

12946

No. _____

Supreme Court of Illinois

Town of Ottawa

vs.

Walker et al

71641  7

STATE OF ILLINOIS, SUPREME COURT.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1859.

Error to La Salle County.

TOWN OF OTTAWA AND PHILO LINDLEY VS. GEORGE E. WALKER AND
RICHARD THORNE.

ABSTRACT OF THE RECORD.

Record. Bill directed to February term, 1859, of La Salle Circuit Court; filed,
1 November 12th, 1858.

Bill alleges that on the 3d day of September, 1858, there was filed in the office of the Clerk of the County Court of La Salle County, a certificate in writing, in substance as follows:

2 "At a town meeting, held at the Court House in the City of Ottawa, on Tuesday, April 6th, 1858, George B. Macey was chosen moderator, and J. D. Pennell clerk *pro tem*.

"At three o'clock of the same day J. D. Caton presented a petition for a tax of one-half mill on each one dollar valuation of the taxable property in the town of Ottawa, to be assessed for the purpose of repairing roads and bridges; and that the commissioners appropriate \$150 of the same towards repairing or building a road or bridge near the residence of L. Leland.

"And, at four o'clock on the same day, L. B. Delano presented a petition for a tax of two mills on each dollar valuation of taxable property, to be assessed for the purpose of building a free bridge across Fox River, near the Aqueduct: all of which was presented in due form and unanimously carried.

"STATE OF ILLINOIS, } I do hereby certify that the foregoing is a
La Salle County, } ss. true copy of entries of votes for raising money made since the last annual meeting of the Board of Supervisors and recorded in the Town Books.

"Witness my hand, this 2d day of September, A. D. 1858.

J. B. RICE,

Town Clerk of said Town."

2 & 3 That about the hour of 3 o'clock, P. M., of the day on which said town meeting was held, by the direction of the electors then present, the balloting for officers of said town was suspended for the purpose of transacting the general business of the day, and, thereupon, said meeting did transact such general miscellaneous business, and the petition presented by Caton was acted upon and the tax therein mentioned voted, which business occupied about ten minutes, and, thereupon, the moderator announced that the miscellaneous business was closed, and the balloting was again resumed; and, at the time said announcement was made, no order was made by the electors for the transaction of any other business

Record. of a miscellaneous nature; and, afterwards, about the hour of 4 o'clock,
2 on said day, and after many of the electors, who were assembled at the time said announcement was made, had left said meeting, the action upon said petition presented by Delano was had as mentioned in said certificate, the balloting for the officers of the town having been suspended for that purpose.

3 & 4 That the Aqueduct mentioned in the said certificate is within the corporate limits of the City of Ottawa. That said city is incorporated by an act of the General Assembly, approved, Feb. 10th, 1853; and that, in and by said charter, exclusive power is given to the City Council to open, alter, abolish, widen, extend, establish, grade, pave, or otherwise improve and alter, repair streets, avenues, lanes and alleys, and other public highways, and to establish, erect and keep in repair bridges.

4 That, by Sec. 1, Art. 5 of said charter, it is provided that "the City Council shall have power and authority to levy and collect taxes upon all property, real and personal, within the limits of the City, not exceeding one-half of one per cent. per annum upon the assessed value thereof, and may enforce the payment of the same in any manner to be prescribed by ordinance, not repugnant to the Constitution of United States and of this State."

That there is no highway crossing said Fox River at or near the Aqueduct except the same be within the limits of the City of Ottawa.

5 That by Sec. 4 of an act to incorporate towns and cities, approved Feb. 10th, 1849, it is provided that "the corporate authorities of cities, incorporated under any special act, shall have power to pass all the ordinances and by-laws, and possess all the powers authorized under the laws and amendatory acts incorporating either of the cities of Springfield or Quincy."

That by an act entitled "An act to reduce the act incorporating the City of Springfield, and the several acts amendatory thereof, into one act, and to amend the same," approved March 2d, 1854, and by Art. 5, Sec. 4 of said act, it was provided that "the City Council shall have power, within the jurisdiction of the city, by ordinance, to have the exclusive control and power over the streets, alleys, and highways of the city, and to abate and remove any of the encroachments or obstructions thereon; to open, alter, abolish, widen, extend, straighten, establish, regulate, grade, clean, or otherwise improve the same, to put drains and sewers therein, and prevent the encumbering thereof in any manner, and protect the same from any encroachment or injury. To establish, erect, construct, regulate and keep in repair bridges, culverts, and sewers, sidewalks and cross-ways, and regulate the construction and use of the same, and to abate any obstructions or encroachments thereof."

That by Sec. 1, Art. 10, of said city of Ottawa, it is provided that "The inhabitants of the City or Ottawa are hereby exempt from working on any road beyond the limits of the city, and from paying any tax to procure laborers for working on the same."

6 That the complainants are taxpayers and property owners in the town and in the city of Ottawa.

That the Board of Supervisors of La Salle county, at their annual meeting, passed an order that said tax for said Fox River bridge be assessed upon said town, and that Philo Lindley, Clerk of the County

Record. Court, will, unless restrained by the court, extend said tax on the collector's book of said town.

6 & 7 Charges that said two mill tax has never been legally assessed, and that the town meeting had no right to pass any resolution to levy said tax, at the time, when the vote, mentioned in said certificate, was taken.

7 That said certificate does not show that said tax was voted at any town meeting of the town of Ottawa.

That no town meeting had a right to direct the building of a bridge within the City of Ottawa, or to raise any tax therefor, or to direct concerning the location or construction of any bridge or bridges within the City of Ottawa, or to direct the imposition or assessment of any tax for such purpose, but that such power is, by law, vested exclusively in the city; and that said City Council of said city have never directed or permitted the construction or erection of any bridge across Fox River at the point mentioned in said certificate.

PRAYER.

8 That said Lindley be restrained from extending said two mill tax upon the collector's book of the town of Ottawa, and that upon the final hearing of the bill the injunction be made perpetual.

9 Injunction issued Nov. 13th, 1858, and served Nov. 15th, 1858.

At November Term, A. D. 1858, defendants moved to dissolve the injunction, which motion was then and there overruled by the court; and afterwards, and at said November Term, A. D. 1858, it was ordered, adjudged, and decreed by the Court that the said injunction be made perpetual, and that the said Lindley, his clerks, &c., be forever enjoined from extending said tax upon said tax book.

Errors Assigned

15 1st That the bill contains no equity upon its face and matters or things sufficient to authorize the court to grant the injunction or to render a final decree

" 2nd The court erred in overruling the motion to dissolve the injunction

16 3rd That the defendants were not called on a deposit

~~before the rendition of the decree~~

16 3^d That the defendants were not lawfully before the court for the purpose of a final hearing, at said Nov Term A.D. 1868

" 4th That defendants were not called or in default at or before the rendition of the decree

" 5th The court erred in rendering the final decree at a term prior to the one to which the bill was directed

" 6th That the court erred in enjoining the clerk from extending the tax upon the tax book

" 7th That the court erred in rendering said final decree & in making said injunction perpetual

~~before the rendition of the decree~~

16 3^d That the defendants were not lawfully before the court for the purpose of a final hearing, at said Nov Term A.D. 1868

" 4th That defendants were not called or in default at or before the rendition of the decree

" 5th The court erred in rendering the final decree at a term prior to the one to which the bill was directed

" 6th That the court erred in enjoining the clerk from extending the tax upon the tax book

" 7th That the court erred in rendering said final decree & in making said injunction perpetual

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1859.

TOWN OF OTTAWA AND PHILO LINDLEY vs. GEORGE E. WALKER AND RICHARD THORNE.

Error to La Salle County.

BRIEF.

The Court has no power to go back of the record and determine the regularity of the proceedings at the town meeting. Art. 8, Sec. 1 of the Township Organization Law, Cooke's Stat., 331, provides that "the Moderator, chosen to preside at the annual or special town meeting, shall regulate the business and proceedings thereof, *and shall decide all questions of order.*" His decision is conclusive, and its correctness cannot be disputed.

Art. 10, Sections 2 and 3, Township Organization Law, Cooke's Stat., 332-3, provides that the Clerk "shall transcribe, in the book of the records of his town, the minutes of the proceedings of every town meeting held therein, and he shall enter in his book every order or direction, and all rules and regulations by any such town meeting."

"He shall deliver to the Supervisor, before the annual meeting of the Board of Supervisors of the County, in each year, certified copies of all entries of votes for raising money, made since the last meeting of the Board of Supervisors, and recorded in the town book."

The transcript of the Town Clerk shows that the petition for the two mill tax "was presented in due form and unanimously carried."

The proceedings are regular upon the face of the record, and the record must be taken as true.

The 5th Sec. 1 of Act of 1857 Cooke's Stat. 368 is directory merely 14 Barb. 291
Art. 3, Sec. 1, Town. Org. Law, Cooke's Stat., 326. The law provides that town meetings shall be held within the town, and the Court will presume that the meeting was held at the proper place, when the bill does not allege that it was not.

The law only requires a certified copy of the "entries of votes for raising money," and it is not necessary to set forth the whole proceedings.

Sess. Laws 1853, page 300; 10 Miss. 410. The City Council is not vested with exclusive power over highways and bridges within the city limits, unless such highways and bridges were established and constructed by the city authorities; the Council have exclusive power, and it is their duty to construct highways and bridges for the benefit and convenience of the people of the city, but they are not bound to construct roads and

bridges within the city limits for the benefit and convenience of the people of the town; that is a duty which devolves upon the town authorities alone, and their power to perform it is coequal with, if not superior to, that vested in the Council.

Sess. Laws 1853, page 314. The city charter provides that "the inhabitants of the city of Ottawa are hereby exempt from working on any roads beyond the limits of the city, and from paying any tax to procure laborers for working on the same."

It is manifest, from this clause, that the legislature intended to recognize the right of the town to tax property within the city for road purposes, and to limit the application of the tax to improvements within the city.

Private Laws 1854, 2d Sess., p. 35. The act giving cities incorporated under any general or special acts, the same powers possessed by the cities of Springfield and Quincy, was passed Feb. 10th, 1849; the amendatory act, giving the city of Springfield exclusive power over highways, was approved March 2, 1854, and therefore did not come within the provisions of the act of Feb. 10, 1849, which was not intended to include amendments that might be made after its passage.

The Court below had no authority to render a decree before the term to which the bill was directed. The appearance of the defendants was only for the purpose of a motion to dissolve, and gave the Court no jurisdiction to render a decree at that term.

It was error for the Court to render a decree upon the bill alone, without the defendants being called, or in default.

D. P. JONES,
For Plaintiffs in Error.

144-181

Town of Ottawa

vs

Geo E. Walther and

Plffs vs
Def

Filed April 29, 1859

L. Deland

clerk

STATE OF ILLINOIS, }
SUPREME COURT,

ss. The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of La Salle Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of La Salle - County, before the Judge thereof, between George E. Walker & Richard Thorne who sue as well for themselves as for the tax payers of the Town of Ottawa plaintiffs, and The Town of Ottawa & Philo Ludley -

defendants, it is said manifest error hath intervened, to the injury of the aforesaid Defendants

as we are informed by their complaint and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plea aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 30th day of March - in the Year of Our Lord one thousand eight hundred and fifty-nine.

L. Leland

Clerk of the Supreme Court.
by J. D. Rice Deputy



144
The Town of Ottawa
& Philo Lindley. —

vs
George B. Walker and
Richard Thorne who sues,
Writ of Error



The Town of Ottawa
etal or

George B. Walker etal

Recipe

Filed March 30. 1857.
L. Leland
clerk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Sheriff of the County of *La Salle* Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the *Circuit* Court of *La Salle* County, before the Judge thereof, between *George E. Walker & Richard Thorne who sue as well for themselves as for the tax payers of the Town of Ottawa* plaintiffs and *The Town of Ottawa & Philo Lindley* defendants, it is said that manifest error hath intervened, to the injury of the said

Defendants

as we are informed by *their* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said *George E. Walker & Richard Thorne*

that *they* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if *they* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *George E. Walker & Richard Thorne* notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *30th* day of *March* in the Year of Our Lord One Thousand Eight Hundred and Fifty-nine.

L. Leland
Clerk of the Supreme Court.
L. J. B. Rice Deputy



144
The Town of Ottawa
& Philo Lindley—

vs
George B. Walker & Richard
Thorne who sue.

Set for.

Served by recording to the within
named George B. Walker & Richard
Thorne March 31st 1859

F. Warner Shiff
per W B Hall

Scro 8 R 110
2 miles $\frac{10}{120}$

Filed April 16. 1859
L. Deland
Clerk



1
State of Illinois

Sasale County, I do hereby certify that the Honorable Madison E. Kellerton Judge for the ninth judicial district in and for said State and the presiding judge of the Sasale County Circuit Court at a term of said Court commenced and held at the Court House in Ottawa in the first Monday in the month of November, the same being the first day of November, in the year of our Lord one thousand eight hundred and eighty eight and of the Nineteenth State of America the eighth third

Present

The Honorable Madison E. Kellerton

Presiding Judge

John F. Nash

Deputy

Washington Bushnell

State Attorney

Eli L. Waterman

Sherriff

It is remembered that on the 12th day of November 1838 a certain bill in Chancery was filed in the office of the Clerk of said Court in the words and figures following to wit:

' State of Illinois Sasale County and Circuit Court
Sherriff vs. February Term A.D. 1839

In the Honorable Madison E. Kellerton Judge of said Court complaining Sherriff against John Rogers for creating George E. Walker and wife parties with themselves as for the two pages of the term of Ottawa Richard Thomas that they are citizens of the town of Ottawa in the County of Sasale and State of Illinois.

From records further shown that on the 3^d day of September A.D. 1838 there was filed in the office of the Clerk of the County Court of said Sasale County a certificate in

substance as follows

"At a town meeting held at the Court House in the city of Attenu on Thursday April 6th 1838 George B. Macy was chosen moderator and J. D. Pennell clerk for term.

At three (3) o'clock of the same day J. D. Leaton presented a petition for a tax of one half mill on each one dollar valuation of the taxable property in the town of Attenu, to be assessed for the purpose of repairing roads and bridges and that the Commission appropriate one hundred and fifty (150) dollars of the same towards repairing or building a road or bridge near the residence of L. Leaud.

And at four o'clock on the same day L. B. Deane presented a petition for a tax of two mills on each dollar valuation of the taxable property to be assessed for the purpose of building a free bridge across Fox River near the Aqueduct, all of which was presented in due form and unanimously carried."

"State of Illinois, I do hereby certify that the foregoing is a true copy of entries of votes for passing money made since the last annual meeting of the Board of Supervisors and recorded in the Town Books.

Witness my hand this 2^d day of September A.D. 1838
J. B. Rice Town Clerk of said Town

Yours Obedient servant, John B. Rice, that about the hour of three o'clock in the afternoon of the day on which said town meeting was held, by the direction of the electors then and there present, the balloting for the officers of said town was suspended for the purpose of transacting the general business of the day which the

Electors might lawfully transact at the Town meeting
 and thereupon said Town meeting did transact such
 general miscellaneous business and the petitioners
 mentioned in the Certificate aforesaid as having been
 presented by J. D. Eaton was presented and acted upon
 and the day wherein mentioned vote of said Town
 meeting, which business occupied about ten minutes
 and thereupon the moderator announced that the
 miscellaneous business of said meeting was closed and
 the balloting was again resumed, and at the time said
 announcement was made no order was made by the
 electors of said Town for the transaction of any other business
 of a miscellaneous nature on that day, and afterwards
 about the hour of four o'clock on said day and after
 many of the electors who were assembled at the time said
 announcement was made had left said Town meeting
 the action of said Town meeting upon the petition presented
 by J. D. Eaton was had as mentioned in said Certificate
 the balloting for the officers of the Town having been suspended
 for that purpose. Your exors are advised & believe & charge
 the fact to be that said Town meeting had on former after the
 transaction of the business of a general nature had been ever
 closed & the balloting for Town officers resumed to receive
 said petition or to act upon the same or to vote said
 vote & that all such proceedings of said Town meeting at
 such time were wholly void.

Your exors further show to your Honor that the
 agreement mentioned in said Certificate is within the
 corporate limits of the City of Attenu, that the point
 designated in said Certificate as the location of said
 bridge would be within the limits of the City of Attenu
 that on the East side of said River it is about the

distance of six hundred and eighty feet from said agnedeuch to the South line of said city, that on the East side of said river it is about the distance of thirty four hundred and eighty feet from said agnedeuch to the point on the East line of said city where the said river crosses said line, that South of said agnedeuch the whole of said river is within the limits of said city, that said city of Ottawa is an incorporated city, incorporated by an act of the General Assembly of the State of Illinois Approved February 10th A.D. 1833, that in and of said charter of incorporation is given to the city Council of said city to open alter, establish, widen, extend, establish grade, pave or otherwise improve and alter repair streets avenues lanes and alleys and other public highways, to establish, erect and repair repair bridges as by article first (5) of said charter referred to which is hereby made well known fully and at large appears.

Your crator further shew that by said charter Section one (1) of article fifth it is provided that "the city Council shall have power and authority to levy and collect taxes upon all property, real and personal within the limits of the city, not exceeding one half of one per cent per annum upon the assessed value thereof, and may enforce the payment of the same in any manner to be prescribed by ordinance not repugnant to the Constitution of the United States and of this State."

Your crator further shew to your Honor that there is no street or other highway crossing said Fox River at or near said agnedeuch except the same be within the city of Ottawa aforesaid.

5

Yours craves further show to your Honor that by virtue of an act to incorporate towns & cities approved February 10th 1837 section four, it was provided that "The corporate authorities of all towns and cities incorporated under chapter twenty five, entitled Corporations of the Revised Code or under any special act, shall have power to pass all the ordinances and by-laws and possess all the powers authorized under the laws and amending acts incorporating either of the cities of Springfield or Quincy."

Yours craves further that by an act of the General Assembly of said State entitled "An act to amend the act incorporating the city of Springfield, and the several acts amending thereof, into one act, and to amend the same" approved March 2^d A.D. 1837 and by Article 5th section four (4) of said act it was provided that the city council shall have power within the jurisdiction of the city, by ordinance, to have the election of streets and lanes, care the streets, alleys and highways of the city and to abate and remove any encroachments or obstructions thereon, to open, alter, widen, widen, extend, straighten, establish, regulate, grade, clean or otherwise improve the same; to put drains and sewers therein, and to prevent the incumbering thereof in any manner, and protect the same from any encroachment or injury, to establish, erect, construct, regulate and keep in repair bridges culverts and sewers sidewalks and cross ways, and regulate the construction and use of the same and to abate any obstructions or encroachments thereof."

Yours craves further show to your Honor that by section one (1) of Article ten (10) of the said chapter of the

6

said city of Ottawa it is provided that "The inhabitants of the city of Ottawa are hereby exempt from working on any road beyond the limits of the city and from paying any tax to procure persons for working on the same,

Your orders further show that they are tax payers in the Town of Ottawa and in the City of Ottawa aforesaid.

Your orders further show to your Honor that at the annual meeting of the Board of Supervisors of LaSalle County the following order was entered upon the records of the said Board:

"It is ordered by the Board that the following rate of taxes be assessed upon the following named several Towns of this County for the current year, for the purpose of defraying Town and other expenses (the same having been certified by the Clerk of the several Towns as ordered under the direction of the Supervisors of said Town of Ottawa one mill for roads and bridges and two (2) mills for Fox River Bridge (Special).

Your orders show that this Lindley Clerk of the County Court of LaSalle County is now preparing the collectors books of said County and extending the taxes thereon that he will unless restrained by order of this Honorable Court extend upon the collectors book of the Town of Ottawa in said County a special tax of two mills on the dollar valuation of property in said Town for the bridge over Fox River aforesaid claiming that he has a right to do so by virtue of the proceedings of the Town meeting aforesaid as witnessed by the certificate aforesaid and by virtue of the said order of the Board of Supervisors aforesaid.

Your orders are advised and shown and charge the Clerk to be that said tax has now been legally

legally assessed, that it would be a violation of the rights of your estate to have the said tax returned upon the said collectors books, that the Town meeting of the Town of Attenu had no right to pass any resolution to pay, the tax assessed at the time when the said mentioned in said certificate was taken, the miscellaneous business of said Town meeting having been closed before the time when said vote was taken.

Your estate charge that said certificate filed with the County Clerk does not show that said tax was paid at any Town meeting of the Town of Attenu, but only at a Town meeting held at the Court House in the City of Attenu, nor does it show that the said George B. Shea of the moderator of said Town meeting was a citizen of said Town of Attenu.

Your estate are advised and believe and charge the fact to be that no Town meeting of the Town of Attenu had a right to direct the building of a bridge within the limits of the City of Attenu or to raise any tax therefor or to direct concerning the location or construction of any bridge or bridges within the City of Attenu, or to direct the imposition or assessment of any tax for such purpose but that such power is by Law vested exclusively in the said City of Attenu and that the said City Council of said City have never directed or permitted the erection or construction of any bridge across Fox River at the points mentioned in said certificate. Your estate further charge that if the said tax is returned by the said Phil Lindley upon the collectors book of the Town of Attenu that your estate will be required to pay a considerable portion of said tax.

8

Was much therefore a few estates are in
 danger of suffering injury and are remediless
 except in equity where matters of this sort are properly
 cognizable and equitable (Yam estates) that
 the said Term of Attain and the said Phil
 Lindley & made parties defendants to this bill and
 that the said Phil Lindley & restrained by writ of
 Injunction passing out of and under the seal of this
 Honorable Court from extending upon the collected
 debt of the Term of Attain the Africa and special
 tax of two miles upon each dollar valuation of the
 real estate property of said Term until the final order
 of this Court and that the said Term of Attain and
 Phil Lindley & promised to answer this their
 bill and that upon the final hearing thereof the
 said Injunction be made perpetual or for such
 other or further relief as to your Honor shall seem
 meet or to equity shall appertain

Shm Clerk

Solicitor for Compt

State of Illinois J Richard Thome being first duly
 sworn says on oath that the matters
 and things in the above bill stated
 and set forth to be as the same are stated as of his
 own knowledge or facts and as far as the same are
 stated upon information & belief are true to the best of
 his information & belief R. Thome

Subscribed & sworn to before me this
 27th day of October A.D. 1838 R. Lindley Clerk

Subscribed & sworn to before me this 27th day of November
 1838 J. H. H. Clerk

6
10
Be therefore in consideration of the premises do strictly
enjoin and command you the said Phil Sindle
and your clerks that you do absolutely and entirely
desist from extending such as is above stated
until you shall appear and answer the complaints
said & said Court make other order to the contrary
to the Sheriff of said County to execute.

Witness John H. Cook Clerk of said Court & the seal
thereof this 13th day of November 1838
J. H. Cook Clerk

Which said writ was returned & filed in said Clerk's
office on the 15th day of November 1838 duly executed
as follows to wit:

"Execute this writ by making the same
to Phil Sindle who accepted service of the copy this
13th day of November 1838 E. L. Waterman, Shff
for H. Warner Dft."

And afterwards to wit: on Friday November 19th 1838
the same being one of the days of said Term of said Court
an order was made and entered of record in said Court
in the words and figures following to wit:

"George E. Walker & Richard Thorne who sue as well for
themselves as for the Port Jagers of
the Term of Ottawa 2

Bill for Injunction
The Term of Ottawa 2 This day the defendants came
Phil Sindle J. D. Jones their solicitor and
more the Court to dissolve the
injunction herein, which motion is granted by the
Court."

11 And again on Tuesday December 12, 1858 the same
being also one of the days of said Christmas term, a final
order was entered of record in said cause in the words
and figures following to wit;

"George E. Walker & Richard Stone who sue as well for
themselves as for the tax payers
of the Town of Ottawa,

vs
The Town of Ottawa &
Philo Lindley

} Bill for Injunction
}

It appearing to the
court that the said defendants herein have
duly entered their appearance herein and
made their motion by power their Atty that
the said Injunction be dissolved, and the
said defendants having failed to file their
answer herein this day this cause came
on to be heard upon the Bill of said com-
plainants & upon the said motion. And
it appearing to the Court that a writ of
Injunction in said cause has been is-
sued out of and under the seal of this
Court by which said writ the said de-
fendants Philo Lindley & his Clerks were
strictly enjoined and commanded that
they do absolutely and entirely desist
from extending on the Tax Book for the
Town of Ottawa a Tax of Two mills on the
dollar on the taxable property in the Town
of Ottawa for the purpose of Building a Bridge
across Fox River near the aqueduct in said

the injunction

Town until they shall appear and answer the complainants bill and said Court shall make other order to the contrary.

The said motion to dissolve said injunction is overruled and it is therefore ordered adjudged & decreed that the said injunction be made perpetual and that the said Philo Lindly, his clerks and employees be forever enjoined and commanded that they absolutely & entirely desist from extending the said tax upon the said Tax Book of the Town of Ottawa aforesaid.

State of Illinois } Sheriff certifies that the above and
 Adair County } foregoing comprises a true full
 perfect and complete record
 in the said entitled cause as the same appears
 of record and on file in my office

Witness John H. Nash Clerk of the Circuit
 Court for said County and the Seal thereof
 at Ottawa this 29th day of March 1857
 J. H. Nash Clerk



The Town of Ottaum
Philip Lindley

George E. Walker
Richard Stone
as well as the
pages of the Town of
Ottaum

Reend

Feb. 3 1823

State of Illinois - Supreme Court thereof
Third Grand Division April Term AD, 1859

The Town of Ottawa &
Philis Lindley Pff in error

vs

George E Walker & Richard
Thorn, who sue for themselves
as well as for the tax payers
of the town of Ottawa -
Defts in error

Error to La Salle

And now comes the said Town of Ottawa
& Philis Lindley by D. P. Jones their solicitor
say that in the record & proceedings
aforesaid & in the rendition of the ^{final} decree
aforesaid manifest error hath intervened
to their prejudice, in this to wit

1st That it appears by said record that the said
bill of Complainant contains no equity,
upon its face & no matters or things sufficient
to authorize the court to grant said injunction
or to render said final decree

2nd That it appears by said record that the
court erred in overruling said motion to
dissolve said injunction

3^d That it appears by said record that said defendants below were not lawfully before the court for the purpose of a final hearing at said November Term A.D. 1858 of said Court

4th That it appears by said record that the defendants below were not called in open Court, or in any wise in default of it or before the time of the rendition of said final decree

5th The court erred in rendering said final decree at ^{the} time if said Court should prior to the one to which said bill was directed

6th The court erred in rendering said final decree in making said ~~judgment~~ ^{judgment} perpetual

6th The court erred in enjoining the Clerk from extending the whole of said tax upon the tax book

7th The court erred in rendering said final decree in making said injunction perpetual

Therefore, & for other errors in the record
& proceedings aforesaid they pray that
said decree may be reversed, annulled
& for naught esteemed

D. J. Jones

Solr for Plffs in Error

And now comes the defendant in error
and says that in the record & proceedings
aforesaid there is no error.

Found in error

B. L. Cook

Filed April 26, 1839.

for deft in error

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The Town of Otter

vs

George & Walker & Co

Record &
Assessors' Evals

Filed April 18-1859

L. Leland
Clerk