

# PROCEEDINGS OF COMMON COUNCIL.

ADJOURNED SESSION—DECEMBER 27, 1881.

The Common Council of the City of Indianapolis, met in the Council Chamber, Tuesday evening, December 27th, A. D. 1881, at seven o'clock, in adjourned session.

**PRESENT**—Hon. Daniel W. Grubbs, Mayor, and, *ex officio*, President of the Common Council, in the Chair, and 14 members, viz: Councilmen Bryce, Caylor, Coy, Dowling, Egger, Fultz, Harrold, Hartmann, Koller, Pearson, Pritchard, Reichwein, Stout, and Thalman.

**ABSENT**—Councilmen Bedford, Brundage, Cole, Cowie, Dean, Knedl, Mauer, Morrison, Ward, Weaver, and Yoke—11.

The City Clerk submitted the following report:

To the Mayor, Common Council and Board of Aldermen:

*Gentlemen*:—The following affidavits are now on file in my office, for the collection of street assessments by precepts, to-wit:

Charles S. Roney vs. William T. Smith, for.....	\$12 00
Henry C. Roney vs. Susan J. White, for.....	11 00

And recommend that you order the precepts to issue.

Respectfully submitted,

JOS. T. MAGNER, City Clerk.

The above report failed to be concurred in by the following vote:

**AYES**, 12—viz. Councilmen Bryce, Caylor, Coy, Dowling, Egger, Fultz, Harrold, Koller, Pearson, Pritchard, Reichwein, and Stout.

**NAYS**, 1—viz. Councilman Thalman.

By consent, Councilman Koller offered the following motion; which was adopted:

That the Street Commissioner be directed to at once repair and make secure, the bridge over Crooked Run. Where the recent rains have damaged it, it is now insecure and dangerous.

## INTRODUCTION OF GENERAL AND SPECIAL ORDINANCES.

Under this order of business the following entitled ordinances were introduced and severally read the first time.

By Councilman Bryce:

S. O. 176, 1881—An Ordinance to provide for grading and graveling the first alley west of Meridian street, from South street to Garden street.

On motion by Councilman Bryce, S. O. 173, 1881, was stricken from the files.

By Councilman Caylor:

G. O. 72, 1881—An Ordinance to amend Section thirteen (13) of the market ordinance ordained July 2d, 1878.

By Councilman Egger:

S. O. 177, 1881—An Ordinance to provide for grading and graveling the first alley west of Virginia avenue, between Bradshaw and Buchanan streets.

By Councilman Pearson:

S. O. 178, 1881—An Ordinance to provide for grading and graveling Pratt street, between Tennessee and Mississippi streets.

By Councilman Pritchard:

S. O. 179, 1881—An Ordinance to provide for grading and graveling the first alley west of Illinois street, (where not already graded and graveled), from Eighth street to the first street north of Eighth street.

On motion by Councilman Pritchard, S. O. 171, 1881, was stricken from the files.

By Councilman Reichwein:

S. O. 180, 1881—An Ordinance to provide for grading and paving with brick, the sidewalks, and curbing and bowldering the gutters of Court street, between Alabama and New Jersey streets, (where not already paved, curbed or bowldered.)

By Councilman Stout:

S. O. 181, 1881—An Ordinance to provide for grading and paving with brick, the north sidewalk of Home avenue, (where not already paved), between Pennsylvania and Delaware streets.

By Councilman Thalman:

S. O. 182, 1881—An Ordinance to provide for grading and bowldering the first alley west of Delaware street, between Market and Ohio streets.

## REPORTS, ETC., FROM STANDING COMMITTEES.

The Committee on Judiciary, through Councilman Pritchard, submitted the following report:

Indianapolis, Dec. 27th, 1881.

To the Mayor and Common Council:

*Gentlemen:*—Your Judiciary Committee, together with the City Attorney, to whom was referred the matter of the annexation of certain territory, including the Stock Yards, report thereon as follows:

1st. In the case of Ross et al., vs. Faust, 54 Indiana, page 471, the Supreme Court say: "That we will take judicial knowledge of the fact, that White River, in Marion county, is *not* a navigable stream, and expressly decide that it is not a navigable stream in Marion county. Furthermore, that the *title* of the owners of lots and lands on the banks of the river, extends to the thread, or middle of the stream." They furthermore decide that this is so, even if the deeds of the present owners, in express terms, limits the title to the banks of the river as the boundary.

It follows, therefore, from this decision, that all the territory on the west bank of the river, is contiguous to the city, the point of contact being the center of the river.

2d. That as a matter of fact, all the lands contiguous to the city, are unplatted lands.

In the petition under consideration, ten platted and recorded additions, together with a lot of unplatted lands, are being referred to the Board of County Commissioners for annexation to the City of Indianapolis.

Can this board make an order annexing platted grounds to the city?

The statute confers power on this board to annex unplatted grounds, when owners thereof are not consenting. This is Section 85 of our Charter. In almost the same language, Section 84 confers jurisdiction on City Council and Board of Aldermen to annex, by resolution, contiguous territory when platted. It is safe to say that if the Commissioners can annex platted ground, the City Council may annex unplatted ground. But clearly, the statute means just what it says; and under it the Council have *exclusive* jurisdiction to annex platted grounds, and the Commissioners *exclusive* jurisdiction to annex unplatted lands.

In the case of the Mayor of the City of Jeffersonville vs. Weems et al., 5 Ind., page 547, it is decided that the county board "have the power to annex to a city any adjacent territory *not embraced* in Section 84." Platted grounds *are* embraced in Section 84; and this case means that the county board have no jurisdiction to annex lands mentioned in that section of our Charter.

In the case of the City of Ft. Wayne vs. Taylor et al., 47 Indiana, page 274, it is decided that the resolution of a city Council annexing adjacent unplatted lands, is void for want of jurisdiction.

In these cases the Supreme Court have construed Sections 84 and 85 of our Charter, and held that the jurisdiction to annex platted territory, is *exclusively* in the city under Section 84, and to annex unplatted territory exclusively in the county board, under Section 85.

It follows, therefore, that it is error to petition the county board to annex the ten plats described in the petition under consideration, for they will have to dismiss, as to them, for want of jurisdiction.

We should petition them to annex all unplatted lands that are contiguous, accompanying the petition with a plat of all such lands, as provided by Section 85. This done, the platted territory will then be contiguous, and we may annex them by resolution, under Section 84.

Your committee recommend that all the plats be referred to the City Civil Engineer, with instructions to prepare plats of all unplatted lands contiguous to the city, and contiguous to one another, as described in petition, and that then the pe-

tion be so amended as to accurately describe, by metes and bounds, the lands set out in the plats.

The second is the proposition of B. Frank Riley, proposing to hunt up unpaid taxes due the city, for ten per cent of the amount he may find and cause to be paid into the city treasury.

James A. Pritchard,  
N. Yoke,

Your committee recommend that the proposition be accepted.

Respectfully submitted,

James A. Pritchard,  
Jas. T. Dowling,  
Committee on Judiciary.

JOHN A. HENRY, City Attorney.

Councilman Dowling moved to refer the above report back to the Committee, to report at the next regular meeting.

Which motion was adopted.

On motion by Councilman Thalman, the City Civil Engineer was instructed to prepare the proper plats, under the direction of the Judiciary Committee.

#### INTRODUCTION OF MISCELLANEOUS BUSINESS.

Councilman Harrold offered the following motion; which was referred to the Board of Public Improvements:

That the Street Commissioner be, and is hereby, directed to fill mouths of alleys with gravel, on line of sidewalk on east side of West street, between South and Merrill streets.

Councilman Hartmann offered the following motion; which was referred to the Board of Public Improvements:

That the Street Commissioner be directed to protect with suitable railing the bridge across Pogue's Run on East street.

Councilman Pritchard offered the following motion; which was adopted:

That the City Attorney be directed to appeal cases before Sq. Smith, rendered against A. Naltner and the city as garnishee defendant.

Councilman Bryce offered the following motion; which was adopted:

To allow John A. Lyons to put down a bowlder crossing for his sidewalk at his premises, No. 88 south Delaware street, according to existing ordinances.

Councilman Thalman offered the following motion; which was referred to the Board of Public Improvements:

That the Street Commissioner be directed to clean the first alley east of Illinois street, between Market and Ohio streets. Also, the first alley east of Pennsylvania street, between Market and Wabash streets.

Councilman Thalman offered the following motions; which were adopted :

That the Finance Committee be directed to confer with the officers of the Belt Railroad and Stock Yards Co., and ascertain, if possible, on what terms the city's bonds (loaned them); can be redeemed.

That V. T. Malott be granted permission to curb with stone and pave with brick the south sidewalk in front of his property on North street, between Pennsylvania and Meridian streets; said work to be done at his own expense, and under the direction of the City Civil Engineer, who is hereby ordered to set the grade stakes.

Councilman Pritchard's motion to adjourn, failed of adoption.

The following entitled ordinance was read the second time :

G. O. 71, 1881—An Ordinance to provide for the re-organization of the Police Board, Fire Board, Hospital Board, Dispensary Board, and Board of Public Improvements of the city of Indianapolis.

On motion, the Common Council then adjourned.

**DANIEL W. GRUBBS, Mayor,**

President of the Common Council.

Attest: **JOS. T. MAGNER, City Clerk.**