

cil, so long as it is not itself attacked, (and I have already observed that the petition does not profess to ask that the resolution may be annulled as illegal), it would seem surely at first sight erroneous and illogical in the highest degree to say that the commissioners in acting under it, and within the limits it prescribed, while it is still in legal force and effect, have acted illegally,—that is as far as their own action is concerned, for the illegality if any, must, in that case, have been in the powers themselves, as well as in the execution of them; and not in the mere exercise of powers either admittedly legal, or what is the same thing practically, left to their legal effect without being called in question.

What the commissioners did appears, as far as it can be collected from the record, to have been this: after their appointment by the Court of Review they advertised in the newspapers, as they were required to do, that they "had been appointed commissioners to assess two-thirds of the cost of the improvement, and that they intended to levy the assessment on a great number of properties which they proceeded to designate, and within the limits which they described; and then they gave notice to all parties interested that they would meet at their room in the City Hall, on Thursday, the fifth of May next, at three o'clock in the afternoon, and would then and there hear any complaint against the proposed limits of assessment." As far as appears no objections were made by any one, and the commissioners went to work to assess two-thirds of the cost, and within those limits, and their right to do so does not appear to have been at that time questioned. Therefore, though I have not the terms of the resolution before me, I see from such evidence as I have that the commissioners made it quite clear that they were going to act as they did, and that nobody was then found who objected to that course; and that it was the right course for them to pursue, if that was what they were required to do by the resolution, and by the judgment of the Court of Review, if neither of those sources of power were called in question in a legal manner. I must assume also that such

really was the course required of them, because the petitioner, though he does not allege it in express terms, in his petition, does allege that that was the precise power which the Corporation assumed to exercise; and because also the learned counsel who argued his case with such consummate skill, distinctly put it upon that ground. He argued against the existence of such a power in the council, and against its exercise by any one acting under their orders, and he assumed that the council had ordered the thing to be done in that way; and I must say I was struck at the time by his argument which was this, (and I take it from his factum word for word), "To say that because the council, when ordering the widening of the street, had decided that the city should only pay one-third of the cost, it followed that the city only had been benefited to the extent of one-third, would be to recognize the right of the council to determine who the parties benefited were, whereas the intention of the new law was that the commissioners alone should be invested with that power." Whatever may be the force of that argument which I will come to in a moment, it implies, I think, clearly that that is what the council did, and that they had not the power to do it. As to the argument itself, I must say it appears to me fallacious, because it confounds the power to determine who the parties to be benefited were with the power to fix the extent of the benefit; but it certainly appears to admit that the resolution must have limited the latter to two-thirds, as regards the locality, and one-third as regards the rest of the city. The position of the petitioner therefore must be that the council gave the commissioners this power whether it had it to give or not; and that the commissioners exercised the power within the limits given. But as regards the proceedings of the commissioners themselves, which is all that is attacked by this action, where can it be pretended that the "illegality" of their proceedings is to be found? Yet that is all that the petition asks to annul. On the other hand if it is an 'illegality' resulting from the execution of illegal orders, why are those orders, why is that authority itself, not the subject of the action?