

NEW JERSEY Court of Errors and Appeals.

The State,
BERNHARD BAYER
AND
WILLIAM KAUFMANN,
Partners &c., Pros. } On Certiorari.

VS.

THE MAYOR AND COUNCIL OF
THE CITY OF HOBOKEN,
Defts. } Brief.

There are two resolutions of the Council of the City of Hoboken brought up by these two writs and it is agreed that the testimony taken shall be used in both cases.

The first writ brings up the following resolution passed by the Hoboken Council March 1st, 1881, and approved by the Mayor of said City March 2nd, 1881.

“Resolved that the official printing for the ensuing year be and the same is hereby awarded to Moyer & Luehs of the “Hoboken Advertiser.”

“And be it further resolved that the Corporation Attorney be and is hereby directed to draw up the necessary bond and agreement.”

The law governing this case was passed in the year 1877, approved March 8th, 1877. Laws of New Jersey, 1877, page 68, which provides

“That whenever the Board of Aldermen, Council or Common Council of any City is required by the provisions of its Charter to **designate** one or more newspapers to publish the proceedings of such Board of Aldermen, Common Council or Council and to publish the proceedings of any of the other Boards in said city in a newspaper or newspapers **printed and published** in said city and **authorized** to publish the laws of the State at the date of the passage of such city charter or any supplement thereto; that in every such case such city may hereafter publish the said proceedings in a newspaper or newspapers **published and printed** in said city that shall have been in existence and published in said city for over two years.

By the Act of 1855, incorporating the City of Hoboken, page 461, section 12, statement of Board of Canvassers of Elections was only to be published in newspapers **printed** in said city.

Section, 35 the annual statement was only to be published in newspapers **printed** in city or county.

Section 48, sale of land for payment of taxes was only to be published in a newspaper **printed** and published in said city: and the Act further provides that if no newspaper shall be **printed** and **published** in said city, then in at least one newspaper generally circulated in said city, etc."

Act 1867, page 689, etc., sec. 5, provides "that the proceedings of the Council and Board of Education of said city, and such matters and things as are directed by said charter to be published, shall hereafter be published in **two** of the newspapers **printed** and **published** in said city in which the laws of this State are now directed to be published."

By Act of 1871, page 1424, sec. 21, one of the designated papers was authorized to publish the official printings daily.

This was repealed in 1872, page 602, sec. 3.

And by the same Act it was enacted, that hereafter the Common Council of the City of Hoboken shall **designate** two newspapers "both of which shall not be of the same political party," one "of each political party which shall publish the proceedings of the Council and Board of Education of said city and such matters and things as are now required to be published by the Charter of the City of Hoboken or by any amendment thereof or supplement to the same at prices to be fixed by the Common Council at rates not exceeding those authorized by law for the printing of legal notices; provided that said newspapers are **printed** and **published** in the City of Hoboken and NOW (1872) authorized to publish the laws of this State."

This law did not contemplate nor was it intended that the printing and publication of the proceedings of the different boards should be put out by contract.

The printing and publication of such proceedings was to be paid for at certain prices, to be fixed by the Common Council and to be limited by the rates authorized by law for the printing of legal notices.

The putting out by contract is against the law.

The object of the law was to have the proceedings printed and published in a paper or papers, *printed and published* in the City of Hoboken and such paper or papers as the Common Council should itself designate, not because of cheapness of work, with the resultant danger of having the work badly and incorrectly done, but to have it exercise its power and judgment in securing to the public

First.—The certainty of accurate reports of the different boards.

Second.—That the printing and publishing of the acts of such boards should be so printed and published with certainty in *well established* papers and not in papers which might comply with the provisions of the law up to the time of their designation and then not be able to contrive such printing and publishing.

Third.—That the best papers, the ones most widely circulated and most firmly established should be designated.

Fourth.—That a paper be designated which shall be beyond question legally qualified to print and publish such

proceedings, and not such as may require judicial decision to determine its status.

Fifth.—A paper of age, influence, large circulation, permanency and one that fully meets the legal requirements.

Throughout all these acts cited it is absolutely certain that all official publications of the City of Hoboken must be in a newspaper **printed and published** in the City of Hoboken.

Not alone **published but printed** also.

This was done for a purpose. It was intended that the city printing should be done in the city and nowhere else.

Now the undisputed facts in this case show that the "Hoboken Advertiser" for its first two issues (enlarged) before this resolution was passed was not printed in Hoboken—in fact, not in New Jersey.

After these issues only four copies were printed in the city or State and they only for an illegal purpose, the whole of the edition remaining, from 600 to 1200 copies, being printed in New York.

(See testimony of Bayer & Moyer.)

A mere subterfuge.

(See Moyer's explanation of this.)

If the taking of four impressions on a stone is sufficient to bring the "Hoboken Advertiser" within the law, then it is not necessary that for any purpose, no matter how strict the law is, nor for what specific purpose, that a paper in fact should be printed in this State.

It is only necessary to strike off a proof and let the edition be printed in New York or Philadelphia, and the law is complied with.

This is absurd and would wholly contravene the purpose of the legislature.

Beside in the law a copy or four copies are not **the newspaper**—it means a whole edition. The proceedings are to be published in a "newspaper", not **one** but the whole issue.

This brings us to the question of what is meant by the word "printed" in all the statutes referred to, and particularly that of 1877.

Worcester, title "Print", verb.

1. To mark by pressure.
2. To form by impression.
3. To impress or stamp with letters, characters or figures.

Title "Printing".

1. The act, the art or the practice of impressing letters, etc., on paper.
2. The act, the art or the practice of impressing figures on cloth or other material.

The word "printed" is not given.

Webster.—Title "Print".

1. To press or impress.
2. To take an impression of, to copy or take off the impress of, to stamp.
3. **Hence, specifically**—to strike off an impression or impressions of; from types, stereotype or engraved plates or the like, **by means of a press**—to multiply by the press, as to **print newspapers, hand-bills, books, pictures, and the like.**

Chambers' Encyclopedia.—Title "printing".

The act of producing impressions from characters or figures on paper or any other substance.

Appleton's Encyclopedia.—Title "Printing".

The taking impressions from types or engraved plates for the purpose of multiplying at a cheap rate, reversed copies of the designs they present.

It is therefore beyond question that "printed" in this case means an impression that has been made or taken on paper, the act of making such impression having been done in the City of Hoboken.

It does not mean the setting up of type, the placing of type in form, the locking of the form; it does mean the taking of the impression of the type after they are locked in form, and the law directs that that impression shall be made in the City of Hoboken.

If this be the true view then the resolution is void.

The Hoboken Advertiser is not printed in the City of Hoboken.

This has already been argued as to the facts and the meaning of the word "printed".

According to all the definitions collated the "printing" was done out of Hoboken. It was done in New York.

Nor is the condition of the necessity of the Council to "designate" a paper repealed.

11 Vroom 152.

To "designate" means to mark out, to make known, to appoint, to specify, to name.

This resolution did not "designate" a newspaper. It simply named two gentlemen of the "Hoboken Advertiser" to do the city printing.

They may have been either

Editors,

Printers

or Carriers.

It was no designation of a newspaper as required by law.

The other resolution is subject to the same criticism, except that the Council did "designate" the "Hoboken Advertiser".

The change from the "Democrat" to the "Advertiser" is not on the side of economy.

The difference per folio is five cents (see Bayer's testimony, folio 15).

But "The Advertiser" makes more folios than the "Democrat" by putting in between the lines more lead (see Bayer's testimony, page 14).

The "Advertiser" makes more folios of the same matter.

It may be stated in conclusion that if the resolutions should be held to be invalid, that no harm can come to the city, for lack of the printing and publishing of the proceedings of the city boards, for the reason that the "Democrat" has continued the full publication of all such proceedings.

New Jersey Court of Errors and Appeals

THE STATE—BERNHARD BAYER, ET
AL., PARTNERS, & C.,

Prosecutors.

vs.

THE MAYOR AND COUNCIL OF THE
CITY OF HOBOKEN,

Defendants.

*In Error to
Supreme Court.*

*Brief for Defend-
ants.*

FACTS.

The prosecutors are the proprietors and publishers of the Hudson County Democrat, a newspaper printed and published at Hoboken for over twenty-five years.

In the year 1877 that paper was designated as the official paper of the city of Hoboken, and in it were published all matters required by the city charter to be published.

On the first day of October, 1879, a contract was entered into by the defendants and the prosecutors, whereby the prosecutors bound themselves to do said official printing for the term of one year, at the prices

stated in said agreement, viz : fifty cents per folio for first insertion and twenty-five cents for each subsequent insertion.

The agreement is in evidence and is found on page 15 of printed book.

The agreement expired October 1st, 1880, but the prosecutors continued to do the official printing at the same price for some time after.

In February, 1878, another paper was established in Hoboken, called the Hoboken Advertiser.

It continued to be published and circulated in Hoboken until the beginning of these proceedings.

The facts relative to the printing appear to be as follows :

Until February 12th, 1881, a period of three years, everything connected with the paper was done in Hoboken.

At that time the paper was enlarged, the composing and all work, except running through the press, was done in Hoboken, and the office was in that city, and the paper continued to be published and circulated there.

For two issues or so the papers were put through the press in New York the entire matter having been composed, set up and placed in forms in Hoboken.

On and after February 26th several impressions of the paper were taken in Hoboken, and then the forms were sent to New York and the remaining copies taken, brought back to Hoboken and issued from the office. That course is still pursued.

On the 25th of January, 1881, the City Clerk was directed to advertise for proposals for city printing.

He did so, and a proposal was received from Moyer and Luehs to do said printing in the Hoboken Advertiser at the following rates, viz. :

Thirty-five cents per folio for the first insertion, twenty cents per folio for each subsequent insertion, being fifteen cents and five cents less per folio than the price paid the prosecutors.

The prosecutors made no proposition.

At the session of March 1st, 1881, the said printing was awarded to the said Moyer and Luehs, "of the Hoboken Advertiser," and they entered into a contract for one year.

March 5th, the first writ was granted.

There being doubt as to the manner in which the Advertiser had been designated as the official paper, it being claimed that no legal designation was made, the City Counsel of March 29, 1881, passed a resolution (found on page 4 of book) formally designating the Hoboken Advertiser as the official paper of the city, and rescinding the resolution designating the Democrat.

That resolution was duly approved, and thereupon the second writ was obtained.

A rule to show cause why mandamus should not issue directing the city authorities to furnish the public printing to the prosecutors was also granted.

By consent the testimony taken is to be used in the argument upon both writs of certiorari and upon the return of the rule to show cause why mandamus should not issue.

POINTS.

The supplement to the charter, approved April 4th, 1867, (Laws of 1867, p. 692, sec. 5) directs that proceedings of Board of Education and City Council, and such matters as are required by the charter to be published, shall be published in two of the newspapers printed and published in said city, in which the laws of the State are directed to be published.

The supplement to the charter, approved March 19th, 1872, (P. Laws of 1872, p. 602, sec. 1) provides that two newspapers should be designated, both of which should not be of the same political party—one of each political party—which should publish the proceedings * * * * * provided that said papers are printed and published in the said city of Hoboken and now authorized by law to publish the laws of the State.

In 1877 an act was passed, which is found in Laws of 1877, page 68, and in the Revision on page 1372, section 74, which provides :

“That whenever the Board of Aldermen, Council or Common Council of any city is required by the provisions of its charter to designate one or more newspapers to publish the proceedings of such Board of Aldermen, Common Council or Council, and to publish the proceedings of any of the other boards in said city, in a newspaper or newspapers printed and published in said city and authorized to publish the laws of the State at the date of the passage of such city charter or supplement thereto, that in every such case such city may hereafter publish the said proceedings in a newspaper or newspapers published and printed in said city that shall have been in existence and published in said city for over two years.”

The effect of that act was to strike out the words

“authorized to publish the laws of the State at the date of the passage of such city charter or supplement thereto” and to insert in lieu thereof the words “that shall have been in existence and published in said city for two years.”

That was the decision of this court in a suit in which these prosecutors and defendants were the parties, which is reported in XI Vroom, page 152.

The effect of the acts of 1867 and 1872 was to confine the printing to such papers as were in existence and authorized to print the laws in 1872, no matter how miserable, poor, antiquated and deficient in circulation they might be ; while a paper started after that date could never be designated even if it attained to a circulation as great as the New York Herald and should become the most popular and widely-read paper in the State or city, or even if it should be thereafter designated to publish the laws of the State.

It was the intention of the Legislature to allow the city authorities to make the best choice possible, giving them the discretion, irrespective of the publication of the laws ; requiring that the paper should have been published two years for the simple purpose of protecting the city and insuring a reasonable age, circulation, standing and permanency in the community, and preventing the starting of ephemeral sheets for the purpose of capturing the city printing in the interest of rings and speculators.

The theory that the Legislature intended to dis sever all connection between State and municipal printing is evidenced by the fact that in 1876 an act was passed which provided that the Governor and others should designate a certain number of papers in the county who should publish the laws for a year only. Under that act there might be no paper in Hoboken authorized to publish the laws of the State ; and the proceedings of the

city boards, if published at all, would need to be published in a paper not so authorized to publish the laws.

The fact is undisputed that the Hoboken Advertiser had been printed, published and circulated in the city of Hoboken for over two years before the city advertised for proposals.

When the enlargement of the paper took place the press work was done in New York, but the type was set up and every particle of work in connection with the paper was done in Hoboken except striking off the impression.

Before the printing was awarded to the Advertiser, and since, a few copies were taken off in the Hoboken office, but the bulk of the issue was taken off in the New York shop.

The plain questions presented to the Court are, What is meant by the word "printed" as used in the act of 1877?

When the paper had become eligible, was that eligibility lost by a temporary doing of the press work, or nearly all of it, in New York, notwithstanding the fact that the office was in Hoboken, the type was set in Hoboken, the editorial work was done in Hoboken, the paper was published in Hoboken, was circulated in Hoboken, was owned and managed by Hoboken men, and nearly every dollar of money expended in making the paper was expended in Hoboken?

The words "printed and published," as used in the statute, is a phrase used to express a single idea—that is, the publication of a newspaper by a firm or individual having a principal office or place of business situate in the city, by which such paper is designated to publish its proceedings.

The words are not technical words, and they are not used in the act in a technical sense. The whole act is to receive such a construction as is most in accordance with the reason and spirit of it.

In the first place, what is the object of this statute, requiring cities to publish their proceedings in a newspaper or newspapers?

Is it intended for the special benefit of printers and publishers of newspapers?

The more reasonable object seems to be to give notice to the inhabitants and tax-payers of the city of the acts and doings of the municipal officers—to the end that every citizen may appear and protest against illegal or improvident acts—that all may have due notice of ordinances passed, and the like.

The object of the words, “published and printed in said city,” is to confine the publication of such proceedings to such papers as are likely to have a general circulation among the people interested therein.

They can have no other object.

Prior to the act of March 8, 1877, the restrictions upon the city of Hoboken in selecting a paper to publish its proceedings were unreasonable and unjust to the public, and to remedy this defect the act in question was passed.

The words “published and printed in said city” are not subject to the narrow construction placed upon them by counsel for the prosecutors.

In addition to the definitions of the word “print,” Webster gives the following:

1. To use or practice the art of typography, or of taking impressions of letters, figures, and the like.

2. To publish a book.

From the moment he prints he must expect to hear no more of truth.—POPE.

Here the word is used in the sense of to publish.

With all the evidence in this cause before us, it is no abuse of language to say Moyer & Luehs are engaged in the printing business at Hoboken. They are printing the Hoboken Advertiser there. Press work is the smallest and least important part of printing a newspaper. It is a mere application of mechanical force;—it is an act in which the public can have no interest or concern whatever.

If the word "*printed*," as used in the act, has any meaning different from the word published, it refers to the more important part of the art, the composition of the matter, the setting of the types and putting in form ready for press work.

There is some reason for giving it such a meaning; that would require the printers to be within the city limits for the convenience of the City Clerk and other officials in delivering to the printers copy of the matters required to be published.

The words fixing the qualifications of the paper, that is to say, a paper "in said city that shall have been in existence and published in said city for over two years," shows the little importance attached to the word "*printed*."

By adopting the construction contended for by the prosecutors, a newspaper which has been in existence for over two years, with its principal office and print-

ing house in the State of New York, by simply sending its forms into Hoboken for press work would become a competent paper to be designated under this act.

In the case of the Dover Bank, or The National Bank of Dover vs. Cross, in the Court of Chancery of this State, a motion was made to set aside a Master's sale on the ground that the notice of sale had been published in a "patent outside" newspaper; that is, in a newspaper partly printed out of this State. The Court held that the publication of the notice in such paper was in compliance with the law. (Case decided July, 1878; not reported.)

I am not able to find any other adjudicated case which gives any further light on the subject.

Under the act in question the Mayor and Council of the city are required to designate for the publication of their proceedings "a newspaper or newspapers published and printed in said city that shall have been in existence and published in said city for over two years."

Thereby they are made the proper judges of facts involved in designating the newspaper to publish their proceedings.

In the absence of fraud, this Court will not review their finding.

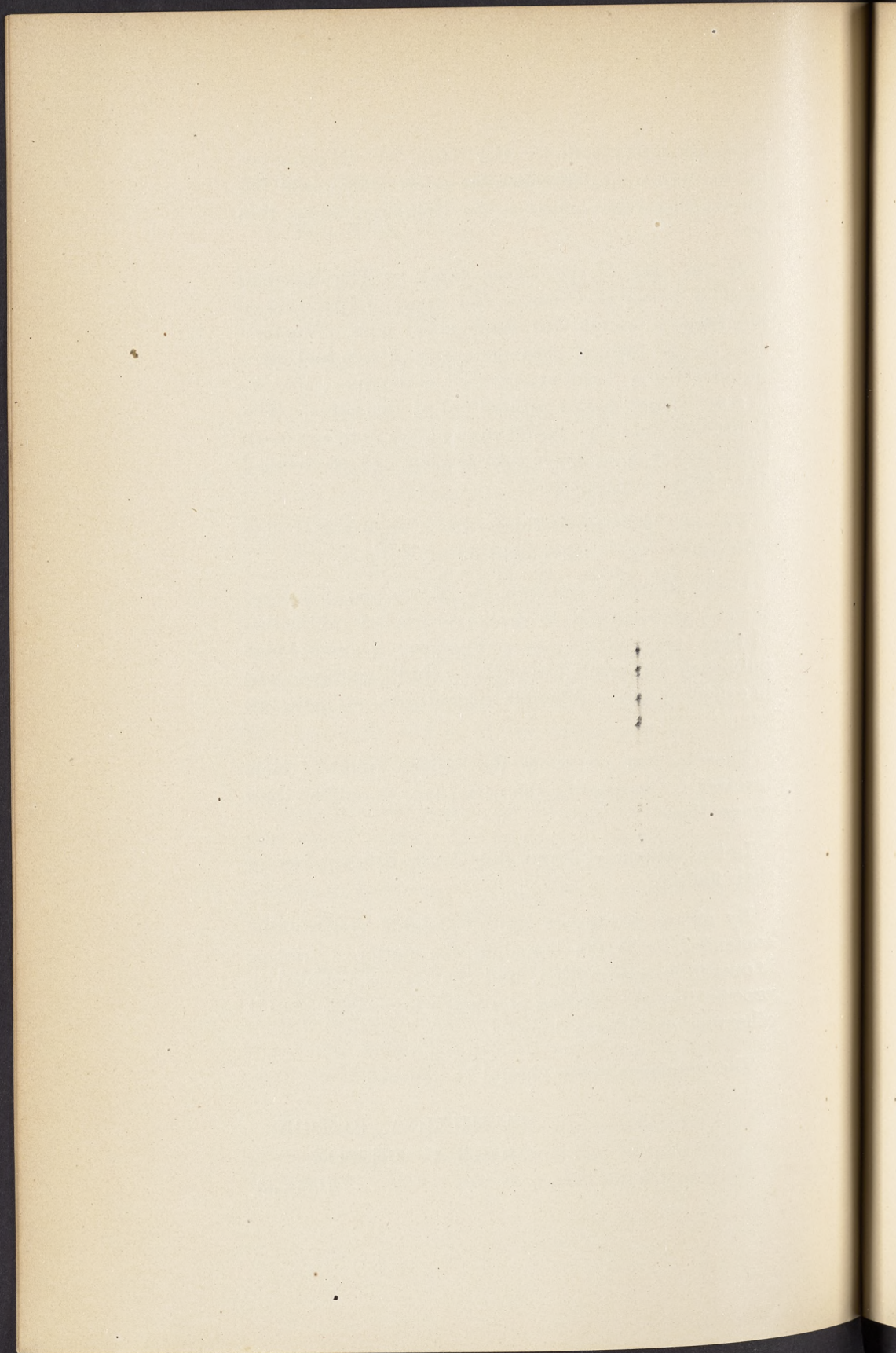
By giving to the act the reasonable construction contended for by the defendant, the matter of printing is opened to competition, and the city is enabled to procure the city printing at a much lower rate than it otherwise could have done.

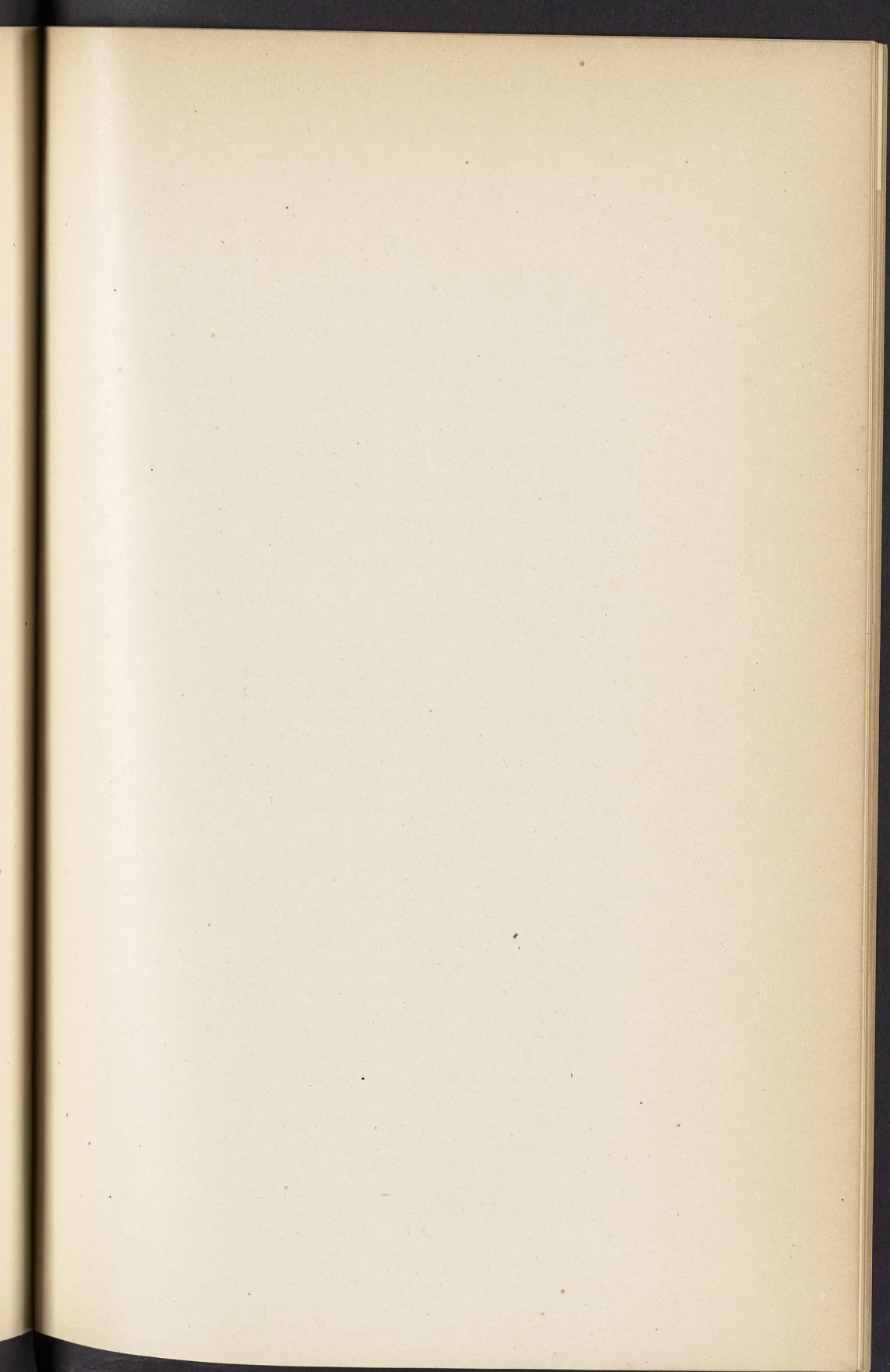
The judgment below should be affirmed.

SAMUEL A. BESSON,

JOHN C. BESSON,

Counsel.





THE GREAT REPUBLIC (1845)

BY JAMES M. SMITH

THE GREAT REPUBLIC (1845) BY JAMES M. SMITH

New Jersey Supreme Court.

FEBRUARY TERM, 1882.

The State.
BERNHARD BAYER, et al.
vs.
THE MAYOR AND COUNCIL OF
HOBOKEN,

1. A newspaper which has been published for two years in the City of Hoboken is entitled to a place in that class of papers from which the selection must be made for the publication of the proceedings of Common Council, although it is not authorized to publish the laws of this State.

2. The office of the "Hoboken Advertiser" is in Hoboken, where those who run and conduct it reside. The entire matter for the paper is composed, set up and placed in forms in Hoboken, after which the forms are sent over to New York City where the mere press work is done, and the papers are then brought back to the office in Hoboken from whence they are issued to subscribers. Held, that this paper is within the reason and spirit of the law "printed and published" in Hoboken.

On certiorari.

Argued before Justices Depue, Vansyskel and Parker at November Term, 1881.

Hoffman & Paxton, for Plaintiffs.

Niven and Besson, for Defendants.

The opinion of the Court was delivered by Vansyckel, Jr. The writs of certiorari in this case bring up resolutions of the Common Council of Hoboken awarding the official printing to the "Hoboken Advertiser," and rescinding a prior resolution designating the "Hudson County Democrat" as the official paper.

The validity of the resolutions is controverted upon two grounds, first, because the "Hoboken Advertiser" is not authorized to publish the laws of this State; second, because it is not printed in this State.

The law governing this case passed in the year 1877, Laws of New Jersey 1877, page 68, provides "That whenever the Board of Aldermen, Council or Common Council of any city is required by the provisions of its charter to designate one or more newspapers to publish the proceedings of such Board of Aldermen, Common Council or Council and to publish the proceedings of any of the other Boards in said city in a newspaper or newspapers printed and published in said city and authorized to publish the laws of the State at the date of the passage of such city charter or any supplement thereto, that in every such case such city may hereafter publish the said proceedings in a newspaper or newspapers published and printed in said city that shall have been in existence in said city for over two years.

In Bayer vs. Hoboken, 11 Vroom 152, Justice Reed held that the effect of this legislation was to place a newspaper, which shall have been published for two years in the City of Hoboken, in that class of newspapers from which the selection must be made for the publication of the proceedings

It is not necessary to entitle a paper to such classification that it be authorized to publish the laws of this State. With respect to the second point the facts are shown to be these. The office of the "Advertiser" is in Hoboken; the entire matter for the paper is composed, set up and placed in forms in Hoboken, and the forms are then sent over to New York City, and the press work done there, and the papers brought back to the office in Hoboken from whence they are issued to subscribers.

The relator insists that this paper is without the requisite qualifications, that it is not "printed and published" in Hoboken, because the mere press work is done in New York City. This I think is too narrow an interpretation of the act. Its object was to limit the publication of the proceedings of Council to such papers as were in fact local papers, conducted, made up and issued in the City of Hoboken.

The composition of the matter, the setting of the type, and preparing the forms for the press work constitute the substantial and important part of the printing. This work in this case being done exclusively in the office of the paper in Hoboken with material and appliances owned and kept there, it is no misapplication of the statutory language to say that the printing office of the "Advertiser" is in Hoboken, and that the paper is printed and published there.

The strict interpretation of the words "printed and published," upon which the relator's case rests, would certainly exclude from the class in which judicial sales may be published all papers with what is termed "a patent outside" entirely made up in New York City.

The paper selected by the resolution sought to be set aside is within the reason and spirit of the law "printed and published" in this State.

The action of the Common Council is on the side of economy in expenditure, a clear case should be presented to lead the Court to reverse it. The point made by the relators that the resolution awarding the official printing to Moyer & Luehs of the "Hoboken Advertiser" does not designate a newspaper for that purpose as required by the charter is not well taken.

The clear meaning of the resolution is that the publications for the city are to be made in the "Advertiser" by Moyer & Luehs of Hoboken who own and conduct it. It was so understood by the parties and a written contract to that effect entered into after the passage of the resolution.

The certiorari should be dismissed.

Justices Depue and Parker concur.

A true copy.

BENJ. F. LEE,
Clerk.

NEW JERSEY ss.



The State of New Jersey to our Justices of our Supreme Court Greeting: Because in the record and proceedings and also in the giving of the judgment in a plaint which was in our said Supreme Court before you between the State of New Jersey (Bernhard Bayer and William Kaufman, partners, etc.. prosecutors, and

on a certiorari issued out of our said Supreme Court to the said the Mayor and Council of the City of Hoboken directed as is said manifest error hath intervened to the great damage of the said Bernhard Bayer and William Kaufman, partners, etc., prosecutors as aforesaid as by their complaint we are informed, we being willing that the error if any there be should in due manner be corrected and full and speedy justice be done to the parties aforesaid in this behalf do command you that if judgment be thereupon given that you send distinctly and openly under your seal the record and proceedings and plaint aforesaid with all things touching and concerning the same to our Court of Errors and Appeals before the Judges thereof on the tenth day of May instant and this writ, and that the record and proceedings aforesaid being inspected we may cause to be further done thereupon what of right and according to law ought to be done.

Witness our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton aforesaid the third day of May in the year of our Lord one thousand eight hundred and eighty-two.

HENRY C. KELSEY,
Clerk.

HOFFMAN & PAXTON,
Attorneys.

The answer of the Justices of the Supreme Court of New Jersey within named. The record and proceedings whereof mention is within made with all things touching and concerning the same. We do certify to the Court of Errors and Appeals in a certain schedule to this writ annexed, as within we are commanded.

M. BEASLEY, C. J.

{ Seal. }

NEW JERSEY SUPREME COURT.

February Term, 1882.

THE MAYOR AND COUNCIL
OF THE CITY OF HOBOKEN,
ads.

State

BERNHARD BAYER, et al.

} On Certiorari.

The Court having heard the argument of Counsel, and inspected the resolutions removed by the writ in the cause, and duly considered the reason filed.

It is ordered that said Writ of Certiorari be dismissed with costs to the defendants.

Entered May 6, 1882.

As of May 3d, 1882.

On motion of
MALCOLM W. NIVEN,

Attorney.

I, Benj. F. Lee, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of an order made in the above stated cause by said Court and entered in the minutes thereof.

{ Seal. }

In testimony whereof I have hereto set my hand and the seal of said Court, at Trenton this Ninth day of May, A. D., Eighteen hundred and eighty-two.

BENJ. F. LEE

COURT OF ERRORS AND APPEALS.

BERNHARD BAYER and
WILLIAM KAUFMANN,
Partners &c.—Pltffs,

vs.

THE MAYOR AND COUNCIL
of the City of Hoboken, defts.

} Assignment
of
Errors.

And now the platntiffs in Error at this day assign the following causes of error:

First. Because the Supreme Court decided that a newspaper which has been published for two years in the City of Hoboken is entitled to a place in that class of newspapers from which the selection must be made for the publication of the proceedings of the Council atthough it is not authorized to publish the laws of the State of New Jersey.

Second. Because the Supreme Court decided that the office of the "Hoboken Advertiser" being in the City of Hoboken, where those who run and conduct it reside and the entire matter for the paper is composed, set up and placed in forms and after which the forms are send over to New York City where the press work is done, and the papers then brought back to the office at Hoboken from whence they are issued to subscribers, the newspaper "The Hoboken Advertiser" is within the reason and spirit of the law "printed and published" in Hoboken.

May 15th, A. D., 1882.

HOFFMAN & PAXTON,
Attorneys for and of Council
with pltffs in error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

BERNHARD BAYER and
WILLIAM KAUFMANN,
Partners &c.—Pltffs,

vs.

THE MAYOR AND COUNCIL
of the City of Hoboken, defts.

} Joinder in error.

And hereupon afterwards to wit: on the third Tuesday of May, A. D., eighteen hundred and eighty-two the said the Mayor and Council of the City of Hoboken by Samuel A. Besson their attorney come into court and say—that there is no error either in the record and proceedings aforesaid or in giving the judgment aforesaid, and they pray here that the court here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid in manner aforesaid given, may in all things be affirmed.

SAMUEL A. BESSON,
Attorney

JOHN C. BESSON,
Of Counsel with defendants.

Because the Supreme Court decided that "the paper selected by the resolution sought to be set aside is within the reason and spirit of the law printed in this state."

Because the Supreme Court decided that the object of the act of 1877 was to limit the publication of the proceedings of Council as were in fact local, to such papers as were conducted, made up and issued in the City of Hoboken when as a matter of law said Court should have held that the object of said act was to limit such publication to such papers as were actually printed in whole in said City and not partially printed therein.

Because the Supreme Court decided "that the point made by the relators that the resolution awarding the official printing to Moyer & Luehs of the Hoboken Advertiser did not designate a newspaper for that purpose as required by the Charter is not well taken" when by the law of the land said Supreme Court should have held that said resolution did not designate a paper for said purpose."

Because said resolution was by the Supreme Court decided to be valid when by the law of the land said resolution should have been set aside and vacated.

THE HISTORY OF THE UNITED STATES

The history of the United States is a story of growth and expansion. From a small collection of colonies on the eastern coast, it grew into a vast nation that stretched across two continents. The early years were marked by struggle and conflict, as the colonies fought for their independence from British rule. The American Revolution was a turning point in the nation's history, leading to the birth of a new republic. The years following the revolution were a time of rapid growth and development. The United States expanded its territory westward, acquiring new lands and settling them. This westward expansion was driven by a desire for land, resources, and new markets. The discovery of gold in California in 1848 led to a massive influx of people to the West, further accelerating the process of expansion. The United States emerged as a major power in the world, with a growing economy and a strong military. The Civil War, which began in 1861, was a defining moment in the nation's history, as it fought to preserve the Union and abolish slavery. The war resulted in the preservation of the United States as a single, unified nation. In the years following the Civil War, the United States continued to grow and expand, becoming a global superpower. The nation's economy flourished, and its military became one of the most powerful in the world. The United States played a leading role in the world during the 20th century, helping to shape the modern world as we know it.

NOTE.—The reasons appear on the
two last pages of this book.

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NEW JERSEY
Court of Errors and Appeals.

The State.
BERNHARD BAYER and
WILLIAM KAUFMANN,
Partners &c.—Prosecutors.

VS.

The Mayor and Council of the
City of Hokoken, Defts.

Writ of Certiorari.

Returnable June Term, 1881,

HOFFMAN & PAXTON,

Attorneys.

NEW JERSEY ss.

The State of New Jersey to the Mayor and Council of the
City of Hoboken—Greeting.

We being willing for certain reasons appearing by the affidavits of Bernhard Bayer filed in this cause to be certified of a certain resolution or resolutions passed by the Council of the City of Hoboken on the first day of March, Eighteen hundred and Eighty-one, and approved by the Mayor of the City of Hoboken on the second day of March, Eighteen hundred and Eighty-one, or pretended to have been so passed and approved, which said resolution or resolutions award, or pretend to award the official printing of the said City of Hoboken for the ensuing year to Moyer & Luehs of the Hoboken Advertiser, together with all things touching and concerning the same, and all things done or pretended to have been done by the said the Council of the City of Hoboken under and by virtue of the said resolution or resolutions, as fully as the same remain before the said The Mayor and Council of the City of Hoboken, by whatsoever name the said Moyer & Luehs may be called therein, or however the said resolution or resolutions may have been made or may be called, to our Supreme Court of Judicature at Trenton on the first Tuesday of June next you do certify and send together with this writ that therein may be done what of right and according to the laws and constitution of this State ought to be done.

Witness Mercer Beasley, Esquire, Chief Justice of our said Supreme Court at Trenton, this fifth day of March in the year Eighteen hundred and Eighty-one.

HOFFMAN & PAXTON,
Att'ys.

BENJ. F. LEE,
Clerk.

The Mayor and Council of the City of Hoboken make return to the within writ, and certify as follows:

That the following is a true extract from the minutes of a meeting of the Council of said City, duly held on the 25th day of January, Eighteen hundred and eighty-one.

Councilman Mehan moved that City Clerk be directed to advertise for proposals to do the official printing for the ensuing year.

Councilman Crissy moved to amend, that the whole matter be referred to the Corporation Attorney for his opinion, the same to be presented at the next stated session.

The amendment to refer to the Corporation Attorney was lost by the following vote:

Ayes—Councilmen Crissy, Curtin, Plunkett and Timken.

Nays—Councilmen Kaufmann, Mehan, Quirk, and Chairman Buckley.

Absent—None.

The original motion was then adopted by the following vote:

Ayes—Councilmen Curtin, Kaufmann, Mehan, Plunkett, Quirk and Chairman Buckley.

Nays—Councilmen Crissy and Timken.

Absent—None.

That said Clerk did so advertise, and that at the session of February 24th, 1881, a proposal was received, and action had thereon as follows:

A proposal from the Hoboken Advertiser to do the official printing for the ensuing year at the following rates was presented, read and referred to the Committee on Printing and Stationery:

Publishing the Councilmanic minutes for twelve months, \$1,200.00, from date of first insertion; all other official matter, 35 cents per legal folio for first insertion and 20 cents per legal folio for each subsequent insertion; or all official matter of whatever nature, the sum of 35 cents per legal folio for first insertion and 20 cents per folio for each subsequent insertion.

That at the session of March 1st, 1881, the following proceedings were had:

The following report from the Committee on Printing and Stationery, was presented and read:

HOBOKEN, February 28th, 1881.

TO THE MAYOR AND COUNCIL.

Gents.—Your Committee on Printing and Stationery to whom was referred the bids for the city printing for the ensuing year, would recommend that the bid for the official printing of Moyer & Luehs of the Hoboken Advertiser for 35 cents per legal folio for first insertion and 20 cents for the second and each subsequent insertion be accepted and your committee would recommend the following for your adoption:

Resolved, That the official printing for the ensuing year be and the same is hereby awarded to Moyer & Luehs of the Hoboken Advertiser, and be it further

Resolved, That the Corporation Attorney be and he is hereby directed to draw up the necessary bond and agreement.

WM. MEHAN.
DANIEL QUIRK.
S. F. CRISSY.

On motion of Councilman Mehan, the report was received and the resolution adopted by the following vote:

Ayes—Councilmen Crissy, Curtin, Kaufmann, Mehan, Quirk, Timken and Chairman Buckley.

Nays—None.

Absent—Councilman Plunkett.

There being a majority of the members of said Council present and voting in the affirmative,

That said resolution was duly presented to the Mayor of said City and approved by him.

In witness whereof the Clerk of said City hath hereto set his hand and affixed the corporate seal of said City.

ROBT. H. ALBERTS,
City Clerk.

NEW JERSEY ss.

The State of New Jersey to the Mayor and Council of the City of Hoboken—Greeting.

We being willing for certain reasons appearing by the affidavit of Bernhard Bayer filed in this cause to be certified of a certain resolution or resolutions passed by the Council of the City of Hoboken, on the twenty-ninth day of March, Eighteen hundred and Eighty-one and approved by the Mayor of the City of Hoboken, on the thirtieth day of March, Eighteen hundred and Eighty-one, or pretended to have been so passed and approved, which said resolution or resolutions designate or pretend to designate the Hoboken Advertiser as the official paper of the City of Hoboken, and also rescind or pretend to rescind the designation of the Hudson County Democrat as the official paper of the City of Hoboken, together with all things touching and concerning the same, and all things done or pretended to have been done by the said the Council of the City of Hoboken under and by virtue of the said resolution or resolutions as fully as the same remain before the said The Mayor and Council of the City of Hoboken by whatsoever name the Hoboken Advertiser may be called therein or however the said resolution or resolutions may have been made or may be called, to our Supreme Court of Judicature at Trenton on the first Tuesday of June next you do certify and send together with this writ that therein may be done what of right and according to the laws and constitution of this State ought to be done.

Witness Mercer Beasley, Esquire, Chief Justice of our said Supreme Court at Trenton, this second day of April in the year Eighteen hundred and Eighty-one.

HOFFMAN & PAXTON,
Att'ys.

BENJ. F. LEE,
Clerk.

The Mayor and Council of the City of Hoboken, make return to within writ as follows and certify as follows:

That on the twenty-ninth day of March, Eighteen hundred and Eighty-one, the following resolution was offered in the said Council.

Whereas the official printing for the City has been awarded to the Hoboken Advertiser, now be it

Resolved, That the Hoboken Advertiser be and is hereby designated as the only official paper of the City of Hoboken, and further be it

Resolved, That the resolution designating the Hudson County Democrat as the official paper of the city be and the same is hereby rescinded.

And was adopted, all the members of the Council being present and voting therefore.

That on the thirtieth day of March, being the day after the adoption of said resolution, said resolution was duly approved by the Mayor of said City.

In witness whereof the City Clerk of said city hath hereto set his hand and affixed the corporate seal of the said city.

ROBT. H. ALBERTS,
City Clerk.

NEW JERSEY SUPREME COURT.

<p>The State BERNHARD BAYER and WILLIAM KAUFMANN, partners, etc. under the name of Bayer & Kaufmann, prosecutors etc., VERSUS THE MAYOR AND COUNCIL of the City of Hoboken, defts.</p>	}	<p>On Certiorari.</p>
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It is hereby agreed by the undersigned Counsel for the respective parties above named that the testimony to be taken in above case may be taken before Herbert Stout, Master in Chancery.

May 18th, 1881.

HOFFMAN & PAXTON,
Att'ys for Prosecutors.
MALCOLM W. NIVEN,
Att'y for Defendants.

NEW JERSEY SUPREME COURT.

<p>The State BERNHARD BAYER & WILLIAM KAUFMANN, Partners, etc. VERSUS The MAYOR and COUNCIL of the City of Hoboken.</p>	}	<p>On Certiorari.</p>
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Testimony taken by consent of Counsel of the respective parties, before me Herbert Stout, Master in Chancery of New Jersey, on the 18th day of May a. d. 1881, at the City of Hoboken,

in the presence of Hoffman & Paxton, Counsel of prosecutors, and Malcolm W. Niven and John C. Besson, Counsel of def'ts.

HERBERT STOUT,

Master.

Henry Luning, a witness produced on the part of the prosecutors, being first duly sworn deposes and says:

Live in No. 309 Broome Street, New York City, am a printer and work for Bayer and Kaufmann at 77 Washington St., in Hoboken, my business there is that of a printer. I do not know Moyer and Luehs—I know the Newspaper called the Hoboken Advertiser. I do not know who the proprietors of that paper are. I know where the office of the paper is, it is on the southwest corner of Washington and Newark Sts., in the City of Hoboken. I know where the paper is printed, it is printed at No. 15 Spruce St., New York, at John Scott's press room. I know it is printed there, because I went into the office of John Scott on Friday evening, the 6th of May instant, between the hours of 9 and 10 o'clock P. M. and saw it being printed in the rear part of the press room on the Frankfort Street side. I was in there about 15 minutes. I went in the front and looked at every press as I went along till I came to this press and then I saw the paper, the Hoboken Advertiser, being printed there.

Witness being shown a copy of the Hoboken Advertiser of the date of May 7th, 1881, says: I took this paper, asked for it and it was given to me as it came from the press on the evening of May 6th, 1881, between the hours of 9 and 10 o'clock P. M. The paper is offered in Evidence and marked *Exhibit 1*, on the part of the prosecutors—this to my knowledge is the only paper known by the name of the Hoboken Advertiser in the County of Hudson. In this paper is printed the Council proceedings of the City of Hoboken for that week—I saw about three or four copies printed while I was there, there were about 900 or 1000 copies printed on one side and those 3 or 4 copies above spoken of were the complete printing of the paper on both sides, while I was present. I secured the 2nd or 3rd paper that was printed on both sides—when I left they were still going on with their work of printing the paper. I cannot say whether this is a copy of the papers that were circulated in Hoboken.

It is here admitted by Counsel of defendants that the paper marked Exhibit 1 on the part of the prosecutors is a copy of the Hoboken Advertiser containing the Council proceedings of the City of Hoboken, circulated in the said City of Hoboken on Saturday May 7th, 1881.

Subscribed and sworn at Hoboken this } HENRY LUNING.
18th day of May A. D., 1881, before me.

HERBERT STOUT,

Master.

Adjourned to Monday May 23rd, 1881, at 9. A. M.

Monday, May 23rd, 1881.

Frank Meyer being duly sworn on the part of the plaintiffs, deposes and saith:

I live at 655 Communipaw Avenue, in Jersey City—am one of the Constables of this County. I was employed to find out where the Hoboken Advertiser was printed, commenced my investigation on the 4th of March 1881, about 3 o'clock in the afternoon. About 3 o'clock I was in the vicinity of the office of the Hoboken Advertiser, corner of Newark St. and Washington St. in Hoboken. I watched the office continually from that time till about 9 o'clock that evening; saw a wagon come then with two men in it, they drove in front of the office, went up stairs and were watching the wagon from the office till about 10 o'clock, then there were five or six men carrying out forms from the office to the wagon—forms were about from 1½ to 2½ feet, there were about 3 or 4 of these boxes or whatever they were, they loaded on the wagon—they left the office about ten fifteen (10.15), with two men on the wagon, there were two in front and two in the rear, that is who were watching—wagon drove from corner of Washington and Newark Sts., and up Hudson St. about 100 feet and turned back again—then through Newark St. down to the ferry, over to Barclay Street with the 20 minutes past 10 o'clock boat—from there I followed the wagon down West St. to Fulton Street, up Fulton St. to William St., the wagon stopped between Fulton and Spruce, drove on again from William up Spruce to No. 15 Spruce St. When the wagon stopped there were the two men on the wagon, and four or five men where the wagon stopped, who I recognized as the same men I had seen in Hoboken when the wagon started from the office—they were unloading the wagon then—one of the men appeared to come from the building No. 15 Spruce St., they took from the wagon the things that were put in the wagon at the office of the Hoboken Advertiser and took them into the building at No. 15 Spruce St., while they were unloading I passed between the wagon and the building, some of them threatened to assault me and have me arrested, stating, that if they knew that I was the sucker that followed the wagon, they ought to give it to me anyway—this building, No. 15 Spruce St., is a printing establishment and on the building is the name "John Scott" and another sign "Smith & Son," Job Printers.

Being Cross-Examined says:

The office of the Hoboken Advertiser is at the corner of Newark and Washington Streets in the City of Hoboken.

Sworn and subscribed before me this 23rd } FRANK MEYER.
day of May, A. D., 1881, at Hoboken.

HERBERT STOUT,
Master in Chancery of N. J.

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Bernhard Bayer, a witness produced on the part of the plaintiffs, being first duly sworn says:

I live in the City of Hoboken, have lived there since 1865—my business is that of publisher of the Hudson County Democrat and the Hudson County Journal—have been in the printing and publishing business since 1871. I know the paper called the Hoboken Advertiser. The Hoboken Advertiser was commenced to be published about January or February of the year 1878, it was a very small sheet, printed on a hand-press, it was afterward enlarged, it was enlarged some time in February 1881, it can as enlarged only be printed on a cylinder press. I am acquainted with all the printing establishments in Hoboken—there is only one press in the City of Hoboken upon which the enlarged sheet of the Hoboken Advertiser could be printed—that belongs to Bayer and Kaufmann—the Hoboken Advertiser has never been printed on that press.

Question—From your knowledge of the printing establishments in Hoboken and the size and weight of the presses used, can you say whether or not the Hoboken Advertiser in its enlarged form was printed in Hoboken?

Answer—It was not.

I am one of the parties in this suit.

Being Cross Examined says:

I mean when I say the Hoboken Advertiser could not be printed on a hand press, that a hand press has not the bed large enough to hold the form to print a paper of that size—they have a hand press, but their hand press is not large enough to print their paper. I do not know exactly the dimensions of the press of the publishers of the Hoboken Advertiser, it has not a bed larger than 15 by 20 inches—I never measured it.

Direct Examination resumed.

The Hoboken Advertiser in its enlarged form is about 24 inches by 36 inches.

Subscribed and sworn before me this }
23rd day of May 1881, at Hoboken. } BERNHARD BAYER.

HERBERT STOUT, Master.

The Charter of the City of Hoboken and the amendments thereto were here offered in evidence.

The Resolutions of the Council appointing Bayer & Kaufmann, official printers of the Hudson County Democrat, an official paper of the County of Hudson, and the contracts under the resolutions.

Also the resolution awarding the printing of the City of Hoboken, to Moyer & Luehs, passed May 18th, 1881.

Also the resolution designating the Hoboken Advertiser as the official paper of the city, passed May 18th, 1881, were here offered in evidence.

Adjourned to Thursday, the 26th day of May, inst., at 9 o'clock A. M.

Thursday, May 26th, 1881.

Albert L. Moyer, a witness, produced on the part of the defendants, being first duly sworn on his oath, saith:

I reside at 54 Bloomfield street, Hoboken—am in the printing business—am in partnership with John N. Luehs—me and my partner are the publishers of the Hoboken Advertiser—that paper is printed and published corner of Newark and Washington streets, in the City of Hoboken—that paper was first established the 2nd of February, 1877—that is the first issue—it was then printed in Hoboken—issued once a week—with the exception of two issues it has been printed and published in Hoboken continually since it was first issued—I mean the presswork of these two issues were not done here—otherwise it was all done here—the paper was published regularly these two times—the type was all set up here in the office at Hoboken—I mean to say that on two occasions the presswork was done outside of the city of Hoboken—the paper has been regularly published and issued ever since it was first established down to the present time—I have made a contract with the City of Hoboken for printing the minutes of the Council and other proceedings of the city in the Hoboken Advertiser—the contract was made in the year 1881—since the contract was made we have published the Council proceedings and other proceedings of the city in the Hoboken Advertiser regularly—this paper, the Hoboken Advertiser in which we have published the proceedings of the Council, is the same paper that we established in 1877.

Being cross-examined, says:

The paper, when first established, was about ten by fifteen, each page—continued to publish it at that size until February 12th, 1881—that size was printed on a hand press in our office—it was after February 12th, 1881, that we commenced to print the proceedings of the city—two or three weeks after that time. On February 12th, we commenced to publish a larger paper—that was twenty-four by thirty-eight—a part of that edition of February 12th, was printed in Hoboken and part in New York—on February 12th, we printed either twelve or thirteen hundred copies—not any of that edition was printed in Hoboken—when I said part of that edition was printed in Hoboken, I made a mistake—we published the same number 12 or 13 hundred copies in the edition of February 19th, none of that edition of February 19th was printed in Hoboken—in the edition of February 26th about the same number was printed—of about five or six copies of that edition the presswork was done entire here in Hoboken, the balance of the edition was printed in New York—that is the presswork—those printed here were printed upon a hand press just about sufficiently large to print them upon—have not made any additions to our press since that time—have not enlarged the size of our press since that time—printed the 4 or 5 copies of the edition of February 26th on a stone press here in Hoboken—these 4 or 5 papers were 24 by 38—they were printed one side

entire at once—there are two of these copies at the office, one at my house and one at the City Clerk's office—there were none of those copies given to the public for circulation, except at the City Clerk's office—we did not print the whole edition on our stone press because the paper is too large and we could not print them quick enough—we printed the 4 copies because we wanted to say the paper was printed in Hoboken, always since that edition we have done the same way—printed 4 copies in Hoboken and the balance of the edition in New York—of the 4 copies since February 26th it was my intention to keep 2 papers at the office, one at my house and one at the City Clerk's office.

Redirect, says:

Our Printing office is here in Hoboken—our type is all set up here—the form of the paper is made up here in Hoboken—for each paper we set up 4 forms of 7 columns each—these forms are locked, that is made firm in the chase, then take 4 or 5 impressions from those forms in our office, then carry the forms to New York to have the rest of the edition done—the whole edition is then brought back to our office and issued from there.

Witness being shown a paper dated April 24th, 1880 and marked *Exhibit 1* on part of Defendants says this is a copy of the Hoboken Advertiser and was issued on the day it bears date—it was printed, published and circulated in the City of Hoboken in that size and form from that date till the 12th day of February, 1881.

Paper dated Saturday, May 21st, 1881 and marked *Exhibit 2* on part of Defendants being shown to witness, he says:

This is a copy of the Hoboken Advertiser as printed and published on the day it bears date—this paper has been printed, published and circulated in the City of Hoboken in that size and form from the 12th day of February, 1881, down to the present time—this paper marked *Exhibit 2*, was printed presswork and all complete in our office in the City of Hoboken.

Subscribed and sworn at Hoboken }
before me, this 26th day of May, 1881. } ALBERT L. MOYER.

HERBERT STOUT, Master.

Robert H. Alberts, a witness produced on the part of the defendants, being duly sworn according to law upon his oath, saith that he is City Clerk of the City of Hoboken, that he has read the affidavits of Bernhard Bayer, one of the relators in the above cause, filed in said cause: that the Hudson County Democrat was until March first, 1881, the official paper of City of Hoboken, that a contract was made on or about the twentieth day of October in the year 1879, between the city and the relators as proprietors of the said Hudson County Democrat, for the official printing, which contract was for the term of one year, and was not renewed; that on the twenty-fifth day of January

last the City Council directed this deponent to advertise for proposals for doing the official printing for the term of one year; that deponent did so advertise for twenty days; that the only proposal received was from Moyer & Luehs, proprietors and publishers of the Hoboken Advertiser, a paper which had been to this deponent's knowledge published and circulated in the City of for more than two years; that the price bid was much less than the price charged by the relators; that the proposal was duly accepted and the resolution passed awarding the official printing to the said Moyer & Luehs, as set forth in the affidavit of said Bayer, which resolution was duly approved by the Mayor of said City, March 2nd, 1881; that the said Moyer & Luehs gave their bond and executed a contract for said official printing, which bond and contract were accepted and approved at the session of March 8th, 1881; and that, at the same meeting, on motion, this deponent was directed to notify the Board of Education and the Board of Water Commissioners to publish their official proceedings in the Hoboken Advertiser; which notice deponent duly gave in writing; that at the session of the City Council held March 29th, 1881, a resolution was duly adopted of which the following is a true copy:

“Whereas, the official printing for the City has been
“awarded to the Hoboken Advertiser, now be it

“Resolved, that the Hoboken Advertiser be and is
“hereby designated as the only official paper of the City
“of Hoboken, and further be it

“Resolved, that the resolution designating the Hud-
“son County Democrat as the official paper of the City
“be and the same is hereby rescinded.

That said resolution was duly presented to the Mayor and approved by him on the following day, and that since the passage of said resolution deponent has regularly given the printing to said Hoboken Advertiser.

Sworn and subscribed before me this } ROBT. H. ALBERTS.
4th day of May, 1881.

HERBERT STOUT,

Master in Chancery of N. J.

Monday, June 6th, 1881.

ALBERT L. MOYER, upon resuming his Cross-Examination,
says:

Question—From the time you entered into your contract with the City and from the time when your paper was enlarged all the copies of your paper were printed in New York with the exception of the four impressions which you say were taken from the stone?

Answer—Yes Sir—the press work.

Question—Have any of the Hoboken Advertisers except the 4 copies you speak of, been printed in Hoboken since the paper was enlarged?

Answer—No Sir—and we now print the editions except the 4 copies in New York—it has been all the time the same.

Question—Is not one side of each of the 4 papers which you say you take from the stone here in Hoboken, printed in New York?

Answer—No Sir, both sides are printed here—when I say printed I mean the impressions taken from the stone.

Question—Are these papers the impressions of which were taken from the stone clear and clean copies, so that they can be read and would they be fit for circulation?

Answer—They are, we have a copy of them on file in the City Clerk's office.

Question—Are not most of the rules cut through the pages on that file?

Answer—I can't answer that because I did not take them up there and did not see half the papers that were taken out—I saw the papers but did not examine them closely.

Question—Did you not before the contract was awarded to you by the City furnish to the Chairman of the Councilmanic Printing Committee, an affidavit that your paper was printed in the City of Hoboken?

Objected to—that the affidavit should be produced.

Answer—The affidavit was not that the entire paper was printed here, the substance was that the Advertiser was printed in Hoboken, but it did not state that the entire edition was.

Question repeated.

Answer—Well, the answer is that the Advertiser was printed in Hoboken.

Question repeated.

Answer—Well, I mentioned the name of the paper. I said the Hoboken Advertiser was printed here.

Question—Then in that affidavit you swore that your paper the Hoboken Advertiser was printed in Hoboken?

Answer—Yes Sir, that is true. There had been two editions of the enlarged paper printed at the time this affidavit was made.

Question—Then in point of fact at the time you made the affidavit not a single copy of the Hoboken Advertiser was printed in Hoboken?

Answer—Yes Sir, there were.

Question—You have already sworn that the first two editions of the enlarged Hoboken Advertiser were all printed in New York, and that your affidavit spoken of was made just after two editions of the enlarged Advertiser had been printed; how then can you say that some copies were printed in Hoboken?

Answer—The affidavit was made after copies had been printed and before the contract was signed.

Question—What copies had been printed in Hoboken at the time the affidavit was made?

Answer—Copies of the 3rd issue of the enlarged paper.

Question—Was not your affidavit made before your issuing of the third issue?

Answer—No, it was not.

Question—Had the whole of your third issue been printed when the affidavit was made ?

Answer—Yes, Sir.

Question—Why did you not state in your affidavit that the entire edition of the Hoboken Advertiser was printed in New York with the exception of the 4 copies taken from the stone ?

Answer—I did not think it necessary.

Question—Necessary for what ?

Answer—Necessary to do so. I did not think it necessary to do so.

Question—Why did you make the affidavit at all ?

Answer—The affidavit was made because there was some doubt expressed that the paper was not entirely printed in this City, that is the press work.

Witness Explains.—The affidavit was made to show we could produce copies of the paper printed in this City.

Question—Is that all the explanation you have to give as to the necessity of making that affidavit ?

Answer—It was made for no particular reason, it was made to answer no purpose.

Question—Were you not told by either the Mayor or one of the Council of the City of Hoboken that unless you made such an affidavit you could not procure the contract for the City printing ?

Answer—No Sir. I was not told so by anybody.

Question—Why then did you make the affidavit ?

Answer—It was made that if there was any question asked about it by any body, we could produce copies printed in Hoboken. The affidavit was made to show we could produce copies printed in Hoboken.

Question—Why did you want to show that ?

Answer—Well, there was no particular reason to show that unless we were asked for it, as proof to show that copies were printed here.

Question—Asked for by whom—proof to whom ?

Answer—No one in particular.

Question—Why then did you make it ?

Answer—Well, we supposed that something of that kind might be asked for.

Question—What lead you to suppose that ?

Answer—Well, we heard that some Councilman might make an objection and we would want some affidavit stating that copies were printed in the City.

Question—Who told you that ?

Answer—My information came from Councilman Mehan.

Question—Your affidavit did not state that "some copies" were printed in Hoboken, but that the Hoboken Advertiser was printed in Hoboken. Why did you not state the whole truth in your affidavit about the printing of the Hoboken Advertiser ?

Answer—Well, speaking of the paper the Hoboken Advertiser, I supposed it did not make any difference whether spoken of one paper or ten thousand.

Question—The affidavit was given to Councilman Mehan, was it not ?

Answer—Yes Sir, I believe it was read by him in the Council, I think it was read in the Council before the contract was made for the City printing, before it was voted on in the Council.

Question—Do you not know that a majority of the Council refused to award you the contract for the City printing unless you could swear that the Advertiser was printed in Hoboken ?

Answer—No Sir, they did not.

Question—Do you not know that some of the Councilmen refused to award you the contract unless you swore that the paper was printed in Hoboken ?

Answer—No Sir.

Question—Who are the owners of your paper ?

Answer—Albert L. Moyer and John M. Luehs.

Question—Who furnishes the capital for the publication of your paper ?

Objected to on ground entirely immaterial to the point in controversy.

Answer—Albert L. Moyer furnishes the capital.

Question—Has the Ex-Mayor John A. O'Neil or any of the members of the last Council of the City of Hoboken furnished you with money or other facilities to carry on the publication of the Hoboken Advertiser ?

Objected to that the question is entirely immaterial.

Answer—Never a penny.

Question—Since the first resolution by which it is claimed you were appointed City Printers was certiorated have you not presented a bill to the Council for the printing of the city work ?

Answer—Yes sir, that bill was passed for payment by the Council and warrant drawn and signed by the Mayor and warrant paid. Since the election of Mayor Besson we have not presented any bills for city printing.

Question—Why not ?

Answer—We were not ready to.

Question—Will you swear positively that the Hoboken Advertiser has a circulation of 1300.

Answer—We have not a positive circulation of that number.

Question—Will you swear positively that you have a circulation of 600 ?

Answer—Yes sir.

Question—Is it not true that most of your papers are given away; that they are mailed free to many parties; that they are given to the boys to sell without pay who return what they have not sold and pay for the balance ?

Answer—As far as the paper being mailed there are a few on the list to public men and some others, same as all papers have, and we have our exchanges. Some of the boys pay in advance and some do not, they return the papers they do not sell and pay for them they have sold.

Re-direct.

Question—With reference to the affidavit did you not know or had you not been told that the paper must be published and printed in the City of Hoboken in order to do the official printing?

Answer—No sir, no one ever told me that. The average circulation of the Hoboken Advertiser runs from 1100 to 1200.

Subscribed and sworn before me at } ALBERT L. MOYER,
Hoboken, this 6th day of June, 1881. }

HERBERT STOUT,

Master in Chancery of N. J.

Thursday, June 9th, 1881.

Bernhard Bayer being re-examined says:

The Hudson County Democrat has been printed and published in Hoboken full twenty-nine years.

Question—It has been stated that there is considerable difference between the cost of printing the official work of the City of Hoboken in the Hoboken Advertiser and the Hudson County Democrat. State in your own way that difference.

Answer—There is hardly any difference; the best way I can show you is to take up one particular item. I now exhibit the Hudson County Democrat of April 23rd, 1881, wherein is published the official canvass of the Charter election of 1881. Bill sent in to the Council for that work by the Hudson County Democrat charging this work with 85 folios at 50 cents a folio, which was our contract price making a total of \$42.50; for the same work the Hoboken Advertiser sent in a bill sworn to and afterwards paid at 109 folios at 35 cents a folio making a total of \$38.15, which if it had been counted at 85 folios, the true measurement of the work, at 35 cents a folio, it would only amount to \$29.75. The difference of the bill of the Hoboken Advertiser in this single item should have been \$8.40, but only amounts to \$4.35.

Question—How is the difference between 24 folios of the Hudson County Democrat and the Hoboken Advertiser made; the Advertiser being 24 folios more than the Democrat?

Answer—It is made, we set our type as this kind of work is required; but they put in between the lines considerable more lead, which can be done with hardly any work or any outlay, but stretches the matter to that extent; there is a standard rule for measuring type which consists of ten lines Nonpareil to one folio, the leads measure just as much as the type; it is stuffing.

Question—Since the city printing has been done by the Hoboken Advertiser have you examined it?

Answer—Yes.

Question—Have you found that the same plan of measurement of the folios has been pursued as in the Exhibit you have just shown?

Objected to. It is not the best evidence.

Answer—In a good many cases.

Plaintiffs here offer the minutes of the official canvass printed in the Hudson County Democrat of April 23rd, 1881, marked Exhibit 5 on part of plaintiffs.

Also offer the printing of the official city canvass as printed in the Hoboken Advertiser of April 23rd, 1881, and marked Exhibit 6 on part of plaintiffs.

Being Cross Examined says:

Question—Name the dates on which the differences in the arrangement of the type is shown in the two papers marked Exhibit 5 and 6 on part of plaintiffs; as are subsequent to the date of that issue.

Answer—To give dates it would require me to go over the files. My contract price last year was 50 cents per folio, the contract price of the Advertiser was 35 cents; that was the price of the first insertion. The rates after that was 25 cents on our contract and 20 cents on the contract of the Hoboken Advertiser.

Witness being examined direct, says:

Question—In your measurement of the city printing done by you in the Democrat under your contract—did you always measure the folios and did you always print as closely without the use of more lead as is shown in *Exhibit 5* of plaintiffs.

Answer—Yes, sir.

Subscribed and sworn this June 9th, } BERNHARD BAYER,
1881, before me at Hoboken.

AERBERT STOUT, Master in Chancery.

This Agreement made this First day of October, Eighteen hundred and seventy-nine, between the Mayor and Council of the City of Hoboken, of the first part, and Bernhard Bayer and William Kaufmann, of said City, parties of the second part, witnesseth:

That the parties of the second part hereby covenant and agree with parties of the first part to do and perform all the official printing for said parties of the first part, for the term of one year from the date hereof, at the rate of Fifty cents per folio for the first insertion, and twenty-five cents per folio for each subsequent insertion; the term official printing to mean and include all printing required to be done by the City Charter, or the laws of the State of New Jersey, affecting said city; and the said the Mayor and Council of the City of Hoboken, do covenant and agree, in consideration of the foregoing, to pay to said parties of the second part, the said sum of Fifty cents per folio for the first insertion and the sum of Twenty-five cents per folio for each subsequent insertion required by law, or by proper and valid resolution of the said the Mayor and Council of the City of Hoboken; and the said parties of the second part covenant to do and perform said official printing in a good and workmanlike manner in the official paper of said City.

In witness whereof the said parties of the first part have caused these presents to be signed by His Honor the Mayor of said City, and their Corporate Seal to be hereto affixed, attested by the City Clerk; and the said parties of the second part have hereto set their hands and seals the day and year first above written.

Signed, sealed in presence of } BERNHARD BAYER. (Seal.)
 ROB. H. ALBERTS. } WILLIAM KAUFMANN. (Seal.)
 E. V. S. BESSON, Mayor. (Corporate Seal.)

Attest: ROB. H. ALBERTS, City Clerk.

This Agreement made this Third day of March, one thousand eight hundred and eighty one, between the Mayor and Council of the City of Hoboken, of the first part, and Albert L. Moyer and John N. Luehs, of the City of Hoboken, in the County of Hudson and State of New Jersey, of the second part, witnesseth:

That the parties of the second part hereby covenant and agree, to and with the parties of the first part, to do and perform all the official printing required to be done under or by virtue of the Charter of the City of Hoboken, or any supplement thereto, or by any ordinance or resolution of said City, or by any law of the State of New Jersey affecting said City, for the term of one year from the date hereof, at the rate of Thirty-five cents per legal folio for the first insertion, and Twenty Cents per legal folio for the second and each subsequent insertion required by law, or by proper and valid resolution of the Mayor and Council of the City of Hoboken. And the said parties of the second part do covenant and agree to do and perform all the said printing in a good and workmanlike manner, and to do such parts thereof as are required to be done and published in a newspaper, in the "Hoboken Advertiser", for the prices mentioned above.

In consideration whereof the parties of the first part covenant and agree to pay the prices above mentioned to the parties of the second part.

In witness whereof the said parties of the first part have caused these presents to be signed by the Mayor of said city, and their Corporate Seal to be hereto affixed, and the parties of the second part have hereto set their hands and seals, the day and year first above written.

Signed, sealed and delivered } ALBERT L. MOYER. (Seal.)
 in presence of } JOHN N. LUEHS. (Seal.)
 ROB. H. ALBERTS. }

JOHN A. O'NEILL, Mayor. (Corporate Seal.)

Attest—ROB. H. ALBERTS, City Clerk.

New Jersey Supreme Court.

The State,

BERNHARD BAYER, and
WILLIAM KAUFMANN,
Partners &c., under the
name and firm of
BAYER & KAUFMANN,
Prosecutors &c.,
Plff.

On Certiorari.

vs.

THE MAYOR AND COUNCIL OF
THE CITY OF HOBOKEN.
Defts.

Reasons.

The writ of certiorari is applied for on the part of the said prosecutors against the said defendant to bring up to the said Court for review a certain resolution or certain resolutions passed by the Council of the City of Hoboken on the first day of March A. D. 1881, and approved by the Mayor of said City of Hoboken on the second day of March A. D. 1881, of which the following is a copy:

“Resolved, That the official printing for the ensuing year be “and the same is hereby awarded to Moyer & Luehs of the “Hoboken Advertiser,” “and be it further

“Resolved, That the corporation attorney be and he is “hereby directed to draw up the necessary bond and agreement.”

And the said prosecutors by their attorneys, Hoffman & Paxton, come and assign the following reasons for the allowance of the writ of certiorari, to wit:

First—That said resolution is illegal and void and should be set aside because the said resolution was intended by the said defendant to designate under and by virtue of the Charter of the City of Hoboken, and under the act of the Legislature of this State P. L. 1877, p. 68 sec. 1, approved March 8, 1877, one or more newspapers to publish the proceedings of such council and to publish the proceedings of any of the other boards in said City, whereas the said resolution does not designate any newspaper for the purpose aforesaid but awards the official printing of the said City to Moyer and Luehs of the “Hoboken Advertiser.”

Second—The said prosecutors allege that heretofore, to wit: on October 11th, A. D. 1877, the said the Mayor and Council of the City of Hoboken did according to the provisions of the said Charter of the said City of Hoboken and according to the laws of the State of New Jersey designate the “Hudson County Democrat,” a newspaper printed and published in said City of Hoboken, as the official newspaper in which should be published the proceedings of such council and the proceedings of any of the other boards of said City which said newspaper, “The Hudson County Democrat,” has by virtue of such designation from thence hitherto published the proceedings of such council and the proceedings of the other boards of said City, which said designation still remains in force and has not in any way been revoked or rescinded and the said “The Hudson County Democrat” is still the official newspaper designated according to law for the publication of the said proceedings.

Third—That since the passage and approval of the said resolution of March first as aforesaid, the said Council of the City of Hoboken have refused and do refuse to furnish to the said newspaper “The Hudson County Democrat” for publication therein the said proceedings of the said Council and the said proceedings of the other boards of the said city.

Fourth—That said resolution of March 1st, A. D. 1881, does not designate a newspaper printed and published in the City of Hoboken as required by law.

Fifth—That said resolution of March 1st, A. D. 1881, does not designate a newspaper printed and published in the City of Hoboken for the period of two years preceding the passage of the said resolution as required by law.

Sixth—That said resolution of March 1st, A. D. 1881, does not designate a newspaper to publish the aforesaid proceedings of said Council and the other boards of said city as required by law.

Seventh—That if said resolution by construction and by intendment does designate “The Hoboken Advertiser” as the official newspaper for the publishing of the said proceedings, then the said prosecutors allege that the said newspaper “The Hoboken Advertiser” was not at the time of the passage of the said resolution a newspaper printed and published in the said City of Hoboken as required by law.

Eighth—That said newspaper “The Hoboken Advertiser” was not at the time of the passage of said resolution and is not now a newspaper printed and published in the City of Hoboken for the space of two years.

HOFFMAN & PAXTON,
Attorneys for Plaintiffs.