

The Northern Central
Railway Company

vs

The Mayor & City Council
of Baltimore.

Decree

Filed February 23 1864

The Northern Central Court of Appeals
Railway Co. of Maryland
vs. December Term
The Mayor, City of Baltimore
Council of Baltimore 1863

The appeal in this cause standing ready for hearing, was argued by the Counsel of the respective parties, and the proceedings have since been read and considered by the Court: It is thereupon this 24th day of February 1864 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 passed on the _____ day of May 1863. from which the appeal in this cause was taken, be and the same is hereby affirmed, with costs to the appellee, and the cause remanded to the said Circuit Court for further proceedings.

Gas S. Parol

Wm. J. Gold, Clerk

Edmunds Cochran

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The Northern Central
Railway Co.

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The Mayor and
City Council of
Baltimore.

Filed February 24th 1864

Bartol. G. C.

Opinion

Bartol J.

Reported

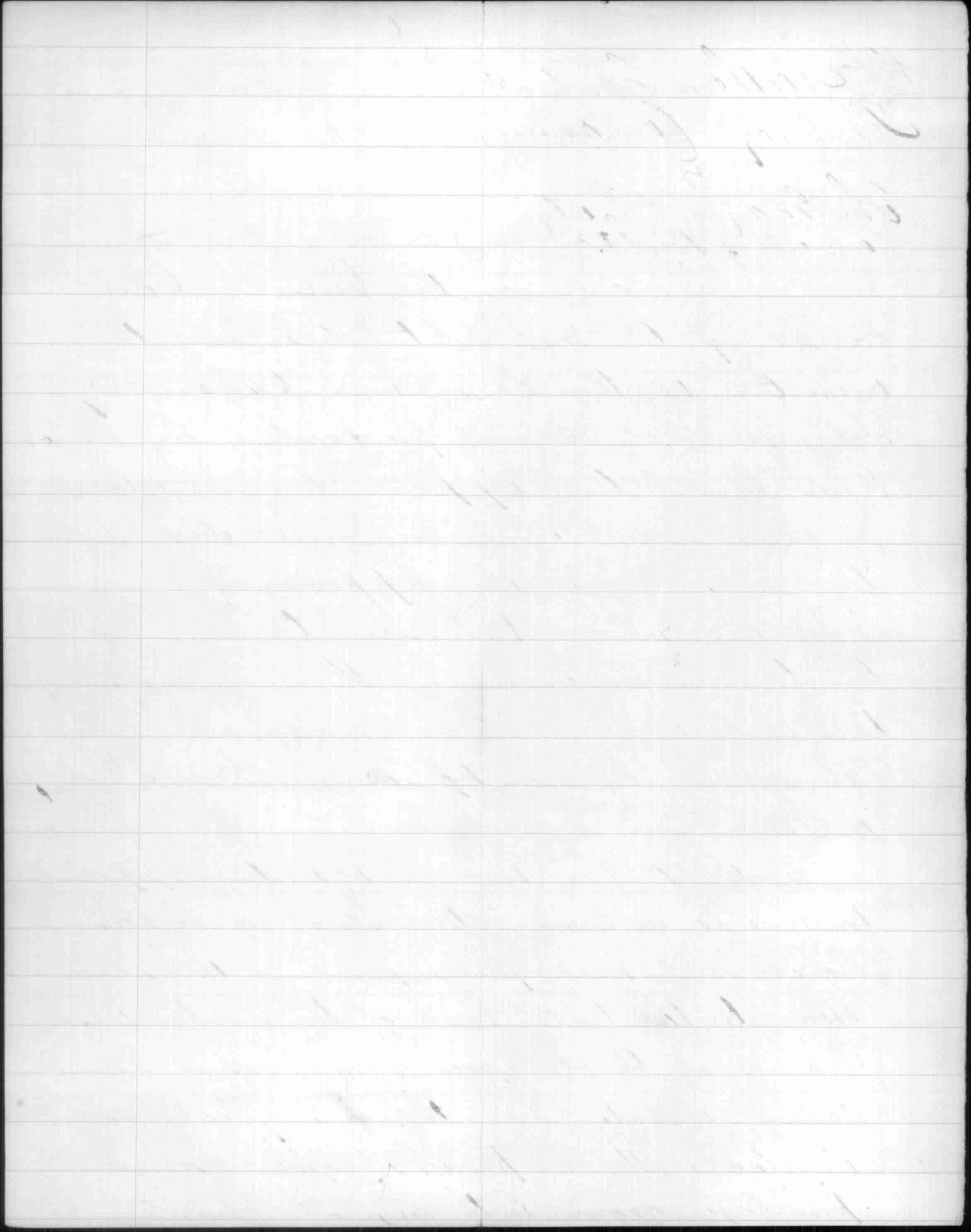
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The Northern Central
Railway Company }

The Mayor & City
Council of Balt. }

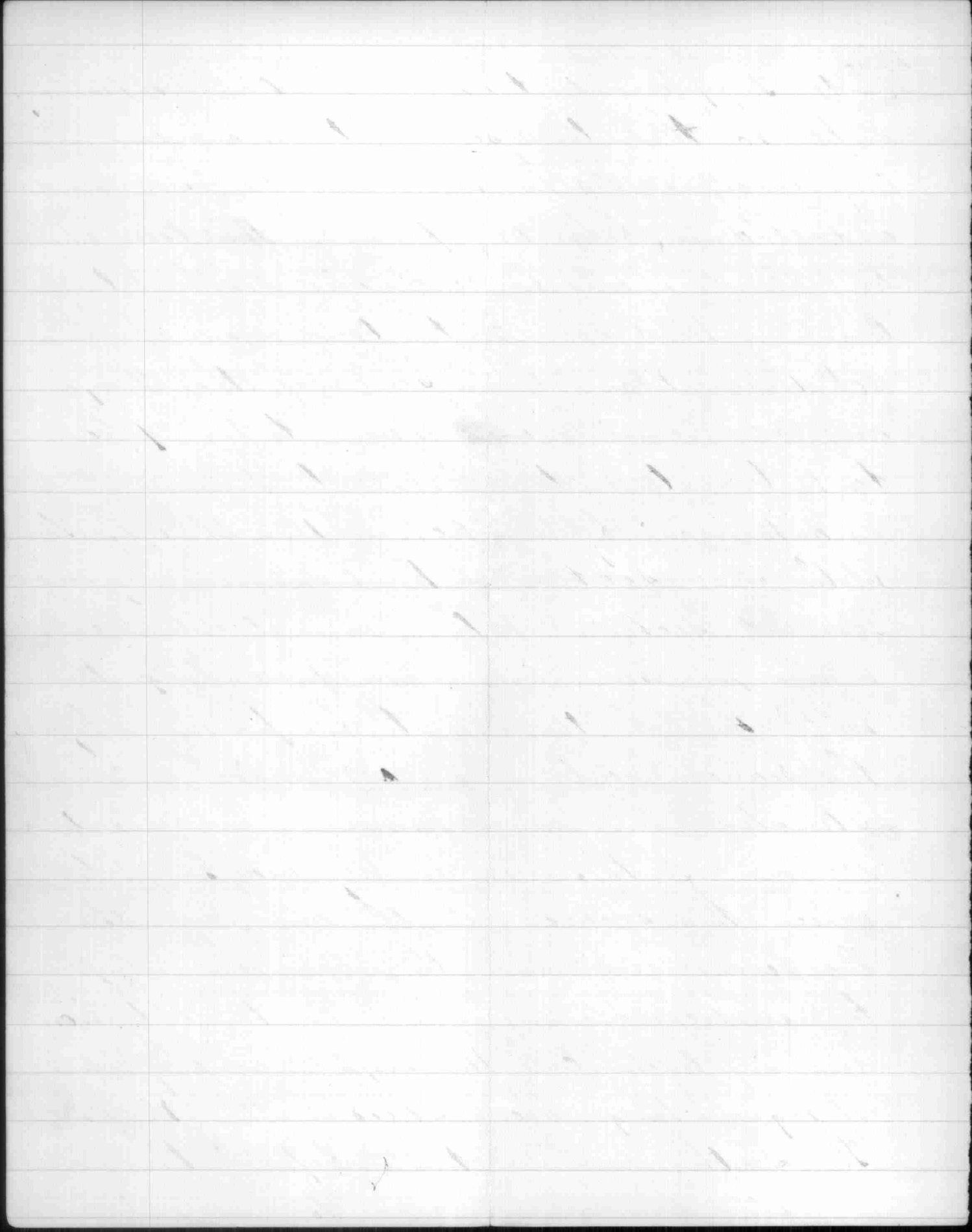
The order of the Circuit Court, overruling the motion to dissolve the injunction in this case, was passed by agreement of counsel pro forma, and comes before us on this appeal, unaffected by the weight of a Judicial determination in favor of the appellee.

The decision of the case turns upon the true construction of the act of 1853 ch. 191, and of the ordinance of the City of Baltimore approved the 20th day of June 1854, -

By the act of 1853 ch 191 the appellant was authorized to construct a lateral branch rail road, from a point on the main stem, to the water line of the North West Branch of the Patapsco river East of Jones' Falls, and to carry this into effect, was invested with the powers, rights and privilege granted in the original charter and



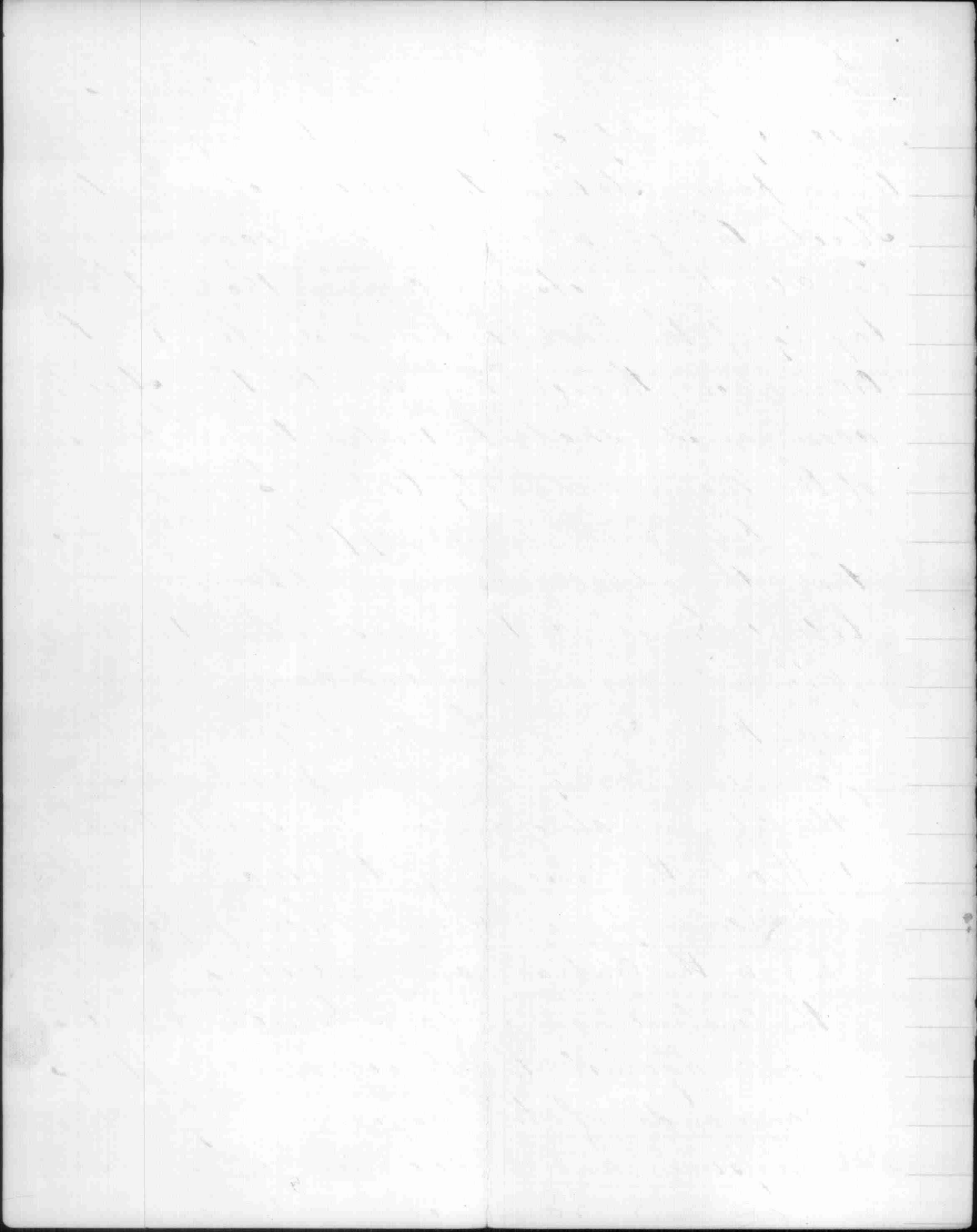
"the Supplements thereto." The act contains a proviso that the assent of the Mayor and City Council of Baltimore, shall be first had and obtained, before any part of said Branch Rail Road shall be constructed within the limits of the City." By the Ordinance of June 20th 1854 (No 55) the assent of the Mayor and City Council was given to the Appellant to extend their road to tide water, as authorized by the act of 1853 Ch 191. This is the first section of the Ordinance, by subsequent sections of the same Ordinance, various provisions are made, prescribing the route through the City to be pursued by the branch rail road, its mode of construction &c. The ordinance contains 14 sections, of these it is only necessary to notice the second, sixth and seventh. The second: authorizes the rail road Company to use locomotive engines on the extension, reserving to the city the right, at any time, of regulating their speed within the City. The sixth: provides that before the appellant shall proceed to lay all or



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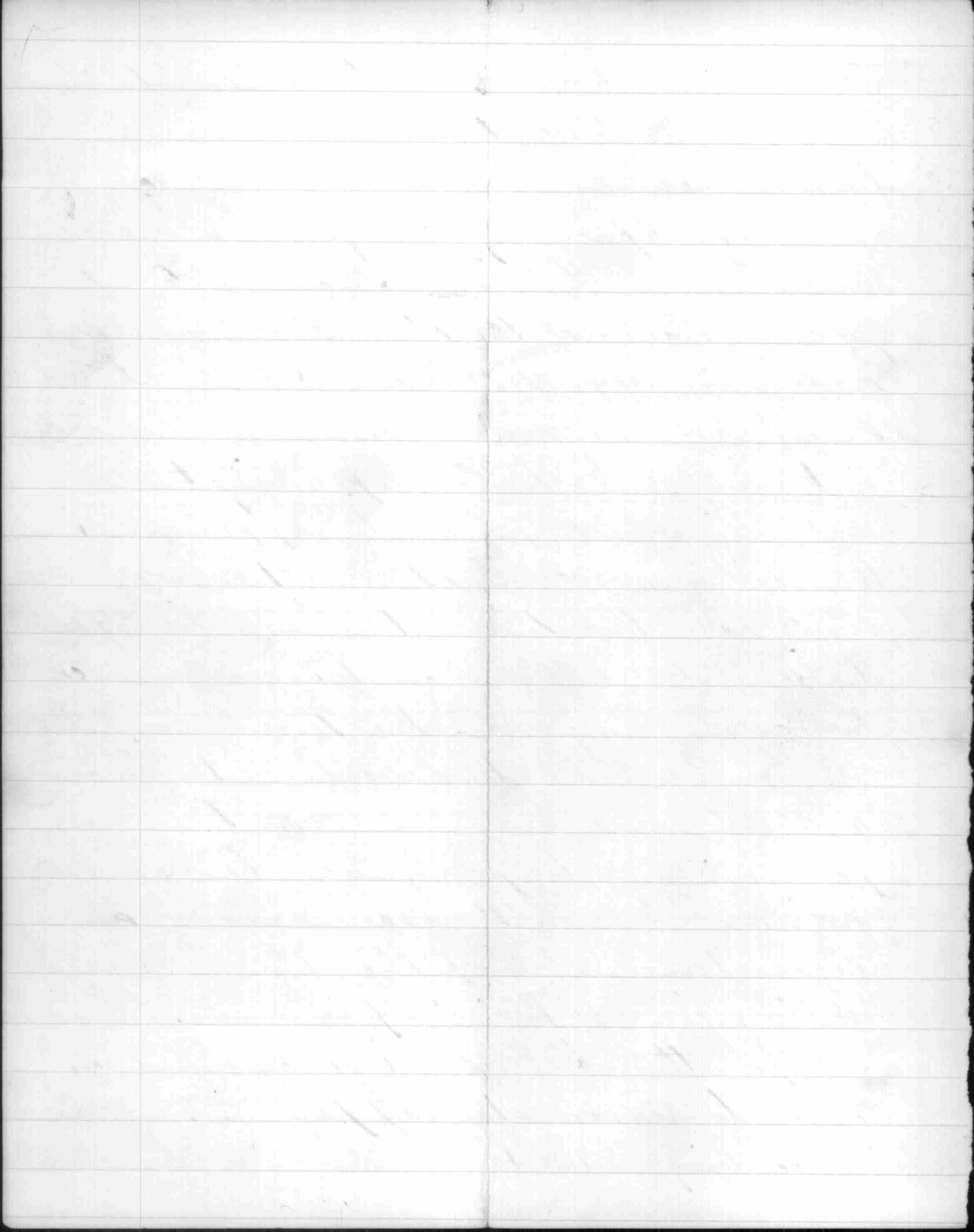
any part of the road on any of the streets authorized by the ordinance, the City Commissioner shall, by the City Surveyor and the Engineer of the Company, establish the grades of all the streets through which the said road may pass. The Seventh enacts and ordains that the laying of the track as provided for in the ordinance, through any or all the streets above named, shall be under the supervision of the Mayor and City Commissioner.

The bill, filed by the appellee, charges that the appellants have introduced the lateral branch of their road, within the limits of the City and are now and have for some time past been in the act of grading the same, and laying the rails thereon through the City and along and out the streets thereof, without the consent of the Mayor and the City Commissioner or under their supervision; but on the contrary are proceeding with the construction of said branch or lateral road against the direction and express commands of the Mayor and City Commissioner, and in defiance of the said law and ordinance."



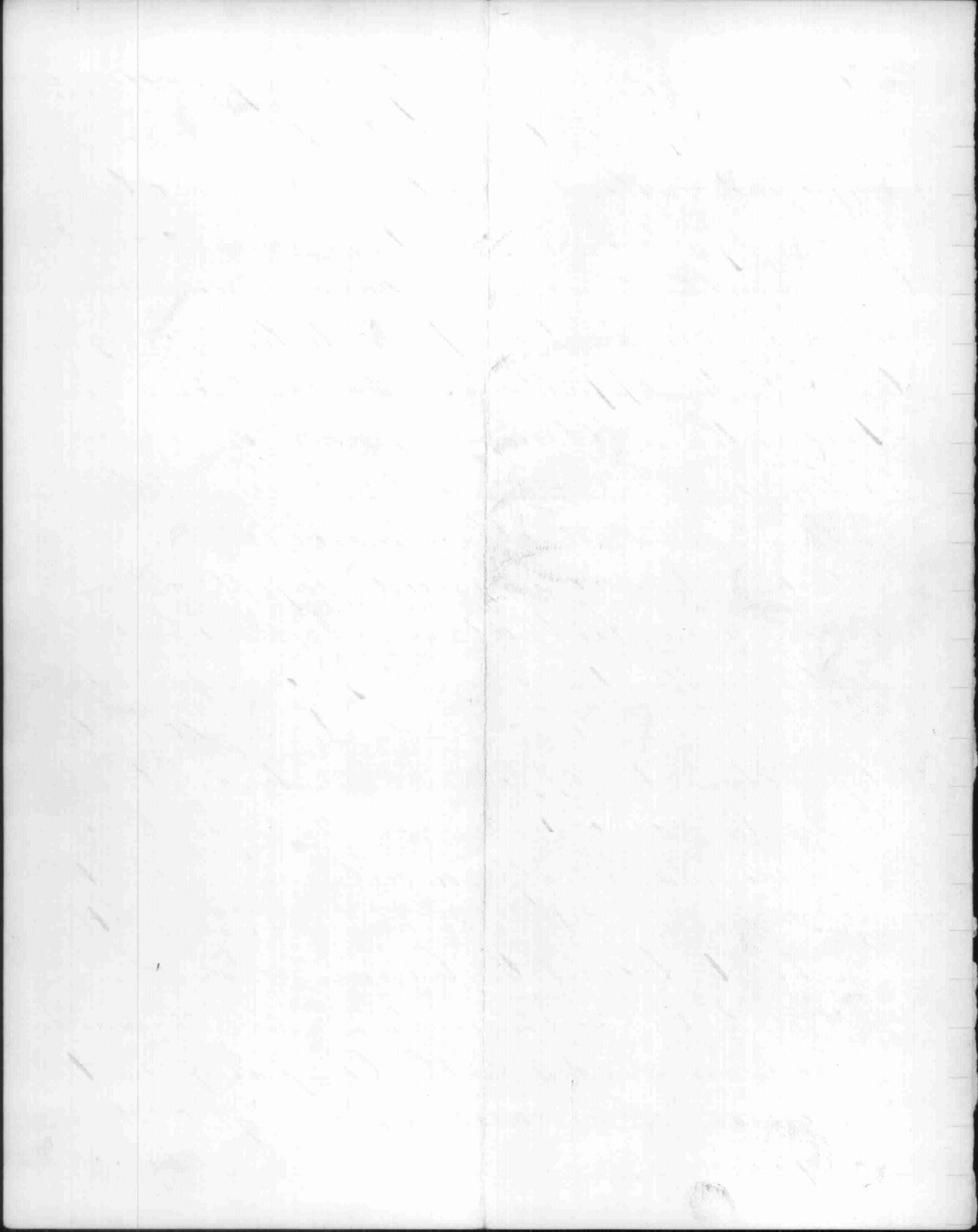
The bill further charges that the appellants have altered the grades of several streets which have heretofore been graded and paved, especially the grades of Lancaster, Harrison, and Patuxent Streets, and the grades of many of the other streets, whose grades have been established, between Bel Air Avenue and the grounds of the Canton Company in the City of Baltimore; especially the grade of Fayette Street, which the appellants in the location and construction of their lateral road, have threatened to raise four feet in height, all which they are now in the act of closing, and threaten to complete the same without the Consent of the Mayor and City Commissioners, or under their supervision; in contempt of said law and ordinance, and to the great damage and inconvenience of the public; and the irreparable injury of the Complainant.

Upon this bill an injunction was issued, to restrain the appellants from proceeding with the work complained of.



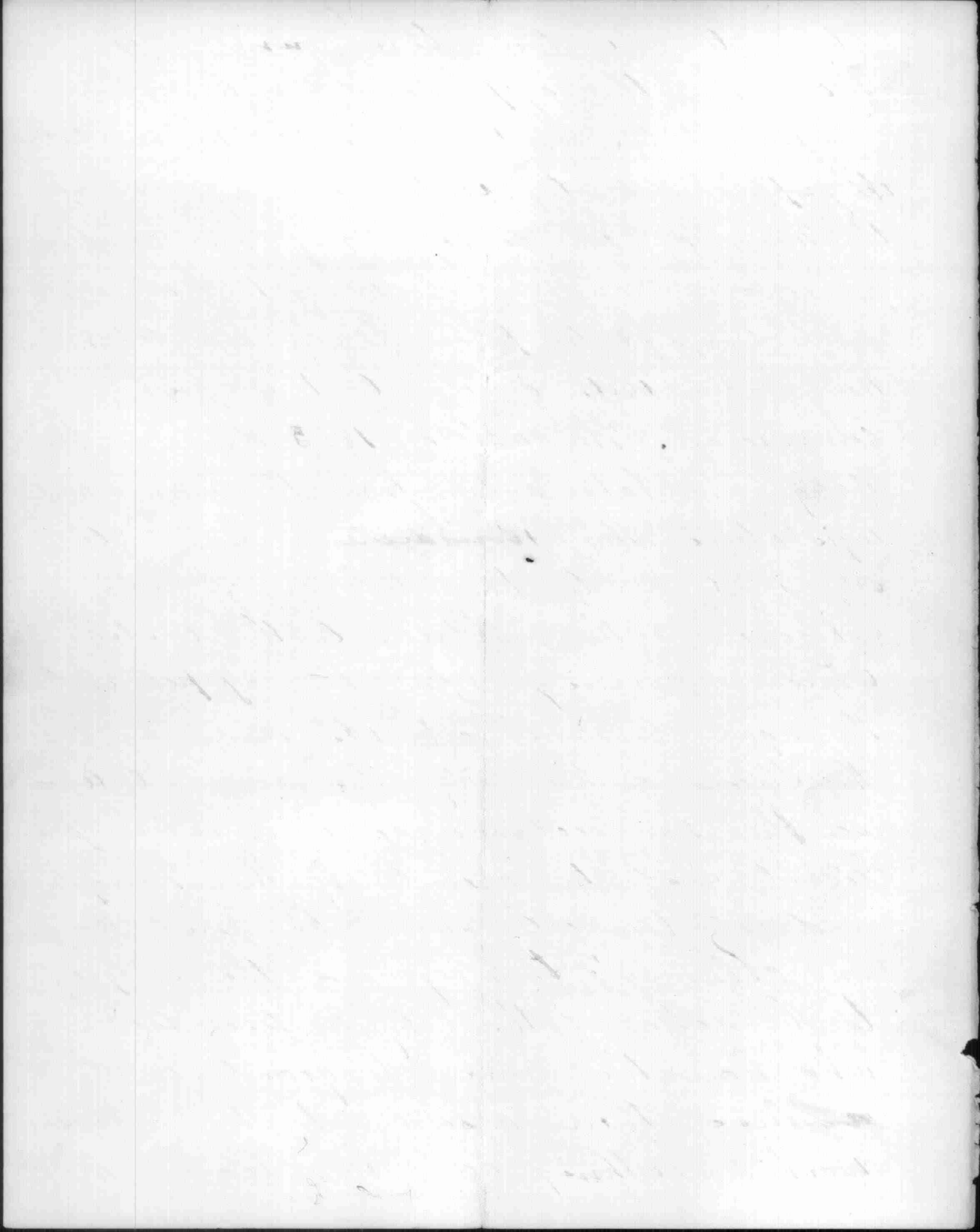
An answer was filed by the appellants which was excepted to for impertinence and insufficiency, these exceptions were afterwards obviated by striking out the portion excepted to as impertinent, and by an amended answer. This last admits that prior to the filing of the bill the appellants had altered or changed the established grades of Lancaster, Hudson, Harrison, Patuxent, Cowley, Potomac, Hull, Canton and Robinson Streets in the City, and had also raised Fayette Street about four feet ~~above~~ about its intersection with the Haute de Grace turnpike.

A motion was made to dissolve the injunction, ^{the} the appellant contends that under the act of 1853 and the assent of the Mayor and City Council given in the first section of the ordinance, it has the "right" to locate the lateral road through the City over such route, and with such grade or grades as the Company in the exercise of its discretion might deem expedient."



Upon this question, ~~this court~~⁶ is
of opinion the appellant is in error.

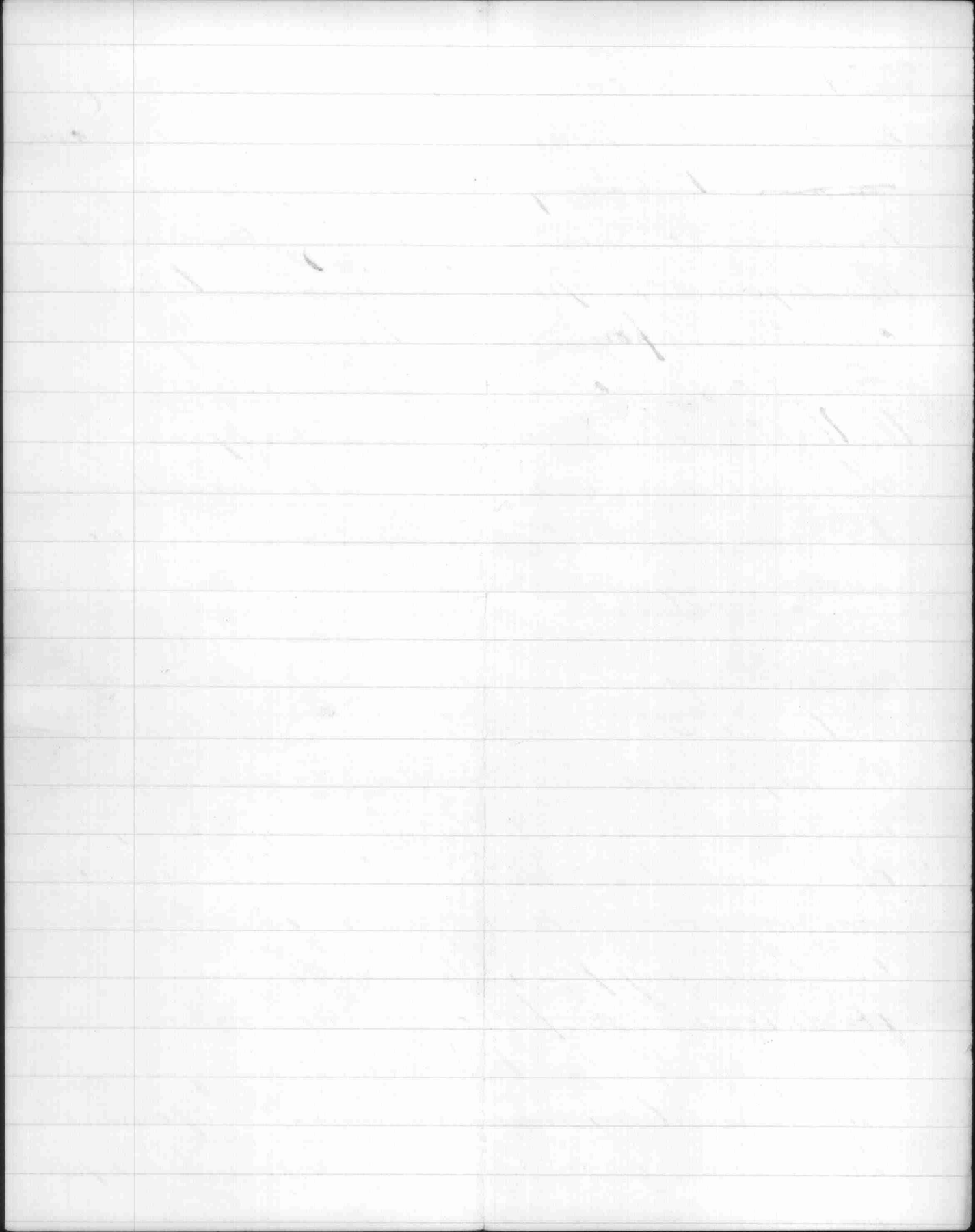
By the charter of the City of Baltimore and
its supplements the State has conferred upon
the Mayor and city Council, full and complete
jurisdiction and control over the streets
and highways, with power to fix and determine
+ their grades, with a view to the public
convenience. The act of 1853 did not
design to take away from the municipal
legislature this jurisdiction and control,
so essential to the welfare of its
citizens and the public, on the contrary,
while conferring upon the appellant
the right to construct its railway over
the streets of the city, the general as-
sembly has declared, as a condition pre-
-cedent, that "the assent of the Mayor
and city Council shall be first had
and obtained"; thus referring the subject
to the action of the city authorities,
who have the power to grant or to
~~refuse~~ refuse their assent to the proposed
work. Nothing can be clearer than



In such a case, the power reserved by the act to the Mayor and city Council ~~over~~ ^{over} ~~complete~~ the subject is complete and unimpaired, and necessarily involves the right of prescribing the terms and conditions upon which their assent is given.

The decision of the Supreme Court of the United States in *Mayor v Grima & others* 8 Howard 490 is an authority for the principle just stated. That was a case involving the constitutional power of Louisiana to impose a tax upon legacies, when the legatee is neither a citizen of the United States, nor domiciled in that State.

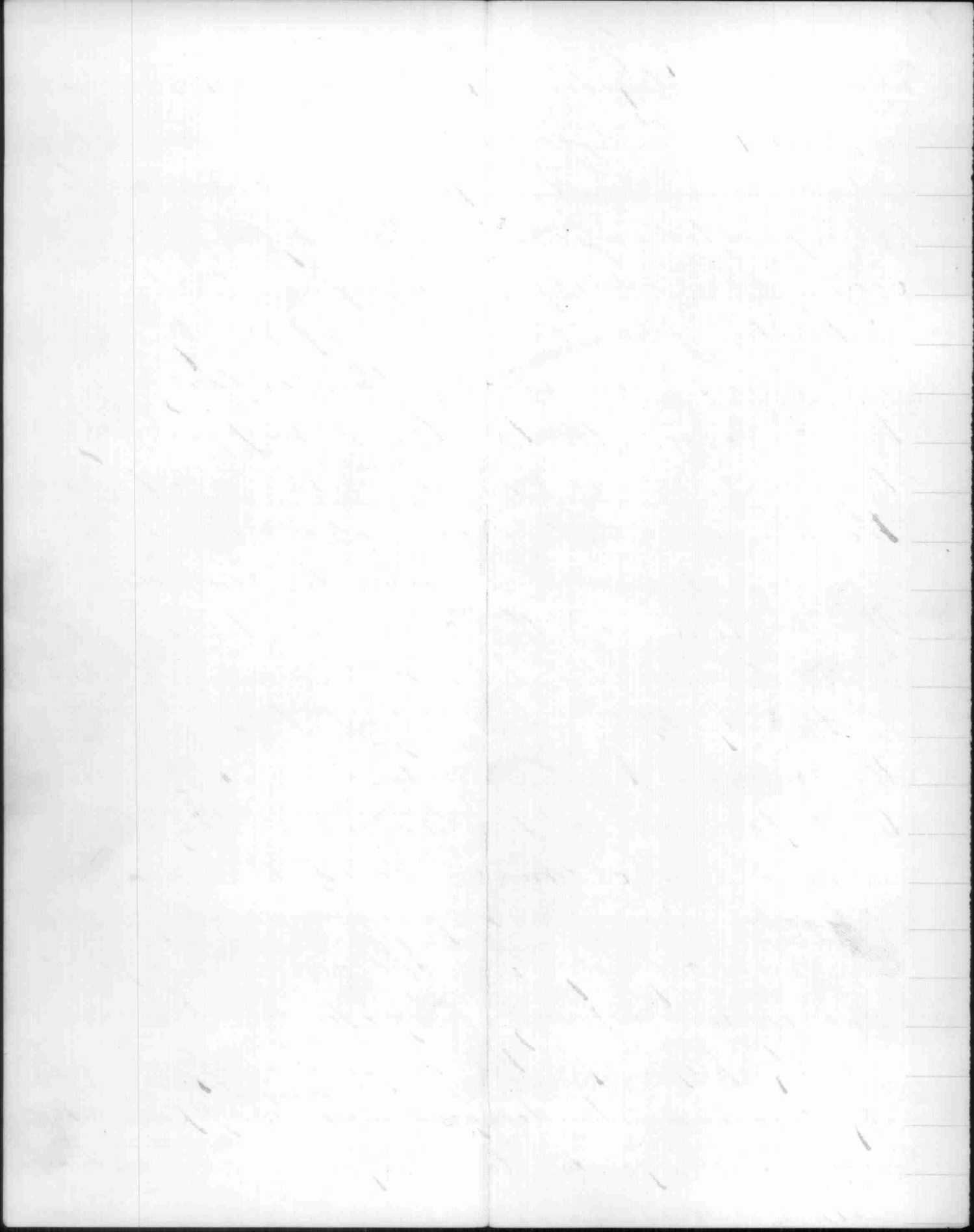
On page 494 Chief Justice Taney says "if a State may deny the privilege altogether, it follows that when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policy." We conclude therefore that the provisions of the ordinance to which we have referred are valid and binding upon the appellant, as conditions upon which the



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assent of the City was granted, they must be construed together with the first section as parts of the same ordinance, and the appellant cannot rightfully claim to act upon the assent given by the first section, and disregard or repudiate the force of the terms and conditions imposed by the ordinance. We speak particularly in the connexion of the terms imposed by the second, sixth, and seventh sections, they are all that are involved in this case, and it is unnecessary to consider the provisions of the other sections.

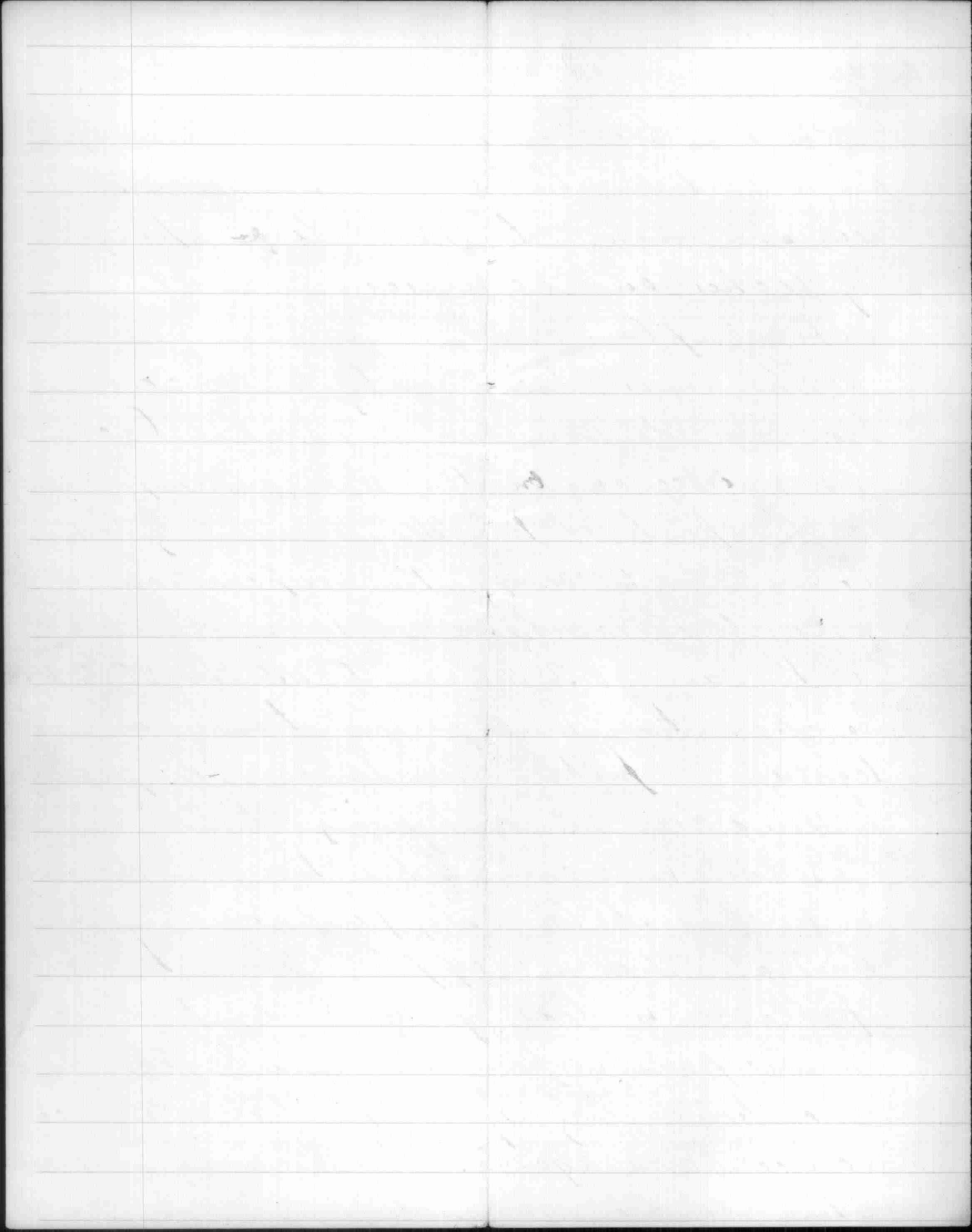
We do not think there is any force in the objection, that by the ordinance the railway is required to be made under the supervision of the Mayor and City Commissioners. The rule "delegatus non potest delegare" does not apply. The Corporation can act only by its officers and agents, and it was not only competent, but eminently proper for the Mayor and City Council by ordinance to designate and appoint the officers or agents to carry out and enforce its provisions.



It has been contended by the appellant that the City has lost its equitable right to the relief prayed, by laches, and acquiescence in the acts complained of.

The facts disclosed by the record before us, do not show any such laches, or acquiescence in the wrongs complained of, on the part of the Mayor and City Council; as to estop the Corporation in a court of Equity. We have decided in the case of *The State vs The Phila. Wilmington & Balt R.R. Co* (ante) that no lapse of time can legalize a public nuisance, or justify a wrong doer in continuing it.

Besides in a case like this, the ordinary rule of equitable estoppel governing individuals, does not apply. Here the appellant is dealing with a public Municipal Corporation, whose acts are manifested only by its public ordinances, officers, and agents. The provisions of the ordinance were well known to the



appellant; upon the assent of the City expressed in the ordinance it professes to act, and yet it has by its own admission, disregarded its plain provisions. No official act of the City authorities has been shown giving sanction ^{or countenance} to the appellants' proceedings; but the claim is now advanced that, it has acquired the right of continuing in the commission of its wrongful acts; because the complainant did not sooner invoke the interposition of the Court. This defence is not supported by any principle of equity applicable to the case as it is presented by the record.

A decree will be signed affirming the order of the Circuit Court, continuing the injunction.

Order affirmed.