

No. 12989

Supreme Court of Illinois

People, ex. rel.

vs.

Bangs

71641  7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 248.

1860

City of New
York

Waller

Repaired

14989

Supreme Court of Chicago.

Sylvester Lind & Samuel
S. Slater Executors of the
last will & testament of
Jabez Barker dead

vs
Joseph Wilde & Anne Wilde
his wife Mary Ann Barker
Lucy Barker, Harriet Barker
Charles J. Bell & Eliza his wife.

It is hereby
stipulated & agreed between the
Solicitors for the respective parties in
this cause that a writ of Error or
Appeal may be brought on the
decree entered in this cause at
the April term of the Supreme Court
by either party Notwithstanding that said April
Term 1860 notwithstanding thirty days
will not intervene between said appeal
and the sitting of the said Supreme
Court and that the Record may
be lodged with the Clerk of the Supreme
Court as required by law at any
time within ~~30~~³⁰ days of the
commencement of the term and an
order of the Court ^{to be taken} may be taken by
either party; and the giving of a
Bond on such appeal or writ of Error
by either party is waived.

Dated April 13. 1860.

Goodwin Larned & Goodwin
Solicitors for J. O. Wilde & wife.

Mathew Taft & Knig
Solicitors for Barker

244

Superior Court of Chicago
In Chancery

Hyndman Leland & Co

vs

Joseph Melde & Co

Stipulation -

Filed April 18, 1860
L. Leland
Clerk

The People of the State of Illinois }
on the relation of Martin Ballou }

vs.

Mark Bangs }

Appeal from Marshall }

And now comes the Plaintiff
and says, that there is manifest Error in the record
and proceedings of the Court below, in this, to wit,

- 1st The Court Erred in giving judgment for the
Defendant, and against the relator for Costs
- 2nd The Court ought to have found the Defendant
guilty, and should have given judgment
of ouster against Defendant, and for Costs,

And the Plaintiff therefore prays that
the said judgment be reversed

Isaac A. Nelson
for Appellant

1
Held before the Circuit Court of Marshall County
in the State of Illinois at a Term thereof begun
and held at the Court House in the City of Lacon
in said County on Monday the Second day of May
in the year of Our Lord One thousand eight hundred
and fifty nine. Present Hon Mark Bangs judge of
the 23^d judicial Circuit of the State of Illinois pre-
siding, Henry Miller States attorney for said judicial
Circuit Thomas Ellis Sheriff of said Marshall
County and James Wescott clerk of said Circuit Court."

Be it remembered that on the 4th day of May
A. D. 1857 the same being one of the days of the
Term as aforesaid and the Court being then judi-
cially sitting with Hon E. N. Powell judge of the
16th judicial Circuit of the State of Illinois
presiding a complaint was filed in said Court
in the suit of the People of the State of Illinois
on the relation of Martin Ballou against Mark
Bangs which complaint is in words and figures
as follows to wit:

Complaint

"State of Illinois }
Marshall County } ss. Martin Ballou being duly sworn
according to law, doth depose and
say, that this deponent has been
and is legally entitled to and should exercise the
powers of the Office of Judge of the twenty third

Judicial Circuit Court of the State of Illinois; that under and by virtue of the provisions of an act entitled "An act to establish the twenty third Judicial Circuit, and to fix the times for holding Courts in the Ninth Judicial Circuit" approved February 10th 1857 at a regular Election for Judge and States attorney for the said twenty third Judicial Circuit held in the Counties of Bureau, Putnam and Marshall in said State on the 14th day of March A. D. 1857 deponent was duly Elected to the said Office of Judge of said twenty third Judicial Circuit Court, and afterwards, to wit, On the 31st day of March in the year last aforesaid, in pursuance of said Election, deponent was duly Commissioned by the Governor of the State of Illinois as such Judge, and deponent thereupon duly qualified by taking the several Oaths in manner and form as required by law and entered upon the duties of said office, and has discharged the duties thereof from the time of his being so Commissioned & qualified to wit, from the 4th day of April A. D. 1857 until the present time, and still holds his said Office. That at the time of deponents aforesaid Election, he then did reside and for more than five years prior thereto had resided in said County of Bureau, at which place deponent has ever since resided & still does reside.

Deponent further says that Mark Bangs of said Marshall County, did on or about the 2^d day of May A. D. 1857 at

A. D. 1857 at said County of Marshall in the State
aforesaid unlawfully usurp and intrude into the
said Office of Judge of the twenty third Judicial
Circuit Court aforesaid, and has ever since unlaw-
fully held and Executed and still does unlawfully
hold and Execute said office; and has and still
does unlawfully receive, take and enjoy the emolu-
ments, rights privileges & exercise the powers of the
said office, and has refused & still does refuse
to allow deponent to hold and Execute the said
office or to receive or enjoy the rights privileges
and emoluments thereof.

Deponent further says that the said Mark Rango
claims to hold the said office by virtue of a
pretended and illegal Election for Judge & State
attorney of the said twenty third Judicial Circuit
held on the 5th day of April A. D. 1857 in the Coun-
ties of Putnam, Marshall & Woodford in said State
unders and by virtue of the provisions of an act
entitled "An act to repeal a certain act herein
named, and to establish the twenty third Judicial
Circuit" approved the 11th day of February A. D. 1857.
Deponent is therefore desirous that a rule may be
made upon the facts stated herein, on motion
of the attorney for the People of the State of Illi-
nois in the 23^d Judicial Circuit, upon the said
Mark Rango to show Cause why leave should
not be given to file an information in behalf of

the People of the State of Illinois, in the nature
of a quo Warranto, upon the relation of said Mar-
tin Ballow against the said Mark Bango for un-
lawfully usurping, intruding into, and unlawfully
holding and executing the said office as aforesaid,"

Subscribed and Sworn

to before me this 4th day

of May A. D. 1859

James McCott Clerk"

"Martin Ballow"

Endorsed filed May 4. 1859. James McCott Clerk"

Information

"State of Illinois }
Marshall County. }

ss. Of the May Term A.D. One
Thousand Eight Hundred and
Fifty Nine of said Marshall County
Circuit Court.

Henry Miller States attorney for the twenty third Judi-
cial Circuit of the State of Illinois, who prosecutes
in behalf and in the name and by the authority of the
People of the State of Illinois, on the relation of
Martin Ballow of the County of Bureau in the
State aforesaid, comes here into Court and gives
the Court to understand and be informed, that
Mark Bango of the said County of Marshall, on
the second day of May in the year of Our Lord, One
Thousand Eight Hundred and Fifty Nine, at the
County of Marshall aforesaid, did unlawfully usurp
and intrude into the office of Judge of the
Twenty Third Judicial Circuit Court of the State

of Illinois, and from and since said second day
of May in the year aforesaid, at the County of Marsh-
all aforesaid, hath and still doth unlawfully hold
and exercise the said office of Judge of the said
Circuit Court, and hath and still doth unlawfully
exercise the powers privileges and rights of said office,
Contrary to the forms of the Statute in such case
made and provided, and against the peace and
dignity of the same people of the State of Illinois."

"Henry Miller States Attorney"

"Endorsed filed May 5. 1859.

James Mescott Clerk"

Agreement

"State of Illinois } ss. Of the May Term of the Circuit
Marshall County } Court of said County A. D. 1857.

The People of the State of Illinois } Information in nature
on the relation of Martin Ballou } of Quo Warranto,

vs
Mark Bange }

It is agreed by the
parties in this cause

that under and by virtue of the provisions of an act
Entitled An act to establish the twenty third Judicial
Circuit, and to fix the times for holding courts in the
Ninth Judicial Circuit approved February 10th 1857 at
a regular Election for Judge and States Attorney for
the twenty third Judicial Circuit held in the Counties

of Bureau, Putnam and Marshall in said State, on the 14th day of March A. D. 1857 Martin Ballou the relator was duly Elected to the office of Judge of the said 23^d Judicial Circuit, that in pursuance of his said Election afterwards, to wit, on the 31st day of March A. D. 1857 he was duly commissioned by the Governor of said State as Judge of said Judicial Circuit, and that thereupon, on the 4th day of April in the year last aforesaid, the said Ballou duly qualified by subscribing and taking the several oaths in manner and form as required by the Constitution and laws of said State, and that he thereupon entered upon the discharge of the duties of said office, and that he has discharged the duties thereof from that time until the present time, and now still claims to hold said office.

That at the time of said Ballou's Election as aforesaid he then did reside, and for more than five years prior thereto had resided in said Bureau County, at which place he ever since has and still does reside.

That at an Election for Judge and State attorney for the twenty third Judicial Circuit held in the Counties of Putnam, Marshall and Hoodford, on the 5th day of April A. D. 1857 under and by virtue of the provisions of an act Entitled "An act to repeal a certain act herein named, and to establish the twenty third Judicial Circuit" approved February 11th 1857 said Defendant Mark Baugus was elected to the office of Judge of the twenty

third Judicial Circuit in said State, that in pursuance of his said Election he was thereupon Commissioned by the Governor of said State as such Judge and duly qualified by subscribing taking the several oaths in manner & form required by the Constitution and laws of said State and entered upon the discharge of the duties of said office, and still Exercises the duties thereof, and at the time of the filing the information in this cause he was Executing the duties & rights of said Office.

That at the time of said Bangs Election as aforesaid, he then, did reside, and for more than five years prior thereto had resided in said Marshall County, at which place he ever since has and still does reside. Now it is hereby agreed to submit this cause to the Court here on the foregoing stated facts, to be decided in the same way as if the cause was now at issue by due form of pleading, the said Defendant Entering his appearance in this cause waiving process & service thereof, and also waiving, all questions of form either in relation to the mode of proceedings or otherwise. Now, if the Court shall be of Opinion that the Defendant Mark Bangs is legally and rightfully Judge of the said twenty third Judicial Circuit of said State, then the Court is to decide ^{the} Cause in favor of Defendant and against the relator for costs - but if the Court shall be of opinion that said Defendant Mark Bangs is not legally, & rightfully Judge of the said twenty third Judicial Circuit and that said relator is legally & rightfully

Judge of said twenty third Judicial Circuit, then the Court is to decide against said Defendant in favor of said relator, & give judgment of ouster against Defendant, & for costs. It is further agreed that either party may take an appeal from such judgment, to the Supreme Court, upon his own bond without other security.'

"Martin Ballou"

"Mark Bangs"

"Endorsed filed May 5. 1857.

James Wescott, Clerk

And on the 5th day of May A.D. 1857 the same being one of the days of the Term as aforesaid and the Court being then judicially sitting the Hon E. S. Powell judge of the Sixteenth Judicial Circuit of the State of Illinois presiding the following proceedings were had in above entitled cause ~~case~~ and entered of record to wit:

Thursday May 5th A. D. 1857.

Trial and
Judgment

"The People of the State of Illinois
on the relation of Martin Ballou
as
Mark Bangs

Quo Warranto.

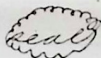
This day came the People
by Henry Miller State Attorney
as well as the relator in
person, and the defendant also came in person as well
as by his counsel, and the parties agreed to waive a

jury and submit this cause to the court for trial; and the court having heard the evidence and being now fully advised in the premises doth find the issues herein for the Defendant. It is therefore considered by the court that the said Mark Bangs the Defendant herein have and recover of the said Martin Ballou the relator herein his costs in and about his defence in this behalf expended, and that he have execution therefor. Whereupon came the relator and prayed an appeal to the Supreme Court of this State, which appeal is allowed upon the relators entering into bond in the sum of One hundred dollars in ten days from this date."

Appeal Bond

"Know all men by these presents, that I Martin Ballou of the County of Bureau and State of Illinois am held and firmly bound unto Mark Bangs of the County of Marshall and State aforesaid in the penal sum of One Hundred Dollars lawful money of the United States, for the payment of which, well and truly to be made, I bind my self my heirs Executors and administrators jointly severally and firmly by these presents, Witness my hand and seal this 5th day of May A. D. 1857. The condition of the above obligation is such that whereas upon the trial of an information in the nature of a Quo Warranto against said Mark Bangs wherein the said Martin Ballou was relator, in the Circuit Court in and for the said County of Marshall and

State aforesaid, a jury having been waived by the said parties and the said Cause submitted to the said Court for trial, a judgment was rendered by the said Circuit Court in favor of said Mark Bangs & further that said Mark Bangs recover his costs therein expended against said relator, from which said judgment of the said Circuit Court, the said Martin Ballow has prayed and obtained an appeal to the supreme Court of said State. Now if the said Martin Ballow shall prosecute his said appeal with effect, and shall moreover pay all costs which may have accrued in the said Cause, in case the said judgment shall be affirmed in the said Supreme Court, then the above obligation to be void, otherwise to remain in full force and effect."

"Martin Ballow" 

"Endorsed filed May 5. 1857."

James Hescott, clerk

State of Illinois, } ss. I, James Hescott, Clerk of the
Marshall County, } Circuit Court in and for
said County and State do certify that the foregoing is a correct transcript of the proceedings had and the papers on file in said Circuit Court in the Suit of The People of the State of Illinois on the relation of Martin Ballow against Mark Bangs as the same appears of record and on file in my office.

In Witness Whereof, I hereto set my hand and
the Seal of said Court at my office in the City
of Lason, in said County this Twelfth day of
April A. D. 1865.

James Wescott clerk

243-45

^{vs} The People ~~re~~ on the
relation of Martin Ballou

^{vs.}

Mark Bangs

Filed April 18, 1860
L. Leland
Clerk

**In Supreme Court ; Third Grand Division,
April Term, A. D., 1860.**

The People of the State of Illinois }
on the Relation of Martin Ballou, } Appeal from Marshall.
vs. }
Mark Bangs. }

This is an information in the nature of a *Quo Warranto* filed in the Marshall Circuit Court, May Term, 1859, by the States Attorney on the relation of Martin Ballou, against Mark Bangs. The facts in the case are set forth in the following agreed case between the parties :

State of Illinois, } ss. Of the May Term of the Circuit Court of said County,
Marshall County, } A. D., 1859.

The People of the State of Illinois, }
on the Relation of Martin Ballou, } Information in nature of *Quo Warranto*.
vs. }
Mark Bangs. }

Pages 5, 6, 7 and 8.

It is agreed by the parties in this cause that under and by virtue of the provisions of an act entitled "An Act to establish the Twenty-third Judicial Circuit, and to fix the time for holding Courts in the Ninth Judicial Circuit," approved February 10th, 1857, at a regular election for Judge and States Attorney for the Twenty-third Judicial Circuit, held in the counties of Bureau, Putnam and Marshall in said State, on the 14th day of March, A. D., 1857, Martin Ballou, the relator, was duly elected to the office of Judge of the said Twenty-third Judicial Circuit, and that in pursuance of his said election, afterwards, to wit, on the 31st day of March, A. D. 1857, he was duly commissioned by the Governor of said State as Judge of said Judicial Circuit, and that thereupon, on the fourth day of April in the year last aforesaid, the said Ballou duly qualified himself by subscribing and taking the several oaths in manner and form as required by the constitution and laws of said State, and that he thereupon entered upon the discharge of the duties of said office, and that he has discharged the duties thereof from that time until the present time, and now still claims to hold said office.

That at the time of said Ballou's election as aforesaid, he then did reside, and for more than five years prior thereto had resided in said Bureau county, at which place he ever since has and still does reside.

That at an election for Judge and States Attorney for the Twenty-third Judicial Circuit held in the counties of Putnam, Marshall and Woodford, on the fifth day of April, A. D., 1859, under and by virtue of the provisions of an act entitled "An Act to repeal a certain act herein named, and to establish the Twenty-third Judicial Circuit," approved February 11th, 1859, said defendant Mark Bangs was elected to the office of Judge of the Twenty-third Judicial Circuit in said State, that in pursuance of his said election he was thereupon commissioned by the Governor of said State as such Judge, and duly qualified by subscribing and taking the several oaths in manner and form required by the constitution and laws of said State, and entered upon the discharge of the duties of said office, and still exercises the duties thereof, and at the time of the filing the information in this cause he was executing the duties and rights of said office.

That at the time of said Bang's election as aforesaid, he then did reside, and for more than five years prior thereto had resided in said Marshall county, at which place he ever since has and still does reside.

Now it is hereby agreed to submit this cause to the Court here on the foregoing stated facts, to be decided in the same way as if the cause was now at issue by due form of pleading, the said defendant entering his appearance in this cause and waiving process and service thereof, and also waiving all questions of form either in relation to the mode of proceedings or otherwise.

Now, if the Court shall be of opinion that the defendant, Mark Bangs, is legally and rightfully Judge of the said Twenty-third Judicial Circuit of said State, then the Court is to decide the cause in favor of said defendant and against the relator for costs—but if the Court shall be of opinion that said defendant, Mark Bangs, is not legally and rightfully Judge of the said Twenty-third Judicial Circuit and that said relator is legally and rightfully Judge of said Twenty-third Judicial Circuit, then the Court is to decide against said defendant, and in favor of said relator, and give Judgment of Ouster against said defendant and for costs. It is further agreed that either party may take an appeal from such Judgment, to the Supreme Court, upon his own bond without other security.

MARTIN BALLOU.
MARK BANGS.

Pages 8 and 9.

The Court gave Judgment for the defendant and against the relator for costs.

POINTS AND AUTHORITIES RELIED UPON BY THE PLAINTIFF.

1st. Sec. 1, of Article 2 of the Constitution of this State vests the powers of government in three distinct departments, viz: Legislative, Executive and Judicial. Circuit Courts or the Judges thereof, comprise a part of the Judicial department of the Government, and consequently are not subject to the dictation or control of either of the other departments thereof.

Sec. 1 of Art. 5, of Const.—Purple's Statutes, 57, do do 45.

2d. Sec. 15 of Art. 5, provides that on the first Monday of June, 1855, and every six years thereafter, an election shall be held for Judges of Circuit Courts; provided, whenever an additional Circuit is created, such provision may be made as to hold the second election of such additional Judge at the regular election herein provided: Consequently the Legislature had no Constitutional power to authorize an election of Judge under the act of Feb. 11th, 1859, as there was no "additional Circuit" thereby created.

Purple's Statutes, page 58. Sess. Laws 1859, page 56 and 57. 6 Cowen R. 642.

3rd. By the Constitution and laws of this State, a Circuit is designated and known only by its number, and not by its territory, because the territory of a Circuit is liable to be changed and varying.

Sec. 7 of Art. 5, of Const.—Purple's Statutes, pp 57.

4th. The Act of Feb. 11th, 1859, did not increase the number of Circuits, but only redistricted the former 23rd Circuit; consequently such "exigency of the State" contemplated in the 6th sec. of Art. 5 of the Constitution, in the opinion of the Legislature, did not then exist as would authorize it to "increase the number of Circuits;" it is therefore evident that the Legislature did not intend by that act to make an additional or new Circuit; and as there was no vacancy in the office of Judge of that Circuit, the relator being then an incumbent in said office, so much of the aforesaid act as provides for the election of a Judge, is therefore void.

Purple's Statutes, page 58. 6 Ind. R., 496. 7 Ind. R., 326. 1 Sumner C. C. R., 277. 9, Watts, 200.

Island & Island

Att'ys for Plaintiff.

The People &c. on the
relation of Martin Ballou
vs.

Mark Beang

Abstract of Record,
Points & authorities

Filed Apr 18. 1860
L. J. Cloud
Clerk

Preface

SUPREME COURT OF ILLINOIS.

Third Grand Division, }

APRIL TERM, A. D. 1860. }

THE CITY OF CHICAGO,
Plaintiff in Error.

VS.

JAMES B. WALLER,
Defendant in Error.

STATEMENT OF CASE.

This was a special proceeding on the part of the City of Chicago to collect an assessment which had been levied upon the defendant's lots for the improvement of West Randolph street, under and by virtue of the city charter of the City of Chicago.

Page 1 *Placita.*

2, 3 & 4 City Collector's report to the Court.

5 Notice of City Collector for all persons to pay on the warrant which was in his hands, the amount that they had been assessed.

6, 7, 8, 10, 11, 12, 13, 14. Copy of warrant for collection of assessment.

15 Collector's return.

16, 17, 18 Suit docketed and judgment.

19 & 20 Bill of Exceptions commences and sets out the names of parties who resist the collection of the assessment and a description of the lots.

21, 23, 24 Contains the objections made by the defendants. The objections are very numerous, but the only one which is in question in this case is No. 18, page 24 of record, which is as follows :

18th. "Uncertainty in valuation of property, there being no amount specified in dollars and cents."

25 The defendants offered in evidence the assessment roll which was objected to by plaintiff, but the objection was overruled and exception noted.

25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37—Contains copy of assessment roll.

The assessment roll contains a description of all the property assessed for the improvement, and a copy of the proceedings of the Common Council and commissioners who levied it; and contains columns of figures, over two of which columns, the words "valuation" and "assessment" were written.

38 After the assessment roll had been introduced, the plaintiff called F. A. Bragg and Hermann Kreismann as witnesses to explain the meaning of the columns in the assessment roll marked "valuation" and "assessment," and asked leave to explain the columns of figures, and offered to show by the witnesses the meaning of the columns, but the Court refused to permit the plaintiff to explain them.

38

The plaintiff here offered F. A. BRAGG as a witness, who, being duly sworn, testified as follows :

"I live in City of Chicago. Am at present engaged as an assistant of the superintendent of special assessments—know how the amounts are levied."

He was then asked the question "if he knew what the column of figures in the assessment roll, which had been introduced by the defendants, and over which the word 'valuation' is printed, stood for and meant."

To which question the defendant then and there objected, which objection was sustained by the Court, and the plaintiff then and there excepted.

HERMANN KREISMANN, a witness, was then called for the plaintiff, who, it was admitted, was the City Clerk of the City of Chicago, and whose duty it was to make up the assessment roll after the assessment has been made and returned by the commissioners to his office, and who was asked the same questions as were asked F. A. Bragg, as to the column of figures in the assessment roll marked "valuation."

But the questions were objected to by the defendant, the objection sustained by the Court, and the plaintiff then and there excepted.

39

The plaintiff then offered to show by this witness the meaning of the column of figures marked "valuation," but the Court refused to admit any parol testimony whatever to explain the columns of figures, and the plaintiff then and there excepted.

This was all the testimony introduced by either side in the case.

The Court then refused the judgment asked for by plaintiff and rendered judgment for the defendant.

40 Clerk's certificate that the foregoing is a true copy of the record in the case.

41 ASSIGNMENT OF ERRORS.

1. The Court erred in permitting the defendant to offer in evidence the assessment roll.

2. The Court erred in refusing to permit F. A. Bragg, a witness offered by the city, to answer the question asked him in regard to the meaning of the columns of figures in the assessment roll over which the word "valuation" was written.

42 3. The Court erred in excluding the evidence of Hermann Kreismann.

4. The Court erred in refusing to permit the City Chicago, the plaintiff, to explain by parol testimony the meaning of the columns of figures in the assessment roll over which was written the word "valuation."

5. The Court erred in rendering a judgment for the defendant.

6. The Court erred in not rendering a judgment for the city.

E. ANTHONY,

Attorney for Plaintiff in Error.

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City of Chicago

v3

Waller
Abstract

Filed Apr 28, 1860

L. Leland
clerk

SUPREME COURT OF ILLINOIS.

Third Grand Division, }

APRIL TERM, A. D. 1860. }

THE CITY OF CHICAGO,
Plaintiff in Error.

VS.

JAMES B. WALLER,
Defendant in Error.

STATEMENT OF CASE.

This was a special proceeding on the part of the City of Chicago to collect an assessment which had been levied upon the defendant's lots for the improvement of West Randolph street, under and by virtue of the city charter of the City of Chicago.

Page 1 *Placita.*

2, 3 & 4 City Collector's report to the Court.

5 Notice of City Collector for all persons to pay on the warrant which was in his hands, the amount that they had been assessed.

6, 7, 8, 10, 11, 12, 13, 14. Copy of warrant for collection of assessment.

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The assessment roll contains a description of all the property assessed for the improvement, and a copy of the proceedings of the Common Council and commissioners who levied it; and contains columns of figures, over two of which columns, the words "valuation" and "assessment" were written.

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38 The plaintiff here offered F. A. BRAGG as a witness, who, being duly sworn, testified as follows :

“I live in City of Chicago. Am at present engaged as an assistant of the superintendent of special assessments—know how the amounts are levied.”

He was then asked the question “if he knew what the column of figures in the assessment roll, which had been introduced by the defendants, and over which the word ‘valuation’ is printed, stood for and meant.”

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HERMANN KREISMANN, a witness, was then called for the plaintiff, who, it was admitted, was the City Clerk of the City of Chicago, and whose duty it was to make up the assessment roll after the assessment has been made and returned by the commissioners to his office, and who was asked the same questions as were asked F. A. Bragg, as to the column of figures in the assessment roll marked “valuation.”

But the questions were objected to by the defendant, the objection sustained by the Court, and the plaintiff then and there excepted.

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5. The Court erred in rendering a judgment for the defendant.

6. The Court erred in not rendering a judgment for the city.

E. ANTHONY,

Attorney for Plaintiff in Error.

258
City of Chicago

vs.
Maller
Abstract

Filed Apr 28. 1860
H. H. H. H.
Clerk

SUPREME COURT OF ILLINOIS.

Third Grand Division, }

APRIL TERM, A. D. 1860. }

Same as 113-8 149
THE CITY OF CHICAGO,

No proof was admitted to show whether this Plaintiff in Error.

was a valuation or not VS.

Except by presence of **JAMES B. WALLER,**

assessment roll - which showed no 8 in assessment Defendant in Error.
Column.

STATEMENT OF CASE.

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6, 7, 8, 10, 11, 12, 13, 14. Copy of warrant for collection of assessment.

15 Collector's return.

16, 17, 18 Suit docketed and judgment.

19 & 20 Bill of Exceptions commences and sets out the names of parties who resist the collection of the assessment and a description of the lots.

21, 23, 24 Contains the objections made by the defendants. The objections are very numerous, but the only one which is in question in this case is No. 18, page 24 of record, which is as follows :

Same 9/as 214 18th. "Uncertainty in valuation of property, there being no amount specified in dollars and cents."

25 The defendants offered in evidence the assessment roll which was objected to by plaintiff, but the objection was overruled and exception noted.

25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37—Contains copy of assessment roll.

The assessment roll contains a description of all the property assessed for the improvement, and a copy of the proceedings of the Common Council and commissioners who levied it; and contains columns of figures, over two of which columns, the words "valuation" and "assessment" were written.

38 After the assessment roll had been introduced, the plaintiff called F. A. Bragg and Hermann Kreismann as witnesses to explain the meaning of the columns in the assessment roll marked "valuation" and "assessment," and asked leave to explain the columns of figures, and offered to show by the witnesses the meaning of the columns, but the Court refused to permit the plaintiff to explain them.

38 The plaintiff here offered F. A. BRAGG as a witness, who, being duly sworn, testified as follows :

“I live in City of Chicago. Am at present engaged as an assistant of the superintendent of special assessments—know how the amounts are levied.”

He was then asked the question “if he knew what the column of figures in the assessment roll, which had been introduced by the defendants, and over which the word ‘valuation’ is printed, stood for and meant.”

To which question the defendant then and there objected, which objection was sustained by the Court, and the plaintiff then and there excepted.

HERMANN KREISMANN, a witness, was then called for the plaintiff, who, it was admitted, was the City Clerk of the City of Chicago, and whose duty it was to make up the assessment roll after the assessment has been made and returned by the commissioners to his office, and who was asked the same questions as were asked F. A. Bragg, as to the column of figures in the assessment roll marked “valuation.”

But the questions were objected to by the defendant, the objection sustained by the Court, and the plaintiff then and there excepted.

39 The plaintiff then offered to show by this witness the meaning of the column of figures marked “valuation,” but the Court refused to admit any parol testimony whatever to explain the columns of figures, and the plaintiff then and there excepted.

This was all the testimony introduced by either side in the case.

The Court then refused the judgment asked for by plaintiff and rendered judgment for the defendant.

40 Clerk's certificate that the foregoing is a true copy of the record in the case.

41

ASSIGNMENT OF ERRORS.

1. The Court erred in permitting the defendant to offer in evidence the assessment roll.

2. The Court erred in refusing to permit F. A. Bragg, a witness offered by the city, to answer the question asked him in regard to the meaning of the columns of figures in the assessment roll over which the word "valuation" was written.

42

3. The Court erred in excluding the evidence of Hermann Kreismann.

4. The Court erred in refusing to permit the City Chicago, the plaintiff, to explain by parol testimony the meaning of the columns of figures in the assessment roll over which was written the word "valuation."

5. The Court erred in rendering a judgment for the defendant.

6. The Court erred in not rendering a judgment for the city.

E. ANTHONY,

Attorney for Plaintiff in Error.

258-1598

City of Chicago

vs

Waller

Abstract

Filed Apr 28, 1860

L. Belmont
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

CITY OF CHICAGO }
vs. J. B. WALLER *et al.* } No. 248.

SAME }
vs. B. B. ADAMS. } No. 308. 310

In the first case,—

Judgment could not be entered in favor of the City, for the reason that the valuation of the property was not set down in the assessment roll, and no application was made to amend it in this particular.

Minneapolis City 1819
21 Rich 67
Lawrence vs. Fast, 20 Ill. 340.
Gibson vs. City of Chicago, 22 Ill. 572
Brown vs. City of Joliet, 22 Ill. 123.
Sec. 4, Chapter 7, of City Charter.

In the second case,—

Court could set aside a default as well in this as in any other case.

Gibson vs. City of Chicago, 22 Ill. 572.

Objection was made to judgment in this case, for the reason that the valuation was fraudulently fixed by commissioners at three times the actual value of the premises, and it was competent for the defendant to show this.

Pease vs. City of Chicago, 21 Ill. 500.
Morrison vs. City of Chicago, 22 Ill. 573.

HOYNE, MILLER & LEWIS,
For Defendants in Error.

Sup Court 248

City of Chicago

L. B. Muller

City of Chicago

Super Court

STATE OF ILLINOIS, SUPREME COURT

APRIL 11 1860

Filed May 11, 1860

Leland
Cecily

HORACE MILLER & LEWIS

SUPREME COURT OF ILLINOIS.

Third Grand Division, }

APRIL TERM, A. D. 1860. }

No. 248

CITY OF CHICAGO, }

v s. }

JAMES B. WALLER, }

No. 310

CITY OF CHICAGO, }

v s. }

BENJAMIN B. ADAMS. }

PLAINTIFF'S POINTS.

These were two cases which arose upon the same assessment.

I.

The same question arises in the case of Waller that was discussed in the case of the *City of Chicago vs. Walker*; and, the same authorities which were quoted in that case, are relied upon in this case. And, I insist, that the Court erred in not permitting the plaintiff to show what the column of figures in the assessment warrant meant.

Brown vs. City of Joliet. 22 Ill. 125.

Einstein vs. City of Joliet, 22 Ill. 126.

II.

In the case of *City of Chicago vs. Adams*, the Court erred in setting aside the judgment which was taken by default against his lot ; because,

1. The judgment was a judgment by *default*, regularly entered, exactly in conformity with sec. 43 of amended charter of the City of Chicago, no one appearing to make any objection or opposing the same.

Bristol vs. City of Chicago, 22 Ill. 587.

2. The Court erred in setting aside the judgment, upon the affidavit of Haven, because it does not appear that *he* ever *retained* any counsel to appear in the case whatever ; or, that anybody else, for him, ever employed or *retained* any counsel to appear and make objections to the rendition of a judgment upon the defendant's lot.

3. The affidavit was insufficient and did not show sufficient reason to authorize the Court to set aside the judgment.

III.

The Court erred in permitting the witnesses, Herrick, Haven, Cummins and Shelby to give testimony as to the value of the property. Because the Commissioners who levied the assessment had complete jurisdiction over the subject-matter ; and it was their special duty and province to value the property, and their valuation was absolutely conclusive.

The State vs. Ross, 3 Zabriskie, 517.

“ “ *Quaife*, 3 Zabriskie, 89.

Haight vs. Day, 1 Johns. ch. 18.

Extension of Hancock street, 18 Penn. 32 ; 19 Penn. 271 ;
16 Barb. 248 ; 7 Barb. 127.

Town of Rochester vs. Town of Chester, 3 N. H. 349.

Matter of Pearl street in City of New York, 19 Wend. 651.

“ “ John and Cherry streets, in City N. Y. 19 Wend. 668.

“ “ William and Anthony streets, in City of New York,
19 Wend. 681.

IV.

The Court erred in rendering a judgment for the defendants
and the same should be reversed.

E. ANTHONY,

Attorney for Plaintiff in Error.

248 + 310

City of Chicago
248 W. Walpus
James B. Walker

City of Chicago
310 W
Benjamin B. Adams

Plebo Point

Filed May 4 1860
L. Leland
Clerk

United States of America }
State of Illinois - Cook County } ss.

Pleas before the Honorable the Judges of the Superior Court of Chicago within and for the County of Cook and State of Illinois at a Special Term of said Superior Court of Chicago begun and holden at the Court House in the City of Chicago in said County and State on the fourth Thursday being the Twenty sixth day of January in the year of our Lord Eighteen hundred and Sixty and of the Independence of the United States of America the Eighty fourth, due notice of the time and place of holding said Special Term of the Court having been printed and published in the Daily Press and Tribune the Corporation Newspaper of the City of Chicago for Twenty days previous to the holding of said Term of Court in accordance with the Statute in such case made and provided and in pursuance of an Order made by the Judges of said Court on the Fourth day of January A. D. Eighteen hundred and sixty.

Present. The Honorable John W. Wilson. Chief Justice
of the Superior Court of Chicago
Wm H. Higgins Grant Goodrich . . . Judges
Charles Hanes Prosecuting Attorney
John Gray Sheriff of Cook County

Attest

Walter Kimbale Clerk.

Be it remembered that on this twenty sixth day of January A. D. Eighteen hundred and sixty Adolph, J. & Mueller, City Attorneys of the City of Chicago reported and filed with the Clerk of this Court a list of Lands, Lots and Parcels of Land and other Real Estate situated in the City of Chicago aforesaid on which taxes remained due and unpaid for the year therein set forth, and attached to said Report was a Certificate of the Press and Tribune Company signed by H. D. Williston of the due publication of notice as required by law of the making and delivering of the Warrant for the collection of said Taxes to the said A. J. & Mueller City Collector as aforesaid. And also attached to said Report was a Certificate signed as aforesaid of the publication in the daily edition of the Chicago Press and Tribune of the Notice of the intended application for a Judgment against said Lands and other Real Estate at this term of Court as required by the Law of this State approved February fourteenth A. D. Eighteen hundred and fifty seven (a Copy of which said Report, Notice, Certificate and Collectors Warrant is hereinafter set forth).

Ordered by the Court that all Objections to Judgment on the general Warrant for Taxes, and on Special Warrants for Assessments be made in writing and filed with the Clerk of this Court by Saturday Morning Next at Ten o'clock.

(Copy)

Collectors Report heretofore referred to.

Of the January Special Term of the Superior Court of Chicago in the year of our Lord one thousand eight hundred and sixty.

To the Honorable John M. Wilson, Vice St. Higgins & Grant Governor Judge of the Superior Court of Chicago

The Report of Adolphus G. B. Mueller City Collector of the City of Chicago respectfully represents that the Special Warrants mentioned in the Schedule herunto attached, issued for the Collection of the Special assessments and taxes, authorized by law, for the purpose therein generally set forth made out in the manner required by law and countersigned by the City Comptroller, were delivered to him the said City Collector on or before the second Tuesday of October A.D. 1859.

That forthwith after the delivery of said Warrants to him, he published a Notice in the Corporation Newspaper of said City, that such Warrants were in his hands for Collection, briefly describing the nature of each of said Warrants, and requesting all persons forthwith to make payment thereof at his Office, and that in default of such payment, the said taxes and assessments would be collected at the cost and expense of the persons liable for the payment of such Taxes and Assessments, which said Notice was generally published for thirty days in said Corporation Newspaper.

That he has given ten days Notice of his intended application to this Court for Judgment against the Lands, lots and parcels of Land for the amount of taxes, Assessments, Interest & Costs

respectively due thereon before the first day of the January ~~and~~
 Special Term of this Court D. D. 1860, briefly specifying the nature
 of the said Warrants upon which said application was to be made
 and requesting all persons interested therein to attend at said term,
 a copy of which said Notice is herewith filed together with a Certificate
 of the due publication of said Notice, from the publisher of the said
 Corporation Newspaper in which the said Notice was published.

That the annexed Schedule is a correct list of the Lands, Lots
 and parcels of Land, together with the amount of taxes & assessments
 interest and costs respectively due thereon as set forth in the said
 Warrants which remain unpaid and uncollected.

Therefore your said Petitioner prays that Judgment may be
 rendered as in such case made and provided.

(Signed) A. H. C. Mueller

City Collector."

"State of Illinois
Cook County ss. *ss.*

I Charles H. C. Mueller City Collector for the City
 of Chicago, do solemnly swear that the annexed Report by me made
 is to the best of my knowledge and belief, true - and the annexed
 Schedule is a true and correct list of the delinquent Lots, Lands
 and parcels of Land upon which I have been unable to collect
 the taxes and assessments as required by law for the year 1859
 as herein set forth - that said taxes and assessments remain due and
 unpaid and uncollected as above stated.

5-

Subscribed and sworn to
before me this Twenty sixth
day of January A. D. 1860

A. J. C. Mueller "

Walter Thibault

clerk Superior Court Chicago

Copy

Notice and Certificate.

" City of Chicago

City Collectors Office, May 31. 1859.

Notice is hereby given that the following Warrant is in my
hands for Collection

"Warrant No 366 West. for filing, curbing and
macadamizing West Randolph Street from Halsted Street to Union
Park,

All persons are requested forthwith to make payment of said
Warrant at my Office, or the same will be collected at the cost and
expense of the persons liable to the payment of the assessments.

A. J. C. Mueller

City Collector."

"I the undersigned publisher of the Chicago Press & Tribune
do hereby certify that a Notice of which the annexed is a true copy
was published thirty consecutive days next after the 31st. day of
May 1859 in the Daily Edition of the Chicago Press & Tribune a
Newspaper published in and of general circulation throughout the
County of Cook, State of Illinois.

Chicago Illinois. Jan'y 25. 1859.

Press & Tribune Co
By G. D. Wilkinson

Copy Warrant

"Special Warrant No 366 S.W."

"State of Illinois

City of Chicago

vs.

The People of the State of Illinois to the
Collector of the City of Chicago, Greeting

Whereas the Common Council of the City of Chicago did on the
fourth day of October 1858 confirm the Assessment duly made
and filed in the Clerk's Office by the Commissioners appointed by
the said Common Council to assess the sum of Twenty two thousand
two hundred dollars upon the real Estate in the West Division of
said City, deemed benefited by filling, curbing & macadamizing
West Randolph Street from Halsted Street to Union Park in proportion
to the benefits resulting thereto in pursuance of an order for said
Assessment made by the said Common Council on the nineteenth day
of July 1858 after duly revising the same, and did thereby assess the
said sum of money upon the real Estate described in the role of
said assessment in the respective proportions thereof marked "Assessment"
set opposite to each lot, part of lot, and real Estate described in
said role, which Role is in the words and figures following to wit:

Assessment Roll.

A description of the Real Estate in the West Division of the City
of Chicago deemed benefited by macadamizing West Randolph Street
from Halsted Street to Union Park, with the valuations thereof, and
the sums of money severally assessed thereon for benefits by the
Commissioners to wit,

Carpenters Addition to Chicago.

Name of Owner	Description	Lot	Sub	Block	Valuation	Assessment	
L. M. Messers			4	28	5000	82	22 Paid
"			8	"	4000	62	81 Paid
P. Carpenter			23	29	2500	41	11 Paid
"			24	"	2500	41	11 Paid
"			25	"	2500	41	11 Paid
"			26	"	2500	41	11 Paid
"			27	"	2500	41	11 Paid
"			28	"	2500	41	11 Paid
"			29	"	2500	41	11 Paid
"			30	"	2500	41	11 Paid
"			31	"	2500	41	11 Paid
"			32	"	2500	40	29 Paid
Charles Shelley, Jr			18	30	5000	83	86
"			19	"	5000	82	22
"	8 1/2		20	"	2500	41	11
L. S. Hayes	14 1/2		"	"	2500	41	11
"	Box 8 30 ft		21	"	2000	32	89 Paid
Henry Taylor	6 30 ft		"	"	3000	49	33 Paid
Joshua Bell			22	"	5000	83	86 Paid
Stephen Dorr			14	31	5000	82	22
W. Shaw			15	"	5000	82	22 Paid
C. B. Farnell			16	"	5000	82	22 Paid
A. H. Mullinger			17	"	5000	82	22
"			18	"	5000	82	22
Charles Shelley, Jr			18	32	5000	82	33
"			19	"	6000	82	22

8

Name of Owner	Description	Lot	Lot	Block	Value	Assessment	
Isaac Shelly Sr	E 1/2		20	32	2500	41	11
	N 1/2		"	"	2500	41	11
			21	"	2600	82	22
			22	"	5000	82	55
Geo: Manner			14	33	11000	320	00
Byron Bentley			15	"	11000	320	00
B. B. Adams			16	"	11000	320	00
R. S. King	E 1/2		17	"	5500	160	00
Ch. A. Sawyer	N 1/2		"	"	5500	160	00
R. S. King			18	"	11000	320	00 Paid
J. A. Case			14	34	11500	322	00
J. M. Grash			15	"	11500	322	00 Paid
J. Q. Bragg	E 1/2		16	"	5600	166	00 Paid
Elizabeth Foot	N 1/2		"	"	5600	166	00 Paid
John Stephens	E 1/2		17	"	5600	166	00
W. H. Hutchinson	N 1/2		"	"	5600	166	00
A. B. Waller			14	35	12500	370	00
"	N 3/4		15	"	8200	222	00
A. B. Russell	E 20 ft		15	"	8200	222	00
R. J. Whitman	E 1/2		"	"	5000	148	00
Wm Justice	N 1/2		16	"	6200	185	00
C. R. Haygood			"	"	6200	185	00 Paid
Rosalie Chapman			17	"	12500	370	00
Flos Mather			18	"	12500	370	00 Paid
J. Mueller	E 1/2		14	36	12500	361	14
W. H. Newberger	N 1/2		15	"	6100	180	85

9

Name of Owner	Part of lot of Land	S Lot	Lot	Block	Valuation	Assess	
	E 1/2		16	36	6100	180	88
	N 1/2		"	"	6100	180	88
Charles Burdell			17	"	12500	361	44
"			18	"	12500	361	44
D. M. Coleman			1	37	6500	193	34 Paid
"			2	"	6100	180	88 Paid
"			3	"	6100	180	88 Paid
R. Slater			4	"	6100	180	88
John Comer			5	"	6100	180	88
"			6	"	6100	180	88
Chas Bryan			7	"	6100	180	88
Wm H. Brown			8	"	6100	180	88 Pa
"			9	37	6100	180	88 Paid
"			10	"	6100	180	88 Paid
S. J. Galt			1	38	12500	370	00
"			2	"	12500	370	00
"			3	"	12500	370	00
"			4	"	12500	370	00
"			5	"	12500	370	00
Geo. Chaskfield			1	39	11500	332	00
J. D. Brown			2	"	11500	332	00
Car Hara			3	"	11500	332	00 Paid
"			4	"	11500	332	00 Paid
"			5	"	11500	332	00 Paid
E. Goodman			1	40	11000	320	00 Paid
"			2	"	11000	320	00 Paid

Name of Owner	Part of lot of Land	Lot	Block	Valuation	Current		
J. Barley		3	110	11000	320	00	Paid
"		4	"	11000	320	00	Paid
J. Carpenter		5	"	11000	320	00	Paid
"		1	141	6000	82	22	Paid
"		2	"	6000	82	22	Paid
"		3	"	6000	82	22	Paid
"		4	"	6000	82	22	Paid
"		5	"	6000	82	22	Paid
E. L. Otara		1	142	6000	82	22	Paid
E. H. Cummings	6 1/2	2	"	3000	41	11	Paid
J. F. Butler	4 1/2	"	"	3000	41	11	Paid
C. Williams	6 30 ft	3	"	4000	49	33	Paid
G. W. Smith	34.20 ft	"	"	2000	32	89	Paid
"		4	"	6000	82	22	Paid
"		5	"	6000	82	22	Paid
D. R. Sutherland		1	143	5000	41	11	
G. Peterson		2	"	5000	41	11	Paid
J. W. Sutherland		3	"	5000	41	11	
J. Mearns		4	"	5000	41	11	Paid
Reis Hester		5	"	5000	41	11	Paid
"		6	"	5000	41	11	Paid
"		7	"	5000	41	11	Paid
T. Hanner		8	"	5000	41	11	Paid
John Travers		9	"	5000	41	11	Paid
J. Schiffen		10	"	5000	41	11	Paid

Name of Owner	Part of lot of Land	St Lot	St	Block	Valuation	Assess	
D. Curtis			23	114	4000	41	11
"			24	"	4000	41	11
"			25	"	4000	41	11
"			26	"	4000	41	11
"			27	"	4000	41	11 Paid
"			28	"	4000	41	11 Paid
"			29	"	4000	41	11
"			30	"	4000	41	11 Paid
Fl. & Goodrich			31	"	4000	41	11
D. Curtis			32	"	4000	41	11
E. H. Cummings			12	135	2500	37	82 Paid
"			13	"	2500	37	82 Paid
A. J. McQuinn			14	"	2500	37	82 Paid
L. D. Gmeyer			15	"	2500	37	82
John Beathford			16	"	2500	38	114 Paid
<u>Sauvages Addition to Chicago</u>							
W. & A. B. White			9	1	4000	92	81 Paid
E. & Ottara			10	"	2000	46	40 Paid
L. & Noble			"	"	2000	46	40 Paid
Wm. Butterfield			11	"	4000	92	81 Paid
"			12	"	4000	92	81 Paid
W. S. Johnston & Co			13	"	4000	92	81
"			14	"	4000	92	81
S. Sawyer			15	"	4000	92	81 Paid
"			16	"	4000	92	81 Paid

May's Heights Addition to Chicago

Name of Owner	Part of Lot of Land	5 Lot	Lot	Block	Valuation	Assess	
			17	1	2000	51	96
			18	"	2500	41	11
			19	"	2500	41	11
			20	"	2500	41	11
			21	"	2500	41	11
			22	"	2500	41	11
			23	"	2500	41	11
			24	"	2500	41	11
			25	"	2500	41	11
			26	"	2500	41	11
			27	"	2500	41	11
			28	"	2500	41	11
			29	"	2500	41	11
			30	"	2500	41	11
			31	"	2500	41	11
			32	"	2500	41	11
<u>Bright's Addition to Chicago</u>							
S. S. Hayes			1	1	3500	82	22
"			2	"	3500	82	22
"			3	"	3500	82	22
"			4	"	3500	82	22
"			5	"	3500	82	22
"			6	"	3500	82	22
"			7	"	3500	82	22
Malcolm McNeil			1	5	4000	208	83
"			3	"	3600	161	43

[illegible]

Name of Owner	Part of lot of Land	S. Lot	Lot	Block	Valuation	Assess		
John Taylor	16 acre St 1 ⁴⁴ chs S 3	S. 0.	7	R E				
	44 chs E 147 chs S 34	8	39	11	10000	159	60	Paid
	chs. 10 beg 1 1/2 Acres							
Joseph Wilson	Part of lot 3 of S.							
	1/4 beg at S. St							
	Cor of S. St's land							
	thence N. 2 ²⁰ chs							
	N 689 chs E 3 ⁷⁰ chs S.	"	"	"	17500	238	1.5	
	3 ⁴⁵ chs. N 1 ⁴⁴ chs, S.							
	3 ¹²⁵ chs. 10 beg 2 ¹³ ac;							
					\$22,200	00		

Now therefore you are hereby commanded to levy make and collect of the Goods and 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 what manner you please execute this writ within thirty days from the date hereof.

Corporate
Seal

Witness John C. Harris Mayor of the City
of Chicago and the Corporate Seal thereof
this 6th day of October 1858.

John C. Harris Mayor

Attest J. H. Krisman, City Clerk

Saml D. Hara

City Comptroller.

Collector's Return.

"State of Illinois }
 City of Chicago }

City Collector's Office

185-

The undersigned Collector of the City of Chicago makes return to the Common Council of the within and foregoing Warrant that he has collected the Assessments on all the real Estate described in said Warrant, opposite to which in the appropriate column the word "Paid" is written, that a demand of payment has been made of the several other assessments not marked "Paid" in every case of the persons mentioned in said Warrant, as liable to the payment thereof, and that he has not been able to find any personal property belonging to any of them subject to the payment thereof.

He therefore returns the said Warrant unsatisfied as to all Assessments not marked "Paid" on the face of the said Warrant
 City Collector,

And afterwards to wit on the second day of February (being one of the days of the said January Special Term of said Court) A. D. Eighteen hundred and sixty) the following, among others, proceedings were had, and entered of record, in said Court, to wit:

Names	Carpenters Addition to Chicago					Amt of Assess		Taxes for		Cost	Total amt due	
	Description	Lot	Lot	Block	Valuation	Dolls	Cts	Dolls	Cts		dolls	Cts
L. B. Hale				14	35	125	00	37	00			
"	St 30 ft			15	"	82	00	22	20			

City of Chicago } Suit for Abatement on Warrant No 366 West
 — (2) — } October 6th 1858. for filing Curbing and
 J. Shelby & Co } Macadamizing West Randolph Street from Halsted
 Street to Union Park.

And now on this 2^d day of February A.D. 1860 comes said City of Chicago by Mes. J. Crocker City Attorney and another having been given of the time and place of making the intended application for Judgment against the Lots, pieces and parcels of Real Estate in said Warrant set forth and objections being filed by George Manner owner of lot 14 in Block 33 in Carpenters Addition to Chicago, Francis Torco owner of lots 10 17. 18. 19. 20 & 21 in Block 10, and in Major Heights Addition, Walton Denver owner of lot 20 in block One Union Park Addition, Nelson McNeil owner of Lots 1. 2. 3 & 4 in Block 6 of Wrights Addition, J. S. Hayes owner of lots 21 & 22 blocks 33 and 1/2 lot 20 Block 30 Carpenters Addition, Lots 1. 2. 3. 4. 5. 6 & 7 in Block 1. Wrights Addition, Lot 13 Block 1, Lots 9. 10. 11. 12 and 13. Block 2. Lots 1. 2. 3. 4. 5 & 6 in Block 4 in Union Park Addition. E. D. Taylor owner lot 2 Block 2 Union Park Addition, Chicago and J. L. Davis owner of lot 3 Block 39 Carpenters Addition, Geo. Blackwelder lot 1 Block 39 & lot 23 and Block 44 in Carpenters Add; W. H. Hutchinson lot 18 & 1/2 17 Block 34 J. Stevens 1/2 & 1/2 of lot 17 in Block 34 Carpenters Add Elizabeth Fort 1/2 of lot 16 in Block 34. Carpenters Add. John R. Case lot 14 block 34. J. B. Waller lot 14 & 1/2 lot 30 lot 15. Block 35. R. H. Highman 1/2 lot 16. Block 35. W. Bushnell lot 15 and 1/2 lot 20 Block 35. C. B. Hagarty Lot 17 of Block 35. S. J. Gale, Lots 1. 2. 3. 4. 5 Block 38. Thos. Matthews Lot 14, Block 36. African Prince lot 15

3 1/2 Block 36, John Miller lot 15 & 1/2 Block 36, J. W. Jager
 Lot 16 3 1/2 Block 36, E. Burdick Lots 17 and 18 Block 36, C.
 Bryson lot 7 Block 37. P. Martin lots 5 & 16, Block 37. R. Slater
 Lot 4 Block 37, Shilo & Magoffin lots 18 & 19 & 1/2 of lot 20
 in Block 33 and lots 18 & 19 & 1/2 of lot 20 in Block 30 Carpenters
 Addition and H. Greenbaum owner of lot 16 Block 36, all in a
 Carpenters Addition to Chicago lot named, to the rendition of judgment
 against the lots pieces and parcels of land in said objections set forth
 and heretofore described and answers being heard on said objections, and
 due deliberation being thereupon had and the premises fully understood
 it appears to the Court that said objections to the taking of judgment
 against said lots pieces and parcels of land in said objections set
 forth and heretofore described are sufficient and valid, the objections
 are therefore hereby sustained and judgment against said lots pieces
 and parcels of land in said objections set forth and heretofore
 described refused or costs of said City, and no owner now appearing
 to make defense or show cause why judgment should not be
 entered against the remaining lots pieces and parcels of land in
 said Warrant, to which objections have not been filed and sustained
 and on Motion of said Attorney

It is therefore concluded by the Court that judgment be and
 is hereby entered against the remaining lots pieces and parcels of
 land described in the aforesaid Warrant (excepting the Lots pieces and
 parcels of land heretofore described to which objections were filed
 and sustained and judgment thereon refused) in favor of the City of
 Chicago for the sum assessed to each lot piece and parcels of land
 remaining, being the amount of assessments and also for costs of
 suit generally thereon and that said City of Chicago have & recover

the further sum of ten per cent upon the amount of assessments ~~and~~
 respectively due and unpaid upon each of the remaining Lots pieces
 and parcels of Land therein set forth as and for two additional cts.

And it is further Ordered by the Court that said parcels
 remaining Lots pieces and parcels of land to which objections
 have not been filed or to which thereof as stated be deemed
 sufficient of each of them remaining to satisfy the amount of ~~the~~
 Assessment and costs assessed to them severally remaining to be sold
 as the law directs.

19

And afterwards to wit on the nineteenth day of February A. D. Eighteen hundred and forty came the said Plaintiff and filed in the Office of the Clerk of said Court his certain Bill of Exceptions in said suit: Which said Bill of Exceptions are in words and figures as follows, to wit:

"City of Chicago"

(to)

James B. Hallett Et al

Warrant No 366 West for filing, curbing and Macadamizing Randolph Street from Hallett Street to Union Park

Be it remembered that this cause came on to be heard before Judges John M. Wilson, Grant Goodrich and Wm. H. Higgins, Judges of the Superior Court of the City of the Chicago where the Defendants filed the following objections

"Superior Court of Chicago

Description of property owned.

J. J. Arwin	Lot 2 Block 39 Carpenters Addition
Mrs. Chas. K. Fulco	Lot 1 Blk 39 & Lot 23 and B. 44.
W. H. Hutchinson	Lot 18 & E 1/2 17 B. 34.
A. Stevens	E 1/2 & W 1/2 of Lot 17 in Blk 34 Carpenters Add
Elizabeth F. Fotto	W 1/2 of Lot 16 in Block 34 Carpenters Addition
John R. Galt	Lot 14 Block 34.
A. B. Waller	Lot 11 & W 30 feet Lot 15 B. 35.
R. V. Nightman	E 1/2 Lot 16 B 35
Ch. Bushnell	Lot 15 to 20 feet 35.
W. R. Vaggers	Lot 17 B. 35

S. G. Lyles

Lots 1, 2, 3, 4, 5 Block 38.

Thos. Matthews

Lot 111. B. 36.

Ferdinand P. Pflaum

Lot 15 $2\frac{1}{2}$ Bk 36.

John Miller

Lot 15 $\frac{1}{2}$ Bk 36.

G. H. Leger

Lot 16 $2\frac{1}{2}$ Bk 36.

C. Burdick

Lot 17 $\frac{1}{2}$ Bk 36.

C. Bryson

Lot 7 B. 37.

P. Martin

Lot 5 $\frac{1}{2}$ B. 37.

R. Slater

Lot 4 B. 37.

Stell & Magoffin

Lots 18 & 19 $\frac{1}{2}$ of Lot 20 in Block 32 andLots 18 & 19 $\frac{1}{2}$ of lot 20. in Block 30

Carpenters Addition.

H. Greenbaum

Lot 16 $\frac{1}{2}$ B. 36.

Helen Dewey

Lot 20 in Block 1. Union Park Addition

S. S. Hayes.

Lots 21 & 22 B. 33 Carpenters Addition.

 $2\frac{1}{2}$ lot 20 B 30 " "

Lots 1, 2, 3, 4, 5, 6 & 7 in Bk 1. Wrights Addn.

Lot 13 B. 1. Union Park Addition.

Lots 9, 10, 11, 12 & 13. B 2. " "

Lots 1, 2, 3, 4, 5 & 6 B 4 " "

E. D. Taylor

Lot 2 B 2, Union Park Addn.

Malcolm McNeil

Lots 1, 2, 3 & 4 in B. 6 Wrights Addition

and

City of Chicago

And now come the paid owners of Real Estate
and object to the application of the said City Collector and the
Instruments applied for herein for the following among other reasons

21 126

That an ordinance of the said City passed on the 10th day of May A. D. 1858 the said property owners on West Randolph Street, were authorized and directed to fill grade & macadamize said Street from the West line of State Street to Union Park according to the Specifications submitted to said City and that it should be done by private contract with the said Owners to the satisfaction of the City Superintendent of Public Works.

2nd

That in pursuance of the said order so passed the said property owners entered into such private contract for the completion of said works with one E. A. Webber by whom in pursuance of the terms of said contract a large portion of the work has been done and payments of money made thereupon besides which according to the mutual stipulations of said contract a large portion of the work has been done by said owners for which they are entitled to a deduction upon amounts to be paid to said Contractor.

3rd

That subsequently and long before said work was entered upon under the said contract with Webber according to said Order of said City, the Common Council levied and assessed a tax of \$22,000. upon the same property of said owners against which the said Report is filed for a Quærent the said Warrant having been issued to collect said amount for the same identical work, for the doing of which they had previously entered into contract and obligations with the said E. A. Webber, and for the payment of which they are now individually liable and become bound as aforesaid and for which they are entitled to deduction as against said Webber on account of payments as well as work done at their own expense.

upon the property charged in said Report of the Collector.

4th For the reason that no Commissioners were ever legally appointed to make the assessment upon which said Warrant was issued and that no legal assessment was ever made of the damages and benefits now charged against the said

5th That the requisite public Notices were never given as required by Law to authorize any such proceedings as were taken to make such Assessment

6th That said improvement was commenced by the City before Fifty per cent of the Cost of said improvement or work was paid into the City Treasury.

7th Because the City in violation of Law has made said Assessment to apply the moneys collected thereon upon a Contract entered into by said City, after said City had authorized the owners to do the same work, and after said owners had made a private Contract for the doing thereof, and while the same continued in full force and effect - and during the time of the performance thereof.

8th Because the said Assessment was levied unlawfully after the City had conferred the authority to do said work by private contract, by said owners as aforesaid.

9th Because it was inconsistent and illegal to appoint said Commissioners to make an assessment of damages, costs and expenses upon the Real Estate of said owners after they had already thrown upon said owners the liability of providing for said damages and costs by private Contract.

10th Because the damages and costs of said work and improvements have been already paid or assessed by the said

owners in pursuance of the authority and direction of the City by private Contract and the said assessment - was unlawfully levied for the same damages and costs and there could be no benefit - to assess upon the Real Estate which they had not already assessed or paid under the direction of said City.

11th Because said Assessment is asked for upon an assessment made to charge their Real Estate with an amount illegally assessed after the Costs, damages and benefits of said improvement had all been provided for and charged upon them as individuals.

12th The City had no authority to direct the work to be done in any other manner than as authorized by the first order, so as to interfere with the obligations already entered into under that order to the injury of said owners.

13th It will appear on hearing and does so appear on the City records, that the Common Council authorized the work to be done and entered into a further Contract upon its own responsibility in gross violation of the rights of your respondents who had entered into the previous Contract in good faith upon the authority of said Common Council and while said Contract was in regular course of fulfillment, and that to pay the said Contract of said City so made in violation of respondents rights, the said Assessment was made upon the property of your respondents.

14th And further for the reason that in the making of said Contract by the said City, it was agreed that a certain

Two Centage of the profits to accrue to the Contractor was to be paid into the City Treasury.

15th

For the reason that said City in making said last Contract was unlawfully and fraudulently interested in the profits of the Contract.

17th

For the reason that the said work so agreed to be let under the last Contract, the City in violation of Law and against the rights of said owners, corruptly, through its officers agreed and stipulated for a portion of the profits accruing under the Contract and that all such proceedings are void.

18th

Because the City Collector and Attorney has been ordered to withhold the application for Judgment in this case by an order of 17th January instant.

18th

On account of uncertainty in valuation of property there being no amount specified in dollars and Cents

19th

Because the City has made an excessive and extortionate levy for \$2500 more than the cost of the work

Stoyno, Miller & Lewis

for Abstractors

And the said Defendants in order to maintain their said cause offered in evidence the Assessment Roll in said cause

Which was objected to by the Plaintiff in said cause but the objection was overruled and the Assessment Roll admitted & of which the following is a Copy

" Assessment Roll

— for —

Macadamizing West Randolph Street

Harold Street to Morgan Street and from Morgan Street to
Union Park.

In Common Council. July the 19. 1858.

Ordered that West Randolph Street be filled, curbed and Macadamized from the West curb line of Harold Street to the centre of Morgan Street, and Macadamized from the Centre of Morgan Street to Union Park in accordance with the Specifications submitted herewith.

Ordered that the sum of Twenty two thousand two hundred dollars be assessed upon the Real Estate in the West Division of the City of Chicago deemed benefited by the said improvement, and that the Common Council do now elect by ballot, three reputable and disinterested freeholders of the City of Chicago to make said assessment.

The orders were passed and the Council proceeded to the Election of Commissioners thereunder - on the first ballot J. H. Kugler, S. R. Mason and S. H. Stone received each 12 Votes and were declared Elected.

Attest J. H. Kugler

City Clerk.

"Cash of Commissioners."

"State of Illinois }
City of Chicago }

We the undersigned Commissioners appointed by the
 Common Council of the City of Chicago to assess the sum of Twenty
 two thousand two hundred dollars upon the real Estate by us as
 deemed benefited by filling, curbing and macadamizing West
 Randolph Street in accordance with the foregoing orders in proportion
 to the benefits resulting there to as nearly as may be do solemnly swear
 that we will faithfully and impartially execute our duty according
 to the best of our ability.

Subscribed and sworn to before me the twenty sixth
 day of August 1858 . . . }
 J. H. Krizio }
 S. B. Haven } Commissioners
 L. W. Stone }
 At Kresnoano. City Clerk "

Assessment Roll.

A description of the real Estate in the West Division of the
 City of Chicago, deemed benefited by macadamizing West
 Randolph Street from Halsted Street to Union Park, with the
 value thereof and the sum of money severally assessed thereon for
 benefits by the Commissioners, to wit.

Carpenters Addition to Chicago.

Name of Owner	Part of Lot of Land	Lot	Lot-Block	Valuation	Assess
J. M. Mancuso			4 28	5000	82 32
"			8 "	4000	62 81
P. Carpenter			23 29	2500	41 11
"			24 "	2500	41 11

27

Name of Owner	Part of lot of Land	Lot	Block	Valuation	Assess
P. Carpenter		25	29	2500	41 11
"		26	"	2500	41 11
"		27	"	2500	41 11
"		28	"	2500	41 11
"		29	"	2500	41 11
"		30	"	2500	41 11
"		31	"	2500	41 11
"		32	"	2500	40 29
Isaac Shelby Co		18	30	5300	83 86
"		19	"	5300	82 22
"	8 1/2	20	"	2500	41 11
J. S. Hayes	16 1/2	"	"	2500	41 11
"	600 & 30 ft	21	"	2500	32 89
Henry Taylor	6 30 ft	"	"	3000	49 33
Isaac Bell		22	"	5000	83 86
Stephen Orr		14	31	5000	82 22
W. Shaw		15	"	5000	82 22
G. B. Harwell		16	"	5000	82 22
J. H. Mileniger		17	"	5000	82 22
"		18	"	5000	82 22
Isaac Shelby Co		"	32	5000	82 56
"		19	"	5000	82 22
"	8 1/2	20	"	2500	41 11
"	16 1/2	"	"	2500	41 11
"		21	"	5000	82 22
"		22	"	5000	82 56

Name of Owner	Part of lot of Land	Set	Set	Block	Valuation	Assessment
Geo: Mamerie			11	33	11000	320 00
Cyrus Butler			15	"	11000	320 00
B. B. Adams			16	"	11000	320 00
R. S. Knig	6 1/2		17	"	8500	160 00
Chas. Sawyer	3 1/2		"	"	8500	160 00
R. S. Knig			18	"	11000	320 00
A. B. Carr			14	34	11500	332 00
J. M. Lyath			15	"	11500	332 00
J. W. Bragg	6 1/2		16	"	5600	166 00
Elizabeth Fouts	3 1/2		"	"	5600	166 00
John Simms	6 1/2		17	"	5600	166 00
"	3 1/2		"	"	5600	166 00
W. H. Hutchinson			18	"	11500	332 00
C. B. Waters			14	35	12500	370 00
"	11 30 ft		15	"	8200	222 00
Ch. Burkhead	6 20 ft		"	"	5000	148 00
R. Whitman	6 1/2		16	"	6200	188 00
Wm. Justice	3 1/2		"	"	6200	188 00
C. B. Haggerty			17	"	12500	370 00
Rosalie Chapman			18	"	12500	370 00
Thos. Mather			14	36	12500	361 24
L. Mueller	6 1/2		15	"	6100	180 88
W. Newberger	3 1/2		"	"	6100	180 88
	6 1/2		16	"	6100	180 88
	3 1/2		"	"	6100	180 88
Charles Birdell			17	"	12500	361 24

29

Name of Owner	Part of lot of Land	Lot	Block	Valuation	Grass
Chas. Bondell		18	36	125 00	361 711
D. McCalum		1	37	65 00	193 34
"		2	"	61 00	180 88
"		3	"	61 00	180 88
R. Slater		11	"	61 00	180 88
John Gomer		5	"	61 00	180 88
"		6	"	61 00	180 88
Charles Bryan		7	"	61 00	180 88
Wm. H. Brown		8	"	61 00	180 88
"		9	"	61 00	180 88
"		10	"	61 00	180 88
D. H. Gale		1	38	125 00	370 "
"		2	"	125 00	370 "
"		3	"	125 00	370 "
"		11	"	125 00	370 "
"		5	"	125 00	370 "
Geo. Scholesfield		1	39	115 00	332 00
J. Y. Brown		2	"	115 00	332 00
Asa Ward		3	"	115 00	332 00
"		11	"	115 00	332 00
"		5	"	115 00	332 00
E. Goodman		1	40	110 00	320 00
"		2	"	113 00	320 00
A. Barby		3	"	110 00	320 00
"		11	"	110 00	320 00
P. Carpenter		5	"	110 00	320 00

Name of Owner	Part of lot of land	Lot	Set	Block	Valuation	Assess
J. Carpenter			1	41	6000	82 22
"			2	"	6000	82 22
"			3	"	6000	82 22
"			4	"	6000	82 22
"			5	"	6000	82 22
E. L. Gifford			1	42	6000	82 22
E. H. Cummings	E 1/2		2	"	3000	41 11
J. W. Gustafson	N 1/2		"	"	3000	41 11
E. Hillman	E 30 ft		3	"	14000	149 33
L. W. Smith	N 20 ft		"	"	2000	32 89
"			4	"	6000	82 22
"			5	"	6000	82 22
D. H. Sutherland			1	43	5000	41 11
L. Petersen			2	"	5000	41 11
J. E. Sutherland			3	"	5000	41 11
J. Moreside			4	"	5000	41 11
Reis Hallen			5	"	5000	41 11
"			6	"	5000	41 11
"			7	"	5000	41 11
J. H. Hansen			8	"	5000	41 11
John Spruce			9	"	5000	41 11
J. Schiffer			10	"	5000	41 11
A. Gustafson			23	44	11000	141 11
"			24	"	11000	141 11
"			25	"	11000	141 11
"			26	"	11000	141 11

Name of Owner	Part of lot of Land	§	Lot	Block	Valuation	Assess
J. Curtis			27	44	4000	41 11
"			28	"	4000	41 11
"			29	"	4000	41 11
"			30	"	4000	41 11
Mrs. Goodjohn			31	"	4000	41 11
J. Curtis			32	"	4000	41 11
E. H. Cummings			12	45	2500	37 82
J. L. McHenry			18	"	2500	37 82
			14	"	2500	37 82
L. D. Alstead			15	"	2500	37 82
John Blodford			16	"	2500	38 64

Sawyers Addition to Chicago.

W. A. & B. White			9	1	4000	92 81
E. L. Ottum	6 1/2		10	"	2000	46 40
G. E. Noble	7 1/2		1	"	2000	46 40
Wm. Butterfield			11	1	11000	92 81
"			12	"	11000	92 81
W. S. Johnston Inc.			13	"	11000	92 81
			14	"	11000	92 81
J. Sawyer			15	"	11000	92 81
do.			16	"	11000	92 81

Moore Heights Addition to Chicago.

			17	1	3000	51 96
			18	"	2500	41 11
			19	"	2500	41 11
			20	"	2500	41 11
			21	"	2500	41 11

Name of Owner	Part of lot of Lots	Lot	Set	Blocks	Navigation	Amount
			22	1	2500	41 11
			23	"	2500	41 11
			24	"	2500	41 11
			25	"	2500	41 11
			26	"	2500	41 11
			27	"	2500	41 11
			28	"	2500	41 11
			29	"	2500	41 11
			30	"	2500	41 11
			31	"	2500	41 11
			32	"	2500	41 11

Frights Addition to Chicago

S. S. Hayes	1	1	3500	82 22
"	2	"	3500	82 22
"	3	"	3500	82 22
"	4	"	3500	82 22
"	5	"	3500	82 22
"	6	"	3500	82 22
"	7	"	3500	82 22
Muelson & Meit	1	5	5000	208 83
"	2	"	5600	164 43
"	3	"	5600	164 43
"	4	"	5600	164 43
"	1	6	5600	164 43
"	2	"	5600	164 43
"	3	"	5600	164 43

Name of Owner	Part of lot of Land	Lot	Block	Valuation	Acres
Malcolm McNeil		4	6	5600	16 1/2 1/3
<u>Union Park Addition to Chicago</u>					
L. S. Mc Knight		19	1	4000	11 3/4 76
Hayes & Kinney		20	"	3000	8 2/2 22
L. S. Mc Knight		21	"	3000	8 2/2 22
"		22	"	3000	8 2/2 22
S. L. Larned		1	2	3000	8 2/2 22
		2	"	3000	8 2/2 22
		3	"	3000	14 9 33
S. L. Larned		4	"	5600	13 1/2 18

Mr. Isaac Stow's Subdivision of part of S. S. 39. B. 11. E. 6

A. Burkhead & Son	Except that part following for Street	6		12000	26 31
Wm. Kimball		7		20000	40 29
Geo. Collocott		8		20000	40 29
A. F. M. Montali		9		20000	40 29
"		10		20000	40 29
"		11		20000	40 29
"		12		20000	40 29

Part of lot 3 of S. 36

1/4 sec. at S. 36. E. 6.

of D. Rathbun's land, then S. 36. E. 6. 10000 13 9 60

John Taylor

2 1/2 1/4 sec. S. 36 1/4 sec. 8 39 111

to 1/4 sec. S. 36 1/4 sec.

to sec: 1/2 acres

Name of Owner	Part of lot of Land	S Lot	E Lot	Block	Valuation	Assess
Joseph Wilson	Part of lot 3 of S. 11 1/4					
	beg. at S. 1/4 cor. of S. 11 1/4					
	land thence N 2 2/3	S. 20	S	N. E.	17500	238 1/3
	chains, W 6 5/8 chs	8	39	111		
	E 3 7/8 chs, S. 3 1/4 chs					
	N 1 1/4 chs, S 3 4/5 chs					
	to beg 2 1/2 acres					
					\$22200 00	

Commissioners Return

"The undersigned freeholders and residents of the City of Chicago, duly elected and appointed by the Common Council of said City to assess the sum of Twenty two thousand two hundred Dollars, upon the Real Estate in the West Division of said City by us deemed benefited in proportion as nearly as may be to the benefits resulting thereto by reason of widening West Randolph Street from Halsted Street to Union Park do hereby report and return to the Common Council

That in pursuance of said appointment they were duly qualified before entering upon their duties as appears by the Oath recorded herein that they published a notice of the time and place of their meeting for the purpose of making said assessment in the the Corporation Newspaper for the period of six consecutive days or previous to such meeting - a Certificate of which publication is herewith attached; that they were present at the time and place and for the purpose designated in said notice and having first fixed a

35-

valuation on the real estate described and set forth in the proper column of the foregoing Assessment Roll, we did then and there, and do hereby in pursuance of said appointments assess the said sum of money upon the real estate hereinbefore set forth and described as the only real estate benefited by said improvement, and that the benefits resulting thereto, is the proportion of said sum set off to each lot, part of Lot and Lane respectively in said Assessment Roll.

And we further report that such Assessment does not exceed three per centum per annum on the property assessed.

All of which is respectfully submitted

Chas. H. King

L. H. Stone

S. R. Haven

Commissioners "

Chicago Sept. 16th 4. 1858.

Commissioners Notice.

Public Notice is hereby given to all persons interested that the undersigned Commissioners appointed by the Common Council of the City of the City of Chicago, to assess the sum of Twenty two thousand two hundred dollars upon the Real Estate in the West Division by them deemed benefited by macadamizing, curbing and filling from the West Curb line of Halsted Street to the center of Morgan Street and macadamizing from the center of Morgan Street to Union Park, will be a room No 6 Dole's building on the fifth day of August 1858 at the hour of ten o'clock A.M. for the purpose of making said Assessment.

Chas. H. King

S. R. Haven

L. H. Stone

Commissioners "

"This certifies that the appended Notice relative to improvement on West Randolph Street has been published in the Daily Democrat the Corporation Newspaper of the City of Chicago, County of Cook, and State of Illinois, six days consecutively, commencing with July 28th 1858.

Chicago, Sept 4. 1858.

John Wentworth - Publisher.

By S. B. Johnson."

"State of Illinois
City of Chicago } ss.

I do hereby certify that the foregoing Assessment Roll was returned to me and filed in my office by the Commissioners this seventh day of Sept. 1858.

J. Kreismann. City Clerk

Pro Marble."

Assessment Notice

" City Clerk's Office

Chicago, Sept 4. 1858.

Public Notice is hereby given to all persons interested that the Commissioners appointed by the Common Council of the City of Chicago, to assess the sum of Twenty two thousand two hundred dollars upon the real estate in the West Division of said City and deemed benefited by macadamized West Randolph Street from Halsted Street to Morgan Street, and from Morgan Street to Union Street 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 Monday the 13th day of Sept 1858 at 4 o'clock P.M., as the Common Council will at that time in the Council Room hear all objections to said Assessment and revise and confirm or annul the same.

H. Kreismann - City Clerk

"This certifies that the appended Notice has been published in the Daily Democrat the Corporation Newspaper of the City of Chicago County of Cook and State of Illinois, six days consecutively commencing with September 8th 1858.

Chicago October 6th 1858.

Jno. Hartworth - Publisher

Order of Confirmation.

"In Common Council October the 4th 1858.

Whereas due notice has been given by the City Clerk of the return of the foregoing Assessment Roll and no objections thereto having been filed it is therefore Ordered that the said Assessment as revised by the Common Council be and the same is hereby confirmed. It is further Ordered that a Warrant be issued for the collection thereof returnable in thirty days after its date

Passed

H. Kreismann - City Clerk

Warrant issued October the 6th 1858."

The foregoing was all the testimony produced or offered by the Defendants in support of their objections and here rested their case.

The Plaintiff then offered in evidence W. W. Bragg as a witness who being duly sworn deposed and testified as follows

Live in the City of Chicago - And at present engaged as an Assistant of the Superintendent of Special Assessments - Know how the amounts are listed - He was then asked the question, He knew what the column of figures in the Assessment Role, which has been introduced by the Defendants and over which the word valuation is printed stands for and means

To which question the Defendants then and there objected which objection was sustained by the Court - & the Plaintiff then and there excepted.

Herman Krusmann, a witness was then called, whom it was admitted was the City Clerk of the City of Chicago, and whose duty it was to make up the Assessment-Role, after the Assessment has been made and returned by the Commissioners to his Office and who was asked the same question as Mr Bragg as to the column of figures in the Assessment Role marked valuation

But the question was objected to by the Defendants - the objection sustained by the Court and the Plaintiff then and there excepted.

The Plaintiff then offered to show by this witness the meaning of the column of figures marked valuation, but the Court refused to admit any parol testimony whatever to explain the columns of figures - but the Plaintiff then and there excepted

This was all the testimony introduced by the Plaintiff in this case - and was also the testimony introduced by either side upon the case - after hearing counsel the Court refused the application for judgment asked for by Plaintiff and rendered a judgment in favor of the Defendants.

And because none of the said exceptions so offered and made to the opinions & decisions of the said Court do appear upon the record of the said trial, therefore the said Plaintiff prayed that said judge would set his hand and seal to this Bill of Exceptions containing the several matters so offered or proved and given in evidence as aforesaid, according to the form of the Statute in that case made and provided and thereupon the said Judges hath accordingly set their hands and seals hereto this nineteenth day of February 1860.

John W. Nelson (Seal)
 Grant Goodrich (Seal)
 Wm. H. Higgins (Seal)"

State of Illinois }
Cook County . . } ss

I Walter Kimball Clerk of the Superior Court of Chicago within and for the County of Cook in the State of Illinois Do hereby certify the above and foregoing to be a full true and perfect Transcript of the Collectors Report & Petition for Judgments, Notice and Certificate of Publication, Collectors Warrants and return; and Bill of Exceptions now on file in my office; together with the Orders and Judgments entered of record in said Court, in a certain suit and proceedings therein, wherein the City of Chicago was Plaintiff and James B. Walter et al were Defendants



In testimony whereof I have hereunto set my hand and affixed the Seal of said Superior Court at Chicago in said County the third day of April A.D., Eighteen hundred and Sixty.

Walter Kimball Clerk

State of Illinois

Supreme Court,

Third Grand Division April Term 1860

City of Chicago } Plaintiff in Error

James B. Waller } Defendant in Error

Afterwards, to wit, on the 18th day of April A.D. 1860, at this same term of the Court before the Justices thereof, comes the said City of Chicago, by E. Anthony, its attorney and says that in the record & proceedings aforesaid and also in the rendition of the judgment there is manifest error in this to wit:

First the Court erred in permitting the Defendant to offer in evidence the assessment roll

Second - The Court ^{erred} in refusing to permit H. A. Bragg, a witness offered by the City to answer the question asked him in regard to the meaning of the columns of figures in the assessment roll, over which the word "valuation" was written -

42 Third - The Court erred in excluding the evidence of Herman Kreisman -

Fourth - The Court erred in refusing to permit the City of Chicago, the Plaintiff to explain by perol testimony, the meaning of the columns of figures in the assessment roll, over which was written the word valuation -

Fifth - The Court erred in rendering a judgment for the Defendant -

Sixth - The Court erred in not rendering a judgment for the City -

And the said City of Chicago, prays that the judgment aforesaid for the errors aforesaid and for other errors apparent in the record & proceedings aforesaid, may be reversed, annulled and altogether held for nothing & that the said City of Chicago may be restored to all things which it hath lost by occasion of the said judgment

E. Anthony

Atty for Plff in Error

And the said Defendants in Error say
say there is no error in the manner &
proceedings aforesaid

Herman Kreisman
for apts in Error

State of Illinois
City of Chicago 248

Superior Court

The City of Chicago

— (w) —

James B. Waller

Record.

Filed April 18, 1860
L. Leland
Clerk