

New Jersey
Court of Errors and Appeals.

I.

SIR JOHN FRANKLIN,
Appellant,
vs.
THE CITY OF MILLVILLE
AND THE MILLVILLE
WATER COMPANY,
Respondents.)
Appeal of Cer-
tiorari. No. 1.

II.

SIR JOHN FRANKLIN,
vs.
THE CITY OF MILLVILLE
AND THE PEOPLE'S WA-
TER COMPANY,
Respondents.)
Appeal of Cer-
tiorari. No. 2.

III.

WALTER WOOD,
Appellant,
vs.
THE CITY OF MILLVILLE,
Respondent.)
Appeal of Cer-
tiorari. No. 3.

BRIEF OF HERBERT C. BARTLETT AND JOSEPH H. GASKILL, COUNSEL
FOR APPELLANTS.
(Prosecutor Below).

BRIEF OF FACTS.

The City of Millville, on December 31st, 1915, adopted two ordinances, known as Ordinance Number 144, looking to the acquisition of the water plant of the Millville Water Company (Book, page 101), and Ordinance Number 145 (Book, page 107), for the acquisition of the plant of the People's Water Company. Application was at once made to the Supreme Court for writs of certiorari to test these ordinances and the proceedings on behalf of the City to acquire these plants, and on January 28th, 1916, writs were allowed by his Honor, Charles C. Black, Justice of Supreme Court, certifying the ordinances into that court.

Application was also made for a third writ of certiorari to test the election held by the City of Millville, on June 11th, 1912, adopting an act entitled, "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April 21st, 1876, and on February 2nd, 1916, this writ was also allowed, bringing the result of that election into the Supreme Court.

A previous application had been made to Justice Kalisch on July 29th, 1912, (this was immediately after the election was held, (see Case, page 17) to test this election, by Counsel for appellants, who were then informed that their action was premature as the City had then taken no further steps or proceedings under this election. This application was especially made to prevent the City raising the question of laches in testing the result of the election of June 11th, 1912. On April 7th, 1916, the Supreme

Court in its opinion (Page 201, case), affirmed the action of the City of Millville in adopting Ordinances 144 and 145, as well as the election held by the city, June 12, 1912, adopting the Water Act of April 21, 1876, and prosecutor now appeals the three judgments of affirmance into this court.

It is agreed all three appeals are to be argued together, and that appellants are taxpayers of the City of Millville.

GROUND'S OF APPEAL.

I.

Ordinance No. 144.

The appellant asks to have the Ordinance known as No. 144 entitled, "An Ordinance for the acquisition by the City of Millville of all the Real Estate, Personal Property and Works and all the Corporate Rights, Powers, Franchises and Privileges of the Millville Water Company of Millville, New Jersey," set aside and declared null and void for the following reasons:

1. Because the said Ordinance is an abuse or excess of authority on the part of the Commission Government of the City of Millville and is so unreasonable, inequitable and unfair as to justify the interference of this Court.
2. Because the proposed purchase by the Commission Government of the City of Millville of two Water Plants, as provided in Ordinances No. 144 and 145, would impose upon the taxpayers of the City an unnecessary burden and is a willful extravagance and abuse of power.
3. Because the City of Millville now practically has to all intents and purposes a municipal plant by virtue of its contract made with the Millville Water Co. on the sixteenth day of January, 1879, by virtue of which the City has secured an unlimited water supply for public purposes in perpetuity.
4. Because the said City of Millville, by virtue of said contract with the Millville Water Company, has provided all the Rules, Regulations and Restrictions with respect to a supply of water for private use, including the rates for such supply, that it would have the power to do under a plant owned entirely and solely by the municipality.
5. Because the City of Millville has already purchased an interest in the plant of the Millville Water

Co. sufficient for the public uses and has an agreement secured by mortgage with the Millville Water Co. protecting the private consumers in the City of Millville.

6. Because the revenue from the two plants proposed to be acquired by Ordinances 144 and 145 is not sufficient to pay the running expenses of the plants and the interest and sinking fund charges on the bonds to be issued for said purchase.

7. Because said Ordinance proposes to raise by taxation the deficiency arising from the failure to secure from the operation of said Water Plants sufficient revenue to pay the running expenses, interest and sinking fund charges.

8. Because said Ordinance is illegal in that the City is not limited to the proposed bond issue of \$130,000 for the purchase of the plant of the Millville Water Co., but provides for the issue of additional bonds if needed, without fixing the amount of such additional issue.

9. Because the right of the City of Millville to make up the deficiency arising from its contract with the People's Water Co. by reason of the failure to secure sufficient revenue from the sale of water pumped by that Company, by taxation, is unsettled, undetermined and pending in this Court.

10. Because the City of Millville never adopted the provisions of an Act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water" (I C. S., page 823) and the Act supplemental thereto and amendatory thereof, as alleged in Section 5 of said Ordinance.

11. Because said Ordinance violates the provisions of a contract made and entered into between the City of Millville and the Millville Water Co. on the sixteenth day of January, 1879.

12. Because the City of Millville has no power to cancel, alter or change the contract between it and

the Millville Water Co. without the consent or concurrence of the Millville Water Co.

13. Because the Millville Water Co. has not consented to any cancellation, change or alteration in its contract.

14. Because said Ordinance is in divers others respects illegal and void.

II.

GROUND OF APPEAL.

Ordinance No. 145.

The appellant asks to have the Ordinance known as No. 145 entitled, "An Ordinance for the acquisition by the City of Millville of all the Real Estate, Personal Property and Works and all the Corporate Rights, Powers, Franchises and Privileges of the People's Water Company of Millville, New Jersey" set aside and declared null and void for the following reasons:

1. Because the said Ordinance is an abuse or excess of authority on the part of the Commission Government of the City of Millville and is so unreasonable, inequitable and unfair as to justify the interference of this Court.

2. Because the proposed purchase by the Commission Government of the City of Millville of two Water Plants, as provided in Ordinances No. 144 and 145, would impose upon the taxpayers of the City an unnecessary burden and is a willful extravagance and abuse of power.

3. Because the City of Millville now practically has to all intents and purposes a municipal plant by virtue of its contract made with the Millville Water Co. on the sixteenth day of January, 1879, by virtue of which the City has secured an unlimited water supply for public purposes in perpetuity.

4. Because the said City of Millville, by virtue of said contract with the Millville Water Company, has provided all the Rules, Regulations and Restrictions with respect to a supply of water for private use, including the rates for such supply, that it would have the power to do under a plant owned entirely and solely by the municipality.

5. Because the City of Millville has already purchased an interest in the plant of the Millville Water

Co. sufficient for the public uses and has an agreement secured by mortgage with the Millville Water Co. protecting the private consumers in the City of Millville.

6. Because the revenue from the two plants proposed to be acquired by Ordinances 144 and 145 is not sufficient to pay the running expenses of the plants and the interest and sinking fund charges on the bonds to be issued for said purchase.

7. Because said Ordinance proposes to raise by taxation the deficiency arising from the failure to secure from the operation of said Water Plants sufficient revenue to pay the running expenses, interest and sinking fund charges.

8. Because said Ordinance is illegal in that the City is not limited to the proposed bond issue of \$126,000 for the purchase of the plant of the People's Water Co., but provides for the issue of additional bonds if needed, without fixing the amount of such additional issue.

9. Because the right of the City of Millville to make up the deficiency arising from its contract with the People's Water Co. by reason of the failure to secure sufficient revenue from the sale of water pumped by that Company, by taxation, is unsettled, undetermined and pending in this Court.

10. Because the City of Millville never adopted the provisions of an Act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water" (I C. S., page 823) and the Act supplemental thereto and amendatory thereof, as alleged in Section 5 of said Ordinance.

11. Because said Ordinance violates the provisions of a contract made and entered into between the City of Millville and the People's Water Co.

12. Because the City of Millville has no power to cancel, alter or change the contract between it and

the People's Water Co. without the consent or concurrence of the People's Water Co.

13. Because the People's Water Co. has not consented to any cancellation, change or alteration in its contract.

14. Because said Ordinance is in divers others respects illegal and void.

III.

GROUNDS OF APPEAL.

Election of 1912.

The appellant prays that a certain election held in the City of Millville on June eleventh, 1912, for the adoption of an Act entitled, "An Act to Enable Cities to supply the Inhabitants Thereof With Pure and Wholesome Water," approved April twenty-first, 1876, and the several Acts supplemental thereto and amendatory thereof as well as the results of said election be set aside and for nothing holden for the following reasons:

1. Because the said ballot prepared for said election was misleading and confusing, in that by inserting on said ballot (as an integral part thereof) suggestions as to how to vote for or against the adoption of said Act such explanations or directions were so stated as to mislead and to confuse the voters as to how to vote for or against said proposition.
2. Because such statements or directions were improperly on the ballot, making the same defective and illegal and said election void.
3. Because there was no revision or correction of the registry list used at the election preceding the special election of June eleventh, 1912, as required by law.
4. Because the returns of said election show that the adoption of said Act of the Legislature was not carried by a majority of the registered voters of the City of Millville.
5. Because the number of votes cast at said election was less than one-half of the registered vote of the City of Millville at the time said election was held.
6. Because said Election was in divers other respects illegal and void.

BRIEF OF ARGUMENT.

WHY ORDINANCES AND PROCEEDINGS TO ACQUIRE WATER PLANTS OF MILLVILLE WATER COMPANY AND PEOPLE'S WATER COMPANY SHOULD BE SET ASIDE.

I.

Because the said ordinances are an abuse or excess of authority on the part of the Commission Government of the City of Millville and are so unreasonable, inequitable and unfair as to justify the interference of this Court.

II.

Because the proposed purchase by the Commission Government of the City of Millville of two water plants as provided in Ordinances Number 144 and 145, would impose upon the taxpayers of the City an unnecessary burden and is a willful extravagance and abuse of power.

The general principles of law on which the Prosecutors rest is found in Dillon on Municipal Corporations, Fifth Edition, Volume 3, Section 1307, as follows:

“1307. Term of Contract.—When a city has statutory authority to enter into contracts for a supply of water and gas for its own use and for the use of its inhabitants, the manner in which its statutory power shall be exercised and the terms of any contract which it may enter into, including the number of years during which it is to continue, rest within the discretion of the municipal authorities; and

the Courts will not review it or set it aside in the absence of fraud or an abuse or excess of authority, or unless the contract is so unreasonable, inequitable or unfair as to justify the interference of a Court on the established principles of law or equity."

This case comes within the exception as above stated.

"Where a municipal body has by law discretion in awarding contracts, such contracts will not be set aside unless it appears that there is fraud or a palpable abuse of that discretion."

Coward vs. Bayonne, 67 N. J. Law, page 470.

"The large discretion which municipal corporations possess in providing a water supply under the comprehensive powers of the Legislature, will not, unless abused, be interfered with by the Courts; of course such discretionary powers being equivalent to a power to levy taxes must be exercised in a conservative manner."

Tiedeman vs. Municipal Corporations, page 316, Sec. 175.

There is neither public nor private necessity for the ordinances in question. The City has a contract with the Millville Water Company for water for public purposes in perpetuity, for which the City paid \$39,000. The contract also regulates prices to private consumers. This contract is secured by mortgage on the Millville Company's plant.

Millville Water Company's supply is inexhaustible; Union Lake is a half mile wide, three or four miles long; the water is filtered; artesian wells also furnish a supply.

The ordinances are not based upon any insufficient supply or impurity of water.

Millville Water Company's capacity, 6,000,000 gallons daily; present consumption, about 4,000,000. Offer of the Water Company to the City in 1909 for supply in addition to contract.

The ordinances put upon the taxpayers an additional and unnecessary burden. The ordinance provides for bonds for Millville Water Company, \$130,000.00
 For the People's Water Company 126,000.00

Total \$256,000.00

Estimated value of the two plants as made by Mr. Adams, an Engineer employed by the City in 1912 (Case, pages 135 to 153) \$171,328.00
 Excess proposed to be paid 84,672.00

The annual burden as follows:

Interest, \$256,000 bonds at 5 per cent . . .	\$12,800.00
Sinking fund, \$256,000 bonds, at 2½ per cent	6,400.00
Depreciation, \$256,000 bonds, at 2 per cent	5,120.00
Taxes, loss of	3,863.00
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Total annual increase of taxes	\$28,183.00
Present tax rate	\$2.15
\$1,000 property tax now is	\$21.50
Increase at .004	4.00
	<hr/>
	\$25.50

Besides an increase in water rates.

The two companies, being in competition, are both run at a loss.

The People's Water Company's annual loss	\$6,401.00
Millville Water Company's annual loss.	6,628.00
	<hr/>
Total losses of operation.....	\$13,029.00

The taxpayers at present are receiving the benefit of this in getting water at about one-half the normal rate, which advantage they lose.

The city also proposes to take over these two companies which are now operated at an annual loss as above.

III.

Because the City of Millville now practically has to all intents and purposes a municipal plant, by virtue of its contract with the Millville Water Company, January 16th, 1879, by virtue of which the City has secured an unlimited water supply for public purposes in perpetuity.

The Court's attention is called to this contract (page 118 of Printed Case) and upon reading the same it will be readily seen that there is neither public nor private necessity for the ordinance in question.

IV.

Because the City of Millville by virtue of said contract with Millville Water Company has provided all the rules, regulations and restrictions with respect to a supply of water for private use including the rates for such supply that it would have power to do under a plant owned entirely and solely by the municipality.

The agreement of January 16th, 1879 (page 118 of Case), between the City and the Water Company, provides in detail such regulation and restriction on the Water Company.

(1) Fixing the water rents to be charged takers of water at prices not exceeding the average rate charged during the same period in the cities of Bridgeton, Trenton, Burlington.

(2) Fixing the size of pipe to be laid in the streets.

(3) Number and kind of hydrants.

(4) Amount of pipe to be laid per year.

(5) Kind and size of stand pipe to be built.

(6) Pump house and location of same.

(7) How pump to be operated.

(8) Land to be bought by Company and its location.

(9) Pipe to cross Maurice River and how laid.

(10) Number and kind of hydrants.

(11) Right of City in perpetuity to draw water for extinguishing fires, flushing gutters, sprinkling streets.

(12) All secured to City by a mortgage on plant. (Page 118, Book).

V.

Because the City of Millville has already purchased an interest in the plant of the Millville Water Company sufficient for the public uses and has an agreement secured by mortgage with the Millville Water Company protecting the private consumers in the City of Millville.

Immediately upon entering into the agreement of January 16th, 1879, between the City and the Millville Water Company, the Water Company gave back to the City a mortgage in the sum of \$39,000 covering all its real estate, right to take water from Union Lake, its easements, franchises, rights, privileges, water works, stand pipe, pump house, machinery, and providing that the Water Company is to furnish free of charge a supply of water to the City of Millville for the purpose of extinguishing fires, flushing gutters and sprinkling the streets

from 65 hydrants and such others as may from time to time be added.

This gives the City absolute security and protection as to the amount of water it shall at all times receive for fires and other City purposes. How could municipal ownership increase any further the City's rights? The City could gain no better right or stronger right by outright ownership than it now has.

VI.

Because the revenue from the two plants proposed to be acquired by Ordinances No. 144 and 145 is not sufficient to pay the running expenses of the plant and the interest and sinking fund charges on the bonds to be issued for said purpose.

The ordinances on the face of them admit this: By section 6 of the ordinance it is provided:

“There shall be raised annually by taxation the amount of the deficiency if any in the water revenues for the payment of (1) of the interest on the debt hereby authorized and created and costs of managing and keeping in repair and operation of the water works with three per centum thereof added to cover losses and deficiencies to be ascertained and certified in the manner provided by section 13 of said act (1 C. S., page 823) and (2) a sum sufficient when added to the water revenues applicable for the purpose to make up an amount equivalent to 2½ per centum of all said bonds issued, and at time outstanding for the retirement of the bonds at maturity which taxes shall be levied, assessed and collected in the same manner as other taxes, and the amount thereof assessed and collected for interest shall be paid by the taxing offices to the treasurer, etc.”

Prosecutors maintain that the City has no right to enter into the purchase of water plants when it

knows it must make up deficiencies in revenues by taxation—thus imposing on taxpayers an unreasonable and heavy burden.

See *Publishing Co. vs. Jersey City*, 54 N. J. Laws, page 437.

VII.

Because said ordinance proposes to raise by taxation the deficiency arising from the failure to secure from the operation of said water plants sufficient revenue to pay the running expenses, interest and sinking fund charges.

Prosecutor maintains that the City has no right to make up a deficiency from water revenues (which it is plain to be seen will occur) by taxation against the owners of property in the City of Millville. That this is an unjust burden on taxpayers—that the City should only purchase in case the plants are self-supporting, and the revenue for running the same, as well as payment of interest on bonds, must come from water revenues and not made up against taxable property. Many taxpayers are not on the water mains of either Company—receiving no benefit from low water rates—and yet are compelled to make up deficiencies by the failure of the plants to pay.

“The statute requires the expenses of publication to be paid out of the license fees. These fees constitute by law municipal funds to be devoted to specific municipal purposes. If these funds prove deficient, the deficiency must be made up by general taxation, for the purposes are such as the municipality is bound to carry out. Under these circumstances taxpayers of the City may lawfully in the discretion of the Court intervene to prevent the illegal expenditure of funds. The prosecutors are taxpayers.”

Publishing Co. vs. Jersey City, 54 N. J. Law, page 437.

VIII.

Because said ordinance is illegal in that City is not limited to the proposed bond issue of \$130,000 for the Millville Water Company plant and \$126,000 for the People's Water Company plant, but provides for the issue of additional bonds if needed without fixing the amount of such additional issue.

Section 4 of the ordinance reads:

“Bonds of the City of Millville shall be issued in the sum of \$130,000, Millville Company (\$126,000, People's Company), or so much thereof as may be necessary, provided that the issue of additional bonds in any further sum shall be authorized by a supplemental or other ordinance if required for said purposes, in case the agreed purchase price of said property and franchises or the award of Commissioners in condemnation proceedings, or the assessment by a jury of the value of said property and franchises and damages sustained by the taking thereof and the costs of condemnation proceedings shall exceed \$130,000 (\$126,000 for People's Company), and the City shall stand by any such award and assessment shall elect not to abandon said condemnation proceedings as prescribed by section 15 of the statute above recited (3 C. S., pages 2187-2188).”

This gives the city unlimited power to bond to cover its condemnation of the two water plants. Prosecutors maintain that the City must be bound by a certain sum fixed by ordinance beyond which they cannot go. The ordinances with these provisions for unlimited bonding are illegal and void.

In *Fishblatt vs. Atlantic City*, 78 N. J. Law, page 135, the bond issue was saved because the Court held that the ordinance fixing amounts of bonds to be issued not to exceed \$500,000 limited the bond issue to

that amount, but in these cases the City does not propose to be limited by the ordinances, but expects to be left free to raise the limit as it pleases, and in such amount as it wishes.

See *Fishblatt vs. Atlantic City*, 78 N. J. Law, page 135.

IX.

Because the right of the City of Millville to make up the deficiency arising from its contract with the People's Water Company by reason of the failure to secure sufficient revenue from the sale of water furnished by that company by taxation is unsettled, undetermined and pending in this Court.

On November 6th, 1912, application was made by N. G. Livermore and Walter Wood, prosecutors to the Branch Court, Justices Swayze, Voorhees and Kalisch, for a writ of certiorari, removing into this Court a resolution to renew for the period of six months a certain contract between the City of Millville and People's Water Company, under which contract a great loss had been sustained by the City of Millville up to January 1st., 1911, of \$23,974—now about \$48,000. Printed books of Case and Briefs on behalf of prosecutors, the City of Millville and People's Water Company, were submitted to the Court. That case is still pending and undetermined.

Under that contract the City has lost to date about \$48,000, and it now proposes to assume a greater burden and loss in the purchase of this plant which has always been a losing proposition.

The taxpayers who have been endeavoring to be released from the burdens of this contract, entered into between the City and the People's Water Company, are now threatened with a large bonded indebtedness for the purchase of the plant in question, and now come into this court to prevent a further load of indebtedness being thrust on the City.

X.

Because the City of Millville never adopted the provisions of an act entitled, "An Act to enable cities to supply inhabitants thereof with pure and wholesome water," (1 C. S., page 823) and the act supplemental and amendatory thereof as alleged in section 5 of said ordinance.

The adoption of this act is attacked directly by the third certiorari, entitled *Wood vs. City of Millville*, so that the question is raised both as a reason for the setting aside of the writs in *Franklin vs. City of Millville* (2 cases), as well as by direct attack. (See argument of reasons, *Wood vs. City of Millville*, page 22 of this Brief).

XI.

Because said ordinance violates the provisions of a contract made and entered into between the City of Millville and the Millville Water Company on the sixteenth of January, 1879.

Ordinance 144 violates the agreement entered into between the City and the Millville Water Company. (See contract, page 118.) Certainly a municipality has no more right to impair the obligations of an existing contract than the State Legislature, even if it is attempted in condemnation proceedings.

Municipal powers are subject to limitations of both Federal and State Constitutions. Restrictions imposed upon the State Legislature by these supreme expressions of the sovereign will apply with equal force to all subordinate agencies and instrumentalities of the State that exercise any of its political functions.

28 Cyc. 27.

A municipality, therefore, may not pass any ex

post facto ordinance, nor any ordinance which violates the obligations of contracts.

28 Cyc., 272.

A franchise granted by a municipality to maintain railroad lines, telegraph or telephone appliances, a water supply, a gas or electric lighting appliances within municipal limits, when accepted and acted upon by guarantee according to its terms, is a contract which the municipality cannot abolish or alter without the consent of the grantee.

8 Cyc., page 950.

The City fails to justify its use of the Eminent Domain Act in the present case—it fails to show that any public necessity exists for its present proceedings of condemnation.

The City is so thoroughly protected under its contract with the Millville Company that it now has a municipal plant, and no occasion exists for its use of its police power. In its contract it has fixed all checks necessary to protect itself and consumers of water. It certainly has no need of two water plants.

The Millville Water Company has more than an ordinary franchise to use the streets of Millville—it has a specific contract in perpetuity to supply water—certainly the present proceedings are a violation of the terms of that contract, and just compensation cannot be fixed for the damage done the Millville Company if the City is allowed to proceed.

See cases collected in notes, 8 Cyc., page 950, in reference to condemnation proceedings after grants made to corporations.

XII.

Because the City of Millville has no power to cancel, alter or change the contract between it and the

Millville Water Company without the consent or concurrence of the Millville Water Company.

In order to terminate the contract of 1879 with the Millville Company the City must secure the consent of the Millville Water Company. It entered into this agreement, fully protected itself and the consumers of water in the City of Millville; the Water Company has acted under the agreement and carried it out in every detail—now the City seeks to break its contract and force the company to sell its plant to the city.

See 8 Cyc., page 950.

The same objections apply to the violation of the contract with the People's Water Company.

THE ELECTION OF JUNE 11TH, 1912.

Appellant attack this election and maintain that the same was illegal and void.

This election and the results are attacked in this cause by certiorari. As stated above, application was made shortly after the election of Judge Kalisch, at Chambers, in Newark, for a writ of certiorari to remove in'o this court the result of the election held on June 11th, 1912, by which it is claimed the City of Millville adopted the act "to enable cities to supply the inhabitants thereof with pure and wholesome water." The election was held on June 11th, 1912, and application made for the writ of certiorari on July 29th, 1912, and the Justice ruled that the application was premature, as the City had taken no steps under the election. Now that the City is proceeding to condemn the water plants and the election of 1912 forms an important part of these proceedings, the prosecutors challenge that election.

CERTIORARI IS THE APPROPRIATE REMEDY TO TEST THE RESULT OF AN ELECTION OF THIS NATURE.

“The Supreme Court has a right to examine into the proceedings of an election held under an Act of Assembly, and in case they are illegal, to declare the election void.”

1 New Jersey Law, page 244.

This was a certiorari to remove the proceedings of an election held for fixing on the place where the Court House for the County of Middlesex should be erected.

See *State vs. Justices R., of Middlesex*, 1 N. J. Law, 244.

The certiorari in this case goes to the results of an election and does not test the title to any public office. Prosecutors concede that in testing title to a public office quo warranto is the proper remedy, but not in testing the results of an election or the validity of the election itself. In these cases certiorari is the proper remedy.

In dismissing the writ of certiorari in *State vs. Clark of Passaic*, reported in 25 New Jersey Law Reports, page 355, on the ground that quo warranto was the remedy—this was done on the ground that title to an office was attacked and on certiorari would remain vacant pending the decision of the Court; no such situation appears here in the case at hand—no office is left vacant by the attack of prosecutor.

In *Brown vs. Street Lighting District*, 69 N. J. Law, page 485, affirmed Court of Errors, 70 N.J. Law, page 762, certiorari was the remedy used to test the election held in this case. This election was held for the purpose of raising a fund for street lighting—no title to office being involved and the attack was made by certiorari and passed on by the Court in that case.

REASONS WHY ELECTION WAS INVALID.

I. Because the ballot prepared for said election was misleading and confusing—the suggestions as to how to vote were made a part of the ballot, and were so blended with the proposition that voters were confused and misled.

(See copy of ballot in Printed Case, page 9).

In the affidavit of Thackara M. Carroll, although he is a bookkeeper by profession, he voted as he supposed correctly on the proposition, but afterwards discovered his vote was thrown out, he having struck out the word “for” on the suggestion of how to vote.

An examination of the ballot will show how confusing the same is arranged—the suggestions as to how to vote appearing directly above the proposition. Out of 876 votes cast, 107 were rejected—one-eighth of the entire vote cast was thrown out and prosecutor maintains the confusing and misleading ballot was the cause of this.

II. That the statements or directions as to how to vote were improperly on the ballot, making the same defective and illegal, and said election void.

Appellant maintain that the ballot used at this election was illegal, in that the suggestions were so blended with the proposition as to prevent voters from properly voting at this election. The directions or suggestions as to how to vote should have been placed at the top of the ballot or at the bottom and so separated from the proposition as not to be involved with the same.

III. Because there was no revision or correction of the election list used at the election held June 11th, 1912.

On this point no testimony was submitted by prosecutors, but prosecutors maintain that the burden is

cast on the City to show that the election was properly held and that prosecutor is not compelled to produce the burden of proof.

See *Morgan vs. Gloucester*, 44 New Jersey Law, page 137.

IV. Because the returns of said election show that the adoption of said Act of the Legislature was not carried by the majority of the registered voters of Millville.

The number of voters on the registry list at the time this election was held was.....	2,306
The number of votes polled.....	986
Number of votes For adoption of Act,	534
Number of votes Against the adoption of Act	345
Number of ballots rejected.....	107
	986

Or, to be more specific, the vote was as follows:

	For			
Names on Registry List.	Names on Poll Book.	Votes Rejected.	Adoption of Act.	Against Adoption.
254	90	..	69	21
207	92	10	74	8
115	55	3	43	9
193	73	8	34	31
185	88	17	46	25
203	108	8	77	23
228	92	13	22	57
292	110	20	35	55
137	56	7	28	21
123	51	8	20	23
211	101	2	57	42
158	70	11	29	30
2,306	986	107	534	345

Out of a registration of 2,306, only 986 votes were polled, less than a majority of the registered voting list.

Millville had a population of 12,000 in 1912 at the time this election was held, and the registered voters numbered 2,306, yet less than one-half of that vote was cast. Certainly an important proposition of this kind should be voted on by more than one-half of its registered vote.

The burden is on the City in this case to show that the election was in every respect legal.

“The defendant must satisfy the Court, not only that an election has been held, but that it was legally noticed and conducted before they can invoke the aid of the Act of 1876 to authorize them to construct water works and encumber the City with debt. If not in conformity with the law in every particular the election must be declared void and together with all resolutions, ordinances and proceedings subsequent thereto and founded thereon will be set aside.”

Morgan vs. Gloucester City, 44 N. J. Law, page 137.

V. Because the number of votes cast at said election was less than one-half of the registered vote of the City of Millville at the time said election was held, prosecutor maintains that the referendum clause, section 16 (I. Compiled Statutes, page 830) means a majority of the legal voters of the City and not a majority of those who shall vote either for or against the adoption of its provisions. Certainly on an important proposition of this kind the intention of the Legislature was that it should be a majority of the voters of the City in order to carry such an election.

Speaking of the importance of a full vote on an election of this kind, again referring to the case of Morgan vs. Gloucester City, New Jersey Law 44, page 144, the Court said:—

“Under such circumstances, would there not have been a full vote if notice had been properly given? The population of Gloucester City in 1880 was a little over five thousand. At the general election of that year, nearly one thousand votes were cast. At the special election of December 21st, only five hundred and eight votes were polled of which two hundred and thirty-two were against the adoption of the provisions of the Act of 1876. Soon after the election, more than six hundred voters within the City protested in writing against the scheme.”

Morgan vs. Gloucester City, *Supra*.

In the election held in Millville in 1912, 345 votes were cast against the adoption of the act as against 534 in favor of the same. Certainly this comparison with the vote in Gloucester City shows that a larger percentage were against the proposition out of the vote cast in Millville than in the Gloucester City vote. As in the Gloucester City case, petitions were filed before the City Commissioners of Millville, signed by property owners, representing an assessed valuation of about seven hundred thousand dollars, protesting against the city's action in condemning the two water plants.

See petitions filed before City Commissioners December 31st, 1915, as printed in the book, pages 154 157.

THE ELECTION OF DECEMBER 4TH, 1894.

At the last hearing for the taking of testimony respondents attempted to fall back on a purported election held December 4th, 1894, in the City of Millville, for the adoption of the Water Act of 1876. The City attempted to read into the present cases the record of the case of Livermore, Kemble and Wood vs. Millville, previously decided by this Court. This testimony was objected to by prosecutors.

The City in the present proceedings has based its ordinances on the election held June 11th, 1912, and no allegation or statement was ever made that they intended to rely on a previous election.

Appellants insist that the election of December 4th, 1894, was never legally held or the proposition lawfully adopted. The City fails to show that it was. It is perfectly well settled that the proof must be plain that all statutory prerequisites to the adoption of the Act of 1876 have been complied with before the Court will sanction any proceedings based upon the assumed existence of the City to operate under the provisions of that act.

Morgan vs. Gloucester City, 15 Vroom, 137.

Schultz vs. Manchester, 32 Vroom, 513.

Brown vs. Street Lighting, &c., 41 Vroom, page 762.

Of this election there is no proof where notices for same were set up, whether signed or what newspapers published in—no form of ballot is shown—nothing to show where polls were held—when opened or closed—or that election was held in manner prescribed by ordinance, the proof is wholly lacking.

VICIOUS ATTACK OF CITY ON WATER OF MILLVILLE COMPANY.

The City shows how unfair and inequitable are its present proceedings by a vicious attack on the quality of water of Millville Water Company.

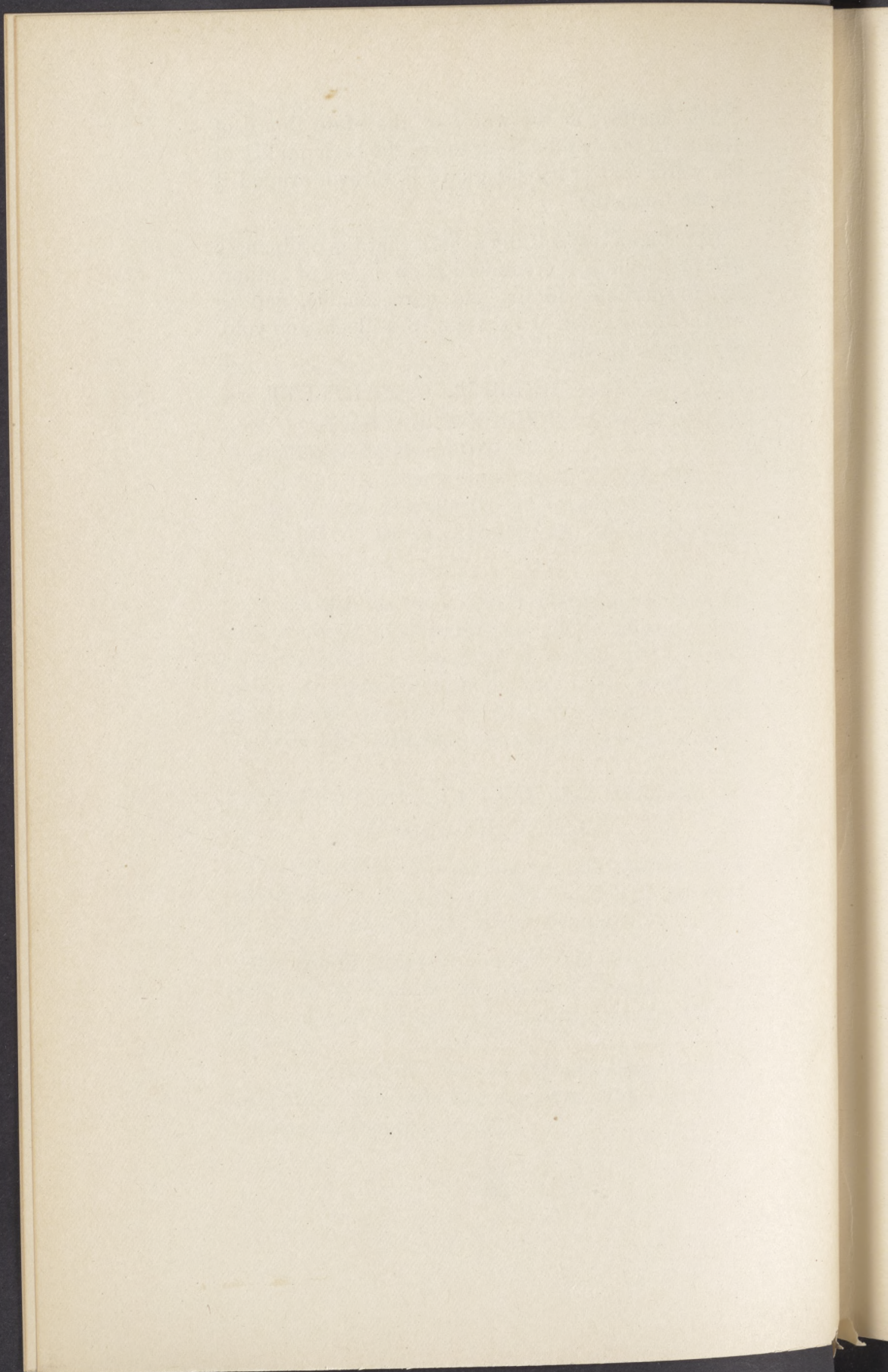
The proofs, however, nullify this attempt in the testimony of Bullock, Horton and Thomas; no epidemic of typhoid has ever occurred in the City of Millville.

Out of the few cases of typhoid shown in 1912, 1913, 1914, 1915, only two are reported as old water. None are reported in 1915.

The analysis of the water by the State Board of Health in the printed book shows the high quality of the water and every safeguard is thrown around it by the Company.

Appellants respectfully submit that the ordinances and proceedings thereunder are an excess of authority, inequitable, unfair, and unreasonable, and as well as the election of 1912 and 1894 illegal and void, and should be set aside.

HERBERT C. BARTLETT,
JOSEPH H. GASKILL,
Attorneys of Appellants.



NEW JERSEY COURT OF ERRORS AND
APPEALS.

SIR JOHN FRANKLIN,
Appellant-Prosecutor,

vs.

CITY OF MILLVILLE AND
MILLVILLE WATER COM-
PANY,
Defendants-Respondents.

ON CERTIORARI OF
ORDINANCE NUM-
BER 144.

SIR JOHN FRANKLIN,
Prosecutor-Appellant,

vs.

CITY OF MILLVILLE AND
THE PEOPLE'S WATER
COMPANY,
Defendants-Respondents.

ON CERTIORARI OF
ORDINANCE NUM-
BER 145.

WALTER WOOD,
Appellant-Prosecutor,

vs.

CITY OF MILLVILLE,
Defendant-Respondent.

ON CERTIORARI OF
ELECTION ON THE
QUESTION OF THE
ADOPTION OF WAT-
ER ACT OF 1876.

ON APPEAL FROM SUPREME COURT.

BRIEF OF CITY OF MILLVILLE, DEFENDANT
IN CERTIORARI.

The writs of certiorari in the two Franklin cases, above stated, brought before the Supreme Court for review two ordinances, one providing for the purchase or condemnation by the City of Millville of the water works, property and franchises of the Millville Water Company, and the other providing for the purchase or condemnation by the city of the water works, property and franchises of the People's Water Company of Millville, New Jersey.

These two ordinances are identical in form, except that one provides for the acquisition of the property of the Millville Water Company and the other of the property of the People's Water Company of Millville, New Jersey.

The third writ of certiorari brought before the court for review proceedings of the City of Millville and the electors had in 1912 in which the legal voters adopted the provisions of the Water Act of 1876 (1 C. S. 823).

The question whether or not the Water Act of 1876 has been adopted in the City of Millville is deemed by the prosecutor to be pertinent to and involved in the issues touching the validity of the two ordinances under review in the Franklin cases, because, to a certain extent, the ordinances in the proceedings for the acquisition of the water plants and the issuing of bonds is founded on the Water Act of 1876.

At the same time, the City of Millville claims the right to take these proceedings and issue the water bonds under authority entirely independent of the Water Act of 1876, as is argued in the brief.

With respect to the question whether or not Millville has adopted the Water Act of 1876, it will be noted that the question of the adoption of the Act has been submitted to the electors of the City of Mill-

ville at two different times, and at both elections the electors have voted for the adoption of the Act. The first of these elections was held in the year 1894, as is shown by the printed book; but the returns of that election appear only in a summarized statement of the result, spread on the minutes of the Common Council. Whether or not the adoption of the Act at the election in 1894 is sufficiently evidenced by the records and files in the office of the City Clerk is presented for determination by the court in these suits, for the first time; and the validity of these proceedings is not waived by the city, but is insisted upon. But, if the court shall hold that the records and files do not sufficiently evidence the fact that the Act of 1876 was adopted at the election held in 1894, then the city insists that the question of the adoption of the Act of 1876 was finally settled by the election held in 1912. The purpose of holding the second election was, manifestly, to set at rest disputes that might arise concerning the election held in 1894.

The city does not admit, however, that the Supreme Court can review by certiorari the question of its right to exercise those peculiar powers and franchises granted to cities by the Water Act of 1876; for the powers and franchises being exercised by the city, or attempted so to be, are corporate franchises which it is using, *de facto*, under color, at least, of a grant by the sovereign power of the State; and the City of Millville maintains that its right to exercise those peculiar franchises granted by the Act of 1876 are only subject to review by *quo warranto* on an information filed by the Attorney-General. And the city denies the right of the court to review, by certiorari, an election held by the legal voters of the city.

The Supreme Court affirmed the two ordinances under review, as well as the election proceedings; and the prosecutors now appeal in each of the three cases.

From the foregoing it will be seen that the discussion of the three causes, by the defendant, City of Millville, involves the following

POINTS.

1. Neither of the ordinances under review is invalid for any of the reasons assigned by the prosecutor.

2. The City of Millville had adopted the Water Act of 1876.

3. The Court cannot, by certiorari, review the election proceedings had touching the adoption of the Act of 1876; nor can the Court, by certiorari, in reviewing proceedings of the Board of Commissioners, inquire into the question whether or not the Water Act of 1876 was, in fact, lawfully adopted if the records of the Common Council disclose, *prima facie*, that the Act was adopted.

I.

NEITHER OF THE ORDINANCES UNDER REVIEW IS INVALID FOR ANY OF THE REASONS ASSIGNED BY THE PROSECUTOR.

The reasons assigned in the two cases are identi-

cal; and the arguments thereon may be the same except, with respect to the contract alleged to exist between the Millville Water Company and the City of Millville, and the other contract existing between the City of Millville and the People's Water Company. The pretended contract with the Millville Water Company purports to be in perpetuity, and never was authorized by any statute. The contract with the People's Water Company, however, was made for the period of twenty-five years and is a subsisting contract. And the question sought to be litigated under reasons eleven and twelve (11 and 12), is fairly presented for determination on the certiorari of Ordinance No. 145, for the acquisition of the property, works and franchises of the People's Water Company.

(1)

Ordinances Numbers 144 and 145 are not an abuse or excess of authority on the part of the City of Millville, and are not so reasonable, inequitable and unfair as to justify the interference of the Court.

The ordinances, in terms, provide for the acquisition of these two water plants in ordinary condemnation proceedings, pursuant to the Condemnation Act of 1900 (2 C. S. 2182, &c.). No fraud with respect to the proceedings is alleged. The question whether or not the City of Millville shall acquire these municipal plants by condemnation proceedings is one of business judgment, and solely within the discretion of the governing body. The presumption is that the city will not pay for the property to be

acquired a sum in excess of its true value, whether the amount of money to be paid shall be reached by agreement with the owner of the property or shall be fixed by commissioners or assessed by a jury on appeal from the commissioners. There is no evidence, nor is there any allegation, that the provisions of the ordinances themselves will not be fairly and equitably carried out; but that question could not possibly arise, the sole question before the Court being whether or not the ordinances, by their terms, provide for any proceedings that are unreasonable, inequitable and unfair. If the ordinances are unreasonable, inequitable and unfair, then the provisions of the Condemnation Act are unreasonable, inequitable and unfair, for the ordinances conform strictly to the requirements of the General Condemnation Act of the State.

(2)

The proposed purchase by the Commission Government of the City of Millville of two water plants, as provided in Ordinances Nos. 144 and 145, will not impose upon the taxpayers of the city any unnecessary burden nor be a wilful extravagance and abuse of power.

If the plants are acquired at a fair price, the inference must be that the city will purchase them at such a price as will produce to the city a fair revenue on the investment under reasonable rates to water customers. Municipal ownership of public water supply is so general throughout this State that private water companies have become and are the exception. Experience has shown, as in the case

of Atlantic City, that the municipal ownership of one plant, in competition with a plant privately owned, has resulted unprofitably to the taxpayers. These two water companies, the Millville Water Company and the People's Water Company, as shown by the reports made to the Public Utility Commission, are running their plants at a loss. Mr. Wilcox, in his treatise concerning public utilities, concludes that from experience the interests of the public are best to be served by a monopoly of these utilities, administered by the Government itself. Our own Board of Public Utilities has even gone so far as to declare that public utilities, when privately owned, should be vested in a monopoly. In the report of the Board of Public Utility Commissioners, Vol. 1, May 1, 1911, to June 2, 1913, at page 655, in the matter of the application for approval of an ordinance of the City of Millville granting franchise to the Consumers' Gas Company, the Board of Public Utility Commissioners said:

“Experience has gone a long way towards demonstrating that services afforded by public utilities tend eventually to be rendered under conditions of monopoly. It is true that for a time a public utility may compete with another supplying the same body of consumers with the same service. But experience demonstrates that such competition is likely to be short-lived. The two competitors are influenced by the consideration of securing high prices by the mutual cancellation of their competition, and not infrequently by the possibility of reducing costs by a union of parts of their productive apparatus. Where actual fusion of the two erstwhile competing concerns does not result, a division of territory or joint agreements as to rates, prices or

service not uncommonly operate to leave consumers at the mercy of a virtual monopoly. The low prices prove but temporary, and the transient gain is succeeded by a long period of loss. That public opinion has come to recognize the almost inevitable outcome of such temporary competition between public utilities is evidenced by much recent legislation. The creation of various boards and commissions with supervisory powers over public utilities, and often with eventual powers of rate fixing, demonstrates that the illusive doctrine of competition in this field is being superseded by an experimental régime of strictly regulated monopoly.

“Two other influential considerations operate in the same general direction. Where competing companies, with franchises, serving the same consumers, finally unite, the unnecessary duplication of plant and appliances entails a permanent burden upon the public. Even where prices, after due hearing, may be prescribed by public authority, some regard must be paid to the interests of *bona fide* investors. The prices set must have some reference to the capital legitimately sunk in the equipment of the formerly competing plants. It not infrequently results that the prices eventually authorized are higher than they would need to be if no more than the necessary amount had been originally invested in plant and appliances adequate for the supply of consumers. Thus the evils of an ill-judged, competitive experiment in a field unsuited therefor perpetuate themselves and burden the consuming public.”

The declaration of principles thus outlined by the

Board of Public Utility Commissioners has been consistently followed by it. Therefore it cannot be argued that the acquisition of the two water plants will be necessarily a wilful extravagance and abuse of power.

For the two reasons above assigned: first, because it ought to be assumed that the price to be paid for the two plants will be such a sum as will return a reasonable revenue to the city on the investment; and second, because, if the city is going into the water business, then the acquisition of both the plants is reasonably necessary if approved business principles are to be followed.

It is respectfully submitted, however, that the question whether one or two plants should be acquired is a business proposition the solution of which is imposed by the law upon the Board of Commissioners, and is not reviewable by certiorari.

(3)

It is not true that the City of Millville now practically has to all intents and purposes a municipal plant by virtue of a contract made with the Millville Water Company.

The service rendered by the plant of the Millville Water Company to the city is specifically stated by the contract in evidence. The city does receive from that water company the use of water through sixty-four fire hydrants for fire purposes and for flushing gutters.

Since the Millville Water Company plant was put in in 1881 the census will show that the city has multiplied several times in population. The making of

the contract with the People's Water Company in 1901 was necessary because the Millville Water Company failed to supply the city with sufficient water for domestic and public uses. Under the operation of the contract with the People's Water Company there has been a sufficient supply of water, in quantity, to consumers, but there are two burdens cast on the public for such service. In the first place, the operation of the contract with the People's Water Company results in an annual loss to the consumer of about forty-five hundred dollars; and the reports of the State Board of Health show that the quality of the water supplied by the Millville Water Company, which is taken from Union Lake, a body of water within the limits of the city, is not fit for consumption.

On reading the contracts with these two water companies it will be manifest that neither plant is municipally owned. The effect of the contracts is that the city is now a purchaser of water from the two water companies under conditions that result in a financial loss and are actually injurious to the public.

(4)

The fourth reason is based on statements of fact assumed by the prosecutor which are not true, if they are relevant to the uses.

The fourth reason infers that the ordinances are unlawful because the City of Millville, by virtue of its contracts with the Millville Water Company and the People's Water Company "has provided all the rules, regulations and restrictions with re-

spect to the supply of water for private use, including the rates for such supply, that it would have the power to do under a plant owned entirely and solely by the municipality."

Under the pretended contract with the Millville Water Company the city has no authority to regulate the rates nor to direct the manner of the purification of the water or to control the plant; and it merely has the right to use water through sixty-four fire-plugs for fire purposes and for flushing gutters.

Under the contract with the People's Water Company the city has the right to take water at a rate which results in an annual loss of approximately forty-five hundred dollars.

It has no ownership nor control over either plant and is merely a customer.

(5)

The fifth reason assigned is not relevant and is not true.

If the facts alleged in the reason be true yet it is not an assignment of a legal reason why the municipality should not take over this business by condemnation so that, if there be a reasonable profit in the business, the city may have the benefit of it, and if the service be poor it can give efficient service.

(6)

The sixth reason rests upon facts assumed; and the assumption of those facts is not warranted by any evidence.

The sixth reason alleged against the ordinances is that

“the revenue from the two plants proposed to be acquired by Ordinances 144 and 145 is not sufficient to pay the running expenses of the plants and the interest and sinking fund charges on the bonds to be issued for said purchase.”

It ought to be taken for granted that the city will only operate one pumping station if both plants are acquired. The revenues of both plants now aggregate about twenty thousand dollars per year. The actual water rent paid by consumers is less than that sum, however, and amounts to about thirteen thousand, five hundred dollars per year. To this sum should be added the value of the hydrant service rendered the city by the Millville Water Company, presumably equivalent to the interest on the thirty-nine thousand dollars of debt, and the value of the service rendered through the hydrants of the People's Water Company, amounting to about twenty-five hundred dollars per year. The total revenue of the city, therefore, under its present water rates, would actually approximate about seventeen or eighteen thousand dollars. The expense of the operation of the People's Water plant is shown to be about \$7500 per year, so that it may be assumed that the expenses for maintenance of the pumping station would be about seven or eight thousand dollars, thus there would be left ten thousand dollars for payment of interests and sinking fund charges on whatever bonds may be issued. The amount of the bond issue will be based upon the value of the plants as fixed by lawful commissioners or a jury on appeal; and that value ought to be

such reasonable sum as will permit the city to earn a fair profit on money invested. Counsel for the prosecutor has no right to assume that the commissioners or a jury will fix as a value of these plants the maximum amount of the bonds authorized to be issued; nor, in justice to the city, ought such a price be fixed.

But, assuming that two hundred fifty-six thousand dollars of bonds are to be issued, it must be borne in mind that the revenue of the two plants, as shown by the figures in evidence, are the result of competitive methods. Competition initiated by the Millville Water Company in 1903, and continued ever since, has fixed the water rates in Millville at a certain nominal price; but the consumer, when he pays one quarter year's water rent, is given a receipt in full for the succeeding quarter; in other words, by the practice pursued in Millville, water rents have been cut exactly in half. If the city shall buy these two plants it does not necessarily follow that the city would continue these rates. An examination of the reports of the Public Utility Commissioners will disclose that the water rates in Millville are the very lowest in the State of New Jersey. If these rates can be maintained, without a loss, no doubt the municipality would continue them, but if unprofitable, it is not fair to assume they will be continued.

But, the point set out in the sixth reason cannot be maintained because (1) the price of the plants and the amount of the bonds to be issued is not ascertainable, and cannot even be conjectured; and (2) the revenue from the two plants cannot be known until fixed by the governing body, after acquisition of the plants. If the old water rates shall be restored, by discontinuance of the fifty per cent. dis-

count of water bills, the revenue in cash from consumers would be approximately twenty-seven thousand dollars; and then the full rate would be much less than ordinarily is charged throughout New Jersey.

(7)

The City has power to raise by taxation the deficiency arising from the failure to secure from the operation of the water plants sufficient revenue to pay the running expenses.

The Act entitled "An Act concerning cities in this State," (P. L. 1884, p. 239; and 1 C. S. 917, par. 1185), confers distinct authority to pay the interest by taxation. And Section 13 of the Water Act of 1876, (1 C. S. 829, par. 871), provides that the deficiency in the interest may be raised by taxation.

By the statute, P. L. 1881, p. 189 (1 C. S. 946, par. 1299) cities of this State are authorized to create, establish and maintain a regular sinking fund in the city; and, under the authority of that Act and many subsequent Acts, it is probable that every city in the State has a regular sinking fund commission of one sort or another. There is such a commission in the City of Millville.

By the Act entitled "An Act to authorize additions to sinking funds in cities," (P. L. 1882, p. 204; 1 C. S. 946, par. 1300), it is provided that where there are water works under the control and operation of commissioners and where a sinking fund has been established by them for the redemption of bonds issued for the purpose of water works, the board is authorized to make additions to the sink-

ing fund annually as they may deem proper and necessary in order to provide for the payment of all bonds issued by authority of law by such board.

By the Act of 1879, (1 C. S. 945), cities having a population of less than one hundred thousand may establish a sinking fund for the cancellation of its bonds, &c. The commissioners provided for by this original Act were appointed by the Court; but by the subsequent Act of 1882, the appointment of commissioners seems to have been vested in the Common Council or governing body. (1 C. S. 946, Sec. 300.)

By the Act of 1898 (P. L. 1898, p. 139; 1 C. S. 949, Sec. 1312, &c.), the council or other legislative body was authorized to create a sinking fund commission consisting of the mayor, comptroller and treasurer; but this Act did not repeal existing laws. (See Section 4 of the Act.)

The city therefore relies (a) on the statute of 1884 (1 C. S. 917, par. 1185), as well as on the provisions of the Water Act of 1876, for the authority to raise by taxation any deficiency required for payment of interest on the bonds; and (b) it rests its authority to raise by taxation deficiencies for the sinking fund purposes on the Act of 1879 (1 C. S. 945, Sec. 1), which grants a general power to all cities to establish a sinking fund for the cancellation of its bonds and from time to time to fix the rate to be annually assessed therefor; in addition to the other powers granted by the several statutes referred to.

Therefore, the seventh point of the prosecutor is not good.

(8)

The eighth reason assigned, to wit, that the ordinances are illegal in that the city is not limited to the proposed bond issues of one hundred thirty thousand dollars in the one case and one hundred twenty-six thousand dollars in the other case, but provides for the issue of additional bonds if needed, without fixing the amount of such additional issue, is not well taken in point of fact.

The sections of the ordinances objected to are Sections 4. The phraseology in the respective ordinances is the same except that in one ordinance an issue of one hundred thirty thousand dollars is provided for the acquisition of the plant of the Millville Water Company, and in the other ordinance an issue of one hundred twenty-six thousand dollars is provided for the acquisition of the plant of the People's Water Company. Only one of these sections need be printed, for illustration. Section 4 of Ordinance No. 144 reads as follows:

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

price of said property and franchises, or the award of commissioners in condemnation proceedings or the assessment by a jury of the value of said property and franchises and damages sustained by the taking thereof and the costs of condemnation proceedings shall exceed one hundred and thirty thousand dollars and the city shall stand by any such award or assessment and elect not to abandon said condemnation proceedings as permitted by Section 15 of the statute above recited (3 C. S., pp. 2187, 2188).''

The language objected to, in the eighth reason, is that contained in the proviso; but it will be observed that that clause of the section does not in any manner whatsoever ordain the issue of additional bonds. It is merely a precautionary clause, inserted to point out a way for the raising of additional money if the governing body should desire so to do after treaty with the owner, or upon a price being fixed by commissioners to be appointed, or upon damages being assessed by a jury the price was found to be in excess of the amount of the bond issue, and the governing body did not elect to abandon the proceedings.

Ordinances Nos. 144 and 145 do not make provision, in themselves, for any issue of bonds in addition to the amounts specified. It would seem prudent and even necessary that the ordinances point out some lawful manner for the payment for these plants if it would develop, in condemnation proceedings, that more money would be required than that sum which the commissioners at this time feel warranted in authorizing to be raised in mandatory terms. The proviso is merely a declaration that the governing body reserves a right to issue additional bonds if they shall be required. In point of fact

no direct provision, in all probability, would have been contained in the ordinances authorizing the issue of any stated amount of bonds were it not for our laws requiring an appropriation of money before a contract may be entered into; and in appropriating or providing for the raising of so much money as might reasonably be necessary the Board of Commissioners exercised a prudent discretion.

But the particular point raised, to wit, that an indefinite amount of bonds is actually authorized, is not founded in fact, for the ordinances make no such vague or indefinite provision for an unlimited issue of bonds, but they distinctly provide that entirely new supplemental or amendatory ordinances must be passed before additional bonds can be issued.

(9)

The ninth point is without meaning.

The ninth reason assigned against the validity of the ordinances is as follows:

“9. Because the right of the City of Millville to make up the deficiency arising from its contract with the People’s Water Co. by reason of the failure to secure sufficient revenue from the sale of water pumped by that company, by taxation, is unsettled, undetermined and pending in this court.”

The defendant, City of Millville, knows of no unsettled, undetermined suit of the nature indicated now pending in the Supreme Court; but, conceding that there is such a suit, the question of the power

of the City of Millville to raise by taxation annually the losses incurred under its contract with the People's Water Company can in nowise effect the validity of the two ordinances for the acquisition of the water plants. That question is not germane to any issues herein.

(10)

The City of Millville has adopted the provisions of the Water Act of 1876, entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," (1 C. S. 823), and the Acts supplemental thereto and amendatory thereof.

- (1) The Act was adopted in 1894.
- (2) If the Act was not adopted in 1894, it was adopted in 1912.
- (3) The Supreme Court, on these certioraries, has no power to inquire into the validity of either the election of 1894 or the election of 1912.

1. The Act was adopted in 1894.

Ordinance Number 55 of the City of Millville, printed with the case, passed October 5, 1894, approved October 9, 1894, provided that an election be held in the City of Millville on Tuesday, the fourth day of December, 1894, for the purpose of adopting or not adopting for said city the provisions of an Act of the New Jersey Legislature entitled, "An

Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April 21, 1876, together with the supplements thereto.

The printed book shows conclusively that the election was held; and it further appears from the minute book of Common Council as follows:

" 'Millville, December 7, 1894. Council met as usual, President Troth in the chair; all members present.' After the approval of certain bills and some other business transactions, the following appears on page 28: 'The Recorder presented the following report of the special election held December 4, 1894, for and against the adoption of the provisions of an Act of the Legislature of New Jersey entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water":

	For.	Against.
First ward, First precinct	112	31
First ward, Second precinct	132	18
Second ward	151	47
Third ward, First precinct	42	76
Third ward, Second precinct	28	58
Fourth ward	183	61
	648	291
	291	
Majority	357	

L. H. Hogate,
City Recorder."

And the election of 1894 is validated by the Act P. L. 1907, p. 14; 1 C. S. 941, Sec. 1279.

It is true that the Act of 1876, Section 16, provides that the election officers shall return to the

council of the city a true and correct statement in writing, under their hands, of the *result* of said election, the same to be entered at large upon the minutes of said body. Manifestly, the statements in writing, under the hands of the election officers, were not entered at large upon the minutes of council. But if the statute means that only the *result* of the election be entered at large on the minutes then the statement entered by the recorder is a sufficient proof of the adoption of the Act by the electors for present purposes. The act of the recorder, or city clerk, in spreading the returns at large on the minutes certainly could have had no effect whatsoever upon the result of that election. *The question of the adoption of the Act was submitted to the electors and not to the city clerk nor to a Court.* If the electors in fact did, by their vote, adopt the Act, then the statute became and was instantly operative in the City of Millville as an additional grant of power and franchise to the body corporate; and a failure of the recording officer to spread at large upon the minutes the statements of the result did not impair nor invalidate the proceedings of the electors at the polls.

“It must be very plain language that would justify the Courts in so construing a referendum clause as to put it within the power of a ministerial officer to nullify the Act.” (*Albright vs. Sussex Co. Lake & Park Com.*, Vr. 534, 535.)

II.

IF THE ACT WAS NOT ADOPTED IN 1894 IT
WAS ADOPTED IN 1912.

The Common Council of the City of Millville no

doubt was advised that there was a question whether or not the result of the election held in 1894, touching the adoption of the Water Act, was sufficiently evidenced by the minutes. Therefore, in 1912, the question of the adoption of the Act of 1876 was again submitted to the people, and the electors again voted to adopt the Act of 1876. The election officers returned to the Common Council of the city a true and correct statement in writing, under their hands, of the result of said election, and the same was entered at large upon the minutes of that body. The election officers of the city, having conducted the election, presumably in accordance with law, having made their return in writing, under their hands, showing the result of said election, and the same having been spread at length upon the minutes of Common Council, the Act must conclusively be assumed to have been adopted in the City of Millville. No irregularities in the election are known, whether with respect to the ballots used or the notice given. The Act has been deemed to be a part of the legislative grant of power to the city government. The city is exercising that power. No notice of any litigation intended, or proceeding of any nature attacking the validity of that election has ever been given to the City of Millville, and the prosecutor is in gross laches in attacking the election. The city must rely upon the return of the proper election officers, solemnly authenticated under their hands and spread at large upon the minutes of Common Council. And the defendant city respectfully insists that the Court is bound to assume in this proceeding that the result of the election was as shown by the return of the election officers evidenced by the minutes of the Common Council.

III.

THE SUPREME COURT, ON THESE CERTIORARIES, HAS NO POWER TO INQUIRE INTO THE VALIDITY OF EITHER THE ELECTION OF 1894, OR THE ELECTION OF 1912.

(a) The city is exercising, *de facto*, powers conferred by the Act of 1876, under color of the two elections held, one in 1894 and the other in 1912. It is respectfully submitted that this Court, on certiorari, can no more inquire into the right of the City of Millville to exercise this corporate franchise than it could, on certiorari, examine into the right of the city to exercise the powers conferred under the Commission Government Act. If the City of Millville is unlawfully exercising the powers conferred by the Act of 1876, then its right so to do can only be challenged in *quo warranto* proceedings instituted by the Attorney-General.

The reason why this is so is manifest. The prosecutor, Wood, who attempts to attack the election held in 1912, is a resident of the State of Pennsylvania. As a taxpayer he may challenge, by certiorari, the proceedings of any statutory tribunal. But it is respectfully urged, that his status as a taxpayer does not permit him, a non-resident of this State, to come into court and question the proceedings, not of a statutory tribunal, but of the citizens, the electors, of the City of Millville, touching the question whether or not they did accept a certain legislative grant as part of the laws effecting the city. Whether or not

the people of Millville wish certain laws to be operative in their municipality does not effect Mr. Wood as a taxpayer. The question of the adoption by the electors of the Act of 1876 is a separate and distinct proposition in nowise related to the proceedings under review. He is not interested in the form of ballot used in Millville. He does not know, and this Court cannot determine as a fact by any possible way, that his property rights will be injured by the operation of this law; because the law is a beneficial one and may produce great benefit to the city in the long course of years.

It is true that in *Morgan vs. Gloucester City*, such an election was reviewed by certiorari; and in *Stroud vs. Consumers' Water Co.*, 27 Vr. 422, the proceeding was on certiorari, but it does not appear that the point now made was raised in those cases.

(b) Also, at the time of the allowance of the writs in *Morgan vs. Gloucester City*, and in the Stroud case, the election laws did not provide any such effective summary review of elections upon a referendum. But, by the Act of 1909, p. 42 (2 C. S. 2125, 2126), application for a recount of votes may be made by any citizen upon any referendum or question submitted to electors. Wherefore, the courts prior to 1909 may have been persuaded to use the writ of certiorari as the only remedy open to a private individual. But by the Act of 1909, any citizen may, upon application made within thirty days, have a recount of the ballots. Does Prosecutor Wood, of Philadelphia, have by this writ a power of review superior to that of a citizen? Are not citizens and taxpayers concluded by the returns unless a recount shall be demanded by a citizen within the thirty days limited by Sec. 159a, page 2125, of the Compiled Statutes?

The prosecutor offered in evidence a certain alleged sample ballot which it is claimed was sent out prior to the election to the legal voters of the city. If the ballot used was defective, any voter in the city had the right to present to the Justice of the Supreme Court a petition setting forth the error or omission, and the Statute provides that

“Said Justice being satisfied thereof shall thereupon summarily, by his order, require the county or municipal clerk to correct such error, &c. Election Laws, 2 C. S. 2094, Sec. 53.”

The voters, therefore, had the opportunity to attack the form of the ballot, and now are concluded.

From the foregoing it appears (1) that the voters might have objected to the ballots; and (2) might have questioned the returns. But the power thus given to a private citizen to question the election proceedings is confined to those cases pointed out by the Statute. After the elapse of thirty days the election only may be attacked by the Attorney-General upon the principles heretofore submitted.

(11-12-13)

The ordinances do not violate the provisions of the contracts existing between the city and two water companies; nor do the ordinances cancel, alter or change the contracts; but the ordinances do take over all of the property, works, franchises and rights of the two companies, upon just compensation made, in accordance with the provisions of the Condemnation Act.

Under the provisions of the Water Act of 1876 the

city has the power to acquire by purchase or condemnation all the real estate, personal property and works, and all the corporate rights, powers, franchises and privileges of the two water companies. (1 C. S. 823, 824, &c.)

Under the provisions of an Act entitled, "An Act to empower cities to acquire land and other property for public use by condemnation" (P. L. 1895, p. 765; 2 C. S. 2198, Sec. 38, &c.), the cities of this State are granted the power to acquire land, water, water rights or other property, within or without said city for the purpose of supplying the city with water; and the acquisition of the property may be either by purchase or condemnation. Under the authority of this Act, as it is hereafter argued, the city has the right to acquire the property of water companies whether or not the Act of 1876 has been adopted.

In exercising the power of eminent domain every species of private property required for the public use is subject to this right. (10 Am. & Eng., 2nd Ed., p. 1089.)

"Private contracts are property, and as such may be condemned and taken under the power of eminent domain. The effect of the power, however, upon private contracts, is usually indirect, resulting, as a general rule, from the condemnation of other property involving the contract." (*Ibid.*)

If the city takes the works, plants and franchises of the two companies necessarily the relations of the contractor and the contractee will be terminated. Indeed the city will terminate all of the contracts of the two companies for the supplying of water to consumers. The value of its contracts to the water companies must be paid for as part of its property taken, and will be included in the award.

“Generally speaking, the power of the State to take property by the exercise of its right of eminent domain extends to every species of property within its territorial jurisdiction and to every variety and degree of interest thereon.” (10 Am. & Eng., 2nd Ed. 1088 and notes on pp. 1088 and 1089.)

If it were true that condemnation could not be had of a certain property because the owner thereof had entered into leases or other contracts with respect to it, then the power of condemnation rarely could be exercised at all. For the taking of every species of property in condemnation quite invariably terminates some contract rights. But the question now raised, though important, seems to be well settled.

(14)

By the Act of 1895 (P. L. 1895, p. 769; 2 C. S., p. 2198, Sec. 38, &c.), the city is granted complete power to acquire land, water rights or other property within or without the city for the purpose of supplying the city with water.

The power contained in this Act is complete, but no provision is made for payment of the property purchased.

But by the Act, P. L. 1814, p. 191, the city is authorized to borrow money not exceeding three hundred thousand dollars for any lawful purpose for which money may be raised by taxation.

By the supplement to the city charter (P. L. 1873, at page 446), the city is given authority to issue a limited amount of bonds for the purpose of sup-

plying the city with water, and by section eleven of the city charter (P. L. 1866, p. 116) the governing body is granted the power to raise money by taxation from year to year such sums of money as may be necessary for carrying into effect the laws and ordinances from time to time enacted by them and for defraying all other necessary expenses to said city.

It is therefore seen that, under the powers granted by the Act of 1895 (2 C. S. 2198), coupled with the broad powers conferred by the Act of 1914 (page 191), these two ordinances are valid even if the Court shall consider that the Water Act of 1876 is not applicable in the City of Millville.

For the foregoing reasons the judgments below in each case should be affirmed.

Respectfully submitted,
LOUIS H. MILLER,
*Of Counsel with the City
of Millville.*

Dated June 1st, 1916.

NEW JERSEY SUPREME COURT.

NEW JERSEY, TO WIT:

The State of New Jersey to the City of
[L. s.] Millville and the Millville Water Company,
Greeting: 10

We being willing for certain reasons appearing by the depositions read and argument heard on the return of the Rule to Show Cause heretofore granted in this matter to be certified of a certain Ordinance known as Ordinance Number 144 of the City of Millville and entitled "An Ordinance for the acquisition by the City of Millville of all the real estate, personal property and works and all the corporate rights, powers, franchises and privileges of the Millville Water Company of Millville, New Jersey," adopted December 31st, 1915, and all proceedings taken by the said City of Millville under and by virtue of said Ordinance. 20

We do therefore command you that the said Ordinance 144 of the City of Millville and entitled as aforesaid adopted the thirty-first day of December, 1915, with the records of the meetings of the said Common Council at which said Ordinance was introduced and passed relating thereto and all proceedings thereunder, together with all things touching and concerning the passing, approving and enacting the said Ordinance, as fully and entirely as before you they remain, to our Justices of the Supreme Court of Judicature, at Trenton, on Monday, the seventh day of February, 1916, you certify and send, together with this Writ, that therein may be done what of right and according to the laws and constitution of this State ought to be done. 30

Witness, William S. Gummere, Chief Justice of our Supreme Court, at Trenton, this twenty-eighth day of January, nineteen hundred and sixteen.

WILLIAM C. GEBHARDT,
Clerk.

JOSEPH H. GASKILL,
HERBERT C. BARTLETT,
Attorneys.

10

[Endorsed.]

NEW JERSEY SUPREME COURT.

SIR JOHN FRANKLIN,
Prosecutor.

vs.

CITY OF MILLVILLE AND MILLVILLE WATER COMPANY,
Defendants.

20

Writ of Certiorari.

Writ returnable February 15th, 1916.

ALLOCATUR.

This writ is allowed; let it be sealed upon condition that the argument be brought on before the February Term of the Supreme Court, 1916.

30

CHARLES C. BLACK,
Justice of the Supreme Court.

Dated January 28, 1916.

HERBERT C. BARTLETT,
JOSEPH H. GASKILL,
Attorneys of Prosecutor.

NEW JERSEY SUPREME COURT.

NEW JERSEY, TO WIT:

The State of New Jersey to the City of
[L. s.] Millville and the People's Water Company,
Greeting:

We being willing for certain reasons appearing by the 10
depositions read and argument heard on the return of
the Rule to Show Cause heretofore granted in this mat-
ter to be certified of a certain Ordinance known as Ordi-
nance Number 145 of the City of Millville and entitled
"An Ordinance for the acquisition of all real estate,
personal property and works and all the corporate rights,
powers, franchises and privileges of the People's Water
Company of Millville, New Jersey," adopted on the
thirty-first day of December, 1915, and all proceedings
taken by the said City of Millville under and by virtue 20
of said Ordinance.

We do therefore command you that the said Ordinance
145 of the City of Millville and entitled as aforesaid,
adopted the thirty-first day of December, 1915, with the
records of the meetings of the said Common Council at
which said Ordinance was introduced and passed relating
thereto and all proceedings thereunder, together with all
things touching and concerning the passing, approving
and enacting the said Ordinance, as fully and entirely as 30
before you they remain, to our Justices of the Supreme
Court of Judicature, at Trenton, on Monday, the seventh
day of February, 1916, you certify and send, together
with this Writ, that therein may be done what of right
and according to the laws and constitution of this State
ought to be done.

Witness, William S. Gummere, Chief Justice of our

Supreme Court, at Trenton, this twenty-eighth day of
January, nineteen hundred and sixteen.

WILLIAM C. GEBHARDT,
Clerk.

JOSEPH H. GASKILL,
HERBERT C. BARTLETT,
Attorneys.

10

[Endorsed.]

NEW JERSEY SUPREME COURT.

SIR JOHN FRANKLIN,
Prosecutor,

vs.

CITY OF MILLVILLE AND PEOPLE'S WATER COMPANY,
Defendants.

20

Writ of Certiorari.

Writ returnable February 15th, 1916.

ALLOCATUR.

This writ is allowed; let it be sealed upon condition that
the argument be brought on before the February Term
of the Supreme Court, 1916.

30

CHARLES C. BLACK,
Justice of the Supreme Court.

Dated January 28, 1916.

HERBERT C. BARTLETT,
JOSEPH H. GASKILL,
Attorneys of Prosecutor.

NEW JERSEY SUPREME COURT.

State of New Jersey to the City of Mill-
[SEAL] ville, Greeting: We being willing for the
reasons appearing in the affidavit of Walter
Wood and Thackara A. Carroll, made in this cause, to be
certified of the election and returns thereof held in the
City of Millville on the eleventh day of June, nineteen
hundred and twelve, for the purpose of adopting the pro-
visions of an act of the Legislature entitled "An Act to 10
enable cities to supply the inhabitants thereof with pure
and wholesome water" approved April twenty-first, 1876,
and the acts amendatory thereof and supplementary
thereto.

We do therefore command you that the said election
and the returns thereof, held on the eleventh day of June,
1912, in the City of Millville aforesaid, for the purpose of
adopting the provisions of an Act entitled "An Act to
enable cities to supply the inhabitants thereof with pure
and wholesome water" and all proceedings thereunder, 20
together with all things touching and concerning the same
as before you they remain, to our Justices of the Supreme
Court of Judicature at Trenton on the tenth day of Feb-
ruary, 1916, you certify and send, together with this
Writ, that therein may be done what of right and ac-
cording to the laws of this State should be done.

Witness, William S. Gummere, Chief Justice of our
Supreme Court, at Trenton, this first day of February,
nineteen hundred and sixteen.

WILLIAM C. GEBHARDT, 30
Clerk.

JOSEPH H. GASKILL,
HERBERT C. BARTLETT,
Attorneys.

[Endorsed.]

NEW JERSEY SUPREME COURT.

WALTER WOOD,
Prosecutor,

vs.

CITY OF MILLVILLE,
Respondent.

10

Writ of Certorari.

Writ Returnable February 10th, 1916.

ALLOCATUR.

This Writ is allowed; let it be sealed upon condition that it be brought on at the February Term of the Supreme Court, 1916.

20

CHARLES C. BLACK,
Justice of Supreme Court.

HERBERT C. BARTLETT,
Attorney of Prosecutor,
Vineland, N. J.

30

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

WALTER WOOD, of full age, being duly sworn, on his oath saith that he is a property owner and taxpayer in the City of Millville, owning taxable property in said city.

1. That on the eleventh day of June, A. D. 1912, there was held in said City of Millville a special election as to whether said City should adopt the provisions of an act of the Legislature of the State of New Jersey, entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April 21st, 1876, and the acts amendatory and supplementary thereof. 10

2. Deponent says that the ballot prepared for the election was misleading and confusing; that by inserting on said ballots (as an integral part thereof) suggestions as to how to vote "For or Against" the adoption of said Act, such explanations or directions were so stated as to arouse doubts in the minds and mislead the voters as to how to vote either for or against the propositions set forth thereon. 20

3. Deponent further states that any such statements or directions were improperly upon the ballot and the same was therefore defective and illegal and the election void.

4. Deponent further states that there was no revision or correction of the Register used at the election preceding such special election of June eleventh, 1912, as required by law.

5. Deponent further states that the said City of Millville is proceeding under and by virtue of said election held on June eleventh, 1912. 30

Sworn and subscribed before me }
 this 24th day of July, A. D. } WALTER WOOD.
 1912. }

JOSEPH G. HAINES.

Master in Chancery of N. J.

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

THACKARA M. CARROLL, of full age, being duly sworn according to law, on his oath saith: that he voted at a special election in the City of Millville and County of Cumberland and State aforesaid, on the eleventh day of June, 1912, on a certain proposition as to whether the said City of Millville should adopt the provision of an act of the Legislature of the State of New Jersey for the obtaining a water supply. Deponent further saith that the ballot given to him to vote at said election was so printed that this deponent voted, or attempted to vote against the proposition by striking out the word "for" as he supposed on the proposition, but which he afterward discovered was the word "for," as set forth in the instructions or directions on said ballot, thus losing his vote on the proposition in question. Deponent further saith that although his occupation is that of second bookkeeper and he is accustomed to keeping books and handling documents and papers every day of his life, he now being twenty-three years of age, yet said ballot, a copy of which is hereto attached, is so misleading and confusing that this deponent failed to vote on the proposition to be voted on, although he attempted to do so, and supposed that he had so voted. Deponent says that he discovered his mistake in voting by a discussion which took place among the clerks in the office where he works on the evening of the day of the said election was held in speaking of the ballot and how confusing it was, he then ascertained that he had absolutely failed to vote on the question to be voted on.

THACKARA M. CARROLL.

Sworn and subscribed before me
 this twenty-fifth day of July,
 A. D. 1912.

EDGAR R. JONES,
 Notary Public of N. J.

[SEAL]

EXHIBIT P1.

Wood vs. Millville.

THIS BALLOT CANNOT BE VOTED

It is a sample copy of the Official Ballot to be used at the Special Election to be held in the City of Millville on the eleventh day of June, nineteen hundred and twelve.

..... 10

SPECIAL ELECTION BALLOT

CITY OF MILLVILLE WARD No. 4 DISTRICT No. 2

JUNE 11, 1912.

L. H. HOGATE,
City Clerk.

..... 20

If the word "FOR" be marked off or defaced upon the ballot, it shall be counted as a vote against the adoption for said City of the provisions of said act;

If the word "AGAINST" be marked off or defaced upon the ballot, it shall be counted as a vote in favor of the adoption for said city of the provisions of said act.

..... 30

FOR AGAINST the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water" approved April twenty-first, eighteen hundred and seventy-six, and the acts amendatory thereof and supplemental thereto.

[Endorsed.]

NEW JERSEY SUPREME COURT.

WALTER WOOD,
Prosecutor,

vs.

MAYOR AND COMMON COUNCIL OF THE CITY OF
MILLVILLE,
Respondents.

10

 On Certiorari.
 Affidavit.

20

HERBERT C. BARTLETT,
Attorney of Prosecutor,
Vineland, N. J.

Filed February 1, 1916.

C. C. B.,

J. S. C.

30

NEW JERSEY SUPREME COURT.

SIR JOHN FRANKLIN, Prosecutor, vs. CITY OF MILLVILLE AND MILL- VILLE WATER COMPANY, Respondents.	}	ON CERTIORARI. REASONS.
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The Prosecutor asks to have the Ordinance known as No. 144 entitled "An Ordinance for the acquisition by the City of Millville of all the Real Estate, Personal Property and Works and all the Corporate Rights, Powers, Franchises and Privileges of the Millville Water Company of Millville, New Jersey" set aside and declared null and void for the following reasons:

1. Because the said Ordinance is an abuse or excess of authority on the part of the Commission Government of the City of Millville and is so unreasonable, inequitable and unfair as to justify the interference of this Court. 20

2. Because the proposed purchase by the Commission Government of the City of Millville of two Water Plants, as provided in Ordinances No. 144 and 145, would impose upon the tax payers of the City an unnecessary burden and is a wilful extravagance and abuse of power.

3. Because the City of Millville now practically has to all intents and purposes a municipal plant by virtue of its contract made with the Millville Water Co. on the sixteenth day of January, 1879, by virtue of which the City has secured an unlimited water supply for public purposes in perpetuity. 30

4. Because the said City of Millville, by virtue of said contract with the Millville Water Company, has provided all the Rules, Regulations and Restrictions with respect to a supply of water for private use, including the rates

for such supply, that it would have the power to do under a plant owned entirely and solely by the municipality.

5. Because the City of Millville has already purchased an interest in the plant of the Millville Water Co. sufficient for the public uses and has an agreement secured by mortgage with the Millville Water Co. protecting the private consumers in the City of Millville.

10 6. Because the revenue from the two plants proposed to be acquired by Ordinances 144 and 145 is not sufficient to pay the running expenses of the plants and the interest and sinking fund charges on the bonds to be issued for said purchase.

7. Because said Ordinance proposes to raise by taxation the deficiency arising from the failure to secure from the operation of said Water Plants sufficient revenue to pay the running expenses, interest and sinking fund charges.

20 8. Because said Ordinance is illegal in that the City is not limited to the proposed bond issue of \$130,000 for the purchase of the plant of the Millville Water Co., but provides for the issue of additional bonds if needed, without fixing the amount of such additional issue.

9. Because the right of the City of Millville to make up the deficiency arising from its contract with the People's Water Co. by reason of the failure to secure sufficient revenue from the sale of water pumped by that Company, by taxation, is unsettled, undetermined and pending in this Court.

30 10. Because the City of Millville never adopted the provisions of an Act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water" (1 C. S. p. 823) and the Act supplemental thereto and amendatory thereof, as alleged in Section 5 of said Ordinance.

11. Because said Ordinance violates the provisions of a contract made and entered into between the City of Millville and the Millville Water Co. on the sixteenth day of January, 1879.

12. Because the City of Millville has no power to cancel, alter or change the contract between it and the Millville Water Co. without the consent or concurrent of the Millville Water Co.

13. Because the Millville Water Co. has not consented to any cancellation, change or alteration in its contract.

14. Because said Ordinance is in divers other respects illegal and void.

HERBERT C. BARTLETT,
JOSEPH H. GASKILL, 10
Attorneys of Prosecutor.

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NEW JERSEY SUPREME COURT.

10	SIR JOHN FRANKLIN, Prosecutor, vs. CITY OF MILLVILLE AND PEOPLE'S WATER COMPANY, Respondents.	}	ON CERTIORARI. REASONS.
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The Prosecutor asks to have the Ordinance known as No. 145, entitled "An Ordinance for the acquisition by the City of Millville of all the Real Estate, Personal Property and Works and all the Corporate Rights, Powers, Franchises and Privileges of the People's Water Company of Millville, New Jersey" set aside and declared null and void for the following reasons:

20 1. Because the said Ordinance is an abuse or excess of authority on the part of the Commission Government of the City of Millville and is so unreasonable, inequitable and unfair as to justify the interference of this Court.

2. Because the proposed purchase by the Commission Government of the City of Millville of two Water Plants, as provided in Ordinances No. 144 and 145, would impose upon the tax payers of the City an unnecessary burden and is a wilful extravagance and abuse of power.

30 3. Because the City of Millville now practically has to all intents and purposes a municipal plant by virtue of its contract made with the Millville Water Co. on the sixteenth day of January, 1879, by virtue of which the City has secured an unlimited water supply for public purposes in perpetuity.

4. Because the said City of Millville, by virtue of said contract with the Millville Water Company, has provided all the Rules, Regulations and Restrictions with respect

to a supply of water for private use, including the rates for such supply, that it would have the power to do under a plant owned entirely and solely by the municipality.

5. Because the City of Millville has already purchased an interest in the plant of the Millville Water Co. sufficient for the public uses and has an agreement secured by mortgage with the Millville Water Co. protecting the private consumers in the City of Millville.

6. Because the revenue from the two plants proposed to be acquired by Ordinances 144 and 145 is not sufficient to pay the running expenses of the plants and the interest and sinking fund charges on the bonds to be issued for said purchase. 10

7. Because said Ordinance proposes to raise by taxation the deficiency arising from the failure to secure from the operation of said Water Plants sufficient revenue to pay the running expenses, interest and sinking fund charges.

8. Because said Ordinance is illegal in that the City is not limited to the proposed bond issue of \$126,000 for the purchase of the plant of the People's Water Co., but provides for the issue of additional bonds if needed, without fixing the amount of such additional issue. 20

9. Because the right of the City of Millville to make up the deficiency arising from its contract with the People's Water Co. by reason of the failure to secure sufficient revenue from the sale of water pumped by that Company, by taxation, is unsettled, undetermined and pending in this Court.

10. Because the City of Millville never adopted the provisions of an Act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water" (1 C. S. p. 823) and the Act supplemental thereto and amendatory thereof, as alleged in Section 5 of said Ordinance. 30

11. Because said Ordinance violates the provisions of a contract made and entered into between the City of Millville and the People's Water Co.

12. Because the City of Millville has no power to cancel, alter or change the contract between it and the People's Water Co. without the consent or concurrence of the People's Water Co.

13. Because the People's Water Co. has not consented to any cancellation, change or alteration in its contract.

14. Because said Ordinance is in divers other respects illegal and void.

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HERBERT C. BARTLETT,
JOSEPH H. GASKILL,
Attorneys of Prosecutor.

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NEW JERSEY SUPREME COURT.

WALTER WOOD,	}	
Prosecutor,		ON CERTIORARI.
vs.		
CITY OF MILLVILLE,		REASONS
Respondent.		

10

The said prosecutor, by Herbert C. Bartlett and Joseph H. Gaskill, his attorneys, comes and prays that a certain election held in the City of Millville on June eleventh, 1912, for the adoption of an Act entitled "An Act to Enable Cities to Supply the Inhabitants Thereof With Pure and Wholesome Water," approved April twenty-first, 1876, and the several Acts supplemental thereto and amendatory thereof as well as the results of said election be set aside and for nothing holden for the following reasons: 20

1. Because the said ballot prepared for said election was misleading and confusing, in that by inserting on said ballot (as an integral part thereof) suggestions as to how to vote for or against the adoption of said Act such explanations or directions were so stated as to mislead and to confuse the voters as to how to vote for or against said proposition.

2. Because such statements or directions were improperly on the ballot, making the same defective and illegal and said election void. 30

3. Because there was no revision or correction of the registry list used at the election preceding the special election of June eleventh, 1912, as required by law.

4. Because the returns of said election show that the adoption of said Act of the Legislature was not carried

by a majority of the registered voters of the City of Millville.

5. Because the number of votes cast at said election was less than one-half of the registered vote of the City of Millville at the time said election was held.

6. Because said Election was in divers other respects illegal and void.

HERBERT C. BARTLETT,
JOSEPH H. GASKILL,
Attorneys of Prosecutor.

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NEW JERSEY SUPREME COURT.

SIR JOHN FRANKLIN, Prosecutor,	}	ON CERTIORARI. DEPOSITIONS.	10
vs.			
CITY OF MILLVILLE AND PEOPLE'S WATER COMPANY,			
Respondents.			
SIR JOHN FRANKLIN, Prosecutor,	}	ON CERTIORARI. DEPOSITIONS.	20
vs.			
CITY OF MILLVILLE AND MILL- VILLE WATER COMPANY,			
Respondents.			

Depositions of witnesses taken in the above two causes by consent, notice being admitted, at the City Hall, Millville, New Jersey, this 21st day of January, A. D. 1916, at eleven o'clock A. M., before Edward I. Berry, Supreme Court Commissioner, in the presence of Herbert C. Bartlett, Esq., and Gaskill & Gaskill, Esqs., for the Prosecutor, and Louis H. Miller, Esq., for the City of Millville.

It is agreed that the depositions of the witnesses shall be taken stenographically and the signatures of the witnesses waived, and that the testimony in both of the above causes shall be taken together. 30

Mr. Gaskill: The prosecutors offer in evidence a copy of the Millville Daily Republican, dated Monday, January 3, 1916, which contains on the last page the ordinances in question.

(Said paper is marked Exhibit P1.)

Mr. Gaskill: Will you admit Mr. Franklin's status?

Mr. Miller: I will admit that Mr. Franklin is a tax payer of the City of Millville.

10 Mr. Gaskill: We also offer in evidence a copy of the charter of the Millville Water Company which is marked Exhibit P2. Counsel for the Prosecutor calls on counsel for the City to produce the original agreement between the Millville Water Company and the City of Millville and the mortgage in connection with the same, which are produced, but as counsel for the City desires that the same shall not be marked, it is agreed that copies may be used in the place of the originals, which copies are produced.

(Said copies are marked Exhibits P3 and 4.)

20 Mr. Gaskill: We call on you to produce the appraisements of the two plants made some years ago by an expert.

Mr. Bartlett: In 1912 by Alton D. Adams.

Mr. Miller: I object to that as not being evidential for any purpose. It is not made under oath. I suppose that will go in if you insist, but it seems to me that objection is fatal.

30 Mr. Gaskill: Well, I am going to offer it and let the Court above decide between us. You will admit that this was done at the request of City Council, and this report in question was submitted to Council.

Mr. Miller: Yes, I will admit that.

Mr. Gaskill: It is admitted subject to your objection as being material and relevant.

Mr. Miller: It may be material and it may be relevant, but because it is not competent.

Mr. Gaskill: Well, whatever your objections are put them on the record and Judge Black will decide; one or the other of us is right.

(By consent a printed copy is used in place of the original, subject to the objection, and marked Exhibit P5.)

Mr. Gaskill: It is agreed that the tax rate of the City of Millville for the year 1915 is \$2.148509. It is agreed between counsel that the total taxable property in the City of Millville is.....	\$6,612,602	10
The Millville Manufacturing Assessment is.....	\$755,600	
Whital Tatem Company's Assessment	697,475	
Millville Water Company....	127,650	
Millville Gas Light Company.	106,000	20
Millville Electric Light Company	49,000	
	<hr/>	
Total	1,735,725	
Balance of taxables in the City of Millville.	\$4,876,877	

It is further agreed that the total assessed value of the taxable property in the City of Millville owned by the said petitioners who objected to the passage of said ordinances is less than seven hundred thousand dollars (\$700,000), this being the amount which was referred to in the prosecutor's affidavit as constituting practically one-half of the assessed value of Millville, outside of the corporations. 30

Mr. Gaskill: Now, I would like to have the protest which was filed by those persons to Council.

Mr. Miller: I wish to introduce an objection to this paper as not being relevant.

Mr. Gaskill: Counsel for the City produce upon call the protest or petition filed by the taxpayers with the City Commission protesting against the passage of the two ordinances in question, and at the request of the City Solicitor the original is not to be marked and left with the Clerk, and a copy certified by the Clerk is marked Exhibit P6 to be used in place thereof.

10 Counsel for the City also produces upon call a petition signed by the taxpayers suggesting that upon a certain contingency the Commission should try out the plan recommended by Mr. Adams as follows, a certified copy of which is offered in evidence and marked Exhibit P7.

Mr. Miller: I would like to interpose the same objection to this paper as not being relevant.

20 Mr. Gaskill: The following is the paper signed by the tax payers: "To the Honorable, the Mayor, and the Fellow Commissioners of the City of Millville, New Jersey: Gentlemen: Since signing a petition to your honorable body referring to the water ordinances and also referring to some articles in the daily press headed, 'The Waterworks Question', we learn that Alton D. Adams, an engineer employed by the City, had advanced a certain solution of the problem as follows:

30 "If greater sums than those above indicated (viz., \$171,328) are demanded for either or both of the water plants in Millville, the City should refuse to purchase, largely increase the water rates for service from the system of the People's Water Company, and leave the two companies to their competition.'

"We respectfully request that the Commissioners try out this plan for at least one year before making any other

move in the matter, and to this end we will ever pray &c." This is marked "Received December 31, 1915, ordered filed January 7, 1916. John S. Horton, City Clerk."

Mr. Gaskill: Counsel for the prosecutor calls on counsel for the City to produce a written offer made by the Millville Water Company to the City of Millville concerning the furnishing of water for public and private use in the month of March or April, 1912, which when produced will be offered in evidence and a copy thereof marked Exhibit P8. Counsel for the prosecutor had subpoenaed the City Treasurer to produce a statement showing the receipts and disbursements of the City of Millville on account of their contract with the People's Water Company, and the City Treasurer appearing presents a typewritten paper, which, by consent of counsel, is admitted to be a correct statement as called for and is admitted in evidence without the necessity of orally examining the City Treasurer, and is marked Exhibit P9. 10

By consent of counsel for the use of both parties, there is offered in evidence the public report of the Board of Public Utility Commissioners for the year 1913, containing a report made to that Board by both of the water companies mentioned in these ordinances, which report is marked Exhibit P10. It is agreed that a copy of a report made up in similar manner with full schedules for the year 1914 shall be offered in evidence and marked Exhibit P11. 20

It is agreed that a copy of a report of the People's Water Company, made up in the same manner for the year 1914, shall be offered and used, if the same can be obtained. 30

SIR JOHN FRANKLIN, SWORN.

By Mr. Gaskill:

Ques. Mr. Franklin, you are superintendent of the Millville Water Company?

Ans. Yes, sir.

Ques. And in active charge of its operations and the furnishing of water to the City of Millville?

Ans. Yes.

Ques. How long have you occupied that position?

Ans. About thirteen years.

Ques. What have you to say with reference to the capacity of that plant with reference to your ability to furnish all the water that is needed in the City of Millville for public and domestic uses?

10 Ans. Well, we have always been able to supply the customers that we have with water, and we have extensions, betterments under way, that will be completed within a couple of months and which will supply any quantity up to six million gallons a day; that would be probably more than twice what would be required for the City of Millville.

Ques. What have you to say with reference to the furnishing of water for public use—you have spoken in your testimony so far as to private use??

20 Ans. We would have the capacity to supply all the water that was required for public use.

Ques. As well as private?

Ans. As well as private; yes, sir.

Ques. What is your source of supply?

Ans. Why, we have two sources of supply; one is Union Lake and another is some artesian wells.

Ques. State whether or not your supply is inexhaustible?

30 Ans. I should consider the supply from Union Lake inexhaustible.

Ques. What rights have you in the Union Lake—what rights of priority in the use of water in the Union Lake?

Ans. We have the first right for water for all needed purposes for the City, and we also have the first right for water power up to fifty horse power.

Ques. How large an area of water has Union Lake?

Ans. Well, now, it is a lake somewhere from one-half a mile to more than that wide and two or three miles long. The Geological Survey gives the exact size and quantity of water; I can't say offhand what it is.

Ques. Are manufacturing establishments also furnished with water for power from that same lake?

Ans. Yes, sir.

Ques. What is the quantity of water consumed in Millville at present, as furnished by both companies?

Ans. I can hardly say as to the People's Water Company; that is more of a hearsay to me. Our own pump- 10
age runs from two to three million gallons a day.

Ques. Is the People's Water Company greater or less than that?

Ans. I should judge it was less.

Ques. And you say that when your extensions are completed that are now under way you can furnish six million gallons?

Ans. A day, easily. 20

Cross-examination.

By Mr. Miller:

Ques. You say the supply from Union Lake is inexhaustible; you mean in quantity, as far as it is concerned with the quantity of the water?

Ans. I should think so, yes.

Ques. There have been, however, complaints, haven't 30
there, from the State Board of Health, made in 1911, touching the purity of the water supplied by you and taken from Union Lake?

Ans. I presume there were, but those have all been rectified.

Ques. Well, is it not a matter of common complaint that that source of water supply is tainted by the sewer-

age of the City of Vineland, distant less than four miles from the head of Union Lake?

Ans. Why, in the first place, I think it is more than four miles, but to answer your other question, I should have to refer you to the State Board of Health. They say it is not; that is, they tell me it is not, but I would refer you to them for a positive answer.

10 Ques. Well, you know the topography of the country and you know the fact to be that the sewage discharge from the sewerage system of the Borough of Vineland finds its way into Union Lake, don't you?

Ans. They say so, and I presume it is so, although I never followed the creek, but they also say that the sewerage when it is emptied into the small creek is purified to such an extent that it is useful for other purposes. That is their report; you can take that from their report.

20 Ques. Is it not true that on the borders of Union Lake a considerable number of cottages, a number that grows every year, have been built in the last seven or eight years?

Ans. Oh, yes, certainly.

Ques. And is it not a matter of knowledge on your part that those cottages contaminate more and more Union Lake as a source of water supply for domestic uses?

Ans. If they do, it is because they disregard their contract and their orders from the Millville Manufacturing Company.

30 Ques. So that if this inexhaustible supply as to quantity shall become so polluted that it is no longer fit for domestic uses, then another supply for this City must be sought—of course that is true, isn't it?

Ans. No, I beg your pardon; the water that is pumped from Union Lake is all filtered; it is treated and filtered, every bit of it, which makes it—the State Board of Health gets a sample each month, takes it to Trenton and has an analysis made and notifies us of the results of

the analysis, and for at least the last year in the filtered water there has not been a single sign of any kind of bacteria that would be injurious to the health.

Ques. Well, as a water expert, would you not say that the flowing of sewerage material into that lake and the cottages inhabited by those who do inhabit them along the borders of it tend to contaminate that as a water supply?

Ans. Not after it passes through the filters. You know Philadelphia, Trenton and other innumerable places take their water supply from sources more contaminated than Union Lake, and they filter it and it is perfectly satisfactory. 10

Ques. Mr. Franklin, referring to the general statement in your affidavit, on which you secured the rule in these suits, you say that in and by the ordinances which have been offered in evidence the City of Millville proposes to bond the City in the sum of \$256,000. What was the basis for that statement?

Ans. Their action and their statement and passing the ordinances. 20

Ques. Have you read the ordinances?

Ans. I read them over once, sure.

Ques. Well, do you know that they provide in the first place for a treaty with the owner for the fixing of the price by mutual agreement—you understood that, did you?

Ans. Oh, yes.

Ques. And that no price being agreed upon, then commissioners should be appointed who should appraise these plants—you understood that to be the next step? 30

Ans. Yes.

Ques. And you know that in appraising those plants the commissioners fix as the value of them a fair value to the owner, measured largely by the earning capacity of the plants, don't you?

Ans. I wouldn't necessarily acknowledge that.

Ques. You did not know that?

Ans. I know it, but I wouldn't acknowledge it, that they would establish a value alone from the earning capacity of the plants.

Ques. Oh, no, but largely so, wouldn't you?

Ans. Oh, no, not largely so.

Ques. How would they do it, speaking now as an expert on such matters?

Ans. As long as there was competition they more than likely would fix the value from the actual physical value
10 of the plant.

Ques. Where did you deduce such a rule?

Mr. Gaskill: Now, I have to object as going a little too far.

Mr. Miller: Well, I will withdraw that.

Ques. Well, you don't assume that these commis-
sioners will fix a value at more than these plants are
20 worth to the owner, taking into consideration the value of franchise, the earning capacity and the physical plant, do you?

Ans. I consider that their value would be established on the physical plants and not on the earning capacity in competition.

Ques. And on that thought you based your affidavit?

Ans. Yes.

Ques. And if an appeal were taken from the commis-
sioners you think that a jury would be bound so to
30 value the plants?

Ans. I wouldn't say.

Mr. Gaskill: I think that is going a little too far in speculation.

Mr. Miller: No, he swears we are going to spend \$256,000. I haven't the remotest idea that we are, but I want to get his idea.

Mr. Gaskill: I object to the question.

(Question repeated.)

Mr. Gaskill: I object to that as incompetent.

Ans. I would seriously object to saying what any jury would do.

Ques. Well, I am asking you what you thought they ought to do in order to get at your state of mind when you signed the affidavit. You think they only take into consideration the physical value of the plant? 10

Ans. I think they only should; I don't say I think they would, but I think they only should do that.

Mr. Gaskill: The Prosecutors offer in evidence a copy of the ordinances of the City of Millville, which is marked Exhibit P12, and rest.

Prosecutors rest.

20

Mr. Miller: Now, I offer in evidence on the part of the defendant Ordinance No. 73 of the City of Millville, providing for and containing a copy of the contract with the People's Water Company of Millville, N. J., as contained in the printed book of ordinances of the City of Millville, pages 179 to 185, inclusive.

JOHN S. HORTON, SWORN.

30

By Mr. Miller:

Ques. You are City Clerk of the City of Millville?

Ans. I am.

Ques. And you have the custody of the minute book of the governing body for the year 1912 and from thence hitherto, haven't you?

Ans. I have.

Ques. Referring to page 297, under date of March 15, 1912, will you read from the minutes of the Common Council any matter referring to the water plants or either of them and the City, and any minutes that follow during the year 1912?

The witness reads from the Minute Book of the City Council as follows: "Millville, New Jersey, March 15, 1912. Mr. Horton introduced the following resolution: 'Whereas, the report of engineer A. D. Adams does not
10 seem to suggest a plan for the early solution of the water question; therefore, be it resolved that the Finance and Water Committee be and is hereby instructed to secure information relative to the institution of condemnation proceedings as a means of obtaining control of the water situation in Millville and report to Council at an adjourned meeting, Friday evening, March 22nd.'"

"Millville, New Jersey, March 22, 1912. In accord with the action of the last meeting Mr. Horton for the
20 Committee reported on the question of condemnation proceedings and offered the following resolution: 'Resolution No. 39. A resolution authorizing negotiations with the Millville Water Company and the People's Water Company of Millville, New Jersey. Whereas, the report of A. D. Adams, Civil Engineer, fixed the maximum purchase price for the plant of the Millville Water Company at \$105,366 and the maximum purchase price for the plant of the People's Water Company of Millville, New Jersey, at \$95,258, on the basis of the acquisition of
30 both of said water plants by the City of Millville, therefore, be it resolved by the Mayor and Common Council of the City of Millville: First, that the City Recorder be and hereby is instructed to communicate in writing to the Millville Water Company and the People's Water Company of Millville, New Jersey, the contents of this resolution and request each of them to advise the Common Council in writing on or before 7.30 o'clock in the

afternoon of April 5, 1912, whether or not they will enter into negotiations directly with the said Common Council on the basis of the said report of Adams respecting the acquisition of the said water plants by the said City.' The above resolution was adopted by unanimous vote on roll call."

"April 5, 1912. Before adjournment the following communications were read: 'Philadelphia, Pa., April 4, 1912. L. H. Hogate, City Recorder, Millville, New Jersey. Dear Sir: Referring to Resolution No. 39, instructing the City Recorder to ask our company whether they will enter into negotiations with City Council on the basis of Adams' report respecting the acquisition of our water works, we are perfectly willing to discuss the purchase of our plant by the City through disinterested appraisal, and under normal conditions. The engagement of Mr. Adams was by the City only and not jointly; the report therefore cannot be considered entirely disinterested. Further, the use of the taxpayers' money year by year to the injury of one plant and to increase the income of the other is not only an absolutely illegal diversion of the funds of the City, but also creates a situation most difficult to arrange in an arbitration. The water situation at Millville can safely be left in charge of the proper State authorities, and our contract with the City provides the maximum rates that citizens can be charged for water. Yours very truly, Millville Water Company, By Walter Wood.'"

"Samuel L. Kent,
903 Witherspoon Building,
Philadelphia, Pa.

April 1, 1912.

To the Mayor and Common Council of the City of Millville, New Jersey.

Gentlemen: We acknowledge the receipt of a copy of Resolution No. 39, adopted March 22, 1912, with relation

to the acquisition of the water plants of this company and of the Millville Water Company by the City. In compliance with the request contained therein we respectfully advise the Common Council that we decline to enter into negotiations for the acquisition of the plant of this company on the basis of the report referred to. This is on the assumption that it is meant thereby, that we would agree to the sale of the plant for the maximum price of \$95,258. We have not seen the Adams report which is referred to, but the result is so far below any reasonable valuation as in our judgment to be absurd, and we would respectfully ask that we be given a copy of the report and a hearing by Council at which we may present the side of the company.

Yours respectfully,

People's Water Company of Millville, New Jersey.
Samuel R. Kent, Treasurer."

"June 21, 1912.

20 Mr. Horton offered the following resolution: 'Resolved that the Finance and Water Committee be and is hereby instructed to enter into negotiations with the Millville Water Company and the People's Water Company for the immediate acquisition of all their plants, property and franchises in the City of Millville.' The above was adopted."

"Millville, New Jersey, August 23, 1912.

30 Mr. Horton presented the following resolution: 'Resolved, that the reports of the Finance and Water Committee relative to the negotiations with the Millville Water Company and the People's Water Company be received and filed. Resolved, that the Mayor and Common Council of the City of Millville proceed to acquire the plants, property and franchises of said water companies respectively. Resolved, that said Committee be and they are hereby authorized and empowered on behalf of this muni-

cipality to offer the said Millville Water Company the sum of \$97,583.50, less \$39,000 previously paid, or \$58,583.50 net, and to the said The People's Water Company the sum of \$91,403.50, payable in cash as soon as necessary bonds for the same can be negotiated, for all their respective plants, property and franchises in the City of Millville. Resolved, that in the event that such offers be not accepted within ten days after making the same, the proper officers of this municipality are hereby authorized, empowered and directed to institute and prosecute such proceedings as shall be necessary to legally acquire said property of said water companies by condemnation.' The above resolution was adopted by the following vote: Yeas, Brown, Cossaboon, Horton, Felmey, Mitchell, Radcliffe, Richards, Sheppard, Wade, White, Troth, Rockhill, total twelve; no, Wheaton." 10

Ques. Do you find any other minute of the old Common Council of the City of Millville relative to the acquisition of the plants of both of these companies by condemnation proceedings? 20

Ans. No.

Mr. Gaskill: Counsel for the Prosecutor objects to all of these minutes and resolutions as incompetent and immaterial and having no bearing whatever upon the present question.

Ques. Mr. Horton, have you letters from the People's Water Company showing that they would decline after November 1st last to furnish water at a price less than that fixed in their contract? 30

Mr. Gaskill: I object to that as incompetent and immaterial and having no bearing whatever upon the present question.

Ans. I have.

Ques. If so, please produce them and read any action taken thereon by the commissioners.

Mr. Gaskill: This is all objected to for the same reason.

(The witness produces the following letters and reads the following extracts from the minutes, the letters being read into the minutes at the request of counsel):

“Received Friday, February 26th, 1915.

John S. Horton, City Clerk.

Millville, N. J., February 25, 1915.

10 To the Mayor and Commissioners of the City of Millville:
Gentlemen:

The People's Water Company of Millville, N. J., was organized in the year 1900 and the final ordinance under which its plant was constructed in your city was passed in 1902 and the works went into operation in the year following.

20 By the terms of the contract the City was to pay the Company ten cents (10 cts.) per thousand gallons for the water furnished with the exceptions contained in the ordinance.

The ordinance contained a provision giving to the City an option to buy the plant and it was with every expectation, and in fact assurance, that this option would be exercised, that the plant was constructed. It was the expectation of all concerned that the City in a short time after the plant was completed would be in possession of its own plant, furnishing its own citizens with water. For various reasons, to some extent due to the delays
30 imposed by litigation, the City has not acquired the plant, and at the present time the People's Water Company is still operating it.

During all this interval of now almost twelve years, believing in the beginning that the delay in acquisition by the City of the plant was solely due to litigation, the Company has made annually large concessions to the City in the matter of the sums due to it for the

water furnished. The inhabitants of the City have been large and even wasteful consumers of the water, which the Company has freely furnished. During the past few years, the Company has voluntarily refrained from making any claim or sending any bill to the City for the water furnished in excess of the sum of \$10,000, this including the annual charge for hydrant rental. The amount which was actually due to the Company under the terms of the contract, and which the City agreed to pay, was in each year largely in excess of what was actually paid by the City. 10

The City, on the other hand, has imposed an annual tax upon the Company of \$3,000, so that the net receipts to the Company have been about \$7,000 per annum. The rates paid by the inhabitants of the City are extremely low—lower than those paid by almost any other community and not more than one-half of a fair and reasonable charge.

While, therefore, the citizens of the City of Millville are enjoying this unusual privilege, the money received by the Company after the payment of the operating expenses and the maintenance and upkeep of the plant leaves nothing for either the bondholders or the stockholders. During all these years the holders of the bonds have received not one cent of interest, to say nothing of the payment of any dividend to the stockholders. The Company has done its best to supply the City of Millville with good, pure water and has, it believes, not only done so but furnished a fire service that has been extremely valuable to the City. It is impossible, however, that the Company should longer continue to waive any of the amount of money that may be due to it from the City under its contract. 20 30

The foregoing plain statement of the facts demonstrates this conclusively. The Company has not even the necessary funds with which to make new connections and extend its business; not only is it necessary for it to dis-

continue such a course of business, but it is unfair that the Company should year after year voluntarily make concessions to the City of that which is honestly and properly due to it. It has always tried to be more than fair to the City of Millville, and a continuation of that policy seems to dictate that it should give to the City a reasonable notice of the fact that it will no longer continue to waive the payment of the sums due it under the contract.

10 We, therefore, formally notify you that from and after the first day of May next, the Company will bill the City for the water supplied to it at the price named in the contract and in accordance with its terms and provisions, and will require that the City shall pay therefor as provided in the contract.

Yours very truly,
 People's Water Co. of Millville, N. J.
 Samuel L. Kent, Treas."

Extracts from Minutes of Board of Commissioners of
 Millville, N. J.

20

February 26, 1915.

"A communication from the People's Water Company, formally notifying the Mayor and Commissioners that from and after the first day of May next the Company will bill the City for the water supplied to it at the price named in the contract and in accordance with its terms and provisions, and will require that the City shall pay therefor as provided in the contract."

30 Mr. Corson's motion to lay the communication over for one week was carried."

"March 5, 1915.

Mayor Gieg referred to the communication from the People's Water Company which was laid over at the last meeting and Mr. Whitaker moved, seconded by Mr. Corson, that action be further deferred for one week, pending investigation by the Board. All voted in the affirmative."

“March 12, 1915.

Mr. Ware reported a conference of the Board of Commissioners with Samuel L. Kent of the People's Water Company on Tuesday, March 9th, at 2.30, at which conference the conclusion was reached that the People's Water Company would defer further action on their water contract for six months from May 1st, 1915.

On motion of Mr. Corson, seconded by Mr. Kates, the Board concurred in the report of Mr. Ware.”

“March 19, 1915. 10

A communication of the People's Water Company confirming the verbal arrangement made on Tuesday, March 9th, 1915, as reported by Director Ware last week, was received and filed.”

“Millville, New Jersey, March 16, 1915.

To the Mayor and Commissioners of the City of Millville:
Gentlemen:

Referring to our letter of Feb. 25th, 1915, addressed 20
to you, please note that the final paragraph is as follows:

“We, therefore, formally notify you that from and
after the first day of May next, the Company will
bill the City for the water supplied to it at the price
named in the contract and in accordance with its
terms and provisions, and will require that the City
shall pay therefor as provided in the contract.”

In accordance with our verbal understanding with you,
we hereby change the date on which this notice is to be
effective from the first day of May, 1915, to the 1st day 30
of November, 1915.

Yours very truly,

People's Water Company of Millville, N. J.

Samuel L. Kent, Treasurer.

Filed March 19, 1915.

John S. Horton, City Clerk.”

“Filed August 20, 1915.

John S. Horton, City Clerk.

Philadelphia, August 20, 1915.

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

Gentlemen:

10 Referring to our various interviews, I beg to say that the People's Water Company of Millville, New Jersey, will sell its plant and property to the City of Millville for \$125,000 cash, to be paid on or before December 31, 1915. This proposal is made with the understanding and upon condition that the Water Company insists upon all, and does not waive any, of its rights and privileges which it now has or to which it may be entitled under its contracts and ordinances with the City and under the various notices given by it to the City or otherwise; furthermore, if this proposal is not accepted and the sale made, the price now proposed shall not be regarded as the value put upon its plant and property by the Water Company, which shall be free at any time, if occasion requires, to show 20 that its value is in excess of the sum mentioned. If settlement is not made on or before December 31, 1915, the Water Company shall be free to withdraw this proposal on two days' notice; it is also understood that the Water Company shall be paid all sums due to it by the City for water furnished during the current term.

People's Water Company of Millville,

By Samuel L. Kent,
Treasurer.”

30

“Extract from Minutes of Board of Commissioners of Millville, N. J.

August 20, 1915.

A communication from the People's Water Company, dated August 20th, 1915, and offering to sell its plant and property to the City for \$125,000 cash, provided

settlement is made on or before December 31st, 1915, was read and on motion of Mr. Corson was received and filed to be taken up at some future date to be agreed upon later, by the following vote: yeas, Whitaker, Corson, Kates, Ware, Gieg."

"Rec'd and filed October 22, 1915.

John S. Horton, Clerk.

Millville, N. J., Oct. 21, 1915.

To the Commissioners
of the
City of Millville, N. J.
Gentlemen:

10

The arrangement for the payment of water used by the City, now in effect, will terminate on October 31st, 1915; the water used thereafter being billed to the city by meter measurement and at the rate fixed in the Ordinance and Contract and authorized thereby and in accordance with the terms thereof.

If you wish to have the meter examined and will advise us, we will afford your representative the necessary facilities at any reasonable time. 20

Yours truly,

People's Water Company of Millville, N. J.

Samuel L. Kent,
Treasurer."

"Extract from Minutes of Board of Commissioners of
Millville, N. J.

October 22, 1915.

30

A communication from the People's Water Company, under date of October 21st, 1915, was as follows:

"The arrangement for the payment of water used by the City, now in effect, will terminate on October 31st, 1915, the water used thereafter being billed to the City by meter measurement and at the rate fixed in the ordi-

nance and contract, and authorized thereby and in accordance with the terms thereof. If you wish to have the meter examined and will advise us, we will afford your representative the necessary facilities at any reasonable time."

Signed, Samuel L. Kent,
Treasurer.

10 On motion of Mr. Whitaker the communication was received and filed and the matter referred to the Board acting as a committee as a whole in conjunction with Solicitor Miller, for consideration and prompt action, by the following vote: yeas, Whitaker, Corson, Kates, Ware, Geig."

"Extract from Minutes of Board of Commissioners of
of Millville, N. J.

November 12, 1915.

20 The following communication was received from Samuel L. Kent, Treasurer of the People's Water Company, under date of November 9th, 1915:

30 "In view of the recent action of the Commissioners in taking steps to acquire the water plants of the City of Millville and with the understanding that this action will proceed with due diligence, it is hereby agreed between the parties hereto to continue the arrangement for the payment of water by the City that was in effect previous to November 1st, 1915 (\$2,500.00 per quarter), until February 1st, 1916, subject, however, to the following condition: that the money now due to this Company by the City (\$2,500.00) for water used during the past quarter shall be paid to the company promptly on receipt of this communication."

People's Water Company of Millville, N. J.
Samuel L. Kent, Treasurer.

On motion of Mr. Whitaker the communication was ordered filed and the Clerk directed to acknowledge receipt

of same by the following vote: yeas, Whitaker, Corson, Kates, Ware, Geig."

Mr. Miller: I also offer in evidence proof of publication of the notice of the introduction of the ordinances in question; also proof of publication of the ordinances themselves after passage. By agreement of counsel these affidavits of publication need not be printed or presented at court.

10

20

30

IN THE SUPREME COURT OF NEW JERSEY.

10 S. J. FRANKLIN,
 Prosecutor,
 vs.
 THE CITY OF MILLVILLE AND THE
 MILLVILLE WATER COMPANY,
 Respondents.

20 S. J. FRANKLIN,
 Prosecutor,
 vs.
 THE CITY OF MILLVILLE AND
 PEOPLE'S WATER COMPANY,
 Respondents.

WALTER WOOD,
 Prosecutor,
 vs.
 THE CITY OF MILLVILLE,
 Respondent.

30 Testimony taken in the three above cases, at the City Hall in Millville, New Jersey, on Thursday, February 3rd, 1916, in the presence of Martin W. Lauer, Master in Chancery, by consent of counsel.

Counsel appeared as follows:

HERBERT BARTLETT, ESQ., and
 HON. JOSEPH H. GASKILL, Counsel for Prosecutor.
 LOUIS MILLER, ESQ., Counsel for City of Millville.

It is stipulated and agreed between counsel for the respective parties that the testimony shall be taken in the three different cases together, and counsel agree that they shall be argued together, and be taken stenographically and the notes of the stenographer reduced to typewriting, the stenographer being duly sworn by the Master.

Howard Kirk, the steongrapher, was thereupon duly sworn by the Master.

It is stipulated and agreed by counsel of the respective parties that the testimony heretofore taken and the exhibits offered upon the rule to show cause in the first two cases, shall be considered as testimony taken upon the allowance of the writs, and to be used in the argument upon their return. 10

It is stipulated by the parties that the City of Millville has adopted the commission form of government, provided for by the statute of 1911 and the supplements thereto. 20

S. J. FRANKLIN, a witness produced on behalf of the prosecutor, having been duly sworn by the Master, was examined and testified as follows:

By Judge Gaskill:

Ques. In addition to the testimony given by you on the rule in the first two cases, I wish to ask you how many artesian wells the Millville Water Company, of which you are superintendent, has? 30

Ans. Sixteen, I believe.

Ques. And what is the capacity of those wells with respect to your ability to furnish water for the City of Millville from those wells without drawing upon the water of Union Lake?

Mr. Miller: I object, as being irrelevant and not tending to show whether or not the proceedings taken by the Commissioner are or are not illegal.

Ans. Our wells are of sufficient capacity to supply more water than we have ever yet been compelled to pump for the supply to the City in any one day or week or month.

10 Judge Gaskill: Counsel for the prosecutor calls upon counsel for the City to produce a written offer to the City from the Millville Water Company in 1909, and the reply is that the City Clerk has been unable to find any such paper, either on the minutes or in the files of the City, but does find a minute in the minute book under date of February 5th, 1909. I offer this minute in evidence.

Mr. Miller: I object to the introduction of the minute as not evidential for any purpose, and as being irrelevant to the pending issue.

20 John S. Horton, Esq., City Clerk: I find under date of February 5th, 1909, the following minute: A communication from the Millville Water Company was read and referred to the finance and water committee.

Mr. Miller: Do you find any further minutes?

The City Clerk: I cannot find the original document.

30 By Judge Gaskill:

Ques. Mr. Franklin, did you keep a copy of the proposal furnished or handed by the Millville Water Company to the City of Millville in 1909?

Mr. Miller: Objected to as immaterial, because any copy he might keep would not be competent to show municipal action of any kind.

Ans. Yes, sir; two or three of them.

Ques. Did you produce a copy of that over at our last meeting, which has since been handed to the printer for printing?

Mr. Miller: I make a further objection because it does not appear that Mr. Franklin, who is the prosecutor in this suit against the Millville Water Company, has any custody of the records or is in any wise connected with the Millville Water Company.

10

Ans. Yes, sir.

Ques. Are you the superintendent of the Millville Water Company?

Ans. Yes, sir.

Ques. And were you at that time?

Ans. Yes, sir; I have been for the last thirteen years.

Ques. And has that copy remained in your possession ever since you handed the original to the City Clerk?

Ans. In my files at the office.

20

Ques. The copy which you produced at the last meeting and which is now in the hands of the printer, having been marked as an exhibit, is that a true copy of the paper you presented to the City of Millville?

Ans. Yes, sir; it is.

Ques. Mr. Franklin, were you living in Millville and a voter in Millville in June of 1912?

Ans. Yes, sir.

Ques. Did you vote at that election?

Ans. Yes, sir.

30

Ques. Which was the referendum election on the water act of 1876?

Ans. Yes, sir.

Ques. Did you receive a sample ballot prior to the election?

Ans. Yes, sir.

Ques. I hand you a paper and ask you if that is the sample ballot that you received prior to the election?

Mr. Miller: I object, as being immaterial and because the witness is not competent to prove it, nor does the paper prove the ballot actually used at the election.

Ans. To the best of my knowledge, it is.

Ques. Has that been in your possession or that of your counsel ever since?

Ans. Yes, sir.

Ques. How does that compare with the official ballot that was used at that election?

10

Mr. Miller: I object, because the witness is not competent to state.

Ans. To the best of my knowledge it is an exact copy.

Ques. You voted at that election?

Ans. Yes, sir.

Ques. And had this sample ballot prior to the election?

20

Ans. Yes.

Judge Gaskill: I mark this ballot "Exhibit No. 1, Wood v. Millville," and offer it in evidence.

Cross-examination.

By Mr. Miller:

30 Ques. Are you supplying water to the City of Millville from your artesian wells entirely?

Ans. Only partially.

Ques. Are you not almost exclusively supplying your water system from the water taken from Union Lake?

Ans. No, sir.

Ques. What proportion are you taking from Union Lake?

Ans. It varies.

Ques. What amount do you take from the lake?

Ans. We take 600,000 gallons every 24 hours from the wells, and the balance that is required we supply from Union Lake.

Ques. What is the supply that is required?

Ans. It varies.

Ques. From what to what?

Ans. It varies from 1,800,000 gallons to about 3,000,000 gallons, the total pumpage.

Ques. Have you knowledge of the report of the State Board of Health with relation to the water supply of Union Lake for the year 1914? 10

Ans. What kind of a report do you mean?

Ques. A report in which a complaint is made of the quality of water supplied by the Millville Water System.

Ans. Only by hearsay.

Ques. Have you examined that report?

Ans. I never saw one.

Ques. Have you seen the report of 1911 of the State Board of Health—that has been printed?

Ans. I might have seen it. I would have to refresh my memory to tell you whether I have seen it. 20

Mr. Miller: It is admitted by counsel for the city that Walter Wood is a taxpayer of the City of Millville.

Judge Gaskill: It is admitted by the prosecutor that notice of the introduction and of the time and place of consideration of Ordinances No. 144 and 145 were published in conformity with the requirements of the statute, and that the ordinances after passing were duly published as required by law. 30

It is also admitted that the ordinances in question were duly passed by the Board of Commissioners of the City of Millville.

(At this point an adjournment was taken until 1.30 o'clock p. m.)

AFTER RECESS.

JOHN S. HORTON, called by the prosecutor, having been duly sworn by the Master, was examined and testified as follows:

By Judge Gaskill:

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

10 Ans. I am.

Ques. And you have in your possession the minutes of the council of the City of Millville prior to the formation of the commission government, have you not?

Ans. I have.

Ques. Will you please turn to your minutes, wherein is recorded the result of the referendum election on the adoption of the so-called Water Act of 1876 and give us the date of your record and the result of the election as reported and recorded?

20 Ans. The result of the election is recorded under date of June 14th, 1912.

Mr. Miller: I object to the Clerk giving any statement as to the result of the election in the record, other than the statement of the results spread at large upon the minutes.

30 Ans. (Reads) The recorder submitted the following report of the results of the special election held June 11th, 1912:

To the Common Council, City of Millville:

I have to report the following result of the special election held June 11th, 1912, for or against the adoption for this City of the provisions of the Act of the Legislature of the State of New Jersey, entitled "An Act to enable cities to supply the inhabitants

thereof with pure and wholesome water" approved April 21st, 1876, and acts amendatory thereof and supplemental thereto.

The whole number of ballots cast was 876.

The whole number of ballots For was 531.

The whole number of ballots Against was 345.

The whole number of ballots rejected was 107.

I also submit to you return sheets or statements of the Board of Election of the several election districts,

L. H. HOGATE,
City Recorder.

10

Ques. Was the clerk of the city at that time known as the recorder?

Ans. He was.

Ques. Do you find in the minute book the original returns referred to in that report?

Mr. Miller: I object to that. The clerk don't know 20 what they are. He is reading now from the minute book, items in the minute book. He does not know whether they are the originals or what they are.

Ques. What do you find on pages 322 to 333 inclusive?

Ans. I find pasted in the minute book on those pages, statements partly printed and partly written, all statements giving—

30

Mr. Miller: Are you reading from the book?

The Witness: I will read it. (Reads).

Statement of the result of an election held in the several election districts in the City of Millville on the 11th day of June, 1912, for the

purpose of voting for or against the adoption of the provisions of an Act known as "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water, approved April 21st, 1876," and the Acts amendatory thereof and supplemental thereto and signed by the Board of Registry and Election of the several districts.

Mr. Miller: I object to that inference.

10 The Witness: They are signed.

Mr. Miller: I object to the clerk stating inferences or deductions or interpreting the document or minutes of the council, and insist that the clerk read from the minutes the records of the council and not merely interpret those documents.

Judge Gaskill: I offer in evidence the book of minutes.

20 Ques. Mr. Horton, do you know what the registered vote of the City of Millville at the preceding fall election, November, 1911, was?

Ans. I do not.

Cross-examination.

By Mr. Miller:

30 Ques. Have you other minutes than those you have read, relating to the special election on the adoption of the Act of 1876?

Ans. Yes.

Ques. What is the first minute or proceeding recorded in your minute book?

Ans. Under date of May 3rd, 1912.

Ques. Read what you find under that date in the minute book.

Judge Gaskill: I object to this, as not being cross-examination, and as being immaterial and irrelevant.

Ans. (Reads). Mr. Horton read a resolution providing for an election concerning the water question, and moved that when council adjourn it be to May 10th at 7.30 to consider further said resolution. Motion passed.

Millville, New Jersey, May 10th, 1912. Council met in adjourned session. President Rockhill was in the chair, all members being present. Mr. Horton offered the following resolution: 10

Resolution No. 41: A resolution authorizing and directing an election to determine whether or not the City of Millville shall adopt the provisions of an Act of the Legislature of the State of New Jersey entitled "An Act to enable cities to provide the inhabitants thereof with pure and wholesome water, approved April 21st, 1876," and the several acts amendatory thereof and supplemental thereto. 20

Be it, Resolved by the Mayor and Common Council of the City of Millville:

Section 1. That an election be held in the City of Millville to determine whether or not the City shall adopt or reject the provisions of an Act of the Legislature of the State of New Jersey, entitled, "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water, approved April 25th, 1876," and the several acts amendatory thereof and supplemental thereto. 30

Section 2. That the said election shall be held in the City of Millville at the several polling places therein, on Tuesday, the 11th day of June, 1912, and that the City Recorder is hereby authorized and directed to advertise and prepare the ballots as required by law.

The resolution was adopted by the following vote:

Vote: Yea—Cossaboon, Felmev, Horton, Mitchell, Radcliffe, Richards, Sheppard, Rockill—eight. Nay—Brown, Wade, Wheaton, White, Troth—five.

Ques. What is the next entry on the minutes?

Judge Gaskill: I object to that, because it is a mere repetition of that which was read, in response to my
10 question.

Ans. (Reads) Council met in adjourned session, President Rockhill in the chair, besides whom the following members were present: Felmev, White, Mitchell, Horton, Sheppard, Richards, Brown, Wade, Troth. Absent: Cossaboon, Radcliffe, Wheaton. The Recorder submitted the following report of the result of the special election held June 11th, 1912: To the Common Council, City of Millville; I have to report the following result of the special election held June 11th, 1912, for or against the adoption for this City of the provisions of an act of the Legislature entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water, approved April 21st, 1876," and acts amendatory thereof and supplemental thereto.
20

The whole number of ballots cast was 876.

The whole number of ballots For was 531.

The whole number of ballots Against was 345.

The whole number of ballots rejected was 107.
30

I also submit to you the return sheets or statements of the Boards of Election of the several election districts.

L. H. HOGATE,
City Recorder.

June 12th, 1912.

On motion of Mr. Horton, the report of the election named, viz: June 11th, 1912, was received and ordered entered in full on the minutes (see pages 322, etc.)

Ques. Read what you find on page 322, etc. I understand you are reading from page 322 of the minute book of the Common Council of the City of Millville?

Ans. Yes.

Ques. Tell us what you find there.

Ans. (Reads).

10

A statement of the result of an election held in the First election district of the First ward of the City of Millville, in the County of Cumberland, and State of New Jersey, on the eleventh day of June, in the year of our Lord one thousand nine hundred and twelve, for the purpose of voting For or Against the adoption for this City of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto.

20

The whole number of names on the register list of signature copy book is two hundred and fifty-four (254).

The whole number of names on the poll book is ninety (90).

The whole number of ballots rejected is none (0).

The whole number of ballots For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April 21st, eighteen hundred and seventy-six, and acts amendatory thereof and supplementary thereto is sixty-nine (69).

30

The whole number of ballots Against the adoption for this city of the provisions of an act entitled, "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first,

eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto, is twenty-one (21).

We do certify that the foregoing is a true, full and correct statement of the result of the election above mentioned, and that the same exhibits the whole number of the names on the poll book and of the ballots rejected, and the whole number of votes given For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen
 10 hundred and seventy-six, and acts amendatory thereof and supplemental thereto, and the whole number of votes given Against the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto.

In witness whereof, we have hereunto set our hands respectively, this 11th day of June, in the year of our Lord one thousand nine hundred and twelve.

20

R. L. MOHR,
 HENRY O. BURT,
 C. L. RAMSEY,
 ARTHUR CROSSLEY,
 Board of Registry and Election.

30

A statement of the result of an election held in the Second election district of the First ward of the City of Millville, in the County of Cumberland, and State of New Jersey, on the eleventh day of June, in the year of our Lord one thousand nine hundred and twelve, for the purpose of voting For or Against the adoption for this City of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto.

The whole number of names on the register list of signature copy book is two hundred and seven (207).

The whole number of names on the poll book is ninety-two (92).

The whole number of ballots rejected is ten (10).

The whole number of ballots For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April 21st, eighteen hundred and seventy-six, and acts amendatory thereof and supplementary thereto is seventy-four (74). 10

The whole number of ballots Against the adoption for this city of the provisions of an act entitled, "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto, is eight (8).

We do certify that the foregoing is a true, full and correct statement of the result of the election above mentioned, and that the same exhibits the whole number of the names on the poll book and of the ballots rejected, and the whole number of votes given For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto, and the whole number of votes given Against the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto. 20 30

In witness whereof, we have hereunto set our hands respectively, this 11th day of June, in the year of our Lord one thousand nine hundred and twelve.

JOSEPH M. HUMMEL,
WILLIS R. JOHNSON,
CHESTER A. HUMMEL,
RAYMOND H. GARRISON,
Board of Registry and Election.

A statement of the result of an election held in the Third election district of the First ward, of the City of Millville, in the County of Cumberland, and State of New Jersey, on the eleventh day of June, in the year of our Lord one thousand nine hundred and twelve, for the purpose of voting For or Against the adoption for this City of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto.

The whole number of names on the register list of signature copy book is one hundred and fifteen (115).

The whole number of names on the poll book is fifty-five (55).

The whole number of ballots rejected is three (3).

The whole number of ballots For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April 21st, eighteen hundred and seventy-six, and acts amendatory thereof and supplementary thereto is forty-three (43).

The whole number of ballots Against the adoption for this city of the provisions of an act entitled, "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto, is nine (9).

We do certify that the foregoing is a true, full and correct statement of the result of the election above mentioned, and that the same exhibits the whole number of the names on the poll book and of the ballots rejected, and the whole number of votes given For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and

supplemental thereto, and the whole number of votes given Against the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto.

In witness whereof, we have hereunto set our hands respectively, this 11th day of June, in the year of our Lord one thousand nine hundred and twelve.

HOWARD W. VANAMAN,
JOHN F. L. GREEN, 10
JOHN W. WALDMAN,
NICHOLAS GRINER,
Board of Registry and Election.

A statement of the result of an election held in the Fourth election district of the First ward, of the City of Millville, in the County of Cumberland, and State of New Jersey, on the eleventh day of June, in the year of our Lord one thousand nine hundred and twelve, for the purpose of voting For or Against the adoption for this City of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto. 20

The whole number of names on the register list of signature copy book is one hundred and ninety-three (193). 30

The whole number of names on the poll book is seventy-three (73).

The whole number of ballots rejected is eight (8).

The whole number of ballots For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April 21st, eighteen

hundred and seventy-six, and acts amendatory thereof and supplementary thereto is thirty-four (34).

The whole number of ballots Against the adoption for this city of the provisions of an act entitled, "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto, is thirty-one (31).

10 We do certify that the foregoing is a true, full and correct statement of the result of the election above mentioned, and that the same exhibits the whole number of the names on the poll book and of the ballots rejected, and the whole number of votes given For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto, and the whole number of votes given
20 Against the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto.

In witness whereof, we have hereunto set our hands respectively, this 11th day of June, in the year of our Lord one thousand nine hundred and twelve.

JOSEPH GASKILL,

B. F. ROCAP,

W. H. MARTS,

THOMAS P. MATTICKS,

30

Board of Registry and Election.

A statement of the result of an election held in the First election district of the Second ward, of the City of Millville, in the County of Cumberland, and State of New Jersey, on the eleventh day of June, in the year of our

Lord one thousand nine hundred and twelve, for the purpose of voting For or Against the adoption for this City of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto.

The whole number of names on the register list of signature copy book is one hundred and eighty-five (185).

The whole number of names on the poll book is 10 eighty-eight (88).

The whole number of ballots rejected is seventeen (17).

The whole number of ballots For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April 21st, eighteen hundred and seventy-six, and acts amendatory thereof and supplementary thereto is forty-six (46).

The whole number of ballots Against the adoption for this city of the provisions of an act entitled, "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto, is twenty-five (25). 20

We do certify that the foregoing is a true, full and correct statement of the result of the election above mentioned, and that the same exhibits the whole number of the names on the poll book and of the ballots rejected, and the whole number of votes given For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto, and the whole number of votes given Against the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabi- 30

tants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto.

In witness whereof, we have hereunto set our hands respectively, this 11th day of June, in the year of our Lord one thousand nine hundred and twelve.

W. J. SIMMERMAN,
JOHN J. WHITAKER,
H. R. ERRICKSON,
ALFRED PETERS,

10

Board of Registry and Election.

20 A statement of the result of an election held in the Second election district of the Second ward of the City of Millville, in the County of Cumberland, and State of New Jersey, on the eleventh day of June, in the year of our Lord one thousand nine hundred and twelve, for the purpose of voting For or Against the adoption for this City of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto.

The whole number of names on the register list of signature copy book is two hundred and three (203).

The whole number of names on the poll book is one hundred and eight (108).

30 The whole number of ballots rejected is eight (8). One (1) spoiled returned.

The whole number of ballots For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April 21st, eighteen hundred and seventy-six, and acts amendatory thereof and supplementary thereto is seventy-seven (77).

The whole number of ballots Against the adoption for this city of the provisions of an act entitled, "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto, is twenty-three (23).

We do certify that the foregoing is a true, full and correct statement of the result of the election above mentioned, and that the same exhibits the whole number of the names on the poll book and of the ballots rejected, and the whole number of votes given For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto, and the whole number of votes given Against the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto.

In witness whereof, we have hereunto set our hands respectively, this 11th day of June, in the year of our Lord one thousand nine hundred and twelve.

CHARLES B. IRELAND,
WILLIAM LOPER,
ARTHUR RADCLIFFE,
MATLACK R. CASSADAY,
Board of Registry and Election.

30

A statement of the result of an election held in the First election district of the Third ward, of the City of Millville, in the County of Cumberland, and State of New Jersey, on the eleventh day of June, in the year of our Lord one thousand nine hundred and twelve, for the purpose of voting For or Against the adoption for this City

of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto.

The whole number of names on the register list of signature copy book is

.....
The whole number of names on the poll book is two hundred and twenty-eight (228).

10 The whole number of ballots rejected is thirteen (13).

The whole number of ballots For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April 21st, eighteen hundred and seventy-six, and acts amendatory thereof and supplementary thereto is twenty-two (22).

20 The whole number of ballots Against the adoption for this city of the provisions of an act entitled, "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto is fifty-seven (57).

30 We do certify that the foregoing is a true, full and correct statement of the result of the election above mentioned, and that the same exhibits the whole number of the names on the poll book and of the ballots rejected, and the whole number of votes given For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto, and the whole number of votes given Against the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto.

In witness whereof, we have hereunto set our hands respectively, this 11th day of June, in the year of our Lord one thousand nine hundred and twelve.

RICHARD WILKINSON,
EDWARD KERSHAW,
JAMES I. MCCORRISTIN,
RALPH H. LEE,
Board of Registry and Election.

A statement of the result of an election held in the 10
Second election district of the Third ward, of the City of
Millville, in the County of Cumberland, and State of New
Jersey, on the eleventh day of June, in the year of our
Lord one thousand nine hundred and twelve, for the pur-
pose of voting For or Against the adoption for this City
of the provisions of an act entitled "An Act to enable
cities to supply the inhabitants thereof with pure and
wholesome water," approved April twenty-first, eighteen
hundred and seventy-six, and acts amendatory thereof 20
and supplemental thereto.

The whole number of names on the register list of
signature copy book is two hundred and ninety-two
(292).

The whole number of names on the poll book is
one hundred and ten (110).

The whole number of ballots rejected is twenty (20).

The whole number of ballots For the adoption for this
city of the provisions of an act entitled "An Act to en- 30
able cities to supply the inhabitants thereof with pure
and wholesome water," approved April 21st, eighteen
hundred and seventy-six, and acts amendatory thereof
and supplementary thereto is thirty-five (35).

The whole number of ballots Against the adoption
for this city of the provisions of an act entitled, "An Act
to enable cities to supply the inhabitants thereof with
pure and wholesome water," approved April twenty-first,

eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto, is fifty-five (55).

We do certify that the foregoing is a true, full and correct statement of the result of the election above mentioned, and that the same exhibits the whole number of the names on the poll book and of the ballots rejected, and the whole number of votes given For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto, and the whole number of votes given Against the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto.

In witness whereof, we have hereunto set our hands respectively, this 11th day of June, in the year of our Lord one thousand nine hundred and twelve.

20

PHILIP K. HUSTED,
FRANK G. SCOTT,
WILLIAM BROWN, JR.,
WILLIAM H. KERSHAW,
Board of Registry and Election.

A statement of the result of an election held in the Third election district of the Third ward, of the City of Millville, in the County of Cumberland, and State of New Jersey, on the eleventh day of June, in the year of our Lord one thousand nine hundred and twelve, for the purpose of voting For or Against the adoption for this City of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto.

30

The whole number of names on the register list of signature copy book is one hundred and thirty-seven (137).

The whole number of names on the poll book is fifty-six (56).

The whole number of ballots rejected is seven (7).

The whole number of ballots For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April 21st, eighteen hundred and seventy-six, and acts amendatory thereof 10 and supplementary thereto is twenty-eight (28).

The whole number of ballots Against the adoption for this city of the provisions of an act entitled, "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplementary thereto, is twenty-one (21).

We do certify that the foregoing is a true, full and correct statement of the result of the election above mentioned, and that the same exhibits the whole number of 20 the names on the poll book and of the ballots rejected, and the whole number of votes given For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto, and the whole number of votes given Against the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved 30 April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto.

In witness whereof, we have hereunto set our hands respectively, this 11th day of June, in the year of our Lord one thousand nine hundred and twelve.

JOHNSON L. BENNETT,

JOHN L. TOMLIN,

ARCHIE BRANIN,

LORENZO B. ROSE,

Board of Registry and Election.

A statement of the result of an election held in the First election district of the Fourth ward, of the City of Millville, in the County of Cumberland, and State of New Jersey, on the eleventh day of June, in the year of our Lord one thousand nine hundred and twelve, for the purpose of voting For or Against the adoption for this City of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto.

10

The whole number of names on the register list of signature copy book is fifty-one (51).

The whole number of names on the poll book is one hundred and twenty-three (123).

The whole number of ballots rejected is eight (8).

20

The whole number of ballots For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April 21st, eighteen hundred and seventy-six, and acts amendatory thereof and supplementary thereto is twenty (20).

The whole number of ballots Against the adoption for this city of the provisions of an act entitled, "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto, is twenty-three (23).

30

We do certify that the foregoing is a true, full and correct statement of the result of the election above mentioned, and that the same exhibits the whole number of the names on the poll book and of the ballots rejected, and the whole number of votes given For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and

supplemental thereto, and the whole number of votes given Against the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto.

In witness whereof, we have hereunto set our hands respectively, this 11th day of June, in the year of our Lord one thousand nine hundred and twelve.

EDWARD P. STEWART,
 STACEY N. EWAN, 10
 EDWARD D. COUNSELLOR,
 J. F. CHARLESWORTH,
 Board of Registry and Election.

A statement of the result of an election held in the Second election district of the Fourth ward, of the City of Millville, in the County of Cumberland, and State of New Jersey, on the eleventh day of June, in the year of our Lord one thousand nine hundred and twelve, for the purpose of voting For or Against the adoption for this City of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto. 20

The whole number of names on the register list of signature copy book is two hundred and eleven (211).

The whole number of names on the poll book is 30 one hundred and one (101).

The whole number of ballots rejected is two (2).

The whole number of ballots For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April 21st, eighteen hundred and seventy-six, and acts amendatory thereof and supplementary thereto is fifty-seven (57).

The whole number of ballots Against the adoption for this city of the provisions of an act entitled, "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto, is forty-two (42).

10 We do certify that the foregoing is a true, full and correct statement of the result of the election above mentioned, and that the same exhibits the whole number of the names on the poll book and of the ballots rejected, and the whole number of votes given For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto, and the whole number of votes given
20 Against the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto.

In witness whereof, we have hereunto set our hands respectively, this 11th day of June, in the year of our Lord one thousand nine hundred and twelve.

P. S. SAMPSON,
FRANCIS L. REEVES,
WILLIAM J. MCCARTHY,
THEODORE F. BIRCH,
Board of Registry and Election.

30

A statement of the result of an election held in the Third election district of the Fourth ward, of the City of Millville, in the County of Cumberland, and State of New Jersey, on the eleventh day of June, in the year of our Lord one thousand nine hundred and twelve, for the purpose of voting For or Against the adoption for this City

of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto.

The whole number of names on the register list of signature copy book is one hundred and fifty-eight (158).

The whole number of names on the poll book is seventy (70).

The whole number of ballots rejected is eleven (11).

The whole number of ballots For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April 21st, eighteen hundred and seventy-six, and acts amendatory thereof and supplementary thereto is twenty-nine (29). 10

The whole number of ballots Against the adoption for this city of the provisions of an act entitled, "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplementary thereto, is thirty (30). 20

We do certify that the foregoing is a true, full and correct statement of the result of the election above mentioned, and that the same exhibits the whole number of the names on the poll book and of the ballots rejected, and the whole number of votes given For the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto, and the whole number of votes given Against the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, eighteen hundred and seventy-six, and acts amendatory thereof and supplemental thereto. 30

In witness whereof, we have hereunto set our hands respectively, this 11th day of June, in the year of our Lord one thousand nine hundred and twelve.

E. A. WARDEN,
JOHN PIKE,
RAYMOND L. ROBINSON,
FRANK R. BEAKLY,
Board of Registry and Election.

- 10 There being no further business council adjourned.
L. H. HOGATE, Recorder.

HERBERT C. BARTLETT, having been duly sworn, examined on behalf of the prosecutor.

By Judge Gaskill:

- 20 Ques. Mr. Bartlett, you are a member of the bar of the State of New Jersey?

Ans. Yes, sir.

Ques. And you practice law in Vineland?

Ans. Yes.

Ques. In the year 1912, following the referendum election in the City of Millville on the water act of April, 1876, were you employed to take any proceedings with respect to the same?

Ans. Yes, I was employed with Judge Gaskill to certify the result of that election to the Supreme Court.

- 30 Ques. Did you make any application along that line?

Ans. In connection with Judge Gaskill I made an application to Judge Kalisch, at Newark, asking for a writ or a rule, on July 29, 1912.

Ques. How do you fix the date?

Ans. By a docket entry made in my docket, kept by me, which shows the different steps taken in various lawsuits.

Ques. What reply did Judge Kalisch make to your application?

Mr. Miller: I object to that. My objection is that if counsel proposes to testify to the result of some proceeding that he instituted or attempted to institute, that the records of the Court would be the only evidence of the action of the Court, and that statements made by a Judge, if there were any, or conversations between the witness and the Judge, or between Judge Gaskill and the Justice, would not be probative of anything. 10

Ans. That the application was premature, as the city had taken as yet no steps under the election of June 11th, 1912.

Mr. Miller: I move that that be stricken out, as not evidential of any court proceeding.

Ques. Did Judge Kalisch put anything in writing at that time? 20

Ans. Nothing.

Ques. Have you the affidavit which you presented to Judge Kalisch on that occasion for a writ or a rule?

Ans. I have just filed the affidavit in the clerk's office in the Supreme Court, and Judge Black has just granted a writ on the same affidavits as were presented to Judge Kalisch.

Ques. In 1912?

Ans. In 1912. I might state that the rule to show cause that was granted was drawn at the same time and presented to Judge Kalisch. 30

Ques. Have you any papers that refresh your recollection in reference to the matter?

Ans. I have.

Mr. Miller: All this is objected to.

Ques. Did Judge Kalisch put anything in writing or give any written decision or opinion concerning the matter?

Ans. He did not.

Ques. Did you see the sample ballot that was shown Mr. Franklin this morning and offered in evidence?

Ans. Yes.

Ques. State whether or not that sample ballot was submitted to Judge Kalisch at that time.

Ans. It was.

10 Ques. And it has been in your possession ever since?

Ans. It has been in my possession ever since that time.

Ques. And the affidavits you have referred to have been sent to the printer for printing in connection with this proceeding?

Ans. Yes.

Cross-examination.

20 By Mr. Miller:

Ques. Have you the ballot you referred to Mr. Horton?

Ans. I have.

Ques. Please read it into the minutes.

Ans. (Reads).

Exhibit P1.

30

Wood v. Millville,

THIS BALLOT CANNOT BE VOTED.

It is a sample copy of the Official Ballot to be used at the Special Election to be held in the City of Millville on the eleventh day of June, nineteen hundred and twelve.

SPECIAL ELECTION BALLOT.

City of Millville. Ward No. 4. District No. 2.
June 11, 1912.

L. H. HOGATE,
City Clerk.

If the word "For" be marked off or defaced upon the ballot, it shall be counted as a vote against the adoption for said City of the provisions of said act; 10

If the word "Against" be marked off or defaced upon the ballot, it shall be counted as a vote in favor of the adoption for said City of the provisions of said act.

FOR AGAINST the adoption for this city of the provisions of an act entitled "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April twenty-first, 20
eighteen hundred and seventy-six, and the acts amendatory thereof and supplemental thereto.

Ques. I understand, Mr. Bartlett, that you applied for the writ of certiorari in 1912, and the purpose of that application was to review the special election?

Ans. I did.

Ques. And the result was that the Court denied your writ—your application was denied—is not that so? 30

Ans. Yes.

Ques. And you made no application to the Court for the writ?

Ans. None other than to Judge Kalisch.

Ques. And you abandoned that proceeding—that is, you did not proceed further after that?

Ans. We did not proceed further, no.

Re-direct examination.

By Judge Gaskill:

Ques. You said that the application was denied. Was it ever denied for any other reason than the Judge stated that it was premature?

Ans. That is the only reason.

Ques. Did he state why it was premature?

10 Ans. He said we should have waited for the City to proceed under that election—the election of June 11th, 1912.

Ques. You applied for a certiorari on the election?

Ans. Yes, sir.

Mr. Miller: I object to any testimony on behalf of the certiorari.

20 I offer in evidence the original document known as resolution No. 41, which was spread at large upon the minutes of the Common Council, and which has been read into the minutes, for the purpose of showing that it was approved by the Mayor May 10th, 1912. It is agreed that this document need not be printed.

JOHN S. HORTON, for the defendant in certiorari, the City of Millville, recalled.

30

By Mr. Miller:

Ques. Mr. Horton, have you other proceedings shown by the minutes taken from your files relating to actions or proposals by the governing body of the city, towards the purchase of either or both of the plants of the water company?

Ans. Yes.

Ques. Do you find some action taken indicated by the minutes, and if so, what?

Judge Gaskill: Objected to as irrelevant, immaterial and as having no bearing whatever upon the adoption by the city of the ordinances in question or the referendum election.

Ans. (Reads) Millville, New Jersey, June 3rd, 1910. Council met in regular session. President Miller in the chair. All members present. Mr. Mitchell introduced the following resolution: 10

Resolved, that the City of Millville, owing to the small income derived from the few consumers on the mains of the People's Water Company, and other reasons, declines to purchase the plant of the People's Water Company, and therefore hereby does decide not to exercise its option as contained in the contract and in the report submitted by the Water Commissioners appointed for that purpose. 20

Mr. Mitchell moves its adoption.

Mr. Horton moves an amendment by adding the words:

Provided, however, that the City solicitor gives an opinion in writing at the July meeting that there is nothing in this resolution that will interfere in any way with the city opening up negotiations at a future time. 30

Mr. Austin offered the following as an amendment to the amendment:

Resolved, that the City of Millville, owing to the small income derived from the few consumers on the main of the People's Water Company and for other reasons, declines to purchase the plant of the People's

Water Company at the price set by the Commissioners.

The vote on Mr. Austin's amendment was: Yea—Austin, Brown, Counsellor, Davis, Mitchell, Radcliffe, Reardon, Stewart, Wheaton—nine. Nay—Cossaboon, Horton, Rockhill, Miller—four.

10 The amendment was carried. The amendment of Mr. Horton's and the original motion of Mr. Mitchell as amended by Mr. Austin's amendment, not being perfectly clear, Mr. Austin moved to reconsider the vote by which his amendment passed. This being done, he then introduced as a substitute to it all the following:

Resolved, that the City of Millville, owing to the small income derived from the few consumers on the mains of the People's Water Company, and for other reasons, declines to purchase the plant of the People's Water Company at the price set by the Commissioners.

20 This substitute was adopted by the following vote: Yea—Austin, Brown, Counsellor, Davis, Mitchell, Radcliffe, Reardon, Stewart, Wheaton—nine. Nay—Cossaboon, Horton, Rockhill, Miller—four.

Ques. Then reading further, will you please produce during the afternoon the report of these Commissioners referred to in Mr. Austin's resolution?

Ans. Yes, sir.

30 Ques. I will call for that later. What is the next reference in the minutes to proceedings for the acquisition for either or both of the water plants?

Judge Gaskill: Objected to as being immaterial and irrelevant to the issue raised by these writs.

Ans. (Reads) Millville, New Jersey, March 3rd, 1911. Council met in regular monthly meeting. President Mil-

ler presided. All members were present. The following resolution was adopted:

Resolved, that the resolution of Council adopted upon the 3rd day of June, 1910, and reading as follows:

Resolved, that the City of Millville, owing to the small income derived from the few consumers on the mains of the People's Water Company, and other reasons, declines to purchase the plant of the People's Water Company at the price set by the Commissioners. 10

Be and the same is rescinded, and that the committee on water be and it is hereby instructed to confer with the People's Water Company with respect to the possible acquisition of the property, franchises and the plants of the People's Water Company, in the exercise of the option reserved under the contract with that company, and to report at the regular April meeting of Council, said Committee, 20 however, to take no action in any way imposing any obligation upon the City of Millville.

Ques. What is the next proceeding shown by the minutes or your files referring to the same matters?

Ans. (Reads) Millville, New Jersey, April 7th, 1911. Council met in regular meeting, President Miller in the chair, besides whom there were present, Stewart, Cossaboon, Felmy, Sheppard, Mitchell, Horton, Brown, Radcliffe, Austin, Rockhill, Wheaton—twelve. Absent: 30 Counsellor—one.

The Water Committee made the following report:

MILLVILLE, NEW JERSEY, April 7th, 1911.

Your committee, which was directed to confer with the People's Water Company with respect to its acquisition of the property, franchises and plants of

the People's Water Company, in the exercise of the option reserved under the contract with that company, respectfully reports that pursuant to the direction above cited they had a conference with the president of the People's Water Company of Millville, New Jersey, and that the company had expressed its willingness not only that the option as originally reserved under the contract with the City of Millville shall continue to be exercised by the City in accordance with the terms of the agreement, but in addition thereto, to modify the agreement so as to give to the City of Millville an option to purchase the property of the company as specified in the agreement, and all its water rights, property and works, for the price of \$185,000, provided this option be exercised on or before the first day of January, 1912, and that the company is willing to enter into a formal agreement with the city to that effect.

10

20

JOHN S. HORTON,
T. C. WHEATON,
ISAIAH COSSABOON,
JOHN R. RADCLIFFE.

Ques. Mr. Horton, in the month of November, 1911, you were chairman of the Finance and Water Committee of the Common Council, weren't you?

Ans. I was.

Ques. Have you a copy of a letter which you wrote to the People's Water Company or to Samuel L. Kent, the treasurer of that company, dated November 22d, 1911?

30

Ans. I don't think I have.

Ques. Do you recall making a communication in writing as chairman of the Finance and Water Committee to the People's Water Company, or one of its officers, at or about that date, November 23rd, 1914, and I show you a letter from Mr. Kent, treasurer of that company, in order that you may if necessary refresh your memory.

Ans. I do.

Ques. You did write a letter to him?

Ans. Yes.

Ques. Did he reply in writing?

Ans. He did.

Ques. Will you produce the letter which he wrote you, which you have just referred to?

Judge Gaskill: I object, for the reasons heretofore given.

10

(Witness hands letter to counsel).

Ques. Did you find this in the files of the City of Millville?

Ans. Yes.

Ques. Is it referred to in any minute of the Common Council?

Ans. Yes, under date of December 1st, 1911.

Ques. Kindly read it.

20

Judge Gaskill: I object, for the reasons heretofore given.

Ans. (Reads) Millville, N. J., December 1st, 1911. Council met in regular monthly session, President Miller in the chair, Mr. Counsellor being the only absentee. Mr. Horton read a lengthy communication from Mr. Kent of the People's Water Company, and the same was ordered filed for reference.

30

Ques. Will you please read the communication?

Judge Gaskill: I object, as the letter has nothing to do with the issue raised in this case.

Ans. (Reads)

Philadelphia, Pa., November 24th, 1911.

John S. Horton, Esq.,
Chairman, Finance Committee,
Millville, N. J.

Dear Sir:—

10 I have your letter of the 23d inst. addressed to my son informing him of the action taken by the Finance and Water Committees on the 22d inst., in which it was decided to defer any action on the bill of the People's Water Company for the quarter ending October 31st last. I understand that this is for the reason that some explanation is desired by the Committees for the increase in the amount of the bill over bills for previous quarters, and this I am very glad to give you. The facts of the matter are these:

20 By the terms of the contract between the People's Water Company and the City of Millville it is provided that the City of Millville should pay to the People's Water Company, for the water furnished to the inhabitants for domestic or manufacturing purposes, the sum of "one cent for one hundred gallons, to be measured at pump station."

30 The People's Water Company agreed that the city should have the use of the fire hydrants to be erected in the City of Millville for the flushing of gutters and sprinkling of streets, it being agreed that such flushing shall be done between the hours of eight A. M. and two P. M. only, and that no more than two hydrants shall be open at the same time. The City of Millville was also to have "the use of water for the flushing of sewers when the city should own its own Sewage Plant and System in which the most approved and automatic discharge tank shall be used." The Water Company further agreed to supply water to the city buildings, school houses, etc., it being understood that 3,000,000 gallons of water annually should be furnished free of charge to the above

buildings; any excess over that amount to be paid for at the rate of one cent per hundred gallons. The original plant was completed in 1902 and an extension thereto about 1905.

Notwithstanding the provision that the city should pay for the water as measured at the pump station, until the present summer no meter was ever installed at the pump station, nor any measurement of the actual amount of water delivered to the City of Millville ever made. It was always in contemplation that the City of Millville would purchase the plant, and its delay in doing so was ascribed to the litigation in which the matter was involved. Pending this time the company did not feel called upon to absolutely insist upon its rights under the contract, but was content, so long as its receipts were sufficient even to pay the operating expenses, to and did allow the ascertainment of the exact amount of water furnished from time to time to remain in abeyance. The amount of water furnished was estimated merely by an estimate of the pumping capacity of the pump, taking the number of gallons to a stroke and making rough allowances for slippage, etc. The estimate thus made was an under estimate and known to be so by the company, the number of consumers at the ordinary rate of consumption in itself showing that the amount consumed was far in excess of the amount billed.

Roughly speaking, the amount of these bills averaged some \$3,000 per quarter. When the bills were received by the city, deductions were made by it for water claimed to be used in the flushing of the streets and in the sewers, in the public buildings and street sprinkling. No measurement was ever made of the amount thus used, but deductions were made which brought the amount to be paid to the Water Company down to the \$6,000 which was the minimum provided for by the contract. As a matter of fact, these estimates of the water claimed to be used by the city for the purposes above stated were gross over

estimates and far in excess of the amount so used, and during the past eight or nine years the actual fact has been that the Water Company has furnished to the consumers in the City of Millville, at a minimum estimate, water the proper payments for which would have amounted to from \$10,000 to \$11,000 a year, though the Water Company has received but \$6,000.

10 If, therefore, the company had been properly paid for what was actually due it, its quarterly bills would have been from \$2,500 to \$3,000 per quarter at the minimum, and we believe even in excess of that amount. It results from this that the Water Company has for all these years practically made a present to the City of Millville of from \$4,000 to \$5,000 a year and upwards, except possibly during the first year or two when the number of consumers was small.

20 Without intending to be at all offensive in the matter, the plain fact is that the City of Millville has met this liberality upon the part of the company with an increase in the assessment of its plant and an imposition of additional taxes whereby the same have increased from \$900 a year to \$3,100. In addition thereto, though this is not a matter perhaps with which the City of Millville is concerned, the cost of operation has been increased, and also the investment of the company in the improvements in the way of new filter plant, etc., which have been added.

30 In addition to the above facts the number of consumers has within the last few months been largely increased and there are now a large number of applicants who will be connected with the mains of the company as fast as may be after December 1st, so that from this increase in consumption naturally the amount of the bill would be increased over the consumption in previous quarters with a less number of consumers.

The present bill is an accurate statement of the water which was actually delivered by the company, measured

at the pump station by a meter installed for that purpose, and there can be no dispute but that the water as measured thereby has been actually furnished, and daily records from this meter have been supplied to your water superintendent. On the other hand, also, measures have been adopted for a more accurate estimate of the water which was consumed by the city and for which it claims it is not required to pay.

In this connection it can be said,

First: That it is by no means clear that the city is entitled under the terms of the contract to the use of the water for flushing the streets without a charge therefor, and

Second: That it is clear that the consumption of the school houses and public buildings is far in excess of 3,000,000 gallons per annum, and is at least double that amount.

Nevertheless, the company has not objected to this claim on the part of the city and without waiving any of its rights in that respect it does not now, at least, make any objection thereto.

The company has deducted from the present bill all the free water to which the City of Millville is entitled and in fact more than that amount, as it has made no charge for the extra water consumed in the school houses and public buildings, and the City of Millville is fairly and properly indebted to the company in the amount of the bill for the present quarter, which has been furnished and which amounts to \$3,778.75, and there is no reason why it should not be at once paid.

The company feels that it certainly no longer is under any obligation to furnish to the City of Millville any water without payment therefor in excess of that to which it is entitled, and that in all fairness the practice

which has prevailed in the past substantially allowing the city to pay what it thought proper, regardless of what it actually owed, should now cease, and that the company demand and receive that to which it is legally and properly entitled.

10 I trust that this will fully explain the reason why the present bill is in excess of the quarterly bills which the city has heretofore been paying and that your committee will understand that it is due in the first place to the actual increase in consumption, and in the second place to the fact that the city is now asked to pay for what it actually got instead of paying for about one-half thereof as it has heretofore been doing.

The present bill is correct and the company must insist upon its prompt payment.

Yours very truly,

PEOPLE'S WATER CO. OF MILLVILLE, N. J.

SAMUEL L. KENT, Treas.

20

Judge Gaskill: Counsel for the prosecutor repeats his objection to the irrelevancy of this testimony, and protests against being obliged to print this letter and similar letters and extracts from the minutes, as being totally irrelevant and immaterial, having no bearing whatever upon the question raised by these three writs of certiorari.

30 Ques. Do you find in your files a letter dated December 29th, 1911, from Samuel L. Kent, Secretary of the People's Water Company, addressed to the Mayor and Common Council of the City of Millville?

Ans. I do.

Ques. Will you please read that in the minutes?

Judge Gaskill: I object, for the same reasons heretofore given.

(Reads)

PHILADELPHIA, PA., December 29, 1911.

To the Mayor and Common Council of the City of Millville.

Gentlemen:—

We hereby agree to extend the existing option of the City of Millville to purchase the plant of this Company under the agreement between us until further notice from this Company withdrawing the same. The Company is 10
entirely willing to do anything which it properly can to facilitate a final settlement of the entire water question, and believe that its logical solution is the acquisition of the plant by the City of Millville. At the same time the existing situation is one which cannot be satisfactory either to the City or to the Company, and some solution ought to be reached with promptness. If not reached, the Company desires, at least, to secure to itself such liberty of action as will enable it to properly protect its 20
own interest, and for these purposes to be free at such time as it may think proper to withdraw the option. It prefers, therefore, not to specify any time during which the option shall remain open, but to reserve entire freedom of action in relation to the matter, whether the time be short or long.

Yours very truly,

PEOPLE'S WATER COMPANY OF MILLVILLE, N. J.

SAMUEL L. KENT, Secretary.

Ques. Turn to the minutes of Common Council of 30
February 2nd, 1912, and read the minutes as far as they relate to the suggestion or proposal for the purchase of the Water Plant, or the assets of either of the water companies.

Judge Gaskill: I make the same objection.

Ans. (Reads)

MILLVILLE, N. J., February 2, 1912.

Council met in regular monthly meeting, President Rockhill in the chair, besides whom there were present, Troth, Wade, Cossaboon, Mitchell, Horton, Sheppard, Richards, Brown, White, Wheaton—ten. Absent: Radcliffe.

Mr. Horton for the committee then submitted the following communication from the People's Water Com-
10 pany:

MILLVILLE, N. J., February 2, 1912.

To the Mayor and Council of the City of Millville.

Gentlemen:

The People's Water Company of Millville, N. J., is willing and agrees if and when approved by the City Council and agreed to by the City, to accept in full payment for water furnished by it and also for fire hydrant rental under its existing
20 contract during the six months commencing on the 1st day of November, 1911, and terminating on the 1st day of May, 1912, two equal quarterly payments of twenty-five hundred dollars (\$2,500) each, upon the first day of February and May, 1912; provided, however, that the charge for water measured less deductions does not exceed twenty-five hundred dollars per quarter; it being also admitted that as of the first day of November, 1911, the People's Water Company is indebted to the City
30 of Millville in the sum of fifteen hundred and twenty-nine dollars and seventy-four cents (\$1,529.74), this sum being arrived at upon an adjustments of the accounts between the company and the City, including therein the taxes for the year 1911.

This agreement is upon the following conditions:

1. That the City of Millville shall restore the rates charged by it to consumers prior to November

1st, 1911, and reinstate and continue, during the year 1912, the practice in use before that time of offering to the consumers water for an additional quarter without charge upon the payment of their bills. This to be applied to the quarter commencing February next, and the withdrawal of the notice to this effect given in December last to be itself withdrawn.

2. This agreement to continue in force only for the time specified, and to be without prejudice to any of the rights of either the City of Millville or the People's Water Company, under the existing contract between them, or to the right of each of them to assert the same after the expiration of said period, and to be considered as a rebate upon the part of the company merely of its charges under its contract for such period. The People's Water Company in making this agreement is actuated by its desire to serve the best interests of the City of Millville and its inhabitants, and co-operate with the authorities in obtaining a supply of pure water at reasonable rates. As a matter of fact, the water rates paid by the inhabitants of the City of Millville have been and are probably lower than any other community in the United States, and in order to lighten the burden as far as possible upon the People's Water Company, it asks that the city authorities use their best efforts to restrain the wasteful and extravagant use of water, and to make that use, as well by the city for its municipal purposes as by the individual consumers, as economical as may be consistent with their proper needs.

Trusting that the city council may take prompt and favorable action upon this proposal, we are

Yours very truly,

PEOPLES WATER COMPANY,
SAMUEL L. KENT, Treasurer.

On motion, this proposition was accepted.

Ques. Mr. Horton, I show you a letter from Walter Wood, treasurer of the Millville Water Company, dated April 4th, 1912, and ask you whether or not that was not produced and offered in the testimony taken under the rule.

Ans. Yes, and was read into the record.

Ques. The letter of Mr. Kent dated April 1st, 1912, addressed to the Mayor and Common Council of the City of Millville, was read into the testimony?

Ans. Yes.

- 10 Ques. Since taking the former testimony have you found in your files a communication from Walter Wood, treasurer of the Water Company, bearing on this matter, and if so, produce it.

Judge Gaskill: I object, as this is entirely irrelevant to the question at issue.

- 20 Ans. In the files of the city I found a letter from Walter Wood, treasurer of the Millville Water Company, which reads as follows:

Office of the Treasurer.
MILLVILLE CORPORATIONS,
400 Chestnut Street.

Philadelphia, Pa., July 5th, '12

John S. Horton, Chairman,
Finance Committee,
Millville, N. J.

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Dear Sir:—

Replying to yours of June 25th, stating that the Finance Committee has been instructed to enter negotiations for the purchase of our Water Company and asking if we are willing to sell.

We beg to confirm the position the company has always held, namely, a willingness to meet all such desire on the part of the city.

We are ready at any time to reach the determination of its value through the usual method of a disinterested appraisalment.

Awaiting your advices as to when the committee will be ready for such discussion, we are

Yours very truly,

WALTER WOOD,
Treas. Millville W. Co.

Ques. I show you an original document from the files, being the resolution adopted February 2nd, 1912. Have you a minute showing the adoption of that resolution, and if so, read it. 10

Judge Gaskill: I object, for the same reason.

Ans. (Reads). Whereas, the People's Water Company of Millville, N. J., has offered to sell to the City of Millville its water plant and all its property together with its franchises in this city for the sum of one hundred and eighty-five thousand dollars; therefore 20

Resolved, by the Common Council of the City of Millville:

1. That it is the sense of the Common Council that the said offer to sell said property and franchises at said price is advantageous to the interests of this city, and that said offer ought to be accepted; provided, that nothing in this resolution contained shall be held or construed or shall operate as an acceptance of said offer or as binding the city by any contract express or implied. 30

2. That for the purpose of duly considering and acting upon the said offer to sell said property and franchises to the city at said price, the Finance and Water Committee of Council are directed to have prepared and to report to the next regular meeting

of Common Council, to be held March first next, proper resolutions, ordinances and other proceedings to be submitted to this body for its consideration, to the end that it may, if it so desire, proceed in a lawful manner to accept said offer, or proceed by negotiation, condemnation or otherwise as Council may deem proper, to effect the purchase or acquisition of said property and franchises and adopt ways and means for raising the money required for any said purpose; which committee is requested to take the advice of the City Solicitor in the premises and is authorized, if in their judgment advisable, to employ special counsel to co-operate with the City Solicitor in that behalf.

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The vote adopting the foregoing resolution was: Yea—Cassoboon, Felmy, Horton, Mitchell, Richards, Sheppard, Wade, White, Radcliffe—nine. Nay—Brown, Wheaton—two. Blank—Troth—one. The resolution was adopted.

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No cross-examination.

Judge Gaskill: I move to strike out the whole of this testimony offered on the part of the City, as irrelevant and immaterial.

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Mr. Miller: I offer in evidence, on behalf of the city, two official reports of the State Board of Health relative to the water supply of the Millville Water Company.

The first report I offer is that of the State Board of Health for the year 1911, as found on page 361, and reads as follows, under the general title Water Purification Plants:

Millville.—There are two water companies here, one supplying a well water, and the other a surface water.

People's Water Company.—This supply is obtained from six artesian wells 112 feet deep. The water contains iron which it is necessary to remove.

From the wells the water flows by gravity to a collecting or suction well 12 feet in diameter and 38 feet in depth. Compressed air is forced through the water in the well to precipitate the iron.

From the suction well, the water is pumped through a rapid sand filter of the horizontal pressure type. The filter is washed with a reverse current of filtered water every other day.

The average daily consumption is 700,000 gallons. 10

The plant is well kept up and the water is free from any danger of pollution.

Millville Water Company.—This company obtains its supply from Union Lake. The water has a very high color from some cedar swamps above. It is also polluted by the surface wash from numerous privies and barns.

The water flows to a rectangular settling basin and from there to four rapid sand filters 15 feet in diameter. Alum is added to the water as it enters the settling basin in the proportion of one-eighth of a grain per gallon. At the time of inspection, the alum pumps were out of order and were not being used. 20

In washing the filters, a reverse current of water only is used. A water motor for furnishing power for the agitators is in place, but it is not used. The filters are operated at a rate of about 60,000,000 gallons per acre per day.

During the past summer, on account of low water and at the time of the inspection, some unfiltered water was pumped to the mains, due to trouble with the pumps. 30

At the present time, the filters are removing very little color. New sand has been added to two of the units and it is planned to change the others also.

The engineer of the plant has no thorough understanding of the principles underlying the process of mechanical filters, and for this reason the plant is in very bad shape.

Since the above was written, the company has taken steps toward having the plant put into proper shape.

Mr. Miller: I also offer the analysis as shown on page 374, which reads as follows:

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CONTINUOUS RECORD OF ANALYSES OF WATER FROM THE PUBLIC SUPPLIES OF NEW JERSEY—RESULTS
IN PARTS PER MILLION EXCEPT WHERE OTHERWISE STATED.

TOWN.	DATE.	SOURCE OF SAMPLE.	Color.	Odor, Cold.	Odor, Hot.	Turbidity.	Total Solids.	Loss on Ignition.	Mineral Residue.	Appearance on Ignition.	NITROGEN AS			
											Free Ammonia.	Albuminoid Ammonia.	Nitrites.	Nitrates.
Millville	Jan. 24, 1911	Filtered water; People's Water Co.	10	0	0	0	39	9	30	.....	.032	.038	.000	.00
"	Jan. 24, 1911	Raw water, intake from Union Lake; Millville Water Co.	65	3-v	3-v	*	46	29	17	.....	.036	.156	.000	.24
"	Jan. 24, 1911	Filtered water; Millville Water Co.	60	3-v	3-v	0	42	29	13	.....	.024	.120	.000	.24
"	Jan. 24, 1911	Raw water; People's Water Co.	10	0	0	40	65	20	45	.....	.012	.030	.000	.00
"	Apr. 21, 1911	Tap; unfiltered water; People's Water Co.	0	1-c	1-c	0	55	25	30	.....	.....	.....	.000	.00

* Slight.

JOHN S. HORTON, RECALLED.

CONTINUOUS RECORD OF ANALYSES OF WATER FROM THE PUBLIC SUPPLIES OF NEW JERSEY—
RESULTS IN PARTS PER MILLION EXCEPT WHERE OTHERWISE STATED.—*Continued.*

TOWN.	DATE.	SOURCE OF SAMPLE.	Chlorine.	Alkalinity.	Hardness, Total.	Iron.	Bacteria per cc. 20° C.	Bacteria per cc. 37° C.	Red Colonies per cc. 37° C.	B. Coli.
Millville	Jan. 24, 1911	Filtered water; People's Water Co.	3.5	.0	.....	1.3	.....	.....	.....	Absent.
"	Jan. 24, 1911	Raw water, intake from Union Lake; Millville Water Co.	3.5	.0	.....	.5	.....	.....	.....	In 10.0 cc.
"	Jan. 24, 1911	Filtered water; Millville Water Co.	3.5	.0	.....	.4	.....	.....	.....	In 10.0 cc.
"	Jan. 24, 1911	Raw water; People's Water Co.	4.0	.0	.....	2.3	.....	.....	.....	In 10.0 cc.
"	Apr. 21, 1911	Tap; unfiltered water; People's Water Co.	5.0	¶	39.0	.8	.....	.....	.....	Absent.

¶ Acid.

The next report offered is that of the State Board of Health for the year 1914, being the last published report issued by that body, at page 201; which report, together with the analysis shown on page 203, I read into the minutes, as follows: (Reads). Repeated instructions have been sent to the Millville Water Company to put the plant in a workable condition, but up to date little, if anything, has been done. The filters are in bad condition, a coagulation basin is greatly needed, and a reliable disinfection apparatus should be installed. The analysis at page 203 reads as follows:

MILLVILLE WATER CO.

WATER ANALYSES.	Dec. 17, 1913.		Feb. 10, 1914.		April 23, 1914.		May 28, 1914.		Aug. 11, 1914.	
	Raw.	Filt'd.	Raw.	Filt'd.	Raw.	Filt'd.	Raw.	Filt'd.	Raw.	Filt'd.
Color	70	60	50	45	60	10	90	55	100	50
Turbidity	0	0	0	0	0	0	.....	.....	0	0
Free Ammonia .....	.056	.032	.030	.024	.018	.008	.....	.....	.038	.028
Alb. Ammonia .....	.082	.084	.072	.046	.052	.022	.....	.....	.096	.072
Nitrites .....	.001	.001	.001	.001	.001	.001	.....	.....	.001	.001
Nitrates .....	.16	.12	.28	.16	.16	.16	.....	.....	.12	.08
Chlorine	3.5	3.5	3.0	4.5	2.5	3.0	.....	.....	4.0	4.5
Alkalinity	3.0	8.0	0	6.0	0	5.0	1.0	10.0	0	4.0
Iron	0.1	0.7	.....	.....	.....	.....	.....	.....	0	0.6
Bacteria per c.c. 20° C.	70	42	185	12	110	1	11	9	240	118
Bactria per c.c. 37° C.	19	11	30	14	38	1	5	1	17	12
Red Colonies per c.c.2	1	0	0	0	0	0	0	2	2
B. Coli (presump.) in 1 c.c. . .	0	.6	1	0	10	0	1	0	1	.2

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Judge Gaskill: I object to the offer of the foregoing, as being entirely irrelevant to the question at issue.

Mr. Miller: I also offer in evidence authenticated copy of the report of the Board of Health of the State of New Jersey, containing an analysis of the water of the Millville Water Company, made by the Board for the year 1915.

(Herewith is handed to the Court copies of reports
10 from the State Board of Health.)

Judge Gaskill: I make the same objection.

Judge Gaskill: Counsel for the prosecutor gives notice that if the Court should consider the testimony offered from the report of the State Board of Health as com-
20 petent or material, that they will refer to a record of the suit brought by the State Board of Health against the Borough of Vineland with reference to the pollution of the stream feeding into Union Lake, and also to the opinion of the Court of Errors and Appeals in the same matter, from which it appears that the Chancellor held that the potable water in Union Lake was not contaminated, notwithstanding the suit brought by the State Board of Health, which opinion was affirmed by the
30 Court of Errors and Appeals.

Mr. Miller: I object, because the findings of fact in that case relate to a time so remote that they have no bearing upon the case at issue. The analyses in evidence show that at times the water in Union Lake is reasonably pure and free from baccilli coli, and at other times it is not fit to be used for potable purposes.

By Mr. Miller :

Ques. Mr. Horton, I requested you to turn to the report of certain commissioners appointed to fix a price at which the City of Millville might exercise the option of purchasing the plant of the People's Water Company, as indicated by the minutes. Have you found spread on the minutes the report of those commissioners?

Ans. I have; yes, sir.

Ques. Will you please read that report into the minutes? 10

Judge Gaskill: I object, for the reasons heretofore given.

Ans. (Reads). Millville, N. J., March 4th, 1910.

Council met in regular monthly session, President Miller in the chair, all members being present except Mr. Wheaton.

Mr. Horton, chairman of the Finance and Water Committee, presented the following report: 20

Report of commissioners appointed by the City of Millville and the People's Water Company of Millville, N. J., to fix the price at which said City may purchase the plant, franchises, rights and property of said Water Company as provided for in the eighth section of its contract with the City of Millville, entered into under and pursuant to Ordinance 73. 30

To the Mayor and Common Council of the City of Millville and the People's Water Company of Millville, New Jersey:

The subscribers, the four commissioners appointed, two thereof by the City of Millville and two thereof by the People's Water Company, of Millville,

New Jersey, pursuant to the eighth section of an existing contract between said companies, provided for by Ordinance No. 73 of said city, to consider and determine the price at which said city shall have the right to acquire the entire plant of the said People's Water Company, of Millville, New Jersey, its franchises, rights, privileges, mains, pipes, conduits, appurtenances and attachments, including all sources of water supply and all other property by purchase, do respectfully hereby make this their final report and determination touching the matters referred to; and we do respectfully report to the said Commissioners and Common Council of the City of Millville and said Water Company, that immediately after our appointment we, the said commissioners, proceeded with due diligence with the performance of our work, but from time to time after the commencing of our duties we were interrupted and delayed by judicial restraining orders from completing and winding up the same, and that after the cessation of all such litigation, other business of the commissioners from time to time interfering caused yet further and unavoidable delays in terminating the work of your commissioners, and that differences of opinion between the commissioners not originally adjusted made further postponement of our final report unavoidable. Notwithstanding all of which, your commissioners at last concluded their labors and have finally come to a unanimous agreement in the premises, and we do respectfully report that in the performance of the duties imposed upon us, we have from time to time made careful inspection of the entire plant, works and physical property, both real and personal, of the People's Water Company of Millville, New Jersey; that we have been from time to time attended by the engineers employed by the city and the Water Company to inspect said property and advise us in the premises; that we have

inquired into the earnings and possible value of the franchises of the said Water Company, and have examined the contract with the City of Millville, have heard statements by citizens desiring to be heard relative to the matters referred to us, and have heard arguments of the respective counsel of the City of Millville and of the said Water Company. After due consideration of all of which we, the said commissioners, have settled and have determined that the price at which the Mayor and Common Council of the City of Millville may acquire the entire plant of the said People's Water Company of Millville, New Jersey, its franchises, rights, privileges, mains, conduits and appurtenances and attachments, including all sources of water supply or other property by purchase, as provided for by section eight of the said contract between the said municipality and said People's Water Company of Millville, New Jersey, is the sum of two hundred and twenty-two thousand five hundred dollars (\$222,500). 10

JAMES F. AUSTIN, 20
 SAMUEL W. BELDON,
 JAMES W. TRENCHARD,
 EDWARD P. BACON.

February 17th, 1910.

Mr. Mitchell moves that the report be referred to the Finance and Water Committee to make report at the next meeting. So ordered.

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Ques. Mr. Horton, do you know who Mr. Austin is?

Ans. I do not.

Ques. Do you know who Mr. Samuel W. Beldon is?

Ans. My understanding is that he is an attorney.

Ques. Do you know who is James W. Trenchard?

Ans. President of the Bridgeton National Bank.

Ques. Who is Mr. Edward P. Bacon?

Ans. He is a prominent merchant of Bridgeton, New Jersey.

Ques. What office does he hold?

Ans. County Collector of Cumberland County, New Jersey.

Ques. And he has been for many years?

Ans. Yes.

10 Ques. Do you know whether or not Mr. Austin is the president of the Tonopah Mining Company?

Ans. I have no personal knowledge of Mr. Austin or his business connections.

Adjourned until Tuesday, February 8th, 1916, at the Court House, Millville, New Jersey, at 2 o'clock p. m.

EXHIBIT P1.

THE CITY OF MILLVILLE.

Ordinance Number 144.

An Ordinance for the acquisition by the City of Millville of all the real estate, personal property and works and all the corporate rights, powers, franchises and privileges of the Millville Water Company. 10

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

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

1. It is hereby determined that the City of Millville shall acquire, forthwith, for public use, all the real estate, personal property and works, and all the corporate rights, powers, franchises and privileges of The Millville Water Company, a corporation of New Jersey, for the purpose of supplying said city and the inhabitants thereof with water for public and private use and consumption; and the Board of Commissioners of said city doth decide, upon full investigation of said matter, and doth ordain, determine and declare that the acquisition of all said property and franchises is necessary, convenient and proper for the public use. 30

2. The Mayor and other members of the Board of Commissioners and the majority of them are hereby made, constituted and appointed agents of the City of Millville

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

franchises and privileges of the Millville Water Company shall then be acquired and taken for public use by condemnation, pursuant to the provisions of the statute "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use," (2 C. S. pp. 2182, &c.) and the acts supplemental thereto and amendatory thereof and such other statutes of this State as may be applicable to said condemnation proceedings; and the City Solicitor shall institute and prosecute said condemnation proceedings with all convenient speed.

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4. In order to pay the agreed purchase price of said property and franchises, if an agreement for the purchase of the same be concluded with the owner, or in order to pay the costs of condemnation proceedings and the award of the commissioners, or assessment by a jury of the value of said property and franchises and the damages sustained, and for the other purposes hereinafter in Section five of this ordinance mentioned, bonds of the City of Millville shall be issued in the sum of one hundred and thirty thousand dollars or so much thereof as may be necessary; provided, that the issue of additional bonds in any further sum shall be authorized by a supplemental or other ordinance if required for said purposes, in case the agreed purchase price of said property and franchises, or the award of commissioners in condemnation proceedings or the assessment by a jury of the value of said property and franchises and damages sustained by the taking thereof and the costs of condemnation proceedings shall exceed one hundred and thirty thousand dollars and the city shall stand by any such award or assessment and elect not to abandon said condemnation proceedings as permitted by Section 15 of the statute above recited (3 C. S. pp. 2187, 2188).

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5. Said bonds shall be issued under the authority of the act entitled, "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," (1

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

All of said bonds shall bear date December first, nineteen hundred and fifteen, shall be payable thirty years after date; shall bear the seal of the city, be signed by the Mayor and the Director of Revenue and Finance, countersigned by the Treasurer and attested by the Clerk; shall be either coupon bonds or registered bonds at the option of the holder; all coupons shall bear the signature of the Treasurer in fac simile; said bonds shall bear interest at the rate of five per centum per annum, payable semi-annually, and shall be payable both principal and interest at the Millville National Bank; and the property and credit of the city shall be pledged for payment of the same.

The Treasurer shall dispose of said bonds at public sale for the best price that can be obtained, but at not less than par and accrued interest. Record of all said bonds shall be kept by the Treasurer, and all moneys received therefrom shall be deposited in the Millville National Bank or other bank or banks designated from time to time by a majority of the Board of Commissioners, and

shall be drawn upon by said Treasurer only for the purposes for which the same were issued as hereinbefore declared and specified, and all said moneys shall be inviolably applied for said purposes only, and for none other, and only when said Treasurer shall be so ordered by proper warrant or warrants issued by the Board of Commissioners of said city. Said bonds shall be in such form as the Board of Commissioners shall, by resolution, provide.

6. A sinking fund for the redemption of said bonds is hereby established. Such portions of the moneys received from the water rents or prices paid for the use of water, and interest on arrears of water rents, as may remain after paying all expenses and costs for purchasing water works or for constructing and maintaining water works, and raising and distributing the water, and salaries, wages and incidental expenses and charges, shall be applied by the Board of Commissioners, first, to the payment of the interest upon the debt created for the purchase and construction of the works, and next, to the purchase of the bonds issued therefor, if the same can be obtained at reasonable rates; or, if that cannot be effected, then to be safely invested by the Commissioners of the sinking fund of this city for the redemption of said bonds when due. There shall be raised annually by taxation the amount of the deficiency, if any, in the water revenues for the payment (1) of the interest on the debt hereby authorized and created and cost of managing and keeping in repair and operation of the water works with three per centum thereof added to cover losses and deficiencies to be ascertained and certified in the manner provided for by Section 13 of said act (1 C. S. 823) and (2) a sum sufficient, when added to the water revenues applicable for the purpose, to make up an amount equivalent to $2\frac{1}{2}$ per centum of all said bonds issued and at the time outstanding for the retirement of the bonds at maturity; which taxes shall be levied, assessed and

collected in the same manner as other taxes, and the amount thereof assessed and collected for interest shall be paid by the taxing officers to the Treasurer, and the amount thereof assessed for sinking fund shall be paid by said taxing officers to the Sinking Fund Commissioners of the city appointed under the provisions of Ordinance No. 142 to be invested by them and allowed to remain as a sinking fund for the retirement of said bonds at maturity.

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

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

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

Adopted December 31st, 1915.

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

Commissioners.

Attest, JOHN S. HORTON, Clerk.

EXHIBIT P1.

THE CITY OF MILLVILLE.

Ordinance Number 145.

An Ordinance for the acquisition by the City of Millville, of all the real estate, personal property and works and all the corporate rights, powers, franchises and privileges of the People's Water Company of Millville, N. J. 10

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

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

1. It is hereby determined that the City of Millville shall acquire, forthwith, for public use, all the real estate, personal property and works, and all the corporate rights, powers, franchises and privileges of The People's Water Company of Millville, N. J., a corporation of New Jersey, for the purpose of supplying said city and the inhabitants thereof with water for public and private use and consumption; and the Board of Commissioners of said city doth decide, upon full investigation of said matter, and doth ordain, determine and declare that the acquisition of all said property and franchises is necessary, convenient and proper for the public use. 30

2. The Mayor and other members of the Board of Commissioners and the majority of them are hereby made, constituted and appointed agents of the City of Millville

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

Company shall then be acquired and taken for public use by condemnation, pursuant to the provisions of the statute "An Act to regulate the ascertainment and payment of compensation for property condemned or taken for public use," (2 C. S. pp. 2182, &c.) and the acts supplemental thereto and amendatory thereof and such other statutes of this State as may be applicable to said condemnation proceedings; and the City Solicitor shall institute and prosecute said condemnation proceedings with all convenient speed.

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4. In order to pay the agreed purchase price of said property and franchises, if an agreement for the purchase of the same be concluded with the owner, or in order to pay the costs of condemnation proceedings and the award of the commissioners, or assessment by a jury of the value of said property and franchises and the damages sustained, and for the other purposes hereinafter in Section five of this ordinance mentioned, bonds of the City of Millville shall be issued in the sum of one hundred and twenty-six thousand dollars, or so much thereof as may be necessary, provided, that the issue of additional bonds in any further sum shall be authorized by a supplemental or other ordinance if required for said purposes, in case the agreed purchase price of said property and franchises, or the award of commissioners in condemnation proceedings or the assessment by a jury of the value of said property and franchises and damages sustained by the taking thereof, and the costs of condemnation proceedings shall exceed one hundred and twenty-six thousand dollars and the city shall stand by any such award or assessment and elect not to abandon said condemnation proceedings as permitted by Section 15 of the statute above recited (3 C. S. pp. 2187, 2188.)

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5. Said bonds shall be issued under the authority of the act entitled, "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," (1 C. S. 823), and the acts supplemental thereto and

amendatory thereof, which act has heretofore been duly adopted in this city pursuant to the provisions and requirements of Section 16 of said act; provided, that said bonds may be issued under the authority and provisions of Chapter 117 of the Laws of the Legislature of New Jersey, Session of 1914, if the Board of Commissioners shall by resolution so direct; the proceeds of the sale of said bonds shall be applied and used for the purpose of defraying all the expenses and the cost of purchase of the aforesaid real estate, works, property, rights, franchises, 10 privileges and appurtenances of the People's Water Company of Millville, N. J., and of maintaining and extending the same, and for the purchase of materials, the laying of mains in and about the city or leading from or connecting it with its source of supply, and constructing all works necessary for the accomplishment thereof.

All of said bonds shall bear date December first, nineteen hundred and fifteen, shall be payable thirty years after date; shall bear the seal of the city, be signed by the Mayor and the Director of Revenue and Finance, counter- 20 signed by the Treasurer and attested by the Clerk; shall be either coupon bonds or registered bonds at the option of the holder; all coupons shall bear the signature of the Treasurer in fac simile; said bonds shall bear interest at the rate of five per centum per annum, payable semi-annually, and shall be payable both principal and interest at the Millville National Bank; and the property and credit of the city shall be pledged for payment of the same.

30 The Treasurer shall dispose of said bonds at public sale for the best price that can be obtained, but at not less than par and accrued interest. Record of all said bonds shall be kept by the Treasurer, and all moneys received therefrom shall be deposited in the Millville National Bank, or other bank or banks designated from time to time by a majority of the Board of Commissioners, and shall be drawn upon by said Treasurer only for the purposes for

which the same were issued as hereinbefore declared and specified, and all said moneys shall be inviolably applied for said purposes only, and for none other, and only when said Treasurer shall be so ordered by proper warrant or warrants issued by the Board of Commissioners of said city. Said bonds shall be in such form as the Board of Commissioners shall, by resolution, provide.

6. A sinking fund for the redemption of said bonds is hereby established. Such portions of the moneys received from the water rents or prices paid for the use of water, and interest on arrears of water rents, as may remain after paying all expenses and costs for purchasing water works or for constructing and maintaining water works, and raising and distributing the water, and salaries, wages and incidental expenses and charges, shall be applied by the Board of Commissioners, first, to the payment of the interest upon the debt created for the purchase and construction of the works, and next, to the purchase of the bonds issued therefor, if the same can be obtained at reasonable rates; or, if that cannot be effected, then to be safely invested by the Commissioners of the Sinking Fund of this city for the redemption of said bonds when due. There shall be raised annually by taxation the amount of the deficiency, if any, in the water revenues for the payment (1) of the interest on the debt hereby authorized and created and cost of managing and keeping in repair and operation of the water works, with three per centum thereof added to cover losses and deficiencies to be ascertained and certified in the manner provided for by Section 13 of said act (1 C. S. 823) and (2) a sum sufficient, when added to the water revenues applicable for the purpose, to make up an amount equivalent to 2½ per centum of all said bonds issued and at the time outstanding, for the retirement of the bonds at maturity; which taxes shall be levied, assessed and collected in the same manner as other taxes, and the amount thereof assessed and collected for interest shall be paid by the tax-

ing officers to the Treasurer, and the amount thereof assessed for sinking fund shall be paid by said taxing officers to the Sinking Fund Commissioners of the city appointed under the provisions of Ordinance No. 142, to be invested by them and allowed to remain as a sinking fund for the retirement of said bonds at maturity.

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

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

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

Adopted December 31st, 1915.

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

Commissioners.

Attest: JOHN S. HORTON, Clerk.

EXHIBIT P2.

CERTIFICATE FOR THE INCORPORATION OF "THE
MILLVILLE WATER COMPANY."

KNOW ALL MEN BY THESE PRESENTS, That we, Richard M. Atwater, George B. Langley, William D. Kemble and Joseph McChesney, all of the City of Millville, County of Cumberland and State of New Jersey, and George Wood, Walter Wood and Stuart Wood, of the City of Philadelphia and State of Pennsylvania, being seven persons a majority of whom reside in the State of New Jersey, having formed ourselves into a Company, for the purpose of constructing, maintaining and operating Water Works in the City of Millville, in the County of Cumberland and State of New Jersey, a city of not less than Two thousand and not more than Fifteen thousand inhabitants for the purpose of supplying said city and the inhabitants thereof with water, being desirous of becoming incorporated and forming said company for said purpose under 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 on the twenty-first day of April, Anno Domini eighteen hundred and seventy-six, do make and sign and acknowledge this Certificate in writing and we do hereby certify,

First. That the corporate name adopted by this Company is and shall be "THE MILLVILLE WATER COMPANY."

Second. That the amount of Capital Stock of this Company shall be and is twenty-five thousand dollars to be divided into Two hundred and fifty shares of One hundred dollars each.

Third. That this Company shall continue in existence for the period or term of Ninety-nine years from and

after it shall become and be incorporated under the provisions of the act of the Legislature above mentioned.

Fourth. That the number of the Directors of the said Company by whom its business shall be conducted and managed shall be seven.

Fifth. That the names of the persons who shall manage the affairs of the Company for the first year or until their successors are elected and qualified are Richard M. Atwater, George B. Langley, William D. Kemble, Joseph McChesney, George Wood, Walter Wood, and
10 Stuart Wood.

Sixth. That the name of the City in and for which such works are to be constructed and the business of the Company carried on is the city of Millville in the county of Cumberland and State of New Jersey.

IN WITNESS WHEREOF, we have hereunto subscribed our names and affixed our seals dated this eighth day of November, in the year of our Lord one thousand eight hundred and seventy-eight.

20 In the presence of
PETER G. LUDLAM.

R. M. ATWATER,	[L. S.]
GEORGE B. LANGLEY,	[L. S.]
WILLIAM D. KEMBLE,	[L. S.]
JOSEPH MCCHESENEY,	[L. S.]
GEORGE WOOD,	[L. S.]
WALTER WOOD,	[L. S.]
STUART WOOD,	[L. S.]

30 STATE OF NEW JERSEY, }
CUMBERLAND COUNTY. }

Be it Remembered, that on this Eighth day of November, in the year of our Lord one thousand eight hundred and seventy-eight, before me, a Master in Chancery of N. Jersey, personally appeared Richard M. Atwater, George B. Langley, William D. Kemble, Joseph McChesney, George Wood, Walter Wood and Stuart Wood

and I being satisfied that they are the persons named in and who signed and executed the above Certificate and I having first made known to them the contents thereof they did severally acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed. All of which is hereby certified.

PETER G. LUDLAM,
M. C. C.

CERTIFICATE OF CONSENT OF THE corporate authorities 10
of the City of Millville to the formation and incorpora-
tion of "THE MILLVILLE WATER COMPANY."

KNOW ALL MEN BY THESE PRESENTS, that at a regular meeting of the Common Council of the City of Millville held at its Council Chamber in said City on the first day of November, in the year of our Lord one thousand eight hundred and seventy-eight, the following preamble and resolution were adopted and passed, viz.:

"WHEREAS, It is represented to this Council that 20
Richard M. Atwater, George B. Langley, William D. Kemble, Joseph McChesney, George Wood, Walter Wood and Stuart Wood have formed a company by the name of the Millville Water Company for the purpose of constructing, maintaining and operating water works for the purpose of supplying the City of Millville and the inhabitants thereof with water, and are desirous of becoming incorporated under the provisions of an act of the Legislature of the State of New Jersey entitled "An Act for 30
the construction, maintenance and operation of Water Works for the purpose of supplying cities, towns and villages of this state with Water," approved the Twenty-first day of April, Anno Domini one thousand eight hundred and seventy-six, and for that purpose require the consent in writing of the corporate authorities of the City of Millville to be filed with the Certificate of Incorporation according to the provisions of the said Act of the Legislature; therefore,

Resolved, that the consent of the corporate authorities of the City of Millville be given to the formation and incorporation of the said The Millville Water Company, and that the Mayor of this City do execute under the seal of the City, as and for the corporate authority of said City of Millville, such consent in writing to be filed with the Certificate of Incorporation of the said Company according to the provisions of the said act of the Legislature above referred to."

10 Now KNOW YE, that I, Josiah B. Comer, Mayor of the said city of Millville, in pursuance of the above recited preamble and Resolution of the Common Council of the said city, and as and for the corporate authorities of the said City, do hereby consent to the formation and incorporation of the said "The Millville Water Company" and do request that the consent in writing may be filed with Certificate of Incorporation of said Water Company as required by the Act of the Legislature of this State recited in said preamble and resolution of said Common Council.

20 IN WITNESS WHEREOF, I have hereunto set my hand and caused these presents to be sealed with the seal and attested by the Clerk of said City. Dated this First day of November in the year of our Lord one thousand eight hundred and seventy-eight.

[SEAL]

JOSIAH B. COMER,
Mayor.

Attest:

JOSHUA DAWSON,
Clerk.

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STATE OF NEW JERSEY.

DEPARTMENT OF STATE.

I, Henry C. Kelsey, Secretary of State of the State of New Jersey, do hereby certify that the foregoing is a

true copy of a paper writing purporting to be the Certificate for the Incorporation of "The Millville Water Company," as the same is taken from and compared with the original, filed November 11, 1878, now remaining on file and of record in my office.

IN TESTIMONY WHEREOF, I have here-
unto set my hand and affixed my Official
[SEAL.] Seal, at Trenton, this Eleventh day of
November, A. D. 1878.

HENRY C. KELSEY, 10
Secretary of State.

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EXHIBIT P3.

True Copy.

John S. Horton, City Clerk, January 21st, 1916.

WATER WORKS CONTRACT.

Agreement Between the City of Millville and the Millville
Water Company.

10 This agreement, made this sixteenth day of January, in the year one thousand eight hundred and seventy-nine, between the Millville Water Company, a company duly incorporated under the laws of New Jersey, of the first part, and the Mayor and Common Council of the City of Millville, State of New Jersey, of the second part, Witnesseth:

20 First. That the said party of the first part, for themselves, their successors and assigns, for and in consideration of the sum of thirty-nine thousand dollars, lawful money of the United States, to be paid to them, the said party of the first part, by the said party of the second part, as hereinafter more particularly stipulated, and in further consideration of the several covenants contained in this agreement, covenant and agree with the said party of the second part that they will lay in and through certain portions of certain streets of the said city of Millville (said streets and portions thereof being designated in Schedule A annexed to this agreement and forming

30 a part thereof), water-pipes for conducting water; that they will lay the said pipes three and a half feet deep below the surface grade of the streets; that the said pipes shall be of different dimensions, viz: five thousand four hundred feet of pipe, with an inside diameter of twelve inches; four thousand five hundred and eighty feet with an inside diameter of eight inches; fifteen thousand nine hundred and ten feet, with an inside diameter of six

inches; and twelve thousand three hundred and forty feet, with an inside diameter of four inches. All the aforesaid pipes to be of the thickness and quality, of like dimensions as to diameter, as described in the book published by R. D. Wood & Co. on water appliances.

Second. That they, the said party of the first part, will place upon the pipes laid as aforesaid and in accordance with Schedule A, sixty-five Matthews' anti-freezing hydrants, each having four-inch barrels and a double hose discharge, at such locations as best answer the requirements for fire protection, and shall be agreed upon by the parties to this agreement during the progress of laying the pipes and erecting the works as herein specified, from which fire hydrants the city of Millville shall have the right in perpetuity to draw water for extinguishing fires, flushing gutters and sprinkling the streets, free of cost and without any further charge whatsoever upon the part of the said party of the first part hereto.

Third. That they, the said party of the first part, should the party of the second part hereto desire it and indicate such desire by a majority vote in Common Council of the city of Millville, will extend the laying of said water pipes along the said streets designated in Schedule A aforesaid, or along other streets of the city of Millville, but in no one year to a greater extent than twelve hundred feet of said pipe, upon the express condition that the party of the second part shall secure an additional fire hydrant, and also two water takers, residents of said city of Millville, for every additional four hundred feet of pipe, laid as aforesaid, and for each additional fire hydrant so erected shall pay to the party of the first part, their successors and assigns, a perpetual rental of fifty dollars per annum.

Fourth. That the said party of the first part hereto will erect on the east side of Columbia Avenue, in the city of Millville, a stand-pipe one hundred and twenty-five feet high and with an inside diameter of twelve feet,

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for the use of said water works, said stand-pipe to be built of good material and in a good, substantial and workmanlike manner, and that they, the said party of the first part, will also erect near where Sharp street crosses the canal in said city of Millville, a good and substantial pump house large enough for a duplicate set of machinery, in which shall be located the pumps, which shall be operated by water power drawn for that purpose from the large pond of the Millville Manufacturing Company, and capable of throwing four fire streams at one time to a height of seventy-five feet; and further, that they, the said party of the first part, will construct a well of sufficient capacity to furnish a supply of water for all ordinary domestic purposes, and which said well shall be connected with the said large pond of the Millville Manufacturing Company and be supplied from it in times of any special emergency.

10
20 Fifth. That the water rents charged by them, the said party of the first part hereto, for the use of water takers within the municipal limits of the said city of Millville, shall not exceed the average rate of water rents charged during the same period in the cities of Bridgeton, Trenton and Burlington.

30 Sixth. That the said party of the first part hereto, in order to insure more effectually the faithful performance of this agreement, will purchase from the Millville Manufacturing Company the tracts of land on which the aforesaid stand-pipe, the building for the pumping machinery and pumps and well are respectively to be placed, and such other real estate as may be needed in the proper construction of the said water works. And also purchase from the said Millville Manufacturing Company the perpetual right to use the water of the said Millville Manufacturing Company, their successors and assigns, for the proper drivings of the pumps and machinery of said water works and for the supply of the said well as aforesaid in times of need, and will make and execute unto the said

party of the second part hereto a mortgage upon the real estate so purchased as aforesaid, and upon the water privileges, water works, pumps, pumping machinery, pipes, franchises and appurtenances, belonging to the said party of the first part hereto, and within the corporate limits of the city of Millville, conditioned upon the faithful performance of the stipulations of this agreement by the party of the first part hereto; and that upon default therein their said real estate, water privileges, water woks, pumps, pumping machinery, pipes, franchises and other property appurtenant to said water works, shall become the property of and forfeited to the city of Millville forever, said condition to be specifically mentioned and set forth in the said mortgage. 10

Seventh. That the said party of the first part hereto will lay the pipe used in crossing Maurice river, so that the upper surface of the pipe shall be two feet below the surface of the river bed; that in laying the pipes under this agreement they will fill up the trenches as soon as possible after the pipes are laid; that when the trenches are filled they will replace the material of the roadbed as nearly as possible in its original position; that they will interfere as little as possible with the public use of the streets during the progress of their work in pipe-laying; that they will indemnify and save harmless the city of Millville from all damages that may be recovered against it for injuries to persons or property in consequence of and during the laying of said pipes; and that they will replace and repair all gas-pipes, sewers, drains, curbs, walls and foot-walks that may be displaced or injured in the work of laying said pipes. 20 30

Eighth. That the Mayor and Common Council of the city of Millville, the party of the second part hereto, in consideration of the premises, covenant and agree with the said party of the first part, their successors and assigns, to pay to them, the party of the first part, the sum of thirty-nine thousand dollars (\$39,000), lawful

money of the United States, as follows: Ninety per cent. of the whole cost of the materials furnished and work done for the thirty days prior to the tenth day of each and every month during the entire progress of the pipe-laying and erection of the water works, is to be paid on that day; the remaining ten per cent. shall be paid upon the termination of the pipe-laying, in accordance with the specifications in Schedule A and the completion and successful operation of the works, as hereinbefore specified and described.

- 10 Ninth. That the party of the second part hereto covenant and agree that the party of the first part, their successors and assigns, shall have the exclusive right in perpetuity to lay water-pipes in the streets of the city of Millville, in accordance with the conditions herein specified, and to pass all ordinances that may be requisite and proper to aid the party of the first part, their successors and assigns, in collecting the water rents as they become due, and such ordinances as shall be necessary for the proper
- 20 protection of the property of the said party of the first part, and also all their rights secured by this agreement; and do further covenant and agree that the party of the first part hereto, their successors and assigns, shall have the exclusive privilege, during the continuance of this contract, of collecting water rents from the water takers of the said city of Millville, and such other persons as may use the privileges afforded by the said water works; the amounts of said rents to be fixed as hereinbefore stipulated; and do further covenant and agree that when-
- 30 ever an extension of pipe may be called for according to the terms of this agreement, that they, the party of the second part, shall thereupon secure two additional water takers, and a fire hydrant for every additional four hundred feet so laid, and pay an annual rental of fifty dollars for said fire hydrant to the said party of the first part, and further, they will not demand of the party of the first part an extension of more than four hundred feet of pipe at

any one time, and not more than twelve hundred feet in any one year.

Tenth. That they, the said party of the second part, do covenant and agree that the said pipes, pumps, out-houses, machinery, well, stand-pipe, real estate and other property incident and appurtenant to the operation of the said water works shall, until forfeited by breach of the conditions of the mortgage hereinbefore mentioned, belong to the said party of the first part, their successors and assigns; and do further covenant and agree with the party of the first part, their successors and assigns, to exempt them from the payment of all taxes except those levied for state and county purposes. 10

In witness whereof, the said parties of this agreement have hereunto interchangeably set their seal, the President and Secretary of the Millville Water Company, party of the first part, having hereunto subscribed their names and caused the common seal of said company to be hereunto affixed, at their office, on the sixteenth day of January, eighteen hundred and seventy-nine. 20

GEORGE WOOD,
President.

JOS. M'CHESNEY,
Secretary.

Witness:

B. A. KNIGHT.

Witness to signature of

J. M'CHESNEY,
N. G. LIVERMORE.

30

And the Mayor and Common Council of the city of Millville, party of the second part, have caused the common seal of the said city to be hereunto affixed, at the

office of the Mayor, on the twenty-fifth day of January eighteen hundred and seventy-nine.

JOSIAH B. COMER, Mayor.
 JOHN N. BRANIN, Member of Council.
 JOHN L. SHARP, "
 HIRAM V. JONES, "
 CHAS. P. BARTLETT, "
 JOHN HUNTER, "
 SAMUEL MISKELLEY, "
 LEWIS MULFORD, "
 EPHRAIM H. SHELDON, "
 JOHN C. CARRALL, "

10

Attest:

JOSHUA DAWSON, City Recorder.

SCHEDULE A.

20 The pipes to be laid by the party of the first part to the foregoing agreement in and through the streets of the city of Millville, in accordance with the stipulations of said agreement, are to be of the following dimensions, and to be laid in and along the following streets, viz:

(Pipe twelve inches in diameter.)

	From the pump house to Columbia avenue..	450 feet
	On Columbia avenue from Sharp street to Buck street	2,890 "
	On Buck street from Columbia avenue to Mulberry street	165 "
30	On Mulberry street from Buck street to High street	410 "
	On High street from Mulberry street to Main street	1,075 "
	On Main street from High street to Second street	410 "

Total of twelve-inch pipe..... 5,400 feet

(Pipe eight inches in diameter.)

On Broad street from Columbia avenue to High street	1,325	feet	
On High street from Broad street to Mulberry street	1,235	"	
On Second street from Main street to a point opposite Whittall, Tatum & Co.'s store at Schetterville	2,020	"	
			10
Total of eight-inch pipe	4,580	feet	

(Pipe six inches in diameter.)

On Sharp street from Columbia avenue to North street	785	feet	
On Church street from Sharp street to Broad street	1,775	"	
On Dock street from Broad street to School House street	370	"	20
On High street from Broad street to Counsellor's	330	"	
On High street from Main street to Smith street	250	"	
On Broad street from High street to Fifth street	1,525	"	
On Vine street from High street to Fifth street	1,525	"	30
On Mulberry street from High street to Fifth street	1,525	"	
On Pine street from High street to Fifth street	1,525	"	
On Main street from Second street to Fifth street	1,110	"	
On Buck street from Broad street to Catholic Church	330	"	

	On Second street from Broad street to Main street	2,310 feet
	On Fourth street from Main street to Smith street	250 "
	On Second street from the store at Schetterville to Maylin street	500 "
	On Main street from High street, crossing the river to the turnpike, and to a point in the turnpike north of Brandriff's house	1,800 "
10	Total of six-inch pipe.....	<u>15,910 feet</u>

(Pipe four inches in diameter.)

	On Buck street from Mulberry street to Pine street	410 feet
20	On Pine street from Buck street to High street	370 "
	On Vine street from Columbia avenue to High street	660 "
	On Buck street from Columbia avenue to Broad street	1,075 "
	On Smith street from High street to Fourth street	1,195 "
	On Third street from Broad street to Main street	2,310 "
30	On Fourth street from Broad street to Main street	2,310 "
	On McNeal street from North street to Church street	450 "
	On Green street from Church street to Dock street	660 "
	On Cedar street from the turnpike.....	700 "
	From Cedar street to Middle avenue.....	200 "
	On Middle avenue	200 "

On the turnpike from a point north of Brandriff's house to a fire hydrant near John Branin's house 1,800 feet

Total four-inch pipe..... 12,340 feet

Witness

B. A. KNIGHT.

GEORGE WOOD,
Pres. of Millville Water Co.

JOS. MCCHESENEY, 10
Sec. of Millville Water Co.

Witness

N. G. LIVERMORE.

JOSIAH B. COMER, Mayor.

JOHN N. BRANIN, Member of Council.

JOHN L. SHARP, "

HIRAM V. JONES, "

CHAS. P. BARTLETT, "

JOHN HUNTER, "

SAMUEL MISKELLEY, 20

LEWIS MULFORD, "

EPHRAIM H. SHELDON, "

JOHN C. CARRALL, "

Attest:

JOSHUA DAWSON, City Recorder.

RESOLUTION PASSED TO ISSUE BONDS. 30

Mr. Mulford offered the following resolution, which was adopted:

"WHEREAS, A contract of agreement has been made and entered into between the city and the Millville Water Company for the construction of works for the supplying of the city with water, by which it has become necessary

to borrow the sum of thirty-nine thousand dollars; therefore, Resolved, that the finance committee, together with the president of council and city treasurer, be and they are hereby authorized to borrow on the credit of the city the sum of thirty-nine thousand dollars, in accordance with, and virtue of, an act of the legislature of this state, entitled 'A further supplement to the act entitled "An act to incorporate the city of Millville"' approved February 26, 1866, which said supplement was approved March 27, 1873, and for the purpose they are hereby authorized
10 to have printed and prepared the bonds of the city, to be signed by the mayor and city treasurer, and attested by the signature of the president of council and city recorder, and the seal of the city, the said bonds to have interest coupons attached, payable semi-annually, and that proposals for the sale of said bonds shall be advertised, and they shall be sold to such bidders as offer the most favorable terms for the interest of the city."

20 The above resolution was passed at a meeting of the City Council, held on January 25, 1879.

EXHIBIT P4.

No. 4923.

THE MILLVILLE WATER COMPANY

TO

THE MAYOR AND COMMON COUN-

CIL OF THE CITY OF MILL-

VILLE.

10

THIS INDENTURE made the sixteenth day of January in the year of our Lord one thousand eight hundred and seventy-nine, BETWEEN The Millville Water Co. a corporation and body politic under the laws of New Jersey of the first part and the Mayor and Common Council of the City of Millville, of the State of New Jersey, of the second part:

20

WITNESSETH, that the said party of the first part, for and in consideration of the sum of thirty-nine thousand dollars (\$39,000) lawful money of the United States of America, to the party of the first part in hand well and truly paid by the said party of the second part the receipt whereof whereby acknowledged do hereby give, grant, bargain, sell and convey unto the said the Mayor and Common Council of the City of Millville, all those certain tracts or piece of land and premises situate in the City of Millville county of Cumberland and State of New Jersey bounded and described as follows viz: First lot beginning at the southeasterly corner of Cumberland avenue and Sharp streets thence extending northwardly along the easterly side of said Sharp street a front of seventy-one (71) feet and nine (9) inches to an angle in said Sharp street and extending of that width southeastwardly between parallel lines one whereof is the northerly line of

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said Columbia avenue and the other a line parallel therewith a depth of seventy-one (71) feet nine inches (9). Second lot beginning at a point in the southerly side of Sharp street ninety-five (95) feet and six (6) inches southwestwardly from the southwestly end of the bridge across the canal and running thence southwestwardly along the line of said Sharp street a front of one hundred and fifteen (115) feet and extending of that width southeastwardly between parallel lines at right angles with said Sharp street fifty-seven (57) feet, both

10 of said lots being parts of a certain tract of land conveyed to the Millville Manufacturing Company by the executors of Richard D. Wood, deceased, by deed dated January 1st, A. D. 1872, and recorded in the Clerk's Office of Cumberland County in Deed Book No. 131, page 571, &c., and which the Millville Manufacturing Company conveyed to the party of the first part hereto by deed dated December 28th, A. D. 1878. And the said party of the first part do hereby give, grant, bargain, sell and

20 convey unto the said party of the second part hereto all and singular the franchises and privileges and rights, conveyed to the said party of the first part by the Millville Manufacturing Company in the said deed, the same being expressed in said deed in the words following, viz: The party of the first part for the consideration aforesaid also grants and conveys to the said party of the second part the rights and privileges of laying pipes and conducting water through the same a point in said canal over, through or across its lands to and upon the lot of land last above

30 described, also the rights of waste way for the water discharge from its water wheel and pipe, said waste way to be maintained at the expense of the party of the second part, also the right and privilege of laying the main pipe of said party of the second part and of conducting water through the same from the pumping station to be situated on the lot last above described under the said canal and across and through the lands of the said party of the first

part to a point on Sharp street, also the right and privilege of taking water from the canal of the said party of the first part for the purpose of operating the machinery now being erected by the party of the second part (or in case of any change of the machinery then sufficient water to develop fifty (50) horse power under a head of twenty-one (21) feet in any water wheel utilizing seventy-five (75) per cent. of the useful effect of the water) and for the further purpose of feeding the pumps of the party of the second part to supply the consumption of its customers and the said party of the first part do also hereby
10 give, grant, bargain, sell and convey unto the said party of the second part all then other water privileges of every kind and water works, stand pipe, pump house, pumps, pumping machinery, wells, reservoir, out buildings, water pipes, tools and appliances and other property appurtenances to said water works built or to be built upon the land and premises above described or connected with and appurtenances thereto anywhere within the corporate limits of the City of Millville.

To HAVE AND TO HOLD the afore granted premises,
20 easements, franchises, rights, privileges, water works, stand pipe, pump house, pumps, pumping machinery, wells, buildings, water pipes and all other property above mentioned and granted unto the said party of the second part and their assigns forever.

Provided, nevertheless, and it is agreed by and between the parties to these presents that The Millville Water Company, the party of the first part, shall forever from
30 and after the date of the completion of their works upon the lands and premises hereinbefore described furnish free of cost a supply of water to the City of Millville for the purpose of extinguishing fires, flushing gutters and sprinkling the streets from sixty-five hydrants and such other as may from time to time be added and keep and maintain for that purpose a power and pressure upon their machinery capable of throwing from five streams at

one time to a height of seventy-five feet and never withdrawing said supply of water or fail to furnish the same for more than ten days at a time except from a necessity arising from the default or negligence of any other party than the party of the first part or from causes beyond the reasonable control of the party of the first part or which they could not have foreseen by the exercise of due care and prudence, and in that event no longer than is necessary to make the needed repairs that then this present Indenture and the estate hereby granted shall be absolutely null and void. And the Millville Water Company party of the first part for themselves their successors and assigns do covenant and agree to and with the said party of the second part that after default shall be made in the performance of the proviso or condition herein contained and above recited the said party of the second part their servants, officers or agents may quietly and peaceably enter into, have, hold, use, occupy, possess and enjoy all and singular the above granted and bargained lands, premises, water works, stand pipes, pump house, pumps, pumping machinery, wells, reservoirs, out buildings, water pipes and all other property appurtenant to said water works without the let, suit, trouble, hindrance or denial of said party of the first part their successors or assigns or of any person or persons whatsoever.

IN WITNESS WHEREOF, the said The Millville Water Company have caused to be hereunto affixed their common or corporate seal attested by the proper officers of the said Company. Dated the day and year first above written.

Attesting :

GEORGE WOOD,

President.

[SEAL]

JOSEPH McCHESNEY,

Secretary.

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

BE IT REMEMBERED that on this sixteenth day of January in the year of our Lord one thousand eight hundred and seventy-nine before me, a Master in Chancery of New Jersey, personally appeared Joseph McChesney who being duly affirmed deposeth and saith that George Wood is President of the said The Millville Water Company and Joseph McChesney is Secretary of the said Company, that he is acquainted with the common or corporate seal of the said Company, that the seal affixed to the foregoing Indenture is the common or corporate seal of said Company, that said seal was affixed to said Indenture by the President of said Company in the presence of this deponent and in accordance with a resolution of the Board of Directors of said Company, that said deed was signed, sealed and delivered as and for voluntary act and deed of the said Company and that at the time of the execution thereof this deponent signed his name as a subscribing witness thereto. 10

JOSEPH MCCHESENEY, 20
 Secretary.

Sworn and subscribed before
 me the day and year above
 written.

PETER G. LUDLAM, M. C. C.

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

30

I, L. H. Hogate, Clerk of the County of Cumberland, also Clerk of the Circuit Court and Court of Common Pleas, in and for said county, the same being Courts of Record, do hereby certify the foregoing to be a true copy of the mortgage, Millville Water Company to the Mayor and Common Council of the City of Millville, therein

recited as taken from and compared with the record of the same as found recorded in my office in Book 31 of Mortgages, page 381, &c.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said County and Courts this 18th day of January, A. D. 1916.

L. H. HOGATE,
Clerk.

[SEAL]

By
ROBT. S. SCHILLES,
Deputy Clerk.

10

10 ct. U. S. Revenue Stamp
cancelled.

2

30

EXHIBIT P5.

REPORT

ON THE VALUES OF THE WATER PLANTS

of the

PEOPLE'S WATER COMPANY AND THE MILLVILLE WATER
COMPANY

By Alton D. Adams, Worcester, Mass.

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SECTION I.

Object of Report.

In this report the object is to determine the fair value of the plant of the People's Water Company and the Millville Water Company, in Millville.

20

Fair values here mean the sum which a well advised purchaser who wished to enter the water supply business could reasonably be expected to give for the respective plants.

The existing duplication and competition of the said water supply plants in Millville obviously has an important bearing on their values.

SECTION 2.

Payments by Millville to People's Water Co.

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At the outset it should be noted that the City of Millville pays to the People's Water Company \$25 or \$30 annually for each public fire hydrant maintained by said Company, and also pays said company one cent per 100 gallons for water furnished to the inhabitants of said city, to the amount of water so furnished being computed

from certain facts or measurements at the pumping station.

The city in turn collects from the consumers the charges for water furnished to them from the mains of the People's Company.

Up to 1909 inclusive, the city paid to the People's Water Company a minimum of \$6,000 annually for water supplied to consumers when its volume at one cent per 100 gallons did not amount to this sum.

- 10 The total payments by the city to the People's Water Company and the approximate payments for hydrant rental have been as follows in the respective years since said company began to operate down to 1910 inclusive:

Years	Total Payments	Approximate Payments For Hydrants
1903	\$3,563 71	\$1,842
1904	9,011 73	2,825
1905	9,158 30	2,825
20 1906	9,019 17	2,825
1907	8,508 37	2,825
1908	8,887 03	2,825
1909	8,868 53	2,825
1910	8,141 44	2,625
	\$64,158 28	\$21,417

- 30 The contract of January, 1902, between City of Millville and the People's Water Company provides for 65 hydrants at \$25 per year and additional hydrants at \$30 each per year, and it is assumed that the total number has been 105, the present figure, from the start. For 1910 all hydrants are taken at \$25 each, as this rate gives \$2,625, the hydrant charge for the year.

On this basis the total sum paid for hydrants during the eight years is \$21,417, but this figure is probably a little too great because the number of hydrants was

less at the start and because the uniform rental for each hydrant now appears to be \$25 per year.

Deducting the \$21,417 for hydrants from the total payments of \$64,158 to the People's Water Company, gives \$42,741 as the sum paid by the city for water supplied to consumers down to the end of 1910.

In this same period from 1903 to 1910, inclusive, the city has received the following sums from water consumers:

May 1st, 1903, to April 13th, 1904.....	\$2,263 28	10
April 1st, 1904, to Jan. 27th, 1905.....	2,045 38	
Jan. 27th, 1905, to Feb. 1st, 1906.....	2,451 21	
Feb. 1st, 1906, to Jan. 31st, 1907.....	2,653 69	
Jan. 31st, 1907, to Jan. 28th, 1908.....	2,700 40	
Jan. 28th, 1908, to Feb. 3d, 1909.....	2,215 75	
Feb. 3d, 1909, to Jan. 14th, 1910.....	2,412 53	
Jan. 14th, 1910, to Jan. 1st, 1911.....	2,025 56	
	<hr/>	
	\$18,767 80	20

It thus appears that during the nearly eight years of operation of the People's Water Company, ending January 1, 1911, the City of Millville paid to said company more than \$42,741 for water supposed to have been supplied to consumers while from these said consumers the city has collected only \$18,767 for water.

This shows a loss to the city of \$23,974. In other words, the city has paid to the People's Water Company for water supposed to have been supplied to consumers up to the end of 1910 more than double the amount it has received from consumers for said water. In addition to the payments to the People's Company the city has also paid \$3,998 as salary to its water superintendent during the eight years ending in 1910.

During the year 1911 the bills of the People's Water Company to the city for water supposed to have been supplied to consumers aggregate \$8,555.71, or more than

four times the amount received by the city from water consumers during said year. This marked increase in the charges of the People's Water Company for water supplied to consumers in 1911 occurred in the last quarter of that year, when the bill of the People's Company for said water was \$4,121.50, in contrast with about \$1,400 charged for such water in previous quarters.

10 On the basis of this charge of \$4,121.50 for water supposed to have been supplied to consumers in the last quarter of 1911, the annual charge of the People's Company to the city for such water will amount to \$16,486, annually, or about eight times the sum that the city received from water consumers in the year 1910.

20 The best, if not the only means by which the city can avoid this large annual loss in the water business, appears to be an increase of water rates to consumers. As the city is required to pay for water on a meter basis and as such payments should be based on the water actually delivered to consumers rather than on the amount pumped at the station, the desirable increase in water rates should be made on a meter basis and a meter installed for each consumer who contracts to pay for one year, at least, such meter rates as may be fixed by the city.

30 Under the terms of its contract with the People's Water Company, the city has the power to fix the rates for water supplied to consumers through the mains of said company and can thus by raising rates limit the amount of water used by consumers and consequently control the sum of money that must annually be paid to the People's Water Company for said water.

It appears to be imperative that the city exercise its right to increase water rates and install meters for consumers if a loss of some \$14,000 or more annually on the water business is to be avoided.

Should the city wish to purchase the plant of the People's Water Company, it will be very important to re-

member that the sums paid to the company by the city over and above the amounts received by the city from consumers, all on account of water supplied to said consumers, cannot be properly used to increase the value of or the price that may be paid for the People's plant, because this excess payment by the city represents a loss which the city has power to stop at any time by increasing water rates as above.

Besides the direct money loss to the city through its dealings with the People's Water Company and consumers, there is an indirect loss due to the excessive and unnecessary amount of water used in Millville. This indirect loss arises from the fact that the excessive amount of water requires a larger sewerage plant than would otherwise be necessary and a greater operating expense incident to said plant. 10

It appears that the number of connections on the mains of the People's Water Company for consumers was 837 in the latter part of the year 1911. According to the statement of the People's Water Company 55,520,000 gallons of water was pumped during the quarter ending October 31st, 1911, and 41,215,003 gallons of this pumpage was charged to the city as having been furnished to consumers to make the bill of \$4,121.50 for that quarter, though the company stated that a greater volume of water should have been charged to the city. The 41,215,003 gallons of water actually charged to the city during said quarter amounts to 447,989 gallons daily and to 535 gallons daily per water connection on an average. This is a large daily volume of water per connection for a city like Millville and would no doubt be very materially reduced by the general introduction of meters. 20 30

As the Millville Water Company uses very few, if any, meters for its consumers, there is no doubt an unnecessary volume of water used from the system, so that both water plants contribute to the excessive flow of sewerage.

According to a test made for your State Board of

Health on the afternoon of October 17th, 1911, sewerage was being discharged at the rate of over one million gallons per day at that time, which is an excessive flow for the City of Millville.

It is the general experience that where water rates are put on a meter basis there is a large reduction in the consumption or rather waste of water.

SECTION 3.

10

Water Situation in Millville.

Two companies, the Millville Water Company and the People's Water Company, supply water in Millville. The Millville Water Company appears to have begun operations about 1879 and the People's Water Company in 1903. The water supplied by the Millville Water Company is diverted from the Maurice River, while the People's Water Company obtains its supply from six artesian wells near the bank of said river below the dam in the City of Millville.

20

According to the reports of the respective companies to the State Board of Assessors for the year ending December 31st, 1910, the Millville Water Company then had 17.2 miles of mains and the People's Water Company had 17.5 miles. Without regard to the exactness of these figures for lengths of mains it may be said that much the greater part of the mains of the two water companies lie in the same streets so that there is a large and unnecessary duplication of water pipes for the supply of the city. It is not possible to state the exact amount of this duplication of water mains because the locations of only a part of the pipes of the Millville Water Company are known. It is known, however, that under its franchise of 1879, the Millville Water Company was required to lay 7.2 miles of mains in certain designated streets. On plotting this 7.2 miles of mains of the Millville Water Company, along the specified streets, with the mains of

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the People's Water Company also shown thereon, it appears that 6.18 miles of said mains of the Millville Water Company are paralleled by the mains of the People's Water Company. In other words 85 per cent. of the water mains originally laid by the Millville Water Company have been paralleled by the mains of the People's Water Company and it appears not improbable that nearly as large a percentage of all the mains of the two water companies lie in the same streets.

To the mains of the Millville Water Company are attached sixty-eight public fire hydrants and the city, by reason of its payment of \$39,000.00 to said Company under the water contract and franchise of 1879, has the right in perpetuity to draw water from said hydrants for extinguishing fires, flushing gutters and sprinkling the streets without any further payment whatsoever. 10

The People's Water Company is supplying 105 public fire hydrants at an annual rental of \$25.00 each, and these 105 hydrants duplicate to a large extent the 65 hydrants that the Millville Water Company is bound to maintain in perpetuity because of the \$39,000.00 paid by the city in 1879. 20

Beginning with the year 1900 the Millville Water Company has reported its annual gross receipts to the State Board of Assessors as follows:

Millville Water Company.

Year	Gross Receipts	Population	Income Per Inhabitant	30
1900	\$9,488 07	10,583	.89	
1901	9,892 66			
1902	9,439 72			
1903	9,450 11			
1904	4,109 99			
1905	5,063 04			

Year	Gross Receipts	Population	Income Per Inhabitant
1906	\$5,467 48		
1907	5,961 67		
1908	6,761 90		
1909	7,376 21		
1910	7,562 51	12,451	.67

10 This record of the gross receipts of the Millville Water Company is important in its bearing on the annual income per inhabitant that a water plant supplying the entire City of Millville can be expected to earn.

In 1900 the Millville Water Company was the only one supplying water in Millville, and for that year said company had annual gross receipts of \$9,488, or 89c per inhabitant. Nearly equal incomes per inhabitant were earned by the Millville Water Company in the years 1901 and 1902, respectively, before the People's Water Company began to operate.

20 In 1904, the first full year during which the plant of the People's Water Company was in operation, the gross annual income of the Millville Water Company fell to \$4,109, representing only 39c per inhabitant on the population of 1900, or less than one-half the income of the earlier year. For 1910 the gross income of the Millville Water Company was \$7,562, representing 60.7 cents per inhabitant. No important part of this income is paid by the City of Millville, but practically all is from private consumers.

30 On the other hand, all the earnings of the People's Water Company come from the city treasury, and it is to be remembered that the city can greatly reduce these earnings at any time and thus avoid a constant loss.

As to consumers, the earnings of the People's Water Company are the amount paid by consumers to the city for water service.

During the year 1910 the city appears to have received \$2,122 from water consumers, and the hydrant rental was \$2,625, making a total of \$4,747 paid for the water service of the People's Company. With the population of 12,451 in 1910, the \$2,122 paid by water consumers to the city amounted to 17.0 cents per inhabitant.

The gross income of \$7,562 for the Millville Water Company, plus \$2,122 paid by consumers to the city in 1910, amounted to \$9,684 or 77.7 cents per inhabitant for the services of both companies to consumers.

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SECTION 4.

Value of a Water Plant to Supply the Entire City of Millville.

The annual income to be derived from the supply of water to a city and all its inhabitants at reasonable rates obviously limits the fair value of the plant or plants used for that purpose.

It follows that the cost of constructing the duplicate and competing water plants in Millville cannot increase their combined value above the limit fixed by the water income to be earned in that city at reasonable rates. 20

As shown above, the gross income of the Millville Water Company in the year 1900, when it furnished the entire supply in said city, was 89 cents per inhabitant, and in 1901 the total amount paid by the consumers of both water companies was 77.7 cents per inhabitant.

It thus appears that in spite of competition the consumers in Millville are now paying nearly as much per inhabitant to the two water companies as they paid to the one company in 1900. 30

From the history of the gross water income in Millville since 1900 it is improbable that this income per inhabitant can be more than doubled at reasonable rates. Assuming that in the absence of competition the gross income per inhabitant from all the water consumers in

Millville could be doubled at reasonable rates, this gross income would then be twice 77.7 cents, or \$1,554.

With the population of 1910 the total gross water income from the consumers would then be twice the \$9,684 received from the consumers of both companies in that year, or \$19,368. If to this last sum is added the \$2,625 paid by the city to the People's Company for hydrant rental the total is \$21,993.

10 Operating expenses for a water system supplying the entire City of Millville may be fairly taken at \$10,000 annually not including depreciation, and this expense deducted from the assumed gross income of \$21,993 leaves \$11,993.

With the low figure of 7 per cent. annually to cover interest and depreciation on the investment, the net income of \$11,993 annually provides for \$171,328 in cost of plant. This \$171,328 is thus the highest value that a water system supplying the entire City of Millville can have on the above basis with no competition.

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SECTION 5.

Plant of the People's Water Company.

The plant of the People's Water Company includes the following real estate and equipment all in the City of Millville:

A tract of land on the bank of the Maurice River below the dam in said city.

30 Six artesian wells on said land, each well being of 8 inch internal diameter and 104 to 118 feet deep.

One receiving well with brick sides of 8 feet internal diameter and 35 feet.

A brick pump house on said land near the wells, this pump house being divided by a brick wall into an engine room 31.5 feet by 43 feet and a boiler room 21.5 feet by 43 feet. The floor of the boiler room is near the ground

level and is of concrete, but the engine room floor is 10 feet below that of the boiler room and is made of timber.

Two horizontal return tubular boilers rated at 70 horse power each. The diameter of each boiler is 4 feet, its length is 18 feet and it has 35 four inch tubes. The boilers are connected with an iron stack 84 feet high and 3 feet in diameter. Operating steam pressure 70 lbs.

Two pumping engines each of the double acting fly wheel horizontal type with water plunger of 8 inch diameter and 30 inch stroke, rated to run 50 or more revolutions per minute. 10

Two small pumps to keep the water level below the wooden floor of the engine room.

A one story brick filter house 30 feet by 20½ feet.

One steel pressure filter 8 feet in diameter and 20 feet long rated at a capacity of 500,000 gallons per 24 hours.

A venturi meter and meter register in the filter house.

All the necessary piping, valves and specials to properly connect the wells, pumps and filter and also the boilers and steam engines.

Approximately the following lengths of cast iron mains in the distributing system: 20

7,645 feet of 16 inch pipe
 3,152 feet of 12 inch pipe
 7,513 feet of 10 inch pipe
 12,719 feet of 8 inch pipe
 60,656 feet of 6 inch pipe

specials for these mains.

185 stop valves of 6 to 16 inch size with boxes. 30

105 double nozzle fire hydrants with 4 inch connections.

A stand pipe of 20 feet internal diameter and 110 feet high above the foundation with a capacity of 258,000 gallons and a small plot of land on which the concrete foundation for this stand pipe is located.

The suction lift with the six artesian wells flowing into

the receiving well is now understood to be about 16 feet and this lift will increase when an attempt is made to pump water at more than the present rate. It is probably fair to say that for any large increase of daily pumpage over the present amount, an additional source of water supply should be provided, either in the form of additional artesian wells or surface drainage area.

As is well known in Millville the raw water from these artesian wells is objectionable because of the quantity of iron it contains. The above pressure filter was installed for the removal of this iron and any considerable increase beyond the present rate of pumpage will require an additional filter to keep the percentage of iron within the present limits.

In view of the fact that good supplies of surface water, apart from the Maurice River, are within easy reach of Millville, it would probably be poor policy to sink further artesian wells or install more filters for artesian water in connection with the plant of the People's Water Company.

SECTION 6.

Cost of the Plant of the People's Water Co.

Excepting only the land occupied by the wells, pumping plant and stand pipe, the estimated cost of the entire plant of the People's Water Company on the basis of present prices for labor and materials, also said cost less the merely physical depreciation in the plant items, is as follows:

Plant Item	Cost	Cost Less Physical Depreciation
Artesian wells and receiving wells, with all connections..	\$8,200	\$6,888
Engine and boiler house and filter house	7,280	6,312

Plant Item	Cost	Cost Less Physical Depreciation	
Complete pumping plant consisting of stack, boilers, engines, pumps, pipes and connections	\$11,000	\$7,480	
Pressure filter	3,000	3,000	
Stand pipe	8,700	7,308	
Distributing system of pipes, valves and hydrants.....	82,033	75,471	10
	<hr/>	<hr/>	
	\$120,213	\$106,459	
6 per cent. for engineering, interest and supervision....	7,212	6,387	
	<hr/>	<hr/>	
	\$127,425	\$112,846	

It is to be particularly noted that the depreciation just deducted from cost relates only to the physical decay of the plant and does not represent the very large loss of value due to the fact that the plant of the People's Water Company duplicates to a large extent the plant of the Millville Water Company. 20

SECTION 7.

Plant of the Millville Water Company.

The plant of the Millville Water Company in Millville comprises the following land, water rights and equipment: 30

The right to draw water from the canal of the Millville Manufacturing Company that leads from Union Lake in the Maurice River as follows:

"Also the right and privilege of taking water from the canal of the said party of the first part for the pur-

pose of operating the machinery now being erected by the party of the second part or in case of any change of the machinery then sufficient water to develop fifty (50) horse power under a head of twenty-one (21) feet in any water wheel utilizing seventy-five (75) per cent. of the useful effect of the water and for the further purpose of feeding the pumps of the party of the second part to supply the consumption of its customers."

10 A certain tract of land below the dam at Union Lake in the Maurice River on which the pumping house of the Millville Water Company is located, also a certain tract of land where the stand pipe of said company is located.

A certain tract of land on the banks of the Maurice River below the dam at Union Lake which was formerly used for artesian wells that have since been abandoned.

A pump house with stone basement and brick upper portion containing a water wheel and pumping machinery used to supply water to mains in the City of Millville.

A filter house with pressure and filters.

20 A suction well adjacent to the pump house.
A water stand pipe 12 feet in diameter and 128 feet high of 108,480 gallons capacity.

A water wheel connected with and intended to drive two water pumps.

One pump of one million and one pump of two and one half million gallons capacity for twenty-four hours, both connected with said water wheel.

One steam pump rated at 750,000 gallons per twenty-four hours.

30 One 40 horse power steam boiler.

Steam and water connections for all the equipment at the pumping station.

One 75 horse power electric motor.

68 four-inch fire hydrants.

The following sizes and lengths of main in the distribution system with stop gates and specials:

Size Inch	Feet Long
12	5,280
8	7,920
6	25,872
4	40,656
3	33,696
2	7,392
	<hr/>
	120,816

The Millville Water Company has about 1,800 water takers and it is doubtful whether the present filters are of sufficient capacity to care for the maximum demand especially when they are somewhat clogged. It is probable that the connections between water wheels and pumps should be altered so as to enable the water supply to be pumped with water power rather than steam or electric power even when the head of water in the lake and canal is low.

SECTION 8.

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Cost of Plant of the Millville Water Company.

On the basis of present prices for materials and labor the cost of the plant of the Millville Water Company, less physical depreciation, is as follows:

Land where the pump house is located and all the water rights therewith, including the right to divert water from Union Lake for the supply of the City.....	\$21,000	
Brick and stone pump house.....	2,040	30
Filter house and tank with connections....	10,000	
Stand pipe	2,000	
Suction well, water wheel, two water driven pumps, one steam pump, and one 40 horse power boiler and stack with all connections.	10,000	
Electric motor	800	
Mains, hydrants and valves	43,961	
	<hr/>	
	\$89,801	

It is particularly to be noted that the figures just given of \$89,801 for cost of the plant of the Millville Water Company less physical depreciation takes no account of the large depreciation affecting said plant because of the fact that it is in large part duplicated by the plant of the People's Water Company.

SECTION 9.

Sources of Water Supply.

- 10 Neither source of water supply now in use at Millville is entirely satisfactory.

That the water from the artesian wells of the People's Water Company is not fully acceptable, is indicated by the fact that said company has only between eight and nine hundred water takers, while the Millville Water Company has some 1,800 water takers. It is not probable that any reasonable amount of filtration will render the water from said artesian wells entirely satisfactory for general use.

- 20 On the other hand, water from the Maurice River, while lacking the objectionable qualities of water from the artesian wells, has other unsatisfactory characteristics due to the large swamps through which that river flows. It is obvious also that with the increasing population along the banks of the Maurice River and about Union Lake, the problem of filtering water from that river so as to free it from organic impurities will become more serious.

- 30 In view of these conditions the City of Millville will probably find it desirable to look for a source of water supply different from any now in use at Millville should it at any time become the owner of the plant of the People's Water Company. It is, therefore, important to note that there are several good sources of surface water supply within easy reach of Millville which are largely free from the objections above indicated and can no doubt be made available at moderate cost.

In this connection it may be noted that the New Jersey State Water Supply Commission has very recently reported in favor of an extensive water storage systems on the Mullica River for the supply of the inhabitants in the greater part of New Jersey south of that stream. The distance from Millville to the Mullica River would probably make a supply from that stream more expensive than other equally good supplies nearer home, but the report of the Water Supply Commission indicates what can be done to secure pure soft water from the streams of South Jersey. 10

SECTION IO.

Fair Value of the Plants, Business and Franchises of the Water Companies in Millville.

As indicated above, the full and fair value of the plants of the Millville Water Company and the People's Water Company, plus their business and franchises, can be no greater than that of a single plant adequately equipped to supply and actually supplying all of the water consumers in Millville, and the maximum value of such a plant with its business and franchise has been found to be not more than \$171,328. 20

This maximum or limiting value of \$171,328 is based on monopoly conditions with no competition in the water supply of Millville.

To make a division of said total value of not more than \$171,328 between the two water companies now in Millville, it is assumed at the start that the plants, business and franchises of both companies are to be acquired so that competition will cease. 30

In 1910 consumers paid \$7,562 for service from the Millville Water Company and \$2,122 for service from the People's Water Company and the \$2,625 paid by the city for hydrant rental brings the total for the service of

the People's Water Company up to \$4,747. For both water companies the total from consumers and from hydrant rentals is thus \$12,309, and of this total the income of the Millville Water Company was 61.5 per cent., while the \$4,747 paid for the service of the People's Water Company was 38.5 per cent. Applying these percentages to the \$171,328 representing the maximum possible value for the plants and business of both water companies, gives a value of \$105,366 for the Millville Water Company and \$65,961 for the People's Water Company, the sum of these values being, of course, \$171,328.

10

On the basis of cost, minus physical depreciation, the sum of the figures for the plant of the Millville Water Company and the People's Water Company is \$202,647. Of this sum the \$112,846 for the plant of the People's Water Company is 55.6 per cent. and the \$89,801 for the plant of the Millville Water Company is 44.4 per cent. Applying these percentages to the limiting value of \$171,328 for both plants, gives \$95,258 for the plant and business of the People's Water Company and \$76,069 for the plant and business of the Millville Water Company.

20

If both plants were to be purchased and competition ended, the purchase price of the Millville Company should be between \$76,069 and \$105,366, while the purchase price of the People's Water Company should be between \$65,961 and \$95,258, the purchase price for both companies being not more than \$171,328.

Assuming that both of the water plants cannot be purchased for a total of \$171,328 so as to put an end to competition, not more than \$60,000 should be paid for the plant and business of the People's Water Company and not more than \$90,000 for the plant and business of the Millville Water Company. Even at these last named figures the ultimate financial results to the city of a purchase of either water plant and the resulting competition with the other plant would be problematical.

30

If greater sums than those above indicated are demanded for either or both of the water plants in Millville, the city should refuse to purchase, largely increase the water rates for service from the system of the People's Water Company and leave the two companies to their competition.

In no event should the city enter into any agreement to purchase either plant on a basis of arbitration except for a price definitely fixed when the agreement is made.

Respectfully submitted, 10
(Signed) ALTON D. ADAMS.

March 12, 1912.

20

30

EXHIBIT P6.

PETITION No. 1.

To the Honorable, the Mayor and his fellow Commissioners of the City of Millville, New Jersey.

Gentlemen:

10 The undersigned Citizens and Taxpayers of this City do hereby respectfully and formally, but most seriously protest against your Honorable Body taking action or adopting the proposed ordinances for acquiring the properties of either or both of the Water Companies operating in this City.

We further protest against your Honorable Body plunging this City in debt to the amount of \$300,000 more or less, for properties of questionable value and earning capacity.

20 Before such large investments are made, we believe, and respectfully request that the matter should be placed before the people at large, and their judgment registered by votes, or otherwise, and that the Commissioners be guided accordingly.

We also call the Commissioners' attention to a series of articles on this question just printed in the daily press, under the caption, "THE WATER WORKS QUESTION," and ask their serious consideration of these figures, unless same can be successfully controverted by competent authorities.

30 And to this end we will ever pray.

List of names on No. 1 Petition.

E. G. McKeague,
Henry Hoffman,
Walter H. Felmey,
E. J. Fath & Bro.,

William F. Livermore,
Chris. Smith,
Col. E. Shaw,
B. K. Garrison,

Chas. F. Kurtz,	Arthur Radcliffe,	
D. G. Westcoatt,	Thomas Gillan,	
Nath. Reeves.	G. W. Bolster,	
A. S. Carman,	John M. Miskelly,	
James Hoffman,	Fernando C. Jones,	
Eugene B. Goodwin,	J. W. Hughes,	
E. B. Hampton,	George Doyles,	
T. S. Simmons,	Chester Maul,	
T. C. Wheaton,	Leon E. Oliver,	
W. F. Lee,	George J. Stewart,	
B. B. Weatherby,	E. C. Robbins,	10
Chas. P. Esibill,	C. H. Myers,	
George Reeves,	J. W. Shaw,	
A. R. Slade,	H. R. Cassady,	
Herman Kurtz,	Ambrose Brown,	
S. M. Souder,	Elijah R. Miskelly,	
Wm. Brown, Sr.,	Lorenzo B. Rose,	
M. F. Beckett,	Chester Goodwin,	
Jno. P. Madeley,	Ralph C. Beakley,	
Jacob Rieck,	Thos. P. Fithian,	20
M. H. Christy,	Zeb Gaskill,	
Wm. S. Maul,	George Zellars,	
John J. Githens,	Frank H. Wheaton,	
Adolph Hess,	E. W. Zellars,	
Chas. B. Wathier,	John D. Feraris,	
George B. Langley,	Hazelton Madden,	
W. S. Wheaton,	Chas. J. Griner,	
C. C. Cassell,	Edmond M. Reeves,	
Wm. B. Mayhew,	Edward H. Corson,	
Mortimer C. Harris,	D. P. Lippincott,	30
Edward H. Harold,	Chas. H. Mayhew,	
S. B. Dunham,	H. A. Weatherby,	
John B. Sieck,	S. B. Kimble,	
E. R. Wallace,	Daniel Goff,	
Frank W. Dalton,	Hugh Gillan,	
Chas. R. Boyle,	J. Wilson Madden,	
Wm. D. Souders,	Alex. McCorristin,	

	J. C. Carrall,	J. D. Zimmerman, Jr.,
	W. R. Goodwin,	John W. Fox,
	R. P. Christy,	C. E. Stanger,
	Thos. H. Norton,	C. M. Wilson,
	Chas. G. Carrall,	Frank G. Wettstein,
	Frank L. Reeves,	Frank Abel,
	Samuel E. Doyles,	Henry D. Jones,
	Jesse Rutter,	Jacob Slimmer,
	H. H. Hummill,	James L. Thompson,
	W. H. Mathews,	Walter Lee Munyon,
10	J. L. Irwin,	Wm. H. Queen,
	Jno. S. Nixon,	E. C. Beebe,
	G. W. Esibill,	Edw. P. Stewart,
	W. C. Bingham,	O. S. Carman,
	W. B. Schobel,	F. D. Corson,
	H. C. Vanaman,	W. T. Loper,
	B. F. Rocap,	James Torrens,
	D. Clinton Hand,	Louis R. Hogan,
	Robt. B. Tinner,	W. G. Champion,
20	J. W. Anderson,	W. F. Andreas.

EXHIBIT P7.

PETITION No. 2.

To the Honorable, the Mayor and his fellow Commissioners of the City of Millville, New Jersey.

Gentlemen:

Since signing a petition to your Honorable Body regarding the Water Ordinances, and also referring to some articles in the daily press headed "The Water Works Question," we learn that Alton D. Adams, an Engineer employed by the City, had advanced a certain solution of the problem as follows:

IF GREATER SUMS THAN THOSE ABOVE INDICATED (viz. \$171,328), ARE DEMANDED FOR EITHER OR BOTH OF THE WATER PLANTS IN MILLVILLE, THE CITY SHOULD REFUSE TO PURCHASE, LARGELY INCREASE THE WATER RATES FOR SERVICE FROM THE SYSTEM OF THE PEOPLE'S WATER COMPANY AND LEAVE THE TWO COMPANIES TO THEIR COMPETITION. 20

We respectfully request that the Commissioners try out this plan for at least one year before making any other move in the matter, and to this end we will ever pray and etc. and etc.

List of names on Petition No. 2.

E. B. Goodwin,	J. L. Irwin,	
E. C. Robbins,	Chester Goodwin,	
Geo. Doyles,	Arthur Radcliffe,	30
B. B. Weatherby,	John M. Miskelly,	
B. K. Garrison,	Ambrose Brown,	
J. W. Shaw,	John S. Nixon,	
C. B. Wathier,	Frank L. Reeves,	
C. H. Myers,	Jacob Slimmer,	
R. B. Whitaker,	Henry Hoffman,	
Chas. H. Mayhew,	W. L. Lienhardt,	

- | | | |
|----|-----------------------|---------------------|
| | H. A. Weatherby, | J. J. Githens, |
| | S. B. Kimble, | H. G. McKeague, |
| | Howard A. Gray, | Jacob Dare, |
| | Edw. H. Corson, | Mortimer C. Harris, |
| | Chas. F. Kurtz, | Theo. C. Wheaton, |
| | M. R. Cassady, | Frank H. Wheaton, |
| | Samuel E. Doyles, | J. R. Callahan, |
| | M. H. Christy, | James L. Thompson, |
| | Daniel Goff, | J. C. Carrall, |
| | Herman Kurtz, | Walter Lee Munyon, |
| 10 | Hugh Gillan, | Wm. H. Queen, |
| | Wm. S. Maul, | E. C. Beebe, |
| | Wm. Brown, | G. W. Esibill, |
| | J. Wilson Madden, | Edw. P. Stewart, |
| | Millard F. Beckett, | Chas. G. Carrall, |
| | Chester Maul, | Mulford W. Rieck, |
| | Wm. F. Livermore, | Adolph Hess, |
| | Thos. H. Norton, | John B. Seick, |
| | Frank W. Dalton, | W. C. Bingham, |
| | W. F. Lee, | O. S. Carman, |
| 2 | Alex. McCorristin, | W. B. Schobel, |
| | J. D. Zimmerman, Jr., | S. B. Dunham, |
| | John D. Ferraris, | F. D. Corson, |
| | Chas. J. Griner, | L. E. Oliver, |
| | George Zellar, | H. C. Vanaman, |
| | Jno. P. Madeley, | W. T. Loper, |
| | John W. Fox, | Benj. F. Rocap, |
| | C. E. Stanger, | W. R. Goodwin, |
| | C. M. Wilson, | Wm. B. Mayhew, |
| | Frank G. Wettstein, | James Torrens, |
| 30 | Frank Abel, | E. R. Miskelly, |
| | Henry D. Jones, | Ralph C. Beakley, |
| | Jesse Rutter, | D. Clinton Hand, |
| | A. S. Carman, | Louis R. Hogan, |
| | James S. Hoffman, | Robert B. Tinner, |
| | H. H. Hummill, | W. G. Champion, |
| | E. H. Harold, | J. W. Anderson, |
| | W. H. Matthews, | W. F. Andreas. |

EXHIBIT P8.

Office of
HIGH PRESSURE CONSTRUCTION AND SUPPLY Co.

Citizens Gas Co., Landis Tp.	Millville Electric L't Co.	
Pittsgrove Gas Company	Citizens Gas Co., Vineland	
Deerfield Gas Company	Maurice River Gas Co.	
Fairfield Gas Company	Commercial Gas Co.	
Millville Gas Light Co.	Downe Tp. Gas Co.	10
Millville Water Co.	Lawrence Gas Co.	

No. 233 High Street

Millville, N. J., February 5th, 1909.

To his Honor the Mayor, and
The Common Council, of Millville, N. J.

Gentlemen:—

Being aware of the fact that the GUARANTEE CLAUSE between yourselves and the People's Water Co. expires sometime this spring, and understanding that this GUARANTEE has been a source of LOSS to the municipality, we, having the welfare of Millville in mind and also desiring to set at rest many false rumors and misunderstandings, and also being in position to offer you, as we think, a much fairer and more desirable proposition, together with a good quality and large quantity of water, we beg to herewith offer you the following, which we hope will more than offset any proposition offered by our opponents. 20

Under certain conditions, to be named and determined by your honorable body and ourselves, we offer and are willing to at once enter into an agreement or contract with the City of Millville, embodying the following: 30

FIRST—

To so arrange our Pipes and Piping at the Water Works and Stand Pipe, that upon an alarm for FIRE

being given, we can and will, in a reasonable given time, place upon our Pipe system a pressure of not less than 75 lbs. at our Works and maintain same (barring accidents) during the continuance of any fire. (This will give under ordinary circumstances from 60 to 65 lbs. pressure anywhere in the business district of Millville.)

SECOND—

10 If Council should desire Fire Hydrants in any locality not now reached by our Mains, upon receiving an order duly authorizing ONE FIRE HYDRANT for each 500 lineal feet, of not less than 6 in. MAIN so laid, and providing there is an average of two dwellings on each section of 500 feet so ordered, we will accept same at an annual rental of \$12.50 per year for each Hydrant so placed, with the further proviso, that when the rental received from private consumers on any 500 feet section, amounts to \$50.00 a year, then and thereafter the Hydrant on that section shall be FREE to the City of Millville.

20 THIRD—

The City of Millville shall have the right and privilege to order placed as many Fire Hydrants at intermediate points on our Mains FREE OF WATER RENTAL as they may desire, always providing that the City Council pays for each installation so made, at cost.

FOURTH—

Free water for public buildings, up to one million gallons a year and for flushing Sewers and Gutters.

30 FIFTH—

All service pipes to be run FREE OF CHARGE, to cellar providing said distance is not more than 40 ft. from the Curb line or Curb box.

SIXTH—

We will bind ourselves, as long as this agreement or contract is in force and faithfully and conscientiously

adhered to by both parties, to at no time charge a higher rate for water rental than the Schedule which follows:—

Rental.	Per year.	Pay in 10 days.
First Privilege—Hydrants for Sink.....	\$5.00	less 10% \$4.50
Bath Tub	2.50	2.25
Water Closet	2.00	1.80
Stationary Basin	1.00	.90
Yard Sprinkler	1.50	1.35

Above makes the rate for an ordinary house, \$10.80 NET per year.

First Privilege—If Yard Sprinkler, Hydrant or Sink	\$5.00	\$4.50	10
Second “ If Wash Pave or Closet....	2.50	2.25	
Extra For Hose Bibb on over a Sink	1.00	.90	
Extra Providing no Yard Hydrant is Charged. If Hose is used with Sink Bibb	2.00	1.80	
Extra Spigot in Yard or House...	1.00	.90	
Wash Tubs, Stationary, each	1.00	.90	
Heater, Steam or Hot Water	2.50	2.25	
Stable, Horse & Buggy	2.50	2.25	
Each extra Horse & Cow..	1.00	.90	20
Livery Stables, per stall	1.00	.90	
Boiler & Engine, per horse power	2.00	1.80	
Building pur- poses, All wooden bldgs	5.00	4.50	
Brick Buildings.....	Special.		
By Meter, Per thousand gallons—10c less 10% with a mini- mum charge of \$10.00 per year.			

For any other use will be made a rate not to exceed an AVERAGE of the above schedule.

Asking that this communication and proposition receive your careful and serious consideration, we are

Very truly yours,
MILLVILLE WATER COMPANY,
By S. J. FRANKLIN,
Supt.

EXHIBIT P9.

RECEIPTS AND DISBURSEMENTS

Of the City of Millville, Account of People's Water Co., as shown by Annual Reports of the City Treasurer 1903 to 1914 inclusive, the Treasurer's Books for the Year 1915 and the Minutes and Bills on File at the City Hall.

Year	RECEIPTS.		PAYMENTS.		
	As per Treas. Reports	Total	(As per Treas. Reports, Bills and Minutes.)		
			Fire Hydrant. Rentals	Exclusive of Rentals	Water Supt.
1903	\$1,961.06	\$2,563.71	\$812.50	\$1,751.21	\$333.36
1904	2,085.20	9,011.73	1,918.75	7,092.98	529.17
1905	2,390.14	9,158.30	2,625.00	6,533.30	585.61
1906	2,801.97	9,019.17	2,625.00	6,394.17	500.04
1907	2,594.73	8,508.37	2,625.00	5,883.37	500.00
1908	2,394.20	8,601.46	2,625.00	5,976.46	500.04
1909	2,407.96	8,433.13	2,625.00	5,808.13	500.04
1910	2,122.56	8,141.44	2,625.00	5,516.44	550.02
1911	2,312.54	8,802.96	2,625.00	6,177.96	500.04
20 1912	3,307.75	9,500.00	.....	9,500.00	83.30
1913	3,509.31	10,000.00	.....	10,000.00	....
1914	3,569.62	10,000.00	.....	10,000.00	....
1915	3,599.55	10,000.00	.....	10,000.00	....
Totals.	\$35,056.62	\$111,740.27	\$21,106.25	\$90,634.02	\$4,581.62

Correct, attest,

Jan. 21, 1916.

G. R. WORSTALL,

City Treas.

EXHIBIT P10.

1913.

REPORT OF MILLVILLE WATER COMPANY.

Plant and Equipment	\$149,167	
Cash and Special Deposits	2,066	
Other Current Assets	(a) 132,302	
Miscellaneous Assets	(b) 162,753	
	<hr/>	
Total Assets	\$446,288	10
	<hr/>	
Funded Debt .....	.....
Current Liabilities	\$89,483	
Reserves	52,131	
Capital Stock	300,000	
Surplus or Deficit	4,674	
Operating Revenues:		
Water Service Revenue	9,740	
Miscellaneous Revenues .....	.....
	<hr/>	20
Total Operating Revenues	\$9,740	
Operating Revenue Deductions:		
Pumping System Expenses	5,940	
Other Water Supply Expenses	1,118	
Maintenance Expenses	8,636	
General and Miscellaneous Expenses	5,428	
	<hr/>	
Total Revenue Deductions	\$21,122	
Net Operating Revenue	11,382	
Non-Operating Income .....	.....	30
Interest Deductions	4,371	
Dividends Declared .....	.....
Surplus or Deficit for Year	15,753	
Miles of Mains	18.58	
Number of Consumers	1,986	

(a) Includes \$127,941 of miscellaneous accounts receivable.

(b) Includes \$150,000 reported as a scrip dividend on capital stock carried in suspense, and \$11,800 securities of other companies.

EXHIBIT PII.

1914.

REPORT OF MILLVILLE WATER COMPANY.

	Plant and Equipment	\$156,955
	Cash and Special Deposits	2,188
	Other Current Assets.....	132,617
10	Miscellaneous Assets	162,545
	<hr/>	
	Total Assets	\$454,305
	<hr/>	
	Funded Debt .....	.....
	Current Liabilities	\$108,119
	Reserves	59,851
	Capital Stock	300,000
	Surplus or Deficit	13,665
	Operating Revenues:	
20	Water Service Revenue	10,013
	Miscellaneous Revenue	75
	<hr/>	
	Total Operating Revenue	\$10,088
	Operating Revenue Deductions:	
	Pumping System Expenses	\$5,602
	Other Water Supply Expenses.....	1,125
	Maintenance Expenses	9,244
	General and Miscellaneous Expenses....	4,597
	<hr/>	
30	Total Revenue Deductions.....	\$20,568
	Net Operating Revenue.....	10,480
	Non-Operating Income	14
	Interest Deductions	4,925
	Dividends Declared .....	.....
	Surplus or Deficit for Year.....	15,391
	Miles of Mains	19.26
	Number of Consumers	2,056

EXHIBIT P12.

ORDINANCE No. 64.

An Ordinance granting to the "People's Water Company of Millville, N. J.," the privilege and right of laying its mains, pipes and conduits, with necessary attachments, through the public streets, avenues, alleys and public grounds of the City of Millville, and contracting for a supply of water. 10

The Common Council of the City of Millville do ordain as follows:

Sec. 1. That the People's Water Company of Millville, N. J., have the full power and authority, without any other consent, except this ordinance, to lay, relay and connect water pipes and mains and appliances under any of the streets, highways, alleys, roads or other public places, within the limits of the said city of Millville, for the purpose of obtaining, procuring, providing, distributing and furnishing water to said city and the inhabitants thereof, in such a manner as to do the least possible damage to property or to the streets, avenues, highways, alleys, roads or other public places, and repairing all such necessary damages as may be done with as little delay as possible, leaving the same in as good condition as when found; provided, that in laying, connecting or repairing said pipes, mains and apparatus, not more than one thousand (1000) feet of any street, highway, alley, road or other public place shall be torn up at the same time, nor this distance for a longer time than ten days without permission of common council. 20 30

Sec. 2. That said water works shall be constructed in the following manner:

Sec. 3. That there shall be a stand-pipe not less than fourteen (14) feet in diameter and one hundred and ten (110) feet high.

Sec. 4. That the pumping machinery shall be so kept of good, modern material, and of sufficient strength for the service; that said pipes shall be so laid in the most workmanlike and substantial manner.

Sec. 5. That the pumping machinery shall be so kept of good, modern material, and of sufficient strength for the service; that said pipes shall be so laid in the most workmanlike and substantial manner.

10 Sec. 6. That in the construction and repair of said works, due diligence shall be used; all open trenches to be guarded with red lights at night; all streets, avenues or alleys to be put in same good condition for the use of the public after the pipes are laid, and that said company shall assume all liability for damages to man, beast or property that might arise from any cause during the construction, operation or repairing said works.

20 Sec. 7. That the maximum rates for water rents to be charged by the said "People's Water Company of Millville," for water furnished to the owners of all private and public buildings shall be for :

	Hydrant in yard, hot and cold water in kitchen..	\$5.00
	Bath Tubs	3.00
	Stationary washstands	1.00
	Washpaves, 60 feet front and less.....	3.00
	Water closet, self acting, and hopper.....	3.00
	Water closet, pan valve or reservoir	2.00
	Urinals	2.00
30	A screw nozzle to the hydrant, (unless a wash- pave is charged to the premises)	3.00

per annum payable in advance. All other attachments to be governed by special rates.

Sec. 8. That the said Mayor and Common Council shall, at the completion of the water plant, make a test of the same, capable of throwing four fire streams at one time from fire hydrants to a height of seventy-five (75) feet.

Sec. 9. That the said Mayor and Common Council of the City of Millville may at any time after one year from the completion of said water plant, and the test having been made, acquire the entire plant of the said "People's Water Company of Millville, N. J.," its franchises, rights, privileges, mains, pipes, conduits and appurtenances and attachments, including all sources of water supply, and all other property by purchase; the price to be so paid therefor to be settled and determined by four commissioners or persons, two to be selected by the said city, and the other two by the said water company, its successors or assigns. In case the said four persons cannot agree as to the price to be paid therefor, they may select a fifth commissioner or person, and the determination and judgment of three of said commissioners or persons shall be binding and final as to the amount to be paid for said entire plant, property and rights. 10

Sec. 10. That the said company, its successors or assigns, shall pay into the city treasury a sum of money equal to the costs incurred for the legal expenses and publication of this ordinance, as may be directed by the said Common Council. 20

Sec. 11. That this ordinance shall take effect within twenty days after publication as provided by the city charter.

Passed by Council September 13, 1900.

Approved by the Mayor, October 5, 1900.

EXHIBIT P13.

ORDINANCE No. 73.

Entering into a contract with the People's Water Company of Millville, N. J., for furnishing a supply of water.

10 The Common Council of the City of Millville do ordain as follows:

Sec. 1. That the following contract be entered into with the People's Water Company of Millville, N. J., to wit:

Agreement between the City of Millville and the People's Water Company, of Millville, N. J.

20 This Agreement, made this first day of November in the year 1901, between the People's Water Company of Millville, N. J., of the first part, and the Mayor and Common Council of the City of Millville, State of New Jersey, of the second part, Witnesseth:

First. That the said party of the first part, for itself, its successors and assigns, covenants and agrees with the said party of the second part, that it will, at its own expense, lay in and through certain portions of certain streets of the said City of Millville, as shown on the plan hereto annexed, water pipes for conducting water.

30 That it will at its own expense, lay the pipes three feet below the surface grade of the streets. That the said pipes shall be of different dimensions, namely, not less than thirty-five hundred and forty feet of pipe with an inside diameter of sixteen inches; not less than eleven hundred and twenty feet of pipe with an inside diameter of twelve inches; not less than fifty-nine hundred feet of pipe with an inside diameter of ten inches; not less than

sixty-four hundred and seventy feet of pipe with an inside diameter of eight inches; not less than twenty-three thousand feet of pipe with an inside diameter of six inches. That said party of the first part will, during a period of two years from the date hereof, put in pipes to the curb and all ferrules free of cost to all applicants who desire to take water and have made arrangements with the said City of Millville so to do. Said pipes shall be put in and said ferrules furnished, however, only upon the order and direction of the proper authorities of said City of Millville. The charge of ferrules after the expiration of two years from the date hereof shall not exceed three dollars each. Said party of the first part will also furnish proper appliances for turning on and off the water supply to each individual consumer, and shall furnish or cut off the supply to each of said consumers as and when it may be so directed by the proper authorities of said city of Millville. 10

Second. That it, the party of the first part, will place upon the pipes laid as aforesaid, sixty-five anti-freezing fire hydrants, each having a four inch barrel and double hose discharge, at such locations as are shown on the plan hereto annexed; from which fire hydrants the City of Millville shall have the right, for the term of twenty-five years, from the date hereof, to draw water for the extinguishment of fire. The party of the first part further agrees that the city shall have the use of the fire hydrants to be erected in the City of Millville for the flushing of gutters and the sprinkling of streets, it being agreed that such flushing shall be done between the hours of eight A. M. and two P. M. only, and that no more than two hydrants shall be opened at the same time. They shall have the use of water for the flushing of sewers when the City of Millville shall own their own sewerage plant and system, in which the most approved automatic discharge tank shall be used. 20 30

The party of the first part hereby further agrees to supply water to the city buildings, school houses, etc., it being understood that three million gallons of water annually shall be furnished free of charge to the above buildings. Should the consumption exceed this amount the charge for the same shall be one cent per hundred gallons.

10 Third. That said party of the first part, should the party of the second part hereto desire it, and indicate such desire by a majority vote in Common Council of the City of Millville, will extend the laying of said water pipes along such streets, designated as aforesaid, or along other streets of the City of Millville. upon the express condition that the party of the second part shall secure an additional fire hydrant for every additional five hundred feet of pipe, laid as aforesaid; and for each additional fire hydrant so erected shall pay to the party of the first part, its successors and assigns, as and for compensation for the use of the water therefrom, the sum 20 of thirty (\$30) dollars per year for each year of the term of this contract then unexpired, payable at the same time and in the same manner as is hereinafter provided with regard to the remaining fire hydrants to be erected thereunder. Provided, that whenever three property owners make application for water and said Council shall order it, an extension of five hundred feet of pipe shall be laid whenever Council may direct, by the said People's Water Company.

30 Fourth. That the said party of the first part hereto will erect in the City of Millville a stand-pipe, not less than one hundred and ten feet high, and with an inside diameter of not less than fourteen feet, for the use of said works; said stand-pipe to be built of good material and in a good substantial and workmanlike manner; and that it, the said party of the first part, will also erect in the City of Millville a good and substantial pump-house, large enough for a duplicate set of machinery, in which

shall be located the pumps, which shall be operated by steam or other motive power, and capable of throwing four fire streams at one time to a height of seventy-five feet and furnish the supply of water of sufficient capacity for all ordinary domestic and manufacturing purposes.

Fifth. That the Mayor and Common Council of the City of Millville, party of the second part hereto, covenant and agree with the said party of the first part, its successors and assigns, in consideration of and as compensation for the water so furnished to the City of Millville for its municipal purposes, as specified in the second paragraph of this agreement, to pay it, the party of the first part, annually the sum of twenty-five (\$25) dollars per hydrant for each and every of the sixty-five (65) fire hydrants, of the character specified in the second paragraph hereof, payable in equal quarterly payments; the first payment to be made at the expiration of three months from the completion and successful operation of the works as hereinbefore specified and described; and that the said City of Millville shall provide for payment of said sums by taxation, or from moneys realized by the sale of water as provided by law.

Sixth. In addition to the sums above specified, the City of Millville, in consideration of and as compensation for the supply furnished to the inhabitants of the said City of Millville, and the firms or corporations residing therein, for domestic or manufacturing purposes, from the pipes and mains herein agreed to be laid in and upon the streets covered thereby, will pay the said party of the first part, its successors or assigns, one cent for each one hundred gallons so furnished, to be measured at pump station; the total payment to be not less than six thousand dollars (as the minimum sum) for any one year for a period of six years. Each of said yearly payments shall be subdivided into quarterly payments,

commencing at the time of the completion of said plant and each quarterly payment shall be for the water furnished for the preceding three months, (the last quarterly payment of each year, however, to be sufficient, with the three preceding payments, to make the total not less than the minimum sum specified for that year.)

It is understood and agreed, however, that in case the said City of Millville shall at any time during the continuance of this contract exercise the option contained in the eighth paragraph of this contract, and in accordance therewith purchase the plant to be erected by said
10 People's Water Company of Millville, N. J., the City of Millville shall be entitled to a credit upon the purchase money for said plant equal to the aggregate of all sums, if any, theretofore paid by the said City of Millville under the above provisions for the payment of the minimum sums herein specified which may in any year be in excess of the amount which would be otherwise due for the amount of water actually consumed in said year at the rate of one cent per hundred gallons, as above fixed.

20 Seventh. That the said People's Water Company of Millville, N. J., is to assume and bear the burden and expense of any and all suits brought to test the legality of this agreement or ordinance, or brought to enjoin the prosecution of work hereunder.

Eighth. That the said Mayor and Common Council of the City of Millville may at any time, after the completion of said water plant, and the test having been made, require the entire plant of the said People's Water
30 Company of Millville, N. J., its franchises, rights, privileges, mains, pipes, conduits and appurtenances and attachments, including all sources of water supply and all other property, by purchase, the price to be so paid therefor to be settled and determined by four commissioners or persons, two to be selected by the said City of Millville and the other two by the said water company, its successors or assigns.

In case the said four persons cannot agree as to the price to be paid therefor, they may select a fifth commissioner or person, and the determination and judgment of three of said commissioners or persons shall be binding and final as to the amount to be paid for said entire plant, property and rights.

Ninth. That said People's Water Company of Millville, N. J., shall place, at its own expense, in the room of the fire department, city hall, a proper gauge which shall show at all times the exact pressure of water upon the mains. 10

Tenth. That the People's Water Company of Millville, N. J., its successors or assigns, shall commence work within thirty days of the acceptance of this ordinance, and shall have completed the waterworks herein named within ten months of the acceptance of the ordinance as aforesaid, or shall forfeit to the City of Millville the sum of ten thousand (\$10,000) dollars, to secure the payment of which the said company shall, within thirty days after this ordinance takes effect, file 20 with the city recorder a bond, with security, satisfactory to the finance committee of council and the city solicitor. And in case of litigation of any kind whatsoever, causing delay in the completion of the said water works, the time shall be extended to agree with the time consumed by such litigation.

Eleventh. In default of such acceptance of this ordinance, as hereinabove specified it shall be understood and held that if said People's Water Company of Millville, N. J., decline to accept this ordinance within thirty 30 days after the publication of the same, as required by law, thereupon all rights, powers and privileges granted hereby shall forever cease and be at an end, and this ordinance shall be and become null and void, and in case of litigation of any kind whatsoever, the time shall be extended to agree with the time consumed by such litigation.

Twelfth. The contract now existing between the parties hereto and made and executed under and by virtue of the ordinances approved October 5, 1900, and July 3, 1901, is hereby cancelled and annuled.

Thirteenth. This contract shall continue in force for a period of twenty-five years from the date hereof.

In witness whereof the said parties of this agreement have hereunto interchangeably set their seals, the president and secretary of the People's Water Company of Millville, N. J., party of the first part, having hereunto subscribed their names and caused the common seal of the company to be hereunto affixed, at this office on the 15th day of November, 1901.

GEORGE A. FREY, President.

SAM'L C. SMITH, Secretary.

And the Mayor and Common Council of the City of Millville, party of the second part, have caused the common seal of the said city to be hereunto affixed at the office of the Mayor, on the first day of November, 1901.

Sec. 2. This ordinance shall take effect within twenty days after its publication, as required by the city charter.

Sec. 3. This contract shall be substituted for and takes the place of the contract between the People's Water Company of Millville, N. J. and the City of Millville, under the ordinance approved July 3, 1901.

30 Passed by Common Council November 1, 1901.

Approved by the Mayor November 1, 1901.

NEW JERSEY SUPREME COURT.

S. J. FRANKLIN, Prosecutor, vs. THE CITY OF MILLVILLE and THE MILLVILLE WATER COMPANY,	} ON CERTIORARI. DEPOSITIONS.	10
S. J. FRANKLIN, Prosecutor, vs. THE CITY OF MILLVILLE and THE PEOPLE'S WATER COMPANY, Respondents.	} ON CERTIORARI. DEPOSITIONS.	
WALTER WOOD, Prosecutor, vs. THE CITY OF MILLVILLE, Respondent.	} ON CERTIORARI. DEPOSITIONS.	20

Millville, New Jersey, February 8, 1916.

Hearing of this matter resumed at two o'clock P. M., 30
on the above date, pursuant to adjournment, before Edward I. Berry, Supreme Court Commissioner, in the presence of counsel for the respective parties.

Mr. Miller: I propose to offer in evidence on behalf of the City of Millville certain depositions, taken in a certain cause lately depending in the New Jersey Su-

preme Court, between Nelson G. Livermore, Henry B. Kemble and Walter Wood, prosecutors, and the Mayor and Common Council of the City of Woodbury and People's Water Company, respondents, which testimony was taken before Henry S. Albord, Esq., a Supreme Court Commissioner, at the office of Louis H. Miller, in the City of Millville, on Saturday, the 13th day of January, 1906, at 10.30 A. M., pursuant to order signed by Hon. Charles G. Garrison, Justice of the Supreme Court, made on January 8th inst. The testimony referred to is

10 now on file in the office of the Clerk of the Supreme Court and is pertinent to the pending issue for the following reasons: In the two cases, Franklin vs. Millville, now pending, the ordinance under review recites as a basis of authority in part the adoption of the Water Act of 1876. While it is true that the Water Act of 1876 has been adopted by the proceedings heretofore offered in evidence in these same causes last week, nevertheless it appears by the city records and by the testimony in the

20 case of Livermore, Kemble and Wood vs. Millville, above referred to, that on October 5, 1894, an ordinance was passed by the City of Millville providing that there should be held in the City of Millville an election of the legal voters of the four wards of the city on Tuesday, the 4th day of December, 1894, for the purpose of adopting or not adopting the provisions of the act entitled, "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," approved April 21, 1876, together with the supplements, and it also appears

30 by the City files and records that at the election held in conformity with the provisions of that ordinance the Act of 1876 was adopted. A statement of the result of the election is not spread at length on the minutes of the Common Council with the same formality that the statute may provide, but there is a minute of the Common Council showing the result of the election, and that the result of the election was that 648 votes were cast

in favor of the adoption of the act and only 291 votes against it, which statement is signed by the Recorder. The ordinance in question, adopted in 1894, and all of the minutes and proceedings of Council so far as they have been discovered relating to that election are in evidence in the case referred to, Livermore, Kemble and Wood, and the offer is now made for the purpose of proving that the Act of 1876 was adopted by the election held in 1894, a question which is at issue in the cases of Franklin vs. Millville.

I, therefore, now offer so much of the testimony in Livermore, Kemble and Wood as is shown in the printed state of the case used in the New Jersey Supreme Court, from pages forty-five to seventy-five, inclusive, the intention being to offer the original evidence on file in the office of the Clerk of the Supreme Court, and I submit to counsel for the other side for use in printing the printed book which I now produce to the Commissioner, and ask that it be marked for identification. 10

Mr. Bartlett: The introduction of the testimony in this case is objected to by the prosecutors as immaterial and irrelevant. The City in the present proceedings bases them on an election held on June 11, 1912. The election referred to by counsel for respondent, not forming any part of the present proceedings, nor are the ordinances in question based on the same. In the case of Livermore, Kemble and Wood vs. City of Millville, in which case prosecutor seeks to introduce the result of an election, the results of that election were challenged in that case, as appear of record in the Supreme Court. 20 30

Mr. Miller: The answer to that is that by the testimony referred to that was taken in the case, the authority of the City in Livermore, Kemble and Wood to do the acts therein litigated was based as well on the Act of

1876 as on the Water Act of 1888, and the authority of the City to take the proceedings then under review was held to be valid because authorized by the Act of 1888. There is no adjudication touching the validity of the election held in 1894, as the records will disclose. In answer to the suggestion that the ordinances under review in Franklin vs. Millville are based on the election held in 1912, I wish to state on the record that Section 5 of the Ordinance recites that said bonds shall be issued under the authority of the act entitled, "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," 1 C. S., p. 1823, and the acts supplemental thereto and amendatory thereof, which act has been duly adopted in this City pursuant to the provisions and requirements of Section 16 of said act. There is nothing in the ordinance that declares in terms or by implication that the basis for the action of Council is the election of 1912 to the exclusion of any action of the electors had under the election of 1894.

20 (Said printed book is offered in evidence and marked Exhibit D 1, 2-8-1916).

Mr. Miller: I offer in evidence analyses of water of Millville Water Company made by the State Board of Health, together with the letter of the Assistant Director, R. B. Fitz Randolph, explaining the same.

30 Mr. Bartlett: Including what dates do you offer the records?

Mr. Miller: 1912.

Mr. Bartlett: January 4, 1912, is that your first?

Mr. Miller: Yes.

Mr. Bartlett: And what is your final one?

Mr. Miller: Why, December, 1915.

Mr. Bartlett: December 2, 1915?

Mr. Miller: No, December 23, 1915.

(Said papers are marked together as one exhibit, Exhibit D2, 2-8-1916).

Mr. Bartlett: All this testimony is objected to on the ground that it is immaterial, irrelevant and incompetent 10 for the reasons given at the former hearing.

HARRY L. THOMAS, a witness produced on behalf of the prosecutor, being duly sworn according to law, on his oath deposes and says:

By Mr. Bartlett:

20

Ques. What official position do you hold in the City of Millville?

Ans. Secretary to the Official Board.

Ques. Board of Health?

Ans. Board of Health, yes.

Ques. How long have you held that position?

Ans. Why, since November of 1915—no, 1914.

Ques. Do you keep the vital statistics that are returned to you of deaths?

30

Ans. No, sir, none whatever; we have nothing whatever to do with that part of it.

Ques. Who are they kept by?

Ans. As far as I know, Mr. Horton, City Clerk.

Ques. Are the reports made to you in case of epidemics?

Ans. Yes, sir.

Ques. Has any such report been made to you since you were secretary of the Board of Health; any epidemic in Millville?

Ans. Yes, sir; last spring, of the smallpox, it proved to be.

Ques. Any other epidemic except smallpox?

Ans. No, sir; none whatever.

Ques. Has any epidemic of typhoid fever been reported to you since you have been in office?

Ans. No, sir.

10 Ques. Or any cases to your knowledge of typhoid fever?

Ans. I think his books will show some few cases.

Ques. An occasional case of it?

Ans. An occasional case, yes.

Cross-examination.

By Mr. Miller.

20 Ques. Have you been in conference with Frank Bullock since yesterday?

Ans. No, sir; not yesterday.

Ques. Day before yesterday?

Ans. No, sir.

Ques. He had custody of the complaints or reports, rather, of contagious diseases in this city, hasn't he?

Ans. Yes, the doctors are all supposed—

Ques. He has there these original reports made by the physicians of the city?

30 Ans. As far as I know, yes, sir; he keeps them.

Ques. Do you know that he did go through his reports, or don't you know, yesterday?

Ans. I don't; no, sir.

Mr. Miller: I will state on the record I happen to know it.

Mr. Bartlett: He is under subpoena to be here.

Mr. Miller: He is under subpoena to be here and he is the man that has them.

By Mr. Bartlett:

Ques. The records then that I have asked for would either be in Mr. Bullock's possession or the City Recorder's, Mr. Horton?

Ans. As to the vital statistics, and as to the others it should be in Mr. Bullock's hands, and he should report them to me once a month. 10

Ques. He keeps the records then?

Ans. Mr. Bullock, as far as I know, keeps the cards the physicians send to him.

Mr. Miller. I will state on the record for the information of the Court and counsel that Mr. Bullock was at my office last night and showed me the original reports which he had taken from his files for 1912, 1913, 1914 and 1915, or those years had been taken from his files by consent, and there were cases of typhoid in each of those years. 20

GEORGE B. WORSTALL, SWORN.

By Mr. Miller:

Ques. Mr. Worstall, it has been shown in the evidence in this case that Mr. Beldon, Mr. James S. Austin, Mr. Edward P. Bacon and James Trenchard, of Bridgeton, made a certain report respecting the value of the People's Water Company property and franchises. Who is Mr. Bacon? 30

Ans. E. P. Bacon?

Ques. Yes.

Mr. Bartlett: This is objected to on the grounds that it is not pertinent.

By Mr. Miller: I wish to show the standing and character of these men. Please answer, Mr. Worstall.

Mr. Bartlett: That line of testimony is objected to by the prosecutor.

10 Ans. He is, I think, in the hardware business in Bridgeton, and County Collector of Cumberland county.

Ques. And who is Mr. James Trenchard?

Ans. He is president of the Bridgeton National Bank.

Ques. An uncle of Mr. Justice Trenchard?

Ans. I don't know; he is in the same family.

Ques. Do you know who Mr. Beldon was?

20 (Same objection).

Ques. Do you know what his business was?

Ans. Beldon was a lawyer.

Ques. A New Jersey lawyer?

Ans. Of Camden, my impression.

Ques. And who is Mr. Austin, James Austin?

(Same objection).

30 Ans. James S. Austin is president of the Tonopah-Belmont Development Company, and he stands high in Philadelphia.

Ques. In financial circles?

Ans. Yes.

No cross-examination.

Mr. Bartlett: It is moved that all of this testimony be stricken out as having no bearing on the present case, nothing being introduced to show that the commissioners were experts in their line in any way.

JOHN S. HORTON, recalled.

By Mr. Bartlett:

Ques. You are the City Clerk of Millville? 10

Ans. I am.

Ques. And do you keep a record of the vital statistics?

Ans. I do.

Ques. Have you those records for 1912, 1913, 1914 and 1915?

Ans. I have.

Ques. Will you produce them?

Ans. They are produced.

Ques. Will you read to the stenographer the number of deaths in the City of Millville for 1912? 20

Ans. Do I understand you to mean that you want all—

Ques. I want the total number of deaths.

Ans. I didn't pay any particular attention to the total number; I keep the individual records, the date of the death and the cause and the important points taken from the death certificates returned; the total is not of any particular importance to us.

Ques. Mr. Horton, can you tell me the total number of deaths in the City of Millville during the year 1912? 30

Ans. I could ascertain the total.

Ques. Will you do so and give it to the stenographer?

Ans. The total of deaths in the City of Millville during the year 1912 was 160.

Ques. How many of those deaths resulted from typhoid fever?

- Mr. Miller: What is the purpose of that inquiry?

Mr. Bartlett: To show that no typhoid has resulted from any impure water supplied in the city.

- 10 Mr. Miller: I object to this record. The Inspector of the Board of Health is in the room, he just entered, and he has the custody of all the reports of typhoid cases in the city for 1912, and that is a better proof of the number of cases here than would be the death record, it being unquestionably true that a person might have typhoid fever and not die of it; therefore I object to this record for that reason.

Ans. I am not familiar with the medical terms. There is enteric fever; I don't know what that is. (After further examination of book). I find only one.

Ques. Will you turn to the records of deaths in the City of Millville for 1913 and give the number?

- 20 Mr. Miller: If that is offered for the same purpose I make the same objection; the same objection will stand to the record for other years offered.

Ans. During the year 1913 the number of deaths in the City of Millville, the total number in the City of Millville, was 182.

Ques. And deaths from typhoid, how many?

Ans. None.

Ques. The number of deaths for 1914?

Ans. 172.

- 30 Ques. And deaths from typhoid for that year?

Ans. None.

Ques. And for the year 1915?

Ans. The total number of deaths 198.

Ques. And deaths from typhoid in that year?

Ans. None.

No cross-examination.

FRANK BULLOCK, SWORN.

By Mr. Bartlett:

Ques. Now, Mr. Bullock, what position do you hold in the City of Millville?

Ans. Health Inspector of the Board of Health.

Ques. How many years have you been Health Inspector?

Ans. Twenty-one or twenty-two.

Ques. In the past six years has there been any epidemic of typhoid fever in Millville? 01

Ans. I don't think there has been an epidemic; we have had four or five cases at a time.

Ques. Do you keep a record of deaths and cases of sickness that are reported to you?

Ans. Not deaths, nothing in deaths.

Ques. How is that?

Ans. No deaths.

Ques. Just cases of sickness?

Ans. Yes.

Ques. Outside of epidemics? 20

Ans. All contagious diseases.

Ques. All contagious diseases are reported to you?

Ans. Yes.

Ques. In 1912, how many cases of typhoid fever were reported to you in the City of Millville?

Ans. Sixteen cases.

Ques. Can you give me the names of the sixteen affected with typhoid fever in that year?

Ans. I can.

Ques. Will you produce those names? 30

Ans. Yes, sir; I have got them right here.

By Mr. Miller:

Ques. What are those papers you hold in your hand?

Ans. These papers are the papers the doctors give us.

Ques. Are those the original reports?

Ans. These are the original.

Ques. Each signed by a physician?

Ans. Yes.

Mr. Miller: All right, read them out, please, Mr. Bullock.

Ans. James Brandriff.

10 Mr. Miller: Give the doctor afterward.

The Witness: Reported by Dr. Sheppard; Nellie Hering, reported by Mayhew; Alice Hering, reported by Mayhew; Minnie Tice, Mayhew; Clarence Wells, Dr. Franckle; Edith Rose, Dr. Jones; A. W. Goodwin, Dr. Neal; Walter Gordon, Dr. Wade; William Barnes, Dr. Franckle; Stephen Farley, Dr. Wade; Carlton Myers, Dr. Wade. I take this for Hunter; it is not very plain. May Hunter, Dr. Franckle; Godfrey Slimmer, Dr. Franckle; Ruth Mathis, Dr. Franckle; Edward Davis, Jr., Dr. Charlesworth; Tony Tenaglio, Dr. Wade.

20 Ques. Now, in the year 1913, how many cases, Mr. Bullock?

Ans. Seventeen cases. Howard J. Reeves, Dr. Sheppard; Walter Pettit, Dr. Kauffman; Edward Pettit, Dr. Kauffman; Elizabeth Schlagle, Dr. Franckle; Joseph Schlagle, Dr. Franckle; Charles Garrison, Dr. Wade. This is a duplicate from the two doctors, one one day and one the other; it is the same.

30 By Mr. Miller:

Ques. It was also reported by who else?

Ans. Hold on, Charles and Elizabeth Garrison, Dr. Wade; here it is, Elizabeth Garrison reported by Dr.

Kirk, that is the same case. Howard Windle, Dr. Franckle; Elizabeth Chamberlain, Dr. Sheppard; Emil Fath, Dr. Sheppard; John Saul, Dr. Halsey of Vineland. Andrew Svit, Dr. Sheppard; Jacob Schlagle, Dr. Franckle; Elizabeth Hutchinson, Dr. Mayhew; James Abel, Dr. Sheppard; Earl Corson, Dr. Neal. Here is a duplicate on the same by another doctor.

Mr. Miller: What doctor?

The Witness: Dr. Mayhew, Neal first and Mayhew second. Neal sent his the 14th and Mayhew the 15th. Mary Hutchinson, Dr. Mayhew. 10

Ques. In 1914, how many cases of typhoid were reported to you?

Ans. Thirteen.

Ques. Please give the name and the physician.

Ans. Mark Garrison, Dr. Sheppard; Edgar Collins, Sheppard; Nellie G. Grant, Dr. Mayhew; Furman Abbot, Dr. Mayhew; Charles Moncrief, Dr. McHenry; Julius Nay, Dr. Wade; Harrison Garrison, Dr. Jones; Bertha Jones, Dr. Kirk; Mrs. Carrie Bailey, Dr. Miller; Helen Cossaboon, Dr. Mayhew; Mrs. Anna Moore, Dr. Miller; Irene Roberts, Dr. Mander; Arthur Pettit,—I don't know what doctor that is—L. J. Kauffman. 20

By Mr. Bartlett:

Ques. In 1915, how many cases? 30

Ans. Eight cases.

Ques. Eight?

Ans. Yes, sir.

Ques. Will you give the names?

Ans. Thomas Entrekin, Dr. Wade; Catherine Entrekin, Dr. Wade; Howard Brown, Dr. Neal; Mrs. Vernon Nichols, Dr. Kauffman; Farnum Lupton, Dr. Mayhew;

Louis Jarvis, Dr. Jones; Caroline Thomas, Dr. Sheppard; Mrs. Harry Hiles, Dr. Sheppard.

Ques. Then your records, Mr. Bullock, show only eight reports of typhoid fever for the year 1915?

Ans. That is the correct record.

Ques. That is the correct record; that is your answer?

Ans. Yes.

Ques. You have been Inspector twenty-one years, you state?

Ans. Twenty-one or twenty-two.

10 Ques. Have you ever had a typhoid fever epidemic in Millville since you have been in office?

Ans. Not over four or five cases at a time, I don't think.

Cross-examination.

By Mr. Miller:

Ques. What would you call an epidemic—what do you mean by epidemic?

20 Ans. Well, if we had a dozen or fifteen cases I would begin to think the State Board would be coming down on us.

Ques. How many?

Ans. Ten or fifteen cases; they have been down here when we have had four or five cases on us.

Ques. Four or five cases is interesting to the State Board of Health, is it?

Ans. Yes.

30 Ques. If you had ten, you would think you had an epidemic?

Ans. I would, at one time; I would begin to think something or other was wrong somewhere.

By Mr. Bartlett:

Ques. Have you had at one time within the past six years more than four or five cases of typhoid?

Ans. I can't answer that at present without going to the records.

By Mr. Miller:

Ques. I direct your attention to the records you have just produced for the month of August, 1913. On August 4, 1913, the case of James Abel was reported, wasn't it?

Ans. Yes.

Ques. August 5th, the case of Elizabeth Hutchinson?

Ans. Yes, sir.

10

Ques. August 14th, the case of Jacob Schlagle?

Ans. Yes, sir.

Ques. August 27th, the case of Andrew Svit?

Ans. Yes, sir.

Ques. August 28th, the case of John Svit?

Ans. Yes, sir.

Ques. August 29th, the case of Emil Fath?

Ans. Yes, sir.

Ques. September 1st, taken sick August 28, 1913, the case of Howard J. Reeves?

20

Ans. Yes, sir.

Ques. September 1st, taken about August 28th, the case of Ethel Chamberlain?

Ans. Yes, sir.

Ques. September 2nd, date of attack, 8-27-1913, case of Harriet Wildin?

Ans. Yes.

Ques. You find all those in your records, do you?

Ans. Yes.

Ques. Those are nine cases in the month of August, 30 aren't they?

Ans. Yes.

By Mr. Bartlett:

Ques. What year?

Ans. 1913.

By Mr. Miller:

Ques. Then you call that an epidemic, don't you?

Ans. Yes.

Ques. That is a pretty fair epidemic, isn't it?

Ans. Yes, sir.

Ques. October 5, 1912, your records show that A. W. Goodwin had typhoid fever, don't they?

Ans. Yes, sir.

Ques. October 11th, Ethel Rose?

10 Ans. Yes, sir.

Ques. October 11th, 1912, Clarence Willis?

Ans. Yes, sir.

Ques. October 18th, Minnie Tice?

Ans. Yes.

Ques. October 23rd, Alice Hering; October 23rd, Nellie Hering?

Ans. Yes, sir.

Ques. That was in October, wasn't it?

Ans. Yes, sir.

20 Ques. Well, there are six cases between October 1st and October 23rd. That is enough, you said, to attract the attention of the State Board of Health, isn't it, if they had known it?

Ans. Yes, they know it, because—

Ques. Well, that is serious, isn't it?

Ans. Yes.

Ques. And in that same year between August 8th and October 1st, weren't there six other cases, as shown by your records, being the cases of Godfrey Slimmer,

30 Mary Hunter, Carl Myers, Stephen Farley, William Barnes, Walter Gordon—there were, weren't there?

Ans. Yes.

Ques. Making twelve cases between August 8th and the 23rd day of October?

Ans. Yes.

Ques. And in 1914 in December there were three cases, weren't there, being the cases of Nellie G. Grant, Furman Abbott, and Charles Moncrief?

Ans. Yes, sir.

Ques. Taking that same year, 1914, you had one case in January, one case in April, three in May, one in June, one in August, one in September, one in November, didn't you, and three in December, as you have just testified?

Ans. Yes, sir.

Ques. So during that year you had a case of typhoid fever nearly always on the report, didn't you?

Ans. On the report, yes.

Ques. Do some of these reports attribute the cause 10
to the old water—is there anything to indicate it?

Ans. One or two is marked "old water" by the doctor, that is all I know.

Ques. Can you find which those are? You mean by "old water" the water of the Millville Water Company, don't you?

Ans. Yes.

Ques. That is what it is commonly called around here, isn't it?

Ans. Yes, sir; here is one, May 6th. 20

Mr. Bartlett: May 6th of what year, and who was it?

The Witness: May 6, 1914.

Mr. Bartlett: And what name?

Ques. That is the report of the case of Edgar Collins, is it, Mr. Bullock?

Ans. Yes. 30

Mr. Miller: I offer this report and read it in the record: "Board of Health of the City of Millville. Report of case of contagious disease." Then follows an extract from a section of Chapter 260, of Laws of 1895. Then, "May 6, 1914, full name of patient, Edgar Collins; age, twenty-eight; sex, male; color, white; place of residence,

Fourth and Smith streets; name of disease, typhoid fever; date of attack, sick about one week. Remarks, old water. F. R. Sheppard, M. D."

Ques. Is there another one there?

Ans. Yes, sir; there is one here somewhere in there—
May 11th.

Mr. Bartlett: What year and who is it?

10 The Witness: 1914.

Mr. Bartlett: May 11, 1914?

The Witness: Yes.

Ques. What case is that?

Ans. Mae Garrison.

20 Mr. Miller: I offer that in evidence and read it in the minutes. Same heading, "May 11, 1914, full name of patient, Mae Garrison, age fourteen; sex, female; color, white; place of residence, 105 North Fourth street; name of disease, typhoid fever; date of attack, May 9th, first sick. Remarks: Old city water. F. R. Sheppard, M. D."

(Said reports are marked Exhibits D3 and D4, 2-8-1916).

30 Ques. Now, Mr. Bullock, with reference to the year 1915, is it not true that between March 31st and April 20th, five cases, namely, cases of Louis Jarvis, Caroline Thomas, Mrs. Harry Hiles, Mrs. Vernon Nichols and Howard Brown, were reported to you as shown by these official reports?

Ans. Yes, sir.

Ques. So there were five cases at one time, weren't there?

Ans. Yes.

Ques. Well, don't you call that a small epidemic?

Ans. Yes, sir.

Ques. And on July 14th and July 16th, two cases were reported practically at one time, weren't they, the cases of Catherine Entrekin and Thomas Entrekin, one reported on the 14th and the other on the 16th?

Ans. Yes.

By Mr. Bartlett:

10

Ques. Mr. Bullock, are any cases reported in 1915 given as coming from the water of the Millville Water Company?

Ans. 1914.

Ques. 1915?

Ans. I couldn't answer. How was that question, now?

Ques. In 1915, are there any cases reported as from the old water company or the Millville Water Company? 20

Ans. Yes; two.

Ques. They are 1914, aren't they? What is the date of those?

Ans. 1914, yes.

(Question repeated).

Ans. No, not '15.

Ques. And then of all the cases that you have read of typhoid fever in Millville since 1912 only two are reported as coming from the Millville Water Company, is that correct? 30

Ans. It is just marked on there, "Millville Water Company;" that is all I know about it.

Ques. All you know is that it is marked on the bottom of the report?

Ans. Yes.

Mr. Miller: Mr. Bartlett, do you offer these reports as a whole?

Mr. Bartlett: Well, I had them read in so I thought we had covered them all.

Mr. Miller: They will be considered in evidence as one exhibit.

10 Mr. Bartlett: I suppose they are one exhibit; he has read them into the record and you have offered two of them.

Mr. Miller: These records produced by Mr. Bullock are offered in evidence by the City of Millville, and it is agreed by counsel that they need not be printed in the state of the case.

20 S. J. FRANKLIN, recalled.

By Mr. Bartlett:

Ques. Mr. Franklin, how many private houses does the Millville Water Company supply in Millville?

Ans. Well, I haven't got it divided quite that way. Private residences, stores, churches and so forth and so forth—these are taken off the books—2008.

Ques. How many restaurants?

30 Ans. Well, they haven't got it; I will read it as they have got it here.

Ques. Yes, read the record as you have it.

Ans. Seven manufacturers, seven boarding houses, two hotels, one hospital, two public fountains, a total of 2027.

Ques. Mr. Franklin, you work constantly under the direction of the State Board of Health?

Ans. Yes, sir; what I meant by that, they take analyses of the water any time during the year, take samples of the water and take analyses of the same any time during the year that they choose.

Ques. And copies of those analyses are sent to your office?

Ans. Yes.

Ques. And are they similiar to those that are offered in evidence?

Ans. As far as I can see, it is the same thing. I haven't compared them all, only some of them. 10

Ques. Looking at the record for 1915, does that show the presence of any B. coli in the water of the Millville Water Company?

Ans. No, sir; it does not.

Mr. Miller: You mean during the year? Just a minute; I move that that answer be stricken out; the exhibit speaks for itself.

Mr. Bartlett: The record speaks for itself there; it shows clear for 1915. 20

Mr. Miller: My record shows, under date of April 23rd, present two in ten cubic centimeters.

The Witness: That is from the lake; that is not from the filtered water.

Mr. Miller: But the lake is your source of supply; that is what we are talking about, the impurities in the lake. 30

Ques. I call your attention, is any B. coli shown from the water supply as sent by you into the mains for 1915?

Mr. Miller: I object to that; the reports speak for themselves.

Ans. No, sir; it does not.

Ques. And the report that is in evidence, which it is claimed shows on April 23rd present two in 10 c. c. refers to the lake and not to your water supply?

Ans. That is what the report says here, from the lake.

Ques. The lake water before it enters your system is filtered, isn't it?

Ans. Yes, sir.

Ques. And all precautions have been taken by those filters to have pure water to be supplied to the City?

10 Ans. We do our best; we try to take all precautions known.

Cross-examination.

By Mr. Miller:

Ques. Has the State Board of Health notified you that it was dangerous to use the raw water from Union Lake?

20 Ans. They have told us that they required it to be filtered.

Ques. You know from these reports that there are B. coli in Union Lake and have been in 1912, 1913, 1914 and 1915, don't you?

Ans. Yes, sir.

Ques. You know that these bacilli coli are the kind of bacteria that come from human excrement, don't you, sir; that is where it gets its name?

Ans. I know that they carry typhoid fever germs.

30 Ques. Yes, and it comes from the human sewage, don't it?

Ans. Well, I am not enough of an expert in that line to say as to that.

Ques. The only place you could get sewage along there would be from the Vineland sewage system, three or four miles above, wouldn't it?

(Objected to).

Ques. Or from the cottages along the shore, isn't it?

Mr. Bartlett: That is objected to.

Ans. It certainly comes from somewhere; it is there in the lake.

Ques. You consider it dangerous to use the water, don't you, because you are developing an artesian well system?

Ans. That was not the reason that the artesian well system was developed.

10

Ques. What was the reason?

Ans. The Company at the time thought there was a demand for artesian water instead of lake water.

Ques. In purifying this water you have to use some chemicals, don't you, Mr. Franklin?

Ans. Yes.

Ques. It seems to make that water alkaline?

Ans. No, not necessarily.

Ques. Well, it does make it, according to these reports, doesn't it?

20

Ans. Not always.

Ques. No, at times?

Ans. The water at times is alkaline and at times is not, and those chemicals are used for the purpose of taking the color out and not for the purpose of purifying the water.

Ques. To remove the color?

Ans. Yes, sir.

Ques. When the water is alkaline, it is what is commonly called hard, isn't it?

30

Ans. A trifle.

Ques. Well, isn't it true that your water, according to these analyses, is at times more alkaline than that of the People's Water Company?

Ans. No, I don't think so.

Ques. Well, I show you a report of the analysis of the People's Water Company, November 23, 1915,

"Alkalinity, 2.0." I show you an analysis of the Millville Water Company December 18, 1914, at which the alkalinity is 3.0. Doesn't that show that your water is harder or more alkaline than the People's Water Company?

Ans. I don't think that that shows on the average that it is harder.

Ques. It does on those dates, doesn't it?

Ans. Possibly; I am taking your figures for this. It is something I don't know anything about.

10 Ques. Well, look and see.

Ans. We are taking the State's figures for it then.

Ques. Well, according to the State's figures it was?

Ans. Yes.

Ques. Now, under date of August 23, 1912, the alkalinity of your water was 12.0. That shows that the alkalinity of your water was six times as great as that of the People's Water Company, doesn't it?

Ans. Well, that was raw water; that wasn't after it had been treated.

20

By Mr. Bartlett:

Ques. Mr. Franklin, does the neighboring town of Vineland receive its water supply from the lake of artesian wells?

Ans. Why, I have understood it was artesian wells.

Ques. Could you say or not whether it was artesian wells?

30 Ans. Only that it is a matter of hearsay with me; I never saw it.

Mr. Miller: I will admit that it is, if it is relevant, but I object to it as being irrelevant.

Mr. Bartlett: It is admitted that the water supply of Vineland is from artesian wells?

Mr. Miller: That is true.

Ques. I want to ask Mr. Franklin one more question: In the statement made by Mr. Bullock showing two deaths from typhoid as reported from the supply of the Millville Water Company, can you say whether those two parties are named as consumers?

Ans. I presume they are; the doctor's statements say they are and without looking it up—

Ques. Have you any records to show whether they 10
are or not?

Ans. No, not here.

Ques. You are making arrangements to enlarge your filter plant, aren't you?

(Objected to as irrelevant).

Ans. Yes, sir; orders are given, have been for two or three months, for a complete duplication of a plant.

Ques. And that will give you a still better filtration 20
system?

Ans. It will give us instead of two and a quarter million gallons, it will give us four and a half million gallons filtered water.

Mr. Bartlett: Now, I offer in evidence a letter or certificate from the State Board of Health showing the 30
death rate per one thousand inhabitants in Millville and Vineland for 1912, 1913 and 1914.

Mr. Miller: I object to that as not relevant.

(Said paper is marked Exhibit P1, 2-8-1916, and read as follows):

“Department of Health of the State of New Jersey.
Trenton, Feb. 4, 1916.

Mr. H. Bartlett,
Vineland, N. J.

Dear Sir:

In reply to your telephone request to-day, we have forwarded, under separate cover, a copy of the last printed report of the State Department of Health containing mortality statistics, death-rates, etc., and we have
10 also prepared the following figures showing the death-rates for three years in the cities of Millville and Vineland, N. J.

	Death-rate per 1,000 inhabitants for Millville and Vineland.	
1912	13.33	17.45
1913	13.29	21.95
1914	12.32	20.06

We have not quite completed the tabulations for 1915,
20 and of course under the circumstances have not been able to give the death-rate for the year in question.

Very respectfully,
David S. South,
Chief, Bureau of Vital Statistics”.

S.E.

30 Mr. Miller: The City of Millville offers in evidence the Charter of the City of Millville, with supplements and amendments, and it is agreed between counsel that the same need not be printed.

Both sides rest.

NEW JERSEY SUPREME COURT.

February Term, 1916.

S. J. FRANKLIN,
Prosecutor,
vs.
CITY OF MILLVILLE AND
MILLVILLE WATER CO.,
Defendants. } On Certiorari.
Ordinance No.
144. } 10

S. J. FRANKLIN,
Prosecutor,
vs.
CITY OF MILLVILLE AND
PEOPLE'S WATER CO.,
Defendants. } On Certiorari.
Ordinance No.
145. } 20

WALTER WOOD,
Prosecutor,
vs.
CITY OF MILLVILLE,
Defendant. } On Certiorari.
Election. }

Argued February 16, 1916. Decided April 7th,
1916.

30

Before Justices Garrison, Trenchard and Black.

Herbert C. Bartlett, Esq., and Messrs. Gaskill &
Gaskill, for prosecutors.

Louis H. Miller, Esq., for City of Millville.

Per Curiam.

There are three writs of certiorari in this case, combined in one record. The first is to test the ordinance adopted by the City of Millville, December 31, 1915, known as Ordinance No. 144, looking to the acquisition of the water plant of the Millville Water Co. The second is the ordinance of the same date, known as No. 145, for the acquisition of the water plant of the People's Water Co. The third is to test the election held by the City of Millville on June 11, 10 1912, adopting an act entitled, "An act to enable cities to supply the inhabitants thereof with pure and wholesome water" approved April 29, 1876, P. L. 1876, p. 366.

There are twelve reasons alleged why the adoption of the ordinances in the first two certioraris should be set aside. We think they are without legal merit. The action of the City of Millville in adopting the two ordinances, No. 144 and No. 145, should be affirmed with costs. In the third certiorari there are 20 five reasons alleged for setting aside the election of June 11, 1912, adopting the act above referred to. None of these reasons have legal merit and the action of the City of Millville in adopting said act should be affirmed with costs.

NEW JERSEY SUPREME COURT.

SIR JOHN FRANKLIN, Prosecutor	}	On Certiorari. Notice of Opin- ion and Entry of Rule For Af- firmance.
vs.		
CITY OF MILLVILLE AND MILLVILLE WATER CO., Defendants.	}	

Sirs:

10

Take notice that an opinion or decision of the Supreme Court has been filed herein, for the affirmance of the Ordinance and proceedings, under review; that judgment for affirmance of said Ordinance and proceedings has been entered; and that if you intend to appeal from said judgment you must take such appeal within ten days after service of this notice upon you, pursuant to the provisions of section two of chapter three hundred and four of the Laws of Nineteen Hundred and Thirteen (P. L. 1913, pp. 621, 20622).

Dated Millville, N. J., April 13th, 1916.

LOUIS H. MILLER,
Attorney of City of Millville,
Defendant in Certiorari.

To Herbert C. Bartlett and Joseph H. Gaskill, Attorneys of Prosecutor, and the Millville Water Company, Defendant in Certiorari.

30

NEW JERSEY SUPREME COURT.

SIR JOHN FRANKLIN,
Prosecutor,

vs.

CITY OF MILLVILLE AND MILLVILLE WATER
COMPANY,

10

Defendants.

ON CERTIORARI.

NOTICE OF OPINION AND ENTRY OF RULE
FOR AFFIRMANCE.

20

LOUIS H. MILLER,

Atty. City of Millville, Defendant in Certiorari.
Office and P. O. Address, No. 17 East Main Street,
Millville, New Jersey.

Due and legal service of the within notice is here-
by acknowledge this day of April,
1916.

30

NEW JERSEY SUPREME COURT.

SIR JOHN FRANKLIN, vs. CITY OF MILLVILLE AND MILLVILLE WATER CO., Defendants.	}	On Certiorari. Rule For Affirm- ance of Ordi- nance Number 144, &c.
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This cause having been brought on for argument in the presence of Joseph H. Gaskill and Herbert C. Bartlett, Esquires, of counsel with the prosecutor, and Louis H. Miller, of counsel with the defendant in certiorari City of Millville, no one appearing on behalf of the defendant in certiorari Millville Water Company; and the court having inspected the record and proceedings and read the testimony herein, and having heard the argument of counsel thereon; and it appearing that the Ordinance and proceedings brought before the court for review in this cause are valid:

10

20

It is therefore, on this eighth day of April, nineteen hundred and sixteen, ordered and adjudged that the aforesaid ordinance and proceedings be and they hereby are affirmed, with costs, to be taxed.

Entered April 10, 1916.

On motion of

LOUIS H. MILLER,
Attorney City of Millville.

30

A true copy.

WM. C. GEBHARDT,
Clerk.

NEW JERSEY SUPREME COURT.

SIR JOHN FRANKLIN,

Prosecutor,

vs.

CITY OF MILLVILLE AND MILLVILLE WA-

10

TER COMPANY,

Defendants.

ON CERTIORARI.

RULE FOR AFFIRMANCE OF ORDINANCE

NUMBER 144, &c.

20

LOUIS H. MILLER,

Atty. Def't. City of Millville,

Office and P. O. Address, No. 17 East Main Street,
Millville, New Jersey.

30

NEW JERSEY SUPREME COURT.

SIR JOHN FRANKLIN,
(Prosecutor) Appellant,
vs.
CITY OF MILLVILLE AND
MILLVILLE WATER CO.,
Respondents.) Notice and
Grounds of Ap- 10
peal.

To Louis H. Miller, Esquire,
Attorney of Respondent, City of Millville,
and To Millville Water Company,
Respondent:

Take notice that the appellant (Prosecutor below) 20
Sir John Franklin appeals to the Court of Errors and
Appeals from the whole of the judgment entered in
this cause affirming the ordinance of the City of
Millville known as Ordinance No. 144, &c., and all
proceedings thereunder on the following grounds:

1. Because the said Ordinance is an abuse or ex-
cess of authority on the part of the Commission Gov-
ernment of the City of Millville, and is so unreason-
able, inequitable and unfair as to justify the inter-
ference of this Court. 30

2. Because the proposed purchase by the Com-
mission Government of the City of Millville of two
Water Plants, as provided in Ordinances No. 144 and
145, would impose upon the taxpayers of the city an

unnecessary burden and is a willful extravagance and abuse of power.

3. Because the City of Millville now practically has to all intents and purposes a municipal plant by virtue of its contract made with the Millville Water Co. on the sixteenth day of January, 1879, by virtue of which the city has secured an unlimited water supply for public purposes in perpetuity.

10 4. Because the said City of Millville, by virtue of said contract with the Millville Water Company, has provided all the Rules, Regulations and Restrictions with respect to a supply of water for private use, including the rates for such supply, that it would have the power to do under a plant owned entirely and solely by the municipality.

20 5. Because the City of Millville has already purchased an interest in the plant of the Millville Water Co., sufficient for the public uses and has an agreement secured by mortgage with the Millville Water Co., protecting the private consumers in the City of Millville.

6. Because the revenue from the two plants proposed to be acquired by Ordinances 144 and 145 is not sufficient to pay the running expenses of the plants and the interest and sinking fund charges on the bonds to be issued for said purchase.

30 7. Because said Ordinance proposed to raise by taxation the deficiency arising from the failure to secure from the operation of said Water Plants sufficient revenue to pay the running expenses, interest and sinking fund charges.

8. Because said Ordinance is illegal in that the City is not limited to the proposed bond issue of

\$130,000 for the purchase of the plant of the Millville Water Co., but provides for the issue of additional bonds if needed, without fixing the amount of such additional issue.

9. Because the right of the City of Millville to make up the deficiency arising from its contract with the People's Water Co. by reason of the failure to secure sufficient revenue from the sale of water pumped by that company, by taxation, is unsettled, undertermined and pending in this Court. 10

10. Because the City of Millville never adopted the provisions of an Act entitled, "An Act to enable citizens to supply the inhabitants thereof with pure and wholesome water" (1 C. S., p. 823) and the Act supplemental thereto and amendatory thereof, as alleged in Section 5 of said Ordinance.

11. Because said Ordinance violates the provisions of a contract made and entered into between the City of Millville and the Millville Water Co. on the sixteenth day of January, 1879. 20

12. Because the City of Millville has no power to cancel, alter or change the contract between it and the Millville Water Co. without the consent or concurrent of the Millville Water Co.

13. Because the Millville Water Co. has not consented to any cancellation, change or alteration in its contract.

14. Because said Ordinance is in divers other respects illegal and void. 30

HERBERT C. BARTLETT,
JOSEPH H. GASKILL,
Attorneys of Appellant.

NEW JERSEY SUPREME COURT.

SIR JOHN FRANKLIN,
(Prosecutor) Appellant,

vs.

CITY OF MILLVILLE AND MILLVILLE WA-
10 TER CO.,
Respondents.

ON CERTIORARI.

NOTICE AND GROUNDS OF APPEALS.

20

Service acknowledged of copy of within notice and
grounds of appeal this day of April,
1916.

Attorney of Respondent,
City of Millville.

30

HERBERT C. BARTLETT,
JOSEPH H. GASKILL,
Attorneys of Appellant, Vineland, N. J.

NEW JERSEY COURT OF ERRORS AND AP-
PEALS.

SIR JOHN FRANKLIN, (Prosecutor) Appellant, vs. CITY OF MILLVILLE AND MILLVILLE WATER CO., Respondents.	}	On Appeal. Notice of Argu- ment.	10
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Sir :

Take notice of the argument of the issue joined in this cause before the New Jersey Court of Errors and Appeals at the State House in the City of Trenton, in the State of New Jersey, on the third Tuesday of June, 1916, at eleven o'clock in the forenoon of said day or as soon thereafter as the said Court can attend to same.

Dated April 18th, 1916. 20

Yours respectfully,
HERBERT C. BARTLETT,
JOSEPH H. GASKILL,
Attorneys of Appellant.

To LOUIS H. MILLER,
Attorney of City of Millville.
MILLVILLE WATER CO.

30

NEW JERSEY COURT OF ERRORS AND AP-
PEALS.

SIR JOHN FRANKLIN,
(Prosecutor)

Appellant,

vs.

CITY OF MILLVILLE, AND MILLVILLE WA-
TER CO.,

10

Respondents.

ON APPEAL.

NOTICE OF ARGUMENT.

To the Clerk of the Court of Errors:

You are hereby notified that the within is a mu-
nicipal case entitled to be advanced, under the pro-
visions of Chap. 304, of the Laws of 1913.

LOUIS H. MILLER,
Atty. of Millville.

Due and legal service of the within notice on the
City of Millville is hereby acknowledged.

LOUIS H. MILLER.

JOSEPH H. GASKILL,
HERBERT C. BARTLETT,

30 Attorneys of Appellant, Vineland, New Jersey.

Due and legal service of within notice of argument
is acknowledged this 22nd day of April, 1916, for
Millville Water Company.

WALTER OWEN,
Secy. of Millville Water Co.

NEW JERSEY SUPREME COURT.

SIR JOHN FRANKLIN,

Prosecutor,

vs.

CITY OF MILLVILLE AND
THE PEOPLE'S WATER
COMPANY, OF MILL-
VILLE, N. J.

Defendants

On Certiorari.
Notice of Opin-
ion and Entry of
Rule For Affirm-
ance.

10

Sirs:

Take notice that an opinion or decision of the Supreme Court has been filed herein, for the affirmance of the Ordinance and proceedings under review; that judgment for affirmance of said Ordinance and proceedings has been entered; and that if you intend to appeal from said judgment you must take such appeal within ten days after service of this notice upon you, pursuant to the provisions of section two of Chapter three hundred and four of the Laws of nineteen hundred and thirteen (P. L. 1913, pp. 621, 622).

20

Dated Millville, N. J., April 13th, 1916.

LOUIS H. MILLER,
Attorney City of Millville,
Defendant in Certiorari.

To Herbert C. Bartlett and Joseph H. Gaskill,
Esquires, Attorneys of Prosecutor, and the People's
Water Company, of Millville, N. J., Defendant in
Certiorari.

30

NEW JERSEY SUPREME COURT.

SIR JOHN FRANKLIN,

Prosecutor,

vs.

CITY OF MILLVILLE AND THE PEOPLE'S

10 WATER COMPANY, OF MILLVILLE, N. J.,

Defendants.

ON CERTIORARI.

NOTICE OF OPINION AND ENTRY OF RULE
FOR AFFIRMANCE.

20

LOUIS H. MILLER,

Office and P. O. Address, No. 17 East Main Street,
Millville, N. J.

Due and legal service of the within notice is here-
by acknowledge this day of April, 1916.

30

NEW JERSEY SUPREME COURT.

SIR JOHN FRANKLIN, Prosecutor, vs. CITY OF MILLVILLE AND THE PEOPLE'S WATER COMPANY, OF MILL- VILLE, N. J. Defendants	}	On Certiorari. Rule For Affirm- ance of Ordi- nance Number 145, &c.	10
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This cause having been brought on for argument in the presence of Joseph H. Gaskill and Herbert C. Bartlett, Esquires, of counsel with the prosecutor, and Louis H. Miller, of counsel with the defendant in certiorari City of Millville, no one appearing on behalf of the defendant in certiorari the People's Water Company of Millville, N. J., and the Court having inspected the record and proceedings and read the testimony herein, and having heard the argument of counsel thereon; and it appearing that the Ordinance and Proceedings brought before the Court for review in this cause are valid: 20

It is therefore, on this eighth day of April, Nineteen hundred and sixteen, ordered and adjudged that the aforesaid Ordinance and proceedings be and they hereby are affirmed, with costs, to be taxed.

Entered April 10, 1916.

On motion of
 LOUIS H. MILLER, 30
 Attorney City of Millville.

A true copy.
 WM. C. GEBHARDT,
 Clerk.

NEW JERSEY SUPREME COURT.

SIR JOHN FRANKLIN,

Prosecutor,

vs.

CITY OF MILLVILLE AND THE PEOPLE'S WA-

10

TER COMPANY, OF MILLVILLE, N. J.,

Defendants.

ON CERTIORARI.

RULE FOR AFFIRMANCE OF ORDINANCE

NUMBER 145. &c.

20

LOUIS H. MILLER,

Atty. Def't. City of Millville.

Office and P. O. Address, No. 17 East Main Street,

Millville, N. J.

30

APPEAL—CERTIORARI ORDINANCE 145.

NEW JERSEY SUPREME COURT.

SIR JOHN FRANKLIN, (Prosecutor) Appellant, vs. CITY OF MILLVILLE AND PEOPLE'S WATER CO., Respondents.	}	Notice and Grounds of Ap- peal.	10
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To Louis H. Miller, Esq.,
Attorney of City of Millville
and People's Water Company,
Respondents:

Take notice that the appellant (Prosecutor below) Sir John Franklin appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause affirming an Ordinance of the City of Millville known as Ordinance No. 145, &c., and all proceedings thereunder on the following grounds: 20

1. Because the said Ordinance is an abuse or excess of authority on the part of the Commission Government of the City of Millville and is so unreasonable, inequitable and unfair as to justify the interference of this Court.

2. Because the proposed purchase by the Commission Government of the City of Millville of two Water Plants, as provided in Ordinances No. 144 and 145, would impose upon the taxpayers of the city an unnecessary burden and is a willful extravagance and abuse of power. 30

3. Because the City of Millville now practically has to all intents and purposes a municipal plant by virtue of its contract made with the Millville Water Co. on the sixteenth day of January, 1879, by virtue of which the city has secured an unlimited water supply for public purposes in perpetuity.

10 4. Because the said City of Millville by virtue of said contract with the Millville Water Company, has provided all the Rules, Regulations and Restrictions with respect to a supply of water for private use, including the rates for such supply, that it would have the power to do under a plant owned entirely and solely by the municipality.

20 5. Because the City of Millville has already purchased an interest in the plant of the Millville Water Co., sufficient for the public uses and has an agreement secured by mortgage with the Millville Water Co., protecting the private consumers in the City of Millville.

6. Because the revenue from the two plants proposed to be acquired by Ordinances 144 and 145 is not sufficient to pay the running expenses of the plants and the interest and sinking fund charges on the bonds to be issued for said purchase.

30 7. Because said Ordinance proposes to raise by taxation the deficiency arising from the failure to secure from the operation of said Water Plants sufficient revenue to pay the running expenses, interest and sinking fund charges.

8. Because said Ordinance is illegal in that the City is not limited to the proposed bond issue of \$136,000 for the purchase of the plant of the People's Water Co., but provides for the issue of additional

bonds if needed without fixing the amount of such additional issue.

9. Because the right of the City of Millville to make up the deficiency arising from its contract with the People's Water Co. by reason of the failure to secure sufficient revenue from the sale of water pumped by that Company, by taxation, is unsettled, undetermined and pending in this Court.

10. Because the City of Millville never adopted the provisions of an Act entitled, "An Act to enable cities to supply the inhabitants thereof with pure and wholesome water," (1 C. S., p. 823) and the Act supplemental thereto and amendatory thereof, as alleged in Section 5 of said Ordinance. 10

11. Because said Ordinance violates the provisions of a contract made and entered into between the City of Millville and the People's Water Co.

12. Because the City of Millville has no power to cancel, alter or change the contract between it and the People's Water Co. without the consent or concurrence of the People's Water Co. 20

13. Because the People's Water Co. has not consented to any cancellation, change or alteration in its contract.

14. Because said Ordinance is in divers other respects illegal and void.

HERBERT C. BARTLETT,
JOSEPH H. GASKILL, 30
Attorneys of Appellant.

NEW JERSEY SUPREME COURT.

SIR JOHN FRANKLIN,
(Prosecutor) Appellant,

vs.

CITY OF MILLVILLE AND PEOPLE'S WATER
10 COMPANY,
Respondents.

ON CERTIORARI.

NOTICE AND GROUNDS OF APPEAL.

20

Service acknowledged of copy of within notice and
grounds of appeal this day of April,
1916.

Attorney of Respondent,
City of Millville.

30

HERBERT C. BARTLETT,
JOSEPH H. GASKILL,
Attorneys of Appellant, Vineland, N. J.

NEW JERSEY COURT OF ERRORS AND AP-
PEALS.

SIR JOHN FRANKLIN, (Prosecutor) Appellant, vs. CITY OF MILLVILLE AND PEOPLE'S WATER CO., Respondents.	}	On Appeal. Notice of Argu- ment.
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Sir:—

Take notice of the argument of the issue joined in this cause before the New Jersey Court of Errors and Appeals at the State House in the City of Trenton, in the State of New Jersey, on the third Tuesday of June, 1916, at eleven o'clock in the forenoon of said day or as soon thereafter as the said Court can attend to same.

Dated April 18th, 1916.

20

Yours respectfully,
JOSEPH H. GASKILL,
HERBERT C. BARTLETT,

Attorneys of Appellant, Vineland, New Jersey.

To LOUIS H. MILLER,
Attorney of City of Millville.

and PEOPLE'S WATER COMPANY.

30

NEW JERSEY COURT OF ERRORS AND AP-
PEALS.

SIR JOHN FRANKLIN,
(Prosecutor)

Appellant,

vs.

10 CITY OF MILLVILLE AND PEOPLE'S WATER
COMPANY,

Respondents.

ON APPEAL.

NOTICE OF ARGUMENT.

20 To the Clerk of the Court of Errors:

You are hereby notified that the within is a municipal case entitled to be advanced, under the provisions of Chap. 304, of the Laws of 1913.

LOUIS H. MILLER,
Atty. of City of Millville.

30 Due and legal service of the within notice on the
City of Millville is hereby acknowledged.

LOUIS H. MILLER, Atty.

HERBERT C. BARTLETT,
JOSEPH H. GASKILL,
Attorneys of Appellant.

NEW JERSEY SUPREME COURT.

WALTER WOOD,	} On Certiorari.	
Prosecutor		} Notice of Opin-
vs.		} ion and Entry of
CITY OF MILLVILLE,	} Rule For Af-	
Defendant.	} firmance.	

Sir:

Take notice that an opinion or decision of the Supreme Court has been filed herein, for the affirmance of the Ordinance and proceedings, under review; that judgment for affirmance of said Ordinance and proceedings has been entered; and that if you intend to appeal from said judgment you must take such appeal within ten days after service of this notice upon you, pursuant to the provisions of section two of chapter three hundred and four of the Laws of Nineteen Hundred and Thirteen (P. L. 1913, pp. 621, 622). 10 20

Dated Millville, N. J., April 13th, 1916.

LOUIS H. MILLER,
Attorney of City of Millville,
Defendant in Certiorari.

To HERBERT C. BARTLETT, Esq.,
Attorney of Prosecutor.

NEW JERSEY SUPREME COURT.

WALTER WOOD,
Prosecutor,

vs.

CITY OF MILLVILLE,
Defendant.

10

ON CERTIORARI.

NOTICE OF OPINION AND ENTRY OF RULE
FOR AFFIRMANCE.

20

LOUIS H. MILLER,
Atty. City of Millville, Defendant in Certiorari.
Office and P. O. Address, No. 17 East Main Street,
Millville, New Jersey.

Due and legal service of the enclosed notice is here-
by acknowledge this day of April, 1916.

30

NEW JERSEY SUPREME COURT.

WALTER WOOD,	}	On Certiorari. Rule For Affirm- ance.
Prosecutor,		
vs.		
CITY OF MILLVILLE,	}	
Defendant.		

This cause having been brought on for argument in the presence of Herbert C. Bartlett, Esquire, of counsel with the prosecutor, and Louis H. Miller, of counsel with the defendant in certiorari, City of Millville, and the court having inspected the record and proceedings and read the testimony herein, and having heard the argument of counsel thereon; and it appearing that the election and proceedings brought before the court for review in this cause are valid: 10

It is therefore, on this eighth day of April, nineteen hundred and sixteen, ordered and adjudged that the aforesaid election and proceedings be and they hereby are affirmed, with costs, to be taxed. 20

Entered April 10, 1916.

On motion of

LOUIS H. MILLER,
Attorney City of Millville.

A true copy.

WM. C. GEBHARDT,
Clerk.

30

NEW JERSEY SUPREME COURT.

WALTER WOOD,

Prosecutor.

vs.

CITY OF MILLVILLE,

Defendant.

10

ON CERTIORARI.

RULE FOR AFFIRMANCE.

20

LOUIS H. MILLER,

Atty. Def't. City of Millville,

Office and P. O. Address, No. 17 East Main Street,
Millville, New Jersey.

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APPEAL—CERTIORARI ELECTION 1912

NEW JERSEY SUPREME COURT.

WALTER WOOD,
(Prosecutor) Appellant,
vs.
CITY OF MILLVILLE,
Respondent.) Notice and
Grounds of Ap-
peal.

10

To Louis H. Miller, Esquire,
Attorney of Respondent:

Take notice that the appellant (Prosecutor below) Walter Wood appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause affirming the election held June 11th, 1912, in the City of Millville and all proceedings thereunder on the following grounds:

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1. Because the said ballot prepared for said election was misleading and confusing, in that by inserting on said ballot (as an integral part thereof) suggestions as to how to vote for or against the adoption of said Act such explanations or directions were so stated as to mislead and to confuse the voters as to how to vote for or against said proposition.

2. Because such statements or directions were improperly on the ballot, making the same defective and illegal and said election void.

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3. Because there was no revision or correction of the registry list used at the election preceding the special election of June eleventh, 1912, as required by law.

4. Because the returns of said election show that the adoption of said Act of the Legislature was not carried by a majority of the registered voters of the City of Millville.

5. Because the number of votes cast at said election was less than one-half of the registered vote of the City of Millville at the time said election was held.

10 6. Because said Election was in divers other respects illegal and void.

HERBERT C. BARTLETT,
JOSEPH H. GASKILL,
Attorneys of Appellant.

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NEW JERSEY SUPREME COURT.

WALTER WOOD,
(Prosecutor)
Appellant,

vs.

CITY OF MILLVILLE,
Respondent. 10

ON CERTIORARI.

NOTICE AND GROUNDS OF APPEAL.

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Service acknowledged of copy of within notice and grounds of appeal this day of April, 1916.

Attorney of Respondent,
City of Millville.

HERBERT C. BARTLETT,
JOSEPH H. GASKILL, 30
Attorneys of Appellant, Vineland, N. J.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10 WALTER WOOD,
(Prosecutor) Appellant,
vs.
CITY OF MILLVILLE,
Respondent. } On Appeal.
Notice of Argument.

Sir:—

Take notice of the argument of the issue joined in this cause before the New Jersey Court of Errors and Appeals at the State House in the City of Trenton, in the State of New Jersey, on the third Tuesday of June, 1916, at eleven o'clock in the forenoon of said day or as soon thereafter as the said Court can attend to same.

20 Dated April 18th, 1916.

Yours respectfully,
JOSEPH H. GASKILL,
HERBERT C. BARTLETT,
Attorneys of Appellant, Vineland, New Jersey.

To LOUIS H. MILLER,
Attorney of City of Millville.

NEW JERSEY COURT OF ERRORS AND AP-
PEALS.

WALTER WOOD,
(Prosecutor)

Appellant,

vs.

CITY OF MILLVILLE,

Respondent. 10

ON APPEAL.

NOTICE OF ARGUMENT.

To the Clerk of the Court of Errors:

You are hereby notified that the within is a mu- 20
nicipal case entitled to be advanced, under the pro-
visions of Chap. 304, of the Laws of 1913.

LOUIS H. MILLER,
Atty. of City of Millville.

Due and legal service of the within notice on the
City of Millville is hereby acknowledged.

LOUIS H. MILLER, Atty.

30

HERBERT C. BARTLETT,
JOSEPH H. GASKILL,
Attorneys of Appellant.

