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New Jersey Supreme Court

JAMES D. MORIARTY,

Prosecutor,

vs.

THE BOARD OF COMMISSIONERS
OF THE CITY OF ORANGE AND

JOHN J. BYRNE, CITY CLERK,

Defendants.

10

*Writ of
Certiorari.*

The State of New Jersey to the Board 20
[L.S.] of Commissioners of the City of Orange
in the County of Essex, and John J.
Byrne, City Clerk of said city, Greeting: We being
willing for certain reasons appearing by the affida-
vits filed in this matter, to be certified of a certain
resolution purporting to have been adopted by said
board May 9th, 1916, and signed by William A. Cal-
houn, William F. Kearney and Harry D. Wethling, 30
three members of said board, which resolution was
intended to terminate a certain contract, dated
August 10, 1914, between James D. Moriarty of the
first part and the City of Orange aforesaid of the
second part, for the removal of ashes, garbage, etc.,
by said Moriarty from said City, for the term of
four years from August 20, 1914: We do command
you, that the aforesaid resolution, with the records
of the meetings of said board at which said resolu- 40
tion was introduced and passed, and all proceed-

Writ.

ings touching and concerning the passing thereof,
and incident thereto, as fully and entirely as before
you they remain, to our Justices of the Supreme
Court of Judicature, at Trenton, on the sixth day
of June, instant, you certify and send, together
with this our writ, that there may be done what of
10 right and according to the laws of this State should
be done.

Witness William S. Gummere, Esquire, Chief
Justice of our said Court, at Trenton, this third
day of June, 1916.

WILLIAM C. GEBHARDT,
Clerk.

20

GEORGE W. ANDERSON,
Att'y for Prosecutor.

30

40

Return.

NEW JERSEY SUPREME COURT.

 JAMES D. MORIARTY,
*Prosecutor,**vs.*
 THE BOARD OF COMMISSIONERS
 OF THE CITY OF ORANGE AND
 JOHN J. BYRNE, CITY CLERK,
Respondents.

 } *Return to* 10
 } *Writ of*
 } *Certiorari.*

In obedience to the command of the annexed writ to us directed, we, the Board of Commissioners of the City of Orange, and John J. Byrne, City Clerk, do hereby certify and send to the Honorable Justices of the Supreme Court of New Jersey, the resolution referred to in said writ of certiorari with the records of the meetings of said Board at which said resolution was introduced and passed and all proceedings touching and concerning the passing thereof and incident thereto as fully and entirely as before us they remain. 20

In Witness Whereof we have hereunto set our hands and seals this sixth day of June, A. D. nineteen hundred and sixteen. 30

DANIEL F. MINAHAN [L.S.]

WILLIAM A. CALHOUN [L.S.]

FRANK J. MURRAY [L.S.]

WILLIAM F. KEARNEY [L.S.]

HARRY D. WETHLING [L.S.]

JOHN J. BYRNE [L.S.] 40

Return.

Orange, N. J., May 9th, 1916.

Regular Meeting of the Board of Commissioners of the City of Orange, held in the Assembly Chamber, City Hall, on Tuesday afternoon, May 9th, 1916, at four o'clock.

10

ROLL CALL.

Present: Commissioners Calhoun, Kearney, Wethling, Murray and Mayor Minahan (5).

Absent: None.

* * * * *

20

The privilege of the floor was then granted Mr. George W. Anderson, Attorney, in reference to the garbage contract between James D. Moriarty and the City of Orange. Mr. Anderson stated that he did not know what action the Board intended taking at the meeting, and suggested that, in the event of the City terminating the said contract, the Bonding Company be given a chance to take over the contract.

No action was taken on Mr. Anderson's request.

* * * * *

30

The Mayor then announced that as the City Scavenger had failed to make proper collections of garbage, etc., in accordance with the existing contract, the Commissioners had a conference with Mr. James D. Moriarty and his foreman on the 8th inst., and that he, Mr. Moriarty, promised to have the City thoroughly cleaned of all garbage, etc., by the 10th inst. In answer to a question by Commissioner Wethling, the Mayor stated he gave no assurance to Mr. Moriarty that the Board would give

40

Return.

him until May 10th to have the City cleaned up, or that the Board would not take any action on terminating the existing contract at this meeting. The Mayor further stated that Mr. Moriarty may have left the conference with that intention, but that he did not nor was he in a position to give any such promise. 10

Commissioner Wethling then presented the following resolution and moved for its adoption:

Whereas, under an agreement between the City of Orange and James D. Moriarty, dated August 10, 1914, said James D. Moriarty agreed to collect, remove and dispose of all garbage, ashes and house refuse of this City in accordance with the specifications and conditions of said agreement. 20

And whereas, numerous complaints have been made by the citizens of this City that the said James D. Moriarty was not collecting and removing ashes, garbage and house refuse in accordance with the terms of his contract.

And whereas, said complaints have been investigated by members of the Board of Commissioners of the City of Orange, personally and through the Police Department and Health Department of said City, and said complaints found just and true. 30

And whereas, in an attempt to get better service and to compel the said James D. Moriarty to properly perform his contract, this Board has on two occasions fined the said James D. Moriarty fifty dollars, after hearing and due notice, the said James D. Moriarty having on both occasions pleaded guilty to violations of his contract. 40

Return.

And whereas, it appears that notwithstanding such fines, the said James D. Moriarty is still violating his said contract and complaints are still made by the citizens of this City of such violations, which complaints have been investigated and found to be true.

10

Now, therefore be it resolved, by the Board of Commissioners of the City of Orange, that the said Board of Commissioners does hereby find and determine that the work required to be performed by the said James D. Moriarty under said contract is not being performed satisfactorily to this Board and the said Board does hereby terminate the said agreement from and after May 11th, 1916.

20

And it is further resolved, that a certified copy of this resolution be mailed by registered mail to James D. Moriarty at his last post office address.

30

And be it further resolved, that the Director of Public Affairs be and he is hereby directed to enter into temporary arrangements with some competent person or corporation for the collection, removal and disposal of the ashes, garbage and house refuse of this City required to be collected, removed and disposed of under said contract until the further action of this Board in the matter.

WILLIAM A. CALHOUN.

WILLIAM F. KEARNEY.

HARRY D. WETHLING.

40

Return.

The roll being called, the resolution was adopted, as by the following vote:

Yeas—Commissioners Calhoun, Kearney and Wethling—3.

Nays—Commissioner Murray and Mayor Minahan—2. 10

In voting "nay" Commissioner Murray stated that, while he was in favor of the contract being terminated, on account of the poor service rendered, he was under the impression that Mr. Moriarty had left the conference held on May 8th with the understanding that he was to be given until Wednesday night to have the City cleaned of all garbage, etc., and, therefore, could not vote at this time for the adoption of the resolution. 20

The Mayor stated that, in his opinion, the matter should be laid over until Thursday, at which time a special meeting could be held on the question, and in view of this opinion, he would vote against the adoption of the resolution.

On motion by Commissioner Calhoun the meeting adjourned. 30

DANIEL F. MINAHAN,
WILLIAM A. CALHOUN,
HARRY D. WETHLING,
Board of Commissioners.

JOHN J. BYRNE,
City Clerk.

Return.

Orange, N. J., May 16th, 1916.

Regular meeting of the Board of Commissioners of the City of Orange, held in the Assembly Chamber, City Hall, on Tuesday afternoon, May 16th, 1916, at four o'clock.

10

ROLL CALL.

Present: Commissioners Calhoun, Kearney, Wethling, Murray and Mayor Minahan—5.

Absent: None.

* * * * *

20

The Mayor then presented a communication from James D. Moriarty and James R. Nugent relative to action of the Board in terminating contract between the City and James D. Moriarty for the removal of garbage, etc., also assignment of the said contract from James D. Moriarty to James R. Nugent, dated May 10th, 1916; also communication from the Bonding Department of the Royal Indemnity Company acknowledging receipt of copy of resolution terminating said contract, which were read and ordered filed.

30

Mr. George W. Anderson appeared before the Board and explained that Mr. Nugent was in a position to carry out the contract, if the Board saw fit to approve the assignment of the contract from James D. Moriarty to Mr. Nugent. The Mayor stated that it was too late to act on the request, and presented the following resolution and moved for its adoption:

40

Return.

Resolved, That the Director of Public Affairs be and he is hereby directed to advertise for bids to be received at a meeting of this Board on Tuesday, June 6th, 1916, at four p. m., for the collection and removal of ashes and collection, removal and disposal of garbage; said bids shall be submitted in conformity to specifications for the said work to be filed with the City Clerk. 10

DANIEL F. MINAHAN,
WILLIAM A. CALHOUN,
WILLIAM F. KEARNEY,
HARRY D. WETHLENG,
FRANK J. MURRAY.

The roll being called, the resolution was adopted,
all voting yea on a call for the yeas and nays. 20
* * * * *

On motion by Commissioner Calhoun the meeting adjourned.

DANIEL F. MINAHAN,
WILLIAM A. CALHOUN,
HARRY D. WETHLING,
Board of Commissioners. 30

JOHN J. BYRNE,
City Clerk.

NEW JERSEY SUPREME COURT.

10	JAMES D. MORIARTY, <div style="text-align: right;"><i>Prosecutor,</i></div> <div style="text-align: center;"><i>vs.</i></div> BOARD OF COMMISSIONERS OF THE CITY OF ORANGE, <div style="text-align: right;"><i>Defendant.</i></div>	}	<i>On Certiorari. Reasons.</i>
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REASONS.

20 The said prosecutor, by George W. Anderson,
 his attorney, comes and prays that the resolution
 of the Board of Commissioners of the City of
 Orange, bearing date the 9th day of May, 1916,
 wherein and whereby it was resolved that the said
 Board of Commissioners "does hereby find and de-
 termine that the work required to be performed by
 the said James D. Moriarty under said contract is
 not being performed satisfactorily to this Board,
 and the said Board does hereby terminate the said
 30 agreement from and after May 11, 1916; and
 whereby it was further resolved that the Director
 of Public Affairs be and he is hereby directed to
 enter into temporary arrangements with some com-
 petent person or corporation for the collection, re-
 moval and disposal of the ashes, garbage and house
 refuse of this City, required to be collected, re-
 moved and disposed of under the said contract
 until the further action of this Board in the mat-
 40 ter," may be set aside, reversed and for nothing
 holden for the following reasons:

Reasons.

First: Because the said Board of Commissioners had no power to terminate the said contract.

Second: Because there is no statute which authorized the making of a contract with a reservation of power to terminate the same such as is contained in the contract made by the defendant with the prosecutor. 10

Third: Because the parties to the contract contemplated unanimous action of the Board of Commissioners in order to terminate the same.

Fourth: Because the action taken by the defendant was arbitrary.

Fifth: Because the action taken by the defendant was unreasonable. 20

Sixth: Because the action taken by the defendant was unfair to the prosecutor and other taxpayers of the City of Orange.

Seventh: Because there was no evidence before the Board of Commissioners to justify a finding that the contract had not been performed.

Eighth: Because it was unnecessary to terminate the contract in order to have the streets cleared of accumulated ashes and garbage. 30

Ninth: Because the City of Orange is fully protected by the bond executed by a surety and annexed to the contract, and the surety could have been called upon to perform the contract.

Tenth: Because no notice was given to the prosecutor of such intended action, nor of the meeting 40

Reasons.

to be held, and he was not given an opportunity to be heard at the formal meeting of the Board of Commissioners.

10 Eleventh: Because no notice was given to the surety on the contract of such intended action, nor of the meeting to be held, and no opportunity was given to said surety company to be heard.

Twelfth: Because the defendant elected to proceed under another term of the contract to enforce a penalty for violations thereof and was bound by such election.

20 Thirteenth: Because the prosecutor was misled by the conduct of the Mayor and Director of Public Affairs of the City of Orange, and thought that the time had been extended to him to fully perform the contract until May 10th.

30 Fourteenth: Because the letting of a contract on May 10, 1916, as shown by the evidence, to Moloney Contracting Company, is not in compliance with the statutes authorizing the making of contracts for the collection or removal of ashes, and the collection, removal and disposal of garbage.

Fifteenth: Because the defendant had no power to authorize the Director of Public Affairs to enter into a temporary arrangement for the collection, removal and disposal of the ashes, garbage and house refuse.

40 Sixteenth: Because an appropriation had been made on February 8, 1916, of a specific sum of money to pay to the prosecutor.

Reasons.

Seventeenth: Because there has been no appropriation made to pay for the collection, removal and disposal of ashes, garbage and house refuse in excess of the amount specified in the contract with the prosecutor.

Eighteenth: Because the said resolution was adopted in an arbitrary manner and unreasonably and not in accordance with fairness and good faith. 10

Nineteenth: Because the evidence shows that the prosecutor contended that he was performing this contract and that he was endeavoring to comply with all the rules and requirements of the Board of Commissioners, and that it was difficult to obtain means to do the work rapidly, and that he was doing the work as rapidly as possible. 20

Twentieth: Because the evidence shows that the Royal Indemnity Company as surety on the prosecutor's bond for the performance of the contract requested the Board of Commissioners to permit it to take over the contract and do the work, which request was ignored and was not acted upon by the defendant.

Twenty-first: Because the said resolution was not on file with the City Clerk for two weeks before its final passage, as required. 30

Twenty-second: Because the said resolution is in other respects unjust and illegal.

Dated June 6, 1916.

GEO. W. ANDERSON,
Attorney of Prosecutor. 40

Transcript.

NEW JERSEY SUPREME COURT.

10	JAMES D. MORIARTY, <i>Prosecutor,</i> <i>vs.</i> THE BOARD OF COMMISSION- ERS OF THE CITY OF ORANGE, et als., <i>Respondents.</i>
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20 Transcript of testimony taken in the above entitled cause, pursuant to rule to show cause and Notice, before Nicholas W. Bindseil, a Supreme Court Commissioner, at the City Hall, Orange, New Jersey, on Wednesday, June 14th, 1916, at 9:30 A. M.

Appearances:

30 Mr. Frank E. Bradner and Mr. George W. Anderson for Prosecutor.

Mr. Arthur B. Seymour for respondents.

40 It is stipulated and agreed by and between the attorneys for the respective parties that the testimony of the witnesses may be taken down in shorthand by the Commissioner and afterwards reduced to typewriting, the signatures of the witnesses to their said testimony being waived.

Transcript.

Mr. Bradner: I offer in evidence a portion of the minutes of the Board of Commissioners of Orange of a meeting held June 15, 1914, containing the following resolution:

“Resolved, That the director of public affairs be and he is hereby directed to advertise for bids to be received at a meeting of this body on Monday, the sixth day of July, 1914, for the collection and removal of ashes and the collection, removal and disposal of garbage; said bids shall be submitted in conformity to specifications for the said work to be filed with the city clerk. 10

(Signed) WILLIAM A. CALHOUN 20
 WILLIAM F. KEARNEY
 FRANK J. MURRAY
 DANIEL F. MINAHAN
 HARRY D. WETHLING

“The roll being called the resolution was declared adopted, all voting “yea” on the call for yeas and nays.”

I offer in evidence the record in the office of the clerk of the City of Orange of the advertisement in connection with the foregoing resolution, which reads as follows: 30

“Sealed Proposals for the Scavenger Service of the City of Orange.

Sealed proposals are invited by the Board of Commissioners of the City of Orange, to be endorsed ‘Proposals for the Scavenger Service 40

Transcript.

of the City of Orange,' and will be received by the Board of Commissioners of the City of Orange, at a meeting to be held in the Assembly Chamber, City Hall, Day Street, on Monday afternoon, July 6th, 1914, at four o'clock.

10 All proposals must be submitted according to the terms and conditions of the specifications for the said work, which may be seen at the office of the City Clerk on and after Monday, June 22, 1914.

Bidders are required to state in their bids their individual names and places of residence in full.

20 The Board of Commissioners reserves the right to accept or reject any or all proposals or any part thereof, if in their judgment such a course should be for the best interests of the city.

DANIEL F. MINAHAN,
Director of Public Affairs."

I offer in evidence a resolution adopted at a meeting of the Board of Commissioners on July 7, 1914,
30 which reads as follows:

"Mayor Minahan then presented the following resolution, which was laid over for two weeks, all voting yea on a call for yeas and nays:

40 "Resolved, That James D. Moriarity be and he hereby is awarded the contract for the collection, removal and disposal of ashes and garbage for a term of four years at the figures

Transcript.

named in his bid, he being the lowest bidder; and the Mayor and City Clerk are hereby authorized and directed to execute a contract for said work on behalf of the city.' ”

I offer in evidence contract between James D. Moriarty and the City of Orange, dated August 10, 1914, for the collection, removal and disposal of garbage, ashes and house refuse in the City of Orange for the term of four years from August 20, 1914. 10

“This agreement, made this tenth day of August, in the year Nineteen Hundred and Fourteen, between James D. Moriarty, of the City of Orange, in the County of Essex and State of New Jersey, party of the first part, and The City of Orange, a municipal corporation, of the County of Essex and State of New Jersey, party of the second part: 20

Witnesseth, That the said party of the first part, in consideration of the covenants hereinafter contained, to be performed on the part of the party of the second part, and under a penalty expressed in a bond for Fifteen Thousand Dollars, bearing even date herewith and hereto annexed, does hereby covenant and agree to and with the said party of the second part, its successors and assigns, that he, the said party of the first part, shall and will collect, remove and dispose of all garbage, ashes and house refuse in the City of Orange, for a term of four years from the twentieth day of August, nineteen hundred and fourteen, in conformity 30 40

Transcript.

with the following specifications and conditions which the said party of the first part hereby agrees to abide by and perform :

10 1. Said garbage, ashes and house refuse shall be collected and removed from Main Street (including South Main Street) from the West Orange line to the East Orange line, Day Street, Centre Street, Canfield Street, Park Street from William Street to Main Street, Lincoln Avenue, Essex Avenue, Cone Street from Main Street to Henry Street, Henry Street from Lincoln Avenue to Centre Street, Mechanic Street from Lincoln Avenue to the Delaware, Lackawanna and Western Railroad, Parrow Street, South Street, Hill Street, Orchard Street, Collin Street, Hickory Street from Hill Street to Parrow Street and Hurlbut Street, daily, and from all streets north of Main Street on Mondays, Wednesdays and Fridays, and from all streets south of Main Street on Tuesdays, Thursdays and Saturdays (holidays included), and all dead animals, except horses, shall be similarly collected and disposed of. The party of the second part may at any time for good cause change routes of party of first part.

20

30

40 2. The wagons to be used for the collection and removal of such garbage, ashes and house refuse shall be furnished by the party of the first part and garbage wagons shall have water tight metal bodies with covers satisfactory to the Director of Public Affairs; all other wagons

Transcript.

shall be covered with canvas covers and be satisfactory to him.

3. All such garbage, ashes and house refuse and dead animals shall be disposed of outside of the city limits of the party of the second part on the day in which the same are collected, and as soon as disposed of the wagons which contained same shall be thoroughly cleaned before being housed for the night, and such garbage and house refuse must be collected, removed and disposed of separately from the ashes. The transfer of garbage, ashes, house refuse and dead animals from wagon to wagon within the said city limits will not be allowed, except by consent of the Director of Public Affairs.

4. Paper must be collected in separate carts or wagons, which must be covered with canvas when loaded. The wagons must be satisfactory to the Director of Public Affairs in type. Paper must be disposed of either outside of the said City limits or in a manner satisfactory to the Director of Public Affairs.

5. Party of the first part must have office in city with telephone, and person in attendance from 7 A. M. to 6 P. M. If materials have been placed out for collection in time and not collected, then in addition to penalty before mentioned they must upon receipt of notice be collected within two hours after telephone notice.

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Transcript.

6. Garbage wagons must not be overloaded. Party of the first part must have his name on them and each wagon must be numbered. They must be painted once a year and kept in good condition.

10 7. Party of the first part must discharge employees guilty of neglect or of insolence.

8. All work done shall be in accordance with such reasonable rules as may be made by the Board of Commissioners of the party of the second part.

20 9. For each day that the wagons of the party of the first part do not conform to the specifications a penalty of five dollars for each wagon for each day will be imposed.

30 It is further covenanted and agreed between the parties hereto that if, after hearing, on due notice, the said party of the first part shall be found guilty by the Board of Commissioners of the party of the second part of a violation of the specifications and conditions of this agreement that for each violation the said party of the second part shall be entitled to the sum of fifty dollars as liquidated damages. Such damages may be kept out of monthly payments due the party of the first part under this agreement.

40 It is further covenanted and agreed by and between the parties hereto that if the work herein required to be performed by the party of the first part is not performed satisfactorily to the Board of Commissioners of the party of

Transcript

the second part) the said Board of Commissioners may by resolution terminate this agreement by mailing to last post office address of the party of the first part a certified copy of the resolution. He and his surety shall then be compelled to pay whatever the City shall be compelled to lay out to finish the work for the unexpired period of this agreement and make good any damages the party of the second part shall suffer by reason of the breach of this agreement.

101

It is further covenanted and agreed by and between the parties hereto that no transfer of this agreement or assignment of part of it, or of any money due on it, subsequent to any attempted assignment thereof, shall be made without consent of the party of the second part by resolution. If this provision is violated, the agreement may be terminated by the party of the second part upon ten (10) days' written notice.

202

It is further covenanted and agreed by and between the parties hereto that the party of the first part shall conform to and obey all the ordinances, rules and regulations now in force in the City of Orange, not inconsistent with this agreement, and also the laws of the State of New Jersey regulating the collection, removal or disposal of ashes, garbage and house refuse.

302

The party of the second part, in consideration of the performance of this agreement on

404

Transcript.

the part of the party of the first part, hereby agrees to pay to him therefor the sum of fourteen thousand, two hundred and twenty-nine dollars and fifty cents annually, in equal monthly installments, payable at the end of each month for the said period of four years.

10

In witness whereof, the said party of the first part has hereunto set his hand and seal, and the party of the second part has caused its corporate seal to be hereto annexed and these presents to be signed by its Mayor and attested by its City Clerk, the day and year first above written.

20

(Signed) JAMES D. MORIARTY.

DANIEL F. MINAHAN,

Mayor.

Attest:

CORNELIA A. BARNARD,
Deputy City Clerk."

(Seal)

30

Accompanying the contract and attached thereto was a bond made by James D. Moriarty and Royal Indemnity Company of the City of Orange, in the sum of \$15,000, dated August 26, 1914, the condition of which is:

40

"That if the above bounden James D. Moriarty shall and will honestly and faithfully do, abide by, keep and perform all and every of the covenants and agreements on his part contained in the said agreement, according to the

Transcript.

true intent and meaning thereof, in every particular, without any fraud or other delay, then this obligation to be void; otherwise to be and remain in full force and effect."

I offer in evidence the minutes of August 4, 1914, containing the resolution presented by Commissioner Minahan, which reads as follows: 10

"Resolved, That the contract hereto annexed, between the City of Orange and James D. Moriarty for the collection, removal and disposal of ashes, garbage and house refuse, be approved as to form, and the Mayor and City Clerk are hereby authorized to execute it on the city's behalf."

I offer in evidence the minutes of March 28, 1916, at which were present all the members, including Mayor Minahan, which reads as follows: 20

"The Mayor announced that he had filed complaint against James D. Moriarty, city scavenger, and directed the City Clerk to read such complaint and notice. The City Clerk then read the following notice and complaint filed in his office on March 23, 1916: 30

"Orange, N. J., March 23, 1916.

"To James D. Moriarty, Esq.:

"Sir:—You are hereby notified to appear before the Board of Commissioners of the City of Orange at a meeting of said Board to be held on Tuesday, the twenty-eighth day of March, 1916, at 4 P. M., in the meeting room, 40

Transcript

City Hall, Orange, N. J., to answer a complaint made against you, filed in the office of the City Clerk by the Director of Public Affairs, a copy of which is hereto annexed, and at said meeting the provision of your contract with the City of Orange, dated August 10, 1914, for the collection and removal of ashes, garbage, etc., which authorizes the imposition of a penalty of \$50 for a violation by you of the specifications and conditions of said agreement, shall be brought to the attention of said Board and the imposition of said penalty requested.

(Signed) "DANIEL F. MINAHAN,
Director of Public Affairs."

101

200

Orange, N. J., March 23, 1916.
To the Board of Commissioners of the City of Orange:

I hereby complain that James D. Moriarty, who has a contract with the City of Orange for the collection and removal of ashes, garbage, etc., violated his said contract on March 20, 1916, in that he failed to collect and remove ashes and garbage from Springdale Place, a public street in the City of Orange, and I request that the said James D. Moriarty be notified to appear before you for trial of this complaint in accordance with the provisions of said contract.

300

400

DANIEL F. MINAHAN,
Director of Public Affairs.

Transcript.

"The Mayor then asked if Mr. Moriarty was present or represented. Mr. George W. Perry appeared before the Board as counsel for Mr. Moriarty and announced that his client pleaded guilty to the charge as stated in the complaint.

"Communication from Mr. Moriarty, dated March 28, 1916, acknowledging his guilt to the charge, was presented and read and ordered filed. 10

"The Mayor then moved that James D. Moriarty be penalized \$50 for violation of his contract as specified in the complaint, which motion was carried, all voting yea on the call for the yeas and nays." 20

I offer in evidence the letter of James D. Moriarty, which is produced by the City Clerk and referred to in the minutes of March 28, 1916.

"Orange, N. J., Mar. 28, 1916.

"Board of Commissioners of the City of Orange, Orange, N. J.:

"Gentlemen:—Having been requested to answer to your Honorable Body, the complaint of March 23, 1916, filed against me in the office of the City Clerk, by the Director of Public Affairs, Daniel F. Minahan, Esquire, to the effect that having failed to collect and remove the ashes and garbage from Springdale Place, in the City of Orange, on March 20, 1916, I have therein violated the provisions of my contract with the City of Orange. 30 40

Transcript.

10 "I respectfully submit that this charge is true and that I did fail to remove the ashes and garbage from Springdale Place on March 20, 1916, as specified in the complaint. It is also true that at other times during the past thirty days, more or less, I have been unable to remove ashes and garbage on schedule time.

20 "Owing to the unfavorable weather conditions during the past winter I have been obliged to work men and teams from early morning until late at night, and also on Sundays; and yet have been unable to keep up with my schedule at all times, notwithstanding that I have been hiring three and four extra teams daily, and have been engaging extra men.

"On account of the labor conditions now existing I have also been handicapped because men formerly available for scavenger work readily find employment in factories with more favorable surroundings.

"I beg you to take the foregoing explanation into consideration.

30 "The city is now cleaned, so far as the provisions of my contract apply, and each section of the city has been cleaned daily during the past several days.

"The present favorable weather conditions justify me in assuring you that you will not have any cause for serious complaint in the future.

40 "Yours respectfully,
(Signed) "JAMES D. MORIARTY."

Transcript.

I offer in evidence the minutes of April 18, 1916, at which all the commissioners were present:

“The Mayor presented a protest, signed by twenty-four residents of Lincoln Place, complaining about the service rendered by the city in the way of garbage collection, stating that the garbage on said street was not collected on April 16, 1915, which communication was received and filed. 10

“The Mayor then presented the following complaint:

“ ‘Orange, N. J., April 18, 1916.

“ ‘To the Board of Commissioners of the City of Orange: 20

“ ‘I hereby complain that James D. Moriarty, who has a contract with the City of Orange for the collection and removal of ashes, garbage, etc., violated his said contract on April 15, 1916, in that he failed to collect and remove ashes and garbage from Lincoln Place, a public street in the City of Orange, and I request that said James D. Moriarty be notified to appear before you for a trial of this complaint in accordance with the provisions of the said contract. 30

(Signed) “ ‘DANIEL F. MINAHAN,

“ ‘Director of Public Affairs.’

“The Mayor then presented the following resolution and moved for its adoption: 40

Transcript.

10 “Resolved, by the Board of Commissioners of the City of Orange, that, whereas, on April 18, 1916, the Director of Public Affairs filed a complaint with this Board, complaining that James D. Moriarty, who has a contract with the City of Orange for the collection and removal of ashes, garbage, etc., violated his said contract on April 15, 1916, in that he failed to collect and remove ashes and garbage from Lincoln Place, a public street in the City of Orange, and requesting that the said James D. Moriarty be notified to appear before this Board for trial of said complaint, in accordance with the provisions of said contract; and

20 “Whereas, This Board deems that there should be a trial of said complaint;

“Now, therefore, be it Resolved, That the said James D. Moriarty be notified to appear before this Board on Tuesday, April 25, 1916, at 4 P. M., at the meeting room of this Board in the City Hall, Orange, New Jersey, to answer the said complaint.

30 “‘And be it further Resolved, That a copy of the said complaint and of this resolution be served upon the said James D. Moriarty in the same manner that process is served in courts of law, as notice of the said complaint.’”

I offer in evidence the minutes of April 25, 1916, at which all the members of the Board were present.

40 “The Mayor moved that the complaint of the Director of Public Affairs against James D.

Transcript.

Moriarty for violation of garbage contract be taken up, and the Clerk was instructed to read said complaint. After the reading of the complaint Mr. Moriarty was given the privilege of the floor, and requested the complaint be dismissed on the ground that a copy of said complaint was ordered served upon him in the same manner that process is served in courts of law, and therefore he objected to the Director of Public Affairs, as complainant, acting as Judge, and the Board of Commissioners as jury in the case. 10

“On motion of Commissioner Kearney, the request of Mr. Moriarty to have the complaint dismissed was denied, all voting yea on the call for the yeas and nays. 20

“Mr. Moriarty asked that he be recorded as objecting to the decision of the Board on his request that the complaint be dismissed.

“Mr. Anderson, representing the Royal Indemnity Company, was given the privilege of the floor, and stated that he was interested in the case only as far as the bonding company was concerned. 30

“Mr. Moriarty was then requested by the Chair to plead, and pleaded ‘not guilty’ to the charge, stating that he intended to cross-examine all parties connected with the complaint, to show cause why he was not guilty of the charge.

“Official Sexton of the Police Department was then called before the Board, and in an- 40

Transcript.

10 swer to question by the City Counsel as to a conversation he had with one of Mr. Moriarty's employees on April 15, 1916, as to the number of wagons Mr. Moriarty had working on that date, stated that the employee advised him Mr. Moriarty had but two wagons making collections. As the different witnesses in the case were not present, Commissioner Calhoun moved that the trial be postponed one week, which motion was carried, all voting yea on the call of the yeas and nays.

20 "Mr. Moriarty was then requested by the Chair to be present at a meeting of the Board to be held Tuesday afternoon, May 2, 1916, at four o'clock, and replied that he would be present."

I offer in evidence the minutes of May 2, 1916, at which all the members of the Board were present.

30 "The Mayor announced that the complaint of the Director of Public Affairs against James D. Moriarty for violation of garbage contract on April 15, 1916, would be taken up before the regular order of business, and asked if Mr. Moriarty desired to be heard. In the absence of Mr. Moriarty, Mr. George W. Anderson, attorney, appeared before the Board as counsel for Mr. Moriarty, and pleaded 'guilty' to the charge as specified in the complaint.

40 "Mr. Anderson further stated that his client had arranged for a sufficient equipment to avoid further complaints in the future.

Transcript.

"The Mayor stated that he would absolutely insist on Mr. Moriarty living up to his contract with the city, and that all future complaints would be severely dealt with, in accordance with the provisions of the contract.

"The Mayor then presented the following resolution: 10

"Whereas, On April 18, 1916, the Director of Public Affairs filed a complaint with this Board, complaining that James D. Moriarty, who has a contract with the City of Orange for the collection and removal of ashes, garbage, etc., violated his said contract on April 15, 1916, in that he failed to collect and remove 20
ashes and garbage from Lincoln Place, a public street in the City of Orange, and requesting that the said James D. Moriarty be notified to appear before this Board for a trial of said complaint, in accordance with the provisions of said contract; and,

"Whereas, This Board on the same day passed a resolution resolving that said James 30
D. Moriarty be notified to appear before this Board on Tuesday, April 25, 1916, at 4 P. M., at the meeting room of this Board in the City Hall, Orange, N. J., to answer the said complaint; and,

"Whereas, It now appears that a copy of the said complaint and of said resolution was served upon the said James D. Moriarty in 40
the manner required by said resolution; and,

Transcript.

“Whereas, The said James D. Moriarty on April 25, 1916, did appear in person and by George W. Anderson, attorney, and pled ‘Not Guilty’ to the said complaint; and,

10 “Whereas, The hearing of the said complaint was adjourned to May 2, 1916, at which time George W. Anderson, attorney for said James D. Moriarty, did appear and withdrew the plea of ‘Not Guilty’ and pled ‘Guilty’ to the said complaint;

20 “Now, therefore, be it Resolved, That this Board does hereby find that the said James D. Moriarty violated his said contract on April 15, 1916, in that he failed to collect and remove ashes and garbage from Lincoln Place, a public street in the City of Orange, as required by the said contract, and does hereby impose upon the said James D. Moriarty a penalty of \$50 for said violation, which said sum shall be kept out of the next monthly payment due from the City of Orange to said James D. Moriarty under the terms of his contract.’ ”

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40

John J. Byrne—Direct.

JOHN J. BYRNE, sworn on behalf of Prosecutor.

- Direct examination by Mr. Bradner: 10
- Q. You are the City Clerk of Orange?
 A. Yes, sir.
- Q. How long have you been City Clerk?
 A. Since May 26, 1914.
- Q. You are then familiar with the garbage contract awarded to Mr. Moriarty?
 A. I am.
- Q. And all proceedings in relation thereto? 20
 A. I am.
- Q. The different minutes that I have read in evidence in the case are original minutes produced here by you, are they not?
 A. Yes, sir.
- Q. In addition to the two fines that have been imposed, which appear in the minutes of March 28 and May 2, do you know of any other fines imposed upon Mr. Moriarty? 30
 A. No, sir.
- Q. From the making of the contract up to March 28, 1916, were any proceedings taken against him which led to the imposition of a fine?
 A. No, sir.
- Q. How long a street is Springdale Place?
 A. I cannot say.
- Q. Do you know the street?
 A. I know about where it is. 40

John J. Byrne—Direct.

Q. It is a short street, isn't it?

A. It is not very long.

Q. How long a street is Lincoln Place?

A. That is not a very long street; I cannot say just the exact length of it.

10 Q. Have you on record any other complaints in addition to the complaints of March 28 and May 2, on which fines were imposed?

A. No, I have none in my office.

Q. To your knowledge were any other complaints presented in due form to the Board of Commissioners?

20 A. No, sir; only through evidence of the Mayor. There was no written complaint that I have a recollection of now, but the Mayor has stated that several complaints had been received besides—some days twelve or fifteen complaints he had received over the telephone and by persons calling at his office.

Q. He made that statement on May 9th, at that meeting?

A. He made it at several meetings prior to the cancellation of the contract.

30 Q. You mean they were made at regular meetings of the Board?

A. The Mayor stated that at regular meetings.

Q. At what regular meeting of which you kept any record?

A. At the meeting on May 9th, 1916.

40 Q. You refer to the meeting of May 9th, 1916, at which the Mayor announced that "as the scavenger had failed to make proper collections of garbage in accordance with the contract, the commissioners had a conference with Mr. James D. Mori-

John J. Byrne—Direct.

arty and his foreman on the eighth instant, and that he (Mr. Moriarty) promised to have the city thoroughly cleaned of all garbage, etc., by the tenth instant." Is that the occasion you refer to?

A. That is one of the occasions.

Q. What is the other one?

A. The other two are on the days when the fines were made, March 28th and also on April 25 and May 2nd, at which time the Mayor complained of violation of the contract. 10

Q. Then you do not know of any specific complaint having been made against Mr. Moriarty?

A. No, sir.

Q. There was a resolution passed on May 9th terminating the contract, was there not, which you have annexed to the return to the writ of certiorari? 20

A. Yes, sir.

Q. Did you give notice to Mr. Moriarty of the passing of that resolution?

A. Yes, sir.

Q. How long had the resolution been on file when you gave the resolution?

A. The resolution wasn't on file; directly coming from the meeting I made a copy and sent it off that evening. 30

Q. The resolution has been filed in your office as Clerk?

A. The resolution was presented to me at the meeting and filed in my office.

Q. Was there any action subsequently taken on the same resolution?

A. Yes, sir.

Q. When? 40

John J. Byrne—Direct.

A. At that meeting on May 9th; that was the passage of it.

Q. You did not treat that as a resolution of the kind that the law required it to be on file two weeks in your office before final adoption?

A. No, sir.

10 Q. On May 16th there was a resolution adopted by the Board to advertise for bids for the collection and removal of ashes, and the collection, removal and disposal of garbage?

A. Yes, sir.

Q. And that resolution has been attached to the writ of certiorari also?

A. Yes, sir.

20 Q. Was the resolution of May 16 on file for two weeks before it was finally adopted?

A. The resolution to advertise for bids?

Q. Yes.

A. No, sir.

Q. When did you advertise for bids?

A. The Friday after the passage of the resolution.

Q. How many days was that?

A. Three days.

30 Q. Have you, Mr. Byrne, the original communication dated May 11, 1916, addressed to the Mayor and Board of Commissioners, signed by Mr. Moriarty?

A. Yes, sir. (Producing same.)

Q. And also the letter of May 27 from Mr. Anderson?

A. Yes, sir. (Producing same.)

40

John J. Byrne—Direct.

Mr. Bradner: The City Clerk produces a communication dated May 11, 1916, signed "James D. Moriarty, James R. Nugent," addressed To the Mayor and Board of Commissioners of the City of Orange, which I offer in evidence.

"To the Mayor and Board of Commissioners of the City of Orange: 10

"Gentlemen:—Without notice to either Mr. Moriarty or his surety it seems that you have passed a resolution intended to terminate his garbage contract with your city, which action, without mentioning other reasons, was at least premature.

"The contract was assigned by Mr. Moriarty to Mr. James R. Nugent, with the knowledge and consent of Mr. Moriarty's surety, before notice of the action of your body was received. This assignment is submitted for approval by your board notwithstanding your former action. That action may be reconsidered and the assignment approved if you see fit and thus save complications. 20

"I presume that if the assignment is approved it will be with the condition that Mr. Nugent give bond for such amount as you may determine for the further performance of the contract by him. Such bond he will give, and offers the Royal Indemnity Company as surety, and will file the same as soon as your action in this regard is known. 30 40

John J. Byrne—Direct.

“In the meantime the contract work will be fully performed under Mr. Moriarty’s contract, which in our judgment has not been terminated and is still in force.

10

“Dated Newark, N. J., May 11, 1916.

“JAMES D. MORIARTY.

“JAMES R. NUGENT.”

Q. It is endorsed “Presented May 16, 1916, John J. Byrne, City Clerk”?

A. Yes, sir.

20

Mr. Bradner: The Clerk also produces a letter signed “Geo. W. Anderson, Att’y for Moriarty and sureties,” dated May 27, 1916, addressed to the Board of Commissioners of the City of Orange, which I offer in evidence.

“May 27, 1916.

“To the Board of Commissioners,

“City of Orange:

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“Gentlemen:—In view of the fact that the termination of the garbage contract between the City and James D. Moriarty by your board is not considered a legal and binding act, and also in view of the fact that the performance of the contract was fully provided for by the sureties under Mr. Moriarty’s contract when the dissatisfaction of the Commissioners became known, and that sufficient equipment and employees have been on the

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John J. Byrne—Cross.

work continuously since, at all times, and at the present time to fully perform the work, the payment of money to any other contractor or person for work within Mr. Moriarty's contract will be an illegal act, and not chargeable to Moriarty. At all events an attempt to charge him with the expenditure of the whole or any part of such moneys will be resisted. 10

"Yours very truly,

"GEO W. ANDERSON,

"Att'y for Moriarty and sureties."

Q. That is also endorsed "Presented June 6, 1916"; is that correct? 20

A. Yes, sir.

Q. Have you any rules and regulations of the Board relating to the collection of garbage?

A. The Board submitted specifications which were approved, and at a later date they passed an ordinance relative to the separation of garbage—

Q. I don't mean that. The contract refers to rules and regulations. Paragraph 8 of the contract provides: "All work done shall be in accordance with such reasonable rules as may be made by the Board of Commissioners of the party of the second part." Do you know of any rules? 30

A. No, sir; there were no rules outside of the specifications and the ordinance.

Cross-examination by Mr. Seymour:

Q. This ordinance that you refer to, Mr. Byrne, in connection with your answer that there were no rules, is that the ordinance of— 40

John J. Byrne—Cross.

10 Mr. Bradner: I object to any cross-examination on the subject of the ordinance, because the answer of the witness was not responsive to the question that was asked him, and also because an ordinance passed subsequent to the making of the contract would be irrelevant and couldn't affect the rights of the contractor.

Q. The ordinance which you refer to in connection with your answer that no rules and regulations had been passed by the Board, is the ordinance passed by the Board on April 27, 1915, isn't it?

A. Yes, sir.

20 Q. And shown in your book of ordinances, Volume 6, page 188?

A. Yes, sir.

Q. Before that ordinance was passed there was an agreement entered into between the City of Orange and Mr. Moriarty and the Royal Indemnity Company in relation to the passage of the ordinance?

A. Yes, sir.

30 Q. Is that the agreement? (Witness shown paper.)

A. Yes, sir.

Q. What is the date of the agreement?

A. 27th of April, 1915.

Mr. Seymour: I offer the minutes containing the ordinance in evidence.

40 Mr. Bradner: In view of the agreement that has been produced, made by the contractor

John J. Byrne—Cross.

and his surety, with the City of Orange, my objection that the contractor would not be bound by the ordinance is not a good one and is withdrawn, but I object to the introduction of the ordinance in evidence, because it does not appear that the contract was terminated for the reason that the contractor had violated any provision of that ordinance. 10

“An Ordinance requiring owners, tenants, housekeepers, and other persons occupying any dwelling house, or other building or any portion thereof, wherein ashes, garbage, paper or other refuse material accumulates, to separate such material, and relating to the receptacles or vessels in which said persons shall deposit such refuse materials, and relating to the collection and disposal thereof. 20

“The Board of Commissioners of the City of Orange do ordain:

“Section 1. Each and every owner, tenant, housekeeper and other person or persons occupying any dwelling house or other building or portion thereof in the City of Orange wherein ‘ashes,’ ‘garbage,’ ‘paper’ and other refuse material accumulates, is hereby required to collect and separate the said refuse material accumulating in any such dwelling house or building or portion thereof occupied by such persons respectively, into three classes as follows: 30 40

John J. Byrne—Cross.

“First: ‘Ashes and non-combustible rubbish material’ shall constitute one separate class.

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“Second: The refuse of animal or vegetable matter which has been used as food for man or beast, and all refuse, animal or vegetable matter which was intended to be used, including condemned food, shall constitute another distinct class of refuse matter to be called ‘garbage.’

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“Third: The waste or other paper and dry combustible rubbish material accumulating in any such dwelling house, building or portion thereof, or premises or portions thereof which the occupant thereof desires removed from the premises, shall constitute a third distinct class of refuse matter.

30

“Section 2. Each and every owner, tenant, housekeeper and other person, or persons, occupying any dwelling house or other building or portion thereof, in the City of Orange, in which ‘ashes and non-combustible rubbish material,’ ‘garbage,’ ‘paper’ and ‘dry combustible rubbish material’ accumulate and are to be removed therefrom by the city contractor or employees, shall properly provide for such removal by using two receptacles for the separation of such refuse; one for ‘ashes and non-combustible rubbish material,’ and one for the ‘garbage,’ and each such

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John J. Byrne—Cross.

receptacle shall be used only for the accumulations of the class of refuse for which it was primarily intended.

“The filled receptacles shall be of such weight as can be easily handled by one man. The receptacle in which the ‘garbage’ accumulations are deposited shall be a metallic water-tight vessel and shall have a separate cover, close fitting when in place, or said garbage may be drained and wrapped in paper (so that the contents shall not leak or slip through) and tied securely. The receptacle in which the ‘ashes and non-combustible rubbish’ accumulations are deposited shall be a metallic or wooden vessel, so constructed as to prevent spilling or leakage of its contents.

“Section 3. Paper and dry rubbish material must be secured in packages to permit of easy handling, and to prevent the contents of the same from being scattered. The two classes of receptacles, namely, one for garbage and one for ashes and non-combustible rubbish material, and waste paper and dry combustible rubbish material, secured in packages as aforesaid, shall be placed by the owners, tenant or tenants, housekeeper and other persons occupying any dwelling house or other building or portion thereof, in the City of Orange, at a point easily accessible between the sidewalk and the curb.

John J. Byrne—Cross.

10 “Section 4. Each and every owner, tenant, housekeeper or other person shall hereafter deposit, or cause to be deposited, the said receptacles or vessels for garbage and for ashes and non-combustible rubbish material, and the packages properly secured, containing waste paper and dry combustible rubbish material, to be deposited and placed as provided in Section 2 of this ordinance, ready for collection by the contractor for the removal of garbage and refuse, or his collectors, at least one-half hour before the time specified by such contractor in the notice served by him upon the householder as the time for the collection of the garbage, ashes and non-combustible rubbish material, and shall cause said receptacles to be removed from the sidewalk within two hours after the collection is made by the contractor or his collectors.

20 “Section 5. The receptacles shall be kept in a clean condition at all times.

30 “Section 6. No person, firm or corporation by themselves or their agents or employees shall dump ashes or rubbish within the limits of this city, unless authorized to do so by a permit signed by the Director of Public Affairs, to be granted by him in his discretion.

40 “Section 7. Every owner, tenant, or other person violating or failing to comply with any of the provisions of this ordi-

John J. Byrne—Cross.

nance shall forfeit and pay for the first offense the sum of Five Dollars, and for every subsequent like violation of any provision of this ordinance shall forfeit and pay the sum of Ten Dollars.

“Section 8. The Chief of Police shall strictly enforce this ordinance, and any scavenger collector or person or corporation contracting with this city for the removal of ashes or garbage may make complaint of the violation of any provision of this ordinance to the proper authorities. 10

“DANIEL F. MINAHAN,
“WILLIAM F. KEARNEY, 20
“HARRY D. WETHLING.
“Board of Commissioners.

“Passed April 27th, 1915.

“JOHN J. BYRNE,
“City Clerk.”

Mr. Seymour: I also offer in evidence the agreement of April 27, 1915, which I referred to. 30

“This Agreement made this twenty-seventh day of April, One Thousand Nine Hundred and Fifteen, between James D. Moriarty, of the City of Orange, Essex County, New Jersey, hereinafter called the Contractor, and Royal Indemnity Company of the City of New York, in the State of New York, hereinafter called the Surety, 40

John J. Byrne—Cross.

and the City of Orange, a municipal corporation in the County of Essex, State of New Jersey, hereinafter called the City.

10 “Witnesseth, whereas the said Contractor and the said City did enter into an agreement on the tenth day of August, One Thousand Nine Hundred and Fourteen, for the collection and removal of ashes, garbage, and house refuse of the inhabitants of the City of Orange, for a term of four years, and whereas the said Contractor has given a bond to the said City, signed by the Surety, which is attached to the said contract and is filed
20 with the City Clerk of the City of Orange, conditioned for the faithful performance by the said Contractor of his said contract with the said City;

30 “And whereas, the said Contractor has requested the Board of Commissioners of the City of Orange to adopt an ordinance requiring the householders and tenants of the said City of Orange to place their ashes, garbage and house refuse in separate receptacles for collection and removal by the said Contractor, and said Contractor alleges that the said separation shall be for his benefit as well as for that of the said City;

40 “And whereas, said Contractor has announced his intention of applying to the Board of Commissioners of the City of Orange or to the Director of Public Af-

John J. Byrne—Cross.

fairs for a permit to dump ashes within the limits of the said City of Orange, the said Contract requiring the ashes to be dumped outside the limits of the City of Orange.

“Now, therefore, said parties hereto do agree as follows: 10

“First: That the adoption of the said ordinance by the said City or the granting of a permit by the said Board of Commissioners or the Director of Public Affairs to the said Contractor to dump ashes within the limits of the City of Orange shall in no wise affect the said contract between the said Contractor and the said City, and shall in no wise affect the bond given by the said Contractor and the said Surety to secure the faithful performance of the said contract, nor shall the rights of the said City to compel the performance of the said contract, or bring any suit or action upon the said bond be in any way whatsoever changed, altered or defeated. 20 30

“In witness whereof, the said parties have hereunto caused these presents to be signed in their own proper persons or by their proper authorities and their seals hereto affixed, the day and year first above written.

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John J. Byrne—Cross.

“Sealed and delivered in the presence of

“JAMES D. MORIARTY,
“ROYAL INDEMNITY COMPANY,

“By Wilbert H. Campbell,
“Attorney-in-fact.

10

“GEO. W. PERRY,
“As to James D. Moriarty.

“Attest:

“B. M. THOMPSON,
“Attorney-in-fact.

“(Corporate Seal.)

City of Orange,

20

Daniel F. Minahan,
Mayor.

Attest:—

John J. Byrne,
City Clerk.”

(Financial Statement and Affidavit of
Justification by Royal Indemnity Compa-
ny attached.)

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(Agreement endorsed “Presented Apr.
27th, 1915.

John J. Byrne,

City Clerk.

Rec'd and ordered filed.”)

Q. At the meeting at which bids under the reso-
lution adopted May 16, for the re-letting of the con-
tract, were to be received, were any bids received?

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A. No, sir.

John J. Byrne & Cross.

Q. Were any further proceedings taken after notice of the granting of the writ of certiorari in this case was brought to the attention of the Board?

A. No, sir.

Q. Who mailed the notice to Moriarty of the copy of the resolution terminating this contract with the City?

A. I mailed it personally.

Q. By registered mail?

A. By registered mail.

Q. And did you get a receipt card?

A. A return receipt card.

Q. Is that there?

A. Yes.

Q. Did the Mayor bring to the attention of the Board the service that the contractor was rendering?

Mr. Bradner: The prosecutor admits that he received the notice which the Clerk sent him.

Q. On other occasions besides these two occasions when specific complaints were filed? You stated in answer to one of Mr. Bradner's questions that no specific complaints were made to you or filed with you, or made to the Board, other than the two specific complaints for which penalties were imposed. Wasn't there a general discussion at these meetings at which penalties were imposed and at other subsequent meetings, as to the service of the contractor?

Mr. Bradner: I object.

Q. Does his report appear in the minutes?

A. Yes, sir.

Q. This discussion was by the commissioners? Mr. Bradner: I object to any discussion not in the presence of Moriarty or any evidence of complaints brought to his attention.

John J. Byrne—Cross.

A. Yes. These complaints were made in Mr. Moriarty's presence.

Q. Was Moriarty present when these discussions were had?

A. Yes, sir; he was present at one, to my knowledge, and his attorney was present on at least two
10 other occasions.

Mr. Bradner: Whom do you mean by his attorney?

Witness: Mr. Perry represented him on the first trial, and Mr. Anderson appeared in his behalf at two or three subsequent meetings.

Q. Did the Mayor bring to the attention of the
20 Board the service that the contractor was rendering to the City?

A. Yes, sir.

Q. On other occasions besides these two occasions when specific complaints were filed?

A. Yes, sir.

Q. And what was his report, if you remember; it wasn't in writing, was it?

A. His report was not in writing.

30 Mr. Bradner: I object to the Mayor's verbal report to the Board, not made in the presence of the contractor.

Q. Does his report appear in the minutes?

A. His full report does not appear in the minutes, but there is reference made, at the meeting of May 2nd, the date of the second fine, at which the Mayor stated the reports were coming in daily and
40 that he did not intend in the future to stand for

John J. Byrne—Cross.

any further violations of the contract by Mr. Moriarty.

Q. Do you recall the Mayor stating that if the complaints didn't cease he would take steps to terminate the contract?

A. Yes, sir.

Q. At the meeting of May 2nd, which was the meeting at which the penalty was imposed? 10

A. Yes, May 2nd.

Q. Were you present at any meeting in the Mayor's office of the commissioners with Mr. Moriarty, subsequent to April 15, 1916, at which his service to the City was discussed?

A. No, sir.

Q. Were you present at any meeting prior to April 15, 1916, at which his service was discussed? 20

A. No, sir.

Q. Was your office called up on the telephone as to the scavenger service?

A. On several occasions.

Q. Did you answer the phone?

A. I answered the phone myself on several occasions, but I made no record of the name, simply referring the party to the Mayor.

Q. What was the nature of the complaint? 30

Mr. Bradner: I object to any complaints made by telephone not called to the attention of the prosecutor.

Q. What was the nature of the complaints?

A. That the garbage had not been collected for several days; one party on Central avenue stating that his garbage had not been collected for three or four days.

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John D. Byrne - Re-Exct.

Q. Did you bring the complaints which you received over the telephone to the attention of any of the commissioners? A. Yes, I recall the Mayor often discussed with them that I was receiving complaints regularly over the phone.

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Q. With all of the commissioners? A. Yes, with all of those I came in contact with during the year I received the complaints at that meeting.

Q. These two fines that were imposed on Mr. Morin were paid by him, were they? A. Yes, they were. They were deducted from his salary. His salary was \$1,000 a month for a regular sum less the fine on these two occasions?

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A. Yes. Q. Did he accept those warrants? A. Yes, he did. April 15, 1916, at which his service was discharged.

A. Yes. Q. Was your office called up on the telephone Re-direct by Mr. Bradner? A. Yes, sir.

Q. Did you receive any complaints in 1914? A. As to what?

A. As to the collection of garbage? A. I answer.

Q. As to the collection of garbage? A. I answer.

A. No, sir. Q. Did you receive any in 1915?

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A. No, sir. Q. What was the nature of the complaints?

Q. You commenced to receive them in the winter of 1916, did you not? A. I object to my objecting to the attention of the prosecutor.

A. I think the first complaints that I received—well, they started from about the middle of January.

Q. What was the nature of the complaints?

A. I should judge that they were complaints of the Board of Health.

Q. Did you know what they were? A. Yes, I did.

Q. Upon any complaints that you reported?

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A. No, they were specific complaints that were reported.

John J. Byrne—Re-direct.

Q. The payments were made to Mr. Moriarty monthly, were they not?

A. Yes, sir.

Q. Was he paid for the month of April less the one fine imposed in that month?

A. Yes, sir.

Q. Has he been paid for the month of May? 10

A. The warrant for the month of May has been made out.

Q. Less the fine of \$50?

A. The warrant for May was made out less the fine for \$50, and he wasn't paid for the entire month of May, only, as I recall it, for the first twelve days—eleven days, at the rate of his salary per day less the \$50.

Q. Is there any record of the issuing of the warrant in the minutes? 20

A. No, sir.

Q. Did the Board authorize the warrant to be issued for eleven days, less the fine of \$50?

A. The Mayor is director of that department and would give such instructions.

Q. Has the payment been made to Mr. Moriarty?

A. The warrant has been drawn out, but I don't know if Mr. Moriarty has cashed the warrant yet or not. 30

James D. Moriarty—Direct.

JAMES D. MORIARTY, Prosecutor, sworn.

Direct examination by Mr. Bradner:

Q. You have the contract for the collection of garbage in the City of Orange?

A. I have—or had.

10 Q. Were you present at a meeting of the Board of Commissioners on May 2nd, 1916?

A. I was not.

Q. Were you present at a meeting on May 29th?

A. No, I was not at that meeting.

Q. Did you have a conference with the Mayor on May 8th?

A. Yes, sir; on May 8th.

Q. Was there anyone with you?

A. My superintendent.

20 Q. What was his name?

A. Ralph Del Deo.

Q. Who else where present?

A. The four of the commissioners were present, Commissioners Kearney, Wethling, Minahan and Murray.

Q. Did you make any agreement at that conference with the Mayor?

A. I did.

30 Q. What was it?

A. I agreed to have the city cleaned up, although I previously notified him that I was not required to take certain stuff under the provisions of my contract.

Q. Tell us what the agreement was?

A. The agreement was that I should have the city cleaned by Wednesday morning, the tenth day of May.

40

James D. Moriarty—Cross.

Cross-examination by Mr. Seymour:

Q. Who was present when that agreement was made, Mr. Moriarty?

A. Mr. Del Deo and Mr. Murray, and Mr. Wethling was present when it was being discussed, but left before the adjournment, and Mr. Kearney.

10

Q. And the Mayor and yourself?

A. Yes.

Q. As a matter of fact, did you have the city cleaned up on the tenth?

A. We did.

Q. All garbage removed from the gutters and all ashes removed from the gutters?

A. Gutters?

Q. Curbstones?

20

A. Yes; I had eleven teams at work.

Q. Do you know that of your own knowledge?

A. No, I do not; my superintendent.

Q. Mr. Del Deo?

A. Mr. Del Deo.

Q. You know he reported to you that by the tenth he had the city cleaned up?

A. Yes.

Q. Do you know of your own knowledge that he had eleven teams working?

30

A. I know that I got a bill for eleven hired teams.

Q. Did you have eleven teams working on May 9th or May 10th or May 8th?

A. I would have to refer to the superintendent as to the exact date.

Q. You don't know of your own knowledge, then?

40

James D. Moriarty—Cross.

A. I saw them, but I am not sure of the date; I saw them.

Q. Were you in town on May 8, 9 and 10?

A. I was.

Q. Did you make an inspection of the town?

A. No.

10 Q. So you don't know of your own knowledge whether it was cleaned up by the tenth?

A. No; I depend on my superintendent for that.

Q. At the conference you referred to at which this agreement was made there were other things discussed besides your proposition to clean up by the tenth, wasn't there?

20 A. Yes; there was a discussion as to my having been obliged to take material that I was not required to take according to the contract, and also the matter of the enforcement of the ordinance discussed, or the lack of it, on the part of the city authorities.

Q. Wasn't there quite a hot discussion between you and the commissioners, in which the commissioners, all of them present, charged you with not having performed your contract?

30 A. No, sir.

Q. Wasn't there anything said about that?

A. There was something said by two of the commissioners.

Q. Who were they?

A. The Mayor and Commissioner Kearney; Commissioner Wethling had nothing to say; neither did Commissioner Murray join in the discussion.

40 Q. At this discussion they called your attention

James D. Moriarty—Cross.

to the sections of the city which hadn't been cleaned for several days, didn't they?

A. Yes; but the Mayor had in his files a letter in which I notified him that I would not take that stuff, as I was not obliged to take it.

Q. Then you admit omitting to take stuff, do you? 10

A. I do.

Q. Your reason being that—?

A. That it was not in accordance with the contract.

Q. It wasn't separated in accordance with the contract?

A. Yes.

Q. And you omitted to take stuff and ashes and garbage, etc., between April 15th and May 8th, at which this discussion took place, on several days, didn't you, for that reason? 20

A. Yes, I did. I declined to take it. I would rather say I declined to take it, or refused to take it.

Q. You instructed your drivers not to take it?

A. I instructed the superintendent to pass it.

Q. And the result was that the city in various sections, and almost in the entire city, had ashes and garbage on the curbstones which were not taken? 30

A. Mixed ashes and garbage and other refuse which did not come within the purview of my contract; I left it on the street.

Q. Did you make any complaints to the police station or the police judge about the neglect of the householders to separate according to the ordinance? 40

James D. Moriarty—Cross.

A. Frequently.

Q. At this period between April 15 and May 8?

A. No, I did not; I had previously done that, and I notified the Mayor that I didn't have to take it and wouldn't take it, by letter.

10 Q. The complaints which you previously made were attended to?

A. No.

Q. They were not?

A. No; on one occasion the Mayor—or rather the judge, sent for two of the violators who defied us, and for a few days, perhaps ten days after that, we had an improvement in the separation, but it went back.

20 Q. How many complaints did you make altogether?

A. Frequently; every time I had a discussion with the Mayor I referred to the lack of the compliance with the ordinance.

Q. How many complaints did you make to the police?

A. Only one.

30 Q. That was fixed up by the judge sending for the offenders and there was an improvement for ten days after?

A. Yes.

Q. On account of the publicity over the matter?

A. Yes. I also notified Commissioner Wethling previously, and he said a few arrests would remedy things.

40 Q. Mr. Moriarty, between April 15 and May 8th and May 9th, on the average per day how many wagons and teams did you have?

James D. Moriarty—Cross.

A. I will have to have our superintendent answer that; I don't know.

Q. How many men did you have employed?

A. He will have to answer that.

Q. Isn't it a fact that ashes and garbage were dumped indiscriminately in one wagon?

A. Yes.

Q. As your drivers went through the city?

10

A. Yes.

Q. Whether it was separated or not?

A. Yes.

Q. At this period?

A. Yes.

Q. Right up to May 9th?

A. Yes. May I qualify that?

Mr. Bradner: Yes.

20

A. (Continuing.) For the reason that the enforcement of the ordinance didn't give sufficient separated stuff to warrant the sending of a single wagon around the section.

Q. If you sent separate wagons for ashes, garbage and paper, it would increase the number of your teams, wagons and men, wouldn't it, that you had to employ?

30

A. No. I did that when the ordinance was first passed and I could do it with less wagons and teams and men for the reason that I could dispose of the paper right in town, by baling it and selling it; the ashes I was dumping, when I got it clear, in low grounds, at the solicitation of property owners, and with the permission of the Mayor, so that all I had to take at a distance was the garbage, the pure garbage, if I got it.

40

James D. Moriarty—Cross.

Q. You recall that the Mayor and the health officer of this city very frequently between, say, January first and May 9th, communicated with your office or with yourself as to complaints of omission to collect ashes and garbage which were made to them?

10 A. Yes, and I as frequently told him that I was not obliged to take it.

Q. Didn't you as frequently tell him that the matter was not attended to?

A. So far as separated stuff was concerned, yes.

Q. That question came up after the second complaint was made for the Lincoln Place violation?

A. No, that question came up before any complaints were made, as a matter of fact.

20 Q. Up to the time the Lincoln Place violation was complained about, you had taken the ashes and garbage without any separation and without any question about separation, hadn't you?

A. I had taken it; yes, sir.

Q. In fact, up to the time that you served that notice on the Mayor you had done it?

30 A. Yes, in consideration of the fact that I had permission from the Mayor to dump within the city limits clean ashes if I could get them.

Q. At that time you dumped all the stuff in one wagon, didn't you?

A. Yes.

Q. Where could you get clean ashes from?

A. From the City Hall, banks, schools, etc. I didn't dump the garbage in those wagons.

Q. It is a fact that you dumped garbage on this ash dump in the Orange Valley?

40 A. I did not dump any garbage, as understood

James D. Moriarty—Cross.

by the contract, within the city limits at any time.

Q. Weren't there complaints brought to your attention that ashes and garbage were dumped on this dump within the city limits?

A. Yes, because some of the stuff was mixed.

Q. At this conference of May 8th, where you said there was an agreement given you until May 10th to clean up the city, that was an informal conference which was held in the Mayor's office? 10

A. That is right.

Q. You had been invited to it by letter from the Mayor?

A. No, by suggestion from Mr. Anderson.

Q. Don't you recall that some of the commissioners were opposed to giving you any further time, and to taking the contract away from you at once, and there was no agreement entered into between you, but you stated as you went out of the door that you would have the city cleaned up by the tenth? 20

A. No.

Q. Isn't that all that took place?

A. No. Answering that, when you say that some of the commissioners wanted to take it away, yes; one of them wanted to take it forthwith, and the other, when he found that there was a disposition on the part of the Mayor to give me until Wednesday, left the room. 30

Q. He was also in favor of taking it away forthwith?

A. I presume he was, by his attitude; he didn't say so.

Q. You mean to say that you made an agreement with the Mayor that if you had the city 40

James D. Moriarty—Cross.

cleaned up by the tenth, no further action would be taken against you?

A. I do.

10 Q. Since December, 1915, up to May 8, 1916, wouldn't you say that on at least twenty occasions the Mayor called your attention, either personally or over the telephone to your office, to complaints that he had received about the failure to collect ashes and garbage?

A. Yes.

Q. Do you remember Commissioner Kearney saying to you at this conference on May 8th, that there was clean ashes and garbage separated from ashes at All Saints' Chapel in the Valley which hadn't been collected there for seven or eight days?

20 A. I remember that. I also remember his saying that he had some in his cellar that hadn't been taken—no, that was Commissioner Wethling.

Q. You had a private contract with Commissioner Wethling, for which he paid you extra, for going into his cellar?

A. Yes.

Q. You have a number of contracts throughout the city?

30 A. Yes.

Q. So Commissioner Wethling wasn't any exception because he was a commissioner, was he?

A. Oh, no.

Q. Do you remember Commissioner Wethling saying as he went out of the door, that if there was to be any discussion of further time, he wouldn't stay in the meeting, that he was in favor of taking the contract away at once?

40

James D. Moriarty—Re-direct.

A. No; that was said by Commissioner Kearney.

Q. Are you the owner of any real estate in this city in your own name?

A. Yes.

Q. Where is it?

Mr. Bradner: I object.

10

A. One piece Mt. Vernon avenue, and one piece 5 Alden Place, both in my own name.

Mr. Bradner: I would like to have the Commissioner state on the record that I object to all the evidence relating to the condition of the streets, the non-collection or non-separation of garbage, except the specific complaints that were made and acted upon by the Board of Commissioners, for the reason that the resolution must have been based upon the specific complaints that were before the Board, but I will direct Mr. Moriarty's attention to some of those conditions that have been brought out on cross-examination.

20

Re-direct by Mr. Bradner:

Q. Mr. Moriarty, prior to the adoption of the ordinance of April 27th, 1915, did you make any separation of garbage and paper and other matter?

30

A. No.

Q. You collected everything together?

A. Everything.

Q. And after that ordinance was adopted did you make separations?

A. I did.

Q. Did you do it yourself or did the householders do it?

40

James D. Moriarty—Re-direct.

A. Householders did it in some cases.

Q. Were you given any directions as to what course to pursue if the material was not separated by the householder?

A. No.

10 Q. What did you do; just use your own judgment?

A. I used my own judgment.

Q. I understood you to say you refused to take any material when it was not separated?

A. I did for a time.

Q. Did you communicate with the Mayor to that effect?

A. I did.

Q. In what way?

20 A. Personally and in interviews in this office after the ordinance was passed, and by complaint—an informal complaint with the police judge.

Q. Did you write any other letter to the Board of Commissioners of the City of Orange than this one of March 28, which is already in evidence?

A. With regard to separation?

30 Q. Yes. Do you know of any other communication in writing that you sent to the Board besides the one I show you?

A. Yes, I wrote a letter to the Mayor in April.

Mr. Bradner: Have you the letter, Mr. Seymour?

Mr. Seymour: Yes. (Letter produced.)

Q. Is that the letter you refer to, that I show you?

40 A. Yes.

James D. Moriarty—Re-direct.

Mr. Bradner: I offer in evidence the letter dated April 27, 1916, which reads as follows:

“Honorable Daniel F. Minahan, Orange,
N. J.:

“Dear Sir:—On behalf of my bonding company and myself, you are hereby notified that beginning with Friday morning, April 28th, no refuse material will be collected or removed unless such material is separated and classified in accordance with the provisions of the contract between the City of Orange and myself and with the ordinances relating to the same. 10

“I have instructed my foreman and drivers to pass all refuse found on the curb which is not separated and classified in accordance with the said requirements. 20

“Yours respectfully,

“JAMES D. MORIARTY.”

Q. Did you get a reply to that letter?

A. I did not.

Q. Are you familiar with Springdale Place? 30

A. Yes.

Q. Have you at my request made any special investigation of the records?

A. I have; I know of its location; I know the location of it; it runs from River street, in the northeastern section of the town—from River street to the city line, which is near North Park street.

Q. How many houses are on that place? 40

Raffaele Del Deo—Direct.

A. Eight on one side and seven on the other, a total of fifteen.

Q. Are you also familiar with Lincoln place?

A. I am familiar with its location; it runs from Lincoln avenue to Scotland street.

10 Q. How many houses are there on that place?

A. I find from the records there are twenty-one houses on both sides of the street; ten on one and eleven on the other, total twenty-one.

RAFFAELE DEL DEO, sworn for prosecutor.

20 Direct examination by Mr. Bradner:

Q. You are the superintendent for Mr. Moriarty?

A. Yes, sir.

Q. How long have you been superintendent?

A. Since the first of May, 1916.

Q. Were you present in the Mayor's office on May 8th, when there was some talk between Mr. Moriarty and the Mayor?

30 A. Yes, sir.

Q. What did you hear?

A. I heard the Mayor give him time until Wednesday, May 10, to clean up the city.

Q. Who said that?

A. The Mayor himself.

Cross-examination by Mr. Seymour:

40 Q. What did the Mayor say; what were his words?

Raffaele Del Deo—Cross.

A. The Mayor say, "You not clean the city yet?" I say, "We clean for Wednesday morning." He say, "All right."

Q. That was all you heard?

A. Yes, sir.

Q. Wasn't there a lot of talk about the dirty condition of the city? 10

A. No, sir; there was talk between one commissioner, Mr. Kearney, and Mr. Moriarty.

Q. You were here all the time?

A. Yes; I was the last one left the door.

Q. Didn't you hear talk about the promise of Mr. Moriarty to clean up the city a week before?

A. Not a week before; on Saturday, May 6th.

Q. The Saturday before? 20

A. On Saturday, May 6th—the rain come—

Q. You heard that talk, he was to clean up by Saturday, May 6th, and didn't do it?

A. No, sir.

Q. It wasn't?

A. I meet the Mayor Sunday morning on Valley street.

Q. You are talking about what you heard in the Mayor's office?

A. Yes. 30

Q. He had told Mr. Moriarty that he did not clean up by May 6th as he promised, didn't he?

A. Yes.

Q. And then it was that Mr. Moriarty said, "I will clean it up by Wednesday morning?"

A. Not Mr. Moriarty.

Q. Who said it?

A. Me.

Q. The Mayor said "All right" to you? 40

Raffaele Del Deo—Cross.

A. Yes, and to Mr. Moriarty, too, because Mr. Moriarty was sitting here, and I sat on that chair (indicating).

Q. Did you clean up by Wednesday morning?

A. Yes, sir.

Q. How many teams did you have on there
10 Monday?

A. Nine on Monday, May 8th.

Q. How many men?

A. Including the driver, eleven.

Q. Including you?

A. No; beside me.

Q. How many boys?

A. No boys.

Q. How many on Tuesday?

20 A. Tuesday I got eleven teams.

Q. How many men?

A. I got thirteen men.

Q. And on the tenth?

A. On the tenth I got eleven teams again and fifteen men.

Q. Between the first and the eighth how many teams did you have each day?

30 A. Between the first and eighth, some days I got five, some days I got six, some days I got seven.

Q. Do you remember stating to the Commissioners on Monday, May 8th, that you could clean up this city and take care of the garbage and ashes and refuse with three teams?

A. Yes, sir; in the summer time; not in the winter time.

Q. How many teams in the winter?

40 A. In the winter, this section here, you want

Raffaele Del Deo—Cross.

five teams; on the other section you want seven teams.

Q. It is harder in the winter than it is in the summer?

A. Yes, because the material is too light in the winter and too heavy in the summer.

Q. Beginning with May first up to May eighth 10
in any year, and this year particularly, could it be done with three teams?

A. No, sir.

Q. That is not in the winter, is it?

A. No, sir; you want to figure from the middle of May until the middle of October.

Q. Then from the middle of May to the middle of October it can be done with three teams?

A. You can clean this section with three teams. 20

Q. This city?

A. Not the city, I am talking about the section.

Q. Three teams a day will clean the city, won't it?

A. No, sir, we divide the city in two sections; this is one side, and the other side is another section.

Q. With the city divided into two sections, you only had to use three teams a day? 30

A. This section three teams and the other seven.

Q. You only go in one section in each day?

A. One day here and the other days on the other side.

Q. Monday, Wednesday and Friday you go in one section?

A. Yes.

Raffaele Del Deo—Cross.

Q. Tuesday, Thursday and Saturday in the other section?

A. Yes.

Q. So all you have is three teams?

A. On Monday three or four teams; Tuesday I got more.

10 Q. And Wednesday how many do you have?

A. Sometimes three, sometimes four, sometimes five.

Q. Then it cannot be done with three teams a day?

A. There are three scavengers.

Q. I am not talking about that now. You told the Mayor on May 8th and the Commissioners on May 8th, that you could do the work with three
20 teams in the summer time in one section, not both; now you say it takes more than three teams a day?

A. In one section.

Q. You only go in one section each day?

A. The other section is too far; you need more teams.

Q. In which section do you need more teams?

A. Section No. 2.

Q. How many teams do you need in Section 2?

30 A. Six.

Q. You didn't say that to the Commissioners?

A. No.

Q. You mean to tell us that between May first and May eighth, while you were superintendent for the contractor, you had five, six and seven teams working?

A. Yes, sir.

40 Q. And you couldn't clean up the city by Saturday?

Raffaele Del Deo—Cross.

- A. No, sir.
- Q. It was May 7th and you couldn't clean it up?
- A. May 6th.
- Q. Between May first and May eighth?
- A. Yes.
- Q. Five, six and seven teams working and you couldn't clean up all that week working? 10
- A. Yes.
- Q. Why?
- A. Too big an accumulation.
- Q. Did you go around to the various parts of the city and look at the accumulation?
- A. Yes, sir, that was too big an accumulation.
- Q. You put everything you picked up in one wagon?
- A. No. 20
- Q. Did you separate it?
- A. I got instruction when I come here, Mr. Moriarty take me all around and show me the condition of the city and tell me, "Don't take garbage and ashes mixed together." Then the drivers have instructions just the same as I do, and the drivers and men put the clean garbage in one wagon and rubbish and ashes in another wagon, and paper in another wagon. 30
- Q. That is between the first and eighth?
- A. Yes.
- Q. After that you took everything?
- A. Yes.
- Q. Mr. Moriarty instructed you to take everything on May 8th?
- A. No; we visited the Mayor and say "We clean up the city and we will take everything until the separation is enforced." 4

Raffaele Del Deo—Re-direct.

- Q. That was on May 8th?
 A. Yes.
- Q. How many of those teams which you say you had between May first and May tenth were Mr. Moriarty's teams, his own horses?
 A. Seventeen, and three hired.
- 10 Re-direct by Mr. Bradner:
 Q. How long did you say you had been working for Mr. Moriarty?
 A. From May first, 1916.
 Q. Have you been in this business before?
 A. Yes, sir.
 Q. Where?
 A. Philadelphia, Boston, New York and Brooklyn.
- 20 Q. What was this accumulation that you speak of?
 A. The accumulation, I found some yard sweepings, dirt, stone, grass, pipe, piece of old furniture, all kind of stuff.
 Q. That was clean-up week?
 A. I talked to many people and they thought it was clean-up week, and threw everything out.
 Q. Do you know the two sections covered by
- 30 Mr. Moriarty's contract?
 A. Yes, sir.
 Q. You have been over them pretty thoroughly, haven't you?
 A. Yes, sir.
 Q. In your judgment, how many wagons were necessary to remove the garbage and ashes and refuse from these two sections?
- 40 A. The City of Orange is divided in two sections for collection; on Monday, Wednesday and

Raffaele Del Deo—Re-cross.

Friday we got a section from Main street down; on Tuesday, Thursday and Saturday, from Main street to Clark place, that is south; this is Section No. 2. In Section No. 1, in the summer time, I can do with three teams, except on Monday; Monday I want four teams, because there is Sunday in between. In the other section in the summer time I want six teams, because the section is so far away. 10

Q. In the winter time?

A. In the winter time in Section No. 1, six teams would be enough, and Section No. 2 I want ten teams.

Q. That would depend on the conditions of the weather?

A. Yes. 20

Q. Does a very rainy season make any difference?

A. No, sir.

Re-cross by Mr. Seymour:

Q. Do you remember Mr. Moriarty saying on May 8th that the reason the city wasn't cleaned up the previous week was because he couldn't hire any teams? 30

A. No, sir.

Q. Do you remember saying that here?

A. Maybe he say that; I don't remember.

Q. Do you know whether he tried to hire any teams that week and couldn't?

A. No, sir.

Q. You don't know that?

A. No, sir, I don't remember that. 40

Ruffaele Del Deo—Re-cross.

Q. What section were you required to collect in, under the contract, on Mondays?

A. From Main street to East Park street.

Q. Main street north?

10 A. Main street north, from the end of West Orange to Paterson street, to East Orange, to the City limits.

Q. That is Section No. 1?

A. Yes, and we got a part here, Cone street, and another street between—I forget the name now, the first street after the railroad, and all the streets between the Lackawanna Railroad and South Main street.

Q. What do you say about those streets?

A. That is section one.

20 Q. That is Monday, Wednesday and Friday?

A. Yes.

Q. On Tuesday, Thursday and Saturday you collect the rest of the city?

A. Yes.

Q. Were you required to go on any streets every day?

A. Yes, sir.

Q. Do you remember what streets?

30 A. Pretty near.

Q. What are they?

A. We start on one part and finish on the end of the section.

Q. On days that you would do work in section one you didn't do any work in section two, did you?

A. Yes, we do work on Monday in section one and start on Tuesday in section two.

40 Q. But on Monday you didn't do any work in

Raffaele Del Deo—Re-cross.

section two?

A. No.

Q. And on Tuesday you didn't do any work in section one?

A. No.

Q. And you were not compelled to go on certain streets every day; you would go on certain streets every other day? 10

A. Yes.

Q. There wasn't any streets that you had to go on every day?

A. No, sir.

Q. And you didn't go on any every day?

A. Only on Main street to Cone street.

Q. Main street and Cone street? 20

A. Yes.

Q. Those are the only two streets you went on every day?

A. Run to the station and all the streets from the Lackawanna Railroad to Main Street Park, to the Common.

Q. You went on Main street and Cone street and down South Main street, near where the park is, every day? 30

A. Yes, sir.

Q. Those are the only streets you went on every day?

A. Yes, sir.

James D. Moriarty—Recalled—Direct.

JAMES D. MORIARTY recalled for further

Direct examination by Mr. Bradner:

Q. Mr. Moriarty, since you received notice that your contract had been terminated, have you continued to collect garbage, ashes, &c?

10 A. I have.

Q. Every day?

A. Every day.

Q. Have you been interfered with in any way?

A. No.

Q. Do you know whether anybody else is going over your route and making collections?

A. I do.

Q. Who?

20 A. Maloney Contracting Co.—that is the name on the wagons.

Q. How many teams have you on, working now daily?

A. We have five, six, as may be necessary; we put them on; they don't stay on all day because we complete the work some days by eleven o'clock. Some of it hasn't been done by the other party.

30 Q. Has there been any division of the work between you and the other party?

A. No arrangement whatever.

Cross-examination by Mr. Seymour:

Q. Do you know of your own knowledge that you have five or six wagons on daily since May 12th?

A. I do.

Q. Those are team wagons?

40 A. Team wagons, five and six as may be necessary, and also a paper wagon some days.

77
James D. Moriarity
John J. Byrne—Cross.

Q. Are you collecting garbage and ashes now without regard to separation?

A. Without regard to separation.

Q. And you have been since May eighth?

A. I have been since May eighth.

Q. Why do you do that, inasmuch as you have given notice to the Mayor that you won't do it?

10

A. Because there is no enforcement of the ordinance; I might say also that I agreed with the Mayor personally that I would take the stuff regardless of whether I was obliged to take it according to the provisions of my contract, on his promise that he would endeavor to get the Commissioners to enforce the ordinance regulating the separation.

Q. That was after you gave the notice?

A. After I gave my notice, yes, sir, at a conference, not the last conference.

20

Q. So that since that notice that you wouldn't take the ashes and garbage unless it was separated, you have, regardless of the notice, in consideration of the Mayor's promise—

A. I decided to waive the objection and take the stuff, including clean-up stuff.

Q. When did the Mayor make such a promise?

A. At a conference prior to the last one, I don't recall the date; the last one was on the eighth, the previous conference at which I agreed to clean up by Saturday night, for he said, "We won't discuss whether you are obliged to take it or not; if you clean up the city I will endeavor to get the other Commissioners to agree with me to enforce the ordinance. I cannot speak for Commissioner Calhoun, because Commissioner Calhoun did not vote for the ordinance originally."

30

40

James D. Moriarty—Recalled—Re-direct.

Q. You had a right under the ordinance to enforce it yourself, hadn't you?

10 A. No; as I understand it, it is up to the Chief of Police to enforce the ordinance; I may make a complaint, according to the ordinance, but the eighth section of the ordinance says the Chief of Police shall enforce this ordinance.

Q. The section giving you the right to put in a complaint was put in at your request?

A. No, it was not; any citizen may make a complaint.

Q. Do you remember after that ordinance was passed, that the city distributed cards to the householders calling attention to the ordinance?

20 A. I do, and also says that unless this—

Q. And notifying them that they must separate?

A. Yes; unless these conditions are complied with the city contractor is not required to take the refuse.

Mr. Bradner: Have you that card with you?

30 Witness: No; they issued two cards, one white and one green, which gave the substance of the ordinance.

Re-direct by Mr. Bradner:

Q. What do you mean by clean-up week?

40 A. I understand by clean-up week, usually a notice is given through the Board of Health or the proper department, for every householder to put out on a certain day such refuse as the contractor is not required to take in accordance with the provisions of the ordinance, and that stuff is usually

James D. Moriarty—Recalled—Re-direct.

taken by some agreement with the governing body and a contractor—usually the city contractor, but in some cities other parties' teams are hired; sometimes the city does it itself by hiring teams.

Q. This clean-up matter was outside of your contract?

A. Yes, sir; outside of my contract. 10

Re-cross by Mr. Seymour:

Q. The Mayor saw you about the collecting of refuse not included in the contract and endeavored to make an agreement with you to give you extra compensation for it?

A. No, sir.

Q. Didn't you say you didn't want it and wouldn't take it under any consideration? 20

A. I served notice through my attorney that if they wanted someone to take it they would have to hire some other teams.

Q. A notice was inserted by the Health Department in the paper to that effect?

A. Not that I know of. The Health Department, through its officers, told people to put out during the week of April 24th and the contractor would have to take it? 30

Q. How do you know that?

A. I refused to take the stuff and they took it in. I said, "You call up the Health Department." A week later, on Monday, April 24, that same stuff was out in front of this bakery; I went in again and they said, "We have been notified by the Health Department to put it out and the contractor will have to take it," and I walked around to Mr. Osborne's office and I told him that; he said that isn't the Health Department; I said one of your 40

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inspectors; he said that isn't the Health Department.

10 It is stipulated that the City has been paying since May 12, 1916, to the Maloney Contracting Company \$70 per day for every working day for collecting and removing ashes, garbage and refuse from the same two sections of the city covered by the Moriarty contract, by special arrangement between the Director of Public Affairs and the Maloney Contracting Company, pursuant to the resolution of May 9th.

PROSECUTOR RESTS.

20

DANIEL F. MINAHAN, sworn on behalf of respondents.

Direct examination by Mr. Seymour:

Q. You are Mayor of the city and also Director of Public Affairs?

A. I am.

30 Q. And as Director of Public Affairs have you the supervision and control of the scavenger service of the city?

A. I have.

Q. Under a resolution passed by the Board of Commissioners referring that service to your care?

A. Yes.

40 Q. Since the signing of the Moriarty contract with the city in August, 1914, have you received any complaints about the service?

Daniel F. Minahan—Direct.

A. Yes, I received complaints in 1914, 1915 and 1916; sometimes the service has been good for two or three months and then it has been wretched.

Q. What complaints did you receive in 1914?

A. In 1914, I think they are on record there from the Health Department, then I received a great many over the telephone; I didn't keep a record of those myself, because at the time I didn't think that it would be necessary. 10

Q. You also have supervision over the Health Department?

A. Yes.

Q. What was the nature of the complaints in 1914?

A. Garbage left, it wasn't collected, and the excuse was that he hadn't gotten into his business yet, didn't understand it yet. 20

Q. Whose excuse?

A. Mr. Moriarty.

Q. You called his attention to these complaints, did you?

A. Yes.

Q. There were no proceedings taken to impose the penalty for these complaints in 1914?

A. No. 30

Q. When did you begin to get complaints in 1915?

A. The latter part of 1915—the complaints are in an envelope there; a great many of them are telephone complaints; I think the first of December, some time around there, just after that large snowstorm. I said nothing about those complaints for four or five weeks; I let him go for four or five weeks, and the garbage was piled up to the first 40

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floor in some cases. I didn't threaten any action at the time, and simply told him to look out for it and catch up. I knew that the storm was interfering with him.

Q. Did you call his attention to all of the complaints that you received?

10 A. To most of them. For instance, if I had a complaint from a certain street, and later in the day I would get another complaint from that street, and I had already found out he would perhaps be through there this afternoon or to-morrow, then I wouldn't say anything more about that, but the Health Department had orders to notify him on every complaint that they had.

Q. For how long a period did these complaints
20 continue?

A. They continued up, I think, until January 7th. On January 7th, it got to such a stage just before that that I couldn't let it go any further, so I called the Commissioners together and I called Mr. Moriarty in.

Q. Where did you call them together?

A. Right here in this office, in my office, and I had—

30 Q. That was on January 7th?

A. Yes, and I had the Health officials here and they went over the complaints and after we had about half finished, Commissioner Calhoun said, "Well, there isn't any use of going any further," and Mr. Perry, Mr. Moriarty's lawyer, and Mr. Moriarty stepped outside, and when they came back they said, "We will admit we are guilty on this, we plead guilty, and we hope you will be lenient,"

40 or some words to that effect, and on that complaint

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we let them off that time, didn't fine them, and that was the end of it.

Q. Was there more than one complaint considered at that conference?

A. Yes; those were for complaints all over town.

Q. How many complaints were there, about?

A. I should say that I myself received a hundred easy; I didn't keep track of them. 10

Q. Did they come to any other department?

A. Yes; to the Health Department; they are here.

Q. How many do they amount to?

A. I should say there are probably a hundred there; I don't know, I am not certain; I didn't count them.

Q. At that conference was it stated, do you remember, in Mr. Moriarty's presence, by any other of the Commissioners that they had received complaints? 20

A. I wouldn't charge my mind with that, because everybody knew just what the conditions were around here, and I suppose they all did; we all had something to say about it.

Q. No proceedings were brought under those complaints, to impose a penalty? 30

A. No; the evidence was so preponderant there was nothing else to do but admit it, and they admitted it before we read half of them, so Commissioner Calhoun asked him if that was enough, and they went out and came back and said they were guilty. The five Commissioners were present at that meeting.

Q. After January 7th were there any more complaints received by you? 40

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A. Yes, they came right on; there was a couple of weeks it got a little better, after a week or two in January, towards the latter end, after he caught up, but it went right back again.

10 Q. Between the seventh and March 28th, which was the date of the filing of the first complaint for the imposition of the penalty, did you receive complaints?

A. Yes.

Q. How frequently?

A. Sometimes twenty or thirty a day, I guess easily; I got them at breakfast, dinner, supper and when I was going to bed, and every other time.

Q. Did you call the attention of the other Commissioners to these complaints?

20 A. Yes, and they called mine to it very forcibly at times, and said I was injuring the whole commission by being so lenient.

Q. Would you call the attention of the contractor to these complaints, also?

A. Yes.

Q. Either by letter or telephone?

A. By telephone; sometimes I would meet him, not very often.

30 Q. What would be his response to your notice?

A. One time he came in and told me he couldn't get extra teams; sometimes he would get teams easily, he was going to be cleaned up the next day or two or three days after and I would let it go and make no formal complaint on that, and finally I couldn't stand it any longer; there were streets that hadn't been cleaned up for a week or two, according to the citizens, and I brought a complaint
40 in on Springdale Place, although it was simply

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that I only wanted to fine him \$50; if I fined him on every street he wouldn't have anything coming, but I wanted to fine him \$50, and show him that I was in earnest, and that meant go and clean the place up. I think I said that at the commission meeting.

Q. That was at the meeting at which the penalty was imposed you stated that? 10

A. Yes.

Q. The date of the next complaint was April 15, 1916; between March 28th, 1916, the day you fined him \$50, and April 15, 1916, did you receive any complaints?

A. The city was in pretty fair condition up to that time, but as I told Mr. Moriarty, and as I made the statement the first time I fined him on March 28th, that after that I couldn't possibly avoid that, I would fine him on every offense. On this date, on April 15, that was on a Saturday, the whole valley section was not clean, and I knew that, and on Lincoln avenue—I saw it myself—and around on the side streets there, the valley section and other parts, more than the valley section; on the hill there, on Monday morning there was a petition came in signed by about eighteen—I think eighteen, the petition is there on file—and I said, "Well, all right, I will fine him again on that." 20 30

Q. Eighteen what?

A. Signed by eighteen residents of Lincoln Place.

Q. What was the petition; what did it say?

A. The petition said that the service was the worst they had had in a great many years.

Mr. Bradner: I think the petition ought to go in evidence. 40

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Mr. Seymour: I will put it in.

A. (Continuing) Commissioner Wethling and Commissioner Kearney—it was their section of the town and they thought they were not being used right on that end.

10 Mr. Seymour: The petition is dated April 16, 1916, and reads as follows:

“To the Mayor of Orange:

We, the residents of Lincoln place, Orange, protest against the service rendered by the City in the way of garbage collection. The service has been very poor all winter, but on this date, April 16, the garbage which should have been collected yesterday is still standing in the street, and presumably will stand there from Saturday morning until Tuesday morning, the next regular collection day.

20

Kindly give this your prompt attention, and greatly oblige.”

Signed by Jane Marcellus and twenty-three others.

30

Q. In response to that petition, Mayor, did you go to Lincoln place?

A. No; I saw the rest of the section; I merely picked that out as one street to fine him on, because I could have fined him on a dozen others in the valley. Commissioner Kearney and Commissioner Wethling came in the next morning with a strong kick. I saw Lincoln avenue myself.

40 Q. On what day?

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A. The Sunday preceding that petition. That petition came in on Monday morning; I saw Lincoln avenue on Sunday, the sixteenth; the petition I got on Monday morning, the seventeenth.

Q. Did you see the garbage and ashes on the curbstone on Lincoln avenue on April 16?

A. Yes. 10

Q. Between what points on Lincoln avenue?

A. Between Mechanic street and Central avenue.

Q. Any further up?

A. I didn't go any further up.

Q. Was the ashes separated from the garbage?

A. I didn't go into it, except that I saw boxes of ashes along there.

Q. Separate boxes from the garbage? 20

A. Yes.

Q. Did you also see garbage along there?

A. I don't remember that.

Q. Separate receptacles?

A. I don't remember that; I do remember that I saw separate ashes.

Q. On that day?

A. Yes.

Q. You made a complaint to the Board of Commissioners for failure of the contractor to collect on April 15th on Lincoln place? 30

A. Yes.

Q. And that was the complaint to which he pleaded guilty through his attorney on May 2nd?

A. Yes.

Q. When he was fined \$50?

A. Yes.

Q. Between April 15th and May 9th did you 40

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receive any complaints?

A. Yes; I received them all along, dozens of them.

Q. Did you receive complaints yourself in your office after April 15th and before May 9th about the service?

10 A. Yes, I received them in my office and in my home and on the street and at dinners and every place else.

Q. Did you also receive them through the Health Department?

A. Yes.

Q. Between those dates?

A. Yes.

20 Q. Were there any proceedings for the imposition of a penalty taken by reason of these complaints, a \$50 penalty?

A. No.

Q. I show you a communication dated May 7, 1916, signed by the German American Citizens' Club.

A. I received that by mail.

Q. Did you bring these complaints to the attention of the Commissioners?

30 A. Yes.

Q. Informally?

A. Yes.

Mr. Seymour: I offer this in evidence.

Mr. Bradner: I object to it as not relevant to the case and was not presented to the Board and acted upon in determining whether the work was done satisfactorily.

40

Daniel F. Minahan—Direct.

“Orange, N. J., May 7, 1916.

To the Honorable Mayor and Commissioners
of the City of Orange.

Dear Sirs:

This organization is not one given to complaining over City matters, but the outrageous manner in which the scavenger service is being conducted, it is impossible to stand by and not complain of the deplorable conditions existing under the present scavenger service. The unsightly condition of the streets littered with scavenger boxes, cans and barrels, is enough to create an epidemic, and we wish to register with you a strong protest against the scavenger in his manner of performing his contract. 10

We are aware the present time is an unfortunate one to complain to your honorable body, but the state of affairs is such that no decent individual can stand by and not complain.

Hoping that the conditions will be improved and the scavenger *made do* his duty, we remain

Yours very truly,

German American Citizens' Club,

William L. Otterbein,
Secy.”

Q. What are those communications you have in your hand?

A. They are communications I received and the carbon of my answer to them—some of them.

Q. In relation to what?

40

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A. In relation to garbage, kicking about the service.

Q. How many have you there?

A. Six written communications between April 15 and May 9th.

10 Q. Did you also receive communications over the phone at your office?

A. Yes.

Q. Between these dates, April 15 and May 9?

A. Yes.

Q. Complaining about the scavenger service?

A. Yes.

Q. How many, do you know?

A. I would say fifteen or twenty a day.

Q. Every day?

20 A. Yes, say fifteen a day.

Q. And did you call the attention of the Commissioners and tell the Commissioners about the numerous complaints you were receiving between April 15 and May 8?

A. Yes, and every one of the Commissioners—I am not certain, at least three of the Commissioners made complaints themselves.

Q. To you?

30 A. Yes.

Q. Who were they?

A. Commissioners Kearney, Wethling and Calhoun.

Q. What were their complaints?

Mr. Bradner: I object.

Q. They were not in writing?

40 A. No; Calhoun complained about his own stuff up there; he said he was burying it in his back yard, and Wethling complained about his stuff, and

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he also complained about the valley section, the whole town. We discussed it twenty times, what we would do.

Q. The Commissioners have offices in the City Hall building?

A. Yes.

Q. Are they present every day at their offices, some of them, nearly all of the day? 10

A. Commissioner Kearney and Commissioner Wethling are here nearly all the time; the other gentlemen you can get them by phone at their offices.

Q. How often did you discuss these complaints with the Commissioners?

A. We used to laugh about it at night—"How many more have you got?" or something like that; it was getting to be a joke the way it was going. 20

Q. Did you also receive complaints between those dates through the Health Department?

A. Yes; they are here in an envelope.

Q. I hand you some papers; what are they?

A. Complaints after April 15, 1916, received at the Health Department.

Q. Do your complaints extend any later than May 8th or May 9th—give the number of complaints between April 15 and May 9th. 30

A. There are forty-four here.

Q. Were there any other complaints that you received?

A. Yes, I received them; people got sick and tired complaining about it.

Q. How did you receive any other complaints besides those you have mentioned?

A. I received them by telephone, I received 40

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them on the street, I remember distinctly one man spoke to me at a dinner, and I received them at my house.

Q. Those you haven't made a note of?

A. No; one man came to my house to complain about it.

10 Q. Between these two dates, April 15 and May 9th, when you received these complaints would you communicate them specifically or generally to the contractor?

A. Yes; oftentimes I would call him up; sometimes I would have the Health Department call him up.

Q. What would the contractor say to you when you got him on the phone or when you saw him?

20 A. He promised me to take care of them right away, that is, sometimes; and sometimes we had an understanding, from May 2nd to the 6th—I received complaints, I guess the telephone was ringing all the time, and I had told him that I would not report the matter—that was the day after we fined him; Mr. Anderson was in on the second, and we fined him, and Mr. Moriarty came in on the morning of the third, to my office, and I told him
30 that I would not make a complaint to the Commissioners against him if he would clean up by the sixth, and when I told the Commissioners that they thought I was giving him a very long time to do it. Then I called Mr. Moriarty up on Thursday, that would be the fourth, and I said, "I don't think you can be cleaned up, you haven't got enough rigs out"; he said he couldn't hire any more, and he said, "But my promise goes, I will be cleaned up
40 by Saturday night." The fifth came and I came

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around the town and I said, "I am sure, Jim, you won't be cleaned up." He said, "My promise still holds good." On Saturday I made another round and it wasn't cleaned up. Sunday I went around with Commissioner Kearney and we found it in a deplorable condition all over.

Q. Where did you go on Sunday? 10

A. I will have to refer to my notes.

Q. Before you go into that, did you make any inspections of the city when you would get these complaints between April 15 and May 9?

A. No; I would see it sometimes, but I wouldn't make a personal inspection; sometimes I would send the health officers; we have police reports there.

Q. Did you have any inspections made? 20

A. Yes.

Q. How?

A. I spoke to the Chief of Police and he detailed officers, and the reports are here, and I had Mr. Osborne, the health officer, have the inspectors make reports, and they are here.

Q. The first personal inspection you made then was when?

A. I wouldn't say for certain, I think it was about Thursday, May 4th; I think it was about Thursday. 30

Q. Did you go around alone?

A. Yes.

Q. Did you go all over the city?

A. Yes.

Q. What did you observe?

A. I observed the garbage stacked up all over the town. 40

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Q. Just what do you mean by "stacked up"?

A. I have seen places where there were twenty and thirty boxes; one street I have in mind now, over there near the Lincoln Avenue School. On Johnson street I have seen twenty boxes in front of those little houses there. He couldn't have been
10 through there in a week or two weeks. And at the school there, I have seen clean ashes out there, probably twelve or fourteen cans—I don't know how many, but a number of cans.

Q. You saw them on one certain day?

A. Yes.

Q. Did you see the same cans there on any other day?

A. Yes.

20 Q. The next day?

A. Yes.

Q. Did you see them there two days in succession?

A. I don't know that; I wouldn't say that—oh, yes, two days in succession.

Q. Is that section a spot where daily collections were made?

A. No.

30 Q. Alternate collections were made there?

A. Yes.

Q. Do you recall seeing ashes and garbage in the sections where alternate collections were to be made, out at the curbstone on days when they should not be there, that is, non-collection days?

A. Yes, at the Orthopaedic Hospital I have seen it out there for two weeks, or ten days, anyhow.

40 Q. Straight?

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A. Yes.

Q. You are referring to the period after April 15th now?

A. Yes, sir.

Q. And all over the city when you made this inspection on Thursday, when you think it was, you say you saw ashes and garbage stacked up? 10

A. Yes.

Q. In both of the scavenger sections of the city?

A. Yes.

Q. On the same day?

A. Yes.

Q. Did you make an inspection with any of the other Commissioners, Commissioner Kearney and Commissioner Wethling?

A. Yes. 20

Q. When did you make the inspection with Commissioner Kearney?

A. I made two or three with him. I made one with him on Sunday, the seventh, and one on Saturday, the sixth of May, and I am not certain about it, but I think he was along on the fifth; then I made an inspection with Brennan up in the Sewer Department on Thursday, the eleventh.

Q. On May 5th with whom did you make the inspection? 30

A. With Kearney.

Q. Where did you go?

A. Went up through the valley section, around down through there; we went all over the town.

Q. And what did you observe?

A. Every place ashes and garbage. One place we came across a wagon down on Hickory street, with a man driving around and didn't know what 40

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he was doing, didn't know where he was going, and said he was looking for the foreman. I said, "Why don't you take this stuff along?" and he said, "I have got to do as I am told."

Q. Did he have a contractor's wagon?

A. Yes, he had wagon 132.

10 Q. How do the conditions which you saw on the fifth with Mr. Kearney compare with the conditions which you observed when you went around alone a day or two before?

A. About the same; it would depend on what section of the town you were in; sometimes you would think it was getting worse and sometimes you would see a little improvement; it is hard to say, unless you saw the street all cleaned up.

20 Q. What time in the day were the inspections made?

A. Sunday it was made in the morning.

Q. The two we are talking about now?

A. In the morning about ten o'clock.

Q. They would run into about what hour?

A. It would take about an hour to go around.

Q. In an automobile?

A. Yes.

30 Q. What was the next inspection after the fifth; whom did you go around with on the sixth?

A. With Commissioner Kearney.

Q. Go all around the city?

A. Yes, in an automobile.

Q. How did the conditions compare with what you saw on the fifth?

A. Just about the same.

40 Q. You went around the fourth, fifth and sixth, either alone or with the Commissioner?

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A. Yes.

Q. Can you say whether you saw the same cans and boxes of ashes and garbage on the fifth and sixth that you saw on the fourth and fifth?

A. Yes, in some places.

Q. The same piles of stuff?

A. Yes, it couldn't possibly change; people couldn't rake it up all over the town that way. I got one complaint on the eleventh—that is after we had taken the contract from him—I got a complaint stating that he hadn't been through that street, and I knew he hadn't, because I had been through there, and that said he hadn't been through the street in two weeks; the last time he was through there was two weeks before. Carl Greenwald, the saloon keeper on Heywood street, called me up. 10

Q. Did you also make an inspection on Sunday, the seventh? 20

A. Yes, Kearney and I went around on the seventh.

Q. All over the city?

A. Yes.

Q. What were the conditions?

A. Very bad, although I will say that he had twelve wagons out that day; that was because these wagons were not working on other work, I suppose; I don't know how many, his foreman told me he had twelve out, and I think he must have had quite a number, because I saw quite a few wagons on Sunday. 30

Q. He was cleaning up on Sunday then, when you went around?

A. Yes; he had some wagons out every day, but 40

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on the fourth he told me he would have the city cleaned by Saturday sure; that was his promise; on the fifth, the same thing, and then Sunday comes around and he is no closer cleaned up; he never did clean up until Maloney went on the job and cleaned it up for him.

10 Q. Did you have a talk with him after the sixth and before the conference on the eighth?

A. I think I left—I don't know whether I told him, but I left word for him to come in; he was in to see me on the third, and on the third he talked separation, and I told him we wouldn't do anything, we wouldn't talk anything until he had the city cleaned up, and he said it would be cleaned up by the sixth; then I said, "We will call a conference on the sixth," and later I changed that—no, 20 he called me up then and said "I will be pretty busy and my foreman will be busy and I don't want to take him off the work," and he said "Let us have the conference on the eighth," and I said, "That is agreeable to me, and then we will see whether you are cleaned up by Saturday or not."

Q. What time did you go around Sunday?

A. It was about eleven o'clock or half-past 30 eleven when I got to your house.

Q. That was another hour's trip?

A. Yes.

Q. The city was not cleaned up?

A. No.

Q. What were the conditions as compared with Saturday?

A. Of course, those twelve teams helped out afterwards during that day, that helped out a little 40 bit, but they were a little better, but couldn't say

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just how much better; the city was in an awful condition, at any rate, Sunday.

Q. Did you make any inspection on Monday, the eighth?

A. Yes.

Q. Who with?

A. Commissioner Wethling—it was either Wethling or Kearney; it may have been Kearney; I know I went around before we had this meeting. The meeting was scheduled for ten o'clock and I went around the city—I am not certain about that, I know I went around. 10

Q. Before the meeting?

A. Yes, but whether I took one of the commissioners with me or not, I don't remember; at any rate, I took Brennan, because I cannot drive an automobile. 20

Q. What conditions did you observe Monday?

A. The same thing, except he cut down a little probably on Sunday; in fact, he had cut down Sunday. In the First Ward there was evidence of cleaning up a little bit.

Q. Was that the only section where there was evidence of cleaning up?

A. I cannot say; in every section of the city there was garbage; I can give you the streets that were not cleaned up. 30

Q. On what day?

A. On Monday.

Q. What streets were they; in the section on which he was compelled to collect on Monday, what streets were they?

A. Monday, May 8th, Dodd, Sherman, Thomas, Heywood, Carroll, Burnside, Washington, Brad- 40

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ford, lower end of High street, Lakeside, lower end of Cleveland. I remember now I didn't make the inspection with one of the Commissioners; I made it with Brennan.

10 Q. Did you see refuse, garbage and ashes there on Monday when you went around, which you had seen there on Saturday and Sunday on those streets?

A. Yes.

Q. The same stuff?

A. I think so. Your recollection, of course, is blurred when you see so much of it.

Q. Was there or not an extraordinary number of boxes in front of these houses in this section?

A. Yes.

20 Q. Does the same thing apply to the other section, too?

A. Yes.

Q. Did you go over the other section on Monday?

A. Yes.

Q. Did you find in that other section ashes, garbage cans and boxes which had not been collected?

30 A. Yes.

Q. Were those the same boxes and cans that were there the Sunday before?

A. Yes.

Q. Did you confer with any of the other commissioners beside Commissioners Kearney and Wethling about these conditions?

A. Yes.

Q. Who?

40 A. Calhoun.

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Q. Did you notify them of a conference which was to be held about those conditions between the Commissioners and the contractor on Monday, May 8th?

A. Yes.

Q. There was such a conference held?

A. Yes.

10

Q. Who were present?

A. All but Commissioner Calhoun. Mr. Murray, Mr. Wethling, Mr. Kearney, Mr. Moriarty, Mr. Del Deo and yourself.

Q. What was discussed at that conference between the Commissioners and Mr. Moriarty?

A. Well, that conference was rather stormy, because before we went into the conference, we talked about whether or not to take the contract from him.

20

Q. Who had talked about it?

A. The Commissioners; I had talked to Mr. Wethling and Mr. Kearney and also talked with Mr. Calhoun, and also spoke to Mr. Murray over the telephone, and I wanted him to come over and he said he couldn't, and I said, "It will be very important, because we are talking about taking the contract from Moriarty."

Q. And the discussion was then about conditions at this conference between yourselves and the contractor?

30

A. Yes; Mr. Moriarty came in and he had this new foreman, and he came in and started to talk, and it wasn't over a minute before the storm broke—five or ten minutes, I suppose.

Q. Do you remember asking Mr. Moriarty or stating to him that the city was not cleaned up as he promised?

40

A. Yes.

Daniel F. Minahan—Direct.

Q. What did Mr. Moriarty say?

A. He said he knew that, but he was handicapped by not having teams, and Mr. Del Deo then came out and he said that the city would be cleaned up Wednesday, and he started in on that promising again.

10 Q. Were there any specific conditions discussed with Mr. Moriarty at that conference?

A. I don't remember anything.

Q. Do you remember whether Commissioner Kearney called his attention to any charges or buildings that hadn't been attended to?

20 A. Yes, and he also called his attention to a street over in the First Ward. Mr. Kearney and Mr. Del Deo got into a little argument over a street in the First Ward that was supposed to have been cleaned up and wasn't, and Kearney and I had been through there—I think Kearney must have been with me on Monday morning—yes, he was with me on Monday morning.

Q. What did Mr. Moriarty say when those specific conditions or violations were brought to his notice at the conference?

30 A. He turned everything over to his foreman that day; he referred everything to Del Deo and put it up to him.

Q. What did Mr. Del Deo say, do you recall?

40 A. Mostly that by Wednesday it will be taken care of, and he understood the city and had it outlined in sections, and all that sort of thing, and he said he could clean the city up with three teams, and, by the way, he made no qualification as to that at all; he simply said he could clean the city up with three teams.

Daniel F. Minahan—Direct.

Q. Did he make any distinction between winter and summer months?

A. No, I don't remember it; he may have done it, but I don't remember it; he said he could clean it up with three teams, and I said to myself right away, "That man doesn't know his business."

10

Mr. Bradner: You kept that all to yourself and didn't say it out loud?

Witness: Yes.

Q. Did you make any agreement with Mr. Moriarty or with his foreman, Del Deo, to give him until the tenth of May to redeem his promise to clean up the city?

A. No.

20

Q. Or any time after that, or any time at all?

A. No, I made no agreement at all with him; Mr. Del Deo said he would be cleaned up by Wednesday morning, and I couldn't make any agreement with him, because I talked to Calhoun over the telephone and Calhoun was in favor of taking the contract away from him on Tuesday; I knew Wethling was in favor, and Kearney was, and even if I had wanted to, I couldn't make any agreement farther with him. I had gone my limit after I met him on May 6th. I said this to him for argument sake—I said, "Suppose we should give you until May 10th," that was until Wednesday, and Wethling jumped up, and when he saw the trend that affairs might take, he said, "I won't stand for that, I won't stay at the meeting where that is done," or something to that effect, and he got up and went out, and Mr. Kearney and Mr. Moriarty had a row from then on, and then Mr. Moriarty

30

40

Daniel F. Minahan—Direct.

stood up and left, and he said as he was going out— I called to him as he was going out; I said, “Now, for our information”—those are the words I used— I said, “For our information, will you have the city cleaned up by Wednesday?” and his foreman answered back “Yes,” meaning, when I said “for our information”—I simply meant for argument sake, while he was out, while he was gone, I wanted to know what I could promise for him, if I could hold it open for Wednesday.

10 Q. Commissioner Murray afterwards came to that meeting?

A. Yes.

Q. And was present until it closed?

A. Yes.

20 Q. And Mr. Calhoun and all the Commissioners were present?

A. Yes.

Q. Did you make any inspections after May 8th?

A. Yes, I have one marked for May 11th; I don't know whether I made one May 10th or not; I made one May 11th.

Q. What did you find on May 11th?

30 A. I made one May 10th. That was Wednesday. I found Willow, Laurel, McChesney, part of Valley street, Fairview avenue; and Thursday, May 11th, I made an inspection of Heywood street, which was still uncleaned—that was the street where the man called up and said it hadn't been cleaned in two weeks, and also Dodd street. Friday, May 12th, Maloney cleaned up both streets, Dodd and Heywood.

40 Q. Did you make an inspection of the city on the twelfth or after the twelfth?

Daniel F. Minahan—Direct.

A. No; I had no more complaints. The twelfth ended the complaints and I haven't had one since, hardly.

Q. You haven't had a single complaint?

A. I don't remember one—yes, Commissioner Wethling had a complaint yesterday, his own place; that was the only complaint I know of, and that was a misunderstanding in regard to doing it. 10

Q. What was his complaint?

A. His complaint was that nobody had called for the garbage; it seems they go into the cellar in his house to get it, and he has an arrangement with Mr. Maloney, but Mr. Maloney must have overlooked it; however, that wouldn't come under the form of a complaint, as that is a private arrangement. 20

Q. That was not collected under the contract?

A. No.

Q. That was the only complaint you had?

A. Yes; that is the only one I remember.

Q. Do you remember whether Mr. Moriarty at the conference on May 8th made any statement in reference to his inability to hire teams?

A. Yes; he said something about it.

Q. What did he say? 30

A. He said that he was handicapped, that he couldn't get teams; and that is what made me particularly sore, because I found out on May 9th that we could get all the teams we wanted.

Daniel F. Minahan—Cross.

Cross-examination by Mr. Bradner:

Q. You produce here a protest signed by a number of people relating to Lincoln place, and I wish to ask you if you knew that the signatures to it were genuine?

10 A. No; I made no inquiry, but I did afterwards subpoena the people, and they were down here and I spoke about it with them; so I presume that their signatures were genuine.

Q. Were they present at the meeting when Mr. Moriarty admitted that he had not removed the garbage in Lincoln place?

A. Mr. Moriarty didn't admit that. It was Mr. Anderson that admitted that.

20 Q. Did you call as witnesses and have them testify, any of the signers of the protest?

A. No; not after they pleaded guilty; there was no necessity for it.

Q. What was the main bone of contention between you and Mr. Moriarty relating to the performance of his contract?

A. That he didn't clean up the city.

Q. He didn't remove any ashes at all?

30 A. He removed some, yes.

Q. Wasn't there any dispute between you as to whether he was obliged to remove a can that contained other things besides ashes?

A. There was never a semblance of a dispute until I stopped Mr. Moriarty from dumping garbage mixed with ashes in a lot at Luddington Road; that is within the city of Orange.

Q. When was that?

40 A. That was April 26, and on the next day I

Daniel F. Minahan—Cross.

had a communication from him saying that he was not going to take anything that was not separated. I had talked to him about separation before, but there was never any dispute about it before.

Q. After that communication he didn't take anything that wasn't separated?

A. Yes, he did. 10

Q. Right along?

A. Yes, right along, but there was a few days when he didn't.

Q. After the last time that you fined him and when you went around and inspected the streets, did you find any cans that had other things in them besides ashes?

A. I didn't empty the cans; I cannot tell you about that. 20

Q. You can tell whether the garbage had been separated and put in different boxes or cans?

A. No, except that I had police reports; they made personal inspections.

Q. You don't know of your own knowledge?

A. No; that is, I didn't root into any cans; I cannot tell you, as far as that goes, but on the top of it, it looked like pure ashes; in fact, I am morally certain. 30

Q. You did assume the responsibility of giving an extension of time to Mr. Moriarty up to May 6th to clean up the city?

A. No, I said I wouldn't make a complaint against him, and the Commissioners let it go at that.

Q. Who superintends the performance of this contract in behalf of the city?

A. I am the head of the department. 40

Daniel F. Minahan—Cross.

Q. Don't you consider it your duty to see that the contract is performed?

A. Yes.

Q. Didn't you believe, then, that you had the power to give the contractor a few days more time to clean up the city?

10 A. Not if the Commissioners didn't want me to; it is a majority vote in a commission government.

Q. When did you act upon it and take a vote on it other than the time you fined him or terminated the contract?

A. That is the only time.

Q. Then you didn't act in your corporate capacity in any of those meetings that you had?

20 A. No; ordinarily each department is left to the Commissioner in charge.

Q. But you certainly did give Mr. Moriarty to understand that if he got the city cleaned up by May 6th there wouldn't be any complaint made?

A. Yes.

Q. And no action taken against him?

A. Yes.

30 Q. And on May 8th you had this conference with him and his foreman and some of the members of the Commissioners?

A. Yes.

Q. That was not a formal meeting, though?

A. No; it was an informal meeting here in my office, but Mr. Moriarty knew about the meeting and was notified to attend, and asked me to make the meeting for the eighth.

Q. He was here?

A. Yes.

40 Q. But you didn't take any formal action at

Daniel F. Minahan—Cross.

that time?

A. No.

Q. Did you believe when Mr. Moriarty left the room on the eighth that he understood that he was to have until the tenth to clean up the city?

A. No, sir.

Q. I find in the return to the writ of certiorari, speaking of the meeting on the ninth, this statement: "The Mayor then announced that as the city scavenger had failed to make proper collections of garbage, the Commissioners had a conference with Mr. James D. Moriarty and his foreman on the eighth instant, and that he (Mr. Moriarty) promised to have the city thoroughly cleaned of all garbage, &c., by the tenth instant." Did you make that announcement on May 9th? 10 20

A. Yes; that announcement is true, that Mr. Moriarty, through his foreman, promised to have it cleaned; I wouldn't say "promised," but said he would have it cleaned. Mr. Moriarty did not promise it.

Q. It states further, "In answer to a question by Commissioner Wethling, the Mayor stated that he gave no assurance to Mr. Moriarty that the Board would give him until May tenth to have the city cleaned, or that the Board would not take any action on terminating the existing contract at this meeting, the Mayor further stating that Mr. Moriarty may have left the conference with that intention, but that he did not, nor was he in a position to give any such promise." That you stated at that time? 30

A. Yes.

Q. You did have a feeling of reluctance to take 40

Daniel F. Minahan—Cross.

any action after that talk with Mr. Moriarty on the eighth, didn't you?

10 A. No; the thing that actuated me more than anything else on the eighth was the fact that perhaps we couldn't get scavenger service, if the meeting that was to be held on Tuesday were to be
10 Thursday, where I would have a couple of days to turn around and see what I could do on scavenger service, because I didn't know much about it myself, and if that meeting had been then, I wouldn't have had Mr. Moriarty in that morning at all; I would have seen what I could do, but all I had was one day to get ready, and I was afraid the city would be left without scavenger service and the city would not stand for it.

20 Q. You voted against terminating the service?

A. Yes.

Q. And Mr. Murray also?

A. Yes; that was at the meeting on the ninth.

Q. Were you influenced at all by what you had observed, that Mr. Moriarty seemed to be making an honest effort to perform the work?

30 A. No; I saw on Sunday all right, but on the third, fourth, fifth and sixth he kept assuring me—
30 he assured me on the fourth and on the fifth that he would be cleaned up on the sixth, and I began to think that I was being hoodwinked then, and especially on Tuesday morning, when I found I could get teams around the city.

Q. On Sunday you say that he had at least twelve wagons?

40 A. No, I wouldn't say that; I cannot tell you how many wagons; his foreman told me he had
40 twelve wagons; I probably saw four or five.

Daniel F. Minahan—Cross.

Q. You didn't see all the wagons?

A. No—I don't know whether I did or not.

Q. Then when the action was taken and the resolution adopted to terminate this contract, you did not know whether you could get the work done or not, did you?

A. I knew I could get it done. 10

Q. You knew on May 9th, when you voted to terminate this contract?

A. I didn't vote to terminate it.

Q. When the vote was taken to terminate the contract, you knew that you could get someone to go right on with the work?

A. Yes.

Q. Did the other three Commissioners know that? 20

A. Yes.

Q. Had you at that time made any arrangement with someone else?

A. No; I talked with somebody but I made no arrangement with him.

Q. When did you make arrangements to have the work done?

A. On the tenth?

Q. That is the next day? 30

A. Yes.

Q. What arrangement did you make?

A. I made an arrangement with the Maloney Contracting Company to collect garbage and ashes; there is a contract to that effect, to collect the garbage and ashes for \$70 a day for every working day, to be terminated on five days' notice.

Q. Did they clean up the city?

A. Yes. 40

Daniel F. Minahan—Cross.

- Q. In how many days?
- A. The first day out.
- Q. Why didn't you stop then; why didn't you stop that expense then?
- A. How could I?
- Q. Give them the five days' notice to stop?
- 10 A. Why?
- Q. The work was all done, it was all cleaned up; that is what you wanted?
- A. They were making time against the next day, garbage and ashes are permanent things.
- Q. It was the present condition that you objected to with Moriarty, the accumulation of garbage and ashes, wasn't it?
- A. Yes.
- 20 Q. When you got that accumulation out of the way, what was there to prevent Moriarty from going on with his contract?
- A. Simply that he never lived up to his promises and his contract had been terminated.
- Q. Did you take that item of expense into consideration when you had your meeting to terminate the contract?
- A. Yes.
- 30 Q. Do you realize that \$70 a day is \$21,000 a year?
- A. Yes.
- Q. One-third more than his entire contract?
- A. Yes. I don't think that is—I didn't know it would be \$70; I had Maloney in here after the meeting; he came in about two o'clock, I telephoned for him and got him here at two o'clock—yes, I knew about it.
- 40 Q. Did you consider the possibility of a resolu-

Daniel F. Minahan—Cross.

tion terminating the contract being set aside and the burden put on the city of paying Maloney and paying Moriarty, too?

A. No.

Q. This resolution was passed rather hastily, wasn't it?

A. Well, something had to be done hastily. 10

Q. What you wanted done was something to remedy the immediate condition of the streets?

A. I was afraid of an epidemic or something breaking out in the city.

Q. You got that all cleaned up in a day, didn't you, at a cost of \$70?

A. After Maloney got on the job, but it was three days after Moriarty was to clean it up, he was to clean it up on the morning of Wednesday the tenth, according to his promise on the eighth, and it wasn't cleaned up until the night of the twelfth, when Maloney was finished; Maloney threw a lot of extra teams in from East Orange and cleaned it up. 20

Q. Why couldn't you have hired those teams and cleaned it up yourself and charged it to Mr. Moriarty?

A. We were not in the scavenger business; Mr. Moriarty had the scavenger contract. 30

Q. You could have hired Mr. Maloney to do it?

A. I took that matter up with the city counsel whether or not we had a right to hire teams, and he didn't think that we had, under the contract.

Q. You wanted to get rid of Mr. Moriarty, didn't you?

A. When?

Q. When you terminated the contract? 40

Daniel F. Minahan—Cross.

A. I voted to keep the contract, but I will tell you that I did want to get rid of him at that time, yes, sir; I found out on the morning of the ninth that we could get teams, which was contrary to what he had been telling me, and I had been living on promises since the first of the year.

10 Q. Does Mr. Moriarty hold any public office?

A. At the present time?

Q. Yes.

A. Postmaster.

Q. When was he appointed?

A. I cannot tell you. He was appointed some time in May; I cannot tell you the day he was appointed.

Q. Early in May?

20 A. I think he has been appointed about a month, I don't know, I am not certain of that.

Q. He was a candidate for the office, was he not, for some little time before?

A. Yes.

Q. Endeavoring to get the position?

A. Yes, sir.

Q. Were you interested in that office?

A. Yes, sir; not personally.

30 Q. In whose behalf?

A. A brother of mine.

Q. Mr. Moriarty is a Democrat?

A. Yes.

Q. And your brother is a Democrat?

A. Yes.

Q. Of course, that didn't influence you at all in your official capacity?

40 A. Absolutely not; in fact, if I were influenced by that at all it would have been the other way.

Daniel F. Minahan—Cross.

Q. This communication from some German American Association, is that a Republican organization?

A. Someone told me—I don't know who they are, but someone told me that it was William L. Otterbein; he is a Republican; I haven't any idea whether it is a political organization or not; I don't know anything about them. 10

Q. German American Citizens' Club?

A. I haven't any idea whether they are Republicans, Democrats or not, except that there is an Otterbein that is a Republican county committeeman, and I think that is the man.

Mr. Bradner: I would like to see the contract with Maloney. 20

(Contract produced.)

Q. This contract that you made with the Maloney Contracting Company was not a contract awarded after calling for bids?

A. No.

Q. This was made on the advice of the city counsel?

A. Yes. 30

Mr. Bradner: I will offer the contract in evidence.

"To the Board of Commissioners of the City of Orange:

Gentlemen:

In consideration of the sum of seventy dollars for every working day, to be paid to me by you, we hereby agree to fully and properly 40

Daniel F. Minahan—Cross.

10 perform all the work required under the contract made between the City of Orange and James D. Moriarty, dated August 10, 1914, for the collection, removal and disposal of all garbage, ashes and house refuse in the City of Orange and to fully comply with all the provisions of said contract, a copy of which is hereto attached and made a part of this agreement for a period beginning May 12, 1916, and continuing until this agreement shall be terminated by you. It is understood that for our compliance with the terms of the said contract you shall pay us the sum of seventy dollars per day for each and every working day and that this agreement between you and ourselves shall be considered an agreement from day to day and may be terminated by you upon five days' notice. The payments due us under the agreement may be made weekly or semi-monthly.

Dated May 10, 1916.

30 Signed, sealed and delivered in the presence of
Arthur B. Seymour.
Moloney Contracting Co.
By Frank A. Moloney,
President.

Approved,
Daniel F. Minahan,
Mayor."

40 (Attached thereto is a copy of the Moriarty contract dated August 10, 1914.)

Daniel F. Minahan—Cross.

Q. Can you tell me whether an appropriation was made to meet the expense of the garbage contract for 1916?

A. We haven't made our budget up yet.

Q. Your fiscal year begins the first of January?

A. Yes.

Q. And the budget for the year 1915 included the \$14,000 for the Moriarty contract? 10

A. Yes.

Q. Your appropriation would be up until what time?

A. Up to the first of January, 1916.

Q. How do you make the payments after the first of January, 1916?

A. We pass a temporary budget.

Q. Was one passed on the first of January? 20

A. Yes.

Q. What time did that cover?

A. For the year 1916.

Q. That was a specific appropriation of \$14,000 for the Moriarty contract?

A. \$14,229.50, I think.

Q. Out of what funds are you paying the Moloney Contracting Company?

A. The comptroller raises moneys and he is paying that out of some of the money which is raised. 30

Q. There hasn't been any appropriation made to cover the Moloney Contracting Company's contract, has there?

A. No, sir.

Q. Have you paid the Moloney Contracting Company anything?

A. Yes.

Q. How much? 40

Daniel F. Minahan—Re-direct.

A. From the end of the first month, from the twelfth, to the first of June; then we pay him every two weeks; I think he is on his second payment; I signed the check yesterday, I believe; he hasn't that check yet.

10 Q. Then you don't know out of what funds these payments are being made?

A. No. The comptroller can tell you; it is up to the financial department to make arrangement for that.

Re-direct by Mr. Seymour:

Q. The budget for the year 1916 hasn't been finally made up?

A. No, sir.

20 Q. The so-called budget of January 1, 1916, is merely temporary for the purpose of bookkeeping?

A. That is all.

Q. And it is usually based upon the budget of the year before, isn't it?

A. Yes, sir.

Q. When is the final budget adopted each year?

A. About this time, June, some time around June.

30 Q. Do you know where the warrant is you just signed for Moloney?

A. I think it is in the treasurer's office; it will be ready on the fifteenth.

Q. Can you tell from this warrant which I show you, dated June 15, 1916, to the Moloney Contracting Company, out of what appropriation the contracting company is being paid?

40 A. It is charged to the Department of Public Affairs.

Q. Is there a miscellaneous appropriation made

Harry D. Wethling—Direct.

to your department?

A. It is itemized, except in the Health Department we make a miscellaneous item for postage and stuff like that, but it only amounts to a few dollars.

RECESS.

10

HARRY D. WETHLING, sworn for respondents.

Direct examination by Mr. Seymour:

Q. Are you a Commissioner of this city?

A. Yes.

Q. What department have you charge of?

A. Department of Streets and Public Improve- 20
ments, streets, water, sewer and municipal lighting.

Q. Have you received any complaints yourself
about the scavenger service in this city?

A. I have.

Q. In writing?

A. Yes, I have some in writing.

Q. How long a period do these complaints
cover?

A. I don't know; I might say a year, about. I 30
had plenty to do myself, and any telephone or verbal or written complaints, I always told these people that it was in the Mayor's Department, and instructed my folks home at the phone to do the same thing.

Q. Are you a member of the German American
Citizens' Union?

A. I am.

Q. That is the association that sent in a com- 40

Harry D. Wethling—Direct.

munication to the Mayor, which has been offered in evidence?

A. Yes.

Q. Is that a political organization?

A. Absolutely no.

Q. What sort of an organization is it?

10 A. A little social club; it has two rooms up over the old post office in Orange.

Q. Is it composed entirely of citizens from Orange?

A. Yes—there might be one or two that might live out of Orange, I am not sure; it is composed mostly of Germans.

Q. It is absolutely non-political?

A. Absolutely, simply a social club.

20 Q. Did you know anything about this communication before it was received?

A. No, I have only attended two meetings in my life.

Q. In what part of the city do you live?

A. I live in the southern end, what is known as the valley section, the Fourth Ward.

30 Q. And in your work as head of the Department of Streets, are you compelled to make frequent tours through the streets of this city?

A. I don't as much in looking after the streets as I would going from here to the municipal plant, which is in the far end of the city, or occasionally going around the city looking for one of the heads of the different departments.

Q. You have a private business, haven't you?

A. I have.

40 Q. You attend to the outside work of that business?

A. I do.

Q. Does that take you through the streets of

Harry D. Wethling—Direct.

Orange a good deal?

A. Yes, it does.

Q. Daily?

A. Well, yes, I would say daily; some days, perhaps, I wouldn't go.

Q. Have you received any complaints about the scavenger service between April 15 and May 8? 10

A. Yes.

Q. How frequent were the complaints?

A. I received quite a few of them from the fact that the citizens of Orange imagined that I, having charge of the streets, I had charge of the garbage, and that threw a great many complaints to me. I would say I would average five or six a day; some days I would get quite a few.

Q. That is between April 15 and May 9? 20

A. Yes.

Q. What did you notice yourself in that period as to the condition of the curbstones in relation to the accumulation of garbage and ashes?

A. I noticed that the garbage and ashes not being collected were being dumped over by dogs or children into the gutters, and left lying there, especially around the Italian section, and in some places it had accumulated higher than the curbstones, and for that reason in particular I was continually finding fault with the Mayor on the garbage question, because people in turn would complain to me about the dirty condition of the streets, and I felt that I suffered more than any of the other Commissioners did. 30

Q. What did you notice particularly as to the accumulation of garbage; was it extraordinarily large or what? 40

Harry D. Wethling—Direct.

10 A. It was extraordinarily large. I stated at the meeting when I introduced the resolution to take the contract away from Moriarty, that the Sunday previous, which was the seventh, there were eleven large baskets of ashes at All Saints' Church. I passed that way Sunday morning, and as to the condition of Forest street I was stopped by a man
20 named McLaughlin, that owns the corner store opposite the church property, and he called my attention to the condition of the street and the garbage there, and as I said at the meeting when I introduced that resolution, the amount of stuff in front of All Saints' Church on Sunday morning was a disgrace. The same thing on Valley street, below the Catholic church, but that was removed
Monday, and in front of one place on Valley street, Keck's, I don't know whether it was separated or not, there were nine boxes, baskets and barrels—about nine in number; they were there until Wednesday afternoon at four o'clock, when they were removed.

Q. From what time?

30 A. They were there Monday; I saw them Sunday morning, and Wednesday morning eleven o'clock, and I passed there about half-past four Wednesday afternoon and I was told they had just been taken away—had just been removed by the contractor.

Q. Were you familiar with the provisions of the contract as to the collections in the two sections of the city?

A. No.

40 Q. Did you know which days the collection was to be made?

Harry D. Wethling—Direct.

A. No, I never bothered with that, only just from hearsay; I never interested myself in it.

Q. Did you notice any extraordinary accumulation of garbage in the other parts of the city?

A. I went around on the ninth and on the tenth with the Mayor, both mornings, and we saw quite a lot in the valley section, this place I spoke of along Valley street, and a number of streets that the Mayor just read off around there, the First Ward and over into Doddtown. 10

Q. That was on what day?

A. On Tuesday and Wednesday; Wednesday morning it was somewhat better.

Q. That was the ninth and tenth?

A. Yes.

Q. Before that had you noticed any accumulation? 20

A. Yes.

Q. In what sections of the town?

A. About everywhere you went: it was piled up in front of private houses, with eight, nine, ten or twelve boxes and baskets; that was the cause of littering the streets; these would fall over and the stuff would be left there. 30

Q. Did you yourself have any arrangement with the contractor for the taking away of your ashes and garbage? 30

A. Yes.

Q. How was that arrangement lived up to between these two dates?

A. He didn't come in my house and take it away; I had three large ash cans and one small garbage can and my mother separates it and puts the garbage in a small can, but the man who attends 40

Harry D. Wethling—Direct.

to the furnace would have to pile the ashes in the corner of the cellar, and often three cans would be filled.

Q. How often would he come to your house under the arrangement; how often did he agree to come?

10 A. Once a week.

Q. Did he skip any weeks without coming at all?

A. Yes, quite a few.

Q. In between these two dates, April 15 and May 9th?

A. I wouldn't say that offhand, between those dates.

Q. Do you remember the conference of May 8th?

20 A. Yes.

Q. Do you remember whether you called his attention at that conference to the fact that he had not collected at your house?

A. I don't know; I wouldn't be positive of that, on May 8th.

Q. How many inspections did you make between April 15 and May 9th for the purpose of ascertaining whether he was living up to his contract?

30 A. May 9th and 10th we made it.

Q. Was this inspection of May 9th made before the meeting of May 9th?

A. Tuesday morning. Monday Mr. Moriarty said here he couldn't hire horses, and Tuesday morning I went to two horse dealers to find out whether he could or not.

Q. What did you find out?

40 A. One of them told me he would let me have

Harry D. Wethling—Direct.

ten teams, and another one told me he would let me have as many teams as I wanted, if I wanted forty or fifty; I asked him how much and he said \$6.25 a day, and the market price is \$6.50.

Mr. Bradner: Did that include carts or coaches? 10

Witness: Carts.

Q. Was there any limitation placed upon the work which these teams were to do?

A. No, I told him I wanted to know for my own satisfaction, if they were available, and this man remarked and told me I might use his name at the meeting if I so desired, he would give me all the teams, and that Mr. Moriarty could have all the teams he wanted if he would pay for them, but he would not pay for them; and he also volunteered that I could use his name, if I liked, but I wanted to know if it was so, that Mr. Moriarty could not get horses; I found that he could, that horses could be hired in the city. 20

Q. At the time you voted for the resolution to terminate the Moriarty contract, were you satisfied with the service he was rendering the city under his contract? 30

A. Absolutely no.

Q. Why not?

A. This garbage and ashes wasn't being collected, the city was in a filthy condition; we were getting complaints from all sources, and there didn't seem to be any chance of it ever getting any better.

Q. You say you referred your complaints to the 40

Harry D. Wethling—Direct.

Mayor and also spoke to him about the complaints between April 15 and May 9th?

A. Yes.

Q. Did you tell the Mayor whether or not you favored extending any more leniency to Moriarty?

10 A. I spoke to the Mayor nearly every day about the garbage situation, and one day we got hot over it and I told him I wouldn't stand for it any more, as I did on the morning of the eighth, that I thought he owed it to the Commissioners and to the city of Orange to make a move to end this thing one way or the other, and on the day we held this conference, on the eighth, when there was talk by Del Deo that he would do it by Wednesday, I left the conference with the statement that I would
20 introduce the resolution to take it away from him, if the Mayor did not.

Q. When was that talk you had with him?

A. I don't know exactly; we talked the thing over pretty nearly every morning.

Q. For what particular period of time was it?

A. About around the third or fourth of May somewhere, I think about a week before we did take the contract away from him.

30 Q. Were you present at the conference of May eighth when there was some talk between the Mayor and Mr. Moriarty about him cleaning up the city by the tenth; if so, what did you hear?

A. I think Mr. Moriarty's foreman, I believe, said he would have it cleaned up by Wednesday morning on the tenth; they were talking about "by Wednesday morning"; I stood up and said I would not stand for any more postponement; I said, "If
40 you don't introduce the resolution tomorrow, I

Harry D. Wethling—Direct.

will," and I walked out of the conference.

Q. What resolution?

A. To take the contract away from Moriarty, to determine that there would be no more postponement and no more promises, if I could stop it.

Q. While you were there, did you hear the Mayor say that he would give Moriarty until May tenth to clean up? 10

A. No.

Q. And that if he was cleaned up by the tenth he would not take any proceedings against him?

A. No; if that occurred it was after I left; it didn't occur while I was there.

Q. Did you hear Mr. Moriarty at that conference say anything as to whether the city was cleaned up at that time? 20

A. Why he didn't say it was cleaned up; he said he couldn't, because he couldn't get the horses; that is the reason I went out to see if he could or not. His foreman stated he could clean the city up with three rigs and three teams, and I told him he couldn't, and he insisted that he could.

Q. Did he make any distinction as to the season between May and October, and October and May, as to the number of teams it would take? 30

A. No; he made a broad statement that he could clean this city with three teams and nothing else.

Q. Three teams a day?

A. Yes; he made no statement of any sections or anything else; he said three teams is enough to clean Orange daily. I told him I didn't know anything about the scavenger business, but I knew he was wrong in that, and he insisted he was right.

Q. Do you know whether this foreman lives in 40

Harry D. Wethling—Direct.

Orange or not?

A. I don't think so; I believe he comes from Newark; I don't know; I wouldn't be positive.

Q. Who were present at that conference that morning?

10 A. The Mayor, Commissioners Kearney, Murray and myself; Calhoun was in before the conference was called and had to go to court.

Q. Had Mr. Calhoun told you his views on the matter before the conference met?

A. The Mayor was here; I am not sure whether Mr. Murray was here yet or not; Commissioner Kearney was here and said, "I am for taking the contract away from him immediately. That is how I stand."

20 Q. At any time up to May 12 and including May 12, did you observe whether or not the city was clean, so far as the ashes and garbage cans on the curb were concerned, including May 11th?

A. No; it was not cleaned.

Q. What were the conditions on May 12?

A. I didn't go around May 12th.

Q. Did you go around any subsequent time to see?

30 A. No; the only thing I know about the latter part of that week is what the Mayor stated, that Moloney had it all cleaned up.

Q. Did you receive any complaints after May 11th of any sort in relation to the service?

A. No.

Q. Did you discuss the complaints that you had received, with the various Commissioners, formally or informally?

40 A. Yes; with all of them at different times.

Harry D. Wethling—Direct.

Q. Did you discuss the complaints which you received, with the contractor, Mr. Moriarty?

A. No; the Mayor had charge of Mr. Moriarty.

Q. Did you ever have any talk with Mr. Moriarty about his lack of system in the collection and removal of ashes and garbage; if so, what was it and when was it? 10

A. At the first meeting the Board of Commissioners had with Mr. Moriarty—I think that was in March, the meeting we held here in the office, the Board of Commissioners and Mr. Moriarty, and he was represented by Mr. Perry, when he pleaded “Guilty”—there was no fine imposed.

Q. That was before March?

A. I don't know; that was the first time we had Moriarty before us here. It wasn't at a regular Commission meeting, it was here. He claimed then that the snow delayed him; the snow made it impossible and delayed his collections. After the conference, on our way out, I spoke to him and his foreman at that time, John Driscoll, and told him that I having charge of the streets was very familiar with the length of them and all that and had the maps up in the engineer's office; that if he would come up there some afternoon I would help him systematize his business and do what I could to lend the assistance of my office to systematize it, route it out, and he seemed to be very pleased with the suggestion, and turned to Driscoll and said, “John, we will go up some afternoon this week and do that,” but I haven't seen him since; he never came up. 20 30

Q. Did he ever come up to see you about it so far as you know or were informed? 40

Harry D. Wethling—Cross.

A. No.

Q. What are you in politics?

A. Democrat.

Q. What is Mr. Moriarty?

A. Democrat.

10 Q. Were you influenced in your vote to terminate this contract by any political considerations?

A. Absolutely no.

Q. Were you personally in a business way friendly with Mr. Moriarty at the time of the passage of that resolution?

A. We were always friends.

Q. And still are, aren't you?

A. Yes; I have known Moriarty for quite a few years.

20

Cross-examination by Mr. Bradner:

Q. What was the occasion for this very sudden and serious action terminating the contract, in your opinion?

A. I don't think there was anything sudden about it; I thought we were putting up with it long enough; it had to be brought to a head.

30 Q. How long had you been putting up with it?

A. Complaints in the spring and I should say from November on, from that time they were coming in very fast and very heavy.

Q. Prior to that time he had done his work fairly well?

A. We had complaints before that time.

Q. But you didn't take any action on that?

A. No.

40 Q. What was the occasion for beginning to take

Harry D. Wethling—Cross.

such severe action in March, when you fined him May first?

A. These complaints were getting heavier and conditions seemed to be getting worse. The occasion of my offering the resolution to take the contract away from him, I thought he had been given plenty of time, and the Mayor didn't introduce the resolution—it was in his office and his department—and I decided I would do it, as I said I suffered more than any other Commissioner. 10

Q. Why did you want to terminate the contract?

A. Because he wasn't giving us satisfactory service; he wasn't doing what he should do for \$14,000 a year.

Q. You were amply secured?

A. We were paying him to do garbage work, to collect the garbage. 20

Q. Didn't you consider that you had ample security with the Royal Indemnity Company?

A. I considered that Moriarty was being paid and should do the work; if he didn't, someone else would.

Q. What was there, so far as you know, to prevent you from having the work done without terminating the contract? 30

A. I believe the Mayor, who has charge of that department, discussed that with the city counsel, and they came to the conclusion that that was the method to proceed under.

Q. To terminate the contract?

A. Yes.

Q. And make a new contract with someone else to perform that same contract?

A. Yes. 40

Harry D. Wethling—Cross.

Q. That was the idea?

A. I suppose so; that was in the Mayor's department.

Q. Was that discussed before you passed this resolution terminating the contract?

A. I believe it was.

10 Q. A public discussion at a meeting of the Board?

A. No.

Q. Before you passed the resolution, did you ascertain how much it would cost you to have the work done?

A. I don't think the Mayor took up that subject until the following Wednesday morning.

20 Q. That was after the resolution had been passed?

A. I think so.

Q. Then you didn't know when you terminated this contract whether you would continue that work at the rate of \$14,000 a year or \$28,000 a year?

A. I think we made the arrangements Wednesday morning with Mr. Moloney.

30 Q. That was afterwards?

A. Yes.

Q. I would like to ask your judgment on this question, Mr. Wethling; how do you justify an expenditure of \$21,000 a year to do this work?

A. I think that, as I said before, the city was in such a terrible condition that the stuff had to be cleaned up, it simply had to be done; this man couldn't do it, or wouldn't do it.

40 Q. And you had someone else do it?

A. And we had to have it done.

Harry D. Wethling—Cross.

Q. It was cleaned up in a day, wasn't it?

A. Yes.

Q. Why didn't you adopt that course to have it done and charge it to Mr. Moriarty?

A. The city counsel advised that we would have to do it the way we did.

Q. And the Board determined that it was more expeditious to bind themselves to pay \$70 for at least six days to clean up the city rather than pay \$70 for one day and charge it to Moriarty? 10

A. Moriarty didn't do his work; he had given a bond of \$15,000 to do the work and proposed to charge the difference to the Bonding Company.

Q. Then your idea is to hold Moriarty and his surety for the difference between \$14,000 and \$21,000? 20

A. I believe so.

Q. You could have saved all that expense by spending \$70, isn't that so?

A. \$70 a day.

Q. For one day?

A. The city counsel advised that we couldn't do the work—

Q. I am not asking you what the city counsel advised. 30

A. That is the advice I worked under.

Q. You didn't act on your own judgment?

A. No; I acted under that advice.

Q. Did you take this matter up with the Surety Company before you passed the resolution?

A. No, sir.

Q. Did you call on the Surety Company to make good the contract?

A. No. 40

Harry D. Wethling—Cross.

Q. Then how do you expect to hold the Surety Company?

A. They filed a bond for the faithful performance of Moriarty's work.

10 Q. You were obliged to give them notice that he wasn't doing the work; you don't know about that?

A. That isn't in my department, no.

Q. What I am trying to get at is, the fairness and reasonableness of this action, and I want to find out from you whether you considered not only the burden to Moriarty but the burden to the taxpayers of this additional expense?

A. That was the object of taking the contract away from Moriarty, the trouble that Moriarty had caused the taxpayers and the Commissioners.

20 Q. The taxpayers are only concerned in what they have to pay out.

A. He agreed to remove the garbage for these taxpayers for fourteen thousand odd dollars a year, which he did not do.

30 Q. But if you had taken the trouble to find out how much it would cost to have the city cleaned up, you would have discovered that it could have been done at least in two days at an expense of \$140, to relieve the present condition?

A. Hire this man at \$70 a day for a day or two and still leave the contract with Moriarty?

Q. Yes.

A. Why should we do that?

Q. You didn't try to do it?

A. Why should we do work for Moriarty?

40 Q. You didn't try to have the work done at any expense without terminating his contract?

Harry D. Wethling—Re-direct.

A. He didn't deliver and we took it away from him.

Re-direct by Mr. Seymour:

Q. In discussing the question of terminating the contract with the commissioners, was there anything said between you as to readvertising for bids and reletting the contract, or was it agreed to give it for the rest of the term to Moloney at \$70 a day? 10

Mr. Bradner: This agreement speaks for itself. I object to the question because it calls for a consideration of a written agreement.

Mr. Seymour: I am asking what the discussion was before the passage of this resolution. 20

Mr. Bradner: He has already said there wasn't any, and I object on that ground.

A. I am not sure when that was discussed; I am not sure whether it was the ninth or tenth, but the discussion was that Moloney would be hired for \$70 a day until the new contract was awarded—advertise for bids and award a new contract. 30

Q. Youk now there was such a discussion as that?

A. Yes.

Q. Didn't you ascertain before the resolution was introduced whether or not an arrangement could be made with Moloney, or didn't you know that the Mayor had ascertained that fact?

A. I don't know whether the Mayor had; I am not positive of that; I cannot say. 40

William F. Kearney—Direct.

Q. What about yourself, then; did you ascertain it?

A. I think it was Wednesday, the tenth, that we made the agreement with Moloney.

10 Q. That was when the agreement was made. I want to know whether you knew the Mayor had ascertained and reported to you that Moloney would make such an arrangement, before the resolution was passed?

A. I am not sure of that.

WILLIAM F. KEARNEY, sworn for respondents.

20 Direct examination by Mr. Seymour:

Q. You are a commissioner of the City of Orange?

A. Yes.

Q. What department have you charge of?

A. Department of Public Safety.

Q. Do you remember receiving any complaints about the scavenger service?

A. Yes, many of them.

30 Q. When did your complaints begin to come in?

A. Last November.

Q. When did they cease?

40 A. Up until Mr. Moloney took charge on May 12. I couldn't go outside of my door unless I ran into some one that would complain about the scavenger service, and I knew conditions pretty well myself in my neighborhood; there were certain streets there that weren't cleaned up in seven or eight days; that I know positively well.

William F. Kearney—Direct.

Q. How frequent were the complaints between November and May, 1916?

A. From about the fifteenth of April up until May 11 they were very frequent; as I say, I couldn't go outside of my door unless I ran into some one who complained about it. Some of them wanted to know if we had a scavenger in the city.

10

Q. Were they more frequent than they were prior to April 15?

A. From May first on is when I received most.

Q. Were they more frequent between April 15 and May first than before April 15th?

A. Yes.

Q. As time went on did they begin to get more frequent?

A. Yes.

20

Q. What was the nature of the complaints?

A. Mr. Moriarty not going around and cleaning up, and coming on days that he should not come; there were seven or eight days that he didn't go near Valley street, over Nassau street or over to the South Orange line and along McChesney street, Christopher street, Tremont avenue; those streets were not touched for seven or eight days.

Q. You live up in that section?

30

A. Yes.

Q. You have lived there a good many years?

A. Yes, all my life.

Q. Did you make a personal inspection of the city between April 15 and May 9th?

A. I did.

Q. How frequently did you make such an inspection?

40

William F. Kearney—Direct.

A. I made an inspection the fifth, sixth, seventh and eighth of May.

Q. Alone?

A. With the Mayor.

Q. Was he with you all the time?

A. Yes.

10 Q. Prior to that time did you make any observations?

A. Yes, I did.

Q. What were the conditions between April 15th and the fifth of May as you observed them yourself in your section?

20 A. As Mr. Wethling stated, as high as fifteen cans out in front of some places, and some of them were dumped over in the gutter, where they would dump a can and fill it up and bring it out again. I saw that in a number of cases, and at Keck's bakery shop there must have been about three or four such out in front of his place, and I will state that they were separated—the ashes were separated from the garbage; that I know positively well, because I went up to the cans and examined them myself.

30 Q. When did you see the conditions in front of Keck's?

A. On the fifth, sixth, seventh and eighth, and previous to that; that was when I made the inspection. Previous to that I walked down that street, from the first of May on.

Q. Do you mean to say that the cans and boxes you saw there on the first of May were still there on the eighth of May?

A. The same cans and boxes filled.

40 Q. Did you see them there every day?

William F. Kearney—Direct.

A. Every day.

Q. Did you observe similar conditions in other parts of that section?

A. I did on the fifth, sixth, seventh and eighth; that was the date that the Mayor and I went throughout the city.

Q. Can you mention some of them? 10

A. Christopher street, McChesney street, Tremont avenue and Oakwood place, Parrow street, South Hill, Taylor, Hickory street.

Q. Did you go through that section on the fifth, sixth, seventh and eighth of May?

A. I did.

Q. Do you mean to say that you saw the same cans and boxes there on all of those dates unemptied? 20

A. The same cans unemptied.

Q. Some of them emptied into the gutter?

A. Yes, and refilled.

Q. Did you make the observation as to whether ashes were separated from garbage on any of those dates in those places?

A. I did.

Q. Was it? 30

A. In some places it was and some places it wasn't.

Q. Was any of it collected where you noticed it was separated?

A. It was not. In fact, it was, as I say, in the neighborhood for seven or eight days.

Q. Did you bring these observations that you made to the attention of the Mayor and other commissioners? 40

A. I brought it to the attention of the Mayor,

William F. Kearney—Direct.

as he was in that department and he was the proper man for me to see.

Q. Did you discuss that with Commissioners Wethling, Murray, and Calhoun?

A. Not with Mr. Murray or Mr. Calhoun, but I have with Mr. Wethling; he has been in here two or
10 three times when I brought it up with the Mayor; I spoke to the Mayor about it because it was in his department.

Q. You have charge of the Police Department?

A. Yes.

Q. Do you know whether some of your policemen made inspections?

A. I do.

Q. And made reports?
20

A. Yes.

Q. Those reports were filed with the Mayor?

A. Yes.

Q. Are you friendly with Mr. Moriarty?

A. Yes, sir.

Q. Have you always been friendly with him?

A. Yes, sir.

Q. Belong to the same political party?

A. I do.

Q. Regular organization Democrat the same as
30 he is?

A. Regular organization Democrat.

Q. Were you influenced by political considerations or business or social considerations in your vote to terminate his contract?

A. Absolutely no. I knew he wasn't carrying
40 out his contract. I have seen it with my own eyes, and that is what led me to vote the way I did, because I knew he was not living up to his contract.

William F. Kearney—Cross.

and he told us that he couldn't get the horses.

Q. He also told you and his foreman told you that he could get everything done by Wednesday, the tenth?

A. He also told us that on a number of occasions before; I was sick and tired of hearing his promises. 10

Q. Why didn't you give him formal notice and have a public meeting and thresh the thing out, so that it couldn't possibly be said there was anything unfair about it?

A. The city counsel advised us according to the contract that it wasn't necessary to notify him.

Q. I don't think you ought to put it on the city; but I think this rests on the Board; I want to know what your own judgment is? 20

A. We are supposed to be guided by our city counsel; that is what he is for.

Q. You are supposed to be guided by your own judgment?

A. We are to a certain extent.

Q. You didn't hear any evidence on it at all, on the question of his contention that he had performed his contract?

A. He stated here that morning that he had, but we knew different, that he didn't. 30

Q. You didn't give him any opportunity to produce any witnesses, to call his foreman and his drivers?

A. He had his foreman here.

Q. You didn't hear anybody?

A. His foreman was here that morning and was present. 40

William F. Kearney—Cross.

Q. That was just a mere informal talk, wasn't it?

A. Yes.

Q. I ask you again, why didn't you fix a time when he could be present with his witnesses and hear the specific complaints and answer them?

10 A. As I told you before, we were guided by what the city counsel told us, that it wasn't necessary; we were all aware and knew that—

Q. Did you understand, then, that you could at your option merely, arbitrarily terminate this contract whenever you felt dissatisfied?

A. When we knew that he wasn't living up to his contract.

20 Q. You could just dispose of it, then, arbitrarily?

A. No; we could bring down three-fourths of the city—of the taxpayers of the city, that would prove that he didn't live up to his contract.

Q. But you didn't do it?

A. No, because we didn't think it was necessary; the complaints I thought were sufficient.

Q. Where are the formal meetings of the Board held?

30 A. On the top floor in the City Hall in the council chamber.

Q. Where were the meetings held at which you imposed the fines on Mr. Moriarty?

A. Upstairs in the council chamber.

Q. You gave him notice of those meetings?

A. I believe so, yes, sir.

Q. Why did you do that?

40 A. Under the advice of the city counsel, I presume; the Mayor did that.

William F. Kearney—Cross.

Q. Strictly because the contract provides for notice in that case?

A. I suppose that is why that course was pursued on the advice of our city counsel.

Q. This condition you say had been going on since November?

A. Since November, yes, sir. 10

Q. It was just as bad in December as it was perhaps in March and April?

A. Oh, no; it kept getting worse all the time.

Q. And you finally decided that the way to stop it would be to fine him for violations?

A. Yes, we thought that would stop it.

Q. Did you come to that conclusion at a regular or special meeting of the Board?

A. That was at a regular meeting. 20

Q. And then adopted that course?

A. Yes.

Q. To overcome this condition of the non-collection of the garbage?

A. Yes.

Q. Why didn't you continue that course?

A. Our service wasn't getting any better, it was getting worse, and why should we tolerate it any longer? 30

Q. Under your contract you could fine him \$50 for every violation, and wouldn't that be sufficient to provide you with funds to do the work that he didn't do?

A. Yes, but where are the people getting off that were putting the garbage out in front of their place?

A. Why couldn't you have it done? 40

William F. Kearney—Cross.

A. The city go ahead and do it?

Q. Yes.

A. That is what we did after we terminated his contract.

Q. Why didn't you do it before?

A. We didn't think that was the proper course
10 to pursue.

Q. And notwithstanding the fact that Mr. Moriarty claimed he was doing his work and doing his best to perform his contract, you thought it was fair and right to put a burden of \$70 a day on him besides losing his money?

A. When I found he was putting the burden on the taxpayers by leaving the stuff out in front of their doors from eight to ten days at a time, I
20 thought it was pretty near time the Commission took action.

Q. Did you realize at the time you took this action that you were putting a burden on the taxpayers of one-third more than the contract price?

A. I didn't realize it at all.

Mr. Seymour: You took into consideration the fact that you would be able to collect the excess out of the bonding company, didn't you?
30

Witness: I did.

Q. How did you expect to collect from the bonding company if you hadn't given the bonding company any chance to make good before you terminated the contract?

A. Under the city counsel's advice.

40

William F. Kearney—Re-direct.

Re-direct by Mr. Seymour:

Q. At the conference of May 8th did Mr. Moriarty ask to be heard with his witnesses as to the statements made by the Commissioners, that he was living up to his contract; did he ask for a chance to furnish proof that he wasn't living up to his contract? 10

A. No.

Q. Was there a lengthy discussion between you and Moriarty as to whether he was making collections as he promised?

A. Yes.

Q. Didn't you call his attention to several instances, including All Saints' Church? 20

A. Yes, all that section.

Q. And the streets you have mentioned?

A. Yes.

Q. In your statement that he was not living up to his contract?

A. Yes.

Q. Do you remember whether Moriarty stated that he was unable to get teams?

A. I do. 30

William A. Calhoun—Direct.

WILLIAM A. CALHOUN, sworn for respondents.

Direct examination by Mr. Seymour :

10 Q. What is your official title, Mr. Calhoun?

A. Commissioner of Revenue and Finance in the City of Orange.

Q. Do you recall receiving any complaints about the scavenger service?

A. I do; yes.

Q. What period of time do these complaints cover?

20 A. I cannot state specifically the dates; I had numerous complaints during the month of March and April, and also some during midwinter—the period of a heavy snowstorm, but I cannot give any exact day.

Q. Did you have any complaints during May of this year?

A. In the early part of May, yes.

Q. How did those complaints come to you?

30 A. By telephone and by meeting people in the street, and wherever I happened to be at night; if I happened to be out of an evening, I would generally hear from some one's mother or wife or member of the family about the poor garbage service they were receiving.

Q. How frequent were those complaints?

40 A. They were very numerous right prior to the time when the Moriarty contract was annulled. We sometimes received four or five a day, and a majority of the citizens realized that it didn't belong

William A. Calhoun—Direct.

to my department, but they were simply from friends and neighbors and clients of mine.

Q. Were they more frequent between April 15 and May 9th than they were prior to that period, these complaints?

A. Yes, they were, during the latter part of the Moriarty contract. 10

Q. The maximum was four or five a day?

A. I should say so, Mr. Seymour.

Q. What was the nature of the complaints?

A. The failure of Mr. Moriarty to collect garbage on the dates which were set in the various sections of the town.

Q. Any complaints in relation to ashes?

A. It relates to both garbage and ashes; it simply was the general term—I don't recall the words that were said—it was the failure to collect refuse. I also had trouble with my own house on numerous occasions; there were three or four times when they were not collected on the day when they should have been collected. 20

Q. Where do you live?

A. 80 High street, Orange.

Q. Were those complaints you refer to between April 15 and May 9th your own complaints? 30

A. I recall at least one instance between that period, but I cannot tell you the date.

Q. As to your own house?

A. Yes; several times I called up Mr. Moriarty, and once or twice he sent around specially, as promised; one occasion he didn't.

Q. Did you do anything else to get rid of your ashes and garbage than leave it on the curbstone?

A. No, I generally got Mr. Moriarty on the 40

William A. Calhoun—Direct.

phone until he came around specially and took it up.

Q. Didn't he spill any of it around?

A. I am not sure whether he did or not; he didn't spread it in the yard; if he did, I generally kicked over the phone until I got it done.

10 Q. Did you make any observation and inspection of streets in the city in relation to complaints?

A. Not with that idea in particular, but it was brought to my notice in the ordinary walking around town, and particularly in the section off High street. White street was one street, and Day street, here in front of the City Hall, on several occasions I have seen the garbage stacked up there a day after it should have been removed, when it was clearly apparent that it hadn't been taken on the correct day.

20 Q. How long have you lived in this city?

A. About sixteen years.

Q. And before you were a commissioner were you connected with the city government?

A. I served three years in the City Council, as a member of the City Council from 1907 to 1910.

30 Q. How did the conditions under the Moriarty contract compare with the conditions, under your observation, during the time you lived here?

Mr. Bradner: I object as entirely irrelevant.

A. The service at that time was fair, especially to what it was under the Moriarty contract.

Q. How frequently were your detours of the streets or observations made in relation to the collection of garbage?

40 A. They were not made with the object of ascer-

William A. Calhoun—Direct.

taining the garbage situation; that wasn't in my department; you couldn't help but notice in walking along the street that garbage was stacked up in front of houses, and it accumulated in some cases apparently for a number of days; the receptacles were overflowing in many instances.

Q. Did you notice these conditions in more than one section of the city? 10

A. I cannot say, except in the northern section; I mean north of Main street; I had no occasion, that I recall, to go over south of Main street; south of the railroad; it was brought to my attention what the conditions over there were, that they were the same over there as they were north, by various citizens who talked to me, and also by talking over the situation with various of the commissioners. I remember speaking to both Mr. Kearney and Mr. Wethling about the conditions over there. 20

Q. Did you bring to their attention and the Mayor's attention the complaints that had been made to you and the observations you made in those discussions?

A. I did; yes, sir; as to the complaints and also as to my observations.

Q. Did they also tell you what complaints they had received and what observations they had made? 30

A. They didn't go over them specifically; they said the whole town was in the same condition, or words to that effect.

Q. Were the complaints you had received from various sections of the city or confined to the one section you spoke of?

A. No, they were from various sections of the city, some from the Valley section, people I knew 40

William A. Calhoun—Direct.

there and used to meet on the street; some were in my immediate neighborhood; I had more from my immediate neighborhood than other sections, presumably because I was better known.

Q. You determined at the meeting of May 9th to terminate the contract?

10 A. Yes, sir.

Q. At that time were you dissatisfied with the performance of the contract by Moriarty?

A. Very much; I was satisfied that the contract was not being performed according to the letter of it, or the spirit either.

Q. Did you have any information at that time whether he was able or willing to perform his contract?

20 A. I knew that he wasn't performing it; I knew what the results were; he was going behind further, according to reports from day to day.

Q. Are your social and business relations with him friendly?

A. Yes.

Q. In political relations also?

A. We belong to different political parties; I never had any argument with him, or never have
30 been very intimate with him, but perfectly friendly, and friendly with him now, so far as I know. I have known him for three or four years to speak to, but we have never been intimate friends.

Q. You voted to award him the contract?

A. Yes; he was the lowest bidder.

William A. Calhoun—Cross.

Cross-examination by Mr. Bradner:

Q. You were obliged to award the contract to the lowest responsible bidder?

A. Yes, sir.

Q. Did you ascertain whether Mr. Moriarty was responsible?

10

A. I relied more than anything else on the fact that he was giving a surety company bond—a company which I considered responsible; I did speak to Mr. Moriarty personally the day on which the contract was awarded and asked him if he felt satisfied that he would carry it out, and he told me there was no question about it. I also asked who was in back of him at that time, and as I recall, he said that he was in it for himself, and there was no doubt about his ability to carry it out. I did that at the council meeting; he was present at the time.

20

Q. And that is the only investigation that was made as to his responsibility—I mean responsibility to do the work, apart from his pecuniary responsibility?

A. It was the only investigation made by me; I don't know what the department head did.

30

Q. Evidently some action was taken in order to satisfy the Board that he was responsible and could perform the contract?

A. That I don't know as to any other action; I personally relied more on the fact of his giving a bond than anything else, and the short conversation I had with him lasted about five minutes.

Q. The probabilities are that the Board relied on it also?

40

William A. Calhoun—Cross.

A. I cannot state for the other members.

Q. Was there any discussion at the time on that subject?

A. I don't recall any.

10 Q. Your recollection is that reliance was placed entirely upon the surety company bond for the performance of the contract?

A. As far as I was concerned, yes, sir; I don't know what investigations the other Commissioners made.

Q. Why didn't you act on that instead of terminating the contract, and look to the surety company?

A. That is who we expect to look to.

20 Q. You didn't give the surety company any opportunity to be heard before you terminated the contract?

A. On several occasions Mr. Anderson, who stated to us that he represented the surety company, was here; he was present in both the regular commission meetings, which were held on Thursday, and he was also present at one or two conferences that I attended.

30 Q. That is a matter of record in the minutes we put in evidence?

A. Yes.

Q. But at the meeting when the contract was terminated, the surety company was not represented?

A. Mr. Anderson was present, as I recollect, at that meeting, but he left before the contract was terminated; he left in the middle of the meeting.

Q. He left before that subject came up?

40 A. He brought the subject up, some phase of it;

William A. Calhoun—Cross.

there was some slight talk about it, but he didn't stay to the end of the meeting and I didn't see him then when it was finally annulled; that was the meeting of May 9th, I think, Mr. Bradner.

Q. The minutes of May ninth read that "the privilege of the floor was granted Mr. George W. Anderson, attorney, in reference to the garbage contract. Mr. Anderson stated that he did not know what action the Board intended taking at the meeting and suggested that in the event of the city terminating the said contract the bonding company be given a chance to take over the contract. No action was taken on Mr. Anderson's request."

10

A. He didn't wait to see, Mr. Anderson didn't; he made this statement as recorded in the minutes, and then he got out, and we proceeded to the regular course of business.

20

Q. You didn't give any formal notice to the surety company that you proposed to take action to terminate the contract?

A. Personally, I didn't.

Q. Nor did the Board?

A. As far as I know, they didn't. I know that Mr. Anderson, apparently, anticipated such action; I know that from the remarks that were made.

30

Q. You judged that from what he said?

A. What he said at the meeting, yes, sir, and from the previous conference we had on the subject.

Q. What reason was there, if you know any, why the surety company should not have been given an opportunity to take over the contract and do the work?

A. I know of no reason why they should.

40

William A. Calhoun — Cross.

Q. That isn't my question.

A. In my opinion the surety company is not fitted to personally perform this work; they would simply have to sublet it to some other contractor, and under the contract, they couldn't assign without the consent of the commission.

10 Q. The city had to sublet to somebody, too?

A. We did; the reason for that was that it was, in my opinion, an emergency which called for prompt action; it was in the spring of the year and the reports were that garbage was accumulating seriously in all sections of the city, and personally, I was afraid that if we ran into a spell of warm weather, we might have a serious epidemic here.

20 Q. Suppose, Mr. Calhoun, that you had notified the surety company that that contract must be performed within a certain number of days and the surety company had taken hold of it and put the wagons on and cleaned up the city, what objection could there have been to that?

A. No objection if the surety company were able to do it, but whether they would give it the personal supervision which a local contractor would or not is, I think, fairly debatable; our object was to have the city immediately cleaned up and then kept clean.

30 Q. Your main object was to clean up the temporary bad condition?

A. And then to keep it in good condition.

Q. Was an appropriation made to cover Mr. Moriarty's contract for the fiscal year commencing January 1, 1916?

40 A. It has not been finally passed; our tentative budget is passed in January of each year; our final

William A. Calhoun—Cross.

budget has not been passed as yet. It is our practice to introduce the tentative budget shortly after the first of the year, then we repeal that and pass a final budget, which is the correct amount.

Q. When do you do that?

A. We are working on it now; it hasn't been introduced; it will require two readings and probably will be introduced during this month; we had one meeting on it this week and had one on it last week. There is one department which hasn't come up before the Commissioners yet, that is the Department of Health; some of it has been definitely fixed.

10

Q. In the tentative budget was the exact amount for his contract for the year appropriated?

A. That is the general practice. They appropriated what I think is the amount of the contract, in the tentative budget, \$14,229.50.

20

Q. On what day is that?

A. On February 8th; it was finally adopted on February 8th, the ordinance being introduced two weeks before.

Q. Has any appropriation been made to cover the contract with Moloney Contracting Company?

A. Not to my knowledge.

Q. Out of what moneys are you paying that company?

30

A. I cannot say positively; I will produce a man who can prove it.

Q. It goes through your department?

A. I do not sign the checks; they are signed by the City Clerk, countersigned by the City Treasurer and the Comptroller.

Q. You are not taking it out of the appropriation for Moriarty, are you?

40

William A. Calhoun—Cross.

A. I cannot say personally, Mr. Bradner, what fund is being used.

Q. When, to your knowledge, did it appear that Moriarty was not fully performing his contract?

10 A. I recall a snow storm early in the winter and the service was behind at that time, but it was a very severe snow; we called Mr. Moriarty up before the commission at an informal meeting of the members of the commission, and he appeared with his counsel, who at that time was Mr. George W. Perry, and admitted that the service was not satisfactory, and stated as a reason for its not being so, that it was due to the severe weather which we had been having; the weather had been very severe at that time and the commission decided to be
20 lenient under the circumstances, and didn't impose any fine.

Q. There has been some testimony here that complaints commenced to come in as far back as November; do you know anything about that?

A. No, not personally; the complaints ordinarily should not come to me; it is not in my department; I get a number of them casually by going along the street, or did toward the end.

30 Q. Were you present at the meeting making the appropriation?

A. Yes, February 8th when it was finally passed, I was there and voted for it.

Q. There wasn't any question raised at the time of the meeting when you made the appropriation for the tentative budget, about Mr. Moriarty's performance of his contract?

A. No, I don't recall any.

Samuel J. Graham—Direct.

Re-direct by Mr. Seymour:

Q. Do you remember Mr. Anderson appearing before the meeting of May 2nd, or possibly the week before May 2nd, and making any statements as to what the contractor would do and whom he said he represented at the time? 10

A. I don't remember it by date; I remember Mr. Anderson appearing on several occasions, and both he and Mr. Moriarty promising to improve the service, but I am not sure whether it was the second of May or not.

Q. On whose behalf did Mr. Anderson say he was speaking?

A. At different times he always claimed to represent the surety company, and I also heard him state on several occasions that he appeared as attorney for Mr. Moriarty. 20

SAMUEL J. GRAHAM, sworn for respondents.

Direct examination by Mr. Seymour:

Q. You are a sergeant on the police force, are you? 30

A. Yes, sir.

Q. Did you make any inspection of the city streets on May seventh of this year?

A. I did, yes, sir.

Q. For what purpose?

A. To see the condition of the scavenger service.

Q. Did you make a report on that? 40

Samuel J. Graham—Direct.

A. Yes, sir.

Q. To whom?

A. To Lieutenant Ryan when I came in in the evening.

Q. Is that your report? (Witness shown paper.)

10 A. I have it on my book; I gave it to him to copy off.

Q. Did you write that on that yellow paper?

A. No.

Q. Where did you write down your memorandum as to what you observed?

A. On the street as I came to it.

Q. Where did you write?

A. In my book; I have that book with me. (Producing book.)

20 Q. Tell us what you observed on May 7th as to the condition of the streets in relation to the accumulation of ashes and garbage on the curbstones.

A. On May 7th I went through Hill street, Parrow street, Milligan place, Hickory street, Central avenue, Taylor street, Chapman street, Ogden street, Oakwood avenue, Kenilworth place, Webster place, Oakwood place, Commerce street.

Q. Did you go alone?

30 A. Part of the time I was alone and part of the time I was in company with Officer Rankin.

Q. What did you observe on those various streets?

A. I have them down here—the number of cans out, what they contained and the number of the houses.

Q. May 7th was on Sunday?

40 A. Yes.

Samuel J. Graham—Direct.

Hill Street.

15	2 Cans ashes.	
27	Mixed.	
29	1 Can ashes.	
35	Garbage and ashes.	
33	Mixed.	10
37	1 Can ashes.	
45	1 Can ashes.	
106	Mixed.	
108	Garbage and ashes.	
110	Garbage and ashes.	

Hill and Hickory Streets.

1	Barrel of rubbish.	
1	Barrel of oyster shells.	20

Parrow Street.

Douglas Hall—11 Boxes.

108	5 Boxes garbage and ashes.	
106	2 Boxes garbage and ashes.	
104	2 Cans garbage.	
102	4 Cans garbage, ashes and papers.	
98	Ashes and old tins.	
96	2 Boxes ashes.	30
90&92	10 Boxes ashes and tins.	

Milligan Place.

3	3 Cans ashes.	
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Hickory Street.

	Biscuit factory—2 cans paper and rubbish.	40
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Samuel J. Graham—Direct.

Central Avenue.

- 407 Rubbish.
 409 Ashes and rubbish.
 411 Ashes and rubbish.
 415 Ashes and rubbish.

10

Parrow Street.

- 88 3 Boxes garbage and rubbish.
 72 Bags, boxes and rubbish.
 70 3 Boxes rubbish.
 64 Ashes.
 62 4 Boxes ashes and rubbish.
 54 1 Box rubbish.
 52 1 Box ashes.
 20 50 1 Box ashes.
 48 3 Boxes rubbish.
 46 1 Box rubbish.
 44 2 Cans ashes.
 40 3 Cans ashes.
 38 1 Can rubbish.
 32 2 Cans ashes and rubbish.
 28 2 Cans rubbish.
 20 1 Can rubbish.
 30 18 1 Can garbage.
 16 2 Cans ashes and garbage mixed.

Parrow and Hickory Streets.

- 3 Boxes ashes.

Parrow and Centre Streets.

- 3 Boxes.

40

Samuel J. Graham—Direct.

Taylor Street.

9	1 Box rubbish.	
8	2 Boxes papers.	
10	3 Boxes garbage and rubbish.	
12	1 Box rubbish.	
14	3 Boxes garbage and ashes.	10
11	6 Boxes garbage, rubbish and papers.	
17	4 Boxes rubbish.	
16	3 Boxes garbage and ashes.	
20	3 Boxes mixed.	
19	5 Boxes rubbish and garbage.	
23	3 Boxes rubbish.	
25	1 Box rubbish.	
26	3 Boxes mixed.	
29	2 Boxes Rubbish and garbage.	20
31	5 Boxes ashes and garbage.	
30	Garbage and papers.	
34	2 Boxes garbage and ashes.	
36	Rubbish.	
35	5 Boxes rubbish and ashes.	
40	Rubbish.	
42	3 Boxes mixed.	

Centre and Taylor Streets.

	3 Barrels and 4 boxes of garbage, ashes and papers.	30
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Chapman Street.

44	2 Boxes ashes.	
40	7 Boxes ashes and garbage.	
38	8 Boxes ashes and garbage.	
36	1 Box rubbish.	
30	5 Boxes ashes and rubbish.	
16	2 Boxes garbage.	40

Samuel J. Graham—Direct.

Ogden Street.

	18	Tin cans.
	24	Garbage.
	26	Rubbish.
	28	Rubbish and garbage.
10	30	Garbage.
	32	Garbage.
	38	Rubbish.
	42	Ashes.
	46	Ashes and rubbish.
	68	Rubbish.
	70	Ashes and papers.

Oakwood Avenue.

20		Central and Oakwood Ave. Rubbish and garbage.
	171	Ashes and rubbish.
	169	Garbage.
	162	Garbage and papers.
	167	Ashes—3.
	163	Ashes.
	161	Ashes and garbage—3.
	157	Bottles and rubbish—2 barrels.
30	155	Ashes—3.
	163	Ashes and rubbish—3.
	151	Ashes—2.
	147	Garbage—1.
	107	Ashes and rubbish—2.
	89-87	Ashes and papers—3.
	85	Ashes and papers—2.
	83	Ashes and papers—2.
	84	Ashes and garbage—5.
40	77	Ashes and papers.

Samuel J. Graham—Direct.

75	Garbage—3.	
73	Papers.	
52&54	Papers and ashes—6.	
20	Ashes and papers.	
18	Ashes and papers—2.	
16	Garbage—2.	
14	Rubbish—1.	10
10&12	Rubbish, garbage and ashes—10.	
8	Garbage.	
19-21	Ashes—4.	
23	Ashes and garbage—4.	
72	Ashes and garbage—2.	
	Prince Street.	
28	Garbage.	
24	Rubbish—2.	
27	Ashes and garbage—2.	20

Kenilworth Place.

	Railroad—Ashes and papers.	
36	Garbage.	
34	Ashes—6.	
30	Ashes and papers—3.	
33	Ashes and garbage—5.	
27	Ashes and garbage—3.	
21	Ashes and garbage—3.	30
11	Ashes and garbage—4.	
1	Ashes and garbage—5.	

Webster Place.

32&34	Ashes and garbage—8.	
30	Rubbish.	
23	Papers.	
21	Rubbish.	40

Samuel J. Graham—Direct.

- 19 Ashes and garbage—2.
- 22 Rubbish and garbage—2.
- 15 Garbage and papers.
- 11 Mixed.

10

Commerce Street.

- 16 Ashes and rubbish—2.
- Corner Main—Ashes.

Oakwood Place.

- 46 Ashes, papers and rubbish—7.
- 46½ Ashes, papers—2.
- 48 Ashes and papers.
- 50 Ashes.
- 20 40½ Garbage and bottles—2.
- 52 Garbage.
- 60 Mixed—2.
- 62 Ashes, garbage and papers—3.
- 66 Ashes, garbage and papers—2.
- 68 Ashes and rubbish—5.
- 70 Ashes and papers—2.
- 76 Mixed.
- 30 78 Garbage and rubbish and ashes—9.
- 80 Garbage and ashes.
- 86 Ashes—2.
- 88 Garbage and ashes—2.

Q. On this list, where you have the word "Mixed," do you mean that ashes and garbage were mixed together?

A. Yes, sir; there is very little of that.

40 Q. And unless you have the word "Mixed," either the garbage was separate from the ashes or

Samuel J. Graham—Direct.

the ashes from the garbage in the various cans you saw?

A. Yes; when I found it mixed, I simply marked it "Mixed," and there was very little of that.

Q. Were you over in that section on Saturday, May sixth, do you know?

A. I was, yes; I am not positive of that; I was 10
in the bank in the morning, and I cannot be positive whether I was there in the afternoon or not, unless I look at the report.

Q. Have you been on day duty every day between April 15 and May 9th?

A. No, sir.

Q. When did you start on day duty, in the month of May?

A. That would be hard for me to recall with- 20
out looking at the report.

Q. Whether you were on day duty or night duty, did you make a general tour of this city?

A. Yes, we make a general tour of the city.

Q. What did you observe in that period as to the accumulation of ashes and garbage on the curbstones?

A. I saw plenty of it.

Q. Can you state whether you saw the same 30
boxes of ashes or garbage in front of any particular house more than one day in succession?

A. I can recall seeing the boxes—I cannot just give the location—several days, yes, sir, in one place that hadn't been touched.

Q. How frequently would you say you saw such a sight?

A. Quite often. 40

Samuel J. Graham—Cross.

Q. During this period between April 15 and May 9th?

A. Yes.

Cross-examination by Mr. Bradner:

10 Q. Then you have seen boxes out on the street, or cans, one day, and saw the same boxes or cans the next day; you don't know whether they had been emptied and filled up again or not?

A. That I cannot swear to, but they were there in the same condition.

Q. You only imagine so; you cannot say positively that those boxes or cans hadn't been emptied between the times that you saw them?

A. I could, yes.

20 Q. How can you do that?

A. They were in the same condition; the scavenger wagon hadn't been along.

Q. That was only your judgment on the appearance of it?

A. Yes.

30 Q. You mentioned several streets on this list, Hill street, Hickory street, Parrow street, Central avenue, Taylor street, Milligan street, Ogden street, Kenilworth place, Webster place, Oakwood avenue, Commerce street and Prince street; are they south of Main street?

A. Yes, sir.

Q. They are in the section of the city where the garbage is collected on Tuesdays, Thursdays and Saturdays?

A. Yes, sir.

40 Q. What time on Sunday, the seventh of May, did you go through these streets?

Claiborne Patterson—Direct.

A. I should think I started in about two-thirty in the afternoon.

Q. It was in the afternoon?

A. Yes.

10

CLAIBORNE PATTERSON, sworn for respondents.

Direct examination by Mr. Seymour:

Q. Have you got your book with you, Mr. Patterson?

A. Yes, sir.

Q. Will you produce it?

20

A. I got one of my books and one has been misplaced.

Q. Your list is short; look over the typewritten list there and tell us whether it is a copy from the report that you made to the Lieutenant of Police of your inspection of Taylor street and Central place as to garbage conditions?

A. Yes, sir.

Q. You made an inspection on April 30, the date mentioned, and made that report to the Lieutenant?

30

A. Yes, I made this report, but my inspection started April 25th and ended May 2nd; as I say, I had another book and I filled that book up and this was given to me since, so this book hasn't got the full report on it.

Q. How many days has that book got?

A. April 29th and April 30th.

40

Claiborne Patterson—Direct.

Q. It begins with April 29th, does it?

A. Yes.

Q. And goes down to what date?

A. It goes down to May 2nd; I haven't got it on this book, only April 25th to May 2nd.

10 Q. Besides April 30th, did you inspect streets in the city on other days between April 29th and May 2nd?

A. Yes.

Q. What section of the city?

A. I took in everything from Main street and Centre street along up Central avenue, all around through Court street, Reynolds street and those streets all around the park, everything from Centre street and Main street back to the East Orange line.

20

Mr. Bradner: That is, all east of Centre street?

Witness: Yes, sir.

Q. What did you observe on those days as to the accumulation of garbage and ashes at the curbstones?

30 A. The streets were full of ashes through that whole entire week beginning Tuesday and ending the following Tuesday.

Q. The cans were at the curb or in the middle of the street?

A. On the curb.

Q. What about garbage?

A. Everything on the curb.

Q. The whole week?

40 A. Yes, sir; the whole week.

Claiborne Patterson—Direct.

Q. Did you observe any scavenger wagon in that section during that week?

A. No, sir; I heard there was one went through there on a Sunday I think, but I never saw it; from Tuesday to Tuesday I never saw a wagon over there.

Q. Was the collection of ashes and garbage, the accumulation of it, extraordinarily large? 10

A. Very, the street was a sight to see.

Q. Which street?

A. All the streets, every street over in that section, taking it east of Centre street.

Q. Can you say whether you saw the same boxes and cans in front of premises more than one day at a time?

A. Yes, sir; positively so. 20

Q. Filled?

A. Yes, sir.

Q. Were there very many instances of that sort, very many sights like that?

A. Yes, sir.

30

40

Claiborne Patterson—Cross.

Mr. Seymour: I offer that list of April 30th in evidence.

April 30, 1911.

	St. No.	Street.	Remarks.
10	11	Taylor Street.	Ashes and garbage
	15	" "	" " "
	44	" "	" " "
	24	Central Place	" " "
	37	" "	" " "
	49	" "	" " "
	54	" "	" " "
	56	" "	" " "
	58	" "	" " "
20	59	" "	" " "

Cross examination by Mr. Bradner:

Q. Were you ever called to appear before the Commissioners to testify as to what you had seen?

A. No, sir; not before.

Q. You merely made a report?

A. I was ordered to make a report on my book
30 as to condition I found the streets in and present it to the Lieutenant when I came in.

Q. You don't know what he did with it?

A. He took note of it, because I saw him at one time make a memorandum of it; I don't know what he did with it after that.

Walter Joseph Cullen—Direct.

WALTER JOSEPH CULLEN, sworn for respondents.

Direct examination by Mr. Seymour:

- Q. Are you an officer of the police force in the City of Orange? 10
- A. Yes, sir.
- Q. Did you make an inspection of the city streets in reference to the accumulation of ashes and garbage on the curbstones?
- A. Yes, sir.
- Q. When?
- A. Starting May 3rd.
- Q. Did you make a record of it in your book? 20
- A. I did, of May 7th.
- Q. Is that the only record you made?
- A. I made different records of garbage on the curb.
- Q. Have you got your book here?
- A. No, sir; the book containing that is destroyed.
- Q. Do you recall where you made any inspection on May 7th? 30
- A. Yes, all over the valley, that is, Valley street, Freeman street, Tompkins street, Austin's lane, Murray street, McChesney place, Nassau street, Liberty street, Ann street.
- Q. All over the valley section?
- A. Yes, where my post took in.
- Q. Do you know what day of the week May seventh was?
- A. Yes, it fell on Sunday. 40

Walter Joseph Cullen—Direct.

Q. What did you observe on Sunday, May 7th, as to the accumulation of ashes and garbage?

A. Ashes and garbage and tin cans and paper were in front of every house; in fact, they were all separated; ashes were in separate cans; in another large can, garbage, and the paper was bundled up and set aside.

10

Q. What about the previous days of May 2nd to May 7th?

A. The garbage was out on May 2nd in the afternoon when I took charge of the Valley post.

Q. You mean garbage and ashes were out?

A. Garbage and ashes.

Q. How long did you observe that same garbage and ashes to remain out?

20

A. I went there on Tuesday afternoon; on Wednesday I was notified to tell them to take it in, and I did so, and they took it in and put it out again, until they got sick and tired of it, until Sunday, and the same ashes and garbage was out still.

Q. That they put out prior to Tuesday?

A. Yes, sir.

Q. Does your post apply to the whole valley section?

30

A. That takes in from Mitchell street to one side of McChesney street, and from Scotland street to the West Orange line.

Q. That is about a dozen city blocks?

A. Yes.

40

Walter Joseph Cullen—Cross.

Cross-examination by Mr. Bradner:

Q. Did you go through that section on the eighth of May?

A. Yes, sir.

Q. Was it cleaned up then?

A. Part of it. 10

Q. What part?

A. There was one small block between Nassau street and Forrest street; South Jefferson street was cleaned up; the other was part of McChesney street; Tompkins street was partly cleaned; two or three boxes taken off Freeman street, part of it.

Q. Was all the rest of it cleaned up on the tenth of May?

A. I wasn't there on the tenth of May. 20

Q. When were you there next?

A. I was through there Tuesday.

Q. Tuesday, May 9th?

A. Yes, sir.

Q. And you didn't go again until when?

A. Until last week.

Q. On Tuesday, May 9th, it was pretty nearly all cleaned up?

A. There was quite a little of it left. 30

Q. What part?

A. On those streets that I mentioned.

Q. A load or two?

A. There was one wagon got loaded up in a block.

Q. Did you see any wagons working in that section on Sunday, May 7th?

A. Those two wagons started in at noon hour.

Q. Whose wagons were they? 40

Luke Riley—Direct.

A. Gus Wharton's.

Q. Moriarty's men, do you know?

A. I don't know whether they were Moriarty's men or not, but he is the contractor in the Valley.

Q. Did you make a report on May 9th?

A. No, sir.

10 Q. What time on May seventh did you go through that section?

A. From half past nine until a quarter of eight at night.

Q. All through the day?

A. Yes.

20

LUKE RILEY, sworn for respondents.

Direct examination by Mr. Seymour:

Q. You are a member of the police force of Orange?

A. I am.

30 Q. Did you make an inspection of the streets in the city for the purpose of observing the accumulation of ashes and garbage?

A. I did.

Q. What period did your inspection cover?

A. South end of the city in the Valley section.

Q. On what day?

A. May 7th.

Q. Did you make any inspection on any other day?

40 A. No other day; I noticed those things lying

Luke Riley—Direct.

out there other days, but I didn't get no orders to make any report on it.

Q. Is this list which I show you a true copy of your book, your original report book?

A. It is.

Mr. Seymour: I offer that list in evidence. 10

McChesney Street.

No.	Ashes.	Garbage.	Mixed.	
66			2	
64	1	1		
62	1	1		
60	1			
58	2	1		20
54	1	1	1	
52		2		
48	6	6	1	
32		4		
30		3		
24		5		
22		7		
20	4	6		
16	1	4		30
14	1	1	2	
12			1	
8	2	2		

40

Luke Riley—Direct.

Christopher Street.

	No.	Ashes.	Garbage.	Mixed.
	17		3	
	18	1	1	
	20		2	
10	23	1	2	
	25		2	
	27		1	
	29		1	
	28		2	
	30		1	
	32	2	3	
	43	1	2	
	45	2	1	
20	47	1	1	
	49	2	1	
	51		1	
	48		2	
	52		2	
	61	1	1	
	60	2	1	
	67	5	2	
	42	2	3	
30				

Tremont Avenue.

	No.	Ashes.	Garbage.	Mixed.
	83	2	1	
	81	2	4	1
	78	2	5	1
	72		1	
	70	3	1	
	69		2	
40	67		1	

Luke Riley—Direct.

Tremont Avenue.			
No.	Ashes.	Garbage.	Mixed.
66			1
60	1	1	1
50		2	
38			1
37	4	2	
35	8		10
33	1	1	
31	1		
20	1	3	
18		2	
16	1	2	
14	1	2	
Beach Street.			
No.	Ashes.	Garbage.	Mixed.
19	1	2	20
13		2	
5		3	
12	3	3	2
20		3	
23	3		
25	1	3	
29		2	
31		2	
30		1	30
33	4	1	
35		4	
34		3	
38	2		
39		3	
44	3	2	
46	2	1	
56		2	
57		1	40

Luke Riley—Direct.

		Morris Street.		
	No.	Ashes.	Garbage.	Mixed.
	82		1	
	79		1	
		Chestnut Street.		
	No.	Ashes.	Garbage.	Mixed.
10	69			6
	70			2
	39	3		
	37	3	1	
	33	2		
	31	1	2	
	27	4	2	
	24	1	4	
		Scotland Street.		
	No.	Ashes.	Garbage.	Mixed.
20	409	1	2	
	405		2	
	403		2	
	418	1	6	
	422	1	4	
	434	1		
	457		2	
	473	3	2	
30	477		2	
	484		4	
	479		3	
	481		2	
	494		2	
	495	1	1	
	483	2	5	
	527		1	
	525		2	
40	511	3	3	
	507	1	1	

Luke Riley—Direct.

No.	Argyle Avenue.		Mixed.
	Ashes.	Garbage.	
18			1
21			1
23	4	1	
24			1
31			6
30			1
35	3	1	
34	1	1	

10

No.	Valley Street.		Mixed.
	Ashes.	Garbage.	
103	13	4	
105	1	2	
107	2	2	
109	3	3	
116	2	3	
115		1	
119		1	
144	1	1	
138		2	
136		1	
170		3	1
174	5	4	
173		2	
194	1	2	1
189	3	2	
191	1	1	
193	1	2	1
195	3	1	

20

30

40

Luke Riley—Direct.

		Langdon Street.		
	No.	Ashes.	Garbage.	Mixed.
	15		3	
	14		2	
	12		2	
10	4		2	

		Beach Street.		
	No.	Ashes.	Garbage.	Mixed.
	62		1	
	63	1		
	65	1		
	74	1	1	
	81		1	
20	83		4	
	78		1	
	80		2	
	85	1	1	

Q. This list gives the numbers of the houses and numbers of cans of ashes and garbage and mixed stuff, doesn't it?

A. Yes.

30 Q. By mixed stuff, what do you mean?

A. Where there is ashes and garbage mixed.

Q. In the same receptacles?

A. Yes.

Q. What day of the week was May 7th?

A. I think it was Sunday.

Q. Did you make any observations the week previous to that?

40 A. I wasn't on day work, but I was up there nights, and I noticed those things the week before.

Luke Riley—Direct.

Q. In that same section?

A. Yes.

Q. What were the conditions all that week?

A. There were quite a number of boxes and cans on the streets there in the gutters waiting for the scavenger to come and pick them up; they hadn't been picked up and quite a number of people complained to me about those things. 10

Q. Were you on night duty all that week?

A. The week previous to that I was; yes, sir.

Q. Did you observe those conditions every night?

A. Every night during the time I was up there; yes, sir.

Q. How long were you up there then, about what period of time? 20

A. That is my steady night post up there; I am up there nights three weeks out of every month, sometimes it is two weeks; it is according to the way the list runs.

Q. Were you up there from April 15 to May 9th?

A. On that post; yes, sir.

Q. All of that period? 30

A. Yes, sir.

Q. At night?

A. Yes.

Q. Can you say whether or not those conditions prevailed every night?

A. I really cannot say they prevailed every night, but I should say they prevailed for a week or two before they were picked up.

Q. When were they picked up?

A. I really cannot say when he picked them up; 40

Luke Riley—Direct.

that happened after I was off, after I finished up day work.

Q. When did you finish night work there?

A. I think I started on day work—I finished night work, it was either the 28th or 29th of April—no, it was the 2nd of May; that was on a Tuesday; I went on day work then on May 2nd.

10 Q. How long did you stay on day work?

A. One week.

Q. To May 9th?

A. Yes.

Q. What were the conditions during that week?

A. Just as I stated; there was garbage and boxes of stuff lying along the street there waiting to be picked up.

20 Q. Were they picked up during that week?

A. No, sir; not during that week.

Q. The week prior to that you were on night work?

A. Yes.

Q. And what were the conditions that week?

A. They were still lying on the street, not picked up.

30 Q. All night?

A. All night.

Q. Did that condition prevail pretty generally throughout that section?

A. On my post it did; I don't know about the other section.

Q. Where was your post?

A. My post started from one side of McChesney street to the South Orange line, from Scotland street to the West Orange line, all adjoining streets.

40 Q. That is a large post, isn't it?

A. Pretty large; yes, sir.

Luke Riley—Cross.

Cross examination by Mr. Bradner:

Q. Did you see these streets that you have on your list on May eighth, Monday?

A. Yes, sir.

Q. Had any of those ashes and garbage and other things been taken away?

A. Not to my knowledge. 10

Q. Nothing taken on Monday?

A. Not that I know.

Q. You didn't count them again, did you?

A. Not after I got the orders to make a report on Sunday I didn't go around on the following day.

Q. Did you go through those same streets on Tuesday, the ninth?

A. I did. 20

Q. Had anything been taken away then?

A. After I made my list, I really did pay particular attention to it then; I thought I had finished what I was supposed to do.

Q. There wasn't anything there then that attracted your attention as an officer of the police department?

A. That thing attracted my attention so much during the period it was laying out that I didn't pay much attention to it. 30

Q. You were not concerned with it?

A. No, not after making my report.

Q. Do you live in that section?

A. No.

Q. You don't know whether that section was ever cleaned up?

A. I know it was cleaned up.

Q. You don't know when? 40

Luke Riley—Cross.

A. I don't know when it was.

Q. How long did you continue there, either on night or day duty?

10 A. I continued that week, I think it was May 2nd I went on day work, and continued until May 9th, then I went on night work again on Tuesday night; I finished at noon on the ninth and started in again at night on the ninth.

Q. During that week, beginning May eighth, did you notice the condition of the streets as to any accumulation of ashes?

A. No, I didn't; after I made the report I didn't pay much attention to it.

Q. Did you see any garbage wagons coming through on the eighth or ninth?

20 A. One night—I don't know what day it was—Mr. Moriarty's driver and his team of mules came through Heywood avenue—they were confused in the streets and they wanted to know how far up the Orange line was; I told them how far it went, and they started down Argyle avenue.

Q. They were collecting then?

A. Yes.

Q. That Tuesday night?

30 A. I cannot recall the date.

Q. It might have been the Saturday night before?

A. It was after I made my report.

John Rankin—Direct.

JOHN RANKIN, sworn for respondents.

Direct examination by Mr. Seymour:

10

Q. Are you an officer of the police force?

A. Yes, sir.

Q. Is this a list and copy of your original report book in the matter of the inspection of garbage conditions that you made?

A. Yes.

Q. When was this inspection made?

A. May seventh, on Sunday.

Q. And did you make any inspection on any other days? 20

A. No, sir.

Q. This is the only report that you made?

A. Yes, sir.

Q. Were you on day duty on May seventh?

A. Yes.

Q. When did you go off day duty?

A. The Tuesday following, I believe.

Q. May 9th? 30

A. Yes.

Q. When before that did you go on day duty?

A. I cannot exactly recall.

Q. A week or two or three?

A. One week, beginning on Tuesday, May 2nd.

Q. And were you on this same post that your list describes?

A. Yes, sir; from May 2 to May 9, I believe it was. 40

John Rankin—Direct.

Q. What were the conditions on other days besides May 7th on this post between May 2 and May 9?

A. The conditions were very bad in that vicinity.

10 A. Were they similar or were they not similar to the conditions mentioned in your report on May 7th?

A. Well, yes; for the week past the garbage was lying all over the streets in cans and boxes and different things.

Q. Do you know whether during that week there was any collection made on your beat?

A. I don't think there was.

20 Q. Did you see any Moriarty Contracting Company or James D. Moriarty wagons over there on the afternoon of Sunday, May seventh?

A. Yes, a wagon made a collection in that district.

Q. Is that the only wagon you saw?

A. The only wagon.

Q. Did you say that you saw garbage and ashes thrown into the street?

30 A. Yes, and dogs pulling it all over the street.

Q. Did you observe whether or not the same boxes and cans which you saw one day in front of any of the houses would be there full the succeeding day?

A. There were so many it would be a pretty hard matter to tell; they would fill them up and take them back again, and would be out the next day, and under the conditions of affairs it would be hard to keep track of them.

40

John Rankin—Direct.

Q. Take them back full?

A. Yes.

Q. Were they ordered to take them back by the police?

A. No, sir.

Q. When were these streets cleaned up that you saw on May seventh? 10

A. One part of Chapman street and one part of Hickory street, that is all he cleaned on that day in question.

Q. On May 7?

A. Yes.

Q. Were any ashes collected in these streets on May 8th?

A. I don't think so; no.

Q. On May ninth? 20

A. I wasn't there then.

Mr. Seymour: I offer in evidence the report of Officer Rankin on May 7, 1916:

Hill Street.

No.	Ashes.	Garbage.	Mixed.
14		"	
16			"
24	"		30
32		"	
50	"		
Met. Bldg.			
Hill and Hickory		"	
68		"	
82	"		
90		"	40

John Rankin—Direct.

Parrow Street.

	No.	Ashes.	Garbage.	Mixed.
	115	"		
	101			"
	97			"
10	93		"	
	91		"	
	89	"		
	85	"		
	83	"		

Parrow Street.

	No.	Ashes.	Garbage.	Mixed.
	79			"
20	77		"	
	61			"
	57	"	"	
	51	"		
	49	"		
	43		"	
	41	"		
	37		"	
30	35	"		
	31	"		
	25	"		
	15 ¹ / ₂	"		
	15	"	"	
	13		"	
	11		"	
	9	"	"	
	1	"	"	
40	Parrow and Centre	"		

John Rankin—Direct.

Pierson Street.

No.	Ashes.	Garbage.	Mixed.
14	"	"	
16		"	
25		"	
27	"	"	10
29	"	"	
30	"	"	
48	"	"	
52		"	
54		"	
56	"		
59	"	"	
57	"		"
47	"		" 20
45	"		"
41	"		

Reynolds Street.

No.	Ashes.	Garbage.	Mixed.
21			"
19		"	
27	"		30

Taylor Street.

No.	Ashes.	Garbage.	Mixed.
57	"	"	
51	"	"	
49	"		
39		"	
37		"	
42	"	"	40

John Rankin—Direct.

Taylor Street.

	No.	Ashes.	Garbage.	Mixed.
	44			"
	46	"	"	
	48	"	"	
10	50	"	"	
	54		"	"

Chapman Street.

	No.	Ashes.	Garbage.	Mixed.
	37		"	
	33	"		
	41			"
20	33		"	
	31		"	
	29	"	"	
	27		"	
	23		"	

Ogden Street.

	No.	Ashes.	Garbage.	Mixed.
	17		"	
	19		"	
	21		"	
	23		"	
	29	"		
	33	"	"	
	37	"	"	
	49	"		

40

John Rankin—Direct.

Hickory Street.

No.	Ashes.	Garbage.	Mixed.
205		"	
211	"	"	
199		"	
193			" 10
191		"	

Central Avenue.

No.	Ashes.	Garbage.	Mixed.
361	"	"	
359		"	
357	"	"	"
360		"	20
362		"	
371	"	"	
397	"	"	
403	"	"	
405	"		

Wilson Place.

No.	Ashes.	Garbage.	Mixed.	
7			"	30
8		"	"	
Oakwood & Wilson	"			

Webster Place.

No.	Ashes.	Garbage.	Mixed.	
14	"	"	"	40
18	"	"	"	

John Rankin—Direct.

		Central Place.		
	No.	Ashes.	Garbage.	Mixed.
	83		"	
	79	"	"	
	77			"
10	78			"
	75			"
	74	"		
	72	"		
	70	"	"	"
	68	"	"	
	58		"	
	59	"	"	
	56	"		
20	57	"	"	
	54	"		
	52	"	"	
	48	"	"	
	46		"	
	47		"	
	41		"	
	30			"
	28	"		"
30	23	"		
	21	"	"	
	24	"	"	

		Central Place.		
	No.	Ashes.	Garbage.	Mixed.
	19		"	
	17	"	"	
	15	"	"	
40	18	"	"	
	13	"	"	"

John Rankin—Direct.

No.	Central Place.			Mixed.
	Ashes.	Garbage.		
14	"			
9	"			"
12	"	"		
6		1		"
36	"	"		10

No.	Oakwood Place.			Mixed.
	Ashes.	Garbage.		
28		"		
15				"
21	"			
7	"	"		
9	"	"		20
15				"
17	"	"		
19				"
61	"	"		
29		"		
33		"		
Oakwood Pl. & Central Av. 1		1		30

No.	Orchard Street.			Mixed.
	Ashes.	Garbage.		
Hill & Orchard	"	"		
12		"		"
18				"
17				"
26				"
				40

Owen J. Egan—Direct.

		Hickory Street.		
		Ashes.	Garbage.	Mixed.
	No.			
	116		"	
	114			"
	108	"	"	
10	Hickory & Pierson	"	"	
	100		"	"
	96	"	"	
	92	"		"
	91	"		"
	56		"	
	57		"	"
	55	"	"	
	54	"		
20	52	"		"

OWEN J. EGAN, sworn for respondents.

Direct examination by Mr. Seymour:

- Q. Are you an officer of the police force?
 A. Yes.
- 30 Q. Did you make an inspection of the garbage and ashes conditions at the request of the Chief?
 A. Yes.
 Q. When?
 A. May first and May second I started—this was in April; my other book was destroyed, so I have it here for May first and May second.
 Q. This report I show you is dated April 30?
 A. It doesn't correspond with this book here.
- 40 Q. It is not in that book?

Owen J. Egan—Direct.

- A. No, sir.
- Q. Have you looked at this April 30 report?
- A. Yes.
- Q. Can you tell us whether or not you made the inspection shown on those streets?
- A. Yes.
- Q. And found the conditions mentioned in the report? 10
- A. Yes.
- Q. Were you on day duty then?
- A. Yes, sir.
- Q. What day of the week was April 30?
- A. I cannot recall.
- Q. Do you remember the day of the week you made the first inspection?
- A. I think it was on Tuesday or Wednesday. 20
- Q. You made an inspection on April 30, May 1st and what else?
- A. May second.
- Q. Did you inspect the same streets on those dates as you did on April 30?
- A. One or two on one day, and I went and looked at them the next day and saw the same stuff was out there.
- Q. The same streets all three days? 30
- A. Yes. It was a whole week I went through the same streets.
- Q. Did you find the same condition?
- A. The same stuff was there.
- Q. All the week?
- A. Yes.
- Q. As is shown on that list of April 30?
- A. Yes.
- Q. What can you say as to the ashes being sepa- 40

Owen J. Egan—Direct.

rate from the garbage in those streets?

A. We were supposed to make a report of ashes, paper and swill and how long it was out there.

Q. You didn't find out whether it was separated or not?

10

A. Yes.

Q. Was it?

A. No, it wasn't.

Q. In no place at all?

A. The garbage and paper was all together.

Q. In all places?

A. In some places, yes.

Q. Were the ashes separate from the garbage?

A. In some, yes, but not all.

20

Q. What proportion were they separated and what proportion mixed?

A. What do you mean?

Q. Was there more separated than mixed?

A. No.

Q. Fifty fifty?

A. About the same.

30

Mr. Seymour: I offer in evidence the report of Officer Egan of April 30, 1916.

ST. NO.	STREET	REMARKS
45	McChesney Street	Garbage
47	" "	"
49	" "	"
60	" "	"
67	" "	"

40

William A. Weber—Direct.

67	Beach Street		“
46	“	“	“
44	“	“	“
38	“	“	“
35	“	“	“
35	Tremont Avenue	Garbage and ashes	
	Morris & Scotland Sts.	“	10

WILLIAM A. WEBBER, sworn for respondents.

Direct examination by Mr. Seymour :

Q. What is your position in this city?

A. Sanitary inspector.

Q. Connected with the Health Department? 20

A. Yes.

Q. Did you make inspections of the accumulation of garbage, ashes and so forth on the city streets?

A. Yes, sir.

Q. Look at these papers, what are they?

A. They are in my handwriting.

Q. What does it show generally?

A. No removal of garbage and ashes. 30

Q. On the streets mentioned in this list you say there was no removal of ashes and garbage?

A. Yes, sir.

Q. On the date mentioned in the list?

A. Yes, sir.

Q. You have two words here, “Since Tuesday,” what does that mean?

A. It wasn't removed on the right days, two days. 40

Morris Fitzmaurice—Direct.

- Q. Did you make any inspection after this?
 A. March 17.
 Q. Is that the last inspection?
 A. Not the last.
 Q. Did you make any between April 15 and
 10 May 9?
 A. I don't think I did.

MORRIS FITZMAURICE, sworn for respondents.

Direct examination by Mr. Seymour:

- 20 Q. Are you an officer of the police force in this city?
 A. Yes, sir.
 Q. On April 29th did you make an inspection of any of the streets for the purpose of observing conditions as to ashes and garbage?
 A. On April 30 I did.
 Q. Did you make any on April 29; have you your book with you?
 30 A. Yes, I made some on April 29.
 Q. Have you compared your book with this list?
 A. Yes.
 Q. Is this list a true copy from your book?
 A. Yes.
 Q. This all refers to April 29th, doesn't it?
 A. I got it April 30, on a Sunday; there must be a mistake on that.
 Q. Is this a copy of your book of April 30?
 40 A. Yes.

Morris Fitzmaurice—Direct.

Mr. Seymour: I offer in evidence the report of Officer Fitzmaurice of April 30, 1916.

ST. NO.	NAME OF STREET	REMARKS	
38	Union Street	Ashes and garbage	
37	" "	" "	10
39	" "	" "	
41	" "	" "	
15	Valley Street	Garbage	
89	" "	Garbage and ashes	
117	" "	" "	
119	" "	" "	
11	Stetson Street	Garbage	
26	" "	"	
27	" "	Garbage and ashes	20
24	" "	" "	
409	South Jefferson St.	Papers tied up in bundles.	
305	" "	Ashes	
58	McChesney Street	Ashes	
64	" "	"	
57	" "	Ashes and garbage	
102	Nassau Street	"	
44	Forest Street	"	30
52	" "	"	

Q. Were you on day duty on April 30?

A. Yes.

Q. When did you go off day duty?

A. The following Tuesday at two o'clock.

Q. When did you go on day duty before that?

A. The Tuesday previous to that, at four o'clock.

Q. In the section mentioned in this list?

A. Yes, sir.

40

Morris Fitzmaurice—Cross.

Q. Were you on night duty in that section from May 2nd to May 9th?

A. No, sir.

Q. Where were you?

A. On Centre street.

Q. Another section?

10 A. Yes.

Q. During the week you were on day duty ending May 2nd, what have you to say as to conditions each day as compared with April 30?

A. The conditions were pretty rough there in some places; you could see four, five and six cans in some places, but I made no record of it.

Q. Did you see any garbage wagons over there collecting during that week?

20 A. I didn't notice.

Q. Did you observe any places where boxes and cans were placed in front of the house or store for more than one day in succession?

A. Yes, sir, I noticed them for a long time, but I took no note of them only on that particular day.

Q. Did you see these sights frequently?

A. Yes, sir.

30 Q. When did you first observe a wagon through there during that week?

A. I don't remember that, because they told me on the 30th that he was supposed to be there on the 29th, and he wasn't there.

Cross-examination by Mr. Bradner:

Q. You were told on April 30th to make a report?

40 A. Yes.

Edward W. Woodman—Direct.

Q. Of the conditions as you observed them on that day?

A. Yes.

Q. Were those streets afterwards cleaned?

A. I didn't notice.

Q. You didn't notice?

A. No, sir. 10

Q. You don't know now?

A. No, sir.

Q. That isn't in your post, is it?

A. No, sir, I finished there on Tuesday noon; this was on a Sunday I made the report.

Q. You made the report on Saturday?

A. On Sunday, April 30.

Q. What time on Sunday did you go through the streets? 20

A. From 9 A. M. until 8 or 9 P. M.

Q. Did you see any ash carts then working, on Sunday?

A. No, sir.

EDWARD W. WOODMAN, sworn for respondents. 30

Direct examination by Mr. Seymour:

Q. What is your position in this city?

A. Police Judge of the city.

Q. Do you know James D. Moriarty, the contractor?

A. Yes.

Q. Did he ever make any complaints to you of the violation of the ordinance requiring household- 40

Edward W. Woodman—Direct.

ers to separate their ashes and garbage?

A. He did.

Q. How many?

A. I think twice he spoke to me about it.

Q. What did you do in reference to it?

10 A. I sent out what we call a card notice, to bring in those families who didn't separate their ashes from the garbage, and warned them that if they didn't do so, I would be compelled to fine them.

Q. How many families did you send notices to?

A. Several, I cannot state the exact number; I think at that time Mr. Moriarty and I thought that these were happening in the very poorest locality in the city, and we felt that we would bring them in and give them a warning before he would make a formal complaint.

20 Q. That course was agreed upon between you?

A. Yes, sir.

Q. Did you take action on every complaint he made or every report he made to you?

A. I think I had them assembled on Saturday morning.

Q. You took action in every case?

30 A. Everything he told me of, and everything that was brought in from the police.

Q. Were there complaints brought in from the police?

A. Yes, several; I don't remember how many.

Q. You took similar action in those cases?

A. I had them all in together.

Q. (By Mr. Bradner): Did you ever take a formal complaint in writing, under oath, from Mr. Moriarty?

40 A. No, sir.

Frank A. Moloney—Direct.

FRANK A. MOLONEY, sworn for respondents.

Direct examination by Mr. Seymour:

- Q. What is your business? 10
 A. Contractor, specially garbage.
 Q. How long have you been in that business?
 A. Twelve years.
 Q. Did you ever have a contract for removing
 the ashes, garbage and so forth from the City of
 Orange?
 A. Yes.
 Q. When? 20
 A. I had for twelve years continually, four
 three-year terms.
 Q. Up to what time?
 A. Up until 1914.
 Q. From 1902 to 1914?
 A. Yes.
 Q. Did you personally superintend the perform-
 ance of your contract with the city during those
 years? 30
 A. I did.
 Q. And during those years were you compelled
 to dispose of your ashes and garbage outside of the
 city limits?
 A. I was, yes, sir.

Mr. Bradner: I object; I cannot see that
 this is material or relevant to the issue, what
 he did under his contract.

Mr. Seymour: I just want to qualify him. 40

Frank A. Moloney—Direct.

Q. You are familiar with the Moriarty contract and the terms of it, and you made a bid for this same work?

A. Yes, and read the specifications.

Q. Was that contract similar to yours as to collection and disposal?

10 A. The same.

Q. How many teams are necessary to properly collect and dispose of the ashes and garbage in the city of Orange, in your opinion?

A. Outside of the city?

Q. Dumping it outside of the city.

A. From May first to October first, eighteen, to do the work properly, and from October first to May first, the winter season, twelve teams.

20 Q. Did you have an arrangement with the Mayor beginning May twelfth of this year to do the work which Moriarty was to do under his contract?

A. Yes, the Mayor made arrangement with me to carry it on.

Q. Did you go around and examine the streets in the city on May 12?

A. Yes, I did.

30 Q. Do you remember what time you and the Mayor made your arrangements for you to take over the work?

A. On Wednesday.

Q. What day was the agreement between you signed?

A. Wednesday morning.

Q. Did you have any temporary arrangement or preliminary?

40 A. A verbal conversation that I would—

Q. When did that take place?

Frank A. Moloney—Direct.

A. Tuesday afternoon.

Q. And afterwards your verbal arrangement was put in the form of a written contract?

A. Yes, and signed on Wednesday morning, on the tenth of May.

Q. So that your arrangement in which you agreed to take over the work and name your price was made on the ninth, and afterwards signed up on the tenth? 10

A. Yes, and started to work on the twelfth.

Q. Did you go around the city on the twelfth and observe conditions?

A. Yes, all around every street in the city.

Q. What were the conditions?

A. The conditions were that the streets were littered with garbage receptacles. 20

Q. Ashes, too?

A. Ashes, papers and mixed refuse of all kinds.

Q. What do you mean by littered?

A. I mean littered, accumulation of boxes.

Q. A large accumulation of boxes?

A. A large accumulation of boxes; you know what an accumulation of ash boxes is in front of a building—barrels and boxes.

Q. Was it an ordinary accumulation that you might find on any day? 30

A. More than the ordinary.

Q. What can you say as to the conditions on the eleventh, tenth, ninth and eighth of that week, if you know?

A. I didn't go over the city; I would say that I went over the city on Tuesday; that was the day that I talked to the Mayor before the meeting.

Q. What were the conditions then? 40

Frank A. Moloney—Cross.

A. They were very bad, because I wanted to see the conditions before I told him what I could do the work for.

Q. Was there an extraordinary accumulation of ashes and garbage in front of the houses?

A. Yes, all over the city.

10 Q. Were those the only two times you went over the city up to May twelfth?

A. Yes.

Cross-examination by Mr. Bradner:

Q. Before you signed the agreement on the morning of May tenth you went over the city with the Mayor?

20 A. No—with the Mayor? No, I did not.

Q. Did you go alone?

A. Yes, sir.

Q. When did you have your conversation with the Mayor on Tuesday, May ninth?

A. About two o'clock in the afternoon.

Q. Where?

A. Right here.

Q. Who was here?

30 A. Nobody but the Mayor.

Q. Did you make an agreement with him then that you would take the job of cleaning up the city?

A. I told him I would take the job if they gave it to me, but I would sign no agreement.

Q. Did you tell him how much you would charge?

A. Yes.

40 Q. Did you know then that Mr. Moriarty's contract had been terminated?

Frank A. Moloney—Cross.

A. I did not, no; I didn't know nothing about it, whether they were going to terminate it or not.

Q. You didn't know what was going on?

A. No, sir, I did not; the Mayor called me up and I was away and I came up here on an hour's notice; I didn't know a thing about it.

Q. How did you expect to get the job if his contract was still in existence? 10

A. I wasn't looking for his job.

Q. Did you expect his contract to be terminated?

A. I did not; I didn't know anything about it.

Q. What did the Mayor want you to do, just clean up the city for the time being?

A. No, the Mayor wanted me to go on with the work until they could advertise for bids, which he said would be about two months; that is the time they advertise and award the contract and one thing and another. 20

Q. And this was before the meeting of that Tuesday, May ninth? Wasn't there a meeting of the Board that day?

A. Yes, sir, in the afternoon.

Q. When did you hear about that meeting?

A. That they were going to hold a meeting; I know they held a meeting every Tuesday of each week. 30

Q. Didn't the Mayor tell you that they expected to terminate Mr. Moriarty's contract?

A. He said they might, he didn't know; I made no arrangements with him about going on with any contract; he said he didn't know what they were going to do; in fact, I wasn't interested what he did do. 40

Frank A. Moloney—Cross.

Q. Did you see him again that afternoon?

A. No, I did not.

Q. What time the next morning did you see him?

A. I saw him Wednesday morning; I came in here.

10 Q. What time?

A. I think it was about ten o'clock or half-past ten.

Q. Did you sign the agreement then?

A. Yes, sir.

Q. When was it prepared?

A. That I cannot say, when it was prepared; I know I signed it here.

Q. It was all ready when you got here?

20 A. Yes.

Q. You didn't have to sit here and wait for it to be prepared, did you, on Wednesday morning?

A. No.

Q. You had concluded your bargain with the Mayor the day before?

A. No, sir, I did not.

Q. What further did you do the next morning?

30 A. I didn't do anything further but sign the agreement.

Q. Did you tell him on Tuesday how much you would charge?

A. I did, yes, sir; that is, if he wanted me to do it.

Q. What did you tell him?

A. I told him I would do the work for \$70 per day.

40 Q. Did you think that was a fair price?

A. I certainly did, under the conditions.

Frank A. Moloney—Cross.

Q. What were the conditions; were they different in any respect from the time the contract was awarded to Moriarty?

A. Horses were higher, feed is higher, labor has gone up; you don't know from one day to the other the price of labor, and the hot spell of the season, right in the dead of summer, the contract was short, for about two months; it takes a lot of equipment for a short period. 10

Q. Weren't you equipped to do the job?

A. Certainly I am equipped, but not to get into a job on such short notice as that; but if I tell a man I will do it, I will try to get there.

Q. You were one of the bidders in 1914, were you not?

A. Yes, sir. 20

Q. You made a bid for two years for \$15,984?

A. Yes.

Q. But for four years at \$16,984 per annum?

A. Yes.

Q. You made a larger amount for a four-year period than you did for a two-year period?

A. Yes, sir.

Q. Of course you figure a profit in your \$70 a day? 30

A. I don't know if I have to answer that question or not. They might advertise for bids in a couple of weeks.

Q. You don't want to tell how much you are making on it?

A. No. I don't know whether I will make a dollar on it or not.

Q. You realize that your price is just about one-third more than the Moriarty contract? 40

Frank A. Moloney—Re-direct.

A. I know what Moriarty was getting and what I am getting, but I have nothing to do with that.

Q. Do you think his contract is a fair price?

A. That I don't know.

Q. Since he made his contract has the cost of carrying on such work increased any?

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A. Yes, sir, quite considerably.

Q. How much, generally speaking; one-third more?

A. Well, yes.

Q. Did you tell the Mayor that?

A. Certainly did.

Q. Before you made your agreement?

A. I sure did.

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Q. Were any of the other Commissioners here at the time you told that to the Mayor?

A. Yes.

Q. Was there anything said about Moriarty probably losing money on his contract?

A. Not a word.

Q. Do you think he could perform his contract and make any money under present conditions?

A. That I cannot say.

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Re-direct by Mr. Seymour:

Q. The Mayor tried to induce you to do this work for \$60 a day, didn't he?

A. Yes, he did.

Q. What was the first price you gave the Mayor for the work?

A. \$75.

Q. You afterwards compromised on \$70?

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A. Yes.

Certificate of Transcript.

STATE OF NEW JERSEY }
 COUNTY OF ESSEX } ss.

I hereby certify that the foregoing testimony was taken pursuant to rule to show cause and notice, before me as Supreme Court Commissioner, at the City Hall, Orange, New Jersey, on Wednesday, June 14th, 1916, at 9:30 A. M., in the presence of Mr. Frank E. Bradner and Mr. George W. Anderson for Prosecutor, and Mr. Arthur B. Seymour for Respondents; that it was stipulated and agreed by and between the attorneys for the respective parties that the testimony should be taken down in shorthand by me and afterwards reduced to type-writing, the signatures of the witnesses to their said testimony being waived; and I further certify that the foregoing is a true and correct transcript of my shorthand notes of the testimony of the witnesses given before me.

- Dated June 19th, 1916.

NICHOLAS W. BINDSEIL,
Supreme Court Commissioner of New Jersey.

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NEW JERSEY SUPREME COURT.

June Term, 1916.

JAMES D. MORIARTY

*v.*BOARD OF COMMISSIONERS OF
THE CITY OF ORANGE.*Certiorari.*

Submitted July 10th, 1916.

Before Justices Swayze, Minturn and Kalisch.
George W. Anderson and Frank E. Bradner, for
the prosecutor.

Arthur B. Seymour, for defendants.

20. The City of Orange contracted with Moriarty for the removal of ashes and garbage for four years from August 20th, 1914. The contract provided that if after hearing on due notice, Moriarty should be found guilty by the Board of Commissioners of a violation of the specifications and conditions, the City should be entitled for each violation to fifty dollars as liquidated damages. It was further agreed that if the work was not performed satisfactorily to the Board of Commissioners, they
30. might by resolution terminate the agreement by mailing a certified copy of the resolution to the last Post Office address of Moriarty; and that he and his surety should then be compelled to pay whatever the city should be compelled to lay out to finish the work for the unexpired period of the agreement, and make good any damages the city should suffer by reason of the breach. This further provision omits any requirement of notice to Mori-
40. arty such as is contained in the clause above set

forth. In March and April, 1916, Moriarty pleaded guilty to two separate charges of violation of the contract, the last of which was on April 15th, and was fined fifty dollars for each violation. On May 9th a resolution was adopted setting forth that the work was not being performed satisfactorily to the Board and the contract was terminated from and after May 11th. Moriarty's counsel were present and suggested that if the City terminated the contract, the Bonding Company be given a chance to take over the contract, but no action was taken on this request. It is not questioned that Moriarty had such notice of this resolution as the contract required. On May 10th a contract was made with the Maloney Contracting Company for removal of garbage, ashes and house refuse for a period beginning May 12th, 1916, for seventy dollars per working day. This contract was terminable on five days' notice. On June 3rd the present writ was allowed removing for review by this court the proceedings at the meeting of May 9th.

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

We think the resolution is not such as is contemplated by Section 6 of the Commission Government Act (P. L. 1912, 649). So far as the resolution merely terminates Moriarty's contract, it is not even within the words of Section 6; so far as it authorizes the making of a contract, the act is intended only to reach original contracts, and not to include merely subsidiary contracts that are already provided for by the terms of contracts duly made. In the present case, the original contract with Moriarty, the validity of which is not questioned, provided that he and his surety should be compelled to pay whatever the city was compelled

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to lay out to finish the work. The sub-contract necessary for that purpose was impliedly authorized by the duly adopted principal contract with Moriarty. We think nothing more was necessary. If we were wrong in this, the prosecutor would not be entitled to relief, since on the prosecutor's view the resolution cannot be held to have been finally adopted, and would be merely the form in which

10. it was proposed to be finally adopted. The statute evidently contemplates two proceedings: (1) the completion of the form in which the ordinance or resolution must be finally passed; (2) the final passage or adoption at least two weeks thereafter. It is only on this supposition that the word final in the act can be given a sensible meaning. The reason underlying the act seems obvious. The provision was meant to insure against haste of trickery in municipal legislation. To that end the public were to have two weeks to examine the proposed resolution or ordinance; and it was not subject to amendment. Since the present resolution was

20. not finally passed within the meaning of the statute, the prosecutor could not be injured, even on his own view. He would have the right to go on doing the work as he has done, and the city would be obligated to pay him. The prosecutor as taxpayer

30. could not be injured, since the city would owe nothing to the Maloney Company for work done before the resolution was finally adopted. The result would then be a dismissal of the writ as prematurely allowed. But for the reason we have before stated, we think the resolution became effective at once, and we proceed to the other objections raised by the prosecutor.

It was legal to insert in the contract the provision for its termination. The argument that no

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such provision is authorized by the statute is beside the point. It may be extra-statutory, but that is very different from being illegal. It would be intolerable if the legislature were required to authorize specifically every provision and specification of every municipal contract. The details must be left to the municipality, as in fact they always have been. The suggestion that the right to terminate a contract opens the door for the evasion of competitive bidding is without force. The fact that a provision which is intended to protect the rights of the city by securing prompt and exact performance on the part of the contractor, adds to the power of the municipality, is far from being against public policy; it is quite in accordance therewith. If, in fact, the provision is perverted for the purpose of evading the requirement of competitive bidding the court can readily correct the evil by setting aside the fraudulent contract. There is no suggestion of fraud in this case.

It is hardly necessary to deal with the suggestion that there should have been unanimous action by the Board. In this case as in others, the act of a majority at a meeting of the Board duly held, is the act of the Board.

That the prosecutor was not entitled to be heard in such a case is settled in this court. *Miller v. Atlantic City*, 74 N. J. Law 345. The contract with Moriarty itself makes a distinction by requiring due notice to him when it is sought to impose the fifty dollars for damage and omitting that requirement in the clause authorizing the termination of the contract.

That the City had not only its remedy by exacting the fifty dollars for liquidated damages, but also its remedy by terminating the contract, is

clear. The damages are for actual violation of contract; the termination is authorized as a remedy for unsatisfactory performance. Violation of the contract may justify the Board of Commissioners in their dissatisfaction; but performance that may well be unsatisfactory, may not go so far as to amount to violation. The contract contains the two clauses because each dealt with a different situation.

10 If the prosecutor was in fact misled by the Mayor it was his own fault. His mistake, or the conduct of the Mayor could not bind the Board. By the contract it was the Board that was to be satisfied, not the Mayor alone.

20 Whether the prosecutor was under a legal obligation to remove house refuse or dead animals is of no importance. If an attempt was made to impose upon him greater burdens than the contract warranted, his remedy was to refuse to do the extra work and stand on his contract rights.

30 The argument that the contract with the Maloney Contracting Company should have been let only after competitive bidding cannot prevail. That contract was only a means of carrying out the provisions of the original contract with Moriarty—a sub-contract. The case is quite like *Camden v. Ward*, 67 N. J. Law 558. Nor is there any proof that the appropriations will be exceeded by carrying out the contract with the Maloney Company. If in fact the cost will exceed the amount to be recovered of Moriarty and his surety, we must assume that the Board will take measures to meet the difficulty, either by terminating the contract under the five day clause contained therein or by obtaining, if practicable, increased appropriations. We cannot assume that they will incur expense in excess of the appropriations.

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We find nothing arbitrary or unreasonable in the action of the Board. The fact that Moriarty had twice within six weeks pleaded guilty to violations of contract was sufficient to justify the Board in finding that his work was not satisfactorily performed.

The writ must be dismissed with costs.

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NEW JERSEY SUPREME COURT.

JAMES D. MORIARTY,

Prosecutor,

vs.

10 THE BOARD OF COMMISSION-
ERS OF THE CITY OF
ORANGE AND JOHN J.
BRYNE, CLERK,

Defendants.

*On Certiorari.
Rule dismissing
Writ.*

20 This cause coming on to be heard at the June
Term, 1916, of this Court, and the Court having
heard the argument of counsel of the respective par-
ties, and having inspected the return to writ of
certiorari issued in said cause, and having consid-
ered the reasons assigned for setting aside said
resolution and being of the opinion that the writ
of certiorari should be dismissed,

It is Ordered that the writ of certiorari issued
in this cause be and the same is hereby dismissed,
with costs.

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Entered September 28, 1916.

On motion of

ARTHUR B. SEYMOUR,

Attorney of Defendants.

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NEW JERSEY SUPREME COURT.

JAMES D. MORIARTY,

Prosecutor,

vs.

THE BOARD OF COMMISSION-
ERS OF THE CITY OF
ORANGE AND JOHN J.
BRYNE, CLERK,

Defendants.

*Notice of Appeal
On Certiorari.* 10

Take notice that the prosecutor, James D. Moriarty, appeals to the Court of Errors and Appeals, the last resort in all cases, from the whole and every part of the judgment entered in the above stated cause which adjudges that the writ of certiorari, allowed in said cause, be dismissed, with the costs of the respondents against the prosecutor. 20

Dated September 30, 1916.

GEO. W. ANDERSON,

Attorney for Prosecutor.

Service acknowledged by Arthur B. Seymour,
City Counsel, Oct. 3, 1916. 30

Filed Oct. 3, 1916.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10	<p>JAMES D. MORIARTY, <i>Prosecutor-Appellant,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>THE BOARD OF COMMISSION- ERS OF THE CITY OF ORANGE, <i>Defendant-Respondent.</i></p>	<p><i>Supreme Court.</i> <i>On Appeal from</i> <i>Grounds of</i> <i>Appeal.</i></p>
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The appellant states the following grounds of appeal:

- 20 1. The determination of the Supreme Court that the stipulation in the contract giving the Board of Commissioners the power to terminate it, is legal.
2. The determination of the Supreme Court that the prosecutor appellant was not entitled to notice and an opportunity to be heard upon the proposed action to terminate the contract.
- 30 3. The determination of the Supreme Court that the Board of Commissioners of the City of Orange had not elected to proceed under another term of the contract to enforce a penalty for the violation thereof, and was not precluded by such proceedings from terminating the contract.
- 40 4. The determination of the Supreme Court that the prosecutor-appellant was not misled by the conduct of the Mayor and Director of Public Affairs of the City of Orange, and that such officer had no power to extend the time for the performance of the contract.

5. The determination of the Supreme Court that the Board of Commissioners of the City of Orange had power to make the contract with Maloney Contracting Company without competitive bidding.

6. The determination of the Supreme Court that the Resolution of May 9, 1916, was not a Resolution authorizing the making of a contract, and is valid, although it was not on file in the office of the City Clerk two weeks before its final passage.

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7. The determination of the Supreme Court that the action of the Board of Commissioners was not arbitrary or unreasonable, and that the fact that the prosecutor had twice within six weeks pleaded guilty to violations of contract, was sufficient to justify the Board in finding that his work was not satisfactorily performed.

8. The determination of the Supreme Court that the writ of certiorari should be dismissed with costs.

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GEO. W. ANDERSON,
Attorney of Appellant.

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New Jersey Court of Errors and Appeals

JAMES D. MORIARTY,

Prosecutor-Appellant,

VS.

THE BOARD OF COMMISSIONERS

OF THE CITY OF ORANGE

ET AL.,

Defendants-Respondents.

On Certiorari.

On Appeal from

Supreme Court.

BRIEF FOR APPELLANT.

ABSTRACT OF THE CASE.

This is an appeal from a judgment of the Supreme Court dismissing a writ of certiorari. The facts are correctly set forth in the preliminary statement in the opinion of the Supreme Court (p. 216), with this explanation:

The counsel of the prosecutor was not present at the meeting of May 9th, as stated on p. 217. Mr. Anderson was at the meeting, but not in the capacity of attorney or counsel for Moriarty. It being admitted no notice was given of the intention of the Commissioners to terminate the contract in question, it was not deemed necessary to explain by testimony how Mr. Anderson, who on a former occasion represented the surety on Moriarty's bond, happened to be present. The fact being that he was present by reason of what he was told by an outside party at the time the meeting was to convene, without the knowledge of Moriarty or his surety, and that he endeavored to avert summary

action by the board, as appears by the state of the case.

The contract between the City of Orange and James D. Moriarty is printed in full at p. 17.

In addition to the statement of facts preceding the opinion of the Supreme Court, the following are material:

The evidence discloses that in the latter part of April and the first part of May, 1916, the citizens of Orange were requested to put out for collection and removal all articles which they desired to throw away, and consequently there was a very large accumulation of ashes and garbage and house refuse and furniture and grass and dirt, and all conceivable things that people would throw away, and it was very difficult for the prosecutor to keep up with the work. It seems that he made some arrangement with the Mayor of the City, that he would have all the streets cleared by May 6th, which fell on a Saturday, and he was unable to do so, and he had another conference with the Mayor, and some of the Commissioners, on May 8th. He testified (p. 61) and he is corroborated by his witness, Del Deo (p. 66), that on May 8th the Mayor, who was also Director of Public Affairs, and had charge of the work, agreed that he could have until May 10th to finish the removal of the accumulated garbage and ashes, etc. He put on eleven extra teams and wagons and was doing his work (pp. 55 and 68).

Notwithstanding this arrangement with the Mayor on May 8th, the Board of Commissioners on

May 9th proceeded to adopt the resolution, which is attacked, although at the meeting of the Board the Mayor stated that Mr. Moriarty may have left the conference with that intention (meaning that he had until the 10th to finish removal of the ashes, etc.). This appears in the return to the writ of certiorari (pp. 4-7, inclusive.)

The Mayor testified that the garbage was all cleaned up on May 12th, when the Maloney Contracting Company had the job, the evidence tending to show that Moriarty had the work practically done by the 11th inst. (pp. 111-112).

SPECIFICATION OF ERRORS RELIED UPON.

1. The determination of the Supreme Court that the prosecutor-appellant was not entitled to notice and an opportunity to be heard upon the proposed action to terminate the contract.

Reasons No. 10, p. 11.

Grounds of appeal No. 2, p. 224.

2. The determination of the Supreme Court that the Board of Commissioners of the City of Orange had not elected to proceed under another term of the contract to enforce a penalty for the violation thereof, and was not precluded by such proceedings from terminating the contract.

Reasons No. 12, p. 12.

Grounds of appeal No. 3, p. 224.

3. The determination of the Supreme Court that the prosecutor-appellant was not misled by the con-

duct of the Mayor and Director of Public Affairs of the City of Orange, and that such officer had no power to extend the time for the performance of the contract.

Reasons No. 13, p. 12.

Grounds of appeal No. 4, p. 224.

4. The determination of the Supreme Court that the action of the Board of Commissioners was not arbitrary or unreasonable, and that the fact that the prosecutor had twice within six weeks pleaded guilty to violations of contract, was sufficient to justify the Board in finding that his work was not satisfactorily performed.

Reasons Nos. 4, 5, 6, 7, p. 11.

Grounds of appeal No. 7, p. 225.

BRIEF OF ARGUMENT.

POINT I.

The contractor was entitled to notice and an opportunity to be heard.

The contract is made with the City of Orange and is executed by the Mayor, and not by the Board of Commissioners (p. 22).

The stipulation in the contract, which requires interpretation, reads as follows:

“If the work herein required to be performed by the party of the first part is not performed satisfactorily to the Board of Commissioners, of the party of the second part, the said Board of Commis-

sioners may by resolution terminate this agreement, etc." (pp. 20-21).

The parties contemplated action by the Board of Commissioners as a body and not individually. Such action would necessarily be judicial. Judicial action always requires notice in order to bind a party to be affected by it.

Moore vs. Haddonfield, 62 Law, 32 Vr., 286,
Court of Errors.

Vailsburg vs. Shannon, 24 Law, 4 Zab., 740,
Court of Errors.

State vs. Jersey City, 24 Law, 4 Zab., 662,
Supreme Court.

The Commissioners were called upon to determine whether the work had been satisfactorily performed.

We contend that the action of the Commissioners was judicial, and that the contractor was entitled to an opportunity to be heard. The evidence shows that he had no notice of the formal meeting, and that he had no opportunity to be heard, and that, indeed, he was given to understand by the Mayor that he would have an extension of time to finish his work. The Supreme Court held that the prosecutor was not entitled to be heard, and relied upon the case of *Miller vs. Atlantic City*, 74 N. J. Law, 345.

We think that *Miller vs. Atlantic City* may be distinguished from this case.

In that case it does not appear that the parties contemplated any liability on the part of the contractor to pay any excess cost to Atlantic City for performing the work of repaving the streets after the contract had been terminated; and it does not appear that there was any contention that the action of the City Council without notice was in itself arbitrary and unreasonable.

Miller stood entirely upon his vested interest in the contract. As a contract of employment it could be terminated by the employer when the work was unsatisfactory. But such termination of the contract would also terminate the liability of the contractor.

Gwynn vs. Hitchner, 66 N. J. Law, 37.

This contract also provides for a hearing on due notice in case of a charge for specific violation of the contract.

We cannot agree with the Supreme Court that the parties intended to exclude notice when action was to be taken to terminate the contract.

Strict construction of the agreement authorizing the Board of Commissioners to terminate the contract would give the Board the power to terminate for a single violation of the contract.

The stipulation in the contract as follows:

“He and his surety shall then be compelled to pay whatever the City shall be compelled to lay out to finish the work for the unexpired

period of this agreement, and make good any damages the party of the second part shall suffer by reason of the breach of this agreement.”—

gives the contractor a special interest in the proceedings to be taken by the Board of Commissioners.

In this case, also, the contractor had contended at a prior formal meeting that he had fully performed his contract (p. 40, l. 30). This raised an issue which required judicial action, of which he should have had notice.

If the contract could be terminated in this way it must be such that it would be terminated in its entirety, so that neither party would have any claim or “come back” against the other party.

POINT II.

The Board of Commissioners Elected to proceed under another term of the contract and was bound by such election.

The contract contains a stipulation for a hearing on notice on charges of violation of the specifications and conditions of the agreement, and that for each violation the City shall be entitled to the sum of fifty dollars as liquidated damages (p. 20).

This contract had been in force for more than a year and a half before any action was taken against the contractor.

On March 23, 1916, the Mayor made a formal complaint, which resulted in the imposition of a fine of fifty dollars (pp. 23-26).

On April 18, 1916, the Mayor made another complaint (p. 27), upon which proceedings were taken, which resulted in the imposition of a fine on May 2, 1916 (pp. 27-32). No further complaints were made against the contractor, but the Mayor testified that between April 15, 1916, and May 9, 1916, he received complaints from citizens (p. 87).

The Mayor also testified at p. 101 that there was a conference called between the Commissioners and the contractor for Monday, May 8th. It was at that conference that the contractor was given to understand that his time would be extended for clearing the streets of garbage, etc.

If the contract means that the Board of Commissioners would have the power to terminate it for either of the violations for which it imposed the fine, then the Board elected to impose the fine instead of terminating the contract. There was nothing in the situation at the time of the adoption of the Resolution of May 9th which showed that the contractor intended to abandon the work. There may have been other violations of the contract which would have subjected him to further fines. The contract contemplates possible violations of the specifications, and the City is to be compensated for those violations by the payment of liquidated damages.

The City, we contend, so understood the contract, and elected to treat the neglect of the contractor as a violation within the meaning of that term of the contract. And this leads to the next point.

POINT III.

The contractor was misled by the conduct of the Mayor, who was the director of public affairs of the City of Orange.

The statute, P. L. 1913, 836, sect. 4, gives to the Board of Commissioners all administrative, judicial and legislative powers and duties theretofore had and possessed and exercised by the Mayor and City Council, and gives them complete control over the affairs of the City; and distributes the executive, administrative and legislative powers, authorities and duties into and among five departments.

The Department of Public Affairs is that which has charge of the collection of ashes, etc.

The statute prescribes that the Mayor shall be the Director of the Department of Public Affairs. He is therefore at the head of the Department which has charge of the collection of garbage, etc.

It is expressly provided in the contract that the wagons to be used shall be satisfactory to the Director of Public Affairs (p. 18), and also that the transfer of garbage, ashes, etc., from wagon to wagon within the city limits will not be allowed except by consent of the Director of Public Affairs (p. 19). Paper must be collected in separate carts or wagons, and the wagons must be satisfactory to the Director of Public Affairs; and paper must be disposed of in a manner satisfactory to the Director of Public Affairs (p. 19).

The evidence shows that the Mayor, who was also the Director of Public Affairs and the person in

actual charge of the work on May 8th, had a conversation with the prosecutor relating to the condition of the streets, and the prosecutor, or his foreman, stated that everything would be cleared away by May 10th.

This is the testimony of the contractor and his foreman, Del Deo. At that time the Director of Public Affairs apparently agreed that the contractor should have further time. At the formal meeting on May 9th the Mayor did not vote for the Resolution, and neither did Mr. Murray, one of the Commissioners, both appearing to have the feeling that the contractor might have understood that he was to have until May 10th, and which they so expressed. (See p. 7). Return of Writ.

In the return to the writ of certiorari (p. 4) there is given a statement of what occurred at the meeting of the Board of Commissioners on May 9th, and at the top of p. 5 there is the following statement:

“The Mayor further stated that Mr. Moriarty may have left the conference with that intention, but that he did not, nor was he in a position to give any such promise.”

It appears clearly that Moriarty and his foreman understood that the Mayor had extended the time, and the Mayor certainly had the impression in his mind at the meeting of May 9th that Mr. Moriarty may have so understood what had been said.

Undoubtedly the contractor, as the evidence shows, was making every effort to finish the cleaning up by the 10th inst., and had practically done so.

The Supreme Court held (p. 220) that:

“If the prosecutor was in fact misled by the Mayor, it was his own fault. His mistake, or the conduct of the Mayor, could not bind the Board. By the contract, it was the Board that was to be satisfied, not the Mayor alone.”

The Mayor had made complaints and the Board had permitted him to act in that capacity, that is, to take charge of the work and to make complaints for violations of the contract. He had received further complaints from citizens and he had threatened the contractor with formal complaints and more fines, and the contractor stated that if he would give him further time he would complete the work. The contractor left the conference with the idea in his mind that no further proceedings would be taken against him until after May 10th, and if he finished the cleaning up by that time nothing further would be done.

We feel justified in contending that the Board of Commissioners was estopped by the conduct of the Director of Public Affairs from taking any action to terminate the contract on May 9th.

POINT IV.

The resolution in view of the evidence taken in this cause appears to have been adopted in an arbitrary manner and unreasonably, and therefore, it should be set aside.

The action of the Board of Commissioners was arbitrary, in that no notice was given to the con-

tractor, or opportunity to be heard. It was unreasonable in that there was no evidence laid before the Board to prove any violations of the contract, and, particularly, there was nothing before the Board in the way of legal evidence or information which even tended to show that the contractor had entirely abandoned the work, or was doing it in such a manner as to evince an intention to abandon it.

The provision in the contract giving the Board of Commissioners the power to terminate it did not justify the Commissioners in acting arbitrarily, or improperly exercising the power.

Dillon Municipal Corporations, 5th Ed., Vol. 2, p. 813, p. 1231.

There is no case in this State directly in point, but there are cases relating to building contracts, such as *Gerisch vs. Herold*, 82 Law, 53 Vr., 605, which held that a contract to erect a house to the satisfaction of the owner made it incumbent upon the builder to prove that the building was completed to the satisfaction of the owner; and the case of *Hayes vs. Kluge*, 86 Law, 1 Gummere, 657, in which the Court of Errors cited the case of *Zaleski vs. Clark*, 44 Conn., 218, with approval, upon the point that a contract to make a bust satisfactory to the defendant, that it was for her alone to determine whether it was so.

These cases illustrate the distinction that is made between satisfaction depending upon fancy, taste, sensibility or judgment of the person to be satisfied and operative fitness or mechanical utility; and the

subject matter is discussed by Justice Swayze in *Gerisch vs. Herold*.

The case of *Gearty vs. Mayor, etc., of New York*, 171 N. Y., 61; 63 N. E. Rep., 804, which is cited by Judge Dillon, involved a contract for street paving, and the contract required the work to be done to the satisfaction of the Park Commissioners and City Engineer. Bartlett, J., says:

“The fact that this was to be performed to the satisfaction of the Commissioners and their engineer is not conclusive against the plaintiff. That power cannot be exercised in an arbitrary manner, but reasonably and in accordance with fairness and good faith.”

The removal of garbage and ashes is a continuous work to be done daily, and the contract contemplates specific violations and the infliction of a fine for such violations.

A reasonable interpretation of the term of the contract giving the Board of Commissioners the power to terminate it if the work is not performed satisfactorily, would be:

When it appears to the Board of Commissioners that the contractor has abandoned the work to such an extent as to evince an intention not to proceed with it, the Board may then proceed in a formal manner to adopt a resolution to terminate the agreement.

It seems to be unnecessary to recite the evidence in this case. It sufficiently appears that the occasion when there was an accumulation of garbage

and other matter was an unusual one, and it sufficiently appears that the contractor was doing his best to clear up the accumulation, etc., and the evidence does not show an intention on his part to abandon the work. The action of the Board was not only arbitrary, as above stated, and unreasonable, but, in view of the conduct of the Mayor and Director of Public Affairs, whereby the contractor was misled, the action of the Board was not taken in accordance with fairness and good faith.

It is respectfully submitted that the judgment of the Supreme Court should be reversed, and that the Resolution terminating the prosecutor's contract should be set aside with costs.

GEORGE W. ANDERSON,
FRANK E. BRADNER,

Of Counsel with Appellant.

Court of Errors and Appeals New Jersey

10

JAMES D. MORIARTY,

Prosecutor,

vs.

THE BOARD OF COMMISSIONERS

OF THE CITY OF ORANGE,

Defendants.

On Certiorari.

ON APPEAL

FROM

SUPREME

COURT.

20

The writ of certiorari allowed in the above entitled action was dismissed by the Supreme Court in an opinion filed August 14, 1916. Following is a copy of the opinion which is reported in 98 Atlantic Reporter 465:

New Jersey Supreme Court

JUNE TERM, 1916.

JAMES D. MORIARTY,

VS.

10 THE BOARD OF COMMISSIONERS
OF THE CITY OF ORANGE,

Submitted July 10th, 1916.

Certiorari.

Before Justices Swayze, Minturn and Kalisch.

20 George W. Anderson and Frank E. Bradner, for
the prosecutor.

Arthur B. Seymour, for defendants.

The City of Orange contracted with Moriarty for
the removal of ashes and garbage for four years
from August 20, 1914. The contract provided that if
after hearing on due notice, Moriarty should be
found guilty by the Board of Commissioners of a
30 violation of the specifications and conditions, the
City should be entitled for each violation to fifty dol-
lars as liquidated damages. It was further agreed
that if the work was not performed satisfactorily to
the Board of Commissioners, they might by resolu-
tion terminate the agreement by mailing a certified
copy of the resolution to the last Post Office address
of Moriarty; and that he and his surety should then
be compelled to pay whatever the city should be com-
pelled to lay out to finish the work for the unexpired
40 period of the agreement, and make good any dam-

ages the city should suffer by reason of the breach. This further provision omits any requirement of notice to Moriarty such as is contained in the clause above set forth. In March and April, 1916, Moriarty pleaded guilty to two separate charges of violation of the contract, the last of which was on April 15th, and was fined fifty dollars for each violation. On May 9th a resolution was adopted setting forth that the work was not being performed satisfactorily to the Board and the contract was terminated from and after May 11th. Moriarty's counsel were present and suggested that if the City terminated the contract, the Bonding Company be given a chance to take over the contract, but no action was taken on this request. It is not questioned that Moriarty had such notice of this resolution as the contract required. On May 10th, a contract was made with the Maloney Contracting Company for removal of garbage, ashes and house refuse for a period beginning May 12, 1916, for seventy dollars per working day. This contract was terminable on five days' notice. On June 3rd the present writ was allowed removing for review by this court the proceedings at the meeting of May 9th.

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

We think the resolution is not such as is contemplated by Section 6 of the Commission Government Act (P. L. 1912, 649). So far as the resolution merely terminates Moriarty's contract, it is not even within the words of Section 6; so far as it authorizes the making of a contract, the act is intended only to reach original contracts, and not to include merely subsidiary contracts that are already provided for by the terms of contracts duly made. In the present case, the original contract with Moriarty, the validity of which is not questioned, provided that he and his surety should be compelled to pay whatever the city

was compelled to lay out to finish the work. The sub-contract necessary for that purpose was impliedly authorized by the duly adopted principal contract with Moriarty. We think nothing more was necessary. If we were wrong in this, the prosecutor would not be entitled to relief, since on the prosecutor's view the resolution cannot be held to have been finally adopted, and would be merely the form in which it was proposed to be finally adopted. The

10 statute evidently contemplates two proceedings: (1) The completion of the form in which the ordinance or resolution must be finally passed; (2) the final passage or adoption at least two weeks thereafter. It is only on this supposition that the word final in the act can be given a sensible meaning. The reasons underlying the act seems obvious. The provision was meant to insure against haste or trickery in municipal legislation. To that end, the public were to have two weeks to examine the proposed

20 resolution or ordinance; and it was not subject to amendment. Since the present resolution was not finally passed within the meaning of the statute, the prosecutor could not be injured, even on his own view. He would have the right to go on doing the work as he has done, and the city would be obligated to pay him. The prosecutor as taxpayer could not be injured since the city would owe nothing to the Maloney Company for work done before the resolution was finally adopted. The result would then be

30 a dismissal of the writ as prematurely allowed. But for the reason we have before stated, we think the resolution became effective at once, and we proceed to the other objections raised by the prosecutor.

It was legal to insert in the contract the provision for its termination. The argument that no such provision is authorized by the statute is beside the point. It may be extra-statutory, but that is very different from being illegal. It would be intolerable if the legislature were required to authorize specifically

40 every provision and specification of every municipal

contract. The details must be left to the municipality, as in fact they always have been. The suggestion that the right to terminate a contract opens the door for the evasion of competitive bidding is without force. The fact that a provision which is intended to protect the rights of the city by securing prompt and exact performance on the part of the contractor, adds to the power of the municipality, is far from being against public policy; it is quite in accordance therewith. If in fact the provision is perverted for the purpose of evading the requirement of competitive bidding the court can readily correct the evil by setting aside the fraudulent contract. There is no suggestion of fraud in this case. 10

It is hardly necessary to deal with the suggestion that there should have been unanimous action by the Board. In this case as in others, the act of a majority at a meeting of the Board duly held, is the act of the Board.

That the prosecutor was not entitled to be heard in such a case is settled in this court. *Miller v. Atlantic City*, 74 N. J. Law 345. The contract with Moriarty itself makes a distinction by requiring due notice to him when it is sought to impose the fifty dollars for damage and omitting that requirement in the clause authorizing the termination of the contract. 20

That the City had not only its remedy by exacting the fifty dollars for liquidated damages, but also its remedy by terminating the contract, is clear. The damages are for actual violation of contract; the termination is authorized as a remedy for unsatisfactory performance. Violation of the contract may justify the Board of Commissioners in their dissatisfaction; but performance that may well be unsatisfactory, may not go so far as to amount to violation. The contract contains the two clauses because each dealt with a different situation. 30

If the prosecutor was in fact misled by the Mayor, 40

it was his own fault. His mistake, or the conduct of the Mayor could not bind the Board. By the contract it was the Board that was to be satisfied, not the Mayor alone.

Whether the prosecutor was under a legal obligation to remove house refuse or dead animals is of no importance. If an attempt was made to impose upon him greater burdens than the contract warranted, his remedy was to refuse to do the extra work and stand on his contract rights.

The argument that the contract with the Maloney Contracting Company should have been let only after competitive bidding cannot prevail. That contract was only a means of carrying out the provisions of the original contract with Moriarty—a sub-contract. The case is quite like *Camden v. Ward*, 67 N. J. Law 558. Nor is there any proof that the appropriations will be exceeded by carrying out the contract with the Maloney Company. If in fact the cost will exceed the amount to be recovered of Moriarty and his surety, we must assume that the Board will take measures to meet the difficulty, either by terminating the contract under the five day clause contained therein or by obtaining, if practicable, increased appropriations. We cannot assume that they will incur expense in excess of the appropriations.

We find nothing arbitrary or unreasonable in the action of the board. The fact that Moriarty had twice within six weeks pleaded guilty to violations of contract was sufficient to justify the Board in finding that his work was not satisfactorily performed.

The writ must be dismissed with costs.

It is respectfully submitted that the judgment of the Supreme Court dismissing the writ should be affirmed.

ARTHUR B. SEYMOUR,

Of Counsel with Defendant.

New Jersey Court of Errors and Appeals

JAMES D. MORIARTY,

Prosecutor,

vs.

THE BOARD OF COMMISSIONERS OF

THE CITY OF ORANGE, *et al.*,

Defendants.

On Certiorari. 10

BRIEF FOR DEFENDANTS.

FACTS.

The facts in this case are correctly set forth in the brief of the prosecutor in his ABSTRACT OF THE CASE, except that there is no evidence of there having been any "clean up" week, except the statement of the prosecutor that people on the street told him that the Health Department of the City of Orange had told them that he was bound to take everything they put on the curbs. (See page 79 of the printed case.) Regardless of the fact of whether or not there was a "clean up" week, the testimony of Police Officers Graham, Paterson, Cullen, Riley, Rankin, Egan and Fitzmaurice, pages 161, et seq., of the case show that for many days prior to the day the resolution terminating the contract was passed, ashes and garbage properly separated had been placed out in front of the residences of the City of Orange and that the prosecutor neglected to make collections for several days.

The points made by the prosecutor in his brief will be taken up in their order.

40

POINT 1.—THE STIPULATION IN THE CONTRACT GIVING THE BOARD OF COMMISSIONERS THE POWER TO TERMINATE IT, IS ILLEGAL.

It is true that the statute authorizing the making of a contract for the collection and removal of ashes and the collection, removal and disposal of garbage (1 Compiled Statutes, page 762) does not expressly provide any means whereby a contract may be terminated, but there being no limitation of terms of such a contract and no prohibition of any particular provision, municipalities which contract under that statute may contract as individuals would in making a contract. Nor does the provision of the statute requiring a contractor to give bonds for the faithful performance of the work impliedly prohibit a municipality from providing in its contract for a means of terminating the contract. The object of the act is for the protection of the municipality and its taxpayers and the provisions for letting a contract to the lowest responsible bidder, who shall give satisfactory bonds is the means taken by the Legislature to provide such protection.

“A city or other municipal corporation having the power to make a contract can deal with the contract in the same manner as if it were a natural person, and may, in the absence of a statutory limitation upon its powers, or conformably with such limitation, change, modify it or cancel it in the same manner as it might originally contract.”

Dillon Municipal Corporations, Par. 820, 5th Ed.

“Municipal corporations do not possess sovereign power to abrogate or change contracts at will and pleasure; but may repudiate, modify or rescind them only under the same conditions and for the same causes as private corporations or persons, as when the contract is void or the right to revoke is reserved.”

40 28 Cyc. 682, citing cases.

The contract between the prosecutor and the City of Orange (see Case page 20, line 36) provided that if the work to be performed by the prosecutor was not performed satisfactorily to the Board of Commissioners of the City of Orange; said Board of Commissioners could, by resolution, terminate the contract. The evidence shows (see Case page 35) that the method provided by the contract to terminate it was followed and the prosecutor admits receiving a copy of the resolution by mail. 10

Other cases in which such provisions in contracts have not been questioned are as follows:

Jones vs. City of New York, 9 N. Y. St., Rep. 247.

Powers vs. City of Yonkers, 114 N. Y. 145, 21 N. E. 132.

POINT 2.—THE PARTIES CONTEMPLATED UNANIMOUS ACTION BY THE BOARD OF COMMISSIONERS. 20

The suggestion by the prosecutor that unanimous action is required by the contract is placing too narrow a construction upon the contract. All legislative bodies perform their acts by a majority vote and the statute under which the Board of Commissioners obtain their authority to govern the City of Orange provides that "A majority of the members of the Board of Commissioners shall constitute a quorum and the affirmative vote of a majority of all the members shall be necessary to adopt any motion, resolution or ordinance." 30

P. L. 1911 page 464, par. 3, as amended by P. L. 1916 page 406.

The resolution received the affirmative vote of the majority of the Board and the Board voted upon the question of terminating the contract in the same manner that it would vote upon the granting of a franchise, or the necessity of any public work, that is, their mind upon the question of voting for or against the resolution was made up by their knowl- 40

edge of the question. This knowledge came to them by their observance of conditions, their receipt of complaints personally, and their knowledge of complaints made to the Mayor who had charge of the department under whose supervision the collection of garbage, etc., came. See Case pages 98 and 99 Et Seq. for the Mayor's testimony; on pages 119-122 Et. Seq. for Commissioner Wethling's testimony, and page 138 et seq. for Commissioner Kearney's
 10 testimony, and pages 150-154 Et Seq. for Commissioner Calhoun's testimony.

Conditions were so bad that Commissioner Calhoun was afraid that serious epidemic might ensue. See page 158 line 18.

POINT 3.—THE PROSECUTOR WAS ENTITLED TO NOTICE AND AN OPPORTUNITY TO BE HEARD.

The Supreme Court has decided to the contrary.
 20 See Miller vs. Atlantic City, 74 N. J. L. p. 345, where the Supreme Court held: "A contract between the prosecutor and the City provided that he should, as required from time to time during a term specified, do certain work in repairing street openings, that the work should be done in an expeditious manner and without any unnecessary delay, and that whenever the City Council should become satisfied that the work or any part thereof was being unnecessarily
 30 delayed, it should have the power to terminate the contract by resolution passed at any meeting, HELD, that the only vested right of the contractor with respect to the continuance of the contract was that it should remain in force until the City Council should become satisfied that the work was unnecessarily delayed and should thereupon by resolution terminate the contract; that City Council could terminate it without notice to the contractor and their action in so doing was not reviewable by the courts in the absence of anything to show that they acted
 40 unreasonably and wantonly."

Surely if the contractor was not entitled to notice the Surety was not, as suggested by the prosecutor under this point and attention is called to the fact that the Surety is not a party to this proceeding.

Cases in other states similar to the case of *Miller vs. Atlantic City* are, *Jones vs. City of New York*, *supra*, where it was decided that—

“Where a contract for the construction of a sewer for the City provided that the prosecution of the work might be suspended at such times and such periods as the Board of Commissioners of the department of public works might determine, the engineer, acting under the authority of that department, had ample authority to direct the suspension of the work and the City was not liable to the contractor for the loss occasioned thereby.” 10

And in *Powers vs. City of Yonkers*, *supra*, it was decided:

“Where a contract for street improvements, to be finished within 100 days, provided that it should be the duty of the city engineer to report to the council whenever the contractor should refuse or neglect to supply a sufficient number of workmen or material, or should fail to prosecute the work with proper diligence, or should omit to fulfill any portion of the contract, and that, if the council should be satisfied that such report was correct, it could declare the contract forfeited, and employ other persons to finish the work, the engineer’s report was sufficient to give the council jurisdiction to declare the forfeiture.” 20 30

114 N. Y. 145, 21 N. E. 132.

And in *Wakefield Construction Company*, N. Y. City, 142 N. Y. Supplement 743—157 App. Div. 535 it is held:

“Under the terms of a contract for sewer work, providing that, if the engineer should be of an opinion that the performance was unnecessarily or unreasonable delayed, he should notify the borough president, who might order the work discontinued, 40

the contractor upon the engineer's certified opinion to that effect was entitled to show what the actual facts were, and whether there were any facts upon which such opinion could have been based."

10 This case also holds that the engineer's certificate was sufficient to give the borough president jurisdiction, and that the certificate of the engineer, in the absence of fraud or bad faith or an arbitrary opinion without regards to the facts was conclusive. The
 20 prosecutor has produced no evidence to show fraud or bad faith or to show that the Board of Commissioners acted unreasonably and wantonly. On the contrary the testimony above cited of the Commissioners shows that the Commissioners had good reason for their action and conditions demanded that the action which they did take be taken at once. See the evidence of the Police Officers and the reports which they made to the Mayor (see pages 161 et seq.) and the testimony of Officers Graham, Pater-
 20 son, Cullen, Riley, Rankin, Egan and Fitzmaurice. These officers submitted detailed reports showing that ashes separated from garbage were placed in proper receptacles for collection by the prosecutor, but remained there for many days without collection. These reports were brought to the attention of the other Commissioners by the Mayor. (See Case p. 88, line 30, and p. 90, line 21.)

30 POINT 4.—THE BOARD OF COMMISSIONERS ELECTED TO PROCEED UNDER ANOTHER TERM OF THE CONTRACT AND WAS BOUND BY SUCH ELECTION.

The election made by the Board was made only with reference to the violations for which the contractor was fined. These violations were one of March 20, 1916, and the other of April 15, 1916. (Case p. 24, l. 20, and p. 26, l. 20.) The testimony
 40 of the Commissioners above cited shows conditions sufficiently bad after April 15, 1916, and before

May 9, 1916, to cause the dissatisfaction of the Commissioners with the performance of the contract by the prosecutor. No proceedings to impose penalties for violations were taken after April 15, 1916, and being dissatisfied with the performance of the contract by the prosecutor, the Commissioners elected to terminate the contract.

The suggestion that the City should have continued fining the contractor for every two violations and thus collect enough to compensate them for cleaning up the City, that is, collect One Hundred Dollars and spend Seventy Dollars to clean up the City is ingenious but not practical. The contract provides that garbage and ashes shall be dumped out of the City limits and for the City to attempt once a week, as it would be necessary to do under the conditions, to have hearings of violations, collect One Hundred Dollars, hire a contractor who must obtain the consent of the authorities in other cities to dump ashes and garbage and expect that such a course of conduct would be satisfactory to the inhabitants of the City would be absurd.

POINT 5.—THE PROSECUTOR WAS MISLED BY THE CONDUCT OF THE MAYOR, WHO WAS THE DIRECTOR OF PUBLIC AFFAIRS OF THE CITY OF ORANGE.

The evidence does not show that the Mayor had any agreement with the contractor to extend the time for the performance of his contract, and if it does show such an agreement there is no authority for the making of the agreement. The Mayor says he made no agreement at all with the prosecutor. (Case page 102, line 20). Commissioner Wethling heard no agreement made. (Case page 127, line 10). Commissioner Calhoun was not present when the alleged agreement was made and Commissioner Murray was present but was not sworn.

POINT 6.—THE PROSECUTOR WAS UNDER NO LEGAL OBLIGATION TO REMOVE HOUSE REFUSE OR DEAD ANIMALS OR FURNITURE.

The testimony of the Police Officers and the Commissioners, above cited, shows that the prosecutor neglected to remove ashes and garbage properly separated and properly placed at the curb as provided by his contract for several days at a time between April 15 and May 9, 1916.

POINT 7.—THE BOARD OF COMMISSIONERS HAD NO POWER TO MAKE THE CONTRACT WITH MALONEY CONTRACTING COMPANY AND HAD NO POWER TO AUTHORIZE THE DIRECTOR OF PUBLIC AFFAIRS TO ENTER INTO SUCH A CONTRACT.

The contract of the prosecutor provides that upon the termination of the contract the City of Orange may proceed to do the work required by the contract for the unexpired period of the contract and may hold the contractor and his surety responsible for the cost thereof. The prosecutor contends that the contract with Maloney Contracting Company is void because it is in violation of the Act of 1912 P. L., page 593, requiring contracts for the expenditure of over Five Hundred Dollars to be made only after advertisement for bids. The contract with the Maloney Contracting Company was not a contract which would come under the provisions of this Act. The contract is a contract from day to day at Seventy Dollars per day, and on its face does not necessarily involve an expenditure of more than Five Hundred Dollars. It may be terminated upon five days notice and the maximum expenditure after notice was given would be Three Hundred and Fifty Dollars.

It is also urged that the arrangement made with the Maloney Contracting Company by the Mayor, under the authority of the Board of Commissioners,

was not a new contract but was merely a step taken to carry out the provisions of the contract of the prosecutor after its termination by resolution and therefore advertising for bids was not required.

It seems to me that the case at bar comes within the purview of *Camden vs. Ward*, 67 N. J. L. 558 (E. & A.), where it was held:

"A contract between the defendant Ward and the City of Camden for the paving of a street with asphalt provided that if the defendant stopped the work before completion the Commissioner of streets of the City might procure the necessary materials and labor and proceed with the construction of the work according to the plans and specifications, and the expense so incurred should be chargeable by the City against the defendant and his surety, the other defendant. Held, (a) that Ward having left the work incomplete, the mode of procuring the labor and materials necessary for completion was committed to the discretion of the street commissioner, and that his failure to procure them at a reasonable cost formed no defence against the city's claim on the defendants for the expense actually incurred; (b) that a city ordinance requiring "any department under the city government, or any committee or board appointed by the city council" to advertise for proposals before binding the city for work or materials, was not applicable to such contract; (c) that if the defendants had the right to have any particular mode adopted for procuring the necessary labor and materials, their failure to object to the method actually chosen, when they were kept informed, by timely notice from the commissioner of each step taken by him in the premises, was a waiver of that right."

If the statute required such an advertisement in express terms it would be necessary. See *Dillon Municipal Corporations*, paragraph 801, volume 2, 5th Ed. (1911), where it is said:

"Where the charter or incorporating act requires

the officers of the city to award contracts to the lowest bidder, a contract made in violation of its requirements is illegal; and in action brought on such contract for the work, the city may plead its illegality in defence; and neither the municipality nor its subordinate officers can make a binding contract for such work except in compliance with the requirements of the law. If the charter requires not only that work for the city shall be let to the lowest bidder after advertisement, but also that similar advertisement shall be made where the work is relet on an abandonment of the contract by the original contractor, the requirements of the statute as to reletting must be followed, otherwise the contract for completion is void and an assessment based thereon cannot be sustained. When the statute is silent on the subject of reletting, it has been held in New York and in Indiana that readvertisement and new letting of the contract is not necessary when the original contractor has abandoned the work. In theory, the property owners who are liable for the expense are not damaged. They are indemnified by the obligation of the contractor and his surety; and if the statute does not in terms require a reletting to the lowest bidder after advertisement, it is not necessary to go through these formalities. In Illinois, a contrary view has been adopted, and it has been held that a simple requirement that any work or other public improvement, when the expense thereof shall exceed \$500, shall be let to the lowest responsible bidder after advertisement does not admit of any exception on a reletting when a valid contract has been let after advertisement for bids and the contractor has abandoned the work. It has been held that a statutory requirement of competitive bidding does not prevent the city from providing in specifications and contracts that the contractor shall do such extra work as the officer in charge of the improvement shall direct, and that compensation therefor shall be the reasonable cost to the contractor

plus a percentage for profits, etc. The extra work does not require to be let by separate advertisement."

It is questionable whether the prosecutor can complain, however, of the want of advertisement for the Maloney Contract for the reason that upon the termination of his contract an emergency arose which required immediate arrangement and an emergency has been recognized as a ground for exception under the provisions of statutes requiring advertisement and competitive bidding. (See Dillon Municipal Corporations, par. 902, vol. 2, 5th Ed.) 10

In the case at bar, immediately after making an arrangement with the Maloney Contracting Company, the Board of Commissioners proceeded to advertise for bids for the reletting of the work required to be performed by the prosecutor's contract, but such reletting was prohibited by the certiorari proceedings instituted by the prosecutor, which acted as a stay. 20

POINT 8.—THE RESOLUTION AUTHORIZES THE MAKING OF A CONTRACT AND IT IS INVALID BECAUSE IT WAS NOT ON FILE IN THE OFFICE OF THE CITY CLERK TWO WEEKS BEFORE ITS FINAL PASSAGE.

Defendants contend that the resolution did not authorize the making of a contract but did authorize the Mayor to proceed to carry out the provisions of the contract of the prosecutor already made and the citations under point 7 are referred to as sustaining this contention. The provision in the Commission Government Act P. L. 1911, page 643, Sec. 6, is manifestly for the protection of taxpayers, for the purpose of informing them what contracts have been authorized so that they may object and for the purpose of giving them an opportunity to keep down the taxation imposed against them; but the taxpayers who were liable for the expense involved in the prosecutors contract could not be damaged by the 30 40

resolution before us. They are indemnified by the obligation of the contractor and his surety, and it may be that if bids were allowed to come in for the reletting of the work they may have been as low or lower than the price mentioned in the prosecutor's contract.

10 POINT 9.—THE RESOLUTION IN VIEW OF
THE EVIDENCE TAKEN IN THIS CAUSE AP-
PEARS TO HAVE BEEN ADOPTED IN AN
ARBITRARY MANNER AND UNREASONABLE
AND NOT IN ACCORDANCE WITH FAIRNESS
AND GOOD FAITH, AND THEREFORE, IT
SHOULD BE SET ASIDE.

The references already cited under Point 3 are here again referred to in denial of this contention.

20 It is respectfully submitted that the certiorari proceedings instituted by the prosecutor should be dismissed.

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