

No. 12969

Supreme Court of Illinois

City of Ottawa

vs.

Chicago & Rock Island R. R. Co

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

1860
No. 144.

City of Quincy

6th St. Quincy

12961

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

THE CITY OF OTTAWA, *et al.*

vs.

THE CHICAGO & ROCK ISLAND
RAILROAD COMPANY.

} *Error to La Salle.*

Points and Authorities of Plaintiff in Error.

The assessment was authorized by law and was made upon property subject to assessment. The decree of the Court, enjoining the collection of the same, was therefore *coram non judice* and should be reversed.

21 Ill. 605-2 2 Ill. 34 and 549.

The answer denied all the material allegations of the Bill and the case was heard and the decree made upon the Bill, and answer, and therefore the bill should have been dismissed.

D. P. JONES,

Att'y for Plaintiffs in Error.

144
Supreme Court
City of Ottawa et al,
vs,
The C. & R. I. R. R. Co.

Printed & Authenticated
of J. H. in Error

Filed Apr 30. 1868
L. Deland
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

THE CITY OF OTTAWA, *et al.*

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RAILROAD COMPANY.

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Supreme Court

The City of Ottawa et al,
vs,

The C. & P. S. R. R. Co,

Pointz & Authorities
of R.R. in Error

Filed April 30. 1860
L. Leland
C

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

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

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.

• 14 See 45 Miller vs. Metzger, 16 Ill. 390.
26 394 & 456 - 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.
x McCoy vs. Morrow, 18 Ill. 519.
Buckmaster vs. Grunly, 3 Gilm. 631.
y Buckmaster et al. vs. Carlin, 3 Scam. 105.
Ralston et al. vs. Wood, 15 Ill. 159.

B. C. COOK.

143-133
City of Ottawa

vs

C. & R. S. R. Co.

143

Filed May 10, 1860
L. Leland
Clerk

Ottawa Ill. Jan 5th 1861
Hon. J. D. Eaton
Springfield Ill.
Dr Sir

In the case of
the City of Ottawa vs the C. & R.
I. R. R. Co. et al decided at Ottawa
at the last term a mistake
was made in the entry of
judgement and I desire to
have a correction made
in time to obtain judgment in
the Court below at the Fall
term.

There are two cases - one
an application for judgment
on a special assessment and
the other an injunction
restraining the city from
obtaining judgment. The Court below
granted the injunction in the
one case & refused to render
judgment in the other, both

decisions were reversed by the
Supreme Court, or intended
to be ~~and~~ judgment rendered
in both cases as in cases of
injunctive

If the matter cannot be
corrected without the record
and you will make an
order authorizing the clerk
to deliver it to me I will
take it down

Yours Truly

L. P. Jones

Supreme Court of the State of Illinois
April Term A.D. 1860

The City of Ottawa &
George H. Walker
Plffs in Error
vs -

The Chicago & Rock
Island Rail Road
Company Dft in Error

} Error &
La Salle

The Clerk of said Court
will please issue scire facias
in above cause

Apr 7th 1860

D. S. Jones
Atty for Plffs in Error

144
The City of Ottawa
& George H. Walker

The Chicago & Rock
Island R.R. Co.

Receipt

Filed April 6. 1860
L. Leland
Clerk

Supreme Court of the State of Illinois
April Term A.D. 1860

The City of Ottawa
& George B. Walker

144 vs.

The Chicago & Rock
Island R.R. Co.

Comer & LaSalle

This was a bill in Chancery
to restrain the collection of an
assessment levied by the City
of Ottawa to defray the expenses
of building a sewer.

The facts set forth in the bill
were not sufficient to give the
Court jurisdiction and it is
only necessary to refer the Court
to the cases cited in the brief &
to the case of Mc Bride vs the City
of Chicago 22 Ill. 576 & to my
argument in case 143 - City of Ottawa
C & R. I. R.R. Co. et al,

The Defendants below answered
the bill denying all its material
allegations & the cause was heard
upon bill and answer
The answer was retitled to us

much weight as evidence, as
the bill and the cause should
have been dismissed but
the Court disregarded the denial
in the answer & rendered
a decree in accordance with
the prayer of the bill

R. J. Jones,

Att'y for Plff in Error

144-134
City of Ottawa
Ontario

vs.
C. & R. R. Co

Argument of
Att. for R.R. in Error

Filed May 15, 1860
S. Leland
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

THE CITY OF OTTAWA and
GEORGE H. WALKER,
Plaintiffs in Error,
vs.
THE CHICAGO & ROCK ISLAND
RAILROAD COMPANY,
Defendant in Error.

ABSTRACT OF RECORD.

Page of Rec.

2

THE C. & R. I. R. R. Co. filed their Bill in Chancery, Aug. 16th, 1858, directed to November term, 1858, of La Salle Circuit Court.

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.

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.

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

Page of Rec. by said Commissioners and published in the newspaper aforesaid, on the 13th and 20th days of March, A. D. 1858.

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.

- 4, 5 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.

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

- 5, 6 " 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 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.

- 6, 7 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

Page of Rec. 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.

9, 8 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.

9, 10 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.

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.

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

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.

15 Injunction issued Aug. 16th, 1858.

20 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.

21 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.

22-5 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.

Errors Assigned.

1st. The Court erred in overruling the motion to dissolve said injunction.

2d. The Court erred in rendering said final decree making said injunction perpetual.

144
Supreme Court

The City of Ottawa
et al,

vs.

The C. & P. R. R. Co.

12969

Abstract

Filed April 27, 1860
L. Leland
Clerk

1
State of Illinois }
La Salle County }

Pleas before the Honorable
Madison E. Hollister, Circuit
Judge of the Ninth Judicial District in and
for said State, and the presiding Judge
of the La Salle County Circuit Court, at a
term of said Court, commenced and held
at the Court house in Ottawa, on 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 fifty
Eight, and of the United States of America
the Eighty third.

Present.

The Honorable Madison E. Hollister Presiding Judge
John F. Nash Clerk
Washington Bushnell State Attorney
Eri L. Waterman Sheriff.

It is remembered that on the 16th day of August
A.D. 1858 a Bill was filed with the Clerk of said
Circuit Court, in the words and figures following
to wit;

"State of Illinois }
La Salle County } And Circuit Court
Thereof, To November

Term A.D. 1858 —

To the Hon M. E.

2

Hollister, presiding Judge of Said Court;

Complaining Showeth unto your Honor
your Orator, The Chicago & Rock Island
Rail Road Company that it is an incorporated
Company, incorporated under and by virtue
of the laws of the Said State of Illinois, that
it is the owner of a certain Rail Road track
and the lands on which the same is built &
lands, a part of which said track is located
within the limits of the City of Ottawa in Said
County.

Your orator further Shews to your Honor,
that the Said City of Ottawa, by a vote of
the City Council, on the 1st day of December
A.D. 1857, - ordered that a main Sewer be con-
-structed according to the plan and specifi-
-cations of the sewerage Committee, commenc-
-ing, 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 States addition to Ottawa
thence East to the East line of said Block
and that the sum of Four Thousand two
hundred dollars be assessed upon the real
estate in the natural Division of the City
benefitted thereby to defray the expenses of

3 Such improvement - Your Orator further shows to your Honor, that afterwards on the 2^d day of March A.D. 1858. - The said City Council of said city of Ottawa in pursuance of the order aforesaid by ballot appointed Samuel W. Raymond, Thomas J. Wade and George B. Macy as commissioners to assess the said Sum of Four thousand two hundred dollars on the real Estate in the City of Ottawa aforesaid benefitted by the construction of the Sewer aforesaid -

Your orator further shows to your Honor that the said commissioners caused to be published in the Ottawa Free Trader a weekly newspaper published in the 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 center of Pine Street and running thence South through and under the center of said Street to a point at or near the north line of Lot Eight (8) in Block Seventy two (72) in States addition to Ottawa, thence Easterly

4 To the East line of said Block, will meet at the office of the City Clerk in said city on Monday the 22^d day of March inst, at the hour of ten O'Clock A.M. for the purpose of making said assessment." said notice was signed by said commissioners appointed as aforesaid, and published in the newspaper aforesaid on the 13th and 20th days of March A.D. 1858.

Your Orator further shows to your Honor that no other notice of any kind or nature whatsoever was ever given by the said commissioners, that they would meet on said 22^d day of March or at any other time whatever to make the assessment aforesaid -

Your orator further shows to your honor that on said 22^d day of March aforesaid the said commissioners George B. Macy, and Samuel W. Raymond met and adjourned until the 23^d day of March A.D. 1858, and on the said 23^d day of March the said commissioners last named met and adjourned till the 24th day of March A.D. 1858 - and on said 24th day of March the commissioners last mentioned met and adjourned until the 25th day of March A.D. 1858, and on the said 25th day of March the said commissioners last named met and adjourned until the 26th day of March A.D. 1858. and

5 on the said 26th day of March the said commissioners last named met and adjourned until the 27th day of March A.D. 1858. and on the said 27th day of March the said commissioners last named met and adjourned until the 29th day of March A.D. 1858. and on the said 29th day of March the said Commissioners Samuel W. Raymond Thomas J. Wade, and George B. Macy met pursuant to adjournment and assessed the said sum of Four thousand two hundred dollars on the Real Estate in the said City of Ottawa by them deemed benefitted by the construction of the Sewer aforesaid. and on the 29th day of March A.D. 1858, the said commissioners returned the assessment roll by them prepared as aforesaid to the City Clerk of said City of Ottawa -

Your orator further shews to your Honor that the said City Clerk of the City of Ottawa 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 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

6 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 addition to Ottawa, thence Easterly to the East line of said Block, have completed their assessment and made return thereof to my office. And any person wishing to appeal from said assessment must file their objections in writing in my office on or before Tuesday the 4th day of May 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. May City Clerk

Said notice was published in said newspaper three successive weeks, the first publication being on the 17th day of April A.D. 1858.

Your orator further shows to your honor that no notice other than the one last above mentioned was ever given by the said City Clerk or by any other person, that the said City Council would meet at and on the said 4th day of May or at any other time to hear appeals from the said assessment and to confirm or amend the same.

Your orator further shows to your honor, that on the said 4th day of May A.D. 1858 - the said City Council of the said City of Ottawa met

7 in pursuance of the said notice and by a vote of the said Council the consideration of the said assessment was laid over until the 11th day of May A.D. 1858, and on the said 11th day of May, the consideration of the said assessment was by a vote of said Council laid over until the 18th day of May A.D. 1858, and on the said 18th day of May the consideration of the said assessment was by a vote of said Council laid over until the 25th day of May 1858, and on the said 25th day of May the said City Council did not meet at their said Council room to hear objections to the said assessment and confirm or amend the same, but on the contrary thereof no action of any kind whatever was had or taken by the said City Council upon or about or in any way concerning the said assessment and the confirmation or amendment thereof -

And your orator further shews to your Honor that on the 1st day of June A.D. 1858, the said assessment roll and the objections thereto were by a vote of the said City Council referred to a select Committee of said Council who were ordered to report upon the same at the next meeting of the said Council, and on the 8th day of June the said day being the day of the said next meeting of the said City Council, the said Committee made their report upon the said assessment

8 roll and the objections filed Therein, and by said report the said Committee stated that they had reduced the said assessment by remitting the sum of forty dollars of the assessment made by said Commissioners on lot seven in Block Seventy two in the States addition to Ottawa, and the sum of twenty dollars on the assessment made by said Commissioner on lot ten (10) in Block Seventy two in the said States addition, And the said report was then and there accepted by the said Council, and on said day last mentioned the said City Council confirmed the said assessment as revised by the said select committee and ordered a warrant for the collection of the same to be issued to the City collector returnable within sixty days from the date of the issuing thereof.

And your orator insists & charges the fact to be that no notice of any kind or nature whatsoever was ever given by said City Clerk or by any other person, that the said City Council, would on said 1st day of June, or on the said 8th day of June meet to hear the objections that might be filed to said assessment, and to confirm or amend the same, and Your Orator further insists that the said action of the said City Council in revising and confirming the said assessment was illegal and void and of no binding force whatever.

Your orator further Shows to your Honor that
 on the 18th day of June A.D. 1858, a warrant
 issued under the hands of the Mayor of said City
 of Ottawa and under the Seal of said City was
 attached to the said assessment roll & the same
 then and there directed to the city collector of the
 said City of Ottawa, which said warrant com-
 manded the said city collector, to levy, make &
 collect of the goods & chattels of the respective
 owners of the real Estate described in said assess-
 ment roll, the several sums of money assessed
 thereon for which each may be liable, and to
 make return of the said writ within sixty days
 from the issuing thereof, and the said assessment
 roll & the warrant thereto attached were on the
 day and year last aforesaid delivered to the said
 City Collector.

Your orator further Shows to your Honor, that
 the gross sum, stated in said warrant, and
 thereby required to be collected was the sum of
 Four thousand one hundred and forty dollars -

And your orator further shows to your Honor
 that in the said assessment roll so attached
 to the said warrant as aforesaid, there was
 and is named and described the following
 property & real Estate Lots numbered three (3)
 and four (4) in Block seven (7) Lots numbered
 two (2), three (3) and four (4) in Block eight (8)

10 all in North Ottawa in the said City of Ottawa
also that portion of the road and road way belong-
ing to the said Chicago and Rock Island Rail
Road Company which is situate on the South
West quarter of Section two (2) Town thirty three (33)
Range three East of the third Principal meridian
the same being within the limits of the said City
of Ottawa, and on each of said lots aforesaid
by said warrant and the assessment roll thereto
attached there was ordered to be collected from
the owner or owners thereof the sum of five dol-
lars and on the said strip of lands in the said
South West quarter of Section two aforesaid,
there was, by said warrant and the assessment
roll thereto attached, ordered to be collected from
the owner thereof the sum of Two hundred and fifty
dollars -

Your Orator further Shows to your honor, that
it is the owner of the South sixty four feet of each
of the lots aforesaid and also of the said road and
road way on the South West quarter of said Section
two, and that the railway track of the said Rail
road Company is built & constructed on an em-
bankment raised upon the said parts of said
lots and upon the said strip of lands on the
South West quarter of said Section two, and that
the said parts of said lots & the said strip of
lands on said Section two are used for no other

11 I suppose whatsoever - And Your orator further shows to your Honor, that George H Walker, the City collector of the Said City of Ottawa threatens and gives out in speeches that he will levy, make & collect of the goods & Chattels of the respective owners of the real Estate described in said assessment roll the several Sums of money assessed thereon, and that he will levy upon and sell the goods and Chattels of your Orator, for the payment of the several Sums of money assessed as aforesaid upon the real Estate of your orator hereinbefore and in said assessment roll described - And your orator Charges that the said assessment has never been legally confirmed, that the same is void and of no binding force whatever, that the said warrant to the said assessment roll attached was illegally issued and was and is void and of no binding force whatever, and that the said City Collector has no right whatever to collect the said Sums of money in said assessment roll mentioned, or to levy upon and sell the goods & Chattels of your orator for the payment of the several Sums of money assessed upon the real Estate of your orator as aforesaid For the reasons:

That the notice aforesaid given by the said Commissioners was and is uncertain and in-

12 That the notice aforesaid given by the said City Clerk was & is uncertain & insufficient; That the no notice of any kind or nature whatsoever was ever given by the said City Clerk or by any other person that the said City Council would, on the said 1st day of June or on the said 8th day of June, meet to hear objections to the said assessment and amend or confirm the same, but the said assessment of said Commissioner was on the said 8th day of June confirmed, as amended by the said Committee without any previous legal notice of any kind or nature whatsoever that ever having been given; that such action or any action whatever would then and there be had upon said assessment.

In as much Therefore as your orator is in danger of suffering great loss, injury and damage and is remediless except in Equity where matters of this kind are properly cognizable and relievable, your orator pray that the said George H. Walker City Collector as aforesaid and the said City of Ottawa be made parties defendant to this your orator Bill of Complaint and summoned to answer the same without oath, which is hereby expressly waived, and that the said George H. Walker & acting under his authority or under and by virtue of the City Council of the said City of

12 Ottawa may be restrained by writ of Injunction
 issuing out of and under the Seal of this hon-
 -orable Court, from proceeding to collect the said
 Several Sums of money assessed as aforesaid upon
 the real estate of your orator herein before men-
 -tioned, and from levying upon or selling any
 portion of the goods and Chattels of your Orator
 for the purpose of making or collecting the
 Said Several Sums of money so assessed as
 aforesaid upon the real estate of your orator
 and that upon the final hearing of this Bill
 that the said Injunction be made perpetual
 or for such other or further relief as to your
 honor may seem meet or to equity shall appear
 -tain

D. C. Court

Solicitor for Compts.

State of Illinois
 La Salle County } Geo C. Campbell being first
 duly sworn States on Oath
 that the matters and things in the above Bill
 Stated so far as the same are stated of his
 own knowledge are true, and so far as they
 are stated upon information or belief are true
 to the best of his knowledge, information or belief.
 Geo. C. Campbell.

Subscribed and Sworn to before me this 12th
 day of August, A.D. 1858.

14 Let an Injunction issue according to the
prayer of the foregoing Bill
Ottawa August 16th 1858,

M. E. Hollister Judge &c.

Be it further remembered that on the said 16th
day of August 1858, a writ of summons issued out of the
Clerks office and under the seal of said Court in the words
and figures following, to wit;

State of Illinois, } The People of the State
La Salle County }^{ct.} of Illinois:

To the Sheriff
of La Salle County, Greeting; We command
you to Summon The City of Ottawa and George W.
Walker if to be found in your County, personally
to be and appear before the Circuit Court of said
County, on the first of day of the next term thereof
to be holden at the Court House in Ottawa, on
the first day of November, next, to answer to a
certain Bill of Complaint filed in our said Circuit
Court on the Chancery Side thereof, against them
by the Chicago & Rock Island Rail Road
Company, and have you then and there this
writ and make return thereon in what manner
you execute the Same. Witness, John F. Nash
Clerk of said Court, and the Seal of said Court
at Ottawa this 16 day of August A.D. 1858.

J. F. Nash Clerk.

15. Which summons was, on the 20th day of Aug. 1858, returned by the Sheriff of La Salle County, with an endorsement thereon in the words and figures following, to wit;

"Served by reading this writ to George H. Walker and delivering to him a true copy thereof, also left a true copy with Julius Avery Clerk of the City of Ottawa this 20th day of August 1858.

Fees = & ret. 1.10. 2 miles 10. 2 copies 1.00 = \$ 2.20.

E. L. Waterman, Shff.

A. E. Grow Depty. "

On the same day of the issuing of the foregoing writ of Summons, to wit, on the 16th day of August 1858, there issued out of said Circuit Clerk's office and under the Seal of said Court, a writ of injunction in the words and figures following, to wit;

"State of Illinois, The People of the State
La Salle County } of Illinois to George H. Walker
Greeting;

Whereas by a certain bill of Complaint filed in the office of the Clerk of the Circuit Court of said County by the Chicago & Rock Island Rail Road Company complainants on the Chaucey side thereof, against you the said Walker, & the City of Ottawa as defendants, wherein among things, it is alleged that the City of Ottawa have caused to be constructed a certain sewer known as Pine Street sewer, and

16 Have caused an assessment on certain real estate to be made to defray the expenses of said work, and that among others an assessment was made on the following described real estate belonging to said Rail Road Company to wit; Lots 3 & 4, in Block 7. Lots 2, 3 & 4 in Block 8 in North Ottawa and a part of the SW 1/4 Sec 2. Town 33. R 3. E 3^d of Q. W. - That said assessment was illegally made and that you the said Walker as collector of the City of Ottawa have been required to collect said assessment so imposed on said Lots from said Rail Road Company. And the Judge of the Circuit Court of said County having ordered an Injunction,

Now therefore in consideration of the premises, we do strictly ^{enjoin &} Command & ~~express~~ you the said Walker, your agents & servants and each of you that you do absolutely and entirely desist from collecting said assessment made on said real estate belonging to said Rail Road Company until you and each of you shall appear & fully answer the complainants bill and said Court make other order to the contrary.

Hereof fail not under the penalty of what the law directs; To the Sheriff of said County, to execute,

Seal

Witness John F. Nash Clerk of said Court and the Seal thereof at Ottawa this 16th day of August 1858.

J. F. Nash Clerk.

17 Which writ of injunction was, on the 20th day of August A.D. 1858, returned by the Sheriff of La Salle County, with an endorsement thereon, as follows, to wit;

"Served by reading this writ to George H. Walker, and delivering to him a true copy thereof this 20th day of August 1858.

Fees = \$r + r $\frac{1}{4}$ 60. 1 miles 5. 1 copy 50 = \$ 1.15.

E. L. Waterman Shff

A. E. Snow Dpy. "

On the 29th day of November A.D. 1858, the same being one of the days of the November Term of said Court for said year, the Defendants in this suit file their answer to complainant's Bill, in the words and figures following, to wit;

State of Illinois } Circuit Court thereof
La Salle County } To November Term A.D. 1858.

In Chancery Sitting,

The answer of the defendants, City of Ottawa, and George H. Walker, City collector of said City of Ottawa, to the Bill of Complaint of the Chicago and Rock Island Rail Road Company, complainants,

These defendants now and at all times hereafter, saving to themselves all and all manner of benefit, or advantage of exception or otherwise

18 That can or may be taken or had, to the many errors, uncertainties, and imperfections, in the said Bill of complaint contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, say:

That the notice published by the Commissioners, Samuel W. Raymond, Thomas J. Wade, and George B. Macy, of the time and place of meeting of the said Commissioners to assess the sum of four thousand two hundred dollars, fixed by the City Council, to be assessed upon the real estate in that part of the city, deemed by them to be benefitted by the construction of a sewer, called and known as the Pine Street Sewer, was not uncertain & insufficient, but was on the contrary as these defendant aver and maintain, both certain and sufficient;

By Section 4, of Article 8 of the Charter of the City of Ottawa, page 33, of the revised ordinances, it is provided that the Commissioners, shall give six days notice in one or more newspapers published in the City, of the time and place of meeting, to all persons interested.

This notice was published in the Ottawa Free Trader, on the 13th and 20th days of March A. D. 1858, all of which said Bill of

19 complaint sets forth and admits.

Defendants further answer that the Legislature must have meant a general notice, to all persons interested, because neither the lands upon which the assessment was to be levied nor the owners thereof could be known at the time of the giving of the notice.

The notice is to be given before the Commissioners commence making their assessment and they cannot then tell what lands will be assessed.

The said Bill of Complaint further sets forth, that the notice given by the Clerk to all persons interested, of the completion of the assessment and the filing of the roll, & of the time and place of meeting of the City Council to hear objections, was uncertain & insufficient."

Defendants answer that the notice was published in the Ottawa Free Trader, three successive weeks, the first being on the 17th day of April A.D. 1858, all of which said Bill of Complaint admits.

These Defendants, answer, that the notices given by the Clerk, was and is, in strict compliance with the requirements of the Charter, except as to the time, which said Charter required said notice to be in publication. Said notices being in print three successive weeks, instead of only for six days.

20 Defendants further answering say, that the notice was and is, in the exact form prescribed by the ordinances, entitled "an ordinance concerning assessments for public improvements," passed on the 24th day of February A.D. 1857, which ordinance is under and in pursuance of a power delegated to the said City Council, in the "act to amend the Charters of the several towns & cities in this State," approved March 1st A.D. 1854, section 2, page 46, of the revised ordinances of the City of Ottawa.

Defendants further answer and say that the adjournments of the said Commissioners from day to day, until they completed their assessments were legal and certain and sufficient, being in accordance with the power contained in the Charter section four article Eight, page 33, and that no other notice but the one given was necessary under the Charter.

These defendants further answering say that the adjournments of the said City Council, from week to week were legal, and that the reference of the whole subject at a regular meeting of the City Council, to a select committee, which committee subsequently and at the next regular meeting after their appointment made their report, does not make

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21 the prior notice "uncertain & insufficient", nor does it invalidate any of the proceedings subsequently made by the City Council.

Defendants answer that when the City Council adjourned, they also especially laid over the consideration of the assessment; and that the first notice was a continuous one, lasting and running from the first publication until the whole matter was disposed of, by the City Council, and was therefore certain & sufficient and was not as complainants say "uncertain and insufficient".

Defendants further answering say, that such a general notice is the one usually given; and that the improvements to be made, and the street to be improved, being mentioned in the notice, the notice is practically sufficient.

No person interested could fail to find out that he was assessed.

Defendants further answer that the Complainants did not appeal to the City Council in writing, or file their appeal in the Clerk's office "within ten days after the first publication of said notice," and are consequently barred from afterwards complaining.

These defendants answer and say, that there is no other matter, cause or thing, in the said Complainants said Bill of complaint

22 contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true, all which matters and things, these defendants are ready and willing to aver and maintain, as this Honourable Court shall direct and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained

George W. Grow
City Attorney "

And afterwards, to wit on Monday December 13th 1858, the same being one of the days of the November term of said Court for the year 1858, an order was entered of record in said cause in the words and figures following, to wit;

"The Chicago & Rock Island
Rail Road Company }
vs } In Chancery
The City of Ottawa, & George H. Walker }

This day the defendants come by G. W. Grow their Solicitor who moves the Court to dissolve the injunction herein "

23 And afterwards, to wit on the 14th day of December 1888 the same being one of the days of the November Term of said Court for said year, a decree was entered of records in said Cause in the words and figures following, to wit;

The Chicago & Rock Island
Rail Road Company }
vs } In Chancery.
The City of Ottawa &
George H. Walker }

It appearing to the Court that ~~that~~ the said defendants herein have been duly served with process of summons more than ten days before the present term of said Court and that the said defendants have duly filed their answer herein, and entered a motion to dissolve the injunction heretofore issued in said cause, this day this cause came on to be heard upon the said bill and answer, and it appearing to the Court, that an Injunction has been issued in said cause out of and under the Seal of this Honorable Court, whereby the said defendant George H. Walker his agents and servants & each of them were strictly enjoined & commanded, that whereas by a certain Bill of Complaint filed in the

24 office of the Clerk of this Court by the Chicago and Rock Island Rail Road Company against the said Walker, and the City of Ottawa as defendants, among other things it is alleged that the said City of Ottawa have caused to be constructed a certain sewer, known as Pine Street sewer, and have caused an assessment to be made upon certain Real Estate to defray the expenses of said work, and that among others an assessment has been made upon the following described Real Estate belonging to said Rail Road Company, to wit; Lots three (3) of four (4) in Block Seven; Lots two (2), three (3) of four (4) in Block Eight (8), in North Ottawa and a part of the South West quarter of Section two (2) Town thirty three (33) North of range three (3) East of the third (3^d) Principal Meridian; that said assessment was illegally made and that said Walker as Collector of the City of Ottawa has been required to collect said assessment so imposed on said lots from said Railroad Company therefore in consideration of the premises they do absolutely and entirely desist from collecting said assessment made on said Real Estate belonging to said Railroad Company until

25

They and each of them should appear & fully answer the said complainants Bill and said Court make other order to the contrary, and it further appearing to the Court that the assessment in said Bill mentioned was illegally made, the said motion to dissolve said Injunction is overruled, and it is hereby, ordered, adjudged & decreed that the said Injunction be made perpetual and that said Walker be forever enjoined & commanded to absolutely & entirely desist from collecting the said assessment upon the real Estate aforesaid, belonging to said Rail Road Company."

State of Illinois }
La Salle County } ss I John F. Nash

Clerk of the Circuit Court
in and for said County and State do hereby
Certify that the within and foregoing, is a true,
full and complete ^{copy of the} records of the proceedings
in a certain cause wherein The Chicago and
Rock Island Rail Road Company was Com-
plainant and The City of Ottawa was de-
fendant, as appears from the Records and
file of my Office.

Witness my Hand and the Seal
of said Court at Ottawa this 6th day
of April A.D. 1860.

John F. Nash Clerk
C. H. Hook Deputy

Certified Copy of
the record in case of
^{vs}
The Chicago & Rock
Island Railroad
Company

^{vs}
The City of Ottawa
&
Geo. H. Walker
~~~~~



Supreme Court of the State of Illinois  
April Term A.D. 1860

The City of Ottawa  
& George H. Walker

vs

The Chicago & Rock  
Island Rail Road  
Company

Error to La Salle

And now comes  
the said plaintiff in error by D. Jones  
their attorney and says that in the  
record & proceedings aforesaid and  
in the rendition of the decree  
aforesaid, manifest error hath  
intervened to the prejudice of the  
plaintiffs in error in this, & wit-  
1<sup>st</sup> the court erred in overruling the  
motion to dissolve said injunction

2<sup>nd</sup> the court erred in rendering  
said final decree making  
said injunction perpetual  
Wherefore &c

D. Jones  
Att for  
Plffs in Error



Supreme Court

City of Ottawa  
& Geo. H. Walker

vs.

Chicago & R. I. R. R. Co.

~~~~~

Record & Assignment
of Error

Filed April 16, 1860
L. Leland
Clerk