

BY-LAWS

OF THE

Hoboken Tax-payers' & Citizens'

ASSOCIATION,

TOGETHER WITH A

Statement of Facts and Principles,

WITH WHICH

EVERY TAX-PAYER SHOULD BE

FAMILIAR.

1873.

BY-LAWS

OF THE

Hoboken Tax-payers' & Citizens'

ASSOCIATION,

TOGETHER WITH A

Statement of Facts and Principles,

WITH WHICH

EVERY TAX-PAYER SHOULD BE

FAMILIAR.

1873.

THE DUTIES OF OFFICERS.

PRESIDENT.

The President shall preside over and preserve order in all the meetings of the Association, call meetings, whenever in his judgment the interest of the Tax-PAYERS demands the same; and he shall always call a meeting when requested to do so by the written application of two members, or on the written notice of the chairman of the "General Committee." In case of the absence, inability or refusal of the President to serve, the Vice-President shall discharge the prescribed duties. If both President and Vice-President be absent, unable or unwilling to serve, then a president shall be elected pro tem.

SECRETARY.

The Secretary shall keep and record in a suitable book, correct minutes of all the business transacted by the Association, and discharge all ordinary duties appertaining to the Secretaryship; and he shall call meetings in the manner heretofore provided, should such duty become necessary by the absence, inability, or refusal of both President and Vice-President.

TREASURER.

The Treasurer shall receive all the funds, and deposit the same for the Association in the First National Bank of Hoboken; and pay all claims, which the Executive Committee shall certify as correct, with a check signed by himself, and countersigned by the Secretary.

EXECUTIVE COMMITTEE.

The Executive Committee, which shall consist of three members, shall examine all claims against the Association, and certify such as may be found correct, audit the Treasurer's account, fill offices, (except that of President) and places on the committees, from the time that a vacancy may occur till the next succeeding meeting; and carry out the wishes of the Association in all matters not otherwise provided.

LAW COMMITTEE.

The Law Committee, which shall consist of three members, shall have charge of and conduct all law business under the authority and direction of the Association.

GENERAL COMMITTEE.

The General Committee shall consist of twenty-seven members, who shall choose one of their own number as chairman, who shall divide the remaining twenty-six members into thirteen sub-committees of two members each; and arrange said thirteen sub-committees on a list in the order which they shall succeed each other in discharging their duties. Each sub-committee shall attend the regular councilmanic meetings of one week, and also all special meetings intervening between said regular meetings, and the next succeeding stated or regular meeting, one member attending the Council chamber on "Committee night," the other attending the meeting of the Council proper, one member attending each special meeting, as may be arranged by the committee or directed by the chairman, so that the Association may have a representative present at each meeting for the purpose of observing the nature and extent of the business transacted. They shall report in writing the result of their observations to the chairman, who, if in his judgment, the nature of the business transacted or proposed, would indicate the necessity for a meeting of the Association, to protect the Tax-payers' interest, shall notify the President in writing, who shall forthwith issue a call for such meeting; or if the said chairman may deem that very prompt action be necessary, he shall notify the chairman of the Law Committee of this fact. When the bottom of the above-named list shall have been reached, the order of succession shall be repeated by re-commencing at the top of said list.

FUNDS.

The Association shall depend on voluntary contributions (except an entering fee) subscribed by members and other friends of the organization, each being expected to regulate, in some measure, the amount subscribed, by the extent of his taxable property within the city limits.

MEMBERSHIP.

Any person who owns, or represents the owner of taxable property in Hoboken, may become a member by subscribing the By-Laws, and paying down one dollar as an entering fee, and becoming obligated to pay such farther sum as he may judge necessary to carry out the objects of the Association. The amount subscribed by him shall be due and payable at such time or times as the Association, or Executive Committee, may decide; and any member who shall refuse or neglect, to respond to the call of the Treasurer shall be deprived of his right to vote or hold office: his refusal, or neglect, to pay his subscription on second call shall render him subject to expulsion by a majority vote of the Association, except a justifiable excuse be offered. The Treasurer shall report all delinquents at the next succeeding meeting.

ELECTIONS.

The President, Vice-President, Secretary and Treasurer shall be elected by ballot as heretofore provided; but the members of standing and such special committees as the Association may deem necessary, shall be elected viva voce by a rising vote, in which case every member present shall vote, except he be excused by the Association.

TIME AND PLACE OF MEETING.

The Association may appoint the time and place, of both stated and special meetings; or it may meet according to the provisions made for calling meetings under the head, Duties of Officers, or on its own adjournment, provided however that all meetings shall be held on business days and at suitable hours.

BULLETINS.

There shall be at least three Bulletin Boards headed with the name and objects of the Association, set up in as many designated public places, within the city limits. All calls for meetings, and notices for the payment of subscriptions and for other purposes, shall be considered as properly made and given, by posting a copy of a written or printed notice on each of said Boards, provided that three full days, at least, intervene, between the time at which the notice is posted, and that for which the call or notice be made or given: provided also that any other plan or method of issuing calls or giving notices may be adopted by the Association or executive committee.

REMOVAL OF OFFICERS AND EXPULSION OF MEMBERS.

Any officer who fails to render satisfactory service may be removed from office by a majority vote of the members present declaring his office vacant. Any member whose complications and practices are deemed to be antagonistic to the interests and objects of the Association may be expelled by a similar vote; provided however that either an officer or a member shall be first afforded an opportunity to make an explanation, which, whether satisfactory or otherwise, will be indicated by the vote.

AMENDMENTS.

These By-Laws may be altered or amended by a majority vote of all the members present at a regular or special meeting. Notice in writing shall be given to the Secretary of any proposed amendment, at least two weeks, before the Association shall act on the same. The Secretary shall notify the members of the proposed amendments, previously to the meeting.

ORDER OF BUSINESS.

- 1.—Reading and Approving the Minutes.
- 2.—Report of Executive Committee.
- 3.—Report of General Committee.
- 4.—Report of Law Committee.
- 5.—Report of Treasurer.
- 6.—Unfinished Business.
- 7.—New Business.

Statement of Facts and Principles.

It was thought to be desirable that a statement should accompany the foregoing By-Laws, so that parties interested may know the necessity for the existence of, and the probable results of such an Association.

The Charter of Hoboken provides that the property benefited by an improvement shall be assessed to pay the cost of the same. The court of last resort has decided that it is unconstitutional to assess property to pay for an improvement at a figure beyond, or above the actual value of the benefit conferred on the property assessed. When this point is passed actual confiscation of the private property of innocent parties is the result; but if this is not allowable even for Public Improvements, how much less allowable is the confiscation of private property for an improvement which even the public interests do not demand? This is the principle that gave rise or birth to the "Hoboken Tax-payers' and Citizens' Association." A principal is responsible for or bound by the actions of his authorized agent while said agent does not exceed his authority; but if the agent exceeds his authority the principal is not bound by such acts, the agent becoming personally responsible or liable.

The Councilmen are virtually the agents of the Tax-payers who placed them in a position to carry out the provisions of the City Charter, their authority; but said agents let out contracts for improvements which were not actually needed, by even the property *improved*, as is proved by the fact that in many instances the property would not bring a price sufficient to pay the cost, notwithstanding the owners' loss of the entire property so improved. Is the letting out of such a contract not a violation of the charter? Is there no personal liability assumed by public servants intrusted with this business? That some of the improvements in question are not public improvements, is proved by the fact that the public make little, if any, use of them. If it be unlawful to take, even for public use, private property without remuneration, surely it is not lawful to take private property without remuneration in case the only benefit enjoyed by the owners of the property so taken, is that of being relieved from the care of the same. This however is similar to the relief from care experienced by the owner of a pocket-book, of which the highwayman would

take charge. If a much needed public improvement costs more than the benefit conferred on the property along the line of said improvement, then it would be proper to assess the property benefited for the value of the benefit conferred, and no more; because if the assessment exceeds this point, the excess is so much private property taken for public use without remuneration. The difference between the local benefit, and the cost of the improvement, should be paid by the public or community benefited by the use thereof. If the improvement do not benefit the public, either presently or prospectively, then the public should not make the improvement; but even the right of the public to compel a constituent member thereof to improve his property, irrespective of the right to abate nuisances, may be very largely abused. It might be well for owners of property located on public thoroughfares to give a little attention to this principle. When an improvement is desired the usual course is to petition the Council to have such improvement made. If the petition be entertained, notice by an advertisement is given of the proposed improvement, and an opportunity offered for objections, if any, to be presented to the Council. Suppose that A and B., owning property on 17th St., petition the Council to improve said street; and that C., whose only lot in the city is located on Newark St., presents his objections, is it likely that the Council would attach much importance to his remonstrance? Perhaps he would be reminded that the city charter provides for assessing the property benefited, and that the Commissioners will not likely assess more than half a block, or square, each side of the improvement; consequently, he is not a proper party to object; and there the matter would stand as far as C. is concerned, he supposing that if he did not receive any benefit from the improvement that he would not have to pay for it. When the job is finished, something like an outrageous swindle is discovered; and the owners of property assessed to pay the *job*, rather than lose the whole of their property, present their objections to the Council with about as much success as C., the Council informing them that they must obtain redress, if any, from the Courts, and thus involve themselves in heavy law expenses, besides contributing to the fund which the Council will use in the defence in order to prevent the complainants from obtaining any redress. Meantime the Council, being unable to collect the assessment, decide to issue Bonds for a term of years, say 20, at 7 per cent per annum. These Bonds would be virtually a mortgage on C's. lot, without his consent of course, for the purpose of raising money against the expenditure of which his right to remonstrate was not recognized. This seems to embody something that resembles taxation without representation. If money at 7 per cent, compound interest, will double itself in ten years, then it follows that the Tax-payers, when they redeem the bonds at the end of 20 years, shall have paid four times the face of said

bonds, and that to pay for an improvement which was not needed, procured at an enormous and fraudulent cost. This is not all; suppose C. wants to sell his lot, he will discover that this modern improvement has neither increased the value thereof nor made it more saleable, but the reverse in both cases.

Lest some should say that the above are mere abstractions, based on fanciful theories, a few facts may be given. During the years 1869-70 five streets, namely Eighth, Twelfth, Thirteenth, Fourteenth and Fifteenth, were let out by the Council on contracts to be filled, graded, curbed, guttered and flagged, *the draining of courts* not being overlooked. Eighth and Fifteenth were let to John McDermott, Twelfth to Dennis Eagan, and Thirteenth and Fourteenth to Coughlin and Callahan. Eighth, Thirteenth and Fourteenth are finished and accepted by the Council, the assessments being confirmed by the same. Twelfth and Fifteenth are approaching completion. These five streets were placed under the tender care and superintendence of Mr. A. L. Du Puget, city surveyor, so that a family likeness may be expected, and consequently, 14th, the last of the three already *finished*, may be taken as a fair specimen to illustrate the character of the nursing experienced by this group at the hands of Mr. Du Puget, who prepared the profiles, plans, specifications, and estimates of quantities.

Mr. Du Puget's estimate of quantities before the contract was let out.

Earth filling, 14,666 yards	at \$1.55	\$22,732.30
Flagging, 10,766 square feet	" .24	2,584.82
Curb, 2,969 lineal	" " .68	2,018.92
Gutter, 2,969 "	" " .23	682.87
Box drain, 100 "	" " 5.00	500.00
Open drain 100 "	" " 2.00	200.00
		\$28,717.93

This shows the cost exclusive of incidentals, according to the estimates and prices subsequently fixed by the contracting parties.

Mr. Du Puget's official figures on which the assessment was made to pay the cost of the improvement.

Earth filling, 54007 cubic yards,	\$83 710.85
Flagging, 10,722 square feet,	2,573.28
Curb, 2,860½ lineal	" 1,945.14
Gutter, 2,860½ "	" 657.92
Box drain, 325 "	" 1 625.00
Open drain, 2543 "	" 5,086.00
	\$95,598.19
Deduct the estimated cost, less incidentals,	28,717.93
Difference between estimate and cost,	\$66,880.26

When the above difference occurred in improving a street 50 feet wide and 493 yards long, what would be the difference between the estimate and cost for improving a street 65 feet wide, running from the north to the south extremes of the meadow, that is, on Mr. Du Puget's improved plan for improving streets? To the above \$95,598.19, may be added \$3,820.23 for incidentals, consisting of \$150 for printing, \$300 for boring expenses, \$3000 for surveyor's fees, and \$370.23 for assessors' fees; and the total cost of this portion of a street will be \$99,418.42.

The contract for this street was made Jan. 18, 1870, the contractors, Coughlin & Callahan, agreeing to finish it by Feb. 1, 1871, and giving their bond for \$14,400, aimed, though wide of the mark, for one-half the cost, as a guarantee for the faithful performance of their agreement. The *job* was finished in the summer of 1872. The contractors, it is understood, gained by this extension of time, as the price of earth filling fell off, so that, it is said, much of the filling material cost only about 25 cents per cubic yard not far from the end of the street, notwithstanding that the contract price was \$1.55, to which 15 per cent may be added for "shrinkage," and the cost of a cubic yard of filling, on the street is, \$1.78½.

When the assessment was completed the considerate city Fathers gave notice that objections in writing to the confirmation of the assessment would be considered at the Council Chamber on the evening of July 12, 1872. On that night there was not a quorum at the hour of meeting, but as there was a theatrical performance in the neighborhood, which it was understood some of the Fathers wanted to see, a comparatively prompt adjournment was effected; and thus the complainants were disappointed at the first step. This disappointment was succeeded by others, so that a very unsatisfactory hearing was obtained. The surveyor, who having been repeatedly called for, made his appearance without either *figures or memory* relating to Fourteenth St. When about to give some explanation as to the figures on the assessment map, he turned to the Councilmen in committee of the whole, and said, "now gentlemen if I be compelled to give figures, I may be making out a case against the city." This brilliant point seemed to be a satisfactory reason to the far-seeing guardians of the tax-payers' interest, why he should not be compelled to answer such queries as some of the complainants had made, while it impressed some, who could not see so penetratingly into the nature of things, with the idea that there was something connected with Mr. Du Puget's figures not fit for presentation to the vulgar gaze. After other vexatious delays and disappointments, the Council confirmed the Assessment, alleged errors and all, notwithstanding that objections were made to items amounting in the aggregate to more than \$24,000, though some of the objectors requested them to confirm only that about which no question had been raised, farther than that the cost was in excess of the benefit, so as to avoid making errors a lien on the city by their official action, thereby throwing the onus on the contractors to prove their claim to the questionable items, in which case, if judgment would be obtained against the city they (the council) would have something to sustain them in paying said items. The Council also declined to cause a re-survey of the work to be made, on the ground of expense; but two of the objectors offered to pay the expense, and to be bound as to quantities, by the survey and calculation, if made by a firm of city surveyors, who were under control of, and enjoyed, as it was understood, the confidence of the council. The communication was read and referred to the Committee on streets and assessments, the chairman of which, Councilman Havens, had said in the city clerk's office, previous to the organization of the council, that "it (the assessment) will be confirmed in spite of the devil"—up till this time there was no suspicion that he was working in opposition to the devil. The communication was placed on file, and the council consoled the aggrieved by advising them to appeal to the Courts for redress. Examine this: First, the Council by confirming errors, throw the weight of their official positions against the objectors, who in face of the

odds, are under the necessity of furnishing money to pay the expenses of both sides of the suit, as the Council will use the tax-payers' money in fighting against any redress being obtained. If D. owns one lot on the corner of 14th St., and any one of those running north and south across the portion of said street improved, his bill shows that the city has a claim against him for \$1,300—exclusive of *special benefit*—as pay for simply filling flagging, curbing, and guttering one street 50 feet wide, while another 65 feet wide is untouched, in the front of his lot; but if this street were similarly improved at a proportionate cost added to the above, the lot would still be unfit for use until another large amount would be expended in filling it up. D., acting on the advice of the council consults a lawyer, who informs him that for about \$150, he will certiorari the assessment, of course not insuring success; but that four owners may join, so that the expenses to each will be only one-fourth of the above. Notwithstanding that D. has paid in full for his lot and several years' taxes too, rather than take the risks he declines the lawyer's services, refuses to pay the assessment, and abandons his lot to the city, supposing that he is done with the whole business, having lost all that he can lose, as he owns no other real estate in Hoboken, but simply pays rent for the house which he occupies. The Mayor and Council being unable to collect the assessments, issue City Bonds for a term of years at 7 per cent per annum, to redeem the improvement certificates. The next tax bill presented to D. has an item "Interest on 14th St. improvement Bonds." The bill presented to D's landlord has a similar item, at which he looks over his spectacles, and says, "one of two things I must do; I must either be satisfied with less profit on my house investment, or I must increase D's rent." Not only this, but if D. pays his assessment, his tax bill on that same lot would show a similar item, as other owners refuse to pay and appeal to the courts; and that not only for one, but for all streets under similar circumstances. There being five such streets, three accepted, and two, 12th and 15th, approaching completion, it follows that five involuntary city mortgages of about \$100,000 each, would, in a short time, rest on D's lot, as well as on the property of all others, whether they own a meadow lot or not. Suppose E. has owned 100x100 feet on any corner of 14th St. for about two years, having paid an average of \$600 per lot,—(\$240), to which add \$400 for interest and taxes,—\$2800; but instead of paying cash in full he paid \$1200, and secured the payment of \$1200 by his Bond giving a mortgage on the lots as collateral to the Bond. Four lots are taken in order to allow E. such an average benefit as 100 feet in depth will give. He finds that his assessment on the corner lot is \$1300, and say \$100 for special benefit; on the next lot \$498.49, on the 3d \$476.82, and on the 4th \$455.14—\$2830.45 in the aggregate for only a 50 feet street, the lots not filled in so as to fit

them for use, with 100 feet of a 65 feet street yet untouched. Rather than pay the assessment E. decides to forfeit the \$1600 he has already paid on the purchase price, interest and taxes, the city or Council not being able to reach his property as he neither resides nor owns any other property in Hoboken. The holder of the mortgage, when his interest stops, sets about foreclosing the mortgage; but when he examines the magnitude of the assessment, and ponders over the prospective expenditures before the lots can be used, and the fact that he is likely to become the purchaser under the foreclosure sale, he decides to sue on E's Bond. Having obtained judgment, he can reach E's property anywhere in the state, and even in a neighboring state by suing there on this judgment. This of course is not peculiar to Hoboken, as the same thing holds elsewhere. Now whether D. and E. own \$1 or \$100,000, the council is guilty of an unconstitutional act in confiscating their property, even if the so called improvement had been a *public improvement*; but how much greater is the offence when the improvement was not actually needed. In addition to the classes represented by D. and E., there are other classes, each of which has to view the alleged frauds from a somewhat different stand point. For instance, there is the very large owner of other portions of Hoboken, while he owns little of the meadow property, directly affected by the present operations. In his case the assessment would be light compared with such involuntary mortgages on his large possessions, and, consequently, if he could evade the latter by paying the assessment it would be wise on his part to do so, provided the matter would end there; but if in either case the sales of his property be stopped by these modern and model improvements, then it becomes necessary to view the scene from another stand point. The chief instrument of the present troubles *graduated* in the employ of the largest owner in the city, which owner must of course, be the largest sufferer in dollars and cents for his ignorance of the qualities of the employee, while other owners suffer proportionately for this ignorance. Another class own very moderately, both on the meadow and the upland; but they are determined not to allow either to be confiscated without an effort on their part to protect their just rights. Acting under this influence they appeared before the Council and presented objections to the assessments for the improvement of the streets already completed. Instead of obtaining redress, they were not only coolly advised to appeal to the courts, but were modestly charged with a desire to evade the payment of *their own assessment* and place it on the city. This the complainants regarded as little short of adding insult to injury, especially at a time when the Council was maturing a plan to issue Bonds to the amount of \$216,000, of which \$96,500 were to raise money to pay for 13th St improvement and

\$16,000 to pay for Second St. improvement from Jefferson St. to the Paterson Plank Road. As the dividing line between Hoboken and Jersey City intersects Second St. at a point considerably east from the Plank Road, it follows that Hoboken City Bonds are being issued to pay street improvements in Jersey City! But as the Hoboken Tax-payers are becoming familiar with this sort of business, probably their equanimity will not be disturbed by the fact that a city debt or liability is now being assumed by the issue of improvement certificates in payment for the improvement of 15th St., a part of which is unquestionably in the Township of Weehawken, while a portion of the westerly end is in the Township of West Hoboken!! The remainder of the \$216,000 is for the purpose of paying over-drafts of other funds!!! Now some of the last-named class of owners, in attending to their individual interests became somewhat familiar with matters, of which otherwise they would, no doubt, have remained in ignorance till perhaps too late to profit by their knowledge. Having discovered that they had other property, in common with all classes owning on the upland, exposed to such illegal absorption they moved in the direction of preventing the Council from doing that which said Council accused the complainants of desiring to be done, namely, that of causing the city—or in other words all Tax-payers whose property is within the city limits—to pay for the improvement of the family group of streets in question; and thus by the persevering efforts of the now chairman of the law committee of the Association, the first of the above-named *mortgages* was shelved, at least for the time. A reference to the Council's minutes will not only show that bids for the Bonds were to be opened on the 27th of Aug., 1872, but that he writ was served on the same evening. On the 10th of Sept. the Council rescinded the action ordering the issue of the 13th St. Bonds. It is hoped that the first success will be followed up with a determination worthy of the cause. Since the honest of all classes, rich and poor, landlord and tenant, the employer and the employed, the buyer and the seller, are aboard the same leaky craft, what is the remedy?—"in the same boat" is too weak a figure, as no vessel of less capacity than Noah's Ark or the Great Eastern would serve on the present occasion. The cowardly desertion of the leaky ship may result in drowning. For instance a resident of Hoboken may decide to save all he can from the anticipated wreck, and remove to a neighboring municipality, under whose care he will place his effects, which may soon be swallowed up, the disease *ringology* or *ringgold* prevailing there, without the counteracting influence of a 'Tax-payers' Association. A wise policy is to remain and resolve that the leak *shall and must be stopped*, and that a vigorous effort *shall and must be made* to catch and punish the rats that caused the leak by

gnawing the hull. Let the voyagers remember that they are sailing under the same colors—read the objects of the Association—and resolve to postpone the settlement of all political and other differences of opinion until they get ashore. Surely the drowning of even an enemy would be unsatisfactory *satisfaction* to a fellow voyager who would necessarily have to go down to *see* his desire accomplished. Instead of suicidal policy, let a cordial invitation be extended to all worthy classes to come aboard, and a promise of such protection to person and property as may be possible. Let there be a determination that “justice to all and favor to none” shall prevail. In every such movement some parties will stand aloof, knowing that nothing is more successful than success; and that it is unpleasant to be identified with the reverse, especially if any *pecuniary* or other risk be assumed. This is one of the ways of being identified with a *success*, that of securing a failure. “When bad men conspire, good men should combine.” The fraudulent classes are alive to the power of united action. Failure now will strengthen the hands of conspirators by enabling them, like a compact army, to take an opposing scattered force in detail. Let every Tax-payer look again at the objects of the Association; and if he approves of them let him show his approval, by calling at the Secretary’s office to enrol as a member, pay his entering fee, and subscribe for such sum as he may deem necessary. Money is less wanted than a publicly expressed determination of each Tax-payer to manfully defend his own legal rights. One dollar, backed up with such an expression, may do more to secure and establish said rights than \$1,000. individually expended. Let each honest property-owner do his duty, which will be very light, if all take the hint, and in a short time whatever else Hoboken will produce it will not produce fraudulent Rings.

A combination of circumstances delayed the printing of the by-laws and statement, so that in the meantime 12th and 15th streets have been completed; consequently, a few facts relative thereto may be added. Fifteenth St. being finished before Twelfth, they will be taken in this order.

The following is a copy of a remonstrance presented to the Council, viz.:

“HOBOKEN, Feb. 25, 1873.

To the Hon. the Council, }
of the City of Hoboken, N. J. }

Gentlemen.

The subscribers, members of the Law Committee of the Hoboken Tax-payers’ and Citizens’ Association, hereby respectfully call your attention to business pending before the Council in relation to Fifteenth street improvement, namely, that introduced by two certificates presented by A. L. Du Puget, city surveyor—one for \$800 in favor of himself for *boring* expenses, reported correct for \$600—just double the amount asked and obtained for a like claim on Fourteenth street improvement; and the other for \$29,177.04 in favor of John McDermott, contractor, in full for work and materials furnished on Fifteenth street improvement. Now in case of final payments for improvements, it is desirable that due care be exercised, so that the interest of Tax-payers may be kept in view. The improvement question is one that requires the careful scrutiny of your Honorable Body. For instance; a considerable portion of the easterly end of this improvement is located in the Township of Weehawken, a fact about which there is no doubt; and, except the map showing the westerly boundary of the city be incorrect, a portion of the westerly end of said improvement is located in the Township of West Hoboken. Here are certainty and a probability, either of which—not to mention their combined force—should induce the council to act cautiously in this matter. Consequently, the subscribers respectfully and firmly remonstrate against the issue of any more certificates on account of this improvement, until the matter be properly investigated and adjusted.

CHARLES SPIELMANN,

ROBERT HARPER.”

The accompanying extract from the minutes of the Council gives a little light in relation to one of the above-named certificates.

EXTRACTS FROM THE MINUTES.

"MAYOR'S OFFICE,
HOBOKEN, March 13, 1873."

To the Honorable the Council of the City of Hoboken :

GENTLEMEN—The resolution passed by your honorable body on the 4th inst., directed an improvement certificate to be issued in favor of A. L. Du Puget, for \$477 50. I here return to your honorable body without my approval, for the reason that the amount allowed Mr. Du Puget, City Surveyor, for expenses of boring (\$477.50) exceeds the amount actually paid for said work by about \$274, as appears by a communication from one of the Commissioners of Assessment and which I hereby send to your honorable body. Inasmuch precedent has been established heretofore to allow the expenses for boring on improvements of this kind, it may be proper to allow this amount actually expended for labor, but to any more would be simply an outrage to the parties interested in the improvement. It is unnecessary for me to say any more upon the subject, as the communication above referred to is sufficiently explicit to require a careful investigation in relation to this matter before the payment of the claim is allowed; and inasmuch as the matters relating to the improvements on Fifteenth street are already very complicated, it becomes necessary for me to exercise the utmost care in all our actions relative thereto, and, if possible, to remove every obstacle that may have a tendency to embarrass or in any way affect the assessment when the same is presented for action thereon, pending its ultimate confirmation.

Yours respectfully,

F. L. SCHMERSAHL, Mayor.

HOBOKEN, March 13, 1874.

To His Honor Mayor Schmersahl :

DEAR SIR—The annexed document presents a transaction which in this community is usually termed "Shenanigan." The men whose names appear are those who worked upon boring on Fifteenth street, as laborers. They have understood by attendance at the Council and otherwise, that the property owners were charged \$2.50 per day for their work, and the sum voted by the Council for labor alone was \$477.50; this they have not received, but paid at the rate of \$2 per day, which in the aggregate amounts to \$203 50. They cannot understand how the balance \$274 has evaporated, and cannot imagine how even Mr. Du Puget's peculiar arithmetic can explain it. They have individually, except Trenor, called at my office and dictated the amounts put down. Trenor lives on the Hill, but the other men are sure of the amount he received. The men want to get paid at the rate they were led to believe they would receive. They have asked me as a Commissioner to see this matter made right. I am powerless in this matter and hereby lay the case before your honor in the belief that justice may be done to the laborers.

Yours, &c.,

JOHN REID.

We, the undersigned hereby certify that we have, each of us received from Mr. A. L. Du Puget, the sums set opposite our names, for work done in the boring of Fifteenth street, Hoboken, and Weehawken, and we further certify, that to the best of our knowledge and belief the names and amounts named in the annexed schedule are complete and correct.

Terence (his X mark) Bennet, 107 Meadow street, Hoboken.....	\$40 00
John Morehead, 107 Meadow street, Hoboken.....	19 40
Jeremiah (his X mark) McCarthy, 10 Jefferson street, Hoboken.....	24 50
Daniel (his X mark) Spellan, 10 Jefferson street, Hoboken.....	38 50
Tim (his X mark) O'Brien, 3 Willow street, Hoboken.....	23 50
Michael, (his X mark) Loyens, Sixth street, near Willow, Hoboken.....	13 00
James Trenor, (works with Peter Touhey near Monastery).....	5 00
Patrick (his X mark) Loyens, Clinton street, near Sixth, (in J. Deegan's house).....	14 00
James Marlin, 118 Willow street, (Coughlin's houses).....	12 00
John (his X mark) O'Donnells, (stops with P. Loyens as above).....	13 00
	<u>\$203 50</u>

Councilman Logan moved to refer to a special committee the communication of John Reid, Commissioner of Assessment, and John McDermott, contractor for Fifteenth street improvements. Carried.

The Chairman appointed as such special committee, Councilmen Logan, Heyne and Sandford."

The special committee appointed to investigate this case, one would almost suppose, tried "how not to do it;" or perhaps some of the Contractors took their stand about the entrance to the chamber and affectionately advised the laborers to return home without appearing before the committee, so that the surveyor got his certificate for \$474.50.

Mr. Du Puget, it appears, made affidavit that he had actually paid \$382 for 191 days' labor at \$2 per day: to this he added \$95.50—25 per cent for discount on improvement certificate—making \$477.50, from which the investigating committee deducted \$30 for boring in Weehawken. The committee lost a golden opportunity of gaining distinction for astuteness, and at the same time, of saving the city from paying discount on work done in Weehawken, by not showing that \$37.50 instead of \$30 should have been deducted. Mr. D. did not harmonize the above affidavit with the oath under which he issued his official certificate, in his own favor for \$800.

Here is another Remonstrance, namely:

"HOBOKEN, N. J., April 22, 1873.

To the Honorable the Council }
of the city of Hoboken. }
Gentlemen.

The Hoboken Tax-payers' and Citizens' Association have been professionally advised, through their Law Committee, that the voting away of Public money on false official certificates, or without receiving the proper consideration secured by contract, is an indictable offence. Any Certificate whether that of the Surveyor, or that of the Committee on streets and assessments, which states that the 15th street Improvements have been done agreeably to the specifications, ignores, at least, one fact, of which a walk over the side-walk will furnish abundant proof—a fact of which your Honorable Body have been notified in writing—a fact, which, though in itself *comparatively* unimportant, tends to confirm a suspicion in relation to other and more important matters connected with these improvements, which matters, though not so easily seen on the surface, are nevertheless supposed to be susceptible of proof by the application of the proper means.

In case of the Confirmation of the above-named Assessment, under the present aspect of affairs, the said Association may deem it to be their duty to hold the members of the Council personally responsible.

Respectfully submitted,

CHARLES SPIELMANN,
ROBERT HARPER."

After various delays the Council having decided to leave out the portions of the street located in Weehawken and West Hoboken, the assessment map was filed and a time appointed for objectors to be heard; but as usual on such occasions, a quorum was not obtained; instead however an adjournment till the night immediately preceding the next stated meeting was effected. On this night a quorum was obtained: one objector being heard, the Committee of the Whole decided to recommend the Confirmation. The next evening the Council confirmed the Assessment, but instead of a \$29,177.04 certificate they ordered one for \$18,985.26. An event not under the control of the committee, caused delay in obtaining an order of Court forbidding the issue of any more certificates for the time, or the issue of this certificate would have been stopped. Those for the assessors' fees and the engineer's final payment were stopped.

Mr. Du Puget estimated before the work was commenced 16,238 cubic yards as the quantity of earth filling for the whole street, and \$27,698.60 as the total cost exclusive of incidentals; but when the work was done he certified 59,664 cubic yards as the quantity, and \$91,241.47 as the cost for the whole length improved. Of this amount however, Hoboken's quota was \$80,799.43, less \$107.90 which the Council ordered to be deducted for 83 yards displaced by box drains. Weehawken's quota being \$8,693.23, and West Hoboken's \$1,753.81. This accounts for the reduction of the above-named certificate which was given by Mr. Du Puget as the final installment to the contractor for the whole improvement; it was reported correct by the committee on streets and assessments, and would, no doubt, have been issued if there had been no interference.

TWELFTH STREET.

In relation to this street the accompanying Report and the succeeding facts give some idea of the modern system of Hoboken street improvements.

REPORT OF A. L. DU PUGET, CITY SURVEYOR.

"The following report was presented:

HOBOKEN, January 13, 1873.

To the Honorable the Mayor and Council of the city of Hoboken:

GENTLEMEN—In reply to your request for information in relation to the amount of work done on Twelfth street, from Grand street to the hill, and in view of the fact that I have already from time to time certified to your honorable body the amount of work done, and that, in consequence of the contractor having filled in the street with the refuse rock from his quarry, it is impossible to ascertain the amount by boring. I presume that you wish me to give you a detailed account, so far as circumstances will allow, of the status of the street and the theory upon which I have based my calculations.

In consequence of the crudeness and incompleteness of the data at present in my possession, the only theory under which we can arrive at an amount to which the contractor is certainly entitled, is by comparison with the quantities ascertained by boring on adjacent, similarly situated streets; thus Twelfth street 1,261 feet long, compared with Eighth street, 1,900 feet and 74,809 yards of filling, would give 47,404 yards; compared with Thirteenth street, 1,290 feet and 44,665 yards filling, would give 43,661 yards; compared with Fourteenth street, 1,480 feet and 54,007 yards filling, would give 46,017 yards, and the whole three streets would give 45,960 yards.

I have given the contractor certificates to the amount of 48,672 yards, being 1,268 yards more than the heaviest job, 5,011 more than the lightest, and 2,712 more than the average. And besides all this the street will require at least 5,000 yards more filling to complete it.

The last two certificates of 5,000 yards each were given as a measure of relief to the contractor, after protracted and deliberate consideration and consultation, in which his honor the Mayor and many of your honorable body took part, and they were received by the contractor under the express condition and understanding that he would ask for no more until the job was completely finished.

In view of these facts and of the various and heavy responsibility resting upon me as a sworn public officer, bonded to the large amount of \$20,000, my duty to my bondsmen, if no further consideration, compels me to state that the facts do not justify me in giving the contractor on Twelfth street, from Grand street to the hill, another certificate to the extent of even one cent, until the street is completely finished and accepted by your honorable body; when, all the data being fully ascertained and established, he will be entitled to such a settlement of his account as the facts may justify.

Very respectfully, your obedient servant,

A. L. DU PUGET,

City Surveyor."

When Mr. Du Puget prepared the profile and specifications he estimated that 11,467 cubic yards of filling material would be the quantity required; but when the work was finished he certified 73,460 cubic yards as the quantity used; and the total cost as \$119,484.77. The assessment is confirmed, and, consequently the last of the five streets is now ready for the Courts.

The annexed table shows the quantity of earth filling and cost—exclusive of incidentals—as estimated by Mr. Du Puget before the work was contracted; and the quantity and cost as certified by Mr. Du Puget, under *official* oath, when the work was completed.

STREET.	DU PUGET'S ESTIMATES.		DU PUGETS CERTIFICATES.		
	No.	Cubic yds.	Cost.	Cubic yds.	Cost.
8th.		19,746	40,589.74	63,338	123,193.21
12th.		11,467	21,449.62	73,460	119,484.77
13th.		12,691	28,544.35	42,538	88,324.88
14th.		14,666	28,717.90	54,007	99,418.42
15th.		16,238	27,698.60	52,627	80,691.53
Total.			\$147,000.21		\$511,112.81

Here is a city debt of \$511,112.81, exclusive of Interest and Law Costs; for what?

The estimated cost is obtained by the quantities and prices at which the contracts were made. The estimate on 15th St. is for the whole length improved, but the quantity as certified is within the city limits. Some filling was deducted on 13th St., but the net cost is taken.

When these contracts were made the Council consisted of Peter Ritter, Joseph W. Bownes, Robert H. Besson, Sumner B. Cole, George Foster, James Healy, John Lee, Frederick L. Schmersahl, Peter McGavisk, (the present Mayor.) Charles W. Schalek, and Ralph Thomas. Committee on Streets and Assessments, Besson, Healy and Bownes. Hazen Kimball was Mayor.

The Supreme Court has set aside Eighth and Thirteenth street Assessments, and ordered new assessments—the other three, namely, 12th, 14th and 15th, will follow a similar course, no doubt, either with or without argument; so that now is the time for tax-payers to bestir themselves.

THE DECISION IN THE EIGHTH STREET ASSESSMENT.

PROPERTY CAN'T BE ASSESSED FOR A SUM GREATER THAN THE BENEFIT CONFERRED.

JUDGE VAN SYCKEL'S OPINION OF THE SURVEYOR.

The following is the full text of the late decision of the Supreme Court on the Eighth street assessment. As the same objections have been or will be made by the property owners for "improving" 12th, 13th, 14th and 15th streets, and as in each case a similar decision will most likely be given. We think the subjoined opinion will be found interesting.

This certiorari brings up an ordinance passed by the Common Council of Hoboken April 15th, 1869, to improve Eighth street from the westerly line of Willow street to the foot of the hill, and the final assessment under it.

VAN SYCKEL, J.

The work under this ordinance was completed in December, 1871, and the writ was not allowed until January, 1872, the prosecutors having permitted the work to be completed before they applied to this Court for relief. The writ of certiorari must be dismissed so far as it brings up for review the ordinance complained of.

Wilkins, et al, vs. Trenton, decided in Court of Errors, March Term, 1873.

The final assessment was confirmed January 9, 1872, and if that is set aside, the Charter of Hoboken imposes upon the Supreme Court the duty of appointing Commissioners to make a new assessment.

1. The first objection taken to the validity of the assessment is that it does not appear that the Commissioners who made it are freeholders, resident in the said City, as required by section 52 of the Charter.

By a supplement to the Charter, passed April 6, 1871 (sec. 17) the Mayor and Common Council were authorized to appoint a Board of Commissioners, whose duty it was to make all assessments during their term of office.

This assessment was made by a Board so appointed, who were permanent officers of the City, and not Commissioners appointed for a particular case.

It is not necessary to set forth the qualifications of officers of the corporation.

State vs. Jersey City, 4 Dutcher 504.

2. The fifty-second section of the Charter provides that the Commissioners shall examine into the whole matter, and shall determine and report in writing to the Council what real estate ought to be assessed for such improvement, and what proportion of such expenses shall be assessed on each separate parcel or lot of land, and that the assessment shall be made upon, and paid by the land and real estate benefited by the improvement, in proportion to benefit received.

This report is defective in two particulars.

1st. It does not state that the Commissioners examined into the whole matter.

2d. They say that they have assessed the cost of the work "according to the provisions of the Charter upon the property benefited by the same," but they do not certify, nor show that they imposed the burden in proportion to the benefits received.

3d It appears by the testimony of each one of the Commissioners, that they assessed all the real estate in the zone of the assessment to a greater extent than it was benefited by the improvement.

The Charter directs that the assessments shall be laid upon the real estate benefited in proportion to the benefit received

The work in this case having cost more than the benefit to be derived from it will be worth to the land owners, who can be assessed; the question is presented whether the cost in excess of the benefits can be imposed upon such land owners.

The Legislature, in conferring this power to assess upon the City Government, did not contemplate a case of this kind. The presumption was that no undertaking would be entered upon, which would not be remunerative in its results, and which would confer benefits, at least co-extensive with its cost. In this case it appearing beyond controversy that there is an excess of expenses over benefits. Private property is taken pro tanto for public use without compensation. That which is received by the land owner is not equal to what is taken from him. This excess of cost cannot in the legitimate exercise of the power of taxation be thrown exclusively upon the persons subject to assessment in this case.

If there are no other lands to which the benefits reach, it is a burden which the public ought to bear, and it should be levied by a general taxation. The Legislative Act confers upon the Corporation no power to impose a burden on the property owner in excess of the benefits accruing to him, and if it did, it would be unconstitutional and void.

This doctrine is so securely founded in reason and sound policy, and so firmly established in the Tide Water Company vs. Cosler (3 C. E. gr. 527,) that it cannot be shaken.

In the later case of the State vs Fuller (6 H. gr. 227,) the Supreme Court sustained an assessment which was laid according to the number of lineal feet, but in that case no excess of cost over benefit was shown to exist, and the Court presumed there was none in fact. If there is any conflict between these cases, I should feel bound by the case in the Court of last resort

This point is ably presented and discussed in that case, that it is unnecessary to say more than that the conclusion reached by the Chief Justice should be strictly adhered to.

The argument that this case is exceptional, because some of the relators petitioned to have the improvement made, are therefore bound to pay whatever it may have cost, is not well founded. They petition to have the work executed in conformity to the City Charter, and they cannot be subjected to any exaction more onerous than the Charter authorizes.

The relators had no control over the cost of the undertaking, that was exclusively within the control of the City authorities, and it was their duty to count the cost before they granted the prayer of the petition, and entered into the engagement.

4. A further objection taken to this assessment is that there is included in it the expense of earth filling on the adjacent lots, outside of the street lines.

The answer made by the defendants is that the filling outside of the street was caused by the bulging necessarily incident to filling up the street to grade, and that no dirt was thrown outside of the limits of the highway; so far as this is true it is a good answer to the objection, but any fillings necessarily and not unavoidably made upon the adjacent lots in the proper prosecution of the enterprise, is unauthorized and gratuitous, and cannot be charged upon the land owners.

The Surveyor's estimate of the expense of the entire work, before it was entered upon, was \$40,589.74, while the actual cost as certified by him was \$123,193.21. This remarkable discrepancy certainly does no credit to his skill as an engineer, and may be looked into by the Commissioners to be appointed, whose duty it will be, under the act, to examine into the whole matter.

In my opinion the entire assessment should be set aside, and a new assessment ordered.

This decision shows plainly that the Courts will protect the tax-payer by restraining a municipal corporation from illegally confiscating his property; but does not the same constitutional principle shield the tax-payer against the operation of a Bond, as well as that of an Assessment, in taking from him more than an equivalent for what he receives? When a contract is made at a greater cost than the legal limit of the *virtual appropriation*—the benefit conferred—is there no personal liability for exceeding this sort of an appropriation?

Some years ago the Town Council of Belfast, Ireland, *advantageously* expended money appropriated by act of Parliament, but not just as the act directed. The case was carried up from Court to Court until it reached the upper House of the British Parliament, where the decision was adverse to the Council, pronouncing them personally liable, not only for the amount misappropriated, but also for the *law costs*.

Experience of this sort might improve the manners of the Hoboken Council and make them a little more careful about insulting and advising an aggrieved tax-payer to appeal to the Courts for redress, especially when they would necessarily have to spend their own and not his money in defending their illegal actions.

At a meeting of the Association Sep. 5, 1873, the Law Committee stated that one drawback was the want of legal proof of fraud, when a gentleman in the audience stated that he was cognizant of one case of repeated application to an owner of property on one of the streets in question, to sign a petition for the improvement. At length Mr. Du Puget bought the lot and paid \$100 to bind the contract, on the condition that the seller should sign the petition, which he did; but could never

after succeed in getting Mr. D. to take the deed. When pressed to do so he reminded the seller that he might consider himself safe, having received \$100.

The committee will feel grateful for such information as will enable them to reach the fraud.

Notwithstanding the magnitude of the five street jobs under consideration, the following items of business transacted at the same meeting show that the attention of the Association is not wholly monopolized thereby, namely:

"Whereas, the Mayor and Council of the City of Hoboken have contracted for the building of two wings to the School-house No. 3, at a cost of \$14,350, notwithstanding that the legislature provided for an expenditure of only \$12,000.; and whereas, it appears that the Mayor hesitated to sign the contract in question, until urged to do so by the Board of Education on an alleged fact, not quite removed from the region of doubt; therefore;

1. Resolved—That this transaction does not entitle the Mayor and Council and Board of Education to the confidence of this Association.

2. Resolved—That the Law Committee be and hereby are instructed to proceed under the direction of the Law Adviser of the Association, to test the legality of this and any similar contract, or *questionable appropriation* of Public Funds."

"Whereas the Hudson County Democrat has shown by its fearless and independent course, that it has adopted the welfare of the citizens as its policy, therefore,

Resolved—That the said newspaper has merited our sincere thanks, which are hereby tendered, for its straightforward and upright policy in opposing fraud and corruption.

Resolved—That we recommend the *Democrat* to our citizens, irrespective of party, as a newspaper which represents and advocates their interests, and is entirely worthy of their support and confidence.

If the Association do not terrify evil-doers, they should at least praise well-doers. Among the latter the Democrat may be classed, while it pursues the course to which it is so thoroughly, so voluntarily, and so independently committed. The optics of some newspaper proprietors are so constituted as to view such a course as adverse to their own pecuniary interests.

In relation to the School-house contract it may be said that advice has been obtained. The Contract is so ingeniously drawn that the consequences of violating the law are evaded by making the last payment due May 1, 1874,

with the hope that the next Legislature will adjust the business. Should this anticipation not be realized, the Contractor will have a claim against the Mayor and Council, individually, for \$2,350. Now as it is high time that such crooked municipal manipulation should be stopped, let every tax-payer who wishes to enjoy a better state of things, use every legitimate means to prevent the legalization of this case. The smallness of the amount furnishes an argument in favor of making this a test case, inasmuch as financial ruin is not likely to result to any of the contracting parties; but if this be allowed to pass, larger amounts may soon be involved; as it is evident that one way of stopping such transactions is to make them unprofitable. Some members of the Association may have forgotten that Bonds were issued last fall to pay the over-drafts of various funds. The Comptroller's Report of last week shows that seven funds have been overdrawn, to the amount of \$16,649.56 in the aggregate.

Again every honest tax-payer is urged to come forward, and show that he will not connive at fraud, but defend his own legal and just rights.

OFFICERS OF THE ASSOCIATION.

President, JOHN LIVESEY, 63 Garden street.

Vice-President, HERMAN H. LUHRS, cor. of 1st and Hudson streets.

Secretary, WILLIAM CRANSTOUN, Jr., 28 Newark street.

Treasurer, WILLIAM H. HARPER, 28 Newark street.

COMMITTEES.

Chairman of Executive Committee, THOMAS FORSTER, 149 Bloomfield street.

Chairman of General Committee, ROBERT A. REED, 89 Washington street.

Chairman of Law Committee, CHARLES SPIELMANN, 8 Newark street.

N. B.—Since the above was put into the hands of the printer, two suits have been commenced to compel the city to pay, or redeem, more than \$50,000. of 13th St. certificates. This is one of the important events in the history of the streets in question. A judgment against the City is virtually a judgment against the *property* of the Tax-payers, who, if they don't act promptly in furnishing the Law Committee with money, and information as to frauds, they may yet be sorry for their apathy. The Commissioners appointed by the Supreme Court to re-assess have made sufficient progress to indicate that more than 60 per cent. of the entire cost, or over \$300,000., exclusive of interest and costs, will be placed on the City at large. The suits commenced will probably establish a precedent. The importance of a test suit is well known.