

12473

No. _____

Supreme Court of Illinois

Major, Admr.

vs.

City of Chicago

71641  7

125

The City of Chicago

or
John Major

125

1857

1857

12473

///

United States of
North America
State of Illinois
County of Cook } s. s.

Plas before the Hon
George Manierre Judge of the Seventh
Circuit of the State of Illinois, and pres
Judge of the Circuit Court of Cook County
said State at a trial term thereof begun
and held at the Court House in Chicago
in said County on the third Monday (being
the seventeenth day) of November in the
year of our Lord one thousand eight
hundred and fifty six and of the Inde-
pendence of the United States the Eighty
first.

Present

Honorable George Manierre
Judge of 7th. Judicial Circuit

James S. Beach Coroner Ex officio
acting Sheriff of said County

Attest Louis D. Board, Clerk,

Court opened by proclamation

Be it remembered that on the ninth day of
March in the year of our Lord one thousand
Eight hundred and fifty five there issued

2
from the office of the Clerk of the Circuit Court of the
County & State aforesaid under the seal of said
Court, the Peoples Writ commonly called "Summons"
directed to the Sheriff of said County and clothed
in the words and figures following viz,

State of Illinois }
Cook County } s.s.

The People of the State of Illinois,
to the Sheriff of said County, Greeting;

We command you that you summon The
City of Chicago if it 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 Chicago in said County on the fourth Mon-
day of March next, to answer unto John Major
Administrator of Timothy Major Deceased in a
plea of Trespass on the case to the damage of
the said plaintiff as he says in the sum of Five
thousand Dollars.

And have you then and
there this writ, with an endorsement thereon, in
what manner you shall have executed the same.

Witness, Louis D. Hoard,
Clerk of our said court and
the seal thereof at Chicago afore-
said this ninth day of February
A. D. 1855.

(L. D. Hoard Clerk)



And afterwards to wit, on the thirteenth day of the month and year last aforesaid, said summons was returned to the office of the Clerk of the Court aforesaid with an endorsement thereon by the Sheriff aforesaid which endorsement is in the words and figures following, viz,

Served by reading to Isaac L. Milliken Mayor of the within named city & H. W. Zimmerman Clerk of the within named city and by delivering a copy of this writ to each of them this 13th. day of February A. D. 1855

2 Services	1.00
2 Copies	1.00
2 Miles	10
1 Return	10
Paid by Plffs. Attys.	<u>82.20</u>

James Anderson
Sheriff

And afterwards to wit, on the twelfth day of March in the year last aforesaid (to wit, 1855) there was filed in the office of the Clerk of said Court, a certain bond for costs, which is in the words & figures following, to wit,

State of Illinois
Cook County Circuit Court }

John Major Admin-
istrator of the Estate of
Timothy Major Deceased }

vs.

The City of Chicago }

Cook County, ss. We do hereby enter ourselves security for costs in this cause, and acknowledge ourselves bound to pay or cause to be paid, all costs which may accrue in this action, either to the opposite party, or to any of the officers of this Court, in pursuance of the laws of this State.

Dated this ninth day of February 1855

Robt Hervey
J. P. Clarkson

seal
seal

And afterwards to wit, on the nineteenth day of April in the year last aforesaid (to wit, 1855) the said plaintiff filed in the office of the Clerk of said Court his certain declaration in this Cause, which declaration is in the words & figures following, viz.

Circuit Court of Cook County
of the May Term A.D. 1855.

State of Illinois }
Cook County ss.

John Major Administrator
of all and singular the goods and chattels, rights
and credits which were of Timothy Major, late of
said County, deceased, Plaintiff in this suit, by
Hervey & Clarkson his Attornies, Complainers of
The City of Chicago, Defendant in this suit of a
plea of respsons on the Case.



For that whereas before, and at the time of the Commission of the grievances hereinafter mentioned and from thence hitherto, a certain Street called Madison Street situated in the City of Chicago in the said County of Cook was and now is a common and public highway and thoroughfare for all persons to pass and re-pass upon and over the same of their free will and pleasure, at all times of the year, on ^{foot} or with cattle to wit, at Chicago aforesaid, in the County aforesaid And whereas before and at the time of the Commission of the grievances hereinafter mentioned, and from thence hitherto, the said defendant had and has the care and management of the said Madison Street and it thereby became and was the duty of the said defendant, so having the management and care of said Street to keep and preserve the said Street free and clear of and from all obstructions or hindrances to the free passage and re-passage over and upon the same of all persons and to keep the said street free and open to such free passage and re-passage for all persons and without any injury, danger or peril to those wishing to pass and re-pass over and upon the said Street. And whereas on the sixth day of August in the year of our Lord One thousand eight hundred and fifty four, and for a long time previous to said last mentioned day there was and stood upon said Madison Street, to wit, on the south side of said Street, and

and opposite to the entrance into said Madison Street of a certain other street, in said City of Chicago called Franklin Street a certain Reservoir or Tank for the collecting and containing of water for the uses and purposes of said defendant, which said Reservoir was square in shape, constructed of wood, and was sunken to the depth of several feet below the level of said Madison Street and elevated several to wit, about three feet above the level thereof, and contained on said sixth day of August a large quantity of water therein, to wit, water to about the depth of about seven feet. And whereas it became and was the duty of the said defendant, so having the care and management of said Madison Street as aforesaid, on said sixth day of August, and before said day, to keep the said Reservoir or Tank so containing water as aforesaid well secured and closed at the sides thereof and well protected and covered at the top thereof, so as to prevent all persons passing and repassing over and upon said Madison Street from sustaining or suffering harm or injury therefrom.

Yet the said defendant, well knowing the premises and whilst so having the care and management of said Madison Street, and whilst the said Reservoir or Tank was and stood upon and in said Street, to wit, on the said sixth day of August and for a long time, to wit, for the

space of one month previous to said last mentioned day, to wit, at Chicago aforesaid, in the County aforesaid wrongfully and unjustly and contrary to his duty as aforesaid permitted the said Reservoir or Tank to be and continue and the same was then and there so insufficiently and defectively closed and protected at the sides thereof and so defectively, imperfectly and insecurely covered, that by reason of the said defective and insufficient protection and covering and on account of the same, the said Timothy Major, being of the age of about four years, on said sixth day of August being and passing over and upon said Madison Street, necessarily and unavoidably slipped and fell into the said Reservoir or Tank so containing water as aforesaid, and was then and there in said Reservoir or Tank, and in and by the water so therein being, suffocated and drowned, and then and there thereby died. And afterwards to wit, on the fifth day of February in the year one thousand eight hundred and fifty five administration in due form of law was granted to the said plaintiff upon the Estate of the said Timothy Major who died intestate, in the County Court of said Cook County, the letters whereof the said plaintiff brings into Court as sufficient evidence to the Court here of said grant which said letters bear date the

day and year in that behalf above mentioned.

And whereas also before and at the time of the commission of the injuries and grievances hereinafter mentioned, the said defendant had the care and management of a certain Street called Madison Street situate in the City of Chicago in said County of Cook, which said Street was at and before said time and from thence hitherto and now is a common and public highway and thoroughfare for the passage and repassage over and upon the same at all times of the year of all persons at their free will and pleasure. And became and was the duty of the said defendant at all said times so having the care and management of said Street, to keep the same free and unobstructed for the passage and repassage of all persons over and upon the same without harm, accident, injury or peril. And whereas before the time of the commission of the grievances and injuries hereinafter mentioned the said defendant had caused to be erected and constructed in and upon said Madison Street on the South side thereof, and opposite to the entrance into said Street of a certain other Street situate in Chicago aforesaid, called Franklin Street, a certain Reservoir or Tank for the reception and containing of water for the uses of said defendant, which said Tank or Reservoir was con-

structed of wood, square in shape, sunken to the depth of several feet below the level of said Madison Street and with its top and sides elevated to the height of about three feet above the level thereof, and was entered by an opening or hole in the top thereof, and contained a large quantity of water therein, to wit, to about the depth of seven feet— And whereas it became and was the duty of the said defendant so having the care and management of said Madison Street, and so having caused the said Tank or Reservoir to be constructed as aforesaid to keep the said Tank or Reservoir at all times, well and securely closed and covered, as well the sides thereof as the opening or hole at the top thereof and whereby the same was entered so as to protect the persons passing and repassing over and upon the said Street from harm, injury or peril therefrom.

Yet the said defendant, well knowing the premises, whilst so having the care and management of the said Madison Street, and whilst the said Reservoir or Tank so caused to be constructed as aforesaid, stood and was on said Madison Street, to wit, on the sixth day of August in the year One thousand eight hundred and fifty four, to wit, at Chicago aforesaid, in the County aforesaid, permitted the said Reservoir or Tank, it, the said Reservoir

or Tank then and there containing a large quantity of
 water, to wit, to the depth of about seven feet of water
 therein, to be and continue and the same then and
 there was so defectively, imperfectly and insufficiently
 closed and protected at the side thereof and so
 inadequately, insecurely and insufficiently covered
 on the top thereof, that the said Timothy Major,
 being of the age of about four years, then passing
 over and upon said Madison Street, necessarily
 and unavoidably slipped and fell into said
 Reservoir or Tank, so then and there being and
 containing water as aforesaid, and was then
 and there in the said Reservoir or Tank, and
 in and by the water therein contained as afore-
 said, drowned and suffocated and thereby
 then & there languished for a short space of time,
 to wit, for the space of about five minutes and
 languishing died, to wit, at Chicago aforesaid
 in the County aforesaid. And afterwards,
 to wit, on the fifth day of February in the year
 one thousand eight hundred and fifty five
 administration upon the Estate of the said
 Timothy Major was granted in due form of
 law in the County Court of said County to
 the said plaintiff, the letters whereof bearing
 date the said last mentioned day and year
 the said plaintiff brings into Court here as
 sufficient evidence of the grant of adminis-

bration as aforesaid.

And whereas also heretofore, to wit, on the sixeth day of August in the year of our Lord one thousand eight hundred and fifty four and before that time and day and from thence hitherto, there was a certain Street situate in Chicago in said County of Cook, called Madison Street which said Street was at said times under the care and management of the said defendant, and was during all said times and now is a common and public highway and thoroughfare for all persons at all times in the year, of their own will and pleasure to pass and repass, go and return there over and thereupon, to wit, at Chicago aforesaid in the County aforesaid and whence it became and was the duty of the said defendant to keep the said Street at all times free and unobstructed for the free passage and upassage over and upon the same of all persons without harm, injury or peril -

And whereas before and on the said sixeth day of August there was and stood upon said Madison Street and on the south side of said Street a certain Tank or Reservoir for the reception of and containing water which said Reservoir or Tank was sunk below the level of said Street

and elevated several feet, to wit, about three feet above the level of said Street and was square in shape and constructed of wood, and on said sixth day of August contained therein a large quantity of water, to wit, about the depth of seven feet of water -

And whereas it became and was the duty of the said defendant so having the care and management of said Madison Street at all times to keep the said Reservoir or Tank so being and standing as aforesaid on said Street and so containing water as aforesaid, well, tightly and securely closed, protected and covered at the top and sides thereof so as to allow persons to pass and repass over and upon said Madison Street at all times without danger, injury or peril therefrom.

Yet the said defendant well knowing the premises and not regarding his duty as aforesaid, whilst so having the care and management of the said Madison Street, and whilst the said Reservoir or Tank, so containing water as aforesaid, so was and stood on said Street as aforesaid, ^{to wit,} on the said sixth day of August, at Chicago aforesaid, in the County aforesaid wrongfully and unjustly permitted the said Tank or Reservoir to be and continue and the same was so defectively, imperfectly and insufficiently closed, protected and covered on the side and

on the top of the same that the said Timothy Major, on
said last mentioned day, at the place ^{last} aforesaid, being
of the age of about four years, and being then passing
over and upon said Madison Street by reason of the
aforesaid defective, imperfect and insufficient cover-
ing and protection to the top and side of said Res-
ervoir or Tank, unavoidably and necessarily slip-
ped and fell into said Reservoir or Tank and
into the water then therein contained as aforesaid
and was then & there in said Reservoir or Tank and in
the water there contained as aforesaid suffocated
and drowned, and so thereby then and there died,
to wit, on said above mentioned sixth day of August
at Chicago aforesaid in the County aforesaid.

And afterwards, to wit, on the fifth day of February
in the year one thousand eight hundred and fifty five
Administration upon the Estate of the said Timothy
Major was granted in due form of law to the said
plaintiff by the County Court of Cook County aforesaid
the letters of which the said plaintiff brings into Court
as full and sufficient evidence of the grant as
aforesaid, bearing date the day and year in
that behalf aforesaid.

Wherefore and by reason of the wrongs, injuries
and grievances hereinabove mentioned the said
plaintiff saith that he hath sustained damage as
Administrator as aforesaid to the amount of Five
Thousand Dollars and therefore he brings this suit
Healey & Clarkson
Plffs Attorneys

And afterwards to wit, on the ninth day of May in the year last aforesaid (to wit 1855) it being one of the days of the regular May term of said Circuit Court, the following among other proceedings in said Court, was had and entered of record in this cause to wit,

506 John Major
 Administrator &c. }
 as. } Case
 City of Chicago }

On motion of plaintiffs Attorneys it is ordered by the Court that the said defendant plead or demur to the plaintiffs declaration in this cause by the coming in of the Court on tomorrow morning, or in default thereof his default be entered.

And afterwards to wit, on the eleventh day of the month and year last aforesaid, it being as yet of the said May term of the Court aforesaid the following further proceedings among others in said Court was had and entered of record in this cause to wit,

506 John Major Admr
 of Timothy Major dec'd }
 as. } Case
 City of Chicago }

On motion it is ordered that the rule to plead in cause be further

extended to the first day of June next.

And afterwards to wit, on the twenty ninth day of May in the year last aforesaid (to wit, 1855) the said defendant filed in this cause its certain demurrer to the said plaintiffs said declaration which demurrer is in the words and figures following, to wit,

Circuit Court of
Cook County

The City of Chicago
ads.

John Major Administrator *vs.*
of Timothy Major decd }

And the said City of Chicago defendant in this suit by G. W. & J. A. Thompson Attorneys comes and defends the wrong & injury where *vs.* and says that the said Declaration and the matters therein contained in manner and form as the same are above stated and set forth are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said defendant and that the said defendant is not bound by law to answer the same, and this he is ready to verify - wherefore by reason of the insufficiency of the said declaration in this behalf the said defendant prays judgment and that the

said plaintiff may be barred from having or maintaining his aforesaid action thereof against said defendant &c.

G. W. & J. A. Thompson
(defts. Atty)

And afterwards to wit, on the sixteenth day of October in the year last aforesaid (to wit, 1855) there was filed a certain notice, which is in the words & figures following to wit,

Cook County Circuit Court
John Major Admr
of Estate of Timothy Major
deceased }
vs. } Case
The City of Chicago }

Please to take notice
that on Monday next or as soon thereafter as
the same may be heard or shall call for argu-
ment and disposition the demurrer by you filed
in said cause to the declaration therein

October 16. 1855.

Yours &c.

To

John A. Thompson Esq. }
Atty for Deft. }

Herry & Clarkson
(Atty. for Plff)

I acknowledge service of a copy of the above notice
16 October 1855

John A. Thompson
City Atty.

And afterwards to wit, on the twenty ninth
day of October in the year last aforesaid, it being
one of the days of the October vacation term of
said Court, the following among other pro-
ceedings in said Court, was had and entered
of record in said cause, to wit,

John Major Adams vs.

266

vs

City of Chicago

} Case

This day come the said
parties by their respective Attorneys and the Court
having heard the arguments of Counsel upon
the demurrer of the defendant to the said
plaintiff's declaration, orders that the same
be sustained and that said plaintiff have
until Saturday next to amend the same. And
it is further ordered that the said defendant
plead thereto by the rule day of the
ensuing term of this Court.

And afterwards to wit, on the fifth day
of November in the year last aforesaid (to wit, 1855)
the said plaintiff filed in said cause his

certain amended declaration which is in the words and figures following, viz.

Circuit Court of Cook County
of the May Term A. D. 1855

State of Illinois }
Cook County } ss.

John Major Administrator of all and singular the goods and chattels, rights and credits which were of Timothy Major, late of said County, deceased, Plaintiff in this suit, by Henry & Clarkson his Attornies, Complains of the City of Chicago, Defendant in this suit of a plea of trespass on the case.

For that whereas before, and at the time of the Commission of the grievances hereinafter mentioned and from thence hitherto, a certain Street called Madison Street situate in the City of Chicago in the said County of Cook was and now is a common and public highway and thoroughfare for all persons to pass and repass upon and over the same of their free will and pleasure, at all times of the year, on foot or with cattle, to wit, at Chicago aforesaid, in the County aforesaid. And whereas before and at the ^{time of the} commission of the grievances hereinafter mentioned, and from thence hitherto, the said defendant had and has the care and management of the said Madison Street and it thereby became and was the duty

of the said defendant, so having the management and care of said Street to keep and preserve the said Street free and clear of and from all obstructions or hindrances to the free passage and repassage over and upon the same of all persons and to keep the said Street free and open to such free passage and repassage for all persons and without any injury danger or peril to those wishing to pass and repass over and upon the said Street.

And whereas on the sixth day of August in the year of our Lord One thousand eight hundred and fifty four, and for a long time previous to said last mentioned day there was and stood upon said Madison Street, to wit, on the South side of said Street, and opposite to the entrance into said Madison Street of a certain other Street in said City of Chicago, called Franklin Street, a certain Reservoir or Tank, which had been before that time erected and constructed by the said defendant, for the collection and containing of water for the uses and purposes of the said defendant, which said Reservoir was square in shape, constructed of wood, and was sunken to the depth of several feet below the level of said Madison Street and elevated several to wit, about three feet above the level thereof and contained on said sixth day of August a large quantity of water therein, to wit, water

to about the depth of about seven feet. And whereas it became and was the duty of the said defendant, so having the care and management of said Madison Street as aforesaid, on said sixth day of August, and before said day, whilst said Reservoir so stood and was on said Street, to keep the said Reservoir or Tank so containing water as aforesaid well secured and closed at the sides thereof and well protected and covered at the top thereof, so as to prevent all persons passing and repassing over and upon said Madison Street from sustaining or suffering harm or injury therefrom.

Yet the said defendant, well knowing the premises and whilst so having the care and management of said Madison Street and whilst the said Reservoir or Tank was and stood upon and in said Street, not regarding his said duty, to wit, on the said sixth day of August, and for a long time, to wit, for the space of one month previous to said last mentioned day, to wit, at Chicago aforesaid, in the County aforesaid wrongfully and unjustly and contrary to his duty as aforesaid permitted the said Reservoir or Tank to be and continue and the same was then and there so insufficiently and defectively closed and protected at the sides thereof and so defectively, imperfectly and insecurely covered, that by reason of the said defective and insufficient protection and

* And the said plaintiff avers that the parents of the said Timothy Major, being of such age and incapable of himself using proper caution and diligence in passing over and upon said street were at said time exercising just her care and diligence and caution respecting him the said Timothy Major and with respect to his then and there being and passing over and upon said street.

covering of the said Reservoir or Tank, and on account of the same, the said Timothy Major, being of the age of about four years, on said Sixth day of August being and passing over and upon said Madison Street, necessarily and unavoidably slipped and fell into the said Reservoir or Tank so containing water as aforesaid, and was then and there in said Reservoir or Tank, and in and by the water so therein being, suffocated and drowned, and then and there thereby died *. And afterwards to wit, on the fifth day of February in the year One thousand eight hundred and fifty five administration in due form of law was granted to the said plaintiff upon the Estate of the said Timothy Major, who died intestate, in the County Court of said Cook County, the letters whereof the said plaintiff brings into Court as sufficient evidence to the Court here of said grant which said letters bear date the day and year, in that behalf above mentioned.

And whereas also before and at the time of the commission of the injuries and grievances hereinafter mentioned, the said defendant had the care and management of a certain Street called Madison Street situate in the City of Chicago in said County of Cook, which said Street was at and before said time and from thence hitherto and now is a common and public highway and thoroughfare for the passage

and re passage over and upon the same at all times of the year, of all persons at their free will and pleasure And whereas it became and was the duty of the said defendant at all said times so having the care and management of said Street, to keep the same free and unobstructed for the passage and re passage of all persons over and upon the same without harm, accident, injury or peril - And whereas before the time of the commission of the grievances and injuries herein after mentioned the said defendant had caused to be erected and constructed in and upon said Madison Street on the South side thereof, and opposite to the entrance into said Street of a certain other Street situate in Chicago aforesaid, called Franklin Street, a certain Reservoir or Tank for the reception and containing of water for the uses of said defendant, which said Tank or Reservoir was constructed of wood, square in shape, sunken to the depth of several feet below the level of said Madison Street and with its top and sides elevated to the height of about three feet above the level thereof, and was entered by an opening or hole in the top thereof, and contained a large quantity of water therein to wit, to about the depth of seven feet. And whereas it became and was the duty of the said defendant so having the care and management of said Madison Street, and so having caused the said Tank or Reservoir to be constructed ^{as} ~~to~~ aforesaid, to keep

the said Tank or Reservoir, at all times well and securely closed and covered, as well the sides thereof as the opening or hole at the top thereof and whereby the same was entered so as to protect the persons passing and repassing over and upon the said Street from harm, injury, or peril therefrom.

Yet the said defendant, well knowing the premises, whilst so having the care and management of the said Madison Street, and whilst the said Reservoir or Tank so caused to be constructed as aforesaid, stood and was on said Madison Street, to wit, on the sixth day of August in the year one thousand eight hundred and fifty four to wit, at Chicago aforesaid in the County aforesaid wrongfully and unjustly permitted the said Reservoir or Tank, it, the said Reservoir or Tank then and there containing a large quantity of water to wit, to the depth of about seven feet therein, to be and continue and the same then and there was so defectively, improperly and insufficiently closed and protected at the side thereof, and so inadequately, insecurely and insufficiently covered at the top thereof, that the said Timothy Major, being of the age of about four years then passing over and upon said Madison Street, the parents of him, the said Timothy then exercising due care of him the said Timothy, necessarily and unavoidably

slipped and fell into said Reservoir or Tank, so then and there being and containing water as aforesaid and was then and there, in the said Reservoir or Tank and in and by the water therein contained as aforesaid, drowned and suffocated and thereby then and there languished for a short space of time, to wit, for the space of about five minutes, and languishing died, to wit, at Chicago aforesaid in the County aforesaid. And afterwards to wit, on the fifth day of February in the year One thousand eight hundred and fifty five, Administration upon the Estate of the said Timothy Major was granted in due form of law in the County Court of said County, to the said plaintiff, the letters whereof bearing date the said last mentioned day and year, the said plaintiff brings into Court here as sufficient evidence of the grant of Administration as aforesaid.

And whereas also heretofore, to wit, on the sixth day of August in the year of our Lord One thousand eight hundred and fifty four and before that time and day and from thence hitherto, there was a certain Street situate in Chicago in said County of Cook, called Madison Street, which said Street was at said times under the care and management of the said defendant, and was during all

said time and now is a common and public highway and thoroughfare, for all persons at all times in the year, of their own will and pleasure to pass and repass, go and return there over and thereupon to wit, at Chicago aforesaid in the County aforesaid, and whereas it became and was the duty of the said defendant so having the care and management of said Street, to keep the said same Street at all times free and unobstructed for the free passage and repassage over and upon the same, of all persons without harm, injury or peril - And whereas before and on the said sixth day of August there was and stood upon said Madison Street and on the south side of said Street and opposite to the entrance into said Street of a certain other Street situate in Chicago aforesaid, called Franklin Street, a certain Tank or Reservoir for the reception of and containing water, which said Reservoir or Tank was sunken below the level of said Street and elevated several feet ~~above~~ to wit about three feet, above the level of said Street and was square in shape and constructed of wood, and on said sixth day of August contained therein a large quantity of water, to wit, about the depth of seven feet of water. And whereas it became and was the duty of the said

defendant so having the care and management of said Madison Street at all times to keep the said Reservoir or Tank so being and standing as aforesaid on said Street and so containing water as aforesaid, well, tightly and securely closed, protected and covered at the top and sides thereof, so as to allow all persons to pass and repass over and upon said Madison Street at all times without danger, injury or peril therefrom.

Yet the said defendant well knowing the premises and not regarding his duty as aforesaid, whilst so having the care and management of the said Madison Street; and whilst the said Reservoir or Tank so containing water as aforesaid, so was and stood on said Street as aforesaid to wit, on the said sixth day of August at Chicago aforesaid in the County aforesaid wrongfully and unjustly permitted the said Tank or Reservoir to be and continue and the same was so defectively, imperfectly and insufficiently closed, protected and covered on the side and on the top of the same that the said Timothy Major, on said last mentioned day, at the place last aforesaid, being of the age of about four years, and being then passing over and upon said Madison Street by reason of the aforesaid defective, imperfect and insufficient covering and protection to the top and sides of said Reservoir or Tank, the parents of him the

said Timothy, then exercising due and proper care and diligence over and of him the said Timothy, unavoidably and necessarily slipped and fell into said Reservoir or Tank and into the water then therein contained as aforesaid and was then and there in said Reservoir or Tank and in and by the water there contained as aforesaid suffocated and drowned, and so thereby then and there died, to wit, on said above mentioned sixth day of August, at Chicago aforesaid, in the County aforesaid.

And afterwards to wit, on the fifth day of February in the year one thousand eight hundred and fifty five, Administration upon the Estate of the said Timothy Major was granted in due form of law, to the said plaintiff in & by the County Court of Cook County aforesaid, the letters of which the said plaintiff brings into Court as full and sufficient evidence of the grant as aforesaid, bearing date the day and year in that behalf aforesaid.

Wherefore and by reason of the wrongs, injuries and grievances hereinabove mentioned the said plaintiff saith that the Estate of the said Timothy Major hath sustained damages pecuniary to a large amount to wit, the sum of Five thousand dollars and that the said plaintiff hath sustained damages as Administrator

aforesaid to the amount of Five Thousand Dollars
and therefore be the said plaintiff as administra-
tor as aforesaid brings this suit &c.

Hervey & Clarkson

Plffs. Attornies

And afterwards to wit, on the twentieth
day of November in the year last aforesaid
(to wit, 1855) the said defendant filed in said
Cause its certain Pleas to the said plaintiffs
amended declaration, which Pleas are in
the words & figures following to wit,

Circuit Court of Cook Co.
City of Chicago

ads.

John Major Adm'r &c.
of Timothy Major dec'd

Nov. Term 1855

And the said de-
fendant by G. W. & J. A. Thompson his Attys.
comes & defends the wrong & injury when &c.
& says that she is not guilty of the premises laid
to her charge in manner & form as the said
Plff. hath above thereof complained against
her and of this she puts herself upon the
Country &c.

G. W. & J. A. Thompson
(defts Attys.)

And for a further plea in this behalf the said defend-
ant by her said Attorneys comes and defends the wrong
re. and as to the several counts in the said declaration
contained, say, by leave of Court re. action because
she says that the said water Tank or reservoir into
which the said Timothy Major is alleged to have
fallen & drowned in said declaration was erected
and built by the said defendant in a good and
substantial manner and securely & properly covered
& closed upon the sides and top thereof & rendered
safe & secure for all persons passing & repassing in
the said street & using due care & caution, and
afterwards and before the time of the fall & drown-
ing of the said Timothy as mentioned in said de-
claration some person or persons unknown to this
defendant without any authority & wrongfully
tore up & removed the covering so as aforesaid
placed upon the top of said Tank by said deft.
and without the knowledge or consent of the
said deft. or of her proper officers, and that the
said covering was not in any manner so tore
up & removed by the authority of the said deft.
nor was the said deft. in any manner notified
of such tearing up & removal by said unknown
person or persons, nor that the same was so tore up
& removed and that the said tearing up and
removal of the said covering by said unknown
person or persons whereby said Tank became

unsafe & insecure as is alleged, was so done by said unknown person or persons without any direction or permission of the said deft. or her proper officers, nor was the said deft. in any manner notified that said covering had been tore up & removed, and this the said deft. is ready to verify - Wherefore she prays judgment if the said Plff. ought to have or maintain his said action thereof against her &c.

G. W. & J. A. Thompson
defts. Atty.

And afterwards to wit, on the third day of December in the year last aforesaid (to wit, 1855) the said plaintiff filed in said cause his certain Replikation and demurrer to the said defendants said Pleas, which said Replikation & demurrer are in the words & figures following to wit,

Bench Court of Cook County
November Term A. D. 1855

John Major Adams &c.
vs.
City of Chicago

And the said plaintiff as the said first plea of the said defendants above here in pleaded, and wherein she, the said defendant puts herself upon the country, doth she like
Herry & Clarkson
Plffs. Atty.

And the said plaintiff as to the second plea, by the said defendant herein above pleaded comes by his said attorneys and defends the wrong and injury &c. where &c. and says that the said second plea and the several matters and things therein contained in manner and form as the same are therein pleaded and set forth, are not sufficient in law for the said defendant to have and maintain their said defense against the said plaintiff, and that ^{he} the said plaintiff is not bound by law to answer the same, and this he is ready to verify, wherefore he prays judgment of the said plea if the said plaintiff ought by law to answer the same—

And the said plaintiff assigns for special cause of demurrer to the second plea of the said defendant.

1. That the said second plea amounts to the general issue.
2. The said second plea is in other respects informal, illegal, defective and insufficient

Hervey & Clarkson
Plffs. Attys.

And afterwards to wit, on the thirteenth day of December, in the year last aforesaid, the said defendant filed in said cause its certain Joinder in demurrer, which is in the words and figures following to wit.

Cook Cir. Court
 City of Chicago
 ads. } Nov. 5, 1855
 John Major Admr. &c.

And the said City of Chicago saith that her said Plea by her secondly above pleaded & the matters therein contained in manner & form as the same are above pleaded & set forth are sufficient in law to bar & preclude the said John Major Admr. &c. from having or maintaining his aforesaid action thereof against her the said City of Chicago, and that the said City of Chicago is ready to verify & prove the same when, where & in such manner as the said Court here shall direct. Wherefore &c. the said City of Chicago prays judgment & that the said John Major Admr. &c. may be barred from having or maintaining his aforesaid action thereof against her the said defendant &c.

G. W. & J. A. Thompson
 (Defts. Attys.)

And afterwards, to wit, on the twenty sixth day of April A. D. 1856. there was filed in said cause a certain stipulation which is in the words and figures following to wit,

In the Circuit Court of Cook County

John Major Adm'r Plf

vs.

The City of Chicago Def. }

It is hereby stipulated and agreed by and between the Attornies for the respective parties in this cause that this cause may be passed when called for Trial this day & that the same may be taken up for disposition during the May Term at any time when the Court can hear & try the same upon Twenty four hours notice of such time being given by the Plaintiffs Attornies to the Attorney for the said Defendants.

Dated 26th. April 1856

Hervey & Clarkson
Attys. for Plff.)

J. L. Marsh
City Atty.)

And afterwards to wit, on the twenty first day of November in the year of our Lord one Thousand eight hundred and fifty six, it being one of the days of the regular November Term of said Court, the following among other proceedings in said Court, were had and

entered of record in said cause to wit,
 John Major Adm^t of
 Timothy Major dec^d
 82 vs.
 City of Chicago } Case

This day comes the parties
 by their respective attorneys and the Court being
 fully advised Orders that the demurrer to the sec-
 ond Plea be sustained and thereupon issue
 being joined between the said parties on motion
 of the plaintiff and by order of Court come a
 jury of good and lawful men to wit, S. A.
 Sheppard, M. R. Allen, E. M. Low, R. Kaurig,
 W^m Briggs, Joel Wood, Peter Rainor, G. Peck,
 W. S. Moore, W. Sawyer, C. Jaynisk & J. M. Allen
 who being severally elected, hied and sworn
 also come and after hearing the evidence, the
 arguments of counsel and the instructions of the
 Court retire under charge of a sworn officer of
 the Court to consider of their verdict and
 subsequently return into Court with the fol-
 lowing verdict. "We, the Jury do find the issue
 for the plaintiff and assess his damages at the
 sum of eight hundred dollars" and hereupon
 come the defendants by their attys. and
 move the Court for a new trial in this
 cause.

And afterwards to wit, on the tenth day of January in the year of our Lord one thousand eight hundred and fifty seven it being as yet of the November term of said Court last aforesaid the following further proceedings among others in said Court was had and entered of record in said cause to wit,

82 John Major Admr of
Timothy Major decd
es. } Case
City of Chicago }

And now again come the said parties by their respective attorneys and the Court having heard counsel on the said defendant's motion for a new trial of this cause and due consideration being thereupon had and the premises fully understood doth overrule said motion.

Wherefore it is considered that the said plaintiff do have and recover of the said defendant his damages of eight hundred dollars in form aforesaid assessed together with his costs and charges in this behalf expended and that he have execution therefor.

Whereupon the said defendant prays an appeal to the Supreme Court of the State of Illinois which is granted and ten days

allowed to file Bill of exceptions - the said plff. expressly waiving an appeal Bond

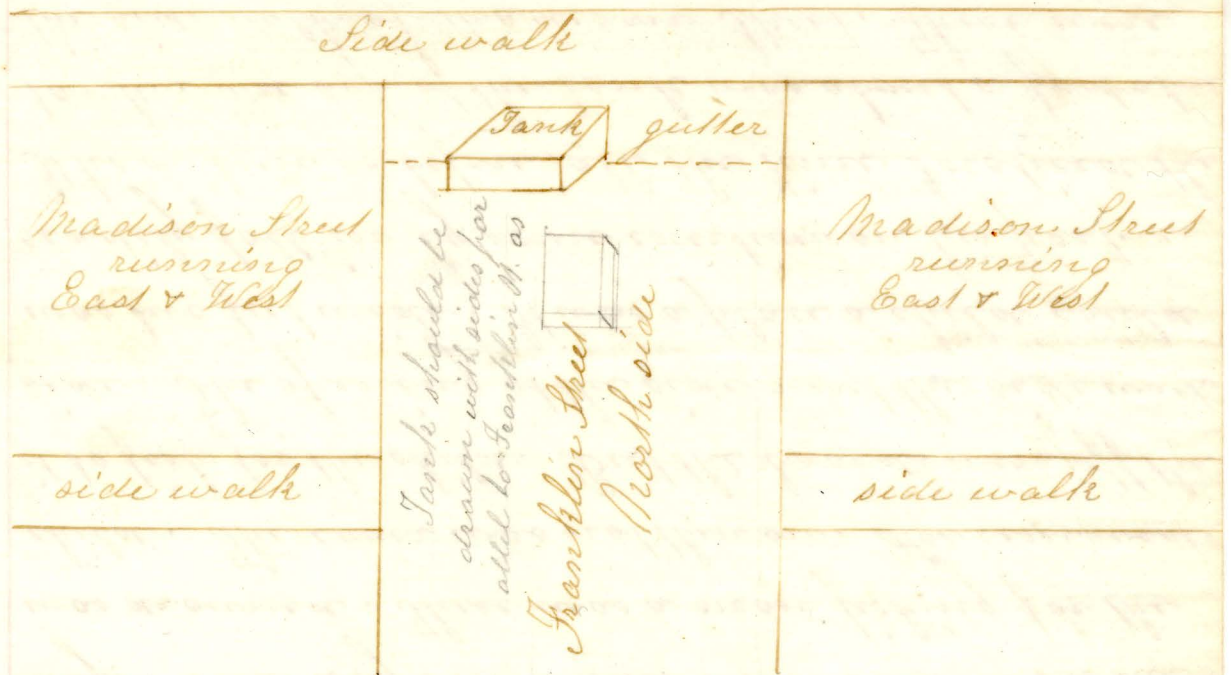
And afterwards to wit, on the tenth day of January in the year last aforesaid (to wit, 1857) the said defendant filed in said cause its certain Bill of exceptions which is in the words & figures following to wit,

State of Illinois Cook County
John Major Administrator
vs. }
The City of Chicago

In the Cook County Circuit Court
November Term A.D. 1856.

Be it remembered that on the trial of this case in said Court on the 21st day of November A.D. 1856 before the Hon. George Manierre Judge of said Court, the plaintiff to sustain the issue on his part introduced the witnesses following who testified as follows.

Hugh Glassford who produced the following diagram in explanation of the location of the water Tank which is alleged to have caused the injury complained of viz.



I know the tank on Madison Street. It stood on the south side - near the south side of Madison Street and at the head of Franklin Street where the latter terminates in Madison as shown in the diagram. The tank was raised above the Street and nearly level with the level of the side walk which itself was above the Street. It was close to the sidewalk of Madison Street. A person could step from the sidewalk on to the tank. At least I could. There were crossings at the street, which were some twenty feet from the tank. I think the tank was four or five feet square. It stood partly in the gutter running along the side of Madison Street, and owing to the slope of the gutter was higher above ground on the side next the sidewalk than on the side fronting the side of Franklin Street. I recollect the time when Major's child was drowned - that was about eighteen months ago. It was in

the summer - in July or August. I had occasion to be a good deal on Madison Street and used to notice the tank. It was out of repair considerably. Sometimes the cover was off and sometimes boards were off the side. There were boards off the side for three months before Major lost his child. It was a very bad place dangerous to children. The water was about 20 feet deep probably. The tank connected with subterranean aqueducts & was used to supply water for fires. The day Major's child was drowned I put a pole down in it. It was full of filthy water. When I heard Major's child was drowned I went out. The side of the tank was open about two feet, and had been so for two or three months. It would take about two feet of boards to cover the side. These boards were off that day and it was the west side they were off.

I cannot tell of its condition on particular days. That day I went there when I heard the child was drowned. There was a man fishing for the child. The cover was not then on. He removed it to fish for the child. But the boards were off the side. The opening at the side next the side walk was two feet wide. It was a place a child could readily fall in by some exertion on his part. It had been so before, all the time I noticed the tank. The top of the tank was about a foot above the sidewalk of Madison Street. There were

two boards of the side. Saw the child when Dr. Boone was trying to restore it. It was dead. I should think the child four years old.

Doctor Boone. Am physician & surgeon - Went to Major's house, which was 200 feet from the tank, good many persons there - I did what could be done and what was usual in attempting to resuscitate the child, but could not restore animation. The child died from drowning. Saw the tank, think its condition about as Glassford stated it. Side was open and top off - This was after child was taken up. Tank stood partly in the gutter and the ground sloped. I should not think the child could get in it accidentally. I should hardly think the ground pitched so that the child could get in without inclination or exertion of its own. I think the child could not fall in the tank from the sidewalk a child could easily step up to the tank whether the cover was on or off and bend over it if it chose. I think the child could get in at the side where the boards were off, but it could hardly do so without a will or an effort of its own.

Austin Hyman. I was Coroner when Major lost his child. This was two years ago. I held an inquest on the child. I examined at that time the tank. The planks were off the west side and left an opening in the tank 18 or 20 inches

at the end over the sidewalk. Owing to the slope of the ground the opening was wider at one end than the other. There was a strip of board 6 or 8 inches wide across the top of the tank under the cap, and then the opening of 18 or 20 inches. There was water in the tank, not quite level with the street. The child could not fall in this opening on the west side without stooping and bending forward on account of the cap piece of board at the top.

Mrs. Haffat. The day the child was drowned I was standing at my door in the alley way between Wells & Franklin Streets and saw Mrs. Major. I went to the tank. Mr. Major and some others were then there. The lid was turned up when I got there. The folks were wanting Major to go down in the tank. He didn't seem to move quickly and Mrs. Major wanted to jump in. I took her ~~home~~ home, as I was returning towards the tank I met Mr. Major having the child on his shoulder dead, coming from towards the tank. The child was black and full of water. I didn't see the child taken from the tank. I was coming from Washington Street going south, turning on Madison Street saw the people standing around the tank. Did not then see the child. Saw the crowd turn from the tank and go towards Major's house Major was amongst them. I went on till I

met the crowd with the child about ten yards from the tank. I went into Major's house. His house was near the street and two or three hundred feet north from the tank on Franklin St. The door opened directly upon the street. Dr. Boone was trying to restore the child, but he failed to restore it. The child was a boy. Its name Timothy Major. The parents buried the child themselves. The tank can't be seen from my house but could be seen from Major's house. Never paid any attention to condition of the tank before the child was lost. I didn't notice anything about it, except the next morning that a board was off. I never saw the top off. As far as I know the parents paid the funeral expenses. All I know of that is what they told me. I don't know whether the City paid the expenses of funeral or not. Major lived on Franklin Street and the tank could be seen from his house. Don't exactly know its age - think it about three years old. He was a healthy child. Major had two other children. He was a poor man and kept no servant. Both he and his wife worked for a living Mr. Fay. When I heard the alarm that the child had fallen in the tank I went out of my house which is next door to Major's in Franklin Street. Went to the tank. Saw Major down in it looking for the child with a rope

around him which two men ^{were} holding. I went to Madison Street bridge to get a pole with a hook on it and returned towards the hole. Didn't see Major take the child out, the crowd prevented that. Saw Major turning from the tank with the child in his arms. From the time the alarm was given I was near the tank all the time. Child was wet and muddy. Went to Major's house. Dr Boone was trying to restore the child. Had never before noticed the tank. I live next door to Major. Could see the tank from our house. I never before knew of the tank. Came a million of times past it and never noticed it. Cover was off and Major had been down when I came. The side of the tank next my house the boards were off. I mean to say if no obstruction prevented I could see from my house the side of the tank where the boards were off. Major is a sailor. The nearest road to the river from his house is on Franklin to Madison. But if vessel was lying on Main river his nearest course would be over Franklin Street to the river and he would not be obliged to go to Madison which is South of his house.

And to maintain the issue on its part the said City of Chicago introduced as witnesses the following persons who testified as follows.

William Coleman. I know the tank. I

recollect the occasion of Major's child being drowned. I had occasion previously to examine & did examine it. I passed it several times. For a considerable time there was a board off one side. The space was wider at one end than the other because part of the tank was in the gutter where the ground sloped off 12 to 16 inches. The cover was on the tank every day previous to the accident. The part of the opening in the gutter end of the tank was large enough to admit a child.

A child could not have fallen in without putting its head in. The widest opening in the side was from 12 to 16 inches. The tank was four feet from the side walk. A child could not step from the side walk to the tank. Franklin Street is in a comparatively retired part of the City.

Elihu Granger. I was an Alderman the year the accident happened. I am familiar with these tanks. They connect with underground aqueducts and are to supply water for fires. I have superintended the construction of some of these tanks. They are generally alike. The depth of them from top to bottom of the water in them is about fifteen feet. In order to protect these tanks from careless or wanton injury the Common Council of the City in July 8. 1851 passed an Ordinance.

The said City of Chicago then introduced in evidence to the Jury Section 4 of an

Ordinance entitled "Concerning Aqueducts" passed July 5, 1851 - as follows -

"Any person or persons who shall open or remove any cover or lid of any reservoir that is placed at any point on any aqueduct aforesaid without special permission from the chief or one of the assistant Engineers of the fire department, the City Marshal, Street commissioner, or one of the members of the Common Council, or except in case when an alarm of fire is given, shall forfeit and pay a penalty of five dollars for Each and Every offence."

The foregoing was all the evidence given in the case both by plaintiff and defendant.

Thereupon said evidence having been submitted to the Jury, the counsel for the City of Chicago then and there requested the Court to instruct the Jury as follows.

"The Statute of this State requiring compensation for causing death by wrongful act, neglect or default does not embrace a case like this and does not authorize a verdict for the plaintiff. An action is allowed by it only in cases where the person dying leaves a widow and next of kin -

Which said instruction the said Court refused to give, and to the refusal to give said instruction defendant then & there excepted.

The Counsel for the defendant then and there further requested the Court to instruct the

Jury as follows (numbered 2)

"A party seeking to recover damages for a loss which has been caused by negligence or misconduct must have shown to the Jury, or it must appear from the evidence that his own negligence and misconduct if old enough to exercise reasonable care and caution, or the negligence and misconduct of other persons from whom care and circumspection under the particular circumstances should be required, has not concurred with the negligence of the party charged in producing the injury complained of."

Which charge or instruction the Court then and there gave.

Counsel for the defendant further requested the Court to give the following instruction to the Jury marked three (3)

"The burthen of proof is on the plaintiff. He must show, or there must appear from the evidence not only negligence on the part of the defendant but that the care and circumspection demanded in relation to the party injured was properly exercised so as to indicate that plaintiff's own negligence, if of sufficient age and experience to exercise caution, or that of those who were bound to care for the party dying, if not able to exercise it for himself, did not contribute to produce the injury complained of."

Which said instruction the Court then & there gave to the Jury.

Counsel for defendant further requested the Court to give the instruction (numbered 4) following to the Jury.

"As pertinent to the question of care on the plaintiff's part, as to the child, the Jury may consider whether the deceased was of such tender years as to be likely to be inconsiderate and improvident and therefore, to have required, for its own safety, the control, oversight and Vigilance of parents or other matured person? and if they so find, then they should inquire whether the parents or other matured person were exercising, when the death happened, a care and prudence as to the person of the deceased which judicious and careful parents, or person having care of a child of like age, ought to exercise.

The burden of proof being on the plaintiff if the Jury believe the deceased required, from his age, such prudence and care, the plaintiff must affirmatively show, or it must appear from all the evidence in the cause that such care and circumspection were exercised at the time of the injury or he cannot recover."

Which said instruction the Court then and there gave to the Jury.

Counsel for defendant further requested

the Court to give to the jury the following instruction (numbered 5)

"If the jury find the deceased was of such an age as to require the custody of his parents to insure his personal safety when in the streets and if it appears from the evidence that his parents knew there was such a dangerous place in the tank and negligently permitted the deceased to stay and wander in the streets by himself near such tank, they did so at their own peril and their neglect must be imputed to the infant and no recovery can be had by the plaintiff."

Which said instruction the Court then and there gave to the jury.

The Counsel for the Defendant further requested the Court to give to the jury the instruction (numbered 6) following —

"The jury in this case, if they should find for the plaintiff, can only allow such damages as the Statute authorizes. The measure of damages it adopts is simply a Compensatory one, that is, that which will make good the loss sustained.

That loss must be a pecuniary loss and be measured by that standard, and arrived at as nearly as the circumstances will admit. The mental sufferings or grief of survivors, or loss of domestic or social happiness, or the degree of culpability of the party in fault are not proper elements

Simply?

in the calculation of damages. The jury cannot award exemplary or vindictive damages. They must ascertain from the evidence the pecuniary loss sustained as nearly as they can approximate thereto, and candidly make that good, and to do this the testimony in the case must have furnished the data upon which the jury may calculate or approximate to an estimate of the pecuniary value of the life to the persons for whose benefit the plaintiff is entitled to damages. To ascertain this value of the life, or the loss sustained the jury is not entitled to go outside of the evidence and indulge in mere speculation and conjecture."

Which instruction the Court then and there gave to the jury, with the addition, however, after the word "conjecture" of the following: "not reasonably made from the evidence and justifiable thereby, but must found their estimate upon such facts in proof as tend to show the pecuniary extent of the loss sustained; but to enable the jury to arrive at such an estimate it is not necessary that any witness should have expressed an opinion as to the amount of such pecuniary loss, but the jury may themselves make such an estimate from the facts proved taking into consideration the age of the deceased and such other evidences as may afford them the means of making the estimate."

To the giving of which said addition to said instruction as asked by Defendant, the Counsel for Defendant then & there excepted.

Counsel for Defendant further requested the Court to give to the jury the instructions following (marked 7)

"When a dangerous place is made in the street by the wrongful act of parties unknown or without the authority of the City, the City cannot be deemed negligent until knowledge or notice of the defect is brought home to her."

To which said instruction the Court then and there gave to the jury with the addition following

"But if a long or unreasonable delay in making such repairs shall be made to appear from the evidence the jury may infer or presume notice, and find for the plaintiff as if express notice had been proved."

To the giving of which ^{said} addition to said instructions asked by defendant, the Counsel for defendant then and there excepted.

The Counsel for the Defendant further requested the Court to give to the jury the following instruction (numbered 8)

"If the jury believe the bank in question was reasonably safe and secure for all such persons as ordinarily make use of the streets of a City, the City is not liable for an injury resulting from

its insufficiency to prevent or guard against an extraordinary occurrence or accident."

Which said instruction the Court then and there refused to give, and to the refusal of the Court to give said instruction the defendant by her Counsel then and there excepted.

And the said Court then and there of its own motion instructed the jury as follows. If the jury shall find from the evidence that the tank or reservoir spoken of by the witnesses was in an unsafe and insecure condition at the time of the alleged drowning and that the same had been in such condition for three months or any considerable period prior to that time, this is evidence from which the jury may infer negligence on the part of the defendant. And if the jury shall also find from the evidence that the said tank was erected by the defendant for municipal purposes, then it was the duty of the defendant to keep the same in repair. And if the jury shall find that the defendant has been guilty of such negligence in keeping the same in repair, then the plaintiff is entitled to recover although the jury shall find that no express notice was given to the City of the unsafe condition of the tank, if they shall also find that the child Timothy Major was drowned therein without any negligence on the part of his parents."

To the giving of which said instruction the Defendant by her Counsel then and there excepted.

The foregoing instructions so given were all the instructions given by the Court to the jury. Thereupon the jury retiring to consult of their verdict came afterwards, to wit, on the 22d. day of November 1856 into Court and returned the following verdict.

"We of the jury find for the plaintiff and assess his damages at Eight Hundred Dollars."

And therefore the Defendant afterwards moved the Court to set aside the verdict of the jury and grant a new trial. And afterwards, to wit, on 24th. day of November filed in Court the following—

John Major Adams &c.	} Cook County Circuit Court November T. 1856.
vs.	
The City of Chicago	

The defendant in the above entitled cause moves the Court to set aside the verdict of the jury and grant a new trial in this cause for the reasons following—

1. The said Verdict is contrary to the ^{law of} ~~instructions~~ ^{instructions} given in the case.
2. The said Verdict is contrary to the evidence given in the case.
3. Because the damages named by the jury are enormous and excessive.
4. Because the Court refused to give the jury

the first and last instructions asked by defendant to be given.

5. Because the Court refused to give Defendants instructions as asked and gave them as modified by the Court. "

Which said motion the Court afterwards, to wit, on the 10th. day of January 1857 overruled and then and there rendered judgment on the said Verdict of the Jury:

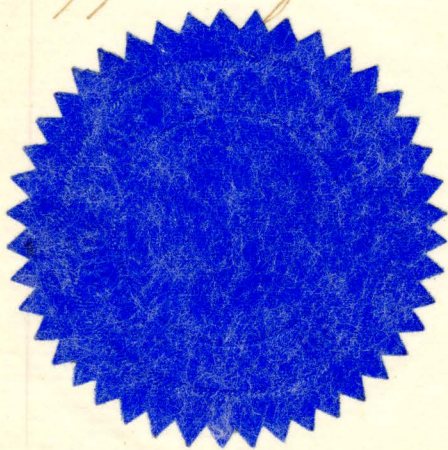
To which decision and opinion of the Court in overruling said motion and in rendering judgment on said Verdict of the Jury the Defendant & her Counsel then and there excepted, and prays this her bill of exceptions may be signed and sealed, and accordingly on this, the 19th. day of January A. D. 1856 her said bills of exceptions are signed and sealed

George Manierre Seal
Judge of 7th. Judicial
Circuit, Illinois

State of Illinois }
County of Cook } S.S.

J. William S. Church
Clerk of the Circuit Court of Cook County in
the State aforesaid do hereby certify the within
transcript to be a full, true, perfect and
complete copy of the records and proceedings

of a certain cause late pending in said Court
wherein John Major administrator of Timothy
Major deceased was plaintiff and the City
of Chicago was defendant as the same now
appears of record in my office.



In witness whereof I have
hereunto set my hand and
affixed the seal of said
Court at Chicago this 25th
day of February AD 1857
Wm L. Church Clerk

Clerk's fee for Record \$13.35

Supreme Court - of Ill. April Term 1857
At Ottawa -

The City of Chicago {
vs

John Major adm^r

{ Appeal from Circuit
Court of Cook County

And now comes the said appellant
the City of Chicago by its attorneys - Joshua
L. Church & John Lyle King - and says
that there is manifest error in the record
proceedings & judgment aforesaid - and
prays that said judgment & proceedings
may be reversed, set aside & for naught
held - and as a specification of
errors presents the following -
(over)

1st The declaration shows no cause of action & the Court erred in sustaining a demurrer to the Second plea of debt below

2nd The Court erred in refusing to instruct the jury as requested by appellant

3 The Court erred in modifying instructions No. 6, asked by the City, & in refusing instructions No. 1 & No 8 respectively

4 The Court instructed the jury erroneously

5- The Court erred in refusing a new trial

6- The Court Erred in rendering judgment in favor of plaintiff - below

7 The Court erred in rendering judgment against the debt below

Marsh & King for appellants

125

The City of Chicago
vs.
John Mayor

125
John Mayor
vs.
City of Chicago

Complete Record

Filed April 21, 1897

S. Leland

Clark

Filed April 21, 1897

S. Leland

Clark

Filed April 18, 1898

125

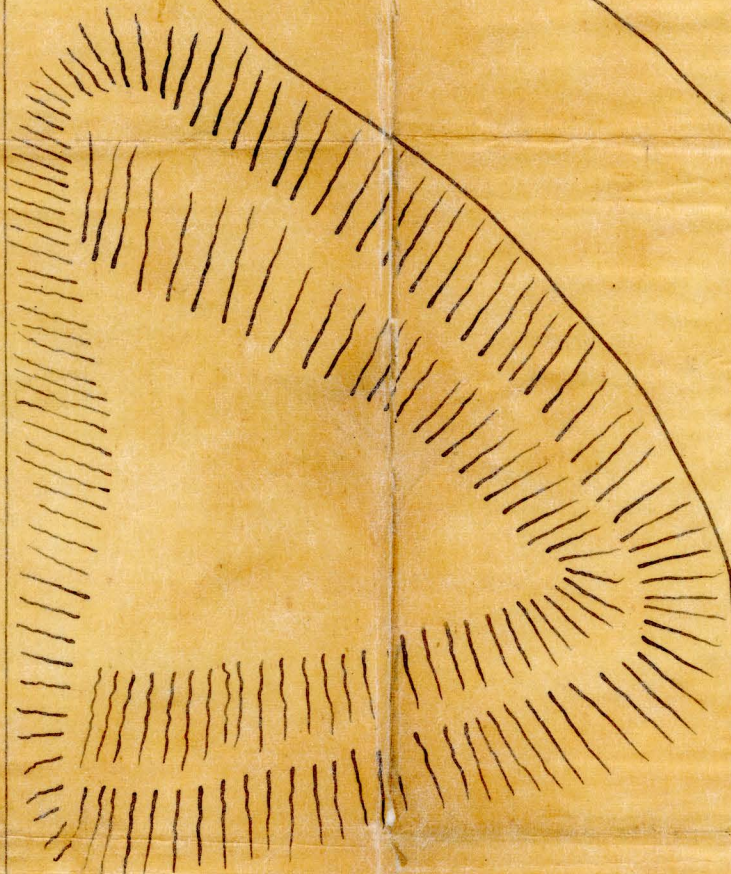
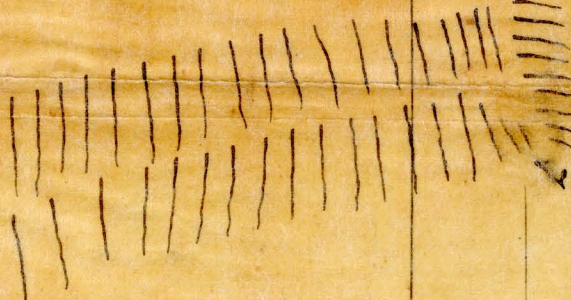
Cab of Engine can be seen from $\frac{1}{2}$ in Crop Road
1212 feet East.

Cab of Engine can be seen from c, in Crop Road
1077 feet East

Cab of Engine can be seen from d, in Crop Road
937 feet East

Cab of Engine can be seen from e, in Crop Road
765 feet East.

Exhibit
page
this seat
it form

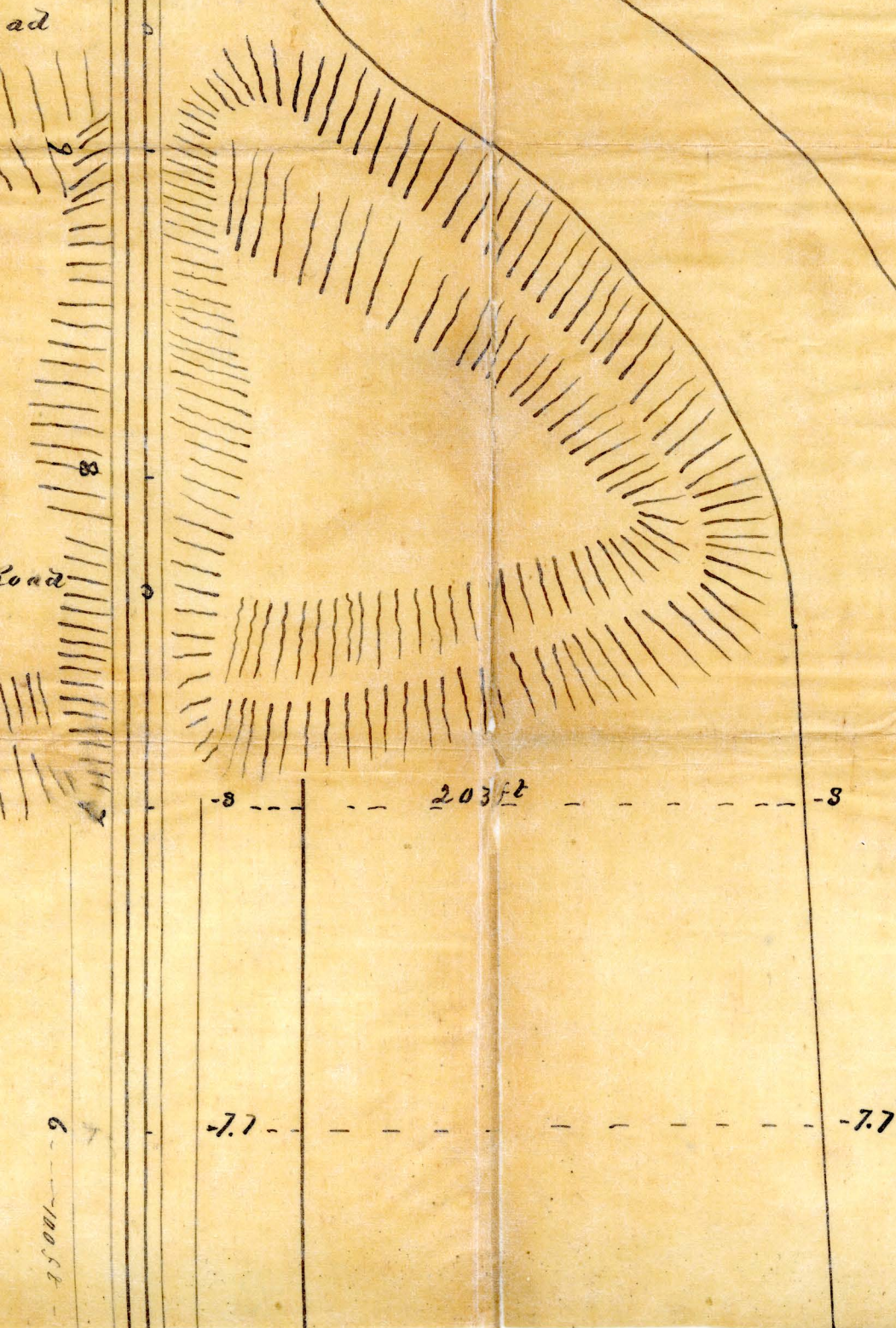


203 ft

-7.7 - - - - -7.7

6 - - - - -100 ft

²⁴ Exhibit B - referred to on
page of the record to which
this seat is attached & of which
it forms a part -



Tiskilwa
R.R. base

Point to Tiskilwa

5-25

1000 ft.

*Island of
R. R. Lane*

Road to Tiskilua

Fence

Fence

*Foot of Bank
Angle of Bank*

*angle of Bank
Foot of Bank*

Fence, 165'

*2-4,
25',
C 100 - 2.9
D 100 - 2.4
A 10 - 1.4
20'*

41' 36'

2 - 100 - 1

Fence

-6.8

Fence, 165' 240.5'

Fence

Foot of Bank

Angle of Bank

angle of Bank

Foot of Bank

5'

4

3

2

100

t

1

Fence

Levels are marked in reference to the rail at points opposite where taken

Grade $23\frac{35}{100}$ ft per mile

700

Scale of Map 50 ft to 1 inch

" " Profile 50 ft " horizontal

" " " 5 ft " " vertical

d 4.1
25'
C 2.9
B 2.4
20'
a 1.4
-3.8

41'

36'