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The suit being in the Circuit Court for the District of Louisiana was commenced by petition, and according to the practice in such cases, there is annexed to the petition a copy of the note sued on, and of the protest and certificate of notice to the indorsers. But this is merely a copy attached to, and a part of the pleading, and is certainly not the *paper* which was offered in evidence. It may or may not be a perfect copy of that paper; but whether it is so or not, it is certain that it does not become a part of the bill of exceptions by being attached to the pleading.

If a paper which is to constitute a part of a bill of exceptions, is not incorporated into the body of the bill, it must be annexed to it, or so marked by letter, number, or other means of identification mentioned in the bill, as to leave no doubt, when found in the record, that it is the one referred to in the bill of exceptions.

There is nothing of the kind here; and as we must presume the ruling of the court to be right, in the absence of anything showing it to be wrong, the judgment must be

AFFIRMED.

MAYOR *v.* SHEFFIELD.

1. Where a corporation is sued for an injury growing out of negligence of the corporate authorities, in their care of the streets of the corporation, they cannot defend themselves on the ground that the formalities of the statute were not pursued in establishing the street originally.
2. If the authorities of a city or town have treated a place as a public street, taking charge of it, and regulating it as they do other streets, they cannot, when sued for such injury, defend themselves by alleging want of authority in establishing the street.

ERROR to the Circuit Court for the Southern District of New York.

The action below was brought by W. P. Sheffield, against the Mayor, &c., of New York, to recover damages for injuries received by him from stumbling over a stump at the

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edge of the sidewalk around the lower end of the City Hall Park, in the city of New York.

Upon the trial it appeared that on the 16th December, 1857, Sheffield, while crossing, in the evening, the lower end of the City Hall Park, fell over a stump above the level of the sidewalk and broke his thigh-bone; that the stump was about fourteen inches distant from the curb of the sidewalk, and was about six inches high and four inches in diameter at the top.

It also appeared that the place where the stump stood, was, prior to the 18th November, 1847, and had been for more than thirty years, within and a portion of the City Hall Park; but that on the day just named, the Common Council of New York adopted an ordinance authorizing the Committee on Lands and Places, together with the street commissioner, to adjust the lower corner line of the Park, so as to make a curve, &c., and that under this ordinance—to the reading of which the counsel of the city, for reasons which will appear in the argument, excepted—the committee and street commissioner shortened the Park twenty feet, cut down a tree there, and threw those twenty feet—within which the stump of the tree—the stump which had caused the accident, stood—into the public street.

The court charged thus:

“The corporate authority of New York, by virtue of their charter and of the laws, have the charge and control of the streets and sidewalks within the corporate limits, and they are bound to keep them in good and safe condition. If they leave an opening in the sidewalk, as is sometimes done, and a person coming along in the night falls into it, without any want of proper care on his part, the defendants are liable for any injury that may be occasioned. So if an obstruction on the face of the sidewalk, over which a person stumbles—boxes, if you please—left out on the sidewalk on a dark night, or barrels, over which a person stumbles and falls, in the absence of want of care on his part, the defendants are equally liable for the injury. The opening in the one case and the obstruction in the other constitute the negligence, are evidence of negligence on the part of

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the authorities who have the control of the matter, and in order to escape from the charge of liability, the burden is thrown upon them to disprove negligence.

"If the plaintiff in this class of cases has been himself guilty of negligence, and which materially contributed to the injury, then he cannot recover, even if the defendants have been shown to be guilty of negligence. The plaintiff must be free from fault."

Verdict and judgment having gone for the plaintiff, the case was now here on exceptions to the evidence as above mentioned, and charge.

Mr. O'Gorman for the City, plaintiff in error :

1. The stump over which the defendant in error fell was not in a public street. The judgment of the court below, therefore, cannot be sustained.

(a.) The position taken by the plaintiff is that owing to the neglect of the plaintiff in error to remove an obstruction from a public street, the injuries complained of were received and the damages recovered sustained. Now prior to 1847, the place where the accident occurred and the stump stood, was a part of the City Hall Park, and the only evidence that such place ever became a part of a public street is the resolution of the Common Council authorizing the street commissioner to curve the lower end of the Park, and the action of that officer under that resolution in cutting off twenty feet therefrom.

Did this resolution, the action of the street commissioner under it, and the subsequent use by the public of the space cut off from the Park, constitute that space a part of a public street? The resolution cannot have that effect, for the reason that the Common Council had no power to pass it.* Prior to 1847, the space where the accident occurred had been a part of and in use as a public park for more than thirty years; and within the principles established by the authorities cited in the note, it was incompetent for the Com-

* Commonwealth v. Alburger, 1 Wharton, 469, 485; Commonwealth v. Bush, 14 Pennsylvania State, 186; Lawrence v. Mayor, 2 Barbour, 577.

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mon Council to diminish the Park by throwing a part of it into the street. The ordinance being void, the act of the street commissioner was without authority.

(b.) The space in question as a part of the public park was a portion of the real estate owned by the corporation of the city of New York.

In 1844 this real estate was, by an ordinance duly enacted, pledged to the redemption of the city debt. This pledge was in 1845 confirmed and made absolute by an act of the State Legislature.* The effect of this ordinance and act was to deprive the Common Council of any power to sell or dispose of any of the real estate of the corporation. The same principle which would justify the conversion of a portion of the park into a street would support any other disposition of the public property which the Common Council might choose to make. It is manifest, therefore, that neither the resolution of the Common Council nor the act of the street commissioner could constitute the space in question a part of a public street, for the reason that the resolution was void and the act of the officer unauthorized.

(c.) In the city of New York the laying out, opening, altering, and widening of public streets is regulated by statute.†

A statute of the State provides that whenever any street is to be laid out, opened, altered, enlarged, or improved, the mayor, aldermen, and commonalty must apply to the Supreme Court for the appointment of commissioners. It is made the duty of the commissioners to view the lands and tenements required for the improvement, and to make a just and equitable assessment of the loss and damage over the benefit and advantage. The statute further provides that if any lands, tenements, or premises belonging to the mayor, aldermen, and commonalty of the city of New York shall be required for the improvement, they shall be compensated for the loss and damage they sustain in like manner as other owners and proprietors of premises. The stat-

* Revised Ordinances of 1859, chapter 9, p. 190-202. Session Laws of 1845, chapter 225, p. 248, § 5.

† Session Laws, 1813, chapter 86, §§ 176, 178.

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ute then enacts, that upon the confirmation by the Supreme Court of the report which the commissioners are required to make, the lands taken shall be appropriated and kept open for a public street forever. Until, therefore, this space in question is shown to have been taken in conformity with requirements of statute, it cannot be regarded as a public street.* The space in question having never been accepted as a part of a public street in the manner provided by law, the corporation were not bound to remove the stump, nor are they liable for the injuries received by the defendant in error.†

2. The charge asserts, that the existence of an obstruction in a street is evidence of negligence and constitutes negligence, and throws upon the defendants the burden of disproving the negligence. Under this charge, no question was left to the jury; for if the existence of the obstruction constitutes the negligence, it is clearly impossible to disprove the negligence without disproving the existence of the obstruction, and the charge was equivalent to saying that in every case in which an obstruction exists in a street, the defendants would be liable.

In addition, it wholly disregards the necessity of notice to the city authorities of the existence of the obstruction.

Mr. W. P. Sheffield, contra. ‡

Mr. Justice MILLER delivered the opinion of the court.

1. The first error claimed to be found in the record of this

* *Matter of Seventeenth Street*, 1 Wendell, 262; *City of Oswego v. Oswego Canal Co.*, 2 Selden, 6 N. Y. R. 257; *Clements v. Village of West Troy*, 16 Barbour, 251; *Northumberland v. Atlantic and St. Lawrence R. R. Co.*, 35 New Hampshire, 574; *Commonwealth v. Kelly*, 8 Grattar, 632; *Holmes v. Jersey City*, 1 Beasley, 299; *Reed v. Town of Cornwall*, 27 Connecticut, 48; *Underwood v. Stuyvesant*, 19 Johnson, 181.

† *Bowman v. City of Boston*, 5 Cushman, 1.

‡ He cited among other cases, *The Mayor*, 5 Selden, 163, S. P., *The Mayor v. Furze*, 3 Hill, 612; *Rochester White Lead Co. v. The City*, 3 Comstock, 464; *Conrad v. Trustees*, 16 New York, 158; *Rex v. Hudson*, 2 Strange, 909; *Trustees v. Merryweather*, 11 East, 375; *Hobbs v. Lowell*, 19 Pickering, 409; *Cincinnati v. White*, 6 Peters, 431.

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case is based on the proposition of the defendant below, that the *locus in quo* was not a legally established public street, and therefore the city was not liable for its condition. On this point the court ruled adversely to the city.

The facts as shown by the bill of exceptions in reference to this matter are in substance these: The place where the accident occurred was formerly a part of the City Hall Park, the property of the corporation of the city of New York. In November, 1847, the City Council ordered that the lower corner-line of the Park be so adjusted as to make a curve, instead of corners and angles, from Broadway to Chatham Street. The execution of those orders, placed in the street the ground where the plaintiff received his injury, and it became a part of the sidewalk at that place.

It is now argued that this is not a street, because the land was not condemned agreeably to a certain statute of the State for the opening and widening of streets. This statute was intended to secure to private land-owners compensation for their property taken for public uses, and can have no application to the case of an appropriation by the City Council, of land owned by the city to the purpose of a street.

It is also said that the Park is, both by contract and by statute, pledged for the redemption of the city debt, and therefore cannot be thus appropriated. It will be time enough to consider this question when some creditor of the city shall raise it. The legal title and the present use and possession are in the city, and were when the land was converted into a street, and it does not lie in the mouth of the city authorities, under these circumstances, to claim exemption for their negligence in the manner of making this conversion, under the plea that the act was a violation of their duty to public creditors.

If the authorities of a city or town have treated a place as a public street, taking charge of it and regulating it as they do other streets, and an individual is injured in consequence of the negligent and careless manner in which this is done, the corporation cannot, when it is sued for such injury, throw the party upon an inquiry into the regularity of

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the proceedings by which the land became a street, or into the authority by which the street was originally established.

2. The second error is supposed to have been found in an exception to the following language of the court in the charge to the jury: "If they (the corporate authorities) leave an opening in the sidewalk, which is sometimes done, and a person coming along in the night falls into it, without any want of proper care on his part, the defendants are liable for any injury that may be occasioned. So, if an obstruction in the face of a sidewalk, over which a person stumbles—a box, if you please, left out on the sidewalk on a dark night, or barrels, over which a person stumbles and falls in the absence of want of care on his part—the defendants are equally liable for the injury. The opening, in the one case, and the obstruction, in the other, constitute the negligence on the part of the authorities who have control of the matter, and, in order to escape from the charge of liability, the burden is thrown upon them to disprove the negligence."

To this charge it is objected that it precluded the defendants from any attempt to show that they were not guilty of negligence, because, if the obstruction constituted the negligence, the existence of the obstruction being proved, no defence could be offered. But this is a verbal criticism not justified by the language of the court, which in the same sentence declares that, in order to escape from liability, the burden is thrown upon defendants to disprove the negligence. No one can read the charge without seeing that the jury must have understood the court as meaning, that the existence of those obstructions was such evidence of negligence as required of the authorities explanations in order to escape liability.

Another objection to this charge is that it ignores the necessity of notice to the authorities of the existence of the obstruction.

It is certainly true, as a general proposition, that before the corporate authorities can be held liable in this class of cases, it must be shown that they knew of the existence of the cause of injury, or had been notified of it, or such a state

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of circumstances must be shown that notice would be implied. And it is true that this charge makes no reference to notice whatever. But when we look into the facts of this case, as shown by the bill of exceptions, we discover a very plain reason why this was omitted. The question of notice, as a fact, could not be disputed, and therefore did not arise as a matter on which the jury required instructions.

The city authorities, in converting the part of the Park already mentioned into a street, had cut down a tree, and left the stump standing from six to eight inches above the surface, and from fourteen to eighteen inches inside the curbstone, on the sidewalk. This was done in 1847; and this stump, thus left by the city authorities, who had cut down the tree, remained in that condition until the time of the accident to plaintiff, in 1857.

These facts were uncontradicted, and stronger proof of notice could not be given. It closed the question, and the omission in the judge's charge of any reference to that subject was justified by the testimony. It would have been superfluous.

JUDGMENT AFFIRMED.

CHRISTY *v.* PRIDGEON.

- 1 The Mexican colonization law of August 18th, 1824, though general to the Republic of Mexico, was, so far as it affected lands within the limits of Texas, after the independence of that country, a local law of the new State, as much so as if it had originated in her legislation. The interpretation, therefore, placed on it by the highest court of the State, must be accepted as the true interpretation, so far as it applies to titles to lands in that State, whatever may be the opinion of this court of its original soundness. If in courts of other States carved out of territory since acquired from Mexico, a different interpretation has been adopted, the courts of the United States will follow the different ruling, so far as it affects titles in those States.
- 2 The interpretation within the jurisdiction of a State of a local law, becomes a part of that law, as much so as if incorporated in the body of