THE COLUMBIA BOTTOM LEVEE COMPANY V MEIER, FREDERICK 1866 ST. LOUIS COUNTY 548/2

OLD
646/2

AFFIRMED

INVOLVES: DEBT
INCORPORATION TO RECLAIM LANDS ADJACENT TO THE MISSOURI AND MISSISSIPPI RIVERS (AS A PUBLIC UTILITY)
REVENUE (FUNDS)
POWER
ASSESSMENT

State of Missouri }
County of St Louis } Be it remembered that on the 15 day of May in the Year of our Lord 1863 was filed in the office of the Clerk of the Law Commissioners Court of St Louis County a certain Cause wherein The Columbia Bottom Levee Company is plaintiff and Frederick Meyer is defendant in the words and figures following to wit

1 The Columbia Bottom Levee Company pltff vs Frederick Meyers Deft

In the St Louis Law Commissioners Court June Term 1863 Saint Louis County

Petition

Plaintiff says the Columbia Bottom Levee Company is a duly incorporated and organized company under and by virtue of an Act of the General Assembly of the State of Missouri entitled an Act to incorporate the Columbia Bottom Levee Company in Saint Louis County Missouri Approved March 8th 1859 and an Act Amendatory thereof entitled an "Act to amend an Act" entitled an Act to incorporate the Columbia Bottom Levee Company in Saint Louis County Missouri Approved January 14th 1860.

That by said acts of incorporation the management of the affairs of said Company was vested in its Board of Directors who were fully authorized to construct such Levee's ditches and other improvements as might be necessary to drain and protect from overflowing the lands within the limits described in said acts to wit. Beginning at the foot of the Bluffs towards the upper end of said Columbia Bottom at a point where the north boundary line of James H Lucas and Ann E. Hunt's land strikes the Bluff thence along said Lucas and Hunt's

2 north boundary line to the Missouri River thence along and down the bank of said river to its junction with the Mississippi thence along and down the western bank of the Mississippi river four miles more or less to the south east corner of D. D. Strains land thence westerwardly along Strains south line to the Bluff thence along said Bluff to the place of begining.

That the board of Directors of said Company by virtue of the power in them vested by the Acts aforesaid for the purpose of raising the money to defray the expenses of making the improvements mentioned in said Acts did on the 2nd day of March A.D. 1861 duly make an assessment upon the owners of land within the limits mentioned in said Acts of Two dollars per Acre for each and every Acre so owned by them payable March 20th 1861. That said defendant at the time of the approval of the above mentioned Acts and at the time when said assessment was made was and still is the owner of Thirty Acres of land within said limits and was therefore duly assessed and became liable to pay plaintiff the sum of Sixty Dollars. Plaintiff has incurred great expense to wit about the sum of twenty thousand dollars in the construction of said levee's and other

3 improvements necessary to drain and protect said lands from overflow that said assessment was requisite and necessary in addition to the previous assessment made by said Directors in order to raise the money to pay said expenses incurred as aforesaid that many other owners of land within said limits having since paid their portion of said assessment and the money so paid has been appropriated toward the payments of said expenses but that defendant has failed and still refuses to pay the amount so assessed against him or any part thereof though payment thereof has often been demanded and for which plaintiff asks judgment with interest from March 20th 1861

John F Lowney Atty

State of Missouri }
County of St Louis } ss John F Lowney attorney for Plaintiff being duly sworn says the foregoing and the matters therein as stated he believes to be true

{signed} John F Lowney

Subscribed & sworn to before me
this 15th day of May 1863

W. C. Huffman
Clk

4 The State Of Missouri.

To the Marshall of St Louis County

Greeting.

Summons

We command you to Summon Frederick Meyer to appear before the Law Commissioner's Court of St Louis County on the first day of the next Term thereof to be held in the City of St Louis within and for the County of St Louis on the first Monday of June next then and there to answer the complaint of The Columbia Bottom Levee Company as set forth in the annexed petition and have you then and there this writ

Seal

Witness W. C. Huffman Clerk of our said Court with the seal thereof hereto affixed at Office in the City of St Louis this 15th day of May in the year of Our Lord eighteen hundred and sixty three

W C Huffman

Clerk

I acknowledge myself bound for all costs that may accrue in the case of Columbia Bottom Levee Company against Frederick Meyer

security for costs

Witness my hand and seal at St Louis this 27th day of June AD 1863

James Lupe

seal

5 Executed this within writ by delivering a true Copy thereof together with the Petition as furnished by the Clerk to the within named defendant

Marshal's Return

St Louis May 16th 1863. James Coff
Marshal

The Columbia Bottom Levee Company plff
vs
Frederick Meyer Deft

In the Law Commissioners Court St Louis County June Term 1863

Motion for security for Costs

Now at this day comes the Defendant by his attorney and moves the Court to rule the plaintiff to give security for costs.

For that the said plaintiff is insolvent and has no property out of which costs could be satisfied

R. S. Voorhis
Atty for Defendant

The Columbia Bottom Levee Company plff
vs
Frederick Meyer Deft

In the Law Commissioners Court St Louis County State of Missouri ss June Term AD 1863

Defendants Answer

Defendant for answer to plaintiff's petition

6 denies that the Columbia Bottom Levee Company is a duly incorporated & organized Company as is alleged in said petition.

Defendant does not know nor has he any knowledge or information sufficient to enable him to form a belief as to whether or not a Board of Directors did on the 2nd day of March 1861 duly make an assessment upon the owners of land within the limits mentioned in said petition of two dollars per acre for each and every acre so owned by them payable March 20th 1861 in the manner and for the purpose named in said petition.

Defendant admits that at the time mentioned in said petition he was the owner and still is the owner of about twenty nine acres of land within the limits mentioned therein But he denies that he was duly assessed and became liable to pay plaintiff Sixty dollars or any other sum or that plaintiff had or has any right power or authority by the Acts of the General assembly mentioned in said petition or otherwise to assess him or any of his property real or personal or to collect any such assessments from him in any manner for the purposes mentioned in said petition or any other purposes whatever. Defendant does not know nor has he any knowledge or information sufficient

7 to enable him to form a belief as to whether plaintiff has incurred great expense the sum of twenty thousand dollars in the construction of levee & other improvements as is alleged in said petition and he denies that plaintiff has constructed any Levee or other improvements that are sufficient to drain or to protect the said lands from overflow.

Defendant does not know nor has he any knowledge or information sufficient to enable him to form a belief as to whether or not the said assessment was necessary in order to raise money to pay expenses as is alleged in said petition and he denies that any necessity of said Company for any purpose whatever gives it any right power or authority to compel him by suit at law or otherwise to pay said assessment or any other assessment of said Company.

Defendant further answering says that the acts of the General Assembly of this State approved 8 March 1859 and the Act amendatory thereof approved 14 January 1860 mentioned in ~~this~~ said petition are both in violation of the Constitution of this State and are therefore void that said acts are particularly in violation of the sixth declaration of the Bill of Rights contained in Article XIII of said constitution also of the last clause of the seventh declaration of the eighth

8 and of the nineteenth declaration in said Article ~~Defendant further answering says that the acts of the General Assembly of this State approved March 1864~~ Defendant says that the erection & construction of such works as the said acts attempt to authorize the said company to make if completed according to proposed plans of the said Company would be totally inadequate for the purposes mentioned in the said petition that the works already constructed by said Company are inadequate to protect the lands in said Bottom from overflow and that the assessments mentioned in said petition are of such a heavy and burdensome imposition that they have caused the said lands to greatly depreciate in value and that any additional assessment by said Company will produce a corresponding depreciation of the value of said lands.

Defendant denies that he is indebted or bound to pay to plaintiff the sum of Sixty dollars or any other sum. Defendant asks to be discharged with his costs

R. S Voorhis atty

Frederick Meyers defendant makes oath and says he belives the above answer and the matters therein as stated are true. Fred Meier

Sworn to & subscribed to before me this 1 day of June 1863

J C Huffman
clk

9 The Columbia Bottom Levee Company pltff
vs
Frederick Meyer Deft

In the St Louis Law Commissioners Court St Louis County State of Missouri
June Term 1863

Demurrer

Defendant comes and demurs to the petition of plaintiff in the above entitled cause for that the same does not state facts sufficient to constitute a cause of action in this "to wit"

1 The petition does not state in what manner the said company was organized.

2 The petition does not state that any Board of Directors was ever appointed for said Company nor does it state the manner of any appointment.

3 The petition does not show the power of a Board of Directors to make assessments upon the land owners mentioned therein.

4 The petition does not show the power of a Board of Directors to make assessments upon the land owners mentioned therein.

5 The petition does not state or in any manner show that defendant consented and agreed to the passage of the Acts of the General Assembly mentioned therein

R. S. Voorhis
atty for Deft

10 The Columbia Bottom Levee Company plff
vs
Frederick Meyer Dft

Tuesday November 3 1863

The Court having heard and duly considered the Demurrer herein and being fully advised thereof overrules the same and allows the Defendant till December 7th 1863 to answer

Demurrer Overruled

The Columbia Bottom Levee Company plff
vs
Frederick Meyer Deft

In the St Louis Law Commissioners Court June Term AD 1863

Now at this day comes the defendant by his attorney and demurs to that part of plaintiffs petition in the second paragraph thereof which is the following words "viz"

Demurrer

"That many other owners of land within said "limits have long since paid their proportion "of said assessment and the money so paid "has been appropriated towards the payment "of said expenses.

Because the same does not state facts sufficient to constitute any cause of action. For that the payment of any assessment of the said Company by other persons does not raise any obligation upon defendant

R S Voorhis. Atty

11 The Columbia Bottom Levee Company Plaintiff
vs
Frederick Meyer Deft

In the Law Commissioners Court St Louis County June Term 1862

Amended answer

The defendant by leave of the Court first had files this his amended answer to the petition of plaintiff and denies that the plaintiff is a duly incorporated and organized Company as is alleged in said petition Defendant does not know nor has he any knowledge or information sufficient to enable him to form a belief as to whether a Board of Directors did on the 2nd day of March 1861 duly make an assessment upon the owners of land within the limits mentioned in said petition of two dollars per acre for each and every acre so owned by them payable March 20 1861 in the manner and for the purpose named in said petition

Defendant admits that at the time mentioned in said petition he was and still is the owner of Thirty Acres of land within the limits mentioned therein but he denies that he was duly assessed and became liable to plaintiff in the sum of Sixty dollars or any other sum or that plaintiff has any power or authority

by the acts of the General Assembly mentioned in said petition or otherwise to assess him or any of his property real or personal for the purposes mentioned in said petition.
Defendant does not know nor has heard knowledge or information sufficient to enable him to form a belief as to whether plaintiff has incurred great expense the sum of about twenty thousand dollars in the construction of levees and other improvements as alleged in said petition and he denies that plaintiff has constructed any levees or other improvements that are sufficient to drain or to protect the said lands from overflow.
Defendant does not know nor has heard knowledge or information sufficient to enable him to form a belief as to whether the said assessment was necessary in order to raise money to pay expenses as is alleged in said petition and he denies that any necessity of said Company for any purpose whatever gives it the right power or authority to compel him by suit at law or otherwise to pay said assessment or any other assessment of said Company. Defendant further answering says that the act of the General Assembly of this State approved 8 March 1859 and the act amendatory thereof approved 14 January 1860 mentioned in said petition are both in violation of the Constitution of this State and are therefore void that said

13 Acts are particularly in violation of the Sixth declaration of the Bill of Rights contained in Article XIII of said Constitution also in violation of the last clause of the seventh declaration of the eighth and of the Ninetee ~~cent~~ declaration of said Article. Defendant says said acts are contrary to and in violation of Public Policy and derogate against the rights of Elective franchise and are therefore void.

Defendant says that the erection and construction of such works as the said acts attempt to authorize the said Company to make if completed according to the design of the said company would be totally inadequate for the purposes mentioned in said petition (that the works already constructed are inadequate to prevent the overflow of the lands in said Bottom and that the assessments mentioned in said petition are such a heavy and burdensome imposition that they have caused the said lands in said Bottom to depreciate greatly in value and that any additional assessments of said Company will produce a corresponding depreciation of the value of said lands)

Defendant says that the said Acts of the General Assembly were obtained by false

Stricken out by Court

and fraudulent representations of the incorporation of said Company but in no way connected with this defendant to said Assembly that parties acting on the part of certain persons interested but in no way connected with defendant circulated a petition among the owners of land in said Bolton for the purpose of gaining the consent of said owners to an act of incorporation of said Company and that said parties so acting falsely and fraudulently represented to such of said owners as ever solicited to sign said petition that any such act of incorporation should not authorize the assessment or levy of a tax amounting to more than two dollars per acre for all purposes whereas said acts provide for a much larger assessment that the said parties represented that before the said General Assembly should be applied to a draft of an act should first be submitted in a public meeting for the purpose of said land holders for their consent and approval but no such consent or approval was ever obtained and the said acts of the General Assembly were passed without the knowledge or consent of the said land owners and especially without the knowledge or consent of this defendant who never subscribed said petition.

Allegation not by Court

Allegation not by Court

Defendant denies that he is

15 indebted to the plaintiff in the sum of Sixty dollars or any other sum for any purpose whatever.

Defendant having answered plaintiffs petition prays to be discharged with his costs

R S Woodis atty

Frederick Meyer defendant makes oath and says he believes the above answer and the matters therein as stated are true

Fred Meyer

Sworn to subscribed before me this 4 day of January 1864

W C Huffman
Clerk

The Columbia Bottom Levee Company pltff vs Frederick Meyer Deft	In the Law Commissioners Court St Louis County June Term 1863

Defendants Bill of Exceptions

Be it remembered that on the 20 day of February 1864 the above entitled cause came on to be heard there being three motions by plaintiff to strike out part of the answer pending they were

first heard by the Court and after considering the same partially sustained and partially overruled the first of said motions, and sustained the last two.—

Bill of Exceptions

To the judgment of the Court in sustaining the said motions the defendant then and there excepted

The Columbia Bottom Levee Company Plff
vs
Frederick Meyer Deft

In St Louis Law Commissioners Court June Term 1873

and now comes the plaintiffs by their attorney & moves the Court to strike out all that part of the amended answer filed by Defendant herein which reads as follows to wit." Defendant says the erection and construction of such works as the said Acts attempt to authorize the said company to make if completed according to the design of said company would be totally inadequate for the purpose mentioned in said petition. That the works already constructed are inadequate to prevent the overflow of the lands in said Bottom and that the assessments mentioned in said petition are such a heavy burdensome position that they cannot the lands in said Bottom to depreciate greatly in value and that any additional assessment

17 of said Company will produce a corresponding depreciation of the value of said lands Because the matters & things therein stated (if true which plaintiffs do precisely deny) are 1st Irrelevant and Redundant in that they do not affect the right of plaintiffs to levy and collect assessments as provided in their Charter and in no wise affect the issues in this case. Plaintiffs having the power under the Charter of enacting other & more perfect works if those now erected prove not sufficient to protect said lands from overflow the facts stated are therefore mere surplusage calculated to confuse & mislead the Jury as to the real issues in the case 2nd They constitute neither a defense nor a counter claim to plaintiffs cause of action Flournoy atty for Plffs

No 2 The Columbia Bottom Levee Company Plff
vs
Frederick Meyer Dft

Law Commissioner Court

Plaintiffs atty "moves the Court to Strike out all that part of Dfts answer which reads as follows to wit.

"And the said Acts of the General Assembly were passed without the knowledge or consent of the said landowners and especially without the knowledge or consent

18 of this defendant who never subscribed said petition because the same (of time which plaintiff specially deny) do not constitute either a defense or counter claim to plaintiff's cause of action

Attorney for Plff

No 3 The Columbia Bottom Levee Company vs Frederick Meyer } Law Commission Court

And now comes the plaintiffs by their attorney & move the Court to strike out all that part of the amended answer which reads as follows "to wit"

"Defendant says that the said Acts of the General Assembly were obtained by false and fraudulent representations of parties interested but in no way connected with defendant & to said Assembly that parties acting on the part of certain persons interested but in no way connected with defendant circulated a petition among the owners of land in said Bottom for the purpose of gaining the consent of said owners to an Act of incorporation of said Company & that said parties so acting falsely & fraudulently represented to such of owners as were solicited to sign said petition that such an Act of Incorporation should not

19 authorize the assessment or levy of a tax amounting to more than two Dollars per Acre for all purposes & that the same should be the only & final assessment for any purpose Whereas said Acts provide for a much larger assessment. That the said parties represented that before the said General Assembly should be applied to a draft of an Act should first be submitted in a public meeting for the purpose of said Landowners for their consent & approved but no such consent or approval was ever obtained" Because the matters & things therein as stated (if true which plaintiffs however expressly deny) are 1st Irrelevant & Redundant,

2nd are not advisable in evidence to nullify a law of the General Assembly

3rd They do not as alleged constitute either a defense or a counter claim to plaintiffs cause of Action

F Lowrey Atty for Plff

A jury was then empannelled and the case opened. The plaintiff offered in evidence the act of incorporation of the plaintiff approved 8 March 1839 and the act amendatory thereof approved 14 January 1860. The defendant objected to the same on the ground of their unconstitutionality. The Court overruled the objection to which

overruling by the Court the defendant then and there excepted. The said Acts are not copied into this Bill but being Laws passed by the Legislature are here referred to as constituting a part of this Bill.

Witness Wm H Cozzens

The plaintiff then called William H. Cozzens as a witness who testified that he was a civil engineer and that he was employed by the Board of Directors of the Columbia Bottom Levee Company to survey the Lands within the limits of the Company in the bottom so as to ascertain the number of Acres by each individual and to survey and locate the Levee That the Levee was located so as to enclose the lands described in the Charter except that along the river it was set back so that a strip of land varying in width according as circumstances made it necessary on account of the bank washing away or being crooked or low was left along the whole river front between the levee and the river thereby leaving out some portions of each tract that fronted on the river The number of Acres actually enclosed within the Levee was about 4122 Acres.

The witness produced a certificate of the surveys of the lands within the Levee which he said was correct. (No such Certificate on file in this office) Clerk

21 James A Monks was then called by the plaintiff
Witness who testified that he was the Secretary of the Company
Jul A Monks and that he kept the Records of the same. That the
Book held in his hand was the Records of the
Proceedings of the Columbia Bottom Levee Company
& had been kept by him as Secretary of said
Company. The plaintiff then offered in evide
-nce the records of the Company contained in a
record book which he said was the record book of
the plaintiff for the purpose of showing
acts of user under the Charter and organization of the
Company. The defendant objected to the records of the
Company as evidence in the case for any purpose
on the ground that there was no evidence to show
that the Charter had been accepted by a majority of the
land owners within the limits prescribed by the
Charter that there was no evidence of legal organ
-ization that there was no evidence that defendant
was a member of the company, so that the records
cannot be evidence against him and can in no
way bind him.

The Court overruled the objection
and the defendant then and there excepted to the
judgment of the Court in said overruling.

Record Minutes of the proceedings of the board of
Entries Directors of the Columbia Bottom Levee Compa
-ny of St Louis County Missouri.

Saint Louis Feby 10th 1860

J A Monks

22 Proceedings of the Columbia Bottom Levee Company.

In accordance with an advertisement published in the Saint Louis Republican an Election was held at the Court House in St Louis Febry 10th 1860 for directors of the Columbia Bottom Levee Company of St Louis County Missouri

Names of Voters	No Acres of Land	No of Votes	Jas. H. Lucas	Jas. A. Monks	Jas C Page	Lewis Patterson	C. O. St Vrain
James H Lucas. over	280	7	7	7	7	7	7
Nicholas Destrehan over	840	21	21	21	21	21	21
Jas. A. Monks and Jas Lupe over	640	16	16	16	16	16	16
James C Page "	280	7	7	7	7	7	7
Lewis Patterson "	80	2	2	2	2	2	2
Reuben Masick "	200	5	5	5	5	5	5

We the undersigned judges of election of Directors for the Columbia Bottom Levee Company certify that the above is a true result of the election

J C Page

St Louis Febry 10th 1860. Lewis Patterson

J A Monks

23 The election being closed find the following persons elected Directors Jas H Lucas Jas A Monks James C Page Lewis Patterson and D D St Amin Lewis Patterson Jas A Monks Jas C Page a legal quorum being present agreeable to appointed February 21st inst for a meeting of all the Directors at the store of Jas A Monks at 11 O'clock A.M. for the election of Chairman Secretary and Treasurer of the Board also to open bids for the levee and appoint an assessment of the lands within our limits.

The board also now order an immediate survey of all the lands in the limits of the Charter and a map showing the owners and the amounts so owned.

Jas C Page Lewis Patterson Jas A Monks

At a meeting of the board of directors at the store of Jas A Monks on the 21st Feby 1860 Jas C Page Jas H Lucas Lewis Patterson and Jas A Monks being present Jas C Page was elected president J. A. Monks secretary and Jas H Lucas treasurer

On motion of Jas H Lucas it was resolved that R. B. Powell be appointed engineer and superintendent at a Salary of One hundred & twenty dollars ($120.00) per month which was adopted

Also that the President make a contract with Thos Byrnes or W D Smythe & Co they being the lowest and best bidders to build the levee.

And it was ordered that an assessment of $1.50/100 per acre be levied and made payable by the 20th of March to the Treasurer of the Co

St Louis Feby 21 1860 J. A. Works
Secy

At a meeting at the office of Jas H Lucas on the 25th of Feby 1860 Jas H Lucas Jas A Works and J C Page being present the following was adopted.

Whereas the two parties proposing for the execution of the work of this Company from upwards of to be irresponsible persons therefore be it resolved by this board that the President be and is hereby authorized to contract with Perry Lee & Co or such other competent contractors at the rate of not over Ten thousand four hundred & eighty dollars for the completion of said work.

Resolved further that the assessment for the first year be One dollar and seventy five cents per acre instead of $1.50/100 as proposed at the last Meeting of the board to be collected in the manner heretofore named

Feby 25 1860 J. A. Works
Secy of the Columbia Bottom Levee Company

25 At a meeting of the board at the house of D.D. St Vrain on the 27th of March 1860 J.A. Marks Lewis Fullerton and D.D. St Vrain being present.

On a view of the ground it appearing that the engineer was locating the line of Levee some distance inwards of the original line as surveyed by W. McKay and on ground that was considerably lower and would thereof add much more to the cost of construction it was resolved that the engineer be instructed to locate the line of levee on the original survey of W. McKay leaving the stakes put down by said W. McKay to be the outside line of levee and if the contractors cannot find materials to build the levee on the outside of the levee that they be allowed to take it from the inside or from both sides

St Louis March 4 1860

J A Marks

secy

26 Names of the owners of land within the limits of the Charter of the Columbia Bottom Levee Company and the number of Acres owned by each also the amount of Taxes levied for the year 1860 at the rate of One & 75/100 Dollars per acre

Names of owners

Paid D.D. St Vrain
Paid Sevin St Vrain
Paid D.D. St Vrain for heirs Freeman De Laurier
Paid Fred Saugrain
Paid Henry Penningroth & B
6 Paid James Lupe
7 Paid James A Monks
8 Paid Nicholas A Destrehan
Paid Freeman De Laurier's heirs (N.A. Destrehan & others
Paid Joseph Sapp
Paid Nancy A Chambers
12 Paid Lewis Patterson
Paid Jonathan Perry (John Owines owns 44 acres Jos Baker 6 acres
14 Paid James H Lucas
Paid Charles McMillen. Paid $12.50 aug 16/60 By H Bone in full
16 Paid Reuben Musick
Henry Knejohn
Paid Wm Hucker
Paid Adolph Gatz

27 Pd E P Morse
Paid Abram Lukes heirs
Julia G Tiffins Est
Paid John Crow
Paid Henry O Brock
Paid Joseph A Sires Est
Paid Deonhardt
X Paid Fred Meyers
Paid Dennis Griffin
Paid Unknown = H W Carter
Paid Henry W Carter
Henry Eckelkamp
Paid Thomas Brindel
Paid Louis A Le Beaume

No of Acres		Amount	
103.25	June 5th order	$ 180	68
206.09	" " " $170.0 pd July 2nd 190.65	360	65
101.40	July 2nd pd by S Strain $57.85 Sept 10th pd by S Strain	177	45
34.62	Apr 9th " 1860	60	58
275.62	April 28th pd $100. June 5th pd $100. July 5th pd by Doct Page $282 33/100	482	33
6 353.00	April 4th pd $230 52/100 May 5th " pd $300.40	617	75
7 283.28	Paid	495	74
8 823.82	April 4th pd $500. May 5th pd $500. June 5th pd $441.68	1441	68
85.71	August 3rd Paid	149	99
76.00	Nov 19th 1860 Paid	133	00
101.50	June 22nd pd $100. Oct 1 pd $77.	177	62
12 101.20	" 5th " by Powell $100. $75.10 Feb 2.00	177	10
50.00	Apr pd $77.00 by May 4th $10.50	87	50
14 275.26	Paid	481	70
50.00	pd by S Strain order $25 July 21 pd $50	87	50
16 238.49	Paid	417	35
50.00	May 7th pd $20. June 17 pd $20. Feb 26th $25	87	50
30.00	Paid	52	50
30.00	May 7 pd $26 July 2 pd $16.50 June 17 pd 10.00	52	50
55.50	Jun 5 pd by Babcock	97	13
55.50	Apl Pd $19.00 Aug 4 pd by order on Lucas	97	13
156.50		263	38
52.85	Pd Nov 19/60	92	48
64.02	Paid	112	03
118.60		207	55
30.00	May 7th Paid	54	50

29

No. of Acres		Amount	
30.00	July 2 pd by order $50. Jany 17 $2.50	52	50
20.00	Paid Feby 19 1861 by D. D St Vain	35	00
22.52	" Aug 9/60	39	41
85.02	Paid	148	79
26.26		45	95
27.88	Paid 25 Sept	48	79
115.68	Paid	202	44
4123.57		7216	18

At a called meeting of the Board of Directors held April 5th 1860 Present James H Lucas James A Marks and James C Page it was on motion of Mr Lucas Resolved that in order to carry out the provisions of the contract with Perry Lee & Co contractors for the clearing and for the construction of levee that the President be and he is hereby authorized to execute and deliver in the name of the Columbia Bottom Levee Co the negotiable promissory note of said Company to the order of said Perry Lee & Co in accordance with the stipulations of said contract and that said negotiable and promissory notes be signed by the President and Secretary of said Company.

~~resolved that the~~ And it was further resolved that the President contract with some one to have the Ditch contained

that comes from Lucas's spring to a point that will carry off the water from said Spring to be determined on by the board upon a veiw of the ground

Resolved also that James A Monks be appointed assessor and collector of this Company
April 5th 1860 J A Monks secy

At a meeting of the board held April 21st 1860 Present J A Monks J C Page D D St Vrain & J H Lucas

It was resolved that R R Powell the engineer of this company having tendered his resignation that the same be accepted and that the President is authorized to employ some competant person in his place at a salary not to exceed that paid heretofore to said engineer
April 21st 1860 J A Monks secy

At a called meeting held at James Lupe's May 17th 1860 Present J A Monks D D St Vrain & J C Page the board ordered the levee along the upper line raised two feet and additional dirt to be added ~~[illegible]~~ to the work on that portion of the levee for some three miles and to carry it out ordered the president to contract with Perry Lee & Co for this extra work at the following prices "viz"

31 For all necessary removals of dirt at 15 cts per cubic yd
" " additional dirt for first 700 feet 30 " " " "
" " " " " beyond that 20 " " " "
and also instructed him to allow the contractors untill July 1st to complete all the work
May 17th 1860 J A Monks secy

Board met at office of J A Lucas 11 o'clock A.M. Monday of August 6 1860 Present James A Monks D D S Wrain Lewis Patterson & J C Page.

Moved by Mr Monks that Perry Lee and Co having failed to complete the work on the Columbia Bottom Levee contracted to be done by them in the time of the contract That the president is hereby authorized not to receive a monthly estimate for Augt or untill the entire work is completed in accordance with the terms of the contract reserving to this company any rights they may possess under said contract of forfeiture of the reserved 10% and the further privelege of with holding any money or notes that may be due to said Perry Lee & Co on the completion of the work that may be required to save the said Company from Mechanics Leins that may be set up The above resolutions passed unanamously

Mr Monks further moved

32 that the president is hereby authorized to inform Perry Lee and Co through the Engineer of the Company of the above resolution Passed unanamously

Aug 6 1860 J A Monks secy

At a called meeting of the board at Mr D D St Vrain, Aug 30/60 Present Patterson Page Monks & St Vrain. it was moved by Mr Monks that the order of the President giving the engineer the 30th inst to pay off all the ~~Hands~~ & Overseers for work done since the 14th inst and the same charged to account of Perry Lee & Co be confirmed by the board.

And the order in same document will on the proper agents of Perry Lee and Co for the Pay Roll for work done on the levee from Aug 1st to 14th of same with the view of paying all hands and overseers for all work done during this time and withholding that amount from Perry Lee and Co on final settlement or the same may be as a lien against the work (not the Company) it being within the last 30 days

Passed unanamously

Aug 3/60 J A Monks secy

33 St Louis Sept 7th 1860 At a called meeting of the board of the Columbia Bottom Levee Co held this day at the office of J H Lucas

It was ordered that the President settle with the Contractors Perry Lee and Co in accordance with the report of the Engineer and pay the balance coming to Perry Lee & Co the contractors on their orders G. C. Van Wagener for all balances coming to them on final settlement.

The claim of Perry Lee & Co for cleaning for Borrow Pits being before the Board for consideration. It was decided unanimously that said claim be rejected

Sept 7th 1860 J H Monks secy

Saint Louis Oct 5th 1860

At a called meeting held this day at the office of J H Lucas. Present Lucas Page and Monks it was unanimously ordered the "Columbia Bottom Levee Company" to meet its present liability execute its two negotiable promissory notes dated Oct 10th 1860 each for the sum of $2000.00 and due respectively in 18 and 24 months with interest at the rate of 10 per cent per annum paid annually The said notes to be made in favor of J H Lucas J C Page & J H Monks D D St Vrain & Lewis Patterson and

34 individually endorsed by the same for the greater facility of sale in order to raise money
Oct 3/60 J H Monks Secy

At a meeting of the board of the Columbia Bottom Levee Co held at the office of J H Lucas on the 2nd of March 1861 pursuant to Notice
Present Lucas Monks St Vrain and Doct Page
On Motion of Mr Lucas an assessment of two dollars per Acre is ordered for the year 1861 payable on or before the 20th March inst

The following By Laws were unanamously approved and adopted by the board of the Columbia Bottom Levee Co

1st There shall be a President whose duty shall be to preside over the meetings of the Board and who shall exercise a general superintendance over the business of the Company

2nd In the absence of the president at any meeting of the board said board may elect a President Pro-tem who shall have for the time being the same powers as the President

3rd There shall be a secretary to said Company whose duty it will be to keep a record of the proceedings of the board and do such other

35 duties are are usually required of a secretary

4th There shall be a treasurer of the Company whose duties it shall be to take care of all monies belonging to the company and pay out the same only on the order of the President or any two members of the board

5th Meetings of the board may be called by the President or any two members of the board

6th There shall be annual meetings of the Board on the first days of May & December of each year

St Louis March 2/60 J. A. Monks secy

In pursuance of public notice given by the directors of the Columbia Bottom Levee Co for an election of five directors of said Company to be held in the Office of James H Lucas in the City of St Louis on the 19th day of March 1864 which said notice was published in the Missouri Republican more than seven days prior to the said day of election There were present the following owners of land within the limits of said Company in person or by proxy: Henry Peringroth Dynas Chambers D D St Vrain Mary Patterson James Lupe James A Monks James H Lucas

36 Anna L Hunt the heirs of N H Destrehan by James C Edwards admr Whereupon James H Lucas and James C Edwards were appointed Tellers and it appearing that Twenty five hundred Acres within said limits were represented proceeded to hold an election for five directors of said Company to serve for the next two years from the first Monday of March 1864 which said election resulted to wit Henry Perringroth received 61 votes James Lupe 61 James A Monks 61 votes. James H Lucas 61 votes & Henry Carter 61 votes being all the votes cast at said election The Henry Penningroth James Lupe James A Monks James H Lucas and Henry Carter are therefore declared duly elected directors of said Company

Names of the owners of land within the limits of the Charter of the Columbia Bottom Levee Company and the number of acres owned by each also the amount of taxes levied for the year 1861 at the rate of Two Dollars ($2.00) per acre

Names of Owners

D D St Vrain
Cerrin St Vrain
D D St Vrain for heirs of Freeman De Lauerer

37 Fred Sangrain
Henry Pennington
6 Jame Lupe
7 James A Monks Apr 28/62 pd $50
Nicholas A Destrehan
" " " & others
Joseph Sapp
Goodrich Williard Co
12 Paid Lewis Patterson
John Owiens
14 James H Lucas Apr 28/62 pd $50
Chas H McMillen or Henry Benne
16 Reuben Marick
Paid Henry Knejohn
Wm Hucker
Adolph Gutz
Babcock
Abraham Lykes heirs or H G Franklin
Julia G Tiffins Est
John Crow
Henry O'Brock
Joseph A Sires Est
Deonhart
Fred Meyers
Dennis Griffin
H W Carter
Henry Eckelkamp
Thomas Brindle

38 Louis A Lebeaume

No of Hours		Amount $	cts
103.25		206	50
206.09		412	18
101.40		202	80
34.62		69	24
275.62		551	24
6 320.00		640	00
7 316.28		632	56
8 823.82		1647	64
85.71		171	42
76.00		152	00
101.50		203	00
12 101.20	March 24 1864	202	40
50.00		100	00
14 275.26		550	52
50.00		100	00
16 238.49		476	98
50.00	June 17th 1863 By cash $100.00	100	00
30.00		60	00
30.00		60	00
55.50		111	00
55.50		111	00
150.50		301	00
52.85		105	70
64.02		128	04
118.60		237	20

39

No of Acres	Amount	
30.00	60	00
30.00	60	00
20.00	40	00
107.54	215	08
26.26	52	52
27.88	55	76
115.68	231	36
4123.57	$8247	14

The witness testified that a petition was circulated among the land owners in Columbia Bottom to obtain a charter from the Legislature and that he signed it that notice was given of the passage of the act of Incorporation and when an election of Directors under it would be held and that an election was held on the 10th day of February 1860 for a Board of Directors That the number of acres of land within the limits of the Company Levee as shown by the records is 4123.57 that at the election 58 votes were cast while represented 2320 acres which is more than half the Land. that 58 votes is a majority of 104 which is the number authorized by the Legislature.

That James H Lucas James A Monks James C Page Lewis Patterson and D. D. L Wrain were elected directors at that election the the directors organized and appointed a secretary and treasurer and elected a President that they then proceeded

to make an assessment upon the owners of lands within said limits to raise the funds necessary to construct the Levee of $1.00 per acre that this assessment was afterwards amended so as to include 25¢ more making it $1.25 per acre as shown by the records that they then advertised for contracts to let out the work that the contract was let out and the work done that the Levee was constructed around the lands on the boundaries described in the Charter except that along the bank of the river the Levee was set back a little that the first assessment was collected that all the parties paid the $1.25 except two

Q By which of the owners of land within the limits of the Company's Levee was this assessment paid?

The defendant objected to this question as impertinent irrelevant immaterial and illegal but the Court overruled the objection and defendant then and there took his exception to the judgment of the Court in overruling the same

A The witness then read the names of persons who paid and among them the defendant as appeared in the records and said that defendant's assessment was $72.20 that defendant paid that amount without objection That the total amount of the assessment as shown by records was $7216.18 that this assessment was made for 1860 and was ordered in February of that year that this money collected was paid over to the contractors who built the Levee that it was not sufficient to pay them off that the agreement with them

41 was to pay half cash and to give note for the balance
That there was not money enough to pay them
half Cash that the expenses for building the Levee
came to 19 or 20 thousand dollars and that some
$13000.00 are yet unpaid
Q What further assessment than the one already mentioned
was made by said Company?
The defendant objected to the question as improper
irrelevant & immaterial and illegal
Plaintiffs attorney said that he asked the question
for the purpose of showing acts of ownership under the Charter
Defendant objected to the question for any purpose
but the Court overruled the same and he then and
there took his exception to the judgment of the Court in
overruling the objection.
A There was an assessment of $2.00 per acre made the
20th of March 1861 upon the owners of land within the
Company's Levee for the purpose of raising funds
necessary to pay for the said Levee. The Company
passed by laws at the same time.
Q What amount was paid by the defendant on that
assessment made March 20 1861?
This question objected to for same reasons the objection
was overruled by the Court and defendant took
his exceptions to each overruling.
A Nothing
Q Was demand ever made of defendant for that
assessment?

42 The same objections were made the same ruling & the same exceptions as above

A I demanded it myself He refused to pay and said he didn't think the Levee was much account

The petition was circulated by Mr Patterson & Mr Lucas for names to obtain the Charter.

Q By which of the owners of land in said Bottom was the petition for a Charter signed &c?

The defendant objected to this question as improper and illegal The Court sustained the objection and the plaintiff then and there excepted to the ruling of the Court

X Examined. Notice was given by advertisement in the Missouri Republican of Passage of Charter & that an election of Directors under it would be held. The notice had reference to the passage of the act it was published in the Missouri Republican I think so

This notice was to call a meeting after the passage of the act in order to organize. A notice was given through the same notice of an election. I don't recollect that any other notice was given of the election

Defendants atty requested Witness to refer to a list the certificate named by Citizens showing the names of owners the number of acres owned by each within the limits and the amount assessed against them & to state how many acres the following persons owned taking that list as the basis which he did as follows

James H Lucas at the time of the election owned 275-26/ acres

43 Nicholas Destrehan owned 823 82/100 acres
I owned together with Mr Lupe 636 28/100 acres
I had 283 28/100 and Mr Lupe 353 acres
I think J C Page and Henry Pennington together owned 275 62/100 acres
Lewis Patterson owned 101 20/100 acres
Reuven Musick owned 238 49/100 acres
This list of land in the record book was taken from Cozzens Survey. Each land owner who voted at that election was allowed one vote for every 40 acres of land owned by him.
Mr Lucas cast 7 votes according to the record of the election. That Mr Lucas was entitled to only 6 votes
Nicholas Destrehan cast 21 votes He was entitled to cast 20 votes
Mr Lupe and myself cast 16 votes we were entitled to cast 15 votes
In the record of the election the parties named were credited with more land than they owned I think that the survey had not been completed at that time
If I had only 98 28/100 acres and Mr Lupe 353 we were entitled to only 11 votes
Mr Page cast 7 votes If he had only 31 54/100 acres he was not entitled to any votes
The aggregate number of votes as above would be only 46 votes
If Mr Cozzens survey is correct then the land

44 represented at the election was entitled to only 49 votes.

The plaintiffs objected to the above calculation as to the number of votes certain owners were entitled to cast at the election of Directors Feby 10th 1866 because said calculation was based upon a certificate of survey of only the No of acres owned by persons within the levee whilst the Charter gave the right of one vote for every 40 acres owned within the limits described in the Charter whether inside or out of the levee & moreover because the survey was made April 10th two months after the election & only purported to give the owners at the time of the survey and because it being admitted by all parties that all the votes that were cast at the election were cast for the Directors elected no other person receiving a vote an error in the Number of votes cast would make no change as to the persons elected and therefore such evidence was immaterial irrelevant incompetent & improper which objection was sustained by the Court.

The defendant here offered to prove that less than one half of the land contained in the boundaries as defined in the petition & in the acts of the Legislature was all that was represented at that election.

This was objected to by the plaintiff

45 as being irrelevant insufficient illegal & improper and the objection was sustained by the Court to which the defendant took his exception then and there Plaintiffs then offered to read from the Book containing the record of the proceedings of said Company (proved to be such by witness Monks) for the purpose of proving the organization of said Company's election of its Board of Directors & other officers passage of By-laws the making of the assessments July 25/60 & March 20/61 & other acts done under the Charter Defendant objected for the following reasons (see 2nd page of this Bill) Objection overruled which Defendant duly excepted and the following portions of said record were considered as read in evidence & afterwards were read by plaintiffs to the Jury.

witness Jos H Lucas

James H Lucas was then sworn for plaintiff & testified as follows. I am acquainted with lands to a considerable extent in the Columbia Bottom the upper part of the Levee is built on my land The Bottom is low land It is subject to overflow so much so that though we have owned it more than 50 years I never paid much attention to it the whole Bottom overflows around the Bluff and some other parts to a depth of 8 or 9 feet Over the whole bottom it would average 3 or 4 feet The Company built a Levee on upper

46 part of my land commencing at the Bluffs making it there very high because the bottom is lower than the Bluffs than near the river and in consequence of the high bank of the river the levee grows higher as you approach the river the Levee is very low near the bluff the levee is higher as the river extends down the river 4 or 5 mile was a complete levee & swept the whole way to the bluffs below as the bank and bottom become depressed the levee increases in height I have lived in levee country and know something about levees It was a good levee and in my judgment competent In one place it has fallen in towards opening The ground was cleared of stumps and other impediments before the levee was constructed. If stumps are left in the levee they injure it In my judgment the levee was what was necessary under the circumstances to protect the lands from overflow It was a fair structure made on scientific principles Mr Bozzens was employed as engineer to construct the levee I consider him as a man of large experience as an engineer About his experience with levees I do not know so much In my opinion the lands would overflow without the levee the water sometimes comes up within the levee in stump Holes It may come up within this levee I looked upon the levee as being in a great

47 measure able to protect the lands from overflow and to increase the value of the land I have seen a great deal of levees & my means of knowledge are founded on a long residence in a level country on the Mississippi & in other — cases and in Southern Country they are constant subject of conversation & in my opinion this work will protect & redrain the lands within it from overflow in the same way as similar works do in the lower country this levee is built with the same kind of — as those The Levee cost some $20000, or nearly all of the amount of the first assessment was collected

x examined sometimes the entire bottom is overflowed I never was there when it was overflowed but I judge of the height of the water by the marks on the trees. The part of the levee that is gone is of considerable length It is perhaps a half mile the banks are constantly wearing away by action of the water in the river the probabilities are that the levee may be partially washed away every year there has never occurred a high overflow since the construction of the levee I cannot say whether the levee would stand an overflow like that of 1844 the levee will not prevent the water from percolating through the sand and coming up inside the levee I have not a doubt a levee can be constructed so as to protect the land I have

4 8 seen a stationary engine used to protect Cotton lands The cleared lands within the Company's levee are worth $100.00 uncleared land is worth I suppose $40.00 A tax of $2.00 per acre would be unwilling to pay for more than two or three years To erect a stationary engine would cost considerable Our Calculation was in the first estimate that it would cost $5.50 per acre to construct the levee from the begining this included the construction of the levee only sufficient to protect the land. We constructed the levee with a view of withstanding the highest floods such as those of 1874 The soil in the Bottom along the Arkansas Mississippi & Missouri rivers are much alike not much difference The levee where I lived down south were constructed in a sandy soil similar to that in Columbia Bottom I have not a doubt about the ability of a levee being constructed in said Bottom in such a way as to protect the lands from overflow. The effect of building the levee was to greatly increase the value of the lands If protected from overflow those lands will average from 70 to 100 Bushels of corn to the Acre

Witness James Lape

James Lape on part of plaintiff.

I should think that levee was sufficient to protect the lands I should think that it would be better adapted to protect those lands the the levees in the lower Country as the water here does not stay up long I am not capable of saying

49 anything about how levees should be constructed

The plaintiff here closed his case.

Witness J.R. Ferguson

The defendant called John R. Ferguson who testified as follows In 1859 & 60 I followed building public works sometimes as a contractor and sometimes as an overseer of public works I know about the construction of the Levee in the Columbia Bottom. I worked as superintendent of its building a little work had been done when I went there I remained until it was finished I have no other knowledge of high water in the bottom than the high water marks these marks were from 20 inches to 2 feet higher than the levee was built for the Company My opinion at the time was that the levee would be of no use For I did not consider that it was constructed on right principals From the nature of the soil it could not prevent overflow and it was not high enough the Levee was principally composed of sand a part of it was carted from the hill the land or bottom was quick sand or sand washed out of the river Where we excavated this sand was from two to six feet deep that sand in my opinion and I have seen it will let water through it a bank of quick sand will not hold water the quick sand was used in the construction of the levee. The defendant here offered to continue this sort of evidence to show the

incapacity of the levee now constructed to answer the end for which it was constructed and that there cannot from the nature of the soil and the force of the river current constantly washing away the banks be constructed levees embankments or ditches that will protect the lands from overflow and high risings of the river. The plaintiffs objected for the reason that such evidence if true would constitute no defense to his action & was irrelevant immaterial & illegal and the Court sustained the objection on the ground that proof of the mere inadequacy or insufficiency or incapability of the levee can form no defense that it must be shown by the defendant that the Company had departed entirely from the intention of the Legislature as expressed in the acts of incorporation as if they had constructed a pyramid or some other work totally foreign to the purpose and use of a levee
The defendant then and there excepted to this ruling of the Court and closed his case
The plaintiff then asked the following instructions which were given by the Court

"Plaintiffs Instructions"

Plaintiffs Instructions No 1 Given

The Jury are instructed that the acts incorporating plaintiffs are constitutional

57

No 2 Given — The Jury are instructed that the acts incorporating plaintiffs do not require the assent of Defendant to make him liable for assessments authorized made by said Acts of Incorporation.

No 3 Given — The Jury are instructed that Acts of Assembly the Charter of plaintiffs and the acts amending thereof read in evidence by the plaintiff if proved by the Records of said Company kept by their Secretary are evidence tending to show the organization & existence of the plaintiffs Corporation.

No 4 Given — The Jury are instructed that the production of the acts Incorporating a Company & of the Books containing a record of the proceedings of said Company kept by its Secretary showing the election of officers authorized by the Charter the passage of By laws & the exercise of the powers & privileges granted by the Charter establish prima facie the existence & due organization of the Company

No 5th Given — To the granting of these instructions the defendant then and there excepted

The defendant asked the following instructions which were refused by the Court.

52

Defendants Instructions No 1 Refused

Before the plaintiff can impose or enforce any obligation under the Charter it must appear to the satisfaction of the jury from the evidence in the case that the said Charter was asked for from the Legislature by a majority of the persons owning land within the limits defined in said Charter or that the said persons in a meeting for the purpose of which they all had personal notice both as to time and place by a majority accepted and ratified the same.

No 2 Refused

Unless the jury believe from the evidence that the defendant joined in a petition to the Legislature praying for the passage of the act of incorporation approved March 8 1859 or that he afterwards accepted the same by a voluntary expression of ratification he did not become a member of said Company under said Charter and the amendatory act approved 14 January 1860 or any proceedings there under by the Board of Directors cannot impose any obligation upon him and you must therefore find for the defendant.

No 3 Refused

If the jury shall find from the evidence that the defendant became a member of the Company by accepting the Charter as contained in the act of the Legislature approved 8 March 1859 the plaintiff cannot yet recover unless you are satisfied from the evidence

53 in the case that the last act approved 14 January 1860 was accepted by the members of the said Company and that the defendant as a member thereof expressly ratified the same.

No 4 Refused Unless the jury believe from the evidence in the case that the land owners within the limits mentioned in the petition accepted the amendments of the Charter contained in the act approved 14 January 1860 and ratified the same by their votes in a meeting of said land owners regularly and legally called for that purpose the election of the present Board of Directors as shown by the records of the Company under said amendment and the acts of said Board are void and the payment of an former assessment imposed by said Board does not raise any implied assent on the part of those paying the same to the proceedings of the said Board and you must find for the defendant

No 5. Refused If the jury shall believe from the evidence in the case that the amendatory act approved 14 January 1860 was accepted and ratified by a vote of a majority of the land owners within the limits mentioned in the petition they cannot ever find for the plaintiff unless they believe further from the evidence that the defendant as a member of the Company voted for the acceptance and ratification of the same

54 No land owner of land within the limits described
No 6 in the Charter can be made a member of said Company
Refused without his voluntary consent. and in that case he cannot be assessed against his will unless he has a voice and can be heard in said Company in those matters which require a vote of the members thereof

No 7 If the jury believe from the evidence that the works
Do mentioned in the Charter to be constructed by plaintiff for the purpose of protecting the lands named in the said Charter from overflow and for the purpose of increasing the value thereof if completed as required would not produce those results then the said Charter is inoperative and the acts of said Board are nugatory and it cannot impose or enforce any obligations

No 8 The Jury are instructed that the plaintiff is permitted to pass
Do acts of use under the Charter for the sole purpose of enabling the plaintiff to establish a corporate existence under the said Charter and is in no way intended to imply any assent on the part of the defendant to the said Acts of use or to impart any obligation under the same

No 9 If the Jury believe from the evidence in the case that the
Do defendant's land is not and cannot be benefitted by the construction of levees embankments ditches &c as proposed in the Charter then they must find for the defendants

55 The jury are instructed that under the evidence in
No 10 the case the plaintiff cannot recover.
Do

To the Judgment of the Court in refusing these instructions the Defendant then and there excepted

The Jury found for the plaintiff in the sum of
Judgment One Hundred and Sixty dollars principal and
Verdict Eighteen dollars interest making in all the sum of One hundred & Seventy Eight dollars

A Borkling
foreman

The Columbia Bottom Levee Company } Law Court Court
Fred Meyer } Plaintiff enters a Remittance of One hundred & fifteen 30/100 Dollars verdict in above entitled cause

Flournoy atty
for Plaintiff

The defendant filed his motion for a new trial as follows

Motion for a New trial The Columbia Bottom Levee Company } In the Law Commissioners Court. St Louis County June Term 1863
Frederick Meyer } Now at this day comes the defendant by his attorney and

56 moves the Court to set aside the verdict in the above entitled cause and to grant him a new trial for that the Court committed errors as follows to wit

1 The Court admitted improper and illegal evidence in the part of the plaintiff

2 The Court refused proper and legal evidence offered by the defendant

3 The Court ~~refused~~ granted improper and illegal instructions to the plaintiff

4 The Court refused proper and legal instructions asked by the defendant.

5 The verdict is against the law in the case

R. S. Voorhis
Att'y for Defendant

Motion for New trial overruled

afterwards to wit on the day of the said motion came on to be heard and being submitted to the Court the same was overruled and the defendant then & there took his exception to the judgment of the Court in overruling said motion

Columbia Bottom Levee Company
vs
Frederick Meier Defendant

In the Law Commissioners Court
St Louis County No 141
October Term A.D. 1863

57 Be it remembered that the defendant duly filed his demurrer in the above entitled cause to the petition therein (Demurrer hertofore inserted)
That the said demurrer was submitted to said Court on the 5 day of October A.D. 1863 for decision
That on the 3 day of November 1863 the said Court having considered the same it was overruled
To which decision of said Court in overruling the said demurrer the defendant then & there excepted

In order that this Bill of exceptions may be made part of the record in the said cause the defendant prays the Court to sign the same and it is accordingly done

R. E. Rombauer Judge

I consent that the within Bill of Exceptions be signed by the judge of this Court & filed in said cause

Flournoy atty for Plff

This was all the case and in order that this Bill of Exceptions may be made a part of record in this cause prays that the same may be signed and sealed as required by law and the same is accordingly done

R. E. Rombauer
Judge

58 I hereby waive all exceptions as to the foregoing Bill of Exceptions not having been signed before the end of the February term & consent that it may be signed and sealed by the Court at any time within thirty days St Louis April 4/64

John F Lowry atty for Plaintiff

State of Missouri } I. W C Huffman Clerk of
County of St Louis } the Law Commissioners Court within and for St Louis County hereby certify the foregoing to be a full true and Correct Transcript of the Record pleadings and proceedings in the Case of the Columbia Bottom Levee Company against Frederick Meyer as fully as the same remain on file and of record in my office

In testimony whereof I hereto subscribe my name and affix the seal of said Court at office this 16th day of May 1864

W C Huffman
Clerk

59

Index

		Page
	Petition	1
	Summons	4
	Security for Costs for Lupe	4
	Marshals Return	5
Motion for	Motion for Security for Costs	5
security for	Defendants Answer	5
	Demurrer	9
	" Overruled	10
	Amended Answer	11
	Bill of Exceptions	16
	Witness Wm H. Gozzins	20
	Witness Jno A Monks	21
	Record Entries	21
	Witness James H Lucas	45
	Witness James Lupe	48
	Witness J R Ferguson	49
	Plaintiffs Instructions	50
	Defendants Instructions	52
	Verdict	55
	Motion for New Trial	55
	Motion for New Trial overruled	56
	Index	57
	Appeal Bond	60

60

Appeal Bond

Know All Men by these Presents that we Frederick Weier as principal and Henrich Obrecht & Herman Benne as sureties are held and firmly bound unto the Columbia Bottom Levee Company in the sum of One hundred & fifty Dollars for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly & severally by these presents sealed with our seals and dated at St Louis this 20th day of April A D 1882. The condition of the above obligation is such that whereas Frederick Weier has appealed from the judgment rendered against him and in favor of the Columbia Bottom Levee Company in the Law Commissioners Court of St Louis County for the sum of Sixty two Dollars and 70 cents together with costs now if the said appellant will pay all costs and damages that may be awarded against him occasioned by such appeal and shall prosecute his appeal and shall perform such judgment as shall be given by the Supreme Court and such as the Supreme Court may direct the Law Commissioners Court of St Louis having to give and if the judgment or any part thereof be affirmed he will comply with and perform the same so far as it may be affirmed and will pay all costs & damages which may be awarded against him by the Supreme Court then this obligation to be void otherwise to remain in full force and effect

61

Fred Meier {seal}
Heinrich Obrock {seal}
Herman Benne {seal}

Law Commissioners Court of St Louis County
April Term 1864 April 30th 1864

This day appeared Frederick Meier the principal and Heinrich Obrock & Herman Benne the securities in the foregoing bond and acknowledged to have executed the same for the purpose therein expressed

In Witness of Which I hereunto set my hand and affix the seal of said Court at office in St Louis County this day and year last aforesaid

Seal

W C Huffman clk

Columbia Bottom Levee Company
vs
Frederick Meier
} In the Law Commissioners Court St Louis County

State of Missouri
County of St Louis } ss Frederick Meier defendant herein being duly sworn on his oath says that the appeal in said cause is not made by him for vexation or delay but because the affiant believes that he is aggrieved by the judgment or decision of the Court

Fred Meier

Subscribed & sworn to before me this 4 day of April 1864.

W. C. Huffman clk

(2) 49
October Term 1866

Law Com'rs Court

Columbia Bottom
Levee Company
Res
vs. } Transcript

Frederick Meier App

Filed Oct 1. 1864
A W Mead
Cl

Appeal to Supreme Court

R. S. Voorhies for appellt
Flournoy " Respt

$18.50 pd by appellt
$10 paid by appellr

1864 April 16 Asst. of Error filed
" May 16 Contd. by Consent.
" Nov 3 Stmt & Br of Res filed
" " 19 Affirmed with ten per cent damages

Columbia Bottom Levee Company, Respondent v Fredrick Meier, Appellant	In the Supreme Court March Term 1866.

And now comes the said appellant and says, that in the record and proceedings of the Court below, in the above entitled cause, there is manifest error, and for error said appellant assigns the following, to wit:

1. The said Court admitted improper and illegal testimony offered by the respondent.

2. The said Court rejected proper and legal testimony offered by the appellant.

3. That the Court gave to the Jury improper and illegal instructions.

4. That the Court refused to give to the Jury proper and legal instructions offered by the appellant.

5. The verdict was against law.

6. The judgment was rendered in favor of the respondent when it should have been rendered for the Appellant.

7. The Court overruled the motion for a new trial made by appellant.

Wm. L. Mason
Atty for Appellant.

Plff joins in error & says there is no error in said Record

Glover & Shepley
for Plff

125

Columbia Bottom Levee Company, Respondent

v

Frederick Meier, Appellant

Assignment of Errors

Wm J. Mason
atty for Appellant

Filed April 16/66
O. D. Field Clk
C C R

The Columbia Bottom Levee Company
vs.
F. Meier.

In the Supreme Court.

Statement for Pltff respondent

The case was brought by plaintiff to recover from defendant an assessment laid upon him as one of the Company to be assessed of certain land within the Columbia Bottom. The company was chartered by the General assembly of this State on the 8th March 1859. (See acts of 1859 page 284.) and its charter was amended by act approved Jany 14. 1860. (See acts of 1859-60 page 214)

The Board of Directors of the Company was elected the 10th of July 1860 and on the 21st of July 1860 they made an assessment on all the property owners of land within the limits mentioned in the charter of $1 75/100 per acre for that year for the purpose of constructing the levee: this assessment the defendant paid. On the 2d day of March 1861 the Board of Directors made another assessment of $2 70/100 per acre on the said land owners. This assessment the defen

dant refused to pay and this suit was brought to enforce it

At the trial the plaintiff introduced evidence of the organization of the Company, of the election of the Board of Directors; of the laying an assessment which the defendant paid, on him and afterwards the further assessment of $200 per acre, on him which he did not pay: That they had expended about $20,000 in constructing the levee enclosing defendant's lands with others

The defendant introduced evidence tending to prove that the Board of Directors had not received the requisite number of votes required to elect them by the charter and offered evidence tending to show that the persons residing in the limits of tracts of land proposed to be surrounded by a levee had been induced to apply for a charter by fraudulent representation and that the levee was so poorly constructed as to be of no benefit to the lands, but the Court rejected the testimony to offered as irrelevant & incompetent. and also struck out of the answer of defendants allega

tions setting up those matters as a defence.

The court thereupon gave & refused the following instructions asked for plff & defendant

Plaintiffs Instructions.

No 1 Given — The Jury are instructed that the Acts incorporating plaintiffs are constitutional

No 2 Given. — The jury are instructed that the Acts incorporating plaintiffs do not require the assent of Defendant to make him liable for assessments authorized made by such Acts of incorporation

No 3 Given — The jury are instructed that Acts of Assr under the Charter of plaintiffs and the Act amendatory thereof read in evidence by the plaintiffs if proved by the records of said Company, kept by their Secretary, are evidence tending to show the organization and existence of the plaintiffs Corporation

No 4 Given — The Jury are instructed that the production of the Acts incorporating a Company & of the Books containing a record of the proceedings of said Company kept by its Secretary, showing the election of Officers authorized by the Charter

the passage of By Laws & the exercise of the powers & privileges granted by the charter establish prima facie the existence & due organization of the Company

To the granting of these instructions the defendant then and there excepted.

The defendant asked the following instructions which were refused by the court

Defendant's Instructions

No 1. Refused. Before the plaintiff can impose or enforce any obligation under the charter it must appear to the satisfaction of the Jury, from the evidence in the case that the said charter was asked for from the Legislature by a majority of the persons owning land within the limits defined in said charter or that the said persons in a meeting for the purpose of which they all had personal notice both as to time and place, by a majority accepted and ratified the same.

No 2. Refused Unless the Jury believe from the evidence that the defendant joined in a petition to the Legislature and praying for the pas-

passage of the Act of Incorporation approved March 8, 1859 or that he afterwards accepted the same by a voluntary expression of ratification, he did not become a member of said Company, under said Charter and the amendatory Act approved 14 January, 1860 or any proceeding thereunder by the Board of Directors cannot impose any obligation upon him and you must therefore find for the defendant.

No 3. Refused. If the Jury shall find from the evidence that the defendant became a member of the Company by accepting the Charter as contained in the Act of the Legislature approved March 8 1859 the plaintiff cannot yet recover unless you are satisfied from the evidence in the case that the last Act approved 14 January 1860 was accepted by the members of the said Company and that the defendant as a member thereof expressly ratified the same.

No 4. Refused. Unless the Jury believe from the evidence in the case that the land owners within the limits mentioned in the petition accepted the amendments of — of the Charter contained in the Act approved 14th. January, 1860 and ratified the same by their votes in a meeting of said land owners regularly and legally called for that purpose the election of the present Board of Directors as shown by the records of the

company under said amendment and the acts of said Board are void and the payment of any former assessment imposed by said Board does not ~~show~~ raise any implied assent on the part of those paying the same to the proceedings of the said Board and you must find for the Defendant.

No 5. Refused.

If the Jury shall believe from the evidence in the case that the emendatory act approved 14 January 1860 was accepted and ratified by a vote of a majority of the land owners within the limits mentioned in the petitions they cannot yet find for the plaintiff unless they are satisfied further from the evidence that the Defendant as a member of the company voted for the acceptance and ratification of the same.

No 6. Refused.

No land owner of land within the limits described in the Charter can be made a member of said Company without his voluntary consent and in that case he cannot be assessed against his will unless he has a voice and can be heard in said Company in the matters which require a vote of the members thereof.

No 7 Refused.

If the Jury believe from the evidence that the works mentioned in the charter to be constructed by plaintiff for the purpose of protecting the lands

named in the said charter from overflow and for the purpose of increasing the value thereof if completed as required would not produce these results then the said charter is inoperative and the acts of said Board are nugatory, and it cannot impose or enforce any obligations

No 8. Refused. The Jury are instructed that the plaintiff is permitted to prove the acts of use under the charter for the sole purpose of enabling the plaintiff to establish a corporate existence under the charter and is in no way intended to imply any assent on the part of the defendant to the said acts of use or to impose any obligation under the same.

No 9. Refused. If the Jury believe from the evidence in the case that the defendant's land is not and cannot be benefitted by the construction of levees, embankments, ditches &c as proposed in the charter then they must find for the defendant.

No 10. Refused The Jury are instructed that under the evidence in the case the plaintiff cannot recover.

Brief for Pltff.

There are three questions presented for the consideration of the Court upon this record

First Is the act constitutional as applying to him as one of the owners of the soil within the limits proposed to be protected by the construction of the levee authorized to be constructed by the act & the amendment thereto

Second Was the defendant becomes by any act of his a member of the corporation created by those acts

Third Is the assessment sued for legally made by competent authority

We submit

First That the Legislature has the power to select any portion of the land within the state & erect a corporation which shall have the power within the prescribed limits to do whatever the Legislature may consider necessary for the physical well being of those living within or owning land in the

district and to permit that corporation to assess the cost of such acts upon the property of the persons benefited.

This the Legislature does whenever it incorporates a town or city, the power exercised is the same when the Legislature incorporates the owners of land in the Columbia Bottom into a company for the purpose of constructing a Levee deemed necessary by the Legislature for the physical well being of the owners of property there, as when it incorporates the inhabitants of a certain portion of St Louis County into a city and gives the corporation thus formed the right to tax the real estate within the limits of the city for the purpose of making constructing or maintaining the levee there —

The instance that is in every respect similar to the present is when the Legislature incorporate the inhabitants of a school district & give them authority to levy a tax upon the property in the district for the support of schools therein. This power has been exercised without objection for almost from the time of the formation of the State government

VII. But even if this were not so yet the defendant by his acts has accepted the charter & its amendment & become a member of the corporation by paying the first assessment made upon him by the company

Even if it is required that in order to make a valid assessment on the property of defendant, he must in some manner become a member of the corporation and accept the charter. he has done so by having voluntarily paid the first call made upon him of $1 $\frac{25}{100}$ per acre on the land owned by him —

This was directly decided in the case of the Ohio & Miss Rail Road Co v McPherson 35. Mo R at page 26. where the Court decided that by paying

an call "the appellants position towards "the respondent is such as ought to preclude "him from denying its corporate existence"

III. It is immaterial whether or not the Board of Directors laying the assessment sued for was elected in accordance with the provisions of the charter as it is proved that they were Directors de facto

Ohio & Miss RR Co vs McPherson 35. Ind R at page 28.

IV The evidence offered on the part of the defendant that fraud & misrepresentation had been used in procuring the charter and that the levee was not properly constructed was rightly rejected

The evidence as to the means used in procuring the charter was inadmissible in any point of view, but rather absurd as set up by a man who without objection had paid a call made upon him.
As to the construction of the levee. it is not necessary to waste words upon that

Glover & Shepley
for respondents

No 77

Supreme Court

The Columbia Bottom Levee Company

vs

Meier

Statement & Brief for Respondents

Glover & Shepley

Filed Nov 3d 1866

O. T. Fishback Clk

Per E. McCarty

The Columbia Bottom Levee Company
v
Fredrick Meier

In the Supreme Court.

Statement by Defendant, Appellant.

This suit was brought by the plaintiff to recover an assessment made upon the defendant _____ _____ as owner of certain land within certain limits prescribed in the charter of plaintiff.

The company was chartered by the General Assembly of this state 8 March 1859. (Acts of 1859 page 284); and the charter was amended by an act approved 14 January 1860. (Acts of 1859-60 page 214).

A call was made by advertisement in the St Louis Republican for an election for a Board of Directors to be held at the Court House in St Louis on the 10 day of February 1860. The minutes of the Company's records show that an election was accordingly held.

At a meeting of the Board, as appears from the minutes of the Record, a Resolution was passed imposing an assessment, ~~[illegible]~~, of $1.50 per acre _____ and made payable by the 20th of March.

On the 25 February it was Resolved by the Board that for the first year the assessment be $1.75 per acre, instead of $1.50. The assessment was made for

the purpose of the Construction of a Levee.

This assessment was paid by defendant on 30 Acres, being $52 50.

On the 2 day of March 1861 another assessment was imposed of $2 00 per acre for that year, payable on or before the 20 March Inst.

This assessment the defendant refused to pay, and this suit was brought to enforce the payment.

The defendant in his answer alleged that the works Constructed were inadequate for the purpose of their Construction, and had Caused a depreciation of the land;

That the acts of the General Assembly were obtained by fraud;

That the said acts were passed by the General Assembly without the knowledge or Consent of defendant.

The Court struck out those portions of the answer, which is indicated in the transcript.

The defendant offered to prove the incapacity of the Levee then Constructed: the impossibility to Construct works, as proposed, to prevent over flow.

The Court ruled that — such evidence was inadmissible and Could Constitute no defence; that it must be shown by the defendant that the Company had departed entirely from the intention of the Legislature as expressed in the acts of incorporation; as if they had Constructed a pyramid or some other work totally foreign to the proposed end of a levee

The preamble of the first act is as follows—
"Whereas, It is represented to the General Assembly
"that the building of a levee on the Missouri and
"Mississippi fronts of the Columbia Bottom, in
"Pettis County, is necessary to protect the lands
"therein from the overflow of said rivers, and would
"greatly increase the value thereof: and the residents
"and owners of lands in said Bottom, having
"presented a petition, asking for the passage of an
"act to that end: therefore"—

The preamble of the second act reads as follows—
"Whereas, It is represented that the act of which this
"is amendatory is in many respects defective, and
"the amount therein allowed to be collected for
"the purpose of reclaiming certain overflowed lands
"therein described is totally inadequate for that
"purpose; therefore"—

At the trial the plaintiff offered to introduce the records of the Company to show acts of user under the Charter and organization of the Company.

The defendant objected to the records of the Company as evidence in the case for any purpose, on the ground that there was no evidence to show that the Charter had been accepted by a majority of the land owners within the limits prescribed by the Charter: that there was no evidence that defendant was a member of the Company, so that the records cannot be evidence against him and can in no way bind him.

The plaintiff, in the examination of the witness Monks, called by plaintiff asked the following question-

Q "By which of the owners of land within the limits of the Company's Levee was this assessment paid?"

It was objected to by defendant but the objection was overruled by the Court-

The following questions were also asked witness, to which defendant ~~[illegible]~~ objected. but his objections were overruled-

Q "What other assessment than the one already mentioned was made by said Company"

Q "What amount was paid by the defendant on that (second) assessment made March 20. 1861?"

Q "Was demand made of defendant for that assessment?"

The Records of the Company show that James H Lucas at the election for organization, cast 7 votes, but was only entitled to 6 as the record shows and as the witness testified

That Nicholas Destrehan cast 21 votes but was entitled to only 20.

Witness an Lafse cast 16 when they were, together entitled to only 15.

He also stated that if he had only 78.$\frac{28}{100}$ acres and Mr Lafse 353 they were entitled to only 11 votes.

That Mr Page cast 7 votes. If he had only 31$\frac{54}{100}$ acres he was not entitled to any votes.

That the aggregate number of votes as above would be only 46 votes.

that if Mr Cozens survey is correct then the land represented at the election was entitled to only 47 votes.

Wm H. Cozens ~~—~~ a witness of plaintiffs produced a certificate of survey which was in possession of the Company, which he said was correct. The Clerk of the Law Commissioner's Court says in transcript that no such paper was on file in his office. The paper was introduced by plaintiffs and was part of the evidence. It was not included in transcript, because plaintiff retained/

The plaintiff then interposed an objection to effect, that the calculation made by witness, at the instance of defendant's counsel, was based upon the quantity of land owned by persons within the limits of the Levee, when the Charter gave more extended limits and owners were entitled to vote according to the more extended limit; that Cozen's survey included only the limits of the land enclosed by the Levee works.

The Court sustained the objection.

The defendant then offered to prove that less than one half of the land contained in the boundaries as defined in the petition and in the acts of the Legislature was all that was represented at that election.

The plaintiff objected to the introduction of such proof, and the objection was sustained by the Court.

The plaintiff offered to read from the Records

aforesaid, the proceedings of the Company for the purpose of proving the organization of the same: the election of a Board of Directors & other officers, passage of the by-laws, making of assessments & other acts of user under the charter. Defendant objected, as is stated at the bottom of the 3 page of this statement. The objection was overruled.

The Court gave and refused the following instructions asked by the plaintiff and defendant,—

Plaintiffs Instructions

No 1 Given — The Jury are instructed that the acts incorporating plaintiffs are constitutional.

No 2 Given — The Jury are instructed that the acts incorporating plaintiffs do not require the assent of defendant to make him liable for assessments authorized made by such acts of incorporation.

No 3 Given — The Jury are instructed that acts of user under the ~~Statute~~ Charter of plaintiffs and the act amendatory thereof read in evidence by the plaintiff, if proved by the records of said Company, kept by their Secretary, are evidence tending to show the organization and Existence of the plaintiffs Corporation.

No 4 Given — The jury are instructed that the production of the acts incorporating a Company & of the Books containing a record of the proceedings of said Company kept by its Secretary, showing the election of officers authorized by the Charter, the passage of by-laws and the Exercise of powers & privileges granted by the Charter, establish <u>prima facie</u> the

existence and due organization of the ~~said~~ Company.

To the granting of these Instructions then and there Excepted.

The Defendant asked the following Instructions which were refused by the Court.

Defendants Instructions

No 1 Refused

Before the plaintiff can impose or enforce any obligation under the Charter, it must appear to the satisfaction of the Jury from the evidence in the Case, that the said Charter was asked for from the Legislature by a majority of the persons owning land within the limits defined in said Charter, or that said persons in a meeting for the purpose of which they all had personal notice both as to time and place, by a majority, accepted and satified the same.

No 2 Refused

Unless the Jury believe from the evidence that the defendant joined in a petition to the Legislature and praying for the passage of the Act of

Incorporation, approved March 8. 1859 or that he afterwards accepted the same, by a voluntary expression of satisfaction, he did not become a member of said Company under said Charter. and the Amendatory Act, approved 14 January 1860, or any proceeding thereunder by the Board of Directors, can entail any obligation upon him and you must therefore find for the Defendants

No 3 Refused.

If the Jury shall find from the evidence that the Defendant became a member of the Company by accepting the Charter as contained in the Act of the Legislature approved March 8. 1859 the plaintiff cannot get more, unless you are satisfied from the evidence in the case that the last Act approved 14. January 1860, was accepted by the Members of the said Company and that the Defendant as a member thereof expressly ratified the same.

No 4 Refused

Unless the Jury believe from the evidence in the case that the landowners within the limits mentioned in the petition, accepted the amendments of the Charter contained in the Act approved 14th

January 1860, and ratified the same by their Votes in a meeting of said Land Owners regularly and legally called for that purpose, the election of the present Board of Directors as shown by the Records of the Company under said Amendment and the acts of said Board are void and the payment of any former assessment imposed by said Board does not raise any implied assent on the part of those paying the same to the proceedings of the said Board, and you must find for the Defendant.

No 5 Refused

If the Jury shall believe from the evidence in the case that the Amendatory act approved 14 January 1860, was accepted and ratified by a vote of the majority of the land owners within the limits mentioned in the petition, they can not yet find for the plaintiff, unless they are satisfied further from the evidence that the defend as a member of the Company voted for the acceptance and ratification of the same.

No 6 Refused.

No land owner of the land within the limits described in the Charter can be made a member of said Company

without his voluntary consent, and in that case he ~~must~~ cannot be assessed against his will unless he has a voice and can be heard in said Company in the matters which require a vote of the members thereof.

No. 7 Refused.

If the Jury believe from the evidence that the works mentioned in the Charter to be constructed by plaintiff for the purpose of protecting the lands named in the said Charter from overflow and for the purpose of increasing the value thereof if completed as required, would not produce these results, then the said Charter is inoperative, and the acts of said Board void and nugatory and it cannot impose or enforce any obligations.

No. 8 Refused.

The Jury are instructed that the Plaintiff is permitted to pass Acts of use under the Charter for the sole purpose of enabling the plaintiff to establish a Corporate existence under the Charter, and is in no way intended to imply any assent on the part of the defendant to the said Acts of use or to impose any obligation under the same.

No 9
Refused.

If the Jury believe from the evidence in the case that the Defendants land is not and cannot be benefited by the construction of levees, embankments, ditches &c, as proposed in the charter, then they must find for the defendant.

No 10
Refused.

The Jury are instructed that under the evidence in the case, the Plaintiff can not recover.

Brief for Defendant.

I The Court below improperly struck out of the answer, the portions setting up the failure and inadequacy of the works proposed under the charter.

The Preamble of the first act reveals the objects of the charter, 1st: to protect the lands defined from overflow, and to increase their value.

The Preamble of the second act develops the same purposes. The bodies of the acts also reveal these ends and purposes: the proceedings of this case develop the same things.

The Court improperly rejected evidence offered by the defendant to prove the impracticability and inadequacy of the levee.

These acts constitute a contract between the adventurers constituting the company and the public, or the parties proposed to be benefited, 1st: the land owners.

Stourbridge Canal Co. v Wheeley. 2 Barn & Adol 793

The Kingston-upon-Hull Dock Co v La Marche - 27 Miss. 517. 4 Peters 152. - 8 Barnewall & Cresswell 57.

The acts being a contract, such contract must necessarily be subject to the incidents of a contract in relation to the subject matter and the consideration, just as an ordinary contract.

It must necessarily follow that if the intention of the Legislature cannot be carried out, or, in other words, is a failure, the contract is a nullity and cannot be enforced against the defendant.

And the necessary sequence is that there is a failure of Consideration.

The intention of the Legislature was to enable parties to protect their lands from over-flow and to enhance the value of the lands. If on the Contrary such intention is impossible to be carried out, it is absurd to suppose that the Legislature further intended that the Company should still exercise the power of Collecting a Tax of $2.00 per acre per annum upon lands constantly depreciating under the exercise of that very power which was given for the very Contrary purpose.

The levee was confessedly designed to protect against periodical high water. The defendant Could have shown that no such high water has occurred since the Construction of the levee, and yet that a large portion of the same has been Carried away by ordinary stages of the river: that from the nature of the location, and said no such works as contemplated in the act of the Legislature, would be of any advantage for the purposes proposed. He other words that such protection is utterly impossible. He could have shown that, in consequence of the organization of the Company and its endeavoring to enforce its power of assessment, the lands have depreciated in value. And it is easily seen that it would require but a very few years to make the land an absolute burden to the defendant, and must eventually drive him to abandon it for protection.

Surely the Legislature never contemplated any such disastrous consequences, for such legislation would be clearly against public policy, unjust and void. But such consequences must inevitably follow under the power granted to the Company if enforced.

If the defendant's land becomes a burden instead of a source of profit, in consequence of the continued assessments of the Company, there can surely be no consideration for his payment of the assessments.

And it must be borne in mind that the defendant was not, and is not a member of the Company. The plaintiff could produce no evidence on that point, save that he had paid the first assessment, which we will endeavor to show does not make him a member, or impose any obligation upon him to pay any additional assessments.

The defendant, then, had the right to plead the matters stricken out of his answer and to produce evidence upon them, and it was error for the Court to strike them out or refuse evidence.

It clearly appears from the whole enactments by the Legislature that the company was empowered to do specific things, viz: to assess taxes to protect the lands from over-flow, to drain the same, so as to enhance the value thereof. If, from the nature of the case these objects are unattainable, there is no power to go on taxing forever, where there is not only no benefit but an absolute detriment.

Beaty v Lessee of Knowler. 4 Peters 152.

It appears from the evidence that a petition was circulated to obtain the names and consent of land owners for the purpose of praying the Legislature to pass an act of incorporation. Now, if false inducements were held out or false representations made to secure the names of land owners, as the defendant was prepared to prove, it was his right to plead it and to introduce evidence to sustain the allegation. Even were he a member of the company by having signed the petition, or otherwise voluntarily consenting to membership, and he was induced thereto by misrepresentations and false inducements they affected the contract between him & the company in such manner as to make it void as to him. Still more where he is not a member of the company by subscription or other contract.

Suppose, in the petition referred to, it was circulated that there should be levied no more than $2.00 per acre upon the land, for all purposes: or that the parties circulating the petition represented that only $2.00 per acre should be levied, as a tax, once and for all, and the defendant or any other person signed the petition with that understanding. Does it follow that their consent is had to an act of incorporation that gives power to tax forever to the complete absorption of the land? This is a contract that he never consented to. These things the defendant was prepared to prove, tho' he had never consented to the act by subscribing a petition

to the Legislature for an enactment of incorporation, nor does the plaintiff pretend that he ever gave any assent, saveing and excepting that he paid the first assessment, which was no legal assent, at all, to constitute him a member.
There is then, a failure of end, purpose, design, intent, and a failure of consideration, which relieves the defendants from any liability to the Company.

II. The production of the Records of the Company to show that all previous steps had been taken, in conformity to the Acts, for its organization was only prima facie evidence, and the defendants had the right to show any nonconformity. But it is patent upon the records themselves that there was no organization in compliance with the Charter acts, which must be construed most strictly against the Company and in favor of the public.
Upon the principle of construction see.
2 Barn & Ad 793
4 Peters 152.

By the 7 § of the Act of 14 Jany 1860 it is provided that five persons, therein named, should constitute the first board of directors, or a majority of them and should hold office until their successors were elected & qualified, and that they should meet at such time and place as should be designated by a majority of them, and shall appoint a time and place at which said Company should proceed to elect

another Board of Directors &c.

The records simply state that "In accordance with an "advertisement published in the St Louis Republican "an election was held at the Court House in St Louis "February 10. 1868. for directors of the Columbia Bottom "Levee Company of St Louis County Missouri".

Such notice was insufficient.

1. Because it does not appear at whose instance the notice was given. The law is explicit, and says that the time & place of election must be designated by the persons named, or a majority of them.

It cannot be presumed that a record which is entirely silent upon the point of conformity to the law is in conformity thereto.

2. Because a mere publication in a news paper, twenty miles distant from the residences of some of the land owners, can import no notice. There should have been a written notice delivered to every individual entitled to vote at the election for Directors, otherwise the action at such meeting is not binding on persons not present.

Angell & Ames on Corporations. Edition 1858. § 492 and authorities there cited.

The record shows that out of twenty-six persons entitled to vote only six were present and voted.

The defendant was not present.

3. In order to guard against surprise the notice should have been given a reasonable time before the day

and hour of meeting; but there is nothing to show how long the notice was given before the meeting. And there is some significance in the fact, as shown by the record, that the voters at that election were some of the heaviest land owners, and voted for themselves.

Angell & Ames. on Corporations
§ 494.

4. It will not be pretended that a majority of the voters were present at that meeting: And the defendants offered to prove that a majority of acres of land was not represented at that meeting, but the Court rejected the evidence. The Acts of incorporation are silent on the point as to what number of persons or acres of land must be represented at the organization, so that the Common law rule, which is the Republican rule, must govern; that is a majority must be present. The Court erred in rejecting the testimony, as the validity of the future acts under that election must come in question.

Angell & Ames. on Cor.
§ 499 — § 501. And Authorities
there cited.

5 There is nothing in the Records to show that James C. Page was a land owner, and yet he is elected a director. And several resolutions purport to have been passed by a bare quorum of three, of which he was one. He could not be a member or officer unless he was a land owner. The very resolution which

provided for the assessment, on which the defendants is sued, was passed by three directors, Lucas, Monks and Page; the latter not a member, if the records are correct. That resolution was, then, void, there being no quorum as required by law.

III. The acceptance of the amendatory act, passed 14 January 1860, does not bind a member of the Company, even, who did not assent to it, though a majority may have assented. Much less can such amendment bind the defendants, who never consented to the original act, and therefore never was a member of the Company.

The original act provided that the Board of Directors should have power to levy off the land owners, and collect the same, within the limits of said charter, such tax per acre not exceeding two dollars for the purpose of constructing such levee, ditches and embankments as they may deem fit & proper. (See Acts of 1859 §6 page 285.) And to keep the same up to levy tax of ten cents per acre annually.

By the amendment of 14 Jany 1860 the Board are empowered, for the same purposes, to levy, assess and collect by ordinary ~~process~~ suit at law or otherwise from the owners and proprietors of lands + + + + a sufficient amount of money (not exceeding two dollars per acre annually) to meet the payment of said bonds and interest that may be due thereon.

The amendment makes a fundamental change in

the stipulations of the charter affecting materially the liability of the members. Where the power was to collect two dollars for all purposes, not as an annual but as a limited tax, and ten cents per acre annually; the amendment extends that power to the collection of an annual tax of $12.00.

If the defendant had joined in the petition to the Legislature and thereby become a member under the first act, the contract in that first act, which would have existed between him and the Company, is impaired, in its obligation to such extent by the amendment, and so varied that it could have no binding force upon him.

New Orleans, Jackson & Great Northern Railroad Co v Harris 27 Miss. 517.

Re. The Direct East-West Junction Railway Co. Ex-parte Johnson 31 Eng. Law & Equ. Reports 430. Angell & Ames on Cor. § 537, 539

The defendant could give no consent by voting on the question of acceptance or organization under the amendment for the simple reason that he does not own forty acres of land. He has no franchise of election in the Company. He can have no voice in the business transactions of the Company, and yet it is attempted to make him liable in a matter in which he cannot utter one word of protest. Was power ever more arbitrary?

IV. The payment of the first assessment does not, of itself, constitute the defendant a member of the

of the Company or impose upon him an obligation to pay any future assessments.

The case of Ohio & Miss Railroad Co v McPherson 35 Mo. 13, cited by plaintiff's counsel has no similarity to this case, and no bearing on it. That was an action upon a subscription list signed by McPherson, in which he contracted to pay a certain amount to the Railroad Co. a written promise to pay where there was consideration.

There is no pretence that the defendant ever made any promise to pay, written or otherwise, in this case. Because he paid voluntarily an assessment for which he had no consideration, it is attempted to hold him as assenting to become a member of plaintiff. There must have been an express promise to pay, before the plaintiff can have action at law.

Angell & Ames on Cor. § 544. 546.

The Court below erred in giving the plaintiff's instructions and refusing those offered by defendant for the reasons and upon the principles urged in this brief.

It was inconsistent in the Court to grant the fourth instruction of plaintiff declaring the records prima facie evidence of organization &c, and then deny the defendant the introduction of evidence to show irregularity and non conformity to law in

that organization. He had the right to negative the prima facie case.

It was manifest error in the Court to refuse the instruction numbered 10 in the transcript, when the plaintiff had failed to show any legal liability upon the defendant, either express or implied.

V. Section 3 of the Act amendatory contemplates the issuing of bonds carrying interest, to raise money to pay for the works enumerated. The assessment upon members of the Company, of large amounts to pay directly for the works is unauthorized by the law. The sale of bonds is the legitimate mode of raising money, and the taxation is allowed to pay the interest on the bonds, and the bonds when they fall due. The Records show that assessments were made to pay directly for the improvements. It is not a conformity to the law. The matter is material, because it varies the time of payment of taxes in large amounts.

VI. The Acts are unconstitutional.

1. The Legislature had no right, under the old Constitution, to appropriate public revenue, raised by taxation, for the purpose of carrying on the government, to private use. That power is attempted to be given in sections 4 + 5 of the amendatory acts. The state and County assessment of taxes is for the benefit of the public, and if any portion of the public revenue is diverted to private use

for the benefit of an individual or private corporation it is a detriment to the public. The payment of all revenue collected for State & County purposes, on said lands, over and above the amount collected for State & County purposes in the year 1859, to the said Company as its property, is such a diversion of the public revenue.

The Legislature had no such power under the Old Constitution. The Legislature was limited to appropriating funds to public improvements, and not to private land owners, as such.

2. The Legislature, in these acts, has attempted to delegate the right of eminent domain to this Company. It has attempted to give to the Company the same power it possesses over the estates of individuals for the collection of public revenue by taxation. It is a settled principle in private corporations, this is none other than a private corporation tho' the first act is declared a public act, that the members are liable for the debts of the Company only to the amount of their interest in the fund or property. But this Company is an anomaly. It has no stock; no fund. It is not limited to a lien on the land of members within its limits, but may seize upon any property they may have, real or personal, to pay assessments. A member's interest ought to be and is in the land he may own within the prescribed limits, and the Company ought to look to the land alone, and be restricted thereto, by a lien or otherwise

These acts are a violation of this fundamental principle of limitation to the intent involved in the enterprise.

3. This Company is in no sense a municipal corporation, and cannot be governed by the same rules or precedents. The Legislature has empowered this Company to levy a tax upon a man's lands whether he ever assented to it or not, so that he pays a tax that goes directly to benefit other private individuals, if there is any benefit in it, but in no sense for municipal purposes. In effect the power is to take from one private individual and give to another. It is not presumed that any man, in his legal senses, will contend that the Legislature has any such power, without the consent of the parties. Even when private property is taken for public use there must be compensation, when it is taken without the consent of the owner.

4. The old Constitution required that all property subject to taxation in this state should be taxed in proportion to its value. The payment to the Company of all revenue over and above the amount collected for state & county purposes in the year 1859, is an indirect violation of that provision. For, all taxes levied for state and county purposes, are for public benefit. Now if the lands are enhanced in value, the public is not benefited, and it is the same to the public as if a distinction were made as to the lands, so

as to assess them below their value.

5. The Bill of rights of the old Constitution declared that the right of trial by Jury should remain inviolate.

The 11 Section of the original act, which is still in force, violates that declaration of the Bill of Rights. Under that section a man's property may be condemned and taken from him without any trial, in the sense in which ~~[illegible]~~ that term is used in the Constitution. He is entitled to a jury. Without a jury trial there is no certain remedy offered for injury to property.

That section does not give any compensation to the land owner whose land is condemned. It says damages shall be assessed, but there is no provision of payment of damages. The Bill of Rights declared that no private property ought to be taken or applied to public use without just Compensation. How then shall private property be taken by sanction of Legislative enactment or appropriated to private use without just Compensation? Or rather how can it be taken at all for such use and appropriation?

That Section (11) provides for no appeal from the judgment of the Circuit Court. The courts of justice are therefore not open to a party whose lands are condemned under this law, in direct violation of the first Clause of the 7 declaration

of the Bill of Rights.

The propositions of the unconstitutionality of the acts of incorporation are deemed to plain to require argument or authorities.

Wm. T. Mason

Atty for Appellants.

No 77

In the Supreme Court

The Columbia Bottom Levee Company, Respondant

v

Frederick Maier, Appelt

Statement & Brief for Appellant

Wm S. Mason
atty

Filed Novr 8th 1866
O T Fishback Clk
Per E D McCarty

The Columbia Bottom Levee Company — Respondent

vs

Frederick Meier — Appellant

The professed object of the act incorporating the Columbia Bottom Levee Company was to reclaim certain lands adjacent to the Missouri and Mississippi Rivers in the County of St Louis, from liability to overflow. The designated limits embraced a large amount of land belonging to a number of different proprietors and in the preamble to the act it is assumed to be passed upon their application. The first board of Directors is designated in the act and the manner of their organization pointed out. Whenever therefore it is shown that the said organization did take place as directed there was a legally constituted company in existence duly authorized by the act to procure ways to carry out the

purposes of its creation. There can be no question now as to the power of the Legislature to create such a company and to invest it with all the necessary power and authority to construct whatever works may be necessary to accomplish the object intended and to raise the funds to pay for the same by assessments on the lands to be benefitted thereby. This question was fully discussed and determined in the case of Egyptian Levee Co. vs Hardin 27 Mo p. 495.

The appellant here defendant below insists that he was not a member of the company and cannot be held liable to its assessments unless he had expressly given his assent to the exercise of such a power by an acceptance of the charter. The power of the Legislature to delegate the authority to this company to levy a tax or assessment for the purposes indicated being settled it

follows necessarily that his assent or dissent is a matter of no consequence. The act is evidently passed upon the idea that it is a work of sufficient public utility to require its execution and to justify the incorporation of a company with the powers granted by it. The power to levy an assessment upon the lands in question is not to be understood as a power to tax in the ordinary meaning of that term. It is a power to compel the payment of a sum limited by the terms of the law as a compensation for a direct benefit conferred.

Suppose that the State itself had undertaken to do this work will it be pretended that there is no power to compel the owners of the land to pay a tax sufficient to compensate for the actual amount of benefit received by them? If the State can do it certainly it can delegate the power to a company to do the same thing

upon the idea that there was a public necessity for this work — and the legislature must be the judge of that matter — and that it would result in direct benefit to the lands designated by the act there can be no hardship upon individuals where the rate of assessment is equal and the terms are fixed by which they can have a voice in controlling the affairs of the company. The work construction and the general management and control of all matters pertaining to the business of the company must of necessity be left to the board of directors. If the board exceeds its authority or attempts to do any thing manifestly injurious or oppressive to the land owners in question there is no doubt of the existence of a remedy for such evils but the character of the work done under its supervision and by its authority cannot be the subject of investigation in a suit like this

and that portion of the answer which undertook to set up the insufficiency of the work, as a defense was properly stricken out. Having disposed of this question it will not be necessary to notice what is said in reference to the exclusion of testimony tending to prove that part of the answer. It was rightly excluded.

It is insisted that there was error in the exclusion of testimony offered by the defendant tending to prove that the organization of the company by the election of its board of directors was illegal for the reason that less than one half of the land in question was represented by the persons voting at said election. But this cannot be material. The first board of corporators had been duly organized as required by law and the second board as shown by the records of the company was elected by the votes of a majority of the land owners in

the district ~~in~~ the first assessment made by the board had been paid by a large majority of the proprietors of the land ~~in the district~~ including the defendant Mier. ~~Now~~ Now if it be admitted for the sake of the argument that there was error in excluding the testimony still he is not prejudiced for the reason that it was abundantly shown that a large majority did acquiesce in what was done by the board thus furnishing sufficient evidence if any were necessary to show their acceptance of the charter and the defendant is bound whether he directly assented or not. The act of incorporation does not require a majority of the votes of all the landowners to elect a board of directors. It prescribes the qualifications of voters simply and a majority actually voting would be sufficient to elect, and a board of directors thus chosen would be fully authorized

to act if the election should be in other respects regular.

Some other points are made by the appellants writ but as they do not appear properly upon the record it is not necessary to consider them

The other judges concurring the judgment of the Court below will be affirmed with ten per cent damages

Thos J. C. Hagg

The Columbia
Bottom Levee
Co. — Res.

vs

Frederick Meier
— appelt

Opinion of the Court
Hagg

Filed Nov 19th 1866
O. T. Fishback Clk
By E. M. McCarty Deptg

Affirmed with
ten per cent dam-
ages —

In the Law Commissioner's Court of St Louis County.
February Term 1864

February 20th 1864

Columbia Bottom Levee Company
vs
Frederick Meier

The parties by attorneys come and also a jury of six by consent, viz:

good and lawful men who being duly elected, tried and sworn the issues herein joined well and truly to try, the trial progressed, and not being concluded at the hour of adjournment, the same is laid over until Tuesday next.

Tuesday February 23rd 1864

Columbia Bottom Levee Company
vs
Frederick Meier

The parties by attorneys come, but only four of the jurors aforesaid appear, Therefore on motion attachments are ordered to issue against the jurors absent and the cause is laid over till to-morrow

Wednesday February 24th 1864

Columbia Bottom Levee Company
"
Frederick Meier

The parties by attorneys come again, & the Marshall returns "Non Est" the attachments issued on yester-

day against the two jurors who failed to appear. Whereupon the parties consent to try the cause with the four remaining jurors, & the trial progressed, and being concluded the jurors aforesaid on their oath aforesaid say they find for the plaintiff in the sum of One hundred & seventy eight dollars, Whereupon plaintiff remits the sum of One hundred & fifteen dollars and thirty cents, It is therefore ordered and adjudged by the Court that the plaintiff recover of the defendant the sum of Sixty two dollars and seventy cents and their costs herein expended & have execution therefor—

State of Missouri }
County of St Louis } I, Frank A. Schneider Clk of the St Louis Circuit Court Certify the foregoing to be true Copies of Record Entries Made by the Law Commissioners Court of St Louis County in the Case of the Columbia Bottom Levee Company against Frederick Kiss That said Entries are a part of the Record of said Cause, And that by law I am the Custodian of the Records of said Law Commissioners Court.

In Witness Whereof I hereto set my hand and affix the Seal of said Circuit Court at Office in St Louis the 8 day of December 1866 F A Schneider Clk