

No. 12840

# Supreme Court of Illinois


Peck.

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vs.

City of Chicago.

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P.F.

City of C

233

1859

2870



Supreme Court, Illinois  
Third Grand Division  
Attawa. April Term  
1859

P. F. H. Peck

Appeal from Cook County  
The City of Chicago & Court of Common Pleas

And, now at this day comes the said  
appellant by Scates, McAllister & Jewett his counsel  
and says that in the record and proceedings, and  
in the rendition of judgment in this cause, mani-  
fest error hath intervened in this to wit:

First The Court erred in rendition of judgment  
for the City - because there was no reference of the  
subject of these improvements to a committee of  
the council to prepare and report a plan of said  
improvements, and an estimate of the cost and ex-  
pense of making the same, and because the Com-  
mon Council did not agree upon, or adopt any  
plan thereof, or estimate.

Second. The order of the Common Council of 2<sup>nd</sup>  
August 1858, was adopted without first having agreed  
upon, or adopted any plan, or estimate of said im-  
provements, or "specifications" for doing the work,  
but the same was an order arbitrarily made,  
for raising by assessment the sum of \$16,200 to  
pay John McBeau for doing said work, under



a private contract, wherefore said order was made without authority, and was, and is void.

Third. Said assessment was made by said Commissioners without due notice of their meeting for that purpose.

Fourth. The Common Council have no power to levy an assessment to pay for improvements made under private contracts, or without a contract with, or employment by, the City.

Fifth. The City have no authority or power to enter into contract for such improvements, nor to adopt or sanction those entered into by others, unless 50 per cent of their cost and expense shall have been collected.

Sixth. That the assessment amounts to more than three per cent on the assessed valuation.

Seventh. The election of Commissioners by the Common Council, without a nomination by the Mayor under the 6<sup>th</sup> Section of the Amended Charter of 1857, was without authority and void.

Eighth. There was no valuation in money fixed upon said lots, and there was no sum assessed upon the same by the said Commissioners, and the Common Council and the Common Pleas Court had no jurisdiction, power or authority to assess, or give judgment against said lots for any sum of money.

Ninth. The Court rendered judgment



against said lots. when by the laws of the land,  
judgment ought to have been rendered for  
Defendant

Scates McAllister & Jewett  
Counsel for Appellant

And now comes the said  
defendant in error by Elliott Anthony  
its attorney, and says that there  
is no error in the record & proceedings  
aforesaid, or in the giving judgment  
aforesaid. And prays that  
the court now here may examine  
as to all the record & proceedings  
aforesaid as the matter aforesaid  
above assigned because & that  
the judgment aforesaid  
may be in all things  
affirmed

E. Anthony  
Atty for Deft  
in Error



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

Pleas before the Honorable John M. Wilson  
Judge of the Cook County Court of Common Pleas  
within and for the County and State aforesaid at  
a special Term of said Cook County Court of  
Common Pleas begun and holden at the Court  
House in the City of Chicago on the twenty seventh  
day of January in the year of our Lord one  
thousand eight hundred and fifty nine, due notice  
of the time and place of holding said term of Court  
having been printed and published in the Chicago  
Daily Democrat, the Corporation Newspaper of the  
said City of Chicago said Notice having been  
printed and published Twenty days previous to the  
first day of holding said Court in accordance  
with the Statute in such case made and provided  
and in pursuance of an Order made by the Judge  
of said Court on the fourth day of January  
eighteen hundred and fifty nine.

Present the Hon: John M. Wilson . . . Judge  
John Gray . . . . . Sheriff

Attest, Walter Kimball, Clerk.



Be it remembered that heretofore to wit on the day of January A.D. Eighteen hundred and fifty nine came Joseph N. Henricks City Collector of the said City of Chicago, and filed in the Office of the Clerk of the Cook County Court of Common Pleas aforesaid, his Report, Petition for Judgment for Special Assessments upon certain property in said City of Chicago, together with Warrant, Assessment Role, Return and Notice of Sale; Which said Report, Petition, Warrant, Assessment Role, Return & Notice is in the words and figures following to wit.

"Of the January Special Term of the Cook County Court of Common Pleas in the year of our Lord one thousand eight hundred and fifty nine.

To the Honorable John M. Wilson Judge of the Cook County Court of Common Pleas

The Report of Joseph N. Henricks City Collector of the City of Chicago respectfully represents that the Special Warrants mentioned in the Schedule herewith attached issued for the Collection of the Special Assessments and taxes authorized by law, for the purposes 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. 1858. That forthwith after the delivery of the 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 person liable for the payment of such taxes and assessments, which said Notice were 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 and costs respectively due thereon, before the first day of the January Special Term of this Court A.D. 1859 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 such 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 amounts of taxes and assessments, interest and costs respectively due thereon, as set forth in the said Warrants, which remain unpaid and uncollected, Wherefore your said Petitioner prays that judgment may be rendered as in such case made and provided.

Geo. N. Hendricks  
City Collector.



"State of Illinois  
Cook County . . . } So.

I Joseph N. Henricks City Collector in and 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 1858 as herein  
set forth - that said taxes and assessments now remain  
due and unpaid and uncollected as above stated.

Subscribed and sworn to by Joseph N. Henricks "  
before me this 27th day of  
January 1859 . . . . .

Walter Kimbale, Clerk  
Cook Co Court Com: Pleas."

"State of Illinois  
City of Chicago } So. Special Warrant No 265 S.

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 21<sup>st</sup> day of ~~September~~<sup>December</sup> 1857 confirm the assessment  
duly made and filed in the Clerks Office by the Commissioner  
appointed by the said Common Council to assess the sum  
of Eight<sup>Twenty</sup> Thousand one hundred and forty four dollars  
upon the real Estate in the South Division of said City  
deemed benefitted by Paving LaSalle Street from w



Randolph Street to South Water Street in proportion to the benefits resulting thereon, in pursuance of an Order for said Assessment made by the said Common Council on the Ninth day of November 1857 after duly reviewing the same and did thereby assess the said sum of money upon the real Estate described in the roll of said assessment in the respective proportions thereof marked "Assessment" set opposite to each lot, part of lot and real Estate described in said roll, which roll is in the words and figures following to wit:

"Assessment Roll"

"A description of the real Estate in the South Division of the City of Chicago deemed benefited by filling, curbing and paving La Salle Street from South Water Street to Randolph Street, with the Valuation thereof, and the sums of money severally assessed thereon for benefits, by the Commissioners, to wit:

Original Town of Chicago.

Name of Owner	Description	Site	Lot	Block	Valuation	Assessment	
P. J. W. Peck	A 2/3		14	18	57000	914.11	
C. R. Starkweather	S 25 ft		"	"	14000	290.32	
W. W. W.	25 ft N 4 adg. S 25 feet		"	"	14000	249.15 Paid	
W. S. Patrick	N 78 ft		5	"	30000	795.52 Paid	
J. H. Seaman	N 40 ft on Lake St. by 40 73 ft on La Salle St. .... }		"	"	28000	522.52 Paid	
Seaman & W. Cagg	N 41 ft & 42 73 ft deep		"	"	11000	81.00 Paid	
H. H. Mayer	E 20 ft on Lake St. by 90 feet deep . . . }		"	"	12000	65.00 Paid	
Orin Crouch			1	19	64000	11453.92	
John Lusk			1	8	"	15000	426.72 Paid
"			2	"	"	13000	330.32 Paid
"			3	"	"	13000	68.55 Paid



# Original Town of Chicago?

Name of Owner	Description	S. Lot	Lot	Block	Value	Assessed
E. S. Smedley		14	8	19	13000	60.96
John Smith	E 60 ft	5	"	"	10000	187.60 Paid
E. S. Smedley	N 20 ft	"	"	"	1000	5.00
E. S. "	(Rec'd \$160 on a/c)	6	"	"	10000	192.16
E. B. McLaughy		7	"	"	10000	191.32 Paid
"		8	"	"	10,000	220.98 Paid
J. H. Beck	N 49	1	33	21000	468.90	
Julian S. Rumsey	S 40 ft	"	"	13000	3814.61 Paid	
M. Shacht	20 ft N 4 adjs S 110 ft	"	"	6500	179.94 Paid	
Freder. Setz	40 " " " 60 "	"	"	13000	346.82 Paid	
J. A. Guntley	S. 100 feet	8	"	30000	836.12 Paid	
J. W. Boyden	N 80 "	"	"	25000	744.13 Paid	
J. Newberg	20 ft on Lake St by 100 ft & deep N of E 1/4	11	311	16000	91.00 Paid	
H. H. Magin	20 ft on Lake St by 100 ft & deep N 4 adjs E 1/2	"	"	16000	110.00 Paid	
Est of L. M. Boyer	20 ft on Lake St by 100 ft on Saville St N. W. cor.	"	"	30000	536.12 Paid	
John Westworth	20 ft on Saville St by 60 ft on alley S. end	"	"	10000	221.57 Paid	
S. D. Skinner	13 12/100 ft on Saville St N 4 adjs S 20 1/2 ft	"	"	7500	135.67 Paid	
A. Berg	20 ft on Saville St N 4 adjs S 35 65/100 ft	"	"	8500	176.22 Paid	
Est of L. M. Boyer	26 ft on Saville St N 4 adjs S 65 65/100 ft	"	"	11000	221.48 Paid	
Est of L. Butterfield	E 1/4	"	"	17000	80.00	
Geo. Roth	N 20 ft on Randolph St 75 ft deep	3	311	13000	428.32 Paid	
J. H. White	20 ft (75 ft deep) E 4 adjs N 20 ft	"	"	14000	92.37 Paid	
David Wilson	20 ft " "	"	"	14000	77.61	
J. J. Sinclair	N 23 ft on Saville 70 ft deep	"	"	11500	242.47 Paid	
Geo. Roth	E 20 ft on Randolph St 75 ft deep	"	"	11000	70.47 Paid	
Geo. Roth	21 3/4 ft on Saville St 55 adjs N 23 ft	"	"	12500	232.46 Paid	
J. Lytle	30 " " " 48 "	"	"	14000	289.21 Paid	
A. M. Reid	16 1/3 " " " 78 "	"	"	8000	178.38 Paid	

\$12144.00.



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 hereby make due return in what manner you shall execute this writ, within thirty days from the date hereof.

Witness John Wentworth Mayor of the City of Chicago and the Corporate Seal thereof this 1<sup>st</sup> day of January 1858.

J. Wentworth Mayor  
Saml. D. Ward "

Attest

H. Kriesman City Clerk "

"Collectors Return

"State of Illinois

City of Chicago

City Collectors Office

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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



Fragment Book for Special Assessments  
City of Chicago - Illinois.

Names	Description	Sub lot	Lot	BLK	Valuation	Amount Assessed	Tax	Per Cent	Per Cent	Per Cent	Total Amt due
					Dollars	Dolls	Cts	Dolls	Cts	Cts	Dolls Cts
P. F. H. Peck	4/9		1	33	24000	668	90	66	89		

The said Warrant.

City Collector,"

"Corporation Notices"

City Collectors Office, Chicago

January 7<sup>th</sup> 1859,

"Public Notice is hereby given that I shall appear before Cook County Court of Common Pleas on the first day of the Special Term thereof, to be holden at the Court House in the City of Chicago on the 27<sup>th</sup> day of January A. D. 1859 for judgment against all blocks lots sub lots pieces and parcels of land, together with the improvements if any situated thereon for all taxes assessments interest and costs therein remaining unpaid as appears from the following described Warrants now in my hands for collection

The Warrants for the collection of taxes for general and special purposes assessed for the Municipal year 1858. said Warrants being dated September 27<sup>th</sup> 1858.

"Warrant No 265 South, dated January 1<sup>st</sup> 1858 for paving La Salle St. from Randolph to South Water Street."

And afterwards to wit on the fourth day of February (being one of the days of the said January Special Term of said Court) A. D. Eighteen hundred and fifty nine, the following among other proceedings were had and entered of Record in said Court to wit:



And now on the fourth day of February A. D. 1869  
comes the said City of Chicago by C. Anthony City Attorney  
and due Notice having been given of the time and place  
of making the intended application for Judgment against the  
said several lands lots pieces and parcels of land in said  
Warrant set forth, and objections to taking of Judgment having  
been filed by J. F. W. Peck for lot Number 4 in Block 18  
and N  $\frac{4}{9}$  of lot 1 Block 33 by C. R. Starkweather for  
South 25 feet of lot 4, Block 18, by Executor of Ira Couch  
for lot 1 Block 19 owners of lots described in Warrant and  
counsel being heard upon said objections and mature  
deliberation being thereupon had and the premises fully  
understood it appears to the Court that the said objections to  
the taking of judgment against lot 4 Block 18, and South  
25 feet of lot 4 Block 18 and lot 1 Block 19 respectively, are  
sufficient and that the objection to taking of judgment against  
N  $\frac{4}{9}$  of lot 1. Block 33 is insufficient - the objections to  
lot 4 Block 18 & South 25 feet of lot 4 Block 18 & lot 1 Block  
19 are therefore sustained, and the objection to N  $\frac{4}{9}$  of lot  
1. Block 33 is therefore overruled, And on Motion of said  
Attorney

It is considered by the Court that judgment be  
and hereby is entered against the said several lands lots  
pieces and parcels of land described in the aforesaid Warrant  
including the N  $\frac{4}{9}$  of lot 1 Block 33 and (excepting the  
said several lots pieces and parcels of land to which  
objections are heretofore sustained, namely, lot 4 Block 18  
South 25 feet of lot 4 Block 18 and lot 1 Block 19) in favor



of the City of Chicago for the sum annexed to each lot piece and parcel of land not excepted, being the amount of assessments and for Costs of suit severally thereon And that the said City of Chicago have and recover the further sum of ten per Cent upon the amount of assessments respectively due and unpaid upon each of the lots lands and parcels of lands therein set forth and not hereinbefore excepted as and for her legal damages.

And it is further Ordered by the Court that the said several lands lots pieces and parcels of land not herein before excepted, or so much thereof as shall be deemed sufficient of each of them to satisfy the amount of assessment damages and Costs annexed to them severally be sold as the law directs.

And thereupon comes the said City of ~~Attorney~~ Chicago by Elliott Anthony City Attorney and prays an Appeal upon entering exceptions herein to the Supreme Court of the State of Illinois for lot 11 Block 18 & South 25 feet of lot 11 Block 18 and lot 1 Block 19 respectively set forth in said Warrant and to which objections were sustained by the Court; Which Appeal is allowed upon filing Bond in each case in the sum of Two thousand dollars with security to be approved by the Judge of this Court, in ten days with Bill of Exceptions.

And thereupon also comes the said P. J. H. Peck one of said objectors and enters his exceptions herein and prays an Appeal herein to the Supreme Court of the State of Illinois for North 4/9 of Lot 1 Block 33.



to which objections are overruled, Which Appeal is allowed to him on the Condition that he file his Appeal Bond in the sum of One thousand dollars with James Long as security therein within ten days and that he have twenty days time to file his Bill of Exceptions.

And thereupon on the fourteenth day of February A. D. Eighteen hundred and fifty nine the said P. F. W. Peck accordingly filed his Appeal Bond in the Office of the Clerk of said Court; Which said Bond is in the words and figures following, to wit.

Know all Men by these Presents That we Philip F. W. Peck and James Long of the County of Cook and State of Illinois are held and firmly bound unto the City of Chicago also of the same County and State in the penal sum of One thousand dollars, lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly severally and firmly by these presents.

Witness our hands and seals this seventh day of February A. D. 1859.

The Condition of the above Obligation is such That whereas the said P. F. W. Peck did on the fifth day of February A. D. 1859 in the Cook County Court of Common Pleas, in and for the County and State aforesaid and of the January Special Term thereof A. D. 1859



recover a judgment against part of lot One Block Thirteenth in Old Town for the sum of Seven hundred and thirty six dollars besides costs of suit for a special Assessment on Warrant No 265 from which said judgment of the said Cook County Court of Common Pleas the said P. F. W. Peck has prayed for and obtained an Appeal to the Supreme Court of said State.

Now therefore if the said Philip F. W. Peck shall duly prosecute his said Appeal with effect and moreover pay the amount of the judgment costs interest and damages rendered and to be rendered against him or said lot 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 virtue.

P. F. W. Peck (Seal)

James Long (Seal)

And thereafter to wit on the twenty fourth day of February A. D. eighteen hundred and fifty nine came the said Defendants and filed in the Office of the Clerk of said Court their Bill of Exceptions in the words and figures following, that is to say,



"State of Illinois } Of the January Special Term Of the Cook  
County of Cook } County Court of Common Pleas A. D. 1859.

The City of Chicago } Suit for Special Assessment to fill  
vs } curb and pave S. La Salle St.  
Philip P. W. Peck impleaded from South Water Street to  
with others . . . . . } Randolph Street.

Be it remembered that heretofore to wit on the  
day of January A. D. 1859 the said Defendant  
P. P. W. Peck came into Court and filed his objections to  
the rendition of Judgment, and Order of Sale applied for  
in this suit; Where said objections are as follows, and to  
which the City Attorney for the City filed Demurrers and  
Traverses of the facts therein objected and alleged as follows,  
that is to say.

"State of Illinois } Of the January Special Term of  
Cook County . . } Set the Cook County Court of Common Pleas  
The City of Chicago } A. D. 1859.

vs } Suit for Special Assessment  
Philip P. W. Peck impleaded } Warrant No: 265.  
with others . . . . . }

The Defendant P. P. W. Peck by  
his Attorneys comes and defends the cause of action and  
objects to the rendition of a Judgment or an Order of Sale



of the premises for the following reasons viz:

First.

There was no reference of the subject of improving this Street to a Committee to prepare and report a Plan for the filling curbing and paving thereof - nor was any Plan agreed on by any Committee - nor was any Plan reported by any Committee; nor was any plan of the same ever made or submitted to the Common Council or adopted by it.

Second.

The Order of the Common Council of the 9<sup>th</sup> day of November 1857 directing that the sum of Twelve thousand one hundred and sixty four dollars be assessed on the Real Estate of the City of Chicago deemed benefited by the filling curbing and paving of LaSalle Street from South Water Street to Randolph Street "in accordance with estimate and specifications herewith submitted" was made by Common Council without any estimate and specifications being made or submitted or adopted or agreed upon, and without adopting or agreeing upon or having adopted or agreed on any Plan for or of said improvement. But the same was an arbitrary Order for assessing that sum for the purpose of raising money to pay one John M<sup>r</sup> Bean for paving said Street under a private Contract, with some of the property holders of said Street. And this Warrant is being now presented for that purpose;

The whole of the work on said Street was done by said M<sup>r</sup> Bean before said Order was made for an apportioned part under private Contract as aforesaid, and part without



any agreement with the City, or City authorities, or owners of lots on said Street - and so Defendant says that the Order of Common Council, and said Commissioners and all others acting under said Warrant was and is wholly void.

Third. The Common Council have no jurisdiction, power or authority to make assessments to pay for improvements made under private contracts or made without contracts. Nor to enter into contracts to make such improvements before so per cent of the amount of their costs shall have been collected, according to Sect 5 of Charters Charter, § 11, and Sects 15 and 16 of City Ordinances, Mun: Code Page 162.

Fourth The Common Council have no authority to elect Commissioners to make Assessments under the 6th Section of Charters Charter of 1857, but the Mayor had the power to nominate and the Council to approve only.

Fifth That the Assessment exceeds three per cent both of the actual and assessed value of the premises

Be it further remembered that afterwards to wit on the 5th day of February 1859 this cause came on in the Cook County Court of Common Pleas for trial:

Whereupon the Plaintiffs Attorneys read the following documents in evidence:

1st A Petition for Closing Sadler Street from South



Water to Randolph St. as follows.

" To the Mayor and Council men of the City of Chicago  
in Council assembled.

" Your Petitioners do most respectfully call on  
your Honorable Body to take immediate steps to have Sa-  
" Street paved from South Water to Randolph Street, and your  
" Petitioners as in duty bound will ever pray."

" Chicago

" M. S. Patrick

" 8<sup>th</sup> July 1857."

" C. R. Starkweather."

" John P. Chapin

" S. McKean

" Geo. Steel

" J. Young Scammon

for Marine Bank

and M. Morney 90 feet front,

" John Link 90 feet.

" E. B. McHagg per John Forsythe his Atty, 39<sup>1/2</sup> feet."

Ind<sup>d</sup>. An order for Local improvement from Committee  
on Streets and Alleys, South Division, viz<sup>t</sup>

Order for Local Improvement.

" To the Mayor and Aldermen of the City of Chicago  
in Common Council assembled"

" Your Committee on Streets and Alleys of the  
" South Division, to whom was referred the Petition of M. S.  
" Patrick and others for the filling, curbing and paving of  
" Sa-Sater Street from South Water Street to Randolph Street,  
" having had the same under consideration and of the opinion



that the prayer of the Petitioners should be granted, they  
therefore ask for the passage of the following Orders.

"Ordered: That La Salle Street from South Water St.  
to Randolph Street, to be filled, curbed and paved in accordance  
with Estimate & specifications herewith submitted.

"Ordered, That the sum of Twelve thousand one hundred  
and forty four dollars be assessed upon the Real Estate in  
the South Division in the City of Chicago deemed benefited  
by the said Improvement, and that the Common Council do  
now Elect by Ballot three reputable and disinterested free-  
holders of the City of Chicago, to make said assessment.

"Chicago?

"Respectfully submitted."

Sept 16. 1854."

Wm. J. Joy of Committee on Streets  
and Alleys South Division."

2<sup>nd</sup> Assessment Roll &c for Paving La Salle Street from  
Randolph Street to South Water Street.

"In Common Council Nov 9<sup>th</sup> 1857.

"Ordered. That La Salle Street from South Water Street to Randolph  
Street, to be filled, curbed and paved in accordance with Estimate  
and specifications herewith submitted."

"Ordered, That the sum of Twelve thousand, one hundred and  
forty four dollars, be assessed upon the Real Estate in the South  
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.

"Ald: Long demanded the Ayes and Nays on the passage



"of the Orders, which resulted as follows

"Ayes. Ald. Bros, Harris, Keddell, D. Wolf, Jay,  
 "Kennedy, Lyman, Carter, Sitts, Dempsey, Dunlap, Satter  
 "Conley and Schmidt - 111"

"Nays. Long, Myers and Wahl - 3"

"The Council then proceeded to the Election of Commissioners  
 "thereunder. On the first ballot J. H. Kinzie, Thomas Hale  
 "and E. W. Atten received each 14 Votes and were declared  
 "Elected."

"Attest, H. Kriesman, City Clerk."

### "Oath 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 Twelve thousand and one hundred & forty four dollars  
 "upon the Real Estate by us deemed benefitted by Paving  
 "Ladalle Street from Randolph Street to South Water Street  
 "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 to the best of our ability.

"Sworn to and subscribed before } Me. H. Kinzie  
 "me the 13<sup>th</sup> day of Nov: 1867 } Tho. Hale Commissioners  
 "H. Kriesman } E. W. Atten  
 "City Clerk."



## "Assessment Roll"

setting forth " a description of the Real Estate in the South  
" division of the City of Chicago, deemed benefitted by filling  
" curbing and paving LaSalle St from South Water St. to  
" Randolph Street, with the Valuation thereof and the sums of  
" money severally assessed thereon for benefits by the  
" Commissioners."

## 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 Twelve thousand one  
" hundred forty four dollars upon the Real Estate in the  
" South Division of said City by us deemed benefitted in  
" proportion as nearly as may be to the benefits resulting  
" thereto, by reason of filling, curbing and paving LaSalle  
" Street from Randolph Street to South Water Street, 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, 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 Valuation on the real Estate described  
" and set forth in the proper columns of the foregoing Assess-  
" ment Roll, we did then and there and do hereby in  
" pursuance of said appointment, 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 therefrom, is the proportion of said  
 "sum set opposite to each lot part of lot and land especially,  
 "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

"J. H. Kinzie }  
 Thos. Hale } Commissioners.  
 E. H. Aiken }

"Chicago Decr the 7<sup>th</sup> 1857"

### Commissioners Notice.

"Public Notice is hereby given to all persons interested  
 "that the undersigned Commissioners appointed by the Common  
 "Council of the City of Chicago, to assess the sum of Twelve  
 "thousand one hundred and forty four dollars (\$12,144)  
 "upon the Real Estate in the South Division by him deemed  
 "benefited by filling, curbing and paving LaSalle Street  
 "from South Water Street to Randolph Street, will be at  
 "room No 6 Polo Building on the twenty first day of  
 "November 1857 at the hour of 1 o'clock A.M. for the  
 "purpose of making said assessment

"John H. Kinzie }  
 Thos Hale } Commissioners  
 E. H. Aiken }

"Chicago, November 12<sup>th</sup> 1857." No 12.64. 5785.



" This Certifies that the appended Notice relative to paving  
 " S. LaSalle Street has been published in the Democratic  
 " Press, the Corporation Newspaper of the City of Chicago  
 " County of Cook, and State of Illinois, Six days  
 " consecutively commencing with November 14<sup>th</sup> 1857  
 " Chicago November 21<sup>st</sup> 1857 "  
 " Scripps, Bros & Spears, Publishers."

### " Assessment Roll "

" A description of the Real Estate in the South Division  
 " of the City of Chicago deemed benefitted by filling, curbing  
 " and paving LaSalle Street from South Water Street to  
 " Randolph Street, with the Valuation thereof, and the sums  
 " of money severally assessed therein, for benefits, by the  
 " Commissioners to wit,

#### " Original Town of Chicago. "

Name of Owner	Part of lot of land	S. Lot	Set	Block	Valuation	Assess't
P. W. K. Peck	N 2 1/2		4	18	37000	911 111
C. R. Starkweather	S 25 ft N 1/2 1/2 1/2 } 225 ft		.	.	14000	291 32
M. Mearns	25 ft N 1/2 1/2 1/2 S 25 ft		.	.	11100	249 18
M. S. Patrick	N 78 ft		5	.	30000	795 52
J. Y. Seaman	N 111 ft on Lake St. by					
	73 ft on LaSalle St.			"	25000	522 52
Seaman & Mc Cagg	N 1/2 E 1/2 73 ft deep.			"	11000	80 00
H. H. Nagle	E 20 ft on Lake St. by					
	90 ft deep . . .			"	12000	65 00
Ira Cruik			1	19	60000	1453 92
John Lusk			1	8	15000	426 72



(22)

Name of Owner	Part of lot of land	E. Set	Set	Block	Valuation	Assess.
John Lusk		2	8	19	12000	83 82
"		3	"	"	12000	68 58
E. J. Smiles		4	"	"	12000	60 96
John Lusk	E 60 ft	5	"	"	10000	187 60
E. J. Smiles	N 20 "	"	"	"	10000	5 00
do		6	"	"	10000	192 16
E. B. McLaugh		7	"	"	10000	191 31
do		8	"	"	10000	220 98
						\$5808 00
P. F. H. Peck	N 4/9		1	33	24000	668 90
Julian S. Ramsey	S 110 ft	"	"	"	12000	3811 61
Mc. Stavel	20 ft N 4/9 S 40 ft	"	"	"	6500	179 94
Friedrich Setz	110 " " " 60 "	"	"	"	12000	346 82
James H. Gurtley	S 100 ft	8	"	"	20000	836 12
A. V. Boyden	N 80	"	"	"	25000	744 16
P. Newberg	{ 20 ft on Lake St. by 100 ft deep N of E 4/4 }	4	34	"	16000	90 00
H. H. Magie	{ 20 ft on Lake St. by 100 ft deep N 4/9 S 40 ft of E 1/2 }	"	"	"	16000	110 00
Est. of L. M. Boyce	{ 20 ft on Lake St. by 100 ft on Sadler St. N 1/2 cor }	"	"	"	20000	556 12
John Wentworth	{ 20 1/2 ft on Sadler St. by 100 ft on Alley South End }	"	"	"	10000	221 57
E. J. Skinner	{ 16 1/2 ft on Sadler St. N 4/9 S 20 ft ft. }	"	"	"	7500	135 67



Name of Owner	Part of Lot of Land	S	Set	Block	Valuation	Assess.
L. Berg	20 ft on Salsado S. N. & adjg S. 35 $\frac{65}{100}$ ft		14	311	8500	176 22
Est of L. M. Berger	20 ft on Salsado S. N. & adjg S 35 $\frac{65}{100}$ ft		"	"	11000	2211 48
Est of St. Butterfield	E 1/4		"	"	17000	80 00
Geo. Roth	11 20 ft on Randolph S. 75 ft deep		5	311	13000	1428 32
R. Nehls	20 ft (75 ft deep) E 1/4 adjg 11 20 ft		"	"	14000	93 57
Jacob & Wilson	20 " " " " 110 ft		"	"	110000	77 64
Geo. Roth	E 20 ft		"	"	110000	70 17
L. G. Sinclair	11 23 ft on Salsado S. 70 ft deep		"	"	11500	2112 47
Geo. Roth	28 ft on S & adjg. 11 23 ft		"	"	12500	232 44
J. Gots	30 " " " " 48 $\frac{8}{10}$ "		"	"	11000	239 21
A. M. Reis	16 1/3 " " " 78 $\frac{8}{10}$ "		"	"	8000	178 38
						<u>86336 00</u>

" State of Illinois  
" City of Chicago } S

" I do hereby certify that the foregoing  
" Assessment Role was returned to me and filed in my office  
" by the Commissioners this 9<sup>th</sup> day of Dec 1857

" H. Kreismann. City Clerk

" P. Marble."

" This certifies that the appended notice has been published  
" in the Daily Democratic Press, the Corporation Newspaper  
" of the City of Chicago, County of Cook and State of Illin.



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ten days consecutively commencing with Decr 11<sup>th</sup> 1857

Chicago, March 19. 1858.

" Scripps, Bros & Spears. Publishers."

" Assessment Notice.

" City Clerk's Office, Chicago Dec 9. 1857.

" 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  
" Twelve thousand two hundred and forty four dollars  
" upon the Real Estate in the South Division of said City,  
" deemed benefited by paving LaSalle Street from South  
" Water Street to Randolph Street have completed their assess-  
" ment and made return thereof to my Office.

" Any person wishing to appeal from said assessment  
" must file their objections in writing, in my Office, on or  
" before Monday the 21<sup>st</sup> day of December 1857 at 7 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  
" do 10 993. 10 A. " H. Kreismann, City Clerk "

" Order of Confirmation.

" On Common Council December the 21<sup>st</sup> 1857.

" 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 be revised and corrected by



"The Council, be and the same is hereby confirmed and  
"such assessment is hereby required to be paid within  
"thirty days from this date and that a Warrant be issued  
"for the collection thereof returnable in Thirty days from  
"its date.

"Dated, N. Kreissman, City Clerk,"  
Mem "Warrant issued January the 1<sup>st</sup> 1868"

11<sup>th</sup> Estimate of City Superintendent of the Cost for filling  
grading, curbing and paving LaSalle St from South Water  
St to Randolph St viz;

"City Superintendent under requisition of Streets &  
"Alleys of South Division submits the following as an  
"Estimate of the Cost for filling, grading, curbing & paving  
"LaSalle St from South Water to Randolph Street, to wit,

"The Street to be filled within Nine inches of the  
"Established Grade with suitable Earth, Paving to be of  
"dimension Stone, laid on Edge not less than 4 inches deep  
"from 14 to 16 inches thick, and from 6 to 18 inches long  
"to be hammer dressed on face and joints (joints not to  
"exceed  $\frac{1}{8}$  the of an inch) to be laid in the work regular  
"Equal courses to be curbed with solid limestone not  
"less than 3 feet square and 5 inches thick to be dropped  
"on face and sides not less than 4 inches from top

"In separate Blocks, namely.

"From South line of South Water Street  
"to North line of Lake Street Sq: yards  
Stone at \$3 per yard



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" Additional 10 per cent for Engineering }  
" advertising, superintending & collecting . . . }

" From the South line of Lake Street  
" to the North line of Randolph Street

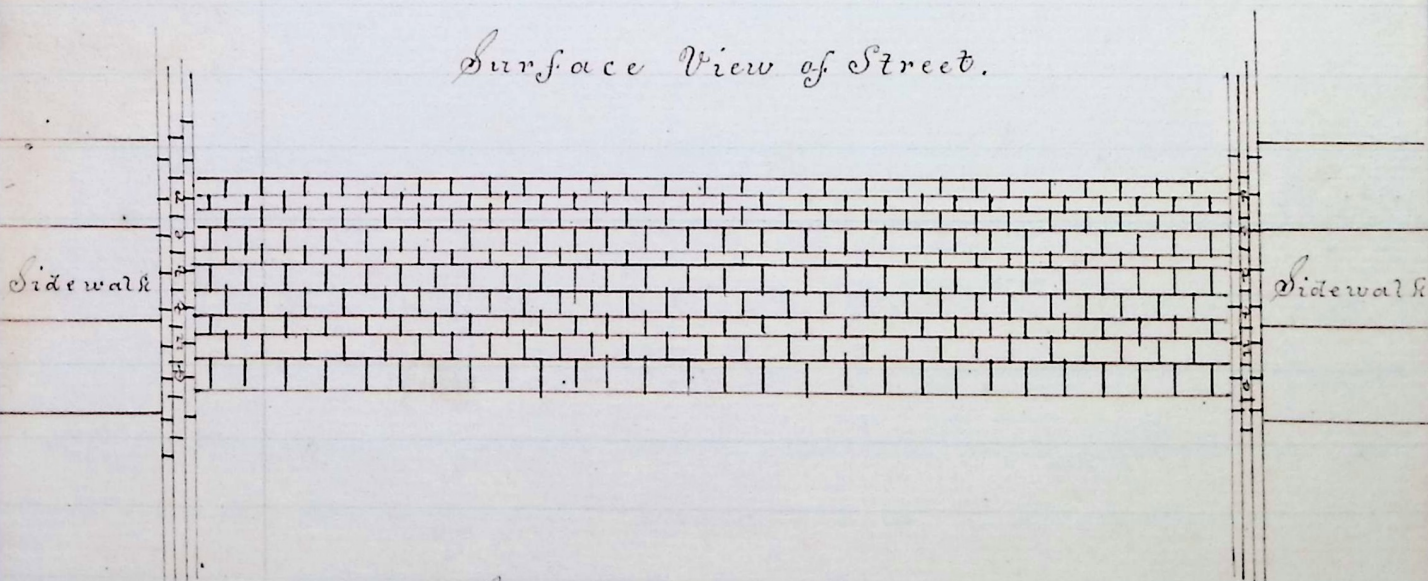
" 1920 Sq: yds Stone @ \$3 per yard \$ 5,760.00  
" Add 10 per cent for advertising, Eng: Sup: & Col: 576.00  
\$ 6336.00

" Dated Sept 11, 1837."

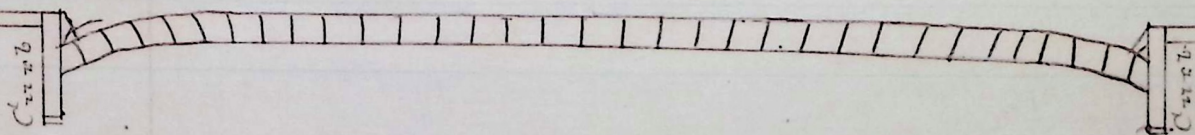
N. S. Bouton, Superintendent  
P. Shipman, "

5<sup>th</sup> Plans by City Superintendent.

Surface View of Street.



Section of Street.





This was all the evidence offered by Plaintiff, and it  
here closed. Whereupon to maintain the issue on his part  
Defendant offered in evidence the following documents.

1<sup>st</sup> A Contract between John McBean and proprietors of  
property on Sadall Street accepted with certain provisions  
by N. S. Bouton Supt. as follows, vizt.

" Chicago 22<sup>nd</sup> July 1857.

" To the Proprietors of Property on Sadall Street.

" Gentlemen,

" I propose to furnish all materials and  
" do all the work grading and paving the above Street  
" with dimension Stone to be laid on edge - not less than 4  
" inches deep, from four to ten inches thick and from six to  
" fifteen inches long, to be laid in the work in equal courses,  
" the Joints to not exceed Five eighths of an inch the material  
" and work to be approved of and made to the satisfaction of  
" the City Superintendent at the rate of Three dollars per  
" superficial yard or sixteen dollars per linear foot Forty  
" eight feet wide.

" Payments to be made at the rate of Seventy five  
" per Cent as the work progresses the balance when the work  
" is completed.

" I remain, Gentlemen,

Yours &c

John McBean.

" We the undersigned Proprietors accept the above  
" proposal (signed) M. L. Patrick



(signed)

John Lusk

J. Young Scammon Pres.

M. Mooney Secy

J. Y. Scammon his Atty

Ezra B. McBaggy Secy

Ans. Forsythe his Atty.

P. F. H. Peck

" Subject to stipulation left with Van Goddell & Bauman July  
 " 25. 1854. Upon which is endorsed the following viz.

" The Conditions of the within Contract I accept on the  
 " part of the City, provided that said Street is first covered  
 " with a bed of clean gravel nine (9) inches thick, and also  
 " provided that the intersections of the Streets and Alleys on  
 " said Street are paved to the Street line.

" July 25. 1854.

" N. S. Barton. Supt."

" No. A contract between P. F. H. Peck and John Mc  
 Bean for Paving LaSalle Street Laying curbing and area  
 stone, as follows.

" I agree to subscribe to Contract for Paving  
 " LaSalle Street from between John McBean & the owners of  
 " the Real Estate between Lake & S. Water St. provided said  
 " McBean shall execute contract and specifications to be  
 " made by and do the work for my part of said Real Estate  
 " under the direction of John M. Van Goddell & Bauman to  
 " cut, lay my outside area stone and curbing in the  
 " manner to be specified by said Van Goddell at the rate  
 " of Sixteen dollars per cord for the Stone and curbing



land into the wall and of the height length and thickness  
said Van Osdel shall direct.

P. J. H. Peck."

"I agree to perform said above work & furnish all  
materials in the manner and in all respects as above  
specified under the direction and according to the speci-  
fications to be furnished by said Van Osdel & Bauman  
within thirty days from date & to execute a contract with  
all the Owners for Paving.

Chicago July 25<sup>th</sup> 1854. John McBean "

3rd Two Receipts from Geo: Steel Atty of John McBean  
to P. J. H. Peck for paving, curbing &c and a Power of  
Atty from McBean to Geo: Steel. to wit.

"\$600<sup>00</sup>

"Received of P. J. H. Peck six hundred dollars on  
"acc of the Paving, grading, filling and curbing done by  
"John McBean on the East half of La Salle Street fronting  
"the North One hundred feet of lot 4 in Block 18, in  
"the Original Town of Chicago. Said McBean claims to  
"have done said work under & in accordance with a  
"written Contract between himself and the Owners of the  
"Real Estate fronting La Salle Street between South Water  
"Street & Lake Street, for the paving between said Streets  
"and represents that said Peck's proportion of said work  
"for the 100 feet aforesaid according to said Contract amounts  
"to \$920, but it is hereby understood that said Peck does  
"not admit his liability for said sum of \$920 for said work.



Chicago on LaSalle Street, And any settlement or partial  
settlement or compromise made therefore between said Steel  
and said Peck, shall be equally binding as though  
made by myself in person.

"John McBean."

"Chicago September 12<sup>th</sup> 1857."

"I hereby represent and guarantee that I am  
authorized to settle with J. F. H. Peck for everything  
appertaining to the Area Walls contracted to be done by  
John McBean for said Peck on LaSalle Street, between  
South Water and Lake St. and I hereby acknowledge  
that said Peck has this day paid me Three hundred &  
seventy two <sup>00</sup>/<sub>100</sub> dollars, in full for said Wall, and every  
thing appertaining thereto & in full of all demands under  
the Contract therefor, left in the hands of Jno M. Van  
Codel (see accompanying Bill of items & said Van Codel's  
Certificate given under said Contract identified by my  
own signature.)

"J. F. H. Peck."

"J. F. H. Peck."

"Chicago, Sept 11<sup>th</sup> 1857"

Defendants proceeded to introduce witnesses.

Walter Kimball called and sworn.

Judge Seated for Defendant.

I will ask Mr Kimball at what time a suit  
was brought against Mr. McBean in 1857 and when



was it disposed of - Objected to

Objection sustained and opinion excepted to.

James Long Called and sworn. Examined by Judge Scates for Defendant.

State whether Mr McBeau filled, paved and curbed La Salle Street from Lake to Water Street, and if so, when he finished it.

Answer, Yes Sir, All of that Block was done before the 14<sup>th</sup> Sept<sup>r</sup> and a portion of the other. I think it was done before the 1<sup>st</sup> Sept<sup>r</sup>.

Q State whether Mr McBeau claimed that he had a contract with Mr Peck and others to fill curb and pave La Salle Street from Lake to Randolph.

Objected to. Objections sustained and opinion excepted to by Defendants.

State if Mr McBeau filled, curbed and paved La Salle Street from Lake to Randolph St., and if so, when did he do it & when did he finish it?

Answer. I could not tell precisely the time when he finished the whole of it.

Q State first if he did the work.

Answer, Yes Sir, he did the work.

Q When did he do it? and when did he finish it?

Answer. Well as I said I can't say when he finished the entire work, but I know he has finished in front of the premises in front of Mr Peck about the 21<sup>st</sup> of Sept<sup>r</sup>.

Q Sept<sup>r</sup> 1857. Answer, Yes Sir 1857.



Q. Which end of the Street did he begin at - Did he not begin at Randolph?

Answer, Well Sir, he began if I mistake not at both ends to fill and get in his stuff, but began the paving at Lake Street, When I saw him in front of Mr Pecks premises I told him of the notice, I told him not to begin in it.

Q. State if Mr Peck notified him not to do any work before his premises show what notice if any he gave him  
Objected to - Objection sustained & document marked "D" (Notice from Mr Peck to Mr McBean not to do any work in front of his lot on LaSalle Street) Excluded. And Exceptions taken by Deft to Opinion.

Q. State Mr Long if you can, and as near as you can when the paving was completed by Mr McBean?

Objected to - objection sustained and opinion excepted to.

Q. Do you know anything about it Mr Long?

Answer. I cannot say precisely the time it was done, but I can tell by dates the time it was done. There are dates from which I could tell, I am certain that it was done before the Order of 9<sup>th</sup> November 1857 was passed.

Q. What other circumstance makes you be sure the date?

Answer. I reflect upon the fact that came before me to refresh my mind. I only can say it was done before any action was taken by the Council.

Mr. Mervey for Plaintiff.

Before the 21<sup>st</sup> of July?



Answer. No Sir, I don't count it; when the Petition was presented, that anything was done by the Council, nor do I count it when the Petition is referred, but I count it the action of the Council, when the thing is accepted by the Common Council, and I know that it was done before any thing was accepted by the Council.

By Deft D. You state it was done before the 9<sup>th</sup> of November?

Answer. Yes Sir, I am pretty confident of it.

" " D. I would ask you if Mr Mc Bean had any conversation with you on the subject of doing the work between these two Streets, and if so state what that conversation was?

Objected to, objection sustained and opinion  
excepted to.

D. State whether there was any Contract entered into by the City or under the authority of the City with John McBean or any other person for the filling curbing and paving LaSalle Street from Randolph to Lake, previous to the 9<sup>th</sup> day of November 1857.

Objected to. Objections sustained and exceptions  
taken.

D. State if you are one of the Aldermen of the City of Chicago & were you at the time mentioned in the previous question.

Answer. Yes.

D. If there had been a Contract entered into by the City for the work as before stated would you have known it, as Alderman of the City?

Answer. I would not necessarily have known it as an



Admiral.

Cross Examined by Mr Harvey.

Q. Mr Long, were you a Member of the Council at the time this Petition of Mr. Starkweather was introduced?

Answer. Yes.

Q. Were you in Council on that occasion. Were you present when the Petition was presented?

Answer. I am not confident of that.

Q. Did you ever have that Petition in your possession?

Answer. It was handed to me in my Office.

Q. By whom Sir, handed to you by Mr. Peck?

Answer. No Sir.

Q. Did you ever have any conversation with Mr. Peck in relation to said Petition?

Answer. Mr. Peck never said fair words to me on the subject of passing that Street from one end to the other.

Q. Did he ever give you any directions on the subject?

Answer. Not one word.

Q. Did you ever have this Petition in your possession after it was presented to the Council?

Answer. I think not. I never saw it from the first day I did see it, until this afternoon.

Q. Did you ever have this Petition in your possession before it was presented to the Common Council?

Answer. On the 21<sup>st</sup> July was the only time I had it in my possession.

Q. How long did you have it before it was presented to the Council?



Answer. Well I have an impression that it was given to me to present to the Clerk.

Q. Will you recall how long you kept it in your possession?

Answer. I think it was presented the first time the Council met after it came into my hands.

Q. Was it by your instrumentality that those proceedings upon the Petition of Mr. Starkweather & others were obstructed in their passage through the Council?

Objected to, Objection sustained.

Q. Was it by your means, that any delays, if there were any, were caused?

Answer. Well Sir, I in the Council took the position that the work being done they could not legally lay an assessment for doing a private work, and it was put over I think to the next meeting for the report to be made out upon that premise.

A. S. Boutin called and sworn Examined by Judge Sells.

Are you City Superintendent, and were you so in 1867 at the time of the making of this Contract of Mr. McBean with the private property holders?

Answer, Yes Sir.

Q. State if you as City Superintendent ever entered into any contract with Mr Mc Bean for the City, for the doing of any work in this Street?

Objected to, Objections sustained and excepted to Opinion.



Q. State if you signed that agreement upon the back of the agreement entered into with the property holders: Did you sign that Memorandum upon that Contract?

Answer. Yes Sir.

(Contract referred to being that between John M<sup>r</sup> Bean and the property holders of date of July 22: 1854.)

Q. State if you take the charge and Superintendence of all the improvements that are made in the Streets, whether by the property holders themselves, or Contractors under them or by Contractors with the City?

Objected to - Objection sustained and Exceptions taken.

Q. Did you sign that Memorandum upon the Contract as approving the Plan that had been agreed upon in the Contract, or with the view to bind the City

Objected to - Objection sustained and Exceptions taken.

Q. State whether property holders are required to have the approval of the City to the plans upon which they propose to fill, curb and pave the Streets.

Objected to, Objection sustained and Exceptions taken.

Q. State whether property holders are allowed by the Council to adopt any grade or fill or mode of curbing & paving the Streets that they may think proper.

Objected to - Objection sustained and Exceptions taken.



Q. State whether the Plan upon which Tabbal Street was curbed and paved by Mr. McBean in 1857 from South Water to Randolph was the Plan of the property holders, or a Plan adopted & furnished by the City?

Objected to - Objection sustained and Exceptions taken.

Q. Was the Plan specified in the Contract referred to between Mr. McBean and others ever referred to submitted to the Common Council or approved by it at any time before the work was done by Mr. McBean under it?

Objected to - Objection sustained and Exceptions taken.

Q. Will you state whether you adopted the Plan that you found already executed by Mr. McBean under the Contract with the private property holders as the Plan you reported with a Map & report on the 11th Sept 1857 and the basis of your Estimate Hereto?

Objected to - Objection sustained and Exceptions taken.

Q. State whether the Plan and Estimate reported by you to the City Council did not embrace the Plan adopted by the private property holders in their Contract with Mr. McBean before referred to & whether the Estimate was not the same rate as therein agreed to be paid by the private property holders under that Contract?

Objected to - Objection sustained and Exceptions taken.



Q. State if you were on the work Mr. Bouton, daily before the 11<sup>th</sup> Sept 1857 and when Mr. McBean was filling & paving the street and saw the work as it progressed?

Answer. Yes Sir, or nearly every day.

Q. State whether Mr. McBean filled, curbed and paved the street from Randolph to Lake, and if so when? Do you know when Mr. McBean did this work from Lake to Randolph?

Answer, Yes Sir,

Q. Will you state at which end of that portion of the street he commenced to pave?

Answer. At Randolph Street.

Q. About what time did he finish the paving at Lake Street?

Answer. I can only tell you about - about the 20<sup>th</sup> October. I think it was. I may be mistaken a few days, 1857.

Q. Had he finished the paving of the street from Lake to Water before that time and if so when was that finished?

Answer. He finished the paving of Lake to Water between the 10<sup>th</sup> and 15<sup>th</sup> of September.

Q. State if the work was done from Lake to Randolph under, or any part under any other contract than the one in evidence here?

Answer. I don't know of any.

James Long testified and Examined by Chicago Seates.

Q. State whether you know of any other contract between



Mr. M<sup>o</sup> Bean and Lot holders for this work between Lake  
and Randolph?

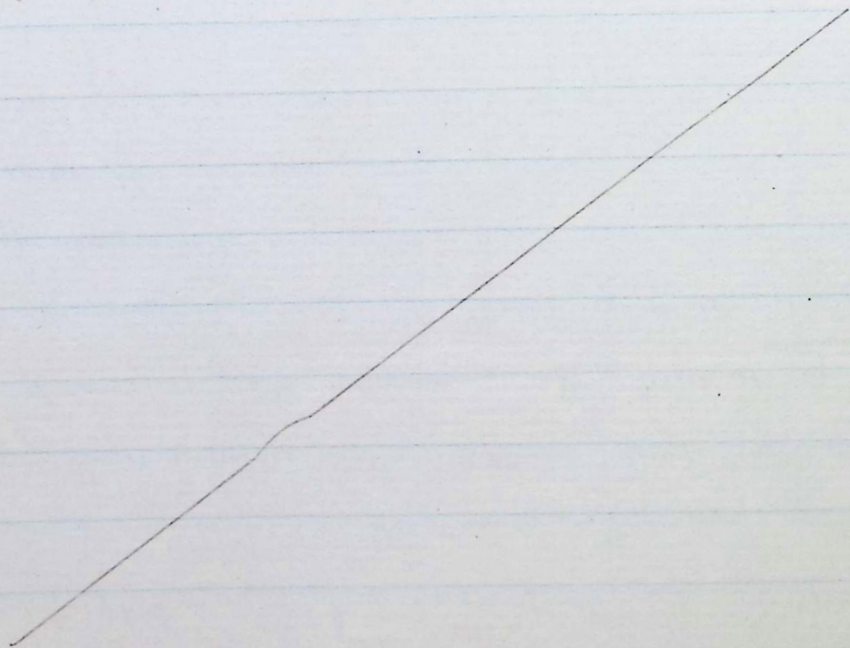
Answer - Well Sir, I do not.

Q. Do you know of any such Contract from the statement  
of Mr. Bean?

Objected to - Objection sustained and  
Exceptions taken to opinion.

It is admitted that there is no evidence on the books  
of the Comptrollers Office, or of the proceedings of the Common  
Council that there is any other Contract for filling, curbing  
and paving Sasalle Street from Randolph to South  
Water Street, except as are heretofore shown as Evidence.

It is admitted that the following Map is a correct  
representation of the Blocks, Lots, Streets, Alleys, &  
contiguous to and connected with this improvement.

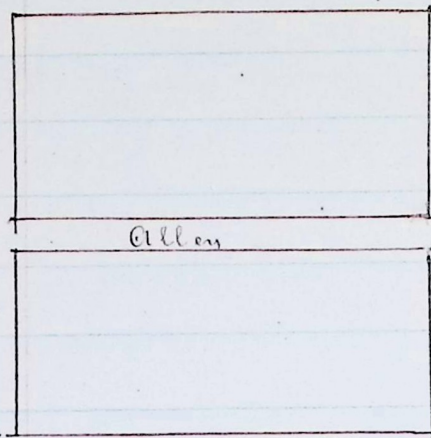




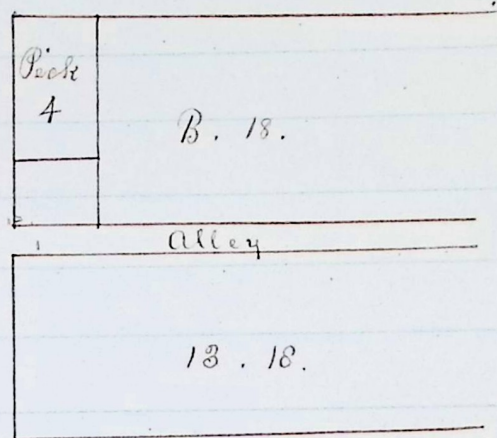
# Part Old Town Chicago.

South Water

Street

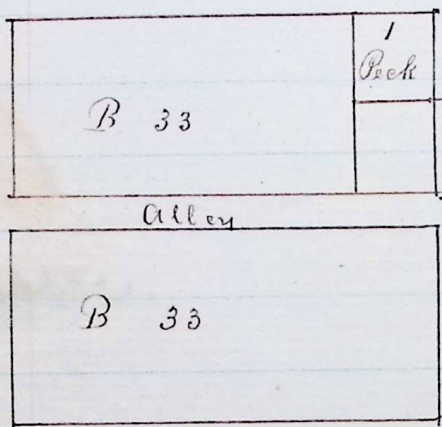


Street.

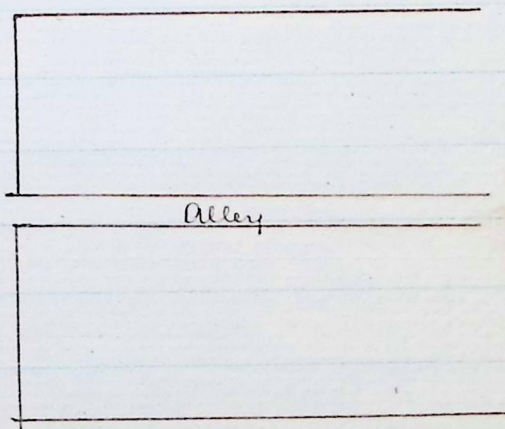


Lake

Street



Street



Randolph

Street.

The foregoing was all the evidence in this cause  
Whereupon the Court having heard the argument of Counsel  
and mature deliberation had rendered a judgment against  
the North four ninths ( $\frac{4}{9}$ ths) of lot numbered one in  
Block numbered Thirty three (33) for sum of Six hundred  
and sixty eight  $\frac{20}{100}$  dollars, together with twenty cents  
to the Clerk and ten per cent damages amounting to the



(42)

the sum of Sixty six <sup>89/100</sup> dollars and making the total  
sum of Seven hundred and thirty six dollars together  
with costs.

To all which rulings opinions, decisions and  
judgment the Defendant then and there excepted and prays  
that his Bill of Exceptions may be signed sealed and  
allowed, which is done accordingly.

(Signed)

John M. Wilson

(Seal)

Judge Cook County Court  
of Common Pleas



State of Illinois,  
Cook County ... } p.

I Walter Kimball Clerk of the Cook County Court of Common Pleas within and for the County and State aforesaid Do hereby Certify the foregoing to be a true and correct copy of the Collectors Report, Warrant Assessment Role, Return, Notice of Sale, Appeal Bond Bill of Exceptions and order of Judgment Entered of Record in a certain suit in said Court wherein the City of Chicago is Plaintiff and Philip J. W. Peck with others are Defendants.

In testimony whereof I the said Walter Kimball have hereunto set my hand and affixed the seal of said Court at Chicago in said County this twenty first day of March A. D. 1859.

Walter Kimball  
Clerk



And now comes the  
Appellee by E. Anthony atty for the  
city of Chicago, And by consent of parties  
and file cross cross herein & says  
that in the record & proceedings aforesaid  
and in the rendition of judgment  
aforesaid upon & against the N 1/2 of Lot  
4. Block 18 in the Original Town of Chicago  
manifest error hath intervened in  
this to wit-

First The court erred in permitting the  
defendant in the court below, Peck, to  
to interpose the objections filed by  
him against the rendition of judgment  
against <sup>said</sup> lot - because by law  
said dept Peck was estopped from  
interposing such objections at the  
time when an application was  
made for judgment against said  
lot.

Second. The court rendered judgment  
against said lot, when by the law  
of the land, judgment ought to have  
been rendered for the plaintiff, the  
city of Chicago, wherefore for the  
errors aforesaid & other errors  
the said plaintiff now prays  
that said judgment may be



reversed & c.

E. Anthony  
for copy Co

In nullo est matrum

M. B. Seates for P. H. N. Rees



233-114  
State of Illinois  
Cook County  
Court of Common Pleas.

The City of Chicago

vs.

Philip F. W. Peck  
impeached &c.

Records.

Filed Apl. 20. 1859  
L. Deland Clk.

Trans \$10.50  
Cert & Seal - 60  
\$11.00



Same Piece of exaptions in 2238  
243- - 234 235 & 238 all argd  
together scutis for poff. Anthony deft.

Printed by Jameson & Morse, 14 La Salle St., Chicago.

## SUPREME COURT.

THIRD GRAND DIVISION,

OTTAWA, APRIL TERM, 1859.

P. F. W. Peck,

vs.

City of Chicago.

} APPEAL FROM COOK COUNTY COURT  
OF COMMON PLEAS.

### ABSTRACT OF RECORD.

2 The report of Joseph N. Hendricks, City Collector, represents that the special warrants, issued for the special assessments and taxes for the purposes therein set forth, were delivered to him, on or before the 2d Tuesday of October, A. D. 1858; that he immediately published a notice in the corporation paper, that such warrants were in his hands for collection, and requesting all persons forthwith to make payment, at his office; that in default, the taxes and assessments would be collected at the cost and expense of the person liable to pay the same; notice was published 30 days.

3 That he has given ten days' notice of his intended application to this court for judgment against the lands, lots, &c., for the amount of taxes, assessments, interest and costs respectively due thereon, before the January special term of this court, A. D. 1859, and requested all persons interested to appear.

### SPECIAL WARRANT No. 265 S.

The warrant contains the assessment roll, as follows:

#### "ASSESSMENT ROLL."

Description of a *portion* of the real estate deemed benefited by filling, curbing and paving La Salle street from South Water to Randolph street, with the valuation thereof, and the sums of money severally assessed thereon for benefits, by the Commissioners, to-wit:

135

Objeets to the blank reading of the  
list -- B. Sale barred by statute of limita-  
tions -- See. Sec 4 - p 43. Municipal Code -



Granting that the the Appraisal of the  
Common Council is conclusive  
as to the rights of the parties <sup>it</sup> does  
it it not follow that all the prin-  
ciples of the law should be consi-  
dered to give it such effect. And if  
there was not jurisdiction the or-  
der appraising the apportionment can  
not be binding - And even if bind-  
ing it would not prevent the court  
from examining into the regularity  
of the of the acts of parties after the  
confirmations. And does not prevent  
appeal for a judgment for the enfor-  
cement of the payment of the ap-  
portionment. If the action was debt in money  
surely he is entitled to appeal on merit  
of error. To remove the proceedings of  
the Common Council it may  
perhaps be necessary to pass and  
by certiorari only, but this  
is to correct the judgment of  
the Court of common pleas.  
and it is urged that the common  
council had no jurisdiction and  
therefore there was nothing to pre-  
vent the common pleas from  
inquiring into that fact.

If the ordinance must follow the  
Charter should not the contractual  
law the ordinance to be binding  
upon the parties to it as well as



upon the property of owners, who  
have to contribute to its maintenance  
taxes. See Schumacher's hand -

Original Town of Chicago.

Name of Owner.	Description.	S. Lot.	Lot.	Block	Valu'n	Ass'ment
P. F. W. Peck,	N. $\frac{1}{2}$		4	18	37000	\$914 41
C. R. Starkweather,	S. 25 feet.		"	"	14000	290 32
P. F. W. Peck,	N. 4-9		1	33	24000	668 90
Ira Couch,			1	19	64000	1453 92

The Collector is commanded to levy, make and collect of the owners of the real estate described in the warrant, the money assessed thereon, for which each may be liable, and make due return in what manner he shall execute the writ, within thirty days from the date thereof.

The collector makes return on the warrant that he has made demand of the assessment, on all the parties, opposite whose names, in its appropriate column, the word "paid" is not written. 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 warrant unsatisfied as to all assessments not marked "paid" on the face of the warrant.

"CORPORATION NOTICE."

*City Collector's Office, Chicago,*

January 7th, 1859.

Public notice is hereby given that I shall apply to the Cook County Court of Common Pleas on the first day of the special term thereof to be holden at the court house, in the City of Chicago, on the 27th day of January, A. D. 1859, for judgment against all blocks, lots, sub-lots, pieces and parcels of land, together with the improvements, if any, situated thereon, for all taxes, assessments, interest and costs thereon, remaining unpaid as appears from the following described warrants now in my hands for collection.

The Warrants for the collection of taxes for general and special purposes, assessed for the financial year 1858, said Warrants being dated Sept. 27th, 1858.

Warrant No. 265 dated January 1st, 1858, for paving La Salle Street, from Randolph to South Water Street.



The Louisiana case proceeds upon the grounds that, the party had another means to redress himself by appeal or writ of error and having failed to appeal from the ~~appeal~~ confirmation, he was estopped from objecting to the valuation, and could not take advantage of want of uncertainty of the valuation.

What right had the city to pay for work done on a public street by a contract, by a property holder without authority from the city.

Learn the Council the power to compel the other property holders by an assessment, to meet such a fact.

Seaton insists that that the act of 1857 amending the city charter declares the ordinance in force until amended and repealed and therefore they should be noticed judicially noticed & acted upon by the court.

The city may repair the streets without adopting any plan as that is charged to the city but to improve a street they must



adapt a plan as the express, is copy-  
ed on the property in the vicinity.

NAME.	DESCRIPTION.	Sub- Lot.	Lot.	Block.	Valua- tion.	Dols Amt of		Assess't.		Dols 10 per ct		Cost.		Total	
					Dols	Dols	Cts.	Dols	Cts.	Dols	Cts.	Dols	Cts.	Dols	Cts.
P. F. W. PECK.	N. 4-9.		1	33	24000	668	00	66	89						

On the 4th February, A. D. 1859, appeared the City, by its attorney, objections having been filed to the taking of the judgment, by P. F. W. Peck, for Lot No. 4 in Block 18, and the North 4-9ths of Lot 1, Block 33; by C. R. Starkweather for south 25 feet of Lot 4, Block 18; by executor of Ira Couch, for Lot 1, Block 19, owners of Lots described in Warrant. The Court sustained the objections to taking of the judgment against Lot 4, Block 18, and South 25 feet of Lot 4, Block 18, and Lot 1, Block 19; and overruled the objection as to N. 4-9ths of Lot 1, Block 33, and made an order that N. 4-9ths of Lot 1, Block 33, (among other real property) be sold, or so much thereof as is deemed necessary to satisfy the amount assessed against it.

Thereupon the City, by its attorney, prays an appeal, on entering exceptions herein, to the Supreme Court, for Lot 4, Block 18, and the South 25 feet of Lot 4, Block 18, and Lot 1, Block 19, which appeal is allowed upon filing bond in each case, in Two Thousand Dollars, and security to be approved by the Court, in ten days, with bill of exceptions.

P. F. W. Peck also prays an appeal to the Supreme Court for N. 4-9ths of Lot 1, Block 33, which is allowed him, on condition that he file his appeal bond in the sum of One Thousand Dollars, with James Long as security, within ten days, and that he have twenty days to file bill of exceptions.

On the 14th February A. D. 1859, P. F. W. Peck filed his appeal bond, which is executed by P. F. W. Peck, principal, and James Long as surety, in the penal sum of One Thousand Dollars, and is in accordance with the requirements of the Court.

On the 24th February, A. D. 1859, defendants file their bill of exceptions.

On the day of January, A. D. 1859, the defendant, P. F. W. Peck comes and defends the courses of action, and objects to the rendition of a judgment, or an order of sale of the premises, for the following reasons, viz:



The plan is required to enable the commissioners to know what benefits and injuries are sustained by cause of the construction of the improvement and thereby is enabling to ascertain the assessment on the property burdened in proportion to benefits resulting from the construction of the work according to the plan furnished them and adapted by the common council.

~~Is such a plan necessary~~ the adaptation of a detailed plan necessary to give jurisdiction to common council to proceed to make the assessments.

Seaton insists that the contract is void in compliance with the provisions of the Charter or the ordinance and therefore is illegal and void.

In case of the work completed before any steps taken and no liability incurred by the city - and there was no improvement to be made and consequently no authority. Such is the case in 233 & 243. in the work done on Canal & Lake Streets no final order was made until after the work was completed.



*First :—*

There was no reference of the subject of improving this street to a Committee, to prepare and report a plan for the filling, curbing, and paving thereof, nor was any plan agreed on by any committee, nor was any plan reported by any committee; nor was any plan of the same ever made or submitted to the Common Council, or adopted by it.

*Second :—*

The order of the Common Council of the 9th day of November, 1857, directing that the sum of Twelve thousand one hundred and forty-four dollars be assessed on the Real estate of the city of Chicago, deemed benefited by the filling, curbing and paving of La Salle street, from South Water to Randolph Street, "in accordance with estimate and specifications herewith submitted," was made by Common Council without any estimate and specifications being made or submitted, or adopted, or agreed upon, and without adopting or agreeing upon, or having adopted or agreed on any plan for, or of said improvement. But the same was an arbitrary order for assessing that sum for the purpose of raising money to pay one John McBean, for paving said street, under a private contract with some of the property holders of said street. And this warrant is now being prosecuted, for that purpose.

- 15      The whole of the work on said street was done by said McBean before said order was made, for an assessment, part under private contract as aforesaid, and part without any agreement with the city, or city authorities, or owners of lots on said street, and so defendant says that the order of Common Council, and said Commissioners, and all other acting under said warrant, was and is wholly void.

*Third :—*

The Common Council have no jurisdiction, power, or authority, to make assessments to pay for improvements made under private contracts, or made without contracts, nor to enter into contracts to make such improvements before 50 per cent of the amount of their costs shall have been collected, according to section 5 of amended charter, p. 4, and sec. 15 and 16 of City Ordinances. Municipal Code, page 162.

*Fourth :—*

The Common Council have no authority to elect commissioners to make assessments under the 6th section of amended charter of 1857, but the mayor had the power to nominate, and the council to approve only.



The law - (city charter) requires  
the collections to be made in  
two years. The statute had ~~limited~~  
had the right to reverse these  
judgments, as more than two  
years from the assessment had elapsed.

In 235. Anthony insists. That  
there was ~~a valuation~~ <sup>map</sup> and no ~~assess~~  
to file a copy of the assessment roll  
and that the ~~of~~ mark is at the bottom.

In other states the ordinance was  
from the acts of the board of common  
in council and not by from a  
judgment for the recovery for such  
assessments.

Hee insists that ~~that~~ the setting aside  
the judgment of Jan'y - 1858 was a  
stay by judicial proceeding in  
the meaning of the charter, and  
the limitation had not run to  
become a bar.

In No 238

The appellant petitions that the  
Common Council would depose and  
order the river which was closed and  
the power is objected to. The court in  
this of special proceeding could not  
be under a judgment on it, unless it  
may be by consent. see stipulation



Seater insists that consent does not give jurisdiction & the stipulation does not give jurisdiction & the judgment is only by default.

*Fifth:*

That the assessment exceeds three per cent, both of the actual and assessed value of the premises.

On the 5th day of February 1859, this cause came on in the Cook County Court of Common Pleas, for trial:

Whereupon the plaintiff's attorneys read the following documents in evidence, as follows:

- 16 1st. A petition was presented to the Common Council, for paving La Salle street, from South Water to Randolph.

The petition respectfully called upon the Mayor and Council men of the city of Chicago, to take immediate steps to have La Salle street paved from South Water to Randolph Streets. The petition was signed "C. R. STARKWEATHER," and numerous others interested therein.

2d. Order for the local improvement from Committee on streets and alleys, South Division.

- 17 The Committee are of opinion that the prayer of the petition should be granted, and asked for the passage of the following orders, to wit:

"ORDERED.—That La Salle street, from South Water to Randolph St., be filled curbed and paved in accordance with estimate "and specification, herewith submitted."

"ORDERED.—That the sum of twelve thousand one hundred and forty-four dollars be assessed upon the real estate in the South division in 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."

"Chicago, Sept. 16, 1857."

- 17 Afterwards, to wit; Nov. 9, 1857, at a meeting of the Common Council, the above orders were passed.

J. H. Kinzie, Thomas Hall, E. M. Aiken, were elected Commissioners, thereunder, by the Council.

- 18 The Commissioners took the oath to execute faithfully and impartially their duties, as commissioners, on the 13th November, 1857.



COMMISSIONERS' RETURN.

18 The Commissioners make return, and say, that they published a notice  
of the time and place of their meeting; that they were present at the  
time and place, and for the purpose designated in said notice, having  
19 fixed a valuation on the real estate described and set forth in the assess-  
ment roll, did then and there assess the sum due on the real estate bene-  
20 fitted by the said improvement, in proportion to the benefit thereby de-  
rived; and that the benefit resulting thereto is the proportion of said  
sum set opposite each lot, part of lot and land respectively, in the assess-  
ment roll.

COMMISSIONERS' NOTICE.

20 Public notice is given to all persons interested, that the Commissioners  
appointed by the Common Council, to assess twelve thousand one hun-  
dred and forty dollars, on real estate deemed benefited by filling, curb-  
ing and paving La Salle street, from South Water to Randolph street,  
will be at room No. 6 Dole's building, on the 21st November, 1857, at  
20 1 o'clock A. M., for the purpose of making said assessment.

Certificate of publisher, that notice was published in "Democratic  
Press," six days consecutively, commencing with Nov. 14, 1857.

ASSESSMENT NOTICE.

24

Chicago, Dec. 9th, 1857, City Clerk's Office. Public notice is hereby  
given to all persons interested, that the Commissioners appointed as  
aforesaid and for the purpose aforesaid, have completed their assessment,  
and made return thereof.

Any person wishing to appeal from said assessment, must file their  
objection in writing, in City Clerk's office, on or before Monday the 21st  
December, 1857, at 7 o'clock P. M., as the council will, at that time, in  
the council room, hear all objections to said assessment, and revise and  
confirm or amend the same.

ORDER OF CONFIRMATION.

24

In Common Council, Dec. 21st, 1857.

Whereas due notice has been given by the City Clerk of the return of  
the "Assessment Roll," and no objections thereto having been filed, it



- 25 is ordered, that the said assessment as revised and corrected by the council be confirmed, and such assessment is required to be paid within thirty days from date, and that a warrant issue for the collection thereof, returnable thirty days from its date.

Mem. Warrant issued January the 1st, 1858.

25 4th. ESTIMATE OF CITY SUPERINTENDENT.

City Superintendent submits, as an estimate of the cost filling, grading, curbing and paving La Salle Street, from South Water to Randolph St., to wit:

The street to be filled within nine inches of the established grade, with suitable earth. Paving to be of dimension stone, laid on the edge, not less than 9 inches deep, from 4 to 10 inches thick, from 6 to 15 inches long, to be hammer dressed on face and joints, (joints not to exceed  $\frac{1}{8}$ th of an inch to be laid in the work regular equal courses, to be curbed with solid lime-stone, not less than 3 feet square, and 9 inches thick, to be dressed on face and sides not less than 4 inches from top.

In separate blocks, namely:

- 25 From South line of South Water Street, to North line of Lake Street, stone at \$3 per yard.

- 26 Additional 10 per cent. for engineering, advertising, superintending and collecting.

From the South line of Lake Street, to the North line of Randolph Street, 1,920 square yards, stone at \$3 per yard. - - - - \$5,760 00

Add 10 per cent for advertising, engineering, superintending, and collecting. - - - - - 576 00

\$6,336 00

*Dated September 14, 1857.*

PLANS BY CITY SUPERINTENDANT.

See diagrams of street and sidewalk on page 26 of Record.

- 27 This was all the evidence offered by Plaintiff, and it here closed. Whereupon to maintain the issue on his part defendant offered in evidence as follows, viz:



1st. A contract between John McBean and the proprietors of property on La Salle Street, accepted with certain provisions by N. S. Bouton, Superintendant, as follows, viz:

*"Chicago, 22d July, 1857.*

"To the proprietors of property on La Salle Street:

"GENTLEMEN.

"I propose to furnish all materials, and do all the work, grading, and paving the above street with dimension stone, to be laid on edge, not less than 9 inches deep, from four to ten inches thick, and from six to fifteen inches long, to be laid in the work in equal courses, the joints to not exceed five-eighths of an inch, the material and work to be approved of and made to the satisfaction of the city Superintendant, at the rate of Three Dollars per superficial yard, or Sixteen Dollars per lineal foot, forty-eight feet wide.

"Payment to be made at the rate of seventy five per cent., as the work progresses, the balance when the work is completed.

"(Signed), JOHN McBEAN."

28

"We, the undersigned proprietors, accept the above proposal.

[Signed,] P. F. W. PECK, and others.

"Subject to stipulations left with Van Osdell and Bauman, July 25th, 1857, upon which is endorsed the following, viz:

"The condition of the within contract I accept on the part of the city, provided that said street is first covered with a bed of clean gravel, nine (9) inches thick, and also provided that the intersections of their streets and alleys on said street are paved to the street line.

"(Signed), N. S. BOUTON."

*"July 25th, 1857."*

2d. A contract between Peck & McBean, for paving La Salle street, and laying curbing and wall.

Peck agrees to subscribe to contract for paving La Salle street, between McBean and owners of real estate, between Lake and S. Water street, provided McBean shall execute contract and specifications, to be made by, and do the work for his part of the real estate, under the direction of Van Osdell & Beauman to wit, to lay outside wall and curbing in the manner specified by Van Osdell at the rate or \$16 per cord for the stone and curbing laid in the wall, and of the height, length and thickness said Van Osdell shall direct.

29



McBean agrees to perform the work and furnish the materials in manner above specified, within ninety days from July 25th, 1857, and agrees to execute a contract with all the owners for paving.

3d. Two receipts from Geo. Steel, attorney for John McBean, to Peck, for paving, curbing, &c. ; also, power of attorney from McBean to Geo. Steel, which are in substance, as follows :  
\$600.00.

30 Received of P. F. W. Peck \$600, on account of paving, &c., done by McBean on E.  $\frac{1}{2}$  of La Salle street, fronting north 100 feet of lot 4, block 18, in original town of Chicago ; McBean represents that Peck's proportion of the work, for the 100 feet, amounts to \$920, but it is understood that Peck does not admit his liability for said amount, unless it be properly certified and the contract established, and said sum is shown to be the proper proportion for said work.

Steel for himself and as agent of McBean, guarantees that Peck shall not be held liable to pay any more money in proportion for the work done in front of his 100 feet, than all the owners shall be made to pay for their respective proportion of said paving, &c.

Dated, 12th Sept., 1857.

#### POWER OF ATTORNEY.

30 I hereby authorize Geo. Steel to settle for me and in my behalf with P. F. W. Peck, all matters pertaining to area wall, also to the paving, &c., of Peck's 100 feet of lot 4, Block 18, La Salle street. Any settlement between Steel and Peck shall be equally binding as though made by myself.

[Signed,]

JOHN McBEAN.

September 12th, 1857.

\$372.08

I hereby acknowledge that Peck has this day paid me \$372.08, in full for area wall, and everything thereunto appertaining, in full of all demands under the contract therefor.

Dated, Sept. 11th, 1857.

[Signed,]

GEO. STEEL.

#### DEFENDANTS PROCEEDED TO INTRODUCE WITNESSES.

Walter Kimball called and sworn.



32

*Q. Judge Scates for Defendant.*—I will ask Mr. Kimball at what time a suit was brought against Mr. McBean, in 1857, and when was it disposed of.

Objected to; objection sustained, and opinion excepted to.

James Long, called and sworn, in reply to Judge Scates, for defendant, says: Mc Bean filled, paved and curbed La Salle street, from Lake to Water street. All of it was done before 14th September, and a part of the other, I think it was done before 1st September.

*Q.* State whether McBean claimed that he had a contract with Peck and others to fill, curb and pave La Salle street, from Lake to Randolph.

Objected to; objections sustained; excepted to by defendants.

*Q.* State if McBean filled, curbed, &c., La Salle from Lake to Randolph, and when?

33

*A.* He did the work. Can't say when he finished the entire. I know he finished in front of Mr. Peck's about 21st September, 1857. He began to fill, and get his stuff at both ends, I think, but began paving at Lake street. When I saw him in front of Peck's premises, I told him of the notice. I told him not to begin on it.

*Q.* State if Peck notified him not to do any work before his premises and show what notice if any he gave him.

Objected to; objection sustained, and document marked "D" (notice from Peck to McBean not to do any work in front of his lot on La Salle street,) excluded, and exceptions taken by defendant, to opinion.

*Q.* State if you can, as near as you can, when paving was completed by McBean.

Objected to; objection sustained; excepted.

*Q.* Do you know anything about it?

I am certain it was before the order of 9th November, 1857, was passed. I relied on the fact that came before me to refresh my mind. I only can say that it was done before any action was taken by the Council.

34

*Q. By Mr. Hervey for plaintiff.*—Was it before 21st July?

No, Sir; I don't count it, when petition was presented, that anything was done by the Council; nor do I count it when petition is refused;



but when the thing is accepted by the Council—I know it was done before anything was accepted by the Council.

*Answer to Question by Defendant.*—I am pretty confident it was done before 9th November.

Q. Had McBean any conversation with you on the subject of doing the work between these two streets? if so, state what it was.

Objected to—objection sustained, and excepted to.

Q. State whether there was any contract entered into by the City, or under the authority of the City, with John McBean or any other person, for filling, curbing &c. La Salle St. from Randolph to Lake, previous to 9th November, 1857?

Objected to—objection sustained and exceptions taken.

I am an Alderman, and was at the time mentioned in the previous question. If a contract had been entered into by the City for the work as before stated, I would not necessarily have known it as an alderman.

35 *Cross-Examined.*—I was a member of the Council at the time Starkweather's petition was introduced; am not confident if I was present on that occasion. It was handed to me—not by Mr. Peck. I never had five words conversation with Peck on the subject of paving that street, from one end to the other. He never gave me any instructions on the subject. I think I never had the petition in my possession since it was presented to the Council. On the 21st of July was the only time I had  
36 it in my possession. I have an impression it was given me to present to the Clerk. I think it was presented the first time the Council met, after it came into my hands.

Q. Was it by your instrumentality that these proceedings, upon the petition of Mr. Starkweather and others, were obstructed in their passage through the Council?

Objected to—objection sustained.

Q. Was it by your means that any delays, if there were any, were caused?

In the Council I took ground that the work being done, they could not legally levy an assessment for doing a private work, and I think it was put over for report to be made on that premise.

N. S. BOUTON called:



*Examined by Judge Scates*—I am City Superintendent; was in 1857, at the time of making this contract of McBean with private property-holders?

*Q.* State if you, as City Superintendent, ever entered into any contract with McBean, for the City, for the doing any work in this street?

Objected to—objection sustained, and excepted to opinion.

37 *Q.* State if you signed that agreement (as City Superintendent) on the back of the agreement entered into with the property holders? Did you sign that memorandum upon the contract?

*Ans.* Yes, Sir.

[Contract referred to, being that between McBean and the property-holders of date July 22d, 1857.]

*Q.* State if you take the charge and superintendence of all improvements that are made in the Streets, whether by property holders themselves, or contractors under them, or by contractors with the City?

Objected to—objection sustained and exception taken.

*Q.* Did you sign that memorandum upon the contract, as approving the plan that had been agreed upon in the contract, or with the view to bind the City?

Objected to—Objection sustained, and exception taken.

*Q.* State whether property holders are required to have the approval of the City, to the plans upon which they propose to fill, curb, and pave the streets?

Objected to—Objection sustained—Exception taken.

*Q.* State whether property holders are allowed by the Council to adopt any grade and fill, or mode of curbing and paving the streets that they may think proper?

Objected to—Objection sustained—Exception taken.

38 *Q.* State whether the plan upon which La Salle Street was paved, and curbed by McBean, in 1857, from South Water to Randolph Street, was the plan of the property holders, or a plan adopted and furnished by the city?



Objected to—Objection sustained—Eceptions taken.

Q. Was the plan specified in the contract referred to between McBean and others ever submitted to the Common Council, or approved by it at any time before work was done by McBean under it?

Objected to—Objection sustained—Exception taken.

Q. Will you state whether you adopted the plan that you found all ready executed by McBean, under the contract with the private property holders, as the plan you reported with a map and report, on the 14th-September, 1857, and the basis of your estimate therein?

Objected to,—Objection sustained,—Exception taken.

Q. State whether the plan and estimate reported by you to the city Council did not embrace the plan adopted by the private property holders in their contract with McBean before referred to, and whether the estimate was not the same rate as therein agreed to be paid by the private property holders under that contract?

Objected to—Objection sustained—Exception taken.

39 I was on the ground nearly every day before 14th September, 1857, while McBean was paving, and saw the work as it progressed.

He paved, filled and curbed the street from Randolph to Lake. He commenced work at Randolph. He finished paving at Lake Street, about 20th October, 1857. He finished paving Lake to Water street, between the 10th and 15th Sept.

JAMES LONG, recalled, and examined by Judge Scates.

40 I do not know of any other contract between McBean and lot holders for this work between Lake and Randolph.

Q. Do you know of any such contract from the statement of McBean?

Objected to—objection sustained—Exception taken.

It is admitted that there is no evidence on the Record of the Controller's office, or of the proceedings of the common Council that there is any other contract for filling, curbing and paving La Salle Street, from Randolph to South Water Street, except as are hereinbefore shown as evidence.

It is admitted that the following map is a correct representation of the lots, streets, alleys, &c., contiguous to, and connected with this improvement.



The foregoing was all the evidence in this cause. Whereupon the court having heard the argument of counsel, rendered judgment against the North 4-9th of lot No. 1, Block 33, for \$668.90-100, together with 20 cents to the clerk, and ten per cent. damages, amounting to the sum of \$66.89-100, and making the total sum of \$736.00, with costs.

To all which rulings, opinions, decisions and judgment, defendant then and there excepted, and prayed bill of exceptions to be signed, which was done accordingly.

#### ASSIGNMENT OF ERRORS.

*First :—*

The court erred in rendition of judgment for the city ; because there was no reference of the subject of these improvements to a committee, by the council, to prepare a plan of said improvements, and an estimate of the expenses of making the same ; and because the common council did not agree upon or adopt any plan thereof, or estimate.

*Second :—*

The order of the common council of 9th November, 1857, was without first having agreed upon, or adopted any plan or estimate of said improvements, "or specification" for doing the work ; but the same was an order, arbitrarily made for raising by assessment, the sum of twelve thousand one hundred and forty four dollars, to pay John McBean for doing said work under a private contract, wherefore said assessment was made without authority and was and is void.

*Third :—*

Said assessment was made by said commissioners without due notice of their meeting for that purpose.

*Fourth :—*

The common council have no power to levy an assessment to pay for improvements made under private contract, or without a contract with, or employment by the city.



*Fifth:—*

The City has no authority or power to enter into contract for such improvement, nor to adopt or sanction those entered into by others, until 50 per cent. of the amount of their cost and expense shall have been collected.

*Sixth:—*

That the assessment amounts to more than three per cent. on the assessed valuation.

*Seventh:—*

The election of Commissioners by the Common Council without a nomination by the Mayor, under the 6th section of the amended Charter of 1857, was without authority and void.

*Eighth:—*

There was no valuation in money fixed upon said lots, and there was no sum of money assessed upon the same by said Commissioners; and the Common Council and the Common Pleas Court had no jurisdiction, power or authority to assess or give judgment against said lots for any sum of money.

*Ninth:—*

The Court rendered judgment against said lots, when by the laws of the land, judgment ought to have been rendered for defendant.

SCATES, McALLISTER & JEWETT,

*Counsel for Appellant.*



233-114

P. G. Peck

vs

The City of Chicago

Abstract

Filed April 26, 1857

L. Edmund

Clerk



Supreme Court of Illinois  
Ottawa April Term  
1839

Philip W. Beck *J* appeal  
233 - <sup>a</sup>  
The City of Chicago *J*

Written Argument  
of Thomas Boyce appointed and  
Scates v. City of Chicago  
in Error



Supreme Court of Ills.

April Term 1859.

S. J. W. Peck.

The City of Chicago

} Appeal

} Brief-

I propose briefly to

discuss 1<sup>st</sup> The point that there was no reference of the subject of improving this Street to a Committee of the Council to prepare and report a plan for the filling curbing & paving said Street with an accurate estimate of the expenses thereof including the costs of making the Apportionment.

This prerequisite is made the foundation of the proceeding in all cases of apportionment for public improvements - See - Municipal Ordinances, Page 155. Chap III of City Ordinances - and also the 85 Section of Amendments to City Charter passed in July 1857 - by which this Ordinance is continued & made a public law of the City.

See Thompson vs. Schermerhorn 3 Seld 96

In this case the Common Council of Schenectady were ~~expressly~~ authorized to make By Laws & Ordinances, ordering & directing any of the Streets to be improved under the direction of the City Superintendent in such manner as they might prescribe, - But the Common Council passed an Ordinance



in which they directed that State Street should  
be paved or in such manner as the City  
Superintendent under the direction of the Committee  
on Roads of the Common Council should prescribe.

But the Court held that the power  
of prescribing the measures of making the  
improvements could not be delegated, they say  
"The trust is an important one as the expenses  
of the improvements are to be paid by the Owner  
of property. In effect it is a power of taxation  
which is the exercise of Sovereign authority and  
nothing short of the most positive & explicit  
language can justify the Court in holding that  
the Legislature intended to confer such power  
in any other manner" 2 Seld 96.

All these powers of Corporations is relation  
to proceedings in derogation of the Common Law to  
affect the property of persons - as in rem - & not in  
personam - and to be construed strictly.

Sharp vs Spear. 4 Hill. 76

Sharp v. Johnson 4 " 96.

Stutes vs. Kelly 7 " 21.

State v. Serak. 1 Dutcher 412

Graves vs. Otis 2 Hill 468.

In the cases of Sharp vs Spear. 4 Hill 76 and



Sharp v. Johnson & Will 96 - the question of  
the validity of the proceedings arose upon the  
the Statute requiring a majority of the persons  
to be benefitted to present a Petition asking for  
the improvement - & upon failure to prove that  
only a bare half of such persons signing the  
whole proceedings were held to be void - Seven  
persons only signed - & it appeared that one or two names were forged & <sup>repeated</sup>  
to make a majority - If Will 87 -

The Court say - The fact that a majority petitioned  
"lies at the foundation of the whole proceeding"  
"and unless that fact be established, the whole"  
"is void from beginning to end"

The Court also say, the trustees had power  
"to proceed if a majority petitioned, but without"  
"such petition they had no authority whatever - They"  
"could not create the power by resolving they had"  
"it - They acted at their peril - They could not"  
"make the occasion by resolving they had it -"  
"Corporations and their officers when they interfere"  
"with the rights of individuals, and especially"  
"when they attempt to divest & transfer the"  
"title to Real Estate must show, that the"  
"very case has arisen in which they would"  
"authorised to proceed. Honest error cannot"  
"confer power. And again - But without a"  
"sufficient petition they had no authority to



"act - There is little of any thing judicial  
in the proceedings of Corporations to take land  
under a group of assessments for public use -

If the Petitioner's case has been  
sufficient, then whether the trustees would proceed  
to act or not was a question addressed to  
their discretion &c -

Now in the case made upon the  
Record the question should have first come before  
the Council after the subject had been referred  
to a Committee who should prepare reports &  
plans with an accurate estimate of the expenses  
including the costs of making the assessments  
and then it would have properly become a  
question for the discretion of the Common Council  
to make the improvement or not -

It is obvious that the Law & Ordinances  
of the City in these cases, ~~have~~ had as their  
object the protection of the property holder, in  
first maturing the details of a plan and  
also estimating the costs & expenses to be  
incurred before finally determining to  
make the improvement & assess the expenses.  
This might become the more necessary if the  
value of the property would not bear an  
amount of assessment equal to the cost of



the improvement because it might exceed  
the three per cent per annum, to which  
the Corporation is limited in any one year  
by the Charter, in making such assessments.  
In any event the Common Council had no  
Jurisdiction to proceed without the preliminary  
<sup>1</sup>reference to a Committee - <sup>(2)</sup>a Plan - <sup>3</sup>an  
estimate of expenses of the improvement, and  
<sup>(4)</sup>the cost of making the assessment -

These things should appear on the face  
of the orders made to render the proceedings  
valid - see The State vs. Newark

Chap & Ordinances - Sec 1

Page 155 -

1 Dutches N.J. 413 - 425

Amendments of 1837. Sec 85 -

**II** But there is still another reason why the  
Common Council never legally obtained Jurisdiction  
~~over~~ so as to make any of their proceedings valid  
or binding so as to authorize a judgment in  
this case against the Land in question -

The whole of the work the  
expense of which was assessed upon this Land  
was done before the Common Council proceeded  
to assess the amount levied - There was  
therefore no such improvement to be made,  
and no expenses had been incurred by the  
City, & no benefits could accrue from the  
improvement out of which said expenses could  
be justly appraised by the Commissioners



appointed

The power vested by the Charter (Sec. 2. Chap VII of City Charter) is to make certain improvements named in that Section and that the expenses of any such improvement shall be assessed upon the Real Estate benefited

Now therefore it clearly seems that three (3) things must concur to call ~~these~~ this power legally into exercise.

1<sup>st</sup> That an Improvement authorized by the Charter is to be made and is legally ordered and directed to be made, 2<sup>d</sup> That the City necessarily incurs expense to make it; and 3<sup>d</sup> That certain Real Estate will be benefitted and that the amount of such expense is to be assessed upon such Estate ~~is~~ so benefitted.

It cannot be an arbitrary exercise of power, that the Common Council is to exercise but a power legally exercised for the purposes expressly granted and for no other purpose and upon no other condition whatsoever.

In the case made upon the Record ~~Records~~ few, all the Conditions and objects of the Grant are negated by the proofs.



1<sup>st</sup> There was no Improvement of the kind  
ordered to be made because the same work  
and the Improvement had been already made  
2<sup>d</sup>. There was no expense of any such  
Improvement incurred or to be incurred, because  
the Private Property Holder on the Street  
had already become liable to pay or had  
paid the expenses under a private contract  
with the Contractor Lee Bean, who had  
done the work; and

3<sup>d</sup> There could be no Real Estate benefitted  
by the Improvements already made, which  
benefit had not already accrued to the  
Owner, from the work done or paid for by the  
City.

I submit that no authority or  
precedents can be found in Reports or  
Statutes for the extraordinary and highly  
very high handed usurpation of Corporate  
authority manifested in this case, and  
perpetrated by the Common Council of  
Chicago.

It is obvious that the whole scope  
and design of the proceeding was to  
collect an assessment for the costs  
or expenses, which accrued to the City



and its officers, or to pay some private Contractor out of the property of Citizens who had already provided contributed the expenses of the work charged against them and had by such means completed the very Improvements which this Corporation pretended to order and erect.

It is believed that the Court cannot uphold so clear a violation of law, and so great and flagrant an exercise of mere arbitrary power.

The case presents so clear a departure upon general principles from the well known cases of the strict limitations to which the exercise of Corporate authorities are held, in the exercise of the rights sometimes granted to take property for public uses or to assess it for benefits by way of payment in the making of public improvements, that an enumeration or citation of them will hardly be required. Should any however be required they will be found noted upon the brief of the Counsel of the City. ~~where the limits of jurisdiction are~~



in the case already cited, - and in

Deming vs. Lewis 11 Decr 647  
Stutes vs. Kelly. 7 Hill 21  
Leaves vs. Hudson R.R. 2 Kern. 192  
Sharp vs. Speer. 4 Hill 76  
Sharp vs. Johnson 4 do - 96  
Thompson vs. Schemmator. 2 Seld - 92  
State vs. City of Newark. 1 Dutcher - 412-13 -

And all the raised cases arising under the City  
Charter, in different States, where ~~all~~ the exercise  
of such power is critically examined and commented  
on in these cases. - The New Jersey Case in

\* In this case 1st Dutcher 412\* is very full upon this subject  
and sustains every position we take in regard  
to the structure required in these apements in order  
to give the Corporation any power or jurisdiction over  
free holders of the property to be apensed, and its condemnation -

In regard to the other points made  
on the Abstract & Points, printed by Messrs. Scatter & Co. I deem it unnecessary to venture upon a ground  
already so ably and fully occupied

All which is respectfully Submitted

J. H. Hays

of Counsel associated  
with J. & M. Allen

Ottawa April 27. 1839 -



Supreme Court Ill.  
Apr. 7. 1859

P. L. W. Beck,  
233- - 114  
City of Chicago

Brief and  
arguments of  
Thos. Howard

For Affew Case

Filed April 28. 1859  
L. Deland  
Clerk



No. 233  
" 234  
" 235  
" 238

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SUPREME COURT, THIRD GRAND DIVISION,

APRIL TERM, 1859.

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233 P. F. W. PECK  
vs.  
THE CITY OF CHICAGO. } *Appeal from Cook County Court of Common Pleas.*

234 JOSEPH W. BARKER  
vs.  
THE CITY OF CHICAGO. } *Same.*

235 RICHARD J. HAMILTON,  
ESTHER EWING,  
G. W. EWING,  
vs.  
THE CITY OF CHICAGO. } *Error to Cook County Court of Common Pleas.*

238 WM. B. OGDEN,  
ROBERT R. CLARKE,  
J. YOUNG SCAMMON,  
ESTATE OF DAN'L ELSTON,  
et al,  
vs.  
THE CITY OF CHICAGO. } *Same.*

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ARGUMENT FOR DEFENDANTS AND APPELLANTS.

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W. B. SCATES, for Appellants.

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# SUPREME COURT, THIRD GRAND DIVISION,

APRIL TERM, 1859.

- 233 P. F. W. PECK,  
vs.  
THE CITY OF CHICAGO, } *Appeal from Cook Co. Court of Common Pleas.*
- 234 JOSEPH W. BARKER  
vs.  
THE CITY OF CHICAGO. } *Same.*
- 235 RICHARD J. HAMILTON,  
ESTHER EWING,  
G. W. EWING,  
vs.  
THE CITY OF CHICAGO. } *Error to Cook County Court of Common Pleas.*
- 238 WM. B. OGDEN,  
ROBERT R. CLARKE,  
J. YOUNG SCAMMON,  
ESTATE OF DAN'L ELSTON,  
et al.,  
vs.  
THE CITY OF CHICAGO. } *Same.*

THE power to make assessments for improvements on streets, and to apportion the expense of them upon owners of lots deemed benefitted.

Mun. Code, p. 38, Sects. 1, 2.

The mode in which this power is to be exercised has been in part regulated for the levying and collecting such assessments, and such rules and regulations are contained in the 7th and 8th chapters of the City Charter, and in the City Ordinances.

See Mun. Code, pp. 38 to 47, and pp. 155 to 162.

But in making more particular notice of the grant of powers in the Charter, and the regulation of its exercise in the Charter and Ordinances of the city, I would call the Court's attention to the following provision:



The Common Council have "power by ordinance, to prescribe the form of Assessment Rolls, and to prescribe the duties and define the powers of assessors. They may also make such rules and give such directions in relation to revising, altering, or adding to the Rolls, as they may deem proper and expedient."

Mun. Code, p. 42, Sec. 1.

They also have power generally, beside the special powers enumerated, "to make, publish, ordain, amend, and repeal all such ordinances, by-laws, and police regulations, not contrary to the constitution of this State, for the good government and order of the city, and the trade and commerce thereof, as may be necessary and expedient to carry into effect the powers vested in the Common Council," &c.

Mun. Code, p. 27, Sec. 4, clause 63.

The Council adopted an ordinance to regulate the mode of making special assessments for public improvements.

It provides that when a street is to be graded, planked, paved, &c., that "the subject shall be referred to an appropriate committee, whose duty it shall be to prepare and report to the Common Council the *plan* of such improvement, with an *accurate estimate* of the expenses thereof, including, in every case, the costs of making the assessment."

Mun. Code, p. 155, Sec. 1.

The ordinance gives the forms of the entries, notices, qualification, assessment roll, returns and confirmation.

The ordinance further provides, "that hereafter no improvement, except cross and side-walks, and cross-sewers, the expense of which is to be defrayed by a special assessment, shall be commenced until fifty per cent. of the cost of such improvement shall have been paid into the city treasury."

Mun. Code, p. 162, Sec. 15.

Section sixteen provides that "no officer of the city shall enter into any contract, involving the expenditure of any money for such improvement," without the treasurer's certificate that that amount of money is in the treasury.

By the amendment of 1857 to the City Charter, Section 85, it is provided that, "all ordinances, regulations, and resolutions now in force in the city of Chicago, and not inconsistent with this act, shall remain in force under this act, until altered, modified, or repealed by the Common Council, after this act shall take effect."

The amended charter further provides that, "no contracts shall be hereafter made by the Common Council, or any committee or member thereof, and no expense shall be incurred by any of the officers or departments of said city government, whether the object of expenditure shall have been ordered by the Common Council or not, unless an appropriation shall have been previously made concerning such expense.



"The making of contracts, and superintendence of all public works, undertaken at the expense of said city, shall be committed by law or ordinance of the corporation to some proper officer or department, under proper rules and regulations preventive of fraud."

Sec. 5, Amended Charter.

These are the principal provisions and regulations under which these assessments are made to raise the money, and contracts for doing the work.

If assessments are not paid, the power under the amended charter is given to any court of general jurisdiction to hear an application for judgment against the lots, &c., assessed; and also to hear "if any defence be offered by any of the owners of said property, or any person having a claim or interest therein," and "determine the same in a summary way without pleadings."

Amended Charter, Sec. 43.

The amended charter has adopted the ordinance referred to, and thereby made it as a part of the charter. Its provisions must, therefore, be observed and complied with in executing the powers conferred for making assessments, and contracts for expending the money.

Having presented the provisions of the charter and ordinance, conferring and regulating this power, I come to notice:

*First.* The power of the Court to hear and adjudicate upon objections in a summary way, without pleadings. The language of the act carries a very strong implication that the Court may determine upon the propriety of ordering a sale upon any grounds deemed sufficient. The defences that may be made under this law, will embrace any state of facts that may satisfy the Court that the assessment ought not to be collected by a sale of the land. I will not enlarge upon this head, but commend the section to the critical examination of the Court, to determine what character of facts and kind of defences may be deemed sufficient by the Court, to withhold an order of sale in these assessments.

*Second*—I notice the prerequisites, under the charter and ordinances, to a valid assessment.

All the authorities concur in the rule that corporations must act within the powers granted in their charters.

Special cases illustrate better than general argument, the great strictness applied to corporate acts in this point of view.

Thus, in *Thompson vs. Schermerhorn*, 2 Selden R., 92, the city of Schenectady was authorized to cause the streets, &c., "to be pitched, levelled, paved, flagged, macadamized," &c.

The Common Council ordered that a street described should be paved, flagged, and



curbed, and "that the superintendent of streets, under the direction of the committee on roads, be directed forthwith to do such paving, curbing, and flagging."

The Court held the proceedings were void, for want of the adoption of some plan by the city upon which the work was to be done.

In *The State vs. Jersey City*, 1 Dutcher R., 309, the Court held that the Common Council had no power to limit the right to make objections to such as are in writing—in proceedings to open streets—the charter not requiring such objections to be written. So a limitation of the power to introduce any ordinance to a stated meeting would make void any ordinance, unless it appeared to have been introduced at a regular meeting of the board.

The Court broadly recognize the strictness of the rule in all cases of proceedings to take private property for public use.

*Van Wickle vs. Camden & Amboy R. R.*, 2 Green N. J. R., 162, is another case illustrating this doctrine.

*Commissioners of Raleigh vs. Kane*, 2 Jones N. C. R., 294, is a case of the application of this same strict rule to the general powers of municipal corporations.

Applications to the County Court for license to retail, were required to be made by a grant of permission of the Commissioners.

The County Court granted a license to retail, upon a permission granted by Commissioners whose office had expired before the license issued, and the Court held the license void, and the retailer subject to a fine for retailing without a license.

So in *Bronson vs. The City of Chicago*, 20 Ill., 252, the Court say the city had no power to levy a special assessment to deepen the Chicago River, under a power to widen it.

no 238 is for deepening the river

Again, in *The Rock Island R. R. vs. The City of Chicago*, 20 Ill., the Court went even so far as to refuse to take cognizance of the cause, because the application was made by one who was not in the office of collector under the amended charter.

Having shown the general principle governing these cases, I proceed to examine the facts of this case, and apply these rules to them in the order of the assignment of errors, viz:

#### FIRST.

There was no plan of the work first adopted by the city.

The city found a private contractor at work under an agreement with a part of the property holders on the street. It was agreed on for work of a specified character.



ter, and that plan and price is reported by the city superintendent, as the plan and estimate for the work.

*Thompson vs. Schermerhorn* City of Rochester 21 Barb 666  
In *Thompson vs. Schermerhorn*, 2 Selden, 92, the street was to be pitched.

But that was not a plan, and the whole was held to be void, although it was to be done under the superintendent. An order to curb, area-wall, fill and plank, or pave a street, is not an adoption of a plan.

Nor can any reliable estimate be made, nor definite amount be determined to be necessary until the particular mode of doing a given quantity of specified work, and the furnishing of a specified quantity and of a certain quality of materials is fixed.

This plan, if I may so call it, contained a portion of the necessary specifications—that is, it required the paving to be done with dimension block stone. But there was no specification as to the quantity of fill nor kind of material.

This is a delicate and important power, to order large expenditures for public improvements, exceeding onerous at times to property holders, and for which their lands or lots are liable to be sold.

Will the Court interpret this grant of power as authorizing arbitrary estimates to be made of large sums, without fully and plainly specifying what is to be done, how and with what materials, and how is it possible to tell the cost until the quantity of fill is specified, as well as the quality of it?

I know it is competent for the Council to fix the grade, and determine what kind and quantity of material shall be used, and the style of workmanship. But to protect property holders, they may not order any sum they please to be levied for these improvements.

Indeed, they may not levy an assessment at all until the exigency arises—that is, a resolution to make the improvement, and the adoption of a plan, with such details and specifications of kinds and quantities of materials and workmanship as will enable them to estimate accurately the sum necessary to defray the cost.

There are so many kinds of pavement, that an order to fill, grade, curb, and pave a street is wholly indefinite. And it is no answer to say that the Council or superintendent may direct the manner of doing the work. Until all these particulars are settled, there is no plan, and an assessment will be void, according to the case in 2 Selden, 92. No contractor can bid for work upon such vague generalities.

The plan in detail is the foundation of the estimate—the estimate of the order for, and the assessment of the property to be charged with the expense. And all these are prerequisites of a contract for doing the work.

The work having been done in this case before any order for an assessment was made, the Council had no jurisdiction to order one to be made.

Thompson vs. Schermerhorn 21 Barb 666



## SECOND.

The second point I make includes the fourth and fifth assignment of errors. The Council have no power to make assessments to pay for work done under private contracts or without contracts, nor has the city power to enter into contracts for work, nor adopt the contracts of individuals, until 50 per cent. of the expense has been collected.

In the administration of this class of powers, under which millions have been and will be collected and expended in making public improvements, and in *invitum* as to the property holder, some checks upon and regulations of the manner of exercising the power, are essential for the protection of the property holder. Some of these safe-guards and protections have been provided in the provisions of the charter requiring that such proportion of the expense—viz, 50 per cent.—shall be collected before contracts are let for the work. Thus bidders may know the present ability of the city to pay for the work as it may be performed.

There is no provision for public lettings of work,—as there should be,—for protection from reckless contracts at ruinous prices. In the absence of any provisions prescribing who shall let out work or make contracts—and the details of some safe mode—it behoves the Common Council to watch and guard against impositions by its servants and others.

The City Council alone can make contracts—unless it should hereafter, by general or special ordinance, authorize some committee, officer, or agent to do so.

The Amended Charter of 1857—Sec. 5—has provided that no contract shall be made by the Council, or a committee or member of it, unless an appropriation shall have been previously made, notwithstanding the object of the expenditure shall have been ordered. It further provides that the making of contracts and superintendence of all public works undertaken at the expense of the city, shall be committed by law or ordinance to some proper officer or department, under proper rules and regulations, preventive of fraud or collusion.

This act was in force before any work was done on LaSalle street, for which this assessment is levied.

Now no contract has been made for this work, and none can be made, because there is no work to do, the whole having been done before the assessment was confirmed.

In the case of *Brady vs. The City of New York*, 16 Howard's N. Y. Practice R., 432, the Court held contracts to be void which were entered into with the proper officer, but not in accordance with the provisions of the ordinance.

And the Court further held, the contractor could not recover for such work in any form of action. The case is one well worth consulting, upon the question of the



powers of municipal officers in making contracts for the city. It will appear that it is not sufficient to show a contract made—even with a city officer or the Common Council—but it is essential to show that the Council or officer had authority to make, and that it had been entered into according to law, in substance and form. The contract was not for want of power to make a contract on the subject matter, but it was held void for want of power to make a contract in the manner this was made.

*Id.*, p. 443.

The Court further say, that the manner in which the party ascertained the lowest bidder not only violated the charter of the city, but the provisions of the city ordinances.

When we come to enquire into the powers of the Council in cases of assessments for public improvements, the inquiry very naturally suggests itself, What did the Council propose to do on the day the order was made for this assessment to be made, viz., on the 9th Nov., 1857? The object was to fill, curb, and pave La Salle street, from South Water to Randolph street. Now, at that time the whole distance had been newly filled, curbed, and paved by private contracts and private labor. There was no such work or materials needed for any such purpose. There was no work to do; nor had the city incurred any debt or liability; nor had she entered into any contract with any one for the work or materials. There was no purpose or design on the part of the city to tear up the recently made work, and to re-construct the street. For anything appearing, the work had been done according to the plan, &c., reported by the city superintendent. Taking this state of facts, and the conclusion seems irresistible, that the Council had no jurisdiction, power, or authority under the provisions of the charter in relation to assessments, to levy one for any purpose.

It is one thing to make an assessment to cause improvements to be made, and quite another thing to make an assessment to pay for improvements made by property holders or strangers, and that, too, after the work had been completed.

This last would be a mere agency to collect the means of paying private contracts, or to collect money to pay for work and materials voluntarily done and furnished, without any liability on the part of the city for the work and materials so done and furnished. The legislature never designed to confer this power of making assessments, to be exercised under such circumstances.

While the Charter confers power to make improvements, and to superintend those made by property holders, there is no power given to interpose between citizen and citizen in the enforcement of an express agreement entered into between them, or a *quantum meruit*. Neither can the Council make an assessment to pay for work or materials voluntarily furnished and wrought into a public improvement, or at the instance of private property holders.

The *gravamen* or *gist* of this power is the *bona fide* intention to incur obligations for, and to cause improvements to be made. This cannot be, where there is nothing to do.

Now, here there was no work to do—no contract to be made—and no contracts, express or implied, binding upon the city; consequently there are no such facts or



state of case, as calls the power of the Council into action for this purpose. Again, no contract could be made for this work, until 50 per cent. of its cost had been collected.

This limitation upon the power of making contracts, was made for the good and protection of the property holder, who may have to bear the burthen of the expense. An additional guaranty of protection will be found in the competition on public lettings to the lowest bidder, and in the cautious deliberation of the *Common Council* in accepting offers and fixing upon the terms and details of the work, and of the contract.

None of these securities can be secured, in these respects, if work, voluntarily done, or done under private contract, is to be levied by the Council as an assessment.

The power is invoked in the nature of an execution to enforce payment upon the principle of a *quantum meruit*, or to enforce specific performance of private contracts, and in this regard the Council is a mere mechanical hand to seize and apply the compensation claimed by the party who had, or who proposed to do certain work, from the property holder who may be deemed benefitted by the work. This cannot be done. The municipal power to levy assessments never was intended, and I have never before met a case where an attempt had been made, to convert the power into a general jurisdiction for the collection of debts, or enforcement of contracts.

### THIRD.

I Shall make no comment on the seventh assignment of error other than to refer the Court to the 6th section of the Amended Charter, which is therein required that city officers of this grade shall be nominated by the Mayor and confirmed by the Council.

### FOURTH.

There was no valuation in money, nor were there any sums of money apportioned and assessed by the commissioners appointed for that purpose. The charter invests the commissioners alone with power to examine and apportion the necessary expense upon the property benefitted in proportion to the benefits. No other persons or tribunal can make that inquiry and apportionment.

Without it no sum can be collected nor can the property be condemned for sale.

The judgment is in the nature of a specific lien, and is enforced as such for the payment of the particular sum imposed.

This apportionment is, then, the foundation of the jurisdiction of all the subsequent proceedings before the Council and before the Court below; and without it, all such proceedings, and the judgment of the Court below, is and was null and void.

When the assessment roll contains no words nor marks, nor abbreviations to show



what is meant by the figures, neither the Common Council nor the Court below can supply the omission; nor can they convert the numbers into dollars, cents, and mills.

This point was decided in reference to the tabular statement in a judgment in *Lawrence vs. Fast*, 20 Ills. R. 338.

I am unable to see how a precisely similar table, without headings in the assessment roll, returned by the commissioners can afford any certain information as to the amounts assessed, than it will when found in the judgment itself.

I cannot perceive how the Court can sustain the jurisdiction of the Council or the Court below, when no assessment was made to be enforced.

If the statement of facts alleged to exist in the objections filed constitutes a ground of defence against the rendition of a judgment, then it was competent to prove the existence of those facts.

Series of questions were put to the witnesses to prove those facts and were excluded by the Court. It was competent for the plaintiff to show—

That McBean, who furnished the materials and did the work, claimed, and professed to do so, under a contract with plaintiff; for, if he did not so, it is conclusive against the power to collect an assessment to pay for work so done under private contract:

That McBean actually did the work, and the time when he completed it, in order to show that the work was finished, before the assessment was ordered, and done under a contract with property holders, and without contracts for part:

That Peck gave due notice to McBean not to do any work on the street opposite his property.

That there was no contract for doing the work, and parol evidence is competent to prove a negative fact; and when plaintiff has established the fact that McBean did the work without contract or liability on the part of the city, and has completed that work and finished the street before the order of assessment, then we have shown facts which defeat the power of the Council to make any assessment for such improvement.

The foregoing remarks, more particularly apply to Peck's case; but the case of

#### BAKER vs. THE CITY

Differs slightly in its facts, as the work was not quite completed when the assessment was made.

The private contract, in this case as in Peck's, afforded the ground of the plan and the estimate; and in each the order was to raise the full amount estimated by the terms of the contract to be necessary to construct the whole street, as well what



there was a private bargain for, as that portion voluntarily done without any agreement.

In both cases the private and voluntary work was done, or being done, and the Council only came in as a subsidiary to the needs of the contractor, who was unable to procure the consent, and make an arrangement with some of the property holders.

To allow the Council to invoke this power of making assessments under such circumstances, to aid and carry out the views of a volunteer adventurer, upsets all our notions of the strict construction of charter powers. There must be work to be done, there must be improvements to be made, or past contracts and obligations for them on the part of the city, to be met and fulfilled, or this power can never be called into existence.

It is not within the power of the Council to make use of this power to enforce private contracts, express or implied; nor can the Council adopt work already done as the basis of an obligation on the city, to enable them to use this power.

Here, then, we find one street entirely finished, and the other mostly done—say three-fourths,—all which is either disregarded or will be adopted by paying the contractor under this process.

This case, like Peck's, and the other two cases at the head of this argument, are obnoxious to the objection that no assessment was made of any sum of money by the commissioners, and consequently the Council and the Court below had no jurisdiction to proceed in the confirmation, and the rendition of judgment.

They are all objectionable, on the ground of the rendition of judgment for ten per cent. And in the case of Ogden, the assessments exceed three per cent. upon the supposed amount.

This last case was without authority, because the charter does not authorise a special assessment for deepening the river.

*Wright et al. vs. The City of Chicago*, 20 Ills. R. 252.

There is another question in No. 235, *Hamilton et al. vs. The City*, different from the other cases.

It is the statute of limitations. It is provided in the City Charter that these assessments shall be a lien upon the lots for two years from the confirmation of the assessment; that is, from 24 Nov. 1856. This suit was brought to the January special term, 1859, more than two years after the confirmation. The specific lien was gone, and, consequently, this proceeding for a judgment against the land, which is a proceeding *in rem*—a special jurisdiction to enforce the lien—does not lie; for, when the lien itself fails, this specific and summary remedy for its enforcement fails with it. If the city has any remedy at all it is by suit in the ordinary way, or by levy and sale of goods subject to lien.

Mun. Code, p. 43. sec. 4.



I would further note that the judgment is void for want of certainty; it is not for any sum of money; being rendered in tabular form without headings to give character and meaning to the figures. They do not, and cannot, represent dollars and cents, as in *Lawrence et al. vs. Fast*, before cited.

There is another objection common to all these cases:

In making up the estimate ten per cent. is added as and for superintendence.

Now there is no authority to make this exaction. The city employs its superintendent at a salary, and pays all its officers or employees with salaries or stated fees.

The Charter contains no provision to authorise money to be collected by assessment to meet these salaries. I cannot cite the Court to a provision that is not in the Charter. Its absence is sufficient to show a want of power to raise money on special assessment for paying salaries in the name of superintendence or otherwise.

I have thus, I believe, noticed all the prominent errors in these records, and submit them to the legal criticisms of the court.

W. B. SCATES,  
For Appellants and Plaintiffs in Error.



~~23374~~

# Supreme Court of Illinois.

## THIRD GRAND DIVISION.

April Term, A. D. 1859.

	RICHARD C. BRISTOL, vs. CITY OF CHICAGO.
	SILAS McBRIDE .....vs.....Same.
233	PHILIP F. W. PECK ....vs.....Same.
234	JOSEPH N. BARKER.....vs.....Same.
235	RICH'D J. HAMILTON ..vs.....Same.
217	WILLIAM B. OGDEN ....vs.....Same.
	HENRY McAULEY .....vs.....Same.
	RICHARD H. PEASE.....vs.....Same.
243	CITY OF CHICAGO.....vs. C. R. STALKWATHER.
	EZEKIEL MORRISON..vs. CITY OF CHICAGO.
	DAVID GIBSON.....vs.....Same.

A P P E A L

FROM THE

COOK CO. COURT

OF

COMMON PLEAS.

### POINTS FOR DEFENDANTS IN ERROR.

### RELATING TO SPECIAL ASSESSMENTS.

BEACH & BARNARD, PRINTERS, 11 CLARK STREET, CHICAGO.



## MUNICIPAL CORPORATIONS.

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The word "municipium" is derived from the Latin "*munus*"—office or honor, and "*capere*"—to take. In Roman law, a foreign town, to which the freedom of the city of Rome was granted, and whose inhabitants had the privilege of enjoying offices and honors there; a free town; a free or privileged town; one that had the right of being governed by its own laws and customs.

*Adams' Roman Antiquities*, 44-77.

From this is derived the Latin word "municipalities," and the English word "municipal."

*Municipal corporation*—A public corporation; a corporation created by government for political purposes, and having subordinate legislative powers to be exercised for local purposes, such as a county, city, town or village.

*Burrill's Law Dictionary*, 2 vol. 732.

*Kent's Commentaries*, side paging, 275; top paging, 304.



A *public corporation* is defined to be an investing the people of a place with the local government thereof. This latter description is the most appropriate, and is justified by the history of these institutions and the nature of the powers with which they were and are invested. The forming of cities into communities, corporations or bodies politic, and granting them the privileges of municipal jurisdiction, contributed more than any other cause to introduce regular government, police, and arts, and to diffuse them over Europe. Some of the cities assumed the necessary privileges and formed themselves into bodies politic under a government established by common consent. Others purchased them from their superiors or acquired them gratuitously from the generosity of the prince and to enable him to counterbalance the powers of the aristocracy.

The feudal government had degenerated into a system of oppression, and the great body of the people were subjected by the power of princes or superior lords to the most degrading and intolerable servitude. Many of the English charters incorporating cities and towns were likewise acquired by means of an appeal either to the fears, avarice, necessities or generosity of the Crown, and like those on the continent are to be viewed, as they in truth are, in the nature of a bill of rights. It was the acquisition of such liberty conceded by or extorted from a sovereign claiming nearly absolute power ; and hence the idea of inviolability so generally and justly attached to them. They were constitutional charters which the Crown could not encroach upon without violating the freedom of the subject. Most, if not all the leading cases in the books, involving the question of the inviolability of these charters, in the English Courts, arose between the *prerogative* of the *Crown* and the corporation. The right or power of *Parliament* in England, or of the Legislature here, to interfere with these bodies, created as auxiliaries to be employed in the government of the State, would present quite a different question.

*The People v. Morris*, 13 Wend. 334.

4 Wheaton 640.

15 Monroe 651.

15 New York 521.



## DISTINCTION BETWEEN PUBLIC AND PRIVATE CORPORATIONS.

The distinction between public and private corporations is strongly marked, and, as to all essential purposes, they correspond only in name. We speak of the erection of a town or county, and the term would be just as appropriate when applied to cities or villages. They are severally political institutions, erected to be employed in the internal government of the State. There is no contract between the government and governed, for but one party is concerned—the public; and the inhabitants, upon whom the powers and privileges are conferred, are mere trustees, who hold and exercise such powers for the public good. The only interest involved is the public interest; and no other is concerned in their creation, continuance, alteration or renewal. The nature and operation of these corporations repudiate the idea of vested rights, and therefore no evil arising out of them could have influenced the convention. *We know of no vested rights of political power, in any citizen or body of citizens, except those conferred by the Constitution.* That is our bill of rights, and is analogous to those granted to kingdoms or minor communities, such as towns and cities, by princes and superior lords on the continent, or by the Crown of England.

*Private corporations* are the private property of the corporators. They are designed to regulate private interest. Large investments are made in pursuance of their authority, and the tenure by which such corporate property is held is like that of an individual to his farm or personal estate; and an invasion of such corporate power is like a violation of private right.

One of the strongest reasons why these private corporations should be cautiously granted arises from the inviolability of the rights acquired under them; for notwithstanding the reserved power in the charter to modify or repeal, an interference seriously affecting this species of property



is calculated to shake public confidence in the security of these corporations generally, and might—and probably would—be immediately disastrous, to the property invested under their faith, in the particular instance in which the Legislature exercised its reserved power. This wide distinction was well known to the members of the convention and shows that the clause in the constitution may be fully satisfied by confining its operation to the case of private corporations. Nor can it be admitted that it was intended to restrict the action of the Legislature, in the municipal regulations of the State, as to one place more than another, or that less latitude was to be given to such regulations, in the government of the citizens residing within the bounds of cities and villages, than of those residing in towns and counties. The nature and object of the power exercised and the claims of those concerned are alike, and it is difficult to discover any solid reason for the distinction.

All our public laws, civil and criminal, however important or severe their operation, enacted for the good government of the people throughout the State, are passed by *majority votes*; and it would be inconceivably strange, if laws passed with a view to a more perfect government of a particular place—(laws better adapted to the organization of society and the business and condition of the governed residing in small districts)—should depend upon a different and greatly restricted rule of action on the part of the Legislature.

*The People v. Morris*, 13 Wend. 337.

*The People &c. v. The Mayor of the City of N. Y.*, 25 Wend. 684.

*City of Louisville v. Pres. & Trustees of &c.* 15 Monroe 642.



# SPECIAL ASSESSMENTS.

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## I.

### WHAT IS AN ASSESSMENT.

"An assessment is doubtless a tax, but the term implies something more, it implies a tax of a particular kind, predicated upon the principle of *equivalents* or benefits, which are peculiar to the persons or property charged therewith, and which are said to be assessed according to the measure or proportion of such equivalents. Whereas, a simple tax is imposed for the purpose of supporting the government generally, without reference to *any special* advantage which may be supposed to accrue to the persons taxed."

*Ridenow v. Saffin*, 1 Handy, Superior Court, of Cincinnati, 473.

*Canal Trustees v. City of Chicago*, 12 Ill. 406.

*Higgins v. City of Chicago*, 18 Ill. 281.

*Matter of Mayor of New York*, 11 Johns. 77.



*Bleecker v. Ballou*, 3 Wend. 264.

*Sharp a. Spier*, 4 Hill, 77.

*The State v. the N. O. Navigation Co.* 11 M. R. 324.

*Worsley v. the 2d Municipality of N. C.* 9 R. R. 333.

*Lafayette v. Orphan Asylum*, 4 Ann, 2.

*Cainly v. Copley*, 2 Ann, 329

15 Wend. 376.

2 Louisiana, 338.

13 Penn. 107.

14 Ohio, 541.

14 Ohio, 141.

The power of assessing property for benefits conferred, was an accustomed and acknowledged power of the Parliament of Great Britain, for 400 years and took the place of the crown.

*Matter of 4th Avenue*, 3 Wend. 452, (a).

*Viner's Abridgment—Title Sewers.*

*Comyn's Digest—"Sewers."*

*See Callis on Sewers.*

## II.

The right of eminent domain may be delegated by the Legislature to a municipal or other corporation—and when it is so delegated, such cor-



porations act judicially, and the proper mode to review their proceedings is by *certiorari*.

*Heyward v. Mayor of N. Y.* 3 Selden, 214.

*State v. Jersey City*, 1 Dutcher, 310.

*Buffalo & N. Y. R. R. Co. v. Brainard*, 5 Selden, 109.

*City of Chicago v. Rock I. R. R. Co.* 20 Ill. 286.

*City of Louisville v. Pres. and Trustees of University*, 15 Ky. 642.

*Cole v. City of Peoria*, 18 Ill. 303.

*Russell v. Mayor of N. Y.* 2 Denio, 488.

Though the Constitution secures the right of the citizen, to a just compensation for his property, before it shall be taken for public use, yet the Legislature has the right to prescribe the mode in which that compensation shall be ascertained and determined.

*Henderson & Nashville R. R. Co. v. Dickenson*, 17 Kentucky, 177.

The State has a supreme and controlling power over the property of individuals, and can confer upon her subordinate jurisdictions both municipal and judicial, the right to take private property for the purpose of opening streets and roads, &c., when, in their opinion, it is demanded by the public welfare or convenience—and when property is thus taken accompanied by an adequate provision for indemnification of the injured party—the appropriation is legalized by the fact that it has been taken for a public purpose, under the authority and sanction of the State.



*Alexander, et al. v. the Mayor of Baltimore*, 5 Gill, 393.

*Burgess v. Pue*, 2 Gill 11.

*Livingston v. Mayor of N. Y.* 8 Wend. 101.

*Wiggins v. Mayor of N. Y.* 9 Paige, 23.

In *Emsbury v. Conner*, 3 Comstock, 525, the Court say, that :

“The whole proceeding is but a mode adopted by the State to exercise its right of eminent domain, through a power confided to the corporation of the City of New York or its officers. The confirmation of the proceedings taken under the statute, in no sense can be deemed an adjudication upon the effect of these proceedings. The order of confirmation has the effect merely to conclude the parties, in respect to the regularity of the proceedings taken preliminarily, in order to transfer the title of the owner of the lands proposed to be taken to the corporation, and does not, as I have before remarked, conclude either party in respect to the question as to the effect.”

#### JUDICIAL ACT.

The assessment of property, is a *judicial act*, and can be reviewed upon *certiorari*.

*Prosser v. Secor*, 4 Barb. 608.

*Van Rensselaer v. Witbeck*, 7 Barb. 133.

*Vail v. Owen*, 19 Barb. 22.

*Brown v. Smith*, 24 Barb. 419.

*Bouton v. the City of Brooklyn*, 15 Barb. 385.

*Hill & Aldrich v. The Mohawk & Hudson R. R. Co.* 3 Sel. 152.

*Matter of Third Street*, 6 Cowen, 571.



The act of a municipal corporation, in confirming an assessment for grading an avenue, is an exercise of judicial authority: and the proceedings may therefore be removed into the Supreme Court by the common law writ of *certiorari*, for review.

*People v. Mayor of Brooklyn*, 9 Barb. 535.

In the case of *The Albany and West Stockbridge Railroad Co. v. The Town of Canaan, et al.* 16 Barb. Rep. 244, the court decided that it was the duty of assessors to estimate and assess that section of a railroad which lies within their town at its full and true value. In ascertaining this value, the superstructure and fixtures and everything annexed to the land are to be taken into the account. But whether the stock of the company is above or below par, or whether the business of the road is productive or unproductive, are questions with which the assessors have nothing to do. *So long as the assessors confine themselves within the above rule, however grossly they may err in their estimate, their valuation is conclusive. Like the verdict of a jury, the amount is not to be questioned.*

The tax based upon the assessment is like a judicial sentence, and can only be attacked for fraud, or an excess of jurisdiction.

*Huggins v. King*, 3 Barb. 616.

It is not the province of the court, any more than of the commissioners, to inquire into the policy or expediency of the improvement ordered by the corporation, though doubtless a *certiorari* would lie for want of jurisdiction or error. The power vested in city authorities in



laying out streets and ordering public improvements, and assessing property and selling the same in case the assessment is not paid, is a judicial power, and can be reviewed upon *certiorari*.

*Parks v. City of Boston*, 8 Pick. 217.

*In the matter of Albany street, in New York*, 11 Wend. 148.

*In the matter of Canal street*, 11 Wend. 155.

### COMMON COUNCIL.

Assessments are levied by the Common Council.

The powers of a Common Council are two-fold.

I. They are legislative and ministerial.

II. Judicial.

### COMMON COUNCIL.

The Common Council is a legislative body, charged with interests and duties of great magnitude and importance : and its action is necessarily more like that of a legislature than like an individual.

*Suarez v. Mayor of New York*, Sandf. 174.

The Common Council being a legislative body, a court has no right to interfere with their legislative discretion, unless they attempt, under



color of passing laws, illegally, wantonly and corruptly to trample upon rights and sacrifice interests which they are specially bound to watch over and protect.

*Davis v. Mayor of New York*, 1 Duer, 498.

*Hodges v. City of Buffalo*, 2 Denio 140.

*Halstead v. Mayor of New York*, 3 Comstock 430.

The City of Chicago has power, by its charter, to order public improvements to be made; and the Common Council are the judges of the necessity, the mode and the manner of the improvement; and it is not the province of the Supreme Court to revise their judgment or examine their motives.

*Waddell v. The Mayor of New York*, 8 Barb. 95.

*In the matter of Beckman street*, 20 Johns. 273.

*In the matter of Livingston street*, 18 Wend. 556.

*Patchin v. Trustees of Brooklyn*, 2 Wend. 377.

\**Buell v. Trustees of Lockport*, 11 Barb. 605.

*The People v. The Supervisors of Westchester*, 4 Barb. 65.

\**Le Roy v. The Mayor, etc. of New York*, 20 Johns. 439.

\**The People v. The Mayor of New York*, 5 Barb. 45.

NOTA BENE.—\**Clark v. City of Rochester*, 24 Barb. 447.

*Swift v. The City of Williamsburg*, 24 Barb. 427.

*Milhau v. Sharp*, 17 Barb. 431.

*Adriance v. The Mayor of New York*, 1 Barb. 19; 10 Morly 549.

\**The Methodist P. Church v. Mayor of Baltimore*, 6 Gill 391.

*Richardson v. Mayor and City Council*, 8 Gill 439.

*Alexander et al. v. The Mayor, etc. of Baltimore*, 5 Gill 383.



Laws which give to municipal or other corporations the right of taxation are *pro tanto* of sovereign power.

*Mason v. Police Jury of Tensas*, 9 Louisiana, 368.

The Corporation of the City of Chicago has exclusive right to control and regulate the use of the streets in the city. In this respect it is endowed with legislative sovereignty; and the exercise of that sovereignty has no limit so long as it is within the objects and trusts for which the power is conferred.

An ordinance regulating a street is a legislative act, entirely beyond the control of the judicial power of the State.

*Milbau v. Sharp*, 17 Barb. 435.

*Alexander et al. v. The Mayor, etc. of Baltimore*, 5 Gill 383.

Whether the assessment is just or not is not a question for us; it is whether it is lawful — whether the property was liable to assessments, and whether the assessment has been legally levied.

*Owners of Ground v. Mayor of Albany*, 15 Wend. 377.

The proceedings of the Common Council of the City of Chicago are public and must be taken notice of by all persons.

*Swift v. City of Williamsburg*, 24 Barb. 427.

*The Methodist Church v. Mayor of Baltimore*, 6 Gill, 391.

*The People v. City of Rochester*, 21 Barb. 669.

*Suarez v. Mayor of New York*, 2 Sandf. Ch. 181.



# III.

As the Common Council act judicially, in taking private property for public use—and as the statute, governing their proceeding, makes their confirmation of an assessment “*final and conclusive*,” their proceedings cannot be inquired into by writ of error or appeal—from an application made by the collector of the city—for judgment on delinquent lots and lands.

The charter of the City of Chicago (Municipal Laws, page 38) SEC. 1, chapter 71, entitled “Assessments for Public Improvements,” provides that “The Common Council shall have power, from time to time—*First*, To cause any street, alley or highway to be *graded, leveled, paved, macadamized or planked*, from time to time,” &c.

SEC. 2d, of same chapter, provides that, “The expenses of any improvement mentioned in the foregoing section (except sidewalks and private drains) shall be assessed upon the real estate, in any natural division, benefited thereby, with the costs of the proceedings therein, in proportion, as nearly as may be, to the benefits resulting thereto: Provided, such assessment shall not exceed three per cent. per annum on the property assessed.”

SEC. 3. The amount to be assessed (except in cases above referred to) determined by Common Council—they shall appoint by ballot, by a majority of Aldermen authorized to be elected, three reputable freeholders to make such assessment. These commissioners shall be sworn to discharge their duty faithfully.

SEC. 4. Before entering on their duty, these commissioners shall give six days notice, in the corporation newspaper, of time and place of meeting, to all persons interested, and they may, if necessary, adjourn from day to day. The commissioners shall assess the amount directed by the Common Council to be assessed, on the real estate by them deemed



benefited by any such improvement, in proportion to the benefit resulting thereto, as nearly as may be, and briefly describe in the assessment roll to be made by them the real estate in respect to which any assessment is made, and the value thereof.

SEC. 5. If these commissioners shall deem that any one will sustain damages over and above the benefit to his property by any such assessment, they may assess upon the real estate a reasonable compensation to such owner; such sum to be added to their assessment roll.

SEC. 6. After finishing their assessment, they shall deliver the same to the City Clerk, within forty days after their appointment, signed by all the commissioners. The clerk shall *then* publish a notice in corporation newspaper for six days, to all persons interested, of the completion of assessment and filing of roll. Time and place shall be named for hearing objections.

SEC. 7. Any person interested may appeal to the Common Council for the correction of the assessment. Appeals shall be made in writing, and filed in the Clerk's office, within ten days after the first publication of said notice. The Council may adjourn such hearing, from day to day, and shall have power, in case of appeal or otherwise, in their discretion, to revise and correct the assessment, and confirm or annul the same, and direct a new assessment to be made, in the manner herein before directed, by the same commissioners or by three others, *which shall be final and conclusive on all parties interested, if confirmed*. When confirmed, the assessment shall be collected as in other cases, and no appeal or writ of error shall lie in any case from such order and determination.

If any assessment be set aside by order of any court, the Common Council may cause a new one to be made, in like manner, for the same purpose, for the collection of the amount so assessed.

This statute, which declares that the report of the commissioners *when confirmed* by the Common Council, shall be *final and conclusive upon all*



persons—means exactly what it says—and is a restriction upon the limit and extent to which litigation should be permitted, on a mere question of appraising the value of land to pay for public improvements, and to confine it to the several steps and hearings expressly permitted by the act.

*New York Central R. R. Co. v. Marvin*, 1 Kernan, 278.

Chief Justice Gardiner, in the case of *Matter of Canal and Walker streets*, 2 Kernan, 412, says :

“ The language of the statute in reference to a court clothed with such authority would be senseless, if not construed as it reads; that in cases of assessment for opening and widening streets, their orders and judgments should be ‘ final and conclusive upon all persons interested whomsoever.’ ”

Such is the case before us.

See also—

*Matter of the Application of the Mayor of New York relative to extending and re-opening Third street*, 6 Cowen 571.

*In the matter of Pearl street*, 19 Wend. 651.

“ “ *William and Anthony streets*, 19 Wend. 678.

“ “ *Mount Morris Square*, 2 Hill, 14.

“ “ *Mayor of N. Y., extending Beekman street*, 20 Johns. 268.

*Stafford v. The Mayor of Albany*, 6 Johns. 4.

“ “ “ “ 7 Johns. 541.

*Corporation of N. Y. v. Dover street*, 18 Johns. 505.

NOTA BENE.—\**Hackins v. Trustees of Rochester*, 1 Wend. 54.

*People v. Corporation of Brooklyn*, 1 Wend. 318.

7 Wheat. 218.

\**LeRoy v. The Mayor*, 4 Johns. Ch. 354.

*Mayor of City of New York v. Colgate*, 2 Duer 4.



NOTA BENE.—*Embury v. Conner*, 3 Comstock 513.

*In the matter of opening Livingston st. in Brooklyn*, 18 Wend. 556.

*Clark v. Brown*, 18 Wend. 213.

\**Buell v. Trustees of Lockport*, 11 Barb. 602.

*Matter of Anthony street*, 20 Wend. 618.

*Doughty v. Hope*, 3 Denio 599.

\**Murray v. Graham*, 6 Paige Ch. 624.

*Matter of Wall street*, 17 Barb. 617.

\**Graff v. Mayor of Baltimore*, 10 Maryland 544.

*Harrington v. Commissioners of Berkshire*, 22 Pick. 263.

21 Pick. 260.

4 N. H. 517.

*Gott v. Carr*, 6 Gill & Johns. 312. 2 Greenleaf, 179.

*Hamilton v. Annapolis & Elk Ridge Railroad*, 1 Md. 567.

1 Md. ch. Dec. 109.

8 G. & J. 443.

8 Md. 7.

2 H. & G. 50.

22 Pick. 263.

21 Pick. 260.

4 Barb. 64.

2 Greenleaf 179.

4 N. H. 517.

5 Adol. & Ellis 814.

3 Mylne & Craig 440.

9 Excheq. 402.

6 Gill 391.

8 Gill 443.

10 Pet. 449.

4 How. 404.

3 Metcalf 381.

2 Eng. Rail. cases 1.

19 Barb. 263.

15 Eng. Law and Eq. 368.

35 " " " " 19, 22, 28.



If it be true that eternal vigilance is the price of liberty, a small portion of that commodity ought, at least, to be required as part of the price of property. Property, it has been well said, has its duties as well as its rights; and he that would enjoy the one, should, in some degree perform the other.

*McGregor v. Comstock*, 17 N. Y. 165.

In the case of *Gott et al. v. Carr*, 6 Gill & Johns. 312, the court say "It is a salutary principle of law, that every person is bound to take care of and protect his own rights and interests, and to vindicate them in due season and in the proper place."

Where a party who is improperly assessed for the opening of a street in the city of New York has an adequate remedy at law against such assessment *by opposing the confirmation of the report of the commissioners*, if he neglects to avail himself of such remedy the Court of Chancery has no jurisdiction to grant him relief. Errors of the commissioners of estimate and assessment cannot be corrected by a collateral suit in *chancery*, except in cases where no adequate relief could be had in the mode pointed out and prescribed by the statute.

*Murray v. Graham*, 6 Paige 622.

*Methodist Church v. Mayor of Baltimore*, 6 Maryland 391.

Where a special power is granted by the statute, affecting the property of individuals, as conferring upon the Judges of a County Court the power of assessing the damages of individuals, in consequence of a public improvement, but requiring that such judges *should not be interested*,



the statute must be strictly pursued, and it must in general appear on the face of the proceedings that it has been so pursued; *yet where a party affected by such assessment had notice of the application to the judges who performed the duty assigned, appeared before them, contested the claim set up, and did not object to the proceeding on the ground of the interest of the judges, he was deemed to have waived the objection, although the fact was not averred that the judges were disinterested.*

Upon *certiorari* brought to review the assessment, this Court will inquire into the principles upon which it was made, and if found to be erroneous, the assessment will be set aside; but the assessment, if made on correct principles, is *conclusive* as to the *amount*, as this Court can neither increase or diminish it.

If the assessment, in a case of this kind, be adjudged to have been made on erroneous principles, this Court has not the power to send back the proceedings, but must reverse them *in toto* and the party seeking the benefit of an assessment must commence *de novo*.

*Baldwin v. Calkins*, 10 Wend. 169.

The statute provides that the assessors, after having made the estimate and assessment, shall certify the same in writing to the Common Council; and the estimate and assessment, being ratified by the Common Council, *shall be binding and conclusive upon the owners and occupants of the lots assessed.* (2 R. L. 407 and 175). It is not the ratification which is binding and conclusive; but the estimate and assessment, when ratified. And it is only when an assessment has been first duly made, that the Common Council has the power of ratification: void things are no things; and there never was any assessment to be ratified. The Common Council



cannot itself make the assessment; it can only cause the thing to be done by sworn assessors. The power of ratification carries with it the authority to set aside a regular assessment, when not made upon just principles. But it does not include an authority to legalize an irregular and void assessment. As there was nothing to be ratified, the act of ratification was itself a nullity. But if that act was good so far as it goes, it would only be one of several necessary links in the plaintiff's chain of title; and it is a well established rule in relation to these statute powers to transfer the title to lands without the consent of the owner—that the authority must be strictly pursued from the beginning to the end. If any material link in the chain be wanting, the whole proceeding will fall to the ground. (*Sharp v. Spier* and *Sharp v. Johnston*, 4 Hill, 86, 92). The case of *Striker v. Kelly*, (7 Hill, 9), as it stands corrected by the Court of Errors, (2 Denio, 323), does not controvert this doctrine; but goes to confirm it.

*Doughty v. Hope*, 3 Denio, 599.

#### ASSESSMENT ROLL.

*In the case of New Orleans v. Rousseau* (2 Louisiana Annual Reports 196)—The Court say, in regard to an assessment roll, and the evidence it is of the proceedings it recites: "Although such assessment roll may not be considered as not having the force and effect of a final judgment, yet we are not prepared to say that a party should be permitted in all cases to go behind it. On the contrary we think it should not be done, unless it be shown, by cogent reasons, that the party sought in vain or was prevented by some valid cause from seeking that relief to which he was entitled under that act; and which, in our opinion, affords ample protection to the citizen whose property may have been improperly assessed. It does not appear in this case that the appellant had ever made any attempt to obtain such relief."



Objections to the proceedings to ascertain the compensation to which the owners are entitled for lands so appropriated, if not taken before the commissioners or in the court below, are not available in this court, except such as could not have been obviated had they been duly taken.

*Buffalo & N. Y. City Railroad Co. v. Brainard*, 5 Selden 100.

All parties having had notice of proceedings in levying the assessments, they will be regarded as having had their day in court, and the action of the Common Council should be holden final. Good faith will not permit them to lie by until large expense has been incurred and the liability of the city fixed, and then come forward with objections, for the first time, which they should have urged *in limine*.

To allow this would be to allow parties to set traps for the Common Council.

"He that is silent when conscience requires him to speak, shall not be heard to speak when conscience requires him to be silent."

## IV.

### COMMISSIONERS.....THEIR POWER.

Valuation of commissioners is conclusive, and cannot be reviewed.

On the amount of the assessment, or the mere value of the property assessed, the decision of the commissioners of appeal is final.

*The State v. Ross*, 3 Zab. 517.

*Betts v. New Hartford*, 25 Connecticut, 180.



If assessors of taxes keep within proper and correct rules, their valuation, like the verdict of a jury, is conclusive.

*Albany & Woodstock Railroad Co. v. Canaan*, 16 Barb. 244.

*The State v. Quaipe*, 3 Zab. 89.

On a *certiorari* to correct a tax assessment of which no one but the prosecutor complains, the court will not set aside the whole assessment, if it can give proper relief to the prosecutor without so doing.

*The State v. Kingsland*, 3 Zab. 85.

Discretion of Commissioners cannot be controlled.

Where the statute gives to commissioners a discretion in a particular case and for a special purpose, I doubt exceedingly whether a mistake of judgment in that case can be corrected. [*Lawton v. Commissioners of Highways*, 2 Caine's Rep. 182.] In the case of special powers granted to an individual by a will, to be exercised according to discretion, the Court of Chancery has repeatedly refused to interfere and to judge of the motive, where there was great inequality in the distribution of property under the trust.

1 Vesey 58.

This is a stronger case than that of a private trust, created by the act of the party, and of a public trust, created for general purposes; and the courts would certainly interfere in this case with much greater reserve and caution.

*Haight et al. v. Day*, 1 Johns. Ch. 18.

*Davis v. Mayor of New York*, 1 Duer 451.—See especially and particularly this case, commencing at pages 497-8.



## DISCRETION.

When a discretion is confided to persons appointed by law, or to a municipal corporation, a court of justice will not attempt to control its exercise.

But if those, in whom discretionary powers are vested, threaten and are about to commit a gross abuse of power, to the injury and in fraud of the rights of individuals and of the public, there is no principle or decision that precludes the interference of a court to prevent the threatened injury.

*Davis v. The Mayor of New York*, 1 Sandf. 452.

*People v. Supervisors of Alleghany*, 15 Wend. 211.

13 Wend. 671.

20 Pick. 79.

3 Denio 119.

*Mead v. Walker*, 1 Hopkins 587.

*Lawton v. Commissioners of Highways*, 2 Caine's Rep. 182.

1 Vesey 158.

*Haight v. Day*, 1 Johns. Ch. 18.

*Oswego Falls Bridge Co. v. Fish*, 1 Barb. Ch. 547.

*The Attorney General v. Mayor &c. of Mobile*, 5 Port. 279.

*The Att. Gen. v. The Great Northern Railway Co.*, 3 L. & E. 263.

*Munt v. Shrewsbury & Chester Railway Co.*, *ibid* 144.

*Waterman's Eden on Injunctions*, vol. 2, p. 259 and notes.

## V.

Assessments for public improvements can be made just as well after the work has been done as before ; it is a mere question of policy for the



corporate authorities; and it cannot affect the validity of an assessment in any way, shape or manner. +

*Laimbeer v. City of New York*, 4 Sandf. 109.

*Wetmore v. Campbell*, 2 Sandf. 341.

*Waddell v. Mayor of New York*, 8 Barb. 95.

5 Barb. 49.

25 Wend. 696.

3 Denio 251.

4 Selden 120.

19 Wend. 659.

19 Wend. 678.

The Corporation of the City of New York, under the statutes regulating the making of sewers, paving the streets, &c., may ~~execute~~ *execute* the work at its own expense, and then make an assessment of the expense upon the property benefited for the first time after the work is completed. +

*Wetmore v. Campbell*, 2 Sand. 341.

*Laimbeer v. the City of New York*, 4 Sand. 109.

#### Assessments for Public Improvements made before the Work is done.

An estimate of the expense of constructing a sewer, in a city, ought to be made before a contract for the work is executed or operations are commenced. And a contract executed previous to the making of the estimate is invalid, and creates no charge against the owners of the lots assessed, +



nor incumbrance upon their property. Yet the premature *execution* of a contract for the work will not affect the validity of the original ordinance for the construction of the sewer, nor of a subsequent estimate or assessment properly made.

*The People v. Mayor of New York*, 5 Barb. 44.

The Court will take notice that we are not now investigating the validity of a contract, but are examining the legality of an assessment.

The Corporation of the City of New York has power to regulate a street at its own expense, and when the work is completed, cause the same to be estimated, assessed and collected of the persons benefited thereby. It may by ordinance direct the work to be done and the expense to be assessed, without designating the persons to be assessed or the limits of the territory within which the assessment is to be made, and then cause the work to be done upon a contract providing for the payment when the money is collected upon the assessment. In such a case the corporation assumes the responsibility of the payment to the contractor, notwithstanding the time of making it is deferred, and the work is done at its expense.

It is in the discretion of the corporation to include in a single assessment the regulation of several streets, or to cause the work upon each one to be separately assessed.

*Manrice v. The Mayor &c. of New York*, 4 Seld. 120.



## VI.

## STATUTE DIRECTORY.

“And slight irregularities will not vitiate an assessment.”

Section 6 of the Charter of the City of Chicago, chapter 7, page 39, of Municipal Law, provides that when the commissioners shall have completed their assessment and made a corrected copy thereof, they shall deliver the same to the City Clerk, within *forty days* after their appointment, signed by all the commissioners. The Clerk shall thereupon cause a notice to be published in the corporation newspaper for six days to all persons interested, of the completion of the assessment and the filing of the roll. Time and place shall be designated therein for hearing objections.

Frequent objections are made to assessments, on the ground that the assessment roll was not returned to the Clerk within forty days, as prescribed in this section.

I contend that this provision of the charter is merely directory, and if the assessment should be levied by the commissioners after forty days, or if the commissioners should levy their assessment within forty days, and should after forty days return their assessment roll to the Common Council, it would not invalidate an assessment.

“Nothing is better settled as a general rule, than that, where a statute requires an act to be done by an officer or officers within a certain time for a public purpose, the statute shall be taken to be merely directory, and though he neglect his duty by allowing the precise time to go by, if he or they afterwards perform it, the public shall not suffer by the delay.”

*Ex parte Heath and others*, 3 Hill, 47.

*People v. Allen*, 6 Wend. 486-7, and cases there cited.

*Colt v. Eves*, 12 Conn. 243-253-255; and cases there cited.



*Jackson et al. v. Young*, 5 Cowen 269.

*Merchant v. Langworthy*, 6 Hill 646.

*Rex v. Loxdale*, 1 Burr 447.

*Whiskard v. Wilder*, 1 Burr 330.

*The People v. Peck*, 11 Wend. 604.

\* *Van Rensselaer v. Wübeck*, 7 Barb. 138.

*Torrey v. Milbury*, 21 Pick, 64.

*Bloom v. Burdick*, 1 Hill 130.

*Weaver v. Devendorf*, 3 Denio 117.

*Williams v. Holden*, 4 Wend. 223.

*Van Rensselaer v. Cottrell*, 7 Barb. 127.

In the case of *Williams v. School District in Lunenburg*, 21 Pick. 82, the court say —

“The last exception is, that the tax was not assessed within thirty days. The statute is directory in this respect, and not restrictive; and they are not prevented from assessing after the expiration of thirty days.”

See also —

*Pond v. Negus*, 3 Mass. 230.

*Striker v. Kelly*, 7 Hill 9.

*Doughty v. Hope*, 3 Denio 249.

*Bloom v. Burdick*, 1 Hill 130.

*Williams v. Holden*, 4 Wend. 223.

*Ex parte Elmendorf v. Mayor of New York*, 25 Wend. 693.

It was objected to a collector's report, that it was returned by the recitals in the judgment etc. on the 20th of January to the Circuit Court, when there was no court—the court not sitting until May. The court say



this objection has been decided, in effect, in *Atkins v. Hinman*, 2 Gill 450, in which the court hold the statute directory in relation to a return or report by the collector five days before the sitting of the Circuit Court. If the time does appear, the law will presume he did his duty in this respect; a literal compliance is not essential to the jurisdiction of the court. If the collector reports before the cause is heard and judgment pronounced, it is sufficient.

*Jackson v. Cummings*, 15 Illinois 451.

The proceedings in levying assessments need not conform to the ordinances of municipal corporations.

Where a municipal corporation, in the improvement of the streets of a city, act within the scope of the authority conferred upon them by a statute law of the State, and comply with the forms of the statute, their proceedings will not be reversed upon *certiorari*.

It is no objection, that, in conducting the proceedings, they do not conform to by-laws established by themselves, to carry into effect the powers conferred upon them.

*Ex parte the Mayor, &c. of Albany*, 23 Wend. 276.

COWEN, Justice, in deciding this case, says that "The objection is entirely novel, that a by-law, passed by a corporation, prescribing to itself certain conditions on which alone an improvement shall be undertaken, or any other regulation made by it, shall so hamper and cripple its powers as to disable it from performing those duties enjoined or authorized by the law of the State. The latter is the charter, the constitution, the organic law of the city; and a by-law, which, in terms, restricts any of its provisions, is equally void, as if it sought to enlarge them."



## IRREGULARITIES.

As to what irregularities will affect the validity of an assessment—

See—

*Van Rensselaer v. Witbeck*, 7 Barb. 140.

*Williams v. School District in Lunenburg*, 21 Pick. 76.

*Pond v. Negus*, 3 Mass. 230.

A party objecting to proceedings relative to the opening of a street cannot hope to avail himself of an irregularity which may exist in the proceedings relative to property in which he has no interest.

*Coles v. Trustees of Williamsburg*, 10 Wend. 657.

## VII.

What Jurisdictional Facts necessary to appear, in order for the Court to enter Judgment.

Copy of advertisement, and certificate of due publication.

## REPORT AND NOTICE OF CITY COLLECTOR.

The amended Charter of the City of Chicago (passed in 1857) section 38, page 14 of printed charter, provides that—

“All orders issued for the collection of the annual taxes, and all special warrants issued for the collection of any special assessments or tax authorized by law, shall be made out in the manner now required by the City Charter, be countersigned by the Comptroller, and delivered to the City Collector on or before the second Tuesday of October in every year after the passage of this Act.”



SECTION 39 provides that—

“The Collector shall forthwith publish a notice in the Corporation Newspaper that such warrants are in his hands for collection, briefly describing the nature of each, and requesting all persons forthwith to make payment thereof at his office, or that the same will be collected at the cost and expense of the persons liable to the payment of such taxes and assessments; said notice to be published for thirty days.”

SECTION 40 provides that—

“If, from any cause, the taxes and assessments charged in said collection warrants are not collected or paid on the lands or lots described in such warrants on or before the first Tuesday in January ensuing the date of said warrants, it shall be the duty of the Collector to prepare and make report thereof to some court of general jurisdiction to be held in Chicago, at any vacation, special or general term thereof, for judgment against the lands, lots, and parcels of land, for the amount of taxes, assessments, interest and costs respectively due thereon; and he shall give ten days' notice of his intended application before the first day of the said term of the said court, briefly specifying the nature of the respective warrants upon which such application is to be made, and requesting all persons interested therein to attend at such term; and the *advertisement so published* shall be deemed and taken to be *sufficient legal notice, both of the aforesaid intended application by the Collector to said court for judgment, and a refusal and a demand to pay the said taxes and assessment.*”

SECTION 41 provides that—

“The Collector shall obtain a *copy* of the said *advertisement* or advertisements, together with a *certificate* of the due publication thereof from the printer or publisher of the newspaper in which the same was published; and shall *file* the same with the Clerk of said Court at the said term, *together with a copy of said report.*”



SECTION 42 provides that—

“The Clerk of said court, upon the filing of such report or reports, and certificate of publication, by the Collector, in each case, shall receive and record the same in a book kept for that purpose, in which shall be entered all judgments, orders and other proceedings of said court in relation thereto, and the same shall be preserved as other records of his office; and the said Clerk shall place the said report or reports and the certificate attached to each at the head of the common law docket for said term, in the following form as nearly as may be, to wit:

“*‘City of Chicago v. John Doe and others, sued for taxes.’*

“Or if it be an assessment for some specified improvement, shall also enter said report or reports returned by said Collector, in similar form as nearly as may be, or as follows:

“*‘City of Chicago v. John Doe. Suit for assessment on warrants for paving - - street, or the opening of - - street.’*

“Or such other title as will sufficiently indicate the nature of the improvement for which the charge or assessment is due, entering a separate suit upon each of said warrants upon which such reports are made.”

SEC. 43. “It shall be the duty of the Court upon calling the docket of said term, if any defence be offered by any of the owners of said property, or any person having a claim or interested therein to hear and determine the same in a summary way, without pleadings; and *if no defence be made* the said Court SHALL pronounce judgment against the said several lots, lands, pieces or parcels of land, as described in said Collector’s reports, and shall thereupon direct said Clerk to make out and issue an order for the sale of the same, which said order shall be in form as nearly as may be of that prescribed in the twenty-ninth section of an act,



entitled an act concerning the public revenue, approved February 26, 1839, by the General Assembly of this State : *Provided*, That in all such cases where a defence is interposed, the trial of any issue or issues therein shall be disposed of with as little delay as possible, consistently with the demands of public justice at said term. But should justice require that for any cause the suit as to one or more owners should be delayed for more than twenty days, judgment shall then be rendered as to the other owners and lands, and process shall issue for the sale thereof, the same as in all other cases."

SEC. 52. "The Common Council may direct all special warrants for the collection of any special assessments levied on any property for any improvement to issue and be delivered to the City Collector forthwith, who shall *notify* by advertisement all persons ininterested to pay the same immediately ; but in all cases where said assessments are not paid, on or before the day of the filing of the Collector's report for judgment in any Court of general jurisdiction, *ten per cent.* shall be *collected* as *additional costs*, and be added to and collected with the other assessments and expenses authorized to be collected on the property assessed ; and for this purpose the Collector shall add to his said report on a separate column, the amount of such additional cost : *Provided*, That from and after the expiration of thirty day's notice to be published in the corporation newspaper by the City Collector, that he has received such special warrant for collection, he shall be authorized and he is hereby required to demand and collect for the use of said city at the rate of ten per cent per annum, on the amount of every assessment made upon any real estate within said city, computed from the day of the date of said warrant to the day of the payment thereof."

By an examination of these sections it will be seen —

1st. That the *Collector* has to make out and file a *report* of the lots and lands upon which the taxes and assessments are not paid ; he does *not* have to file a *copy* of the *assessment roll* or *copy* of *assessment warrant*



(i. e. warrant for the collection of the assessment), but simply a *report* of the lots, lands, &c.—in other words, a *list* of the *delinquent lots and lands*.

2d. A copy of the advertisement (notice) which he gives of his intended application for judgment, together with a *certificate* of the due publication of said advertisement (notice), by the printer or publisher of the newspaper in which the same was published.

[NOTE.—The words “*advertisement*” and “*notice*” in sections 40 and 41, it will be observed, are used in exactly the same sense and mean the same thing ]

SECTION 40 expressly provides that —

“The *advertisement* so published shall be deemed and taken to be *sufficient* and legal notice, both of the aforesaid intended *application* by the Collector to said Court for judgment, and *refusal* and a *demand* to pay the said taxes and assessments.

Upon these being filed with the clerk, the court acquires jurisdiction over them in just the same way as the court does over delinquent lots and lands, under the general revenue law of the State.

See Blackwell on Tax Titles, page 235.

*Atkins v. Hinman*, 2 Gill. 437.

*Chestnut v. Marsh*, 12 Ill. 173

*Spellman v. Curtinius*, 12 Ill. 409.

*Pitkin v. Yau*, 13 Ill. 251.

*Manly v. Gibson*, 14 Ill. 136.

15 Ill. 279.

The delinquent lots and lands which have been taxed and assessed are now in court; and that, too, legally, per force of the statute. What now is the duty of the Court?



SEC. 43 of the amended Charter points it out—"It *shall be the duty* of the Court, upon calling the docket of said term, if any *defence* be offered by any of the owners of said property, or any person having a claim or interest therein, to hear and determine the same, in a *summary way*, without pleadings; and if *no* defense be made the said Court *shall pronounce judgment* against the said several lots, lands, pieces or parcels of land, as described in said collector's report," &c.

The first question that presents itself in investigating this section is, *What defence* can be offered by a person representing the property—can any defence be offered which would entitle a party to a jury? This provision of the Charter of the City of Chicago is *literally identical* with SEC. 28 of the present Revenue Law of the State; and in order to determine what defences can be offered under this law, it is proper that we ascertain what defences have been permitted under the General Revenue section.

Now, such a thing as a jury trial upon any matter of defence which has ever been offered under this section is, I think, unheard of and unparalleled in this State. The language employed is, that the "Court shall hear and determine *every defence* in a *summary way*." To try any question by a *jury* would not be a summary way; therefore I submit that no jury trial can ever take place under this section. Under a similar statute the same has been held in Kentucky, Missouri, Tennessee, and various other States of the Union.

See Blackwell on Tax Titles, page 40.

Now, what defences can be offered? Can a party, in a case of a special assessment, levied for a public improvement—such as paving or grading a street—offer a defence that the *proceedings* of the Common Council were irregular? that the Commissioners of Estimate and Assessment failed in complying with the various provisions of the statute relating to their duties? Is *this* the time and place to review the acts of the Com-



mon Council? Does not the statute provide a *time and occasion* to inquire into all these things? Where were these parties when the Common Council passed the *order ordering* the improvement? Are not the proceedings of a Common Council public, and must not all parties take notice of the proceedings of a Common Council in cities?

Where were the parties who are now resisting the collection of the assessment, when the commissioners appointed by the Common Council gave them six days notice of their *meeting*, to all persons, before proceeding to enter upon their duties? Where were these parties during the "*forty days*" that the commissioners were at work making up their assessment—every moment of which time they had a right to present their grievances? Where were these parties when the commissioners made their return to the Clerk of the Common Council and while he published his notice of the return by the commissioners for six days? Where were these parties when the Common Council sat to hear any and all objections pertaining to the assessment, before they confirmed it? Does not the statute provide that any person interested may appeal to the Common Council to correct said assessment? Was this man dumb that he could not speak? was he blind that he could not see? was he deaf and could not hear? was he a fool and could not understand? or is he a knave and don't mean to pay?—which? which?

Read chap. 7 of the Charter of the City of Chicago (pp. 39, 40, 41) if the assessment pertained to a "public improvement,"—or chap. 6 (pp. 32, 33, 34, 35 &c.) if the assessment pertained to the opening of a street—and see if no opportunities are offered for the protection of property. No person can pretend that he did not have notice, because notice was given to "all persons" as prescribed by law; and this Court have held, in the case of *Macey v. City of Ottawa*, that *such notice* is *legal* and *sufficient*. Now, the party has had his day in court; he was notified, but did n't come.



SEC. 7, chap. 7 of the Charter of the City of Chicago (page 40 of Municipal Laws) provides that—

"Any person may appeal to the Common Council for the *correction* of the assessment. Appeals shall be in writing, and filed in the Clerk's Office, within ten days after the first publication of said notice. The Council may adjourn such hearing, from day to day, and shall have power in case of appeal or otherwise, in their discretion, to revise and correct the assessment, and confirm or annul the same, and direct a new assessment to be made, in the manner hereinbefore directed, by the same commissioners or by three others, which *shall be final and conclusive on all parties interested, if confirmed*. When confirmed, the assessment shall be collected as in other cases, and no appeal or writ of error shall lie, in any case, from such order and determination."

Is this law constitutional or unconstitutional? If it be constitutional, then it must be obeyed. Public policy demands that these proceedings should end somewhere; and the Legislature and the Courts have said—Thus far, and no farther.

Now, I submit that—

1. No person can inquire into the regularity of the proceedings of the Common Council in regard to an assessment, after it has been confirmed, except by direct proceeding—by *certiorari*.

This I have shown on other occasions, in several arguments before this Court, and shall not now touch upon that subject.

2. I contend that no person has a right, under the Charter of the City of Chicago, to make any other defence upon an application for judgment against delinquent lots and lands, for special assessments and taxes, than such as pertains to the insufficiency of the "notice" or "advertisement" of the Collector, of his intended application for judgment; the

Conclusive in this case of property so far as a tax  
 assessment is concerned—no further



insufficiency of his report; and matters apparent upon the face of the same, and which pertain to the description of land or otherwise;

3. Proof that the property was not subject to assessment;

4. That the assessment had been paid;

or defences of this *class*; and that the *proceedings* relative to the levying of the assessment cannot be inquired into at all—at said time—the party being absolutely estopped per force of the statute. These, I hold, are *jurisdictional facts*—and these alone are to prevail.

Another suggestion in relation to this matter. Suppose that no defence whatever is interposed: the statute book makes it the *duty* absolutely of the Court to “pronounce judgment against the said several lots, lands, pieces or parcels of land, &c., as described in said Collector’s report.” Mark the language: “If no defence be made, the said Court *shall pronounce judgment*,” &c. &c. Now, here his duty is made imperative. And yet parties sue out writs of error to reverse the judgment so pronounced in *accordance with law*—to reverse the decision of a judgment, alleging that it is *against law*!

Was there ever such an anomalous and unheard of proceeding. A writ of error sued out of the Supreme Court to correct the Statute Book!! Unless a writ of error is possessed of legislative qualities greater than the legislature itself. I do not think it can reverse a statute.

“If no defence be made the said Court *shall* pronounce judgment,” &c. There can be no ambiguity in such language as this—and unless this portion of the section is unconstitutional it seems clear that no writ of error ought to lie, from a judgment thus pronounced.

SEC. 8, of article 9, provides—

“That the Collector shall return the list, &c. with a certificate signed by him, that the taxes remain unpaid, and that he could find no goods and chattels whereon to levy and collect the amount of the tax.”



The return conforms to this provision. We have held such a return *conclusive* of the fact stated, the officers being responsible for a false return if it be one.

*Taylor v. the People*, 2 Gill. 351, 119, 446.

*Job v. Tebbetts*, 5 Gill. 382.

*The City of Ottawa v. Macey*, 20 Ill. 482.

*Olcott v. the State*, 5 Gill. 490-1.

*Spellman v. Curtenius*, 12 Ill. 409.

*Chestnut v. Marsh*, 12 Ill. 175.

*Blackwell on Tax Titles*, 235.

The assessors are personally liable for a faithful and honest discharge of duty.

*Tompkins v. Sands*, 8 Wend. 462.

*Weaver v. Devendorf*, 3 Denio, 117.

*Loomis v. Spencer*, 1 Ohio, 153.