

No. 12826

Supreme Court of Illinois

Robertson.

vs.

City of Rockford.

71641  7

302-140

Thomas D. Robertson
Etal

vs

City of Rockford.

302

12826

1859

United States of America

State of Illinois Winnebago County S. & E.

Pleas before the Hon Benj R Sheldon Judge
of the Fourteenth Judicial Circuit of the State of Illinois
at a Term of the Winnebago County Circuit Court for hear-
ing and deciding Chancery Causes began & held at the Court
House in the City of Rockford in said County on the 27th
day of September A.D. 1858:

Present Hon Benj R Sheldon Judge:

Winnebago Circuit Court

In Chancery

To the Hon Benjamin R Sheldon Judge
of the 14th Judicial Circuit of the State of
Illinois & Judge of the Circuit Court of the
County of Winnebago in said State in
Chancery Sitting

Humblly complaining unto your Honor Your Orators
Thomas D. Robertson John S. Coleman Melancthon Stue-
Elias Gosper Marcellus W. Churchill John Edwards Nip-
Les W Warner Shutech Blake Thomas Harrison Goodyear
W Sanford Worcester A Dickerman and Charles J. Ste-
main of the County of Winnebago in the State of Illinois
Respectfully shew that they are residents tax payers of the
City of Rockford in the County & State aforesaid: That the
assessed value of the property upon which they contribute
to the City taxes exceeds in the aggregate the sum of two
hundred thousand dollars and that the aggregate amount
of taxes they pay in said City for City purposes amounts to
the sum of three thousand dollars annually as near as
your Orators can estimate the same. they not having at hand
any certain data. they are unable to estimate the amount
at which their property is assessed or of taxes they pay with
entire accuracy but they avowly believe that they have above
general greatly underestimated the same.

And your Orators further shew that the

2) said City of Rockford is an unincorporated Company City that its powers are mainly derived from and contained in a certain Amended Charter of said City, being an act of the Legislature of the State of Illinois entitled an act to amend the Charter of the City of Rockford approved March 4th A.D. 1834. and excepting such powers as are granted to said City and the Mayor or Common Council & officers thereof by the aforesaid act the said City possesses no power to do any act of any considerable importance and in respect to the borrowing of money, especially your orators are advised by counsel and verily believe that the said City and its corporate authorities and officers possess no powers whatever save and except what is granted therein by the 97th section of said Act.

And your Orators further shew that the said 97th section of said Act is in the words and figures following to wit:

"The common Council shall also have power to borrow money on the credit of the City, but no sum or sums of money shall be so borrowed at a greater rate of interest than twelve percent for the year nor shall the interest or the aggregate of all the sums to be borrowed exceed one half of the tax assessed upon real estate in the City for the general expenses in the City."

And your Orators further shew that by the 96th section of the same act power is given to the Common Council to levy & collect taxes upon all property real & personal within the City for the purpose of defraying the general expenses of the City not exceeding five mills on the dollar of the assessed property in said City and cannot exceed that rate and can only collect such sum for such purposes as can be collected at such rate.

And your orators further shew that the whole amount of the assessed value of the real estate in said City subject to taxation according to the last assessment thereof is about one million two hundred thousand dollars. And that by and at the aforesaid rate of taxation at five mills on the dollar the sum of about six thousand dollars and no more might be raised by tax on said real estate for the general expenses of said City.

And your Orators further shew that the said Common Council according to the best information of your orators

Can obtain by enquiry of the members of said Common Council and the officers of said City have borrowed the sum of exceeding thirty thousand dollars and as near as your orator can ascertain the same amounting to forty thousand dollars at the rate of ten per cent per annum interest thereon which interest payable annually amounts to the sum of from three to four thousand dollars more than one half the aforesaid sum of six thousand dollars. The Amount said Common Council are by said 97th section authorized to raise for general expenses by tax on said real estate in said City and that said money borrowed as aforesaid is in fact more than said Common Council are authorized by said 97th section of said Act to borrow on the credit of said City.

And your Orator further shew that a certain incorporated Company known as the Menasha & Rockford Rail Road Company has been incorporated & organized with powers to build a Rail Road from Menasha in the State of Wisconsin to Rockford aforesaid which Rail Road Company was duly incorporated by an act of the Legislature of the State of Illinois passed and approved on the twentieth day of January in the year of our Lord one thousand eight hundred & fifty seven which act of said Legislature is entitled an act to incorporate the Menasha and Rockford Rail Road Company and that since the passage of said Act, divers persons have subscribed to the stock of the said Company and such Company has been duly organized and a portion of the work necessary to the construction of said road has been done and other portions are now being done.

And your orator further shew that the 6th 7th & 8th sections of said Act give to divers towns cities Counties & villages a long or near the line of said rail road powers to subscribe to the stock of the said Rail Road Company or to lend their Credit to said Company in manner as hereinafter stated which several sections of the last mentioned act are in words and figures as follows to wit:

§ The several Counties cities incorporated villages & towns through or near which said Rail Road shall be located are hereby authorized to subscribe to the capital stock in or generally to lend their credit to the corporation hereby created

for the purpose of acting in the construction of said road provided that no such subscription or loan shall be made until the same shall be voted for as hereinafter provided:

§ 7. Whenever one hundred voters of any such County shall make a written application to the County Clerk of such County or twenty five voters of any such city incorporated village or town shall make such application to the Clerk thereof requiring an election by the legal voters of such County city village or town to determine whether such subscription or loan shall be made specifying in such application the amount to be subscribed for or loaned such clerk shall file such application in his office & immediately give notice as required by law for an election to be held by the legal voters of said County city village or town such election shall be held & conducted in all respects and the returns thereof made as in case of annual elections.

§ 8. If a majority of the voters voting at any such election shall be in favor of such subscription or loan then such County City or incorporated village or town by its proper corporate authority shall subscribe or loan said corporation the amount as specified in section seven (7) and shall issue to said Corporation their bonds for such amount drawing ten per cent interest per annum and payable in not less than ten or more than twenty years.

And your Orator further shew that after the passage of said act and on or about the 23^d day of August 1858. acting in pursuance of the aforesaid provisions of the last mentioned act and intending to act under the above recited Authority i.e. the last afore mentioned act and assuming that the said City of Rockford had the Authority to do divers persons voters of the City of Rockford to the number of twenty five and more applied to the Clerk of the said City of Rockford to call an election in said City at which the legal voters thereof should vote on a proposition to loan the aid of said City to the Genesee Rockford & Rock Island Rail Road Company to the amount of fifty thousand dollars which application was in writing and was filed in the Office of the Clerk of said City on the day & year last aforesaid a copy whereof marked schedule A is

hereto annexed which your Orator pray may be taken as
a part of this their Bill of Complaint.

And your Orator further shew that S. W. Burnham
the City Clerk of said City after receiving & filing said application
on or about the 24th day of August aforesaid caused a notice
to be inserted in the papers published in said City calling an elec-
tion at which the legal voters of said City might vote on said ap-
plication to be held in said City on the second day of September
thereafter a copy of which notice is hereto annexed marked sched-
ule B which your Orator pray may be taken as part of this
their bill of complaint:

And your Orator further shew that on the second
day of September aforesaid an election was held in said City in
accordance with said notice and that at said election a majority
of the votes cast at said election were in favor of the said Loan
as applied for as aforesaid:

And your Orator further shew that by the aforesaid seventh
section of the act incorporating the said Genesee & Rockford Rail
Road Company it is provided that elections held under it shall
be held and conducted in all respects and the returns thereof
made as in case of annual elections and that by the 11th section
of the aforesaid act amending the charter of said City as aforesaid
it is provided that twenty days notice of the annual elec-
tions shall be given in some newspaper of said City:

And that but ten days notice was given of the election here-
as aforesaid to determine whether the said City would loan its
Credit as aforesaid or not:

And your Orator say that they have been advised by
Counsel & verily believe that by the terms of the said seventh sec-
tion of the aforesaid act incorporating said Rail Road a notice
of twenty days of the holding of such election was absolutely required
and such notice not having been given for twenty days as required
by said act amending said Charter of said City in case of an-
nual elections in said City the election held under the same
as aforesaid was utterly null & void and gave the said City its
Corporate authorities no power whatever to lend its credit to the
said Rail Road Company:

And your Orator further shew that by the act incorpo-
rating

6.

said Rail Road Company the authority given by the abovesaid sections thereof to the cities & other municipal corporations therein mentioned & described is to lend their credit or subscribe to the stock of the Kenosha & Rockford Rail Road Company which the application aforesaid altho professing to be based on the abovesaid seventh section of the aforesaid Charter of the Kenosha & Rockford Rail Road Company was that the said City should lend its credit to the Kenosha Rockford & Rock Island Rail Road Company and the notice above mentioned specified that said election was for the purpose of determining whether the City of Rockford should lend would lend its credit to the last above described Rail Road Company: And the election was held for the purpose of determining whether the said City should so lend its credit to the said last mentioned company: and your Orators say that they have been advised by counsel believe & insist that the said City have no legal power whatever to lend its credit to the said last named Rail Road Company and the abovesaid section of the abovesaid mentioned act incorporating said Kenosha & Rockford Rail Road Company confers no such power on said City or the corporate authorities thereof.

And your Orators further shew that the said Kenosha Rockford and Rock Island Rail Road Company are authorized to build a road from Kenosha aforesaid to the City of Rock Island in the State of Illinois while the Kenosha & Rockford Rail Road Company is only authorized to build a Rail Road from Kenosha to Rockford and that the authority given the said City of Rockford by the act aforesaid to lend its credit to the last mentioned Rail Road Company gave said City no power whatever to lend its credit to the other company above described altho the Kenosha Rockford & Rock Island Rail Road Company was created by the consolidation of the other aforesaid Company & another Rail Road Company known as the Rockford & Mississippi Rail Road Company: And your Orators insist that such a circumstance gave no authority to the City of Rockford aforesaid as applied for.

And your Orators further shew that they have been advised by counsel & so believe and insist that the authority given to said City of Rockford to lend its credit to the aforesaid

Kenosha & Rockford Rail Road Company was so, a power subordinate & subject to the aforesaid limitation in the said 97th section of the act amending the Charter of said City, and that the Legislature when they incorporated said Company intended it so to be and that the said City having long since exhausted its power to borrow money as aforesaid and the loan of its credit being in substance in fact a borrowing of money on the credit of said City by the Common Council thereof the said City & the corporate authority thereof are certainly without power to lend its credit to said Rail Road Company applied for as aforesaid & notwithstanding the aforesaid election the said City can not thus no power whatever to lend its credit to said Rail Road Company.

And your Orator further shew that they have been informed & verily believe that the Common Council of said City unless they are restrained by injunction as hereinafter prayed for will cause the said Bonds to be issued to the said Rail Road Company in compliance with said application to the amount of fifty thousand dollars. That there is no means provided by said Act to distinguish the said bonds to be issued to the said Rail Road Company from other bonds of the said City and altho such issue would probably be void in the hands of said Company or persons with notice your Orator think it very probable that the same would be valid in the hands of bona fide purchasers & even if not valid in such hands to resist the payment thereof would be an act of repudiation which would be very detrimental to the interests of said City, tending very materially to impair the reputation of said City its inhabitants for said fair and honorable dealing and to ruin the credit of said City and its proper legitimate securities in the money markets of the Country to such an extent that it would be for the interest of the said City to pay said bonds altho they might be utterly void rather than to suffer the loss of Character consequent upon repudiating the same.

And your Orator further shew that the proposed road of the said Rail Road Company to which the said loan is proposed to be lent is not more than one fourth completed to the said City of Rockford the part to which the directors

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of said Rail Road proposed to complete the same: That
it has several competing Rail Roads which are completed from
nearly every important point on its line and that in the judgment
of your Orator the said Rail Road will never be a paying road
and your Orator opinion for many years the said Rail Road
will not be able from its earnings to pay much if anything
more than its running expenses: That mortgage bonds to the
amount of seven hundred thousand dollars of said Rail Road
have been authorized to be issued and doubtless as many of
them same as can be disposed of will be issued: And your Ora-
tor verily believe that the said City Bonds proposed to be issued
will never be paid (except perhaps a small part of the interest
thereof by the said Rail Road Company) But that said City will
ultimately be obliged to pay all of the principal & the greater
part of the interest of said bonds.

And your Orator further show that the aforesaid
proposition to loan the credit of said city in the manner the
same is attempted to be done is nothing more or less than an
attempt to raise money by taxation for the benefit of a private
corporation to be paid to such private corporation to aid them
in the construction of their said Rail Road and that it is
an attempt to appropriate the private property of your Ora-
tor & others to the purposes of a private corporation without any
compensation whatever to the owner of such property & for that
& other reasons a palpable violation of the constitution of the
State of Illinois and your Orator further insist that said pro-
visions in said Act authorizing a loan of the credit of said city
are repugnant to said Constitution and therefore void.

And your Orator further show that they verily be-
lieve that if the aforesaid city should issue the large amount of
Bonds above mentioned that said issue would cause a very large
depreciation in the value of the Bonds of said City which
would be very detrimental to the credit of said city and that
not only so but with the amount of Bonds asked by said Rail
Road in the money market it would be impossible for the said
City to raise any money for any useful improvement in said
city by loan: That in the judgment of your Orator the city

would by the limitation aforesaid in its amended charter be without the power to make such loan & even the said City might have the legal power to borrow money yet the large amount of out standing Bonds of said City would effectually prevent such Loan except at rates so ruinous for the said City to pay and your orator only believeth that the issue of the aforesaid Bonds of the said City to the amount aforesaid would be not only injurious to the interests of said City by imposing upon it an enormous debt depreciating its credit preventing its making for many years such useful improvements as may be almost vital to the interests of said city subjecting its tax payers to largely increased taxation & giving a bad name to the said City & thereby keeping out desirable persons who would otherwise settle and invest capital in said City by creating the impression abroad that the tax payers of said City will be subject to an enormous taxation by reason of the public debt of said City:

And your Orator further sheweth that if the said City shall be required to pay said bonds, that your Orator would in consequence of them be subjected to a very large tax & as your Orator now contribute to the taxes of said City the amount of taxes which they would be required to pay as near as they can estimate the same would amount to the sum of Two hundred dollars annually and more as they verily believe besides a still heavier tax to pay the principal of said bonds when the same should become due and in the judgment of your orator each of them would be subject to an annual tax for said purpose of twenty dollars and some of them a great deal more and your Orator for this Bill as well on account of themselves and in their own behalf as on account of the other tax payers of said city and all other persons having an interest in the funds & credit thereof:

And your Orator further sheweth that the said authorities of said city and the managers & directors of said Rail Road are determined that the said Bonds of the said City to the amount aforesaid shall be issued to the said Genesee & Rockford & Rock Island Rail Road Company & that said Company will put the same in circulation and negotiate & sell the same unless restrained by the injunction of your honorable Court and that unless

they are so restrained great & irreparable injury will result to your Orators & the other taxpayers of said City & all persons interested in the funds and credit of said City: and which wrongs & doings are contrary to equity and tend to the manifest wrong and injury of your orators in the premises.

In tender consideration whereof & for as much as your Orators are remediless in the premises by the strict rules of the Common Law and can only obtain relief in courts of equity where matters of this nature properly cognizable and relievable:

To the end that the said City of Rockford and the Menasha Rockford & Rock Island Rail Road Company shall each of them full true & perfect answer make to all and singular the matters & things hereinbefore stated & charged & that by a decree of your Honorable Court the said City of Rockford its common Council Mayor & Aldermen & other officers and each of them their successors Attorneys Counsellors agents & servants may be perpetually & forever restrained & enjoined from issuing of its Bonds to the said Rail Road Company or any other person in compliance with said application or in any manner whatever lending the credit of said City to the said Rail Road Company and that during litigation the said City and its aforesaid officers their successors agents Attorneys Counsellors & servants might in like manner be enjoined from doing any of the things aforesaid and that your Orators may have such further relief in the premises and such other relief in the premises as the nature of the case may require and will be agreeable to equity.

And may it please your Honor to grant unto your Orators their writ of Injunction restraining the parties aforesaid in manner aforesaid from performing the acts aforesaid, and also that the said City of Rockford & the Menasha Rockford & Rock Island Rail Road Company may be summoned according to law & the course of practice of your Honorable Court to answer the premises and further to stand to & abide & perform such order direction & decree therein as may be agreeable to equity & good conscience & your Orators will ever pray &c.

Wright & Sawyer
Sols for Compl

Thos D. Robertson
John S. Coleman
Melancthon Starr

11.
Elias Cooper
Mo. C. Churchill
By Jas M Wight his Atty:
John Edwards
W M Warner
Shutcher Blake
Thos Harrison
S. A. Sanford
C. J. Storman
W A Dickerman
By Jas M Wight their Solr

Schedule "A" referred to in foregoing Bill

To S. W Burnham Esq

Clerk of the City of Rockford:

The undersigned Legal voters of the City of Rockford would hereby make application in accordance with the provisions of section seven of an act to incorporate the Kenosha & Rockford Rail Road Company approved May 20 1857 and ask that an election be had as directed in said Act to determine whether said City will loan to the Kenosha Rockford & Rock Island Rail Road Company second division the sum of fifty thousand dollars in ten per cent Bonds running ten years.
Dated Rockford Ills Aug 18. 1858.

L. M. Spafford
C. C. Briggs
Seely Perry
George Inouell Jr
A. P. Lane
B. Wengate
Wm L. Wallis
J. B. Toller
Wm T. Wilcox
Jesse Marsh
C. J. Sellerson

J. Spafford
A. Staines
S. B. Gregory
B. McKinney
W. B. Menden
U. C. Spafford
D. J. Dickson
R. A. Bird
Jesse T. Seely
Wm. Watson
S. W. Stein

Willard Wheeler
 Benjamin Holt
 Jacob Hazlet
 John Draley
 Solomon Wheeler
 P. Woolworth
 E. B. Perry
 S. Martin
 S. Peck
 C. A. Huntington
 J. D. Hall
 J. Dunning
 L. J. Sackett
 Charles Barker
 Jonathan Peacock
 P. B. Garity
 Jas Albert
 John W. Dyce
 J. A. Buckbee
 W. W. Gram
 L. W. Buckbee
 Francis Bates
 D. C. May
 S. J. Clark
 W. E. Wheeler
 J. G. Manlove
 Edward Vaughan
 J. W. Seccomb
 Isaac Andrews
 Anson S. Miller
 E. C. Daugherty
 Henry M. Davis
 Charles W. Clark
 P. M. Laughlin
 J. M. Gregory
 S. Williams
 W. W. Fleming

H. P. Manning
 S. H. Wheat
 Tho J. L. Remington
 H. D. Frost
 John Cook
 David Pierce
 S. Anson
 A. O. Ticknor
 Silas E. Taylor
 J. H. Zoller
 S. M. Preston
 John Braden
 E. C. Drew
 B. J. Spalding
 D. Dow
 J. B. Smith
 John Selch
 J. W. Hathaway
 David Miles
 A. E. Goodwin
 Julius Warner
 H. Watterman
 John A. Davis
 William J. Swift
 J. E. Dennis
 E. A. Kirk
 L. A. Andrews
 Charles Herman
 W. W. Thompson
 J. M. Thurston
 Ira Phillips
 C. A. Dunham
 J. Smous
 S. Smous
 J. McLean
 W. S. Maynard
 Porter Sheldon

E. J. W. Ellis
 M. W. Taylor
 John Gilbert & Co
 Cyrus J. Miller
 Wm Worthington
 Mary Brockway
 Alpheus Crosby
 Joseph Rickett
 Geo W DeWay
 Isaac Crosby
 J. J. Palmer
 S. L. Bronson
 William Shulin
 Tho J Rickett
 Tho Boyd
 Charles Williams
 Henry L Emerson
 Julius A Penny
 L. W. Ketchum
 Geo D. Olson
 John Barnard
 D. S. Bartlett
 M. M. Waldo
 Joseph Burns
 Henry Parks
 Edm J Woods
 Francis Barnard
 C. W. Sheldon
 W. S. Warring
 Wm Thompson
 Duncan Ferguson
 D. M. Ferguson
 James Fleming
 Robert M Hatch
 W. L. Rowland
 H. Forman
 J. A. Deane
 Geo W Rickett

Gabe Carpenter
 Elijah Burpee
 J. E. Buckbee
 R. P. Blaisdell
 U. L. Springsteen
 Alex S. Pullerson
 C. W. Shaw
 Edward Kennedy
 R. E. Lucas
 J. M. Brown
 L. W. Barnum
 C. D. Clark
 L. B. Rising
 M. M. Rising
 R. C. Bailey
 J. E. Sargent
 J. P. Sargent
 Joshua Stowe
 Jacob Stigle
 George K. Bennett
 W. J. Crawford
 J. G. Clark
 J. G. Benfield
 Kate Lough
 David Lewis
 J. J. Miller
 Robt Smith

John P. Manny
 E. W. Blaisdell Jr

Schedule "B" referred to in the foregoing bill

Special Election

In Accordance with a petition, signed by a large number of citizens of the City of Rockford I hereby call a Special Election of the legal voters of said City to be holden on Thursday the second day of September 1858 at 10 O'clock A.M. to vote in accordance with section 7 of an Act "to incorporate the Kenosha & Rockford Rail Road Company" approved May 20 1857, to determine whether the said City of Rockford will loan to the Kenosha Rockford & Rock Island Rail Road Company, second Division the sum of fifty thousand dollars in ten percent bonds, running ten years. Provided the said road leaves as collateral security with the said City, Fifty Five Thousand Dollars of the First mortgage Bonds of the said Rail Road, the Road agreeing to pay the interest on the said Bonds Annually;

The election will be held within the several wards of the City as follows:

First Ward Judge Shaws Office
 Second Ward D. S. & J. H. Fairfield's Office
 Third Ward Court House.
 Fourth Ward - Basement Baptist Church
 Fifth Ward - Bradens Store

The Judges appointed at the last annual election will act upon this occasion;

J. W. Burnham City Clerk

Enacted "Filed Sep 27 1858.

M. B. Darruck Clerk
 By W. B. Darruck Dep. Clerk "

His Honor Court
In Chancery

Of Sep Term A.D. 1858.

The joint & several answers of the City of Rockford & the Kenosha Rockford & Rock Island Rail Road Company to the Bill of Complaint of Thomas D. Robertson John S. Coleman & others against these defendants:

These defendants now & at all times hereafter saving preserving to themselves all manner of benefit & advantage of exception to the many errors & insufficiencies in the said Complainants bill contained for answer thereto or to so much thereof as these defendants are advised is material for them to make answer unto they answer.

Admit that the said Complainants are residents & taxpayers of said City of Rockford but whether the aggregate assessed value of their property is correctly in said bill of Complaint these defendants are not informed except by said bill: these defendants however ever insist that the whole assessed value of the property in said City is one Million & between seven & eight hundred thousand dollars instead of the amount stated in said bill of Complaint:

These defendants further admit that the said City of Rockford is an incorporated City under laws enacted as stated in said Bill & that its powers are mainly derived from said Act but these defendants aver that said Act is declared to be a public Act & they refer this honorable Court to the various provisions & sections thereof.

These defendants further answering admit that said Kenosha & Rockford Rail Road Company was incorporated as stated in said bill & that application was made to the clerk of said City of Rockford for an election & that an election was held as set forth in said bill of Complaint but these defendants ever insist that at said election Ten Two hundred & sixteen votes were given & that the majority in favor of making such loan was five hundred & ninety (503 for 2131 against).

These defendants further answering admit that said application was made for a loan to the Kenosha Rockford & Rock Island Rail Road Company & these defendants claim & insist

that by virtue of the provisions of an act to incorporate the Kenosha & Rockford Rail Road Company passed June 20. 1857 (which being a public Act these defendants refer the court to the same) as well as by the several sections of an Act to incorporate the Rockford & Mississippi Rail Road Company passed January 28. 1857 the said Kenosha & Rockford Rail Road Company had the legal right to consolidate with the said Rockford & Mississippi Rail Road Company & these defendants aver & insist that said Rail Road Companies come to be about March in the year 1857 in pursuance of the provisions of said Acts did become consolidated upon such consolidation assumed the name of Kenosha & Rockford & Rock Island Rail Road Company & by that name said Incorporation has ever since had & been entitled to all the rights & privileges & powers previously belonging to said Kenosha & Rockford Rail Road Company, and these defendants deny that the notice for said election was insufficient as required by Law, but on the contrary said election was a special election requiring but seven days notice & said Clerk caused said notice to be published more than seven days in several newspapers published in said City of Rockford:

These defendants further answering deny that the power of said City of Rockford to make said Loan is limited or restrained as is in said bill pretended but on the contrary these defendants insist that express & sufficient power & authority is provided in said acts incorporating the said Rail road companies before they were consolidated as aforesaid:

These defendants further answering admit that said Rail Road is not completed & that the purpose & object of obtaining said Loan from said City is to enable said Company to complete the same at an early day but these defendants aver & insist that in the act of consolidation aforesaid it was expressly provided that said Loan must & shall only be appropriated to the construction & completion of that portion of said road designated as the second division thereof that is that part extending from Starward in the County of McHenry in the State of Illinois to & into the said City of Rockford being a distance of about 26 miles: and these defendants further aver & insist that said portion of said Road has been entirely

graded and with very little additional expense will be ready
for the iron for the track & that the purpose & object of said Compa-
ny is to appropriate the entire avails of said land loans to the
purchase of the iron for the track for said portion of said road &
that in addition to said Company having deposited with said
City the amount of their bonds as specified in said notice set
forth Schedule B. of said Bill of Complaint, the said com-
pany immediately after said election & before they required the
corporate authority of said City to issue said Bonds, delivered to said
City a Bond executed by citizens thereof worth & responsible for \$200,000
& more providing in substance that the avails of said bonds shall
be applied entirely to the purchase of such iron & that unless said
Company shall be enabled to purchase the whole of the iron ne-
cessary to lay the whole track of said 26 Miles estimated to cost
about \$135,000 the said bonds shall be returned by said Compa-
ny to said City of Rockford to be cancelled, that these defendants
did not & do not now suppose or believe that said Rail Road
Company were under any obligation, legal or otherwise to give
any such security but they have done so for the purpose of show-
ing the entire good faith of said Company in said transaction
& to provide proper & sufficient security against any contingency
of loss to said City.

And these defendants further answering deny that
with the assistance to be furnished by said Loans the said Com-
pany will be unable to complete said road & put the same in run-
ning order in a short space of time & they deny that said Rail
Road when completed will not be profitable & that the stock will
be of little or no value: but on the contrary thereof, these defend-
ants aver & insist & charge that it is well known to said Complain-
ants & that it is an almost universally admitted fact, that in the
opinion of all men conversant with Rail Road matters who know
the condition of said Company's road & its relation to the business
interests of said City of Rockford said Rail Road will be a profit-
able investment that it will not only pay its expenses, but will afford
profitable dividends on its stock & that it is regarded by almost all
the citizens of said City of Rockford to be of the utmost importance
to the interests of said Citizens to secure the early completion of said
road: And these defendants further deny that there is any reason

to fear that said City of Rockford will in any event suffer loss or injury by reason of issuing said bonds and these defendants protest against the insinuations & imputations in the said bill contained of the financial weakness & inability of said City of Rockford and on the contrary thereof they aver & insist that the financial credit of said City is good & sound & as these defendants believe will not be injured or affected in any such manner as said Complainants pretend:

And these defendants further answering admit that said City of Rockford has issued bonds for the purpose of borrowing money for general purposes to the whole amount authorized in the said 97th section of said Charter of said City but these defendants claim & insist that said limitation only applies to the legal power of said City to borrow money in the course of for the purpose of the ordinary municipal government of said City & was not intended for & does not operate to limit the Authority of the Legislature to empower said City to issue bonds for the purpose aforesaid:

All which matters & things these defendants are ready to aver, prove & maintain as &c

The City of Rockford
Jn. Kelly City Mayor

James Marsh Esqr
Jas L. Loop of Council

Winona Rockford & Rock Island
Rail Road Company

Ordered "Filed Sep 27" 1858.

"M^{rs} Derrick Clerk"

"By W^m Penoyer Dep Clerk"

And afterwards to wit on the 30th Sep 1858 it being one of the days of the aforesaid term of Court the following decrees & orders were entered of record to wit

Thomas D. Robertson & others

Sept 30 1858

City of Rockford & the
Menasha Rockford & Rock
Island Rail Road Company

This cause coming on to be
finally heard on bill and
answers herein and the Com-

plainants by their Solicitor having withdrawn all objection to
the election in said bill mentioned on account of the insufficiency
of the notice of said election given by the clerk of the said City
of Rockford as mentioned in complainants bill and the Court
having heard the arguments of counsel as well for the said Com-
plainants as for said defendants and the Court being advised in
the premises: And it appearing to the Court by the record in
said cause that the said Complainants are not entitled to the
relief by them sought in their said bill: It is ordered adjudged
and decreed that Complainants bill be absolutely dismissed and
that the Complainants pay the costs and that the defendants
have execution therefor.

Benj R. Sheldon

And thereupon come the Complainants Thomas D. Rob-
ertson and Goodyear A Sanford two Complainants in this cause
and pray an appeal of this cause to the Supreme Court of
the State of Illinois which is granted by the Court on condition
that within thirty days from the rising of this Court they enter
into bonds to the defendants with Sheldon W Church as surety
in the penalty of six hundred dollars conditioned as the law
directs.

Know all men by these presents that we Thom-
as D. Robertson Goodyear A Sanford & Sheldon W Church are
held firmly bound to the City of Rockford & the Menasha Rock-
ford & the Menasha Rockford & Rock Island Rail Road Compa-
ny in the penal sum of six hundred dollars for the payment of
which well & truly to be made we bind ourselves our heirs executor
& administrator jointly & severally firmly by these presents sealed

with our seals and dated this 20th day of October A.D. 1838

The condition of this obligation is such that whereas in a certain Cause in the Circuit Court of Winnebago County in the State of Illinois on the Chancery side thereof lately pending in which the above named Thomas D. Robertson Goodyear W Sanford with John A Coleman Melancthon Starr Elias Cooper M. G. Churchill John Edwards Thatcher Blake Allyn M Warner Charles J. Hornman Thomas Harrison Wm Beckerman were complainants & the above named obligees were defendants on the 30th day of September A.D. 1838, at the September term of said Court of said year a final decree of dismissal of their bill for costs was entered in said Cause by said Court then sitting in Chancery in favor of said defendants & against said complainants & whereas the above named Thomas D. Robertson & Goodyear W Sanford two of the above named complainants then prayed an appeal of said Cause from the decision of said Circuit Court in the rendition of said decree to the Supreme Court of the State of Illinois which was then granted them by said Court on condition that they should within thirty days enter into bonds to the said defendants with Selden W Church as surety in the penalty of six hundred dollars conditioned as the law directs:

that if the above bounden Thomas D. Robertson & Goodyear W Sanford the above named appellants shall duly prosecute their said appeal & shall in case said decree shall be affirmed by the said Supreme Court pay the said decree & all costs interest & damages adjudged against the said complainants in said Cause on the determination of said appeal then this obligation to be void else to remain in full force & virtue:

Signed & sealed & delivered
in presence of: The words
"bounden" & "adjudged" above
underlined & sundry small
words stricken out before
execution

Thos D. Robertson

{Seal}

Goodyear W Sanford

{Seal}

Selden W Church

{Seal}

Wm W Wright

Entered

" Filed Oct 21. 1858. "

" M B Derrick Clerk "

" By Attny Genl Dep Clerk "

Thos L. Robertson et al

vs
City of Rockford et al

In Chancery

Sep^r Term 1858.

Bill dismissed at Complainants at

Plaintiffs Costs:

Ap ^r 85. Doc ¹⁰ Sum ¹¹⁰ fil Pa ¹⁵ Mo hear ²⁰	1.70
Or Do ³⁰ Agt ²⁰ Dr ²⁰ Or Do ²⁰ Sub Court ²⁰ Or Dr ²⁰ In resp ²⁰	1.20
Or Dr ²⁰ Bl ³⁰ to Dr ²⁰ Sp ¹⁵ Ct 15 ³⁵	1.20
	<u>\$ 4.10</u>

Defendants Costs:

Ap ²⁵ Agt ²⁰ Sub Court ²⁰ Or Dr ²⁰ fil P ¹⁰ Or Dec ²⁰ Em Dr ¹⁰	1.95
Or Ex ²⁰ In Ex ¹⁵ Doc ¹⁰ Bl ³⁰ to Dr ²⁰ Sp ¹⁵ Sh ¹⁰ Ct 15 ³⁵	1.85
To for Sub Court ^{10.75}	10.75
	<u>\$ 14.55</u>

State of Illinois

Winnebago County

I Morris B. Derrick Clerk of the Circuit Court in and for said County do hereby certify that the foregoing is a true correct & complete transcript of the records & files of papers in the foregoing entitled cause, in my Office & that they are the whole of such originals duly compared therewith by me.

Witness my hand & the seal of said Court this
5th day of November A.D. 1858.

M B Derrick Clerk

By Attny Genl Dep Clerk

Supreme Court of Illinois
Thomas & Noble & John
Coleman Melmoth & Stan
Elliott & Marshall &
Churchill, John Edward
Hlynn, & Barnes Shute & Blake
Thomas Garrison Gooden & Lagout
Wacster & Beckman &
Charles J. Horner &

The City of Rockford &
The Rockford Rockford & Rock
Island Rail Road Company

Appeal from the Circuit Court

And the said appellants by Wright
Shroyer their attorneys have and say that in the
record and proceedings in this cause in
the Court below there is manifest error in
this, that is, to wit, that by such proceedings now
it appears that the Court below denied the relief
sought by the complainants ^{there} ~~in~~ the said Court
should have granted the same, because the
said Court below refused the injunction sought
by said bill when the said Court should ^{have} granted the
same. Because by said record it appears that the
said record was laid in the Court below for
the appellants when it should have been for the
complainants to said bill

Wright & Shroyer

Attorneys for appellants

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Wm Cober Cober

Thos D. Robinson
et al

vs.

City of Rockford

et al

Transcript.

Filed Oct. 22, 1859
Island Ch.

#5. W. L. by Wright

Co.

complement of
for record - as so will
get up

Supreme Court
Thomas S. Robertson et al
v
The City of Rockford et al

Page 1

Argument on part of appellants

The Abstract Supremacy states the defects in this case. It is attempted by the City of Rockford to ~~lend~~ lend its credit to The Kinoshu Rockford & Rock Island R.R. Co.

The Provisions of the Statutes containing the power under which it is supposed the loan can be made are set out in full in the in the abstract. Also the Petition for and Notice of the relation which it is intended authorizes it in in like manner set forth in full, is also the provisions of the City Charter of the City of Rockford limiting its rights to borrow money and pay set forth.

The Appellants and the other ~~complainants~~ complainants in the Court below and by payers of the City and the voters of the City having voted to lend the credit of the City to the amount of \$50,000 to the said Rail Road Co, and the City being about to issue City bonds to that amount. The Compts in the Court below place their line to require the City pay - owing to making the City and the Kinoshu Rockford & Rock Island R.R. Co parties defendants.

The defendants answered the same by saying on their answer and the bill dismissed by the Court below

We contend that the city of Rockford has no authority under the law to do so.

Page 2
1st - Bremond the exercise of such power is prohibited by its charter. By its ~~charter~~ charter the city is authorized to borrow money but is limited to a sum for which the interest to be paid shall not exceed one half the amt. The city is authorized to raise by taxation on the real estate for its general expenses. The amount it is authorized to raise by taxation for its general expenses is five mills on every dollar of the assessed value of the real and personal property of the city.

When we have ~~ascertained~~ ascertained the assessed value of the real estate and the rate of interest to be paid the question of the amount the city is authorized to borrow becomes of easy mathematical solution.

It appears by the record that the whole ^{amt} of money the city was authorized by its charter to borrow had been borrowed before the passing of this bill.

The limitation above mentioned appearing in the record and what can be alleged to repeal or disturb its effect. It is said that a certain Rail Road charter of the Rockford & Rockford Rail Road Co has a provision in it which ~~permits it~~ does in some sort repeal, varies, disturbs or suspends the said limitation and on the strength of such provision appearing in a Rail Road it is sought to be argued a most important provision in the Rock

for the Charter

Page 8

Now when we consider that the charter of the city was obtained at its own solicitation, and that its provisions were adopted at its own instance and that the limitation in question is well calculated to subvert a most laudable effort of checking extravagance and recklessness which the city and its friends, and to diminish that economy and completeness in expenditure which in such circumstances and so much needed we and had cause to scan the provisions of any law adopted ~~of any law~~ at the instance of other parties without the knowledge or consent of the city and not forget that it where any of them can be given them inconsistent with the ~~provisions of such city charter~~ provisions of the city charter.

And especially and we could to the exercise of this law when such conflicting provisions are found in a Rail Road Charter, obtained at the instance of parties having no interest in the well being of the city, and in no way desiring of promoting the interest of such city, but most anxious in the advancement of its own ends.

In this Charter of the Knickerbocker & Rockwood Rail Road we find a provision that Citizens and Towns do or near the line of said Road might become stockholders of such a company might lend its credit to such a company and subscription in town should be petitioned for and

added for in a manner prescribed by said Rail
Road charter

Page 4th

This Provision is general the city of Rougemont
is not mentioned in it, but it applies generally to
the municipal corporations therein named.

Now the attempt is to set aside repeal
or disturb most useful provisions in the char-
ter of the city by those general provisions of the Rail
Road charter passed without the knowledge of the
city at the instance of the Rail Road Corporation
for its own benefit and it is insisted that the
Provisions of the Rail Road charter can be
made effective for that purpose

The ask is it likely that the Legislature
when they granted the Rail Road charter had
any reference whatever to that of the city? Is it
it probable that the Legislature had the city or
its charter in its mind at all? or that it then
supposed that it was repealing or disturbing
a most useful Provision of its charter?
And may we not assume with confidence
that had such consequences been foreseen the
Rail Road charter never would have contained
those provisions?

Such an exhibition of its impudence leads
us to consider the doctrine of repeal by impli-
cation for if those useful and beneficial lim-
itations in our City ~~law~~ and repealed changed

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or disturbed by the Provisions in the Rail Road
 Charter it is not done by reason of any express
 repealing clause contained in the last act, but
 by reason that there is such inconsistency between
 the two Provisions that both cannot be in force
 at the same time and in consequence the oldest must
 be repealed by the other. This kind of repeal is called
 repeal by implication.

And for the reason that there is an
 inconsistency, my often creep into different acts or
 different subjects without any intent in the Legis-
 lature to repeal and even without their being aware
 of such inconsistencies, and because such inconsis-
 tencies if effect was given them to repeal might
 work great injustice. Courts have adopted a
 most beneficial rule, "that repeals by impli-
 cation are not to be ~~from former~~ favored,"
 but that as far as possible is to be given to
 both ~~the~~ ^{old} acts, however inconsistent with
 each other and that such inconsistencies are to
 be reconciled if possible.

The test of this principle is, by evi-
 dent and apprehended law, as to adopt or the
 doctrine that when the different Provisions
 of different States conflict, effect is to be given
 to that State which has the most specific
reference to the subject which the inconsistency most
particularly concerns.

Now let us look at our case in the light
 of the above. The city is expressly limited in its power
 to borrow money by its charter and has by law

Page 6

ted that power, but it is contended that this limitation either in *pro* or *pro tanto* has been respected by a Rail Road charter having no reference to either specially or generally to power as appears on its face to the power of the city of the city or to the effect to be given its charter. Now it appears to me that this supposed repeal is one of those repeals by implication not favored in fact not to be permitted.

The case of *Stinson* is *Case* 12 Ill. 339 is a strong case for the complainants. In that case the Plaintiff in Error was incorporated as a town by act of the Legislature with power to license licensed grocers: by a subsequent act in relation to the licensing grocers. The President & Trustees of towns were authorized to license grocers but required to pay over the money received to the County. In the *Stinson* charter no express provision is contained as to whom the licensed money was to belong but by implication it was held to belong to the town.

The County of *Lincoln* claimed that the town of *Stinson* was required by the grocer licensing act to pay the money to them. But this Court held the town was not so bound because it claimed the money under a clause of its own charter which the general act did not repeal the reason being that repeals by implication are not favored, or as I may imagine the Court may have thought it unjust that a party should be deprived of its rights granted, by some inconsistency in law.

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Subsequent act passed without any reference to the first act and without any intent or even expectation that the last act was, or have any effect what ever on the first. Showing that in that case this Court did observe the rule of construction I have insisted upon - Giving effect to the law (to wit the town charter) having special reference to the subject of contracting (to wit the rights of the town) and making a law on a different subject, not intended to supersede it, gives way to it.

Such construction also must be adopted to give effect to both laws if possible and ⁱⁿ one case we insist upon full effect by giving to the limitations in the charter of the city and that the provisions of the Rail Road charter ~~must~~ ^{are} so far as they are repugnant to the city charter must be held to be subject and subordinate to those of the city charter. Thus the city is authorized by such Rail Road charter to become a stockholder of said Company or to lend money to it if no constitutional difficulty exists, but in the exercise of this power the city must take care that it does not transgress the limitations in its charter.

The Provisions in the Rail Road charter are merely enabling to enable municipal corporations (who without them had not the power) to become its stockholders & creditors and was adopted for that purpose and was not designed, to interfere with, repeal, or obstruct

Page 8

any beneficial provisions of any city charter and the power conferred by the Public Road Charter and the exercise within the limits of the city charter, and the city within those limits is enabled to subscribe for stock in said Company or become its creditor but it is not to be permitted in the exercise of such power to disregard those limitations.

In the Boston case 12, 339 the Court held that the subsequent act could not deprive the town of its rights previously granted in our case we insist that the last act could no more repeal a useful and beneficial limitation equivalent to and in many respects more beneficial than a right.

Nor is this power to be considered as a power outside of and which the city can exercise without regard to the limitation in its charter leaving the limitation in force in respect to all other matters.

Because this exercise of ^{the} power comes within the reason of the limitation and the mischief it was intended to prevent, the limitation was designed to check & prevent extravagance in the management of its municipal affairs, while this habit of subscribing for stock of and lending to Rail Roads is the most ~~great~~ prolific source of such extravagance and when we find such barriers to extravagance we are not permitted to believe the Legislature intended to break them in the manner ~~now~~ insisted on. If the city is the holder

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to this limitation and at the same time is to be put
 rather towards this loan, these very bonds to
 be issued will not only have the effect of partly
 to increase the indebtedness of the city but at the
 same time will form a part of the indebted-
 ness of the city which will prevent and obstruct
 it by the operation of the limitation in ques-
 tion from borrowing money for any purpose of
 improvement hereafter to the city

This loan to the Rail Road Company
 and issues of its bonds, is a borrowing of money
 and nothing else. The bonds will go into the
 money market, money will be raised by the
 sale of them and the city will be liable for the
 payment, and I apprehend that the fact
 that the money is to be loaned to the Rail Road
 Company does not alter the character of the
 transaction

Nor does the fact that it is a loan
 to the Rail Road Company which they are to
 provide to be liable for the same make it any the less
 a borrowing of money by the city.

To determine what the transaction is
 we have but to determine what the liability
 of the city will be to those persons who may
 become holders of the bonds, and the fact that
 there may be a liability in the Rail Road Co
 for the same does not alter the case besides
 I suppose this Court understands what probable
 it is that one of the signs of a liability like
 this for a Rail Road to such as this is

2^d The loan should not be made because the provisions of the Rail Road charter above ~~referred~~ referred to and copied in the abstract contains no authority for this loan sought to be ~~referred~~ referred.

The power upon which the claim to the loan is based is, to loan to the Kenosha & Rockford Rail Road Co. The loan is sought to be made to the Kenosha Rockford & Rock Island Rail Road Co., a corporation is distinct and different from the other as is John Smith from Thomas Jones, they being two natural persons.

The provisions of the Rail Road charter referred to contains no authority or power, to any town, city or county to lend its credit to or subscribe for stock in the company last named. nor does any statute contain any such power and the attempt is, to transfer the power to be exercised in respect to one corporation into a power to be exercised in respect to another corporation.

If the corporation seeking the loan was the same ~~named~~ corporation referred to in the Rail Road charter by a different name this objection doubtless, would fail but we insist it is not the same, that the Kenosha & Rockford Rail Road Co is not the same corporation as the Kenosha Rockford & Rock Island Rail Road Co but that the two names represent two corporations, as truly distinct as well as named by in ~~identity~~ identity.

Page 11 The Record plainly shows that these two
 and distinct corporations. The bill states that
 the Knoxville & Rockford Co was authorized to build
 a Rail Road from Knoxville to Rock
 ford and that the other Co is authorized to
 build a Rail Road from Knoxville to Rock
 Island that these two Company was formed
 by the consolidation of the first Co with another
 to this the business admits setting up such
 consolidation and alleging that the consolidated
 Co succeeded to the rights of the companies
 of which it was formed and making the consoli-
 dation and the alleged succession the foun-
 dation of its claim the loan and thereby
~~insisting~~ insisting that these enabling provisions
 in the Rail Road charter referred to, formed not
 as a right by agreement on the consolidation
 of the two companies.

But we insist that this is not a
 question of right in any company. These
 Provisions of the Rail Road charter ~~gave~~
 vested no right in the company authorized
 which it could either use or loan it. The
^{charter} gave the company no means by which it could
 either ~~claim~~ claim a loan or a subscription.
 The whole matter was taken set on foot and
 completed by the city and every intermedi-
 ate act was taken performed by it. The com-
 pany as such had no means of asking that
 the loan be made, but it was taken made
 on a vote of the electors of the city after being
 petitioned for by a certain number of such the

Page 12 to; and we can only find in those provisions a grant of power to the city to do a certain thing in a certain way, which let for the power thus granted and it could not do it all

Now it may be true that the Rail Road Company could transfer and transmit its rights to the mud co but I apprehend it would puzzle the ingenuity of any lawyer ever asked to say how such co could transmit to any body a power to be exercised by another party over whose exercise it could exercise no control

This Power was an unusual one in derogation of common law and common right, novel & capable of great abuse, to be exercised on the portion of the city above but for the benefit of ~~the~~ a Corporation acting for its own interest and not for that of the public and might be productive of great mischief. It was the creature of the Statute and only exists by its Revisions

This being so we are led to the principle that a grant of powers of this kind is to be strictly ~~and~~ construed and that the powers themselves are to be strictly ~~and~~ pursued not only in respect to the mode of doing the thing but also in respect to the thing itself. There are many decisions where the principles affirmed that in the execution of such powers they must be strictly pursued in

7
 respect to the manner of execution, notwithstanding the thing authorized is done, it must be done in the strict precise manner required.

In the case 3 Comstock 401. Two Fund Commissions to whom mortgages were given and whose duties were prescribed by Statute were authorized to sell the mortgaged premises in a prescribed manner on default. Upon a mortgage there was a default within the terms of the statute, a regular notice of the sale was given by both Commissioners, at the sale only one Commissioner attended. The other having been prevented from doing so by some accidental cause the sale was at auction and made by one Commissioner in the absence of the other.

This sale was held bad because only ^{one} ~~one~~ Commissioner was present at the sale.

At the same sale the land was struck off to a purchaser who the same afternoon refused to complete the sale and the land was again put up and sold to the purchaser it was held that this second sale was bad because a second sale on that day was not authorized by the Statute.

These are cases where the doctrine is enunciated in respect to the mode of execution. The case where the ^{express power} ~~case~~ relates to the thing itself and not to the manner for the reason I apprehend that it is so self evident that the authority only extends to the thing itself and cannot authorize the doing a different thing that the question has not been much

page 14 drawn into litigation

My friend it must be that an authority to pay a sum of money to John Smith can not be expression or implication to make such an authority to pay such sum to John Jones unless those two ~~persons~~ names represent one identical person. So an authority to make a grant to Illinois Central Rail Road Co is not an authority and cannot be made one to make the same or a similar grant to the Chicago & Rock Island Rail Road Co

These Propositions are too close to this case and if the authority contained in by the other line is to prevail in this case it must be further ^{implying that} the two Rail Road Companies the Knoxa & Rockford Co & the Knoxa ^{perhaps a} Rock Island Co and ^{in fact} the same person or that the last Co so includes the first in some mysterious way or manner that a loan to it is in substance and just a loan to the other so that the question comes to us and they in fact let one Co's or does the last alone include Co so include the other that a loan to the last company is in substance and just a loan to the other

And they the same the record shows that the authority of one is to build a road ~~off~~ between points different from the points between which the other is authorized to build then the powers, objects and names of these Co

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portions and different than can they be the same. A mere change of name would doubtless work no change in the liability of a corporation and if the same a cause of good action good against it by the old name would be good against it by the new name but it is clear that no action at law would lie against the Knosha Rockford & Rock Island Co for any debt or liability of the Knosha & Rockford Co. and it may be here remarked that a corporation being so entirely intangible so purely a creature of the State its name is almost its only distinctive characteristic by which identity and individuality can be determined and no inference of the identity of two corporations by different names can be admitted. that the difference is a mere change of name requires positive and satisfactory proof and cannot be established by introduction

Can the other proposition be true that the new company do include the old one that is to say the new Co is a loan to the old one.

The record shows that this new Co was formed by the consolidation of the old company with another Co and that the consolidated Co taking the name of the Knosha Rockford & Rock Island Rail Road Co the court says that the consolidation was in pursuance of the charter of said

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Company is constituted that these charters
authorized a transfer of the rights of the old Co
to the new and that such transfers were made.
This matter is alleged as the foundation of
their ~~loan~~ claim by the new Co to this
loan as a transcribed right of the old Co
I trust however I have already shown that
the old Co possessed no such right and
could transfer none.

The Power to do the thing authorized
we have shown must be strictly pursued
The same identical thing authorized must
be done not a similar or equivalent thing.

And the question arises is alone
to the Knickerbocker & Rockford & Port Jervis Co the
same thing as a loan to the Knickerbocker & Rockford
Co or is it a similar thing, that it is a simi-
lar thing seems ~~probable~~ probable but how
can it be the same thing. The two Compa-
nies are not identical though it is said
one includes the other but in what way does
it include it? does it include it ^{being} by its ^{lost}
its own identity and by its having ~~been~~ come
into and merged in it.

Now I insist that the Legislature
in the ~~act~~ Grant of Power they made ~~the~~
meant that the power should be executed in
respect to the very identical Co in whose favor
it was to be granted and in respect to the other
Co to whom, had it been a new loan
the loan was authorized to be made to the

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Smith for instance would that power have
 authorized ~~that~~ ~~that power have~~ authorized
 a loan to Smith & Jones, one of the firm be-
 ing John Smith, it is true in the second
 case the firm does include the individual
 members. But even in such a case perhaps
 the consent of the source of the loan (which ~~will~~
 being willing to trust John Smith) could never
 be obtained for a loan to Smith & Jones, and
 especially might this be the case if at the
 time the power was granted such power had
 not been created or the liability of its partners
^{had been}
 afterwards changed

But an analogy drawn from the relation
 of natural persons is but a feeble one, for the rea-
 son that the individuality of a natural person
 is never lost by association with other persons
 while a corporation has no individuality but
 such as the law gives it; is in fact but one
 person and that merely an artificial one which
 is incapable of subdivision or association, so
 that a change of a corporation in any essential par-
 ticular can scarcely be made without changing
 its identity, to be sure an addition can be
 made to its powers, its names, rights and liabil-
 ity remaining as before & its personal identity
 still remains or the change might be in the
 name alone without any material change
 in any other respects and it would be the
 same identical corporation by another name.
 but we conclude that a corporation being

Page 18 he and person of itself cannot be said to include another any more than it includes the stockholders of whom it is formed, and no one would pretend that a loan to John Jones would authorize a loan of money ^{to a corporation} of which he was a stockholder or that the corporation included him and therefore the loan to it was one wholly,

With no greater propriety we must say it is pretended that a loan to the Kenosha Rockford & Rock Island Co is a loan to the Kenosha & Rockford Co because the first was formed by the consolidation of the last with some others, as well might it be contended that a loan to the County of Cook was a loan to the City of Chicago because the City is included in the County and a component part of it.

Hence we insist that this authority in a town city County or other municipal corporation to loan to Rail Road Companies or to subscribe for their stock is a power not at all inherent in their character as municipal corporations and cannot be exercised by them except authority be expressly given by the Legislature and when that authority is given the same is so inconsistent with its ordinary objects and powers and in such clear derogation of common law that the precise power granted and no other

Page 19

~~and~~ must be explained according to the precise terms of the grant and even in the mode of execution the power must be strictly pursued. it cannot be extended by implication nor can any other than the precise ^{granted} ~~power~~ be created by construction

We believe that the attempt to create a power in the City of Rockford to take stock in or hold its credit to the Illinois Rockford & Rock Island Co ~~is~~ out of the power to ^{do} in the Illinois & Rockford Co is an attempt to create a power by construction which cannot be done

As to the proper construction of statutes in favor of corporations and in derogation of the common ^{right} ~~law~~ see Stanger vs Birdsall 2 Cowen 419, 420

This doctrine is thus held "In the construction of statutes made in favor of corporations or particular persons or in derogation of common right care should be taken not to extend them by and their express words or their clear import"

3 The Power sought to be exercised is such an
Page 20 one as the Legislature had no constitutional
right ^{or power} to grant.

Let us see what is attempted here.
it is what is called a loan of credit by the
city of Rockford to the Rail Road Company
which is simply an issue of ~~the~~ ^{the} bonds of the
city to the Co which which bonds the company
are to sell in market for their own benefit
for the best price they can obtain. The Co
to receive and use the money and entering
into some kind of contract with the city to
pay the accruing interest on the bonds and to
take them up as they mature, or in the event
of the city doing so that they will repay to the
city what the city may be required to pay for
that purpose. Now of this transaction I can
make nothing but a borrowing of money on the
one hand by the city and a loan of it on the
other to the Rail Road Co in short the city
of Rockford proposes to go into the money
market and borrow the sum of \$50,000 and
to lend the same when borrowed to the Rail
Road Co, and that the city of Rockford
may do this obliging thing to the said compa-
ny its bonds to the amount of \$50,000 are to
be put afloat the whole amount of which
with an amount of interest as large the city
will be ~~obliged~~ ^{liable} to pay and if necessary
to tax most severely for that purpose all taxable
property within its ~~limits~~ ^{limits} in short the
~~proposed~~ purpose of the tax payers is to

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is to be drawn from them by the power of taxation without their consent, to be loaned to a private corporation in which they have no interest. Altho the power is somewhat round about and circuitous, I insist that it for all that it is now the less such as I have stated and I feel that it would be an insult to the intelligence of this Court to suppose that it can do it in any thing else.

Now because the attempt is such as I have stated we insist the Legislature could not constitutionally authorize it, that it comes within the constitutional prohibition that Private property cannot be taken over by the State for private use either with or without compensation except with the consent of its owner. This proposition is well enough but I wish refer the Court to 3 Conn. 251 2 S. 367. 5 Maryland Rep 237. 244

That the attempt is to borrow money loaned to a corporation we believe is plain enough to any apprehension and we insist that it is the taking ~~the~~ private property for private use and if it is such the power could not be granted and its grant is wholly void.

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We insist that it is a taking of Public Property for private purposes because that it is to be lent to a corporation which is owned by a private one in respect to this branch of our land and it nearly concerns ^{us} to imagine what are the characteristics of this corporation which makes it a private one and in what respect has it a public character

We say that its character is private because its property is private; because it is chartered for its own ^{proper} benefit; and because it is under private control. Its ownership, its interests, its control, is in no sense public, is not in the public but is strictly in private hands, and all its acts are for its own private advantage

We suppose it to be Public in the sense that it possesses a franchise in which the public has an interest and that for the purpose of making the franchise useful to the public in which it might otherwise fail altogether the Sovereign authority has consented to exercise in its favor the right of eminent domain but beyond this no law has ever decided it was proper to give a loan is strictly a private business transaction between two persons other

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either one person may be a municipal corporation and the other a Rail Road Company, with out the interposition of the State by its right of eminent domain the whole object of the grant might be defeated by one obstruction, but no such necessity exists in raising town loans, when clothed with the power to borrow money the corporation may and ought to do like every other person and go into the money market and borrow of it, solemnly and duly and sufficient and there can be no reason for borrowing of a ^{city} which never can be a money lender or an expense for making a special loan (for such is the ⁱⁿeffect) of unwilling but wealthy tax payers by the votes of persons knowing nothing to pay, and ignorantly supposing that such loan may contribute employment for them and willing to add any burden that may be asked to the shoulders of the rich.

Now this Company seeking this loan may thing but a Rail Road Company or some corporation of that kind the loan obtained as it is sought to be would be clearly a violation of the constitution, and we insist that except in some peculiar matter clearly indicated the Rail Road Corporation and in no respect different from other corporations in that that "A Rail Road Corporation the claiming its powers from the State does not act as its agent and with

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Special reference to the public advantage
but under a special grant for its own advan-
tage that the need of construction is different
when the public is concerned from cases of pri-
vate grants, the minority brought to the pub-
lic and the proceedings of such private
grants should be strictly construed. 21
Conn Rep 294. 306

This Revised part we believe has never
been decided in any Court that we can dis-
cern it was not decided in the case of
Puttymann v. Johnson 6 19 Dec 406

It has been decided that counties might
properly be authorized to subscribe for stock in
Rail Road Companies and that such grant
of authority was constitutional and we sup-
pose such decisions correct. A Rail Road
of itself may be a matter of public concern
to such an extent that it may in part or in
the whole be built and controlled by the pub-
lic represented by the State or by some public
thing authorized by the State but in such cases
the interests of the public in the undertaking
must be as extensive as its contributions, thus
a City would furnish a certain amount of
money to build the Rail Road and would
own it with an interest in or a share of
the Road equivalent to the amount of money

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contributed by it to its construction and the
 effort would be a creation of public property
 by the use of public money. The money contributed
 here and the thing created each having
 an equal degree of public character.

But what is sought in this case? Why
 supply that the city shall supply the money
 and the company own the property which it
 is used in carrying, it was its money but ac-
 quires no interest in the road nor share in
 its management or control, in fact, it neither
 receives or returns any thing but a doubt
 as to the propriety of the money in
 case the company should be ordered to
 transport it, which we insist (in the light
 of the history respecting Rail Roads, who were
 to ^{must} accomplish their objects) is very
 unlikely.

It is altogether probable that had the
 transaction a legend of good Stock Subscription the
 city would be reminded but we insist that
 such probability scarcely amounts to a valid
 reason for reminding it again.

The case of Rully man is I suppose to
 above referred to it is true also, that the
 Legislature had the constitutional right to
 empower either County to take Stock in or
 lend their credit to Rail Road Companies
 but the only question in that was whether
 the County of Tazewell could be authorized to

page 26 took stock in a Rail Road to and this, but
did decide that counties could take stock
in such corporations, but whether county or
city could lend their credit or lend money
to such companies was not before this, but
was not in question and could not have
been decided by it, and I think I have shown
such question to be entirely different from the
one decided.

In that case this Court also said
that cities might under the constitution be
authorized to do the same thing, but it is
probably that the peculiar powers of cities were
not in the minds of the Court at that time

The Convention which framed our new
Constitution by the 5th section of the 9th article
do say for whole proposed municipal corpora-
tions may be authorized to levy taxes and con-
fer the power so granted to a ~~city~~
right ^{to levy} taxes for municipal purposes, this Court
has decided that Section 38 Article 3 does not
prevent the Legislature from authorizing the
city & counties to subscribe for stock in ~~the~~ Rail
Road Company, but it appears to me that
any grant to a city to take such stock is
a clear violation of the spirit of the constitu-
tion expressed by the two above quoted ~~provi-~~
visions

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It is the doctrine that in all Legislative matters, the power of the Legislature is Supreme and not withheld by the Constitution, and the such withholding must not be mere ground inference but must plainly appear on the face of the Constitution.

Now the Constitution on its face shows great distrust of corporate bodies, and without intent to restrict the Legislature in the grant of such powers, and the provision was inserted in it that municipal corporations might be authorized to lay taxes for municipal purposes, and by the use of such permissive grant we could withhold all power in respect to the levy of taxes not contained ^{in it}, and is clearly manifest such intent as they would have done, had they it expressly said municipal corporations shall not be permitted to lay taxes, except for ~~municipal~~ municipal purposes, and that the maxim of the Expansion of one thing excludes all others, may ~~not~~ be applied to the Constitution. Thus we insist it to be inferred, here, for the proper construction of that doctrine. See the book to 4 Const. 101

It is said that the above rule does not apply in the construction of Constitution, I had supposed however that ~~it would~~ in the

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Construction of a constitution not only its words,
and to be regarded as that it, and the
spirit was the considered and that power,
which might plainly appear on its face
without the use of express words, and that
when to find was to be regarded as
as they would have been had the words
been express

And I suppose ^{must} be that by the
laws in force at the time of the election in
question the city was limited in the an-
out of money it could borrow and that
such limitation had been blazed by signs
that the city had no legal power to borrow
and having no such power could not issue
its bonds for the purposes in question

2^d That the city has no legal authority
to do this sought by it to be done and that
that the authority in the charter of the New
York & Rockford Rail Road Company to the
city to lend its credit to that company is a
new naked power to lend to that corpo-
ration and gives no right to lend to the
New York & Rockford & Rock Island to the

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And last named Company being a different corporation and person from ~~the first~~, the one to whom the loan is authorized the made

3 That the Legislature had no constitutional power to authorize a loan from a city to a corporation like the one to whom it is sought to be made in this cause.

Because it is a direct interference with the taking of private property without the consent of its ~~owner~~ owners under the guise of taxation for private purposes, for the purpose of lending the same without the consent of the owner to private corporation.

And Because by the provisions of the 5th Section of the 9th Article of the Constitution in connection with other provisions, the of and particularly of the 38th Section of the 3rd Article the city is prohibited from exercising the power of taxation for the purposes of a loan of the kind in question in this cause it being allowed to be proved that a city has a legal right to make a loan which it ~~has~~ ~~not the means of paying it~~ is prohibited from raising the money by taxation being it such tax as being the only method by which it could raise the money.

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The above considerations appear to
me conclusive against the loan being let
be made and that the city should be per-
manently informed for making it

On my printed abstract I have given
the loan to the authorities having upon
the question, discussed some very and
some more minutely and to the end let
not to say I have in the above ~~from~~ argu-
ment upon the loan and which with
this I submit the whole thing, and

Yours, A. Wright
for appellants

302-1410

Supreme Court

Thos. S. Robertson

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The city of Rockford

Appellants Argument

Filed May 10, 1889

L. Leland
Clerk