

REGULAR MEETING.

COUNCIL CHAMBER,
CITY OF INDIANAPOLIS,
May 21, 1894. }

The Common Council of the City of Indianapolis met in the Council Chamber, Monday evening, May 21, 1894, at 8 o'clock, in regular meeting.

Present, Hon. Wm. H. Cooper, President of the Common Council, in the chair, and 19 members, viz: Messrs. Allen, Costello, Drew, Hennessy, Kaiser, Koehring, Krauss, Magel, Merritt, Murphy, O'Brien, Puryear, Rauh, Ryan, Schmid, Shaffer, Stein, Stott and Young.

Absent, 1—viz: Mr. Colter.

The Clerk proceeded to read the Journal, whereupon Councilman Krauss moved that the further reading of the Journal be dispensed with.

Which motion prevailed.

COMMUNICATIONS, ETC., FROM MAYOR.

His Honor, the Mayor, presented the following communication:

EXECUTIVE DEPARTMENT,
CITY OF INDIANAPOLIS,
May 10, 1894. }

To the President and Members of the Common Council:

GENTLEMEN—I have this day approved the following ordinances passed by your honorable body on the 7th inst.:

- G. O. No. 26, of 1894. An ordinance to prevent vice and immorality, and to suppress houses kept for immoral purposes, etc.
- G. O. No. 33, of 1894. An ordinance authorizing the improvement of the roadway of New Jersey street, etc., from Washington street to Massachusetts avenue.

Respectfully submitted,
C. S. DENNY,
Mayor.

Which was read and ordered spr ad on the minutes.

His Honor, the Mayor, presented the following communication :

EXECUTIVE DEPARTMENT,
CITY OF INDIANAPOLIS, }
May 21, 1894. }

To the President and Members of the Common Council:

GENTLEMEN—I return herewith Resolution No. 9, of 1894, without my approval, and with my disapproval endorsed thereon.

This resolution seeks to require the City Attorney to give his written opinion as to the legality of every ordinance proposed or offered by members of the Council. This would impede legislation, and entail needless, unjust and unusual labor on the City Attorney. As the Attorney's opinion can always be procured when there is doubt as to the validity of any ordinance introduced, before action is taken, I can see no good to be subserved by this resolution.

Respectfully submitted,
C. S. DENNY,
Mayor.

Which was read and ordered spread on the minutes.

REPORTS, ETC., FROM CITY OFFICERS.

Communication from City Attorney :

DEPARTMENT OF LAW,
CITY OF INDIANAPOLIS, }
May 21, 1894. }

To the President and Members of the Common Council:

GENTLEMEN—Referring to your resolution passed February 5th, 1894, directing me to investigate and report whether it is the duty of the city or the Union Railway Company to improve and repair Louisiana and McCrea streets; also Jackson Place from Meridian street west to McCrea, north on McCrea to Jackson Place, thence west to Illinois street, inclusive, I respectfully say:

That I have examined the several ordinances relating to the subject. General Ordinance No. 33, 1886, seems to contain all the provisions upon this subject. Under said ordinance I find no obligation upon the part of the Union Railway Company to improve and repair the streets named. In said ordinance the Union Railway Company agrees to dedicate certain ground therein described, and which is now used as streets as described in your resolution, but there is no provision in said ordinance that said railway company shall improve or repair the same.

I am informed by some of the officers of said Union Railway Company, upon inquiry, that no such obligation was ever assumed by said company, either by ordinance or other method. As I have not been able to find evidence of such obligation in the ordinances, I have concluded this is correct.

I see no reason why the city should not be under the same obligation to improve and maintain the streets named, in repair, in the same method as other streets.

The space known as Jackson Place, in front and north of the Union Depot, other than the fifty feet immediately south of the Fair building is claimed by the Union Railway Company to be private property and not dedicated as a street or public place. I suppose it is not important for me to determine at the present time whether the use made of Jackson Place is an implied dedication. There has not, as I believe, been any formal, express dedication of it. I am informed by Mr. Mansfield, the Civil Engineer of the Union Railway Company, that whenever the city desires to improve Louisiana and McCrea streets and so much of Jackson place as they agreed to dedicate for a street under said ordinance, that he will recommend to the Union Railway Company to make a like character of improvement on that portion of Jackson Place fronting the Union Depot, so claimed by it as private property.

Under General Ordinance No. 33, 1886, as accepted by the Union Railway Company, it is provided that it shall make a valid dedication to the public for street purposes of the rectangular strip of land described in said ordinance, which is in part the streets described in your resolution.

I have not examined the record to see whether a formal plat of dedication was ever filed or not. I suppose this fact will develop when the Board of Public Works orders the improvement of the streets, but in any event said tract has been dedicated by implication, if not expressly, and I am informed that the Union Railway Company, if it has not filed formal plat, is ready and willing to do so at any time if necessary.

Respectfully,

J. E. SCOTT,
City Attorney.

Which was read and ordered spread on the minutes.

Communication from City Attorney :

DEPARTMENT OF LAW,
CITY OF INDIANAPOLIS,
May 21, 1894. }

To the President and Members of the Common Council :

GENTLEMEN — I herewith return General Ordinance No. 22, 1894, referred to me by you at your last meeting for correction and amendments, and I recommend the following correction and amendments :

1. Amend Section Three (3) by inserting after the words " Board of Commissioners," being the concluding words of said section, the following :

All licenses issued by the Comptroller shall be signed by the Mayor and Comptroller.

Every person to whom license shall be issued under the provisions of this ordinance shall at all times upon request or demand, permit any police officer or officers of the City of Indianapolis, to enter upon the premises designated in such license and every part thereof, for the purpose of observing and inspecting the same, and to detect and prevent violations of the law.

Every license issued under the provisions hereof, or any prior ordinance, relating to the sale of spirituous, vinous or malt liquors, may be revoked or suspended by the Mayor, whenever deemed necessary by him for the proper execution and enforcement of the laws of the State and ordinances of the city, or to maintain the good order and efficient government of the city.

The provisions of this ordinance, however, shall not apply to bona fide sales by druggists for strictly medicinal purposes.

2. Amend Section Five (5) so as to read as follows :

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed, except as to past violations thereof and pending actions for penalties thereunder, and for such purpose the same shall remain in force.

Provided, however, That nothing herein shall be construed to rescind or make void unexpired licenses heretofore issued by the city under existing valid ordinances, but such licenses shall continue in force for the unexpired term subject to the terms and conditions in this ordinance prescribed.

3. Between Sections Five and Six insert the following as a new section.

SECTION 6. Any person who shall violate any of the provisions of this ordinance, shall, upon conviction, be fined in any sum not exceeding one hundred dollars, to which may be added imprisonment for any period not exceeding thirty days, and each day's continuance in the violation of any of the provisions of this ordinance, shall constitute a separate offense.

4. Amend Section Six, by striking out the figure "6" after the word "Section" in the first line of said section and insert the figure "7" in lieu thereof.

I beg further to say : The ordinance as introduced contains no penalty clause

the same having been inadvertently omitted in this office in the drafting. The penalty clause now recommended is precisely the same as that in the ordinance heretofore in force.

The remaining amendments, aside from the one saving actions pending, relate to bona fide sales by druggists for medicinal purposes, inspection of the licensed place by the police, and the revocation of the license in certain cases by the Mayor. I am of the opinion that druggists, under the decision of the Supreme Court, could make bona fide sales for medicinal purposes, even if such sales were not excepted; also, that the law now empowers the police to inspect places under license, and the Mayor to revoke licenses when necessary, to enforce law and ordinances or to maintain good order and government.

As these powers of the Mayor and police do not seem to be generally understood by those to whom licenses are issued, I think it would be wise to incorporate them in the ordinance under which the license is issued, making reference thereto in the license itself, when issued.

There is need of a new ordinance. There has been no general ordinance passed upon the subject since the adoption of the present Charter, which extends the jurisdiction of your body to four miles beyond the city limits, the old ordinance being based upon the two-mile limit.

I am of the opinion that the ordinance with the amendments suggested, when passed, will be valid.

Respectfully,

J. E. SCOTT,
City Attorney.

Which was read and referred to Committee on Finance.

REPORTS FROM OFFICIAL BOARDS.

The following communication was received from the Board of Public Works:

DEPARTMENT OF PUBLIC WORKS,
OFFICE OF THE BOARD,
INDIANAPOLIS, May 18, 1894. }

Hon. William H. Cooper, President Common Council, City:

DEAR SIR—We herewith transmit to you for your consideration and action thereon "An ordinance, approving a certain contract, granting the Terre Haute & Indianapolis Railroad Company the right to lay and maintain two switches or side-tracks across Pennsylvania street, immediately north of the tracks of the Indianapolis Union Railway, in the City of Indianapolis, under certain terms and conditions."

Very respectfully,

J. A. WILDMAN.

ANDREW KRAMER.

F. J. MEYER.

Board of Public Works.

Which was read and referred to the Committee on Railroads.

REPORTS, ETC., FROM STANDING COMMITTEES.

Mr. Kaiser, on behalf of the Committee on Elections, to whom was referred the following communication:

BOARD OF SCHOOL COMMISSIONERS,
SECRETARY'S OFFICE,
INDIANAPOLIS, IND., May 7, 1894. }

Lee Nixon, Clerk of the City of Indianapolis:

DEAR SIR--On the 9th day of June next, being the second Saturday, an election will be held for the election of one School Commissioner from each of the following districts:

District No. 1. Voting place—School No. 1, corner New Jersey and Vermont streets.

District No. 2. Voting place—School No. 2, corner Walnut and Delaware streets.

District No. 9. Voting place—School No. 9, corner Vermont and Davidson streets.

District No. 10. Voting place—School No. 10, corner Home avenue and Ash street.

District No. 11. Voting place—School No. 11, corner Tennessee and Fourth streets.

Please to bring the matter before the Council that the legal notice may be given and the Judges and Inspectors appointed.

Very respectfully,

EMMA B. RIDENOUR,
Ass't Secretary of the Board of School Commissioners.

Made the following report:

INDIANAPOLIS, May 21, 1894.

Mr. President:

Your committee, to whom was referred the communication from the School Commissioners, May 7, 1894, beg to report the following resolution, which we recommend be passed.

Respectfully submitted,

WM. KAISER.

WM. HENNESSY.

A. A. YOUNG.

Committee.

Resolved by the Common Council of the City of Indianapolis, That the following named persons be, and they are hereby appointed Inspectors and Judges of the Election to be held in the following School Commissioners' Districts, June 9, 1894:

District No. 1. Inspector—George Kothe; Judges—Charles W. Nickum, Thomas Cottrell.

District No. 2. Inspector—Daniel L. Wood; Judges—J. H. Eagle, T. E. Johnson.

District No. 9. Inspector—Joshua Zimmerman; Judges—Philip Reichwein, Emil Rassmann.

District No. 10. Inspector—William T. Brown; Judges—Henry L. Smith, John R. Budd.

District No. 11. Inspector—A. J. Gardner; Judges—Joseph G. Stemmen, Henry Voight.

Which was read and concurred in.

Mr. Rauh, on behalf of the Committee on Finance, to whom was referred:

App. O. No. 7, 1894. An ordinance appropriating the sum of six thousand dollars for the use of the Department of Law for the payment of judgments, compromises and costs.

Made the following report:

Mr. President :

Your Committee on Finance, to whom was referred App. O. No. 7, beg leave to report that upon investigation we find that the appropriation of \$2,500 made at the beginning of the fiscal year was inadequate, and is now nearly exhausted, and with various judgments and costs decided against the city which should be adjusted without further delay, and other pending suits and claims which could be advantageously compromised and expensive litigations avoided, if funds were available for such purpose. We therefore recommend that the ordinance be passed.

HENRY RAUH.
CHARLES KRAUSS.
J. R. ALLEN.
ED. G. STOTT.
GEO. MERRITT.
JAS. H. COSTELLO.

Which was read and concurred in.

Mr. Rauh, on behalf of the Committee on Finance, to whom was referred the communication of the City Attorney of the date of May 7, 1894, pertaining to the printing of the revised ordinances, made the following report :

Mr. President :

Your Committee on Finance, to whom was referred the communication of J. E. Scott, Attorney for the City of Indianapolis, pertaining to printing of revised ordinances, would respectfully recommend that the Board of Public Works ascertain what charges the committee, Wm. L. Taylor and J. E. McCullough may have for revising such ordinances. Your committee does not feel like recommending the printing of the revised ordinances, until we fully know the expense there may be attached.

HENRY RAUH.
CHARLES KRAUSS.
J. R. ALLEN.
ED. G. STOTT.
GEO. MERRITT.
JAS. H. COSTELLO.

Which was read and concurred in.

Mr. Stein, on behalf of the Committee on Ordinances, to whom was referred the following communication :

EXECUTIVE DEPARTMENT,
CITY OF INDIANAPOLIS, }
April 10, 1894. }

To the President and Members of the Common Council:

GENTLEMEN—The Board of Public Works have called my attention to the fact that your honorable body has so far failed to pass any ordinance to regulate the making of private house connections with sewers, gas and water pipes, and compelling property owners to make such connections before permanent street improvements are made, and in default thereof to authorize the city to cause the work to be done at the expense of such owner, etc. Section 23 of the Charter fully authorizes your body to legislate on this subject. I think a carefully prepared ordinance should at once be passed, fully covering the matters authorized by the provisions of the Charter above referred to, and recommend that such action be taken.

Respectfully submitted,
C. S. DENNY,
Mayor.

Made the following report :

INDIANAPOLIS, May 21, 1894.

Your Committee on Ordinances respectfully present the following ordinance regulating the making of private connections with sewers, water and gas mains, etc., as by direction of the City Attorney. [See ordinance on page 248.]

THEODORE STEIN.

P. J. RYAN.

HENRY MAGEL.

Which was read and concurred in and referred to Committee on Sewers, Streets and Alleys.

Mr. Koehring, on behalf of the Committee on Public Property and Improvements, to whom was referred the communication of the Mayor of the date of May 7, 1894 [see page 230], in regard to G. O. No. 11, 1894, made the following report:

To the President and Members of the Common Council:

GENTLEMEN—Your Committee on Public Property and Improvements, to whom was referred the communication of the Mayor in regard to G. O. No. 11, and the inventory of personal property to be sold by the Board of Public Safety, would respectfully submit the following report:

We have referred the communication to the City Attorney, who has prepared an ordinance amending said G. O. No. 11 as recommended by the Mayor. We recommend that it be passed.

We also submit an ordinance authorizing the sale of the personal property described in the inventory referred to us. We recommend that it be passed.

CHAS. KOEHRING.

ED. G. STOTT.

Which was read and concurred in.

Mr. Drew, on behalf of the Committee on Railroads, to whom was referred:

G. O. No. 35, 1894. An ordinance defining a part of the boundary line of the City of Indianapolis, Indiana, so as to extend the same, and annexing to the City of Indianapolis certain territory contiguous thereto; providing for the publication thereof, and fixing the time when the same shall take effect.

Made the following report:

INDIANAPOLIS, May 21, 1894.

Mr. President:

Your committee to whom was referred G. O. No. 35, 1894, annexing territory extending to Washington township on the north, beg leave to report that they have received a remonstrance against the annexation signed by nearly all of the resident freeholders, etc., of that territory, and also an affidavit concerning the same, which is presented with this report, and respectfully recommend that the ordinance be stricken from the files.

LUCIUS W. DREW.

GEO. W. SHAFFER.

WM. HENNESSY.

Which was read and concurred in.

Mr. Drew, on behalf of the Committee on Sewers, Streets and Alleys, to whom was referred:

G. O. No. 37, 1894. An ordinance providing for the change of the name of Tennessee street to Capitol avenue, and fixing the time when the same shall take effect.

Made the following report :

INDIANAPOLIS, May 21, 1894.

Mr. President :

Your committee to whom was referred G. O. No. 37, 1894, changing the name of Tennessee street to Capitol avenue, beg leave to recommend that the ordinance be passed.

LUCIUS W. DREW.
GEO. W. SHAFFER.
WM. HENNESSY.

Which was read and concurred in.

Mr. Allen, on behalf of the Committee on Contracts and Franchises, to whom was referred :

G. O. No. 36, 1894. An ordinance approving a certain contract, granting Frank Mummenhoff the right to lay and maintain a switch or sidetrack across Alabama street, at a point 130 feet south of the south property line of Maryland street, in the City of Indianapolis, Indiana.

Made the following report :

INDIANAPOLIS, May 21, 1894.

To the President and Members of the Common Council :

Your Committee on Contracts and Franchises have had G. O. No. 36 under consideration, and recommend that it be passed.

J. R. ALLEN.
H. RAUH.
J. H. SCHMID.
CHARLES KRAUSS.
GEO. MERRITT.
JAS. H. COSTELLO.

Which was read and concurred in.

INTRODUCTION OF GENERAL AND SPECIAL ORDINANCES.

Under this order of business the following ordinances were introduced :

By Committee on Ordinances (through Mr. Stein) :

G. O. No. 38, 1894. An ordinance to regulate the making of private connections with sewer, gas and water pipes, and to compel owners of property to bring such connections inside of the curb of streets before permanent improvement thereof, and in default of the owners making such connections, to authorize the city to do so at the owner's expense, and matters connected therewith; providing a penalty for the violation thereof; providing for publication and fixing the time when the same shall take effect.

SECTION 1. Be it ordained by the Common Council of the City of Indianapolis, Indiana, That before the permanent improvement of any street or alley containing sewer, gas or water pipes, the Board of Public Works of said city may cause a written notice to be served on the owner of each piece of property requiring or that may require sewer, gas or water connection, abutting upon such street or alley so proposed to be improved, by delivering a copy to such owner personally or by leav-

ing a copy of the same at his last or usual place of residence, or if such person be a non-resident he shall be notified by publication in some daily newspaper of general circulation in such city once each week for three successive weeks. Such notice shall name a day not earlier than sixty days after service or after the last publication and shall notify such person to make or cause to be made all connections for sewer, gas or water; or bring, or cause to be brought, such sewer, gas or water connections inside the property line of such street or alley within the time fixed in such notice. It shall thereupon be the duty of such persons so notified to make or cause to be made all connections with sewer, gas and water pipes in the street or alley proposed to be improved or to bring, or cause to be brought, such connections inside the property line of said street or alley. Any person, firm, company or corporation refusing or failing to comply with the terms of such notice within the time specified therein, and any person violating any provision of this ordinance shall, upon conviction, be fined in any sum not exceeding one hundred dollars, and failure or refusal to make each of several connections required or to bring the same within the property line of said street or alley, shall constitute a separate offense.

SEC. 2. In case any person having any interest in lands or lots abutting on any such street or alley proposed to be improved shall be of unsound mind or an infant, said Board of Public Works may certify the same to the City Attorney, and said City Attorney shall forthwith apply to the proper court and secure the appointment of a guardian for such infant or person of unsound mind; and thereupon said Board may give notice to such guardian, who shall thereupon comply with the notice and protect the interests of his ward: *Provided*, That if such infant or person of unsound mind already have a guardian such notice may be served on such guardian. The requisites of notice to such guardian shall be the same as in the case of notice to other persons and he shall be subject to the same penalties as other persons.

SEC. 3. In case any person, firm, company, corporation or guardian so notified as above provided, shall fail or refuse to make or cause to be made, the proper connections, or shall fail or refuse to bring, or cause to be brought, such connections inside of the property line or inside of the curb of such street or alley within sixty days after the serving of the notice so to do, or after the last publication of such notice, then the City of Indianapolis by and through the Board of Public Works of said city, may cause said connections to be made or to be brought inside the curb of such street or alley at the expense of the owner of such abutting property. And said City of Indianapolis, and its said Board of Public Works, are hereby authorized to do and perform all things necessary and requisite to carry out the provisions of this ordinance. The expense of making such connections shall be a lien on the property abutting on such street or alley for the benefit of which, or on account of which such connections are made, and shall be collectible in the same manner that expenses for sprinkling streets are collectible, and said city shall not be liable for any part of the expense of making such connections, but the total cost thereof shall be paid for by the owners of the abutting property. The duties of the Department of Finance and of the Treasurer, the rights of contractors, and the liabilities of such city in relation to such sewer, gas and water connections shall be the same as in the case of expense for sprinkling streets.

SEC. 4. Whenever the said Board of Public Works shall, by contract, cause any connections to be made or to be brought inside the curb line as contemplated above it shall first prepare and place on file in the office of said department, complete drawings and specifications of said work particularly setting forth the amount of such work and connections for each separate lot or tract of land along said street or alley for which such connections are to be made so that bids may be made separately on the work required for each lot or separate tract of land, and contracts for such work may be made showing exact amount chargeable against each of such separate lots or tracts of land. Thereupon said Board shall cause notice to be published in one daily or weekly newspaper of general circulation, published in said city, once each week for two weeks, informing the public and contractors of the general nature of the work and of the fact that the drawings and specifications are on file in said office, and calling for sealed proposals for such work by a day not earlier than ten (10) days after the first of said publications, and such sealed proposals shall separately

state the amount bid on the work required for each separate lot or tract of land. The Board may, in its discretion, fix a later day for receiving such sealed proposals provided such date shall be mentioned in each of such notices. Said Board shall, if satisfactory bids be received, let such contracts to the lowest and best bidder, but shall have the right to reject any or all bids and such contract shall specify amount required for the work and be done for and on behalf of each separate lot or parcel of land.

SEC. 5. This ordinance shall be in full force and effect from and after its passage and publication once each week for two weeks successively in *The Sun*, a daily newspaper of general circulation, printed and published in said City of Indianapolis.

Which was read first time and referred to Committee on Sewers, Streets and Alleys.

By Board of Public Works:

G. O. No. 39, 1894. An ordinance approving a certain contract, granting the Terre Haute and Indianapolis Railroad Company the right to lay and maintain two switches or side-tracks across Pennsylvania street, immediately north of the tracks of the Indianapolis Union Railway, in the City of Indianapolis, under certain terms and conditions.

WHEREAS, Heretofore, to-wit: On May 18, 1894, the Board of Public Works of the City of Indianapolis, made and entered into a certain contract with The Terre Haute and Indianapolis Railroad Company, which contract is as follows:

WHEREAS, Heretofore, to-wit: On the 11th day of May, 1894, The Terre Haute and Indianapolis Railroad Company filed an amended petition before the Board of Public Works of the City of Indianapolis, as follows:

To the Board of Public Works, Indianapolis, Indiana:

GENTLEMEN—The Terre Haute and Indianapolis Railroad Company hereby respectfully ask permission of the City of Indianapolis, by and through its Board of Public Works, to construct and maintain two additional side-tracks, or switches, across Pennsylvania street, in the City of Indianapolis, north of the tracks of the Indianapolis Union Railway Company, described as follows:

The frog of the main line of the switch is at the east property line of Pennsylvania street, at the north rail of the north Union Railway track. The south rail of said main line of the switch crosses the west curb line of Pennsylvania street fifteen (15) feet north of the north rail of the north track of the Indianapolis Union Railroad. The point of the switch of the first branch from this main switch line is at the east curb line of Pennsylvania street. The point of frog of said first branch is at the west curb line of Pennsylvania street, all according to the drawings herewith submitted, attached hereto, filed herewith and for greater certainty marked "Exhibit A."

Your petitioner prays that the privilege and authority herein requested shall be granted upon such terms and conditions as may hereafter be agreed upon by contract.

Very respectfully,

THE TERRE HAUTE AND INDIANAPOLIS RAILROAD COMPANY,
By JNO. G. WILLIAMS,
Vice-President.

NOW, THEREFORE, This agreement made and entered into this, May 18, 1894, by and between The Terre Haute and Indianapolis Railroad Company, party of the first part, and the City of Indianapolis, State of Indiana, by and through its Board of Public Works, party of the second part;

WITNESSETH, That said party of the first part being desirous of securing a right-of-way for two switches, or side-tracks, over and across Pennsylvania street, in the City of Indianapolis, hereby covenants and agrees and fully binds itself, its successors, legal representatives and assigns that, in consideration of the granting of the privileges and authority herein given, it will lay, construct and maintain said switches, or side-tracks, upon the terms and conditions hereinafter set forth, viz:

1st. They shall be so laid, improved and kept in repair as to be safe for persons on foot, in vehicles, or otherwise, and shall at all times be subject to the orders and control of the Board of Public Works of the City of Indianapolis.

2d. Said tracks or switches shall be laid on such grade as shall be established by said Board and shall be put down under its supervision and to its satisfaction and approval. Said side-tracks, or switches, shall be raised or lowered to conform to any grade which may, from time to time, be hereafter established whenever so ordered in writing by said Board.

3d. The crossing where said side-tracks or switches intersect Pennsylvania street, shall, at all times, be kept improved and in repair and free from defects or obstructions of any kind. No car or cars shall be permitted to obstruct such crossings or to be thereon except for such time as may be absolutely necessary in moving them back and forth, but they shall, at no time, be stopped or detained thereon in such a manner as to obstruct public travel.

4th. Said party of the first part agrees, at the pleasure and written order of said Board, to take up and remove said side-tracks, or switches, and upon its failure so to do, upon such notification, in writing, of ten days, to promptly pay the cost of having the same done. And said party of the first part, hereby releases all claim for damages whatsoever that may arise by reason of such removal and said Board or said city in removing said side-tracks, or switches, or in causing the same to be done, shall, in no wise, be or become a trespasser.

5th. In case the said side-tracks or switches shall be or become out of repair or in need of being reconstructed or become in any way defective (of which facts the said Board shall be the exclusive judge), it shall be the duty of the said party of the first part to promptly repair or improve the same, and failing in which, after a notification in writing of ten days, said Board shall do or cause the same to be done at the expense of said party of the first part, and for which expense and cost said party of the first part shall be liable.

6th. The said party of the first part, hereby binds itself to hold the said party of the second part and said city harmless from any and all claims for damages growing out of the existence, maintenance or use of said side-tracks, or switches, and to pay any judgment, with costs, that may be on that account rendered against it or said city.

7th. Any violation of any provision of this instrument by said party of the first part, or by any one for it or at its instance or permission, shall operate as an immediate and absolute forfeiture of all the privileges and authority granted or given by this contract: *Provided, however,* The same may be terminated, without cause, at the pleasure of said Board as hereinbefore set forth in clause four.

And said party of the second part, by virtue of an Act of the General Assembly of the State of Indiana, entitled "An Act Concerning the Incorporation and Government of Cities having more than one hundred thousand population according to the last preceding United States Census, and matters connected therewith, and declaring an emergency," approved March 6, 1891, and in consideration of the things hereinbefore set forth, and upon the terms and conditions of the things herein stipulated, hereby gives, grants and duly vests said party of the first part, the right, privilege and authority to lay two (2) single switches, or side tracks, over and across Pennsylvania street, as prayed for in its petition, which is set forth in the preamble hereto, and as shown by the drawings attached and made part thereof and marked "Exhibit A."

In witness whereof, we have hereunto set our hands this, May 18, 1894.

THE TERRE HAUTE AND INDIANAPOLIS RAILROAD COMPANY,

By JNO. G. WILLIAMS,

Vice-President,

Party of the First Part.

Attest:

GEO. E. FARRINGTON,

Secretary.

THE CITY OF INDIANAPOLIS,

By J. A. WILDMAN,

ANDREW KRAMER,

F. J. MEYER,

Board of Public Works,

Party of the Second Part.

WHEREAS, Said contract has been submitted by said Board to the Common Council of the City of Indianapolis, for its consideration and action, NOW, THEREFORE:

SECTION 1. Be it ordained by the Common Council of the City of Indianapolis, Indiana, That said contract above set forth, be and the same is hereby, in all things, confirmed and approved.

SEC. 2. This ordinance shall take effect and be in force from and after its passage.

Which was read first time and referred to Committee on Railroads.

By Mr. Koehring:

G. O. No. 40, 1894. An ordinance to amend Sections 1 and 2, of an ordinance entitled "An Ordinance Authorizing the Sale and Alienation of Personal Property belonging to the City of Indianapolis, and matters connected therewith, and fixing the time for the taking effect thereof," being G. O. No. 11, 1894, passed April 2, 1894, and fixing the time for the taking effect thereof.

SECTION 1. Be it ordained by the Common Council of the City of Indianapolis, Indiana, That Section one (1) of an ordinance entitled "An Ordinance Authorizing the Sale and Alienation of Personal Property belonging to the City of Indianapolis, and matters connected therewith, and fixing the time for the taking effect thereof," being G. O. No. 11, 1894, passed April 2, 1894, be and the same is hereby amended so as to read as follows:

Section 1. Be it ordained by the Common Council of the City of Indianapolis, Indiana, that whenever any personal property belonging to said City of Indianapolis, shall no longer be needed, or no longer fit for the purpose for which it was intended to be used, and it shall be deemed advisable by the head or heads of any department of said City having the care and custody of such property to sell the same, such head or heads of any such department shall make or cause to be made an inventory of such property particularly describing it, and shall cause such property so inventoried to be appraised by three disinterested freeholders of such City of Indianapolis, to be appointed for that purpose by the Judge of Circuit Court in and for the County of Marion and State of Indiana, neither of such appraisers to be officers or employes of said city, which appraisers so appointed shall make their appraisement and sworn valuation in writing, which appraisement and sworn valuation in writing, together with such inventory, shall be returned to the Mayor of said city, who shall, if he approves said proceedings and contemplated sale, endorse his approval of the same in writing on such appraisement and sworn valuation, and if such valuation shall amount in the aggregate to a sum less than two hundred dollars, said Mayor shall return said inventory, appraisement and approval to the department from which it came; but if such valuation shall amount in the aggregate to two hundred dollars or more, said Mayor shall submit said inventory, appraisement and approval to the Common Council, which shall, if it approves such sale, authorize the same by ordinance. When such sale shall be approved by the Mayor if the aggregate appraisement is less than two hundred dollars, or if the aggregate appraisement is two hundred dollars or more when approved by the Mayor and the Common Council, the head or heads of any such department shall thereupon offer said property for sale at public or private sale, upon such notice as shall seem advisable to such head or heads of department, and shall sell the same or any part thereof for the best price that can be obtained for such property. But no sale of any property shall be made for a less sum than the appraisement thereon, and no sale shall be made except for cash. Whenever a purchaser for any such property is found such purchaser shall pay the purchase price to the head or heads of such department who shall thereupon deliver to such purchaser a bill of sale of such property, and such purchaser shall thereupon be entitled to the property so sold. Immediately after any such sale the head or heads of such department shall pay the purchase money into the city treasury, and receive a voucher therefor, which voucher shall be deposited with the City Comptroller and a careful account of the transaction shall be kept by the department making the sale.

SEC. 2. That Section Two (2) of said ordinance be and the same is hereby amended so as to read as follows:

Sec. 2. Each of the three appraisers appointed for any such appraisement as provided for in the preceding section shall be entitled to receive for his services the sum of two dollars upon presentation to the City Comptroller of a certificate from the head or heads of such departments that such person has been appointed as such appraiser, and has made such appraisement, and payment thereof shall be from the fund appropriated to the Finance Department for incidental expenses of the city officers.

SEC. 3. This ordinance shall be in full force and effect from and after its passage.

Which was read the first time.

Mr. Young moved that the constitutional rules be suspended for the purpose of placing G. O. No. 40, 1894, on its final passage.

Which motion was adopted by the following vote:

AYES 20—viz: Messrs. Allen, Costello, Drew, Hennessy, Kaiser, Koehring, Krauss, Magel, Merritt, Murphy, O'Brien, Puryear, Rauh, Ryan, Schmid, Shaffer, Stein, Stott, Young and President Cooper.

NAYS—None.

Mr. Young moved that G. O. No. 40, 1894, be read second time.

Which motion prevailed.

On motion of Mr. Rauh, G. O. No. 40, 1894, was then ordered engrossed, read third time, and passed by the following vote:

AYES 20—viz: Messrs. Allen, Costello, Drew, Hennessy, Kaiser, Koehring, Krauss, Magel, Merritt, Murphy, O'Brien, Puryear, Rauh, Ryan, Schmid, Shaffer, Stein, Stott, Young and President Cooper.

NAYS—None.

By Mr. Koehring:

G. O. No. 41, 1894. An ordinance approving the appraisement and contemplated sale of certain personal property belonging to the City of Indianapolis, and authorizing the sale of such property.

WHEREAS, The Department of Public Safety of the City of Indianapolis has heretofore made or caused to be made an inventory of personal property in the care and custody of such department, and deemed by such department no longer fit or needed for the use for which it was intended, and caused such property so inventoried to be appraised by three disinterested freeholders of said city, appointed for that purpose by the Judge of the Circuit Court in and for the county of Marion and State of Indiana, which appraisers, so appointed, have made their appraisement and sworn valuation in writing, and return such appraisement and sworn valuation in writing, together with such inventory, to the Mayor of said City of Indianapolis; and,

WHEREAS, the Mayor of such city has approved said proceedings and contemplated sale by endorsing his approval in writing thereon, which said inventory and sworn appraisement and valuation in writing, and the approval of the Mayor are in the words and figures following:

INDIANAPOLIS, IND., April 26, 1894.

Hon. Caleb S. Denny, Mayor of the City of Indianapolis:

The undersigned appraisers, appointed by the Marion Circuit Court to appraise the following property, belonging to the City of Indianapolis, and in the possession of the Department of Public Safety:

Four horses, 1000 feet M. L. condemned hose, 1000 feet M. L. sprinkling hose, 800 pounds battery copper,
Appraise the same at the following price:
Horse No. 59, \$20; horse No. 53, \$25; horse No. 67, \$10; horse No. 25, \$5;
1000 feet M. L. condemned hose, at 1½ cents a foot; 1000 feet M. L. sprinkling hose, at 10 cents a foot; 800 pounds battery copper, at \$50.

Respectfully,

THOS. F. COLBERT,
CHAS. WONNELL,
J. J. HIGGINS,

Appraisers.

THE STATE OF INDIANA, }
COUNTY OF MARION, } SS:

Before me, Richard C. Herrick, a notary public in and for the said county, this 26th day of April, 1894, came Thos. F. Colbert, Chas. Wonnell and J. J. Higgins, and under oath declared the above statement to be correct and true according to their belief and knowledge.

RICHARD C. HERRICK,

[SEAL.]

Notary Public.

WHEREAS, said inventory and appraisalment has been submitted by the Mayor to the Common Council of the City of Indianapolis for its consideration and action, now, therefore,

SECTION 1. Be it ordained by the Common Council of the City of Indianapolis, Indiana, That said appraisalment and contemplated proceedings and sale above set forth, be and the same are hereby in all things confirmed and approved, and the sale of such property so inventoried and appraised, or any part of it, at a price not lower than the appraised value of the same, or of any such part of the same if such part only is sold, is hereby authorized, and the Commissioners of Public Safety are hereby authorized and empowered to make such sale and to do any and all things requisite and necessary in the premises to be done in the sale of such property.

SEC. 2. This ordinance shall take effect and be in force from and after its passage.

Mr. Koehring moved that the constitutional rules be suspended for the purpose of placing G. O. No. 41, 1894, on its final passage.

Which motion was adopted by the following vote:

AYES 20—viz: Messrs. Allen, Costello, Drew, Hennessy, Kaiser, Koehring, Krauss, Magel, Merritt, Murphy, O'Brien, Puryear, Rauh, Ryan, Schmid, Shaffer, Stein, Stott, Young and President Cooper.

NAYS—None.

Thereupon G. O. No. 41, 1894, was read second time, ordered engrossed, read third time, and passed by the following vote:

AYES 20—viz: Messrs. Allen, Costello, Drew, Hennessy, Kaiser, Koehring, Krauss, Magel, Merritt, Murphy, O'Brien, Puryear, Rauh, Ryan, Schmid, Shaffer, Stein, Stott, Young and President Cooper.

NAYS—None.

MISCELLANEOUS BUSINESS.

Mr. Stott moved that the communication from the City Attorney, pertaining to the improvement and repair of Louisiana and McCrea streets, Jackson Place, etc., be referred to the Board of Public Works with the request that the streets be improved.

Which motion prevailed.

Mr. Drew submitted the following petition :

PETITION BY ROBERT KENNINGTON FOR ORDER UPON THE CITY
CIVIL ENGINEER TO MAKE ADDITIONAL ESTIMATE.

To the Honorable, the Common Council of the City of Indianapolis :

Your petitioner, Robert Kennington, would respectfully represent and show to your honorable body that heretofore, to-wit: on the 10th day of March, 1890, there was introduced into the then Common Council of said City of Indianapolis, the following Declaratory Resolution, to-wit:

Resolved by the Common Council and Board of Aldermen of the City of Indianapolis, Indiana, That it is deemed necessary to improve Madison avenue, from Delaware street to the south line of Lincoln Lane, by re-grading, bowldering and curbing the gutters, and improving the roadway with broken stone, and requiring the Citizens' Street-railroad Company to pay its proportion of the cost thereof, in accordance with profile and specifications on file in the office of the City Civil Engineer. The total cost of said improvement shall be assessed per lineal front foot upon the real estate abutting on said Madison avenue, between Delaware street and the south line of Lincoln Lane (except the portion thereof occupied by street and alley crossings, which shall be assessed against the City of Indianapolis); said assessments, if deferred, to be paid in ten annual installments. A bond or bonds shall be issued in anticipation of the collection of said assessments, unless the property owners pay said assessments before said bond or bonds are issued; all as provided for in an Act of the General Assembly of Indiana, approved March 8, 1889.

Which said resolution was thereupon adopted by a vote of 24 ayes, there being no vote in the negative (see page 203); and thereafter, to-wit: on the 24th day of March, 1890, said declaratory resolution was adopted by the Board of Aldermen by a vote of 10 ayes, there being no votes whatever in the negative (see pages 262 and 264); that at the time of the introduction of said declaratory resolution and the passage thereof, and of the introduction and passage of the ordinance hereinafter referred to, and of the passage of the estimates, and of the proceedings had by said Common Council and Board of Aldermen, as hereinafter set forth, said Common Council consisted of twenty-five members and no more, and said Board of Aldermen consisted of ten members and no more, and said declaratory resolution was passed and adopted, both in said Common Council and said Board of Aldermen, by a vote of more than two-thirds of the members thereof.

Concurrently with the adoption of said declaratory resolution, it was ordered by said Common Council and said Board of Aldermen, that the City Clerk of said City of Indianapolis give notice for ten days of the passage of such resolution by publication for two weeks, in some newspaper of general circulation published in such city; said notice to state the time and place, when and where the property-holders along the line of said proposed improvement could make objections for the necessity of the construction thereof, and that thereupon, pursuant to said order, the then City Clerk of said city did proceed to give such notice by two successive publications in the *Indianapolis Sun*, a newspaper of general circulation published in said City of Indianapolis, the first of which publications was made on the 28th day of March, 1890, and the last of which was made on the 4th day of April, 1890; and in and by said notices it was provided that all persons interested therein should have the opportunity to be heard thereon, and were required to appear in room No.

4 in said City Clerk's office in said city, on the 15th day of April, 1890, to show cause, if any they had, why the declaratory resolution should not be adopted; said notice so given by said City Clerk being in the words and figures following, to-wit:

Notice is hereby given that the Common Council and Board of Aldermen of the City of Indianapolis, Indiana, pursuant to the provisions of an Act of the General Assembly, approved March 8, 1889, providing the mode and manner of making street improvements, enforcing the payment of the costs thereof, and issuing street improvement bonds as therein provided, etc., having duly passed the following resolution, to-wit:

DECLARATORY RESOLUTION.

Resolved by the Common Council and Board of Aldermen of the City of Indianapolis, Indiana, That it is deemed necessary to improve Madison avenue, from Delaware street to the south line of Lincoln Lane, by re-grading, bowldering and curbing the gutters, and improving the roadway with broken stone, and requiring the Citizens' Street-railroad Company to pay its proportion of the costs thereof, in accordance with profile and specifications on file in the office of the City Civil Engineer. The total cost of said improvement shall be assessed per lineal front foot upon the real estate abutting on said Madison avenue between Delaware street and the south line of Lincoln Lane (except the proportion thereof occupied by street and alley crossings, which shall be assessed against the City of Indianapolis); said assessments, if deferred, to be paid in ten annual installments. A bond or bonds shall be issued, in anticipation of the collection of said assessments, unless the property owners pay said assessments before said bond or bonds are issued, all as provided for in an Act of the General Assembly of Indiana, approved March 8, 1889.

Notice is further hereby given to the owners of all property along the line of said proposed improvement, to appear at room 4, in the office of the City Clerk, on the 15th day of April, 1890, at 10 o'clock A. M., and there make objections, if any they have, to the necessity for said proposed improvements.

E. B. SWIFT,
City Clerk.

Your petitioner further shows that theretofore, to-wit: on the 10th day of March, 1890, there was introduced into said Common Council, by Mr. Councilman Markey, the following ordinance, to-wit:

An ordinance to provide for grading and bowldering the gutters and between the tracks of the Citizens' street-railroad, curbing the outer edges of the side-walks with stone, and improving the roadway with broken stone, of Madison avenue, from Delaware street to Lincoln Lane, and requiring the Citizens' Street-railroad Company to pay its proportion of the cost thereof, as provided for in G. O. No. 4, 1884.

SECTION 1. Be it ordained by the Common Council and Board of Aldermen of the City of Indianapolis, That the roadway of Madison street, forty-four feet in width, from curb to curb, from Delaware street to Lincoln Lane, be graded to stakes to be set by the City Civil Engineer on the original grade of said street, and in accordance with the profile made for said street, on file in said Engineer's office, and the gutters bowldered to a width of five feet with the best quality of bowlders placed upon twelve inches of bank sand, bowlders to range in size from four to ten inches in longest diameter, and to be rammed three times and left uncovered until approved by the Engineer, and finished with a two-inch coat of sand; and the roadway improved (except that portion between the tracks of said street-railroad, to be herein further to be provided for) with broken stone as follows, to-wit: a six-inch layer of hard stone, broken into fragments as nearly regular in shape as possible to break them, which should not measure more than five nor less than $2\frac{1}{2}$ inches in diameter, to be spread over the entire length of the improvement for such portion of the street as the Engineer may direct; upon this first layer shall be spread a second layer of sound, hard stone, broken into fragments measuring not more than $2\frac{1}{2}$ nor less than $1\frac{1}{2}$ inches in diameter, spread so as to make a total depth of broken stone eighteen inches in the center of the roadway, sloping to

twelve inches at the outer edges of the gutters, and said broken stone to be rolled until it is thoroughly packed, and finished with a two-inch coat of sand, and the entire roadway rolled until thoroughly settled; and that portion of the roadway between the rails of said street-railroad to be excavated to a depth of twelve inches, and bowldered with the best quality of bowlders, placed upon sufficient sand to bring the surface up to proper grade and to be properly rammed and settled.

CURBING.

The outer edges of the sidewalks to be curbed with the best quality of lime-stone, not less than four feet in length, eighteen inches deep, and four inches thick. The top, ends and face of said curbing to be neatly dressed, so as to form a good, even and close joint at the ends, and present a smooth face at least twelve inches from the top of same. The return curb at corners of streets and alleys to be cut at a radius of four feet. All curbs to be set upon six inches of sand.

OLD MATERIALS.

All earth, gravel, sand, bowlders and other materials on said street (except such stone curbing as the Engineer shall order to be re-set on the line of work), between the limits aforesaid, shall be the property of the contractor; said contractor shall take into consideration the value of all said materials in making his bids to do said work.

SIDEWALKS.

The sidewalks to be widened so as to leave the roadway forty-four feet wide and the lawns neatly dressed up to the line and height of the curb, with fine earth, and left smoothly raked. All work specified to be done in this ordinance shall be done to the entire satisfaction of the City Civil Engineer.

GUARANTEE.

The contractor will be required to guarantee the said pavement to be in good condition, to the satisfaction of the Common Council and the Board of Aldermen, and that it shall be kept without cost for repairs, either to the city or property owners, for a period of five years from the date of completion of the same, except where intentionally cut for pipe laying and other purposes, and in these cases the contractor must enter into a satisfactory contract for making repairs at a stated rate named in the bid for paving; *Provided*, this guarantee shall not apply to nor cover the maintenance of said paving between the rails of each track of said street-railroad.

BIDS.

Bidder must state a price per lineal front foot on each street for grading and improving the roadway, also a price per lineal foot for curbing.

ASSESSMENTS.

SEC. 3. The cost of grading, paving and curbing of said part of said street as aforesaid (except the proportion thereof occupied by the street and alley crossings, and except such portion thereof as is hereinafter provided to be charged against and shall be collected from the Citizens' Street-railroad Company) shall be assessed per lineal front foot against the real estate abutting and bordering thereon between the limits aforesaid, until and in accordance with the provision of an Act of the General Assembly of the State of Indiana approved March 8, 1889, entitled: An Act concerning powers and duties of cities and incorporated towns and their Common Councils and Boards of Trustees, the mode and manner of making street and alley improvements, and building sewers, and providing for the mode and manner of enforcing the payment of the costs of street and alley improvements and building sewers, and permitting cities or incorporated towns to issue street and sewer and improvement bonds, and repealing all conflicting laws and declaring an emergency.

The cost of grading, paving and curbing of such proportion of said street as is occupied by the crossings of streets and alleys (except such part thereof as is hereinafter provided to be charged against and collected from the Citizens' Street-railroad Company) shall be assessed against and collected from the City of Indianapolis according to law; *Provided*, that in no event shall the City of Indianapolis be liable for any part of said cost of said improvement other than for such proportion for such street and alley crossings. All said assessments, if deferred, shall be paid in ten annual installments, to each of which shall be added interest at 6 per cent. per annum, payable annually from the date of final estimate, and collected as provided by law.

A bond or bonds shall be issued to the contractor in payment for said work, unless the property owners paid their assessments before said bond or bonds are issued, all as provided in said Act of the General Assembly in Indiana, approved March 8, 1889.

It is hereby found as a fact by the Common Council and Board of Aldermen of the City of Indianapolis, that the Citizens' Street-railroad Company of Indianapolis, is the owner and operator of a single track street-railway laid on said Madison avenue, between Delaware street and Lincoln Lane, and that the occupancy, by said tracks, of said street, not only increases the cost of its maintenance by the city and property owners, but greatly obstructs the public use thereof, and that such increased cost of maintenance and such obstruction of the public use thereof will be greatly lessened by the improvement herein provided for.

It is, therefore, ordered by said Common Council and Board of Aldermen, that the Citizens' Street-railroad Company be assessed with and liable to the contractor for the amount of cost of said improvement, exclusive of the curbing, equal to the proportion that nine feet bears to the whole width of the roadway of a street from curb to curb between Delaware street and Lincoln Lane, such proportion to be estimated by the City Civil Engineer and charged to said company, as provided by G. O. No. 4, of 1884, of said city, entitled: An ordinance to amend Section 1 of an ordinance entitled, "An ordinance to amend Sections 5 and 6 of an ordinance entitled, 'An ordinance authorizing the construction and extension and operation of a certain passenger railway in and upon the streets of the City of Indianapolis, ordained and established January 18, 1864,' which amendatory ordinance was ordained April 2, 1878," ordained April 14, 1884; said G. O. No. 4, 1884, for all the purposes of this improvement and collection of the costs thereof is made a part hereof as fully and effectually as if the same were copied herein at full length.

SEC. 4. The City Civil Engineer is hereby directed to set the proper grade stakes and also to advertise, by publication one day each week for three successive weeks in *The Sun*, a daily newspaper of general circulation in said City of Indianapolis, that sealed proposals for the execution of said work will be received by the Common Council on the 2d day of June, 1890, the day named in said advertisement.

SEC. 5. This ordinance shall take effect and be in force from and after its passage.

Passed by the Common Council this 21st day of April, 1890.

Attest: E. B. SWIFT,
City Clerk.

T. L. SULLIVAN,
Mayor.

Passed by the Board of Aldermen this 28th day of April, 1890.

Attest: S. V. PERROTT,
Clerk of the Board of Aldermen.

ISAAC THALMAN,
President of the Board of Aldermen.

Ordained and established this 28th day of April, 1890.

Attest: E. B. SWIFT,
City Clerk.

T. L. SULLIVAN,
Mayor.

ISAAC THALMAN,
President of the Board of Aldermen.

Which said ordinance was thereupon referred to the Committee on Streets and Alleys; and thereupon, to-wit: on the 28th day of April, 1890, and subsequent to the adoption of said declaratory resolution by said Common Council and by said Board of Aldermen, and subsequent to the time set for the hearing thereon, no person having appeared or shown any cause why said declaratory resolution should not be acted upon, said Committee on Streets and Alleys filed its report recommending the passage of said ordinance (page 324); and the same was thereupon, to-wit: on the same day, received by said Common Council and read the first time, and the rules of the Council having been suspended upon motion, there being twenty votes in the affirmative and two in the negative, the same was then read the second time, ordered engrossed, read the third time, and passed by a vote of twenty-two ayes, there being no vote whatever in the negative (see pages 324, 335 and 338); thereupon said ordinance came before the Board of Aldermen of said city on the 28th day of April, 1890, where the same was referred to the Committee on Streets and Alleys and Sewers and Drainage (page 378); and thereafter, to-wit: upon the same day, upon motion, the rules were suspended for the purpose of placing the same on final passage, by a vote of ten in the affirmative and none in the negative, and it was thereupon read the second and third times, and passed by a vote of ten in the affirmative and none in the negative; and said ordinance was thereupon approved by the Hon. Thomas L. Sullivan, the then Mayor of said city, on said 28th day of April, 1890, and thereby then and there came in full force and operation.

Your petitioner further shows that thereafter the City Civil Engineer of said City of Indianapolis caused to be published for three weeks successively, in said *Indianapolis Sun*, to-wit: on the 8th, 15th and 22d days of May, respectively, notice of the passage of said ordinance, and inviting bids for the making of said improvement, in accordance with the terms thereof, and thereupon your petitioner and others, to-wit: Fulmer, Cooper & Co., in accordance with said ordinance and said notice, submitted to said Common Council sealed proposals for the making of said improvement, which said sealed proposals were thereupon on said day, to-wit: the said 2d day of June, 1890, opened, read and referred to the Committee on Contracts (see pages 489, 490 and 513); and thereupon afterwards, to-wit: on the 9th day of June, 1890, the Committee on Contracts of said Council, submitted its report upon said sealed proposals, recommending, among other things, that the contract should be awarded to your petitioner (see pages 510 and 513); which said report was received and concurred in on the same day (see page 514); and thereupon afterwards, to-wit: on the same day the said report and recommendation of the Committee on Contracts was read in the Board of Aldermen, and the action of the Common Council in that behalf concurred in (see page 531); and thereafter, to-wit: on the 16th day of June, 1890, the contract and bond of your petitioner for improving said Madison avenue, pursuant to said declaratory resolution, said ordinance and said actions by the said Common Council and Board of Aldermen, was submitted, by said City Civil Engineer, to said Common Council, and the same were approved; and thereafter, to-wit: on the 23d day of June, 1890, the action of the Common Council thereon, and said contract and bond were approved by the Board of Aldermen (see page 565), which said contract so executed by your petitioner, and by the said City of Indianapolis, by its Mayor, is in the words and figures following, to-wit:

This agreement made and entered into this 16th day of June, 1890, by and between Robert Kennington, of the county of Marion and State of Indiana, of the first part, and the City of Indianapolis, said county and State, of the second part,

WITNESSETH, That the said party of the first part does covenant and agree to grade, bowlder the gutters and bowlder between the tracks of the Citizens' street-railroad, curb with stone the outer edges of sidewalk, and improve the roadway with broken stone, of Madison avenue, from Delaware street to Lincoln Lane.

For grading and broken stone, \$1.60 per lineal foot front in each side.

For curbing with stone, 55 cents per lineal foot front on each side.

For bowldering, 75 cents per lineal foot front on each side.

For repairing, where intentionally cut for pipe laying, etc., 10 cents per square foot.

Said amounts to be collected by the said party of the first part at his own expense from the owners of the property bordering on said improvement, according to their respective number of feet, and from the City of Indianapolis, for any lot or lots owned by said city, and for crossing of all streets and alleys; and said party of the first part herein further agrees to pay any and all moneys due to any contractor, or to any person or persons furnishing any material whatever, and to any laborers employed by said party of the first part, for any work done in the prosecution of such improvement. It is hereby expressly understood that no assignment of this contract shall be made to any other party without the consent of said city.

The party of the first part further agrees to perform the work according to Special Ordinance No. 59, 1890, and plans and specifications on file in the office of the City Civil Engineer, and to his entire satisfaction.

The said party of the first part covenants and agrees that he will exercise in the prosecution of said work all proper skill and care, that he will properly and fully guard and protect all excavations or dangerous places, and will use due and proper precaution to prevent injury to any property, person or persons whatever; and that he will omit no reasonable precaution which will tend to the security of all persons and property.

The contractor further covenants and agrees to supply all earth required to complete the necessary grading, and if a surplus, to remove the same to some street or alley, not exceeding a distance of half a mile, as shall be directed by the City Civil Engineer, and spread the same to his satisfaction.

The contractor further agrees to maintain the work and keep it in good repair, to the entire satisfaction of the City Civil Engineer, for a period of one year from date of final allowance of estimate, without cost to the city or property holders along the line of said improvements. Said work shall be finished on or before the first day of January, 1891, to the entire satisfaction of the City Civil Engineer; and should said work not be finished by the time specified, and according to the above specifications, then the said contract shall be void and of no effect in law, and the said party of the second part shall have the privilege and option of forfeiting this contract, and of re-letting the same; and the party of the first part shall be liable for all damages that may accrue by said failure to perform said work according to this contract; and unless the said work shall be done within the time specified, the said party of the first part shall not recover for any work done under this contract.

In testimony whereof, the foregoing named parties hereunto set their hands this 16th day of June, 1890.

ROBERT KENNINGTON,
Contractor.

For the City of Indianapolis:

T. L. SULLIVAN,
Mayor.

Your petitioner further shows, that thereupon he entered upon the work provided for in said contract, and within the time limited therein, to-wit: the 10th day of November, 1890, did in all respects, in accordance with said contract, fully complete and carry out the same, and did make said improvement as required by said contract to the satisfaction of said City Civil Engineer, and his work was thereupon, to-wit, prior to the 10th day of November, 1890, accepted by said City Civil

Engineer and by said city, and thereupon, in assumed compliance with the obligation of the city in that behalf, said City Civil Engineer did submit to said Common Council the following report and estimate, to-wit :

INDIANAPOLIS, November 10, 1890.

To the Mayor, Common Council and Board of Aldermen :

GENTLEMEN—I herewith report a first and final estimate for grading and bowldering the gutters, and bowldering between the rails of the tracks of the Citizens' street-railroad, curbiug with stone the outer edges of the sidewalks, and improving the roadway with broken stone, of Madison avenue, from Delaware street to Lincoln Lane, authorized by Special Ordinance No. 59, 1890, based upon the terms of the contract with Robert Kennington, contract for said work approved by the Common Council the 16th day of June, 1890, and by the Board of Aldermen the 23d day of June, 1890.

Total length frontage of improvement, 5,824 feet.	
Total cost of improvement	\$16,619 73
Aggregate cost per lineal front foot	2 85 $\frac{37}{100}$
Total allowance to property owners	746 91
Total cost of work done by contractors	15,872 84

Respectfully submitted,

A. P. SHAWVER,
City Civil Engineer.

[See page 92.]

Which said report was thereupon referred to the Committee on Streets and Alleys ; and thereafter, to-wit : on the 1st day of December, 1890, said Committee on Streets and Alleys made to said Common Council its report, in the words and figures following, to-wit :

To the Mayor, Common Council and Board of Aldermen of the City of Indianapolis :

GENTLEMEN—The Committee on Streets and Alleys, of the Common Council, to whom was referred the final estimate made by the City Civil Engineer in favor of Robert Kennington, contractor, for the total cost of fifteen thousand eight hundred and seventy-two and eighty-four one hundredths dollars (\$15,872.84), pursuant to Special Ordinance No. 59, 1890, respectfully report that said committee met in Room 2 of the City Clerk's office, on the first day of December, 1890, at ten o'clock A. M., in pursuance to a notice given therefor, and having carefully examined and considered final estimate, and no one appearing to object to the same, recommends that said final estimate and assessment so made by said Engineer, be, in all things, adopted, approved and confirmed.

Respectfully submitted,

EMIL C. RASSMANN,
CHAS. A. GAUSS,
ROBT. MARTINDALE,
Committee on Streets and Alleys.

[See page 790.]

And concurrently therewith reported the following resolution :

Resolved by the Common Council and Board of Aldermen of the City of Indianapolis, Indiana, That the report of the Committee on Streets and Alleys, of the Common Council, recommending that the final estimate made by City Civil Engineer in favor of Robert Kennington, contractor for grading and bowldering the gutters, and bowldering between the rails of the tracks of the Citizens' street-railroad, curbing with stone the outer edges of the sidewalks, and improving the roadway with broken stone, of Madison avenue, from Delaware street to Lincoln Lane, pursuant to Special Ordinance No. 59, 1890, be, and the same is hereby approved. That the assessments set forth in said final estimate are hereby approved and confirmed ; and there is hereby assessed against the several lots and parcels of ground, as described in said final estimate, the several amounts set opposite and assessed against said several lots and parcels of ground, respectively, for and on account of said improvement.

The County Auditor is hereby directed to place said assessments upon the city tax duplicate, and to charge the same respectively against the several lots and parcels of ground against which they have been so assessed, as follows, to-wit: ten per cent. for each successive year for ten years, together with interest on the several amounts so assessed, at six per cent per annum, payable semi-annually, calculated from the date of the approval of this estimate, until the several amounts fall due. The first ten per cent. of said assessments, with interest on the whole from the date of the approval of this estimate, shall be due and payable on the third Monday of April, 1891; the semi-annual interest on the unpaid balance shall be due and payable thereafter at the dates of the semi-annual payment of city taxes in each year; and on the third Monday in April in each year thereafter, one-tenth of the principal of said assessment, together with the semi-annual interest on the unpaid balance, shall be due and payable, until all is paid.

Provided, however, That the above provision for extending said assessments upon the city tax duplicate, and collecting the same successively in annual and semi-annual installments of principal and interest respectively, shall apply only to the owner or owners of said lots or parcels of ground, who shall promise and agree, in writing, filed with the City Clerk of this city, that, in consideration of having the right to pay his or their assessment or respective assessments, in installments, they will not make any objection to the illegality or irregularity as to their respective assessments, and will pay the same, when due, with interest thereon, not exceeding six per cent, as shall, by ordinance or resolution of the Common Council and Board of Aldermen, be prescribed and required.

The said assessments, together with interest thereon, shall, from the date of the approval of this estimate, be a lien upon the several lots and parcels of ground against which they are assessed respectively, to the same extent that taxes are a lien upon such property; and said assessments, when placed upon the city tax duplicate, pursuant to the above proviso, shall be at once due and payable, and shall be collected by precept and sale, as now provided by law.

The proceeds from such assessments as are so placed on the city tax duplicate, shall constitute a special fund to be applied to the payment of the costs of said improvement, and of the bonds and certificates to be issued therefor, and for no other purpose. (See pages 990 and 991.)

And thereafter, to-wit: on the 8th day of December, 1890, the following proceedings were had before the Board of Aldermen in that behalf, to-wit: said report of the Committee on Streets and Alleys above referred to, was read and referred to the Committee on Streets and Alleys; and thereafter, to-wit: on the 15th day of December, 1890, the following further proceedings were had in that behalf by said Board of Aldermen, to-wit: said committee, to whom said matter was referred, submitted the following report, to-wit:

To the President and Members of the Board of Aldermen:

GENTLEMEN—Your Committees on Streets and Alleys and Sewers and Drainage, and Contracts and Bridges, to whom was referred the final estimate reported in favor of Robert Kennington, for improving Madison avenue, have met and heard complaint from one property owner. After careful consideration of the matter, your committees are of the opinion that the work has been performed according to specifications, and therefore recommend that the estimate be allowed.

Respectfully,

THEO. F. SMITHER,

GEO. T. BREUNIG,

H. W. LAUT,

M. H. FARRELL,

H. B. SMITH,

JOHN J. BLACKWELL,

Committee on Contracts and Bridges. Committee on Streets and Alleys.

[See page 1017.]

Which said report was received, and the estimate resolution theretofore adopted by the Common Council was adopted by a vote of seven in the affirmative and none in the negative. That thereupon, afterwards, to-wit: on the 15th day of December,

1890, in pretended compliance with the law and with the several actions so taken by said Common Council and Board of Aldermen, as hereinbefore set forth, the then City Civil Engineer issued and delivered a certain pretended first and final estimate for the work done by your petitioner, under and pursuant to said contract, from which it was made to appear that the total length of the frontage of said improvement was 5,824 feet; that the total cost of said improvement was \$16,619.89; that the average cost per lineal front foot was \$2.85 $\frac{37}{100}$; that the total allowance to property owners was \$728.53, and that the total cost of the work done by the contractor was \$15,891.36.

Your petitioner further certifies that on or about said date, to-wit: on the 9th day of January, 1891, the then City Clerk certified to the then Auditor of Marion County that the persons hereinafter named, owning the number of feet abutting upon said improvement, hereinafter shown, with the amount due thereon, as hereinafter stated, had signed a waiver of error and filed the same in his office, thereby undertaking and assuming to obtain the benefits of the time allowed by the statute in such cases made and approved, to-wit:

Casper Hess, 58 ft., 1 in.	\$105 88
John Hess, 28 ft.	51 28
Louis Ehrman, 40 ft.	114 15
Hanna Oliver, 92 ft.	262 53
William C. Rehling, 152 ft.	333 75
Engel Harting, 30 ft.	85 61
Mary E. Lotz, 40 ft.	114 15
Julius Bottler, 73 ft., 4 in.	133 70
John Click, 30 ft.	85 61
Casper Gmeiner, 30 ft.	85 61
Casper Wilhelm, 60 ft.	171 22
Elizabeth Steele, 30 ft.	85 61
John Mertz, 62 ft.	147 32
Otto Stechan, 119 ft. $\frac{1}{2}$ in.	282 48
Jacob Wittinger, 110 ft.	261 03
Henry E. Krafthafer, 43 ft., 4 in.	102 83
Ellen Dutton, 42 ft.	119 85

Your petitioner submits with this petition the original of said estimate sheet filed with the then Auditor of Marion county, and refers to the records in that behalf, and will, if desired, furnish herewith a copy thereof, but does not furnish such copy now for the reason that said sheet is very cumbersome and difficult to file as an exhibit herewith.

Your petitioner further shows that in and from said final estimate, it is made to appear, and does appear, that the total cost of said improvement was \$16,619.75, from which there should be deducted on account of credit of old material, and for other purposes, \$746.81, leaving the net amount which your petitioner was entitled to receive on account of said work, the sum of \$15,872.94; and that under and by virtue of his contract and the proceedings in that behalf, as hereinbefore set forth, and the Statute in such cases made and provided, he was entitled to receive from said City Civil Engineer and from said city, valid estimates from the several parties affected by said improvement, amounting in the aggregate to said sum of \$15,874.94; but that in pretended compliance with said contract and the rights of your petitioner in that behalf, the said City Civil Engineer and the said city authorities had undertaken and did undertake, in and by said final estimate, to furnish to him estimates against the various property holders, other than the City of Indianapolis

and of the Citizens' Street-railroad Company, amounting in the aggregate to \$12,605.80, and against the City of Indianapolis, amounting in the aggregate to \$1,454.56, and against the Citizens' Street-railroad Company, amounting in the aggregate to \$1,812.58, and no other, further, or different assessment or estimate was made, either by said City Civil Engineer or by said city authorities.

Your petitioner further shows that at the time of the making of said final estimate, and ever since, said Citizens' Street-railroad Company has constantly refused to pay said estimate, or any part or parcel thereof, and has constantly claimed, and still claims, that there was no warrant of law whatever for the attempt by said City Civil Engineer or said city authorities, to assess against it the whole or any part of said expense; the said contention of said Citizens' Street-railroad Company being based, as your petitioner is informed and believes, and therefore, charges, upon the following state of affairs, to-wit:

On or about the 18th day of January, 1864, an ordinance was duly enacted and ordained by the Common Council of the City of Indianapolis, authorizing the construction of a system of street railway in said city, which ordinance was duly accepted by the Citizens' Street-railway Company, and a system of street railroads built and put in operation in accordance with the provisions thereof. The provisions of said ordinance of 1864, which related to the construction, improvement and repair of streets, are all contained in Sections 5 and 6 of said ordinance, the same being as follows, to-wit:

SEC. 5. The track of any such railway shall not be elevated above the surface of the street, and the same shall be laid so as to conform to the established grades of the streets of said city, and in such manner as to be no unnecessary impediment to the ordinary use of the streets, and the passage of wagons, carriages, and other vehicles, upon, along or across said track, at any point and in any and all directions, with suitable bridges at all the gutters, so as to permit the free and unimpeded flow of water in and along said gutters. The said company shall bowlder the space between the rails of the track, and also shall pave, bowlder, or other improve (as the street may be) two feet on the outside of each rail, so as at all times to correspond with the street outside, and keep the same, together with all bridges at the crossings of gutters, in good repair, to the satisfaction of the Common Council, and in case of the failure of the said company to do the same, the Common Council shall have the right to prevent the use of said track by removing the rails therefrom.

SEC. 6. All tracks of any such railway shall be of uniform gauge, not exceeding five feet in width, and shall be composed of the most approved rail. The Common Council of said city shall, at any time, have the power to order the said company to cause any such track or tracks to be taken up and relaid whenever it shall be necessary for the purpose of regrading any street, constructing sewers, or laying water or gas pipes therein. And the said company shall be liable for all legal, consequential damages, which may be sustained by any person by reason of the carelessness, negligence, or misconduct of any of the agents or servants of said company, in the course of their employment in the construction or use of the railways aforesaid, any or either of them.

Your petitioner only files herewith Sections 5 and 6 of said ordinance, but refers to the entire ordinance in that behalf, and will, if desired, furnish, as a part of this petition, a copy of said entire ordinance.

That said ordinance and the acceptance thereof by said Citizens' Street-railway Company constituted a contract existing by and between the City of Indianapolis and the Citizens' Street-railway Company, which contract continued in full force unaltered, unchanged and unvaried, until, to-wit: the 2d day of April, 1878; that up to said last named date, the system of street railway constructed under said

ordinance of 1864 was comparatively small, and only extended upon a small number of streets in said city; that said city, having increased largely in population and extent, the citizens and the Common Council thereof, and the residents of other portions of said city were desirous that other street railway tracks should be laid and the system extended; that prior to said last named date, the system consisted of a number of short lines, upon each of which a fare of five cents was charged; that although the different lines connected, there was no interchange of business, and additional fares were charged upon transfer from one line to another, and passengers were required to change cars, and upon the change of cars, were required to pay a new and additional fare; that among other lines then operated by said Citizens' Street-railway, was one beginning at the intersection of Christian and College avenues in said city, and running in a southwesterly direction to the Union Railway tracks on South Illinois street, upon which full fare was charged from any portion of said line to any other portion thereof, and upon said last named date it was especially desired by the Common Council and Board of Alderman of said city and by the residents of said city that said last mentioned line should be extended north on College avenue from Christian avenue to Seventh street and south through a tunnel passing under the Union Railway tracks on Illinois street, along Illinois street and South Meridian street to Morris street, being a street about a mile south of said Union Railway tracks, the whole extension at both ends of said line amounting to about a mile and a half of additional track. And in order to induce said Citizens' Street-railway Company to extend its lines, and particularly the line last above mentioned, and to induce said company to transport passengers from the northern terminus of said last mentioned line to the southern terminus thereof for one fare of five cents, and in order to induce said Street-railway company to extend its lines generally, and lay them upon various other streets of said city where there were no street-car facilities, so that the citizens of that portion of the city might be generally provided therewith, the said Common Council and Board of Aldermen of said city, on said 2d day of April, 1878, duly passed and ordained the following ordinance, to-wit:

SECTION 1. Be it ordained by the Common Council and Board of Aldermen of the City of Indianapolis, That Section 5 of the above entitled ordinance be amended so as to read as follows, to-wit: Section 5. The track of any such railway shall not be elevated above the surface of the street, and the same shall be laid so as to conform to the established grades of the streets of said city and in such manner as to be no unnecessary impediment to the ordinary use of the streets, and the passage of wagons, carriages and other vehicles upon, along or across said tracks, at any point and in any and all directions, with suitable bridges at all the gutters, so as to permit the free and unimpeded flow of water in and along said gutters. The said company shall keep the space between their tracks, and two feet on the outside of each rail, together with all bridges at the crossings of gutters, at all times, in good repair, to the satisfaction of the Common Council and Board of Aldermen, and shall also cause the space between their tracks, and two feet on the outside of each rail, to conform to the grade of the street on which the same is laid. And if said company shall fail or refuse to repair any street or bridge in such way or manner as the Common Council and Board of Aldermen shall direct, or shall fail or refuse to make the space between the tracks, and two feet on the outside of each rail, conform to the grade of the street upon which the same is laid, for a period of ten days after having been notified so to do by the order of said Common Council and Board of Aldermen, then said Council and Board shall have the right to prevent the use of the track by causing the rails to be removed therefrom. And if said company shall, within six months from the first day of April, 1878, extend their

tracks on South Illinois street, through the tunnel, and thence south along said street to Russell avenue, and thence along said avenue to South Meridian street, and thence along said street to Morris street, and shall operate the same so as to carry passengers from Morris street to and from Seventh street and College avenue, and to and from all intermediate points on said route, for one five-cent fare: then said company shall have the right to construct their said tracks through the South Illinois street tunnel: *Provided*, That two tracks shall be built in each of the approaches of the tunnel, and one track through each of the roadways, and all cars going south shall run through the west roadway, and those running north through the east roadway, and, *Provided, further*, that said company shall keep the roadways in said tunnel, and its approaches, in good repair, to the satisfaction of the Common Council and Board of Aldermen, and that said company shall at all times keep the bottom or floor of such roadway planked with good two-inch oak plank, and that in laying said tracks through said tunnel and its approaches, the same shall be laid in such a manner as to be no impediment to the ordinary use of the same, as a street, and the passage of wagons, carriages and other vehicles along and across the said tracks. And upon a failure of the said company to comply with any of the provisions of this ordinance for a period of ten days after being notified so to do, by the order of the Common Council and Board of Aldermen, the said Council and Board of Aldermen shall have the right to prevent the use of tracks by removing the rails therefrom. The said Common Council and Board of Aldermen reserve the right to close up and discontinue the use of said tunnel at any time that they may deem such action to be to the best interest of the city, without in any manner becoming liable to said company for any damages on account thereof. And said company, in consideration of the amendments as herein provided, to the fifth and sixth sections of the ordinance of January 18, 1864, shall construct, build and operate one and one-half miles of new tracks in addition to those now built and constructed, and in addition to the new track herein provided for on South Illinois street, Russell avenue and South Meridian streets, within three years from and after January 1, 1879, one-half mile of which shall be built at least, each year, and said new tracks shall be constructed upon and along streets or portions of streets not now provided with a street-railroad, and shall not now include any additional track that may be laid alongside of any track on any streets now having a street railroad track constructed upon them. And upon a failure of said company to comply with any of the provisions of this ordinance, the Common Council and Board of Aldermen of said city shall have the right to at once repeal this ordinance and provide for the enforcement of sections five and six of the ordinance of January 18, 1864.

SEC. 2. That Section 6 of said ordinance be amended to read as follows: Section 6. All tracks of any such railway shall be of uniform gauge, now exceeding five feet in width, and shall be composed of the most improved rail. The Common Council and Board of Aldermen of said city shall, at any time, have the power to order the said company to cause any such track or tracks to be taken up and relaid whenever it shall be necessary for the purpose of grading any street, constructing sewers, or laying water or gas pipes therein. And the said company shall be liable for any legal consequential damages which may be sustained by any person by reason of the carelessness, negligence, or misconduct of the agents or servants of said company, in the course of their employment in the construction or use of the railroads as aforesaid, any or either of them, and should the city be sued therefor, the said company, or some officer thereof, shall be notified of such suit, and thereupon it shall be the duty of the company to defend or settle the same: and should judgment go against the city in any such case, the city shall recover the amount thereof, with all costs, from the company, and the record of the judgment against the city shall be conclusive evidence in the cause to entitle the city to recover in any court therein against the company: *Provided*, That the expense of taking up and relaying said tracks shall be paid by any corporation requiring such work to be done, other than the city of Indianapolis, her contractors or servants, which are to be held free from all costs or expenses therefor.

SEC. 3. This ordinance shall take effect and be in force from and after its passage: *Provided*, There shall be filed with the Mayor of the city within thirty days

from the date of such passage, a certified copy from the records of said Citizens' Street-railway Company of a resolution of the board of directors of said company, accepting the terms and conditions herein provided, which certified copy shall be reported by the Mayor to the Common Council and Board of Aldermen, and spread upon the records of the proceedings of said bodies.

Passed by the Common Council April 1, 1878.

Attest: BENJ. C. WRIGHT,
City Clerk.

J. CAVEN,
Mayor.

Passed by the Board of Aldermen April 2, 1878.

Attest: GEORGE T. BREUNIG,
Clerk Board of Aldermen.

H. C. NEWCOMB,
President.

Ordained and established this 2d day of April, 1878.

Attest: BENJ. C. WRIGHT,
City Clerk.

J. CAVEN,
Mayor.
H. C. NEWCOMB,
President Board of Aldermen.

Which said ordinance was duly accepted and acted upon by said Citizens' Street-railway Company, and said extensions of its former system, especially provided for in said ordinance, were at once made in accordance therewith, and passengers were, and ever since have been, carried upon said lines for one fare of five cents as provided in said ordinance; and in addition to said extensions especially contemplated and provided for in said ordinance, said Citizens' Street-railway Company and its successor, as hereinafter shown, have greatly extended the system of street-railways existing in the City of Indianapolis on and prior to said 2d day of April, 1878, there having been built since that time at least thirty miles of additional street-railway track, all of which was constructed and has since been operated in reliance upon said ordinance of April 2d, 1878, and in consideration of which said street-railway company and its successor, as hereinafter stated, have expended very large sums of money; and said ordinance of April 2d, 1878, became, was, and is a contract between the said City of Indianapolis and said Citizens' Street-railway Company, binding and obligatory not only upon the City of Indianapolis as then constituted, and existing, but upon said city of Indianapolis as it has ever since existed, without reference to changes in the laws of the State in relation to its Government; and said contract has ever since remained in full force and effect.

Your petitioner further shows that subsequent to the passage of said ordinance of April 2d, 1878, the City of Indianapolis, by G. O. No. 4, 1884, a copy of which is in the words and figures following, to-wit:

G. O. No. 4, 1884. An ordinance to amend Section 1 of an ordinance entitled "An ordinance to amend Section five (5) and six (6) of an ordinance, entitled 'An ordinance authorizing the construction, extension and operation of certain passenger railways in and upon the streets of the City of Indianapolis,' ordained and established January 18, 1864, which amendatory ordinance was ordained April 2, 1878."

SECTION 1. Be it ordained by the Common Council and Board of Alderman of the City of Indianapolis, That Section one (1) of the above recited ordinance of April 2, 1878, be and the same is hereby amended so as to read as follows, to-wit: Section 1. That Section five (5) of said original ordinance of January 18, 1864, shall read as follows: Section 5. The tracks of said railway company shall not be elevated above the surface of the street where laid, and the rails shall be so laid as to conform to the established grades of the street on which the same are laid, and in such a manner as to be no unnecessary impediment to the ordinary use of such streets

and the convenient passage of vehicles upon, along, or across said tracks at any point in any direction. All gutter crossings shall be properly bridged and kept in repair by said company, so as to permit the free and unimpeded flow of water in and along said gutters. Whenever any street shall be improved from curb to curb, on which said railway company has laid any track or tracks, such improvement shall be under a contract let by the City to the best bidder, as required by law; and in all cases of such original improvements, said railway company shall pay and be liable to the contractor doing the work, for an amount equal to the proportion that nine feet bears to the whole width of the roadbed (or street from curb to curb), if there be a single track only on such street, and in the proportion that eighteen feet bears to the whole width of the roadbed (or street from curb to curb), if there be a double track on such street, such proportion to be estimated by the City Civil Engineer. No account shall be taken of any switches or sidetracks in making said estimates. If said company shall fail or refuse to pay said contract for the work according to the Engineer's estimates, as allowed by the Common Council and Board of Aldermen, for a period of twenty days after such allowance, then, in that case, said contractor shall be entitled to recover from said company the amount of such estimate, together with one per centum of the amount thereof in addition, for each and every day thereafter until the same shall be paid, in any court of competent jurisdiction. If said company shall fail to keep all streets used by it in repair, as aforesaid, or shall fail or refuse to make any and all repairs ordered by said Common Council and Board of Aldermen, for a period of two days after notice so to do, then the City may do the work through her Street Commissioner, and recover the cost thereof, with ten per cent. damages, from such company, or said city shall have the right to remove the rails of the tracks of such company for any distance determined and ordered by the Common Council and Board of Aldermen.

In case the City shall cause any change in the crown or level of any street on which any track of such company is laid, to be made, in the future improvement of any street, said company shall at once cause its tracks to be changed and relaid in conformity to such change, so as not to interfere with travel on such street beyond the time when the contractor improving such street shall complete his work, and should said company fail or refuse to comply with this, or any other provisions or requirements contained in this ordinance, then and in that case, the Common Council and Board of Aldermen shall have the right to declare all the rights, franchises and grants of said company in said City, forfeited, and prevent the further use of the streets by said company.

The Common Council and Board of Aldermen reserve the right to close up and discontinue the use of the tunnel under the railroad tracks on South Illinois street at any time they may deem such action to be to the best interests of the city, as provided in the ordinance to which this is amendatory, without in any manner becoming liable to said company for any damages on account thereof.

SEC. 2. This ordinance shall take effect and be in force from and after its passage.

Passed by the Common Council, this 23d day of February, 1884.

Attest: GEO. T. BREUNIG,
City Clerk.

JOHN L. McMASTER,
Mayor.

Passed by the Board of Aldermen the 14th day of April, 1884.

Attest: FRANK W. RIPLEY,
Clerk.

BRANARD RORISON,
President.

Ordained and established the 14th day of April, 1884.

Attest: GEO. T. BREUNIG,
City Clerk.

JOHN L. McMASTER,
Mayor.
BRANARD RORISON,
President B. of A.

Was attempted to be passed and ordained by the Common Council and Board of Aldermen of the City of Indianapolis, without the consent of the Citizens' Street-

railway Company; that the provisions thereof were never accepted by said Company, nor was the same in any way recognized as having any force or effect whatever, or as in any way modifying the contract between said Citizens' Street-railway Company and said City, as so created, established and existing under and by virtue of said ordinance of April 2nd, 1878, as hereinbefore set forth. And thereafter, in the month of April, 1888, the Citizens' Street-railroad Company having been properly incorporated under the general laws of the State of Indiana in that behalf enacted, by purchase, transfer and assignment succeeded to all the property, rights of every kind, character and description of said Citizens' Street-railway Company, and thereupon the then Common Council and Board of Aldermen of the City of Indianapolis, by its ordinance duly passed and ordained, approved and ratified said transfer, and extended to said Citizens' Street-railroad Company all the rights, privileges and benefits that had theretofore been granted to its predecessor, the Citizens' Street-railway Company, which said last named ordinance is in the words and figures following, to-wit:

An ordinance approving the sale and transfer to the Citizens' Street-railroad Company of Indianapolis, Indiana, its successors and assigns, of all the property, rights, privileges, and franchises of the Citizens' Street-railway Company of Indianapolis, Indiana, and confirming unto said first named company all the rights, privileges and franchises of the latter company, subject to all the duties and obligations under which said rights, privileges, and franchises have been heretofore held by said last named company.

WHEREAS, The Citizens' Street-railway Company of Indianapolis, Indiana, has sold and transferred to the Citizens' Street-railroad Company of Indianapolis, Indiana, its successors and assigns, all the property of every description, franchises, and privileges heretofore granted to the said railway company by said city, with and subject to all the obligations and requirements heretofore imposed and now resting on said railway company, therefore,

SECTION 1. Be it enacted by the Common Council and Board of Aldermen of the City of Indianapolis, That the sale and transfer heretofore made by the Citizens' Street-railway Company of Indianapolis, Indiana, of all its property, rights, franchises, and privileges in the City of Indianapolis, to the Citizens' Street-railroad Company of the City of Indianapolis, its successors and assigns, subject to all the duties, conditions, and obligations theretofore imposed and now resting on said railway company, be and the same is hereby in all things ratified and approved; and all said rights, privileges, and franchises heretofore possessed by said old corporation granted to and confirmed in said new corporation, its successors and assigns, subject to the same duties and obligations as rested on said old corporation.

SEC. 2. This ordinance shall take effect and be in force from and after its passage.

Which said last named ordinance was thereupon duly accepted by said Citizens' Street-railroad Company immediately upon its passage, and by said transfer and ordinance said Citizens' Street-railway Company succeeded to all the rights, privileges and immunities of the said Citizens' Street-railroad Company; and by reason thereof said Citizens' Street railroad Company, after the acceptance of said last named ordinance and long prior to the passage of said Special Ordinance No. 59 of 1890, providing for the improvement of said Madison avenue, as hereinbefore set forth, became and was entitled to use the streets of the City of Indianapolis, free from any duty whatever of paying for any portion whatever of the cost of improving the whole or any portion of the streets upon which it had located its lines of street railroad, and subject only to the provisions contained in said ordinance of April 2, 1878, touching the repair of such portion of the street as might be occupied by it in connection with the operation of its street railway system.

Your petitioner further shows not only that said Citizens' Street-railroad Company has always claimed and maintained said right, but that in the opinion of your petitioner, the claim of said Citizens' Street-railroad Company is well founded in point of law; that while said Citizens' Street-railroad Company was making such claim as to its rights and as to its immunity from any charge whatever on account of the improvement of any streets upon which it had located and was operating its lines, certain parties, to-wit: The Western Paving and Supply Company having therefore contracted with the City of Indianapolis for the improvement of a portion of Pennsylvania street, under and by which contract the authorities of the City of Indianapolis had undertaken and assumed to require the Citizens' Street-railroad Company to pay a certain proportion of the cost of improving said street, and the Citizens' Street-railroad Company having refused to pay the whole or any portion of said cost, instituted in the Circuit Court of Marion County, its certain action against said Citizens' Street-railroad Company to require it to pay its said proportion of such expense, said cause so instituted being known and designated as Cause No. 5126 of said Circuit Court, and such proceedings were had in said cause that issue having been joined therein, it was held and adjudged by said court, that said General Ordinance No. 4 of 1884, and all proceedings and ordinances subsequent thereto, in and by which it was attempted to charge said Citizens' Street-railroad Company with any portion of the expense of the improvement of the streets upon which its line was located, were inoperative and void; that said ordinance of April 2nd, 1878, as hereinbefore set forth, and the acceptance thereof by said Citizens' Street-railway Company, constituted a valid and subsisting contract between the City and the said Citizens' Street-railway Company, in and by which said Citizens' Street-railway Company was exempted from any liability for contributing to any expense of improving the streets upon which its said lines had been located and established, and that by the transfer from the Citizens' Street-Railway Company to the Citizens' Street-railroad Company, all the rights and immunities in that behalf of the Citizens' Street-railway Company, passed to and vested in the Citizens' Street-railroad Company, and that the Citizens' Street-railroad Company was and is not liable to contribute to any extent whatever to the expense of improving any streets upon which its lines of railroad were located, and an appeal having been taken from the judgment of said Circuit Court to the Supreme Court of the State, said judgment was in all things affirmed by said Supreme Court, the opinion in that behalf being reported in 128th Ind. at page 525; and it was, and is, and has been, therefore, the settled law of this State, since the passage of the ordinance of 1888, hereinbefore referred to, that said Citizens' Street-railroad Company is not, and can not be, held liable, directly, or indirectly, for any portion whatever of the cost of improving any street in the City of Indianapolis upon which its lines are located, save and except in so far as it may own property adjacent to the street upon which such improvement has been located, and your petitioner says that there was and is no warrant of law whatever for attempting to require your petitioner, under his said contract with the City for the improvement of Madison avenue, or under said Special Ordinance No. 59 of 1890, as hereinbefore set forth, or under any ordinance or ordinances whatever of said city, to collect any portion whatever of the expense of said improvement from said Citizens' Street-railroad Company, but that by virtue of the Statute in such cases made and provided, it became and was the duty of said City of Indianapolis to provide, by proper ordi-

nance and proper contracts, for the assessment of the entire cost of any improvement made upon any street, and especially of the improvement of said Madison avenue, against the adjacent property-holders according to their frontage upon said street and against the City of Indianapolis for any property held by it fronting upon said street, and for the street and alley crossings, and any and all provisions in said Special Ordinance No. 59, or in the contract between your petitioner and said City thereunder, purporting, professing, or attempting to have your petitioner to look to said Citizens' Street-railroad Company for any portion of expense, or to exempt the adjacent property-holders and the City of Indianapolis from any portion of the expense thereof, by requiring the same to be paid by said Citizens' Street-railroad Company, were and are wholly inoperative and void, and that said contract and said Special Ordinance No. 59 of 1890 should be construed as though each and every expression therein contained, looking to the collection of any portion of said expense from said Citizens' Street-railway Company, or relieving the adjacent property holders in said City of Indianapolis therefrom, as though the same had been entirely eliminated from said ordinance and said contract, and as though said ordinance and contract had in and by their terms provided for the assessment of the entire expense of said improvement upon the adjacent property by the front foot, and against the City of Indianapolis as to the expense for said street and alley crossings. And said City Civil Engineer in making said first and final estimate for the expense of said improvement ought to have estimated no part of the same against said Citizens' Street-railroad Company, but, on the contrary, should have estimated the entire expense thereof, ratably and proportionately, against the adjacent property holders and said City of Indianapolis, and that in passing upon said estimate said Common Council and Board of Aldermen ought to have required said City Civil Engineer to have estimated and apportioned the entire expense against said property holders and said city, and ought not to have approved the estimate and assessment so submitted by said City Civil Engineer, as hereinbefore set forth.

Your petitioner further shows that the contract price, which by the terms of his contract he was entitled to receive from said city and from the adjacent property holders, he has hitherto wholly failed and refused, by reason of said mistaken estimate so made by said City Civil Engineer and so approved by said Common Council and Board of Aldermen, the sum of \$1,812.58. He submits and shows that the amounts assessed against said property holders and against said city are $12\frac{9}{10}$ per cent. too small, to-wit: That the amount assessed against said city should have been the sum of \$1,641.89, and that the amount assessed against the individual property holders in the aggregate should have been the sum of \$14,231.05, being an increase of $12\frac{9}{10}$ per cent. upon each and every of said property holders and said City of Indianapolis. That by virtue of the statute in such cases made and provided, he is remediless to enforce his just claims for such additional amount of \$187.33 against the City of Indianapolis, and \$1,625.25 against the several property holders until after he shall have received an additional and final estimate therefor from the City Civil Engineer, said estimate, by said City Civil Engineer, being a condition precedent to the right of your petitioner to recover of and from the city, and of and from the several property holders, the balance still due to your petitioner for and on account of said work so performed by him.

He submits that inasmuch as there might be doubts in the mind of the present City Civil Engineer as to his duty or right to make such additional and correct estimate, without the express authority and direction of your honorable body, that a resolution or ordinance should be adopted by your honorable body directing the City Civil Engineer to make an additional and final estimate of the expense of said work, estimating against said City of Indianapolis and the various property holders adjacent to the line of said improvement an addition of $12\frac{9}{10}$ per cent. on the estimate heretofore made, or such other per cent. as, upon an investigation by your honorable body, should be deemed to be right and proper, in order to enable your petitioner to receive the balance of \$1,812.58 still due and owing him for and on account of said improvement.

Your petitioner therefore demands and prays that a resolution, ordinance, or other proper form of an order, be passed or ordained by your honorable body directing your said City Civil Engineer to make a further, additional and final estimate of the expense occasioned by the improvement of said Madison avenue under said contract, and that said City Civil Engineer be required to take such proper steps in that behalf as will enable your petitioner to receive from said City of Indianapolis and said property holders the balance so still due and owing to your petitioner, as above heretofore shown, and your petitioner will ever pray, etc.

ROBERT KENNINGTON,
Contractor.

By HAWKINS & SMITH and
WILLIAM A. KETCHAM,
His Attorneys.

INDIANAPOLIS, May 21, 1894.

Which was referred to Committee on Judiciary.

Mr. Kaiser called up the following resolution:

Resolved by the Common Council of the City of Indianapolis, That the following named persons be, and they are hereby appointed Inspectors and Judges of the Election to be held in the following School Commissioners' Districts, June 9, 1894:

District No. 1. Inspector—George Kothe; Judges—Charles W. Nickum, Thomas Cottrell.

District No. 2. Inspector—Daniel L. Wood; Judges—J. H. Eagle, T. E. Johnson.

District No. 9. Inspector—Joshua Zimmerman; Judges—Philip Reichwein, Emil Rassmann.

District No. 10. Inspector—William T. Brown; Judges—Henry L. Smith, John R. Budd.

District No. 11. Inspector—A. J. Gardner; Judges—Joseph G. Stemmen, Henry Voight.

Mr. Kaiser moved that resolution be adopted.

Which motion prevailed by the following vote:

AYES 20—viz: Messrs. Allen, Costello, Drew, Hennessy, Kaiser, Koehring, Krauss, Magel, Merritt, Murphy, O'Brien, Puryear, Rauh, Ryan, Schmid, Shaffer, Stein, Stott, Young and President Cooper.

NAYS—None.

ORDINANCES ON SECOND READING.

On motion of Mr. Allen, the following entitled ordinance was taken up, read second time, ordered engrossed, and then read the third time:

G. O. No. 36, 1894. An ordinance approving a certain contract, granting Frank Mummenhoff the right to lay and maintain a switch or side-track across Alabama street, at a point 130 feet south of the south property line of Maryland street, in the City of Indianapolis, Indiana.

And was passed by the following vote:

AYES 20—viz: Messrs. Allen, Costello, Drew, Hennessy, Kaiser, Koehring, Krauss, Magel, Merritt, Murphy, O'Brien, Puryear, Rauh, Ryan, Schmid, Shaffer, Stein, Stott, Young and President Cooper.

NAYS—None.

On motion of Mr. Drew, the following entitled ordinance was taken up, read second time, ordered engrossed, and then read the third time:

G. O. No. 37, 1894. An ordinance providing for the change of the name of Tennessee street to Capitol avenue, and fixing the time when the same shall take effect.

And was passed by the following vote:

AYES 17—viz: Messrs. Allen, Drew, Hennessy, Kaiser, Koehring, Krauss, Magel, Merritt, O'Brien, Puryear, Rauh, Schmid, Shaffer, Stein, Stott, Young and President Cooper.

NAYS 3—viz: Messrs. Costello, Murphy and Ryan.

On motion of Mr. Rauh, the following entitled ordinance was taken up, read second time, ordered engrossed, and then read the third time:

App. O. No. 7, 1894. An ordinance appropriating the sum of six thousand dollars for the use of the Department of Law for the payment of judgments, compromises and costs.

And was passed by the following vote:

AYES 20—viz: Messrs. Allen, Costello, Drew, Hennessy, Kaiser, Koehring, Krauss, Magel, Merritt, Murphy, O'Brien, Puryear, Rauh, Ryan, Schmid, Shaffer, Stein, Stott, Young and President Cooper.

NAYS—None.

On motion of Mr. Drew, the following entitled ordinance was taken up and read the second time:

G. O. No. 35, 1894. An ordinance defining a part of the boundary line of the City of Indianapolis, Indiana, so as to extend the same, and annexing to the City of Indianapolis certain territory contiguous thereto; providing for the publication thereof, and fixing the time when the same shall take effect.

And, on motion of Mr. Drew, was stricken from the files by the following vote:

AYES 15—viz: Messrs. Allen, Drew, Hennessy, Kaiser, Koehring, Krauss, Magel, Merritt, Murphy, Rauh, Ryan, Shaffer, Stein, Stott and President Cooper.

NAYS 5—viz: Messrs. Costello, O'Brien, Puryear, Schmid and Young.

On motion of Mr. Young, the Common Council, at 9:45 o'clock P. M., adjourned.

W. H. Cooper

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President.

ATTEST:

Lee Kirk

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City Clerk.