No. 14816

Supreme Court of Illinois

City of Chicago

vs.

Quimby

71641

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 60

J. W. Middleton & Co., Stationers, 190 Lake St.

60

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION — APRIL TERM, 1865.

CITY OF CHICAGO
v.
BENJ. F. QUIMBY. } *Error to Cook.*

THE question for solution may be enunciated concisely thus: "Is a member of the Chicago Board of Trade, "selling flour examined by the inspector of that Board, "but which has not been examined by the city inspector, "liable to prosecution under the municipal ordinance?"

The charter of the Board of Trade, sec. 10, authorizes that corporation to appoint inspectors of flour, etc.; and prescribes, "that the certificate of such inspector, as to "the *quality* or *quantity* of any article, shall be evidence "between buyer and seller, of the quantity, grade, or qual- "ity of the same, and shall be binding upon the members "of the corporation, or others interested, and requiring or "assenting to the employment of such inspector." Abstract, p. 13.

The city charter empowers the common council, "to "regulate, by ordinance, the inspection of flour," etc. City Charter, pp. 26, 32.

The city ordinance provides for the inspection of flour, by the city inspector, "if its inspection be *desired* by the "buyer or seller thereof." Abstract, pp. 3 and 6. And

Filed A/e 20. 1865
L Solomon Clk

prescribes a penalty of $5, for each barrel sold in violation of such ordinance. Abstract, p. 4.

Before entering upon the main argument, we submit some preliminary observations:

I. The charter of the Board of Trade constitutes their inspection the sole criterion of quality and quantity, in all cases, where inspection has been requested, as between members of the board, and others assenting to it.

II. The inspection of the Board of Trade is necessarily *exclusive*, in the cases specified by the charter. Because such inspection is expressly declared to be "binding" in those cases. And demonstrably there cannot be two "binding" rules applicable to the same cases.

III. The city charter does not assume to repeal the charter of the Board of Trade, in any particular.

IV. The city ordinance does not prescribe any compulsory inspection; but leaves the matter to be determined by the "desire" of the buyer or seller.

Hence, according to our view, there is no sort of conflict betwixt the charter of the Board of Trade and the city charter; nor betwixt the former and the city ordinance. But as the counsel for the city put a different construction, as well upon the city charter, as upon the ordinance, we will consider the subject in every possible aspect.

Main Argument.

First General Proposition. The privilege of inspection granted to the Board of Trade cannot be repealed or destroyed, even by legislative action.

PROBATORY PROPOSITIONS.

I. This right or privilege of inspection is a franchise.

2 Black Comm. pp. 37, 38.
3 Kent's Comm. pp. 458, 459.
Tyack v. *Bromley*, 4 Edw. Ch. Rep. 258.

II. A franchise is a grant. "Franchises are certain "privileges conferred by grant from government, and "vested in individuals."

3 Kent's Comm. 458.

"An estate in such a franchise, and an estate in land, "rest upon the same principles."

3 Kent's Comm. 458.

III. A grant is a contract. *Fletcher* v. *Peck*, 6 Cranch, 137. And Dartmouth College case.

IV. Even under the system of English prerogative, such a franchise could not be recalled. Broom's Maxims, 80. "The same identical franchise that has before been "granted to one, cannot be bestowed on another, for that "would prejudice the former grant."

2 Black. Comm. 37.
Islington Market Case, 3 Cl. & Fin. 513.

V. In this country, such a franchise is protected by the Federal Constitution, which inhibits the States from passing laws to impair the obligation of contracts.

"Corporate franchises," says STORY, J., "are legal es- "tates vested in the corporation itself as soon as it is "*in esse*."

Dartmouth College v. *Woodward*,, 4 Wheat. 700; 14 B. Mon. 426; 31 Miss. 699; 21 Miss. 517; 11 Iredell, 558; 34 Maine, 411; 13 Georgia, 68, 83; 25 Ill. 141.

Such is the law. The legislature could not repeal or destroy the franchise of inspection, granted by the Board of Trade. Such is the supreme law of the constitution.

The next question is, *quid facti?* Has the legislature attempted to annul this corporate franchise? We assert the contrary. But according to the construction put upon the city charter and the ordinance, by the other side, the franchise of the Board of Trade has been utterly destroyed, for two reasons.

First—The inspection of the Board of Trade, as a "binding" rule, has been rendered a natural impossibility. Because they assert the city inspection to be a "binding" rule; and, as already shown, there cannot be two "binding" rules relating to the same subject-matter.

Secondly—The evidence proves that a compulsory city inspection would wholly annihilate the value of the franchise possessed by the Board of Trade, and make even its exercise impracticable. Abstract, p. 14.

At the outset, it would superinduce an additional cost of ten cents on every barrel of flour inspected. Abstract, pp. 9, 10. No trade could bear such a burden.

But the counsel for the city contend that the oral evidence, referred to in this connection, was incompetent. Even if the objection were a valid one, the court must know, without proof, that no flour trade in a great commercial mart, could bear two inspections.

ADVERSE ARGUMENT. "That the State may grant a "franchise to others similar to the one previously con- "ferred on the Board of Trade, although the effect may be "to render the latter of no value."

The Charles River Bridge case, 11 Peters, 536.

ANSWER. The two cases are broadly contradistinguished by the following peculiarities:

1. In the Charles River Bridge case, the rival franchises were only similar. The two bridges were near each other. That was all.

But in the present case, the franchises are supposed to be the *same*, and not merely *similar*. The city claims the right to inspect the same identical barrels of flour previously inspected by the Board of Trade.

2. In the former case, it was physically possible for the two franchises to co-exist together. In this case, it is impossible, even in thought.

3. If the individual corporators of the Charles River Bridge Company had possessed the franchise of passing over their own bridge, and then the legislature had attempted to compel them to pass over the Warren Bridge also, there would be some analogy between the two cases; but as the present case stands, there is none.

Second Adverse Argument. "That the power of inspection conferred on the city, is one of police, merely; and that the ordinance is a police regulation."

Answer.

1. The legislature can not, under the pretence of exercising a police power, wholly destroy the franchise of the Board of Trade. A police regulation that impairs the obligation of a contract falls under the prohibition of the Federal Constitution, equally with a law passing under any other name. The point was expressly ruled in 28 Ill. 290: "If the requirements imposed were so onerous as to render the franchises of the body useless, it would operate as a virtual repeal of the charter, and would necessarily be in violation of their vested rights, and be inoperative and void."

II. It is a strange perversion of language to call this ordinance a "police regulation." No one is compelled to have flour inspected at all, unless he "desires" it. The only cases to which the ordinance practically applies are those where there has been a previous inspection by an expert:—the very cases where a City Inspection would be least needed, and most futile.

The only proof offered by the city that an inspection was "desired," is the fact of a prior inspection by the Board of Trade.

III. The only power of the common council, in the case, is "to regulate, by ordinance, the inspection of "flour." City Charter, pp. 26, 32.

But an ordinance is a "law" or "regulation" of a municipal corporation. Burrill's Law Dictionary.

This ordinance is not a law. It is not a general rule. It does not command, but leaves the matter to the "desire" of the individual. Hence, it is not a municipal law. 1 Black. Comm. 44.

The power to act, by ordinance is legislative only. It is the authority to adopt general rules on the subject of the power. *Boom* v. *Utica*, 2 Barb. 109.

IV. An unreasonable ordinance is void. 8 Coke, 126; *Dunham* v. *Rochester*, 5 Cowen, 465; *Buffalo* v. *Webster*, 10 Wendell, 102; *Commissioners* v. *Gas Company*, 12 Penn. St. Rep., 322; Angell on Cor. p. 409; Vandine's Case, 6 Pick. 190; *Commonwealth* v. *Worcester*, 3 Pick. 473; Angell on Cor. p. 422.

"A by-law must be reasonable, though made in pursu-"ance of an express power, or it will be void." *Kennebec R. R. Co.* v. *Kendall*, 31 Maine, 477.

But *quid facti?* Clearly this ordinance is *unreasonable* to the uttermost of human absurdity.

1. It applies only to cases where there has been a previous inspection, and omits all others.

2. It excludes all cases of flour in bags.

3. It establishes grades, which the proofs show impossible for any inspection to realize in fact.

4. According to the construction of the other side, it forbids a merchant from asking his own brother to examine his flour, if the latter be an expert.

5. It leaves every thing to the desire of the buyer or seller.

Can any court pronounce such an ordinance a "police "regulation ?"

Finally, under this head, the ordinance, according to any view, is in violation of the city charter, which prescribes $100 by way of penalty, as the extreme limit, for any one offence. City Charter, p. 36.

But the ordinance specifies the penalty of $5 for each barrel sold, which might run up the penalty of a single offence to $10,000. In this very case two hundred barrels were sold in a single transaction. Abstract p. 2.

It is not competent thus to sever a single offence, and estimate its parts by quantity instead of quality. The very point we now make, was decided in *Mayor* v. *Ordrenan*, 12 Johnson, 123, 124.

6. "If by-laws are unequal in their operation, they "will be void." *Boston* v. *Shaw*, 1 Metcalf, 130, 135.

Mayor of Hudson v. *Thorne*, 7 Paige, 263. "As by-"laws must be reasonable, the common council can not "make an ordinance, permitting one person to carry on a "dangerous business, and prohibit another who has an "equal right from pursuing the same business."

See also, *Mayor of Columbia* v. *Beasley*, 1 Humphrey, 241; *Mayor of Memphis* v. *Winfield*, 8 Humphrey, 707, 709.

But this ordinance is stained with the most flagrant inequality. It is a blow aimed at the Board of Trade alone; the blow of a poisoned dagger aimed by a hand concealed.

Second General Proposition.

If a compulsory power of inspection has been conferred on the city, by its charter, (which may well be doubted) it can not have been intended to embrace cases where a previous inspection had been made by the Board of Trade, within the scope of their franchise.

"A repeal by implication is not inferred, unless in a "case of irreconcilable inconsistency between two stat- "utes." Sedgwick's Stat. and Const. Law, 127; *Ottowa* v. *Lasalle*, 12 Ill., 340, 341.

But in the present case, both statutes may well stand together; and thus the power of the city would extend to all cases, save the limited class included in the franchise of the Board of Trade. Just as the jurisdiction of the civil courts embraces in terms all matters of controversy; yet would not authorize a new litigation in a contest already determined by arbitration according to the charter of the Board of Trade.

"If a statute and ordinance can both stand together, "there is no repeal." 3 E. D. Smith, 156, 164.

In *Mayor* v. *Nicholls*, 4 Hill, 209, an ordinance, relating to pressed hay, was held void, because a statute had authorized a sale with the mark of the owners.

Third General Proposition.

The ordinance is void in other particulars, as transcending the powers of the charter.

I. It compels the owner of the flour to pay a fee, upon inspection. But the charter contains no semblance of authority to impose such a tax.

"The burden is upon the corporation to show the power "to levy such a tax." *Mayor* v. *Hartridge*, 8 Georgia, 23, 28.

II. The ordinance empowers the city inspector to take part of the flour inspected under the name of a "sample." "But the charter gives no such authority. And private "property can never be taken without an express grant" of power to that effect, from the State. *Sharp* v. *Spier*, 4 Hill, 81; *Beatty* v. *Knowles*, 4 Peters, 169.

"Property can only be taken in one of two modes: by "taxation, or by eminent domain." *People* v. *Mayor of Brooklyn*, 4 Comstock, 422.

Fourth General Proposition.

The ordinance is void for uncertainty.

I. It says, that flour shall be inspected, "if *desired* by "the buyer or seller."

But who will ascertain the secrets of "desire?"

II. The term "inspection" is defined in the ordinance, to be "any examination" by an expert. Abstract p. 6.

Therefore, in one view, any examination by an expert satisfies the requirement of the ordinance. And yet a penalty is imposed where no violation would be possible.

Or, perhaps, the ordinance means, that if inspection be desired, it shall be made by an expert. But the whole matter is, in the highest degree, uncertain.

Fifth General Proposition.

A fair construction of the ordinance might show it not to be inconsistent with the franchise of the Board of Trade. The only intelligible sense of the language is: "That flour is to be inspected by the city inspector, if such "inspection be *desired* by the buyer or seller."

Finally, such an ordinance, unequal, unreasonable, and oppressive, as it is, should receive no favor at the hands of any court. The entire system of inspection by municipal authorities is a barbarous interference with the freedom of commerce; and has been everywhere repudiated by enlightened legislation. 17 New York Rep., 147, 148. The mercantile community do not desire any inspection by the appointees of political factions. They have no confidence in such inspections or inspectors. And the proof shows that to sustain this prosecution, would have the effect of striking down the flour trade of Chicago. Besides, the ordinance and prosecution evince the workings of spite towards the Board of Trade. The suit itself is for a penalty alleged to have been incurred by a transaction between two members of the Board of Trade, a sale and purchase, on their own inspection. And we submit respectfully, but with the utmost confidence, that the court should not only affirm the judgment, but might also well rebuke so harsh a prosecution.

A. W. ARRINGTON,
For Defendants in Error.

A further Brief in writing is also filed. Sept. 24. 1865.

The City of Chicago }
v. } Error to the Superior Ct. of Chicago.
Benj. F. Quimby. }

2d. Brief for deft.

A two-fold aim characterizes the prosecution in this case. First. To extract from an important branch of the commerce of Chicago, undeserved patronage to an official appointee. Secondly. To strike down a cherished franchise of the Board of Trade, the best friend of that commerce.

Such was the object of the Ordinance of Aug. 24, 1863, (p. 3 of the abstract) by which ordinance, flour-dealers were threatened with destructive penalties, unless they should procure an inspection by "The City Flour Inspector," whenever inspection should be desired by buyer or seller. Yet, with all its severity, that Ordinance accomplished nothing, but left the officer with a barren title, unheeded by the selected victims. Hence, the Ordinance of Nov. 9, 1863, was promulged, to give this favorite the perquisites of inspection, as often as either buyer or seller should desire "any examination, by an expert, or other person, of flour, by sample or otherwise, in order to ascertain the quality thereof." (§ 1; p. 6 of the abstract.)

The former Ordinance was to give the officer the exclusive right of inspection, and the latter one was to extend

the meaning of that term, so as to make it embrace every examination of flour, to ascertain its quality. - Thus, rivalry was to be banished; and the sample-system, so much preferred by the members of the Board of Trade, was to be uprooted, and replaced by the system indicated by these Ordinances, or transferred to the City official, exclusively.

That officer, as prosecuting witness, testified, that "The City inspection being compulsory, and [that of] the Board of Trade voluntary, the eventual result would be, unless the Board paid their Inspector themselves, the parties would no longer require the Board of Trade Inspection." (P. 40 of Record; p. 15 of abstract.)

Now, such strangling is without legal sanction, whether from instantaneous fiat, under the Ordinances, or by the slower process of the officer's action.

The grant to the Board of Trade was made Feb. 18, 1859. (P. 14 of Private Laws of 1849.) It was subtracted from or carved out of the power given to the City, by act of Feb. 14, 1851, (p. 146 of Priv. Laws 1851, clauses 41 & 43), re-enacted in 1863 in reducing the City Charter into one act. (See the title of this latter act.)

In reducing the City Charter into a single act, the embodying therein of a Statute previously existing could not have the effect to repeal any of the pro-

visions in the Board of Trade Charter.

The State Legislature has expressed no dissatisfaction with its grant to the Board of Trade; and, Can the City do so? Or, more properly, Has the City Inspector such superiority?

Shall the veil called police-power thus dignify him? — He is not a police officer. The object of the inspection indicated is to facilitate trade, and not to detect or punish malefactors, or law breakers; and this object, in the view of the General Assembly, may be promoted equally as well under the direction of the Board of Trade as under the supervision of the Common Council.

As a court will be astute to defeat injustice, it cannot be swift to sanction it.

The technical objections of counsel are without merit.

The judge had a right to hear all the testimony, for his information as to the rules of trade & commerce; & if any of it was incompetent, he is to be presumed to have discarded that part, in his final deliberations. — Yet, if not so, the prosecutor cannot complain, for he made no case.

The discretion of the judge, as to the order in which he chose to hear speeches, is not to be assigned as error. — In ruling on the subject, he considered the fact that

the deft. stipulated the facts represented by the prosecutor.

Public interest is not to be subserved by disturbing the judgment of the Circuit Court. On the contrary, such disturbance would be a serious public-injury; but this the Counsel of the defendant have not suffered themselves to contemplate as possible. It is to be added, that this is a private prosecution, in which we see nothing of the City of Chicago except its name.

Thomas Dent,
for deft. in error.

Apl. 21., 1865.

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City of Chicago

vs.

Benj. F. Quimby.

2d. Brief for deft.

Filed Apl. 24. 1865.

Skeland

Clk.

In Supreme Court of Illinois

April Term 1885

City of Chicago

v.

Benjamin F. Quinby

Reply of Counsel for Plff. in Error

Some remarks of Mr. Dent for Defts. in Error require notice

This case is being prosecuted wholly on behalf of the City of Chicago

Private interests have nothing to do with the prosecution of this case in particular

whatever to do with it. - The present City Flour Inspector is, I am informed, the Board of Trade flour inspector, but it was deemed of importance that the question whether or not the City has the power it claims, should be definitively determined. -

Among the errors assigned is that the Court erred in awarding the opening and closing the case to the Defendant

Mr. Dent has made suggestions on this point and in answering them I remedy the defect if any existed in my printed argument

which is silent upon it –

It is insisted that defendant was entitled to open and close because he admitted the Plaintiff's case on the trial –

I am unable to perceive how a stipulation as to facts changes the burden of proof – It is not an admission of the Plaintiff's case but only of the evidence by which it is sustained

It has been directly held that even where the defendant admits the Plff's case, the Plff. is still entitled to open & close

Page v Osgood, 2 Gray (Mass.) 260

In contemplation of law the Plaintiff always has this right

Benham v Rowe, 2 Cal, 387, sup. 408

And in these & other cases the decision of the Court below was held open to review –

= = = =

In the Private Laws of 1851, page 132, will be found an act to reduce the law incorporating the City of Chicago

Chapter IV on p. 14 treats of the powers & of the Common Council and by Section 4 provides that that body shall have "power within the jurisdiction of the City, by ordinance"
"Forty first (p. 146) "to regulate the inspection of flour, meal, pork &c, &c,
"Forty Third To appoint inspectors, weighers, gaugers, and regulate their duties and prescribe their fees"

This act was eight years anterior to the passage of the act to incorporate the Board of Trade and the powers therein and thereby granted have been continued in the Common Council to this date and are now possessed by that body

The Forty first and Forty Third divisions under the 8th Section of Chapter IV of the act of 1863 revising & the Charter of Chicago contain precisely the same powers in the same words

Private Laws of 1863, page 69

Upon the principles & authorities stated in my printed brief it appears the Common Council had full & complete power over

the subject of inspection since 1851 -

— — —

Certain "preliminary propositions" are enunciated by Judge Livingston

The 1st one declares that right of inspection to be a "franchise"

If this be not correct then the four other dependent propositions fall to the ground

I deny that this right of inspection is a franchise because (a) it is a political power and may be revoked at any time (b) it is not susceptible of being made property of (c) the State can not divest itself of a power essential to civil society (d) the right of inspection is granted to the Board of Trade as an endowment of existence simply -

— — —

In the preparation of my printed brief I was obliged to answer defts.'s argument as made below & hence I may rehearse the same remarks here by reason of the different arrangement in this Court of the defts points

If the right of inspection be a franchise it is not wholly destroyed by the requirements of this ordinance

It seems to me that the reasons assigned for such argument by the Counsel for Defendant in Error are insufficient

It is true the Board of Trade Charter provides that their inspection shall be a binding rule as between those who agree to it ~~and~~ but it is ~~argued~~ argued that there can not be two binding rules &

The City inspection is compulsory when inspection is desired - The Board of Trade inspection is voluntary - The inspection of the City would be evidence though there is no provision in the ordinance like that in the Charter of the Board of Trade but I do not perceive why if the parties choose to agree that the one inspection shall be the rule rather than the other, they must not be bound by it -

But Counsel assigns as the second ~~reason~~ & conclusive ground one which the Court will perceive that the enforcement of the City ordinance destroys the Board of Trade inspection, that it wholly annihilates the value of the latter by increasing the expense

The evidence admitted to sustain this proposition was entirely incompetent as much so as to attempt to prove that people are more likely to travel over a free ~~bridge~~ than a toll bridge.

But the evidence taken together establishes that if Board of Trade would pay their own inspector there would be no additional expense -

See page 15 abstract

Counsel insists that the city "franchise" (?) & the Board of Trade "franchise" (?) are the same because they operate on the same barrel of flour -

Syllogistically thus:

1. "A" & "B." build bridges over the Charles River
2. But the Charles River is the Charles River
3. Therefore A's bridge is B's bridge -

But waiving the further discussion of these points, the position of the City of Chicago is unassailable, That this ordinance is a police regulation, passed by the City in the legitimate exercise of its police power and the Board of Trade in all its operations is subject to such police laws as may

from time to time be enacted for the protection and safety of citizens and the general health, convenience and good order —

O. & Miss. R.R. Co. v McClelland
25 Ill. 140

G. & C. U. R.R. Co v Appleby, 28 Ill. 289

To break the force of this argument which the Counsel for Defts. feels to be overwhelming it is said that in case in 28 Ill. Ego decides that if the requirements imposed by a police regulation are "so onerous as to render the franchises of the body useless" the regulation would be void —

This is not the language of the Court — Judge Walker says if the requirements are to "unreasonable" a very different word from "onerous"

We have seen from the ordinance itself & the evidence that there is no difficulty whatever in "answering" the requirements of the ordinance

If Counsel denies that the ordinance is a police regulation

Because no one is compelled to have flours inspected & all rules

he "desires" it -

The object of the law is to act upon the subject of inspection - It is not to compel parties to have inspection but when they have it to procure that of the city -

In this case the proof that inspection was "desired" is not confined to the fact of a prior inspection - On the contrary it appeared in evidence that the buyer (Steward) requested inspection and the seller requested the Board of Trade inspection which was thereafter had -

III - But Counsel says the ordinance is not a law - "It does not command" he says, "but leaves the matter to the 'desire' of the individual"

This is absurd - The ordinance leaves the individual to determine whether he wishes inspection but if he does, he is then commanded to take the city inspection -

See page 10 printed brief

IV - An unreasonable ordinance is void

As per Judge Arrington
On pages 11, 12 & 13 of printed brief

of Plaintiff in Error will be found complete answers to everything urged under this head -

I particularly call the attention of the Court to what I have said on page 12 of my printed argument in answer to the position that the ordinance is void because in violation of the City Charter which confines penalties to $100 -

The case of the Mayor &c v Ordenaar, 12 Johns. 122, is relied on but fails to sustain the point -

That was a case where $3000 in penalties were attempted to be recovered - In the case at bar Lumley is prosecuted for selling twenty barrels without the city inspection when inspection was desired by the buyer, Mr. Stewart - The amount of bonds is fixed upon that the full penalty prescribed by the charter ($100) may be inflicted - Lumley sold 200 barrels in fact - We admit he can not be further punished for this violation of law - The cause of action can not be split -

This case, attempted to be done in 12 Johnson is very properly decided against by the Court -

The Court will perceive a marked difference between the two cases & the two ordinances - The object of the Chicago ordinance was to fix the measure of punishment not exceeding $100 and not leave it discretionary with the Police Justice -

This objection can not be raised in this case - As is said in Slotter v New York, 14 Wend 87

"Whether the penalty is too high, is certainly not a question for this Court - When the Plaintiffs below attempt to recover for a great number of penalties in one count, then the case of The Mayor &c v Ordronaux, 12 Johns. R, 122 will be an authority in point"

The objection that the ordinance is void for inequality is met and answered on page 13 of my printed brief -

Defts
The Second General proposition is considered on page 9 of printed brief

Defendants third General proposition is discussed at the bottom of page 13 of printed brief

I. The payment of a fee is not a tax
Slocum v N. York, 14 Howard. 87; Goddard, Petitioner, 16 Pick. 504; Boston v Schaefer, 9 Pick. 418

II. The taking of the sample of flour is no taking of private property without consent - If the ordinance compelled inspection instead of designating how it shall be had, the question might be a different one

Defts. fourth General proposition that the ordinance is void for uncertainty is untenable

1. Persons desiring inspection are supposed to know their own minds under the law -
If they wish to violate the law, ways will be devised to penetrate the "secrets of desire"
2 I. See ~~Night~~ Nightingale, Petitioner, 11 Pick. 168

Defendants fifth general proposition would make the ordinance no law at all and is an ingenious mode of asserting that it is not a law because optional An examination of the ~~law~~ ordinance will disclose that it is open to no such absurd construction - It is compulsory on the subject -

The entire argument of Defendants Counsel is an admirable restatement of long exploded positions assumed in opposition to the enforcement of police regulations
The "tune" is a familiar one and if there be any difference in the sound in the present instance it results simply from the superior manner of its execution and the greater brilliancy of the variations -

The reversal of this judgment by the decision of this Court in support of the validity of the ordinance, so far from "striking down" the flower trade of

Chicago will go far to place it upon the best sewer foundations -

Through the reputation which flour which has undergone the city inspection, will obtain, the name of Chicago will become more widely and favorably known and her citizens will find themselves protected in the purchase of the "staff of life" by the official brand of an officer sworn to do his duty, responsible to the city authorities and made circumspect by heavy bonds required against dereliction of duty -

W. W. Fuller
Of Counsel for the
City of Chicago

Supreme Court 60 121

City of Chicago

vs

Benjamin Schmidt

Reply of Counsel
for the Plff. in Error

Filed Sept. 26. 1868
L. Leland
Clk.

City of Chicago,
plff. in error,
v.
Benj. H. Lumsby,
deft. in error.

} Error to Cook.

Supreme Court of Ill.,
Apl. Term 1864, at Ottawa.

It is stipulated that this cause may be docketed at this term, but is not to be heard at this term except upon agreement of counsel.

Ottawa, Apl. 29th, 1864.

Francis Adams &
Melville W Fuller for
Plaintiff in error—
Arrington & Dent,
attys. for deft. in error.

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City of Chicago
v.
Benj. F. Quinby.

Stipulation as
to filing record.

Filed Feb. 30. 1864.
Leland
Clk.

Chicago Times Print, No. 74 Randolph Street.

SUPREME COURT OF ILLINOIS.

City of Chicago,
Plaintiff in Error.

vs.

Benjamin F. Quimby,
Defendant in Error.

Error to Cook.

Points for Plaintiff in Error.

This case must be discussed upon the defence made, which presents three positions, either of which, if well taken, defeats a recovery.

First. That the ordinance in question is unconstitutional and void: because within the inhibition of Sec. 10, Art. 1, U. S. Const., unless—

Second. The members of the Board of Trade and all who place themselves within the corporate jurisdiction of that body, are held to be exempt from its operation, which it is contended they should be in any event.

Third. That the ordinance is *per se* unreasonable, invalid and void.

Of these in their order—

First. That the ordinance is unconstitutional.

I. The ordinance is a police regulation, enacted by the Common Council in a legitimate exercise of power.

1. It is a police regulation.

(a) "Police" is defined to be "the government of a city or town; the administration of the laws and regulations of a city or incorporated town or borough; the internal regulation and government of a Kingdom or State."

The police powers of a State are stated by Chief Justice TANEY (License Cases 5, How. 583) to be "nothing more nor less than the powers of government inherent in every sovereignty to the extent of its dominions."

~~PASSENGER CASES.~~

Woodbury J., Passenger Cases, 7 Howard 523.
4 Blk. Com. Ch. 13.

(b.) Inspection laws belong to the governmental powers in question.

Marshall, C. J., Gibbons *vs.* Ogden, 9 Wheaton 1.
Barber, J., City of N. Y. *vs.* Milne, 11 Peters 141.
And see cases cited ~~*infra*~~ Supra.

2. What power has the Common Council of Chicago in regard to the inspection of flour? Since 1856 at least, and by the City Charter of 1863, p. 32, secs. 41 and 43, the Common Council is expressly granted power.

(a.) To regulate the inspection of flour.

(b.) To appoint inspectors, regulate their duties and prescribe their fees.

(a.) The power "to regulate" is the power to prescribe the rule by which the subject matter is governed.

Marshall, C. J., 9 Wheaton 196.

The regulation of a subject indicates and designates the entire result.

Gibbons vs. Ogden, 9 Wheat. p 209.

New York vs. Milne, 11 Peters 158.

Therefore the "embargo" was sustained.

1 Kent Com. 432.

Under same circumstances power to regulate is power to suppress.

Buff. & Niag. R. R. Co. vs. Buffalo, 5 Hill 211.

See also Cincinnati vs. Bryson, 15 Ohio 644.

Buckingham's case 10 Ohio 261.

(b.) The power to appoint inspectors necessarily implies the power to *compel* their employment.

Stokes vs. N. Y., 14 Wendell 87.

The Common Council has and has had for years exclusive control over the inspection of flour.

3. An ordinance of this character being passed by the Common Council, is to be regarded as if enacted by the legislature.

Coates vs. Mayor, &c., 7 Cowen 585; Presbyterian Church vs. New York, 5 Cow. 538; 5 Abbott's Pr. R. 422; 4 Wheaton 652.

This Ordinance is therefore a police regulation, ordained by the Common Council in the competent exercise of a power covering the whole subject of controversy, legitimately belonging to that body and expressly granted, and that it is the same and so to be regarded, as if enacted by the Legislature.

It is submitted that as this Court will pronounce no act of the Legislature unconstitutional, unless the repugnancy between it and the fundamental law is clear and beyond doubt, this ordinance can not be held void for that reason.

II. If the provision in the Board of Trade Charter is *per se* a franchise, yet similar franchises may be granted, and

private property, a public corporation may stand on the same footing as a *private* corporation because *quoad hoc* it is such.

Angell and Ames on Corp. sec. 33 and cases cited.

It is not perceived why a private corporation so far as it is vested with the administration of *public* powers should not be considered a *public* corporation.

City of Paterson vs. Society for Establishing Useful Man., 4 Zabriskie 399.

The Court distinctly decides this point and puts it on the ground that "in dealing with Chartered rights regard is always had rather to the *character* of the *rights granted* than to the *nature* of the corporation."

(a) The power in this case is a political one, and as such *revocable* inasmuch as the Board of Trade is *quoad hoc* a public corporation.

(*b.*) The contracts designed to be protected by the 10th Section, Art. 1st, Fed. Constitution, are contracts by which *perfect rights, certain definite, fixed, private rights of property* are *vested.*

Daniells, J. Butler vs. Pennsylvania, 10 How., 402.

"Salaries may be reduced; offices having no definite tenure, though filled, may be abolished; faculties may *be withdrawn;* the inducements to invest capital be impaired and defeated by the varying legislation of a State, without impairing constitutional obligations."

Campbell, J.; State Bank of Ohio *v.* Knoop, 16 How., 408, citing 8 How. 163; 1020, 395; 324, 534; 8 Peters, 88; 2 Sanford, S. C. R., 355.

The right of inspection cannot be made property of. Ingenuity might as well insist on a vested right to do wrong.

(*c.*) The State cannot divest itself of a power essential to civil society. Such powers cannot be made the subject of contract.

O. & M. R. R. Co. *v.* McClellan, 25 Ill., 140.

Bank of Republic *v.* Co. of Hamilton, 21 Ill., 59.
2 Parsons, Con't, 538, and cases.

If it be objected that the power to make canals, roads, turnpikes, &c., may be made the subject of contract, and why not powers of the character under discussion? It may be answered—

1. That roads, canals, &c, are matters of public convenience and of a kind of limited necessity, while the protection of the morals, good health and order of the community is essential to the intellectual *moral being and actual safety* of the individual in his intercourse with his kind.

2. That Railroads, &c., admit of property interests therein, and all "contracts" are predicated upon *property* or some object of value.

3. The State may even destroy its grants of this character upon making compensation where the injury is *direct*, for if *consequential* it is *damnum absque injuria*. (4 Blkst., chap. 13.) And it would necessarily be *damnum absque injuria* if this Board of Trade Right were of this class of grants, and invaded as contended.

(d) A franchise is "a special privilege conferred by government on individuals, and which does not belong to the citizens generally by common right."

Angell and A. on Corp., Introduction.

It is certainly a natural right *per se* to ask a person to examine and declare the quality and weight of a barrel of flour. When therefore it is granted to a corporation, it is simply as an endowment of existence. A person, "spoke into existence" by human laws as a corporation is, has no attributes but those imparted by its creator; hence to impart this natural right it must be expressed in the Charter, but it is to be exercised in the same subordination to governmental control as the natural man would exercise it. No opposite intention can be supposed and none is shown.

Bank of Rep. vs. Co. of Hamilton, 21 Illinois 59.

The right in question being held in subordination to governmental control, may be revoked if necessary in the exercise of such power of government.

Essentially revocable, it is not impairing the obligation of a contract to revoke it and *afortiori* not, to subject it to the exercise of the police power.

This permission to the Board of Trade to exercise the right of inspection is after all nothing more nor less than a license uncoupled with an interest, gratuitously granted for the mere convenience of the grantee, and as such revocable at any time.

IV. But whether the right of inspection be a franchise or not, the Board of Trade in all its operations and particularly in this, is subject to such police laws as the General Assembly may from time to time enact for the protection and safety of citizens and the general convenience and good order.

Such laws may incidentally impair the value of franchises or of rights held under contracts, but they are passed *diverso intuitu* and are not within the constitutional inhibition.

Peirce on Am. R. R. Law p. 40, and see notes on p. 41.

Thorpe vs. R. & B. R. R. Co., 1 Williams [Vt.] 140.

Hence it has always been held that the clause of the Federal Constitution in question does not limit or affect the power of the State to enact general police regulations for the public order, health and morals.

2 Parsons on Cont., p. 538.

Baker vs. Boston, 12 Pick, 194.

Vanderbilt vs. Adams, 7 Cowen 349.

Coats vs. Mayor &c., 7 Cowen 385.

Presbyterian Church vs. City of New York, 5 Cowen 538.

Thorpe vs. Rutland & B. R. R., 1 Williams [Vt.] 140, 152

It is said, however, that such regulations are void if their requirements are such as to render the franchises of the corporation useless, and 28 Ill. 290 Gal. & Chi. R. R. vs. Appleby, is cited.

And defendant insists that such is the case here, because the City ordinance inflicts a penalty for doing so on those

who take the Board of Trade inspection, and because no trade can stand two inspections:

(a.) The City ordinance does not inflict a penalty for having the Board of Trade inspection. If a person takes the inspection it shows he desires inspection. It is proof of the violation of the ordinance if he does not get the City inspection also, and that is all. There is nothing to prevent taking the Board of Trade inspection as well as that of the city.

A Railroad Company is answerable for not ringing a bell. If the train had no bell on it, it would be pretty good proof that none was rung. In case of conviction is the company punished for not having a bell?

(b.) Flour dealers cannot stand two inspections, it is said, and upon this point much of defendant's evidence was introduced against plaintiff's objections. If this evidence were admissible, and establishes anything, it is that the expense of two inspections could not be borne, but—

[1.] The Board of Trade inspection is voluntary. The effect, if carried to the extent claimed, would be, not to destroy a right but simply to prevent persons who otherwise might prefer the Board of Trade inspection from getting it.

Persons preferred crossing Warren street bridge but went over Charleston bridge, because the latter was a free bridge.

[2.] If the expense is the operative cause of the assumed destruction of the Board of Trade inspection, let them pay their inspector a salary insted of fees and drawings.

Are the requirements of this ordinance so "unanswerable" to use the words of Judge WALKER, 28 Ill., 290, that to comply destroys the franchises of the Board of Trade? And it is only the destruction of essential (Judge WALKER) or indispensable (Judge REDFIELD) franchises that can in any event be considered within the constitutional inhibition. The Board of Trade would exist in the enjoyment of all its essential functions if it had no right of inspection at all.

The evidence was plainly inadmissable.

If the law be as presented here, it is for the Court to pass upon the ordinance and Board of Trade Charter, and

determine whether or not this alleged franchise can be considered destroyed.

It is objected that the ordinances should have named the Board of Trade inspection if designed to operate thereon.

We answer, why do not all general laws enumerate the corporations to which their provisions may apply?

Second. It is contended that the ordiannce is void unless the members of the Board of Trade and all who place themselves within the corporate jurisdiction of that body, are held to be exempt from its operation, which it is claimed they should be in any event.

We have already seen that the Board of Trade cannot claim a special exemption from the operation of general laws.

The second branch of the proposition is, however, that the members of the Board of Trade and others ought to be held exempt from the operation of the ordinance in any event, and the reason given is, that the ordinance should not be so construed as to apply to the right of inspection of the Board of Trade since that would virtually take it away, and Statutes ought to be so construed as to stand together, if possible.

But this rule works the other way—

Defendant proves that the whole flour trade passes through the Board of Trade, yet he insists that it should be applied to inspection outside of their jurisdiction. That is to say, "all the world" being exempt, the ordinance should be brought to bear upon the "rest of mankind." This is the destruction not of the Board of Trade but of the Police power of a great city. - *Mutato nomine de te fabula narratur.*

The City inspection is compulsory, but the Board of Trade inspection can also be had; [and without expense if the corporation will pay the expense from its own funds.] The two stand together and can be administered together, and it is only on this reasoning that both can stand.

Third. That the ordinance is *per se* unreasonable, invalid and void.

Statutes are to be so construed as to have a reasonable effect agreeably to the intent of the Legislature, and Courts must give them such interpretation as may appear best calculated to effectuate the design of their passage. And this applies to penal as well as remedial statutes. It is also well settled that penal laws passed for beneficial public purposes, are to be construed liberally.—1 Blk., Com., 88. Again, the necessity or expediency of the law rests with the body which enacts it, and its decision is conclusive.

Coates vs. Mayor, &c.; 7 Cowen, 588.

And a by-law or ordinance enacted under authority from the Legislature, and conformably thereto, has the same force as though enacted by the Legislature.

4 Wheat., 652; 7 Cow., 588; 5 Abbott's Pr., 522.

Brick Presbyterian Church case, 5 Cow., 538.

Let us examine the objections to this ordinance in the light of these principles.

First Objection.—It is not a law or regulation because optional.

Answer.—The design of the ordinance was to operate on the subject of inspection, hence whenever inspection is desired, it must be had by the City Inspector.

Law is a rule of conduct. So is this ordinance whenever the exigency arises for its application.

Law commands. So does this ordinance in the specified case.

Second Objection.—The ordinance is unreasonable.

This is a question for the Court to determine, and all the evidence admitted below against plaintiff's objection should have been excluded.

Worcester's case 3 Pick. 473; Comyn's Dig.

Tit. By Law B. 1; 8 Coke 126 [b].

City of Peoria vs. Calhoun 29 Illinois.

Respublica vs. Caldwell, 1 Dallas 150.

Paxon vs. Sweet, 1 Green (N. J.) 196.

What are reasonable and valid by-laws?

Com. Dig. Tit, By-Law, B 1, B 3.

But counsel argued below that this ordinance was unreasonable, because,

1. It was never enforced except when inspection had been had.

Answer. (a.) Inspection had or inspection requested, are either of them proof of inspection desired. Hence, evidence of a violation of the ordinance if city inspection be not obtained, and that is all.

(b.) Even if it were true, it is perfectly competent to pass an ordinance, directly requiring every person getting Board of Trade inspection, to get city inspection, and this would not be unreasonable.

2. Because it does not apply to flour in bags.

Answer. (a.) The Common Council has a right to pass an ordinance to apply to barrels only, if it chooses.

(b.) But this ordinance does apply to flour in bags.

3. Because grades impossible to be carried out.

Answer. (a.) Grades are established for a standard, and that is all. It is possible to carry out ordinance according to the grades therein established. Evidence was introduced on both sides of this question and might have been indulged in *ad infinitum.* [b.] The ordinance provides for inspection by sample, and as members of Board of Trade always inspect by sample this is a complete answer. [c.] Defendant's flour was sold by sample.

4. Because ordinance prohibits a man from asking his own brother to examine his flour.

Answer.—[a.] Would such an interpretation effectuate the intention of the Common Council?

[b.] It is not so. To ask a man's opinion about flour for one's own satisfaction is one thing. To trade and traffic on such opinion, and claim it as an official sanction is another.

5. Because City Inspectors can only inspect by sample, so as to ascertain quality under this ordinance.

Answer.—[a.] Quality is the chief element to be determined in regard to health. [b.] But a fair construction covers inspection as to quantity as well as quality.

6. Because ordinance makes no discrimination between home and foreign consumption.

Answer.—[a.] On fair construction it applies primarily to home consumption. [b.] But the city has a right to direct inspection, when desired, as well to prepare for a foreign market as this. Chicago has a right to be known in the markets of the world. [c.] By-Laws may be good in part though bad in part. Rogers vs. Jones, 1 Wendell; Rex vs. Feversham, 8 T. R., 352. [d.] Presumption here that flour was for home consumption.

7. Because it measures the offence by its quantity and not its quality.

City Charter of 1863, p. 36, provides that violations of ordinances can be punished by penalties not exceeding $100.

Defendant insists that the quantity sold constitutes the offence, and if 200 barrels be sold, the jurisdiction is exceeded.

Answer. [a.] The offence is for the sale of each and every barrel. Cases cited by defendant do not run on all fours with this in this important particular. [b.] The provisions of the City Charter are as much parts of the ordinance as if named therein. It is as if it read, "$5 for each and every barrel sold up to the limit of $100." The object was to fix the fine beforehand, so that the measure of punishment might be known beforehand and not left at all discretionary with the justice. The Charter limitation operates to prevent going beyond $100, and that is all.

Suppose penalty five cents per barrel, and 3,000 barrels sold. No conviction could be had on Counsel's hypothesis. Suppose $100 be the penalty for selling, and only one barrel sold, this would be entirely disproportionate to the offence. Suppose that the ordinance read, that for every sale the party should be fined not less than $5, nor more than $100, this would leave it discretionary with the justice to inflict a fine of $100 for selling a single barrel, or $5 for the sale of 2000. The construction of defendant's counsel would determine that the Charter operates not as a limitation but as a prescription of how offences should be punished.

The point in the decisions in 12 Johnston, and other cases is, that the cause of action cannot be split. One conviction is a bar to the other prosecutions. This we admit, but we

deny that a single case can be found justifying the Court in interpreting this ordinance to mean that the Common Council intended to exceed $100, and therefore ordinance is void.

See Stokes vs. New York, 14 Wendell, 87.

Ordinance

Third Objection.—The ~~evidence~~ is void, because unequal.

Answer. In what does the inequality consist? Counsel says, in that the ordinance operates only on Board of Trade. Why? Because they do the flour business.

The ordinance is a general law and takes hold of the subject matter on which it is intended to operate, as fast and as far as presented.

If a general law affecting powder houses be passed, it is valid, though there be but one or none in the State.

Thorpe vs. R. R. Co.; 1 Williams, [Vt.] 152.

Redfield on Railways; Tit. Constitutional Questions.

Goddard, Petitioner, &c., 16 Pick., 504.

Some other objections were urged in the Court below, in another case, which are noticed out of abundant caution.

1. That ordinance was void for uncertainty.

Answered by Nightingale, Petr., 11 Pick. 168.

2. Void as in restraint of trade.

Petitioner

Answered by Vandine, ~~Peters~~, 6 Pick., 187; Comyn's Dig. "By-Law," B. 3; 11 Pick. 168; City Davenport vs. Kelly, 7 Clark, Iowa, 102; In argu., 15 Ohio, 625; Cincinnati vs. Bryson.

3. Void because compels payment of fee, and is taxation.

Answer. (a) Charter gives power to fix Inspectors' "fees," page 32; [b.] This is not a tax. 16 Pick., 504; Boston vs. Schaffer, 9 Pick., 418; 10 Ohio, 257; 15 Ohio, 525; 14 Wend., 89.

[c.] If anybody desires inspection, he reaps a benefit in contemplation of law, for which he should pay.

J. M. Waller

J. Counsel

60

Supreme Court Ills

City of Chicago

vs

R. F. Quinby

Suits for Plff. in error

Filed Oct 22. 1864

D. L. Leonard Clk.

M. W. Fuller

of Counsel for Plff in error.

THE CHICAGO TIMES PRINT, 74 RANDOLPH STREET.

SUPREME COURT OF ILLINOIS.

APRIL TERM, A. D. 1864.

CITY OF CHICAGO,
PLAINTIFF IN ERROR,
vs.
BENJ. F. QUIMBY,
DEFENDANT IN ERROR.
} *Error to Cook.*

ABSTRACT OF RECORD.

This was an action of debt commenced in the Police Court, by the city of Chicago, against Benjamin F. Quimby, doing business under the name of B. F. Quimby & Co., for a violation of the ordinances of the city hereinafter set forth. The penalty claimed in the process is "not exceeding one hundred dollars," and upon the trial of the cause in the court below judgment was entered for a fine of one hundred dollars and costs of suit, from which the defendant prosecuted his appeal to the Circuit Court of Cook county.

March 19th, 1864, jury waived and cause submitted to court for trial by agreement, argued and taken under advisement.

April 20th, 1864, court finds issues for defendant, to which plaintiff excepts and moves the court to set aside said finding and grant a new trial, which motion the court overrules and enters judgment upon the finding in favor of the defendant, and against plaintiff, for costs. To which decisions and rulings of the court in overruling said motion and entering judgment upon the finding the plaintiff duly excepts.

BILL OF EXCEPTIONS.

The plaintiff, to maintain and prove the issues on its part, offered and read in evidence without objection the following stipulation, signed by the counsel of the respective parties, namely:

"The following state of facts may be considered as proved in the above entitled cause:

1st. That the defendant, on the 24th day of November, A. D. 1863, in the city of Chicago aforesaid, sold to Dugald Stewart, of said city, two hundred barrels of flour marked 'Eclectic Mills.'

That, on the exhibition of a sample of the flour by defendant to said Dugald Stewart, and before the bargain for the flour was struck, said Stewart requested that the flour should be inspected. Whereupon said defendant requested to have it inspected by the Inspector of the Board of Trade of said city, who had been duly qualified by giving bonds as required by the rules of the Board; which was agreed upon, and that thereafter, and before delivering the flour, the defendant caused the flour to be inspected by the Inspector of the said Board of Trade, (before then duly appointed under the charter of said Board), and procured his certificate, and that on the presentation of such certificate to said Stewart, he, said Stewart, paid the defendant for the flour and one-half the inspection fees, taking defendant's receipted bill for the price thereof, with such certificate of inspection, and the flour, two hundred barrels as aforesaid, was thereupon delivered to said Stewart by the defendant, viz.: on the 24th day of November, A. D. 1863, at said city.

And that said defendant and said Stewart at the several times aforesaid, were members of said Board of Trade; that at the several times aforesaid the City Flour Inspector was one Stephen H. Dales, who had been duly qualified and was acting as such, and that said flour was not inspected by said City Flour

Inspector, or any assistant of his at any time, nor was he nor any of his assistants requested to inspect the same.

Either party shall be at liberty to introduce such further evidence as may be competent.

The city ordinances of August 24th, 1863, and November 9th, 1863, are to be received in evidence without further authentication, and without the necessity of proving the publication
11 of the same, which is admitted, and they are admitted to be the only ordinances in force concerning the inspection of flour."

The plaintiff also offered in evidence, in connection with the stipulation aforesaid, the City Ordinances of August 24th and November 9th, 1863, mentioned therein, which were received and read in evidence without objection, and are as follows:

ORDINANCE OF AUG. 24th, 1863.

11 AN ORDINANCE CONCERNING THE INSPECTION OF FLOUR.

Be it ordained by the Common Council of the City of Chicago:

SEC. 1. That the Mayor, by and with the advice and consent of the Common Council, shall biennially appoint an Inspector of Flour for the city of Chicago, who shall be known as "The City Flour Inspector."

SEC. 2. Said Inspector may appoint and remove at pleasure one or more Deputy Inspectors, who shall have the right to brand all barrels or bags of flour inspected by any or either of them in the name of the said Inspector, and the said Inspector shall have
1[illegible] the right to take bond with sufficient penalty and security necessary to himself from each of said Deputies, and of the same tenor as the bond hereinafter required to be executed by the said Inspector, and the said Inspector may sue on the bond of any or either of his said Deputies to recover any damages that he may have suffered by reason of the misfeasance or malfeasance of any or either of them while acting in the capacity of such Deputy Flour Inspector.

SEC. 3. It shall be the duty of every person or business firm bringing flour to this market, and every person or business firm receiving flour on consignment, or in any way dealing in flour at wholesale or retail, before selling said flour, if its inspection be desired by the buyer or seller thereof, to procure the same

to be inspected by the said City Flour Inspector or his Deputy, and such person, business firm or dealer shall have the same properly arranged so as to be accessible for such inspection. Every person, business firm or dealer in flour violating any of the provisions of this section shall be fined in the sum of five dollars for each and every barrel so sold without such inspection; provided, it shall not be deemed necessary to inspect flour in bags, except by mutual agreement of buyer and seller, and any flour
13 taken from bags for the purpose of inspection shall be replaced, when inspected, with the exception that the said Inspector may take, not to exceed eight ounces of flour as a sample of any one lot of not less than twenty bags.

SEC. 4. The Inspector shall provide and keep an office in some convenient place in the city of Chicago, which shall be kept open from 7 A.M. to 6 P.M. every day, Sundays excepted, and in which the said Inspector shall at all times have some person during his absence to receive orders, and, on due application, either himself or his Deputy shall proceed with as little delay as possible to any point within said city, where the inspection of flour is required, and inspect the same.

SEC. 5. It shall be the duty of the said Inspector to procure sealed weights and scales, and weigh or cause to be weighed, so much of each lot or number of barrels of flour offered for inspection, as shall be sufficient to satisfy the said Inspector of the whole lot or number of barrels offered and so inspected by him, or by any or either of his deputies, and shall see whether each barrel
14 contains 196 ponnds of flour, and he shall brand or cause to be branded on the head of each and every barrel of flour so inspected and weighed, by plainly and distinctly marking in some indellible manner upon the head of the barrel the quantity and grade of the flour contained therein, together with his name, and the month and year the same was inspected.

SEC. 6. The following grades of flour are hereby established, and the inspection of the same shall conform to, and each barrel inspected shall be branded in accordance with the following standard, to wit:

First Grade—All flour which is sound, made from select winter wheat, free from impurities, properly milled and thoroughly cleaned in every respect, shall be denominated *XXtra*.

Second—All flour which is sound, made from select spring wheat, and such sound flour as may be made from winter wheat which may approach, but not being equal in quality to *XXtra*,

the same having been thoroughly cleaned and prepared in every respect, shall be denominated *Xtra.*

Third—All sound flour which is not equal in color or quality to *Extra*, shall be denominated *Extra Superfine.*

Fourth—All sound flour not equal in color or quality to *Extra*
15 *Superfine*, but free from bran, shorts, or other refuse, shall be denominated *Superfine.*

All the above grades of flour shall be put up in good, tight, well coopered barrels, and all flour inferior to *Superfine* shall be rejected.

SEC. 7. The said Inspector shall be liable for all damages that may occur to any person, for want of a just and faithful inspection of such flour as may be by him inspected, or inspected by any or either of his Deputies, and any person thus damaged may have right of suit in all courts having jurisdiction of the same, provided said flour shall not be exposed to inclement or damp weather or stored in damp places after such inspection shall have been made, without making void any claims for damages against said Inspector.

SEC. 8. The said Inspector shall be entitled to two cents for inspecting each barrel and bag of flour when no other price shall be agreed upon, and shall be entitled to take from each barrel not to exceed four ounces of flour as a sample of the same.

SEC. 9. Neither the said Inspector nor any or either of his Deputies shall be allowed to buy or sell or deal directly or indirectly in flour, or act as the agent or agents of any person or
16 persons for the purchase or sale of flour, while he or they or any of them holds the office of Flour Inspector or Deputy Flour Inspector.

SEC. 10. The said Inspector shall keep a record of all flour inspected by him and his Deputies, and shall report in writing to the Common Council on the 1st Monday in May in each year the number of barrels and bags of flour of each grade so inspected, and such other information with regard to the inspection of flour as the Common Council may by order or resolution require.

SEC. 11. An Inspector or Deputy Inspector willfully violating, refusing, or failing to comply with any of the provisions of this ordinance, so far as they are made incumbent upon any or either of them, shall for every such offence be subject to a fine of not less than five nor more than one hundred dollars, and shall also be subject to immediate removal from office.

SEC. 12. Any Inspector appointed under this ordinance shall, before entering upon the duties of said office, give bond, with two or more good and sufficient sureties, to be approved by the Common Council, in the penal sum of five thousand dollars, payable to the city, and conditioned that he will well and faithfully perform the duties of said office, and satisfy all damages that may legally accrue against him as City Flour Inspector under this ordinance; and he shall also take an oath of office.

SEC. 13. All fines and penalties recognized by this ordinance may be prosecuted and collected before any court having jurisdiction of the same.

SEC. 14. This ordinance shall take effect from and after its passage and publication.

ORDINANCE OF NOVEMBER 9th, 1863.

17 AN ORDINANCE TO AMEND AN ORDINANCE ENTITLED "AN ORDINANCE CONCERNING THE INSPECTION OF FLOUR," PASSED AUGUST 24, 1863.

Be it ordained by the Common Council of the City of Chicago:

SECTION 1. It shall be the duty of every person or business firm bringing flour to this market, and every person or business firm receiving flour on consignment, or in any way dealing in flour, at wholesale or retail, before selling said flour, if its inspec-
18 tion be desired by the buyer or seller thereof, to procure the same to be inspected by the said City Flour Inspector or his deputy, and such person, business firm, or dealer shall have the same properly arranged so as to be accessible to such inspection; and the term inspection, as employed in this ordinance and the ordinance to which this is an amendment, shall be held to embrace any examination by an expert or other person of flour by sample or otherwise in order to ascertain the quality thereof. Every person, business firm, or dealer in flour violating any of the provisions of this section shall be fined in the sum of five dollars for each and every barrel so sold without such inspection. *Provided*, it shall not be deemed necessary to inspect flour in bags, except by mutual agreement of buyer and seller, and any flour taken from bags for the purpose of inspection shall be replaced when inspected, with the exception that the said inspector may take not to exceed eight ounces of flour as a sample of any one lot of not less than twenty bags.

SEC. 2. The following grades of flour are hereby established,

and the inspection of the same shall conform to, and each barrel inspected shall be branded in accordance with, the following standard, to wit:

First Grade—All flour which is sound, made from select winter wheat, free from impurities, properly milled, and thoroughly cleaned in every respect, shall be denominated Double Extra.

Second—All flour which is sound, made from select spring wheat, and such sound flour as may be made from winter wheat which may approach but not equal in quality Double Extra, the same having been thoroughly cleaned and prepared in every respect, shall be denominated Extra.

Third—All sound flour which is not equal in color or quality to Extra shall be denominated Extra Superfine.

Fourth—All sound flour not equal in color or quality to Extra Superfine, but free from bran, shorts or other refuse, shall be denominated Superfine. All the above grades of flour shall be put up good, in tight, well coopered barrels. All flour inferior to Superfine shall be rejected. Provided that nothing in this section or in sections five and six of the ordinance to which this is an amendment shall apply to flour bought and sold by sample. But it shall be the duty of such Inspector to brand each barrel so bought and sold by sample with the word "Inspected," together with his name and the month and year the same was inspected.

SEC. 3. Sections numbered 3, 5 and 6 of the ordinance passed August 24th, 1863, aforesaid, so far as the same are inconsistent with this ordinance, are hereby repealed.

SEC. 4. This ordinance shall take effect and be in force from and after its passage.

The plaintiff then called as a witness Stephen H. Dales, who being sworn testified:

I am the City Flour Inspector. I was for nearly two years Flour Inspector for the Board of Trade until April 1863. I received the appointment of City Flour Inspector during the past season. I was appointed and confirmed at the Common Council meeting two weeks after August 24th, 1863, and presented my bonds two weeks after that, being four weeks after August 24th, which were approved the said evening. I then entered upon the discharge of my duties, that is four weeks after August 24th, and have been ready and willing to inspect all flour when inspection of was desired ever since. I was ready and willing on the 24th day November, '63, to inspect the flour in question here, or any other.

Immediately after I entered upon the discharge of my duties, I had notices struck off and circulated to the effect that I was prepared to inspect under the ordinance. I had one hundred struck off, most of which were distributed to the Board of Trade. I also informed the members of the Board on 'Change. I was on 'Change frequently. I am a member of the Board of Trade.

The plaintiff here rested its case.

The defendant then offered in evidence the following stipulation, signed by the counsel of the respective parties, namely:

22 "It is hereby stipulated and agreed, that the following is a correct statement of the oral testimony given on behalf of the defendant in the case of *City of Chicago*, vs. *Benjamin Adams & John Q. Adams* in the Superior Court of Chicago, and that said testimony may be treated as if given in evidence in this case subject to the objection thereto, and every part thereof on the ground of incompetency and irrelevancy made by the plaintiff in the trial of the aforesaid case against Benjamin Adams and John Q. Adams and renewed in this case.

John F. Beaty. Am Secretary Board of Trade. Have been since February 1, 1863. 1176 members of the Board. Don't know how many deal in flour. The 1176 are the registered members. The initiation fee is $5 00, and the annual assessment $10. We have tables in the hall of exchange for the exhibition of samples. The privilege to make selection of tables is sold to the highest bidder once a year. There is in addition a rental of $5 per year for a square of the tables, each table is divided into four squares.

CROSS EXAMINATION.

Board has a flour inspector. He has two cents per barrel for inspection, and is entitled to the flour from his drawings. The
23 drawings are about 3 oz. per barrel. The Board receives nothing for inspection. The universal custom is to take the drawings so far as I know.

RE-DIRECT.

Barrels for last year passing through hands of Board of Trade 1,120,000. The inspection fees at 2 cents per barrel would be $22,400, and the drawings, allowing 1 barrel for 900 inspected, taking the flour at $4 75 per barrel, would be $5,856, making in all $28,256. The costs of inspection to the Inspector would be about $8,000, leaving net profit $20,256. This calculation is based

upon the premises that all the flour passing through Board of Trade is inspected.

RE-CROSS EXAMINATION.

I think about one-half is inspected. Can't say how long the Board has had an Inspector.

Wm. H. Low. Commission Merchant since 1857. Deal in flour in the city. Sell for at least twenty mills. Don't know how many barrels per annum. Am a member of Board of Trade. They have rules of inspection. (Rules were shown witness). These are the rules. Am acquainted with these rules. Have
24 read the city ordinance. If carried out strictly the ordinance would make additional expense of cartage, cooperage and storage. In some cases little or no additional expense; in some cases 10 cents per barrel additional. It would depend very much upon the season of the year. About $\frac{2}{3}$ of the flour would be subject to the additional expense of 10 cents per barrel. Don't understand how ordinance as to grades could be carried out usefully. Some inspectors might be able to tell from grade as established what wheat was used. It is difficult to tell the difference between Spring and Winter Wheat. If flour was subject to second inspection the effect would be to destroy the value of Board of Trade inspection. If party desiring inspection was compelled, after Board of Trade inspection, to have a second inspection, it would have the effect to increase expense of handling flour. If it increased the expense 10 cents per barrel would direct the trade largely to other markets. Flour is generally sold by the Board by sample. Inspector decides whether flour corresponds with sample. The purchase is made by inspection of sample. The Inspector of Board of Trade gets 2 cents per barrel, and drawage. That is what the drawer with which he in-
25 spects contains. I do not say it is impossible for inspection to grade in accordance with provisions of ordinance. He would be likely to commit many errors. Under any system of grading this would be likely. We give the sample to the inspector, he inspects the sample, then gives certificate that the barrels correspond with sample. The certificate goes with the flour. He mentions the brand of the barrels. He puts on his own inspection brand. This is done under rules of Board of Trade. If purchaser is not pleased with flour sold in retail trade, it is the custom to allow its return. The inspection here allows us to settle all our difference here, without recourse to other markets, keeps inspection under the eyes of dealers, and in their own hands. Inspection by sample is a very reliable one. In many cases the benefit of Board of Trade inspection would justify

taking that inspection, even though city inspection must also take place. In many cases if inspection were had by grade under the ordinances, sellers might go to the expense of inspecting by sample. Flour is dealt in at such a trifling profit, that dealers are cautious in going to any additional expense. 10 cents per barrel
26 is very near a profit on flour. It would be a very great annoyance to submit to two inspections. Parties frequently make their freight contracts, and then purchase at board to be delivered same day. *Most of our sales are by sample. Members of the Board do most of the flour trade of Chicago.*

J. W. Sykes. Produce and commission merchant. Been in business nearly four years. Am member of Board of Trade. Acquainted with ordinances; also Board regulations. I am a purchaser of flour. The increased expense of inspection would come out of seller; not me. Can't tell cost of inspection by city. The inspection by Board is not any particular advantage to me except at time of purchase. I buy a great deal of flour without inspection: First—I buy much I do not wish inspected; second—Have guarantees in many cases which I prefer to inspection. I judge that about *half* the flour that comes here is inspected. We prefer inspection under our own control. The rules put in evidence were adopted some time last summer.

27 *John H. Mott.* Seller of flour. Have been seven years. Am member of Board. Am acquainted with ordinance and Board of Trade rules. By inspection under ordinance if necessary to make flour accessible, depending upon depot to which it is bonded, increased expense for drayage must be three to five per cent.; storage, five to six cents; cooperage, about one cent, and small item of insurance in some cases. It would be impossible in some cases to make it accessible at the depots. In a majority of cases the expense would be additional. Have read grades in ordinance. Don't think any buyer or seller could fix any value upon description of grades in ordinance. Could not tell from description of grades, the quality of flour. An expert could determine on very high grades of winter wheat flour that it is such—in all except in high grades. They would be likely to mistake majority medium and low grades for high grades. Inspection insures seller against reclamation. Is a guaranty to the buyer. Ordinance would decrease receipts and sales. Buyer would not stand two inspections. I think the seller would not.

CROSS EXAMINATION.

Flour cannot be inspected by Board of Trade Inspector if not accessible. Most of the dealers use Board of Trade inspection.

28 RE-DIRECT.

Retail consumers purchase in barrels except when they purchase from city mills. Most retailers purchase in barrels and put it up in bags when selling in smaller quantities. Sell in cotton or paper bags. Retailers sell about half in bags.

J. F. Beatty RECALLED. 26th May, 1863, the regulations in force were made. The two at the bottom were made prior to that date.

J. D. Cole, Jr. Retail dealers sell about two-thirds of what flour they sell in bags. I am a manufacturer of flour.

CROSS EXAMINED.

My business has always been more or less in selling by retail. Retail dealers buy of me generally in barrels. I guarantee, which is better than inspection.

The rules and regulations of the Board of Trade above mentioned were then offered and received in evidence, subject to the objection aforesaid, and are as follows:

CLASSIFICATION OF FLOUR

AND RULES OF INSPECTION ADOPTED BY THE BOARD OF TRADE OF THE CITY OF CHICAGO.

1st.—SOUND. To be strictly sound, free from any and every defect or fault causing either smell or taste.

2d.—WEEDY. Flour made from wheat that has come in contact with a noxious weed, imparting an unpleasant smell, which it is supposed will cook out.

3d.—UNSOUND. All flour not "sound" or "weedy," whether the unsoundness is derived from the condition of the wheat, or has originated in the flour. The Inspectors are required to note on their certificate the character of the unsoundness, such as *musty*, *hard sour*, *soft sour*, or *slightly unsound*; the latter explanation of the unsoundness being intended to indicate that the flour will probably work sound for immediate use, and is but slightly depreciated in value.

All flour that inspects "sound" and full weight, shall be branded, and none other; and it shall be the duty of the Inspectors, when working to a sample, to state on their certificate the

number of barrels above or below the sample, and have a sample or samples of the same, which the parties may examine; also to state on their certificate, when the flour is "unsound" or "weedy," the number of barrels of each description, and also, when practicable, the number of barrels that are so stained or out of condition as to depreciate the market value of the flour. The Inspectors shall satisfy themselves in regard to the weights, and in case they deem it necessary to strip some of the flour, they shall be entitled to twenty-five cents for each barrel so stripped (if it proves to be short weight) in addition to the regular fee of two cents per barrel for inspecting and branding. The charge for stripping shall be paid by the seller. No certificate shall be issued for a part of a lot of flour inspected, without the consent of both the buyer and seller. The inspectors shall only be liable to damage for any discrepancy between the flour for which a certificate is issued and the sample which they retain of the flour so inspected, unless the buyer hands them the sample to inspect by.

RULES FOR THE ADJUSTMENT OF SHORT WEIGHT OF FLOUR, IN THE ABSENCE OF ANY SPECIAL UNDERSTANDING BETWEEN BUYERS AND SELLERS.

1st.—Flour shall be sold on the basis of one hundred and ninety-six pounds to the barrel.

2d.—In case of short weight, the buyer shall be allowed for such shortage at the rate he pays, and three-fourths of a cent per pound on same for freight, and, in addition, five cents per barrel for the expense of re-filling.

CHICAGO, 1863.

21 Which said stipulation was received and read in evidence, subject to the objection of the plaintiff thereto, that the evidence therein contained (including said Board of Trade rules) was incompetent and irrelevant.

31 The defendant then offered in evidence the Charter of the Board of Trade. To the admission whereof the plaintiff then and there objected on the ground that the same was incompetent, and the court overruled the objection and admitted said charter in evidence, and the plaintiff then and there duly excepted (*abstract p.* 36).

32 Section 1 creates the corporation; sections 2, 3, 4 and 5 relate to rules and regulations, and election and appointment of officers; sections 6, 7 and 8 treat of expulsion of members, com-

35 mittees, arbitration, &c.; section 9, of requiring bonds, &c; section 10 is as follows:

"Said corporation shall have power to appoint one or more persons as they see fit, to examine, weigh, measure, gauge or inspect flour, grain, provisions, liquors, lumber, or any other article of produce or traffic, commonly dealt in by the members of said corporation, and the certificate of such person or inspector as to the quality or quantity of such article, or their brand or mark upon it, or upon any package containing such article, shall be evidence between buyer and seller, of the quantity, grade or quality of the same, and shall be binding upon the members of said corporation, or others interested, and requiring or assisting in the employment of such weighers, measurers, gaugers, or inspectors; nothing herein contained, however, shall compel the employment, by any one, of any such appointee."

Section 11 provides for the imposition and collecting of fines.

36 Section 12 denies power or authority to do or carry on any business, except such as is usual in the management of Boards of Trade.

The defendant then called as a witness *W. H. Low*, who being duly sworn testified: I have reflected as to effect of the city ordinance on the inspection of the Board of Trade since I testified in the Adams case.

The plaintiff here objected to the witness giving his opinion as to the effect aforesaid, but the court decided to receive said
37 testimony subject to the objection, and the witness proceeded: I think it would destroy it. The board would not exercise its inspection if city ordinance were enforced. Flour could not bear the expense of two inspections.

Cross Examination waived.

Ledden Davis. I have reflected on the subject, and examined the ordinance since I testified in the other suit. I have been a flour inspector. Was so for several years, and have been in the flour and milling business for twenty-five years. I don't understand the city ordinance. Should not know how to do my duty under it. I believe a reinspection of the same flour would destroy both inspections. My reason is this: By courtesy inspectors may pass flour one pound light. Suppose flour comes here three quarters of a pound light. Then Board of Trade Inspector inspects and takes out quarter of a pound. Then City

Inspector inspects and takes out quarter of a pound, and the flour would be unmerchantable.

CROSS EXAMINATION waived.

38 *Robert Mc Chesney.* Have been in flour business here for six years. I think there could be but one inspection. If city inspection compulsory, Board of Trade inspection would have to be abolished.

CROSS EXAMINATION waived.

J. W. Sykes. I agree with Mr. McChesney. The city inspection would seriously *embarrass* the Board of Trade inspection *at first*, and finally result in killing it. I consider it impossible to inspect according to the grades established by the city ordinance.

CROSS EXAMINATION waived.

J. H. Mott. City inspection would undoubtedly destroy Board of Trade inspection.

CROSS EXAMINATION waived.

John Creighton. I am Inspector of the Board of Trade. Been in flour business for nearly fifteen years. I have examined the city ordinance. I don't think inspection following the city grades could be had.

CROSS EXAMINATION waived.

39 The defendant here rested its case.

All the foregoing evidence was received by the court subject to the plaintiff's objection thereto that the same was incompetent.

The plaintiff by its counsel then moved to exclude all of the testimony set forth in said stipulation No. 2, and all of the foregoing testimony on the ground that so much thereof as was introduced to show that the ordinance was unreasonable, was incompetent because the unreasonableness of the ordinance was matter of law for the court, and so much of said testimony as was introduced to show that the Board of Trade inspection would be destroyed by the city inspection was incompetent because that was a question of law for the court. The witnesses only stated their conclusions, and the result indicated was only indirectly occasioned, if at all. But the court overruled the motion. To which

decision and ruling of the court the plaintiff by its counsel then and there excepted. The plaintiff then recalled

40 *S. H. Dales.* Flour can be inspected according to the grades established by the city ordinance. The object of the grades is to enable purchasers to know that the flour they buy is no poorer than the grades. The object of the grades is to get at a standard. I went and got wheat ground as it is described in the ordinance, and kept sample as standard, and then inspected in accordance with standard.

The inspection may be, however, *by sample simply*, under the ordinance of November 9th. Flour passing through the Board of Trade is usually inspected by sample. Inspection under the city ordinances may be either by grade or sample. So far as inspection by *sample* is concerned, the expense under the city ordinances and under the Board of Trade charter is the same. Flour has to be accessible in both cases. *If the Board of Trade defrayed the cost of their own inspection, it could be carried out easily with the city inspection.* It could be carried out even if they did not, though of course at the expense to the parties of two inspections. The city inspection being compulsory and the
41 Board of Trade voluntary, the eventual result would be, unless the Board paid their inspector themselves, the parties would no longer require the Board of Trade inspection.

This was all the evidence in the case.

The defendant thereupon insisted that he was entitled to the opening and closing of the argument, and the plaintiff insisted that that right belonged to it; but the court decided that the opening and closing belonged to the defendant, and the defendant by his counsel accordingly opened and closed the argument upon the law and the facts. To which decision and ruling of the court in deciding that the right to open and close the argument of said cause belonged to the defendant, and in awarding the same accordingly, the plaintiff by its counsel then and there duly excepted.

41 Issues found for defendant and plaintiff moves for new trial on the following grounds, namely:

42 1. Said finding is against the law.

2. Said finding is against the evidence.

3. The court erred in the admission of testimony on behalf of the defendant.

4. The court erred in permitting the defendant to open and close said cause.

5. The finding should have been for the plaintiff and against the defendant.

43 Motion overruled and exception.

45 Clerk's certificate.

ERRORS ASSIGNED.

1. That the finding of the court below was against the law.

2. That said finding was against the evidence.

3. That the court erred in admitting incompetent evidence in behalf of defendant in error.

4. That the court erred in overruling the motion of plaintiff in error to exclude the evidence offered on behalf of the defendant in error.

5. That the court erred in awarding the opening and closing of said cause to the defendant in error.

6. That the court erred in overruling the motion of plaintiff in error for a setting aside the finding and a new trial.

7. That the judgment is for the defendant in error and against the plaintiff in error, whereas it should have been in favor of the plaintiff in error and against the defendant in error.

FRANCIS ADAMS,
City Attorney,
AND MELVILLE W. FULLER,
} *Attorneys for Plaintiff in Error.*

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City of Chicago
vs
Benj. F. Quimby

Abstract

Filed May 13. 1861
S. Strong Clk

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable E S Williams Judge of the Seventh Judicial Circuit of the State of Illinois, and sole presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the Second Monday, (being the Eleventh day) of April in the year of our Lord One Thousand Eight Hundred and sixty four, and of the Independence of the said United States the Eighty Eighth

Present, Honorable E S Williams Judge of the 7th Judicial Circuit of the State of Illinois.

Joseph Knox States Attorney.

10 S 16 Ammond Sheriff of Cook County.

Attest, Wm J Church Clerk.

Be it remembered that heretofore to wit: on the 15th day of September in the year 1863 there was filed in the Office of the Clerk of the Court aforesaid Certain papers, to wit: a Summons a Transcript and an Appeal Bond, respectively in the words and figures following, to wit:

Justice Summons

State of Illinois } ss.
County of Cook } Police Court.

The People of the State of Illinois to any Constable of Said County: Greeting: You are hereby Commanded to Summon Benjamin F Lumby Gringbusiness in the name of B F Lumby & Company

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to appear before me at my Office, in said City, on the 14th day of December 1863 at 2 O'Clock P.M. to answer the Complaint of the City of Chicago, on a plea of debt, for a failure to pay said City a certain demand not Exceeding one hundred dollars, for a violation of an ordinance of said City Entitled an Ordinance Concerning the inspection of Flour passed August 24 1863. and also the Amendment to said Ordinance passed Nov. 9th 1863. Entitled an Ordinance Concerning the inspection of Flour passed August 24th. 1863. to wit: for a violation of Section One of said Amended ordinance, & thereof make due returns as the law directs, Given under my hand and Seal this Eighth day of December A D 1863.

C W Dowell Seal
Justice of the Peace

Endorsed as follows.
Returned Served by Reading to the within named Defendant this 10th day of December A D 1863.
Service 20¢
Chas Barrett
Constable.

Transcript.
City of Chicago } Debt for Penalty, for a violation
vs } of Section one of an Amended or-
Benjamin F Lumby } dinance Concerning the inspection

2

of Hour passed August 24th 1863. Demand $100—

December 8th 1863 On Oath and Complaint of Stephan H Dales Summons issued to Constable Barrett returnable December 14th 1863 Returned Served by reading to the within named defendant December 10th 1863, December 14th 1863 Cause Called for trial.— Defendant Called three times. and did not appear, and after hearing the Evidence, Judgment rendered for Plaintiff for Debt and Costs of Suit

Fine, $100.00—
Costs 1.00

Bond filed for appeal to Circuit Court.

5 Cents Revenue Stamp

State of Illinois
Cook County } ss.

I do hereby Certify that the transcript and the papers herewith transmitted to said Court, Contain a full and perfect Statement of all the proceedings before me.—

Wm Connell Seal
Justice of the Peace

Bond.

Know all men by these presents That we Benjamin F Lainby and Eli Desmore

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of the County of Cook in the State of Illinois, are held and firmly bound unto the City of Chicago in the penal Sum of Two Hundred Dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves, our heirs. Executors and administrators jointly, severally and firmly by these presents. Witness our hands and Seals this 14th day of December A.D. 1863. The Condition of the above Obligation is Such, That whereas the said City of Chicago, did on the 14th day of December A.D. 1863 before E.W. Dowell a Justice of the Peace for the said County of Cook recover a judgment against the above bounden Benjamin F. Quimby for the Sum of One hundred Dollars from which judgment the said Benjamin F. Quimby has taken appeal to the Circuit Court of the County of Cook aforesaid and State of Illinois. Now if the said Benjamin F. Quimby shall prosecute his appeal with effect and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal, then the above Obligation to be void; otherwise to remain in full force and effect.

Approved by me at my office this 14th day of Dec 1863. E.W. Dowell Justice of the Peace

Benjamin F. Quimby (Seal)
E.W. Dowell (Seal)

And thereupon, to wit: on the day of the date of the filing of the papers last aforesaid there was issued out of said Clerks office a Peoples writ of Summons directed to the Sheriff of Cook County to Execute, in the words and figures following, to wit:

State of Illinois }
Cook County } ss.

The people of the State of Illinois. To the Sheriff of said County Greeting: We Command you, That you Summon The City of Chicago if he shall be found in your County personally to be and appear before the Circuit Court of Cook County on the first day of the next term thereof, to be holden at the Court House in Chicago in said County on the first Monday of January next, to answer unto Benjamin F Quimby on an Appeal from the Judgment of Charles McDonnell Esquire a Justice of the Peace within said County. And have you then and there this writ, with an endorsement thereon, in what manner you shall have Executed the same.

Witness William L Church, Clerk of our said Court, and the Seal thereof at Chicago aforesaid, this 15th day of December A.D. 1863.

Seal

Wm L Church Clerk.

And afterwards, to wit: on the 2nd day of January A.D. 1864 the said Summons was returned by said Sheriff into the Court aforesaid endorsed as follows, to wit:

Served the within writ by reading and delivering a Copy thereof to E. Sherman Mayor and J. Hayes Comptroller, this 2nd day of January A.D. 1864.

D. J. Hammond Sheriff
By J. Fisher Dep'ty.

Fees. $2.20

And afterwards to wit: on the 19th day of March A.D. 1864. to wit: at the February Term of the Court aforesaid the following proceedings were had in said Cause and entered of Record, to wit:

City of Chicago
vs.
Benjamin F. Quimby } Appeal.

This day Comes the said Plaintiff by Francis Adams its Attorney and the said Defendant by Arrington & Dent his Attorney also Comes and by Oral Consent of said parties now here given in Open Court said Cause is submitted to the Court for trial upon the issues joined therein and the intervention of a Jury waived and the Court after hearing the Evidence & Arguments of Counsel as well on the part of the plaintiff

as of the Defendant, and not being sufficiently advised in the premises takes said Cause under advisement.

And afterwards, to wit: at the April Term of said Court, towit: on the 20th day of April in the year aforesaid, the following proceedings among others were had in said Cause and entered of Record, to wit:

City of Chicago
vs. } Appeal.
Benjamin F Quimby

This day again come the said parties by their Attorneys, and the Court having had said Cause under advisement, and being now fully advised of and Concerning the premises doth find the issues for the Defendant, to which decision of the Court that Plaintiff by its Counsel now here Excepts and moves the Court to set aside said finding and grant a new trial herein, which motion the Court upon due Consideration thereof doth overrule, to which ruling of the Court the Plaintiff Excepts,

Whereupon it is Considered by the Court that said Defendant do have and recover of the said Plaintiff his Costs and Charges by him about his defense in this behalf Expended, and have Exe-

therefor.

And afterwards, towit: on the 26th day of April 1864 said plaintiff by its Attorney filed in said Court in said Cause a certain bill of Exceptions in the words and figures following, towit:

In Circuit Court of Cook County.

State of Illinois } ss.
Cook County } March 1st, 1864.

City of Chicago
vs.
Benjamin F Quimby

Be it Remembered that on this 18th day of March A.D. 1864. the same being one of the days of the February Term A.D. 1864. of said Court. this Cause coming on to be tried. and a Jury having been waived and the Cause Submitted to the Court for trial. the plaintiff to maintain and prove the issues on its part offered in Evidence a Stipulation on file in said Cause, marked No. 1. in the words and figures following. towit:

Stipulation No. 1.

The City of Chicago
vs. } Appeal by defts.

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Benjamin F Quimby

Circuit Court of
Cook County.

The following State of facts may be considered as proved in the above entitled Cause.

1st That the defendant on the 24th day of November A. D 1863. in the City of Chicago aforesaid sold to Dugald Stewart of said City two hundred barrels of flour marked "Eclectic Mills".

That on the Exhibition of a Sample of the flour by the defendant to said Dugald Stewart, and before the bargain for the flour was struck, said Stewart requested that the flour should be inspected, whereupon said defendant requested to have it inspected by the Inspector of the Board of Trade of said City, who had been duly qualified by giving bond as required by the rules of the Board which was agreed upon, and that thereafter, and before delivering the flour, the defendant caused the flour to be inspected by the Inspector of the said board of trade (before then duly appointed under the Charter of said board) and procured his Certificate, and that on presentation of such Certificate to said

10)

Stewarth, he said Stewarth paid the defen=dant for the flour, and one half the inspection fees, taking defendants receipt bill for the price thereof, with such certificate of inspection, and the flour, two hundred barrels as aforesaid — was thereupon delivered to said Stewart by the defendant viz: on the 24th day of November AD 1863 at said City —

And that said defendant and said Stewart at the Several times aforesaid, were members of said Board of Trade. That at the Several times aforesaid the City Flour Inspector was one Stephen H Dales who had been duly qualified and was acting as such, and that said flour was not in=spected by said City flour Inspector, or any assistant of his at any time, nor was he nor any of his assistants requested to inspect the Same.

Either party shall be at liberty to introduce such further Evidence as may be Competent.

The City ordinances of August 24th 1863. and November 7th 1863. are to be received in Evidence without further Authentication, & without the necessity of proving the publica=tion of the Same which is admitted and they are admitted to be the only ordinances

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in force Concerning the inspection of flour

H. W. Fuller

March 14/64 For the City of Chicago

Arrington & Dent

For defts.

which was received and read in evidence without objection.

Together with the two City ordinances of August 24th and November 9th, 1863, therein and which were admitted to be the ordinances therein named, and are in the words and figures following, to wit:

Ordinance of 24 August 1863.

An Ordinance Concerning the inspection of Flour

Be it Ordained by the Common Council of the City of Chicago.

Sec 1. That the Mayor, by and with the advice and Consent of the Common Council shall biennially appoint an Inspector of flour for the City of Chicago who shall be known as "The City Flour Inspector"

Sec. 2. Said Inspector may appoint & remove at pleasure one or more Deputy Inspectors who shall have the right to brand all barrels or bags of flour inspected by any or either of them in the name of the said Inspector and the said Inspector shall have the right

12)

to take bond with sufficient penalty & security necessary to himself from each of said Deputies and of the same tenor as the bond hereinafter required to be executed by the said Inspector and the said Inspector may sue on the bond of any or either of his said Deputies to recover any damages that he may have suffered by reason of the misfeasance or malfeasance of any or either of them while acting in the capacity of such Deputy Flour Inspector.

Sec. 3. It shall be the duty of every person or business firm receiving flour on consignment or in any way dealing in flour at wholesale or retail, before selling said flour, if its inspection be desired by the buyer or seller thereof, to procure the same to be inspected by the said City Flour Inspector or his Deputy and such person, business firm or dealer shall have the same properly arranged so as to be accessible for such inspection. Every person, business firm or dealer in flour violating any of the provisions of this section shall be fined in the sum of five dollars for each and every barrel so sold without such inspection; provided, it shall not be deemed necessary to inspect flour in bags, except by mutual agreement of buyer and seller and any flour taken from bags for the purpose

of inspection shall be replaced, when inspected with the exception that the said inspector may take, not to exceed eight ounces of flour as a sample of any one lot of not less than twenty Bags.

Sec. 4— The Inspector shall provide and keep an office in some convenient place in the City of Chicago which shall be kept open from 7 A.M. to 6 P.M. Every day, Sundays excepted, and in which the said Inspector shall at all times have some person during his absence to receive orders, and on due application either himself or his Deputy shall proceed with as little delay as possible to any point within said City, where the inspection of flour is required and inspect the same.

Sec. 5— It shall be the duty of the said Inspector to procure Sealed weights and Scales and weigh or cause to be weighed, some of each lot or number of barrels of flour offered for inspection, as shall be sufficient to satisfy the said Inspector of the whole lot or number of barrels offered and so inspected by him, or by any or either of his deputies and shall see whether each barrel contains 196 pounds of flour, and he shall brand or cause to be branded, on the head of each and every barrel of flour so inspected

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and weighed. by plainly and distinctly marking in some indelible manner upon the head of the barrel the quantity and grade of the flour contained therein, together with his name and the month and year the same was inspected.

Sec. 6. The following grades of flour are hereby established. and the inspection of the same shall conform to. and each bbl. inspected shall be branded in accordance with the following standard, to wit:

First Grade. all flour which is sound made from select Winter wheat, free from impurities. properly milled and thoroughly cleaned in every respect, shall be denominated XXtra.

Second. All flour which is sound, made from Select Spring wheat. and such sound flour as may be made from winter wheat which may approach, but not being equal in quality to XXtra the same having been thoroughly cleaned and prepared in every respect. shall be denominated Xtra

Third. — All sound flour which is not equal in color or quality to Extra shall be denominated Extra Superfine.

Fourth. All sound flour not equal in color or quality to Extra Superfine. but free from bran

Shorts, or other refuse, shall be denominated Superfine.

15)

All the above grades of flour shall be put up in good tight well coopered barrels and all flour inferior to Superfine shall be rejected.

Sec. 7. The said Inspector shall be liable for all damages that may occur to any person for want of a just and faithful inspection of such flour as may be by him inspected or inspected by any or either of his Deputies and any person thus damaged may have right of suit in all Courts having jurisdiction of the same, provided said flour shall not be exposed to inclement or damp weather or stored in damp places after such inspection shall have been made, without making void any claims for damages against said Inspector.

Sec. 8— The said Inspector shall be entitled to two Cents for inspecting each barrel and bag of flour when no other price shall be agreed upon, and shall be entitled to take from each barrel not to exceed four ounces of flour as a sample of the same.

Sec. 9— Neither the said Inspector nor any or either of his Deputies shall be allowed to buy or sell or deal directly or indirectly in flour, or act as the agent or agents of

any person or persons for the purchase or sale of flour, while he or they or any of them holds the office of Flour Inspector or Deputy Flour Inspector.

Sec. 10— The said Inspector shall keep a record of all flour inspected by him and his Deputies, and shall report in writing to the Common Council on the first Monday in May in each year the number of barrels and bags of flour of each grade so inspected and such other information with regard to the inspection of flour as the Common Council may by order or resolution require.

Sec. 11— Any Inspector or Deputy Inspector wilfully violating, refusing or failing to comply with any of the provisions of this ordinance so far as they are made incumbent upon any or either of them, shall for every such offence be subject to a fine of not less than five nor more than One Hundred Dollars, and shall also be subject to immediate removal from office.

Sec. 12— Any inspector appointed under this ordinance shall, before entering upon the duties of said office, give bond, with two or more good and sufficient sureties, to be approved by the Common Council, in the

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17)

penal sum of five thousand dollars, payable to the City of Chicago, and Conditioned that he will faithfully perform the duties of said office, and satisfy all damages that may legally accrue against him as City Flour Inspector under this ordinance, and he shall also take an oath of Office.

Sec. 13. All fines and penalties Recognized by this ordinance may be prosecuted and Collected before any Court having jurisdiction of the same.

Sec. 14. This Ordinance shall take Effect and be in force from and after its passage and due publication.

Ordinance of November 9th, 1863.

An ordinance to Amend an Ordinance Entitled "An ordinance Concerning the inspection of Flour" passed August 24. 1863.

Be it ordained by the Common Council of the City of Chicago:

Section. 1 — It shall be the duty of every person or business firm bringing flour to this market, and every person or business firm receiving flour on Consignment, or in any way dealing in flour, at wholesale or retail before selling said flour if its inspection be desired by the buyer or seller thereof to

procure the same to be inspected by the said City Flour Inspector or his deputy. and such person business firm or dealers shall have the same properly arranged so as to be accessible to such inspection; and the term inspection as employed in this ordinance and the ordinance to which this is an amendment shall be held to embrace any Examination by an Expert or other person of flour by sample or otherwise in order to ascertain the quality thereof. Every person, business firm, or dealer in flour violating any of the provisions of this Section shall be fined in the sum of five dollars for each and every barrel so sold without such inspection Provided. it shall not be deemed necessary to inspect flour in bags. Except by mutual agreement of buyer and seller and any flour taken from bags for the purpose of inspection shall be replaced when inspected with the exception that the said inspector may take not to exceed eight ounces of flour as a sample of any one lot of not less than twenty bags—

Sec- 2. The following grades of flour are hereby established. and the inspection of the same shall conform to. and each barrel inspected shall be branded in

accordance with the following Standard, to wit:

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First Grade — All flour which is sound, made from Select winter wheat, free from impurities, properly milled, and thoroughly cleaned in every respect, shall be denominated Double Extra.

Second — All flour which is sound made from Select Spring Wheat, and such sound flour as may be made from winter Wheat which may approach but not Equal in quality Double Extra, the same having been thoroughly cleaned and prepared in every respect shall be denominated Extra

Third. All sound flour which is not Equal in Color or quality to Extra shall be denominated Extra Superfine.

Fourth. All sound flour not Equal in Color or quality to Extra Superfine, but free from bran, shorts, or other refuse shall be denominated Superfine. All the above grades of flour shall be put up good, in tight well coopered barrels. All flour inferior to Superfine shall be rejected. Provided that nothing in this Section or in Sections five and Six of the Ordinance to which this is an Amendment shall apply to flour bought and sold by Sample.

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But it shall be the duty of such Inspector to brand each barrel so bought and sold by Sample with the word "Inspected", together with his name and the mark and year the same was inspected —

Sec. 3. Sections numbered 3. 5. and 6. of the ordinance passed August 24th 1863 aforesaid, so far as the same are inconsistent with this Ordinance, are hereby Repealed —

Sec. 4. This Ordinance shall take Effect and be in force from and after its passage.

Which Ordinances were also received and read in Evidence without objection.

The plaintiff then Called as a Witness Stephen H Dales who being duly Sworn, testified:

I am the City Flour Inspector. I was for nearly two Years Flour Inspector for the Board of Trade until April 1865. I received the appointment of City Flour Inspector during the past Season. I was appointed and Confirmed at the Common Council Meeting two weeks after August 24th 1863. and presented my bonds two weeks after that, being four weeks after Aug 24th which were approved the same Evening. I then entered upon the discharge of my

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duties, that is, four weeks after Sept. 21st and have been ready and willing to inspect all flour when inspection was desired ever since. I was ready and willing on the 24th day of November 63. to inspect the flour in question here or any other — Immediately after I entered upon the discharge of my duties I had notices struck off and circulated to the effect that I was prepard to inspect under the ordinance, I had one hundred struck off, most of which were distributed on the Board of Trade — I also informed the members of the Board on Change, I was on Change frequently. I am a member of the Board of Trade —

The Plaintiff here rested its Case —

The Defendant then offered in Evidence — Stipulation No 2 which was in the words and figures following, to wit:

State of Illinois } In Circuit Court of Cook
Cook County } ss. County Feby T. 1864.

City of Chicago
vs.
Benjamin F. Quimby

It is hereby Stipulated and agreed that the following is a Correct

Statement of the oral testimony given on behalf of the Defendants in the Case of City of Chicago vs. Benjamin Adams and John L Adams in the Superior Court of Chicago, and that said testimony may be treated as if given in Evidence in this Case subject to the objection thereto and every part thereof on the ground of incompetency and irrelevancy made by the Plaintiff in the trial of the aforesaid Case against Benjamin Adams and John L Adams and Renewed in this Case ——

John G Beaty — Am Secretary of Board of Trade Have been Since Feby 1 1865. 1176 Members of the Board, dont know how many deal in Flour. The 1176 are the Registered Members. The initiation fee is $5. and the annual assessment $10. We have tables in the Hall of Exchange for the Exhibition of Samples, the privilege to make Selection of tables is sold to the highest bidder once a Year, there is in addition a Rental of $5. pr Year for a Square of the tables, Each table is divided into four Squares ——

Cross Examination

Board has a flour inspector, He has been 2 cents per bbl. for inspection and is entitled to the flour from his drawings, the drawings are about 3 oz per Bbl. The Board

receives nothing for inspection. The Universal Custom is to take the drawings so far as I know ——

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Redirect

Bbls for last year passing through hands of Board of Trade 1.120.000. The inspection fees at 2 Cents per Bbl would be $22.400. and the drawings allowing 1 bbl for 900 inspected taking the flour at $4.75 per Bbl. would be $5856. making in all $28,250. The Costs of inspection to the Inspector would be about $8.000. leaving net profit $20.256. This Calculation is based upon the premises that all the flour passing through Board of Trade is inspected.

Re-Cross-Examination

I think about one half is inspected. Can't say how long the Board have had an Inspector.

Wm. H Low. Commission Merchant since 1857. Deal in flour in the City - Sell for at least twenty mills. Don't know how many bbls per annum. Am a member of Board of Trade. They have rules of inspection (Rules were shown witness) These are the rules. Am acquainted with these rules. Have read the City ordinance. Of

Carried out Strictly this Ordinance would make additional Expense of Cartage, Cooperage & Storage. In some Cases little or no additional Expense. In some Cases 10 Cts. per bbl. additional. It would depend very much upon the Season of the year — About 2/3 of the Flour would be subject to the additional Expense of 10 Cts. per bbl. Don't understand how Ordinance as to grade could be carried out usefully. Some Inspectors might be able to tell from grade as established what Wheat was used. It is difficult to tell the difference between Spring and Winter Wheat. If Flour was subjected to Second Inspection the effect would be to destroy the Value of Board of Trade inspection. If party desiring inspection was Compelled after Board of Trade inspection to have a Second inspection it would have the effect to increase Expense of handling flour. If it increased the Expense 10 Cents per bbl. would direct the Trade largely to other Markets.

Flour is generally sold by the Board by Sample. Inspector decides whether the flour corresponds with Sample. The purchase is made by inspection of Sample. The Inspector of Board of Trade gets 2 Cts. per bbl. and drawage. That is what the drawer with which he inspects Contains. I do not

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Say it is impossible for Inspector to grade in accordance with provisions of Ordinance He would be likely to Commit many Errors Under any System of grading this would be likely. We give the Sample to the Inspector. he inspects the Sample, then gives Certificate that the bbls. Correspond with Sample. The Certificate goes with the Flour He mentions the brand of the bbls. He puts on his own inspection brand. This is done under the Rules of Board of Trade. If purchaser not pleased with Flour Sold in Retail trade it is the Custom to allow its Return. The inspection here allows us to Settle all our differences here without Recourse to other Markets. Keeps inspection under the Eyes of dealers. and in their own hands. Inspection by Sample is a very Reliable one In many Cases the benefit of Board of Trade inspection would justify taking that inspection Even though City inspection must also take place. In many Cases if inspection were had by grade. under the Ordinance Sellers might go to the Expense of inspecting by Sample. Flour is dealt in at Such a trifling profit that dealers are very Cautious in going to any additional Expense. 10 cents per bbl. is very near a

profit on flour. It would be a very great annoyance to submit to two inspections. Parties frequently make their freight contract and then purchase at Board to be delivered same day. Most of our Sales are by Sample Members of the Board do most of the Flour trade of Chicago

J W Sykes. Produce and Commis: Merchant.

Been in business nearly four years Am member of Board of Trade. Acquainted with ordinance, also Board regulations. I am a purchaser of flour. The increased Expense of inspection would come out of the seller, not me. Don't tell Cost of inspection by City. The inspection by Board is not any particular advantage to me, Except at times of purchase.

I buy a great deal of Flour without inspection. 1st I buy much I do not wish inspected. 2nd Have guarrantees in many cases, which I prefer to inspection. I judge that about half the flour that comes here is inspected. Prefer inspection under our own Control.

The Rules put in Evidence were adopted some time last Summer.

John H Mott. Seller of Flour, have been

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Seven years. Am Member of Board. Is acquainted with ordinance and with Board of Trade Rules. By inspection under ordinance. if necessary to make flour accessible, depending upon depot to which it is landed. increased Expense for drayage would be 3 to 5 ¢. Storage 5 to 6 ¢. Cooperage about 1 ¢ and small item of insurance in some Cases. It would be impossible in some Cases to make it accessible at the Depots. In a majority of Cases the Expense would be additional. Has read grades in Ordinance. Don't think any buyer or Seller Could fix any value upon description of grades in ordinance. Could not tell from the description of a grade the quality of the flour. An Expert Could determine on very high grades of winter wheat flour. that it was such in all except in high grades. they would be liable to mistake majority Spring flour grades. for high grades. Inspection Secures Seller against Reclamation. is a guarantee to the buyer. — Ordinance would decrease Receipts and Sales. Buyer would not stand two inspections. I think the Seller would not. X. Flour Cannot be inspected by B of T. Inspector if not accessible. Most of the dealers use Board of Trade inspection.

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Redditch. Retail Consumers purchase in bbls except when they purchase from City Mills Most Retailers purchase in bbls. and put it up in bags. When selling in Smaller quantities. Sell in Cotton or paper bags Retailers Sell about half in bags.

J B Beatty Recalled 26 May /63 the Regulations in force were made. The two at the bottom were made prior to that date.

J D Cole Jr Retail dealers Sell about two thirds of which they Sell in bags. I am a Manufacturer of flour.
Cross Examination. My business has always been more or less in Selling by Retail. Retail dealers buy of me. Generally in bbls I guarantee which is better than inspection.

The Rules or Regulations of the Board of Trade above mentioned were then offered and received in Evidence Subject to the objection aforesaid and are as follows. Namely.
Classification of Flour and Rules of Inspection adopted by the Board of Trade of the City of Chicago
1st Sound. To be Strictly Sound, free from any and every defect or fault Causing either

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Smell or taste.

2nd Weedy. Flour made from Wheat that has Come in Contact with a noxious weed. imparting an unpleasant Smell, which it is supposed will Cook out —

3rd Unsound. All Flour not "Sound" or "Weedy" whether the unsoundness is derived from the Condition of the Wheat, or has originated in the Flour. The Inspectors are required to note on their Certificate the character of the unsoundness Such as musty hard Sour, Soft Sour, or Slightly unsound, the latter Explanation of the unsoundness being intended to indicate that the Flour will probably work Sound for immediate use and is but slightly depreciated in Value. —

All Flour that inspects "Sound" and full weight shall be branded and bore other and it shall be the duty of the Inspectors, when working to a Sample, to State on their Certificate the number of barrels above or below the Sample and have a Sample or Samples of the same which the parties may Examine; also to State on their Certificate, when the Flour is "unsound" or "weedy" the number of barrels of each description and also when practicable, the number of barrels that

case so stained or out of Condition as to depreciate the market Value of the Flour, The Inspectors shall satisfy themselves in regard to the weights, and in Case they deem it necessary to strip some of the Flour, they shall be entitled to the Regular fee of two Cents per barrel so stripped (if it proves to be short weight) in addition to the Regular fee of two Cents pr. Barrel for Inspecting and branding The Charge for stripping shall be paid by the Seller. No Certificate shall be issued for a part of a lot of Flour inspected, without the Consent of both the buyer and Seller. The Inspectors shall only be liable to damage for any discrepancy between the Flour for which a Certificate is issued and the Sample which they retain of the Flour so inspected, unless the buyer hands them the Sample to inspect by.

Rules for the adjustment of short weight of Flour, in the absence of any Special Understanding between buyers and Sellers.

1st Flour shall be Sold on the basis of One hundred and Ninety Six pounds to the barrel.

2nd In case of short weight, the buyer shall be allowed for such shortage at the Rate he pays and three fourths of a Cent per pound

on the same for freight. and in addition five
31 (5) Cents per barrel for the expense of refilling.
Chicago 1863.

M W Fuller of Counsel
for City of Chicago.

March 18. 1864. Arrington & Dent
Attys for Defts.

which was received and read in evidence
subject to the objection by the Defendant there-
to that the evidence therein contained was
incompetent and irrelevant.—

The Defendant then read in evidence the
Charter of the Board of Trade which is in
the words and figures following to wit.

"An Act to Incorporate the Chicago Board
of Trade"

Sec: 1. That the persons now composing the
Board of Trade of the City of Chicago are hereby
created a body politic and corporate under
the name and style of the "Board of Trade of the
City of Chicago." and by that name may sue
and be sued, implead and be impleaded, recei-
ve and hold property and effects real & personal
by gift devise or purchase, and dispose of the
same by Sale lease or otherwise. Said property
so held not to exceed at any time the sum
of two hundred thousand dollars: may have a

Common Seal, and alter the same from time to time, and make such rules, Regulations and by-laws from time to time as they may think proper or necessary for the government of the Corporation hereby Created, not Contrary to the laws of the land —

Sec. 2. That the Rules, Regulations and by-laws of the said Existing Board of Trade, shall be the rules and by-laws of the Corporation hereby Created until the same shall be regularly Repealed or altered; and that the present Officers of said Association, known as the "Board of Trade of the City of Chicago" shall be the officers of the Corporation hereby Created, until their respective offices shall regularly Expire, or be vacated, or until the Election of new officers according to the provisions hereof.

Sec. 3 The officers shall Consist of a Presidt, one or more Vice Presidents, and such other officers as may be determined upon by the Rules, Regulations or bylaws of said Corporation all of said officers shall respectively hold their offices for the length of time fixed upon by the Rules and Regulations of said Corporation hereby Created and until their Successors are Elected and qualified.

Sec. 4 The said Corporation is hereby

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authorized to establish such Rules Regulations and by-laws for the management of their business, and the mode in which it shall be transacted, as they may think proper.

Sec. 5. The time and manner of holding Elections and making appointments of such officers as are not elected, shall be established by the Rules, Regulations or by-laws of said Corporation.

Sec. 6. Said Corporation shall have the right to admit or expel such persons as they may see fit, in manner to be prescribed by the Rules Regulations, or by laws thereof. Said Corporation may Constitute and appoint Committees of Reference and Arbitrations, and Committees of Appeals, who shall be governed by such Rules and Regulations as may be prescribed in the Rules Regulations or by-laws for the Settlement of such matters of difference as may be Voluntarily Submitted for Arbitration by Members of the Association or by other persons not Members thereof, the Acting Chairman of either of said Committees when Sitting as Arbitrators, may administer oaths to the parties and witnesses, and issue Subpoenas and attachments, Compelling the attendance of Witnesses, the Same as Justices of the Peace and in like manner Directed

to any Constable to Execute.

Sec. 8. When any Submission shall have been made in writing, and a finch Award shall have been rendered, and no appeal taken within the time fixed by the Rules or by-laws, then on filing such Award and Submission with the Clerk of the Circuit Court, an Execution may issue upon such Award as if it were a Judgment rendered in the Circuit Court, and such Award shall thenceforth have the force and effect of such a Judgment, and shall be entered upon the Judgment docket of said Court

Sec. 9. It shall be lawful for said Corporation when they shall think proper to require and require of, and from their officers, whether elected or appointed, good and sufficient bonds for the faithful discharge of their duties and trusts, and the President or Secretary is hereby authorized to administer such Oaths of Office as may be prescribed in the by-laws or Rules of said Corporation. Said bonds shall be made payable and Conditioned as prescribed by the Rules or by-laws of said Corporation, and may be sued and the moneys Collected and held for the use of the party injured, or such other use as may be determined upon by

said Corporation.

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Sec. 10. Said Corporation shall have power to appoint one or more persons, as they may see fit, to Examine, weigh, measure, gauge, or inspect flour, grain, provisions, liquor lumber, or any other article of produce or traffic Commonly dealt in by the members of said Corporation, and the Certificate of such person or inspector, as to the quality or quantity of any such article, or their brand, or mark upon it, or upon any package Containing such article, shall be Evidence between buyer and Seller, of the quantity, grade, or quality of the Same, and shall be binding upon the Members of said Corporation, or others interested, and requiring or assenting to the employment of such Weighers, Measurers, Gaugers, or Inspectors. Nothing herein Contained however, shall Compel the employment by any one, of any such appointee.

Sec. 11. Said Corporation may inflict fines upon any of its members, and Collect the Same, for breach of its Rules, Regulations or by-laws, but no fine shall Exceed five dollars. Such fines may be Collected by action of debt, before a Justice of the Peace, in the name of the Corporation,

Sec. 12. Said Corporation shall have no power or authority to do or Carry on any business. Excepting such as is usual in the Management of Boards of Trade. or Chambers of Commerce, or as provided in the foregoing Sections of this bill.

Approved, Feb. 18, 1859.-

To the admission of which said Charter the Defendant by his Counsel then and there objected on the ground that said Evidence was incompetent. but the Court overruled said objection and admitted said Charter in Evidence. to which said Ruling and decision of the Court the plaintiff by his Counsel then and there duly Excepted.

It was then admitted by the Plaintiff that the Board of Trade had duly organized under their said Charter

The Defendant further Called as a Witness,

W H Low who being duly Sworn testified: I have reflected as to the Effect of City Ordinance on the Inspection of the Board of Trade since I testified in the Adams Case

The Defendant here objected to the Witness giving his opinion as to the Effect aforesaid but the Court decided to receive said testimony

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subject to the objection, and the witness proceeded. I think it would destroy it. The Board would not exercise its inspection if City Ordinance were enforced. Flour could not bear the expense of two inspections.

The Cross Examination of the witness was waived.

The Deft. then called

Ledden Davis who being duly sworn testified: I have reflected on the subject and examined the Ordinance since I testified in the other suit. I have been a Flour Inspector, was so for several years & have been in the Flour and Milling business for twenty four years. I don't understand the City Ordinance. Should not know how to do my duty under it. I believe a reinspection of the same flour would destroy both inspections. My reason is this. By Courtesy inspectors may pass flour one pound light. Suppose flour comes here three quarters of a pound light. Then Board of Trade inspector inspects and takes out quarter of a pound. Then City inspector inspects and takes out quarter of a pound. And the flour would be unmerchantable.

Cross Examination waived.

The Defts then Called as a witness.
Robert McChesney who being duly Sworn testified: Have been in flour business here for Six Years - I think there Could be but one inspection. If City inspection Compulsory the Board of Trade inspection would have to be abolished.
Cross Examination waived —
The Defendant then Called as a witness
J W Sykes who being duly Sworn testified
I agree with Mr McChesney. The City inspection would Seriously Embarass the Board of Trade inspection at first and finally result in killing it. I Consider it impossible to inspect according to the grades Established by the City ordinance
Cross Examination waived —
The Defendant Called as a witness.
J H Mott who being duly Sworn testified
The City inspection would undoubtedly destroy the Board of Trade Inspection.
Cross Examination waived
The Defendant then Called as a witness
John Weighton who being duly Sworn testified
I am Inspector of the Board of Trade. Been in flour trade for nearly 15 Years. Have Examined the City ordinance. I don't think inspection following the City grades Could

be had — Cross Examination waived —

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The Defendant here rested his Case. All the foregoing Evidence was taken & Received by the Court Subject to Plaintiffs objection thereto that the Same was incompetent.

The Plaintiff by its Counsel then Entered a Motion to Exclude all of the testimony Set forth in Said Stipulation No 2. and all of the foregoing testimony on the ground that So much thereof as was introduced to Show that the Ordinance was unreasonable, was incompetent, because the Reasonableness of the ordinance was matter of law for the Court and So much of Said testimony as was introduced to Show that the Board of Trade inspection would be destroyed by the City Inspection was incompetent because that was a question of law for the Court. The Witness only Stated their Conclusions and the Result indicated was indirectly occasioned if at all. But the Court overruled the Motion as to which decision and ruling of the Court the Plaintiff by its Counsel then and there Excepted.

The plaintiff then Recalled as a Witness S H Bales who, being previously Sworn as

a witness testified. Flour can be inspected according to the grades established by the City Ordinance - The object of the grades is to enable purchasers to know that the Flour they buy is no poorer than the grade. The object of the Grades is to get at a Standard. I went and got Wheat ground as it is described in the Ordinance and kept Samples as Standards and then inspects in accordance with the Standards.

The inspection may be however by Sample simply under the Ordinance of Nov. 9th. - Flour passing through the Board of Trade is usually inspected by Sample. Inspection under the City Ordinances may be either by Grade or Sample -

So far as inspection by Sample is Concerned, the Expense under the City Ordinance, and under the Board of Trade Charter is the same - The flour has to be accessible in both Cases - If the Board of Trade defrayed the Cost of their own inspection, it Could be Carried out Easily with the City inspection. It Could be Carried out Even if they did not, though of Course at the Expense to the parties of two inspections. The City inspection being Compulsory, and the Board of Trade voluntary. the Eventual

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result would be. unless the Board paid their Inspector themselves, the parties would no longer require the Board of Trade inspection.

This was all the Evidence in the Case.

The Defendant thereupon insisted that he was entitled to the opening and closing of the argument and the Plaintiff insisted that that right belonged to it. But the Court decided that the opening and close belonged to the defendant, and the Defendant by his Counsel accordingly opened & closed the argument upon the Law and the facts.

To which decision and ruling of the Court in deciding that the right to open & close the argument of said Cause belonged to the Defendant and in awarding the same accordingly, the Plaintiff by its Counsel then and there duly excepted.

The Court thereupon having Considered said Cause did thereafterwards find the issues for the Defendant and the Plaintiff thereupon entered its motion for a rehearing to set aside said finding, and new trial of the said Cause in the words and figures following, to wit:

In Circuit Court of

State of Illinois } Cook County April 2. 1864.
Cook County } S.S.

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City of Chicago
vs.
Benjamin F Quinby

And now comes said Plaintiff by Wm W Fuller its Atty and moves the Court to aside the finding and grant a new trial herein for the reasons following, viz:

1- Said finding is against the law:
2- Said finding is against the Evidence:
3- The Court erred in the admission of testimony on behalf of the Defendant
4. The Court erred in permitting the Defendant to open & Close said Cause.
5- The finding should have been in favor of the Plaintiff and against the Defendant.

Wm W Fuller
of Counsel for Plff

but the Court overruled the same and entered judgment on the finding in favor of said Defendant and against said Plaintiff. To which several decisions and rulings of the Court in finding the issues for the Defendant and against said Plaintiff and

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in overruling said motion for a rehearing and new trial and in entering judgment on said finding, the Defendant by his Coun=sel then and there duly excepted.

And forasmuch as the matters, and things hereinbefore mentioned and set forth do not otherwise appear, the Plaintiff prays that this its Bill of Exceptions may be signed and Sealed and made part of the record hereof, which is done this 25th. day of April A.D. 1864

E S Williams. Seal

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I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of all papers on file except an affidavit of merits, in a certain cause lately pending in said Court, on the Common Law side thereof, wherein The City of Chicago was plff and B Kingsley H Quimby et al Defendant

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court at Chicago, this 28 day of April A. D. 1864

W. L. Church Clerk.

Transcript B 10,55

In Supreme Court of Illinois

City of Chicago
vs
Benjamin F. Quinby

April T. A.D. 1864

Afterwards, Writ, on the first Tuesday after the said Sunday of April. A.D. 1864, at the same term before the Judges of the Supreme Court of the State of Illinois, comes the said City of Chicago by Melville W. Fuller & Francis Adams, its Attys. and says that in the record & proceedings aforesaid & also in rendering the judgment aforesaid, there is manifest error in this, viz: That the finding of the Court below was against the evidence: That said finding was against the law: That the Court below erred in admitting the testimony offered & received on behalf of the defendant, said Benjamin F. Quinby: That the Court erred in overruling the motion of said City of Chicago to exclude the evidence offered & received on behalf of said defendant Benjamin F. Quinby: That the Court below erred in awarding the opening and closing of said cause to the defendant, Benjamin F. Quinby: That the Court erred in overruling the motion of said City of Chicago to set aside the finding & for a new trial of said cause: That the judgment aforesaid in form aforesaid given, was given for said defendant Benjamin F. Quinby and against said City of Chicago, whereas by the Court & the law, said judgment ought to have been given for the said City of Chicago & against said Benjamin F. Quinby - And the said City of Chicago say that the judgment aforesaid & the proceedings aforesaid & other errors in the record & proceedings aforesaid may be reversed, annulled and altogether held for nothing, & that it may be restored to all things which it has lost by occasion of such judgment &c

Melville W. Fuller
Francis Adams
Attys. for City of Chicago
Plff. in Error

And the said Benj. F. Quinby, by his attys., says there is no such error as is above alleged; wherefore he prays that the judgment of said Circuit Court be affirmed, &c.

Arrington & Dent
attys. for defdt. in error

Filed Apl. 30. 1864
E. Wheaton
Clk.

City of Chicago
vs
Benj. F. Quinby
Errors, Sums & joinder

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