certify and send, together with this writ; that therein may be done what of right and accord- 30 ing to the laws of this State should be done.

Witness, William S. Gummere, Esq., Chief Justice of our Supreme Court, at Trenton, this thirtieth day of December, nineteen hundred and twenty.

ENOCH L. JOHNSON,
Clerk.

LEWIS STARR,
Attorney.

NEW JERSEY SUPREME COURT.

THE STATE, WILLIAM P. ADAMS,
Prosecutor.

vs.

JOHN S. HORTON, CITY CLERK, CITY OF
10 MILLVILLE; THE CITY OF MILLVILLE;
AND THE PEOPLES' WATER COM-
PANY OF MILLVILLE, N. J.

Respondents.

CASE NO. 1.

20

CONTRACT.

IN CERTIORARI.

WRIT.

30

Returnable Jan. 15, 1920.

I Allow This Writ. Let It Be Sealed, Dated Dec.
30, 1920.

CHAS. C. BLACK, J. S. C.

LEWIS STARR, Attorney,
4th and Market Sts., Camden, N. J.

(Copy of Return, Endorsed on Writ.)

The contract, agreement and proceedings within mentioned, together with all things touching or concerning the same, I do certify and send to the Justices of our Supreme Court of Judicature, as within I am commanded.

In witness whereof I have heretofore set my hand and caused the seal of the City of Millville to be hereto affixed, this fourteenth day of January, 1921.

10

(SEAL)

JOHN S. HORTON,
City Clerk, City of Millville.

**Copy of Letter From the Peoples' Water Company
of Millville, New Jersey, Addressed to the
Board of Commissioners of the City of Millville,
New Jersey, Under Date of July 31, 1920, and
Filed August 27, 1920, in Connection With the
Above Resolution No. 360.**

20

**PEOPLES' WATER COMPANY OF MILLVILLE,
N. J.**

Office: 112 North Broad Street,
Second Floor.

Address all Communications
to the Company.

30

Philadelphia, Pa., July 21, 1920.

To the Board of Commissioners
of the City of Millville,
Millville, New Jersey.

Gentlemen:—

We beg to bring to your attention

the fact that the conditions under which we are operating our plant in Millville are such that we can no longer continue to operate the plant for the income that we are now receiving. We have been hoping to avoid litigation, which would be expensive to both the City and this Company, and as it is our desire to close up our affairs in Millville in an amicable way, we offer to sell our entire plant to the City for the sum of \$125,000.00, clear of all encumbrance, and
10 if this offer is accepted, we will agree to waive all claims for water rent which we claim to be due in excess of the \$10,000.00 yearly payments you have been making. The balance which we claim is now due (as of May 1st, 1920,) is \$32,271.09. It would also be understood that any balance due by this Company for taxes at the date of settlement would be cancelled.

If your Board promptly takes such action as is necessary to place this matter before the Electors of
20 the City at the general election to be held on the First Tuesday in November next, and will agree that if said election is favorable to the purchase of our property at the price and upon the terms above mentioned, settlement to be made on or before January 1st, 1921, our Company will postpone such action as it had contemplated to correct the unfavorable conditions under which we are now operating.

We would appreciate hearing from you upon the above matter at your earliest convenience.

30

Yours very truly,

PEOPLES' WATER COMPANY OF MILLVILLE,
N. J.

W. H. ROTH, Vice President.

R'r

(Take up with Solicitor Miller, 8-20-'20.)

Filed August 27, 1920.

J. S. HORTON,
City Clerk.

Extract From the Minutes of the Board of Commissioners of the City of Millville, New Jersey.

Millville, New Jersey, August 27, 1920.

The Board of Commissioners met in regular session with Director Simmerman presiding. Members present Simmerman, Bennett, Kates and Wheaton. Absent, Kurtz.

10

* * * * *

Resolution Number 360, referring to a proposal of the Peoples Water Company of Millville, New Jersey, to sell their entire plant to the City for the sum of \$125,000.00 clear of all encumbrance, and offering to waive all claims for water rent claimed to be due if this offer is accepted, provided any balance due the City for taxes at the date of settlement shall be cancelled; and further, proposing to postpone such action as had been contemplated if this Board takes the necessary action to place the matter before the electors of the City, at the next general election, and made settlement on or before January 1, 1921, if the result of the election is favorable to the purchase, and providing that the City does accept the aforesaid offer, contingent upon the approval of the electors, at the general election on November 2, 1920. This resolution also directed the Clerk to certify this resolution to the County Clerk to the end that said officer may cause this measure to be submitted and voted upon in the City of Millville in conformity with the statute. This resolution was adopted by the following votes: Yeas, Simmerman, Bennett, Kates and Wheaton.

20

30

RESOLUTION NUMBER 360.

Whereas, the Peoples Water Company of Millville, New Jersey, has submitted to the City of Mill-

ville, an offer or proposal in writing, in the works and figures following, to wit:—

Philadelphia, Pa., July 31, 1920.

To the Board of Commissioners,
of the City of Millville,
Millville, New Jersey.

10 Gentlemen:—

We beg to bring to your attention the fact that the conditions under which we are operating our plant in Millville are such that we can no longer continue to operate the plant for the income that we are now receiving. We have been hoping to avoid litigation, which would be expensive to both the City and this company, and as it is our desire to close up our affairs in Millville and in an amicable way, we offer to sell our entire plant to the City for the sum of \$125,000., clear of all encumbrance, and if this offer is accepted, we will agree to waive all claims for water rent which we claim to be due in excess of the \$10,000 yearly payment you have been making. The balance which we claim is now due (as of May 1st, 1920,) is \$32,271.09. It would also be understood that any balance due by this Company for taxes at the date of settlement would be cancelled.

30 If your Board promptly takes such action as is necessary to place this matter before the electors of the city at the general election to be held on the First Tuesday in November next, and will agree that if said election is favorable to the purchase of our property at the price and upon the terms mentioned, settlement to be made on or before January 1, 1921, our Company will postpone such action as it had contemplated to correct the unfavorable conditions under which we are now operating.

We would appreciate hearing from you upon the above matter at your earliest convenience.

Yours very truly

PEOPLES WATER COMPANY OF MILLVILLE,
N. J.

By W. H. ROTH,
Vice President.

As by the said writing, this day ordered filed with the Clerk, reference being thereto, had, will appear:

10

And whereas this Board is of opinion that it is advantageous to the City to accept said offer, but deems it proper and fitting that a matter of such importance ought be submitted to the legal voters for their rejection or approval, and such submission may be had with but small expense, to the City, therefore,

20

RESOLVED By the Board of Commissioners of the City of Millville:

1. That the City of Millville does accept the aforesaid offer of the Peoples Water Company of Millville, New Jersey, and the Mayor is authorized and directed to sign and deliver to said corporation, forthwith upon this Resolution becoming operative, a writing authenticated by the seal of the City, attested by the Clerk, accompanied by a copy of this Resolution, notifying said corporation that the City accepts its said offer or proposal.

30

2. In order to pay for said plant, bonds shall be issued under and pursuant to the provisions of Ordinance Number 145, entitled, "An Ordinance for the Acquisition by the City of Millville of all the real estate, personal property and works and all the corporate rights, powers, franchises and privileges of the Peoples' Water Company of Millville, N. J.,"

adopted December 31, 1915, and the ordinances supplemental thereto and mandatory thereof.

3. The Board of Commissioners, of its own notion pursuant to the authority granted by Section 17 of the Walsh Act as amended (Suppl. C. S. 1114,) does hereby submit this resolution to the Electors of the City for adopting or rejection at the next general election to be held November second, 1920. The Clerk is directed to certify to the County Clerk this
10 resolution, to the end that said officer may cause this measure to be submitted with any other Public Question to be voted upon in the City of Millville by printing in proper form to be placed on the ballot as provided by Article XIII of the General Election Law (P. L. 1920, p. 682,) and the Board of County Canvassers is requested to certify the result of said election, with respect to the matters aforesaid as provided by Section 8 of Article XX of said Election Law (P. L. 1920, page 732.)

20 4. For the information of voters, this resolution shall be published by the City Clerk in one or more newspapers circulating in the City once in each week of October next, provided that the same shall be published therein daily except Sunday from October 25th to November 2nd next, inclusive of said dates.

30 5. The provisions of this Resolution shall remain inoperative until and unless the Electors shall vote to adopt the same at the election to be held as aforesaid, and in case the same shall then be adopted, the provisions thereof shall immediately be of full force and effect; provided, that the provisions of section three and four shall be effective immediately upon the adoption of this resolution by the Board of

NOTICE OF APPEAL.

(Filed July 12, 1921.)

NEW JERSEY SUPREME COURT.

WILLIAM P. ADAMS, *et al.*,
Prosecutors,

vs.

JOHN S. HORTON, Clerk of
the City of Millville, the
CITY OF MILLVILLE and
PEOPLES' WATER COM-
PANY OF MILLVILLE, NEW
JERSEY,

Defendants.

Notice of Appeal.
On Certiorari.

*L. H. Miller, Attorney of Defendant, City of Millville
and John S. Horton, City Clerk; and J. Fithian
Tatem, Attorney of Defendant, Peoples' Water
Company of Millville, New Jersey:*

Gentlemen:

Take Notice that the prosecutors, William P. Adams, and S. J. Franklin, above named, appeal to the Court of Errors and Appeals from the whole of the judgment in this cause, by which the writ of certiorari issued therein was dismissed with costs.

LEWIS STARR,
*Attorney of Prosecutors
and Appellants.*

[ENDORSED]

Due and legal service of the within notice is hereby acknowledged for Peoples' Water Company of Millville, N. J. J. Fithian Tatem, Atty.

July 5, 1921.

Due and legal service of the within notice on City of Millville and John S. Horton, Clerk, is hereby acknowledged.
July 2/21. Louis H. Miller.

Commissioners.

Adopted August 27, 1920.

..... Mayor.
W. J. SIMMERMAN,
SAMUEL D. BENNETT,
WALTER S. KATES,
W. S. WHEATON,
Commissioners.

Attest:

JOHN S. HORTON, Clerk.

11

20

30

Proof of Publication—Resolution Number 360.

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

W. E. Middleton, of full age, being duly sworn according to law, on his oath deposes and says that he is the Publisher of the "Millville Daily Republican," a newspaper published in the City of Millville, in the County of Cumberland, and State of New Jersey; and that the notice, of which the annexed printed slip is a true copy, was printed and published in the said newspaper on the 7th day of October, nineteen hundred and twenty, and continued to be printed and published in the said newspaper for 11 times at least once in each week, the last publication of said notice being on the 2nd day of November, nineteen hundred and twenty, and that the dates on which said publications were made as aforesaid are: October 7-14-21-25-26-27-28-29-30. November 1-2, 1920.

(SEAL) Sworn to and subscribed before me this second day of November, nineteen hundred and twenty. W. E. MIDDLETON.

MAUDE F. HANKINS,
Notary Public of New Jersey.

(The annexed printed slip referred to in above Proof of Publication, is a true copy of Resolution No. 360, adopted August 27, 1920, and shown with the addition of the caption "Notice to Voters, City of Millville.")

Proof of Publication—Resolution Number 360.

STATE OF NEW JERSEY,)
COUNTY OF CUMBERLAND,) ss.

R. L. VanHook, of full age, being duly sworn on her oath saith, that she is the agent of the Evening News Company, publishers of the Bridgeton Evening News, a newspaper printed and published at Bridgeton, in the County of Cumberland, in the State of New Jersey; that the City of Bridgeton is the County Seat of said County and is the municipality in said County having the largest population by the last preceding federal and State census, and that the notice, of which the annexed is a printed copy, was published in said newspaper eleven times, and that the dates on which said publication was so made as aforesaid are,

October 4, 11, 18, 25, 26, 27, 28, 29, 30, 1920, and
November 1, 2, 1920. 20
Subscribed and sworn to }
before me, this 3rd day of } REBA L. VANHOOK.
January, A. D., 1921. }

J. ROY OLIVER,
Atty.-at-Law of N. J.

(The annexed printed copy referred to in above Proof of Publication is a true copy of Resolution No. 360, adopted August 27, 1920, and shown with the addition of the caption, "Notice to Voters, City of Millville.") 30

Extract From the Minutes of the Board of Commissioners of the City of Millville, New Jersey.

Millville, New Jersey, October 29, 1920.

The Board of Commissioners met in regular session with Director Simmerman presiding. Members present Simmerman, Bennett, Kates and Wheaton. Absent, Kurtz.

* * * * *

Resolution Number 366, with a public letter attached, giving reasons why this Board favors the adoption of Resolution No. 360, and directing the Clerk to publish the same, daily until the close of the next election, was adopted by the following vote: Yeas, Simmerman, Bennett, Kates and Wheaton.

20

Resolution Number 366.

Whereas, this Board, in any by Resolution No. 360, has submitted to the legal voters the question of the acceptance or rejection of the proposal made in writing by the Peoples Water Company of Millville, New Jersey, dated July 31, 1920, to sell its entire plant to the City, and whereas in said resolution it is recited that this Board is of the opinion that it is advantageous to the city to accept said proposal; and requests have come to the Commissioners from various sources that the Board make known to the public reasons on which such option favoring the purchase of the water plant on the terms offered by the Company is founded, and it is proper and advisable, under the circumstances, that the Board make known to the public its reasons in the premises:

And, whereas such reasons are fairly set forth and stated in the public letter annexed to this Resolution, without reference to the point whether or

not, within a reasonable period of time and by expenditure of a reasonable sum for house connections, said water plant, if owned and operated by the public, might be made a paying proposition. therefore,—

Resolved by the Board of Commissioners of the City of Millville, that the Public Letter hereto attached expresses concisely and fairly the reasons why this Board believes that Resolution 360 providing for the purchase by the City of Millville of the entire plant of the Peoples' Water Company, of Millville, N. J., ought be adopted by the legal voters of the City at the election to be held next Tuesday, November 2, 1920, and that, for the information of our citizens, this resolution, and the attached Public Letter of the Commissioners forming a part thereof, be published by the Clerk in one or more of the newspapers circulating in this city, daily until the close of the next election. 10

Adopted October 29, 1920. 20

.....Mayor.
W. J. SIMMERMAN,
SAMUEL D. BENNETT,
WALTER S. KATES,
W. S. WHEATON,
Commissioners.

ATTEST:
JOHN S. HORTON, Clerk.

30

A PUBLIC LETTER.

Voters Can Now Settle Water Problem Once For All.

To the Voters of Millville:

On Tuesday, November 2nd, an opportunity will be given you to vote for or against the purchase, by

the City, of the entire plant of the Peoples' Water Company, for the sum of One Hundred and Twenty-Five Thousand dollars, (\$125,000.00) and the waiver of past due taxes, free and clear of all encumbrances; a claim against the city for a large sum for water service to be released if the plant is bought by the city. The letter of the Company containing the offer is being published each day in the local papers, and reference is made to it for certainty regarding the proposition made to the city by the Company.

10 If this purchase is approved, the Company agrees to waive its claim against the city, which on May 1, 1920, amounted to \$32,271.00 and now amounts to \$55,176.04., and which covers a balance each year for water service. Suits have been entered in the Supreme Court by the Company for the collection of \$32,271.00 of this amount, which still are pending in the courts.

20 On April 23, 1918, the City Commission issued a statement in which the history of the water problem was presented. As everyone in Millville is familiar with the events which lead the City officials twenty years ago to endeavor to provide the people with an adequate water supply, which could not be had from the Millville Water Company, it is unnecessary to go into the details in this communication.

30 The people have already voted to adopt the Water Act of 1875, authorizing the city to purchase a municipal water plant thereby indicating their desire to take the matter of water service into their own hands. Believing this is still the desire of the citizens of Millville, your Commissioners have agreed to purchase the water plant of the Peoples' Water Company at the price and terms aforesaid, subject to the approval by the voters of the city.

We have no hesitancy in stating that the value of the property we would secure is very greatly in excess of the amount to be paid therefore, and at present prices of material and labor the plant would

undoubtedly cost nearly three times as much as we are asked for it. It is, therefore, a good business proposition for the City to purchase this plant at this time.

In addition to the financial value, there is a more important aspect and that is the people will then control the service of a commodity without which we could not live. We can control extension of water mains for fire service or for domestic use to newly developed sections, which cannot secure service now. 10

If we permit the Peoples' Water Company to continue operation rather than to purchase their plant, several things might be done by the Company which would be detrimental to the interests of Millville.

First: Because of the decisions of our Supreme Court and the Court of Errors and Appeals, the Peoples' Water Company claim they could make application to the Board of Public Utility Commissioners for approval of a rate higher than the one set out in our contract with the Company. Your Commissioners were advised some time ago that the Company contemplated doing this and we have no doubt this action will be taken by the Company if the City does not purchase the plant. 20

Second: The suits which have been brought by the Company for the collection of the \$32,271.00 above referred to, have not been brought to trial, as the Company is awaiting the outcome of the election. If the election is favorable to the purchase, the suit will be dropped and the claim cancelled. If the purchase is not approved, then, we are informed by the Company, the suits will be pressed to a conclusion and new suits brought for the additional claims accruing since May 1, 1920. 30

Third: Should the Company succeed in establishing its claim to a higher rate, we might be compelled to pay this rate not only for the balance of

the term of our contract, which is about six years, but perhaps indefinitely thereafter.

Fourth: Under similar circumstances in other cities where competition between utilities has existed for a long while, utilities eventually get together and consolidate the plants under some arrangement satisfactory to themselves and then proceed to collect from the public the highest possible rates. There is a possibility of this situation arising in Millville if
 10 we do not take advantage of the opportunity now given to purchase the Peoples' Water plant.

Fifth: The quality of the water furnished by the Peoples' Water Company's plant is excellent, while the water furnished by the Millville Water Company's plant has often been the subject of considerable complaint. Under municipal ownership, everyone will be assured of water service of the highest quality at all times. It is a thoroughly established fact, that pure and wholesome water in
 20 large quantities can be obtained from artesian wells, the source of supply of the plant of the Peoples Water Company.

After considering the water question from every standpoint, your Commissioners strongly recommend that the voters support the proposition to purchase the water plant of the Peoples' Water Company at the election on November 2nd.

Dated October 29, 1920.

30

Respectfully,

.....Mayor,

W. J. SIMMERMAN,
 SAMUEL D. BENNETT,
 WALTER S. KATES,
 W. S. WHEATON,

Commissioners.

Proof of Publication—Resolution Number 366.

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

W. E. Middleton, of full age, being duly sworn according to law, on his oath desposes and says that he is the Publisher of the "Millville Daily Republican," a newspaper published in the City of Millville, in the County of Cumberland, and State of New Jersey; and that the notice, of which the annexed printed slip is a true copy, was printed and published in the said newspaper on the First day of November, nineteen hundred and twenty, and continued to be printed and published in the said newspaper for two times, at least once in each week, the last publication of said notice being on the second day of November, nineteen hundred and twenty; and that the dates on which said publication were made as aforesaid are: November 1-2, 1920.

Sworn to and subscribed
before me this Second
day of November, nine-
nineteen hundred and
twenty. } W. E. MIDDLETON.

MAUDE F. HANKINS,
Notary Public of New Jersey. (SEAL)

(The annexed printed slip referred to in above Proof of Publication is a true copy of Resolution No. 366 and a Public Letter, adopted and dated October 29, 1920, and shown with the addition of the caption "Public Information for Voters of Millville.")

Proof of Publication—Resolution Number 366.

STATE OF NEW JERSEY,
COUNTY OF CUMBERLAND, ss.

R. L. VanHook, of full age, being duly sworn on her oath saith, that she is the agent of the Evening News Company, publishers of the Bridgeton Evening News, a newspaper printed and published at
10 Bridgeton, in the County of Cumberland, in the State of New Jersey; that the City of Bridgeton is the County Seat of said County and is the municipality in said County having the largest population by the last preceding federal and State census, and that the notice, of which the annexed is a printed copy, was published in said newspaper three times, and that the dates on which said publication was so made as aforesaid are, October 30, November 1, No-
20 vember 2, 1920.

Subscribed and sworn to be-
fore me, this 10th day of } REBA VANHOOK.
January, A. D., 1921 }

GEORGE HERING,
Notary Public. (SEAL)

30 (The annexed printed copy referred to in the above Proof of Publication is a true copy of Resolution No. 3 and a Public Letter, adopted and dated October 29, 1920, and shown with the addition of the caption "Public Information for Voters of Millville.")

Extract From the Minutes of the Board of Commissioners of the City of Millville, New Jersey.

Millville, New Jersey, November 12, 1920.

The Board of Commissioners met in regular session with Director Simmerman presiding. Members present Simmerman, Bennett, Kates and Wheaton.

* * * * *

10

The Clerk presented the certificate of the Cumberland County Board of Elections, showing the official canvass of the result of the election held in the City of Millville on the Second day of November, 1920, and giving the vote upon the question, "Shall the Resolution of the Board of Commissioners of the City of Millville, known as Resolution No. 360, providing for the purchase by the City of Millville of the entire plant of the Peoples' Water Company of Millville, New Jersey, be adopted?"

20

"Yes" received 2711 votes, and "No" received 1294 votes. On motion of Director Wheaton the statement was ordered filed, the returns entered upon the minutes, and the matter referred to Director Wheaton and Solicitor Miller to proceed with the approval, by competent authority, of the necessary bond issue; and to take any further action necessary to complete the transaction of the purchase. This motion prevailed by the following vote: Yeas, Simmerman, Bennett, Kates and Wheaton.

30

A Statement of the Result of An Election Held in the City of Millville, Cumberland County, New Jersey, on the Second Day of November, A. D., 1920, to Elect a Chosen Freeholder For the Fifth Ward, Together With the Public Question

Voted Upon, Made By the Board of County Canvassers of Said County (Filed November 12, 1920. John S. Horton, City Clerk.)

Shall the Resolution of the Board of Commissioners of the City of Millville, known as Resolution Number 360, providing for the purchase by the City of Millville of the entire plant of the Peoples' Water Company of Millville, N. J., be adopted?

10	First Ward:	Yes.	No.
	First District,	237	61
	Second District,	181	20
	Third District,	212	27
	Second Ward:		
	First District,	306	108
	Second District,	291	70
20	Third Ward:		
	First District,	190	213
	Second District,	194	270
	Fourth Ward:		
	First District,	120	75
	Second District,	308	126
	Third District,	203	106
30	Fifth Ward:		
	First District,	292	135
	Second District,	177	83
	Whole number of votes,	2711	1294

We do hereby certify, that the foregoing is a true, full and correct statement of the result of the election above mentioned, as the same is exhibited by the statements produced and laid before the

Board of County Canvassers, according to law, that the same exhibits the number of the names in the signature copy registers and the register of voters, the number of names of the voters in the poll book of the election districts, respectively, and of the ballots rejected, the whole number of the names in the signature copy registers and the register of voters, the whole number of names of the voters in the poll book of the several election districts, the name of each person for whom any vote or votes were cast, 10
the number of votes cast for each person in each election district, and the whole number of votes cast for each person for each office designated, and also specifies each public question voted upon, and the number of votes cast thereupon in each election district respectively and the whole number of votes cast thereupon in the several election districts as they appear by the statements so produced and laid before the said board.

IN WITNESS WHEREOF, we have hereunto 20
set our hands this eighth day of November, A. D., 1920.

JOHN OGDEN,
CHARLES F. HEADLEY,
FERDINAND R. JONES,
E. C. REBER,
Board of County Canvassers.

Attest:
(SEAL) L. H. HOGATE, Clerk.

30

A statement of the determination of the Board of County Canvassers, relative to an election held in the City of Millville, in the County of Cumberland, for the election of a Chosen Freeholder, Fifth Ward, and the public question submitted, the said board do determine that at the said election, Zorobabel Gaskill was duly elected Chosen Freeholder for the Fifth Ward, and that upon the following public

question, "Shall the Resolution of the Board of Commissioners of the City of Millville, known as Resolution Number 360, providing for the purchase by the City of Millville of the entire plant of the Peoples' Water Company of Millville, N. J., be adopted?" "Yes" received twenty-seven hundred eleven votes and "no" received twelve hundred ninety-four votes.

I do hereby certify that the foregoing is a true, full and correct statement of the determination of the Board or Canvassers therein mentioned. In witness whereof, I have hereunto set my hand, this eighth day of November, 1920.

JOHN OGDEN,

Chairman of the Board of County Canvassers.

(SEAL) Attest:

L. H. HOGATE, Clerk.

20

Extract From the Minutes of the Board of Commissioners of the City of Millville, New Jersey.

Millville, New Jersey, November 19, 1920.

The Board of Commissioners met in regular session with Director Simmerman presiding. Members present, Simmerman, Bennett, Kates and Wheaton.

* * * * *

On motion of Mr. Wheaton, the Clerk was instructed to notify the Peoples' Water Company of the result of the election held November 2, 1920, in reference to the purchase of their plant. This motion prevailed by the following vote: Yeas, Simmerman, Bennett, Kates and Wheaton. Kates and Wheaton.

30

Copy of Letter to Peoples' Water Company,

Pursuant to the instructions of above motion:

W. J. SIMMERMAN,
Director of Revenue and Finance.

WALTER S. KATES,
Director of Streets and Public
Improvements.

SAMUEL D. BENNETT,
Director of Public Safety.

W. SCOTT WHEATON,
Director of Parks and Public
Buildings.

10

CITY OF MILLVILLE, NEW JERSEY.

Office of City Commissioners.

LEWIS E. KURTZ, Mayor.

November 22, 1920.

20

Peoples Water Company,
112 N. Broad Street,
Philadelphia, Pa.

Gentlemen:—

At a regular meeting of the Board of
Commissioners of the City of Millville, on Friday,
November 19, 1920, the Clerk was instructed to in-
form you that the returns of election held in Mill-
ville on Tuesday, November 2nd, showed a majority
favoring the adoption of Resolution No. 360, provid-
ing for the purchase of your plant by the City.

30

Very truly yours,

J. S. HORTON,

City Clerk.

Extract From the Minutes of the Board of Commissioners of the City of Millville, New Jersey.

Millville, New Jersey, December 3, 1920.

The Board of Commissioners met in regular session with Mayor Felmey presiding. Members present, Felmey, Simmerman, Bennett, Kates and Wheaton.

* * * * *

10 City Solicitor Miller reported having visited New York and consulted with Caldwell and Raymond, in reference to the validity of a bond issue for the purchase of the Peoples' Water Company plant, and stated that Mr. Caldwell approved this bond issue, and further reported that the titles to the property were now being examined, and the proceedings working out satisfactorily.

20

Resolution Number 261.

30 A Resolution providing for the purchase by the City of Millville of all the real estate, personal property and works, and all the corporate rights, powers and franchises and privileges of the Peoples' Water Company of Millville, N. J., for the price or sum of one hundred and twenty-five thousand dollars (\$125,000.00) lawful money, and the allowance of certain delinquent taxes assessed against said company and its property in this city prior to the taxing year 1917.

WHEREAS, by section two of ordinance number 145 of the City of Millville, it was ordained as follows:

“2. The Mayor and other members of the Board of Commissioners and the majority of them

are hereby made, constituted and appointed agents of the City of Millville to negotiate, on the part of the City, an agreement with the owner or owners for the purchase of said real estate, personal property and works and all the corporate rights, powers, franchises and privileges of the said Peoples' Water Company of Millville, N. J., and the said agents are required and directed to use all reasonable means and endeavor in good faith to come to an agreement as to the price and terms of the purchase thereof 10 with the owner or owners of said real estate, personal property and works and corporate rights, powers, franchises and privileges aforesaid, and said agents shall proceed in said matter with all convenient diligence and dispatch and shall make report in the premises within thirty days after this ordinance shall become effective, or as soon thereafter as conveniently may be. In case the city can acquire said land and other property by agreement with the owner or owners, the Director of Revenue 20 and Finance and the Treasurer are authorized and directed to pay to said owner or owners the agreed purchase price according to the terms of the agreement; and all further directions and proceedings for the acquisition of said property and franchises shall be by resolution, or further or supplementary or amendatory ordinance of the Board of Commissioners. The agents of the City hereinbefore appointed shall not enter into any final contract or agreement, on behalf of the city, for acquisition of said property 30 and franchises without making report to, and being duly authorized by resolution or supplemental ordinance of the Board of Commissioners."

AND, WHEREAS, afterwards, on the thirtieth day of November, 1917, the Mayor and all other members of the Board of Commissioners, constituted and appointed agents of the City of Millville in and by said Section Two of said ordinance Number 145, submitted to the Peoples' Water Company of

Millville, N. J., mentioned in said ordinance Number 145, a conditional proposal in writing for the purchase by the City of Millville, of all the real estate, personal property and works and all the corporate rights, franchises and privileges of said Peoples' Water Company of Millville, N. J., a corporation of New Jersey, which conditional proposal is in the words and figures following, that is to say.

“To the Peoples' Water Company of Millville, N. J.

10 Gentlemen:

If your company, by appropriate corporate action, assented to by your bondholders, in consideration of the benefits to your company thereon arising, will grant to the City of Millville, the right, option and privilege hereinafter outlined, the subscribers, Commissioners of the City of Millville, agents of the City in this behalf under the provisions of Section Two of Ordinance Number 145 of said City will by appropriate proceedings make re-
20 port to the Board of Commissioners of such right, option and privilege with recommendation that said board do submit to the electors of said city, the question of the exercise of said option at a special election to be held for that purpose on or before May first, next, or at some other election if any shall be held within said time where said question may lawfully be submitted to the electors. The right, option and privilege which the subscribers ask your Company to grant to the City of Millville is as follows:
30

The City of Millville shall have the right, option and privilege of purchasing from your Company, all of the real estate, personal property and works and all the corporate rights, powers, franchises and privileges of the Peoples' Water Company of Millville, New Jersey, at any time before September 2nd, next, at the price hereinafter mentioned, provided that the City of Millville, by due corporate action, shall, on or before July 15th, next,

by writing, under the seal of the City, notify said Peoples' Water Company, of Millville, New Jersey, that the City has elected to exercise such right, option and privilege of purchase of the aforesaid real estate, personal property and works, and all the corporate rights, powers, franchises and privileges of said Company. And in case the City shall fail to give such notice of its election to exercise said option, on or before July 15th, next, then said right, option and privilege of purchase is expired; and if 10
within said time, to wit: on or before July 15th, next, the City shall give such notice of its exercise of said option, then the sale shall be consummated, and settlement made on September 1st, next, at (12) o'clock, noon, at the Millville National Bank, Millville, New Jersey; or at an earlier date, or other place in Philadelphia, or New Jersey, at the option of the City, whereof, it shall give notice to the Company.

The price or consideration, at which the City 20 shall have the right, option and privilege of purchasing said plant, as aforesaid, shall be (a) One Hundred Twenty-five Thousand Dollars (\$125,000.-00) lawful money of the United States of America, which money shall be paid in cash, or by certified check, or certified City Warrant, to the order of the Peoples' Water Company of Millville, New Jersey.

And (b) the satisfaction and cancellation of record by the City of Millville, of all taxes levied and assessed against said Company in the City of 30 Millville, and remaining in arrears, and unpaid at the time of settlement, providing that the taxes for 1917 shall be paid by the Company, or allowance thereafter, made to the City in settlement. The said option shall provide that the title to the said real estate, personal property and works, and all the corporate rights, powers, franchises and privileges of said Company, shall be free and clear of all incumbrances, excepting the aforesaid taxes, and shall be

conveyed by good and sufficient deed or deeds of conveyance, with full covenants of warranty.

Included in said deeds of conveyance, shall be:
(1) a surrender of the contract with the City of Millville, existing under the provisions of Ordinance No. 73, and (2) a general release to the City, against all claims and demands whatsoever, except such claims as shall have arisen at the time of settlement for water service supplied to the City of Millville, by the Company, under contract, from and after November 1st, 1917; settlement for which service shall be made by the City under the terms of the contract, as a transaction entirely separate and apart from the purchase of the plant, property and franchises, as aforesaid, upon an exercise of said option.

AND WHEREAS, the said Peoples' Water Company of Millville, New Jersey, has accepted said conditional proposals, and thereby has granted to the City of Millville, the option of said conditional proposal mentioned, as appears by a resolution of the Board of Directors of said Corporation, a certified copy of which was transmitted by said Company to the City of Millville, and is now on file with the City Clerk, and which resolution reads as follows, viz:

Resolved, That the right, option and privilege of purchasing the property of this Company is hereby given to the Commissioners of the City of Millville, New Jersey, under the terms outlined by said Commissioners in their communication to this Company, dated, November 30th, 1917,

Further resolved, That said communication from the Commissioners of the City of Millville, be filed with, and form a part of the minutes of this meeting.

AND WHEREAS, afterward, the Mayor and all other members of the Board of Commissioners,

agents of the City, as aforesaid, in that behalf, did make report in writing to the Board of Commissioners of the City of Millville, on the seventh day of December, 1917, to the effect that after numerous interviews and negotiations, the said agents had procured from the Peoples' Water Company of Millville, New Jersey, an option for the purchase of all the real estate, personal property and works, and all the corporate rights, powers, franchises and privileges of the Peoples' Water Company of Millville, New Jersey, upon the terms stated in the conditional proposal, and acceptance hereinbefore, in this resolution, recited and set forth. And recommending that the Board of Commissioners of the City of Millville, do, by appropriate proceedings, submit to the electors of the City of Millville, on or before May 1st, next, the question whether the City of Millville shall exercise the aforesaid option and privilege of purchase. 10

AND WHEREAS, the Board of Commissioners of the City of Millville, has made careful investigation, and given due consideration of the matter of the purchase of the aforesaid property, works and franchises, upon the terms stated in the said conditional proposal, and acceptance, and the said Board believes that it is for the best interest of the City of Millville, and its inhabitants, and taxpayers, that the City do exercise said right, option and privilege of purchase, and do acquire the said property, works and franchises for the price or consideration specified in said option, but the said Board of Commissioners has decided that a question of such importance to the public, ought to be submitted to the qualified electors of the City for their determination. 20 30

Therefore, Resolved by the Board of Commissioners of the City of Millville. (1) That the City of Millville doth elect to exercise and shall exercise its aforesaid right, option and privilege of purchase, of all of the aforesaid real estate, personal property

and works, and all of the corporate rights, powers, franchises, and privileges of the Peoples' Water Company, of Millville, New Jersey, a corporation of New Jersey, upon the precise terms and conditions and for the price or consideration in said option, set forth and declared. (2) That immediately after the adoption of this resolution by the electors of the City, and on or before July 15th, 1918, the Mayor shall notify the Peoples' Water Company of Millville, New Jersey, by writing, under the seal of the City attested by the Clerk, that the City of Millville has elected to exercise said option, and shall transmit to said Company, a certified copy of this resolution.

That the bonds of the City of Millville provided for by said Ordinance No. 145, and the ordinances supplemental thereto, and amendatory thereof, shall be issued and sold at public sale according to law, forthwith, after the adoption by the electors of this resolution, in the sum of One Hundred Twenty-five Thousand Dollars (\$125,000.00) or so much thereof, as shall be necessary. And the proceeds of the sale of said bonds shall be applied towards payment of the purchase price of all the aforesaid real estate, personal property and works, and all the rights, powers, franchises and privileges of said Company.

All other, or further proceedings necessary for the consummation of the purchase of said property and franchises, and the issue of said bonds shall be had by resolution or by ordinances supplemental to said ordinance No. 145.

(3) This resolution shall go into effect immediately, but its provisions, except as to the referendum herein contained, shall remain inoperative until, and unless a majority of the qualified electors voting thereon, shall vote in favor thereof, at the special election herein as mentioned; and the question of the adoption of this resolution, shall be, and hereby is submitted by the Board of Commission-

ers, of its own motion, to the qualified electors of the City of Millville, at a special election which is hereby called, and shall be held in said City on Tuesday, the 30th day of April, next, and notice of said special election shall be given, and said election shall be held and the returns thereof made, canvassed and certified by the proper officers in the manner provided by law.

The expense of said special election shall be paid from the appropriation for special elections heretofore provided in the local budget, and taxing resolution for the current fiscal year. 10

Adopted by the Board of Commissioners of the City of Millville, the first day of March, 1918.

(Signed),

THOMAS WHITAKER, Mayor.

WILBERT J. SIMMERMAN,

SAMUEL D. BENNETT,

WALTER S. KATES,

LEWIS E. KURTZ,

Commissioners. 20

Attest:

JOHN S. HORTON,

Clerk.

STATE OF NEW JERSEY, }
CITY OF MILLVILLE, } ss.

I, John S. Horton, Clerk of the City of Millville, hereby certify the foregoing to be true copies of the resolutions, ordinances, minutes and proceedings therein recited, as compared with the originals of record in my office. 30

In witness whereof, I have hereto set my hand and caused the seal of the City of Millville to be hereto affixed, this fourteenth day of January, 1921.

JOHN S. HORTON,

Clerk of the City of Millville.

(SEAL)

Mich. 1, 1918.

NEW JERSEY SUPREME COURT.

	THE STATE, WILLIAM P.	}	Reasons.				
	ADAMS,			}	On Certiorari.		
	Prosecutor,					}	Case No. 1.
	vs.						
10	JOHN S. HORTON, City	}					
	Clerk of the City of Mill-			}			
	ville, et. als.,					}	
	Respondents.						

20 The prosecutor above named, by Lewis Starr, his attorney, appears and prays that the contract and agreement entered into between the City of Millville and the Peoples' Water Company of Millville, New Jersey, for the acquisition by the City of Millville of the Water Works, property and franchises of the Peoples' Water Company be set aside, annulled and, for nothing holden, for the following reasons:

1. The said contract and agreement was made by and between the parties thereto without any sufficient legal power and authority, either by Legislative or Municipal action.
2. The said contract was ultra vires the City of Millville.
- 30 3. The Commissioners of the City of Millville did not possess any legal power or authority to enter into the contract.
4. Ordinance No. 145, as adopted by the Commissioners of Millville on December 31, 1915, does not constitute any sufficient legal authority or power to authorize the Commissioners of Millville to enter into the contract with Peoples' Water Company.
5. The power and authority of the Commis-

sioners of Millville to enter into the said contract with the Peoples' Water Company, cannot be predicated or based upon ordinance No. 145, because the power and authority conferred thereby became exhausted when the proceedings instituted thereunder, failed to result in the purchase of the water works as contemplated by the terms thereof by the refusal of the voters of Millville to approve of said purchase as expressed at the election held April 13, 1918.

10

6. The Commissioners of Millville did not possess any power or authority, legislative or municipal, to resume negotiations with the Peoples' Water Company in 1920, which resulted in the passage of Resolution No. 360, because there was no valid or subsisting ordinance in existence authorizing the purchase of the Water Works by the People's Water Company.

7. Said Resolution No. 360, adopted August 27, 1920, is insufficient in law to authorize and empower the Commissioners to enter into the contract or agreement for the purchase of said water works.

20

8. At the time of the making of the contract and agreement between the City of Millville and the said Peoples' Water Company, the City had no funds in hand with which to pay the contract price and no bonds had been issued, the proceeds of which could be used for the purpose of paying the contract price.

9. The method adopted by the City to raise funds to pay the contract price was improper and illegal, because the power conferred by Ordinance 145 had been exhausted and could not be exercised when the resolution for the issue of bonds was adopted.

30

10. The bonds could not be lawfully issued pursuant to the terms of Ordinance 152, adopted August 18, 1916.

11. Section 17 of the Walsh Act, under which

the Commissioners submitted the question of the election relative to the purchase of the water works of the Peoples' Water Company to the vote of the people of Millville, was repealed by Chapter 116 of the Laws of 1919 and, therefore, no legal authority existed for the submission of said question to the voter, under the Walsh Act.

10 12. Chapter 116 of the Laws of 1919, by which Article 32 of the Home Rule Act was amended, provides a specific method for submission of questions to the vote of the people of the municipality, which method was not pursued by the Commissioners and, therefore, the said election was inoperative and void.

13. The question of the approval or rejection of the plan to purchase the water works of the Millville Water Company was not submitted by the Commissioners to the voters of Millville in the form required by law.

20 14. The said contract and agreement and all proceedings taken thereunder are illegal, void, and made and taken without proper legislative or municipal authority.

LEWIS STARR,
Attorney of Prosecutor.

NEW JERSEY SUPREME COURT.

CASE NO. 1.

THE STATE, WILLIAM P. ADAMS,
Prosecutor, 10

vs.

JOHN S. HORTON, CITY CLERK OF THE CITY
OF MILLVILLE, ET. ALS.,
Respondents.

ON CERTIORARI. 20

REASONS.

LEWIS STARR, Atty.,
4th and Market Sts., Camden, N. J.

30

NEW JERSEY SUPREME COURT.

	WILLIAM P. ADAMS,	}	Case No. 1. On Certiorari. Additional Reasons
	Prosecutor,		
	vs.		
10	JOHN S. HORTON, City Clerk, and Others,	}	Additional Reasons
	Respondents.		

15. At the time of the making of the contract and agreement and when the obligation to purchase the plant was incurred, no money had been appropriated by the City of Millville for the payment of the contract price.

20

LEWIS STARR,
Attorney of Prosecutor.

30

ADDITIONAL REASONS—ENDORSEMENT. 37

NEW JERSEY SUPREME COURT.

WILLIAM P. ADAMS,

Prosecutor,

vs.

JOHN S. HORTON, CITY CLERK AND OTHERS,
Respondents. 10

CASE NO. 1.

ON CERTIORARI.

ADDITIONAL REASONS. 20

LEWIS STARR, Attorney,
4th and Market Sts., Camden, N. J.

30

NEW JERSEY SUPREME COURT.

CASE NO. 2.

THE STATE OF NEW JERSEY, ss.

10 The State of New Jersey to John S. Horton,
City Clerk, City of Millville, Greetings.

(SEAL) We being willing for certain reasons to be certified of a certain resolution adopted by the Board of Commissioners of the City of Millville, County of Cumberland and State of New Jersey, on the tenth day of December, nineteen hundred and twenty, authorizing the submission of bids for the issue and sale of bonds under the authority of ordinance 145, to be used for the acquisition of
20 the water works of the Peoples' Water Company of Millville, N. J.:

We do command you that the said resolution passed by the said Board of Commissioners on the tenth day of December, nineteen hundred and twenty, and the records of the meetings of said Commissioners at which said resolution was introduced and passed, together with all things touching and concerning the same and the passing, approving and
30 enacting of the ordinance No. 145, aforesaid, as fully and entirely as before you they remain, to our Justices of the Supreme Court of Judicature at Trenton on the 15th day of January, nineteen hundred and twenty-one, you certify and send, together with this writ; that therein may be done what of right and according to the laws of this State should be done.

Witness, William S. Gummere, Esq., Chief Justice of our Supreme Court at Trenton, this 30th

day of December, nineteen hundred and twenty.

ENOCH L. JOHNSON,
Clerk.

LEWIS STARR,
Attorney.

NEW JERSEY SUPREME COURT. 10

THE STATE, WILLIAM P. ADAMS,
Prosecutor,

vs.

JOHN S. HORTON, CITY CLERK, CITY OF
MILLVILLE; THE CITY OF MILLVILLE;
AND THE PEOPLES' WATER COM-
PANY OF MILLVILLE, N. J., 20
Respondents.

IN CERTIORARI.

WRIT.

CASE NO. 2.

Returnable Jan. 15, 1921. 30

I Allow This Writ, Let It Be Sealed, Dated Dec. 30,
1920.

CHAS. C. BLACK, J. S. C.

LEWIS STARR, Attorney,
4th and Market Sts., Camden, N. J.

(Copy of Return, Endorsed on Writ.)

The contract, agreement and proceedings with-
in mentioned, together with all things touching or
concerning the same, I do certify and send to the
Justices of our Supreme Court of Judicature, as
within I am commanded.

In witness whereof I have hereto set my hand
and caused the seal of the City of Millville to be here-
10 to affixed, this fourteenth day of January, 1921.

(Seal of the City
of Millville.)

JOHN S. HORTON,
City Clerk, City of Millville.

**Extracts From the Minutes of the Board of Commis-
sioners of the City of Millville, New Jersey.**

20

Millville, New Jersey, November 19, 1915.

The Board of Commissioners met in regular ses-
sion with Mayor Geig presiding. Members present,
Geig, Whitaker, Corson, Kates and Ware.

* * * * *

Ordinance No. entitled "An Ordinance for
the Acquisition by the City of Millville of all the real
estate, personal property and works, and all the cor-
30 porate rights, powers, franchises and privileges of
the Peoples' Water Company of Millville, New Jer-
sey," was introduced, read by the Clerk and laid
over under the rules.

Millville, New Jersey, December 3, 1915.

The Board of Commissioners met in regular
session with Mayor Geig presiding. Members pres-

ent, Geig, Whitaker, Corson, Kates and Ware.

* * * * *

A communication from Mr. S. J. Franklin, requesting a postponement for two weeks of the hearing on the proposed ordinances for acquiring the plants of the two water companies, was received and ordered filed.

Ordinances Number 144 and 145, providing for the acquisition of the real estate, personal property and works, and all the corporate rights, powers, franchises and privileges of the Millville Water Company and the Peoples' Water Company of Millville, New Jersey, were taken up in regular order, and the titles read by the Clerk, after which Mr. Corson moved that both ordinances be laid over for one week for further consideration and amendment. This motion was passed by the following vote: Yeas, Whitaker, Corson, Kates, Ware and Geig. 10

City Solicitor Miller stated that it would probably be desirable to amend these ordinances in reference to form of bonds. 20

Extracts From the Minutes of the Board of Commissioners of the City of Millville, New Jersey.

Millville, New Jersey, December 10, 1915.

The Board of Commissioners met in regular session with Mayor Geig presiding. Members present, Geig, Whitaker, Corson, Kates and Ware. 30

* * * * *

Solicitor Miller stated that after a conference with Treasurer Worstall and Director Whitaker, it had been decided to make no change in form of Ordinances Nos. 144 and 145, relating to the issue of bonds. Mr. Corson's motion that final action on proposed ordinances for acquisition of the plants,

etc., of the Millville Water Company and of the Peoples' Water Company, be deferred until next Friday, was passed by the following vote: Yeas, Whitaker, Corson, Kates, Ware and Geig.

Millville, New Jersey, December 17, 1915.

The Board of Commissioners met in regular session with Mayor Geig presiding. Members present, Geig, Whitaker, Corson, Kates and Ware.

10

* * * * *

Two communications from the Municipal League in reference to proposed ordinances for acquisition of the two water plants, were read and ordered filed by the following vote: Yeas, Whitaker, Corson, Kates, Ware and Geig.

Mr. Newell Corson, president of the Municipal League,, assured the Board that sincere desire for information prompted these letters.

20

Ordinances proposed as Nos. 144 and 145, and providing for the acquisition of the real estate, personal property and works, and all the corporate rights, powers, franchises and privileges, of the Millville Water Company and of the Peoples' Water Company were taken up in regular order and the titles read by the Clerk. Mr. Ware moved that final action on both ordinances be postponed until an adjourned meeting, Thursday, December 23rd, at 3.30 o'clock P. M., and that when we adjourn it be until Thursday, December 23rd, 1915, at 3.30 o'clock P. M.

30

Extracts From the Minutes of the Board of Commissioners of the City of Millville, New Jersey.

Before taking a vote on this motion, Mayor Geig invited any citizen in the room to take part in the discussion. Dr. A. R. Slade, stated that he had no desire to unduly delay the action of the Commis-

sioners, but thought the public should have fuller information. At the suggestion of Mayor Geig, a portion of the report of Alton D. Adams, Engineer, dealing with the water situation in Millville was read by the Clerk.

Millville, New Jersey, December 23, 1915.

The Board of Commissioners met in adjourned session at 3.30 P. M. with Mayor Geig presiding. Members present, Geig, Corson, Kates and Ware. Absent, Whitaker. 10

Mayor Geig stated that the principal object of the adjourned session was for further consideration of the two proposed ordinances for the acquisition by the City of the two water plants, and invited anyone present to express views on the matter. Mr. Corson moved that owing to the absence of Mr. Wood, who had requested a hearing and of Director Whitaker, who was detained by illness, that final action on the two ordinances, providing for the acquisition by the City of the two water plants, be postponed until the next regular meeting. Mr. Kates seconded the motion, which was passed by the following vote: Yeas, Corson, Kates, Ware and Geig. 20

Millville, New Jersey, December 24, 1915.

The Board of Commissioners met in regular session with Mayor Geig presiding. All members present but Mr. Whitaker. 30

* * \ * * * * *

Ordinances proposed as Nos. 144 and 145, were taken up in regular order and the titles read by the Clerk. Mr. Corson moved, seconded by Mr. Kates, that action on these two ordinances be postponed until the next regular meeting. This motion was carried by the following vote: Yeas, Corson, Kates, Ware and Geig.

Extracts From the Minutes of the Board of Commissioners of the City of Millville, New Jersey.

Millville, New Jersey, December 31, 1915.

The Board of Commissioners met in regular session with Mayor Geig presiding. Members present, Geig, Corson, Kates, Ware and Whitaker.

* * * * *

10 Ordinance Number 144 was read in full by the Clerk. Mayor Geig invited Mr. Walter Wood to speak, and Mr. Wood talked at length on the water situation. Mayor Geig and Director Corson asked Mr. Wood several questions in reference to the subject. Mr. B. Frank Buck addressed the Board and presented a petition of protest against the adoption of the proposed ordinances, for acquiring the properties of either or both of the water companies operating in Millville. Mr. Buck asked the privilege of

20 adding more names to this petition if final action on the ordinances is not taken today. The petitions were ordered read, and the Clerk read same in full. Mr. Buck at this time presented another communication, signed by numerous citizens, requesting the Board to try out a certain plan advanced by Alton D. Adams, for at least one year, before making any further move in the matter. Mayor Geig directed the Clerk to read the communication in full, and said communication or petition was read in full.

30 Franklin, Mr. Buell, Mr. Corson, Mr. Ware, Mr. Whitaker, Mayor Geig, Solicitor Miller, and Mr. Wood, all took part in a thorough discussion after which Mayor Geig ordered the roll call.

* * * * *

Ordinance Number 145, providing for the acquisition of of the real estate, personal property and works, and all the corporate rights, powers and franchises, and privileges of the Peoples' Water Company of Millville, New Jersey, was taken up in

regular order and read in full by the Clerk, after which the Clerk was directed by the Mayor to call the roll on the adoption of the ordinance. The roll was called and Ordinance No. 145 adopted by the following vote: Yeas, Whitaker, Corson, Kates, Ware and Geig.

ORDINANCE NUMBER 145.

10

An Ordinance For the Acquisition By the City of Millville, of All the Real Estate, Personal Property and Works and All the Corporate Rights, Powers, Franchises and Privileges of the Peoples' Water Company of Millville, N. J.

Whereas, the Board of Commissioners of the City of Millville deems it proper and of public necessity that the City of Millville acquire all the real estate, personal property and works, and all the corporate rights, powers, franchises and privileges of the Peoples' Water Company of Millville, N. J., a corporation of New Jersey, for the purpose of supplying said city and the inhabitants thereof with water for public and private use and consumption thereof. 20

The Board of Commissioners of the City of Millville do ordain. 30

1. It is hereby determined that the City of Millville shall acquire, forthwith, for public use, all the real estate, personal property and works, and all the corporate rights, powers, franchises and privileges of the Peoples' Water Company of Millville, N. J., a corporate of New Jersey, for the purpose of supplying said city and the inhabitants thereof with water for public and private use and consumption; and the Board of Commissioners, of said city doth

decide, upon full investigation of said matter and doth ordain, determine and declare that the acquisition of all said property and franchises is necessary, convenient and proper for the public use.

2. The Mayor and other members of the Board of Commissioners and the majority of them are hereby made, constituted and appointed agents of the City of Millville to negotiate, on the part of the City, an agreement with the owner or owners for the purchase of said real estate, personal property and works and all the corporate rights, powers, franchises and privileges of the said The Peoples' Water Company, Millville, N. J.; and the said agents are required and directed to use all reasonable means and endeavor in good faith to come to an agreement as to the price and terms of the purchase thereof with the owner or owners of said real estate, personal property and works and corporate rights, powers, franchises and privileges aforesaid, and said agents shall proceed in said matter with all convenient diligence and dispatch and shall make report in the premises within thirty days after this ordinance shall become effective, or as soon thereafter as conveniently may be. In case the city can acquire said land and other property by agreement with the owner or owners, the Director of Revenue and Finance and the Treasurer are authorized and directed to pay to said owner or owners the agreed purchase price according to the terms of the agreement, and all further directions and proceedings for the acquisition of said property and franchises shall be by resolution or further or supplementary or amendatory ordinances of the Board of Commissioners. The agents of the city hereinbefore appointed shall not enter into any final contract or agreements, on behalf of the city, for acquisition of said property and franchises without making report to, and being duly authorized by resolution or supplemental ordinance of the Board of Commissioners.

3. If the city cannot acquire said real estate, personal property and works and all the corporate rights, powers, franchises and privileges of The Peoples' Water Company of Millville, N. J., by agreement with the owner, whether by reason of disagreement as to the price, or the legal incapacity of the owner, or inability in the owner to convey valid title or by any other cause, the said real estate, personal property and works and all the corporate rights, powers, franchises and privileges of the said Water Company shall then be acquired and taken for public use by condemnation pursuant to the provisions of the statute "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use," (2C, S. pp. 2182 &c., and the acts supplemental thereto and amendatory thereof and such other statutes of this state as may be applicable to said condemnation proceedings; and the City Solicitor shall institute and prosecute said condemnation proceedings with all convenient speed. 10 20

4. In order to pay the agreed purchase price of the said property and franchises, if an agreement for the purchase of the same be concluded with the owner, or in order to pay the costs of condemnation proceedings and the award of the commissioners, or assessment by a jury of the value of said property and franchises and the damages sustained, and for the other purposes hereinafter in Section five of this ordinance mentioned, bonds of the City of Millville shall be issued in the sum of one hundred and twenty-six thousand dollars or so much thereof as may be necessary, provided, that the issue of additional bonds in any further sum shall be authorized by a supplemental or other ordinance if required for said purposes in case the agreed purchase price of said property and franchises, or the award of commissioners in condemnation proceedings or the assessment by a jury of the value of said property and 30

franchises and damages sustained by the taking thereof, and the costs of condemnation proceedings shall exceed one hundred and twenty-six thousand dollars and the city shall stand by any such award or assessment and elect not to abandon said condemnation proceedings as permitted by Section 15 of the statute above recited (3C. S. pp. 2187, 2188).

5. Said bonds shall be issued under the authority of the act entitled "An Act to enable cities to
10 supply the inhabitants thereof with pure and wholesome water," (1 C. S. 823), and the acts supplemental thereto and amendatory thereof, which act has heretofore been duly adopted in this city pursuant to the provisions and requirements of Section 16 of
20 said act; provided, that said bonds may be issued under the authority and provisions of Chapter 117 of the Laws of the Legislature of New Jersey, Session of 1914, if the Board of Commissioners shall by resolution so direct; the proceeds of the sale of said
30 bonds shall be applied and used for the purpose of defraying all the expenses and the cost of purchase of the aforesaid real estate, works, property, rights, franchises, privileges and appurtenances of the Peoples' Water Company of Millville, N. J., and of maintaining and extending the same, and for the purchase of materials, the laying of mains in and about the city or leading from or connecting it with its source of supply and constructing all works necessary for the accomplishment thereof.

30 All of said bonds shall bear date December first, nineteen hundred and fifteen, shall be payable thirty years after date; shall bear the seal of the city, be signed by the Mayor and the director of Revenue and Finance, countersigned by the Treasurer and attested by the Clerk; shall be either coupon bonds or registered bonds at the option of the holder; all coupons shall bear the signature of the Treasurer in fac simile; said bonds shall bear interest at the rate of five per centum per annum, payable

semi-annually and shall be payable both principal and interest at the Millville National Bank; and the property and credit of the city shall be pledged for payment of the same.

The Treasurer shall dispose of said bonds at public sale for the best price that can be obtained, but at not less than par and accrued interest. Record of all said bonds shall be kept by the Treasurer and all moneys received therefrom shall be deposited in the Millville National Bank or other bank or banks, designated from time to time by a majority of the Board of Commissioners, and shall be drawn upon by said Treasurer only for the purpose for which the same were issued as hereinbefore declared and specified, and all said moneys shall be inviolably applied for said purposes only, and for none other, and only when said Treasurer shall be so ordered by proper warrant or warrants issued by the Board of Commissioners of said city. Said bonds shall be in such form as the Board of Commissioners, shall, by resolution, provide. 10 20

6. A sinking fund for the redemption of said bonds is hereby established. Such portions of the moneys received from the water rents or prices paid for the use of water, and interest on arrears of water rents, as may remain after paying all expenses and costs for purchasing water works or for constructing and maintaining water works, and raising and distributing the water, and salaries, wages and incidental expenses and charges, shall be applied by the Board of Commissioners, first, to the payment of the interest upon the debt created for the purchase and construction of the works and next, to the purchase of the bonds issued therefor, if the same can be obtained at reasonable rates; or if that cannot be effected, then to be safely invested by the Commissioners of the sinking fund of this city for the redemption of said bonds when due. There shall be raised annually by taxation the amount of the de- 30

10 deficiency, if any, in the water revenues for the pay-
ment (1) of the interest on the debt hereby author-
ized and created and cost of managing and keeping
in repair and operation of the water works with
three per centum thereof added to cover losses and
deficiencies to be ascertained and certified in the
manner provided for by Section 13 of said act (1 C.
S. 823) and (2) a sum sufficient, when added to the
water revenues applicable for the purpose, to make
20 up an amount equivalent to 2½ per centum of all
said bonds issued and at the time outstanding, for
the retirement of the bonds at maturity; which
taxes shall be levied, assessed and collected in the
same manner as other taxes, and the amount thereof
assessed and collected for interest shall be paid by
the taxing officers to the Treasurer, and the amount
thereof assessed for sinking fund shall be paid by
said taxing officers to the Sinking Fund Commis-
sioners of the city appointed under the provisions of
30 Ordinance No. 142 to be invested by them and al-
lowed to remain as a sinking fund for the retirement
of said bonds at maturity.

7. If the authority of the city to take any of
the proceedings or to do any of the acts, matters or
things hereinbefore provided for under the author-
ity of those several statutes particularly above recit-
ed shall be brought in question it is the intention of
the Board of Commissioners to rest their authority
not alone upon those several statutes, but upon the
30 city charter, the act P. L. 1895, P. 769 (2C. S. 2198),
and all and every other of the statutes of this state
granting power and authority to this municipality
in the premises.

8. All other proceedings of the Board of Com-
missioners required to be had, if any, touching the
matters in this ordinance contained shall be by
further or amendatory or supplemental ordinances
or by resolutions of the Board of Commissioners.

9. All resolutions or ordinances or parts of

resolutions or ordinances inconsistent herewith are hereby repealed. This ordinance shall take effect ten days after its publication, as provided by law.

Adopted December 31, 1915.

HARRY J. GEIG, Mayor,
THOMAS WHITAKER,
ROLAND B. CORSON,
WALTER KATES,
W. FRED WARE,

Commissioners.

10

Attest: JOHN S. HORTON, Clerk.

The Proof of Publication of the notice of the introduction of Ordinance Number 145, also Proof of Publication of Ordinance after adoption were presented as evidence at City Hall, Millville, New Jersey, January 21, 1916, before Edward I. Berry, Supreme Court Commissioner, in case of John Franklin, Prosecutor, vs. City of Millville and Peoples' Water Company, Respondents, and cannot now be found in the files of the City Clerk. 20

Extracts From the Minutes of the Board of Commissioners of the City of Millville, New Jersey.

Millville, New Jersey, August 4, 1916. 30

The Board of Commissioners met in regular session with Mayor Whitaker presiding. Members present Whitaker, Corson, Kates, Ware and Kurtz.

* * * * *

Director Corson filed with the Clerk a statement of the financial condition of the City of Millville as of August 4, 1916. A true copy of this statement is shown on pages 112 to 115, and is the same state-

ment referred to in Ordinance 151 and 152, supplemental to Ordinances 144 and 145.

* * * * *

Mr. Ware introduced an ordinance supplemental to Ordinance 145, which was read by the Clerk and laid over for two weeks under the law.

* * * * *

10 Prior to the introduction of the supplemental ordinances, to ordinances Numbers 144 and 145, referred to on page 110, Mr. Ware filed with the Clerk statements from City Engineer Wade, giving the probable periods of usefulness of the improvements or properties for which bonds are proposed to be authorized.

Millville, August 18, 1916.

20 The Board of Commissioners met in regular session with Mayor Whitaker presiding. Members present, Whitaker, Corson, Kates, Ware and Kurtz.

* * * * *

30 Ordinance No. 152, a supplement to the ordinance entitled "An Ordinance for the Acquisition by the City of Millville of all the real estate, personal property and works, and all the corporate rights, powers, franchises and privileges of the Peoples' Water Company of Millville, N. J., adopted December 31, 1915, and known as Ordinance No. 145 of the City of Millville, was adopted by the following vote: Yeas, Corson, Kates, Ware, Kurtz and Whitaker.

ORDINANCE NUMBER 152.

A Supplement to the Ordinance Entitled "An Ordinance For the Acquisition By the City of Millville of All the Real Estate, Personal Property and Works, and All the Corporate Rights, Powers, Franchises and Privileges of the Peoples' Water Company of Millville, N. J., adopted December 31, 1915, and Known As Ordinance Number 145 of the City of Millville. 10

Whereas, because of the provisions of Chapter 252 of the Laws of 1916, (P. L. 1916, page 525, &c.) authorizing and regulating the issuance of bonds and other obligations and the incurring of indebtedness by cities and other municipalities certain modifications in said Ordinance Number 145, are required to be made to the end that the terms of said ordinance providing for the issue of bonds by the City shall be in conformity with the said statute of 1916, therefore, 20

The Board of Commissioners of the City of Millville, do ordain:

1. All of the bonds to be issued under the provisions of the ordinance to which this ordinance is a supplement shall bear date August first, nineteen hundred and sixteen; said bonds shall be for not more than one thousand dollars nor less than one hundred dollars each; shall be payable in not exceeding thirty years from their date in annual installments commencing August first, nineteen hundred and eighteen, and no installment shall be made for more than fifty per centum in excess of the 30

amount of the smallest prior installment. Said installment shall be equal in amount as nearly as may be and in sum multiple of one hundred dollars. The precise amount of each said annual installment of bonds shall be fixed by supplemental ordinance when the total amount of bonds necessary to be issued for the purpose of said Ordinance Number 145 shall have been ascertained.

10 2. Said bonds shall be sold in the manner provided by Section 6 of Chapter 252 of the Laws of 1916 (P. L. 1916, page 532, &c.)

20 3. This municipality shall temporarily finance the carrying out of the purpose for which this ordinance and the ordinance to which this is a supplement is authorized to issue bonds by borrowing money and issuing from time to time temporary improvement notes, to an aggregate amount not in excess of the amount for which said bonds may be issued, which improvement notes shall state in general terms the purpose for which they are issued, and shall mature in not exceeding one year from their date, and shall bear interest at the rate of five per centum (5 per cent.) per annum, payable semi-annually. Said improvements notes shall be payable both as to principal and interest at the Millville National Bank; said notes may from time to time be renewed by the issuance of new notes of the same maturity and rate of interest and shall also be subject to call, but such renewed notes shall not be renewed after six years after the purpose for which they were issued has been carried out. The issuance of such improvement notes shall be authorized by resolution of the Board of Commissioners and shall be executed as in this ordinance and in the ordinance to which this is a supplement is provided for the long term bonds, and said improvement notes and the issuance thereof shall be in all respects in accordance with the provisions of Section 13 of said Chapter 252 of the Laws of 1916. The proceeds of

30

the sale of said bonds shall be used and applied so far as may be necessary for the redemption of any said temporary improvement notes that may have been issued.

4. Said bonds and said improvement notes shall be signed by the Mayor and the Director of Revenue and Finance, attested by the Clerk and countersigned by the Treasurer, and shall bear the seal of the City; and the coupons, if any, shall be signed by the facsimile signature of the Treasurer. 10
Said bonds and said improvement notes shall be payable in lawful money of the United States of America, both as to principal and interest, at the Millville National Bank, and both said bonds and said improvement notes shall be in such form as may be provided by resolution of the Board of Commissioners. Said coupon bonds, if any, may be registered as to principal only or as to both principal and interest. The Treasurer shall be transfer agent and registrar of said bonds. 20

5. The proceeds of said bonds or improvement notes issued under said Ordinance Number 145 and this supplemental ordinance shall be paid to the Treasurer of the City, who shall in no event disburse of the same except to pay the expense of issuing and selling the same and for the purpose or purposes for which such Bonds or improvement notes were issued. If for any reason, any part of such proceeds are not applied to or necessary for such purpose or purposes the Board of Commissioners of this City 30
may reappropriate the proceeds remaining unapplied to pay the principal of any outstanding bonds.

6. Pursuant to the provisions of Section 2 of said Chapter 252 of the Laws of 1916 (P. L. 1916, page 525, &c.) it is hereby certified and declared:

(a) The probable period of usefulness of the improvement or property for which said bonds and said improvement notes are authorized is forty years.

(b) The average assessed valuation of the taxable real property (including improvements) of this municipality computed upon the next preceding three valuations thereof in the manner provided by Section 12 of said Act is four millions, seven hundred eighteen thousand, two hundred and ninety-three dollars.

(c) The net debt of this municipality computed in the manner provided in Section 12 of Chapter 252 of the Laws of 1916 is one hundred eight thousand, five hundred seven dollars and ten cents.

(d) The statement required by Section 12 of said Chapter 252 of the Laws of 1916 (P. L. 1916, pp. 535,536, &c.) has been made and was filed with the City Clerk on the fourth day of August, 1916, as required by said Act of the Legislature.

7. This ordinance shall be attested by the Clerk and shall be published once in the manner prescribed in Section 2 of Chapter 525 of the Laws of 1916; and the Clerk shall publish with this ordinance a statement in the form provided by subdivision 1 of Section 2 of said Act. The bonds authorized by this ordinance and said Ordinance Number 145, to which this ordinance is a supplement, shall not be issued nor delivered until after thirty days shall elapse from and after the date that this ordinance shall be published.

8. Said bonds shall recite that they are issued pursuant to the provisions of Chapter 252 of the Laws of 1916, and in all respects the sale issuance and delivery of said bonds and said improvement notes shall conform to said act of the Legislature.

9. Such portions of the moneys received from the water rents or prices for the use of water and interest on arrears of water rents, as may remain after paying all expenses and costs for purchasing water works or for constructing and maintaining water works and raising and distributing the water, and salaries wages and incidental expenses and charges

shall be applied by the Board of Commissioners, first for the payment of interest upon the debt created for the purchase and construction of the works, and next, to the purchase of bonds issued therefor, if the same can be obtained at reasonable rates, or if that cannot be effected, then to be safely invested by the Commissioners of the Sinking Fund of this City for the redemption of said bonds and improvement notes when due. There shall be raised annually by taxation the amount of the deficiency, if any, in the water revenues for the payment (1) of the interest on the debt authorized and created by said Ordinance Number 145, and this supplemental ordinance and the cost of managing and keeping in repair and operation the water works, with three per centum thereof added to cover losses and deficiencies to be ascertained and certified be in the manner provided in Section 13 of the Act entitled, "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," (1 C. S. 823, &c.) and (2) a sum sufficient, when added to the water revenues applicable for the purpose, to make up an amount equivalent to the installments of said bonds that shall accrue and fall due each year for the retirement of each of such installments of bonds at maturity; which taxes shall be levied, assessed and collected in the manner as other taxes and the amount thereof assessed and collected for interest shall be paid by the taxing officer to the Treasurer, and the amount thereof assessed for the retirement of said bonds shall also be paid by the taxing officers to the Treasurer for the retirement of the installments of said bonds as the same shall fall due. The Sinking Fund Commissioners shall, on the first day of July of each year, pay to the Treasurer from the moneys which have come into their hands as a sinking fund for that purpose the balance of the moneys required for the retirement of bonds falling due on August first of that year.

10. All ordinances and parts of ordinances inconsistent herewith are hereby repealed; and this ordinance shall take effect immediately upon its publication as provided by law.

Adopted August 18, 1916.

THOMAS WHITAKER, Mayor.

ROLAND B. CORSON,

LEWIS E. KURTZ,

WALTER S. KATES,

W. FRED WARE,

Commissioners.

10

Attest:

JOHN S. HORTON, Clerk.

20

Proof of Publication—Showing Introduction of Ordinance 152.

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

30 W. E. Middleton, of full age, being duly sworn according to law, on his oath deposes and says that he is the publisher of the Millville Daily Republican, a newspaper printed and published at the City of Millville, in the county of Cumberland, and State of New Jersey; and that the notice of which the annexed printed slip is a true copy, was printed and published in the said newspaper on the 7th day of August, nineteen hundred and sixteen, and continued to be printed and published in the said newspaper for one time, and that the dates on which said pub-

lications were made as aforesaid are: August 7, 1916.

Sworn to and subscribed to)
 before me this 15th day)
 of August, nineteen hun-) W. E. MIDDLETON.
 dred and sixteen.

MAUDE F. HANKINS,
 (SEAL) Notary Public of New Jersey. 10

The printed slip referred to is a true copy of Ordinance Number 152 as shown above with the addition of the caption "City of Millville, Notice" and "Notice is hereby given that an ordinance, a copy of which is hereinafter set out, was introduced before the Board of Commissioners of the City of Millville, on Friday, August 4th, 1916, and the same remains on file in the office of the City Clerk open to the inspection of all persons interested therein, and 20 that said ordinance will be considered by the Board of Commissioners on final passage, on Friday, August 18, 1916, at 3.30 o'clock in the afternoon, at the Commission Chamber in the City Hall, in the City of Millville, N. J., when and where any persons interested therein may be heard for or against the passage of the same. Following is a copy of the proposed ordinance referred to."

30

Proof of Publication—Adoption of Ordinance 152.

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

W. E. Middleton, of full age, being duly sworn

according to law, on his oath deposes and says that he is the publisher of the "Millville Daily Republican," a newspaper printed and published at the City of Millville, in the County of Cumberland, and State of New Jersey; and that the notice, of which the annexed printed slip is a true copy, was printed and published in the said newspaper on the 21st day of August, nineteen hundred and sixteen, and continued to be printed and published in the said newspaper for one time; and that the dates on which said publication were made as aforesaid are:

August 21, 1916.

Sworn to and subscribed to
before me this 22nd day
of August, nineteen hundred and sixteen. } W. E. MIDDLETON.

20 MAUDE F. HANKINS,
(SEAL) Notary Public of New Jersey.

(The printed slip referred to is a true copy of Ordinance Number 152, shown above, with the addition of the Caption "City of Millville;" also with the addition of the following paragraph at the bottom of the advertisement: "The foregoing Ordinance was adopted on the 18th day of August, 1916. The bonds authorized thereby will be issued and delivered after the 20th day of September, 1916, and any suit, action or proceeding to set aside or vacate this Ordinance must be begun on or before said last mentioned date.

JOHN S. HORTON,

Clerk of the City of Millville.")

Extract From the Minutes of the Board of Commissioners of the City of Millville, New Jersey.

Millville, New Jersey, December 10, 1920.

The Board of Commissioners met in regular session with Mayor Felmev presiding. Members present, Felmev, Simmerman, Bennett, Kates and 10 Wheaton.

* * * * *

Resolution No. 372, authorizing the Director of Revenue and Finance to advertise for sealed proposals for the purchase of \$126,000 Water Bonds, authorized to be issued by Ordinance No. 145, was adopted by the following vote: Yeas, Simmerman, Bennett, Kates, Wheaton and Felmev.

Resolution No. 373, authorizing the Director of Revenue and Finance to provide blanks for bidders 20 for the bonds to be issued under the provisions of Ordinance No. 145, was adopted by the following vote. Yeas, Simmerman, Bennett, Kates, Wheaton and Felmev.

RESOLUTION NUMBER 372.

30

Be It Resolved By the Board of Commissioners of the City of Millville, New Jersey:

Section 1. That the Director of Revenue and Finance be and he hereby is authorized to insert in the Millville Daily Republican, the Bridgeton Evening News and a financial paper published in New York City or Philadelphia, Pennsylvania, an adver-

tisement calling for sealed proposals for the purchase of One Hundred Twenty-six Thousand (\$126,000.) Dollars Water Bonds of the City of Millville authorized to be issued by Ordinance Number 145, adopted by the Board of Commissioners of the City of Millville on the 31st day of December, 1915, such proposals to be received and opened at a meeting of this Board to be held on the thirty-first day of December, 1920. Such advertisement shall be in
 10 such form as the director of Revenue and Finance shall deem best, may require a deposit of cash or a certified check to accompany each bid and may require that the bidders use printed form of proposal to be furnished by the City.

Section 2. Said bonds, the endorsement thereon and the interest coupons thereto attached shall be in substantially the following form, to wit:

No. \$1000.00

20

UNITED STATES OF AMERICA,
 STATE OF NEW JERSEY,
 CITY OF MILLVILLE,
 WATER BOND.

The City of Millville, in the State of New Jersey, hereby acknowledges its indebtedness for value received and promises to pay to the bearer, or,
 30 if this bond be registered, to the registered holder hereof, on the first day of December, 1945, the sum of

ONE THOUSAND DOLLARS,

with interest thereon at the rate of five per centum (5 per cent.) per annum, payable semi-annually on the first day of June and the first day of December in each year upon surrender of the annexed interest coupons as they severally become due. Both principal and interest of this bond are payable in lawful

money of the United States of America at the Millville National Bank in the City of Millville, New Jersey.

At the request of the holder, this bond will be registered as to principal or as to principal and interest, in accordance with the provisions endorsed hereon.

This bond is one of an issue of like date, amount and tenor, issued for the purpose of defraying all the expenses and the cost of purchase of the real estate, works, property, rights, franchises, privileges and appurtenances of the Peoples' Water Company of Millville, New Jersey, and of maintaining and extending the same, and for the purchase of materials, the laying of mains in and about the City, or leading from or connecting it with source of supply and constructing all works necessary for the accomplishment thereof for the purpose of supplying said City and the inhabitants thereof with water for public and private use and consumption, under the authority of an act entitled, "An act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved the 21st day of April, 1876, (Compiled Statutes, page 823), and the acts supplemental thereto and amendatory thereof, and is authorized by an ordinance of the Board of Commissioners of said City, adopted the 31st day of December, 1915, and duly published, as required by law, and a resolution of said Board duly adopted.

It is hereby certified that all conditions, acts and things essential to the validity of this bond exist, have happened and have been done and that every requirement of law effecting the issue thereof has been duly complied with, and that the issue of bonds of which this is one is within every debt and other limit prescribed by the Laws and Constitution of said State.

The faith and credit of said City are hereby pledged to the punctual payment of the principal

and interest of this bond according to its terms|

IN WITNESS WHEREOF, the City of Millville has caused this bond to be signed by its Mayor, countersigned by its Director of Revenue and Finance and City Treasurer and attested by its City Clerk under the corporate seal of the said City, and the coupon attached hereto to be authenticated by the facsimile signatures of said Director of Revenue and Finance and City Treasurer, and this bond to
10 be dated as of the first day of December, 1915.

Countersigned:

.....
City Treasurer. Mayor.

Attest:

.....
City Clerk Director of Revenue and
20 Finance.

WE HEREBY CERTIFY, That we have this day cut off and cancelled all the unmatured coupons attached to this bond and that the within bond is hereby converted into a registered bond, with the interest payable thereon semi-annually. Both principal and interest will be payable to the registered holder named in the registration blank below, his assignee or legal representative, at the times and place expressed on the face of this bond. The interest on request will be remitted by mail in New York
30 Exchange.

Dated Millville, N. J.,.....

.....
Mayor.

.....
City Treasurer.

This bond may be registered as to principal under the signature of the City Treasurer below, and shall thereafter be transferrable only by a written assignment of the registered owner or his attorney duly acknowledged or proved, such transfer to be endorsed hereon and entered on the books of said City Treasurer kept for that purpose. Such transfer may be to "Bearer." The coupons will remain payable to bearer, unless all of them shall be surrendered and canceled, as evidenced by the execution of the foregoing conversion certificate provided for that purpose. 10

DATE OF REGISTRY	NAME OF REGISTERED HOLDER	CITY TREASURER

COUPON.

No. \$25.00 20

The City of Millville, in the STATE OF NEW JERSEY, will pay to the bearer Twenty-Five Dollars (\$25.) on the first day of 19 , at the Millville National Bank, Millville, New Jersey, being the semi-annual interest then due on its water bond.

.....
 City Treasurer. Director of Revenue and Finance.

Adopted December 10, 1920. 30

WALTER H. FELMEY, Mayor.
 W. J. SIMMERMAN,
 SAMUEL D. BENNTT,
 WALTER S. KATES,
 W. S. WHEATON.
 Commissioners.

Attest:
 JOHN S. HORTON, Clerk.

Proof of Publication—Resolution Number 372.

STATE OF NEW JERSEY,)
COUNTY OF CUMBERLAND,) ss.

W. E. Middleton, of full age, being duly sworn according to law on his oath deposes and says that he is the publisher of the Millville Daily Republican,
10 a newspaper published in the City of Millville, in the County of Cumberland and State of New Jersey; and that the notice of which the annexed printed slip is a true copy, was printed and published in the said newspaper on the 16th day of December, nineteen hundred and twenty, and continued to be printed and published in the said newspaper for three weeks successively, at least once in each week, the last publication of said notice being on the 30th day of December, nineteen hundred and twenty; and that
20 the dates on which said publication were made as aforesaid are:

December 16-23-30, 1920.

Sworn to and subscribed before me this 31st day of December, nineteen hundred and twenty.

W. E. MIDDLETON.

30 MAUDE F. HANKINS,
(SEAL) Notary Public of New Jersey.

(The annexed printed slip referred to in Proof of Publication is a true copy of the printed form herewith.)

Proof of Publication—Resolution Number 372.

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

R. L. VanHook, of full age, being duly sworn on her oath saith, that she is the agent of the Evening News Company, publishers of the Bridgeton Evening News, a newspaper printed and published at Bridgeton, in the County of Cumberland, in the State of New Jersey; that the City of Bridgeton is the County Seat of said County and is the municipality in said County having the largest population by the last preceding federal and State census, and that the notice, of which the annexed is a printed copy, was published in said newspaper three times, and that the dates on which said publication was so made as aforesaid are:

December 14-21-28, 1920. 20
 Subscribed and sworn to before me, this 12th day of January, A. D., 1921. } REBA L. VANHOOK

J. ROY OLIVER,
 Atty. at Law of N. J.

(The annexed printed copy referred to in Proof of Publication is a true copy of the printed form herewith.) 30

BLANK PROPOSAL AND ADVERTISEMENT.

**\$126,000.00 Five Per Cent. Water Bonds of the City
of Millville, New Jersey.**

- 10 Sealed proposals will be received until Friday, December thirty-first, 1920, at 3.30 o'clock P. M., at which time the proposals will be opened before the Board of Commissioners, in the Commission Chamber, at the City Hall, Millville, New Jersey, for the purchase of Water Bonds of the City of Millville, New Jersey, of the par value of \$126,000.00; subject to the following conditions:
- 20 All bids must be enclosed in sealed envelopes, directed to Wilbert J. Simmerman, Director of Revenue and Finance of the City of Millville, Millville, New Jersey, and must be accompanied by cash or certified check for two per cent. of the par value of bonds bid for, which check shall be drawn to the order of the City of Millville, and made payable at some lawful incorporated bank or trust company of New Jersey, Pennsylvania or New York, which check or cash shall be deemed and held a guaranty that the bidder presenting the same will be bound by and will comply with the terms of his bid and this
- 30 notice. No bid will be received for less than par and accrued interest. All bids must be delivered to the Director of Revenue and Finance on or before the thirty-first day of December, 1920, at 3.30 o'clock P. M., when the same will be opened by the said Director of Revenue and Finance in the presence of the Board of Commissioners of the City of Millville at the Commission Chamber, in the City Hall, Millville, New Jersey. Bonds will be delivered to the successful bidder or bidders at the office of

The Treasurer of the City of Millville, on Saturday, the fifteenth day of January, 1921, at twelve o'clock noon, when and where the balance of the purchase price must be paid in cash or certified check as aforesaid; and in case any bidder shall fail or refuse to pay for and receive any bonds allotted to him, according to the terms of this notice, his deposit aforesaid shall be forfeited to the city, and said bonds so allotted may then be awarded to the next highest bidder, or again be advertised and sold by the Board of Commissioners; and in case any of said bonds are so awarded to the next highest bidder, he will be required to pay for and receive the same within ten days after notice so to do. The Board reserves the right to reject any or all bids. All proposals will be subject to the provisions stated in the bids and in this notice contained. **Bidders must use the printed form of proposals furnished by the City which may be had on application to the City Treasurer, the Director of Revenue and Finance, or the City Clerk.** Bids must be stated in words and figures. All bids not in accordance with the above directions will be rejected.

Said bonds are to bear date December first, 1915; will be issued in denominations of \$1,000 each; bear interest at the rate of Five per centum (5 per cent.) per annum, payable semi-annually, June 1 and December 1, are payable both principal and interest at the Millville National Bank, Millville, New Jersey; and the principal is payable on December first, 1945. Said bonds are coupon bonds with privilege of registration as to principal only or as to both principal and interest. Interest on fully registered bonds will, on request of owner, be remitted by mail in New York exchange.

The said Water Bonds are to be issued under and pursuant to the provisions of Ordinance No. 145, adopted by the Board of Commissioners of the City of Millville, December thirty-first, 1915 (prior to the

enactment of Chapter 252 of the Laws of 1916, commonly known as the Pierson Act, the provisions of which as to serial maturities, method of sale, etc., are in the opinion of counsel not applicable to this issue) for the purpose of paying the contract price of the purchase by the city of the property and franchises of the Peoples' Water Company of Millville, New Jersey. The validity of said ordinance has been affirmed by the Court of Errors and Appeals of
10 New Jersey.

The legality of this issue of bonds has been approved by Caldwell and Raymond, Attorneys, 115 Broadway, New York City, New York, a copy of whose opinion will be furnished any purchaser of the bonds on request.

Dated December tenth, 1920.

20 WILBERT J. SIMMERMAN,
Director of Revenue and Finance of the City
of Millville, City Hall, Millville, N. J.

FINANCIAL STATEMENT.

30

Assessed valuation, real estate, 1920, except 2d class railroad property,	\$5,903,825.00
Assessed valuation 2d. class railroad property, 1920,	50,290.00
Assessed valuation, personal estate, 1920,	2,094,075.00
Total valuation, 1920,	8,048,190.00

Bonding Debt (including this issue),	465,377.16	

Water Bonds,	\$126,000.00	
Sinking Funds,	75,547.22	

Net Bonded Debt,	\$263,829.94	
Floating Indebtedness,	None	
Cash balance,	55,490.92	
Population, 1920,	14,760.00	10

PROPOSAL FOR MILLVILLE IMPROVEMENT BONDS.

To the Director of Revenue and Finance of the City of Millville.

For one hundred twenty-six thousand dollars 20
 [\$126,000.] par value of the City of Millville five per cent. Water Bonds, dated December first, 1915, referred to in the annexed advertisement, which is hereby made a part of this proposal, the undersigned will pay.....
 Dollars [.....].
 together with the accrued interest on said bonds, to the date of delivery and will accept delivery of said bonds at the office of the Treasurer of the City of Millville, N. J., on the fifteenth day of January, 30 1921, at twelve o'clock noon.

Cash or certified check payable to the order of the City of Millville, in the sum of.....
 Dollars [\$],
 the same being two per cent. of the par value of the bonds hereby bid for, accompanies this proposal and is to be returned to.....

 upon the sale of the bonds, provided this proposal is

not accepted, otherwise to be retained by the said city until the delivery of the bonds and the payment thereof as above stated, when said deposit will be applied toward the purchase price; and the same may be retained to the use of said city as and for liquidated damages and not as a penalty in case the undersigned fails to make such payment of the purchase price according to the terms of this proposal.

Dated.....19

10

.....
P. O. Address
.....

NOTE—No addition to or alteration in the printed portion of the above proposal shall be made and the same must not be detached from the annexed advertisement.

Resolution Number 373.

20

Resolved, That the Director of Revenue and Finance cause to be printed a sufficient number of blanks for bidders for the bonds to be issued under the provisions of Ordinance Number 145 of the City of Millville; and also, that he cause to be printed, forthwith, ready for execution by the proper officers of the City, the bonds provided for by said Ordinance to the end that the same may be executed by the proper officers and delivered to the purchaser or purchasers.

30

Adopted December 10th, 1920.

WALTER H. FELMEY, Mayor.
W. J. SIMMERMAN,
SAMUEL D. BENNETT,
WALTER S. KATES,
W. S. WHEATON,
Commissioners.

Attest:

JOHN S. HORTON, Clerk.

PUBLIC INFORMATION.**For Voters of Millville.**

Resolution No. 366.

Whereas, This Board in and by Resolution No. 360, has submitted to the legal voters the question of the acceptance or rejection of the proposal made in writing by the Peoples' Water Company of Millville, New Jersey, dated July 31, 1920, to sell its entire plant to the city, and whereas in said resolution it is recited that this Board is of the opinion that it is advantageous to the city to accept said proposal; and requests have come to the Commissioners from various sources that the Board make known to the public reasons on which such opinion favoring the purchase of the water plant on the terms offered by the company is founded, and it is proper and advisable, under the circumstances, that the board make known to the public its reasons in the premises; 10 20

And whereas such reasons are fairly set forth as stated in the public letter annexed to this resolution, without reference to the point whether or not within a reasonable period of time and by expenditure of a reasonable sum for house connections, the said water plant, if owned and operated by the public, might be made a paying proposition; therefore, 30

Resolved, By the Board of Commissioners of the City of Millville, that the Public Letter hereto attached expresses consisely and fairly the reasons why this Board believes that Resolution 360 providing for the purchase by the City of Millville of the entire plant of the Peoples' Water Company of Millville, N. J., ought to be adopted by the legal voters of the city at the election to be held next Tuesday, November 2, 1920, and that, for the infor-

mation of our citizens, this resolution, and the attached Public Letter of the Commissioners forming a part thereof, be published by the Clerk in one or more of the newspapers circulating in this city, daily until the close of the next election.

Adopted October 29th, 1920.

10

.....Mayor.
W. J. SIMMERMAN,
SAMUEL D. BENNETT,
WALTER S. KATES,
W. S. WHEATON,
Commissioners.

20

STATE OF NEW JERSEY, /
COUNTY OF CUMBERLAND, ss.

I, John S. Horton, Clerk of the City of Millville, hereby certify the foregoing to be true copies of the resolutions, ordinances, minutes and proceedings therein recited, as compared with the originals of record in my office.

In witness whereof I have hereto set my hand and caused the seal of the City of Millville to be hereto affixed, this fourteenth day of January, 1921.

30

(SEAL)

JOHN S. HORTON,
Clerk of the City of Millville.

NEW JERSEY SUPREME COURT.

THE STATE, WILLIAM P.
ADAMS,

Prosecutor,

vs.

JOHN S. HORTON, City
Clerk of the City of Mill-
ville, et. als.,

Respondents.

Case No. 2.

On Certiorari.

Reasons.

10

The prosecutor above named, by Lewis Starr, his attorney, appears and prays that the resolution adopted by the Board of Commissioners of the City of Millville, on the 10th day of December, 1920, authorizing the submission of bids for the issue and sale of bonds under the authority of Ordinance No. 145, to be used for the acquisition of the water works of the People's Water Company of Millville, New Jersey, be set aside, annulled, and for nothing holden, for the following reasons:

1. The Commissioners of the City of Millville did not, at the time of the adoption of said resolution, possess any legal right or authority to issue bonds for the purpose of raising money to carry out and perform any contract for the acquisition of the water works aforesaid.

2. The contract and agreement made by and between the City of Millville and the Peoples' Water Company for the sale and purchase of said water works was made without any sufficient legal power or authority, either by legislative or municipal action.

3. The said contract was ultra vires the City of Millville.

4. Ordinance No. 145, as adopted by the Commissioners of Millville on December 31, 1915, does not constitute any sufficient legal authority or power to authorize the Commissioners of Millville to enter into the contract with the Peoples' Water Company.

5. The power and authority of the Commissioners of Millville to enter into the said contract with the Peoples' Water Company cannot be predicated or based upon Ordinance No. 145, because the power and authority conferred thereby became exhausted when the proceedings instituted thereunder failed to result in the purchase of the water works as contemplated by the terms thereof, by the refusal of the voters of Millville to approve of said purchase as expressed at the election held April 13, 1918.

6. The Commissioners of Millville did not possess any power or authority, legislative or municipal, to resume negotiations with the Peoples' Water Company in 1920, which resulted in the passage of Resolution No. 360, because there was no valid or subsisting ordinance in existence authorizing the purchase of the water works by the Peoples' Water Company.

7. Said Resolution No. 360, adopted August 27, 1920, is insufficient in law to authorize and empower the Commissioners to enter into the contract or agreement for the purchase of said water works.

8. The method adopted by the City to raise funds by the issue of bonds to pay the contract price to the Peoples' Water Company of Millville, was improper and illegal because the power conferred by Ordinance 145 had been exhausted and could not be lawfully exercised when the resolution for the issue of bonds was adopted.

9. The bonds could not be lawfully issued, pur-

suant to the terms of Ordinance 152, adopted August 18, 1916.

10. Section 17 of the Walsh Act, under which the Commissioners submitted the question of the election relative to the purchase of the water works of the Peoples' Water Company to the vote of the people of Millville, was repealed by Chapter 116 of the Laws of 1919 and, therefore, no legal authority existed for the submission of said question to the voters under the Walsh Act. 10

11. Chapter 116 of the Laws of 1919, by which Article 32 of the Home Rule Act was amended, provides a specific method for submission of questions to the vote of the people of the municipality, which method was not pursued by the Commissioners and, therefore, the said election was inoperative and void.

12. The question of the approval or rejection of the plan to purchase the water works of the Millville Water Company was not submitted by the Commissioners to the voters of Millville in the form required by law. 20

13. The said resolution was illegal, void and passed and adopted without proper legislative or municipality authority.

LEWIS STARR,
Attorney of Prosecutor.

NEW JERSEY SUPREME COURT.

—
CASE NO. 2.
—

10

THE STATE, WILLIAM P. ADAMS,

Prosecutor.

vs.

JOHN S. HORTON, CITY CLERK OF THE CITY
OF MILLVILLE, ET. ALS.,

Respondents.

20

—
ON CERTIORARI.
—

REASONS.
—

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LEWIS STARR, Atty.,
4th and Market Sts., Camden, N. J.

NEW JERSEY SUPREME COURT.

WILLIAM P. ADAMS,

Prosecutor,

vs.

JOHN S. HORTON, City

Clerk, and Others,

Respondents.

Case No. 2.

On Certiorari.

Additional Reasons

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15. At the time of the making of the contract and agreement and when the obligation to purchase the plant was insured, no money had been appropriated by the City of Millville for the payment of the contract price.

LEWIS STARR,

Attorney of Prosecutor.

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NEW JERSEY SUPREME COURT.

—
WILLIAM P. ADAMS,

Prosecutor,

vs.

10

JOHN S. HORTON, CITY CLERK AND OTHERS,

Respondents.

—
CASE NO. 2.

—
ON CERTIORARI.

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—
ADDITIONAL REASONS.

—
LEWIS STARR, Atty.,

4th and Market Sts., Camden, N. J.

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NEW JERSEY SUPREME COURT.

WILLIAM P. ADAMS,
Prosecutor,

vs.

JOHN S. HORTON, Clerk
City of Millville, THE
CITY OF MILLVILLE,
and THE PEOPLES' WA-
TER COMPANY of Mill-
ville, N. J.,

Defendants.

Case No. 1.
On Certiorari of
Contract. 10
On Petition to
Quash.
Depositions.

WILLIAM P. ADAMS,
Prosecutor,

vs.

JOHN S. HORTON, Clerk
City of Millville, THE
CITY OF MILLVILLE,
and THE PEOPLES' WA-
TER COMPANY of Mill-
ville, N. J.,

Defendants.

Case No. 2. 20
On Certiorari of
Bond Issue.
On Petition to
Quash.
Depositions.

Depositions and other evidence in the above
stated cause taken this 31st day of January, A. D.,
1921, at 10 o'clock A. M., at the Court House, Cam-
den, New Jersey, before Edward I. Berry, Supreme
Court Commissioner, pursuant to notice annexed,
the taking of said depositions having by consent
been adjourned to this time. Present, Lewis Starr,
Esq., for the Prosecutor, Louis H. Miller, Esq., for
the City of Millville, and J. Fithian Tatem, Esq., for

30

The Peoples' Water Company of Millville, New Jersey.

It is agreed that the depositions shall be taken stenographically and the signatures of the witnesses waived.

10 It is agreed between counsel that the writ, return, record, proceedings and testimony in both of these cases be printed together. Also that the testimony taken under the rule to show cause hereunder shall be used in the above stated cases, and that the record, the return, the proceedings and testimony in each of the cases designated as Nos. 1 and 2 may be used on the argument and considered by the Court in the disposition of both causes.

It is further stipulated between counsel:

1. That the City of Millville accepted the provisions of the Walsh Act of 1911.
- 20 2. That the City also adopted the General Water Act of April 21, 1876.
3. That resolution No. 261, offered in evidence on the taking of depositions on the rule to show cause was adopted on March 1, 1918, as is therein recited.
4. That an election was held on April 17, 1918, in the City of Millville, under the provisions of Resolution 261, which resulted as follows: In favor of said resolution, 663 votes were cast, and against said
30 resolution 818 votes were cast.
5. That the communications from the Millville Municipal League which were presented in the year 1915, together with the list of names attached thereto, a copy of which communications are returned with the writ, need not be printed.
6. That the statement of the financial condition of the City of Millville, as of August 4, 1916, as appears in the return, need not be printed.
7. That the certificate of the City Engineer as

to the period of the usefulness of the improvement need not be printed.

John S. Horton, sworn.

By Mr. Starr:

Q. Mr. Horton, you are the City Clerk of the City of Millville, are you? 10

A. Yes.

Q. And been City Clerk for how long?

A. Over six years.

Q. And have you here the book of minutes of the Commissioners covering the period of time that you have been acting as Clerk?

A. Yes.

Q. Were you Clerk in 1915?

A. Yes.

Q. When ordinance 145 was passed? 20

A. Yes.

Q. And been Clerk ever since continuously?

A. Yes.

Q. On the 27th of August, 1920, had any appropriation been made by the City of Millville to provide \$125,000 to purchase the plant of the Peoples' Water Company?

A. I don't recall any such action.

Q. Had any bonds at that time been issued and sold for the purpose of raising funds to buy the plant on that day? 30

A. Not to my recollection.

Q. And has the City of Millville ever made any appropriation of funds to purchase the plant of the Peoples' Water Company?

A. By a resolution in my return which authorizes the sale of bonds; they were duly advertised, and so forth.

Q. Is that the only action that the Commissioners have ever taken with reference to the appropriation of the funds to buy the plant?

A. As relating to the contract or the proposal in question.

Q. And up until the time of the service of the writs of certiorari upon you no bonds had been issued or sold—that is a fact, isn't it?

A. Not to my knowledge.

10 Q. After the adoption of Resolution 360, did you as Clerk, send a certified copy of that Resolution to the Peoples' Water Company?

A. I did.

Q. Do you remember on what day it was sent?

A. Not from memory, I can't give the date.

Q. Was there a letter with it?

A. It is my recollection that I dictated a letter enclosing a certified copy and stating in that letter that the action was taken by direction of the
20 Board of Commissioners at a stated meeting.

Q. The Resolution was adopted apparently on the 27th of August, 1920; how soon after that did you transmit a certified copy of the Resolution?

A. I have no way of fixing the exact date, Judge, of that.

Q. Well, it was before the election was held, then, was it?

A. Yes, undoubtedly before.

30 Q. Then after the election, the only communication you had, or the City had, with the Peoples' Water Company, was the letter which you wrote transmitting to the company the result of the election, a copy of which appears in your return?

A. I could not answer that; I could only testify as to what part I might have to do.

Q. I mean, as far as you are concerned.

The Witness: Yes, as far as I am concerned I merely followed the directions of the Board of Commissioners at a stated meeting, and transmitted in

writing the result of that election to the Peoples' Water Company.

CROSS-EXAMINATION.

By Mr. Miller:

Q. Mr. Horton, there had been proceedings for the acquisition of this plant and the payment of the purchase price by ordinance, had there not? 10

A. Yes.

Q. What is the number of it—what is the number of the original ordinance?

A. 145.

Q. And a copy of that was returned with the writ, wasn't it?

A. Yes.

Q. Was there a supplemental or amendatory ordinance?

A. Ordinance 152, a supplemental ordinance to 145. 20

Q. That has been sent up with the writ, too?

A. Yes.

Q. So that when you state that there had been no proceedings providing for the purchase of this plant, you did not mean to have the Court infer that these ordinances had been repealed or rescinded in any way, did you?

A. Well, I did not get the intent of the question just from that angle, Mr. Miller. 30

Q. Well, they haven't been repealed, have they?

A. Oh, no. I did not take it that there had been no ordinance provision made; there had been an ordinance provision for the raising of this money.

Q. Which are still in force?

A. Yes.

Q. Did you send a copy, a certified copy of

Resolution 360, to the Peoples' Water Company of Millville, N. J., at some time?

A. I think it has been presented here in evidence, hasn't it? I think I saw it across the room being passed around.

Q. And you did at some time notify the company of the result of the election?

A. I did.

10 William P. Adams, sworn.

By Mr. Starr:

Q. Mr. Adams, you are the Prosecutor in these writs, are you?

A. Yes, sir.

Q. Where do you reside?

A. Millville, New Jersey.

Q. And how long have you lived there?

20 A. All my life.

Q. How old are you?

A. Twenty-seven.

Q. Do you own real estate?

A. Yes, sir.

Q. In Millville?

A. Yes, sir.

Q. You pay taxes on that real estate?

A. Yes, sir.

30 CROSS-EXAMINATION.

By Mr. Miller:

Q. Mr. Adams, you are the Prosecutor of both these writs, are you not?

A. Yes, sir.

Q. Your employment is what?

A. I am employed by the High Pressure Construction Supply Company as salesman.

Q. Who is the General Manager of that company?

A. Mr. S. J. Franklin.

Q. What office, if any, does Walter Wood hold in that company?

A. I couldn't say.

Q. He is the dominating factor, isn't he?

A. I really don't know.

Q. Where is their office?

A. 233 High Street, Millville. 10

Q. That is the office of the Gas, Water and Electric Companies, isn't it?

A. It is.

Q. What has Mr. Walter Wood to do with the Gas, Water and Electric Companies, if anything?

A. I couldn't say just what office he holds.

Q. Is he the dominating influence in the management of the companies?

A. I couldn't swear to it; it is generally presumed that he is. 20

Q. What office does Mr. Franklin hold in the Water Company?

A. I couldn't answer that.

Q. Is it an important office—he is General Manager, isn't he?

A. I couldn't tell you; I don't work for the Water Company.

Q. Is he an officer?

A. I don't know.

Q. Is he an officer in the Gas Company? 30

A. Yes, I happen to know that.

Q. In the Electric Light Company?

A. Yes.

Q. You knew that the question of the purchase of this plant was submitted at an election in 1918, didn't you?

A. Yes, sir.

Q. And the people voted not to buy it?

A. Yes.

Q. And you know there was an election held in 1920 on the question of purchase, didn't you?

A. Yes, sir.

Q. You voted at that election?

A. I voted.

Q. You voted against it?

A. Naturally.

Q. How did you know that the question was going to be submitted at the election? Did you see
10 in the papers an advertisement of Resolution 360, a copy of it?

A. I remember seeing something about the election, yes.

Q. What property do you own in Millville?

A. House and lot at the corner of Sixth and Mulberry Streets.

Q. What is the value of it?

A. About \$3,000.00

Q. What is your equity in it—is it mortgaged?

20 A. Mortgaged.

Q. How much mortgage?

A. The mortgage is about \$1400.00, partially paid.

Q. Are you the litigant in this suit—that is, are you paying the expenses of it?

A. I am not.

Q. Who is?

A. I don't know.

Q. Who requested you to appear as Prosecu-
30 tor?

A. Mr. Franklin asked me if I cared to appear?

Sir John Franklin, sworn.

By Mr. Starr:

Q. Mr. Franklin, where do you reside?

A. Millville, New Jersey.

Q. How long have you lived there?

A. About twenty years, eighteen to twenty.

Q. What is your age?

A. Fifty-six.

Q. Do you own property?

A. Yes, sir.

Q. Real estate?

A. Yes, sir.

Q. Are you a taxpayer—do you pay your 10 taxes?

A. Yes, sir.

CROSS-EXAMINATION.

By Mr. Miller:

Q. What do you pay taxes on, real estate on Second Street?

A. Real estate, 112 North Second Street.

20

Q. A residence, isn't it?

A. A residence, yes, rented to George Thomas, who lives there.

BOTH SIDES REST.

30

NEW JERSEY SUPREME COURT.

 WILLIAM P. ADAMS,

Prosecutor,

vs.

 JOHN S. HORTON, Clerk City of Millville, THE
 CITY OF MILLVILLE and THE PEOPLES'
 WATER COMPANY OF
 MILLVILLE, N. J.,

10

Defendants.

 CASE NO. 1.

ON CERTIORARI OF CONTRACT.

ON PETITION TO QUASH.

DEPOSITIONS.

 WILLIAM P. ADAMS,

20

Prosecutor,

vs.

 JOHN S. HORTON, Clerk City of Millville, THE
 CITY OF MILLVILLE and THE PEOPLES'
 WATER COMPANY OF
 MILLVILLE, N. J.,

Defendants.

 CASE NO. 2.

30

ON CERTIORARI OF BOND ISSUE.

ON PETITION TO QUASH.

DEPOSITIONS.

 COMMISSIONER'S FEES.

Prosecutor:		
To 1 sitting,		\$4.00
To swearing 3 witnesses @ .25,		.75
To taking 15 fol. of evidence @ .30	4.50	
		<u>\$9.25</u>
Respondents:		
To taking 12 fol. of evidence @ .30	\$3.60	

EDWARD I. BERRY, S. C. C.

PETITION TO QUASH WRIT.

NEW JERSEY SUPREME COURT.

<p>WILLIAM P. ADAMS, <i>Prosecutor,</i> vs. JOHN S. HORTON, City Clerk, City of Millville; THE CITY OF MILLVILLE; and the PEOPLES' WATER COMPANY OF MILLVILLE, N. J., <i>Defendants-in-Certiorari.</i></p>	}	<p>On Certiorari of 10 Contract. (Case No. 1.) Petition to Quash Writ.</p>
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To his Honor Charles C. Black, Justice of the Supreme Court: 20

The City of Millville and the Peoples' Water Company of Millville, New Jersey, respectfully show unto your Honor:

1. That in the year 1915, an ordinance of the City of Millville, known as Ordinance 145, was adopted, providing for the acquisition, by purchase or condemnation, of the plant of the Peoples' Water Company, of Millville, New Jersey. 30

2. The validity of that ordinance was reviewed by this Honorable Court on certiorari, as well as the validity of the proceedings resulting in the adoption by the elector of the Water Act of 1876, referred

to in the ordinance. The Supreme Court adjudged, that the proceedings resulting in the adoption of the Water Act of 1876, were valid, and Ordinance Number 145 was affirmed by this Court. Said judgments were affirmed by the Court of Errors July 6, 1916.

Wood vs. Millville;
Franklin vs. Millville, 89 N. J. L. 646.

- 10 3. Afterward, on August 18, 1916, Ordinance Number 152 was adopted, modifying the form of bonds to conform to the provisions of the Pierson Act (P. L. 1916, p. 525). The ordinance was published, and appended to the ordinance was the following published notice:

20 "The foregoing ordinance was adopted on the 18th day of August, 1916. The bonds authorized thereby will be issued and delivered after the 20th day of September, 1916, and any suit, action or proceeding to set aside or vacate the ordinance must be begun on or before the said last mentioned date.

John S. Horton,
Clerk of the City of Millville."

- 30 4. Negotiations between the city and the water company for the purchase of the plant were carried on and resulted in an offer invited by the city to purchase the plant, on certain terms, subject to the approval of the voters. The electors voted in the negative on that proposition.

5. Further negotiations between the parties led to the offer by the water company to the city for a sale of the entire plant on certain terms; which offer was accepted subject, however, to the approval of the voters at the then next general election to be

held November 2, 1920. Said proposal was dated July 31, 1920, and Resolution 360 was adopted August 27, 1920. A copy of said resolution is annexed and made a part hereof.

6. Pursuant to the directions contained in the resolution, it was advertised in the local papers once in each week of October last, and was published daily except Sunday from October 25, to November 2, 1920. The proposition submitted also was published on the sample and official ballots. Thus wide publicity was given to the Resolution No. 360. 10

7. The election held November 2, 1920, resulted as follows: Yes, 2711; No, 1294, and so the resolution thus submitted was adopted. The return or certificate of the county board of canvassers was made November 6, 1920. The local newspapers made the usual reports of the result of said election touching the adoption or rejection of Resolution 360. 20

8. On November 19, 1920, the city government by the governing body, ordered the clerk to notify the Peoples' Water Company of the result of said election; and a letter was accordingly forwarded by the city clerk to the water company. The officers of the water company were also informed in like manner as was the public in general of the result of said election. And on November 12, 1920, when the certificate of the result of the election was laid before the commissioners and filed by the clerk, Director Wheaton and Solicitor Miller were instructed to proceed with approval by competent authority of the necessary bond issue and to take any action necessary to complete the transaction of the purchase. On December 3, 1920, the city solicitor reported (as was the fact) that he had visited New York and con- 30

sulted with Caldwell & Raymond, in reference to the validity of the bond issue, and further reported that the titles to the property were now being examined, and the business concerning the purchase of the plant proceeding satisfactorily.

10 9. In connection with the title learning from Mr. W. H. Roth, its vice-president, that there was a trust mortgage of \$150,000 on the plant, the city solicitor notified him that the city would not only require the mortgage cancelled but, also, would require cancellation, and deposit with the city government, of all of the bonds secured by the mortgage. Mr. Roth undertook to secure cancellation and surrender of the bonds and satisfaction of the mortgage in time for the settlement December 31, 1920, the time fixed by the proposal accepted by Resolution No. 360; and on December 22, 1920, wrote the city solicitor as per letter attached and made part 20 hereof.

30 10. On December 29, 1920, W. H. Roth, vice-president of the water company, lodged with the city solicitor (1) the said trust mortgage for \$150,000 of bonds (2) a warrant for satisfaction of same; (3) a certain prior mortgage, discovered by the city to be open on record, to secure \$100,000 of bonds; and (4) a warrant for satisfaction of the same. Said city solicitor retained the two mortgages, but returned the warrants to Mr. Roth, requesting that the usual prothonotary's certificate of authority of the notary be attached. On December 31, 1920, at 2.30 P. M. said W. H. Roth delivered said satisfaction pieces to the city solicitor, who now has custody of both mortgages and both satisfaction pieces.

11. The warrant for satisfaction of the \$150,000 mortgage was dated December 29, 1920; and was proved December 22, 1920, before Frank N. Jardine, notary public of Pennsylvania; and the prothonotary's certificate (No. 46227) is dated December 30, 1920. The warrant for satisfaction of the \$100,000 mortgage bears date December 29, 1920, and was proved before the said notary the same day, and the prothonotary's certificate (No. 46226) attached bears date December 30, 1920.

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12. By said warrant for satisfaction of said \$150,000 trust mortgage it is recited:

"And whereas it appears to the satisfaction of this company (the trust company) that the bonds issued under and secured by said mortgage have been paid and satisfied in full, both as to principal and interest, for which reason the aforesaid request (for cancellation of the trust mortgage) can properly be granted."

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And a like recital appears in the warrant for satisfaction of the other mortgage, although that is not here material.

13. In fact, as the Peoples' Water Company of Millville, New Jersey, charges and said city is informed by W. H. Roth, vice-president of said company and likewise charges, there were outstanding, in the hands of bona fide holders, for value on December 22, 1920, \$150,000 par value of valid bonds secured by said trust mortgage in that sum and the holders of said bonds, upon the faith and credit of the agreement for sale of said water plant to the City of Millville, and upon the definite understanding and agreement then made between said bondholders and the Peoples Water Company of Millville, New Jersey, that the purchase price of \$125,-

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Petition to Quash Writ

000 expected to be received by said company on consummation of the sale of its plant to the City of Millville under the terms set forth in Resolution 360, would be paid and distributed amongst said bondholders, *pro rata*, said bondholders surrendered up and cancelled their said \$150,000 par value of bonds, in good faith, and to the end that the title to this property could be cleared in time for the settlement, agreed upon as December 31, 10 1920.

14. Under the circumstances mentioned not only have said bondholders surrendered up their bonds but all of said issue of \$150,000 par value of bonds outstanding December, 1920, as aforesaid were mutilated and destroyed; and the same now are in possession of the water company in that condition.

These petitioners therefore aver that the writ of certiorari allowed herein December 30, 1920, ought 20 be quashed because:

First. The prosecutor alleges as a reason against the making of the contract only a technical point concerning the wording of the ballot a question that should have been presented to the Justice of the Supreme Court, prior to the election, under Section of the Election Law, and it is now too late to raise that point.

30 Second. The affidavit presented on application for the writ points out a form of question framed by the "Home Rule" Act, but ignores Article XIII, Sections 13, 14, 15 and the form of ballot of the general Election Law, P. L. 1920, pp. 690, 691, 692, 693.

Third. Prosecutor is in gross laches in that he waited so long before applying for the writ that

Petition to Quash Writ

securities of the par value of \$150,000 and of the actual cash value of \$125,000 have been destroyed, in the reasonable effort of the water company and its creditors, in good faith to clear the title of the plant ready for settlement at any early, specified day.

Fourth. The laches of the prosecutor has placed the city in a position where its interests as a purchaser are jeopardized, for that timely objection to the form of ballot (if defective) would have permitted the election officials to correct the ballot in order of the Justice of the Supreme Court. 10

For the reasons aforesaid, and forasmuch as many of the matters aforesaid were not presented to the Justice when the writ was prayed for, defendants pray the writ may be quashed.

LOUIS H. MILLER,
Attorney of City of Millville.
 J. FITHIAN TATEM,
Attorney Peoples' Water 20
Company of Millville, N.
 J.

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

LOUIS H. MILLER, being duly sworn, on his oath deposes and says: 30

I am one of the officers of the City of Millville having knowledge of the acts of the city government related or referred to in the foregoing petition, which I have read; and I also had the transaction with the Peoples' Water Company recited in the petition. So far as those matters are concerned, they are true.

Concerning the cancellation of the bonds, some time early in July, Mr. W. H. Roth, vice-president of the Peoples' Water Company, called at my office, and we discussed the title to the water plant. He disclosed to me the fact of the existence of a trust mortgage for \$100,000 securing a large amount of bonds, nearly all of which I understood from him were in the hands of people or interests friendly to the American Pipe and Construction Company, said to own a majority of the Peoples' Water Company stock. I requested Mr. Roth to not only have the trust company authorize the mortgage cancelled at settlement, but also to turn over to the city the bonds, cancelled, because there we would always be able to prove by checking the bonds that all of them had been cancelled and surrendered; and I pointed out that this practice had been adopted by me in April, 1920, when I passed title to the Cumberland Glass Manufacturing Plant, on which was a bond issue of \$1,000,000.00 and which plant had been sold to the Illinois Glass Company, and that the Illinois counsel had insisted on surrender of the cancelled bonds as a muniment of title. Mr. Roth suggested that an incineration certificate ought be satisfactory, but on my insistence he undertook to get the bonds and have them cancelled and turned over to the city at the settlement. On December 22nd, 1920, the company wrote a letter as per copy attached, to which I replied, a copy of my letter being also attached. On December 28th, 1920, Mr. Roth came to my office with the two cancelled mortgages and the two satisfaction pieces, as stated in the petition. I have kept the mortgages ever since and now have them. The two satisfaction pieces, as stated, were returned to Mr. Roth, who brought them to my office again on December 31, 1920, with the prothonotary's certificates attached. When he came into my office,

on this last occasion I told him that the writ of certiorari had been allowed.

William P. Adams is a young man who works in the Gas Water and Electric office, of which Mr. S. J. Franklin is general manager and Mr. Walter Wood is treasurer, those gentlemen being the prosecutors in Wood vs. Millville and Franklin vs. Millville. Hence it is reasonable to infer, and I believe, he was especially interested in the question of the adoption of Resolution 360 and in a position to be informed so that he might promptly prosecute a writ of certiorari, or question the legality of the wording on the ballot he now complains of.

LOUIS H. MILLER.

Sworn to and subscribed before me this 24th day of January, 1921.

MARY F. LYONS,
*A Foreign Commissioner of Deeds
For New Jersey.*

(Seal)

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STATE OF PENNSYLVANIA, }
CITY OF PHILADELPHIA, } ss.

WILLIAM H. ROTH, of full age, being duly sworn according to law, on his oath says that he is the vice-president of the Peoples' Water Company of Millville, N. J., and that H. Bayard Hodge is the treasurer of said company; that deponent and said Hodge have had charge of the negotiations and arrangements between the City of Millville and the said Peoples' Water Company relative to the purchase by said city of the water plant located at Millville owned by said company; that deponent has read the foregoing petition and the statements there-

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in contained relative to the negotiations between the said city and the Peoples' Water Company of Millville, N. J., are true.

Deponent further says that some time in July, 1920, deponent called at the office of Louis H. Miller, Esq., city solicitor of the City of Millville, New Jersey, and discussed with said Miller the matter of the transfer to the said City of Millville of the title to the water plant in question; that deponent stated to the said Miller that there existed a trust mortgage for \$150,000.00 to secure that amount par value of the outstanding bonds, and said Miller then advised deponent that upon the settlement it would be necessary not only to produce a proper satisfaction piece to cancel the said mortgage, but that all the bonds must be duly cancelled and turned over to the city before the said Miller would approve the purchase; that deponent at that time suggested to said Miller that the customary method should be followed, which was that the bonds should be destroyed by burning, and that an incineration certificate to that effect, executed by the trust company which was the trustee for said bonds, should be sufficient; but upon the insistence of the said Miller, deponent agreed that the bonds should be actually mutilated and delivered to said Miller, as the representative of the City of Millville.

Deponent further says that on December 29th, 1920, deponent visited Millville, N. J., and went to the office of Louis H. Miller, Esq., the city solicitor of said City of Millville, taking with him the two cancelled mortgages and the two satisfaction pieces, as stated in the petition; that owing to the fact that the satisfaction pieces did not have attached thereto the prothonotary's certificates deponent took them with him to Philadelphia and caused said prothonotary's certificates to be attached, and on December

31st, 1920, took the said satisfaction pieces, with the said certificates duly attached, and delivered them to the said Miller; that it was on the occasion of this visit to Millville on December 31st, 1920, that deponent first received notice of the issuance of a writ of certiorari in this case.

Deponent further says that in order to pass a valid and clear title to the property, which it was intended and proposed that the Peoples' Water Company should convey to the City of Millville, it was necessary to obtain from the holders and produce 10
for cancellation the entire \$150,000.00 of bonds outstanding, secured by the mortgage for \$150,000.00 above mentioned; that the said bonds were a first lien upon the property and franchise of the Peoples' Water Company of Millville, N. J., and in order to pass a title to said property to the City of Millville clear of all encumbrances, it was necessary that said bonds should be cancelled and the mortgage securing the same satisfied of record; that with this purpose deponent secured the assent of the holders of 20
all of the said bonds to the surrender and cancellation thereof, and their further consent to accept in full payment for said bonds the purchase price of \$125,000.00 agreed to be paid by the City of Millville to the Peoples' Water Company of Millville, N. J., for said property; that deponent further says it is impossible to again place the holders of said bonds in the position that they were prior to the cancellation thereof, and that unless settlement is allowed 30
to proceed in accordance with the plans as contemplated and agreed an irreparable injury will be suffered by the holders of the said bonds.

WILLIAM H. ROTH.

Sworn to and subscribed before me this 21st day
of January, 1921.

(Seal) MARY F. LYONS,
*A Foreign Commissioner of Deeds
For New Jersey.*

PEOPLES WATER COMPANY OF MILLVILLE,
N. J.

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Office: 112 N. Broad St.

Philadelphia, Pa., December 22d, 1920.

Lewis Miller, Esq.,

City Attorney,

Millville, N. J.

Dear Sir:—

We have received from West End Trust Company,
Trustee under mortgage of Peoples Water Com-
pany of Millville, N. J., dated January 1904, and re-
20 corded in the Clerk's Office of Cumberland County,
Certificate of Satisfaction of said mortgage.

We have also received from them the bonds which
have been duly cancelled, together with the unma-
tured coupons from January 1st, 1921 to January
1st, 1924, both inclusive, and an incineration certifi-
cate stating that all matured coupons have been
destroyed.

We desire to know whether you prefer that we
should satisfy the mortgage at this time or deliver
30 the mortgage and satisfaction piece to you at time of
settlement.

Yours truly,
PEOPLES WATER COMPANY OF
MILLVILLE, N. J.

H.r

H. Bayard Hodge, Treasurer.

Petition to Quash Writ

December 27, 1920.

Peoples Water Co., &c.

112 N. Broad Street,

Second Floor, Philadelphia, Pa.

In Re: City of Millville Water Bonds.

Gentlemen:

I beg to acknowledge receipt of your letter of December 22, referring to the satisfaction of the trust mortgage dated January 14, 1904. It will be satisfactory if you deliver the mortgage at the time of the settlement together with the cancelled bonds and the incineration certificate stating that the matured coupons have been destroyed. However, since you have received the cancelled bonds, incineration certificate and satisfaction piece, you may as well now proceed to cancel the trust mortgage so that the title will be cleared for the settlement. 10

In this connection I suppose the mortgage shown on the records dated May 1, 1901, to the West End Trust and Safe Deposit Company to secure an issue of \$100,000.00 of 5% bonds will also be cancelled of record, and at the time of the settlement I will be very glad if you will produce whatever documents may be necessary to show the satisfaction of this earlier mortgage. 20

You will also find in the files of the American Pipe Company, an assignment of the rights of the Peoples Water Company to receive the money mentioned in the sixth section of Ordinance No. 70. Ordinance No. 70 was superseded by Ordinance No. 73, the latter ordinance being the one under which the present contract was made and which is yet in force. It might be that the American Pipe Company was subrogated to the right of the Peoples Water Company to receive the rentals under Section 6 of Ordinance 73, when that ordinance was substituted for Ordinance 70. At any rate I think it will be wise 30

Rule to Show Cause

to get a release from the American Pipe Company to the Water Company and its successors and assigns with respect to this document. The assignment referred to is dated..... 1901, and was recorded August 9, 1901, in Book J of Miscellaneous Records for Cumberland County, page 371 &c.

Yours very truly,
City Solicitor of Millville.

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RULE TO SHOW CAUSE.

NEW JERSEY SUPREME COURT.

20	WILLIAM P. ADAMS, <i>Prosecutor,</i>	}	
	vs.		
	JOHN S. HORTON, City Clerk, City of Millville; THE CITY OF MILLVILLE; and the PEOPLES' WATER COMPANY OF MILLVILLE, N. J.,		On Certiorari of Contract. On Petition to Quash. Rule to Show Cause.
	<i>Defendants.</i>		

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On reading and filing the petition to quash the writ of certiorari allowed herein, and for good cause therein shown, it is on this 24th day of January, 1921, on motion of Louis H. Miller, attorney of City of Millville, and J. Fithian Tatem, attorney of the

Rule to Show Cause

Peoples' Water Company of Millville, N. J., ordered that the prosecutor show cause before the Supreme Court, at the State House in the City of Trenton, on the third Tuesday of February, 1921, at 10.30 o'clock in the forenoon, why the allocatur should not be set aside and the writ of certiorari herein quashed, as having been improvidently granted.

And it is further ordered that the parties or any of them have leave to take affidavits, on two days notice, to be read on the argument of said cause and on the coming in of this rule; and that a copy of this rule and of said petition and the affidavits annexed to the same be served on the prosecutor or his attorney within two days from this date and that for the purpose of such service copies certified by either one of the attorneys of the petitioners may be used.

Let this rule be entered.

CHAS. C. BLACK,
J. S. C. T.

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DEPOSITIONS.

NEW JERSEY SUPREME COURT.

10	WILLIAM P. ADAMS, <i>Prosecutor,</i> vs. JOHN S. HORTON, City Clerk, City of Millville; THE CITY OF MILLVILLE; and the PEOPLES' WATER COMPANY OF MILLVILLE, N. J., <i>Defendants.</i>	Case No. 1. On Certiorari. On Petition to Quash. Depositions.
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Depositions and other evidence in the above stated cause taken this 31st day of January, A. D. 1921, at 10 o'clock A. M., at the Court House, Camden, New Jersey, before EDWARD I. BERRY, Supreme Court Commissioner, pursuant to notice annexed, the taking of said depositions having by consent been adjourned to this time.

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PRESENT:

LEWIS STARR, Esq., for the prosecutor.
 LOUIS H. MILLER, Esq., for the City of Millville,
 and J. FITHIAN TATEM, Esq., for the Peoples'
 Water Company of Millville, New Jersey.

(It is agreed that the depositions shall be taken stenographically and the signatures of the witnesses waived.)

(It is agreed between counsel that the record, return, proceedings and testimony in both of the writs of certiorari may be used on the argument and considered by the Court in the disposition of the rule to show cause in case No. 1.)

(It is stipulated between counsel that the record and proceedings on file with the clerk of the Supreme Court in the two cases, Wood vs. Millville and Franklin vs. Millville, on certiorari, in which cases were reviewed the validity of Ordinance No. 145, referred to in the petition herein and the election for the adoption of the Water Act of 1876, may be used on the argument and considered as in evidence, and that the printed book in said cases may be used on the argument.)

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(It is also stipulated between counsel that resolution No. 261 was adopted by the commissioners on the 1st of March, 1918, a copy of which is introduced in evidence and marked Exhibit 1 for the respondents; and that pursuant to the resolution a special election was held as therein provided on the 13th of April, 1918, which resulted as follows: 663 votes were cast in favor of the purchase and 818 were cast against the purchase.)

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(Said paper is marked Exhibit R1 for the respondents.)

WILLIAM H. ROTH, SWORN.

By Mr. Tatem:

Q. Mr. Roth, you are connected with the Peoples' Water Company of Millville?

A. Yes, sir.

Q. In what capacity?

A. Vice-president.

10 Q. How long have you been connected with that company?

A. Since the early part of 1917.

Q. Mr. Roth, in the summer of 1920, there were some negotiations between the City of Millville and the Peoples' Water Company relative to the proposed sale by the water company to the city of the water plant at Millville, were there not?

A. There were.

20 Q. And in the course of those negotiations, you visited Millville and had an interview with Mr. Miller, the city solicitor?

A. I did.

Q. Kindly state what took place at that interview?

30 A. Mr. Miller raised the question as to the company's ability to transfer the property to the city clear of incumbrance, and to give a clear title. Mr. Miller explained to me that in turning over the property he wanted us to deliver to him not only the cancelled mortgages but also the cancelled bonds, stating his reason for requesting that was that he had had a transaction with some corporation in which that was required. I told him that was not usual in the transfer of a public utility property, that an incineration certificate of the trustee showing that the bonds were cancelled and incinerated, ought to be sufficient, but he demanded that the bonds themselves be turned over. So on behalf of the company

I agreed to see that that was done, and in due course the company did have the bonds cancelled and ready for delivery.

Q. What was the amount of the bonds outstanding?

A. \$150,000.

Q. Secured by a mortgage given to what trust company?

A. Given to the West End Trust Company, Philadelphia.

Q. Had all the \$150,000 of bonds actually been used? 10

A. The whole \$150,000 had been signed and certified by the trustee, and they were all out of the water company's possession.

Q. I show you a mortgage, entitled, "Mortgage, Peoples' Water Company of Millville, N. J. to West End Trust Company," which mortgage was dated January 14, 1904, in the sum of \$150,000, to secure that amount of bonds of the denominations therein set forth, this mortgage having been recorded in the clerk's office of Cumberland County in Book No. 75 of Mortgages, page 547, and so forth, and in Book No. 15 of Chattel Mortgages, page 34, and so forth, which mortgage has just been handed to me by Mr. Miller, and I ask you if that is the mortgage referred to as securing the bonds in question? 20

A. It is.

(Said mortgage is offered in evidence and marked Exhibit R2 for the respondents.) 30

(It is stipulated between counsel that the printing of the said mortgage is waived, and it is agreed that there is nothing endorsed or written on the face of the mortgage to show that it is cancelled of record.)

Q. Now, Mr. Roth, in the month of December, 1920, you again visited Mr. Miller in connection with the proposed sale of this water plant to the city, did you not?

A. I did.

Q. On or about December——

A. The 29th; on December 29th I called on Mr. Miller.

Q. Kindly state what took place at that time?

10 A. I called on Mr. Miller on December 29, 1920, in connection with the title to our property, settlement for which was to be made on or before January 1, 1921, under the terms of our agreement, and at that time I turned over to Mr. Miller the mortgage that has just been proved, also an old mortgage, dated in 1901, and two satisfaction pieces cancelling both mortgages, those satisfaction pieces having been executed by the West End Trust Company, trustee. Mr. Miller, in examining these papers for
20 the purpose of giving me a receipt for them, discovered that the two satisfaction pieces did not have attached thereto a prothonotary's certificate showing that the notary public who took the acknowledgments of the trust company's officers was authorized to do so, and therefore returned the two satisfaction pieces to me with the request that we have the prothonotary's certificate attached. I took them back to Philadelphia, and on December 31st
30 I returned the same satisfaction pieces to Mr. Miller with the prothonotary's certificate attached thereto. On December 29th, I left with Mr. Miller the two original mortgages and took his receipt for the same.

Q. I show you a paper purporting to be a satisfaction piece, duly authorized by the directors of the West End Trust Company, directing the officers of said company to satisfy the mortgage hereto-

William H. Roth—Direct

fore presented and marked Exhibit R2, and I ask you if this is the paper which you presented to Mr. Miller at the time of the interview to which you have testified?

A. It is the same paper.

Q. And afterward did you obtain the prothonotary's certificate which is now attached to this satisfaction piece?

A. Yes.

Q. And what did you subsequently do with the satisfaction piece?

A. After taking it away from Mr. Miller's office on December 29th, I took it back to Philadelphia, and on December 30, 1920, secured the prothonotary's certificate, and on December 31st, I returned the satisfaction piece with the prothonotary's certificate attached, to Mr. Miller in Millville.

Mr. Miller: I would like to have this satisfaction piece spread at length on the stenographer's minutes.

Mr. Starr: I haven't any objection.

(Said paper is offered in evidence, marked Exhibit R3 for respondents, and read as follows:

"RESOLUTION.

WHEREAS, request has been made by the Peoples Water Company of Millville, N. J., that this company should authorize the discharge from record and cancellation of the mortgage executed by the Peoples Water Company of Millville, N. J. to West End Trust Company, Trustee, dated January 14th, 1904, and recorded in the Clerk's Office of Cumberland County, at Bridgton, N. J., in Book No. 15 of Chattel Mortgages, page 314 &c., on January 22nd, 1904 and in Book No. 75 of Mortgages pages

547 &c., on January 22nd, A. D. 1904, said mortgage having been given to secure an issue of One hundred and Fifty Thousand Dollars first mortgage bonds of said Peoples Water Company of Millville, N. J.

10 AND WHEREAS, it appears to the satisfaction of this company that the bonds issued under and secured by said mortgage have been paid and satisfied in full, both as to principal and interest, for which reason the aforesaid request can properly be granted:

THEREFORE BE IT RESOLVED, That the Officers of this Company be, and they are hereby authorized and directed to execute under the Corporate seal of this company a discharge of mortgage, and also to execute any and all other papers and to do and perform any and all other acts necessary and proper to the end that said mortgage may be cancelled and satisfied of record.

20 KNOW ALL MEN BY THESE PRESENTS, That West End Trust Company, a corporation organized and existing under the laws of the State of Pennsylvania, does hereby certify that a certain mortgage bearing date the 14th day of January A. D. 1904, made and executed by Peoples Water Company of Millville, N. J., a corporation of New Jersey, to West End Trust Company, and recorded in the Clerk's Office of Cumberland Cuntty, at Bridgton, N. J., in Book No. 15 of Chattel Mortgages, page 314 &c. on
30 January 22nd, 1904, and in Book No. 75 of Mortgages, page 547 &c., on January 22nd, A. D. 1904, has been fully paid and satisfied; and the said West End Trust Company does hereby consent that the said mortgage may be discharged of record.

IN WITNESS WHEREOF, the West End Trust Company has caused these presents to be signed by its president and attested by its secretary and its

William H. Roth—Direct

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corporate seal to be hereunto affixed this 22nd day of December A. D. 1920.

WEST END TRUST COMPANY

By O. E. Wolbert.
Vice-President.

ATTEST:

Robert L. Morgan.
Asst-Secretary.
(Seal.)

State of Pennsylvania }
County of Philadelphia } ss. 10

Be it remembered, that on this twenty-second day of December A. D. nineteen hundred and twenty, before me the subscriber a Notary Public in and for the Commonwealth of Pennsylvania residing in the City of Philadelphia, personally appeared Robert L. Morgan, who I am satisfied is the person who signed the foregoing Discharge of Mortgage as the Assistant-Secretary of the West End Trust Company, the corporation named in and which executed said discharge, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as such Officer aforesaid; and that the foregoing discharge of mortgage made by said West End Trust Company, and sealed with its corporate seal is the voluntary act and deed of said West End Trust Company made by virtue of authority from its Board of Directors. All of which is hereby certified. 20

Robert L. Morgan. 30

I hereby certify that I am not a Stockholder, Director or Officer of the bank, Banking Institution or Trust Co., party hereto.

(Signed) Frank N. Jardine.

Frank N. Jardine
Notary Public
Commission Expires
March 23, 1921.

46227.

Form No. 27.

IN THE COURTS OF COMMON PLEAS OF
PHILADELPHIA COUNTY.

STATE OF PENNSYLVANIA, }
County of Philadelphia. }

I, Henry F. Walton, Prothonotary of
the Courts of Common Pleas of said
(Seal) County, Which are Courts of Record,
having a common seal, being the officer
authorized by the laws of the State of

- 10 Pennsylvania to make the following certificate, do
Certify, That Frank N. Jardine, Esquire, whose
name is subscribed to the certificate of the acknowl-
edgment of the annexed Instrument and thereon
written, was at the time of such acknowledgment a
Notary Public for the Commonwealth of Pennsyl-
vania, residing in the County aforesaid, duly com-
missioned and qualified to administer oaths and
affirmations and to take acknowledgments and
proofs of Deeds or Conveyances for lands, tenements
20 and hereditaments to be recorded in said State of
Pennsylvania, and to all whose acts, as such, full
faith and credit are and ought to be given, as well
in Courts of Judicature as elsewhere; and that I am
well acquainted with the handwriting of the said
Notary Public and verily believe his signature
thereto is genuine, and I further certify that the
said instrument is executed and acknowledged in
conformity with the laws of the State of Pennsyl-
vania.

- 30 IN TESTIMONY WHEREOF, I have hereunto
set my hand and affixed the seal of said Court, this
30th day of December in the year of our Lord one
thousand nine hundred and twenty. (1920).

Henry F. Walton.
Prothonotary."

Q. I show you a paper purporting to be a mortgage dated May 1, 1901, between the Peoples' Water Company of Millville, N. J. and the West End Trust Company, to secure a proposed bond issue of \$100,000, which mortgage is recorded in the Cumberland County Clerk's Office aforesaid, in Book 66 of Mortgages, page 256, &c., and in Book 13 of Chattel Mortgages, page 197, &c., and ask you if this is the mortgage of \$100,000 to which you have testified?

A. It is.

10

(Said paper is offered in evidence and marked Exhibit R4 for respondents.)

(It is agreed that this mortgage is not to be printed in the record, and that there is no endorsement showing that the mortgage was satisfied of record.)

Q. When you took the mortgage which has just been offered and marked Exhibit R4 to Mr. Miller, on the occasion of the interview to which you have testified, did you take with you the satisfaction pieces covering that mortgage? 20

A. I did.

Q. I show you a satisfaction piece dated December 29, 1920, and ask you if that is the paper which you presented to Mr. Miller?

A. It is the same paper.

Q. Did you at Mr. Miller's request then take that paper back to Philadelphia and secure the prothonotary's certificate? 30

A. I did.

Q. And what did you do with it subsequently?

A. I secured a prothonotary's certificate and returned the satisfaction piece with the protho-

tary's certificate attached thereto to Mr. Miller on December 31, 1920, in Millville.

(It is agreed that this satisfaction piece shall be offered in evidence and marked Exhibit R5, and spread at length on the stenographer's minutes. Said paper read as follows):

10 "WHEREAS, request has been made by the Peoples Water Company of Millville, N. J., that this Company should authorize the discharge from record and cancellation of the Mortgage executed by the Peoples Water Company of Millville, N. J. to West End Trust Company, Trustee, dated May 1st, 1901 and recorded in the clerk's office of Cumberland County at Bridgeton, N. J. in book No. 66 of Mortgages, page 256, etc., on the 22nd day of May A. D. 1901, said mortgage having been given to secure an issue of One hundred thousand Dollars first mortgage Bonds of said Peoples Water Company of
20 Millville, N. J.

AND WHEREAS it appears to the satisfaction of this Company that the Bonds issued under and secured by said mortgage have been paid and satisfied in full both as to principal and interest, for which reason the aforesaid request can properly be granted:

30 THEREFORE BE IT RESOLVED, that the Officers of this Company be, and they are hereby authorized and directed to execute under the corporate seal of this company a discharge of mortgage, and also to execute any and all other papers and to do and perform any and all other acts necessary and proper to the end that said mortgage may be cancelled and satisfied of record.

KNOW ALL MEN BY THESE PRESENTS, That the West End Trust Company, a corporation organized and existing under the laws of the State of

William H. Roth—Direct

Pennsylvania, do hereby certify that a certain mortgage bearing date the first day of May, A. D. 1901, made and executed by the Peoples Water Company of Millville, New Jersey, a corporation of New Jersey, to the West End Trust Company, and recorded in the clerk's office of Cumberland County at Bridgeton, N. J., in book No. 66, page 256, etc., on the 22d day of May, A. D. 1901, has been fully paid and satisfied and the said West End Trust Company does hereby consent that the said mortgage may be discharged of record. 10

IN WITNESS WHEREOF, the West End Trust Company has caused these presents to be signed by its president and attested by its secretary and its corporate seal to be hereunto affixed this 29th day of December A. D. 1920.

WEST END TRUST COMPANY,
By O. E. Wolbert,
Vice-President.

ATTEST: 20
Robert L. Morgan.
Assistant Secretary.
(Seal.)

Witness.

W. H. Conger, Jr.

Thomas Evans.

STATE OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA. } ss.

Be it remembered, that on this 29th day of December, A. D. nineteen hundred and twenty, before me 30 the subscriber, a Notary Public in and for the Commonwealth of Pennsylvania, residing in the City of Philadelphia, personally appeared Robert L. Morgan, who I am satisfied is the person who signed the foregoing discharge of mortgage as the Assistant Secretary of the West End Trust Company, the corporation named in and which executed said dis-

charge, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed and delivered the same as such Officer aforesaid; and that the foregoing discharge of mortgage made by said West End Trust Company, and sealed with its corporate seal is the voluntary act and deed of said West End Trust Company made by virtue of authority from its Board of Directors. All of which is hereby certified.

10 I hereby certify that I am not a Stockholder, Director or Officer of the Bank, Banking Institution or Trust Co., party hereto.

Frank N. Jardine.

Frank N. Jardine.

Notary Public.

(Seal.) Commission Expires
March 28, 1921.

46228

Form No. 27.

20 IN THE COURTS OF COMMON PLEAS OF
PHILADELPHIA COUNTY.
STATE OF PENNSYLVANIA, }
County of Philadelphia. }

Acknowledgment (Notary.)

I, Henry F. Walton, Prothonotary, of the
Courts of Common Pleas of said County,

(Seal.) which are Courts of Record having a
common seal, being the officer authorized
by the laws of the State of Pennsylvania

30 to make the following Certificates, do Certify that
Frank N. Jardine, Esquire, whose name is sub-
scribed to the certificate of the acknowledgment of
the annexed Instrument and thereon written, was
at the time of such acknowledgment a Notary
Public for the Commonwealth of Pennsylvania, re-
siding in the County aforesaid, duly commissioned
and qualified to administer oaths and affirmations

William H. Roth—Direct

and to take acknowledgments and proofs of Deeds or conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe his signature thereto is genuine, and I further certify that the said Instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania. 10

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 30th day of December, in the year of our Lord one thousand nine hundred and twenty. (1920).

Henry F. Walton.
Prothonotary."

Q. As a matter of fact, Mr. Roth, had the bonds which were secured by this mortgage marked Exhibit R3, been previously cancelled or destroyed? 20

A. Yes, they were cancelled in 1904.

Q. So that the only bonds actually outstanding as representing a valid indebtedness against the plant of the Peoples' Water Company consisted of the \$150,000 of bonds issued under and secured by the mortgage presented and marked Exhibit R1?

A. Yes.

Q. Mr. Roth, at the time you went down to Mr. Miller's office did you take with you the cancelled bonds? 30

A. No.

Q. From whom did you receive the mortgages and the satisfaction pieces referred to which you took down to Mr. Miller's office?

A. I received them from the treasurer of the company, Mr. H. Bayard Hodge.

Q. You mean the treasurer of the Peoples' Water Company?

A. Yes, sir.

Q. If you know, who made arrangements with the trust company relative to the cancellation of these mortgages and the giving of the satisfaction pieces?

A. Mr. Hodge, the company's treasurer.

Q. Since you took the mortgages and the satisfaction pieces back from Mr. Miller's office have they been in your custody since?

A. They have been in the custody of Mr. Hodge, the treasurer of the company.

Mr. Starr: What was that?

(The last question and answer read by the stenographer.)

The Witness: I meant the bonds, the cancelled bonds had been in the custody of the treasurer. The mortgages and satisfaction pieces have been in Mr. Miller's hands.

Cross-examination.

By Mr. Starr:

Q. Mr. Roth, you said a moment ago that Mr. Hodge had made arrangements with the trust company with reference to the cancellation of the mortgages?

A. Yes.

Q. Have you any personal knowledge of the circumstances under which those arrangements were made?

A. Yes, as an officer of the company Mr. Hodge and I discussed the matter as to how that should

be done, and it was arranged that he, as treasurer, should have care of that transaction.

Q. And he was the one that had the negotiations with the trustee?

A. Yes.

Q. The first conversation as detailed by you with Mr. Miller occurred sometime in the summer of 1920, as I understand it?

A. In July, yes. Well, that was not really the very first; it was in connection with this particular transaction. We had been negotiating for some years. 10)

Q. Yes, but I am speaking about with reference to this particular transaction when you discussed the method by which the bonds were to be cancelled?

A. Yes.

Q. That was in the summer of 1920?

A. That is true.

Q. And you had no further communications with him with respect to that particular subject matter until the 29th of December? 20

A. Yes, we had some correspondence and I think some telephone conversations leading up to what happened in December the cancellation of the mortgages.

Mr. Starr: We can stipulate, can we not, that those satisfaction pieces have never been presented to the county clerk for the formal satisfaction of the record of the mortgages? 30

Mr. Miller: That is positively true, Judge; I wouldn't use them at all, nor do I think I would have given them up to Mr. Roth; I would let them stay there. We will stipulate that they have not been recorded.

Q. When you had the conversation with Mr. Miller in the summer of 1920, were the bonds secured by the 1904 mortgage in the hands of the individual holders?

A. Yes.

Q. And when were they gathered in?

A. In December, 1920.

Q. Who had to do with that, you or Mr. Hodge?

A. Both of us.

10 Q. And was any receipt given?

A. Yes.

Q. Have you the form of the receipt?

A. Yes.

Q. A copy of the receipt? Let me have the copy, will you please.

(Witness hands paper to examining counsel.)

20 Q. Have you a list of the holders of the bonds, or can you give me the names of all of the bondholders?

A. At that time there was but one bondholder.

Q. And that was the American Pipe and Construction Company?

A. Yes.

Q. And when did that corporation acquire the title to the bonds, all of the bonds?

30 A. It acquired title to some of them some years ago, and in the early part of 1920 acquired title to the balance.

Q. So that when the Peoples' Water Company made the proposition to sell the plant which is shown by the communication, sometime in July of 1920, the American Pipe & Construction Company was the owner of all of the bonds of the Peoples' Water Company?

A. Yes, that is to say, it was either owner or con-

trolled them through the deposit of the bonds as collateral for a note, as set out in that receipt; they had possession of the bonds.

Q. Well, did anybody have any interest in the bonds, any of the bonds, except the American Pipe and Construction Company, when the proposition was made to the city to sell the plant?

A. No.

Q. And the bonds were in the possession of the American Pipe & Construction Company?

10

A. They were.

Q. And were they ever turned over to the trustee?

A. Yes.

Q. When?

A. In December, 1920, for the purpose of cancellation and securing the satisfaction of the mortgages, or of the mortgage, rather.

Q. I notice that in your testimony on direct examination by Mr. Tatem you were asked whether or not all those bonds were issued, and you did not answer that categorically; you said they were certified, and they had been delivered by the trustee. As a matter of fact, were they all issued and outstanding as obligations of the company?

20

A. They were so regarded by us; whether you would regard them so legally I don't know, but the fact is this: Some of the bonds, as stated in that receipt, were issued by the company as collateral security for notes.

Q. And those notes were held by what——

30

A. By the American Pipe & Construction Company.

Q. So that the bonds then being owned by the Peoples' Water Company, were issued and delivered to the American Pipe & Construction Company as collateral security for the indebtedness of the

Peoples' Water Company to that corporation, is that right?

A. Yes, that is right.

Q. So they were either the absolute owner or had the bonds under a pledge?

A. Yes.

Q. By the Peoples' Water Company for a debt?

A. That is right.

10 Q. And does the American Pipe and Construction Company own the stock of the Peoples' Water Company?

A. It owns the majority of it.

Q. It controls the corporation?

A. It does.

Q. What is the total capitalization, authorized capitalization of the Peoples' Water Company?

A. \$100,000.

Q. And what proportion of that is owned by the American Pipe & Construction Company?

20 A. \$98,950.00.

Q. Did the West End Trust Company, as trustee, give any receipt to either the American Pipe and Construction Company or the Peoples' Water Company when these bonds were surrendered for cancellation?

A. The West End Trust Company gave this satisfaction piece, which the company regarded as a receipt for the bonds.

Q. But there was no other receipt given?

30 A. I don't think so; the treasurer can answer that question; I was not handling that end of the transaction.

Q. When were the bonds actually surrendered to the trustee, on what day?

A. On some day in December, 1920, I think on the dates that the satisfaction pieces were dated, but there again I will have to refer you to the treasurer.

Q. Is Mr. Hodge here?

A. Yes, he is here.

Mr. Starr: May I have this receipt marked as an exhibit?

Mr. Tatem: Yes.

(Said receipt is offered in evidence and marked Exhibit P1 for the prosecutor, and read as follows): 10
"December 14, 1920.

The American Pipe & Construction Company,
112 North Broad Street,
Philadelphia, Pa.

Gentlemen:

We hereby acknowledge receipt of \$10,000.00 of First Mortgage Bonds of this Company, Nos. 141 to 150 inclusive, of the denomination of \$1,000.00 each, with coupons due January 1st, 1921, et seq. attached, also \$140,000.00 of First Mortgage Bonds, 20
Nos. 1 to 140 inclusive, of the denomination of \$1,000.00 each, with coupons due January 1st, 1921, et seq. attached.

All of these bonds have been turned over by you to this company, at our request, in order to enable us to have cancelled of record the mortgage dated January 14th, 1904, created to secure the issue of the above mentioned bonds, it being necessary to cancel this mortgage in order that our plant may be turned over to the City of Millville, N. J., with which 30
City we have a contract, as evidenced by our proposition to said City dated July 31st, 1920, and the acceptance of same by resolution of the Board of Commissioners of said City at a meeting held on August 27th, 1920, under which the City agrees to purchase our plant for the sum of \$125,000.00, and settle for the same on or before January 1st, 1921.

The above mentioned bonds are turned over to this Company by you, and received by us, with the distinct understanding that:—

10 First: The \$10,000.00 of bonds first above mentioned, which your Company owns, are to be paid at face value immediately this Company receives payment of the purchase price for our plant from the City of Millville. In the meantime this Company has issued to the American Pipe & Construction Company a demand note, dated December 14th, 1920, with interest, in the sum of \$10,000.00, which is to be held by your Company until the payment mentioned has been made.

20 Second: The \$140,000.00 of bonds have been heretofore held by the American Pipe & Construction Company as collateral security for notes issued by this Company for construction of our plant, and it is understood that the American Pipe & Construction Company is surrendering these bonds to our Company merely as an accommodation in order that the mortgage above referred to, may be cancelled of record for the reasons above stated.

30 It is also understood and agreed that as soon as settlement is made with the City of Millville on or before January 1st, 1921, this Company will pay over to the American Pipe & Construction Company the entire proceeds from the sale of our plant to said City, less such expenses as our Company may have in connection with closing up its affairs, which payment it is understood, will be accepted by the American Pipe & Construction Company as in full settlement for said \$10,000.00 of Bonds and the notes for which said \$140,000.00 of bonds have been heretofore held as collateral, the total amount of said notes being \$183,884.65; also as in full settlement for other notes aggregating \$235,274.04, issued to the American Pipe & Construction Company by our

Company, from time to time, all of which notes the American Pipe & Construction Company is to surrender to the Peoples Water Company of Millville, N. J., for cancellation at the time of the settlement above mentioned.

Yours very truly,
PEOPLES WATER COMPANY OF
MILLVILLE, N. J.

(Signed)

By Rob't. Wetherill. 10
President.

(Signed)

ATTEST: H. B. Hodge.
Secretary."

(Seal.)

Q. There was no consideration paid the American Pipe & Construction Company by the Peoples' Water Company other than mentioned in this receipt which is marked Exhibit P1, was there?

A. No. 20

Q. And did Mr. Miller give you any receipts when you turned over the satisfaction pieces or the mortgages?

A. He did.

Q. May I see those, please?

(Papers are handed examining counsel.)

Mr. Starr: I offer in evidence the receipt signed by Mr. Miller, dated December 29, 1920, and ask 30 that that be marked Exhibit P2 and copied in the record; also a receipt dated December 31, 1920, and ask that that be marked Exhibit P3 and copied in the record.

(Said receipts are marked respectfully Exhibits P2 and P3 for prosecutor and read as follows):

“Millville, N. J. December 29th, 1920.

I Louis H. Miller, Solicitor of the City of Millville, New Jersey, acknowledge having received this day from the Peoples Water Company of Millville, New Jersey the following documents:

10 1. A certain trust mortgage dated May 1, 1901 given by the Peoples Water Company of Millville, New Jersey to the West End Trust and Safe Deposit Company to secure \$100,000. of bonds of the company recorded May 22, 1901, in the Cumberland County, New Jersey Clerk's Office in Book 66 of Mortgages page 256 &c., and also in Book No. 13 of Chattel Mortgages page 197 &c;

20 2. A certain other trust mortgage given by the Peoples Water Company of Millville, New Jersey, to the West End Trust Company to secure \$150,000. bonds of the Company dated January 18, 1904 and recorded in said Clerk's Office on January 22, 1904, in Book 75 of Mortgages page 547 &c. and in Book No. 15 of Chattel Mortgages pages 34 &c.

(Signed) Louis H. Miller.”

“Millville, N. J. December 31, 1920.

30 Received this thirty-first day of December, 1920, at 2.30 o'clock p. m. from Peoples Water Company of Millville, New Jersey, two satisfaction pieces, one for satisfaction of record of mortgage of Peoples Water Company to West End Trust Co., trustee, dated January 14, 1904; and the other for satisfaction of the mortgage Peoples Water Co., to West End Trust Co., Trustee, dated May 1, 1901.

NOTE: The above satisfaction pieces were tendered me December 29, 1920, but returned to the Peoples Water Co., so that the usual Prothonotary's certificate could be attached to the proof.

(Signed) Louis H. Miller,
City Sol'r of Millville, N. J.”

William H. Roth—Cross

(It is agreed that the writs of certiorari in both of the cases was served upon the city clerk between ten and twelve o'clock A. M. on December 31, 1920.)

Q. Now, Mr. Roth, can you give me the date when the board of directors of the West End Trust Company passed the resolution, a copy of which is attached to the satisfaction piece with reference to the 1904 mortgage?

A. I cannot give you the date.

10

By Mr. Tatem:

Q. What was the first knowledge that you had, Mr. Roth, of the allowance of the writ of certiorari?

A. The first knowledge that I had of that was when Mr. Miller informed me on the afternoon of December 31, 1920, when I delivered the satisfaction pieces to him with the prothonotary's certificates attached.

Q. And that was when you received from Mr. Miller the receipt for these papers dated December 31, at 2.30 P. M.?

20

A. Yes.

Q. Were you down there for the purpose of bidding upon the city bonds in connection with this matter?

A. Yes, I had a bid in my pocket in proper form, with a certified check of the proper amount to be deposited with the bid.

Q. Was this for the bonds which it was proposed that the city should issue in payment for this plant?

30

A. Yes.

By Mr. Starr:

Q. Were you acting for the Peoples' Water Com-

pany or the American Pipe & Construction Company?

A. The bid was one of the American Pipe & Construction Company.

Q. And if the bonds had been issued, the understanding was that the American Pipe & Construction Company were to take the city bonds in exchange for the bonds that they had surrendered to the trust company?

10 A. Well, the receipt there speaks for itself upon that.

Q. Was there any arrangement between the two corporations except that disclosed by the receipt?

A. No.

Q. Did you know that the writ of certiorari was served on the Peoples' Water Company on the morning of the 31st?

A. I did not.

20 Q. By the chief engineer, or the engineer in charge of the plant at Millville?

A. I did not; I did not see him on the 31st.

Q. Well, you have since discovered that that was a fact, haven't you?

A. Yes.

Q. It was served in the morning on him?

A. The paper actually reached our office on the following Monday, which was the 3rd of January.

Q. Are you an officer also of the American Pipe & Construction Company?

30 A. I am.

Q. In what capacity?

A. I am secretary and assistant-treasurer.

H. BAYARD HODGE, SWORN.

By Mr. Tatem:

Q. Mr. Hodge, you are connected with the Peoples' Water Company of Millville?

A. I am.

Q. In what capacity?

A. Secretary and treasurer.

Q. How long have you been connected with that company? 10

A. Since the early part of 1917.

Q. You together with Mr. Roth, had charge of the negotiations which took place between the Peoples' Water Company and the City of Millville, relative to the proposed sale by the company of its water plant to the city?

A. Yes, sir.

Q. Attached to the petition to quash the writ in this case, there is a copy of a letter dated December 22, 1920, addressed to Louis Miller, Esq., city attorney, Millville, New Jersey, and signed, "Peoples' Water Company of Millville, N. J., H. Bayard Hodge, Treasurer." Is that a true copy of a letter which you sent to Mr. Miller on behalf of the Peoples' Water Company? 20

A. Yes, sir.

Mr. Starr: Have you got the original here?

Mr. Miller: I turned it over to Tatem, whose stenographer copied it. 30

Mr. Starr: Well, if you say that is a copy, I will take it.

Mr. Tatem: It is a true copy; I thought we had it here.

Q. There is also attached to the petition a copy of a letter purporting to be written by Mr. Miller as city solicitor of Millville, to the Peoples' Water Company, dated December 27, 1920, which is apparently in reply to your letter of December 22, 1920; is that a copy of a letter which was received from Mr. Miller by your company?

10 A. Yes, sir.

Q. Mr. Hodge, in preparation for the proposed consummation of the sale of this property to the City of Millville, will you kindly state what was done by you as treasurer of the Peoples' Water Company?

A. When Mr. Roth reported his conversation with Mr. Miller in regard to the surrender of the cancelled bonds, the board of directors of the Water Company on December 14th, at a meeting, authorized the officers to present the bonds to the West End Trust Company for cancellation, and requested the West End Trust Company to satisfy the January, 1904, mortgage of record and cancel the bonds.

20 Mr. Starr: Now, it seems to me, Mr. Fithian, if we are to be bound by the action of the directors, we ought to have those minutes. Have you got the minute book here?

30 Mr. Tatem: I think we have.

Mr. Starr: I think you ought to put in evidence the minute of the action of the board.

Mr. Tatem: We will put it in.

Mr. Starr: It may or may not be material, I don't

know, but if I am to be bound by it I think we ought to have the formal action.

Q. In pursuance to that direction by the directors what did you do as treasurer of the company?

A. As treasurer of the company I received from the American Pipe & Construction Company the bonds which they owned, and the bonds which they held as collateral for the loans, and they were delivered to Mr. W. H. Conger, Jr., assistant trust officer of the West End Trust Company, together with a certified copy of the resolution requesting the satisfaction of the mortgage and cancellation of the bonds.

Q. How many of those bonds did you deliver to Mr. Conger for the purpose of cancellation?

A. The entire issue, \$150,000.00.

Q. What coupons did you also deliver at that time?

A. We delivered at the same time all the coupons with the request that numbers one to thirty-three sent up there be incinerated, and thirty-four to maturity be cancelled, all unmatured coupons to be cancelled.

Q. Are the bonds purporting to be issued by the Peoples' Water Company of Millville, N. J., and secured by a mortgage of the West End Trust Company, dated January 1, 1904, and numbered from one to 150 inclusive, each of said bonds being in the principal sum of \$1,000—are those the bonds which you have testified that you presented to Mr. Conger, for cancellation?

A. They are.

Q. I show you a lot of coupons which have evidently been detached from the bonds in question, as said coupons are numbered respectively from 1 to 150, and are coupons of the serial numbers from

Nos. 34 to 40 inclusive, and ask you if those are the coupons which you at the same time presented to Mr. Conger for cancellation?

A. They are.

Q. After these bonds and coupons had been presented by you to Mr. Conger, kindly state what was done with them as far as your knowledge goes?

10 A. They were re-delivered to me as treasurer of the Peoples' Water Company, together with an incineration certificate for the matured coupons, and a satisfaction piece for the mortgage, and the original copy of the mortgage dated January 1, 1904.

Q. Where is that incineration certificate—have you the incineration certificate?

A. Yes.

Q. To which you have referred, with you?

A. Yes, sir (handing paper to examining counsel).

20 Mr. Tatem: I will offer this in evidence and ask that it be marked Exhibit R6 for the respondent.

(Said paper so marked.)

Q. When you spoke of receiving from Mr. Conger a satisfaction piece at the same time you received the cancelled bonds I ask you if the satisfaction piece which has been offered and marked Exhibit R3 is the paper to which you refer?

A. It is.

30 Q. In what condition were the bonds and coupons in question at the time they were re-delivered to you by the West End Trust Company?

A. They were perforated.

Q. I ask you to examine the specimen of these bonds and coupons, and ask you if, when re-delivered to you, they were in the same condition as they are now?

A. Yes, sir, they were.

Q. For the record, how would you describe that condition?

A. Cancelled by perforation.

Q. And does that cancellation extend to your knowledge to each and all of these bonds and coupons?

A. Yes, sir.

Q. Subsequent to the date when you received from the trust company these cancelled bonds and coupons and the satisfaction piece relating to the mortgage of January 1, 1904, did you again visit the West End Trust Company in connection with this matter? 10

A. Yes, sir.

Q. And for what purpose?

A. Mr. Roth reported that Mr. Miller had discovered that the mortgage dated 1901 given by the Peoples' Water Company to the West End Trust Company, trustee, had not been satisfied of record. I went over to see Mr. Conger, and in looking up the files, their files, we found that it was marked off their books, but in searching the original records they found the original mortgage, and that it had not been satisfied of record. They also delivered to me at the same time an incineration certificate for the \$100,000 of bonds, together with the coupons. 20

Q. Have you that certificate?

A. Yes, sir.

(Said incineration certificate is offered in evidence and marked Exhibit R7 for respondents.) 30

Q. At the same time, did Mr. Conger deliver to you a satisfaction piece covering the mortgage of May 1, 1901?

A. Yes, sir.

Q. I show you a paper purporting to be a satisfaction piece authorizing the satisfaction of the mortgage made by the Peoples' Water Company of Millville to the West End Trust Company as trustee, dated May 1, 1901, which satisfaction piece is Exhibit R5 for the respondents, and ask you if that is the satisfaction piece which you received from Mr. Conger?

A. It is.

10 Q. And at the same time did you receive the original mortgage dated May 1, 1901?

A. I did.

Q. Which is marked Exhibit R4 for the respondents?

A. I did.

20 Mr. Tatem: The bonds from No. 1 to No. 150, both inclusive, are offered as one exhibit, Exhibit R10 for the respondent, and it is agreed that they are all for \$1,000 each and in the same form except for the numbering. It is further agreed that all of said bonds are perforated in numerous places through the body of the bond and through the signatures and seals thereof by a perforated stamp containing the letters, "W. E. T. Co. December 16, 1920."

30 Mr. Miller: I will request Mr. Tatem to produce the original bonds at the argument for inspection by the Supreme Court.

Mr. Tatem: The coupons which have been detached from said bonds, being coupons numbered 34 to 40 inclusive, and falling due according to the terms thereof from January 1, 1921, to January 1, 1924, inclusive, and having been detached from bonds No. 1 to No. 150 inclusive, are presented with

numerous perforations through each and every of said coupons, each of said coupons being in the sum of \$25.00.

Cross-examination.

By Mr. Starr:

Q. Now, Mr. Hodge, was there any receipt given to the Peoples' Water Company at the time the bonds were surrendered to the trust company? 10

A. No, sir, the delivery of the certified copy of the resolution with the bonds and the knowledge that the satisfaction piece and cancelled bonds were handed back was considered sufficient.

Q. No other paper was passed between the parties?

A. No, sir.

Q. Now, on what date did the Peoples' Water Company receive the bonds from the American Pipe & Construction Company? 20

A. The early part of December, 1920; I don't remember the exact date.

Q. And on what date did the Peoples' Water Company pass the bonds along to the trust company?

A. About the 15th or 16th of December.

Q. And then did the Peoples' Water Company have the possession of those bonds for a matter of a week or ten days or more?

A. Well, I don't exactly remember the date, but they were delivered to the trustee within a couple of days after the Peoples' Water Company's board met. 30

Q. And are you an officer of the American Pipe & Construction Company?

A. I am.

Q. What is your official connection with that corporation?

A. Vice-president and treasurer.

Q. And when were the bonds returned to you as treasurer of the Peoples' Water Company from the trust company?

A. About the 22nd of December, 1920.

Q. And they have been in your possession ever since?

10 A. Yes, sir.

Q. Who is president of the Peoples' Water Company?

A. Mr. Robert Wetherill.

Q. And what is his official connection, if any, with the American Pipe & Construction Company?

A. President.

Q. And you are the vice-president of the Construction Company and Mr. Roth is vice-president of the Peoples' Water Company?

20 A. Yes.

Q. Are there interlocking directors of the two corporations?

A. Well, Mr. Wetherill and myself—yes, some of the board are interlocking.

Q. How many directors are directors of both boards?

30 A. To tell you the truth—don't put this down—I don't remember who is on the Peoples' board; there are two of us, Mr. Wetherill and myself, I am sure of; there are only two.

Q. Have you in your possession any formal contract executed between the Peoples' Water Company and the city with reference to the acquisition of this plant?

A. We have a letter from the city accepting our offer to sell the plant.

Q. Have you the original of that here?

A. Yes, Mr. Roth has it.

Mr. Starr: Mr. Roth has produced the paper referred to, and it is stipulated that it is a certified copy of Resolution No. 360, which is already in the record.

Q. And no other formal document or paper was signed between the water company and the city with reference to the purchase of the property? 10

A. No, sir.

Q. You received, did you not, from Mr. Horton, after the election was had, a formal notification of the result of the election?

A. Yes, sir.

Q. And is that the communication (showing witness paper)?

A. Yes, sir.

Q. Dated December 22, 1920, signed, "John S. Horton, City Clerk"? 20

A. Yes.

(It is stipulated that this letter is also in the return to the writ of certiorari.)

Q. You made a proposition, did you not, to the city to sell the plant, and that was incorporated in Resolution 360?

A. Yes, sir.

Q. And it is a fact, is it not, that the Peoples' Water Company replied to the communication of November 22, 1920, by letter dated the same day? 30

A. It is.

(Said letter is introduced in evidence, and marked Exhibit P4, and read as follows):

William H. Conger, Jr.—Direct

“November 22, 1920.

Mr. John S. Horton,
City Clerk,
Millville, N. J.

Dear Sir:

10 We beg to acknowledge receipt of your letter of the 22nd advising us of the result of the election held on Tuesday, November 2nd. We note that a majority favored the adoption of Resolution No. 360, providing for the purchase of our plant by the City. We are prepared to go ahead with whatever is necessary to close the matter up whenever the City is ready.

Yours truly,
People's Water Company of Millville, N. J.,
W. H. Roth,
Vice-President.”

20 WILLIAM H. CONGER, JR., SWORN.

By Mr. Tatem:

Q. Mr. Conger, you are connected with the West End Trust Company of Philadelphia?

A. I am.

Q. In what capacity?

A. Assistant trust officer.

30 Q. And as assistant trust officer, it was within your department to have to do with the cancellation of the bonds secured by the trust mortgage given to your company by the Peoples' Water Company of Millville?

A. It is.

Q. Will you kindly state your connection there-

William H. Conger, Jr.—Direct

with, and just what was done by you or under your authority?

A. About the 15th or 16th, I am not exactly sure of the date, I think it was the 15th of December, 1920—Mr. Hodge came in to see me with reference to the cancellation of the bonds and the satisfaction of the mortgage for \$150,000 for which we were trustee, the mortgage of 1904, and he handed me a resolution, a certified copy of a resolution adopted at a meeting of their board on the 14th of December, requesting that we cancel the bonds and satisfy the mortgage. 10

Q. I show you a paper purporting to be a certified copy of the resolution adopted by the board of directors of the Peoples' Water Company of Millville, N. J., at a meeting held December 14, 1920, with the seal of the Peoples' Water Company of Millville impressed thereon, and signed by H. Bayard Hodge, secretary, and ask you if this is a certified copy of the resolution directing the cancellation of the mortgage in question to which you have testified? 20

A. It is.

Mr. Tatem: We will offer that and have it marked Exhibit R8 for respondent.

(Said paper so marked.)

Q. In accordance therewith what did you then proceed to do, Mr. Conger? 30

A. We cancelled the entire issue of bonds Nos. 1 to 150, \$1000.00 each, with all coupons from Nos. 34, on, that is, the unmatured coupons; we cancelled them by perforation by our regular cancellation machine; and the overdue coupons were cremated, that is, up to No. 33, on each bond.

Q. Now, I show you the bonds which have been offered in evidence, and ask you if those are the bonds to which you refer, and whether the method of cancellation by perforation by stamp "W. E. T. Co." and the date, December 16, 1920, is the method usually taken for cancelling said bonds?

A. It is; in fact, it is the only method we use.

10 Q. Did you also at the same time perforate the coupons which were detached from said bonds, being coupons Nos. 34 to 40 inclusive?

A. We did.

Q. The coupons which had fallen due prior to January 1, 1921, you stated were destroyed by incineration?

A. Yes, they were cremated.

Q. Have you any proof of that destruction with you?

A. Yes, I have; this is our only copy of this, though, that I have.

20 Q. The incineration certificate which has been offered and marked Exhibit R6 for the respondent, is the certificate which was executed by your company showing the destruction by burning of the coupons on those bonds which fell due prior to January 1, 1921?

A. Covers coupons Nos. 1 to 33 on each bond, yes.

30 Q. After these bonds and the coupons which fell due on January 1, 1921, and subsequent dates, had been cancelled, as you have described, what did you then do with them?

A. On the 22nd of December, I returned them to the Peoples' Water Company and wrote a letter for the attention of Mr. Hodge; here is a copy of it, if you want that—showing that I sent him the cancelled bonds and the certificate of incineration as well as the executed satisfaction piece; I think that is what you call it, a satisfaction piece.

William H. Conger, Jr.—Direct

Q. I show you a letter dated December 22, 1920, addressed to the Peoples' Water Company, attention of Mr. Hodge, and signed by you as assistant trust officer of the West End Trust Company?

A. Yes.

Q. And ask you if that is the letter which you wrote to the Peoples' Water Company in regard to the satisfaction of the mortgage and the cancellation of the bonds in question and the return of said bonds to the Peoples' Water Company?

10

A. It is.

Q. And the signature on said letter is your signature?

A. It is not my signature; it was signed for me in my department; it was my letter.

(Said letter is marked Exhibit R9 for respondents.)

Q. After those bonds secured by the \$150,000 mortgage had been returned, as set forth in the letter of December 22, did you then have any further negotiations with the Peoples' Water Company in regard to the mortgage of 1901?

20

A. Yes, Mr. Hodge came over to see me and informed me that we had never satisfied the original mortgage of \$100,000 dated May 1, 1901. I went to my records and found that my records were marked closed and ended, and the matter was entirely cleared from the books, but upon looking into the papers, getting out the old papers, we found the original cremation certificate, executed back in 1904, I think about June, by Mr. Wolbert, who was still connected with us as vice-president and treasurer.

30

Q. I show you the cremation certificate which has been offered and marked Exhibit R4 for respondent,

and ask you if that is the certificate to which you refer?

A. That is, and following that we then executed a satisfaction piece in order that the mortgage might be formally stricken from the record, ended and closed out of existence.

10 Q. The satisfaction piece which you stated was executed by your company to satisfy the mortgage dated May 1, 1901, is the satisfaction piece which was offered in this case and marked Exhibit R5 for the respondent?

A. Yes, that is correct.

Q. What is the date on which that satisfaction piece was executed?

A. December 29, 1920.

Q. And to your knowledge was a prothonotary's certificate attached thereto subsequent to that time?

A. I don't recall that, I can't say that; I would have to guide myself entirely by this.

20 Q. You had no personal knowledge?

A. No. Pardon me, I might say that I looked after the execution of this, as you can see by my signature; it was executed by the other officers guided by my own witnessing.

Q. Did you also then at the same time deliver to Mr. Hodge for the Peoples' Water Company the original mortgage dated May 1, 1901, in the sum of \$100,000?

A. I did, yes, sir.

30 Q. The mortgage which you so delivered is the one which was presented and marked Exhibit R4 for respondent?

A. Yes.

Q. You testified that at the time the bonds secured by the \$150,000 mortgage were cancelled and re-delivered to the Peoples' Water Company, there was executed on behalf of your company a satis-

faction piece covering said mortgage, the same having been executed on December 22, 1920?

A. Yes.

Q. I show you the satisfaction piece which has been offered and marked Exhibit R3 for the respondent, and ask you if that is the satisfaction piece covering the \$150,000 mortgage in question?

A. It is.

Q. I further ask you if that satisfaction piece was executed and delivered on the date which it bears, 10 December 22, 1920.

A. It was.

No cross-examination.

(The bonds numbered 1 to 150, heretofore offered in evidence are now marked as one exhibit, Exhibit R10 for respondent, and the coupons from said bonds which were offered are marked as one exhibit, Exhibit R11 for respondent.)

20

RESPONDENTS REST.

Mr. Starr: We have no testimony.

30

EXHIBITS.

EXHIBIT P1 FOR PROSECUTOR.

December 14, 1920.

The American Pipe & Construction Company,
112 North Broad Street,
Philadelphia, Pa.

10

Gentlemen:—

We hereby acknowledge receipt of \$10,000.00 of First Mortgage Bonds of this Company, Nos. 141 to 150 inclusive, of the denomination of \$1,000.00 each, with coupons due January 1st, 1921, et seq. attached, also \$140,000.00 of First Mortgage Bonds, Nos. 1 to 140 inclusive, of the denomination of \$1,000.00 each, with coupons due January 1st, 1921, et seq. attached.

20

All of these bonds have been turned over by you to this Company, at our request, in order to enable us to have cancelled of record the mortgage dated January 14th, 1904 created to secure the issue of the above mentioned bonds, it being necessary to cancel this mortgage in order that our plant may be turned over to the City of Millville, N. J., with which City we have a contract, as evidenced by our proposition to said City dated July 31st, 1920, and the acceptance of same by resolution of the Board of Commissioners of said City at a meeting held on August 27th, 1920, under which the City agrees to purchase our plant for the sum of \$125,000.00, and settle for the same on or before January 1st, 1921.

30

The above mentioned bonds are turned over to this Company by you, and received by us, with the distinct understanding that:—

First: The \$10,000.00 of bonds first above mentioned, which your Company owns, are to be paid at face value immediately this Company receives payment of the purchase price for our plant from the City of Millville. In the meantime this Company has issued to the American Pipe & Construction Company a demand note, dated December 14th, 1920, with interest, in the sum of \$10,000.00, which is to be held by your Company until the payment mentioned has been made.

Second: The \$140,000.00 of bonds have been heretofore held by the American Pipe & Construction Company as collateral security for notes issued by this Company for construction of our plant, and it is understood that the American Pipe & Construction Company is surrendering these bonds to our Company merely as an accommodation in order that the mortgage above referred to, may be cancelled of record for the reasons above stated.

It is also understood and agreed that as soon as settlement is made with the City of Millville on or before January 1st, 1921, this Company will pay over to the American Pipe Construction Company the entire proceeds from the sale of our plant to said City, less such expenses as our Company may have in connection with closing up its affairs, which payment, it is understood, will be accepted by the American Pipe & Construction Company as in full settlement for said \$10,000.00 of Bonds and the notes for which said \$140,000.00 of bonds have been heretofore held as collateral, the total amount of said notes being \$183,884.65; also as in full settlement for other notes aggregating \$235,274.04, issued to the American Pipe & Construction Company by our Company, from time to time, all of which notes the American Pipe & Construction Company is to surrender to the Peoples Water Company of Millville,

EXHIBIT R1 FOR RESPONDENT.

Mch 1, 1918

Resolution Number 261

A Resolution providing for the purchase by the City of Millville of all the real estate, personal property and works, and all the corporate rights, powers and franchise and privileges of the People's Water Company of Millville, N. J., for the price or sum
10 of one hundred and twenty-five thousand dollars (\$125,000.00) lawful money, and the allowance of certain delinquent taxes assessed against said company and its property in this city prior to the taxing year 1917.

WHEREAS, by section two of ordinance number 145 of the City of Millville it was ordained as follows:

20 "2 The Mayor and other members of the Board of Commissioners and the majority of them are hereby made, constituted and appointed agents of the City of Millville to negotiate, on the part of the City, an agreement with the owner or owners for the purchase of said real estate, personal property and works and all the corporate rights, powers, franchises and privileges of the said People's Water Company of Millville, N. J.; and the said agents are required and directed to use all reasonable means and endeavor
30 in good faith to come to an agreement as to the price and terms of the purchase thereof with the owner or owners of said real estate, personal property and works and corporate rights, powers, franchises and privileges aforesaid, and said agents shall proceed in said matter with all convenient diligence and despatch and shall make report in the premises within thirty days after this ordinance shall become effective, or as soon thereafter as conveniently may

Exhibits

be. In case the city can acquire said land and other property by agreement with the owner or owners, the Director of Revenue and Finance and the Treasurer are authorized and directed to pay to said owner or owners the agreed purchase price according to the terms of the agreement; and all further directions and proceedings for the acquisition of said property and franchises shall be by resolution, or further or supplementary or amendatory ordinance of the Board of Commissioners. The agents of the City hereinbefore appointed shall not enter into any final contract or agreement, on behalf of the city, for acquisition of said property and franchises without making report to, and being duly authorized by resolution or supplemental ordinance of the Board of Commissioners." 10

AND, WHEREAS, afterwards, on the thirtieth day of November, 1917, the Mayor and all other members of the Board of Commissioners, constituted and appointed agents of the City of Millville in and by said Section Two of said ordinance Number 145, submitted to the People's Water Company of Millville, N. J., mentined in said ordinance Number 145, a conditional proposal in writing for the purchase by the City of Millville of all the real estate, personal property and works and all the corporate rights, powers, franchises and privileges of said People's Water Company of Millville, N. J., a corporation of New Jersey, which conditional proposal is in the words and figures following, that is to say: 20

"To the People's Water Company of Millville, N. 30

J.

Gentlemen:

If your company, by appropriate corporate action, assented to by your bondholders, in consideration of the benefits to your company thereon arising, will grant to the City of Millville, the right, option and

privilege hereinafter outlined, the subscribers, Commissioners of the City of Millville, agents of the City in this behalf under the provisions of Section Two of Ordinance Number 145 of said City will by appropriate proceedings make report to the Board of Commissioners of such right, option and privilege with recommendation that said board do submit to the electors of said city, the question of the exercise of said option at a special election to be held for that purpose on or about May first, next, or at some other election if any shall be held within said time where said question may lawfully be submitted to the electors. The right, option and privilege which the subscribers ask your Company to grant to the City of Millville is as follows:

10 The City of Millville shall have the right, option and privilege of purchasing from your Company, all of the real estate, personal property and works, and all the corporate rights, powers, franchises and privileges of the People's Water Company of Millville, New Jersey, at any time before September 2nd, next, at the price hereinafter mentioned, provided that the City of Millville, by due corporate action, shall, on or before July 15th, next, by writing, under the Seal of the City, notify said People's Water Company, of Millville, New Jersey, that the City has elected to exercise such right, option and privilege of purchase of the aforesaid real estate, personal property and works, and all the corporate rights, powers, franchises and privileges of said Company.

20 And in case the City shall fail to give such notice of it's election to exercise said option, on or before July 15th, next, then said right, option and privilege of purchase is expired; and if within said time, to wit: on or before July 15th, next, the City shall give such notice of it's exercise of said option, then the sale shall be consummated, and settlement made on

30

September 1st, next, at twelve (12) O'clock, noon, at the Millville National Bank, Millville, New Jersey; or at an earlier date, or other place in Philadelphia, or New Jersey, at the option of the City, whereof, it shall give notice to the Company.

The price or consideration, at which the City shall have the right, option and privilege of purchasing said plant, as aforesaid, shall be (a) One Hundred Twenty-five Thousand Dollars (\$125,000.00) lawful money of the United States of America, which money shall be paid in cash, or by certified check, or certified City Warrant, to the order of the People's Water Company of Millville, New Jersey. 10

And (b) the satisfaction and cancellation of record by the City of Millville, of all taxes levied and assessed against said Company in the City of Millville, and remaining in arrears, and unpaid at the time of settlement, providing that the taxes for 1917 shall be paid by the Company, or allowance thereafter, made to the City in settlement. The said option shall provide that the title to the said real estate, personal property and works, and all the corporate right, powers, franchises and privileges of said Company, shall be free and clear of all incumbrances, excepting the aforesaid taxes, and shall be conveyed by good and sufficient deed or deeds of conveyance, with full covenants of warranty. 20

Included in said deed or deeds of conveyance, shall be: (1) a surrender of the contract with the City of Millville, existing under the provisions or ordinance No. 73, and (2) a general release to the City, against all claims and demands whatsoever, except such claims as shall have arisen at the time of settlement for water service supplied to the City of Millville, by the Company, under contract, from and after November 1st, 1917; settlement for which service shall be made by the City under the terms 30

of the contract, as a transaction entirely separate and apart from the purchase of the plant, property and franchises, as aforesaid, upon an exercise of said option.

AND WHEREAS, the said People's Water Company of Millville, New Jersey, has accepted said conditional proposal, and thereby, has granted to the City of Millville, the option of said conditional proposal mentioned, as appears by a resolution of
10 the Board of Directors of said Corporation, a certified copy of which was transmitted by said Company to the City of Millville, and is now on file with the City Clerk, and which resolution reads as follows, viz:

Resolved—that the right, option and privilege of purchasing the property of this Company is hereby given to the Commissioners of the City of Millville New Jersey, under the terms outlined by said Commissioners in their communication to this Company, dated, November 30th,
20 1917.

Further resolved—that said communication from the Commissioners of the City of Millville, be filed with, and form a part of the Minutes of this meeting.

AND WHEREAS, afterward, the Mayor and all other members of the Board of Commissioners, agents of the City, as aforesaid, in that behalf, did make report in writing to the Board of Commissioners of the City of Millville, on the seventh day of
30 December, 1917, to the effect that after numerous interviews and negotiations, the said agents had procured from the People's Water Company of Millville New Jersey, an option for the purchase of all the real estate, personal property and works, and all the corporate rights, powers, franchises and privileges of the People's Water Company of Mill-

ville, New Jersey, upon the terms stated in the conditional proposal, and acceptance hereinbefore, in this resolution, recited and set forth. And recommending that the Board of Commissioners of the City of Millville, do, by appropriate proceedings, submit to the electors of the City of Millville, on or before May 1st, next, the question whether the City of Millville shall exercise the aforesaid option and privilege of purchase.

AND WHEREAS, the Board of Commissioners of the City of Millville has made careful investigation, and given due consideration of the matter of the purchase of the aforesaid property, works and franchises, upon the terms stated in the said conditional proposal, and acceptance, and the said Board believes that it is for the best interest of the City of Millville, and it's inhabitants, and tax payers, that the City do exercise said right, option and privilege of purchase, and do acquire the said property, works and franchises for the price or consideration specified in said option, but the said Board of Commissioners has decided that a question of such importance to the public, ought to be submitted to the qualified electors of the City for their determination.

Therefore—Resolved by the Board of Commissioners of the City of Millville. (1) That the City of Millville doth elect to exercise and shall exercise it's aforesaid right, option and privilege of purchase, of all of the aforesaid real estate, personal property and works, and all of the corporate rights, powers, franchises, and privileges of the People's Water Company, of Millville, New Jersey, a corporation of New Jersey, upon the precise terms and conditions, and for the price or consideration in said option, set forth and declared. (2) That immediately after the adoption of this resolution by the electors of the City, and on or before July 15th, 1918, the

Mayor shall notify the People's Water Company of Millville, New Jersey, by writing, under the seal of the City attested by the Clerk, that the City of Millville has elected to exercise said option, and shall transmit to said Company, a certified copy of this resolution.

10 That the bonds of the City of Millville provided for by said ordinance No. 145, and the ordinances supplemental thereto, and amendatory thereof, shall be issued and sold at public sale according to law, forthwith, after the adoption by the electors of this resolution, in the sum of One Hundred Twenty-five Thousand Dollars (\$125,000.00) or so much thereof, as shall be necessary. And the proceeds of the sale of said bonds shall be applied towards payment of the purchase price of all the aforesaid real estate, personal property and works, and all the rights, powers, franchises and privileges of said Company.

20 All other, or further proceedings necessary for the consummation of the purchase of said property and franchises, and the issue of said bonds shall be had by resolution or by ordinances supplemental to said ordinance No. 145.

30 (3) This resolution shall go into effect immediately, but its provisions, except as to the referendum herein contained, shall remain inoperative until, and unless a majority of the qualified electors voting thereon, shall vote in favor thereof, at the special election herein as mentioned; and the question of the adoption of this resolution, shall be, and hereby is submitted by the Board of Commissioners, of its own motion, to the qualified electors of the City of Millville, at a special election which is hereby called, and shall be held in said City on Tuesday, the 30th day of April, next, and notice of said special election shall be given, and said election shall be held, and the returns thereof made, canvassed and cer-

tified by the proper officers in the manner provided by law.

The expense of said special election shall be paid from the appropriation for special elections heretofore provided in the local budget, and taxing resolution for the current fiscal year.

Adopted by the Board of Commissioners of the City of Millville, the first day of March, 1918.

(SIGNED)

THOMAS WHITAKER Mayor. 10
HILBERT J. SIMMERMAN
SAMUEL D. BENNETT
WALTER S. KATES
LEWIS S. KURTZ

ATTEST:

JOHN S. HORTON.
Clerk.

(Exhibit R2, see Testimony, p. 19.)
(Exhibit R3, see Testimony, p. 21.)
(Exhibit R4, see Testimony, p. 25.)
(Exhibit R5, see Testimony, p. 26.)

20

EXHIBIT R6 FOR RESPONDENT.

This is to certify that at Philadelphia, Pennsylvania, December 22, 1920, the undersigned witnessed the incineration of coupons Nos. 1 to 33 inclusive from Bonds Nos. 1 to 150 et seq, being all of the matured coupons from the entire issue of \$150,000.00 of First Mortgage 5% Bonds of the Peoples Water

30

Exhibits

Company of Millville, New Jersey, dated January 1st, 1904.

Thomas Evans
Edward W. Stille

State of Pennsylvania }
County of Philadelphia } ss

10 Thomas Evans and Edward W. Stille both of the City of Philadelphia, being sworn according to law, depose and say that they did in the presence of each other incinerate and destroy on the 22 day of December, A. D., 1920, coupons from the First Mortgage Bonds of the Peoples Water Company of Millville, New Jersey, as set forth in the above statement further deponents saith not.

Thomas Evans
Edward W. Stille

Sworn and subscribed to
before me this 22 day of December, A. D., 1920

20 Frank N. Jardine
Notary Public
Commission Expires March 23, 1921.

EXHIBIT R7 FOR RESPONDENT.

CREMATION CERTIFICATE.

30 THIS IS TO CERTIFY, that we the undersigned have this day in the presence of each other, DESTROYED the following described securities BY BURNING THE SAME TO ASHES.
100 Bonds No 1 to 100 both inclusive of the Peoples Water Co. of Millville N. J. Issued under Mortgage dated May 1st 1901 and recorded in Cumberland

Exhibits

Co BK 66—P 256 &c. and all coupons therewith
being all coupons issued with the Bonds.

The West End Trust & Safe Deposit Co.

Chas E. Wolbert

Treas.

Dated Broad St. and So Penn Square

Philada., this Sixth

day of June 1904

Witness to all signatures,

Robert L. Morgan

10

EXHIBIT R8 FOR RESPONDENT.

Certified copy of the Resolution adopted by the
Board of Directors of the Peoples Water Company
of Millville, N. J., at a meeting held on December
14th, 1920.

RESOLVED: That the officers be and they here- 20
by are, authorized and directed to deliver to the
West End Trust Company, Trustee under the First
Mortgage of this Company dated January 1st, 1904
for cancellation, the \$150,000. of First Mortgage 5%
bonds of this Company, being all of the bonds au-
thorized by said mortgage, together with coupons
No's 1 to 40 both inclusive, being all the coupons
originally attached to said bonds.

BE IT FURTHER RESOLVED: That the West
End Trust Company, Trustee, be and it is hereby re- 30
quested to satisfy said Mortgage dated January 1,
1904, and cancel the bonds and coupons issued there-
under and deliver the satisfied mortgage and can-
celled bonds and coupons to the Treasurer of this
Company.

I, H. Bayard Hodge, do hereby certify that the
foregoing is a true and correct copy of the Resolu-

Exhibits

tion adopted by the Board of Directors of the Peoples Water Company of Millville, N. J. at a meeting held on December 14th, 1920.

H. Bayard Hodge
Secretary

EXHIBIT R9 FOR RESPONDENT.

10

WEST END TRUST COMPANY
Broad St. & South Penn Square.

Charles B. Dunn,
President

William L. Nevin,
Vice-president

Charles E. Wolbert,
Vice-pres. Treas. and Secy.

John M. Strong,
Trust Officer

20

Robert L. Morgan,
Asst. Treas. and Asst. Secy.

William H. Conger, Jr.,
Asst. Trust Officer

Samuel L. Hayes,
Asst. Treas. and Asst. Secy.

Francis T. Reinhart,
Asst. Treas. and Asst. Secy.

Philadelphia, December 22, 1920.

30

Peoples Water Company,
114 North Broad Street,
Philadelphia, Penna.

Attention Mr. Hodge.

Gentlemen:—

In the matter of satisfaction of mortgage of the Peoples Water Company, I am enclosing herewith cancelled bonds Nos. 1 to 150 for one thousand Dol-

lars each; also cancelled coupons covering January 1921, July 1921, January 1922, July 1922, January 1923, July 1923 and January 1924.

We also enclose two copies of the incineration certificate covering coupons Nos. 1 to 33 inclusive duly acknowledged.

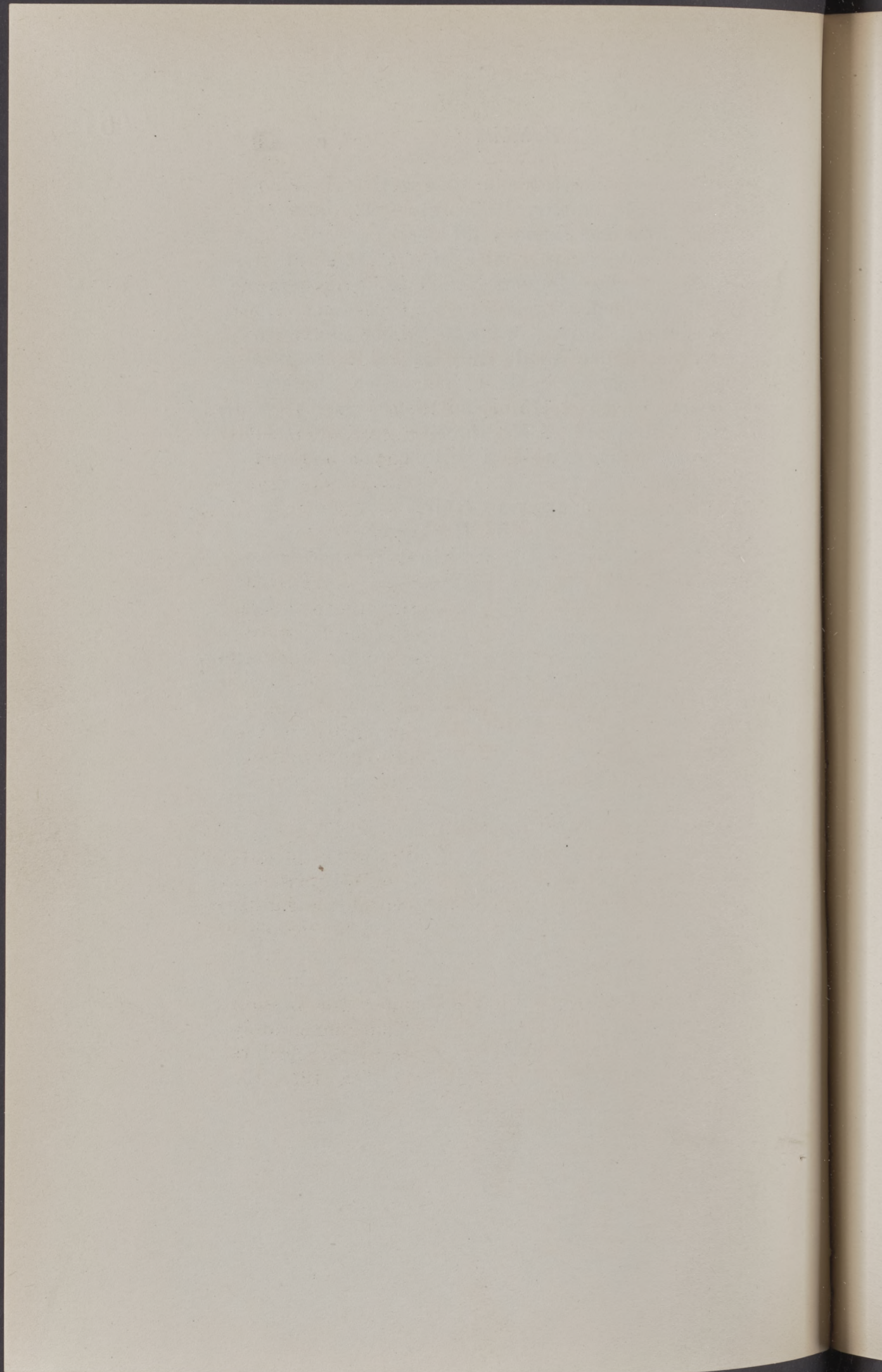
Also enclosed find an order to satisfy mortgage covering the above bonds duly executed by this Company as recorded in the Clerk's office, Cumberland County book No. 115 of chattel mortgage page 314, etc.; also a bill of Mr. Jardine, care of West End Trust Company, which I will ask you to remit to him direct. 10

Yours very truly,
W. H. Conger, Jr.,
Assistant Trust Officer.
Per

E:K
Encs.

20

30



OPINION.

(Filed June 8, 1921.)

NEW JERSEY SUPREME COURT.

February Term, 1921.

10

WILLIAM P. ADAMS,
Prosecutor, }
vs. }
JOHN T. HORTON, *et al.*,
Defendants. }

20

Two writs of certiorari involving contract and bond issue of the City of Millville.

Argued February Term, 1921.

Decided June Term, 1921.

LEWIS STARR, For Prosecutor.

LOUIS H. MILLER, For City of Millville.

J. FITHIAN TATEM, For Peoples' Water Co.

Argued before TRENCHARD, MINTURN and KALISCH,
J. J.

30

PER CURIAM:

These cases were argued together, one being a certiorari to review a contract, and the other being a certiorari to review a bond issue of the City of Millville. It was conceded at the argument that the bond

issue could not be sustained and upon motion of the solicitor of the city the proceedings involving that question were discontinued. The other question involved motions to dismiss, and the controversy is reduced to the question of the validity of proceedings and resolutions upon the part of the City of Millville to purchase the Peoples' Water Company. That question in turn depends largely upon whether or not a certain ordinance known as Ordinance 145
10 passed in 1916, was actually in existence and operative, and thus legally presented a foundation for the proceedings to purchase the water works. We think that this ordinance presented a basis for the municipal action taken. By Section 1 it provides that it is hereby determined that the City of Millville shall acquire forthwith, for public use, the Peoples' Water Company. By Section 2 the Mayor and members of the board of commissioners were constituted
20 agents to negotiate on the part of the city an agreement for the purchase. Said agents were required to use all reasonable means to reach an agreement with all convenient speed and report the result within thirty days after the ordinance became effective or as soon thereafter as conveniently may be. Section 3 provides that if the city cannot acquire the property by agreement, it shall proceed to condemn the same. It appears that the city endeavored to agree and apparently could not reach an agreement, and then finally in the summer of 1920, its official
30 received an offer from the Peoples' Water Company offering to sell the plant to the city for \$125,000. The city thereupon passed a resolution accepting that proposition, contingent upon favorable action to that effect upon a referendum to the voters to be submitted in November, 1920.

The resolution expressly provided that it should take effect only if and when such favorable action was taken by the people. In November at the general election the matter was submitted to the people. They voted favorably, and we may fairly say in that situation that as against the prosecutor of this writ, the favorable vote of the people automatically resulted in a contract between the city and the Peoples' Water Company.

The prosecutor of this writ, who is a taxpayer, complains that before the contract could spring into existence there must have been as a condition precedent a meeting of the minds; and that there was no such meeting of the minds, as he contends, certain notices were not given to the Peoples' Water Company by the city counsel to effectuate the result. It may be that the Peoples' Water Company might so contend, and that the city might also assume that position, but as a fact neither of them occupies that mental status so that we may therefore assume that this contract sprang into existence early in November, 1920, as the result of the referendum. But we think the conclusive point which is dispositive of this contention, is that there was laches upon the part of the prosecutor in contesting the matter. It was open to him to apply for a writ in the summer of 1920 to review the validity of the resolution, which was a public proceeding of which he must have been cognizant. It was also open to him to apply for his writ upon the favorable action of the voters in November, 1920, and this he failed to do in either instance. He waited until December 30th, or 31st, and then obtained this writ with the result that an entire proceeding of a public nature involving a large financial expenditure is delayed, not in its incipiency, but at a time when after labor and expense and a

possible change of the legal rights of the parties, properties, and securities involved, and upon the threshold of its execution have created at least equities, which it is too late now to disturb in the public interest. In such a situation the law requires diligence and not inaction if a party seeks to challenge the legality of a proceeding involving a public interest.

- 10 McKevitt vs. Hoboken, 16 Vr. 482;
 McGurty vs. Newark, 100 Atl. 849;
 Street Impt. Assn. vs. Ocean City, Id. 568;
 Carver vs. Camden, 49 Vr. 293;
 Lindabury vs. Clinton Township, 93 L. 96.

This conclusion must result in a dismissal of the writ upon which argument was heard, with costs, and such will be the order.

20

30

ORDER.

(Filed June 15, 1921.)

NEW JERSEY SUPREME COURT.

WILLIAM P. ADAMS,
Prosecutor,

vs.

JOHN S. HORTON, Clerk of
the City of Millville, the
CITY OF MILLVILLE and
the PEOPLES' WATER COM-
PANY OF MILLVILLE, N. J.,

*Defendants in
Certiorari.*

On Certiorari.
(Case No. 1—
Contract.)

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The defendant, John S. Horton, clerk of the City of Millville, having made return to the writ of certiorari herein, certifying a certain contract and agreement made between the City of Millville by its Board of Commissioners and the Peoples' Water Company of Millville, New Jersey for the acquisition by the City of Millville of the water works of said Peoples' Water Company as by the writ of certiorari and return herein reference being thereto had will more particularly appear; and this cause having been brought on for argument before the Court, in the presence of the counsel of the respective parties; and the Court having read and consid-

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ered the depositions taken herein; and the argument of counsel thereon having been heard and considered by the Court; and it appearing to the Court that the proceedings removed by the said writ of certiorari are lawful, and also, that the prosecutor was in laches in prosecuting his said writ of certiorari, and no good cause being shown or appearing to the contrary:

10 It is on this fifteenth day of June, 1921, on motion of Louis H. Miller, attorney of the City of Millville and J. Fithian Tatem, attorney of Peoples' Water Company of Millville, New Jersey, Ordered that the said writ of certiorari be and the same hereby is dismissed, with costs of the defendants to be taxed.

Entered this fifteenth day of June, 1921, on motion of

20 LOUIS H. MILLER,
*Attorney of Defendants, City
of Millville, and John S.
Horton, City Clerk.*

J. FITHIAN TATEM,
*Attorney of Defendant, Peo-
ples' Water Company of
Millville, N. J.*

REASONS FOR REVERSALS.

(Filed Aug. 1, 1921.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

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WILLIAM P. ADAMS, <i>et al.</i> , <i>Prosecutor-Appellant</i> , vs. JOHN S. HORTON, City Clerk of City of Millville, CITY OF MILLVILLE, and PEO- PLES' WATER COMPANY OF MILLVILLE, <i>Respondents.</i>	}	On Appeal from Supreme Court. Reasons for Reversal.
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The appellants above named, by Lewis Starr, their attorney, urge the following reasons for the reversal of an order entered in the Supreme Court on June 15, 1921, in the above entitled cause, dismissing the writ of certiorari allowed therein with costs.

1. In the record and proceedings aforesaid, and also in the giving of judgment in the Supreme Court, there is a manifest error in this, to wit: that it appears by the record aforesaid, that the writ of certiorari issued out of the said Court in the said cause, was dismissed, whereas the said Supreme Court should not have dismissed said writ, but should 30

have reversed the proceedings of the commissioners of Millville, removed by said writ, and set aside and vacated the contract and agreement between the City of Millville and the Peoples' Water Company, for the acquisition of the water works, property and franchise of the latter corporation.

2. Because the Supreme Court dismissed said writ of certiorari for the reasons stated, whereas the said
10 Supreme Court should have retained said writ, and on the record and proceedings before it, reversed the proceedings of the commissioners of the City of Millville, and set aside the contract as aforesaid.

3. Because the said Supreme Court decided that the proceedings removed by the said writ of certiorari were lawful, whereas the same were unlawful, and they should have been reversed.

20 4. Because upon the record and proceedings before the said Supreme Court, the latter should have decided that the contract and agreement between the City of Millville and the Peoples' Water Company of Millville, for the acquisition by the City of Millville of the water works, property and franchise of the Peoples' Water Company, should for the reasons alleged in the said Supreme Court be set aside, annulled, and decreed to be for nothing holden, because:

30 (a) The said contract and agreement was made by and between the parties thereto without any sufficient legal power and authority, either by legislative or municipal action.

(b) The said contract was *ultra vires* the City of Millville.

(c) The commissioners of the City of Millville did not possess any legal power or authority to enter into the contract.

(d) Ordinance No. 145, as adopted by the commissioners of Millville on December 31, 1915, does not constitute any sufficient legal authority or power to authorize the commissioners of Millville to enter into the contract with Peoples' Water Company.

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(e) The power and authority of the commissioners of Millville to enter into the said contract with the Peoples' Water Company, cannot be predicated or based upon ordinance No. 145, because the power and authority conferred thereby became exhausted when the proceedings instituted thereunder, failed to result in the purchase of the water works as contemplated by the terms thereof by the refusal of the voters of Millville to approve of said purchase as expressed at the election held April 13, 1918.

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(f) The commissioners of Millville did not possess any power or authority, legislative or municipal, to resume negotiations with the Peoples' Water Company in 1920, which resulted in the passage of Resolution No. 360, because there was no valid or subsisting ordinance in existence authorizing the purchase of the water works by the Peoples' Water Company.

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(g) Said resolution No. 360, adopted August 27, 1920, is insufficient in law to authorize and empower the commissioners to enter into the contract or agreement for the purchase of said water works.

(h) At the time of the making of the contract and agreement between the City of Millville and the said Peoples' Water Company, the city had no funds in hand with which to pay the contract price and no bonds had been issued, the proceeds of which could be used for the purpose of paying the contract price.

10 (i) The method adopted by the city to raise funds to pay the contract price was improper and illegal, because the power conferred by ordinance 145 had been exhausted and could not be exercised when the resolution for the issue of bonds was adopted.

(j) The bonds could not be lawfully issued pursuant to the terms of ordinance 152, adopted August 18, 1916.

20 5. That the said Supreme Court erred in holding that the prosecutor was in laches in prosecuting his writ of certiorari.

LEWIS STARR,
Attorney for Appellant.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

NOVEMBER TERM, 1921.

THE STATE, WILLIAM P.
ADAMS, *et als.*,
Prosecutors-Appellants,
vs.

JOHN S. HORTON, Clerk of
the City of Millville, THE
CITY OF MILLVILLE, and
the PEOPLE'S WATER COM-
PANY OF MILLVILLE, NEW
JERSEY,
Respondents.

} On Appeal from the
Supreme Court.

BRIEF ON BEHALF OF PROSECUTORS.

STATEMENT OF CASES.

This appeal brings up the judgment of the Supreme Court, entered June 15, 1921, dismissing the writ of certiorari issued upon the application of the prosecutors, to remove a contract made between the City of Millville and the People's Water Company, with respect to the acquisition by the former, of the latter's water works (C. p. 167).

The soundness of the decision of the Supreme Court in dismissing the writ, for the reasons set

forth in a *per curiam* opinion (C. p. 163) is involved on this appeal.

As appears by the opinion of the Supreme Court (C. p. 163, l. 33), two writs of certiorari were issued, one to review the contract and the other to review a bond issue. These cases were argued together and it being conceded by the respondents that the bond issue could not be sustained, the proceedings involving the same were discontinued.

It is because of the issue of these two writs that the printed case used on this argument includes matter relevant to the bond issue, but such irrelevant matter has been eliminated from the case.

GROUND OF APPEAL.

The grounds urged for the reversal of the action of the Supreme Court, are set forth in the reasons for reversal (C. p. 169, *et seq.*).

STATEMENT OF FACTS AND CHRONOLOGICAL HISTORY.

The City of Millville adopted the provisions of the Walsh Act of 1911 and the governing body of the municipality is a Board of Commissioners (C. p. 82, l. 18).

By supplement to the city charter, approved March 27, 1873, P. L. of that year, p. 446, the city authorized to issue bonds to an amount not exceeding \$75,000 to supply the city with water, said supplement containing the following: "Provided

“that council shall take no action, either in the issuing of bonds or building of water works until the same shall, either at a general or special election, have been approved of by the citizens of said city.”

Millville adopted the provisions of the General Water Act of 1876, 1 Comp. St., 823, which provided that any municipality may purchase the water plant of any company owning water works within the city. Authority is conferred to borrow any sum not exceeding \$1,500,000, for the purpose of defraying the cost thereof. While this act may have repealed the limitation imposed by the city charter as to the maximum of bonds to be issued, it did not modify the express condition of the charter, that no bonds should be issued without the approval of the voters (C. p. 82, l. 20).

On December 31, 1915, the Commissioners adopted Ordinance No. 145, by the provisions of which, it was declared that the city acquire, forthwith, for public use, the water works, &c., of the People's Water Company. The ordinance constituted the Commissioners agents, on behalf of the city, to negotiate an agreement with the owners for the acquisition of the property, with a provision that they should, as such agents, “proceed in said matter with all convenient diligence and dispatch, and shall make report in the premises within thirty days after this ordinance shall become effective, or as soon thereafter as conveniently may be” (C. p. 45).

The ordinance also provided that in case the city could acquire the plant by agreement, the director of revenue and finance and treasurer were authorized to pay the agreed price, according to the terms of the agreement, with the reservation that the Com-

missioners should not enter into any final contract for such acquisition without making report to and being duly authorized by resolution or supplemental ordinance.

Section 4 of the ordinance provided for an issue of bonds not exceeding \$126,000 to pay the purchase price, or the award, in case condemnation proceedings might become necessary.

The ordinance also provided that the bonds should be issued under the General Water Act of 1876, as above referred to.

After Ordinance 145 was passed, the same was certiorated to the Supreme Court, where the validity thereof was sustained, and the judgment of the Supreme Court was affirmed by the Court of Errors, *Wood vs. Millville*, 89 L. 646. Such decision, however does not, in any way, effect the questions arising under the writ of certiorari which are the subject-matter of this litigation.

After the adoption of Ordinance 145, the Legislature, in 1916, enacted what is known as the Pierson Act, prescribing certain conditions and requirements with reference to the issue of municipal obligations and Millville, in order to comply with the terms of such Act, on August 18, 1916, passed a supplement to Ordinance 145, known as Ordinance 152, which supplemental ordinance provided that the bonds to be issued under Ordinance 145, should be dated August 1, 1916, run for thirty years and be sold according to the provisions of Section 6 of the Pierson Act (C. p. 53).

Pursuant to the terms of Ordinance 145, and on March 1, 1918, the Commissioners passed Resolution No. 261, which, after reciting the said ordinance, referred to an option obtained by the city to purchase the plant of the People's Water Company at

any time before September 2nd, then next, for \$125,000, declared that the option be exercised and bonds to the amount of \$125,000 be issued under the provisions of said ordinance, provided the proposition be submitted to the voters and approved by the majority thereof at a special election (C. p. 24).

This referendum was required under the provisions of the city charter above mentioned.

On April 30, 1918, a special election was held in accordance with Resolution 261, and 663 votes were cast in favor of the purchase and 818 against the same. Thereupon, all negotiations to acquire the water plant, authorized by Ordinance 145, terminated (C. p. 82, l. 27).

Nothing was done respecting the purchase of the plant of the People's Water Co. for over three years after the unfavorable election.

On August 27, 1920, the Commissioners adopted Resolution No. 360, which recited a communication addressed by the People's Water Company to the Commissioners, dated July 31, 1920, offering to sell the plant to the city for \$125,000, the cancellation of certain taxes and the relinquishment of certain claims which the company had been asserting against the municipality. The resolution recited the desire of the Commissioners that the offer be accepted and that the matter be submitted to the voters for rejection or approval. The resolution then provided that the offer of the company be accepted and the Mayor was authorized forthwith, upon the resolution becoming operative, to deliver to the water company a writing authenticated by the seal of the city, attested by the clerk, accompanied by a copy of the resolution notifying the company of the acceptance of the proposal. The resolution also provided that to pay for the plant, bonds should

be issued under the provisions of Ordinance 145, and the ordinance supplemental thereto. It was then declared that the Commissioners, of their own motion, under the authority of Section 17, of the Walsh Act, submit the resolution to the electors, for adoption or rejection, at the general election of 1920, and that the question be submitted in the form as provided in Article 13 of the general election law of 1920. The last paragraph of the resolution is as follows: "The provisions of this resolution shall remain inoperative until and unless the electors shall vote to adopt the same at the election to be held as aforesaid, and in case the same shall then be adopted, the provisions thereof shall immediately be of full force and effect, provided that Sections 3 and 4 (which referred to the referendum) shall be effective immediately upon the adoption of this resolution by the Board of Commissioners" (C. p. 5).

An election was held under the provisions of this resolution on November 2, 1920, and 2711 votes were cast in favor and 1296 votes against the adoption of the resolution (C. p. 20). The question was submitted to the voters in the following term: "Shall the resolution of the Board of Commissioners of the City of Millville, known as Resolution No. 360, providing for the purchase by the City of Millville of the entire plant of the People's Water Company of Millville, N. J., be adopted?" (C. p. 19, l. 15.)

After the election had been held, the Board of Commissioners, by resolution, directed the city clerk to notify the water company of the result thereof. The city, however, did not deliver to the water company the formal acceptance, under the seal of the city, attested by the clerk and signed by the Mayor, as provided by Section 1 of Resolution 360, but, on

the other hand apparently assuming that the submission of the offer by the water company, dated July 31, 1920, the adoption of Resolution 360 and the favorable result of the election, constituted an obligation on the part of the city to buy and the water company to sell. The Commissioners started proceedings for the issue of bonds to pay for the plant (C. p. 33, l. 26).

On December 10, 1920, a resolution was adopted authorizing the advertisement for sealed proposals for said bonds, to be received by the Commissioners on Friday, December 31, 1920, at 3. 30 P. M. (C. p. 61, l. 32). This resolution provided that the bonds should be sold and issued under the terms of Ordinance 145 and should be dated December 1, 1915, and bear interest at five per cent. per annum. The resolution did not make any provision for the sale or issue of bonds under the terms of Ordinance 152, or comply in any way with the requirements of the Pierson Act (C. p. 63, l. 20).

The writ of certiorari was allowed on December 30, 1920. The writ in case No. 1 required the removal of any contract or agreement between the city and the People's Water Company for the acquisition of the plant and the writ in case No. 2 removed the resolution for the sale and issue of bonds.

The prosecutors are taxpayers, freeholders and residents of Millville.

ARGUMENT.

FIRST.

No proper legislative or municipal power was possessed by the Commissioners to enter into any

contract for the purchase of the water plant, at the time the same was attempted to be made, for the reason that the authority conferred by Ordinance 145 had become exhausted and could not be then exercised.

It is perfectly manifest that the purpose of Ordinance 145 was for the then immediate negotiation, between the City Commissioners and the People's Water Company, for the acquisition of the plant. This is not only shown by the express language of the ordinance, that the property be acquired forthwith, and the positive requirement that the Commissioners, as the agents of the city, should make report of the result of their efforts within thirty days after the adoption of the ordinance or as soon as conveniently might be thereafter, but also the proceedings which the city initiated to submit the question to the voters almost immediately after the validity of the ordinance had been established by the Court of Errors' decision. As the vote was adverse to the proposition when the election was held in 1918, the whole matter ended and it was assumed by all concerned in the transaction that the purpose of the ordinance had been fulfilled and the matter was ended.

There is nothing contained in Ordinance 145 to indicate that the power and authority to buy the plant and issue bonds was a continuing one and might be exercised indefinitely thereafter, regardless of time.

Apparently, by the supplement to the city charter no bonds could be issued without the approval of the voters and when such approval was withheld, it was perfectly obvious that the power and authority conferred by Ordinance 145 had completely and absolutely terminated.

Therefore, it is equally manifest that when the Commissioners attempted, in the summer of 1920, nearly five years after the ordinance had been adopted, to negotiate for the purchase of the plant and issue bonds therefor, the authority so to do cannot be properly predicated upon Ordinance 145.

Resolution 360, which is the one creating the obligation to buy, in express terms provided that the bonds, to pay for the plant, should be issued under the provisions of 145 and supplemental ordinance. There is no pretense, therefore, that the power to buy and issue bonds therefor is claimed to exist under any municipal sanction other than Ordinance 145. We have been unable to discover any legislative grant of municipal power which would authorize the acquisition of water works and to issue bonds for the payment thereof, except by an ordinance.

We contend that Resolution 360, in itself, independently of any support conferred by a valid and subsisting ordinance, would be insufficient to authorize the purchase of the plant or the creation of bonds.

The authority possessed by the Commissioners to act as municipal agents must be construed in accordance with the general principle respecting agency.

Manifestly the authority of an agent to perform an act in a particular manner and within a definite period of time, cannot possibly be construed so as to be executed without limitation as to time. In such circumstances the power to act is not a continuing one.

See 2 C. J. 527.

SECOND.

At the time the contract and agreement was attempted to be made between the Commissioners and

the People's Water Company and when the former incurred the obligation to buy the latter's plant, no fund or sum of money had been appropriated or was in possession of the city with which to pay for the same and no bonds had been issued or legally authorized.

Section 31 of the Crimes Act, 2 Comp. St., 754, prohibits the governing body of any municipality from incurring any obligations "in excess of the appropriation and limit of expenditure provided by law "for the purposes respectively of any such board "or committee, thus disbursing, ordering or voting "for the disbursement and expenditure of public "moneys, or thus incurring obligations in excess of "the amount appropriated and limit of expenditure "as now or hereafter appropriated and limited by "law."

No appropriation, as such, has ever been made to Millville to provide funds to pay for the water works of the People's Water Company.

Assuming that Resolution 360 was an acceptance of the offer of the water company, which became operative when favorably approved by the voters, an agreement on the part of the city to buy was perfected, then, at once, a concurrent obligation to pay the purchase price was incurred. There is no pretense that, at that time, any money had been appropriated or the funds were in hand or bonds might or could be legally issued. If it be conceded that no appropriation had been made, but claimed that the authority conferred by Ordinance 145 and 152 to issue bonds for the purpose of paying for the plant, was sufficient to relieve the Commissioners from liability under the Crimes Act, then the power to issue such bonds under Ordinance 145 became vitally important and if the authority conferred by Ordinance

145 had become exhausted, there was no legal sanction for the issue of bonds, which would provide funds to carry out the obligation to pay \$125,000 for the water company.

It would seem, therefore, that any contract to buy and pay the purchase price without having the funds either appropriated, provided for or in hand, would constitute a violation of Section 31 above mentioned and make the contract null and void and acquire public policy.

Water Co. vs. Read, 50 Law, 665;

Siedler vs. Hudson, 39 Law, 632.

THIRD.

The Commissioners did not submit to the voters the question of purchasing the plant in the manner prescribed by law and the form in which the question was submitted was not in accordance with the statute.

The Commissioners declared, in Resolution 360, that they, of their own motion, submitted the question of the approval or rejection of the offer of the water company to the voters pursuant to the authority of Section 17 of the Walsh Act of 1911. This section provides that any ordinance or measure which the board or voters have authority to enact may, on the own motion of the board, be submitted to the electors for adoption or rejection, with the same force and effect as provided in the referendum provision of the Walsh Act.

Apparently the Walsh Act does not confer any authority to purchase water works.

Chapter 152 of the Laws of 1917, known as the Home Rule Act, in Art. 32, prescribes methods by which a municipality may secure a water supply.

The Legislature, by Chapter 116 of the Laws of 1919, amended Art. 32 above referred to by adding a new section known as Section 32, P. L. 1919, p. 277, which provides that the governing body of any municipality desiring to purchase water works, might, in its discretion, prior to making the purchase, submit the question to the voters by adopting a resolution for that purpose, which question should be submitted in substantially the following form: "Shall _____ of _____ (name of municipality) purchase the water system for public or private purposes of this municipality and its inhabitants?"

This act also authorized the municipality to issue bonds for the purpose of carrying out the terms of the contract, which bonds should be issued in conformity with the Pierson Act.

It will be observed that the Walsh Act expressly mentioned in Resolution 360 did not prescribe any particular form by which the question should be submitted. The Home Rule Act, as amended in 1919, did provide a special form, which was not followed in this particular instance.

Another amendment to the Home Rule Act was passed by the Legislature in 1920, Chapter 62, which provided a different method for the purchase of existing water works and required a referendum in case of request by ten per cent. of the legal voters. This latter legislation, however, only provides for a referendum in case of the filing of a petition by ten per cent. of the legal voters, while Chapter 116 of the Laws of 1919, p. 277, above referred to, expressly applies to an election submitted at the discretion of the governing body.

This Court, in *Wethling vs. Board of Commissioners*, 110 Atl. 133, in effect held that the provisions

of the Walsh Act, which deal with the subject-matter of referendum to voters, were superseded and repealed by the Home Rule Act to the extent that the latter referred to the same subject-matter. See also *Bayonne vs. Garven*, 41 N. J. L. J. 269.

It is apparent, therefore, that the question of the approval or rejection of the contract with the water company should have been submitted not under the Walsh Act, but under the Home Rule Act, which provides a specific form therefor which was not adhered to.

Resolution 360 also refers to Art. 13 of the General Election Law of 1920, page 682, which section provides that any public question which is to be submitted to the people shall be printed in a separate space at the foot of the ballot with proper instructions, but there is no particular form prescribed by which the question shall be submitted.

FOURTH.

The prosecutors were not in laches.

The basis of the opinion of the Supreme Court, holding that the prosecutors were guilty of laches, is the delay in an application to review the proceedings after the resolution of August 27, 1920, and before the general election in November of the same year, as well as the delay in applying for the writ after the voters, at a general election, had approved the purchase of the plant.

Resolution 360 was adopted August 27, 1920, and provided for a referendum at the general election of November 2nd of the same year.

The first section of the resolution was a conditional acceptance of the offer of the water company to

sell, and the Mayor was authorized and directed to sign and deliver to the latter forthwith, upon the resolution becoming operative, a writing authenticated by the seal of the city and attested by the clerk, notifying the water company that the city accepted its offer and proposal.

Section 2 provided for the issue of bonds. Section 3 provided for a referendum. Section 4 provided for a publicity program (C. p. 8, l. 27).

Section 5 was as follows:

“5. The provisions of this Resolution shall remain inoperative until and unless the Electors shall vote to adopt the same at the election to be held as aforesaid, and in case the same shall then be adopted, the provisions thereof shall immediately be of full force and effect; provided, that the provisions of section three and four shall be effective immediately upon the adoption of this resolution by the Board of Commissioners.”

It is manifest, from this situation, that two conditions precedent existed before the contract to purchase became effectual: First, a favorable result at the election, and second, the acceptance of the offer of the water company by document under the seal of the city, as provided by the first section of the resolution.

In advance of the creation of a contract, application for a writ of certiorari to remove the proceeding for the purpose of having the Supreme Court pass upon its validity, would have been premature. The only portions of the resolution of August 27, 1920, which became effective prior to the election, was that providing for a referendum, and, undoubtedly, if an application had been made for a writ, in

advance of the election, it would have been denied on the ground that the Court would not act so as to stay the election, but would only take cognizance of the validity of the proceedings after the referendum.

It is submitted, therefore, that no laches can be attributed to the prosecutors with respect to any matter which occurred prior to the general election of 1920, nor until after the 10th of December, when the Commissioners passed the bond resolution showing a determination to proceed with the purchase.

Naturally, also, prosecutors would not seem to be in laches, except as to any action which either the city or water company might, under ordinary and reasonable conditions, be expected to take after the approval of Resolution 360 by the referendum provided thereby, and before the writ was applied for.

We contend that no contract to purchase could reasonably be said to have been entered into between the respective parties, until after the election was held, and then only in case of a favorable vote, and upon a formal written acceptance under the seal of the city and the signature of the Mayor being delivered to the water company. The prosecutors had a right to assume that the municipal authorities would negotiate with the water company in accordance with the action taken by the municipal body.

On the other hand, however, the municipal authorities did not proceed as provided by the first section of Resolution 360.

No properly authenticated acceptance of the offer of the water company to sell was ever executed and delivered to the latter. The only action taken by the commissioners was a resolution authorizing the city clerk to notify the water company of the result of the election and this notification was acknowledged

by the water company, but neither of these communications in any way carried out or fulfilled the requirements of Section 1 as above set forth.

This accounts for the delay in the application for a writ to remove the contract, in advance of the adoption by the Commissioners on December 10, 1920, of a resolution for the sale and issue of bonds to purchase the plant under Ordinance 145. Consequently it cannot be successfully contended that the prosecutors were in laches covering the period from the date of the election, November 2nd to December 10th, when the bond resolution was adopted.

Manifestly the prosecutors had the right to rely upon compliance with the terms of Resolution 360, and until the making of the formal acceptance was brought to the attention of the prosecutors, they were not obliged to act. On the other hand, however, the municipal authorities, assuming that the original proposition made by the company to the city, together with the qualified acceptance thereof, contained in Resolution 360, and the favorable vote of the people, did constitute a binding contract to buy and sell, proceed at once, by resolution, to initiate proceedings for the sale and issue of bonds to carry out the proposition and when this action was taken, and the advertisements were being made, the prosecutors promptly applied for the writs, which were allowed prior to the time the proposals were to be submitted.

Great uncertainty existed as to the precise date when a binding and enforceable contract was entered into between the municipality and the water company, but to be on the safe side, and to act in harmony with the understanding of the Commissioners as to the situation, the prosecutor not only applied for a writ to question the validity of the

bond resolution, but also to remove any contract which may have become existent but not publicly disclosed.

We contend, therefore, that the prosecutors were not guilty of any laches in failing to apply for a writ with reference to the contract, in advance of the adoption of the bond resolution. Apparently this latter resolution did not constitute a contract between the city and the water company, and it was not until this writ was issued, return made and the testimony taken, that it was established that no formal acceptance by the city had ever been made.

The only matter urged to support the claim of laches after the bond resolution was adopted is the alleged cancellation of bonds of the water company to the amount of \$150,000, secured by mortgage covering the plant being acquired by the city, which bonds were surrendered after the bond resolution was adopted and before the writ in this case was applied for.

It is perfectly obvious that the prosecutors could not, under any circumstances, have anticipated that the bonds would be cancelled in advance of the time when settlement was to have been made and the water company paid the purchase price for its plant. The original proposition of the water company set forth in Resolution 360 provided for a settlement on or before January 1, 1921. No intimation was given that any steps would be taken with reference to such settlement before that time, in fact, the city did not initiate any proceedings to have the bonds sold before December 31, 1920, the day before settlement was to be made. Hence the prosecutors are not charged with knowledge or put upon inquiry that the water company or its bondholders would in any way substantially change their position before the city was in funds to complete the purchase.

Nevertheless contrary to all reasonable business practice, the bondholders voluntarily surrendered their bonds to the water company for cancellation, and the same were delivered to the West End Trust Company, trustee under the mortgage, and they were mutilated, the overdue and unpaid coupons cremated, the unpaid coupons cancelled, after which they were returned to the water company. Under no possible standard of business dealings, could the prosecutors have anticipated that the bondholders would proceed in this fashion.

It is also manifest that the owners of the bonds never intended that the latter should be cancelled in advance of the time when the city would be in funds to make settlement for the plant.

The American Pipe & Construction Company owns all of the bonds of the water company and practically ninety-nine per cent. of the stock. The officers of the two corporations are largely the same and an interlocking directorship exists. For all practical purposes, the two corporations are identical.

The receipt given by the water company to the pipe company, dated December 14, 1920, shows very clearly the terms under which the bonds were surrendered. This receipt does not give any consent, so far as the pipe company is concerned, to the cancellation or mutilation of the bonds, until such time as the municipality should be in funds to pay the purchase price, and settlement made with the water company.

It is stated, in the receipt, that the bonds were turned over so that the mortgage securing the same might be cancelled of record upon the settlement for the property on or before January 1, 1921. It was never intended, that either the bonds or the mortgage should be cancelled until such settlement

occurred. It was provided that ten thousand of the bonds should be paid at face value, immediately upon the water company receiving payment from the city, and meanwhile a demand note for the equal amount was given to the pipe company by the water company.

As to the balance of the bonds which were held as collateral by the pipe company, it was distinctly understood that they were surrendered as an accommodation in order that the mortgage might be cancelled of record at the time of the settlement, and that upon receipt of the purchase money by the company, it was agreed that the entire proceeds of the sale, less expense, should be paid to and accepted by the pipe company in full settlement of all claims and demands of the pipe company against the water company, amounting to over \$235,000.

The physical mutilation of the bonds was in direct violation of the understanding between the water company and the pipe company, for it is obvious that neither of these parties intended that the bonds were to be cancelled and the mortgage satisfied of record until the city was in funds to pay for the property and actually made settlement.

The predicament in which the pipe company, as the owner of the bonds, now finds itself, is the result, not because of any delay or laches on the part of the prosecutors, but for the reason that the water company acted in violation of its undertaking as shown by the receipt above referred to.

Furthermore, when this situation is thoroughly analyzed, it is absolutely apparent that no actual or substantial damage, harm or loss has resulted to either the water company or the pipe company.

The mortgage has not been actually cancelled. It is true that the trustee has executed a warrant to

cancel the mortgage, but this document has not been delivered beyond recall, nor filed or recorded in the county clerk's office and the mortgage remains unsatisfied of record.

The bonds, while surrendered and physically cancelled, as a matter of fact, are still subsisting obligations of the water company in favor of the pipe company. The actual mutilation of the bonds was in violation of the understanding, or occurred through a mistaken idea of the arrangement between the pipe company and the water company as to the necessity of having the bonds surrendered and cancelled in advance of the settlement. The bonds are owned by the pipe company and the pipe company controls the water company and, if necessary, the bonds can be reinstated and endorsed to show that they are not in fact paid or cancelled, or new bonds may be issued in substitution for the ones surrendered.

In these circumstances, therefore, it would be impossible for any person to successfully contend that the bonds had, in fact, been paid or the mortgage has, in fact, been cancelled and satisfied.

The prosecutors had a right to assume, even if they are charged with notice of the existence of the mortgage, by reason of it being recorded in the clerk's office, that the bonds would not be surrendered and the mortgage cancelled, until the city paid for the property. This could not, under any circumstances, be done until bonds were sold or funds otherwise obtained by the city.

The usual procedure in such cases would have been for the city to pay to the water company the purchase price of the property, and concurrently with the delivery of this fund, the bondholders would surrender their bonds to the trustee, who

would immediately discharge the lien of the mortgage and then disburse the proceeds of the sale to the holders of the bonds secured by the mortgage.

If the bondholders were to receive municipal obligations in exchange for their bonds, as is apparent from the fact that the water company intended to bid upon the sale of the bonds, such municipal bonds would be exchanged for the bonds of the water company, and the transaction would be closed at one time, contemporaneously with the surrender of the water company bonds and the cancellation of the mortgage.

Unless it be decided in this case that the prosecutors were obliged to anticipate that the transaction would be handled in some unusual and unbusinesslike manner, no laches can be imputed because of the cancellation of the bonds of the water company, before the latter received the purchase price from the city.

The opinion of the Supreme Court upon the question of laches, is predicated upon the delay in applying for the writ, both before and after the referendum of November, 1920.

As to the former period: It is manifest that the only effect of the resolution of August 27, 1920, which the Supreme Court seemed to think should have been removed by a writ in advance of the election, was to provide for the referendum and, if favorable, for the delivery of a formal document accepting the proposition of the water company to sell its plant.

As heretofore stated, it is almost imperative to assume that the Court would not have entertained such an application at a time when the allowance of the writ would have prevented the election.

As to the second: The prosecutors, after the November election, had a right to assume that the terms

of the resolution would be fulfilled, and that before the contract could be reviewed, it must have appeared that the formal acceptance completing the contractual relations between the parties had been delivered. Otherwise, the proceeding to review the contract would have been premature.

No matter how vigilant the prosecutors may have been in watching the proceedings of the commissioners to obtain timely notice of the execution of the formal acceptance, nothing could have been done until it was manifest that some action had been taken, or that it appeared that the city was acting as if the contract to purchase had become obligatory, and it was then, after the passage of the bond resolution, that the application for the writ of certiorari was promptly made.

We submit, therefore, that the judgment of the Supreme Court dismissing the writ of certiorari should be reversed.

LEWIS STARR,
Attorney of Prosecutors.

NEW JERSEY SUPREME COURT

THE STATE, WILLIAM P.
ADAMS,
Prosecutor-Appellant,

vs.

JOHN S. HORTON, Clerk,
&c.; CITY OF MILLVILLE;
and the PEOPLE'S WATER
COMPANY OF MILLVILLE,
N. J.,
Defendants-Respondents.

On Certiorari.
On Appeal from Supreme Court.

BRIEF FOR DEFENDANTS-RESPONDENTS

The writ of certiorari issued in this case reviews a contract between the City of Millville and the water company for the purchase of the company's plant.

A rule to show cause why the certiorari should not be quashed was made returnable at the same time as the writ. By stipulation of counsel, the testimony taken on the rule may be used on argument of the writ, as well as on argument of the rule to show cause (C. 82).

1. In December, 1915, the city enacted Ordinance No. 145, providing for the acquisition by purchase or condemnation of the plant of the People's Water Company (C. 45). The validity of this ordinance

was affirmed by the Court of Errors (*Wood vs. Millville; Franklin vs. Millville*, 89 N. J. L. 646). Upon perusal of those cases it will appear that there was litigation not only on the validity of Ordinance 145, but also on the question of the adoption of the Water Act of 1876 by the city.

2. In July, 1916, after adoption of the Pierson Act, the City of Millville adopted Ordinance 152 (C. 53), providing for the issuance of serial bonds instead of the long term, sinking fund bonds contemplated by the original ordinance.

3. After negotiations the People's Water Company made a proposal to sell its plant to the city on certain terms. This proposition was submitted to the voters at a special election held in April, 1918, but the vote on the proposition was adverse.

4. Subsequently, in July, 1920, the water company again submitted a proposition for the sale of its plant to the city. This proposition was, by Resolution 360 (C. 5), submitted to the voters at the general election held November 2, 1920, when the electors voted to buy the plant, 2711 voting "yes," and 1294 voting "no" (C. 20).

5. The company was apprised of the result of the election, and proceeded to get ready for delivery of the title on December 31, 1920, in accordance with the terms of the contract which had resulted from the acceptance by the city of its proposal. Amongst other things, to that end, it obtained consent of the Public Utility Commissioners to the sale, and it arranged to clear its title of certain mortgages of record in the manner hereinafter mentioned. The

city on its part proceeded to examine the title, and consulted expert counsel touching a sale of the bonds to be issued under Ordinance 145.

6. The city solicitor, who was passing on the title, had notified the water company that he would require not only cancellation of a trust mortgage securing \$150,000 of bonds, but also surrender to the city of the bonds that thereby had been secured, the bonds of course to be made void by appropriate method of cancellation. On December 22, 1920, the trustee-mortgagee, West End Trust Company, of Philadelphia, Pa., cancelled by mutilation, all of the \$150,000 of bonds and gave a warrant for satisfaction of record of the trust mortgage. The bonds had been held, wholly or in large part, by the American Pipe & Construction Company, which corporation, friendly in interest though not identical with People's Water Company, had surrendered up the bonds on a stipulation in effect that the proceeds of the contemplated sale of the water plant of the People's Water Company should be paid over to the bondholders. This stipulation is printed in the case (C. 125, 126).

7. On December 29, 1920, W. H. Roth, vice-president of the People's Water Company, produced to the city solicitor (1) a certain old trust mortgage for \$100,000 dated in 1900, covering the water plant, which had been discovered in searching the title and which mortgage the water company supposed had been cancelled; (2) a trust mortgage securing the \$150,000 of the bonds of the company hereinbefore mentioned; (3) (4) warrants by the West End Trust Co., the trustee named in both mortgages, for satisfaction of record of both mortgages. The attorney

for the city returned the warrants so that the usual certificates of the prothonotary of the authority of the officer taking the proofs might be attached to the documents.

8. On December 30, 1920, Mr. Justice Black allowed this writ of certiorari. The writ was served December 31st, 1920, in the morning; and on that day at 2.30 P. M. Mr. Roth brought to the city solicitor's office at Millville the warrants for satisfaction of the mortgages, when he was notified for the first time that the writ of certiorari had been allowed.

9. Thereupon, in due course, the City of Millville and the People's Water Company filed their petition to quash the writ to review the contract of sale, on the ground of laches; and Mr. Justice Black granted the rule to show cause thereon why the allocatur should not be set aside and the writ be quashed.

The Supreme Court heard argument on both the motion to quash and on the main case. As a result judgment was entered that this writ of certiorari be dismissed (C. 167, 168).

POINTS.

1. The writ of certiorari was properly dismissed for laches.
2. If the writ was not properly dismissed for laches, then the contract of sale should be affirmed.
3. If the writ again brings before the Court for review Ordinance No. 145, then the writ, in that as-

pect, must be dismissed because that ordinance is *res adjudicata*.

4. If the writ brings before the Court for review the amendatory Ordinance No. 152, then as to that ordinance the writ should be dismissed for laches.

I.

THE WRIT WAS PROPERLY DISMISSED FOR LACHES.

At the time of the allowance of the writ the Court was not apprised of the fact that the prosecutor's laches in issuing out his writ had led the water company and its bondholders into such a feeling of security that they had surrendered their bonds for cancellation on December 22, 1920, eight days before the title was to be delivered, at the instance of the water company, and upon the reasonable requirement of the city attorney that the bonds as well as the trust mortgage must be cancelled and turned over with the title deed. That fact is now shown to the Court by the testimony taken.

If the fact had been made known to Mr. Justice Black when the writ was applied for December 30, 1920, he probably would have considered it as an important factor against an allowance of the writ. And the point now being urged, the writ ought to be dismissed for laches.

When the allowance of a certiorari is a matter of discretion with the Court, the Court may, on the argument, if justice requires it, dismiss the writ. *State vs. Kingsland*, 23 N. J. L. 85; *Wood vs. Millville*, 85 L. 734, 735.

The allowance of a common law writ of certiorari being discretionary, the Court may, if at any time in the progress of the cause it discovers facts which on application for the writ would have defeated it, dismiss on its own motion. *State, Malone, Pros. vs. Water Commissioners*, 30 N. J. L. 247.

And the writ was properly dismissed by the Supreme Court for reasons clearly developed upon the taking of the testimony. Not only were the bondholders, innocent parties, greatly and irreparably damaged by the delay in issuing out the writ but the laches of Adams, the prosecutor, is proved to have been so exceedingly gross that, without reference to the spoliation of the \$150,000 of bonds, the writ should be quashed. For it is shown by the testimony that he is employed by the same interests that prosecuted the former certiorari of Ordinance No. 145; and hence he must have been interested in the election at which the question of the purchase of the water plant was submitted. He admits he voted at the election, held November 2, 1920, on the question of the purchase. Yet he stood idly by from November 2, until December 30th without applying for his writ. Finally at Mr. Franklin's request, he says he permitted the use of his name as prosecutor. During all that time he must have known that both parties were proceeding at great expense to close the settlement of the purchase of this valuable public property. Mr. Franklin, who was sworn, does not deny this, and, indeed has joined with Mr. Adams as prosecutor. Mr. Franklin is superintendent of the Millville Water Company, which fact appears at page 23 of the case, *Wood vs. Millville*, in evidence here. Therefore there can be no question that the prosecutors Adams and Franklin, from the time of the adoption August 27, 1920, of Resolution No. 360

were cognizant of its passage. The resolution was published at length weekly in October, 1920, in the local papers, and was published daily in those papers during the week preceding the election. Yet the prosecutor made no move to secure his writ, although he is charged with notice that the city and the water company in due course would be obliged to, as in fact they did, institute important and necessarily expensive proceedings for the consummation of the sale.

Manifestly the city, the company and the bondholders will all be injured irreparably by the delay of the prosecutor in applying for his writ, if the sale of the plant be now set aside.

For these reasons the Supreme Court properly dismissed the writ on the ground of laches.

II.

IF THE WRIT WAS NOT PROPERLY DISMISSED FOR LACHES, THE VALIDITY OF THE PROCEEDINGS REMOVED BY IT, RESULTING IN THE CONTRACT FOR THE PURCHASE OF THE WATER PLANT BY THE CITY, SHOULD BE AFFIRMED.

The validity of the contract is founded on Ordinance 145 of the city (C. 45).

The contract is embodied in (a) the proposal (C. 3, 4), and (b) the acceptance by Resolution 360 (C. 5, 6, 7).

Ordinance 145 has been reviewed by this Court on appeal in certiorari proceedings (*Wood vs. Millville*; *Franklin vs. Millville*, 89 L. 646), and its validity cannot be now assailed.

By the mandate of this ordinance the plant of the People's Water Company is directed to be acquired by purchase or by condemnation, and ample provisions are made to obtain the end sought. The contention now raised to the effect that the refusal by the city of the first proposition for sale, which was submitted to the voters and rejected by them in 1918, exhausted the powers conferred, created or imposed by the ordinance, is not sustained by anything appearing in the ordinance itself. For the ordinance declares a fixed policy of acquiring the plant even by condemnation, in the event that negotiations for the purchase failed. The plain intent of the ordinance, clearly manifested in Sections 1, 2, 3 and 4, is that the city should persist in the purpose to acquire the plant by purchase and then (Sec. 3), if the city could not acquire the plant by agreement with owner, whether because of disagreement as to price, or legal incapacity of the owner, or inability of the owner to convey said valid title, or by any other cause, the property then shall be acquired by condemnation (Ordinance 145, Sec. 3—C. 47).

2. The point that no money had been appropriated is not justly taken; since the ordinance itself provided means to raise the money. Further, by Sec. 13 of Chapter 252 of the Laws of 1916 (P. L. 1916), p. 539, amended P. L. 1918, p. 989, moneys could have been raised temporarily to finance the scheme of purchase even in anticipation of the issue of the permanent bonds, as was contemplated and provided for by Section 3 of the supplemental Ordinance 152 (C. 54). And if the point was valid it is now cured by the Act of 1921, which declares that a provision for issuing bonds or temporary notes shall be held to constitute an appropriation. P. L. 1921, at top p. 247 (j).

3. The point that the question of purchase was not submitted in the manner and form prescribed by law, is set forth in terms too vague to require that it be met by argument. But if power in the city to submit the question is challenged, the city points to Sec. 17 of the Commission Government Act as amended by P. L. 1913, pp. 323, 324, which provides that the Board of Commissioners may of its own motion submit to the voters for adoption or rejection at a general or special municipal election, any ordinance or measure that the Board of Commissioners shall have authority to enact. There is not in the statute any provision as to the method of ordering the submission; hence that may be done either by ordinance or by resolution. *State vs. Jersey City*, 27 N. J. L. 493, 498, is the leading case. It is cited approvingly in L. R. A.; in Cyc.; and in several foreign jurisdictions. See Sheppard's Citations.

4. On application for the writ objection was made to the form of the question submitted to the voters as it appeared on the ballot; but if the question was not properly put, application should have been made to a justice of the Supreme Court to correct the ballot. In fact, however, the question was put in strict conformity with the 1920 election law; and the point does not seem to be raised now in the reasons filed.

5. The Board of Commissioners was not required to submit to the voters the question of the adoption of Resolution Number 360. They did submit the question, however, because it was of grave public importance, instead of accepting the proposition by their own mere vote as it was within their power to do. In submitting the question their act was one

of wisdom and good government, and within the authority of the board; and their proceedings for the referendum and the election thereon ought not be overthrown by these prosecutors, representing interests adverse to the public, except for reasons most substantial in law.

III.

IF THE WRIT BRINGS BEFORE THE COURT FOR REVIEW ORDINANCE 145, THEN THE VALIDITY OF THAT ORDINANCE IS RES ADJUDICATA.

To sustain this point the city brings before the Court for inspection the record and proceedings in *Wood vs. Millville* and *Franklin vs. Millville*, reported in 89 L. 646.

IV.

IF THE WRIT IN CASE NO. 2 BRINGS BEFORE THE COURT FOR REVIEW ORDINANCE 152, THEN AS TO THAT ORDINANCE THE WRIT MUST BE DISMISSED FOR LACHES.

This is so because, by the terms of the statutory notice appended to that ordinance, it is too late to litigate it. The notice is printed with the Ordinance by the clerk (C. 60, bottom of page) in conformity with the provisions of Chapter 252 of the Laws of 1916 [P. L. 1916, at page 526 (d)], which provides:

“(d) * * * The said ordinance or resolution shall be attested by the clerk and shall be published once in the manner prescribed by section eleven hereof, and no other publication or posting shall be required.

The clerk shall publish with such ordinance or resolution a statement in substantially the following form:

The foregoing (ordinance or resolution) was (adopted or approved) on the day of 19 .

The bonds authorized thereby will be issued and delivered after the day of , 19 (specifying a day not less than twenty days after the first publication) and any suit, action or proceeding to set aside or vacate this ordinance must be begun on or before the said last mentioned day.”

The ordinance was first published August 21, 1916 (C. 60, top page); and the clerk's notice appended to Ordinance 152, read:

“The foregoing Ordinance was adopted on the 18th day of August, 1916. The bonds authorized thereby will be issued and delivered after the 20th day of September, 1916, and any suit, action or proceeding to set aside or vacate this Ordinance must be begun on or before said last mentioned date.

John S. Horton,
Clerk of the City of Millville.”

By force of this statute the prosecutors are barred by laches from attacking this ordinance.

For the foregoing reasons it is respectfully submitted the judgment of the Supreme Court ought be affirmed.

LOUIS H. MILLER,
*Of Counsel with the City of
Millville.*

J. FITHIAN TATEM,

JOHN D. McMULLIN,
*Of Counsel with the People's
Water Company.*

Note: The outline of the foregoing brief was agreed upon September 24, 1921, by and between J. Fithian Tatem, for the water company, and L. H. Miller, for the City of Millville. After the death of Mr. Tatem, Mr. McMullin was substituted as counsel for the water company, and he now joins in the brief.

November 7, 1921.

LOUIS H. MILLER,
JOHN D. McMULLIN.

