

No. 12983

Supreme Court of Illinois

City of Chicago

vs.

Rosenfeld et al

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. ~~247~~.

246 & 247
~~247~~

Prepared

1860

*Book of Minutes
1860*

Received of

7982

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

CITY OF CHICAGO, }
 vs. }
ROSENFELD & ROSENBERG, }
CITY OF CHICAGO, }
 vs. }
L. D. HURD. }

STATEMENT OF CASE.

Page of Rec.

1 This was a special proceeding on the part of the city of Chi-
4 cago, to collect an assessment which had been levied for filling,
 walling and paving Dearborn street, from the south line of Ran-
 dolph street, to the north line of Madison street. The record
 shows that the city collector made a report to the Superior Court
 of the city of Chicago, at a special term of the Court, begun
 and holden on the 26th day of January, 1860.

2, 3, 4, 5, 6, 7 The report is in the usual form, and contains a notice with
 certificate of publications which was published by said collector,
 notifying all persons who should not pay their taxes and assess-
 ments, that he should apply on the said 26th day of January, for
 a judgement against their lands.

10 Judgment of Court.

11 The bill of exceptions shows that when the case came on to be
 heard, Rosenfeld and Rosenberg, in behalf of themselves,
 interposed the following objections.

 1st. The application is based upon a supposed assessment
 shown in the following sheets attached, which is a true copy, and
 in which there was no reference of the subject of improving this
 street to a committee to prepare and report a plan for 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 Com-
 mon Council, or adopted by it.

 2. The order of the Common Council of the 23d of May, 1859,
 directing the sum of \$18,094.68 to be assessed on the real estate
 of the city of Chicago, deemed benefitted by the improvement,
 &c., in accordance with estimates and specifications herewith
 submitted, was made by the Common Council without any esti-
 mate and specifications being made or submitted, adopted or
 agreed upon for said improvement. The whole work on said

Page of Rec. street was done by De Golyer before said order was made for an assessment, part under private contract and part without any agreement with the city or city authorities. And the party therefore claims that they are void.

3d. 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 cost shall have been collected, according to Sec. 5 of Amended Charter, page 4, and sec. 15 and 16 of City Ordinance, Municipal Code, page 162.

4. *Defendants state that they are prior mortgagees of the premises hereinafter mentioned for the purchase money; and the paving, &c., done opposite the lot, 76 feet of lot 5, block 58, was set down to D. and H. Knight, done under a contract, therefore, between Henry Knight, the mortgagor, and said De Golyer, and not otherwise.*

That the work was all done before the order of 23 May, 1859, and without any contract or liability therefor on the part of the city.

5th. Respondents object, because costs of superintending and engineering, &c., are included in the assessment.

6th. The Court had no power or authority to call or hold a special term for any purpose whatever.

7th. The commissioners by whom said assessment was made were not freeholders.

On the case being called, the city of Chicago—the plaintiff—produced the following stipulation: “I, Henry Knight, of the city of Chicago, do hereby authorize and empower the city of Chicago, to enter a judgment against the following piece or parcel of land *owned by, and described* as follows: 76 feet of ground fronting on Dearborn street, commencing 23 feet and eight inches south of Calhoun place, (formerly known as the alley,) in block 58, original town of Chicago, for the full amount of the assessment and costs, which assessment has been levied upon said above described property, owned by me, for walling, filling, and paving with block stone, Dearborn street, in the city of Chicago, from Randolph street to Madison street, and upon which said above described property the said city of Chicago has given notice that it will apply for judgment to pay said assessment, on the 26th of January, 1860, in the Superior Court of the city of Chicago; *meaning and intending hereby to confer a judgment* upon said assessment, and upon said property, for the full amount of the assessment so levied upon said property, and the costs incident to said assessment,

Page of Rec. "whatever said costs may be, in favor of said city of Chicago.
18, 19 Signed, HENRY KNIGHTS."

And then asked for judgment against said lots, in accordance with the terms and provisions of said stipulation. But the Court refused to enter a judgment against said lots; to which ruling of the Court the said plaintiff then and there excepted.

20 The defendant then offered in evidence a certain deed of mortgage made by Henry Knights and wife, on the 15th day of July, 1859, acknowledged on the 25th of July, 1859, and recorded on the 26th day of July, 1859, which mortgaged the undivided half of the premises in question, described in the stipulation of Knights, and which was made to secure the sum of \$17,000 and interest, and is still in full force. The objectors also offered in evidence an agreement between the objectors and said Knights, that he would employ counsel and defend, and in case of his failure to do so, they should be at liberty to defend against said assessment at the expense of Knights.

This evidence was objected to; but the objection was overruled, and plaintiff excepted.

20, 21 *Stephen De Golyer* was then called as a witness, who testified that that the work was done before the assessment had been levied, and was done by a contract with the owners of property fronting on the street, and Stuart and McMahon. He was then asked if he had the contract, and he said he had a contract made by various parties, with Stuart and McMahon. He was then asked to produce it, to which the plaintiffs objected; but the objection was overruled, and exception taken by plaintiff.

22, 23 The contract was then produced, and appeared to be a proposition to do the work; made Stuart and McMahon on the one part and acceptance on the part of certain parties, and authorized by N. S. Bouton, Superintendent of Public Works.

On cross examination, the witness stated that the stipulation mentioned was signed by Henry Knights and that he authorized the entering of a judgment for the amount of the assessment.

The Court rendered a judgment against the undivided half of the lots in question, to the rendering of which judgment the plaintiff then and there objected. The above were all of the proceedings in this case so far as Rosenfeld and Rosenberg were concerned. After this judgment had been rendered, and on the next day, one Luther D. Hurd filed a motion to set aside the judgment rendered against the premises in question; which motion was based upon the affidavit of one Daniel C. Ferguson, who testified that he was the agent of Luther D. Hurd, in the management of his property; that said Hurd held a mortgage

Page of Rec. on the undivided half of lot 5, block 58; that he fully intended 17, 18 to make, or have made, a defence against the application for judgment in the case; that said premises had been mortgaged by Henry Knights to secure the sum of \$4,000; and that there was a prior mortgage on the property. Affiant further stated that he applied to Knights to defend against the assessment; that said Knights promised him, Ferguson, that he would employ counsel and resist application for judgment. The deponent further stated that he understood and believed that the interest of said Hurd was included in the objections of Rosenfeld and Rosenberg, and did not know the contrary until the 2d inst., when he learned, greatly to his surprise, that no defence had been made; that said Knights had deceived him, &c. Said deponent further stated that he believed that Hurd had a good defence, &c.

Upon this affidavit being filed, the Court set aside the judgment which had been rendered on the undivided one-half of the lot in question, and permitted Hurd to file objections. The objections set out that Hurd is the mortgagee of an undivided half of the premises hereinafter mentioned, and the paving, &c., done opposite the 40 feet S. and adjoining N. 23 2-3 ft., and the 36 ft. N. adjoining S. 63 ft. in lot 5, block 58, was done under a contract between H. Knights, the mortgagor, and said De Golyer and others, and not otherwise. The other objections are identical with those filed by Rosenfeld and Rosenberg; and on the case being called for trial, the same testimony precisely was introduced in the case as was introduced in the case of Rosenfeld and Rosenberg, with the additional testimony of a trust deed made by Henry Knights and wife, to L. D. Hurd, dated 24th day of June, 1859, acknowledged on the same, and duly recorded on June 30th, and is upon the undivided half of the premises described on the stipulation of Knights with the City of Chicago.

It is stipulated between the parties, that the bill of exceptions in the case of Hurd may be inserted in, and become a part of the record in the case of Rosenfeld and Rosenberg, and the two cases be taken up together and argued as one case, and the Court may decide in the one case whatever shall be just and right severally as to each.

The plaintiff assigns the following errors:

1st. The Court erred in both of the above cases, in permitting the defendants, who were mortgagees, and had no other interest in the property in question or on the assessment, to come in and defend in the cases.

2d. The Court erred in not rendering judgment in favor of the City, in accordance with the terms and provisions of the agreement made and entered into between Henry Knights and the City of Chicago; said Henry Knights being the owner of the property.

3d. The Court erred in rendering a judgment for the defendants Rosenfeld and Rosenberg, and against the City of Chicago.

4th. The Court erred in setting aside the judgment which it rendered against the undivided half of the premises in question, at the instance of Hurd.

5th. The Court erred in permitting Hurd to come in and defend in the case, he being merely a mortgagee.

6th. The Court erred in permitting the defendants in both of the above cases to introduce, in evidence, the mortgages made by Feary Knigh's and wife to them.

7th. General error assigned.

E. ANTHONY,
Att'y for Plaintiff in Error.

¹¹⁴ 246 + ¹¹⁵ 247

36
City of Chicago

v

Rosenfeld

City of Chicago

v

Heuer

Almaer

Filed Apr 28, 1840

Admission
Clary

IN THE SUPREME COURT,

Third Grand Division.

APRIL TERM, A. D. 1860.

No 247

THE CITY OF CHICAGO,

Plaintiff in Error,

v s.

ROSENFELD & ROSENBERG,

Defendants in Error.

POINTS OF PLAINTIFF IN ERROR.

I.

It is admitted, in this case, that Henry Knights was the owner in fee of the property in question upon which the assessment was levied. The City was the plaintiff in the case and Knights defendant. Knights gave the City a stipulation, that it might take judgment for the amount of the assessment. Rosenfeld & Rosenberg being mortgagees of the undivided half of the premises, claimed the right to come in and defend. This was objected to, but the Court overruled the objection, and let them in.

The question, in *this* case is, whether under section 43 of the amended charter of the City of Chicago, the mortgagees had any

such right. I claim that, under the circumstances, they had not. Because, 1st. Knights was the owner of the property, and had a right to make such a bargain in regard to his land as he pleased ; and that the defendants were not in such a position as they could interfere. A mortgage is nothing but a security for debt ; it conveys no title to the property, and the interest of the mortgagee is a mere chattel interest.

27 Barb. 505.

3 Denio, 232.

3 Barb. 305.

2 Barb. ch. 135.

It does not appear, by the evidence, that the security of the mortgagees would be lessened, in the least, by the judgment ; and, in accordance with the above views, the Court erred in refusing to render a judgment upon the whole premises of Knights' in accordance with the stipulation.

II.

CITY OF CHICAGO, }

vs.

L. D. HURD. }

No 246.

L. D. Hurd was a mortgagee, also, of an undivided half of the premises in question, at the time when the case of Rosenfeld & Rosenberg was called for trial and was tried. Hurd had not entered his appearance in the case at all. But after a judgment had been entered up against the undivided half, then one D. C. Ferguson comes in and files an affidavit showing *his* utter neglect to appear and defend the matter, and throwing the blame on Knights, asks of the Court to set aside the judgment and let him come and defend.

The Court did this ; and his case was tried and a judgment rendered for defendants

Under the forty-third section of the amended charter, which provides that, when the case is called, "if no defence be made, the said Court *shall* pronounce judgment against the said several lots and lands," &c. I contend that the Court erred ; and whether the assessment was void or not, made no difference, the Court had *jurisdiction* of the cause, and having jurisdiction legally entered up a judgment ; and the reasons assigned, for setting that judgment aside, were wholly inadequate, and the Court erred in so doing. Therefore, the judgment in this case ought to be reversed.

E. ANTHONY,

Attorney for Plaintiff in Error.

246 & 247-114-115
City of Chicago
Rosenfeld & Rosenberg

City of Chicago
246 ~
Hurd

Pliff's points

Filed May 4, 1860
L. Leland
Clerk

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

CITY OF CHICAGO, }
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CITY OF CHICAGO, }
 vs. }
L. D. HURD. }

STATEMENT OF CASE.

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THIS was a special proceeding on the part of the city of Chicago, to collect an assessment which had been levied for filling, walling and paving Dearborn street, from the south line of Randolph street, to the north line of Madison street. The record
1 shows that the city collector made a report to the Superior Court
4 of the city of Chicago, at a special term of the Court, begun and holden on the 26th day of January, 1860.

2,3,4,5,6,7 The report is in the usual form, and contains a notice with certificate of publications which was published by said collector, notifying all persons who should not pay their taxes and assessments, that he should apply on the said 26th day of January, for a judgement against their lands.

10 Judgment of Court.

11 The bill of exceptions shows that when the case came on to be heard, Rosenfeld and Rosenberg, in behalf of themselves, interposed the following objections.

1st. The application is based upon a supposed assessment shown in the following sheets attached, which is a true copy, and in which there was no reference of the subject of improving this street to a committee to prepare and report a plan for 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.

2. The order of the Common Council of the 23d of May, 1859, directing the sum of \$18,094.68 to be assessed on the real estate of the city of Chicago, deemed benefitted by the improvement, &c., in accordance with estimates and specifications herewith submitted, was made by the Common Council without any estimate and specifications being made or submitted, adopted or agreed upon for said improvement. The whole work on said

Page of Rec. street was done by De Golyer before said order was made for an assessment, part under private contract and part without any agreement with the city or city authorities. And the party therefore claims that they are void.

3d. 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 cost shall have been collected, according to Sec. 5 of Amended Charter, page 4, and sec. 15 and 16 of City Ordinance, Municipal Code, page 162.

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That the work was all done before the order of 23 May, 1859, and without any contract or liability therefor on the part of the city.

5th. Respondents object, because costs of superintending and engineering, &c., are included in the assessment.

6th. The Court had no power or authority to call or hold a special term for any purpose whatever.

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On the case being called, the city of Chicago—the plaintiff—produced the following stipulation: “I, Henry Knight, of the
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 “parcel of land *owned by, and described* as follows: 76 feet of
 “ground fronting on Dearborn street, commencing 23 feet and
 “eight inches south of Calhoun place, (formerly known as the
 “alley,) in block 58, original town of Chicago, for the full
 “amount of the assessment and costs, which assessment has been
 “levied upon said above described property, owned by me, for
 “walling, filling, and paving with block stone, Dearborn street,
 “in the city of Chicago, from Randolph street to Madison street,
 “and upon which said above described property the said city
 “of Chicago has given notice that it will apply for judgment
 “to pay said assessment, on the 26th of January, 1860, in the
 “Superior Court of the city of Chicago; *meaning and intending*
 “*hereby to confer a judgment* upon said assessment, and upon
 “said property, for the full amount of the assessment so levied
 “upon said property, and the costs incident to said assessment,

Page of Rec. "whatever said costs may be, in favor of said city of Chicago.
18, 19 Signed, HENRY KNIGHTS."

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20 The defendant then offered in evidence a certain deed of mortgage made by Henry Knights and wife, on the 15th day of July, 1859, acknowledged on the 25th of July, 1859, and recorded on the 26th day of July, 1859, which mortgaged the undivided half of the premises in question, described in the stipulation of Knights, and which was made to secure the sum of \$17,000 and interest, and is still in full force. The objectors also offered in evidence an agreement between the objectors and said Knights, that he would employ counsel and defend, and in case of his failure to do so, they should be at liberty to defend against said assessment at the expense of Knights.

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The plaintiff assigns the following errors:

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2d. The Court erred in not rendering judgment in favor of the City, in accordance with the terms and provisions of the agreement made and entered into between Henry Knights and the City of Chicago; said Henry Knights being the owner of the property.

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7th. General error assigned.

E. ANTHONY,
Att'y for Plaintiff in Error.

114 - 115
246 & 247

City of Chicago

vs

Rosenfeld et al

City of Chicago

vs

Hunt

Abstract

Filed Apr 28, 1860

Leland

clerk

United States of America)
State of Illinois, Cook County } P.

Pleas before the Honorable the Judges of the Superior Court
of Chicago within and for the County of Cook and State
of Illinois at a special term of said Superior Court of
Chicago begun and holden at the Court House in the
City of Chicago in said County and State on the fourth
Thursday being the Twenty sixth day of January in the
year of our Lord one thousand eight hundred and sixty
and of the Independence of the United States of America
the eighty fourth, due notice of the time and place of
holding said special term of said Court having been
printed and published in the Daily Press and Tribune the
Corporation Newspapers of the City of Chicago for twenty
days previous to the holding of said term of Court in
accordance with the Statute in such case made and provided
and in pursuance of an Order made by the Judges of
said Court on the fourth day of January A.D. 1860,

Present The Honorable John M. Wilson, Chief Justice of the
Superior Court of Chicago.

New H. Higgins Esq. Advocate Judges

Charles Hawes Prosecuting Attorney

John Gray Sheriff of Cook County

Attest Walter Kimball, Clerk.

Be it remembered that on this Twenty sixth day of January A.D. Eighteen hundred and fifty Charles F. L. Muller, City Collector of the City of Chicago reported and filed with the Clerk of this Court a list of Lands, Lots and parcels of Land and other Real Estate situated in the City of Chicago aforesaid, on which taxes remained due and unpaid for the year therein set forth, and attached to said Report was a Certificate of the Press and Tribune Company prepared by H. B. Hillston of the due publication of Notice as required by law of the making and delivering of the Warrant for the collection of said taxes to the said C. F. L. Muller City Collector as aforesaid, and also attached to said Report was a Certificate prepared as aforesaid of the publication in the Daily Edition of the Chicago Press and Tribune of the Notice of the intended application for a Judgment against said Lands and other Real Estate at this term of Court as required by the Law of this State, approved February fourteenth A.D. Eighteen hundred and fifty seven (a Copy of which said Report, Notice Certificate and Warrant is hereinafter set forth)

Ordered by the Court that all objections to judgment on the General Warrant for taxes, and on Special Warrants for assessment be made in writing and filed with the Clerk of this Court by Saturday morning next at Two o'clock.

Copy

3
Collectors Report heretofore referred to.

Of the January Special Term of the Superior
Court of Chicago in the year of our Lord one
thousand eight hundred and sixty
To the Honorable John N. Wilson, Ward St Higgins
and Grant Goodrich Judges of the Superior Court of Chicago

The Report of Adolph F. G. Miller City Collector of the
City of Chicago respectfully represents that the Special Warrants
mentioned in the Schedule herunto attached issued for the
collection of the Special Assessments and Taxes authorized by law
for the 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. 1859.

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

4
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 C. D. 1861, 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 publication of the said Corporation Newspaper in which the said Notice was published,

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

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

(Signed) A. F. M. Muller

City Collector."

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

I Adolphus F. M. Muller, City Collector of 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 that the annexed Schedule is a true and correct List of the delinquent Lots, Lands and parcels of Land upon which I have been unable to collect the taxes and assessments as required by law for the

year 1859 as herein set forth. that said taxes and assessments
remain due and unpaid and uncollected as above stated,
Subscribed and sworn to before
me this twenty sixth day of January } A. F. C. Mueller?
A. D. 1861 }

Walter Kimball

Clerk Superior Court, Chicago."

Copy .

Notice and Certificate.

"City of Chicago.

Collectors Office. August 10th 1859.

Notice is hereby given that the following Warrants are in
my hands for collection

"Warrant No 309 South For filling walking and
plowing Dearborn Street from the South line of Dearborn^{1st} Street
to the North line of Madison Street.

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

A. F. C. Mueller."

City Collector."

"We the undersigned publishers of the Chicago Press and
Tribune do hereby certify that a notice of which the annexed is a
true copy was published thirty consecutive days next after the 10th
day of August 1859 in the daily edition of the Chicago Press
and Tribune a Newspaper published in and of general circulation

throughout the County of Cook, State of Illinois.

Chicago, Illinois, January 25. 1860,

Press and Tribune Co

By G. D. Johnston."

Copy, Warrant.

"Special Warrant No 302 S.

"State of Illinois
City of Chicago } 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
first day of August 1859 confirm the assessment duly made and
filed in the Clerk's Office by the Commissioners appointed by the
said Common Council to assess the sum of eighteen thousand three
hundred and sixty ninety eight 64/100 dollars upon the Real Estate
in the South Division of said City deemed benefited by filling
walking and paving Dearborn Street from the South line of
Randolph Street to the North line of Madison Street in proportion
to the benefits resulting there to pursuant of an order for said
assessment made by the said Common Council on the 23^d day
of May 1859 after duly revising the same and also thereby assess
the said sum of money upon the Real Estate described in the rolls
of said assessment in the respective proportions thereof marked
"Assessment", set opposite to each lot, part of lot, and Real
Estate described in said rolls; which rolls is in the words and
figures following to wit,

Assessment Roll.

A description of the great Estate in the South Division of the City of Chicago decreed benefited by the filling walling and paving Dearborn Street from the South line of Randolph Street to the North line of Madison Street with the valuation thereof and the sums of money generally assessed thereon for benefits by the Commissioners, to wit,

Original Town of Chicago

Name of Owner	Part of lot or Lane	5 Lot	Lot	Block	Valuation	Assessment
A. B. Rice	S. 80 ft		4	34	\$5000	10 1/4 20 1/2
Isaac Cook	N 100 ft		"	"	\$5000	13 09 00 1/2
B. S. Morris	N 60 ft		5	"	\$3000	7 56 14 0
M. Davis	35 ft S & adj N 60 ft		"	"	18000	45 8 15 1/2
Philip Carlin	25 ft S & adj N 95 ft		"	"	12000	32 1/4 25
City of Chicago	24 ft S & adj N 120 ft		"	"	11000	31 11 16 1/2
Est. P. McBarth	S. 36 ft		"	"	18000	44 1/2 24 1/2
D. Mc Harris	1/4 of N 100 ft	1	38		45000	130 9 00 1/2
H. L. Dickey & Co	S. 80 ft		"	"	\$5000	10 1/4 20 1/2
J. Kuej	S 50 ft		8	"	\$3000	65 11 50 1/2
C. M. Fullerton	1/2 ft N & adj S 50 ft		"	"	\$2000	9 42 45 1/2
J. F. Dickey	38 1/2 ft N & adj S 120 ft		"	"	18000	56 6 0 1/2
Geo. Mariano	N 19 1/2 ft		"	"	9000	25 3 0 1/2
M. Corrigan	S 20 ft	1	34		10000	26 1 80 1/2
Gowen & Bonner	20 ft N & adj S 20 ft		"	"	10000	26 1 80 1/2
B. H. Sherman	20 ft N & adj S 140 ft		"	"	10000	26 1 80 1/2
Byron Bentley	20 ft N & adj S 60 ft		"	"	10000	26 1 80 1/2
Arrie Kendall	1/2 100 ft adj N 60 ft		"	"	\$5000	130 9 00 1/2

Name of Owner	Part of Lot or Land	Lot	Block	Valuation	Assessment
S. B. Cobbs	71 1/2	8	57	36000	1063 94 1/2
W. W. Zimmerman & Co	5 1/2	"	"	40000	1063 94 1/2
E. C. Tinkham	71 90 1/2	4	58	50000	1178 10 1/2
C. Parker	5 40 1/2	"	"	18000	523 60
P. W. F. Peck	50 ft S 40 ft, 71 90 1/2	"	"	32000	652 50 1/2
George Mannin	5 24 1/2	5	"	12000	353 112 1/2
Est. of St. Roman	36 ft 71 40 ft, 5 24 1/2	"	"	18000	471 24 1/2
D. Knights	40 ft S 40 ft, 71 23 1/2 1/2	"	"	19000	523 60
W. Knights	36 ft 71 40 ft, 5 63 1/2	"	"	18000	471 24 1/2
John Jones	71 23 1/2 1/2	"	"	11000	314 14 1/2
				\$18398	64

Now therefore you are hereby commanded to levy make and collect of the groves and abutments of the respective owners of the real estate above described, the several sums of money assessed therein for which each may be liable as aforesaid, and hereof make due return in what manner you shall see unto this writ within thirty days from the date hereof.

Witness John F. Hannes, Mayor of the City of Chicago
 and the Corporate Seal Hereof this fourth day of
 August 1889.

John C. Hannes Mayor

Attest W. K. Zimmerman, City Clerk

Samuel D. Ward, Comptroller

Collectors Return

State of Illinois } City Collectors Office
 City of Chicago }

1889

9
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 persons whose assessments not marked "Paid" in every case of the persons mentioned in said Warrant as liable for the payment thereof, and that he has not been able to find any personal property belonging to any of them subject to the payment thereof.

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

And afterwards to wit on the first day of February (being one of the days of the January Special Term of said Court) A. D. eighteen hundred and sixty, the following proceedings were had in said Court and entered of record in said Court, to wit:
"City of Chicago" Sui for Assessment on Warrant No 302
(vs) S. August 4th 1859. For filling, walling
B. S. Morris Etal } and paving Dearborn Street from the south
line of Randolph Street to the North line
of Madison Street.

Original Town of Chicago

Name	Description	Lot	Sub	Block	Valuation on rolls	Assessment on rolls	Assessment on rolls	Assessment on rolls	Assessment on rolls	Assessment on rolls	Assessment on rolls
W. Wright	40 ft x 125 ft 2 1/2 ft			1900	\$23 1/2	\$2 3 1/2					
"	36 ft x 125 ft 6 1/2 ft			1800	\$7 2 1/2	\$7 12					

And on the first day of February A. D. 1860 came the said City of Chicago by

10
Geo. F. Brooker City Attorney and due notice having been given of the time and place of making the return application for judgment against the Lots pieces & parcels of Real Estate in said Warrant set forth and objections being filed by Rosenberg & Luther. D. Shurt to rendition of judgment against 110 ft. S and adjoining N 23 2/3 feet of lot 5 Block 58 Also Town of Chicago & 36 ft. N 7, adjoining South 63 feet part and counsel being heard on said objections and due deliberation thereupon had & the premises being fully understood, it appears to the Court that said objections are sufficient to void the said objections are therefore hereby sustained and judgment against said Lots refused at costs of said City and no owner now appearing to make defense and show cause why judgment should not be rendered against the remaining Lots pieces and parcels of Land and on motion of said attorney.

It is therefore considered by the Court that judgment be and is hereby entered against the remaining Lots pieces and parcels of Land described in the aforesaid Warrant (excepting the Lots heretofore described to which objections are sustained and judgment refused) in favor of the City of Chicago for the sum assessed to each Lot piece and parcels of Land being the amount of assessments and also costs of suit generally thereon and that 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 remaining Lots pieces and parcels of Land therein set forth as and for her additional costs.

And it is further ordered by the Court that said several remaining Lots pieces and parcels of Land or so much thereof as shall be deemed sufficient of each of them to satisfy the amount of assessment and costs assessed to them generally be sold as the law directs.

11
And afterwards to wit on the day of
A. D. Eighteen hundred and sixty came the said Plaintiffs
and filed in the Office of the Clerk of said Court, its certain
Bill of Exceptions in words and figures following, to wit,

"City of Chicago
— us —
Rosenfeld & Rosenberg } Suit for Assessment on Warrant
No 302 Tenth.

Be it remembered that this cause came on to be heard
before Judges John M. Nelson, Grant L. Herrick, Van St. Higgins
Judges of the Superior Court of Chicago, and the Defendants filed
the following objections to said assessment and against the rendition
of a judgment against the lots described in said objections.

"State of Illinois
Cook County. } Of the January Term of the Superior
Court of Chicago.

Rosenfeld & Rosenberg
— vs —
The City of Chicago } Suit for Special Assessment
Warrant No 302 S.

The Defendants by Seabo, McAlister & Hewitt, their
Attorneys came and defended the cause of action and object to the
rendition of a judgment or an order of Sale of the premises for
the following reasons, viz:

First

The application is based upon a supposed assessment
shown in the following sheets attached, which is a true Copy
and in which there was no reference of the subject of improving
this Street to a Committee to prepare and report a Plan for
the filing, carrying 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 23rd day of May 1859 directing that the sum of Eighteen thousand, three hundred and thirty eight $\frac{64}{100}$ dollars be assessed on the Real Estate of the City of Chicago deemed benefited by the filling, curbing and paving of South Dearborn Street from Randolph Street to Madison Street in accordance with estimates and specifications herewith submitted was made by the Common Council without any estimate and specifications being made or submitted, adopted or agreed upon 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 De Golin for paving said Street, under a private contract with some of the property holders on said Street. And this Warrant is now being prosecuted for that purpose,

The whole of the work on said Street was done by said De Golin before said Order was made for an assessment. Part under private contracts as aforesaid, and part without any agreement with the City or City authorities, or owners of Lots on said Street, And so defendants say that the orders of Common Council, and said Commissioners, and also 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 take into contracts to make such improvements before 50 per cent of the

13 amount of their cost shall have been collected according to Sect 5 of amended Charter § 41. and Sects 15 and 16 of City Ordinances Munici Code § 162.

Fourth. Defendants state that they are prior Mortgagees of the premises hereafter mentioned for the purchase money, and the having & done opposite the lot 46 feet of lot 5 B 58 was set down to O. P. H. Knight, done under a contract therefor between Henry Knight the Mortgagor and paid De Holyer not otherwise.

That the work was all done before the order of 23 May 1859 and without any contract or liability therefor on the part of the City.

Seals, M^o Alister & Jewett
Atty's for Defendants."

Fifth. Respondents further objecting show that the sum of further included in said Assessment for expense of Superintending and Engineering is part, as well as assessing and collecting whereas the City Superintendent and Engineers are paid regular assessed salaries for their services out of the City revenue and the performance of their duties in relation to making improvements, which are paid for by Special Assessments, does not in any manner affect the expense of the City with regard to such officers.

Sixth. That the Court has no power or Jurisdiction to call or hold a Special term for any purpose whatever.

Seventh. That the Commissioners by whom said Assessment was made were not freeholders.

Seals, M^o Alister & Jewett. Atty's for Defs."

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hundred and ninety eight $\frac{64}{100}$ dollars be assessed on the Real Estate of the City of Chicago, deemed benefited by the filling and curbing and paving of North Dearborn Street from Randolph Street to Madison Street in accordance with estimates and specifications herewith submitted, was made by the Common Council without any estimate and specifications being made or permitted adopted or agreed upon 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 De Glier and others for paving said Street under a private contract with some of the property holders in said Street, and this Warrant is now being prosecuted for that purpose.

The whole of the work on said Street was done by said De Glier and others before said order was made for an assessment - part under private contracts as aforesaid, and part without any agreement with the City or City authorities or owners of Lots in said Street and so Defendants say that the orders of Common Council and said Commissioners and also others acting under said Warrant, was, and is wholly void.

Fourth

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 \$5 per cent of the amount of their cost shall have been collected according to Sec 5 of amended Charter § 11, Secs 15 & 16 of City Ordinances Mun: Code page 162.

Fifth.

Respondent further objects, plans that the sum of have been included in said assessments upon expense of the

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superintending and repairing in part, as well as opening and
collecting, whereas the City Superintendents and Inspectors are paid
regular annual Salaries for their services out of the City Treasury
and the performance of their duties in relation to making improve-
ments which are paid for by Special Assessments, do not increase
or in any manner affect the expense of the City with regard to
such officers.

Sixth

That the Court has no power or jurisdiction to call or
hold a Special Term for any purpose whatever.

Seventh

That the Commissioners by whom said Assessment was
made are not freeholders.

Declar., No Objection & Answer

Atty for Deft."

"State of Illinois } Of the January Special Term of the Superior
Cook County ... } Court of Chicago A. D. 1860.

Father D. Thura }
— acts — } Suit for Special Assessment in S. Dearborn
The City of Chicago } between Randolph & Madison.

Daniel C. Ferguson being first duly sworn deposes and
says that he is agent for said Thura in the management of
his interest in relation to the property hereinafter mentioned said
Thura holds a Mortgage on the undivided half of that part
of lot 5 Block 58. in the original Town of Chicago, bounded
as follows beginning at a point on the West line of said lot
5 - 99 $\frac{1}{2}$ feet South of the North West corner of said lot -
thence North along the West line of said lot 46 feet thence
East 80 feet to the East line of said lot - thence South 46 feet

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Thence West 80 feet to the beginning. Which said Mortgage is to secure the payment of four thousand dollars - and is subject to a prior Mortgage for the sum of \$8000. Affiant believes said undivided Lot is a bare security for said sum.

Affiant states that he fully intended to make or have made a defence against the application in this case for a judgment on this Agreement - and for that purpose applied to Henry Knight the Mortgagor to cause the same to be done, and the interests of said Thura protected, and said Knight a week or more since promised affiant as such Agent that he would employ counsel and resist such application - Since this Court has been in session said Knight assured affiant that he had employed counsel to defend against the same.

Affiant states that before the objections filed by Rosenthal & Rosenberg were tried affiant went after said Knight - to be present in Court, and attend to the same - and said Knight did come into Court and was present when the said objections were heard - Affiant understood from said Knight & believed that the interest of said Thura was included in the said objections & did not know to the contrary until the 2nd inst: - when he learned greatly to his surprise that no objections had been filed and no defence made - but that said Knight had desired affiant & confessed a judgment on said Agreement - Affiant states that the Mortgagor said Thura is a nonresident of this State, and knows nothing personally of this application - and that affiant would have interposed a defence had he not been deceived by the assurances and conduct of said Knight.

Affiant states that he believes the said Thura has a

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good and meritorious defense to the application and that the said
Sturo will file the same objections made by Roswell Rosenberg
and that the first objection made by the said Sturo herewith filed
is true in substance and in fact and further affiant says not
subscribed and sworn to
this 3rd February 1860 } Daniel B. Ferguson,
J. Kincaid. clk.

The said Plaintiff on the case being called here produced
the following stipulation

"I Henry Thights of the City of Chicago do hereby
authorize and empower the City of Chicago to enter a judgment
against the following piece or pieces of Land owned by me
described as follows - Twenty six feet of ground fronting on
Dearborn Street commencing Twenty three feet and eight inches
South of Madison Place (formerly known as the Alley) in Block 58
Original Town of Chicago for the full amount of the Assessment
Cots, which Assessment has been levied upon said above described
property owned by me, for walling, filling and paving with Block
Stone Dearborn Street in the City of Chicago, from Randolph
Street to Madison Street and upon which said above described
property the said City of Chicago has given Notice that it will
apply for judgment to pay said Assessment on the 26th of January
1860 in the Superior Court of the City of Chicago, meaning and
intending hereby to confess a judgment upon said assessment & upon
said property for the full amount of the Assessment so levied
upon said property and the Cots incident to said Assessment

whatever said Costs may be in favor of said City of Chicago
(Signed) H. Knight."

" I David L. DeGolyer hereby agree to and with said Henry Knight that I will pay all Costs to the City in entering up judgment upon said Assessment, and the said David L. DeGolyer further agrees to and with said Henry Knight that in consideration of the said Knight confessing a judgment upon the property owned by said Knight on Dearborn Street for paving walking and filling Dearborn Street - that he will not have an execution issue upon said judgment for the space of Nine Months from the date of confessing said judgment -

(Signed) D. L. DeGolyer."

" The City of Chicago hereby acquiesces and agrees to the above arrangement between the said Henry Knight and David L. DeGolyer - It being distinctly understood and agreed that the City of Chicago is to be in no case liable by reason of said arrangement, or by reason of any delay by said arrangement.
George T. Crocker Samuel D. Ward, Comptroller.
City Attorney."

And asked that a judgment be rendered against said Lots decreed by the Defendants in their objections according to the terms and provisions of said stipulation - but the Court refused to enter a judgment against said Lots.

To which ruling of the Court the said Plaintiff then and there assented.

The said Defendants then offer the following stipulation between City of Chicago and Henry Knight, Defendant, and Rosenfeld and

20 Rosenberg objections dated February 29th 1860 - to wit.

"City of Chicago" . . .

— (12) —

Henry Knight - defendant

Rosenfeld and Rosenberg

Objections . . .

Suit for Assessment

Warrent 303 South.

It is hereby stipulated by and between the parties hereto that the objectors Rosenfeld and Rosenberg, produced in evidence in the trial of this cause a certain Deed of Mortgage made by Henry Knight & wife, defendant, on the 15th day of July 1859, acknowledged on the 25th day of July 1859 and recorded on the 26th day of July 1859 in Cook County, which bears date as above and which is upon the undivided half of the premises sought to be subjected to this Assessment and which is described in the stipulation of said Henry Knight with the City of Chicago for the entering & execution of judgment and also in the objections, and which said Deed of Mortgage was made to secure the sum of \$14,000 & interest and is still in full force.

The objectors also read in evidence an agreement between said Knight and said Objectors that he would employ Counsel and defend and in case of his failure to do so, they should be at liberty to defend against said Assessment at the expense of said Knight. This stipulation was to be used in place of the original document.

E. Clusamy

Atty for City of Chicago

H. B. Seates, M^o C & Clerk

Atty for Objectors."

Chicago

Feb. 29, 1860"

To the introduction of which the said Plaintiff then & there objected, but the Court overruled said objection and said document was introduced and read in evidence.

The Defendants then introduced as a witness Stephen De Golyer who being duly sworn as a witness testified

That the work of the improvement on Dearborn Street, for which the Assessment had been levied, was done before the assessment was levied - That the same was done by an arrangement & contract he believed with the owners of property, who owned property fronting on the Street -

That the persons who did the work were Stuart & Mr Mahon - and that there was a written Contract to do that work - but that said Contract was not with him - He was then asked if he had the Contract - and he answered that he had a Contract in his possession made by various parties - Stuart & Mr Mahon with some of the property owners, but did not know whether that Contract was the one the Council desired or not -

The witness was then asked to produce the Contract he referred to:

To which the Plaintiff objected because he noticed whatever had been given the witness or Plaintiff to produce any such document; but the Court overruled said objection; and the Plaintiff then and there excepted.

The witness produced said document or Contract, which was and is in the words and figures following to wit:

"Chicago, 6th January 1858

"To the proprietors of property on Dearborn Street between

Randolph and Madison Streets.

Hereby,

We propose to furnish material and do the work viz.
grading and paving the above Street with block stone as is
laid on Cassale Street at the rate of Three dollars per superficial
yard - the work to be done to the satisfaction of the City
Superintendent, payments to be made at the rate of twenty five
per cent as the work progresses and the balance when
completed

Your Obedt. Servts

Stuart & The Nation."

"This Contract is assigned over to Delgolyer, Stuart & Co.,
Stuart & The Nation."

"We the undersigned accept the annexed proposal - each
for himself, without binding himself with us for the rest."

Edward A. Fitcham.

S. Young - Son's

G. Bonner

Katharine McPartey. Administrat

Daniel McElroy for my interest only - John Jones

J. H. Knight & Smith.

Michael Corrigan.

Philip Berlin.

George Manner, to the extent of his interest.

(Signed January 18th 1858)

Hugh F. Dickey accepted to be bound to the extent of his
interest only . . .

A. Cook for my interest only.

E. Adams & Co. " " "

A. B. Rice, to be bound by my interest only.

Masonic Temple Association, will pay to the extent of their

interest - Morris - Presto

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Geo. W. Morris, to the extent of his interest only.

A. M. Fullerton to the extent of his interest.

H. H. Zimmerman, to the extent of his interest only.

Solomon Wheeler to the extent of his interest.

E. S. Williams & C. S. Collins, Administrators of A. H. Collins Estate to the extent of the interest of said Estate only."

"Office Supt Pub. Works.

Chicago, January 23^d 1858.

The City of Chicago hereby authorizes the execution of the work as mentioned within provided the left of filling shall be not less than one foot, also the approaches shall be included in the agreement without recourse to the City for any payments whatever - also the work to be performed under the immediate Superintendence of the City Supt. and to his entire satisfaction and that the City Surveyor shall give all grades and lines necessary in the progress of the job.

A. J. Bouton

Supt of Pub. Works."

The witness on being cross Examined stated that the stipulation mentioned and which is signed by Henry Knight - was signed by Henry Knight, and that said Knight told him that the City of Illinois mentioned were his lots and that he was the owner of the same at the time when said assessment was levied, and that he was desirous of having him the witness, who had subsequently become the assignee of the contract from Stuart & Mc Mahon -

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and that was the reason Knights gave him the stipulation he was authorizing the City, the Plaintiff in this case, to enter up a judgment in the case.

This was all of the evidence introduced by either party in the case and both parties rested.

And after hearing counsel the Court refused the application for judgment asked for by the Plaintiff in this case, and rendered a judgment in favor of the Defendant upon the undivided one half of said Lot and against the Plaintiff.

To which judgment so rendered by the Court the Plaintiff then and there excepted,

And because now of the said exceptions so offered and made to the opinions and decisions of the said Court do appear upon the record of the said trial therefore the said Plaintiff prayed that said Judge would set his hand and seal to this Bill of Exceptions containing the several matters so offered or found and given in evidence as aforesaid according to the form of the Statute in that case made and provided and thereupon the said Judges hath accordingly set their hands this day of 1860.

Wm H. Higgins Judge.

Grant Goodrich Judge &c.

Seal
Seal
Seal

25

City of Chicago

(vs)

Henry Knight, defendant

Suit for Assessment

L. D. Shura, Objector

It is hereby stipulated by and between the parties hereto that all the proceedings mentioned and set forth in the Bill of Exceptions in the case of the City of Chicago vs Rosنفeld & Rosenberg, which has been taken to the Supreme Court at this town are correctly stated and set forth, and that all of the matters and things therein mentioned are true and that at the time when a judgment was rendered in that case no assurances whatever had been entered in this case and no objections whatever filed by the said Shura but that after all the proceedings had been had, which are stated and set forth in the record and Bill of Exceptions of the case of the City of Chicago vs Rosنفeld & Rosenberg that the said L. D. Shura came into Court and moved to set aside the Judgment which the Court had rendered against the undivided half of lot that part of Lot 5 Block 58 in the Original Town of Chicago bounded as follows beginning at a point on the West line of said Lot 5 99 6/12 feet South of the North west corner of said lot - Thence North along the West line of said Lot 76 feet - Thence East 80 feet to the East line of said Lot - Thence South 76 feet - Thence West 80 feet to the beginning - and to let the said Shura come in and defend the same, and that said Motion was based upon the Affidavit of D. C. Ferguson the Agent of said Shura (which said Affidavit is herewith set forth)

That said Court did set aside the Judgment

To which decision of the Court the Plaintiff then
and there excepted.

That then the said Shura filed the same identical objections,
which are filed in the case of Rosenfeld and Rosenberg

To which decision of the Court in permitting the
said Shura to file the said objections the said
Defendant then excepted,

That the said Shura then introduced the same testimony
precisely, which was introduced in the case of Rosenfeld and
Rosenberg with the addition of the following evidence contained in
the following stipulation

" City of Chicago . . . }

_____ (u) _____

Henry Knight .. defendant

L. D. Shura

Suit for Assessment

Warrent 302

It is hereby stipulated by and between the
parties hereto that the objector L. D. Shura produced in evidence
in the trial of this cause a certain Deed of Trust made by
Henry Knight & wife to L. D. Shura dated the 21st day of
June 1859 acknowledged on the same day and duly recorded in
the Records Office of Cook County, June 30th 1859 and which
is upon the undivided half of the premises described in the
stipulation of Henry Knight with the City of Chicago, for the
entering and confessing of judgment & also in the objections - and
which said Deed of Trust was made to secure the sum of One
Thousand dollars and is still in force

This stipulation may be used in place of the

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original document.

E. Anthony

Chicago
Feb 29, 1860

Atty for City of Chicago
Seals, Mr. Messier & Chamber
Atty for Third.

To the introduction of all of which evidence was the
decision of the Court in admitting said evidence to be
given the said Plaintiff then and there excepted.

That after hearing of said testimony that the Court then and
there refused to render a Judgment against said City & rendered
a Judgment against the said City.

To which decision of the Court in rendering said
judgment the said Plaintiff then and there excepted.

It is further stipulated that this Bill of Exceptions may be
inserted in and become a part of the record in the case of
Rosenfeld & Rosenberg and the two cases shall be taken up together
and argued as one case - and the Court may decide in the
one case whatever shall be just and right severally as to each.
All which is agreed and made part of the record in this case
and a part of said case against Rosenfeld & Rosenberg.

Wm. H. Higgins Judge

Grant Goodrich "Judge of the"

Seal

Seal

Seal

State of Illinois,
Cook County } ss.

I Walter Kimball, Clerk of the Superior Court of Chicago, within and for the County of Cook, in the State of Illinois. Do hereby certify the above and foregoing to be a true, true and perfect Transcript of the Collectors Report and Petition for Judgment - Notice & Certificate. Collectors Warrant & Return and Bids of Exceptions now on file in my Office; together with the orders and judgments entered of record in said Court in certain suits and proceedings had and taken therein; wherein the City of Chicago was plaintiff and Henry Knight - defendant, with Rosenfeld & Rosenberg and S. D. Hura, defendants, in relation to Special Assessment - Warrant - No 302 South,



In testimony whereof I have hereunto set my hand and affixed the Seal of said Superior Court at Chicago in said County the ~~10~~ Twelfth day of April A.D. Eighteen hundred and sixty.

Walter Kimball
ck

City of Chicago

Rosenfeld & Rosenberg

City of Chicago

L. D. Hund

Supreme Court. Third
Grand Division April
Term A.D. 1860

And now comes the said
plaintiffs in error in the above
entitled causes - and say, that in the
records aforesaid & in the proceedings
aforesaid manifest error hath intervened
and the said plaintiff assigns the
following errors.

First. The court erred in both of the above
cases in permitting the defendants
who were mortgagees and had no
other interest in the property in
question or in the assessment to
come in and defend in the cases

Second - The court erred in not rendering
judgment in favor of the city in
accordance with the terms and
provisions of the agreement made
and entered into between ^{Henry Hughes &} the City
of Chicago ~~and the~~ said Henry Hughes
being the owner of the property

Third - The court erred in rendering a
judgment for the defendants
Rosenfeld & Rosenberg & against the
City of Chicago.

Fourth. The court erred in setting aside the judgment which it rendered against the respondents solely of the premises in question at the instance of Hurd.

5 The court erred in permitting Hurd to come in and defend in the case - he being merely a mortgagee.

6 The court erred in permitting the ~~plaintiffs~~ ^{defendants} in both of the above cases to introduce in evidence the mortgage made by Knight & wife to them -

For these ~~errors~~ ^{errors} and for other errors appearing in the record and proceedings aforesaid the said plaintiffs in the cases aforesaid prays may be reversed, annulled & altogether held for nothing & that they ^{the said plaintiffs} may be restored to all things which it hath lost by occasion of the said judgments.

E. Anthony
Atty for Plaintiffs.
in Error.

State of Illinois
Cook County 247

Superior Court of Chicago

City of Chicago

(1st)

Rosenfeld & Rosenberg
Et al

Record.

Filed April 18, 1860
L. Leland
Clerk

\$10.00

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

CITY OF CHICAGO, }
 vs. }
ROSENFELD & ROSENBERG, }
CITY OF CHICAGO, }
 vs. }
L. D. HURD. }

STATEMENT OF CASE.

Page of Rec.

1 THIS was a special proceeding on the part of the city of Chi-
4 cago, to collect an assessment which had been levied for filling,
 walling and paving Dearborn street, from the south line of Ran-
 dolph street, to the north line of Madison street. The record
 shows that the city collector made a report to the Superior Court
 of the city of Chicago, at a special term of the Court, begun
 and holden on the 26th day of January, 1860.

2, 3, 4, 5, 6, 7 The report is in the usual form, and contains a notice with
 certificate of publications which was published by said collector,
 notifying all persons who should not pay their taxes and assess-
 ments, that he should apply on the said 26th day of January, for
 a judgement against their lands.

10 Judgment of Court.

11 The bill of exceptions shows that when the case came on to be
 heard, Rosenfeld and Rosenberg, in behalf of themselves,
 interposed the following objections.

1st. The application is based upon a supposed assessment
shown in the following sheets attached, which is a true copy, and
in which there was no reference of the subject of improving this
street to a committee to prepare and report a plan for 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 Com-
mon Council, or adopted by it.

2. The order of the Common Council of the 23d of May, 1859,
directing the sum of \$18,094.68 to be assessed on the real estate
of the city of Chicago, deemed benefitted by the improvement,
&c., in accordance with estimates and specifications herewith
submitted, was made by the Common Council without any esti-
mate and specifications being made or submitted, adopted or
agreed upon for said improvement. The whole work on said

Page of Rec. street was done by De Golyer before said order was made for an assessment, part under private contract and part without any agreement with the city or city authorities. And the party therefore claims that they are void.

3d. 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 cost shall have been collected, according to Sec. 5 of Amended Charter, page 4, and sec. 15 and 16 of City Ordinance, Municipal Code, page 162.

4. *Defendants state that they are prior mortgagees of the premises hereinafter mentioned for the purchase money; and the paving, &c., done opposite the lot, 76 feet of lot 5, block 58, was set down to D. and H. Knight, done under a contract, therefore, between Henry Knight, the mortgagor, and said De Golyer, and not otherwise.*

That the work was all done before the order of 23 May, 1859, and without any contract or liability therefor on the part of the city.

5th. Respondents object, because costs of superintending and engineering, &c., are included in the assessment.

6th. The Court had no power or authority to call or hold a special term for any purpose whatever.

7th. The commissioners by whom said assessment was made were not freeholders.

On the case being called, the city of Chicago—the plaintiff—produced the following stipulation: “I, Henry Knight, of the city of Chicago, do hereby authorize and empower the city of Chicago, to enter a judgment against the following piece or parcel of land *owned by, and described* as follows: 76 feet of ground fronting on Dearborn street, commencing 23 feet and eight inches south of Calhoun place, (formerly known as the alley,) in block 58, original town of Chicago, for the full amount of the assessment and costs, which assessment has been levied upon said above described property, owned by me, for walling, filling, and paving with block stone, Dearborn street, in the city of Chicago, from Randolph street to Madison street, and upon which said above described property the said city of Chicago has given notice that it will apply for judgment to pay said assessment, on the 26th of January, 1860, in the Superior Court of the city of Chicago; *meaning and intending hereby to confer a judgment* upon said assessment, and upon said property, for the full amount of the assessment so levied upon said property, and the costs incident to said assessment,

Page of Rec. "whatever said costs may be, in favor of said city of Chicago.
18, 19 Signed, HENRY KNIGHTS."

And then asked for judgment against said lots, in accordance with the terms and provisions of said stipulation. But the Court refused to enter a judgment against said lots; to which ruling of the Court the said plaintiff then and there excepted.

20 The defendant then offered in evidence a certain deed of mortgage made by Henry Knights and wife, on the 15th day of July, 1859, acknowledged on the 25th of July, 1859, and recorded on the 26th day of July, 1859, which mortgaged the undivided half of the premises in question, described in the stipulation of Knights, and which was made to secure the sum of \$17,000 and interest, and is still in full force. The objectors also offered in evidence an agreement between the objectors and said Knights, that he would employ counsel and defend, and in case of his failure to do so, they should be at liberty to defend against said assessment at the expense of Knights.

This evidence was objected to; but the objection was overruled, and plaintiff excepted.

20, 21 *Stephen De Golyer* was then called as a witness, who testified that that the work was done before the assessment had been levied, and was done by a contract with the owners of property fronting on the street, and Stuart and McMahon. He was then asked if he had the contract, and he said he had a contract made by various parties, with Stuart and McMahon. He was then asked to produce it, to which the plaintiffs objected; but the objection was overruled, and exception taken by plaintiff.

22, 23 The contract was then produced, and appeared to be a proposition to do the work; made Stuart and McMahon on the one part and acceptance on the part of certain parties, and authorized by N. S. Bouton, Superintendent of Public Works.

On cross examination, the witness stated that the stipulation mentioned was signed by Henry Knights and that he authorized the entering of a judgment for the amount of the assessment.

The Court rendered a judgment against the undivided half of the lots in question, to the rendering of which judgment the plaintiff then and there objected. The above were all of the proceedings in this case so far as Rosenfeld and Rosenberg were concerned. After this judgment had been rendered, and on the next day, one Luther D. Hurd filed a motion to set aside the judgment rendered against the premises in question; which motion was based upon the affidavit of one Daniel C. Ferguson, who testified that he was the agent of Luther D. Hurd, in the management of his property; that said Hurd held a mortgage

Page of Rec. on the undivided half of lot 5, block 58; that he fully intended 17, 18 to make, or have made, a defence against the application for judgment in the case; that said premises had been mortgaged by Henry Knights to secure the sum of \$4,000; and that there was a prior mortgage on the property. Affiant further stated that he applied to Knights to defend against the assessment; that said Knights promised him, Ferguson, that he would employ counsel and resist application for judgment. The deponent further stated that he understood and believed that the interest of said Hurd was included in the objections of Rosenfeld and Rosenberg, and did not know the contrary until the 2d inst., when he learned, greatly to his surprise, that no defence had been made; that said Knights had deceived him, &c. Said deponent further stated that he believed that Hurd had a good defence, &c.

Upon this affidavit being filed, the Court set aside the judgment which had been rendered on the undivided one-half of the lot in question, and permitted Hurd to file objections. The objections set out that Hurd is the mortgagee of an undivided half of the premises hereinafter mentioned, and the paving, &c., done opposite the 40 feet S. and adjoining N. 23 2-3 ft., and the 36 ft. N. adjoining S. 63 ft. in lot 5, block 58, was done under a contract between H. Knights, the mortgagor, and said De Golyer and others, and not otherwise. The other objections are identical with those filed by Rosenfeld and Rosenberg; and on the case being called for trial, the same testimony precisely was introduced in the case as was introduced in the case of Rosenfeld and Rosenberg, with the additional testimony of a trust deed made by Henry Knights and wife, to L. D. Hurd, dated 24th day of June, 1859, acknowledged on the same, and duly recorded on June 30th, and is upon the undivided half of the premises described on the stipulation of Knights with the City of Chicago.

It is stipulated between the parties, that the bill of exceptions in the case of Hurd may be inserted in, and become a part of the record in the case of Rosenfeld and Rosenberg, and the two cases be taken up together and argued as one case, and the Court may decide in the one case whatever shall be just and right severally as to each.

The plaintiff assigns the following errors:

1st. The Court erred in both of the above cases, in permitting the defendants, who were mortgagees, and had no other interest in the property in question or on the assessment, to come in and defend in the cases.

2d. The Court erred in not rendering judgment in favor of the City, in accordance with the terms and provisions of the agreement made and entered into between Henry Knights and the City of Chicago; said Henry Knights being the owner of the property.

3d. The Court erred in rendering a judgment for the defendants Rosenfeld and Rosenberg, and against the City of Chicago.

4th. The Court erred in setting aside the judgment which it rendered against the undivided half of the premises in question, at the instance of Hurd.

5th. The Court erred in permitting Hurd to come in and defend in the case, he being merely a mortgagee.

6th. The Court erred in permitting the defendants in both of the above cases to introduce, in evidence, the mortgages made by Ferry Knigh's and wife to them.

7th. General error assigned.

E. ANTHONY,
Att'y for Plaintiff in Error.

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City of Chicago

v

Brosenfeld et al

City of Chicago

v

Home

Abstract

Filed Apr 28, 1860

Edmund

Clark