

Sent

28 Dec

Mayor & City Council of Baltimore

or

George W. Porter

Brown B. G. C.

Goldborough J.

28 Dec 1862

D. L. Sides

The Mayor and City Council of Baltimore

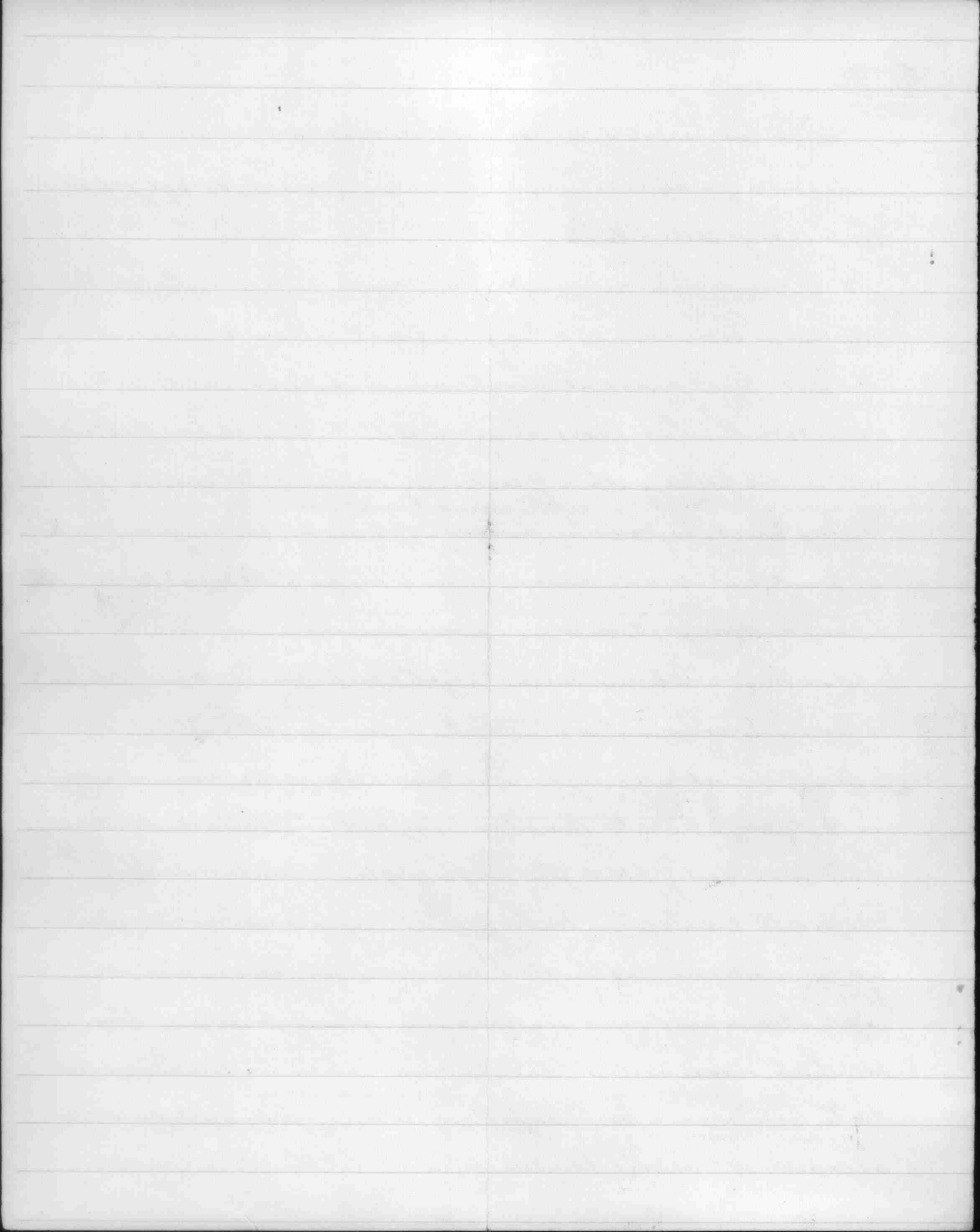
vs

George W. Porter

Court of Appeals

December Term 1861

For several years prior to the incidents which induced this Controversy in this Case, the City of Baltimore was blessed with a prosperity strikingly illustrated by its material Expansion. The waste places within her jurisdiction were, day by day, disappearing under the advance of this Expansion. Her highways ~~of antiquarian~~ were being extended and were affording uninterrupted intercourse to her Citizens from one Extremity of the City to the other. This state of prosperity beget a corresponding public feeling, from which, in 1852, arose the determination to lay out and establish an Avenue one Hundred feet wide on the Confines of the City to be denominated the North Avenue. In that year, certain real Estate was condemned to form the bed of this improvement between Pennsylvania and York Avenues under an Ordinance of the Corporate Authorities, by which it was declared that the opening and condemnation of North Avenue as a public highway, would be a great public improvement and result advantageously to the Community.



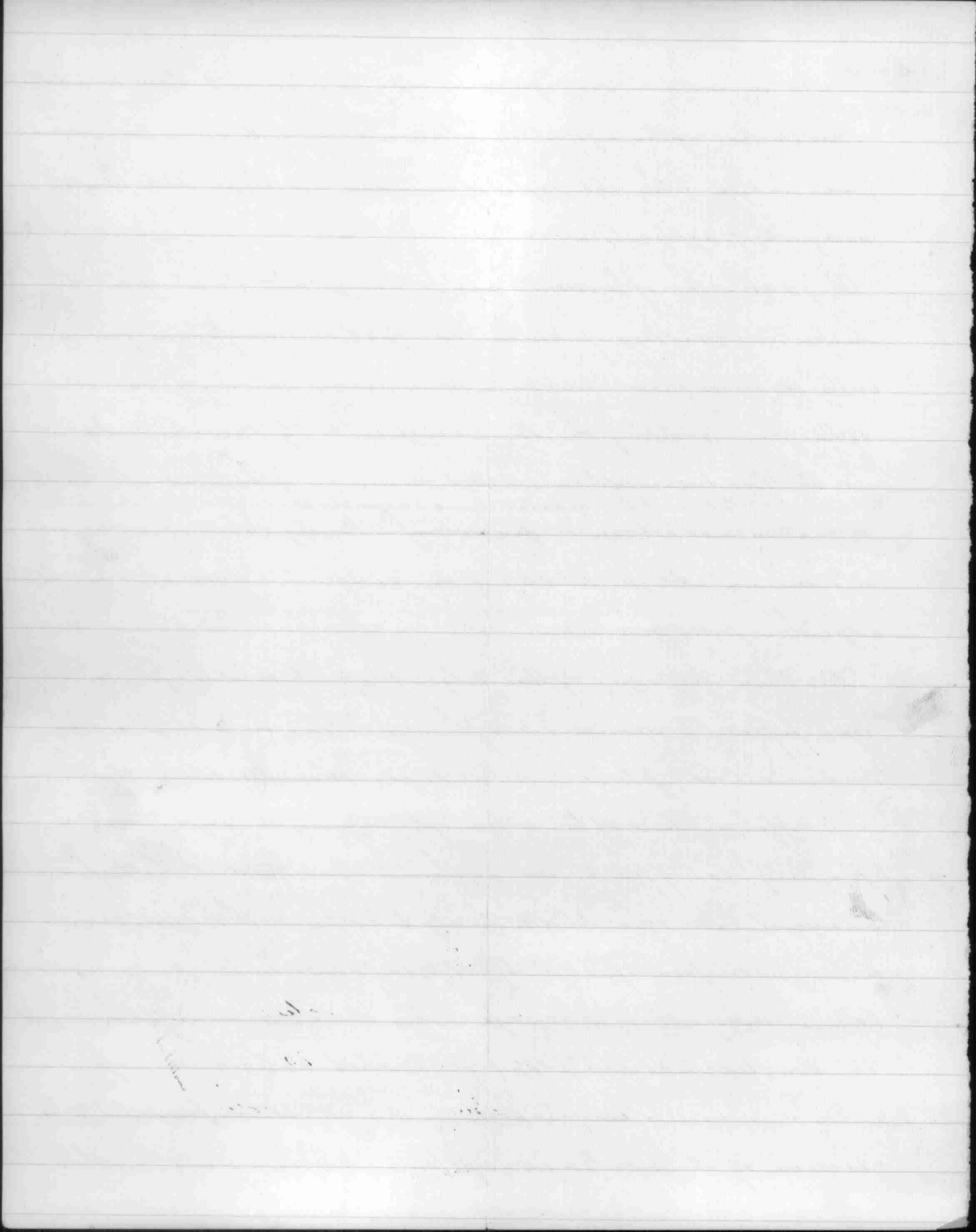
Though the bed of the avenue had been condemned for several years as a public highway, it continued useful for that purpose for want of authority to grade it.

It became therefore necessary to obtain the passage of a law under the provisions of which, it could be made practically useful as a great public convenience.

and for this purpose, the act of 1856 Ch. 114 was passed.

After the passage of that act, a number of the ^{proprietors} owners of land lying upon the Avenue, ~~proprietors~~ ^{representing themselves} to be the owners of a majority of front feet, made application to the City Commissioners to have the same graded.

Upon this application, the City Commissioners went on to have the work done, and assessed upon the property a tax to pay the cost and expense of the grading. Making such apportionment upon all the adjoining property, equally according to the number of front feet in the same manner as in the ordinary case of a street lying wholly within the limits and jurisdiction of the City, and without making any apportionment of damage to the owners or any of them. He then proceeded to place the tax list in the hands of the Collector, who advertised the property of the appellants for sale, on account of its nonpayment.



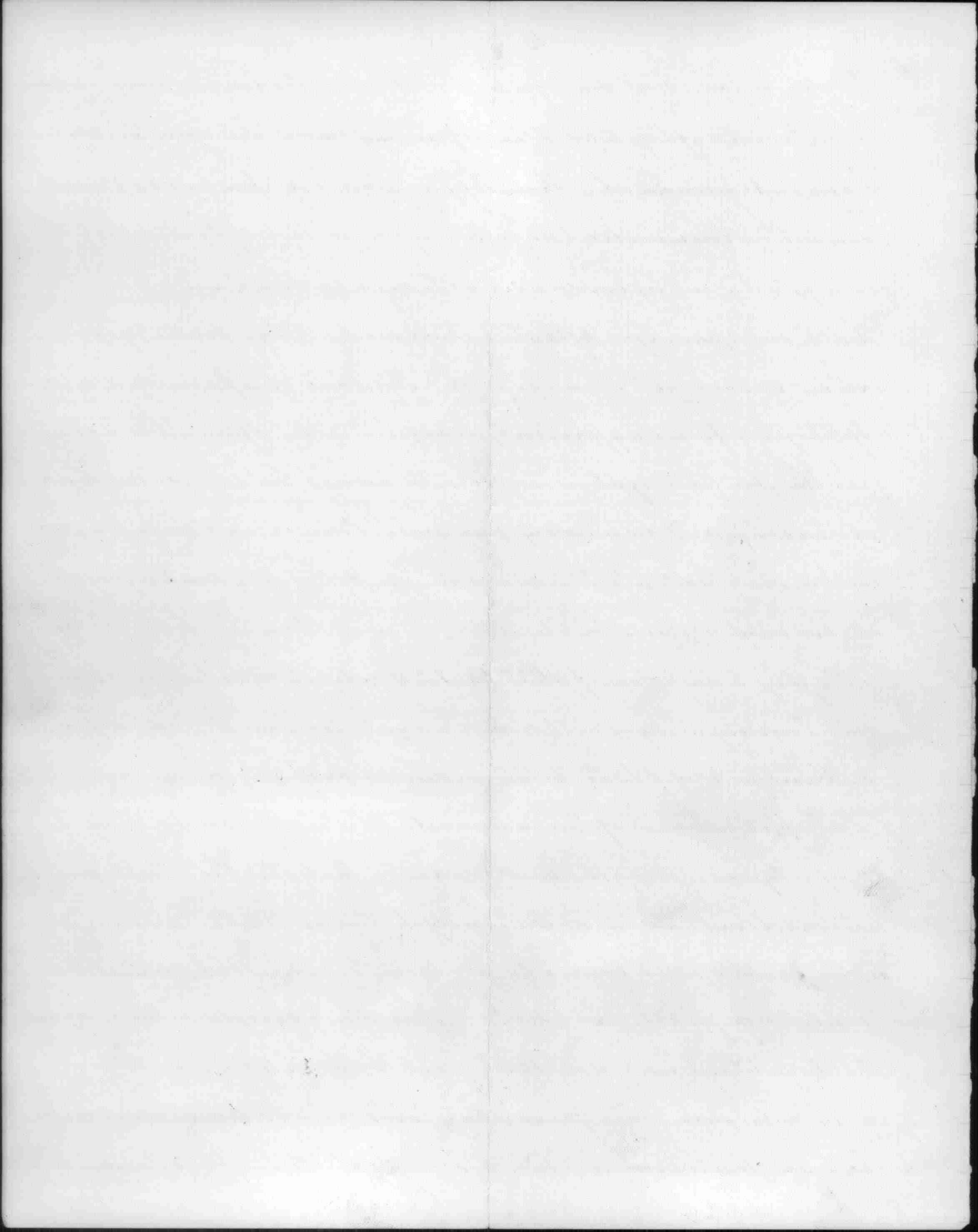
An injunction was granted by the Circuit Court at the instance of the Appellee to prevent the sale; and this appeal was taken from the order of the second of June 1860, continuing the injunction.

A great deal of Evidence was taken in the Case upon the disputed question whether the Application for the grading of the Avenue, had been signed by persons owning a Majority of the feet fronting thereon as required by law; and also for the purpose of showing the manner in which the work of grading had been done, and the consequent damage and injury alleged to have been suffered by many of the adjoining proprietors.

But in disposing of the present appeal, it is quite unnecessary to decide upon those questions or to pass upon the various Exceptions to the Evidence presented in the record.

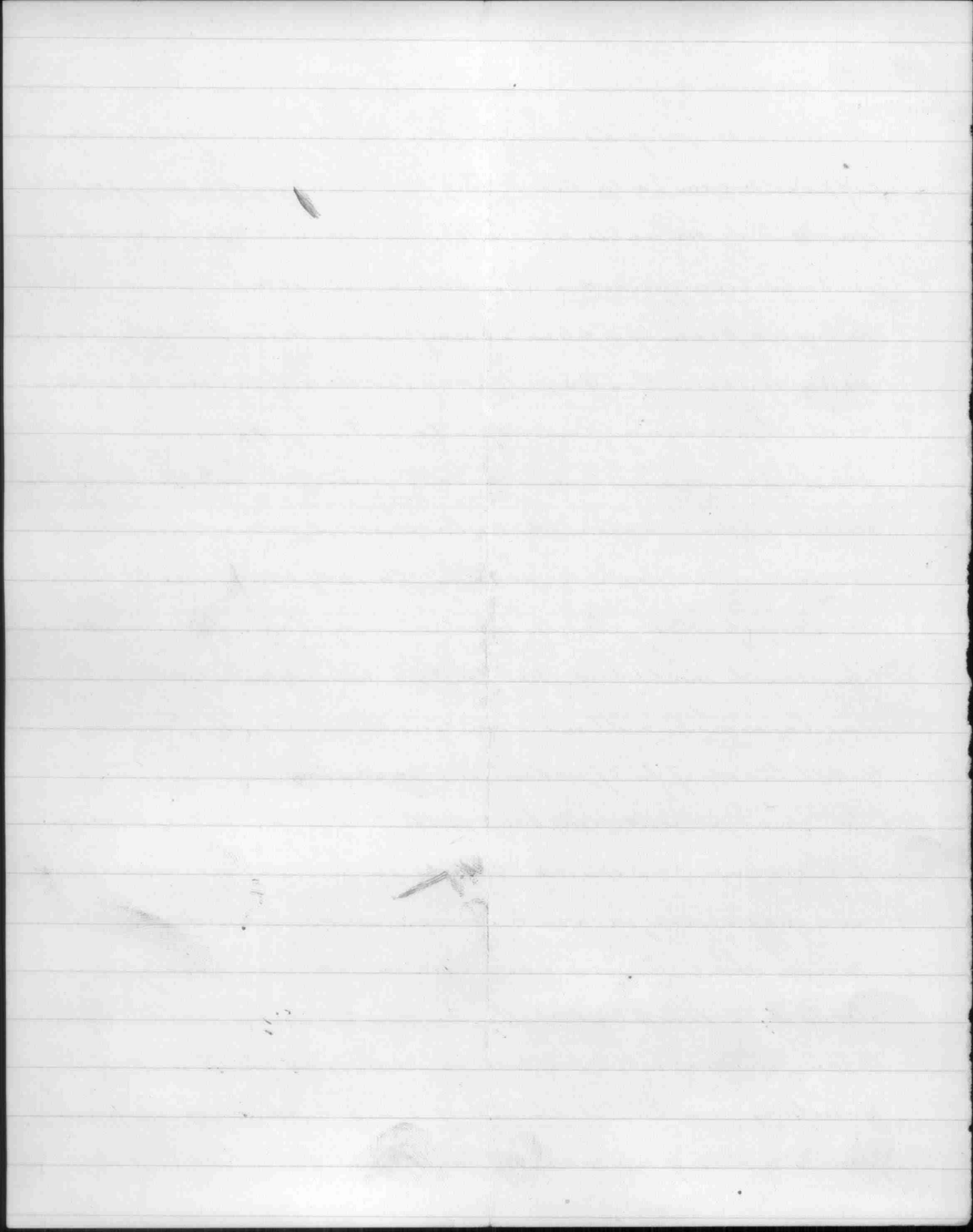
The affirmance of the Action of the Circuit Court, may be properly rested on the broad ground, that the City Commissioners had no legal power or Authority to Cause North Avenue to be graded, and that all his proceedings in the premises were Coram non iudice and void. This Conclusion is based on the Construction of the Act of 1856 Ch 164.

By reference to the preceding laws and ordinances, it will be seen that ~~both~~ the two systems for opening and Condemning



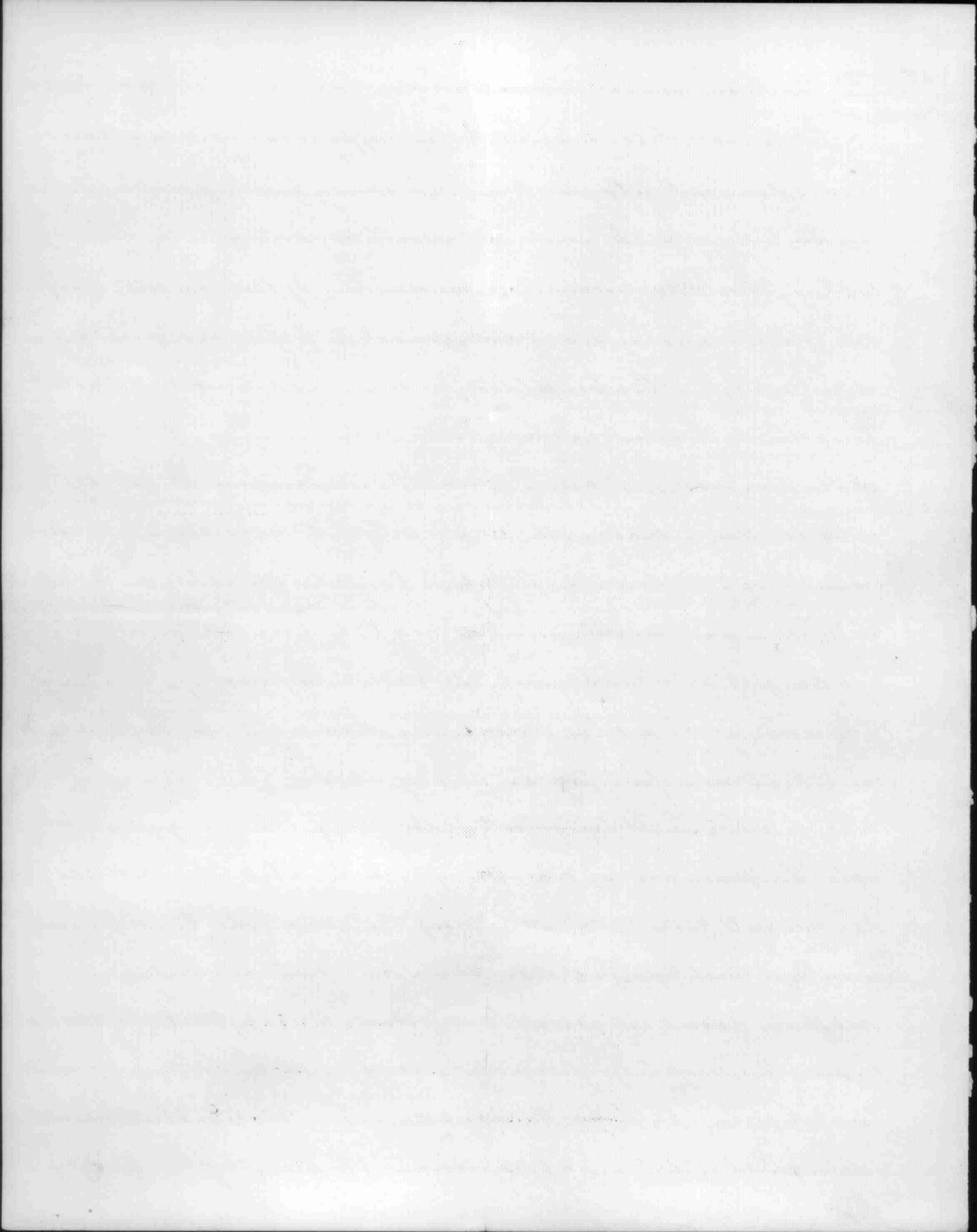
streets and for grading and paving them, are essentially different from each other; they are provided for by different laws and ordinances, executed by different officers and governed by different rules and regulations.

This will plainly appear by reference to the Revised Ordinances of 1850 N^o 15 and 17 and the Acts of Assembly under which, they were respectively adopted. In passing the act of 1856 Ch 164 the Legislature seem to have blended the two systems, and hence, some difficulty has arisen in giving such construction to that act as will make all its provisions harmonized with each other. In its title, it is declared to be supplementary to the act of 1838 Ch 226 which relates to opening and Condensing Streets; in its first section it contains, like the act of 1838, provisions ~~providing~~ for ascertaining the damages as well as the benefits which will be caused to the owners of adjoining lands by the grading and requires as a preliminary to any proceeding under the law, that the Mayor and City Council shall determine the proposed work to be consistent with the public good. and the fourth section provides that an appeal shall be granted to the owners of property from the assessment of benefit and damage arising from the grading or paving of the avenue.



In these respects, the law is very similar in its provisions, to the act of 1838, and wholly unlike the Existing laws and Ordinances relating to the grading and paving of Streets in the City of Baltimore. In the action that was taken by the City Commissioners, these provisions of the law were wholly disregarded, and the record shows that he proceeded in the same manner as is Contemplated by Ordinance 15 of 1850, and as in the ordinary case of a Street lying in the City with the property adjoining thereto on both sides within the City jurisdiction. Inasmuch as the property adjoining North avenue on one side, lies in the County of Baltimore, it was not competent for the Mayor and City Council to make any assessment on such property for the expense of grading and paving it, without some further legislation on the subject: hence the necessity for the act of 1856.

The great extent and cost of the work, the irregularity of the surface over which it passes, with the very great Embankments and Excavations required, and the consequent damage that might result to some of the adjoining property from the grading, no doubt, suggested to the Legislature, the propriety of making different provisions of law from those applicable to the ordinary case of grading and paving a Street lying wholly within the limits of the City.



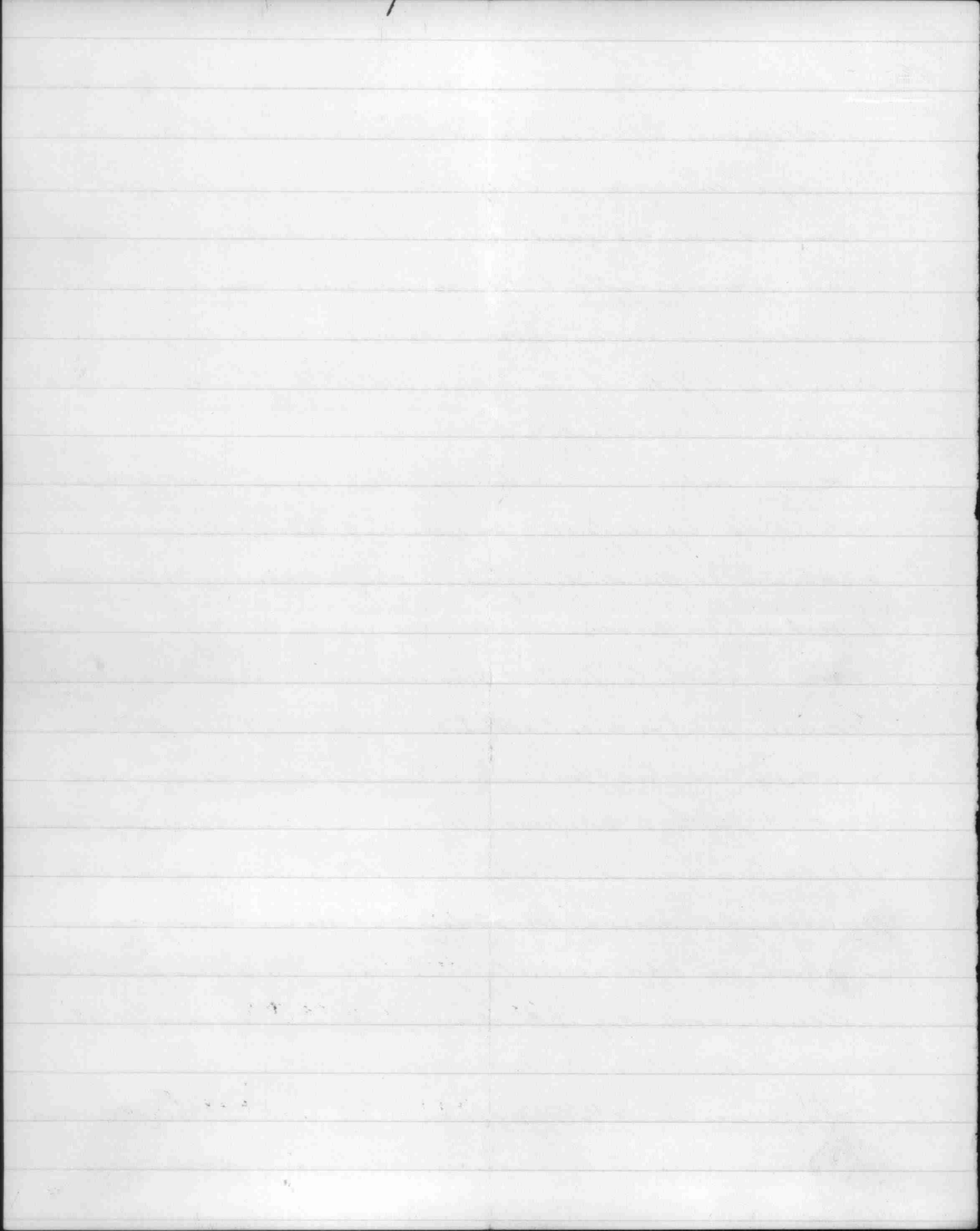
However that may be, it is sufficient to say, that independent of the Act of 1856, the City Authorities possessed no power to grade the North Avenue -

Their powers being derived under that Act alone, within its provisions are to be found prescribed, the rules and directions, to which, the Mayor and City Council must conform in executing those powers -

It was not a case to which the Ordinance No 15 of 1850 was at all applicable; and the City Commissioners acting under that Ordinance, possessed no jurisdiction or authority to act in the matter -

The power is conferred by the Act, on the Mayor and City Council, and could be executed by them, only in the way in which all their powers are executed, by Ordinance adopted for that purpose; prescribing the officer by whom, and the manner in which, the objects of the law should be accomplished; and providing the time and manner in which an appeal might be had, by the parties interested -

Being a work of great magnitude and expense, involving not only private interests, but also of public concern, the Act requires that the Mayor and City Council shall first determine that it is "consistent with the public good" -



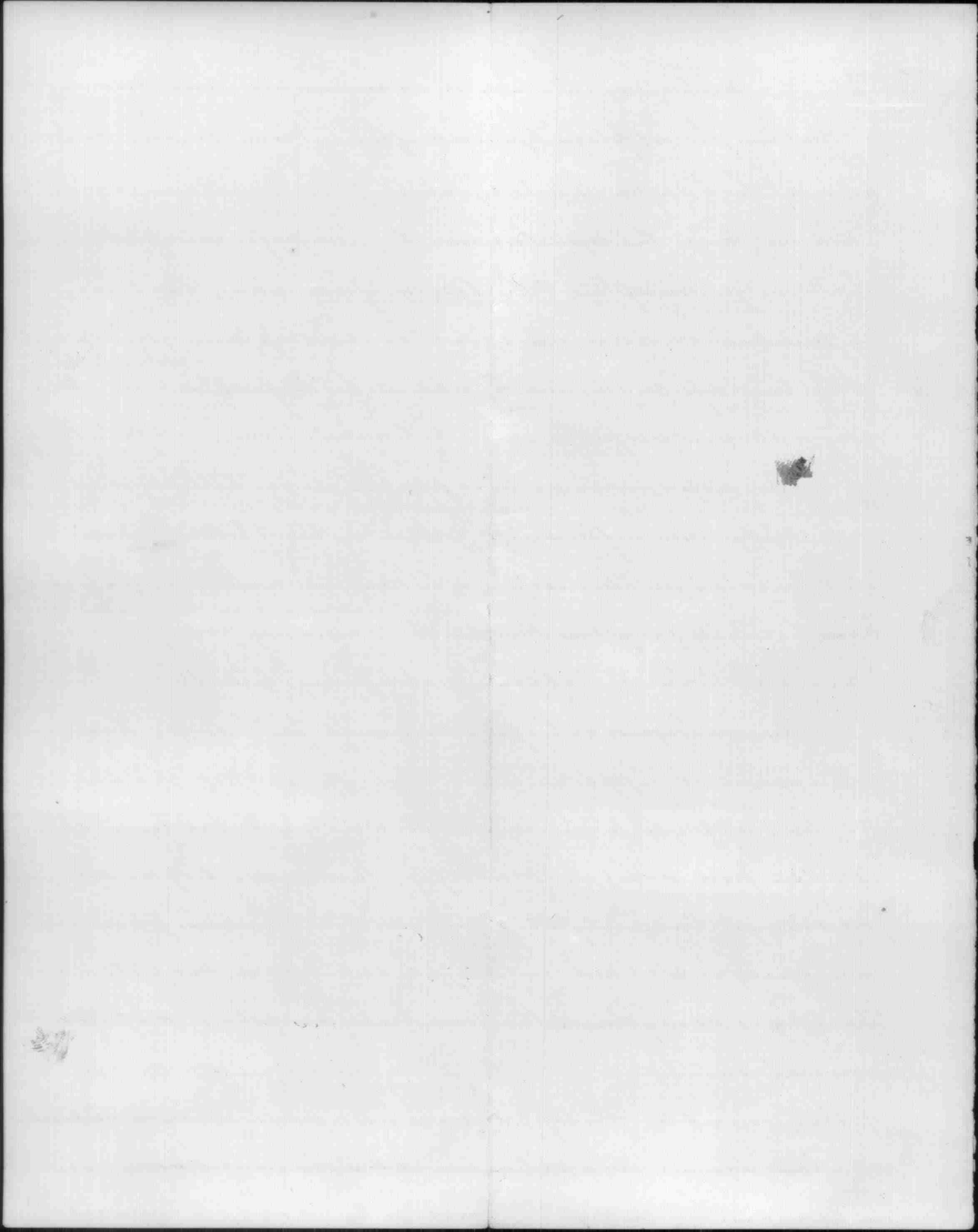
No such preliminary determination was made -
No was the application addressed to them; or any action
had by them upon the subject -

Under these circumstances, it is impossible to say,
that the action of the City Commissioners was authorized
by any law or ordinance; without which, the payment
of the tax assessed by him, cannot be enforced by a sale
of the appellers property -

It was urged that as the appellee signed the application
to the City Commissioners for grading the "North Avenue",
he should be precluded from taking advantage of the want
of authority to perform the duties under the Act of 1856 -

We do not think that this proposition is tenable - If the
appellee was ignorant of the duties of the Commissioners
and signed an application which it was not lawful
for that officer to entertain, it would not preclude the
appellee from availing himself of the nullity of the Subsequent
proceedings - Certainly, it would not debar him from
interfering to stop an unlawful sale of his property which
would have been one of the consequences of the Act of the
Commissioners -

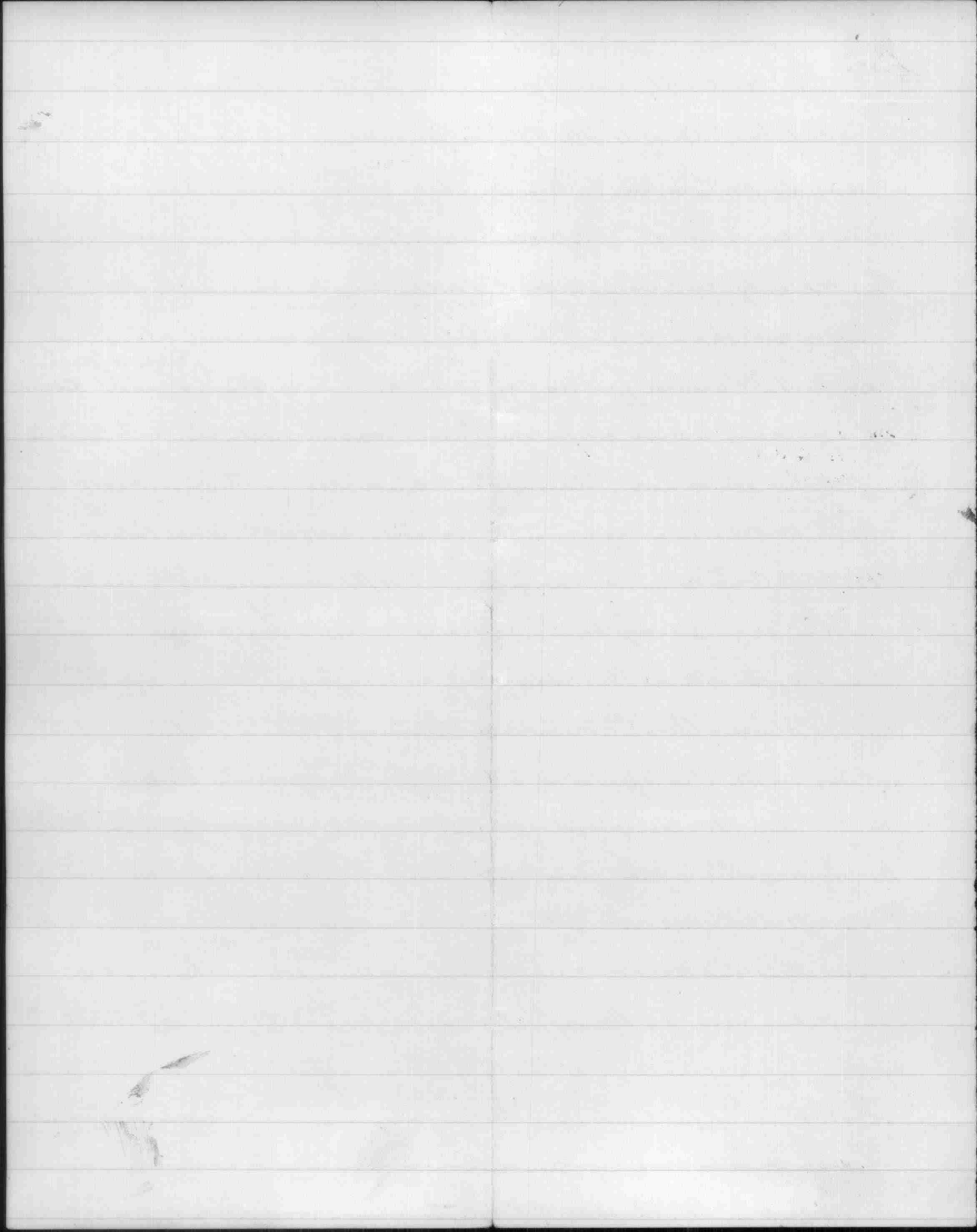
The principle of estoppel has no application to the case -
The law requires the application of the assent of a Majority



of the feet of property fronting on the Avenue, before any steps can be taken by the Corporation to have it graded; but because the appellee has signed such an application, it surely cannot be successfully maintained that he assented that the work should be done in any other way than the law requires; or if he had so assented, that ^{such assent} could confer any power upon the City Commissioners not possessed by him under the laws and ordinances of the City.

The ordinance afterwards passed on the 9th day of December 1859 to confirm the grading of North Avenue, not being authorized by any law, was not of binding force, and could not have the effect of ratifying the acts of the City Commissioners, or in any manner change the rights of the parties litigant.

In the argument of the case, the question of jurisdiction was argued with great ability. The Counsel for the appellant insisting that the Court of Chancery has no jurisdiction to grant the relief asked for in the bill. The only remedy being in a Court of law by an appeal from the proceedings of the City Commissioners under the Act of 1856 or by Certiorari. ~~The principles which a Court of Equity is empowered to exercise to correct the wrongs and~~ the case of the Methodist P. Church vs the Mayor & City Council



6th Gill 391 was referred to in support of the position -

But that Case is unlike the present - There the Street Commissioners were acting within the scope of their Authority - and if the allegations of the bill were true, the acts complained of were but irregularities subject to be reviewed on appeal by the tribunal appointed by law for that purpose - Here the City Commissioners acted without any lawful Authority - Their acts are not merely irregular but void - In *8 Howard 543*, the Supreme Court say "the rule is, that where a limited tribunal takes upon itself to exercise a jurisdiction which does not belong to it, its decision amounts to nothing and does not create a necessity for an appeal" -

The principles on which a Court of Equity intervenes by injunction to arrest the illegal proceedings of public functionaries are stated by Lord Chancellor Cottenham in *Fruin v Lewis* 4th Myl & Cray 20th Eng Chy R 249 cited with approbation by Mr Justice Story in 2nd Chy Jur. sec 955 a - In *Holland Case* 11th M. R 186 the Jurisdiction of the Court of Chancery was maintained under circumstances and upon grounds which completely cover this Case -

Order affirmed and Injunction made perpetual

2
Mayor & City Council
of Baltimore

vs
Geo: W. Davis

Decree

Filed 21st July 1843

Mayor & City Council
of Baltimore and
others

George W. Porter

Court of Appeals
of Maryland
Dec. Term 1861

The appeal in this cause standing ready for hearing was argued by counsel for the respective parties, and the proceedings have since been considered by this Court: It is thereupon this 21st day of February in the year 1862 by the Court of Appeals of Maryland and by the authority thereof, adjudged, ordered, and decreed that the order of the Circuit Court for Baltimore City of the 30th of September 1858, granting the injunction in this cause upon the bill filed by the appellee be and the same is hereby affirmed, and it is further adjudged, ordered and decreed that the said injunction be and the same is hereby made perpetual, ~~the costs to~~ with costs ~~to be paid~~ to the appellee

Rich^d P. J. Bowie

Jas. S. Bastob,

Brian J. Goldborough

S. Morris Cochran