

# THE CITY RECORD.

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PROCLAMATION.

\$1,000 REWARD.

MAYOR'S OFFICE,  
New York, September 23, 1873.

WHEREAS, On the 22d day of August last, a fiendish outrage was committed on the person of Mr. Walter Gibson, proprietor of the "Harlem Local," by throwing a large quantity of vitriolic acid in his face, destroying the sight of the left eye, and endangering the sight of the other; and whereas active but unsuccessful efforts have been made to discover the perpetrators of the assault.

Now, I, W. F. Havemeyer, Mayor of the city of New York, do hereby offer a reward of one thousand dollars for the apprehension and conviction of the person or persons who were guilty of the offense; the said reward to be paid on their conviction and the certificate of the District Attorney that such conviction was had upon the testimony of the person or persons claiming the reward. But all claims not presented to the Mayor within twenty days after such conviction shall be disregarded.

W. F. HAVEMEYER,  
Mayor.

### LAW DEPARTMENT.

The following opinions constitute a portion of the proceedings of the Law Department for the week ending September 27th, 1873:

Persons in default to the corporation are not received as contractors, nor as sureties upon contracts for work required by the city; but such persons cannot be regarded as "in default to the corporation" until their liability has been determined, the amount due from them liquidated, and the city is in a position to receive the same or to commence suit therefor if unpaid.

So held where a surety upon a contract for a certain work presented himself as a surety upon a contract for another and independent work under substantially these circumstances: The contract first mentioned provided among other things that if the contractor failed to perform, and a new contract with other persons should become necessary, any excess of the consequent cost of the work over the amount of the first contract should be paid to the city. The first contract was abandoned. A second, made with other persons, was for a sum less than that mentioned in the first, and was also forfeited. A third contract was entered into with still other persons at a sum greater than the amount fixed in the first. But the work had not yet been completed, and it was therefore uncertain whether the third contract, like the other two, might not yet be forfeited or abandoned. The excess of cost to which the city might ultimately be subjected was therefore a matter of uncertainty.

Where a person offers himself as a surety, the Comptroller may properly take into consideration any contingent liability to which such person has subjected himself by other agreements of suretyship; but the fact applies to his pecuniary responsibility, and not to his competency as a

proper person for acceptance as a surety upon other and independent contracts.

LAW DEPARTMENT,  
OFFICE OF COUNSEL TO THE CORPORATION,  
September 18, 1873.

Hon. Andrew H. Green, Comptroller of the City of New York:

SIR—Your letter of the 27th ultimo makes substantially the following statement of facts:

On the 24th of June, 1872, a contract was awarded to James F. and William H. Keyes, as the lowest bidders, for the construction of a sewer in 56th street, at \$5,804. The sufficiency of Henry Stollmeyer and Christopher Keyes as sureties was approved by the Comptroller on the 15th of July, 1872, and the bid was returned to the Department of Public Works, where it had been made. The Messrs. Keyes refused to execute the contract. After re-advertisement, a new contract for the work was awarded by the Commissioner of Public Works to Messrs. Gleason and Meyers, at \$5,337 40—a lower sum than that in the first contract. On the 29th of October, 1872, the sufficiency of William and Michael Loughlin as sureties upon the second contract was approved by the Comptroller. This second contract also was not performed, and on the 12th of August, 1873, after the usual preliminaries, a third contract was awarded for \$7,440, to R. J. Howe, the lowest bidder, being higher than either of the two previous awards.

The contract of suretyship in each case was substantially as follows:

We, the undersigned, consent and agree, that if the contract for which the preceding estimate is made be awarded to the person or persons making the same, we will become bound as sureties for its faithful performance; and if the said person or persons shall omit or refuse to execute such contract, if so awarded, we will pay, without proof of notice or demand, to the said Mayor, Aldermen and Commonalty, any difference between the sum to which such person or persons would have been entitled upon the completion of such contract and the sum which the Corporation may be obliged to pay to the person to whom the contract shall be awarded at any subsequent letting: the amount in each case to be calculated upon the estimated amount of the work by which the bids are tested.

It appears that the names of Henry Stollmeyer and Christopher Keyes, the sureties of the first contractors above mentioned, are offered as contractors or as sureties upon other proposed contracts, and the question now submitted to me is whether, under the circumstances, these two persons are to be considered "in default to the corporation," and therefore incompetent to act as sureties upon contracts to which the corporation is a party.

The terms above quoted of the agreement executed by these gentlemen as sureties are so broad as, in my judgment, to render them liable to the city for any cost in excess of the amount of the first contract to which the city may be ultimately subjected upon the completion of the work by other persons, at any time after the first contract was abandoned. This liability was not cancelled by the act of the City in making a second contract with other persons for the performance of the same work at a sum less than that mentioned in the first contract. The second contract having also been abandoned, the sureties must be held for any excess of cost to which the city may prove to have been subjected when the work is ultimately completed, no matter by whom, under a third or any successive contract to which the city may be driven by successive failures or abandonments, until the work shall have been ultimately completed.

At the same time, the sureties cannot be regarded as "in default to the city" until such completion of the work has been accomplished, and the precise difference between the amount of the first contract and the ultimate expense and cost has been liquidated and ascertained. The city is not in a position to receive payment from these sureties on the first contract until the sum for which they have bound themselves has been accurately stated, and this of course cannot be done until the work in its completed state shall have been accepted by the city.

It is undoubtedly proper for the Comptroller, in considering the sufficiency of these sureties when offered upon contracts for other public works, to take into view the contingent liability to which they have subjected themselves by executing this and other contracts of suretyship; but they cannot be rejected as contractors or as sureties upon contracts for any new works upon the ground that they have made default in paying a sum which, as above explained, the city cannot yet be regarded as in a condition to demand or receive. They present themselves as contractors or sureties upon contracts for new works in a light equally favorable to themselves as sureties before; provided they are possessed of sufficient property and responsibility. It is also to be borne in mind that the amount for which they may ultimately prove liable as sureties upon the first contract, must be equitably apportioned and be shared by the sureties on the second contract whose principal's failure to perform involves those sureties in a like liability to that incurred by the sureties upon the first contract.

I am, sir,

Very respectfully yours,  
E. DELAFIELD SMITH,  
Counsel to the Corporation.

Where a contract was made between the Croton Aqueduct Department and an individual for paving an avenue, and under the stipulations thereof, the Department annulled the same upon the ground that it was not being prosecuted by the contractor in good faith, and the Department entered into a new contract with another person for the performance of the same work at a sum greater than that mentioned in the first contract: Held, That a surety who as such had guaranteed both contracts could not be rejected as a proposed contractor for other and separate work required by the city, upon the ground that he was "in default to the corporation," until the paving in question should in some manner be wholly completed and accepted, and the city be placed in a position to ascertain and receive from such surety the exact excess of cost involved in the ultimate and complete performance of the work, under new contracts or otherwise, according to the stipulations of the original contract. A liability must be liquidated and absolute, not uncertain and contingent, in order to render a person "in default to the city" within the meaning of the provisions of law and of ordinance under which the Comptroller is called upon to refuse upon that ground his acceptance of a person proposing to contract with the city, either to perform work or to be a surety for its performance.

LAW DEPARTMENT,  
OFFICE OF COUNSEL TO THE CORPORATION,  
NEW YORK, September 20, 1873.

Hon. Andrew H. Green, Comptroller of the City of New York:

SIR—From your letter of the 25th ultimo, I obtain substantially the following facts:

In July, 1867, the Croton Aqueduct Department opened bids for paving Second avenue, from Sixty-first to Eighty-sixth street, and awarded the contract to Robert Jardine at \$99,425. The Comptroller approved the sufficiency of Theodore Martine and Charles Devlin as sureties. The contract was filed in the Department of Finance, as required by law.

The agreement of the sureties was in the shape of a money bond in the penalty of \$15,000, with the condition that their principal should well and truly, in good, sufficient, and workmanlike manner, perform the work mentioned in the contract in accordance with its terms, and comply with the conditions and covenants therein contained.

Among other stipulations, the contract contained a provision that if at any time the Board should be of opinion, and should so certify in writing, that the contractor was executing the contract in bad faith, they should have the power to discontinue the work and to employ persons, by contract or otherwise, to complete the same; and in case the expense should be less than the sum which would have been payable under the contract, if the same had been completed by the contractor, he should be entitled to receive the difference; and in case the expense should exceed the amount mentioned in the contract, the contractor should pay the amount of such excess upon notice from the Board. After the work had been proceeded with for several months, the Croton Aqueduct Department annulled the contract, as they were therein authorized to do, for the regularly alleged reason that the contractor was prosecuting the same in bad faith.

In 1868 a proposal for the performance of the work was re-advertised, and in August of that year, John Gargan, being the lowest bidder, was awarded a new contract for the same work at \$100,450. His sureties were Charles Devlin and Matthew Sheridan. This proposal was returned to the Croton Department August 25, 1868, without the approval of the Comptroller, for the reason stated, that Mr. Sheridan had refused to justify in the amount required as surety, and that Mr. Gargan, the contractor, declined to accept the contract in a letter to the Finance Department. Mr. Charles Devlin now appears as surety on the number of the bids for contracts, which bids have been stated by the Department of Public Works to the Department of Finance for the approval of the Comptroller.

This second contract, and the agreement of Mr. Devlin as surety thereon, are not before me; but I assume that Mr. Devlin's agreement of suretyship is similar to that executed by the sureties upon the first contract.

The question now submitted to me is whether under the circumstances Mr. Devlin is "in default to the Corporation" under the lettings to which I have referred.

I am not informed as to what, if anything, has been done since the second contract was awarded. I am, however, clearly of the opinion that Mr. Devlin cannot be regarded as "in default to the Corporation" upon the mere fact that the contractor in the first contract has forfeited the same; nor upon the further fact that the proceedings above mentioned have been taken toward the completed execution of a second contract for the execution of the work by another person. Before Mr. Devlin can be held a debtor to the Corporation upon his agreements of suretyship under the

first or second contract, the Board must, in my judgment, go on by contract or otherwise to the execution and completion of the work; and then, upon an account stated, it must be ascertained and certified to him what excess of cost over the amount mentioned in the first or in the second contract has been necessarily, actually, and ultimately incurred by the Board in procuring the execution of the work.

Upon the facts, therefore, as I understand them, and as above set forth, my answer to your communication must be that Mr. Devlin is not "in default to the Corporation" under the lettings of either 1867 or 1868.

I am, sir, very respectfully yours,  
E. DELAFIELD SMITH,  
Counsel to the Corporation.

### COMMISSIONERS OF THE SINKING FUND.

Abstract of the proceedings of the Commissioners of the Sinking Fund, at the meeting held at the Comptroller's Office, July 1, 1873.

Present—Hon. William F. Havemeyer, Mayor, (Chairman), Hon. Andrew H. Green, Comptroller, George W. Lane, Esq., Chamberlain, Jenkins Van Schaick, Esq., Chairman Finance Committee Board of Aldermen.

Proposals for leases of ferries and ferry franchises, laid over at the last meeting, were taken up and referred to a committee, consisting of the Comptroller and Chamberlain, to consider and report.

The application of the "Hoboken Land and Improvement Company," (owners of Hoboken Ferry), for enlarged accommodations for the ferry at the foot of Christopher street, was received and referred to the same committee.

The application of T. Francis Gibbons to rent vacant engine houses, Nos. 160 Wooster street, 49 Leonard street, 53 Spring street, and 352 West 35th street, was received and referred to the Comptroller.

The following resolution was adopted, viz.:  
RESOLVED, That a statement, or account of all the real and leasehold estate, and other property and franchises owned by the Corporation, be prepared, to be accompanied by diagrams showing the form and dimensions of each lot, or separate parcel of property; and that one thousand copies of the same be printed, under the direction of the Comptroller.

Sundry bills for printing, advertising, and other expenses on account of sale of real estate and leases of ferries and ferry franchises, April 29th, 1873, were submitted and ordered paid.

The following preamble and resolution were adopted, viz.:

WHEREAS, The whole of the second floor of Centre Market was leased by the Mayor, Aldermen and Commonalty of the City of New York, for the term of five years from May 1st, 1872, to William Lalor, and the southerly portion of such floor, except that part which had been rented by Lalor previous to July 18th, 1872, is required for public purposes, to be used and occupied as and for an armory; therefore, be it

RESOLVED, That the lease made by the City with William Lalor, on May 7th, 1872, be cancelled, in accordance with the provisions contained therein; and that the Comptroller of the City of New York, be authorized to execute a new lease to William Lalor, of the portion of such second floor of Centre Market as are not required for the armory, for the balance of the existing term; the rent to be fixed at such an amount as will be proportionate to the rent originally reserved for the whole floor.

The Clerk was directed to notify John McKeon, Esq., of the action of this Board at its last meeting, rescinding that portion of the resolution passed October 12, 1870, authorizing his employment as standing counsel to the Commissioners of the Sinking Fund.

W. H. DIKEMAN,  
Clerk.

### DEPARTMENT OF FINANCE.

#### APPOINTMENT.

Lawrence Langan, Messenger Bureau of Arrivals, from September 18, 1873, at twelve hundred dollars per annum.

AND. H. GREEN, Comptroller.

### THE CITY RECORD.

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AB'M DISBECKER,  
Supervisor.





