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NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, *Prosecutor and Appellant,* VS. THE BOROUGH OF GLEN RIDGE, *Respondent.*	*On Certiorari.*

NOTICE OF APPEAL.

TO MESSRS. COLLINS & CORBIN,

Attorneys of The Borough of Glen Ridge.

Take notice, that The Mayor and Aldermen of the City of Paterson above named appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in the New Jersey Supreme Court in this cause affirming the order appointing the commissioners on condemnation brought up for review by the writ of certiorari in said Supreme Court, on the following grounds.

1st. That the said Supreme Court did adjudge and decide that The Borough of Glen Ridge had the right to condemn the right to take and divert continuously until the first day of April, A. D., 1926, from the Passaic River at Little Falls, in Passaic County, New Jersey, three hundred and fifty thousand gallons of water per day, the quantity of water necessary for its water supply as against riparian lands of the City of Paterson

upon said Passaic River known as the Westside Park, The Engine House Lot, and Eastside Park, upon a writ of certiorari issued out of said Supreme Court to review the proceedings to condemn said right, and said Supreme Court so adjudged and decided under the following facts, viz: that the said property proposed to be condemned and taken under said proceedings had been and at the time of said proceedings was already devoted to public uses; that the property known as Westside Park and that known as Eastside Park were acquired by the City of Paterson in the year eighteen hundred and eighty-eight, and were laid out, improved and opened for the use and enjoyment of the public by the City of Paterson in the year eighteen hundred and eighty-nine, and ever since have been and now constitute the public park system of said City, and are used, maintained and kept up at large annual expense on the part of the City for the recreation, enjoyment and benefit of the inhabitants of Paterson under the statutes of the State for such purpose made and provided; that said City has expended in the purchase, maintenance and embellishment of said parks upwards of half a million dollars; that the property known as the Engine House lot now is and for more than thirty years last past has been devoted to the public use of the said City of Paterson as an engine house and lot; that the land upon which said engine house is erected is contiguous to the Passaic River and the fact that the title of the City extends to the middle of the River and that the City is a riparian owner and has all the rights of a riparian owner on the Passaic River, is a valuable element to the City for the use, enjoyment and ownership of said property; that the water which the defendant proposes to take by said proceedings is a part of each of said three properties and forms a part of said two parks as devoted to

the public uses, and the taking thereof as to each of said three properties would diminish, impair and destroy *pro tanto* the public use thereof; and that the waters of said River form a valuable and important element for the parks and the City of Paterson as the owner of said parks is a riparian owner and entitled as such to the use of the said waters of the Passaic River, the same as other riparian owners under the laws of this State, the existence of said water rights having been one of the chief inducements to the City of Paterson in the selection of said properties as sites for public parks.

2nd. That the said Supreme Court did adjudge and decide that the said The Borough of Glen Ridge had the right and authority to condemn the property proposed to be taken by said proceedings, although said Borough of Glen Ridge owned no water plant or water works and has no system of distributing pipes and has taken no proceedings to acquire any water plant or water works for public use, and, although it obtains its water supply under a contract with the Orange Water Company and has no proprietary or other right or source of water supply or in the plant or works from which said water is supplied.

3rd. That the said Supreme Court did adjudge and decide that said The Borough of Glen Ridge had the right and authority to condemn the property proposed to be taken by the proceedings brought up by the writ in this cause, although the said Borough of Glen Ridge has not complied with the requirements of the statutes governing the condemnation of property for purposes of a water supply or water works or a plant for the supply of water for domestic and public use in boroughs.

4th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that said Borough of Glen Ridge had no lawful right or authority to condemn the property proposed to be taken by the proceedings brought up by the writ in this cause.

5th. That the said Supreme Court did adjudge and decide that said Borough of Glen Ridge had the right and authority to condemn the property proposed to be taken by the proceedings brought up by the writ in this cause, although the Council of the Borough of Glen Ridge has not adopted any ordinance nor taken any other lawful proceedings for the construction or purchase of water works and a plant for the supply of water for domestic and public use.

6th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that the facts stated in the application of the Borough of Glen Ridge for the appointment of commissioners brought up by the writ in this cause, do not authorize the said Borough to condemn lands or water rights and show no *prima facie* right to have commissioners appointed for the purpose in said application set forth.

7th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that the order appointing commissioners brought up by the writ in this cause was unauthorized by law and should not have been made.

8th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that the true object and purpose of the proceedings brought up by the writ in this cause, are to enable the Montclair Water Company or the Orange Water Company, or one of them, to acquire

for their own uses and purposes, the property of the prosecutor, and the said proceedings, although taken in the name of the Borough of Glen Ridge, are for the benefit and uses of said water companies, or one of them, and the power of eminent domain is thereby attempted to be used, contrary to law, for the benefit of the said water companies and not for the benefit of the Borough of Glen Ridge.

9th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that The Borough of Glen Ridge in and by the said proceedings is attempting, contrary to law, to lend the use of its name and authority for the purpose of acquiring by condemnation the property of the prosecutor not in connection with or for any proper or lawful use of its own, but for the sole use and benefit of the Orange Water Company, and the Montclair Water Company, or one of them.

10th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that inasmuch as the Borough of Glen Ridge has never submitted descriptions of its source of water supply to the State Water Commission in accordance with the provisions of the act entitled "An Act to establish a State Water Supply Commission and to define its powers and duties and the conditions under which waters of this State may be diverted," approved June 17, 1907, and inasmuch as said Commission has never approved the same, the said Borough of Glen Ridge, although proposing to divert water from a new source of water supply, has no lawful power to condemn lands or water or to condemn the lands or water proposed to be taken by said proceedings.

11th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that, inasmuch as the statutes regulating the government of Boroughs provide that it shall not be lawful for the Council to construct or purchase any water works or water supply plant until there shall have been presented to the Council the consent thereto in writing signed by the owners of a majority of real estate in said Borough, nor until the same shall have been assented to by a majority of the legal votes cast for or against the proposition of construction, purchase or contract of water works or water supply or water supply plant at a general or special election held in said Borough, and inasmuch as no such consent in writing has been signed and no such election has been held in the said borough of Glen Ridge to authorize the construction, purchase or contract of any water works or water supply or water supply plant, the said Borough of Glen Ridge had no lawful right or authority to condemn the said property proposed to be taken by said proceedings.

12th. That the said Supreme Court in divers other matters apparent in the record did adjudge and decide erroneously.

Randal B. Lewis,
Attorney of Appellant.

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,

against

THE BOROUGH OF GLEN RIDGE,
Defendant.

WRIT OF CERTIORARI.

Returnable January 30th, 1911.

THOMAS F. McCRAN,
Atty. of Prosecutor.

I allow this writ. Let it be sealed.

JAMES F. MINTURN,
J. S. C.

New Jersey, ss.:

The State of New Jersey to Honorable James F. Minturn, Justice of the [L. S.] Supreme Court of the State of New Jersey,

Greeting:

We being willing for certain reasons to be certified of a certain order made by you on the eleventh day of January, Nineteen Hundred and Eleven, appointing commissioners to fix the compensation to be paid to The Mayor and Aldermen of the City of Paterson, as riparian owner, for water sought to be taken and diverted by The Borough

of Glen Ridge, do hereby command you that the said order, together with all things touching and concerning the same, to our Justices of the Supreme Court of Judicature of the State of New Jersey, at Trenton, on the thirtieth day of January, Nineteen Hundred and Eleven, you do certify and send, together with this writ, that therein may be done, what of right and according to the laws and constitution of the State of New Jersey, ought to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court, at Trenton, this eleventh day of January, A. D. nineteen hundred and eleven.

WM. RIKER, JR.,
Clerk.

THOMAS F. MCCRAN,
Attorney.

RETURN.

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

I, James F. Minturn, Justice of the Supreme Court of the State of New Jersey, do hereby in the schedule hereto annexed, send to our Justices of the Supreme Court of Judicature of the State of New Jersey, the copy of the Order appointing Commissioners to fix the compensation, and all things concerning and touching the same as I am within commanded.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Circuit Court in and for the County of Passaic, this twenty-third day of January, A. D. Nineteen Hundred and Eleven.

[SEAL]

JAMES F. MINTURN,
J. S. C.

(Filed December 23, 1910.)

THE BOROUGH OF GLEN RIDGE,

against

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON.

To the Honorable James F. Minturn,
Justice of the Supreme Court of New Jersey:

The petition of the Borough of Glen Ridge respectfully shows:

1. Your petitioner is a municipal corporation having power to take land and public property for public use, and has determined to take for public use the property hereinafter described for the purpose of its water supply; for which purpose it is required and necessary; and your petitioner has not been able to acquire said property by agreement with the owner by reason of disagreement as to the price.

2. The following is a particular description of the property required:

The right to take and divert continuously until the first day of April, A. D., 1926, from the Passaic River at Little Falls, in Passaic County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of said municipal corporation, not exceeding an average quantity in any year of three hundred and fifty thousand gallons of water per day, the

same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property and against which the said right to divert said water is required, is described as follows, to wit:

The riparian lands situated on the banks of the Passaic River, in the City of Paterson, County of Passaic, State of New Jersey, the said lands being three parcels, to wit:

(A) A tract of land known as the West Side Park, located on the left bank of the Passaic River, and extending from Preakness Avenue, southwesterly up the Passaic River one-half mile, more or less, to the line of the lands late of the estate of Richard Van Houten, being the westerly line of said Park; said River being the southerly boundary of said West Side Park.

(B) A tract of land, located in the City of Paterson, County of Passaic, State of New Jersey, known as the "Engine House Lot," described as follows:

BEGINNING on the southeasterly side of Water Street, at a point five feet and three and one-half inches westerly from the westerly side of the house of the heirs of Adrian B. Van Houten, deceased; running thence (1) southerly at right angles to Water Street as the same has been laid out from Temple Street, to Albion Street to the Passaic River; thence (3) northerly parallel with the first course to the southerly side of Water Street; thence (4) easterly along the same three feet and three inches to a turn in said Water Street, and thence (5) easterly, still along the southerly side of said Water Street twenty-one feet and eleven inches to the place of beginning. Said Passaic River being the southerly boundary of said Engine House lot.

(C) A tract of land situate in the City of Paterson, County of Passaic, State of New Jersey, and known as the East Side Park, located on the right bank of the Passaic River, extending from the center of the center line of Broadway southwardly along said river a distance of fifteen hundred (1,500) feet more or less to the southerly boundary of said park, said river being the easterly boundary of said East Side Park.

3. The water supply of your petitioner is obtained, by contract, from the Orange Water Company, a corporation chartered by the Legislature in 1865 (Pamp. Laws 1865, p. 936), which owns and operates the distributing pipes in the Borough of Glen Ridge. It receives the water from the Montclair Water Company, at the boundary line of the Town at Highland Avenue, Linden Avenue and Lincoln Street. The Montclair Water Company diverts and takes said water from the Passaic River at Little Falls by means of its dam, pumping station and filtration plant at that point, and thence conveys it through its pipes to its main southerly to the boundary line of the Borough of Glen Ridge, where it delivers the same to Orange Water Company for the use of your petitioner, and the same is necessary and required for the supply of water to the Borough of Glen Ridge and its inhabitants; such diversion and taking are at a point above the riparian lands on the Passaic River belonging to the owner herein elsewhere named; and such owner claims that its lands are damaged thereby, and these proceedings are taken to protect and assure to the said Borough the right to continuously take said supply as against said owner of the rights and property herein proposed to be taken, whether the said supply shall continue to be taken by said methods and through said in-

strumentalities whereby it is now taken, or whether through other methods and instrumentalities hereafter to be provided.

4. The name and residence of the owner and occupant of said property and the names and residences of the persons appearing of record to have any interest in said property are:

The Mayor and Aldermen of the City of Paterson.

5. Your petitioner has endeavored, in good faith, to acquire the right and property above described and required, by agreement with the said owner, but, by reason of inability to agree as to the price and damages to be paid therefor, cannot acquire the same by agreement.

Your petitioner therefore prays that three Commissioners may be appointed to fix the compensation to be paid for said property and the damages (if any) by reason of taking the same, and to make an award therefor pursuant to the statute in such case made and provided.

THE BOROUGH OF GLEN RIDGE,

By COLLINS & CORBIN,
Attorneys,
243 Washington Street,
Jersey City, N. J.

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

Richard Rossiter, being duly sworn, on his oath says: That he is the Agent of the municipal corporation, petitioner named in the foregoing petition, in the matter of proceedings to acquire property and water rights for its water supply, as therein described, having been appointed such Agent by resolutions duly passed by the proper

municipal board and authority of said municipal corporation; that the matters stated in the foregoing petition are true, and that deponent was, by said resolutions duly authorized by said municipal corporation to negotiate for the purchase of the property and right of diversion of water described in the petition, and has, in good faith, endeavored to agree with the owners for the same, but has not been able to agree upon the price, and damages, and the petitioner cannot acquire such right by agreement with the owners because unable to agree with them as to the price and damages; that the petitioner is already taking and diverting water for its public supply at the place and in the manner described in the petition, and the said water is required and the taking thereof is necessary for the public water supply of said municipal corporation.

Deponent's efforts to agree with the Mayor and Aldermen of the City of Paterson for the taking of the property and rights required as aforesaid, consisted in an application to the Mayor of said City, the Board of Aldermen of said City, in regular session assembled, The Board of Public Works of said City, in regular session assembled, The Board of Finance of said City, in regular session assembled, to each and all of whom he made cash offers in writing for each of the three parcels required; also, of an application to the Park Commission of said City, in regular session assembled, to whom he also made a cash offer in writing for the Parcels A and C, being with respect to the East Side and West Side Parks; also, of an application to the Board of Fire and Police Commissioners of said City, inregular session assembled, to whom he made a cash offer in writing for Parcel B, being with respect to the Engine House Lot, so-called; and neither said Mayor or any of said

Boards would or did accept his offers, or make any counter-offer, or in any wise indicate any willingness to agree on any terms whatever, and deponent could make no agreement with them or any of them. Such written offers to said Mayor and Boards and officers were presented to all of them between November 29th and December 22nd, 1910; and at the same time the offers in writing were presented, similar offers were made orally to each of said parties, none of which was accepted.

RICHARD ROSSITER.

Subscribed and sworn to this 23rd day of Decr., 1910, before me.

SAMUEL S. MOORE,
Notary Public of New Jersey.

Before HONORABLE JAMES F. MINTURN, Justice of the Supreme Court of New Jersey:

THE BOROUGH OF GLEN RIDGE,
Petitioner,

against

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON.

ORDER FIXING DAY.

On Application of the Petitioner to acquire Rights to Take and Divert Water for Public Water Supply.

Application having been made to me, James F. Minturn, a Justice of the Supreme Court, of the

State of New Jersey, by the Borough of Glen Ridge, by petition, for the appointment of three Commissioners to fix the compensation to be paid by said Company for the property in said petition described, and the damages (if any) by reason of the taking of the same, I do hereby assign the third day of January, nineteen hundred and eleven, at the hour of eleven o'clock in the forenoon, at the Court House, in Paterson as the time and place for the hearing of said petition, and I direct that notice of said hearing be given to the owners, occupants and persons appearing of record to have an interest in said lands, at least six days before the hearing.

And let said petition and this order be filed in the office of the Clerk of the County of Passaic, and notice of the pendency of these proceedings be recorded in said County, as by the statute required.

Given under my hand this 23d day of December, Nineteen Hundred and Ten.

JAMES F. MINTURN,
Justice of the New Jersey Supreme Court.

(Filed December 28, 1910.)

To the Mayor and Aldermen of the City of Paterson:

Take notice, that the petition, copy whereof is hereto appended, was presented to his Honor, James F. Minturn, one of the Justices of the Supreme Court of New Jersey, and by his order, has been filed in the Office of the Clerk of the County of Passaic, together with notice of the pendency thereof and of proceedings thereunder, and that by his said order, a copy whereof is hereto appended, he has assigned the third day of January,

1911, at the hour of 11 A. M., at the Court House in Paterson, as the time and place for the hearing of said petition, and for the appointment of three commissioners to fix the compensation to be paid to you by the undersigned, petitioner, for the taking of your property in said petition described (said property being necessary and being taken by petitioner for its public purposes) and the damages, if any, by reason of the taking of the same, and application will accordingly be made, at said time and place, for an order appointing said Commissioners.

THE BOROUGH OF GLEN RIDGE,
Petitioner.

By COLLINS & CORBIN, *Attorneys,*
243 Washington Street, Jersey City.

New Jersey, ss.:

Richard Rossiter, being duly sworn, according to law, on his oath, says: That on the 23rd day of December, A. D. 1910, he served a true copy of the foregoing notice, together with a copy of the petition filed by said petitioner with the Clerk of the County of Passaic on the 23rd day of December, 1910, and the order made by Mr. Justice Minturn upon the filing of said petition, and filed therewith upon The Mayor and Aldermen of the City of Paterson, at Paterson, by giving the same to and leaving the same with Andrew F. McBride, Mayor of said City.

RICHARD ROSSITER,

Subscribed and sworn to at Paterson this
28th day of December, 1910, before me.

WILLIAM V. ROSENKRANS,
Master in Chancery of New Jersey.

(Filed January 5, 1911.)

In Passaic County Clerk's Office, before Hon. James F. Minturn, Justice of the Supreme Court.

The Borough of Glen Ridge, *Petitioner,* against The Mayor and Aldermen of The City of Paterson.	*In Condemnation.*

ORDER POSTPONING HEARING.

On this third day of January, 1911, Messrs. W. H. Corbin and Michael Dunn, appearing for the petitioner, and Mr. Edward F. Merrey, City Counsel, John W. Griggs and W. B. Gourley, counsel appearing for the respondent, the respondent applied for a postponement of the hearing of the application which the petitioner opposed, whereupon, after hearing counsel of the parties, it is ordered that the hearing be deferred to Wednesday, January 11, 1911, at 10.15 A. M., at the Court House in Paterson.

James F. Minturn,
J. S. C.

(Filed January 12, 1911.)

Before Honorable James F. Minturn,
Justice of the Supreme Court of
the State of New Jersey.

The Borough of Glen Ridge, *Petitioner,* against The Mayor and Aldermen of The City of Paterson.	*On Petition for Condemnation.*

ORDER APPOINTING COMMISSIONERS.

Upon this eleventh day of January, Nineteen hundred and eleven, being the date fixed by me for the hearing upon the petition filed in this matter, and upon filing in the office of the Clerk of the County of Passaic of the proofs presented of the service of notice of the hearing upon the owners, occupants and persons interested in the lands and property described in said petition, the same being evidence satisfactory to me that said notice has been served as required by the statute; and, after hearing Collins and Corbin Attorneys for the petitioner, and John W. Griggs and William B. Gourley and Edward F. Merrey, appearing on behalf of the Mayor and Aldermen of the City of Paterson,

I, James F. Minturn, Justice of the Supreme Court of the State of New Jersey, do hereby appoint William W. Watson, William I. Lewis and Charles A. Bergen, three disinterested freeholders,

residents of the County of Passaic, Commissioners, to examine and appraise the lands in the petition described, and to assess the damages, if any, by reason of the taking of the same by petitioner, on at least six days' notice, to be given by the petitioner to each of said owners, occupants and persons interested in the property, either personally or by leaving at their residence, or by giving the same to their attorney appearing for them on this application.

And it is Ordered, That the said Commissioners shall file their report with the Clerk of the County of Passaic, on or before the tenth day of February, next.

JAMES F. MINTURN,
Justice of the Supreme Court
of the State of New Jersey.

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

I, John J. Slater, Clerk of said County and Clerk of the County Courts thereof, do hereby certify that the foregoing is a true copy of a petition for Appointment of Commissioners, and Order fixing day for hearing; Proof of Service of Petition, Order for Hearing, and Notice thereof; Order postponing hearing to January 11, 1911; and Order Appointing Commissioners, *in re* The Borough of Glen Ridge, against The Mayor and Aldermen of the City of Paterson, as the same is taken from and compared with the original Petition, &c., now remaining on file and of record in my Office.

In testimony whereof, I have hereunto set my hand and affixed the seal of
[SEAL] the said Courts and County, at Paterson, this twenty-third day of January, A. D. Nineteen Hundred and Eleven.

JNO. J. SLATER,
Clerk.

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,

vs.

THE BOROUGH OF GLEN RIDGE,
Defendant.

On Certiorari.

REASONS.

THOMAS F. McCRAN,
Atty. of Prosecutor.

Service of a copy of the within Reasons acknowledged this 10th day of February, 1911.

COLLINS & CORBIN,
Attys. for Defendant.

The Mayor and Aldermen of the City of Paterson, the above named prosecutor, by Thomas F. McCran, its attorney, comes and prays that the order made by Honorable James F. Minturn, a Justice of the Supreme Court of the State of New Jersey, on the eleventh day of January, nineteen hundred and eleven, appointing commissioners to fix the compensation to be paid to the said The Mayor and Aldermen of the City of Paterson, as riparian owner, for water sought to be taken and diverted by The Borough of Glen Ridge, may be reversed and set aside for the following reasons:

1. The property proposed to be condemned and taken under the proceedings brought up by the writ in this cause is already devoted to public uses.

The property known as Westside Park and that known as Eastside Park were acquired by the City of Paterson in the year eighteen hundred and eighty-eight and were laid out, improved and opened for the use and enjoyment of the public of the City of Paterson, in the year eighteen hundred and eighty-nine, and ever since have been and now constitute the public park system of said City, and are used, maintained and kept up at large annual expense on the part of the City for the recreation, enjoyment and benefit of the inhabitants of Paterson under the statutes of the State for such purposes made and provided; that said City has expended in the purchase, maintenance and embellishment of said parks upwards of half a million dollars. The property known as the Engine House lot now is and for more than thirty years last past has been devoted to the public use of said City of Paterson as an engine house and lot. The land upon which said engine house is erected is contiguous to the Passaic River and the fact that the title of the City extends to the middle of the River and that the City is a riparian owner and has all the rights of a riparian owner on the Passaic River, is a valuable element to the City, for the use, enjoyment and ownership of said property. The water which the defendant proposes to take by said proceedings is a part of each of said three properties and forms a part of said two parks as devoted to the public uses, and the taking thereof as to each of said three properties would diminish, impair and destroy *pro tanto* the public use thereof. The waters of said River form a valuable and important element for the parks and the City of Paterson as the owner of said parks is a riparian owner and entitled as such to the use of said waters of the Passaic River, the same as other riparian owners under the laws of

this State, the existence of said water rights having been one of the chief inducements to the City of Paterson in the selection of said properties as sites for public parks.

2. The Borough of Glen Ridge owns no water plant or water works and has no system of distributing pipes and has taken no proceedings to acquire any water plant or water works for public use. It obtains its water supply under a contract with the Orange Water Company and has no proprietary or other right of source of water supply or in the plant or works from which said water is supplied.

3. The Borough of Glen Ridge has not complied with the requirements of the statutes governing the condemnation of property for purposes of a water supply or water works or a plant for the supply of water for domestic and public use in Boroughs.

4. The Borough of Glen Ridge has no lawful right or authority to condemn the property proposed to be taken by the proceedings brought up by the writ in this cause.

5. The Council of the Borough of Glen Ridge has not adopted any ordinance nor taken any other lawful proceedings for the construction or purchase of water works and a plant for the supply of water for domestic and public use.

6. The facts stated in the application of the Borough of Glen Ridge for the appointment of commissioners brought up by the writ in this cause, do not authorize the said Borough to condemn lands or water rights and show no *prima facie* right to have commissioners appointed for the purpose in said application set forth.

7. The order appointing commissioners brought up by the writ in this cause was unauthorized by law and should not have been made.

8. The true object and purpose of the proceedings brought up by the writ in this cause, are to enable the Montclair Water Company or the Orange Water Company, or one of them, to acquire for their own uses and purposes, the property of the prosecutor, and the said proceedings, although taken in the name of the Borough of Glen Ridge, are for the benefit and uses of said water companies, or one of them, and the power of eminent domain is thereby attempted to be used, contrary to law, for the benefit of the said water companies and not for the benefit of the Borough of Glen Ridge.

9. The Borough of Glen Ridge in and by the said proceedings is attempting, contrary to law, to lend the use of its name and authority for the purpose of acquiring by condemnation the property of the prosecutor not in connection with or for any proper or lawful use of its own, but for the sole use and benefit of the Orange Water Company, and the Montclair Water Company, or one of them.

10. The Borough of Glen Ridge has never submitted descriptions of its source of water supply to the State Water Commission in accordance with the provisions of the act entitled "An Act to establish a State Water Supply Commission and to define its powers and duties and the conditions under which waters of this State may be diverted," approved June 17, 1907, and said Commission has never approved the same, for which reason the said Borough of Glen Ridge, although proposing to divert water from a new source of water supply has no lawful power to condemn lands or water

or to condemn the lands or water proposed to be taken by said proceedings.

11. The statutes regulating the government of Boroughs provide that it shall not be lawful for the Council to construct or purchase any water works or water supply plant until there shall have been presented to the Council the consent thereto in writing signed by the owners of a majority of real estate in said Borough, nor until the same shall have been assented to by a majority of the legal votes cast for or against the proposition of construction, purchase or contract of water works or water supply or water supply plant at a general or special election held in said Borough, and no such consent in writing has been signed and no such election has been held in the said Borough of Glen Ridge to authorize the construction, purchase or contract of any water works or water supply or water supply plant.

12. The said proceedings, in divers other respects, are unauthorized and contrary to the statutes of this State.

THOMAS F. MCCRAN,
Attorney for Prosecutor.

NEW JERSEY SUPREME COURT.

November Term, 1912.

MAYOR AND ALDERMEN OF THE CITY OF PATERSON,

vs.

BOROUGH OF GLEN RIDGE.

OPINION.

Argued November 7, 1912. Decided June, 1913. Certiorari. Before Justice Swayze, Voorhees and Kalisch. *Per curiam.*

The proceedings are affirmed with costs for reasons that are sufficiently stated in the opinion in Paterson vs. Jersey City, No. 291, and Paterson vs. Kearny, No. 289, of the same term.

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,

vs.

THE BOROUGH OF GLEN RIDGE,
Defendant.

On Certiorari.

RULE OF AFFIRMANCE.

The Court having inspected the writ and return in this cause, and considered the reasons assigned for reversal, and having heard the arguments of counsel, and being of opinion that the order appointing Commissioners in condemnation brought up for review is in all respects regular and lawful:

It is thereupon ordered and adjudged that the same be, and it hereby is affirmed with costs to the defendant to be taxed.

Entered June 17th, 1913. On motion of
COLLINS & CORBIN,
Defendant's Attorneys.

New Jersey Supreme Court.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, *Prosecutor and Appellant,* VS. THE WEST ORANGE WATER COMPANY, *Respondent.*	*On Certiorari.*

NOTICE OF APPEAL.

To MESSRS. COLLINS & CORBIN,
Attorney of The West Orange Water Company.

Take notice, that The Mayor and Aldermen of the City of Paterson above named appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in the New Jersey Supreme Court in this cause affirming the order appointing the commissioners on condemnation brought up for review by the writ of certiorari in said Supreme Court, on the following grounds.

1st. That the said Supreme Court did adjudge and decide that the West Orange Water Company had the right to condemn the right to take and divert continuously until the twenty-fifth day of October, A. D. 1942, from the Passaic River at Little Falls, in Pasaic County, New Jersey, one million gallons of water per day, the quantity of water necessary for its water supply as against riparian lands of the City of Paterson upon said Passaic River known as the Westside Park, The Engine House Lot, and Eastside Park, upon a writ of certiorari issued out of said Supreme Court to review the proceedings to condemn said right, and said Supreme Court so adjudged and decided under the following facts, viz: that the

said property proposed to be condemned and taken under said proceedings had been and at the time of said proceedings was already devoted to public uses; that the property known as Westside Park and that known as Eastside Park were acquired by the City of Paterson in the year eighteen hundred and eighty-eight, and were laid out, improved and opened for the use and enjoyment of the public by the City of Paterson in the year eighteen hundred and eighty-nine, and ever since have been and now constitute the public park system of said City, and are used, maintained and kept up at large annual expense on the part of the City for the recreation, enjoyment and benefit of the inhabitants of Paterson under the statutes of the State for such purpose made and provided; that said City has expended in the purchase, maintenance and embellishment of said parks upwards of half a million dollars; that the property known as the Engine House lot now is and for more than thirty years last past has been devoted to the public use of the said City of Paterson as an engine house and lot; that the land upon which said engine house is erected is contiguous to the Passaic River and the fact that the title of the City extends to the middle of the River and that the City is a riparian owner and has all the rights of a riparian owner on the Passaic River, is a valuable element to the City for the use, enjoyment and ownership of said property; that the water which the defendant proposes to take by said proceedings is a part of each of said three properties and forms a part of said two parks as devoted to the public uses, and the taking thereof as to each of said three properties would diminish, impair and destroy *pro tanto* the public use thereof; and that the waters of said River form a valuable and important element for the parks and the City of Paterson as the owner of said parks is a riparian

owner and entitled as such to the use of the said waters of the Passaic River, the same as other riparian owners under the laws of this State, the existence of said water rights having been one of the chief inducements to the City of Paterson in the selection of said properties as sites for public parks.

2nd. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that The West Orange Water Company had no lawful right or authority to condemn the property proposed to be taken by the proceedings brought up by the writ in this cause.

3rd. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that the facts stated in the application of The West Orange Water Company for the appointment of commissioners brought up by the writ in this cause, do not authorize the said the West Orange Water Company to condemn lands or water rights and show no *prima facie* right to have commissioners appointed for the purposes in said application set forth.

4th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that The West Orange Water Company has not complied with the requirements of the statutes governing condemnation of property for the purpose of a water supply or water works or a plant for the supply of water for domestic and public use in towns.

5th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that The West Orange Water Company is not authorized by law to condemn any lands or water rights except in West Orange or in the neighborhood thereof, and the lands and water rights pro-

posed to be taken by the proceedings brought up by the writ in this cause are not within the limits of West Orange or in the neighborhood thereof.

6th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that The West Orange Water Company is not a diverter of water from the Passaic River, but a mere purchaser of water from the Montclair Water Company, and that the object and purpose of these proceedings is to acquire for the Montclair Water Company a right to divert said water of the Passaic River, in order that it may sell to the West Orange Water Company as heretofore. The statement contained in the petition of the West Orange Water Company for the appointment of commissioners to the effect that it has for several years past been taking and diverting water from the Passaic River at Little Falls through dams, filtration works and pumping stations located at that place, is untrue, the fact being that the dams, filtration works and pumping stations so mentioned are the property of the Montclair Water Company, the East Jersey Water Company and the Acquackanonck Water Company as joint owners, the West Orange Water Company having no right, title or interest therein, and the sole connection of the West Orange Water Company with the said works and such diversion is as a mere purchaser of water from the Montclair Water Company of water diverted from the Passaic River at Little Falls and delivered to the West Orange Water Company under contract at West Orange.

7th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that inasmuch as the West Orange Water Company has never submitted descriptions of its source

of water supply to the State Water Supply Commission, in accordance with the provisions of the act entitled "An Act to establish a State Water Supply Commission and to define its powers and duties, the conditions under which water of this State may be diverted," approved June 17, 1907, and inasmuch as the said Commission has never approved the same, the said The West Orange Water Company, although proposing to divert water from a new source of water supply, has no lawful power to condemn lands or water or condemn the land or water proposed to be taken by said proceedings.

8th. That said Supreme Court in divers other matters apparent in the record did adjudge and decide erroneously.

RANDEL B. LEWIS,
Attorney of Appellant.

NEW JERSEY SUPREME COURT

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,

vs.

THE WEST ORANGE WATER COMPANY,
Defendant.

WRIT OF CERTIORARI.

Returnable January 30th, 1911.

THOMAS F. McCRAN,
Atty. of Prosecutor.

I allow this writ. Let it be sealed.

JAMES F. MINTURN,
J. S. C.

New Jersey, ss.:

The State of New Jersey to Honorable James F. Minturn, Justice of the [L. S.] Supreme Court of the State of New Jersey,

Greeting:

We being willing for certain reasons to be certified of a certain order made by you on the eleventh day of January, Nineteen Hundred and Eleven, appointing commissioners to fix the compensation to be paid to The Mayor and Aldermen of the City of Paterson, as riparian owner, for water sought to be taken and diverted by The West Or-

ange Water Company do hereby command you that the said order. together with all things touching and concerning the same, to our Justices of the Supreme Court of Judicature of the State of New Jersey, at Trenton, on the thirtieth day of January, Nineteen Hundred and Eleven, you do certify and send, together with this writ, that therein may be done, what of right and according to the laws and constitution of the State of New Jersey, ought to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court, at Trenton, this eleventh day of January, A. D., nineteen hundred and eleven.

WM. RIKER, JR.,
Clerk.

THOMAS F. McCRAN,
Attorney.

RETURN.

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

I, James F. Minturn, Justice of the Supreme Court of the State of New Jersey, do hereby in the schedule hereto annexed, send to our Justices of the Supreme Court of Judicature of the State of New Jersey, the copy of the Order appointing Commissioners to fix the compensation, and all things concerning and touching the same as I am within commanded.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of
[SEAL] the Circuit Court in and for the County of Passaic, this twenty-third day of January, A. D. Nineteen Hundred and Eleven.

JAMES F. MINTURN,
J. S. C.

(Filed December 23, 1910.)

THE WEST ORANGE WATER COMPANY,
Petitioner,
against
THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON.

To his Honor, James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey:

The petition of The West Orange Water Company respectfully shows:

1. That your petitioner is a corporation of the State of New Jersey, duly organized by certificate of incorporation filed in the Office of the Secretary of State on the 27th day of October, 1892, pursuant to the act entiled: "An Act for the construction, maintenance and operation of water works for the purpose of supplying cities, towns and villages of this State with water," approved April 21st, 1876, and the several supplements thereto and amendments thereof; there being appended to and filed with said certificate the consent of the corporate authorities of the Township of West Orange, in the County of Essex, as by statute required; the term of existence of the corporation expires October 27, 1942; the purposes of the formation of the company are, among others, the constructing, maintaining and operating of water works in said Township for the purpose of supplying said Town-

ship of West Orange, and the inhabitants thereof, with water; and your petitioner has power to take water rights and property for its said purposes.

2. Your petitioner has constructed its water works and is engaged in supplying water to the said Township (which is now incorporated as the Town of West Orange), and its inhabitants, for a public water supply, and has for several years past been taking and diverting water for the purposes aforesaid from the Passaic River at Little Falls, in Passaic County, through the dams, filtration works and pumping station located at that place, and such continued taking and diversion thereof is required and necessary for the public purposes aforesaid; and your petitioner has therefore determined to acquire for public use for the purposes aforesaid, and under its chartered rights and the authority conferred by the aforesaid acts and the general laws of this State, the rights and property below described.

3. Such diversion of water at Little Falls is, and for more than five years past, has been made directly by the Montclair Water Company, through its, the said dams, filtration works and pumping station, and by it, by means of its water mains, conveyed thence to West Orange and there delivered under contract to your petitioner for the purposes of the water supply of the Town of West Orange as aforesaid.

The said rights and property so to be acquired are described as follows:

The right to take and divert continuously until the twenty-fifth day of October, A. D. 1942, from the Passaic River at Little Falls, in Passaic County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of the town of West Orange not exceeding an average quantity in any year of one

million gallons of water per day, the same being required and necessary to be taken for the purposes of your petitioner for the supply of West Orange.

The land and property and against which the said right to divert said water is required, is described as follows, to wit:

The riparian lands situated on the banks of the Passaic River, in the City of Paterson, County of Passaic, State of New Jersey, the said lands being three parcels, to wit:

(A) A tract of land known as the West Side Park, located on the left bank of the Passaic River, and extending from Preakness Avenue, southwesterly up the Passaic River one-half mile, more or less, to the line of the lands late of the estate of Richard Van Houten, being the westerly line of said Park; said River being the southerly boundary of said West Side Park.

(B) A tract of land, located in the City of Paterson, County of Passaic, State of New Jersey, known as the "Engine House Lot," described as follows:

Beginning on the southeasterly side of Water Street, at a point five feet and three and one-half inches westerly from the westerly side of the house of the heirs of Adrian B. Van Houten, deceased; running thence (1) southerly at right angles to Water Street (as the same has been laid out from Temple Street) to Albion Street to the Passaic River; thence (3) northerly parallel with the first course to the southerly side of Water Street; thence (4) easterly along the same three feet and three inches to a turn in said Water Street, and thence (5) easterly, still along the southerly side of said Water Street twenty-one feet and eleven inches to the place of beginning. Said Passaic

River being the southerly boundary of said Engine House lot.

(C) A tract of land situate in the City of Paterson, County of Passaic, State of New Jersey, and known as the East Side Park, located on the right bank of the Passaic River, extending from the center of the center line of Broadway southwardly along said river a distance of fifteen hundred (1,500) feet more or less to the southerly boundary of said park, said river being the easterly boundary of said East Side Park.

4. The name and residence of the owner and occupant of said property and the names and residences of the persons appearing of record to have any interest in said property are:

The Mayor and Aldermen of the City of Paterson.

5. Your petitioner has endeavored, in good faith, to acquire the right and property above described and required, by agreement with the said owner, but, by reason of inability to agree as to the price and damages to be paid therefor, cannot acquire the same by agreement.

Your petitioner therefore prays that three Commissioners may be appointed to fix the compensation to be paid for said property and the damages (if any) by reason of taking the same, and to make an award therefor pursuant to the statute in such case made and provided.

THE WEST ORANGE WATER COMPANY,

By COLLINS & CORBIN,
Attorneys,
243 Washington Street,
Jersey City, N. J.

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

Richard Rossiter, being duly sworn, on his oath says: That he is the Agent of the West Orange Water Comany, petitioner named in the foregoing petition, in the matter of proceedings to acquire property and water rights for its water supply, as therein described, having been appointed such Agent by resolution duly passed by the Board of Directors of said corporation; that the matters stated in the foregoing petition are true, and that deponent was, by said resolutions duly authorized by said corporation to negotiate for the purchase of the property and right of diversion of water described in the petition, and has, in good faith, endeavored to agree with the owners for the same, but has not been able to agree upon the price, and damages, and the petitioner cannot acquire such right by agreement with the owners because unable to agree with them as to the price and damages; that the petitioner is already taking and diverting water for its public water supply at the place and in the manner described in the petition, and the said water is required and the taking thereof is necessary for the public water supply of said corporation.

Deponent's efforts to agree with the Mayor and Aldermen of the City of Paterson for the taking of the property and rights required as aforesaid, consisted in an application to the Mayor of said City, the Board of Aldermen of said City, in regular session assembled, The Board of Public Works of said City, in regular session assembled, The Board of Finance of said City, in regular session assembled, to each and all of whom he made cash offers in writing for each of the three parcels required; also, of an application to the Park Commission of said City, in regular session assembled,

to whom he also made a cash offer in writing for the Parcels A and C, being with respect to the East Side and West Side Parks; also, of an application to the Board of Fire and Police Commissioners of said City, and to all the members individually to whom he made a cash offer in writing for Parcel B, being with respect to the Engine House Lot, so-called; and neither said Mayor or any of said Boards would or did accept his offers, or make any counter-offer, or in any wise indicate any willingness to agree on any terms whatever, and deponent could make no agreement with them or any of them. Such written offers to said Mayor and Boards and officers were presented to all of them between November 29th and December 22nd, 1910; and at the same time the offers in writing were presented, similar offers were made orally to each of said parties, none of which was accepted.

RICHARD ROSSITER.

Subscribed and sworn to this 23rd day of Decr., 1910, before me.

SAMUEL S. MOORE,
Notary Public of New Jersey.

Before Honorable James F. Minturn, Justice of the Supreme Court of New Jersey:

The West Orange Water Company,
Petitioner,

against

The Mayor and Aldermen of The City of Paterson,

ORDER FIXING DAY.

On Application of the Petitioner to acquire Rights to Take and Divert Water for Public Water Supply.

Application having been made to me, James F. Minturn, a Justice of the Supreme Court of the State of New Jersey, by the West Orange Water Company, by petition for the appointment of three Commissioners to fix the compensation to be paid by said Company for the property in said petition described, and the damages (if any) by reason of the taking of the same, I do hereby assign the third day of January, nineteen hundred and eleven, at the hour of eleven o'clock in the forenoon, at the Court House, in Paterson, as the time and place for the hearing of said petition, and I direct that notice of said hearing be given to the owners, occupants and persons appearing of record to have an interest in said lands, at least six days before the hearing.

And let said petition and this order be filed in the office of the Clerk of the County of Passaic, and notice of the pendency of these proceedings be

recorded in said County, as by the statute required.

Given under my hand this 23d day of December, Nineteen Hundred and Ten.

JAMES F. MINTURN,
Justice of the New Jersey Supreme Court.

(Filed December 28, 1910.)

To the Mayor and Aldermen of the City of Paterson:

Take notice, that the petition, copy whereof is hereto appended, was presented to his Honor, James F. Minturn, one of the Justices of the Supreme Court of New Jersey, and by his order, has been filed in the Office of the Clerk of the County of Passaic, together with notice of the pendency thereof and of proceedings thereunder, and that by his said order, a copy whereof is hereto appended, he has assigned the third day of January, 1911, at the hour of 11 A. M., at the Court House in Paterson, as the time and place for the hearing of said petition, and for the appointment of three Commissioners to fix the compensation to be paid to you by the undersigned, petitioner, for the taking of your property in said petition described (said property being necessary and being taken by petition for its public purposes) and the damages, if any, by reason of the taking of the same, and application will accordingly be made, at said time and place, for an order appointing said Commissioners.

THE WEST ORANGE WATER COMPANY,
Petitioner.
By COLLINS & CORBIN, *Attorneys,*
243 Washington Street, Jersey City.

NEW JERSEY, ss.:

Richard Rossiter, being duly sworn, according to law, on his oath, says: That on the 23rd day of December, A. D. 1910, he served a true copy of the foregoing notice, together with a copy of the petition filed by said petitioner with the Clerk of the County of Passaic on the 23rd day of December, 1910, and the order *named* by Mr. Justice Minturn upon the filing of said petition, and filed therewith upon The Mayor and Aldermen of the City of Paterson, at Paterson, by giving the same to and leaving the same with Andrew F. McBride, Mayor of said City.

RICHARD ROSSITER,

Subscribed and sworn to at Paterson this 28th day of December, 1910, before me.

WILLIAM V. ROSENKRANS,
Master in Chancery of New Jersey.

(Filed, January 11, 1911.)

In Passaic County Clerk's Office, before Hon. James F. Minturn, Justice of the Supreme Court.

The West Orange Water Company, *Petitioner,* against The Mayor and Aldermen of The City of Paterson.	*In Condemnation.*

ORDER POSTPONING HEARING.

On this third day of January, 1911, Messrs. W. H. Corbin and Michael Dunn appearing for the petitioner, and Mr. Edward F. Merrey, City Counsel, John W. Griggs and W. B. Gourley, counsel appearing for the respondent, the respondent applied for a postponement of the hearing of the application which the petitioner opposed, whereupon, after hearing counsel of the parties, it is ordered that the hearing be deferred to Wednesday, January 11, 1911, at 10.15 A. M., at the Court House in Paterson.

James F. Minturn,
J. S. C.

(Filed January 12, 1911.)

Before Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey.

The West Orange Water Company, *Petitioner,* against The Mayor and Aldermen of The City of Paterson.	*On Petition for Condemnation.*

ORDER APPOINTING COMMISSIONERS.

Upon this eleventh day of January, Nineteen hundred and eleven, being the date fixed by me for the hearing upon the petition filed in this matter, and upon filing in the office of the Clerk of the County of Passaic of the proofs presented of the service of notice of the hearing upon the owners, occupants and persons interested in the lands and property described in said petition, the same being evidence satisfactory to me that said notice has been served as required by the statute; and, after hearing Collins and Corbin, Attorneys for the petitioner, and John W. Griggs and William B. Gourley and Edward F. Merrey, appearing on behalf of the Mayor and Aldermen of the City of Paterson,

I, James F. Minturn, Justice of the Supreme Court of the State of New Jersey, do hereby appoint William W. Watson, William I. Lewis and Charles A. Bergen, three disinterested freeholders, residents of the County of Passaic, Commissioners,

to examine and appraise the lands in the petition described, and to assess the damages, if any, by reason of the taking of the same by the petitioner, on at least six days' notice, to be given by the petitioner to each of said owners, occupants and persons interested in the property, either personally or by leaving at their residence, or by giving the same to their attorney appearing for them on this application.

And it is Ordered, That the said Commissioners shall file their report with the Clerk of the County of Passaic, on or before the tenth day of February, next.

JAMES F. MINTURN,
Justice of the Supreme Court
of the State of New Jersey.

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

I, John J. Slater, Clerk of said County and Clerk of the County Courts thereof, do hereby certify that the foregoing is a true copy of a petition for Appointment of Commissioners, and Order fixing day for hearing; Proof of Service of Petition, Order for Hearing, and Notice thereof; Order postponing hearing to January 11, 1911; and Order Appointing Commissioners, *in re* The West Orange Water Company, against The Mayor and Aldermen of the City of Paterson, as the same is taken from and compared with the original Petition, &c., now remaining on file and of record in my Office.

In testimony whereof, I have hereunto set my hand and affixed the seal of
[SEAL] the said Courts and County, at Paterson, this twenty-third day of January, A. D. Nineteen Hundred and Eleven.

JNO. J. SLATER,
Clerk.

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, *Prosecutor,* vs. THE WEST ORANGE WATER COMPANY, *Defendant.*	*On Certiorari.*

REASONS.

THOMAS F. McCRAN,
Atty. of Prosecutor.

Service of a copy of the within Reasons acknowledged this 10th day of February, 1911.

COLLINS & CORBIN,
Attys. for Defendant.

The Mayor and Aldermen of the City of Paterson, the above named prosecutor, by Thomas F. McCran, its attorney, comes and prays that the order made by Honorable James F. Minturn, a Justice of the Supreme Court of the State of New Jersey, on the eleventh day of January, nineteen hundred and eleven, appointing commissioners to fix the compensation to be paid to the said The Mayor and Aldermen of the City of Paterson, as riparian owner, for water sought to be taken and diverted by The West Orange Water Company, may be reversed and set aside for the following reasons:

1. The property proposed to be condemned and taken under the proceedings brought up by the writ in this cause is already devoted to public uses. The property known as Westside Park and that known as Eastside Park were acquired by the City of Paterson in the year eighteen hundred and eighty-eight and were laid out, improved and opened for the use and enjoyment of the public of the City of Paterson, in the year eighteen hundred and eighty-nine, and ever since have been and now constitute the public park system of said City, and are used, maintained and kept up at large annual expense on the part of the City for the recreation, enjoyment and benefit of the inhabitants of Paterson under the statutes of the State for such purposes made and provided; that said City has expended in the purchase, maintenance and embellishment of said parks upwards of half a million dollars. The property known as the Engine House lot now is and for more than thirty years last past has been devoted to the public use of the said City of Paterson as an engine house and lot. The land upon which said engine house is erected is contiguous to the Passaic River and the fact that the title of the City extends to the middle of the River and that the City is a riparian owner and has all the rights of a riparian owner on the Passaic River, is a valuable element to the City, for the use, enjoyment and ownership of said property. The water which the defendant proposes to take by said proceedings is a part of each of said three properties and forms a part of said two parks as devoted to the public uses, and the taking thereof as to each of said three properties would diminish, impair and destroy *pro tanto* the public use thereof. The waters of said River form a valuable and important element for the parks and the City of Paterson as the owner of said

parks is a riparian owner and entitled as such to the use of said waters of the Passaic River, the same as other riparian owners under the laws of this State, the existence of said water rights having been one of the chief inducements to the City of Paterson in the selection of said properties as sites for public parks.

2. The West Orange Water Company has no lawful right or authorty to condemn the property proposed to be taken by the proceedings brought up by the writ in this cause.

3. The facts stated in the application of The West Orange Water Company for the appointment of commissioners brought up by the writ in this cause do not authorize the said The West Orange Water Company to condemn lands or water rights and show no *prima facie* right to have commissioners appointed for the purposes in said application set forth.

4. The West Orange Water Company has not complied with the requirements of the statutes governing condemnation of property for the purpose of a water supply or water works or a plant for the supply of water for domestic or public use in towns.

5. The West Orange Water Company is not authorized by law to condemn any lands or water rights except in West Orange or in the neighborhood thereof, and the lands and water rights proposed to be taken by the proceedings brought up by the writ in this cause are not within the limits of West Orange or in the neighborhood thereof.

6. The West Orange Water Company is not a diverter of water from the Passaic River, but a mere purchaser of water from the Montclair Water Company, and the object and purpose of

these proceedings is to acquire for the Montclair Water Company a right to divert said water of the Passaic River, in order that it may sell to the West Orange Water Company as heretofore. The statement contained in the petition of the West Orange Water Company for the appointment of commissioners to the effect that it has for several years past been taking and diverting water from the Passaic River at Little Falls through dams, filtration works and pumping stations located at that place is untrue, the fact being that the dams, filtration works and pumping stations so mentioned are the property of the Montclair Water Company, the East Jersey Water Company and the Acquackanonck Water Company as joint owners, the West Orange Water Company having no right, title or interest therein, and the sole connection of the West Orange Water Company with the said works and such diversion is as a mere purchaser of water from the Montclair Water Company of water diverted from the Passaic River at Little Falls and delivered to the West Orange Water Company under contract at West Orange.

7. The West Orange Water Company has never submitted descriptions of its source of water supply to the State Water Supply Commission, in accordance with the provisions of the act entitled "An Act to establish a State Water Supply Commission and to define its powers and duties, the conditions under which water of this State may be diverted," approved June 17, 1907, and said Commission has never approved the same, for which reason the said The West Orange Water Company, although proposing to divert water from a new source of water supply, has no lawful power to condemn lands or water or condemn the land

or water proposed to be taken by said proceedings.

8. The said proceedings, in divers other respects, are unauthorized and contrary to the statutes of this State.

THOMAS F. MCCRAN,
Attorney for Prosecutor.

(Filed June 13, 1913.)

NEW JERSEY SUPREME COURT.
November Term, 1912.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,

vs.

THE WEST ORANGE WATER COMPANY.

OPINION.

1. A water company incorporated October 25th, 1892, under the Water Company Act of 1876 is authorized to condemn land and to divert water although they are not in the neighborhood of the municipality to be supplied.

2. A water company incorporated October 25th, 1892, under the Water Company act of 1876 is authorized to condemn land and divert water for the purpose of enabling it to fulfill contracts with municipalities other than that in which its works are situated.

Argued November 7, 1912. Decided, June, 1913.

Certiorari, Before Justices Swayze, Woorhees and Kalisch.

John W. Griggs and William B. Gourley, (Edward F. Merrey on the brief) for prosecutors.

Gilbert Collins (Michael T. Barrett, Daniel J. Murray, Davis & Hastings, on the brief) for defendants.

The opinion of the Court was delivered by Swayze, J.

Some of the questions raised in this case have been disposed of by the opinions in Paterson vs. Jersey City, ante p. 454; and Paterson vs. Kearny ante p. 456. In the present case the condemning agency is an incorporated water company, and the prosecutor challenges its authority to condemn. That authority is to be found in the water company act of 1876, (Comp. Statutes 3635). It is said to be insufficient to warrant the proceeding for three reasons: (1) because the power to condemn is limited to land in the neighborhood of the municipality to be supplied with water; (2) because power can only be exercised for the supply of the municipalities the company was incorporated to supply, and the defendant seeks to condemn to enable it to fulfill contracts for the supply of other municipalities; (3) because only two years was allowed by the statute for the completion of the works and that time has expired. In support of the first reason, the prosecutor relies on section 4, which enacts that it shall be lawful for the corporation to enter upon any land in the neighborhood of the municipality which it is intended to supply with water and to make such preliminary examinations, explorations, measurements and levelings, as may be necessary and proper for its corporate purposes. This, however, is not the section that gives the corporation power to divert water (section 3) nor the section that gives it power to condemn (section 5). It is authorized by the former to take and divert any and all such springs and streams of water as shall be necessary and proper to enable the corporation to carry into effect the purposes of its incorporation. It is authorized by the latter to condemn any spring or springs, stream or streams of water

for the purpose of its corporation. There is no limitation in either of these sections to land in the neighborhood of the municipality. We agree with the counsel for the defendant that the limitation applies only to the right of entry for preliminary examination and exploration; and that to construe the sections authorizing the taking and the condemnation as limited in the same way would make the grant nugatory since any diversion from a stream may affect lower riparian owners at a great distance and unless their rights can be condemned the water company would not be helped by the condemnation of land in the immediate neighborhood. It is hardly necessary to add that section 4 applies by its language only to an entry on land, while section 5 authorizes the condemnation of the right to divert water. Section 4 seems to be intended to confer an additional power, not to limit the power conferred by sections 3 and 5. The right to take and the right to condemn are both limited to the purposes of the corporation, and the argument of the prosecutor is that the water company was incorporated only for the purpose of supplying West Orange, while it now seeks to condemn in order to enable it to fulfill contracts for the sale of water to other municipalities. The certificate of incorporation states that the defendant is incorporated for the purpose of constructing, maintaining and operating water works in the township of West Orange, and for the purpose of supplying such township and the inhabitants thereof with water. It follows the language of section 1 of the act of 1876. It states two purposes: (1) the construction, maintenance, and operation of water works, and (2) the supply of West Orange and its inhabitants with water. The latter purpose does not necessarily limit the scope of the former. By

the very words of the statute the two purposes are treated as distinct, and the word "purposes" is used not once but twice. The words naturally mean that the company must serve both purposes, but they do not limit the object of constructing, maintaining and operating the works to the purpose of supplying West Orange with water. If the latter clause had not been connected with the former by the conjunction "and", it might have been forcibly contended that the latter purpose was a limitation upon the former; the use of the conjunction is an indication to the contrary. It would of course be too narrow to rest the case upon this mere grammatical construction alone. The certificate must be read in the light of the statutory law existing at its date, October 25th, 1892. In 1883 companies incorporated under the act of 1876 were authorized to extend their mains and supply water beyond the corporate limits of the municipality (Comp. Stat. p. 3641, pl. 649) and in 1888, general power was given to municipalities to contract with water companies for a water supply. The same year by an amendment of section 15 companies incorporated under the act of 1876, were given the same right that was originally given to specially chartered aqueduct companies, to add to and to extend their works; the proviso that was inserted indicates that the legislature anticipated that this privilege might be used by the companies for the purpose of supplying other municipalities and it therefore enacted that the section should not be deemed, taken or construed to empower or authorize any water company to supply water within the corporate limits of any city owning or controlling its water supply. In the light of this legislation, the language of the certificate of incorpora-

tion must be construed as authorizing the defendant to supply water to municipalities other than West Orange.

The objection that the two years allowed by the statute for the completion of the works has elapsed, is not tenable, since section 15 expressly authorizes extensions from time to time.

None of the reasons alleged against the appointment of commissioners is sustained. The proceedings are affirmed with costs.

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,
vs.
WEST ORANGE WATER COMPANY,
Defendant.
} *On Certiorari.*

RULE OF AFFIRMANCE.

The Court having inspected the writ and return in this cause, and considered the reasons assigned for reversal, and having heard the arguments of counsel, and being of opinion that the order appointing Commissioners in condemnation brought up for review is in all respects regular and lawful:

It is thereupon ordered and adjudged that the same be, and it hereby is, affirmed with costs to the defendant to be taxed.

Entered June 17th, 1913,

On motion of

COLLINS & CORBIN,
Defendant's Attorneys.

New Jersey Supreme Court.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, *Prosecutor and Appelant,*	
vs.	*On Certiorari.*
THE MAYOR AND ALDERMEN OF JERSEY CITY, *Respondent.*	

NOTICE OF APPEAL.

To MESSRS. COLLINS & CORBIN:

Attorney of the Mayor and Aldermen of Jersey City.

Take notice, that The Mayor and Aldermen of the City of Paterson above named appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in the New Jersey Supreme Court in this cause affirming the order appointing the commisioners on condemnation brought up for review by the writ of certiorari in said Supreme Court, on the following grounds.

1st. That the said Supreme Court did adjudge and decide that The Mayor and Aldermen of the City of Jersey City had the right to condemn the right to take and divert perpetually from the Rockaway River at Boonton, a tributary of the Passaic River, seventy million gallons of water per day, the quantity of water necessary for its water supply as against riparian lands of the City of Paterson upon said Passaic River known as the

Westside Park, The Engine House Lot, and Eastside Park, upon a writ of certiorari issued out of said Supreme Court to review the proceedings to condemn said right, and said Supreme Court so adjudged and decided under the following facts, viz; that the said property proposed to be condemned and taken under said proceedings had been and at the time of said proceedigs was already devoted to public uses; that the property known as Westside Park and that known as Eastside Park were acquired by the City of Paterson in the year eighteen hundred and eighty-eight, and were laid out, improved and opened for the use and enjoyment of the public by the City of Paterson in the year eighteen hundred and eighty-nine, and ever since have been and now constitute the public park system of said City, and are used, maintained and kept up at large annual expense on the part of the City for the recreation, enjoyment and benefit of the inhabitants of Paterson under the statutes of the State for such purpose made and provided; that said City has expended in the purchase, maintenance and embellishment of said parks upwards of half a million dollars; that the property known as the Engine House lot now is and for more than thirty years last past has been devoted to the public use of the said City of Paterson as an engine house and lot; that the land upon which said engine house is erected is contiguous to the Passaic River and the fact that the title of the City extends to the middle of the River and that the City is a riparian owner and has all the rights of a riparian owner on the Passaic River, is a valuable element to the City for the use, enjoyment and ownership of said property; that the water which the defendant proposes to take by said proceedings is a part of each of said three properties and forms a part of said two

parks as devoted to the public uses, and the taking thereof as to each of said three properties would diminish, impair and destroy *pro tanto* the public use thereof; and that the waters of said River form a valuable and important element for the parks and the City of Paterson as the owner of said parks is a riparian owner and entitled as such to the use of the said waters of the Passaic River, the same as other riparian owners under the laws of this State, the existence of said water rights having been one of the chief inducements to the City of Paterson in the selection of said properties as sites for public parks.

2nd. That said Supreme Court in divers other matters apparent in the record did adjudge and decide erroneously.

RANDAL B. LEWIS,
Attorney of Appellant.

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,

vs.

THE MAYOR AND ALDERMEN OF JERSEY CITY,
Defendant.

WRIT OF CERTIORARI.

THOMAS F. McCRAN,
Atty. for Prosecutor.

I allow this writ. Let it be sealed.
JAMES F. MINTURN,
J. S. C.

New Jersey, ss.:

The State of New Jersey to Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey,

[L. S.]

Greeting:

We being willing, for certain reasons, to be certified of a certain order made by you on the eleventh day of January, Nineteen Hundred and Eleven, appointing commissioners to fix the compensation to be paid to The Mayor and Aldermen of the City of Paterson, as riparian owner for water sought to be taken and diverted by The Mayor and Aldermen of Jersey City, do hereby command you that the said order, together with all things touching and concerning the same, to

our Justices of the Supreme Court of Judicature of the State of New Jersey, at Trenton, on the thirtieth day of January, Nineteen Hundred and Eleven, you do certify and send, together with this writ, that therein may be done what, of right and according to the laws and constitution of the State of New Jersey ought to be done.

Witness, William S. Gunmere, Esquire, Chief Justice of our Supreme Court, at Trenton, this eleventh day of January, A. D. Nineteen Hundred and Eleven.

THOMAS F. MCCRAN,
Attorney.
WM. RIKER, JR.,
Clerk.

RETURN.

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

I, James F. Minturn, Justice of the Supreme Court of the State of New Jersey, do hereby, in the schedule hereto annexed, send to our Justices of the Supreme Court of Judicature of the State of New Jersey, the copy of the Order Appointing Commissioners to fix the compensation, and all things concerning and touching the same as I am within commanded.

In testimony whereof I have hereunto set my hand and affixed the seal of the
[SEAL] Circuit Court in and for the County of Passaic, this twenty-third day of January, A. D. Nineteen Hundred and Eleven.

JAMES F. MINTURN,
J. S. C.

(Filed December 23, 1910.)

THE MAYOR AND ALDERMEN OF JERSEY CITY,

against

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,

To the Honorable James F. Minturn, Justice of the Supreme Court of New Jersey:

The petition of the Mayor and Aldermen of Jersey City respectfully shows:

1. Your petitioner is a municipal corporation having power to take land and property for public use, and has determined to take for public use the property hereinafter described for the purpose of its water supply; for which purpose it is required and necessary; and your petitioner has not been able to acquire said property by agreement with the owner by reason of disagreement as to the price.

2. The following is a particular description of the property required:

The right to take and divert continuously and perpetually from the Rockaway River at Boonton in Morris County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of said municipal corporation, seventy million gallons of water per day, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property and against which the said right to divert said water is required is described as follows, to wit:

The riparian lands situated on the banks of the Passaic River, in the City of Paterson, County of Passaic, State of New Jersey, the said lands being three parcels, to wit:

(A). A tract of land known as the West Side Park, located on the left bank of the Passaic River, and extending from Preakness Avenue southwesterly up the Passaic River one-half mile, more or less, to the line of the lands late of the estate of Richard Van Houten, being the westerly line of said Park; said river being the southerly boundary of said West Side Park.

(B). A tract of land, located in the City of Paterson, County of Passaic, State of New Jersey, known as the "Engine House Lot," described as follows:

Beginning on the southeasterly side of Water Street, at a point five feet and three and one-half inches westerly from the westerly side of the house of the heirs of Adrian B. Van Houten, deceased; running thence (1) southerly at right angles to Water street, as the same has been laid out from Temple street, to Albion street to the Passaic River; thence (3) northerly parallel with the first course to the southerly side of Water street; thence (4) easterly along the same three feet and trree inches to a turn in said Water street, and thence (5) easterly, still along the southerly side of said Water street twenty-one feet and eleven inches to the place of beginning. Said Passaic River being the southerly boundary of said Engine House lot.

(C). A tract of land situate in the City of Paterson, County of Passaic, State of New Jersey, and known as the East Side Park, located on the right bank of the Passaic River, extending from the cen-

ter of the center line of Broadway southwardly along said river a distance of fifteen hundred (1,500) feet, more or less, to the southerly boundary of said park; said river being the easterly boundary of said East Side Park.

3. Said property and rights are necessary for and are taken for and form part of the water works constructed for Jersey City by the Jersey City Water Supply Company under the contract entered into between your petitioner and Patrick H. Flynn, dated February 28, 1899, which contract was assigned by said Patrick H. Flynn to the said Jersey City Water Supply Company. The said Water Works consist of an impounding dam across the Rockaway River at Boonton, in the County of Morris, and a conduit leading therefrom to Jersey City, with the needed reservoirs, rights of way and water rights to divert from the Rockaway River the water needed for the supply. Said river is a tributary of the Passaic River upon which the lands of the owners hereinafter mentioned lie, and the diversion is made above their said lands, of water which would otherwise flow past and over their said lands, by reason whereof they claim compensation and damages.

Your petitioner has become the purchaser of said Works, and of the property and rights connected therewith, and is now the equitable owner of the same, although not yet the legal owner thereof. Your petitioner has been for six years past and is now receiving its water supply from said source through said works. In and by said contract of February 28th, 1899, your petitioner contracted with the said Flynn and his assigns to exercise such powers or rights in the matter of condemnation, or otherwise, as it then had or might afterwards acquire, which might be advant-

ageously used or exercised for the purpose of the said contract, in order to enable the use or acquisition of such water or water rights, lands, or other property, as might be necessary to the proper and convenient construction and maintenance of the system of water works to supply Jersey City, such rights of condemnation to be exercised in the name of the City, but at the cost and expense of the contractor, and these proceedings are taken in pursuance of said contract, to assure the water supply to your petitioner for Jersey City.

4. The name and residence of the owner and occupant of said property and the names and residences of the persons appearing of record to have any interest in said property are: The Mayor and Aldermen of the City of Paterson.

5. Your petitioner has endeavored, in good faith, to acquire the right and property above described and required, by agreement with the said owner, but, by reason of inability to agree as to the price and damages to be paid therefor, cannot acquire the same by agreement.

Your petitioner therefor prays that three Commisioners may be appointed to fix the compensation to be paid for said property and the damages (if any) by reason of taking the same, and to make an award therefor pursuant to the statute in such case made and provided.

The Mayor and Aldermen of Jersey City,
By Collins & Corbin, *Attorneys*,
243 Washington Street, Jersey City, N. J.

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

Richard Rossiter, being duly sworn, on his oath, says: That he is the Agent of the municipal corporation, petitioner named in the foregoing petition, in the matter of proceedings to acquire property and water rights for its water supply, as therein described, having been appointed such Agent by resolutions duly passed by the proper municipal board and authority of said municipal corporation; that the matters stated in the foregoing petition are true, and that the deponent was, by said resolutions, duly authorized by said municipal corporation to negotiate for the purchase of the property and right of diversion of water described in the petition, and has, in good faith, endeavored to agree with the owners for the same, but has not been able to agree upon the price, and damages, and the petitioner cannot acquire such right by agreement with the owners because unable to agree with them as to the price and damages; that the petitioner is already taking and diverting water for its public water supply at the place and in the manner described in the petition, and the said water is required and the taking thereof is necessary for the public water supply of said municipal corporation.

Deponent's efforts to agree with the Mayor and Aldermen of the City of Paterson for the taking of the property and rights required as aforesaid, consisted in an application to the Mayor of said City, the Board of Aldermen of said City, in regular session assembled, The Board of Public Works of said City, in regular session assembled, The Board of Finance of said City, in regular session assembled, to each and all of whom he made cash offers in writing for each of the three parcels required; also of an application to the Park Com-

mission of said City, in regular session assembled, to whom he also made a cash offer in writing for the Parcels A and C, being with respect to the East Side and West Side Parks; also of an application to the Board of Fire and Police Commissioners of said City, in regular session assembled, to whom he made a cash offer in writing for Parcel B, being with respect to the Engine House Lot, so called; and neither said Mayor or any of said Boards would or did accept his offers, or make any counter-offer, or in anywise indicate any willingness to agree on any terms whatever, and deponent could make no agreement with them or any of them. Such written offers to said Mayor and Boards and officers were presented to all of them between November 29th and December 22nd, 1910; and at the same time the offers in writing were presented similar offers were made orally to each of said parties, none of which was accepted.

RICHARD ROSSITER.

Subscribed and sworn to this 23rd day of Dec., 1910, before me,

SAMUEL S. MOORE,
Notary Public of New Jersey.

Before Honorable James F. Minturn, Justice of the Supreme Court of New Jersey:

The Mayor and Aldermen of Jersey City,
Petitioner.

against

The Mayor and Aldermen of the City of Paterson,

On Application of the Petitioner to Acquire Rights to Take and Divert Water for Public Water Supply.

ORDER FIXING DAY.

Application having been made to me, James F. Minturn, a Justice of the Supreme Court, of the State of New Jersey, by the Mayor and Aldermen of Jersey City, by petition, for the appointment of three Commissioners to fix the compensation to be paid by said Company for the property in said petition described, and the damages (if any) by reason of the taking of the same, I do hereby assign the third day of January, nineteen hundred and eleven, at the hour of eleven o'clock in the forenoon, at the Court House, in Paterson, as the time and place for the hearing of said petition, and I direct that notice of said hearing be given to the owners, occupants and persons appearing of record to have an interest in said lands, at least six days before the hearing.

And let said petition and this order be filed in the office of the Clerk of the County of Passaic,

and notice of the pendency of these proceedings be recorded in said County, as by the statute required.

Given under my hand this 23rd day of December, Nineteen Hundred and Ten.

JAMES F. MINTURN,
Justice of the New Jersey Supreme Court.

(Filed December 28, 1910.)

To the Mayor and Aldermen of the City of Paterson:

Take notice, that the petition, copy whereof is hereto appended, was presented to his Honor, James F. Minturn, one of the Justices of the Supreme Court of New Jersey and by his order has been filed in the office of the Clerk of the County of Passaic, together with notice of the pendency thereof and of proceedings thereunder, and that by his said order, copy whereof is hereto appended, he has assigned the third doy of January, 1911, at the hour of 11 A. M., at the Court House in Paterson, as the time and place for the hearing of said petition, and for the appointment of three commissioners to fix the compensation to be paid to you by the undersigned petitioner for the taking of your property in said petition described (said property being necessary and being taken by petitioner for its public purposes) and the damages, if any by reason of the taking of the same, and application will accordingly be made, at said time and place for an order appointing said commissioners.

THE MAYOR AND ALDERMEN OF JERSEY CITY,
Petitioner.

By COLLINS & CORBIN, *Attorneys,*
243 Washington Street, Jersey City.

New Jersey, ss.:

Richard Rossiter, being duly sworn, according to law, on his oath says: That on the 23d day of December, A. D. 1910, he served a true copy of the foregoing notice, together with a copy of the petition filed by said petitioner with the Clerk of the County of Passaic on the 23rd day of December, 1910, and the order made by Mr. Justice Minturn upon the filing of said petition, and filed therewith, upon The Mayor and Aldermen of the City of Paterson, at Paterson, by giving the same to and leaving the same with Andrew F. McBride, Mayor of said City.

RICHARD ROSSITER.

Subscribed and sworn to at Paterson this 28 day of December, 1910, before me,

WILLIAM V. ROSENKRANS,
Master in Chancery of New Jersey.

(Filed January 5, 1911.)

In Passaic County Clerk's Office, before Hon. James F. Minturn, Justice of the Supreme Court.

The Mayor and Aldermen of Jersey City, *Petitioner,* against The Mayor and Aldermen of the City of Paterson.	*In Condemnation.*

ORDER POSTPONING HEARING.

On this third day of January, 1911, Messrs. W. H. Corbin and Michael Dunn appearing for the petitioner, and Mr. Edward F. Merrey, City Counsel, John W. Griggs and W. B. Gourley, counsel appearing for the respondent, the respondent applied for postponement of the hearing of the application which the petitioner opposed, whereupon, after hearing counsel of the parties, it is ordered that the hearing be deferred to Wednesday, January 11, 1911, at 10.15 A. M., at the Court House in Paterson.

James F. Minturn,
J. S. C.

(Filed January 12, 1911.)

Before Honorable James F. Minturn, Justice of the Supreme Court of the State of New Jersey.

The Mayor and Aldermen of Jersey City, *Petitioner.* against The Mayor and Aldermen of The City of Paterson,	*On Petition for Condemnation.*

ORDER APPOINTING COMMISSIONERS.

Upon this eleventh day of January, 1911, being the date fixed by me for the hearing upon the petition filed in this matter, and upon filing in the office of the Clerk of the County of Passaic of the proofs presented of the service of notice of the hearing upon the owners, occupants and persons interested in the lands and property described in said petition, the same being evidence satisfactory to me that said notice has been served as required by the statute; and after hearing Collins & Corbin, Attorneys for the petitioner, and John W. Griggs and William B. Gourley and Edward F. Merrey, appearing on behalf of the Mayor and Aldermen of the City of Paterson.

I, James F. Minturn, Justice of the Supreme Court of the State of New Jersey, do hereby appoint William W. Watson, William I. Lewis and Charles A. Bergen, three disinterested freeholders, residents of the County of Passaic, Commis-

sioners, to examine and appraise the lands in the petition described, and to assess the damages, if any, by reason of the taking of the same by the petitioner, on at least six day's notice, to be given by the petitioner to each of said owners, occupants and persons interested in the property, either personally or by leaving at their residence, or by giving the same to their attorney appearing for them on this application.

And it is Ordered, That the said Commissioners shall file their report with the Clerk of the County of Passaic, on or before the tenth day of February next.

JAMES F. MINTURN,
Justice of the Supreme Court

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

I, John J. Slater, Clerk of said County and Clerk of the County Courts thereof, do hereby certify that the foregoing is a true copy of a Petition for Appointment of Commissioners, and Order fixing day for hearing; Proof of Service of Petition, Order for hearing, and Notice thereof; Order postponing hearing to January 11, 1911; and Order Appointing Commissioners, in re The Mayor and Aldermen of Jersey City, against The Mayor and Aldermen of the City of Paterson, as the same is taken from and compared with the original Petition, etc., now remaining on file and of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Courts and County, at Paterson, this twenty-third day of January, A. D. Nineteen Hundred and Eleven.

[SEAL]

JOHN J. SLATER,
Clerk.

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,

vs.

THE MAYOR AND ALDERMEN OF JERSEY CITY,
Defendant.

On Certiorari.

REASONS.

THOMAS F. MCCRAN,
Att'y of Prosecutor.

Service of a copy of the within reasons acknowledged this 10th day of February, 1911.

COLLINS & CORBIN,
Attys. of Defendant.

The Mayor and Aldermen of the City of Paterson, the above named prosecutor, by Thomas F. McCran, its attorney, comes and prays that the order made by Honorable James F. Minturn, a Justice of the Supreme Court of the State of New Jersey, on the eleventh day of January, nineteen hundred and eleven, appointing commissioners to fix the compensation to be paid to the said The Mayor and Aldermen of the City of Paterson, as riparian owner, for water sought to be taken and diverted by The Mayor and Aldermen of Jersey City, may be reversed anl set aside for the following reasons:

1. The property proposed to be condemned and taken under the proceedings brought up by the writ in this cause is already devoted to public uses. The property known as Westside Park and that known as Eastside Park were acquired by the City of Paterson in the year eighteen hundred and eighty-eight, and were laid out, improved and opened for the use and enjoyment of the public by the City of Paterson in the year eighteen hundred and eighty-nine, and ever since have been and now constitute the public park system of said City, and are used, maintained and kept up at large annual expense on the part of the City for the recreation, enjoyment and benefit of the inhabitants of Paterson under the statutes of the State for such purpose made and provided; that said City has expended in the purchase, maintenance and embellishment of said parks upwards of half a million dollars. The property known as the Engine House lot now is and for more than thirty years last past has been devoted to the public use of the said City of Paterson as an engine house and lot. The land upon which said engine house is erected is contiguous to the Passaic River and the fact that the title of the City extends to the middle of the River and that the City is a riparian owner and has all the rights of a riparian owner on the Passaic River, is a valuable element to the City for the use, enjoyment and ownership of said property. The water which the defendant proposes to take by said proceedings is a part of each of said three properties and forms a part of said two parks as devoted to the public uses, and the taking thereof as to each of said three properties would diminish, impair and destroy *Pro Tanto* the public use thereof. The waters of said River form a valuable and important element for the parks and the City of Paterson as the owner of said parks is a ripari-

an owner and entitled as such to the use of the said waters of the Passaic River, the same as other riparian owners under the laws of this State, the existence of said water rights having been one of the chief inducements to the City of Paterson in the selection of said properties as sites for public parks.

2. The said proceedings, in divers other respects, are unauthorized and contrary to the statutes of this State.

THOMAS F. MCCRAN,
Attorney for Prosecutor.

(Filed June 13, 1913.)

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, *vs.* THE MAYOR AND ALDERMEN OF JERSEY CITY.	*On Certiorari.*

November Term, 1912.

OPINION.

When the legislature authorized cities to condemn water and water rights for the purpose of supplying the city with water (Comp. Stat. p. 2198, pl. 38), it by necessary implication authorized the condemnation of the right of another city to the undiminished flow of a river for purposes of pleausre and recreation in connection with its parks, in a case where the quantity of water necessary for the use of the river by the latter city depended upon the dams down the stream.

Argued November 7, 1912. Decided June, 1913.

Before Justices Swayze, Voorhees and Kalisch.

John W. Griggs and William B. Gourley (Edward F. Merrey on the brief) for prosecutor.

Gilbert Collins, (Michael T. Barrett, Daniel J. Murray, Davis & Hastings on the brief) for defendant.

Commissioners were appointed upon the application of Jersey City to condemn the right to take and divert perpetually from the Rockaway River at Boonton, the quantity of water necessary for its water supply, as against riparian lands of

Paterson, known as West Side Park, the Engine House lot, and East Side Park. The City of Paterson resists condemnation because it claims that the water is already devoted to a public use, in that its flow is valuable to the two city parks and the engine house lot. West Side Park is above the dam of the Society for Establishing Useful Manufactures, and East Side Park is above the Dundee Dam. Both parks are along the slack-water caused by these dams. Water flows over the S. U. M. dam ten months of the year, and even in July and August, there would be water flowing over the dam but for the fact that the S. U. M. is drawing all that comes through its flume. The level of the water at the East Side Park seems to depend entirely upon the Dundee Dam, but the water is so foul that it is not used for boating or similar purposes in connection with the Park. The amount of water which it would be possible for Jersey City to divert in dry seasons is seven million gallons daily, and when she diverted that quantity sixty million gallons still passed down the Passaic River. The average daily flow of the river in the driest season was ninety-seven million gallons; the average daily flow for fifteen years has been about nine hundred and fifteen million gallons. The total quantity of water proposed to be diverted to Jersey City and other municipalities that have similar condemnation proceedings pending, and by the City of Newark would leave in the driest seasons fifty million gallons daily to flow past Paterson, and this amount is ample to supply the mill ponds above the East Side and West Side Parks; "the ordinary elevation of the water would in no wise be affected by the diversion."

The opinion of the Court was delivered by Swayze, J.

The only objection urged to these proceedings is that Jersey City is seeking to condemn property already devoted to a public use. This is not an accurate statement of the case. What Jersey City is seeking to acquire is a right to a joint user of running water. It is true that the use to which Jersey City is to put the water involves its abstraction from the stream, while the use to which Paterson puts it is for purposes of pleasures and recreation in connection with its parks, involving the use of the flow only. But as long as the legislature authorizes in response to public necessities, the abstraction of water from a river for a municipal water supply, this use is as lawful as the other. The case therefore resembles the cases of joint user of a common easement. Morris and Essex Railroad Co. v. Central Railroad Co., 2 Vroom 205. National Docks &c. Co. v. United Companies, 24 Id., 217. We need not consider the relative importance of supplying Jersey City with an absolute necessity and the importance of allowing Paterson the pleasures of boating and skating. When the legislature in 1895 authorized cities to condemn water and water rights for the purpose of supplying the city with water, (Comp. Stat., 2198, pl. 38), it by necessary implication authorized the condemnation of such rights as Paterson had in the flow of the stream, at least to the extent required in the present case. The situation differs from that in Van Reipen v. Jersey City, 29 Vr. 262. It was there held that the general grant in the act of 1895 of power to condemn did not carry the right to extinguish the franchises of the Morris Canal. Jersey City in this case does not seek to extinguish the rights of Paterson in its public parks, or in the river flowing by them; it hardly seeks to disturb them under the evidence in the case, since the quantity of water necessary for the use of the river by Paterson depends on the two dams, rather than on the abstraction of water above.

The proceedings are affirmed with costs.

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, *Prosecutor,* *vs.* THE MAYOR AND ALDERMEN OF JERSEY CITY, *Defendant.*	*On Certiorari.*

RULE OF AFFIRMANCE.

This Court having inspected the writ and return in this cause, and considered the reasons assigned for reversal, and having heard the arguments of counsel, and being of opinion that the order appointing Commissioners in condemnation brought up for review is in all respects regular and lawful:

It is thereupon ordered and adjudged that the same be, and it hereby is, affirmed with costs to the defendant to be taxed.

Entered June 17th, 1913.

On motion of

COLLINS & CORBIN,
Defendant's Attorneys.

New Jersey Supreme Court.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, *Prosecutor and Appellant,*	
vs.	*On Certiorari.*
THE MAYOR AND COUNCIL OF THE CITY OF BAYONNE, *Respondent.*	

NOTICE OF APPEAL.

To MESSRS. COLLINS & CORBIN:

Attorney of The Mayor and Council of the City of Bayonne.

Take notice, that The Mayor and Aldermen of the City of Paterson above named appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in the New Jersey Supreme Court in this cause affirming the order appointing the commisioners on condemnation brought up for review by the writ of certiorari in said Supreme Court, on the following grounds.

1st. That the said Supreme Court did adjudge and decide that The Mayor and Council of the City of Bayonne had the right to condemn the right to take and divert continuously until the sixth day of October, A. D. 1929, from the Passaic River at Little Falls, in Passaic County, New Jersey, eight and a half million gallons of water per day, the quantity of water necessary for its water supply as against riparian lands of the City of Paterson upon said Passaic River known as the Westside Park, The Engine House Lot, and Eastside Park, upon a writ of certiorari issued out of said Supreme Court to review the proceedings to

condemn said right, and said Supreme Court so adjudged and decided under the following facts, viz; that the said property proposed to be condemned and taken under said proceedings had been and at the time of said proceedings was already devoted to public uses; that the property known as Westside Park and that known asEastside Park were acquired by the City of Paterson in the year eighteen hundred and eighty-eight, and were laid out, improved and opened for the use and enjoyment of the public by the City of Paterson in the year eighteen hundred and eighty-nine, and ever since have been and now constitute the public park system of said City, and are used, maintained and kept up at large annual expense on the part of the City for the recreation, enjoyment and benefit of the inhabitants of Paterson under the statutes of the State for such purpose made and provided; that said City has expended in the purchase, maintenance and embellishment of said parks upwards of half a million dollars; that the property known as the Engine House lot now is and for more than thirty years last past has been devoted to the public use of the said City of Paterson as an engine house and lot; that the land upon which said engine house is erected is contiguous to the Passaic River and the fact that the title of the City extends to the middle of the River and that the City is a riparian owner and has all the rights of a riparian owner on the Passaic River, is a valuable element to the City for the use, enjoyment and and ownership of said property; that the water which the defendant proposes to take by said proceedings is a part of each of said three properties and forms a part of said two parks as devoted to the public uses, and the taking thereof as to each of said three properties would diminish, im-

pair and destroy *pro tanto* the public use thereof; and that the waters of said River form a valuable and important element for the parks and the City of Paterson as the owner of said parks is a riparian owner and entitled as such to the use of the said waters of the Passaic River, the same as other riparian owners under the laws of this State, the existence of said water rights having been one of the chief inducements to the City of Paterson in the selection of said properties as sites for public parks.

2nd. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that The Mayor and Council of the City of Bayonne has no lawful right or authority to condemn the property proposed to be taken by the proceedings brought up by the writ in this cause.

3rd. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that The Mayor and Council of the City of Bayonne has not adopted any ordinance or taken any other lawful proceedings for the construction or purchase of water works and a plant for the supply of water for domestic and public use.

4th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that the facts stated in the application of The Mayor and Council of the City of Bayonne for the appointment of commissioners brought up by the writ in this cause do not authorize the said town to condemn lands or water rights and show no *prima facie* right to have commissioners appointed for the purposes in said application set forth.

5th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that The Mayor and Council of the City of Bay-

onne has not complied with the requirements of the statutes governing condemnation of property for the purposes of a water supply or water works, or a plant for the supply of water for domestic or public use.

6th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that there is no law of this State which authorizes the Mayor and Council of the City of Bayonne to condemn water rights.

7th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that inasmuch as The Mayor and Council of the City of Bayonne has never submitted descriptions of its source of water supply to the State Water Supply Commission, in accordance with the provisions of the act entitled "An Act to establish a State Water Supply Commission and to define its powers and duties, the conditions under which waters of this State may be diverted," approved June 17, 1907, and inasmuch as said Commission has never approved the same, the said The Mayor and Council of the City of Bayonne, although proposing to divert water from a new source of water supply, has no lawful power to condemn the lands or water or condemn the land or water proposed to be taken by said proceedings.

8th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that the true object and purpose of the proceedings brought up by the writ in this cause are to enable the New York and New Jersey Water Company and the East Jersey Water Company, or one of them, to acquire for their own uses and purposes the property of the prosecutor, and the said proceedings, although taken in the name of the City of Bayonne, are for the benefit and uses of

said Water Companies, or one of them, and that the power of eminent domain is hereby attempted to be used, contrary to law, for the benefit of said Water Companies, or one of them, and not for the benefit of the City of Bayonne.

9th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that The Mayor and Council of the City of Bayonne in and by the said proceedings is attempting, contrary to law, to lend the use of its name and authority for the purpose of acquiring by condemnation the property of the prosecutor, not in connection with or for any lawful or proper use of its own, but for the sole use and benefit of the East Jersey Water Company and the New York and New Jersey Water Company, or one of them.

10th. That said Supreme Court in divers other matters apparent in the record did adjudge and decide erroneously.

RANDAL B. LEWIS,
Attorney of Appellant.

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,

against

THE MAYOR AND COUNCIL OF THE CITY OF BAYONNE,
Defendant.

WRIT OF CERTIORARI.

Returnable January 30th, 1911.

THOMAS F. McCRAN,
Atty. of Prosecutor.

I allow this writ. Let it be sealed.

JAMES F. MINTURN,
J. S. C.

New Jersey, ss.:

The State of New Jersey to Honorable James F. Minturn, Justice of the [L. S.] Supreme Court of the State of New Jersey,

Greeting:

We being willing, for certain reasons, to be certified of a certain order made by you on the eleventh day of January, Nineteen Hundred and Eleven, appointing commissioners to fix the compensation to be paid to The Mayor and Aldermen of the City of Paterson, as riparian owner, for water sought to be taken and diverted by the

Mayor and Council of the City of Bayonne, do hereby command you that the said order, together with all things touching and concerning the same, to our Justices of the Supreme Court of Judicature of the State of New Jersey, at Trenton, on the thirtieth day of January, Nineteen Hundred and Eleven, you do certify and send, together with this writ, that therein may be done, what, of right and according to the laws and constitution of the State of New Jersey, ought to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court, at Trenton, this eleventh day of January, A. D. nineteen hundred and eleven.

WM. RIKER, JR.,
Clerk.

THOMAS F. MCCRAN,
Attorney.

RETURN.

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

I, James F. Minturn, Justice of the Supreme Court of the State of New Jersey, do hereby in the schedule hereto annexed, send to our Justices of the Supreme Court of Judicature of the State of New Jersey, the copy of the Order appointing Commissioners to fix the compensation, and all things concerning and touching the same as I am within commanded.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Circuit Court in and for the County of Passaic, this twenty-third day of January, A. D. Nineteen Hundred and Eleven.

[SEAL]

JAMES F. MINTURN,
J. S. C.

(Filed December 23, 1910.)

THE MAYOR AND COUNCIL OF THE CITY OF BAYONNE,

against

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON.

TO THE HONORABLE JAMES F. MINTURN,
Justice of the Supreme Court of New Jersey:

The petition of the Mayor and Council of the City of Bayonne, respectfully shows:

1. Your petitioner is a municipal corporation having power to take land and public property for public use, and has determined to take for public use the property hereinafter described for the purpose of its water supply; for which purpose it is required and necessary; and your petitioner has not been able to acquire said property by agreement with the owner by reason of disagreement as to the price.

2. The following is a particular description of the property required:

The right to take and divert continuously until the first day of October, A. D., 1929, from the Passaic River at Little Falls, in Passaic County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of said municipal corporation, not exceeding an average quantity in any year of three hundred and fifty thousand gallons of water per day, the

same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property and against which the said right to divert said water is required, is described as follows, to wit:

The riparian lands situated on the banks of the Passaic River, in the City of Paterson, County of Passaic, State of New Jersey, the said lands being three parcels, to wit:

(A) A tract of land known as the West Side Park, located on the left bank of the Passaic River, and extending from Preakness Avenue, southwesterly up the Passaic River one-half mile, more or less, to the line of the lands late of the estate of Richard Van Houten, being the westerly line of said Park; said River being the southerly boundary of said West Side Park.

(B) A tract of land, located in the City of Paterson, County of Passaic, State of New Jersey, known as the "Engine House Lot," described as follows:

Beginning on the southeasterly side of Water Street, at a point five feet and three and one-half inches westerly from the westerly side of the house of the heirs of Adrian B. Van Houten, deceased; running thence (1) southerly at right angles to Water Street as the same has been laid out from Temple Street, to Albion Street to the Passaic River; thence (3) northerly parallel with the first course to the southerly side of Water Street; thence (4) easterly along the same three feet and three inches to a turn in said Water Street, and thence (5) easterly, still along the southerly side of said Water Street twenty-one feet and eleven inches to the place of beginning. Said Passaic River being the southerly boundary of said Engine House lot.

(C) A tract of land situate in the City of Paterson, County of Passaic, State of New Jersey, and known as the East Side Park, located on the right bank of the Passaic River, extending from the center of the center line of Broadway southwardly along said river a distance of fifteen hundred (1,500) feet more or less to the southerly boundary of said park, said river being the easterly boundary of said East Side Park.

3. Said property and rights are necessary and are taken for and form part of the Water Works constructed for the City of Bayonne by the New York and New Jersey Water Company under a contract entered into between your petitioner and Messrs. Washington and Beall, dated September 6th, 1894, which contract was assigned by said Washington and Beall to the New York and New Jersey Water Company, and the said New York and New Jersey Water Company obtains said supply of water by contract with the East Jersey Water Company, dated July 12th, 1895. The works of the said New York and New Jersey Water Company consists of a pipe line extending from Kearny avenue, in the Township of Kearny, in Hudson County, to the City of Bayonne, with its appliances, into which it receives the supply of water for your petitioner at said point in the Township of Kearny from the East Jersey Water Company, under its said contract with that company, which brings the same through its pipe line from Little Falls, in Passaic County, to said point in Kearny, the said water being taken and diverted from the Passaic River at Little Falls, by the East Jersey Water Company, by means of a dam, pumping and filtration station at that point; said point of diversion on the Passaic River being above the lands of the owners hereinafter mentioned, and the

diversion being of water which would otherwise flow past and over their said lands, by reason whereof they claim compensation and damages.

Your petitioner, in the said contract with Washington and Beall, agreed that in case it should be found that any power or rights possessed, or that might be acquired by it, for the condemnation of land, water or water rights, might be advantageously used or exercised for the purposes of said contract, to put such powers or rights in force, or permit the said Washington and Beall, or their assigns, so to do, in the name of your petitioner, but at the expense of the said Washington and Beall, or their assigns, and in the said contract between New York and New Jersey Water Company, assignee of Washington and Beall, and East Jersey Water Company, it was agreed that in case it should be found that any power or rights possessed by the City of Bayonne under the said contract with Bayonne, in respect to the condemnation of land, water or water rights, might be advantageously used or exercised for the purpose of the said contract between said city and Washington and Beall, then the New York and New Jersey Water Company agreed to put said powers or rights in force, or permit the East Jersey Water Company, or their assigns, so to do, in the name of the New York and New Jersey Water Company, or in the name of the City of Bayonne, if so empowered, but at the expense of the East Jersey Water Company, its successors or assigns; and this proceeding is taken by your petitioner in aid of the said contracts for the condemnation of lands and rights elsewhere described, for the assurance of said water supply to said City of Bayonne.

4. The name and residence of the owner and occupant of said property and the names and residences of the persons appearing of record to have any interest in said property are:

The Mayor and Aldermen of the City of Paterson.

5. Your petitioner has endeavored, in good faith, to acquire the right and property above described and required, by agreement with the said owner, but, by reason of inability to agree as to the price and damages to be paid therefor, cannot acquire the same by agreement.

Your petitioner therefore prays that three Commissioners may be appointed to fix the compensation to be paid for said property and the damages (if any) by reason of taking the same, and to make an award therefor pursuant to the statute in such case made and provided.

THE MAYOR AND COUNCIL OF THE CITY OF BAYONNE.

By COLLINS & CORBIN,
Attorneys,
243 Washington Street,
Jersey City, N. J.

DANIEL J. MURRAY, *City Attorney.*

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

Daniel J. Murray, being duly sworn, on his oath says: That he is the Agent of the municipal corporation, petitioner named in the foregoing petition, in the matter of proceedings to acquire property and water rights for its water supply, as therein described, having been appointed such Agent by resolutions duly passed by the proper municipal board and authority of said municipal corporation; that the matters stated in the foregoing petition are true, and that deponent was, by said resolutions, duly authorized by said munici-

pal corporation to negotiate for the purchase of the property and right of diversion of water described in the petition, and has, in good faith, endeavored to agree with the owners for the same, but has not been able to agree upon the price, and damages, and the petitioner cannot acquire such right by agreement with the owners because unable to agree with them as to the price and damages; that the petitioner is already taking and diverting water for its public water supply at the place and in the manner described in the petition, and the said water is required and the taking thereof is necessary for the public water supply of said municipal corporation.

Deponent's efforts to agree with the Mayor and Aldermen of the City of Paterson for the taking of the property and rights required as aforesaid, with the assistance of Richard Rossiter, consisted in an application to the Mayor of said City, the Board of Aldermen of said City, in regular session assembled, The Board of Public Works of said City, in regular session assembled, The Board of Finance of said City, in regular session assembled, to each and all of whom he made cash offers in writing for each of the three parcels required; also, of an application to the Park Commission of said City, in regular session assembled, to whom he also made a cash offer in writing for the Parcels A and C, being with respect to the East Side and West Side Parks; also, of an application to the Board of Fire and Police Commissioners of said City, in regular session assembled, to whom he made a cash offer in writing for Parcel B, being with respect to the Engine House Lot, so-called; and neither said Mayor or any of said Boards would or did accept his offers, or make any counter-offer, or in any wise indicate any willingness to agree on any terms whatever, and de-

ponent could make no agreement with them or any of them. Such written offers to said Mayor and Boards and officers were presented to all of them between November 29th and December 22nd, 1910; and at the same time the offers in writing were presented, similar offers were made orally to each of said parties, none of which was accepted.

DANIEL J. MURRAY.

Subscribed and sworn to this 22nd day of December, 1910, before me.

SAMUEL S. MOORE,
Notary Public of New Jersey.

Before Honorable James F. Minturn, Justice of the Supreme Court of New Jersey:

NEW JERSEY SUPREME COURT.

The Mayor and Council of the City of Bayonne,
Petitioner,

against

The Mayor and Aldermen of The City of Paterson.

On Application of the Petitioner to acquire Rights to Take and Divert Water for Public Water Supply.

ORDER FIXING DAY.

Application having been made to me, James F. Minturn, a Justice of the Supreme Court, of the State of New Jersey, by the Mayor and Council of the City of Bayonne, by petition, for the appointment of three Commissioners to fix the compensation to be paid by said Company for the property in said petition described, and the damages (if any) by reason of the taking of the same, I do hereby assign the third day of January, nineteen hundred and eleven, at the hour of eleven o'clock in the forenoon, at the Court House, in Paterson as the time and place for the hearing of said petition, and I direct that notice of said hearing be given to the owners, occupants and persons appearing of record to have an interest in said lands, at least six days before the hearing.

And let said petition and this order be filed in the office of the Clerk of the County of Passaic,

and notice of the pendency of these proceedings be recorded in said County, as by the statute required.

Given under my hand this 23d day of December, Nineteen Hundred and Ten.

JAMES F. MINTURN,
Justice of the New Jersey Supreme Court.

(Filed December 28, 1910.)

To the Mayor and Aldermen of the City of Paterson:

Take Notice, that the petition, copy whereof is hereto appended, was presented to his Honor, James F. Minturn, one of the Justices of the Supreme Court of New Jersey, and by his order, has been filed in the Office of the Clerk of the County of Passaic, together with notice of the pendency thereof and of proceedings thereunder, and that by his said order, a copy whereof is hereto appended, he has assigned the third day of January, 1911, at the hour of 11 A. M., at the Court House in Paterson, as the time and place for the hearing of said petition, and for the appointment of three commissioners to fix the compensation to be paid to you by the undersigned, petitioner, for the taking of your property in said petition described (said property being necessary and being taken by petitioner for its public purposes) and the damages, if any, by reason of the taking of the same, and application will accordingly be made, at said time and place, for an order appointing said Commissioners.

THE MAYOR AND COUNCIL OF THE CITY OF BAYONNE,
Petitioner.

By COLLINS & CORBIN, *Attorneys,*
243 Washington Street, Jersey City.

New Jersey, ss.:

Richard Rossiter, being duly sworn, according to law, on his oath, says: That on the 23rd day of December, A. D. 1910, he served a true copy of the foregoing notice, together with a copy of the petition filed by said petitioner with the Clerk of the County of Passaic on the 23rd day of December, 1910, and the order made by Mr. Justice Minturn upon the filing of said petition, and filed therewith upon The Mayor and Aldermen of the City of Paterson, at Paterson, by giving the same to and leaving the same with Andrew F. McBride, Mayor of said City.

RICHARD ROSSITER,

Subscribed and sworn to at Paterson this 28th day of December, 1910, before me.

WILLIAM V. ROSENKRANS,
Master in Chancery of New Jersey.

(Filed January 5, 1911.)

In Passaic County Clerk's Office, before Hon. James F. Minturn,
Justice of the Supreme Court.

The Mayor and Council of the City of Bayonne, *Petitioner,* against The Mayor and Aldermen of The City of Paterson.	*In Condemnation.*

ORDER POSTPONING HEARING.

On this third day of January, 1911, Messrs. W. H. Corbin and Michael Dunn, appearing for the petitioner, and Mr. Edward F. Merrey, City Counsel, John W. Griggs and W. B. Gourley, counsel, appearing for the respondent, the respondent applied for a postponement of the hearing of the application which the petitioner opposed, whereupon, after hearing counsel of the parties, it is ordered that the hearing be deferred to Wednesday, January 11, 1911, at 10.15 A. M., at the Court House in Paterson.

James F. Minturn,
J. S. C.

(Filed January 12, 1911.)

Before Honorable James F. Minturn,
Justice of the Supreme Court of
the State of New Jersey.

The Mayor and Council of the City of Bayonne, *Petitioner,* against The Mayor and Aldermen of The City of Paterson.	*On Petition for Condemnation.*

ORDER APPOINTING COMMISSIONERS.

Upon this eleventh day of January, Nineteen hundred and eleven, being the date fixed by me for the hearing upon the petition filed in this matter, and upon filing in the office of the Clerk of the County of Passaic of the proofs presented of the service of notice of the hearing upon the owners, occupants and persons interested in the lands and property described in said petition the same being evidence satisfactory to me that said notice has been served as required by the statute; and, after hearing Collins and Corbin, Attorneys for the petitioner, and John W. Griggs and William B. Gourley and Edward F. Merrey, appearing on behalf of the Mayor and Aldermen of the City of Paterson,

I, James F. Minturn, Justice of the Supreme Court of the State of New Jersey, do hereby appoint William W. Watson, William I. Lewis and Charles A. Bergen, three disinterested freeholders,

residents of the County of Passaic, Commissioners, to examine and appraise the lands in the petition described, and to assess the damages, if any, by reason of the taking of the same by the petitioner, on at least six days' notice, to be given by the petitioner to each of said owners, occupants and persons interested in the property, either personally or by leaving at their residence, or by giving the same to their attorney appearing for them on this application.

And it is Ordered, That the said Commissioners shall file their report with the Clerk of the County of Passaic, on or before the tenth day of February, next.

JAMES F. MINTURN,
Justice of the Supreme Court of the State of New Jersey.

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

I, John J. Slater, Clerk of said County and Clerk of the County Courts thereof, do hereby certify that the foregoing is a true copy of a petition for Appointment of Commissioners, and Order fixing day for hearing; Proof of Service of Petition, Order for Hearing, and Notice thereof; Order postponing hearing to January 11, 1911; and Order Appointing Commissioners, *in re*: The Mayor and Council of the City of Bayonne, against The Mayor and Aldermen of the City of Paterson, as the same is taken from and compared with the original Petition, &c, now remaining on file and of record in my Office.

In testimony whereof, I have hereunto set my hand and affixed the seal of
[SEAL] the said Courts and County, at Paterson, this twenty-third day of January, A. D. Nineteen Hundred and Eleven.

JNO. J. SLATER,
Clerk.

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, *Prosecutor,* vs. THE MAYOR AND COUNCIL OF THE CITY OF BAYONNE, *Defendant.*	*On Certiorari.*

REASONS.

THOMAS F. McCRAN,
Atty. of Prosecutor.

Service of a copy of the within Reasons acknowledged this 10th day of February, 1911.

COLLINS & CORBIN,
Attys. for Defendant.

The Mayor and Aldermen of the City of Paterson, the above named prosecutor, by Thomas F. McCran, its attorney, comes and prays that the order made by Honorable James F. Minturn, a Justice of the Supreme Court of the State of New Jersey, on the eleventh day of January, nineteen hundred and eleven, appointing commissioners to fix the compensation to be paid to the said The Mayor and Aldermen of the City of Paterson, as riparian owner, for water sought to be taken and diverted by The Mayor and Council of the City of Bayonne, may be reversed and set aside for the following reasons:

1. The property proposed to be condemned and taken under the proceedings brought up by the writ in this cause is already devoted to public uses. The property known as Westside Park and that known as Eastside Park were acquired by the City of Paterson in the year eighteen hundred and eighty-eight and were laid out, improved and opened for the use and enjoyment of the public of the City of Paterson, in the year eighteen hundred and eighty-nine, and ever since have been and now constitute the public park system of said City, and are used, maintained and kept up at large annual expense on the part of the City for the recreation, enjoyment and benefit of the inhabitants of Paterson under the statutes of the State for such purposes made and provided; that said City has expended in the purchase, maintenance and embellishment of said parks upwards of half a million dollars. The property known as the Engine House lot now is and for more than thirty years last past has been devoted to the public use of said City of Paterson as an engine house and lot. The land upon which said engine house is erected is contiguous to the Passaic River and the fact that the title of the City extends to the middle of the River and that the City is a riparian owner and has all the rights of a riparian owner on the Passaic River, is a valuable element to the City, for the use, enjoyment and ownership of said property. The water which the defendant proposes to take by said proceedings is a part of each of said three properties and forms a part of said two parks as devoted to the public uses, and the taking thereof as to each of said three properties would diminish, impair and destroy *pro tanto* the public use thereof. The waters of said River form a valuable and important element for the parks and the City of Paterson as the owner of said

parks is a riparian owner and entitled as such to the use of said waters of the Passaic River, the same as other riparian owners under the laws of this State, the existence of said water rights having been one of the chief inducements to the City of Paterson in the selection of said properties as sites for public parks.

2. The Mayor and Council of the City of Bayonne has no lawful right or authority to condemn the property proposed to be taken by the proceedings brought up by the writ in this cause.

3. The Mayor and Council of the City of Bayonne has not adopted any ordinance or taken any other lawful proceedings for the construction or purchase of water works and a plant for the supply of water for domestic and public use.

4. The facts stated in the application of the Mayor and Council of the City of Bayonne for the appointment of commissioners brought up by the writ in this cause, do not authorize the said town to condemn lands or water rights and show no *prima facie* right to have commissioners appointed for the purpose in said application set forth.

5. The Mayor and Council of the City of Bayonne has not complied with the requirements of the statutes governing the condemnation of property for the purposes of a water supply or water works, or a plant for the supply of water for domestic or public use.

6. There is no law of this State which authorizes the Mayor and Council of the City of Bayonne to condemn water rights.

7. The Mayor and Council of the City of Bayonne has never submitted descriptions of its source of water supply to the State Water Supply Commission, in accordance with the provisions of the act entitled "An Act to establish a State Water Supply Commission and to define its powers and

duties, the conditions under which waters of this State may be diverted," approved June 17, 1907, and said Commission has never approved the same, for which reason the said The Mayor and Council of the City of Bayonne, although proposing to divert water from a new source of water supply, has no lawful power to condemn the lands or water or condemn the land or water proposed to be taken by said proceedings.

8. The true object and purpose of the proceedings brought up by the writ in this cause, are to enable the New York and New Jersey Water Company and the East Jersey Water Company, or one of them, to acquire for their own uses and purposes, the property of the prosecutor, and the said proceedings, although taken in the name of the City of Bayonne, are for the benefit and uses of said water companies, or one of them, and the power of eminent domain is thereby attempted to be used, contrary to law, for the benefit of the said Water Companies, or one of them, and not for the benefit of the City of Bayonne.

9. The City of Bayonne in and by the said proceedings is attempting, contrary to law, to lend the use of its name and authority for the purpose of acquiring by condemnation the property of the prosecutor not in connection with or for any proper or lawful use of its own, but for the sole use and benefit of the East Jersey Water Company, and the New York and New Jersey Water Company, or one of them.

10. The said proceedings, in divers other respects, are unauthorized and contrary to the statutes of this State.

THOMAS F. MCCRAN,
Attorney for Prosecutor.

(Filed June 13, 1913.)

NEW JERSEY SUPREME COURT.
November Term, 1912.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,

vs.

CITY OF BAYONNE,

Argued November 7, 1912. Decided June, 1913.

Certiorari. Before Justices Swayze, Voorhees and Kalisch.

Per Curiam:

OPINION.

The opinions just filed in Paterson v. Jersey City, and Paterson v. Kearny, are applicable in the present case. It is only necessary to add that the city's power to condemn water and water rights seems to be clear under the act of 1895. The proceedings are affirmed with costs. (C. S. 2198, pl. 38.)

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, *Prosecutor,* *vs.* THE MAYOR AND COUNCIL OF THE CITY OF BAYONNE, *Defendant.*	*On Certiorari.*

RULE OF AFFIRMANCE.

The Court having inspected the writ and return in this cause, and considered the reasons assigned for reversal, and having heard the arguments of counsel, and being of opinion that the order appointing Commissioners in condemnation brought up for review is in all respects regular and lawful:

It is thereupon ordered and adjudged that the same be, and it hereby is, affirmed with costs to the defendant to be taxed.

Eentered June 17, 1913.

On motion of

COLLINS & CORBIN,
Defendant's Attorneys.

New Jersey Supreme Court.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, *Prosecutor and Appellant,* *vs.* THE MONTCLAIR WATER COMPANY, *Respondent.*	*On Certiorari.*

NOTICE OF APPEAL.

To MESSRS. COLLINS & CORBIN:
Attorney of The Montclair Water Company.

Take notice, that The Mayor and Aldermen of the City of Paterson above named appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in the New Jersey Supreme Court in this cause affirming the order appointing the commissioners on condemnation brought up for review by the writ of certiorari in said Supreme Court, on the following grounds.

1st. That the said Supreme Court did adjudge and decide that The Montclair Water Company had the right to condemn the right to take and divert continuously until the fifteenth day of January, A. D. 1987, from the Passaic River at Little Falls, in Passaic County, New Jersey, seven million gallons of water per day, the quantity of water necessary for its water supply as against riparian lands of the City of Paterson upon said Passaic River known as the Westside Park, The

Engine House Lot, and Eastside Park, upon a writ of certiorari issued out of said Supreme Court so adjudged and decided under the following facts, viz: that the said property proposed to be condemned and taken under said proceedings had been and at the time of said proceedings was already devoted to public uses; that the property known as Westside Park and that known as Eastside Park were acquired by the City of Paterson in the year eighteen hundred and eighty-eight, and were laid out, improved and opened for the use and enjoyment of the public by the City of Paterson in the year eighteen hundred and eighty-nine, and ever since have been and now constitute the public park system of said city, and are used, maintained and kept up at large annual expense on the part of the city for the recreation, enjoyment and benefit of the inhabitants of Paterson under the statutes of the State for such purpose made and provided; that said city has expended in the purchase, maintenance and embellishment of said parks upwards of half a million dollars; that the property known as the Engine House lot now is and for more than thirty years last past has been devoted to the public use of the said City of Paterson as an engine house and lot; that the land upon which said engine house is erected is contiguous to the Passaic River and the fact that the title of the city extends to the middle of the river and that the city is a riparian owner and has all the rights of a riparian owner on the Passaic River, is a valuable element to the city for the use, enjoyment and ownership of said property; that the water which the defendant proposes to take by said proceedings is a part of each of said three porperties and forms a part of said two parks as devoted to the public uses, and the taking thereof as to each of said three properties

would diminish, impair and destroy *pro tanto* the the public use thereof; and that the waters of said river form a valuable and important element for the parks and the City of Paterson as the owner of said parks is a riparian owner and entitled as such to the use of the said waters of the Passaic River, the same as other riparian owners under the laws of this State, the existence of said water rights having been one of the chief inducements to the City of Paterson in the selection of said properties as sites for public parks.

2nd. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that The Montclair Water Company had no lawful right or authority to condemn the property proposed to be taken by the proceedings brought up by the writ in this cause.

3rd. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that the facts stated in the application of the Montclair Water Company for the appointment of commissioners brought up by the writ in this cause, do not authorize the said company to condemn lands or water rights and show no *prima facie* right to have commissioners appointed for the purposes in said application set forth.

4th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that inasmuch as The Montclair Water Company has no power or authority to condemn any lands or water rights except for the supply of water to the inhabitants of the Town of Montclair, and that inasmuch as its application to condemn the lands of the prosecutor is for the purpose of supplying water not only to the Town of Montclair, but also to the Town of Bloomfield, the Town of Nutley and the Brough of Glen Ridge, said proceedings

are unlawful, unauthorized and void, and should be set aside.

5th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that inasmuch as The Montclair Water Company is authorized only to condemn lands and water rights within or in the neighborhood of the Town of Montclair, and that inasmuch as the lands and property of the prosecutor sought to be taken are not within or in the neighborhood of the Town of Montclair, said proceedings are consequently unauthorized.

6th. That said Supreme Court in divers other matters apparent in the record did adjudge and decide erroneously.

RANDAL B. LEWIS,
Attorney of Appellant.

NEW JERSEY SUPREME COURT

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,

vs.

MONTCLAIR WATER COMPANY,
Defendant.

WRIT OF CERTIORARI.

Returnable January 30th, 1911.

THOMAS F. McCRAN,
Atty. of Prosecutor.

I allow this writ. Let it be sealed.

JAMES F. MINTURN,
J. S. C.

New Jersey, ss.:

The State of New Jersey to Honorable James F. Minturn, Justice of the [L. S.] Supreme Court of the State of New Jersey,

Greeting:

We being willing, for certain reasons, to be certified of a certain order made by you on the eleventh day of January, Nineteen Hundred and Eleven, appointing commissioners to fix the compensation to be paid to The Mayor and Aldermen of the City of Paterson, as riparian owner, for water sought to be taken and diverted by The Mont-

clair Water Company, do hereby command you that the said order, together with all things touching and concerning the same, to our Justices of the Supreme Court of Judicature of the State of New Jersey, at Trenton, on the thirtieth day of January, Nineteen Hundred and Eleven, you do certify and send, together with this writ, that therein may be done what, of right and according to the laws and constitution of the State of New Jersey, ought to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court, at Trenton, this eleventh day of January, A. D., nineteen hundred and eleven.

WM. RIKER, JR.,
Clerk.

THOMAS F. McCRAN,
Attorney.

RETURN.

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

I, James F. Minturn, Justice of the Supreme Court of the State of New Jersey, do hereby, in the schedule hereto annexed, send to our Justices of the Supreme Court of Judicature of the State of New Jersey, the copy of the Order appointing Commissioners to fix the compensation and all things concerning and touching the same as I am within commanded.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of
[SEAL] the Circuit Court in and for the County of Passaic, this twenty-third day of January, A. D. Nineteen Hundred and Eleven.

JAMES F. MINTURN,
J. S. C.

(Filed December 23, 1910.)

THE MONTCLAIR WATER COMPANY,
Petitioner,
against
THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON.

To his Honor, James F. Minturn, one of the Justices of the Supreme Court of the State of New Jersey:

The petition of The West Orange Water Company respectfully shows:

1. That your petitioner is a corporation of the State of New Jersey, duly organized by certificate of incorporation filed in the Office of the Secretary of State on the 15th day of January, 1887, pursuant to the act entiled: "An Act for the construction, maintenance and operation of water works for the purpose of supplying cities, towns and villages of this State with water," approved April 21st, 1876, and the several supplements thereto and amendments thereof; there being appended to and filed with said certificate the consent of the corporate authorities of the Township of Montclair, in the County of Essex, as by statute required; the term of existence of the corporation expires January 15, 1987.

2. The purposes of the corporation, as set forth in its certificate of incorporation, are as follows: the purpose of constructing, maintaining and operating water works in said township for the purpose of supplying said township, anl the inhabitants thereof, with water; and the purpose of con-

structing, maintaining and operating works in connection therewith for the purpose of supplying water to such other cities, towns, townships and villages as it may be lawful for it to supply for public and private uses, by contract with any of such cities, towns, townships and villages, made with their respective municipal or other authorities.

3. Your petitioner has constructed its water works and is engaged in supplying water directly to the said township (which is now incorporated as the Town of Montclair) and its inhabitants, and to the Town of Bloomfield, and to the Town of Nutley, and to the Borough of Glen Ridge, for a public water supply, by contract; and has for more than five years past been taking and diverting water for its purposes from the Passaic River, at Little Falls, in Passaic County, through the dams, filtration works and pumping station located at that place; and the continuance of such taking and diversion thereof is required and necessary for its public purposes aforesaid, and under its chartered rights and the authority conferred by the aforesaid acts and the general laws of this State, the rights and property of which the following is a particular description, to wit:

The right to take and divert water continuously until the fifteenth day of January, A. D. 1987, from the Passaic River at Little Falls, in Passaic County, New Jersey, not exceeding an average quantity in any year of seven million gallons of water per day, the same being required and necessary to be taken for the purposes of said corporation.

The land and property and against which the said right to divert said water is required, is described as follows, to wit:

The riparian lands situated on the banks of the Passaic River, in the City of Paterson, County of Passaic, State of New Jersey, the said lands being three parcels, to wit:

(A) A tract of land known as the West Side Park, located on the left bank of the Passaic River, and extending from Preakness Avenue, southwesterly up the Passaic River one-half mile, more or less, to the line of the lands late of the estate of Richard Van Houten, being the westerly line of said Park; said River being the southerly boundary of said West Side Park.

(B) A tract of land, located in the City of Paterson, County of Passaic, State of New Jersey, known as the "Engine House Lot," described as follows:

Beginning on the southeasterly side of Water Street, at a point five feet and three and one-half inches westerly from the westerly side of the house of the heirs of Adrian B. Van Houten, deceased; running thence (1) southerly at right angles to Water Street (as the same has been laid out from Temple Street to Albion Street) to the Passaic River; thence (3) northerly parallel with the first course to the southerly side of Water Street; thence (4) easterly along the same three feet and three inches to a turn in said Water Street, and thence (5) easterly, still along the southerly side of said Water Street twenty-one feet and eleven inches to the place of beginning. Said Passaic River being the southerly boundary of said Engine House lot.

(C) A tract of land situate in the City of Paterson, County of Passaic, State of New Jersey, and known as the East Side Park, located on the right bank of the Passaic River, extending from the center of the center line of Broadway southwardly along said river a distance of fifteen hun-

dred (1,500) feet more or less to the southerly boundary of said park, said river being the easterly boundary of said East Side Park.

4. The name and residence of the owner and occupant of said property and the names and residences of the persons appearing or record to have any interest in said property are:

The Mayor and Aldermen of the City of Paterson.

5. Your petitioner has endeavored, in good faith, to acquire the right and property above described and required, by agreement with the said owner, but, by reason of inability to agree as to the price and damages to be paid therefor, cannot acquire the same by agreement.

Your petitioner therefore prays that three Commissioners may be appointed to fix the compensation to be paid for said property and the damages (if any) by reason of taking the same, and to make an award therefor pursuant to the statute in such case made and provided.

THE MONTCLAIR WATER COMPANY,
By COLLINS & CORBIN,
Attorneys,
243 Washington Street,
Jersey City, N. J.

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

Richard Rossiter, being duly sworn, on his oath says: That he is the Agent of the cohporation, petitioner named in the foregoing petition, in the matter of proceedings to acquire property and water rights for its water supply, as therein described, having been appointed such Agent by resolution duly passed by the Board of Directors of said corporation; that the matters stated in the foregoing petition are true, and that deponent was, by said resolutions, duly authorized by said corporation to negotiate for the purchase of the property and right of diversion of water described in the petition, and has, in good faith, endeavored to agree with the owners for the same, but has not been able to agree upon the price, and damages, and the petitioner cannot acquire such right by agreement with the owners because unable to agree with them as to the price and damages; that the petitioner is already taking and diverting water for its public water supply at the place and in the manner described in the petition, and the said water is required and the taking thereof is necessary for the public water supply of said corporation.

Deponent's efforts to agree with the Mayor and Aldermen of the City of Paterson for the taking of the property and rights required as aforesaid, consisted in an application to the Mayor of said City, the Board of Aldermen of said City, in regular session assembled, The Board of Public Works of said City, in regular session assembled, The Board of Finance of said City, in regular session assembled, to each and all of whom he made cash offers in writing for each of the three parcels required; also, of an application to the Park Commission of said City, in regular session assembled,

to whom he also made a cash offer in writing for the Parcels A and C, being with respect to the East Side and West Side Parks; also of an application to the Board of Fire and Police Commissioners of said city in regular session assembled, and to all the members individually to whom he made a cash offer in writing for Parcel B, being with respect to the Engine House Lot, so-called; and neither said Mayor or any of said Boards would or did accept his offers, or make any counter-offer, or in any wise indicate any willingness to agree on any terms whatever, and deponent could make no agreement with them or any of them. Such written offers to said Mayor, and Boards and officers were presented to all of them between November 29th and December 22nd, 1910; and at the same time the offers in writing were presented, similar offers were made orally to each of said parties, none of which was accepted.

RICHARD ROSSITER.

Subscribed and sworn to this 23rd
day of Decr., 1910, before me.

SAMUEL S. MOORE,
Notary Public of New Jersey.

Before Honorable James F. Minturn, Justice of the Supreme Court of New Jersey:

Montclair Water Company,
Petitioner,

against

The Mayor and Aldermen of The City of Paterson,

ORDER FIXING DAY.

On Application of the Petitioner to acquire Rights to Take and Divert Water for Public Water Supply.

Application having been made to me, James F. Minturn, a Justice of the Supreme Court of the State of New Jersey, by the Montclair Water Company, by petition, for the appointment of three Commissioners to fix the compensation to be paid by said Company for the property in said petition described, and the damages (if any) by reason of the taking of the same, I do hereby assign the third day of January, nineteen hundred and eleven, at the hour of eleven o'clock in the forenoon, at the Court House, in Paterson, as the time and place for the hearing of said petition, and I direct that notice of said hearing be given to the owners, occupants and persons appearing of record to have an interest in said lands, at least six days before the hearing.

And let said petition and this order be filed in the office of the Clerk of the County of Passaic, and notice of the pendency of these proceedings be

recorded in said County, as by the statute required.

Given under my hand this 23d day of December, Nineteen Hundred and Ten.

JAMES F. MINTURN,
Justice of the New Jersey Supreme Court.

(Filed December 28, 1910.)

To the Mayor and Aldermen of the City of Paterson:

Take notice, that the petition, copy whereof is hereto appended, was presented to his Honor, James F. Minturn, one of the Justices of the Supreme Court of New Jersey, and by his order, has been filed in the Office of the Clerk of the County of Passaic, together with notice of the pendency thereof and of proceedings thereunder, and that by his said order, copy whereof is hereto appended, he has assigned the third day of January, 1911, at the hour of 11 A. M., at the Court House in Paterson, as the time and place for the hearing of said petition, and for the appointment of three Commissioners to fix the compensation to be paid to you by the undersigned, petitioner, for the taking of your property in said petition described (said property being necessary and being taken by petition for its public purposes) and the damages, if any, by reason of the taking of the same, and application will accordingly be made, at said time and place, for an order appointing said Commissioners.

MONTCLAIR WATER COMPANY,
Petitioner.

By COLLINS & CORBIN, *Attorneys,*
243 Washington Street, Jersey City.

New Jersey, ss.:

Richard Rossiter, being duly sworn, according to law, on his oath, says: That on the 23rd day of December, A. D. 1910, he served a true copy of the foregoing notice, together with a copy of the petition filed by said petitioner with the Clerk of the County of Passaic on the 23rd day of December, 1910, and the order *named* by Mr. Justice Minturn upon the filing of said petition, and filed therewith upon The Mayor and Aldermen of the City of Paterson, at Paterson, by giving the same to and leaving the same with Andrew F. McBride, Mayor of said City.

Richard Rossiter,

Subscribed and sworn to at Paterson this
28th day of December, 1910, before me.

William V. Rosenkrans,
Master in Chancery of New Jersey.

(Filed, January 5, 1911.)

MONTCLAIR WATER COMPANY, *Petitioner,* against THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON.	*In Condemnation.*

tice of the Supreme Court.

In Passaic County Clerk's Office, before HON. JAMES F. MINTURN, Jus-

ORDER POSTPONING HEARING.

On this third day of January, 1911, Messrs. W. H. Corbin and Michael Dunn appearing for the petitioner, and Mr. Edward F. Merrey, City Counsel, John W. Griggs and W. B. Gourley, counsel appearing for the respondent, the respondent applied for a postponement of the hearing of the application which the petitioner opposed, whereupon, after hearing counsel of the parties, it is ordered that the hearing be deferred to Wednesday, January 11, 1911, at 10.15 A. M., at the Court House in Paterson.

JAMES F. MINTURN,
J. S. C.

(Filed January 12, 1911.)

THE MONTCLAIR WATER COMPANY, *Petitioner,* against THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON.	*On Petition for Condemnation.*

Before HONORABLE JAMES F. MINTURN, Justice of the Supreme Court of the State of New Jersey.

ORDER APPOINTING COMMISSIONERS.

Upon this eleventh day of January, Nineteen hundred and eleven, being the date fixed by me for the hearing upon the petition filed in this matter, and upon filing in the office of the Clerk of the County of Passaic of the proofs presented of the service of notice of the hearing upon the owners, occupants and persons interested in the lands and property described in said petition, the same being evidence satisfactory to me that said notice has been served as required by the statute; and, after hearing Collins and Corbin, Attorneys for the petitioner, and John W. Griggs and William B. Gourley and Edward F. Merrey, appearing on behalf of the Mayor and Aldermen of the City of Paterson,

I, JAMES F. MINTURN, Justice of the Supreme Court of the State of New Jersey, do hereby appoint William W. Watson, William I. Lewis and Charles A. Bergen, three disinterested freeholders, residents of the County of Passaic, Commissioners,

to examine and appraise the lands in the petition described, and to assess the damages, if any, by reason of the taking of the same by the petitioner, on at least six days' notice, to be given by the petitioner to each of said owners, occupants and persons interested in the property, either personally or by leaving at their residence, or by giving the same to their attorney appearing for them on this application.

And it is Ordered, That the said Commissioners shall file their report with the Clerk of the County of Passaic, on or before the tenth day of February, next.

JAMES F. MINTURN,
Justice of the Supreme Court of the State of New Jersey.

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

I, John J. Slater, Clerk of said County and Clerk of the County Courts thereof, do hereby certify that the foregoing is a true copy of a petition for Appointment of Commissioners, and Order fixing day for hearing; Proof of Service of Petition, Order for Hearing, and Notice thereof; Order postponing hearing to January 11, 1911; and Order Appointing Commissioners, *in re* The Montclair Water Company, against The Mayor and Aldermen of the City of Paterson, as the same is taken from and compared with the original Petition, &c., now remaining on file and of record in my Office.

In testimony whereof, I have hereunto set my hand and affixed the seal of
[SEAL] the said Courts and County, at Paterson, this twenty-third day of January, A. D. Nineteen Hundred and Eleven.

JNO. J. SLATER,
Clerk.

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, *Prosecutor,* vs. THE MONTCLAIR WATER COMPANY, *Defendant.*	*On Certiorari.*

REASONS.

THOMAS F. McCRAN,
Attorneys for Defendant.

Service of a copy of the within Reasons acknowledged this 10th day of February, 1911.

COLLINS & CORBIN,
Attys. for Defendant.

The Mayor and Aldermen of the City of Paterson, the above named prosecutor, by Thomas F. McCran, its attorney, comes and prays that the order made by Honorable James F. Minturn, a Justice of the Supreme Court of the State of New Jersey, on the eleventh day of January, nineteen hundred and eleven, appointing commissioners to fix the compensation to be paid to the said The Mayor and Aldermen of the City of Paterson, as riparian owner, for water sought to be taken and diverted by The Montclair Water Company, may be reversed and set aside for the following reasons:

1. The property proposed to be condemned and taken under the proceedings brought up by the

writ in this cause is already devoted to public uses. The property known as Westside Park and that known as Eastside Park were acquired by the City of Paterson in the year eighteen hundred and eighty-eight and were laid out, improved and opened for the use and enjoyment of the public of the City of Paterson, in the year eighteen hundred and eighty-nine, and ever since have been and now constitute the public park system of said City, and are used, maintained and kept up at large annual expense on the part of the City for the recreation, enjoyment and benefit of the inhabitants of Paterson under the statutes of the State for such purposes made and provided; that said City has expended in the purchase, maintenance and embellishment of said parks upwards of half a million dollars. The property known as the Engine House lot now is and for more than thirty years last past has been devoted to the public use of the said City of Paterson as an engine house and lot. The land upon which said engine house is erected is contiguous to the Passaic River and the fact that the title of the City extends to the middle of the River and that the City is a riparian owner and has all the rights of a riparian owner on the Passaic River, is a valuable element to the City, for the use, enjoyment and ownership of said property. The water which the defendant proposes to take by said proceedings is a part of each of said three properties and forms a part of said two parks as devoted to the public uses, and the taking thereof as to each of said three properties would diminish, impair and destroy *pro tanto* the public use thereof. The waters of said River form a valuable and important element for the parks and the City of Paterson as the owner of said parks is a riparian owner and entitled as such to the use of said waters of the Passaic River, the

same as other riparian owners under the laws of this State, the existence of said water rights having been one of the chief inducements to the City of Paterson in the selection of said properties as sites for public parks.

2. The Montclair Water Company has no lawful right or authorty to condemn the property proposed to be taken by the proceedings brought up by the writ in this cause.

3. The facts stated in the application of The Montclair Water Company for the appointment of commissioners brought up by the writ in this cause do not authorize the said company to condemn lands or water rights and show no *prima facie* right to have commissioners appointed for the purposes in said application set forth.

4. The Montclair Water Company has no power or authority to condemn any lands or water rights except for the supply of water to the inhabitants of the Town of Montclair, and inasmuch as its application to condemn the lands of the prosecutors is for the purpose of supplying water not only to the Town of Montclair, but also to the Town of Bloomfield, the Town of Nutley and the Borough of Glen Ridge, said proceedings are unlawful, unauthorized and void, and should be set aside.

5. The Montclair Water Company is authorized only to condemn lands and water rights within or in the neighborhood of the Town or Montclair. The lands and property of the prosecutors sought to be taken are not within or in the neigborhood of the Town of Montclair, and consequently said proceedings are unauthorized.

6. The said proceedings are in divers other respects unauthorized and contrary to the statutes of the State.

THOMAS F. MCCRAN,
Attorney for Prosecutor.

New Jersey State Library

(Filed June 13, 1913.)

NEW JERSEY SUPREME COURT.
November term, 1912.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,

vs.

MONTCLAIR WATER COMPANY.

OPINION.

Argued November 7, 1912. Decided June 1913.

Certiorari, before Justices Swayze, Voorhees

Per Curiam:

This case differs from the case of the same prosecutor against the West Orange Company in that Montclair adjoins Little Falls, which may properly be said to be in the neighborhood, if that were necessary; and in that the certificate of incorporation states as one of its purposes the operation of water works for the purpose of supplying water to such other municipalities as it may be lawful for it to supply. The case is to that extent stronger in favor of the defendant.

The proceedings are affirmed with costs.

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,

vs.

THE MONTCLAIR WATER COMPANY.

On Certiorari.

RULE OF AFFIRMANCE.

The Court having inspected the writ and return in this cause, and considered the reasons assigned for reversal, and having heard the arguments of counsel, and being of opinion that the order appointing Commissioners in condemnation brought up for review is in all respects regular and lawful:

It is thereupon ordered and adjudged that the same be, and it hereby is, affirmed with costs to the defendant to be taxed.

Entered June 17, 1913.

On motion of

COLLINS & CORBIN,
Defendant's Attorneys.

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New Jersey Supreme Court.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, *Prosecutor and Appellant,* *vs.* THE TOWN OF HARRISON, *Respondent.*	*On Certiorari.*

NOTICE OF APPEAL.

To MESSRS. COLLINS & CORBIN:
Attorney of The Town of Harrison.

Take notice, that The Mayor and Aldermen of the City of Paterson above named appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in the New Jersey Supreme Court in this cause affirming the order appointing the commissioners on condemnation brought up for review by the writ of certiorari in said Supreme Court, on the following grounds.

1st. That the said Supreme Court did adjudge and decide that The Town of Harrison had the right to condemn the right to take and divert continuously until the sixteenth day of August, A. D. 1929, from the Passaic River at Little Falls in Passaic County, New Jersey, two million gallons of water per day, the quantity of water necessary for its water supply as against riparian lands of the City of Paterson upon said Passaic River known as the Westside Park, The Engine House Lot, and Eastside Park, upon a writ of certiorari issued out of said Supreme Court to review the proceedings to condemn said right, and said Su-

preme Court so adjudged and decided under the following facts, viz: that the said property proposed to be condemned and taken under said proceedings had been and at the time of said proceedings was already devoted to public uses; that the property known as Westside Park and that known as Eastside Park were acquired by the City of Paterson in the year eighteen hundred and eighty-eight, and were laid out, improved and opened for the use and enjoyment of the public by the City of Paterson in the year eighteen hundred and eighty-nine, and ever since have been and now constitute the public park system of said city, and are used, maintained and kept up at large annual expense on the part of the city for the recreation, enjoyment and benefit of the inhabitants of Paterson under the statutes of the State for such purpose made and provided; that said city has expended in the purchase, maintenance and embellishment of said parks upwards of half a million dollars; that the property known as the Engine House lot now is and for more than thirty years last past has been devoted to the public use of the said City of Paterson as an engine house and lot; that the land upon which said engine house is erected is contiguous to the Passaic River and the fact that the title of the city extends to the middle of the river and that the city is a riparian owner and has all the rights of a riparian owner on the Passaic River, is a valuable element to the city for the use, enjoyment and ownership of said property; that the water which the defendant proposes to take by said proceedings is a part of each of said three properties and forms a part of said two parks as devoted to the public uses, and the taking thereof as to each of said three properties would diminish, impair and destroy *pro tanto* the public use thereof; and

that the waters of said river form a valuable and important element for the parks and the City of Paterson as the owner of said parks is a riparian owner and entitled as such to the use of the said waters of the Passaic River, the same as other riparian owners under the laws of this State, the existence of said water rights having been one of the chief inducements to the City of Paterson in the selection of said properties as sites for public parks.

2nd. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that the Town of Harrison had no lawful right or authority to condemn the property proposed to be taken by the proceedings brought up by the writ in this cause.

3rd. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that the Town of Harrison has not adopted any ordinance or taken any other lawful proceedings for the construction or purchase of water works and a plant for the supply of water for domestic and public uses.

4th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that the facts stated in the application of the Town of Harrison for the appointment of commissioners brought up by the writ in this cause, do not authorize the said town to condemn lands or water rights and show no *prima facie* right to have commissioners appointed for the purposes in said application set forth.

5th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that the Town of Harrison has not complied with the requirements of the statutes governing con-

demnation of property for the purposes of a water supply or water works or a plant for the supply of water for domestic or public use in towns.

6th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that there is no law in this State which authorizes the Town of Harrison or any incorporated town to condemn water rights.

7th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that, inasmuch as by the act entitled "An Act to enable incorporated towns to construct water works for the extinguishment of fires and supplying the inhabitants thereof with pure and wholesome water", passed March 4, 1894, it is provided that any incorporated town is authorized to take and convey from such source or sources as may be practicable into and through such town such quantities of pure and wholesome water as may be required for domestic use, the extinguishment of fire and other purposes by the inhabitants residing within the corporate limits of said town, and that inasmuch to this end, such town is authorized by its board of commissioners or other governing body by whatever name it may be called to appoint three commissioners to be called water commissioners, who shall have the powers and perform the duties in said act mentioned, and that inasmuch as The Town of Harrison has never appointed such water commissioners, the proceedings of said town are for that reason wholly unauthorized and void, that the application for the appointment of commissioners in this cause should have been denied for that reason.

8th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor,

that the true objects and purposes of the proceedings brought up by the writ in this cause are to enable the East Jersey Water Company and the New Jersey Suburban Water Company, or one of them to acquire for their own use and purposes, the property of the prosecutor, and that said proceedings, although taken in the name of the Town of Harrison, are for the benefits and uses of said Water Companies, or one of them, and that the power of eminent domain is hereby attempted to be used, contrary to law, for the benefit of said water companies and not for the benefit of the Town of Harrison.

9th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that The Town of Harrison in and by the said proceedings is attempting, contrary to law, to lend the use of its name and authority for the purpose of acquiring by condemnation the property of the prosecutor, not in connection with or for any proper or lawful use of its own, but for the sole use and benefit of the East Jersey Water Company and the New Jersey Suburban Water Company, or one of them.

10th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that inasmuch as The Town of Harrison has never submitted descriptions of its source of water supply to the State Water Supply Commission, in accordance with the provisions of the act entitled "An Act to establish a State Water Supply Commission and to define its powers and duties, the conditions under which waters of this State may be diverted," approved June 17, 1907, and inasmuch as the said commission has never approved the same, the said Town of Harrison, although proposing to divert water from a new source of

water supply, has no lawful power to condemn lands or water or condemn the lands or water proposed to be taken by said proceedings.

11th. That said Supreme Court in divers other matters apparent in the record did adjudge and decide erroneously.

RANDAL B. LEWIS,
Attorney of Appellant.

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,

vs.

THE TOWN OF HARRISON,
Defendant.

WRIT OF CERTIORARI.

Returnable October 13th, 1911.

THOMAS F. McCRAN,
Atty. of Prosecutor.

I allow this writ. Let it be sealed.

C. W. PARKER,
J. S. C.

New Jersey, ss.:

The State of New Jersey to Honorable Charles W. Parker, Justice of the [L. S.] Supreme Court of the State of New Jersey,

Greeting:

We being willing, for certain reasons, to be certified of a certain order made by you on the twenty-sixth day of September, Nineteen Hundred and Eleven, appointing commissioners to fix the compensation to be paid to The Mayor and Aldermen of the City of Paterson, as riparian owner, for water sought to be taken and diverted by The Town of Harrison, do hereby command you that the said order, together with all things touching and concerning the same, to our Justices of the

Supreme Court of Judicature of the State of New Jersey, at Trenton, on the thirteenth day of October, Nineteen Hundred and Eleven, you do certify and send, together with this writ, that herein may be done what, of right and according to the laws and constitution of the State of New Jersey ought to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court, at Trenton, this twenty-sixth day of September, A. D. Nineteen Hundred and Eleven.

WM. RIKER, JR.,
Clerk.

THOMAS F. MCCRAN,
Attorney.

RETURN.

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

I, Charles W. Parker, Justice of the Supreme Court of the State of New Jersey, do hereby, in the schedule hereto annexed, send to our Justices of the Supreme Court of Judicature of the State of New Jersey, the copy of the Order Appointing Commissioners to fix the compensation, and all things concerning and touching the same as I am within commanded.

In testimony whereof I have hereunto set my hand and affixed the seal of the
[L. S.] Circuit Court in and for the County of Passaic, this eleventh day of October, A. D. Nineteen Hundred and Eleven.

CHARLES W. PARKER,
J. S. C.

(Filed July 25, 1911.)

To the Mayor and Aldermen of the City of Paterson:

Take notice, that the petition, copy whereof is hereto appended, was presented to his Honor James F. Minturn, one of the Justices of the Supreme Court of New Jersey, and by his order, has been filed in the office of the Clerk of the County of Passaic, New Jersey, together with notice of the pendency thereof and of proceedings thereunder, and that by his said order, copy whereof is hereto appended, he has assigned the 19th day of September, 1911, at the hour of 11 A. M. at the Court House, in the City of Paterson, as the time and place for the hearing of said petition, and for the appointment of three commissioners to fix the compensation to be paid to you by the undersigned, petitioner, for the taking of your property in said petition described; (said property being necessary and being taken by your petitioner for its public purposes) and the damages, if any, by reason of the taking of the same, and application will accordingly be made, at said time and place, for order appointing said commissioners.

The Town of Harrison,
Petitioner.

By Michael T. Barrett,
Attorney, Newark.

Collins & Corbin, *Attys.*
243 Washington Street, Jersey City.

THE TOWN OF HARRISON,
Prosecutor,

against

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,

To the Honorable James F. Minturn, *Justice of the Supreme Court of New Jersey*:

The petition of the Town of Harrison respectfully shows:

1. Your petitioner is a municipal corporation having power to take land and property for public use, and has determined to take for public use the property hereinafter described for the purpose of its water supply; for which purpose it is required and necessary; and your petitioner has not been able to acquire said property by agreement with the owner by reason of disagreement as to the price.

2. The following is a particular description of the property required:

The right to take and divert continuously until the 16th day of August, A. D. 1929, from the Passaic River at Little Falls, in Passaic County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of said municipal corporation, not exceeding an average quantity in any year of two million gallons of water per day, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property and against which the said right to divert said water is required is described as follows, to wit:

The riparian lands situated on the banks of the Passaic River, in the City of Paterson, County of Passaic, State of New Jersey, the said lands being three parcels, to wit:

(A). A tract of land known as the West Side Park, located on the left bank of the Passaic River, and extending from Preakness Avenue southwesterly up the Passaic River one-half mile, more or less, to the line of the lands late of the estate of Richard Van Houten, being the westerly line of said Park; said river being the southerly boundary of said West Side Park.

(B). A tract of land, located in the City of Paterson, County of Passaic, State of New Jersey, known as the "Engine House Lot," described as follows:

Beginning on the southeasterly side of Water Street, at a point five feet and three and one-half inches westerly from the westerly side of the house of the heirs of Adrian B. Van Houten, deceased; running thence (1) southerly at right angles to Water street, as the same has been laid out from Temple street, to Albion street to the Passaic River; thence (3) northerly parallel with the first course to the southerly side of Water street; thence (4) easterly along the same three feet and three inches to a turn in said Water street, and thence (5) easterly, still along the southerly side of said Water street twenty-one feet and eleven inches to the place of beginning. Said Passaic River being the southerly boundary of said Engine House lot.

(C). A tract of land situate in the City of Paterson, County of Passaic, State of New Jersey, and known as the East Side Park, located on the right bank of the Passaic River, extending from the cen-

ter of the center line of Broadway southwardly along said river a distance of fifteen hundred (1,500) feet, more or less, to the southerly boundary of said park; said river being the easterly boundary of said East Side Park.

3. The Town of Harrison was chartered by Chapter 275 of the Laws of 1869 and has the powers granted thereby and by the several acts supplementary and amendatory thereof, and by the general laws of the State applicable to Towns. Said Town owns and controls a system of water supply mains throughout its public streets and highways, through which it is and for many years has been receiving and distributing a supply of water for fire protection and for the use of its inhabitants.

The said supply of water is now obtained by said Town from the Passaic River at Little Falls and has been so obtained for more than seven years last past continuously by virtue of a contract dated September 15, 1903, made between said Town and The New Jersey Suburban Water Company, whereby said Company agreed to furnish said Town an entire and adequate supply of water for fifteen years, commencing six months after the date of said contract, with the option to the Town of extending the contract for a second period of ten years. The right to take and divert said water as against certain riparian owners on the Passaic River below Little Falls having been questioned the Town of Harrison by its council adopted resolutions on October 18, 1910, as follows:

> "Resolved, that the town of Harri-
> "son hereby determines to acquire said
> "right of diversion, namely, the right to
> "divert an average daily amount of two
> "million gallons of water per day in each
> "year until August 16, 1929, at Little

"Falls, on the Passaic River, the same "being necessary for the purpose of the "said contract (meaning the contract "above mentioned) and for the use of the "Town of Harrison for public water sup- "ply, and if unable to agree with any of "the owenrs of the riparian lands for the "said right of diversion, to condemn said "rights against said owners for the pub- "lic use aforesaid."

And the Town of Harrison did thereby determine to continue to take said water at said point and to enlarge such supply from the Passaic River through and by virtue of the said contract, and through the agency of the said The New Jersey Suburban Water Company. The Town of Harrison has the power to take said water at said point for the public water supply of the Town, by virtue of its charter and supplements and the general laws of the State.

4. The names and residences of the owners and occupants of said property and the names and residences of the persons appearing of record to have any interest in said property are: The Mayor and Aldermen of the City of Paterson.

5. Your petitioner has endeavored, in good faith, to acquire the right and property above described and required, by agreement with the said owner, but, by reason of inability to agree as to the price and damages to be paid therefor, cannot acquire the same by agreement.

Your petitioner therefor prays that three Commisioners may be appointed to fix the compensation to be paid for said property and the damages (if any) by reason of taking the same, and to

make an award therefor pursuant to the statute in such case made and provided.

THE TOWN OF HARRISON,
By MICHAEL T. BARRETT, *Attorney,*
Newark.

By COLLINS & CORBIN, *Attorneys,*
243 Washington Street, Jersey City, N. J.

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

Clarence T. Van Deren, being duly sworn, on his oath, says: That he is the Agent of the municipal corporation, petitioner named in the foregoing petition, in the matter of proceedings to acquire property and water rights for its water supply, as therein described, having been appointed such Agent by resolutions duly passed by the proper municipal board and authority of said municipal corporation; that the matters stated in the foregoing petition are true, and that the deponent was, by said resolutions, duly authorized by said municipal corporation to negotiate for the purchase of the property and right of diversion of water described in the petition, and has, in good faith, endeavored to agree with the owners for the same, but has not been able to agree upon the price, and damages; and the petitioner cannot acquire such right by argument with the owners because unable to agree with them as to the price and damages that the petitioner is already taking and diverting water for its public water supply at the place and in the manner described in the petition, and the said water is required and the taking thereof is necessary for the public water supply of said municipal corporation.

Deponent's efforts to agree with the Mayor and Aldermen of the City of Paterson for the taking of the property and rights required as aforesaid, consisted in an application with the assistance of Mr. Richard Rossiter to the Mayor of said City,

the Board of Finance of said City, in regular session assembled, to each and all of whom he made cash offers in writing for each of the three parcels required, also of an application to, and neither said Mayor or said Board would or did accept his offers, or make any counter-offer, or in anywise indicate any willingness to agree on any terms whatever, and deponent could make no agreement with them. Such written offers to said Mayor and Boards and officers were presented to all of them between June 22nd and July 17th, 1911, and at the same time the offers in writing were presented, similar offers were made orally to each of said parties, none of which was accepted.

CLARENCE T. VAN DEREN,

Subscribed and sworn to this 17th day of July, 1911, before me,

CHARLES R. COOK,

[L. S.] *Notary Public of New Jersey.*

Before Honorable James F. Minturn, Justice of the Supreme Court of New Jersey:

The Town of Harrison.
Petitioner,

against

The Mayor and Aldermen of the City of Paterson.

ORDER FIXING DAY.

On Application of the Petitioner to Acquire Rights to Take and Divert Water for Public Water Supply.

Application having been made to me, James F. Minturn, a Justice of the Supreme Court, of the State of New Jersey, by the Town of Harrison, by petition, for the appointment of three Commisioners to fix the compensation to be paid by said Company for the property in said petition described, and the damages (if any) by reason of the taking of the same, I do hereby assign the nineteenth day of September, nineteen hundred and eleven, at the hour of eleven o'clock in the forenoon, at the Court House, in the City of Paterson, as the time and place for the hearing of said petition, anl I direct that notice of said hearing be given to the owners, occupants and persons appearing of record to have an interest in said lands, at least six days before the hearing.

And let said petition and this order be filed in the office of the Clerk of the County of Passaic, and notice of the pendency of these proceedings be

recorded in said County, as by the statute required.

Given under my hand this 22nd day of July, Nineteen Hundred and Eleven.

JAMES F. MINTURN,
Justice of the New Jersey Supreme Court.

(Filed July 27, 1911.)

To the Mayor and Aldermen of the City of Paterson:

Take notice, that the petition, copy whereof is hereto appended, was presented to his Honor, James F. Minturn, one of the Justices of the Supreme Court of New Jersey and by his order has been filed in the office of the Clerk of the County of Passaic, New Jersey, together with notice of the pendency thereof and of proceedings thereunder, and that by his said order, copy whereof is hereto appended, he has assigned the 19th day of Sept., 1911, at the hour of 11 A. M., at the Court House in Paterson, as the time and place for the hearing of said petition, and for the appointment of three commissioners to fix the compensation to be paid to you by the undersigned petitioner for the taking of your property in said petition described (said property being necessary and being taken by your petitioner for its public purposes) and the damages, if any, by reason of the taking of the same, and application will accordingly be made, at said time and place for an order appointing said commissioners.

THE TOWN OF HARRISON,
Petitioner.

By MICHAEL T. BARRETT,
Attorney, Newark.
COLLINS & CORBIN, *Attorneys,*
243 Washington Street, Jersey City.

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

Richard Rossiter, being duly sworn, according to law, on his oath says: That on the 25th day of July, A. D. 1911, he served a true copy of the foregoing notice, together with a copy of the petition filed by said petitioner with the Clerk of the County of Passaic on the 25th day of July, 1911, and the order made by Mr. Justice Minturn upon the filing of said petition, and filed therewith, upon Andrew F. McBride, Mayor of said City, at the City of Paterson, at his office in the City Hall, by giving the same to and leaving the same with him.

RICHARD ROSSITER.

Subscribed and sworn to at Paterson this }
25th day of July, 1911, before me, }

C. FRANK KIREKER,
Master in Chancery of New Jersey.

(Filed September 26, 1911.)

In Passaic County Clerk's Office, before Hon. James F. Minturn, Justice of the Supreme Court.

The Town of Harrison, against The Mayor and Aldermen of the City of Paterson.	*In Condemnation.*

ORDER POSTPONING HEARING.

On this Nineteenth day of September, 1911, upon motion of Collins & Corbin, attorneys of petitioner, and upon consent of Thomas F. McCran, City Attorney for respondent, it is,

Ordered That the hearing on the application be deferred to Tuesday, September twenty-sixth, Nineteen Hundred and Eleven, at eleven o'clock A. M., at the Court House in Paterson.

James F. Minturn,
J. S. C.

We hereby consent to the making and filing of the foregoing order.

Collins & Corbin,
Attorneys for Petitioner.
Thomas F. McCran,
Attorney for Respondent.

(Filed September 30, 1911.)

Before Honorable Charles W. Parker,
Justice of the Supreme Court of
the State of New Jersey.

The Town of Harrison, *Petitioner,* against The Mayor and Aldermen of The City of Paterson,	*On Petition for Condemnation.*

ORDER APPOINTING COMMISSIONERS.

Upon this 26th day of September, 1911, being the date fixed for the hearing upon the petition filed in this matter, and upon filing in the office of the Clerk of the County of Passaic of the proofs presented of the service of notice of the hearing upon the owners, occupants and persons interested in the lands and property described in said petition, the same being evidence satisfactory to me that said notice has been served as required by the statute; and after hearing Collins & Corbin, Attorneys for the petitioner, and Thomas F. McCran, appearing on behalf of the Mayor and Aldermen of the City of Paterson, and waiving any objection to the making hereof by reason of the absence of Hon. James F. Minturn, who made the former orders herein, I, Charles W. Parker, Justice of the Supreme Court of the Sate of New Jersey, sitting in the place and stead of said James F. Minturn, do hereby appoint William W. Watson, William I. Lewis and Charles A. Bergen, three dis-

interested freeholders, residents of the County of Passaic, Commissioners, to examine and appraise the lands in the petition described, and to assess the damages, if any, by reason of the taking of the same by the petitioner, on at least six days' notice, to be given by the petitioner to each of said owners, occupants and persons interested in the property, either personally or by leaving at their residence, or by giving the same to their attorney appearing for them on this application.

And it is Ordered, That the said Commissioners shall file their report with the Clerk of the County of Passaic, on or before the twenty-sixth day of October next.

CHARLES W. PARKER,
Justice of the Supreme Court
of the State of New Jersey.

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

I, John J. Slater, Clerk of said County and Clerk of the County Courts thereof, do hereby certify that the foregoing is a true copy of a Petition for Appointment of Commissioners, and Order fixing day for hearing; Proof of Service of Petition, Order for hearing, and Notice thereof; Order postponing hearing to September 26, 1911; and Order Appointing Commissioners, in re The Town of Harrison, Petitioner, vs. The Mayor and Aldermen of the City of Paterson, Respondent, as the same is taken from and compared with the original Petition, &c., now remaining on file and of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Courts and County, at Paterson, this Tenth day of October, A. D. Nineteen Hundred and Eleven.

JOHN J. SLATER,
Clerk.

[L. S.]

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, *Prosecutor,* *vs.* THE TOWN OF HARRISON, *Defendant.*	*On Certiorari.*

REASONS.

THOMAS F. McCRAN,
Att'y of Prosecutor.

Service of a copy of the within reasons acknowledged this 20th day of October, 1911.

MICHAEL T. BARRETT,
By COLLINS & CORBIN,
Attys. of Defendant.

The Mayor and Aldermen of the City of Paterson, the above named prosecutor, by Thomas F. McCran, its attorney, comes and prays that the order made by Honorable Charles W. Parker, a Justice of the Supreme Court of the State of New Jersey, on the 26th day of September, nineteen hundred and eleven, appointing commissioners to fix the compensation to be paid to the said The Mayor and Aldermen of the City of Paterson, as riparian owner, for water sought to be taken and diverted by The Town of Harrison, may be reversed and set aside for the following reasons:

1. The property proposed to be condemned and taken under the proceedings brought up by the

writ in this cause is already devoted to public uses. The property known as Westside Park and that known as Eastside Park were acquired by the City of Paterson in the year eighteen hundred and eighty-eight, and were laid out, improved and opened for the use and enjoyment of the public by the City of Paterson in the year eighteen hundred and eighty-nine, and ever since have been and now constitute the public park system of said City, and are used, maintained and kept up at large annual expense on the part of the City for the recreation, enjoyment and benefit of the inhabitants of Paterson under the statutes of the State for such purpose made and provided; that said City has expended in the purchase, maintenance and embellishment of said parks upwards of half a million dollars. The property known as the Engine House lot now is and for more than thirty years last past has been devoted to the public use of the said City of Paterson as an engine house and lot. The land upon which said engine house is erected is contiguous to the Passaic River and the fact that the title of the City extends to the middle of the River and that the City is a riparian owner and has all the rights of a riparian owner on the Passaic River, is a valuable element to the City for the use, enjoyment and ownership of said property. The water which the defendant proposes to take by said proceedings is a part of each of said three properties and forms a part of said two parks as devoted to the public uses, and the taking thereof as to each of said three properties would diminish, impair and destroy (*Pro Tanto* the public use thereof. The waters of said River form a valuable and important element for the parks and the City of Paterson as the owner of said parks is a riparian owner and entitled as such to the use of the said waters of the Passaic River, the same as other

riparian owners under the laws of this State, the existence of said water rights having been one of the chief inducements to the City of Paterson in the selection of said properties as sites for public parks.

2. The Town of Harrison has no lawful right or authority to condemn the property proposed to be taken by the proceedings brought up by the writ in this cause.

3. The Town of Harrison has not adoptel any ordinance or taken any other lawful proceedings for the construction or purchase of water works and a plant for the supply of water for domestic and public uses.

4. The facts stated in the application of the Town of Harrison for the appointment of commissioners brought up by the writ in this cause do not authorize the said Town to condemn lands or water rights and show no *prima facie* right to have commissioners appointed for the purpose in said application set forth.

5. The town of Harrison has not complied with the requirements of the statutes governing condemnation of property for the purposes of a water supply or waer works or a plant for the supply of water for domestic or public use in towns.

6. There is no law in this State which authorizes the Town of Harrison or any incorporated Town to condemn water rights.

7. By the act entitled "An act to enable incorporated towns to construct water works for the extinguishment of fires and supplying the inhabiants thereof with pure and wholesome water," passed March 5, 1894, it is provided that any incorporated town is authorized to take and convey

from such source or sources as may be practicable into and through such town such quantities of pure and wholesome water as may be required for domestic use, the extinguishment of fire and other purposes by the inhabitants residing within the corporate limits of said town; and to this end, such town is authorizel by its board of commissioners or other governing body by whatever name it may be called to appoint three commissioners to be called water commissioners, who shall have the powers and perform the duties in said act mentioned. The Town of Harrison has never appointed such water commissioners, and the proceedings of said Town are for that reason wholly unauthorized and void, and the application for the appointment of commissioners in this cause should have been denied for that reason.

8. The true objects anl purposes of the proceedings brought up by the writ in this cause are to enable the East Jersey Water Company and the New Jersey Suburban Water Company, or one of them, to acquire for their own use and purposes the property of the prosecutor, and the said proceedings, although taken in the name of the Town of Harrison, are for the benefits and uses of said Water Companies, or one of them, and the power of eminent domain is thereby attempted to be used, contrary to law, for the benefit of said Water Companies and not for the benefit of the Town of Harrison.

9. The Town of Harrison in and by the said proceedings is attempting, contrary to law, to lend the use of its name and authority for the purpose of acquiring by condemnation the property of the prosecutor, not in connection with or for any proper or lawful use of its own, but for the sole use and benefit of the East Jersey Water Company

and the New Jersey Suburban Water Company, or one of them.

10. The Town of Harrison has never submitted descriptions of its source of water supply to the State Water Supply Commission, in accordance with the provisions of the act entitled "An act to establish a State Water Supply Commission and to define its powers and duties, and the conditions under which waters of this State may be diverted," approved June 17, 1907, and said Commission has never approved the same, for which reason the said Town of Harrison, although proposing to divert water from a new source of water supply, has no lawful power to condemn lands or water or condemn the lands or water proposed to be taken by said proceedings.

11. The said proceedings, in divers other respects, are unauthorized and contrary to the statutes of this State.

THOMAS F. MCCRAN,
Attorney for Prosecutor.

NEW JERSEY SUPREME COURT.

November term, 1912.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON.

vs.

THE TOWN OF HARRISON,

OPINION.

Argued November 7, 1912. Decided June, 1913. Certiorari. Before Justices Swayze, Voorhees and Kalisch.

Per Curiam:

The proceedings are affirmed with costs for the reasons stated in the opinion filed in No. 289, Paterson v. Kearny.

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,

vs.

THE TOWN OF HARRISON,
Defendant.

On Certiorari.

RULE OF AFFIRMANCE.

The Court having inspected the writ and return in this cause, and considered the reasons assigned for reversal, and having heard the arguments of counsel, and being of opinion that the order appointing Commissioners in condemnation brought up for review is in all respects regular and lawful:

It is thereupon ordered and adjudged that the same be, and it hereby is, affirmed with costs to the defendant to be taxed.

Entered June 17, 1913.

On motion of

COLLINS & CORBIN,
Defendant's Attorneys.

New Jersey Supreme Court.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, *Prosecutor and Appellant,* *vs.* MAYOR AND COUNCIL OF THE BOROUGH OF EAST NEWARK, *Respondent.*	*On Certiorari.*

NOTICE OF APPEAL.

To MESSRS. COLLINS & CORBIN:

Attorney of The Mayor and Council of the Borough of East Newark.

Take notice, that The Mayor and Aldermen of the City of Paterson above named appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in the New Jersey Supreme Court in this cause affirming the order appointing the commissioners on condemnation brought up for review by the writ of certiorari in said Supreme Court, on the following grounds.

1st. That the said Supreme Court did adjudge and decide that The Mayor and Council of the Borough of East Newark had the right to condemn the right to take and divert continuously until the 31st day of August A. D. 19 from the Passaic River at Little Falls, in Passaic County, New Jersey, six hundred thousand gallons of water per day, the quantity of water necessary for its water supply as against riparian lands of the City of Paterson upon said Passaic River known as

the Westside Park, The Engine House Lot, and Eastside Park, upon a writ of certiorari issued out of said Supreme Court to review the proceedings to condemn said right, and said Supreme Court so adjudged and decided under the following facts, viz; that the said property proposed to be condemned and taken under said proceedings had been and at the time of said proceedings was already devoted to public uses; that the property known as Westside Park and that known as Eastside Park were acquired by the City of Paterson in the year eighteen hundred and eighty-eight, and were laid out, improved and opened for the use and enjoyment of the public by the City of Paterson in the year eighteen hundred and eighty-nine, and ever since have been and now constitute the public park system of said City, and are used, maintained and kept up at large annual expense on the part of the City for the recreation, enjoyment and benefit of the inhabitants of Paterson under the statutes of the State for such purpose made and provided; that said City has expended in the purchase, maintenance and embellishment of said parks upwards of half a million dollars; that the property known as the Engine House lot now is and for more than thirty years last past has been devoted to the public use of the said City of Paterson as an engine house and lot; that the land upon which said engine house is erected is contiguous to the Passaic River and the fact that the title of the City extends to the middle of the River and that the City is a riparian owner and has all the rights of a riparian owner on the Passaic River, is a valuable element to the City for the use, enjoyment and ownership of said property; that the water which the defendant proposes to take by said proceedings is a part of each of said three properties and forms a part of said

two parks as devoted to the public uses, and the taking thereof as to each of said three properties would diminish, impair and destroy *pro tanto* the public use thereof; and that the water of said River form a valuable and important element for the parks and the City of Paterson as the owner of said parks is a riparian owner and entitled as such to the use of the said waters of the Passaic River, the same as other riparian owners under the laws of this State, the existence of said water rights having been one of the chief inducements to the City of Paterson in the selection of said properties as sites for public parks.

2nd. That the said Supreme Court did adjudge and decide that The Mayor and Council of the Borough of East Newark has no lawful right or authority to condemn the property proposed to be taken by the proceedings brought up by the writ in this cause.

3rd. That the said Supreme Court did adjudge and decide, that The Mayor and Council of the Borough of East Newark had the right and authority to condemn the property proposed to be taken by said proceedings, although said Mayor and Council of the Borough of East Newark owned no water plant or water works and has taken no proceedings to acquire any water plant or water works for public use.

4th. That the said Supreme Court did adjudge and decide, that The Mayor and Council of the Borough and Council of the Borough of East Newark had the right and authority to condemn the property proposed to be taken by said proceedings, although the Mayor and Council of the Borough of East Newark has not complied with the requirements of the statutes governing the con-

demnation of property for purposes of a water supply or water works or a plant for the supply of water for domestic and public use in Boroughs.

5th. That the said Supreme Court did adjudge and decide, that the said The Mayor and Council of the Borough of East Newark had the right and authority to condemn the property proposed to taken by said proceedings, although the Mayor and Council of the Borough of East Newark has not adopted any ordinance nor taken any other lawful proceedings for the construction or purchase of water works and a plant for the supply of water for domestic and public use.

6th. That the said Supreme Court did adjudge and decide, that The Mayor and Council of the Borough of East Newark had the right and authority to condemn the property proposed to be taken by said proceedings, although the facts stated in the application of The Mayor and Council of the Borough of East Newark for the appointment of commissioners brought up by the writ in this cause, do not authorize the said Borough to condemn lands or water rights and show no *prima facie* right to have commissioners appointed for the purposes set forth in said application.

7th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that the order appointing commissioners brought up by the writ in this cause was unauthorized by law and should not have been made.

8th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that the true object and purpose of the proceedings brought up by the writ in this cause, are to enable the East Jersey Water Company and the

New Jersey Suburban Water Company, or one of them, to acquire for their own uses and purposes, the property of the prosecutor, and that the said proceedings, although taken in the name of the Mayor and Council of the Borough of East Newark, are for the benefits and uses of said water companies, or one of them, and that the power of eminent domain is thereby attempted to be used, contrary to law, for the benefit of said water companies and not for the benefit of The Mayor and Council of the Borough of East Newark.

9th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that The Mayor and Council of the Borough of East Newark in and by the said proceedings is attempting, contrary to law, to lend the use of its name and authority for the purpose of acquiring by condemnation the property of the prosecutor not in connection with or for any proper or lawful use of its own, but for the sole use and benefit of the East Jersey Water Company and the New Jersey Suburban Water Company, or one of them.

10th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that, inasmuch as The Mayor and Council of the Borough of East Newark has never submitted descriptions of its source of water supply to the State Water Supply Commission in accordance with the provisions of the act entitled "An act to establish a State Water Supply Commission and to define its powers and duties and the condition under which waters of this State may be diverted," approved June 17, 1907, and inasmuch as said Commission has never approved the same, the said The Mayor and Council of the Borough of East Newark, although proposing to divert water from a new source of water supply, has no law-

ful power to condemn lands or water or to condemn the lands or water proposed to be taken by said proceedings.

11th. That the said Supreme Court did adjudge and decide that The Mayor and Council of Borough of East Newark had the right and authority to condemn the property proposed to be taken by said proceedings, although the statutes regulating the government of boroughs provide that it shall not be lawful for the council to construct or purchase any water works or water supply plant until there shall have been presented to the Council the consent thereto in writing signed by the owners of a majority of the real estate in said borough, nor until the same shall have been assented to by a majority of the legal votes cast for or against the proposition of construction, purchase or contract of water works or water supply or water supply plant at a general or special election held in said borough, and although no such consent in writing has been signed, and although no such election has been held in said Borough of East Newark to authorize the construction, purchase or contract of any water works or water supply or water supply plant.

12th. That said Supreme Court in divers other matters apparent in the record did adjudge and decide erroneously.

RANDAL B. LEWIS,
Attorney of Appellant.

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,

against

THE MAYOR AND COUNCIL OF THE BOROUGH OF EEST NEWARK,
Defendant.

WRIT OF CERTIORARI.

Returnable April 26th, 1911.

THOMAS F. McCRAN,
Atty. of Prosecutor.

I allow this writ. Let it be sealed.

JAMES F. MINTURN,
J. S. C.

New Jersey, ss.:

The State of New Jersey to Honorable James F. Minturn, Justice of the [L. S.] Supreme Court of the State of New Jersey,

Greeting:

We being willing, for certain reasons, to be certified of a certain order made by you on the 25th day of March, Nineteen Hundred and Eleven, appointing commissioners to fix the compensation to be paid to The Mayor and Aldermen of the City of Paterson, as riparian owner, for water sought to be taken and diverted by the

Mayor and Council of the Borough of East Newark, do hereby command you that the said order, together with all things touching and concerning the same, to our Justices of the Supreme Court of Judicature of the State of New Jersey, at Trenton, on the twenty-sixth day of April, Nineteen Hundred and Eleven, you do certify and send, together with this writ, that therein may be done what, of right and according to the laws and constitution of the State of New Jersey, ought to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court, at Trenton, this eighth day of April, A. D. nineteen hundred and eleven.

WM. RIKER, JR.,
Clerk.

THOMAS F. MCCRAN,
Attorney.

RETURN.

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

I, James F. Minturn, associate justice of the Supreme Court of the State of New Jersey, do hereby in the schedule hereto annexed, certify to our Justices of our Supreme Court of Judicature of the State of New Jersey, the record and proceedings mentioned in the within Writ of Certiorari, with all things concerning and touching the same as I am within commanded.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of
(L. S.) the Circuit Court of the County of Passaic, this twenty-first day of April, A. D. Nineteen Hundred and Eleven.

JAMES F. MINTURN,
J. S. C.

(Filed March 27, 1911.)

THE MAYOR AND COUNCIL OF THE BOROUGH OF NEWARK,

against

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON.

TO THE HONORABLE JAMES F. MINTURN,
Justice of the Supreme Court of New Jersey:

The petition of the Mayor and Council of the Borough of East Newark, respectfully shows:

1. Your petitioner is a municipal corporation having power to take land and property for public use, and has determined to take for public use the property hereinafter described for the purpose of its water supply; for which purpose it is required and necessary; and your petitioner has not been able to acquire said property by agreement with the owner by reason of disagreement as to the price.

2. The following is a particular description of the property required:

The right to take and divert continuously until the 31st day of August, A. D. 19 , from the Passaic River at Little Falls, in Passaic County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of said municipal corporation, not exceeding an average quantity in any year of six hundred thousand gallons of water per day, the same being

required and necessary to be taken for the purposes of said municipal corporation.

The land and property and against which the said right to divert said water is required, is described as follows, to wit:

The riparian lands situated on the banks of the Passaic River, in the City of Paterson, County of Passaic, State of New Jersey, the said lands being three parcels, to wit:

(A) A tract of land known as the West Side Park, located on the left bank of the Passaic River, and extending from Preakness Avenue, southwesterly up the Passaic River one-half mile, more or less, to the line of the lands late of the estate of Richard Van Houten, being the westerly line of said Park; said River being the southerly line of said West Side Park.

(B) A tract of land, located in the City of Paterson, County of Passaic, State of New Jersey, known as the "Engine House Lot," described as follows:

BEGINNING on the southeasterly side of Water Street, at a point five feet and three and one-half inches westerly from the westerly side of the house of the heirs of Adrian B. Van Houten, deceased; running thence (1) southerly at right angles to Water Street as the same has been laid out from Temple Street, to Albion Street to the Passaic River; thence (3) northerly parallel with the first course to the southerly side of Water Street; thence (4) easterly along the same three feet and three inches to a turn in said Water Street, and thence (5) easterly, still along the southerly side of said Water Street twenty-one feet and eleven inches to the place of beginning. Said Passaic River being the southerly boundary of said Engine House lot.

(C) A tract of land situate in the City of Paterson, County of Passaic, State of New Jersey, and known as the East Side Park, located on the right bank of the Passaic River, extending from the center of the center line of Broadway southwardly along said river a distance of fifteen hundred (1,500) feet more or less, to the southerly boundary of said park, said river being the easterly boundary of said East Side Park.

3. Said property and rights are necessary and are taken for the water supply of the Borough of East Newark, in the County of Hudson, under a contract entered into between your petitioner anl the New Jersey Suburban Water Company, dated August thirty-first, nineteen hundred and six, whereby said company agreed to furnish to the said borough an entire and adequate supply of water for the inhabitants of said borough, which shall be pure and wholesome filtered water, and shall be supplied in quantities sufficient for the purposes of domestic use and other use in the borough, for the extinguishing of fires, and all other uses and purposes for which the borough may require or desire to have water. Said water supply was to commence immediately and extend for a continuous term of five years. Your petitioner was, by said contract, to receive said water from the New Jersey Suburban Water Company, at or near the junction of Sherman Avenue and Fourth Street, or at such other points as might thereafter be agreed upon by your petitioner and the said company; and your petitioner is now receiving the water from the said New Jersey Suburban Water Company, which in turn receives the same from the East Jersey Water Company at the corner of Kearny and Belleville Avenues in Kearny, to which point it is brought by the East Jersey Water Company, through its main extending from Little

Falls to said corner of Kearney and Belleville Avenues. Said last named company takes and diverts said water from the Passaic River at Little Falls, in Passaic County; and these proceedings are taken in pursuance of said contracts, and to assure and confirm the diversion ad delivery of said water supply thereunder for your petitioner, the Borough of East Newark.

4. The name and residence of the owner and occupant of said property and the names and residences of the persons appearing of record to have any interest in said property are: The Mayor and Aldermen of the City of Paterson.

5. Your petitioner has endeavored, in good faith, to acquire the right and property above described and required, by agreement with the said owner, but, by reason of inability to agree as to the price and damages to be paid therefor, cannot acquire the same by agreement.

Your petitioner therefore prays that three Commissioners may be appointed to fix the compensation to be paid for said property and the damages (if any) by reason of taking the same, and to make an award therefor pursuant to the statute in such case made and provided.

THE MAYOR AND COUNCIL OF THE BOROUGH OF EAST NEWARK.

By COLLINS & CORBIN,
Attorneys,
243 Washington Street,
Jersey City, N. J.
DAVIS & HASTINGS, *Attorneys.*

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

Terence H. O'Donnell, being duly sworn, on his oath says: That he is the Agent of the municipal

corporation, petitioner named in foregoing petition, in the matter of proceedings to acquire property and water rights for its water supply, as therein described, having been appointed such Agent by resolutions duly passed by the proper municipal board and authority of said municipal corporation; that the matters stated in the foregoing petition are true, and that deponent was, by said resolutions, duly authorized by said municipal corporation to negotiate for the purchase of the property and right of diversion of water described in the petition, and has, in good faith, endeavored to agree with the owners for the same, but has not been able to agree upon the price, and damages, and the petitioner cannot acquire such right by agreement with the owners because unable to agree with them as to the price and damages; that the petitioner is already taking and diverting water for its public water supply at the place and in the manner described in the petition, and the said water is required and the taking thereof is necessary for the public water supply of said municipal corporation.

Deponent's efforts to agree with the Mayor and Aldermen of the City of Paterson for the taking of the property and rights required as aforesaid, with the assistance of Mr. Richard Rossiter, consisted in an application, with the assistance of Mr. Richard Rossiter, to the Mayor of said City, the Board of Aldermen of said City, in regular session assembled, The Board of Public Works of said City, in regular session assembled, The Board of Finance of said City, in regular session assembled, to each and all of whom he made cash offers in writing for each of the three parcels required; also, of an application to the Park Commission of said city, by application to the

their vice-president, to whom he also made a cash offer in writing for the Parcels A, and C, being with respect to the East Side and West Side Parks; also, of an application to the Board of Fire and Police Commissioners of said City, in regular session assembled, to whom he made a cash offer in writing for Parcel B, being with respect to the Engine House Lot, so-called; and neither said Mayor or any of said Boards would or did accept his offers, or make any counter-offer, or in any wise indicate any willingness to agree on any terms whatever, and deponent could make no agreement with them or any of them. Such written offers to said Mayor and Boards and officers were presented to all of them between March 15th and March 22nd, 1911; and at the same time the offers in writing were presented, similar offers were made orally to each of said parties, none of which was accepted.

TERENCE H. O'DONNELL.

Subscribed and sworn to this 24th day of March, 1911, before me.

JOHN KEENAN,
Justice of the Peace.

(L. S.)

Before Honorable James F. Minturn, Justice of the Supreme Court of New Jersey:

Mayor and Council of the Borough of East Newark,
Petitioner,

against

The Mayor and Aldermen of The City of Paterson.

ORDER FIXING DAY.

On Application of the Petitioner to acquire Rights to Take and Divert Water for Public Water Supply.

Application having been made to me, James F. Minturn, a Justice of the Supreme Court, of the State of New Jersey, by the Mayor and Council of the Borough of East Newark, by petition, for the appointment of three Commissioners to fix the compensation to be paid by said Company for the property in said petition described, and the damages (if any) by reason of the taking of the same, I do hereby assign the eighth day of April, nineteen hundred and eleven, at the hour of ten o'clock in the forenoon, at the Court House, in the City of Paterson as the time and place for the hearing of said petition, and I direct that notice of said hearing be given to the owners, occupants and persons appearing of record to have an interest in said lands, at least six days before the hearing.

And let said petition and this order be filed in the office of the Clerk of the County of Passaic,

and notice of the pendency of these proceedings be recorded in said County, as by the statute required.

Given under my hand this 25th lay of March, Nineteen Hundred and eleven.

JAMES F. MINTURN,
Justice of the New Jersey Supreme Court.

(Filed March 27, 1911.)

To the Mayor and Aldermen of the City of Paterson:

Take Notice, that the petition, copy whereof is hereto appended, was presented to his Honor, James F. Minturn, one of the Justices of the Supreme Court of New Jersey, and by his order, has been filed in the Office of the Clerk of the County of Passaic, together with notice of the pendency thereof and of proceedings thereunder, and that by his said order, copy whereof is hereto appended, he has assigned the eighth day of April, 1911, at the hour of 10 A. M., at the Court House in the City of Paterson, as the time and place for the hearing of said petition, and for the appointment of three commisioners to fix the compensation to be paid to you by the undersigned, petitioner, for the taking of your property in said petition described (said property being necessary and being taken by petitioner for its public purposes) and the damages, if any, by reason of the taking of the same, and application will accordingly be made, at said time and place, for an order appointing said Commissioners.

MAYOR AND COUNCIL OF THE BOROUGH OF EAST NEWARK.
Petitioner.

By COLLINS & CORBIN, *Attorneys,*
243 Washington Street, Jersey City.

New Jersey, ss.:

Richard Rossiter, being duly sworn, according to law, on his oath, says: That on the 27th day of May, A. D. 1911, he served a true copy of the foregoing notice, together with a copy of the petition filed by said petitioner with the Clerk of the County of Passaic on the 27th day of March, 1911, and the order made by Mr. Justice Minturn upon the filing of said petition, and filed therewith upon The Mayor and Aldermen of the City of Paterson, at Paterson, by giving the same to and leaving the same with Andrew F. McBride, Mayor of said City, in his office in the City Hall.

RICHARD ROSSITER,

Subscribed and sworn to at Paterson, N. J., this 27th day of March, 1911, before me.

C. FRANK KIREKER,
Master in Chancery of New Jersey.

144 A-32 In re East Newark
(Filed April 8, 1911.)

Before Honorable James F. Minturn,
Justice of the Supreme Court of
the State of New Jersey.

Mayor and Council of the Borough of East Newark, *Petitioner,* against The Mayor and Aldermen of The City of Paterson.	*On Petition for Condemnation.*

ORDER APPOINTING COMMISSIONERS.

Upon this eighth day of April, Nineteen hundred and eleven, being the date fixed by me for the hearing upon the petition filed in this matter, and upon filing in the office of the Clerk of the County of Passaic of the proofs presented of the service of notice of the hearing upon the owners, occupants and persons interested in the lands and property described in said petition, the same being evidence satisfactory to me that said notice has been served as required by the statute; and, after hearing Collins and Corbin, Attorneys for the petitioner, and John W. Griggs and William B. Gourley and Edward F. Merrey, appearing on behalf of the Mayor and Aldermen of the City of Paterson,

I, James F. Minturn, Justice of the Supreme Court of the State of New Jersey, do hereby appoint William W. Watson, William I. Lewis and Charles A. Bergen, three disinterested freeholders,

residents of the County of Passaic, Commissioners, to examine and appraise the lands in the petition described, and to assess the damages, if any, by reason of the taking of the same by the petitioner, on at least six days' notice, to be given by the petitioner to each of said owners, occupants and persons interested in the property, either personally or by leaving at their residence, or by giving the same to their attorney appearing for them on this application.

And it is Ordered, That the said Commissioners shall file their report with the Clerk of the County of Passaic, on or before the eight day of May, next.

JAMES F. MINTURN,
Justice of the Supreme Court of the State of New Jersey.

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

I, John J. Slater, Clerk of said County and Clerk of the County Courts thereof, do hereby certify that the foregoing is a true copy of the record and proceedings in the matter of Appointment of Commissioners, etc., *in re*: The Mayor and Council of the Borough of East Newark, against The Mayor and Aldermen of the City of Paterson, as the same is taken from and compared with the original record and proceedings, now remaining on file and of record in my Office.

In testimony whereof, I have hereunto set my hand and affixed the seal of
[L. S.] the said Courts and County, at Paterson, this Nineteenth day of April, A. D. Nineteen Hundred and Eleven.

JNO. J. SLATER,
Clerk.

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, *Prosecutor,* vs. THE BOROUGH OF EAST NEWARK, *Defendant.*	*On Certiorari.*

REASONS.

The Mayor and Aldermen of the City of Paterson, the above named prosecutor, by Thomas F. McCran, its attorney, comes and prays that the order made by Honorable James F. Minturn, a Justice of the Supreme Court of the State of New Jersey, on the eighth day of April, nineteen hundred and eleven, appointing commissioners to fix the compensation to be paid to the said The Mayor and Aldermen of the City of Paterson, as riparian owner, for water sought to be taken and diverted by The Mayor and Council of the Borough of East Newark, may be reversed and set aside for the following reasons.

1. The property proposed to be condemned and taken under the proceedings brought up by the writ in this cause is already devoted to public uses. The property known as Westside Park and that known as Eastside Park were acquired by the City of Paterson in the year eighteen hundred and eighty-eight and were laid out, improved and opened for the use and enjoyment of the public of the City of Paterson, in the year eighteen hundred and eighty-nine, and ever since have been

and now constitute the public park system of said City, and are used, maintained and kept up at large annual expense on the part of the City for the recreation, enjoyment and benefit of the inhabitants of Paterson under the statutes of the State for such purposes made and provided; that said City has expended in the purchase, maintenance and embellishment of said parks upwards of half a million dollars. The property known as the Engine House lot now is and for more than thirty years last past has been devoted to the public use of said City of Paterson as an engine house and lot. The land upon which said engine house is erected is contiguous to the Passaic River and the fact that the title of the City extends to the middle of the River and that the City is a riparian owner and has all the rights of a riparian owner on the Passaic River, is a valuable element to the City, for the use, enjoyment and ownership of said property. The water which the defendant proposes to take by said proceedings is a part of each of said three properties and forms a part of said two parks as devoted to the public uses, and the taking thereof as to each of said three properties would diminish, impair and destroy *pro tanto* the public use thereof. The waters of said River form a valuable and important element for the parks and the City of Paterson as the owner of said parks is a riparian owner and entitled as such to the use of said waters of the Passaic River, the same as other riparian owners under the laws of this State, the existence of said water rights having been one of the chief inducements to the City of Paterson in the selection of said properties as sites for public parks.

2. The Mayor and Council of the Borough of East Newark has no lawful right or authority to

condemn the property proposed to be taken by the proceedings brought up by the writ in this cause.

3. The Mayor and Council of the Borough of East Newark owns no water plant or water works and has taken no proceedings to acquire any water plant or water works for public use.

4. The Mayor and Council of the Borough of East Newark has not complied with the requirements of the statutes governing the condemnation of property for the purposes of a water supply or water works, or a plant for the supply of water for domestic or public use in boroughs.

5. The Council of the Borough of East Newark has not adopted any ordinance nor taken any other lawful proceedings for the construction or purchase of water works and a plant for the supply of water for domestic and public use.

6. The facts stated in the application of the Mayor and Council of the Borough of East Newark for the appointment of commissioners brought up by the writ in this cause, do not authorize the the said Borough to condemn lands or water rights and show no *prima facie* right to have commissioners appointed for the purposes in said application set forth.

7. The order appointing commissioners brought up by the writ in this cause was unauthorized by law and should not have been made.

8. The true object and purpose of the proceedings brought up by the writ in this cause, are to enable the East Jersey Water Company and the N. J. Suburban Water Company, or one of them, to acquire for their own uses and purposes, the property of the prosecutor, and the said proceedings, although taken in the name of

the Mayor and Council of the Borough of East Newark, are for the benefit and uses of said water companies, or one of them, and the power of eminent domain is thereby attempted to be used, contrary to law, for the benefit of the said Water Companies, and not for the benefit of the Mayor and Council of the Borough of East Newark.

9. The Mayor and Council of the Borough of East Newark in and by the said proceedings is attempting, contrary to law, to lend the use of its name and authority for the purpose of acquiring by condemnation the property of the prosecutor not in connection with or for any proper or lawful use of its own, but for the sole use and benefit of the East Jersey Water Company, and the New Jersey Suburban Water Company, or one of them.

10. The Mayor and Council of the Borough of East Newark has never submitted descriptions of its source of water supply to the State Water Supply Commission, in accordance with the provisions of the act entitled "An Act to establish a State Water Supply Commission and to define its powers and duties and conditions under which waters of this State may be diverted," approved June 17, 1907, and said Commission has never approved the same, for which reason the said Mayor and Council of the Borough of East Newark, although proposing to divert water from a new source of water supply, has no lawful power to condemn the lands or water or to condemn the lands or water proposed to be taken by said proceedings.

11. The statutes regulating the government of boroughs provide that it shall not be lawful for the council to construct or purchase any water works or water supply plant until there shall have

been presented to the Council the consent thereto in writing signed by the owners of a majority of real estate in said borough, nor until the same shall have been assented to by a majority of the legal votes cast for or against the proposition of construction, purchase or contract of water works or water supply or water supply plant at a general or special election held in said borough, and no such consent in writing has been signed, and no such election has been held in the said Borough of East Newark to authorize the construction, purchase or contract of any water works or water supply or water supply plant.

12. The said proceedings, in divers other respects, are unauthorized and contrary to the statutes of this State.

THOMAS F. MCCRAN,
Attorney of Prosecutor.

(Filed June 13, 1913.)

NEW JERSEY SUPREME COURT.
November term, 1912.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,

vs.

BOROUGH OF EAST NEWARK.

OPINION.

Argued November 7, 1912. Decided June 1913.

Certiorari. Before Justices Swayze, Voorhees and Kalisch.

Per curiam:

The proceedings are affirmed with costs for the reasons stated in the opinion in the case of Paterson v. Glen Ridge, No. 290, of the same term.

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,

vs.

BOROUGH OF EAST NEWARK,
Defendant.

ORDER OF AFFIRMANCE.

The Court having inspected the writ and return in this cause, and considered the reasons assigned for reversal, and having heard the arguments of counsel, and being of opinion that the order appointing Commissioners in condemnation brought up for review is in all respects regular and lawful:

It is thereupon ordered and adjudged that the same be, and it hereby is, affirmed with costs to the defendant to be taxed.

Entered June 17, 1913.

On motion of

COLLINS & CORBIN,
Defendant's Attorneys.

New Jersey Supreme Court

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, *vs.* THE TOWN OF KEARNY, *Respondent.*	*On Certiorari.*

NOTICE OF APPEAL.

To MESSRS. COLLINS & CORBIN:
Attorney of the Town of Kearny.

Take notice, that The Mayor and Aldermen of the City of Paterson above named appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in the New Jersey Supreme Court in this cause affirming the order appointing the commissioners on condemnation brought up for review by the writ of certiorari in said Supreme Court, on the following grounds:

1st. That the said Supreme Court did adjudge and decide that The Town of Kearny had the right to condemn the right to take and divert continuously and until the twenty-ninth day of December, Nineteen Hundred and Twenty, from the Passaic River at Little Falls in Passaic County, New Jersey, two million three hundred thousand gallons of water per day, the quantity of water necessary for its water supply as against riparian lands of the City of Paterson upon said Passaic River known as the Westside Park, The En-

gine House Lot, and Eastside Park, upon writ of certiorari issued out of said Supreme Court to review the proceedings to condemn said right, and said Supreme Court so adjudged and decided under the following facts, viz; that the said property proposed to be condemned and taken under said proceedings was already devoted to public uses; that the property known as Westside Park and that known as Eastside Park were acquired by the City of Paterson in the year eighteen hundred and eighty-eight, and were laid out, improved and opened for the use and enjoyment of the public by the City of Paterson in the year eighteen hundred and eighty-nine, and ever since have been and now constitute the public park system of said city, and are used, maintained and kept up at large annual expense on the part of the city for the recreation, enjoyment and benefit of the inhabitants of Paterson under the statutes of the State for such purpose made and provided; that said city has expended in the purchase, maintenance and embellishment of said parks upwards of half a million dollars; that the property known as the Engine House lot now is and for more than thirty years last past has been devoted to the public use of the said City of Paterson as an engine house and lot; that the land upon which said engine house is erected is contiguous to the Passaic River and the fact that the title of the city extends to the middle of the river and that the city is a riparian owner and has all the rights of a riparian owner on the Passaic River, is a valuable element to the city for the use, enjoyment and ownership of said property; that the water which the defendant proposes to take by said proceedings is a part of each of said three properties and forms a part of said two parks as devoted to the public uses, and the taking thereof as to each

of said three properties would diminish, impair and destroy *pro tanto* the public use thereof; and that the waters of said river form a valuable and important element for the parks and the City of Paterson as the owner of said parks is a riparian owner and entitled as such to the use of the said waters of the Passaic River, the same as other riparian owners under the laws of this State, the existence of said water rights having been one of the chief inducements to the City of Paterson in the selection of said properties as sites for public parks.

2nd. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that the Town of Kearny had no lawful right or authority to condemn the property proposed to be taken by the proceedings brought up by the writ in this cause.

3rd. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that the Town of Kearny has not adopted any ordinance or taken any other lawful proceedings for the construction or purchase of water works and a plant for the supply of water for domestic and public use.

4th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that the facts stated in the application of the Town of Kearny for the appointment of commissioners brought up by the writ in this cause do not authorize the said Town to condemn lands or water rights and show no *prima facie* right to have commissioners appointed for the purposes in said application set forth.

5th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that the Town of Kearny has not complied with the requirements of the statutes governing con-

demnation of property for the purposes of a water supply or water works or a plant for the supply of water for domestic or public use in towns.

6th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that there is no law of this State which authorizes the Town of Kearny or any incorporated town to condemn water rights.

7th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that the Town of Kearny has never appointed three commissioners to be called water commissioners as provided by the act entitled "An act to enable incorporated towns to construct water works for the extinguishment of fire and supplying the inhabitants thereof with pure and wholesome water," passed March 5, 1884, and did not adjudge and decide as contended by the prosecutor that the proceedings of said town are for that reason wholly unauthorized and void, and that the application for the appointment of commissioners in this cause should have been denied for that reason.

8th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that the true objects and purposes of the proceedings brought up by the writ in this cause are to enable the East Jersey Water Company, The New Jersey Suburban Water Company and The New York and New Jersey Water Company, or one of them, to acquire for their own uses and purposes the property of the prosecutor, and that the said proceedings, although taken in the name of the Town of Kearny, are for the benefit and uses of said Water Companies, or one of them, and that the power of eminent domain is thereby attempted to be used, contrary to law, for the benefit of said

Water Companies, or one of them, and not for the benefit of the Town of Kearny.

9th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that the Town of Kearny in and by the said proceedings is attempting, contrary to law, to lend the use of its name and authority for the purpose of acquiring by condemnation the property of the prosecutor, not in connection with or for any proper or lawful use of its own, but for the sole use and benefit of the East Jersey Water Company, The New Jersey Suburban Water Company and The New York and New Jersey Water Company, or some or one of them.

10th. That the said Supreme Court did not adjudge and decide as contended by the prosecutor, that inasmuch as the Town of Kearny has never submitted descriptions of its source of water supply to the State Water Supply Commission, in accordance with the provisions of the act entitled "An act to establish a State Water Supply Commission, and to define its powers and duties, the conditions under which waters of this State may be diverted," approved June 17, 1907, and inasmuch as said Commission has never approved the same, the said Town of Kearny, although proposing to divert water from a new source of water supply, has no lawful power to condemn lands or water or condemn the land or water proposed to be taken by said proceedings.

11th. That said Supreme Court in divers other matters apparent in the record did adjudge and decide erroneously.

RANDAL B. LEWIS,
Attorney of Appellant.

NEW JERSEY SUPREME COURT

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,

vs.

TOWN OF KEARNY,
Defendant.

WRIT OF CERTIORARI.

Returnable October 13, 1911.

THOMAS F. McCRAN,
Atty. of Prosecutor.

I allow this writ. Let it be sealed.

C. W. PARKER,
J. S. C.

New Jersey, ss.:

The State of New Jersey to Honorable Charles W. Parker, Justice of the [L. S.] Supreme Court of the State of New Jersey,

Greeting:

We being willing, for certain reasons, to be certified of a certain order made by you on the eleventh day of January, Nineteen Hundred and Eleven, appointing commissioners to fix the compensation to be paid to The Mayor and Aldermen of the City of Paterson, as riparian owner, for water sought to be taken and diverted by the Town

of Kearny, do hereby command you that the said order, together with all things touching and concerning the same, to our Justices of the Supreme Court of Judicature of the State of New Jersey, at Trenton, on the thirteenth day of October, Nineteen Hundred and Eleven, you do certify and send, together with this writ, that therein may be done what, of right and according to the laws and constitution of the State of New Jersey, ought to be done.

Witness, William S. Gummere, Esquire, Chief Justice of our Supreme Court, at Trenton, this twenty-sixth day of September, A. D., nineteen hundred and eleven.

WM. RIKER, JR.,
Clerk.

THOMAS F. McCRAN,
Attorney.

RETURN.

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

I, Charles W. Parker, Justice of the Supreme Court of the State of New Jersey, do hereby, in the schedule hereto annexed, send to our Justices of the Supreme Court of Judicature of the State of New Jersey, the copy of the Order appointing Commissioners to fix the compensation, and all things concerning and touching the same as I am within commanded.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Circuit Court in and for the County of Passaic, this eleventh day of October, A. D. Nineteen Hundred and Eleven.

[SEAL]

C. W. PARKER,
J. S. C.

(Filed July 25, 1911.)

To The Mayor and Aldermen of the City of Paterson:

Take notice, that the petition, copy whereof is hereto appended, was presented to his Honor, James F. Minturn, one of the Justices of the Supreme Court of New Jersey, and by his order, has been filed in the office of the Clerk of the County of Passaic, New Jersey, together with notice of the pendency thereof and of proceedings thereunder, and that by his said order, copy whereof is hereto appended, he has assigned the 19th day of September, 1911, at the hour of eleven A. M. at the Court House in the City of Paterson, as the time and place for the hearing of said petition, and for the appointment of three commissioners to fix the compensation to be paid to you by the undersigned, petitioner, for the taking of your property in said petition described; (said property being necessary and being taken by your petitioner for its public purposes) and the damages, if any, by reason of the taking of the same, and application will accordingly be made, at said time and place, for an order appointing said commissioners.

THE TOWN OF KEARNY,
Petitioner.

By COLLLNS & CORBIN, *Attorneys,*
243 Washington Street, Jersey City.

TOWN OF KEARNY,

against

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON.

To the Honorable James F. Minturn, Justice of the Supreme Court of New Jersey:

The petition of the Town of Kearney respectfully shows:

1. Your petitioner is a municipal corporation having power to take land and property for public use, and has determined to take for public use the property hereinafter described for the purpose of its water supply; for which purpose it is required and necessary; and your petitioner has not been able to acquire said property by agreement with the owner by reason of disagreement as to the price.

2. The following is a particular description of the property required:

The right to take and divert continuously until the 29th day of December, A. D. 1920, from the Passaic River at Little Falls, in Passaic County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of said municipal corporation, not exceeding an average quantity in any year of Two Million three hundred thousand gallons of water per day, the same being required and necessary to be taken for the purposes of said municipal corporation.

The land and property and against which the said right to divert said water is required, is described as follows, to wit:

The riparian lands situated on the banks of the Passaic River, in the City of Paterson, County of Passaic, State of New Jersey, the said lands being three parcels, to wit:

(A) A tract of land known as the West Side Park, located on the left bank of the Passaic River, and extending from Preakness Avenue, southwesterly up the Passaic River one-half mile, more or less, to the line of the lands late of the estate of Richard Van Houten, being the westerly line of said Park; said River being the southerly boundary of said West Side Park.

(B) A tract of land, located in the City of Paterson, County of Passaic, State of New Jersey, known as the "Engine House Lot," described as follows:

BEGINNING on the southeasterly side of Water Street, at a point five feet and three and one-half inches westerly from the westerly side of the house of the heirs of Adrian B. Van Houten, deceased; running thence (1) southerly at right angles to Water Street (as the same has been laid out from Temple Street) to Albion Street to the Passaic River; thence (3) northerly parallel with the first course to the southerly side of Water Street; thence (4) easterly along the same three feet and three inches to a turn in said Water Street, and thence (5) easterly, still along the southerly side of said Water Street twenty-one feet and eleven inches to the place of beginning. Said Passaic River being the southerly boundary of said Engine House lot.

(C) A tract of land situate in the City of Paterson, County of Passaic, State of New Jersey,

and known as the East Side Park, located on the right bank of the Passaic River, extending from the center of the center line of Broadway southwardly along said river a distance of fifteen hundred (1,500) feet more or less to the southerly boundary of said park, said river being the easterly boundary of said East Side Park.

3. The Town of Kearny was formed as a Town by virtue of the adoption in the year 1898 of Chapter 93 of the Laws of 1898, whereby the Town became invested with all the powers conferred by "An Act to provide for the formation, establishment and government of towns," approved March 7, 1895, and said town now has all the powers conferred thereby and by the several supplements and amendments thereof and of other general acts applicable to towns. Said Town had previous to the year 1904 created and now has and owns a system of water mains for the obtaining and distributing of water in and through its public streets and highways and has been receiving its supply of water for fire protection and for the use of its inhabitants through the same from the Passaic River at Little Falls for more than seven years last past continuously; and since the sixteenth day of August, 1904, has been obtaining said supply by virtue of a contract between the said Town and the New York & New Jersey Water Company and the New Jersey Suburban Water Company, made and entered into on said day, whereby said companies agreed to furnish such supply of water to said Town from said date until December 29, 1920. And questions having arisen as to the right of said Town to take and divert said water at said place as against certain riparian owners on the Passaic River below Little Falls, the said Town of Kearny, by resolution of its Council passed Oc-

tober 26, 1910, did resolve:

"Resolved, that the Town of Kearny "hereby determines to acquire said right of "diversion, namely, the right to divert an "average daily amount of 2 3-10 million gal- "lons of water per day in each year until "December 29, 1920, at Little Falls on the "Passaic River, the same being necessary "for the purposes of the said contract "(meaning the contract above mentioned) "and for the use of the Town of Kearny "for public water supply; and if unable to "agree with any of the owners of the ri- "parian lands for the said right of diver- "sion, to condemn said right against said "owners for the public use aforesaid."

And the Town of Kearny did thereby determine to take and continue and enlarge said water supply at the said point from the Passaic River, through and by virtue of the said contract, through the agency of the said The New York & New Jersey Water Company and The New Jersey Suburban Water Company, as against the said riparian owners.

4. The names and residences of the owners and occupants of said property and the names and residences of the persons appearing of record to have any interest in said property are:

The Mayor and Aldermen of the City of Paterson.

5. Your petitioner has endeavored, in good faith, to acquire the right and property above described and required, by agreement with the said owner, but, by reason of inability to agree as to the price and damages to be paid therefor, cannot acquire the same by agreement.

Your petitioner therefore prays that three Commissioners may be appointed to fix the compensation to be paid for said property and the damages (if any) by reason of taking the same, and to make an award therefor pursuant to the statute in such case made and provided.

THE TOWN OF KEARNY.
By COLLINS & CORBIN,
Attorneys,
243 Washington Street,
Jersey City, N. J.

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

Richard Rossiter, being duly sworn, on his oath, says: That he is the Agent of the municipal corporation, petitioner named in the foregoing petition, in the matter of proceedings to acquire property and water rights for its water supply, as therein described, having been appointed such Agent by resolutions duly passed by proper municipal board and authority of said municipal corporation; that the matters stated in the foregoing petition are true and that deponent was, by said resolutions, duly authorized by said corporation to negotiate for the purchase of the property and right of diversion of water described in the petition, and has, in good faith, endeavored to agree with the owners for the same, but has not been able to agree upon the price, and damages, and the petitioner cannot acquire such right by agreement with the owners because unable to agree with them as to the price and damages; that the petitioner is already taking and diverting water for its public water supply at the place and in the manner described in the petition, and the said water is required and the taking there-

of is necessary for the public water supply of said municipal corporation.

Deponent's efforts to agree with the Mayor and Aldermen of the City of Paterson for the taking of the property and rights required as aforesaid, consisted in an application to the Mayor of said City and The Board of Finance of said City, in regular session assembled, to each and all of whom he made cash offers in writing for each of the three parcels required; and neither said Mayor or said Board would or did accept his offers, or make any counter-offer, or in any wise indicate any willingness to agree on any terms whatever, and deponent could make no agreement with them or any of them. Such written offers to said Mayor, and Boards and officers were presented to all of them between June 22d anl July 17th, 1911; and at the same time the offers in writing were presented, similar offers were made orally to each of said parties, none of which was accepted.

RICHARD ROSSITER.

Subscribed and sworn to this 18th
day of July, 1911, before me.

C. FRANK KIREKER,
A Master in Chancery of N. J.

Before Honorable James F. Minturn, Justice of Supreme Court of New Jersey:

Town of Kearny,
Petitioner,

against

The Mayor and Aldermen of The City of Paterson,

ORDER FIXING DAY.

On Application of the Petitioner to acquire Rights to Take and Divert Water for Public Water Supply.

Application having been made to me, James F. Minturn, a Justice of the Supreme Court of the State of New Jersey, by the Town of Kearny, by petition, for the appointment of three Commissioners to fix the compensation to be paid by said Company for the property in said petition described, and the damages (if any) by reason of the taking of the same, I do hereby assign the Nineteenth day of September, nineteen hundred and eleven, at the hour of eleven o'clock in the forenoon, at the Court House, in the City of Paterson, as the time and place for the hearing of said petition, and I direct that notice of said hearing be given to the owners, occupants and persons appearing of record to have an interest in said lands, at least six days before the hearing.

And let said petition and this order be filed in the office of the Clerk of the County of Passaic, and notice of the pendency of these proceedings be

recorded in said County, as by the statute required.

Given under my hand this twenty-second day of July, Nineteen Hundred and Eleven.

JAMES F. MINTURN,
Justice of the New Jersey Supreme Court.

(Filed July 27, 1911.)

To the Mayor and Aldermen of the City of Paterson:

Take notice, that the petition, copy whereof is hereto appended, was presented to his Honor, James F. Minturn, one of the Justices of the Supreme Court of New Jersey, and by his order, has been filed in the Office of the Clerk of the County of Passaic, New Jersey, together with notice of the pendency thereof and of proceedings thereunder, and that by his said order, copy whereof is hereto appended, he has assigned the Nineteenth day of September, 1911, at the hour of 11 M., at the Court House in the City of Paterson, as the time and place for the hearing of said petition, and for the appointment of three Commissioners to fix the compensation to be paid to you by the undersigned, petitioner, for the taking of your property in said petition described (said property being necessary and being taken by your petitioner for its public purposes) and the damages, if any, by reason of the taking of the same, and application will accordingly be made, at said time and place, for an order appointing said Commissioners.

THE TOWN OF KEARNY,
Petitioner.

By COLLINS & CORBIN, *Attorneys,*
243 Washington Street, Jersey City.

New Jersey, ss.:

Richard Rossiter, being duly sworn, according to law, on his oath, says: That on the 25th day of July, A. D. 1911, he served a true copy of the petiforegoing notice, together with a copy of the petition filed by said petitioner with the Clerk of the County of Passaic on the 25th day of July, 1911, and the order *made* by Mr. Justice Minturn upon the filing of said petition, and filed therewith upon Andrew F. McBride, Mayor of said City, at the City of Paterson at his office in the City Hall, by giving the same to and leaving the same with him.

Richard Rossiter,

Subscribed and sworn to at Paterson this 25th day of July, 1911, before me.

C. Frank Kireker,

A Master in Chancery of New Jersey.

(Filed September 26, 1911).

In Passaic County Clerk's Office, before Hon. James F. Minturn, Justice of the Supreme Court.

The Town of Kearny, *Petitioner,* vs. The Mayor and Aldermen of The City of Paterson.	*In Condemnation.*

ORDER POSTPONING HEARING.

On this Nineteenth day of September, 1911, upon motion of Collins & Corbin, attorneys of petitioner, and upon consent of Thomas F. McCran, City Attorney, for respondent, it is

Ordered, That the hearing on the application be deferred to Tuesday, September twenty-sixth, Nineteen Hundred and Eleven, at eleven o'clock A. M., at the Court House in Paterson.

James F. Minturn,
J. S. C.

We hereby consent to the making and filing of the foregoing order.

Collins & Corbin,
Attorneys for Petitioner.
Thomas F. McCran,
Attorney for Respondent.

(Filed September 30.)

Before Honorable James F. Minturn,
Justice of the Supreme Court of
the State of New Jersey.

The Town of Kearny,
Petitioner,

against

The Mayor and Aldermen of
the City of Paterson,

ORDER APPOINTING COMMISSIONERS.

Upon this 26th day of September, Nineteen hundred and eleven, being the date fixed for the hearing upon the petition filed in this matter, and upon filing in the office of the Clerk of the County of Passaic of the proofs presented of the service of notice of the hearing upon the owners, occupants and persons interested in the lands and property described in said petition, the same being evidence satisfactory to me that said notice has been served as required by the statute; and, after hearing Collins and Corbin, Attorneys for the petitioner, and Thomas F. McCran, appearing on behalf of the Mayor and Aldermen of the City of Paterson, and waiving any objection to the making hereof by reason of the absence of Hon. James F. Minturn, who made the former orders herein,

I, Charles W. Parker, Justice of the Supreme Court of the State of New Jersey sitting in the place and stead of James F. Minturn, do hereby appoint William W. Watson, William I. Lewis and

Charles A. Bergen, three disinterested freeholders, residents of the County of Passaic, Commissioners, to examine and appraise the lands in the petition described, and to assess the damages, if any, by reason of the taking of the same by the petitioner, on at least six days' notice, to be given by the petitioner to each of said owners, occupants and persons interested in the property, either personally or by leaving at their residence, or by giving the same to their attorney appearing for them on this application.

And it is Ordered, That the said Commissioners shall file their report with the Clerk of the County of Passaic, on or before the twenty-sixth day of October, next.

CHARLES W. PARKER,
Justice of the Supreme Court
of the State of New Jersey.

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

I, John J. Slater, Clerk of said County and Clerk of the County Courts thereof, do hereby certify that the foregoing is a true copy of a petition for Appointment of Commissioners, and Order fixing day for hearing; Proof of Service of Petition, Order for Hearing, and Notice thereof; Order postponing hearing to September 26, 1911; and Order Appointing Commissioners, *in re* The Town of Kearny, Petitioner, vs. The Mayor and Aldermen of the City of Paterson, Respondent, as the same is taken from and compared with the original Petition, &c., now remaining on file and of record in my Office.

In testimony whereof, I have hereunto set my hand and affixed the seal of
[SEAL] the said Courts and County, at Paterson, this tenth day of October, A. D. Nineteen Hundred and Eleven.

JNO. J. SLATER,
Clerk.

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,
vs.
THE TOWN OF KEARNY,
Defendant.
On Certiorari.

REASONS.

THOMAS F. McCRAN,
Atty. of Prosecutor.

Service of a copy of the within Reasons acknowledged this 20th day of October, 1911.

COLLINS & CORBIN,
Attys. for Defendant.

The Mayor and Aldermen of the City of Paterson, the above named prosecutor, by Thomas F. McCran, its attorney, comes and prays that the order made by Honorable Charles W. Parker, a Justice of the Supreme Court of the State of New Jersey, on the 26th day of September, nineteen hundred and eleven, appointing commissioners to fix the compensation to be paid to the said The Mayor and Aldermen of the City of Paterson, as riparian owner, for water sought to be taken and diverted by the Town of Kearny, may be reversed and set aside for the following reasons:

1. The property proposed to be condemned and taken under the proceedings brought up by the

writ in this cause is already devoted to public uses. The property known as Westside Park and that known as Eastside Park were acquired by the City of Paterson in the year eighteen hundred and eighty-eight and were laid out, improved and opened for the use and enjoyment of the public of the City of Paterson, in the year eighteen hundred and eighty-nine, and ever since have been and now constitute the public park system of said City, and are used, maintained and kept up at large annual expense on the part of the City for the recreation, enjoyment and benefit of the inhabitants of Paterson under the statutes of the State for such purposes made and provided; that said City has expended in the purchase, maintenance and embellishment of said parks upwards of half a million dollars. The property known as the Engine House lot now is and for more than thirty years last past has been devoted to the public use of the said City of Paterson as an engine house and lot. The land upon which said engine house is erected is contiguous to the Passaic River and the fact that the title of the City extends to the middle of the River and that the City is a riparian owner and has all the rights of a riparian owner on the Passaic River, is a valuable element to the City, for the use, enjoyment and ownership of said property. The water which the defendant proposes to take by said proceedings is a part of each of said three properties and forms a part of said two parks as devoted to the public uses, and the taking thereof as to each of said three properties would diminish, impair and destroy *pro tanto* the public use thereof. The waters of said River form a valuable and important element for the parks and the City of Paterson as the owner of said parks is a riparian owner and entitled as such to the use of said waters of the Passaic River, the

same as other riparian owners under the laws of this State, the existence of said water rights having been one of the chief inducements to the City of Paterson in the selection of said properties as sites for public parks.

2. The Town of Kearny has no lawful right or authority to condemn the property proposed to be taken by the proceedings brought up by the writ in this cause.

3. The Town of Kearny has not adopted any ordinance or taken any other lawful proceedings for the construction or purchase of water works and a plant for the supply of water for domestic and public use.

4. The facts stated in the application of The Town of Kearny for the appointment of commissioners brought up by the writ in this cause do not authorize the said Town to condemn lands or water rights and show no *prima facie* right to have commissioners appointed for the purposes in said application set forth.

5. The Town of Kearny has not complied with the requirements of the statutes governing condemnation of property for the purposes of a water supply or water works or a plant for the supply of water for domestic or public use in towns.

6. There is no law of this State which authorizes the Town of Kearny or any incorporated town to condemn water rights.

7. By the act entitled "An act to enable incorporated towns to construct water works for the extinguishment of fire and supplying the inhabitants thereof with pure and wholesome water," passed March 5, 1884, it is provided that any incorporated town is authorized to take and convey from such source or sources as may be practicable

into and through such town such quantities of pure and wholesome water as may be required for domestic use, the extinguishment of fire and other purposes by the inhabitants residing within the corporate limits of said town; and to this end such town is authorized by its board of commissioners or other governing body by whatever name it may called to appoint three commissioners to be called water commissioners, who shall have the powers and perform the duties in said act mentioned. The Town of Kearny has never appointed such water commissioners, and the proceedings of said town are for that reason wholly unauthorized and void, and the application for the appointment of commissioners in this cause should have been denied for that reason.

8. The true objects and purposes of the proceedings brought up by the writ in this cause are to enable the East Jersey Water Company, The New Jersey Suburban Water Company, The New York and New Jersey Water Company, or one of them, to acquire for their own uses and and purposes the property of the prosecutor, and and the said proceedings, although taken in the name of the Town of Kearny, are for the benefit and uses of said Water Companies, or one of them, and the power of eminent domain is attempted to be used, contrary to law, for the benefit of said Water Companies, or one of them, and not for the benefit of the Town of Kearny.

9. The Town of Kearny in and by the said proceedings is attempting contrary to law to lend the use of its name and authority for the purpose of acquiring by condemnation the property of the prosecutor, not in connection with or for any proper or lawful use of its own, but for the sole use and benefit of the East Jersey Water Company, The New Jersey Suburban Water Company

and the New York and New Jersey Water Company or some or one of them.

10. The Town of Kearny has never submitted descriptions of its source of water supply to the State Water Supply Commission, in accordance with the provisions of the act entitled "An act to establish a State Water Supply Commission and to define its powers and duties and the conditions under which waters of this State may be diverted," approved June 17, 1907, and said Commission has never approved the same, for which reason the said Town of Kearny, although proposing to divert water from a new source of water supply, has no lawful power to condemn lands or water or condemn the land or water proposed to be taken by said proceedings.

11. The said proceedings, in divers other respects, are unauthorized and contrary to the statutes of this State.

THOMAS F. MCCRAN,
Attorney for Prosecutor.

(Filed June 13, 1913.)

NEW JERSEY SUPREME COURT.

November Term, 1913.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,

vs.

THE TOWN OF KEARNY,

OPINION.

1. The act of May 1st, 1911, authorizes town councils to acquire water and water rights by condemnation where the town is supplied with water for fire protection and for the use of its inhabitants, held, that a town coming within the provisions of the act, may properly proceed to condemn a supply of water, although the intent is to acquire the right to divert water in order that a water company may have the same for the purpose of enabling it to perform its contract to supply the town, provided the town is in a position to use the supply for public purposes after the diversion.

2. Under the act of May 1st, 1911, authorizing towns to acquire water and water rights by condemnation, it is enough that the town had a distributing system so that the water acquired can be made available for the benefit of its citizens whether it owns its reservoirs or not.

3. The necessity of obtaining the approval of the State Water Supply commission exists only in the case of a new additional source of supply and not of a source of supply in actual use in 1907 when the State Water Supply Commission act was passed.

Argued November 7, 1912. Decided June 1913.

Certiorari. Before Justices Swayze, Voorhees and Kalisch. John W. Griggs and William B. Gourley, (Edward F. Merrey on the brief) for prosecutors.

Gilbert Collins (Michael T. Barrett, Daniel J. Murray, Davis & Hastings, on the brief) for defendants.

The opinion of the Court was delivered by Swayze, J.

The objection that the defendant is seeking to condemn land already devoted to a public use is disposed of by our opinion in Paterson v. Jersey City. That the Town of Kearny was authorized by the act of 1888 to contract with the water companies for a supply of water is settled. Jersey City v. Kearny, 43 Vr. 109. The petition for the appointment of Commissioners was presented to Justice Minturn in July 1911, and the act of May 1, 1911 is therefore applicable. That act authorizes the town council to acquire water and water rights by condemnation where the town is supplied with water for fire protection and for the use of its inhabitants, or may determine to obtain or enlarge such supply. Kearny was already supplied with water and comes under this act.

The prosecutor raises the further objection that these proceedings are not within the statutory authority since the object is to authorize the diversion of water by a private water company.

This argument is based upon the fact that the evident intent of the town is to acquire the right to divert the water in order that the water company may have it for the purpose of enabling it to perform its contract to supply Kearny. There is no charge of bad faith on the part of the defendant, and we see no reason to doubt that the real object of the proceedings is to secure a supply of water for the town. If that is not the real object or if the water is diverted to some other use not authorized, the right acquired will be at an end, just as land reverts to the prior owner when the use for which it is condemned is abandoned. Slingerland v. Newark, 25 Vr. 62, 67. It is necessary, however, that the town should be in a position to use for public purposes the supply after it has acquired the right to divert it. Since the point of diversion at Little Falls, is distant from the town, there must be some means of conveying the water to the distributing system of the town. We see no reason why the town may not avail itself of the most convenient method. It might after it had acquired the right to divert, pump or otherwise convey the water in barrels or tank cars, as is sometimes done with oil, and so transport it; but surely it is under no obligation to adopt that expensive method when a pipe line is available. In effect, as counsel for defendant argues, the diversion is a diversion by the municipality. No actual diversion takes place except as the municipality uses the water.

It can make no difference to the prosecutor that the result is that the damages which the town might recover of the water company for breach of contract are thereby minimized, or that perhaps the right of the town under the contract to so much water is abandoned for its right under a

new contract to have the water company pump and transport the water. That is a matter between the town and the water companies.

It is argued that the statutes can only apply to municipalities that have water works for which water and water rights would be necessary. That may be granted without conceding that anything more than a distributing system is required. If the municipality has a distributing system so that the water and water rights which it acquires can be made available for the benefit of its citizens, it can make no difference whether it owns its own reservoirs or not. It must be enough that it owns its distributing system. To force municipalities which are as close together as they are in the Passaic Valley to have each its own pumping station, its own reservoir, and its own pipe line from Little Falls to the municipal boundary. would be to compel a useless waste of public money, Harrison, Kearny and East Newark, for example, are virtually one compact city. We find nothing that would forbid them to have a common pipe line, and a common reservoir. If they may do this, the means by which they may accomplish the end is not material, even though that means is the selection of a water company as their common agent.

The objection that the approval of the State Water Supply Commission has not been obtained is untenable. The act creating that commission applies only to the acquisition of a new or additional source of water supply. The source of supply now sought to be condemned is the same that was in actual use in 1907, when the State Water Supply Commission act was passed. It was the actual source of supply that was contemplated by the statute, not as the prosecutor argue, a source definitely fixed as the one from which the municipality must perforce obtain its supply.

The object of the statute was to prevent further diversion from sources not then in use, without the approval of the state board. Different language would have been used if it had been intended to protect only those municipalities which had a legal right to a specified source. The evident intent was to protect municipalities in their then existing rights to a supply of water whether obtained by contract with a water company or by ownership of the source of supply.

The proceedings are affirmed with costs.

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, *Prosecutor,* *vs.* THE TOWN OF KEARNY, *Defendant.*	*On Certiorari.*

RULE OF AFFIRMANCE.

The Court having inspected the writ and return in this cause, and considered the reasons assigned for reversal, and having heard the arguments of counsel, and being of opinion that the order appointing Commissioners in condemnation brought up for review is in all respects regular and lawful:

It is thereupon ordered and adjudged that the same be, and it hereby is, affirmed with costs to the defendant to be taxed.

Entered June 17, 1913.

On motion of

COLLINS & CORBIN,
Defendant's Attorneys.

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, *Prosecutor,* vs. THE BOROUGH OF GLEN RIDGE, *Defendant.*	*On certiorari.*

ORDER TO STAY PROCEEDINGS.

Whereas, on the eleventh day of January, nineteen hundred and eleven, I did allow a writ of certiorari in the above stated cause to review a certain order made by me on the said eleventh day of January, nineteen hundred and eleven, appointing William W. Watson, William I. Lewis and Charles A. Bergen Commissioners to fix the compensation to be paid to The Mayor and Aldermen of the City of Paterson as riparian owner for water sought to be taken and diverted by The Borough of Glen Ridge;

It is on this 21st day of January, nineteen hundred and eleven, ordered, that all proceedings under the said order appointing Commissioners as aforesaid be, and the same are hereby stayed, except as hereinafter stated, and that the said William W. Watson, William I. Lewis and Charles A. Bergen, and each of them, Commissioners aforesaid, desist from proceedings to execute their duties under said order, except to take and subscribe

the oath required of them as Commissioners, until the further order of the Court herein.

JAMES F. MINTURN,
J. S. C.

(A similar order was issued in each of the other seven cases.)

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,
vs.
THE BOROUGH OF GLEN RIDGE,
Defendant.
On certiorari.

RULE TO TAKE DEPOSITIONS.

Application being made for leave to take depositions to be used in the argument of the above stated cause,

It is ordered that the said prosecutor and defendant have leave to take depositions, to be used in the said argument.

On motion of

THOMAS F. McCRAN,
Attorney of Prosecutor.

Dated January 21st, 1911.

Let the above rule be entered on the minutes.

JAMES F. MINTURN,
J. S. C.

(A similar rule was issued in each of the other seven cases.)

TRANSCRIPT OF SHORTHAND NOTES.

Depositions of witness and Exhibits taken and offered, on the part of the Prosecutor, in the above entitled causes, before Edward O'Byrne, Supreme Court Examiner, on the twenty-sixth day of April, 1912, at half past ten o'clock in the forenoon, at the City of Paterson, N. J., in the presence of John W. Griggs, Esq., of Counsel for the prosecutor, and William H. Corbin, Esq., of Counsel for defendants, this deposition being taken by consent, without notice.

EDWARD O'BYRNE,
Supreme Court Examiner.

JAMES H. McCOLLOM, a witness produced in behalf of the Prosecutor, being duly sworn according to law, testifies as follows:

Direct examination by Mr. Griggs:

Q. You reside in the City of Paterson? A. Yes.

Q. Your occupation? A. Superintendent of Parks.

Q. Of what Parks? A. The entire system of parks of the City of Paterson.

Q. What are they known as? A. East Side Park, West Side Park, and a number of other parks that do not front on the river.

Q. Describe West Side Park. Q. West Side Park is situate on Totowa Avenue, running down on the westerly side to the Passaic River; along the Passaic River by Molly Ann's Brook, to Totowa Avenue again; beginning on the easterly side of the brook it runs down along the brook and the river to Preakness Avenue. I do not know what the entire river frontage is, but I should judge it is three quarters of a mile, including the brook.

Q. It is on the north side of the Passaic River at that point? A. Yes.

Q. Above the Great Falls? A. Yes.

Q. About how far above the Great Falls is the most westerly line of the property? A. One thousand feet.

Q. How long have you been connected with that park in an official way? A. Since the beginning; it will be twenty-four years the fifteenth day of June coming.

Q. Describe the improvements and embellishments, if any, which the City has, during that period, made to the park. A. Why, the entire ground has been graded with the exception of a small portion on the south easterly end of the park, and there has been built a stone wall along the river bank, and it is terraced above that, and there is a walk running all along there that is greatly used by the people on account of its being so close to the river. On the westerly side of the park, there is a walk extending all along the river bank that is very extensively used by the people. In fact, you will find the people sitting along the walks close to the river when you will not find them in any other portion of the park, the river there being comparatively clean and pure.

Q. Has the park been planted with trees and shrubs? A. Oh, yes.

Q. And flower beds and so forth are maintained there? A. I have not the figures in my mind, but the park system of the City of Paterson has cost, with the first cost of the land, up to date, about six hundred thousand dollars.

Mr. Corbin: I object to this answer upon the ground that it is not responsive, and it is not relevant and pertinent to the issue.

Mr. Griggs: It is a mere expression of opinion.

Q. Has anything been done up at West Side Park recently to enable the people to use the river in front of the property? A. Yes. During the past season there has been built a new concrete retaining wall, and a couple of flights of steps in that wall to enable the people either to ascend or descend to boats or the ice during the skating season.

Q. How extensively is the river used in front of the park for public boating? A. Why, in there during Sunday afternoons when a concert would be going on in the park you could see the entire river in the vicinity of the park almost covered with boats and canoes—probably two hundred or three hundred boats and canoes.

Q. Are numbers of water crafts of various kinds kept on the river above the Great Falls? A. Oh, yes.

Q. For hire? A. For hire and also for private use.

Q. For pleasure? A. Yes.

Q. What have you to say as to the importance of the river as an adjunct to a public park in the City of Paterson?

Mr. Corbin: I object to the question upon the ground that it is not a question for expert evidence, and, if it be, the witness is not an expert on that subject.

A. I think it is one of the largest assets in connection with West Side Park.

Q. Where is East Side Park located? A. On the easterly side of the town, running from Broadway Bridge, along Broadway, to lands owned by Mrs. Wall, possibly a distance along Broadway of probably one thousand feet; along the property out to Park Avenue; along Park Avenue for possibly three hundred feet; along Passaic Avenue to a line fence that runs down to the river; along the river

possibly seven hundred or eight hundred feet—I should judge the river line would be—along the easterly boundary of East Side Park.

Q. Is the river in front of East Side Park set back by the Dundee Dam so as to form a kind of a lake which is called Dundee Lake? A. There is a swamp there which is caused by the stoppage of the water at the Dundee Dam.

Q. Has the front of the park at East Side next to the river been improved yet by the park commissioners? A. No; it has not.

Q. For what reason?

Mr. Corbin: I object upon the ground that the witness is not competent to answer.

Q. Do you know for what reason? A. Simply on account of the foulness of the river at the present time.

Q. If, by the construction of the trunk sewer or by any other means the pollution is removed from the Passaic River, what would be the utility and availability of the river at East Side Park as an adjunct to the public use?

Mr. Corbin: I object to the question as it is not proper expert opinion, being a question as to which the witness has not shown competency to prophesy, and I also object for the reason stated in the objection to the last previous question.

A. Well, I think in case of the pollution being removed, while the area is not as great along the river as it is at West Side Park, I think it would be available in proportion just as much.

Q. Did the park commissioners at any time maintain a boat house for public use? A. They did.

Q. At East Side Park? A. They did.

Q. When? A. Well, it was done away with, a matter of twenty years ago, when the river began to get very foul. The man's business dropped off.

Q. You say the man's business dropped off; was it maintained by a private party? A. The man had concession from the park commissioners permitting him to build the boat house and use it for that purpose.

Q. Did he pay rental for that purpose? A. Yes.

Q. Has East Side Park been likewise improved by grading? A. Yes, sir.

Q. And by the planting of trees and flower beds and so on? A. Yes, sir.

Q. From your observation, what is the public attendance on Sunday at these two parks during the seasons of Spring, Summer and Fall? A. Do you want an average?

Q. Yes. A. It would be very hard to average. At the time of the band concerts we have an immense crowd, sometimes eight thousand or ten thousand people. At other times we have not near as many. There are days when East Side Park would not have five hundred people. At West Side Park, which is patronized more than East Side Park, it is nothing unusual on Sunday to have four thousand or five thousand people there.

Cross-examination by Mr. Corbin:

Q. You speak of having some association with the park, I think, for twenty-four years? A. It will be twenty-four years the fifteenth of June coming.

Q. The city bought the land and took over the parks about the year 1888, didn't they? A. Yes.

Q. This West Side Park, you say, has boat houses? These are also used not by the city but by persons to whom concession is given? A. No;

they are not on the park lands; they are on private property, and some are houses and some are boat clubs.

Q. The city owns one side of the river? A. One side only.

Q. The opposite side is owned by private individuals? A. The City owns land on that side also but that has been only recently acquired.

Q. How recently? A. They are not owners yet; it has not been turned over to them.

Q. Up to January 1, 1912, the city owned only one side? A. Yes; the north side.

Q. The water in front of West Side Park is slack water maintained there by the dam of the Society for Establishing Useful Manufactures, which is at the head of the Great Falls? A. Yes.

Q. And the level of the water in front of this park is governed by the height of the water in that dam; is it not? A. To a certain extent.

Q. Well, if the water is drawn down below the crest of the dam, the water in front of the park is drawn down accordingly? A. Yes.

Q. If the water overflows the dam, your water rises accordingly? A. Yes.

Q. The draught of water for the operations of the Society for Establishing Useful Manufactures, and its tenants, is over that dam; is it not? A. Yes.

Q. How much is that fluctuation, up and down? A. Between the crest of the dam?

Q. Give your best judgment. A. I should say three or four feet; five feet possibly.

Q. And sometimes the water rises two or three feet over the dam? A. We have had it so that it covered the entire park almost.

Q. How many feet have you known it to be over the crest of the dam? A. I should judge eight or nine feet.

Q. That is in time of flood? A. Yes; extreme flood.

Q. In the winter and in the seasons when you have reasonably high water, how high does the water flow over the dam? A. Why I should judge a couple of feet.

Q. How much of the year is there water flowing over the dam out of the three hundred and sixty-five days? A. Well, I should judge, possibly nine or ten months out of the year.

Q. That is, in addition to the water drawn over the dam for the use of the Society for Establishing Useful Manufactures? A. The water that the Society uses is drawn from the race-way, located west of the dam.

Q. But you say that for perhaps ten months of the year there is some water flowing over the dam? A. Yes.

Q. That is, in addition to what they take from the race-way? A. Yes.

Q. What is the season of the year when you have no water flowing over the crest of the dam? A. July and August, I should judge.

Q. There would be water flowing over the dam then, but for the fact that the Society is drawing all that comes through its flume? A. I should judge that is the reason for it.

Q. But at the lake, or at the pond that is made by the dam, still there is water there so that canoes and boats can go up, is there not, even in the driest weather? A. Well, there are times when you have trouble on account of the bottom.

Q. There is always water enough to float the canoes? A. Not always opposite the park.

Q. They draw it down? A. It is so that the rocks show and the boats cannot pass them. There is one rock ledge in front of the park, the continuation of the rocks in back of the park, and there I

have seen boys wading across with their shoes off.

Q. How high is the dam above the natural bed of the stream, to the crest of the dam? A. I could not answer that question; I could give an approximation.

Q. Well, approximate it. A. I should judge six or eight feet high.

Q. When the stream is very high the bed or channel of it is to the south side of this ledge of rock in the stream. A. The main channel, yes.

Q. So that when the stream is——

A. (Interrupting) It is possibly one hundred or one hundred and twenty feet wide there.

Q. Where? A. This north channel.

Q. Is the southerly one wider? A. Oh, yes.

Q. Now, at the East Side Park, the level of the water in that river there is governed by the level of the Dundee Dam; is it not? A. Yes; back water,

Q. The dam is some distance—a mile or more below the park? A. I should judge a mile or a mile and a half.

Q. How much does the level of the water fluctuate there in front of the East Side Park? A. Between high and——

Q. (Interrupting) High water and the lowest. A. I would not judge it above there, more than five or six feet, except in case of flood.

Q. And then, of course, it would be higher? A. Yes.

Q. This swamp that you speak of in front of the park is caused by the construction of the dam? A. Yes; by the back water.

Q. That dam at Dundee had been built some years before the establishment of the park? A. Yes.

Q. Some twenty years before the purchase of the park? A. More than that.

Q. At the East Side Park you speak of the pol-

lution of the river. That is dye-stuff, is it not, which blackens the water and otherwise discolors it? A. The water is discolored, and I presume it is caused by that.

Q. The principal trouble is due to the manufacture wastes and stuff and so on? A. Yes.

Q. Your suggestion is that if these were eliminated by an intercepting sewer, or otherwise, the park would be more desirable? A. Providing there was sufficient water left there.

Q. Suppose there was not any water there at all; suppose the water should be taken entirely away from the river; would not the park be worth anything? A. If you will allow me, I will just state when I was a boy or a young man just growing up, when the river was clean—and it was down there—Colonel Derrom had a structure, a kind of a boat house and what they called "Derrom's dock," and I used to go fishing there, and we used to catch yellow perch. I don't think you could catch anything there now.

Q. You could not catch any fish now? A. No. I believe there is carp there; I have heard them slapping around in the water.

Q. The Dundee Dam sets the water back for some four miles, does it not? A. I don't know the distance, but I have been told it is up to the Thirty-third Street Bridge.

Q. It sets it back for the entire frontage of the East Side Park? A. Yes, sir.

Q. And beyond that? A. And beyond that.

Q. That mill pond is in fact exceedingly foul, is it not? A. Yes.

Q. Practically black? A. Well, a very dark color.

Mr. Griggs: I offer in evidence deed from the Society's Land Company, to the Mayor and Aldermen of the City of Paterson, dated March 29th, 1888, recorded May 14th, 1888, in Book A-9 of Deeds, page 499, etc.

(Marked Exhibit P-1.)

Mr. Griggs: I offer in evidence deed from the Society for Establishing Useful Manufactures to the Mayor and Aldermen of the City of Paterson, dated March 29th, 1888, recorded May 14th, 1888, in book A-9 of Deeds of Passaic County, on page 503, etc.

(Marked Exhibit P-2.)

Mr. Griggs: I offer in evidence deed from Ann Van Beuren, to the Mayor and Aldermen of the City of Paterson, dated April 23rd, 1888, recorded May 14th, 1888, in book A-9 of Deeds, for Passaic County, on pages 494, etc.

(Marked Exhibit P-3.)

Mr. Griggs: I offer in evidence a deed from Albert Tag and Henry C. Rosenbaum to the Mayor and Aldermen of the City of Paterson, dated April 10, 1888, recorded May 14, 1888, in Book A-9 of Deeds for Passaic County, on pages 486, etc.

(Marked Exhibit P-4.)

Mr. Griggs: I offer in evidence deed from Ann M. Van Buran to the Dundee Manufacturing Company, dated Jan. 27th, 1864, recorded March 12, 1866, in the Passaic County Clerk's Office.

(Marked Exhibit P-5.)

Mr. Griggs: I offer in evidence the City's Map of West Side Park which was Exhibit C-10 in the case of the Mayor and Aldermen of the City of Paterson vs. The East Jersey Water Company, in Chancery of New Jersey.

(Marked Exhibit P-6.)

Mr. Griggs: I also offer in evidence map of the East Side Park, which was Exhibit C-11, in the case of the Mayor and Aldermen of the City of Paterson vs. The East Jersey Water Company, in Chancery of New Jersey.

(Marked Exhibit P-7.)

Mr. Griggs: I offer in evidence deed from Ralph Doremus, Francis E. Doremus, and Henry C. Doremus, and their wives, to the Mayor and Aldermen of the City of Paterson, dated August 6th, 1859; recorded August 10th, 1859, in Book F-2 of Deeds of Passaic County on pages 298, etc., being Exhibit C-20 in the case of the Mayor and Aldermen of the City of Paterson, vs. The East Jersey Water Company, in Chancery of New Jersey.

(Marked Exhibit P-8).

Mr. Griggs: It is agreed that the property mentioned in the last described deed from Doremus, et al., to the City of Paterson, from the time of its acquisition in 1859, to the present date, has had a fire engine house upon it and has been used by the said City of Paterson as a fire engine site.

Mr. Corbin: Well, if you state that that is the fact, I will agree to it.

Mr. Griggs: Well, I do state it.

Mr. Corbin: Then I agree to it.

Mr. Griggs: I now offer to read into the record as evidence in this case the testimony of John Donohue given on the hearing of the case between the Mayor and Aldermen of the City of Paterson and the East Jersey Water Company, known as the Chancery Injunction Suit, on April 10, 1906, as follows:

Mr. Corbin: I do not object to this method of proof, but I enter my objection to the relevancy and pertinency of the evidence.

(Mr. Griggs reads as follows):

Question: Have you records in your possession showing the cost of the two parks in the City of Paterson?

Answer: I have pretty exactly what it would be, some of our records were destroyed, but I can give you within a——

Question: Give us the original cost and the moneys expended since then for its maintenance.

Answer: $540,000.

Question: What does that embrace?

Answer: The sale of the bonds and the maintenance of the parks since they were purchased.

Mr. Griggs: It is stipulated by the respective counsel present that the foregoing testimony and exhibits shall be used in each of the eight certiorari suits above entitled.

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

I, Edward O'Byrne, Supreme Court Examiner, do certify that the foregoing deposition of James H. McCollom was taken before me by consent; that the witness was by me first duly sworn to testify

to the truth, the whole truth and nothing but the truth; that the questions and answers were taken down by me in shorthand notes and were by me transcribed, and that the foregoing is a true transcript of the said deposition.

EDWARD O'BYRNE,
Supreme Court Examiner.

NEW JERSEY SUPREME COURT.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,
v.
THE TOWN OF HARRISON,

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,
v.
THE MONTCLAIR WATER COMPANY.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,
v.
THE MAYOR AND COUNCIL OF THE CITY OF BAYONNE.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,
v.
THE WEST ORANGE WATER COMPANY.

On Certiorari.
Depositions.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,
v.
THE MAYOR AND ALDERMEN OF JERSEY CITY.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,
v.
THE BOROUGH OF GLEN RIDGE.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,
v.
THE TOWN OF KEARNEY.

THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON,
Prosecutor,
v.
THE MAYOR AND COUNCIL OF THE BOROUGH OF EAST NEWARK.

Depositions in the above entitled causes taken before me, David A. Newton, a Supreme Court Examiner of the State of New Jersey, this October 11, 1912, at 10 o'clock in the forenoon, at the office of Messrs. Collins & Corbin, 243 Washington Street, Jersey City, pursuant to the annexed notice.

Appearances:

For the Prosecutor:

Hon. John W. Griggs and Randal B. Lewis, Esq.

For the Defendants:

Hon. Gilbert Collins and Clement K. Corbin, Esq.

It is stipulated and agreed by the respective parties that the testimony may be taken stenographically by the Examiner, by him transcribed, and that the signatures of the witnesses thereto be waived.

It is further stipulated and agreed by the parties that the testimony now to be given, with the testimony heretofore taken on behalf of the prosecutor, by the consent of the parties is to be used on the hearing irrespective of whether there was a rule for affidavits in all of the causes.

TURNER A. BEALL, a witness produced on behalf of the defendants, upon being duly sworn according to law on his oath, testified as follows:

Direct Examination by Mr. Collins:

Q. Your name, age and residence? A. Turner A. Beall; age, fifty; residence, City, County and State of New York.

Q. When did you become interested in the matter of purveying water to the municipalities in Hudson county? A. In or about January, 1894.

Q. What was the condition of affairs as to the water supply of the various municipalities that are involved in this case at that time—Jersey City, did it not, had its own supply from Belleville, and Bayonne—(interrupted). A. The City of Jersey City was then receiving a supply of water from the pumping station on the east bank of the Passaic river at Belleville, and from the same supply it delivered water to the city of Bayonne and to the towns of Harrison and Kearny, including the present territory of the borough of East Newark.

Q. The works to which you allude were the city's own works? A. Yes, sir.

Q. The city of Bayonne, and what other? A. The towns of Harrison and Kearny, including the pres-

ent territory of the borough of East Newark, which was afterwards created out of part of the town of Kearny.

Q. State what you then did in the matter? A. My partner, Mr. Washington, and I, made a proposition to procure and deliver a satisfactory water supply to the city of Bayonne, which proposition, after some months of negotiations, resulted in a contract.

Q. Is this the contract (handing witness paper)? A. It is.

Mr. Collins: By consent copies are to be used instead of originals and formal proof is waived.

The Witness (continuing): This is a contract dated September 6, 1894, between the City of Bayonne and Messrs. Washington and Beall.

Marked Exhibit D-1.

Q. That was assigned by the firm of Washington and Beall to the New York and New Jersey Water Company? A. It was on April 20, 1895.

Q. Is that the assignment? A. It is (examining paper handed him).

Said assignment offered in evidence and marked Exhibit D-2.

Q. Was that modified later? A. An additional contract was made between the City of Bayonne and the New York and New Jersey Water Company by an ordinance passed by the Mayor and Council of the City on June 21, 1904, and accepted by the Water Company on June 28, 1904.

Said contract offered in evidence and marked Exhibit D-3.

By Mr. Corbin:

Q. Was there a further modification made of this contract, Mr. Beall, in 1909? A. There was a further contract or an additional contract made between the City and the New York and New Jersey Water Company by resolutions adopted by the City October 6, 1909, and accepted by the Water Company. This additional agreement provides for the construction by the Water Company of a second or duplicate supply main and ratifies and confirms the preexisting contracts.

Q. Is that the contract I show you (handing witness paper)? A. Yes.

Offered in evidence and marked Exhibit D-4.

By Mr. Collins:

Q. In 1895 did your company make a contract with the East Jersey Water Company in connection with the supply of Bayonne? A. The New York and New Jersey Water Company entered into a contract with the East Jersey Water Company in July—July 12, 1895.

Q. Is that it (handing witness paper)? A. It is.

Q. What did it cover? A. It covers an agreement between—whereby the New York and New Jersey purchases water—agrees to purchase water from the East Jersey Water Company for the supply of the City of Bayonne through the mains of the New York and New Jersey Water Company, and other purposes.

Said contract offered in evidence and marked Exhibit D-5.

Q. And has the City of Bayonne been supplied with water by the New York and New Jersey Wa-

ter Company with water furnished to the New York & New Jersey Water Company by the East Jersey? A. It has.

Q. Furnished where? A. At the intersection of Kearny and Belleville Avenues in the town of Kearny.

Q. At first how did it come down there—how did it reach there? A. The water supplied to our company, the New York & New Jersey, at that point—(interrupted).

Q. By the way, you were president of that company? A. Yes. You have not yet qualified me.

Q. I know it; I will now do so. You were president of the company and continued to be so until some time in the present summer? A. I was president of the company and general manager from about 1897 to August 5, 1912.

Q. Go on, now, from where I interrupted you? A. The water was delivered to us, the New York & New Jersey, by the East Jersey from its pipes running under the Passaic river at Belleville, originally and for a short time from a source at Paterson, and shortly thereafter—I think—at Paterson, or in part or as a whole from surplus water from the pipe lines supplying the city of Newark, until about 1899 or 1900, when the supply was delivered to us by the East Jersey from the Little Falls plant.

Q. Pipe and aqueduct running from Little Falls to this Kearny and Belleville Avenues? A. Kearny and Belleville Avenues; yes; in the town of Kearny.

Q. Why was it necessary in 1894 to get this new supply for Bayonne? A. The supply received up to that time by the City of Bayonne from the City of Jersey City was notoriously impure and inadequate in quantity and pressure, and we were solicited by the then responsible authorities of the City

New Jersey State Library

of Bayonne to take the matter up and co-operate with them in some plan whereby a pure and more adequate supply of water could be introduced into that city.

Q. What was the cause of the impurity? A. Pollution of the Passaic river at Belleville, the point of intake of the Jersey City water supply.

Q. What caused that pollution? A. The pollution in the Passaic river was undoubtedly caused by sewage and manufacturing products drained into the river at points above Belleville—notably at Paterson and Passaic.

Q. Now proceed. You have stated now what the source of supply has been. I might ask you if the new duplicate supply main has been built? A. It has been from Kearny to Bayonne and is in operation and has been for some months.

Q. There is a cross connection by which the duplicate main receives water at the same point? A. Yes; the cross connection is at the foot of Kearny hill where our gates and controlling valves are located.

Q. What are the sizes of those two mains? A. They are each 30 inches in diameter, built of—the first main built of riveted steel and to some extent cast iron—to a small extent; and the second main is built of what is known as lock bar steel, the rivets being only where the two lengths of pipe are joined together instead of longitudinally—(interrupted).

Q. Well, it is a large steel aqueduct, and about what length in miles? A. Approximately 15 miles each. (After a pause). I think if you will allow me I will make that 12 miles. I think it is nearer that.

Q. How long prior to 1894 had Bayonne been taking water from Jersey City? A. I understood for 10 or 15 years or longer; but I have no personal knowledge.

Q. Had Bayonne at that time, and does it still have, a complete distributing system throughout the city? A. It has now a complete distributing system. At that time its system was probably complete for the necessities of that time, but a great deal of installation has been put in since our contract was made.

Q. But there was a system of water pipes throughout the city wherever they used water? A. Yes, sir.

Q. Hydrants? A. Yes.

Q. And house service too? A. Yes.

Q. And your company delivered its supply at the city line? A. At a point on the northerly line of the City, and the City received the water there and distributed it throughout the city.

Q. You being paid by the million gallons? A. The city paid us by the million gallons and distributed it by meter to the consumer.

Q. After the decision of the Chancery suit of Paterson against the East Jersey before Vice-Chancellor Emery, did the City of Bayonne pass resolutions authorizing condemnation? A. It did.

Q. Is this a certified copy of the resolution? A. It is.

Offered in evidence and marked Exhibit D-6.

Q. In order to complete the history down to the present time, I ask you if there has been a more recent contract—an additional contract of May 18, 1911.

Mr. Corbin: There was one before that.

The Witness: I have testified as to the additional contract made between the City of Bayonne and the New York and New Jersey Water Company dated October 6, 1909.

Q. Yes; that you told me. Go on. A. There has been a further additional contract made since that date—I think in or about December during the year 1911, but I have not a copy of that contract with me.

Q. We perhaps don't need that, Governor; but (to the witness) you might generally state what it was?

Mr. Griggs: Well, I would like to have it; I never heard of it.

The Witness: You say you want it.

Mr. Griggs: Yes; it can be offered subject to production. I object to it if it be not produced.

Said resolution is marked Exhibit D-7.

The Witness: This resolution—(interrupted).

Mr. Collins: He consents that we produce it later.

The Witness (continuing): This last resolution and acceptance by the Water Company recites the requirements of the City in relation to the new pipe line and water supply as set forth in the agreement of October, 1909, but it eliminates the provision in the latter agreement for the right to the Water Company to transport any water beyond the City of Bayonne for use outside of the city.

Mr. Griggs: Is that relevant at all; that was after these proceedings were brought.

Mr. Collins: I have forgotten. When was this begun?

Mr. Corbin: This was begun around January, 1911.

Mr. Collins: Well, it was after that; and of course it would not have any bearing; but I thought the court ought to be apprised of it.

Mr. Griggs: I object to it as irrelevant.

Q. Has there been still another of May 18, 1911? A. On May 18, 1911—(interrupted).

Mr. Griggs: That is another one objected to for the same reason.

A. (continuing) On May 18, 1911, the New York and New Jersey Water Company entered into a further agreement with the East Jersey whereby instead of purchasing water from the East Jersey by the million gallons, as provided in the original agreement of July 12, 1895, the New York & New Jersey contracted for the use of the pumping plant and delivery facilities of the East Jersey for the purposes of its contract with the City of Bayonne.

Q. And is this it? (handing witness paper) A. It is.

Said agreement offered in evidence and marked Exhibit D-8.

Mr. Griggs: Objected to as irrelevant and immaterial.

Mr. Collins: I only put it in evidence to be entirely frank with the court.

Q. What are the present necessities of the City of Bayonne for water? A. The City of Bayonne is using now an average of about eight million gallons per day. When we began delivering to the City of Bayonne in 1897 or 1898 they used an average of under two million gallons per day.

Q. It is a manufacturing town as well as residential—constantly growing, and with probable increase of water necessities all the time? A. That is true, and is shown by the fact that the census returns of the population at the time we made our contract showed less than twenty thousand population, while the last census shows a population in excess of fifty-five thousand. Very large manufac-

turing industries are constantly locating in Bayonne.

Q. With what other municipalities were you concerned either individually or as an officer of some corporation? A. As President of the New York & New Jersey Water Company and as President of the New Jersey Suburban Water Company I was also interested in the procuring and delivery of a supply of water to the towns of Kearny and Harrison and the borough of East Newark.

Q. Take them up in their order of time and state the condition as to water service at the given time; what the requirements were, and what has happened since? A. The town of Kearny had been receiving its water from the City of Jersey City.

Q. It was then the Township of Kearny and has become since by legislation the town of Kearny? A. Yes. It had been receiving its water for a long term of years from the City of Jersey City at Belleville and Kearny Avenues from the supply pumped from the Passaic river by Jersey City at Belleville. This supply was abandoned by Jersey City owing to impurity and inadequacy about 1896.

Q. When you say "inadequacy" you refer to the capacity of Jersey City to furnish it? A. I refer to what I understand to be the conditions of the works at that point.

Q. There was no inadequacy of water at Belleville? A. I refer to the capacity of the existing works at that time, as I have been from time to time advised. The City of Jersey City abandoned these works and their operation about 1896 or 1897 upon procuring from the East Jersey a supply which was delivered at Belleville and Kearny avenues by the East Jersey to Jersey City, being sold by the million gallons. Out of this last supply the town of Kearny and the town of Harrison and

the present territory of the borough of East Newark—(interrupted).

Q. Which was then within the—(interrupted) A. Within the township of Kearny—was supplied from 1896 or 1897 to about July 1, 1903. The same statement as to the —(interrupted).

Q. One moment. Are you—did not the original contract with Jersey City go back as far as 1886—I think, I know I was mayor then—whereby Jersey City supplied Harrison? A. Yes; I was about to state that the same conditions relating to the supply of water to the township of Kearny which I have just testified to applied also to the supply of water by Jersey City to the town of Harrison.

Q. Dating as far back as 1886? A. Dating as far back, I believe, as 1886.

Q. Go ahead. A. Jersey City ceased to supply Harrison about July 1, 1903, as well as Kearny, because at that time Jersey City ceased to receive its supply from the East Jersey at Belleville and Kearny Avenues, and began to receive its water supply from the East Jersey at Upper Montclair into its new main running from Jersey City to Boonton; hence there was no supply of water at Belleville and Kearny Avenues after that date belonging to or owned under the control of Jersey City, and the companies which I represented entered into an agreement with the East Jersey whereby we became contractors to receive a supply from the East Jersey company at Belleville and Kearny Avenues, and in turn delivered it to the towns of Kearny and Harrison and the borough of East Newark.

Q. That is to the township of Kearny then including East Newark; and the Town of Harrison? A. Yes.

Q. At that time there was an outstanding contract between the East Jersey Water Company and

the township of Kearny, was there not, of which an assignment was made? A. There was such a contract which had been in existence for a number of years, but had never been put into operation because the contract provided that the town of Kearny should provide a pipe line at Belleville and Kearny Avenues to receive this water and carry it through the town of Kearny, and that pipe was never provided by the town. When Jersey City ceased to supply these towns by reason of the change in the location of its supply—in the location of the point of reception of its supply—the New York & New Jersey and the New Jersey Suburban took an assignment from the East Jersey of that old contract which had not been in operation.

Q. I show you the original agreement between the East Jersey and the township of Kearny, is that it? A. Yes; the agreement that you hand me is dated June 29, 1895, and is between the East Jersey and the township of Kearny.

Offered in evidence and marked Exhibit D-9.

Mr. Collins: I also offer in evidence the assignment to the East Jersey.

Marked Exhibit D-10.

Q. So from that time on those two water companies, assignees, furnished the water by the million gallons from this point of delivery at Belleville and Kearny Avenues into the Kearny system, is that right? A. From about July 1, 1903, the New York & New Jersey and the New Jersey Suburban have furnished all the water consumed within the territory of the town of Kearny, the town of Harrison and the borough of East Newark, and they have—these municipalities have received the water from these two companies and have de-

livered it to the consumers. We have to deliver it into the pipe lines of the municipalities.

Q. You deliver it into the pipe line of Kearny at the line of Kearny and then distribute it or rather Kearny then distributes it throughout its own system? A. No, sir; we deliver it, as I have stated, in a pipe line which our water company, the New Jersey Suburban, built from Belleville and Kearny Avenues, the original point of delivery under the agreement between the township of Kearny and the East Jersey. The township of Kearny having failed to provide such a pipe line as it contracted in that agreement, the agreement was afterwards amended when assigned to my water companies and extended for a period of ten years; and my water companies constructed a pipe line from that point of delivery through the entire length of the town of Kearny—(interrupted).

Q. Town of Kearny or township? A. Town of Kearny—constructed it to a point of delivery at the northerly line of the town of Harrison and the easterly line of the borough of East Newark, known as Fourth street. Now from that pipe line built by the New Jersey Suburban the water is delivered at various points into lateral and connecting pipes that belong to the town of Kearny, being always metered at those points of connection—there are about six of those points—and at Fourth Street, Harrison, on the line dividing Harrison, Kearny and East Newark, there are meters through which the water passes from that new pipe line into the distributing pipes of the town of Harrison and the borough of East Newark.

Q. The meters are so placed that each municipality can pay for the water it takes? A. Yes, sir.

Q. And the three municipalities have their own distributive systems? A. They have.

Q. Then the main pipe to supply Harrison and East Newark has to run through Kearny? A. Yes;

and is also a thirty-inch steel pipe of the same character and description as that built to the City of Bayonne.

Q. Is this the contract for the constructing of the new pipe (handing witness paper)? A. This is the contract between the town of Kearny and the New York & New Jersey Water Company and the New Jersey Suburban Water Company which provides not only that these companies shall construct the new pipe, but that they shall deliver water to the town of Kearny and shall receive payment therefor for a certain period of years.

Q. Was there one before that one? A. The only contract before that of which I have any knowledge is the contract previously entered into between the town of Kearny and the East Jersey, which was assigned to these two companies.

Said contract, dated August 16, 1904, offered in evidence and marked Exhibit D-11.

Q. The Kearny contract is a subsisting contract? A. Yes, sir.

Q. Running for how long? A. Until December, 1920.

Q. Did the town of Kearny pass a resolution authorizing condemnation? A. It did.

Q. Is this it (handing witness paper)? A. Yes; it is dated October 26, 1910.

Mr. Collins: I offer in evidence certified copy of that resolution.

Marked Exhibit D-12.

Q. Is there also as to Kearny a contract of May 18, 1911, similar to that that we have been speaking of of that date for Bayonne? A. Yes, sir.

Mr. Collins: I offer that in evidence.

Mr. Griggs: Objected to as irrelevant.
Said contract marked Exhibit D-13.

Q. I might ask you what the Kearny's necessities? A. Kearny is a town of about seventeen or eighteen thousand people with considerable manufacturing interests located along the easterly bank of the Passaic river, also in that large district running to the Hackensack river, known as the Kearny meadows. The consumption of water in the town of Kearny is increasing rapidly owing to these manufacturing demands and the building up of residential part of the town.

Q. What is it now? A. About two million gallons a day.

Q. Increased from what? A. From a little under one million a day in 1903.

Q. Before we leave Kearny; I notice that Exhibit D-11 refers to some supplemental contracts of February, 1896, June, 1897 and June, 1898, between the East Jersey and the township of Kearny; I don't want to encumber the record, and so perhaps the Governor will let you tell what they were? A. These contracts were merely resolutions of extensions of the—as I recollect them—of the period within which the town of Kearny was to provide a pipe line in order to receive the water supply which it had contracted for with the East Jersey.

Q. But they did not do it? A. No, sir; they did not.

Q. Now as to the town of Harrison? A. The statement—the testimony that I have given in relation to the town of Kearny as to the history of the supply and the sources of supply applies also to the town of Harrison.

Q. The Harrison contract I show you—is that it (handing witness paper)? A. September 15,

1903, the New Jersey Suburban Water Company made a contract with the town of Harrison for its water supply and this contract is it.

Said contract offered in evidence and marked Exhibit D-14.

Q. Had you made an agreement July 1, 1903, with the East Jersey—your two water companies with the East Jersey July 1, 1903? A. We did.

Mr. Collins: I offer it in evidence.
Said agreement marked Exhibit D-15.

Q. The existing contract with Harrison runs till when? A. It was made on July 1, 1903, for a period of fifteen years, running to July 1, 1918, with the privilege to the town of Harrison to elect for a further extension of ten years. Subsequently the town of Harrison did so elect and passed resolutions declaring its election to extend the period of the contract to September 1, 1928.

Mr. Collins: We will offer in evidence those resolutions.
Said resolutions marked Exhibit D-16.

Q. What were Harrison's requirements then and now? A. Well, Harrison was using about 750,000 gallons a day, and they are using now approximately two million gallons a day.

Q. Harrison is what kind of a town? A. It is a very active industrial manufacturing town.

Q. Of about what population? A. About 17,000 at the present time. The last census showed about 15,000.

Q. Did Harrison pass a resolution authorizing condemnation October 18, 1910? A. It did.

Q. Is that it? A. It is.

Said resolution offered in evidence and marked Exhibit D-17.

Q. Is this the recent contract of May 18, 1911, similar to those we have had before? A. This is a contract made May 18, 1911, between the New Jersey Suburban and the East Jersey.

Mr. Collins: I offer it.

Mr. Griggs: Objected to as irrelevant.

Said contract of May 18, 1911, marked Exhibit D-18.

Q. East Newark is a borough set off from the town of Kearny when? A. My recollection is that the separation took place about 1898.

Q. And how was that supplied until you made an independent contract, the Suburban Water Company made an independent contract with the Borough? A. The territory of East Newark being included in the township of Kearny was supplied with water as part of Kearny. Afterwards when the borough was established it received its water supply until July 1, 1903, from the City of Jersey City by the same method and the same sources, and the same pipe that supplied the township of Kearny and the town of Harrison up to that date. Since July 1, 1903, the borough of East Newark has received its water supply from the New Jersey Suburban.

Q. Up to August 31, 1906, when an independent contract was made? A. Well, it received its supply from July 1, 1903, to August 31, 1906, from the Suburban Water Company without contract. On August 31, 1906, contract was made between the borough and the Suburban Water Company for a period of five years. Since the expiration of that period the Borough has continued to receive its supply from the Suburban Water Company, buy-

ing it by the million gallons, but not under any contract.

Said contract of August 31, 1906, offered in evidence and marked Exhibit D-19.

Q. Did East Newark on March 8, 1911, pass a resolution to condemn? A. It did—March 8, 1911.

Said resolution offered in evidence and marked Exhibit D-20.

Mr. Griggs: Objected to as irrelevant.

Q. Did the Suburban Water Company make a similar contract to those of May 18, 1911—similar to those of the same date that I have put in? A. It did, in relation to the supply of water for the borough of East Newark.

Said contract offered in evidence and marked Exhibit D-21.

Mr. Griggs: Objected to as irrelevant.

Q. So that, as I understand it, while there is no subsisting contract for a fixed term with East Newark, the Suburban Water Company has been continuing to supply it at the same rates after the expiration of the written contract? A. Yes.

Q. What was the population of East Newark and its necessities for water when it was made a borough, and how now? A. I understand the population of East Newark is about 4,000, and it has not largely increased in population in the past ten years, because it has a small territory and is thickly populated. The manufacturing interests there are large, but not growing as rapidly as in the other towns I have testified to by reason of lack of space.

Q. The territory is very small and the princi-

pal industry is the Clark Thread Works? A. Yes, sir.

Q. East Newark was set apart as a borough under the general act authorizing the creation of boroughs by territorial limits, and came into operation under the general borough law, as you understand? A. I have been so advised by Messrs. Collins & Corbin.

Mr. Collins: It is also admitted that the town of Kearny was formed as a town by virtue of the adoption in the year 1898 of chapter 93 of the laws of that year; and Harrison has a special charter passed in 1869, I think.

Mr. Corbin: Yes; 1869.

Cross-Examination by Mr. Griggs:

Q. You speak of the population of the Passaic river at Belleville which caused Jersey City to cease getting its water supply at that point—are you aware that a portion of the pollution of the water of the river at Belleville was caused by the sewage of Newark being carried up by the tide? A. I am only aware of the condition of the river. As to the percentage of the pollution for which Newark was responsible, I am not competent to speak.

Q. Your statement about pollution of the Passaic by Passaic and Paterson, etc., is just mere general information? A. General information and knowledge of the Passaic Valley and the factories and the pollutions that I have seen from time to time in my travels.

Q. But you know nothing about the operation of the tide in carrying pollution from Newark above Belleville? A. Well, I know that the tide operates above Belleville. Where the pollutions

below Belleville come from or originate I have not made any particular study.

EDMUND LeB. GARDNER, a witness, produced on behalf of the defendants, upon being duly sworn according to law on his oath, testified as follows:

Direct Examination by Mr. Collins:

I reside in Ridgewood, Bergen county, New Jersey, and am the president of the East Jersey and have been for the last three years. Before that I was Vice-President since about 1895, and I have been connected with it since that time—spring of 1895.

Q. When did the East Jersey begin to divert water from the Passaic river, and where? A. Under contract in the spring of 1892—under a contract with the City of Newark, and they built works in the Pequannock Valley, and they began the delivery in the spring of 1892 from that water shed.

Q. The Pequannock being one of the two branches that form the Passaic—the Pequannock and the Rockaway? A. The Pequannock is one of the three streams that form the Pompton—the Pequannock, the Wanaque and the Ramapo form the Pompton; and the Pompton flows into the Passaic river and is its principal tributary.

Q. Did you mention Rockaway? A. That joins it at a different point.

Q. There is another tributary farther up called the Rockaway? A. Yes, further to the south and west.

Q. You had a contract with Newark for the construction of their water works with the privi-

lege to Newark to buy the works and aqueduct from your company which was consummated when? A. In September, 1900—September 24, 1900; and until that time we had the privilege of disposing of all the water in excess of twenty-seven and a half million gallons up to fifty million gallons, which was the quantity which that water shed and system assumed to produce.

Q. And the diversion for them and the surplus you used was on the Pequannock? A. On the Pequannock.

Q. Proceed and just give the history of the operations of the company down to date—briefly. A. I have stated this contract which they made. On or about the time that the—or soon after they turned water on to Newark, they also turned water on from this line—surplus water—to the Montclair Water Company and to the Orange Water Company, the Orange Water Company supplying at that time what is now known as East Orange, Bloomfield and Glen Ridge. They did nothing further with the—in the way of a water supply until they made a contract with Kearny and that contract—(interrupted).

Q. The one that has been offered in evidence? A. Yes; that contract. Nothing was done with that contract because Kearny would not accomplish anything and because the East Jersey did not have its pipes just at that date on that side of the river. They terminated—it was Newark's pipes they were using—and it terminated in Belleville. Along in 1895 or the spring of 1896 the East Jersey having made this contract with Kearny, and also having hopes of a contract with Jersey City, but because of the contract with Kearny, laid pipes through Belleville and across the Passaic river and up Kearny Avenue to the corner of Kearny Avenue and Belleville Avenues, and

would have then furnished water to Kearny had Kearny lived up to its contract and had its pipe. They were in position to deliver water, however. Then the city of Jersey City made overtures—made a contract for a supply of all the surplus water which we could furnish from the Newark system—assumed to be in the neighborhood of twenty millions of gallons.

Q. Go on. A. The water was turned on and was found to be wholly inadequate for the purposes of Jersey City—much less than our engineers anticipated—some ten million gallons less; and on account of the contractual relations we had established with Jersey City we were compelled to at once add to the capacity of the Newark works, both from the fact that the pipe itself was inadequate to fulfill the conditions of the Newark contract; and the East Jersey in the year 1897, I think it was, laid a second main from the Pequannock water shed down to Belleville in Newark, and then had capacity of something over fifty millions of gallons.

Q. Did they lay a second pipe under the Passaic? A. They had a sufficient number of pipes under the Passaic.

Q. And where was the intake of that new pipe? A. Same position, side by side, with the other, at the Macopin intake dam.

Q. At Macopin? A. On the Pequannock.

Q. What size pipe was that? A. 42—48 part of the way, about four miles; and then 42. They then gave Jersey City a complete supply, but anticipating that on the 24th of September, 1900, they would be compelled to turn over these works to Newark, and having made a contract with Jersey City for an entire supply, they laid a third main in to—not to Macopin, but to Little Falls, and started to build a large works there for their own supply and to supply water for the City of Pater-

son and Passaic, who were then getting their supply from above the Great Falls but within the limits of the City of Paterson, which supply had been polluted, and there had been two typhoid epidemics, due to pollution, because it lay within the City of Paterson, and it was carried out by Molly Ann's Brook that ran through part of the city from which this typhoid came; and Little Falls lay above it and the drainage of Little Falls went into it, and it was thought, too, that it would be more economical to have one large than a number of small works.

Q. When you speak of a contract for the entire supply of Jersey City you mean a temporary supply pending the completion—(interrupted). A. They had not at the time, they had not at that time made their contract. They did soon afterwards, but it was recognized that it was a contract; they had been asking for bids previously.

Q. They would eventually make a contract for the construction of works? A. Of their own.

Q. Similar to the contract that was made through your company with Newark? A. But not necessarily with us.

Q. And they did afterwards made such a contract with Patrick H. Flynn? A. Yes.

Q. You built that pipe from the Pequannock down to Belleville? A. Yes, and we continued then to furnish water to Jersey City; and as the demands of Jersey City grew we delivered some of the water of the Passaic river from Little Falls into the pipe to supplement the supply of water that was coming down from the Pequannock, because the demands were greater than the capacity—the safe capacity—of that water shed; and in that new pipe there was mingled at that time some water from the Passaic river at Little Falls, and the balance was water from the Pequannock. That con-

dition continued until about May 23, 1904, when the supply was turned on from the works of Jersey City's own works.

Q. What was the name of that place? A. At Upper—Lower Boonton.

Q. I mean the place where you put the water into their—(interrupted). A. That was incidental to it—about—as soon as the pipe line across the meadows—Jersey City's new pipe line across the meadows—had been laid in about May or June—about July 1—some time in June, 1903—we turned in Newark's supply—Jersey City's supply at that point.

Q. What is the name of that point? A. Brookdale.

Q. That is up in—(interrupted). A. It is between Montclair and Passaic.

Q. Now then go on? A. It is the point where our pipe line passes under or across the Jersey City pipe, and that had to be done because Jersey City's pipes across the meadows from the corner of Belleville Avenue and Kearny Avenue and Belleville Turnpike road were insufficient to carry the water necessary, and two of them were in very bad shape and Jersey City was constantly—every moment—on the verge of having a water famine.

Q. And they were encrusted with pollution, were they not? A. Yes.

Q. Now, proceed; did you establish at Little Falls a pumping—(interrupted). A. We built at Little Falls a large pumping plant.

Q. And filtration—(interrupted). A. And commenced to deliver water from there about 1899. We built a filtration plant that was completed about 1902. We began to deliver water also to Nutley about 1895. There was a Nutley Water Company there and they made a contract with the East Jersey and that contract was taken over by

the city when it bought the Nutley works—pipes of the Nutley Water Company—and they made a contract subsequently with the East Jersey and that subsequent contract was assigned by the East Jersey to the Montclair Water Company, who are now delivering the water.

Q. As to the Bayonne and the West Hudson towns, Mr. Beall has correctly stated the situation and the contracts are all in evidence? A. Yes. Now, may I make an additional statement?

Q. You may. A. Now, I think I ought to say this: Having established these works at Little Falls, the East Jersey entered into a contract with the Passaic and Acquackanonk Water companies to deliver them a supply of water, they to take it from the river and they to pump and deliver it to them.

Q. Who took it from the river? A. Passaic and Acquackanonk Water Companies, and they, the East Jersey, to pump it for them—to act as their pumping agent. Later on they made the same sort of an arrangement with Montclair. Previous to that they had been supplying Montclair at so much a million gallons.

Q. That is exactly what I wanted to have you tell us: just how the works are conducted there down to the present contracts by which you are—(interrupted). A. You are not interested in that today, are you, because since that Chancellor decree, that the East Jersey must not take water at all or anything, the Montclair Water Company has taken over any obligations of the East Jersey, and they are conducting the works and they are delivering the water both to the East Jersey and to the Passaic and to the Acquackanonk.

Q. So that the works are being conducted and operated by the Montclair Water Company? A. They are divided up and owned between those companies—(interrupted).

Q. What companies? A. The works are divided up in this way: three-eighths, including the pumping plant and certain proportions of the pipes, are owned by the Passaic Water Company, and two-eighths by the East Jersey and two-eighths by the Acquackanonk Water Company and one-eighth by the Montclair Water Company.

Q. Now then, proceed to tell us the method of supplying the various towns. I will first offer in evidence the certificate of incorporation of the Montclair Water Company.

Said certificate to be marked Exhibit D-22.

A. The Montclair Water Company was created, I think, about 1887, and was under the law of 1876, and it proceeded to supply Montclair with a well supply, which was thought, I assume, at the time to be sufficient for the purpose, and they put down one large well and then some driven wells and delivered for some considerable time until the East Jersey got its supply, and then they supplemented that well supply with water from the East Jersey pipe; but that well supply became so bad, I presume on account of the building up of the community, that it was considered dangerous by the board of health, and even by ourselves, and that eliminated it entirely, and for a good many years no water has been drawn from those wells.

Q. What year was it that they began to take water from the East Jersey? A. April, 1892—as soon as we got water down and started to deliver it to Newark we also started to deliver it to them.

Q. The Town of Montclair gets its water supply from the Montclair Water Company, which is a water company organized under the law of 1876, with power of eminent domain, etc., and the Mont-

clair Water Company pumps its own water? A. Yes, from its own works at Little Falls.

Mr. Griggs: Judge Collins, I think that kind of general statement may be a little misleading, because that is only a recent arrangement, the date of which has not been given; but originally, as I understand, the Montclair Water Company had a contract with the East Jersey to get the water out of the Newark pipes and get it out of there, and subsequently got it out of the East Jersey pipes. Now the witness says that since some order in the injunction suit Montclair has assumed the responsibility of operating —the Montclair Company has assumed the responsibility of operating a pumping station at Little Falls; but the date of that is not given.

Q. What is the date? A. I have not got that in my mind. Let me see. As I have said, the Montclair Company got its water from the East Jersey by purchase, and about the year 1906 the contract was changed so that the East Jersey and the Montclair Company agreed that the water was to be taken from the river and the East Jersey was to act solely as an agent in pumping.

Mr. Griggs: Now, I understand that you are going to offer that contract which shows that modified arrangement made about 1906; are you not?

Mr. Collins: We will get that for you.

The Witness: I will explain a little further. About 1908 the East Jersey sold the works—an interest in these works—to these various communities—these various water companies, Montclair, the Passaic and the

Acquackanonk—sold to them so that they should be co-owners; and then the East Jersey continued to take the water from there as representing them and acting as their agent so far as their supplies went, and pumping it for them.

Q. You say that was in 1908? A. I think so.

Mr. Griggs: Well, I cannot tell, but the record in the Paterson suit will show. This is my point. Mr. Gardner has testified to what he thinks the legal effect of these contracts is. I do not want that to stand without the production of the contracts.

Mr. Collins: There is no objection whatever to having them in. They were in in the East Jersey case.

Mr. Griggs: Yes, that is to say, the deeds for the conveyance of an undivided interest in the works and the pipe line were offered in evidence at the time the decree was settled before Vice-Chancellor Emery.

Mr. Collins: That is my memory.

Mr. Griggs: They were not offered in evidence on that trial because they were made afterwards. I would like a copy of the arrangement which was made as the witness says, in 1906, whereby, as he says, the Montclair Company assumed the responsibility but the East Jersey acted as its agent for pumpnig. I would like to have that contract put in. Of course, the deed of 1908, or whenever it was, ought to be put in also.

Mr. Collins: No objection to putting them in; but I don't think they are relevant.

Mr. Griggs: I think they are more important than some other things you have put in.

Q. It is the Montclair Water Company which is now seeking to condemn the right to divert, which is the subject of these certioraries? A. Yes, Montclair Water Company.

Mr. Collins: I offer in evidence certified copy of the resolution of the Montclair Wat- Company passed November 26, 1910.

Marked Exhibit D-23.

Q. Does the Montclair Water Company supply other municipalities than Montclair? A. It does.

Q. What are they? A. Bloomfield, Glen Ridge; those are the municipalities themselves; and the West Orange Water Company, which supplies West Orange.

Q. Glen Ridge is a borough carved out of Bloomfield? A. Carved out of Bloomfield. Shall I go on?

Q. Yes. A. The Essex County Freeholders, for their public institutions in Caldwell, the town of Nutley, by assignment from the East Jersey; and the Little Falls Water Company by assignment from the East Jersey.

Q. The Montclair Company, I take it, has its own distributing system and sells to consumers direct in Montclair, but sells by the million gallons to the others which have their own distributing systems? A. Yes.

Mr. Collins: I offer in evidence contract between the Town of Bloomfield and the Montclair Water Company, dated May 8, 1905.

Marked Exhibit D-24.

Mr. Collins: Also contract between the town of Nutley and the East Jersey, dated December 1, 1904.

Marked Exhibit D-25.

Assignment of that contract to the Montclair Water Company by the East Jersey, dated December 17, 1910.

Marked Exhibit D-26.

I now take up the West Orange Water Company and offer in evidence the certificate of incorporation of that Company, dated October 25, 1892.

Marked Exhibit D-27.

And the contract between the Montclair Water Company and the West Orange Water Company of November 1, 1892.

Marked Exhibit D-28.

Q. And the West Orange Water Company owns the distributive system in West Orange and sells direct to customers? A. Yes, sir.

Mr. Collins: I offer resolution of December 14, 1910, of West Orange Water Company to condemn.

Marked Exhibit D-29.

Q. As to Glenridge, the supply was originally under this contract, was it, between the Orange Water Company and the Montclair Water Company? A. Yes, contract of May 1, 1895.

Mr. Collins: I offer it.

Marked Exhibit D-30.

Q. And is now continued under arrangement shown in the documents now shown you? A. Yes, sir.

Q. Explain what happened and why it was nec-

essary? A. First the Glen—Glen Ridge under the law set itself off as a borough separating itself from Bloomfield, of which it was a part, and continued of course to receive water from the Orange Water Company, and the Orange Water Company under this contract received water from us. Then some short time ago Glen Ridge bought the pipes from the Orange Water Company in the same way that Bloomfield had bought the pipes from the Orange Water Company, and now owns and distributes water themselves, and in order that they might continue to receive the supply we exchanged the letters of assurance that we would give it to them from day to day and that they would pay for it.

Mr. Griggs: Won't you give the day of the sale of those pipes.

The Witness: I cannot.

Mr. Griggs: Was it in 1912?

The Witness: I think it was last year, and yet I am not sure.

Mr. Griggs: Letter of May 27, 1911, advises you that plans for the taking of the plant are now under way—so that it must have been soon after that.

The Witness: Well, then it must have been after that.

Three letters, dated respectively, May 8, 1911, May 27, 1911, and April 25, 1912—all marked Exhibit D-31.

Mr. Collins: I now offer the resolution for condemnation of Glen Ridge Borough.

Marked Exhibit D-32.

Q. Do I understand that when they began to take the water from you—from Montclair Water

Company, that they stopped—was not the well supply stopped altogether? A. Not at once.

Q. But they did eventually? A. After three or four years.

Q. Now from the time that they took the water from the Montclair Water Company that water was used for all these municipalities to which you allude? A. You mean that well water?

Q. No, the water they got from you? A. Yes. I was going to say that the well water was insufficient.

Q. And during the time that they did use the well water they mixed it with the water taken from you and supplied it indiscriminately to their own customers and to these other towns? A. Yes, whatever uses they had for it, I think so. Since then—since the well water supply has been abandoned all the water comes—(interrupted).

Q. From you? A. Yes, and it was abandoned a good many years ago.

Q. Yes, you said so. A. Yes.

Q. Can not water—can any water be furnished to these various municipalities, Montclair, Bloomfield, Glen Ridge, Nutley, West Orange, from any other source than from that which is now used? A. I know of no other source which would be adequate and safe.

Q. Is that also true as to Bayonne and the west Hudson towns? A. That is also true as to Bayonne and the West Hudson towns.

Q. The diversion at Little Falls is in the township of Little Falls? A. It is.

Q. Which adjoins the town of Montclair? A. Yes.

Q. And the others are all contiguous? A. They are contiguous with the exception of Little Falls and that—(interrupted).

Mr. Griggs: You mean contiguous to one another?

The Witness: They all touch Montclair.

Mr. Griggs: Montclair town?

The Witness: Township of Little Falls touches Montclair.

Mr. Griggs: But Orange and Nutley—they do not touch Montclair?

The Witness: Nutley touches Montclair.

Mr. Griggs: Montclair, yes; but not Little Falls?

The Witness: Oh, no.

Q. How far is it from the Little Falls pumping station to the Montclair line? A. Direct line?

Q. By pipe line? A. You mean by our pipe line or in a direct line, or—(interrupted).

Q. Both—your pipe line and in a direct line. A. In a direct line, right back over the hill it is not a distance of over two miles, if it is as much as that.

The Witness: Mr. Griggs, Montclair touches Little Falls.

Mr. Griggs: Little Falls extends from the Passaic river over the mountain to the other water shed, as a matter of fact (interrupted)

Q. The township of Little Falls touches Montclair? A. Oh, yes; it does touch it.

The Witness: I desire to make a correction in the interests of exactitude. I should say that when the East Jersey supplied the Orange Water Company with water it was made a condition of that supply that no water should be delivered by them within the precincts of East Orange.

Q. I think we now come to Jersey City.

Mr. Griggs: Why can't we stipulate as to that?

By consent of counsel, proofs of the matters set forth in the condemnation of Jersey City are omitted as not to be attacked.

Cross-examination by Mr. Griggs:

Q. Mr. Gardner, you are president, you say, of the East Jersey? A. I am at the present time.

Q. And of the Montclair Water Company? A. No, I am treasurer of the Montclair Water Company.

Q. Are you connected officially with the Orange Water Company? A. No.

Q. The West Orange Water Company? A. No.

Q. The Passaic Water Company? A. I am treasurer of the Passaic Water Company.

Q. Acquackanonk Water Company? A. Treasurer.

Q. Jersey City Water Supply Company? A. President.

Q. There is a group of water companies, consisting among others of the Passaic Water Company, the Acquackanonk Water Company, the Montclair Water Company, the Jersey City Water Supply Company, Little Falls Water Company, East Jersey Water Company—all of which are affiliated and controlled in the same interest?

Objected to as irrelevant and immaterial.

A. We haven't any interest in the Little Falls Water Company.

Q. Leave that out then. A. And the Jersey City Water Supply Company has passed out of existence; it sold its works and is being wound up. We had a different kind of an interest there; in fact, the

East Jersey Water Company had no interest at all; but some of my associates, my friends, put in part of the money to carry out those works, and asked me to take the presidency, because they thought I was competent.

Q. Come back to the East Jersey and the Montclair Company. A. Yes, they, the Passaic and the Acquackanonk are owned by the same interests—largely owned by the same interests.

Q. And who or what is the principal stockholder of all these companies?

Objected to as irrelevant and immaterial.

A. There is a holding compasy—the New Jersey General Security Company.

Q. Did you say that at the present time the Montclair Water Company is operating the pumping and filtering plant at Little Falls? A. For the other companies and for itself.

Q. Are the accounts kept in the name of the Montclair Water Company? A. They are.

Q. And it is the employer? A. Of all the people connected therewith.

Q. Montclair—the territory known as Montclair—is over what they call Third Mountain from Little Falls, is it not? Lies on the south side of the mountain. A. It is First Mountain, is it not? clear up, right up on the very top.

Q. I don't know whether it is first, second or third, I always forget which way they run. A. It runs clear up on top of the mountain; it extends

Q. But the inhabited part of Montclair is not in the drainage area that is represented by the Passaic river above Paterson? A. No.

Q. It is in a different drainage area entirely? A. Yes, in the drainage area of the Passaic river.

Q. But as represented by Newark, Nutley, Glen Ridge, Bloomfield, etc.? A. Yes, I should say that there must be some part of it where it extends up over the mountain, I have no doubt there is a little of it extends down the other way.

Q. But, generally speaking, it is not in that water shed? A. No; it is in the water shed of the Passaic, but not in that part of the water shed which is above the City of Paterson; but that don't apply to Little Falls.

Q. Oh, I didn't mention Little Falls—only Montclair? A. Only Montclair.

Redirect-examination by Mr. Collins:

Q. I want to ask Mr. Gardner a question that I overlooked; that it as to the location of West Side and East Side Park and the engine house owned by the City of Paterson, where they are situated with relation to the flow of the Passaic river; that is, whether they are on the normal line or on back water? A. The West Side Park is situated on the Passaic river above the dam of the Society, and it is on that pondage which abuts, on the pondage created by the dam of the Society. The flow of the Passaic river goes past it, but it is entirely the height of the water—the condition of the water there is entirely regulated by the draft of the Society.

Mr. Griggs: Mr. Gardner is now testifying to the legal effect of the deeds; and I object to his testimony.

Mr. Collins: All I am getting at is that the height of the water is governed by these dams.

Q. The height of the water in front of any of the three pieces of property is regulated by the dams? A. No; the engine house is upon the river proper

and is below the Society's dam and is only regulated the—flow of water is only regulated in so far as the Society may at times, like over Sunday or times like that, may shut off entirely the flow of water in the Passaic river past the engine house. They do that on Sundays.

Mr. Griggs: The same is true of the East Side Park, as far as the flow down the river is concerned?

The Witness: That is below and that is on the pondage—(interrupted)

Q. Where is the East Side Park? A. The East Side Park is situated on the pondage on the Dundee Water Power and Land Company.

Mr. Collins: Now I will offer in evidence the decree in the suit of Paterson against the East Jersey, advised by Vice-Chancellor Emery.

(Marked Exhibit D-33.)

Objected to as irrelevant.

Agreement, dated April 18, 1907, between Montclair Water Company and East Jersey Water Company offered in evidence and marked Exhibit D-34.

Agreement, dated December 31, 1910, between the East Jersey Water Company, Passaic Water Company, Acquackanonk Water Company and Montclair Water Company, offered in evidenec and marked Exhibit D-35.

Abstract of deed from East Jersey Water Company to Montclair Water Company, dated Janaury 1, 1908, and recorded February 26, 1908, in Book F-19, p. 23, of Deeds

for Passaic County, offered in evidence and marked Exhibit D-36.

The further taking of depositions under the notice above referred to was thereupon declared closed.

DAVID A. NEWTON,
Supreme Court Examiner of New Jersey.

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

To the Honorable, the Chief Justice and the Justices of the Supreme Court of the State of New Jersey:

I, David A. Newton, Supreme Court Examiner, do certify that the foregoing witnesses, Turner A. Beall and Edmund LeB. Gardner, appeared and testified before me; that they were first duly sworn to testify to the truth, the whole truth, and nothing but the truth; that their testimony was taken by me stenographically and that the foregoing is a true and impartial transcript thereof; and that pursuant to stipulation heretofore entered the signatures of said witnesses to said testimony have been waived.

DAVID A. NEWTON,
Supreme Court Examiner.

Dated, October 15, 1912.

Prosecutor's Exhibits.

EXHIBIT P-1.

Deed from the Society's Land Company to the Mayor and Aldermen of the city of Paterson, dated March 29, 1888, recorded May 14, 1888, in Book A-9, pages 499, etc., conveys for a consideration of $45,000, the following:

The First Tract :—Beginning at the corner formed by the intersection of the southeasterly line of Totowa avenue with the southwesterly line of Preakness avenue; thence (1) southeasterly along said line of Preakness avenue to the high water mark on the northwesterly side of the Passaic river; thence (2) southwesterly, westerly and northwesterly along said high water mark of said river and of the Oldham brook, their several courses to the southeasterly line of Totowa avenue; thence (3) northeasterly along the southeasterly line of Totowa avenue to a point distant two hundred and twenty-five feet southwesterly from the point of beginning; thence (4) southeasterly parallel with Preakness avenue, ninety-nine feet and eighty-eight hundredths of a foot (99.88); thence (5) northeasterly parallel with Totowa avenue, one hundred and fifty feet to a point distant seventy-five feet, southwesterly from the southwesterly line of Preakness avenue; thence (6) northwesterly parallel with the fourth course ninety-nine feet and eighty-eight hundredths of a foot to the southeasterly line of Totowa avenue; thence (7) northeasterly along the same seventy-five feet to Preakness avenue, and the place of beginning.

The Second Tract: All that tract of land bounded on the east by high water mark of the Oldham brook, on the north by Totowa avenue, on the west by the lands of the estate of Richard Van Houten, deceased, on the south by high water mark of the Passaic river.

Excepting, however, from the said tracts, and not conveying all parts thereof that are overflowed by the river and brook at the present height of the dam at high water mark.

It is understood and agreed that the term high water mark is the edge of the water in said river and brook when the water is flowing at a height of six inches over the dam of the Society for Establishing Useful Manufactures, above the Falls at the present height of the dam.

The said two tracts being parts of the property conveyed to the party of the first part hereto by deed from Morgan G. Colt and wife and De Grasse B. Fowler and wife, dated August first, eighteen hundred and eighty-seven and recorded in the Clerk's office of Passaic County, in Book U-8 of Deeds, pages 492, &c.

It is understood and agreed that the party of the first part shall not be liable for any damages caused by the overflow of said river and brook at the present height of said dam.

EXHIBIT P-2.

Deed from the Society for Establishing Useful Manufactures to the Mayor and Aldermen of the City of Paterson, dated March 29, 1888, recorded May 14, 1888, in Book A 9, pages 503, etc., conveys for a consideration of $1, the following:

The right, privilege and easement to make such use of the waters of the Passaic river and of the Oldham brook in front of and bordering on the lands conveyed to the party of the second part hereto by the Society's Land Company by deed of even date herewith as is customary and legal for riparian owners, and for such purposes to have access and right to cross over any intervening lands between high water mark and the water of the Passaic river and Oldham brook, and also the

use of any such intervening lands for the purpose of ornamentation; but it is distinctly understood and agreed and this grant is made upon this distinct condition and agreement that such access and use shall not and shall not in any way be construed to give to the City of Paterson the right to divert the water of the Passaic river or interfere with its use by the party of the first part hereto or to make any erection that would cause pollution of said waters, and that the party of the first part hereto shall not be held liable for any damages caused by the over-flow of said river and brook at the present height of said dam.

To have and to hold the said easement, right and privilege unto the said party of the second part, its successors and assigns to its and their sole use, benefit and behoof forever. And it is further understood and agreed that the said conveyance by the Society's Land Company to the party of the second part hereto above referred to, to high water mark of the Passaic river and the Oldham brook, carries the title of the party hereto of the second part, to the edge of the water in said river and brook when the water therein is flowing at a height of six inches over the dam of the Society above the Falls at the present height of the dam.

EXHIBIT P-3.

Deed from Ann M. Van Beuren to The Mayor and Aldermen of the City of Paterson, dated April 23, 1888, recorded May 14, 1888, in Book A 9, pages 494, etc., conveys for a consideration of $35,000, the following:

All those tracts or parcels of land and premises hereinafter particularly described, situate, lying

and being in the City of Paterson, in the County of Passaic, and State of New Jersey:

The first lot:—Beginning at the Passaic river and at the northeast corner of a tract of land sold some time ago by James Van Blarcom, and Hetty, his wife, to Henry P. Doremus, and running (1) north, seventy-eight degrees, west along the north boundary of the land sold as above and continuing this course thirteen chains and five links to land formerly belonging to Cornelius Vreeland, Esq., deceased, and striking in the line the sixth course as run and as entered on a deed from Henry Goutches and wife to James Van Blarcom, and recorded in the clerk's office of Essex County, Book O 2 of Deeds, pages 471 and 472; thence (2) running northwardly on the line (intended to be the sixth course in said deed) north six degrees and a half east, ten chains and four links to a corner; thence (3) (as by the seventh course in said deed), north seventy-five degrees and a half west, eleven chains and eleven links to a corner of Henry Garretson; thence (4] along the eighth course in said deed north twelve degrees and a half, east six chains and fourteen links to the south side of the road leading out of Broadway, in Paterson, to Hackensack; thence (5) along the south side of said road, south eighty-six degrees and fifteen minutes, east thirty-three chains to said river; thence (6) down said river with the several courses thereof to the place of beginning.

Containing forty acres and three hundredths.

Bounded by land of Henry P. Doremus and said Cornelius Vreeland, deceased, heirs, on the south by lands of the heirs of said Cornelius Vreeland deceased, and of Henry G. Garretson, on the west; by the said road, on the north, and by the Passaic river on the east; it being the same land conveyed by John Van Blarcom, and Ann, his wife, to Brant

Van Blarcom, by deed dated the 28th day of November, A. D., 1835, and recorded in the Clerk's office of Essex County, in Book 4 of Deeds, pages 434, etc.

The second lot:—Beginning at a stake in the line of land formerly belonging to Edo P. Mercelis, but now to Albert Van Houten; thence running (1) north thirteen degrees, east five chains and fifty-four links to lands now in the possession of George Holland; thence (2) south seventy-eight degrees east thirty-five chains and eighty-five links to land of said party of the first part; thence (3) south seven degrees and thirty minutes west five chains and thirty-eight links to land o fthe heirs of Cornelius Vreeland, Esq., deceased, and thence (4) north seventy-eight degrees and twenty minutes west thirty-six chains and thirty-nine links to the places of beginning.

Containing nineteen acres and fifty-four hundredths, more or less. Bounded on the west by land now or late of Albert Van Houten, on the north by land in the possession of said George Holland, by lands of Henry G. Garrison and Brar Van Blarcom, on the east by lands of the said Brant Van Blarcom, and on the south by land of the heirs of said Cornelius Vreeland, Esq.

It being the same premises conveyed by Cornelius C. Vreeland and wife to Brant Van Blarcom by deed bearing date the twenty-fourth day of April, A. D., 1838, and recorded in the Clerk's Office of Passaic county, in Book B of Deeds, pages 114 and 115.

The third lot:—Beginning in the middle of the road leading from Paterson to the New Bridge and in the westerly line of lands of the said Ann M. Van Beuren and Charles E. Van Beuren, formerly belonging to Brant Van Blarcom, from thence running (1) south fifteen degrees, west along the lands of said Ann M. Van Beuren and

Charles E. Van Beuren six chains and forty-seven links; thence (2) north seventy-seven degrees and fifteen minutes west nine chains and thirty-eight links; thence (3) north fifteen degrees and thirty minutes east five chains and ninety links to the middle of said road, thence (4) south eighty-one degrees east along the middle of said road, nine chains and forty links to the place of beginning. Containing five acres and seventy-six hundredths of an acre more or less, and being part of the same property described in a deed from Henry Goetchius and wife to Henry G. Garrison, dated June 18th, 1811, and recorded in the Clerk's office of the County of Essex in Book T of Deeds, pages 163, etc.

Excepting therefrom a certain parcel of land and premises described as follows:

Beginning in the southerly line of Broadway, its intersection with the westerly line of a lot formerly of Henry G. Garrison, deceased, and which was conveyed by Peggy Garrison, his executrix, to Ann M. Van Beuren and Charles E. Van Beuren, by deed dated October 12th, 1854, and recorded in Passaic County Clerk's office in Book W of deeds, pages 16, etc., thence running (1) along Broadway south eighty degrees and fifteen minutes east, ten chains and seventeen links to a point fourteen inches easterly of a white oak tree, marked and standing near the southerly line of Broadway; thence (2) south fifteen degrees and forty-five minutes west, eleven chains and sixty-three links to the line of lands of Andrew Derrom; thence (3) along said Derrom's line and the line of lands now or formerly of one Farrar, north seventy-five degrees and thirty minutes west, twenty-five chains and fifty-one links to the line of lands now or late of one Doremus; thence (4) along the same north sixteen degrees east five chains and fifty-three links; thence (5) south seventy-five degrees, east fifteen chains

and thirty-eight links to a corner of the said Garrison lot; thence (6) along said Garrison's lot north sixteen degrees east, five chains and fifty-three links to the place of beginning.

Containing nineteen acres and seventy-six hundredths of an acre.

The same being the premises conveyed by Ann M. Van Beuren to Stephen H. Wall, by deed dated Sept. 14th, 1866, and recorded in Book C 3 of Deeds for Passaic County, page 15. And also excepting a strip of land along Broadway, conveyed to the City of Paterson by an instrument dated Nov. 11th, 1867.

The above premises are sold subject to the terms of a deed from Ann M. Van Beuren to The Dundee Manufacturing Company, dated Jan. 27th, 1864, which conveys certain privileges of overflow.

EXHIBIT P-4.

Deed given by Albert Tag and Henry C. Rosenbaum and Camilla, his wife, to the Mayor and Aldermen of the City of aPterson, dated April 10, 1888, recorded May 14, 1888, in Book A 9, pages 486, etc., conveys, for a consideration of $40,000, the following:

All those tracts of land and premises situate, lying and being in the city of Paterson, county of Passaic and State of New Jersey, mentioned and described in a certain mortgage made by Andrew Derrom and wife to John J. Brown, dated February first, Anno Domini, eighteen hundred and seventytwo, recorded in Book Y of mortgages in said county, pages one hundred and sixty-four, &c., that is to say:

The First Tract.—Beginning on the west side of the public road leading from the Hackensack road to Weasel—by east of Brant Van Blarcom's pres-

ent (1842) dwelling and in a corner formed by the intersection of two of said Van Blarcom's lines, and in the northeast corner of this lot; and running thence (1) south nine degrees west five chains and twenty links; (2) north seventy-seven degrees and thirty minutes west twelve chains and thirty links; (3) north nine degrees, east five chains and twenty-four links; (4) south seventy-seven degrees and twenty minutes, east twelve chains and thirty-one links to the place of beginning.

Containing six acres and thirty-five and a half hundredths.

Being the same tract that was conveyed by Jeremiah Vreeland to the said Andrew Derrom by deed dated December thirtieth, eighteen hundred and fifty, and recorded in Passaic County Clerk's office in Book P of Deeds for said county, pages 496 and 497.

The Second Tract.—Beginning in the centre line of Passaic avenue at the point of intersection of the said centre line with the southerly line of the lot first above described; thence running (1) along said line of said above described lot westerly six hundred and fifty-three feet and five inches to the easterly line of the lot next described herein; thence (2) southerly along said line of said next lot nearly at right angles with Willis street and along the westerly line of the whole lot conveyed by John Dunlop and wife to said Andrew Derrom by deed dated April 10th, 1868, and recorded in said clerk's office in Book K 3, of Deeds, page 263, &c., two hundred and sixty feet to a point on said line if extended four hundred and sixty-eight feet from the centre line of Willis street; thence (3) easterly parallel with Willis street five hundred and ninety-seven feet and eight inches to the centre line of Passaic avenue; thence (4) northerly along the centre line of Passaic avenue two hundred

and ninety-two feet and nine inches to the place of beginning.

Being the most northerly portion of the tract conveyed by John Dunlop and wife as above stated to said Andrew Derrom.

The Third Tract.—Beginning at the corner formed by the intersection of the centre line of Willis street and Passaic avenue; running thence (1) westerly along the centre line of Willis street, five hundred and ten feet and ten inches to the westerly line of the lot conveyed by John Dunlop and wife to the said Andrew Derrom as aforesaid; (2) northerly along said westerly line and nearly at right angles with said Willis street, four hundred and sixty-eight feet and six inches; thence (3) easterly nearly parallel with said Willis street five hundred and ninety-seven feet and eight inches to the centre line of Passaic avenue; and thence (4) southerly along said centre line of Passaic avenue four hundred and seventy-six feet and two inches to the place of beginning.

Being the southerly portion of the tract of land conveyed as aforesaid by said John Dunlop and wife to said Andrew Derrom.

The Fourth Tract.—Beginning at the center line of Willis street, aforesaid, and at the southwest corner of the above described tract; thence running (1) northerly along the westerly line of said above described tract, four hundred and sixty-eight feet and six inches; thence (2) westerly nearly parallel with Willis street, fifty feet; thence (3) southerly parallel with the first line of this lot four hundred and sixty-eight feet to the centre line of Willis street aforesaid; thence (4) easterly along the centre line of said street, fifty feet to the place of beginning.

Being the same lot that was conveyed by Farmer Hobson to said Andrew Derrom by deed dated

July 23rd, eighteen hundred and sixty-six, and recorded in said clerk's office, in Book B 3, of Deeds, pages 216, &c. Said two lots being adjacent.

Also that certain tract of land situate in said county, particularly described in a certain confirmatory Indenture of Mortgage of the same date recorded in Book Y of Mortgages, for said county on pages 559, &c., and described as follows:

Beginning at a point on the south line of the said first tract which point is the southwest corner of said second tract, running thence first, southerly along the second course of said second tract two hundred and sixty feet; thence second westerly parallel with Willis street fifty feet to the easterly line of property conveyed by Farmer Hobson and wife, to the said Andrew Derrom in trust, by deed dated July 1, 1868, and recorded in the clerk's office of Passaic county, in Liber P-3 of Deeds, page 252; thence third northerly along the line of said Farmer Hobson's property two hundred and fifty-nine feet four inches to the southerly line of first tract; thence fourth easterly along said line of first tract fifty feet to the place of beginning.

The said hereinafter described pieces or parcels of land being the same premises which were conveyed by the Manhattan Trust Company (formerly the Real Estate Trust Company) to Albert Tag and Henry C Rosenbaum parties of the first part hereto by deed bearing date———.

EXHIBIT P-5.

ANNA M. VAN BEUREN,
to
THE DUNDEE MANUFACTURING COMPANY.

This indenture made this twenty-seventh day of January, in the year of our Lord, one thousand and eight hundred and sixty-four,

Between Anne M. Van Beuren, of the city of Paterson, in the county of Passaic, and state of New Jersey, of the first————

And the Dundee Manufacturing Company, of the state of New Jersey, of the second part,

Witnesseth, that the said party of the first part, for and in consideration of the sum of six hundred and fifty-five dollars and thirteen cents, lawful money to her in hand paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the party of the first part therewith fully satisfied, content and paid, hath granted, bargained, sold and conveyed, and by these presents doth grant, bargain, sell and convey, unto the said party of the second part, and their assigns, the right and privilege of overflowing without molestation forever, all such and so much of the farm lands and premises of the said Anne M. Van Beuren, situate in the city of Paterson aforesaid, in, adjacent and near to the Passaic river, and extending from the lands of Henry P. Doremus on the south to the public road known as the Broadway road on the north as one or shall be overflowed or cause to be overflowed with water or otherwise injured by means of the dam and works of the said the Dundee Manufacturing Company, erected and built in and across the Passaic river below said

lands as and at the height that the said dam is now erected and constructed, and of maintaining the said dam or any other in lieu thereof, at the same height forever.

To have and to hold the said right and privilege of overflowing the said lands as aforesaid, to the said party of the second part, their successors and assigns, to their proper use, benefit and behoof forever.

And the said Anne M. Van Beuren for herself, her heirs, executors and administrators, doth covenant and grant, to and with the said party of the second part, their successors and assigns, that she, the said Anne M. Van Beuren, is the true, lawful and right owner of the said lands and premises with the appurtenances, and that she hath good right, full power and lawful authority to grant, and convey the above mentioned right and privilege of overflowing the same in manner aforesaid.

Also that she, her heirs and assigns will warrant, secure and forever defend, the said party of the second part, their successors and assigns in the peaceable possession and quiet enjoyment of the said right of overflowing the said lands, as aforesaid forever, against the lawful claims and demands, hindrances and disturbances of any and every person and persons whatsoever.

And that the said Anne M. Van Beuren for herself, her heirs and assigns, doth also for the consideration aforesaid, release, acquit and discharge the said party of the second part, their successors and assigns of and from all manner and claim of damages caused or to be caused by the erection and maintenance of said dam in manner aforesaid.

In Witness Whereof, the said Anne M. Van

Beuren hath hereto set her hand and seal the day and year first above written.

ANNIE M. VAN BEUREN, [L.S.]

Sealed and delivered in the presence of

JOHN HOPPER.

PASSAIC COUNTY, ss.:

On the eighth day of February, A. D., eighteen hundred and sixty-four, before me, John Hopper, a Master in Chancery of New Jersey, personally appeared Anne M. Van Beuren, and acknowledged that she signed, sealed and delivered the foregoing Indenture, as her voluntary act and deed, the contents thereof being first made known to her by me and I being satisfied that she is the grantor named therein.

JOHN HOPPER,
Master in Chancery.

Received in the office and recorded March 12, 1866.

HOXSEY,
Clerk.

EXHIBIT P-6.

Map of Westside Park.

EXHIBIT P-7.

Map of Eastside Park.

EXHIBIT P-8.

Deed from Ralph Doremus and Catherine, his wife, Francis E. Doremus and Henry C. Doremus and Ann Eliza, his wife, to the Mayor and Aldermen of the city of Paterson, dated August 6, 1859, recorded August 10, 1859, in Bok F-2, pages 298, etc., conveys for a consideration of $500, the following:

All that tract of land and premises herein particularly described, situate, lying and being in the city of Paterson, in the county of Passaic, and State of New Jersey.

Beginning on the southeasterly side of Water street, at a point five feet and three and one-half inches westerly from the westerly side of the house of the heirs of Adrian B. Van Houten, deceased, running thence (1) southerly at right angles to Water street (as the same has been laid out from Temple street), to Albion street to the Passaic river, thence (3) northerly parallel with the first course to the southerly side of Water street, thence (4) easterly along the same three feet and three inches to a turn in said Water street, and thence (5) easterly, still along the southerly side of said Water street twenty-one feet and eleven inhces to the place of beginning.

Defendants' Exhibits.

EXHIBIT D-1.

AGREEMENT BETWEEN WILLIAM D'H. WASHINGTON AND TURNER A. BEALL AND THE CITY OF BAYONNE FOR THE SUPPLY OF WATER TO SAID CITY.

This agreement, made this 6th day of September in the year of our Lord, 1894, between William D'H. Washington of the City of New York, in the County of New York and State of New York, and Turner A. Beall of the City of Yonkers, in the State of New York, parties of the first part, and the Mayor and Council of the City of Bayonne, a municipal corporation of the State of New Jersey, party of the second part, Witnesseth:

Whereas, the party of the second part desires to obtain for the City of Bayonne and its inhabitants, a supply of pure and wholesome water for drinking, domestic and manufacturing purposes, the extinguishment of fires, and all other lawful purposes, and the parties of the first part have offered to furnish or cause to be furnished such supply upon the terms and conditions hereinafter stated:

Now Therefore, the parties hereto, in consideration of one dollar to each in hand paid by the other, receipt of which is hereby acknowledged, and of the mutual covenants and agreements herein contained, do mutually agree as follows:

(1) The parties of the first part undertake and agree to furnish, or cause to be furnished, to the party of the second part, by means of a substantial system of water works, to be operated by the parties of the first part, or their assigns, an ample supply of pure and wholesome water to be de-

livered from available water sources into the system of pipes now constructed or hereafter to be constructed by the party of the second part, at such point in said city as shall be designated by the mayor of said city, said designation to be made within thirty days after notice shall be given said mayor by said parties of the first part, or their assigns, requiring such designation, and under a pressure of not less than forty-five pounds to the square inch. The standard of purity of the said water to be furnished hereunder shall be as follows:

1. The water must be clear, transparent, without color or smell and of a pleasant taste. By the terms "clear, transparent and without color" is meant that the water shall have practically no color when contained in a tube of colorless glass and seen through a depth of one foot against a plate of white porcelain.

2. It shall contain in 100,000 parts not more than:

Free ammonia, 0.005 parts or 0.003 grain in U. S. gallons of 231 cubic inches.

Albuminoid ammonia, 0.01 parts or 0.006 grain in U. S. gallons of 231 cubic inches.

Required oxygen. It should not require more than 0.25 parts of oxygen to oxidize its organic matter in 100,000 parts.

Nitrites and Nitrates. The Nitrites (N-2 0-3) should be entirely absent or present only in trace. The Nitrates (N-2 0-5) should not exceed 0.2 parts per 100,000.

Chlorine, 0.3 parts, or if drawn from deep wells, 2.0 parts or 1.2 grain in U. S. gallons of 231 cubic inches.

3. It shall be soft (not above 5 French)

and not make undue scale in boilers, or be unfit for laundry uses.

4. It shall not contain more than 30 colonies of bacteria per cubic centimeter, prepared from a sample freshly taken.

A sample or samples of any water proposed to be supplied thereunder shall be submitted by the parties hereto or their assigns, for analysis, at the expense of the party of the first part, either to Professor Charles F. Chandler or to Professor R. Ogden Doremus, chemists of New York city, who shall determine whether the same be up to the standard above provided. If both of said chemists shall refuse, or for any reason be unable to act, then such sample or samples shall be submitted for such determination to the chemist of the Water Bureau or Health Department of the city of New York, and if he shall refuse or be unable to act, each party hereto shall name a chemist, and they two shall name an umpire, and the decision of these three, or a majority of them, on such sample or samples of water, shall be conclusive. And it is understood and agreed, that the party of the second part shall have the right to have samples of the water supplied hereunder submitted to chemists at any time, and from time to time during the term of this contract, for the purpose hereinbefore indicated, and such submission shall be made as follows:

The party of the second part shall notify the parties of the first part, or their assigns, in writing, that they require such submission and the time when samples of water shall be taken and thereupon at the time named in such notice five samples of the water shall be drawn from the water being supplied hereunder at the place of inlet into the system of pipes of the party of the second part, one of which samples shall be retained

by each of the parties hereto and the other three samples shall be submitted by the party of the second part to chemists for analysis, each of the parties hereto naming one chemist and they two naming an umpire, and the decision of the three, or a majority of them, upon such sample or samples of water shall be conclusive. And in the event of said chemists, to whom said water is submitted for analysis, from time to time, as aforesaid, refusing to certify that the same is up to the standard above provided, all payments which may accrue to the parties of the first part, or their assigns, thereafter under the terms of this contract shall be suspended, and the said party of the second part be released from all liability to pay the same until the water again reaches its standard of purity, to be determined by drawing and submitting samples to chemists in like manner as last provided, written notice of the time of drawing such samples to be given by the parties of the first part, or their assigns, to the party of the second part.

It being understood and agreed that a rebate of 25 per cent. shall be allowed to the party of the second part upon the price of all wateractually consumed during the period the water shall be inferior in quality than that provided by the standard hereinbefore defined; provided, however, that if the said water shall at any time continue in such an impure and unwholesome condition for a period of ninety days (which condition is to be determined by again submitting samples thereof at the end of said period to said chemists) then this contract shall be void at the option of the party of the second part, and said party shall be and is hereby released from all liability thereunder, and shall be at liberty to enter into such other contract or agreement for a water supply as it deems best.

Second. The party of the first part agrees that

the works for the furnishing of the said supply of water shall be begun within six months from the date of this contract, and so far completed and in operation within two years from this date as to provide a daily supply of two million five hundred thousand gallons, which the party of the second part agrees to receive and pay for as hereinafter provided, (provided however, that if the parties of the first part supply water hereunder in less than two years the minimum amount to be received and paid for by the party of the second part during first year (said year dating from the day the water supplied by the party of the first part shall be approved by the chemists as herein provided) shall be seven hundred and thirty million gallons annually, and during the second year of said supply of water, nine hundred and twelve million five hundred thousand gallons annually, as in next paragraph specified) and thereafter the parties of the first part agree to provide and maintain a daily supply of water equal to all the requirements of the party of the second part, provided that the said party of the second part shall in all cases give six months written notice to the parties of the first part, or their assigns, of any increase in supply required over two million five hundred thousand (2,500,000) gallons daily and from and after the time when such increased supply shall be provided, pursuant to such notice, the party of the second part agrees during the remaining term of this contract to receive and pay for at least fifty per cent of such additional daily supply as required. Provided, however, further, that if within two years from this date the parties of the first part or their assigns, shall have expended or cause to be expended, in good faith towards the erection of such system of water works one half of the cost thereof, which shall not amount to less than $400,-

000, then any delay caused by injunction or other judicial process, or any unavoidable accident, or delay in getting any necessary land or right of way, or malicious interference or strikes, shall not be counted part of the time above limited, it being understood, however, that in no case shall such delay extend beyond one year.

And it is hereby expressly understood and agreed, that if for any reason the parties of the first part are unable or neglect to furnish the party of the second part the quantity or quality of water within the time herein agreed upon, this contract shall, at the option of the party of the second part, cease, and the party of the second part be relieved and released from all further liability thereunder.

And it is further understood and agreed that in the event of the inability, failure or neglect of the parties of the first part to deliver the 2,000,000 gallons of water of the quality agreed to be furnished by them within three years as herein agreed upon, then the said parties of the first part agree to pay to the said party of the second part the sum of $25,000.00 which is hereby fixed and agreed upon as the liquidated damages of the party of the second part for the loss of the use of said water, and the opportunities to make other contracts and all other damages of every kind and description to which the party of the second part would be entitled, for the non-delivery of said two million (2,000,000) gallons of water as aforesaid, and to secure the payment of which amount of $25,000 the parties of the first part have given the bond of the American Surety Company in the penal sum of $50,000.

Third. The parties of the first part or their assigns shall give thirty days written notice to the party of the second part, by delivering such notice to the Mayor or City Clerk of said city, of the

time when they will be ready to deliver water to the party of the second part under the terms of this contract, and on and after the date named in such notice the parties of the first part agree to deliver or cause to be delivered the water as specified in the last paragraph, and the party of the second part agrees to receive from the parties of the first part or theri assigns, all the water required for said city and to pay for the same at the following rates, viz:

For the first 2,000,000 gallons consumed each day, at the rate of $89.00 per one million gallons.

For the third million gallons consumed each day, at the rate of $80.00 per one million gallons.

For the fourth one million gallons consumed each day, at the rate of $70.00 per one million gallons.

For the fifth one million gallons consumed each day, at the rate of $55.00 per million gallons; and

For the sixth one million gallons and all in excess thereof consumed each day, at the rate of $40 per one million gallons.

It being understood and agreed, however, that the party of the second part shall not be obligated at any time to pay for more water than it actually uses, provided that the party of the second part agrees that the daily supply received and consumed by it shall during the first year after the date of the first delivery under this contract be not less than 2,000,000 gallons per day, and thereafter not less than 2,500,000 gallons each day, and in addition in all cases fifty per cent. of any additional supply over and above 2,500,000 gallons required by the party of the second part, as in the last paragraph provided.

Settlements to be made quarterly on the first days of January, April, July and October, it being understood and agreed, however, that at the end

of the first, second and third quarter of each year, no more water shall be paid for than has been actually consumed during each of said quarters respectively, and that at the end of the fourth quarter of each year the difference between the amounts paid during the three preceding quarters and the total amount the party of the second part is obliged to pay under the terms of this contract for the year shall then be paid in full.

Fourth. In the event that the parties of the first part, or their assigns, shall issue mortgage bonds, secured by a mortgage or deed of trust, upon the works to be constructed by them, with the lands, reservoirs, machinery, pipes, outfits, rights, privileges and franchises, and such other property as may appertain thereto the payments for water supplied hereunder as they may from time to time become due and payable, or so much thereof as may be necessary to pay the interest upon said bonds, shall be paid by the party of the second part to the trustee or trustees named in said bonds, mortgage or deed of trust, and the proper officers of the party of the second part shall sign a certificate on the back of each of the said bonds, under the corporate seal of the said city, reciting the substance of this contract, provided such undertaking is not contrary to law, and that such portion of said water charges as may be necessary therefor will be paid into the hands of the trustee or trustees for the protection of the purchasers of the said bonds; provided, however, that the party of the second part shall not be required to pay, or to sign any certificate obligating itself to pay any further sum or sums of money than shall accrue and become due from the party of the second part for water supplied hereunder. Provided further, that nothing to be endorsed or written, or signed by the party of the second part on said bonds, shall

in any case be deemed or taken to be an undertaking on the part of the party of the second part to guarantee the payment thereof, or the interest to accrue thereon, beyond or in addition to the amounts or sums of money which may become due and payable under the terms of this contract. And in case of the failure of said parties of the first part to deliver the water as agreed, no liability of any kind or description shall exist against the said party of the second part by reason of any such endorsement or writing on said bond. And in case the liability of the party of the second part to the parties of the first part shall cease, then all liability on said bond shall cease.

Fifth. The party of the second part further agrees in case it shall be found that any power or rights possessed or that may be acquired by the party of the second part, in respect to the prevention of the pollution of any water, or the prevention of injury to any portion of the works constructed for the supply of water, or the punishment of such injury, or the condemnation of land, water or rights, may be advantageously used or exercised for the purpose of this contract, so far as it has or may acquire the power to do so, to put such powers or rights in force or permit the parties of the first part, or their assigns, so to do in the name of the party of the second part, but at the expense of the parties of the first part, or their assigns.

And the party of the second part further agrees that the parties of the first part in constructing the works required under this contract, shall have the right to lay pipes through the streets and avenues of the party of the second part, to the point or points of reception, provided, that said pipes shall not be used for any other purpose than to furnish the water provided for under this contract, and that not more than five hundred (500) feet

of any street or avenue shall be opened or excavated at one time, and that in no case shall any cross street or avenue be blocked so as to prevent the passage of vehicles during the progress of the work of laying such pipes and that such excavation and work shall be so made and performed as not to interfere with the approach of fire engines to fire hydrants on the line of such work, it being expressly understood that in case the parties of the first part shall obstruct the said cross streets or avenues or fire hydrants, the party of the second part shall have the right to remove such obstructions at the cost of the parties of the first part; and provided further, that such construction through such streets and avenues shall be made under the direction of the Street Commissioner, and the Committee on Water, Streets and Drainage, or under such other officer or committee as may be designated by the City of Bayonne, and shall not interfere with or injure other constructions or works made therein, and that the parties of the first part shall at their own cost and expenses immediately fill up all excavations and relay any pavement or sidewalk removed, and leave such streets and avenues in as good condition after such pipes are laid therein as they were before such work was commenced.

And it is hereby further agreed that in no case shall the party of the first part furnish water to any person or corporation within the limits of the City of Bayonne.

Sixth. This contract shall continue for a period of twenty-five years, provided that the party of the second part may at the expiration of ten years from the date hereof, or at the expiration of any period of five years thereafter, at its option, upon giving one year's written notice of such intent to the parties of the first part, or their assigns, pur-

chase the said water works at a prive five per cent. of which shall be equal to the aggregate price of toll accruing to the parties of the first part, or their assigns, for water supplied by said works during the year immediately preceding the date of said purchase.

If the party of the second part elect to purchase and serve notice aforesaid, then the parties of the first part, for themselves and their assigns, agree upon receipt of the price named to convey to the party of the second part, free and clear of all claims and demands whatsoever, the said water works, including the lands, dams, reservoirs, rights of way, conduits, pipes, machinery and appurtenances of every kind in connection therewith and thereupon this contract shall cease and be thereafter annulled.

In witness whereof the parties of the first part have hereunto set their hands and seals, and the party of the second part has caused its official seal to be affixed and these presents to be signed by its mayor and city clerk, the day and year first above written.

Sealed and delivered
in the presence of:
PHILIP LUMBREYN,

WM. DEH. WASHINGTON, [SEAL]
TURNER A. BEALL. [SEAL]
WM. C. FARR, *Mayor.*

Attest:
[SEAL] W. C. HAMILTON, *City Clerk.*

EXHIBIT D-2.

ASSIGNMENT OF WASHINGTON AND BEALL TO NEW YORK & NEW JERSEY WATER COMPANY.

Know All Men By These Presents, that whereas a certain written contract was duly made and entered into between us, the undersigned Turner A. Beall and William DeH. Washington, and the Mayor and Counsel of the City of Bayonne, New Jersey, dated the sixth day of September, 1894, whereby we, on behalf of ourselves and assigns undertook and agreed to furnish and the Mayor and Council of the City of Bayonne agreed to receive a supply of pure and wholesome water for said City of Bayonne, for the period of twenty-five years from the date of said contract, upon the terms and conditions therein set forth; and whereas the New York and New Jersey Water Company has been duly incorporated under the laws of the State of New Jersey for the purpose of operating water works and supplying water therefrom and is desirous of acquiring and fulfilling said contract.

Now, therefore, we, the said Turner A. Beall and William DeH. Washington, in consideration of the sum of one thousand dollars and other valuable consideration, the receipt whereof is hereby acknowledged, have sold, assigned, transferred and set over, and by these presents do hereby sell, assign, transfer and set over unto the said The New York and New Jersey Water Company, all our right, title and interest in and to said contract, and all moneys, interest, benefit and advantage whatsoever, now due or hereafter to accrue, arise or be had or made by virtue thereof; to have and to hold the same unto the said The New York and New Jersey Water Company, its successors and assigns, to its and their own use, benefit and behoof

forever; the said New York and New Jersey Water Company, its successors and assigns, to well and truly fulfill and perform all and singular the covenants and conditions in said contract contained on the part of the parties of the first part thereto and to well and truly indemnify and save us harmless therefrom.

And we do hereby constitute and appoint the said The New York and New Jersey Water Company, our attorneys in our names, or otherwise, but at its own costs, to take all legal measures which may be proper or necessary for the complete recovery and enjoyment of the assigned premises.

Witness our hands and seals, this 20th day of April, 1895.

WILLIAM DEH. WASHINGTON. [SEAL]
TURNER A. BEALL, [SEAL]

In presence of:
JAS. H. BEALL.

EXHIBIT D-3.

ACCEPTANCE OF BAYONNE ORDINANCE, 1904.

To the Honorable the Mayor and Council of the City of Bayonne, New Jersey.

GENTLEMEN:

At a meeting of the Board of Directors of the New York and New Jersey Water Company, held this day, the following preamble and resolutions were unanimously adopted:

Whereas there has been submitted to this Board an ordinance passed by the Council of the City of Bayonne on June 21st, 1904, and approved by His Honor, the Mayor of Bayonne June 24th, 1904, which ordinance is in the words and figures following:

An ordinance to provide for an extension of the system of water mains in this city, and for a further supply of water for the purpose of extinguishing fires and for other purposes in this city.

Whereas, The Water supply of this city is received from the New York and New Jersey Water Company (assignee of William DeH. Washington and Turner A. Beall), under and by virtue of the provisions of a certain contract bearing date September 6th, 1894, made by and between the City of Bayonne and the said William DeH. Washington and Turner A. Beall, the intake for said water supply being at the northerly extremity of the city, from which intake the water is distributed throughout the city by mains owned by the city, which distributing mains have by reason of their age become incrusted, and their capacity lessened, which, with the greatly increased demands of the manufacturing industries located here, as well as the large increase of population, have rendered the said distribution system inadequate for the present needs of the city; and

Whereas, Notwithstanding the provision which is now being made by the laying of an additional main to increase the supply for a portion of the city, it is deemed advisable, in view of the rapid increase in population and the incoming of additional manufacturing industries, to make further provision for an increased pressure and quantity, and for better protection against fire for the entire city, as well as to secure the means of procuring an adequate water supply for the future; and

Whereas, This city can make provision for securing such additional pressure, quantity and fire protection only by the laying of additional water mains at large expense; and

Whereas, The New York and New Jersey Water Company at its own cost and expense, and

without the expenditure of any money by the city, has offered to lay water mains in and through certain of the streets and avenues of this city, hereinafter designated, for the purpose of conveying water to and throughout the city, as well as beyond the city, on the terms hereinafter provided, by means of which mains such better provision will be made for the present and future water needs of the city, and the said company has also offered to erect and maintain at its own cost and expense a certain number of fire hydrants along the line of the said mains so to be laid by it, and also at its own cost and expense to furnish from said mains and hydrants water free, which may be drawn therefrom for the purpose of extinguishing fires and for street sprinkling purposes; and the said company offers also to pay to the city a sum equal to five ($5.00) dollars per million gallons for each and every million gallons of water that may be conveyed by said mains beyond the city; and

Whereas, It is the judgment of this board that it is to the advantage of this city that such offer should be accepted; therefore

Be it ordained by the Mayor and Council of the City of Bayonne as follows:

Section 1. That the offer of the New York and New Jersey Water Company, above recited, be accepted, and the right is hereby granted to the said the New York and New Jersey Water Company, its successors and assigns, upon the conditions herein stated, to lay, maintain, repair, renew and operate water mains, not exceeding two, which mains may be constructed of either steel or iron pipes of an internal diameter not less than sixteen (16) inches each, and not more than thirty-six (36) inches each for a period of twenty-five years from the date hereof (and not to be made any longer by any power, except by consent of the city),

from a point in West Fifty-fifth street, near and west of Avenue "D," to be designated by the Mayor; thence easterly to Avenue "D"; thence southerly through Avenue "D" to East Fifty-second street; thence easterly through East Fifty-second street to Avenue "E"; thence southerly through Avenue "E" to Linnet street; thence easterly through Linnet street to Ingham avenue; thence southerly through Ingham avenue and under the property of the city at the foot of said Ingham avenue to and continuing under the waters of the Kill von Kull to the southerly boundary line of this city, said mains to be constructed and maintained not less than three and one-half (3½ ft.) below the surface of the street, which mains may be laid at the same time, or at different times, at the option of the said water company and as hereinafter provided, the first main laid to have its center line six feet (6 ft.) west of the center line of Avenues "D" and "E," six feet (6 ft.) south of the center lines of East Fifty-second street and Linnet street, and ten feet (10 ft.) east of the center line of Ingham avenue, together with all the necessary gates, gate boxes, valves, manholes, vaults, meters, meter-booths and other usual and necessary appliances for the safe maintenance and operation of the said water main or mains; the second main to be laid on the westerly and southerly sides of the first main, two feet (2 ft.) distant therefrom in the clear; in no event shall more than five hundred feet of any street or avenue be opened or excavated at any one time, and in no case shall any cross street or avenue be blocked so as to obstruct the passage of vehicles during the progress of work in laying such pipes or water mains, and that such excavations and work shall be so made and done as not to interfere with the way or approach of fire engine or other fire appa-

ratus to any of the fire hydrants on the line of such work, and if such company should in doing such work obstruct any cross street or avenue, or obstruct the way to any fire hydrant, the city officers shall have the right to remove such obstruction at the cost and expense of said company, which shall be liable to and pay the city the cost therefor; such work shall be so done as not unnecessarily to interfere with, and shall not injure any other construction or work in or under any of the streets or avenues; and the said water company shall at its own cost and expense immediately after laying and testing said mains fill up all excavations and relay all pavements or sidewalks which may be romeved or in any way disturbed during the progress of such work, and it shall leave the streets and avenues and maintain the same for at least six months in a good condition after such main or mains have been laid as said streets and avenues were in before the commencement of such work; the grade of said main or mains, their distance from each other and from other structures, at different points, and all the rest of the said work to be subject to the direction of the Mayor of this city, or the Council or its Committee on Water and Streets, or other proper designated officer or committee of the City of Bayonne; the first main above mentioned to be laid and completed within one year of the date of this ordinance, except that any delay caused by injunction or other judicial process, or unavoidable accident, or delay in getting any necessary land or right of way, or malicious interference, or strikes, shall not be counted part of the one year above limited, but to the extent of not exceeding one year's additional time, delay so caused may be added thereto. The city may at any time or times make, lay and construct, or have made, laid and constructed in and

under any or all of said streets or avenues, sewers, drains, culverts, gas pipes, water pipes and electric wires and other wires, as well as from time to time to extend, relay, reconstruct, repair and maintain the same, and to make and maintain or have made and maintained any and all municipal or quasi-municipal works and public improvements and excavations therefor, whether specified hereunder or not, in and under all said streets and avenues, and either parallel to or across the said main or mains and over or under the same as the case may be, and as in the opinion of the appropriate city officer or board may be necessary and proper; and the water company shall, on receipt of reasonable notice from the city, take the necessary steps to protect such main or mains from any injury arising from necessary and unavoidable work incident to the construction of any municipal improvement, and to raise or lower said main or mains, if necessary, at any sewer crossing, and shall not claim damages from the city therefor; but nothing herein shall be constructed as preventing the water company from requiring from any contractor, or any person or corporation other than the city, compensation for indemnity, against injury or damages to its main or mains; and in case said water company does not raise or lower said main or mains where necessary at any sewer crossing, within twenty days of notice by the city, then the city may do the same or have the same done at the expense of said water company.

When the water company shall determine to lay the second line above referred to, it shall serve two months notice therefor upon the Mayor of the City, and upon its Council or the City Clerk, and said second main shall be laid in the streets and avenues, and according to the specifications hereinbefore designated, unless the city shall determine to have it laid in other streets and avenues for the

better and more efficient distribution of the supply of water throughout the city; in which event the city shall designate such other streets and avenues to be used for such purpose, and the water company shall then lay such second main in such other, and only in such other streets and avenues, provided said company shall not pay the cost for the second route to any extent that it may exceed by more than one thousand feet (1,000 ft.) the length of the first line laid hereunder, the cost of such excess length of line over one thousand feet longer than the first line to be laid by the city, and both said mains to converge at the foot of Ingham avenue. On or before the laying of the said second line in and through the City of Bayonne, the company shall lay or cause to be laid, from the companys point of intake to the city's point of intake, of its supply of water, a second supply main or conduit of as large a capacity and as good a quality and durability as said second main to be laid in the streets of the city, its said supply main or conduit to be laid to and connect with its said two mains and with the city's distributing mains at the northerly end of the City of Bayonne, at a point or points to be designated by the Mayor of the City or by the Mayor and Council.

Section 2. The grant made herein is upon the further condition that the said water company, its successors and assigns, shall erect, when said mains are being laid, and shall maintain throughout the time of this grant, at points to be designated by the city, twenty (20) fire hydrants along the line of each of the said two mains, or forty hydrants in all, which hydrants shall be of standard pattern, with double openings, and suitable for use by the fire department of the City of Bayonne, and shall be kept in good repair, and be maintained by the said water company, its succes-

sors and assigns, who or which shall also furnish to the city free water from said hydrants for the extinguishment of fires, and for reasonable use in sprinkling streets.

Section 3. The city shall from time to time during and after the construction of said main or mains designate points at street crossings at which said main or mains shall be tapped and water drawn therefrom into the distributing pipes of the city for the purpose of supplying water to the manufacturers and other customers of the city, and for all other needs of the city, for a full, complete and efficient water supply; all such taps and all valves thereto to be made and set by the water company at its own cost and expense, if the places therefor be designated by the Mayor or by the Mayor and Council while said main or mains are being laid, but at the expense of the city if such places or points be not designated by the city during the construction of said main or mains, and to be operated jointly by said water company and by the city. The city shall at its own expense set and maintain a meter at each of the said taps or connections, to which the representatives of the city and said company shall have access at all reasonable times, by which the amount of water so drawn from the said main or mains and delivered into the distributing pipes of the city shall be measured, and the amount thereof shall be charged to the city, and it shall be accepted and paid for by the city at the same rates and upon the same terms as to the payment to the said water company, its successors or assigns, or its or their trustee, as is provided for by the said contract of September 6, 1894; or

The city may, at its option, either before or after setting any or all such meters at said taps and connections, elect to have a different method of measuring and arriving at the amount of water to

be drawn from said main or mains, and delivered into the distributing pipes of the city, namely, by means of a standard meter or meters to be provided, set and maintained by said water company at the point or points of intake of water at or near the northerly line of the city, and also at the point of outlet of water at the foot of Ingham avenue, near the southerly line of the city—the difference between the quantity of water received at said intake point or points and that passing out at said outlet point to be the amount of water to be charged to the city as aforesaid (less the amount of water passing through the twenty hydrants on each of said mains asaforesaid, for fire purposes or for street sprinkling, which shall be supplied free to the city), and may at the option of the city be metered at each hydrant, or the value of which hydrant water shall be estimated at $30.00 per hydrant per annum, which amount the water company shall in that event allow the city as a rebate on its water bill.

Section 4. This grant is on the further condition that the water company shall not sell water either in or out of the city, for consumption within the city, or for resale within the city, except to the city, and said mains shall never be used for any other purpose than as water mains. The water company may convey water by means of the main or mains hereinbefore referred to (subject to the prior fulfillment of all its obligations to deliver water to the city, as to quality, quantity and pressure and in all other respects, under the contract of September 6th, 1894, and under and pursuant to the terms of this ordinance); through and beyond the limits of the City of Bayonne, if legally authorized so to do, and all water so conveyed shall be metered by a standard meter or meters at the southerly end of the main or mains

hereinafter referred to; and the said company shall, as a condition of and in consideration of this grant, pay to the city quarterly a sum at the rate of and equal to $5.00 per million gallons for each and every million gallons of water so conveyed beyond the limits of the city, as shown by the said meter or meters at the southerly end of said main or mains, and the city shall be entitled to receive said sum, at its option, in cash, or by a credit upon its bills from the water company for water delivered to it by said company through either or both of said tw omains or through the existing supply main bringing water to the city, and in that event to that extent the contract price of said company's water supplied to the city shall be reduced; and the city's officers shall have access at all reasonable times to inspect and examine said meter or meters and every other meter that may be used to measure any water furnished to the city or to measure water in whose quantity the city may be interested, and shall have the right to require that every such meter or meters shall be repaired from time to time whenever necessary, at th expense and cost of the water company; and the water company shall have the same right in regard to any meter or meters of the city and used to measure water in which the company is similarly interested.

Section 5. In case it shall be found that any power or rights possessed, or that may be acquired by the city in respect to the prevention of the pollution of any water, or the prevention of injury to any portion of the works now constructed or the additional works proposed to be constructed for the supply of water for the city; or the punishment for such injury, or the condemnation of lands, water or rights, may be advantageously used or exercised for the purpose of more effectually carrying out this ordinance, the city agrees so far as it has

or may acquire the power so to do, to put such powers or rights in force, or to authorize the water company, its successors or assigns, so to do in the name of the city, but in every such case, or in any case at the expense of the water company, its successors or assigns.

Section 6. Nothing herein shall impair any right, option and interest are hereby expressly contract of September 6th, 1894; but every such right, optin and interest are hereby expressly saved and reserved to and for the city, and nothing herein shall be construed to extend the time of said contract of September 6th, 1894, to any period beyond that specified therein, namely; twenty-five years of and from its said date.

Section 7. The rights and duties hereunder shall inure to and bind said water company, its successors and assigns; and whenever said company refuses or neglects to do any work herein required of it, the city may do the same or have the same done at the company's expense, and the company shall owe and pay the city the reasonable cost of doing the same, as a debt due from the said company to the city.

Section 8. This ordinance shall take effect when, and not until, it is accepted in all its terms by said the New York and New Jersey Water Company, by an instrument in writing, duly executed by it under its corporate seal, and filed in the office of the City Clerk of this City, whereby said water company will agree to comply with all the conditions hereof, and to fulfill all the provisions hereof on its part, when this ordinance and its acceptance as aforesaid shall constitute a contract between said water company and the city for a period of twenty-five years (and no longer, as aforesaid), provided said contract in writing be so executed and filed within ten days from the

date of the passage and the adoption of this ordinance.

THOMAS BRADY, *Mayor.*

Passed June 21, 1904.
Approved June 24, 1904.
Attest: W. C. HAMILTON, *City Clerk.*

Now therefore be it resolved, That this Company hereby accepts in all its terms the foregoing ordinance, and hereby agrees to comply with all the conditions thereof, and to fulfil all the provisions thereof, on its part, and agrees that the said ordinance, and this acceptance thereof shall constitute contract between this company and the city as in said ordinance provided.

Resolved, That the President and Secretary of this company be, and they are hereby authorized and directed to file a copy of this resolution of acceptance, duly executed by the company under its corporate seal, in the office of the City Clerk of the City of Bayonne, within ten days from the date of the passage and the adoption of the said ordinance.

Dated, New York, June 28th, 1904.

THE NEW YORK AND NEW JERSEY WATER COMPANY.

T. A. BEALL, *President.*

Attest:
[SEAL] JOSEPH H. BEALL, *Secretary.*

EXHIBIT D-4.

ACCEPTANCE OF BAYONNE RESOLUTIONS, 1909.

New York, October 6th, 1909.

To the Hon. Mayor and Council of the City of Bayonne.

GENTLEMEN:

At a meeting of the Board of Directors of the New York and New Jersey Water Company held this day at the office of the company, the following preamble and resolution were unanimously adopted, viz:

Whereas, There has been submitted to this Board a resolution passed by the Council of the City of Bayonne on October 5th, 1909, and approved by His Honor, the Mayor of Bayonne, October 6th, 1909, which resolution is in the words and figures following:

"Resolved, That the New York and New Jersey Water Company be and it is hereby notified that the City of Bayonne requires the construction of a second or duplicate supply main to extend from Kearny and Belleville, New Jersey, to Avenue B and Fifty-sixth street, Bayonne, and there to be connected with the mains of the city, as well as with the main of the company leading therefrom to the Kill von Kull, and to be used in supplying the City of Bayonne with water in case of any emergency requiring the temporary closing down of the company's present supply main or interruption of the present supply, and to be not less than 30 inches in diameter (except at railroad and river crossings), and furnishing an estimated capacity sufficient for the present needs and future requirements of the City of Bayonne, as well as for the proposed service to the Borough of Richmond, as recommended by the New York

Fire Insurance Exchange, to entitle the City of Bayonne to a reduction of 15 per cent. on its fire insurance district rate; and that in consideration of the Company's agreement to construct or provide such second or duplicate main and water supply within one year from the date hereof (except for delays caused by strikes, litigations, the procuring of necessary rights of way or other cause beyond the control of the company, which delays, if any, shall be added to the said period), the City of Bayonne agrees with the said company, its successors or assigns, to purchase its entire supply of water from it or them at the same rates and on the same terms and for all the purposes and periods of the agreements made by the city with said company, dated September 6th, 1894, and June 21st, 1904. And in case it shall be found that any power or rights possessed, or that may be acquired by the city, in respect to the prevention of the pollution of any water, or the prevention of injury to any portion of the works now constructed or the additional works proposed to be constructed for the supply of water for the city, or the punishment for such injury, or the condemnation of lands, water or rights, or the crossing of any road, street or other property, may be advantageously used or exercised for the purpose of more effectually carrying out this resolution—the City agrees so far as it has or may acquire the power so to do, to put such powers or rights in force, and it hereby authorizes the Water Company, its successors or assigns, so to do in the name of the city, but in every such case, or in any case at the expense of the Water Company, its successors or assigns."

Now Therefore, Be it Resolved, That this company hereby accepts in all its terms the foregoing resolution, and hereby agrees to comply with all the provisions thereof and to fulfil all the condi-

tions thereof on its part, and agrees that the said resolutions and this acceptance thereof shall constitute a contract between this company and the City of Bayonne as in said resolution provided.

Resolved, That the President and Secretary of this company be and they are hereby authorized and directed to file a copy of this resolution and acceptance, duly executed by the company under its corporate seal, in the office of the City Clerk of the City of Bayonne.

NEW YOTK AND NEW JERSEY WATER COMPANY.
[SEAL] By T. A. BEALL,
President.
Attest: JOSEPH H. BEALL, *Secretary.*

EXHIBIT D-5.

CONTRACT BETWEEN THE EAST JERSEY WATER COMPANY AND THE NEW YORK & NEW JERSEY WATER COMPANY FOR THE SUPPLY OF WATER TO THE CITY OF BAYONNE, N. J.

This agreement, made this 12th day of July, 1895, between the East Jersey Water Company, a corporation duly organized under the laws of the State of New Jersey, party of the second part, Witthe New York and New Jersey Water Company, a corporation duly organized under the laws of the State of New Jersey, party of the second part. Witnesseth:—

Whereas the party of the second part is the owner of a certain contract, bearing date Sept. 6, 1894, between William D'H. Washington and Turner A. Beall and the Mayor and Council of the City of Bayonne, New Jersey (a copy of which is hereto annexed) and to carry out the provisions

of said contract desires to obtain from the party of the first part a supply of pure and wholesome water; and

Whereas the party of the first part is the owner of numerous sources of water supply, and is willing and desirous to sell water deliverable from the same;

Now therefore the parties hereto in consideration of one dollar to each in hand paid by the other, the receipt of which is hereby acknowledged, and of the mutual covenants and agreements herein contained, do mutually agree as follows:

(1) The party of the first part undertakes and agrees to furnish or cause to be furnished, to the party of the second part, and to begin delivery within six months from the date hereof, an ample supply of pure wholesome water, to be delivered from available water sources into the pipe or pipes to be hereafter constructed by the party of the second part, at the corner of Belleville avenue and Kearney avenue, in the Township of Kearney, County of Hudson and the State of New Jersey, at such a pressure and of such quality and in such quantity, as will fulfil the conditions of the said contract with the City of Bayonne, and the further requirements of the party of the second part as hereinafter provided.

Time lost by reason of strikes or legal proceedings or by other unavoidable accident or by the act of God or the public enemy shall be added to the above limit of six months for the beginning of the delivery of water.

(2) It is agreed that in case of the forfeiture of said contract with the City of Bayonne or the cancellation thereof by said City or the release of said City from liability thereunder for any cause, the party of the first part shall not be liable for any damages, loss of revenue or other loss to

the party of the second part or to any one. It is further agreed that if at any time the party of the second part shall suffer a rebate of twenty-five per cent. (25%) from the price of any water delivered to the City of Bayonne because of inferiority of the quality of such water, as provided in said contract, then the party of the first part shall suffer and allow a rebate of twenty-five per cent of the price due to it under this contract for such water; such rebate to apply to the same quantity of water as that upon which the party of the second part suffers a rebate, and no more.

(3) It is further understood and agreed, that in the event of the inability, failure or neglect of the party of the first part to provide the said supply of water of the quality agreed to be furnished by them and to begin the delivery thereof within the time hereinabove agreed upon, then the said party of the first part shall pay to the party of the second part the sum of twenty-five thousand dollars ($25,000), which is hereby fixed and agreed upon as the liquidated damages of the party of the second part, for such delay.

(4) The party of the second part agrees to receive from the party of the first part, its successors or assigns, all the water required for fulfilling said contract with the Mayor and council of the city of Bayonne and for fulfilling any contracts it may hereafter acquire for supplying water for consumption and use on Staten Island in the State of New York and not elsewhere, and to pay for the same thirtyfive per cent (35 %) of the entire gross receipts arising from the sale of said water, free of any charge or deduction whatever, it being understood as a part of this agreement, that no water shall be sold by the party of the second part to consumers in any other territory than that above mentioned, nor at a lower schedule of prices

nor of a higher standard of quality than is specified in the contract with the city of Bayonne above mentioned, except by further agreement made and had in writing between the parties hereto.

(5) The party of the second part agrees forthwith in good faith to proceed to obtain the necessary rights of way and to construct a cast iron or steel pipe line of at least 30 inches diameter from the corner of Belleville and Kearney avenues in said Township of Kearney to the City of Bayonne and to construct the necessary reservoirs and other works in Bayonne and elsewhere for the conveying and delivering of said water to the city of Bayonne under said first mentioned contract and to use all due diligence to complete said pipe line and other works and to begin to receive said water within six months from the date hereof; but the party of the second part shall not be liable for damages for failure to complete said works, provided that if said works are not fully completed and water received for the City of Bayonne under this contract within two years from the date of this contract, then the party of the first part may at its option by written notice to the party of the second part, terminate and rescind this contract and the same shall upon the giving of such notice be absolutely null and void.

(6) It is expressly agreed and understood that the party of the first part shall have the right to the use of said pipe line when constructed for the conveyance of its water and to tap the same at any and all convenient points for the purpose of conveying said water to its customers; and the party of the second part agree in constructing said pipe line to put in taps and connections at such points as shall be indicated by the party of the first part, and also to allow said pipe line to be tapped after it is constructed, if necessary or convenient,

for the purpose aforesaid; all such taps and connections to be made at the expense of the party of the first part.

Provided, always, that the party of the second part shall at all times have the first right to draw water and the right to draw all the water it may require for the supply of the City of Bayonne and for the supply of Staten Island under existing or future contracts as above specified.

(7) All payments for water shall be made by the party of the second part to the party of the first part at its principal office in New York or New Jersey as may be specified, on the day next following under the receipt of the principal sums by the party of the second part under such contracts as they now have or may have.

(8) The party of the second part further agrees in case it shall be found that any power or rights now possessed by the City of Bayonne, or that may be acquired by the party of the second part under said contract with Bayonne, in respect to the prevention of the pollution of any water or the prevention of injury to any portion of the works constructed for the supply of water, or the punishment of such injury, or the condemnation of land, water, or water rights, may be advantageously used or exercised for the purpose of this contract, so far as it has or may acquire the power to do so, to put such powers or rights in force, or permit the parties of the first part, or their assigns, so to do in the name of the party of the second part, or in the name of the City of Bayonne if so empowered, but at the expense of the party of the first part, its successors or assigns.

(9) This contract shall continue for a period of twenty-four years and two months, with the continuing option in the party of the second part, its successors and assigns, to renew the same upon

like terms and conditions as herein contained, for successive periods of twenty-five years each forever, upon giving one year's written notice of such intent to renew to the party of the first part, its successors or assigns.

In witness whereof the parties hereto have caused these presents to be sealed with their common or corporate seals, and the same to be signed by their proper officers, by virtue of the authority vested in them.

EAST JERSEY WATER COMPANY,
By HENRY S. DRINKER,
Vice-President.

[SEAL.]

Attest:

D. G. BAIRD,
Secretary.

NEW YORK & NEW JERSEY WATER COMPANY,
By CHARLES E. CLARKE,
President.

[SEAL.]

Attest:

Secretary.

EXHIBIT D-6.

RESOLUTIONS OF BAYONNE CITY COUNCIL AUTHORIZING CONDEMNATION PROCEEDINGS.

Whereas, the New York and New Jersey Water Company, assignee of William D. H. Washington and Turner A. Beall, contractors, have given notice to the Mayor and Council of the City of Bayonne that it will be necessary for the city to procure by consent, or condemn, the right of diversion for the water supply to be furnished under the contract of September 6th, 1894, with the supple-

ments thereto dated June 24th, 1904, and October 6th, 1909, as against the riparian owners on the Passaic River below Little Falls, (where the water is taken through the instrumentality of and under contract with the East Jersey Water Company); and

Whereas, the City did, by its said contract, agree that if it should be found that any powers or rights of the City for the condemnation of lands, water or water rights, might be advantageously used or exercised for the purpose of said contract, to put said powers or rights in force, or permit the said contractors or their assigns so to do, in the name of the City but at the expense of the said contractors or their assigns.

Resolved, That the City hereby determine to acquire said right of diversion, namely, the right to divert an average daily amount of eight and a half (8 1-2) million gallons of water per day in each year until October 6th, 1929, at Little Falls, on the Passaic River, the same being necessary for the purposes of the said contracts, and for the use of the City of Bayonne for public supply; and if unable to agree with any of the owners of the riparian lands for the said right of diversion, to condemn said right against such owners for the public use aforesaid.

Resolved, That in pursuance of said contract, the City Attorney of Bayonne, as agent of the City of Bayonne, is authorized and directed to procure said right by agreement with the riparian owners as to the price of said right of diversion, and where no agreement can be made, to proceed to cause the same to be taken by condemnation in the name of the City, for the public use aforesaid, but at the cost and expense of the said New York and New Jersey Water Company.

Resolved, That Collins & Corbin, Attorneys at

Law, and Daniel J. Murray, Esq., City Attorney, are authorized, in the name of the city, but at the expense of said Company, to conduct any and all lawful condemnation or other legal proceedings for the acquirement of said right of diversion, but solely at the expense of said Company.

Resolved, That the City Clerk be and he is hereby authorized and directed to furnish certified copies of these resolutions to the New York and New Jersey Water Company.

I hereby certify the foregoing to be a true copy of resolutions adopted by the Board of Councilmen of the City of Bayonne, at a regular meeting of said Board held October 18, 1910.

Dated, October 19, 1910.

W. C. HAMILTON,
City Clerk.

EXHIBIT D-7.

RESOLUTION PROVIDING FOR ADDITIONAL CONTROL BETWEEN THE CITY OF BAYONNE AND THE NEW YORK AND NEW JERSEY WATER COMPANY.

To The Hon. The Mayor and Council of the City of Bayonne, New Jersey.

GENTLEMEN:

At a meeting of the Board of Directors of the New York and New Jersey Water Company, held this day, the following preamble and resolutions were unanimously adopted:

Whereas there has been submitted to this Board resolutions passed by the Mayor and Council of the City of Bayonne at a regular meeting of the Council held on Tuesday, November 21st, 1911, which

resolutions are in the words and figures following:

Resolved, That inasmuch as the City of Bayonne is receiving its water supply through a 30-inch main constructed fifteen years ago when the population of the City was less than twenty thousand and the water consumption less than two million gallons per day, and in view of the increase in population to nearly sixty thousand and in water consumption to approximately seven million gallons per day, the Mayor and Council of the City of Bayonne deem it necessary and require for the present and reasonable prospective needs of the City, and as a safeguard in case of the closing down or breakage of the present supply main or interruption of the present water supply and to insure a material reduction in the fire insurance rates throughout this City, that the New York and New Jersey Water Company shall forthwith complete the construction of the additional 30inch supply main and works now being built from Kearny and Belleville to Avenue B and 56th Street, Bayonne, and there to be connected with the mains of the City, and to be used for the lawful uses and purposes of the City of Bayonne for its water supply from the works of the said Company; and that the said mains and works so supplying water to the City of Bayonne shall not be used for the transportation of water beyond said City to Staten Island, or any other point outside of the State of New Jersey, except and unless such transportation be permitted by the duly constituted authorities of the State of New Jersey.

Resolved, That the Mayor and Council of the City of Bayonne hereby reaffirm and readopt the resolutions heretofore adopted on December 7th, 1909 and September 20th, 1910, providing for the acquisition and condemnation of certain lands, property and rights for the purpose of the con-

struction of the additional pipe line and water supply for the use of this City, and that Daniel J. Murray, Esq., City Attorney, be and is hereby instructed and empowered to take all necessary steps to acquire the same, either by purchase or condemnation, the cost of such purchase or condemnation to be borne by the New York and New Jersey Water Company in accordance with the terms of the contracts between said Company and the City of Bayonne, and that all steps heretofore taken by the said City Attorney in relation to such acquisition or condemnation be and are hereby ratified and confirmed.

Now Therefore Be It Resolved, That this Company hereby accepts in all their terms the foregoing resolutions, and hereby agrees to comply with all the conditions thereof and to fulfil all the provisions thereof, on its part, including the completion of the proposed new supply main, upon the provision by the City, by the exercise of its powers of condemnation or otherwise, of the necessary rights of way and crossings therefor—and the operation of said mains and works in the manner indicated by the resolutions of the City; and that the President and Secretary of this Company be and they are hereby authorized and directed to file forthwith a copy of this resolution of acceptance, duly executed by the Company under its corporate seal, in the office of the City Clerk of the City of Bayonne.

Dated, New York, December 19th, 1911.

NEW YORK AND NEW JERSEY WATER COMPANY,
[Seal.] BY T. A. BEALL,
President.

Attest:
JOSEPH H. BEALL,
Secretary.

EXHIBIT D-8.

CONTRACT MAY 18, 1911, EAST JERSEY WATER COMPANY WITH N. Y. & N. J. WATER COMPANY.

This Agreement, made this eighteenth day of May, one thousand nine hundred and eleven, by and between The East Jersey Water Company, party of the first part, and The New York and New Jersey Water Company, party of the second part, witnesseth:

Whereas, the East Jersey Water Company is causing pumping to be done for the party of the second part of water for its purposes, to wit, the providing of a supply to the City of Bayonne under written contracts now existing between the parties hereto, which contracts do not specify the source from which the water shall be taken; and

Whereas, the water has in fact been taken for more than ten years last past from the Passaic River at Little Falls, and is now being obtained from that source; and

Whereas, the City of Bayonne, by resolutions passed by its Council on October 18, 1910, has explicitly designated and indicated the said source of supply as the source from which it is to take water for its uses—a copy of its preamble and resolutions passed on said date being hereto appended and made part hereof; and

Whereas, said City of Bayonne has, since the passage of said resolutions, actually commenced condemnation proceedings against certain riparian owners below Little Falls to take said water in aid of the New York and New Jersey Water Company, who have contracted to supply it to said city; and

Whereas, the taking of water at said point requires the acquirement, by agreement or condemnation, of the right against the riparian owners on

the Passaic River below that point, and The East Jersey Water Company possesses the water power at Little Falls, and has obtained the right of diversion as against the owners of the other water powers below Little Falls, so that its consent to the diversion is necessary; and the parties hereto are advised that the party of the second part, by virtue of its municipal contracts with the City of Bayonne, possesses such rights of diversion as against the State for the use and benefit of said City of Bayonne.

Now, Therefore, it is hereby agreed, that the supply so to be pumped to the party of the second part shall be taken by the party of the second part under the authority which it is advised was conferred upon it by its said municipal contracts, charter and otherwise, from the Passaic river at Little Falls aforesaid; which source is hereby designated and agreed upon for such supply, and the supply shall be continued therefrom during the period of the contracts between the party of the second part and the Mayor and Council of the City of Bayonne—the party of the first part being made the agent and employe of the party of the second part to use its water power, mains and riparian and other facilities to accomplish the diversion which is authorized by said municipal contracts, and to receive per million gallons for the water so delivered through its mains into the mains of the party of the second part the prices prescribed in its contract as compensation, not for water sold but for services as agent, and for the use of its appliances, water power, mains and property in accomplishing said municipal supply, which the said party of the first part hereby agrees to use and provide for that purpose, and also agrees to pay all the costs, expenses and awards incident to the condemnation of the water rights for and on behalf of

said city, which water rights are referred to in said resolutions authorizing the condemnation thereof for the purpose of said City's water supply; and that said water rights shall thereupon be and become the property of the said City of Bayonne and used for its water supply by the party of the second part.

Nothing herein contained shall release the party of the first part from its present contract obligations to furnish to the party of the second part a supply of water sufficient to fulfill the requirements of the existing contracts between the party of the second part and the Mayor and Council of the City of Bayonne from some available source, or from any other obligation or liability to the party of the second part now existing thereunder, or otherwise.

It is further understood and agreed that the provisions of the contract of July 12, 1895, between the East Jersey Water Company and The New York and New Jersey Water Company, providing for the furnishing water by The East Jersey Water Company to The New York and New Jersey Water Company for consumption and use on Staten Island in the State of New York have been heretofore, to wit, on December 13, 1907, fully released, abrogated, cancelled and discharged, which abrogation is hereby ratified and confirmed.

And it is further understood and agreed that the sixth paragraph of the said contract of July 12, 1895, which provides that The East Jersey Water Company might use the pipe line of The New York and New Jersey Water Company, when constructed, for the conveyance of water and might tap the same for its uses, is hereby abrogated, cancelled and annulled.

In witness whereof, the parties hereto have caused their respective common seals to be hereto

affixed, and these presents to be duly signed and delivered the day and year first above written.

THE EAST JERSEY WATER CO.,
By HENRY S. DRINKER,
Vice-President.

Attest:
D. G. BAIRD,
Secretary.

THE NEW YORK & NEW JERSEY WATER CO.,
T. A. BEALL,
President.

Attest:
JOSEPH H. BEALL,
Secretary.

EXHIBIT D-9.

AGREEMENT BETWEEN THE EAST JERSEY WATER COMPANY AND THE TOWNSHIP OF KEARNEY.

This agreement made this 29th day of June, 1895, between the East Jersey Water Company, a corporation duly organized and existing by virtue of the laws of the State of New Jersey, party of the first part, hereinafter referred to as the Company, and the Board of Township Committee of the Township of Kearney, being the Board having charge and control of the water-supply of the inhabitants of the Township of Kearney, in the county of Hudson, and being a municipal corporation of the State of New Jersey, party of the second part, hereinafter referred to as the Township, witnesseth as follows:

That in consideration of the moneys hereinafter agreed to be paid, and the water hereinafter agreed to be furnished, and all the covenants hereinafter

set forth, the said parties for themselves, their successors and assigns, do mutually covenant, contract and agree as follows:

(1) The Company agrees to obtain and supply to the Township and the Township agrees to take from the Company, for and during the continuous term of fifteen years commencing six months from and after the date hereof, or at such earlier date as the Company may be able to furnish said water, an entire and adequate supply of water, which shall be good and wholesome and shall be supplied in quantities sufficient for the purposes of domestic use, for the extinguishment of fines and for such other lawful uses and purposes in the township as may be necessary or convenient, and for which the township may lawfully use, sell or supply water; all the water required shall be delivered by pumping or gravity at the junction of Kearney avenue and the Belleville Turnpike road in the Township of Kearney, County of Hudson and State of New Jersey, at a head equal to at least seventy-five feet above the elevation of the present water pipe now supplying the Township of Kearney at the said point.

(2) The Company agrees to furnish and deliver and the Township agrees to take and pay for, as stipulated in this contract, all the water necessary and convenient for the uses and purposes aforesaid.

(3) Payments by said Township for water supplied under this contract shall be made by the proper disbursing officer or officers of the Township in lawful money, quarter-yearly on Thursday of the second week of each and every quarter after the delivery of water has commenced, for all the water so delivered during the preceding quarter, according to meter register, upon the certificate of the superintendent of the Company certify-

ing to the quantity of water delivered, and also certified to by the water purveyor of the Township of Kearney. In case of dispute the Township is to pay a sum equal to the amount which it paid for the corresponding quarter of the year last past and the disputed amount is to be settled by arbitration, one arbitrator being named by the Township, one by the Company and a third to be selected by the two so chosen, and the decision of a majority of these arbitrators shall be final. The Company is to carefully measure all water delivered under this contract, and the Township, by its engineers and proper officers, shall at all times have reasonable opportunity to inspect and examine the meters and appliances for measurement.

The price to be paid for said water shall be at the rate of ninety dollars per million gallons for all water delivered by the Company to the Township as aforesaid.

(4) The Company agrees to put into the water mains of the Township pressure valves which will maintain a head of water at any one point designated by the Township of not less than seventy-five feet nor more than one hundred and fifty feet.

(5) The standard of water offered is in all respects to be in accordance with the specifications hereto attached.

(6) The Township agrees to place at the disposal of the Company all powers which it now has or may hereafter acquire or which may be necessary to enable the Company to acquire, by condemnation or otherwise, the necessary rights of way in streets and highways or lands, storage reservoirs, and also water rights and other property whether within or without the Township of Kearney, which rights and powers may be exercised in the name of the Township, but at the expense of the Com-

pany, and the Company agrees to hold the Township harmless of and from all claims and demands of all persons by reason of the taking and acquiring for the purposes of this contract of all lands, rights, waters, water rights and other property. The Township hereby gives and guarantees to the Company rights of way through its streets for laying pipes and water mains to supply the Township of Kearney and other consumers outside of Kearney Township.

The Township covenants that if it should be found that any powers or rights held or possessed or that may hereafter be held or possessed by it, whether in respect to the prevention of the pollution of waters or the prevention of injury to any portion of the works constructed for the supply of water or for the punishment of such injury, or otherwise, or for the condemnation of lands, waters or rights, may be advantageously used or exercised for the purposes of this contract, that then the Township will, so far as it has or may acquire the power so to do, put such rights and powers in force and permit the Company, its successors and assigns, so to do, in the name of the township; provided, however, that in all instances in which said use shall be made at the request of or for the benefit of the Company, its successors or assigns, the expense thereof shall be paid by the Company, and the Township shall be lawfully indemnified from any loss or damage by reason thereof.

And the Township hereby designates the following public highways and roads wherein may be laid the Company's water mains for the supply of consumers outside of Kearney Township, to wit:

I. Kearney avenue from the north to the south line of Kearney Township.

II. The Newark and Belleville Road from the thread of the Passaic River to the junction of said

road with the Newark and New York Turnpike.

III. The Newark and New York Turnpike from the thread of the Hackensack River to the Harrison town line so far as the Township now has or may have power to grant rights in the same.

And the Township grants to the Company the right, license and privilege, irrevocable, to lay and place under the surface of said avenue and roads (so far as the township has power to do so) one or more water mains for the purpose aforesaid, the said mains to be placed not less than three feet below the surface of said avenue and roads respectively; on Kearney avenue the same to be laid under the roadway and within ten feet of the easterly curb-line; on the Newark and Belleville road and on the Newark and New York Turnpike, to be laid on the southerly side of the road and within the southerly third of the width thereof respectively; said mains to be so laid as not unnecessarily to interfere with existing pipes; and the Company in laying the same to promptly restore the surface of the avenue and roads to as good conditions as the same was before the laying of the mains and shall always maintain said mains in good condition and promptly repair the surface whenever they have occasion to disturb the same for access to said mains.

(7) The Company agrees to furnish the Township with all plans, details and working drawings as the work progresses under this contract, and the Township, through its Township surveyor, shall have the right to inspect all work performed and materials furnished by the Company.

(8) The Company agrees to complete the work and begin the delivery of water within six months from the date of this contract, but any time lost by reason of strikes, accidents, litigations or other causes unavoidable or beyond the control of the

Company shall not be computed within said six months, but shall be added thereto.

(9) For every day's delay in the completion of the work beyond the term of the contract, the Company shall pay to the Township the sum of $100 per day as liquidated damages and not by way of penalty. It being understood that time lost as above stated, by strikes, accidents, litigations or other delays unavoidable or beyond the control of the Company are not to be computed within said six months.

(10) The Company hereby guarantees a continuous supply of good and wholesome water for all the terms for which the contract shall be made, suitable and sufficient for the purposes aforesaid.

(11) The parties hereto agree that the specifications hereto annexed and upon which the Company made its proposal to the Township for the supply of water shall be and are hereby made a part of this contract.

In testimony whereof the said Township has caused these presents to be signed by the Chairman of its Board of Township Committee and its seal to be hereto affixed and attested by its Clerk, and said Company has caused these presents to be signed by its Vice President and its common seal to be hereto affixed and attested by its Secretary the day and year first above written.

CHARLES ENGELSTADTER,
Chairman.

[SEAL]
Attest:
GABRIEL REID, *Township Clerk.*

THE EAST JERSEY WATER COMPANY,
[SEAL] By HENRY S. DRINKER, *Vice President.*
Attest: D. G. BAIRD, *Secretary.*

Supplemental Contract made this fourteenth day of February eighteen hundred and ninety-six, between the East Jersey Water Company, party of the first part, and the Board of Township Committee of the Township of Kearney, party of the second part, witnesseth:

Whereas, The parties hereto entered into a written contract dated June 29th, 1895, whereby the Company was to furnish to said Township a supply of water and to begin to deliver the same within six months after the date of the contract, and to continue the delivery for a term of fifteen years thereafter;

And Whereas, The Company has given the Township notice that it has obtained a supply of water and has the same now ready to deliver to the Township;

And Whereas, The Township has no water main of its own into which to receive the said water at the corner of Kearney and Belleville avenue as provided in said contract, but must hereafter make provision for such a main;

Now it is mutually agreed between the parties that the time for the commencement of the delivery of said water shall be June 29th, 1897, and the delivery thereof shall continue thereafter for thirteen and a half years, that is to say, until the 29th day of December, nineteen hundred and ten; provided, that if said Township shall before June 29th, 1897, build a water main or a water main shall be built by said Company available for the purpose, or a water main shall otherwise be constructed which shall be available to the Township for the purpose, then the delivery of water shall commence as soon as such main is completed and available and shall continue until December 29th, 1910; in all other respects the said contract is hereby ratified and confirmed.

If the company shall on or before June 29th, 1897, make a contract with the Town of Harrison to supply that town with water whereby the company is to provide a water main for the Town of Harrison that the company can control, then the Township of Kearney, may, at its option, receive the water through that main instead of receiving the same at the corner of Kearney and Belleville avenues as above mentioned; such option to be exercised on or before June 29th, 1897.

In witness whereof, the said township has caused these presents to be signed by the chairman of its Board of Township Committee and its seal to be hereto affixed and attested by its clerk and said company has caused these presents to be signed by its Vice President and its common seal to be hereto affixed and attested by its secretary the day and year first above written.

(Signed CHAS. F. ENGELSTADTER,
Chairman, Board of Township Committee,
Kearney Township, Hudson Co., N. J.

Attest:

GABRIEL B. REID,
Township Clerk.

EAST JERSEY WATER COMPANY,
By HENRY S. DRINKER,
Vice President.

[SEAL]

Attest:

D. G. BAIRD,
Secretary.

JUNE 17th, 1897.

It is hereby mutually agreed that the time for the commencement of the delivery of water under the contract of June 29, 1895, be further extended

to September 29th, 1897, and that the delivery shall continue thereafter until December 29, 1910.

WM. BARDSLEY,
Clerk of Township Committee.

Attest:
DAVID DAVIES,
[SEAL] *Clerk.*

Supplemental Contract made this fourteenth day of June, A. D. 1898, between the East Jersey Water Company, party of the first part, and the Board of the Township Committee of the Township of Kearney, party of the second part, witnesseth:

Whereas, The parties hereto entered into a written contract dated June 29th, 1895, whereby the company was to furnish a supply of water and begin to deliver the same within six months after the date of the contract, and to continue the delivery for a term of fifteen years thereafter; and whereas, notwithstanding the company had the water ready for delivery and gave the township due notice thereof, yet the township not being ready to take the same, requested a postponement of the time of the beginning of the delivery of said water, to which the company consented and a supplemental agreement was accordingly made on February 14th, 1896, and a still further extension was made by endorsement thereon; and whereas, the township has no water main of its own into which to receive said water, at the corner of Kearney and Belleville avenues as provided in said original contract, but must hereafter make provision for such a main:

It is hereby mutually agreed between the parties that the time for the commencement of the delivery of said water shall be June 29th, 1900, and the delivery thereof shall continue thereafter until the 29th day of December, 1910, provided, that if the

township shall before said twenty-ninth day of June, 1900, build a water main, or a water main shall be built by said Company available for the purpose, or a water main shall otherwise be constructed which shall be available to the Township for the purpose, then the delivery of water shall commence as soon as such main is completed and available and shall continue until December 29th, 1910. In all respects the original contract of June 29th, 1895, is hereby ratified and confirmed.

If the Company shall on or before June 29th, 1900, make a contract with the Town of Harrison to supply that town with water whereby the Company is to provide a water main for the Town of Harrison that the Company can control, then the Township of Kearney may, at its option, receive the water through that main instead of receiving the same at the corner of Kearney avenue and Belleville avenue as above mentioned; such option to be exercised on or before June 29th, 1900.

In witness whereof the said Township has caused these presents to be signed by the chairman of its board of Township Committee and its seal to be hereto affixed and attested by its Clerk and said company has caused these presents to be signed by its Vice-President and its common seal to be hereto affixed and attested by its secretary the day and year first above written.

(Signed) WILLIAM J. GORSUCH,
Chairman Board of Township Committee,
Kearney Township, Hudson Co., N. J.

Attest:
JAMES F. KELLY,
Township Clerk.

EAST JERSEY WATER COMPANY,
By HENRY S. DRINKER,
Vice-President.

Attest:
ALBERT P. FISHER,
[SEAL] *Secretary.*

New Jersey State Library

EXHIBIT D-10..

ASSIGNMENT OF KEARNEY CONTRACT BY EAST JERSEY WATER COMPANY TO THE NEW JERSEY SUBURBAN WATER COMPANY AND THE NEW YORK & NEW JERSEY WATER COMPANY.

This indenture of assignment, made the first day of July, nineteen hundred and three, between East Jersey Water Company, a corporation of the State of New Jersey, party of the first part, and New Jersey Suburban Water Company and New York & New Jersey Water Company, corporations of said state, party of the second part.

Whereas, the East Jersey Water Company entered into a contract with the Board of Township Committee of the Township of Kearney, a municipal corporation of New Jersey, bearing date June 29th, eighteen hundred and ninety-five, providing, among other things, for a supply of water by the East Jersey Water Company to said Township for the term of fifteen years, the same to be delivered at the corner of Kearney avenue and Belleville Turnpike Road in the Township of Kearney, Hudson County, New Jersey, as by reference thereto will more fully appear,

Now this indenture witnesseth, that the party of the first part in consideration of one dollar and other valuable consideration paid by the party of the second part, the receipt whereof is hereby acknowledged, hath assigned, transferred, conveyed and set over unto the party of the second part, their successors and assigns, the right and privilege in said contract contained to obtain and supply to said Township water for the portion of the term of fifteen years therein mentioned which now remains unexpired, and the right to receive from

the Township payment therefor at the time and in accordance with the terms of said contract, and subject to the conditions therein mentioned; together with all the rights contained in said contract hereafter to construct, lay and maintain any further water mains and other fixtures and appliances necessary for the supply of said water to said Township under the terms of said contract.

And the party of the second part, jointly and severally, do covenant and agree to and with the party of the first part, that they will carry out and fulfill the terms of said contract for the supply of water to said Township, and will indemnify and hold harmless the Township as therein provided and set forth, as fully as the party of the first part is, by the terms of said contract, bounden.

It being understood, however, that they may consent to a cancellation of all their right, title and interest in said contract and all the terms thereof, by agreement with the Town of Kearney, on the making of a new contract between either of them and said town for a supply of water for a longer term of years.

In testimony whereof, the parties to these presents have caused their respective common seals to be hereto affixed and duly attested and these presents to be signed and delivered by their appropriate executive officers, the day and year first above written.

EAST JERSEY WATER COMPANY,

[SEAL] By EDMUND LEB. GARDNER,

Vice-President.

Attest:

ALBERT P. FISHER,

Secretary.

NEW JERSEY SUBURBAN WATER COMPANY,
[SEAL] By T. A. BEALL,
President.

Attest:
J. WILLIAM GRIFFIN,
Secretary.

NEW YORK & NEW JERSEY WATER COMPANY,
[SEAL] By T. A. BEALL,
President.

Attest:
JOSEPH H. BEALL,
Secretary.

EXHIBIT D-11.

CONTRACT OF THE TOWN OF KEARNEY WITH THE NEW YORK & NEW JERSEY WATER COMPANY AND THE NEW JERSEY SUBURBAN WATER COMPANY.

At a meeting of the Board of Directors of the New York & New Jersey Water Company held August 16, 1904, the following preamble and resolutions were unanimously adopted:

Whereas there has been submitted to this Board a certain preamble and resolutions adopted August 15, 1904, by the Town Council of the Town of Kearney, which preamble and resolutions are in words and figures following:

"Whereas the Town of Kearney is now receiving its supply of water for the uses of its inhabitants and for public uses from the New Jersey Suburban and the New York & New Jersey Water Companies under and pursuant to the terms and conditions of a certain contract made and entered into between the East Jersey Water

Company and the Board of Township Committee of the Township of Kearney, dated June 29th, 1895, which said contract was thereafter extended and ratified by mutual agreements between the parties thereto on February 14, 1896, June 17, 1897, and June 14, 1898, and which said contract was assigned by the East Jersey Water Company to the New Jersey Suburban Water Company and the New York & New Jersey Water Company by instrument in writing dated July 1, 1903, of which assignment due notice was given to the Town of Kearney; and

"Whereas under and by the provisions of the said contract, the Town of Kearney is obliged to pay for the water so supplied the sum of $90 per million gallons, and is also obliged to furnish a main of its own into which to receive the said water at the corner of Kearney and Belleville avenues, in the town of Kearney; and

"Whereas it is proposed by the Town of Kearney that the New Jersey Suburban Water Company and The New York & New Jersey Water Company shall reduce the price for water now being supplied to this town under and pursuant to the aforementioned contract, from $90 to $82.50 per million gallons, the price now being paid by the Town of Harrison, under contract made by it with the New Jersey Suburban Water Company, which has been sustained by a recent decision of the Supreme Court; and shall relieve and protect the town from its existing obligation to construct and provide a main from Belleville and Kearney avenues to receive and distribute its water supply and shall tap the present 30-inch main of the New York & New Jersey Water Company in Belleville Turnpike and connect the same with the town's distributing system at Elm street and Grand Place, in order to furnish to

this town better fire pressure and protection, in consideration of the extension of the aforementioned contract of June 29, 1895, for a period of ten years from the date of the expiration thereof,

"Now, therefore, be it Resolved, That the contract made June 29, 1895, between the East Jersey Water Company and the Board of Township Committee of the Township of Kearney, together with the supplemental contracts between the same parties made February 14, 1896, June 17, 1897, and June 14, 1898, assigned as hereinabove recited, to the New Jersey Suburban and The New York & New Jersey Water Companies, be and the same are hereby ratified and confirmed, and the term thereof extended for a period of ten years from the date of the expiration of the aforementioned contracts as in their terms provided; that is, December 29, 1910; in consideration of which extensions the price for the water to be delivered under the said contracts is to be reduced from $90 to $82.50 per million gallons, beginning with the acceptance of this resolution, and the Town of Kearney is to be relieved from the obligation heretofore imposed upon it to construct or provide a main for the reception of its water supply at Belleville and Kearney avenues, and the places of delivery of water so to be supplied under said contract from and after the completion of the new mains and pipes herein authorized, are hereby designated to be the meter vaults of the Town of Kearney at the junction of Kearney and Midland, Bergen and Johnston avenues, and by metered connections with the mains of the town at the intersections of the Belleville Turnpike Road with Elm street and Grand Place; and the right is hereby granted to the New Jersey Suburban Water Company and The New York & New Jersey Water Company, their successors and

assigns, to lay, maintain and operate such pipe or pipes, with all necessary appurtenances, in Belleville Turnpike Road and in Kearney avenue, as may be necessary to carry out the purposes of said contract hereby extended, and of this contract on the terms set forth in the contract hereby extended and on the following additional terms: The New Jersey Suburban Water Company and The New York & New Jersey Water Company may lay a main in Kearney avenue not exceeding thirty-six inches in diameter, extending from the said thirty-inch main of the New York & New Jersey Water Company in Belleville turnpike southerly in Kearney avenue to the line of the town of Harrison, and to be laid on the easterly side of the avenue under the roadway, and within ten feet of the curb line, and at least 3 feet below the surface of the avenue; at the junction of Belleville Turnpike Road with Grand Place, a pipe six inches in diameter shall be laid from said 30-inch pipe in Belleville road across Kearney avenue and along the Belleville turnpike road to and connected with the north end of the town's main in Grand Place, and a meter shall be placed and maintained at or near Belleville turnpike road and Grand Place to measure water delivered through such connection; at the intersection of Elm street and Belleville Turnpike road a similar connection shall be made from the 30-inch main of the water company to the 6-inch main of the town and a similar meter connection be established. The water company shall promptly restore the surface of the ground, together with the pavement, if disturbed, to as good condition as it was before the laying of the pipes and meter, and shall keep the same in order and repair until the ground disturbed is entirely settled, and shall properly guard all openings made by them in the highways and be liable for damages from their negligence in

opening same and in the laying of the pipes, and shall indemnify the town from all loss by reason thereof, and shall prosecute their work diligently with a view to keep open only such portion of the street as is reasonably necessary to properly prose cute the work; the construction referred to shall be completed within one year from the date hereof, to which period, however, shall be added the time, if any, during which the construction shall be delayed by litigation or unfavorable accident.

"And the water companies shall agree to provide filtered water, and to permit additional metered supply main connections (not less than six inches in diameter each) with their mains, at any intersecting street, or on the meadows where required for manufacturing purposes, and the companies shall agree not to sell water for consumption or use within the Town of Kearney other than to the town, except to the Pennsylvania Railroad at the meadow shops, or in any case where the rights of way or existing contract or charter obligations of the water companies shall require such delivery; and if, during the term of the contract aforesaid, the said water companies shall furnish water at a lower price than is herein provided, to any other municipality, to reach which they have to furnish the same through mains laid in our town, they shall furnish the Town of Kearney water aforesaid at the same price during the time remaining of the said contract with the Town of Kearney, at which they furnish such other municipality.

"Resolved, That these resolutions shall take effect when they are accepted by the New Jersey Suburban Water Company and the New York & New Jersey Water Company by an instrument in writing duly executed by said companies and filed with the Clerk of the Town of Kearney, and, when

so accepted, they shall constitute a contract between the Town of Kearney and the said water companies, their successors and assigns."

Now Therefore be it Resolved, That this company hereby accepts the foregoing resolutions in all their terms, and hereby agrees to comply with all the conditions thereof on its part, and agrees that the said resolutions and this acceptance thereof shall constitute a contract between the Town of Kearney and the New Jersey Suburban Water Company and this company, as in said resolutions provided.

Resolved, That the president and secretary of this company be and they are hereby authorized and directed to file a copy of these resolutions of acceptance, duly executed by the company under its corporate seal, in the office of the Town Clerk the Town Council or the Town of Kearney held date of the passage and the adoption of the aforementioned resolutions.

THE NEW YORK & NEW JERSEY WATER COMPANY,
By T. A. BEALL, *President.*
[SEAL] Attest:
JOSEPH H. BEALL, *Secretary.*

I hereby certify the foregoing to be a correct copy of a resolution passed at a regular meeting of Monday, August 15, 1904.

THEO. WILDMAN,
[TOWN SEAL] *Town Clerk.*

EXHIBIT D-12.

RESOLUTIONS OF KEARNY COUNCIL TO AUTHORIZE CONDEMNATION.

Whereas, the New York and New Jersey Water Company and the New Jersey Suburban Water Company have given notice to the Town of Kearny that it will be necessary for the Town to procure by consent, or condemn, the right of diversion for the water supply to be furnished under its contract with the Town of Kearny, dated August 16th, 1904, as against the riparian owners on the Passaic River below Little Falls, where the water is taken through the instrumentality of and by contract with the East Jersey Water Company,

And Whereas, the Town did, by its said contract, agree that if it should be found that any powers or rights of the Town for the condemnation of lands, water or water rights, might be advantageously used or exercised for the purpose of said contract, to put said rights or powers in force, or permit the said Companies, their successors or assigns, so to do, in the name of the Town, but at the expense of the said Companies, the Town to be indemnified for any loss or damage by reason thereof:

Resolved, That the Town of Kearny hereby determines to acquire said right of diversion, namely, the right to divert an average daily amount of two and three-tenths (2.3) million gallons of water per day, in each year, until December 29th, 1920, at Little Falls, on the Passaic River, the same being necessary for the purposes of the said contract, and for the use of the Town of Kearny for public water supply; and if unable to agree with any of the owners of the riparian lands for the said right of diversion, to condemn said right against such owners for the public use aforesaid.

Resolved, That in pursuance of said contract, Richard Rossiter, Ecq., of Paterson, as agent of the Town of Kearny, is authorized and directed to procure said right by agreement with the riparian owners as to the price of said right of diversion, and where no agreement can be made, to proceed to cause the same to be taken by condemnation in the name of the Town, for the public use aforesaid, but at the cost and expense of the said New York and New Jersey and New Jersey Suburban Water Company.

Resolved, That Collins & Corbin, Attorneys at Law, and Edward Kenny, Esq., Town Attorney, are authorized in the name of the Town, but at the expense of said Companies, to conduct any and all lawful condemnation or other legal proceedings for the acquirement of said right of diversion.

Resolved, That the Town Clerk be and he is hereby authorized and directed to deliver to the said Companies certified copies of these resolutions.

I hereby certify the foregoing to be a true copy of a resolution adopted at a regular meeting of the Council of the Town of Kearny, held October 26, 1910.

WILLIAM B. ROSS,
Town Clerk.

EXHIBIT D-13.

CONTRACT MAY 18, 1911, EAST JERSEY WATER COMPANY WITH NEW YORK AND NEW JERSEY WATER COMPANY AND NEW JERSEY SUBURBAN WATER COMPANY.

This Agreement made this eighteenth day of May, one thousand nine hundred and eleven, be-

tween The East Jersey Water Company, party of the first part, and The New York and New Jersey Water Company and The New Jersey Suburban Water Company, parties of the second part, witnesseth:

Whereas, The East Jersey Water Company is causing pumping to be done for the parties of the second part of water for their purposes, to-wit, the providing of a supply of water to the Town of Kearny under written contracts between the parties hereto, which contracts do not specify the source from which water shall be taken; and

Whereas, The water has in fact been obtained for more than ten years last past from the Passaic River at Little Falls, and is now being obtained from that source; and

Whereas, The Town of Kearny, by resolution of its Council passed on October 26, 1910, copy whereof is hereto appended and made part hereof, has explicitly designated and indicated the aforesaid source of supply as the source from which it is to take the water for its uses, and has determined to commence and has already commenced condemnation proceedings against certain riparian owners to take said waters in aid of the said parties of the second part, who have contracted to supply it therewith by contract dated August 15, 1904, to which reference is hereby made; and

Whereas, The taking of water at that point requires the acquirement, by agreement or condemnation, of the right against the riparian owners on the Passaic River below that point, and the East Jersey Water Company possesses the water power at Little Falls and has obtained the right of diverion as against the owners of the other water powers below Little Falls, so that its consent to the diversion as against the owners of the other water advised that the parties of the second part by vir-

tue of their municipal contracts with the Town of Kearny possess such rights of diversion as against the State for the use and benefit of said Town of Kearny:

Now, therefore, it is hereby agreed that the supply of water so to be pumped to the parties of the second part shall be taken by the parties of the second part under the authority which they are advised was conferred on them by virtue of their municipal contracts with the Town of Kearny, charters and otherwise, from the Passaic River at Little Falls aforesaid, which source is hereby designated for such supply, and the supply shall be continued therefrom during the period of the said contract of August 14, 1905, with the Town of Kearny—the party of the first part being made the agent and the employee of the parties of the second part to use its water power, mains and riparian and other facilities to accomplish the diversion which is authorized by said municipal contracts and to receive per million gallons for the water so delivered through its main into the mains of the parties of the second part the prices prescribed in its contracts as compensation, not for water sold but for services as agent, and for the use of its appliances, water power, mains and property in accomplishing the municipal supply which the party of the first part hereby agrees to use and provide for that purpose; and also agrees to pay all the costs, expenses and awards incident to the condemnation of the water rights for and on behalf of the said Town of Kearny, which water rights are referred to in the said resolutions authorizing the condemnation thereof for the purpose of such water supply of the Town of Kearny, and that said water rights shall thereupon be and become the property of said Town of Kearny and

used for its water supply by the parties of the second part.

Nothing herein contained shall release the party of the first part from its present contract obligations to furnish to the parties of the second part a supply of water sufficient to fulfill the requirements of the existing contract between the parties hereto for the supply of the Town of Kearny from some available source, or from any other obligation or liability to the parties of the second part now existing thereunder or otherwise.

In witness whereof, the parties hereto have caused their common seals to be hereto affixed and these presents to be duly signed and delivered the day and year first above written.

THE EAST JERSEY WATER COMPANY,
BY EDMUND LE B. GARDNER,
Vice President.

[L.S.] Attest:
ALBERT P. FISHER,
Secretary.

THE NEW YORK AND NEW JERSEY WATER COMPANY,
BY T. A. BEALL,
President.

[L.S.] Attest:
W. N. LEONARD,,
Asst. Secretary.

THE NEW JERSEY SUBURBAN WATER COMPANY,
BY T. A. BEALL,
President.

[L.S.] Attest:
W. N. LEONARD,
Secretary.

EXHIBIT D-14.

CONTRACT BETWEEN THE TOWN OF HARRISON AND THE NEW JERSEY SUBURBAN WATER COMPANY.

This agreement made this 15th day of September, nineteen hundred and three, by and between the New Jersey Suburban Water Company, a corporation duly organized and existing by virtue of the laws of the State of New Jersey, party of the first part hereinafter referred to as the company, and the Town of Harrison in the County of Hudson, being a municipal corporation of the state of New Jersey, party of the second part, hereinafter referred to as the town, witnesseth:

First. The company agrees to obtain and supply to the town and the town agrees to take from the company, for and during the continuous term of fifteen years commencing six months from and after the date hereof, or at such earlier date as the company may be able to furnish said water (with the option to the town to extend this contract for a second period of ten years), an entire and adequate supply of water for the inhabitants of said town, which shall be pure and wholesome and shall within one year be filtered water, and to be supplied in quantities sufficient for the purposes of domestic use in said town, for the extinguishing of fires, and for all other lawful uses and purposes for which the town may require or desire to have water and for which the town may lawfully use, sell or supply water; all the water required shall be delivered by pumping or gravity at the junction of Sherman avenue and Fourth street, in the town of Harrison, county of Hudson and state of New Jersey, at a head equal to that under which the said town is now receiving its water supply.

Second. The company agrees to furnish and deliver and the town agrees to take and pay for, as

stipulated in this contract, all the water necessary and convenient for the uses and purposes aforesaid.

Third. Payments by such town for water supplied under this contract shall be made by the proper disbursing officer or officers of the town in lawful money, quarter yearly on Thursday of the second week of each and every quarter after the delivery of water has commenced, for all the water so delivered during the preceding quarter, according to meter register upon the certificate of the superintendent of the company certifying to the quantity of water delivered and also certified to by the water purveyor of the town of Harrison. In case of dispute the town is to pay presently a sum equal to the amount which is paid for the corresponding quarter of the year last past, and the disputed amount is to be settled by arbitration, one arbitrator being named by the town, one by the company, and a third to be selected by the two so chosen, and a decision of a majority of these arbitrators shall be final. The company is to carefully measure all water delivered under this contract by meter set for that purpose and the town, by its engineers and proper officers, shall at all times have reasonable opportunity to inspect and examine the meter and appliances for measurement.

The price to be paid for all water delivered by the company to the town during the existence of this contract shall be at the rate of $82.50 per 1,000,000 gallons.

Fourth. The town covenants that, if it should be found that any powers or rights held or possessed, or that may hereafter be held or possessed by it, whether in respect to the prevention of injury to any portion of the works constructed for the supply of water, or for the punishment of such injury, or otherwise, or for the condemnation of

lands, waters or rights, may be advantageously used or exercised for the purpose of this contract, that then the town will, so far as it has or may acquire the power to do so, put such rights and powers in force or permit the company, its successors or assigns, so to do in the name of the town; provided however, that in all instances in which said use shall be made at the request of or for the benefit of the company, its successors or assigns, the expenses thereof shall be paid by the company and the town shall be lawfully indemnified from any loss or damage by reason thereof.

The Town hereby grants to the Company such rights of way through its streets, for a water main as may be necessary to supply the Town of Harrison under this contract, said main to be so laid as not unnecessarily to interfere with existing pipes, and the company, in laying the same, to promptly restore the surface of the streets to as good condition as the same was before the laying of the main, and shall always maintain said main in good condition and promptly repair the surface whenever they have occasion to disturb the same for access to said main.

Fifth. The company agrees to complete the work and begin the delivery of water within six months from the date of this contract, but any time lost by reason of strikes, accidents, litigation or other cause, unavoidable or beyond the control of the company, shall not be computed within the six months, but shall be added thereto.

Sixth. The provisions of this contract shall be

binding upon and apply to the successors and assigns of the parties hereto.

NEW JERSEY SUBURBAN WATER COMPANY,
[SEAL] TURNER A. BEALL,
President.

Attest:
J. WILLIAM GRIFFIN,
Secretary.

THE TOWN OF HARRISON,
[SEAL] PETER SULLIVAN,
President.

Attest:
B. P. WALSH,
Town Clerk.

EXHIBIT D-15.

AGREEMENT BETWEEN THE EAST JERSEY WATER COMPANY, THE SUBURBAN WATER COMPANY AND THE NEW YORK & NEW JERSEY WATER COMPANY.

This agreeemnt, made this first day of July, Nineteen Hundred and Three, between the East Jersey Water Company, of the first part, and New Jersey Suburban Water Company and the New York and New Jersey Water Company, of the second part, all corporations of New Jersey.

Whereas the party of the first part has this day assigned to the party of the second part the right to supply water to the township of Kearney under the contract between the party of the first part and said township dated June 29, 1895, and to receive the moneys accruing under said contract.

Now, in consideration of said assignment, it is agreed:

First. The party of the second part shall take

all their supply of water required for all their present and future uses and purposes in that part of Hudson County, New Jersey, lying West of the Hackensack river, from the party of the first part at the corner of Kearney avenue and Belleville Turnpike Road in the township of Kearney; and the party of the first part agrees to supply the same.

Second. The water to be supplied to the township of Kearney under said contract of June 29, 1895, is to be received by the party of the second part through the gates and meter now established at the point aforesaid by the party of the first part for the supply of Kearney; and the party of the second part agrees to pay for all water passing through said gates and meter at said point, whether consumed by the township of Kearney or its inhabitants, or otherwise, at the price of sixty dollars ($60.00) per million gallons, payable half yearly until they or either of them shall by some contract with any person, corporation or municipality in said county agree to supply water at some other price than that of ninety dollars per million gallons; after which contract or contracts the price to be paid under this contract to the party of the firs part for the amount of water thereafter supplied under said new contracts shall be thirty dollars ($30.00) per million gallons, plus one half of all that shall be received under such contracts in excess of said thirty dollars ($30.00) per million gallons; settlements and payments to be made quarterly or semi-annually, according to the manner of payment, under said contracts.

In testimony whereof, the parties hereto have caused their corporate seals to be hereto affixed

and these presents to be executed the day and year first above written.

THE EAST JERSEY WATER COMPANY,

[SEAL]

By EDMUND LEB. GARDINER,
Vice-President.

Attest:

ALBERT P. FISHER,
Secretary.

NEW JERSEY SUBURBAN WATER COMPANY,

[SEAL]

By T. A. BEALL,
President.

Attest:

J. WILLIAM GRIFFIN,
Secretary.

NEW YORK & NEW JERSEY WATER COMPANY,

[SEAL]

By T. A. BEALL,
President.

Attest:

J. H. BEALL,
Secretary.

EXHIBIT D-16.

EXTENSION OF CONTRACT BETWEEN THE TOWN OF HARRISON AND THE NEW JERSEY SUBURBAN WATER COMPANY.

Whereas the town of Harrison has heretofore, namely, on the 15th day of September, 1903, provided, by contract with the New Jersey Suburban Water Company, for an ample supply of pure and wholesome filtered water in quantities sufficient

for purposes of domestic and manufacturing use in this Town, for the extinguishing of fires and for all other lawful uses and purposes for which the Town may require or desire to have water or may lawfully use, sell or supply water, which contract is for the continuous period of fifteen years, with the option to the Town to extend the same for a second period of ten years, and the said contract has been sustained by the Court of Errors and Appeals of New Jersey; and the Town has received for nearly five years, and is now receiving an ample, complete and satisfactory supply of water thereunder,

Now Therefore, in order that no reasonable complaint or criticism may be made that the Town has not provided a supply of water sufficient in quantity and permanence to meet all the reasonable requirements of the railroads, manufacturers and other consumers located in the Town of Harrison; be it

Resolved, That the Town of Harrison hereby elects to exercise the option reserved to it in the agreement of September 15th, 1903 between the Town of Harrison and the New Jersey Suburban Water Company, to extend the term of said contract for a second period of ten years, and it does hereby extend the said contract for such period of ten years from the date of the expiration of the first period of fifteen years for which the said contract was made and executed; and that the Town Clerk, and he is hereby directed to transmit to the New Jersey Suburban Water Company a certified copy of this resolution in order that the said Company may be duly advised that the Town of Harrison has elected to exercise the option referred to.

This is to certify that this is a true copy of the resolution passed at an adjourned meeting of

the common council of the Town of Harrison held June 24th, 1908.

DANIEL B. WALSH,
Town Clerk.

[SEAL]

EXHIBIT D-17.

RESOLUTIONS OF THE TOWN OF HARRISON AUHORIZING CONDEMNATION PROCEEDINGS.

Whereas, the New Jersey Suburban Water Company has given notice to the Town of Harrison that it will be necessary for the Town to procure by consent, or condemn, the right of diversion for the water supply to be furnished under its contract with the Town of Harrison dated September 15th, 1903, as against the riparian owners on the Passaic River below Little Falls, where the water is taken through the instrumentality of and by contract with the East Jersey Water Company; and

Whereas, the Town did, by its said contract, agree that if it should be found that any powers or rights of the Town for the condemnation of lands, water or water rights might be advantageously used or exercised for the purpose of said contract, to put said rights or powers in force, or permit the said Company, its successors or assigns, o to do in the name of the Town, but at the expense of the said Company, the Town to be indemnified for any loss or damage by reason thereof:

Resolved, That the Town of Harrison hereby determines to acquire said right of diversion, namely, the right to divert an average daily amount of two million gallons of water per day, in each year, until August 16th, 1929, at Little Falls on the Passaic River, the same being necessary for the

purposes of the said contract, and for the use of the Town of Harrison for public water supply; and if unable to agree with any of the owners of the riparian lands for the said right of diversion, to condemn said right against such owners for the public use aforesaid.

Resolved, That in pursuance of said contract, Clarence T. Van Deren of Harrison, as Agent of the Town of Harrison, is authorized and directed to procure said right by agreement with the riparian owners as to the price of said right of diversion, and where no agreement can be made, to proceed to cause the same to be taken by condemnation in the name of the Town, for the public use aforesaid, but at the cost and expense of the said New Jersey Suburban Water Company. The award for compensation and damage to be paid by that Company.

Resolved, That Collins & Corbin, Attorneys at Law, and Michael T. Barrett, Esq., Corporation Counsel, are authorized, in the name of the Town, but at the expense of said Company, to conduct any and all lawful condemnation or other legal proceedings for the acquirement of said right of diversion, but solely at the expense of said Company.

Resolved, That the Town Clerk be and he is hereby authorized and instructed to deliver certified copies of these resolutions to the New Jersey Suburban Water Company.

The above is a certified copy of a resolution adopted at an adjourned meeting of the Common Council of the Town of Harrison, N. J., held on Tuesday Evening, October 18, 1910.

PETER J. GOODMAN,
Town Clerk.

EXHIBIT D-18.

AGREEMENT OF EAST JERSEY WATER CO. WITH NEW JERSEY SUBURBAN WATER CO., MAY 18, 1911.

This agreement, made this eighteenth day of May, one thousand nine hundred and eleven, between the East Jersey Water Company, party of the first part, and the New Jersey Suburban Water Company, party of the second part, witnesseth:

Whereas, the East Jersey Water Company is causing pumping to be done for the party of the second part of water for its purposes, to-wit, the providing of a supply of water to the town of Harrison under written contracts now existing between the parties hereto, which contracts do not specify the source from which the water shall be taken; and

Whereas, the water has in fact been obtained for more than ten years last past from the Passaic River at Little Falls, and is now being obtained from that source; and

Whereas, the Town of Harrison, by its Council, by their resolutions passed on October 18, 1910, a copy of whereof is hereto appended and made part hereof, has explicitly designated and fixed the said point at Little Falls for the taking of water for the supply of said town, and has commenced condemnation proceedings against certain riparian owners below Little Falls to take, as against them, the supply of water contracted to be furnished to the said town by the New Jersey Suburban Water Company which has contracted to supply it to said town; and

Whereas, the taking of water at said point at Little Falls requires the acquirement, by agreement or condemnation, of the right against the riparian owners on the Passaic River below that

point, and the East Jersey Water Company possesses the water power at Little Falls and has obtained the right of diversion as against the owners of the other water power below Little Falls, so that its consent to the diversion is necessary; and the parties hereto are advised that the party of the second part, by virtue of its municipal contract with the Town of Harrison possesses the right of diversion as against the State for the use and benefit of the Town of Harrison,

Now, therefore, it is hereby agreed that the supply so to be pumped to the Town of Harrison shall be taken by the party of the second part under the authority which it is advised was conferred upon it by its municipal contract, charter and otherwise, from the Passaic River at Little Falls aforesaid, which source is hereby designated for such supply, and the supply shall be continued therefrom during the period of the contract between the party of the second part and the Town of Harrison—the party of the first part being made the agent and employee of the party of the second part to use its water power, mains and riparian and other facilities to accomplish the diversion which is authorized by said municipal contracts, and to receive per million gallons for the water so delivered through its mains into the mains of the party of the second part the prices prescribed in its contracts as compensation, not for water sold but for services as agent, and for the use of its appliances, water power, mains and property in accomplishing the municipal supply of said town, which the party of the first part hereby agrees to use and provide for that purpose, and also agrees to pay all the costs, expenses and awards incident to the condemnation of the water rights for and on behalf of the said town, which water rights are referred to in the said resolutions

authorizing the condemnation therefor for the purposes of said water supply; and that said water rights shall thereupon be and become the property of the said Town of Harrison and used for its water supply by the party of the second part.

Nothing herein contained shall release the party of the first part from its present contract obligations to furnish to the party of the second part a supply of water sufficient to fulfill the requirements of the existing contracts between the parties hereto for the supply of the Town of Harrison from some available source, or from any other obligation or liability to the party of the second part now existing thereunder or thereupon. The contract whereby the New Jersey Suburban Water Company is required to furnish water to the Town of Harrison is the contract dated September 15th, 1903, to which reference is hereby made.

In witness whereof, the parties hereto have caused their common seals to be hereto affixed and these presents to be duly signed and delivered the day and year first above written.

THE EAST JERSEY WATER COMPANY,
BY EDMUND LEB. GARDNER,
Vice President.

Attest:
ALBERT P. FISHER,
Secretary.

THE NEW JERSEY SUBURBAN WATER COMPANY,
BY T. A. BEALL,
President.

Attest:
W. N. LEONARD.

EXHIBIT D-19.

CONTRACT BETWEEN THE SUBURBAN WATER COMPANY AND THE BOROUGH OF EAST NEWARK.

This agreement made this 31st day of August, in the year of our Lord one thousand nine hundred and six, between the New Jersey Suburban Water Company, party of the first part, hereinafter called the Company, and the Mayor and Council of the Borough of East Newark, party of the second part, hereinafter called the Borough.

Witnesseth, that the said Company and the said Borough, in consideration of the mutual promises and agreements hereinafter contained, and of the sum of one dollar by each to the other in hand well and truly paid, the receipt whereof is hereby acknowledged, do agree as follows:

1. The said Company agrees to furnish to the said Borough an entire and adequate supply of water for the inhabitants of said Borough, which shall be pure and wholesome filtered water, and shall be supplied in quantities sufficient for the purpose of domestic use and the use in the Borough, for the extinguishing of fires, and all other uses and purposes for which the Borough may require or desire to have water, or may use, sell or supply water for, and during the continuous term of five years, commencing immediately, at and for the price of eighty-two dollars and fifty cents ($82.50) per million gallons provided, however, that if the said Company shall sell water to any other municipality at a lower rate than eighty-two dollars and fifty cents ($82.50) per million gallons, then the price to be paid for water by the Borough to the Company shall at once be reduced to and shall be no higher than the lower price at which water is

furnished to such other municipality by the Company.

2. The said Borough agrees to receive its water supply from said Company and pay for the same at the rate aforesaid, and as hereinbefore and hereinafter provided.

3. That the said water shall be delivered by the Company to the Borough by pumping or gravity from the thirty-inch pipe line of the company at or near the junction of Sherman avenue and Fourth street or at such other point as may thereafter be agreed upon by the said Company and the said Borough, at a head equal to that under which the Borough is now receiving its water supply.

4. That the Company shall begin the delivery of water upon the completion of the necessary connections therefor between the main of the Company and the main of the borough, at the place aforesaid, which connection the said Company agrees to make immediately, and which connection shall be made at the cost of the said Company and under the supervision and direction of the Borough authorities.

5. That the Borough shall carefully measure the water delivered under this contract by the present meter or such other meter as may be set by it for that purpose, and joint readings shall be taken by the proper officer of the Borough and a representative of the Company, on the first day of every month; and payment by the Borough for water supplied under said contract shall be made by the proper disbursing officer or officers of the Borough in lawful money, on the order of the Mayor and council according to the measurements hereinbefore provided for, on the fifteenth days of July and January in each year, for all of the water delivered during the half year preceding the first days of said months of July and January.

6. That in case it shall be determined by the Court of Errors and Appeals that a certain contract for water supply heretofore made by and between the said Borough and the authorities of the City of Jersey City is valid, then the provisions of this contract shall be null and void and the obligation of the said Borough to accept and pay for water under this contract shall thereupon immediately cease and determine.

In witness whereof the said Company has caused this agreement to be signed by its president and its common corporate seal to be hereto affixed and attested by its secretary, and the said Borough has caused this agreement to be signed by its mayor and its corporate seal to be hereto affixed and attested by its Borough clerk the day and year first above written.

THE NEW JERSEY SUBURBAN WATER COMPANY,
BY T. A. BEALL,
President.

Attest:

[SEAL.] W. N. LEONARD,
Secretary.

EDWARD KENNY,
Mayor of East Newark.

Attest:

[SEAL.] WILLIAM HEALEY,
Borough Clerk.

EXHIBIT D-20.

RESOLUTIONS OF COUNCIL OF EAST NEWARK AUTHORIZING CONDEMNATION PROCEEDINGS.

Whereas, the New Jersey Suburban Water Company has given notice to the Borough of East Newark that it will be necessary for the Borough of East Newark to procure by consent, or condemn, the right of diversion for the water supply to be furnished under its contract with the Borough of East Newark, dated August 31st, 1906, as against the riparian owners on the Passaic River below Little Falls, where the water is taken through the instrumentality of and by contract with the East Jersey Water Company;

Resolved, That the Mayor and Council of the Borough of East Newark hereby determines to acquire said right of diversion, namely, the right to divert an average daily amount of six hundred housand (600,000) gallons of water per day, in each year, until August 31st, 1911, at Little Falls, on the Passaic River, the same being necessary for the purposes of the said contract, in all its terms and provisions, and for the use of the Borough of East Newark for public water supply; and if unable to agree with any of the owners of the riparian lands for the said right of diversion, to condemn said right against such owners for the public use aforesaid.

Resolved, That in pursuance of said contract, Terrence H. O'Donnell, Esq., of East Newark, as Agent of the Borough of East Newark, is authorized and directed to procure said right by agreement with the riparian owners as to the price of said right of diversion, and where no agreement can be made, to proceed to cause the same to be taken by condemnation in the name of the Bor-

ough, for the public use aforesaid, but at the cost and expense of the said New Jersey Suburban Water Company.

Resolved, That the Borough Clerk be and he is hereby directed to deliver a certified copy of these resolutions to the New Jersey Suburban Water Company, which Company shall within ten days after the receipt thereof file with the Borough Clerk its written consent to accept these resolutions and to pay the said costs and expenses of its contract to furnish and provide water to this Borough.

Resolved, That Messrs. Collins & Corbin and Davis & Hastings, Attorneys at Law, are authorized, in the name of the Borough, but at the expense of said Company, to conduct any and all lawful condemnation or other legal proceedings for the acquirement of said right of diversion.

Adopted March 8th, 1911. Approved March 8th, 1911.

CORNELIUS A. MCGLENNON,
Mayor.

A true capy.
Attest:

[SEAL.] THOS. J. CAREY,
Borough Clerk.

EXHIBIT D-21.

AGREEMENT BETWEEN THE EAST JERSEY WATER COMPANY AND THE NEW JERSEY SUBURBAN WATER COMPANY.

This agreement, made this eighteenth day of May,

one thousand nine hundred and eleven, between the East Jersey Water Company, party of the first part, and the New Jersey Suburban Water Company, party of the second part, witnesseth:

Whereas, the said East Jersey Water Company is causing pumping to be done for the party of the second part of water for its purposes, to-wit, the providing of a supply of water to the Borough of East Newark, under written contracts now existing between the parties hereto, which contracts do not specify the source from which the water is to be taken; and

Whereas, the water has in fact been taken for the supply of said Borough (or its predecessor municipal government of the same territory) for more than ten years last past at Little Falls, and is now being obtained from that source; and

Whereas, the Borough of East Newark, by resolution of its Council passed March 8, 1911, a copy whereof is hereunto appended and made part hereof, has explicitly designated and indicated the said source of supply as the source from which it is to take water for its uses, and has already commenced condemnation proceedings against certain riparian owners below Little Falls to take said waters in aid of The New Jersey Suburban Water Company, which has contracted to supply said water to said Borough by agreement dated August 31, 1906; and

Whereas, the taking of water at Little Falls requires the acquirement by agreement or condemnation, of the right against the riparian owners on the Passaic River below that point, and The East Jersey Water Company possesses the water power at Little Falls and has obtained the right of diversion as against the owners of the other water powers below Little Falls, so that its consent to the diversion is necessary, and the parties hereto

are advised that the party of the second part, by virtue of its said municipal contract, possesses such right of diversion as against the State for the use and benefit of the Borough of East Newark:

Now, therefore, it is hereby agreed that the supply so to be pumped to the party of the second part shall be taken by the party of the second part under authority which it is advised was conferred upon it by its said municipal contract, charter and otherwise, from the Passaic River at Little Falls aforesaid, which source is hereby designated for such supply, and the supply shall be continued therefrom during the period of the said contract between the party of the second part and the Borough of East Newark—the party of the first part being made the agent and employee of the party of the second part to use its water power, mains and riparian and other facilities to accomplish the diversion which is authorized by said municipal contract, and to receive per million gallons for the water so delivered through its mains into the mains of the party of the second part the prices prescribed in its contracts as compensation, not for water sold, but for services as agent and for the use of its appliances, water power, mains and property in accomplishing the municipal supply, which the party of the first part agrees to use and provide for that purpose; and also agrees to pay all the costs, expenses and awards incident to the condemnation of the water rights for and on behalf of the said Borough of East Newark, which water rights are referred to in the said resolutions authorizing the condemnation thereof for the purpose of the water supply of said Borough; and that said water rights shall thereupon be and become the property of the said Borough and used for its water supply by the party of the second part.

Nothing herein contained shall release the party of the first part from its present contract obligations to furnish to the party of the second part a supply of water sufficient to fulfill the requirements of the existing contract between the parties hereto for the supply of said Borough from some available source, or from any obligation or liability to the party of the second part now existing thereunder, or otherwise.

In witness whereof, the parties hereto have caused their common seals to be hereto affixed and these presents to be duly signed and delivered the day and year first above written.

THE EAST JERSEY WATER COMPANY,
BY EDMUND LEB. GARDNER,
Vice-President.

Attest:
ALBERT P. FISHER,
Secretary.

THE NEW JERSEY SUBURBAN WATER COMPANY,
BY T. A. BEALL,
President.

Attest:
W. N. LEONARD,
Secretary.

EAST NEWARK

RESOLUTIONS, MARCH 8, 1911.

(*Here follow resolutions in full.*)

EXHIBIT D-22.

CERTIFICATE OF INCORPORATION OF THE MONTCLAIR WATER COMPANY.

This is to certify that we:
John R. Bartlett of the City, County and State of New York;
Joseph Van Vleck, Township of Montclair, County of Essex, State of New Jersey;
Jasper R. Rand, Township of Montclair, County of Essex, State of New Jersey;
Edwin A. Bradley, Township of Montclair, County of Essex, State of New Jersey;
Albert P. Fisher, of the City of Brooklyn, County of Kings, State of New York;
Whiting G. Snow, Township of Montclair, County of Essex, State of New Jersey, and
Henry C. Andrews, of the City, County and State of New York; do hereby associate ourselves into and form a company under and by virtue of an act of the Legislature of New Jersey, entitled, "An Act for the construction, maintenance and operation of water works for the purpose of supplying cities, towns and villages of this State with water," approved April 21st, 1876, and the several supplements therto, and amendments thereof, for the purposes hereinafter mentioned, and to that end we do by this our certificate set forth:

First. That the name which we have adopted and assumed to designate said company, and to be used in its business and dealings is, The Montclair Water Company;

Second. The amount of the capital stock is one million dollars. The number of shares into which the same is divided is ten thousand shares, and the par value of each share is one hundred dollars.

Third. The term of the existence of said corporation shall be fifty years, commencing on the

fifteenth day of January, Anno Domini, eighteen hundred and eighty-seven, and terminating on the fifteenth day of January, Anno Domini, nineteen hundred and thirty-seven;

Fourth. The number of directors of said company shall be five but may be increased as the By-Laws may direct;

Fifth. The namfes of the directors of said company, who shall manage the affairs the first year, or until their successors are elected and qualified are:

John R. Bartlett,
Jasper R. Rand,
Whiting G. Snow,
Edwin A. Bradley, and
Albert P. Fisher;

Sixth. The works are to be constructed, and the business of said company carried on in the Township of Montclair in the County of Essex; and said company is for the purpose of constructing, maintaining and operating water works in said township, and for the purpose of supplying said township, and the inhabitants thereof, with water; and for the purpose of constructing, maintaining and operating works in connection therewith for the purpose of supplying water to such other cities, towns, townships and villages as it may be lawful for it to supply for public and private uses, by contract with any of such cities, towns, townships and villages, made with their respective municipal or other authorities.

In witness whereof, we have hereunto set our

hands and seals this thirteenth day of January, A. D., eighteen hundred and eighty seven.

Signed, sealed and delivered
in the presence of:
as to John R. Bartlett,
Albert P. Fisher,
Whiting G. Snow,
and Henry C. Andrews,
George M. Keasbey.
as to Joseph Van Vleck,
Jasper R. Rand,
and Edwin A. Bradley
Jno. L. Blake.

JOHN R. BARTLETT, [L. S.]
J. VAN VLECK, [L. S.]
JASPER R. RAND, [L. S.]
EDWIN A. BRADLEY, [L. S.]
ALBERT P. FISHER, [L. S.]
WHITING G. SNOW, [L. S.]
HENRY C. ANDREWS, [L. S.]

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

Be it remembered that on this thirteenth day of January, in the year of our Lord eighteen hundred and eighty-seven, before me, one of the Masters of the Court of Chancery, personally appeared Joseph Van Vleck, Jasper R. Rand and Edwin A. Bradley, to me known to be three of the persons described in, and who executed the foregoing certificate, and I, having first made known to them the contents thereof, they each acknowledged that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

JNO. L. BLAKE,
Master in Chancery of New Jersey.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } ss.:

Be it remembered, that on this thirteenth day of January in the year of our Lord eighteen hundred and eighty-seven, before me, one of the masters of the Court of Chancery personally appeared

John R. Bartlett, Albert P. Fisher, Whiting G. Snow and Henry C. Andrews to me known to be four of the persons described in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they each acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

GEORGE M. KEASBEY,..
Master in Chancery of N. J.

The consent of the corporate authorities of the Township of Montclair is hereby given to the organization of the within mentioned company, and to such acts, matters and things in connection therewith as it is lawful or proper that such consent should be given for according to the statute in such case made and provided, and in accordance with the resolution passed by the Township Committee of the Township of Montclair, on the thirteenth day of January, eighteen hundred and eighty-seven.

THOMAS RUSSELL,
[SEAL] *Chairman of the Township Committee.*
Attest:
A. EBEN VAN GIESON,
Acting Town Clerk.
Endorsed: Filed January 15, 1887.
HENRY C. KELSEY,
Secretary of State.

EXHIBIT D-23.

RESOLUTIONS OF THE MONCLAIR WATER COMPANY AUTHORIZING CONDEMNATION PROCEEDINGS.

Resolved, by the Board of Directors of Montclair Water Company, that the following rights and property are necessary and required for the purposes of said Company for a public water supply for the Town of Montclair, and that Richard Rossiter is hereby appointed Agent of the Company to agree with the City of Paterson and with the Chesnut Hill Land Company and any others interested in the said rights and property hereinafter mentioned and described, and if, for any reason, he is unable to agree with them for the purchase of said rights and property, then the officers of this Company are authorized to proceed to acquire said rights and property by condemnation, according to law. The rights and property mentioned are described as follows:

The right (as against the lands and riparian owners hereinafter described and named) to take and divert from the Passaic River at Little Falls, in Passaic County, New Jersey, until January 15, 1987, the quantity of water necessary for a public water supply for the Town of Montclair and its inhabitants, not exceeding an average quantity in any year of two and a half million gallons of water per day, the same being required and necessary to be taken for the aforesaid purposes of the Montclair Water Company.

The land and property against which, and against whose owners said right to divert said water is required, is described as follows, to wit:

First. The riparian lands situated on the banks of the Passaic River, in the City of Paterson, County of Passaic, State of New Jersey, owned

by The Mayor and Aldermen of the City of Paterson. The said lands being three parcels, to wit:

(a) A parcel known as the West Side Park, located on the left bank of the Passaic River, and extending from Preakness Avenue southwesterly up the Passaic River one half mile, more or less, to the line of the lands late of the estate of Richard Van Houten, being the westerly line of said Park; said river being the southerly boundary of said West Side Park.

(b) A tract of land, located in the City of Paterson, County of Passaic, State of New Jersey, known as the "Engine House Lot," described as follows:

Beginning on the southeasterly side of Water Street, at a point five feet and three and one-half inches westerly from the westerly side of the house of the heirs of Adrian B. Van Houten, deceased; running thence (1) southerly at right angles to Water street (as the same has been laid out from Temple street) to Albion street to the Passaic River; thence (3) northerly parallel with the first course to the southerly side of Water street; thence (4) easterly along the same three feet and three inches to a turn in said Water street, and hence (5) easterly, still along the southerly side of said Water street twenty-one feet and eleven inches to the place of beginning. Said Passaic River being the southerly boundary of said Engine House Lot.

(c) A tract of land, situate in the City of Paterson, County of Passaic, State of New Jersey, and known as the East Side Park, located on the right bank of the Passaic River, extending from the center line of Broadway southwardly along said river a distance of fifteen hundred (1,500) feet, more or less, to the southerly boundary of

said Park; said river being the easterly boundary of said East Side Park.

Second: The riparian land situated on the right bank of the Passaic River, owned by the Chestnut Hill Land Company, in the City of Paterson, County of Passaic, State of New Jersey, which lands extend from a point near the easterly line of East Thirty-Fifth street on the north, eastwardly and southwardly down the stream along the right bank of said river as it winds and turns, a distance of thirty-four hundred (3,400) feet, more or less, to the southerly line of said riparian land of the Chestnut Hill Land Company, which line where it strikes said river is distant about one hundred (100) feet northerly from the northerly line of Broadway, in said city of Paterson.

I hereby certify, that the above resolution was passed this 28th day of November, 1910, at a special meeting of the Board of Directors of the Montclair Water Company, duly called, and at which a quorum was present.

ALBERT P. FISHER,
Secretary.

EXHIBIT D-24.

AGREEMENT BETWEEN THE TOWN OF BLOOMFIELD AND MONTCLAIR WATER COMPANY.

Agreement, made and entered into this 8th day of May, A. D., 1905, by and between the Town of Bloomfield, a municipal corporation of the State of New Jersey, party of the first part, hereinafter to be referred to as said Town of Bloomfield, and The Montclair Water Company, a corporation of

the State of New Jersey, hereinafter to be referred to as the said Montclair Company, party of the second part, Witnesseth:

That the said Montclair Company, its successors and assigns, in consideration of the sums hereinafter set forth and to be paid by the said Town of Bloomfield, its successors and assigns, does hereby covenant, promise and agree to and with the said Town of Bloomfield, its successors and assigns, as follows:

1. Said Montclair Company agrees to deliver and said Town of Bloomfield agrees to accept a supply (continuous, except as hereinafter provided; and under a pressure of not less than eighty-five pounds at the point of delivery from the pipe line of the said Montclair Company into the pipe of the said Town of Bloomfield) of all water needed by the Town of Bloomfield or its inhabitants for private or public uses, (which water shall be potable, wholesome and palatable, and shall be properly filtered] at a point on the line of pipe of the said Montclair Company as now laid, namely, at the corner of Broad street and Watchung avenue.

(2) The meter is to be controlled by said Montclair Company, and the representatives of the said Town of Bloomfield are to have access to the same for the purpose of reading it, or testing it, in the presence of representatives of said Montclair Company at all reasonable times. During such time as said meter may be out of service, the consumption per day shall be the average consumption per day of the next preceding and next following month of which a record shall have been made.

(3) The said Town of Bloomfield agrees to pay to the said Montclair Company, for all water delivered by the said Montclair Company to it, the sum of sixty-five dollars per one million gallons.

Said Montclair Company shall present bills for said water, between the first and fifteenth days of January, April, July and October, in each year, and the amount of the same shall be paid by the said town of Bloomfield to the said Montclair Company at its principal office for doing business on or before the first day of the month following. If any question shall arise as to the correctness of such amount, payment for the amount called for shall not be thereby delayed, but payment for the amount called for shall be made, and the Town of Bloomfield shall have the right to proceed to verify or question the same. If any error shall be found by either party to have been been made in any measurement or settlement, the same shall be corrected by adjusting such error in the next settlement after the amount of error shall have been determined.

And Whereas, it has been necessary hitherto, and will do doubt continue to be necessary hereafter, from time to time, to temporarily discontinue the supply or reduce the pressure of water through the conduit of the said Montclair Company for short periods of time, because of accidents and for the purpose of making necessary repairs;

And whereas, the said Town of Bloomfield has no service reservoir in connection with its distribution system such as is usually built in a town water supply system.

Now, therefore

(4) It is agreed that neither the town of Bloomfield nor any inhabitant thereof or other person supplied with water to be furnished under this contract shall have any claim or demand against the said Montclair Company because of such temporary discontinuance of supply or reduction of pressure or by reason of the absence of

such service reservoir or any consequences to flow therefrom.

5. It is further mutually agreed that in case of any disagreement between the parties hereto as to whether there has been due performance of any covenant or stipulation herein contained, or of any dispute involving questions not definitely settled by this agreement, all such matter shall be referred to three persons as arbitrators, one to be selected by each of the parties hereto and the third by the two so selected, and the award or decision in writing of a majority of them shall be final and binding on the parties hereto.

6. It is further mutually understood and agreed between the parties hereto that this agreement shall take effect on the date hereof and shall continue in force and be binding on the respective parties hereto until the first day of May, A. D., nineteen hundred and twenty-five (1925).

In witness whereof the parties hereto have by their respective proper officers duly executed these presents, the day and year first aforesaid.

GEORGE FISHER,
Mayor of the Town of Bloomfield.

[SEAL] Attest:

WM. L. JOHNSON,
Town Clerk.

THE MONTCLAIR WATER COMPANY,
By W. G. SNOW,
President.

[SEAL] Attest:

AIBERT P. FISHER,
Secretary.

EXHIBIT D-25.

CONTRACT BETWEEN THE TOWN OF NUTLEY AND THE EAST JERSEY WATER COMPANY.

Agreement, made and entered into this first day of December, A. D., 1904, by and between the town of Nutley, a municipal corporation of the State of New Jersey, party of the first part, hereinafter to be referred to as said town of Nutley, and The East Jersey Water Company, a corporation of the state of New Jersey, hereinafter to be referred to as the said East Jersey Company, party of the second part, Witnesseth:

That the said East Jersey Company, its successors and assigns, in consideration of the sums hereinafter set forth and to be paid by the said town of Nutley, its successors and assigns, does hereby covenant, promise and agree to and with the said town of Nutley, its successors and assigns, as follows:

(1) Said East Jersey Company agrees to deliver and said town of Nutley agrees to accept a supply (continuous, except as hereinafter provided; and under a pressure of not less than ninety pounds at the point of delivery from the pipe line of the said East Jersey Company into the pipe of the said town of Nutley) of all water needed by the town of Nutley or its inhabitants for private or public uses, which water shall be potable, wholesome and palatable, and shall be properly filtered, at a point on the line of pipe of said East Jersey Water Company as now laid, namely, near Rusby's pond.

(2) Said town of Nutley agrees to pay for, maintain and keep in repair a water meter satisfactory to the said East Jersey Company; said meter to be controlled by said East Jersey Company, and

the representatives of the said town of Nutley are to have access to the same for the purpose of reading it, or testing it, in the presence of representatives of said East Jersey Company, at all reasonable times. Upon demand of the said East Jersey Company, the said town of Nutley agrees to promptly cause said meter to be repaired at their own cost, and during such time as said meter is out of service the consumption per day shall be the average consumption per day of the next preceding and next following month of which a record shall have been made.

(3) The said town of Nutley agrees to pay to the said East Jersey Company, for all water delivered by the said East Jersey Company to it, the sum of one hundred dollars per million gallons for the first ninety-one million gallons per quarter year; ninety-five dollars per million gallons for the second ninety-one million gallons per quarter year; ninety dollars per million gallons for the third ninety-one million gallons per quarter year; and eighty-five dollars per million gallons for all water in excess of two hundred and seventy-three million gallons per quarter year. Said East Jersey Company shall present bills for said water, between the first and fifteenth days of January, July and October, in each year, and the amount of the same shall be paid by the said town of Nutley to the said East Jersey Company at its principal office for doing business, on or before the first day of the month following. If any question shall arise as to the correctness of such account, payment for the amount called for shall not be thereby delayed, but proceed to verify or question the same. If any error shall be found by either party to have been made in any measurement or settlement, the same shall be corrected by adjusting such error in the

next settlement after the amount of error shall have been determined.

And whereas, it has been necessary hitherto, and will no doubt continue to be necessary hereafter, from time to time, to temporarily discontinue the supply or reduce the pressure of water through the conduit of the said East Jersey Company for short periods of time, because of accidents and for the purpose of making necessary repairs;

And whereas the said town of Nutley has no service reservoir in connection with its distributing system such as is usually built in a town water supply system;

Now therefore—

(4) It is agreed that neither the town of Nutley nor any inhabitant thereof or other person supplied with water to be furnished under this contract shall have any claim or demand against the said East Jersey Company because of such temporary discontinuance of supply or reduction of pressure by reason of the absence of such service reservoir or any consequences to flow therefrom, provided, however, that during the continuance of this contract, in the event of, but only during such discontinuance of the supply of water, said town may obtain its supply from those owning or controlling any water pipe line or water supply passing through or near said town of Nutley.

5. It is further mutually agreed that in case of any disagreement between the parties hereto as to whether there has been due performance of any covenant or stipulation herein contained, or of any dispute involving questions not definitely settled by this agreement, all such matters shall be referred to three persons as arbitrators, one to be selected by each of the parties hereto and the third

by the two so selected, and the award or decision in writing of a majority of them shall be final and binding on the parties hereto.

6. It is further mutually understood and agreed between the parties hereto that this agreement shall take effect on the date hereof and shall continue in force and be binding on the respective parties hereto until the first day of December, A. D., 1914.

In witness Whereof the parties hereto have by their respective proper officers duly executed these presents, the day and year first aforesaid.

TOWN OF NUTLEY,
By WM. F. DITTIG, *Vice-Chairman.*
[SEAL] Attest:
FRANK L. RUSBY, *Town Clerk.*
THE EAST JERSEY WATER COMPANY,
BY EDMUND LEB. GARDNER,
Vice-President.
[SEAL] Attest:
ALBERT P. FISHER, *Secretary.*

EXHIBIT D-26.

AGREEMENT BETWEEN EAST JERSEY WATER COMPANY AND THE MONTCLAIR WATER COMPANY.

Agreement, made this 17th day of December, 1910, between the East Jersey Water Company, party of the first part, and the Montclair Water Company, party of the second part (both said companies being corporations of the State of New Jersey), Witnesseth:

Whereas, the party of the first part did upon the 1st day of December, 1904, enter into a contract with the town of Nutley, (a municipal corporation

of the State of New Jersey) whereby they agreed to deliver water to the said Town of Nutley for a period of years, as by reference to said contract will more fullyappear;

And, Whereas the party of the first part desires to assign said contract to the party of the second part, and the party of he second part is willing to accept such assignment and to fully perform all the terms and conditions of the said contract.

Now Therefore it is agreed between the parties hereto

(1) That the party of the first part in consideration of one thousand dollars and other valuable consideration paid by the party of the second part, the receipt whereof is hereby acknowledged, hath assigned, transferred, conveyed and set over unto the party of the second part, their successors and assigns, the said aforementioned contract with the Town of Nutley for the supply of water to said Town, and the right to receive from the said Town payment for said water in accordance with the terms of the said contract.

(2) And the party of the second part doth hereby covenant and agree to and with the party of the first part, that they will faithfully carry out and fulfill the terms of said contract for the supply of water to he said Town of Nutley, and will indemnify and hold harmless the party of the first part from any damages that may accrue due to the lack of such fulfillment.

(3) It is further agreed, that as the party of the second part does not own a pipe line extending to the point of delivery of said water supply to the said Town of Nutley, but must use the pipe line belonging to the party of the first part for a distance of about 6930 feet for the purpose of making said delivery of water, the party of the second part hereby agrees to pay, and the party of

the first part hereby agrees to accept, the sum of Two Dollars per million gallons for all the water delivered under this contract, as full compensation for the use of the said pipe line of the party of the first part for the transportation of said water delivered under the contract aforementioned.

(4) It is further agreed that this agreement shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns, respectively.

In Witness Whereof the parties hereto have by their respective duly authorized officers executed these prsents and affixed their respective common seals hereto, the day and year first aforesaid.

THE EAST JERSEY WATER COMPANY,
By EDMUND LEB. GARDINER, *Vice-President.*

Attest:
[SEAL] ALBERT P. FISHER, *Secretary.*

THE MONTCLAIR WATER COMPANY,
By W. G. SNOW, *President.*

Attest:
[SEAL] ALBERT P. FISHER, *Secretary.*

EXHIBIT D-27.

CERTIFICATE OF INCORPORATION OF THE WEST ORANGE WATER COMPANY.

This is to certify, That we, Frederick Frelinghuysen, George Spottiswoode, Carroll Ph. Bassett, Allan L. Bassett, Adrian Riker, William Runkle and Whiting G. Snow, all residents in the County of Essex and State of New Jersey, do hereby associate ourselves into a company under and by virtue of the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act for the construction, maintenance and operation of

water works, for the purpose of supplying cities, towns and villages of this state with water," approved April 21, 1876, and the several supplements thereafter and acts amendatory thereof, for the purposes hereinafter mentioned, and to that end we do by this our certificate set forth:

First. The Company is formed for the purpose of constructing, maintaining and operating water works in the Township of West Orange, in the county of Essex and State of New Jersey (being a township which has a population of not more than fifteen thousand and not less than five hundred inhabitants), and for the purpose of supplying such township and the inhabitants thereof with water.

Second. The corporate name adopted by the Company is THE WEST ORANGE WATER COMPANY.

Third. The amount of the capital stock is one hundred thousand dollars and the amount with which it will commence business is the sum of ten (10) thousand dollars; there will be one thousand shares of the par value of one hundred dollars each.

Fourth. The term of the existence of the company is to be fifty (50) years from the date of its corporation.

Fifth. The number of directors is five and the names of those who shall manage the affairs of the Company for the first year or until their successors are elected and qualified, are Frederick Frelinghuysen, George Spottiswoode, Allan L. Bassett, William Runkle and Carrol Ph. Bassett and each of them is a stockholder of the corporation.

Sixth. The name of the township in or for which such works are to be constructed and the business of the company carried on, is the township of West Orange, in the County of Essex.

In witness whereof, we have hereto set our hands

and seals this twenty-fifth day of October, eighteen hundred and ninety-two.

	FREDK. FRELINGHUYSEN,	[L. S.]
	GEORGE SPOTTISWOODE,	[L. S.]
John Monteith.	CARROL PH. BASSETT,	[L. S.]
	ALLAN L. BASSETT,	[L. S.]
	ADRIAN RIKER,	[L. S.]
	WM. RUNKLE,	[L. S.]
	WHITING G. SNOW.	[L. S.]

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

Be it remembered that on this 25th day of October, eighteen hundred and ninety two, before me, a Master in Chancery of New Jersey, personally appeared Frederick Frelinghuysen, George Spottiswoode, Carroll Ph. Bassett, Allan L. Bassett, Adrian Riker, William Runkle and Whiting G. Snow, who, I am satisfied, are the persons named in and who executed the foregoing certificate, and, I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

JOHN MONTEITH,
M. C. C. of N. J.

Know all men, by these presents, That the Township Committee of the township of West Orange, in the County of Essex, the corporate authorities of the township proposed to be supplied with water by the Company proposed to be formed under the foregoing certificate, hereby consent to the formation of the said Company under the said certificate, for the purposes therein mentioned and to the filing of said certificate and this consent in the office of the Secretary of State pursuant to the statutes in such case made and provided

In Witness Whereof, the said Township Committee have caused this consent to be sealed with the corporate seal of the said township, and to be signed by the hand of their chairman, this 25th day of October, A. D., eighteen hundred and ninety-two.

FREDERICK W. SHRUMP.

(Township Seal)

Endorsed:

"Filed October 27, 1892.

HENRY C. KELSEY,

Secretary of State."

EXHIBIT D-28.

CONTRACT BETWEEN THE MONTCLAIR WATER COMPANY AND THE WEST ORANGE WATER COMPANY.

This agreement, made this first day of November, in the year of our Lord, 1892, between the Montclair Water Company, a corporation formed under and by virtue of an Act of the Legislature of the State of New Jersey, of the first part, and the West Orange Water Company, a corporation formed under and by virtue of an Act of the Legislature of the State of New Jersey, of the second part.

Whereas, the party of the second part is about to contract with the township of West Orange to provide for it a public water supply, the provisions of which contract are to be subject to the approval of the party of the first part:

And whereas the party of the second part desires to secure a supply of water to be delivered into a system of mains to be laid in said Township

of West Orange in accordance with the terms of said contract;

Now, therefore, in consideration of one dollar and the mutual covenants herein, it is agreed as follows:

1st. The party of the first part agrees to deliver water at the township line (dividing Montclair Township from West Orange) on Harrison avenue and Mountain avenue, under a pressure sufficient to meet the requirements of the said contract with West Orange, on and after the first day of May, 1893, during the continuance of this agreement.

The present or a new reservoir or standpipe to be erected and maintained by the party of the first part and holding not less than 200,000 gallons shall be directly connected by mains at least six inches in diameter, conducting the supply to said township line, and the plant so erected shall be capable of delivering into the mains of the said party of the second part at a rate sufficient to meet the requirements of said contract with West Orange.

2nd. The said party of the first part further agrees that the water so to be furnished shall be pure and wholesome, and the supply thereof abundant and constant, and so furnished as to meet the requirements of the contract between the party of the second part and the said township of West Orange.

3rd. The party of the first part further agrees to erect and maintain meters of a suitable form and construction on their mains near the West Orange line to determine the quantity of water supplied to said party of the second part, and that monthly determinations of said quantity shall be made by the party of the first part in the presence of a representative of the party of the second part, if it is so desired, and from the record of

such determinations the quantity of water shall be paid for. Obvious defects in the meters shall be remedied without delay.

4th. This agreement shall continue in full force and be binding on the parties hereto for the term of twenty-five years from the first day of May, 1893, at which time the works of the party of the second part shall be ready to accept and take such water supply, and the party of the second part agrees to pay ten cents per thousand gallons for all water received by it. If the township of West Orange purchase the plant of the party of the second part before the expiration of the twenty-five years herein mentioned, the rights of the party of the second part to receive water from the party of the first part under this agreement at ten cents per 1000 gallons shall cease and the party of the first part shall become entitled to receive fifteen cents per 1000 gallons for all water furnished by it to the said Township of West Orange.

5th. The party of the second part further agrees that it will neither use or sell, during the life of this contract, any other water than that furnished by the party of the first part, provided the water so furnished shall be of quality and quantity sufficient to meet the requirements of the contract of said parties of the second part with the township of West Orange.

6th. It is further mutually agreed that in case of any disagreement between the parties hereto as to whether there has been due performance of any covenant or stipulation herein contained, or any dispute involving questions not definitely settled by this agreement, all such matters shall be referred to three persons as arbitrators, one to be selected by each of the parties hereto, and the third by the two so selected, and the award or decision in writ-

ing of a majority of them shall be final and binding on the parties hereto.

7th. It is hereby further agreed that the party of the first part shall present its account for compensation as aforesaid between the 1st and 15th days of January, April, July and October of each year, and the same shall be paid by the party of the second part on or before the first days of the month following. If any question shall arise as to the correctness of such account, payment for the amount called for by the same shall not thereby be delayed, but the party of the second part shall have the right to proceed to verify or question the same. If error shall be found by either party to have been made in any measurement or settlement, the same shall be corrected by adjusting such error in the next settlement, after the amount of such error shall have been determined.

In witness whereof the parties hereto have caused these presents to be signed by their respective presidents and attested by their respective secretaries, the day and year first above written.

THE MONTCLAIR WATER CO.
W. G. SNOW, *President.*

[SEAL.] ATTEST—
ALBERT PH. FISHER, *Secretary.*

THE WEST ORANGE WATER COMPANY,
BY WM. RUNKLE, *President.*

[SEAL.] ATTEST—
CARROL H. BASSETT, *Secretary.*

EXHIBIT D-29.

RESOLUTIONS OF THE WEST ORANGE WATER COMPANY AUTHORIZING CONDEMNATION PROCEEDINGS.

As Secretary of the West Orange Water Com-

pany, I hereby certify that at a meeting of the Board of Directors held the 14th day of December 1910 the following resolution was unanimously adopted.

CARROLL H. BASSETT.

Summit, N. J.
December 14th 1910.
[SEAL.]

Resolved, by the Board of Directors of the West Orange Water Company, that the following rights and property are necessary and required for the purposes of said Company for a public water supply for the Town of West Orange, and that Richard Rossiter is hereby appointed Agent of the Company to agree with the City of Paterson and with The Chestnut Hill Land Company and any others interested in the said rights and property hereinafter mentioned and described, and if, for any reason, he is unable to agree with them for the purchase of said rights and property, then the officers of this Company are authorized to proceed to acquire said rights and property by condemnation, according to law. The rights and property mentioned are described as follows:

[SEAL.]

The right to take and divert continuously until the 25th day of October, A. D. 1942, from the Passaic River at Little Falls, in Passaic County, New Jersey, the quantity of water necessary for the public and domestic uses of the public water supply of said Town of West Orange, not exceeding an average quantity in any year of one million gallons of water per day, the same being required and necessary to be taken for the purposes of said Town of West Orange.

The land and property and against which the said right to divert said water is required, is described as follows, to wit:

The riparian lands situated on the banks of the Passaic River, in the City of Paterson, County of Passaic, State of New Jersey, the said lands being three parcels, to wit:

(A). A tract of land known as the West Side Park, located on the left bank of the Passaic River, and extending from Preakness Avenue southwesterly up the Passaic River one half mile, more or less, to the line of the lands late of the estate of Richard Van Houten, being the westerly line of said Park; said river being the southerly boundary of said West Side Park.

(B.) A tract of land, located in the City of Paterson, County of Passaic, State of New Jersey, known as the "Engine House Lot," described as follows:

BEGINNING on the southeasterly side of Water Street, at a point five feet and three and one-half inches westerly from the westerly side of the house of the heirs of Adrian B. Van Houten, deceased; running thence (1) southerly at right angles to Water street (as the same has been laid out from Temple street) to Albion street to the Passaic River; thence (3) northerly parallel with the first course to the southerly side of Water street; thence (4) easterly along the same three feet and three inches to a turn in said Water street, and thence (5) easterly, still along the southerly side of said Water street twenty-one feet and eleven inches to the place of beginning. Said Passaic River being the southerly boundary of said Engine House lot.

(C). A tract of land situate in the City of Paterson, County of Passaic, State of New Jersey, and known as the East Side Park, located on the right bank of the Passaic River, extending from the center of the center line of Broadway southwardly along said river a distance of fifteen hundred (1,500) feet, more or less, to the southerly boun-

dary of said park; said river being the easterly boundary of said East Side Park.

Also, The riparian lands situated on the right bank of the Passaic River, owned by the Chestnut Hill Land Company, in the City of Paterson, County of Passaic, State of New Jersey, which lands extend from a point near the easterly line of East Thirty-Fifth street, eastwardly and southwardly down the stream along the right bank of said river as it winds and turns, a distance of thirty-four hundred (3400) feet, more or less, to the southerly line of said riparian land of the Chestnut Hill Land Company, which line where it strikes said river is distant about one hundred feet northerly from the northerly line of Broadway, in said City of Paterson.

EXHIBIT D-30.

CONTRACT BETWEEN THE ORANGE WATER COMPANY AND THE MONTCLAIR WATER COMPANY.

An indenture made and entered into this first day of May in the year of our Lord eighteen hundred and ninety-five by and between the Orange Water Company, a corporation organized under the laws of the State of New Jersey, and located in the Township of East Orange, in the County of Essex, in said State, party of the first part, hereinafter to be referred to as said Orange Company; and the Montclair Water Company, a corporation organized under the laws of the State of New Jersey, located in the Township of Montclair, in the County of Essex, in said State, party of the second part, hereinafter to be referred to as said Montclair Company;

Witnesseth:

That said Montclair Company, its successors and assigns, in consideration of the sums hereinafter set forth and to be paid by said Orange Company, its successors and assigns, does hereby covenant, promise and agree to and with said Orange Company, its successors and assigns, as follows:

First. Said Montclair Company agrees to deliver and said Orange Company agrees to accept, a continuous supply under pressure, of the water needed by the Township of Bloomfield for domestic and fire purposes, at two or more points on the lines of pipe of said Montclair Company as now laid; namely: from the supply now or hereafter to be used in the towns of Montclair and West Orange, to the whole of the high service district, sometimes called the Glen Ridge district, in said Township of Bloomfield; and from the conduit of the East Jersey Water Company as now delivered by a branch pipe at Broad street and Watchung avenue, or at an equivalent pressure to all the rest of said Township of Bloomfield.

Second. Said Orange Company agrees to pay for the water meters, and for the installation of said meters, to be set up at each point of draft from the pipes of said Montclair Company.

The meters are to be controlled and set by said Montclair Company, and the representatives of said Orange Company are to have access to the same for the purpose of reading them, or of testing them, in the presence of representatives of said Montclair Company, at all reasonable times.

Third. Said Orange Company agrees to pay to said Montclair Company the sum of eight cents per thousand gallons for all water delivered by said Montclair Company to it. Said Montclair Company shall present its account for compensation, between the first and fifteenth days of Janu-

ary, April, July and October, of each year, and the amount of the same shall be paid by said Orange Company to said Montclair Company, on or before the first day of the month following. If any questions shall arise as to the correctness of such account, payment for the amount called for by the same shall not be thereby delayed; but payment for the amount called for shall be made, and said Orange Company shall have the right to proceed to verify or question the same. If any error shall be found by either party to have been made in any measurement or settlement, the same shall be corrected by adjusting such error in the next settlement, after the amount of error shall have been determined.

Fourth. This agreement shall continue in full force and be binding on the parties hereto for the term of ten years from the first day of May, 1895.

Fifth. It is further mutually agreed that in case of any disagreement between the parties hereto as to whether there has been due performance of any covenant or stipulation herein contained, or of any dispute involving questions not definitely settled by this agreement, all such matters shall be referred to three persons as arbitrators, one to be selected by each of the parties hereto, and the third by the two so selected, and the award or decision in writing of a majority of them shall be final and binding on the parties hereto.

In witness whereof the parties hereto have caused these presents to be signed by their respective presidents, and attested by their respective secre-

taries, the day and year first above written.
Signed, sealed and delivered
in the presence of:

ORANGE WATER CO.
[SEAL] F. M. SHEPARD, *Pres.*
F. M. SHEPARD, JR., *Secy.*
MONTCLAIR WATER CO.
[SEAL] W. G. SNOW, *Pres.*
A. P. FISHER, *Secy.*

Extension of contract between the Orange Water Company and the Montclair Water Company.

April 17th, 1905.

Montclair Water Co.,
Montclair, N. J.

Gentlemen:—

We desire to extend the water contract, so far as relates to the supply for Glen Ridge, for one year, from the 1st of May, 1905, to the 1st of May, 1906, on the present terms.

Yours truly,
Orange Water Company,
F. M. SHEPARD, *President.*

April 19th, 1905.

Orange Water Company,
F. M. Shepard, Esq., President.
East Orange, New Jersey.

Gentlemen:

We have your application for an extension of our present contract with you dated May 1st, 1895, which expires May 1st, 1905, for a period of one year, for the supply of water for Glen Ridge, and it is understood between us that we will continue this supply under the terms of the above mentioned contract until May 1st, 1906.

Yours very truly,
The Montclair Water Company,
By Edmund LeB. Gardiner,
Treasurer.

April 20, 1905.

E. LeB. Gardiner, Esq.,
Paterson, N. J.

My Dear Mr. Gardiner:

Your favor 19th with agreement to continue the Glen Ridge water supply for a year, is at hand and quite satisfactory.

Yours very truly,
F. M. SHEPARD, *President.*

EXHIBIT D-31.

AGREEMENT BETWEEN MONTCLAIR WATER COMPANY AND BOROUGH OF GLEN

Paterson, N. J.,
May 8, 1911.

To the Mayor and Council of the
Borough of Glen Ridge, N. J.

Gentlemen:—

We have been informed by your counsel, Mr. Beard, that you have taken over the plant of the Orange Water Company and that you propose now to supply yourselves and your inhabitants with water within the Borough of Glen Ridge.

This Company is willing to continue to supply water, from day to day, to the Borough of Glen Ridge, in the same way as we have been furnishing water to the Orange Water Company, and for the same price, feeling that it is not advisable, at this time, to negotiate a contract for a specific period of time.

Will you kindly notify us of the exact date when the transfer will be made, in order that the meters may be read and the bills made out accordingly.

In thus continuing to furnish water for the sup-

ply of Glen Ridge, it must be distinctly understood that it may be necessary, from time to time, to temporarily discontinue the supply or reduce the pressure of water for short periods of time, because of accidents and for the purpose of making necessary repairs, and that neither the Borough of Glen Ridge nor any inhabitant thereof or other person supplied with water to be furnished by this Company shall have any claim or demand against the Company because of such temporary discontinuance of supply or reduction of pressure.

We should expect, of course, an acknowledgment of the receipt of this letter, and a statement, given over the signatures of the proper Borough authorities, stating that payment will be made, every three months, by the Borough of Glen Ridge to this Company, for all water delivered through the meters through which water is now supplied to the Borough, namely, at Lincoln Street, Highland Avenue and Linden Avenue, at the price of Eighty Dollars ($80.00) per million gallons.

Yours very truly,
The Montclair Water Company.
By Edmund LeB. Gardner, *Treasurer.*

Glen Ridge, N. J.
May 27th, 1911.

Montclair Water Company,
Mr. E. LeB. Gardner, Treas.,
158 Ellison St., Paterson, N. J.

Dear Sir:

We beg to acknowledge receipt of your letter of May 8th, with reference to the water supply at Glen Ridge. We wish to advise you that the plans for taking over the plant from the Orange Water Company are now under way, but it will probably

be some time before the transaction is actually consummated.

We will give you due notice of the time at which the plant is to be taken over, and at that time a formal acknowledgement of receipt of your letter of May 8th.

Yours very truly,
E. S. SULLIVAN,
Chairman Light & Water Committee.

COPY.

Glen Ridge, N. J.,
April 25, 1912.

The Montclair Water Company,
No. 158 Ellison Street, Paterson, N. J.

Gentlemen:—

Referring to your letter of May 8th, 1911, in relation to supplying water to the Borough of Glen Ridge, we beg to advise you that the Borough will be in a position to purchase water from your Company on May first, 1912, on which date we request that you have a representative meet our Superintendent, Mr. James E. Brooks, with a representative of the Orange Water Company to read the supply meters.

After which reading of the meters bills for the water supplied to be rendered quarterly to the Borough of Glen Ridge.

The Borough hereby agrees to make payment for the water passing through the meters every three months, at the price of Eighty ($80.) Dollars per million gallons.

Very truly yours,
D. H. STANDISH, *Mayor.*
EDWARD S. SULLIVAN, *Chairman of Committee on Water and Light.*

EXHIBIT D-32.

RESOLUTIONS OF GLEN RIDGE COUNCIL AUTHORIZING CONDEMNATION PROCEEDINGS.

Office of the
MAYOR AND COUNCIL
Borough of Glen Ridge
State of New Jersey
Glen Ridge, N. J., December 1, 1910.

Resolution adopted by the Borough Council of the Borough of Glen Ridge, on December 1, 1910.

Whereas, the Montclair Water Company has given notice to the Borough of Glen Ridge that it will be necessary for the Borough to procure by consent, or condemn, the right of diversion for the water supply to be furnished it after April 1, 1911, as against the riparian owners on the Passaic River below Little Falls, where the water is diverted through the instrumentality of and by agreement with the Montclair Water Company and the East Jersey Water Company.

Resolved, that the Mayor and Council of the Borough of Glen Ridge do hereby determine to acquire said right of diversion, namely the right to divert an average daily amount of three hundred and fifty thousand (350,000) gallons of water per day in each year until April 1, 1926, at Little Falls on the Passaic River, the same being necessary for the use of the Borough of Glen Ridge for public water supply; and if unable to agree with any of the owners of the riparian lands for the said right of diversion, to condemn said right against such owners for the public use aforesaid, and be it further

Resolved, that Richard Rossiter of Paterson, as agent of the Borough of Glen Ridge, is

hereby directed to procure said right by agreement with the riparian owners, subject to the approval by the Borough as to the price of said right of diversion, and where no agreement can be made, to proceed to cause the same to be taken by condemnation in the name of the Borough for the public use aforesaid, subject to the subsequent acceptance and agreement by the Borough to pay any amount to be awarded, it being understood and agreed that the cost and expense of said proceedings and of the prosecution and condemning of the same is hereby limited to the amount so agreed upon as damages, or the amount to be awarded as damages for said diversion, if said award is approved by the Borough, and that the said Borough shall not be liable for any other costs or counsel fees.

Resolved, that Collins and Corbin, attorneys-at-law, are hereby authorized in the name of the Borough, but at the expense of said Company, to conduct any and all lawful condemnation or other legal proceedings for the acquirement of said right of diversion.

Be it further resolved that the authority herein given may be revoked at any time by the Council of this Borough.

The foregoing is a true copy of the resolution adopted by the Borough Council, December 1, 1910.

Attest,

JOHN A. BROWN,
Borough Clerk.

Office of the
MAYOR AND COUNCIL
Borough of Glen Ridge
State of New Jersey
Glen Ridge, N. J., December 1, 1910.

Resolution adopted by the Borough Council of the Borough of Glen Ridge, on December 1, 1910.

Resolved that Richard Rossiter is hereby authorized to offer Chestnut Hill Land Company and the City of Paterson one dollar each for the right of diversion of water in accordance with resolution of even date.

The foregoing is a true copy of the resolution adopted by the Borough Council, December 1, 1910.

Attest:

JOHN A. BROWN,
Borough Clerk.

EXHIBIT D-33.

FINAL DECREE IN SUIT OF CITY OF PATERSON AGAINST EAST JERSEY WATER COMPANY.

IN CHANCERY OF NEW JERSEY.

BETWEEN THE MAYOR AND ALDERMEN OF THE CITY OF PATERSON, Complainants, and THE EAST JERSEY WATER COMPANY, Defendant.	On Bill, etc.

DECREE.

(Filed January 5, 1910).

This cause coming on to be heard upon the bill,

amended bill, answer, amended answer and replication, and proofs taken thereon, and John W. Griggs, William B. Gourley and Thomas C. Simonton, Counsel for the Complainants, having been heard on behalf of the complainants, and William H. Corbin and Michael Dunn, Counsel for the Defendant, having been heard on behalf of the Defendant, and the pleadings, proofs and arguments of the respective counsel having been heard,

It is thereupon, on this fourth day of January, Nineteen Hundred and Ten, Ordered, Adjudged, and Decreed by His Honor, Mahlon Pitney, Chancellor of the State of New Jersey, and the said Chancellor does hereby Order, Adjudge and Decree, That the Complainants, The Mayor and Aldermen of the City of Paterson, are riparian owners of the lands described in the amended bill of complaint in this cause, comprising the Westside Park, the Eastside Park and the engine house lot upon the Passaic River; that complainants have title in and to said lands comprising the Eastside Park and the engine house lot to the centre of the Passaic River, and in respect to said three tracts of land the complainants have, as against the defendant, the rights of a riparian owner, and as such riparian owner have a right to the full flow of the said stream along or over complainants' said three tracts of land, including the water diverted by the defendant, subject only to the diminution thereof by the lawful and reasonable uses of said stream by upper riparian owners, and those claiming under them; that the diversion by the defendant of the water of the said River from said River through its dams, reservoirs and pumping station at or near Little Falls on said River above the said lands of the complainants is a violation of the rights of the complainants as such riparian owners of said three tracts of land, and the complain-

ants are entitled to equitable relief against the defendant in respect thereto, as hereinafter set forth.

And It Is Further Ordered, Adjudged and Decreed, that the complainants are entitled to a perpetual injunction restraining the defendant, its agents and servants, from the further diversion of the water of the Passaic River from said River through its dams, reservoirs and pumping station at or near Little Falls on said River, for the purposes of sale, or of delivering to any other persons or corporations, to be sold either directly or indirectly, but that no writ of injunction issue until the first day of April, Nineteen Hundred and Eleven, and that if before that time proceedings for condemnation of the complainants' rights be commenced by or in aid of the defendant, then said writ of injunction shall not issue until further order of this Court.

And It Is Further Ordered, Adjudged and Decreed, that the complainant has no standing in equity on its claim as a municipality, set up in the charging undiluted sewage into the Passaic River, bill, of a right to construct a sewer system disand to the undiminished flow of the river for the purpose of diluting the sewage, and all relief upon that portion of the bill of complaint setting up such a claim is hereby denied.

And It Is Further Ordered, Adjudged and Decreed, that complainants are entitled to their costs of suit to be taxed. The application for the allowance of a counsel fee to complainant in the taxable costs is reserved for special separate order.

MAHLON PITNEY,

Respectfully advised,

JOHN R. EMERY,

Vice-Chancellor.

EXHIBIT D-34.

CONTRACT BETWEEN THE MONTCLAIR WATER COMPANY AND THE EAST JERSEY WATER COMPANY.

Agreement, made this 18th day of April, A. D., 1907, Between the Montclair Water Company, a corporation of the State of New Jersey, party of the first part, and The East Jersey Water Company, a corporation of the State of New Jersey, party of the second part, Witnesseth:

Whereas the party of the first part has been obtaining its supply of water from the party of the second part, under a contract dated May 2, 1895, supplemented by a further contract of November 9, 1896;

And Whereas it has been understood between the parties hereto, that while the party of the second part is delivering water to the party of the firs part under the contracts aforesaid, that the actual taking and diverting of water has been made by the party of the first part;

And Whereas it is now desired to have this more definitely set forth.

Now Therefore It is Agreed as Follows: That in consideration of the aforementioned agreements and of the understanding had between the parties hereto, the party of the second part will receive from the party of the first part at Little Falls, the water which may be needed for the party of the first part, and will pump and filter the same through their works which are now established at Little Falls and deliver the water at such a pressure as may be necessary for the purposes of the party of the first part into the conduits of the party of the first part, located at Grove Street in the Township of Acquackanonk, and at Brookdale

in the County of Essex, and will receive in full compensation for such pumping, filtration and delivery, the sums specified in the aforementioned agreements, for all the water so pumped, filtered and delivered.

The party of the first part on its part agrees that it will take from the Passaic River at Little Falls and deliver into the head gates of the party of the second part, so much water as may be needed for its purposes and that it will pay to the party of the second part in full compensation for the pumping, filtration and delivery of said water into its conduits the sums set forth in said aforementioned contracts.

This agreement is to take effect immediateely and to continue in force until cancelled by six months notice by either party hereto.

In case of dispute between the parties hereto in regard to any of the provisions of this contract, it is agreed that the same shall be settled by arbitration, one arbitrator being named by the Montclair Water Company, one by the East Jersey Water Company, and a third to be selected by the two so chosen; and a decision of a majority of these arbitrators shall be final.

In Witness Whereof the parties hereto have by their duly authorized executive officers executed these presents, the day and year first aforesaid.

THE MONTCLAIR WATER COMPANY,
By W. G. SNOW, *President.*
[SEAL] Attest: ALBERT P. FISHER, *Secretary.*
THE EAST JERSEY WATER COMPANY,
By EDMUND LEB. GARDINER, *Vice-President.*
[SEAL] Attest: ALBERT P. FISHER, *Secretary.*

EXHIBIT D-35.

AGREEMENT BETWEEN THE EAST JERSEY WATER COMPANY, THE PASSAIC WATER COMPANY, THE ACQUACKANONK WATER COMPANY AND THE MONTCLAIR WATER COMPANY.

Agreement, made this 31st day of December, 1910, between The East Jersey Water Company, party of the first part, The Passaic Water Company, party of the second part, The Acquackanonk Water Company, party of the third part, and The Montclair Water Company, party of the fourth part, (all said parties being corporations of the State of New Jersey), Witnesseth:

Whereas, the parties hereto are tenants in common of the property, both real and personal, and water rights and water works, situated at Little Falls, Passaic County, New Jersey, also in the reservoir at Garret Mountain, and in the pipe lines and rights of way described in certain deeds dated January 1, 1908, given by The East Jersey Water Company to the other parties hereto respectively, the same being held in the shares and proportions in said deed described;

And Whereas, in order that these works may be operated to pump and deliver water to each of the parties hereto according to their several needs, and in such quantity as may be lawfully required for their several purposes, it is essential that the care, operation and management of said works should be devolved upon one Company;

And Whereas, The East Jersey Water Company has assigned to The Montclair Water Company the contract made between the Little Falls Water Company and The East Jersey Water Company, dated June 1st, 1903, for a supply of water to the

inhabitants of the Township of Little Falls for domestic, fire and other purposes; and also the contract with the Town of Nutley, dated December 1st, 1904, for a supply of water to said Town.

Now Therefore, It Is Agreed Between The Parties Hereto:

(1) That from and after January 1st, 1911, the executive officers of The Montclair Water Company shall have the charge and management of the joint property of the parties hereto, situated at Little Falls and on Garret Mountain, and of the pipe lines connected therewith, so far as owned in common, for the purpose of operating the same and delivering water for each of them into the pipe lines used exclusively by said parties respectively hereto to the extent of their several requirements.

(2) That all things that may be necessary to the maintenance, repair, extension, improvement and operation of these said works, for the purposes aforesaid, shall be done and carried out by the executive officers of the party of the fourth part.

(3) That an accurate account shall be kept of all costs and expenses connected with the operation, maintenance, repair, extension and improvement of said works, including all expenses of management, taxes, salaries of executive officers, and all other expenses in any way connected with said works and property jointly owned by the parties hereto.

(4) That an accurate measurement shall be kept of the quantities of water delivered, from day to day, into the several pipes of the parties hereto; and that upon December 31st, 1911, and upon each succeeding December 31st thereafter, an account shall be rendered to each of the parties of the gross cost of operation and maintenance of the said works as above expressed, and of the total amount of water delivered to each of the parties

hereto; and that each of the parties hereto will promptly pay such a sum of money as shall represent such proportionate part of the costs of operation and maintenance as the amount of water delivered to such party bears to the gross amount of water pumped, in order that the said costs and expenses may be equitably and fairly distributed according to the quantity of water taken by each.

(5) It Is Further Agreed That, upon demand of the party of the fourth part, the other parties hereto will, from time to time during the year, pay on account, proportionately, such sums of money as will put the party of the fourth part in position to carry out this contract; the balance at the end of the year to be adjusted in accordance with this contract.

(6) This contract shall continue for one year from its date, and thereafter from year to year, until terminated by three months written notice given by one party to the others, terminating the same on the 31st day of December of the year in which the notice is given.

In Witness Whereof, the parties hereto have, by their respective appropriate executive officers, duly executed these presents, the day and year first aforesaid.

THE EAST JERSEY WATER COMPANY,
By EDMUND LEB. GARDINER, *Vice-President.*
[SEAL] Attest: ALBERT P. FISHER, *Secretary.*

THE PASSAIC WATER COMPANY,
By W. G. SNOW, *Vice-President.*
[SEAL] Attest: ALBERT P. FISHER, *Secretary.*

THE ACQUACKANONK WATER COMPANY,
By JNO. J. SLATER, *Vice-President.*
[SEAL] Attest: ALBERT P. FISHER, *Secretary.*

THE MONTCLAIR WATER COMPANY,
By W. G. SNOW, *Vice-President.*
[SEAL] Attest: ALBERT P. FISHER, *Secretary.*

EXHIBIT D-36.

DEED FROM THE EAST JERSEY WATER COMPANY AND THE MONTCLAIR WATER COMPANY.

EAST JERSEY WATER COMPANY	DEED.
	Dated, January 1. 1908.
To	Rec. Feb. 26, 1908, Passaic County, Book F. 19, p. 23.
MONTCLAIR WATER COMPANY.	

Consideration $1 and other valuable considerations, secured by purchase money mortgage given by the party of the second part to the Bankers Trust Company, trustee, delivered simultaneously herewith, the principal whereof is payable July 1, 1918, with interest payable semi-annually.

Conveys In Fee All The Undivided One-eighth Part of two tracts of land in Passaic County, consisting of water rights, rights of way, easements, and tracts of land in Townships of Little Falls and Wayne and Borough of Totowa.

Parcel A. Prior right, at all times, as against Beattie Manufacturing Company, to draw from Passaic River or tributaries, above dam at Little Falls, the quantity of water required by East Jersey to supply its customers by pumping through pipes of East Jersey not exceeding annual average of 50 mill. galls. daily.

Parcel B. All the residue of the Little Falls Water power belonging to the Beattie Manufacturing Company and all other rights of said Company to use the water and power, to maintain a dam at the present site at the head of the Little Falls and all rights of flowage and pondage above said dam which dam shall not be maintained above the ele-

vation fixed as the limit in the agreement between George W. Howell and others, Drainage Commissioners appointed by the Supreme Court of New Jersey of the one part, and the said Beattie Manufacturing Company of the other part, dated July 2, 1888, and filed in the office of the Clerk of the Supreme Court July 3, 1888, subject to the terms of which agreement all the property hereby granted is conveyed, which terms the East Jersey Water Company assumes to the full extent of the liability thereunder of the Beattie Manufacturing Company, and discharges and indemnifies the Beattie Manufacturing Company therefrom.

Parcel C. Describes the tract in the Township of Wayne and Borough of Totowa, containing 55.35 acres of land, subject to the rights of the Morris Canal & B. Co., and the right reserved by the Beattie Manufacturing Company to operate and maintain both a coal dump and right of way thereto, at present located between Union Avenue and the Morris Canal, near the Aqueduct bridge over the Passaic River as long as said Canal shall remain open for navigation.

Parcel D. Right to flow and drain lands of the Beattie Mfg. Co. south side of River necessary or expedient to be flowed or drained for the development of the whole water power, etc.

Parcel E. Also the right to use so much of the land on the south bank of the Passaic at the head of Little Falls as is necessary to maintain and repair the dam now standing at that point, or to build or maintain any dam which may be hereafter built by the East Jersey Water Company to replace or renew the same.

Parcel F. Is a right of way 66 feet wide for pipe lines in the Township of Little Falls, Passaic County, the center line whereof is described—con-

taining 3.33 acres; running through Beattie Manufacturing Co.'s property down the river.

Parcel G. Right of way 33 feet wide for railroad branch from D. L. & W. R. R. to River Road in Manchester Township, described in detail; containing 3.58 acres.

Parcel H. Two parcels of land bordering on the Passaic River, above Beattie Dam, for beautifying and improvement, and protecting the river from pollution. One containing 2.6 acres; the other containing 1.20 acres; also part of Stag Island.

From all the above there is reserved to the Beattie Mfg. Co., except the water rights named in Parcel A, (namely, the prior right to draw 50 mill. galls. of water daily) the right to use at their manufacturing establishment at Little Falls on the south bank of the Passaic River two hundred and twenty-five cubic feet of water per second during working hours, etc. There is a lengthy provision relative thereto.

The above is the same property conveyed to East Jersey Water Company by Beattie Mfg. Co. by deed dated Nov. 30, 1901, recorded in Book V. 16, p. 15.

Also, land in Manchester, containing 8/100 of an acre.

Also, other parcels of land in the Township of Little Falls, containing 190.63 acres, with certain exceptions.

Being same conveyed by Montclair Water Co. to East Jersey Water Co., January 1, 1908, on Notch Road, etc.

Also, two tracts conveyed by John W. Griggs to East Jersey Water Co., Jan. 20, 1905, the first containing 7.38 acres; the second containing 5.98 acres.

Also, tract conveyed by Hannah Jackson to East Jersey, dated April 21, 1900, containing 9.94 acres, in Little Falls.

Also, tract conveyed by E. LeB. Gardner to East Jersey Water Co., Sept. 15, 1900, in Little Falls, containing 4.96 acres.

Also all those certain tracts and parcels of land and premises hereinafter particularly described, situate, lying and being in the Borough of Totowa, Townships of Little Falls and cquackanonck, County of Passaic, State of New Jersey, constituting a right of way for steel water mains, with valves, gate houses, and other connections, to wit, as herein stated and set forth.

(Here follows description, beginning at Station 711+63 and running for thirty courses to Station 822+ 46).

Of All The Property Above Described An Equal One-Eighth Interest Is Conveyed, And No More.

And from this point, all the undivided 1-5th part of the following described property.

Leaving the lands of the East Jersey Water Company, and crossing the lands of Susan Hamilton, et al., about 627.2 feet to Station 826 x 77.2; thence (31) south 10 degrees, 40 minutes East, etc., etc., runs on to course 41, to Station 964+59, into lands of Charles E. W. Harney, and 155 feet southeasterly along the conduit from the southerly line of West Passaic Avenue, the right of way being 66 feet wide.

Also, the Undivided One-eighth Part of the right, title and interest of the East Jersey Water Company in a contract with Beattie Mfg. Co., dated Nov. 30, 1901, with the benefits and advantages thereof.

Also the Undivided One-eighth Part of all tools, fixtures, appliances, apparatus and materials on the premises. Habendum in fee.

Subject to lien of mortgage by East Jersey Water Company to Beattie Manfg. Co., dated Nov. 30, 1901, Rec. in Book X6, p. 413.

Also Subject to the obligation of the East Jersey Water Company in the above contract.

Montclair Water Company assumes and agrees to pay 1-8th part of all sums of principal and interest required to be paid to Beattie Manfg. Co., by said mortgage and contract.

Covenants of seizin, good right to convey, quiet enjoyment, against encumbrances, further assurance, and warranty.

Acknowledged Feb. 19th, 1908.

RICHARD ROSSITER,
Commissioner of Deeds.

EAST JERSEY WATER COMPANY TO PASSAIC WATER COMPANY.	DEED. Dated, Jan. 1st, 1908. Rec. Feb. 20, 1908, Book C. 19, p. 173.

Consideration $1.00 and purchase money mortgage given to Bankers' Trust Co.

Conveys, all the undivided three-eighths part of certain parcels, consisting of water rights, rights of way, easements, &c., in Township of Little Falls and Wayne and Borough of Totowa. Parcels A, B, C, D, E, F, G, and H, same as in Montclair deed, and same reservations to Beattie.

Also, same parcel of 8/100 acres, and same parcel conveyed Jan. 1st, 1908, by Montclair Water Company to East Jersey Water Co., containing 190.63 acres, more or less.

Also, the two tracts conveyed by Griggs to East Jersey Water Co.

Also, tract conveyed by Hannah Jackson to East Jersey Water Co.

Also, tract conveyed by E. LeB. Gardner to East Jersey Water Co., Sept. 15, 1900.

Also, the tracts constituting right of way of the

pipe line, down to Station 822+46, being line of land between East Jersey Water Co., and Susan Hamilton, *et al.*

Of all the property above described an undivided three-eighths interest is conveyed, and no more.

The said right of way extending from Station 711+63 to 822+46.

Also, the undivided two-thirds part of a right of way 50 feet wide, 15 ft. on the right, and 35 ft. on the left of the line of the 42" steel water main, from station 717+02.8 to Station 719+35, in Little Falls.

Also, the undivided 3/8ths part of the right, title and interest of East Jersey Water Co., in contract with Beattie Manfg. Co., dated Nov. 30, 1901.

Also, undivided 3/8ths part of tools, fixtures, appliances, apparatus, &c.

Habendum in fee.

Subject to mortgage and contract to Beattie Manfg. Co., and with covenants same as in above deed to Montclair Water Co.

Acknowledged Feb. 19th, 1908, before Richard Rossiter, Commissioner of Deeds.

East Jersey Water Company to Acquackanonk Water Company.	DEED. Dated, Jan. 1, 1908.

Rec. Feb. 20, 1908, Book D-19 of Deeds for Passaic County, p. 194.

Consideration $1.00 and purchase money mortgage to Bankers' Trust Co.

Conveys, all the undivided two-eighths of same lands mentioned in the deed to Montclair Water Company, to wit: Parcels A, B, C, D, E, F, G, H, and the parcel of 2.6 acres.

Also, Stag Island, and reservations to Beattie.

Also, parcel conveyed by Montclair Water Co., to East Jersey Water Co., Jan. 1, 1908, containing 190.63 acres.

Also, two tracts conveyed by Griggs to East Jersey Water Co., Jan. 20, 1905.

Also, tract conveyed by Hannah Jackson to same, April 21, 1900.

Also, tract conveyed by Gardner to same, Sept. 15th, 1900.

Also, right of way constituting steel water main, beginning at Station 711+63 and extending to Station 822+46.

Of all property above described an undivided two-eighths interest is conveyed and no more.

And from this point, all the undivided two-fifths part of the following described property:

Leaving the lands of the East Jersey Water Company and crossing lands of Susan Hamilton, *et al.*, about 627.2 feet to Station 826+77.2, continuing to Station 911+05, which is the southerly line of Broad St.

Also, the undivided 1/3d part of all the right of way 50 feet wide, 15 ft. on the right and 35 ft. on the left, of the line of the 42-inch steel main from Station 717x02.8 to Station 719x35, which second Station 717+02.8 to Station 719+35, which second & Paterson Turnpike..

Also, the undivided 2-8 part of the interest of East Jersey Water Company in the Beattie contract of Nov. 30th, 1901, and 2-8 part of all tools, &c.

Subject to mortgage to Beattie, dated Nov. 20th, 1901.

The Acquackanonk Water Co., assuming 2-8 part of the obligation of the Beattie mortgage and contract.

Habendum in fee.

Full covenants as in Montclair deed.

Acknowledged Feb. 19th, 1908, before Richard Rossiter, Commissioner of Deeds.

BEATTIE MANUFACTURING COMPANY TO EAST JERSEY WATER COMPANY.	DEED. (Dated November 30, 1901 Consd. $330,000.

Conveys parcels A, B, C, D, E, F, G, and H by the same descriptions as in the deed from the East Jersey Water Company to the Montclair Water Company dated January 1, 1908.

Certain reservations of water rights to Beattie Mfg. Company.

Habendum in fee.

EXHIBIT D-37.

CERTIFICATE OF EXTENSION OF CORPORATE EXISTENCE OF MONTCLAIR WATER COMPANY.

This is to certify that at a meeting of the stockholders of Montclair Water Company, a corporation of New Jersey, formed by certificate filed in the office of the Secretary of State, January 15th, 1887, held at the Company's principal office in Montclair, on Monday, October 17th, 1910, at 10 o'clock A. M., which meeting was called by a notice stating the object of the meeting, signed by the holders of at least one-third in value of the outstanding capital stock of the Company, and which notice was given personally to each stockholder at least ten days before the date of said meeting, all the stockholders of said corporation voted in favor

of the extension, renewal and continuance of the corporate existence of said Company so that it shall continue for fifty years after the term limited in its Certificate of Incorporation, that is to say, until January 15th, 1987, and this certificate is made to the end that it may be filed in the office of the Secretary of State according to law, and the corporate existence of said Company is extended and continued accordingly.

In witness whereof, the Presiding Officer and Secretary of said meeting have hereunto set their hands and seals, and the President and Secretary of said Company have caused the seal of said corporation to be hereunto affixed, the Seventeenth day of October, Nineteen Hundred and Ten, and have caused hereto to be appended the written assent, in person or by proxy, of all the stockholders of said Company.

WHITING G. SNOW, [L. S.]
Presiding Officer of the aforesaid meeting.

ALBERT P. FISHER, [L. S.]
Secretary of said meeting, and
Secretary of Montclair Water Co.

[SEAL] WHITING G. SNOW,
President of Montclair Water Company.

Attest:
ALBERT P. FISHER,
Secretary.

State of New Jersey, }
County of Essex, } ss.:

Be it remembered, that on this Seventeenth day of October, Nineteen Hundred and Ten, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared, Whiting G. Snow, President of Montclair Water Company, and Albert P. Fisher, Secretary of said company and also Secretary of the meeting of the stockholders of said Company, mentioned in the foregoing certifiate, and also

Whiting G. Snow, Presiding Officer of the said stockholders' meeting, to whom I severally made known the contents of the within mentioned certificate of continuance of existence of said corporation, and they thereupon severally acknowledged that they signed, sealed and delivered the said certificate as and for their respective voluntary act and deed, and as and for the voluntary act and deed of the Montclair Water Company and its stockholders.

And the said Albert P. Fisher, being duly sworn, on his oath, says: That he is Secretary of Montclair Water Company, and that Whiting G. Snow is President, and deponent well knows the seal of said Company and the signature of said President; that the seal affixed to the foregoing Certificate, purporting to be the common seal of the Montclair Water Company, is such common seal, and was thereto affixed, and said certificate signed and delivered by the said Whiting G. Snow in the presence of deponent, as and for the voluntary act and deed of said Company, and deponent thereupon subscribed his name thereto as witness. And he further says that prior to the execution of the foregoing Certificate, and on the said Seventeenth day of October, Nineteen Hundred and Ten, all the stockholders of said Company voted in favor of the extension and continuance of the corporate existence of said Company so that it shall continue for fifty years after the term limited in its Certificate of Incorporation, that is to say, until January 15th, 1987, at a meeting of the stockholders called by a notice which stated the object of the meeting, signed by the holders of at least one-third in value of the out-standing capital stock of said Company, and which notice was given personally to every stockholder of the Company at least ten days before the date of said meeting.

WILLIAM H. CORBIN,
Master in Chancery of New Jersey.

CONSENT OF STOCKHOLDERS.

We, the subscribers, being all the stockholders of the Montclair Water Company, a corporation of New Jersey, formed by certificate filed in the office of the Secretary of State, January 15th, 1887, do hereby give our written assent to the within Certificate continuing the corporate existence of the Montclair Water Company so that it shall continue for fifty years after the term limited in its Certificate of Incorporation, that is to say, until January 15th, 1987, having already also voted our assent at the meeting of the stockholders therein mentioned.

Witness our signatures; and, in the case of The New Jersey General Security Company, one of the stockholders, witness its corporate seal, this Seventeenth day of October, Nineteen Hundred and Ten.

GEO. F. BAKER,
H. C. FAHNESTOCK,
EDMUND LEB. GARDNER,
WHITING G. SNOW,
ALBERT P. FISHER,

THE NEW JERSEY GENERAL SECURITY COMPANY,
By
[L. S.] EDMUND LEB. GARDNER,
President.

ALBERT P. FISHER,
Secretary.

State of New Jersey, }
County of Essex, } ss.:

Be it remembered, that on this Seventeenth day of October, Nineteen Hundred and Ten, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Albert P. Fisher, who, being by me duly sworn, on his oath says: That he is Secretary of Montclair Water Company; that he saw each and all of the stockholders

of said Company sign the foreging assent to the continuance of the corporate existence thereof, and, in the case of The New Jersey General Security Company, one of such stockholders, a corporation, he saw Edmund LeB. Gardner, the President thereof, sign said assent and affix the corporate seal of said Company thereto.

ALBERT P. FISHER,

Subscribed and sworn to, at Montclair, N. J., this 17th day of Oct., 1910, before me

WILLIAM H. CORBIN,
Master in Chancery of New Jersey.

State of New Jersey, }
County of Essex, } ss.:

Whiting G. Snow, President, and Albert P. Fisher, Secretary of Montclair Water Company, and Presiding Officer and Secretary respectively of the meeting of the stockholders, on their respective oaths say that they are such President and Secretary, and were the Presiding Officer and Secretary respectively of the meeting of the stockholders of Montclair Water Company held this October 17th, 1910, for the purpose of extending the corporate existence of said Company, and that the said Company is at this time, and has been for years past, actually and continuously engaged in and has provided for the conduct of the business for which it was incorporated, and that the charter of the corporation has not yet expired.

WHITING G. SNOW,
ALBERT P. FISHER.

Subscribed and sworn to, at Montclair N. J., this 17th day of Oct., 1910, before me,

WILLIAM H. CORBIN,
Master in Chancery of New Jersey.

EXHIBIT D-38.

AFFIDAVIT OF JOHN H. COOK, OCTOBER 29, 1912.

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

John H. Cook, being duly sworn, on his oath says, that he is the Hydraulic Engineer of The Society for Establishing Useful Manufactures, at Paterson, New Jersey, and has occupied this position since April, 1897; that under his supervision measurements of the quantity of water passing the Great Falls of the Passaic River at Paterson have been made daily since September 1, 1897; that the longest continuous low flow of the Passaic River at this point, during the time that he has been connected with the said Society, occurred during the latter half of the year 1910, beginning about the middle of July and continuing through August, September and October and a few days into November, being a total period of seventeen weeks; that during this period the average daily runoff at no time exceeded one hundred and forty-one million gallons, and during the second week in October was only fifty-seven and one-half million gallons, which was the lowest daily average runoff for a week of the Passaic River at Paterson during the fifteen years that I have been connected with the said Society; the daily average runoff for the entire period of seventeen weeks aforementioned being ninety-four million gallons. The year 1910 was a year of very low rainfall, the total for the year being 39.56 inches, as measured by the United States Weather Observer at Paterson, N. J., being the lowest rainfall for any year during the past twenty-four years, as measured at Paterson; the average rainfall for the said period of twenty-four

years being 49.55 inches per year. The rainfall was especially low during the months of low flow in the Passaic River. This period of low rainfall in the year 1910 was not only the lowest rainfall that occurred in the period of twenty-four years, namely, 1886 to 1911, both inclusive, but also occurred as the culmination of the lowest extended period of rainfall during that twenty-four years, the period 1906 to 1911, both inclusive, comprising the period of six consecutive years of lowest rainfall that have occurred during the said twenty-four-year period, at Paterson, N. J.

During the said period of seventeen weeks, the average daily diversion from the Passaic River at Little Falls, by the City of Bayonne, the Town of Harrison, the Town of Kearney, the Borough of East Newark, the Borough of Glen Ridge, the Montclair Water Company and the West Orange Water Company was 12.1 million gallons. During this period the City of Jersey City was using all except 10 million gallons average daily flow of the Rockaway River up to October 2, 1910, and after that date was diverting all the flow of the Rockaway River, allowing an average daily amount of 7 million gallons of the natural flow of the Rockaway River to go down the stream. The amount of water flowing down the Pequannock River, from which Newark takes its supply, as shown by Exhibit D-3, placed in evidence in the case of Weidmann Silk Dyeing Company v. Newark, amounted to an average of 4 million gallons per day, and during the second week in October, when the flow reached its lowest point at the City of Paterson, the amount flowing down the Pequannock River averaged three million gallons per day.

I am familiar with the petitions in the condemnation proceedings now being taken to secure the water supply to the municipalities and water com-

panies I have mentioned above, and the following is a tabulation I have made of the amounts that these municipalities and water companies, with the exception of Jersey City, are seeking to condemn in the said proceedings, namely:

West Orange Water Co.....	1.0	million gallons per day.
Bayonne	8.5	do
Montclair Water Co.....	7.0	do
Harrison	2.0	do
East Newark	0.6	do
Kearney	2.3	do
Glen Ridge	0.35	do
a total of	19.75	million gallons per day.

The average daily amount diverted in the year 1910 for the use of these municipalities and water companies was 12.1 million gallons, leaving an excess of 7.65 million gallons daily average over the daily average diverted in the year 1910.

The daily average flow of the Passaic River at Paterson during the dry period of 1910, namely, 97 million gallons, would thus have been reduced by 7.65 million gallons daily if the entire diversion was being made which is sought to be condemned, which would leave a total of 90 million gallons daily average still remaining in the river.

Reducing this still further by the daily average amount which it would be possible for Jersey City to divert, namely 7 million gallons per day, plus the additional amount which it would be possible for Newark to divert, amount to 4 million gallons per day, would reduce this figure still further to 79 million gallons.

The daily average amount of water passing down the Passaic River, past Paterson, in the driest week in October, 1910, was 60 million gallons. At this time Jersey City was diverting all the water of the

Rockaway River, while Newark was allowing 3 million gallons daily to pass down the stream. Taking the 7.65 million gallons daily of water which is the added amount taken by these condemnation proceedings, plus the amount that Newark was letting down the stream from the Pequannock, makes a total of 10.65 million gallons daily, which would reduce the amount flowing in the Passaic River past Paterson to about 50 million gallons daily, which would have been the amount remaining in the river during the driest week in the last fifteen years. This amount of water is ample to supply the mill ponds above the East Side and West Side Parks, and the ordinary elevation of the water would in no wise be affected by the diversion. The total additional amount diverted in the driest week of 1910 would have been a daily average of about one-sixth of the water remaining in the stream on that week.

The average daily flow of the Passaic River past Paterson for the past fifteen years has been about 915 million gallons.

Since May 23, 1904, all the water supplied to Bayonne, Kearney, Harrison, East Newark, Glen Ridge, Bloomfield, Nutley, Montclair and West Orange has come from the Pumping Station at Little Falls; and from November, 1899, to May, 1904, water from Little Falls and surplus water from the Newark pipes was supplied to these municipalities.

The Essex County institutions are supplied with water by the Montclair Water Company, and are located in the Passaic Water Shed above Little Falls.

Since their original installation, the distribution pipes in the streets of Bayonne, Kearney, Harrison and East Newark have been owned by said municipalities, to the best of my knowledge, infor-

mation and belief; since about 1903 the distribution pipes in the streets of Bloomfield have been owned by said town and since the month of May, 1912, the distribution pipes in the streets of Glen Ridge have been owned by said municipality, to the best of my knowledge, information and belief; and said municipalities, respectively, supply water to their inhabitants for domestic purposes and the extinguishing of fires.

JOHN H. COOK.

Subscribed and sworn to before me this 29th day of October, 1912.

JOSEPH G. WOLBER,
A Master in Chancery, of New Jersey.

It is argued that the foregoing affidavit shall be taken as testimony in this cause subject to the objection of the Prosecutor that it is irrelevant.

Dated, October 29, 1912.

JOHN W. GRIGGS,
Counsel for Prosecutor.

GILBERT COLLINS,
Counsel for Defendant.

Statement.

Eight writs of certiorari were issued at the suit of the Mayor and Aldermen of the City of Paterson against the respective corporations, defendants, mentioned in the foregoing titles. They bring up orders made by a Justice of the Supreme Court appointing Commissioners to condemn property and rights of the Mayor and Aldermen of the City of Paterson, which are decribed in the several petitions of the municipalities. In substance, the various condemnation proceedings are brought to obtain from the City of Paterson the right to take and divert continuously from the Passaic River at Little Falls, in Passaic County, water said to be for the public and domestic uses of the various municipal corporations who are petitioners, the quantity varying in amount as to each petitioner, but making an aggregate of 90,500,000 gallons per day.

These applications, with the exception of that of Jersey City, are the result of the decree of the Court of Chancery in the injunction suit of the City of Paterson against the East Jersey Water Co., record, page , wherein the issuance of the injunction was withheld to give opportunity for an application to condemn the rights of the City.

The lands and property against which the right to divert the water is required are described as riparian lands situated on the banks of the Passaic River, in the City of Paterson, the said lands being in three parcels, to wit:

(a) A tract of land known as the West Side Park, located on the left bank of the Passaic River,

and extending from Preakness Avenue southwesterly up the Passaic River one-half mile, more or less, to the line of lands of the estate of Richard Van Houten, being the westerly line of said park, said river being the southerly line of said West Side Park.

(b) A tract of land located in the City of Paterson, known as the "Engine House Lot," and described by metes and bounds. (*See petition of Glen Ridge, Record, page* 9).

(c) A tract of land situated in the City of Paterson, and known as the East Side Park, located on the right bank of the Passaic River, extending from the center line of Broadway, southwardly along said river a distance of fifteen hundred feet, more or less, to the southerly boundary of said park, said river being the easterly boundary of said East Side Park.

The various deeds by which the City of Paterson acquired title to these properties have been put in evidence. They are Exhibits P-1, P-2, P-3, P-4, P-5 and P-8, and appear on pages 197 to 210 of the record.

The title to the bed of the river in front of the West Side Park was vested in the Society for Establishing Useful Manufactures. Concurrently with the purchase of the lands comprising the park, the S. U. M. conveyed to the City of Paterson "the right, privilege and easement to make such use of the water of the Passaic River and Oldham Brook in front of and bordering on the park lands as is customary and legal for riparian owners. *Exhibit P-2, Record, page* 198.

The City of Paterson, by virtue of the title acquired by these deeds, is a riparian owner on the

Passaic River. The deeds and the title of the city were construed by Vice-Chancellor Emery with great definiteness and particularity in the case of *The City of Paterson* v. *East Jersey Water Company*, 74 *N. J. E.*, 49; *affirmed*, 77 *N. J. E.*, 588.

The Supreme Court affirmed the condemnation proceedings in each of the eight cases and the prosecutor has brought these appeals.

The prosecutor insists that the various orders appointing commissioners are illegal, and that they should be reversed and set aside for various reasons, of which one only is applicable to all of the municipalities, and that one reason will be first considered.

POINT I.

The property proposed to be condemned and taken under the proceedings brought up by the writs in each one of these cases is already devoted to public uses.

The property known as West Side Park and that known as East Side Park were acquired by the City of Paterson in the year 1888 and were laid out, improved and opened for the use and enjoyment of the public of the City of Paterson, in the year 1889, and ever since have been and now constitute the public park system of said city, and are used, maintained and kept up at large annual expense on the part of the city for the recreation, enjoyment and benefit of the inhabitants of Paterson under the statutes of the State for such purposes made and provided; that said city has expended in the purchase, maintenance and embellishment of said parks upwards of half a million dollars. The

property known as the Engine House Lot now is and for more than thirty years last past has been devoted to the public use of said City of Paterson, as an engine house and lot. The land upon which said engine house is erected is contiguous to the Passaic River, and the fact that the title of the city extends to the middle of the river and that the city is a riparian owner and has all the rights of a riparian owner on the Passaic River, is a valuable element to the city, for the use, enjoyment and ownership of said property. The water which the defendant proposes to take by said proceedings is a part of each of said three properties and forms a part of said two parks as devoted to the public uses, and the taking thereof as to each of said three properties would diminish, impair and destroy *pro tanto* the public use thereof. The waters of said river form a valuable and important element for the parks, and the City of Paterson, as the owner of said parks, is a riparian owner and entitled as such to the use of said waters of the Passaic River, the same as other riparian owners under the laws of this State, the existence of said water rights having been one of the chief inducements of the City of Paterson in the selection of said properties as sites for public parks.

In support of the objection comprised in this reason it is shown by undisputed testimony that the City of Paterson bought the two parks about the year 1888, and has since improved and used them for the purposes of public parks; that the original cost, together with the moneys expended for improvement and maintenance, amounts to $540,000 (Record, page 156).

West Side Park has a river frontage of about three-quarters of a mile, including Molly Ann's Brook. It is on the north side of the river, about

one-fifth of a mile at the nearest point above the Great Falls. The entire ground has been graded with the exception of a small portion on the southeasterly end of the park, and a stone wall has been built along the river bank above which it is terraced; a walk runs all along the river bank that is greatly used by the public on account of its being so close to the river. On the westerly side of the park there is a walk extending all along the river bank that is also very extensively used by the public. The park has been planted with trees and shrubs. During Sunday afternoons the entire river in the vicinity of the park is almost covered with boats and canoes—probably two hundred or three hundred boats or canoes. Numbers of water crafts of various kinds are kept on the river about the falls for hire and for private use. It is testified that the river, as an adjunct to a public park in the City of Paterson, is one of its largest assets (Record, page 147).

The East Side Park is farther down the river, below the Great Falls, opposite Bergen County. It lies along the line of the flowage of the Dundee Dam, but the ownership of the city extends to the middle of the river, subject to the right to maintain the dam. The front of the park along the river has not yet been improved, on account of the foulness of the river at its present time. It is testified that if the pollution of the river is removed by means of the trunk sewer, the river and the river front would be available in similar proportion and in the same manner as the West Side Park. At one time the city maintained a boathouse for public use, but it was discontinued when the water in the river became too much polluted.

East Side Park has, except along the river, been

improved by grading, planting trees, flowerbeds, and so on.

Band concerts are held in the parks on Sundays, and it is not unusual to have from 8,000 to 10,000 people present in the West Side Park on Sundays.

There are times when the water in the river at the West Side Park gets so low that there is trouble in floating the canoes and boats on account of their touching the bottom (page 151).

Parcel B, the Engine House Lot, is a small and rather unimportant property, located on the bank of the Passaic River, with title in the city to the middle of the river, which, for over thirty years, has been used for the public purpose of a fire engine house.

It thus appears that the defendant municipalities are seeking to take by condemnation from the City of Paterson a right to a part of the flow of the Passaic River past these properties. The right of the City to the flow of the river is conceded, of course, by the proceedings taken to condemn. Not only theoretically, but practically, these properties and all of them, including the water rights in the river as appurtenant to the ownership of the bank and the bed of the river, are already devoted to a public use. That being so, *there is no statutory authority which authorizes any one of these municipalities to take by condemnation any part of the property of the City of Paterson so devoted to such public use.*

The statutory authority to condemn water rights for these various petitioners is not all derived from the same act.

The authority of Jersey City is sought to be derived from the Act of 1895, *Comp. Stat., 2198.*

The City of Bayonne claims the right to condemn under the same Statute.

The authority of the Town of Harrison and the Town of Kearney is sought to be derived from the Act of May 1, 1911 (P. L., 1911, page 675).

The authority of the Borough of Glen Ridge and the Borough of East Newark must be derived, if at all, from the General Act concerning boroughs.

Neither the Act of 1895 or 1911 is applicable to boroughs.

The authority of the Montclair Water Company and the West Orange Water Company is sought to be derived from the Water Corporation Act of 1876, under which they are organized.

The contention of the appellant is that there is no Statute which permits any water company or any municipal corporation to condemn the property of another municipal corporation which is already devoted to public use, so as in any way to materially decrease, interfere with or injure the prior use.

The decisions on this point have been uniform in this State. Referring to some of the cases, a pertinent one is that of *Jersey City* v. *Montclair Railway Company,* 35 *N. J. L.,* 328. This was a case involving the right of the Montclair Railway Company, which possessed the power to condemn lands for a railroad from Montclair to the Hudson River, to condemn a right of way through property of Jersey City which had been acquired and was then held by the City for the purpose of constructing a reservoir to be used in connection with the water works of the City for the supply of water to the City. It was held that under the ordinary powers conferred on the railroad company by their charter, they had not the power to condemn and take reservoir property for the purpose of building a railroad through it. The Court referred to the decisions which adjudicated the right of one railroad company to cross the tracks of another railroad

company, but denied the right of a railroad company to take a highway longitudinally, and then said:

> "But this reservoir properly stands even on a higher plane than an ordinary highway, and the presumption is stronger that the legislature had no intention to have it touched. In a highway the public have only an easement. In this they own the fee, and it is devoted to a most important public use. It is like the court house grounds of a county and to take them would require an express indication of the legislature or an implication equally conclusive."

In the case of *Van Reipen* v. *Jersey City,* 58 *N. J. L.,* 262, in the well considered opinion of Mr. Justice VAN SYCKEL, it was held that Jersey City, under the *Act of* 1895, *P. L.,* 769, *General Statutes, page* 1388, had no authority to take the water rights of the Morris Canal for the purpose of a water supply for Jersey City.

In *New Jersey Southern R. R. Co.* v. *Long Branch Commissioners,* 10 *Vr.,* 28, the doctrine was clearly enunciated, and, as Mr. Justice VAN SYCKEL in the former case said, "firmly established."

> "While the government, in the exercise of its sovereignty, may sanction the acquisition of rights resting upon prior grant on just compensation being made, no power to take will flow from mere authority to acquire by condemnation such rights as a city may deem it proper to obtain."

To the same effect is the case of *New York, Susquehanna & Western Railroad Co.* v. *Paterson,* 61 *N. J. L.,* 408.

The Court of Appeals of New York have unvaryingly held the same doctrine as will appear from the following cases:

Matter of Boston & Albany R. Co., 53 *N. Y.*, 574.

This was a case where the railroad company sought to condemn a right-of-way for its railroad through lands owned by the Village of Greenbush and used as a public park. The General Railroad Act under which the corporation was seeking to condemn gave power to acquire title to any real estate required for the purposes of the incorporation.

It was held that this language did not give authority to take lands held by a municipal corporation in trust for the use of the public as a public park.

In the opinion it is said that the authority to enter upon and take possession of property already held and dedicated by authority of law to one public use, for another and entirely different use, also declared to be public, must be expressly conferred—that is, in direct terms or by necessary implication, and the implication does not arise if the powers expressly conferred can by reasonable intendment be exercised without the appropriation of property already actually held and used for another public use.

Matter of Rochester Water Commissioners, 66 *N. Y.*, 413.

A water company was incorporated for the purpose of supplying the City of Rochester with water. It owned waters on the margin of a lake, and claimed to own as riparian owner the waters of the lake. The Water Commissioners of the City of

Rochester, under statutes authorizing the city to acquire by condemnation the title to any lands, waters, lakes, springs, streams or easements therein, sought to acquire by condemnation a right or easement in certain lands of the water company adjoining the lake, which was described in the petition as the right of entering upon the lands so described and digging therein the necessary trench and laying in such trench when the same is dug the necessary pipes, etc. Although the Court decided that the application was not, when properly constructed, such as would take any of the waters of the lake, they discussed the law relating to the case from that point of view. They declared:

> "Lands held upon a special trust for a public use cannot be appropriated to another public use without special authority from the legislature. If, therefore, the object of these proceedings or the effect of the orders granted is to deprive the appellant of any of its corporate franchises and privileges or take from it property or lands held in trust for a public use or necessary to the exercise of the powers and the enjoyment of the privileges conferred by the act of incorporation, the orders cannot be sustained."

People v. *Thompson,* 98 *N. Y.,* 7.

In this case the principle is reiterated that property devoted to one public use may be applied to another only when express authority is given for that purpose by the clearest provisions of law (p. 11).

In re Application of City of Buffalo, 68 *N. Y.,* 167.

This was a proceeding on behalf of the City of Buffalo to condemn a strip of land 60 feet wide and about two miles long which passed through the lands of certain railroad corporations used for railroad purposes. The opinion discusses the law of expropriation of property already devoted to a public use, and holds that the language of the city charter did not authorize the condemnation in that case.

The provision of the charter was that the city should have power to take lands for canals, basins, slips, and other public waters, and for any other corporate purpose or object.

> "Now," says Judge FOLGER, "as before said, there are no words in the charter of the city, nor any other lands already held for a public use. Nor does there appear on the face of the charter a necessary implication that the power so to do was meant to be given. To hold that it did, would be to hold that every gift of power to take lands, though made in the most general terms, carried with it the power to take lands already held for public purposes. All corporate bodies to whom that general power is lawfully given are organized to promote some purpose in the judgment of the legislature worthy of attainment and conducive to the public good. If we were to hold that such a gift in all cases carried with it the further power to do all things necessary to accomplish the result sought for, we should annul the rule that the power to take property already devoted to a public use must be given in express terms, or must be necessarily implied. This may not be done."

Further on he says:

> "It is not to be implied from a general power given, without having in view a then existing and particular need therefor, that the legislature meant to subject lands devoted to a public use already in exercise, to one which might thereafter arise. A legislative intent that there should be such an effect will not be inferred from a gift of power made in general terms. To defeat the attainment of an important public purpose to which lands have already been subjected, the legislative intent must unequivocally appear. If an implication is to be relied upon, it must appear from the face of the enactment, or from the application of it to the particular subject-matter of it, so that by reasonable intendment, some especial object sought to be attained by the exercise of the power granted could not be reached in any other place or manner."
>
> *Suburban R. Transit Co.* v. *N. Y.*, 128 *N. Y.*, 510.

In the opinion, which was by Judge GRAY, the general principle is stated in the following language:

> "In the absence of express language, no implication of an intention to supersede the prior devotion to the public use of the plaintiff's railroad can be predicated upon the general terms of an act, which does not require such by reason of some inherent necessity, or for the attainment of an object not otherwise to be effected. A construction of an act should be avoided which would injuriously affect the rights of others, and that

> sense should be attached to its provisions which will harmonize its objects with the preservation and enjoyment of all existing rights."

It was contended by the defendants, and their contention was sustained by the Supreme Court, that what these municipalities are seeking to acquire is a right to *a joint user* of running water which will not impair or injuriously affect the public use of the waters of the river by the City of Paterson. The case of *Morris and Essex Railroad Company* v. *Central Railroad Co.*, 2 *Vr.*, 205, *and National Docks Co.* v. *United Companies*, 24 *Vr.*, 217, are cited as authority for this contention. These cases and many other similar ones involve nothing except the crossing of one railroad by another, something that is expressly authorized by the General Railroad Act of New Jersey, and which can be done without impairing in any degree the essential use of the road first constructed. The facts in this case, however, are very different. The use of the river as an adjunct of the parks requires the presence of water in sufficient quantity not only to furnish embellishment, but to accommodate water crafts. The defendants are not seeking to use the river in its normal condition opposite the parks in common with the water crafts used by the public, but *are seeking to take out the water before it gets to the parks without returning it.* If that can be done to the extent attempted in these proceedings, it can be done *in toto* and the easement of the city entirely destroyed.

It is suggested in the opinion of the Supreme Court in the Jersey City case that the diversion of the water by Jersey City will disturb the uses of it by Paterson to only a small degree. Certain data as to the minimum flow of the river during

certain periods are set forth in the preliminary statement to that opinion (*Record page* 78), with a view of showing that it would be impossible for Jersey City to divert in dry seasons more than seven million of gallons daily, leaving sixty million still flowing down the river. Just what evidence in the cause justified such a statement is not disclosed in the opinion of the lower Court. It is presumably derived from the affidavit of John H. Cooke, printed on *page* 346, where he gives certain gaugings of the river in some periods of low flow. It is not apparent that Mr. Cooke made any such gaugings himself or knows how true they are. Nor is it apparent that he is an officer of Jersey City or has any charge of their works, so that he cannot know what their habit or custom is.

We must resort to the statement of Jersey City as to what it proposes to do as contained in the application for the appointment of Commissioners. Referring to that document, we see (*Record, page* 62) that it proposes to take and divert continuously and perpetually from the Rockaway River at Boonton, *seventy million gallons of water per day.* There is no suggestion that it means to confine its diversion to seven million gallons. What it is seeking to condemn it would have the right to take, and the presumption is that it will take it. So that instead of being limited to seven millions of gallons a day, as the Supreme Court seems to have been misled into thinking, it will be entitled to take seventy millions of gallons each day of the year out of the flow of the river.

Referring now to the applications of the other municipalities, we find quite a different form of statement. Take Bayonne (*Record, page* 88); it seeks to condemn the right to take and divert *the quantity of water necessary for the public and domestic uses of Bayonne, "not exceeding an average*

quantity in any year of 350,000 *gallons of water per day."*

In the applications of each of the other municipalities similar language is used. The minimum to be taken each day is not given. The right sought to be acquired is the right to take any amount on any day provided the total amount taken in any year shall not exceed a certain average amount for each day of the three hundred and sixty-five days in the year. This would give them the right to refrain from any taking for such period as they might select, and then condense their taking to a short period when the water was most needed for Paterson, during which they could take out as many million of gallons a day as they saw fit, provided, during the whole year, they did not exceed the average per day in the application mentioned.

It is manifest that under such a description or right to divert, it is impossible for any Court to say that the quantity of water in the river opposite the park would not be at any time so decreased by the operations of the defendants as to interfere with the park uses.

In considering the question of flow of the river and the fact that the flow is somewhat affected and controlled by the dam of the S. U. M. at the Falls and of the Dundee Company at Passaic, it must be borne in mind that *these dams only retain the water in low periods,* long enough to get ahead sufficient to supply the raceways connected with the water works of the S. U. M. and the Dundee Company. The gates are then raised and the water is drawn off and the height of the water at the reservoirs is immediately decreased. During the night and durings Sundays in low seasons the gates are kept closed, so as to allow an accumulation of water for the daily use of the works. While the gates

are up and the water is flowing through the race the abstracted water taken by the defendants would be of great use in sustaining the flow of the river if it were allowed to come down.

We submit that the attempt to justify this taking on the grounds of joint use analogous to the crossing of one railroad by another is unsound, and the condemnations cannot be sustained upon any such principle.

Jersey City and Bayonne rest their right to condemn on the Act of 1895, P. L. 769. *This was the same act construed in Vanreipen* v. *Jersey City,* 58 *Law,* 262. The Supreme Court in its opinion (*Record, page* 79) spoke of the *Vanreipen* case as holding that the Act of 1895 did not give power to *"extinguish the franchise"* of the Morris Canal. *The proceedings of Jersey City which were in that case adjudged unlawful were not for the purpose of extinguishing the franchises of the Canal Company.* The question was stated in the opinion of Mr. Justice VAN SYCKEL: "Under the Act of 1895, can any part of the water rights granted by charter of the Legislature to the Morris Canal Company be condemned for the use of Jersey City?"

The answer to that question was in the following language: *"This language is not broad enough to include lands and water rights held and owned by the Morris Canal for its use under said authority."*

Of course, the decision in the *Vanreipen* case is not binding upon this Court, but we submit that it is sound and in harmony with many adjudged cases in this State extending over a long period of time, and is in accordance with the decisions of Courts of the highest authority in other States.

There is not in any one of the statutes referred to as authority for the exercise of the right of condemnation by any of these defendants, any language whatever except of the most general import.

If it had been the intention of the Legislature to permit property already devoted to a public use to be again expropriated for another public use by other public corporations, it would seem reasonable to think, in view of the long line of decisions of the Supreme Court and in view of the provisions of the General Railroad Act in that respect, that some language would have been inserted in these statutes indicating clearly such a purpose. The absence of any such language seems reasonably conclusive that the Legislature did not intend any such result.

Of course, we recognize the power of the Legislature to authorize the taking of property similar to that which is sought to be acquired in these cases for use by other corporations, but we do not believe, and it would be unwise to hold, that general language authorizes municipalities to prey upon each other in this way.

This whole subject of water rights is under the control of the Legislature, and when they think the time has come to authorize these defendants to acquire property which other municipalities have devoted to public use, they can lawfully make provision for such a course. Heretofore they have not done so.

In the injunction suit of the *City of Paterson* v. *East Jersey Water Co.*, 74 *Eq.*, 49 (*affirmed by Court of Errors*, 77 *Eq.*, 588), Vice-Chancellor Emery enters into a very full discussion of the flow of the Passaic River at West Side Park. He refers to the S. U. M. dam at the Falls, which to some ex-extent impounds the waters and backs them up the river, forming some sort of a reservoir, and states (p. 89):

> "When the water is near the top of the dam, the back flow reaches about to the lower

> boundary of West Side Park, three-eighths of a mile above."

He gives the flow of the river during dry seasons past the West Side Park, on pp. 89 and 90. In 1904 there were 16 days in which the flow was less than 167 million gallons a day. In September, 1904, on 13 days the flow was below 167 million gallons a day. In June, 1905, there were 18 days in which the flow was less than 167 million gallons a day. In July, 1905, there were 24 days in which the flow was less than 167 million gallons a day. In November, 1905, there were 16 consecutive days in which the flow was less than 133 million gallons a day. He says (p. 90):

> "The amount given by defendants as their present average diversion, about 22 million, is thus a material and sensible diminution of the entire flow above the falls and passing the West Side Park in times of lowest water if these figures can be taken as affording a basis for making a reasonably approximate estimate of the amount and proportion of water diverted at such times, and I think they can."

He further says (p. 91):

> "The estimates of this entire flow past Paterson below the Falls during the dry months of 1904 and 1905, above referred to, show that on the days in those months when the water was low the proportion of the entire flow diverted by defendants was in June, July and September, 1904, from one-tenth to one-twelfth, and in July and November, 1905, somewhat larger. Manifestly, this proportion, or anything like it, is too

> great to be considered as an immaterial diminution of the flow of the river during these low periods, and so far as the amount of it is concerned, it is an actual and perceptible diminution of the city's right as riparian owner to the flow of the water, either past West Side Park above the Falls, or the engine-house lot and the East Side Park below the Falls."

If this could be said of a diversion of 22 million gallons a day, what should be said of a diversion nearly five times as great, which will result from these condemnations, if allowed to be made?

In *Swindwon Water Co.* v. *Wilts & Berks Canal,* L. R. 7, H. L. 697, cited in *Paterson* v. *East Jersey Water Co.,* 74 Equity, 85, Lord Chancellor Cairns declared:

> "Such use (a diversion by a water company for purposes of sale) and a claim of a right to take it is a use which virtually amounts to a complete diversion of the stream; as great a diversion as if they had changed the watershed of the country. It is a confiscation of the rights of the lower owner. It is an annihilation so far as he is concerned; so that portion of the stream which is used for those purposes is done not for the sake of the tenements of the upper owner, but that the upper may make gains by eliminating the water to other parties who have no connection with any part of the stream."

The defendants in their brief refer to the figures showing the average run-off of flow of the stream during a year. The amount of such average annual run-off, shown in the affidavit of John H. Cooke, be-

ing stated to be 915 million of gallons. The Supreme Court seems to have attached some importance to this figure.

The average daily run-off of the river is of no importance whatever in determining whether the property of the City of Paterson will be injuriously affected by the proposed diversions. A similar use of the daily average flow for the year was sought to be made in the injunction suit of *Paterson* v. *East Jersey Water Co., supra,* but it was rejected by the Vice Chancellor, whose conclusions were affirmed and adopted by this Court.

In his opinion, 74 *Equity,* 87, Vice Chancellor Emery says,

> "for the protection of the right the lowest flow of the river must be taken to be the flow which the unlawful diversion may affect. * * *"
>
> "The defendant produces a comparison of the average amount daily diverted with the average daily flow of the river including high water and floods and contends that the right of the complainant to be protected at all by injunction must be considered as depending on or effected by this comparison. But for this purpose the average flow would be an erroneous standard."

It needs very little consideration to convince the judicial mind *that the rule of law must be as we contend. Were it not so, there is not any kind of public property, no matter to what important use it may be devoted, that would not, under the language of the general condemnation statutes that exist in such multitude, be liable to be taken and conferred upon some other municipality or quasi-public corporation.*

The whole water supply of one city might be taken for another city. The principle applies not only to the whole of a piece of property devoted to public use, but to each and every part of it. If these municipalities can each one of them take a certain portion of the water to which the City of Paterson as riparian owner is entitled, and which is being used as public parks, all the other cities in the State can separately take varying quantities of water until there is none left. And if they can take the water, they can also take the lands. If they can take the park lands, they can take the engine houses, and the school houses, and the court houses, and the city halls, and sanitary buildings. It is inconceivable that the legislature could ever knowingly have passed an act conferring such a power as this in general terms upon every municipality that saw fit to exercise it. Had it been supposed that any one of these statutes authorized the taking of any part of the water supply of the City of Newark, for instance, there would have been undoubtedly great public agitation and objection on behalf of the people of that city.

We submit that this objection is well taken and is sustained by authority and reason, and that it goes to the very foundation of the right of all of these municipalities to condemn this property.

If the Court shall be of opinion that this point is well taken, it will be unnecessary to consider the other reasons urged by the prosecutor against the validity of the condemnation proceedings.

With reference to the application of Jersey City, this is the only point raised by the reasons, and the prosecutor desires to rest the case, so far as Jersey City is concerned, solely upon this ground.

POINT II.

The City of Bayonne, the Town of Harrison, the Borough of Glen Ridge, the Town of Kearney and the Borough of East Newark have no right to condemn the property of the City of Paterson, for the reason that neither of them possesses, owns or operates any water supply plant, works, or source of supply, and neither of them has entered into any contracts for the construction or acquisition of such works, plants or source of supply.

CITY OF BAYONNE.

Bayonne is organized under a special charter (*P. L.* 1896, *page* 371) ; it has the right to contract for a supply of water under its charter and other acts.

In September, 1894, Bayonne contracted for a supply of water with two individuals, Washington and Beall (*Exhibit D*-1, *page* 211). In this contract it is recited that the City of Bayonne desires to obtain a supply of pure and wholesome water, and Washington and Beall agree "to furnish or cause to be furnished to the city by means of a substantial system of water works, to be operated by them *or their assigns,* an ample supply of pure and wholesome water, *to be delivered from available water sources* into the system of pipes now constructed or hereafter to be constructed by the city. The city agrees to receive from the contractors, *or their assigns, all the water required for said city and to pay for the same*" at specified rates per million gallons.

It is observable that by this contract the city agreed to pay for water furnished to it and not for pumping, filtering and transmitting it.

(See comment of Vice-Chancellor Stevens, in *Attorney-General* v. *East Jersey Water Company,* 78 *N. J. E.,* 341.)

Washington and Beall assigned this contract to the New York and New Jersey Water Company, a corporation incorporated under the general corporation act. The assignment was made in 1895. The assignment was ratified by Bayonne, and afterwards the contract was extended so that the term should extend until 1929.

The New York and New Jersey Water Company never furnished the water directly, but by a contract made July 12, 1905, between it and the East Jersey Water Company (*Exhibit D-5, page* 237), wherein it was recited that the East Jersey Water Company *"is the owner of numerous sources of water supply and is willing and desirous to sell water deliverable from the same,"* the East Jersey Water Company stipulated that it would furnish or cause to be furnished to the New York and New Jersey Water Company an ample supply of pure and wholesome water to be delivered *from available water sources* into the pipe or pipes to be thereafter constructed by the New York and New Jersey Water Company, at such pressure and of such quality as will fulfil the conditions of the said contract with the City of Bayonne.

The contract further provides that the New York and New Jersey Water Company will receive from the East Jersey Company all the water required for fulfilling any contract it may acquire for supplying water to Staten Island; that it will construct a pipe line from the corner of Belleville and Kearney Avenues in the Township of Kearney to

the City of Bayonne, and that the East Jersey Company should have the right to the use of said pipe line for the conveyance of its water and to tap the same at any and all convenient points for the purpose of conveying water to its customers.

It appears from the testimony of T. A. Beall that the City of Bayonne has been supplied since 1895 with water by the New York and New Jersey Water Company from the supply of water furnished to it by the East Jersey Water Company, the supply being furnished at the intersection of Kearney and Belleville Avenues from pipes of the East Jersey Water Company running from the Passaic River at Belleville originally, and afterwards from surplus water from the pipe line supplying the City of Newark, until about 1899 or 1900, since when the supply has been delivered by the East Jersey Water Company to the New York and New Jersey Water Company from the Little Falls plant of the former company.

(*Exhibit D*-8 is a contract made *May* 18, 1911, between the East Jersey Water Company and the New Jersey Water Company. It was offered in evidence subject to the objection of the prosecutor because it was made subsequently to the time of the application for the appointment of commissioners to condemn; and for that reason it cannot be considered in anywise as changing the status which existed at the time the application was made. This agreement is significant, however, because for the first time in the arrangements of Bayonne for obtaining water, *there is designated a particular source from which the water supplied to it under the Washington and Beall contract, as assigned, is to be delivered. Record, page* 248.)

Bayonne, in 1894, had, and still has, a complete distributing system throughout the city. It received its supply at a point on the northerly line of the city and from thence distributed it throughout the city. (*Record, page* 165.)

TOWN OF KEARNEY.

This was formerly the Township of Kearney and has become since, by Act of the legislature, the Town of Kearney. (*Record, page* 168.)

In 1895 the Township of Kearney made an agreement with the East Jersey Water Company to take and pay for a supply of water to be furnished by the company, to be delivered by pumping or gravity at the junction of Kearney Avenue and the Belleville Turnpike Road. (*Exhibit D-9; Record, page* 250.)

This contract, in July, 1903, was assigned by the East Jersey Water Company to the New Jersey Suburban Water Company, and the New York and New Jersey Water Company. The assignees agreed to carry out and fulfill the terms of the contract for the supplying of water to the Township. From about July 1, 1903, the New York and New Jersey Water Company and the New Jersey Suburban Water Company have furnished all the water consumed within the territory of the Town of Kearney, the Town of Harrison and the Borough of East Newark; and these municipalities have received water from these two companies and have delivered it to their inhabitants. It is delivered into the pipe lines of the municipalities.

The New York and New Jersey and the New Jersey Suburban Companies, *do not, nor does either of them, own any source of water supply or any works.* The water delivered by these companies

is obtained from the East Jersey Water Company from its pipe line running from its plant on the Passaic River at Little Falls.

(A contract, dated May 18, 1911, between the East Jersey Water Company and the New York and New Jersey Water Company and the New Jersey Suburban Water Company, *Exhibit D*-13; *Record, page* 269; was offered in evidence, but under objection because it was executed subsequently to the application for the appointment of Commissioners. This contract is the same as the contract of the same date relating to Bayonne, and it also cannot be considered as affecting the status of the parties at the time the application to condemn was made.)

TOWN OF HARRISON.

The Town of Harrison made a contract September 15th, 1903, with the New Jersey Suburban Water Company, whereby the company agreed to furnish and deliver, and the Town agreed to take and pay for, all the water necessary for the purposes of the town for a continuous term of fifteen years. This contract did not mention the source of the supply. As already stated, from about July 1st, 1903, the Town of Harrison received its water supply from the New York and New Jersey Water Company and the New Jersey Suburban Water Company, which in turn received it *by purchase* from the East Jersey Water Company from its source of supply at Little Falls.

Exhibit D-15 is an agreement between the East Jersey Water Company and the Suburban Water Company and the New York and New Jersey Water Company, dated July 1, 1903, by which the two

latter companies agreed to take all their supply of water required for all their present and future uses and purposes in that part of Hudson County lying west of the Hackensack River from the East Jersey Water Company, delivered at the corner of Kearney Avenue and Belleville Turnpike Road in the Township of Kearney.

We understand that it is under this agreement that the East Jersey Water Company has supplied the other two companies with water to fulfill the contracts with the Town of Kearney and the Town of Harrison.

(An agreement dated May 18th, 1911, between the East Jersey Water Company and the New York Suburban Water Company, *Exhibit D*-18, was offered in evidence, under objection. *Record, page* 282. This contract cannot be considered because it changes the status of the Town of Harrison from what it was at the time its application was made.)

BOROUGH OF EAST NEWARK.

East Newark is a Borough set off from the Town of Kearney. Since July 1, 1903, the Borough of East Newark has received its water supply from the New Jersey Suburban Water Company. From July 1, 1903, to August 31, 1906, it received it without contract. On August 31, 1906, a contract was made between the Borough and the Suburban Water Company for a period of five years. Since the expiration of that period the Borough has continued to receive its supply from the Sururban Company, buying it by the million gallons, *but not under any contract.* (Testimony of T. A. Beall, *Record, page* 175.)

The water supplied by the Suburban Company to East Newark is received from the East Jersey Water Company from the same pipes from which the water for Harrison and Kearney is taken.

GLEN RIDGE.

Glen Ridge is a Borough carved out of Bloomfield.

There does not appear to be any formal contract on the part of Glen Ridge for a water supply. The supply of Glen Ridge was originally under a contract between the Orange Water Company and the Montclair Water Company, *Exhibit D*-30, dated May 1st, 1895, under which the Montclair Water Company agreed to deliver a continuous supply of water needed by the Township of Bloomfield from the supply used or thereafter to be used in the Towns of Montclair and West Orange to the whole of the high service district sometimes called the Glen Ridge district. (*Record, page* 317.)

After it was set off as a Borough, Glen Ridge continued to receive water from the *Orange Water Company,* and the *Orange Water Company* received water from the *Montclair Water Company,* which in turn received water from the *East Jersey Water Company* from its source of supply at Little Falls. Then a short time ago it bought the pipes from the Orange Water Company and now owns a distribution system itself. (Testimony of E. L. Gardner, *Record, page* 189.)

Exhibit D-31 shows some arrangement for continuing a daily supply from the Montclair Water Company to the Borough of Glen Ridge, but no definite contract seems to be in existence.

In the resolutions of the Glen Ridge Council authorizing the condemnation proceedings, it is recited:

"Whereas, the Montclair Water Company has given notice to the Borough of Glen Ridge that it will be necessary for the Borough to procure, by consent or condemn, the right of diversion for the water supply to be furnished it after April 1, 1911, as against the riparian owners on the Passaic River below Little Falls where the water is diverted *through the instrumentality of and by agreement with the Montclair Water Company and the East Jersey Water Company*:

"Resolved, that the Mayor and Council of the Borough of Glen Ridge do hereby determine to acquire *such right of diversion,* namely, the right to divert an average daily amount of 350,000 gallons of water in each year at Little Falls, on the Passaic River, the same being necessary for the use of the Borough of Glen Ridge for a public water supply."

MONTCLAIR WATER COMPANY.

This company was formed under the Water Supply Act of April 21, 1876. A copy of its charter is *Exhibit D-22, Record, page* 293. It is stated in its certificate of incorporation that *the works are to be constructed* and the business of said company to be carried on *in the Township of Montclair,* in the County of Essex, and that such company was formed for the purpose of *constructing, maintaining and operating water works in said Township,* and for the purpose of supplying said Townships and the inhabitants thereof with water, and for the purpose of constructing, maintaining and operating works in connection therewith for the purpose of supplying water to such other cities,

towns, townships and villages as it may be lawful for it to supply, for public and private use by contract," etc.

It was incorporated in 1887. In its application for the appointment of commissioners, Montclair states that it has constructed its water works and is engaged in supplying water directly to said township and its inhabitants, and to the Town of Bloomfield, to the Town of Nutley, and to the Borough of Glen Ridge, *by contract,* and has for more than five years past been taking and pumping water for its purposes from the Passaic River at Little Falls, through the dams, filtration works, and pumping station, located at that place. It will be observed that it does not state that it is the owner of any plant or works at Little Falls. It appears, however, by *Exhibit D*-36, *Record, page* 334, that in 1908 the East Jersey Water Company conveyed to the Montclair Water Company an undivided eighth interest in the plant of the East Jersey Company at Little Falls on the Passaic River. Originally the Montclair Company obtained its water supply from driven wells and subsequently supplemented that supply from the East Jersey pipe line. According to the testimony of Mr. Gardner, the Montclair Company got its water from the East Jersey Company by purchase, and about the year 1906 the contract was changed so that the East Jersey Company and the Montclair Company agreed that the water was to be taken from the river and the East Jersey was to act solely as an agent in pumping. (*Record,* 185.)

WEST ORANGE WATER COMPANY.

This company was formed under the Water Act of April 21, 1876. The date of its incorporation is

October 27th, 1892. The purposes of the formation of the company are the *construction, maintaining and operating of water works in the Township of West Orange.*

In its petition it states that for several years it has been taking and diverting water for the purpose of its incorporation *from the Passaic River at Little Falls.*

This statement is not sustained by the proofs. Indeed, the petition negatives its correctness, for in paragraph 3 it is said: "Such diversion at Little Falls is and for more than years *has been made directly by the Montclair Water Company through its dams, filtration works and pumping station and by it,* by means of its water mains, conveyed thence to West Orange and there delivered direct to the petitioner for the purpose of the water supply of the Town of West Orange."

The West Orange Water Company has never been anything except a customer of the Montclair Water Company, and never has located, designed or contracted for any plant or for the ownership of any source of water supply on the Passaic River.

There is no statute which permits municipalities to acquire, either by purchase or condemnation, lands or water rights for the purpose of water supply, except they be connected with a plant or works or source of supply to be owned by the municipality and controlled by it.

It is assumed that the necessary authority will be sought in the *Act of April* 2nd, 1888 (*G. S., page* 2210).

This act, which was considered in the *Slingerland case,* 25 *Vr., page* 62, makes it lawful for any municipal corporation having the charge or control of the water supply to enter into a contract or agreement with any water company or other com-

pany, contractor or contractors, for a period not exceeding twenty-five years, for the obtaining or furnishing of a supply or a further or other supply of water to such municipal corporation and for such other lawful uses and purposes as may be deemed necessary or convenient."

The Act contains a provision that the contract may contain "an option for the acquiring by such municipal corporation of the land, water and water rights for such supply on terms to be fixed in said contract."

This provision as to an option cannot confer authority to acquire water rights independently of a general plant or system; for it speaks of the land, water *and water rights* for such supply, and, therefore, has in contemplation the purchase by the municipality of something besides a mere quantity of water delivered periodically and paid for by the million gallons.

The case of *Slingerland* v. *Newark,* 25 *Vr.,* 62, was a certiorari brought to review proceedings taken by the Mayor and Common Council of the City of Newark in pursuance of the *Act of March* 17, 1891 (*P. L., page* 172) to condemn lands of Slingerland for the purposes of laying down, constructing and maintaining a pipe line or lines to be used in supplying Newark with water for public use.

The facts of that case were that in pursuance of the *Act of April* 2, 1888 (*P. L., page* 366), the East Jersey Water Company and the Mayor and Common Council of the City of Newark made a contract dated September 24, 1889, by which the company bound itself to construct works capable of supplying the municipality with water from the Passaic watershed to the amount of fifty million

gallons per day, and to furnish therefrom to the city such water as might be necessary for the use of the city and its inhabitants, at a stated price per million gallons, for a period of twenty-five years, and the city agreed to take water and pay the price. The contract also contained a provision giving the city an option, to be exercised at any time prior to the expiration of one year after the completion of the works, of purchasing the works with the water rights and water supply, for the sum of Six million dollars.

On October 11, 1889, the city exercised the option secured to it by the contract.

So that when the proceedings to condemn the lands of Slingerland were instituted in June, 1891, the status was that the city, through the East Jersey Water Company, its contractor, was constructing water works on the Pequannock River for the purpose of supplying Newark and its inhabitants with water. The East Jersey Water Company was merely the contractor. The city was the owner, and the title to the property sought to be condemned was to be taken in the city.

The difference between the facts in that case and the facts in these cases is obvious. Here there is no contract with any of the water companies as agent to construct works for the supply of any one of these municipalities, nor is there any contemplation that such works should be constructed. The East Jersey Water Company and some of its associated companies own a plant originally constructed by the East Jersey Water Company, near Little Falls, on the Passaic River. At that place water is pumped from the river by the East Jersey Water Company, filtered, and then sent through pipes a long distance and beyond the watershed, to these various municipalities, under contracts

whereby the municipalities agree merely to take and pay for a certain amount of water at a certain price, and the contracting water companies agree to supply such water. The contracts do not designate any particular source from which the water is to be obtained. The water companies are merely purveyors of water, and they take water from the Passaic River and sell to whoever will contract to buy. No one of these municipalities owns a single foot of trunk pipe line nor a single iota of water right or riparian lands in the Passaic watershed.

The scheme is merely a device to enable a wrongdoer to legalize its unlawful conduct.

In order to have the benefit of the power of condemnation these municipalities should make provision for a distinctly local supply of water from a particular place, a contract for the construction of works, and should bring itself within the facts that existed in the *Slingerland* case.

If their proceedings shall be sustained in these suits, the case presented will be one where a number of municipalities have acquired, as against the City of Paterson, the right to divert water from the Passaic River within the limits of that city, but do not possess a scintilla of other property rights in lands or waters or pipe lines connected therewith.

This constitutes an attempt to evade legal responsibility for unlawful acts and to fortify the water companies in a position that has been seriously assailed, both by private owners and by the State, and which is found to be untenable. For surely the legislature cannot have intended to confer the power of condemnation upon municipalities in order to assist ordinary purveyors of supplies, whether of wood, or coal, or asphalt, or anything else that a city may need, when the ability of the purveyor to procure the requisite article is imperfect

through lack of ownership of the source of supply.

There is no precedent case in which a municipality has been held to have the power of condemnation where it has contracted merely to be supplied with water.

In the *Slingerland* case it was urged by the prosecutor that as in certain contingencies the city of Newark might refuse to accept the works in which event they would remain the property of the water company, it was therefore uncertain whether the prosecutor's land would be devoted to public use, and it was argued that for this reason the condemnation was illegal. To this contention Mr. Justice DIXON, in his opinion, replied:

> "But the same uncertainty attends almost every condemnation; after the taking something may occur to prevent the actual user. The common effect of such an occurrence is that the land reverts to the prior owner. Such would be the consequence here. The Water Company acquires no title whatever, and the city acquires title for the specified use only, on failure of which the rights of the former owner would come into play."

There is a wide difference between contracting to be supplied with water and obtaining a water supply. As used in the statutes, the latter phrase means not only the water but the works, and the source of supply.

The power should be strictly construed.

Hampton v. *Clinton*, 65 *N. J. L.*, 158.
Somerville Water Company v. *Somerville*, 77 *N. J. E.*, 199-210.
Manda v. *Orange*, 78 *N. J. L.*, 251.

An examination of the various complicated and interlaced contracts by which the municipalities mentioned in this point obtain their supply, shows that they are merely purchasers of water by the million gallons. In some instances they purchase it not from the original diverter from the Passaic River, but from intermediate companies that in turn purchase from another company which obtains it from the East Jersey Water Company, which pumps it from the Passaic River at Little Falls.

For instance, Bayonne has been supplied since 1895 with water by the New York and New Jersey Water Company from the supply furnished to it by the East Jersey Water Company, the supply being furnished to the New York and New Jersey Company from the East Jersey pipes at the confines of the City of Bayonne. The Town of Kearney, the Town of Harrison and the Borough of East Newark are similarly situated, except that since August 31, 1911, *East Newark has been buying its water by the million gallons but not under any contract.*

As to these particular municipalities it appears that there is not any semblance of a contract to support this application.

Glen Ridge originally received water from the Orange Water Company; the Orange Water Company received it from the Montclair Water Company; the Montclair Water Company in turn received water from the East Jersey Water Company from its source of supply at Little Falls. Subsequently Glen Ridge bought the pipes of the Orange Water Company and now owns a distributing system.

There is some kind of an indefinite arrangement for continuing a daily supply from the Montclair Water Company to the Borough of Glen Ridge, but no definite contract seems to be in existence.

It is submitted, therefore, that the second point of this agreement is sustained by the proofs and by the facts stated in the applications of the five municipalities referred to in Point 2.

POINT III.

In addition to the foregoing objections to the applications of the West Orange Water Company and the Montclair Water Company, it is further insisted, as to these two companies, that they do not possess the power of condemning water rights within the limits of the City of Paterson.

These two companies are corporations formed under the provisions of the Act entitled *"An Act for the construction, maintenance and operation of water works for the purpose of supplying cities, towns and villages of this State with water," approved April* 21, 1876, and the several supplements thereto and amendments thereof.

The charter of the West Orange Company declares that it is formed for the purpose of constructing, maintaining and operating works in the Township of West Orange (*Exhibit D-27, Record, page* 308).

The charter of the Montclair Water Company declares that it is formed for the purpose of constructing, maintaining and operating water works in said Township, that is, *in the Township of Montclair.*

Thus, by the very declaration of these companies in their respective charters, they are limited to the construction, maintenance and operation of works in their respective townships.

The water supply act of 1876 (*G. S.* 2199) under which these corporations are organized, provides in Section 4 "That it shall be lawful for such corporation to enter upon any and all lands *in the neighborhood* of the village, town or city which it is intended to supply with water."

It is further provided that such company shall commence the construction of their water works within six months of the date of their organization and shall complete the same within two years from the date of commencement.

We insist:

(1) That these corporations are limited to the neighborhood of the respective municipalities which they were designed to supply with water and named in their certificates of incorporation.

Whatever liberality of construction may ordinarily be given to the word "neighborhood," it cannot fairly be extended so as to authorize a company formed to supply West Orange or Montclair with water to go as far as the limits of the City of Paterson in order to take from the latter city water which Paterson has already devoted to a public use.

In the strictest meaning of the word, Paterson is not in the "neighborhood" of Montclair or West Orange. It is not in the same county; it is not near to either of these towns. It is not in the same part of the Passaic watershed, and it is separated from both of them by from eight to fifteen miles and by a chain of mountains.

In a case in Colorado—*Coffin* v. *Ditch Co.*, 6 *Col.*, 443—a statute providing that all persons having claims on the bank, margin, or *neighborhood* of any stream of water, creek or river, shall be entitled to use the water thereof, was held to include only lands in the immediate valley of the stream.

In *Madison* v. *Morristown Gas Light Company,* 65 *N. J. E.,* 356, it was held that the authority conferred upon the Gas Light Company to sell gas for the purpose of lighting the streets, buildings, manufactories and other places, situated in *Morristown and its vicinity,* does not authorize that company to enter into the independent municipality of Madison, four miles distant from Morristown, and lay pipes in the streets thereof.

This case was decided by the Court of Errors and Appeals, and in the opinion the words "vicinity" and "neighborhood" were considered.

The language of the Court of Appeals of New York in *Easterly* v. *Cole,* 3 *N. Y.,* 502-505, was quoted approvingly, as follows:

> "I understand 'neighborhood' to mean the same town or place where the plaintiff carried on business, and not a different town or place."

The Court further says:

> "The act of incorporation of the defendant company is not difficult of construction. Its language construes itself. The company is incorporated to supply gas 'for the purpose of lighting the streets, buildings, manufactories and other places situated in Morristown and its vicinity.' Every building or other place in Morristown may be lighted. Buildings in the vicinity of Morristown may also be lighted. The intent was to give the defendant the right to lay gas pipes and light Morristown and the buildings or factories lying in its vicinity—that is, adjoining Morristown. If this construction is not put upon the act, where will you say this 'vicinity' extends? If it takes in the inde-

pendent municipality of Madison, why not Chatham and Summit?"

(2) *The object of the condemnation proceedings on the part of these water companies is not for the supplying of water to the municipalities which they were incorporated to supply, but to fulfil contracts for the sale of water to other municipalities.* This being outside of their declared objects of incorporation, they cannot condemn lands or water rights for such purpose.

(3) The works of these companies should have been completed within two years from the date of commencement. That period has long ago expired. The rights now sought to be acquired must be considered a part of *their* works.

POINT IV.

The Town of Harrison and the Town of Kearney have not complied with the provisions of the law governing towns desiring to construct water works.

The *Act of March* 5, 1884 (*G. S.*, 3559; *P. L.* 1884, *page* 44), entitled "*An Act to enable incorporated towns to construct water works for the extinguishment of fires and supplying the inhabitants thereof with pure and wholesome water,*" is the only act, so far as we can discover, which gives incorporated towns the right to condemn property for the purpose of a water supply.

This Act makes it necessary that the governing body shall appoint three commissioners, to be called "Water Commissioners," who shall have the powers and perform the duties relative to the establishment of the water works. Section 4 of this Act provides "That if it should become necessary,

in the opinion of said Water Commissioners, to lay pipes through any private lands, or if any private lands shall be required for erecting reservoirs or other works thereon or from which they may desire to take and use the water of any spring or springs, stream or streams of water, and no agreement can be made with the owner or owners thereof, etc.," application may be made for condemnation.

It does not appear that either of these towns has established a Board of Water Commissioners, nor that the opinion of said Water Commissioners as to the necessity of acquiring this property has ever been given. Consequently, these towns have not complied with the prerequisites to the condemnation of these water rights.

POINT V.

The Town of Harrison, the City of Bayonne, the Town of Kearney, the Borough of Glen Ridge and the Borough of East Newark, have not, nor has either of them, submitted descriptions of their respective sources of water supply to the State Water Supply Commission in accordance with the provisions of the Act entitled "An Act to establish a State Water Supply Commission, and to define its powers and duties, and the conditions under which waters of this State may be diverted," approved June 17, 1907 (P. L., 1907, page 633).

Section 2 of this Act provides:

> "No municipal corporation, corporation or person engaged in supplying or propos-

> ing to supply the inhabitants of any municipal corporation with water, shall have power to condemn lands or water for any new or additional source of water supply, or to divert water from such new or additional source until such municipal corporation, corporation or person has first submitted descriptions thereof, which may be accompanied by maps and plans, to said Commission, and until said Commission shall have approved the same."

There are two provisos to this section, neither of which modifies, so far as these municipalities are concerned, the obligation to conform to the above quoted conditions.

It is submitted that this provision is applicable to these municipal corporations. At the time of the passage of the Act of 1907 not one of them owned any source of water supply. None of them, in the slightest degree, had control, possession or ownership of the source of water supply which they are now attempting to acquire. It is true they were purchasing water, directly or indirectly, from a company which pumped water from the Passaic River and conveyed it through many miles of pipe to the confines of these municipalities. But the purveyor was under no obligation to furnish the water from any particular source, and there is nothing in the arrangements between the East Jersey Water Company and these municipalities which indicates the Passaic River or any part of it, or any part of its waters, as the source of water supply of these municipalities. They are not attempting to acquire by purchase or condemnation any existing or operating water works; nor are they municipal corporations that have already acquired

lands or water, and, in good faith, commenced the construction of works. They had no works; they had no property from which a source of supply could be derived.

The object of the Water Commission Act of 1907 was to prevent municipalities from thereafter acquiring title to water or sources of water supply which they at that time had not acquired. The municipalities named in this point obtained their water from and through various purveyors without any designation whatever as to the sources from which it was to be derived. Incidentally it appears that the purveyors obtained the water from the Passaic River, but without right so to do. It was to prevent one municipality from grabbing up the perpetual right to take water as against other municipalities that the Act of 1907 was passed; from acquiring water from localities which by reason of distance or of the necessities of other nearer municipalities, they ought not to be allowed to take; and, in general, to see that thereafter the water resources of the State were taken only according to a general system approved by the State's representatives. These purposes are peculiarly applicable to the circumstances now before the Court. The manifest injustice, from a broad, equitable basis, of allowing municipalities lying, some of them on the confines of the marine tidal waters of the State, to come miles inland and within the limits of the City of Paterson to take the water of the Passaic River, commends the wisdom of these provisions of the Water Supply Commission law. It should be vigorously and sternly enforced by the Courts.

For that reason, and because these municipalities are seeking without permission, revision or control of the State Water Supply Commission, to absorb water rights in a distant part of the State

and in another watershed, the application should be held to be unauthorized and the order appointing commissioners declared void.

POINT VI.

The Boroughs of Glen Ridge and of East Newark have no authority to prosecute their respective applications because they have not complied with the conditions prescribed by the law governing boroughs in their efforts to acquire these water rights.

Section 70 of the General Borough Act which governs these two boroughs provides that: "In case the council cannot agree with the owner or owners or other persons interested in any lands or water rights, whether within the limits of such corporation or *in the neighborhood thereof,* which the borough may desire to take, use and occupy, or from which lands they may desire to take or divert * * * water * * * they may apply for the appointment of commissioners," etc. (Compiled Statutes, page 265).

All that was before said with reference to the meaning of the phrase "in the neighborhood" is applicable to the language above quoted.

It is apparent also that the right to condemn, on behalf of boroughs, is specifically attached to a proceeding for the construction of a definite plant of water works. In this case, as has been before said, no water works or water plant is contemplated. The only right sought is one beneficial to the Water Company to take lands to enable it to fulfil contracts for the supply of water to these boroughs.

These boroughs cannot derive any authority from the Act of 1895 (*P. L.* 1895, *page* 769; 2 *Compiled Statutes,* 2198), which was the law under which Jersey City sought to take the water rights of the Morris Canal in the *Van Reipen* case; nor from the Act of 1891 (*P. L.* 1891, 172), for the reason that both of these acts apply only to cities.

POINT VII.

The Act entitled "An Act to empower towns to acquire land and other property for water supply by condemnation," approved May 1, 1911 (P. L., 1911, page 675), affords no authority to the Towns of Harrison and Kearney to acquire the water rights sought to be obtained in these proceedings.

These two towns made their applications and had commissioners appointed before the passage of this act, but, convinced probably of their lack of power to condemn, this Act of 1911 was obtained, the original proceedings were abandoned and new applications made September 26, 1911.

It is submitted that this language is insufficient, under the strict rule of construction that must be applied, to uphold their present applications, which were made subsequently to the passage of the act.

The act indicates a studious purpose to avoid fully stating the facts and conditions that affect these towns. It merely declares that where any town is now supplied with water for fire protection and for the use of its inhabitants, or may hereafter determine to obtain or enlarge such supply, the town council may acquire land, water, water rights or other property within or without

the town for the purpose of such supply, and, to that end, may take condemnation proceedings.

It is submitted that this does not apply to a case where a town is supplied by an independent purveyor.

It is stated in the application of the Town of Harrison (*Record, page* 92) that this determination to take water from the Passaic River was by virtue of its contract with the New Jersey Suburban Water Company and through the agency of that company.

But it appears that the New Jersey Suburban Water Company has no plant on the Passaic River, has no pipes from the Passaic River, and is merely a purchaser of water from the East Jersey Water Company.

The connection is too remote and the device is too apparent.

The Act of 1911 *does not in any way abolish the procedure required by the Town Law of* 1884.

The judgment of the Supreme Court should be reversed, and the order appointing Commissioners in each of these cases should be set aside.

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Statement.

These are appeals from eight judgments of the Supreme Court affirming eight orders appointing commissioners in condemnation proceedings. The commissioners were appointed to condemn certain riparian rights of the City of Paterson in the Passaic River in behalf, respectively, of a municipality, or a water company supplying a municipality. All of the municipalities in question are at present supplied with water taken from the Passaic River or its tributaries at points above the City of Paterson, principally at Little Falls. They have been so supplied during varying lengths of time, beginning in most cases about 1894.

In the year 1905 the City of Paterson brought a suit in Chancery to enjoin the East Jersey Water Company, which was the contracting agent through which all of these various municipalities, excepting Jersey City, derived their respective water supplies, from diverting water from the Passaic River at a point above the limits of the City of Paterson, by which diversion the flow of the river was diminished where the same passed in front of certain lands owned and used by the City of Paterson, viz, two parks and an engine-house lot.

Pursuant to the opinion of Vice-Chancellor Emery (*Paterson* v. *East Jersey Water Company*, 74 *N. J. Eq., p.* 49), the Chancellor, on January 6, 1910, made a final decree (Exhibit D-33, p. 326) adjudging that the City of Paterson was entitled to a perpetual injunction restraining the East Jersey Water Company from further diverting the

water of the Passaic River through its dams, pumping station, etc., near Little Falls, for the purposes of sale or of delivering the same to any other persons or corporations to be sold either directly or indirectly; but the decree further ordered that no writ of injunction should issue until April 1, 1911, and that if before that time proceedings for condemnation of the rights of the City of Paterson were commenced by or in aid of the East Jersey Water Company, then such writ of injunction should not issue until the further order of the Court.

Thereafter, pursuant to the suggestion contained in the decree, the various municipalities and water companies serving municipalities, which obtained their supplies through the East Jersey Water Company—and also Jersey City—began proceedings for condemnation of the rights of the City of Paterson, as riparian owner, in the flow of the Passaic River at said parks and engine house within that city. Upon the hearing of their respective petitions for the appointment of commissioners, objections were made to such appointments by the City of Paterson, which were overruled, and the appointments were in each case duly made in accordance with "An Act to Regulate the Ascertainment and Payment of Compensation for property condemned or taken for Public Use (Revision of 1900," Comp. Stat., p. 2182). Thereupon writs of certiorari were allowed, as to each order, upon the application of the Mayor and Aldermen of the City of Paterson as prosecutor.

The petitions for the appointment of commissioners for the ascertainment and payment of compensation for the rights sought to be condemned and taken for public use, were made under powers granted to the respective municipalities and water

companies by their charters or by the general laws of this State.

We propose to discuss first the points raised by the appellant which are equally applicable to all the respondents, and thereafter to take up separately those points which are peculiarly applicable to the several respondents. The similarity and, in most respects, identity of the questions raised are such that we beg to present the arguments in favor of the several respondents in one brief, referring to the separate cases only when their several peculiarities render it necessary.

POINT I.

The property and rights sought to be condemned are not devoted to public uses to the exclusion of the right of diversion sought to be acquired.

The right of diversion sought to be acquired will not affect any public use to which the flow of the stream is now devoted.

The first ground of appeal in each of the eight cases is directed to the fact that the property proposed to be condemned is already devoted to public uses. It should constantly be borne in mind, throughout this discussion, that the property that the respondents are seeking to acquire is not land, but the right to divert a certain number of gallons of water per day which would otherwise flow past the riparian lands of the appellant. The question, therefore, which is raised by the appellant's first ground is whether or not this flow of water sought to be diverted is devoted to public uses. The riparian lands which give to the appellant the

right to demand compensation for this diversion, as declared by the Court of Chancery, consist of three parcels: (1) a tract known as West Side Park, located on the left bank of the Passaic River and extending along the same about half a mile; (2) a tract known as the engine-house lot, located on the Passaic River, and extending along the same for a distance of about 25 feet, and (3) a tract known as the East Side Park, located on the right bank of the Passaic River, extending along the same for a distance of about 1,500 feet. In order, therefore, to find that the rights that are sought to be acquired by the respondents are already devoted to public uses it must be found that that part of the flow which is sought to be taken is devoted to some public use at one or more of the three points where it passes the riparian lands owned by the appellant, which are concededly devoted to public uses; and furthermore that the flow sought to be taken is so devoted to public use, because it is appurtenant, as a riparian right, to lands which are devoted to public use.

The first tract, known as West Side Park, is a public park and playground. There are no domestic uses for the flow of the stream upon this tract, and the only use that can possibly be made of the same, and the only use that, in fact, according to the testimony for the appellant (Case, p. 146, l. 11, *et seq.*), is made of the same, is for pleasure boating in summer, skating in winter, and such adornment of the park as results from its contiguity to the stream.

The testimony in the case shows that the possibilities of the stream at this point for purposes of boating and skating are governed, not by the flow from above the West Side Park, except in times of extraordinary flood, but are governed by

the draft of water made by the Society for Establishing Useful Manufactures (hereinafter referred to as the S. U. M.), which maintains a dam about one thousand feet below.

The second tract of land, known as "the engine-house lot," is a city lot, the rear of which abuts on the river for a distance of about twenty-five feet. The appellant states in its notice of appeal that "this is a valuable element to the city for the use, enjoyment and ownership of said property," but utterly fails to show what the use is. In fact, there is nothing at all in the testimony of the appellant about the engine house, with the exception of a stipulation made by the parties (Case, page 155, l. 29) in which it is admitted that the City of Paterson has had a fire-engine house upon this lot since its acquisition in 1859. We submit that there is no use being made of the water which flows past this lot, and that therefore the flow sought to be taken, so far as it concerns the riparian rights appurtenant to this lot, is not already devoted to public uses as claimed by the appellant.

The third tract, known as the East Side Park, is, like the West Side Park, situated on a slack water, viz, that of the Dundee Dam.

This state of facts was carefully considered by the Supreme Court, which in its opinion found as follows:

> "Commissioners were appointed upon the application of Jersey City to condemn the right to take and divert perpetually from the Rockaway River at Boonton, the quantity of water necessary for its water supply, as against riparian lands of Paterson, known as West Side Park, the engine-house lot, and East Side Park. The City of Pater-

son resists condemnation because it claims that the water is already devoted to a public use, in that its flow is valuable to the two city parks and the engine-house lot. West Side Park is above the dam of the Society for Establishing Useful Manufactures, and East Side Park is above the Dundee Dam. Both parks are along the slack water caused by these dams. Water flows over the S. U. M. dam ten months of the year, and even in July and August there would be water flowing over the dam, but for the fact that the S. U. M. is drawing all that comes through its flume. The level of the water at the East Side Park seems to depend entirely upon the Dundee Dam, but the water is so foul that it is not used for boating or similar purposes in connection with the park. The amount of water which it would be possible for Jersey City to divert in dry seasons is seven million gallons daily, and when she diverted that quantity sixty million gallons still passed down the Passaic River. The average daily flow of the river in the driest season was ninety-seven million gallons; the average daily flow for fifteen years has been about nine hundred and fifteen million gallons. The total quantity of water proposed to be diverted to Jersey City and other municipalities which have similar condemnation proceedings pending, and by the City of Newark, would leave in the driest season fifty million gallons daily to flow past Paterson, and this amount is ample to supply the mill ponds above the East Side and West Side Parks; 'the ordinary elevation of the water would in no wise be affected by the diversion.' "

This finding of fact is final on appeal to this Court, but in order to make perfectly clear the basis thereof, we reproduce our argument before the Supreme Court.

The amount of water taken by the S. U. M. in its operations and the manner of its drawing thereof is such that the variation in the level of the water opposite the West Side Park reaches an extent of from three to five feet at ordinary stages of the stream.

This appears from the testimony of Mr. James H. McCollom (Case, p. 150, l. 13 *et seq.*), a witness called on behalf of the *prosecutor*, who testified as follows:

> "Q. The water in front of West Side Park is slack water maintained there by the dam of the Society for Establishing Useful Manufactures, which is at the head of the Great Falls? A. Yes.
>
> Q. And the level of the water in front of this park is governed by the height of water in that dam, is it not? A. To a certain extent.
>
> Q. Well, if the water is drawn down below the crest of the dam, the water in front of the park is drawn down accordingly? A. Yes.
>
> Q. If the water overflows the dam, your water rises accordingly? A. Yes.
>
> Q. The draught of water for the operations of the Society for Establishing Useful Manufactures, and its tenants, is over that dam; is it not? A. Yes.
>
> Q. How much is that fluctuation, up and down? A. Between the crest of the dam?
>
> Q. Give your best judgment. A. I should say three or four feet; five feet possibly.

Q. And sometimes the water rises two or three feet over the dam? A. We have had it so that it covered the entire park almost.

Q. How many feet have you known it to be over the crest of the dam? A. I should judge eight or nine feet.

Q. That is in time of flood? A. Yes; extreme flood.

Q. In the winter and in the seasons when you have reasonably high water, how high does the water flow over the dam? A. Why, I should judge a couple of feet.

Q. How much of the year is there water flowing over the dam out of the three hundred and sixty-five days? A. Well, I should judge, possibly nine or ten months out of the year."

From this testimony it appears that at no time, excepting in times of extraordinary flood, is the river in front of the West Side Park more than a slack water, and the level of the water at the point in question is dependent not upon the flow from above, but upon the amount of water drawn through the raceway of the S. U. M. It would not appear, therefore, that the volume of the flow would at any time materially affect the depth or suitability of the stream for boating or skating, inasmuch as both the quantity of water and the rate of the current opposite the West Side Park are governed by the operations of the S. U. M.

What has been said with respect to the effect of the dam upon the depth and current of the river, makes it quite obvious that the adornment of the park cannot suffer by reason of the loss of that part of the flow which is sought to be taken

by the respondents. Since the level of the water is subject at all times to be raised or lowered according to the variations in the draft made by the S. U. M., and since a slack water is necessarily created by the dam, it is not easy to see in what respect the physical aspect of the river at that point would be affected by the loss of that portion of its natural flow which is sought to be taken. The conclusion is unavoidable from all the testimony in the case that the dam of the S. U. M. and the draft of water by the S. U. M. through its raceway are, in fact, the controlling elements in the condition of the river at the point in question. The amount of flow sought to be taken is an immaterial element, and neither contributes to nor affects any use which the public now has in the river or which the appellant now has in the river at that point by reason of its riparian ownership.

The immateriality of the amount taken is borne out by Mr. John H. Cook, hydraulic engineer of the S. U. M., whose testimony appears in the form of an affidavit which is printed as Exhibit D-38 (p. 346), and is to be taken as testimony by agreement of counsel. Mr. Cook has selected the driest period, and the period of lowest water in the Passaic River, during the last fifteen years, for which time he has been connected with the S. U. M. This low water occurred during the lowest period of rainfall during the last twenty-four years (p. 346, l. 37), as shown by the United States weather record at Paterson. Mr. Cook computed what the effect of the full diversion sought to be made by the respondents in these proceedings would have been at that time of very low flow. He found that in the year 1910 there was a total period of low water of seventeen weeks (p. 346, l. 22), the lowest week being the second week in October (p. 346,

l. 25). During this time the average daily run-off of the Passaic River at Paterson amounted to ninety-four million gallons (p. 346, l. 32), and got down in the very driest week to an average of fifty-seven and a half million gallons (p. 346, l. 26). Mr. Cook shows that if at that time the municipalities seeking to condemn water rights had been diverting the full amount for which they are now seeking to condemn, it would have reduced the average figure during the period to about seventy-nine million gallons per day, and during the very driest week to about fifty million gallons per day, this latter figure being about five-sixths of the amount of water which actually passed during that very dry week.

The average daily run-off of the Passaic River, as shown by Mr. Cook, is about 915,000,000 gallons (p. 349, l. 22). It will thus be seen that the amount sought to be condemned cuts no figure as far as the average run-off is concerned, and at the times of the very lowest flow, will not decrease the amount of water in the river to any great extent. Mr. Cook also shows that the amount of water which would remain in the stream on the very driest week of the year of the lowest rainfall in the last twenty-four years, would be ample to supply the ponds opposite the East and West Side Parks, and that the ordinary elevation of the water would in no wise be affected (p. 349, l. 12 to 16).

The second tract, known as the engine-house lot, we have already considered fully. The Supreme Court did not take up the situation with respect to it in detail, but it is obvious that the riparian rights appurtenant to this tract, if devoted to a public use at all, are not devoted to one which is at all comparable in importance to those asserted in the cases of the other two tracts.

The third tract, known as East Side Park, is a public park and playground similar to the West Side Park, and the argument as to the West Side Park applies with equal force to this park. It also is located upon a slack water caused by the Dundee Dam (p. 152, l. 16, *et seq.*) The river, however, at this point is so discolored with dyestuffs (p. 152, l. 38; p. 148, l. 17 *et seq.*), that the park commission has made no improvement along the river front, although at one time there was a boathouse maintained there for public use by a man who had a concession from the Park Commissioners (p. 148, l. 36, to p. 149, l. 9). It will be seen from this testimony that the river was foul at least twenty years ago, and was unpleasant for boating. The same situation is therefore presented as in the case of the West Side Park, *i. e.*, that the Dundee Dam and the draft of water therefrom are, in fact, the controlling elements of the height of water and of the current in the river at this point. Moreover, the river is not used at all opposite this park, due to the pollution of the water. The quantity of water sought to be taken is consequently an immaterial element, and would neither contribute to nor affect any use which the public might have in the river, if there were any such use, or which the appellant now has in the river at that point by reason of its riparian ownership.

We have now discussed in the light of the testimony, the actual effect, upon the flow, of the diversion of that part of it sought to be condemned, at the points where the appellant is vested with riparian rights; and have more particularly discussed that effect upon the riparian rights themselves. It is perfectly clear that so far as those rights are now devoted to public uses, the proposed diversion cannot affect them. In fact, the

diversion in question has taken place for nearly twenty years and the public uses which the appellant claims would be destroyed by the threatened taking, have been enjoyed in spite of such actual taking during all of that period. With respect to such part of the flow as is not necessary for the enjoyment of public uses to which the appellant's riparian rights are alrcady devoted, the appellant stands in the position of a private land owner whose rights are sought to be acquired by corporations vested with the power of condemnation. The rule of law upon this subject is well settled. It is stated by Mr. Lewis in his work on *"Eminent Domain," Volume* 2, 3*d Ed., par.* 441, as follows:

> "The general rule (*i. e.*, that property devoted to public use cannot be taken for any other public use) is founded upon the presumption that the legislature did not intend by a general grant of the eminent domain power to authorize an interference with the enjoyment of property devoted to public use under prior grants of the same power. A taking which is no interference, present or prospective with the prior use, is not within the rule. Consequently it is generally held that an easement or joint use may be appropriated where the two uses are not inconsistent and the second is no interference with or impairment of the first. * * *
>
> "442. Property of a quasi-public corporation not in use and not necessary for the exercise of its public franchises or discharge of its public duties, may be taken under a general power to condemn property the same as though it belonged to a private individual."

The text then goes on to cite by way of illustration the remarks of the New York Court of Appeals in the matter of the *Rochester Water Commissioners,* 66 *N. Y.,* 413, at page 418, as follows:

> "Lands held by a corporation or by a public body, but not used for or necessary to a public purpose, but simply as a proprietor and for any private purpose to which they may be lawfully applied, may be taken as if held by an individual owner. * * * The property rights of a corporation in lands not held in trust for a public use are no more sacred than those of individual proprietors."

The rule of coincident use of the same property for two public uses where such uses are not inconsistent with each other, has been fully recognized by the Courts of this State. In *Van Reipen* v. *Jersey City,* 58 *N. J. Law,* 262, the question was raised before the Supreme Court whether any part of the water rights granted by charter of the Legislature to the Morris Canal Company, could be condemned for the use of Jersey City under a general power of condemnation for the purpose of supplying the city with water. It appeared that the water rights of the Morris Canal Company were under authority of its charter already devoted to a public use, and that the proposed condemnation would *destroy such use.* The Court held that in such case there must be an express or necessarily implied grant of power to condemn, but said (p. 266):

> "The charter of the Morris Canal and the fact that its water rights are held for a quasi-public use, furnish no unsurmountable obstacle to the appropriation of such

> rights to the uses of the State for the preservation of the public health and safety upon just compensation being made."

The rule of coincident use by one public corporation of property already devoted to public use by another public corporation, has been fully developed in the cases dealing with the crossing of one railroad by another. Such a case was *Morris & Essex Railroad Company* v. *Central Railroad Company,* 31 *N. J. L.,* 205. On certiorari to set aside the award of commissioners for the assessment of damages to the Morris & Essex Railroad Company, caused by a projected crossing of the Central Railroad Company, it was claimed by the prosecutor that as the land in question had first been taken under a statute for the purpose of a public railroad, it was not lawful for the Central Railroad to condemn the same for a crossing without express authority given by the Legislature for such crossing. This case arose in 1865 before the general provisions of the Railroad Law respecting crossings, and the condemning company depended solely upon its general power of condemnation. The Court held that the right clearly existed, and said (p. 214):

> "It may well be where the attempt is to sequestrate a portion of the franchise of a railroad company to the use of a company subsequently incorporated, such sequestration could not be justified in the absence of a grant of such authority in clear and express terms, * * * but when the franchises are untouched and the claim is simply to a right of way across the track of a railroad company, such company in my opinion occupies no higher ground than the com-

> mon land owner, * * * and as such use of the track of the plaintiffs in the manner contemplated will not to any material extent interfere with the operations of their road or impair rights and franchises previously granted to them, it is not perceived how any implication can arise which will prohibit such appropriation of their track."

In *National Docks, etc., Company* v. *United Companies,* 53 *N. J. L.,* 217, this Court defined the nature of such coincident use, which at that time had been expressly authorized by the general Railroad Law, and said (p. 221):

> "In the condemnation of a crossing over the lands of another railroad, which are necessary for railroad purposes, all that is acquired is a right of way. After such condemnation, the place of crossing remains in the common use of both railroads for the exercise of their respective franchises. The manner of crossing is not destructive of the ability of the road crossed to fully, fairly and freely exercise its franchises (citing cases)."

We might take the words of this Court and apply them to the present situation, and state the rule governing this case as follows:

> "After the condemnation of the portion of the flow sought by the respondents, the entire flow remains in the common use of both the appellant and the several respondents; in the one for the exercise of its riparian rights now devoted to public uses, in the others for the exercise of the rights acquired for purposes of diversion for pub-

> lic use. The manner and amount of taking by the several respondents is not to be destructive of the ability of the appellant to fully, fairly and freely exercise its riparian rights to the extent that the same are already devoted to public use."

While the authorities in this State are numerous in support of the rule of coincident use, none approaches so closely to the present case in its similarity as to the facts as a well-considered case decided by the Supreme Court of Pennsylvania, *Independent Gas Co.* v. *Butler Water Company,* 210 *Pa.,* 177; 59 *Atl. Rep.,* 984. In that case the Gas Company, engaged in supplying the population of a borough with light and heat, laid its pipe lines through lands which subsequently became necessary to a water company supplying the inhabitants of the same borough with water. The lands in question were essential to the water company for the construction of a reservoir, and condemnation proceedings were accordingly instituted under general powers of condemnation. To the extent that the pipe line would be submerged by the reservoir, there would be a joint occupancy of the same land by the two companies. The gas company brought a suit in equity to enjoin the water company from condemning its rights in the land in question. From a decree dismissing the bill the gas company appealed and the Court above affirmed the decree, saying:

> "Here are two corporations, each having the right of eminent domain; each exercising that right under the terms of its charter to promote the health, comfort and prosperity of the inhabitants of the same borough; in the exercise of their corporate rights they

> clash; without relinquishing any substantial power under its corporate franchise, the one can waive in favor of the other a mere technical right without substantial loss; the other cannot give way without peril to its franchise; a sufficient supply of water is an absolute necessity to the inhabitants of the borough; that necessity can only be met by constructing this reservoir at the exact place selected by defendants' engineers; under such circumstances, which ought in equity to yield? * * *
>
> "Assume, therefore, as we must do here, that the prior appropriation by the gas company is technically interfered with by the subsequent condemnation of the land by the water company, the injury is but slight and can readily be compensated in damages. Therefore, on this ground alone, the decree is one which ought to have been made."

So in this case we have the City of Paterson on one hand and these several municipalities and water companies on the other hand, each having the right of eminent domain and each exercising that right to promote the health, comfort and prosperity of the inhabitants of the State. In the exercise of their respective rights they clash technically, but as has been shown by the testimony, not actually. Without reliquishing any substantial power or the exercise of any substantial right, the City of Paterson can waive in favor of these defendants a mere technical right without substantial loss. These respondents, on the other hand, cannot give way without peril of fire, famine and pestilence to the inhabitants of a large portion of the State, whose welfare and safety in respect to

the all-important element of water supply, has been placed in their safe-keeping.

An instructive case is *In re certain lands in Lawrence,* 119 *Fed. Rep.,* 453, in which the United States sought to condemn land for a post office, not by virtue of any paramount authority, but by virtue of authority delegated to it by the Commonwealth of Massachusetts, so that the proceedings were governed by the laws of Massachusetts. The land in question was dedicated to the use of the inhabitants of Lawrence as a public park. The United States sought to condemn under a general statutory authority, without express provision for a taking of lands already devoted to public use. The Court said (p. 455):

> "In the absence of express statutory provision, the question is one of reasonable interpretation of the legislature's general intent as applied to the case before the court.
> * * *
> "If there is no express legislative provision, the relative importance of the two uses is to be determined by the court. If the later use is deemed by the court, under all the circumstances, to be more important than the earlier, the land is taken for the later use, without compensation for the loss of the earlier. If the earlier use is deemed the more important, the later is forbidden, and the earlier continued."

The opinion cited as authority *East Hampton* v. *County Commrs.,* 154 *Mass.,* 424, where a town sought to prevent County Commissioners from laying out a highway over land belonging to the town and used in connection with a schoolhouse. The

Supreme Court of Massachusetts held that, in the absence of express statutory provision, the question whether or not the Legislature had provided that property taken for one use should be applied to another was to be answered upon consideration of the relative importance and the necessities of the two uses, the extent of the harm to be done, and the circumstances of the particular case.

The principle laid down in these cases that it is the function of the Courts to determine the relative importance of two conflicting public uses in the absence of express legislative provision, is fully in accord with the general principle so often recognized by the decisions of this State, that where the power of eminent domain is sought to be exercised, it is the function of the Courts to determine whether or not the contemplated use is a public use at all.

Finally we cite:

Olmsted v. *Proprietors of the Morris Aqueduct,* 47 *N. J. L., pp.* 311-329.

This celebrated case has been followed in a long line of decisions, and the principle enunciated is so familiar that we do not consider it necessary to cite further authority on this point.

These cases, which accord with sound legal principles, as well as with common sense, are sufficient to indicate the unreasonable nature of the claim made by the appellant in the cases *sub judice.* There can be no doubt of the relative importance and the necessities of the use of the Passaic River for pleasure boating and skating, and as a physical adornment to the parks of Paterson, as opposed to the use of that river as the only available source of water supply to the thousands of inhabitants of

the towns of Northern New Jersey in whose behalf the condemnation proceedings now under review have been instituted (p. 190, l. 22 to l. 30). The public use to which the appellant claims the flow of the river has been already devoted would, upon such considerations, necessarily yield to the vastly more important public use to which it is sought to be devoted. Such would be the case, even were there a direct conflict in the two uses, rendering one exclusive of the other. How, then, can the appellant plausibly argue that the portion of the flow sought to be taken is irrevocably dedicated for use in connection with the park, when the testimony in the case heretofore adverted to clearly indicates that the proposed taking will not conflict with the use of the river for park purposes, and will not be a use exclusive of or even trenching upon the public uses to which a part of the flow is now devoted.

If the appellant were the owner of riparian lands used for no purpose whatever, it would hardly be contended that the riparian rights in the flow of the stream appurtenant to such lands were not proper subjects of condemnation by corporations duly vested with the power of eminent domain; for, in such a case, the lands themselves would be subject to such condemnation.

The riparian rights appurtenant to the engine-house lot are in no stronger position. There is not an iota of testimony to show that the flow of the river at that point is devoted to any public use whatever, and, in fact, the only allegation in the notices of appeal touching the public use of the riparian rights appurtenant to the engine-house lot is to the effect that, "the city is a riparian owner and has all the rights of a riparian owner on the Passaic River," and this "is a valuable element to

the city for the use, enjoyment and ownership of said property."

There are further allegations as to the two parks —that the waters of the river form a valuable and important element of the same, and that the existence of the water rights was one of the chief inducements to the City of Paterson in the selection of the sites for parks. But it has been clearly shown that the part of the flow sought to be taken is no more a necessary and important element of the parks, and, therefore, no more devoted to public use, than the riparian rights appurtenant to any lot of land owned by the city not devoted to any use whatever. Once it be admitted that mere ownership by a municipal corporation is not necessarily a devotion to public use, the entire argument for the appellant upon this phase of the case falls.

The appellant cites many cases to show that one municipal corporation cannot condemn the property of another which is already devoted to public use, so as in any way *materially* to decrease, or interfere with, or injure the prior use. In general, we do not dissent from this proportion; indeed, we have quite fully developed it above. The question thus resolves itself largely into one of fact, as to whether this is such a *material* interference with a prior public use as to preclude a subsequent use without an express enactment of the Legislature to that effect. As we have pointed out, the Supreme Court in its finding, which is final, has held that this is not such a use as will destroy the prior use, but is one which can be coincidently enjoyed. In every case cited by the appellant, in which the power to condemn was denied, *the use desired was such that the prior use would be practically wiped out,* and, indeed, in these same cases, the principle which we have developed is laid down

along with the principle asserted by the appellant. This is particularly so in the case of the *Rochester Water Commissioners,* 66 *N. Y.,* 413, *ubi supra.*

The necessary destruction of the prior use in the cases cited by appellant is largely apparent from its brief, but we beg to add a few details from the cases not cited at length, and which we have not cited elsewhere herein.

In *New Jersey Southern R. R. Co.* v. *Long Branch Commissioners,* 39 *N. J. L.,* 28, it appears clearly (p. 29) that "the appropriation of this strip as a public street will necessarily require the removal of the railroad track and the exclusion of the prosecutors from the use of the lands."

In *N. Y., S. & W. R. R. Co.* v. *Paterson,* 61 *N. J. L.,* 408, it appears (p. 410): "The proposed street is laid out nearly across the middle of this yard, and according to the testimony would destroy the yard, so that the company could not use it to advantage."

In re Application of City of Buffalo, 68 *N. Y.,* 167, the matter under discussion was the taking of lands for a canal, which would be "a very serious interference * * * with use by the railway corporations of their premises" (p. 176).

In *Suburban Rapid Transit Co.* v. *New York City,* 128 *N. Y.,* 510, an effort was made to take lands for park uses, which had previously been appropriated by a railroad company for its right of way.

It will thus be seen that in all of these cases there was either a destruction or a serious impairment of the first use, and that they are thus clearly distinguishable from the case at bar.

In *People* v. *Thompson,* 98 *N. Y.,* 6, cited by appellant, an endeavor was made to place pillars in Chatham Street, New York City, to support the Brooklyn Bridge, and this was unsuccessfully attempted to be justified under a law which provides "that said bridge shall not obstruct any street which it shall cross, but that such street shall be spanned by a suitable arch or suspended platform as shall give such height for the passage under the same for all purposes of travel and transportation."

The appellant quotes from the opinion of Vice-Chancellor Emery in the suit of *Paterson* v. *East Jersey Water Company,* 74 *N. J. Eq.,* 49 (*affirmed* 77 *N. J. Eq.,* 588), to show that the diversion of twenty-two million gallons per day was regarded by the Vice-Chancellor as a perceptible diversion out of a total of one hundred and thirty-three million gallons per day. Granted that this is true, as decided by the Court in that case, in order to *compel* condemnation of the city's rights, it does not necessarily follow that that diversion, or a much larger diversion, is such a material diversion as would *prevent* the condemnation of the city's public uses of the character asserted. We do not find that the Vice-Chancellor found that such diversion would interfere in any way with boating and skating, or with the beauty of the stream, upon which public uses rests the city's right to prevent condemnation in the proceedings under review. On the other hand he clearly indicates that he believes the municipalities involved in this suit can condemn the water (p. 103).

The appellant attempts to distinguish the railroad crossing cases cited in the Supreme Court. Counsel emphasize the point that railroad crossings are expressly authorized by the General Rail-

road Act of New Jersey, but omit any mention of the fact that the principle expressed by the statute was laid down by this Court as the fundamental law of the State before the General Railroad Act was passed. (See *Morris & Essex R. R.* v. *Central R. R., ubi supra*). Counsel also state that a railroad crossing can be made without impairing in *any* degree the essential use of the road first constructed. It is a matter of common knowledge that such crossings do impair the use of the first line, but the principle of permitting a crossing is based upon the fact that the interference is not to any material extent. Such is the situation in this case. The diversion will not impair the park uses to any material extent, and it cannot do so as long as kept within the bounds of the condemnation.

Counsel for appellant go into a long argument, on the facts, wherein they say that it is suggested in the opinion of the Supreme Court, and stated in the affidavit of John H. Cook, that the amount of water diverted by Jersey City in dry seasons would be only seven million gallons daily, leaving sixty million still flowing down the river, and attempt to show, by reference to the petition for the appointment of commissioners, that what Jersey City proposes to take is seventy million gallons of water, instead of seven. The objection, of course, applies only in the Jersey City case.

The argument arises from a misunderstanding of the situation as developed by the petition and testimony. The diversion that Jersey City asks to make is at Boonton, from the Rockaway River, which is a tributary of the Passaic, and while indeed it is stated to be seventy million gallons per day, as a matter of fact the diversion from the flow of the river is often much less and runs down

as low as about seven million gallons a day, for the very good reason that that is all the water flowing in the stream at the time. The sixty million gallons, which is mentioned as remaining, includes the water coming down from all parts of the watershed above the property of appellant, and is the amount remaining after all diversions are made, including Jersey City's. The result is just what the Supreme Court found, viz, that the diversion of Jersey City at times of low water is about seven million gallons per day, and it cannot be more, for the right it seeks to condemn is a diversion at Boonton, and therefore no right to divert water from points below where the stream is larger is acquired in the proceedings. If, as urged by the appellant, we consider the low-water flow of the river, at such times the water coming from other portions of the watershed will maintain the stream at the sixty million figure. This will be true even if for some seemingly impossible natural reason the flow of the Rockaway River be increased, so that seventy million gallons per day can be diverted. The water from the other parts of the watershed will come down just the same and the appellant will not be harmed. This being the case, and admitting that it is proper, as the appellant states, to presume that Jersey City will take this amount of water, and assuming that it does take this amount of water, the appellant is still left in the same position, as found by the Supreme Court, because Jersey City can only take water from that portion of the watershed which is tributary to the Rockaway River at Boonton.

We desire to make it plain, however, that Jersey City, to meet its demands, draws from stored waters during the dry season and so is able to obtain the full amount that it requires to supply its in-

habitants. What we are discussing is the low water flow of the river, which is the only portion of the flow with which we are concerned, even according to the argument of the appellant based upon the opinion in the case of *Paterson* v. *East Jersey Water Co.*

The argument of the appellant that the form of the petitions in which the amount of water sought to be stated is an average quantity, instead of having an exact limit, leaves the respondents in a position to divert large quantities of water at certain times when the water is at its lowest ebb, loses sight of the facts in the case, as shown by Cook's testimony (p. 348).

The total amount of water that is being condemned for diversion at Little Falls at the present time is 19.75 million gallons per day, or 7.65 million gallons more than the daily average diverted in the year 1910. In that year of extreme low flow at a time of the lowest rainfall in twenty-five years, there was still sixty million gallons per day passing through the river opposite Paterson, in the week of lowest ebb (p. 348, l. 27), and it further appears from Mr. Cook's testimony that the total diversion which present municipalities may make under these condemnation proceedings in addition to the total diversion that it is possible for the City of Newark to make would have reduced the flow to about fifty million gallons per day (p. 349, l. 9). It thus appears that if these respondents have in mind the production of any such result as the appellant fears, they will have to increase the carrying capacity of their mains to three and one-half times the total average amount sought to be diverted in order to take all the water in the river, even at the very lowest stage of the river, which, of course, occurs only once in many years.

The absurdity of this position is apparent. It is well known that slight fluctuations occur in the draft of water at various times during the year, but as a rule such fluctuations amount to not more than 25 per cent., or in exceptional cases as much as 50 per cent. Even supposing such a fluctuation to amount to 50 per cent., the draft at times of low water would amount to no more than ten million gallons above the average, which would still leave forty million gallons flowing down the stream. But a reduction of forty million gallons per day is very unlikely, for Mr. Cook's figures are all based upon the actual diversion made at the time of low flow in 1910, and therefore any excess of diversion likely to occur at such a period was actually taking place and accounted for in his figures. An extremely liberal figure to allow for this fluctuation, when the basis of Mr. Cook's figures is taken into consideration, is probably 15 per cent., which might make a reduction of the estimated future low water flow to forty-seven million gallons per day.

Counsel then proceed to assert that the added water diverted by these municipalities "would be of great use in sustaining the flow of the river if it were allowed to come down." They cite no proof to sustain them in this contention. On the other hand, the engineer of the S. U. M., who has had charge of the works since 1897, testified (Case, p. 349, l. 14) that "the ordinary elevation of the water would in no wise be affected by the diversion."

Counsel then quote an English case, cited in *Paterson* v. *East Jersey Water Company,* in an endeavor to impress upon this Court the fact that the mentioning of the great average run-off of the stream, amounting to nine hundred and fifteen

million gallons per day, is a matter of no importance. We do not claim, nor has the Supreme Court in its opinion stated, that the average run-off governs in the circumstances, but it seems to us proper that it should be mentioned in connection with the other facts concerning the flow of the stream, to give an adequate conception of the character of the diversion in all its relations, and of what a small portion of the year the dry season consists.

Boating and Fishing are not Public Uses.

It is nowhere suggested in the case that the public uses to which the flow of the river opposite the parks is said to be devoted are other than pleasure boating, skating and adornment. In such a case, we challenge the contention that the flow is devoted to a public use at all. It is perfectly clear that the Legislature could not have authorized the appellant to condemn the flow of the river for such uses independent of an ownership in riparian lands to which such uses may be appurtenant as riparian rights. The Constitution of the State, Article I, Par. 16, prohibits the taking of private property for anything but public use, and under that article it has been held by this Court that the right of fishing in an inland lake cannot be separated from the ownership of the lake, and taken under the power of eminent domain, because the acquiring of such a right is not for the purposes of public use, which implies utility, but for mere purposes of sport or pastime. Considering the question of what constitutes public use, this Court, per DIXON, *J.*, said, in *Albright* v. *Sussex Co. L. and P. Com.*, 71 *N. J. L., pp.* 303, 306:

> "I turn then to the consideration of the matter in view of the rules which have been

> laid down as aids in determining what is a public use within the meaning of this provision of the constitution. A definition of the phrase has not, I think, been judicially attempted, but among the statements of the doctrines to be found in the books, that of Professor Cooley seems most likely to subserve the general welfare for which the constitutional power is delegated, and at the same time to protect private property, which is equally a ward of our constitution. He says (Const. Lim., 553): 'The reason of the case and the settled practice of free governments must be our guides in determining what is, or is not, to be regarded as a public use, and that only can be considered such where the government is supplying its own needs, or is furnishing facilities for its citizens in regard to those matters of public necessity, convenience or welfare which, on account of their peculiar character, and the difficulty of making provision for them otherwise, it is alike proper, useful and needful for the government to provide'"

In view of the foregoing decision and the grounds upon which it is based, it would not seem possible to class pleasure boating and skating and adornment for esthetic effects, as public uses within the meaning of that term as applied to the law of eminent doman. If they are not public uses, then it follows that none of the rights which the appellant claims are already devoted to public uses are, in fact, so devoted, and the objections to the condemnation proceedings upon that ground are without validity.

POINT II.

Contracts for the construction or purchase of water supply plants are not necessary to enable the respondent municipalities to condemn the water rights of the appellant.

Appellant, in its brief, lays great stress upon the fact that neither of such municipal respondents, with the exception of Jersey City, "possesses, owns or operates any water supply plant, works or source of supply," or has entered into any contracts for the construction or acquisition thereof.

While this is true, it is only so when strictly applied to supply works as distinguished from the distribution works used in the furnishing of water. As a matter of fact, *all the condemning municipalities own the distribution pipes in their streets, and the appellant's objection is confined merely to the supply works which conduct the water in bulk from its source to the local municipal plants.*

We beg leave here to state the facts that show the general nature of the water works supplying all the respondents except Jersey City, which now owns its works.

There is one pumping station which is located on the Passaic River at Little Falls. The water is first filtered and then forced through a main which extends in a general southeasterly direction from Little Falls, through Essex County and across the Passaic River to the junction of Belleville and Kearny Avenues in the Town of Kearny, in Hudson County, a distince of about ten miles. This main connects with a high reservoir on Garret Mountain, near Great Notch. The pumping plant

and filtration station at Little Falls are owned by the following companies:

Montclair Water Company, 1-8 undivided share.

Acquakanonk Water Company, 2-8 undivided shares.

East Jersey Water Company, 2-8 undivided shares.

Passaic Water Company, 3-8 undivided shares (Case, p. 184, l. 1).

The main leading from this plant which we have mentioned, is also owned in shares, by the companies which own the pumping plant, for varying portions of its length, excepting the lower part that crosses the Passaic River into the Town of Kearny, which is operated solely by the East Jersey Water Company. The pipes of the companies supplying water in Essex County connect with this main at convenient points, and the remaining water is finally delivered to the New York and New Jersey Water Company and the New Jersey Suburban Water Company at the corner of Belleville and Kearny Avenues. The works at Little Falls are operated at the present time by the Montclair Water Company, the expenses of operation being contributed by the several owners (Exhibit D-35, p. 331). Prior to December 31, 1910, they were operated by the East Jersey Water Company.

The City of Bayonne.

The City of Bayonne was chartered in 1869 by a special act of the Legislature (P. L. 1869, p. 371), which empowered the Council of said city to provide "water for extinguishing fires." The power

of condemnation, however, is directly conferred upon all cities by the condemnation acts of 1891 and 1895 (Comp. Stat., p. 2194, Sec. 31; p. 2198, Sec. 38).

The Act of 1891 empowered the proper municipal authority of any city to acquire "lands" for any lawful public use or purpose. The term lands includes water rights; but, to put the matter beyond cavil, the Act of 1895 was passed, expressly conferring upon any city power "to acquire land, water, water rights or other property within or without said city for the purpose of supplying said city with water." We do not understand that the appellant disputes the right of Bayonne to condemn water rights, but only the exercise of the right under the circumstances.

The City of Bayonne owns its distribution system and has furnished its citizens with water since 1885 at least (Case, p. 164, l. 36 *et seq.*; p. 165, l. 1 *et seq.*). Prior to 1894 it purchased water from Jersey City, which at that time was diverting water from the Passaic River at Belleville. The supply became impure and inadequate, and consequently Bayonne set about providing an improved supply (p. 163, l. 33, *et seq.*). To enable it so to do, the city, upon September 6, 1894, entered into a contract with Messrs. W. DeH. Washington and T. A. Beall (Defendant's Exhibit D-1, p. 211), in which they agreed to furnish or cause to be furnished to the City of Bayonne, by means of a substantial system of water works, to be operated by them or their assigns, an ample supply of pure and wholesome water from available water sources. In aid of that contract Bayonne agreed that in case it should be found that any power or rights possessed or that might be acquired by it by the condemnation of land or water rights,

might be advantageously used or exercised for the purposes of said contract to put such powers or rights in force, or permit the said Washington and Beall or their assigns so to do in the name of the City of Bayonne, but at the expense of Washington and Beall, or their assigns (p. 219, l. 15 to 29). The contract further contained an option in the City of Bayonne to purchase the works (p. 220, l. 33).

This contract was upon April 20, 1895, assigned by Messrs. Washington and Beall to the New York and New Jersey Water Company, which now furnishes the City of Bayonne with water. The company built a line of pipe about twelve miles long (see testimony of T. A. Beall, p. 164, l. 34), to a point in the Town of Kearny, where it connects with the pipe line of the East Jersey Water Company, whose works we have already described.

Upon July 12, 1895, the New York and New Jersey Water Company, in order to carry out its contract with Bayonne, entered into an agreement with the East Jersey Water Company wherein the East Jersey agreed to furnish them the necessary water to fulfill the requirements of the contract with the City of Bayonne (Exhibit D-5, p. 237). And the New York and New Jersey Water Company further agreed, so far as they might be able, to put into force any power or rights of condemnation possessed by Bayonne which might be used for the purpose of the contract. The East Jersey Water Company began to supply water shortly thereafter, and since about 1900 has been supplying water for Bayonne from the present plant at Little Falls (p. 163 *et seq.*). This contract is still in force, and under it the New York and New Jersey Water Company has a right to secure water from the East Jersey Water Company for the term of the Bayonne contract (p. 241, l. 35 *et seq.*).

The Bayonne contract and its assignment was ratified in 1904 and 1909 (see Exhibits D-3, p. 223, and D-4, p. 235), and the term thereof extended to 1929, together with other modifications; a further change was made in 1911, after the commencement of these proceedings, by which certain provisions relating to supplying water to Staten Island were eliminated (D-7, p. 244).

In support of these contracts the Board of Councilmen of the City of Bayonne, upon October 18, 1910, passed a resolution which declared "that the city hereby determines to acquire the right to divert an average daily amount of eight and one-half million gallons of water per day in each year until October 6, 1929, at Little Falls, on the Passaic River, the same being necessary for the purposes of said contracts and for the use of the City of Bayonne, now to be supplied, and, if unable to agree with any of the owners of the riparian lands for the said right of diversion, to condemn said right against such of the owners for the public use aforesaid" (p. 243, l. 16 *et seq.*). These condemnation proceedings were begun under that resolution.

Upon May 18, 1911, the East Jersey Water Company and the New York and New Jersey Water Company entered into a further agreement reciting the facts that the water furnished had been diverted from Little Falls for more than ten years, and that Bayonne had passed a resolution for condemnation on October 18, 1910, and designating the source from which the water furnished under the contract of 1895 should be taken as the Passaic River at Little Falls, and agreeing that the compensation paid for the delivery of water should not be for water sold, but for services rendered by the East Jersey Water Company as agent for the New York and New Jersey Water Company in

pumping and delivering the supply and for the use of its mains and property, and agreeing that the water rights condemned should become the property of the City of Bayonne and used for its water supply (p. 248, l. 12 *et seq.*). The defendant City of Bayonne is now being furnished with water under these agreements.

The Town of Harrison.

The Town of Harrison owns its distribution system, and was formerly supplied by Jersey City from the Passaic River through its works at Belleville. This was done as early as 1886 (p. 169, l. 7). When, however, the Jersey City supply became polluted, Harrison finally turned to other sources, and on September 15, 1903, entered into a contract with the New Jersey Suburban Water Company, whereby said company agreed to furnish the town with an entire and adequate supply of water for fifteen years, with an option to the town to extend the contract for a period of ten years (Exhibit D-14, p. 273). The contract also contained a covenant on the part of the town to use its powers of condemnation, if necessary (p. 274, l. 32).

The Town of Harrison did thereafter, on June 24, 1908, extend said contract for the period of ten years, and is condemning for the extended period (Exhibit D-16, p. 278). The New Jersey Suburban Water Company, on July 1, 1903, had entered into a contract with the East Jersey Water Company to procure water from the East Jersey, and since that time has been taking water from that company under that contract (Exhibit D-15, p. 276).

The Town of Harrison, in support of its contract, on October 18, 1910, passed a resolution determin-

ing to acquire the right of diversion, by condemnation if necessary, of an average daily amount of two million gallons of water per day in each year until August 16, 1929, at Little Falls on the Passaic River, the same being necessary for the purposes of the contract with the New Jersey Suburban Water Company and for the use of the Town of Harrison for a public water supply (Exhibit D-17, p. 280, l. 33). These proceedings were thereafter begun by direction of that resolution.

The East Jersey Water Company and the New Jersey Suburban Water Company upon May 18, 1911, after the passing of the resolution by the Town of Harrison, and before the commencement of these proceedings, entered into an agreement (Exhibit D-18, p. 282), reciting the fact that the water supplied had been diverted from Little Falls for more than ten years, and that the Town of Harrison had fixed Little Falls as the point for taking the water supply of said town (p. 282, l. 26), and agreeing that the source for the Town of Harrison should be from the Passaic River at Little Falls, as designated for such supply, and that the East Jersey Water Company should act as the agent and employee of the New Jersey Suburban Water Company to pump and deliver the required amount of water, and to receive its compensation for its services for so doing, but not for water sold, and that any water rights taken by said condemnation for the supply of Harrison should be the property of the town and used for its water supply. The Town of Harrison was, at the institution of these proceedings, and at the present time is, receiving its water supply under these contracts.

Town of Kearny.

The Town of Kearny owns its distribution system and, in manner similar to the Town of Harrison, received its water supply from Jersey City—the Town existing at that time as the Township of Kearny, which also included the Borough of East Newark (p. 168, l. 16 *et seq.*).

In 1895, the Township of Kearny entered into a contract with the East Jersey Water Company for an entire and adequate supply of water (Exhibit D-9, p. 251, l. 10). No water was delivered under this contract for many years, but the contract was kept alive (p. 256, 257, 258), and was finally assigned to the New Jersey Suburban Water Company and New York and New Jersey Water Company, July 1, 1903 (Exhibit D-10, p. 260).

In the meantime, in 1898, the Town of Kearny had been formed under the Town Act of 1895, and thereafter, in 1904, it entered into a new contract with the New York and New Jersey Water Company and the New Jersey Suburban Water Company ratifying the contract of 1895, between the East Jersey Water Company and the Township of Kearny, and the supplements thereto, extending the period for the taking of water under said contract to December 29, 1920 (p. 264, l. 15), and making other modifications thereof. The contract of 1895, which was thus ratified in 1904, contains a covenant on the part of Kearny to use its powers of condemnation, if necessary, in the furtherance of the contract. The Town of Kearny is now receiving and since 1903 has received its supply of water under this contract (p. 170, l. 33).

The Town of Kearny, upon October 26, 1910, passed resolutions similar to Harrison's for the condemnation of 2.3 million gallons of water per day in each year until December 29, 1920, at Little

Falls on the Passaic River, reciting that the same were necessary for the purposes of said contract and for the use of the Town of Kearny for a public water supply (p. 268, l. 28 *et seq.*). These proceedings were begun under the direction of that resolution.

Thereafter, upon May 18, 1911, and before the beginning of these proceedings, the East Jersey Water Company and the New York and New Jersey Water Compaany and New Jersey Suburban Water Company entered into an agreement similar in form to the agreement of like date entered into with respect to Bayonne and Harrison (Exhibit D-13, p. 269), since which dated the Town of Kearny has been receiving its supply of water under that agreement.

The Borough of East Newark.

Prior to 1898 the Borough of East Newark was part of the Town of Kearny, and it has generally been supplied with water in a similar manner. Upon August 31, 1906, it entered into a contract with the New Jersey Suburban Water Company (Exhibit D-19, p. 285), for a supply of water for a period of five years, which water was supplied from the same source and under the same contract between the East Jersey Water Company and the New Jersey Suburban Water Company that the supplies of Harrison and Kearny were furnished. The period for this condemnation has expired, and the Borough of East Newark is now receiving its water supply without a written contract (p. 175, l. 36 *et seq.*).

Upon March 18, 1911, the Borough passed a resolution to condemn 600,000 gallons of water daily

in the Passaic River at Little Falls (D-20, p. 288), and thereafter, upon May 18, 1911, the East Jersey Water Company and New Jersey Suburban Water Company entered into a similar agreement to those mentioned above with respect to the nature of the services performed (Exhibit D-21, p. 289).

The Borough of Glen Ridge.

The Borough, upon December 1, 1910, passed resolutions determining to acquire the right of diversion of 350,000 gallons of water daily until April 1, 1926, from the Passaic River at Little Falls, and authorizing condemnation proceedings to secure said diversion right (Exhibit D-32, p. 324). At that time the Borough was being supplied by contract from the Orange Water Company, which was a specially chartered corporation (P. L. 1865, p. 936), and which owned the distribution pipes in the Borough of Glen Ridge, which was formerly part of the Township of Bloomfield. This company purchased the water supply of Glen Ridge from the Montclair Water Company (p. 188, l. 27 *et seq.*), under a contract between these companies, which expired in 1905, but which had been renewed from year to year (Exhibit D-30, p. 317). Thereafter the Borough acquired the waterworks of the Orange Water Company within the Borough, and operates these works (p. 189, l. 6). It is now receiving water from the Montclair Water Company under a contract made by letter (Exhibit D-31, p. 321). The passage of the resolution is thus seen to be a part of the plan of the Borough to secure a proper water supply for itself, which it has since carried out in another respect by the purchase of the distribution system in its streets.

The general power to contract for the furnishing of a water supply in bulk is found in "An Act to authorize any of the municipal corporations of this State to contract for a supply, or a further or other supply of water therefor," approved April 2, 1888.

The Act is found in Comp. Stat., page 364, Section 669. It empowers any municipality, through its board having control of the water supply, to contract with any contractor "for the obtaining and furnishing of a supply, or a further or other supply of water to such municipal corporation for the purpose of extinguishing fires, and for such other lawful uses and purposes as may be deemed necessary or convenient"; and the Act provides further "that such contract may contain an option for the acquiring by such municipal corporation" of the waterworks. Under this Act of 1888 contracts were made for the supply of the City of Newark with water, and for the supply of the City of Jersey City, at prices per million gallons, and it may be noted here that the appellant does not question the right of Jersey City to condemn water rights for the furtherance of said contract. The Act of 1888 does not in terms authorize the taking of water from streams, but such authority must be inferred since physical conditions in New Jersey are such that our large cities can be supplied from streams only, and because in a later act, passed in 1901 (Comp. Stat., 3648, p. 673), the authority to contract for stream water is distinctly recognized and authority is given to municipalities to change a contract for a supply by new provisions as to area of watershed or proportion of flow to be impounded.

The decisions under this Act of 1888 are numerous, and include several where some of the very

contracts in aid of which these condemnation proceedings are brought, were sustained.

Slingerland v. *Newark*, 54 *N. J. L.*, 62, 66, is the most important of these cases. There it appeared that the East Jersey Water Company made a contract with Newark, under the Act of 1888, to deliver water from the Pequannock for a term of years into the Newark reservoir, at a price per million gallons, through a main with a capacity of fifty million gallons per day. The company reserved the right for eight years to sell water from the mains in excess of twenty-seven and a half million gallons a day, to customers outside of Newark. The City had an option to buy the whole plant at the end of the term of eight years. In building the works, it became necessary to condemn waterpowers below the point of diversion, and land for the main, and by the contract the city had agreed that the company might use the power of the city to condemn. On certiorari, to review a proceeding to condemn for right of way, the objection was raised that the taking was for the benefit of the private company. The proceeding was sustained, and it was held that a contractor for a public work was entitled to the exercise of the power to condemn so far as appropriate or necessary to the performance of his contract.

In *Brady* v. *Bayonne*, 57 *N. J. L.*, 379, there was a writ of certiorari to review the very contract (since extended) under which the City of Bayonne is now receiving water from Little Falls. The Bayonne charter merely confers power to provide water for extinguishiing fires, but it was held that the Act of 1888 extended the power of the city as to water "to such further public purposes as fell within the proper sphere of municipal trusteeship."

In *Acquackanonk Water Co.* v. *Passaic,* 65 *N. J. L.,* 476, the General Act of 1888 is held to supersede all special charter provisions conferring power to contract for water supply.

In *Passaic Water Company* v. *Paterson,* 65 *N. J. L.,* 472, the Act of 1888 is critically considered, and held to authorize a contract for the delivery of water to a municipal corporation, and not directly to its inhabitants.

In *Livermore* v. *City of Millville,* 71 *N. J. L.,* 503, a contract under the Act of 1888 with that city was held valid.

In *Jersey City* v. *Kearny,* 72 *N. J. L.,* 109, there was a certiorari to review the very contract (since extended) under which that town is now receiving water pumped at Little Falls by the East Jersey Water Company.

The Court cites the General Municipal Act of 1888, and also the General Town Act of 1895 (Comp. Stat., 5533, Sec. 380), and holds that either of these acts authorized the contract.

In *Jersey City* v. *Harrison,* 72 *N. J. L.,* 185, 192, the contract made under the authority of the Act of 1888, under which the town is now receiving water from Little Falls, was affirmed in this Court.

The foregoing authorities establish that the Act of 1888 confers powers as follows:

First.—The Act confers power on every municipality to contract for water at wholesale for distribution by the municipality to its inhabitants and customers.

Second.—The Act also confers power on any contractor, whether a natural person or a corporation, to make and carry out such contracts.

Third.—The contractor is entitled to the benefit of the powers of appropriation vested in the municipalities, for the taking of lands and waters, so far as necessary or convenient to the performance of his contract.

The provision contained in the Act of 1888 *authorizing "an option for the acquiring by such municipal corporation of the land, water and water rights for such supply on terms to be fixed in said contract," is merely permissive, and does not bind the defendant municipalities to contract for a special source of supply and waterworks, in order to exercise their powers of condemnation in obtaining a supply of water.*

The act does not specifically empower a municipal body having control of the water supply to make an agreement for the building of works, but broadly authorizes the making of a contract, "for the obtaining and furnishing of a supply or a further or other supply of water for such municipal corporation" (Comp. Stat., 3647, Sec. 669, l. 9 *et seq.*). There is no provision in the act that the contract must be for the construction of a waterworks and a plant, or the procuring of a source of supply to be owned by the municipality.

But if we admit that it is necessary to have waterworks, yet, using the language of the Supreme Court, we can do so "without conceding that anything more than a distributing system is required. If the municipality has a distributing system so that the water and water rights which it

acquires can be made available for the benefit of its citizens, it can make no difference whether it owns its own reservoirs or not. It must be enough that it owns its distributing system" (Case, p. 144, A-69, l. 7 *et seq.*).

The Act of 1888 is a general act affecting all municipalities, and provides a convenient means for procuring supplies of water by comparatively small municipalities, like those under consideration.

Their location is such that it is necessary to go a considerable distance to secure a proper supply of water, in the case of Bayonne something like twenty miles. This must be done in some manner, as a proper water supply is vital to the health of the community. The testimony shows that this is the only adequate and safe source of supply for these municipalities (p. 190, l. 20 to 30).

The construction of works of the character necessary to convey this water from Little Falls to its distribution point in Hudson County, is necessarily expensive, and it would be a great hardship on the small municipalities if each one had to build a separate pipe line into the upper Passaic watershed, necessitating a crossing of the Passaic River, a right of way some ten miles long, and a pumping plant. It would entail great additional expense to thus duplicate the works, and increase very greatly the cost of operation and the interest charges thereon. With municipalities located as these are, it is a practical necessity to devise some method of co-operating for the purpose of securing an adequate supply of water.

This was recognized by the Supreme Court in the *Kearny* case where it says (Case, p. 144, A-69, l. 14, *et seq.*) :

> "To force municipalities which are as close together as they are in the Passaic Valley to have each its own pumping station, its own reservoir, and its own pipe line from Little Falls to the municipal boundary, would be to compel a useless waste of public money. Harrison, Kearny and East Newark, for example, are virtually one compact city."

Counsel for the appellant go into the details of the *Slingerland* case at great length, and set forth wherein the facts differ from those under consideration. They go on to show that if these municipalities are allowed to condemn under the contracts in question, it will present a case where a number of municipalities have acquired the right to divert water as against the City of Paterson without a scintilla of other property rights connected therewith. We submit that the situation of the defendants is exactly what would have been the position of Newark if the contract had not contained an option to buy the works. The statute says the contract *"may"* contain an option for the purchase of the works. Suppose the Newark contract had been the same in all respects except as to the option to purchase contained therein, and that it then became necessary to condemn water rights to enable the contractor to fulfil that contract, *i. e.,* to supply the City of Newark with water for a period of 25 years. Does the appellant contend that such an action could not be maintained? In the case of *Slingerland* v. *Newark,* 54 *N. J. L.,* p. 62, the Court takes up the objection raised as to the event of a failure on the part of the City to exercise the option, and says, p. 67:

> "But the same uncertainty attends almost every condemnation; after the taking, some-

> thing may occur to prevent the actual user. The common effect of such an occurrence is that the land reverts to the prior owner. Such would be the consequence here."

This uncertainty connected with the exercising of an option is a greater infringement of private rights than the taking of certain property for a certain definite length of time, as is sought in the present instance. The defendant municipalities have absolute contracts by which they can secure the water they are seeking for the length of the condemnation periods. In the case of an indefinite option, something is being condemned which may be perpetually used, or possibly only for a short time.

The prosecutor makes a distinction between contracting to be supplied with water and for a water supply. A reference to the statute of 1888 (Comp-Stat., 3647) will show that the authority is given to contract for a supply of water, and the option clause at the end of the statute which speaks of the purchase of "land, water and water rights" for such supply must necessarily refer to the purchase of definite property, if such an option is to be enforced at all. There is nothing in the option clause which restricts or limits the body of the statute to contracting for a water supply with an option instead of a supply of water.

The Bayonne contract does contain an option for the purchase of the works of the New York and New Jersey Water Company. The works at present consist of a pipe line. The contract does not place a duty upon the contractor to build or acquire supply works other than the pipe line. The prosecutor also calls attention to the provision in the contract between the East Jersey Water Company and the New York and New Jersey

Water Company for the Bayonne supply which provides for the use of the excess capacity of the Bayonne pipe line by the East Jersey Water Company. It should be noted, however, that this contract was made to carry out the provisions of the contract with the City of Bayonne, a copy being annexed thereto (Case, p. 237, l. 37), and that the option of the City to purchase the pipe line is thus recognized. The privilege of using the line was also made subject to the uses it was to be put to by the New York and New Jersey Water Company. This is a similar use to that made of the excess capacity of the Newark pipe line by the East Jersey Water Company and approved in the *Slingerland* case.

Bayonne's contract with Washington and Beall was passed upon and sustained in *Brady* v. *Bayonne,* 57 *N. J. L.,* 379, where the Court, by Justice GARRISON, held, p. 380:

> "The Act of 1888 expressly empowers any municipal body having charge and control of such water supply as may exist to contract for a further and other supply. It clearly contemplates an extension of power in respect to the general subject of water, not alone as to its quantity and quality, but also for such other and further public purposes as fall within the proper sphere of municipal trusteeship. Under this statute we think that the Board of Councilmen of the City of Bayonne is empowered to contract for a water supply for general purposes."

The Harrison contract was also affirmed on certiorari in this court in *Jersey City* v. *Harrison,* 72 *N. J. L.,* 185-192; and the same court also affirmed the judgment in the suit on the contract for

water supply—*Suburban Water Co.* v. *Harrison,* 72 *N. J. L.,* 194.

The objections raised to the form of the contracts for the delivery of water because the contractors have agreed to sell the water to a municipal contractor at a price per million gallons, must be considered in connection with the further provisions of the principal contracts in question, viz, Bayonne, Kearny and Harrison, in all of which provision is made for putting into effect, if necessary, powers of condemnation resting in the municipalities. This is a direct recognition in the contracts of the fact that the municipality is the diverter of the water and that its rights are the basis of the contract. The comment of Vice-Chancellor Stevens in the case of *Attorney-General* v. *East Jersey Water Company,* 78 *N. J. Eq.,* p. 341, referred to by the prosecutor that, "It is not supposable that Washington and Beall intended by so expressing themselves to lay claim to ownership of the water" we submit, is borne out by the recognition in the contract of the City's powers to condemn.

The appellant takes particular exception to the clause in the contract between the New York and New Jersey Water Company and the East Jersey Water Company, which states that the East Jersey Water Company "is the owner of numerous sources of water supply and is willing and desires to sell water deliverable from the same." From a careful consideration of what the word "sources" means, it appears that it has regard only to the ownership of lands where water may be pumped or diverted; it has no reference to the ownership of the water. When employed in its proper sense the word "sources" is correctly used to state the actual facts as they existed in connection with the East Jersey Water Company. At that time that company did

own various tracts of land and possessed various rights adjacent to streams where water could be diverted. An examination of the rest of the sentence criticized, viz., the sale of water, shows that all that the company desired to sell was "water deliverable." The word "deliverable" modifies the selling of water and makes it clear that the company did not have in mind selling anything which it had no right to sell. The water was not deliverable for purposes of sale except as it was diverted under the powers of the consuming municipalities. The argument of the appellant against what counsel assume to be an effort to assert ownership wrongfully in the water does not take into account the true import of the word "deliverable." The meaning of this word is borne out by the rest of the contract, which provided for the exercise of the powers of condemnation, possessed by the City of Bayonne, when necessary to carry out the terms thereof.

The facts under which the supply is furnished to the Borough of East Newark and Glen Ridge have changed since the institution of these proceedings, and the contracts under which they are supplied are of a temporary and informal nature.

The contractors can secure no rights to their own uses through condemnation proceedings vesting rights solely in the parties condemning.

It must be noted at the outset that these proceedings are brought in each of these cases in the name of the municipality having power to condemn and the condemnation is sought to be made for the use of the party condemning. There is no effort made in any of the petitions to attempt to procure a supply of water for the use of any contractor. The proceedings are merely in aid of contracts to

supply, and the water is sought to be condemned for the use of the moving party. It is difficult to see how water taken under these proceedings can be used other than for the purpose for which it is condemned. The contracting water companies merely act as carriers transporting water from the point of diversion to the municipal customers. Counsel for the appellant stated at the hearing on the making of the orders, that although the rights sought to be condemned will go to the condemning party, yet he inferred that it would make no difference whom the technical title belonged to as long as the contractor paid the cost of the proceeding. We submit this argument is utterly without foundation in law. In these cases the contractors have contracted to do a certain lawful thing, and in connection therewith they have agreed to assume, among other things, the expense to which the various municipalities may be put in securing the necessary rights to enable the carrying out of the contract. This is a proper subject of contract as one of the essential parts in the procuring of a water supply. Counsel did not contend that it is not a proper subject of contract in the case of Jersey City, by which city proceedings are being taken in a similar manner. We submit that if a contract made under the Act of 1888 is valid for the furnishing of a water supply under the circumstances under which these municipalities are supplied, that the power of condemnation can be used for the benefit of the recipients of the water, and that no right will be acquired thereunder which can be used by the contracting companies other than in the furtherance of their contracts with the condemning municipalities and for their benefit.

The opening of streets has brought up the question of the effect of payments made by private parties of the cost of proceedings for the taking

of property for public uses. The case of *North Baptist Church* v. *Orange,* 54 *N. J. L.,* 111, is a case in point; there a property owner offered to pay $1,000 towards the opening of the street which would specially benefit him more than others. It was therein contended that this offer was calculated to influence the judgment of the Council in its determination whether the street should or should not be opened. The writ was argued before Justices DEPUE, DIXON and REED, and in delivering the opinion of the Court Justice REED said (p. 115):

> "The offer merely introduces a new factor in the conditions under which the Common Council is to consider the propriety of opening the proposed street, but it leaves that body, untrammeled by any bribe, directly or indirectly, in view of all the conditions and with regard to the best interests of the public, to exercise that discretion with which it is invested by the legislature."

See also *Denham* v. *County Commrs.,* 108 *Mass.,* p. 202.

The case of *Barr* v. *New Brunswick,* 67 *Fed.,* 402, was a case where the opening of a street in the City of New Brunswick was sought to be enjoined because the Pennsylvania Railroad Company had agreed to pay the expense of taking complainant's property by the city through the power of eminent domain. The Court held that this was a proper exercise of the power of eminent domain, although greatly to the railroad's interest, and says (p. 403):

> "That the railroad will be benefited by the proposed action of the Common Council,

> and that it has agreed to pay all necessary expenses arising from the vacation and laying out of the public streets in question, cannot affect the matter. The affidavits submitted by defendants clearly show that the public interest will be promoted by the proposed action, and, if that be so, it is perfectly proper to invoke the right of eminent domain, although private interests may also gain largely."

In the case of *Slingerland* v. *Newark,* 54 *N. J. L.,* 62, above referred to, Judge DIXON points out the effect of a condemnation of this kind. He says (p. 66):

> "The object of the condemnation, and its effect will be, *to vest the land in the city* to be used for its water supply. For this purpose, and for this only, does the statute transfer the title to the city and authorize it to enter upon and take possession of the land. That the same purpose of obtaining a water supply is in part to be accomplished by another municipal power, that of contracting with the water company, does not seem to be a good reason for denying the right to exercise this power. Both powers are granted for the same end; both are convenient for attaining that end. It is reasonable that they should be exerted therefor conjointly, as well as separately, if the conditions require it. * * * Nor is it as though the company were seeking to exercise the power by delegation from the city, and so *to acquire the land for itself.* Then would be pertinent that line of decisions which deny the right of the legislative grantee to delegate its authority to another. But

> under present circumstances the doctrine of *Ten Broeck* v. *Sherrill,* 71 *N. Y.,* 276, is more apt, that the power to condemn is not impaired by the fact that the public has contracted with a stranger for the thing which it is trying to appropriate, the stranger being unable otherwise to fulfil his contract."

It must be noted in connection herewith that the New York and New Jersey Water Company and the New Jersey Suburban Water Company have contracted with the East Jersey Water Company to the effect that the East Jersey Water Company shall merely act as agent of the other companies for the pumping, filtering and conveying of water, and that the water rights which may be condemned shall belong to the condemning municipalities. These contracts were entered into before the commencement of the Harrison and Kearny proceedings, and after the commencement of the Bayonne and East Newark proceedings. If, then, as the prosecutor admits, the contractors who are furnishing the Hudson County municipalities could themselves build complete works for the supply of those towns, and would have no interest in the water rights acquired by the municipalities, other than as in aid of their contracts, how can they or their agent, the East Jersey Water Company, obtain any further use of the water diverted under the present arrangement, particularly when it appears that they have agreed that the water shall be used to supply the condemning municipalities only? The operations of those companies in supplying the Hudson County municipalities have been from the start as set up in the contracts made in May, 1911, and could not have been otherwise, but they have now remedied the objections which have been made to the form of the contracts.

It is an important feature of these supplies that in every case the water is supplied and delivered to a municipal corporation which itself owns its distribution system and sells water to its inhabitants. The municipality is itself necessarily an active participant in the diversion from the Passaic River. If it did not open its water gates and draw the water into its own mains, the diversion at Little Falls would instantly cease. The municipality itself is the diverter, and the water companies are merely agencies supplying the machinery through which the municipality accomplishes the diversion, and the price per million gallons paid to it is the compensation for the use of the machinery.

Power to Assign Contracts.

The objection is raised that the diversion must be made by the immediate contractor who contracts with the city. The statutes do not so provide. If the Act of 1888 had never been passed, a city could exercise its power to acquire water by the method of contract, just as it may pave streets, either by one large contract or by means of the many small contracts required where the Street Commissioner and his gang do the work. Whether a municipal contract shall be assignable is left to the municipal discretion.

The Bayonne contractors agree that they will furnish *or cause to be furnished* water by works operated by them or their assigns, and the city agrees to receive water from them or their assigns (p. 211, l. 23 *et seq.*).

The Kearny contract is made by the parties *for themselves, their successors and assigns* (p. 251). There has been no assignment of the other contracts.

Now the three contracts with Bayonne, Kearny and Harrison have all been sustained on certiorari, and in the cases of Bayonne and Kearny there had been assignments. Furthermore, Bayonne and Kearny ratified the assignments by later contracts.

Power to Employ Sub-Contractors.

The objection is raised that here the pumping is by a sub-contractor and that the power to take the water from the river must be exercised by the contractor in person.

In the case of the four Hudson County towns, the contractor with the City has a sub-contract with the East Jersey to pump and filter the water and convey it through mains owned by the East Jersey as far as North Kearny.

If the right to assign the whole contract may be exercised, all the more can the contractor employ sub-contractors to aid in the performance. Indeed, the nature of the service contracted for is such that it cannot be executed except through sub-contracts. In order to divert water the contractor must sub-contract with some riparian owner to give him access to the stream. He must also sub-contract with all riparian owners who are injured by the diversion, to obtain their consent. Here, the East Jersey is not only a riparian owner, but happens to own a fine water power, which is useful for pumping, and a large filter and a pipe line running part way toward the city to be supplied.

Why may not the contractor agree not only to pay this riparian owner for the diversion, but also to hire him to pump and filter and use his main as far as it will go to transport the water on its way. The East Jersey does not thereby exercise

any right of diversion, but does part of the work for one who has that right. The contractor must hire someone to do the work; he is not limited to hiring men by the day or month. He may, if he likes, hire a riparian owner, and put the hiring in writing and pay at a rate per million gallons.

So far as any riparian owner injured by the diversion is concerned, if he consents to a diversion for Bayonne supply, it makes no difference to him through what chain of contractors and sub-contractors the city gets its water; if he does not consent, his right must be taken by some party having the right to condemn, and that is the city alone.

Delegation of Choice of Source.

There is a further objection raised by the appellant's argument, namely, that the municipalities have not in their contracts designated the source of supply as the Passaic River and cannot delegate the selection thereof. To this we think there are several replies: 1st, the objection was raised to the Bayonne contract, and the contract was held valid; 2nd, the Jersey City and Newark contracts, and the Kearny and Harrison contracts, all left the selection of the point of diversion to the contractor, and were sustained; 3rd, the act of diversion requires the active participation of the municipalities, and when they open their gates and take the water into their distributing mains, they set the diversion going at Little Falls. The acceptance of this water is a ratification of the diversion at Little Falls.

POINT III.

The Montclair and West Orange Water Companies have power to condemn the water rights of the appellant.

MONTCLAIR WATER CO.

The Montclair Water Company was incorporated in 1887 under the Water Works Act of 1876 (Comp. Stat., p. 3635, Sec. 630), and posessses powers of condemnation (Comp. Stat., 3637, Sec. 637). It was formed (Exhibit D-22, p. 293) for the purpose of constructing, maintaining and operating water works in the Township (now Town) of Montclair, and for supplying the inhabitants thereof with water, and in connection therewith for the purpose of supplying such other municipalities as may be lawful for it to supply by contract (p. 294, l. 20 *et seq.*). The consent of the corporate authorities of the Township of Montclair was given to the formation of this Company as required by the Statute of 1876. Its corporate existence was afterwards extended to 1987 (Exhibit D-37, p. 341).

The Company began supplying water to the Township of Montclair from wells, but, as early as 1892, began to take water diverted from the Passaic watershed (p. 184, l. 31), and since about 1904 has received its supply entirely from Little Falls (p. 181, l. 27 *et seq.*).

The Montclair Water Company owns a 1/8 interest in the pumping plant at Little Falls, and has operated that plant since December 31, 1910, as we have set forth. Prior to that time, the Little Falls plant was operated by the East Jersey Water Company, the last agreement under this former arrangement being made April 18, 1907 (Exhibit D-34, p. 329). In this the East Jersey Water Com-

pany agreed to pump and filter and delivered the water diverted by the Montclair Water Company at Little Falls, and the Montclair Water Company agreed to make the diversion at Little Falls. That agreement was superseded by the agreement of December 31, 1910 (Exhibit D-35, p. 331), whereby the Montclair Water Company agreed to operate the plant.

The Town of Bloomfield was supplied by the Montclair Water Company as early as 1895 at which time a contract was made between the Orange Water Company, which supplied said town (then Township of Bloomfield, Exhibit D-30, p. 317). This contract continued for a period of ten years. Thereafter the Town of Bloomfield acquired its water plant from the Orange Water Company and upon May 8th, 1905, entered into a contract with the Montclair Water Company, in which the Company agreed to deliver and supply all water needed by the Town of Bloomfield or its inhabitants for private or public uses (p. 300, l. 20 *et seq.*).

The Town of Nutley was formerly supplied by the Nutley Water Company, which made a contract with the East Jersey Water Company for a supply of water in 1895 (p. 182, l. 36). Shortly thereafter the Town of Nutley bought the water works and a further contract was made between the Town and the East Jersey Water Company on December 1st, 1904 (Exhibit D-27, p. 303). This contract was thereafter assigned to the Montclair Water Company (p. 183, l. 4). By its contract the East Jersey Water Company agreed to deliver to the Town of Nutley "all the water needed by the Town of Nutley or its inhabitants for private or public uses" (p. 303, l. 28 to 30).

The agreement with the Borough of Glen Ridge consists of a contract between the Orange Water Company and the Montclair Water Company (Ex-

hibit D-30, p. 317), which we have already mentioned by which the Montclair Water Company agreed to supply water to the Township of Bloomfield, of which the Borough of Glen Ridge was then a part, and extensions thereof from year to year up to the present time, the last extension being made by the Borough of Glen Ridge which has since purchased the works from the Orange Water Company (Exhibit D-31, p. 321). The Montclair Water Company is thus actually supplying the three municipalities mentioned under various forms of contract.

West Orange Water Co.

The West Orange Water Company was incorporated October 25, 1892, under the Water Works Act of 1876 (Certificate of Incorporation, Exhibit P-27, p. 308) "for the purpose of constructing, maintaining and operating water works in the Township of West Orange * * * and for the purpose of supplying such Township and the inhabitants thereof with water." Consent to the incorporation thereof was obtained from the Township authorities, and the Company now supplies said municipality (now Town of West Orange) and its inhabitants with water by means of its own distribution pipes through the streets (p. 188, l. 18).

The Company upon its incorporation entered into a contract with the Montclair Water Company (Exhibit D-28, p. 311), under which the Montclair Water Company agreed to deliver water for a term of twenty-five years from the 1st of May, 1893. The Montclair Water Company has supplied the West Orange Water Company from the same sources from which it has procured its own supply up to the present time (p. 190, l. 12 *et seq.*). The

directors of the West Orange Company upon December 14th, 1910, passed resolutions (Exhibit D-29, p. 314 *et seq.*) declaring that the water rights of the appellant were necessary for the purposes of the Company, and directing the officers of the Company to proceed to acquire said rights by condemnation (p. 315, l. 10 *et seq.*).

The appellant does not deny the right or authority of the Water Companies to condemn lands or water rights for the supply of the inhabitants of the Towns which they supply, but bases its objections upon:

(1) An alleged limitation in the Act of 1876 which confines water companies to the neighborhood of their respective municipalities.

(2) The attempt by the Montclair Water Company to condemn rights for the supply of the Towns of Bloomfield and Nutley and the Borough of Glen Ridge.

(3) The failure to acquire these water rights within two years from the dates of commencement of construction of the plants.

(4) In the case of West Orange Water Co., the absence of a supply works owned by that Company.

1. *The word "neighborhood" as used in Section 4 of the Act of* 1876, *limits only the right of entry for purposes of preliminary surveying and exploration.*

Section 4 of the Act of 1876 empowers water companies to enter upon:

> "all lands in the neighborhood of the village, town or city which it is intended to supply

> with water and to make all such preliminary examinations, explorations, measurements and levelings as may be necessary and proper for its corporate purposes." (Comp. Stat., p. 3637, Sec. 636).

This power of entry, however, occurs between two sections which also refer to the powers of water corporations, and further must be considered in connection with Section 15 of the Act as amended in 1888. Section 3, immediately preceding, confers power

> "to take and divert any and all such springs and streams of water, and build, erect, alter, repair, enlarge and maintain all such reservoirs and works, and lay down all such pipes and conduits for water, at such times and in such places as shall be *necessary and proper* to enable said corporation to carry into effect the *purposes of its incorporation.*" (Comp. Stat., p. 3637, Sec. 635.)

Section 5, immediately following, provides:

> "That in case said corporation cannot agree with the owner or owners, or other persons interested in any lands which said corporation may desire to take, use and occupy, or from which they may desire to take or divert, either in whole or in part, any spring or springs, stream or streams of water for the purposes of its corporation," any Justice of the Supreme Court may appoint commissioners, etc. (Comp. Stat., p. 3637, Sec. 637).

Section 15 of the Act as amended in 1888 (Comp. Stat., p. 3640, Sec. 647), provides for extending

the works and diverting streams which may from time to time be necessary.

It thus appears that the Legislature empowered any water company to divert "such streams" as should be *necessary "to carry into effect the purposes of its incorporation,"* with power to condemn when necessary "lands which said corporation may desire to take"; and by the amendment of 1888, power, from time to time, to "divert all such streams of water as shall be necessary."

The section in which the word "neighborhood" occurs is merely a grant of an additional power to render the powers granted in the other two sections more effective.

Applying the above statutes to the facts, we find as follows: The Montclair Water Company originally procured its supply from wells located within the limits of the Township of Montclair (p. 184, l. 16 *et seq.*). Then it became necessary to supplement that supply (l. 22), and then it became necessary to abandon it altogether (l. 25), and the Company then turned to the Passaic River, which is the only practical source (p. 190, l. 22 to 27). These facts surely present a necessity which the Water Act with its amendment was designed to take care of. The term "neighborhood" is used only in connection with preliminary explorations, measurements and levelings, and merely limits the amount of trespassing that the surveyors of such a company can do. *There is no limitation upon the water to be taken and diverted except the limit of necessity.*

The companies are under a duty to supply water and it is not possible that the Legislature by this clause concerning entry intended so to limit their activities as to absolutely defeat the purposes of their incorporation. In any event if the statute

was not originally broad enough it was made so by the amendment of 1888 above cited.

In *Olmsted* v. *Proprietors of the Morris Aqueduct,* 47 *N. J. L.,* 311, 329, this Court defines a necessary supply of water for a water company to be "so ample that a lack of water could not be reasonably apprehended. A supply to that extent is necessary to enable the company to perform its duty to its consumers." We maintain that this supply is absolutely necessary.

In fact, the supply taken by the Montclair Water Company from Little Falls is, in the strictest sense, in the neighborhood of the Town of Montclair and the territory supplied by the Montclair Water Company. Little Falls is a township adjoining Montclair, the distance from the Town of Montclair to the point of diversion in a straight line being about two miles (p. 190, l. 30 *et seq.*; p. 191, l. 17).

The word neighborhood, however, has been asserted by the appellant to refer to the acquiring of water rights, and to limit them to the neighborhood. We have set forth above our contention that the word neighborhood was put in the Act to limit the trespassing that such a company could lawfully make, but if by any chance it was meant to limit the right to acquire water rights, it at once defeats the entire purpose of the Act of 1876. It is impossible to divert "such springs and streams of water * * * as shall be necessary and proper to enable said corporation to carry into effect the purposes of its incorporation" (Comp. Stat., p. 3637, Sec. 635) without diverting water from lower riparian owners possibly 100 miles distant. A water company, incorporated for the purpose of supplying a small municipality on the head waters of the Passaic River in Morris County, may divert water from the stream within the limits of

that municipality, and yet they may infringe the rights of the appellant in the same manner as is claimed do these respondents. There are undoubtedly numerous water companies operating in the State of New Jersey who are technically unlawfully diverting water from lower riparian owners, and who, under the decision in the case of *Paterson* v. *East Jersey Water Company,* may be said to be diverting water without compensating therefor.

We submit that the appellant has misinterpreted the meaning of the legislature, and that the word neighborhood does not refer to the water rights acquired on the lower reaches of the stream from which the water supplied is taken.

The case of *Madison* v. *The Morristown Gas Light Company,* 65 *N. J. Eq.,* 256, cited by the appellant, refers to the positive carrying on of a business. If, for instance, the Montclair Water Company was attempting to lay its pipes through the Town of Bloomfield and into the Township of Belleville, and there to lay its pipes along the streets of that municipality to furnish water to local consumers, it would be attempting to stretch the word "neighborhood" in the same manner in which the word "vicinity" was sought to be interpreted in the *Madison* case.

A careful scrutiny of the case of *Coffin* v. *Ditch Company,* 6 *Col.,* 443, referred to by the appellant, wherein a statute provided that all persons having claims on the bank margin or neighborhood of any stream, should be entitled to use the water thereof, and which was held to include only lands in the immediate valley, shows that the statute had particular reference to the location of the claims as related to streams, and did not have reference to the streams which might be available for the water supply of any particular locality—a very different thing.

What may be the neighborhood for one man may not be the neighborhood for another. In *State* v. *Meek,* 26 *Wash.,* 405, it was held that the term neighborhood may be said to be a comprehensive term—one man's neighborhood may be a small hamlet, while the neighborhood of another may be a county or state. We submit the same thing is true in considering the procuring of a necessary water supply. What would be a diversion from the neighborhood in the case of one municipality, would not be considered so in the case of another municipality differently located.

2. *The Act of* 1876, *with the amendments and supplements thereto, empowers water companies to supply adjoining municipalities with water.*

The appellant contends that the proceedings of the water companies are unauthorized and void because the Montclair Water Company is attempting to condemn water for the Towns of Bloomfield and Nutley, and the Borough of Glen Ridge.

In Section 1 of the Act, we find that a water company may be incorporated "for the purpose of conducting, maintaining and operating water works in any city * * * and for the purpose of supplying such city * * * with water."

In furtherance of this power the legislature in the year 1888 amended the fifteenth section of the Act of 1876 so that it now reads as follows:

> "Sec. 15. That any aqueduct company now in existence under any special charter in this State, and any company which has been incorporated under the provisions of this Act, shall have the right from time to time to add to and *extend their works to such extent as may be necessary to carry out the purposes of its corporation,* and for that

purpose to take all such lands *and divert all such streams* of water, in the manner hereinbefore provided, *as shall be necessary* for that purpose; provided, that nothing in this section shall be deemed, taken or construed to empower or authorize any aqueduct or water company to supply or furnish water within the corporate limits of any city of this State owning or controlling its water supply." (Comp. Stat., 3640, Sec. 647.)

These sections were construed at length by the Supreme Court in the *West Orange* case (Case, p. 53, l. 27, to p. 54, l. 34) as follows:

"The certificate of incorporation states that the defendant is incorporated for the purpose of constructing, maintaining and operating waterworks in the Township of West Orange, and for the purpose of supplying such township and the inhabitants thereof with water. It follows the language of Section 1 of the Act of 1876. It states two purposes: (1) the construction, maintenance and operation of water works, and (2) the supply of West Orange and its inhabitants with water. The latter purpose does not necessarily limit the scope of the former. By the very words of the statute the two purposes are treated as distinct, and the word purposes is used not once, but twice. The words naturally mean that the company must serve both purposes, but they do not limit the object of constructing, maintaining and operating the works to the purpose of supplying West Orange with water. If the latter clause had not been connected with the former by the conjunction 'and,' it might have been forcibly contended that the

latter purpose was a limitation upon the former; the use of the conjunction is an indication to the contrary. It would, of course, be too narrow to rest the case upon the mere grammatical construction alone. The certificate must be read in the light of the statutory law existing at its date, October 25, 1892. In 1883 companies incorporated under the Act of 1876 were authorized to extend their mains and supply water beyond the corporate limits of the municipality (C. S. 3641, p. 649), and in 1888 general power was given to municipalities to contract with water companies for a water supply. The same year by an amendment of Section 15 companies incorporated under the Act of 1876 were given the same right that was originally given to specially chartered aqueduct companies, to add to and to extend their works; the proviso that was inserted indicates that the legislature anticipated that this privilege might be used by the companies for the purpose of supplying other municipalities, and it therefore enacted that the section should not be deemed, taken or construed to empower or authorize any water company to supply water within the corporate limits of any city owning or controlling its water supply. In the light of this legislation the language of the certificate of incorporation must be construed as authorizing the defendant to supply water to municipalities other than West Orange."

In addition to the above, the Supreme Court, in its opinion in the Montclair Water Company case, stated that that case was stronger upon this point

than the West Orange case, "in that the certificate of incorporation states as one of its purposes the operation of water works for the purpose of supplying water to such other municipalities as it may be lawful for it to supply" (Case, p. 128).

The above quotations set forth fully our argument, and we therefore shall not burden this Court further.

3. *Water companies have the right to extend their works and divert such streams as they may deem necessary from time to time, and are not limited to a period of two years.*

Section 14 of the Act of 1876 (Comp. Stat., p. 3640, Sec. 646) refers to the completion within two years of "the proposed water works." This we take it means the water works proposed in detail as the original works to be constructed for the supply and distribution of water, otherwise a water company could not extend its mains through new streets, and it would hold back the growth of the municipality which it was incorporated to promote, thus defeating the purpose of its incorporation. Any question that may have arisen with respect to the meaning of this section has, however, been effectually disposed of by the amendment of Section 15 which we have above quoted, wherein water companies were expressly given power to extend their works from time to time and divert such streams of water as may be necessary.

4. *A water company may lawfully enter into a contract for a supply of water.*

The appellant finds an apparent discrepancy in the petition of the West Orange Water Company, in that it states in paragraph 2 thereof (Case, p. 35, l. 8) that it "has for several years past been

taking and diverting water for the purposes aforesaid from the Passaic River at Little Falls in Passaic County through the dams, filtration works and the pumping station located at that place, and such continued taking and diversion thereof is required and necessary for the public purposes aforesaid"; and in paragraph 3 (p. 35, l. 21) states that "such diversion of water at Little Falls is, and for more than five years past has been, made directly by the Montclair Water Company through its, the said dams, filtration works and pumping station, and by it, by means of its water mains, conveyed thence to West Orange and there delivered under contract to your petitioner." We submit that the actual diversion taking place is set forth clearly by this language, although there is possibly an apparent contradiction. It would probably be clearer and more correct to say that such diversion "has been made through the agency of the Montclair Water Company."

In the contract between them the Montclair Water Company (Case, p. 312, l. 7) agrees to deliver water at certain points, and the West Orange Water Company agrees to receive and pay for water delivered (p. 313, l. 10). There is nothing said about the source of supply, but the diversion was authorized by the West Orange Water Company through its acceptance of the water supplied over a long period. And this source has now been adopted by its Board of Directors (Exhibit D-29, p. 314). A contract of this kind is expressly authorized by a supplement to the Water Act of 1876, passed in 1903 (Comp. Stat., p. 3641, Sec. 650). This authorizes a water company "to make and enter into a contract with any other company organized under any law of the State for a supply of water upon such terms, and for such times as may be mutually agreed upon, and said companies

so contracting may lay such supply mains and pipes as may be thought necessary to furnish said supply, through any property upon obtaining the consent in writing of the owner thereof; or under the surface of any streets, roads, highways or public places; provided, that said companies first obtain the consent by ordinance of the municipality or municipalities through which said mains and pipes are to be laid." This act directly authorized contracts of the character under discussion, and the company supplying water stands in the position of an agent in the same manner as if it were furnishing a municipality under the Act of 1888 authorizing municipalities to contract. The existence of the contract enables the West Orange Water Company to put into force its powers of condemnation to acquire the rights of the appellant.

POINT IV.

The Act entitled "An Act to empower towns to acquire lands and other property for water supply by condemnation" approved May 1st, 1911 (P. L. 1911, p. 675), empowers the Towns of Harrison and Kearny to acquire by condemnation the water rights sought to be obtained in these proceedings, and it is not necessary to have water commissioners appointed to enable them to procure water rights necessary for their supplies.

The act authorizing the appointment of commissioners was passed in 1884 and will be found in the Compiled Statutes at page 5476.

It does not seem that the Towns of Harrison and Kearny must condemn under this statute at

the present time, since in 1911 the Legislature passed an Act entitled, "An Act to empower towns to acquire land and other property for water supply by condemnation" (P. L. 1911, p. 675), which governs this proceeding. By Section 54 of the General Town Act of 1895, the council of any town having four thousand population and over was empowered "to provide for a supply of pure and wholesome water" by contract "with private corporations or with adjoining municipalities" (Comp. Stat., p. 5533, Sec. 380). This power had already been conferred on all municipalities in the Act of 1888. In *Jersey City* v. *Kearny,* 72 *N. J. L.,* 109, the very contract in aid of which Kearny has started condemnation proceedings was under review on certiorari and held to be authorized by either of the acts cited.

The empowering clause in the Act of 1911 is as follows:

> "Where any town is now supplied with water for fire protection and for the use of its inhabitants, or may hereafter determine to obtain or enlarge such supply, the town council may acquire land, water, water rights, or other property within or without the town, for the purpose of such supply, and to that end may take or authorize proceedings to condemn, pursuant to the act entitled, "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use."

From this it is seen that where any town is now supplied with water, the Town Council "may take" proceedings to condemn. The act provides also for taking proceedings where the supply is to be en-

larged; and, evidently to provide for the latter contingency, the act provides in Section 2, that nothing in the act shall be construed to interfere with the powers of the State Water Supply Commission. It also provides an alternative in the "authorization" of proceedings to condemn. This statute is complementary to Section 54 of the Town Act and gives authority to condemn which the appellant claims is lacking. The resolutions passed by the towns in these cases both direct and authorize the agents of the towns to attempt to procure the rights by agreement, and, if that cannot be done, direct the taking of the same by condemnation (Exhibit D-12, p. 268; D17, p. 280). We submit that the towns have complied with the requirements of the statutes giving towns powers of condemnation and that it is not necessary to have a Board of Water Commissioners to take action under the statute of 1911.

POINT V.

The water supply in aid of which the water rights of the appellant are sought to be condemned is not a new or additional source of water supply within the meaning of "An Act to establish a State Water Supply Commission and to define its powers and duties, and the conditions under which waters of this State may be diverted," approved June 17, 1907 (Comp. Stat., p. 5797).

This ground of appeal is relied upon by counsel for the appellant in all the proceedings except those against Jersey City and the Montclair Water Company.

This Act of 1907 expressly provides in Section 2 (Comp. Stat., p. 5798, Sec. 13) that

> "no municipal corporation, corporation or person engaged in supplying or proposing to supply the inhabitants of any municipal corporation with water, shall have power to *condemn lands or water for any new or additional source of water supply, or to divert water from such new or additional source* until such municipal corporation, corporation or person has first submitted descriptions thereof, which may be accompanied by maps and plans to said commission and until said commission shall have approved the same."

This section prohibits two things: First, the condemnation of such source; second, the diversion of water from such source. These two things are linked together in the section, and it appears that the intention of the Legislature was to have them stand or fall together. If, therefore, the municipalities and water companies which have begun these proceedings, had power in 1907 to divert and condemn water from the source of supply which is now being used, and since they were, as we have shown, at that time diverting water from this source, the fact that condemnation proceedings had not been instituted at that time for taking the water which was being diverted does not prohibit the taking of proceedings at the present time. The fact that the condemnation proceedings are being taken since the passage of the Act for the furtherance of an old diversion from an old source, does not now make that source a new one, and bring the taking under the jurisdiction of the State Water Supply Commission. The statute further provides at the end of Section 2 (Comp. Stat., 5798, Sec. 13) that

> "nothing in this Act contained shall be construed to take from any municipality in this State the right to use and take all the water which it *has the right to use* or appropriate by purchase or condemnation."

The power of the State Water Supply Commission was afterwards, 1910, extended to cover well and sub-surface supplies (Comp. Stat., p. 5801, Sec. 21 *et seq.*), but the Legislature did not otherwise enlarge its powers. The intention of the Legislature to leave undisturbed the diversions existing in 1907 thus clearly appears.

The appellant raises the further objection that the contracting companies were under no obligation to furnish water from a particular source. The fact is, however, that the water had been furnished from this source by these companies for a number of years and the works were of the most permanent character, and the supply is, in fact, the only one that is available for the municipalities in question. The source from which the water was procured was well known, and had been the subject of large discussion and litigation, and the municipalities had continually made the diversion by receiving the water into their distribution systems. There is no proof that it is possible for these municipalities to get a proper supply of water elsewhere, but there is proof on the other hand that this is the only adequate and safe supply for them. The appellant infers that this is a case where the State Water Commission ought to step in and make these municipalities "bordering upon marine tidal waters" secure other supplies, where in fact the topography of that part of the State makes it necessary to go a long distance to secure a proper supply of water. The building of a water supply works is a very costly matter, and the endeavor of water supply engineers is to cut down the length of pipe lines as much as

possible. It is not likely that these municipalities and their contractors would go twenty miles for a supply of water if a proper supply could be obtained near at hand.

The word "source" means the place where the water can be secured and not the ownership of riparian rights. It does not appear that in any sense of the word this source is new, and it is further submitted that, under the proviso at the end of the second section of the Act (Comp. Stat., 5798, Sec. 13), if the municipalities had "the right to use or *appropriate* by purchase or condemnation" at the time the Act was passed, the Act did not apply to them and consequently this ground of appeal cannot in any wise defeat these proceedings. If the Act is to be held to apply at all to this source of supply, the question of the municipalities' right to take must first be decided negatively. The most that can be said is that if some of the other grounds of appeal are upheld it is possible that an application to the Water Supply Commission may be necessary.

POINT VI.

The Boroughs of Glen Ridge and East Newark have power to contract for a supply of water and to maintain condemnation proceedings in aid of such contracts.

The provision of the Borough Act with respect to the condemnation of lands or water rights appears in Section 70 (Comp. Stat., p. 265). This section refers to lands "whether within the limits of such corporation or in the neighborhood thereof." To properly interpret the section the Act of 1888 permitting contracts for a supply of water

must be read with it as must Section 76 of the Borough Act (Comp. Stat., p. 268), which also authorizes the making of contracts for " a supply of water" to be furnished by an adjoining municipality or "any water company of this State."

What has been said as to the interpretation of the word "neighborhood" is equally applicable here. These municipalities are dependent upon this source as being the only one available as completely as are any of the other respondents.

Some other minor points are raised in the notice of appeal which counsel have not discussed in their brief; we therefore pass them by.

POINT VII.

The judgments of the Supreme Court should be affirmed.

MICHAEL T. BARRETT,
Town Attorney for the Town of Harrison.

DANIEL J. MURRAY,
City Attorney for the Mayor and Council of the City of Bayonne.

DAVIS & HASTINGS,
Attorneys for the Mayor and Council of the Borough of East Newark.

COLLINS & CORBIN,
Attorneys for All Respondents.

GILBERT COLLINS,
Of Counsel.

In Chancery of New Jersey

CITY OF PATERSON

vs.

THE EAST JERSEY WATER COMPANY.

Memorandum on Settlement of Decree.

December 28, 1909.

EMERY, *V. C.*

The application to open the proofs for the purpose of proving the contracts for water supply between Paterson and the Passaic Water Co., Passaic and the Acquackanonk Water Co. and the defendant company with the Montclair Water Company is denied. It is stated by counsel that one object of this application to open the proofs is in order to insist that no decree for injunction in the cause should be made unless the three Water Companies be brought into court and made defendants in the suit. This objection to any decree for injunction based on the absence of parties, if valid, should have been made before the long and expensive hearing was begun, and when the Water Companies, if necessary parties, might have been brought in. Such of the contracts as were in force at the begin-

ning of the suit in 1905 may, however, be proved on this application to settle the decree, for the purpose of showing the effect of any decree for injunction on the municipalities and fixing the time when it should be directed to issue. A reasonable delay is just and equitable in order that an opportunity may be afforded for the Water Companies or municipalities affected to institute proceedings to condemn complainant's water rights, if they now have the right to do so, and to apply to the Legislature for additional legislation if they have not now the right. The complainant's counsel, while they do not admit that their riparian rights can be condemned, do not object to a delay in issuing the injunction for the purpose of instituting the proceedings or attempting to procure further legislation. They suggest six months, while defendants ask two years' delay. I will fix the time for issuing the injunction as not earlier than April 1st, 1911, and will also direct that if proceedings for condemnation be taken before that time, then injunction shall not issue without further order of the Court. The contracts with Passaic and the Montclair Water Company existing at the time of the commencement of the suit have since expired, but the contract between the Passaic Water Company and the City of Paterson does not expire until August, 1910.

This time fixed for the issuing of the injunction will, I think, be ample for the municipalities affected to legalize their present source of water supply, if this can be done. Another circumstance has an important bearing on the matter of fixing the time for issuing injunction. Since the filing of the opinion in this case, the Attorney-General, on behalf of the State, has filed an Information against the defendant water company, charging that its diversion of water at Little Falls for the purpose

of supplying the inhabitants of Bayonne, Harrison, East Newark, Kearny, Nutley and Little Falls with water for domestic use is without authority of law, and asking an injunction to restrain further diversion. Diversion for these municipalities is part of the injury complained of in this case To this Information the defendants have filed an answer and the suit is now pending. The issuance of the injunction in the present suit should also be delayed a reasonable time for the final determination of that suit. The reason is, that if an injunction cutting off the only present water supply of these municipalities is obtained by or on behalf of the State itself, it would be more likely to lead to the legislation necessary to meet the situation thus arising, than an injunction obtained by a mere riparian owner in a suit like the present. The conservation and control of the water supply of our fresh water streams in their use for potable purposes, which must be paramount, has become a most urgent and pressing question. The necessity of legislation to meet present conditions becomes more and more apparent, and if the State by its authorized officials seeks to enjoin the supply of these municipalities by the defendant company, because of its lack of authority to divert the water, it is not unreasonable to suppose that this radical step is taken in view of the general interests involved in the control of potable waters, and that some general system of conservation and control is contemplated. Some legislative advances in this direction have already been made since the hearing of the present suit. By the act approved June 17, 1907 (P. L. 633) a State Water Supply Commission has been created, charged with the general supervision over all the sources of potable and public water supply, to the end that the same may be economically and prudently developed for the use of the

people of this State, and no new or additional water supply for the inhabitants of any municipal corporation can be condemned or diverted without their approval on behalf of the State. The act does not seem to give the Commission supervision over any water supply existing at the time of the act, but if the existing supply to any municipality should be declared to be an illegal diversion, there would seem to be no reason why the municipalities whose legal supply is thus cut off or threatened should not have relief under the act by applying to the Commission for a legal source of supply. And as the State, by the State Water Supply Commission act, has now assumed in the public interest some supervision beyond the existing lawful use or authority, it seems most reasonable to expect that the present legislation will, at the instance of the officers in control, be supplemented by such further legislation as will afford to any municipality whose present supply may be stopped by the State as illegal, the right to obtain a lawful supply.

The questions involved in the Attorney-General suit are so important that the opinion of the Appellate Court will probably be sought, and sufficient time for the hearing and determination of the case on appeal should be allowed. All things considered, the issuing of the injunction should, therefore, be delayed until April 1st, 1911, and if before that time proceedings for condemnation of the riparian rights of the complainant be commenced, then the injunction should not be issued without further application to the Court.

The decree should declare and settle the complainant's right as riparian owner substantially as in complainant's draft for decree, and its right to a perpetual injunction against further diversion. The decree should not contain the clause pro-

posed by complainant allowing it to waive the right to an injunction against defendant so far as relates to the water supply of Paterson and Passaic. The complainant's entire equity depends on the establishment of its riparian rights against defendant's diversion of the water for sale, and its rights are declared and fixed by the decree irrespective of the person or corporation for whom defendant unlawfully diverts the water. The direction for an injunction is for the sole purpose of enforcing the entire rights claimed by the bill and declared by the decree. If complainant intended not to enforce its rights against diversion so far as related to the supply to the cities of Paterson and Passaic and their inhabitants, such exception or waiver should have been made in the bill, or before the hearing, as it might substantially affect the equity to an injunction against diversion by the defendant for the other municipalities named.

The form of decree proposed to be advised is enclosed. On further consideration I conclude that no further or other terms or conditions should be imposed. Objections to the form will be heard on January 4, 1910, at Chancery Chambers, Newark, when decree will be settled and advised.