No. 12729

Supreme Court of Illinois

C. B. & Q. R.R.

vs.

County of Bureau.

(28849) 7

Frary

No. 12729

Supreme Court of Illinois

C. B. & Q. R. R. Co.

vs.

Frary

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254 1??
Chicago B. & Q. R.R.
vs
~~D. Brotherton et al~~
Roderick B. Frary

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Page 1.

Be it remembered that on the Ninth day of July in the year of our Lord one thousand eight hundred and fifty eight, came the Chicago Burlington and Quincy Rail Road Company by Kendall and Ide their Solicitors, into the Office of the Clerk of the Circuit Court for the County of Bureau in the State of Illinois and filed their Bill for injunction and praecipe for summons & injunction thereon, in the words and figures following to wit;

Copy of Bill for injunction

" To the Honl Martin Ballow Judge of the 23^d Judicial Circuit of the State of Illinois

Your Orators the Chicago Burlington & Quincy Rail Road Company, respectfully show unto your Honor, that they are an incorporation for Railway purposes, duly incorporated, authorized and recognized as such by the laws of the State of Illinois, that they have a Rail Road known and called "the Chicago Burlington and Quincy Rail Road" fully equipped and in operation from the City of Chicago in said State to Galesburg in said State and that their said Rail Road passes through Bureau County in said State of Illinois which County has been and is now under Township organization.

Your Orators further show that they were by their incorporate name aforesaid assessed and taxed for the year A.D. 1857, on their said Rail Road in said County in the manner and to the extent hereinafter more fully set forth; that a list of your Orators taxable property and the valuation thereof, to wit; of their real property, fixed and stationary personal property, pro rata movable property, and their personal property, subject to assessment for taxation in said County for the year 1857 was by your Orators reported and filed in the Office of the Clerk of the County Court of said Bureau County on the 21st day of April A.D. 1857, a copy of which list, marked "A" is hereunto annexed and made a part of this Bill.

Fol. 2

Your Orators further Show that at a meeting of the Board of Supervisors of said County held in September A.D. 1857, such proceedings were had, that the Chairman of said Board appointed a Committee of the members of said Board to examine and report on the assessments of the several Rail Roads in said County, which said Committee at the same meeting of the said board and upon the 19th day of September A.D. 1857 made their report thereon a Copy of which report or so much thereof as is applicable to your Orators, Marked "B" and made a part of this Bill is hereunto annexed which said report was then and there received & adopted by said Board

Your Orators further Show, that on the said 19th day of September A.D. 1857 the said Board adopted the following resolution, to wit;

"Resolved; that the Clerk of this Board be and is hereby authorized to raise the assessments on the property of the several Rail Road Companies, having roads running through and in said County of Bureau in accordance with the report of the Special Committee on Rail Road assessments, as adopted by the Board Sept. 19. 1857."

Which said resolution together with all the records & proceedings of said Board pertaining or relating to the same is hereby made a part of this bill reference thereto being had for greater Certainty in this behalf. (V. book Marked Supervisors Record)

Your Orators further Show that at a meeting of said Board of Supervisors held on the 8th day of December AD 1857, the said Board by vote reconsidered their Action as aforesaid in regard to Rail Road assessments in said County, and referred the Matter to a Committee of said Boards, which said Committee at the same meeting of said Boards, and upon the 9th day of December 1857 made their report thereon, a copy of which report or so much thereof as is applicable hereto marked "C" and made a part of this bill is hereunto annexed, which which report with the accompanying resolutions was then and there received and adopted by said Board.

Your Orators further show, that on the evening of the said 9th day of December 1857, the said Board of Supervisors adopted the following resolution, to wit:

"Resolved by the Board of Supervisors of Bureau County, that the Clerk of this Board be and he is hereby authorized to increase the assessment in the property of the several Rail Road Companies having Rail Roads running through and in said County, in accordance with the resolutions passed by this Board Dec 9. 1857, and that the ~~tax~~ assessment so raised shall be the assessment levied on the property of the several Rail Road Companies therein named."

which said resolution, together with all the records and proceedings of said Board pertaining or relating to the same is hereby made a part of this Bill, reference thereto being had for greater certainty (v. book marked Supervisor's Records)

Your Orators further show that by their report and assessment list, they are the owners of real estate in said Bureau County valued at $5187.06/ which by the revenue laws of this State is denominated real property; that the value of their Main and Side tracks and Stations in said County is $219,545.00/ which by said Revenue Laws is denominated "fixed and stationary personal property"; that the value of their "other personal property" so denominated by said Revenue Laws is the sum of $1300.; and the value of their "pro rata movable property" so denominated by said revenue laws is the sum of $148,555.40 making the aggregate listed value of all the taxable property of your Orators in said Bureau County, the sum of $374.587.46. (✯)

Your Orators further show that the taxes have been extended against your Orators' property aforesaid, in said County, upon the tax books for the year 1857 upon an increased assessment of forty per cent as ordered by the said Board; so that your Orators "Personal property" listed by them as aforesaid at $1300

(✯) Your Orators further show that the assessment and valuation of their property for purposes of taxation in said County for the year A.D. 1857 is as above stated and that by raising the said assessment forty per cent in accordance with the resolution of said Board their personal property, fixed and stationary personal property and pro rata movable property as assessed on the Tax Books of said County is the sum of $517,160.36

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has been increased and assessed by said Board at $1820; their "fixed and Stationary personal property" listed by them at $219.545. has been increased and assessed by said Board at $307.363; their "pro-rata movable property" listed by them at $148.555.40. has been increased and assessed by said Board at $207.977.56 making in the aggregate the sum of $517.160 56/100 and an increase of $147.760.16 over and above the amount at which the said property was reported and filed by your Orators as aforesaid for the year 1857

Your Orators further show that their said property was so assessed by said Board and the taxes extended ~~[illegible]~~ thereon upon the basis of the aforesaid enhanced valuation of forty per cent, without the knowledge of your Orators and without any notice to them by said Board or the Clerk of the County Court of said Bureau County of such increased valuation, although your Orators were by the revenue laws of this State legally entitled to such notice.

And your Orators further show that no notice whatever of such alteration and enhancement in the valuation or assessment of your Orators' said taxable property in said County of Bureau was ever either before or since such alteration by said Board given by the Clerk of said County or said Board or either of them, to your Orators or any of its Officers or agents; that the aforesaid list of their said taxable property filed by your Orators in the Office of the Clerk of said County on the 21st day of April 1857 contains a full and correct description of all the property of your Orators subject to taxation in said County

And your Orators further show that the said alteration and enhancement of the valuation of said taxable property by adding thereto forty per cent increase is unjust and inequitable, as the valuation when thus enhanced is entirely disproportionate to and much above the valuation of other

5

property in said County; and that your Orators are advised and believe and therefore allege and insist that the alteration of said list as reported by your Orators and the increase in valuation of the same and the assessment and levy of taxes against your Orators said property, is illegal for the want of the notice to your Orators, required by the revenue Laws of this State in such case made and provided; and that the taxes as charged and assessed against your Orators in said County, for A.D. 1857 are in consequence thereof unlawfully enhanced and increased from about the sum of $5930.57 to the sum of $8282.16, making the amount of $2351.59 taxes illegally charged against your Orators for the year AD 1857, in the said County, all of which will more fully appear by the Certified Statement of taxes and property made by the County Clerk of said Bureau County, the tax book assessment lists and other evidence records and papers to be produced and exhibited on the trial of this cause, reference thereto being had for greater certainty in this behalf. And as for the amount of the taxes in the several towns in said County through which your Orators said road passes and wherein they are taxable, your Orators refer to, and make a part of this bill, a schedule or Statement hereunto annexed and Marked "D" showing a true and lawful computation of said taxes and the difference between the taxes now charged against your Orators and the amount lawfully due from them.

And your Orators further show, that they have not paid said taxes; that Roderick B. Frary is the Treasurer and Ex-Officio Collector of taxes in said County, that all lawfull taxes due from your Orators in said County are payable to said Treasurer that such lawful taxes are now due from your Orators to said Frary in his Official Capacity as treasurer and Collector as aforesaid, that said Frary has now in his hands the Certified Statement of taxes against your Orators' property and threatens that unless restrained and enjoined from collecting said illegal taxes he shall proceed to levy upon the property of your Orators, and sell the same to make the full amount of the aforesaid taxes now charged against your Orators in said County; that your Orators are ready and willing to pay such portion of said taxes as may be legal and just; that Treasurer & Collector demands the whole of the taxes so illegally assessed, and refuses to receive of your Orators that portion of

the said taxes which is legal and just in full payment of the taxes charged against your Orators on said certified Statement of Taxes; that the Collection of such illegal taxes by levy or distress and sale of the property of your Orators would work great and irreparable loss and injury to your Orators inasmuch as they have no personal property in said County out of which said taxes could be collected, excepting their Cars engines, machinery, fuel and furniture of said Rail Road, all of which is necessary to the successful operation of the same, and the interests of public travel.

In consideration of the premises, your Orators therefore pray that the said Roderick B Frary Treasurer and ex-officio Collector of said Bureau County may be made a party defendant to this Bill, that he may be summoned to answer all and singular the allegations herein contained, but without oath; which is hereby waived,; that in the meantime upon filing this bill an injunction [illegible] form of law be awarded and directed to be issued against said Frary in his official Capacity as aforesaid, enjoining him from levying, selling or distraining the property of your Orators for such illegal taxes, and from Collecting or proceeding in any manner to Collect from your Orators more than the sum of $5930.57 parcel of taxes levied as aforesaid and acknowledged by this bill to be justly due from your Orators

7 until the further order of said Court and that upon final hearing of this cause there be made a just and correct estimate of the true amount of taxes lawfully due in said County from your Orators for the year AD 1857, and that the aforesaid illegal assessments and taxes be annulled and set aside and if at the time of making said decree in this Cause, your Orators have not paid said lawful taxes, that then an order of this Court be entered in the Cause in substance and to the effect that your Orators be allowed to pay said lawful taxes in full satisfaction & discharge of all the said taxes now charged against your Orators as aforesaid, and that a perpetual injunction be awarded, barring and prohibiting forever the collection of so much of the said taxes as shall be adjudged and found illegal, and that your Honor will award such other and further full and adequate relief to your Orators as the nature of this Case shall require, and equity afford. And your Orators will ever pray &c

Amos T Hall
Vannorman, Kendall & Ide
Solicitors for Complainants

State of Illinois } ss
Bureau County }

George O. Ide being duly sworn says that the said Bill, excepting the matter of notice which is not within his knowledge, is true in substance and fact

Subscribed & sworn to before me this 2d day of July AD 1858
Milo Kendall Notary Public for Bureau Co Ills

L S

George O. Ide

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State of Illinois } SS.
County of Cook }

Amos T Hall, of the City of Chicago & County of Cook being duly sworn saith that he is now and for some years past has been the Treasurer of the Chicago Burlington & Quincy R. R. Company the Corporation in the foregoing bill named, and the Complainants therein that by means of his Office of Treasurer he has acquired & possesses as he verily believes greater and more particular knowledge of and relating to the matters of the said bill and the facts therein stated than the president or any or either of the members of such corporation (a knowledge of such matters appertaining peculiarly to the province of the deponent as such Treasurer) that he has read the said bill subscribed by him and that the same is true of his own knowledge except as to the matters which are therein stated to be on information & belief of the Complainants and as to those matters he has been so informed and believes it to be true

Amos T Hall

L S

Sworn & Subscribed
this 6th day of July 1858
Isaac Claflin
Notary Public

Let an injunction issue in accordance with the prayer of the foregoing bill restraining the collection of the sum of two thousand three hundred & fifty one dollars and fifty nine cents parcel of taxes assessed as in said Bill named upon the filing of this bill together with the bond of the said Complainants in the penal sum of two thousand dollars conditioned as the law directs with John Van Nortwick surety

J. D. Caton
Allowed July 7. 1858 Chi Just Ill

Paper referred to marked "B"

The Committee on Rail Road assessments presented their report which being read was adopted in words and figures as follows, to wit;

To the Hon Board of Supervisors of Bureau County Ills. Your Committee appointed to examine the several lists of property belonging to the several Rail Road companies having Rail roads running through and in said County of Bureau filed with the Clerk of this Board by said Rail Road Companies to be assessed for taxes for the year 1857—

Respectfully report that in pursuance of the direction of said Board we proceeded to examine the said lists and reccommend - that the assessment on the fixed and stationary personal property of the Chicago Burlington & Quincy Railroad Company situated in said County of Bureau as made by their Secretary April 17. 1857 & filed by the Clerk of this board should be raised forty per cent, that the assessment on the other personal property of the Chicago Burlington and Quincy Rail-road Company situated in said County of Bureau as made by their Secretary. April 17. 1857 and filed by the Clerk of this Board be raised forty per cent - that the assessment of the pro rata movable property of the Chicago Burlington and Quincy Rail-road Company as made by their Secretary April 17. 1857 and filed by the Clerk of this Board be raised forty per cent—

All of which is respectfully submitted

Wm C Stacy
M. G. Lovchin
Jacob T Thomson
Edward B Triplett
Nathan Gray

Paper referred to Marked "C"

The Committee on Rail Roads assessments presented their report which was read and motion received in words and figures as follows, viz;

To the Honorable board of Supervisors of Bureau County

Your committee to whom refered the matter of Rail road assessments as made by your board at its last session beg leave to make the following report.

That the entire assessment as made by your board at its last session on the property of the Chicago Burlington & Quincy Rail-road Company was $532.188.06 making an average per mile on 42½ miles 12.552.19

On the property of the Chicago & Rock Island Rail Road company $489.390.10 making an average per mile for 4½ miles $12.413.88

Your Committee in their last report assumed the data given by the report of the Committee on assessing Rail-roads adopted September 1855. which gives the length of the Peoria & Bureau Valley Rail Road in this County at 4¾ miles which would reduce the above assessment 1/19 or to an average per mile of $11.763 12-

The aim of your Committee in their report as adopted by the last session of this board was to get the total assessment per mile on the different roads as nearly equal as practicable believing that the entire cost of roads and equipments of the different roads running through the County were not far from equal and therefore a larger percentage was recommended for the Chicago & Rock Island & the Peoria & Bureau Valley Rail roads and not from any desire to discriminate in favor of the Chicago Burlington & Quincy Rail Roads. But your Committee at its present session after a closer examination and in presence of facts that did not then appear they find they have ignorantly made an un-

11 -just discrimination against the Chicago & Rock Island & the Peoria & Bureau Valley Rail-roads on a/c of the excess of Rolling stock on the Chicago & Burlington R R and over-looking the rates of which the tracks are listed. The tracks of the Chicago & Rock Island ~~and~~ and Peoria & Bureau Valley Rail Roads are listed by their agent B. C. Cook average one dollar per foot, while the valuation of the tracks of the Chicago Burlington & Quincy Rail Road is listed at 90 ¢ per foot which after being raised 40 % amounts to one dollar and twenty six cents per foot while the assessment of the Chicago & Rock Island Rail Road with 45 % added average $1 45 per foot and the track of the Peoria & Bureau Valley Rail Road being raised 60 % makes the assessment $1 60 cts per foot.

The rolling Stock of the Chicago Burlington and Quincy Rail Road is $45.737.24 more than the Chicago & Rock Islands and $137,855.03 more than the Peoria and Bureau Valley Rail Roads. Should the assessment of the fixed and Stationary personal property of the Chicago & Rock Island and the Peoria & Bureau Valley Rail-roads be raised 30 % from the amount as listed it would then make the tracks of those roads average per foot $1.30 4 cents more than that of the Chicago Burlington & Quincy Rail road. Assuming that the rolling Stock of the several roads to be listed nearly in the same ratio (and from the evidence before your Committee they are inclined to the opinion there is no very material difference) the pro rata movable property should be raised on all the roads alike — Therefore your Committee would recommend the adoption of the following orders

Wm. C. Stacy Chm

Resolved that the valuation of the fixed and Stationary personal property, of the other personal property property and of the pro rata movable property of the Chicago Burlington & Quincy Rail Road Company situated in said County of Bureau as listed by their Secretary April 17. 1857 and filed by the Clerk of this Board be raised forty per cent — That the valuation of the fixed and Stationary personal property of the Chicago and Rock Island Rail Road Company as given in the lists of taxable property of said Company and filed with the Clerk of this Board May 1. 1857 be increased thirty per cent.

That the valuation of the other personal property and of the "Pro-rata movable property of the Chicago & Rock Island Rail Road Company as given in the lists of taxable property and filed with the Clerk of this Board May 1. 1857 be increased forty per cent - that the valuation of the fixed and stationary personal property of the Peoria & Bureau Valley Rail road company as given in the lists of taxable property of said Company and filed with the Clerk of this Board May 1. 1857 be increased thirty per cent - that the valuation of the other personal property and of the pro-rata movable property of the Peoria & Bureau Valley Rail Road Company ~~&&~~ as given in the lists of taxable property of said Company as filed with the Clerk of this Board May 1. 1857 be increased forty per cent.

Paper referred to marked "D"

Schedule or Statement referred to in the foregoing Bill, showing the taxes on said Rail Road as assessed, and also the true amount of taxes due from said Rail Road and the difference between said amounts as follows, to wit;

In the town of Clarion 18 N R 11 E

Amount of taxes assessed

State tax	$ 223.42
County "	116.71
Town "	12.67
School "	166.73
Road & Bridge tax	42.35
	$ 561.88

13 The amount of taxes due in Clarion

State tax	\$160.17
County "	83.67
Town "	9.08
School "	119.53
Road & Bridge Tax	30.36
	\$402.81

In the town of Westfield 17 N R 11 E

Amount of taxes assessed

State tax	\$379.53
County "	198.26
Town "	29.45
School "	237.57
Road & Bridge Tax	141.61
	\$ 986.42

True amount of Taxes due in Westfield

State Tax	\$ 272.13
County "	142.15
Town "	21.12
School "	166.72
Road & Bridge Tax	101.54
	\$ 703.66

In the Town of Berlin 17 N R 10 E

Amount of taxes assess[illegible]

State Tax	\$ 567.78
County "	296.60
Town "	18.64
School "	364.77
Road & Bridge Tax	300.83
	\$ 1548.62

True amount of taxes due in Berlin

State Tax	\$ 407.09
County "	212.66
Town "	13.36
School "	258.77

Road & Bridge Tax	215.69
	$ 1107.57

In the Town of Dover 17. N. R. 9 E
Amount of Taxes assessed

State Tax	$ 71.86
County "	37.54
Town "	3.64
School "	5.36
Road & Bridge Tax	51.48
	$ 169.88

True amount of taxes due in Dover

State Tax	$ 51.52
County "	26.91
Town "	2.61
School "	3.79
Road & Bridge Tax	36.91
	$ 121.74

In the Town of Princeton 16. N. R. 9. E
Amount of Taxes assessed

State Tax	527.69
County "	275.66
Town "	12.20
School "	63.21
Road & Bridge Tax	161.45
Corporation "	99.47
	$ 1139.68

True amount of taxes due in Princeton

State Tax	$ 378.27
County Tax	197.60
Town "	8.75
School "	44.81
Road & Bridge Tax	115.78
Corporation "	80.47
	$ 825.68

15 In the Town of Center 16. N R 8 E

Amount of Taxes Assessed

State Tax	$ 586.02
County "	313.13
Town "	147.81
School "	406.53
	$ 1453.49

True amount of Taxes due in Center

State Tax	$ 420.72
County "	219.78
Town "	106.11
School "	288.70
	$ 1035.31

In the Town of Concord 16 N. R. 7. E.

Amount of Taxes Assessed

State Tax	$ 319.62
County "	166.96
Town "	12.88
School "	145.56
Road & Bridge Tax	87.30
	$ 732.32

True amount of Taxes due in Concord

State Tax	$ 229.18
County "	119.72
Town "	9.23
School "	103.31
Road & Bridge Tax	62.59
	$ 524.03

In the Town of Macon 15 N. R. 7 E

Amount of Taxes Assessed

State Tax	$ 276.46
County "	144.42
Town "	20.63
School "	86.26

Road & Bridge Tax $ 68.08

$ 595.85

True amount of taxes due in Macon

State Tax	$ 198.18
County "	103.52
Town "	14.78
School "	61.56
Road & Bridge Tax	48.80
	$ 426.84

In the Town of Brawby 15 N. R. 6. E.
Amount of Taxes assessed

State Tax	$ 547.30
County "	285.90
Road & Bridge Tax	65.34
School " "	195.48
	$1094.02

True amount of taxes due in Brawby

State Tax	$ 392.44
County "	205.01
Road & Bridge Tax	46.85
School "	138.63
	$ 782.93

Total amount of Taxes assessed	$ 8282.16
Total amount of t[illegible] due	5930.57
Difference	2351.59

Paper Referred to Marked "A"

Office of the Chicago, Burlington & Quincy R R Co.
Chicago April 17. 1857

To the County Clerk of the County of Bureau, State of Illinois

In accordance with the 22d Sections of the "Acts in relation to the assessment of property," approved Feb 12th 1853, and the 2d, 3d, 4th and 12th Section of "An act to amend the assessments and revenue laws" approved Feb 14th, 1855; the Chicago Burlington and Quincy Rail Road Company, make the following return:

For value and description of the "Real Estate" owned by the Company in the County of Bureau see annexed Schedule Marked A

For Value and description of the "Fixed and Stationary Personal Property" in the County of Bureau see annexed Schedule Marked B

For value of all other Personal Property owned by the Company in the County of Bureau see annexed Schedule marked C

For value and inventory of all the "Movable Property" of the Company on their whole Road, see Schedule marked "D"

The total length of the Main Track of the Company in this State is 728.640 feet or 138 Miles. The total value of all the Rolling Stock of said Company is \$ 503,575.00 Now if 728.640 feet, (the whole length of the Main Track) give \$ 503.575.00 (the total value of all the rolling Stock) how much will 214.955 feet of Main track, which is the length in the County of Bureau give? The answer is \$ 148.555.40 which is the share or proportion that you are entitled to assess.

The County of Bureau is therefore entitled to assess as follows

1st	"Real Estate	Schedule A	\$ 5,187	06
2d	"Fixed and Stationary Personal property	" B	\$ 219.545	00
3d	Other personal property	" C	\$ 1.300	00
4th	Pro-Rata Movable Property	× " D	\$ 148.555	40

Total [illegible] in the County of Bureau \$ 374.587.46

This valuation is made on the first of April 1857. Should any change be made in the same by you, you are required to give notice of the same at this Office. See Section

18 9 of the first act referred to in this report

All of which is respectfully submitted

Amos T Hall

Secretary of the Chicago Burlington & Quincy Railroad Co

Schedule A

Part of Section	Section	Town	Range	Length of Strip	Width of Strip	No of Acres	Valuation	
Sec	25	18	11	5301	100	12.16	109	44
SE 1/4	26	"	"	460	"	1.05	9	45
N 1/2 & SW 1/4	35	"	"	6110	"	14.02	126	18
SE 1/4	34	"	"	2962	"	6.80	61	20
N 1/2	3	17	"	3848	"	8.83	79	47
SE 1/4	4	"	"	4951	"	11.36	102	24
N 1/2 & SW 1/4	9	"	"	1730	"	3.99	35	73
	8	"	"	6270	"	14.43	129	87
Arlington Depot Grounds						7.75	69	75
SE 1/4	7	"	"	1180	"	2.71	24	39
N 1/2	18	"	"	4752	"	10.90	98	10
NE 1/4 & S 1/2	13	"	10	5922	"	13.60	122	40
SE 1/4	14	"	"	550	"	1.26	11	34
N 1/2	23	"	"	5392	"	12.38	111	42
SE 1/4	22	"	"	5850	"	13.43	120	87
N 1/2 & SW 1/4	27	"	"	204	"	.46	4	14
N 1/2 & SW 1/4	28	"	"	6124	"	14.06	126	54
S 1/2	29	"	"	4711	"	10.81	97	29
Dover Depot Grounds						7.75	[illegible]	75
NW 1/4	32	"	"	760	[illegible]	[illegible]	[illegible]	[illegible]
N 1/2 & SW 1/4	31	"	"	5970	[illegible]	[illegible]	[illegible]	[illegible]
S 1/2	36	"	9	4771	"	[illegible]	[illegible]	46
NW 1/4	1	16	"	1165	"	2.68	25	12
N 1/2 & SW 1/4	2	"	"	5925	"	13.61	122	49
S 1/2	3	"	"	4101	"	9.41	83	69
NW 1/4	10	"	"	1759	"	4.03	36	27
N 1/2 & SW 1/4	9	"	"	5711	"	13.11	117	99
Princeton Depot Grounds						8.08	72	72
N 1/2 & SE 1/4	8	"	"	5724	"	13.14	118	26

19

S 1/2	6	"	"	1715	"	3.93	35	37
N 1/2	7	"	"	4520	"	10.38	93	42
N 1/2 + SW 1/4	12	"	8	5782	"	13.30	119	70
	Am't	Car'd	Ford	114.220		285.78	2572	02
	Am't	Bro't	Ford	114.220		285.78	2572	02
S 1/2	11	16	8	3405	100	7.82	70	38
NW 1/4	14	"	"	2376	"	5.45	49	05
N 1/2 + SW 1/4	15	"	"	5818	"	13.37	120	33
S 1/2	16	"	"	38[illegible]	[illegible]	8.91	80	19
NW 1/4	21	"	"	2017	"	4.63	41	67
Wyanet Depot Grounds						5.87	52	83
N 1/2 + SW 1/4	20	"	"	6113	"	14.02	126	18
NW 1/4 + SW 1/4	20	"	"			36.22	325	98
SE 1/4	19	"	"	2435	"	5.60	50	40
N 1/2	30	"	"	3756	"	8.62	77	58
NE 1/4 + S 1/2	25	"	7	5517	"	12.67	114	03
S 1/2	26	"	"	5101	"	11.71	105	39
NW 1/4	35	"	"	723	"	1.66	14	94
N 1/2 SW 1/4	34	"	"	7356	"	16.89	152	01
Buda Depot Grounds						8.03	72	27
NW 1/4	3	15	"	437	"	1.00	9	00
N 1/2 + SW 1/4	4	"	"	6043	"	13.89	125	01
S 1/2	5	"	"	4177	"	9.60	86	40
NW 1/4	8	"	"	1789	"	4.09	36	81
N 1/2	7	"	"	5410	"	12.42	111	78
N 1/2	12	"	6	5273	"	12.12	109	08
N 1/2	11	"	"	5430	"	12.46	112	14
NE 1/4 & S 1/2	10	"	"	5920	"	13.60	122	40
Neponset Depot Grounds						9.18	82	62
SE 1/4	9	"	"	1290	"	2.96	26	64
N 1/2	16	"	"	4610	"	10.58	95	22
NE 1/4 & S 1/2	17	"	"	5940	"	13.64	122	76
SE 1/4	18	"	"	1482	"	3.40	30	60
N 1/2	19	"	"	4423	"	10.15	91	35
				214.955		576.34	5187	06

The above parcels of Land embrace a strip or tract of Land extending on each side of the Rail Road Track and embracing the same, commencing at the point where the line of said Rail Road crosses the East boundary line of Bureau County and extending to the point where the said Rail road Track crosses the West boundary line of said County Containing in all 576 34/100 Acres, which is valued at $ 9.00 per acre $ 5187 06/100

Schedule B

	Feet	Value of	
Length of Main Track in the County of Bureau	214.955	193.459	50
" Side Tracks " " "	14.095	12.685	50
Station at Arlington		2200	00
Station at Malden		1500	00
Station at Princeton		3.000	00
Station at Wyanet		2.800	00
Station at Buda		2.000	00
Station at Neponset		1.900	00
Total Value of "Fixed and Stationary Personal Property"		$219.545	00

Schedule C

Personal Property	Value	
Tools & fixtures for repairs of Road	100	00
All other Personal Property	1.200	00
Total of Personal Property	$ 1.300	00

Schedule D

Movable Property

Description	No	Average Value		Total Value	
Locomotives	51	4000	00	204.000	00
Passenger Cars	26	1400	00	36.400	00
Emigrant Cars	5	600	00	3.000	00
Baggage Cars	10	500	00	5.000	00
House Cars	615	350	00	215.250	00
Cattle Cars					
Platform Cars	120	250	00	30.000	00

21	Grain Cars					
	Coal Cars	37	250	00	9.250	00
	Hand Cars	27	25	00	675	00
	Total of Movable Property				$503.575.00.	

Recapitulation

Valuation of the Chicago Burlington & Quincy R.R. Co (By Towns)
in Brown Co.

Town	Items of Property	Feet	Valuation	
No 18 N R No 11 East	Real Estate		306	27
	Fixed & Stationary Personal Property		13.349	70
	Other Personal Property		0	00
	Pro Rata Movable Property		10251	09
			23907	06
No 17 N R No 11 East	Real Estate		539	55
	Fixed & Stationary Personal Property		24317	50
	Other Personal Property		50	00
	Pro Rata Movable Property		15.709	39
			40 616	44
No 17 N R No 10 East	Real Estate		802	71
	Fixed & Stationary Personal Property		35.435	40
	Other Personal Property		0	00
	Pro Rata Movable Property		24.522	30
			60.760	41
No 17 N R No 9 East	Real Estate		98	46
	Fixed & Stationary Personal Property		4293	90
	Other Personal Property		0	00
	Pro Rata Movable Property		3297	24
			7689	60
No 16 N R No 9 East	Real Estate		705	33
	Fixed & Stationary Personal Property		34542	30
	Other Personal Property		50	00
	Pro Rata Movable Property		21.161	48
			56.459	11

No 16 N. R. No 8 East	Real Estate	1114	29
	Fixed & Stationary personal property	36.679	60
	Other Personal Property	400	00
	Pro Rata Movable Property	24600	40
		62794	29
No 16 N R No 7 East	Real Estate	458	64
	Fixed & Stationary Personal Property	20826	20
	Other Personal property	0	00
	Pro Rata Movable Property	12921	50
		34206	34
No 15 N R No 7 East	Real Estate	369	00
	Fixed & Stationary Personal Property	16070	40
	Other Personal Property	800	00
	Pro Rata Movable Property	12340	28
		29.579	68
No 15 N R No 6 East	Real Estate	792	81
	Fixed & Stationary Personal Property	34030	00
	Other Personal Property	0	00
	Pro Rata Movable Property	23751	72
		58574	53

State of Illinois
Circuit Court for Bureau County
In Chancery

The Chicago Burlington &
Quincy Rail Road Company
vs
Roderick B Frary
Ex-officio Collector of Bureau County
Deft

Cook County ss

John Van Nortwick of said County being duly sworn deposes and says that he is the President of the Chicago Burlington & Quincy Rail Road Company the Corporation named as Complainant in the annexed Bill of Complaint & has held said Office & performed

23 the duties thereof for more than one year last past. That neither this deponent nor the said Corporation of which he is President nor any of its officers or agents to the knowledge or belief of this deponent was ever notified of any alteration in the list or valuation of the property of said Company made by its Treasurer filed in Bureau County for assessment & taxation for the year 1857 either from the Clerk or Board of Supervisors of said County or either of them or any person in their behalf and that this deponent never heard of such increased valuation until after the taxes were assessed & extended thereon & after the same was in the hands of the Treasurer of said Co for Collection

John Van Nortwick

Subscribed & Sworn before
me this Sixth day of July 1858

LS

Isaac Claflin
Notary Public"

Copy of Praecipe for Writ of Injunction & Summons.

" Chicago Burlington & Quincy Rail Road Co		Sept. T. Cir. Court of Bureau Co. Ills
vs		
Roderick B Frary Tres & Ex-Officio Collector &c		Bill of Injunction

Clerk please issue the writ of injunction & Summons in Chancery against Deft (on filing the bill & order of Justice Caton & the injunction bond & this precipe) and direct the processes to Shff of Bureau to serve forthwith & without delay

July 9th 1858 Kendall & Ide for Complts"

And on the same day Came the said Complainants & filed their bond to the Defendant herein, in the words and figures following, to wit;

24 Know all men by these presents that the Chicago Burlington and Quincy Rail Road Company as Principal and John Van Nortwick as security are held & firmly bound unto Roderick B Frary Treasurer and ex Officio Collector of the County of Bureau in the State of Illinois and his successors in Office in the penal sum of Ten thousand dollars lawful money of the United States to the payment of which sum well and truly to be made we the undersigned, bind ourselves and our Successors, heirs executors administrators firmly jointly & severally by these presents witness our hands and seals this sixth day of July AD 1858

The Condition of this obligation is such that whereas the above bounden Chicago Burlington and Quincy Rail road Company has upon its bill filed in the Circuit Court of Bureau County Illinois prayed for and obtained an injunction against Roderick B Frary Treasurer and Ex-Officio Collector of the County of Bureau Illinois the defendant in said Bill of Complaint pursuant to the prayer of said Bill, Now if the said Chicago Burlington and Quincy Rail road Company shall well and truly pay to the said Roderick B Frary Treasurer and ex officio collector of said Bureau County or his successors in all such damages as shall be awarded against the said Chicago Burlington & Quincy Rail Road Company in case said injunction shall be dissolved and also all such costs and damages as shall be sustained by the said Roderick B Frary Treasurer & ex officio Collector &c by reason of wrongfully suing out the said injunction then this obligation shall be void otherwise in force

(L S) Chicago Burlington & Quincy Rail Road Company by Amos T Hall Treasurer

Attest A. T. Hall Secy
Frank S Curtis

John Van Nortwick (seal)

And, upon the filing of the said Bill for injunction, Praecipe, & bond as aforesaid, to wit, on the said 9th day of July AD 1858, a summons in Chancery and Writ of

25 injunction herein, issued out of the office of the Clerk of the said Circuit Court, which said Writs and the Sheriff's endorsements thereon, are in the words and figures following; to wit;

Copy of Summons in Chancery

"State of Illinois }
Bureau County }
The People of the State of Illinois
To the Sheriff of Bureau County Greeting

We command you to summon Roderick B Frary Treasurer and Ex=officio Collector within and for the County of Bureau and State of Illinois if he shall be found in your County to be and appear before our Circuit Court for said County on the first day of the next term thereof to be held in the town of Princeton on the first Monday of September next to answer a certain bill of Complaint filed in our said Circuit Court on the Chancery side thereof against him by the Chicago Burlington & Quincy Rail Roads Company and further to do and receive whatever our said Court shall then and there consider in that behalf; and this he shall in no wise omit. Hereof fail not and make due return of this writ, with an endorsement of the manner in which you execute the same

L S

Witness Edward M Fisher Clerk of our said Court and the seal thereof at Princeton this 9th day of July in the year of our Lord one thousand eight hundred and fifty eight

Edward M Fisher Clerk
per W. A. Fisher Deputy"

Upon which summons the Sheriff made the following endorsement

"I served the within writ by reading to the within named R. B. Frary and leaving a certified copy with said Frary July 12 1858
J. K. Waldron Shff"

Copy of Writ of Injunction

" State of Illinois }
Bureau County } ss

The People of the State of Illinois to Roderick B Frarey Treasurer & Ex officio Collector within and for the County of Bureau in the State of Illinois

Whereas the Chicago Burlington & Quincy Rail Road Company has lately exhibited their bill of Complaint to the Judge of the Circuit Court in and for the County of Bureau and State of Illinois on the Chancery side thereof against you the said Roderick B Frary Treasurer and Ex officio Collector for the County of Bureau & State of Illinois, defendant. Whereas among other things it is alledged, that a list of their taxable property and the valuation thereof to wit; of their real property, fixed and Stationary personal property, pro Rata Movable property & other personal property subject to assessment for taxation in said County for the year 1857, was by them reported and filed in the office of the Clerk of the County Court of said Bureau County on the 21st day of April 1857 that by their report and assessment list they are the owners of Real estate in said Bureau County valued at $ 5187.06 which by the revenue laws of this State is denominated real property, that the value of their Main & Side tracks and Stations in said County is $ 219.545 00/. which by said revenue laws is denominated "fixed and Stationary personal property" that the value of their "other personal property" so denominated by said revenue laws is the sum of $1300; and the value of their "Pro rata Movable property" so denominated by said Revenue Laws is the sum of $ 148.555.40 making the aggregate listed value of all their taxable property in said Bureau County the sum of $ 374.587.46. That the Board of Supervisors for Bureau County on the 9th day of December 1857. authorized and instructed their Clerk to increase the assessment at the rate of forty per cent that the taxes have been extended against their property in

27 said County upon the tax books for the year 1857 upon an increased assessment of forty per cent as ordered by said Board so that their "personal property" listed by them as aforesaid at $1300 has been increased and assessed by said Board at $1820, their "fixed and Stationary personal property" listed by them at $219.545 has been increased + assessed by said board at $307.633, their "Pro Rata Movable property" listed by them at $148.555.40. has been increased and assessed by said board at $207.977.56 making in the aggregate the sum of $517.160 56/100 and an increase of $147.760.16 over and above the amount at which the said property was reported and filed by them as aforesaid, without the knowledge of the said Complainants, and without any notice to them by said Board or the Clerk of the County Court of said County of such increased valuation, that such increased valuation is illegal and unlawfully enhanced and increased from about the sum of $5930.57 to the sum of $8282.16 making the amount of $2351.59 taxes illegally charged against them for the year 1857 in said County. That Roderick B Frarey is the Treasurer + ex-officio Collector of taxes in said County and that unless restrained + enjoined from collecting said illegal taxes he shall proceed to levy upon the property of said Complainants + sell the same to make the full amount of the aforesaid taxes now charged against them in said County; All of which, and other things which are more particularly and fully set out in Complainants Bill of Complaint.

We therefore in consideration of the premises do strictly enjoin and command you the said Roderick B Frary Treasurer and Ex-officio Collector for said County of Bureau that you do absolutely and entirely desist from levying, selling or distraining the property of the said Complainants, for such illegal taxes, and from collecting or proceeding in any manner to collect from the said Complainants more than the sum of $5930.57 parcel of said taxes levied as aforesaid, until you shall appear to and fully answer the said Complainants bill of Complaint, and the said Court make other order to the Contrary. Hereof fail not under

penalty of what the law directs
Witness Edward M Fisher Clerk of our said Circuit
L S Court and the seal thereof at Princeton in said
County this 9th day of July 1858
Edward M Fisher Clerk"

Upon which writ the Sheriff made the following endorsement

" I served the within writ by reading to R. B. Frary this 12th day of July AD 1858
J. K. Waldron Shff Bureau Co Ills"

Pleas before the Honble Martin Ballou Judge of the twenty third judicial Circuit of the State of Illinois at the September Term of the said Circuit Court begun and held at the Court House in Princeton within and for the County of Bureau on monday the sixth day of September in the year of our Lord one thousand eight hundred and fifty eight
Present Honble Martin Ballou Judge
Edward M Fisher Clerk
Zachary K Waldron Sheriff

To wit on the 3d day of said Term it being the 8th day of September AD 1858

The Chicago Burlington
Quincy Rail Road Company
vs Bill for Injunction
Roderick B Frary Treasurer &
Ex-Officio Collector for Bureau
County Illinois

Now comes the said Defendant by Taylor, Stipp & Paddock his Attorneys, and files his Answer to the Complainants bill of Complaint herein which is in the words and figures following to wit;

29. The Chicago Burlington & Quincy Rail Road Company
vs
Roderick B Frary Treasurer & Ex-Officio Collector of the County of Bureau State of Illinois

Circuit Court
Bureau Co. Ills

Bill in Chancery
at Sept Term
A.D. 1858

The Answer of Roderick B Frary the said Defendant to the Bill of the Chicago Burlington & Quincy Rail Road Company the said Complainants

This Defendant now and at all times hereafter saving to himself all and all manner of benefit or advantage of exception or otherwise, that can or may be had or taken to the many errors uncertainties and imperfections in the said Bill contained for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, Answering saith

That he is willing to admit and does admit that the said Complainants are a railway corporation under the Style of the "Chicago Burlington & Quincy Rail Road Company" and are duly organized under the laws of the State of Illinois; that defendants have a Rail way called the "Chicago Burlington & Quincy Rail Road" that said road passes through the above named County of Bureau; said defendant further admits that said Complainants filed (by mail) a list and valuation of their taxable property within the said County of Bureau subject to assessment for taxation for the year 1857 at the time and in the manner required by law, always saving this, that this defendant does not admit that the said list and valuation contained a full true and correct valuation of the property of said Complainants liable to taxation in said County of Bureau for the year 1857 Defendant further admits that the copy of said list marked "A" and attached to the Bill of the Complainants as an exhibits is a true copy of such list;

This defendant further admits that the Statements of the Complainants Bill setting forth the action of the Board of Supervisors of said Bureau County at their September

Session A.D. 1857 in relation to the said list and valuation of Complainants property are substantially true.

This Defendant further Admits that the Statements of the Complainants' Bill Setting forth the Action of the Board of Supervisors of Said Bureau County at their December Session A.D. 1857 in relation to the said list and valuation of Complainants property are substantially true although this defendant insists that the allegations of the Complainants' Bill touching the said December session of Said Board are not material; for the reason that the valuations of the property of said Company, were not, by said Board at said December Session enhanced in anywise over and above the additional forty per centum already imposed by said Board at their previous regular September Session as aforesaid. This defendant further admits that by their said report and assessment list the Complainants are the owners of Real Estate in said County of Bureau valued at $5187.06 which by the Revenue Laws of this State is denominated "Real Property" that by said report and list the value of their Main and Side tracks and Stations in said County is $219.545 00/100 which by law is denominated "Fixed and Stationary Personal property" that by said report and list the value of their "Other personal property" so denominated by said revenue laws is the sum of $1300 00/100; and that by said report and list the value of their "Pro-rata Movable property" so denominated by the said revenue laws is the sum of $148.555 49/100 which according to said report and list make the aggregate value of all the taxable property of Complainants within the County of Bureau equal to the sum of $374.587.46

This defendant does not admit but expressly denies that the true and lawful assessment and valuation of the property of Complainants for the purposes of taxation in said County for 1857 is as above and in the Bill of the Complainants Stated; and this defendant alleges that such assessment and valuation ought of right to have been increased to the extent that the said Board of Supervisors have actually increased the same as hereinafter detailed

And this defendant does not admit but expressly denies that the final action of the said Board of Supervisors in the above matter was to increase the said list and valuation (excepting "Real Property") in the sum of forty percent and consequently he expressly denies that Complainants "personal property" their "fixed and stationary personal property" and their "pro-rata moveable property" now stand assessed in the tax Books of said Bureau County in the sum of $517,165 50/100", and he also expressly denies that such property did stand so assessed at the commencement of this suit; but on the contrary he alleges the truth of the matter to be as hereinafter in that behalf explained and set forth.

This defendant again admits that the valuation of the property of Complainants (except real property) filed with the Clerk of the County Court were increased by the said Board of Supervisors, upon the recommendation of their Committee on Rail Road-assessments at the September Session AD 1857 to the extent (forty per cent) alleged in the Bill of Complainants, yet this defendant wishes this Court to understand, and alleges the fact to be, that the action of said Board at their subsequent adjourned session held in December of the same year and referred to in Complainants Bill did not change, increase or in any wise affect the valuation of the property of the Complainants, as the same at that time stood; but that it remained at precisely the same rate of valuation after such December Session at which it had been equalized by the said Board at said September Session until its valuation was again changed by said Board in manner herein below set forth

This defendant further says that the said Complainants for reasons best known to themselves have omitted to set forth the entire action of said Board of Supervisors in relation to this subject; that at a subsequent special session of said Board begun on Tuesday 8th June AD 1858 (to wit, on the 10th of said Month) the ~~xx~~ said Complainant by one Hawkins then duly authorized agent for such purpose, appeared before said board and presented a memorial or petition praying of said Board to be relieved from the payment of all, or a portion of such increase of forty per cent imposed, as above stated, by said Board at their September session; a copy of which memorial Marked "A" with a certified statement of the record of said Board concerning the same is hereto appended and made a part of this answer that such memorial was, then and there, by said Board, respectfully received, and duly referred to the Committee on finance of said Board, with instructions to inquire into the Case; that said Hawkins the Agent of Complainants, together with Milo Kendall Esq, the Attorney for said Complainants within the said County of Bureau, proceeded to meet and confer with said Committee upon the subject of said Memorial, that said finance Committee after a patient investigation of the Claims of Complainants to be relieved from the said increase of assessment or so much thereof as might be just and equitable, made a report in favor of complying with the prayer of said memorial, and reducing the valuation of the property of Complainants in the sum of \$16.525; which report being received by said Board on the eleventh day of said June was adopted by said Board at that time; that on the same day, the said Board, in pursuance of the said report made an order instructing this defendant as County Treasurer to abate the taxes against complainants upon the sum of \$16.525 of assessment or valuation; that accordingly the Clerk of said Board made the necessary pro-rata reduction upon the tax list aga[illegible] and delivered such list, so reduced, to [illegible] list so reduced [illegible] \$16.525 of assessme[illegible] standing enjoined by process of this Court; and the only [illegible] of taxes against said Complainants which this defendant ever threatened to levy by distress of the goods of Complainants;

And for a further answer in this behalf this defendant denies that Complainants had not notice of said increase of the valuation of their taxable property as alleged in their Bill filed herein; and he says that they had such notice of the action of the said Board of Supervisors

33 at the time and in the mode required by the laws of this State; as follows, that is to say; that Joseph V. Thompson Esq who was acting as clerk of the said Board of Supervisors before, during and after (until 7th December 1857) the said September Session thereof A.D. 1857 in addition to making publication in two newspapers of said County of such increase, in the valuation, by said Board, of the property listed by complainants, prepared and deposited in the Mail at Pr[illegible] in said County a written statement of such [illegible] the valuation of the property of Complain[illegible] signed the same as such Clerk and directed the same to the Treasurer of said Company; that such Statement so signed and directed was mailed as aforesaid by said Clerk within a reasonable time, less than a month from the close of the (September) Session of said Board at which said increase was voted; as this defendant is informed by said Joseph V Thompson and verily believes

And further touching the said allegations of lack of notice, this defendant says that at about the time of the aforesaid action of the said Board in raising the valuation of Complainants property, and before the subsequent December Session of said Board, the said Clerk for the time being placed in the hands of said Milo Kendall, who at that time was, and ever since has been, an officer and agent of said Company, recieving from Complainants a salary as their County attorney, and occupying an influential position in the management of said Company as to this County the original report of the Committee on Rail Road assessments adopted at the said September Session of said Board explained to said Kendall the Contents thereof and stated to him the action of the said Board in raising the valuation of Complainants property as aforesaid as this defendant is informed, verily believes, and alleges in answer to the Bill of Complainants, wherefore he suggests to this Court and insists that by the service, by such Clerk of said original report, upon the Complainants herein in the person of their said agent and attorney Milo Kendall

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the said Complainants are chargeable with actual written notice of all the doings of said Board at such September Session in relation to the Change in valuation in said Bill complained of — that it was the duty of said Kendall at once to have reported such change of valuation to his employers; that if he neglected so to report, such neglect should not affect the equities of this respondent in this matter

And as a further answer to that part of Complainants' Bill alleging a lack of notice of such increase of valuation, this defendant says that by the voluntary appearance of Complainants by their said agent Hawkins before said Board at said June Session AD 1858 and presentation of a memorial asking at the hands of said Board an investigation upon the merits of their list and valuation as by said Complainants originally filed with the Clerk of said Board; and for the added reason that said Hawkins, together with said Kendall, as agents for said Complainants accepted the resolution of reference of said Memorial passed by said Board and proceeded to meet the Committee of said Board to whom Complainants memorial had been refered and discuss with said Committee the prayer of the said Memorial for an abatement of valuation upon the merits of the list as filed, and were successful in inducing the said Board to vote a considerable reduction of such assessment in compliance with the prayer of such memorial as herein before set forth — the said Complainants should be held by this Court to have waived all and every [illegible] notice upon them of such increase in [illegible] their property, even though they were by law, entitled to such notice, and even, also, though they had not already received such notice, as herein alleged.

And for a further answer this defendant says that he knows of no law of the State of Illinois by which Complainants are entitled to notice in case the Board of Supervisors of this County, in the exercise of their general power of equallizing the assessments of the County, Railroad and otherwise, see fit to increase the valuation of any property listed by complainants under the revenue laws of this State as in this case, and he denies that Complainants are or ever were entitled to any notice of the action of said Board upon their list filed the 21st April AD 1857, that such action was duly recorded in convenient books of record, as the law requires, by the Clerk of said Board, which books were readily to be inspected by said complainants or their agents and attorneys, and to the records thereof relating to the subject of Complaint herein, the said Complainants are privy, and by which they must be bound in all Courts and places

And this defendant further says that Complainants had a complete remedy at law for the extravagant valuation of their property by said Board (if any such was made by said board) that such remedy was by appearing before such board, or a subsequent one, and sueing for an abatement of such alleged extravagant valuation as the law and custom are in such cases, and further, that, not only ~~has~~ Complainants had such complete legal remedy, but that they used and pursued the same to the fullest extent; as is shown by their having actually appeared before said Board at its Session in June 1858 & prayed for and obtained such abatement as such Board in its discretion saw proper to award, viz; an abatement of valuation in the sum of $16.525 as herein above stated

And this defendant, denying the right of Complainants to any other and further notice of the action of said Board in raising the said valuation at such September term as aforesaid than is necessarily implied from the fact of their privity to the records of such Board in the matter of their said list, for further answer to said Bill says that the laws of the State gives the Board of Supervisors of this County full and ample discretionary powers upon such evidence as may come before them, to equalize all assessments of property within said County, whether made by the ordinary township assessors of said County, voluntarily listed by any rail road corporation, or listed (or amended)

36 by the Clerk of said County; that in the exercise of this power said board have been in the frequent habit of adding to such assessments as seemed to them too low, as well as taking from such as seemed to them too high; that it has never been the practice of said Board or the Clerk thereof to issue any notice or warning to those persons or Corporations, the assessment of whose property has thus been equalized (unless in the case of Rail Road lists as a matter of mere grace and courtesy and not as a matter of right) nor, as this defendant alleges, is any notice or warning in such case at all to be expected, claimed or demanded by complainants, or any other person or persons, or corporations; but the same is a mere act of favor and courtesy on the part of any Officer, or person giving the same

And for a further explanation of the allegations in this answer this defendant says that he did receive of the County Clerk of said County on the 15th of January AD1858 a certified list, in due form, of the property of Complainants and the taxes due thereon for the year 1857 upon the enhanced assessment of forty per cent made as aforesaid by said Boards at their said September Session further that said Board at said June Session withdrew from the Custody of this defendant such list and utterly superseded the same; and thereupon that such Board at the said June Session AD1858 upon the instance of Complainants proceeded to reconsider the matter of such tax and abated and altered the same to the benefit of said Complainants as herein above specially detailed and that in pursuance of such [illegible] this defendant again received of sa[illegible] abated as aforesaid in the sum of $[illegible] which abated list, and no other, is the list of taxes in the hands of this defendant for collection against the Chicago Burlington and Quincy Railroad Company at the commencement of this suit; and that the same, that is the list last named, is the only list that this defendant ever threatened to levy by distress of the Chattels of Complainants

This defendant admits that he is the Treasurer and ex-officio Collector of said County as alleged in Complainants Bill; that he was about, until restrained by this Court, to collect the said (abated) taxes, according to the said amended list; he further acknowledges the receipt of $5,930.57 upon %c of said (abated) list, well and truly paid by Complainants in partial satisfaction of this defendants official demands as such Collector leaving a ballance upon the list, now standing against said Complainants [illegible] by the process of this Court, of the sum of [illegible] which last amount and not $2,301.59, as alleged in Complainants said Bill is that claimed by this defendant as now actually due from Complainants as taxes for the year 1857.

And this defendant denies all and all manner of unlawful Combination and confederacy wherewith he is by the said Bill charged, without this, that there is any other matter cause or thing in the said Complainants said Bill of Complaint Contained material or necessary for this defendant to make answer to, and not herein and hereby well and Sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to aver maintain and prove as this Honorable Court shall direct; and he prays to be hence dismissed with his reasonable costs and charges, in this behalf most wrongfully sustained

Roderick B Frary Collector &c

By Taylor, Stipp & Paddock, his Solrs

State of Illinois } ss
County of Bureau }

I do solemnly swear that all the several matters and things which are set forth in the foregoing answer, as from the information of others, I believe to be true; and all the several other matters of fact therein set forth (saving the matters alleged concerning the notice given to complainants by J. V. Thompson of which I have no knowledge) are true in substance and in fact

Subscribed & sworn before me this 8th Sept AD 1858

{L.S} Geo L Paddock Not Pub
Princeton Bu Co. Ills

R. B. Frary

[12124-18]

Exhibit Marked "A" referred to in answer.

State of Illinois }
County of Bureau }

Be it remembered that at the Special Session of the Board of Supervisors of said County held at the Court House at Princeton in said County on Tuesday 8th day of June AD 1858 after the said Board had duly organized, among other matters, the following proceedings were had.

That is to say at a meeting of said Board adjourned from said 8th of June and held on the third day of such Special Term to wit on Thursday 10th 1858

"Memorial "C.B & Q.R.R "Co"

On leave of the Board. Mr Hawkins Agent of the Chicago Burlington & Quincy Rail Road company presented a memorial praying for abatement of taxes on said road for 1857;
" which on Motion of Mr Sumner was referred to the Committee
" on finance with instructions to inquire into the case giv-
" ing the company all the privileges, they would have had, had
" the notice been recieved by them"

And the said memorial was then filed by the undersigned and is in the words and figures following, viz:

" To the Honorable Board of Supervisors of Bureau Co Ills
" in session June 9th 1858
" Gentlemen
" Whereas the Chicago Burlington & Quincy Railroad
" Co in accordance with the Laws of this State did on the
" first day of May 185[illegible] the [illegible] Office of said Co
" a true [illegible] said [illegible] taxable effects
" in said Co [illegible] basis [illegible] said year 1857 &
" whereas the Board of Supervisors of said Co did at their
" September Term of said year add to said list 40 per cent
" on all property (except real estate) listed, and in which case
" it became the duty of the Clerk of said Board to notify the
" secretary A. T. Hall Esq of said Rail Road Co of such in-
" crease or percentage so added, and whereas such notice was
" never recieved at said R. R. Offices, and the said Hall having

no notice of the said change or increase in the assessment for said year untill called upon by the proper officer for the payment of said tax, and believing said R. R. Co to be over & unfairly assessed by the addition of said 40 pr

Would therefore petition your honorable body to relieve and abate said tax to the amount of said 40 p/c so added by said Board or so much of that amount as you in your deliberations at this time may determine to be just & equitable under all the [illegible] with the case

And as in duty bound &c

Yours truly

W. H. Hawkins

for said R. R. Co

Princeton June 10/58

Friday June 11th 1858 Board met pursuant to Adjournment

Present ~~xxxx~~ as before

CB&QRR The Committee on Finance reported on the memorial of the Chicago Burlington & Quincy Rail Road Company and on motion of Mr Terry the report was adopted.

And the said report was duly filed by the undersigned and is in the words and figures following, to wit;

To the Hon Board of Supervisors of Bureau County

The Committee of Finance to whom was referred the memorial of the Chicago Burlington & Quincy Rail Road Company through their agent W. H. Hawkins of Aurora would beg leave to report that after having examined the assessment of the different Rail Road Companies in said County and also the report of the Committee of the last Board who equalized the assessments thus made and who believed that they had arrived at a just conclusion in equalizing the assessments on said Roads

But your Committee after a careful examination of the subject do find that the assessment of the Rock Island Rail Road Company in the County of Bureau is

		$447.263
The assessment of the Bureau Valley Rail Road		46.582
Which amt to		$493.845
The assessment of the Chicago		
Burlington & Quincy	$522.347	the excess of Stock
listed by " " "	35.737	
	486.610	which deducted

from the aggregate of the R. Island RR would leave the sum of $7.235 in favor of Chicago B & Quincy R Road

It is evident from the facts as shown from the length of the two roads that the committee of the last Board to whom this matter was refered in their investigation and equalization assumed that the C. B & Q. R R & Rock Island including the Bureau Valley as a part of the Rock Island was of equal length

Therefore your Committee believe that said Committee did not take into account the four miles and a half of track of the Bureau Valley Rail Road which is estimated at $23.760

from which deduct	7.235
would leave	$16.525

on which amount your Committee would recommend an abatement of all taxes. All of which is respectfully submitted

A.G. Porter Chn

Friday June 11th 1858

Board Met pursuant to adjournment

Present as before

Abatement on C.B & Q.R.R.Co.

The following resol[illegible] offered by [illegible] Porter and on motion adopted: [illegible] of the Board of Supervisors of Bureau County, that the County Treasurer be hereby instructed to abate the tax on Sixteen thousand five hundred and twenty five dollars of assessment made against the Chicago Burlington & Quincy Rail Road Company for the year 1857

State of Illinois } ss
County of Bureau }

I Stephen G Paddock Clerk of the

County Court and of the Board of Supervisors in & for the County aforesaid do declare the above to be a true Copy of the Memorial of the Chicago Burlington & Quincy Rail Road Company above mentioned, the report of the said Finance Committee, and the proceedings of said Board thereupon as the same appear by the records and files of my said Office and further that that said proceedings were had at the time and in the manner above set forth - In witness whereof I have hereto [illegible] and seal of Office at

L S

Prince[illegible] day of September 1858

Stephen G Paddock Clerk

In Circuit Court Bureau County Illinois
September Term A.D. 1858

The Chicago Burlington & Quincy Railroad Company
vs
R. B. Frary Collector &c

Bill for Injunction

Stephen G Paddock being duly sworn, on his oath says: that he is the County Clerk of said ~~Bureau~~ County of Bureau and has acted as such since the 7th of December last; That on or about the 10th day of June AD 1858 one W. H. Hawkins presented to the Board of Supervisors of said County a certain memorial on behalf of the above named corporation a true and certified Copy whereof with the proceedings of said Board thereon is hereto attached - that said Hawkins represented himself as the agent of said Company and, in Company with M. Kendall Esq. attorney for said Corporation in said County of Bureau, proceeded to meet and negociate with the Committee on finance of said Board in accordance with the order of said Board referring the said Memorial to said Committee; that said Hawkins and said Kendall discussed the action of said Board in increasing the valuation of the property of said Company for the year 1857 and urged said Committee at several meetings with said Committee, to report in favor of reducing the valuation of the property of said Company in compliance with the prayer of said Memorial - that said meetings were held in the back office of deponent - that said committee on Finance kept no written record or memorandum of the proceedings upon such memorial other than their report to such Board, a true and certified copy whereof is also hereto attached.

Subscribed & sworn to by said deponent before me this 2d day of September A D 1858
Geo L Paddock N.P.
Bureau Co Ills

Stephen G Paddock

And on the same day Came the defendant by his Solicitors aforesaid and filed the letter of A. T. Hall Treasurer of said C. B & Q. R. R. Co and the affidavits of Justus Stevens & J. V. Thompson which said letter & affidavits are in the words and figures following, to wit;

Copy of the Letter of the said Treasurer

Office of the Chicago Burlington & Quincy Railroad Company
Chicago June 26. 1858

R. B. Frary Esq
Treasurer Bureau County

Sir, I have your favor of the 26th instant relative to the taxes in your County against the Chicago Burlington & Quincy Rail Road Company for 1857.

In accordance with the requirements of the 22d Section of an "Act in ~~tlx~~ relat[illegible] property" we [illegible] reported [illegible] valued it at as [illegible] County belonging to individuals was valued for that year. [illegible] listing our "Fixed and Stationary personal property" "other personal property" & "movable property" we give you the same rates that were reported to and approved by every other County through which our Road runs; the aggregate valuation of the above named property including the real estate as reported by us to Bureau County was $374.587.46 — Your Board in their final action

43. "June 9 instant value our property at $505.832.77 being an increase over our valuation of $131.235.33 all of which is on property other than real estate thus increasing the tax against this Company $2.082.77 making the aggregate tax now claimed of us $8.020.15 instead of $5.937.38 which is our full proportion of tax in your County.—

By this you will see that the tax has been increased over 33 per cent above a fair proportion, as shown by the taxes assessed upon the same property in Counties east and west of Bureau County, and we verily believe fully that much higher than the property of your citizens is taxed.—

We shall sincerely regret the necessity for taking any steps that will embarras you or your County, but feel that duty to our Stockholders compels us to resist this unjust and inequitable burthen. We are willing to pay the tax that is justly predicable upon the valuation in our list, that is $5.937.38 if your Board will authorize you to recieve it as our tax in full for 1857. or, if this cannot be done we are willing to submit the whole question to any lawyer upon whom your County Attorney and our Attornies Messrs Arnold & Kendall shall agree and will bind ourselves to abide his decision, and you shall in like manner be bound, and if upon reviewing the whole subject it is decided that we are legally bound to pay the whole or any part of the tax assessed in Bureau County for the year 1857 we will pay the amount so decided upon, at once, without further Cost or litigation

Yours Truly.

Amos T Hall

Tr C. B & Q. R. R. Co"

State of Illinois } ss
County of Bureau }

Stephen G Paddock being duly sworn says that he is familiar with the hand writing of Amos T Hall from having recieved from said Hall communications by him signed as treasurer of the Chicago Burlington & Quincy Rail Road Company and from having seen other

44 papers, by said Hall subscribed, & that the foregoing letter is in the genuine handwriting of said Hall as deponent verily believes

Sworn & Subscribed this 8th Sept AD 1858 before me
(L S) Geo L Paddock N P
for Princeton in said Co

Stephen G Paddock

Copy of Affidavit of Justus Stevens

In Circuit Court Bureau Co Illinois
Sept Term AD 1858

Chicago Burlington & Quincy Rail Road Company
vs
R. B. Frary Collector of Bureau Co Ill

Bill for Injunction

Justus Stevens of Princeton in said County, being duly sworn, on his oath says that he is acquainted with W. H. Hawkins, that this deponent has at sundry times had business with the said rail road Company, and settled the same with the said Hawkins as the agent of said Company; that deponent has at sundry times delivered wood upon the track of said Company for the use of said company for which he then and there recieved "vouchers" of said Hawkins on behalf of said Company which were afterwards caused to be presented by deponent at the office of said Company and duly accepted and cashed by its Treasurer.

That at an[illegible] Hawkins on behalf of said Company offered deponent a price in money for a certain piece of land, belonging to deponent, lying upon the said Rail road and desired by said Company for a crossing. That deponent has known said Hawkins to act as the agent of said Company in other ways and at other times; that said Hawkins is known and reputed among the business men along the line of said road as the agent of the said Company and has been so known and reputed for more than

45 a year past, and further he says not

Subscribed and sworn before me
this 2d September AD 1858
Geo L Paddock N.P.
Princeton Bureau Co Ills" } Justus Stevens"

Copy of Affidavit of J. V. Thompson

[illegible] State of Illinois
[illegible] Bureau Sept. Term 1858

In the matter of the Chicago
Burlington & Quincy Rail Road Company
vs
R. B. Frary Collector &c }

Joseph V Thompson being first duly sworn on oath says that he was duly elected Clerk of the County Court of said County at the regular November Election in the year 1853, that he continued to act as Clerk of said Court from that time until the 7th of Decr 1857 That during such his period of office he was Ex-officio the Clerk of the Board of Supervisors of said County that he acted as such Clerk during the Annual September Session of said Board held in said year 1857. That on the 21st of April 1857 the Chicago Burlington & Quincy Rail Road Company by their Secretary Amos T Hall filed by mail with this deponent a list and valuation of the taxable property belonging to said Company liable to taxation in said County the same being signed by said Hall as such Secretary: that deponent on the receipt thereof endorsed the same "Filed April 21st 1857
J. V. Thompson, Clerk"

Deponent says that at said September session of said Board the said list and valuation were duly laid before the said Board by their Clerk and that such proceedings were then and there by said Board had as that said valuation, upon the report of the Committee on Railroad assessments to which it had been referred was increased in the rate of 40 per centum over the valuation as filed by said Company upon which basis this deponent was ordered by said Board to compute the tax due from said Company for the said year 1857—

Deponent further says that in addition to making publication in two newspapers of said County of such increase in the valuation of the property mentioned in such list giving the said Company public notice of such increase by said Board, this deponent in his Official Capacity prepared and served upon said Company a written notice or statement of such Change or increase, in manner following that is to say: this deponent wrote and subscribed as County Clerk a letter containing a full abstract of the report of the said Committee upon Rail road assessments with a concise statement of the aforesaid action of the said Board thereon; which letter, as this deponent avers, was a full and sufficient notification to said Company of such increase by said Board. That deponent enclosed said letter in a secure envelope and directed the same to said Hall at the Office of said Company at Chicago, that said letter, so addressed, was by this deponent, within a few days, less than a month, from the Close of said session of said Board duly deposited with the U. S. Post Master for the time at Princeton, either in person or by his Clerk & deputy James K Remick to be by said Post Master duly forwarded to said Hall; and this deponent says that such mode of Communication by the United States Mail was that usually employed by the Officers of said Company at Chicago and this deponent in addressing each other — deponent says that he [illegible] that his said letter was not for[illegible] course, but on the contrary verily believes [illegible] it was so forwarded

Deponent further says that such action of the Board of Supervisors in so raising the valuation of said Company's property was matter of Public interest and notoriety at that time; having been known and commented upon by Milo Kendall Esquire, and other Agents and employees of said Company; as well as by the public of said County generally

Deponent further says that ~~at~~ about the time of the aforesaid action of said Board and before the December Session of said Board AD 1857 he placed in the hands of said Kendall (who at that time was, now is, and ever since that time has been, the regular and resident Attorney and agent of said Company within the County of Bureau aforesaid, and as this deponent is informed and believes, a salaried officer of said Company, occupying a high and responsible position in the affairs and management of said Company) the original report of the [illegible] Committee on Rail road assessments being [illegible] in the [illegible] of the said Company in the [illegible] a copy of which marked "B" is appended thereto; that this deponent then & there explained to said Attorney the contents of said report and stated to him the action of the said Board thereon, and verily believes that said Attorney carefully examined and read the said report, and then and there had actual notice of the aforesaid increase in valuation by said Board.

Further deponent saith not, saving this; that from his position and office as Clerk of said Board at that time the foregoing facts are clearly impressed upon his memory

J. V. Thompson "

State of Illinois }
County of Bureau }

Sworn & subscribed this 6th August
AD 1858 before me
Geo L Paddock
Notary Public "

And afterwards to wit on the 11th day of September AD 1858 it being the 6th day of said Term of said Circuit Court:

The Chicago Burlington & Quincy Rail Road Company
vs
Roderick B Foing Treasurer & Ex-Officio Collector for Bureau County Illinois

Bill for injunction

Now comes the said

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complainants by their Solicitors Kendall & Ide and on motion it is considered by the Court that the said Complainants have leave to file an amended bill herein, which is in the words and figures following, to wit;

"C. B & Q R R Co }
vs } Bureau Circuit Court
R. B. Frary Treas &c } Sept T 1858

It is agreed that the amendments to the Original Bill hereto attached may be filed & made a part of said Bill & in said Cause

Kendall & Ide for Complts"
Taylor & Paddock for Defts"

State of Illinois } ss
Bureau County } Circuit Court September Term 1858

Chicago Burlington & Quincy Rail Road Company }
vs } Injunction
Roderick B Frary }

Your Orators by way of amendment to their Bill heretofore filed in this Cause aver that the list of their property filed by them on the 21st day of April AD 1857 in the Office of the Clerk of the County Court of said County is a full and fair statement of all their said property, subject to taxation in said County and that the same was made out and filed in accordance with the requirements [illegible]

Your Orators [illegible] said Board of [illegible] in the month of June 1858 and after the said list of property had been increased as herein before charged and after the said taxes had been made out and levied and charged against your Orators and payment thereof demanded by said defendant of your Orators as aforesaid, said Board abated from the aggregate assessment of the property of your Orators in said County for the year 1857 as increased by said Board, the sum of

49 $16.525 valuation, which statement would reduce the amount of illegal taxes enjoined by your Orators to the sum of $2,089.34 or thereabouts instead of the sum of $ 2.351.59 as hereinbefore alleged; And your Orators aver that they never did accept and never have accepted or recognised the action of said Board and the said Abatement as binding upon your Orators, or of any validity whatever.

Your Orators further Show that the Original tax list mentioned in their said Bill as being in the hands of said Defendant [illegible] against your Orators was either amended by said County Clerk in pursuance of said abatement, or an additional Statement showing the said abatement in the taxes aforesaid, was appended by said Clerk to said List. But in either event your Orators show there was an abatement of said taxes made so as to reduce the sum of $8282.16 taxes charged against your Orators to $8019.91; and that amended list or statement was delivered by said County Clerk to said Defendant to collect of your Orators the taxes charged therein, all of which will more fully appear by the exhibits to be produced on the hearing of this Cause

Your Orators further Show that said list or statement showing the abatement aforesaid contains the same taxes excepting the amount so abated which defendant has threatened to collect of your Orators, as set forth in their said Bill; and that the abatement aforesaid and the said additional Statement showing the amount of taxes levied in said County for the year 1857 against your Orators and as abated by said Board were made since the tenth day of June 1858 or thereabouts

Kendall & Ide Compls Solicitors

State of Illinois } ss
Bureau County } George O Ide being first duly sworn deposes and says that the matters & facts set forth above are true in substance and in fact

Subscribed and sworn to before me this 11th day of September 1858
C. M. Fisher Clerk

George O Ide

50 Now Come the said Complainants by their Solicitors aforesaid and file their Replication to the defendants Answer herein which is in the words and figures following to wit;

State of Illinois } ss
Bureau County } Circuit Court September Term 1858

Chicago Burlington & Quincy Rail Road Company
vs
Roderick B Frary Treasurer & Ex-Officio Collector

In Chancery
Replication

The Replication of the said Complainants to the answer of said defendant

These replicants saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors and uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto say that they do and will aver, maintain and prove their said Bill as amended to be true certain and sufficient in the law to be answered unto by ~~the~~ said defendant and that the answer of said defendant is very uncertain, evasive and insufficient in the law to be replied unto by by these replicants; without that, that any other matter or thing in the said answer contained material or effectual in the law, to be replied unto and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied; is true; all which [illegible] these replicants are ready to aver, maintain and prove as this Honorable Court shall direct and humbly pray as in and by their said Bill they have already prayed

Kendall & Ide
Complts Solicitors

And on the 13th day of September to wit on the 7th day of said Term, Came the said defendant by his solicitors aforesaid and filed the affidavit of J. K. Remick herein which is in the words and figures following to wit;

"State of Illinois } C. B & Q R. R. Co vs R. B. Frary } Ct Ct
County of Bureau } Sept /58

James K Remick being duly sworn on oath says that he acted as deputy Clerk of the County Court of said County under Joseph V Thompson before, during, and for some months after the [illegible] the Board of Supervisors of said County of Bureau [illegible] September A.D. 1857 that after such Session Milo Kendall Esq frequently came into the office of said Thompson and that he and said Thompson conversed about the action of the said Board in raising the valuation of the property of the Chicago Burlington & Quincy Rail Road Company for the year 1857: that this deponent does not know that said Thompson showed said Kendall the Original Report of the Committee on Rail Road assessments of said Board upon which the said property was so raised in value but has the impression he did so, and believes such to be the fact. This deponent is quite certain, from his recollection of such conversations, that said Kendall at the time of such conversations, to wit between the September and December Sessions of said Board 1857 was notified and well aware that the said valuation had been increased by said Boards for the year 1857 forty per cent

Subscribed and Sworn to before me this 13th September AD 1858 } James K Remick"
Edward M Fisher Clerk"

And on the 20th day of September to wit on the 13th day of said Term of said Court, the said Complainants by Kendall & Ide their Solicitors came and filed the affidavits of W. H. Hawkins, C. G. Hammond, M. Kendall, John Van Nortwick & A. T. Hall, herein, which said affidavits are in the words and figures following to wit;

Copy of W. H. Hawkins' affidavit.

State of Illinois } ss
Bureau County }

In the Circuit Court of
The Sept Term 1858

Chicago Burlington & Quincy
Rail Road Company
vs
Roderick B Frary Treasurer &c

In Chancery

Injunction

W. H. Hawkins being duly sworn deposes and says that he is the fuel Agent of the Complainants and by special application or request from the agents of Complainants at Chicago is frequently employed in & about other business matters pertaining to said Company. Affiant says he had no knowledge of the Subject matter of Complaint in this Cause until about the first of June 1858 or thereabouts and prior to that date (June 1. 1858) knew nothing of the increased assessment of said Company's property as complained of Affiant says that at or about the first of June 1858 he was requested on behalf of said Company to procure if possible an abatement of the 40 per cent increased assessment of said Company's property in said County of Bureau for the year 1857 on the ground that the same was illegal & unjust and that the same had been added to the assessment of said Company & the tax thereon extended without any notice to said Company until the taxes thereon were demanded of said Company [illegible] the last of May (as affiant is informed) 1858. That at the Session of the Board of Supervisors of said County about the tenth of June 1858. this Affiant presented a memorial to said Board in substance as set forth in the exhibits to the defendants answer in this Cause and affiant and Mr Kendall, then appeared before a Committee appointed by said Board to investigate the Subject of Rail road assessments & taxation and requested said Committee to recommend

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to said Board an abatement of the 40 per cent complained of as set forth + mentioned in the Bill + Answer in this Cause and the taxes Consequent thereon for the Causes and reasons aforesaid - affiant + said Kendall were inquired of by said Committee or some one or more of them whether said Company would acquiesce + abide by whatever should be done by the Board in relation thereto that either affiant or said Kendall [illegible] replied to the question in [illegible] not [illegible] the Company to any such decision not knowing what action might be taken by the Board [illegible] could not assure them that the Company would acquiesce in the Matter short of an abatement of the whole 40 per cent, - but if the Board should make a liberal abatement of the 40 per cent it probably would be an inducement to the Company to acquiess in their action rather than litigate the Matter although the Company nevertheless deemed it their legal right to have the whole 40 percent increased assessment abated. That neither this affiant or said Kendall were in any way authorized (to the knowledge of affiant) to agree to any abatement binding said Company, at least no abatement less than the amount complained of to wit the said 40 per cent increased + the taxes consequent thereon - That if the Company saw fit to compromise in any other way it was a matter for them + no direction or discretion in that regard was committed to affiant - That the purpose for which we appeared before said Committee as understood by this affiant (+ by the whole Committee as affiant believes) was to procure an abatement of the whole or so much of the 40 per cent as we could and leave the matter in the discretion of the Company to abide by the action of the Board or not as they deemed proper so to do. Affiant says that Amos D Blall the Treasurer of said Company + John Van Rotwick the President of said Company are Officers and agents of said Company superior in authority to this affiant or any other Officer or agent of said Company as to the particulars concerning the taxation + assessment against said Company and the Subject

[12724-53]

matter of this suit as affiant believes. And affiant says that he immediatily reported to said Hall & Van Nortwick or one of them the action of said Board and committed the whole subject to them on behalf of said Company to approve or disapprove of the result as they deemed advisable for the interest of said Company

W. H. Hawkins"

Subscribed & sworn to before me this 14th day of Sept 1858

{ L S }

W Kendall N.P.
for Bu Co Ills"

Copy of Affidavit of C. G. Hammond

State of Illinois } ss
County of Bureau }

In the Circuit Court of said County of the September Term 1858

Chicago Burlington & Quincy Rail Road Company
vs
Roderick B Fray Treas & Ex-Officio Collector of Bureau County Ills

Charles G Hammond being duly sworn deposes and says that he now is, and has continually been for the last two years and upwards the Superintendant of the Chicago Burlington & Quincy Rail Road complainants in the above entitled cause that during the time aforesaid the Office of the Company, and chief Business place thereof has been [illegible] in the City of Chicago in said State. [illegible] received no notice of any increase of the a[illegible] upon the property embraced in the Schedule of the Company filed in the Office of the Clerk of the County Court of the said Bureau County for the year 1857 at any time. This affiant further says that he knows of no such notice of the increase of said assessment having been recieved by any other agent of said Company at any time. Affiant says further that he had no knowledge of such increase or enhancement

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of the assessment aforesaid and consequently had no opportunity of making any defence against the aforesaid increase of said assessment or the taxes consequent thereon, and affiant knows of no neglect, or delay, either on his part or on the part of any other Officer or agent of said Company in interposing the defence of said Company against the increased assessment aforesaid and the taxes consequent thereon

C. G. Hammond

State of Illinois
Cook County
City of Chicago } Before me Peter Daggy a Notary Public in and for said City this day personally came Charles G. Hammond (who is to me well known) and being by me first duly sworn deposeth and saith on oath, that the Matters and things set forth in the foregoing affidavit are correct and true as he verily believes

(L S) In Witness whereof I have hereunto set my hand and notarial Seal this 6th day of September AD 1858

P. Daggy
Notary Public"

Copy of the Affidavit of Milo Kendall Esq, with a copy of a letter thereto attached purporting to be from A. T. Hall, to him

(Letter)

Chicago Burlington and Quincy Rail Road Company
Treasurers Office
Chicago May 18 1858

Milo Kendall Esqr
Dear Sir

I have just received the enclosed from the Treasurer of Bureau County.

Our return of assessable property May 1 1857 was as follows

1st Real Estate	$ 5.187.06
2d Fixed and Stationary personal property	219.545.00
3d Other personal property	1.300.00
4th Pro-Rata Movable property	148.555.40
Total in the County of Bureau	$ 374.587.46
The enclosed shows total valuation	522.347.79
on an increase equal to	$ 147.760.33

We have recieved no notice of an increase by the County Officers of our Valuation & presume there must a mistake in the matter – Will give it your immediate attention & report upon it as early as possible

Yours Truly
A. T. Hall Tr"

(Affidavit)

State of Illinois } ss In the Circuit Court Sept T. 1858
Bureau County } In Chancery

Chicago Burlington & Quincy
Rail Road Company
vs } Injunction
R. B. Frary Treas.r & Ex Officio Collector &c

Milo Kendall

being duly sworn deposes and says that neither this affiant nor the firm of Kendall & Ide of which this affiant is a member was in any way employed either as ~~an~~ agent or attorney for the above named Company Complainants, concerning any tax or assessment levied or assessed against said Company in said County of Bureau for the year 1857 (and about which this suit is brought) until the 18th day of May 1858 or thereabouts at which time this affiant was requested by letter from Amos T Hall Treasurer of said Company to give attention to the subject of said taxes and assessment which letter is hereto attached and made an exhibit to this affidavit said letter contained a statement (or a blank receipt) purporting to show the amount of taxes charged against said Company which has been lost or mislaid; [illegible] notice was ever served upon this affiant or upon the firm of Kendall & Ide to the knowledge of affiant, that the assessment of Rail road property as given in & valued by said Hall as treasurer of said Company for the year 1857 for said County of Bureau had been raised or increased by the Board of Supervisors, or that the same had been in any manner changed altered or increased – This affiant has no personal recollection of ever seeing the Official report of said Board of Supervisors concerning said assessment & taxes until after Affiant was employed by said Company to investigate the matter which was about the 18th day of May 1858 Affiant says he has carefully & attentively read the affidavit of Joseph V Thompson Esq late Clerk of the County Court of said County which affidavit is on file in this Cause and upon due reflection affiant has not been able to recollect of said Thompson ever exhibiting to this affiant the report of the Committee on Rail road assessments for the year [illegible] or any affecting or concerning this Cause. This affiant cannot positively aver that he had not heard it talked of that said assessment had been increased long before affiant was employed about the Matter but this affiant denies being notified on behalf of said Company by any person in any way of such increase of said assessment. furthermore that all the notice affiant ever had prior to the 18th of May 1858 was by mere rumor if at all. This Affiant further says that the County Clerk of said County never has been in the habit of serving notice on this affiant in such cases. that the assessment of the property of said Company has been raised or increased by the Supervisors each year successively for several years last past and no notice to said Company was ever pretended to be served on this affiant in such case, although the relations of this affiant to said Company were and have been for the last three or four years the same as now. Moreover affiant believes said Thompson well knew that this affiant was not the proper person to be notified in such cases. this affiant says he never did to his knowledge in any way notify said Hall or any agent of said Company of the increase of said assessment or have any correspondence or conversation with him or them on that subject until after the 18th of May last. That prior to that time affiant had nothing whatever to do with the matter and was not authorized to take notice or act for the said Company in relation thereto

That this affiant is not a general agent or Salaried Officer of said Company and has not been at any time since the said Company was organized & operated under the name of the "Chicago Burlington & Quincy Rail Road Company"

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that the only employment or relation existing between the said Company & this Affiant or the firm of Kendall & Ide is that which usually and ordinarily appertains or exists between Client and attorney. Neither this affiant or said firm have any general power or authority to act for said Company in any case until first directed or requested so to do. And in relation to said assessment we had no authority or power to act until after the 18th day of May 1858 as above stated.

This affiant further says that some time just before a meeting of the Board of Supervisors of said County held about the month of June 1858, affiant was requested on behalf of said Company to say to said Supervisors that said Company were ready and willing to pay their tax on the valuation as given in by said Hall but that they were not willing to pay on the additional 40 per cent increased assessment as they considered that illegal and unjust, that at said meeting of the Board in June 1858 affiant and one W. H. Hawkins an agent of said Company appeared before a committee appointed to investigate the subject of rail road assessments and requested said Committee to recommend to said Board an abatement of the 40 percent increased assessment and the taxes consequent thereon for the reason that said Company had not been notified of such increase of the assessment and that the same was illegal and unjust

Affiant did not raise any question or make any motion before said Board conce[illegible] said taxes and assessments to his recoll[illegible] appear in the matter before the Board, but [illegible] the Committee aforesaid. Affiant recollects of himself and said Hawkins being inquired of by the Committee or some one of them whether the said Company would acquiesce in whatever should be or might be done by the Board of Supervisors in that behalf. Affiant distinctly remembers replying in substance that we could not assure them that the said Company would acquiesce in such action of the Board, that we could not promise

59 that the Company would be satisfied with anything short of an abatement of the whole of the 40 per cent. That however if the Board should see fit to make a liberal abatement of the 40 percent it might & likely would be an inducement to the Company to acquiese in the matter rather than resort to litigation. Affiant says that neither this affiant nor said Hawkins to the knowledge of affiant were in any way authorized or empowered to agree to any abatement by said Company short of the whole 40 per cent. but the only purpose for which we appeared before said Committee as understood by this affiant was to procure an abatement of the whole or so much of the 40 per cent as we could and leave the matter in the discretion of the Company to abide by the action of the Board or not as they deemed proper under all the circumstances of the Case - this affiant from his knowledge of the history of this case is constrained to believe that much of the publicity and notoriety of matters pertaining to said assessment and taxation as mentioned in the affidavit of said Thompson occurred since the 18th day of May last and since the subject matter of this suit became the subject of legal investigation and that said Thompson may be mistaken in point of time in that particular

This affiant further says that it is very probable that affiant & said Thompson may have conversed on the subject of rail road assessments and possibly on the subject of the 40 percent increased assessment as complained of in this cause. Affiant further says that he has conversed with said Thompson on the subject of his affidavit filed in this cause and the matters therein stated and said Thompson assured this Affiant that he could not positively say he ever actually placed in the hands of this affiant the report of said supervisors increasing said assessment 40 per cent and that he did not wish to be understood as swearing that he ever notified me officially of said increase of the said assessment but claims only that we had conversed in a general way on the subject and exhibited

" or alluded to the reports & assessments of the several Rail Roads in a general way only prior to the 18th day of May last all of which although not distinctly recol'ected by this affiant yet this affiant admits may be true. Said Thomson also stated to this affiant since the making of his affidavit that affiant at the time of ~~making~~ such conversation stated to said Thompson that affiant had nothing to do with said assessment for said Company and was not a general agent for said Company but was only authorized to act when specially notified or called upon by said Company. Said Thompson further stated to Affiant that his, said Thompson's affidavit was drawn up in a hurry by Geo L Paddock and upon reviewing it there were some things stated pretty strong in it that upon more mature deliberation he would if desired make a counter affidavit modifying the same in the particulars herein above stated

Subscribed & sworn to before me this 15th day of September 1858
George O Ide Police Magistrate
Town of Princeton"

Milo Kendall"

Copy of Affidavit of Amos T Hall (Treasurer of said Co)

" State of Illinois }
County of Bureau }
In the Circuit Court of said County
of the Sept~~xxxxx~~ Term 1858

Chicago Burlington & Quincy
Rail Road Company
vs
Roderick B Gray Treas' & Ex Officio Collector of Bu. Co. Ills

Bill in Chancery.

Amos T Hall being duly sworn deposes and says that he now is and has continually been for the last two years and upwards the Treasurer and chief or principal accounting Officer of the Chicago Burlington & Quincy Rail Road Company

61

Complainants in the above entitled cause. That during the time aforesaid the Offices of said Company and Chief business place thereof has been at and in the City of Chicago in said State. That this affiant as the Treasurer and Chief accounting officer of said Company made out or caused to be made out and filed in the Office of the Clerk of the County Court of said Bureau County for the year 1857 a schedule or list of the taxable property for the purposes of assessment and taxation in said County for the year 1857 a copy of which is made an Exhibit to the Bill of Complaint in the above entitled cause.

That this affiant received no notice by mail or otherwise of any increase of the assessment upon the property embraced in said Schedule or list for the year 1857 until about the 18th day of May 1858 at which time said assessment had been increased forty per cent and the tax levied upon the assessment so increased and a demand was made of this affiant for a payment of the said taxes

This affiant further says that he knows of no such notice of the increase of said assessment having been recieved by any other agent of said Company prior to the time payment of said taxes was demanded as aforesaid. Affiant says further that he had no knowledge of such increase or enhancement of the assessment aforesaid until the time payment of the said taxes was demanded as above mentioned and consequently had no opportunity of making any defence against the aforesaid increase of said assessment, or the taxes consequent thereon, until after the time payment of said taxes was demanded as aforesaid and affiant knows of no neglect or delay either on his part or on the part of any other Officer or Agent of said Company in interposing the defence of said Company against the increased assessment aforesaid and the taxes consequent thereon

Subscribed & Sworn to before me this 4th day of September AD 1858

Amos T. Hall"

Jas. T. Hoyt
Notary Public"

(L S)

Copy of the Affidavit of John Van Nortwick

State of Illinois }
County of Bureau }   In the Circuit Court of said County
Of the Sept Term 1858

Chicago Burlington & Quincy
Rail Road Company
vs
Roderick B Frary Treasr Ex-Officio
Collector of Bu Co Ills

John Van Nortwick being duly sworn deposes and says that he now is and has continually been for the last year and upwards the President of the Chicago Burlington and Quincy Rail road Company Complainants in the above entitled Cause that during the time aforesaid the Office of said Company and chief business place thereof has been at and in the City of Chicago in said State

That this Affiant received no notice by Mail or otherwise of any increase of the assessment upon the property embraced in the Schedule of the Company filed in the Office of the Clerk of the County Court of the said Bureau County for the year 1857 until about the 18th day of May 1858 at which time said assessment had been increased forty per cent and the tax levied upon the assessment so increased and a demand was made of this Affiant for a payment of the said taxes

This Affiant further says that he knows of no such notice of the increase of said assessment having been received by any other agent of said Company previous to the time payment of said taxes was demanded as aforesaid. Affiant says further that he had no knowledge of such increase or enhancement of the assessment against aforesaid until the time payment of the said taxes was demanded as above mentioned and consequently had no opportunity of making any defence against the aforesaid increase of said assessment, or the taxes consequent thereon until after the time payment of said taxes was demanded as aforesaid

And affiant knows of no neglect or delay either on his part or on the part of any other Officer or agent of said Company in interposing the defence of said Company against the increased assessment aforesaid and the taxes Consequent thereon.

Subscribed & sworn to before me this 4th day of September A D 1858. [illegible]   John Van Nortwick"

L S

Notary

And on the 15th day of said Term to wit on the 22d day of September A D 1858 Came the said Complainants by their Solicitor aforesaid and filed the affidavit of J. V. Thompson herein in the words and figures following to wit;

State of Illinois } ss   In the Circuit Court
Bureau County }   Of the Sept. T. 1858
In Chancery

Chicago Burlington & Quincy Rail Road Company
vs
Roderick B Frary Treasr &c

Injunction

Joseph V Thompson being duly sworn deposes and says that he made an affidavit on behalf of the Defendant in the above entitled Cause about the 6th day of September instant, wherein it is stated that at a certain time there mentioned 'Milo Kendall was now is and 'ever since that time' (refering to the stated time) 'has been the 'regular and resident Attorney and agent of said Company 'within the County of Bureau aforesaid, and as this deponent 'is informed and believes, a salaried officer of said Company' &c This affiant now upon more mature reflection says that at the time or times of the conversations with said Kendall about the increase of assessment mentioned in said affidavit said Kendall then informed ~~xxx~~ affiant that he (said Kendall) was not a general Agent of said Company and that he only acted as attorney for the said Company in ~~th~~ the said Bureau County when requested by said Company that he was attorney for them in this Bureau County when an attorney's services were required and was paid for his services when he acted Specially for said Company, and had no Salary not even a pass on the Rail Road belonging to said Company

Affiant further says that in his former Affidavit does not mean to be understood that he gave said Kendall Official notice of the Change in the assessment of said Rail road as County Clerk, to be by said Kendall delivered to said Company but that the said Kendall was notified of said increase of assessment by affiant who then believed that said Kendall was acting as Attorney for said Company until said Kendall then & at that time denied being a salaried Officer of said Company. Affidavit desires that the above be taken and considered in connection with his former affidavit herein made

Subscribed & sworn to before me
Sept 20th 1858

J. V. Thompson"

E. M. Fisher Clerk
by J. H. Olds"

To wit: on the 19th day of said Term it being on the 27th day of September AD 1858

The Chicago Burlington & Quincy Rail Road Company
vs
Roderick B Frary Treasurer & Ex-officio Collector for Bureau County Ills

Injunction

Now comes the said defendant by Taylor & Paddock [illegible] his motion [illegible] to dissolve the injunction [illegible]

State of Illinois } ss
Bureau County }

In Circuit Court
September Term 1858

The Chicago Burlington & Q. R. R. Company
vs
R B Frary

In Chancery

And now comes the defendant by Taylor & Paddock his Solicitors and having filed his answer herein and proofs in support thereof, now moves the Court to dissolve the Injunction herein

Taylor & Paddock Sols for Deft "

– And the said Complainants Come by Kendall & Ide their solicitors and the defendant by his solicitors appeared and file their agreement [illegible] herein which is in the words and figures following to wit;

State of Illinois } ss
Bureau County }

In the Circuit Court
Of the Sept Term 1858

Chicago Burlington & Quincy Rail Road Company
vs
R. B. Frary Treasurer & Ex-officio Collector of Bureau County Ills

In Chancery
Bill for Injunction &c

It is mutually agreed and admitted that by the parties Complainant & defendant in this Suit that the exhibits & records of Board of Supervisors Book B in this Cause produced in evidence contain a full true and perfect transcript of all the acts and proceedings of the Board of Supervisors of said County Concerning or pertaining to the assessment and valuation of Complainants property in said County and the taxes imposed thereon for the year 1857 and which is the subject of Complaint by the Bill in this Cause

Kendall & Ide for Complts
Taylor & Paddock for Deft "

Pleas before the Honorable Martin Ballou Judge of the twenty third Judicial Circuit of the State of Illinois at the January Term of the said Circuit Court begun and held at the Court House, in Princeton, within and for the County of Bureau on Monday the third day of January in the year of Our Lord one thousand eight hundred and fifty nine

Present Honle Martin Ballou Judge

Edward M Fisher Clerk
David E Norton Sheriff

And now, to wit; on the 18th day of said Term that is to say on Saturday January 22d AD 1858, comes the said Complainants by Kendall and Ide their Solicitors and file their bill of Exceptions herein which is in the words and figures following, to wit:

State of Illinois } ss In the Circuit Court of the
Bureau County } January Term A D 1859

Chicago Burlington and
Quincy Rail Road Company
vs
Roderick B Frary Treasurer &
Ex-Officio Collector of the County of Bureau } In Chancery

Be it remembered that on this 17th day of January A.D. 1859 at the January term of said Court AD 1859, this Cause came on to be heard upon the Original Bill of Complaint, the answer thereto, and the supplemental or amended bill of Complaint, the exhibits to the Bill and amended Bill, and the exhibits to the Answer, the agreement of the parties and the affidavits and other exhibits and proofs in writing adduced: Which Bill and amended Bill of Complainants and the exhibits thereto are in the words and figures following to wit" (and are hereinbefore set out as of the September term A D 1858)" the answer of the defendant and the exhibits thereto are as follows" (and are hereinbefore set out as of the September Term A D 1858) "the agreement of the parties is as follows" (and is hereinbefore set out as of the September Term A D 1858)" The affidavit proofs and other exhibits of the Complainant are as follows" (and are hereinbefore set out as of the Sept Term A D 1858) "The affidavits proofs and other exhibits of the defendant are as follows" (and are hereinbefore set out as of the Sept Term A.D. 1858)" And upon the hearing of the said Cause the Court made the following final order judgement and decree

67 " in this cause, to wit;"—

State of Illinois } ss
Bureau County }

In Circuit Court
January Term AD 1859

The Chicago Burlington & Quincy Rail Road Company
vs
Roderick B Fracy Treasurer and Ex-officio Collector of Bureau Co Ills

In Chancery

This day came the Complainants by Kendall & Ide their Solicitors, and also came J. I. Taylor Solicitor for the Defendant, and the defendant having filed his motion to dissolve the injunction herein at the last term of this Court, the above entitled Cause now came on for hearing upon the Bill and Amended Bill of the Complainants, answer of the defendant & evidence exhibits, proofs, and agreement of the said parties filed in this Cause, and the Court having heard the Argument of Counsel, and being duly advised in the premises, It is now ordered adjudged and decreed by the Court that the injunction granted in the above entitled Cause be dissolved and that the Bill of the Complainants filed herein be dismissed, and that the defendant recover of the Complainants all the costs by him expended in this Cause, and that he have execution therefor, and it is ordered that the defendant proceed to Collect the taxes enjoined by the said injunction as though the same had not been enjoined, and thereupon the Complainants by their Solicitors prayed the said Court for an appeal to the Supreme Court of the State of Illinois from the decision & decree of the Court herein, and it is ordered by the Court that such appeal be allowed to the Complainants upon their executing an appeal bond in this Cause in the penal sum of five thousand dollars, conditioned as provided by law in such Cases and thereupon the said Complainants presented their appeal bond executed by them & Milo Kendall as their Security and the same being examined by the Court it is ordered that the same be approved & filed.

[12724-79]

"To the rendering of which said orders, Judgment and Decree of the Court dissolving said injunction in this Cause and dismissing the said Bill of Complaint and entering Judgment & decree of the Court against the Complainants for the Costs of suit, the Complainants then & there by their Counsel excepted and prayed the Court then & there to sign & seal this their Bill of exceptions which is done

M. Ballou Judge (seal)
23d Judicial Circuit Ills"

Copy of Bond for Appeal to the Supreme Court of the State of Illinois, filed herein by the aforesaid Complainants.

Know all men by these presents that the Chicago Burlington and Quincy Rail-road Company of the State of Illinois and Milo Kendall of the County of Bureau and State of Illinois are held and firmly bound unto Roderick B Frary Treasurer and Ex-Officio Collector of the said County of Bureau and State aforesaid in the penal sum of five thousand dollars current money of the United States for the payment of which well and truly to be made we bind ourselves and the said Railroad Company bind their successors and assigns and the said Milo Kendall binds his heirs executors and administrators, jointly severally and firmly by these presents witness our hands and seals this Eighteenth day of January AD 1859

The Condition of the above obligation is such that whereas the said Roderick B Frary Treasurer and Ex Officio Collector of the said County of Bureau and State of Illinois did on the 17th day of January AD 1859 in the Circuit Court in and for the said County of Bureau and State of Illinois recover a decree against the above bounden Chicago Burlington and Quincy Rail Road Company dissolving a certain injunction and dismissing a certain Bill of Complaint in a certain Cause wherein said Rail Road Company were Complainants and said ~~Roderick B~~ Frary Treasurer and ex-officio Col-

-lector as aforesaid was defendant and did also recover against the Rail Road Company a decree for dollars Costs in said Cause from which said decrees of the Circuit Court the said Rail Road Company has prayed for and obtained an appeal to the Supreme Court of said State Now if the said Rail road Company shall [illegible] pro[illegible] [illegible] said appeal with effect and sha[illegible] mo[illegible] [illegible] the [illegible] of the judgment, decree, [illegible] and damages [illegible] and to be rendered against them in case the said decree shall be Affirmed in the said Supreme Court then the above obligation to be void, otherwise to remain in full force and virtue

L. S.

Chicago Burlington and Quincy Rail Road Company by Amos T Hall Secretary

Taken and approved by me this 20th day of Jany AD 1859 in Open Court
M. Ballou Judge"

Milo Kendall (Seal) "

State of Illinois }
Bureau County } ss

I, Edward M. Fisher, Clerk of the Circuit Court in and for the County of Bureau in the State of Illinois do hereby certify that the above and foregoing is a true and Correct Transcript of all the proceedings in the above entitled Cause as the same appear on the files and of record in my Office

In testimony whereof I have hereunto set my hand and affixed the seal of the said Court at My Office in Princeton in said County this 26th day of February A.D. 1859

Edward M Fisher Clerk
per Wm Hall Jenkins Dep Clk

Fees Paid by Complainants
Transcript $27.50
Docket Fee to Supreme Court 5.00
$32.50

(12729-23)

And now comes the said appellant and says that in the record & proceedings afore said & in the rendition of the Judgment afore said there is manifest error in this to wit

1st The court erred in dissolving the Injunction aforesaid

2 The Court erred in rendering Judgment for Costs in form aforesaid

3 The court erred in rendering the decree aforesaid in manner & form aforesaid

B. C. Cook
for appellant

And now comes the appellee by Wallace his counsel and joins in error and says that in the record of the proceedings aforesaid there is no such error as appellant hath above assigned & this he prays may be inquired of by the court, wherefore appellee prays that said decree may be in all things affirmed & for his costs &c

W. H. L. Wallace
counsel for appellee

2 5 4 1 8 9 9.

Chicago Burlington
& Quincy Rail Road
Co. vs

~~D. Kenan N. Brown~~
~~et al.~~
Roderick B. Frary et al

Filed April 21. 1859
L. Leland
Clerk

X 5 7 0 0 f 3

Cook.

SUPREME COURT OF ILLINOIS,

Third Division—April Term, 1859.

THE CHICAGO, BURLINGTON & QUINCY RAILROAD CO., *vs.* RODERICK B, FRARY, TREASURER & EX-OFFICIO COLLECTOR of the COUNTY of BUREAU.	Appeal from Lasalle County Circuit Court.

This was an application for an injunction made by appellants to enjoin the collection of a portion of the tax claimed to have been levied against it in the county of Bureau.

R. p. 1. Bill alledges,

That the C. B. & Q R. R. Co. are an incorporated company &c. That said road was fully equipped and in operation from Chicago to Galesburgh. That it passed through said Bureau County that said county was under township organization. That a list of the taxable property of said road and the valuation thereof in the manner required by law was filed in the Office of the county clerk of said county, on the 21st of April, 1857, a copy of which was annexed to said bill and marked "A."

p. 17 Exhibit marked "A" sets forth that total length of main track of said company in said State is 728,640 feet. The total value of rolling stock \$503.575. That the length of main track in said county was 214,955 feet and the share of rolling stock which said county was entitled to assess was \$148,555 40; and that the county of Bureau was entitled to assess on

1st, RealEstate	\$5,187 06
2d, Fixed and Stationary Personal property	219,545 00
3d, Other personal property	1,300 00
4th, Pro Rata Moveable Property	148,555 40
Total in the county of Bureau,	\$374,587 46

p. 18. Schedule "A" of said exhibit "A" sets forth a description of each of the several tracts of land owned by said railroad company in said county, and the valuation thereof, amounting in all to the sum of \$5,187 06.

p. 20. Schedule "B" of said exhibit "A" sets forth the length of the main track and the several side tracks of said road in said county, and the total valuation thereof, which was \$219,545.

" " Schedule "C" of said exhibit "A" sets forth the personal property of said road in said county, and the total value thereof, which was \$1,300 00.

Schedule "D" of said exhibit "A" sets forth a description of the entire movable property of said road and the valuation thereof, which was the sum of $503,575.

p. 21. The recapitulation in said exhibit "A" sets forth the several items of the property of said road in each of the towns of said county and the valuation thereof.

R. p. 2. That a meeting of the board of supervisors of said county, held Sept. 1857, a committee of said board appointed to examine and report on the the assessments of railroads in said county, on the 19th of September 1857, made their report, a copy of which was annexed to said bill, marked "B," which said report was received and adopted by said board.

p. 9. Said report sets forth that said committee had examined the lists filed by the said company, and recommended that the assessment on the fixed and stationary personal property of said road should be increased 40 per cent. That the assessment on the other personal property of said road should be increased 40 per cent. That the assessment of the *pro rata* moveable property of said road be increased 40 per cent.

R. p. 2. Said bill further sets forth, that on the 19th day of September, 1857, the said board adopted a resolution, that the clerk of said board be authorized to raise the assessments on property of the several railroads, having roads running through said county, in accordance with the report of the Committee aforesaid, as adopted September, 19th 1857, Said bill further sets forth that at a meeting of said board of supervisors, held on the 8th of December ~~September~~, 1857. The said board reconsidered their action aforesaid, and referred the matter to a committee of said board, which committee made their report on the 9th day of December, 1857, which report was annexed to said bill marked exhibit "C."

R. p 10 Said report sets forth, among other things, that the entire assessment made by said board at its last session, on the property of the C. B. & Q. R. R. Co., was $532,188 06, and recommended that the valuation of the fixed and stationary personal property, of the other personal property and of the pro rata and movable property of the said railroad company, in the county of Bureau, as listed by them, April 17th, 1857, and filed with the clerk of said boad, be raised 40 per cent.

R. p. 3. Said bill further sets forth, that on the said 9th day of December, 1857, said board adopted a resolution that the clerk of said board be authorized to increase the assessment on the property of the several railroad companies having roads running through said county, in accordance with the resolution passed by said board, December 9th, 1857, and that the assessment so raised be the assessment levied on the property of the several railroad companies.

The bill further sets forth, that said complainants are the owners of real estate in said county, valued at $5187 06. That the value of their main side tracks denominated by the revenue laws, fixed and stationary personal property, was in said county, $219,545. That the value of their other personal property in said county, was the sum of $1,300, and the pro rata of their moveable property, so denominated by said revenue laws, in said county, was $148,555 40, making an aggregate of $374,587 46, as appears by the list herein before mentioned.

And that the assessment and valuation of their said property, for taxation in said county, for the year 1857, is as aforesaid, and that by being increased 40 per cent. in accordance with the resolutions of said board, their personal property, fixed and stationary personal property, and pro rata movable property stands assessed on the tax books of said county at $517,160 46.

p. 4. The bill further shows that the property of said rail road company was so assessed by said board and the taxes extended thereon upon the basis of said increased valuation, without the knowledge of said complainant and without any notice whatever, to it, or its officers by said board or the clerk thereof, of such increased valuation, although it was legally entitled to the same. And that no notice whatever of such alteration and enhancement in the valuation or assessment of said complainants taxable property, in said county, was ever. either before or since, said alteration given by said board or the clerk thereof, to said complainant or any of its officers or agents. And that said list filed by said complainant as aforesaid contained a full and correct description of all the property of said complainant in said county. That said alteration and enhanced valuation was unjust, and inequitable and the levy of taxes against said complainants property, upon the basis thereof, was illegal on account of the want of notice to said complainant.

p. 5. That the taxes charged and assessed against said complainant in said county for the year 1857. were by means thereof unlawfully increased from about the sum of $5,930 57 to about the sum of $8,282 16, making the amount of taxes illegally charged against said complainant about the sum of $2,351 59.

The bill further shows that the taxes were not then paid, that Roderick B. Frary was Treasurer and Ex-officio Collector of said County; that all lawful taxes due from said complainant to said county were payable to said Frary, that said Frary was threatening to collect the entire amount of
p. 6 said $8,282 16, and was threatening to levy on the property of the complainant and sell the same to make the full amount aforesaid. That said complainant was ready to pay the full amount of taxes legally assessed against them in said county, which was about the sum of $5,930 57. That said Treasurer and Collector demanded the whole amount of taxes, illegally assessed as aforesaid, and refused to receive that portion that was legal and just in full payment of taxes charged against complainant. That the collection of such illegal taxes by levy and sale of the property of complainant, would work irreparable injury to complainant. inasmuch &c.

The bill then prays. that said Frary be made party defendant to the same and summoned to answer without oath, that he may be enjoined from levying, distraining, or selling the property of the complainant for such illegal taxes and from collecting from complainant more than the sum of $5,930 57 from complainant, for taxes of the year 1857. That said illegal assessments and taxes be annulled and set aside; That said complainant be allowed to pay said lawful taxes in full discharge of all the taxes now charged against complainant, and that a perpetual injunction be awarded forever prohibiting the collection of so much of the taxes charged against the complainant as shall be found to be illegally assessed.

R, p. 8. Order for an injuction endorsed upon said bill by J. D. Caton, Chief Justice of Ill., in accordance with the prayer thereof.

p 22,23 Affidavit of John Van Nortwick, who deposes that he is President of the C. B. & Q. R. R. Co., complainant in said bill; that he has been for more than a year; that neither deponent nor said corporation nor any of its officers or agents, were, to the knowledge or belief of deponent, ever notified of any alteration in the list or valuation of the property of complainant, filed as aforesaid, either from the clerk or board of supervisors, or any person on their behalf, that deponent never heard of said alteration until after the taxts were assessed and extended thereon, and until after the same were in the hands of said treasurer for collection.

p. 24 Precipee for injuction.

Injunction bond.

p. 25. Summons to said defendant and return of service thereon.

p. 26. Writ of injunction and endorsement of service thereon.

p. 29. Answer defendant admits, that said complainant was a corporation &c.

That they have a railroad in said county; that they filed the list mentiontioned and described in said bill; but denied that said list contained a full, true and correct valuation of the property of said railroad company in said county. That exhibit "A" is a full and true copy of the same.

Answer further sets forth that the statements of said bill, setting forth the action of said board of supervisors, at their September session, 1857, in relation to said list were true, and that the statements in said bill in regard to the action of said board at their December session, 1857, on
p. 30. said list were substantially true, but insists that the allegations of said bill touching said December session are not material for the reason that the valuation of the property of the complainant were not increased at said session, over and above the additional 40 per cent. imposed by said board at their previous September session.

Answer admits that complainants were the owners of real estate described in said lists valued therein at $5,187 06. That said lists also set forth the fixed and stationary personal property. The other personal property, and the pro rata moveable property as alleged in said bill, Answer alleges ought of right to have been increased to the extent the Supervisors did increase it.

p. 31. Answer denies that the final action of said board was to increase the valuation of the property of the said complainant (excepting real property) in the sum of forty per cent., denies that said property now stands assessed on the tax book of said county at the sum of $517,160 36. Answer further admits that at the September session of said board, the valuation of the property of said complainant (except real property,) filed as aforesaid, was increased by said board to the extent of forty per cent., as alleged in said bill; but alleges that the said board, at the December session neither changed nor in anywise altered the valuation of the property of complainant, as the same at that time stood; but that it remained at the same rate of valuation at which it had been equalized by said board at said September session.

Answer alleges that at a subsequent session of said board held in June,
p. 32. A. D., 1858, the said complainant by Hawkins, their agent, appeared before said board and presented a petition praying that they be relieved from the payment of the tax on said additional forty per cent., that said petition was received and referred to the committee on finance of said board; that said Hawkins and Milo Kendall, Esq., attorney for complainant in Bureau county, met and conferred with said committee, that said committee reported in favor of reducing the said increased valuation in the sum of $16,525, which said report was received by said board on the 11th day of June aforesaid, and then adopted, that on said day said board made an order instructing respondent, as county treasurer, to abate the taxes against complainant upon said sum of $16,525, and that thereupon the clerk of said board made the necessary pro rata reduction upon the tax list against complainants and delivered such list so reduced to respondent, and which said list so reduced, is the list now standing enjoined by process of this court, and is the only list of taxes against complainant which respondent ever threatened to levy by distress of the goods of complainant.

Answer further denies that complainant did not have notice of said increased valuation, and alleges that complainant had the notice required by law, as follows:

p. 33. J. V. Thompson, clerk of said board, during and after said September session, published a notice of said increase, in two newspapers in said county, and also sent a notice of the same to complainant by mail, the said notice being signed by him and directed to the treasurer of said company, that said notice was sent within a month after said September session.

Answer further sets up that about the time of the September session, and before December session, said clerk placed in the hands of Milo Kendall, Esq., attorney for said railroad company, the original report of said committee of said board, and explained to him the contents &c., and stated to him the action of said board.

p. 34. Answer further sets up that railroad company waived their right to notice, by the appearance of their agent, Hawkins, as aforesaid.

p. 35. Answer further sets up that complainant is not entitled to notice in the premises, that said action was duly recorded in convenient books of record in the office of said clerk as required by law.

Answer further sets up that complainant has a complete remedy at law by appearing before said board or a subsequent one, and exercised and pursued the same and obtained a reduction of $16,525. Further that said board have full power over the matter, that notice is not required by law: that the giving of such notice is a mere favor.

That at the June session of said board, said board withdrew from this respondent, the list filed by complainant and raised forty per cent. as aforesaid and reduced the same in the sum of $16,525, and upon such reduced list, and the taxes thereon is the only one ever in the hands of this respondent upon which he threatened to levy and distrain the goods of complainant.

Admits that respondent is treasurer and collector, that he was about to collect said taxes on said reduced list, that he has received from complainant $5,930 57 upon account of same, that there is yet due $2,089 34 and not $2,351 59 as alleged in the bill.

(Signed) R. B. FRARY.

And sworn to.

p. 38 Exhibit A, referred to in said answer sets forth the petition of the Railroad company, by Hawkins, their agent, to said board of supervisors, at their June session, 1858, which petition set forth that, whereas, the said complainant had filed his list as aforesaid, that the same had been raised 40 per cent, except real estate, that no notice had been given to complainant of said increase until called upon to pay the taxes on the

p. 39, same, therefore they prayed that said 40 per cent. or so much thereof as said board should deem just, should be abated.

(Signed) W. H. HAWKINS,
For Railroad Company.

Said Exhibit also sets forth the report of the finance committee upon

p. 40. said petition, recommending that said list as increased, be abated $16,525 which abatement was accordingly made by said board.

p. 41. Affidavit of L. G. Paddock, county clerk, that Hawkins presented said petition, represented himself as agent of complainant and in company with Milo Kendall, Esq., met and negotiated with said finance committee, &c.

(Signed) L. G. PADDOCK.

p. 42. Copy of letter of A. T. Hall, Treasurer of said railroad company, filed by respondents, dated June 26th, 1858, and which commenced, "R. B. Frary, Esq., Treasurer of Bureau County, Sir:

I have your favor of the "26th instant, relative to the taxes in your county, against the Chicago, "Burlington & Quincy Railroad Company, 1857," and there stated that complainants had filed their list, &c., and that the board had increased 40 per cent. &c., that the final action of said board raised the value of com-
p. 43. plainants' property over the list filed $131,235 33. Regrets the necessity of resisting the payment of the increased tax; offers to pay $5,937 38 if board will receive it in full payment, and agree to submit the question to any attorney whom complainants' and said county can agree upon and abide by his decision.

(Signed) AMOS T. HALL,
Treas. C. B. and Q. R. R. Co.

Affidavit of L. G. Paddock, that he had received letters purporting to be from Hall in the same hand writing as that of above letter.

p. 46. Affidavit of Justus Stevens tends to show that Hawkins is agent of said R. R. Co.

p. 45. Affidavit of J. V. Thompson tends to substantiate the statement of facts in regard to action of board of supervisors. Also states that he as clerk of said board made publication of the increase of said list in two newspapers in said county, and also wrote a letter containing a statement of the action of said board, and enclosed the same and directed the same to said Hall, and either himself or by his deputy, deposited it in the post office: that said action of the board was a matter of public notoriety; that he placed in the hands of Milo Kendall, Esq., attorney of said R. R. Co., the report of the action of said board and explained the same to him, &c. (Signed)

J. V. THOMPSON.

p 48,49 Amended bill of complainants admits that the sum of $16,525 was abated from said increased valuation of said list, at said June session, 1858, and avers that they never accepted the same, or recognized in any way the action of said board as binding upon them; admits that the taxes charged against them were reduced from $8,282 16 to $8,019 91, and this amended list delivered to said treasurer to collect.

p. 50. Replication to answer in ususal form.

p. 51. Affidavit of J. K. Rennick, tending to show that Kendall received notice from Thompson.

p. 52. Affidavit of W. H. Hawkins. States that he is full agent of the complainant, and upon special request of said complainant, is employed upon other business for them; that he had no knowledge of the said increased valuation till about the 1st of June, 1858; that at said June term he presented the said petition to said board; that he had no power or authority to acquiesce in the reduction of $16,525, and did not so acquiesce.

p. 54. Affidavit of C. G. Hammond Superintendent of C. B. and Q. R. R. Co. That he had received no notice whatever of the increased valuation aforesaid, and does not know of any such notice being received by any of the officers of said company.

p. 55. Affidavit of Milo Kendall, Esq., that neither affiant nor the firm of Kendall & Ide were ever employed upon the business of said complainant
56. in regard to said taxes, until the 18th day of May, 1858; that no notice was ever served upon him or said firm of said increased valuation: thinks
57. he had heard it talked about; that he has not, since said company was organized, been a general agent or salaried officer of said complainant, and never acted for them in any case until directed to do so; that he did not acquiesce in the said reduction of $16,525; that he was only author-
p. 59 ized to accept a reduction of the whole 40 per cent.; that he has had a conversation with affiant Thompson in regard to his affidavit, and that said Thompson informed him that his affidavit was drawn in a hurry by
p. 60. Geo. L. Paddock, and that he, Thompson, did not mean to be understood as saying that he ever notified said Kendall, officially, of said increased valuation, but only conversed on the subject in a general way.

p. 61. Affidavit of Amos T. Hall, Treasurer of said R. R. Co., that he received no notice whatever of the said increased valuation until the 18th day of May, 1858, when a demand was made for the taxes on said increased valuation: knows of no such notice being received by any of the officers of said company.

p. 62. Affidavit of John Van Nortwick, President of said R. R. Co., that he never received any notice whatever of said increased valuation until the 18th day of May, A. D., 1858, when said tax was demanded as aforesaid; that he knows of no such notice having been received by any of the officers of said company.

p. 63 Affidavit of Joseph V. Thompson substantiates that part of Kendall's affidavit which refers to him.

p. 64. Motion to dissolve Injunction.

p. 65. Agreement that exhibits of records of board of supervisors are a perfect transcript of the same.

p. 66. Bill of Exceptions.

p. 67. Order that injunction be dissolved and judgment for costs against complainant. Appeal prayed. Security approved and bond filed.

p. 68. Exception of complainant to orders of Judgment and decree and dismissal of said bill, copy of appeal bond in the usual form.

ASSIGNMENTS OF ERROR.

1st. The Court erred in dissolving the injunction aforesaid.

2d. The court erred in rendering the judgment for costs aforesaid in manner and form aforesaid.

3d. The Court erred in entering the decree aforesaid in manner and form aforesaid.

GLOVER & COOK,
For Appellant.

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The C. B. & Q. R. R. Co

vs

Roderick B Frary, Treasurer
& Ex Officio collector of the
County of Bureau

Abstract

not invalid, the assessment
[illegible] 1853 [illegible] 22, [illegible]
[illegible] act Feb 1853
[illegible] 2, 3 [illegible]

Glover, Cook & Campbell
& I. N. Arnold
for R. R. Co

W. H. L. Wallace
for Appellee

SUPREME COURT OF ILLINOIS,

Third Division—April Term, 1859.

THE CHICAGO, BURLINGTON AND QUINCY R. R. Co. *vs.* RODERICK B. FRARY, Treasurer, &c. } *Appeal from Bureau.*

POINTS AND AUTHORITIES FOR APPELLEE.

The objection taken to the assessment in this case is, not that the board of supervisors had not the power to make the assessment, but that they proceeded irregularly in making it.

The appellee makes the following points:

I. There is no irregularity or illegality in the manner of making the assessment. By the township organization law (vide session L. 1851, page 57, Art. 20, sec. 1) the board of supervisors have the power of *equalizing* the assessment. This necessarily implies the power to increase and diminish; and this power may be exercised at the annual or any other meeting of the Board. (Session L. 1851, page 51, Art. 16, Sec. 4.)

Again: This same power of equalization is recognized in the act of 1853, (*vide* Session L. 1853, page 19, secs. 43 and 44); and although by the terms of this last law they are required to make the equalization at the annual meeting, yet this is merely directory, and by the 4th sec. 16 art. of the act of 1851, (above referred to,) expressly authorized the board at their *annual* or at *any other meeting*, "to perform all other duties" "which *may be* required of or enjoined on them by any law of this state." By the 2d sec. of the act of 1855, (*vide* Session Law 1855, p. 39, sec. 2,) the board are expressly authorized to assess the property themselves.

The change in the valuation in this case, however, was made at the annual meeting of the board. The change was made at the September meeting of the board, which is the *annual* meeting. (*Vide* Session L. 1851, page 51, art. 16, sec. 2). At that meeting the valuation of the personal property was increased 40 per cent. And although the board at its December session reconsidered its action so far as to refer it to a committee, yet the change which was made in September was not disturbed, and the only change that was made after September, was the reduction, in June, 1858, on the application of appellant, of $16,525 from the aggregate valuation.

II. The appellant was not entitled to notice of the change in the valuation. They rely upon the 9th sec. of the act of 1853, and the 4th sec. of the act of 1855. The first section applies only to the change made by the *assessor*, and the last applies only to changes made by *clerks and assessors*: and neither of said sections relate to an assessment made by the board, in accordance with the powers given in the 2nd section of the act of 1855, above referred to.

The act under which the change was made is a public one, and the appellants were bound to take notice of the liability that existed of having *their* valuation of the property changed by the board at its annual meeting. They were bound to appear then and make their objections, if any they had.

III. But if notice were necessary, the record shows that notice was given Thompson, who was county clerk in September, swears that he sent notice by mail, to Hall, the Treasurer of the company, at Chicago. He also called the attention of Kendall, the attorney of the railroad, to the fact of the change.

Again. In June, 1858, Hawkins, the agent of the company, applied to the board to reduce the valuation; that petition was received and referred by the board to a committee, with instructions to act upon it as though the application had been made in apt time, and the whole record shows that the committee heard the suggestions of appellants' counsel, and it is to be presumed that they acted with reference to said suggestions, and in accordance with the instructions of the board under which the matter was referred to them, and the board in accordance with the report of the committee, and on the petition of appellant did then reduce the valuation $16,525.

The appellant having applied to the board and their application having been received and acted on by the board in precisely the same manner as though said application had been made in apt time; appellant has had its day in the proper and legitimate forum, and cannot now in this court question the action of the board, and that action is final and conclusive and cannot be reviewed.

Morgan vs. County Com. Scott Co, 4 Gil. 368.

IV. But even if there was an irregularity or even an *illegality* in the manner of making the assessment or charging the tax, the court of chancery has no power to restrain the collection of the tax by injunction. If the proceedings in assessing or charging the tax is illegal, the appellant has a remedy at law, and a court of chancery has no power to interfere by injunction. The tax (the collection of which was enjoined in this case) embraced a part of the public revenue, state, county and town, for the purpose of defraying the ordinary expenses of the government. If the proceeding was void, or illegal, or even irregular, the process would afford no protection to the officer in attempting to collect the tax, and appellant could sue him and recover.

On this point I refer to the following authorities:

Session Laws 1853, page 21, sec. 50.
Van Doren vs. Mayor of New York, 9 Paige 388.
Meserole vs. Mayor of Brooklyn, 26 Wend. 132.
4 Barb. Sup. Ct. 9, 17.
McCoy vs. Chilicothe, 1 Ohio 609; 3 Ham. 380.
Dean vs. Todd, 22 Mo., 1 Jones 91.
Soyer vs. Tompkins, 23 Mo., 2 Jones, 443.
Mooers vs. Smedley, 6 Johns. Ch. R., 28.
2 Bro 19, 182; 4 Johns. Ch. R. 352; 2 Caines R 182
3 Atk. 639; 1 Johns. Ch. R. 18.

On the point that it is against the policy of our laws to permit an interference with the collection of the revenue, the court is referred to the Statute concerning the action of replevin, sec. 3 (vide Blackwell's Stat. 266, sec. 3) in which the plaintiff is required to swear that the property "has not been taken for any tax, assessment, &c.

W. H. L. WALLACE,
Counsel for Appellee.

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C. B & Q R R Co

vs

R. B Fleary

Appellee's Brief

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12729

SUPREME COURT OF ILLINOIS,

Third Division—April Term, 1859.

THE CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY,
vs.
RODERICK B. FRARY.

APPELLANTS' BRIEF.

The record in this case shows that the said Railroad Company duly filed a list and valuation of all their taxable property in Bureau County as required by law.

That at the annual meeting of the Board of Supervisors of said County, in September, the valuation of the items of "Fixed and Stationary Personal Property," of "The other Personal Property," and of "The Pro Rata Moveable Property" in said list and in the list of each Railroad in said County, were increased 40 per cent. each.

That at a session of said Board, held in December of said year, the action of said Board at the September Term was re-considered and such action had that the items aforesaid of said list were each increased 40 per cent., and the said items in the lists filed by other Railroad Companies in said County, were increased in different proportions.

That no notice of any of these changes was ever given to said company.

That subsequently, at a session of said Board held in June, 1858, said Company, by agent, petitioned the Board to abate said increased valuation.

That said Board did at said June session, abate an inconsiderable portion of the same.

And we insist for appellant,

I. Said Board had no right to increase the valuation of said Company's property *in gross.*

By the law of 1855, Railroad Companies are required to file a list of their taxable property in each County with the County Clerk, who shall lay the same before the Board of Supervisors when they meet to equalize the assessment of property, which, by the acts of 1851 and 1853, must be at an annual meeting.

And said Board can only do one of two things in regard to said list.

If they find it correct they may assess it accordingly.

If they do not think it a full and fair statement of the Company's Taxable Property and the value thereof, they may assess it in accordance with the rules prescribed for the assessment of such property.

The rules for the assessment of such property are laid down in section 2 of the Act of 1855, Purple's Statute, 994, and prescribed a specific description of each lot or parcel of land and its value, the number of acres taken for right of way, stations, &c., the length of main track and all the side tracks in the county and their value, a list of the rolling stock of said Company, and its value, and the value of all other personal property of said Company in said county.

There is no pretence whatever that this has been done; but 40 per cent has been added in gross, according to the whims and prejudices of the members of said Board, and without an effort having been made to ascertain the true value of any one item of property.

The whole policy of the law in regard to assessments of property is, that it shall be assessed by items, and from an actual knowledge of the value of the different items assessed.

See Purple's Statute page 940, sec. 10.
Also, Purple's Stat. p. 945, sec. 30 and 31.
Ibid, 947, " 37 and 39.

Take all these rules, in connection with the Act of 1855, already referred to, and there can be no doubt as to the intention of the law as to the assessment of property by items and not in gross.

II. The Board of Supervisors had no right to increase the valuation of Appellant's property, unless they believed that the list did not contain a full and fair statement of the property of the Company, or that it was not valued in accordance with the requirements of law.

2 Purple's Statute, page 994, section 551.

The bill alleges that said list did contain a full and fair statement of said Appellants' and the value thereof, and that as increased, the valuation was unjust and oppressive This fact was entirely incontroverted, and there is nothing in the record to show that the Board of Supervisors believed otherwise.

III. The final increase of which we complain, was made at the December session of said Board. This the Board had no right to do.

Purple's Statute, 994, section 551.

The record shows that an order increasing each of the items above enumerated 40 per cent., on these Railroads in said County, was made at the September session, but that at the December session this order was reconsidered, *that is vacated*, for it is nothing more nor less, as the subsequent order of said Board shows.

Then the lists of each of these Roads were referred to a committee of said Board, which made a report *different* from the order previously entered by said board, which report was approved and an order entered that the clerk of said Board "increase the assessment of the property of the several Railroads running through and in said County, in accordance with the resolution of said Board, passed Dec. 9, 1857, and that the assessment so raised, be the assessment levied on the property of the several Railroad Companies therein named."

By this order the clerk was to increase the assessment of the Railroads passing through said County, in a different manner and to a different amount than that specified in the first order passed at the annual meeting in September, and although as to any one Road, the result of this order was the same as the result of the first, it was nevertheless a new and different order.

The irregularity is in the time it was made, and a coincidence of result as to the amount of increase with another order made at a proper time does not help it.

The Board had the right, at their December session, under the general powers granted them, to vacate or rescind the order made by them at the September session; but further than this they could not go, until the next annual meeting. They did vacate said order as is shown by the record. This left the matter as if it had never been before the Board at all. And if it had never been before them at all, they would certainly have had no right to have taken any action whatever upon said list untii their next annual meeting.

IV. The Appellants were not notified of any change in said assessments, as provided by law.

Purple's Statute, p. 995, section 553.

It is contended by Appellees that this provision only applies to changes made by *Clerks and Assessors* and do not relate to an assessment made by the Board.

Let us see what the act is: it is true that it provides that "If any clerk or assessor aforesaid shall change the valuation of property as aforesaid, or any of the same, that shall be returned by any Railroad Company, he shall give notice of such change," &c.

The 2d section of the act had provided that the Board of Supervisors in certain instances, should have power to change the valuation of the property listed by Railroad Companies, and no where is such power given to the clerk or assessor; they were only to do the mechanical work of preparing the lists and extending the taxes thereon; they had no power to make any change in a list filed by a Railroad Company, of their own motion, they could only do it upon order of the Board. Then, when the act says, "If any clerk or assessor shall change the valuation of the property *as aforesaid*," it must mean when they change it on the order of the Board of Supervisors, or not mean anything.

Just such a change as this was made by the clerk, (if any legal change was made) and yet no notice of the same was ever given to said Railroad Company. Hence said Company are not bound by the change if it was regular otherwise.

I think I need not argue this question of notice. Different officers of the company swear that they never received any notice or heard of any being received, and on the contrary, Thompson, the clerk, swears that he enclosed such a notice and directed it to Hall; but there is no evidence whatever that it was ever placed in the mail, and Hall swears positively that he never received it. The pretence of notice to Kendall is entirely unfounded, as shown by Kendall's affidavit on page 56 of record, and of Thompson on page 63 of record.

But it is said by Appellee that the Court of Chancery has no power to restrain the collection of this tax by injunction, because the Appellants have a remedy at law. I suppose he refers to the right of Appellant to sue the officer attempting to collect the tax and recover damages against him.

This, we insist, would not be an adequate remedy.

If the officer should levy upon a train of cars while the same was passing through said County, (and this was what he was threatening to do when enjoined,) the Railroad Company would suffer an *irreparable injury;* they would become liable to every passenger upon said train for the damage resulting from their detention, and it is entirely impossible to ascertain what such damages would amount to and still more impossible to recover a tithe of them from a public officer, acting under color of authority, and even if it were possible so to recover, there would be a still greater injury inflicted upon the officer.

The Appellant was in danger of having the entire business of his road interrupted with a resultant injury to the public and themselves, which a court of law could not give anything like an adequate remedy for. And the rule of law is well settled that in such cases of irreparable injury, Courts of Equity will entertain jurisdiction and proceed as readily to protect *personal* as real property.

13 Howard, 559; 20 Conn., 121; 12 Peters, 98; 8 Eng. Ch. Cond. 394.
6 Johns. Ch'y. 439; 9 Paige, 327; 2 Wis. 396; 10 Eng. L. & E. 73.
2 Story Eq. 924; 5 McLean, 428; 2 Md. Ch'y., 412; 17 Ibid, 501.
17 Cont. 375; 6 Paige 563; 8 Dana, 299; 11 Eng. L. & E. 182.
1 Simon & Sten. 607; 5 Mason 244; 13 Ibid, 253; 9 Ibid, 182.
2 Story Eq. sec. 717, *et. seq.*; 3 Atkins, 383; 6 Blackford, 491.

The first point made by the Appellee is not, I think, sustained by the law to which he refers.

See Session Laws 1851, page 57, section 1.

This section does, it is true, give the Board of Supervisors the power of *equalizing assessments*, but only under particular circumstances. The Act provides that "The Board of Supervisors of each County in this State, at their *annual* meeting, shall examine the assessment rolls *of the several Towns* in their County, for the purpose of ascertaining whether the valuations in *one town or district bear just relation to all towns or districts* in the County, and they may increase or diminish the aggregate valuation of Real Estate in any town or district by adding or deducting such sum upon the hundred as may in their opinion be necessary to produce a just relation between all the valuations of *Real* Estate in the County," &c.

1st. The law gives the Supervisors no power whatever over the lists filed by Railroad Companies, but only over the assessment rolls of the different Towns of which these Railroad lists form no part.

See Purple's Statute, page , sec. .

2d. The power of changing the valuation of these Town rolls is limited to increasing or diminishing the aggregate valuation of *Real Estate* in

(12729-40)

any Town, so as to produce a just relation between all the valuations of *Real Estate* in all the Towns, and in the case at bar no change whatever was made in the valuation of Real Estate.

See Record, page 10.

3d. The change contemplated by that Act could only be made at the annual meeting, as the general provision in Art. 16, sec. 4 of the Act is limited, and only provides that "at their annual meetings, or at *any other* meeting" they shall have power—

5th. To perform all other duties, not inconsistent with this Act which may be required of or enjoined on them by any law of this State."

'Twould be *inconsistent* with the 1st sec. of Art. 20, to perform this duty at any but an annual meeting.

And they are not required or enjoined to do so by any law of this State.

The law of 1853 (see session laws of 1853, page 19, sec. 43 and 44) is similar in its provisions to the law of 1853, and refers only to the assessment rolls of the Towns.

The powers of the Board of Supervisors to alter or approve the lists filed by Railroad Companies is all derived from the Act of 1855, and they must proceed strictly in accordance with its provisions, and in the case at bar we insist that they entirely failed to do this. We think the injunction should therefore have been sustained, and judgment for costs rendered against the defendant below.

GLOVER, COOK & CAMPBELL,
For Appellants.

(12229-50)

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C B & Q RR Co

v

Frary

Applts. Brief

Bureau county

RR assessment case

Filed May 26. 1859

L Leland

Clerk

In Chancery.

In Bureau County Circuit Court.

The Chicago, Burlington & Quincy Rail Road Company
vs
County of Bureau and Roderick B. Frary Treasurer of said County of Bureau
} Bill.

To the County of Bureau and Roderick B. Frary Treasurer thereof. Defts.

Please to take notice that on Thursday next at the capitol at Springfield, at the opening of court on that day or as soon thereafter as counsel can be heard I shall apply to the Supreme Court for an Injunction restraining you from collecting the tax of 1858 against the complainant, to the extent of the addition of 70 per cent, on the valuation furnished by complainant & to the extent that such tax is illegal. Respectfully,

Jan 7. 1859

Isaac N. Arnold
Sol. for Complainant

[12729-5]

Chancery No. 2[illegible]

Mr Arnold Mason
for Lane
Respondent
submits the
Bill —
Jany - 13. 1859
E. W. [illegible]
Sol. for
Complainant

I hereby acknowledge service of a true copy of the within notice this 5th day of January 1859
R. B. [illegible]
County Treasurer
Brown County Ills

I hereby acknowledge