

13398

No. _____

Supreme Court of Illinois

O'Kane^E~~K~~

vs.

Treat et al

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

356
No. ~~2000~~

O'Kane
vs

Heat

1861

11
Prepared

13398

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

PATRICK O'KANE	}	<i>Error to Recorder's Court of the City of La Salle.</i>
<i>vs.</i> EDMUND B. TREAT et al.		

ABSTRACT OF RECORD.

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Bill.

- 1 Inhabitants and tax payers of the city of La Salle, defendants in error, filed their bill against O'Kane, the collector in the town of La Salle, March 29th, 1861, alleging,

That by the charter of said city the inhabitants of said city are exempt from working and from paying any tax to procure laborers to work on any road outside the city limits.

That a town meeting of the town of La Salle, April 5th, 1859, resolved "That fifty cents on each one hundred dollars assessed for 1859 be appropriated towards constructing a road across the Bottom, in the town of La Salle, from the south boundary of the city to the Illinois river."

By the same meeting it was resolved "that the commissioners of highways be authorized to assess a road tax of 40 cents on the \$100 on real estate, in view of heavy expenses on account of the wet season."

That the commissioners of highways, in some way, employed Cody & Duncan to construct said road across the Illinois bottom.

That the moneys voted to be levied as aforesaid were levied on the property of complainants, in common with other tax payers, and, except delinquencies, was collected and paid out for the purposes indicated in said resolutions; and that no other taxes have been voted by the town of La Salle since April, 1859.

- 5 That on March 27th, 1860, the town auditors of the town of La Salle allowed as charges against the town:

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John Cody,	} as highway commissioners, each,.....	\$100 00
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Cody & Duncan, as balance due them on construction of said road,		3767 64

- 4 That on the 8th of September, 1860, Cody & Duncan, claiming that the moneys paid them by said town for construction of said road, claimed before the auditors of said town, as a balance due them on said work..... 1485 08
which was by said auditors audited and allowed against said town; and at the same meeting the highway commissioners reported to said town auditors that there was due certain parties named in said report, as a balance for the construction of highways and bridges in said town..... 1753 35
- 5 which was also audited and allowed.

And said auditors, at the same meeting, audited and allowed against said town, to wit:

William Byrne,.....	\$50 00
John Keys,.....	50 00
C. Zimmerman,.....	39 00
As highway commissioners.	

- 6 That the aggregate of claims so audited and allowed at said two meetings, by said Board of Auditors, was.....\$7599 39

That said several sums, amounting to said aggregate, were, by the Board of Supervisors of La Salle County, levied upon the tax payers of said town in proportion to their assessments for that year.

That complainants were included in said levy.

That said tax was extended on collector's book for said town against complainants.

That the whole town tax of said town amounts to "sixteen mills upon the dollar."

That complainants have no means of knowing the per cent. that has been levied upon them for road purposes.

That all the roads and bridges for which said taxes have been levied are without the city limits.

That the levy is illegal as against them, and insisting that they are exempt from taxation for road purposes beyond the city limits.

- 7 That the tax collector, Patrick O'Kane, is about to coerce the collection of said tax so extended on his tax-book.

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8 Prayer for an injunction against O'Kane, till the further order of the Court, from collecting the "said road taxes," and for answer not under oath, and for a final decree enjoining him "from the collection of said illegal taxes," and for such other and further relief, &c.

9 Injunction *pendente lite* allowed, March 27th, 1861.

10 *Answer.*

Filed May 7th, 1861.

Admits complainants are inhabitants and tax payers of said city, situated in the town of La Salle, and county of La Salle, and that the tax they seek to enjoin is levied upon property within the city of La Salle.

Admits the adoption of the resolutions mentioned in the bill, at the town meeting of the town of La Salle, of April 5th, 1859.

11 Admits that the commissioners of highways employed Cody and Duncan to construct the road mentioned in the bill, and says that it was done as follows :

12 That at the same town meeting, April 5th, 1859, in connection with the foregoing resolutions, the following resolution was adopted, "That the commissioners of highways are hereby authorized and required to let the construction of the road, for embankment, culverts, or bridges, from the south boundary of the city of La Salle to the Illinois river, to the lowest responsible bidder;" and that said commissioners, in pursuance of the last resolution, let the contract for building said road and bridges to said Cody and Duncan, who furnished the materials for the same; and that, in pursuance of said contract, said Cody and Duncan constructed said road and bridges.

Admits that moneys voted by the resolutions mentioned in the bill, were levied, and, with the exception of delinquencies, collected, and paid out for the purposes indicated in said resolutions; and that no other moneys have been voted by said town, other than as above stated.

Admits that the Board of Auditors, at the meeting, March 27th, 1860, audited and allowed against said town the several sums mentioned in complainant's bill, for the purposes stated in said bill.

And that, on the 8th September, 1860, said town Auditors audited and allowed against said town of La Salle the sums mentioned in complainant's bill, for the purposes therein stated.

12 Says that said several claims, audited and allowed as above, including sums due Cody and Duncan, for constructing said road and furnishing materials for said bridges, under their said contract, were reported to the Board of Supervisors of said county, and that said Board, at their

PAGE OF REC. September session, 1860, by resolution, directed the County Clerk to extend on the collection books of the various towns the school taxes as returned by the school officers, and the district road taxes; also the following town taxes:

Towns.	Town Taxes.
La Salle.	16 Mills.

And that the collector's book, of the town of La Salle, with said town tax of 16 mills upon each \$1.00 extended thereon, came into the hands of defendant, as town collector, and that said tax was levied on the inhabitants of said town, including the city of La Salle, according to the assessed value of their property.

Admits the road and bridges in bill mentioned are within the limits of the town of La Salle; but without the limits of the city.

- 14 And that said town tax of 16 mills was leyied by said Board of Supervisors to pay off the indebtedness of the town of La Salle, embracing the claims reported to them by the Board of Auditors, as aforesaid.

Admits his want of pecuniary responsibility, individually, and that at the time of filing the bill he was about to collect said tax of 16 mills, according to his tax list.

- 15 Says, that on his tax list is a class of taxes called district road taxes, in a separate column, (other and different from the column of town taxes, to which this tax of 16 mills belongs.)

Denies all other allegations in the bill, and the soundness of the legal conclusions therein.

Decree.

- 17 Entered May 7th, 1861, recites that defendant, having filed his answer, the cause was set down for hearing on bill and answer, on motion of complainants, and that upon the hearing it was decreed——
——— “that the said defendant be forever enjoined from collecting from complainants respectively $12\frac{1}{2}$ -16ths of the town tax in said bill of complaint mentioned, and that each party pay their own costs.”

Certificate of the Clerk verifying the Record.

POINTS FOR PLAINTIFFS IN ERROR.

I. The section of the city charter relied on as exempting complaints from this tax, when properly construed, is merely a limitation as to the power of the city authorities to tax the inhabitants.

II. If not a mere limitation, as suggested in point one, then the section has reference merely to the poll tax for road labor, and what is commonly called the district road tax, and the language of the section immediately succeeding this favors this construction.

III. The construction claimed by complainant would be unconstitutional.

IV. This construction would be so outrageously unjust, that the Court will not adopt it if it is capable of any other rational construction.

V. The case does not furnish a basis by which to say how much of this tax is for road purposes.

VI. The Court of Chancery will not interfere to correct a mere irregularity in the levy of town taxes.

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Charter 1852 Session Laws 242 - Art 8

Sec. 1 -

Amended Charter Special Laws ¹⁸⁵³ ~~55~~ - page 436

Constitution Art IX Sec 5 -

Power of Towns - Auditing acc'ts Scales 360

1854 Towns to build bridges 11 11 363

Repeal of all repugnant acts 365

Board of Supervisors fix rate of town tax Scales
333
335
336

Dickens
Brief

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T. LYLE DICKEY,
For Plaintiff in Error.

356

Patrick O'Kane

vs

Edmund B. Treat

Abstract of Record

Filed May 10th 1861

L. Liband

Clerk

1

Points, authorities and arguments
of Daniel Evans of Counsel for Plaintiff
in error—

Patrick O'Hane
Plaintiff in error—

E. B. Heatwell Court of the City of LaSalle,
Defendants in error— } Error to the Recorders
County of LaSalle

This was an application
by the defendants in error for an
injunction against to restrain the plaintiff
in error, as collector, in the town of LaSalle,
in said LaSalle County, from collecting
certain taxes mentioned in the Bill of Complaint.

The Judge granted the order for an
injunction, and at the May Term of the
said Recorder's Court, the cause was set
down for hearing on Bill and answer,
there being no controversy in reference to the
facts of the case.

The Defendants in error who were
Plaintiffs below, allege in their Bill, and
which is admitted, that they are inhabitants
of the City of LaSalle, in the Town of LaSalle,
and that they are the owners of real estate
property, lying within the limits of said
City of LaSalle, which was taxed in the
mode prescribed in the Bill, for the
construction of a road and bridges in the
said Town of LaSalle, but without the
limits thereof. The Complainants in
their Bill allege, that their property
lying within the limits of said City

is exempt from taxation for the purpose of building the road mentioned in this bill, in virtue of the following provision of the Charter of Said City.

"The Inhabitants of the City of La Salle are hereby exempt from working on any road beyond the limits of the City, and from paying any tax to procure laborers to work upon the same" -

The foregoing provision is common to many ~~city~~ charters of cities in this State, and therefore, a judicial determination of its meaning is desirable. Although such adjudication is not necessary, in my judgment for the disposition of the case at Bar, it will dispense with the need of deciding other questions presented by the Record, and I will therefore briefly examine it, first in order.

I think it is clear that the tax, which said provision in Charter exempts the inhabitants of the City from paying, is the per Capitem. or poll tax.

It is the equivalent tax for the poll tax which the Statute, Purcell's Statutes page 1158. Section 11, imposes, as follows: "Every Male inhabitant being above the age of Twenty one years, and under the age of fifty, (excepting paupers, idiots, lunatics and such others as are exempt by law, shall be assessed, at least, two days in each and every year."

The Ordinance of Said

City have a similar provision, authorized by the City Charter, which was held to be Constitutional in *J. Scammon*, page 129) which is as follows:

"That every male inhabitant of said City over twenty one years of age, is hereby required to labor upon the Streets, Lanes, Avenues or Alleys, under the direction of the Street Supervisor, not exceeding three days in each and every year. The ordinance further authorizes every person to commute for the labor required by paying three dollars into the hands of the Street Supervisor, to be expended in improving the Streets of the City, just as the Statute which imposes Street labor upon every inhabitant, allows him to commute for the same, by paying seventy five cents a day.

It is obvious that the exemption from working on roads without the City limits, contained in the City Charter, applies only to the labor or to the commutation money or poll tax which is the equivalent for and represents said labor, for the next section in the Charter ~~to~~ following this exemption provisions, Empowers the City Council for the purpose of keeping Lanes, Avenues &c, in ~~order~~ Repair, to require the male inhabitants over twenty ~~three~~ years, in like manner as the Statute, to labor on the Streets or forfeit the sum of one dollar for each day.

This road labor of the inhabitants of towns is very properly limited to the

Session Laws
1852. Page 250.

City for the purpose of keeping the Streets in repair, and it would be a double burden on the inhabitants of Cities, if they were ^{also} Compelled to labor on roads or pay a full tax to procure labor on roads without the City limits.

Hence this exemption of the inhabitants of Cities from labor or tax to procure labor, on roads outside the City limits.

The provision in the charter means simply that the inhabitants of Cities shall not be required to work a certain number of days on the Streets, or pay a commutation money therefor to procure such labor, and also a certain number of days on roads without the City limits. It means simply that an inhabitant of the City shall not be required to do double the amount of labor that is required of an inhabitant of the town.

Any other construction of the charter, the construction insisted upon by the defendants in error, involves consequences that the Legislature never could have intended.

If this provision in the charter is meant to exempt the inhabitants of the Cities, from taxes to make or improve roads and bridges without ~~the~~ limits. but in the town of LaSalle, then all those statutes which recognize the inhabitants of Cities as inhabitants of towns, for certain purposes are void and inapplicable as to towns wherein Cities ~~are~~ situate,

having similar provisions in their Charters, or else we must sanction the doctrine, that the inhabitants of a City can impose a tax upon the inhabitants of a town wherein such City is situated, against the wishes and protests of such inhabitants, and from which they themselves are free.

These Statutes give to the inhabitants of the City a right to vote at the Town Election for town officers, for raising taxes to improve roads and bridges, in like manner as the inhabitants of the town, and impose a penalty upon the judges of the town election, if they should refuse to receive the votes of the qualified voters of the City for any thing Resolution that such Town Meeting, is authorized to accept, and if the judges of the town election, at which the Resolutions were adopted for building the road and for raising the money therefor, had refused to receive the votes of these Complainants, for the resolution, assessing this ^{tax} ~~very~~ which they desire to rid themselves from paying, they would have been subject to a penalty therefor.

Yet will it be said, that the inhabitants of the City of La Salle, who constitute the great part of the people of the town of La Salle, had the right to vote at the town election, mentioned in Complainants Bill for all the town officers, had the right to vote for the Resolution instructing the Commissioners

4. of highway to let the Comba-A for-
the Construction of the Road in said Bill
mentioned, had the right to vote for-
raising the tax to pay therefor, had the
right to impose this tax upon the
property lying without the limits of
the City; while they themselves, the Complain-
ants, were ^{exempt} from the assessment and
payment of said tax? Shall one part
of a Township have the right to impose
a tax upon another part from which
themselves are free?

Of course, no such monstrous
proposition was intended by this
provision in the City Charter. Nor did
the Legislature intend to make inapplicable
the large class of statutes, which empowers
all the qualified voters of towns, (including
cities therein), to vote for the officers and
the measures allowed by law to be voted
for. The construction I insist upon
is consistent with these statutes.

2. If this provision in the City Charter
exempts the Complainants from
paying the tax alleged in their Bill,
then it violates the fifth section, of
Article Nine, of the State Constitution.

That section provides that the
Corporate authorities of townships,

Cities, &c May be vested with power to assess and collect taxes for corporate purposes, Such Taxes to be uniform in respect to person and property, within the jurisdiction of the Body imposing the same.

If then the Voters of the town of La Salle had the right to assess a tax for making the road as alleged in Complainant's Bill, (and such right is not doubted). Such tax must be uniform in respect both to person and property throughout the town of La Salle.

If then the ^{provision in the} charter of the City of La Salle exempts a portion of the inhabitants of said town of La Salle and their property from such tax, then it is neither uniform, in respect to persons or to property throughout the town.

3.

If the inhabitants of a City, qualified to vote, have not a right to vote at the town elections of the town, in which such City is situate, to raise or levy taxes to make and improve roads therein, then they should not be liable to pay damages resulting from injuries to persons and property, by reason of bad roads and bridges in the town.

But they are so liable, and the law will not attach this liability, unless

5. They are empowered to remove the defects in the roads and bridges, from which such liability may arise, by levying taxes for this purpose.

The fact of the liability of the inhabitants of a city, in common with the inhabitants of a town including such city, shows, of itself, that such city is an integral part of a township for the town purpose of levying a tax to build roads and bridges therein.

The qualified voters of the City of La Salle, therefore, had a right to vote at the Town Election, as ~~the~~ mentioned in Complainant's Bill, had a right to vote to tax their own property, in the manner they did, as shown in said Bill, and having done so, the Constitution requires the tax thus ~~assess~~ ordered to be assessed, to be uniform throughout the township, and it must necessarily be uniform, else it would be true, that the inhabitants of the City of La Salle, can compel the inhabitants of the Town of La Salle, to pay a tax against their protest.

48 But if it were true, that the Complainants were exempt from liability to taxation, from building the road as mentioned in their Bill, in virtue of the City Charter, then, I insist, they could not be allowed to arrest the Collection of the Tax, at the time of their application, for an injunction.

It is a principle peculiarly effective, in a Court of Equity, that no person shall take advantage of his own wrong.

The Complainants are themselves responsible for the construction of the road and the assessment of the tax complained of. They were legal voters of the town, they voted to build this road, they voted to assess this tax upon the property of the whole town, for the purpose of building this road. They instructed the Commissioners of Highway to make the contract for building this road, they knew the Commissioners of Highway complied with their duty, pursued their instructions in letting the contract for constructing this road, saw it rise to completion under the contract made by their own agents, and when the only ^{thing} left to be done, to consummate the Resolutions, adopted by Complainants and the legal voters of the Town of LaSalle, at their Town Meeting, was the payment of their own self imposed taxes, they discover there was no authority to tax themselves! They have palpably taken advantage of their own wrong, saw Messrs Cody and Duncan invest several

7
thousand dollars, in this road, they required to be constructed; and after thus inducing this outlay of money, and waiting for the completion of the road, that they might enjoy the full benefit of it, they tell the collector, that the Resolutions adopted by them, at the town meeting, are effective, only so far as to make the property in the town, outside the city limits, liable to taxation, for paying for the building of the road.

In my opinion before the Complainants secure the sanction of this Court to any such act of repudiation of self-imposed liability, they will have to appear with cleaner hands. If they did not desire to be bound by the action of the town, at its meeting, they should have restrained the Commissioner of Highways, from fulfilling their instruction, but they can not, after permitting body Duncan to take the contract and complete it, without objection, now say they refuse to be bound by the action of the town meeting. Every law which does not contravene some principle of public policy, may be waived by the person for whose benefit the law was made.

On this principle, I think, if the Complainants are exempt under the Charter from building roads without the city limits, they must be held to have waived the benefit of the Charter.

35 But I insist that this tax can not be restrained, upon the facts, as set forth in Complainants Bill.

against
Purple Statute
1143- article
11.

From these facts, it appears, that the Board of Town Auditors, of the town of La Salle, Audited the claims and indebtedness of said town, amounting to several hundred dollars over and above what was due, for the construction of this road, and which is admitted to be a legal indebtedness of the town.

Purple Statute
1147- Sec 4 sub
3-

The whole amount of this indebtedness, legal as well as illegal, as claimed by Complainants as to them, was reported, as required by the Statute, to the Board of Supervisors of the County, who directed that a tax of Sixteen Mills on each one hundred dollars, of the valuation be levied upon the real property of said town, in order to pay off said indebtedness.

It will be seen that the Board of Supervisors would have assessed the property of the town, for the payment of its indebtedness, had the road not been built, and therefore, it is only so much of the assessment, as was necessary, to meet the indebtedness of the town for building the road is objected to, by the Complainants. Indeed, they do not object to this assessment, but only object to its extension, upon property lying within the limits of the City of La Salle, upon the theory of Complainants, the error of the Board of Supervisors ^{was} in not increasing the rate of taxation, and in not limiting it to the

town of La Salle, exclusive of the City. The Board of Supervisors, then, had the authority, and it was its duty, to assess a tax upon the town of La Salle, to pay off its indebtedness.

The tax either would not have been so large, had the road not been built, or it would have been larger, but not extended to the City.

I think this Court has settled the principle, by repeated decisions, that where there is authority vested in a Body, to levy a tax for a specific purpose, the Court will not inquire into its regularity, but leave the parties to their legal remedies.

It is only in cases, where the law has conferred no power to levy a tax, or when it is done for a fraudulent purpose, that a Court of Equity will stay its collection.

In the Case presented by the ~~plaintiffs~~ Complainant's Bill, the Board of Supervisors had the undoubted authority, and it was their duty to assess a tax upon the property valuation of the town of La Salle, to pay off its indebtedness. They had the authority, and the tax was levied for a just purpose. The object of the Complainant's Complaint, is, that the Board of Supervisors levied a larger tax than they ought to have done,

or extended ~~at~~ portion of the tax they
 rightfully assessed, over territory ~~they~~
 which was exempt therefrom;
 and therefore, the Complainants can
 not, in Equity, stay the collection of
 the tax.

21. Ills. Report 610. and the authorities
 therein referred to by the Court.

D. Evans
 of Counsel for
 Plaintiff in Error.

35.6 - 183

P. O'Name
Plaintiff in Error
vs

E. B. Heat et al
Defts in Error -

D. Beams
of Counsel for
Plaintiff in Error -

Filed May 11. 1861
L. Leland
Clerk

Recorders Court of the City of
Loa Salle May Term AD 1861
State of Illinois. Loa Salle County
and City of Loa Salle — } ss

Pleds Proceedings Indeg-
ments and decrees held and taken
in and before the Recorders Court
of the City of Loa Salle in Loa Salle County in
the State of Illinois, at a regular
Term thereof commenced and
held at the Recorders Court Room
in said City in Loa Salle County in the
State of Illinois, on the 5th day of
May in the Year of our Lord one thousand
Eight hundred and Sixty one and of the
Independence of the United State of
America the Fifth Fifth

Present His Honor William Chambers Judge
Charles S. Miles Clerk
Eli L. Waterman Sheriff

Filed before the Hon. J. H. H.
Chambers - Presiding Judge of the Recorder's
Court of the City of La Salle in the
County of La Salle at the May Term
thereof A. D. - 1861 - began on Monday
May 6th 1861 -

Be it remembered that
on the 29th day of March A. D. - 1861
there was filed in the office of the
Clerk of said Court a bill in
Chancery in the words & figures
following -

To the Honorable William Chambers
Judge of the Recorder's Court of the City of La Salle
in the County of La Salle and State of Illinois
in Chancery sitting

Respectfully represents unto
your Honor your Orators Rollin G. Parks, Edmund
B. Treat, Calvin B. Bath's, Walter Todd, Ira Todd,
George M. Roddy, ^{comprising the firm of Messrs. Roddy & Co.} Burton Myers, Alfred Dean
Henry Chapman, Archibald McPhedran, Geo.
M. King, David Brown, ^{comprising the firm of Messrs. M. King & Co.} Fenneland, S. Adams, &
Volney G. Hatch comprising the firm of "Adams
and Hatch", James C. Brown, Ebenezer M. Gar-
field, Alfred Dean and Marvin Blanchard
Assignees of Herman Baldwin, Dixwell Catthrop,
William C. Drake, Lyman Hall, Alexander B.
Hitchcock, Joseph Strout, William F. Keeler,
Walter G. Porter, Samuel S. Gardner, Henry
Turner, Cyrus M. Brown and Henry B. Chap-
man and William B. Lornis, comprising the
firm of "Chapman & Lornis", Jacob Haver,
Edward Hooper, James Strain, James M.
Garfield, Jonathan Peck, John V. Robinson,

William Johnson, Elias G. Spaulding, Henry McGinnis, and Aaron Gann, E. Follett Bull, E. Follett Bull administrator of the estate of Isaac H. Lamb, deceased, La Salle Coal Mining Company, John J. Page, Samuel S. Postlethwaite and Philetus Fuller comprising the firm of S. Postlethwaite & Co, Stephen M. Kicker, Sidney Harrow and David C. Haugh, Willis M. Veto, Isaac R. Veto, E. B. Chummers, Charles H. Parks and John B. Preston, trustee for Mary Hardy and Isaac Hardy, that they are all, with the exception of the said Walter Todd, of the firm of "M. & J. Todd & Co" and Marvin Blanchard one of the assignees of Herman Baldwin and Rollin G. Parks inhabitants of the city of La Salle in said County and State and all tax payers ^{and are possessed of property situated} in said City, and are by the charter of said City passed by the General Assembly of said State on the twenty third day of June in the year of our Lord one thousand eight hundred and fifty two (1852) exempted from working on any road beyond the limits of said City, and from paying any tax to procure laborers to work upon the same.

And your Orators further represent unto your Honor that at the Town Meeting of the Town of La Salle in said County and State, held on the fifth day of April A. D. 1859 a vote of the voters of said Town was taken, by which the following resolution was adopted to wit, Resolved by the Town Meeting that fifty cents on each one hun-

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dred dollars assessed for the year 1859 be appropriated towards constructing a road across the Bottom in the Town of La Salle, as set forth in the foregoing resolution, and which resolution was for the construction of "a road from the South Boundary of the City of La Salle South of Lock No 14. to the Illinois River opposite Shippingport, and that at the same meeting the following resolution was also by the said Town Meeting adopted, to wit: The Commissioners of Highways offered in their report the following recommendation to wit: In view of the heavy expenses necessary to make the required improvements this year in consequence of the unusual wet season we would recommend that the Commissioners be authorized to assess a road tax of forty cents on the one hundred dollars on real estate, which was adopted, all of which resolutions will fully appear by reference to the records of said Town of La Salle.

And your Orators further state that on or about the day of A. D. ~~18~~ 18 the Commissioners of Highways of said Town of La Salle in some manner or other employed Richard Cady and Nicholas Duncan of said Town to construct said road from the South Boundary of the City of La Salle South of Lock No 14. to the Illinois River opposite to Shippingport, but at what price and upon what terms your Orators are not advised, and that the money voted to be levied by the aforesaid several resolutions was levied upon the property of your Orators in common with

the other inhabitants of the said town of
 La Salle owning taxable property, and
 with ^{the exception of} a small amount of delinquencies was
 by the tax collector of said town collected
 and paid out for the several purposes
 indicated and set forth in said ~~several~~
 resolutions.

And your Orators further repre-
 sent that they are advised that no other
 moneys or levies of taxes has or have been
 voted by the voters of said town of subse-
 quent to the date of the votes set forth in
 said resolutions above set forth.

And your Orators further represent
 that the said body and Bureau pretending
 that the aforesaid moneys paid to them by
 said town for the labor performed by them
 in the construction of said road was not
 an adequate compensation to them for
 the construction of said road on to wit,
 the eighth day of September A.D. 1860 presented
 to the Board of Auditors of said town a bill
 for a balance due them as they claimed
 on said work of one thousand four hundred
 and eighty five dollars and eight cents
 (\$1485.08). That at the same meeting the
 commissioners of highways reported to said
 town Auditors that there was due to cer-
 tain parties named in said report as
 a balance for the construction of high-
 ways and bridges in said town the sum
 of one thousand seven hundred and
 fifty three dollars and thirty five cents

which was by said town Auditors
 audited and allowed against
 said town

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($\$153,35$) which Amount was also Audited And allowed against said Town of La Salle by said Board of Auditors, and that said Auditors also at the same meeting Audited and allowed as proper charges against said Town the sum of fifty dollars to William Byrne and fifty dollars to John Keys and thirty nine dollars to Christian Zimmerman as Commissioners of Highways of said Town.

And your Orators further represent unto your Honor that at a meeting of the Board of Auditors of said Town held on the 2^d day of March A. D. 1860 said Board Audited and allowed as proper charges against said Town the following sums, to John body, John Gray and Thomas Keys as Commissioners of Highways of said Town the sum of One hundred dollars each making the sum of $\$300$ and to Patrick Conway as a Commissioner of highways the sum of twenty one dollars; that they also allowed the said body & Duncan the sum of $\$133,32$, as interest on a note which had before that time been given by the Commissioners of highways of said Town to said Duncan & body on account of the construction of said road across said Bottom; and also to said body & Duncan the sum of three thousand seven hundred and sixty seven dollars and sixty four cents ($3\frac{1}{2}$, 64) as a balance due to them on the construction of said road all of which fully appears by the Town records of said Town. And your Orators

6 further represent that the aggregate of the claims so audited and allowed by said Board of Auditors at said two meetings in March and September A. D. 1860 is \$7599.39.

And your Orators state that the said several claims amounting to the sum last stated were by the Board of Supervisors of the County of La Salle levied upon the owners of taxable property of said town of La Salle in proportion to their property as the same appeared by the assessors book of said town for that year, and that your Orators have all been included in said levy, that said tax has been extended on the collections book for said town, as a tax against your Orators.

And your Orators further state that they have no certain means of knowledge as to the per cent that has been levied upon your Orators for road purposes, but that the whole town tax of said town amounts to sixteen mills upon the dollar.

And your Orators further represent unto your Honors that all of the roads and bridges for the construction and repair of which, said taxes have been levied upon your Orators as aforesaid are without the limits of said city of La Salle - and that said taxes were levied upon the property of your Orators without any authority of law; your Orators, being by virtue of the said Charter entirely exempt from taxation for road purposes beyond the limits of said city.

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And your Orators further represent that said taxes for road purposes has been extended upon the collectors book of said Town of La Salle, and that said tax collector Patrick O'Hane is now proceeding with the collection of said tax, and is threatening to seize and sell personal property of your Orators for the satisfaction of said taxes, and that said Patrick O'Hane is, as your Orators are informed and believe a man of small pecuniary means, and would be unable to pay the damages which your Orators would be entitled to recover against him for such illegal seizure and sale, in a proceeding at law; that the Bondsmen of said O'Hane as such collector would not as your Orators are advised be liable for the torts of said collector in such illegal seizure and sale, or for moneys wrongfully collected by him from your Orators so that your Orators would be without any adequate remedy at law in the premises.

So the end therefore that your Orators be not remediless in the premises and irreparably injured they pray that a writ of injunction may issue out of the Office of the Clerk of this Honorable Court under the seal thereof and directed to the said Patrick O'Hane commanding and enjoining him that until the farther order of this Honorable Court, he his servants, agents, and deputies and each and every of them do entirely desist and refrain from in any manner proceeding to the collection of said road taxes, or any

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part thereof: that the People writ of Subpoena may issue to the said Patrick O'Hane commanding him to be and appear before the Recorder's Court of said City of La Salle at the next term thereof: that he may answer all and singular the allegations in this Bill contained, though not under oath which oath is hereby expressly waived: that upon the hearing of this cause said defendant and his successors in office may be perpetually enjoined from the collection of said illegal taxes, and that your Orators may have such other and further relief in the premises as equity and good conscience may require and as to your Honor may seem meet, and they will ever pray &c

J. James Strain their Sol.

State of Illinois }
La Salle County }

Ebenezer M. Garfield
being duly sworn on oath says that the several matters and things set forth in the foregoing bill are true in substance and in fact as he verily believes.

Subscribed and sworn
to this 12th day of February
A. D., 1861.

Ebenezer M. Garfield

E. J. Bull

Not. Pub.

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To which said bill of Complaint was attached the following order by the said Judge - viz

Let the injunction issue in this cause restraining the collector from collecting from the complainants $\frac{12\frac{1}{2}}{16}$ of the town tax in bill mentioned, on the complainants entering into bond to Patrick O'Hane collector of the town of La Salle or his successors in office in the sum of fifteen hundred dollars with Saml B. Carter or John Brown or Saml K Lindley as security conditioned to pay the tax enjoined in case of the dissolution of the injunction.

Wm Chumasco

Done, Mar 27 1861. Judge

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The defendant further answering south -
~~The defendant further answering south~~
^{that he admits} that at the town meeting of the
 town of La Salle (in which said city of La Salle
 is situated) in said County and State
 held on the fifth day of April A. D. 1839, a
 vote of the legal voters of said town was taken
 by which the following Resolutions was adopt-
 ed, viz. Resolved by the town meeting that
 fifty cents on each one hundred dollars
 assessed for the year A. D. 1839 be appropriated to-
 wards constructing a road across the bottom in
 the town of La Salle as set forth in the fore-
 going Resolutions and which Resolution was
 for the construction of a road as described
 in Complainants bill. Defendant answering
 further admits that a Resolution voting that
 the Commissioners of Highways recommended
 the assessment of a road tax of forty cents on
 the one hundred dollars to improve the roads
 was adopted by said town meeting as described
 in Complainants said Bill - Respondent admits #

(a) ~~The defendant further answering south~~
^{at the same time of the adoption of} that the said town meeting adopted in
 connection with the foregoing Resolutions
 also adopted in connection with the foregoing resolutions
 the following Resolution, to wit, Resolved
 that the Commissioners of Highways elected
 for the town of La Salle for the year A. D.
 1839 are hereby authorized and required to let
 the construction of the road for embank-
 ment, culverts or bridges from the South
 boundary of the City of La Salle to the Illinois
 River opposite Shippingport to the lowest
 responsible bidder, provided that the
 said Commissioners shall give fifteen

That the Commissioners of highways of said town - employees
 Cody & Nicholas Duncan - to construct said road & State that it was done
 in the manner following that is to say - (a)

17 And on the 7th day of May A.D. 1861 - there was filed in the office of said clerk - an answer in said cause in the words following viz -

State of Illinois } In Recorder's Court of the
La Salle County } City of La Salle in said
County May term thereof A.D. 1861.

Edmund B. Great
et al, vs, } Answer
Patrick P Kane }

The defendant now and at all times hereafter saving and reserving to himself all benefit and advantage of exceptions which can or may be had or taken to the many errors, uncertainties and other imperfections in said complaints said Bill of Complaint for answer thereto or unto so much and ^{such} parts thereof as this defendant is advised is or are material or necessary for him to answer this defendant answering saith

that he admits that the complainants with the exceptions in said bill mentioned are inhabitants of the City of La Salle in the town of La Salle County and State aforesaid and that they are tax payers therein and that the tax of which complainants complain and which they seek to enjoin was levied upon property situated within the said City of La Salle.

Respondent admits - the language alleged to be in said Charter - but insists that taken in connection with the sections of said charter - and the Constitution and laws of this State - respondent insists that the legal conclusion asserted in the bill is unsound

And respondent admits that money voted to be levied - by the aforesaid resolutions mentioned in the bill was levied upon the life property of complainants in common with the property of other taxpayers of said town of La Salle & with the exception of a small amount of delinquencies was collected by the tax collector of said town & paid out for the several purposes indicated & set forth - in said several resolutions set out in said bill & that no other money or levies of taxes has or have been voted by the voters of said town - subsequent to the date of the voting set forth in the resolutions set out in said bill other than as above stated - and respondent admits that -

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day notice for receiving such proposals." The defendant further answering, saith that the Commissioners of said town of La Salle in pursuance of the foregoing Resolutions and in conformity thereto let the contract for building said road ^{and bridges} to Richard Body ^{who furnished the materials for the same} and Nicholas Duncan being the road described in complainants bill and that said Body and Duncan in pursuance of said contract with the said Road Commissioners constructed said Road ^{and bridges and culverts as the specified in the resolutions authorizing the same to be done} ~~the foregoing Resolutions authorized to be done.~~

The defendant further answering saith that he admits that the Board of Auditors of the said town of La Salle on the eighth day of September A. D. 1860 audited the said several sums of money mentioned ^{for the purposes therein stated} in complainants bill, and also that the Board of Auditors of said town at their meeting on the 27th day of March A. D. 1860 audited the said several sums mentioned ^{for the purposes stated in said bill} in complainants bill and allowed the same against the said town of La Salle.

The defendant further answering saith that the said several claims audited and allowed against the said town of La Salle including certain sums of money justly due the said Body and Duncan for constructing the road ^{and furnishing materials for bridges} as aforesaid in accordance with their contract for building the same with the Commissioners of Highway of said town were reported to the Board of Supervisors of said County of La Salle and that said Board

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of Supervisors at their September Session A.D. 1860 adopted the following Resolution: Resolved that the County clerk is hereby authorized to extend on the collection books of the various towns of the county the school taxes as returned by the school officers according to law and the district road taxes and also the following town taxes

Towns	Town Taxes
La Salle	16 Mills-

And the defendant further answering saith that the Collector's book of the said town of La Salle with the said town tax extended therein of sixteen mills upon each one hundred dollars came into his the defendant's hands as Collector for said town of La Salle and that said tax was levied upon ~~all~~ the ^{inhabitants} ~~real~~ estate of said town including the said City of La Salle according to the assessment of ~~the~~ valuation ^{of their property} as it appears from the assessors book of said town for said year.

The defendant further answering saith that he admits that the Road and the bridges ^{mentioned in said bill} ~~said Culverts~~ ~~constructed~~ by the said body and ~~Duncan~~ and the roads mentioned in said bill are within the town of La Salle and without the limits of the said City of La Salle. and that the

~~The defendant further answering saith that a large part of said claim of Duncan and body was for materials furnished for the construction of said bridges and Culverts and but a part of the claims~~

~~And debts as audited and allowed against the said~~
~~Town of La Salle by the Board of Supervisors Auditors~~
~~of said town at their said several meetings men-~~
~~tioned in complainants bill was for the claims~~
~~of said body and Duncan for the constructing~~
~~of said road and that a part of said claims~~
~~audited and allowed as aforesaid was for the~~
~~services of the Commissioners of Highway of said~~
~~town amounting to several hundred dollars and~~
~~other claims and charges for which said town~~
~~was justly and legally owing and indebted, and~~
~~that the said tax of sixteen mills as extended~~
~~upon the collectors book for said town in~~
~~pursuance of the Resolutions of the Supervisors~~
~~of said La Salle County as aforesaid was levied~~
~~by said Board of Supervisors upon the assessed~~
~~valuation of the real estate of said town to~~
~~pay off and discharge the indebtedness of~~
~~said town of La Salle ^{embracing the claims} reported by the~~
~~Board of Auditors of said town to said~~
~~Board of Supervisors as aforesaid.~~

Respondent admits that his pecuniary re-
 sponsibility individually is limited but insists
 that he is acting in the line of his duty. He
 admits that he is the collector of the town of
 La Salle and at the time of filing complain-
 ants bill was about to collect said tax
 of 16 mills on the dollar on all the tax payers
 of said town according to his tax list - in
 proportion to the assessed value of the
 property of said tax payers.

Respondent further answering says
 that on his collector's book or tax list is a

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class of taxes in a separate column called District Road tax (which is other and different from the column of town taxes - to which this tax of 16 mills belongs) ~~although in the town of La Salle there is no district road tax~~ Respondent refers to his collectors book or tax list now returned to the County Treasurer to illustrate his statement in this regard.

Respondent denies the soundness of the legal conclusions in said bill as to complainants rights and privileges and denies that any other matter or thing in said bill contained and not herein answered unto is true and having answered fully prays to be hence discharged with his reasonable costs &c

Patrick O'Kane

Daniel Evans
of counsel for deft.

And afterwards on the 7th day of May - being one of the days of said May Term of said Court the following proceedings were had ~~well~~ entered of record in said Court viz -

State of Illinois } In the Recorders Court
La Salle County } of the city of La Salle
May Term 1864.

Edmund B. Treat, Calvin C. Balthis, Walter Todd, Ira Todd, Geo. M. Tidale, Burton Ayres, Alfred Dean, Henry Chapman, Archibald McPhedron, Geo. M. King, David Brown, Ireland J. Adams, Volney G. Hatch, James L. Brown, Ebenzer M. Garfield, Alfred Dean, Marvin Blanchard, Dixwell Lathrop, William C. Drake, Lyman Hall, Alexander B. Hitchcock, Joseph Strout, William F. Keeler, Walter G. Porter, Samuel Gardner, Henry Turner, Cyrus Brown, Henry Chapman, William C. Loomis, Jacob Haver, Edward Hooper, James Strain, James W. Garfield, Jonathan Peck, John V. Robinson, William Johnson, Elias G. Shaulding, Henry McInnis, Aaron Gunn, E. Follett Bull, E. Follett Bull Administration &c, La Salle Coal Mining Company, John J. Page, Samuel S. Postelthwait, Philetus Fuller, S. M. Hickey, Sidney Darrow, David L. Haugh, Willis M. Witt, Isaac R. Witt, E. B. Chambers, Charles W. Parks, John B. Preston trustee &c.

	}	Complainants
vs.		In Chancery
Patrick O'Hane		
Collector of the Town of La Salle		

17

This day came the Complainants by Bull and Strain their Attornies and defendant by Evans his attorney and defendant having filed his answer herein on motion of the Complainants this cause is set down for hearing upon Bill and answer and the cause so coming on to be heard and the allegations of said Bill and the statements of said Answer and the arguments of Counsel as well for the Complainants as the defendants ^{being consistent} it is ordered adjudged and decreed by the Court that the said defendant be forever enjoined and restrained from collecting ^{from} the Complainants respectively $\frac{12\frac{1}{2}}{16}$ of the Town tax in said Bill of Complaint mentioned and that each party pay their own costs.

Wm Chmoozero

Judge Recorder Court
La Salle

State of Illinois La Salle County
and City of La Salle

I Charles S. Miller Clerk of the
Recorders Court of the City of La Salle in
said County do hereby certify that the
that the above and foregoing is a true
and complete transcript of the record

orders and proceedings of court in the
foregoing cause being the bill answer
and decree therein as the same
now remains of record in my
office. Witness my hand and the
seal of said court at Los Angeles
this 7th day of May A.D. 1861
Charles S. Miller
Clerk

True for Record #324

State of Illinois

Supreme Court - April Term 1861 -

Patrick D Kane

vs

Edmund B. Heat & others

} Enor to Recorders
} Court of the City of Larnelle

And now comes the said Patrick D. Kane
by Evans & Dickey his attorneys and says
that in the foregoing record - proceedings &
decree - there is manifest error - & he asks
that the same may be reversed set aside
& for naught held - & plaintiff assigns
the following points of error -

1st The court erred in rendering a decree
against the plaintiff in error - & in favor
of complainants

2nd The Court erred in not dismissing the
bill -

3rd The Court erred in ~~rendering~~ that enjoining
the collection of said tax -

Evans & Dickey

for plaintiff in error

And Comes the said Defendants in error
by Shain & Bull their attorneys and say
that there are no such errors in the foregoing
proceedings & decree as alleged by said
plaintiff in error - & ask that said
decree may be in all things affirmed

James Shain

E. F. Bull

of & attys

Assignment of Errors
to be signed by Shain
& Bull & attached
to the transcript

Stated

358
P. O. Home
W.

E. B. Treats et al
Transcript of
Record

Filed May 8. 1861
L. Leland
Clerk

Patrick O'Kane) In the Supreme Court
vs } 1861,
Treat et al, }
Argument for plaintiff in
error.

The proposition of defendants is that the citizens of the City of LaSalle are not subject to taxation for road purposes outside the city limits.

The general proposition now to be discussed may well be said to be (from the fact that all the City Charters of this State have the like provision with this LaSalle Charter) that the citizens and residents of a city are not liable to taxation by State, County or Town authority for road purposes outside of city limits, whether for State, County or town roads.

Such a proposition appears to me to be greatly at variance with the general design and machinery of our government, and so should not be sustained except by most express Statute which will admit of no other construction.

Equality of taxation is a principle of justice, and it is secured by Art. 9, Sec. 2, of the Constitution, with such exception only as is there provided, and also

by Sec. 3. Equality and uniformity of taxation in respect to persons and property are further and more fully secured by Sec. 5, throughout the limits of every taxing power from the State to the lowest municipal corporation.

The State is the first corporation, then follow the wheels within wheels, Counties, townships, School-districts, cities, towns and villages. Each of these within its limits is a taxing authority; and if there be a city within a town, how the city property should be exempt from the town-tax (although it be for road purposes) under these constitutional provisions is more than I can conceive.

Let it be said that the taxation is made equal and just by the mutual provision that the City shall take care of its streets, and the town of its roads; and so there is equality; and otherwise there would be a hardship, a double tax, imposed on cities.

But it is plain that this will not answer the requirements of the Constitution. The City is within the limits of the town, is within the jurisdiction of the town-tax-

ing power, and so the tax for the town purpose must be alike upon the town and city property.

The City government is usually special - not forced on a people - but sought for on account of some special advantages to be derived therefrom. The tax which supports it is, in all respects, or should be, additional.

The town has power to contract (Scates P. 336) There was a resolution authorizing a ~~the~~ contract for building this road, and under it a contract was made which is not complained of as unfair or unjust. Among the proper town charges are the moneys authorized to be raised by a vote of the town for any town purposes; which are to be levied on the taxable property of the town (Scates 335).

A tax levied to pay the debt arising on this contract, is just as legitimately a town charge, and to be paid by a general taxation as any other. There is no propriety in characterizing it as a tax for road purposes. It is not so entered in the books of the collector.

The Board of Auditors (Scates 333) allowed several town charges and they have gone regularly as such upon the tax books.

Shall the town pay its debts, and shall all of the property within the limits of the town be taxed for this purpose as the last part of Sec. 5. Art. 9 Cons. requires, together with township laws,?

In aid of this Construction I point to the universal practice. Our Constitution is recent, our cities multitudinous; and the universal practice has been — the framers of the Constitution taking a part — to tax city property to ~~pay town contracts~~ to pay for roads outside of cities contracted to be built by town authority.

I point also to the injustice of the defendant's proposition; for it embraces the principle of representation without taxation — a principle as unjust as its converse is. If the legislature did not intend that citizens of cities should pay they would not have permitted them to vote. The practice also is for counties to aid in the construction of costly turnpikes and bridges and tax the citizens of the County equally to pay. Shall it be said that, so far as residents of cities are concerned, such tax is illegal and the collection can be restrained,?

This question is a new one — I suggest the reason to be that it has no solid

foundation. It escaped the attention of the learned counsel in the Ottawa case cited by defendants; and I know of no other where it might so well have been raised.

Usually the power of the city is confined to its limits territorially, but may be extended beyond. In this City Charter it is extended beyond by Art. 5. Sec. 43. The interest of the citizens might well require the expenditure of money on roads outside the city limits. Under the general power to contract a city might well provide for labor on roads leading to it. Hence (as was thought best in this case) the limitation on the power of the City Art. 8. Sec. 1. Hence also (finding this very inconvenient) the amendment enlarging the City's powers in this particular. Special Laws 1853 P. 435. Observe the language of the limitation. The inhabitants are exempt from "working on any road" - evidently having reference to the working out a poll tax - and from "paying any tax to procure laborers to work" - evidently referring to the practice of commutation or supplying substitutes (See the next Sec.)

So that I infer that this is simply a ~~po~~ limitation upon the power of the City

and not a repeal of the existing general law.

Again: That the proposition of defendants is against the provisions of the township laws is admitted — but it is claimed that the township laws, in this particular, have been repealed by the City Charter —

I insist that this is not so, If the township laws were Constitutional and the City Charter provision (in instituting an inequality of taxation) is unconstitutional, as I insist it is, then of course there is no repeal.

A repeal is not to be implied in this instance. The township law is a general law and the City Charter is a special law (comparatively); and the latter should not be held to repeal the former except the statute be most express. To say that the township law is repealed, as inconsistent with the City Charter, is a begging of the question, in this — it appears that the City Charter provision is more than a mere limitation upon the legislative power of the city. So there is no express repeal, but it must first be found that the township laws are inconsistent with the City Charter.

But if there be a repeal of the township laws passed in 1851 by the City Charter passed in 1852 I insist that this provision of the City Charter has been itself repealed by township laws passed in 1854 (See Leates P. 360).

If this reasoning be good for one it is alike good for the other - alike forcible and conclusive.

The defendants, in order to be entitled to relief, should show specifically what relief they are entitled to. Mr Bull for defendants, has said that the percentage of the tax deemed illegal was discovered by reference to the Collector's Book. I know of no such thing. Reference was made by plaintiff in error to his book to show that this tax, complained of, was regarded as a tax for town purposes - and that there was a separate road tax levied on all other real estate than that in the City. The bill says complainants can't tell the proportion of the tax which is illegal, and, without further proof, this is conclusive.

Though there may be an erroneous taxation - and though there may have been a mode of relief from it, yet it is highly inequitable.

ble and unjust that complainants should have it in this way, and at this time.

This contract was ordered at the town meeting of 1859 and was made soon after. One tax was levied to meet the debt thus incurred, and paid by complainants with others. This was reported undoubtedly at the town meeting of 1860, as it was the officer's duty so to do (Scates 333) Two sessions of the Board of Auditors were afterwards held which are public and known to complainants at which this debt and these proceedings complained of were recognized.

Then the tax was extended as usual by the Board of Supervisors, which I think complainants were bound to know, and they do not complain that they did not know. The Superior Courts have a Supervisory care over these lesser tribunals and can review their proceedings on writ of Certiorari - and yet complainants delay till a period when most persons have paid their tax and till the eve of another town election before they make complaint.

Complainants should show that they voted against the contract at the town meeting of 1859, they should have sought relief from it before the Board of Auditors of August 1859 and March 1860 - at the

town meeting of April 1860 - before the Board of Auditors of August 1860 - and before the Board of Supervisors of September 1860. Failing there they should have attempted the review of their action by certiorari. And further - having waited so long, and if such delay can be deemed pardonable, they should have applied to the Board of Auditors which sat I think before this bill was filed - and I will add also to the town meeting of April 1861; on the principle that a party should exhaust his other remedies before he applies to a Court of Chancery - and then should come with clean hands and ask for that only which will be justice to him and not injustice to others.

On the suggestion of the hardship imposed on defendants by a double tax made by Mr. Bull I might well reply (having reference to the actual facts of the case) that it was a pet proposition of the merchants of LaSalle (complainants with others) to build this road across the bottom for the benefit of their trade. I submit that it ~~be~~^{is} the very grossest of wrongs, if, now that the work is accomplished, they should be allowed to repudiate their contract and either cheat the Contractors ^{and} laborers out of their pay, or throw the burden of payment

upon the few taxpayers of the town of
LaSalle resident outside the city.

I have not seen any authorities presented
or to be presented by defendants. I do
not conceive there can be any that can
enforce the general principles suggested
on behalf of plaintiff

E. S. Hollbrook
Atty of Plt. in Error

256 - 1864 19/83
Hollbrook & Co

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Treat et al.

Hollbrook's

Argument for
Plaintiff in Error

Fried May 14. 1861

LaSalle
Court

Mr. Recd. Henry Hunt
Vice to the Secretary
E. S. Hollbrook

State of Illinois } ss Third Grand Division -
Supreme Court } April Term A.D. 1861

Patrick O'Hare, Collector
of the Town of LaSalle
Plaintiff in error

vs:

Edmund B. Inat. et al.
inhabitants of the city of
LaSalle. Defs. in error

Error to Records
Court of LaSalle

Argument submitted on part of defs. in error.

May it Please your Honors.
The first question that presents itself in
this case is whether the inhabitants of
the city of LaSalle are legally liable for the
payment of taxes for the construction
of roads beyond the city limits under
the general revenue laws of the State -

It is admitted by the defendants
in error that they would be liable for
the taxes under the general revenue
laws of the State, except for a provision
in the City Charter of the city of LaSalle,
- Sec. Session Laws 1852, Art. 8 sec. 1. page
250 - which reads as follows viz:

"The inhabitants of the city of LaSalle are
"hereby exempt from working on any road
"beyond the limits of the city, and from
"paying any tax to procure laborers to work

upon the same" which they claim exempts them from the payment of the tax in question - The Bill alleging and the answer admitting that the road for the building of which this tax was levied, is beyond the limits of the city; and the merits of this case depends upon the proper construction of the above quoted section of the city charter -

On the part of the Defendants in error it is contended that this exemption clause means exactly what it says and is an absolute and unqualified exemption from the payment of every species of tax for such purposes - The Plaintiff in error contends that this clause is simply a limitation on the powers of the city council to levy taxes for that purpose - This can not be so for the city council are creators of the law chartering the city, they have no powers whatever except such as are conferred by the charter, no such power is expressly or impliedly conferred in the original charter hence this clause could not have been intended as a limitation on their power - But must have been intended as a limitation upon some other taxing power - What taxing power aside from

3-

the town or perhaps the county can under our law levy a tax for road purposes? - none - This then must have been a limitation upon the power of the town or county to tax the city for road purposes outside of the city limits - for to no other taxing power can it have reference -

In order to enable the inhabitants of said city, if they saw proper, the legislature in 1853 - see session laws 1853, pages 435 + 6 - passed an amendment to the city charter which conferred upon the city council of the city of Paducah the power of issuing bonds to the amount of \$15,000 - to levy a tax for their payment - to sell the same and apply the proceeds to the improvement of the streets of said city and of the roads leading thereto within two miles of the city limits - Aside from what appears in the records of this case I may perhaps be permitted to say, that nearly the whole amount of that loan has been taken and the money thus obtained has been expended for the purposes contemplated in said amendment to the city charter -

4-

Is it then fair, just, reasonable that, the inhabitants of said city—after taking upon themselves the burden and expense of the city government, of keeping in repair, opening and maintaining the roads and building the bridges within the city limits, and of the roads and bridges within two miles of the same,—should be liable to double taxation for those purposes as they will be if the construction is placed upon said section of the city charter sought to be placed thereon by the Plaintiff—

It is urged secondly on the part of the plaintiff in error that this exemption clause was only an exemption from poll tax for road labor &c — That this is not the true construction is manifest from its language. "The inhabitants of the city are exempt &c" and from the language Sect. 2nd Art. 9. of the Constitution viz: "The General Assembly shall provide for levying a tax by valuation, so that every person and corporation pay a tax in proportion to the value of his or her property &c" and in accordance with this constitutional provision the revenue law

5- now in force - see Scates Statute Sec. 47 + 8
page 1060 provides that "To each assess-
ment roll a warrant under the hand
of the county clerk & seal of the county
Court, shall be annexed commanding
such collector to collect from the several
persons named in the assessment
roll the several sums mentioned in the
last column of such roll opposite their
respective names" and "in all cases
the warrant shall authorize the col-
lector, in case any person named in
the assessment roll shall neglect or
refuse to pay his tax to levy the same by
distress &c" and by the 64th Sect. same
act page 1064 "The collector is required to call
upon the person taxed and demand pay-
ment of the taxes charged to him on his
property" and the 65th Sect. provides that
"if any person shall neglect or refuse to pay
the taxes imposed on him the collector
shall levy the same by distress and sale
of the goods and chattels of the person &c"
and the same idea is contained in
the 73rd Sect. - We, therefore, find the con-
stitutional provision plain and all of
the provisions of the revenue law are in
accordance therewith, that the tax is not
a tax upon the property but upon the

6- persons in proportion to the value of their property, and hence the provision of the city charter, exempting "the inhabitants of the city from paying any tax &c" applies not only to poll tax but to any and all taxes for road purposes outside of the city limits except such as are levied by the city council under the amendment to the city charter passed in 1853-

7-

The third point made by plaintiff is that the construction sought to be placed upon the city charter by the defendants would be unconstitutional as being in violation of that section requiring uniformity of taxes or with respect to persons within the jurisdiction of the tax imposing body - The first answer to the objection is, that, admitting for the sake of the argument that a tax levied upon that portion of the town of LaSalle beyond the city limits would be a violation of the constitution, it might follow that there would be no power to levy a tax upon any portion of the town for road purposes, but it would not follow as a legal, constitutional necessity - that a tax for road purposes must be levied on the city - Another answer, and a complete one, is, that quo ad the taxing power for road purposes, the city of LaSalle, is no part of the town of LaSalle, hence the tax on the town beyond the city limits would be uniform - But it is unnecessary to argue the question of the constitutionality of the construction sought to be placed upon the city charter by defendants as I think this Court has already and

8 - repeatedly settled the question in their favor. The most recent case, one which was well considered, and which according to my views is conclusively ~~will be found~~ in favor of the constitutionality of defendants construction of the city charter, is "The Illinois Cent. Rail Road Co. vs: The County of McLean et al. 17. Illinois Rep. page 291 - several Ills. decisions are referred to in that case, that are of the same import -

In the case at Bar the Legislature commuted to the inhabitants of the city of LaSalle all taxes outside of the city limits for road purposes in consideration of their taking upon themselves the burdens imposed upon them by the city charter - Such exemptions and commutations are I think chiefly in the line of the constitutional exceptions cited in the above case and the cases therein referred to -

9- The fourth point made by Plaintiff is that the construction sought for by Defendants is outrageously unjust - and counsel urged that if the city were exempt, but at the same time had the right to vote at town meetings the great American doctrine that taxation and representation must go together would be violated - If this were true and this court were sitting for the purpose of enforcing that doctrine it might perhaps set aside the whole tax, but a sufficient answer is that the tax complained of was not levied by a town meeting vote, but was audited by the town auditors and levied by the board of supervisors - It is true that the Spring of 1889 - the town meeting voted a tax amounting in all to 90 cents on the \$100. besides appropriating \$1000. already in the town treasury for the purpose of building said road, but it is equally true that that tax was collected without a murmur from the inhabitants of said city, was paid by them willingly, but when they are asked to pay this additional tax, not authorized by any town meeting whatever, levied for a purpose ~~that~~ their city charter says they shall not be

taxed for, they throw themselves back on their legal rights and say they will not pay the same - Where is the injustice? They have contracted to build the bridges and roads, lanes and alleys within their city limits, and to keep the same in repair, which is a far greater burden, in proportion, than the balance of the inhabitants of said Town are called upon to bear, for that purpose - As a compensation to the inhabitants of said city for taking upon themselves this burden, - and so that they shall not be liable to a double tax for the same purpose, the Legislature has said that they shall not be called upon to "work or pay labor a tax to procure others to work on roads outside of the city limits" The board of supervisors have levied a tax for that purpose - To the paying of that tax they object - But the inhabitants of the city have done more than take upon themselves the ~~maintenance~~ maintenance of the roads &c within their borders, they have also expended a large amount

11- of money on roads outside of the city limits within two miles of the same, (which comprises nearly the whole of the Town of Hubbard) - and now they are called upon by this tax to pay taxes for the same purposes the third time - whereas persons residing outside of the city limits have been called upon but once - If then the strict rule of law requires this tax to be collected, it is a rule that operates with great injustice, hardship and oppression upon the defendants -

The plaintiff further urges that the case does not furnish a basis to say how much of this tax is for road purposes - The amount levied for road purposes is definitely stated in the bill, the rate per cent is not exactly known to the defendants, but ~~it~~ ^{the illegal tax} was mixed in with the town tax and if it could not be separated therefrom would have rendered the whole town tax void. The ~~defendant~~ Plaintiff in his answer

refers to his collectors book from which the court below made the ~~estab~~ estimate of the exact ^{proportion} ~~amount~~ of the town tax that was levied for building roads outside of the city limits and enjoined that proportion of the tax and no more - The legal and illegal tax were so intermingled that the defendants claimed the whole ought to have been enjoined, but they find no fault with the judgement and I presume this court will say that they ^{will} presume that proportion to be correct until the Plaintiff in error shows it to be incorrect -

— In Blackwell on Tax Tithes ~~will~~ pages 192. 3+4 will be found a reference to authorities showing that the intermingling of illegal with legal taxes so that they cannot be separated renders the whole law void -

The Plaintiff urges further that the court of Chancery will not interfere to correct mere irregularities in the levy of town taxes. I do not desire to take issue with that proposition. The Defendants did not ask the court to interfere upon the ground that mere irregularities occur in the levy of the taxes. They ask the court to interfere because they claim they are by law exempt from the payment of these taxes. This court has time after time decided that a court of chancery will not interfere to correct mere irregularities in the collection of taxes and in each one of the cases they have at the same time decided that a court of chancery will interfere if a tax is levied upon persons exempt by law from the tax levied. The power to levy a tax must be derived from some positive law. The power of the town to levy a tax for road purposes is derived from the general township organization law, by that law ~~the~~ one town cannot levy a tax upon another be the same adjacent or remote.

— As far as road purposes are concerned the city of Ladell and Town of Ladell are

as much as as if the city did not lie within the town
 two distinct corporations. If for any
 portion of the State, or of the county,
 or of the town, the law concerning
 the levy of taxes for road purposes
 is repealed, no authority would then
 exist to levy such a tax and the
 inhabitants of the exempt district
 would be exempt from the tax -
 because as to them there is an utter
 want of taxing power. But in the
 case at Bar the Defendants are
 specifically exempted from the
 tax complained of - The 13 Sect. of
 the city charter declares it to be a
 public act and the 14 Sect. repeals
 all laws inconsistent with it -
 By that act the defendants claim
 that town or county were as completely
 deprived of the power of levying
 a tax on them for road purposes
 as if they lived in the county of
 Cook or McDonough - In the
 case of the Town of Ottawa et al.
 vs. Walker et al. 21st Illinois
 page 610 - Opinion by Justice Walker
 this court distinctly and clearly
 lay down the principle that is
 contended for by Defendants

15- The distinctions between those cases where the court of equity will and where not, interfere are nice, but are clearly defined and show clearly that if, the construction of the city charter contended for by defendants is correct, that then the court of Chancery will interfere to restrain this tax -

See 21st Ills. Page 610 -

- " 17 " " 291

Same exception is made in 22nd Ills. 34 as well as in all other cases in our reports on this subject

In the case in the 21st Ills. 610. the town authorities sought to levy a tax for building a bridge within the city of Ottawa, the city by charter having jurisdiction of bridges and roads within its limits - the court sustained the injunction because the town was not authorized to levy the tax. In the case at Bar the tax was levied through the machinery of the town upon the inhabitants of the city for work done on roads outside of the city limits, from which taxation they claim by law to be exempt, so far as the right of the court of Chancery to interfere are not the cases parallel?

It is no answer to say that the board of Supervisors were authorized to levy a tax, but at most have only erred in the exercise of that power. For if the construction we contend for is correct they had not the power to levy this tax at all. In the Ottawa case the town had the right to levy a tax to build bridges within the town - In the case at Bar a tax might well be levied upon the town exclusive of the city of LeBalle, to build a road, but to include the inhabitants of the city in that levy was an usurpation of power as really as if the city was not within the town; was a levy of tax without authority of law -

It seems to me that the principles enunciated in the opinion of Judge Walker in the Ottawa case, carried to their legal and unavoidable conclusion, completely and effectually settles this case in favor of the Defendants in error -

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The seventh and last point made by Plaintiff in error ought not ~~it~~ seems to me, be entitled to any weight. The counsel for the plaintiff was hardly fair in his argument. The defendants did not lie by until the last moment. Notice was served that application would be made for this injunction nearly two months before the cause was heard and it was postponed from time to time for his accommodation and after the cause application was made the judge of the court below held the matter under advisement for sometime - so that the application was made sometime previous to the date of the granting of the injunction - The court also ought to take into consideration the fact that the tax enjoined was not ~~passed~~ voted for at any town meeting, was levied from the report made by the town auditors alone - and that although it is true the inhabitants of the town might know by an examination of the records what claims were allowed, that in the ordinary course of affairs they would not be likely to examine into the matter very closely, and

probably would not have done so in this instance, if the claims audited had not been so extremely large and the tax levied so extraordinarily heavy; ~~as they were in this instance~~ but when such an onerous tax was presented to them for payment, they naturally enquired, for what is this tax levied and as soon as informed took measures to relieve themselves of a tax as unjust as burdensome - as illegal as oppressive - so that their application was made as soon as they knew their rights had been encroached upon -

The Plaintiff in error stands in no position to complain of dilatoriousness on the part of defendants if the tax was levied as we claim entirely without authority of law -

If the court will examine the statute page 360 which Holbrook of course for Plaintiffs claimed, repealed the city charter by implication they will see that such was not the intention of the legislature, but their intention was simply to repeal ~~such~~ such portion of

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The Township organization law as
was inconsistent with that act;
They certainly had no intention;
neither did they directly or indi-
rectly interfere with the chartered
rights of the city of LaSalle -

It is a well known rule of law
that equals by implication are not
favored by the courts -

E. F. Bull

Byt's atty

356-183

Patrick O'Hane
Collector re. Pff. in error

^{95.}
Edmund B. Inat-
et al. Dfts in error

Argument submitted
on part of Dfts. in
Error

Filed May 11. 1861

L. Leland
Clerk

E. H. Bull
Dfts atty