

No. 12516

Supreme Court of Illinois

City of Ottawa.

vs.

Macy, et al.

71641  7

Supreme Court 3^d Division - April Term, 1888,

The City of Ottawa

vs.

George B. Maey et al. }

And now comes the
Plaintiff in error by Leland & Leland & J. Avery
I say, that in the record & proceedings in
this cause, there is manifest error, in this,
to wit: ~~The~~

The Court below erred in refusing to
enter judgment for the assessment & in
sustaining the objections to the judgment.

And for these & other errors
apparent in said record, the plaintiff
in error prays that the judgment & determination
of the Court below in this respect, may be
reversed, annulled & set aside.

Leland & Leland & J. Avery
for plff. in error.

And now come the said defendants in error
and say, that in the record and proceedings
aforesaid there is no error, wherefore they
pray, that the judgment aforesaid be affirmed.
Olivier C. LeMay,
att. for Defs. in Error.

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County Court LaSalle County March Term A.D. 1858
State of Illinois } ss
LaSalle County }

Pleas before the County Court of the
County of LaSalle and State of Illinois at a reg-
ular Term of said Court & for said County com-
menced and held at the Court House in Ottawa
on Monday the 1st day of March A.D. 1858

Present Hon John C. Schaumburg Judge

City of Ottawa

vs

Suit for Assessment

~~John Doe & Co~~
George B. May et al.

Whereas Albert J. Dow City Collector
of the City of Ottawa returned to the Clerk of the
County Court of the County of LaSalle and State
of Illinois on the 23^d day of Feb'y A.D. 1858 the follo-
wing Town lots as having been assessed in accor-
dance with the ordinances of said City for the
purpose of improving Streets in front of said lots
and that the assessments thereon remain due
and unpaid on the day of the date of said
Collectors return and that the respective owner
or owners have no goods and chattels within
the said City on which the said Collector could
levy for the said assessments and costs
due and unpaid on the following described Town
Lots and parts of Town lots situated in said
City of Ottawa to wit=

Warrant N^o 15

List of Town Lots within the limits of the City of
 Ottawa County of LaSalle and State of Illinois
 "deemed benefitted by the curbing and paving the
 gutters and gravelling LaSalle Street from the sou-
 th side of Main Street to the Canal Bridge" within
 the sum of money severally assessed thereon which
 remain unpaid

In whose name Assessed	Descri- ption	Lot	Block	Valuation Dollar	Am ^t of Assessment Dollars Cts
Original Town of Ottawa					
G. B. Macey	Abott	1	12	5000	110 00
La ^s Lemoashire	W ^h S ^h	7	"	1500	15 00
Ebert & Myers	W ^h S ^h	"	"	1250	15 00
Arthur B. Ward	W ^h S ^h	2	17	1500	10 00
State Addition to Ottawa					
Unknown		3	25	200	5 00
Same		4	"	200	5 00
Same		5	"	200	5 00
Same		6	"	200	5 00
Same		7	"	200	5 00
Same		8	"	200	5 00
Same		25	"	200	8 00
Same		26	"	200	8 00
Alonzo Edwards		28	"	200	8 00
Same		29	"	200	8 00

Alonso Comasols	30 25	200	800
Same	31 "	700	800
Same	32 "	700	800
Unknown	9 26	200	500
W. W. Low	11 "	200	500
Same	12 "	200	500
Wm. P. Daffy	17 "	600	800
Same	18 "	400	800
Sam. Curran	20 "	200	800
Same	21 "	200	800
Same	22 "	200	800
Timothy Slattery	24 "	500	800
John Bailey	5 35	1000	9300
Catholic Church	13 "	500	2400
King & Brother	10 36	1500	9375
Same	11 "	1500	10000
Same	12 "	500	2400
Wm. Edw. F. Hannan	Apr 7 35	1000	4500
John Foley	10 36	1500	9000
Same	11 "	1500	9800
Same	12 "	500	2400
Thos. Forbes	5 36	2000	9000
Sam. Stout	10 36	2000	9000
Same	11 "	1500	9800
Same	12 "	500	3000
A. C. Gay	8 1/2 1 85	2000	5700
Sam. E. Watkinson	8 30 1/2 2 "	2000	700
Same	6 "	2500	11000

Nims L. H. Gujer	7 85	100 00	110 00
Methodist Church	10 "	40 00	110 00
Jason Gurley	3 86	57 00	32 00
A H Howland	4 "	20 00	123 00
Henry Harbont	5 "	20 00	110 00
E. B. Taylor	13 "	10 00	32 00
Baptist Church	14 "	25 00	120 00
Warren Crooks	545 ft 2 90	20 00	10 00
Swiss	5 1/2 6 "	15 00	55 00
L. A. A. Hess	and 1/2 11 "	25 00	55 00
Louisa Leland	" 1/2 11 "	25 00	55 00

State of Illinois

County of LaSalle
City of Ottawa

I Albert J. Dow City Collector of
the City of Ottawa County and
State aforesaid certify the
foregoing list of Lots upon which an assess-
ment was levied for the purpose set forth in the
caption thereof is correct according to the best of
my knowledge and belief that the amount
specified against each lot now remain unpaid
and I can find no goods and chattels of the
owners thereof upon which to levy and collect
the same.

Albert J. Dow City Coll

Ottawa Jan'y 25th 1858

Subscribed & Sworn to before

me February 23^d 1858. P. Lindley clerk

C. L. Herrick Deputy

3-

State of Illinois
 County of LaSalle
 City of Ottawa

Corlins Avery City ^{clerk} of said
 City on oath says that the
 foregoing written list is a
 true copy of the delinquent
 list filed in my Office by A. J. Dow City Collector
 January 26th 1858 and that no payments have
 been made thereon since
 Subscribed & Sworn to before J. Avery City clerk
 on July 23rd 1858

L Lindley clerk

C. L. Herrick Depy

State of Illinois
 County of LaSalle
 City of Ottawa

I Albert J. Dow City collector
 for the City of Ottawa in the
 County of LaSalle and State
 of Illinois do hereby give notice that I will apply
 to the County Court of LaSalle County at the next
 term thereof to be holden at the Court House
 in Ottawa in said County and State on the first
 Monday of March next for judgment aga-
 inst the above described Lots and parts of Lots
 for the amount of Taxes and costs thereon
 The whole cost when sold will be fifty cents
 on each Lot and part of Lot
 City of Ottawa Jan 30th 1858. Albert J. Dow City coll

State of Illinois } ss This is to certify that the
 County of LaSalle } above list of Lots and parts of Lots
 City of Ottawa } in the City of Ottawa County of LaSalle
 and State of Illinois Together with
 the above notice of the intended application for judgment
 was published in the Ottawa Free Trader a weekly
 newspaper printed at Ottawa in said County on
 the 30th day of January 1858 being over six days previous
 to the first Monday in March 1858 that the
 number of copies of said list and notice corresponds
 with the number of copies of said paper
 issued for that week and that the said list and
 notice is a literal copy of the manuscript copy
 furnished by the City Collector of said City of
 Ottawa and County of LaSalle and State of Illinois
 Dated At Ottawa 30th Jan 1858 Wm. Osman Publisher

State of Illinois } County Court March Term 4th 1858
 LaSalle County } ss

To Hon John C. Champain

Judge of said Court

Albert J. Doro
 City Collector of the City of Ottawa County and State
 aforesaid prays that a judgment may be entered
 against the lots and parts of lots in the foregoing
 list described and that a precept may
 issue thereon commanding the Sheriff to sell the
 same to make such taxes and costs Albert J. Doro City Coll

To the ruling of the Court in this containing said objections the said city of Ottawa by its said atty then and then excepted

And now comes the said city of Ottawa by every her attorney and enters a motion for a judgment against the aforesaid Town Lots and parts of Town lots for the amount of the assessment interest and costs annexed and chargeable to them respectively and it appearing to the Court that due notice of the intended application for judgment against said Town lots more than ~~thirty~~ ^{thirty} days prior to the first day of the present term of this Court and no owner hath appeared to make defense or show cause why judgment should not be entered against said Town lots for the assessment interest and costs so due and unpaid thereon.

Except ^{to} 460 ft of Lot 1 & w¹/₂ S ¹/₂ Lot 7 in Block 12, Original Town of Ottawa and Lots 17 & 18 in Block 26 & lots 10, 11 & 13 in Block 36 & Lots 7, 10, 11 & 12 in Block 55 & Lot 5 in Block 56 & Lots 10, 11 & 12 in Block 66 & Lots 1 & 7 in Block 85 & Lots 4 & 5 in Block 86 & 45 ft Lot 2 & S ¹/₂ 6 in Block 90 & Lot 14 in Block 86 in State Addition to Ottawa which are objected to by Bashnell & Gray attys for defts which objections are sustained by the Court.

Whereupon it is considered by the Court that judgment be and is hereby rendered against the aforesaid Town Lots in the name of the city of Ottawa for the sums annexed to each Town Lot and for costs being the amount of the assessment interest and costs due thereon and for which said Town lots are chargeable (except 460 ft

And by agreement of frontiers team is given \$5.00
 bill of exceptions herein within ten days from
 the last day of this term of this court
 John C. Champin. 8

Lot 17 with S. 1/4 lot 7 in Block 12 Original Town of Ottawa
 & Lots 17 & 18 in Block 26 & Lots 10, 11 & 12 in Block 36 & Lots
 7, 10, 11 & 12 in Block 53 & Lots 5 in Block 56 & Lots 10, 11 & 12 in
 Block 66 & Lots 14 & 7 in Block 83 & Lots 4 & 5 in Block 86 &
 S. 1/4 lot 2 & S. 1/4 lot 6 in Block 90 & Lots 14 in Block 86 in State
 Addition)

And it is ordered by the Court that the
 said several Town Lots or so much thereof as
 shall be sufficient of each of them to satisfy
 the amount of Assessment interest and costs an-
 nued and chargeable to them severally be sold
 by the Sheriff of the County of Lafalle as provided
 by law and the ordinances of said City of Ottawa

John C. Champin

* Be it remembered that on the 20th day of March
 A.D. 1858 a Bill of exceptions was filed in the ^{clerk's} office
 of said Court in the words and figures following
 to wit:

State of Illinois) County Court of said County
 Lafalle County) ss March Term A.D. 1858.

City of Ottawa

vs Special Assessment
 George B. Macy & Co.

Be it remembered that on the
 28th day of February A.D. 1858 said City Collector
 of the City of Ottawa filed the following delin-

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-grant List viz-

Warrant #15

List of Town Lots within the limits of the city of Ottawa County of LaSalle and State of Illinois deemed benefited by the curbing and paving the gutters and graveling LaSalle Street from the ^{South} side of main Street to the canal Bridge with the sums of money severally assessed thereon which remains unpaid

On whose name assessed	Description	Lot	Block	Valuation	amt of Assessment
Original Town of Ottawa					
G. B. Macy	160 ft	1	12	6000.00	110.00
Chas Lanashire	over 8 1/2	7	"	15744.00	15.00
Chas & Myers	over 8 1/2	"	"	12376.00	15.00
Julia Brown	over 8 1/2	2	17	15744.00	10.00
State Addition to Ottawa					
Unknown		3	25	3000	5.00
Same		4	"	3000	5.00
Same		5	"	2000	5.00
Same		6	"	2000	5.00
Same		7	"	2000	5.00
Same		8	"	2000	5.00
Same		25	"	2000	8.00
Same		26	"	2000	8.00
Alonzo Edwards		28	"	2000	8.00
Same		29	"	2000	8.00
Same		30	"	2000	8.00
Same		31	"	7000	8.00

Alfred Edwards		32 25	700	80 00
Unknown		9 26	200	5 00
Dr. Dr. Low		11 "	200	5 00
Sum		12 "	200	5 00
Heirs P Duffy		17 "	600	80 00
Sum		18 "	200	8 00
Sam Adams		20 "	200	8 00
Sum		21 "	200	8 00
Sum		22 "	200	8 00
Timothy Slattery		24 "	500	8 00
John Bailey		5 35	1000 00	95 00
Catholic Church		13 "	500	24 00
King & Brother		10 36	1500	98 00
Sum		11 "	1500	100 00
Sum		12 "	500	24 00
Heirs of Edw Kearney	At 1/2	7 35	1100	45 00
John Foley		10 "	1500	90 00
Sum		11 "	1500	98 00
Sum		12 "	500	24 00
Thos Forbes		5 56	2000	90 00
Col Stout		10 66	2000	90 00
Sum		11 "	1500	98 00
Sum		12 "	500	20 00
E. G. Gay	8 1/2	1 85	2000	57 00
Sam Waterman		2 "	200	7 00
Sum		6 "	2500	110 00
Heirs of L & Giger		7 "	1000	110 00
Methodist Church		10	400	110 00

Jason Gurley		3 86	5000	32 00
A H Howland		4 "	2000	122 00
Henry Harburt		5 "	2000	110 00
E B Taylor		13 "	2000	82 00
Baptist Church		14 "	2500	120 00
Barren More	\$45 ft	2 90	2000	14 00
Sum	\$12	6 "	1500	55 00
C. & A. Hays	md 1/2	11 "	2500	85 00
Lorenzo Leland	" 1/2	11 "	2500	55 00
\$2527.75-				

State of Illinois
 LaSalle County } ss Albert G. Dow City Collector
 City of Ottawa } of the City of Ottawa County
 & State aforesaid certify the
 foregoing list lots upon which an assessment
 was levied for the purpose set forth in the
 caption thereof is correct according to the best
 of my knowledge & belief that the amount
 specified against each lot now remains
 unpaid and I can find no goods & chattels
 of the owners thereof upon which ^{to} levy & collect
 the same

Albert G. Dow City Clerk

Ottawa Cany 25th 1858

Subscribed & sworn to before
 me February 28th 1858

L Lindley clk
 C. L. Derrick Deputy

State of Illinois }
 LaSalle County }
 City of Ottawa }

Julius Orwig clerk of said
 City on oath says that
 the foregoing written list is
 a true copy of the delinquent
 list filed in my office by A. J. Dow
 City Collector Jan^y 26th 1858 and that no
 payment have been made thereon since
 subscribed & sworn to by A. Orwig City Clerk
 before me July 28th 1858

I Lindley clk

A. J. Dow City Clerk

State of Illinois

LaSalle County

County Court (March Term 1858)

To Hon^{ble} J. C. Champlin Judge of said
 Court } Albert J. Dow City Collector of the City
 of Ottawa County and State aforesaid, prays
 that a judgment may be ~~xxxxxxx~~^{entered}
 against the lots & parts of lots in the foregoing
 list described and that a precept
 may issue thereon commanding the Sheriff
 to sell the same to make such taxes
 & costs

Albert J. Dow

City Collector

And also returned the following proof of publication of said List-

Passent A# 15

List of Town Lots within the limits of the city of Ottawa County of Lafalle and State of Illinois "damned benefitted by the curbing and paving the gutters and graveling Lafalle Street from the South side of Main Street to the Canal Bridge" with the sums of money severally assessed thereon which remain unpaid

Original Town of Ottawa		Ass.	Vol.	Amount of
In whose name and	Ass.	Vol.	Ass.	Ass.
G. B. Macy	A 1/2 ft	1 12	5000	10 00
Ed Laneashire	W 1/2 S 1/4	7 "	1500	15 00
Edw & Mary	W 1/2 S 1/4	7 "	1250	15 00
Charles B. Ward	W 1/2 S 1/4	2 17	1500	10 00
State Addition to Ottawa				
Unknown		3 25	200	5 00
Same		4 "	200	5 00
Same		5 "	200	5 00
Same		6 "	200	5 00
Same		7 "	200	5 00
Same		8 "	200	5 00
Same		35 "	200	8 00
Same		26 "	200	8 00
A. H. Edwards		28 "	200	8 00
Same		29 "	200	8 00
Same		30 "	200	8 00
Same		31 "	700	8 00

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Alonso Edwards		32 35-	7 ⁰⁰	8 ⁰⁰ 00
Wm. Curran		9 26	2 ⁰⁰	5 ⁸⁰
Dr. Dr. Low		11 "	2 ⁰⁰	5 ⁰⁰
do		12 "	2 ⁰⁰	5 ⁰⁰
Mrs P. Duffy		17 "	6 ⁰⁰	8 ⁰⁰ 00
do		18 "	4 ⁰⁰	8 ⁰⁰
Mr. Homan		20 "	2 ⁰⁰	8 ⁰⁰
do		21 "	2 ⁰⁰	8 ⁰⁰
do		22 "	2 ⁰⁰	8 ⁰⁰
J. Slattery		22 "	5 ⁰⁰	8 ⁰⁰
Mr. Bailey		5-35	14 ⁰⁰	93 ⁰⁰
Catholic Church		13 "	5 ⁰⁰	24 ⁰⁰
King & Brothers		11 36	15 ⁰⁰	93 ⁷⁵
do		11 "	15 ⁰⁰	100 ⁰⁰
do		12 "	5 ⁰⁰	24 ⁰⁰
Mrs C. Korman	Nh.	7 55-	10 ⁰⁰	45 ⁰⁰
John Foley		10 "	15 ⁰⁰	90 ⁰⁰
do		11 "	15 ⁰⁰	98 ⁰⁰
do		12 "	5 ⁰⁰	24 ⁰⁰
Thos. Forbes		5-36	20 ⁰⁰	90 ⁰⁰
Lot Stout		10 66	20 ⁰⁰	90 ⁰⁰
do		11 "	15 ⁰⁰	98 ⁰⁰
do		12 "	5 ⁰⁰	30 ⁰⁰
A. G. Gay	8 1/2	1 85	20 ⁰⁰	57 ⁰⁰
Law. C. Waterman	53 off	2 "	2 ⁰⁰	7 ⁰⁰
A. C. Waterman		6 "	25 ⁰⁰	110 ⁰⁰
Mrs L. H. Geizer		7 "	100 ⁰⁰	110 ⁰⁰
Methodist Church		10 "	40 ⁰⁰	110 ⁰⁰

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Jason Gurley		\$ 86	500	82 00
A H Howland		4 "	2000	122 "
A Hurlbut		5 "	2000	110 00
E. B. Gaylor		13 "	1000	32 "
Bapt Church		14 "	2500	120 "
Dr. Moore	\$ 48 ft	3 90	200	10 00
do	\$ 1/2	6 "	1500	55 "
L. V. A. How	und 1/2	11 "	2500	55 00
L. Leland	" 1/2	11 "	2500	55 00

State of Illinois } ss I Albert G. Dow City Collector
 County of LaSalle } for the City of Ottawa in the
 City of Ottawa } County of LaSalle and State
 of Illinois do hereby give notice
 that I will apply to the County Court of LaSalle
 County at the March Term thereof to be holden
 at the Court House in Ottawa in said County
 and State on the first Monday of March
 next for judgment against the above de-
 scribed Lots and parts of Lots for the am-
 ount of Taxes and costs thereon the whole
 cost when sold will be fifty ^{cents} on each Lot and
 part of Lot
 Albert G. Dow City Coll
 City of Ottawa Jan 20th 1858

State of Illinois } ss This is to certify that the
 County of LaSalle } above list of Lots and parts
 City of Ottawa } of Lots in the City of Ottawa

\$ 16

County of LaSalle and State of Illinois together with the above notice of the intended application for judgment was published in the Ottawa Free Trader a weekly newspaper printed at Ottawa in said County on the 30th day of January 1858 being over six days previous to the first Monday in March 1858 that the number of copies of said list and notice correspond with the number of copies of said paper issued for that week and that the said list and notice is a literal copy of the Manuscript-copy furnished by the City Collector of said City of Ottawa and County of LaSalle and State of Illinois

Dated Ottawa 30th Jan 1858 W^m C. Egan Publisher

On the 8th day of March 1858 objections to said judgment being made were filed by the owners of following described lots

Geo. B. Macy	201-13 th	1 in 12	Original Town
Annus Luncaster	W ^m 86 1/2	7	" " "
Heirs P. Daffy	17 - 26	State Addition	
"	18 - "	" "	
King & Son	10	36	" "
"	11	"	" "
"	12	"	" "
Heirs C. Korman	7	83	" "
John Foley	10	"	" "

Colin Joley	11 -	53	State Addition
"	12 -	"	"
Thos. Jollys	5 -	86	"
Lab. Stout	10 -	66	"
"	11	"	"
"	12	"	"
A. G. Gay Sr	1	85	- "
Wm. C. H. Lugin	7 -	"	"
A. H. Howland	4	86	"
Henry Smallbut	5 -	"	"
Warren Moore	45 ft 2 -	90	"
"	8 1/2 6	90	"
Baptist Church	14	86	"

The objections filed were as follows
 State of Illinois } In the County Court thereof
 LaSalle County } March Term A.D. 1858

The City of Ottawa }
 as } Suit for Taxes
 Geo. B. May et al }

And now comes said
 defendants and say that judgment ought
 not to be rendered against the real estate
 in said Warrant No 15 mentioned for said
 assessment and for reason of objection
 show to the Court here the following
 viz

- 1st Because the assessment for said Improvement was made under Sec 2 or 8 of the City Charter and is void the said provisions of said Charter being repugnant to the State Constitution and inconsistent with the principles of taxation and assessment therein fixed.
- 2^d Because the said assessment is void not having been assessed uniformly upon all the real estate subject to taxation or assessment in the natural division benefitted thereby
- 3^d Because the commissioners who made said assessment did not before entering upon their duties in that behalf give to all persons interested therein and owning property to be assessed sufficient notice as required by law of the time and place of meeting to make such assessment
- 4th Because said commissioners did not go upon or view the premises assessed but ^{made} ~~valued~~ the said assessment at the office of the City clerk without any actual view of the premises and the benefits arising therefrom to the owners of property assessed
- 5th Because there is no legal confirmation of said assessment by the city council for the reason that after the completion of said assessment Ball and the filing of the same with the City clerk the said clerk did not give any sufficient notice as required by law, to the

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parties whose interests were affected by said assessment of the time and place fixed for the hearing of objections thereto by the said City Council

6th Because the return of the City Collector to said Warrant, does not show any demand for said assessment as required by law made of the persons owning the property assessed ~~not~~ that such persons have no goods & chattels whereon to levy for the satisfaction of said assessment & the said persons had sufficient personal property to satisfy said assessment

7th Because there is no legal return by the Collector to said Warrant the purported return being void on the ground that it was made more than thirty days after the date of the warrant which was the time limited therein for making such return

8th Because some of the owners of Lots 17 & 18 in Block 26 and Lot 7 in Block 55 and Lot 7 in Block 80 in State Addition were minors and no application was made by the City Council to either the judge of the Circuit or County Courts for the appointment of a guardian for said minors nor was any notice served upon the guardian of said minors as required by law

9th Because Lot 13 in Block 83 Lot 10 in Block 85 and Lot 14 in Block 86 are all lots with public church buildings thereon used exclusively for that purpose of religious worship and are exempt by law from all taxation or assessment whatever.

10th Because said proceedings are in many other respects informal and insufficient in law

Bushnell & Gory

Attys for Defts Objecting

On hearing of said objections the following evidence was introduced,

1st The assessment Roll to which the was an objection except as to the notice attached thereto which said notice were in the words & figures following viz

Commissioners Notice

Public Notice is hereby given to all persons interested that the undersigned commissioners appointed by the city Council of the City of Ottawa to assess the sum of seven thousand six hundred and sixty six dollars and fourteen cents on the real estate benefitted by the grading of Laflamme Street to the Canal Bridge and paving and curbing the gutters of the same will meet at A. A. Avey's office in said City on the 23rd day of July 1857 at 9 o'clock A.M. for the purpose

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of making such assessment

Ottawa July 18

Henry C. Reed

Geo Whipple

Saml B Widley

Comrs

This certifies that the notice a copy of which is herewith attached was published on the 18th day of July A.D. 1857 in the Ottawa Free Trader a weekly newspaper published at Ottawa LaSalle County Illinois and that the number of transcript of the same corresponds with the regular number of copies of said paper on that day

Ottawa Aug 6th 1857

Wm Cason Publisher

and it also appeared by the return of the Commissioners attached to said assessment Roll that said Commissioners met at the time & place designated in said notice & did there & there make said assessment

Assessment Notice

Public notice is hereby given to all persons interested that the commissioners appointed by the City Council of the city of Ottawa to assess the sum of Seven thousand Six hundred and sixty Six Dollars and fourteen cents on the real estate in the part of the city benefitted by the grading of LaSalle Street from the south side of main street to the canal Bridge

and paving and curbing the gutters of this ^{same} ~~city~~
have completed their assessment and made
return of the same to my Office.

Any person wishing to appeal from said assess-
ment must file their objections in writing in
my office on or before Tuesday the 18th day of Aug-
ust 1857. at 7 o'clock P.M. as the city council will
at that in the council Room hear all objections
to the assessment and revise & confirm or
amend the same

Aug 8th

J. Every city clerk

(Printers certificate thereto attached)

This certifies that the annexed note was pub-
lished two weeks successively in the Ottawa Free
Trader a weekly newspaper published at
Ottawa LaSalle County and State Illinois
commencing the number of said paper
dated August 8th 1857

(W. W. Osborn)

Corporations printer

and by the record of the proceedings of the
city council here introduced it appeared
that the city council did at the time & place
in said notice designated confirm said
assessment

23 3 The Warrant of the city collector attached
to said Assessment Roll which was in the words
and figures following viz

State of Illinois }
Lafayette County } The People of the State of Illinois
City of Ottawa } to the collector of said City
Greeting

Whereas the city council of the City of Ottawa
did on the 25th day of August - A.D. 1857 con-
firm the assessment duly made and filed
in the clerk's office by the commissioners
appointed by the said city council to
assess the sum of Seven thousand Six
Hundred and Sixty Six & $\frac{14}{100}$ Dollars upon
the real estate in the natural division by
~~the improvement~~ of the city deemed benefi-
ted by the improvement of Lafayette Street as
described in the head of the above Assessment
Roll in proportion as nearly as may be
to the benefit resulting therefrom in pursuance
of an order for said assessment made
by the said city council on the 7th day
of July A.D. 1857 and did thereby assess the
sum of Seven thousand Six Hundred and
Sixty Six & $\frac{14}{100}$ Dollars upon the real estate des-
cribed in the Roll of said assessment in the
respective proportions thereof marked

"assessment" set off against to each lot part of lot and real described in said Roll which said Roll in the words & figures above set forth

Now therefore you are hereby commanded to levy make and collect of the goods & chattels of the respective owners of the real estate above described the several sums of money assessed thereon for which each may be liable as aforesaid and hereof make due return in thirty days from the date hereof

Witness the hand of George C. Walker Mayor
of the city Ottawa and the corporation Seal
thereof this 28th day of September 22nd 1857
Attest J. Avery
city clerk

Returned and filed Janry 26th 1858

J. Avery city clerk

The collectors return to said warrant is the delinquent list herinbefore given and the certificate thereto attached

3 The following ordinances or parts of ordinances of the city of Ottawa were introduced

an ordinance concerning assessments for public improvements

Section 6th of said ordinance Before entering

upon their duties the commissioners shall give at least six days notice in the corporation paper of the time and place of making their assessments and they may if necessary adjourn from day to day such notice may be in the following form

Commissioners Notice

Public notice is hereby given to all persons interested that the undersigned commissioners appointed by the City Council of the City of Ottawa to assess the sum of — dollars on the real estate in the part of the city by us deemed benefitted by the (here state the substance of the order) will meet at — in said — on the — day — of at the house — of — clerk for the purpose of making ~~making~~ said assessment

Ottawa 185—

A. B

C. D

E. F.

Commissioners

The commissioners shall attach to this assessment roll a certificate of such publication signed by the Proponent or general agent of the corporation paper

Section 9, of said Ordinance. The commissioners shall complete their assessment and file the same in the office of the City Clerk within forty days after their appointment unless

further time shall be given them for the purpose. The clerk shall thereupon cause a notice of the return of such assessment to be published for six days in the corporation paper and a certificate of such publication under the hand of the corporation printer or his general agent shall be written upon or attached to the roll. The notice may be in the following form:

Assessment Notice

City Clerk's Office

Ottawa 185

Public Notice is hereby given to all persons interested that the commissioners appointed by the city council of the city of Ottawa to assess the sum of — dollars on the real estate in the part of the city benefitted by the (here state the substance of the order) have completed their assessment and made return thereof to my office. Any persons wishing to appeal from said assessment must file their objections in writing in my office on or before Thursday — the — day of — 185 at 7 o'clock P.M. as the city council will at that time in the council Room hear all objections to the assessment and revise & confirm or amend the same.

C. A. Clark

27
Section 10 of said Ordinance - When all objections to the assessment shall have been heard and the roll revised and corrected by the city council an order of ^{confirmation} ~~confirmation~~ shall thereupon be entered by the city clerk (if such order shall be made) which order may be in the following form to wit:

Whereas due notice has been given by the city clerk of the return of the assessment made by the commissioners appointed by the city Council on the - day of - 188- to assess the sum of - dollars on the real estate in the part of the city benefited by the (here state the nature of the assessment) and all objections to such assessment having been duly heard and disposed of by the city council (or no objections thereto having been made as the case may be) it is therefore

Ordered that the said assessment as revised and ordered by the city Council be and the same is hereby confirmed. It is further ordered that a warrant be issued and directed to the city collector for the collection thereof returnable in thirty days after date

Section 11 of said ordinance. The city collector shall have the same power in the collection of warrants as he possesses in the collection of general taxes. If any part of the assessment shall not be collected by the return day of

the warrant he shall make return thereof in the manner required for the return of General warrants. The order of sale shall be entered by the City clerk and the sale and return thereof shall be made by the City collector in the manner prescribed for taxes. All warrants for Special Assessments shall be charged by the City clerk to the collector receiving the same & such collector shall be liable therefor in the same manner and to the same extent as he is for general taxes.

Section 13 of said ordinance - No assessment shall be deemed to be invalid in any case where the same shall be made in conformity with law although the same shall not be made in conformity with the proceedings and forms herein prescribed.

By order

Passed July 24 42 1857

Published March 1st 42 1857

An Ordinance to carry into effect an act of the General assembly of the State of Illinois entitled "an act to amend the charter of the several Towns and cities in this State." Approved March 17 1854

Sec 1. Be it ordained by the City Council of the City of Ottawa that in all cases where taxes

assessed on any lot or real estate in this city
 by the corporate authorities thereof are not paid
 within the time limited it shall be the duty
 of the city collector after having given notice
 of such intended application by advertisement
 at least thirty days previous to such application
 in some newspaper published in this city to
 apply to the county court of Lafalle county at
 the decennial term thereof and cause judgment
 to be entered in said court against such
 delinquent lots or real estate for the amount
 of taxes due and unpaid and costs and
 the said court shall proceed to hear and deter-
 mine such application and render judgment
 against such delinquent lot or real estate
 in the same manner and the said judgment
 shall have the like effect as though said
 delinquent list had been returned to said court
 by the Sheriff or collector of the county in the
 collection of State and county taxes; and said
 court after the entry and rendition of said
 judgment shall issue a precept or order to
 the city collector directing him to sell such
 delinquent lots or real estate at public auction
 to pay said delinquent taxes and costs; and
 the said sale shall be made on the second
 Monday after said court shall have
 adjourned by the city collector at the

door of the Court House in said County the said
 City Collector having previously given notice of
 said sale by advertisement by one insertion
 in some newspaper published ~~in~~ⁱⁿ this city
 § 2 Be it further ~~ordered~~^{ordered} ~~xxxxxx~~ That in all cases where
 assessments have heretofore been made or shall
 hereafter be made by the corporate authorities of
 this city on any lot or real estate in this city
 for the purpose of Improving any street side
 walks avenue or alley in front of or adjacent
 to such lot or real estate or for any purpose
 whatsoever either by ordinance resolution or
 other proceeding and such assessment shall
 not be paid within the time limited by
 the ordinance resolution or order making
 such assessment it shall be the duty of the
 City Collector to apply to the County Court of
 Lofall County at any regular term thereof
 and cause judgment to be entered in said
 court against said lot or real estate for the
 amount of such assessment and costs and
 said court upon such application being made
 shall render judgment against such lot or
 real estate for the amount of said assessment
 due and unpaid and costs and shall issue
 a precept or order to the Sheriff of said
 County commanding him to sell said
 lot or real estate or so much thereof

31

as may be necessary to pay said judgment and costs in the same manner and with like effect - as if sold upon execution at law

4th Martin Murray testified that the heirs of John Duffey were minors and owned lots 17 & 18 in Block 26 State Addition.

That the heirs of Edward Kierman were minors and owned Mr Lot 7 in Block 33 State Addition. That one of the heirs of G. H. Gujer was a minor.

Which was all the evidence in case

The court refused to render judgment against the lots & parts of lots in said delinquent list to which objections were made and to the decision of the court in so refusing to render judgment the city of Ottawa excepted & prays the court to sign and seal this bill of exceptions which is done

A. C. Champelin *De*

State of Illinois

La Salle County, I Philo Limmy Clerk of the County Court in & for said County & shal do hereby certify that the above is a true & correct copy of the Judgment & bill of exceptions in the foregoing proceeding

as the same appears of record on file
in my office

Our Witness Whom I have
presented to my hand & the
Seal of said Court at Ottawa
this 16th day of April 1858
J. J. Clerk

Ans 77 p folios a 104 \$7.75

Cost & Seal \$8.10

130
In City of Ottawa
George B. Macer et al

Transcript &
copy of error

Filed April 17. 1858
L. Deland
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1858.

CITY OF OTTAWA *vs.* GEORGE B. MACY *et als.*

POINTS AND AUTHORITIES.

THE objections to the rendition of judgment in this case were :

I. Section II., Article 8 of the charter of the city of Ottawa is unconstitutional.

This objection was abandoned in the Court below.

Charter and ordinances of Ottawa, p. 33.

Shaw vs. Dennis, 5 Gilm. 405.

Morris vs. City of Chicago, 11 Ill. 650.

Canal Trustees vs. Chicago, 12 Ill. 403.

The People, &c., vs. Brooklyn, 4 Comst. 419.

II. The assessment was not upon all the real estate in the natural division benefitted thereby.

The position taken in support of this objection is, that the real estate assessed must be bounded by some natural boundary ; that is, that all the real estate in a portion of the city bounded by such natural boundary must contribute to the improvement. See Sec. II., Art. 8, on page 33.

To this we answer : 1st. The words, natural division, do not necessarily convey the idea that the division must be one bounded by rivers, ravines, mountains, and the like. Our definition of the word natural is not forced, nor far fetched, and we would *naturally* suppose that the provision was one directing to the commissioners that, in selecting the area to be assessed, they should confine themselves to a reasonable and natural proximity to the street to be improved, and that the division to be selected by them should be one reasonably and naturally benefitted, and this view is corroborated by the 4th section, which provides that the commissioners shall assess the necessary amount upon the real estate by them deemed benefitted by the improvements, thereby investing them with a discretion to select the area upon which the assessment is to be levied. The construction contended for would necessarily, if adopted, operate unjustly, because, to say nothing about the great difficulty of determining what would be natural boundaries in that sense, no one bounded by such natural barriers could be selected upon which the assessment could be justly levied.

2d. If the words, natural division, are to have the construction contended for, then we say it is merely a limitation upon the commissioners that they shall not go out of such natural division, and not a requirement that they shall levy the assessment upon all the land in such natural division. The language is upon real estate in any natural division, not upon all the real estate in, nor upon the real estate *of* any natural division.

3d. It does not appear but that the real estate upon which the assessment was levied was bounded by limits natural in the sense contended for, and it is to be presumed that the commissioners have done their duty in this respect, unless the objectors have proved that they did not.

III. The notice of the time and place of meeting to make the assessments was not sufficient.

By Section IV. of Article 8, of the charter, page 33, it is provided that the commissioners shall give six days' notice in one or more newspapers published in the city, of the time and place of meeting, *to all persons interested.*

The notice was published for the time and in the paper required, but it is objected that a general notice *to all persons interested*, without naming them or the land owned by them, is not a compliance with the statute requirements.

To this we answer, that the legislature must have meant a general notice *to all persons interested*, because neither the land upon which the assessment was to be levied, nor the owners thereof, could be known at the time of the giving the notice. The notice is to be given *before the commissioners commence making their assessment*, and they cannot then tell what land will be assessed.

IV. The commissioners made the assessment at the office of the city clerk without having gone upon and viewed the premises.

To this there are two answers: 1st. There is no requirement of law that they shall go upon and view the premises; and 2d, There is no evidence in support of the objection, and if such was their duty it is to be presumed that they did it till the contrary appears.

Again, if said view was necessary, and if it was also necessary that it should be recited on the assessment roll, and no presumption of its having been done is to be had unless it is so recited; then, as the bill of exceptions shows that the roll was introduced in evidence, and that there was no objection to it except as to the notices attached thereto, such recital should be presumed to have been in it.

V. The city clerk did not give sufficient notice of the time and place of hearing objections to the confirmation of the assessment by the city council.

The notice was published in the proper paper and for the proper length of time, and the only objection is that it is too general; that it should name the persons whose land was assessed, or describe the land assessed. The notice will be found on page 2 of the abstract.

This notice is exactly in the form prescribed by the ordinance, (for the ordinance see abstract, pages 2, 3, 4 and 5,) and the question is whether the ordinance and the notice given under it are in compliance with the requirements of Sec. VI. of Art. 8 of the charter. (See page 33.)

It was conceded below, and whether conceded or not it cannot be questioned, that if the notice was such as contemplated by the charter it was sufficient.

If it has already been demonstrated that the notice required by Sec. 4 is a general notice to all persons interested, does it not follow that exactly the same language in Sec. 6 should receive the same construction? The question is not whether the Legislature ought to have required a different and more particular notice in the latter section than in the former, but it is whether they have done so.

In answer to the argument, that the Legislature must be supposed to have intended that the notice should contain the description of the lands or the names of the owners, because the owners might not otherwise get notice of a time and place when they could object to the confirmation of the assessment, we say that such second opportunity for a hearing is one

which need not have been given by the Legislature, and an assessment under the notice in the 4th Section, without any opportunity for an appeal, would have been valid. But suppose the notice not such as intended by said Section 6, yet the 2d Section of the act of March 1st, 1854, to amend the charters of the several towns and cities in this State, provides that the corporate authorities shall have full power to fix by ordinance the kind and time of notice of the assessment. (See 9th Pick. 46.)

Such a general notice is the one usually given. The Chicago charter and ordinances are the same as those of Ottawa, and such is the notice given under their charter and ordinances. (See Chicago charter and ordinances, pages 38 and 155.)

Such notice has been held sufficient in New York under a similar law.

Owners of Ground vs. Albany, 15 Wend. 374.

People, &c., vs. Brooklyn, 4 Comst., page 441.

The following cases may shed some light on the question:

Griffith's, Adm'r., vs. Vertner et ux., 5 Howard's Miss. 740.

App et al. vs. Dreisback, 2 Rawle 304.

Freetown vs. County Com'rs. of Bristol, 9 Pick. 46.

The improvements to be made and the street to be improved being mentioned in the notice, the notice is practically sufficient. No person interested would fail to find out that he was assessed.

VI. The return of the collector does not show any demand for the amounts assessed, nor that the owners had no goods and chattels. Said owners had sufficient personal property.

By Sec. VII. of Art. 8, page 34, special assessments are to be collected by warrant and sale as provided in Art. 9, as near as may be. Section VIII. of Article 9 provides, that the collector's return shall state that said taxes remain unpaid, and that he can find no goods or chattels whereon to levy and collect the same, and this is all the return that he is required by law to make on his delinquent list; and this he has done, and having made the return required by law he is presumed to have performed his duty in the respects mentioned in the objections.

Taylor vs. The People, 2 Gilm. 349.

Job et als. vs. Tebbetts, 5 Gilm. 376.

The presumption that the collector did his duty has not been destroyed by any evidence that the demand was not made, or that the owners had goods and chattels on which the collector could have levied.

VII. The return of the warrant by the collector not having been made within thirty days, it is void and illegal.

To this we answer, that there is no provision of law requiring the collector to make his return within thirty days. It is a mere direction of the council to their officer for the purpose of properly expediting the business of collection, and a delay in this respect is not a matter of which the owners ought to complain. Whether the collector could have made a levy after the thirty days, is a question it is not necessary to consider. It would seem that even this might be done in a case where the time within which it might be done was only limited by the warrant, but not by the law.

Bassett vs. Porter, 4 Cush. 487.

Sheldon vs. Van Buskirk, 2 Comst. 473.

But it would seem that the return of the officer of what he did or did not do must necessarily be properly made after the thirty days, because even if it be likened to the case of an execution required by law to be

returned in a certain time, the officer would have the whole of the last day to make his levy, and might retain the execution till the property levied upon was sold, and make his return afterwards, and in either event the return could not be made till after the return day, and this is a common practice in relation to executions, the propriety of which has never been questioned.

Suppose, however, that it was a statute requirement that the return of the delinquent list should be made within thirty days after the date of the warrant, even then the statute would be only directory.

Alkins vs. Hinman, 2 Gilman 450.

Jackson vs. Cummings, 15 Ill. 451.

VIII. Some of the owners of lots 17 and 18, in block 26, and of the north half of lot 7, in block 55, and lot 7, in block 85, in State's Addition, were minors, and no guardian was appointed, nor was any notice served upon the guardian of said minors.

To this we answer: 1st. That it does not appear that the minors were without guardians, and unless this were so no appointment should have been made, and if they had guardians the publication of the notice was sufficient.

2d. The 12th Sec. of Art. 8 only applies to cases where some act like building a side-walk is to be done by the owners, where a personal service is required, and where there is no guardian upon which it can be served. This being a proceeding *in rem*, the published notice binds minors as in ordinary tax proceedings, subject to their right to redeem.

3d. It does not appear that the one heir of Geiger had any interest in the lot assessed as belonging to the heirs of Geiger, and the fact, if shown, that the proceedings were not valid as to the one heir, would not have prevented the Court from rendering a judgment against the interests of the others.

IX. Lot 13 in block 85, lot 10 in block 85, and lot 14 in block 86, are all lots with public churches and exclusively for religious worship, and are exempt from assessment.

To this we answer, that they are liable for local assessment, though not for general, state, county and city taxes.

In the matter of the Mayor of New York, &c., 11 John 77.

Trustees of the Canal vs. Chicago, 12 Ill. 403.

LELAND & LELAND AND J. AVERY,
Attorneys for Plaintiffs in Error.

City of Ottawa
George B. Haeghe
Bridg

Attorneys for Plaintiffs in Error.

LELAND & LELAND AND J. VALLEY,

Trustees of the Grand St. Chicago, 13 Ill. 408.

In the matter of the Estate of John Levy, dec'd, 11 John W.

To this we answer, that they are liable for local assessment, though
the exempt from assessment.

IX. Lot 13 in block 86, lot 10 in block 86, and lot 14 in block 86, are
parts of the estate.

These prevented the Court from rendering a judgment against the in-
terest, that the proceedings were not valid as to the one heir, would not
the lot assessed as belonging to the heirs of Geiger, and the fact, if
86. It does not appear that the one heir of Geiger had any interest in
ordinarily tax proceedings, subject to their right to redeem.

This being a proceeding in rem, the published notice binds minors as in
is required, and where there is no guardian upon which it can be served.
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86. The 13th Sec. of Art. 8 only applies to cases where some act like
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have been made, and if they had guardians the publication of the notice
were without guardians, and unless this were so no appointment should
To this we answer: 1st. That it does not appear that the minors
served upon the guardian of said minors.

tion, were minors, and no guardian was appointed, nor was any notice
north half of lot 1, in block 86, and lot 1, in block 86, in State's Adm.

VIII. Some of the owners of lots 1, 2 and 16, in block 86, and of the
Jackson vs. Cummings, 12 Ill. 421.

Alfons vs. Hansen, 3 Gilman 426.

the warrant, even then the estate would be only directors,
the defendant list should be made within thirty days after the time of
published, however, and it does not appear that the return of
been questioned.

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the return could not be made till after the return day, and this is a com-
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day to make his levy, and might retain the execution till the property be-
returned in a certain time, the officer would have the whole of the last

City of Ottawa
vs.
Geo B. Macey et al. } Supreme Court
3^d S. D.
April 7. 1858.

Argument for defendants in error.

The first objection upon which we rely is, that the assessment was not uniform on all the real estate in the natural division of the city benefitted.

The 2 Sec. Art. 8 of the City Charter provides, that

"The expenses of any improvement mentioned in the foregoing section, except side-walks and private drains, shall be assessed upon real estate in ~~any~~ natural division benefitted thereby, with the costs of the proceedings thereon, as nearly as may be, to the benefit resulting therefrom.

We are not disputing that it is competent for the Legislature to say what area, a ward for instance, may be assessed. This is settled by the case of Shaw vs. Dennis 5 Gil. 405, but

we claim, that the assessment must be uniform in the ward.

Sections 5 & 6. Art. 9. of our State Constitution seems to us to empower the Legislature, or rather restrict the Legislature, to uniform taxation throughout the area.

We think ~~sec. 2.~~ Art. 8. of City Charter was meant to require all the property in the natural division benefitted to be assessed, not the particular property ^{benefitted} in the division, but the division which is benefitted. and that this provision is not a limitation on the commissioners not to go out of the natural division, but a positive requirement that they should assess all property in the ~~natural~~ ^{natural} division benefitted.

The Legislature must have meant more than is claimed by the construction put by the counsel for plaintiff in error. The natural division has a meaning, in all the charters in this State, where the words are employed, and it will be found that in every case where it is used, there are natural divisions made by running streams, as in Chicago.

So in this city - The part East of Fox River constitutes one natural division separated from the rest by Fox River - South Ottawa is another natural division separated by the Illinois River, and that part of our City which is West of Fox River and North of the Illinois River forms another natural division. The Com. will, without proof take notice of these natural divisions -

1 Greenleaf Div.

The next point made in our objections (which is 5th. in the order of assignment) is that no sufficient notice was given of the time and place of confirming the assessment -

The Charter gives the right to have objections heard before the City Council, before confirmation, and to this end requires the clerk to publish a notice "to all persons interested" of the completion of the assessment, and filing of the roll. Time and place shall be designated for hearing objections." See Sec. 6. Art 8. City Charter -

We insist, that where a person is to be deprived and divested of his title, he must have a better notice than the one given - We claim that the notice should contain either a description of the lands assessed, or the names of the owners of the land assessed - and that any notice short of this is fatal -

The Legislature did not intend to prescribe a form for notice, when they employed the words in Sec. 6. Art. 8. City-Charter - but only meant that a sufficient notice should be given, to all parties interested, either by a publication of the property assessed or the names of the owners of property assessed - It is contended however on the other side, that the Legislature by the 2^d Sec. of act of March 1854. has given this city power to prescribe the kind and time of notice, and was - much as the City, by ordinance has prescribed the form of notice used in this case - the notice in this case, is sufficient - In reply we say. The Legislature did not intend, and could not if they desired, divest the title to property, by an insufficient notice - one which was not calculated in any way whatever to effectuate the

objects of a notice -

Revenue Statutes are to be construed
most favorably to the citizen, and
against the taxing power

Hewitt's 748. 749

10 Wend. 186.

9 Pick. 414

8 Geo. 30

1 Dev. & Bat Ex. R. 218

Dudley R. 132 -

I need not call the attention of
the Court to the relaxation on the
subject of notice, and how it was
long contended in the English Courts
that a personal notice was necessary,
and how publication of notice grad-
ually came to be held good, and to
the great length modern courts have
gone to sustain notice by publication,
but surely there is no good reason
why the doctrine should be further
extended, as would be the case if
the notice in this cause is sustained.
I will not cite cases, but will con-
tent myself by stating the general
rule laid down in all the elementary.

books and the cases, that the notice (particularly where the title to land is to be divested) in order to be good, must be reasonably calculated to effect the object of the notice, and certainly, tested by this rule, this notice is palpably bad.

But it is said, that the improvements to be made and the street to be improved being mentioned in the notice, the notice is practically sufficient, as no person interested would fail to find out that ~~the~~ had been assessed. This would perhaps be so, if the assessments were confined to the property on the line of street improved, but certainly the argument is vicious, where the Commissioners do not confine their assessment to the street improved, but travel over such area in the natural division outside of the street improved, and assess all they regard as benefited.

On the 7th point made by the objectors in the Court below, the counsel for the plaintiff in error is much mistaken in saying that there is no provision of law requiring

the City Collector to return his warrant
in 30 days, for it will be seen
by reference to the abstract in this
case, which contains the city ord-
inance entitled

"An Ordinance Concerning Assessments for
public improvements, Sec. 10. There
is the following provision.

"It is further ordered, that a warrant
be issued and directed to the City-
Collector, for the collection thereof,
returnable in thirty days after date."

This requirement is imperative and
is not merely directory.

14 Ill. 223. 15 Ill 218.

7 Conn. 550

and the rule seems clearly to be, "that
where the omission to make the return
within the time limited, can by any
possibility work advantage or injury
however slight, to any one affected
by it, then the requirement is imperative
and not directory merely, and a failure
on the part of the officer will vitiate the
proceedings." 4 McLean 213.

1 Vermont 359
4 Hill 99
3 Barbour L.C.R. 343
20 Wend 249
21 Pick 64
2 Galt Mi.R. 498
25 Marie 359
3 Mass. 432
12 Vermont 677

It is plain to see that the owners of property, have an advantage in having the return made at the day prescribed, as they are entitled to have all the time to prepare for resisting the confirmation assessment - and judgment upon it - He has a right to see at an early day what the return is, so that he may controvert any fact contained in it, which he can do, for the purpose of defeating a judgment against the lands, upon the authority of the Case of Job. vs. Lebbitt 5 Gil. 376 - and Taylor vs. People 2 Gil. 349

In regard to the objection made by us in regard to the minors - we desire only to call the attention of the Court, to Sec. 11. and 12. Art. 8. City Charter -

We rely with confidence upon
our objections appearing in plain-
tiff in errors printed brief - as
numbered there 2. 3. & (5 particularly), and
6. 7. & 8. waiving only the 1st & 9th.
objections -

We think therefore the judgment
of the Court below should be
affirmed -

Othert. Gray
pro Geo B. Macy et al.

N.B. Let this also stand as our
Argument in the cases of the
City of Ottawa or. A. H. Fisher et
al. in which case the Court will
see there is one additional objection
to those above assigned.
and also to stand in the case of
the City of Ottawa or. Imster & Co.

O. C. Gray
pro Defs in error
in these cases.

¹³⁰
Supreme Court
3^d Grand Division

The City of New York
vs

Geo. B. Macy
et al.

Argument for
Defendants in error.

Filed May 13, 1858
L. Leland
clerk

W. B. May
pro Defs in error.

State of Illinois { Third Grand Division
Supreme Court { April Term AD 1839,

George B. Macy {
Joseph Stout { Appeal from
John Galey { LaSalle County
Warren Moore { Court.
vs
The City of Ottawa

An appeal was
duly taken & perfected in the
above entitled case, and it
is hereby stipulated and agreed
by the parties thereto, that the
said appeal may be dismissed.

Oliver C. Gray,
Atty. Geo. appellants.
E. J. Seland

for the appellee

City of Ottawa
Maurice Black

369
Sperme can
Grand Duc

Georgette Macgill
as
Lieut of Ottawa

12516

Filed May 2 1859
L. Leland
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

APRIL TERM, A. D. 1858.

CITY OF OTTAWA *vs.* GEORGE B. MACY *et als.*

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The position taken in support of this objection is, that the real estate assessed must be bounded by some natural boundary; that is, that all the real estate in a portion of the city bounded by such natural boundary must contribute to the improvement. See Sec. II., Art. 8, on page 33.

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III. The notice of the time and place of meeting to make the assessments was not sufficient.

By Section IV. of Article 8, of the charter, page 33, it is provided that the commissioners shall give six days' notice in one or more newspapers published in the city, of the time and place of meeting, *to all persons interested.*

The notice was published for the time and in the paper required, but it is objected that a general notice *to all persons interested*, without naming them or the land owned by them, is not a compliance with the statute requirements.

To this we answer, that the legislature must have meant a general notice *to all persons interested*, because neither the land upon which the assessment was to be levied, nor the owners thereof, could be known at the time of the giving the notice. The notice is to be given *before the commissioners commence making their assessment*, and they cannot then tell what land will be assessed.

IV. The commissioners made the assessment at the office of the city clerk without having gone upon and viewed the premises.

To this there are two answers: 1st. There is no requirement of law that they shall go upon and view the premises; and 2d, There is no evidence in support of the objection, and if such was their duty it is to be presumed that they did it till the contrary appears.

Again, if said view was necessary, and if it was also necessary that it should be recited on the assessment roll, and no presumption of its having been done is to be had unless it is so recited; then, as the bill of exceptions shows that the roll was introduced in evidence, and that there was no objection to it except as to the notices attached thereto, such recital should be presumed to have been in it.

V. The city clerk did not give sufficient notice of the time and place of hearing objections to the confirmation of the assessment by the city council.

The notice was published in the proper paper and for the proper length of time, and the only objection is that it is too general; that it should name the persons whose land was assessed, or describe the land assessed. The notice will be found on page 2 of the abstract.

This notice is exactly in the form prescribed by the ordinance, (for the ordinance see abstract, pages 2, 3, 4 and 5,) and the question is whether the ordinance and the notice given under it are in compliance with the requirements of Sec. VI. of Art. 8 of the charter. (See page 33.)

It was conceded below, and whether conceded or not it cannot be questioned, that if the notice was such as contemplated by the charter it was sufficient.

If it has already been demonstrated that the notice required by Sec. 4 is a general notice to all persons interested, does it not follow that exactly the same language in Sec. 6 should receive the same construction? The question is not whether the Legislature ought to have required a different and more particular notice in the latter section than in the former, but it is whether they have done so.

In answer to the argument, that the Legislature must be supposed to have intended that the notice should contain the description of the lands or the names of the owners, because the owners might not otherwise get notice of a time and place when they could object to the confirmation of the assessment, we say that such second opportunity for a hearing is one

which need not have been given by the Legislature, and an assessment under the notice in the 4th Section, without any opportunity for an appeal, would have been valid. But suppose the notice not such as intended by said Section 6, yet the 2d Section of the act of March 1st, 1854, to amend the charters of the several towns and cities in this State, provides that the corporate authorities shall have full power to fix by ordinance the kind and time of notice of the assessment. (See 9th Pick. 46.)

Such a general notice is the one usually given. The Chicago charter and ordinances are the same as those of Ottawa, and such is the notice given under their charter and ordinances. (See Chicago charter and ordinances, pages 38 and 155.)

Such notice has been held sufficient in New York under a similar law. *Owners of Ground vs. Albany*, 15 Wend. 374.

People, &c., vs. Brooklyn, 4 Comst., page 441.

The following cases may shed some light on the question:

Griffith's, Adm'r., vs. Vertner et ux., 5 Howard's Miss. 740.

App et al. vs. Dreisback, 2 Rawle 304.

Freetown vs. County Com'rs. of Bristol, 9 Pick. 46.

The improvements to be made and the street to be improved being mentioned in the notice, the notice is practically sufficient. No person interested would fail to find out that he was assessed.

VI. The return of the collector does not show any demand for the amounts assessed, nor that the owners had no goods and chattels. Said owners had sufficient personal property.

By Sec. VII. of Art. 8, page 34, special assessments are to be collected by warrant and sale as provided in Art. 9, as near as may be. Section VIII. of Article 9 provides, that the collector's return shall state that said taxes remain unpaid, and that he can find no goods or chattels whereon to levy and collect the same, and this is all the return that he is required by law to make on his delinquent list; and this he has done, and having made the return required by law he is presumed to have performed his duty in the respects mentioned in the objections.

Taylor vs. The People, 2 Gilm. 349.

Job et als. vs. Tebbetts, 5 Gilm. 376.

The presumption that the collector did his duty has not been destroyed by any evidence that the demand was not made, or that the owners had goods and chattels on which the collector could have levied.

VII. The return of the warrant by the collector not having been made within thirty days, it is void and illegal.

To this we answer, that there is no provision of law requiring the collector to make his return within thirty days. It is a mere direction of the council to their officer for the purpose of properly expediting the business of collection, and a delay in this respect is not a matter of which the owners ought to complain. Whether the collector could have made a levy after the thirty days, is a question it is not necessary to consider. It would seem that even this might be done in a case where the time within which it might be done was only limited by the warrant, but not by the law.

Bassett vs. Porter, 4 Cush. 487.

Sheldon vs. Van Buskirk, 2 Comst. 473.

But it would seem that the return of the officer of what he did or did not do must necessarily be properly made after the thirty days, because even if it be likened to the case of an execution required by law to be

returned in a certain time, the officer would have the whole of the last day to make his levy, and might retain the execution till the property levied upon was sold, and make his return afterwards, and in either event the return could not be made till after the return day, and this is a common practice in relation to executions, the propriety of which has never been questioned.

Suppose, however, that it was a statute requirement that the return of the delinquent list should be made within thirty days after the date of the warrant, even then the statute would be only directory.

Alkins vs. Hinman, 2 Gilman 450.

Jackson vs. Cummings, 15 Ill. 451.

VIII. Some of the owners of lots 17 and 18, in block 26, and of the north half of lot 7, in block 55, and lot 7, in block 85, in State's Addition, were minors, and no guardian was appointed, nor was any notice served upon the guardian of said minors.

To this we answer: 1st. That it does not appear that the minors were without guardians, and unless this were so no appointment should have been made, and if they had guardians the publication of the notice was sufficient.

2d. The 12th Sec. of Art. 8 only applies to cases where some act like building a side-walk is to be done by the owners, where a personal service is required, and where there is no guardian upon which it can be served. This being a proceeding *in rem*, the published notice binds minors as in ordinary tax proceedings, subject to their right to redeem.

3d. It does not appear that the one heir of Geiger had any interest in the lot assessed as belonging to the heirs of Geiger, and the fact, if shown, that the proceedings were not valid as to the one heir, would not have prevented the Court from rendering a judgment against the interests of the others.

IX. Lot 13 in block 85, lot 10 in block 85, and lot 14 in block 86, are all lots with public churches and exclusively for religious worship, and are exempt from assessment.

To this we answer, that they are liable for local assessment, though not for general, state, county and city taxes.

In the matter of the Mayor of New York, &c., 11 John 77.

Trustees of the Canal vs. Chicago, 12 Ill. 403.

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Attorneys for Plaintiffs in Error.

The City of Ottawa
vs
George Ballway et al
Brief

Agents for Paints in New
Hampshire and Vermont.

Re Jackson vs. Cummings, 12 Ill. 421
 Adams vs. Minner, 2 Gilman 150.

the warrant, even then the estate would be only director.

the dividend list should be made within thirty days after the date of dividend payment, that it was a simple requirement that the notice of such dividend be given in the usual manner.

non Inactive in relation to execution, the hypothesis of which has never the return could not be made till after the return day, and this is a common notion was said, and made his return afterwards, and in either event to make his day, and might retain the execution till the hypothesis returned in a certain time, the officers would have the right of the last

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George D. Macey & Co
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