

No. 13091

Supreme Court of Illinois

Perkins

vs.

Lewis

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division

No. 108.

Perkins

vs

Lewis

Executors

13091

SUPREME COURT

OF THE

STATE OF ILLINOIS.

STATE OF ILLINOIS, }
KANE COUNTY. }

CIRCUIT COURT, KANE COUNTY,
November Term, A. D. 1859.

Otho Perkins, Charles K. Parks, David Martin,
Samuel Sterling, and Moses Bliss,

vs

J. K. Lewis, Richard Wheeler, Samuel Flint,
William F. Cooy, Ely Barber, and A. R. Mc-
Wayne. The President and Trustees of the
Town of St. Charles, &c.

BILL FOR INJUNCTION.

PAGE OF RECORD.

Bill was filed in the proper Clerk's Office, August 13th, 1859.

It sets up that the complainants are each of them owners of Real Estate within the corporate limits of the town of St. Charles, and that each of them are liable to be assessed, and to pay their rateable proportion of Taxes levied by the said Corporation.

The Bill charges, that at the last Session of the Legislature, an Act was procured to be passed—"Entitled, an Act to authorize the inhabitants of the incorporation of the town of St. Charles, to subscribe to the Stock of the St. Charles Railroad Company, approved February 21st, 1859." That complainants have never seen said Act—that they are informed that it has not been published—that they have not had time to get a copy from the Secretary of the State, since they were informed of the passage of the said Act, and ask leave, when they shall get a copy, to attach the same to this bill and make it a part thereof, and to which complainants refer. That complainants are informed that said Act authorizes the Corporate officers of said town, or some of them to call a meeting of the legal voters residing within the corporate limits of said town, to vote, either for or against subscribing to the Stock of the St. Charles Railroad Company, or ("that said Corporation shall subscribe for or cause to be subscribed for any, and if any, how much of the capital Stock of the St. Charles Railroad Company.") That the President of said Board of Trustees, has directed or requested the Clerk of said Board to issue and post up notices, calling said proposed meeting, and that the said Clerk has posted such notices, a copy of one is hereto attached marked "B" to which reference is made.

Bill sets up that Defendants are the Trustees of said town, except A. R. McWayne, who is Clerk, and that J. K. Lewis is President of said Board.

Bill charges an Information and Belief, that the St. Charles R. R. Co. are authorized to build a Branch R. R. from any point within the Corporate limits of the town of St. Charles, Southerly to connect with the Dixon Air Line, or Easterly with the Galena and Chicago Union Railroad. That a Branch Road, connecting with either, would have to be built beyond the incorporate limits of said town.

It charges, that Defendants, or some of them, under pretence of authority to be obtained in pursuance of an election, to be held at a time and place in said notice mentioned, are about to subscribe Stock to a large amount to the Stock of said St. Charles R. R. Co., and to issue bonds of said Corporation, of a large amount to pay for said Stock, making the same a charge on the said Corporation, and upon the property of the complainants; the principal interest to be

5 paid by taxing all the real and personal property within the said incorporation and of complainants as a sequence.

6 Bill charges on information and belief, that it is not designed to have any Stock taken in said St. C. R. R. Co., except such part as shall be taken by said town of St. Charles. That said complainants are advised by counsel, and so charge the fact to be, that said town of St. Charles is a municipal corporation for the government of the people of said town, and not a private corporation for pecuniary purposes, and that it is contrary to the constitution of this State to make such a private corporation for the purpose of speculation and compelling the inhabitants and property owners of said town to invest their property without their consent, and against their wishes in the speculation of said municipal corporation, which is changed from the legitimate constitutional and lawful object.

7 That should said Railroad be built as proposed, a large proportion would have to be built without the limits of said corporation. That there has long existed a Branch R. R. leading from St. Charles and connecting with the G. & C. U. R. R., which has long since been abandoned, as it did not pay running expenses and repairs, and if a new Railroad is built or the old one repaired, it would be a tax on the said town to keep the same in a running condition, of which complainants would be obliged to pay their rateable proportion as tax-payers in said corporate limits; and moneys thus invested would be wasted and lost. That said defendants, and others acting with them, on information and belief, intend to subscribe the Stock of the St. Charles R. R. and issue the Bonds as aforesaid, for the pretended purpose of building the same,—yet they intend to apply the proceeds of said Bonds in the repairing the said Old Track aforesaid, and not to apply proceeds according to said Act, which Old Track, on information and belief, belong to the G. & C. U. R. R. Co. That no benefit of any kind can possibly accrue to complainants or their property by building said branch R. R. or repairing the Old Track. That it will not increase the value of the property of complainants; but will diminish it in value by incumbering it with heavy taxes.

8 Bill also charges, on information and belief, that defendants, or some of them are about to issue the bonds of the incorporated town of St. Charles, to pay for said capital Stock, to be subscribed as aforesaid, amounting to several thousand dollars, under said law in Schedule "A" mentioned, bearing a high rate of interest, pledging all the property within the corporation limits for the
9 payment thereof. That defendants confederating &c., have called an election at the town of St. Charles, aforesaid, on the 15th of August, 1859, to get an excuse to subscribe to said capital Stock, and issue said Bonds aforesaid, sometimes pretending that the proceeds are to be applied to the building a Railroad to connect with the Air line at Geneva, sometimes to the building a Branch Railroad to connect with the G. & C. U. R. R., and sometimes to the repairing the old Branch R. R. Old Track; all of which actings and doings and pretences
10 are contrary to equity, &c. Then follows the usual prayer for the writ of Summons, for answer without oath of defendants. And also for an Injunction in usual form, restraining defendants' agents, attorneys and successors from subscribing for, or to the capital Stock of said R. R. Co., and from issuing and signing, selling or disposing of any Bonds, pledging the Corporate town of St. Charles, for the redemption of the same, pursuant to the Act of the Legislature in Exhibit "A" mentioned, by which said town of St. Charles may be made liable for any R. R. Co. whatever, or repairing the track of any R. R. Co., and that on a final hearing this Injunction be made perpetual.

A. M. HERRINGTON, Solicitor.

(Signed)

OTHOW. PERKINS.

11 Here follows an affidavit of said Perkins, who reciting says he signed the foregoing bill for himself and the other complainants in the usual form. Sworn to the 13th day of August 1859, before C. B. Wells, Master in Chancery.

(Then follows an order as below.

To PAUL R. WRIGHT, Esq. }
Clerk of Kane Co. Cir. Court. }

Let an Injunction issue according to the prayer of the foregoing Bill
of Complaint.

CHAS. B. WELLS,

Master in Chancery.

["Exhibit" B.]

NOTICE.

12 Whereas, I have been requested by the President of the Board of Trustees
of the Incorporated Town of St. Charles, in the County of Kane, and State of Il-
linois, to call an election of the citizens, (legal voters) of said incorporated town
of St. Charles, pursuant to an Act of the general assembly of the State of Illinois,
entitled "An Act to authorise the inhabitants of the Corporation of the town of
St. Charles, to subscribe to the Stock of the St. Charles Railroad Company,"
approved February the 21st, 1859. Therefore, pursuant to such request, and in
obedience to the law in such case made and provided. Notice is hereby given
to the inhabitants of the incorporated town of St. Charles, in the County of
Kane and State of Illinois, that an election will be held for said Corporation, at
the Stone building, commonly known as the "Town Hall," in the incorporated
town of St. Charles, on the East side of Fox River, where the last annual town
meeting was held for said Corporation, on Monday, the 15th day of August,
1859, to ascertain whether or not, the citizens of said Corporation, in accordance
with law, are desirous that said Corporation shall subscribe for, or cause to be
subscribed for any, and if any, how much of the capital Stock of the said St.
Charles Railroad Company, in pursuance of the law and of the Act above refer-
red to; said election to be conducted, and the vote then and there to be taken in
13 the manner referred to and pointed out in Section 3 & 4 of said Act above herein
referred to, and in accordance with the law, which said Section 3 and part of 4
reads as follows: (Section 3). That before the Stock, aforesaid, shall be subscri-
bed, an election shall be held, to ascertain whether the citizens of said Corpora-
tion are desirous that such subscription be made. Whereas said election shall
be called by the Corporation Clerk, whenever so requested by the President of
the Board of Trustees of said Corporation, (officers for said Corporation). Sect. 4.
That the vote shall be taken by ballot, upon which shall be printed or written,
or partly printed or partly written, "For a Railroad \$ " (specifying how
much) "or against a Railroad." Given under my hand this 5th day of August
A. D. 1859.

A. R. McWAYNE,

Corporation Clerk.

Polls will be open at 9 o'clock A. M. and closed at 6 o'clock P. M.

14 That on the 19th day of August, there was filed in the Clerk's office a sum-
mons in the usual form, directed to the Sheriff, &c., and returnable on the first
day of the next term &c., under the hand and seal of the proper officer, &c., on
15 the back is endorsed due service by the proper officer, on all the defendants—
in due time.

16 That on the 19th day of August, there was filed a writ of Injunction in this
case, in the proper Clerk's office, issued pursuant and in accordance with the
order of the Master in Chancery above set out, strictly enjoining and command-
ing you, the said J. K. Lewis, President of the Board of Trustees of the Town
of St. Charles, and Richard Wheeler, Samuel Flint, William F. May, Eli
Barber and J. K. Lewis, Trustees of said town, and A. R. McWayne, Corpora-
tion Clerk, and the persons aforesaid, and each and every of you, under the pe-
nalty of the law thence ensuing; that you and each of you do absolutely desist
and refrain from subscribing for, or to the capital Stock of the St. Charles Rail-
road Company, or from issuing, signing, selling, or disposing of any Bonds
pledging the corporate town of St. Charles, aforesaid, for the redemption of the
17 same, pursuant to an Act of the Legislature, entitled an Act to authorize the
inhabitants of the Corporation of the Town of St. Charles, to subscribe to the

Stock of the St. Charles Railroad Company, approved February the 21st, 1859, by which the said town of St. Charles may be made liable for any Railroad Company whatever, or the repairing the track of any Railroad until &c., which writ is under the hands of the proper officer and seal of the proper Court, and dated August 13th, 1859. On its back is endorsed, proper service by the proper officer on all of the defendants, as of August 15th, 1859.

Filed in the Clerk's Office, August 19th, 1859.

- 18 On the 12th day of December, 1859, it being one of the days of the November Term of the said Kane Co. Circuit Court, default was taken at the instance of complainant's Counsel—bill was taken as confessed—and the Injunction was made perpetual. Order entered up in usual form.

Also ordered that complainants recover of defendants their costs, &c.

ABSTRACT BY EASTMAN & BOTTSFORD, }
Attorneys for Defendants. }

108 3.

Lewis vs Perkins

Almonet

Filed Apr 24. 1868
S. Adams
Clerk

J. R. Lewis et al
vs
Otho W. Perkins et al } Error to Remedy

Argument of Petitioners in Error.

It is not claimed in Complainants' Bill, that the acts of the defendants, The plaintiffs in error are informal, or in violation of the Statute under which they assume to act,

Complainants allege a pretence on part of the defendants, to subscribe Stock, or issue Bonds, for the purpose of repairing the St. Charles Branch R. R. If, to issue Bonds, or subscribe Stock for such a purpose, is a violation of the Statute, the Court should have modified the Injunction, so as to have prevented the evil.

The question, and only question, for the Court to determine, is, "Is the Act, named in the Bill of Complaint, authorizing the Town of St. Charles to subscribe Stock &c. to the St. Charles R. R. Co. Constitutional."

If it is Constitutional, and the acts of the defendants mentioned in Bill, are in compliance thereof. There is no equity on the face of the bill, and the Court erred in its rulings - although other facts set up in the bill, may show the exercise of the powers conferred upon them by said act, ^{to be} is un-expected, - and the act under which the defendants

In determining this question, the Court must look to the body of the Constitution, for

assumed to act, be contrary to the principles of natural justice
see case of Wheeler vs Mayor of Philadelphia, 21 Penn. 163.
cited in note 2 Am. Banking cases. p. 39
and 2 " " " " 54.2

reasons. And if the Court find such act to be within the general grant of legislative power, that is, if it be in its character and essence a law, and if it be not forbidden expressly or impliedly by the Constitution, it is valid."

"To make it void, it must clearly be not an exercise of legislative authority, or else be forbidden so plainly as to leave the case free from all doubt."

Said act is not in violation of Section 38. Art. 3. of the Constitution. The cases cited in 19. & 21. Ill. Reports, are decisive on this point.

"It does not violate the right of acquiring, possessing, and protecting property, secured by Sec 1. Art 13. of Const. - the right of property is not absolute, but that it may be taxed for the public benefit."

"The said act would not deprive the complainants of their property, in violation of Sec 8. Art 13 - the word deprive, means to take, and the act. authorizes the property of the ~~defendant~~ complainants to be burdened with a tax, and not to be taken.

Said act does not authorize the taking of private property, for public use, contrary to Sec 11. of Art 13.

It does not impair the obligation of contracts, in violation of Sec 17. of Art 13.

The last four points are fully discussed and established in case of *Shaplen v Mayor* of Philadelphia, 21. Penn. (9 Harris) p. 149, referred to in note. Following the case of *City of Bridgeport v Housatonic R.R. Co.* in 2^d Am. Railway cases, p. 39.

Similar acts have been sustained by the courts of Ohio, Kentucky, Pennsylvania, Tennessee, New York, Virginia, Louisiana, Mississippi, Iowa, Massachusetts, and in Illinois under the old Constitution.

It remains to consider whether Art 9, entitled "Of the Revenue", is in effect, a prohibition, or limitation, on the legislative power on the subject of Taxation.

In said Article, except Sec. 3, which exempts certain property from taxation, and Sect 4, which relates to tax sales, there are three leading, or prominent ideas.

1. Objects of Taxation
2. Subjects of taxation.
- 3 The principle or rule that shall govern in levying Taxes.

(2 Am. Railway cases, p. 61)

Sec. 1. provides for a Capitation Tax.
The object of taxation, is for general state purposes.
The subjects of taxation, are persons, of a

certain age and condition.

The rule is so much per person.

Sect 2. provides for taxing the property of every individual and Corporation, according to the value thereof, and also Auctioneers, Pedlars &c. Toll Bridges &c.

Here the object is ~~again~~ for general purposes, the subjects are property, and certain trades &c. And the rule is the valuation of property.

Sect 5. provides that Corporate authorities of Counties, Townships, School districts, Cities, Towns, and villages may be vested with power to assess and collect Taxes for Corporate purposes. - Such Taxes to be uniform with respect to persons and property within the jurisdiction of their respective Corporate limits.

Here the object is Corporate purposes - the subjects are persons and property. And the rule is, uniformity upon the persons & property within the Corporate limits.

It is claimed the language used in said Sections 1, 2, & 5, is appropriate to a grant of specific powers - and as the granting of specific powers, is an exclusion of all other powers, these grants of powers operate as a ^{limitation} upon the legislature, in the exercise of the power of taxation.

If said Sections are a grant of specific

Powers of Taxation, and the principle of interpretation or construction above announced, be correct. The said Sections contain the whole power of the General Assembly in relation to Taxation. - There is no other like grant, and they necessarily exclude all other Powers.

This construction is conceded to be correct, and it would seem the framers of the Constitution were well aware of this principle of interpretation, and knew its effect, and fearing that ^{the} power of the General Assembly over the subject of Taxation, otherwise full, ample and unlimited, might be limited or so constituted to be, by the granting of the specific powers in said Sections enumerated, they added Section 6, which provides, that though certain objects and subjects of Taxation are therein before specified, the General Assembly shall not be deprived of the power to require other objects or subjects to be taxed, provided the rule of Taxation be consistent with the principles of Taxation fixed in the Constitution.

It is said, if said Sections 1, 2 & 5, being a grant of specific Powers, do not operate as a limitation, they have no meaning, and are a dead letter - on the contrary, it can be said, with equal force, that if they ^{do} operate, Section 6, is meaningless, and a dead letter.

Sections 1, 2 & 5, to be operative, say to the

General Assembly, "you can do this, and nothing more" Section 6. says, that although you can do as Sections 1, 2 & 5 direct, you are not prohibited from doing something more, in a certain manner"

The idea should not be entertained, nor is it reasonable to suppose, that the framers of the Constitution, intended that any part thereof should be impertinent, and of no effect.

The Constitution, like any other instrument, should be construed, so that all its parts will stand and be operative. Can it ~~not~~ be so construed?

Without the first five Sections of Art. 9, The General Assembly could have exercised all the powers therein specified, and in the manner therein indicated; and the framers of that instrument, may have intended, ~~to be merely directory~~, the said Sections to be merely directory, in relation to the particular objects and subjects of taxation therein specified, and fearing that they might be deemed a grant of specific powers, and thereby limit the power of the General Assembly, they added the 6th Section

are inclined to this view

The Counsel for the plaintiffs in error, ~~and~~ ^{and} consider a more reasonable and sound construction, to be, that the said first Sections operate as a limitation on the rule or principle that shall govern in levying Taxes.

But not as a limitation, on the objects and subjects of taxation, - and ^{that} Section 6, confirms this view. By stating that the specifications of the objects and subjects of taxation shall not deprive the General Assembly of the power to require other objects ~~and~~ subjects to be taxed. thereby removing the limitation, and also stating, that if other objects or subjects are taxed, they must be taxed in such manner as may be consistent with the principles of taxation fixed in the Constitution, thereby limiting the power of the General Assembly as to the rules principles of taxation.

If this construction is correct, there is no constitutional objection to the General Assembly investing the corporate authorities of Counties &c, with additional powers to assess and collect taxes, for additional or other than corporate purposes, merely, provided, the rule or principle of taxation conforms with the principle fixed in the Constitution.

In the case before the Court, the General Assembly has authorized the Corporate Authorities of the Town of St Charles to subscribe to, or take stock in the St Charles Rail Road Company, and to issue bonds in payment of such stock, and to assess ~~and~~ a tax upon the property within the corporate limits of said

town and collect the same, in the manner therein prescribed, for the payment of said bonds and interest thereon -

There is no new subject of taxation mentioned - it is the property within the corporate limits of said town.

The object or purpose of taxation is additional, it is to aid in the construction of the St Charles R. Road; and it is not pretended ~~but~~ ^{that} the Tax is to be levied upon all ^{the} taxable property in said corporate limits, uniformly and in proportion to the value thereof.

A Railroad is a public Highway for the public benefit. - 21 Jan. 169.

It is not necessary that the Rail Road to be built should lie within the corporate limits of the County. City &c. to be taxed for building the same

21 Jan 171. 2

It is not for the Court to determine what amount of interest the inhabitants of the town of St Charles may have in building said Rail Road - it must be taken for granted that the President and Trustees of said town. Are fully and fairly represented the majority of their constituents, in the premises.

21 Jan 172

In the cases cited in 19 + 21 Ill. it seems

The Legislature are not the Court are the proper
quarters, to determine the expediency of laying
for a special external improvement.
Excluded from limits & Leigh. 120. Cases
in not opened.

#

The only part of the Constitution referred to
and relied on, is the 3d Sec. of Art 3 - yet
the broad question raised, is the consti-
tutionality of the act of the Legislature, and
upon this question, it was the duty of
Court, ~~and Counsel~~ to examine the
whole Constitution, (and Counsel presume
the Court did do so). and ascertain
whether the act complained of was
in violation of any part of the same.

Counsel held that the cases in 19 &
21 Ill. are fully decisive of the case
before the Court.

And ask to have the case
reversed, & remanded - or the injunction
dissolved according to the rules and
practice of this Court.

Eastman & Bragdon
J. L. Beveridge

By J. L. Beveridge.

108-3

100.00/6000.00/6

Supreme Court

A. J. S. S. S. S. S.

W. Perkins S. S.

Account for
Platts in error

Filed May 9, 1860
L. Leland
Clerk

J. L. Beverly
for Platts in error

Superior Court

O. W. Jenkins

vs.

A. R. Lewis & others

By an Act of the Legislature approved Feb. 18. 1859 (See Sup. Laws p. 546) Oliver W. Butler, Henry Stearns, Peter H. Bunchell James D. Van Sutter and J. L. Eastman were created a body politic and corporate under the name of the St. Charles Rail Road Company and authorized to locate, construct and use a Rail Road commencing at a convenient place within the corporate limits of the town of St. Charles and running from thence, westerly or southerly, and connect either with the main track of the Galena & Chicago Union Rail Road Company or with the Dixon Air Line R. R.

The Capital Stock is fixed at \$15000, and may be increased to \$50000.

By this Act the Township of St. Charles is authorized to take stock in this Rail Road Company.

By a subsequent Act approved Feb. 21

1859 (See Sup. Laws p. 184) the incorporation of the town of St. Charles is authorized to take Stock in this Rail Road Compa-
ny.

Section 4. of the last mentioned Act provides that the amount of Stock to be taken by the town shall be determined by the legal votes of the town at an election to be called for that purpose.

The Act then directs that Bonds of the town shall be issued for the amount of the Stock taken and that these may be given to the Rail Road Company in payment for the Stock.

The 1st Section provides for the levying of a special Tax upon all the taxable property in the corporation for the payment of the principal & interest of the bonds.

Section 9. of the last Act above mentioned provides that the inhabitants of the town shall through officers appointed by them, take possession and have the management and control of the road - provided they shall take the Stock mentioned in the 3rd Section. The inhabitants of the town of St. Charles constituted a body politic

by the Name of the President & Trustees
of the Town of St. Charles Feb. 12. 1853
(See Sep. Terms of 1853 p. 232.)

The Bill is filed in behalf of a number
of Taxpayers of the town of St. Charles
against the defendants as Trustees
of said corporation to enjoin them from
issuing the Bonds of the corporation
for Stock in said Rail Road Company.

The Bill alleges that the
Bonds if issued will become a charge upon
the property of the complainants - that a
large portion of the Rail Road when built
will lie entirely without the corporate limits
of the town. - That a branch Road
with the same connection owned by the
Galena & Chicago R. R. Co. once existed and
has been for a long time abandoned be-
cause it would not pay running ex-
penses, and that the money intended to be
raised if expended either in building
the new Road or repairing the old one
will be entirely wasted and lost and that
no benefit can possibly accrue to the
complainants or their property from the
construction of the road. - but that on
the contrary their property will be great-
ly depreciated in value.

That the town of St. Charles is a Municipal Corporation created for the government of the inhabitants thereof, and not for the purpose of building a Rail Road and that the complainants, citizens and property holders in said town ought not to be compelled to invest their property in so ruinous an enterprise against their wishes and without their consent.

No answer was put in and the Bill was taken for confessed - and a decree entered in pursuance of the prayer of the bill.

The question presented by this record is whether the legislature can under our Constitution authorize this Municipal Corporation to ~~tax~~ the property of its inhabitants against their wishes and without their consent, to raise money for the purchase of Stock in a Rail Road Company, and to impose upon its inhabitants the burden of its management and control and thereby convert their local Municipal government per se into a private Corporation, in other words, as this money is to be raised by taxation, whether there is any Constitutional restriction upon

the power of the legislature to authorize a Municipal Corporation to tax its inhabitants - whether it can be invested with authority to tax for any and all purposes, or whether it is not limited to such purposes as are within the scope and object of its institution.

A tax differs from a seizure of private property for public use in this - that the first is a demand from each inhabitant of his just share of the expense of the government - the other is a seizure of his property in addition to and without any regard to his proportion of the public burdens.

The property of the Citizens cannot be taken for public use without just compensation being made to him. He would suffer the same injustice from a tax imposed without any regard to a resulting benefit.

The inhabitants of a Municipal Corporation cannot complain, though the burden of its government rests heavily upon him. No demand is made upon him & apt to contribute his share towards the purposes

and objects of its institution for human-
cious in they at least, a corresponding
benefit; but if he is compelled to contribute
to an object which is not of a cor-
porate character, but which lies wholly
without the sphere of Corporate purposes,
such an exercise of the taxing power is
in effect, to take his property and give
it to another without his consent.

And to say nothing of any
express Constitutional prohibition there has
never been held as a Constitutional exercise
of legislation power in any State in the
Union, on the contrary it has been constant-
ly resisted as inconsistent with just
principles by our judicial tribunals in
which it has been attempted to be enforced.

Wilkinson vs. Leland & others

2 Petus 157.

Spauld vs. Taylor 9 Cranch 43

Brown vs. Hammond & Barr 91

Dole vs. Butcher 9 Barr, 110

Parsons vs. Lewis & Doran 2 Dallas 310

Toney vs. Delmonico & Reuter & Co. 10
3 Harrison 203.

Varick vs. Smith & Paige 159

On the Matter of Mary Shul 11 Wend.

Bladgood Is. (M. & H. R. R. Co
18 March 59

Jaynes W. Foster 4 Hill 144-145
Embury Is. known 4 Kemal. Rep. 577.

But we insist that by our Constitution the legislature is prohibited from granting this power to Municipal Corporations.

The only provision in the old Constitution upon the subject of taxation is contained in the 26th section of the 8th article and is in these words. "That the mode of levying a tax shall be by valuation so that every person shall pay a tax in proportion to the value of the property he or she has in his or her possession."

There is no limitation except as to the mode of levying the tax. But the provisions of the New Constitution are much more specific on this subject.

Section One of Article 9. entitled "Revenue" provides for the Collection of a Capital tax.

Section 2. fixes the same limitation upon the mode of taxation which is contained in the Old Constitution and further provides that "the general Assembly shall have

power to tax pollars, auctioners, brokers,
bankers, Merchants, Commission Merchants,
Shamers, jiggers, inn-keepers, grocery-
keepers, toll bridges and ferries and persons using
and exercising franchises and privileges in
such manner as they shall from time to
time direct.

Section Six. provides that the specifications of
the objects and subjects of taxation shall not
define the general assembly of the power
to require other objects or subjects to be tax-
ed in such manner as may be consistent
with the principles of taxation fixed in
this constitution.

Section 3. specifies the property to be ex-
empt from taxation.

Section 4 relates to the giving notice of
purchases made at tax sales.

Section 5. is in the following words.

"The Corporate authorities of Counties,
townships, school districts, cities, towns
and villages may be vested with power to
assess and collect taxes for corporate pur-
poses, such taxes to be uniform in ac-

"-apart to persons and property within
"the jurisdiction of the body imposing
"the same and the general Assembly shall
"require that all the property within the
"limits of Municipal Corporations belong-
"ing to individuals shall be taxed for
"the payment of debts contracted under
"authority of law."

The language is "the Corporate
Authorities of Counties &c (may be vested with
power to assess and collect taxes for corpo-
-rate purposes. It is in effect say-
ing to the legislature that it may vest
Corporate Authorities with power to assess
and collect taxes for Corporate purposes.

This language is appropriate to a
grant of power, but as the granting of
one or more specific powers or things is an
exclusion of all others this grant operates
as a limitation and is equivalent to say-
ing that the legislature shall not vest
Corporate authorities of Counties &c with
power to assess and collect taxes for
any other than Corporate purposes.

When the principle that the ex-
press mention of one thing implies the in-
tent to exclude others.

Dwarris on Statutes 713.

July man vs. Supervisors of Taxable ltr. 19. 4th
Hll.

If the legislature can confer upon Cor-
porate Authorities of Counties or other pro-
cess of taxation then then specified then
the provision of the 5th section can have
no operative effect; for, the legislature
could clearly not the power specified in
this section had the Constitution been
entirely silent upon the subject.

If this section is to have any
effect whatever it must operate as a lim-
itation upon the power of the legislature
It is never to be presumed
that the legislature had nothing in view
in making a law; hence it is another rule
of interpretation that a statute should nev-
er be so construed as to render it a nul-
lity or quibb under its face; but such
a construction ought to be put upon it
as that it shall have its full force and
effect and not to be made vain and il-
lusory.

Smith's Commentaries p. 171. p. 527.

In like manner the constitutional provis-
ion in relation to the taking of private
property for public use operates as a limita-
tion upon the power of the legislature

to take private property for any other than a public use.

The language of the provision is. - "Nor shall any person's property be taken or applied to public use without the consent of his representatives in the General Assembly - Nor without just compensation being made to him". This is construed as a grant of power to the legislature and also by implication as a limitation by confining its exercise to the particular purposes specified.

The Constitution by authorizing the appropriation of private property to public use, implicitly declares that for any other use, private property shall not be taken.

In the Matter of May, Dec 11 Mond 1871.

This provision of the Constitution is designed to be as full a limitation as a definition of the right of the government or sovereign political power to interfere with the otherwise absolute right of the citizen to the undisturbed possession of his own property. It is therefore to be construed as equivalent to a Constitutional declaration that private property without the consent of the owner shall not be taken

"only for the public use & then only upon a
"just compensation."

Blond good to (Mr. S. H. R. R. Co.

18 Mead. 59.

Century in. Lesson 4 Lesson Ref 517

The 1st Section of Article 9. giving power to
the legislature to specify other objects and
subjects to be taxed than those specified in
the 2nd section shows that the framers
of the Constitution understood the whole ar-
ticle as a grant of specific powers to the
legislation upon the subject of taxation
and by implication excluding all other
powers than those specifically granted.
Could the article which was designed to
be a limitation upon the action of the
legislation upon the subject of taxation
why does it form a part of our organic
law.

It is absurd to say that the people
granted to the legislature a right to do
what it had a right to do without the
grant and there could be no object in
granting by a Constitutional provision, spe-
cific powers to the legislature if the legis-
lation can independently of the Constitution-
al provision exercise other powers than

granted in relation to the subject concerning which the specific powers are given. Such a construction would render the whole article nugatory and of no effect.

Should the legislation authorize this town to lay a tax upon its taxable property for the purpose of raising money to build a Court House in another County 100 miles distant, would the Court have any limitation in saying that the purpose for which the money was to be raised was not a corporate purpose as applicable to the town of St. Charles and that the Act for that reason would be unconstitutional and void.

The question was not raised in the case of *Pittman v. Supervisors of Tazewell County* 19 Ills. 411. The only point then decided is - that the granting of powers to towns like St. Charles to take stock in Rail Road Companies does not violate the 38th section of the 3rd article of the Constitution - which provides that the credit of the State shall not be given to or in aid of any individual association or corporation.

That a legislative enactment is not void because it authorized the perform-

and of an Act supposed to be enacted within
the season of some other publication. No refer-
ence whatever was made to the provisions of the
Constitution to which the attention of the Court
is now called. And a decision that
an act complained of does not violate one pro-
vision of the Constitution does not determine
the question as to whether it does or does not
violate another and distinct provision of the
same instrument.

If then the Corporate authority of a town
can only be vested with power to assess and
collect taxes for Corporate purposes it remains
to be considered whether a tax to collect
money for building of this Rail Road can
in any just sense be said to avail for a
Corporate purpose as applied to the town of
St. Charles.

The road in question as appears from
the Bill will, when constructed, lie in
large part without the Corporate limits of
the town and may by the terms of the
Charter be extended to other towns.

In the case of *Mc'Dermott et al vs. Kennedy*
Brightly Reports (Conn) 332 - it is ⁴prop-
-ly decided that the building of a Rail Road
not within the limits of a borough is in

5-
no sense a bough purpose - that the purpose is purely a private one - that the fact that the use of the road when constructed may be of advantage to the bough does not render it a bough purpose and the judgment in this case was afterwards affirmed on appeal and Judge Ruffield in his able work on the Law of Railways p. 537 note 2. says "In regard to the power of the Legislature to empower a Municipal Corporation to subscribe for Railway stock there has been some controversy.

The dissenting opinions of some of the judges upon the question when the majority of the Court have maintained the validity of such subscriptions would appear to show the advantage of the argument especially when it has been attempted to impose a burden upon Municipal Corporation for the erections of Railways beyond their territorial - although incidentally affecting their pecuniary interests by way of business.

The fallacy of the argument by which the leading opinions have been attempted to be maintained if there be any, seems to consist in affirming that Corporate interests of Municipal Corporation extend to anything affecting their general

wealth & business prosperity, whereas, in truth we are compelled to limit such interests at a point far short of this.

Anything which is practically indispensable to the security of life and property - or to the successful pursuit of business, and to the furtherance of public improvements and enterprise and which is strictly within the territorial limits of the Corporation, is understood to be fairly regarded as of Municipal interest & concern."

The purpose to be a Corporate one when applied to a Municipal Corporation must affect the body politic in its aggregate capacity - and if it consists in a thing granted, the thing must be granted for indiscriminate public use in order to make the purpose of the grant a public purpose, anything short of this is a private purpose.

If anything is to be considered a Corporate purpose which would tend to affect the general wealth or business prosperity of the inhabitants of a Municipal Corporation - then the restriction limiting the power of Municipal Corporations in assessing and col-

-lecting ^{to} ~~to~~ corporate purposes, in-
stead of giving a wall of defence would
become a mere cob-web barrier - its
very weakness and fragility inviting at-
-tack and this Constitutional safeguard
would not only be wholly inefficient but the
great end and aim of the framers of this
instrument, the object and design of
this restriction, would be entirely defeated.

Such a doctrine would also be
in direct hostility to a fundamental
rule of construction which should be applied
with all its force to a Constitutional restric-
-tion in legislative power imposed by the
people (the source of all power) in their
sovereign capacity - that is. that every
law should receive such a construction
as not to elude its force or render it
vain and illusory.

Smith's Commentaries 421. 422

It will be remembered that the Com-
-plainants in this case opposed the pro-
posed usurpation of their rights as soon
as it came to their knowledge and they
ask the intemperance of the Court be-
-fore the rights of innocent third par-
-ties are affected; as municipal author-
-ities are the agents of the people and

act for their benefit, should the complain-
-ants stand by and permit - without objec-
-tion the proposed subscription to be made
or allow third persons to be deceived
into investments in the belief that the
acts are approved of the court & pre-
cluded from afterwards objecting.

Henry Miller & Lewis
for Defendants

¹⁰⁸⁻¹³
Supreme Court
C. W. Perkins
vs
A. H. Lewis et al

Argument
for
defendants in error

Filed May 26. 1860

A. H. Leonard
clerk

Kenneth Miller & Lewis
Attys for defendants

Superior Court

O. W. Perkins

vs.

A. H. Lewis & others.

By an act of the Legislature approved Feb. 18. 1859 (See Laws p. 54) Oliver W. Butler Henry Stevens John H. Burchell James S. Van Fatten and D. S. Eastman were created a body politic and corporate under the name of the St. Charles Rail Road Company and authorized to locate, construct and use a Rail Road commencing at a convenient point within the corporate limits of the town of St. Charles, and running from thence northward, easterly or southerly and connect either with the main track of the Galena & Chicago Union Rail Road Company or with the Dixon & St. Louis R. R. The capital stock is fixed at \$150,000. and may be increased to \$50,000.

By this Act the Township of St. Charles is authorized to take stock in this

Rail Road Company.

By a subsequent Act, approved Feb. 21 1859 (see Rep. Laws p. 184 the incorporation of the town of St. Charles is authorized to take stock in this Rail Road Company.

Section 4. of the last mentioned act provides that the amount of stock to be taken by the town shall be determined by the legal voters of the town at an election to be called for that purpose.

The act then directs that Bonds of the town shall be issued for the amount of the stock taken and that these may be given to the Rail Road Company in payment for the stock. The 11th Section provides for the levying of a special tax upon all the taxable property in the Corporation for the payment of the principal & interest of the bonds.

Section 9. of the first act above mentioned provides that the inhabitants of the town shall through officers appointed by them take possession and have the management & control of the road. - Provided they shall take the stock mentioned in

the 3rd Section. The ^{inhabitants} ~~inhabitants~~ of the town of St. Charles constituted a body politic by the name of the President & Trustees of the Town of St. Charles Feb. 12. 1863 (See Session Laws of 1863 p. 232)

The Bill is filed in behalf of a number of Tax payers of the town of St. Charles against the defendants as Trustees of said Corporation to enjoin them issuing the Bonds of the Corporation for Stock in said Rail Road Company.

The Bill alleges that the Bonds if issued will become a charge upon the property of the complainants - that a large portion of the Rail Road when built will lie entirely without the corporate limits of the town - that a branch road with the same connection owned by the Galena & Chicago R. R. Co. once existed and has been for a long time abandoned because it would not pay running expenses. And that the money intended to be raised if expended either in building the new Road or repairing the old one will be entirely wasted and lost.

and that no benefit can possibly accrue to the complainants or their property from the construction of the road. but that on the contrary their property will be greatly depreciated in value.

That the town of St. Charles is a Municipal Corporation created for the government of the inhabitants thereof and not for the purpose of building a rail road and that the complainants, citizens or property holders in said town ought not to be compelled to invest their property in so ruinous an enterprise as a rail road without their consent.

No answer was put in and the Bill was taken for confessed - and a decree entered in pursuance of the prayer of the bill.

The question presented by this record is whether the legislature can under our Constitution authorize this Municipal Corporation to tax the property of its inhabitants as a rail road without their consent to raise money for the purchase of stock in a Rail Road Company. And to impose upon its inhabitants the burden of

its Management and Control and
they convert their local Municipal
government ~~pro tanto~~ into a private
Corporation, in other words as

This money is to be raised by tax-
ation and whether there is any constitu-
tional restriction upon the power of the
legislature to authorize a Municipal
Corporation to tax its inhabitants -
whether it can be invested with au-
thority to tax for any and all purpo-
ses, or whether it is not limited to
such purposes as are within the
scope and object of its institution.

It differs from a seizure of private
property for public use in this that
the first is a demand from each
inhabitant of his just share of
the expenses of the government - the
other is a seizure of his property in
addition to and without any re-
gard to his proportion of the pub-
lic ^{burden} business.

The property of the citizen cannot
be taken for public use without
just compensation being made to
him. He would suffer the same

injurious from a tax imposed without
any regard to a resulting benefit.

The inhabitants of a Municipal Corporation cannot complain though the burthen of its government rests heavily upon him provided no demand is made upon him & apt to contribute his share towards the purposes and objects of its institution for he receives in return at least a corresponding benefit. But if he is compelled to contribute to an object which is not of a corporate character, but which lies wholly without the sphere of corporate purposes, Such an exercise of the taxing power is in effect to take his property and give it to another without his consent.

And to say nothing of any express constitutional prohibition" this has now been held as a Constitutional exercise of legislative power in any state in the Union, on the contrary it has been constantly insisted as inconsistent with just principles by every judicial tribunal in which it has been attempted to be enforced. Wilkinson vs. Landolt & the 2 Peters 57

Swett vs. Taylor 9 Cranch 43
Brewer vs. Hammond 6 Barr. 91
Doherty vs. (Metcalf) 7th 9 Barr 110
Vanhans Lefebvre vs. Duane 2 Dallas 310
Trench vs. Delmar & Raitan Canal Co.
3 Harrison 3d 213.
Vanick vs. Smith & Co. Paige 159
In the Matter of Albany Canal 11 Wend 157
Bloodgood vs. N. & H. R. R. Co.
18 Wend 59
Taylor vs. Porter 4 Heile 144-145
Lantry vs. Lennor 4 Const. Rep. 517

But we insist that by our constitution the legislature is prohibited from granting this power to municipal corporations. The only provision in the old Constitution upon the subject of taxation is contained in the 20th Section of the 8th article and is in these words "that the mode of laying a tax shall be by valuation so that every person shall pay a tax in proportion to the value of the property he or she has in his or her possession". There is no limitation except as to the mode of laying the tax.

But the provisions of the new constitution are much more specific on this subject. Section one of article 9. entitled Revenue provides for the collection of a Capitation tax.

Section 2. fixes the same limitation upon the mode of taxation which is contained in the old constitution, and further provides that "the general Assembly shall have power to tax pedlars, auctioneers, brokers, bankers, merchants, commission merchants, shoemen, jugglers, inn-keepers, quack - doctors, toll bridges and ferries and persons using and exercising franchises and privileges in such manner as they shall from time to time direct."

Section Six provides that "the specifications of the objects and subjects of taxation shall not deprive the general assembly of the power to require other objects or subjects to be taxed in such manner as may be consistent with the principles of taxation fixed in this constitution."

Section 3, specifies the property to be exempt from taxation.

Section 4, relates to the giving no-
-tices of purchases made at tax sales.

Section five is in the following words.

"The corporate authorities of Counties,
"townships, school districts, cities, towns
"and villages may be vested with
"power to assess and collect taxes for
"corporate purposes, such taxes to be
"uniform in respect to persons and
"property within the jurisdiction of the
"body imposing the same, and the
"general assembly shall require that
"all the property within the limits of
"municipal corporations belonging to in-
"dividuals shall be taxed for the payment
"of debts contracted under authority - of law."

The language is "the corporate author-
-ities of Counties &c may be vested with
power to assess and collect taxes for
corporate purposes. It is in effect say-
ing to the legislature that it may
vest corporate authorities with power to
assess and collect taxes for corporate
purposes. This language is appro-
-priate to a grant of power, but as
the granting of one or more specific
powers or things is an exclusion of all
this grant operates as a limitation

and is equivalent to saying that the legislature shall not grant Corporate authorities of Counties or other forms to assess and collect taxes for any other than Corporate purposes. When the principal that the express mention of one thing implies the intention to exclude others.

Decision on Statute 713.

Fuller v. Supers of Tazewell Co 19 Ill 411

If the legislature can confer upon Corporate authorities of Counties or other forms of taxation than those specified then the provision of the 5th Section can have no operative effect, for the legislature could clearly vest the powers specified in this section had the Constitution been entirely silent upon the subject. If this Section is to have any effect whatever it must operate as a limitation upon the power of the legislature.

It is now to be presumed that the legislature had nothing in view in making a law; hence it is another rule of interpretation that a Statute should never be so construed as to render it a nullity or ^{of interpretation} exclude its force, but such a construction

"ought to be put upon it so that it shall
"have its full force and effect and not
"to be made vain and illusory."

Smith's Commentaries p. 171. § 527.
In like manner the Constitutional
provision in relation to the taking
of private property for public use
= also as a limitation upon the power
of the legislature to take private
property for any other than a public use.

The language of the provision
is "nor shall any man's property be
"taken or applied to public use (without
"the consent of his representatives in the
"general Assembly. Or (without just
"compensation being made to him)." This
is construed as a grant of power to
the legislature and also by impli-
cation as a limitation by confining
its exercise to the particular pur-
pose specified.

"The Constitution by authorizing the ap-
"propriation of private property to public
"use implicitly declares that for any
"other use private property shall not be
"taken." On the Matter of Albany
Sept 11. Mond 187

"This provision of the Constitution is

" designed to be as well a limitation as a
" definition of the right of the government
" a sovereign political power to interfere with
" the otherwise absolute right of the citizen
" to the undisturbed possession of his own
" property. It is therefore to be construed
" as equivalent to a Constitutional declara-
" tion that private ^{property} without the consent of
" the owner shall be taken only for the public
" use & then only upon a just compensa-
" tion " Bloodgood v. (M. & B. R.R. Co.
18 Mead. 59

Embrey v. ⁸ Turner 4 Const. Rep. 517
The 1st section of article 9 giving
power to the legislature to specify other
objects and subjects to be taxed than
those specified in the 2nd section shows
that the framers of the Constitution in-
-tended the whole article as a grant
of specific powers to the legislature
upon the subject of taxation and by
implication excluding all other powers
than those specifically granted.
Unless the article was designed to be
a limitation upon the action of
the legislature upon the subject of
taxation why does it form a part of
our organic law. It is absurd

to say that the people granted to the legislature a right to do what it had a right to do without the grant and there could be no object in granting by a Constitutional provision specific powers to the legislature, if the legislature can independently of the Constitutional provision exercise other powers than those granted in relation to the subject concerning which the specific powers are given. Such a construction would render the whole article nugatory and of no effect.

~~This question was not raised.~~
Should the legislature authorize this, to wit: to levy a tax upon its taxable property for the purpose of raising money to build a Court House in another County 100 miles distant would the Court have any limitation in saying that the purpose for which the money was to be raised was not a corporate purpose or applicable to the town of St. Charles and that the act for that reason would be unconstitutional and void.

The question was not raised in the case of *Pettyman vs. Supervisors of Tazewell County* 19 Ill. 411. The only point then decided

is, that the granting of power to towns
cities or to take stock in Rail Road Com-
panies does not violate the 38th section of
the 3rd article of the Constitution which
provides that the credit of the State shall
not be given to or in aid of any individ-
ual association or corporation. That a legis-
lative enactment is not void because it
authorizes the performance of an act sup-
posed to be embraced within the reason of
some other prohibition. Our reference what-
ever was made to the provisions of the
Constitutions to which the attention of the
Court is now called. And a decision that
an act complained of does not violate one
provision of the Constitution does not deter-
mine the question as to whether it does
or does not violate another and distinct pro-
vision of the same instrument.

If then the corporate authority of a town
can only be vested with power to assess and
collect taxes for corporate purposes it remains
to be considered whether a tax to collect
money for building of this rail Road can
in any just sense be said to avail
for a corporate purpose as applied to
the town of St. Charles.

The record in question as appears from

the Mill when constructed lies in large part without the corporate limits of the town and may by the terms of the charter be extended to other towns.

In the case of *Mc Dermont et al vs Kennedy*, *Bright's Reports (Conn)* 332. It is expressly decided that the building of a Rail Road (not within the limits of a borough) is in no sense a borough purpose - that the purpose is purely a private one - that the fact that the use of the road when constructed may be of advantage to the borough does not render it a borough purpose and the judgment in this case was afterwards affirmed on appeal and Judge Redfield in his able work on the Law of Railways ~~sup~~ p. 537. note 2 says - "In regard to the power of the Legislature to empower a Municipal Corporation to subscribe for Rail- way stock there has been some controversy. The dissenting opinions of some of the judges upon this question when the majority of the Court have maintained the validity of such subscriptions would appear to have the advantage of the argument, especially when it has been attempted

to impose a burden upon Municipal Cor-
porations for the sections of Railways beyond
their territorial limits - although incidentally
affecting their pecuniary interests by way of busi-
ness. The fallacy of the argument by
which the leading opinions have been attempt-
ed to be maintained if there be any seems
to consist in affirming that corporate inter-
ests of Municipal Corporations extend to any-
thing affecting their general wealth or business
prosperity whereas in truth we are compelled
to limit such interests at a point far
short of this. Everything which is
practically indispensable to the security
of life and property, or to the successful pro-
sperity of business and to the advancement of
public improvement and enterprise and
which is strictly within the territorial lim-
its of the Corporation is undoubtedly to be
fairly regarded as of Municipal interest
& concern.

The purpose to be a corporate one when
applied to a Municipal Corporation must
affect the body politic in its aggregate
capacity and if it consists in a thing
granted the thing must be granted for in-
discriminate public use in order to
make the purpose of the grant a

public purpose, anything short of this is a private purpose.

If anything is to be considered a corporate purpose which may tend to affect the general wealth or business prosperity of the inhabitants of a Municipal Corporation - then the restriction limiting the power of Municipal Corporations in assessing and collecting taxes, to ~~incorporate~~ purposes instead of proving a wall of defence would become a mere cob-web barrier - its very weakness and fragility inviting attack and this Constitutional safeguard would not only be wholly inefficacious but the great end & aim of the framers of this instrument, the object and design of this restriction would be entirely defeated. Such a doctrine would also be in direct hostility to a fundamental rule of construction which should be applied with all its force to a Constitutional restriction in legislative power (imposed by the people) the source of all power in their sovereign capacity - that is, that any law should receive such a construction as not to elude its force a puerile & vain and illusory. Smith's Commentaries 421, 422.

It will be remembered that the complain-
ants in this case opposed the proposed
usurpation of their rights as soon as it
came to their knowledge and they ask
the interpretation of the Court before the
rights of innocent third parties are affected,
as Municipal authorities are the agents of
the people and act for their benefit, should
the complainants stand by and permit
without objection the proposed subscription
to be made or allow third persons to be
deceived into investments in the belief
that the acts are approved of they might
be precluded from afterwards objecting.

Henry Miller & Lewis
for defendants

¹⁰⁸⁻³
Superior Court
O. W. Perkins
J.
L. R. Lewis et al

Argument
for
defendants in error

Filed May 26, 1860

L. Leland
Clerk

Henry Miller & Lewis
Atty for Defendants

United States of America }
State of Illinois - Kane County } ss

Cases before the Honorable Isaac G. Wilson
Judge of the Thirteenth Judicial
Circuit and presiding Judge of
the circuit court of Kane County
in the State of Illinois at a
Term of said court begun and
held at the Court House in
Geneva in said County on
the third Monday of November
in the year of Our Lord One
Thousand Eight Hundred and
Fifty Nine and of the indepen-
dence of the United States of America the Eighty Fourth
Present

Hon. Isaac G. Wilson - Judge
Edward E. Jocelyn - State Attorney
Ethel J. Allen - Sheriff

Attest

Paul R. Wright }
Clerk }

Be it remembered that hitherto to wit:
On the 13th day of August A.D. 1859 there
was filed in the office of the circuit clerk
of the circuit court in and for the county
of Kane and State of Illinois a Bill for
Injunction and relief which was in the
words and figures following to wit:

State of Illinois }
Kane County }

Do the Honorable Isaac
G. Wilson Judge of the Thirteenth Judicial
Circuit of said State and presiding Judge
of Kane county circuit court:
Humbly complaining shew unto your
Honor your Orators Otho W. Perkins
Charles K. Parks David Martin Samuel
Sterling & Moses W. Bliss would most
respectfully shew unto your Honor
that they and each of them are owners
of Real Estate and Tax payers within
the limits of the incorporated town of
St. Charles county of Kane and State of
Illinois and that all and each of your
Orators are liable to be assessed and pay
their ratable proportion of all taxes levied
by the corporation of said town upon

Your Orators said property located within the corporate limits of said Town for all purposes whatsoever And Your Orators would show unto Your Honor that some evil minded person or persons unknown to your Orators residing within the corporate limits of said Town procured or caused to be procured at the last session of the Legislature of the State of Illinois an act to be passed by said Legislature purporting to be an act entitled an act to authorize the inhabitants of the corporation of the Town of St Charles to subscribe to the Stock of the St Charles Rail Road Company approved February 21st 1859 which said act Your Orators have never been able to see and they are informed that it has not been published as yet and that since they have been informed of the passage of said act Your Orators have not been able on account of time to procure a copy thereof from the office of the Secretary of State But Your Orators would respectfully ask leave that when they shall be able to procure a copy of said act they may be allowed to attach the same to this their Bill of complaint and make it a part of thereof Marked

Exhibit A, To which Your Orators beg leave to refer

And Your Orators would further show unto Your Honor that they are informed that said act authorizes the corporate officers of said Town or some of them to call a meeting of the legal voters residing within the corporate limits of said Town to vote either for or against subscribing to the stock of the St. Charles Rail Road Company or that said corporation shall subscribe for or cause to be subscribed for and if any how much of the capital stock of the St. Charles Rail Road Company and that the president of the said board of Trustees of Town has directed or requested the clerk of said board to issue and post up notices calling said proposed meeting and that A. R. McWayne the clerk of said Board of Trustees has issued and posted such notices - a copy of one of said notices which is herunto attached and marked Exhibit B To which Your Orators beg leave to refer should it become necessary and Your Orators would inform your Honor that J. R. Lewis is President of said board of Trustees of said Town of St. Charles

and that Richard Wheeler Samuel ~~Shunt~~
William S. May Eli Barber & J. K. Lewis
are the Trustees of said Town and that
A. R. M. C. Haynes is clerk of said Board
all of whom Your Orators pray may be made
defendants to this their Bill of Complaint

And Your Orators would further show
unto Your Honor that they are informed
and believe and so charge the facts to be
that the St Charles Rail Road company are
authorized ~~to~~ and empowered to build
a Branch Rail Road from any point
within the corporate limits of the town
of St. Charles Southw^{ly} to connect with the
Dixon Air line or easterly ^{with} the Galena
and Chicago Union Rail. Road: a branch
road connecting with either would have
to be built without and beyond the in-
corporate limits of said Town of St Charles
aforesaid — And Your Orators would
further show unto Your Honor that the said
defendants or some of them ^{under} ~~made~~ pretence of
authority to be obtained in pursuance of an
election to be held at a time and place
in said notice aforesaid mentioned are
about to subscribe stock to a large amount
of the stock of the said St Charles Rail Road
company and to issue bonds of said

incorporated Town of St Charles of a large amount to pay for said Street & subscribed to said Rail Road company and making the same a charge upon the town of St Charles and upon the Property holders of Your Orators and each of them The principal and interest of the same to be paid by taxing all the Real and personal property within the said Town of St Charles and as a necessary consequence the property of Your Orators — And Your orators further show unto Your Honor that upon information and belief and so charge the fact to be that it is not designed or intended to have any stock taken in said St Charles Rail Road company except such part as shall be taken by said Town of St Charles but on the contrary thereof it is the design and intention to make the said Town of St Charles a Rail Road ~~incorporation~~ incorporation

And Your Orators further Show unto Your Honor as they are advised by counsel and so charge the fact to be that the said incorporated town of St Charles is a Municipal Corporation for the government of the People of said Town and not a private corporation

for pecuniary purposes and that it is
contrary to the constitution of this state
to make such a private corporation
for the purpose of speculation and compell-
ing the inhabitants and property owners
of said town to invest their property without
their consent and against their wishes in
the speculations of said Municipal corpora-
tion which is changed from the legitimate
constitutional and lawful objects thereof
And your orators would further show unto
your Honor that should any branch
Rail Road be built as proposed from
within the corporate limits of said town
would have to be a large proportion ^{built} with-
out the corporate limits of said ^{town of St.} Charles

And your Orators would further show
unto your Honor that there has long
existed a branch Rail Road leading
from the said town of St. Charles connect-
ing with the Galena and Chicago Union
Rail Road company and that the
same has long since been abandoned
because it would not pay running expen-
ses and repairs and that should a new
Rail Road be built or the old one
repaired it would be a tax upon the
said town to keep the same in running

condition of which your Orators would be obliged to pay their ratable proportion as Tax payers within said corporate limits of said Town and that all money thus invested would be wasted and lost

And your Orators would further show that the said defendants and others acting with them as your Orators are informed and believe intend to subscribe the stock of the St Charles Rail Road and issue the Bonds as aforesaid for the pretended purpose of building the same yet they intend to apply the proceeds of said Bonds in the repairing the ^{said} old tracks aforesaid and not to apply the proceeds according to ~~the~~ said act which said old tracks as your Orators are informed and believe to be true belongs to the Galena and Chicago Union Rail Road company and is not owned and controlled by the Municipal authorities of said Town of St Charles

And your Orators would further show unto your Honor that no benefit of any name or kind can possibly accrue to your Orators or their property by building said St. Charles Rail Road or repairing the old tracks, that it will not in any manner increase the value

3
of the property of Your Orators but on the contrary thereof will diminish the value of their property by encumbering it with heavy taxes and assessments

And Your orators would further show upon information and belief and so charge the fact to be that the said defendants or some of them are about to issue the bonds of the Incorporated town of St. Charles aforesaid to pay for said Capital Stock to be subscribed as aforesaid to the amount of Seven Thousand Dollars under said law in Schedule "A." Mentioned bearing a high rate of interest pledging all the property within the said corporate limits of said Town of St. Charles for the payment thereof And Your orators had well hoped that the said defendants would have regarded their duty in the premises and would have refrained from subscribing to said stock and issuing or ^{attempting} ~~authorizing~~ to issue said Bonds But now not it is May it please Your Honor said defendants not regarding their duty in said the premises but combining and confederating to and with divers persons to your orators unknown whose names when known & Your orators pray may be made inserted in this their bill of complaint with

apt and proper words to charge them to
injury and oppress Your orators have called
an election at the town of St. Charles aforesaid
to wit on the 15th day of August A.D. 1854
to get an excuse to subscribe to said
Capital stock and issue said bonds
aforesaid and intend to issue the same
sometimes pretending that the proceeds
shall be applied to the building a branch
Rail Road to connect with the air line
Rail Road at Geneva sometimes preten-
ding the same to be applied to the building
of a Branch Rail Road connecting with
the Galena & Chicago Rail Road at the
junction and sometimes pretending that
the proceeds of said Bonds are to be applied
to the repairing the abandoned Branch
Rail Road (old track) All of which
actings and doings and pretences are
contrary to equity and good conscience
and tend to the manifest and irrepar-
able injury of Your Orators In tender
consideration thereof and for as much
as Your orators are powerless in the prem-
ises and can only have relief in this
honorable court where matters of this
and like nature are cognizable and
relievable Therefore Your orators ask that

She said

defendants may be ~~made~~ summoned to answer this Your Orators Bill of Complaint without oath their oath being ^{expressly} ~~expressly~~ waived. And Your orators would therefore ask that the People's writ of Exemption may issue out of and under the seal of this Honorable Court restraining and enjoining the said defendants to wit the President and Trustees of the Town of St. Charles ^{and} ~~or~~ their clerk or any or either of them their agents attorneys and successors in office from subscribing for or to the capital stock of said St. Charles Rail Road ^{company} ~~and~~ from issuing signing selling or disposing of any Bonds pledging the corporate town of St. Charles as aforesaid for the redemption of the same pursuant to the act of the Legislature in exhibit "A." mentioned by which the said Town of St. Charles may be made liable for any Rail Road company whatever or repairing the tracks of any Rail Road and upon a final hearing of this injunction to be made perpetual and for such other & further relief as shall be equitable to equity and good conscience And that Your Orators may have a writ of Summons issuing out of this honorable Court and

under the Seal thereof directed to the said
defendants commanding them and each
of them to appear in this honorable court
on the first day of the next term thereof
to answer unto this your Orators bill of
complaint and as in duty bound &c.

A M Herrington }
Solicitor

Otho W. Perkins

State of Illinois }
Kane County }

Otho W. Perkins who
signed the foregoing Bill
of complaint for himself and the other
complainants first being duly sworn
doth depose and say that he has heard
the foregoing bill of complaint by him
subscribed read & knows the contents
thereof that such matters & things as
are therein stated upon his own
knowledge are true and as to those
matters & things as are therein stated
upon the information of others he believes
to be true

Otho W. Perkins

Sworn & subscribed to
before me this 13th day of
August A.D. 1859

Chas B Wells
Master in chancery
& Kane circuit court

To Paul R. Wright Esq.

Clerk of Kans Co. cr. court-

Let an injunction
 issue according to the Prayer of the
 foregoing bill of Complaint-

Chas. P. Mills

Master in Chancery

4
Notice!

{Exhibit B}

Whereas I have been requested by the President-
of the ~~and~~ board of Trustees of the incorporated
town of St. Charles in the county of St. Louis
and State of Illinois to call an election of
the citizens (legal voters) of said incorporated
town of St. Charles pursuant to an act of the
General assembly of the state of Illinois
entitled an act to authorize the inhabitants
of the corporation of the town of St. Charles
to subscribe to the stock of the St. Charles
Rail Road company approved Feb. the 21st 1859

Therefore pursuant to such request and
in obedience to the law in such cases
made and provided

Notice is hereby given
to the inhabitants of the incorporated town
of St. Charles in the county of St. Louis and
state of Illinois that an election will
be held for said corporation at the store
building commonly known as the "town hall"
in the incorporated town of St. Charles on
the east side of St. River where the last
~~passed~~ annual Town Meeting was held
for said corporation on Monday the 15th
day of August A.D. 1859 to ascertain
whether or not the citizens of said corporation
in accordance with the law are desirous that

4
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Whereas I have been requested by the President-
of the ~~and~~ board of Trustees of the incorporated
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building commonly known as the "town hall"
in the incorporated town of St. Charles on
the east side of St. River where the last
~~passed~~ annual Town Meeting was held
for said corporation on Monday the 15th
day of August A.D. 1859 to ascertain
whether or not the citizens of said corporation
in accordance with the law are desirous that

Shot Afterwards to wit on the 19th day of August A.D. 1854 there was also filed in the clerks office of the ^{said} Kane county circuit court a summons which was in the words & figures following to wit:

State of Illinois }
Kane county }^{ss}

The People of the State of Illinois to the Sheriff of said county Greeting
We command you that you summon J. K. Lewis Richard Wheeler Samuel Eliot William A. Way & Eli Barber President and Trustees of the Town of St. Charles in the County of Kane and State of Illinois and A. R. McWayne Corporation Clerk if they shall be found in your county personally to be and appear before the Circuit Court of said County on the first day of the next term thereof to be holden at the Court House in Geneva in said County on the third Monday of November next to answer unto Otto W. Perkins Charles R. Parks David Martin Samuel Sterling and Moses W. Bliss complainants in their certain Bill of complaint filed in the said Court on the chancery side thereof

for injunction

Shd have you then and
then this writ with an endorsement thereon
in what manner you shall have
executed the same

Clk

{ Seal }

Witness Paul R. Wright
Clk of our said court and
the seal thereof at Geneva this
Fifteenth day of August - A.D.
1854

P. R. Wright
Clk

Upon the back of which summons there appears
the following ^{are} endorsement in the words and
figures following to wit: Served this writ
August 15th 1854 by delivering to Samuel Hunt
a ^{correct} copy of the same

E. J. Allen - Sheriff of
Herk Co.

I further executed this writ August
15th 1854 by delivering to Eli Barber J. E. Lewis &
William C. Way correct copies of this writ

E. J. Allen Sheriff of Herk Co.

by H. W. Clark deputy

I further Executed this writ Aug 18 1854 by
delivering to A. B. W. Haynes a correct copy
of the same

E. J. Allen Sheriff of

by H. W. Clark Deputy

Filed in the circuit court after 19th day of
August A.D. 1859

P. B. Wright - clerk
Herrington - attorney

And afterwards do wit on the 19th day of
August A.D. 1859 there was filed in the
office of the clerk of the circuit court of
said county a writ of injunction which
was in the words and figures ^{following} to wit:

State of Illinois }
Kane county }^{ss} The People of the state of
Illinois do J. K. Lewis President
of the board of Trustees of the Town of St.
Charles in said county and Richard Whel-
er Samuel Eliot William D. May Eli Parker
and J. K. Lewis Trustees of said Town and
A. R. McWayne Corporation clerk their
agents attorneys and successors in office
Greeting - Whereas ~~Letts~~ W. Perkins
Charles K. Parks David Martin Samuel
Sterling and Moses M. Bliss complain-
ants have lately filed their certain
bill of complaint in our Kane county
circuit court on the Chancery side
thereof against you the said President

and Trustees of the Town of St Charles and
corporation cluse defendants praying to be
relieved touching the matters therein com-
plained of and which Bill is still then
pending We therefore in consideration of
the premises and of the particular matters
and things in ^{the} said bill set forth do
strictly enjoin and command you
the said J. R. Lewis President of the Board
of Trustees of the town of St Charles in
said county and Richard Whaler ~~and~~
~~Samuel Flint~~ William F. May Eli Bar-
ber and J. R. Lewis Trustees of said
Town and A. R. McWayne corporation
clerk and the persons aforesaid and
each and every of you under the penalty
of the law thence ensuing that you
and each of you do absolutely dissent
and refrain from subscribing for or
to the Capital Stock of the St Charles
Rail Road Company or firm issuing
signing selling ^{or} disposing of any bonds
pledging the corporate town of St Charles
aforesaid for the redemption of the same
pursuant to an act of the Legislature
entitled an act to authorize the inhab-
itants of the corporation of the town of
St Charles to subscribe to the stock of

the St. Charles Rail Road company approved
Dec. the 21st 1854 by which the said town
of St. Charles may be made liable for
any Rail Road company whatever or
repairing the tracks of any Rail Road
until the further order of our ^{said} court of
Chancery herein

{ seal }

Witness Paul R. Wright

Clk of our said court and
the seal thereof at Genoa in
said Kan county this
thirteenth day of August A.D.
1854

P. R. Wright
Clk

Upon the back of which writ of Enforcement
is the following endorsement in words
& figures to wit:

Executed this writ
August 15th 1854 by delivering to each
of the within named defendants a
correct copy of the same

E. J. Allen - Sheriff of
Kan county

by H. M. Clark - deputy

Dated August 19th 1854

P. R. Wright clks

And afterwards do sit on the 12th day of
December A.D. 1859 the same being one of the
days of the said November Term of ^{said} court-
The following among other proceedings was
had and ordered to be entered of record

Otho W. Perkins Charles R. Parks
David Martin Samuel Sterling
and Moses M. Bliss

J. K. Lewis Richard Whaler
Samuel Flint William D. May
& Eli Barber President and
Directors of the Town of St. Charles
in the County of St. Louis and State
of Illinois and A. R. McWayne
Corporation Clerk

Bill for
Exemption

This day came
the complainants by Harrington their solicitor
or and on his motion it is ordered that the
defendants be called and they being three
severally three times solemnly called come not
nor any person or either of them nor any one
for them but herein make default which
is ordered by the court to be entered of
record and it is further ordered that the
complainants bill of complaint herein

be taken as confessed against said defendants and that the injunction heretofore ordered herein be made perpetual.

It is therefore ordered, adjudged and decreed that ~~the~~ said defendants their agents.

attorneys and successors in office or any or either of them be and they are hereby perpetually enjoined from subscribing for or to the capital stock of the St Charles Rail Road company and from issuing, signing & selling or disposing of any bonds pledging the corporate town of St. Charles aforesaid for the redemption of the same pursuant to an act of the Legislature entitled an act to authorize the inhabitants of the corporation of the town of St Charles to subscribe to the stock of the St Charles Rail Road company approved Feb the 21st 1854 by which the said town of St Charles may be made liable for any Rail Road company or station or repairing the tracks of any Rail Road.

And it is further considered and adjudged by the court that the complainants have and recover of the defendants their costs in this cause expended and have execution therefor.

In Supreme Court
April Term 1860.

J. H. Lewis et al. Pres. &
Trustees of Town of St. Charles
Plaintiffs in error

vs
Otho W. Perkins et al
Defendants in error

} Error to Bank Co.

Assignment of errors.

- 1 The Court erred in granting a temporary injunction, as the bill has not sufficient equity on the face.
- 2 The Court erred in making the injunction perpetual.

~~Geo. E. Eastman~~ & Botolph
Jno S. Beveridge
Atty for Pltffs in error

and the Defendants in error say that
is no error in the record of proceedings
pursued

Hayden Miller Lewis
~~Hayden Miller Lewis~~
for Defendants in error -

Supreme Court

J. H. Lewis et al

vs
Otho W. Perkins et al

Errors

2

Filed April 17, 1860

L. Leland
Clerk

W. L. Eastman
J. H. Lewis et al
for Petitioner

¹⁰⁸ Kano Bob. Kount³

Otto Perkins³
chal

at 48.

● J. K. Lewis chal. Master
of S. Charles

Transcript

Filed Dec. 20. 1860.
L. Island Ck.

BRIEF OF PLAINTIFFS IN ERROR.

SUPREME COURT,

APRIL TERM, 1860.

J. K. Lewis, at al.,
vs
Otho W. Perkins, et al. } ERROR TO KANE CO.

ERRORS ASSIGNED.

1st.—Court erred in granting a *temporary* injunction, as the bill has not sufficient equity on the face.

2d.—Court erred in making the injunction *perpetual*.

POINTS AND AUTHORITIES.

1st.—The action of Plaintiffs in error, complained of in Bill, is pursuant to law.

Session Laws, 1859, p. 684, ¶ 4. "An Act to authorize the inhabitants of the incorporation of the Town of St. Charles to subscribe to the stock of the St. Charles Railroad Company."

2d.—Said Act is constitutional.

19 Ill. 406.

21 " 451.

City of Bridgeport vs. Housatonic Railroad Co.

2 Am. Railway Cases. 39.

And numerous cases referred to in note following.

EASTMAN & BOTSFORD,
J. B. BEVERIDGE,
For Plaintiffs.

108 3

Lewis as Perkins

Pepp. Davis

Filed April 20. 1860

L. Lewis
Clerk