

**MEMORIAL OF THE  
HOLDERS AND OWNERS OF  
THE FLOATING DEBT OF THE  
CITY OF SAN FRANCISCO**

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Memorial of the Holders and Owners of the Floating Debt of the City of San Francisco by  
Various

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# MEMORIAL.

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TO THE LEGISLATURE OF THE STATE OF CALIFORNIA:

The memorial of the undersigned holders and owners of indebtedness of the City of San Francisco, respectfully shows to your Honorable Body,

That the City of San Francisco is a corporation, created and governed by acts of the Legislature of this State, with certain powers and privileges in the several acts contained.

The founding of the City of San Francisco, and the circumstances connected with that event, constitute some of the most striking passages of American history. The leading event of the century—the discovery of gold in California—bringing hither the population of a State, without the means, resources or appliances for their support or accommodation, or even protection, created an immediate necessity for a city upon the Pacific coast. The obscure village of Yerba Buena was selected as its site. This demand for a commercial emporium was so urgent, that the city sprung up at once without waiting, like other cities, a process of gradual development, and with the advantages, was therefore subjected to the difficulties and embarrassments which are peculiar to the rapid founding of a large city, without the resources in the country to support its population, with immediate wants but without adequate means to supply them. The necessities of commerce and the accommodation of a numerous population, required improvements and labor, materials and money, and these had to be furnished before taxes could be laid and collected; while the high prices of labor and materials which prevailed a few years ago, and still in some degree prevail in California, made the supply of these indispensable wants expensive. It is hardly necessary to remind the Legislature, that the process of building a large city on a desert coast, and fitting it for the accommodation and uses of a large population and for the purposes of a commercial emporium—when this process is an immediate exigency, and the work of years is compressed into the labor of a few months—must, necessarily, under the most favorable circumstances, be attended by extraordinary difficulties. But when, superadded to this, a state of things novel and without past experience existed, and accidents, fires and all the confusion of a hurried settlement, by a strange and heterogeneous population intervened, it will be at once perceived that the cost and burthens of this immense undertaking would be greatly augmented. Nor were these the only difficulties, perhaps not the chief. The site of the city was such as to require unusual labor in making streets and highways and putting them in order. Sand hills had to be cut down, passage-ways through rocks to be made, mountainous places leveled, wharves constructed and marshes and parts of the Bay filled in, it is more wonderful that so much should have been accomplished against such physical and other impediments, than that it should have cost the sums expended to effect them. As in all new countries, it happened that the official business of the corporation was not always intrusted

to the best hands; and that the confusion and embarrassments which prevailed did not always admit of the wisest action or the best results, even when the best were intended. To carry through the tremendous enterprise of founding a large city within a few months, necessarily involved indebtedness, to which the then and accruing revenue was altogether inadequate. The many works, which in all of the departments of physical improvement and municipal administration, the new city accomplished, had to be contracted for at the rates then prevailing. Everything was exorbitantly high. The wages of labor, the cost of materials and the interest of money were beyond anything before known on this continent; but these works and improvements, and the support of the municipal government were the absolute necessities of the times; and if they cost more to the city than the same things would have cost to private individuals, this was owing in some degree to the fact, that individuals can always procure work cheaper than governments, and that labor procured for credit is dearer than labor procured for cash.

In order to keep up the city government and to carry into effect these great enterprises, a system of credits was adopted by the officers of the government entrusted with the management and control of her affairs. The revenue of the city, from all its sources, was anticipated. As debts became due, scrip was issued, payable out of the particular funds set apart, by the ordinances of the corporation, for that purpose. Contractors for public works were thus paid as their accounts were audited; and the officers and employees of the city received their compensation in the same way. This scrip, for the most part, took the form of warrants, drawn by the Mayor and Comptroller upon the Treasurer, payable to the party contracting with the city or to the bearer.

This was done under a provision of the charter.

These warrants were issued and this mode of doing business was pursued by all administrations and officers of the city government, and without objection or complaint on the part of individuals, from the year 1850 to the passage of the Consolidation Bill of 1856. The paper so issued was treated all this time as valid and subsisting indebtedness and evidences of debt against the corporation; was received by the corporation in the payment of dues to it; was paid out for debts after being so received; was registered as indebtedness by ordinance, to be paid in the order of registry; was received at certain rates, a table of which is hereto annexed, in the market, and taken for investment and in business operations, and constituted a considerable portion of the stocks held in the city. It constituted the consideration for every branch of public expenditure. Through this agency the gas that lit the city, the houses in which the public business was transacted, the buildings for the Fire Department, and the expenses of that department, the salaries of the public officers, the construction of sewers and streets, the police, the local judiciary—in a word, all the necessary expenses of the city government were made. The city received, and now holds, the advantages and benefits of this consideration; she has been protected by it from fire and flood, and in the person, rights and property of her citizens; she has derived from it no inconsiderable portion of her revenues, and furnished means of education to the youth of the city; she has risen to the rank she holds as a great commercial city—retained and perpetuated her supremacy as the commercial emporium of the Pacific Coast—increased her trade and her facilities of commerce, and has secured to her citizens and the State, indeed to the world, the advantages, comforts and enjoyments which distinguish her. In fact, she has conducted her whole fiscal system in this mode and upon the basis of her liabilities for these securities. The outstanding indebtedness of the city at present, unrecognized and unprovided for, is shown by the annexed tabular statement, in which that indebtedness is given in detail, upon which we propose hereafter addressing to your Honorable Body a few observations.

In the year 1855, the Legislature passed an Act, a copy of which is hereto

appended. This Act, it is believed, was intended to authorize the funding of all the legal and equitable indebtedness of the city; but by some oversight, the particular language used was so restricted as to confine the Examiners, appointed under that Act, to the funding only of such legal and equitable indebtedness as had been created *by ordinance* legally passed. The Examiners only allowed the sum of \$322,281 07, which has been funded. The balance yet remaining practically unrecognized, amounts to about the sum of \$1,375,000, as represented by the same or similar evidences of indebtedness. The Examiners admit, in their report, that much of this indebtedness is as equitable as any recognized by them; though not coming within the precise terms of the Act.

To the validity of these evidences of indebtedness objections have been made which your memorialists propose, very briefly, to consider. They all refer to the *mere mode* in which the indebted was created, and are based upon the charge that the directions prescribed by the charter were not pursued in making the contents or in giving the evidences of indebtedness.

Under the circumstances to which we have adverted, if the directions were not strictly pursued, yet if the city got the full benefit of the consideration of this indebtedness and her citizens were exempted from taxation to this extent and she still retains and enjoys the public works and the results of the services of those who labored and expended their money in her behalf, it would not be difficult to see that, if not in strict law, certainly in equity and good conscience, she ought to be held liable to pay for what she has thus received. The contracts made and services rendered were made and rendered openly, publicly and notoriously; with the full knowledge and approbation of the accredited agents of the city; without objection or complaint, and with the acquiescence of the people. These acts and transactions were continuous, running through several years, done every day, and with the full understanding that they were legal and authorized, and accompanied by all the external *indicia* and marks of authenticity; and now, at this late day, when these evidences have gone into the hands of persons who have paid value for them in entire ignorance of any objection to them, and with every reason to believe that they were what on their face they imported, it is gravely proposed that they shall be ignored and repudiated; and that all this labor and these services and expenditures on behalf of the city shall go unpaid and uncompensated. If this course were pursued by any private citizen, if he, through the acts of his agent, should for long years receive the benefits of contracts made in his name; see buildings daily going up for his benefit, and improvements made upon his premises; if he supported himself and his household and preserved his estate, by means of the labor and property of others thus obtained; if every day for six years he had passed and approved the accounts of his agent, in which these transactions were represented; if he had gone through the streets ringing a bell after him and proclaiming that the paper signed by his agent on this account, was good and would be received by him in payment of debts due to him, could he be heard for a single moment to say that in truth, he owed nothing; that he had supported himself all along and aggrandized himself at the expense of a credulous public, and that the only obligatory force in the agency was in getting for himself all the benefits of it, without subjecting himself to any of the burdens? If such a plea in the case of an individual would be scouted as unconscionable and infamous, is it any better in the case of a rich and populous city, whose reputation and honor should be jealously guarded and protected even from suspicion? Your memorialists believe that this defence is as unfounded in law as in morals, and can meet with no favor at the hands of your honorable body.

It is contended that much of this scrip was issued upon contracts made by virtue of joint resolutions, and not by ordinances signed by the Mayor; and that this latter mode of contract was the mode required by the charter. If this were true, it would be no valid objection to the payment of the warrants issued by the



proper officers of the corporation to whom this duty was assigned; and as the face of these warrants imported a compliance with the law and the discharge of all precedent duties by the officers, third persons were authorized to believe, and might safely repose upon the belief that these officers had done their duty; and especially is this so, when the city authorities have in every way recognized the legality of these contracts; have held out their agents as having authority to bind her; have affirmed in every way the liability of the city, and held out inducements to the public to receive and deal with these securities; and besides this have received the work and services done, and appropriated them to the use of the city. It surely does not lie in the mouth of the city now, after this practical adoption of the contract and securing the fruits of it, to set up a technical plea that the contract was not made in exact and literal conformity to the requirements of the charter. Nor is the plea so unjust in fact, good in strict technical law. There is no provision in the charter which requires an ordinance to be passed in advance of the contract; nor is any formal mode prescribed for the passage of such ordinance. It need not directly, in terms, authorize a contract. Like all other powers and agencies, it may have effect from subsequent adoption as well as by original authority, and the form or mode of such adoption is not essential. Any act which recognizes the contract as valid may have that effect; and the many ordinances passed in various forms by the city authorities (a reference to some of which has already been made) taken in connection with the receiving of the work and the extending the authority of the city over it would be amply sufficient for that purpose. These acts have been numerous, and are so plain a recognition of the contracts made by the agents of the city, as to leave no doubt on this branch of the question.

It has been objected that many of these contracts were fraudulent, and most exorbitant charges under them have been made against the city. If this were true at most, it would be an objection to fraudulent claims, not to those which were not so; and even as to these, it might be argued that the fault of making such contracts was that of the servants and agents of the corporation, for whose conduct, she, and not innocent third persons, are responsible. But these charges have been greatly exaggerated. So far from the street contracts, which are chiefly the subjects of this complaint, being sources of profit, it may be remarked, that though prices often seemed to be high, that this must be taken in reference to prices prevailing elsewhere, and not to prices at that time prevailing in California; that the work was to be paid for in a depreciated medium; that this medium, received at its nominal amount, would not bring for cash that amount; that capital was scarce and interest high, and the city made no advances, but forced the contractor to borrow money at high rates; that the delay of the city in making payment according to her contract, brought about a heavy loss to the contractor, while she paid no interest on her evidences of indebtedness; inasmuch, that in truth, a contractor getting payment of his warrants at forty per cent. at the time of contract or performance, would have received more than he could now obtain if he got the warrants and had them funded to-day. The truth is, that it is a notorious fact, that the contractors doing this work for the city, have all or nearly all of them failed on account of them; and that if an account were taken, of the work done by the contractors for the city, at this day, valuing the work according to rates then current on contracts with private individuals, and charging one-half of the customary rates of interest to this time, or even the legal rate, the city would lose more than by paying the face of the warrants.

The objection has been urged, that this indebtedness should not be paid because it is in the hands of speculators, who have bought it up for a small sum. Even if this were so, it would be no argument against its payment. A man or a corporation suffering his or its paper to be depreciated by his own neglect to meet

it or to preserve his credit, could scarcely be heard to urge that he was not to pay at all because he had refused so long to pay his debts. But the truth is, that the charges is not true as made. Doubtless, as in all stocks, there has been, to some extent, speculation in this scrip. But as to the larger portion of it, it has been taken in payment or as security for debts at so large a per centage on its nominal value, that if funded, the value of the stock would not more than secure the parties in their expenditures. Nor is it held wholly by capitalists; on the contrary, much of it is held by poor men who cannot afford to lose the little investments which they have made upon the faith and credit of the city.

The question of the liability of the city for this indebtedness, has been presented to the Hon. D. O. Shattuck, Judge of the Superior Court of San Francisco, and that upright judge has decided in favor of the liability of the city, upon the broadest principles of equity and justice. The question, though before the Supreme Court, has not been decided upon, the question of the rights of a *bona fide* holder to recover upon the scrip, the case having gone off upon technical points, independent of the merits of the main question, and the case is now before the Supreme Court on a petition yet undecided, for a re-hearing.

Your memorialists, in consideration of the premises, represent to your Honorable Body, that the facts which they have set out, establish an equitable, legal and moral obligation upon the City of San Francisco to pay these debts. That every consideration of duty, of honor and of interest, conspire to enforce this high obligation. That to ignore it and to repudiate these debts, would be an act of dishonor which would disgrace the city and the State at home and abroad, and that if such an act could be successful, the State and the City would lose, in the long run, in the injury done to their credit, more than she would gain by a saving of the dollars and cents which would be the price of her honor. That having received the consideration for this indebtedness she cannot, in conscience or law, refuse upon the first and plainest principles of justice, to pay the stipulated sum for it. And as the city has not property wherewith to pay the debts, or if she had, it could not be subjected without great loss to her, your memorialists pray that a funding bill be passed by your honorable body, according to the plan herewith submitted, or in such other form as your honorable body may adopt. And as in duty bound, etc., etc.

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*AN ACT to provide for Funding the Legal and Equitable Debt of the City of San Francisco, and for the final Redemption of the same; approved May 7, 1855.*

SECTION 1. The Common Council of the City of San Francisco, to be elected at the first election under an Act entitled "An Act to Re-Incorporate the City of San Francisco," passed, April twenty-eight, one thousand eight hundred and fifty-five, shall provide by ordinance for

funding, at a rate of interest not to exceed six per cent. per annum, all the outstanding indebtedness of the City of San Francisco, which may be existing as a legal and equitable claim against said city at the time of their election and qualification. They shall provide, in the same ordinance, for the annual or semi-annual payment of the interest to accrue on said funded debt. The bonds for said debt shall be made payable within twenty years, in the City of New York or the City of San Francisco, at the option of the bondholders. No indebtedness against said city, except the funded debt, shall draw interest.

SEC. 2. For this purpose, the Common Council shall appoint by ordinance, three persons, not members of the City Government, citizens of said city, as a Board of Examiners. It shall be the duty of said board to examine all accounts and claims against the city, and to report to the Common Council such as they may consider legal or equitable indebtedness against said city. The Board of Examiners shall, before entering upon their duties, execute good and sufficient bonds, to be approved of by the Common Council, in the penal sum of fifty thousand dollars each, for the faithful performance of their duties; and shall, on making their report, affirm under oath, that all indebtedness, as reported by them, is correct and in accordance with the provisions of the next preceding section of this Act. The official bonds of the Board of Examiners shall be canceled on the expiration of the term for which they were appointed; *provided*, they are found by the Council to have complied with the requirements of this Act; otherwise they shall be prosecuted on their bonds, and be deemed guilty of malfeasance in office, and punishable with imprisonment in the State Prison for one year. They shall have power to send for persons and papers, to administer oaths and affirmations, and to punish as for contempt a refusal to appear and answer. They may continue in session, from day to day, until the first day of September next, unless their examination be sooner concluded, and shall receive such compensation as the Common Council may determine.

SEC. 3. The ordinances of the Common Council duly passed, and a valuable consideration received by the city, shall be deemed the only proper basis of claims by the Examiners in making their report; and no scrip, Comptroller's warrant, or certified or audited accounts shall be received by them as evidence of indebtedness against the city sufficient to entitle the holder thereof to the benefit of this Act, without proof or evidence *alibi* connecting such warrant, scrip or account with the original debt upon which it was issued; and no claim based upon any fraudulent contract or without consideration, shall be funded under this Act.

SEC. 4. When the report of said Examiners shall have been made to the Common Council, said Council shall have power, by ordinance, to confirm or reject the same, or to confirm in part and reject the balance; said report if confirmed, or if confirmed only in part, then as to such part as may be confirmed, shall be taken to be a correct account and statement of the debts of said city that are entitled to be funded under this Act.

SEC. 5. The Common Council shall provide by ordinance, by a tax upon the taxable property within the limits of said city, for the semi-annual payment of the interest to accrue on said funded debt, payable in the City of San Francisco or the City of New York; the first interest due upon the bonds to be issued under this Act, shall be payable on the first day of January, A. D. eighteen hundred and fifty-six; and thereafter the interest shall be payable semi-annually, on the first day of July and January of each year. The Common Council shall at the expiration of ten years from and after the passage of this Act, by ordinance provide for raising by tax on the property within the city limits, such an amount, annually, as shall be deemed sufficient to pay, at maturity, the bonds under this Act. It shall also be the duty of the Commissioners, after having created the sinking fund herein provided, annually to invite proposals for the surrender of bonds, and advertise at least ninety days in two daily papers in the City of San Francisco, for the same. The Commissioners shall publish all the bids received by them, and shall accept the best for the city, but in no case shall any bid be accepted above par value. All bonds purchased, the dates, numbers and amounts of the same, shall be entered by the Comptroller in a book to be kept by him for that purpose, and shall be by him endorsed so "Cancelled;" after which, the Commissioners shall file such bond as cancelled, and keep the same in some safe depository as their vouchers. But if bonds cannot be purchased, as herein provided, then the Fund Commissioners shall from time to time invest all money in their hands in State or United States securities, and shall so continue to invest until sufficient amount is in their possession to pay off all the bonds issued under this Funding Act.

SEC. 6. The Mayor, Comptroller and Treasurer of the City of San Francisco, and their successors in office, are created, under this Act, a Board of Fund Commissioners, and shall receive twelve hundred dollars each, per annum, for their services as such Funding Commissioners. The bonds to be issued shall bear interest, as provided for by the first section of this Act, and shall be signed by each member of the Commission in his official capacity, and countersigned by the Chairman of the Board of Examiners. Each coupon shall be signed by the Chairman of the Board of Commissioners. The Board of Commissioners shall cause all moneys paid into the City Treasury, collected by tax, as provided in section five of this Act, to be applied to the payment of the semi-annual interest of the debt funded by this Act. The Fund Commissioners shall carry out all the provisions of this Act, shall be held individually liable, and also liable on their official bonds for the faithful performance of their duties under this Act.