

PROCEEDINGS

OF THE

COMMON COUNCIL

OF THE

CITY OF ROCHESTER

For 1876--7.

ROCHESTER, N. Y.:

UNION AND ADVERTISER COMPANY'S PRINT, WEST MAIN STREET.

1877.

referred the claim for insurance on the law library belonging to the state, would report that the city is not liable for the insurance, and would report against the claim.

E. HUNTINGTON,
Wm. S SMITH,
A. H. MARTIN,
Committee.

Ordered received, filed and published and it was then adopted.

REPORTS OF STANDING COMMITTEES.

Ald. Thomas from the Lamp Committee, Ald. Rickard from the Park Committee, Ald. Bennett from the Truant House Committee, Ald. A. H. Martin from the City Property Committee, Ald. Fleckenstein from the Poor Committee, Ald. Brown from the Health Committee, Ald. Chace from the Contingent Expense Committee, Ald. Smith from the Map and Survey Committee, reported favorably on the bills referred to their respective committees and moved their reference to the Finance Committee for payment.

REPORTS OF SPECIAL COMMITTEES.

Ald. Kelly, from the State Line Railway Committee, and the Fourth of July Celebration Committee, reported progress and asked for further time, which was granted.

COMMUNICATIONS FROM THE MAYOR AND OTHER EXECUTIVE OFFICERS.

By the Clerk—

MAYOR'S OFFICE,
ROCHESTER, N. Y., Jan. 23d, 1877. }

Gentlemen of the Common Council :

It is doubtless not a matter of much surprise that George D. Lord has commenced his suit against the city of Rochester. We have been led to believe that such would be the case, in view of the fact that the communication which he sent to your Board some time since, claiming damages to a large amount, was virtually rejected, but viewing the present situation in whatever light we choose, it has really become one of the most serious importance.

Furthermore, it will hardly answer for us to speculate as to what the final result of this case may be; that it will prove a protracted one scarcely admits of doubt, and to use a common but a very proper expression at this time, viz.: that it will be tried for all it is worth, is evident from the fact that able and ingenious counsel has been retained by the plaintiff.

Under all these circumstances the question very properly asked by everyone is, what shall be done? and here it is that I propose to make a suggestion and then leave the matter for your consideration.

The term of office of the present Aldermen will expire on the first Monday of April next; and while it is possible that some of you may again be chosen to fill the seats you now occupy the committees of the Board must necessarily change every twelve months; and all committee fees, as at present constituted, in less than ninety days.

Then why not delegate the management of this case to three or five citizens, men noted for ability and integrity, and in whom the people have confidence, who would doubtless serve without compensation, following it from the beginning to the ending, through every channel and at every turn. Evidently it cannot run itself, nor must it be allowed to; and I believe I but speak the minds of the taxpayers when I

say they demand, and the magnitude of the case demands, one direction only until finally settled.

CORNELIUS R. PARSONS,
Mayor.

The following is a copy of the complaint as served upon me as Mayor.

Supreme Court, Monroe County; George D. Lord against the city of Rochester, William R. Seward and Thomas Leighton.

The plaintiff in this action for complaint against the defendant says, that on the 12th day of April, 1873, one James McDonald entered into a contract with the defendant, the city of Rochester, by which he agreed to furnish all the materials and perform all the labor required by the board of water commissioners of said defendant to construct water works for said defendant on a plan theretofore devised by said commissioners and known as the Hemlock lake plan, which work was to be constructed according to the specifications and notices annexed to said contract and in accordance with the directions of the Chief Engineer of said water works and his authorized assistants, and the said defendant in and by said contract agreed with said McDonald to pay him for furnishing such material and doing such labor at the following prices: for grubbing and clearing for conduit, one hundred dollars (\$100). For grubbing and clearing for reservoirs at the rate of twenty-five dollars (\$25) per acre. For bailing and draining, including constructing and removing coffer dam, three thousand dollars (\$3,000). For earth excavations and back filling, at the rate of twenty-five cents (.25) per cubic yard. For earth excavations at the rate of twenty-five cents (.25) per cubic yard. For rock excavations at the rate of three dollars (\$3) per cubic yard. For embankment hauled 1,000 feet or under, at the rate of twenty cents per cubic yard. For embankment hauled over 1,000 feet at the rate of sixty cents per cubic yard. For trenching, back-filling and replacing paving or distribution at the rate of sixty cents per lineal foot.— For hard burned brick in work at the rate of one dollar per thousand. For cut stone, coping, steps and covers at the rate of one dollar (\$1) per superficial foot. For cut stone, masonry in cement at the rate of (\$15) per cubic yard. For puddling at the rate of ten cents per cubic yard. For lining hauled 1000 feet or under at the rate twenty-five cents per cubic yard. For lining hauled over 1000 feet at the rate of seventy cents per cubic yard. For stone paving at the rate of three dollars (\$3) per cubic yard. For slope wall at the rate of two dollars (\$2) per cubic yard. For loose stone, gravel and brush at the rate of one dollar per cubic yard. For concrete at the rate of ten dollars (\$10) per cubic yard. For hemlock timber and plank at the rate of twelve dollars (\$12) per thousand.— For pine timber and plank at the rate of thirty dollars (\$30) per thousand. For white oak timber and plank at the rate of one hundred dollars (\$100) per thousand. For cast iron pipes, for conduit at the rate of seventy-six dollars (\$76) per gross ton. For cast iron pipe for distribution at the rate of eighty dollars (\$80) per gross ton. For lead at the rate of twelve cents per foot. For pump-packing at the rate of twenty cents per pound. For fitting and setting drafts at the rate of five dollars (\$5) each. For fitting and setting 24-inch stop-cocks at the rate of five dollars (\$5) each. For fitting and setting 30-inch stop-cocks at the

rate of five dollars (\$5) each. For fitting and setting 16-inch stop-cocks at the rate of five dollars (\$5) each. For fitting and setting 12-inch stop-cocks at the rate of five dollars (\$5) each. For fitting and setting 8-inch stop-cocks at the rate of five dollars (\$5) each. For fitting and setting 6-inch stop-cocks at the rate of five dollars (\$5) each. For fitting and setting 4-inch stop-cocks at the rate of five dollars (\$5) each. For drilling, fitting and inserting taps for service pipe, blow-offs, &c., from one-half to two inches diameter, at the rate of two dollars (\$2) each. For clay drain pipe, four inches diameter, at the rate of ten cents per lineal foot.

And this plaintiff further says that it was agreed between said parties that the work and material so contracted to be done and furnished should be paid for monthly upon the estimate of the said chief engineer less five per cent. of the amount thereof, which was to be reserved until the whole work which was the subject of such contract should be completed, and that within ninety days after the said work, in the opinion of the said water commissioners and the said chief engineer, should have been completed, the said defendant would pay the sum which should remain due therefor. The said plaintiff begs leave to refer to the said contract and the specifications thereto attached for a more particular and complete statement of the terms thereof. Said plaintiff further says that on said 12th of April, 1873, the said James McDonald, by an instrument in writing under his hand and seal, duly assigned and transferred to said plaintiff the aforesaid contract and all interest, profit and advantage to be derived therefrom, to which assignment for greater particularity the plaintiff begs leave to refer.

The said plaintiff further says that shortly after the making of said contract, and of such assignment, he entered upon said work, and afterwards, and more than ninety days before the commencement of this action, fully completed the same, and that the same was so completed in the opinion of the said Water Commissioners and of said Chief Engineer.

But said plaintiff further says that notwithstanding such completion the defendant has not paid the said plaintiff for said work according to the terms of the contract, but is now indebted to him therefor in a large sum of money, to wit: the sum of six hundred thousand dollars, and especially that said defendant neglected and refused to pay for two hundred thousand cubic yards (200,000) of embankment, at twenty cents per cubic yard, amounting to forty thousand dollars (\$40,000); two hundred thousand cubic yards of trench excavation, at twenty-five cents per cubic yard, amounting to fifty thousand dollars (\$50,000); for 86,984 pounds of cast iron, for sleeves in place of broken bells, at four and one-half cents (4½ cents) per pound, amounting to three thousand nine hundred and fourteen and twenty-eight one hundredth dollars (\$3,914.28); for earth excavation, amounting to five thousand nine hundred and eighty-one dollars (\$5,981); for rock excavation, amounting to five thousand seven hundred and fifty four dollars (\$5,754); for embankment hauled less than 1600 feet, the sum of twelve thousand seven hundred and seventy-two dollars (\$12,772); for slope wall, the sum of one thousand six hundred and sixty-two dollars (\$1,662); for rip-rap, the sum of four thousand six hundred

and ninety-six dollars (\$4,696); for masonry laid dry, the sum of one thousand two hundred and seventy-five dollars (\$1,275); for masonry, rubble and cement, the sum of four hundred and eighty six dollars (\$486); for amount due as per final estimate rendered by chief engineer, the sum of fifteen thousand one hundred and twenty-two and forty-eight one-hundredths dollars (\$15,122.48).

Second—For a second and further cause of action, the plaintiff repeats the averments in the first cause of action in this complaint, stated so far as the same relate to the execution of said contract and the assignment thereof, and says that it was further provided in the said agreement that the iron pipe to be used in said water works were to be made of such form, size and construction as should be directed by the engineer of said water works, and that said engineer did direct and require the plaintiff to have certain wrought-iron pipe used as a part of the conduit of said water works, constructed with cast-iron bells at the end hereof, of a particular form and mode of construction; that plaintiff did have the same so constructed, and laid in the trenches of said water works; that the pipes so laid were largely found to be defective in the form of the end thereof by means of said bells, by reason of which many of said bells broke; that plaintiff was put to great expense thereby, as follows: In digging up said pipe on conduit line, thirty thousand eight hundred and fifty-six dollars (\$30,856), repairing leaks on conduit line caused by such defects, seven thousand six hundred and ninety-six and thirty one hundredth dollars (\$7,696.30); re-lining trenches on conduit line, eleven thousand two hundred eight and thirty-three one hundredth dollars (\$11,208.33); cast iron for sleeves in place of broken bells upon said pipe, three thousand, nine hundred fourteen and twenty-eight one hundredth dollars (\$3,914.28); that such defects were solely occasioned by the defect in the plan adopted by such engineer, and not at all by any neglect or misconduct of the plaintiff or those in his employ; that said defendant, although often requested, has wholly refused to pay the plaintiff the whole or any part of said several sums of money.

Third—The plaintiff, for a further cause of action, repeats the averments in the first cause of action in this complaint, stated so far as the same relate to the execution of said contract and the assignment thereof, and says by the terms of the contract the work provided for thereby was to be finished on or before the 1st of June, 1875; that a pre-requisite of the doing of said work was the obtaining by the said defendant of the right of way to lay said pipe from Hemlock Lake to the city of Rochester; that the said defendant neglected to institute necessary proceedings for obtaining the same until some in the spring of 1875, and the same was not procured until about the month of September in that year, whereupon the plaintiff was required by the said defendant, through its Water Commissioners, as by the terms of said contract they have the right to require, to complete the said work with all possible dispatch, and did complete the same in the winter months of 1875 and 1876, whereby he was put to a very large additional expense over and above what he would have been put to in doing such work if the said defendant had taken proceedings at the proper time to obtain such right

of way as it might have done, which additional expense amounted to the sum of seventy five thousand dollars, (\$75,000), and which the said defendant, although often requested, has neglected and refused to pay.

Fourth—The plaintiff, for a further and separate cause of action, says that the said defendant is indebted to him in the sum of fifty thousand dollars (\$50,000) for the balance due him, the said plaintiff, for work and labor done by him, the said plaintiff, at the instance and request of said defendant, in the fall and winter of 1874, in digging trench and laying pipe in the city of Rochester for Water Works constructed according to the Holly system, so-called, which sum the defendant, although often requested, has neglected and refused to pay.

Fifth—And for a further and separate cause of action, the plaintiff says that the defendant is indebted to the plaintiff for work and labor done and materials furnished by said plaintiff for said defendant and at its request, and for money laid out and advanced by said plaintiff for said defendant at its request, and for goods, wares and merchandise sold and delivered to said defendant by said plaintiff, the particulars whereof are stated in the schedule hereto attached and made a part of this complaint, amounting in the whole to the sum of \$350,000, which the defendant, although often requested, has neglected and refused to pay.

Sixth—For a further cause of action the plaintiff repeats the averments in the first cause of action in this complaint stated, so far as the same relate to the execution of said contract, and the assignment thereof, and further says that after the making of said contract, and in the summer of 1873, he was directed and required by the said defendant to purchase all of the iron pipe necessary to complete such water works, at the market price thereof at that time; that he did purchase, in accordance with such requirement, sixteen thousand (16,000) tons of pipe, of which thirteen thousand (13,000) tons was in excess of the pipe then necessary to prosecute such work; that at the time of the purchase of such pipe the plaintiff anticipated a fall in the market price of iron and of iron pipe, and to induce the plaintiff to purchase the same the defendant undertook and promised to pay and make good to the plaintiff the loss, if any, which he might sustain by purchasing such pipe, in excess of what he then needed to complete his contract; that before it became necessary to use any part of said 13,000 tons of pipe the market price thereof had fallen twenty dollars (\$20) per ton, whereby the defendant became liable to pay to the said plaintiff the sum of two hundred and sixty thousand dollars (\$260,000.)

The said plaintiff further says that William R. Seward, as trustee, and Thomas Leighton individually have an interest in the claims against the said defendant, the city of Rochester, by virtue of assignment of some part thereof as security for debts owing from the plaintiff, and that the said plaintiff has applied to said Seward and Leighton to become parties plaintiff in this action and that they and each of them have declined so to do.

Wherefore the plaintiff prays judgement against the said defendant, the city of Rochester, for the sum of six hundred thousand, three hundred eighty-eight dollars and ninety-seven

cents (\$600,388 97) with interest from the commencement of this action.

W. F. COGSWELL, Plaintiff's Attorney.

SCHEDULE.

<i>The City of Rochester to George D. Lord:</i>		Dr.
For 200,000 cubic yards of embankment, not paid for, at twenty cents per cubic yard, contract price.....		\$40,000 00
For pipe inspection at foundries, charged in final account.....		11,840 00
For additional expense in the labor for said work being done in the winter months of 1875 and 1876 on account of delay by Water Commissioners in getting right of way.....		75,000 00
For balance of claim for extra work done in the fall and winter of 1873, in digging pipe trench for Holly system in the city.....		50,000 00
For extra expense in digging up wrought iron pipe on conduit line in the winter months of 1875 and 1876, made necessary by the breaking of bells which were made according to plans furnished by the Board of Water Commissioners.....		39,586 00
For amount deducted from final estimate for work done by the Water Commissioners at Mt. Hope reservoir.....		1,474 18
For 200,000 cubic yards of excavation at..... twenty-five cents per yard.....		50,000 00
For deductions by the Water Commissioners for repairing leak on conduit line, caused by defect bells made, according to plans furnished by said Commissioners and without fault of contractor.....		7,696 90
For reduction for refilling trenches on conduit line.....		11,208 28
For 86,984 pounds cast iron for sleeves in place of broken bells at four and a half cents per pound.....		3,914 28
For rent of land for storing pipe.....		
J. F. Montgomery.....	\$450 00	
W. N. Sage, ex'r, etc.....	400 00	
Owen Morgan.....	30 00	
Chase & Otis.....	412 50	
Daniel Richmond.....	400 00	
		\$1,692 50
For deduction from final estimate which had been allowed in the last monthly statement.....		
Earth excavation.....	\$5,981 00	
Rock excavation.....	5,754 00	
Embankment less than 1,000 feet.....	12,872 00	
Slope wall.....	1,662 00	
Excavation.....	4,696 00	
Masonry laid dry.....	1,275 00	
Masonry rubble in cement.....	486 00	
		\$32,626 00
For steam excavator purchased by order of chief engineer.....	700 00	
For flat scow.....	450 00	
For tools taken by order of the Board of Water Commissioners or Chief Engineer.....	1,500 000	
For amount due; as per final estimate rendered by Chief Engineer.....	15,122 48	

Ald. Huntington moved that when the Board adjourn it be the next Tuesday evening, and that the subject matter presented by the Mayor be made a special order for that meeting, and that the Mayor present the names of three citizens to take charge of the matter—the arbitrators or committee to be confirmed or rejected by the Council. Adopted.

By the Clerk:

MAYOR'S OFFICE,
ROCHESTER, N. Y., Jan. 23, 1877. }

Gentlemen of the Common Council:

One of the most important departments of a city government is that of public lamps, and its management and workings is frequently open to criticism. For the information of yourselves and the public, I herewith transmit to you the number of unlighted lamps reported by the night patrol from January 9th to the present date, viz.:

Kerosene 2,941; Gas 566.

During this period, and for the above number of lamps, the city is charged about \$150, and should the same state of things continue to exist a reform of some kind will certainly