35 A. 526 (R.I. 1896)
19 R.I. 437
SMITH ET AL.
v.
TOWN OF WESTERLY ET AL.
ARNOLD ET UX.
v.
PRICE ET AL.
Supreme Court of Rhode Island
February 26, 1896

Walter H. Barney, A. B. Crafts, and Francis Colwell, for town of Westerly.

Walter B. Vincent, for Seaman's Friend Soc.

Jos. C. Ely, Walter B. Vincent, and Jas. M. Ripley, for Westerly Waterworks.

TILLINGHAST, J.

These cases have been tried together, and we will consider them in the same way. The Smith case is brought by certain taxpayers of the town of Westerly, in behalf of themselves and all others similarly situated, against the town of Westerly, the members of the town council, members of the committee on waterworks, and the town treasurer, and seeks to enjoin them from proceeding further with the erection of waterworks, or the purchase of land therefor, and from expending any money or incurring any obligations whatever in respect thereof, and for other relief. The Arnold case is brought by taxpayers and owners of land abutting on one of the public streets of Westerly, in behalf of themselves and others similarly situated, against the members of the town council, and seeks to enjoin the respondents and their successors in office, together with their agents and servants, from constructing waterworks or opening streets of the town, and in particular the street on which the complainants' lands abut, for the purpose of laying water pipes therein, without the consent of the Westerly Waterworks, prior to the expiration of the term of years under which it is claimed said corporation has exclusive rights

in the streets of said town. The complainants in the Smith case substantially set up in their bill: (1) That at a town meeting holden in Westerly, on the 11th day of April, 1895, it was voted to build waterworks for said town; (2) that the town council of Westerly, in pursuance of said vote, has authorized its committee on waterworks to expend the sum of $1,749 in purchasing certain lands to be used in the construction of waterworks; (3) that the action of the town and town council in the premises was without legislative authority; (4) that, notwithstanding such want of authority, the said town council is proceeding to purchase lands without the state, and threatens to spend large sums of money in building waterworks, by reason of which a burden will be placed upon the complainants and other taxpayers; (5) that the Westerly Waterworks, a private corporation, is, and for a long time has been, furnishing to the citizens of Westerly an abundant supply of pure water at a reasonable cost, and from which the necessary supply for public use can at all times be

procured; (6) that the building of new waterworks is unnecessary, and would impose an unjust burden upon the complainants and other taxpayers; (7) that the Westerly Waterworks has the exclusive right, under a contract with said town, to use the public highways for the purpose of laying water pipes, and continuing the same therein, during a specified period, not yet expired, with the terms of which contract said Westerly Waterworks has complied; (8) that, whenever said town shall proceed to construct new waterworks, the said Westerly Waterworks will have the right to enjoin it from so doing; (9) that the complainants believe that said Westerly Waterworks intends so to enjoin the town; (10) that, in case said town should be so enjoined, all sums of money expended by it as aforesaid would be wholly lost; (11) that the Westerly Waterworks obtains its supply from a certain brook in North Stonington, Conn., through contracts made with and privileges obtained from parties having the right to and controlling the stream; (12) that the land which the town is proceeding to purchase is only available in obtaining a supply from the same brook or stream from which the Westerly Waterworks obtains its supply; (13) that no contract or arrangement has been made by said town with the parties controlling said stream to take water therefrom; (14) that the complainants are informed and believe that no such contract or arrangement can be made, and that any expenditure of money for land in such locality would be wholly lost; and (15) that the notice to the taxpayers calling the town meeting of April 11, 1895, did not state that any proposition to expend money was to be voted upon at said meeting, but that, notwithstanding this fact, the expenditure of $150,000 was authorized. The complainants in the Arnold bill set up substantially the same facts, together with the charter of the Westerly Waterworks, and seek the same general relief. To the Smith bill the respondents the town of Westerly and William Hoxsey have demurred, and the other respondents have answered; and to the Arnold bill the respondents have demurred. Several grounds of demurrer are alleged, but principally to the effect that it does not appear from said bills, or either of them, that the Westerly Waterworks has the exclusive right to use the public highways of said town for the purpose of laying and maintaining water pipes, etc.; that, so far as appears from the allegations set up, the town of Westerly has the right to erect waterworks and purchase land therefor; and, also, that it appears by said allegations that the vote of the town passed April 11, 1895, was authorized and legal.

The principal questions raised by the pleadings are: (1) Does the contract entered into between the town council of Westerly and the Westerly Waterworks Company confer upon the Westerly Waterworks the exclusive right to use the public highways and grounds of said town for the laying and maintaining of water pipes for the purposes aforesaid? (2) Has the town of Westerly the right to construct waterworks of its own? And (3) if it has such right, does the vote of the town passed April 11, 1895, authorize the construction of such waterworks?

Before proceeding to answer the first of these questions, it is proper to state that it appearing to the court that the questions involved could not be determined without passing on the rights of the Westerly Waterworks, and it also appearing that said Westerly Waterworks was interested in said questions, but was not a party to said bills or either of them, said corporation was, by order of the court, notified to intervene in said suits if it desired to be heard. Said corporation, however, has not seen fit to become a party to either of said bills, and has informed us through its counsel that it

does not desire to do so.

As to said first question, then: The contract which was made with James M. Pendleton and others, who styled themselves the Westerly Waterworks Company, and who subsequently obtained a charter, and organized thereunder as the Westerly Waterworks, we will treat, for the purposes of this decision, as having been made with said corporation. The only authority to make said contract on the part of the town council is conferred by Pub. Laws R.I. 1884, c. 425, § 1, which provides as follows: "The town council of any town, or the city council of any city, may grant to any person or corporation the right to lay water pipes in any of the public highways of such town or city for the supplying the inhabitants of such town or city with water, and may consent to the erection, construction and the right to maintain a reservoir or reservoirs within said town or city, for such time and upon such terms and conditions as they may deem proper,

including therein the power and authority to exempt such pipes and reservoirs, and the land and works connected therewith, from taxation." It will be seen at once that, in attempting to grant to said company the exclusive right to lay water pipes in the public highways of the said town, the town council exceeded the authority conferred by said statute, and hence that the town is not bound by said contract; for, however it may be as respects the power of the legislature to make such a grant exclusive, it is clear that no such power can be exercised by a town council unless it is conferred by express words or by necessary implication. In other words, when a franchise like the one here set up in favor of a corporation is drawn in question, and is claimed to have been obtained by virtue of a contract of this sort, the power of the town council to enter into such a contract must be free from doubt; or, as said by the court in *State v. Cincinnati Gaslight & Coke Co.,* 18 Ohio St. 293, "it must be found on the statute book in express terms, or arise from the terms of the statute by implication so direct and necessary as to render it equally clear." See 2 Dill. Mun. Corp. (4th Ed.) § 695, and cases cited; *Citizens' Gas & Min. Co. v. Town of Elwood,* 114 Ind. 332, 16 N.E. 624; *Syracuse Water Co. v. City of Syracuse (N.Y.)* 22 N.E. 381; *Norwich Gaslight Co. v. Norwich City Gas Co.,* 25 Conn. 19, 31; *Saginaw Gaslight Co. v. City of Saginaw,* 28 F. 529, 534, 538; *Grand Rapids Electric Light & Power Co. v. Grand Rapids Edison Electric Light & Fuel Gas Co.,* 33 F. 659 et seq.; *Birmingham & Pratt Mines St. Ry. Co. v. Birmingham St. Ry. Co.,* 79 Ala. 465, 473; *Paine v. Spratley,* 5 Kan. 525; Sedg. St. & Const. Law (2d Ed.) 291-296, and cases cited; *Farnsworth v. Town Council of Pawtucket,* 13 R.I. 82; *Mathewson v. Hawkins, Index QQ,* 18, 19, 31 A. 430. Any ambiguity or doubt arising cut of the terms used by the legislature must be resolved in favor of the public. Suth. St. Const. § 380, and cases cited. The statute above quoted simply authorized the respondent town council to grant the right to lay water pipes in the public highways of said town for the purposes and under the limitations and exemptions specified, but did not authorize them to go beyond its terms, and grant the exclusive right so to do. This would be to enlarge and very materially alter said statute, instead of construing it as the law requires in regard to acts like this, which tend to establish monopolies or confer exceptional exemptions and privileges, correlatively trenching on general rights. End. Interp. St. § 349, and cases cited. Thus, in case of *Wright v. Nagle,* 101 U.S. 791, it was held that legislative power given to an inferior body to establish ferries and bridges did not authorize such body to grant the

exclusive right therefor to one person; that every statute which takes away from the legislature its power will always be construed most strongly in favor of the state. In State v. Cincinnati Gaslight & Coke Co., supra, in which the question now before us was very exhaustively and learnedly considered, the charter conferred on said company power "to manufacture and sell gas, to lay pipes," etc., provided the consent of the city council be obtained for that purpose. Under the power given to the city council of Cincinnati "to cause said city or any part thereof to be lighted with oil or gas," and to levy a tax for that purpose, it contracted to invest the defendant with the full and exclusive privilege of using the streets, etc., for the purpose of lighting the city for the term of 25 years, and thereafter until the city should purchase the works. It was held that while there was no doubt that the city might, by contract, provide for the lighting thereof by gas, yet it had no authority to grant the exclusive right so to do to the respondents. In *Jackson Co. Horse R. Co. v. Interstate Rapid Transit Ry. Co.,* 24 F. 306, it was held by Judge Brewer that, in the absence of express authority in its charter, the city of Kansas had no power to grant to a street-railway company the sole right for the space of 21 years to construct, maintain, and operate their railway over and along the streets of said city. In *Minturn v. Larue,* 23 How. 435, it was held that a charter authorizing the city of Oakland to establish and regulate ferries, or to authorize the construction of the same, gave no power to the city to grant an exclusive privilege. In the case of Lehigh Water Co.'s Appeal, 102 Pa. St. 515, the act went so far as to provide, among other things, that "the right to have and enjoy the franchises and privileges of such incorporation within the district or locality covered by its charter shall be an exclusive one, and no other company shall be incorporated for that purpose until the said corporation shall have from its earnings realized and divided among its stockholders during five years a dividend equal to eight per centum per annum upon its capital stock." Laws 1874, p. 94. It was held by the court that, notwithstanding such a provision, the right of the water company was exclusive only as against other private water companies, but not as against the borough. Without multiplying citations in support of the construction which we have put upon said statute, it is sufficient to say that the authorities are singularly uniform in sustaining the conclusion to which we have arrived. We have examined the authorities relied on by complainants' counsel in support of the construction of said statute contended for by them, but fail to find that they materially conflict with the doctrine above stated. The case of *Atlantic City Waterworks Co. v. Atlantic City,* 39 N.J.Eq. 367, which is specially relied on, is clearly distinguishable from the cases at bar, in that the act of the legislature (Pub. Laws 1866, p. 318) by virtue of which the ordinance there in question was passed authorized the city

council to pass such ordinances as they should judge proper for providing a supply of water for the city. They passed an ordinance granting the exclusive right to the complainant to furnish water to the city and its inhabitants; and the court held that, whether or not the city's grant of the exclusive privilege granted was ultra vires and void as creating a monopoly, the city had exhausted its power as to providing a water supply, and, moreover, that the complainants' franchise, which was granted by the legislature, was exclusive, and that, consequently, the court would, by injunction, protect the complainants in their rights,--the chancellor saying that "equity will protect a corporation entitled to the enjoyment of an exclusive franchise against unlawful competition." We

see no occasion to question the soundness of this decision. *New Orleans Gaslight Co. v. Louisiana Light & Heat Producing & Manuf'g Co.,* 115 U.S. 650, 6 S.Ct. 252, is not in point, for the reason that in that case the charter of the complainant corporation expressly granted to said company the exclusive privilege of making and selling gas in New Orleans; and the court held that a legislative grant of an exclusive right to supply gas to a municipality and its inhabitants, through pipes laid in the public streets, and upon the condition of the performance of the service by the grantee, is a grant of a franchise vested in the state, in consideration of the performance of a public service, and, after performance by the grantee, is a contract protected by the constitution of the United States against state legislation to impair it. *State v. Columbus Gaslight & Coke Co.,* 34 Ohio St. 572, was also a case where the charter of the complainant contained an express provision giving to the corporation the exclusive privilege of supplying the city of Columbus and its inhabitants with gas for the term of 20 years; and hence it has no bearing on the question now under consideration.

But it is urged by the complainants that the town of Westerly has recognized the existence and validity of said contract by a certain vote which it passed relative thereto on April 11, 1895. Said vote is as follows: "That the town council of the town of Westerly be, and it is hereby, requested to agree, if possible, with the Westerly Waterworks of said town, upon a third referee, under the agreement between said town and said Westerly Waterworks." Doubtless, this vote may properly be said to have amounted to a recognition of the existence of the contract in question, in so far, at any rate, as it confers upon the town the right to purchase the waterworks which had been constructed by virtue thereof. But, even assuming that it was a recognition of the contract in its entirety, still it does not amount to an adoption or ratification thereof by the town. And, indeed, even assuming still further that it did thus operate, it could not have the effect to validate said contract, for the very conclusive reason that the town itself, in its corporate capacity, had no authority to make said contract; and it hardly needs to be argued that the town could not ratify a contract which it had no power to make originally. The power to make such a contract as the statute contemplates is expressly conferred upon councils, and hence the maxim, "Expressio unius est exclusio alterius," is clearly applicable. Nor is the town estopped from taking advantage of the incapacity of said town council to make said contract because the other party thereto acted in good faith in making the same, and has on its part fulfilled all the obligations which it assumed thereunder, as contended by complainants' counsel. *McTwiggan v. Hunter, Index RR, --,* 33 A. 5. It was bound at its own peril to know the extent of the authority of the town council and also of the town in the premises. *Austin v. Coggeshall,* 12 R.I. 329.

To what we have said above regarding the proper construction to be put upon said statute, it may be added that under Pub. Laws R.I. c. 566, passed June 1, 1876, town councils were given power to grant to any person or corporation the exclusive right to lay water pipes in the public highways of the town, for the purpose of supplying the inhabitants thereof with water, but that subsequently, in the Revision of 1882, said power to grant the exclusive right to use the highways for such purpose was cut down to the power to grant simply the right so to do, and said chapter 566 was repealed. See Pub. St. R.I. c. 38, § 32, together with chapter 260, § 12.

But the complainants further contend that not only was the granting of said franchise by the

town council acquiesced in and approved by the town, but that it was subsequently sanctioned by the legislature in the charter of the Westerly Waterworks. An examination of said charter, however, fails to show any ratification or adoption of said contract, or any reference thereto; and while the act in some respects closely follows the terms of the attempted grant from the town council, and was evidently drafted with said contract in the mind, and probably in the presence, of the scrivener, yet it materially differs therefrom in other respects; and, while granting rights in the streets for an indefinite period, yet neither itself grants nor recognizes any authority in the town council to grant an exclusive right therein. In this connection we will briefly refer to the case of *Citizens' Water Co. v. Bridgeport Hydraulic Co.,* 55 Conn. 1, 10 A. 170, which it is claimed by complainants' counsel is a strong authority in its favor. While that case comes nearer to sustaining the construction contended for than any of the others, yet it is clearly distinguishable from the cases at bar. The main point of similarity between that case and those now before us is that there the common council of Bridgeport, in 1853, accepted a proposition made by

G. to supply the city with water, and granted him (with a right of assignment) the exclusive right to lay pipes in the streets so long as a full supply of pure water should be furnished. In 1857 the Bridgeport Hydraulic Company was incorporated, with power to acquire, and which did acquire, all the right of G. under the vote of the city, and became charged with all his duties; and this company soon after expended a large sum of money in acquiring property and establishing its waterworks. In granting said charter, the general assembly expressly recognized and confirmed the grant made by said city; and the court held that said grant thereby became as effective as if the city had had the power to make it, and as if the legislature had made it in the most direct and explicit words. But it is clearly evident from the opinion of the court that without said act the grant of the exclusive use of the streets in said city would not have been sustained. The court say: "Inasmuch as Nathaniel Greene had power to bind himself to furnish water for a specified consideration, if the city had possessed power to bind itself in the manner proposed, there would have been no reason for the interference of the legislature in the matter; the contract between an individual and the city would, of necessity, have been left to the parties, or to judicial arbitrament if they had disagreed. In the want of power upon the part of the city to give to Nathaniel Greene a binding obligation to do what it desired to do is found the only reason for the existence of the seventeenth section, to give the needed legislative sanction to the city's desire to grant, and to its act granting, the exclusive use of the streets in return for the supply of water." "The legislature, having, in effect, authorized the city to make a contract which it desired to make, will not--cannot--now relieve it." If the charter of the Westerly Waterworks had expressly, or perhaps by necessary implication, recognized and adopted the contract now in question, a very different state of facts would be presented, and the case might, and probably would, be decided in accordance with the one just referred to. But no reference whatever being made in the charter of the Westerly Waterworks to said contract, and nothing appearing to show that the legislature had any knowledge even of its existence, we clearly should not be warranted in holding that, simply because there is quite a striking similarity between the tenth section thereof and one clause of said contract, therefore said act amounts to an adoption or ratification thereof. We therefore decide that the contract entered into between the

town council of Westerly and the Westerly Waterworks Company did not confer upon said company, or upon their successor, the Westerly Waterworks, the exclusive right to use the public highways and grounds of said town for the laying and maintaining of water pipes for the purposes aforesaid.

The second question is whether the town of Westerly has the right to construct waterworks of its own. We think it has. Pub. Laws R.I. c. 285, passed March 30, 1882, entitled "An act in relation to supplying towns with water" (now Gen. Laws R.I. c. 123), provides that "whenever the electors of any town, qualified to vote upon questions of taxation or involving the expenditure of money, shall have voted at a town meeting called for that purpose, to provide a water supply for the inhabitants of such town, or for some part thereof; or whenever any town shall enter or shall have entered into any contract with any person or corporation to furnish such town with such a water supply (a contract which towns are hereby authorized to make), then such town, or the person or corporation bound to fulfill such contract, as the case may be, may take, condemn, hold, use and permanently appropriate any land, water, rights of water and of way necessary and proper to be used in furnishing or enlarging any such water supply, including sites and materials for dams, reservoirs, pumping stations, and for coal houses, with right of way thereto, and right of way for water pipes along and across public highways and through private lands, and including also lands covered or to be flowed by water, or to be in any other way used in furnishing, enlarging or maintaining any such water supply. And if any change in any highway shall be required for the accommodation of such water supply, then such town, person or corporation may alter the grade of such highway or construct a bridge therein, under the direction of the town council of the town where such change is made, and as far as may be needful, first giving bond with surety satisfactory to a justice of the supreme court, if requested, conditioned to reimburse such town for every expense and damage occasioned by such change of grade or other change in such highway." Said act also provides for the payment of any property taken for said purposes, for the manner by which property may be condemned, how the damages to the owner thereof shall be ascertained, the manner of determining whether the taking of property for said purpose is necessary, the appointment of commissioners to appraise the damages sustained by reason of the taking of property, the right of trial by jury in favor of any party aggrieved by any award of damages which may be made on account of such taking, and generally for all the usual and necessary proceedings common to the exercise of the right of eminent domain. Indeed, we fail to see that there can be any doubt as to the sufficiency of the authority of any town under said act to construct and maintain waterworks of its own. This is its evident scope and purpose, and we think it is ample and sufficient for the accomplishment thereof.

But complainants' counsel urge the insufficiency of said act, in that it nowhere expressly says that towns are authorized, after a vote of the taxpayers so to do, to build waterworks.

It is true that the act does not use this particular language, but it does use language equally as effectual and pertinent; and it makes no difference what particular form of language the general assembly has seen fit to adopt, so long as it is clearly sufficient to accomplish the object sought to be obtained.

But counsel for the complainants further argue that the legislature itself, by the passage of other acts since the passage of said chapter 285, specially authorizing towns to build and construct waterworks, has placed its own construction upon the extent of the powers conferred by that chapter; and he instances the passage of the "Act for supplying the town of Cumberland with pure water," passed May 25, 1893, the same being Pub. Laws R.I. c. 1254. The contention is that the general assembly, in passing the last-named act, impliedly decided that, notwithstanding the provisions of said chapter 285, still towns have no authority to build waterworks without further legislation. We fail to see the force of this argument. It is very common for a particular town to desire something different in the way of legislation from that which is provided for towns in general, not only as to the mode of constructing and maintaining waterworks, but also as to very many other things in connection with the management of the local affairs thereof. An examination of the legislation of the state shows that quite a large proportion of our laws have been passed to meet the wants, or wishes at least, of some individual town or district, and hence, of course, have only a local application. Indeed, special legislation of this sort is, and long has been, a marked feature of the lawmaking branch of our state government. But this fact in no wise detracts from the force and authority of general laws in those towns where matters of this sort are not regulated by special acts. Although an examination of said chapter 1254 shows that in minor particulars it is somewhat different from chapter 285, yet we fail to see that its general scope or authority is any greater, or that the passage thereof tends in the least to show that the legislature considered that said town of Cumberland was not invested with full general powers in the premises before the passage thereof. But even assuming that the legislature did consider that the passage of said chapter 1254 was necessary in order to authorize the town of Cumberland to construct waterworks, or, to state it differently, that said chapter 285 was insufficient for said purpose, still such legislative construction, while entitled to great respect, should not control the action of the court on a question so free from doubt as the one now under consideration. See *State v. District of Narragansett,* 16 R.I. 440, 16 A. 901; Sedg. St. & Const. Law (2d Ed.) p. 214; Suth. St. Const. § 311, and cases cited.

As to the third and last question aforesaid, viz: Does the vote of the town passed April 11, 1895, authorize the construction of waterworks? Said vote is as follows: "Resolved, that the town council of the town of Westerly be, and it is hereby, requested to agree, if possible, with the Westerly Waterworks of said town, upon a third referee, under the agreement between said town and said Westerly Waterworks; and, in case no such agreement can be arrived at within thirty days from the date of this meeting, the said town council is hereby directed to contract for and construct waterworks for said town, not to exceed in cost the sum of $150,000." In order to more fully understand this vote, it is necessary to refer to a former vote of the town, passed June 2, 1891, and also a vote of the town council subsequently passed, on the same day, in pursuance thereof. Said votes are as follows: Vote of the town: "Resolved, that the town council be, and they are hereby, instructed to notify the Westerly Waterworks Company, in writing, that the town desires to purchase the property of the Westerly Waterworks Company; and they are further instructed to take all necessary action, in accordance with the provisions of the franchise of the said Westerly Waterworks Company, to ascertain at what price the Westerly Waterworks can be

purchased." Vote of the town council: "Whereas, the town of Westerly, in town meeting duly assembled, did on the 2d day of June, A. D. 1891, adopt the following resolution: [Then follows the above.] Now, therefore, it is voted by the town council of said Westerly that the clerk of the council be, and he is hereby, authorized and instructed to notify the Westerly Waterworks, a corporation duly incorporated, and located in said town of Westerly, that said town of Westerly desires to purchase the property of the said Westerly Waterworks, together with all the rights, privileges, and appurtenances to the same in any wise appertaining and belonging, in accordance with said resolution adopted by said town as aforesaid." While not particularly questioning the sufficiency of said vote of April 11, 1895, as such, to confer the necessary authority upon the town council to construct waterworks, yet complainants' counsel contend that the town had no authority to pass said vote, because the notice contained in the warrant, pursuant to which said town meeting was held, did not justify the action taken. The article or notice contained in the warrant calling said town meeting was as follows: "To hear and consider the report of the arbitrator selected on behalf of the town as to progress in matter of determining value of the Westerly Waterworks and to take such further action as the town shall see fit with reference to the purchase of said waterworks, and also to consider the question of advisability of constructing, maintaining, and operating new waterworks, by the town." The statute requires that the warrant calling a special town meeting shall contain a notice of the business to be transacted therein, and also that no vote shall be passed in any town meeting concerning the making of a tax unless special mention thereof be made in the warrant. See Pub. St. R.I. c. 35, now Gen.
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Laws R.I. c. 37. We think the notice above quoted clearly answers the statutory requirement, and hence that it was sufficient to authorize the passage of the vote or resolution in question. All that is necessary in such a notice is that it be sufficiently explicit to call the attention of the voters to the subject to be considered and acted on (*Marden v. Champlin,* 17 R.I. 427, 22 A. 938; *School Dist. v. Blakeslee,* 13 Conn. 234); and, if this is done substantially, it is sufficient (*Torrey v. Inhabitants of Millbury,* 21 Pick. 64). "The articles inserted in warrants for calling town meetings," says Mr. Justice Hubbard in *Haven v. City of Lowell, 5 Metc. (Mass.)* 35, "presenting the various subjects for the consideration of the inhabitants, are, from the very nature of the case, general in their description, and are oftentimes inartificial in their construction. They are the mere abstracts or heads of the propositions which are to be laid before the inhabitants for their actions, and matters incidental to and connected with such propositions are alike proper for their consideration and action." See, also, *Fuller v. Inhabitants of Groton,* 11 Gray, 340; *Com. v. Wentworth,* 145 Mass. 50, 12 N.E. 845. We think that no one who read the notice of said meeting could fail to understand that a proposition to construct waterworks by the town was liable, at any rate, to be taken up and acted on; and, of course, every voter must have known that the construction of such works would necessarily involve the expenditure of a large sum of money. Nor does the fact alleged in complainants' bill--viz. that there were only 123 out of a total of about 600 voters present at said meeting--conclusively show, as contended by counsel, that the taxpaying voters did not suppose that any such action could be taken. It is matter of common knowledge that special town meetings, in particular, are frequently, if not usually, attended by less than a majority of the voters. They are

too busy about their own affairs, or too indifferent regarding the particular matters to be acted on, to devote their time or attention thereto, and hence the business must necessarily be transacted by a minority of the total number of voters in the town; and while it were well if this were otherwise, and the people took a more general and active interest in public affairs, yet we must take things as we find them, and judge accordingly.

For the reasons above given, the demurrers must be sustained.