

²⁶²
²⁸⁸
The Mayor & City

Council of Baltimore

vs $\frac{262}{1857}$

The Northern Central
Railway Company

Order Oct. 24th 1857

Mr. Turner,

Please file this
Bill & give as
prayed

G. L. Dulany
Solicitor General

Tested

Filed October 24th 1857

make copy for Campbell
Copy (1857)

As further to what you feeling their answer
to move to dissolve the corporation,
on giving full days notice to the
said defendant,
Amesbury Street,

To The Honorable William George
Krebs, Judge of the Circuit Court for
Baltimore City.

The Bill of Complaint of the Mayor and City
Council of Baltimore humbly complaining sheweth
to your Honor, that by an Act of the General
Assembly of Maryland passed on the tenth
day of May A.D. 1853 Ch. 191. entitled "An Act to
amend the act to incorporate the Baltimore and
Susquehanna Rail Road Company" it is by
the first section thereof among other things
provided, that said Company should be
authorized to construct a lateral branch Rail
Road from any point $\&$ on the line of their road
to the Water line of the North West branch of
the Patapsco ~~river~~ river, east of Louis Falls,
and to carry this privilege into effect; they were
further invested with all the powers granted
to the said Company by their original charter
and the supplements thereto. The said powers
and privileges however, in and by said law
were made dependant for their exercise upon
the assent and approval of the Mayor and
City Council of Baltimore, being first obtained.
That this act was duly accepted by a majority
of the stock-holders of Baltimore and Susquehanna
Rail Road Company in general meeting
assembled. That in the exercise of the powers
thus

conferred upon and accepted by the said
company, they made application to the Mayor
and City Council of Baltimore for their
assent to and approval of the construction
of a lateral Rail Road to be made by said
company from the line of their Road, within
✓ the limits of the City of Baltimore -- East to the
Water line of the Patuxent river. That in
pursuance of this application, the said Mayor
and City Council enacted an ordinance
No. 35 entitled "an ordinance to authorize the
Baltimore and Annapolitan Rail Road
company to extend their Road to Tide Water"
approved 20th June 1854. That by the second
section of this ordinance authorizing the
introduction of said lateral Road within
the limits of the City of Baltimore, it is +
expressly provided that in the location and
✓ construction of the same said company was
permitted under the direction and with the
consent of the Mayor and City Commissioners to
adopt such grades and curves, as might enable
them to use advantageously locomotive engines
thereon, under the restriction, however, that no
grade of any street already graded and paved
should be altered or interfered with, except under
the direction of the Mayor and City Commissioners,
and that the whole work should be under such

salutary regulations, as the City Authorities might from time to time prescribe. It is also further provided by the Sixth section of the aforesaid ordinance, that before the said Company should proceed to lay all or any part of said Road, on any of the streets authorized by said ordinance, the City Commissioners should establish the grades of all the streets through which said Road might pass, by the City Surveyor, and Engineer of, and at the cost of the said Rail Road Company.

It is also further provided in, and by the Seventh section of the said ordinance, that the laying of the track, as aforesaid through all or any of the said streets, should be under the supervision of the Mayor and City Commissioners. Your Orator's further state to your Honors that under the acts of the State of Pennsylvania and Maryland passed for that purpose, the said Baltimore and Susquehanna Rail Road Company, the York and Cumberland Rail Road Company, the York and Maryland Line Rail Road Company, have been consolidated, and made one, under the name of the Northern Central Railway Company, said consolidation having been perfected some time before the grievances hereinafter complained of. To the great inconvenience

inconvenience and injury of the Corporation,
and in direct and contemptuous opposition
to the said law and ordinance, the said
Northern Central Railway company have
introduced within the limits of the City of
Baltimore, a branch of their said Road
with intent to carry it to tide waters of the
North-west Branch of the Patuxent River,
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 of
Baltimore, and along and over the streets
thereof, without the consent of the Mayor of
said City, and the City Commissioners, or under
their supervision, but on the contrary thereof are
proceeding with the construction of said branch
or lateral Road, against the direction and
express commands of the said Mayor and
City Commissioners, and in defiance of said
law and ordinance. That said Company
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 Bell Mis. Avenue
and the grounds of the Canton Company,
in the City of Baltimore, especially the grade

of Fayette street, which the said Company¹ in the location, and construction of said lateral Road have threatened to raise four feet in height; all which they are now in the act of doing and threaten to complete the same, without the consent of the Mayor and City Commissioners, or under their supervision, in contempt of the said Law and Ordinance, to the great damage and inconvenience of the Public, and to the irreparable injury of the Mayor and City Council of Baltimore. That the said Company have been warned and required, not to proceed with the construction of said branch road in the manner aforesaid, but have refused to comply with such requisition, or to cease or suspend their unlawful construction of said Road, and threaten to proceed and are proceeding with its construction in manner aforesaid: all which actings and doings are contrary to Equity and good conscience, and tend to the irreparable and manifest injury of your orator in the premises. To the end, therefore, that the said Northern Central Railway Company, the several matters and things heretofore charged may answer as fully as if they were herein again repeated and they specially interrogated

interrogated thereto; and that they may be enjoined, and prohibited from constructing or grading or laying with rails their said Branch Rail Road or way, upon or along or across the streets within the limits of the City of Baltimore or from altering the grades of any of said streets, or from proceeding with the work of building said Road, except with the consent and under the Supervision of the Mayor and City Commissioners; and for such, other and further relief, as to your Honor may seem just and equitable.

May it please Your Honor to grant unto your Orators, against the said Northern Central Railway company, its officers and servants, enjoining and strictly prohibiting them, from constructing, grading, or laying with rails their said Branch Rail Road or way, upon, along, or across the said streets within the limits of the City of Baltimore, or from altering the grade of any of said streets or from proceeding with the work of building the the said Road except with the consent and under the Supervision of the Mayor of the City of Baltimore and the City Commissioners.

And also the writ of Subpoena against the said Northern Central Railway Company, commanding them to be and appear on this,

this Court, at some certain day to answer
the premises and abide by and perform such
decrees as may be passed therein. And as in
duty bound &c. &c.

L. H. Dulany,
Solicitor for Comptroller

State of Maryland

Baltimore City to wit:

On this 23rd day of October A. D. 1857
personally appeared before the subscriber
a Justice of the Peace for said City G. L.
Brazley, and made oath in due form of
law that he is City Commissioner and that
the matters of fact set forth in the foregoing
Bill are true as therein stated.

A. W. Morris J. P.

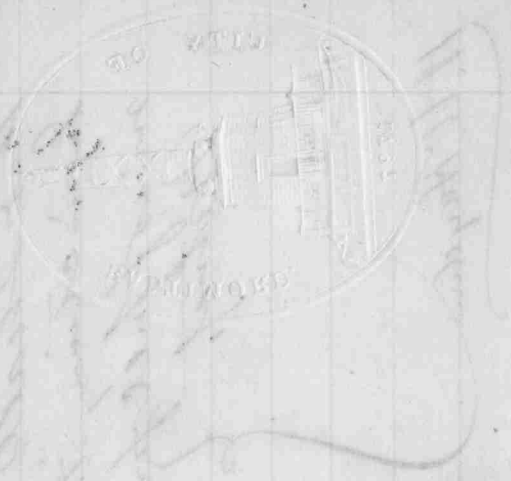
Resolved upon the foregoing Rule this 24th
day of Oct 1857, that upon Complainant's
giving Bond with surety in the penal sum
of ten thousand ^{with the usual condition} dollars, to be approved
by the Clerk of this Court, that an
exemplification issue as prayed, with leave to

May 1863
North Creek

I believe the within
Bond sufficient
Wm. H. H. Jones
Clerk.

Filed Oct 27th 1863

Bond \$1,500
225



Wm. H. H. Jones
Clerk

I now all menly these Presents that the Mayor & City Council of Baltimore & Tho A Thompsons are held and firmly bound unto the State of Maryland in the full & just sum of ten thousand — Dollars to be paid to said State or its certain Attorney to which payment well and truly to be made and done we bind ourselves and each of us and each of our heirs Executors and Administrators jointly and severally being by these Presents Sealed with our Seals and dated this 27th Day of October A.D. 1857

Whereby and order of the Circuit-Court for Baltimore City passed in a cause wherein the Mayor & City Council of ^{Baltimore} ~~others~~ are complainants and The Northern Central Railway ^{Company} ~~is~~ are defendants; an Injunction has been directed to issue upon the filing of a Bond in the above penalty with approved Security

Now the Conditions of this Obligation is such that if said complainant do & shall prosecute said writ of Injunction with effect or otherwise in demurrer & save harmless the defendants from all costs & damages that shall be occasioned them by the issuing of said Injunction, then this Obligation to be void otherwise of full force & effect.

Witness

Thos: Swann
Mayor

Seal
Seal
Seal

H. W. Hayden

Tho A Thompsons

SEAL

Service as stated of the within
Injunction

R. M. Campbell

J. Malcomb

Depp. Solr.

Oct-27 1857 P.M.
4 1/2 O'Clocks

262/1857

4

The Mayor & City
Council

The Northern Central
Railway Co.

Injunction

Injunction served
on the Northern Central
Railroad Company by
Service on Robert
S Hollins Secretary
of said Company
Oct 27 1857 at 15 minutes
past 4 O'Clocks P.M.

Filed Nov 6 1857

Saml S Gastings
Dulaney Mf

MARYLAND, SCT.

The State of Maryland

To The Northern Central Railway Company, its officers and servants



Greeting:

Whereas, The Mayor and City Council of Baltimore

have exhibited to us, in our CIRCUIT COURT FOR BALTIMORE CITY, their Bill of Complaint for relief in Equity, and for AN INJUNCTION to restrain you the said Northern Central Railway Company, your agents, officers, and servants from constructing, grading or laying with Rails, your Branch Rail Road or Way across, upon or along any of the streets within the limits of the City of Baltimore and from proceeding with the work of building said Road except with the consent and under the Supervision of the Mayor & City Council of Baltimore and the City Commissioners

until the matter can be heard and determined in equity.

Now therefore, these are to COMMAND and strictly to ENJOIN and PROHIBIT you the said Northern Central Railway Company. Your officers and servants from constructing, grading or laying with rails, the said Branch Rail Road or way upon, along or across any of said streets within the limits of the City aforesaid, except with the consent of said Mayor & City Council under its supervision & that of the City Commissioners

until the further order of our said Court in the premises.

WITNESS the Honorable WILLIAM GEORGE KREBS, Judge of the Circuit Court for Baltimore City, the 14th day of Sept 1857

ISSUED the 27th day of Oct 1857

W. H. H. Fisher

Clerk.

262
1887

5

The Mayor & City
Council

vs

The Northern Central
Railway Co

Summons

Summons

Nov 6th 1887

Wm. J. G. ...
Dilany



THE STATE OF MARYLAND

To



The Northern Central
Railroad Company
its officers and servants

~~of Baltimore City~~ Greeting:

WE COMMAND AND ENJOIN YOU, that all excuses set aside, you be in your person
before the Judge of the Circuit Court for Baltimore City, at the Court House in said City, on the
second Monday of *November* next, to answer the complaint of

*The Mayor & City Council of
Baltimore*

against you in the said Court exhibited.

HEREOF fail not, as you will answer the contrary at your peril.

Witness the Honorable WILLIAM GEORGE KREBS, Judge of our said Court, the

day of *Sept* 1857

Issued the *7th* day of *Oct* Anno Domini 1857

W. W. Furness
ck

242
1857 6
The Northern Central
Railroad Company
at length

The Mayor and City
Council of Baltimore
answer

Mr Adams file this
answer and on his
motion to disprove
the injunction

J. S. A.
J. M. C.

Copied

Record made to same
Term - 1863

Ad 16 May 1863

///

1

The answer of the Northern Central Railway Company to the Bill of complaints of the Mayor and City Council of Baltimore filed against this Respondent in the Circuit Court for Baltimore City

This Respondent admits that by an act of the General Assembly of Maryland in said Bill recited in part the Baltimore and Annapolis Harbour Rail Road Company was authorized to construct a lateral branch rail road from any point on the line of the rail road of the said Company to the water line of the north west Branch of the Patapsco River East of Jones Falls and to carry this privilege into effect the said Company was further invested with all the powers granted to the said Company by the original charter thereof and the Supplements thereto in relation to the location construction and use of its main rail road. But it was further provided that the agent of the Mayor and City Council of Baltimore (the present complainant), should in first had and obtained before any part of the said Branch Rail Road or rail road should be constructed within the limits of the said City

This Respondent admits that the said act was only accepted by the said Baltimore and Annapolis Harbour Rail Road Company

at a general meeting of the Stockholders thereof
suly convened for that purpose

And this Respondent further admits
that ~~as the application of the said Baltimore~~
~~and Tinschmanna Rail Road Company~~
the said Mayor and City Council of Baltimore
did by Ordinance entitled "an Ordinance
to authorize the Baltimore and Tinschmanna
Rail Road Company to extend their road
to Tide water" approved June 20. 1854 and
which is recited in said Bill grant permission
to the said Company to extend its road
to Tide water as authorized by the aforesaid
Act of the General Assembly.

And this Respondent is advised
that in virtue of such a grant and permission
of the said Mayor and City Council of Balti-
more as aforesaid given the said Baltimore
and Tinschmanna Rail Road Company
became vested with full power and authority
to locate said proposed branch railroad
over such route and with ^{such} grade or grades
as the said Company in the exercise of its discretion
might or should deem expedient and that
under color of a limitation or condition annexed
to such permission as aforesaid it was not
competent for the said Mayor and City Council
of Baltimore ~~to~~ to reserve a right to control

restrain or embarrass the said company
 in the location or construction of its aforesaid
 proposed branch rail road. Nevertheless
 it is further admitted that the said Mayor
 and City Council of Baltimore by the Ordinance
 aforesaid did provide or attempt to provide
 that in the location and construction of its
 aforesaid branch rail road the said company
 should be permitted under the direction and
 with the consent of the said Mayor and City
 Commissioners of Baltimore to adopt such
 grades and curves as might enable the said
 company to use advantageously locomotive
 engines thereon. and that no grade of any
 kind be altered or ~~changed~~ interfered with or created
 under the direction of the before named officers
 and that the said company should be subject to
 other restraints expressed in the second section of
 the aforesaid ordinance. And that by subsequent
 sections of the said ordinance yet other restraints
 are affected to be imposed on the said company
 as in said Bill and more fully in the said
 ordinance are recited.

This respondent is advised that
 the aforesaid special provisions of the said
 ordinance if carried out would place
 the branch rail road proposed to be made

as aforesaid altogether, under the control and direction of the Mayor and City Council of Baltimore in regard to the construction and management thereof and are therefore inconsistent with the provisions of the aforesaid Act of Assembly which expressly confer on the said Company in reference to the construction and enjoyment of the said branch railroad all the powers rights and privileges which were at that time enjoyed by the said Company in reference to its main railroad. and that in so far as the said conflict extends the said Ordinance null and inoperative.

And the respondent admits that

in virtue of certain Acts of the Legislature of the State of Pennsylvania and Maryland

the said Baltimore and Annapolis Rail Road Company - the York and Cumberland Rail Road Company and the Maryland Line Rail Road Company and the Insigneanna

Rail Road Company have become united and consolidated into one body politic and corporate by the name of the Northern Central Railway

Company and the said new corporation by the name aforesaid (that is to say the defendant to this suit) is become vested with and entitled to exercise all the rights powers and privileges

which were granted to the said Baltimore and
 Annapolis and Frederick and Pennsylvania Rail Road Company by the
 aforesaid first mentioned act of the General
 Assembly of Maryland and by the Ordinance
 of the Mayor and City Council aforesaid

And this Respondent further says that
 at the time of the passage of the aforesaid several
 Acts of the Legislatures of Pennsylvania and Maryland
 and the consolidation of the aforesaid Cor-
 porations the said Baltimore and Annapolis and
 Frederick and Pennsylvania Rail Road Company was largely indebted
 and wholly without credit and incapable
 of carrying on its operations - and amongst
 other things it was indebted to the State of Maryland
 in an amount approaching to the sum of
 three millions of dollars and to the Mayor
 and City Council of Baltimore in the sum of
 eight hundred and fifty thousand dollars
 and that the other companies heretofore
 named were in a like condition of embar-
 rassment and it was universally conceded
 that the grand objects contemplated by the
 organization of the aforesaid corporations
 would be disappointed unless a consolidation
 of the said companies could be effected into
 one other corporation with increased powers
 and facilities

And this Respondent further says
 that in order to encourage the consolidation

afterwards the General Assembly of Maryland
by one other act passed at its January session
1854 Chapter 260 entitled "an act to provide
for the sale of the interest of the State of Maryland
in the Baltimore and Annapolis Rail
Road Company and for the completion of
the Northern Central Railway Company
from Tide water in the City of Baltimore to
Lanberry in the State of Pennsylvania and for
vesting certain powers to that end in the Mayor
and City Council of Baltimore" did agree to
relinquish all its claims and demands on
the said Baltimore and Annapolis Rail
Road Company in exchange for a perpetual
annuity of ninety thousand dollars to be
paid out of the income and profits of the said
proposed consolidated company and did
also authorize the Mayor and City Council
of Baltimore to relinquish all its interest in
and claims against the said Baltimore
and Annapolis Rail Road Company.
and accordingly by Ordinance ~~of the~~
said Mayor and City Council of Baltimore
entitled an ordinance to aid in the completion
of a continuous line of Railway from Lanberry
in Pennsylvania to Tide water in the City of
Baltimore approved June 1854 the
Mayor and Recorder of the said City were

A main line of railroad from the City
of Baltimore to Lumbury aforesaid and
effected ~~as a charge~~ of this object by ~~an act~~
an act of more than three million
dollars. The greater part of which was
raised on the Bonds of this respondent secured
by a pledge or mortgage of its property and
revenues. and having accomplished this
part of its undertaking this respondent
entered upon the duty of locating grading
and constructing its proposed branch road
to Tide water over the ^{same} Route indicated by
the Ordinance aforesaid and has actually
expended in this part of its work upwards
of three hundred thousand dollars upon
the service in this respondent of the work of
inspection found in this course and not
for the expense of said inspection ~~needed~~ and other
arrangements which were ^{incurred by the tendency of this suit and}
^{the consequent directed at machines to put up to prevent work}
long since ^{have} completed its said branch
road to Tide water and would have been
secured to the State of Maryland and the City of
Baltimore the advantages contemplated by this
aforesaid provision.

This Respondent for this says
that the frequent changes which have taken place
in the administration of the affairs of the
company render it impossible for this respondent

to speak with certainty in relation to all its proceedings in the locating and constructing its aforesaid Branch rail road - But speaking according to the best information now attainable this respondent avers that the Mayor and City Council of Baltimore had full and timely notice of the plans adopted by this respondent for the locating grading and constructing said Branch rail road and might and ought to have stated the objections taken to the same if any such objections really existed before this respondent had proceeded to make such large expenditures on said work and that by reason of their default in making such timely objections they have forfeited all right (if right they ever had) to object to the work or done by this respondent or to the rights of this respondent to complete the said Branch rail road agreeably to the plans and specifications heretofore adopted by this respondent and partially carried into execution as aforesaid and this respondent is advised that the said complainant thus having timely notice of the plans and specifications adopted for the construction of said Branch rail road ought to have made particular objections to the said plans (if any such existed) so as to have enabled the respondent to have observed the

same or in the event of an irreconcilable
difference ought forthwith to have instituted
proceedings with the view of arresting the
respondent before its cars on Kings had been
made as aforesaid nevertheless the said com-
plainant made no such specific objections to
the said work as planned and intended to be
executed by the respondents but contented
themselves with general objections and
without making any admissions or explanations
with a view to remove or lighten the obstacles
in the way of and hindering said work although
the said complainant well knew that the
defendants claimed the right to proceed
with the said work notwithstanding said objections
and that the said respondents was actually
proceeding with said work as aforesaid.

And this respondent admits that
in making the aforesaid branch railroad
it has altered or departed from the established
grades of several of the graded and paved
highways through which said branch railroad
passes and in such manner to alter or depart from the
grades of highways and paved streets on its said route
so made were necessary and those which are designed will be necessary
to preserve a grade on said branch railroad
practicable for the convenient and advantageous
use of Locomotive engines thereon and that
the grades proposed for said branch railroad

cannot be materially altered without great ~~incon-~~
venience in the alterations and without great incon-
venience and injury to the rail road in the use
thereof

And this respondent avers that although in
locating and constructing its aforesaid branch rail
road it is not bound by the restraining demands
of the aforesaid ordinances yet in its desire to
proceed with its work in harmony with the Com-
plainant it has at all times been willing and
yet is willing and desirous to submit its plans in
reference to the said branch rail road to the said
Complainant or its officers: and at all times has been
and yet is willing to listen to and adopt any sug-
gestions which may be made by the complainant
or its officers with a view to the construction of
the said branch rail road in a manner which

shall be at once satisfactory to the complainant
and convenient of use to this respondent. But no such
suggestions have at any time been made to this
respondent: nor is this respondent in a condition

to discover what alterations in its aforesaid plans
would render them acceptable to the said complainant

And this respondent is therefore led to apprehend
that the difficulties which it has encountered in
the construction of the said branch rail road are
to be attributed to the imagined inconveniences
therein to the complainant and the
public than to a desire to deprive this respondent of

to right to call for a formal release or relinquishment
of the rights and interests of the said Complainant
in the said late Baltimore and Annapolis Rail
Road Company. And this respondent is confirmed
in this apprehension and in its convictions that no
well founded objection exists to the location and
grading of the aforesaid Branch railroad agreeably
to the plans already adopted by an ordinance
recently made by the Mayor of the City of Baltimore
to the President of this respondent to the effect that the
objections taken to the construction of the said branch
railroad might be removed by the relinquishment
on the part of this respondent of one half part of the
interest of the City of Baltimore in the said late Balti-
more and Annapolis Rail Road Company which
in virtue of the Ordinance aforesaid is and ought to
be released to this respondent on the completion of the
said branch railroad to tide water. But this res-
pondent submits that if the said Complainant or
its officers have any rightful control over the grading
and construction of the said branch railroad
it is a right or power of control which must be
exercised in the an exclusive eye to the convenience
use by the public of the Street through which the said
branch railroad is to pass and by this respondent of
the aforesaid Branch railroad and not for the purpose
of making said right or power subservient to the
accomplishment of collateral purposes
And this respondent further says that

the extension of its branch rail road to tide water is essential to the development of its facilities as a great highway for trade and to the realization of the income whereon it is to provide for payment of its large debts and to compensate its stockholders for their investments in the undertaking. and that it would be unjust as well to this respondent as to the State of Maryland which has relinquished its claims against the said Baltimore and Annapolis and Annapolis and Annapolis Rail Road Company on the terms therein indicated and to creditors of this respondent who have become rich in reliance upon the good faith of the City of Baltimore to permit the complainant at this late day to throw any impediment in the way of the construction of the said branch rail road which shall not be necessary to the security of the public interests. and it would be especially unjust to the said creditors of this respondent to permit the complainant to resume its former position as a creditor by mortgage in priority over the said creditors

This respondent avers that it has in all respects exerted its ability to carry out in good faith its contract with the City of Baltimore and that for the construction of the branch rail road in the manner and on the terms herein set forth it would have been able to complete its said branch rail road in a manner acceptable to the public. It is now anxious to complete the same and to enter upon the construction of other improvements within the limits of the city which will require a heavy expenditure on the part of this respondent and which when completed

will tend to the advantage of the said City equally with
that of the respondent. This respondent deprecates
continued litigation with the Complainant as injurious
to both parties - For the sake of peace and in view of the
great interests which are prejudiced by the controversy
this respondent is ready and willing to ~~render~~ surrender
it over to the judgment of the Complainant
in so far as it may be done without embarrassing
this respondent in the use of the said Branch railroad
after the same shall have been completed. And this
respondent submits that if those advances are not
made in a becoming spirit this honorable Court
may and ought to order and to cause the said
Branch railroad to be graded and constructed
in such manner as in the judgment of the Court
will reconcile this respondent's rights and interests
with the general convenience. And this respondent
in conclusion prays the aforesaid injunction
may be dissolved and this respondent disposes
and seals this answer with its
corporate seal and causes it to be signed by Thomas
Alexander and James Mason Campbell, his solicitors
retained for it to defend this suit.

W. G. Alexander
J. Mason Campbell,
Att'ys for respondent

Baltimore City Court

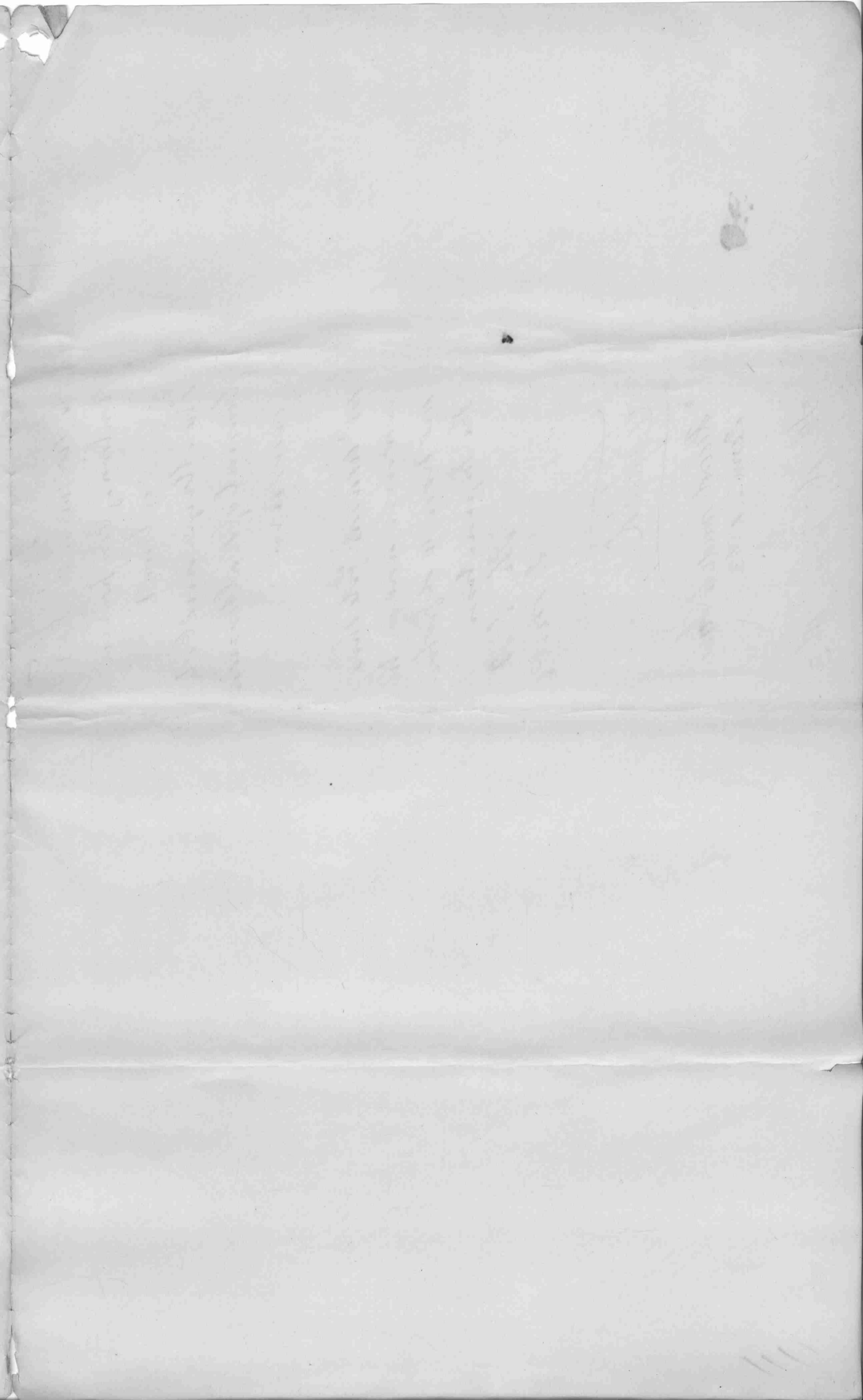
On this sixteenth day of May in the
year eighteen hundred and sixty three



before me a further of the peace in and for
said City personally appeared J. D.
Cameron President of the Northern
Central Railway Company the respondent
in the foregoing answer and made oath
that the matters stated in the foregoing
answer are true to the best of his know-
ledge and belief

Allen E. Forrester

10
before me a letter of the same date
and date, however, it is not
the same as the one of the 10th
but the other one is not the same
as the one of the 10th either
but the one of the 10th is not
the same as the one of the 10th
either.



262

Ct. Ct.

1863

No. 3 Docket.

Mayor & City Council

vs.

A. L. R. R. Comby

Rule for Hearing.

Service admitted this 19th

day of May 1863

Solicitor for

Filed 18 day of May 1863

The Mayor & City Council
of Baltimore

Versus

The Northern Central R R
Company

IN THE CIRCUIT COURT
FOR BALTIMORE CITY.

May Term 1863

ORDERED BY THE COURT, this

18th day of May 1863

upon motion of the Defendant's Solicitor,

motion to dissolve the injunction in
that the above cause be set down for hearing on the

29th

day

of May 1863

Provided, a copy of this Order be served on the opposite

party or its solicitor, on or before the

19th

day of May 1863

Wm G. Krebs

True Copy.

TEST:

Clerk.

186

Ct. Ct.

No.

Docket.

Mayor & City Council
of Baltimore

vs.

North. Cent. Rwy Co

Rule for Hearing.

Service admitted this 18th

day of May 1863.

John L. Thomas

Solicitor for M & C C & B

Filed _____ day of _____ 186

*The Mayor City Council
of Baltimore*

Versus

*The Northern Central R. R.
Company*

IN THE CIRCUIT COURT
FOR BALTIMORE CITY.

May Term 1863

ORDERED BY THE COURT, this *18th* day of *May* 186*3*

upon motion of the *Defendants* Solicitor,
Motion to dissolve the injunction
that the above cause be set down for hearing on the *29th* day
of *May* 186*3*

Provided, a copy of this Order be served on the opposite
party or its solicitor, on or before the *19th* day of *May, inst*

W^m Geo. Krebs

True Copy.

TEST:

John T. Adams Clerk.

Mayor & City Council
of Baltimore 262
1863

The Northern Central
Railway Company

Mr. Adams -
File these exceptions
to defendants answer.

Wm. Schley
John L. Thomas
for def.

Id 29 May 1863

The Mayor & City Council
of Baltimore

vs

The Northern Central Railway Co.

In the Circuit
Court for
Baltimore City

Exceptions, taken by the Complainant to the answer of the defendant, filed in this case, by said defendant, on the 16th day of May 1853, in the several particulars hereinafter mentioned.

The said Complainant excepts to the said answer for insufficiency in the following particulars:

1. For that whereas, in and by the said Bill, it is expressly charged, that the defendant had altered the grade of several streets, which had, theretofore, been graded and paved, especially the grades of Lancaster, Harrison and Patuxent Streets, and the grades of many of the other streets, the grades whereof had 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 said Company (the defendant) had threatened to raise in the construction of said lateral road, four feet in height, yet the said defendant, in and by said answer, whilst admitting, that in making said lateral or branch railroad, it had departed from the established grades of several of the graded and paved streets, through which said railroad passes, nevertheless, has not admitted or denied, whether it had altered the grade of said several streets, in that behalf in said Bill.

1851

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of Baltimore

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mentioned, namely, Lancaster, Huron & Patuxent Streets, or any of them; and had not admitted, nor denied, whether it had or had not altered the grade, of other streets, between Bel-Air Avenue and the grounds of the Canton Company; & had not admitted or denied the allegation, that it had threatened to raise the grade of Fayette Street four feet in height, in the construction of said branch or lateral road.

2. Because said answer in other particulars is short, evasive and insufficient.

And the said complaint excepts to the said answer, to the extent and in the portions thereof hereinafter designated, for irrelevancy and impertinence, as hereinafter stated, that is to say:

3. To so much and all such parts of said answer, as are comprised within the following limits, that is to say; commencing ^{on} with the 5th line of the 5th page of said answer, with the words, "And the Respondent further says", down to ~~the end of the fifth line~~ ^{at the end of the fifth line, counting back} ~~to include~~ the words "aforesaid proceedings" from the bottom of the 8th page.

4. To so much, and all such parts, of said answer, as are comprised within the following limits: Beginning with the words "But speaking of", being the end of the 3rd line of the ninth page of said answer, down to the end of the 17th line on the 10th page of said answer.

5. To so much and such parts of said answer, as are comprised within the following limits; that is

The first part of the report is devoted to a general
 description of the work done during the year.
 It is divided into three main sections: the first
 dealing with the general work, the second with
 the work done in the various departments, and
 the third with the work done in the various
 branches of the service. The first section
 contains a general account of the work done
 during the year, and the second section
 contains a detailed account of the work done
 in the various departments. The third section
 contains a detailed account of the work done
 in the various branches of the service.

A

to say, commencing with the 5th line of the 11th page of said answer down to the words "tide water" inclusive in the 18th line of the 11th page of said answer.

6. To so much and such parts of said answer as are comprised within the following limits: beginning, with the words - "and that it would be unjust" in the 6th line of the 13th page of said answer, down to the end of the 19th line of said page.

And the said Complainant excepts to so much of said answer as is comprised within the following limits, as being, not merely, impertinent, but, also, as being scandalous, that is to say;

7. To so much of said answer, as is contained within the following limits: Beginning, ^{with the words} "And this Respondent," in the 24th line of the 11th page of said answer, down to the words "tide water" inclusive, in the 18th line of the 12th page of said answer.

Wherefore, the said Complainant excepts to the said answer, to the extent, and in the several ^{and upon the grounds} particulars, hereinbefore stated. And prays

John L. Thomas
City Councillor

262
187
The Mayor & City Council
of Baltimore

9

The Northern Central
Railway Company

Amended

~~Supplemental answer~~

Mr. Adams file this

J. S. C.

J. M. C.

accepted as if part of
original answer, without prejudice
to the exception of Thomas
for impugning
& scandal. City Counselor.

Mr. Schley

Solr. for complt.

29 May 1863

The Mayor & City Council
of Baltimore
vs
The Northern Central
Railway Company

Circuit Court for
Baltimore City

^{amended}
The ~~Supplemental~~ Answer of the
Northern Central Railway Company,
whereby it answers in detail & specifically
certain averments in the Bill, which it
had answered in a general way.

The said respondent saith that it
admits that prior to the filing of the Bill, it
^{Established}
~~had altered~~ the Grades of Lancaster, Hudson, Harri-
son, Patuxent, Curley, Thomas, Hull,
Canton, or Robinson Streets, in the City of
Baltimore, and had also raised Fayette Street
about four feet, at or about its intersection
with the Havre de Grace Turnpike, but
that at the time the Bill was filed the
grades of none of the streets between the
grounds of the Canton Company and Bel-
air Avenue had been ^{Established} ^{by the City}, and
so it says that it has not altered the
grades of ^{any} such streets.

W. S. Alexander
J. Mason Campbell
Sol^r for def^t

242
1863
The Mayor of City ¹⁰
Council of Baltimore

vs
The Northern Central
Railway Company

order May 29, 1863,

29 May 1863

The Mayor & City Council
of Baltimore
The Northern Central
Railway Company

Circuit Court for
Baltimore City

May 1863.

The motion for dissolution
of the injunction filed in this cause
and the exceptions to the answer of
the defendant standing ready for hearing
and being submitted

On this motion and upon
the agreement of the parties Ordered
pro forma that the said injunction be
and the same is hereby continued until
the final hearing or further order to be
passed in the cause.

And the exceptions taken
to said answer for insufficiency being
waived it is upon consideration of the
exceptions taken to said answer for im-
pertinence and scandal further Ordered
that the 2nd, 4th, 5th and 6th of said exceptions
be and the same are hereby overruled
and that the 7th of said exceptions be and
the same is hereby sustained and the
part of the said answer so excepted to
be and the same is hereby directed to be
expunged. The Court being of opinion that
the said part of said is irrelevant to
the matter in issue and impertinent -
although the same is not scandalous as
alleged in said exception

Wm. B. Wells

212
1863

(102)

Mayor & City Council
of Baltimore

vs

The North. Cent. Rwy

Co

Agreement

7d 29. May 1863

The Mayor & City Council of
Baltimore

The Northern Central Railway Co

May Term 1883.

In the
Circuit Court
of Baltimore City

It is agreed in this case that the motion
made by the defendant to dissolve the
injunction heretofore issued in this case,
^{pro forma with a view to an appeal,}
may be overruled ~~and that the~~
~~the exception to the answer for immateriality, is waived.~~
~~injunction be set aside and the~~
~~the exceptions thereto for immateriality and for~~
~~error or delay continued to the~~
~~scandal are submitted to the judgment of the Court.~~
~~final hearing in this case.~~

It is further agreed that the Laws &
Ordinances referred to in the Bill and
Answer need not be entered
in the Record, but that the same
may be used at the Court of Appeals
from the printed Laws and Ordinances,

John L. Thomas Jr
City Solicitor

Wm Schley
Sols for Complainant

W. G. Alexander

J. Mason Campbell

Sols for N. C. Rwy Co

242
1863 (11)

Mayor & City L

A L R B

At 29 May 1863

Mayor & City
Council of Balw

vs

The Northern Central
Railway Co

Mr Adams

Enter an appeal from
the Order Continuing the Inj^o & send up record at
once

Z. S. Alexander

J. M. Campbell

for N. C. Rway Co

262
1867
Northern Central Rail
way Company

vs
The Mayor & City
Council of Balto.
Decision
of Court of Appeals



In Testimony whereof I have
hereunto set my hand as
Robert and affixed the seal
of the said Court of Appeals
this Eighth day of April 1864

George Rowles Tolson
Court of Appeals

Per

Feb 11th April 1864

The Northern Central Railway Company vs The Mayor & City Council of Baltimore	In the Court of Appeals of Maryland December Term 1863 James L. Bastot Justice delivered the opinion of this court.
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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 railroad, from a point on the main stem, to the water line of the North West Branch of the Patuxent river East of Jones' Falls, and to carry this into effect, was invested with the powers, rights and privileges 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

20.th 1854 (N^o 55) the agent 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; authorized 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 any part of the road on any of the streets authorized by the ordinance, the City Commissioners 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 this 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

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.

The bill, filed by the appellee, charges that the Appellants ~~have introduced the lateral branch of~~ 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 Belair Avenue and the grounds of the Canton Camp 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 Commissioner, 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 as charged the established grades of Lancaster, Hudson, Harrison, Patuxent, Curley, Potomac, Hull, Canton and Robinson Streets in the City, and had also raised Fayette Street about four feet at or about its intersection with the Havre de Grace turnpike.

A motion was made to dissolve the injunction & 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 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, and the contrary, while conferring upon the appellant the right to construct its railway over the streets of the City, the General Assembly has declared, as a condition precedent, 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 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 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 Mager vs Grima & others 8 Howard 249 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 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 this 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

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 Pk. Md. & Balt R.R. Co.* (ante) that no lapse of time can legalize a public nuisance, or justify a wrong done 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

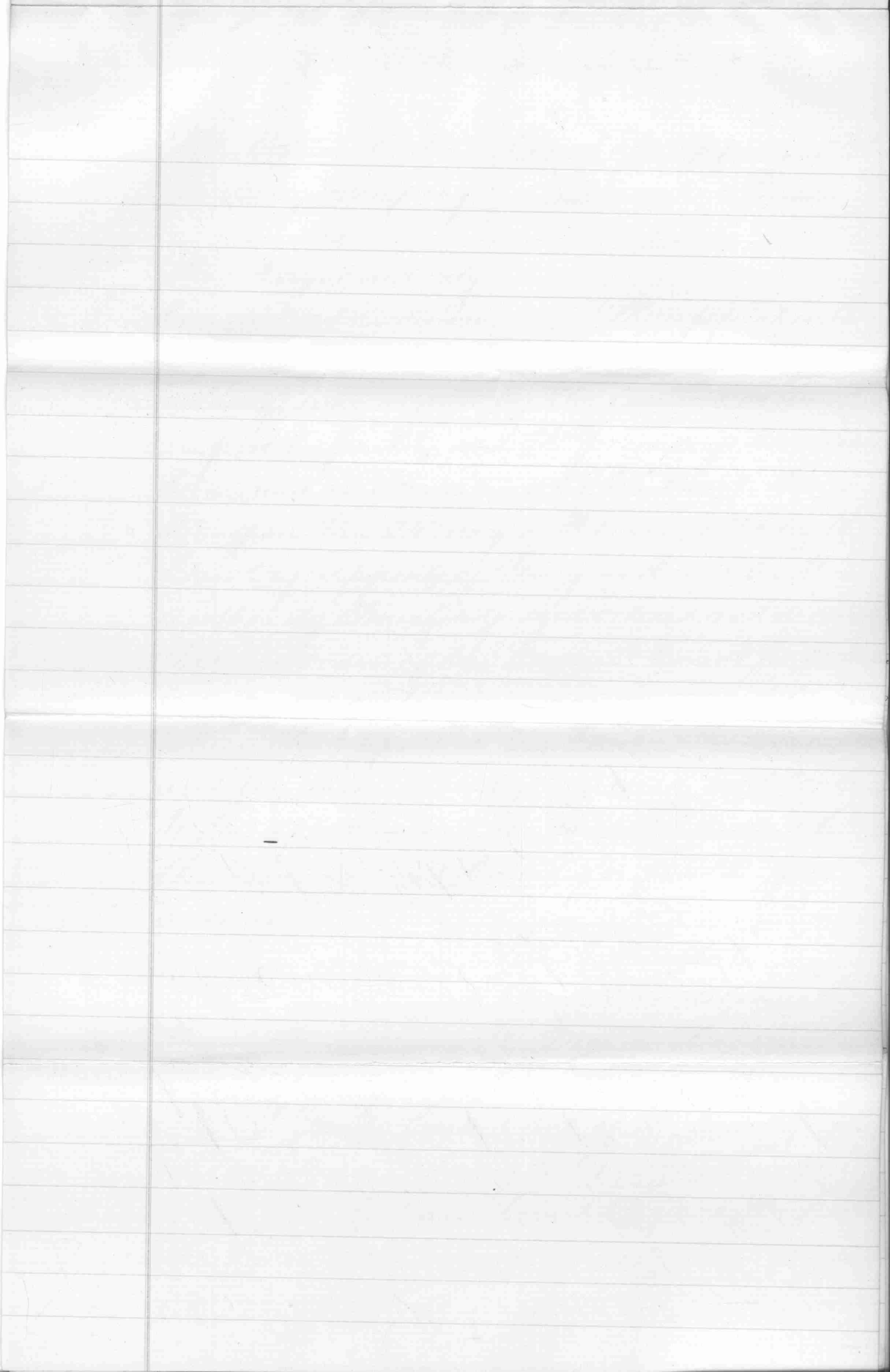
it has acquired the right of continuing in the
Commission of its wrongful acts; because the
Complainant did not sooner invoke the inter-
position of the Court. This defence is not
supported by any principle of equity - ap-
plicable to the case as it is presented by the
record

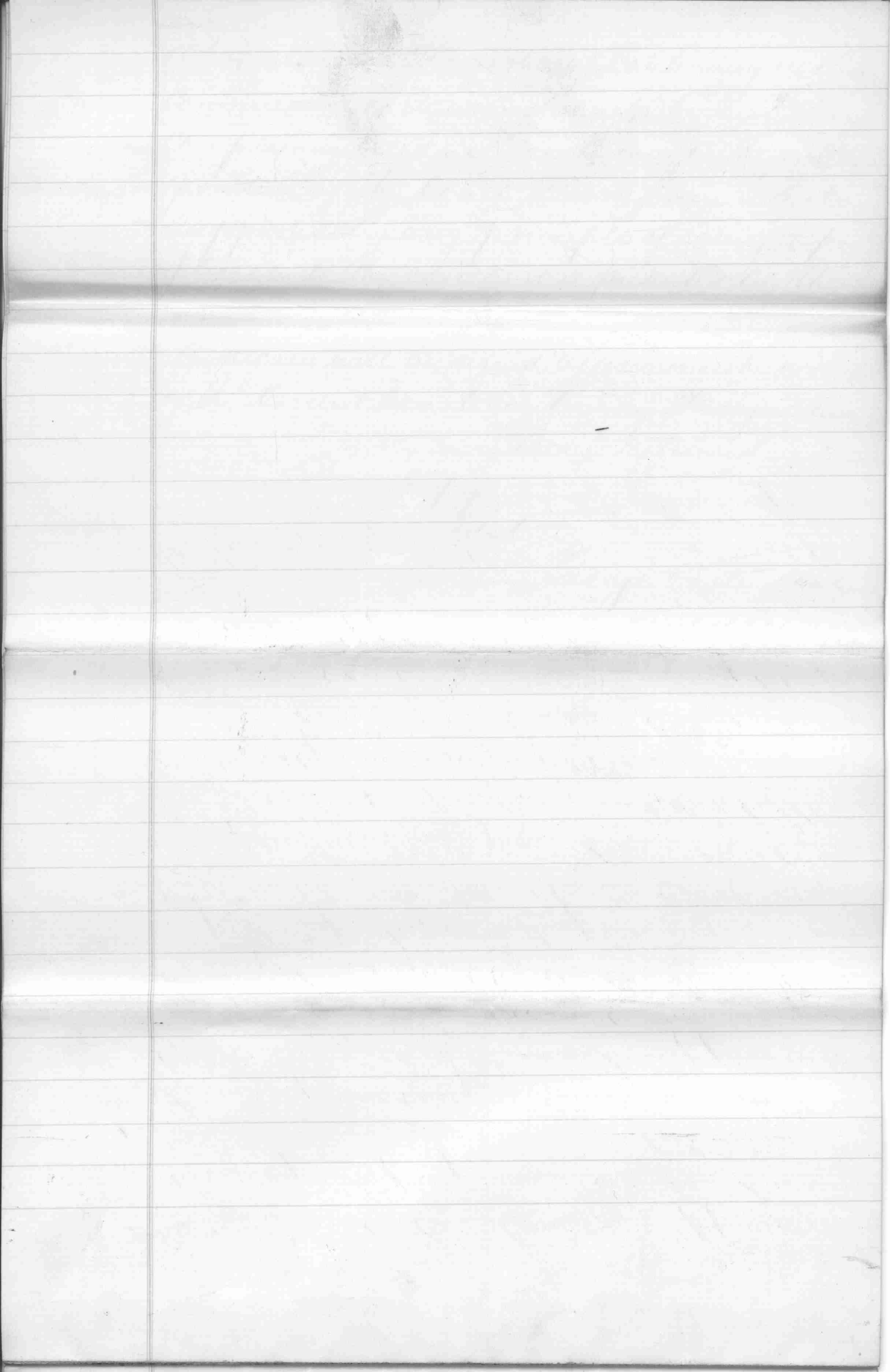
A decree will be signed affirming the order
of the Circuit Court, continuing the injunction

Order Affirmed

True Copy
Test

George Earle, Clerk
Court of Appeals of Md.





The Northern Central
Railway Company
vs

Court of Appeals of Md.
December Term
1863

The Mayor and City
Council of Baltimore

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 Appellees and the cause remanded to
the said Circuit Court for further pro-
ceedings

Las. L. Bartol

Price & Goldsborough

J. Morris Cochran

State of Maryland, Ct.

I George Carl Clerk of the Court of Appeals
of Maryland do hereby certify that the afore-
going is a full and true copy as taken from
the record and proceedings of the Court of
Appeals aforesaid.