

12990

No. _____

Supreme Court of Illinois

City of Ottawa

vs.

Chicago & Rock Island R.R.Co;

et al

in the proceedings had previous to the confirmation of the assessment by the city council. The charter provides that the council "shall have power in case of appeal, or otherwise, in their discretion, to revise or correct the assessment, and confirm or annul the same, and direct a new assessment to be made in the manner hereinafter directed by said commissioners, or by three others, which shall be final & conclusive on all parties interested, if confirmed. When confirmed, the assessment shall be collected as provided in article 9 of this charter, as near as may be, and no appeal or writ of error shall lie in any case from such order and determination." Sec. 7, Art. 8, city charter of Ottawa.—The power of confirmation vested in the council is a discretionary power, and the exercise of it a judicial act. The council acquired jurisdiction over the parties by the publication of the Clerk's notice; the latter had an opportunity to appear before the former and object to the assessment for any errors or irregularities in the proceeding of the commissioners, and the decision of the council was conclusive.

21 Barb. Sup. C. R. 672.

The facts that the charter provides for the sale of the real estate assessed, without judgment, (Sec. 7, Art. 8 and Art 9, city charter,) and that there was no law enacted authorizing judgment to be rendered, until after the date of the charter, clearly show that the action of the council is final and conclusive.

The granting of the injunction was *coram non judice* and void. 21 Ill. 605; 22 Ill. 34 and 594; and is not binding when brought in question collaterally; 3 Zab. 120; 11 Geo. 453.
3 How. U.S.R. 750, 1 Pet. 340, 13 Pet. 571, 8 How. 540
2 How. 59, 3 Dall. 7-4 Branch 241, 13 Ill. 443
4 Secum 536, 3 Kil. 199, 15 Ill. 415

The release to the Trustees of Illinois and Michigan canal did not apply to this improvement—did not exempt the canal property from assessment, and even if it did, that would not render the assessment void.

22 Ill. 303.

D. P. JONES,
Att'y for Plaintiff in Error.

Supreme Court
City of Ottawa

vs,
 The C^o R. I. R. R. Co.
 et al
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Points & Authorities  
 of Plff in Error

12990

Filed Apr 28. 1860

L. Deland  
 Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

144. THE CITY OF OTTAWA and }  
GEORGE H. WALKER }  
vs. }  
THE C. & R. I. R. R. CO. }

POINTS FOR DEFENDANT IN ERROR.

THIS was a Bill in Chancery by defendant in error, to stay the collection of a certain tax.

Bill verified by affidavit, and preliminary injunction granted thereon.

The defendants below file their answer and ask that injunction be dissolved. The answer was not under oath, and the Record does not show any evidence whatever, so that this Court will consider the bill as *true*, and if it makes out a case for an injunction, will affirm the order of the Court below.

The order and decree below were proper, for the tax complained of was not legally assessed and levied upon the property of defendants in error.

1. The assessment was made for the building of a sewer, and the authority to raise it being special, must have been strictly complied with.

Blackwell on Tax Titles, 47 *et seq.*, and cases there cited.  
21 Ill. 413.

2. No notice was ever given to defendants in error that said assessment had been completed, said roll filed, and of the time and place where its objections to the same could be heard, as required by Sec. 6, of Article 8, of the charter of the City of Ottawa.

Abstract, page 2.

3. No notice whatever was ever given to any persons whoever, of the time and place when said City Council did actually meet and consider and affirm said assessment.

Abstract, page 2.

This failure to give the notice required by law, renders the action of said City Council, as far as it relates to said assessment, inoperative and

void; it being well settled that no person can legally have his rights affected without an opportunity of being heard.

20 Ill. 416.

*Keech vs. People*, 22 Ill. 478.

Blackwell on Tax Titles, 251 and note.

4. The property of defendants in error was not in any way benefitted by the proposed improvement, for which the assessment was made.

This was the averment of the bill, and there was no evidence to the contrary.

5. If plaintiffs in error rely upon the cases in the 20 Ill.:

The Court will observe that this case is materially different from those.

In this case no evidence was introduced to show that the City Council had prescribed any form of notice to be given by the Clerk, or that the one given was in the form required by any public law or any city ordinance.

This being the fact, unless the notice given was reasonable, and likely to call the attention of the party whose rights were to be affected, this Court will not presume that it was sufficient, especially when the bill avers that the defendants in error had in fact no notice whatever of the proceeding.

6. The evidence not being set out in the record, this Court cannot say that the decision of the Court below was wrong. There may have been evidence to sustain it; for instance, evidence showing that the notices given were *not* in compliance with the city ordinances.

14 Illinois, 45.

14 Illinois, 394.

14 Illinois, 456.

16 Illinois, 390.

22 Illinois, 415.

GLOVER, COOK & CAMPBELL,  
*For Defendants in Error.*

City of Ottawa

vs George Walker

144 vs

C. & R. J. R. & Co

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Defendants Ponis

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Filed May 10. 1860

L. H. Brown

Clk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

THE CITY OF OTTAWA

*vs.*

THE CHICAGO & ROCK ISLAND  
RAILROAD COMPANY *et al.*

} *Error to La Salle.*

*Points and Authorities of Plaintiff in Error.*

The city council has power to provide by ordinance for levying or making the assessment and to adopt any rule, regulation or proceeding for obtaining judgment.

Cooke's Stat. p 202; 20 Ill. 421.

The city council has passed valid ordinances, prescribing the manner of levying assessments and obtaining judgments thereon, and the proceedings in this case are in conformity with the same.

The Commissioners had power to adjourn from day to day.

Sec. 4, Art. 8, Charter city of Ottawa.

The notice of the commissioners was published for the length of time and in the form prescribed by the city charter, and the ordinances of the city, and is sufficient.

Sec. 4, Art. 8, Charter of the city of Ottawa.

20 Ill. 420; Record p. 44 and 60.

The notice of the Clerk was also published for the length of time and in the form prescribed by the city charter and the ordinances of the city, and is sufficient.

Sec. 6, Art. 8, Charter of the city of Ottawa.

20 Ill. 420; Record p 45 and 49.

The city council were not bound to decide upon the confirmation of assessment on the day named in the notice for that purpose.

20 Ill. 422.

The decision of the commissioners, and in case of appeal, of the city council, upon the question of benefits resulting from the improvement, is conclusive, and cannot be examined or inquired into by the Court.

Sections 3, 4, 5, 6 and 7, Art. 8, Charter of  
the city of Ottawa.

The Court will not take notice of any errors or irregularities

in the proceedings had previous to the confirmation of the assessment by the city council. The charter provides that the council "shall have power in case of appeal, or otherwise, in their discretion, to revise or correct the assessment, and confirm or annul the same, and direct a new assessment to be made in the manner hereinafter directed by said commissioners, or by three others, which shall be final or conclusive on all parties interested, if confirmed. When confirmed, the assessment shall be collected as provided in article 9 of this charter, as near as may be, and no appeal or writ of error shall lie in any case from such order and determination." Sec. 7, Art. 8, city charter of Ottawa.— The power of confirmation vested in the council is a discretionary power, and the exercise of it a judicial act. The council acquired jurisdiction over the parties by the publication of the Clerk's notice; the latter had an opportunity to appear before the former and object to the assessment for any errors or irregularities in the proceeding of the commissioners, and the decision of the council was conclusive.

21 Barb. Sup. C. R. 672.

The facts that the charter provides for the sale of the real estate assessed, without judgment, (Sec. 7, Art. 8 and Art 9, city charter,) and that there was no law enacted authorizing judgment to be rendered, until after the date of the charter, clearly show that the action of the council is final and conclusive.

The granting of the injunction was *coram non judice* and void. 21 Ill. 605; 22 Ill. 34 and 594; and is not binding when brought in question collaterally; 3 Zab. 120; 11 Geo. 453.  
*3 How. U.S. 750 - 1 Bl. 340 - 13 Bl. 511. 8 How 540*  
*2 How 59, 3 Dall 7, 4 Branch 241, 13 Ill 445*  
*4 Scam 536 - 3 Gib 199 - 15 Ill 415*

The release to the Trustees of Illinois and Michigan canal did not apply to this improvement—did not exempt the canal property from assessment, and even if it did, that would not render the assessment void.

22 Ill. 303.

D. P. JONES,  
*Att'y for Plaintiff in Error.*

Supreme Court

City of Ottawa

vs.:

The C. & R. & R. R.  
Co. et al.Points & Authorities  
of Plff. in Error

Filed Apr 30. 1860

L. Helmer

Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

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CITY OF OTTAWA, }  
                  <sup>vs.</sup> } *Error to La Salle.*  
C. & R. I. R. R. Co. }

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I. The bill of exceptions does not set out all the evidence, consequently this court will not say that the decision of the circuit court was wrong.

*Miller vs. Metzger*, 16 Ill. 390.

*Warner vs. Carlton*, 22 Ill. 415.

II. The decree of the circuit court of La Salle county was conclusive; it could not be attacked collaterally.

*Stone vs. Wood*, 16 Ill. 177.

*McCoy vs. Morrow*, 18 Ill. 519.

*Buckmaster vs. Grunly*, 3 Gilm. 631.

*Buckmaster et al. vs. Carlin*, 3 Scam. 105.

*Ralston et al. vs. Wood*, 15 Ill. 159.

B. C. COOK.

City of Ottawa

no 143

68 N. D. R. Co.

143

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

THE CITY OF OTTAWA,  
*vs.*  
THE CHICAGO & ROCK ISLAND  
RAILROAD COMPANY, *et als.* } *Error to La Salle.*

ABSTRACT OF RECORD.

*Page of Rec.* 1 On the 27th day of January, A. D. 1860, there was filed with the Clerk of the La Salle County Circuit Court, a certified transcript of the record and proceedings in the County Court of said County in the above cause, from which it appears that on the 5th day of December, A. D. 1859, the city Collector of the city of Ottawa returned to the Clerk of the said County Court a list of town lots, parts of town lots, tracts of land, and parts of tracts of land, as having been assessed in accordance with the ordinances of said city, for, and benefitted by, the construction of a main sewer, commencing at the South side of the Illinois and Michigan canal, in the centre of Pine street, running thence South through and under the centre of said street to a point at or near the North line of lot 8 in block 72, State's Addition to Ottawa, thence easterly, to the East line of said block, with the several valuations thereof, and the sums of money severally assessed thereon, which said list is set out in said record, and to which was attached the following certificate and affidavit, viz:

19-39 LA SALLE COUNTY, }  
STATE OF ILLINOIS, } *ss.*  
City of Ottawa, } I, George H. Walker, City Collector of the said city of Ottawa, hereby certify, that the within list is correct according to the best of my knowledge and belief, and that the taxes were due and unpaid up to the 19th day of February, A. D. 1859, and that I was unable to find goods and chattels upon which to levy and collect the same.

Given under my hand this 14th day of March, A. D. 1859.

GEO. H. WALKER, *City Collector.*

Subscribed and sworn before me, this 15th day of March,  
A. D. 1859.

ARTUHR LOCKWOOD,  
*Justice of the Peace.*

19-34 There was also attached to, and filed with said list, the following notice and certificate, viz:

STATE OF ILLINOIS, LA SALLE COUNTY, }  
City of Ottawa, } *ss.*

I, Albert F. Dow, Collector of the City of Ottawa, in the county of La Salle and State of Illinois, do hereby give notice to all

*Page of Rec.* persons interested, that I shall apply to the County Court of La Salle county in the State of Illinois, at the December term thereof, A. D. 1859, to be commenced and held at the Court House in the city of Ottawa in said La Salle county, on Monday the fifth day of December, A. D. 1859, for judgments against the several lots and parts of lots, tracts of land and parts of tracts of land above described, for the amounts severally and respectively assessed thereon, by the Commissioners appointed by the city council of said city of Ottawa, for the purpose of constructing the above described sewer as above set forth, and costs.

ALBERT F. DOW,

*City Collector of the City of Ottawa.*

Ottawa, November 26th, 1859.

This certifies that the annexed list of lands and town lots deemed benefitted by the construction of the sewer therein described, and on which assessments remain due and unpaid, was published in the *Ottawa Free Trader*, a weekly newspaper, printed in the city of Ottawa, La Salle county and State of Illinois, on the 26th day of November, A. D. 1859, together with the notice of intended application to the county court for judgment against said lots, and that said publication occurred over six days previous to the holding of said court.

WM. OSMAN, *Publisher.*

- 21 At the December term, A. D. 1859, of said county court, the city of Ottawa, by its attorney, moved for judgment against said real estate, whereupon Champlain & Hanbury, George H. Norris and the Chicago & Rock Island Railroad Company objected to such judgment, and the court being interested in all said real estate assessed in the name of Champlin & Hanbury and J. C. Champlin, and on motion of said George H. Norris, and the C. & R. I. R. R. Co., by their attorney, it was ordered by the court that the venue be changed to the circuit court of said La Salle, as to all said real estate assessed in the names of the parties aforesaid.

At the February term, A. D. 1860, of the La Salle county circuit court, the city of Ottawa, by its attorney, on the hearing of this cause, read in evidence the following portion of an ordinance of said city, passed February 24th, 1857, viz:

- 44 SEC. 6. Before entering upon their duties, the commissioners shall give at least six days' notice in the corporation paper of the time and place of making their assessment, and they may, if necessary, adjourn from day to day; such notice may be in the following form:

*Commissioners' Notice.*

Public notice is hereby given that the undersigned, commissioners appointed by the city council of the city of Ottawa, to

*Page of Rec.* assess the sum of ——— dollars on the real estate in the part of  
 1 the city by us deemed benefitted by the (here state the substance of the order) will meet at ——— in said ——— on the ——— day of ——— at the house of ——— Clerk, for the purpose of making said assessment.

A. B., }  
 C. D., } *Commissioners.*  
 E. F. }

The commissioners shall attach to their assessment roll a certificate of such publication, signed by the proprietor or general agent of the corporation paper.

SEC. 9. The commissioners shall complete their assessment and file the same in the office of the city Clerk within forty days after their appointment, unless further time shall be given them for the purpose. The Clerk shall thereupon cause a notice of the return of such assessment to be published for six days in the corporation paper, and a certificate of such publication under the hand of the corporation printer or his general agent, shall be written upon or attached to the roll. The notice may be in the following form :

(The form of the notice is here set out in the record.)

SEC. 10. When all objections to the assessment have been heard, and the roll revised and corrected by the city council, an order of confirmation shall thereupon be entered by the clerk, (if such order shall be made,) which order may be in the following form :

(The form of the order is here set out in record.)

SEC. 12. No assessment shall be deemed to be invalid in any case where the same shall be made in conformity with law, although the same shall not be made in conformity with the proceeding and forms herein prescribed.

47 The said city of Ottawa, by its attorney, also read in evidence an order of the city council of said city, passed Dec. 1st, 1857, for the construction of said sewer and for the assessment of the sum of \$4,200 upon the real estate in the natural division of the city benefitted thereby, to defray the expenses of such improvement. Also the record of the proceedings of said city council of March 2d, 1859, appointing three Commissioners to assess said sum of \$4,200, upon the real estate in the natural division of said city benefitted by the construction of said sewer in the manner prescribed by law.

Also an order of said city council, passed June 8th, 1858, confirming said assessment as revised and corrected by said city council, and directing a warrant to be issued directed to the city Collector for the collection thereof, returnable in sixty days after

Page of Rec. date, which said orders and proceedings are in the form prescribed by said ordinance.

- 49 The said city, by its attorney, also read in evidence a notice of the city Clerk of said city, in the form prescribed by the aforesaid ordinance, that the said commissioners had made return of said assessment to his office, and that any person wishing to appeal from the same must file their objections in writing, in his office on or before Tuesday, the 4th day of May, A. D. 1858, at seven o'clock, P. M., as the city council would meet at that time at the council room, hear all objections to the assessment, and revise and confirm, or annul the same. Also the following certificate attached to said notice, viz :

This certifies that the annexed notice was published in the *Ottawa Free Trader*, a weekly newspaper published at Ottawa, La Salle county and State of Illinois, for three successive weeks, the first insertion of which was in the number of said paper dated April 17th, 1858.

Ottawa, May 4th, 1858.

WM. OSMAN,  
*Corporation Printer.*

- 52 The said city, by its attorney, also read in evidence the following ordinance of said city, passed Dec. 29, 1857, viz :

SEC. 1. Be it ordained, &c., that the city Collector shall give notice by advertisement in some newspaper published in said city at least six days, of the application to the county court for the judgment mentioned in Section two of chapter fifteen, of revised ordinances.

SEC. 2. The fees of officers in cases of special assessments for public improvement in the proceedings to obtain such judgment shall be the same as in cases of application for judgment for general taxes, and shall be taxed as costs.

- 55 The said city, by its attorney, then moved for judgment, to the rendition of which the defendants objected, and the defendants Champlin, and Champlin & Hanbury, introduced *J. O. Glover* as a witness, who testified that the property assessed in the name of said Champlin, and Champlin & Hanbury is not benefitted by the construction of said sewer ; which testimony, on motion of the attorney for said city, was excluded by the Court.

The defendants also read in evidence the following resolution and proceedings of the city council of said city, viz :

Ald. Gray, from the committee appointed to negotiate with Trustees of the Illinois and Michigan canal, reported that the committee had induced the Board to pass the following order, viz :

A proposition was this day submitted by a committee appointed by the city council of Ottawa, in relation to the construction of a sewer for the discharge of the matter which comes from the canal, asking the Board to provide for paying the cost of that

*Page of Rec.* part of said sewer which was parallel with the canal, the city agreeing to provide for the cost of the residue of said sewer, say from the point at which it curves in Pine street, to the outlet at Fox River.

*Therefore, resolved,* That the Board of Trustees agree to pay the said city the gross sum of \$3,000 as their part of the cost of the proposed sewer, provided said city will execute a release of all claims for damages resulting from the alleged leaking of water, and provided also, said city indemnify said Board against the claims of any individual for damages arising from the same cause; provided, also, that one-half of the above sum be paid when one-half of the work is completed, and the balance when the entire work is finished and in operation.

Canal office, Lockport, May 13th, 1857.

W. H. SWIFT,  
D. LEAVITT,  
C. H. RAY.

On motion of Green, the above report was received, and copy of said order ordered to be recorded.

October 7th, 1857.

58. On motion of Leavens, the Mayor was authorized to give a release and bond to Trustees of Illinois and Michigan Canal for leakage, South side of the canal and east of the side cut, and draw the money appropriated by said board for a sewer in the city.

October 13th, 1857.

On motion of Smith, the order passed Oct. 6th, authorizing the Mayor to execute a release and indemnifying bond to the Trustees of the Illinois and Michigan Canal, was rescinded.

- 59 On motion of Smith, ordered that the Mayor be authorized to execute and deliver to the Board of Trustees of the Illinois and Michigan Canal a release and indemnifying bond in the language of a resolution of said Board, appropriating \$3,000 towards building a sewer in the city, passed May 13th, 1857, upon the payment of said sum in said resolution specified.

The Chicago & Rock Island Railroad Company then read in evidence a bill filed in said Circuit Court by said R. R. Co., *vs.* said city.

- The bill alleges that the complainants are an incorporated Co., and own a Railroad track and the land on which it is built, a part of which is located in the city of Ottawa.

That the City Council of said city ordered a sewer to be constructed in said city, and the sum of \$4,200 to be assessed upon the real estate in the natural division of the city benefitted thereby, to defray the expenses of such improvement.

*Page of Rec.* That on the 2d day of March, 1858, this City Council appointed three Commissioners to assess said sum of \$4,200 on the real estate benefitted as aforesaid.

60 That said Commissioners caused to be published in the *Ottawa Free Trader*, a weekly newspaper published in said city of Ottawa, the following notice:

"Public notice is hereby given to all persons interested, that the undersigned, Commissioners appointed by the City Council of the city of Ottawa to assess the sum of four thousand two hundred dollars on the real estate in that part of the City by us deemed benefitted by the construction of a sewer commencing at the South side of the Illinois and Michigan Canal, in the centre of Pine street, and running thence South through and under the centre of said street, to a point at or near the North line of lot eight (8) in block seventy-two, (72,) in State's Addition to Ottawa, thence easterly to the East line of said block, will meet at the office of said City Clerk in said city, on Monday, the 22d day of March inst., at the hour of ten o'clock A. M., for the purpose of making said assessment," and that said notice was signed by said Commissioners and published in the newspaper aforesaid, on the 13th and 20th days of March, A. D. 1858.

61 That no other notice was ever given by the said Commissioners that they would meet on the 22d day of March, to make such assessment.

~~47~~ That on the said 22d day of March, the said Commissioners met and adjourned until the 23d day of March, 1858, and continued to meet and adjourn from day to day until the 27th day of March, 1858, when they again met pursuant to adjournment, and adjourned until the 29th day of March, 1858, and on the said 29th day of March, they again met pursuant to adjournment and assessed said sum of \$4,200 on the real estate in said city by them deemed benefitted by the construction of said sewer, and returned the assessment roll by them prepared to the City Clerk of said city.

62 That the said City Clerk caused to be published in said newspaper the following notice:

~~48~~ "Public notice is hereby given to all persons interested, that the Commissioners appointed by the City Council of the city of Ottawa to assess the sum of four thousand two hundred dollars on the real estate benefitted by the construction of a main sewer commencing at the South side of the Illinois and Michigan Canal in the centre of Pine street, and running thence South through and under the centre of said street, to a point at or near the North line of lot eight (8) in block seventy-two, in State's Addition to Ottawa, thence easterly to the East line of said block, have completed their assessment, and made returns thereof to my office. Any person wishing to appeal from said assessment

*Page of Rec.* must file their objections in writing, in my office on or before Tuesday, the 4th day of March, A. D. 1858, at 7 o'clock P. M., as the City Council will at that time, at the Council room, hear all objections to the assessment and confirm or amend the same.

J. AVERY, *City Clerk.*"

That the said notice was published in said newspaper three successive weeks, the first publication being on the seventeenth April, 1858.

64 ~~67~~ That on the said 4th day of March, 1858, said City Council met and by a vote of the same, the consideration of the said assessment was laid over until the 11th day of May, 1858, and on said 11th day of May the same was again laid over by a vote of said Council, until the 18th day of May, 1858, and on the said 18th day of May, 1858, the same was again laid over until the 25th day of May, 1858, by a vote of said City Council, and on said 25th day of May, said City Council did not meet, or take any action upon said assessment; that on the 1st day of June, 1858, said assessment roll and the objections thereto, were by a vote of said City Council, referred to a select committee of said Council, who were ordered to report thereon at the next meeting of said Council, and on the 8th day of June, the same being the day of the said next meeting, said committee made their said report, and by the same stated that they had reduced the said assessment by remitting the sum of \$40 of said assessment on lot 7 in block 72, State's Addition to Ottawa, and the sum of \$20 on said assessment on lot 10 block 72, in said State's Addition. That on said last named day said City Council accepted said report and confirmed the said assessment as revised by the said committee, and ordered a warrant for the collection of the same, to be issued by the city Collector, returnable within sixty days from the date of the issuing thereof.

66 ~~68~~ That on the eighteenth day of June, 1858, a warrant issued under the hand of the Mayor of said city, and under the seal of said city, for the collection of said assessment, was attached to the said assessment roll, which was then and there delivered to the said city Collector; that the complainant is the owner of a Railroad, and road way together with other real estate, situated in said city which are included in said assessment roll, and upon which a portion of said sum is assessed by said commissioners.

68 That said Railroad track is built upon an embankment raised upon said real estate, and that said real estate is used for no other purpose.

That city Collector of said city is about to levy upon and sell ~~the~~ goods and chattels of complainant, for the payment of the sum so assessed on real estate of complainant.

Page of Rec. *Prayer*:—That the defendants may be compelled to answer the bill, but not under oath which is waved, that said city Collector may be restrained, by writ of injunction, from collecting such assessment, and that said injunction be made perpetual.

71 ~~71~~ Injunction issued Aug. 16th, 1858.

73 ~~73~~ Answer of defendants filed November 29th, 1858. The answer, among other things, alleges that the notice given by said City Clerk was and is in the exact form prescribed by an ordinance of said city, approved March 1st, 1854.

75 ~~75~~ That the complainant did not appeal to the City Council in writing, or file a repeal in Clerk's office within ten days after the 1st publication of said notice, and concludes with a general denial of the bill.

76 ~~76~~ On the 13th day of December, 1858, being one of the days of the November term, 1858, of said Circuit Court, the defendants moved to dissolve the injunction, and afterwards, at said term, the Court overruled said motion, and the cause having been brought on for final hearing, upon bill and answer, the Court made an order and decree making said injunction perpetual.

78 The Court overruled the motion for judgment, and refused to render such judgment, and the said city, by its attorney, then there excepted.

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*Errors Assigned.*

81 1st. That the Court erred in overruling said motion for judgment, and in refusing to render judgment against said real estate.

2d. The Court erred in overruling judgment against the plaintiff in error.

143-143  
Supreme Court

The City of Ottawa  
vs -

The C. & P. I. R. R.  
Co. et als

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Abstract

Filed April 27. 1860  
L. Leland  
Clerk

Supreme Court. April Term 1860

The City of Ottawa }  
143 vs - } Error to La Salle  
The Chicago & R. I. R. }  
Co. et al. }

Argument of Counsel for Plff. in Error

This was an application for judgement, under the act of the Legislature of March 1st 1854, for the amount assessed upon certain real estate in the City of Ottawa, for the construction of a sewer.

The court below refused to render judgement and the city brings the cause to this court and <sup>assigns</sup> for error the refusal of the court below to render judgement.

The provisions of the charter of the City of Ottawa by virtue of which the assessment was levied, are as follows:

~ ~ ~

- Sac. 1. Power to grade &c.  
 2. Expenses for public improvements—how assessed.  
 3. Amount of assessments—how determine, and how made.  
 4. Commissioners to give notice.  
 5. Damages, how assessed.  
 6. Commissioners shall deliver copy of assessment to city clerks.  
 7. Appeal for correction of assessment.  
 8. Vacancies in commissioners, how filled.  
 9. Double Assessments—Refunding of Assessment.  
 10. Private Drains.  
 11. Commissioners to take oath—their fees and how taxed.  
 12. Damages to infants, proceedings, in case of.

§ 1. The city council shall have power, from time to time, to cause any street, alley or highway to be graded, levelled, paved, McAdamized or planked and keep the same in repair, or to cause any lot in said city to be filled up; to cause cross and side walks, main drains, and sewers, private drains, and aqueducts, to be constructed and laid, relaid, cleansed and repaired, and regulate the same, and to grade, improve, protect and ornament any public square, now or hereafter laid out.

§ 2. The expenses of any improvement mentioned in the following section except side walks and private drains, shall be assessed upon real estate in any natural division benefitted thereby, with the costs of the proceedings therein, in proportion as nearly as may be, to the benefits resulting thereto.

§ 3. The amount to be assessed for any such improvement except side walks and private drains, shall be determined by the city council, and they shall by ballot, appoint by a majority of all the aldermen authorized by law to be elected, three reputable freeholders of the city to make such assessments. The commissioners shall be sworn faithfully and impartially to execute their duty to the best of their ability.

§ 4. Before entering on their duties, the commissioners shall give six days notice in one or more newspapers published in said city, of the time and place of meeting, to all persons interested, and they may if necessary, adjourn from day to day. The commissioners shall assess the amount directed by the city council to be assessed on the real estate by them deemed benefitted by any such improvement, in proportion to the benefits resulting thereto, as nearly as may be, and briefly describe in the assessment roll to be made by them, the real estate in respect to which, any assessment is made and the value thereof.

§ 5. If the commissioners shall be of opinion that any owner of land situated upon any street, alley or other highway, graded or levelled under this section, will sustain damages over and above the benefits which may accrue to the owners of such land by the improvement, they may assess such an amount as they may deem a reasonable recompense to such owner upon the real estate benefitted, in the manner aforesaid, and such sum shall be added to the assessment roll, and the amount certified to the council at the time of filing the roll.

§ 6. When the commissioners shall have completed their assessment, and made a correct copy thereof, they shall deliver the same to the city Clerk within forty days after appointment, signed by all the commissioners. The Clerk shall thereon cause a notice to be published in one or more newspapers published in said city, for six days, to all persons interested therein, of the completion of the assessment, and the filing of the roll. Time and place shall be designated, for hearing objections.

§ 7. Any person interested may appeal to the city council for the correction of the assessment. Appeals shall be in writing and filed in the Clerk's office within

*The charter is made a public act and admissable in evidence in all courts of the state without proof, by Sec 14 Art 9 of the same*

*The act of March 1<sup>st</sup> 1854 above referred to, gives the city council*

full power to provide by resolution or ordinance for making or levying an assessment of this kind, to fix the time of payment, and the time & kind of notice of the assessment and of the application to the County Court and declares that "the corporate authority of any town or city shall have full and complete authority to adopt any rule, regulation or proceeding, which they may deem necessary to carry the provisions of this act into full and complete effect"

The record shows that the city council have passed ordinances prescribing the manner of making of proceedings in cases of this nature and that the proceedings in this case were in strict conformity with these ordinances and the city charter

But it is insisted that the city council had no authority to confirm the assessment after the time for hearing objections mentioned in the clerk's notice. In the case of the city

of Ottawa vs Fisher et al 20 Ill 422  
this Court expressly decided that this  
was not a valid objection - that  
the day fixed in the notice was for  
hearing objections, not for deciding  
upon them. It is also said that  
the bill of exceptions does not  
set out all the evidence and that  
therefore this court will not say  
that the decision of the Circuit  
Court was wrong. The conclusion  
may be a valid one if founded  
in facts - but it is not - the bill of  
exceptions purports to contain  
all the evidence in the case.

Objection was also made on the  
trial below that the City Council  
had released the Canal Trustees  
from all claims for damages  
resulting from the leakage of  
the canal and indemnified them  
against the claims of individuals  
for damages arising from the  
same cause, in consideration  
of the contribution by the Canal  
Trustees of \$3000, towards the  
construction of a certain other  
sewer in the City of Ottawa.

A release of damages could not by any reasonable implication, exempt the property of the Canal from assessments for improvements rendered necessary by the leakage, ~~provided, the Canal property was~~ benefited by the improvements. The liability for damages, resting on the Canal Trustees, was entirely separate and distinct from the charge upon the real estate - one could only be enforced in a personal action against the Trustees as a corporation - the other in a proceeding in rem. If any damage resulted to the City in consequence of the leakage, the City could sue the Trustees & recover the amount of damage sustained and they had at the same time, the further power to provide against the recurrence of any such damage by making an assessment upon the Canal property, for the construction of a sewer, if such property would be benefited thereby.

But if this release was intended

to embrace assessments, I insist  
that the City Council had no ~~such~~  
~~power and therefore no~~ ~~action~~ ~~ing~~  
power to authorize it, and that  
their action in this respect, is  
not binding upon the city.  
The charter provides that all the  
expenses of improvements of this  
kind, shall be assessed upon  
real estate in any natural  
division of the city benefited  
thereby in proportion to the benefits  
resulting therefrom; ~~and~~ a release  
of this kind would be in direct  
conflict <sup>with</sup> this provision & therefore  
void. But admitting the release  
to be binding upon the city, the  
case falls within the principle  
laid down in the case of *Merritt*  
*et al vs Harris et al*, 22 Ill 311 where  
it was held that the omission to  
assess <sup>a part of the</sup> ~~all the~~ property liable to  
taxation under the revenue laws  
will not render the whole tax void.  
and furthermore, the record does  
not show that the sewer, for which  
this assessment was made, ~~had~~  
was constructed in consequence

of the leakage from the canal  
or had any connection with it  
nor does it appear that the canal  
property was ever assessed.

It also insists that the Court  
in this proceeding has no power  
to enquire ~~into~~ and examine  
into any errors in the proceedings  
prior to the confirmation of  
the assessment by the City Council.

The charter has imposed that duty  
on another tribunal. It gives  
the power to the city council <sup>in their discretion</sup> to  
revise or correct the assessment,  
and confirm or annul the same,  
and direct a new assessment to be  
made, and declare, that its decision  
shall be final & conclusive on all  
parties interested, and that no  
appeal or writ of error shall lie from  
the same. Any interested party  
thinking himself aggrieved, has  
there an opportunity to be heard  
and if he is not satisfied with  
decision of the council. he may  
resort to the common law writ of  
certiorari. The subsequent act of the

legislature authorizing the court  
direct & render judgment on  
the assessment, does not render  
the action of the council any  
the less conclusive & final. No  
power is there given to the court to  
review the action of ~~the~~ <sup>the</sup> council or  
the city authorities,  
but it is simply required to  
render judgment, on the  
application of the corporate  
authorities, and the legislature  
has delegated to the city council  
the exclusive power to prescribe  
any regulation or proceeding which  
they may deem necessary, &  
obtain such judgment. The  
jurisdiction of the court therefore  
depended, in part, upon the ordinances  
of the common council and <sup>council</sup> they  
retaining the exclusive power of  
reviewing the assessment until  
they give the court <sup>concurrent</sup> jurisdiction  
in that respect.

The baronet court in enjoining the  
collection of this assessment must  
entirely be beyond its jurisdiction.

The case of Mc Bride vs the City of  
Chicago 22 Ill 576. fully settles  
this point and it only remains  
to ~~ascertain~~ <sup>ascertain</sup> whether the decree  
is void and can be attacked in  
a collateral proceeding. It is  
well settled that where the want of  
jurisdiction appears on the face  
of the proceedings, ~~void is~~  
will be held void even when  
brought in question collaterally  
(see authorities cited in brief of  
plff in Error) The Bill and decree  
furnishes <sup>us</sup> ~~the~~ the facts upon which  
the court acted - and these facts  
did not give the court jurisdiction  
It is entirely immaterial however  
whether the court had jurisdiction  
or not. ~~It is no prohibition~~  
The injunction is no prohibition  
to a court of law & in no way  
interferes with it. - it is addressed  
only to the parties and courts of law  
never take notice of it

2 Story's Eq. Juris. Sec 875. p 209. Willard's  
Eq. Juris p 250. 4 Hill, R 268.

D. J. Jones

Att. for Plff. in Error

143-133

City of Ottawa et al

vs

The C & N. I. R. Co.

Arguments of Atty.  
for Plffs in Error

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Filed May 15, 1860

E. Selous

clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, 1860.

THE CITY OF OTTAWA,  
*vs.*  
THE CHICAGO & ROCK ISLAND  
RAILROAD COMPANY, *et als.* } *Error to La Salle.*

ABSTRACT OF RECORD.

*Page of Rec.* 1 On the 27th day of January, A. D. 1860, there was filed with the Clerk of the La Salle County Circuit Court, a certified transcript of the record and proceedings in the County Court of said County in the above cause, from which it appears that on the 5th day of December, A. D. 1859, the city Collector of the city of Ottawa returned to the Clerk of the said County Court a list of town lots, parts of town lots, tracts of land, and parts of tracts of land, as having been assessed in accordance with the ordinances of said city, for, and benefitted by, the construction of a main sewer, commencing at the South side of the Illinois and Michigan canal, in the centre of Pine street, running thence South through and under the centre of said street to a point at or near the North line of lot 8 in block 72, State's Addition to Ottawa, thence easterly, to the East line of said block, with the several valuations thereof, and the sums of money severally assessed thereon, which said list is set out in said record, and to which was attached the following certificate and affidavit, viz:

19-39 LA SALLE COUNTY, )  
STATE OF ILLINOIS, ) *ss.*  
City of Ottawa, ) I, George H. Walker, City Collector of the said city of Ottawa, hereby certify, that the within list is correct according to the best of my knowledge and belief, and that the taxes were due and unpaid up to the 19th day of February, A. D. 1859, and that I was unable to find goods and chattels upon which to levy and collect the same.

Given under my hand this 14th day of March, A. D. 1859.

GEO. H. WALKER, *City Collector.*

Subscribed and sworn before me, this 15th day of March,  
A. D. 1859.

ARTUHR LOCKWOOD,  
*Justice of the Peace.*

19-54 There was also attached to, and filed with said list, the following notice and certificate, viz:

STATE OF ILLINOIS, LA SALLE COUNTY, )  
City of Ottawa, ) *ss.*

I, Albert F. Dow, Collector of the City of Ottawa, in the county of La Salle and State of Illinois, do hereby give notice to all

*Page of Rec.* persons interested, that I shall apply to the County Court of La Salle county in the State of Illinois, at the December term thereof, A. D. 1859, to be commenced and held at the Court House in the city of Ottawa in said La Salle county, on Monday the fifth day of December, A. D. 1859, for judgments against the several lots and parts of lots, tracts of land and parts of tracts of land above described, for the amounts severally and respectively assessed thereon, by the Commissioners appointed by the city council of said city of Ottawa, for the purpose of constructing the above described sewer as above set forth, and costs.

ALBERT F. DOW,

*City Collector of the City of Ottawa.*

Ottawa, November 26th, 1859.

This certifies that the annexed list of lands and town lots deemed benefitted by the construction of the sewer therein described, and on which assessments remain due and unpaid, was published in the *Ottawa Free Trader*, a weekly newspaper, printed in the city of Ottawa, La Salle county and State of Illinois, on the 26th day of November, A. D. 1859, together with the notice of intended application to the county court for judgment against said lots, and that said publication occurred over six days previous to the holding of said court.

WM. OSMAN, *Publisher.*

21 At the December term, A. D. 1859, of said county court, the city of Ottawa, by its attorney, moved for judgment against said real estate, whereupon Champlain & Hanbury, George H. Norris and the Chicago & Rock Island Railroad Company objected to such judgment, and the court being interested in all said real estate assessed in the name of Champlin & Hanbury and J. C. Champlin, and on motion of said George H. Norris, and the C. & R. I. R. R. Co., by their attorney, it was ordered by the court that the venue be changed to the circuit court of said La Salle, as to all said real estate assessed in the names of the parties aforesaid.

At the February term, A. D. 1860, of the La Salle county circuit court, the city of Ottawa, by its attorney, on the hearing of this cause, read in evidence the following portion of an ordinance of said city, passed February 24th, 1857, viz:

44 SEC. 6. Before entering upon their duties, the commissioners shall give at least six days' notice in the corporation paper of the time and place of making their assessment, and they may, if necessary, adjourn from day to day; such notice may be in the following form:

*Commissioners' Notice.*

Public notice is hereby given that the undersigned, commissioners appointed by the city council of the city of Ottawa, to

*Page of Rec.* assess the sum of ——— dollars on the real estate in the part of  
 1 the city by us deemed benefitted by the (here state the substance of the order) will meet at ——— in said ——— on the ——— day of ——— at the house of ——— Clerk, for the purpose of making said assessment.

A. B., }  
 C. D., } *Commissioners.*  
 E. F. }

The commissioners shall attach to their assessment roll a certificate of such publication, signed by the proprietor or general agent of the corporation paper.

SEC. 9. The commissioners shall complete their assessment and file the same in the office of the city Clerk within forty days after their appointment, unless further time shall be given them for the purpose. The Clerk shall thereupon cause a notice of the return of such assessment to be published for six days in the corporation paper, and a certificate of such publication under the hand of the corporation printer or his general agent, shall be written upon or attached to the roll. The notice may be in the following form :

(The form of the notice is here set out in the record.)

SEC. 10. When all objections to the assessment have been heard, and the roll revised and corrected by the city council, an order of confirmation shall thereupon be entered by the clerk, (if such order shall be made,) which order may be in the following form :

(The form of the order is here set out in record.)

SEC. 12. No assessment shall be deemed to be invalid in any case where the same shall be made in conformity with law, although the same shall not be made in conformity with the proceeding and forms herein prescribed.

47 The said city of Ottawa, by its attorney, also read in evidence an order of the city council of said city, passed Dec. 1st, 1857, for the construction of said sewer and for the assessment of the sum of \$4,200 upon the real estate in the natural division of the city benefitted thereby, to defray the expenses of such improvement. Also the record of the proceedings of said city council of March 2d, 1859, appointing three Commissioners to assess said sum of \$4,200, upon the real estate in the natural division of said city benefitted by the construction of said sewer in the manner prescribed by law.

Also an order of said city council, passed June 8th, 1858, confirming said assessment as revised and corrected by said city council, and directing a warrant to be issued directed to the city Collector for the collection thereof, returnable in sixty days after

Page of Rec. date, which said orders and proceedings are in the form prescribed by said ordinance.

- 49 The said city, by its attorney, also read in evidence a notice of the city Clerk of said city, in the form prescribed by the aforesaid ordinance, that the said commissioners had made return of said assessment to his office, and that any person wishing to appeal from the same must file their objections in writing, in his office on or before Tuesday, the 4th day of May, A. D. 1858, at seven o'clock, P. M., as the city council would meet at that time at the council room, hear all objections to the assessment, and revise and confirm, or annul the same. Also the following certificate attached to said notice, viz:

This certifies that the annexed notice was published in the *Ottawa Free Trader*, a weekly newspaper published at Ottawa, La Salle county and State of Illinois, for three successive weeks, the first insertion of which was in the number of said paper dated April 17th, 1858.

Ottawa, May 4th, 1858.

WM. OSMAN,

*Corporation Printer.*

- 52 The said city, by its attorney, also read in evidence the following ordinance of said city, passed Dec. 29, 1857, viz:

SEC. 1. Be it ordained, &c., that the city Collector shall give notice by advertisement in some newspaper published in said city at least six days, of the application to the county court for the judgment mentioned in Section two of chapter fifteen, of revised ordinances.

SEC. 2. The fees of officers in cases of special assessments for public improvement in the proceedings to obtain such judgment shall be the same as in cases of application for judgment for general taxes, and shall be taxed as costs.

- 55 The said city, by its attorney, then moved for judgment, to the rendition of which the defendants objected, and the defendants Champlin, and Champlin & Hanbury, introduced *J. O. Glover* as a witness, who testified that the property assessed in the name of said Champlin, and Champlin & Hanbury is not benefitted by the construction of said sewer; which testimony, on motion of the attorney for said city, was excluded by the Court.

The defendants also read in evidence the following resolution and proceedings of the city council of said city, viz:

Ald. Gray, from the committee appointed to negotiate with Trustees of the Illinois and Michigan canal, reported that the committee had induced the Board to pass the following order, viz:

A proposition was this day submitted by a committee appointed by the city council of Ottawa, in relation to the construction of a sewer for the discharge of the matter which comes from the canal, asking the Board to provide for paying the cost of that

*Page of Rec.* part of said sewer which was parallel with the canal, the city agreeing to provide for the cost of the residue of said sewer, say from the point at which it curves in Pine street, to the outlet at Fox River.

*Therefore, resolved,* That the Board of Trustees agree to pay the said city the gross sum of \$3,000 as their part of the cost of the proposed sewer, provided said city will execute a release of all claims for damages resulting from the alleged leaking of water, and provided also, said city indemnify said Board against the claims of any individual for damages arising from the same cause; provided, also, that one-half of the above sum be paid when one-half of the work is completed, and the balance when the entire work is finished and in operation.

Canal office, Lockport, May 13th, 1857.

W. H. SWIFT,  
D. LEAVITT,  
C. H. RAY.

On motion of Green, the above report was received, and copy of said order ordered to be recorded.

October 7th, 1857.

58 On motion of Leavens, the Mayor was authorized to give a release and bond to Trustees of Illinois and Michigan Canal for leakage, South side of the canal and east of the side cut, and draw the money appropriated by said board for a sewer in the city.

October 13th, 1857.

On motion of Smith, the order passed Oct. 6th, authorizing the Mayor to execute a release and indemnifying bond to the Trustees of the Illinois and Michigan Canal, was rescinded.

59 On motion of Smith, ordered that the Mayor be authorized to execute and deliver to the Board of Trustees of the Illinois and Michigan Canal a release and indemnifying bond in the language of a resolution of said Board, appropriating \$3,000 towards building a sewer in the city, passed May 13th, 1857, upon the payment of said sum in said resolution specified.

The Chicago & Rock Island Railroad Company then read in evidence a bill filed in said Circuit Court by said R. R. Co., *vs.* said city.

The bill alleges that the complainants are an incorporated Co., and own a Railroad track and the land on which it is built, a part of which is located in the city of Ottawa.

That the City Council of said city ordered a sewer to be constructed in said city, and the sum of \$4,200 to be assessed upon the real estate in the natural division of the city benefitted thereby, to defray the expenses of such improvement.

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That on the 2d day of March, 1858, this City Council appointed three Commissioners to assess said sum of \$4,200 on the real estate benefitted as aforesaid.

60 That said Commissioners caused to be published in the Ottawa *Free Trader*, a weekly newspaper published in said city of Ottawa, the following notice:

"Public notice is hereby given to all persons interested, that the undersigned, Commissioners appointed by the City Council of the city of Ottawa to assess the sum of four thousand two hundred dollars on the real estate in that part of the City by us deemed benefitted by the construction of a sewer commencing at the South side of the Illinois and Michigan Canal, in the centre of Pine street, and running thence South through and under the centre of said street, to a point at or near the North line of lot eight (8) in block seventy-two, (72,) in State's Addition to Ottawa, thence easterly to the East line of said block, will meet at the office of said City Clerk in said city, on Monday, the 22d day of March inst., at the hour of ten o'clock A. M., for the purpose of making said assessment," and that said notice was signed by said Commissioners and published in the newspaper aforesaid, on the 13th and 20th days of March, A. D. 1858.

61 That no other notice was ever given by the said Commissioners that they would meet on the 22d day of March, to make such assessment.

~~45~~ That on the said 22d day of March, the said Commissioners met and adjourned until the 23d day of March, 1858, and continued to meet and adjourn from day to day until the 27th day of March, 1858, when they again met pursuant to adjournment, and adjourned until the 29th day of March, 1858, and on the said 29th day of March, they again met pursuant to adjournment and assessed said sum of \$4,200 on the real estate in said city by them deemed benefitted by the construction of said sewer, and returned the assessment roll by them prepared to the City Clerk of said city.

62 That the said City Clerk caused to be published in said newspaper the following notice:

~~46~~ "Public notice is hereby given to all persons interested, that the Commissioners appointed by the City Council of the city of Ottawa to assess the sum of four thousand two hundred dollars on the real estate benefitted by the construction of a main sewer commencing at the South side of the Illinois and Michigan Canal in the centre of Pine street, and running thence South through and under the centre of said street, to a point at or near the North line of lot eight (8) in block seventy-two, in State's Addition to Ottawa, thence easterly to the East line of said block, have completed their assessment, and made returns thereof to my office. Any person wishing to appeal from said assessment

*Page of Rec.* must file their objections in writing, in my office on or before Tuesday, the 4th day of March, A. D. 1858, at 7 o'clock P. M., as the City Council will at that time, at the Council room, hear all objections to the assessment and confirm or amend the same.

J. AVERY, *City Clerk.*"

That the said notice was published in said newspaper three successive weeks, the first publication being on the seventeenth April, 1858.

64 ~~47~~ That on the said 4th day of March, 1858, said City Council met and by a vote of the same, the consideration of the said assessment was laid over until the 11th day of May, 1858, and on said 11th day of May the same was again laid over by a vote of said Council, until the 18th day of May, 1858, and on the said 18th day of May, 1858, the same was again laid over until the 25th day of May, 1858, by a vote of said City Council, and on said 25th day of May, said City Council did not meet, or take any action upon said assessment; that on the 1st day of June, 1858, said assessment roll and the objections thereto, were by a vote of said City Council, referred to a select committee of said Council, who were ordered to report thereon at the next meeting of said Council, and on the 8th day of June, the same being the day of the said next meeting, said committee made their said report, and by the same stated that they had reduced the said assessment by remitting the sum of \$40 of said assessment on lot 7 in block 72, State's Addition to Ottawa, and the sum of \$20 on said assessment on lot 10 block 72, in said State's Addition. That on said last named day said City Council accepted said report and confirmed the said assessment as revised by the said committee, and ordered a warrant for the collection of the same, to be issued by the city Collector, returnable within sixty days from the date of the issuing thereof.

66 ~~48~~ That on the eighteenth day of June, 1858, a warrant issued under the hand of the Mayor of said city, and under the seal of said city, for the collection of said assessment, was attached to the said assessment roll, which was then and there delivered to the said city Collector; that the complainant is the owner of a Railroad, and road way together with other real estate, situated in said city which are included in said assessment roll, and upon which a portion of said sum is assessed by said commissioners.

68 That said Railroad track is built upon an embankment raised upon said real estate, and that said real estate is used for no other purpose.

That city Collector of said city is about to levy upon and sell ~~the~~ goods and chattels of complainant, for the payment of the sum so assessed on real estate of complainant.

Page of Rec.

70 ~~12-11~~ *Prayer*:—That the defendants may be compelled to answer the bill, but not under oath which is waved, that said city Collector may be restrained, by writ of injunction, from collecting such assessment, and that said injunction be made perpetual.

71 ~~11~~ Injunction issued Aug. 16th, 1858.

73 ~~11~~ Answer of defendants filed November 29th, 1858. The answer, among other things, alleges that the notice given by said City Clerk was and is in the exact form prescribed by an ordinance of said city, approved March 1st, 1854.

75 ~~11~~ That the complainant did not appeal to the City Council in writing, or file a repeal in Clerk's office within ten days after the 1st publication of said notice, and concludes with a general denial of the bill.

76 ~~11~~ On the 13th day of December, 1858, being one of the days of the November term, 1858, of said Circuit Court, the defendants moved to dissolve the injunction, and afterwards, at said term, the Court overruled said motion, and the cause having been brought on for final hearing, upon bill and answer, the Court made an order and decree making said injunction perpetual.

78 The Court overruled the motion for judgment, and refused to render such judgment, and the said city, by its attorney, then there excepted.

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*Errors Assigned.*

81 1st. That the Court erred in overruling said motion for judgment, and in refusing to render judgment against said real estate.

2d. The Court erred in overruling judgment against the plaintiff in error.

Supreme Court

143

The City of Ottawa

vs

The C & P. I. R. R.,

Co. et al.

Abstract

Filed April 27, 1860  
L. Leland  
Clerk