before the hearing of the case James Sharp, W. W. Riter, James C. Watson, A. G. Glauque, and Speucer Clawson have filed herein their petition averring that they are resident property holders and taxpayers within said city, and offer to contribute to the expense of this cause and ask the benefit of the relief sought and their names were added to that of W. L. Pickard as plaintiffs herein:

Three questions arise in the determination of the case.

1st. Has the city the right or power to sell real estate owned by it?

2nd. If it has this right, has it heretofore dedicated or appropriated the land in controversy to the uses and purposes of a public park, in such a manner and to such an extent as to take away its right to now sell it?

3rd. If the city has the right to sell real estate owned by it, which has not been dedicated or appropriated to the uses and purposes of a public park or other public purpose or use, is there anythiug in the manner of making the sale in the present case, or in the price to be received, or in the declared object to be attained in making the contemplated sale, to authorize a court of equity to interfere to prevent such sale?

It is alleged iu the complaiut and admitted that the city holds the premises in controversy by a fee simple title. The evidence shows that the city purchased this block of ground on the 14th day of March, 1879, from one B. Morris Young, and received a deed from him therefor of that date. The records of the City Council pertaining to the purchase of this land do not show that it was not bought for any special or designated purpose, and the deed from Young to the city is in the ordinary form of deeds, and contains no limitations upon the rights of the city in regard to its use or disposition and imposes no trust upon the city iu respect thereto, of any kind whatever. The city therefore holds the property by a perfect and undisputed title, free from any limitations or trusts, except such as may be imposed by operation of law, to use or dispose of it for the general good of its inhabitants.

The charter of the city contains the following provision, viz: "The inhabitants of said city by the name and style aforesaid, shall have power to sue and be sued, to plead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatsoever; to purchase, receive, hold, sell, lease, convey and dispose of property real and personal for the benefit of said city, both within and without its corporate boundaries; to improve and protect such property, and do all other things in relatiou thereto as natural persons. Comp. Laws, 1888, Vol. 1, Sec. 306.

By its charter then, it will be seen, the city is given the power, in express terms, to purchase or sell real estate for the benefit of the city. But if the charter were silent on the subject the city would have the implied power to acquire, hold, and alienate or dispose of property.

Dillon on Municipal Corporations, Vol. 12, Sections 561 to 564 inclusive.

But it is contended that the contemplated sale is in violation of Section 2 of An Act of Congress, approved July 30th, 1886, which provides: "That no Territory of the United States, now or hereafter to be organized, or any political or municipal corporation or subdivision of any such Territory, shall hereafter make any subscription to the capital stock of any incorporation or company or association having corporate powers, or in any manner loan its credit to, or use it for the benefit of any such company or association, or borrow any money for the use of such company or association." That this law of Congress in no manner affects the power of the city to make the sale in question is too obvious to admit of serious argument. By the sale of this land the city makes no subscription to the capital stock of any corporation or company, uor any loan of its credit nor will its credit be thereby used for the benefit of any company association or individual; nor does it thereby borrow any money for the use of any such company, association or individual. The congressional enactment referred to was intended to prohibit the exercise of the taxing power of the Territory, or of any municipality within it, iu aid of private corporatious or associations by subscribing to the capital stock of any such corporatiou, or loaning its credit, or in any of the ways mentioned in the statute or by any other similar methods, whereby burdens would be imposed upon the inhabitants of such Territory or municipality for the benefit of private corporations or associations; but this statute in nowise affects the power of the city to sell or dispose of any of its property, although one of the objects of such sale or disposition may be to encourage or promote the building of a railroad, or aid any other public enterprise which will greatly benefit the inhabitants of the city.

It is contended that the city has dedicated this block of ground to the uses of a public park and has thus placed it beyond its power to uow sell it to private parties. All that has ever been done in the way of dedicating or appropriating the ground for a public park, as shown by the evidence is, that in March, 1880, it was leased to one John Reading for a period of five years, one of the conditions of the lease beiug that Reading was to plant trees "in and around said square as per plan submitted," and it is shown by the affidavit of Reading that there are now about one thousand trees growing on and around the block. He was also to grade the ground sufficiently to enable him to irrigate the trees. Also in 1883 the City Council "advertised for plans for the improvement of the public parks and squares," offering the following premiums to the successful competitors:

For plan of Liberty Park	$100.00
For plan of Washington Square	20.00
For plan of Tenth Ward Square	20.00
For plan of Pioneer Square, partly designed	10.00

The evidence also shows that $10 was paid one W. R. Jones as a premium for furnishing the best plan for improving Pioneer Square.

It is also shown that in 1879 the City Council by resolution changed the name of the property from that of "Old Fort Block" by which it had previously been known to "Pioneer Square."

On the other hand it is shown that from the time the grouud was purchased in 1879 until the present time it has been kept enclosed by a fence and the public have been excluded from all use or enjoyment of it as a public park or otherwise; that Reading used it for the cultivation of fruits and vegetables and that at the end of his lease it was again leased to him by the city for another period of five years at $200 per annum which last lease expired January 1st, 1890.

It is not shown that by resolution, ordinance or otherwise, the City Council ever dedicated or appropriated this land to the uses of a park nor any other public use; nor is it shown that any money, has ever beeu expended on it to improve it for such use except the $10 paid Jones, nor that anything has been bone by way of improving the ground looking to such a use of it, except the planting of the trees referred to, and the planting of the trees would be equally beneficial to it should it be used for other purposes than as a park.

These facts fall far short of what is necessary to constitute a dedication of this grouud to a park or other public use.

The evidence only shows that the council at one time contemplated that at some future time they might dedicate the land to the use of a park and improve it and use it for such purpose.

The Supreme Court of California, in the case of San Francisco vs. Canavan 42 Cal. 541, say: "It is one of the essential elements of a good dedication, that it shall be irrevocable, and that the land shall be forever dedicated to the public use which is designated, provided the public see fit to use it for that purpose." Again the court says: "To constitute a valid and complete dedication, two things must concur, to wit: an intention by the owner, clearly indicated by his words or acts, to dedicate the land to the public use, and acceptance by the public of the dedication. This acceptance is generally established by the use of the public for the purpose to which it has been dedicated. * * * This use must be of such duration that the public interest and private rights would be materially impaired if the dedication were revoked, and the use by the public discontinued. See also Washburne on easements Sections 132 and 139. But even if there had been a dedication, still it would be within the power of the city to sell or dispose of it, as it holds the legal title and has the permission of legislative authority to sell it and it has never been used by the public, and no public interest or private right would be materially impaired by such sale.

Brooklyn vs. Armstrong, 45 N. Y., 234.

Kings Co. Ins. Co. vs. Sterns, 101 N. Y., 416.

Brooklyn Park Com'r vs. Copeland, 106 N. Y., 496.

And even if the square had been dedicated by the city as a public park, authority is expressly given by subdivision 8, of section 1, of article 4, of vol. I., compiled laws, to vacate parks and public squares, so that the power of the city to make such use of this square for the benefit of the city as it chooses, either by selling it, or by vacating it, is beyond question.

But it is contended that the price to be obtained is inadequate, and the sale