

New Jersey Court of Errors and Appeals.

THE MAYOR AND COMMON COUNCIL OF
the City of Hudson,

Plaintiffs in Error,

vs.

THOMAS ANDREWS, HENRY H. NEW-
KIRK, EDWIN R. V. WRIGHT, THO-
MAS HARRISON, and _____

President of the Board of Alder-
men of the City of Hudson,

Defendants in Error.

*On Writ of Error
to the Supreme
Court.*

R E C O R D .

NEW JERSEY SUPREME COURT.

THE STATE, on the relation of THOMAS
ANDREWS, HENRY H. NEWKIRK,
EDWIN R. V. WRIGHT, THOMAS HAR-
RISON, and _____ who is
President of the Board of Alder-
men of the City of Hudson, Water
Commissioners of Hudson City,

Relators,

vs.

THE MAYOR AND COMMON COUNCIL OF
the City of Hudson.

*Rule to show cause
why a Mandamus
should not issue.*

It having been suggested to the court that Thomas An-
drews, Henry H. Newkirk, Edwin R. V. Wright, Thomas
Harrison and the President of the Board of Aldermen of

the City of Hudson, for the time being, were constituted a Board of Water Commissioners of the City of Hudson, by an act of the Legislature, entitled "An act to authorize the Water Commissioners of the City of Hudson to contract for and introduce water into said city, and to provide for the payment thereof;" approved March 20th, 1857; and that subsequently, and on or about the twenty-sixth day of August, eighteen hundred and fifty-seven, a contract was entered into between the said Board of Water Commissioners
 10 of the City of Hudson, and the "Water Commissioners of Jersey City," for the purpose of enabling the said Water Commissioners of Hudson City to introduce water within the limits of Hudson City;

And that on or about the twelfth day of September, eighteen hundred and fifty-seven, the said Water Commissioners of Hudson City entered into a contract with William Keeney, John R. Halladay and Justus Slater, by which the said Keeney, Halladay and Slater agreed to do work and furnish materials for the construction of the necessary works to in-
 20 troduce water into said City of Hudson;

And it having been further suggested that an act of the Legislature was passed, which was approved March eighteenth, eighteen hundred and fifty eight, entitled "An act to legalize certain proceedings of the Water Commissioners of Hudson City;"

And it having been further suggested that under the act incorporating the City of Hudson, approved April 11th, 1855, Thomas Andrews, Henry H. Newkirk, and Thomas Harrison had been elected Water Commissioners, and had
 30 given bonds to the Mayor and Common Council of the City of Hudson, which had been accepted by the said The Mayor and Common Council of the City of Hudson, which last bonds were in compliance with either the act incorporating Hudson City, or the act of March 20, 1857, hereinbefore referred to;

And it further appearing that by the said act of March twentieth, eighteen hundred and fifty seven, that each of the said Water Commissioners of Hudson City, except the President of the Board of Aldermen aforesaid, before en-
 40 tering upon the duties of his office, shall give bond for ten

thousand dollars, with good and sufficient sureties, to The Mayor and Common Council of the City of Hudson, and to be approved by said Mayor and Common Council, for the faithful performance of his duties as such Commissioner;

And it having been further suggested to the court that all of the said Commissioners, except Edwin R. V. Wright, gave bond to the said the Mayor and Common Council of the said City of Hudson under the act incorporating Hudson City aforesaid, and that on or about the twenty-fifth day of March, eighteen hundred and fifty-eight, Edwin R. V. Wright, together with Jacob Miller, John Tice and Laurent John Tornele as his sureties, entered into bond to the Mayor and Common Council of the City of Hudson, as required by law, under the said act of March 20th, 1857. And that Thomas Andrews, together with James R. Dey, William H. Boyd and George T. Gants as his sureties, entered into bond to the Mayor and Common Council of the City of Hudson as required by law, on or about the 20th day of March, 1858, under the said act of March 20th, 1857. And that Henry H. Newkirk, together with John Smith and John P. Acker-20 man as his sureties, entered into bond to the Mayor and Common Council of the City of Hudson as required by law on or about the 25th day of March, 1858, under the said act of March 20th, 1857, which last named bonds were about the time they bear date tendered to the Mayor and Common Council of the City of Hudson, who refused to accept the same;

And it having been further suggested to the court, that all the said Commissioners, Thomas Andrews, Henry H. Newkirk, Edwin R. V. Wright and Thomas Harrison have 30 given bonds as required by law to the said the Mayor and Common Council of the City of Hudson, and that the Mayor and Common Council of the City of Hudson refuse to recognize the said Water Commissioners as being lawfully entitled to exercise their powers and functions under the acts of the Legislature in such case made and provided.

It is therefore ordered that the said The Mayor and Common Council of the City of Hudson show cause on the twenty-third day of March, eighteen hundred and fifty-nine, at the State House in Trenton, at ten o'clock in the forenoon of 40

that day, why a mandamus should not issue commanding the said The Mayor and Common Council of the City of Hudson to accept the said bonds so tendered as aforesaid, and recognize the said Thomas Andrews, Henry H. Newkirk, Edwin R. V. Wright and Thomas Harrison, and

the President of the Board of Aldermen of the City of Hudson as Water Commissioners, of the said City of Hudson.

And that either party have liberty to take affidavits
10 under this rule.

On motion of

I. W. SCUDDER,

Attorney for the said Relators.

NEW JERSEY SUPREME COURT.

THE STATE, THOMAS ANDREWS and
others,

Relators,

vs.

MAYOR AND COMMON COUNCIL of the
20 City of Hudson.

*On Rule to show
cause why a Man-
damus should not
be issued, &c.*

Depositions of witnesses in the above stated cause, taken before William C. Morris, a Commissioner, &c., of the Supreme Court, at the office of I. W. Scudder, Esq., in Jersey City, on Friday, the eighteenth day of March, pursuant to notice, and in the presence of I. W. Scudder, Esq., Attorney for Relators, and of John P. Vroom, Esq., Attorney of Defendants, who admitted legal service of notice.

The Relators produced a contract between the Water Commissioners of Jersey City, and the Water Commission-
30 ers of the City of Hudson, bearing date the twenty-sixth day of August, A. D. 1857, marked Exhibit 1, on part of Relators. The execution of this contract being admitted by Attorney of defendants, subject to these exceptions, viz: That it does not appear to be signed by the President of either Board of Water Commissioners, and also, that it is not un-

der seal of the Water Commissioners, and to the fact alleged in the said contract, that Mr. Andrews was President, it being denied that Mr. Andrews was President of any Board of Water Commissioners of the City of Hudson.

Robert C. Bacot, a witness on the part of the Relators, on his oath saith: I am Registrar of the Board of Water Commissioners of Jersey City; have been in that position about two years, and being shown Exhibit 1, on part of Relators, says he is a subscribing witness thereto; at the time of the execution of this paper, marked Exhibit 1, Charles Fink was 10 President of the Board of Water Commissioners of Jersey City, and Mr. Andrews was President of the Board of Water Commissioners of the City of Hudson; the Mayor of the City of Hudson, Judge Carpenter, has been to my office in relation to that contract; he was there twice or oftener, may be three times; came with Mr. Andrews, and others of the Commissioners of the City of Hudson; they were to have the agreement consummated; Mr. Carpenter was urgent that some agreement should be made that they might be supplied with water; so far as I could judge, from his appearance 20 in the office with them, Mr. Carpenter assisted in the making of that agreement; I judge so from his appearance in the office with the members of both the Boards, and the general conversation all round; I think he took part in those conversations, according to the best of my recollection.

Q. Did or not Mr. Carpenter, when both of the Boards were in session, direct the execution of the contract?

A. I think he did, generally, but I do not refer to the time when the contract was signed, for I don't think he was there at that precise point of time.

Q. Was or not the contract prepared and submitted to both Boards before it was signed? 30

A. To the best of my recollection, the contract was sent up to Bergen for their approval, and then returned to the Board and passed, and was subsequently executed; Mr. Carpenter did not at any time during the progress of that negotiation, to my recollection, express any dissent.

And being cross-examined :

Q. Who composed the Board of Water Commissioners for the City of Hudson ?

A. Mr. Andrews, Mr. Newkirk, Mr. George DeMott; I do not know that Mr. Harrison was one of the members, because he was not present. Andrews was President of the Board.

Q. How do you know he was President ?

A. He appeared there as President, was introduced as President, and signed the agreement as President.

The last part of the answer objected to.

Q. Had you any other knowledge of his being President except that ?

A. No, Sir.

Q. Had the presence of Mayor Carpenter before your Board any thing to do with the making of that contract ?

A. I should think it had, from his coming there with those gentlemen and urging that the contract should be made; on two occasions he came there and expressed his disappointment at the delay in making the agreement, so that they could be supplied with water.

In chief again, saith :

Q. Was this contract signed by Mr. Fink, President of the Board of Water Commissioners of Jersey City, by the authority of that Board ?

A. It was.

This last question objected to on the ground that it does not appear, by the contract, that it was ever signed by Mr. Fink as President of the Board of Water Commissioners of 30 Jersey City.

ROBERT C. BACOT.

Sworn and subscribed before }
me, March 18th, 1859. }

WM. C. MORRIS, Commissioner, &c.

William Keeney, a witness produced on part of the Relators, on his oath saith : Agreement bearing date the 12th day of September, A. D. 1857, between Keeney, Halladay and Slater

of the first part, and the Water Commissioners of the City of Hudson, of the second part, being produced and shown witness and marked Exhibit 2, on part of the Relators, saith:

I am one of the parties to that agreement; I, and Halliday and Slater, did work under that agreement.

Q. State now as near as you can, what was the value of the work and materials, done and furnished, under that agreement?

A. I never went into any calculation myself, of the amount of work and materials, but took the certificate thereof of the Engineer, Mr. Bailey, which was something over four thousand dollars.

Q. In consequence of that contract, Exhibit 2, did you enter into contracts with other parties to supply you with materials to enable you to perform that contract?

A. We did; we contracted with the Cement and Pipe Companies for something over ten thousand dollars worth; then we contracted with a party in New York, for Hydrants, Gates, &c., to the amount of over two thousand dollars, or about two thousand dollars; Mr. Carpenter was Mayor of the City of Hudson in the year 1857.

Q. Was he aware of the performance of the work done by Keeney, Halliday and Slater, under this contract, Exhibit 2, and if so, state fully his acts and doings?

A. I had some talk with the Water Commissioners of Hudson City before we entered into it; I was unwilling to close the contract until we had had a regular meeting of the Mayor and Water Commissioners of Hudson City; we met then, I think, in the Mayor's Office; then we talked over the prices of the work, and I think the contract was drawn there, or was agreed to and drawn afterwards; the prices were all agreed to then, and Mayor Carpenter and the Water Commissioners agreed to it; the President of the Board of Water Commissioners of Hudson City was authorized at that time to sign the contract; I went there to work according to the agreement at the time that was set; I didn't know at the time I went there to work that there was any difficulty or disagreement between the Commissioners and the Common Council, and never heard anything of the kind at the time I went up to go to work with Mr. Bailey; I know

nothing of any difficulty until about the time the injunction was served.

Q. Was Mayor Carpenter aware of your doing work under that contract?

A. He was; he took as active a part in it as any one I know; wanted us to go on so that we could have the water in before winter; when we went up there we went by Judge Carpenter's house; met him, and he spoke about our beginning the work down by his house in the first place, and after
10 ter some conversation took place then we were started by the direction of the engineer, Mr. Bailey, down on Newark avenue on top of the hill near Mr. Harrison's house; the Mayor knew of our going to work, but did not go down there with us; I never saw the Mayor on the work to my knowledge; I should think we were on the work in the neighborhood of three weeks; the place where we began to work was on the main road, from Hudson City to Jersey City, and in Hudson City; Mr. Carpenter made no objections during the progress of this work, although I saw him frequently; I saw him at
20 his own house and in Hudson City, and several times in Jersey City while the work was going on.

And being cross-examined:

(All the testimony of the last witness objected to, and especially that part of it which relates to the acts and doings of Mayor Carpenter, as being irrelevant and immaterial.)

Mr. Andrews, Mr. Newkirk, Mr. DeMott, Mr. Harrison and Mr. Wright constituted the Board of Water Commissioners.

Q. How do you know that they constituted the Board?

30 A. I don't know any thing but what I heard, meeting with them frequently; heard Mr. Carpenter speak of them; also heard Mr. Bailey speak of them as Water Commissioners.

Q. Did you know any other way except as you have stated?

A. I don't know as I did, but have heard several parties talk about it.

Q. Who was President of that Board?

A. Mr. Andrews.

Q. How do you know?

A. By meeting with him; he acted as President, and was authorized by the Board that was present to sign the contract with us as President.

Q. Did you know whether those persons called the Board of Water Commissioners were legally constituted?

This question was objected to.

A. I did not know anything about it, that was the reason I wanted to meet with the Mayor before I signed the con-10 tract.

Q. Did you take any legal advice as to whether that contract would be binding?

A. I did not.

Q. Did you know, except by hearsay, that Messrs. Andrews, Newkirk, Harrison, Wright and DeMott were the Water Commissioners at the time the contract was signed, the materials furnished, and the work done?

A. I knew that a portion of them were; I went to Mr. Newkirk's and saw the Act of the Legislature appointing 20 them Commissioners.

Q. Did you inquire no further?

A. I made some inquiries about Mr. DeMott, and he was President of the Common Council, and that made him Water Commissioner.

Q. Did you read all the Act appointing the Water Commissioners?

A. I think I did.

Q. Did you read that part of it which requires the Water Commissioners, before entering upon the duties of their office, to give bond in the sum of \$10,000 each, to the Mayor and Common Council of the City of Hudson, to be approved by them, for the faithful performance of their duty?

A. I think I did.

Q. Did you inquire whether they had done so?

A. I meant that I did, and that was my object in meeting with Mayor Carpenter to see if all was right?

Q. Did you ever inquire of the Clerk of the Common Council whether such bonds had been filed with him?

A. I did not.

Q. Did you ever inquire of Mayor Carpenter whether such bond had been filed with the clerk?

A. I don't recollect that I did; I inquired of Mayor Carpenter if every thing was all right; he told me it was, and to go on with the work.

Q. Did you ask Mayor Carpenter whether the Commissioners had given bond under the act?

A. I don't think that I did just in those words.

The testimony of the last witness, so far as relates to the 10 acts and doings of Judge Carpenter is objected to by Mr. Vroom, Attorney of Defendants.

In chief again:

Q. When you asked Mayor Carpenter whether everything was all right, was it your purpose to inquire whether the law had been so far complied with as to give full authority to the Water Commissioners to contract with you and your associates?

A. That was the intention of the question that I asked; I was informed that DeMott was a member of the Common 20 Council, and President of the Board of Councilmen at that time.

Q. Was Mr. DeMott present when you asked Mr. Carpenter the questions that you have stated?

A. He was in the room with them.

Q. So that he could hear?

A. He might have heard if he had paid attention to our conversation; it was a small room, and all talking, and he might or might not have heard it.

The testimony in relation to Mr. DeMott objected to by Mr. Vroom.

30

WILLIAM KEENEY.

Sworn and subscribed before }
me, March 18th, 1859. }

WM. C. MORRIS, Commissioner, &c.

George H. Bailey, a witness produced on the part of the Relators, being shown Exhibit No. 2, saith: I am a subscribing witness to it, and saw it executed; I am the Engineer

of the Board of Water Commissioners of Jersey City, and have been so for four years and a half; I acted as Engineer for the Water Commissioners of Hudson City; I was aware of the negotiation which led to the contract between the Water Commissioners of Hudson City and Jersey City; I think Mayor Carpenter was present at one meeting of the two Boards of Commissioners; I think he appeared to be favorable to the supply of water, and seemed anxious that it should be brought about; at the time I speak of the contract between the two Boards of Commissioners was under 10 discussion; Mr. Carpenter was aware that the work was to be commenced; he was notified on Saturday that the work would be commenced the next Monday; I can't say I ever saw him on the work while it was in progress; don't think I ever did; we proposed to commence in the street in front of his house; he said he preferred we would commence somewhere else, as that street had just been repaired, and at his suggestion we started at another place; the amount of work done according to my certificate, is rising \$4,000 in value; I heard no question of the legal authority of the 20 Board of Water Commissioners from the commencement of the work till two or three days before the injunction was served; some of the Water Commissioners of Hudson City were aware of the progress made in the work by Keeney and Halladay; I think Mr. DeMott was aware it, though I can't say I saw him on the ground; Mr. Carpenter saw the draft of the contract, Exhibit No. 2, before it was signed.

Defendants object to that part of the testimony of the above witness, which relates in any way to the acts or conversations of Mayor Carpenter. 30

GEO. H. BAILEY.

Sworn and subscribed before)
me, March 18th, 1859.)

WM. C. MORRIS, Commissioner, &c.

Relators produced the agreement between Keeney, Halladay & Slater and the Patent Water and Gas Pipe Company, showing the sub-contract for the furnishing pipes, &c., marked Exhibit 3, on part of the Relators.

the negotiations that led to this contract, a number of times when our board was in session urging the consummation of the agreement to supply Hudson City with water; he urged me individually as well as in my official capacity to have the contract consummated; the negotiation for the contract progressed from time to time occasioned by various amendments that were suggested and discussed; Mayor Carpenter met with us two or three times while our Board was in session, urging the signing of the contract on the part of the Jersey City Commissioners; also advocated it at different times in the streets of Jersey City when he met me; I suppose he was fully aware of the contract; must have been aware, as it was talked over and fully discussed in his presence; Alderman Aldridge was always a strong advocate of the supplying of Hudson City with water from the Jersey City Reservoir.

The above evidence objected to by Mr. Vroom, and being cross-examined, saith: Mayor Carpenter was not asked to sign the contract as far as I know; I did not suppose he was a member of the Board of Hudson City Commissioners; I knew he was not; I supposed he came to our Board in an official capacity; I do not think that it would have made any difference, legally, if the contract had been signed without his consent; I supposed that the Water Commissioners of Hudson City had power to act without Mayor Carpenter's concurrence; I cannot say that the contract would not have been signed if Mayor Carpenter had not appeared before us, but that had its influence, inasmuch as he in his official capacity, as Mayor of the City, favored and urged the project, we supposed he represented the interests and wishes of the City because he so stated that; therefore, our Board favorably considered and finally yielded to the pertinacious endeavors of the Commissioners of Hudson City to agree to or accept the amendments proposed by them to the contract.

Q. How did Mayor Carpenter urge the project in his official capacity?

A. The Board of Jersey City Commissioners always supposed that he acted in that capacity, while attending our meetings; this is the only answer I have to give; I don't

know positively that he acted in his official capacity, but we always supposed he did; the Mayor of Jersey City cannot act in his official capacity in relation to contracts executed by our Board, he may influence them; that influence would be other than his individual influence; as Mayor it is supposed that he knows the wishes and interests of the inhabitants, and should conform to them and be governed by them; the direct opposition of the Mayor to any contract by our Board, would not, I should think, invalidate any contract we might make, nor would the opposition of the Common Council with the Mayor, I should think, if the Commissioners confined themselves within proper bounds.

In chief, again :

Those amendments that were proposed and discussed were very favorable to Hudson City; so considered at the time and were incorporated in the agreement.

CHARLES FINK.

Sworn and subscribed before }
 me, March 19th, 1859. }
 WM. C. MORRIS, Commissioner, &c.

20 EXHIBIT No. 1, ON THE PART OF RELATORS.

“This agreement made this twenty-sixth day of August, in the year 1857, between the Water Commissioners of Jersey City of the first part, and the Water Commissioners of the City of Hudson of the second part witnesseth : That the said party of the first part, for the purpose of supplying the said City of Hudson with water for the use of the people thereof, according to the provisions of an act entitled ‘An act to authorize the Water Commissioners of the City of Hudson to contract for and introduce into said city, and to provide for the payment thereof,’ approved, March 20th 1857 and in consideration of the water rents hereinafter reserved to be

paid, do hereby agree with the said party of the second part, that they the said party of the first part, will furnish and supply to the said party of the second part, for the term of three years, from the first day of December next, a good and sufficient supply of water from the reservoir of the party of the first part, to be delivered at or near the distributing reservoir into a water pipe, to be connected at that point, with the twenty inch main, said supply to be sufficient for all purposes in the City of Hudson for which said water is or may be used during said term in said City of Jersey City; 10

“And the said party of the second part, agree that they will by, or before the first day of December next, lay and provide at their own expense, water pipes through the streets, and other places in the City of Hudson, south of the main, running into and out of the reservoir for the purpose of distributing and furnishing the Passaic water to the people of Hudson, which pipes shall connect at the point above designated, and shall be laid sufficiently strong and tight to prevent any loss or waste of water by bursting or breaking, and shall in such respects, be under the inspection and with the 20 approbation of the said party of the first part, or of their Engineer;

“And the said party of the second part do further agree with the said party of the first part, that for all the Passaic Water so furnished to and used by the people of Hudson City, or by any person in said city, and from all buildings upon lots upon the streets, through lands or elsewhere, in the City of Hudson, south of the main, running into and out of the reservoir, excepting the buildings now owned by William Gilbert and Thomas Welden, or other similarly situated, 30 they the said party of the second part, will collect and pay over to the said party of the first part, water rents at the same rates and prices, now charged by the party of the first part to the inhabitants of Jersey City, for the like use of said water, and to buildings upon lots in like streets in Jersey City, with twenty per cent. added thereto in lieu of surface and pipe tax, and that the said party of the second part will pay over the same to the said party of the first part, in advance, on the first day of June and December, in each year, the first payments to be made in advance to the next 40

of said half yearly days, for payment as soon as the water is let into the pipes for use, and said party of the second part are to pay such water rents to said party of the first part, whether the same be received or collected by them, to the said party of the second part or not, from the consumers of water, or others liable to pay the same.

“ And the said party of the second part do further agree that they will pass and enact the like rules and regulations, as to the mode of using the water, as are in force in Jersey
10 City, or as shall hereafter be made for Jersey City, by the party of the first part, with like penalties for their violation ; and, that they will enforce such rules and regulations and collect such penalties, and pay the same to said party of the first part ; and that they will also establish the further regulation, that if any person shall wilfully violate the rules and regulations so established, or refuse to conform to the same, the said party of the first part, may notify and demand of
20 the said party of the second part to cut off the supply of water from such person so violating the same, and to refuse to supply such person and the family to which he belongs, or such premises, or both, with the use of any Passaic Water during the residue of said term of three years.

“ And the said party of the second part do further agree that they will not allow their distributing pipes to be tapped except under their inspection, and in such manner as the said party of the first part, or their Engineer, shall approve ; and, that they will keep a record and report to the said party of the first part, on the first Monday of each
30 month, every such tapping, the place where made, and the size of the service pipe, and the house or premises with which the same are connected.

“ And the said party of the second part do further agree that the said party of the first part, and their agents, shall at all times have access to the premises on which said water is used, and have access to all parts of the same, to which the water is conveyed, to examine the manner which the same is used, and the said party of the first part may be at liberty to cut off all supply of water from any premises upon which access shall have been refused ; and, it is further agreed
40 that said party of the first part may, at any time, if their

works shall not be able, from accident or insufficient capacity to supply, to cut off the supply from the City of Hudson, so long as such incapacity shall arise from the insufficiency of the works and not from accident, an abatement shall be made from the water rents from the time when such supply shall cease or be suspended; and, it is further agreed that if the said party of the second part shall omit or refuse to perform this contract in all things on their part, the said party of the first part may cut off the supply of water, and keep the same shut off until a satisfactory adjustment and compensation shall be made for such violation of this agreement. 10

“And it is further agreed that the said party of the second part, shall pay to the said party of the first part, for each public hydrant erected by the said party of the second part the yearly sum of five dollars, to be paid in two equal half yearly payments in advance on the first days of June and December aforesaid, and that said hydrants shall not be used for any purpose whatever except for extinguishing fires;

“And it is agreed that no use whatever shall be made in the City of Hudson of the Passaic water furnished by the 20 said party of the first part, except for purposes for which a compensation is provided by this agreement;

“And it is further agreed by the said party of the second part, that they will by the first day of December 1857 aforesaid, cause distributing pipes to distribute said Passaic water, to be laid in the streets in the City of Hudson.”

EXHIBIT No. 2, ON THE PART OF RELATORS.

This Agreement, made this twelfth day of September, eighteen hundred and fifty-seven, by and between William Keeney and John R. Halladay (doing business under the name and firm of Keeney & Halladay), and Justus Slater, all of Jersey City, of the first part, and the Water Commissioners of the City of Hudson, of the second part, witnesseth :

That for and in consideration of the prices hereinafter named, the said party of the first part hereby agree to furnish
10 all the materials for, and lay down the water pipes required for the distribution of Passaic water in the city of Hudson, together with the stop cocks, fire hydrants, &c., necessary to complete the same, according to the following specifications.

[SPECIFICATIONS OMITTED.]

The party of the second part agree to pay the party of the first part, for the work completed according to the foregoing specifications at the following rates :

20 For twelve inch pipes, one dollar and eighty cents per lineal foot ;

For eight inch pipes, one dollar and fifteen cents per lineal foot ;

For six inch pipes, seventy-eight cents per lineal foot ;

For four inch pipes, fifty-seven cents per lineal foot.

All branches shall be paid for the same as two feet of pipe of the same dimensions. All stops the same as one foot of pipe of the same dimensions :

30 For five hydrants, including bends and setting, thirty-five dollars each ;

For twelve inch stop-cocks, including setting and tubes around the same, one hundred dollars each ;

For eight inch stop-cocks, including as above, sixty-five dollars each ;

For six inch stop-cocks, including as above, forty-five dollars each.

For four inch stop-cocks, including as above, thirty dollars each ;

For air-cocks and tubes complete, four dollars each ;

For taps for service pipes, one dollar and fifty cents each ;

For rock excavation, wherever found, in addition to the above prices, three dollars and fifty cents per cubic yard.

The above prices shall be in full compensation for all materials furnished, and labor necessary to complete the work to the satisfaction of the Engineer, and according to the foregoing specifications.

Payments shall be made weekly, on account of the work as it progresses, on the estimate of the Engineer, reserving half the amount of the contract until the completion of the work.

The party of the first part agree to commence the work immediately, to give it their personal attention, and complete the same by the 15th of November 1857.

When the Engineer in charge of the work shall certify to the party of the second part that the work required by the contract is complete, the said party of the second part shall immediately, or within thirty days of the rendering of said certificate, pay to the party of the first part the amount which, according to this contract, appears to be due.

The said party of the first part hereby agree that the pipes 20 and other work so to be put down by them shall, for one year, answer the purpose required, and for which they are intended; and to make all necessary alterations and repairs required during said one year, occasioned by any deficiency in said pipes, or the laying down of the same, or by the same or any part thereof, being insufficient for the purpose required.

In witness whereof, we have hereto set our hands and seals this twelfth day of September, eighteen hundred and fifty-seven. 30

WILLIAM KEENEY, [L. s.]

JUSTUS SLATER, [L. s.]

JOHN R. HALLADAY, [L. s.]

THOMAS ANDREWS, [L. s.]

Prest. of the Board of Water Commissioners.

In presence of

GEO. H. BAILEY.

EXHIBIT NO. 3, ON THE PART OF RELATORS.

Memorandum of an agreement made this seventeenth day of September, 1857, between Messrs. William Keeney, John R. Halladay and Justus Slater, of Jersey City, of the first part, and the Patent Water and Gas Pipe Company, of Jersey City, of the second part, witnesseth :

That the parties of the first part having contracted to lay the pipes for the distribution of water, in Hudson City, N. J., hereby agree to and with the party of the second part 10 for the consideration, and on terms herein contained, as follows :

The party of second part, agree to furnish the requisite materials, and to manufacture about 22,500 feet of pipe, made of wrought iron, lined with hydraulic cement, with wrought iron sleeves requisite for laying the same ; said pipe to be made of the best materials used by the second party, and in the most thorough and workmanlike manner, and to be delivered to the first party at the works of the second party, in Jersey City, as fast as may be required by the first party 20 under this contract.

The parties of the first part agree to receive the pipe at the works of the second party, in Jersey City, between the date of this contract and the first day of November ensuing, and to pay for the same as the work progresses, one-half on the first day of each month for all pipe delivered for them during the preceeding month, in cash, and the balance on the first day of January, 1858, in the Water Scrip of the City of Hudson, New Jersey, bearing seven per cent. interest and payable semi-annually.

30 The quantities of pipe to be manufactured under this contract shall be about 1800 feet of twelve inch diameter, 2000 feet eight inches diameter, 16000 feet six inches diameter, and 2500 feet four inches diameter, the same to be paid for as above specified at the rates of one dollar per lin. foot for pipe twelve inches diameter, sixty-seven cents per lin. foot for pipe ten inches diameter, fifty-three cents per lin. foot for pipe eight inches diameter, forty cents per lin. foot for pipe six inches diameter, thirty-seven cents per lin. foot for pipe four inches diameter.

It is understood and agreed that said first party shall on or before the first day of October next give to the said second party a detailed statement in writing of the quantities of pipe, and their diameter, and also of the number and sizes of branches, stops or plugs and faucetts.

The pipe made under this contract shall be capable of resisting a constant pressure of one hundred feet head, and the shocks to which pipes under such a head will be subject.

The delivery of the pipes shall be commenced on or before the 20th September instant, and completed on or before the 10 15th of November next.

All differences of opinion as to the true intent and measuring of this contract shall be referred to Geo. H. Bailey, Esq., of Jersey City, and his decision upon questions in dispute shall be binding upon both parties.

The rates of charges for plugs, branches and faucetts, shall be similar to those charged the Passaic Water Company of Paterson.

In witness whereof the parties hereto have attached their seals, and appended their signatures, and the signatures 20 of the President and Secretary of the second party hereto in duplicate, this 17th day of September, 1857.

WILLIAM KEENEY, [L. s.]

JOHN R. HALLADAY, [L. s.]

JUSTUS SLATER, [L. s.]

Witness: McREE SWIFT.

[L. s.] W. H. TALCOTT,
Prest. Pat. Water and Gas Pipe Co.

WALTER HARRIS, *Sec.*

ABRIDGMENT OF EXHIBIT No. 4, ON THE PART
OF RELATORS.

BILL OF COMPLAINT.

IN CHANCERY OF NEW-JERSEY.

To the Honorable BENJAMIN WILLIAMSON, Esquire, Chancellor of the State of New Jersey, humbly complaining :

Show unto your Honor, your Orators, the Mayor and Common Council of Hudson City, in the State of New Jersey ;

10 That your Orators, by virtue of the provisions of an act of the Legislature of the State of New Jersey, approved April 11, 1855, entitled "an Act to incorporate the City of Hudson," were constituted a municipal corporation for the government of said city, and the management of its municipal affairs :

That by another act of the said Legislature, approved March 20th, 1857, entitled "an Act to authorize the Water Commissioners of the City of Hudson to contract for and introduce water into the said city, and to provide for the payment thereof," Thomas Andrews, Henry H. Newkirk, Edwin R. V. Wright, Thomas Harrison, and the President of the Board of Aldermen, of the said City of Hudson, for the time being, were constituted the Board of Water Commissioners, and they and their successors in office were authorized to make such contracts, arrangements and agreements as in their discretion might be deemed advisable to enable them to introduce into said city water for the use of the inhabitants thereof; and the said Commissioners were also authorized by said act to make such rules and regulations as
20 might be necessary and expedient with reference to the laying of pipe in the streets, the mode of using water and the terms upon which the same should be used, and to make all such contracts, agreements and engagements as might be
30 deemed expedient, with reference to the purchase of materi-

als, the purchase or use of lands, the doing of work, the employment of engineers, clerks and agents, as might be deemed advisable to carry out the purposes of said act, as by reference to said act, will more fully and at large appear.

That the said Thomas Andrews, Henry H. Newkirk and Thomas Harrison, three of the said Commissioners, accepted said appointment and gave bonds, with sureties as required by said act, and together with George V. DeMott, the President of the Board of Aldermen of said city, for the time being, entered upon their duties as Water Commissioners, 10 and elected Thomas Andrews their President, (the said Edwin R. V. Wright, the other Commissioner appointed by the said act, not having accepted said trust, nor given bond as required by said act,) and profess to constitute the Board of Water Commissioners of the City of Hudson, as provided in said act.

That the above named Commissioners who gave bond as aforesaid together with the said George V. DeMott as President of the Board of Aldermen, claim by virtue of said act to have authority to bind your orators and the inhabitants 20 of said city by their contracts and agreements, without the consent of your orators first obtained and without consulting or advising with them relative thereto.

That by said act the said Water Commissioners have or claim to have authority to enable them to defray the expenses incurred for the purpose thereof, to issue in the name of your orators, notes, bonds, scrip or certificates of debt to be denominated on the face "Hudson City Water Scrip" to an amount not exceeding \$60,000, bearing an interest not exceeding seven per cent. per annum, and the principal to be 30 payable at periods not less than ten nor more than twenty years from date, with power to sell or pledge the same, at not less than their par value, which bonds were by said act made binding upon your orators, and all chattels of their citizens and all real estate whatever within said city.

That your orators were by said act authorized to raise by tax such sum as should be necessary to pay the interest of the principal of said notes, bonds, scrip, or certificates of debt.

That by the second section of an act of the said Legislature, approved March 18th 1857, entitled "A supplement to an 40

act entitled 'An act to incorporate the City of Hudson, in the County of Hudson,' approved April 11th 1855 it is provided "that it shall be lawful for the Water Commissioners of said city, subject to the approval of the Mayor and Common Council to make a contract with the Water Commissioners of Jersey City for a sufficient supply of water for the extinguishment of fires and the laying of the necessary pipes, and apparatus for the distribution of and easy access to the said water; and the yearly cost of the same shall be assessed annually upon the real estate of said city, along, or
 10 over, or through which the said water pipes shall be laid," and to which said act now in full force and unrepealed, your orators for greater certainty pray leave to refer.

That your orators are informed and believe, that the said Water Commissioners who accepted the trust in them reposed by the said act of March 29th, 1857, and gave bond as aforesaid, that is to say, the said Thomas Andrews, Henry H. Newkirk and Thomas Harrison, together with the said George V. DeMott, President of the said Board of Aldermen, (the said E. R. V. Wright, not having accepted said
 20 trust, nor given bond as required by law, and taking no part in the negotiation,) on the 26th of August, 1857, entered into a written contract or agreement with the Water Commissioners of Jersey City, which said contract is in words and figures, as follows: (See Exhibit No. 1.)

That after the execution of the said agreement, the Water Commissioners of the City of Hudson, that is to say, the said Thomas Andrews, Henry H. Newkirk, and Thomas Harrison, together with the said George V. DeMott, President of
 30 the Board of Aldermen, professing to have power and authority for that purpose under the provisions of said act creating and appointing them Commissioners as aforesaid, have as your orators have been informed and believe, entered into a contract or contracts with Keeney, Halladay and Slater, or some other person or persons for furnishing water pipes for conducting the water from the reservoir of the said Water Commissioners of Jersey City, to and through the several streets, lanes and alleys of the said City of Hudson, and also
 40 for the laying down of said pipes in said streets, lanes and alleys, thereby incurring a very large expenditure of mon-

eys which they claim will be a charge against your orators, and subject the inhabitants and tax payers of said city to the imposition of a general tax, to be levied upon the personal and real estate of all said inhabitants and tax payers, without reference to the benefit and advantage which said inhabitants may or can derive from the introduction of said water, and the said Commissioners further claim the right and authority under the provisions of said act to issue bonds, notes, scrip, or certificates of debt, as "Hudson City Water Scrip," for the purpose of meeting and securing the debts, so by 10 them incurred on said contracts, and further claim that your orator, the said Mayor of the City of Hudson, is bound by the provisions of said act to sign said notes, bonds, scrip and certificates of debt, and that the same shall be sealed with the corporate seal of said city, thereby binding your orators and the inhabitants and tax payers of said city for the payment and redemption of the principal and interest of the same; and the said Commissioners, Thomas Andrews, Henry H. Newkirk, Thomas Harrison and George V. DeMott, have issued, or threatened to issue, such bonds &c., as afore- 20 said, and demand that your orator, the said Mayor, shall sign the same, and cause the corporate seal of said city to be thereunto affixed, whereby your orators and inhabitants and tax payers of said city may become legally bound to pay and redeem the same, and their real and personal estate become chargeable for the payment and redemption of said bonds, issued as aforesaid.

And your Orators further show unto your Honor, and insist—

1st. That the above-named Commissioners had no legal 30 power or authority by virtue of the said act of March 20th, 1857, or by any other act of the Legislature to enter into and consummate the aforesaid agreement made with the Water Commissioners of Jersey City, inasmuch as one of the Commissioners, appointed by the said act, to wit: Edwin R. V. Wright refused to accept the said trust, and give bond according to its provision, thereby creating a vacancy, or leaving a vacancy in said Board of Commissioners, which by the terms of said act ought first to have been filled on notice and request by the Common 40

Council of said city, and for the same reason the contract or contracts made as aforesaid by said Commissioners for the furnishing and laying of pipes in the streets, lanes and alleys of said city, were made wholly without law or authority, and are absolutely void, and not binding upon your orators or the inhabitants of the said city, and for the same reason the bonds, notes, scrip, or certificates of debt already issued, or threatened to be issued by said Commissioners in the name of your orators, are not and cannot be available to
 10 charge your orators or the inhabitants and taxpayers of said city with the redemption or payment thereof.

2d. And your orators further show and insist that if the said Thomas Andrews, Henry H. Newkirk and Thomas Harrison, together with the said George V. DeMott, professing to act as a Board of Water Commissioners have in that capacity made and entered into any contract with any person or persons, as herein above stated for furnishing water pipes for said City of Hudson and for laying down the same in the streets of said city, the same is not binding upon your orators
 20 or the inhabitants and tax payers of said city, because by the 52d section of the act to incorporate said city it is provided that all contracts for work to be done, or materials to be furnished for improvements provided in said act of incorporation shall at all times be given to the lowest bidder who will comply with the requirements of the Common Council and give security for doing said work and furnishing said materials according to contract, whereas the persons above named in making such contracts for water pipes and laying down
 30 the same, did not advertise for proposals for the same nor invite competition whereby they might ascertain the lowest bidder.

3d. And your orators further show and insist in the present state of the finances of said City of Hudson, and the present condition of the country no loan can be advantageously made by the sale or negotiation of the bonds, notes, scrip or certificates of debt provided, to be issued by the said Water Commissioners in the name of your orators, but if the same be issued and negotiated at all for the raising of
 40 funds, must be sold or negotiated at a large sacrifice, and a

necessary delay of payments on the contracts so as aforesaid alleged to be made by said Water Commissioners for furnishing and laying down said water pipes, and your orators charge and insist that it was not the intention, nor is it the true meaning and construction of the said act appointing Water Commissioners as aforesaid, to invest said Water Commissioners with power to contract debts and bind your orators and the inhabitants of said city to the payment of a large amount of money not only without the consent or the approval of your orators, but against their own opinions and 10 wishes, and the opinions and wishes of a very large majority of the inhabitants of said city, and they further show that the said Thomas Andrews, Henry H. Newkirk and Thomas Harrison, together with the said George V. DeMott, claiming to be the Board of Water Commissioners for said city give out and threaten that they will issue bonds, notes, scrip and certificates of debt to a large amount to meet the expenses of the work and materials contemplated by said contracts, and that they will compel your orator the Mayor of said city to sign such securities, and to cause the corporate 20 seal to be affixed thereto whereby your orators and the inhabitants and tax-payers of said city will have imposed upon them a very heavy debt, without funds to meet or liquidate the same, and against their expressed will and consent.

And your orators further show that they or some person for them have frequently and in friendly manner, applied to the said Thomas Andrews, Henry H. Newkirk, Thomas Harrison and George V. DeMott, and requested them to desist from issuing such bonds, notes, scrip, or certificates of debt, or from further attempting to make other contracts, or from 30 further attempting to carry out contracts by them already made, until your orators can be fairly heard in the premises touching the legality of said contracts and their binding effect upon your orators and inhabitants of said city.

And your orators well hoped that the said Thomas Andrews, Henry H. Newkirk, Thomas Harrison and George V. DeMott, would have complied with such reasonable request of your orators, but now, so it is; may it please your Honor, that the said defendants give out and threaten that they 40

will carry out such contracts as they already may have made touching and concerning the introduction of water into said city, and that they will make and enter into such other contracts for the like purpose as they may see fit, and that they will issue such bonds, notes, scrip, or certificates of debt, to meet and defray the expense of introducing said water into said city, and without any funds at their own disposal, or any funds at the disposal of your orators, that they will by such securities bind your orators to the payment of very
 10 large sums of money against the will of your orators, and as your orators are advised by counsel, and believe, are contrary to law and in derogation of the duties and powers vested, or designed to be vested, in said defendants or in the Board of Water Commissioners of said city: all which actings and doings of said defendants are contrary to equity and good conscience, and tend to the great injury, wrong and prejudice of your orators, and inhabitants and tax payers of said city.

In tender consideration whereof, and inasmuch as your
 20 orators are remediless in the premises, at law, and can only have relief in this Court, and to the end that said defendants, and each of them, may upon his corporal oath full answers make to all and singular the premises as fully and particularly as if the same were herein again repeated, and they thereto particularly interrogated, and that they and each of them may be restrained by the order and decree of this Honorable Court, from making and entering into any other contract whatever for the purchase of lands or materials, or for doing any work authorized by said act appointing Water
 30 Commissioners as aforesaid, and that they may also be enjoined and restrained from carrying out and perfecting any contract made by them as aforesaid, and from issuing, or causing to be issued, any bonds, notes, scrip, or certificates of debt, in the name of your orators, whereby your orators can be charged with the payment of any debt, or whereby any debt may be imposed upon them or the inhabitants and tax payers of said city, until your orators can be fully heard in the premises, or until the further order of this Court, and that your orators may have such further and other relief in

the premises as the nature of the case may require, and shall be agreeable to equity and good conscience.

Prayer for Process and for Injunction.

(Signed,) DANIEL P. VOORHEES,
Sol. of Complainants.

JAMES S. NEVIUS,
of Counsel with Compts.

STATE OF NEW JERSEY, *ss.*

Edmund T. Carpenter being duly sworn on his oath says that he resides in and owns real estate in the City of Hudson, 10 and is the Mayor of said city; that by a resolution of the Board of Aldermen of said city approved the 22d day of September instant, this deponent, as Mayor, in conjunction with the committee on streets and assessments were authorized to take measures to obtain an injunction against the action of the Water Commissioners of said city in laying pipes and contracting for a supply of water, contrary to the wishes of the people as expressed at a public meeting on the 19th instant. And this deponent further says that he has had the above bill of complaint read and explained to him 20 and that the matters and things set forth and alleged therein, so far as they relate to his own acts and proceedings, or the acts and proceedings of the said complainants, and so far as they are stated of his own knowledge, are true; and so far as they relate to the acts and proceedings of others, or are stated on information and belief, he believes them to be true; and he further says that for several years he has been engaged in business in said city, and is still so engaged, and is in the habit of daily intercourse with many of the principal inhabitants and property owners in said city; that the per- 30 sons named in said bill as defendants thereto have been acting or professing to act as the Board of Water Commissioners of said city, and in that capacity have entered into a contract with the Water Commissioners of Jersey City for a supply of water to said City of Hudson from their reservoir; and have also entered into certain contracts with other per-

sons for furnishing water pipes and laying down the same in the streets of said city ; that the latter contracts have been made, as this deponent has been informed and believes, by said defendants, without advertising for proposals to furnish said water pipes and laying down the same, or inviting competition by bidders for such pipes and work, and all the said contracts were made by said defendants without any consultation or concert with said complainants, and without their approval, and without consultation or advisement with a
10 very large majority of the inhabitants and tax-payers of said city, and as this deponent believes, against their expressed wishes. And this deponent further says that the said defendants give out and threaten that they will, notwithstanding the opposition of the complainants and the majority of the citizens of said city, carry out and complete said contracts, and that they will make and enter into such other contracts for the purchase of land and materials and work as in their discretion they may see fit for accomplishing the introduction of water into said City of Hudson, and that in
20 order to defray the cost and expense of the same, they will issue bonds, notes, scrip, or certificates of debt in the name of the said complainants and compel this deponent as Mayor of said city to sign the same, and affix the corporate seal thereto, thereby binding said complainants, and the inhabitants, and tax-payers of said city against their express wish and consent for the payment thereof. And this deponent further says that the said city has no funds for constructing said works, or for paying the amount that may accrue on said contracts, and he is advised by counsel that the complainants have no power to raise by tax in the manner prescribed
30 by the said act appointing Water Commissioners the money necessary to defray the expenses of introducing water into said city, as the provisions of said act are inconsistent with the power and authority vested in the complainants by their charter and the supplement thereto. And this deponent further says that from the best information he can obtain he believes it to be true that the sum of \$60,000 of water scrip, or bonds, or certificates of debt cannot now be negotiated, or loans affected thereon upon the terms limited by law, and
40 any contracts made by the said defendants that may be

binding on the complainants and inhabitants of said city will involve the city in damages that may be sustained by any contractor by reason of their inability to raise the necessary funds to comply with the same.

EDMUND T. CARPENTER.

Sworn and subscribed at Elizabeth, }
 Sept. 29, 1857, before me, }

B. WILLIAMSON, *Ch.*

A N S W E R .

IN CHANCERY OF NEW-JERSEY.

10

And the said defendants, Thomas Andrews, Henry H. Newkirk, Thomas Harrison and George V. DeMott, answering, say:

That they admit that the complainants were incorporated on the 11th day of April, 1855, by virtue of an act entitled, "an Act to incorporate the City of Hudson."

And these defendants admit that an act of the Legislature of the State of New Jersey, approved March 20th, 1857, entitled "an Act to authorize the Water Commissioners of the City of Hudson to contract for and introduce water into said city, and to provide for the payment thereof," was passed, and that Thomas Andrews, Henry H. Newkirk, Edwin R. V. Wright, Thomas Harrison, and the President of the Board of Aldermen, of the City of Hudson, for the time being, were constituted the Board of Water Commissioners, of the City of Hudson.

And these defendants further admit that the said Board of Water Commissioners were empowered as in the said act referred to, to which act and every part thereof for greater certainty reference is made. 30

And these defendants admit that Thomas Andrews, Henry H. Newkirk and Thomas Harrison, three of the said Com-

missioners accepted the said appointment, and gave bonds, with sureties, as required by the said act, and together with George V. DeMott, the President of the Board of Aldermen, entered upon their duties as Water Commissioners, and elected Thomas Andrews their President.

And these defendants admit that Edwin R. V. Wright, the other Commissioner appointed by the said act, never gave any bonds as required by the said act ; but nevertheless the said Edwin R. V. Wright always professed to accept the said
10 office, and concur with the said Commissioners.

And these defendants further answering say that, as Water Commissioners of the City of Hudson, they claim no other power and authority than is given them by law ; by the acts of the Legislature of the State of New Jersey and the rules of law and equity with reference to their construction.

And these defendants in further answering say, that as stated in the said bill, the Water Commissioners have authority in the name of the complainants to issue notes, bonds, scrip, or certificates of debt to be denominated on the face
20 "Hudson City Water Scrip" to an amount not exceeding sixty thousand dollars, bearing an interest not exceeding seven per cent. per annum, and the principal to be paid at periods not less than ten nor more than twenty years from date with power to sell or pledge the same at not less than their par value, which bonds, if issued as stated in the said bill, were by the said act made binding on the complainants, and all chattels of the citizens of Hudson and all real estate whatever within the said city.

And these defendants admit that the complainants were by
30 said act authorized to raise money by tax to pay the interest of such notes, bonds, scrip or certificates of debt.

And these defendants admit that by the second section of an act of the Legislature of the State of New Jersey approved March 18th 1857, entitled "A supplement to an act entitled 'An act to incorporate the City of Hudson in the County of Hudson'" approved the 11th day of April 1855, it was provided as in said bill stated. But these defendants do not admit that the clause of the said act, so set forth in the said bill, is in full force and unrepealed ; but whether
40 said act or the clause in said bill set forth, is in full force

and unrepealed, is a question to be submitted to the judgment and determination of this Honorable Court.

And these defendants further answering say that they, Thomas Andrews, Henry H. Newkirk, Thomas Harrison and George V. DeMott, did, on the 26th day of August, 1857, enter into a written contract or agreement with the Water Commissioners of Jersey City; and these defendants admit that the said contract is truly stated in the said bill.

And these defendants say, that though the said Edwin R. V. Wright was not formally sworn into office, he nevertheless sanctioned the official acts and proceedings of these defendants, and approved the entering into the said contract.

And these defendants admit that they have entered into contracts with Keeney & Halladay and Slater, for furnishing water pipes for conducting the water from the reservoir of the Water Commissioners of Jersey City, to and through certain of the streets, lanes and alleys of the said City of Hudson, and also for the laying down said pipes in certain of the streets, lanes and alleys of the said city.

And these defendants in further answering say that the following is a copy of the said contract :

[SEE EXHIBIT 2.]

And these defendants admit that thereby, provided said contracts are fully carried out, an expenditure of money will be incurred to the amount of about twenty-six thousand dollars, which expenditure may, and in some form will, become a charge upon the City of Hudson, and the inhabitants and tax-payers thereof. But these defendants deny that such contracts for the introduction of water, and the expenses to be thereby incurred, will subject the complainants and the tax-payers of the City of Hudson to the imposition of a general tax to be levied on the personal and real estate of all said inhabitants and tax-payers, without reference to the benefit and advantage which said inhabitants can or may derive from the introduction of said water.

And these defendants under the circumstances of this case claim the right under the provisions of the said act to issue bonds, notes, scrip, or certificates of debts, as Hudson City Water Scrip, for the purpose of meeting and securing the

debts so by them incurred on said contracts. And these defendants further claim, under the circumstances of this case, that the complainants or the Mayor of said city, are bound under the acts of the Legislature of this State, to sign said notes, bonds, scrip, and certificates of debt, and that the same should be sealed by the corporate seal of the said city, and thereby bind the complainants and the inhabitants and tax payers of the City of Hudson, for the payment and redemption of the principal and interest of the same; provided, nevertheless, that the revenue derived from the use of the water should not be sufficient to pay such principal and interest.

And these defendants admit that they had it in contemplation, prior to the order and injunction of this Honorable Court, to issue such bonds, notes, and certificates of debts, and expected and believed that the Mayor of the said city would have signed the same, for the reasons hereinafter stated; nevertheless, these defendants say that the mode of issuing said bonds, notes or certificates of debts, and the circumstances connected therewith, are not correctly set forth in said bill; that these defendants have not issued such bonds, notes, scrip, or certificates of indebtedness, and have not given out any threats that they would issue them, and have not demanded of the Mayor of the City of Hudson to sign the same, nor have they made any threats to that effect, for the reason that these defendants have, until the action taken by the complainants, by exhibiting their bill of complaint, supposed and believed that all their conduct, acts and proceedings, met with the approbation of the said the Mayor of the City of Hudson, and the Common Council of said city; and, that prior to the exhibition of the said bill of complaint, there was no pretence that there was anything unlawful or improper in the official acts and conduct of the defendants.

And these defendants, under the circumstances of this case, deem that they had the power to enter into the said agreement with the Water Commissioners of Jersey City, as in said bill stated, notwithstanding the said Edwin R. V. Wright refused or declined to give bonds, and notwithstanding no other commissioner was appointed in his place.

And these defendants insist, notwithstanding the reasons stated in the said bill, that the contracts made by them for the furnishing and laying of pipes in the streets, lanes and alleys of said city, were made by and with authority of law, and were not void.

And these defendants further insist that the notes, bonds, scrip, or certificates of debt, which these defendants contemplated to issue in the names of the complainants, would have been available, to charge the complainants and the inhabitants and tax payers of the City of Hudson with the payment 10 and redemption thereof.

And these defendants insist that the contracts made by them for furnishing water pipes for said City of Hudson, and for laying down the same, are binding upon the complainants, and the inhabitants and tax payers of the City of Hudson, notwithstanding the fifty-second section of the act to incorporate said city, as stated and referred to in said bill.

And these defendants deny that in the present state of the finances of said City of Hudson, and the present condition of the country, no loan can be made advantageously, by the 20 sale or negotiation of the bonds, notes, scrip, or certificates of debts, provided or contemplated to be issued by these defendants in the name of the complainants; and these defendants deny that if the said bonds, notes, scrip or certificates of debts should be issued and negotiated for the raising of funds, that the same must be sold or negotiated at a large sacrifice, and a necessary delay of payments on the contracts made by these defendants as charged in the said bill. And these defendants, notwithstanding the insistment of the complainants as to the meaning and construction of the act ap- 30 pointing them Water Commissioners as aforesaid, do claim the power and authority by them exercised under the circumstances herein stated, and do insist that they have lawfully acted in making the said contracts, and in all that they have done with reference to the introduction of water in the City of Hudson.

And these defendants deny that their acts and proceedings have been had and done without the consent and approval of the complainants, and against the opinions and wishes of a very large majority of the inhabitants of the City of Hud- 40

son; though these defendants admit that the complainants have not sanctioned by ordinances and resolutions in a formal and official manner the contracts and proceedings of these defendants.

And these defendants deny the threats as stated in the said bill to issue bonds, notes, scrip, and certificates of debt to a large amount, and compel the complainants to sign the same.

Nevertheless, these defendants admit that they claim the
10 right under the circumstances of this case, to issue water scrip to an amount as herein stated, and that it is the duty of the Mayor of Hudson City to sign such securities, and to cause the corporate seal of the City of Hudson to be affixed thereto, and thereby to give to such securities their fullest legal force and effect.

And these defendants respectfully submit to this Honorable Court, that instead of giving out and threatening that they will carry out such contracts as they have already made, touching and concerning the introduction of water in the
20 said City of Hudson, and that they will make and enter into such other contracts for the like purpose as they may see fit; and that they will issue such other bonds, notes, scrip, or certificates of debt to meet and defray the expense of introducing said water into said city, and without any funds at their own disposal, or any funds at the disposal of the complainants; and that they will by such securities bind the complainants to the payment of large sums of money against the will of the complainants, and contrary to law as
30 charged in the said bill; these defendants have at all times believed, till the said bill for injunction was exhibited in this Honorable Court, that they were acting with the advice, consent and approbation of the complainants and of the people of Hudson City; and they believed that their course of conduct met with the approval of the people of Hudson City, and the tax payers of Hudson City.

And these defendants further answering say, that the Mayor and Common Council of Jersey City, became incorporated by an act entitled "an Act to incorporate Jersey City," approved March 18th, 1851.

40 That an act entitled "an Act to authorize the construction

of works for supplying Jersey City and places adjacent, with pure and wholesome water," was passed by the Legislature of the State of New Jersey, approved March 25th, 1852; that the object of the said act was to supply Jersey City with pure and wholesome water, and also to make provision at some future day for supplying North Bergen, Bergen, and Hoboken, with water.

That by the last mentioned act a Board of Water Commissioners was established, and it was declared thereby that all authority granted or given by that act, should be exercised exclusively by and through a Board of Commissioners, to be appointed as therein directed.

That under the authority given by that act, and the various supplements thereto, a receiving reservoir was constructed on the banks of the Passaic River, and a distributing reservoir was constructed in the Township of North Bergen, in the County of Hudson, within what is the present territory of Hudson City.

That the Mayor and Common Council of the City of Hudson were incorporated by an act of the Legislature of this State approved April 11, 1855.

That by the 63d section of the last mentioned act, the Mayor and Common Council of the City of Hudson were vested with the powers and subject to the restrictions contained in the "act to authorize the construction of works for supplying Jersey City and places adjacent with pure and wholesome water."

That no proceedings have been taken under the last mentioned act to introduce water into Hudson City.

That on the 18th of March 1857 an act was passed entitled 30
 "a supplement to an act entitled 'an act to incorporate the City of Hudson in the County of Hudson.'" That by the 2d section of the said act it was enacted "That it shall be lawful for the Water Commissioners of said city subject to the approval of the Mayor and Common Council to make a contract with the Water Commissioners of Jersey City for a sufficient supply of water for the extinguishment of fires and the laying of the necessary pipes and apparatus for the distribution of, and easy access to, the said water; and the yearly cost of the same shall be assessed annually upon the 40

real estate in said city, along, or over, or through which the said water pipes shall be laid."

But these defendants are advised by their counsel and insist, that the said last mentioned act is not in force or operative, and that the same has been repealed and supplied by the act entitled "An act to authorize the Water Commissioners of the City of Hudson to contract for and introduce water into said city, and to provide for the payment thereof" approved March 20th 1857, to which last act reference is
10 hereinafter made.

And these defendants further answering say, that by the said last mentioned act of the Legislature of the State of New Jersey approved March 20th 1857, Thomas Andrews, Henry H. Newkirk, Edwin R. V. Wright, Thomas Harrison, and the President of the Board of Aldermen of the City of Hudson for the time being, were constituted the Board of Water Commissioners of the City of Hudson.

That after the passage of the said act, the Board of Water Commissioners thereby appointed, organized as a Board,
20 that is to say, Thomas Andrews, Henry H. Newkirk, Thomas Harrison and George V. DeMott, the President of the Board of Aldermen, of the City of Hudson, took upon themselves the burthen, duty and obligation of the said office of Water Commissioners; that George V. DeMott was elected Alderman of the said City of Hudson on the third Tuesday in April in the year of our Lord 1857, and was thereafter appointed President of the Board of Aldermen of said city. The said George V. DeMott was appointed such President of the said Board of Aldermen, of the said City of Hudson, on
30 the day of , 1857, and took upon himself the discharge of the duties of that office, and also entered upon the discharge of his duties as Water Commissioner under the said act of March 20th, 1857.

And these defendants further answering say, that Thomas Andrews, Henry H. Newkirk and Thomas Harrison, three of the said Water Commissioners, gave bonds conditioned as follows:

[SEE EXHIBIT 5.]

And these defendants further answering say, that Edwin R. V. Wright, one of the Commissioners named in the said act, did not give bonds as required by law, but desired the other Water Commissioners to proceed and make a contract with the Water Commissioners of Jersey City, so as thereby to secure the introduction of water into the City of Hudson; and promised from time to time to meet the said Board, and to enter into bonds, and gave out and declared that he approved of the acts and proceedings of the said Water Commissioners.

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That Thomas Andrews was appointed President of the said Board of Water Commissioners, of the City of Hudson, and acted as such President.

That after the said Water Commissioners of Hudson City became organized, a contract was made and entered into between the Water Commissioners of Jersey City, and the Water Commissioners of the City of Hudson, which contract was signed after the same had been approved by both of the Boards of Commissioners, that is to say, by the Board of Water Commissioners of Jersey City, and the Board of 20 Water Commissioners of Hudson City, and a resolution was passed by the Board of Water Commissioners of Jersey City, authorizing Charles Fink, their President, to sign the same, and a resolution was also passed by the Board of Water Commissioners of Hudson City, authorizing Thomas Andrews to sign the same, which contract was dated the 26th day of August 1857, and which these defendants believe is correctly set forth in the said bill, but to avoid all doubt, reference is made to the same.

That when the proceedings were being had, preliminary to 30 the execution of the said contract, Edmund T. Carpenter, Esquire, then being the Mayor of Hudson City, and still being the Mayor of said City, was frequently present, and gave his sanction to the acts and proceedings of the said Board of Water Commissioners of the City of Hudson, and verbally expressed his sanction of the contract hereinbefore set forth, entered into between the said Water Commissioners of the said two cities.

That prior to the entering into the said contract, and while negotiations were pending between the Water Com- 40

missioners of Jersey City and the Water Commissioners of Hudson City, and during the Summer of the year eighteen hundred and fifty-seven, the said Edmund T. Carpenter, Mayor as aforesaid, was frequently present before the Board of Water Commissioners of Jersey City, and strongly urged making a contract between the two boards for the supply of water. That the said Edmund T. Carpenter not only urged the entering into the said contract publicly by personal application to the Board of Water Commissioners of Jersey
 10 City, but also urged the entering into the said contract by personal application to individual members of the said Board of Water Commissioners of Jersey City.

That these defendants sincerely supposed that in their acts and proceedings they were not only complying with the law of the land touching their powers and duties in the premises, but also supposed and believed that they were acting with the advice and sanction of the inhabitants and tax payers of the City of Hudson, and the Mayor of said city.

That the said Edmund T. Carpenter in his annual message
 20 delivered to the Common Council of the City of Hudson, in the Spring of eighteen hundred and fifty-seven, strongly urged the Water Commissioners to proceed and perform the duties, and exercise the powers imposed upon and vested in them by the act of March twentieth, eighteen hundred and fifty-seven, hereinbefore referred to, and to take all necessary steps to introduce water into the City of Hudson.

That the said Edmund T. Carpenter, Mayor as aforesaid, said to some of the Water Commissioners of Hudson City that he would sign the water scrip authorized by the said
 30 act of the 20th of March 1857; which water scrip it was designed should be used and applied to raise the money to defray the necessary expenses incident to introducing water into Hudson City.

That thereupon, and after the said contract had been entered into between the two Boards, another contract was made between William Keeney, John R. Halladay and Justus Slater of the one part, and the Water Commissioners of Hudson City of the other part. That the said contract is hereinbefore particularly set forth.

40 That the last mentioned contract was approved in the fol-

lowing manner: About the time when the contract was to have been executed, there was a meeting held at the Mayor's office in Hudson City; at which meeting Edmund T. Carpenter, Mayor of Hudson City, the Board of Water Commissioners of said city, George H. Bailey the Engineer of said Commissioners, Keeney, Halladay and Slater, were present; which meeting had been called to consider the propriety of executing the said contract between the Water Commissioners of Hudson City and said Keeney, Halladay and Slater. That the said contract which had been prepared by the 10 said George H. Bailey, was then presented for consideration, and the same was read and carefully examined; and in the discussion of the provisions of the said contract, the said Edmund T. Carpenter, Mayor, as aforesaid, took a prominent part. That the provisions of the said contract were then approved—after the incorporation of amendments, which were then prepared and agreed upon. That after the said contract had been drafted in duplicate the same was signed, and executed by the said Keeney, Halladay and Slater and the President of the Board of Water Commissioners of Hudson 20 City, the said President being thereunto authorized by a resolution of the Board of Water Commissioners of Hudson City.

That previous to entering into the said contract with Keeney, Halladay and Slater, the said Edmund T. Carpenter, with Thomas Andrews, President of the Board of Water Commissioners, went to the Hudson County Bank to provide a certain amount of cash funds, to enable the said Commissioners to go on and perform their part of the said contract; and that at that time an arrangement was made to pass 30 to the credit of the Water Commissioners the sum of \$5,000, as soon as the Water Scrip could be deposited as security, which fact was communicated to Keeney, Halladay and Slater; and upon the assurance that such was the case Keeney, Halladay and Slater entered into the said contract hereinbefore stated, and were principally induced thereby to make the contract, and incur the expenditures hereinafter stated.

That the Mayor of Hudson City communicated to Keeney, Halladay and Slater the facts in relation to obtaining credit as aforesaid, at the Hudson County Bank, and these defend- 40

ants fully believed that such a course of proceeding was legal and was within the scope of their authority.

That there was no concealment with reference to the proceedings taken in the premises; that the whole course of the proceedings in relation to making and entering into the said contract were of a public character, and were well known to many of the inhabitants of Hudson City, and as these defendants believe, to all of the Board of Aldermen of Hudson City; and no person, as these defendants are aware, 10 came forward to interpose any objections to the same.

The contract with Keeney, Halladay and Slater, contemplated the laying of 22, 800 feet of pipe, which should vary in diameter from 4 to 12 inches, and was to have been laid in the principal streets of Hudson City; that Keeney, Halladay and Slater, in the performance of their part of the contract, have laid water pipes, as follows: They commenced laying pipes in the Newark Turnpike, near the Hill where stands the homestead of James Harrison, deceased, which were six inch pipes, and laid the same to Bergen Five Corners, being about 1,900 feet; these pipes were laid in front 20 of the Court House, Jail and Work House, of the County of Hudson, and the inducement to lay these pipes first, was that the Freeholders of Hudson County greatly desired to procure the water for public purposes, and had already voted \$2,000 with the design of introducing water into these buildings, from the reservoir, on their own account, but were willing and anxious to take water from the supply to be offered by the works of the Water Commissioners.

They then commenced laying a twelve inch pipe near the 30 Bergen Five Corners, and laid the same in the Bergen Woods Avenue, towards the reservoir, a distance of about 997 feet, and it would require about 800 feet to complete that main to the reservoir; that in the Bergen Woods road there was an excavation made but not fully completed, of about 800 feet in earth and rock, where no pipe has been laid.

That the said contractors have laid water pipes in Beacon Avenue, being a six-inch pipe connected with a twelve-inch main, and the same has been laid in the last mentioned 40 avenue about five hundred feet. That Beacon Avenue has

situated along the same a large number of wooden buildings, which are occupied by laborers, principally Germans, and the introduction of water there was considered of great consequence in case of fire.

The whole actual expenditure by the contractor in work done and pipes laid at the present time, amounts to four thousand and eighty-five dollars and ten cents, as these defendants from information state to be true.

And the contractors, as these defendants have been informed, have entered into sub-contracts and engagements by 10 which they have become bound to pay upwards of ten thousand dollars for work and materials, which is in addition to the work done and materials already actually furnished.

That the said contractors have not as yet received the first cent of compensation for the said work done and materials furnished, and have no further indemnity than the contract hereinbefore stated.

That to make the pipes laid and the work already done useful, would require as these defendants are informed, but little additional expense. About eight hundred feet of 20 twelve inch pipe, laid in Bergen Woods Avenue, will connect the pipes already laid with the Reservoir. To lay this pipe, make the necessary excavation, and supply about thirteen hydrants, and the necessary gates on the mains, would require an additional expenditure of about two thousand five hundred dollars, and such additional expenditure would supply the most densely populated part of the city with water.

That if it be deemed advisable, and if the contractors can be relieved from their contracts already made, or be indem- 30 nified against indebtedness incurred, the works could then be left to be completed at another period; provided, nevertheless, such course can meet with the approval of the Water Commissioners of Jersey City and the parties interested in the work which has been commenced, and so far carried towards its completion.

And these defendants are advised by their counsel and humbly insist:

That they were lawfully appointed by the said act of the 20th of March 1857.

That they were lawfully organized under the said last mentioned act, and that the said contracts with the Jersey City Water Commissioners and Keeney, Halladay and Slater were lawful contracts and were duly authorized by the acts of the Legislature in such case made and provided.

That it is the duty of the Mayor of Hudson City to sign and execute the water scrip necessary to be issued to pay for the said work.

That under any state of circumstances the complainants
10 cannot stand by and permit the said contracts to be made, and the said work to be done so far as the same has been performed, and then, after an acquiescence of such a character, invoke the aid of this Honorable Court by its power to enjoin.

That these defendants are a corporation, exercising corporate powers and franchises, and their contracts made within the general scope of their corporate powers and authority, are not incidentally to be called into question by the Writ of Injunction of this Honorable Court.

20 That the continuance of the said injunction granted by this Honorable Court must lead to not only great loss and damage, but will involve many actions at law, to adjust difficulties of a complicated character arising out of the discontinuance of said work.

And these defendants also humbly insist that their official acts as hereinbefore stated, being within the scope of their authority are binding on the Mayor and Common Council of the City of Hudson, and on the inhabitants of that city.

DEPOSITIONS ATTACHED TO ANSWER.

STATE OF NEW JERSEY, }
30 HUDSON COUNTY, } ss.

Before me personally appeared William Keeney, John R. Halladay, and Justus Slater, who, by me being duly sworn, according to law, depose and say, that they have heard read the foregoing answer; that all those parts of the said answer

which relate to the acts, contracts and proceedings of these deponents, as in the said answer stated, are true, and the same are correctly set forth.

WILLIAM KEENEY,
JOHN R. HALLADAY,
JUSTUS SLATER.

Sworn and subscribed before me, at Jersey City, this 28th day of December, 1857. }

JAMES FLEMMING, JR.,
Master in Chancery, N. J.

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

Before me personally appeared Thomas Harrison, who by me being duly sworn, according to law, deposeth and says, that he is one of the defendants in the foregoing answer named; that this deponent was not present at the meeting of the Water Commissioners, when the contract between the Water Commissioners of Hudson City, and the Water Commissioners of Jersey City was passed upon and approved, and was not present when the contract between the Water 20 Commissioners of Hudson City and Keeney, Halladay and Slater, was passed upon and approved; that this deponent always regarded said contracts as the official contracts of the said Board of Water Commissioners of Hudson City, and has always approved of the same as being the official contracts of the said Board of Water Commissioners of Hudson City, and this deponent further says that the matters, facts and things in the foregoing answer set forth with the qualifications in this affidavit stated, are true, so far as the same relate to the acts and deeds of this deponent, and 30 so far as the same relate to the acts and deeds of any other person or persons this deponent believes them to be true.

THOMAS HARRISON.

Sworn and subscribed before me, at Jersey City, this 29th day of December, 1857. }

LUTHER S. ELMER,
Master in Chancery, New Jersey.

STATE OF NEW JERSEY, }
 HUDSON COUNTY, } 88.

Before me personally appeared Charles Fink, who by me being duly sworn according to law deposes and says that he is the President of the Board of Water Commissioners of Jersey City, and has been a member of that Board for about

That this deponent as President of the said Board signed the contract between the Water Commissioners of Jersey City and the Water Commissioners of the City of Hudson, 10 which bears date on or about the 6th day of August 1857. That a few weeks before said contract was entered into Edmund T. Carpenter, then being Mayor of Hudson City, called at the office of the Water Commissioners of Jersey City, while the Board of Water Commissioners of Jersey City were in session, and made a formal application for the introduction of water into Hudson City, and advocated the making of a contract between the Water Commissioners of Hudson City and the Water Commissioners of Jersey City; and desired that a contract to that effect should be made and 20 signed.

And this deponent further says, that the said Edmund T. Carpenter, was persevering in his efforts to get water introduced into Hudson City, until the contract above referred to was actually made and signed.

That the visits of the said Edmund T. Carpenter to the Water Commissioners of Jersey City were principally in the months of July and August 1857.

That the said Edmund T. Carpenter came and called on the Water Commissioners of Jersey City, once or twice in 30 company with the Water Commissioners of Hudson City or some of them, and always urged forward the entering into a contract, by which water could be introduced into Hudson City. One of the grounds for urging forward an arrangement by which water could be introduced into Hudson City was, that the tunnel through Bergen Hill, which was in the course of construction for the Erie Railroad had the effect to reduce the quantity of water in the wells on Bergen Hill; and this reason was strongly urged by Mr. Carpenter.

Mr. Carpenter also made personal and private applications to this deponent, urging the making a contract between the two Boards of Water Commissioners, authorizing the introduction of water into Hudson City.

And this deponent further says, that when the said contract was made and signed, this deponent fully believed that the Water Commissioners had full and ample power in the premises, and that they were duly authorized to make and execute the said contract.

And this deponent further says, that he as one of the 10 Water Commissioners of Jersey City acted in the most entire good faith, and he fully believes that all his fellow Commissioners in the Board acted in good faith, in the entering into the contract herein before referred to, and this deponent fully believes that the Water Commissioners of Hudson City acted in the most entire good faith in entering the said contract.

That during the whole course of the negotiation touching the said contract no question was ever raised or suggested by any one in relation to any lack of power or technical 20 defect of power in the Water Commissioners of Hudson City, with reference to the entering into the said contract. And this deponent always believed that the said contract was binding, or he would never have consented to the execution of the same.

CHARLES FINK.

Subscribed and sworn be- }
fore me, this 21st December, }
A. D. 1857. }

GEO. W. CASSEDY,
Master in Chancery of New Jersey

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

Before me personally appeared Mindert Van Horne of the Township of Bergen, in the County of Hudson, and State of New Jersey. That this deponent is one of the members

of the Board of Chosen Freeholders of the County of Hudson; and has been such member for about five years last past. That the Court House, and Jail, and Work House of the County of Hudson are situated on the Newark Turnpike Road, and the excavation for water pipes has been made in said Turnpike in front of the Jail and Workhouse aforesaid. That the Board of Chosen Freeholders have caused water pipes to be put in the Jail and Workhouse, and but little work is necessary to put the pipes in proper order to
 10 conduct water from the main pipe in said Turnpike Road, as soon as the same shall be laid and water shall flow therein. That the Workhouse and Jail require that a large quantity of water should be used therein; and the water pipes were put therein with the view to introduce water from the Reservoir constructed by the Water Commissioners of Jersey City, near the Bergen Five Corners.

That this deponent feeling the necessity for the use of water in the Workhouse and Jail took some part in forwarding the making of the contract between the Water Commissioners of Jersey City and Hudson City.

And this deponent further says, that he is of the opinion and belief, that should the Water Commissioners of Hudson City carry out their plans and introduce water, the Freeholders of Hudson County would take the water from their pipes laid in the Newark Turnpike in front of the Jail and Workhouse, and would pay a proper compensation therefor.

MINDERT VAN HORNE.

Subscribed and sworn before me, at Jersey City, this }
 30 12th day of December, 1857. }

WASHINGTON B. WILLIAMS,
Master in Chancery.

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

Before me personally appeared George H. Bailey, who by me being duly sworn according to law, deposeth and says, that this deponent is the Engineer of the Commissioners for the introduction of water in Jersey City, and has been such Engineer for three years and upwards; this deponent was also Engineer for the Hudson City Water Commissioners; this deponent drew the plans and made the estimates for the 10 work the Water Commissioners of Hudson City proposed to construct; this deponent drafted the contract between the Water Commissioners of Hudson City, and Keeney, Halladay and Slater; that the terms upon which Keeney, Halladay and Slater agreed to do the work in the said contract mentioned, between them and the Water Commissioners of Hudson City, were reasonable terms, and were as low as this deponent is of the opinion and believes the said work could be done for, and give the contractors a reasonable profit; this deponent made a close calculation to ascertain how low the 20 work mentioned in the said contract could be done, and also made inquiry of Mr. Wells, the contractor for the Brooklyn Water Works, who at that time had just received proposals for the Brooklyn Water Works, and had just entered into a sub-contract with sub-contractors to build the Brooklyn Water Works; this deponent was informed by Mr. Wells of the prices for which the Brooklyn Water Works were sublet, and the prices at which Keeney, Halladay and Slater agreed to do the work in their contract mentioned, were at least from 20 to 25 cents per dollar lower than the contrac-30 tors in Brooklyn agreed to lay the same sized pipe of a quality no better adapted for the purpose than those that Keeney, Halladay and Slater agreed to lay; this deponent was present at a meeting of the Water Commissioners of Hudson City, when the contract between them and Keeney, Halladay and Slater was under consideration; Edmund T. Carpenter, the Mayor of Hudson City was also present, and said Edmund T. Carpenter advocated the entering into that contract, and urged upon the Board of Water Commissioners of Hudson City, the acceptance of that contract, and the same 40

was thereupon passed upon and approved by the Board of Water Commissioners of Hudson City, and the President of that Board was authorized to sign the same by a resolution of the said Board.

This deponent, went with Mr. Keeney, one of the contractors to the place where they, the contractors, returned to do the work, and just before the work was commenced, and there saw Edmund T. Carpenter, who there gave his advice as to the part of the street where the said pipe should be laid.

GEO. H. BAILEY.

Subscribed and sworn before }
me, at Jersey City, this 30th day }
of December, 1857.

J. FLEMMING,

Master in Chancery, N. J.

ABRIDGMENT OF EXHIBIT 5 ON THE PART OF RELATORS.

Bond of Henry H. Newkirk (Job Smith and James M. Newkirk, sureties), to the City of Hudson for the sum of \$10,000, dated the 13th day of November 1856, with condition as follows:

“Whereas the above bounden Henry H. Newkirk has been duly appointed one of the Water Commissioners of the said city by the Common Council thereof. Now therefore if the said Henry H. Newkirk shall well and truly and faithfully perform all the duties of his office enjoined on him as such Water Commissioner, and shall well and truly pay over to the Treasurer of said city all moneys received by him as such Water Commissioner, and act in all things in accordance with the acts of the Legislature of the State of New Jersey and the charter and ordinances of the City of Hudson—Then this obligation to be void, otherwise to remain in full force and virtue.” Which bond was duly executed.

At a regular meeting of the Common Council held November 27th 1856, the said bond was presented and approved.

Bond of Thomas Harrison (Jesse West and Isabella Harrison, sureties), to the City of Hudson, for the sum of \$10,000, dated November 24th 1856, with condition as follows:

“Whereas the above bounden Thomas Harrison has been duly elected by the Common Council of said city a Water Commissioner of the City of Hudson. Now therefore if the said Thomas Harrison shall well and truly and faithfully perform all the duties of his office enjoined on him as such Water Commissioner, and shall well and truly pay to the City Treasurer of said city all moneys collected by him at 10 the time and in the manner prescribed by any ordinance of the said city, or as shall be required by any resolution of the Common Council approved by the Mayor in the same manner as ordinances require to be approved by him, then this obligation to be void, otherwise to remain in full force and virtue.” Which bond was duly executed.

At a regular meeting of the Common Council held November 27th 1856 the said bond was read and approved.

Bond of Thomas Andrews, (Jane W. Graves and James R. Day, sureties), to the City of Hudson, for the sum of 20 \$10,000, dated June 10th, 1856, with same condition as on last mentioned bond, and duly executed.

At a regular meeting of the Common Council, held June 19th, 1856, the said bond was read and approved.

Thomas Andrews was nominated by the Mayor and elected by the Common Council at a regular meeting held June 5th, 1856.

Henry H. Newkirk was nominated by the Mayor, and elected by the Common Council at a regular meeting held November 6th, 1856.

Thomas Harrison was nominated by the Mayor, and elected by the Common Council at a special meeting held November 13th, 1856. 30

At a regular meeting of the Common Council, held September 21, 1857, the following resolution was adopted:

Resolved, That the Mayor, in conjunction with the Committee on Streets and Assessments be authorized to take the proper measures to place an Injunction on the present action of the Water Commissioners in laying pipes and contracting for supplying water in a manner contrary to the wishes of the people.

The said resolution was approved by the Mayor, September 22d, 1857.

- 10 At a regular meeting of the Common Council held October 1st, 1857, the following resolution was adopted :

Resolved, That the Collector of Taxes be instructed not to collect the amount of water tax assessed against any person until further orders.

Approved October 2d, 1857.

At the aforesaid meeting of October 1st, 1857, the Committee reported that the Injunction had been served on the Water Commissioners.

- 20 At a regular meeting of the Common Council held February 26, 1858, notice of the Injunction having been dissolved was sent to the Common Council by the City Attorney.

Bond of Edwin R. V. Wright (Jacob Miller, John Tice, Laurent J. Tonnelle, sureties), to the Mayor and Common Council of the City of Hudson, for the sum of \$10,000, dated March 25th, 1858, with condition, as follows :

- 30 “Whereas, the said Edwin R. V. Wright was duly and legally appointed, constituted and chosen one of the Water Commissioners of the City of Hudson, by virtue of an act of the Legislature of the State of New Jersey, approved March 20th, 1857, entitled an act to authorize the Water Commissioners of the City of Hudson, to contract for and introduce water into said city, and to provide for the payment thereof; now, therefore, the condition of this obligation is, that if the said Edwin R. V. Wright shall faithfully perform the duties of his office as such Commissioner, as aforesaid, then the above obligation to be void, otherwise to remain in full force and virtue.” Which bond was duly executed.

Annexed to said bond is an affidavit of said E. R. V. Wright, that he is worth in real estate, located in the County of Hudson, over and above all incumbrances, debts and liabilities of every nature and kind whatsoever, the sum of \$50,000; also oath, that he will faithfully, honestly and impartially perform the duties of his office as Water Commissioner, which last affidavit was sworn and subscribed the 29th day of June, 1858, before P. H. Mulford, Master in Chancery.

Bond of Thomas Andrews (James R. Dey, William H. Boyd and George F. Gantz, sureties), to the Mayor and Common Council of the City of Hudson, for the sum of \$10,000, dated March 20th, 1858, with condition, as follows:

“Whereas, the said Thomas Andrews was appointed and constituted one of the Board of Water Commissioners of the City of Hudson, by the act entitled an act to authorize the Water Commissioners of the City of Hudson to contract for and introduce water into said city, and to provide for the payment thereof; now, therefore, the condition of this obligation is that if the said Thomas Andrews shall faithfully perform the duties of his office as such Commissioner as aforesaid, then the above obligation to be void, otherwise to remain in full force and virtue.” Which bond was duly executed.

Annexed to said bond is the oath of said Thomas Andrews that he will faithfully perform all the duties devolved upon him as such Water Commissioner during the term for which he may hold the said office, according to the best of his ability; which oath was subscribed and sworn the 25th day of March 1858, before Laurent J. Tonnelle, Justice.

Bond of Henry H. Newkirk (Job Smith and John G. Ackerman, sureties), to the Mayor and Common Council of the City of Hudson, in the sum of \$10,000, dated March 25th 1858, with same condition as in last mentioned bond.

Annexed to said bond is the oath of said Henry H. Newkirk that he will faithfully perform all the duties devolv-

ed upon him as such Water Commissioner during the term for which he may hold said office, according to the best of his ability, which oath was subscribed and sworn the 25th day of March 1858, before Laurent J. Tonnelle, Justice.

At a regular meeting of the Common Council held April 1st 1858 the bonds of E. R. V. Wright, H. H. Newkirk and Thomas Andrews together with an oath of office of said Newkirk and Andrews, were received and referred to the Committee on Laws and Ordinances.

At a Regular meeting of the Common Council held May 1st, 1858, a communication from the Water Commissioners notifying the Board of the drawing by lot of terms of office of said Commissioners, was read and laid on the table.

At a regular meeting of the Common Council held June 16th, 1858, the following resolution was adopted :

Resolved, That the City Clerk be instructed to notify the aforesaid Water Commissioners of this city, that if any scrip shall be issued by them purporting to be Water Scrip of the City of Hudson, it will not be signed or acknowledged by His Honor the Mayor, or the Common Council of this city.

Approved June 17, 1858.

At a regular meeting of the Common Council of the City of Hudson held June 30, 1858, the following resolution was read and laid over :

Resolved, That the official bonds of E. R. V. Wright, H. H. Newkirk and Thomas Andrews, as Water Commissioners, be approved.

At the meeting July 14, 1858, the resolution as above was taken up, read, and laid over indefinitely.

At a regular meeting of the Common Council held August 24th, 1858, His Honor the Mayor having reported the service on him of a summons in suit of Keeney, Halladay and Slater against the city, the following resolution was adopted :

Resolved, That the Committee on Laws and Ordinances, in conjunction with the Mayor and President of the Board, be instructed to defend the suit instituted by Keeney, Halla-

day and Slater, against the city. Approved August 25th, 1858.

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

I, Charles J. Roe, City Clerk, of the City of Hudson, do depose and swear, that according to the Journal of the Common Council of said City of Hudson, George V. DeMott was duly elected President of the Board of Aldermen of said city, on the 4th day of May, A. D. 1857, and served as such 10 President for the year ending May 3d, 1858.

(Signed)

CHAS. J. ROE,
City Clerk.

Subscribed and sworn to before me, at }
the City of Hudson, aforesaid, this 5th }
day of March, 1859. }

JOHN G. ACKERMAN,
*Commissioner of Deeds in and for the
County of Hudson.*

NEW JERSEY SUPREME COURT.

20

THE STATE, on relation of THOMAS }
ANDREWS, HENRY H. NEWKIRK and }
EDWIN R. V. WRIGHT and others, } *On a Rule to show*
Water Commissioners, of Hudson } *cause why a Man-*
City: } *damus should not*
vs. } *issue.*
THE MAYOR AND COMMON COUNCIL OF }
Hudson City. }

It having heretofore been represented to this Court that on the twenty-fifth day of March, eighteen hundred and fifty-30 eight, Edwin R. V. Wright, as principal, together with Jacob Miller, John Tice and Laurent John Tonnelle, as his sureties, entered into bond to the Mayor and Common Council of the City of Hudson, as required by an act of the

Legislature of the State of New Jersey, passed March 20th, 1857, entitled "An act to authorize the Water Commissioners of the City of Hudson to contract for, and introduce water into said city, and to provide for the payment thereof," which said bond was tendered to the Mayor and Common Council of the City of Hudson.

And that Thomas Andrews, as principal, and James R. Dey, William H. Boyd, George F. Gantz, as sureties, entered into bond to The Mayor and Common Council of the City of Hudson on the twentieth day of March, eighteen hundred and fifty-eight, which said bond was tendered to the Mayor and Common Council aforesaid.

And that Henry H. Newkirk, as principal, Job Smith and John S. Ackerman, as sureties, on the twenty-fifth day of March, eighteen hundred and fifty-eight, entered into bond to the said The Mayor and Common Council of the City of Hudson, which bonds were Water Commissioners bonds under said act, and were all tendered as aforesaid to the Mayor and Common Council of the City of Hudson, who declined to accept the same.

And a rule to show cause why a mandamus should not issue to the said The Mayor and Common Council of Hudson City, commanding them among other things to accept the said bonds, having been heretofore granted and argued.

It is thereupon ordered that a mandamus do issue out of this court, commanding the said The Mayor and Common Council of Hudson City to accept such bonds of Thomas Andrews, Henry H. Newkirk and Edwin R. V. Wright, or either of them, as shall be good, lawful and sufficient bonds.

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On motion of

I. W. SCUDDER,

Atty. for Relators.

Entered March 21st, 1859.

NEW JERSEY COURT OF ERRORS AND APPEALS
OF THE TERM OF JUNE 1859.

THE MAYOR AND COMMON COUNCIL of
the City of Hudson,

Plaintiffs in Error,

vs.

THOMAS ANDREWS, HENRY H. NEW-
KIRK, EDWIN R. V. WRIGHT, and
others,

Defendants in Error.

In Error.

*Assignment of Er-
ror.*

New Jersey *ss.*, afterwards, that is to say, on the third Tuesday of June 1859, before the Court of Errors and Ap-10 peals of the State of New Jersey, at Trenton, come the said The Mayor and Common Council of the City of Hudson, by John P. Vroom, their Attorney, and say : that in the record and proceedings aforesaid, and in giving the judgment aforesaid, there is manifest error in this, to wit : that the said Supreme Court before whom the above cause was argued, ordered that a mandamus should issue out of the said Supreme Court commanding the said The Mayor and Common Council of Hudson City to accept the bonds of Thomas Andrews, Henry H. Newkirk and Edwin R. V. Wright, or 20 either of them, as should be good, lawful and sufficient bonds : whereas by the law of the land the said Supreme Court should not have so ordered.

Secondly : because the Supreme Court on motion only, and without first issuing an alternative mandamus by the said order did order and direct a peremptory mandamus to issue.

Thirdly : because the said order or judgment of the Supreme Court was in other respects erroneous, illegal and void.

JOHN P. VROOM

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Attorney of plaintiffs in Error.

Usual joinder in Error,

I. W. SCUDDER.

Attorney of defendants in Error.





