

XI.

TOWN AND VILLAGE BOARDS OF LEWISTON v. THE ROME, WATERTOWN AND
OGDENSBURGH RAILROAD COMPANY.

November 24, 1887.

The town and village boards of Lewiston, Niagara county, complained that in 1867, the Lake Ontario Shore Railroad Company was organized to build and operate a railroad from the city of Oswego to the Niagara river in the village of Lewiston, and by special legislative enactment the cities, villages and towns along the line of the proposed road were authorized to subscribe and take stock and to issue bonds in aid of the building of said road. (See chapter 811, Laws of 1868, and chapter 241, Laws of 1869.) That in consideration of benefits expected and pledges made by said company to make Lewiston the terminus of their road and to establish machine shops, bridge Niagara river at this point, and to make connection with the Great Western railway of Canada at Queenstown, Ont., and a branch line to the docks in the village of Lewiston to connect with the steamboats and vessels on the river and lake, the town subscribed \$152,000 to the capital stock of said company and issued town bonds to that amount in payment therefor. The right of way was obtained through the town and village to the docks and to the proposed site of the new bridge. That before the road was completed it passed into the control of the Rome, Watertown and Ogdensburgh Railroad Company, and in 1875, this company completed the road to a point in the village of Lewiston, making connection with the New York Central and Hudson River railroad to Suspension Bridge and Niagara Falls, and continued to run in connection with the same until 1881. That in 1880, the Niagara Falls Branch Railroad Company was organized and built a new railroad, starting from a point on the Rome, Watertown and Ogdensburgh road four miles north-east of the village, and running to Suspension Bridge, passing the village of Lewiston nearly three-quarters of a mile from its business center, and that thereafter passenger trains were abandoned between the new junction and the village of Lewiston and were run only over the new road. That the company have no depot or passenger accommodations, and have taken up their side-tracks, turntables, water-tank and small engine-house, thus depriving the people of Lewiston of all the anticipated advantages and accommodations for which they allege they were induced to bond themselves to aid in constructing this road.

The company made the following reply:

"I. That under articles of association, duly filed in the office of the Secretary of State, March 27, 1868, the Lake Ontario Shore Railroad Company became incorporated under the laws of said State 'for the purpose of constructing, maintaining and operating a railroad for public use in the conveyance of persons and property from the city of Oswego in the county of Oswego, to the village of Lewiston, in the county of Niagara,' a distance of about one hundred and forty miles; that thereafter the said Lake Ontario Shore Railroad Company constructed about sixty miles of said line of railroad running westward from the said city of Oswego, and that on the 1st day of May, 1872, the said Lake Ontario Shore Railroad Company executed a mortgage upon all its property and estate, rights and franchises to Willis Phelps and John G. Kellogg, to secure the payment of

certain bonds to be thereafter issued by said company; that thereafter certain of said bonds were issued by the said company.

"II. That thereafter, default having been made by the said company in payment of the interest upon said bonds, proceedings were instituted for the foreclosure of the said mortgage and the sale of the said mortgaged premises; that thereafter and on the 22d day of September, 1874, the said mortgaged premises were sold under a decree of the Supreme Court of said State, at public auction, to Moses Taylor, Samuel Sloan and their associates.

"III. That thereafter, by proceedings duly had under the provisions of an act of the said State, entitled 'An act to facilitate the reorganization of railroads sold under mortgage, and providing for the formation of new companies in said cases,' passed May 11, 1874, the said Moses Taylor, Samuel Sloan and their associate purchasers, became duly incorporated as a new corporation, under the name of the Lake Ontario Railroad Company, and became the owners of the property, rights and franchises which were of the said Lake Ontario Shore Railroad Company; that said articles of association of said Taylor, Sloan and their associates were duly filed in the office of the Secretary of State on the 29th day of September, 1874.

"IV. That thereafter, pursuant to an agreement of consolidation between this respondent and the Lake Ontario Railroad Company, aforesaid, filed and recorded in the office of the Secretary of State, January 14, 1875, the said Lake Ontario Railroad Company became merged and consolidated with its capital stock, franchises and property, with this respondent into one corporation and company, known as the Rome, Watertown and Ogdensburg Railroad Company; and that since said consolidation, this respondent has been the owner and in possession and use of the property, estate, rights and franchises which were of the said Lake Ontario Railroad Company; that after said consolidation and merger, the said railroad, which was originally designated to run from the city of Oswego to the village of Lewiston, was completed to said last named point, and that since said completion this respondent has continued to operate said railroad continuously from the city of Oswego to the village of Lewiston.

"V. On information and belief, this respondent further says that under chapter 811 of the Laws of said State of 1868, and chapter 241 of the Laws of said State of 1869, the town of Lewiston subscribed to the capital stock of the Lake Ontario Shore Railroad Company to the amount of \$152,000, and issued in payment thereof bonds of the said town to the amount of \$152,000; but this respondent denies that said subscription was made in consideration or in consequence of any pledges made by said Lake Ontario Shore Railroad Company in respect to the terminus of said road, or in respect to machine shops and round-house to be built at the said village of Lewiston, or of any pledge by the said company to bridge the Niagara river at Lewiston, or to make connection with the Great Western Railway of Canada, or to construct a branch line thereof to the docks in said village of Lewiston.

"VI. This respondent further says that if said alleged pledges were made by the said Lake Ontario Shore Railroad Company, and said subscription was made in consideration thereof, it has been expressly decided by the Court of Appeals of the State of New York, that such subscription and the issue of bonds of said town therefor, would create a contract between the said company and the said town, but that such 'contract, right and obligation are not in any proper sense a public matter in which the people of the State in their sovereign capacity are interested.' (*The People v. Rome, Watertown and Ogdensburg Railroad Co.*, 103 N. Y., 95.)

"VII. This respondent further say that if the Lake Ontario Shore Railroad Company did enter into any contract relation and obligation to the town or village of Lewiston, by reason of the matters set forth in the petition herein, such contract relation or obligation was not and has not become a lien or charge upon the property of the respondent, and that said Court of Appeals, in the case above referred to, held that such contract obligation 'does not devolve upon a purchaser of the property on foreclosure sale, or upon a new corporation organized under the statute to operate the road.'

"VIII. Further answering, this respondent says that it is not true, as alleged in said petition, that the Rome, Watertown and Ogdensburg

Railroad Company have no depot in the town of Lewiston; on the contrary, this respondent says that it has at all times maintained a depot in the town of Lewiston for the accommodation of the citizens of said town and for the transaction of all the business which it has to and from said town and village.

"IX. That after the building of the said line of railroad by this respondent to the village of Lewiston, and a location of a station thereof in said village, this respondent, owing to the heavy grades between Lewiston and Suspension Bridge, leased a railroad from a point four miles east of Lewiston station to Suspension Bridge, which had a station on said last named road in the town of Lewiston about one-half mile from the former station, which said last named station it now maintains for all business, both passenger and freight, which may be offered; and this respondent further maintains and operates its original line of railroad into the village of Lewiston, and thus gives to said town and village of Lewiston the use of two lines of railroad and of two stations within said town and village instead of one line and one station, as was formerly done, besides running two trains in each direction daily instead of one, as formerly.

"X. That in consequence of the changes referred to in the last paragraph of this answer, a portion of the superstructures of this respondent, to wit: a small extent of track, a small engine-house and turn-table, became no longer necessary to the operation of this respondent's railroad at the village of Lewiston and have in consequence been removed, but that such removal has not lessened the efficiency of the railroad service rendered by this respondent to said town and village.

"XI. On information and belief, this respondent further says that while it is true that the town of Lewiston did subscribe for stock in the Lake Ontario Shore Railroad Company, and did issue its bonds in payment therefor, yet shortly after the issue of said bonds, said town defaulted in the payment of the interest on said bonds; that as a result of much protracted litigation the said town effected a compromise of its said bonds whereby the rate of interest thereon was reduced from seven per cent to five per cent; that soon thereafter the said town again defaulted in the payment of interest on said bonds, and again effected a compromise whereby the rate of interest was again reduced from five per cent to four and one-half per cent.

"XII. For further answer this respondent says that the said town and village of Lewiston has heretofore imposed and does now impose taxes upon all the property of this respondent lying within the limits of said town and village, which are onerous, excessive and unreasonable, and which would warrant this respondent in withdrawing its property, so far as possible or practicable, from the jurisdiction and territory of said town and village.

"XIII. This respondent denies that it is now violating, neglecting or evading, or that it has at any time violated, neglected or evaded any of its charter obligations, or any of the obligations imposed on it either by its charter or otherwise, towards the town or village of Lewiston or the people thereof."

Pursuant to notice duly given, upon the twentieth of October, Commissioners Rogers and Baker inspected the railroad and locality and took the testimony of the parties in interest, representing the town and village of Lewiston, and upon the twenty-fifth of October the Board heard the representatives of the Rome, Watertown and Ogdensburgh Company in New York.

From personal examination and evidence obtained at these hearings, it appears that the Rome, Watertown and Ogdensburgh road have no proper depot for the accommodation of either passengers or freight at Lewiston. That no passenger trains are run over the old track from the village to the new junction, but that they continue taking freight, which is either delivered to them at the central depot in the village or loaded on their cars on the side-track.

The questions involved are:

1. Has the Rome, Watertown and Ogdensburgh Railroad Company the right to practically abandon a portion of its road or change its terminus without consent of the town authorities, they having bonded in its aid?

2. Are the people entitled to proper accommodations, to wit: A station house and ticket office on the new road?

Regarding the first question, section 23 of the General Railroad Law, as amended by chapter 77 of the Laws of 1876, authorizing the directors of any railroad company "to change its route or termini by a vote of two-thirds of their whole number" would, if held to apply in this case, sustain the complainants. It says: "Nor shall the provisions of this section authorize the alteration of the route or terminus of any railroad in any town, county or municipal corporation which has issued bonds, etc., in aid of the construction of said road, without the consent in writing of a majority of the taxpayers." Upon this point the Rome, Watertown and Ogdensburgh Railroad Company say that "the foreclosure sale by which the property and franchises, which were of the Lake Ontario Shore Company, were purchased and transferred to the Lake Ontario Railroad Company and thence by consolidation to this respondent, took place *September 22, 1874*, and by that sale and transfer and by subsequent consolidation of the successor company with this respondent, the obligation arising out of any contract, expressed or implied, with the town of Lewiston on account of its subscription to the capital stock of the Lake Ontario Shore Railroad Company was not transferred to the successor company or through the consolidation to the respondent.

"The Suspension Bridge branch was built in 1881. It was therefore built, its route and terminus fixed at a time when neither the Lake Ontario Railroad Company nor the respondent was under any obligation whatever to the town of Lewiston by reason of its subscription to the capital stock of the Lake Ontario Shore Railroad Company. This conclusion seems to be in the nature of a self-evident proposition. The provision of the statute requiring the consent of the town can have no application in the present case." The Court of Appeals says, in addition, regarding the obligations following a sale under foreclosure in a similar case:

"But the performance of the contract, if there was a valid one, never devolved upon the defendant. The contract obligation was not a charge or lien upon the property of the Syracuse Northern Railroad Company, and remains where the unsecured obligations of the company rested after the foreclosure of the mortgage given by it. It did not pass by the foreclosure sale to, or devolve upon, its successors, the Syracuse and Northern Railroad Company, and the Rome, Watertown and Ogdensburgh Railroad Company." (*People v. Rome, Watertown and Ogdensburgh Railroad Company*, 103 N. Y., 106.)

It would appear, therefore, that the change of the route or termini can be legally sustained, and that this was required by the exigencies of the situation, the Grand Trunk Railway Company having leased the Great Western railroad and declined to join with the respondent in building the bridge at Lewiston, and that said bridge charter was owned jointly by the Grand Trunk and this respondent — one being powerless without the other. The Rome, Watertown and Ogdens-

burgh Company were obliged to build to the Suspension Bridge in order to make connections with Canadian roads.

The second question, as to the justice of the request for suitable accommodations for passengers, there can be no doubt, and the Board recommends that the Rome, Watertown and Ogdensburgh Railroad Company promptly erect and maintain a suitable station house with platform and planking at the hillside stopping place near Lewiston, and provide a freight and ticket agent to transact such business as may be offered.

By the Board.

WILLIAM C. HUDSON,
Secretary.

XII.

LAWRENCE A. SNEDEN v. THE NEW JERSEY AND NEW YORK RAILROAD COMPANY.

November 27, 1887.

In 1885, Mr. Sneden complained of the "incessant and reckless" blowing of a locomotive whistle on the New Jersey and New York railroad, at Spring Valley, at 5 o'clock in the morning. After examination the Board recommended that "the engine be taken up the road some distance in a northerly direction and blow two blasts of fifteen seconds." This was done, and the complainant expressed himself satisfied with the result.

In July, 1887, Mr. Sneden again complained to the Board that instead of the locomotive being taken up the road "some distance," it was taken up but "a short distance," and near his house. After lengthy correspondence the company ordered the whistle not to be blown at all.

XIII.

L. H. LYON v. THE ROME, WATERTOWN AND OGDENSBURGH RAILROAD COMPANY.

December 7, 1887.

This complaint was that after the Rome, Watertown and Ogdensburgh Railroad Company leased the Utica and Black River line, they changed the names on the cars of the latter line to that of the former, to the inconvenience of the traveling public.

The reply of the company was that after the lease, both lines were operated as one, and that it frequently occurred that cars run on either line were switched off on to the other, and that if the old names were adhered to in operation, the inconvenience and confusion would be increased. But in order to obviate any mistakes at Utica, cards telling the destination of the cars would hang on each car.