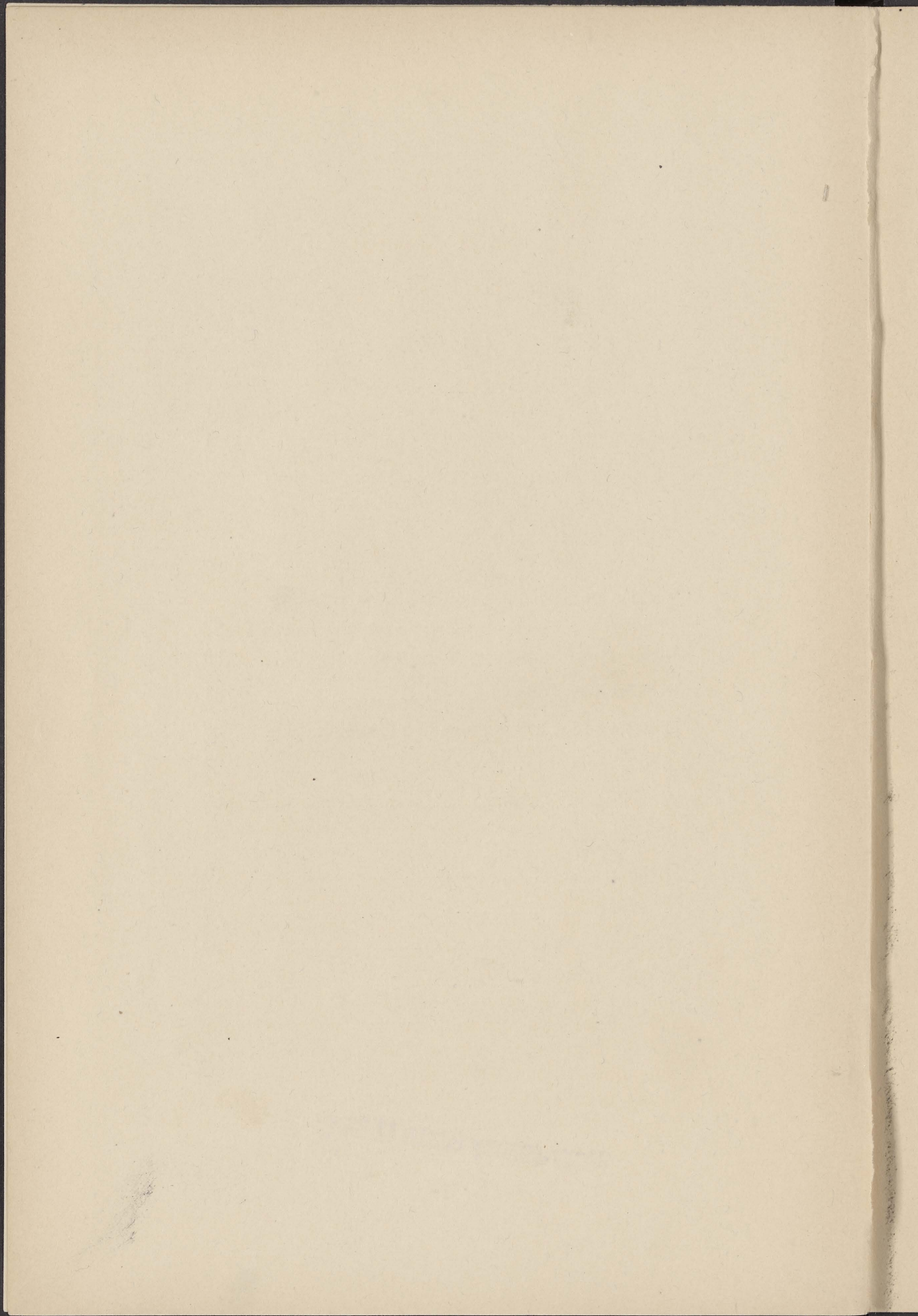


INDEX.

| | PAGE |
|---|------|
| Writ of Certiorari..... | 1 |
| Order on Petition for Appointment of Condemnation Commissioners | 3 |
| Petition for Appointment of Condemnation Commissioners | 5 |
| Order Appointing Condemnation Commissioners | 36 |
| Affidavit of Walter W. Corrigan..... | 39 |
| Affidavit of John H. Cook..... | 51 |
| Petition for Order Amending Petition..... | 56 |
| Order Amending Petition..... | 62 |
| Stipulation | 63 |
| Return to Writ of Certiorari..... | 69 |
| Reasons | 70 |
| Opinion | 73 |
| Rule for Judgment | 80 |
| Notice of Appeal | 81 |



Writ of Certiorari.

(Sealed July 9, 1928.)

NEW JERSEY, to wit:

(SEAL) THE STATE OF NEW JERSEY to JOHN McCUTCHEON, Clerk of the County of Passaic, and PASSAIC VALLEY WATER COMMISSION, a body corporate, GREETING: 10

WE, being willing for certain reasons to be certified of a certain order made on the 12th day of May, 1928, by Charles C. Black, Justice of the Supreme Court, on the petition of Passaic Valley Water Commission, a body corporate of the State of New Jersey, appointing three commissioners to fix the compensation to be paid by said Passaic Valley Water Commission for the lands, waterworks and property of the Passaic Consolidated Water Company, a corporation of the State of New Jersey, in said petition described to be taken and condemned for public use in pursuance of the provisions of Chapter 195 of the Laws of 1923 and the acts amendatory thereof and supplemental thereto, DO HEREBY COMMAND YOU, John McCutcheon, Clerk of the County of Passaic, that you send under your seal to our Justices of our Supreme Court of Judicature at Trenton, on the twentieth day of July next, as well the said order, the petition of said Passaic Valley Water Commission and the order fixing the time and place for the hearing of such petition together with the amendments and order thereon with all things touching and concerning the same as fully and entirely as they remain in your office by whatsoever names the parties may be called therein, to- 20 30 40

Writ of Certiorari.

gether with this, our Writ, that we may further
cause to be done thereupon what of right we shall
see fit to be done.

10 WITNESS, WILLIAM S. GUMMERE, Esquire, Chief
Justice of our Supreme Court at Trenton, this
9th day of July, 1928.

FRED L. BLOODGOOD,
Clerk.

LINDABURY, DEPUE & FAULKS,
Attorneys.

Endorsed:

This Writ is allowed, let it be sealed.

20 Dated July 5, 1928.

By the Court

CHAS. C. BLACK
Justice of Supreme Court.

Service of the within Writ acknowledged for the
Passaic Valley Water Commission.

Dated July 10th, 1928.

30 WM. B. GOURLEY,
Attorney for Passaic Valley
Water Commission

**Order on Petition for Appointment of
Condemnation Commissioners.**

(Filed April 24, 1928.)

BEFORE

His HONOR CHARLES C. BLACK,
JUSTICE OF THE SUPREME COURT.

10

IN THE MATTER

of

The application of PASSAIC VAL-
LEY WATER COMMISSION for the
appointment of three commis-
sioners to fix the compensation
to be paid for the water works,
rights, franchises and property
of PASSAIC CONSOLIDATED WATER
COMPANY to be taken and con-
demned for public use.

ORDER.

20

Application having been made to me, Charles C. Black, a Justice of the Supreme Court of the State of New Jersey, by the Passaic Valley Water Commission, a corporation of this State, organized under and by virtue of Chapter 195 of the Laws of 1923 by petition on behalf of the cities of Paterson, Passaic and Clifton for the appointment of three commissioners to fix the compensation to be paid by said commission for the lands, water works and property in said petition described, to be taken and condemned for public use in pursuance of the provisions of said statute, and the damages, if any, by the reason of the taking of the same, I do hereby assign, Saturday, the twelfth day of May, 1928,

30

40

*Order on Petition for Appointment of
Condemnation Commissioners.*

at the hour of ten o'clock in the forenoon(day-
light saving time) at the Court House in the City
of Paterson, County of Passaic, as the time and
place for the hearing of said petition before me,
and I direct that notice of said hearing be given to
10 the owners, occupants, corporations and persons
appearing of record to have an interest in the
lands, water works and property set forth in said
petition at least six (6) days before the hearing:

It is further ordered that the petition and this
order be filed in the office of the Clerk of the
County of Passaic and notice of the pendency of
these proceedings be filed and recorded in said
County and certified copies of said petition and
order filed in the Clerk's Office of the Counties of
20 Hudson, Essex and Morris, respectively, and no-
tice of the pendency of these proceedings be filed
and recorded in the office of the Register of Deeds
in the Counties of Hudson and Essex respectively
and in the office of the Clerk of the County of
Morris, as by the statute required.

It is further ordered that said notice shall be
also published twice in the Paterson Morning
Call, once this week and once the following week
and a copy thereof mailed on or before April 28th,
30 1928, to such of the parties interested as reside out
of this State, including any corporation having its
principal office outside of this State, whose address
can be ascertained.

Given under my hand this 24th day of April
A. D. 1928.

CHAS. C. BLACK,
Justice, Supreme Court.

(Filed April 24, 1928.)

**Petition for Appointment of Condemnation
Commissioners.**

BEFORE

HIS HONOR CHARLES C. BLACK, 10
JUSTICE OF THE SUPREME COURT.

IN THE MATTER

of

The application of PASSAIC VAL-
LEY WATER COMMISSION for the
appointment of three commis-
sioners to fix the compensation
to be paid for the water works,
rights, franchises and property
of PASSAIC CONSOLIDATED WATER
COMPANY to be taken and con-
demned for public use. 20

*To the Honorable Charles C. Black, Justice of the
Supreme Court of the State of New Jersey:*

The petition of Passaic Valley Water Commis- 30
sion, respectfully shows that:

1. The City of Paterson, the City of Passaic
and the City of Clifton at the time of the passage
of the ordinances hereinafter mentioned, and for
a long time prior thereto, up to the present time,
were and are municipalities in the State of New
Jersey, having power to take land and other prop-
erty for public use, in which water was and is
supplied for domestic and public use by a privately
owned water works, to wit, the water works owned 40

*Petition for Appointment of Condemnation
Commissioners.*

by the Passaic Consolidated Water Company, a corporation organized under the laws of the State of New Jersey.

2. Prior to the second day of July, A. D. Nine-
10 teen hundred and twenty-seven, the respective governing bodies of the said cities of Paterson, Passaic and Clifton severally adopted an ordinance entitled, "An Ordinance authorizing proceedings for the acquisition by purchase or condemnation of the water works, rights, franchises and property of the Passaic Consolidated Water Company by the joint action of the cities of Paterson, Passaic and Clifton," wherein and whereby
20 they respectively ordain that the City so passing such ordinance join with the two other cities in an application on behalf of the said cities, pursuant to Chapter 195 of the Laws of 1923 and any other laws of New Jersey which may be applicable to such proceeding, to a Justice of the Supreme Court for the appointment of Commissioners to acquire by purchase or condemnation, on behalf of said cities, the said waterworks owned by said Passaic Consolidated Water Company, together with the rights and franchises relating thereto and
30 the rights and franchises to obtain an additional supply of water and all other property of the owner of such water works that may be necessary to maintain, operate, enlarge or extend the water works so acquired, and to enlarge, extend, maintain and operate the same to supply water for the municipalities acquiring such water works, as aforesaid, and to all other municipalities theretofore supplied with water by the same water works. And it was further thereby ordained that the special
40 counsel, which said ordinance recites had

*Petition for Appointment of Condemnation
Commissioners.*

been retained by said municipalities be directed and authorized to take the proper legal proceedings to carry out said ordinances respectively, all of which more fully appear from a copy of said ordinances which are hereto annexed, made a part hereof and to which reference is hereby made. 10

3. At the time of the passage of the aforesaid ordinances the following municipalities had been theretofore supplied with water by the same water works, to wit, the City of Bayonne, the City of Garfield, Town of Kearny, Town of Harrison, Town of Montclair, Town of Nutley, Town of Bloomfield, Borough of East Newark, Borough of Prospect Park, Borough of Totowa, Borough of Haledon, Borough of West Paterson and Township of Little Falls; all being municipalities of the State of New Jersey. 20

4. At least sixty days prior to the 2nd of July, A. D. 1927, each and every of the foregoing municipalities, to wit, said City of Bayonne, City of Garfield, Town of Kearny, Town of Harrison, Town of Montclair, Town of Nutley, Town of Bloomfield, Borough of East Newark, Borough of Prospect Park, Borough of Totowa, Borough of Haledon, Borough of West Paterson, and Township of Little Falls, were notified in writing that by virtue of the authority and direction of certain ordinances, to wit, the ordinances hereinbefore mentioned, that the said City of Paterson, City of Passaic and City of Clifton would jointly apply to the Honorable Charles C. Black, a Justice of the Supreme Court of the State of New Jersey, at the Passaic County Court House, at said City of Paterson, Passaic County, New Jersey, on Satur- 30 40

*Petition for Appointment of Condemnation
Commissioners.*

day, July 2nd, 1927, at 10 o'clock in the forenoon,
or as soon thereafter as said application could be
heard, for the appointment of a commission in
their behalf to acquire by purchase or condemna-
tion the water works of the Passaic Consolidated
10 Water Company in said notice particularly de-
scribed as follows:

20 "The said water works consist of a pump-
ing and filtration plant on the Passaic River
at Little Falls, Passaic County, New Jer-
sey, reservoirs used in connection with said
works, water mains leading from said pump-
ing plant and said reservoirs, to the mu-
nicipalities supplied with water by said water
works, being the municipalities to which
his notice is addressed, and the said cities
of Paterson, Passaic and Clifton, and all
distributing mains and hydrants in the mu-
nicipalities of Paterson, Passaic, Clifton,
Bayonne, Garfield, Kearny, Harrison, Nutley,
Bloomfield, Montclair, East Newark, Pros-
pect Park, Totowa, Haledon, West Paterson,
and Little Falls which are owned by said
Water Company, together with all the rights,
and franchises relating thereto, and the rights
and franchises to obtain an additional supply
of water, and any or all other property of
30 the owner of said water works, the said Pas-
saic Consolidated Water Company, that may
be necessary to maintain, operate, enlarge,
or extend the said water works, and to en-
large, extend, maintain, and operate the same
to supply water in the municipalities acquir-
ing such water works, as aforesaid, the said
cities of Paterson, Passaic and Clifton, and
in all other municipalities theretofore sup-
plied with water by the same water works."

40 The said notice in writing further notified said
municipalities that said application would be made
pursuant to an act of the legislature of the State

*Petition for Appointment of Condemnation
Commissioners.*

of New Jersey entitled, "An Act to authorize two or more municipalities in this State by means of a commission to acquire, either by purchase or condemnation and operate privately owned water works, now or hereafter supplying water therein, and in other municipalities, if any, in which water is supplied by the same water works, together with the franchises, rights and any or all other appurtenant property of the owner or owners of such works, and to enlarge and extend the same," passed March 23, 1923, and known as Chapter 195 of the Laws of 1923, of the State of New Jersey, and an act of said legislature amending the same passed March 29, 1926, known as Chapter 283 of the Laws of 1926 of said State, and also any other laws of said State which may be applicable thereto, and that said notice was given to said municipalities pursuant to Chapter 195 of the Laws of 1923. The said notice was signed by the respective cities of Paterson, Passaic and Clifton by their respective Mayors, under the respective seals of the said cities and attested by their respective City Clerks, and thereupon duly served upon the said municipalities, to wit, the City of Bayonne, City of Garfield, Town of Kearny, Town of Harrison, Town of Montclair, Town of Nutley, Town of Bloomfield, Borough of East Newark, Borough of Prospect Park, Borough of Totowa, Borough of Haledon, Borough of West Paterson and Township of Little Falls, respectively, as more fully appears by the proofs of such service presented to your Honor at the time of the application for the order for the appointment of commissioners made on July 2nd, 1927, and hereinafter particularly mentioned, and which proofs are on file in the office of the Clerk of the Passaic County Circuit Court.

*Petition for Appointment of Condemnation
Commissioners.*

5. On July 2nd, 1927, application was made to your Honor at the Passaic County Court House, pursuant to said ordinances and the notices aforesaid, for the appointment of a commission on behalf of the City of Paterson, the City of Passaic and the City of Clifton to acquire said water works, and that thereupon your Honor made an order dated July 2nd, 1927, in and by which, after reciting that the said last mentioned cities had given notice to the said City of Bayonne, City of Garfield, Town of Kearny, Town of Harrison, Town of Montclair, Town of Nutley, Town of Bloomfield, Borough of East Newark, Borough of Prospect Park, Borough of Totowa, Borough of Haledon, Borough of West Paterson, and Township of Little Falls, that they would jointly apply to your Honor, a Justice of the Supreme Court, at the time and place therein stated, for the appointment of a commission in their behalf of not more than five persons to acquire by purchase or condemnation the water works of the Passaic Consolidated Water Company, which water works, together with the rights and franchises relating thereto and the rights and franchises to obtain an additional supply of water and any or all other property of the owner of such water works, of the Passaic Consolidated Water Company, which may be necessary to maintain, operate, enlarge or extend the said water works and to enlarge, extend, maintain and operate the same to supply water in the municipalities acquiring the said water works as aforesaid, the said cities of Paterson, Passaic and Clifton, and all other municipalities theretofore supplied with water by the same water works; and further reciting that more than sixty days notice of said application had been given to said

*Petition for Appointment of Condemnation
Commissioners.*

City of Bayonne, City of Garfield, Town of Kearny, Town of Harrison, Town of Montclair, Town of Nutley, Town of Bloomfield, Borough of East Newark, Borough of Prospect Park, Borough of Totowa, Borough of Haledon, Borough of West Paterson and Township of Little Falls, which were all of the municipalities supplied with water by the same water works other than Paterson, Passaic and Clifton and that proof of such service had been duly made; your Honor, as a Justice of the Supreme Court, by virtue of the power and authority vested in you by law as said order declares, appointed James Wilson and J. Willard DeYoe, residents of the City of Paterson, Arthur S. Hughes, resident of the City of Passaic, and William V. Negus, resident of the City of Clifton, to acquire the water works aforesaid, either by purchase or condemnation, together with the rights and franchises relating thereto and the rights and franchises to obtain an additional supply of water and any or all other property of the Passaic Consolidated Water Company, the owner of said water works, that may be necessary to maintain, operate, enlarge or extend, the water works so acquired and to enlarge, extend, maintain and operate the same as aforesaid and in all other municipalities heretofore supplied with water by the same water works, as more fully and at large appears from the original order signed by your Honor and now on file with the Clerk of the said Circuit Court.

6. As soon as practicable, to wit, on July 11, 1927, the said James Wilson, J. Willard DeYoe, Arthur S. Hughes, and William V. Negus met in the City Hall of the City of Paterson and after being duly sworn to truly and faithfully discharge

*Petition for Appointment of Condemnation
Commissioners.*

- 10 their duties as such commissioners thereupon proceeded to organize by electing one of their number, to wit, said James Wilson as president, and by appointing Paul L. Troast as Secretary and Treasurer; and did furthermore adopt a name whereby they might sue and be sued, to wit, the name "Passaic Valley Water Commission," and did adopt a seal for the commission circular in form with the name "Passaic Valley Water Commission" and the year "1927" thereon. The said treasurer was also required to give bond with surety in the sum of \$10,000 for the faithful performance of his duty; which bond was executed and delivered to the commission in due course.
- 20 7. Immediately after organization the said Passaic Valley Water Commission proceeded to negotiate for the purchase of the entire water works aforesaid supplying water in the municipalities making the application for its appointment and in the other municipalities supplied with water as aforesaid by the same water works, and to that end, after several meetings with the chief officers of said company, offered the owner of said water works, to wit, said Passaic Consolidated Water
- 30 Company, a fair price for the same, to wit: the sum of \$8,276,127 for the said water works, which offer said Passaic Consolidated Water Company rejected and refused to accept. Said Commission and said owner could not agree on terms for the sale thereof and said commission was unable to acquire said property by agreement with the owner by reason of disagreement as to the price.
- 40 8. Thereupon said Commission at a meeting held on the twenty-fourth day of January, 1928,

*Petition for Appointment of Condemnation
Commissioners.*

duly resolved, in pursuance of said Chapter 195 of the Laws of 1923, to make application to a justice of the Supreme Court for the appointment of a commission to condemn the water works in pursuance of and in the manner prescribed by an act entitled, "An Act to regulate the ascertainment and payment of compensation of property condemned or taken for public use (Revision of 1900) approved March 20, 1900, and the amendments and supplements thereto, and to invoke and exercise in the manner provided in said act approved March 20, 1900, and its supplements and amendments for the purpose aforesaid, in its own name, all of the powers of the applying municipalities, or any of them, to acquire property for public use. 10
20

9. The said water works are located in more than one county, to wit: in the Counties of Passaic, Hudson, Essex and Morris. The greater part in value of the land and other property is situate in the County of Passaic. A general description of the said water works and other property of the Passaic Consolidated Water Company which your petitioner has determined to acquire on behalf of the cities of Paterson, Passaic and Clifton pursuant to the authority conferred upon them by law, is as follows: 30

The water works and all the property of the Passaic Consolidated Water Company, including real estate, rights-of-way, easements, water rights, franchises, contracts, plant, structures, personal property, materials and all other property except money and securities and except its franchise as a corporation, consisting of:

(a) The dam, pumping station, filter plant and appurtenant works located on the Pas- 40

*Petition for Appointment of Condemnation
Commissioners.*

saic River in the Borough of Totowa and Township of Little Falls in the County of Passaic:

10 (b) The Great Notch Reservoir and appurtenant works located in the Borough of West Paterson, Passaic County:

(c) The New Street Reservoir and appurtenant works located in the Borough of West Paterson:

20 (d) The main transmission line, consisting generally of a 51-inch diameter steel pipe extending from the said pumping station at Little Falls to Kearny Avenue and Belleville Turnpike, Kearny, and appurtenant structures, located in the Boroughs of Totowa and West Paterson, Township of Little Falls and City of Clifton, Passaic County, the Town of Bloomfield, Town of Nutley, and Town of Belleville, Essex County, and the Town of Kearny, Hudson County:

30 (e) The 42-inch transmission main leading from said Little Falls plant to Paterson, the 30-inch steel Acquackanonk transmission main, all connecting pipes between the aforesaid transmission mains and the reservoirs and all pipe lines, meters, services, hydrants and other appurtenances located in public streets and private rights-of-way and meters owned by said Company installed on premises of various consumers in the Cities of Paterson, Passaic and Clifton and the Borough of Prospect Park and elsewhere:

(f) The Stony Road Reservoir and appurtenant works, the Dyers Pipe Line and appurtenant works, Middle and Totowa Reservoirs and appurtenant works, located in Paterson:

40 (g) The Valley Yard on Ryle Road and the Pipe Yard at 35th Street, in Paterson; the yard on Monroe Street and the office build-

*Petition for Appointment of Condemnation
Commissioners.*

ing at 145 Prospect Street, in Passaic and the
Booster Pumping Station on Brown Avenue
in the Borough of Prospect Park:

(h) All water rights of said company in the
Passaic River and its tributaries and else-
where and all rights and franchises relating
to said company and the rights and franchises
to obtain an additional supply of water or
that may be necessary to maintain, operate,
enlarge or extend the said water works: 10

(i) The interest of said company in all con-
tracts for the purpose of supplying water or
water rights to or for the sale of water to or
by the Passaic Consolidated Water Company:

(j) All supplies on hand, general equip-
ment, fixtures, appliances, vehicles, office
equipment, tools, implements, repair parts
and all other personal property connected
with or used in connection with said water
works wherever located: 20

(k) All Company records, schedules, maps,
plans, and drawings showing in any way the
extent, amount or location of dams, pipes,
valves, meters, services, hydrants, service
lines or other structures or property and all
other records necessary or convenient for the
operation or extension of the said water
works: 30

(l) The several parcels of land on Stone-
house Brook known as the Kikeout Reservoir
Site in the Borough of Kinnelon, Morris
County, the several parcels of land on either
shore of the Pequannock river in the town-
ship of Pequannock, and the Boroughs of
Butler and Riverdale in Morris County and
the Boroughs of Bloomingdale and Pompton
Lakes in Passaic County; the several parcels
of land adjoining the right-of-way of the City
of Newark's Pequannock pipe line extending
from Macopin Reservoir to Little Falls, in the 40

*Petition for Appointment of Condemnation
Commissioners.*

10 Boroughs of Kinnelon, and Butler and the
Township of Pequannock, Morris County, and
Townships of Wayne and Little Falls, Passaic
County, and all other real estate and rights-
of-way. Being the same property described
in the petition to your Honor for the appoint-
ment of Commissioners to acquire the same
by purchase or condemnation.

20 10. The tracts of land owned by said Company
of which a general description is above set forth
are more particularly described in a mortgage
given by said Company to The First National
Bank of the City of New York, Trustee, to secure
an issue of bonds in the sum of \$50,000,000., which
mortgage bears date May 1, 1924, and was re-
corded June 16, 1924, in Book R-13 of Mortgages
for Passaic County on page 142 etc.: and was
also recorded on June 17, 1924, in Book F-10 of
Mortgages for Morris County on page 1 etc. and
was also recorded on June 17, 1924, in Book 1246
of Mortgages for Hudson County on page 1 etc.
and was also recorded on June 16, 1924, in Book
G-51 of Mortgages for Essex County on page 511,
etc.; also the following tracts of land of said
company acquired since May 1, 1924; a tract de-
scribed in a deed from The Highland Water Com-
pany to Passaic Consolidated Water Company
bearing date November 5, 1925, and recorded in
the Register's Office of the County of Passaic on
November 6, 1925, in Book I-32 of Deeds for said
County on page 493; also a tract of land described
in a deed from said Highland Water Company to
Passaic Consolidated Water Company bearing
date May 7, 1926, and recorded in the Register's
Office of the County of Passaic on May 15, 1926, in
40 Book X-32 of Deeds for said County on page 134

*Petition for Appointment of Condemnation
Commissioners.*

etc., also a tract of land described in a deed from The Society for Establishing Useful Manufactures to Passaic Consolidated Water Company bearing date February 1, 1928, and recorded in the Register's Office of the County of Passaic on February 7, 1928, in Book K-34 of Deeds for said County on page 181; also a tract of land described in a deed from August P. Mezzanotte and Angela Mezzanotte, his wife, to Passaic Consolidated Water Company bearing date October 27, 1924, and recorded in the Register's office of the County of Passaic on November 21, 1924, in Book M-31 of Deeds for said County on page 567; also a tract of land described in a deed from Karl Zulauf and Maria Zulauf, his wife, to Passaic Consolidated Water Company bearing date January 12, 1928; also a tract of land described in a deed from the Order of Poor Clares of the Immaculate Conception to Passaic Consolidated Water Company bearing date March 31, 1925, and recorded in the Register's Office of the County of Passaic on April 6, 1925, in Book X-31 of Deeds for Passaic County on page 150; also a tract of land described in a deed from James Pearson and Elizabeth E. Pearson, his wife, to Passaic Consolidated Water Company bearing date April 30, 1925, and recorded in the Register's Office of the County of Passaic on May 2, 1925, in Book A-32 of Deeds for said County on page 121.

Excepting and reserving therefrom all that tract of land described in a deed from the Passaic Consolidated Water Company to State of New Jersey bearing date October 16, 1924, and recorded in the Register's Office of the County of Passaic on January 23, 1925, in Book W-31 of Deeds for said County on page 61; also excepting and re-

*Petition for Appointment of Condemnation
Commissioners.*

10 serving therefrom a right of way to erect and
maintain a bridge over the Pequannock River for
road purposes only across a certain tract of land
described in the deed from Passaic Consolidated
Water Company to The American Homes Com-
pany bearing date November 12, 1925, and re-
corded in the Register's Office of the County of
Passaic on March 18, 1926, in Book P-32 of Deeds
for said County on page 574; also excepting and
reserving therefrom an easement for drainage
purposes over and across the tract of land de-
scribed in a deed from The Passaic Consolidated
Water Company to the State of New Jersey bear-
ing date March 8, 1927, and recorded in the
Register's Office of the County of Passaic on
20 March 25, 1927, in Book O-33 of Deeds for said
County on page 436, etc.; also the tract of land
described in a deed from Passaic Consolidated
Water Company to The Holland Company bearing
date April 27, 1927, and recorded in the Register's
Office of the County of Passaic on April 28, 1927,
in Book T-33 of Deeds for said County on page
70 etc.

30 The above tracts of land are to be taken by your
petitioner subject to all easements of any persons
therein appearing of record.

11. Your petitioner further shows that the fol-
lowing mortgages appear of record as liens upon
the water works and other property of said Pas-
saic Consolidated Water Company, that is to say:
a mortgage given by The Passaic Water Company
a former owner of part of said property to John
J. Brown, Trustee, which mortgage bears date
April 15, 1875, and was recorded March 17, 1877,
40 in the Clerk's Office of the County of Passaic in

*Petition for Appointment of Condemnation
Commissioners.*

Book G-2 of Mortgages for said County on page 574; which mortgage was also recorded on July 30, 1875, in the Clerk's Office of Morris County in Book E-3 of Mortgages for said County on page 23 etc. This mortgage was given to secure an issue of bonds in the sum of \$225,000.; a mortgage given by the Passaic Water Company, a former owner of part of said property to John J. Brown, Trustee, which mortgage bears date April 1, 1880, and was recorded June 30, 1880, in Book L-2 of Mortgages for Passaic County on page 597 etc. This mortgage was given to secure an issue of bonds in the sum of \$200,000. Said John J. Brown died on January 23, 1894, and proceedings were thereafter had in the Court of Chancery whereby The Paterson Savings Institution of Paterson was appointed Trustee of said mortgage: a mortgage given by the Passaic Water Company, a former owner of part of said property, to The Central Trust Company of New York, Trustee, which mortgage bears date June 1, 1887, and was recorded on January 15, 1890, in the Clerk's Office of the County of Passaic in Book R-3 of Mortgages for said County on page 587 etc. This mortgage was given to secure an issue of bonds in the sum of \$2,500,000. The principal office of said The Central Trust Company of New York is at No. 80 Broadway, in the City, County and State of New York. A mortgage given by The Acquackanonk Water Company, a former owner of part of said property to The Central Trust Company of New York, Trustee, which mortgage bears date November 1, 1889, and was recorded on December 17, 1889, in the Clerk's Office of the County of Passaic in Book R-3 of Mortgages for said County on page 507, etc., and was given to secure an issue of bonds in the sum of \$300,000. A mortgage given

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*Petition for Appointment of Condemnation
Commissioners.*

- 10 by The Acquackanonk Water Company, a former owner of part of said property, to the Paterson Savings Institution, Trustee, which mortgage bears date January 1, 1896, and was recorded on April 25, 1896, in the Clerk's Office of the County of Passaic in Book X-4 of Mortgages for said County on page 519, etc., and was given to secure an issue of bonds in the sum of \$300,000. The principal office of The Paterson Savings Institution is at No. 129 Market Street, Paterson, New Jersey. A mortgage given by The Passaic Water Company, a former owner of part of said property, to the Paterson Savings Institution, Trustee, which mortgage bears date January 1, 1896, and was recorded on March 11, 1896, in the Clerk's Office of the County of Passaic in Book X-4 of mortgages for said county, on page 271, and was given to secure an issue of bonds in the sum of \$500,000. A mortgage given by The Montclair Water Company, a former owner of part of said property, to the Paterson Savings Institution, Trustee, which mortgage bears date January 1, 1896, and was recorded on April 13, 1896, in the Clerk's Office of the County of Essex in Book R-12 of Mortgages for said County on page 518 etc. and was given to secure an issue of bonds in the sum of \$500,000. A mortgage given by The Acquackanonk Water Company, a former owner of part of said property to The Bankers Trust Company, Trustee, whose principal office is at No. 16 Wall Street, in the City, County and State of New York, which mortgage bears date January 1, 1908, and was recorded in the Clerk's Office of the County of Passaic on January 11, 1909, in Book Y-7 of mortgages for said County on page 93 and was given to secure an issue of bonds in the sum of \$800,000. A mortgage given by The Passaic Water
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*Petition for Appointment of Condemnation
Commissioners.*

Company, a former owner of part of said property, to The Bankers Trust Company, Trustee, which mortgage bears date January 1, 1908, and was recorded in the Clerk's Office of the County of Passaic on January 11, 1909, in Book Y-7 of Mortgages for said County on page 125 and was given to secure an issue of bonds in the sum of \$1,200,000. A mortgage given by The Montclair Water Company, a former owner of part of said property, to the Bankers Trust Company of New York, Trustee, which mortgage bears date January 1, 1908, and was recorded in the Register's Office of the County of Passaic on January 1, 1909, in Book Y-7 of Mortgages for said County on page 162 etc. and was given to secure an issue of bonds in the sum of \$400,000. A mortgage given by the East Jersey Water Company, a former owner of part of said property, to the Bankers Trust Company of New York, Trustee, which mortgage bears date January 1, 1909, and was recorded in the Register's Office of the County of Passaic on March 22, 1909, in Book Y-7 of Mortgages for said County on page 352 etc. and was given to secure an issue of bonds in the sum of \$800,000, which mortgage was also recorded on December 28, 1909, in the Register's Office of the County of Essex in Book X-24 of Mortgages of said County on page 388 etc. Also the mortgage aforesaid given by the Passaic Consolidated Water Company to The First National Bank of New York, whose principal office is at No. 2 Wall Street, in the City, County and State of New York, bearing date May 1, 1924, to secure an issue of bonds in the sum of \$50,000,000. and recorded as aforesaid.

12. The Passaic Consolidated Water Company, a corporation organized under the laws of the

*Petition for Appointment of Condemnation
Commissioners.*

State of New Jersey, is the true and lawful owner and occupant of the said water works and other property and that the residence and principal office of said Passaic Consolidated Water Company is at No. 158 Ellison Street, in the City of Paterson, County of Passaic and State of New Jersey.

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13. The purpose of this application is to acquire all of the said property as above described of said The Passaic Consolidated Water Company except moneys and securities and except its franchise as a corporation to the end that the petitioner on behalf of said cities of Paterson, Passaic and Clifton, may own said property free and clear from all encumbrances thereon, and supply said cities with water for domestic and public use, and perform such obligations in relation to supplying water which are binding at the present time upon said Passaic Consolidated Water Company.

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14. In addition to supplying water to the cities of Paterson, Passaic and Clifton, the said Passaic Consolidated Water Company supplies water to the following municipalities to wit: the City of Bayonne, City of Garfield, Town of Kearny, Town of Harrison, Town of Montclair, Town of Nutley, Town of Bloomfield, Borough of East Newark, Borough of Prospect Park, Borough of Totowa, Borough of Haledon, Borough of West Paterson, and Township of Little Falls, and to certain water companies to wit: to the New York and New Jersey Water Company, whose principal office is at No. 23 West Eighth Street, in the City of Bayonne, in the County of Hudson, The New Jersey Suburban Water Company, whose principal office is at No. 15 West Eighth Street in the City of Bayonne,

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*Petition for Appointment of Condemnation
Commissioners.*

in the County of Hudson, and New Jersey Water Service Company whose principal office is at the Bank Building, Boonton Avenue, Butler, in the County of Morris.

15. Your petitioner therefore prays that your Honor will appoint three disinterested freeholders, residents of the said County of Passaic, commissioners, to examine and appraise the said lands and other property and to assess the damages on at least six days notice to be given to the persons interested in the said property; in such manner as your Honor may direct, and in such order of appointment, fix the date on or before which said commissioners shall file their report, and to that end your Honor shall assign by order, the time and place for the hearing of this petition before your Honor or before any Justice of the Supreme Court and directing proper notice thereof to be given said owner and persons interested.

PASSAIC VALLEY WATER COMMISSION,
By JAMES WILSON,
President.

Attest:

PAUL L. TROAST,
Secretary.

(Seal)

*Petition for Appointment of Condemnation
Commissioners.*

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC, } ss. :

ARTHUR H. PRATT, being duly sworn on his oath
says: I am the engineer of the Passaic Valley
10 Water Commission, the petitioner named in the
foregoing petition, in the matter of the proceed-
ings to acquire the water works and other prop-
erty as therein described. The matters stated in
the foregoing petition are true according to the
best of my knowledge, information and belief. I
have been familiar for years with the property
of the Passaic Consolidated Water Company as
described in said petition. This property lies in
20 the counties of Passaic, Morris, Essex and Hudson.
More than four-fifths in value of the land and
other property of said company as described in
the said Petition are situate in the County of
Passaic. At a special meeting of said Commis-
sion held at its office in the United States Trust
Building in the City of Paterson on the Thirteenth
day of January, 1928, at which all the members of
the Commission were present, the President and
Secretary of said Passaic Consolidated Water
Company appeared to negotiate for the sale of
30 said water works and other property to said Com-
mission together with all rights and franchises
relating thereto and the rights and franchises to
obtain an additional supply of water and any or
all other property of the owner of such water
works that might be necessary to maintain, oper-
ate, enlarge or extend, the water works so ac-
quired and to enlarge, extend, maintain and
operate the same to supply water in the municipi-
40 all other municipalities heretofore supplied with

*Petition for Appointment of Condemnation
Commissioners.*

water by the same water works as described in the petition aforesaid. Said Commission offered said company the sum of \$8,276,127 for the said water works and other property described in the petition, which offer said company rejected and refused to accept. Said Commission and said owner could not agree on terms for the sale thereof and said Commission was unable to acquire said property by agreement with the owner by reason of disagreement as to the price. 10

ARTHUR H. PRATT.

Sworn and subscribed to before me }
 this 18 day of April, 1928. }
 OLIVE M. FERRER, 20
 A Notary Public of New Jersey.
 (L. S.)

STATE OF NEW JERSEY, }
 COUNTY OF PASSAIC, } ss. :

PAUL TROAST, being duly sworn on his oath says, I am the Secretary of The Passaic Valley Water Commission. The copies of the ordinances annexed to the foregoing petition are true copies of the original ordinances adopted by the cities of Paterson, Passaic and Clifton respectively, the same having been compared by me with the said originals. Several meetings were held between said Commission and the representatives of said Passaic Consolidated Water Company, that is to say with the President and Secretary and with the President, Secretary and Counsel of said company, for the purpose of agreeing upon terms for the sale of the property of said company described in said petition. Said Commission offered for said 30
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*Petition for Appointment of Condemnation
Commissioners.*

property the sum of \$8,276,127 free from encumbrances. Said company through its President and Secretary demanded the sum of \$18,000,000. Later, on January 23, 1928, I served upon John H. Cook, President of said company, a written offer to purchase the property of said company described in said petition by said Commission signed by the President and Secretary of said Commission, on behalf of the cities of Paterson, Passaic and Clifton at the sum of \$8,276,127 free from encumbrances. I also verbally made the same offer to said John H. Cook as such President. The said Company in writing and verbally refused said offer. The difference in price was too great to agree upon terms for the sale thereof.

PAUL L. TROAST.

Sworn and subscribed to before me }
 this 18th day of April, 1928. }
 OLIVE M. FERRER,
 A Notary Public of New Jersey.
 (L. S.)

30 **AN ORDINANCE** authorizing proceedings for the acquisition by purchase or condemnation of the water works, rights, franchises, and property of the Passaic Consolidated Water Company by the joint action of the cities of Paterson, Passaic and Clifton.

40 WHEREAS, the cities of Paterson, Passaic and Clifton have joined with other municipalities in obtaining a new supply of water through the agency of the North Jersey District Water Sup-

*Petition for Appointment of Condemnation
Commissioners.*

ply Commission, which is constructing for said cities and other municipalities a water works upon the Wanaque River, and it is necessary for said cities of Paterson, Passaic and Clifton to acquire or construct water mains in the streets and elsewhere and a pumping station and the incidental reservoirs in order to use said new water supply; and, whereas, the water works owned by the Passaic Consolidated Water Company, consisting of a pumping and filtration plant on the Passaic River at Little Falls, Passaic County, New Jersey, and the incidental reservoirs and mains from said plant and reservoirs to the said cities of Paterson, Passaic and Clifton, and distributing mains and hydrants in the streets of said cities, from which which water works the said three cities now receive their present water supply, is adapted for said purpose of using the said new supply from the Wanaque River, and

WHEREAS, the said cities have by conferences of committees of their respective governing bodies and by the passage of resolutions by said governing bodies retaining special counsel in this matter, taken joint action for acquiring by purchase or condemnation the water works plant and water rights and franchises of the said Passaic Consolidated Water Company:

THEREFORE BE IT ORDAINED, by the Board of Finance of the City of Paterson, that this city join with the cities of Passaic and Clifton in an application on behalf of the said cities, pursuant to Chapter 195 of the Laws of 1923, and any other laws of New Jersey which may be applicable to such proceedings, to a Justice of the Supreme Court for the appointment of commissioners to

*Petition for Appointment of Condemnation
Commissioners.*

10 acquire by purchase or condemnation, on behalf of the said cities the said water works owned by the said Passaic Consolidated Water Company, together with the rights and franchises relating thereto, and the rights and franchises to obtain an additional supply of water and all other property of the owner of such water works that may be necessary to maintain, operate, enlarge, or extend, the water works so acquired, and to enlarge, extend, maintain and operate the same to supply water for the municipalities acquiring such water works as aforesaid and to all other municipalities theretofore supplied with water by the same water works.

20 AND BE IT FURTHER ORDAINED, that the said special counsel be directed and authorized to take the proper legal proceedings to carry out this ordinance.

Passed Feb. 4, 1927.

S. S. EVANS,
President Board of Finance.

Approved Feb. 5, 1927.

30 COLIN M'LEAN,
Mayor.

Attest:
HOWARD L. BRISTOW,
Clerk.

*Petition for Appointment of Condemnation
Commissioners.*

AN ORDINANCE authorizing proceedings for the acquisition by purchase or condemnation of the water works, rights, franchises, and property of the Passaic Consolidated Water Company by the joint action of the cities of Paterson, Passaic and Clifton.

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WHEREAS, the cities of Paterson, Passaic and Clifton have joined with other municipalities in obtaining a new supply of water through the agency of the North Jersey District Water Supply Commission, which is constructing for said cities and other municipalities a water works upon the Wanaque river, and it is necessary for said cities of Paterson, Passaic and Clifton to acquire or construct water mains in the streets and elsewhere and a pumping station and the incidental reservoirs in order to use said new water supply; and whereas, the water works owned by the Passaic Consolidated Water Company, consisting of a pumping and filtration plant on the Passaic River at Little Falls, Passaic County, New Jersey, and the incidental reservoirs and mains from said plant and reservoirs to the said cities of Paterson, Passaic and Clifton, and distributing mains and hydrants in the streets of said cities, from which water-works the said three cities now receive their present water supply, is adapted for said purpose of using the said new supply from the Wanaque river, and

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WHEREAS, the said cities have by conferences of committees of their respective governing bodies and by the passage of resolutions by said governing bodies retaining special counsel in this matter, taken joint action for acquiring by purchase or condemnation the water works plant and water rights and franchises of the said Passaic Consolidated Water Company:

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*Petition for Appointment of Condemnation
Commissioners.*

THEREFORE BE IT ORDAINED, by the Board of Public Works of the City of Paterson, that this city join with the cities of Passaic and Clifton in an application on behalf of the said cities, pursuant to Chapter 195 of the Laws of 1923, and any other
 10 laws of New Jersey which may be applicable to such proceedings, to a Justice of the Supreme Court for the appointment of commissioners to acquire by purchase or condemnation, on behalf of the said cities, the said water works owned by the said Passaic Consolidated Water Company, together with the rights and franchises relating thereto, and the rights and franchises to obtain an additional supply of water and all other property of the owner of such water works that may
 20 be necessary to maintain, operate, enlarge, or extend the water works so acquired, and to enlarge, extend, maintain and operate the same to supply water for the municipalities acquiring such water works as aforesaid and to all other municipalities theretofore supplied with water by the same water works.

AND BE IT FURTHER ORDAINED, that the said special counsel be directed and authorized to take the proper legal proceedings to carry out this ordinance.
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Passed February 8, 1927.

RICHARD R. CHISWELL,
President, Board of Public Works.

Approved February 9, 1927.

COLIN M. M'LEAN,
Mayor.

Attest:
 40 EDWARD DUPREE,
City Clerk.

*Petition for Appointment of Condemnation
Commissioners.*

AN ORDINANCE authorizing proceedings for the acquisition by purchase or condemnation of the water works, rights, franchises, and property of the **Passaic Consolidated Water Company** by the joint action of the cities of **Paterson, Passaic and Clifton.** 10

WHEREAS, the Cities of Paterson, Passaic and Clifton have joined with other municipalities in obtaining a new supply of water through the agency of the North Jersey Water Supply Commission which is constructing for said cities and other municipalities a water works upon the Wanaque River, and it is necessary for said cities of Paterson, Passaic and Clifton to acquire or construct water mains in the streets and elsewhere and a pumping station and the incidental reservoirs in order to use said new water supply; and whereas, the water works owned by the Passaic Consolidated Water Company consisting of a pumping and filtration plant on the Passaic River at Little Falls, Passaic County, New Jersey, and the incidental reservoirs and mains from said plant and reservoirs to the said cities of Paterson, Passaic and Clifton, and distributing mains and hydrants in the streets of said cities, from which water works in the said three cities now receive their present water supply, is adapted for said purpose of using the said new supply from the Wanaque River; and 20 30

WHEREAS, The said cities have by conference of committees of their respective governing bodies 40

*Petition for Appointment of Condemnation
Commissioners.*

and by the passage of resolutions by said governing bodies retaining special counsel in this matter, taken joint action for acquiring by purchase or condemnation, the water plant and water rights and franchises of the said Passaic Consolidated
10 Water Company.

THEREFORE BE IT ORDAINED by the Board of Commissioners of The City of Passaic:

That the City join with the cities of Paterson and Clifton in an application on behalf of the said cities, pursuant to Chapter 195 of the Laws of 1923, and any other laws of New Jersey which may be applicable to such proceedings, to a Justice
20 of the Supreme Court for the appointment of Commissioners to acquire by purchase or condemnation, on behalf of the said cities, the said water works owned by the said Passaic Consolidated Water Company, together with the rights and franchises relating thereto and the rights and franchises to obtain an additional supply of water
30 and all other property of the owner of such water works that may be necessary to maintain, operate, enlarge or extend the water works so acquired and to enlarge, extend, maintain and operate the same to supply water for the municipalities acquiring such water works as aforesaid and to all other municipalities theretofore supplied with water by the same water works.

AND BE IT FURTHER ORDAINED that the said Special Counsel be directed and authorized to take the

*Petition for Appointment of Condemnation
Commissioners.*

proper legal proceedings to carry out this ordinance.

JOHN R. JOHNSON
ANTON L. PETERSEN
ABRAM PREISKEL
JOHN J. ROEGNER 10
JOHN H. McGUIRE
Commissioners.

A. D. BOLTON,
City Clerk.

Passed at a regular meeting of the Board of
Commissioners held Tuesday, March 22nd, 1927.

A. D. BOLTON,
City Clerk.

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AN ORDINANCE authorizing proceedings for
the acquisition by purchase or condemnation of
the water works, rights, franchises, and property
of the Passaic Consolidated Water Company by
the joint action of the cities of Paterson, Passaic
and Clifton.

WHEREAS, the cities of Paterson, Passaic and
Clifton have joined with other municipalities in 30
obtaining a new supply of water through the
agency of the North Jersey District Water Supply
Commission, which is constructing for said cities
and other municipalities a water works upon the
Wanaque River, and it is necessary for said cities
of Paterson, Passaic and Clifton to acquire or
construct water mains in the streets and elsewhere
and a pumping station and high service reservoirs
in order to use said new water supply; and where-
as, the water works owned by the Passaic Consoli- 40

*Petition for Appointment of Condemnation
Commissioners.*

10 dated Water Company, consisting of a pumping
and filtration plant on the Passaic River at Little
Falls, Passaic County, New Jersey, and the high
service reservoirs and mains from said plant and
reservoirs to the said cities of Paterson, Passaic
and Clifton, and distributing mains and hydrants
in the streets of said cities, from which water
works the said three cities now receive their pres-
ent water supply, is adapted for said purpose of
using the said new supply from the Wanaque
River, and

20 WHEREAS, the said cities have by conferences of
committees of their respective governing bodies
and by the passage of resolutions by said govern-
ing bodies retaining special counsel in this matter,
taken joint action for acquiring by purchase or
condemnation the water works plant and water
rights and franchises of the said Passaic Consoli-
dated Water Company:

30 NOW THEREFORE THE CITY OF CLIFTON DOES HEREBY
ORDAIN: That this City join with the cities of Pater-
son and Passaic in an application on behalf of the
said cities, pursuant to Chapter 195 of the Laws
of 1923, and any other laws of New Jersey which
may be applicable to such proceedings, to a justice
of the Supreme Court for the appointment of com-
missioners to acquire by purchase or condemna-
tion, on behalf of the said cities, the said water
works owned by the said Passaic Consolidated
Water Company, together with the rights and
franchises relating thereto, and the rights and
franchises to obtain an additional supply of water
and all other property of the owner of such water
40 works that may be necessary to maintain, oper-

*Petition for Appointment of Condemnation
Commissioners.*

ate, enlarge, or extend the water works so acquired, and to enlarge, extend, maintain, and operate the same to supply water for the municipalities acquiring such water works as aforesaid, and to all other municipalities theretofore supplied with water by the same water works. 10

AND BE IT FURTHER ORDAINED that the said special counsel be directed and authorized to take the proper legal proceedings to carry out this ordinance.

Passed: April 5, 1927.

WM. P. JORDAN,
Chairman of the City Council. 20

Attest: William A. Miller,
City Clerk.

Approved: S. G. Thorburn,
Mayor.

A True Copy of Petition and Order.

Dated April 27th, A. D. 1928. 30

JOHN McCUTCHEON,
Clerk.

By LEOZA B. MARSH,
Deputy Clerk.

**Order Appointing Condemnation
Commissioners.**

(Filed May 12, 1928.)

BEFORE

HONORABLE CHARLES C. BLACK,
JUSTICE OF THE SUPREME COURT.

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IN THE MATTER

of

The application of PASSAIC VAL-
LEY WATER COMMISSION for the
appointment of three commis-
sioners to fix the compensation
to be paid for the water works,
rights, franchises and property
of PASSAIC CONSOLIDATED WATER
COMPANY to be taken and con-
demned for public use.

} ORDER.

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Passaic Valley Water Commission, a corpora-
tion of this State, organized under and by virtue
of Chapter 195 of the Laws of 1923, having made
application to me by petition in writing to ap-
point three disinterested freeholders, residents of
the County of Passaic, to examine and appraise
the lands, water works and other property in said
petition described to be taken and condemned for
public use pursuant to law and to assess the dam-
ages if any by reason of the taking of the same
on at least six days' notice to the parties inter-
ested in said property in such manner as I might
direct, and in such order of appointment to fix
the date on or before which such commissioners
40 must file their report and I having ordered that

Order Appointing Condemnation Commissioners.

Saturday the 12th day of May, 1928, at the hour of ten o'clock in the forenoon, daylight saving time, at the Court House in the City of Paterson, County of Passaic, be fixed as the time and place for the hearing of said petition before me and that notice of said hearing be given to the owners, occupants, corporations and persons appearing of record to have an interest in the lands, water works and other property set forth in said petition at least six days before the hearing, and that the said petition and order be filed in the office of the Clerk of the County of Passaic and notice of the pendency of the proceedings be filed and recorded in said county and certified copies of said petition and order be filed in the Clerk's Office of the Counties of Hudson, Essex and Morris respectively and that notice of the pendency of these proceedings be filed and recorded in the office of the Register of Deeds in the Counties of Hudson and Essex respectively and in the office of the Clerk of the County of Morris as by the statute required, and that said notice be published twice in the Morning Call, once in the week of April 24th, 1928, and once in the following week and a copy thereof mailed on or before April 28th, 1928, to such of the parties interested as reside out of this State including any corporation having its principal office outside of the state whose address can be ascertained; and the hearing now having been had on the day and at the hour and place named in said order; and evidence satisfactory to me having been presented by affidavits that notice has been served and published and said petition and order filed and notice of the pendency of these proceedings filed and recorded as required by said order and I having heard what was to be said in the matter by the attorneys for the

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Order Appointing Condemnation Commissioners.

petitioners and the attorneys for the Passaic Consolidated Water Company and of other parties,

10 NOW THEREFORE, I, Charles C. Black, Justice of the Supreme Court of the State of New Jersey on this 12th day of May, 1928, do hereby appoint James C. Hinchliffe, Thomas H. Wilson and Robert D. Benson, three disinterested freeholders, residents of the County of Passaic in which County the greater part in value of the land and other property described in the petition are situate, Commissioners to examine and appraise the lands, water works and other property in said petition described and to assess the damages to be sustained in the taking and condemning of the lands, water works and property aforesaid for
20 the purpose set forth in said petition and to proceed therein as directed by the Act entitled, "An Act to regulate the ascertainment and payment of compensation for property condemned and taken for public use (Revision of One Thousand Nine Hundred).

30 It is further ordered that said Commissioners give six days notice to each of the persons and corporations interested in the lands, water works and property described in said petition of the time and place when and where they will meet and proceed to execute their duties under this appointment.

It is further ordered that said Commissioners shall file their report on or before the 1st day of May, 1929.

CHARLES C. BLACK,
Justice Sp. Ct.

Affidavit of Walter W. Corrigan.

BEFORE

HONORABLE CHARLES C. BLACK,
A JUSTICE OF THE SUPREME COURT.

| | | |
|--|---|------------|
| <p style="text-align: center;"><i>In Re</i></p> <p>Application of PASSAIC VALLEY WATER COMMISSION for the ap- pointment of three Commis- sioners to fix the compensation to be paid for the water works, rights, franchises and property of PASSAIC CONSOLIDATED WATER COMPANY to be taken and con- demned for public use.</p> | } | AFFIDAVIT. |
| | | 10 |
| | | 20 |

State of New Jersey, }
County of Passaic, } ss:

WALTER W. CORRIGAN, being duly sworn ac-
cording to law on his oath says:

I am the Secretary and Treasurer of the Passaic
Consolidated Water Company, (hereinafter some-
times referred to as the "Water Company"), a
corporation of the State of New Jersey, and have
been such Secretary and Treasurer since the or-
ganization of said Company on October 30, 1923.
The records of the said Company including its
title papers are in my custody as such officer there-
of and I am fully familiar with all of the property
owned by the said Company.

I have read the petition presented in the above
entitled matter to the Honorable Charles C. Black,

Affidavit of Walter W. Corrigan.

Justice of the Supreme Court, on the 24th day of April, 1928.

10 (a) The said petition does not describe in a general way or otherwise, all of the tangible property of the Water Company included within the waterworks of the Water Company and property relating thereto and used by it in the conduct of its business and necessary for the operation of such waterworks.

(b) The descriptions of some of such property contained in said petition are inaccurate and misleading.

20 (c) The said petition also includes in the description of the property to be condemned and taken, property not now owned by the Water Company or owned by it on the date of the filing of said petition.

(d) The said petition also fails to state whether or not the said petitioner intends to condemn and take certain intangible property of the Water Company, particularly its accounts receivable.

(a) *Tangible property of the Water Company omitted from said petition.*

30 The said petition identifies the real property of the Water Company by reference to the descriptions contained in a certain mortgage made by the Water Company to the First National Bank of the City of New York as Trustee, to secure bonds in the sum of \$50,000,000, which mortgage bears date May 1, 1924, and was recorded as stated in said petition, and by reference to the deeds for certain other tracts of land acquired by the Water Company subsequent to the date of said mortgage.
40 The reference, however, to deeds for land ac-

Affidavit of Walter W. Corrigan.

quired by the Water Company subsequent to said date is incomplete in that no mention is made of the land acquired by it by deed made by Prospect Land Company to the Water Company bearing date February 27, 1925, covering premises located in the City of Passaic and used by the Water Company in the conduct of its business, as an office building, and in that it also omits the right of way conveyed by the Society for Establishing Useful Manufactures to the Water Company by deed dated February 6, 1928, through the Falls Grounds in Paterson, N. J., which right of way is used by the Water Company for a pipe line for the transportation of water and is necessary for the operation of such water works. The said description also fails to include the lease of the building occupied by the Water Company as an office located at 158 Ellison Street, Paterson, N. J., which lease was made to the Water Company by Lilian A. De Barge, as Executrix of the Estate of Samuel Nathan, Deceased, for a term of five years beginning November 1, 1924, with a renewal privilege of five years from said date.

(b) Inaccuracies in said descriptions.

Subdivision (a) of paragraph 9 of said petition being a part of the general description of the property of the Water Company which the petitioner desires to condemn, refers to "the dam, pumping station, filter plant and appurtenant works located on the Passaic River in the Borough of Totowa and Township of Little Falls in the County of Passaic." Such dam, pumping station, filter plant and appurtenant works are located not only in the Borough of Totowa and Township of Little Falls in the County of Passaic but also in Wayne Township in said County.

Affidavit of Walter W. Corrigan.

Subdivision (c) of said paragraph 9 refers to the New Street Reservoir and appurtenant works as located in the Borough of West Paterson. Said appurtenant works are located not only in the Borough of West Paterson but also in the City of Paterson.

10 Subdivision (d) of said paragraph 9 refers to the main transmission line consisting generally of a 51" diameter steel pipe extending from said pumping station at Little Falls to Kearny Avenue and Belleville Turnpike, Kearny. Said 51" steel pipe extends only to the old Belleville Reservoir on Joralemon Street in Belleville and a 42" steel pipe extends from that point to Kearny Avenue and Belleville Turnpike, Kearny, except that the
20 crossing under the river consists of seven 16" wrought iron pipes.

Subdivision (g) of said paragraph 9 refers to the yard on Monroe Street in the City of Paterson as property owned by the Water Company. A portion of such yard is owned by the Water Company and another portion thereof is leased by said Company from the Dundee Water Power & Land Company, a corporation of the State of New Jersey.

30 Subdivision (1) of paragraph 9 refers to the several parcels of land located on either shore of the Pequannock River in the Township of Pequannock and other places. The Water Company owns no parcels of land adjoining either shore of the Pequannock River in the Township of Pequannock, although it owns land adjoining the shore of said River in the other places mentioned in said paragraph.

Affidavit of Walter W. Corrigan.

(c) *Property included in the description which is not owned by the Passaic Consolidated Water Company.*

Paragraph 10 of said petition, on page 11 thereof, attempts to except certain real estate from the general description of the lands of the Water Company as given in the mortgage and deeds referred to in said paragraph 10 by reference to deeds made by the Water Company subsequent to the date of the execution and delivery of said mortgage. Said paragraph, however, and said petition fails to mention all of the deeds made by said Company subsequent to the date of the execution and delivery of said mortgage for lands included within the description contained in said mortgage. Since the date of the execution of said mortgage the following deeds for lands included within the description contained in said mortgage have been made by said Water Company, none of which are mentioned in said petition:

1. Deed made February 2, 1925, to William Baxter conveying right of way across property known as the "Slater Mill property" located at Riverdale.

2. Deed made October 1, 1924, to Fred D. Mase, conveying 3.1 acres of land located at Belleville, N. J.

3. Deed made December 20, 1927, to John H. Vicine for about 49 acres of land in Pompton Notch in Pequannock Township.

4. Deed made to Board of Chosen Freeholders of Passaic County bearing date December 20, 1927, for a new road at New Street Reservoir.

Affidavit of Walter W. Corrigan.

(d) *Indefiniteness of the petition with regard to accounts receivable.*

10 The petition does not state whether the petitioner intends to condemn and take the accounts receivable and certain other intangible property of the Water Company. The indefiniteness of the petition with regard to the accounts receivable of the Water Company is important in view of the great value of such accounts.

20 On the 24th day of April, 1928, the date of the filing of the said petition, said Company had and now has, a claim against the New York and New Jersey Water Company and the New Jersey Suburban Water Company for water furnished said Companies amounting to \$218,679.49, which claim now is and for some time past has been in course of litigation with said Companies.

30 The Water Company on said date also had accounts receivable for water furnished and services rendered which had been billed to its customers amounting to \$143,026. In addition to the foregoing the Water Company had, on said date, accrued charges which had not then been billed, for water furnished amounting to \$190,000. It is the practice of said Company to collect quarterly and in some instances monthly for water furnished to its said customers, the charge being based upon meter readings. In some instances, particularly in the case of water furnished for fire protection purposes, collection of a fixed charge is made in advance.

40 The Water Company also has on deposit in bank the sum of \$34,345.91, which consists of the amount of deposits made with it by certain of its customers to secure the payment of charges for water furnished and services rendered. The Water Company is under obligation to return said deposits to

Affidavit of Walter W. Corrigan.

said customers if and when they shall cease to be supplied with water by said Company. Said Company also has on deposit in bank the sum of approximately \$14,713.19, which has from time to time been deposited with it at the time extensions of its service were made under agreements with the depositors, and all or a portion of the amounts so deposited by said depositors will be returned under certain circumstances, depending upon the development of the territory in which such extensions were made. 10

The allegations of the petition are so indefinite and uncertain that it is impossible to ascertain with certainty, from an examination thereof, whether any of said accounts receivable or deposits are intended to be condemned and taken by the petitioner or whether any or all thereof are intended to be excluded from the property to be condemned and taken. 20

THE COMMISSION IS ATTEMPTING TO TAKE THE WATER COMPANY'S PROPERTY WITHOUT JUST COMPENSATION AND WITHOUT DUE PROCESS OF LAW.

As appears from paragraph 13 of said petition, the petitioner is attempting to take the property of the Water Company free and clear from all encumbrances thereon, whereas Chapter 195 of the Session Laws of 1923 under which these proceedings were instituted, only authorizes said petitioner to take such property subject to the lien of any mortgage or mortgages thereon. The following underlying mortgages securing bonds issued by corporations which were subsequently merged and consolidated into the Passaic Consolidated Water Company are now liens upon certain portions of the property of the Water Company: 30 40

*Affidavit of Walter W. Corrigan.**Passaic Water Company.*

10 (a) Mortgage dated June 1, 1887, made by Passaic Water Company to Central Trust Company of New York, Trustee, to secure the payment of bonds in the aggregate par amount of \$2,500,000. on July 1, 1937, with interest at the rate of 5% payable semi-annually. Bonds of the aggregate par amount of \$2,141,000. have been issued and are now outstanding under this mortgage.

20 (b) Mortgage dated January 1, 1896, made by Passaic Water Company to Paterson Savings Institution to secure the payment of bonds in the aggregate par amount of \$500,000. on January 1, 1937, with interest at the rate of 5% per annum payable semi-annually. Bonds to the aggregate par amount of \$500,000. have been issued and are now outstanding under this mortgage.

(c) Mortgage dated January 1, 1908, made by Passaic Water Company to Bankers Trust Company of New York, Trustee, to secure the payment of bonds in the par amount of \$1,200,000. on January 1, 1958, with interest at the rate of 5% per annum payable semi-annually. Bonds of the aggregate par amount of \$1,200,000. have been issued and are now outstanding under this mortgage.

30 The bonds secured by said mortgages made by the Passaic Water Company mentioned under (a) and (b) hereof are not callable or payable until the maturity thereof, while the bonds secured by the mortgage mentioned under (c) hereof are callable on any interest payment date on six months' notice at 105 and accrued interest.

Montclair Water Company.

40 (d) Mortgage dated January 1, 1908, made by Montclair Water Company to Bankers Trust Company of New York, Trustee, to secure the payment of bonds in the aggregate

Affidavit of Walter W. Corrigan.

par amount of \$400,000. on January 1, 1958, with interest at the rate of 5% per annum payable semi-annually. Bonds of the aggregate par amount of \$400,000. have been issued and are now outstanding under this mortgage. Such bonds are callable on any interest date on six months notice at 105 and accrued interest. 10

East Jersey Water Company.

(e) Mortgage dated January 1, 1909, made by East Jersey Water Company to Bankers Trust Company of New York as Trustee, to secure the payment of bonds in the aggregate par amount of \$800,000. on January 1, 1958, with interest at the rate of 5% per annum payable semi-annually. Bonds of the aggregate par amount of \$797,000. have been issued and are now outstanding under this mortgage. Such bonds are callable on any interest payment date on six months notice at 105 and accrued interest. 20

Acquackanonk Water Company.

(f) Mortgage dated November 1, 1889, made by Acquackanonk Water Company to Central Trust Company of New York, as Trustee, to secure the payment of bonds in the aggregate par amount of \$300,000. on November 1, 1939, with interest at the rate of 5% per annum payable semi-annually. Bonds of the aggregate par amount of \$294,000. have been issued and are now outstanding under this mortgage. 30

(g) Mortgage dated January 1, 1896, made by Acquackanonk Water Company to Paterson Savings Institution to secure the payment of bonds in the aggregate par amount of \$300,000. on January 1, 1939, with interest at the rate of 5% per annum payable semi-annually. Bonds of the aggregate par amount of \$300,000. have been issued and are now outstanding under this mortgage. 40

Affidavit of Walter W. Corrigan.

10 (h) Mortgage dated January 1, 1908, made by Acquackanonk Water Company to Bankers Trust Company of New York, as Trustee, to secure the payment of bonds in the aggregate par amount of \$800,000. on January 1, 1958, with interest at the rate of 5% per annum payable semi-annually. Bonds of the aggregate par amount of \$800,000. have been issued and are now outstanding under this mortgage.

20 The bonds respectively secured by mortgages of the said Acquackanonk Water Company mentioned under (f) and (g) hereof are not callable or payable until the days when they respectively become due, as above stated. The bonds secured by the mortgage of the said Acquackanonk Water Company mentioned under (h) hereof are callable on any interest payment date on six months' notice at 105 and interest.

30 On May 1, 1924, the Passaic Consolidated Water Company executed and delivered its mortgage to the First National Bank of New York as Trustee, to secure the payment of bonds in the aggregate par amount of \$50,000,000. Bonds in the aggregate par amount of \$1,504,000. have been issued and are now outstanding under this mortgage. Such bonds bear interest at the rate of 6% per annum payable semi-annually and will mature on May 1, 1949. They are callable on any interest date after May 1, 1934, on thirty days' notice at 110 and accrued interest.

40 From the foregoing statement it appears that bonds to the amount of \$3,197,000., with annual interest charges of \$159,850., will not mature until the year 1958, although such bonds are callable on six months' notice at a premium of \$50. per bond; that bonds to the amount of \$1,504,000., with annual interest charges of \$90,240., will not mature until 1949, and that such bonds are not callable

Affidavit of Walter W. Corrigan.

until after May 1, 1934, and then only at a premium of \$100. per bond; that bonds to the amount of \$594,000., with annual interest charges of \$29,700., will not mature until 1939; and that bonds to the amount of \$2,641,000., with annual interest charges of \$132,050., will not mature until the year 1937.

10

The Water Company, after the property which the petitioner is seeking to condemn shall have been taken by the petitioner, will have no business and no source of income and no means from which to pay the interest on said bonds, except the amount which shall be awarded for such property.

If the amount so awarded shall be paid into the Court of Chancery to be there held as security for the payment of all of said bonds as and when they mature and for the payment of interest thereon in the meantime, such amount would be greatly reduced by such payments below the value of the Water Company's interest in said property and the Water Company will be deprived of fair compensation for its property so taken. Under such a method of condemnation the Water Company can never receive the fair value of its interest in the property unless the award therefor shall include not only the value of the property determined without reference to the liens thereon but also the damages occasioned the Water Company by reason of depriving it of its entire business and source of income and leaving it with its obligations.

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Your petitioner is advised that under the general Condemnation Act of 1900, pursuant to which the above mentioned petition has been filed, it is the duty of the Condemnation Commissioners to fix and determine the amount of their award without considering liens upon or the several inter-

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Affidavit of Walter W. Corrigan.

ests in such property. If the amount of the award for the property of the Water Company shall be determined in such manner and thereafter such award shall be deposited in the Court of Chancery to be held until the maturity or the redemption of such bonds and payments made therefrom with interest to such date of maturity or redemption as aforesaid, the property of the Water Company will be taken for public use without just compensation in violation of Section 16 of Article I of the Constitution of the State of New Jersey and the Water Company will be deprived of its property without due process of law in violation of the 14th Amendment to the Constitution of the United States.

Upon the basis of thorough appraisals heretofore made and of partially completed appraisals now in the course of preparation the property of the Water Company proposed to be taken by the petitioner, and whether there is intended to be included therein the accounts receivable, and other intangible property hereinbefore specifically mentioned, the value of such property is substantially in excess of Twenty Million Dollars.

Deponent therefore prays that a Writ of Certiorari may be issued out of the Supreme Court to review the appointment of Condemnation Commissioners in accordance with the prayer of said petition.

WALTER W. CORRIGAN.

Sworn to and subscribed before me }
this 12th day of May, 1928. }

GUSTAVE A. LEIMBACHER,
Notary Public of New Jersey.

[NOTARY SEAL.]

Affidavit of John H. Cook.

In re

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|---|---|---------------|
| Application of PASSAIC VALLEY WATER COMMISSION for the ap- pointment of three commis- sioners to fix the compensation to be paid for the water works, rights, franchises and property of PASSAIC CONSOLIDATED WATER COMPANY to be taken and con- demned for public use. | } | AFFIDAVIT. 10 |
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| STATE OF NEW JERSEY, } COUNTY OF ESSEX, } ss.: | } | 20 |
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JOHN H. COOK, being duly sworn according to law, on his oath, says:

I reside in the City of Passaic, in the County of Passaic and State of New Jersey, and am the President of the Passaic Consolidated Water Company (hereinafter sometimes referred to as the "Water Company"), a corporation of the State of New Jersey, and have been such President since the organization of said Water Company on October 30, 1923. 30

The Company was formed through the consolidation of Acquackanonk Water Company, East Jersey Water Company, Kearny Water Company, Montclair Water Company and Passaic Water Company. At the time of its incorporation I was the chief officer of each of the companies so consolidated into it and had long been familiar with the properties owned by each of 40

Affidavit of John H. Cook.

them and the business done by each of them. I devote my entire business time to the management and affairs of the Water Company and am thoroughly familiar with its property and business.

10 From the time of its incorporation the Water Company has actively carried on a large business in supplying water for public use to various municipalities and their inhabitants. It is a public utility of the State of New Jersey within the meaning of such term as defined by Chapter 195 of the Laws of 1911, and has been adjudged so to be both by the New Jersey Supreme Court and the New Jersey Court of Errors and Appeals. The Water Company supplies either directly or through other
20 water companies all of the potable water used within the Township of Little Falls, Borough of Totowa, City of Paterson, City of Passaic, City of Clifton, Borough of West Paterson, Town of Kearny, Town of Harrison, Borough of East Newark, Borough of Prospect Park, and all or practically all of the water so used in the City of Bayonne. The Water Company also supplies a large part of the water used in the Town of Bloomfield and has connections with and may be under obligation to supply water for similar purposes
30 to the Town of Montclair. It also has connections with other municipalities and is prepared to render a standby service to them.

As appears from the petition in the above matter the Water Company's properties are located in the Counties of Passaic, Morris, Essex and Hudson. The total population supplied by the Water Company is about 425,000. Within its Paterson district it has about 185 miles of transmission and distribution mains, of which over
40 16 miles are 16" to 48" in diameter; upwards of

Affidavit of John H. Cook.

1,600 fire hydrants; upwards of 22,000 meters, and upwards of 22,000 service pipe connections to consumers. In its Passaic District it has about 67 miles of transmission and distribution mains from 4" to 20" in diameter; upwards of 610 fire hydrants; upwards of 7,400 meters and upwards of 7,400 service pipe connections to consumers. In its Clifton district it has about 54 miles of transmission and distribution mains from 6" to 30" in diameter; upwards of 400 fire hydrants; upwards of 6,500 meters and upwards of 6,500 service pipe connections to consumers. In Essex County it has about two and one-half miles of mains from 16" to 51" in diameter and in Hudson County about one-half mile of mains which are nearly all 42" in diameter. The quantity of its hydrants, meters and service pipe connections is, of necessity, constantly changing and constantly increasing. It is constantly required to make extensions to its mains and other properties and to expend very substantial amounts not only for such extensions but in betterments and repairs to its mains and other facilities. During the last two years it has expended for such purposes upwards of \$710,000. The nature of the business in which it is engaged, the growth of the population in the important territories it serves, makes it certain that it will be compelled to continue such expenditures during the pendency of the proceedings herein in which a very large part, if not practically all, of its entire property, assets and franchises are sought to be condemned. It is impossible to estimate what this sum will be.

In so far as the Water Company may during the pendency of such proceedings expend moneys for repairs and betterments to its present facilities, the Act under which such proceedings are taken,

Affidavit of John H. Cook.

as I am credibly informed and believe, makes no provision for compensation for such expenditures. In so far as such expenditures may be made for extensions of and additions to its mains and other facilities, these will not be included in the property sought to be condemned and yet will
10 be rendered worthless to the Water Company by separation from its other property proposed to be taken. As I am similarly informed and believe, the Act under which such proceedings are sought to be taken makes no provision whatever for the awarding of damages to the Water Company on account of any of these matters. During the same period it is inevitable that the Water Company will also be required to supply a large number of
20 additional meters and service pipe connections and the same thing is true as to these.

Its accounts receivable are necessarily constantly changing. As they stood as of April 24, 1928, the date of the filing of the petition herein seeking the appointment of condemnation commissioners, they are set forth in the affidavit of Walter W. Corrigan, verified May 12, 1928, to be submitted herewith. They have of necessity changed considerably since April 24, 1928, and will at the time that the Company's property is
30 taken be entirely different from what they were on the date of the filing of the said petition, and will continue to change daily so long as the Water Company continues its business. Its ordinary accounts receivable as its business is now conducted consists of upwards of 35 thousands of accounts, representing amounts due for water furnished to an equally large number of consumers. This situation will be of necessity continue so long as the Water Company continues to do business. I am
40 similarly informed and believe that under the

Affidavit of John H. Cook.

said petition the Passaic Valley Water Commission cannot take over these accounts as they will stand at the time they may take possession of the Company's property and franchises. If they are not so taken, the Water Company will undoubtedly be faced with great difficulty and suffer material loss and damage in attempting to collect the same as it will no longer have the power of collection by discontinuance of service and will necessarily be thereby greatly damaged. The Water Company's bills are rendered monthly or quarterly and the average amount thereof to the individual household consumer does not exceed \$15. per annum.

10

Practically the entire revenue of the Water Company is derived from its ordinary accounts receivable representing the charges made by it for water furnished either directly to consumers or to other water companies. During the year 1927 its operating expenses exclusive of depreciation and interest on bonded indebtedness amounted to \$1,152,453. It must continue to make operating expenditures at least substantially at this rate until such time as its property and franchises are taken from it, if they are to be taken from it under the proceedings herein.

20

The taking of the Water Company's property and franchises, as aforesaid, for public use pursuant to the provisions of the statutes under which the same are sought to be taken, and which are designated in the petition for the appointment of condemnation commissioners herein, would under the foregoing circumstances result in the taking of the property of the Company for public use without just compensation in violation of Section 16 of Article I of the Constitution of the State of New Jersey, and in depriving the Company

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Petition for Order Amending Petition.

of its property without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States.

JOHN H. COOK.

Sworn to and subscribed before me }
10 This 17th day of May, 1928. }
DOROTHY B. GOODEN,
Notary Public for New Jersey.
My commission expires Feb. 17, 1931.

Petition for Order Amending Petition.

20 Before His Honor, CHARLES C. BLACK,
Justice of the Supreme Court.

IN THE MATTER
of
The application of PASSAIC VAL-
LEY WATER COMMISSION for the
appointment of three Commis-
sioners to fix the compensation
to be paid for the water works,
rights, franchises and property
of Passaic Consolidated Water
Company to be taken and con-
demned for public use. } PETITION.

To the Honorable CHARLES C. BLACK, Justice of
the Supreme Court of the State of New
Jersey.

40 The petition of Passiac Valley Water Commis-
sion respectfully shows that:

Petition for Order Amending Petition.

1. Your petitioner presented its petition to your Honor on the 24th day of April, 1928, praying that your Honor appoint three disinterested freeholders, residents of the County of Passaic, Commissioners to examine and appraise the lands and other property of the Passaic Consolidated Water Company and to assess the damages, and your Honor did on said last date assign Saturday, the 12th day of May, 1928, at the hour of ten o'clock in the forenoon, daylight saving time, at the Court House in the City of Paterson, as the time and place for the hearing of said petition and for the appointment of three commissioners to examine and appraise the property in said petition described and assess the damages if any, on which last named day your Honor appointed James C. Hinchliffe, Thomas H. Milson and Robert D. Benson, three disinterested freeholders of the County of Passaic, Commissioners to examine and appraise the property described in said petition.

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2. The said Passaic Consolidated Water Company by its counsel on said May 12th, 1928, upon the hearing of said petition apprised your Honor that certain premises of which said company was the owner or in which it had an interest were not included in said petition.

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3. Your petitioner therefore desires to amend its said petition to the end that the said property of said company may be included in the condemnation proceedings aforesaid and therefore prays said petition be amended in the following manner:

All that tract of land more particularly described in the deed from Prospect Land Company to Passaic Consolidated Water Company bearing date February 27, 1925, and recorded March 3, 1925, in Book U-31 of page

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Petition for Order Amending Petition.

10 541 etc. of deeds for Passaic County. Also a right of way ten feet wide across lands described in a grant made by The Society for Establishing Useful Manufactures to Passaic Consolidated Water Company bearing date February 6, 1928, and recorded February 7, 1928, in Book K-34 of Deeds for Passaic County on page 182 etc. in which to lay, operate, maintain and renew a thirty-six (36) inch concrete and a forty (40) inch steel pipe for the transportation of water.

Also such right as the Passaic Consolidated Water Company may possess in and to the tract of land known as No. 158 Ellison Street, in the City of Paterson, County of Passaic, of which they have possession but of which there is no recorded title.

20 Your petitioner prays to amend subdivision (a) of paragraph 9 of the petition by adding thereto the words "Wayne Township" so that said subdivision (a) will read as follows:

(a) The dam, pumping station, filter plant, and appurtenant works located on the Passaic River in the Borough of Totowa and Township of Little Falls and Wayne Township in the County of Passaic.

30 also to amend subdivision (c) of said paragraph 9 by adding the words, in the "city of Paterson" thereto so that said subdivision (c) will read as follows:

(c) The New Street Reservoir and appurtenant works located in the Borough of West Paterson and in the City of Paterson.

also to amend subdivision (d) of said paragraph 9 so that said subdivision (d) will read as follows:

40 (d) The main transmission line consisting generally of a 51 inch diameter steel pipe ex-

Petition for Order Amending Petition.

tending from said pumping station at Little Falls to the Old Belleville Reservoir on Jorammon Street and a 42 inch steel pipe to Kearny Avenue and Belleville Turnpike, Kearny, except under the Passaic River where there are seven 16 inch lines of wrought iron pipe.

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also to amend subdivision (1) of said paragraph 9 by omitting the words "in the Township of Pequannock" also any right, title and interest of said company to a lease for part of the property of Passaic Consolidated Water Company on Monroe Street in the City of Passaic, County of Passaic, of which said company has possession, but of which there is no recorded title.

Petitioner further prays to amend paragraph 10 of the petition by adding at the bottom thereof:

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ALSO excepting and reserving therefrom all right, title and interest in that tract of land described in a deed from the Passaic Consolidated Water Company to William Baxter, bearing date February 2, 1925, and recorded in the Register's Office of the County of Morris on August 27, 1925, in Book P-29 of Deeds for said County on page 139 etc.

ALSO excepting and reserving all that tract of land situate in the Town of Belleville described in a deed from the Passaic Consolidated Water Company to Fred D. Mase bearing date October 1, 1924, and recorded December 5, 1924, in Book A-71 of Deeds for Essex County on page 573 etc.

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ALSO excepting and reserving therefrom all that tract of land situate in the Township of Pequannock in the County of Morris described in a deed from Passaic Consolidated Water Company to John B. Vicine, bearing date October 1, 1925, and recorded June 8, 1926, in Book Z-29 of Deeds for Morris County on page 410 etc.

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Petition for Order Amending Petition.

10 ALSO excepting and reserving therefrom all those tracts of land situate in the Town of Nutley in the County of Essex described in a deed from Passaic Consolidated Water Company to Walter Zimmermer, bearing date July 18, 1924, and recorded July 18, 1924, in Book X-70 of Deeds for Essex County on page 456 etc.

ALSO excepting and reserving therefrom all the right, title and interest of said company in and to the tract of land described in a deed from said company to The Board of Chosen Freeholders of the County of Passaic bearing date December 20th, 1927, for a new road at the New Street Reservoir and not yet recorded.

20 Your petitioner further prays to amend paragraph 13 of said petition so that the same will read as follows:

30 13. The purpose of this application is to acquire all of the property of said Passaic Consolidated Water Company except moneys and securities, bills and accounts receivable and except its franchise as a corporation to the end that the petitioner on behalf of the said cities of Paterson, Passaic and Clifton may own said property free and clear from all encumbrances thereon and supply said cities with water for domestic and public use and perform such obligations in relation to supplying water which are binding at the present time upon said Passaic Consolidated Water Company.

PASSAIC VALLEY WATER COMMISSION.

By JAMES WILSON,
President.

Attest:

40 PAUL L. TROAST,
Secretary.

Petition for Order Amending Petition.

STATE OF NEW JERSEY, }
 COUNTY OF PASSIAC, } SS.:

PAUL L. TROAST being duly sworn on his oath says: I am the Secretary of the Passaic Valley Water Commission, the petitioner in the above 10
 petition named; the matters and things set forth in the said petition are true.

PAUL L. TROAST.

Sworn and subscribed to before me this }
 7th day of June, 1928. }

OLIVE M. FERRER,
 A Notary Public of New Jersey.

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Order Amending Petition.

Before His Honor, CHARLES C. BLACK,

Justice of the Supreme Court.

IN THE MATTER

of

The application of PASSAIC VAL-
LEY WATER COMMISSION for the
appointment of three commis-
sioners to fix the compensation
to be paid for the water works,
rights, franchises and property
of PASSAIC CONSOLIDATED WATER
COMPANY to be taken and con-
demned for public use.

Order.

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It appearing to me that the said Passaic Valley Water Commission has filed its petition praying that certain amendments be made to its original petition for the appointment of three disinterested freeholders, residents of the County of Passaic, Commissioners to examine and appraise the lands and other property of said Passaic Consolidated Water Company and to assess the damages if any, which said original petition was filed in the Clerk's Office of Passaic County on the 24th day of April, 1928 and which amendments are set forth in the petition now presented to me and that said amendments are reasonable.

It is therefore on this eighth day of June, 1928, after hearing counsel for said Passaic Valley Water Commission and counsel for said Passaic Consolidated Water Company and for the mortgagees having liens upon said property, ordered

Stipulation.

and adjudged that said original petition filed in the Clerk's Office of the County of Passaic on April 24, 1928, be amended in the manner and form as set out in the petition presented to me on the day of the date hereof.

CHARLES G. BLACK.

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Stipulation.

NEW JERSEY SUPREME COURT.

IN THE MATTER

of

The application of PASSAIC VALLEY WATER COMMISSION for the appointment of three Commissioners to fix the compensation to be paid for the water works, rights, franchises and property of PASSAIC CONSOLIDATED WATER COMPANY to be taken and condemned for public use.

On Application for Writ of Certiorari.
STIPULATION.

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IT IS HEREBY STIPULATED AND AGREED by the parties to the above proceeding as follows:

1. That the hearing had herein upon the Prosecutor's application for a writ of certiorari shall be regarded and treated as if prior thereto said writ had been granted and the return made thereto and such hearing had on said writ and return.

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Stipulation.

2. That the order of the Court upon such application and hearing may be made in pursuance of the provisions of the foregoing paragraph of this stipulation.

10 3. That the State of Case used upon such hearing, together with the petition for the amendment of the petition for the appointment of commissioners and the order amending the latter petition, shall, except as provided in the following paragraph hereof, constitute the State of Case upon which such order is made. It shall be treated as including a return to such writ, and the affidavits included therein shall be treated as taken on due notice under an order of the Court.

20 4. There shall be regarded as included in such State of Case a Writ of Certiorari and the Prosecutor's Reasons for the sustaining thereof in the form attached hereto, which Writ and Reasons may be filed in the proceeding with the same force and effect as if filed in time and prior to the order of the Court herein.

LINDABURY, DEPUE & FAULKS,
Attorneys of Prosecutor.

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WILLIAM B. GOURLEY,
Attorney of Respondent.

Dated July 2, 1928.

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Stipulation.

NEW JERSEY, to wit:

THE STATE OF NEW JERSEY to JOHN
 McCUTCHEON, Clerk of the County
 [SEAL] of Passaic, and PASSAIC VALLEY
 WATER COMMISSION, a body corpor- 10
 ate, GREETING:

WE, being willing for certain reasons to be cer-
 tified of a certain order made on the 12th day of
 May, 1928, by Charles C. Black, Justice of the
 Supreme Court, on the petition of Passaic Valley
 Water Commission, a body corporate of the State
 of New Jersey, appointing three commissioners
 to fix the compensation to be paid by said Passaic
 Valley Water Commission for the lands, water- 20
 works and property of the Passaic Consolidated
 Water Company, a corporation of the State of
 New Jersey, in said petition described to be taken
 and condemned for public use in pursuance of the
 provisions of Chapter 195 of the Laws of 1923
 and the acts amendatory thereof and supplemental
 thereto, DO HEREBY COMMAND YOU, John McCutche-
 on, Clerk of the County of Passaic, that you send
 under your seal to our Justices of our Supreme
 Court of Judicature at Trenton, on the day 30
 of next, as well the said order, the
 petition of said Passaic Valley Water Commis-
 sion and the order fixing the time and place for
 the hearing of such petition, with all things touch-
 ing and concerning the same as fully and entirely
 as they remain in your office by whatsoever names
 the parties may be called therein, together with
 this, our Writ, that we may further cause to be
 done thereupon what of right we shall see fit to
 be done. 40

Stipulation.

WITNESS, WILLIAM S. GUMMERE, Esquire, Chief
Justice of our Supreme Court at Trenton, this
day of May, 1928.

Clerk.

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Attorneys.

NEW JERSEY SUPREME COURT.

IN THE MATTER

of

The application of PASSAIC VAL-
LEY WATER COMMISSION for the
appointment of three commis-
sioners to fix the compensation
to be paid for the water works,
rights, franchises and property
of PASSAIC CONSOLIDATED WATER
COMPANY to be taken and con-
demned for public use.

On Application
for Writ of
Certiorari.

REASONS.

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The Prosecutor, by Lindabury, Depue & Faulks,
as attorneys, comes and prays that the order made
in the above-entitled proceeding on April 24, 1928
by Charles C. Black, a Justice of the Supreme
Court of the State of New Jersey for the appoint-
ment of three commissioners to fix the compensa-
tion to be paid Passaic Consolidated Water Com-
pany, the Prosecutor herein, by Passaic Valley

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Stipulation.

Water Commission, the Respondent herein, for the lands, waterworks and property in said order mentioned, may be set aside, reversed and for nothing holden, for the following reasons:

1. The legislation under which the proceedings under review herein for the taking of the franchises and certain of the property of the Prosecutor for public use when applied to said franchises and property does not and can not provide for the making of just compensation therefor to the Prosecutor. 10

2. Under such proceedings the Prosecutor will receive no compensation for the enhanced value of its property proposed to be taken resulting from the improvements, additions and extensions it must make while discharging its public duty during the pendency of the proceedings, nor damages for such extensions or additions not taken but rendered worthless. 20

3. In such proceedings no compensation is provided for the loss in the value of the Prosecutor's accounts receivable which will result from the separation of the ownership of such accounts from the ownership of its waterworks and business. 30

4. The attempt to take the Prosecutor's franchises and such of its property as is proposed to be taken, free and clear of liens, is not authorized by Chapter 195 of the Session Laws of 1923.

5. The attempt to take the Prosecutor's franchises and such of its property as is proposed to be taken, free and clear of liens, if consummated may result in the taking of the Prosecutor's property without just compensation. 40

Stipulation.

10 6. The taking of the Prosecutor's franchises and such of its property as is proposed to be taken for public use pursuant to provisions of the statutes under which the same are sought to be taken, and which are designated in the petition for the appointment of the condemnation commissioners, would result in the taking of the property of the Prosecutor for public use without just compensation in violation of Section 16 of Article I. of the Constitution of the State of New Jersey.

20 7. The taking of the Prosecutor's franchises and such of its property as is proposed to be taken for public use pursuant to provisions of the statutes under which the same are sought to be taken, and which are designated in the petition for the appointment of the condemnation commissioners, would result in depriving the Prosecutor of its property without due process of law in violation of the 14th Amendment to the Constitution of the United States.

Attorneys for Prosecutor.

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Return to Writ of Certiorari.

A return to the Writ of Certiorari appearing on pages 1 and 2 hereof has been duly made by respondents and filed in the office of the Clerk of the New Jersey Supreme Court. Said Return is composed of the papers printed on pages 3 to 38 and 56 to 63 hereof. 10

The Certificate of said Return reads as follows :

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC, } ss.:

I, JOHN McCUTCHEON, Clerk of Passaic County, do hereby, in the schedule hereto annexed certify to our Justices of our Supreme Court of Judicature of the State of New Jersey, the Order, 20
appointing three Commissioners to fix the compensation to be paid by Passaic Valley Water Commission for the lands, water works and property of the Passaic Consolidated Water Company, a corporation of the State of New Jersey, together with the Petition of said Passaic Valley Water Commission for such appointment and the Order fixing the time and place for the hearing of such Petition, as well as the Petition of said Passaic Valley Water Commission to amend said original Petition and the Order made upon said last mentioned Petition with all things touching and concerning the same as fully and entirely as they remain on file and of record in my office. 30

In testimony whereof, I have hereunder set my hand and affixed the seal of the said County of Paterson the tenth day of July, A. D. 1928.

[SEAL]

JOHN McCUTCHEON,
P. F. CUNNINGHAM,
Special Deputy. 40

Reasons.

ment of three commissioners to fix the compensation to be paid Passaic Consolidated Water Company, the prosecutor herein, by Passaic Valley Water Commission, the Respondent herein, for the lands, waterworks and property in said order mentioned, may be set aside, reversed and for nothing holden, for the following reasons: 10

1. The legislation under which the proceedings under review herein for the taking of the franchises and certain of the property of the Prosecutor for public use when applied to said franchises and property does not and can not provide for the making of just compensation therefor to the prosecutor.

2. Under such proceedings the Prosecutor will receive no compensation for the enhanced value of its property proposed to be taken resulting from the improvements, additions and extensions it must make while discharging its public duty during the pendency of the proceedings, nor damages for such extensions or additions not taken but rendered worthless. 20

3. In such proceedings no compensation is provided for the loss in the value of the Prosecutor's accounts receivable which will result from the separation of the ownership of such accounts from the ownership of its waterworks and business. 30

4. The attempt to take the Prosecutor's franchises and such of its property as is proposed to be taken, free and clear of liens, is not authorized by Chapter 195 of the Session Laws of 1923.

5. The attempt to take the Prosecutor's franchises and such of its property as is proposed to 40

Reasons.

be taken, free and clear of liens, if consummated may result in the taking of the Prosecutor's property without just compensation.

10 6. The taking of the Prosecutor's franchises and such of its property as is proposed to be taken for public use pursuant to provisions of the statutes under which the same are sought to be taken, and which are designated in the petition for the appointment of the condemnation commissioners, would result in the taking of the property of the Prosecutor for public use without just compensation in violation of Section 16 of Article I. of the Constitution of the State of New Jersey.

20 7. The taking of the Prosecutor's franchises and such of its property as is proposed to be taken for public use pursuant to provisions of the statutes under which the same are sought to be taken, and which are designated in the petition for the appointment of the condemnation commissioners, would result in depriving the Prosecutor of its property without due process of law in violation of the 14th Amendment to the Constitution of the United States.

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LINDABURY, DEPUE & FAULKS,
Attorneys of Prosecutor.

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Opinion.

(Filed July 19, 1928.)

NEW JERSEY SUPREME COURT.

No. 274. MAY TERM, 1928.

| | | | |
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| <p style="text-align: center;"><i>In re</i></p> <p>Application of PASSAIC VALLEY WATER COMMISSION on Condem- nation.</p> | } | <p style="text-align: right;">On Certiorari.</p> | 10 |
|--|---|--|----|

Argued June 8th, 1928; Decided July 18, 1928.

Before Justices MINTURN, BLACK and CAMPBELL.

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For the Prosecutor: MESSRS. LINDABURY, DE-
PUE and FAULKS; MESSRS. STRYKER and
MILTON.

Opposed: MESSRS. WM. B. GOURLEY, WM. I.
LEWIS, ARTHUR S. CORBIN and GEORGE L.
RECORD.

Per Curiam.

On May 12th, 1928; an order appointing three
Commissioners to fix the compensation to be paid, 30
by the Passaic Valley Water Commission, for the
property of the Passaic Consolidated Water Com-
pany was made by a Justice of the Supreme Court
and duly filed with the Clerk of Passaic County
at Paterson, N. J.

Thereafter, upon notice, an application for a
certiorari to review the legality of such order was
made to this Court. Both parties by their respec-
tive attorneys at the time and place designated 40
for such hearing made extensive and elaborate

Opinion.

arguments for and against the granting of a writ of certiorari. Thereafter, both parties by their respective attorneys agreed in writing, duly filed with the Court, that if a writ of certiorari was allowed by the Court, in order to facilitate a speedy review by the Court of Errors and Appeals, a final determination and judgment might be entered upon the papers then before the Court, which were used upon the application for the writ. The writ having been allowed, a proper return having been made thereto and the reasons of the prosecutor for the allowance of the writ having been promptly filed, being the reasons stated in the prosecutor's original brief. The petition of the Passaic Valley Water Commission having been duly amended by an order of a Justice of the Supreme Court, under date of June 27th, and filed in the Clerk's Office of the County of Passaic at Paterson, N. J. The order of amendment provides for the amendment of the petition in reference to the descriptions of the property omitted and in several other particulars. It, also, provides: (13) the purpose of this application is to acquire all the property of said Passaic Consolidated Water Company except moneys, securities, bills and accounts receivable, and except its franchise as a corporation, to the end that the petitioner on behalf of the said cities of Paterson, Passaic and Clifton may own said property free and clear from all encumbrances thereon and supply said cities with water.

The points made and argued by the prosecutor are: First, the description of the property proposed to be taken is inaccurate, these inaccuracies are set out at some length in the affidavit of Walter W. Corrigan. They have been substantially cured by the amendment made and filed on June 27th,

Opinion.

1928. Second, the description of the property proposed to be taken is not sufficiently definite to enable either the company or the Commissioners in Condemnation to identify the same; this refers specifically to the accounts receivable. This also has been substantially cured by the amendments.

The Act, P. L. 1923, Sec. 3, p. 507, provides, "In
 "all applications, orders, reports and proceedings
 "a general description of the property to be con-
 "demned shall be sufficient."

We think there can be no embarrassment, either to the prosecutor, the Commissioners or the Passaic Valley Water Commission under the descriptions as amended. The cited cases of *Vail v. Morris &c. R. R. Co.*, 21 N. J. L. 189; *New York &c. Co. v. Broome*, 50 N. J. L. 432, do not militate against this view. They are clearly and substantially distinguished by the facts.

Third, the legislation under which the proceedings were instituted, when applied to the property and franchises of the Company proposed to be taken, does not and cannot provide for just compensation, in other words, the Act, so it is argued, is inadequate and therefore, it is not valid, as applied to its property. This of course, if so, is serious and might be fatal, but it will doubtless be a surprise to many to learn, that an act of the Legislature copied largely from the railroad charters used and applied extensively in the State for nearly one hundred years, and in its present form drawn by such an accurate, learned and experienced lawyer as the late Charles L. Corbin, is not a workable act in all condemnation cases. The General Condemnation Act, P. L. 1900, p. 79.

The Company will receive no compensation for the enhanced value of its property proposed to be taken resulting from the improvements, additions

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Opinion.

and extensions, it must make, while discharging its public duty, during the pendency of the proceedings; nor damages for such extensions or additions not taken, but rendered worthless.

10 This is predicated upon the sixth section of the Act, which provides that the value is to be ascertained "as of the date of the filing of the petition
"and order therein," viz., May 12th, 1928. If, in the application of the statute, it may seemingly work an injustice, we cannot refuse to apply or enforce a constitutional statute for that reason; because, as was said by Chief Justice Beasley, in the case of *Douglass v. Board of Chosen Freeholders*, 38 N. J. L. 216; where that which is directed to be done is within the sphere of legis-
20 lation, and the terms used clearly express the intent, all reasoning derived from the supposed inconvenience, or even absurdity of the result, is out of place.

But to meet this situation, the Passaic Valley Water Commission, at the argument and in its brief made this proposition, the Commission is willing and has the power under the Act, P. L. 1923, p. 504, to contract, that in the event, that the Commission takes over the property covered by the petition at the end of the condemnation proceedings, the Commission will pay in addition to the
30 condemnation award, the actual cost of the property contributed by the Company, after the date of the appointment of the Condemnation Commissioners, or to condemn the same. This the Passaic Valley Water Commission has the power to do under the Act, P. L. 1923, p. 504; Sec. 3 "may
"enter into a contract to purchase such water
"works for compensation to be agreed upon or
"fixed by condemnation proceedings, as herein-
40 "after provided."

Opinion.

But even without this offer, we see no practical or legal difficulty in applying the statute, so as, to produce a result of just compensation in the award, for the property taken and the damages done by such taking. This loss is a damage to the Company's property not taken, caused directly by the taking of the rest of the Company's property. This loss is clearly recoverable as damages, in the condemnation proceedings, in the award. This process does not involve the taking of private property without compensation. The property actually taken and the damages to the remaining property is adequately covered by the award of the Commissioners. 10

If the after acquired property is rendered valueless in the judgment of the Commissioners, by the severance of such property from the main property covered by the petition, this may be included as damages under the statute, P. L. 1900, p. 81, Sec. 5. The General Condemnation Act, P. L. 1900, p. 81, Sec. 5, provides, "Commissioners to examine and appraise the said land or property and to assess the damages." Sec. 6, "the Commissioners &c. shall proceed to review and examine the lands or other property, and make a just and equitable appraisal of the value of the same, and an assessment of the amount to be paid by the petitioner for such land or other property and damages aforesaid." Sec. 7. Upon filing of the report &c. The petitioner is hereby empowered to enter upon and take possession of said land or other property for the purposes for which the same was authorized to be taken. 20 30

Manning v. New Jersey Shore Line R. R. Co., 80 N. J. L. 349; *Bergen Neck Ry. Co. v. Point Breeze Ferry Co.*, 57 N. J. L. 163. *In Re Essex* 40

Opinion.

Park Commission, 80 N. J. Eq. 1; affirmed 81 N. J. Eq. 163.

In addition thereto, the situation feared by the prosecutor has not arisen, does not now exist and may never exist.

10 Fourth, the attempt to take the Company's property free and clear of liens is not authorized by P. L. 1923, p. 504, and if consummated, may result in taking the Company's property without just compensation. We find no legal difficulty here, while it is true, the Act P. L. 1923, p. 504, does not contain a specific authority, in express words, to condemn free and clear of the mortgage liens amounting in the aggregate to \$7,936,000.00.

20 The argument is, as the Act P. L. 1923, p. 504, provides, for an additional situation, under which the property may be taken, viz., subject to the lien of any mortgage or mortgages thereon; therefore, it excludes all other situations and the condemning party cannot acquire the property free and clear of the mortgage liens. This is a *non sequitur*.

30 The Act P. L. 1923, p. 504, expressly provides, "for the appointment of Commissioners to condemn the water works in pursuance of and in the manner prescribed by an act entitled, 'An act to regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of 1900)'," P. L. 1900, p. 79.

40 An examination of that act reveals a clear purpose, to have the Commissioners and the jury on an appeal, to make a just and equitable appraisal of the value of the property and the damages only. They have no concern with or function to perform with any liens, judgments, or mort-

Opinion.

gages. To ascertain the value of the property and the damages to be awarded, is their sole function. Then Sec. 8 provides for the additional machinery to be invoked, when the property taken is encumbered by any mortgage, judgment or other lien, or in case for any other reason, the petitioner cannot safely pay the amount awarded to any person, in all such cases, on petition to the Chancellor, the amount awarded may be paid into the Court of Chancery and there shall be distributed according to law. The powers of the Court of Chancery and the machinery therein provided for are not limited or circumscribed by the amount or extent of the liens. These two acts must be read together, and when so read there is ample power and authority to take the property free and clear of the mortgage liens.

This has been the accepted practice in New Jersey for many years.

In re Essex Park Commission, 80 N. J. Eq. 1; affirmed 81 N. J. Eq. 163; *City of Newark v. Eisner*, 100 N. J. Eq. 101; *City of Newark v. Cook*, 99 N. J. Eq. 527; *Board of Freeholders of Hudson County v. Sinisi*, 100 N. J. Eq. 552.

These are all the points argued by the prosecutor in its brief.

The order of May 12th, 1928, appointing Condemnation Commissioners is affirmed and the writ of certiorari is dismissed.

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Rule for Judgment.

NEW JERSEY SUPREME COURT.

| | | |
|----|---|--|
| 10 | PASSAIC CONSOLIDATED WATER COMPANY, Prosecutor, <i>vs.</i> JOHN McCUTCHEON, Clerk of the County of Passaic, and PASSAIC VALLEY WATER COMMISSION, Defendants. | On Certiorari, &c. RULE FOR JUDGMENT. |
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20 The Court having inspected the order dated
 May 12th, 1928, made by Supreme Court Justice
 Charles C. Black appointing three commissioners
 to fix the compensation to be paid, by the Passaic
 Valley Water Commission, for the water works,
 rights, franchises and property of the Passaic
 Consolidated Water Company to be taken and
 condemned for public use, as well as all matters
 touching and concerning the same, as returned
 with the writ of certiorari allowed in this cause,
 and having read the depositions of John H. Cook
 30 and Walter W. Corrigan taken thereunder, and
 having read the reasons for setting said order
 aside and annulling the same, and having heard
 the argument of counsel, and having fully con-
 sidered the same and all the matters aforesaid, do
 order and adjudge that the said order of May 12th,
 1928, be and the same is, in all matters and things
 affirmed, and that the said writ of certiorari be
 and the same is hereby dismissed.

40 Entered July 27, 1928.

On motion of

WILLIAM B. GOURLEY,
 Attorney of Defendant.

Notice of Appeal.

(Filed August 29, 1928.)

NEW JERSEY SUPREME COURT.

| | | | |
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| <p>PASSAIC CONSOLIDATED WATER COMPANY, Prosecutor-Appellant,</p> <p style="text-align: center;"><i>vs.</i></p> <p>JOHN McCUTCHEON, Clerk of the County of Passaic, and PASSAIC VALLEY WATER COMMISSION, Defendants-Appellees.</p> | } | <p>On Certiorari. NOTICE OF APPEAL FROM JUDGMENT OF SUPREME COURT.</p> | <p>10</p> <p>20</p> |
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To: WILLIAM B. GOURLEY, Esq.,
Attorney of Defendants-Appellees.

Sir:

PLEASE TAKE NOTICE that Passaic Consolidated Water Company, the above named Prosecutor, appeals to the Court of Errors and Appeals from the whole of the judgment entered in the above stated cause on the following ground: 30

1. Because the Supreme Court erred in dismissing the Writ of Certiorari heretofore allowed in this cause for the reasons assigned and filed by the Prosecutor in this cause in the Supreme Court, which reasons are as follows:

(1) The legislation under which the proceedings under review herein for the taking of the franchises and certain of the property of the Prosecutor for public use when applied 40

Notice of Appeal.

to said franchises and property does not and cannot provide for the making of just compensation therefor to the Prosecutor.

10 (2) Under such proceedings the Prosecutor will receive no compensation for the enhanced value of its property proposed to be taken resulting from the improvements, additions and extensions it must make while discharging its public duty during the pendency of the proceedings, nor damages for such extensions or additions not taken but rendered worthless.

(3) In such proceedings no compensation is provided for the loss in the value of the Prosecutor's accounts receivable which will result from the separation of the ownership of such accounts from the ownership of its waterworks and business.

20 (4) The attempt to take the Prosecutor's franchises and such of its property as is proposed to be taken, free and clear of liens, is not authorized by Chapter 195 of the Session Laws of 1923.

(5) The attempt to take the Prosecutor's franchises and such of its property as is proposed to be taken, free and clear of liens, if consummated may result in the taking of the Prosecutor's property without just compensation.

30 (6) The taking of the Prosecutor's franchises and such of its property as is proposed to be taken for public use pursuant to provisions of the statutes under which the same are sought to be taken, and which are designated in the petition for the appointment of the condemnation commissioners, would result in the taking of the property of the Prosecutor for public use without just compensation in violation of Section 16 of Article I of the Constitution of the State of New Jersey.

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Notice of Appeal.

(7) The taking of the Prosecutor's franchises and such of its property as is proposed to be taken for public use pursuant to provisions of the statutes under which the same are sought to be taken, and which are designated in the petition for the appointment of the condemnation commissioners, would result in depriving the Prosecutor of its property without due process of law in violation of the 14th Amendment to the Constitution of the United States. 10

Dated Aug. 24, 1928.

LINDABURY, DEPUE & FAULKS,
Attorneys for Prosecutor-Appellant.

Sat below: Justices Minturn, Black and Campbell. 20

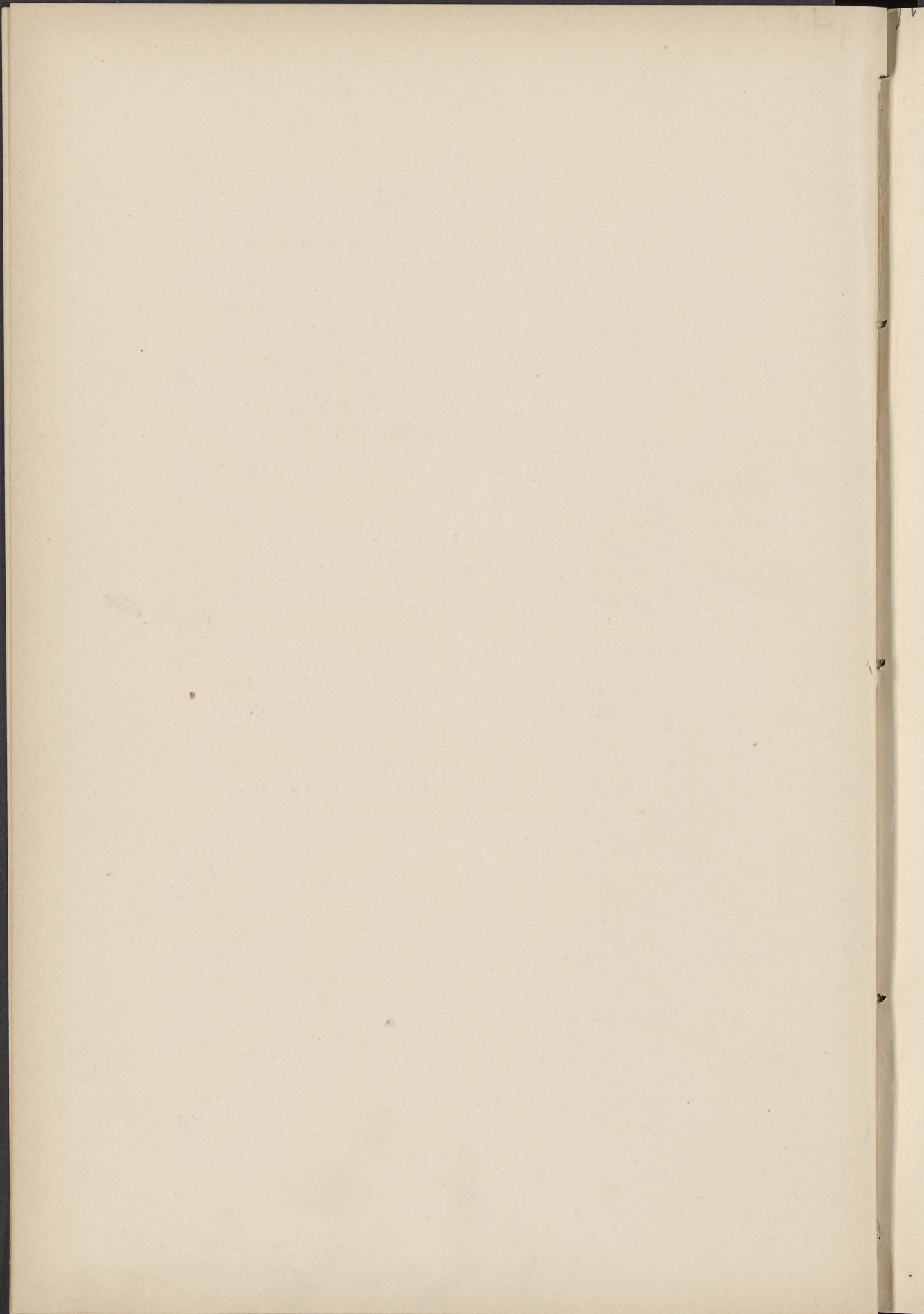
Endorsed:

Due service of the within Notice of Appeal is hereby acknowledged this 25th day of August, 1928.

W. B. GOURLEY,
Attorney of Defendants-Appellees.

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New Jersey Court of Errors and Appeals

PASSAIC CONSOLIDATED WATER
COMPANY,
Prosecutor-Appellant,

vs.

JOHN McCUTCHEON, Clerk of the
County of Passaic, and PASSAIC
VALLEY WATER COMMISSION,
Respondent-Appellee.

ON
CERTIORARI,
ON APPEAL
FROM THE
SUPREME
COURT.

**REPLY BRIEF OF PROSECUTOR-
APPELLANT.**

I.

The Appellant will be required to make repairs, improvements, betterments, additions and extensions pending the condemnation proceedings.

The Respondent, replying to Point I of Appellant's brief, denies that the Appellant will be obliged to make any repairs, improvements, betterments, additions or extensions to its property pending the condemnation proceedings. This denial, however, is contrary to the uncontradicted evidence in the case, which shows the Company is constantly required to make extensions to its mains and other property and to expend very substantial amounts not only for such extensions but in betterments and repairs to its mains and

other facilities, and that *it is certain that it will be compelled* to continue expenditures for this purpose during the pendency of the proceedings. That this is true is further apparent from the evidence concerning the extent of the territory supplied by the Company, the extent and character of its property, the nature of the Company's business and the growth of population in the territories which it serves.

The Appellee did not see fit to offer any evidence on this point but now asks this Court not only to ignore the uncontradicted evidence thereon but to accept the exact contrary thereof as proven.

Counsel have made this contention notwithstanding the fact that in the quotation from the agreement signed by the Commission which is mentioned on page 19 of their brief it is recited that "during the pendency of the proceedings it may be necessary, from time to time, for the Company, in rendering service to said municipalities and the inhabitants thereof, to lay additional water pipes and mains, extend some of its existing water pipes and mains, make house connections and install meters." This recital is an admission by the respondent that such additions and extensions may become necessary during the pendency of the proceedings.

As we understand counsel's contention, it is not that the Company, if it is to perform adequate service, will not be obliged to make improvements, betterments, additions and extensions but that it may succeed in avoiding the performance of this duty during the pendency of the proceedings. A rather striking illustration of the Commission's position in regard to these matters appears on page 6 of its brief, where the possible necessity of installing new filters in the Company's Little Falls plant at a cost of \$300,000. is men-

tioned. Counsel argue that even if these filters are required to be contracted for now because they may be needed during the Summer of 1929 this is no concern of the Commission or of this Court. The Company is alone said to be concerned. If it deems the filters necessary to enable it to perform its public duty, the Commission says it must make this very substantial expenditure without being in anywise compensated therefor and without regard to whether or not the Commission will own its water works by the Summer of 1929 or not. But the Company has no assurance that it will not be under obligation to supply pure water to its extensive territory during the Summer of 1929 and for some time thereafter. Surely it cannot be contended that the Company is not under the same duty to supply pure water to its customers during the pendency of this proceeding as prior thereto. If it fails in the performance of such duty our laws not only provide a means by which its performance may be compelled but also impose upon it a liability for injury sustained by others by reason of such failure. See *Jones v. Mount Holly Water Co.*, 87 N. J. L. 106, in which the Supreme Court held that a water company was bound to use reasonable care that the water supplied by it shall be ordinarily and reasonably pure and wholesome and that if it fails to use such care it is liable for the damages resulting therefrom.

Not only does the uncontradicted evidence show that very substantial expenditures must be made by the Company during the pendency of the proceedings for repairs, improvements and betterments, but the statement in respondent's brief that it has thus far made no expenditures is unwarranted by anything in the evidence and is directly contrary to the fact.

II.

Under the existing law the Company cannot protect itself against loss incurred in making such extensions, improvements and betterments.

Counsel for Respondent concede *arguendo* that it may become necessary to make extensions, improvements and betterments but express the opinion in an indefinite way that the Company may protect itself against loss in so doing. They attempt to illustrate their point of view by saying that it is the practice of the Company to refuse to make extensions until a revenue therefrom is assured. While this illustration is in no way supported by any evidence it is also beside the point.

The question confronting the Company with regard to extensions and additions is not whether the revenue to be produced thereby will be sufficient to warrant the expenditure but whether the Company can be compensated for the loss which will occur when its property shall be taken, without compensation, for the loss in value of such extensions or additions. Certainly security against this loss in the case of an extension cannot be required from the householder or the developer of real estate as that would be to require such householder and developer to practically install the extensions themselves. Counsel's suggestion is even more impracticable when applied to improvements such as the installation of a new filter plant or new machinery, for in such a case security could only be obtained by agreement with the commission or with the municipalities, which agreement, so far as it might relate to improvements which become a part of the realty described in the petition, as will be hereinafter shown, neither has

power to make. Neither has the commission nor the municipalities power to relieve the Company from the liabilities which it would incur if it should fail to make such extensions and improvements when required.

Counsel insist, however, that the commission will desire the improvements and extensions, when made, and that it will be willing to take them at cost. This insistment amounts to no more nor less than to admit that under the pending procedure the Company will be deprived of the value of such extensions and improvements and will be obliged to rely upon the fairness and business judgment of the commission in order to secure compensation for the loss thus sustained. This is not a constitutional method of providing just compensation for property taken by eminent domain. It is elementary law that the property owner must either secure just compensation before his property is taken or be in a position to *coerce* the making of just compensation after the property shall have been taken. If, after he has lost his property, he is at the mercy of the condemnor, he has been deprived of his rights in violation of both the State and Federal Constitutions. See *Butler v. Sewer Commissioners*, 39 N. J. L. 665.

The fallacy in the Respondent's argument on this point is:

First. That the duty of the Company to render adequate service is not dependent upon guarantees or agreements of indemnity.

Second. That the possibility of securing adequate compensation by means of such agreements is a method not provided for by the Act and therefore cannot properly be urged in support of the argument that the Act provides just compensation.

III.

The legislation does not provide just compensation even though the Commission is authorized but not required to subsequently acquire the extensions and additions made during the pendency of the condemnation proceedings.

Counsel insist that if the Eminent Domain Act of 1900 is read in connection with the Act of 1923 and its amendments, it provides just compensation for the Company because the Commission has power to purchase or take, by an additional condemnation proceeding, the improvements made during the pendency of the present condemnation proceedings. We have considered this argument on page 19 of our main brief. We submit that for the reasons there stated the Commission has no such power unless it secures additional authority from each municipality. We further submit that the respondents' entire argument under this point is based upon a misconception of the law. Counsel for Respondent do not contend that at the conclusion of the present condemnation proceedings the Company will be in a position to compel the Commission either to purchase or condemn the extensions and additions not taken but rendered valueless by the present proceedings. Their whole argument on this point is that the Commission *if it sees fit to do so has power* to take such extensions and additions and thus save the Company from a loss which it will otherwise sustain. They do not state how the Company is to escape such loss if the Commission, in the exercise of its discretion, decides not to take such extensions and additions or if the Commission should determine to take them at less than

the value which they would have had if not severed from the rest of the plant. The question, therefore, as to whether the Company may receive just compensation for this loss will be left entirely to the discretion or the caprice of the Commission. Clearly such a statutory provision does not provide just compensation. In *Butler v. Sewer Commissioners*, 39 N. J. L. 665, cited in our main brief, Justice Reed, speaking of the constitutional requirements for just compensation, said:

“That it must be a remedy to which the party can resort, of his own motion, or compel the movement of the municipality by mandamus.” (Citing *People v. Heyden*, 6 Hill 359; *Cooley on Const. Lim.* 56).

And again on page 672:

“In Bloodgood v. Mohawk & H. Railroad Company, 18 Wend. 9, the rule is stated to be that certain and adequate provision must first be made by law (except in cases of emergency), so that the owner can coerce payment through the judicial tribunals without any unreasonable or unnecessary delay.”

This, we submit, is undoubtedly the law. Clearly the constitutional mandate has not been complied with if the payment of just compensation is made to depend solely upon the judgment or caprice of the condemnor. Furthermore, as stated in our main brief, Respondents' argument, even if sound, would have no application to improvements other than extensions and additions made to the plant of the Company pending the condemnation proceedings. If, to use the illustration mentioned by the Respondents' counsel under Point I of their brief, the Company were to be obliged to install new filter beds at a cost of \$300,000. pending the proceedings, or if the Company were to install new boilers or other fixed

machinery, such filter beds, boilers or machinery would, upon installation and annexation to the freehold, become a part of the property now under condemnation and pass to the Commission upon the payment or tender of the award made in the pending case. Surely it cannot be contended that the Commission, under existing legislation, has the power to pay for such improvements in an amount in excess of the award. One of the vices of the existing legislation is that such improvements and increases in value, if made, will necessarily pass to the Commission without compensation. As to these improvements, the Commission, if the pending proceeding is continued to a conclusion, will be as powerless to aid the Company as the Company will be to aid itself.

IV.

The failure of the act to provide just compensation is illustrated by the necessity for a contract relating to the extensions mentioned in Respondent's brief.

Counsel for Respondent further state that the Commission has made a contract with the Company to purchase from it the extensions necessarily made by it during the pendency of the proceedings and that, therefore, the Company's argument that the Act in question does not provide just compensation is unsound. It will be noted that this alleged agreement does not attempt to cover such things as new filter beds, new machinery and equipment which the Company may be required to provide in order to render an adequate service and protect itself from liability. It only deals with extensions of mains, new connections therewith and new meters installed so that

it by no means covers the loss which the Company will sustain if this proceeding is prosecuted to a conclusion.

We submit that such agreement, if made, has no bearing whatever upon the validity of the statutes in question. The question is whether the Legislature has provided a fair and equitable method by which the Company will receive just compensation for its property. By the agreement, the parties, by doing something not required or provided for by the Legislature will only mitigate the loss which the Company will sustain if it secures only the compensation provided for by the Act. If an agreement not contemplated by the Act is required in order that the Company may secure just compensation it necessarily follows that the compensation provided for by the Act is not just and that the Act is, therefore, invalid. The Company has a constitutional right to just compensation. The Commission has no right to take by condemnation any of its property except under a statute which provides for such compensation. Since the Act itself does not contain such provision it is invalid.

V.

The attempt to take the Company's property free and clear of liens is not authorized and if accomplished will result in the taking of the Company's property without just compensation.

Respondent's counsel concede that the Commission has the power to take the Company's property subject to liens, but insist that the authority given it so to do is permissive only and that it also has power to take such property free and

clear of liens. This contention is based upon the use of the word "may" in the language of Section 4 of the Act of 1923. We do not wish to reiterate what we have said in our main brief on this question except to again call the Court's attention to the fact that the word "may" is used in Section 5 of the Act in a mandatory sense, and also to the cases cited in our main brief. We submit that the Court should construe the word "may" as it occurs in Section 4 as mandatory in order to prevent a grave injustice to the Company which will otherwise occur, and in order to render the Act in this respect valid.

We further submit that if the Act is construed so as to permit the Commission to take the Company's property free and clear of liens it fails to provide just compensation. We do not contend that the Legislature is without power to authorize the condemnation of the Company's property free and clear of liens. Neither do we contend that if the Company's property shall be taken free and clear of liens the award must include not only the value of the property but a sufficient sum in addition thereto to pay the interest on the bonds or any part thereof between the date of the payment of the award into the Court of Chancery and the maturity of the bonds. Our contention is that under the legislation in question no provision is made which expressly permits the Company's proportionate part of the award to be paid to it as soon as the amount thereof shall be ascertained. Respondent's counsel insist in their brief, *first*, that the Legislature has no power to provide for the immediate distribution to the bondholders of their share of the award, citing *Randolph v. Middleton*, 26 N. J. Eq. 543, and, *second*, that under the Eminent Domain Act of 1900 an immediate distribution will occur both to

the bondholders and to the Company, citing no authority therefor. The difficulty, however, with this latter contention is that there is nothing in the language of the legislation in question which expressly so provides. The question presented, therefore, is, *first*, whether in the absence of such a provision the bondholders who are entitled to interest on such bonds at a definite rate until maturity can be required to accept in lieu thereof the present value of their bonds, and, *second*, if not, whether a procedure which operates to deprive the Company of all of its property, business and earning capacity without permitting it to receive for its own use one penny of the award until the maturity of its bonds, affords the Company just compensation. The disastrous effect on the Company of such a procedure is self-evident. By it a solvent company with a valuable equity in its property would inevitably be ruined. If this is the effect of the existing legislation it is so solely because the Legislature in making provision for the condemnation of the Company's property has failed to provide that the bondholders and the Company should each receive their respective portions of the award as soon as such proportionate parts should be ascertained. Respondent has attempted to show that if the Company's contention is sustained the exercise of the power of eminent domain will be seriously interfered with, and that a much greater award would be required for property subject to long term mortgages than for property free and clear of liens. Neither of these results would follow, however.

As above stated, our contention is not that the Legislature has no power to authorize the taking of the Company's property free and clear of liens, nor that the Company should receive more for its

property because it is subject to mortgages than it would otherwise receive, but that if the Company's property is to be taken free and clear of liens it must be taken under a procedure which will permit the Company to secure its share of the award without any greater delay than is necessary in order to ascertain the amount of such share. This contention is, we submit, supported by the language of Justice Reed in the case of *Butler v. Sewer Commissioners*, 39 N. J. Law 665, to which we have above referred. In that case Justice Reed said:

“* * * The power to postpone his right to receive the price for one day, or to substitute for it something other than money, is a power to postpone payment so long that the land owner may be ruined, and to pay in something of little pecuniary value at the time of its reception.

“Such a power existing in the Legislature, would annul the significance of the provisions designed to protect and guard the rights of the citizen whose property is condemned.”

While this language was used with regard to a different state of facts, we submit that it illustrates the principle applicable to this situation, and that any procedure for the condemnation of property under which the actual payment to the owner of his share of the award may be postponed for many years does not provide for just compensation.

Counsel for respondent suggest that argument on this point is premature because, as they say, the bondholders may accept immediate payment of their bonds or the municipalities after the award is made may decide to abandon the proceedings, and therefore the Company may not be harmed. The Company's claim, however, is that the Commission is without lawful authority to

take its property. It undoubtedly has the right to submit the question of the validity of the legislation under which the Commission is acting for the determination of the Court before its property shall actually be appropriated.

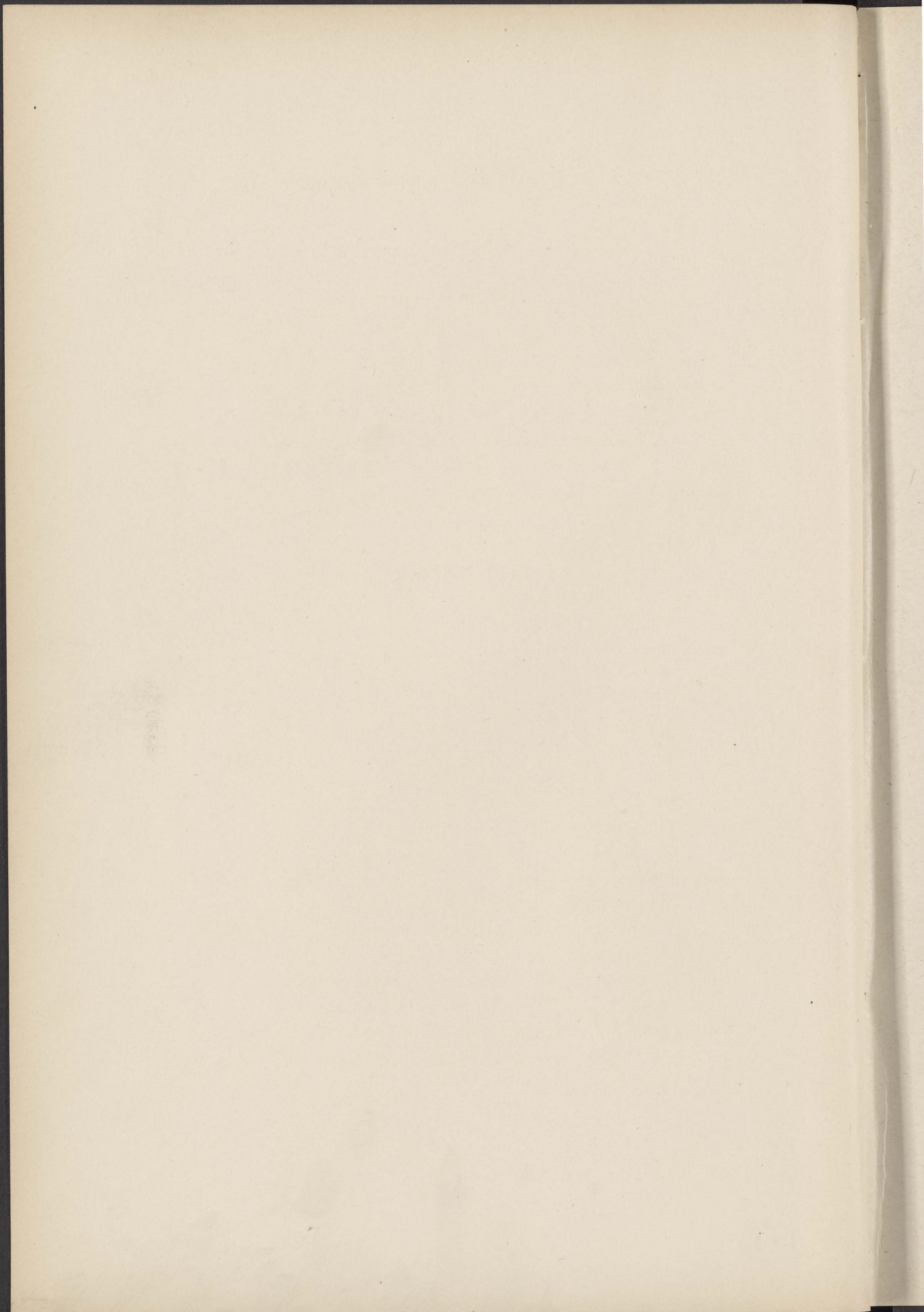
Conclusion.

We respectfully submit that the judgment of the Supreme Court should be reversed and that the order appointing the Commissioners should be set aside.

Respectfully submitted,

LINDABURY, DEPUE & FAULKS,
Attorneys of Prosecutor-Appellant.

FREDERIC J. FAULKS,
JOHN MILTON,
JOSIAH STRYKER,
Of Counsel.



New Jersey Court of Errors and Appeals

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| Passaic Consolidated Water Company, Prosecutor-Appellant, vs. John McCutcheon, Clerk of the County of Passaic, and Pas- saic Valley Water Commis- sion, Defendants-Appellees. | } On Certiorari On Appeal from the Supreme Court |
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BRIEF FOR DEFENDANTS-APPELLEES

STATEMENT

The cities of Paterson, Passaic and Clifton for many years have had before their respective governing bodies in one form or another, the pressing question of owning their own water works, reservoirs and distributing mains to supply their inhabitants with water. Committees have been appointed, appraisals made at great expense, and careful consideration given to the whole project. The preamble to the ordinances adopted by these three cities respectively and set out in the State of the Case (pp. 26, 29, 31 and 33) presents the situation clearly. This preamble is as follows:

Whereas, the cities of Paterson, Passaic and Clifton have joined with other municipalities in obtaining a new supply of water through the agency of the North Jersey District Water Supply Commission, which is constructing for said cities and other municipalities a water works upon the Wanaque River, and it

is necessary for said cities of Paterson, Passaic and Clifton to acquire or construct water mains in the streets and elsewhere and a pumping station and the incidental reservoirs in order to use said new water supply; and, whereas the water works, owned by the Passaic Consolidated Water Company, consisting of a pumping and filtration plant on the Passaic River at Little Falls, Passaic County, New Jersey, and the incidental reservoirs to the said cities of Paterson, Passaic and Clifton, and distributing mains and hydrants in the streets of said cities, from which water works the said three cities now receive their present water supply, is adapted for said purpose of using the said new supply from the Wanaque River, etc.

This reservoir will yield daily one hundred million gallons. Of this sum Paterson has been allocated 20 million gallons; Passaic, 11 million gallons; and Clifton 6,750,000 gallons. The original estimated cost of this reservoir was \$20,350,000. These three cities have paid \$6,398,625 for their proportion of such cost. It is computed that to meet the additional cost to complete the project they will have to pay a further sum of \$2,202,375. They are now paying interest upon the above sum of \$6,398,625, a sum which is in excess of \$300,000 a year. When the new contribution is made these cities will have invested in this enterprise the sum of \$8,601,000.

In furtherance of their purpose to supply water to their inhabitants from their own water works.

these municipalities, Paterson, Passaic and Clifton, have taken steps to acquire the property of the Passaic Consolidated Water Company. The City of Paterson was formerly supplied with water by the Passaic Water Company. The cities of Passaic and Clifton were formerly supplied with water by the Acquackanonk Water Company. Acquackanonk was the name of the township that formerly embraced the territory now included in the municipal limits of Passaic and Clifton. These two companies about five years ago were merged with certain other companies under the name of Passaic Consolidated Water Company which now owns all the property under process of condemnation. The acquisition of this property by the Commission on behalf of said cities would avoid a duplication by these municipalities of distributing and transmission mains, reservoirs and filter plants of the water company.

Application was accordingly made under Chapter 195 of the Laws of 1923, p. 504 to a Justice of the Supreme Court for the appointment of a Commission. The Commissioners were duly appointed and became a body corporate under the name of Passaic Valley Water Commission. After elaborate study of the whole project with the aid of experts an offer was made to the Water Company of \$8,276,127 for its property (p. 12). The Company refused to accept this sum and demanded the sum of \$18,000,000, p. 26. This was declined. Thereupon the Passaic Valley Water Commission applied to Justice Black for the appointment of three Commissioners to examine and appraise the lands and other property described in its petition and to assess the damages.

After hearing counsel for the Water Company the Justice, on May 12, 1928, appointed three condemnation Commissioners "to examine and appraise the lands, water works and other property in said petition described and to assess the damages to be sustained in the taking and condemning of the lands, water works and property aforesaid for the purpose set forth in said petition."

Upon the hearing for the appointment of Commissioners, the Water Company, through its counsel on a motion for a writ of certiorari, raised three points: (1) that there were certain alleged inaccuracies in the petition describing the property and (2) that no compensation was provided for the loss in their accounts receivable and (3) because no compensation was provided for the loss to the company occasioned by the difference in interest between the time the award was paid into the Court of Chancery and the maturity of its bonds. The argument was that the Water Company would have to add a sum to make up the rate of interest fixed in the bonds, above what the deposit in Chancery would bring and that no provision was made in the act for compensation to meet this payment.

Justice Black suggested that the application be made to the Supreme Court. This was done. Upon the argument before the Supreme Court a fourth point was made (4) that the legislation in question had no provision for compensation to the Water Company for money expended for improvements and betterments during the period of condemnation.

The inaccuracies were corrected by an order of the Justice and the question now comes before this

Court upon the three points argued in the brief of counsel, (1) that there is no provision to compensate the Company for the alleged loss in its accounts receivable, (2) that no compensation can be awarded for additions and betterments to the property after the filing of the petition and (3) that additional compensation should be paid the Water Company to protect it against its bondholders, because certain mortgages outstanding bear a higher rate of interest than the money would earn on deposit in the Court of Chancery.

We say in answer to these points (1) that during the period between filing the petition and the passing of title no improvements will be required (2) that if such improvements should be required the Water Company can protect itself against loss; (3) that ample provision is made in the legislation under review for just compensation for such improvements; (4) that at the request of the Water Company which refused to make improvements otherwise, the Commission, with the assent of the municipalities has entered into an agreement in writing with the Water Company to protect it against loss for improvements and betterments pending condemnation and (5) that the Commission has undoubted right to take over the property free and clear of encumbrances.

DURING THE PENDENCY OF THE CONDEMNATION PROCEEDINGS NO IMPROVEMENTS WILL BE REQUIRED.

We strongly assert that there is no occasion whatever for the Company to expend any moneys in im-

provements and betterments pending the award of the Commissioners.

The Court is asked to take judicial notice of the fact that a public utility supplying water to a large and rapidly growing population in an important residential and industrial section of the state *must* (italics ours) continually expend large sums for these purposes. Of course if the company is not to go out of business it is reasonable to suppose that expenditures would be made. But if it is to go out of business it is also reasonable to suppose that expenditures would not be made. The argument that because the company expended \$700,000 during the last two years before condemnation it is fair to assume that an expenditure of substantially the same amount will be expended during the pendency of the proceedings, is utterly fallacious. It is more reasonable to assume that such large expenditures would enable the company to carry on its affairs for some years without further investment. These great companies build for the future. They anticipate its requirements with scientific accuracy. But what concern have we, in this inquiry, concerning the investment of \$300,000 in installing new filters at the Little Falls plant in the expectation that the summer of 1929 will be dry and the water now purchased from Jersey City as an additional supply will be withdrawn? This may be consummate managerial prudence but it does not affect this proceeding. The whole argument is based upon what they think may possibly happen and not at all upon the facts of the case. We are now six months from the day of filing the

petition and not a single dollar has been expended by the company in any such improvements and betterments. They presented the same argument six months ago, and the intervening time has shown them to be wrong. Their fears and fancies so far are unfounded. What reason is there to believe that the next six months will tell a different story? The Condemnation Commissioners have fixed Tuesday, October 16th, 1928, as the time to view and examine the property in question and Tuesday, October 30th, 1928, as the time to proceed with their duties to make a just and equitable assessment of the value thereof, and to assess the damages to be sustained in taking and condemning the same, when parties interested may be heard. It is to be presumed that the matter will go forward with reasonable diligence. Thus the end is in sight.

II

A.

***IF ANY SUCH IMPROVEMENTS AND BET-
TERMENTS SHOULD HAVE TO BE MADE
DURING THE PENDENCY OF THE PROCEED-
INGS THE WATER COMPANY HAS AMPLE
POWER TO PROTECT ITSELF AGAINST
LOSS.***

We have denied that any improvements and betterments will be required, but if in the exigency of affairs they have to be made, the Water Company can very readily protect itself against loss. Under the circumstances of this case we refuse to believe

that any tribunal would attempt or indeed have the legal power to compel the company to make extensive expenditures without adequate security. The Company followed the practice of protecting itself against loss before condemnation proceedings. It would not formerly lay a new extension main before there were customers to provide a revenue sufficient to cover the cost of the extension and interest thereon unless the city or the customers gave security to pay a sum large enough to meet such cost and interest and until the business on such extension was large enough for a proper return. This practice can be continued during the pendency of these proceedings. Their practice now is to demand deposits for meters and other things so as to safeguard the Company against loss. If a municipality desires mains laid the Company can demand protection against such expenditures. If a house holder desire connection made with the mains the Company can make suitable arrangements with him. In every phase of the matter it can adequately protect itself. Even upon a request for water by some developer of real estate the Company can properly say that its property is under process of condemnation and that it cannot expend money upon new construction and should in consequence have security. But for the sake of the argument let us suppose that the Company prefers to make such new construction. Take a typical illustration:—A great many houses are built on a certain street or streets either by individual owners or by so-called "development." The Company makes the necessary extensions and connections. The people move in and the water is supplied by the Company until the Commission takes

possession. What happens then? Is it not to the interest of every party in interest, the company, the water Commission, the municipalities and the customers, that this supply should continue uninterruptedly? It is plain that the interest of everybody, to say nothing of public necessity, will require the continuance of the service of the company, that the Commission acquire the extensions, and connections, or that the municipalities acquire them and buy water from the Commission. The only conflict of interest will arise as to the question of price. If the Commission seek to buy, the Company may repeat the present argument that they will be unwilling to pay a fair price because the Company will be at their mercy. It is clear however, that the water must be continued to be supplied. Neither the Commission nor the municipality would dare to shut it off. An injunction in such case or a mandamus to restore the supply would be allowed. The Company can still contract with the householder, water company or municipality for water in quantities, large or small and the Commission will be obliged to take over such agreements. By its petition the Commission also declares its purpose to "perform such obligations in relation to supplying water which are binding at the present time upon said Passaic Consolidated Water Company." p. 22. The Commission in its effort to purchase or the new Condemnation Commissioners in making its award would know that the only way the water can be supplied is through the company's mains or by laying other mains which would cost as much as the Company asks. Under such circumstances we must clothe the Commission with practical good sense. There will be nothing

for them to gain by constructing a new line which would cost as much as the company's line. The new Condemnation Commissioners would of course in their award value such new construction at least at the cost incurred by the Company. But in any case the Company in its argument has failed to present a condition of affairs that would be injurious to them from which it cannot fully discharge itself by reasonable observation of business practice.

The Company has flatly refused to make even the extensions, mains and house connections to supply new houses in each of these three cities unless adequate security is given by the city in which the extensions are made to protect them against the loss of their investment in case the property of the company is taken by condemnation. In this court they base their argument on the fact that they may be compelled by some unknown authority to execute such extensions in these cities. On the other hand they positively refuse to make them, without municipal security. We repeat our assertion and challenge denial that this is exactly the position that the Company has taken by the advice of counsel and have refused and announced their intention to continue to refuse to make any further extensions in any city until the city authorities guaranteed the investment. It is common knowledge, indeed it is the law, that before extensions of gas, water, telephone and electric service are directed to be made that a reasonable return must be apparent before an investment can be made.

ACCOUNTS RECEIVABLE.

The Water Company is also apprehensive that it will not be able to collect its accounts receivable because loss will result from the separation of the ownership of such accounts from the ownership of the water works. What distinction can be drawn between these accounts and the accounts of any business man whose property is taken? These debtors are all property owners and the Company must collect its debts as any other citizen or corporation is obliged to do. The fact that many of their accounts are for small amounts does not change the law. Judgment may be had in our courts for the small sum as well as the large sum. The inconvenience does not make the act unconstitutional. Losses in business are not recoverable in condemnation proceedings. *Philadelphia & Camden Ferry Co. v. Inter-City L. R. R. Co.*, 76 N. J. L. 50—20 C. J. 779. It is a novelty in the law of eminent domain that accounts receivable of a company are constitutionally required to be paid by the condemnor. Are the numerous small accounts receivable of the grocer, whose building is to be condemned, also to be paid? He must move from the neighborhood and his debtors can obtain no further credit and refuse to pay. He had no knowledge when these debts were incurred that he would have to move. If he had known he could have adopted measures to limit the credit and force payment. He would be in the same position if the debts had arisen between the date of filing the petition and the date of payment for the prop-

erty. His only protection is a suit at law. This Company is more fortunate. If we adopt its view about the fear of payment for the sake of the argument we may be permitted to inquire why thus warned it cannot require any doubtful customer to make a deposit. Our argument that the Company can protect itself against loss in case of new construction applies with added force to these accounts. Its daily practice is to demand deposits. It thus protects itself now for water meters and for doubtful accounts. The Company may exact from the new customers to be served, from old customers, or from doubtful debtors, or from the city, appropriate security which would protect its investment. We raise no question about such right. If taken no loss is possible.

The brief for the Company expressly asserts that the Company does and can enforce the payment of water bills by shutting off the water. It will retain this power until compensation is paid. It calls attention to the fact that many of its accounts are for less than \$4. This makes it a very simple matter to request a deposit or to give notice in view of these proceedings that after a certain date water rents must be paid in advance. This order can be enforced by refusal to continue to supply the water. The entire remedy is in its own hands.

The Commission has proposed to the Company and this proposal we are authorized to renew in this brief that upon its acquisition of the water works, the Commission will in the course of its duty in collecting current items of accounts receivable

from its customers aid the Company to collect its water arrearages. The Commission is prepared to enter into such a contract at any time the Company desire.

III.

THE LEGISLATION IN QUESTION NOW UNDER REVIEW, P. L. 1923, p. 504; P. L. 1926, p. 469 and P. L. 1928, p. 198 WITH THE ACT OF EMINENT DOMAIN AFFORDS JUST COMPENSATION TO THE WATER COMPANY FOR ITS PROPERTY INCLUDING PAYMENT FOR IMPROVEMENTS AND BETTERMENTS DURING THE PENDENCY OF THE PROCEEDINGS.

The whole tenor of the Company's brief is to the effect that the legislation in question does not provide just compensation for improvements pending the proceedings. We reiterate strongly that there is ample power for such compensation. These cities have by proper legislative action, by ordinance, authorized the Commission to acquire the water works and other property of the Company. The Commission has power to contract for the purposes of the act. It is reasonable to assume that the legislature in the acts in question intended by the power given to the Commission to enable it to contract for everything appertaining to the acquisition of the property. The legislature knew of course that it was not dealing with private property with fixed limits but with that of a public utility, a going concern, where changes under certain circumstances might be required to be made pending the proceedings. It is,

we say, reasonable to assume that this power to contract to purchase covers such changes, as under the circumstances alleged might have to be made. Independently, however, of this assumption, the municipalities themselves gave the power to the Commission to contract with the Company. The attention of the Court is drawn by counsel for the appellants to P. L. 1926, p. 469-470, which provides as follows:

8a. The Commission shall have no power or authority to incur any liability on behalf of the municipalities and none of its debts, expenses or liabilities shall bind the municipalities except with their consent expressed by resolution of their governing bodies. The municipalities shall have power from time to time to make appropriations for the commission upon such terms and conditions as may be determined.

This section does not support the argument sought to be based upon it and does not affect the question. By ordinance p. 26, 29, 31 and 33 each city was authorized to apply to a Justice of the Supreme Court for the appointment of Commissioners to acquire the property by purchase or condemnation. Thus these commissioners (Passaic Valley Water Commission) were specifically empowered to buy or condemn the property of the Company "and any or all other property of the owner of such water works that may be necessary to maintain, operate, enlarge or extend the water works so acquired and to enlarge, extend, maintain and operate the same," etc. P. L. 1923, p. 504, Sec. 1. This power is not exhausted by a single purchase. It may be exercised in two or

more purchases or in one or more condemnations. Indeed the third section expressly provides for such contingency in the following language "The water works acquired by the Commission appointed in pursuance of the first section of this act whether by a single purchase or two or more purchases or by one or more than one condemnation proceeding, etc." The same section declares that the term "waterworks" shall be construed to include * * * "water works, rights, and franchises *owned by one corporation* or party or more than one." Here is express authority given to acquire the water works of one corporation by a "single purchase or two or more purchases or by one or more than one condemnation proceeding." The Company seems to have overlooked this language.

Counsel rest their argument in the main, upon the fact that the act of Eminent Domain limits the value to the date of filing the petition. But this is not to state the whole argument. The appraisalment of value may be limited by the act of Eminent Domain to the date of filing the petition. This legislation however, empowers the Commission to purchase or condemn *at any time and as often as their duties require*. The Eminent Domain Act is merely the procedure for the acquisition of the property. The power rests elsewhere. Here it is found in the legislation now under review. By this legislation in express terms the Commission is clothed with wide powers and further is invested with authority to invoke "all the powers of such municipalities or any of them to acquire property for public use." We proceed

by the act of Eminent Domain to condemn their property as of the date of filing the petition. If the Company make improvements pending such procedure (and it may be said that for any reasonable improvements we are not averse) we have the power to purchase or condemn such property. In case of a second condemnation we can file our petition, if it be required, upon the day of the payment of the award in the present proceedings. Such new construction will presumably be then in operation and would have to be taken over of necessity by the Commission. The award in this new condemnation would be for the value of such new construction with interest at 6% from the time of filing the petition until the second award was paid because of our immediate occupation of such new construction. Independently of the allowance of interest in such second award the owner would be entitled to be paid such interest for such occupation. Thus full compensation to the last dollar will be awarded the Company for its property. The Commission, therefore, has power to purchase from the Company the property acquired after April, 24th, 1928. It has like power to condemn such property. Indeed if the Commission and the Company agreed upon a price for part of the property but failed to agree upon a price for the remainder of the property, if such units were distinct enough to prevent confusion, the act gives the power to purchase a part and to condemn the remainder.

We confidently assert that paragraph 8a does not limit the power of the Commission in respect to the question now under review for two rea-

sons: First, this section does not apply where "their consent expressed by resolutions of the respective governing bodies has been given." This power has been expressly given by such governing bodies in the ordinances aforesaid. Secondly, on still another view such power still rests in the Commission. They are authorized to purchase or condemn the water works which in this case has the value of many million dollars. The Commission could not discharge itself of its very responsible public duties to make an offer to the company of the value of the property without extensive study and engagement of experts. To give to paragraph 8a the construction which would nullify the whole act would be to violate the rules of construction. How can the Commission "enlarge or extend the water works" as empowered by the act if paragraph 8a controls? How can they purchase or condemn (in the absence of direct instruction which we assert was given by the ordinances aforesaid)? If an interpretation of these acts compels the retention of paragraph 8a it can only be done by such construction that will not arrest the extraordinary powers given to the Commission. How can they acquire property by condemnation if paragraph 8a governs? The purpose of their creation is to acquire "the entire water works." The spirit and reason of the original act are otherwise overthrown. This language should have a liberal construction to sustain the important grant of power. Otherwise in effect it repeals the act to purchase or condemn. The maxim *ut res magis valeat quam pereat* is not authority for an interpretation that leads to an unreasonable result.

The last clause of the paragraph declares that municipalities shall have power from time to time to make appropriations for the Commission upon such terms and conditions as may be determined. How can an appropriation with any exactness be made before it be determined what is the value of the property? It is difficult to see how such a paragraph is not necessarily in conflict with the proper construction of the act. In any case, however, as stated *supra* the consent required by such section expressed by resolution of the respective governing bodies of such cities has been given in the ordinances aforesaid.

We repeat therefore, that there is ample authority either by purchase or condemnation to acquire the property in question, that may reasonably be required to be constructed pending these proceedings.

We think it is pursuing the argument beyond practical limits to suggest as counsel have done in their brief that there is no provision made for the enhancement of the value of the whole property by some additions and betterments, put in place pending the proceedings. In a property which is valued at \$18,000,000 by the Company, it is difficult to see just what the enhancement would be to the original property beyond the cost of such additions—additions which may never be made.

When no substantial rights are violated such remedial statutes should receive liberal construction in the public interest.

**THE COMPANY HAS ENTERED INTO AN
ENGAGEMENT WITH THE COMMISSION
WITH THE ASSENT OF THE MUNICIPALITIES
FOR SUCH NEW CONSTRUCTION PENDING
CONDEMNATION AS MAY REASONABLY BE
REQUIRED.**

Notwithstanding the force of the argument above outlined the Water Company has refused to proceed with additions. While the property of the appellant, pending these proceedings may remain until their termination as at present, it is freely conceded that certain ordinary additions here and there would be welcome to some of our citizens. We think that both these great state agencies should aid in this regard. The Company has insisted that before it would make such an investment a contract with the Commission would have to be ratified by the municipalities. While we are strongly of opinion for the reasons stated that there is power in the Commission to provide just compensation for such additions, the Commission and the Company have had a written agreement prepared by their respective counsel to provide for compensation for such additions. This document has been signed by the Commission, approved by the three respective municipalities and left with the President of the Water Company. This agreement recites that:

“Whereas on or about the 24th day of April, 1928, the Commission on behalf of the Cities of Paterson, Passaic and Clifton, in the County of Passaic and State of New Jersey, instituted in the New Jersey Supreme Court,

proceedings to condemn the water system, franchises and certain property of the Company, and

“Whereas during the pendency of said proceedings it may be necessary from time to time for the Company in rendering service to said municipalities and the inhabitants thereof to lay additional water pipes and mains, extend some of its existing water pipes and mains, make house connections and install meters and it is the desire of the Commission and said municipalities that the Company shall make such expenditures as may be necessary for said purpose and that upon the acquisition of the water system franchises and other property now so sought to be condemned the Commission shall acquire any other property so acquired by the Company.”

It is herein provided that the Company will, during the pendency of said proceedings provide all of the materials and do all the work reasonably necessary to enable it to lay additional water pipes and mains, extend its existing water pipes and mains, make connections and install meters as aforesaid, as from time to time requested in writing by the Commission. The cost of such work or materials shall be borne by the Company.

“All of the cost to be incurred by it in doing such work or in providing such materials which cost it is hereby agreed shall be computed as follows: to the amount actually and directly expended by the Water Company in the doing of such work or in providing of such materials there shall be added 20% which

said 20% shall include and cover all overhead, engineering, inspection, superintendence, liability insurances and other expenses of the Water Company in connection therewith."

Upon the payment of such cost, such work shall become the property of the Commission.

Thus every provision is taken to protect the Company.

V.

THE ATTEMPT TO TAKE THE COMPANY'S PROPERTY FREE AND CLEAR OF LIENS IS AUTHORIZED BY CHAPTER 195 OF THE SESSION LAWS OF 1923, AND, IF CONSUMMATED, WILL NOT RESULT IN TAKING THE COMPANY'S PROPERTY WITHOUT JUST COMPENSATION.

(a)

The word, "may" in the language of section 4 of the act of 1923 providing for the taking of appellant's water works free and clear of liens is used premissively and not as a mandate.

"Ordinarily the word 'may' implies permission only, but often it is construed to be mandatory."

Kennelly v. Jersey City, 57 N. J. L., 293, 297.

The view of Chancellor Kent was adopted in *Sciple vs. Elizabeth, 27 N. J. L., 407, 410*, and followed in all succeeding cases in this state in-

cluding *Fagen v. Hoboken*, cited in appellant's brief. He said that the true rule of construction applicable to statutes in such cases is that the word *may* means *must* or *shall*, only in cases where the public interests and rights are concerned, and where the public or third persons have a claim *de jure* that the right shall be exercised.

But the public interests are not concerned in having the Company's property taken subject to the lien of the mortgages upon it, except as the public is interested in having it acquired through the exercise of a sound discretion as to which method will be the more economical: to take it subject to liens or free of them. The legislature intended this discretion be exercised by the Commission.

The Company have no claim *de jure* that the right to take subject to the mortgages should be exercised, unless to take the property free of the liens would be unconstitutional; which is a question relating to another phase of appellant's proposition.

As in its ordinary use the word "may" intends permission and not command, it can be given no other intendment save by construction. When the word as used in the 4th section of the statute of 1923 is construed in the light of its context nothing appears to vary its ordinary meaning, but, on the contrary, clearly establishes the intent of the legislature to so use it; as will be shown.

The 3rd section of the act of 1923 provides as follows:

“If the commission and the owner of the water works cannot agree on terms for the sale thereof, or if such proposed contract shall not become binding as herein provided, application shall be made by the commission to a justice of the Supreme Court for the appointment of commissioners to condemn the water works in pursuance of and in the manner prescribed by an act entitled ‘An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of 1900,’ approved March twentieth, one thousand nine hundred, and the amendments and supplements thereto; and the commission is hereby further authorized to invoke and exercise in the manner prescribed in said act approved March twentieth, one thousand nine hundred, and its supplements and amendments, for the purpose aforesaid, either in its own name, or in the name of any or all of the municipalities so supplied with water, all of the powers of such municipalities, or any of them, to acquire property for public use.”

There would seem to be no question that under the Eminent Domain act, any authority having power to condemn, including the Commission, would have the right to take private property for public use free and clear of mortgages. This is admitted in appellant's brief (pp. 34, 35) and established by the cases there cited. It is said in the brief that “No specific authority is conferred upon the commission to condemn free and clear of the liens of the

mortgages." If by this it is correctly intended that no right to condemn free and clear of liens can be delegated by the state unless such right is expressed in the act giving power to condemn, the result would be to upset a practice established for a century. But the proposition is not sound. It confounds power with the method of its exercise. Power to condemn having been given the Commission, the power to exercise it would have arisen under section 1 of the Eminent Domain act without any express conference of legislative authority in the act of 1923. The Eminent Domain act is a law providing the method in which a power to condemn shall be exercised and part of that method provides for the bringing in to the proceeding all persons who appear of record to have any interest in the property (sec. 2); for an assessment of the amount to be paid by the petitioner for such land or other property and damage (sec. 6); and in case the lands or other property taken are incumbered by any mortgage, the amount awarded may be paid into the Court of Chancery and shall there be distributed according to law (sec. 8).

Having conferred this power to proceed under the Eminent Domain Act upon the Commission, the legislature having in view that some other method of dealing with the mortgages upon the property of a water company might be more advantageous, gave the option conferred by the fourth section of the act of 1923. There is nothing in the language of the section indicating an intent to revoke or modify the power conferred by section 3. The language is permissive and no occasion appears for a construction which would make it mandatory.

Appellant contends that the word "may" must be given a mandatory meaning because, if it isn't, the municipalities will be devoid of power to issue bonds to pay for the water works, which power, being deemed to be necessary to the acquisition of the plant, can not be exercised unless the works are taken subject to liens, and, therefore, a taking subject to liens is the only taking permitted by the statute. This argument for construction of the word "may" is purely *ab inconvenientio*. It is not sound in that it fallaciously assumes that the words "so acquired" in the phrase "and for the purpose of raising the money to pay the compensation agreed upon or fixed by the condemnation proceedings for the water works so acquired," is to be understood as relating to the antecedent words of the section providing that "any such water works may be acquired subject to liens." This argument for such construction fails entirely to take into consideration the most important guide for such purpose:—the intent of the legislature. It rests entirely upon the last resort in construction:—the rules of grammar. As to those rules it is said,

"the technical rules of grammar may, in the construction of sentences, be overridden by a more common sense reading, based upon the consideration of the object and subject matter of the act, than could result from their strict application." *Endlich on the Interpretation of Statutes, sec. 81.*

And see *ibid, sec. 414:*

"In searching for an antecedent, it does not follow that the first word that may an-

swer the reference must be taken." *Camden &c. R. Co. v. Briggs*, 22 N. J. L., 623, 649.

"Few statutes would stand, if tried by the strict standard of logic, grammar or rhetoric." *Waters v. Quimby*, 27 N. J. L., 296, 311.

And see,

Mendles v. Danish, 74 N. J. L., 333.

Conover v. Public Service Ry. Co., 80 L., 681.

In re Merrill, 88 E., 261.

Jansen v. Woolworth Co., 92 L., 529.

If any limitation upon the power to issue bonds could be fixed by treating the words "so acquired" in the manner contended for by appellant, the whole argument for such limitation falls to the ground in view of the express provision of section 4 (P. L. 1926, p. 469):

"The power to issue said bonds and their validity shall not be dependent on or affected by the validity or regularity of the proceedings to establish the commission or to acquire the water works, or to make the enlargements, extensions or improvements thereof."

The absence from the statute of any provision for the acceleration of the maturity of the bonds affords no inference that the legislature intended the property to be taken free of the liens securing the bonds.

If any such provision were contained in the statute it would probably be liable to attack as being unconstitutional, because it impaired the obligation of contracts.

Randolph v. Middleton, 26 N. J. E., 543.

(b)

The act is not unconstitutional in permitting the property and franchises of appellant to be sold free and clear of liens, and provides a means for giving appellants just compensation for its water works and franchises.

The claim of the appellant is that the statute is unconstitutional because under its provisions the value of the water works awarded to them may, under certain conditions, be insufficient to enable them to pay their debts; or, to state it more specifically, their claim of unconstitutionality is based upon the fact that they have mortgaged their property and franchises to secure interest bearing bonds which will not mature until long after the award for the value of the water works has been made; that, consequently, the condemnor, under the provisions of the 8th section of the Eminent Domain Act, will pay the amount of the award into the Court of Chancery to be there distributed among those entitled to it; whereupon, owing to the fact that the debt due the bondholders will not mature for many years after the award is paid, the interest charges on the debt will be met out of the principal sum of the award which will thereby be reduced to an amount less than appellant's lawful share of the

amount of the award. We think the foregoing is a correct statement of appellant's claim in its strongest aspect.

But, we submit, that these considerations do not indicate unconstitutionality in the statute.

The only limitation upon the State's right of Eminent Domain is that the property in question shall not be taken for the use intended without just compensation; which, under the liberal statutory interpretation of our Eminent Domain act, means that when taken, it shall be upon "a just and equitable appraisal of the value of the same, and an assessment of the amount to be paid by the petitioner for such land or other property and damage aforesaid, as of the date of the filing of the petition and order thereon."

All that is "taken" in this proceeding is "The Water Works and all the property of the Passaic Consolidated Water Company, including real estate, rights of way, easements, water rights, franchises, contracts, plant structures, personal property, material and all other property except money and securities and except its franchise as a corporation (Petition, par. 9, Case p. 13); and, also, except bills and accounts receivable (Amended Petition, par. 13, Case p. 60)."

For the property so taken, the condemnors must pay their value and damage. And such value and damage must be awarded by the Commissioners in a lump sum. As was said in *Zimmerman v. H. & M. R. R. Co.*, 76 L., 251,

"the duty of the commissioners was simply

to ascertain what sum of money is an equivalent for the whole right which the condemning company is to acquire, and the whole injury which it is to inflict, leaving to other tribunals the distribution of the fund among the claimants of particular estates and interests."

The same principle is adopted in

Penn. R. R. Co. v. National Docks R. R. Co., 28 Vr., p. 86.

Bright v. Platt, 5 Stew., p. 362.

Crane v. Elizabeth, 36 E., 339.

Herr v. Board of Education, 82 L., 610.

In *Crane v. Elizabeth*, *supra*, this court said,

"The action of the city authorities has thus the distinctive qualities of a proceeding *in rem*, a taking, not of the rights of designated persons in the thing needed, but of the thing itself, with a general monition to all persons having claims in the thing. When, by the appraisement of the commissioners, the price of the thing is fixed, that price stands instead of the thing appropriated and represents all interests acquired. The Legislature has not imposed upon the city officials the duty of searching out all these interests and assigning to each its just equivalent. It has contented itself with the simple direction that the fund shall be paid to him who is presumably entitled to it, the general owner of the land. Where no other claimant intervenes, that course will usually meet the

ends of justice. But if, in any special case, this owner ought not, in equity, to receive the fund, the court of chancery will, at the instance of any interested complainant, take charge of its proper distribution, and so secure those particular equities which the generality of the statute has left without express protection."

Under this procedure it is manifest that upon the taking and award just compensation for the property taken will be given. This we understand appellant to admit. But, argues appellant, we have mortgaged the property for a long term of years at high interest rates, so that under the provisions of the 8th section of the statute which protects the condemnor against claims by lien holders, not parties to the proceeding, or who may have disputes with the owner or with each other, it may happen that we shall have to continue to pay interest until the maturity of the mortgages, which payments may deplete the fund paid into court.

We deny that such a result would operate to deprive the appellant of just compensation, for the reasons about to be stated:

(1) The condemnation proceeding accelerates the due date of the mortgages so that they become due as of the date the property is taken.

This arises from the nature of public and private dominion over property. Private right over property is always subject to the State's right of Eminent Domain, which with us is limited only by the self imposed obligation to make just compensation when the right is exercised. If the owner of

the fee could arbitrarily determine whether or not the state should take his property free of liens or subject to them, he would thereby be enabled to defeat the right of the State to acquire the owner's land free of all liens. Or, in other words, the absolute right of the State to take anything and pay off and discharge every right in and to that thing would be impaired. The right of the State, if such were the rule, would not be a right of Eminent Domain, but merely a right of taking conditioned upon other circumstances than the making of just compensation.

When the mortgages upon the water works were executed they were given and accepted subject to the State's right and with knowledge of it. Obviously neither mortgagor nor mortgagee can set up that the exercise of the State's paramount right would operate to their injury, and therefore render the statute unconstitutional. Granting that one or the other was injured by the State's action it was *damnum absque injuria*.

Beseman v. Penn. R. R., 21 Vr., 235.

The right under the mortgage was a right in the property for a definite term, the right of the company as the owner of the fee might be of longer duration. It cannot be that the right of the State to take the whole property was in anyway affected by the duration of the estate of either mortgagee or owner. Both could be put an end to at the will of the State whenever it thought proper.

(2) The legislature, unless it thinks fit to do so, is under no obligation to provide for a just or equit-

able apportionment or distribution of the award among those entitled thereto.

The limitation upon the power of the legislature to take property is, only, that it provide for just compensation. When this is provided and awarded in such manner that the fund is placed at the disposal of those entitled to it the constitutional obligation of the State is discharged. Henceforth any conflict between the parties having an interest in the *res* as to their respective proportions of the award is to be settled by those tribunals established by law for such purpose. The State is no longer interested.

Crane v. Elizabeth, supra.

If this were not so, just compensation could not be made by the State or its agencies until the rights in the *res*, of every person, had been ascertained and determined and the share of each in the award had been fixed and tendered. But this is not the law. It is true that those who have an interest of record must be made parties to the condemnation proceeding, but this is not a constitutional prerequisite to the taking; it is statutory. It is also true that the interests of those who have unrecorded interests in the *res* are not destroyed by the proceeding. Their rights in the *res* are transferred to the fund. In this manner just compensation is provided for every interest in the property taken. The fact that the interests of various parties in the *res* has been so complicated by their own acts that it becomes difficult to equitably settle disputes as between themselves, in no way affects the power of the State to take the property, or place upon it any

other duty than that of making just compensation as of the time of the taking. If the parties are injured by such taking it is *damnum absque injuria*.

Appellant's claim that one of the consequences of the taking may be that being deprived of its earning power, it will be unable to pay the interest on its unmatured bonds out of income, will have to resort to the principal of the award and be thereby deprived of just compensation.

Admitting the necessity of such resort, it by no means follows that they will be deprived of just compensation for these reasons:

(a) It may be that the value of the property taken as ascertained by the award, amounted to no more or even less than the amount of the mortgages upon it. In such case the Company would be entitled to payment of no part of the award and yet just compensation would have been made.

(b) It says such resort will have to be made, because the taking will deprive it of its earning power. But it cannot complain of this. Its earning power depends upon its franchises. The use of those franchises may or may not enable it to earn sufficient to pay the interest on its bonds. But, be that as it may, its franchises are to be taken from it in this proceeding and the Company will receive just compensation for them. The result may be to place the Company in the position similar to that of a business man whose property, in which he conducts business, is taken from him. He may be in debt on his interest

bearing notes or bonds. He may have depended upon his business for the funds to pay both interest. But when his property is taken he can receive no compensation for the injury arising from the loss of his business, so that both he and his creditors may greatly suffer. But this Company is much more highly favored. Not only its real and personal property are to be paid for, but its business, its franchises, as well. Full and just compensation is to be made it by such payment.

Montgomery County v. Schuylkill Bridge Co., 110 Penn St., 54.

Monongahela Navigation Co. v. U. S., 148 U. S., 312, 329.

The further argument is that the legislation is unconstitutional because it does not provide that the mortgages shall be paid out of the award immediately. But this is the present rule and universal practice. It is not directly charged that the condemnor should pay such loss by way of damages but this is inferable from parts of the argument.

A simple illustration will show the fallacy of this:

Suppose the State proceed to condemn two tracts of land and the award of the Commissioners is \$100,000 for each tract. Tract A is free and clear of liens. Tract B has a mortgage thereon for \$100,000 at 6% payable in 20 years. The owner of tract A takes his money. The owner of tract B contends that the State must pay him not only \$100,000, the value of his property but in addition a sum of money which invested, will realize the difference between what

the fund in the Court of Chancery will bring, let us say, 3% and the 6% provided in the mortgage. It will require approximately \$45,000 addition to the fund in Chancery, invested at the rate of 3% to realize \$3000 a year for the 20 years. In other words the additional fund of \$45,000 after producing \$3000 for 20 years will be exhausted. The State must therefore pay, if this argument is sound, \$145,000 for tract B. An argument which leads to such a result carries its own refutation. The terms of interest of the mortgage and the rate obtained in Chancery may vary with each case but the argument holds. The result desired would imperil the whole power of the State itself as well as of those subordinate municipal divisions of the state to which in the interest of the public such power has been committed. It would enable every landowner who did not desire condemnation to defeat the proceeding by placing a mortgage upon his property for a long period at a high rate of interest. Neither the State nor any county, city or other municipality would attempt to pay such an absurd figure.

A further illustration on this point that directly affects this proceeding may be had by a reference to the mortgages upon the property of the appellant now under condemnation. They are set out in the State of the Case, p. 18, 19, 20 and 21. They are nine in number and mature at various times from 1937 to 1958; that is to say from 9 to 30 years. Eight bear interest at 5 per cent and one at 6 per cent. The bonds outstanding, secured by these mortgages represent \$7,936,000. If we take this sum as the value of

the property it will produce three per cent when placed on deposit in the Court of Chancery. There has to be an additional sum which will produce the remaining two percent of the five per cent mortgages and the remaining three per cent of the six per cent mortgages. By taking the mortgage debt \$7,936,000 as the value of the property for the purpose of argument we are able to calculate the precise sum due on each mortgage and the sum to be added to meet its interest until maturity.

A computation shows that these cities would have to pay into the Court of Chancery, above the award of the Condemnation Commissioners and the value of the property as damages the sum of \$3,000,000.

Vice Chancellor Pitney in *re Sleeper*, 62 N. J. Eq., 67, says:

“For it is abundantly established by authority in this state, that, in a case like this an award is presumed to include the whole value of the land free of encumbrance and that the mortgagee or other lienor is entitled to be paid out of the fund and the party acquiring the land by condemnation proceedings is entitled to have such payment made out of the fund, in exoneration of the land acquired.”

The interpretation of an act becomes a part of the act. Chief Justice Beasley speaking for this Court in *Randolph v. Middletown*, 26 N. J. Eq. 547, said:

“If this statute authorizing, in case of in-

solvency of corporations of this class, the appointment of a receiver and the sale of the corporate property free from all encumbrance, has been in existence at the time of the execution of the mortgage, an entirely different problem would have been presented for solution. In such a condition of things, it might well be held that such a provision of the general law would enter into the substance of the contract and become a part of it; this would be in harmony with practice and with theoretical principles."

Mortgagor and mortgagee knew this interpretation before the execution of their mortgages or are chargeable with it. Indeed many of the constituent water companies that are embraced in the merger which created the appellant have in their charters power to condemn. The largest of these companies was the Passaic Water Company which supplied water to the City of Paterson. Under its charter P. L. 1849, p. 47, power to condemn is given. The condemnation commissioners there are directed to report in writing what the company must pay each owner; then this language of paragraph six follows:

"and a copy thereof, certified by the clerk of the said County, shall at all times be considered as plenary evidence of the right of said company to have, hold, use, occupy, possess and enjoy the land so described; and it shall be the duty of said company to pay the said owner or owners the amounts assessed as aforesaid, or, in case

the owner or owners refuse to receive the same, or live out of the state, or are incapacitated by law to receive the same, then said sum shall be paid and delivered to the clerk of said county, to be by him retained for such owner; and upon making payment in either of the ways above stated, the title of the premises mentioned in the said award and so paid for, shall be vested in the said company."

The appellant takes the title to its property by this procedure but not the smallest suggestion is made about anything else. The Company is to pay the owner the amount assessed for the value of the land and damages if any (but nothing else). The clerk retains the money for the owner. With the knowledge that this was its own practice it is unconvincing to be told by it now, that it understood the practice was otherwise.

The statute declares Eminent Domain Act sec. 8 that, "In case the lands or other property taken are incumbered by any mortgage * * * the amount awarded may be paid into the Court of Chancery * * * and shall be there distributed according to law." No exception is found here as to mortgages that have not matured. The language is *any* mortgage. Thereupon the amount awarded *shall be distributed*. Nothing is said about waiting for years. Four of these mortgages mature in thirty years.

With all this knowledge of proceedings in condemnation on the part of the Company we respectfully inquire why if it conceived that it was

in some peril of being held for interest after the payment of the award, it did not take the ordinary precaution to protect itself by inserting a condition in its mortgage covering the subject.

This field of the law is very common. It is of universal practice. Every city counsel is almost daily engaged in such service. There are several hundred cases in the New Jersey Reports alone upon this subject. There are thousands of cases that are never reported. It is a prolific field of litigation because of natural disagreement between buyer and seller as to price. There are many thousand cases reported in the United States. And yet, notwithstanding this amazing number of cases, the counsel for the appellant are unable to cite a single case to support their views although the subject of condemning property incumbered with mortgages is of daily occurrence.

It is observed that no bondholder appears to object that the maturity of his security is unconstitutionally accelerated. We have only the expression of the fears of the mortgagor. This is not enough. The Company can make such point before the Condemnation Commissioners and before the trial court. Indeed the municipalities may object to the award and withdraw. The language of the statute is "any municipality may withdraw from the condemnation proceedings at any time within thirty days after the award of the commissioners shall have been made." There is not now therefore any absolutely assurance that the municipalities will accept the award. This can only be determined hereafter. They are of course very desirous of accepting an award

that appears to them to be approximately close to their own appraisal. This is for the future. This present appeal is premature. Any interest the Company may have can be adequately protected when the municipalities accept the award and pay the amount into the Court of Chancery.

It need hardly be said that the power of Eminent Domain is one of the extraordinary powers of the State. It transcends all legislative limitations save to provide for just compensation. It is higher than the constitution. It is an attribute of sovereignty, inherent in the state and essential for its own preservation. Yet this great power under the construction suggested is arrested and turned against itself..

It is respectfully submitted that this great public enterprise should be permitted to proceed and the judgment of the Supreme Court should be affirmed.

WILLIAM B. GOURLEY,
WILLIAM I. LEWIS,
ARTHUR S. CORBIN,
GEORGE L. RECORD,

Of Counsel for Defendants-Appellees.

**Chapter 195 of the Laws of 1923 and
Amendments thereto.**

Chapter 195, Laws of 1923.

“AN ACT to authorize two or more municipalities in this State by means of a commission to acquire, either by purchase or condemnation, and operate privately owned water works now or hereafter supplying water therein, and in other municipalities, if any, in which water is supplied by the same water works, together with the franchises, rights, and any or all other appurtenant property of the owner or owners, of such works, and to enlarge and extend the same.

“Be it enacted by the Senate and General Assembly of the State of New Jersey:

“1. The governing body of two or more municipalities in this State in which now or hereafter water is supplied for domestic and public use by privately owned water works, whether such water works are owned by one or more corporations or parties, may make application to any justice of the Supreme Court for the appointment of a commission in their behalf to acquire such water works, either by purchase or condemnation, together with all rights and franchises relating thereto, and the rights and franchises to obtain an additional supply of water, and any or all other property of the owner of such water works that may be necessary to maintain, operate, enlarge or extend the water works so acquired, and to enlarge, extend, maintain and operate the same to

supply water in the municipalities acquiring such water works as aforesaid and in all other municipalities theretofore supplied with water by the same water works, provided that all of the municipalities so supplied with water shall be notified in writing of such application at least sixty days before the same is made, and may join therein. Any vacancy in said commission shall be filled by appointment as above provided, and upon such notice as a justice of the Supreme Court shall direct; inability of any member of the commission to serve shall be treated as a vacancy. The application to appoint the commission or to fill any vacancy may be continued from time to time by the justice of the Supreme Court to whom the same is made.

“2. Every commission appointed in pursuance of the first section of this act shall consist of not more than five persons, residents of the municipalities making the application for their appointment and joining therein, if any; they shall organize as soon as practicable by electing one of their number as president, and shall appoint a secretary and a treasurer, who need not be members of the commission, and adopt a seal, and a name whereby they may sue and be sued. The secretary shall keep full and correct minutes of all the meetings and transactions of the commission, and perform such other duties as may be required of him; the treasurer shall give bond for the faithful performance of his duties in such amount as the commission shall prescribe. The offices of secretary and treasurer may be held by the same person. The members of the commission shall receive for their services compensation to be fixed by agreement with municipalities having at least two-thirds of the population by the last national or State census of all of the municipalities making

the application for their appointment and joining therein, if any; or, in case of failure to agree, by a justice of the Supreme Court. The secretary and the treasurer shall each receive such compensation as the commission may determine. All expenses incurred prior to the acquisition of the water works shall be considered as part of the cost thereof; all expenses subsequently incurred for operating the water works and all other expenses and charges not properly chargeable to capital account shall be paid or set aside out of earnings.

“3. Immediately after organization the commission shall proceed to negotiate for the purchase of the entire water works supplying water in the municipalities making the application for its appointment, and in the other municipalities, if any, supplied with water by the same water works; and may enter into a contract to purchase such water works for compensation to be agreed upon or fixed by condemnation proceedings as hereinafter provided. A copy of every contract to purchase such water works, without condemnation, made by the owner thereof and such commission, shall forthwith be served by the commission on each of the municipalities that made and joined in the application, if any, for the appointment of the commission, and said contract shall become binding only as to such two or more of the municipalities that made the application for the appointment of the commission, and joined therein, if any, as shall by resolution of their governing bodies file with the commission their assent thereto; provided, that such assents shall be so filed within three months after the copies of said contract have been served on the municipalities by the commission, as above provided. If the commission and the owner of the water works

cannot agree on terms for the sale thereof, or if such proposed contract shall not become binding as herein provided, application shall be made by the commission to a justice of the Supreme Court for the appointment of commissioners to condemn the water works in pursuance of and in the manner prescribed by an act entitled 'An act to regulate the ascertainment and payment of compensation for property condemned or taken for public use (Revision of 1900)', approved March twentieth, one thousand nine hundred, and the amendments and supplements thereto; and the commission is hereby further authorized to invoke and exercise in the manner prescribed in said act approved March twentieth, one thousand nine hundred, and its supplements and amendments, for the purpose aforesaid, either in its own name, or in the name of any or all of the municipalities so supplied with water, all of the powers of such municipalities, or any of them, to acquire property for public use. If the property of more than one owner is proposed to be acquired by condemnation, applications for the appointment of commissioners for that purpose may be consolidated by order of a justice of the Supreme Court, and thereafter carried on as far as practicable as one proceeding. If the water works is located in more than one county, a duplicate of the petition for the appointment of commissioners, and of all orders, reports and other proceedings shall be filed in the office of the clerk of each county in which any part of the property is located. In all applications, orders, reports and proceedings a general description of the property to be condemned shall be sufficient. Any municipality may withdraw from the condemnation proceedings at any time within thirty days after the award of the commissioners shall have been made. The water works acquired by the commission appointed in

pursuance of the first section of this act, whether by a single purchase or two or more purchases or by one, or more than one, condemnation proceeding, shall be the property of the municipalities making the application or applications for the appointment of such commission, and the municipalities, if any, joining therein, as if they constituted a single municipality. The term 'water works' used in this act shall be construed to include one system or more than one system of water works, whether or not such water works extend into or supply water in other municipalities than those proposing to acquire or owning the same, and water works, rights and franchises owned by one corporation or party, or more than one, and shall include rights and franchises to obtain an additional supply of water, and any or all other appurtenant property of such owner or owners.

“4. Any such water works may be acquired subject to the lien of any mortgage or mortgages thereon; and for the purpose of raising the money to pay the compensation agreed upon or fixed by condemnation proceedings for the water works so acquired or to be acquired, and to pay the cost, or part of the cost, of enlarging, extending and improving the same, the commission appointed in pursuance of the first section of this act, and any succeeding commission, however appointed or elected, shall be and hereby is fully authorized to issue bonds in the names of the municipalities making the application for the appointment of such commission and of the municipalities, if any, joining therein, the bonds to be under the seal of the commission, signed by the president, and attested by the secretary thereof. The term of such bonds, which shall not exceed forty years, the rate of interest thereon, sinking fund and amortiza-

tion provision therefor, and other conditions that may be deemed advisable, shall be prescribed by the commission issuing said bonds, and said bonds shall be sold in the manner provided by law for the sale of municipal bonds. The bonds so issued shall be the joint and several obligations of the municipalities in whose names they are issued, but the municipalities shall be liable as among themselves for the payment of the principal and interest thereon in the proportion that the assessed value for taxation of all the real estate in each of the municipalities for the year preceding the time when such water works shall be acquired bears to the total assessed value for said year of all the real estate in all of the municipalities making application for the appointment of the commission, and of the municipalities, if any, joining therein; and the amount of said bonds, or any portion thereof, shall not be taken into account in ascertaining the amount of indebtedness that any of the municipalities may now, or at any time hereafter, be authorized to incur by any law of this State.

“5. The commission appointed pursuant to the first section of this act, and any succeeding commission, however appointed or elected, shall have power to enlarge and extend the water works and operate the same, or may make a contract for a period not exceeding ten years, or a succession of contracts each not exceeding said period, with any individual, firm or corporation, to operate such water works on such terms as may be agreed upon, and such commission may prescribe and change from time to time rates to be charged for water supplied by the water works so acquired, and by any extension or enlargement thereof, provided that rates for the same kind or class of service shall be uniform in all the municipalities sup-

plied by such water works. As soon as practicable after acquiring the water works rates shall be prescribed, and shall be revised from time to time whenever necessary, so that the water works shall be and remain self-supporting, the earnings to be sufficient to provide for all expenses of operation and maintenance and such charges as interest, sinking fund and amortization, so as to prevent any deficit to be paid by taxation from accruing; and said commission and any succeeding commission shall have power to prescribe and alter and enforce all reasonable rules and regulations for the maintenance and operation of such water works and the collection of rates.

“6. At any time after water works shall have been acquired in pursuance of this act, it shall be lawful for the governing bodies of the municipalities owning the same to enter into an agreement prescribing a method of electing or appointing a commission to succeed the commission appointed as provided in the first section of this act; the agreement so made shall specify the number of persons to constitute the commission, their term or terms of office, method of organization, and powers and duties and compensation; provided, that the members of the commission may agree to serve without, or at a nominal, compensation; it shall also provide for the appointment or election of a secretary, treasurer, and such other officers as may be necessary, and prescribe their duties and compensation, and shall contain such other provisions as may be necessary for the maintenance and efficient operation of such water works, the extension and enlargement thereof, and the proper management of its financial affairs; and may be amended from time to time. Any such agreement or amendment thereof shall be valid when assented to by the governing bodies

of the municipalities containing at least two-thirds of the population of all municipalities owning such water works according to the last preceding national or State census; provided, that the governing bodies of all municipalities owning the water works shall have had an opportunity to approve or disapprove any proposed agreement or amendment thereof. The commission elected or appointed in pursuance of such agreement shall organize as soon as practicable, adopt a seal, and a name by which it may sue and be sued, and enter upon the discharge of its duties, whereupon the terms of office of the members of the commission appointed in pursuance of the first section of this act shall cease and determine. Any commission appointed in pursuance of the first section of this act, or by virtue of such agreement, may sell any part of the property in its charge not needed for public use, and may also sell to any municipality the distributing system of mains therein and enter into a contract to supply water in quantity to the municipality purchasing such distributing system; provided, that no distributing system shall be sold to any municipality without the consent of the governing bodies of the municipalities owning the same having by the last national or State census at least two-thirds of the population of all such municipalities.

“7. In all cases in which the owner of water works purchased or condemned in pursuance of this act has at the time of such purchase or condemnation the consent of the State to take and divert water from any source for domestic and public use, the rights obtained by such consent shall pass to and vest in the municipalities acquiring the water works as herein provided, and no further or other consent of any State board or commission shall be necessary. Provided, how-

ever, said municipalities shall be bound by all the terms and conditions attached to such consent and accepted by the owner of the water works purchased or condemned; and provided, further, that nothing in this act shall be interpreted to affect the power and authority of the Board of Conservation and Development over the sources of water supply in this State.

“8. At any time after the appointment of such commission by a justice of the Supreme Court, any municipality in which water is supplied by the water works which it is proposed to acquire, or which may have been acquired as provided in this act, may be permitted to join with the municipalities making or joining in the application for the appointment of the commission, or owning the water works, on such terms and conditions as may be agreed on; provided that municipalities containing at least two-thirds of the population according to the last State or national census of all the municipalities seeking to acquire or owning such water works shall agree to permit such other municipality to join.

“9. All acts and parts of acts inconsistent with this act be and the same are hereby repealed, and this act shall take effect immediately.

“Passed March 23, 1923.”

Chapter 283, Laws of 1926.

“An Act to amend an act entitled ‘An act to authorize two or more municipalities in this State by means of a commission to acquire, either by purchase or condemnation, and operate privately-owned waterworks now or hereafter supplying water therein and in other municipalities, if any, in which water is

supplied by the same waterworks, together with the franchises, rights, and any or all other appurtenant property of the owner or owners, of such works, and to enlarge and extend the same,' approved March twenty-third, one thousand nine hundred and twenty-three, constituting chapter 195 of the Pamphlet Laws of 1923, in reference to the issuance of bonds or/and for by municipalities for the purposes authorized by said act.

“Be it enacted by the Senate and General Assembly of the State of New Jersey :

“1. Section four of the act to which this act is an amendment is thereby amended to read as follows :

“4. Any such waterworks may be acquired subject to the lien of any mortgage or mortgages thereon; and for the purpose of raising the money to pay the compensation agreed upon or fixed by condemnation proceedings for the waterworks so acquired or to be acquired, and to pay the cost, or part of the cost, of enlarging, extending and improving the same, the municipalities which are to own the said waterworks or the enlargements, extensions and improvements to the same are hereby authorized to issue bonds jointly in the names of all such municipalities, in the same manner and pursuant to the same provisions of law that apply to the issuance of other municipal bonds, and each such municipality shall adopt such ordinances and resolutions and cause such bonds to be sold, executed and delivered as if such bonds were its own separate obligations. The proceeds of sale of said bonds shall be received by the treasurers of said municipalities and immediately be transferred to the said commission or any succeeding commission then in office. The

power to issue said bonds and their validity shall not be dependent on or affected by the validity or regularity of the proceedings to establish the commission or to acquire the waterworks or to make the enlargements, extensions or improvements thereof. The bonds so issued shall be the joint and several obligations of the municipalities in whose names they are issued, but the municipalities shall be liable as among themselves for the payment of the principal and interest thereon in the proportion that the assessed value for taxation of all the real estate in each of the municipalities for the year preceding the time when such waterworks shall be acquired bears to the total assessed value for said year of all the real estate in all of the municipalities joining in the issuance of said bonds; and the amount of said bonds, or any portion thereof, shall not be taken into account in ascertaining the amount of indebtedness that any of the municipalities may now, or at any time hereafter, be authorized to incur by any law of this State.

“2. The act to which this act is an amendment is hereby further amended by adding a new section, numbered 8a, reading as follows:

“8a. The commission shall have no power or authority to incur any liability on behalf of the municipalities and none of its debts, expenses or liabilities shall bind the municipalities except with their consent expressed by resolution of their respective governing bodies. The municipalities shall have power from time to time to make appropriations for the commission upon such terms and conditions as may be determined.

“3. The act to which this act is an amendment is hereby further amended by adding a new section, numbered 8b, reading as follows:

“8b. If for any reason any section or provision of this act shall be questioned in any court and shall be held to be unconstitutional or invalid, no other section or provision of this act shall be affected thereby.

“4. This act shall take effect immediately.

“Approved March 29, 1926.”

Chapter 92, Laws of 1928.

“AN ACT to amend an act entitled ‘An act to amend an act entitled “An act to authorize two or more municipalities in this State by means of a commission to acquire, either by purchase or condemnation, and operate privately-owned waterworks now or hereafter supplying water therein, and in other municipalities, if any, in which water is supplied by the same waterworks, together with the franchises, rights, and any or all other appurtenant property of the owner or owners, of such works, and to enlarge and extend the same,” approved March twenty-third, one thousand and nine hundred and twenty-three,’ constituting chapter one hundred and ninety-five of the Pamphlet Laws of one thousand nine hundred and twenty-three, in reference to the issuance of bonds or/and for by municipalities for the purposes authorized by said act, which amended act is known as Chapter two hundred and eighty-three of the Laws of one thousand nine hundred and twenty-six, approved March twenty-ninth, one thousand nine hundred and twenty-six.

“Be it enacted by the Senate and General Assembly of the State of New Jersey.

“1. Section one of the act to which this act is an amendment is hereby amended to read as follows:

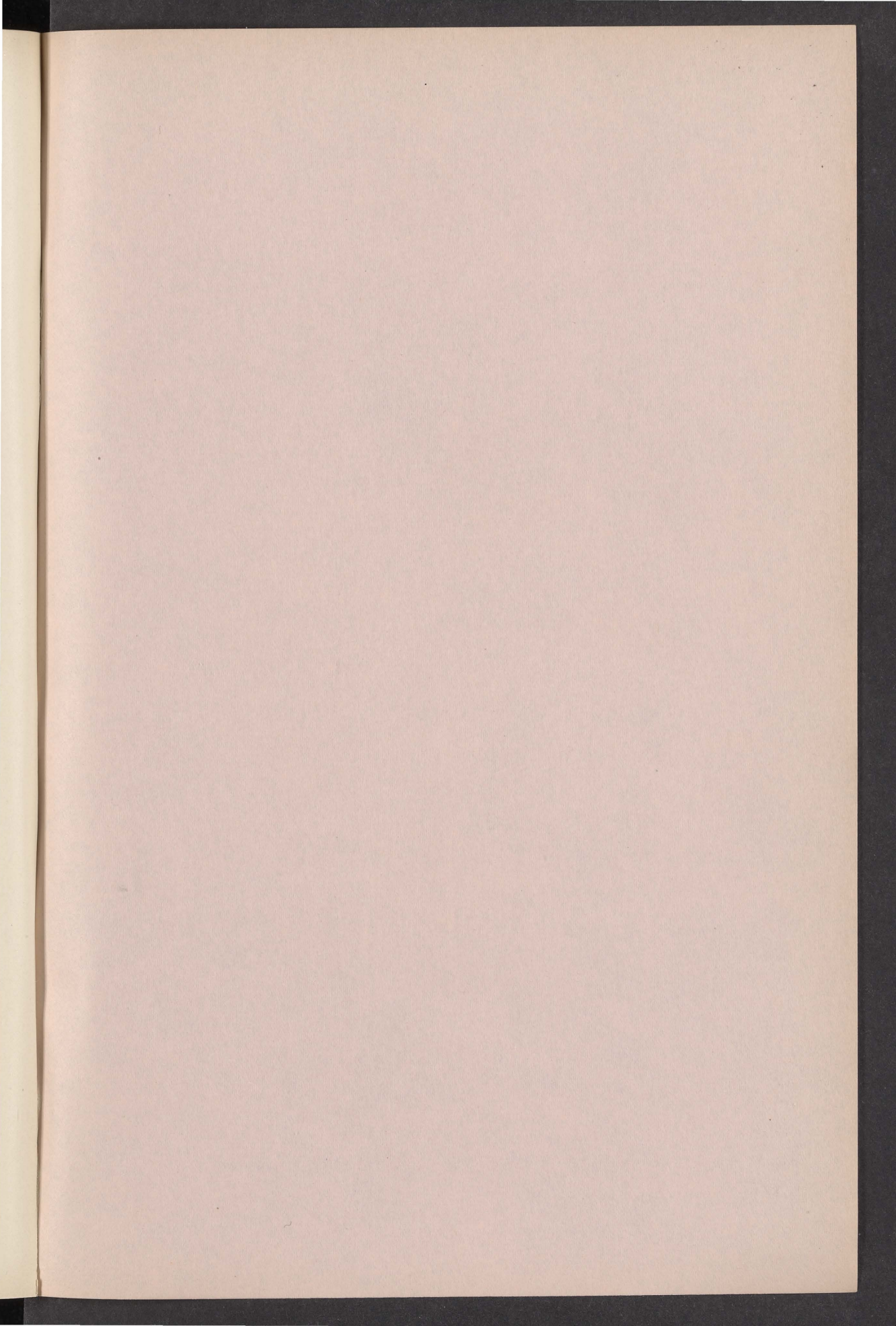
“1. Section four of the act to which this act is an amendment is hereby amended to read as follows:

“4. Any such waterworks may be acquired subject to the lien of any mortgage or mortgages thereon; and for the purpose of raising the money to pay the compensation agreed upon or fixed by condemnation proceedings for the waterworks so acquired or to be acquired, and to pay the cost, or part of the cost, of enlarging, extending and improving the same, the municipalities which are to own the said waterworks or the enlargements, extensions and improvements to the same are hereby authorized to issue bonds jointly in the names of all such municipalities, in the same manner and pursuant to the same provisions of law that apply to the issuance of other municipal bonds, and each such municipality shall adopt such ordinances and resolutions and cause such bonds to be sold, executed and delivered as if such bonds were its own separate obligations; or each municipality may issue and sell its own bonds separately for its proportion of said cost, as hereinafter provided. The proceeds of sale of said bonds shall be received by the treasurers of said municipalities and immediately be transferred to the said commission or any succeeding commission then in office. The power to issue said bonds and their validity shall not be dependent on or affected by the validity or regularity of the proceedings to establish the commission or to acquire the waterworks or to make the enlargements, extensions or improvements thereof. The bonds so issued, if jointly and severally issued, shall be the joint and several obligations of the municipalities in whose names they

are issued, but the municipalities shall be liable as among themselves for the payment of the principal and interest thereon in the proportion that the assessed value for taxation of all the real estate in each of the municipalities for the year preceding the time when such waterworks shall be acquired bears to the total assessed value for said year of all the real estate in all of the municipalities joining in the issuance of said bonds; and the amount of said bonds, or any portion thereof, shall not be taken into account in ascertaining the amount of indebtedness that any of the municipalities may now, or at any time hereafter, be authorized to incur by any law of this State; but if the said municipalities shall decide to issue separate bonds, the bonds so issued shall be the obligations of such municipalities respectively, and the amount thereof shall be fixed in the same proportion as hereinbefore provided in the case of joint and several bonds.

“2. This act shall take effect immediately.

“Approved March 26, 1928.”



are issued, but the municipalities shall be liable as among themselves for the payment of the principal and interest thereon in the proportion that the assessed value for taxation of all the real estate in each of the municipalities for the year preceding the year when such waterworks shall be acquired bears to the total assessed value for said year of all the real estate in all of the municipalities jointly in the issuance of said bonds; and the amount of said bonds or any portion thereof shall not be taken into account in ascertaining the amount of indebtedness that any of the municipalities may owe, or at any time hereafter, be authorized to incur by any law of this State; but if the said municipalities shall decide to issue separate bonds, the bonds so issued shall be the obligations of such municipalities respectively, and the amount thereof shall be paid in the same proportion as herebefore provided in the case of joint and several bonds.

"Y. This act shall take effect immediately.

"Approved March 26, 1923."