

**Pipe Dreams:**  
**Commercial Bank of New Orleans v. Albert Stein, Waterworks Engineer**  
by  
Carolyn G. Kolb

On Monday, June 25, 1838, a warrant was issued by the Judge of the First District Court of Louisiana for the arrest of Albert Stein, a Civil Engineer and resident of New Orleans, a respected authority on waterworks and a native of Prussia whose career in America had brought him renown and a comfortable living. Stein was not charged with a crime, he was being sued by his former employer, and his resulting legal problems would wend their way up to the Supreme Court of Louisiana during the following years. In the case, *Commercial Bank of New Orleans v. Albert Stein*, the bank contended that Stein had not turned over relevant documents and items on his resignation as superintendent of the New Orleans Waterworks, which the bank had been chartered to construct and operate. Those items were worth \$40,000 to them, according to the bank.<sup>1</sup> Stein disagreed.<sup>2</sup> Consideration of the case provides not only a narrative of a civil action, but an absorbing glimpse into the commercial milieu in which the infrastructure of an American city was created in the early part of the nineteenth century. Moreover, the portrait that emerges of Stein depicts a professional man of science, proud of his craft and ready to defend what he saw as his intellectual property.

Judge A. M. Buchanan of the First District Court of Louisiana signed the arrest warrant that Monday ordering Sheriff Frederick Buisson “to arrest the body of the defendant Albert Stein and him confine till he shall give sufficient security that he shall not depart from said state without the leave of the said Court.” This was not a pleasant way to begin the week, but by Thursday the warrant had been returned and Stein’s freedom was secured. To be free on bond, Stein found two upstanding citizens, the attorney M. W. Hoffman and the grocer J. W. Justamond, who pledged \$50,000 assuring that Stein would remain available to the Court.<sup>3</sup> Indeed, Stein remained in New Orleans for some time: the District Court trial would not begin until March 17, 1839, a little more than five years from the day he had undertaken the New Orleans waterworks project.

Stein had begun working on the New Orleans waterworks November 23, 1833<sup>4</sup>. The Bank’s board of directors passed a resolution approving his terms of employment December ninth (Stein’s forty-eighth birthday), and he signed a contract with the Commercial Bank’s waterworks committee on December 23, 1833. In return for superintending the construction and operating the works, he would be paid \$6,000 a year.<sup>5</sup> Either party could revoke the contract with a month’s notice. Because he was “unacclimated,” Stein was not required to stay in the city from June to November, or until any epidemics had passed each year.<sup>6</sup> During that period the bank might compel him to travel within “the limits of the United States” on behalf of the project (perhaps on buying trips for pipes and pump machinery) for which his expenses would be defrayed. It was made clear that he worked under supervision of the waterworks committee and the bank’s board.<sup>7</sup>

Stein’s job description was exact: he was appointed civil engineer of the project, he was to “labour assiduously” and “devote his whole time and

all the skill and knowledge he possesses to the proper discharge “ of his duties, and “particularly to prepare and furnish...all plans, drafts and estimates” to the bank’s waterworks committee. He was to work “with the assistance and under the control of said committee” and “to give them all needful information and the aid of his skill and knowledge.”

Stein had an abundance of skill and knowledge. Born in Prussia in 1785, he was educated as a civil engineer and in 1807 he was appointed a hydraulic engineer in the German Duchy of Berg and Cleves, then under control of Napoleon I. After the fall of Napoleon he immigrated to America in 1816, settling first in Philadelphia where he knew Frederic Graff, engineer for that city’s waterworks. Stein sought American work. He made surveys for an Ohio canal and submitted a design for waterworks in Cincinnati in 1817, subsequently building it. During the 1820’s he worked deepening the Appomattox River at Petersburg, Virginia, and served as engineer of the Lynchburg waterworks. In 1832 he designed and built waterworks for Richmond, Virginia, that provided a technological first for the country: Stein built a filtration system.<sup>8</sup> Stein earned \$6,500 for his Richmond efforts, and at the same period he was designing a system for Nashville. Only 44 American cities had waterworks in 1830 and Stein alone was rapidly increasing that number.<sup>9</sup>

New Orleans, whose 1822 waterworks, designed by the same Benjamin Latrobe who built the Philadelphia system, consisted solely of a pump pulling Mississippi River water through pipes along French Quarter streets, badly needed a dependable municipal water supply. The city was growing, expanding upriver, and becoming more industrialized with an active port. In 1833 the Louisiana Legislature chartered a private corporation, the Commercial Bank of New Orleans, with the aim of

building and operating a waterworks. This charter gave a 35 year monopoly of water service, with a fifteen percent profit on gross returns for the first five years, ten per cent afterwards.<sup>10</sup>

The Commercial Bank's Water Works Committee published a report on February 18, 1836 and described in glowing terms its projected success at its venture. Although the charter required only that water be supplied at 15 feet of pressure, the new system would supply 21 feet of pressure. The requirements of the charter had actually been met at \$36,000 less than the projected \$400,000 cost. The reason for this miraculous achievement? "...Upon Mr. Albert Stein rests the responsibility" the report stated. "... The honor of having planned and executed in so short a time a work of so much difficulty and importance will be exclusively his."<sup>11</sup>

The report was signed by William G. Hewes Chairman, Maunsel White and Felix Labatut as committee members.<sup>12</sup> The waterworks would go into operation on April 28, 1836, when water was pumped into the reservoir and the system went to work. All was successful.<sup>13</sup>

In 1836 Stein had been heaped with praise by the committee. The public reacted with gratitude to the new water supply. Were there any signs to be discerned of the acrimony to come between the bank and the engineer? It may be that the entire project had been a troublesome one from the beginning. The committee's own February, 1836, report seemed to have been an attempt to assuage complaints. "The great difference of opinion which existed . . . as to the best mode" to elevate the water supply had been the first controversy even before Stein was hired. Should it be a 100 foot tall iron cistern? Should the pipes themselves run 15 feet in the air? The committee itself decided not to speak up for one system or another. Furthermore, since "there was not a single member of the Board

practically acquainted with the subject of Water Works that had we not had an engineer among us.... the difficulties.... were considered by many intelligent persons as unsuperable." And so, "it was therefore decided that the first step should not be taken until the services of an engineer of the highest character could be procured," the report noted. <sup>14</sup>

Stein would advocate constructing a huge earthen mound on a square bounded by Richards, Market, and Religious Streets, just blocks from the river and a little over a mile upriver from Canal Street. The mound, built with mud from the river batture, would rise 21 feet and be topped by a brick reservoir measuring 250 feet square on the inside, and with its twelve foot deep interior plastered with cement. The top level of the water would actually be 38 feet higher than the level of Canal Street. The bank also purchased land near the river at Tchoupitoulas and Richard Streets to house the pumps, which pulled in river water through a 16 inch wide suction pipe 800 feet long. The same width pipe fed the reservoir's four compartments, with a capacity of four million gallons.<sup>15</sup>

The project was an engineering feat, not without problems. "The settlement of disputes and difficulties . . . have occupied much time and caused much trouble," the report admitted, although "this . . . would have been ten-fold had it not been for the great exactness and economy of the engineer." Indeed, the four year project was finished in less than two years, and, with original specifications, was less expensive than had been thought. The bank's report is careful to point out how prudent their methods were: "The utmost exactness had been observed in regard to the expenditures. The bills are carried to appropriate accounts, so as to show the exact cost .... Each bill must be approved by the engineer and by the Water Works Committee." Moreover, the bank had been so careful in its

budgeting they assured the public "that the Bank will be able to furnish water clear and pure at a much less expense" than the present system.<sup>16</sup>

After all that positive discourse on the waterworks theme, the report closed on a somewhat rueful note:

That this plan is the best that could have been adopted, and indeed the only one likely to have succeeded, we have no doubts -- that it *is* [sic] doubted by some, we do not deny; but the objections have been candidly examined...<sup>17</sup>

The objections, for the moment, may have been satisfied. In the month following Stein's resignation at the beginning of May of 1838 the atmosphere became far less congenial.<sup>18</sup> Stein's letter confirming his resignation was sent May 9. On May 10 the bank board met and accepted it. On May 14 the bank sent a letter to Stein telling him "to hand over to the water works committee all the papers and documents in your possession in relation to your office." Stein let the bank know in no uncertain terms that he felt he had already given them everything. The haggling over eleven items specified by the bank, including account books, maps and charts, and various other records, went on until the suit was filed June 25.<sup>19</sup> By that time Commercial Bank President William G. Hewes' affidavit may have stated that he had "no intention of vexing" Stein by suing him and having him arrested, but it is hardly likely Stein could have felt otherwise than peeved.<sup>20</sup>

In a remarkable letter apparently written May 27, 1838, Stein speaks out in defense of what he saw as his own intellectual property that the bank was demanding of him:

If in the execution of said work I have found it convenient to write books or keep memoranda or to draw plans or to construct theories or to deduce demonstrative notions on hydraulics from my daily experience in a science which has

employed my life and supplied me my bread, if after collating & perfecting in New Orleans the judgments of science I have tested at different places , I have gathered them into any referring system & have embodied them in my private papers, preserved in my private study I shall hardly consent to surrender them under the sweeping demands of the President for everything relative to the water works nor can I suppose that any deliberate demand to that extent will be direct by authority of the Board.<sup>21</sup>

The exchanges in the correspondence grew increasingly more heated. At one point, bank cashier George Hall wrote "it is hardly to be expected that the committee . . . should be able to describe minutely [sic] all these documents and plans." In particular the bank wanted the sketches showing where the pipes were laid, and, in addition, the bank demanded the original "dry point drawings which Mr. Stein thought it requisite and necessary to have drawn."<sup>22</sup> Stein may have thought he was complying by handing over relevant items. The bank, however, thought so little of his compliance that a note in the trial records says succinctly:

The preceding is a List of all the papers sent to the office of the Commercial Bank and Water Works by Mr. A. Stein at the time of his resignation and most of them are of very little use or value.

F. M. Scott, Secretary<sup>23</sup>

Although the suit was filed June 25, 1838, the trial would not get underway until the following March 17. Perhaps the most effective witness was J.P. Coulon, whose prior employment was "of the sea," but who nevertheless was employed by the bank as secretary of the water works, and was also paid by Stein to serve as the engineer in his absence. Coulon was asked specifically about a plan book showing where pipes were laid. He admitted he had seen such a book at Stein's house where several people,

including a Mr. Tollope, a Mr. Mollhausen, and a Mr. Troost, were employed in drawing plans.<sup>24</sup>

Coulon said he believed that any expenses the bank would suffer for not having such a plan book would be "about eight or ten thousand dollars." A plan of that sort would be worth "about fifteen hundred dollars," he said.

Other witnesses stated they had seen various plans and books in the waterworks office, showing "how far from the banquet [sic] those pipes ran" and other location guides. One witness, L. J. Rogers, recounted how he had seen pipes "strewn all over the streets and no one to stand guard over them," presumably in evidence of Stein's poor management. Other witnesses included John Lathem, who had to be deposed separately as he "worked on the river," and John Swainson, an engineer "who served an apprenticeship in England." Witnesses were asked whether they could read Stein's plans as shown in court and most could. Witnesses even sometimes defined items discussed. "the fire plug is like a post on the sidewalk exposed to view," and "a stop cock is an iron grating in the street, visible to any person and indicates the position of the branches."<sup>25</sup>

In the course of the trial in District Court some thirty exhibits were offered, including a street plan showing pipe locations. The bank's witnesses insisted there had been a bigger, better plan and Stein had not turned it over. Stein's side insisted the bank had everything it required. Stein's attorneys filed a Bill of Exception on March 20, 1839, arguing that the Bank may have complained at not having a plan showing where pipes were laid, but their petition did not demand they be paid damages for costs incurred for lacking such a plan. And, the petition had only insisted they be given the plan or paid its "value in money." Furthermore, they suffered



no such damages anyway. Judge Buchanan overruled them, and the case went to the jury.

The jury returned a verdict March 25. The bank won. The verdict ordered Stein to give the bank five items: (1) a large city map showing pipe locations and sizes, (2) a plan book showing the exact position of pipes and apparatus in each street, (3) an invoice book recording all pipe purchases and contracts up to April 30, 1838, (4) an inventory of all pipes on hand as of that date and (5) an account of all pipes laid to that time. If the items were not given the bank by Stein, he would be "condemned to pay unto the said plaintiffs the Commercial Bank of New Orleans the sum of eight thousand dollars." Stein also had to pay court costs of \$187.37 1/2.<sup>26</sup>

On April 6 Stein's attorneys, Grymes, Harrison and Hoffman, were back in court asking for a hearing on a new trial. The plaintiffs' attorneys, C. M. Conrad and Connor, spoke against it. Finally, on April 24, Judge Buchanan refused a new trial. Stein filed for a petition for appeal to the Supreme Court of Louisiana on May 2. Reason for the appeal that a new trial be granted was "error in the final judgment rendered against him." Stein, with the aid of Christopher Adams and John Bach, posted a twelve thousand five hundred dollar bond and the appeal was granted.

The appeal was filed with the Supreme Court March 16, 1841. According to the court minutes of March 7, 1843, the justices seated to hear the case included Francois Xavier Martin, Henry Adams Bullard, Alonzo Morphy, Edward Simon and Rice Garland. Judgment was rendered March 20, 1843. The Court granted Stein a new trial, set aside the verdict, and, in an opinion written by F. X. Martin, presiding judge, found error in that

the Jury . . . neglected to divide the sum which the defendant should pay, in case he did not deliver the five articles aforesaid,

into five sums, one of which the defendant should pay in case he failed to deliver one or more of the said five articles.

The Supreme Court judgment also noted that some of the articles mentioned as being retained by Stein seemed actually to have been used by the bank as evidence in the trial, and, it was never shown that the large plan was ever completed or even that it ever existed.<sup>27</sup>

And here, March 20, 1843, the records end. There is nothing in the First District Court records to show that a new trial was held, nor was there anything further recorded in the minute books for First District Court on the matter of Commercial Bank of New Orleans v. Albert Stein. Because the court records include a copy of a street map with colored lines showing where pipes were laid, and an engraving or etching showing an elevation of the reservoir, it is possible that Stein was able to satisfy at least some of the requirements. Perhaps a settlement was reached out of court.

Stein continued an active life in New Orleans. In the period from 1838 to 1840 he served as a city engineer, and also as an engineer for the Canal Bank, from which position he oversaw completion of the New Basin Canal.<sup>28</sup> Always a man of strong opinions, he even had a scheme for ridding the Mississippi River of its troublesome sand bars by constructing works at one of the passes to let the river scour itself, in just such a manner as James Eads' jetties would do the same thing decades later.<sup>29</sup>

Stein had leased the waterworks of Mobile, Alabama in late 1840. He and his family moved to nearby Spring Hill, where he resided while he continued operating the Mobile waterworks until his death in 1874. He remained an outspoken authority on civil engineering, issuing pamphlets on Mobile Bay, consulting in New York on the Croton Aqueduct, and even occasionally appearing in court.<sup>30</sup>

Regarding the expense and trouble that the Commercial Bank of New Orleans encountered in their pursuit of the illusive plans and documents of Albert Stein, the bank seems to have been more punitive in their quest than might have been expected. The Supreme Court ruling appears to be a sensible one, perhaps even a decision that two reasonable parties might have reached on their own. Why was a compromise not possible between Stein and the bank? Perhaps the Commercial Bank did not appreciate Stein's somewhat abrupt resignation, since his written notice was sent nine days after the fact. Perhaps they also were aware of his work for the city, and for the Canal Bank, and this may have made them feel that the waterworks no longer had his full attention. And, it may be that the "doubts" that the 1836 Water Works Committee pamphlet attempted to assuage grew rather than lessened.

One reason for his battle with the bank may have been Stein's own personality. According to his obituary, he

had but little forbearance toward error, or toward ignorance...His scorn of a conceited adversary was unqualified, and he would scarcely condescend to argue with opposition....This positiveness of bearing in controversy created antagonism, instead of conciliating sympathy, and greatly diminished his influence upon his contemporaries.<sup>31</sup>

For whatever reason, Albert Stein and the Commercial Bank of New Orleans had found themselves entangled in a legal dispute that would stretch over five years -- a good three years longer than the waterworks that brought them together had taken to complete.

<sup>1</sup> Commercial Bank of New Orleans v. Albert Stein, Docket #3691, Supreme Court of Louisiana Archives, Department of Manuscripts and Archives, Earl K. Long Library, University of New Orleans. See Appendix.

<sup>2</sup> Commercial Bank of New Orleans v. Albert Stein, Supreme Court of Louisiana Archives. Stein's answer, filed June 28, 1838, denied the allegations and further denied that he was "indebted in any manner or liable" to the plaintiff or that the plaintiff had "any such cause of action against him."

<sup>3</sup> Commercial Bank of New Orleans v. Albert Stein, Supreme Court of Louisiana Archives.

John Gibson, Gibson's Guide and Directory of the State of Louisiana and The Cities of New Orleans & Lafayette (New Orleans: John Gibson, 1838), 244. Stein had important friends: Justamond was a Brigadier General in the Louisiana Militia.

<sup>4</sup> Mobile Register, 20, Sept. 1874. As his obituary noted, Stein had married Caroline Troost in Nashville on November 21, 1833.

<sup>5</sup> Gibson, 244. Judge A. M. Buchanan of the First District Court, which served the six parishes of Orleans, Jefferson, Plaquemines, St. Bernard, St. Charles and St. John, was paid only \$4,500 per year.

<sup>6</sup> Both Benjamin Latrobe, designer of New Orleans first waterworks, and his son had died of yellow fever contracted in New Orleans.

Commercial Bank of New Orleans v. Albert Stein, Supreme Court of Louisiana Archives. Exhibits, Document 1. See Appendix.

<sup>8</sup> M. N. Baker, The Quest for Pure Water: The History of Water Purification From the Earliest Records To the Twentieth Century (New

York: The American Water Works Association, Inc., 1948), 127- 130. In Stein's Richmond system a reservoir held water in four pens, and in two of them water entered from the bottom and percolated up through gravel and sand to provide "an abundant supply of pure and sweet water for our city" according to a Richmond Watering Committee report of February 17, 1832. The upward filtration system proved unsuccessful and the system was augmented in later years, but Stein had provided the first filtered water to an American city, and he had brought the project in under budget: \$92,600 was estimated, \$76,861 was spent.

M. N. Baker, 127-130.

<sup>10</sup> Nelson Manfred Blake, Water for the Cities: A History of The Urban Water Supply Problem In the United States, Maxwell School Series - III (Syracuse: Syracuse University Press, 1956), 266.

<sup>11</sup> Report of the Water Works Committee of the Commercial Bank of New-Orleans. Presented February 18, 1836, and Published By Order of the Board of Directors (New Orleans: Gaston Brusle, 1836), 1-14.

<sup>12</sup> Report of the Water Works Committee, 6.

John Gibson, Gibson's Guide and Directory of the State of Louisiana and The Cities of New Orleans & Lafayette (New Orleans: John Gibson, 1838), 337, 353.

The committee was composed of three members: one the President of the Bank (Hewes), and the other two members of the bank's board, one of whom had to have been appointed to his position by the City of New Orleans. Both White and Labatut are still listed on the bank's board in the City Directory for 1838, but at that time the Water Works Committee is listed as Hewes, White and T. O. Meux, Meux being one of the City's two

representatives to the board at that time. When Stein was hired in 1833 Joshua Baldwin and C. Genois served with Labatut on the Water Works Committee.

<sup>13</sup> Report of the Water Works Committee, 14.

<sup>14</sup> Report of the Water Works Committee, 4.

<sup>15</sup> Report of the Water Works Committee, 6.

Gibson, 336.

<sup>16</sup> Report of the Water Works Committee, 9-12. The water supply for New Orleans in 1836 would have included that from cisterns, wells, water sold from carts, and river water pumped from the Mississippi through pipes along streets of the French Quarter with plugs at corners where local householders fetched water.

<sup>17</sup> Report of the Water Works Committee, 14.

<sup>18</sup> Commercial Bank of New Orleans v. Albert Stein, Supreme Court of Louisiana Archives. A letter from Stein dated May 9, 1838, is Exhibit 2 in the court records. Stein writes the Board and President of the Bank confirming his "verbal notice I gave the President before the first of April" to "terminate said contract on the 30th day of April." Apparently he did not notify them in writing before the fact of his resignation, which may not have been taken lightly.

<sup>19</sup> Commercial Bank of New Orleans v. Albert Stein, Supreme Court of Louisiana Archives. President Hewes wrote Stein on May 25 telling him to turn over all waterworks documents to the bank, Stein replied on the 27th that he wanted them to list exactly what they wanted since he felt he had

turned over everything. The bank replied on the 27th with a list of eleven items they wanted: 1. a book listing all pipes laid to private families by January 1, 1838; 2. a book of invoices for all pipes and materials; 3. an inventory of all pipes in hand; 4. list of all pipes ordered not yet delivered; 5. street map showing pipes laid; 6. book with data on supplies and labor used in laying pipes in each street; 7. books to be balanced to date of Stein's resignation; 8. show where a deposit of \$1,300 to his engineering account went; 9. account for office furniture and supplies in Stein's possession paid for by the bank; 10. furnish bills of lading for pipes in shipment from Philadelphia; and 11. Explain a certain \$6,800 bank expense. Stein wrote them on June 1, answering each item: 1. he would transcribe a new copy for them, the original book contained other personal material, too; 2. the bank had the originals, Stein had only copies; 3. he already furnished this, and the "rules and regulations" the bank adheres to did not require him to do so; 4. he has turned over everything he had, if more arrived he would send them also; 5. this book is ready to be handed over; 6. he knows of no such book; 7. the bank's own officers balanced the books; 8. calling the \$1,300 amount "loose and inaccurate" Stein suspects this is a misreading of a \$1,429 payment from the Second Municipality for the paving of sidewalks; 9. all office furniture has been accounted for, he recalls a \$10 grate which may have been lost and he will pay for; 10. President Hewes directed him to order some pipes, a list of four items is attached; 11. refer to answer seven (the bank's officers balanced the books). In subsequent correspondence the bank continues to demand the same items, not accepting Stein's explanations.

<sup>20</sup> Commercial Bank of New Orleans *v.* Albert Stein, Supreme Court of Louisiana Archives. See Appendix.

<sup>21</sup> Commercial Bank of New Orleans *v.* Albert Stein, Supreme Court of Louisiana Archives. See Appendix.

<sup>22</sup> Commercial Bank of New Orleans *v.* Albert Stein, Supreme Court of Louisiana Archives.

<sup>23</sup> Commercial Bank of New Orleans *v.* Albert Stein, Docket #16.313 ; First Judicial District Court, New Orleans Municipal Archives, Louisiana Collection, New Orleans Public Library.

<sup>24</sup> Commercial Bank of New Orleans *v.* Albert Stein, Supreme Court of Louisiana Archives. The picture that emerges of Stein's method of operation is one of more autonomy than might have been expected. Although the Commercial Bank funded the waterworks project, they turned over complete management and direction of it to Stein, including setting up a bank account from which he himself paid wages, invoices, land costs, etc., rather than the bank paying directly. Other than oversight by the committee, Stein apparently had complete freedom to proceed as he saw fit. This included working out of his own home, which had been built as part of the waterworks project and stood on Tchoupitoulas Street near the pump engine house. The Mr. Troost was probably his brother-in-law.

<sup>25</sup> Commercial Bank of New Orleans *v.* Albert Stein, Supreme Court of Louisiana Archives.

<sup>26</sup> Commercial Bank of New Orleans *v.* Albert Stein, Supreme Court of Louisiana Archives.



<sup>27</sup> Commercial Bank of New Orleans *v.* Albert Stein, Supreme Court of Louisiana Archives.

<sup>28</sup> Mobile Register, 20, Sept. 1874.

<sup>29</sup> Albert Stein, To Samuel J. Peters, Esq., President of the Chamber of Commerce of New Orleans, dated New Orleans, February, 1841. Stein's plan had been brought to Washington by the Chamber of Commerce and publicized in DeBow's Review, however the chief Army engineer refused to approve the plan. Stein published several pamphlets such as this, including another on the Mississippi River passes in 1851, by which time he was a resident of Mobile.

<sup>30</sup> Records of a suit, Albert Stein *v.* George W. Ashby, Supreme Court of Alabama, January term, 1857, are in the University of Virginia Library, and Albert Stein *v.* John Burden, Alabama Supreme Court, no provenance, is in the Library of the University of North Carolina Chapel Hill.

Apparently Mr. Stein's Louisiana court experience did not keep him from being litigious. It is possible that he also was involved in a court case over a partnership he did not receive for his work in Cincinnati early in his American career.

<sup>31</sup> Mobile Register, 20, Sept. 1874.

## Appendix

**Documents from Commercial Bank of New Orleans v. Albert Stein, Docket #3691, Supreme Court of Louisiana Archives, Department of Manuscripts and Archives, Earl K. Long Library, University of New Orleans.**

### **Petition Filed 25th June, 1838**

To the Honorable the District Court in and for the 1st Judicial District  
for the State of Louisiana:

The Petition of the Commercial Bank of New Orleans, a corporation duly established by law of said state, respectfully shows that one Albert Stein, heretofore residing in the City of New Orleans, has been for some time past employed by your Petitioners as Engineer and Superintendent of the Waterworks constructed by them for the purpose of supplying the City of New Orleans with water in compliance with the terms of the charter of your petitioners, and that as such, said Albert Stein had the sole charge and direction of said works. That he, in his said capacity or those under him and paid by your petitioners, have made sundry plans and estimates and kept divers books records & papers relative to and appertaining to the construction and continuance of said works and also had possession of sundry pipes and materials necessary to the construction and progress of said works, all of which belong and are of considerable value to your petitioners.

Your petitioners show that said Stein has ceased to be employed by them but that nevertheless, tho repeatedly requested, he does refuse to render to your petitioners a completed account of said plans, estimates, books, records, pipes, implements, etc., and to deliver up the same to your

petitioners or to his successor in office. Your petitioners further show that they can not without great trouble, inconvenience or expense continue said works without the above mentioned plans, estimates and other above enumerated articles. That said plans, estimates books and records, said pipes, implements and materials, etc., are worth to your petitioners at least the sum of forty thousand dollars. That said Albert Stein, your petitioners are informed and verily believe is about to depart from the state without leaving sufficient property behind to satisfy the above mentioned sum, the value of said articles.

Wherefore, your Petitioners pray that said Albert Stein be duly made to answer this petition, that the annexed affidavit being considered he be arrested and held to bail. That after all due proceedings he be condemned by this honorable court to render an account of all said Plans, Estimates, Books, Records, Papers, Pipes, Implements, materials etc. which may be in his possession or under his control in any manners relating or appertaining to the said waterworks & fixtures of your petitioners and the same to deliver up to petitioners or in default thereof that he be condemned to pay to your petitioners said sum of forty thousand dollars, the value whereof with all damages and costs and for all general relief in the premises. Your petitioners as in duly signed by F. B. Conrad, their attorney.

### **Affidavit**

Personally appeared William G. Hewes, President of the Commercial Bank of New Orleans, who being duly sworn made oath that all the material facts and allegations in said petition contained are true and correct. That Albert Stein is greatly indebted to the said Commercial Bank of New Orleans in the sum of at least forty thousand dollars being the value of the articles enumerated in the above petition belonging to said Bank detained by said

Albert Stein, that said sum is really due. That affiant verily believes Albert Stein is liable to remove from the state without leaving sufficient property to satisfy the demand of said Commercial Bank of New Orleans against him and that this oath is not taken with the intention of vexing said Albert Stein but only in order to secure the demand of said bank against him.

Signed, William G. Hewes, President, Commercial Bank of New Orleans

.

**Exhibits, Document 1. (Stein Employment Contract)**

"Be it known that in this twenty third day of December in the year of our Lord one thousand eight hundred and thirty three. Before me, Branche W. Miller, Notary Public with the Parish and City of New Orleans, duly commissioned and sworn, personally came and appeared Joshua Baldwin, Charles Genoix and Felix Labatut of the one part and who compose the committee appointed by the Commercial Bank of New Orleans, a duly incorporated institution of this city to contract for and superintend the water works about to be created in conformity to the charter of said Bank and which Committee are acting herein for and in behalf of said Bank by virtue of a resolution passed on the ninth, December, eighteen hundred thirty three, and Albert Stein of this city of the other part, which said party of the first and second part mutually declared as follows:


That whereas by a vote of the directors of said Commercial Bank the said Albert Stein has been appointed civil engineer of said bank and superintendent of the works about to be erected by the said bank with a view to supply the city of New Orleans and its Fauburgs [sic] with water agreeable to their charter of incorporation. And whereas the said Albert Stein has accepted by these present does accept said appointment and promises to bring himself to labour assiduously therein and to devote his whole time and all the skill and knowledge he possesses to the proper discharge of the duties thereof and particularly to prepare and furnish to said Company and to the committee appointed by them to superintend and direct said works, all plans drafts, and estimates that may from time to time be necessary in the prosecution of works or of any part thereof and to superintend and direct the executors of said works so far as to regulate the manner in which the same should be done with the assistance and under

the control of said committee as may for the time being be appointed by the board of directors of said Company to direct said works and to give them all needful information and the aid of his skill and knowledge in addition to the mode of constructing said works so as to attain the object thereof whenever required so to do. And in general to do and perform all such other acts and duties as are usually performed by civil engineers entrusted with the superintendence of such or of similar waterworks.

It is however agreed upon by and between the contracting parties that as the said Albert Stein is unacclimated he shall not be forced to remain within the city or its fauburgs during the months of July, August, September and October nor to return there till the first of November or from the existence of any epidemic should it endanger his health so to do, but that during his absence on this account the said Committee may required his services in his aforesaid capacity at any other place within the limits of the United States in any manner they may deem most conducive to the advancement of the aforesaid waterworks. Provided however, that if such requisition of his services at any other points should be attended with any additional expense the same shall be defrayed by said Company.

And the said Commercial Bank of New Orleans, by and through the Committee aforesaid do promise and bind themselves to pay to the said Albert Stein full compensation for his services in said capacity the sum of six thousand dollars per annum which salary is to commence from the twenty third of November last past.

It is further agreed upon by and between the contracting parties aforesaid that the contract may be annotated at any time and revoked at the will of either party provided one month's notice of such intention to be given to the other party.



This done and passed the day and year aforesaid in the presence of Charles Madison and C. W. Fairfield witnesses who hereunto sign their names with said Parties and me Notary.

Joshua Baldwin, C. Genois, Felix Labatut, Albert Stein, B. W. Miller,  
Notary Public

**Exhibit No. 5 (Letter from Albert Stein, May 27, 1838)**

To the Board of directors of the Commercial Bank  
Gentlemen

I received on Friday last a note from Mr. Hewes your president dated the 25th of May of which I deem it best to make an answer to your board. In that note Mr. Hewes says that he had "been impatiently waiting to receive from me the papers, Books plans etc. appertaining to the waterworks" -- also to converse with me on some necessary explanations of accounts, etc. I called at the counting house of Mr. Hewes the next day 26th inst. about 9 o'clock and informed Mr. Hewes that I had sent to the Bank all the papers plans etc. belonging to the Bank which I could find and that I would send any other such which I might find hereafter. I then told Mr. Hewes to let me know specifically what Books, plans or papers he intended to demand and yet demanded. He replied "everything relating to the New Orleans waterworks." I rejoined that I would willingly hand over the bank whatever belonged to it but that there might be some things in my possession falling under the description he gave which were my private property & which I was under no obligation to hand over to the Bank. Mr. Hewes mentioned a book in which were noted the pipes laid etc. I did not at first understand to what book he alluded and supposed him to allude to my private memorandum book which the board will pardon me for saying I should under no consideration part with and I gave him a refusal, but when afterwards I comprehended the particular book which he referred to (not my private mem. book ) I promised to send it in & now promise to send the same in to the Bank.



My obligations as engineer and superintendent are very definite & not to be mistaken. The duties to which I was bound while in office I have fulfilled I trust to their strictest letter. The duties which I owe upon the act of retiring from office I can see clearly and shall perform faithfully. In respect to the fullness and correctness in which I have executed my office & rendered my accounts I solicit the board if there be any complaints to make to furnish me with the specifications of the same in writing. In respect to duties I lately owed and still owe to the Bank on my withdrawal from its service & on the accession of a successor to me, I also solicit of the Bank to apprise me in writing of their interpretations of our contract with reference thereto that I may distinctly understand what particular books papers plans estimates etc. or what classes of such the Board thinks itself entitled to claim from me.

I am conscious that while in office I prepared & furnished to the Bank all the plans, drafts & estimates that were from time to time necessary in the prosecution of water works. I am conscious that while in office I did superintend & direct to the best of my skill and knowledge the execution of the water works with the assistance & under the control of the committee for the time being.

I am conscious that I did consult and advise with the committee or chairman in relation to these said works & gave them all needful information & the aid of all my skill & knowledge in the hydraulic sort -- as far as it related to the construction of these water works whenever I was required by the committee or chairman so to do and generally when needful or advantageous to the committee.

If in the execution of said work I have found it convenient to write books or keep memoranda or to draw plans or to construct theories or to

deduce demonstrative notions on hydraulics from my daily experience in a science which has employed my life and supplied me my bread, if after collating & perfecting in New Orleans the judgments of science I have tested at different places , I have gathered them into any referring system & have embodied them in my private papers, preserved in my private study I shall hardly consent to surrender them under the sweeping demands of the President for everything relative to the water works nor can I suppose that any deliberate demand to that extent will be direct by authority of the Board. I beg the bank then to communicate to me in writing the nature of its complaints against me if it have any & to the extent of its demand for plans drafts estimates etc. from me. It will give me great pleasure to receive such communications & to answer to it by that prompt obedience to its just wishes which I have always exhibited.

Respectfully etc.

(signed) Albert Stein

### Supreme Court Ruling

Commercial Bank of New Orleans v. Albert Stein

Appeal from the First District Court

The petition states that the Defendant, who was heretofore employed by the Plaintiffs as an Engineer and Superintendent of the works erected by them, for supplying the City of New Orleans with water, retains a number of Plans, Maps and estimates made by him, or by persons employed under him by the Plaintiffs, which are indispensable to them for continuing the said works, and a number of Books and Papers relating to the said works, as well as a quantity of pipes, implements and materials, their property, and refuses to deliver them to the Plaintiffs, or to his successor in office, the whole of which are of the value of forty thousand dollars. The petition concludes with a prayer that the defendant may be condemned to deliver the same to them, or pay the said sum. The Defendant pleaded the general issue. the case was tried by a Jury, who rendered a verdict against the Defendant for the delivery of:

1st A large plan or map of the City, showing the streets in which pipes have been laid, and their calibre.

2nd A Book, or Books of plans, shewing the size of pipes laid in each street, and the exact termination of the pipes from the termination of the square, etc.

3rd. An invoice Book, in which are recorded all contracts for pipes imported for the Bank, etc.

4th An Inventory of the Pipes remaining on hand, at the Defendant's resignation.

5th An account of all Pipes laid, their sizes, and where laid, up to the same period.

In default of the said delivery, the Plaintiffs should recover from the Defendant the sum of Eight thousand dollars. The Court gave judgment according to the verdict and the Defendant appealed, after an unsuccessful attempt to obtain a new trial.

The Court, in our opinion, erred, in refusing the new trial, principally on the ground of the Jury, having neglected to divide the sum which the defendant should pay, in case he did not deliver all the five articles aforesaid, into five sums, one or more of which the Defendant should pay in case he failed to deliver one or more of the said five articles. the Jury ought to have said that in case the Defendant failed to deliver the first article he should pay such a sum, and so on. It appears from the record that some of the Books and Documents claimed, and the delivery of which the verdict directs, were brought into Court and used as evidence by the Plaintiffs' counsel. The evidence does not show that the large plan or Map of the City, which is the object of the first article, was ever executed. It appears only that it was begun.

Justice requires that the case should be remanded for a new trial, in order that if the Defendant be mulcted in damages, on account of the improper retention of any one of the articles claimed, he may not be mulcted(as by the present verdict he is) as heavily for the improper retention of all of them.

It is therefore ordered, and decreed that the Judgment be annulled, avoided and reversed, the verdict set aside, and the case remanded for further proceedings according to law, the plaintiff and appellees paying the costs of the appeal.