

*Law Department,
Office of the Counsel to the Corporation.*

R. *New York,* June ^{22⁸} 1895

y.e.

Hon. William L. Strong,

Mayor.

S i r :-

I respectfully beg leave to call to your attention the condition of affairs in which the long pending project for the construction of a public building, commonly called the Municipal Building, has been left by recent legislation, and would suggest action in respect to the claims of architects who have filed plans for said building.

Under various statutes known as Chapter 323 of the Laws of 1888, Chapter 299 of the Laws of 1890, Chapter 414 of the Laws of 1892, (the latter was repealed by Chapter 547 of the Laws of 1894) and Chapter 750 of the Laws of 1895, certain powers were given to a Commission composed of the Commissioners of the Sinking Fund, the Surrogate, the County Clerk and the Register to provide for the building already referred to.

Under this Act certain proceedings were had and plans advertised for.

One hundred and thirty-four plans were filed with the Comptroller by architects and after an examination thereof a Committee of consulting architects ap-

pointed by the Commission, reported that certain specified plans, six in number, were the best, but they did not recommend any one plan as being suitable for the building.

Before the Commission came to any conclusion in this matter, Chapter 547 of the Laws of 1894, by repealing Chapter 414 of the Laws of 1892, prohibited the building of the Municipal Building in the City Hall Park and thereby rendered useless all the plans previously filed.

No action was taken by the Commission and a proceeding for a mandamus to compel them to act was denied by Judge Barrett at Special Term, Supreme Court.

Thereafter a number of architects who filed plans made claim to compensation from the city on the ground that although the Board of Commissioners appointed under the statute had refused to act, yet, that as they had, at the invitation of this Board, which was as they claim, the city's agent, prepared plans, the city was liable to them for such amount as would afford them reasonable compensation for their labor.

Only one of these claims have so far taken the form of actual suit, it being evident that the others have been holding back to await the event of the first suit.

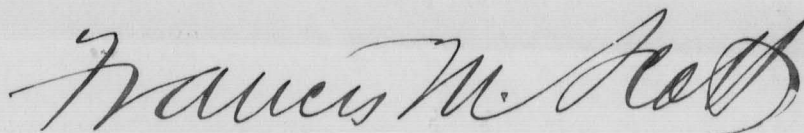
This suit, Audsley vs. The Mayor, has just been tried in the United States Circuit Court and the complaint dismissed by Judge Lacombe.

Under the provisions of Chapter 750 of the Laws of 1895, which was passed to alleviate the hardships occasioned by the non-action of the Board of Commissioners, the Board of Commissioners has ample power to act, and I would most respectfully urge speedy action by that Board in compliance with this last named statute which is herewith enclosed.

I think this course is not only just to the architects who have submitted plans, but will also be a very wise one for the protection of the interests of the city as it will either prevent the bringing of further suits or if these suits are brought, will deprive them of any importance.

I would therefore respectfully suggest that there be an early meeting of the Commission of which **you** are Chairman, and that prompt action be taken as indicated in Chapter 750 of the Laws of 1895.

Yours respectfully,

A handwritten signature in cursive script, reading "Francis M. Roth". The signature is written in dark ink and is positioned above the typed name and title.

Counsel to the Corporation.

One enclosure.

Communication.

— FROM —

COUNSEL TO THE CORPORATION.

In the matter of the
distribution of prizes
to architects for
plans for new
Municipal Bldg.

DATED NEW YORK,

*Law Department,
Office of the Counsel to the Corporation.
New York, June 24 1895.*

Hon. William L. Strong,

Mayor.

Sir:-

Herewith I beg to transmit a copy of the report
of the transactions of the Law Department for the year
1894.

Yours respectfully,

Francis M. Hall

Counsel to the Corporation.

*Law Department,
Office of the Counsel to the Corporation.*

B.-M.

New York, June 28, 1895.

Hon. William L. Strong,

Mayor.

Sir:-

Referring to the question submitted to me in relation to the resolution of the Common Council now before you, for your consideration, giving the consent of the City authorities to certain extensions of street railroads in the northern part of the city, upon the application of the Third Avenue Railroad Company, I have to say:-

That Section 93 of the Railroad Law provides as follows:-

"The consent of the local authorities in cities containing twelve hundred and fifty thousand inhabitants or more, according to the last Federal census or State enumeration, must contain the condition that the right, franchise and privilege of using any street, road, highway, avenue, park or public place shall be sold at public auction to the bidder who will agree to give the city the largest percentage per annum of the gross receipts of such corporation, etc.

If the resolution of the Board is approved by the Mayor, the franchise must still be offered at public auction, and the question then arises whether, under the route authorized by the resolution fair competition by prospective bidders is possible.

The Third Avenue Railroad Company having a road now constructed through 125th Street to the Fort Lee Ferry, and also up Tenth Avenue as far as 185th Street, will be in a position, without further application to the

local authorities, if they should prove to be the highest bidder and the franchise sold to them, to proceed with the construction of the extension.

Any other corporation, however, which might desire to bid for the proposed franchise would be seriously embarrassed by the fact that the proposed route is so laid out that even if it obtained the franchise it would become necessary for it to again apply to the local authorities for a further consent in order to connect the new system with the existing system. Under the provisions of law one railroad cannot be laid down in a street already occupied by a railroad company without the consent of the company already in possession. (Section 102 of the Railroad Law).

While there is a provision in the law, in Section 93, as follows:-

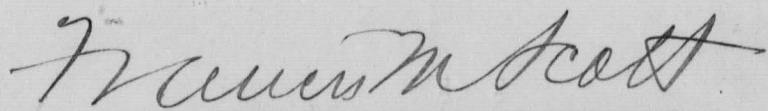
"Whenever it shall be desired to unite two
"street surface railroad routes at some point not
"over one half mile from such respective lines or
"routes, and establish by the construction of such
"connection a new route for public travel, and the
"corporation or corporations owning or using such
"railroads shall consent to operate such connection
"as a part of a continuous route for one fare, and
"it shall appear to the local authorities that such
"connection cannot be operated as an independent
"railroad, without inconvenience to the public, but
"that it is to the public advantage that the same
"should be operated as a continuous line or route
"with existing railroads * * no sale of such
"franchise shall be made as provided in this section,
"but any consent of the local authorities for the
"construction and operation of such connection, ex-
"tension or branch shall provide that the corporation
"or corporations operating such connection, extension
"or branch shall pay into the Treasury of said city
"annually the percentage provided for extensions or
"branches in section ninety-five of this chapter, for
"the purposes, at the times, in the manner and upon
"the conditions set forth in such section."

further proceedings would be necessary to obtain the consent to make the connection with the existing lines and those laid down in the resolution now pending.

You will observe from the citations from the Railroad Law above quoted, and from the actual situation of affairs, that the company applying for the extension under consideration must of necessity be at some advantage in bidding for the franchise, since if it should be the successful bidder nothing will be left to be done by it to take advantage of the extension granted, whereas its only possible competitor, while it might deem it worth while to bid upon the franchise, yet if it should be successful would be obliged to initiate and carry through further proceedings before it could avail itself of the full advantage of the extension granted by connecting it with its existing line.

It is doubtless true that any existing company applying for an extension of its route would seek to obtain one which would be more favorable to itself than to any other company; but I have no doubt that a route could be laid out which would be equally accessible to the two great street railroad systems, and upon the sale of which an absolutely fair and equal competition could be secured.

Yours very truly,



Counsel to the Corporation.

Opinion.

— FROM —

COUNSEL TO THE CORPORATION.

26

DATED NEW YORK,

June 28

*Law Department,
Office of the Counsel to the Corporation.
New York.* July 2nd, 1895.

O'T.-D.

HS

Hon. William L. Strong,

M a y o r .

S i r :-

I beg to acknowledge the receipt of a communication signed by your confidential clerk Mr. Burrows, and dated the 27th of June, 1895, transmitting by your direction a resolution of the board of aldermen, number six hundred and twenty-eight, for my examination and report.

The resolution in question amends an ordinance, which, as I understand it, now reads as follows:

"§477. Any duly licensed hackney coach or cab shall stand while waiting for employment, at one of the following places, and for the periods of time hereinafter provided;

"Stand No. 20. At all railroad depots, five minutes previous to the arrival of all passenger trains, except at the Grand Central Depot, where licensed owners and drivers may solicit passengers at the full front of said depot, outside the curb-stone, at Forty-second street, without their vehicles."

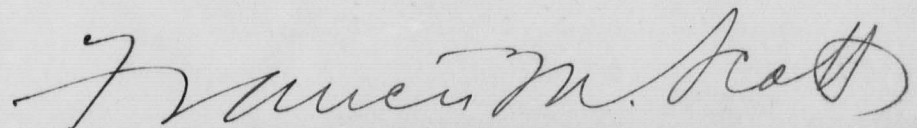
By the proposed amendment the ordinance from the words, "Stand No. 20", reads as follows:

"At all railroad depots, five minutes previous to the arrival of all passenger trains, licensed owners and drivers may solicit passengers without their vehicles, except that at the Grand Central Depot such hackmen shall not stand on the sidewalk more than three feet within the curb."

The effect of the proposed amendment, if the existing ordinance is as I have above quoted it, will compel hackmen at all stations in the City to stand without their vehicles when soliciting passengers for the time prescribed before the arrival of trains, but in the case of the Grand Central Station will permit them to encroach three feet upon the curb-line.

Such an ordinance it is within the power of the board to pass, and I advise you accordingly.

Yours truly,

A handwritten signature in cursive script, reading "Francis M. Hall". The signature is written in dark ink and is positioned above the typed name.

Counsel to the Corporation.

Opinion.

— FROM —

COUNSEL TO THE CORPORATION.

Waskewich's
Resolution

28

DATED NEW YORK,

July 2

See 9433
Duple

In Common Council.

Resolved

That permission be and the same is hereby given to
Jacob H. Schiff, to erect a fountain in
the square at the junction of Canal Street
and East Broadway as shown on the accompanying
diagram

the material furnished and the water supplied and to the satisfaction
the work to be done at his own expense, under the direction of
the Commissioner of Public Works, such permission to continue
only during the pleasure of the Common Council.

Adopted by the Board of Aldermen November 20th 1894.
a majority of all the members elected voting in favor thereof.

Approved by the Mayor, November 27th 1894.

Michael J. Blake
Clerk of the Common Council.

9767

Resolution

Permitting Jacob.

H. Schiff. to erect a
fountain at the junction
of Canal St and East
Broadway.

KUHN, LOEB & CO.

27 & 29 Pine Street,

New York July 1st 1895.

Hon. Wm. L. Strong, Mayor,

New York.

Dear Sir:-

Referring to my communication of the 24th ulto., and your reply thereto, upon the subject of the fountain at Rutgers Square, I request that prompt action be taken in taking over the fountain on behalf of the City. At present no one has the responsibility to care for the fountain, and as it is, the basin is, as I am informed, made a receptacle for the refuse of the neighborhood, and, instead of becoming an ornamentation to Rutgers Square, the fountain will, if permitted to continue uncared for, likely soon grow into a nuisance.

Respectfully,

Jacob H. Schiff

City of New York
Department of Public Parks
4 and 51 Chambers St.
THE ARSENAL, CENTRAL PARK.

COMMISSIONERS' OFFICE.

july 6th, 1895.

Hon. William L. Strong,
Mayor.

Sir:-

I am directed to acknowledge receipt of letter from your office under date of 3rd instant, enclosing letter from Mr. J. H. Schiff relative to a fountain in Rutgers Square, and to say that this Department has no knowledge of the former communication referred to by Mr. Schiff or of any letter having been received from him on this subject. I find that a resolution was adopted by the Board of Aldermen on November 20, 1894, and approved by the Mayor on November 27, 1894, granting Mr. Schiff permission to erect a fountain at the junction of Canal Street and East Broadway, the work to be done, the material furnished and the water supplied at his own expense, under the direction of the Commissioner of Public Works. The so-called Rutgers Square is simply an open paved space at the junction of Canal Street and East Broadway, over which this Department does not exercise any jurisdiction.

Very respectfully,

Charles L. F. Burns

Secretary, D.P.P.

Department of Public Works

Commissioner's Office

No. 31 Chambers Street

New York

July 11, 1895.

M

THE HONORABLE WILLIAM L. STRONG,

Mayor.

Dear Sir:

In the matter of the letter addressed to you by Mr Jacob H. Schiff with reference to a fountain erected by him in Rutgers Square, enclosing a letter from the Secretary of the Department of Public Parks saying that Department has no jurisdiction over the said square, I beg leave to report that I find that in November, 1894, the Board of Aldermen adopted a resolution which was approved on the 27th of that month by Mayor Gilroy, granting permission to Mr Schiff to erect a fountain in Rutgers Square (junction of Canal Street and East Broadway) at his own expense, the water to be supplied at his own cost also, and all to be done under the direction of this Department. Subsequently permission was given to tap the water-main to supply this fountain, without charge to Mr Schiff.

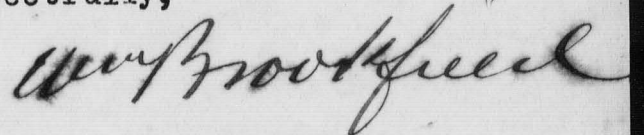
I enclose herewith copy of the resolution of the Board of Aldermen, referred to.

Mr Schiff asks that prompt action be taken by the City authorities to accept the fountain to be maintained hereafter as a City charge. I find no authority for doing this. Enquiry develops the fact that the Comptroller has received no notification from any authorized

branch of the City Government to assume responsibility for the maintenance of the fountain.

Under the circumstances, I can only await authorization from competent authority.

Very respectfully,

A handwritten signature in dark ink, appearing to read "Wm. B. Woodfield". The signature is written in a cursive style with a large, sweeping initial "W".

Commissioner of Public Works.

CITY OF NEW YORK.
OFFICE OF THE MAYOR.

July 12th, 1895.

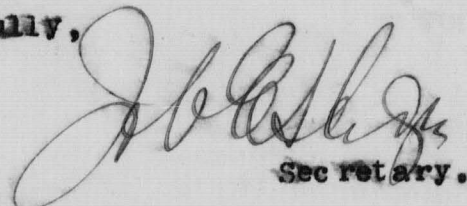
Hon. Ashbel P. Fitch,
Comptroller,
New York.

Dear Sir:-

Enclosed herewith please find various letters and documents relative to a fountain erected by Jacob H. Schiff in Rutgers Square, and which he desires to turn over to the City as its property and for its final care.

Will you kindly ascertain the correct mode of procedure in this matter, that I may, at the Mayor's request, communicate at an early date with Mr. Schiff.

Very respectfully,


Secretary.

*Law Department,
Office of the Counsel to the Corporation.*

M

New York. August 3^d 1895.

Fitch
Hon. Ashbel P. Fitch,
Comptroller.

S i r : -

I have received your letter, dated July 15th, 1895, with the correspondence in relation to the fountain erected by Mr. Jacob H. Schiff in Rutgers Square.

You request my consideration and advice in regard to what action should be taken by the city.

It appears that by resolution of the Common Council, approved by the Mayor, November 27, 1894, permission was given to Mr. Schiff to erect a fountain in the square at the junction of Canal street and East Broadway, the work to be done, material furnished and the water supplied at his own expense, under the direction and to the satisfaction of the Commissioner of Public Works.

Subsequently permission was given to tap the water main to supply this fountain without charge to Mr. Schiff.

He has written to the Mayor, under date of July 1, 1895, to the effect that he desires the city authorities to accept the fountain and maintain it hereafter as a city charge.

In a letter to the Mayor, from the Secretary of the Department of Public Parks, dated July 6, 1895, it is stated that the Park Department has no jurisdiction over the so-called Rutgers Square.

Among the papers is a letter from the Commissioner of Public Works to the Mayor, dated July 11, 1895, to the effect that he finds no authority for maintaining the fountain as a city charge, and that the Comptroller has received no notification from any authorized branch of the city government to assume the responsibility, and that he can only await the authorization of competent authority.

In a letter to you, dated July 12, 1895, the Secretary to the Mayor requests you to ascertain the correct mode of procedure.

It would seem that the power to take action rests with the Common Council.

By Sub-division 24 of Section 86 of the consolidation Act, the Common Council has power to make ordinances "In relation to the erection and repair of public fountains for the use of man and animals at convenient points along the streets and avenues and public places."

By Sub-division 25 of the same section the Common Council has power "by resolution to require the Commissioner of Public Works to do any work or take any action proper for carrying into effect the powers of the Common Council."

If this fountain is to become the property of, and be maintained by, the city, I think the proper course to attain this object is as follows :

Mr. Schiff should address a communication to the Common Council stating the facts in relation to this fountain, and formally presenting it to the city.

The Common Council should then pass a resolution accepting the same on behalf of the city, and a further resolution requiring the Commissioner of Public Works to assume control of the fountain, keep it in proper condition and supply it with water.

Very respectfully,

Wm. H. Thorne
Acting Counsel to the Corporation.

Communication.

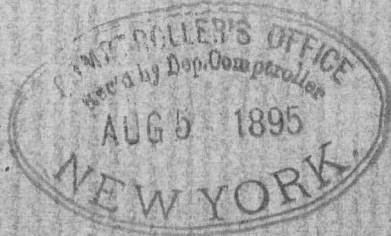
— FROM —

COUNSEL TO THE CORPORATION.

I refer to the fountain
erected by Mr Jacob
St. Schiff. - in
Rutgers Square

Copy of
Division
Sent to
Mr Schiff
Aug 7/95

29



DATED NEW YORK,

Aug 3. 1895

*City of New York,
Finance Department
Comptroller's Office*

AUGUST 6, 1895

JOB E. HEDGES, ESQ.,
Mayor's Secretary,

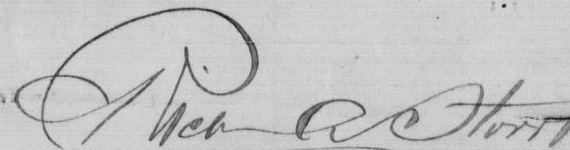
Dear Sir :

Herewith I enclose for the information of the Mayor, a communication received from the Counsel to the Corporation under date of the 3d inst., in relation to the fountain erected by Mr. Jacob H. Schiff in Rutgers Square.

I have forwarded a copy of the communication to Mr. Schiff.

The letters and documents received from you on the 12th ult. are returned herewith.

Respectfully,



Deputy Comptroller.

*Law Department,
Office of the Counsel to the Corporation.
O'R
New York.* August ^{12th} 1895.

Y. C.

Hon. William L. Strong,

Mayor.

S i r :-

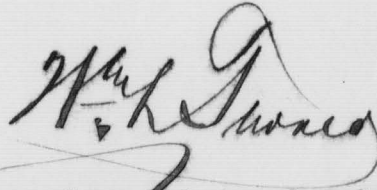
I am in receipt of a communication from Mr. Burrows, Confidential Clerk, stating that he transmits by your direction a resolution of the Board of Aldermen, No. 664, for my examination and report to your office at once.

The papers enclosed are a statute passed this year authorizing the Mayor, Aldermen and Commonalty of the city of New York to modify, alter or qualify any grant or conveyance heretofore made by them to the Hebrew Orphan Benevolent Asylum Society of the city of New York so as to permit or authorize the said Society to sell and convey in fee simple absolute the whole or any part of the premises conveyed to said Society by the Mayor, Aldermen and Commonalty of the city of New York, and by said statute said Society is permitted to devote the proceeds of such sale to the maintenance and support of said Society and to the orphans, half orphans and indigent children under its charge; also a resolution of the Board of Aldermen in reference to the matter and authorizing such sale, together with a report of the Committee of the

Law Department of the Board of Aldermen recommending the granting of the annexed petition of the Asylum Society for permission to sell the property specified therein.

Upon an examination of the resolution of the Board of Aldermen I am of the opinion that it conforms to the terms of and is authorized by the statute already referred to.

Yours,

A handwritten signature in cursive script, appearing to read "Wm. H. Turner". The signature is written in dark ink and is positioned above the typed name.

Acting Counsel to the Corporation.

Communication.

— FROM —

COUNSEL TO THE CORPORATION.

30

DATED NEW YORK,

Aug 12, 1895

*Law Department,
Office of the Counsel to the Corporation.*

O'R-
New York. August 15th 1895

Hon. William L. Strong,

Mayor.

S i r :-

I have received a letter from your secretary dated August 12th, 1895, enclosing a copy of a communication from L. B. Miller of Bradyville, Tenn.

It is stated therein that a lady of Louisville claims that there is an estate in New York City in the name of Robert Edwards, and that the heirs have instituted suit against the city and that the city has offered to compromise at One and one-half billion Dollars, and that the month of September has been selected to compromise the case.

The records of this department furnish no information as to any such claim and doubtless it is entirely mythical. There is no proposition of which I am aware pending as to the compromise of any suit of that nature involving any large amount of money.

Very respectfully,



Acting Counsel to the Corporation.

A.M.

*Law Department,
Office of the Counsel to the Corporation.*

New York, August 30th 1895.

Hon. William L. Strong,

M a y o r .

S i r :-

I have received a request for an opinion, addressed to the Counsel to the Corporation, by Mr. Hedges, your Secretary, by your direction, respecting provisions of the Consolidation Act requiring auctioneers licensed by the Mayor to file in your office a bond for \$2,000., and other provisions of law requiring a bond of \$5,000. to the State to be approved by the State Comptroller. It is suggested that as these latter provisions are of a general nature, they may not, in view of the special requirement in force here, compel auctioneers licensed by the Mayor to give such bond to the State.

In answering the inquiry suggested, I shall assume that the provision requiring a bond to be given to the State is to be found in Chapter 310 of the Laws of 1883. I make the assumption as there are other provisions of law relating to the general subject matter of auctioneers' bonds to be given to the State which, if no longer in force, have been repealed by implication and not expressly. These further provisions are to be found in 1 R. S. page 531, §§ 11, 12 and 13, (1st Edition) and in §§ 1 and 2 of Chapter 52 of the Laws of 1838. Notwithstanding the fact that the Act of 1883 (*supra*) covers the whole subject matter of these former and early enactments

and is in important respects inconsistent with them, they are contained in the most recent editions of the Statutes of both Birdseye and Banks upon the possibility that they may still have some legal vitality. Whether they have and to what extent, it will not be necessary for your purposes to determine, since your question will be answered when it is decided whether or not, in view of the existence of the provision of the Consolidation Act any bond is required to be given to the State.

Such Act is in form an amendment of Section 3, Chapter 547 of the Laws of 1866, which amended Chapter 62 of the Laws of 1846, but was wholly repealed by Chapter 106 of the Laws of 1868, and is therefore a repealed act revived by amendment. It is as follows:-

"§3. No person authorized to exercise the office of an auctioneer shall execute the duties of such office, and no broker engaged in selling goods, wares, merchandise or effects, subject to fees or duties by the laws of this State, shall engage in such business until such broker or auctioneer shall have entered into a bond to the people of this State, with two sufficient freeholders as his sureties, in the penalty of five thousand dollars each, conditioned for the faithful performance of the duties of his office, and for the payment of the fees or duties that are or shall be imposed by law, and that shall accrue on sales made by him or under his direction, by virtue of his office. Such bond shall be taken and approved by the agent appointed by the Comptroller, in pursuance of chapter three hundred and ninety-nine of the laws of eighteen hundred and forty-nine; but if executed in a city where there is no such agent, it shall be taken and approved by the mayor or recorder of such city; and if executed by an auctioneer appointed for a county, shall be approved by a judge of the county court for such county; such bond when executed shall be transmitted to the Comptroller, within ten days after such execution, and a copy placed on file in the office of the agent, or where there is no agent, in the office of the county clerk of the county in

"which the same shall have been taken and approved.
"The fees to be paid to the agent approving such bond
"shall be five dollars; and for approval of the re-
"turns to be made of sales, three dollars; and for
"filing the duplicate copy of the aforesaid bond,
"fifty cents; every broker or auctioneer who shall
"sell any goods, wares, merchandise or effects, as
"specified in this act without having filed the bonds
"required by law, or who shall neglect to make or
"render the accounts, or pay over the duties required
"by law, shall be deemed guilty of a misdemeanor, and
"punished by imprisonment not exceeding one year, or
"by fine not exceeding one thousand dollars or by
"both such fine and imprisonment."

It will be noted that the condition of the bond is for the faithful performance of the duties of the office as well as for the payment of fees or duties imposed by law and these duties or fees were, by other provisions of law, payable to the State through specified channels at fixed dates (See §§23, 41 and 45, Birdseye Res.) These fees or duties, auctioneers in the City of New York were likewise compelled to pay. Thus §§1989 and 1990 Consolidation Act says:-

§1989. Every auctioneer, within ten days after he shall have exhibited his account, shall pay for the use of this state the duties accrued on the sales mentioned in the account, and immediately after such payment shall deliver or transmit such account, with the affidavits indorsed thereon and annexed thereto, to the Comptroller, to be filed in his office.

§1990. Every such payment made by an auctioneer shall be made to such bank in the city of New York as shall be designated by the comptroller as entitled to the state deposits according to law, and the receipt of the proper officer of the bank shall be taken therefor."

In January of 1893, however, the Court of Appeals in the case of *The People vs. Wilmerding* (136 N.Y., 363) decided that notwithstanding that the legislature of 1883 evidently supposed when it passed the act in question

that duties were still payable to the State, by auctioneers, the statutes under which such duties were required, had passed out of existence and that there were no laws then or now in existence requiring such payments subsequent to the passage of a repealing act of 1868 (Chapter 106). This decision does not, as I read it, nullify the Act of 1883,--it could not well do that,--but leaves it still in force. Neither does it do away with those other provisions of law requiring bonds to be given to the State to which I have hereinbefore alluded. It certainly does away with the probable reason for their existence but nevertheless the condition of the bond is for the faithful performance of the duties of the office of auctioneer as well as for the payment of dues and it would not be wise either for this department or for you to assume that the effect of that decision is to make a bond for \$5,000. to the State no longer necessary--Such an assumption would involve the determination that such bond is not required, not only in the City but elsewhere in the State.

The provision of the Consolidation Act relating to the bond to be taken by the Mayor is as follows:-

"§1985. All auctioneers doing business in the city shall hereafter be required, between the first and fifteenth of June in each and every year, to obtain from the Mayor of said city a license to engage in and carry on such business and occupation, upon filing a bond with two good securities in the penal sum of \$2,000. (as amended by L.1883, Ch. 276, §29, p. 319."

Its history is briefly this. It was formerly contained in an act, Chapter 138 of the Laws of 1863, entitled "An Act to punish for frauds and to suppress mock

"auctions". By a recital in the act it was stated that the evil intended to be remedied was especially prevalent in the City of New York and after making certain fraudulent practices generally a misdemeanor, it provided that auctioneers in New York City should be specially licensed by the Mayor upon giving the \$2,000. bond. It is quite clear that after the enactment of this statute, auctioneers in New York City were expected to give bonds both to the State and to the Mayor, the latter being required in order that they might be more effectively controlled and the practices which the act was intended to remedy, prevented. As it was of a special and local nature, it was included in the Consolidation Act, while the provisions in existence at the time of the adoption of this last mentioned act in respect to the bond to be filed with the Comptroller were not of that nature and were not so included.

The object and purpose of the bond given under §1985, above quoted, has been defined in *Viadero vs. Stacom*, 14 Daly, 345. The bond in suit was given in 1883, after the Consolidation Act went into effect and it was held to be given for the purpose of preventing frauds committed on purchasers at auction sales, a fact which appears from the condition of the bond, which expressly refers to the act of 1853. The bond given to the State filed with the Comptroller, however, was intended to secure the payment of the dues accruing to it as well as the faithful performance of the duties of auctioneers and

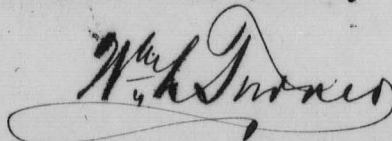
these dues, auctioneers in New York City, as has been seen, were compelled to pay. The bonds were therefore intended to secure two radically different purposes. It is true that the provisions which were then in existence with reference to the latter bond, being of a general nature, were not included in the Consolidation Act, since that act was not intended to be more than a compilation of special and local laws affecting public interests in the City of New York, but such fact does not operate to repeal such provisions since there was no prior, local or special act covering the same subject matter covered by them, which was in existence or which was or could have been included in such compilation. Had there been such a special act and had it been so included, it might have operated as a repeal of the more general provisions covering the same subject. (See Matter of N. Y. Institute for Deaf and Dumb, Ct. of Apps., 25 Abb. N. C. 31.) It was not, however, the legislative intent to do more than furnish a complete statement of local laws without affecting other general provisions of statutes applicable to the whole State, including this City.

Because, therefore, the bond given to the Mayor was intended to secure one end and the bond given to the Comptroller another and totally distinct end, I think it the wiser and more conservative opinion that both are required of auctioneers doing business in this City notwithstanding the local and special nature of the provisions requiring the former and its presence in the Consolidation Act and the more general nature of the provision

or provisions requiring the latter and ^{their} its absence from that statute. It would be strange if the passage of that act resulted in relieving auctioneers doing business in this city, upon giving a bond for \$2,000. from a condition which requires those in other parts of the State, if since the decision in the Wilmerding case they are by law so required, to give a bond for \$5,000., when by the very act which requires the \$2,000. bond, the legislature had determined that the practices of auctioneers in this City was such as to require additional precautions here for the protection of the unwary. Nothing short of a plain expression of such intention would justify such a construction. It cannot be based upon inference nor loose implication.

I accordingly advise you, although the matter is not free from difficulty that if a bond to the State is still required from auctioneers doing business anywhere within it, it is necessary for auctioneers doing business in this City to give such a bond, in addition to that required upon obtaining the license from yourself.

Respectfully yours,

A handwritten signature in cursive script, appearing to read "W. H. Jones".

Acting Counsel to the Corporation.

*Law Department,
Office of the Counsel to the Corporation.*

B.-M.

New York. September 6 1895.

Hon. William L. Strong,

M a y o r .

S i r :-

I have received from your confidential clerk, for examination and report, a resolution of the Board of Aldermen approving an amendment to Section 183 of Article XIII, Chapter 8 of the Revised Ordinances of 1880.

The Section in question provides that no person shall fire or discharge any gun, pistol, fouling-piece, or other fire-arm in the City of New York, under the penalty of Ten Dollars for each offence.

A very large number of enclosed gardens and parks have, from time to time, been exempt from the provisions of this section, and the purpose of the amendment now before you is to also exempt from its provisions the property belonging to the Country Club.

The Country Club is an organization of gentlemen owning and occupying a considerable portion of property on Eastchester Bay in the late Town of Westchester, recently annexed to the City of New York. The premises belonging to this club are isolated, and in my opinion the very excellent reasons which rendered it proper to adopt an ordinance against the discharge of fire-arms in the City do not apply to the property belonging to this club.

As at present situated, and for many years to come, in all probability, the premises belonging to the

Country Club will be far removed from every habitation, and will be out of the line of the increase of population; and of course when the conditions so change as to make the use of fire-arms on their premises dangerous to the public safety, the Board of Aldermen always have it in their power to revoke their permission.

In my opinion, therefore, no harm can come from the approval of the resolution which, as I have already intimated, will put this club and its property on the same footing as a large number of other clubs, parks and enclosed grounds are now placed upon.

Yours very respectfully,

Francis M. Kott
Counsel to the Corporation.

Communication.

— FROM —

COUNSEL TO THE CORPORATION.

Discharging
Fire Arms
in City Limits

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DATED NEW YORK,

Sept. 6

*Law Department,
Office of the Counsel to the Corporation.
B
New York.* September 21, 1895

Hon. William L. Strong,
Mayor.

S i r :

I have received, from your Chief Clerk, a communication enclosing resolutions of the Board of Aldermen numbers 786, 787 and 788, for examination and report.

First. Resolution No. 786 intended to amend section 183 of chapter 8 of the Revised Ordinances of 1880 by adding at the end thereof the words "the grounds of Mrs. M. W. Ditman in Baychester".

The effect of this resolution would be to exempt the grounds of Mrs. Ditmar from the ordinances prohibiting the discharging of fire arms within the city limits, Baychester being in that portion of the city recently annexed.

You will perhaps recall that a short time ago you approved a similar resolution in behalf of the Country Club of Westchester. I know nothing whatever as to the particular reasons why it is desired to exempt Mrs. Ditman's property from the operation of the ordinance.

Second. Resolution 787 intended to authorize the Counsel to the Corporation to draw upon the Comptroller a sum not to exceed two hundred dollars for contingencies of the Law Department.

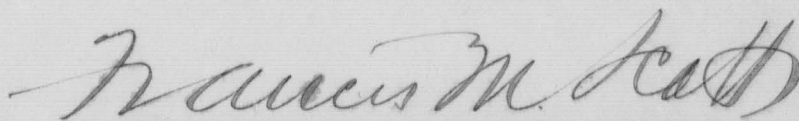
This communication was drafted by me and forwarded to the Board of Aldermen with the request that they should adopt it, the reason for its adoption appearing in

my letter of July 11, 1895, attached to the resolution. In preparing the resolution I attempted to guard the City as far as possible against all risk, and think that I succeeded in doing so. I observe that the Board has reduced the amount from five hundred dollars, which was what I asked for, to two hundred dollars. That of course is a matter for the exercise of their discretion. I consider that the public service will be benefited if the resolution should be approved.

Third. No. 788 is a resolution intended to protect the general public from the contingency of accidents arising from the erection of buildings, and provides in general that in all buildings over three stories in height there shall be maintained during the construction thereof a temporary roof structure over the sidewalk in front of the building.

It seems to me that this is a wise and reasonable regulation, and I know of no reason why it should not be approved.

Yours very truly,

A handwritten signature in cursive script, reading "Francis M. Keith". The signature is written in dark ink and is positioned above the printed name.

Counsel to the Corporation.

Communication.

— FROM —

COUNSEL TO THE CORPORATION.

Fire Arms
Discharging

61

DATED NEW YORK,

Sept. 21