

No. 13271

Supreme Court of Illinois

City of Chicago

vs.

Wheeler

79
STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 218.

Wheeler
vs
City of Chicago

86

1327

1.
Supreme Court
William Wheeler
appellee
vs
The City of Chicago

Suggestions in reply
to argument of
appellants -

The argument for the appellee having
been prepared and filed before the argument
of the appellants, we desire to notice
a few things only contained in the
appellants argument -
1st

At page 10 of appellants argument
it is objected that the proof as to the
commissioners of assessment does
not support the allegations of the
declaration - it being averred in
that - the common Council appointed
disinterested free-holders &c -

We only desire now to add that
no question like this was made
in the Court below and can not
now be made here for the first-
time - it amounts at most to a
question of variance -

The counsel in the Court below
only interposed a general objection
to the reading in evidence of the

assessment roll and order of
confirmation. This was not sufficient
to reach a question of variance.
See -

16 Ills 271

15 John 210

14 Wend 71

2 Hall 1 N.B. 603

3 do 237

These cases are directly to the point,
2nd

The objection raised by the printed
slip inserted between the 10th & 11th
page of such argument is evidently
a mere after thought - it was in
no manner raised in the Court
below - it is not presented by the
abstract or in the argument as
originally printed and does not
seem to have been discovered
even by the learned counsel for
the city until he had completed
his labors. To this objection there
are several obvious answers -
1st

The objection not having been
made below can not be made
here - See cases cited above.

also 4 Scan 11

23 Dec 139

2nd

The charter does not require that this notice ~~and~~ certificate of publication be entered of record or entered upon or in anywise connected with the assessment roll - and it being shown that the Common Council entered an order confirming this assessment. It will be presumed certainly as against them - that the preliminary proceedings were all regular.

This would seem to be the rule as to third persons -

See - Nealey vs Brown / Kilman 10-

Much more should this presumption be indulged as against the party - who is attacking its own proceedings - It will not do for the Council for the city to ask this Court to presume that the City confirmed an assessment which was void for irregularity in its own preliminary proceedings -

J. M.

But in any view as against the city, there is sufficient

evidence on the roll that this notice was duly published -
Sec 11 requires the notice to be given by the City Clerk by publication &c. Now the City has caused to be entered upon its own original assessment roll a copy of a proper notice with a certificate that the same was published 10 days consecutively commencing with April 8th 1856. in the Chicago Times the Corporation newspaper - this is signed "Publisher" without the name of the publisher being given - Then in the order of confirmation it is recited that "due notice has been given by the City Clerk &c." This we submit is clearly sufficient.
H^{ch}

We may also add that the act of confirmation cured this alleged defect - The counsel for the City seems to think that the case of Eppinger vs Wiley 23 Ill 521 is in point to show this assessment void for uncertainty. If the figures 43 placed under the heading - "Total amounts due" in that case had some word, mark

or sign to indicate ^{call} with certainty
that they stood for - 40 many
cents the case would then bear
some analogy to the case at bar -
but as it is. there is nothing to show
for what this 43 stands. and as
well might it be called dimes
as cents - and then it could be
made up of the figures at the left -
The $4 \times 8 \text{ cts} \times 8 \text{ cts} = 20 \text{ cts} = 2 \text{ dimes}$,
there being nothing to show what
the 2 or the 21 stands for -
we are at liberty to call the 2
Dollars = 20 dimes - and the
21 dimes -

$2 \times 20 \times 21 \text{ dimes} = 43 \text{ dimes}$ -
So that. there is nothing except
mere surmise or conjecture to indicate
what the 43 stands for -

We apprehend that had there been
some sign to fix this sum as
cents the decision of this Court
in that case would have
been quite different

Throwell & Smith
Atty for Appellee

C^o 218
Supreme Court
Wm Wheeler
appellee
vs

The City of Chicago
appellant

“Suggestion in
answer to
argument of
appellant”

Dornell Smith
attys

SUPREME COURT OF ILLINOIS

THIRD GRAND DIVISION.

April Term, 1861.

CITY OF CHICAGO, Appellant,
v.
WILLIAM WHEELER, Appellee,
CITY OF CHICAGO, Appellant,
v.
ROSALIA BONNER and
PERCY A. BONNER,

} Appeal from the Su-
perior Court of
Chicago.

POINTS FOR APPELLANT.

The assessment was void, and the assessment roll was inadmissible in evidence, for the reasons—

I.

The roll does not show on its face that the Commissioners making the assessment, were each of them “disinterested freeholders.”

The City Charter of 1831, chap. 6, sec. 2, requires Commissioners to be “disinterested freeholders residing in said City.”

They act under special statutory authority, and it must affirmatively appear on the face of the proceedings that they possess those qualifications.

State v. Williamstown, 4 Zabriski, 547.

State v. Van Geisen, 3 Green, 339.

Mayor, &c. v. Hughes, 4 Gill and John, 481.

Griffin v. Reising, 2 Cush. 75.

City of Chicago v. R. I. R. R. Co., 20 Ill. 286.

Where City Charter requires Commissioners to be “disinterested freeholders,” it must appear on the face of the proceedings that they are such.

State v. Newark, 1 Dutcher, 399.

This rule applies to those substituted to fill a vacancy, as much as to those originally appointed. *Ib.*

The fact that the Commissioners are *freeholders* is a *jurisdictional fact*, only to be shown by the appointment itself, or the record of it.

Nichols v. Bridgeport, 23 Conn., 189.

Judson v. Bridgeport, 25 Conn., 426.

II.

The assessment is void for uncertainty, because there are no words, signs, or characters to denote the meaning of the figures.—The dollar mark is found only at the foot of three of the columns on last page. The figures in the columns headed "valuation," "value of land condemned," "damage to buildings condemned," "total damages," "benefits by the improvement," are not characterised by any word, sign, or mark. The significance of the figures in these columns is quite as essential as that of any of the other columns.

The first element of calculation in the roll, is the *value* of the lot, why? Because the Charter 1851, chap. 6, sec. 7, requires the commissioners "to determine and appraise to the owner or owners the *value* of the real-estate *appropriated*." The whole lot's value is the necessary precedent to determine the value of the part appropriated. They are required to include in the estimate of damage to the land the value of the buildings, and, then, as the sequel to this foregoing determination, and evolved from them is the "total damages." These necessary elements in the roll are wanting, because there are no words, marks or characters connected with the figures in those columns showing what they were designed to represent.

Lawrence v. East, 20 Ills. 338.

Gibson v. City of Chicago, 22 Ills. 566.

Eppinger v. Kirby, 23 Ills. 521.

III.

It is claimed that the 86th Section of the act amendatory of the City Charter of 1851, passed Feb. 6th, 1857, (Session Laws, 1857, p. 911,) validates, confirms, and cures the said assessment. The reply is—

First. The Legislature does not possess the power to validate a void proceeding.

McDaniel v. Correll, 19 Ill. 226.

Marsh v. Chesnut, 14 Ill. 223.

Billings v. Detten, 15 Ill. 218.

Second. If the Legislature have power to regularize and validate a merely irregular, or, even void, proceeding, it yet has not the power to make *nothing* mean something, or, at least, in this matter, it has not sought to give and fix value upon columns of figures which signify nothing. Upon the adjudged cases in the Illinois reports, the columns that are without the dollar mark and other sign to characterize the figures therein, mean nothing—and the Legislature, even, cannot change the axiom "*Ex nihilo nihil fit*," and legalize that which never was.

JOHN LYLE KING,
Attorney for Appellant.

2184 219
The City of Chicago

^{no}
M^r Wheeler

Barnes

^{no}
Barnes & Barnes

Appts Ponds

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SUPREME COURT.

WILLIAM WHEELER,
Appellee.
 ads.
 THE CITY OF CHICAGO,
Appellant.

Appeal from the Superior Court of Chicago.

POINTS FOR APPELLEE.

This is a special assumpsit, brought by Wheeler, plaintiff below, against the City, defendant below, to recover the amount of an assessment or award to him, of damages for his land, condemned for the extending and opening of La Salle street, in the city of Chicago. The case has been once before this court, upon the question as to whether the action of assumpsit would lie, (see this case reported in 24 Ill. 105,) and was remanded, with leave to the defendant to plead. The defendant filed the general issue, and the cause was tried before the court, (a jury having been waived,) and a decision and judgment rendered by the court below in favor of Wheeler, for the amount of his assessment or award, without interest.

The city now brings the case to this court upon appeal, alleging that its own assessment is so utterly void for irregularity as that no rights were acquired or obligations incurred thereunder, and upon this ground asks a reversal of the judgment. By stipulation, Wheeler has assigned cross-error for the disallowance of interest upon the award, which he claimed, and which was denied to him by the court below.

Upon the trial, as appears by the bill of exceptions, the city attorney contented himself with a general objection to the introduction in evidence of the assessment roll and order of confirmation; but upon the final argument he claimed that the assessment was void upon two grounds.

1st. He alleged that it nowhere appeared upon the face of the record or proceedings, that the commissioners of assessment, chosen by the common council, were each disinterested freeholders residing in said city, and that the assessment was therefore void.

2nd. He alleged that there were no words, signs or characters upon the assessment to indicate what the figures thereon were designed to represent, and that the assessment was therefore void for uncertainty.

It will be seen that the question as to whether this assessment was void for the reason that it was not returned by the commissioners within forty days of their appointment, as required by the 10th Sec. of Chap. 6 of Charter, was presented to this court and decided when the case was here before; and we now respectfully insist that the two remaining objections urged against this assessment as above are not sustainable.

Our answer to these objections is two-fold.

1st. We claim that, independently of any legislative act of confirmation, the assessment is valid.

2nd. Even though otherwise irregular and invalid, the legislature, by subsequent Act of confirmation, rendered this assessment valid.

I.

As to the objection that it does not appear that the commissioners of assessment were disinterested freeholders, etc., we submit—

1st. That it does sufficiently appear. The charter requires no formal appointment, but merely directs that the common council “shall choose by ballot, three disinterested freeholders residing in said city, as commissioners,” etc. The form of doing this, adopted by the council, seems to have been, to enter a formal order for the election of commissioners, and afterwards to proceed to elect under and in fulfilment of such order. On the 12th of November, 1855, the common council did enter a formal order, running as follows:

“Ordered that the common council do now elect by ballot, three reputable, discreet and *disinterested freeholders of the city of Chicago*, whose duty it shall be,” etc. Then the record recites that “The order was passed and the council proceeded to the election of commissioners *thereunder*. On the first ballot, F. A. Bragg and Thos. Church received each 10 votes and were declared elected. On the second ballot for a third commissioner, there was no choice.” This was all that was done at this meeting. At a meeting on the 10th day of January thereafter appears the following entry:

“In Common Council, Jan. 10, 1856.”

“By Alderman Colby. An order for the election of commissioners for the opening of Franklin street. The order was passed, and the

council proceeded to the election of commissioners thereunder. On the first ballot there was no choice, and upon motion of Alderman Fletcher, further balloting *on said order* was suspended for the purpose of electing three commissioners to make an assessment for the extension of La Salle street. On the first ballot there was no choice. On the second ballot W. W. Saltenstall received ten votes, and was declared elected. On the third ballot, F. A. Bragg and Thomas Church received each 11 votes, and were declared elected. (See proceedings of common council as entered upon assessment roll in bill of exceptions.) Then the commissioners filed their oath in writing, in which they describe themselves as "freeholders of the city of Chicago." (See commissioner's oath in bill of exceptions.)

Thus it appears that on the 12th of November, the common council enter a formal and solemn order, declaring that they will proceed and elect "three reputable, discreet and *disinterested freeholders of the city of Chicago*," as commissioners, and then proceed immediately to the selection of the proper men "*thereunder*," that is, in obedience to and fulfilment of such order. Bragg and Church are selected as the proper men to fulfil the requirements of the order; but a majority of the aldermen fail to agree on a third man, and the meeting adjourns leaving the order in full force and its obligations unfulfilled. Then, at a subsequent meeting of the council, held on the 10th of January, after entering an order for election of commissioners for opening Franklin street and balloting thereunder, on motion of Alderman Fletcher (the same man who reported and procured the passage of the order for electing for La Salle street,) further proceedings are suspended upon the Franklin street order, for the purpose of electing the commissioners in fulfilment of the La Salle street order, and the council thereupon proceed and elect Bragg and Church, (the same two who were successfully balloted for at the time of the passage of the order,) and at this time succeed in agreeing upon the third man, Saltenstall, thus fulfilling the order. Had the common council succeeded on the 10th of January, in selecting all three of the commissioners in fulfilment of the order, there could be no question but that the qualification of the commissioners sufficiently appeared on the face of the proceedings. But we insist that the case is no different as it stands. The order remained in full force at the consummation of the election of commissioners, on the 10th day of January, and what was then done was obviously a continuation of the proceedings of the former day, and in fulfilment of the requirements of the original order; and it is immaterial whether such requirements were fulfilled at the same meeting or at a subsequent meeting. If fulfilled, surely the commissioners were each "reputable, discreet and *disinterested freeholders of the city of Chicago*."

2nd. It is not necessary that this should appear affirmatively upon the face of the record. There is no provision of the charter requiring it. The common council having had full power and jurisdiction to act in choosing the commissioners, it will be presumed that they selected the proper persons. 17 Sergent & Rawle, 388.

This was a certiorari to review proceeding in laying out a highway under special statutory powers. The statute required that the persons to be appointed should be freeholders; it was held that this was presumed till the contrary appeared and the proceedings were affirmed. The court say: "Now we must take it they were qualified persons, unless there is some color of evidence that they were not, or some admission of the fact." So in *Gray vs. Caldwell*, Hardin's (Ky.) Reports, 63, which was a certiorari to set aside proceedings upon a writ of *ad quad damnum*, under a special statute of Kentucky, relative to the erection of mills, one of the errors assigned, was that it did not appear upon the face of the record, that the jurors selected by the sheriff under the writ, were fit persons or freeholders, as required by the statute, the court overruled the objection, holding that it need not appear on the face of the record. Upon the same principle, where the report of commissioners of estimate and assessment is signed by only two of the commissioners, when nothing appears to the contrary it will be presumed that all the commissioners met and consulted. *Doughty vs. Hope*, 3 Denio, 249. See also 5 Foster, (N. H.) 458; 2 Gilman, 450; 15 Ill., 449, as cases further illustrating this principle.

3rd. But whether disinterested freeholders or not, they were commissioners *de facto*, and their assessment cannot be thus collaterally attacked. This position is amply fortified by authority, showing that the principle that the acts of officers *de facto* are valid and binding as to the public and third persons, is applicable to this class of cases.

In *Schofield vs. Watkins*, 22 Ill., 66, which was an injunction to restrain a collector from the collection of a school tax, this court recognize the acts of trustees of schools *de facto* in forming school districts, and the acts of directors of schools *de facto* in levying a tax, as valid. Mr. Justice WALKER, in delivering the opinion of the court, says: "The tax was levied by persons exercising and performing the duties of directors of this district, and these incorporations have the power to impose these taxes; and whether they held their office *de jure* or *de facto*, their acts in levying the tax will not be inquired into by a court of equity for mere irregularity."

In *Guyer vs. Andrews*, 11 Ill., 494, which was trespass for taking property under a tax warrant, based upon an assessment made by an assessor not qualified by reason of not having taken the oath required

by statute; the defendant justified, and the court sustained the justification, upon the ground, that although the assessor was not properly qualified, still "as an officer *de facto* he could make an assessment which was binding so far as the public and third persons were concerned," and in support of this position, the case of *The People vs. Collins*, 7 John., 549, is cited as a case "in point." This case in Johnson was a mandamus to compel the defendant, as town clerk, to record a survey of a highway laid out by persons acting as commissioners of highways, but who had not qualified by taking the oath of office. The statute providing that a neglect to take such oath should be deemed a refusal to serve in such office, and directing the town to proceed and elect other persons to fill the office. The court held, that as officers *de facto*, their acts were valid, and ordered a peremptory mandamus directing the defendant to record the survey. The case of *VanSteenbergh vs. Bigelow*, 3 Wend., 42, is to all intents in point. This was an action of trespass *quare clausum*. The defendant justified under an act of the legislature, incorporating the Bristol Turnpike Co., and introduced the Act and the proceedings thereunder establishing the turnpike. The statute provided for the appointment of appraisers "being freeholders of the county," by one of the judges of the court of common pleas to appraise the damage to the owners of the land taken for the road. The plaintiff, upon the trial, offered to prove that one of the appraisers was not in fact a freeholder, but the evidence was excluded, and for this, error was assigned but not sustained. Chief Justice SAVAGE, in delivering the opinion of the court, said: "The judge was clearly right in rejecting the proof that one of the appraisers was not a freeholder. Whether the appraisers were freeholders or not was not inquirable into collaterally. Their appointment had been made by an officer whose duty it was to have appointed freeholders, and no other; if he erred in that particular, the appointment might have been examined in this court on certiorari, and if illegally made, would have been set aside."

Many other cases illustrating this position are in the books. Thus, the acts of a deputy sheriff *de facto* are valid; and a sale by him of real estate on a *fi. fa.* will pass a good title.

Buckman vs. Ruggles, 15 Mass., 180.

The acts of a collector of taxes *de facto* are valid, and trespass will not lie in favor of those whose property has been taken by him and sold for taxes, against the select men who issued the warrant.

Tucker vs. Aiken, 7 New Hamp., 113.

A sheriff (*ex officio* collector of taxes) is collector *de facto*, though he omit to give the bond, as required by statute, and his acts in selling land under process for taxes will pass a good title.

Sheldon vs. Coats, 10 Ohio, 278.

A school tax levied by a meeting called by a committee *de facto* is valid, and the acts of a collector *de facto* in collecting the tax is also valid as to the public and the third persons. 21 Pick., 75.

This was an action to recover back a tax collected.

A tax title based upon an assessment by select men *de facto* with a sale by a collector *de facto*, is valid.

Bean vs. Thompson, 19 New Hamp., 290.

A title to land, based upon a sale by a constable *de facto*, by virtue of an execution from justice court, is valid.

Burke vs. Elliott, 4 Iredell, 355.

4th. Again, the common council had the undoubted power and jurisdiction to act in choosing these commissioners; and in doing so, they necessarily exercised a discretion and judgment in selecting persons properly qualified, and whether they exercised their discretion and judgment properly or improperly, the proceedings are not ⁱⁿ valid or subject to be thus attached collaterally. In support of this well-recognized principle many authorities could be cited, among which is the case of *Treasurer of the city of Camden vs. Mulford*, 2 Dutcher (N. J.), 49. This was an action to recover of the defendant the expense of paving Pine street in front of his premises, under an ordinance of the common council. The city charter (like the charter of Chicago) gave the common council exclusive power over the streets, and empowered them, whenever a majority of the property owners in value along the street should petition for the same, to order a street to be paved, and in case the owner refused to make the improvement, the council could cause the same to be done and sue the owner for the amount. Such expense was also made a lien upon the land, and the council were empowered to sell the same to pay expenses. The defendant alleged in a plea, that the ordinance directing the pavement was passed "without the petition therefor of a majority in value of the land owners on said Pine street." Plaintiff demurred, and the plea was held bad. The court say: "The demurrer to the third plea raises the question, whether the ordinance requiring Pine street to be paved if passed by the council without the petition of a majority of the land holders fronting on the street is void, so that the defendant may avail himself of the defense by calling its validity in question collaterally, or whether it remains in force until set aside by a direct proceeding for that purpose," and after reviewing the authorities and discussing the subject at great length, the court say: "But it is not denied that the city council have the power of directing by ordinance the street to be paved. The subject is within their jurisdiction and control. The complaint is that they exercised an undoubted

power in an unauthorized manner or without the proper authority, the requisite number of petitioners not being before them. To represent this as a want of jurisdiction or a want of power, is a confounding of terms."

The case of *The People vs. Collins*, 19 Wend., 56, embodies the same principle. In that case commissioners were appointed by the legislature to lay out a road on the most direct and eligible route between two points, and the road, instead of being as required, was, to use the language of the court, "strikingly injudicious." Yet a mandamus was granted, directing the road commissioners to open the street, on the ground that the commissioners having power to act, an improper exercise of the powers did not render their proceedings void. See also *The State vs. Richmond*, 6 Foster (N. H.), 232.

In addition to the foregoing, the case of *Smith vs. The Commissioners of Cumberland Co.*, 42 Maine, 395, is an authority to show that a defect of this charter, even if a defect at all, is a mere technical defect, for which a court should not even grant a writ of certiorari, much less declare the whole proceeding utterly void in consequence.

II.

We maintain, also, that the objection that this assessment is void for uncertainty, is equally unfounded. It is sufficiently certain within the rule already laid down by this court as we understand it.

In *Jackson vs. Cummings*, 15 Ill., 449, it is decided that the character \$ means dollars, and should be so read. And in the case of *Gibson vs. Chicago*, 22 Ill., 566, we understand this court to have held the assessment column in that assessment sufficiently certain, but held the assessment bad because the valuation column (which was an essential part of that assessment) "was filled with figures and nothing else," having "no word, mark or character attached to or connected with any of these figures, showing what they were designed to represent." In delivering the opinion of the court, Chief Justice CATON says: "In the assessment roll are two columns, one headed 'valuation' and the other 'assessment,' in each of which certain figures are set down. The last column (which was the assessment column) is footed up thus: '\$20,814 00,' and between the 4 and the next to the last 0 is a red line drawn, which may be fairly understood to mean twenty thousand eight hundred and fourteen dollars and no cents, and when the footing at the bottom of the column is found to be the sum of all the figures in the column above, we are reasonably informed that the figures above are designed for dollars and cents, although there is nothing in the column

above to indicate what these figures were intended to stand for. We are disposed to embrace anything which can by any reasonable intendment inform us of the meaning of the figures set down in the assessment." Then in speaking of the valuation column he says, "The column headed 'valuation' is filled with figures—nothing else. There is no word, mark or character attached to or connected with any of these figures showing what they were designed to represent. There is no proof in this case showing what was the valuation placed upon any lot in this assessment."

In that case the assessment was for improving, not for opening a street, and in an assessment for improving, the statute directs that the commissioners shall "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." (See Sec. 4, Chap. 7, of Charter of 1851.)

And this valuation is matter of substance, for by Sec. 2 of same chapter, the assessment cannot exceed three per cent of the valuation, and an excess over this would be going beyond the power conferred by the charter (22 Ill., 573); hence this provision requiring a valuation, should be regarded as peremptory and not merely directory; and there being no valuation in the assessment in the Gibson case, this court very properly held that the assessment was fatally defective.

But the provisions of the charter in relation to assessments for opening streets are entirely different. The commissioners are directed "to make their assessment, and determine and appraise to the owner or owners the value of the real estate appropriated for the improvement and the injury arising to them respectively, from the condemnation thereof, after making an allowance therefrom for any benefit which such owners may respectively derive from such improvement," and "if the damage to any person be greater than the benefit received, or if the benefit be greater than the damage, in either case the commissioners shall strike a balance and carry the difference forward to another column, so that the assessment may show what amount is to be received or paid by the owners respectively, and the difference only shall in any case be collected by them or paid to them."

Then "having ascertained the damages and expenses of such improvement as aforesaid, the commissioners shall thereupon apportion and assess the same, together with costs of proceedings, upon the real estate by them deemed benefitted, in proportion to the benefits resulting thereto from the improvements as nearly as may be, and shall describe the real estate upon which their assessment may be made." See Sec. 7, 8 and 10, of Chap. 6, of Charter of 1851.

These are the only provisions as to the form and manner of making the assessments.

It will be readily seen that the left hand column of the assessment in this case, headed "valuation," is wholly unnecessary, and really forms no part of the assessment.

The statute does not require a valuation of the land assessed for benefits, and it could be of no possible use, since its value can bear no portion to the amount assessed upon it. The assessment being in proportion to benefits and not in proportion to value, it is clear that a lot worth only \$1000 may be assessed ten times as much as another worth \$10,000, depending upon its location with reference to the improvement.

The figures in the remaining columns are carried forward to the right by addition and subtraction, into the final columns headed "nett damages" and "nett benefits," thus constituting a balance struck, showing the amounts to be received and paid by the property owners respectively, as required by the statute.

Now, these final columns, and also the column headed "cost of proceedings," are footed at the bottom of each page, and their amounts carried forward from page to page to the conclusion, where their sums total are footed up and set down under these columns respectively at the end of the last page, with the sign \$ prefixed to each sum, with a red line dividing the cents from the dollars the same as in the assessment column in the Gibson case.

That these final footings were placed there as the sums total, not only appears from their quantity, but the words "amounts carried forward" and "amounts brought forward" at the bottom and top of the intermediate pages in the assessment, and the word "totals," (the very signification of which is the "whole sums or amounts,") is placed at the left of these final footings which are additional evidences beyond what appeared in the Gibson case, showing affirmatively what they respectively represent. Hence this assessment is sufficiently certain upon the principle that the denomination of the sum of several numbers is the same as the integral parts out of which such sum is made up, and vice versa. And this is the principle, as we understand it upon which this court held the assessment column in the Gibson case sufficiently certain. The award to Wheeler, for which judgment in this case was rendered, is placed in the column headed "nett damages" upon the 34th page of the assessment, (see this page as copied into the bill of exceptions,) and is one of the integral parts of the sum total of all the figures in the columns thus headed, and is therefore sufficiently certain.

We are sustained in this position by other analogous cases. We apprehend that the same test should be applied here, as in the case of a deed, and the rule as to deeds is perhaps nowhere better stated than by Lord Tenterden, in the case of *Coles vs. Hulme*, 8 Barn. & Cress., 568.

He says: "In every deed there must be such a decree of *moral certainty* as to leave in the mind of a reasonable man no doubt of the intent of the parties." And that there is at least a "*moral certainty*" in the mind of every reasonable man as to what the various figures in the essential parts of this assessment are designed to represent, seems to us clear and beyond dispute. See also under, this head,

Grant vs. Brotherson, 7th Missouri, 458.

Moss vs. Thompson, 17 Missouri, 406.

McCoy vs. Gilmore, 7 Ohio, 392.

Sweeter vs. French, 13 Met., 262; 16 Shep., 469; 3 Barb., (N. Y.) 374; 5 Car. & Payne, 488.

It is clear that the city should not be heard to object to any defects in this assessment, unless they are so radical in their character as to render the whole proceedings utterly nugatory and void. Mere technical defects or irregularities not affecting the substantial rights of parties interested, can only be urged by such parties upon objections to the confirmation of such assessment or upon appeal from such confirmation. See Sec. 17, Chap. 6, of Charter of 1851, 18 Ill., 276—280. And even should it be held that any of the columns out of which those headed "nett damages" and "nett benefits" are made up, are not strictly formal and certain, still the final balance to be received or paid by the respective parties interested being certain, the substantial rights of the parties are preserved and the assessment should not be held utterly void.

The mere formalities to be observed in ascertaining these balances seems not to have been considered as essential by the legislature, since the charter provides that such forms may be changed by the common council at pleasure. (Sec. 18, Chap. 6, Charter 1851.)

Defects of this character are amendable (24 Ill., 493,) and the rule is that amendable defects do not render a proceeding void, but voidable only, upon direct proceedings for that purpose.

III.

In support of this objection, that it does not appear that the commissioners of assessments were disinterested freeholders, etc., etc., the counsel for the city in the court below relied principally upon the cases of

Nichols vs. Bridgeport, 23 Conn., 189.

Judson vs. Bridgeport, 25 Conn., 426.

State vs. Jersey City, 1 Dutcher, 309.

State vs. Newark, 1 Dutcher, 399.

The New Jersey cases are not authority for the purposes for which they were cited. These were each cases of certiorari, to review and set aside the proceedings, and the court by no means held the proceedings absolutely void for a defect of this character, so that they could be attacked collaterally. And from the doctrine of the case of the *Treasurer of the City of Camden vs. Mulford*, 2 Dutcher, 49, quoted under the first point above, it is apparent that they would not so hold.

The Connecticut cases are more to the purpose, the question in these cases arising collaterally in suits to recover back assessments collected.

The provisions of the Bridgeport charter are somewhat different from those of the Chicago charter. The Bridgeport charter required a formal appointment in writing of the assessors, to be made by the mayor, and to be recorded in the records of the city; and the court seems to have held, that the absence of a recital in this written appointment, that the assessors possessed the requisite qualifications, was a jurisdictional defect, and that without such recital the assessors had no jurisdiction or power to make an appraisal. The court in these cases cite no authorities in support of this extraordinary ruling; and we submit that the doctrine there advanced is not only wholly unsupported by adjudications outside of that State, but is contrary to the whole current of authorities in this and other States; and whether there be a substantial distinction between the two charters or not, those cases should not be regarded as law and controlling authorities in this case.

IV.

But whatever may have been the defects in this assessment, they were cured by subsequent legislative Act of confirmation. The 86th Sec. of the act amendatory of the city charter of 1851, passed February 6th, 1857, (see Session Laws, 1857, page 911,) is as follows:

“All actions, rights, fines, penalties and forfeitures, in suit or otherwise, which have accrued under any act to which this is an amendment, or under any ordinance of said city now in force, shall be vested in and be prosecuted by the corporation. *And all proceedings now or heretofore commenced for the opening of any street or streets in said city, and the assessment of real estate for any such improvement is hereby expressly legalized and affirmed; and the common council is hereby expressly authorized to continue such proceedings and open said street or streets, any defect, decree, or order of any court to the contrary notwithstanding.*” Thus while proceedings upon this assessment were pending, and before any attempt had been made to enforce its collection by sale of lots assessed, it is “expressly legalized and affirmed” and the

common council are "*expressly authorized to continue such proceedings and open said street or streets, any defect, decree or order of any court to the contrary notwithstanding.*"

In support of the position that this act is valid and constitutional, and operated to cure any supposed defects in this assessment, we beg leave to refer the court to the opinion of Judge WILSON, delivered in the court below, which is hereto appended, and where the subject is fully discussed, and in a far more able and satisfactory manner than we are able to do. And we shall say nothing further upon this point, except briefly to refer to some of the authorities cited in that opinion, for the purpose of showing how completely they sustain its positions.

The case of *Marsh vs. Chestnut*, 14 Ill., 223, recognizes the power of the legislature, by Act of confirmation, to render valid assessments otherwise void, upon which further proceedings are to be had, "so that the taxes charged upon them may be collected without another assessment."

In *Schofield vs. Watkins*, 22 Ill., 66, the same doctrine is asserted by this court in reference to the forming of school districts and levying school taxes, and in delivering the opinion of the court, Mr. Justice WALKER, in speaking of the Act of confirmation in that case says: "This Act took effect upon "its passage, and there can be no doubt that the legislature have "power to form a school district, or may legalize the acts of officers in attempting to form a district, so as to render such district legal, and there "can be as little doubt that such was the operation of this enactment. "If any irregularity had occurred in its formation by the trustees, which "would have been grounds for reversing their order establishing it, "those irregularities were cured by this enactment, and the power to "cure irregularities in the manner of levying a tax is equally undoubted, "and so far as this tax was levied for the purposes specified in the Act, "there is no doubt that the levy is thereby made valid."

State vs. City of Newark, 3 Dutcher, 185, was a case of certiorari to set aside a special assessment for altering and widening a street; it was objected that the resolutions of the common council relative to the altering and widening of the street were not presented to the mayor for his approval, as required by the provisions of the city charter, at the time of the proceedings, which were taken in 1854. A supplement or amendment to the charter passed by the legislature in 1857, provided that "such resolutions "shall be deemed and taken to have been formally presented to, approved and signed by the mayor." The court held that the objection, though otherwise fatal, was cured by such confirmatory act, and the assessment rendered valid by the retrospective operation of the statute.

Yost's Reports, 17 Penn., (5 Harris,) 524, was a case of special proceedings in laying out a highway by special commissioners appointed by the legislature; the commissioners filed a report of their proceedings in the Court of Quarter Sessions for confirmation, as required by the statute. The party interested filed exceptions to the report, alleging that the commissioners had not pursued the directions of the statute. While the exceptions were pending and before confirmation, the legislature passed an Act confirming the proceedings and directing an order of confirmation to be entered. It was objected that this Act was unconstitutional, but the court held the Act valid.

Mr. Justice LEWIS, in delivering the opinion of the court, says: "The subject is within and under the control of the legislature. That branch of government may order a report to be made designating the line of a street or road, or after such report is made, without previous authority, it may give vitality to the report by Act of confirmation; the Act of the 15th of March, 1848, directing the report in this case 'to be confirmed by the court, as if the Act had passed before the proceedings of the commissioners,' is an Act of this description, and is a legitimate exercise of power. The report of the commissioners, including of course that portion of it which makes it necessary to prosecute the buildings of the party complaining, is as fully adopted and confirmed by the legislature as if they had previously authorized the action in express terms. This view of the case renders it entirely unnecessary to inquire whether the commissioners had strictly pursued the directions contained in the Act of Assembly, previously passed on the subject."

Schenley vs. Commonwealth, 36 Penn., (12 Casey,) 29, was a *scire facias*, (a remedy given by statute,) to recover the amount of a special assessment for grading and paving a street. The charter gave the city power to pave and grade streets, and lay a special tax upon the lots fronting the street to defray costs and expenses, which tax it further provided should remain a lien upon the lots until fully paid and discharged. The common council passed an ordinance authorizing the paving and grading certain streets in said city, and empowered the committee on streets to receive proposals for the work, and levied a special tax to defray the costs and expenses of the work. The ordinance was not recorded until the 9th of February, 1859, in consequence of which, by the terms of the charter, it became null and void. To cure this defect, an Act of Assembly was passed on the second day of February, 1859, (after the institution of the suit,) providing that the omission to record the same should not impair, or in any manner affect the contracts for grading and paving the said streets, or any assessment, tax, lien or claim for costs of grading and paving done or to be done, in pursuance of or in accordance with the provisions of said ordinance. This statute was

declared valid and constitutional, and the action sustained upon the principle that it operated only to compel the owners of the property benefited to pay the expenses of the improvement, which was most just and equitable, and that retroactive legislation to effect such just purposes is constitutional. Many other analogous cases may be found in the books strongly in support of the principle contended for.

The principle being that retrospective legislation, not contrary to natural justice and equity, but passed to effectuate lawful purposes, is a legitimate exercise of legislative power, and valid, even though its effect may be in some measure to impair or change vested rights. See 7 Blackford, 474; 8th do., 10; 16 Mass., 326; 15 Wend., 436; 7th Ind., 316; 2 Paine, C. C., 74; 2 Peters, 380; 8th do., 88; 4 Mass., 566; 1 Hill, (N. Y.) 324; 13 Vermont, 382; 2 Peters, 627; 8 Mass., 468—472; 6 Conn., 54 and 190.

The effect of this confirmatory Act, as bearing upon the dollar mark question, so called, is this: The final columns headed "net damages" and "net benefits" being certain within the rule laid down in the Gibson case, with the aid of this confirmatory Act this assessment would be good were these the only columns in the roll.

Hence, though it should be conceded that under the provisions of the charter of 1851 the separate items out of which the balance is struck, were required to be stated in separate columns at the left of these final columns, and that the columns at the left in this assessment, are insufficient for want of certainty, still the assessment under said confirmatory Act would be good.

This, it will be observed is the view taken by Judge WILSON in the opinion appended.

V.

In relation to the question of interest, we claimed in the Court below interest in behalf of Wheeler, upon the amount of the award of damages to him, to be computed at 6 per cent. from the end of two years after the confirmation of the assessment by the Common Council, or at least from the commencement of this suit (March 2, 1859.) The Court below refused to allow any interest, to which refusal Wheeler excepted, (see bill of exceptions,) and for this, cross-error is assigned by Wheeler pursuant to stipulation.

We understand from the principle of the case of *Doyle et al. v. Canter*, 24 Ill., 51, that should this Court hold that interest should be

also 54 Ill 127

allowed, it being mere matter of computation, and the necessary data being before the Court on which to make up a correct judgment, the case need not be remanded, but judgment can be entered here in this Court for the correct amount, with interest added. But if we are mistaken in this, rather than have the case remanded, and thus continued in litigation, we are instructed by our client to waive the claim for interest, and ask the Court not to consider this assignment of cross-error, but to consider the same waived and withdrawn, which we accordingly do.

As to the right to interest, we insist that it should be allowed as coming within the statute which provides that "creditors shall be allowed to receive interest at the rate of six per centum per annum for *all moneys after they become due*, on any bond, bill, promissory note, or other *instrument of writing*." (Sec. 2 chap. 54 Revised Statutes of 1845.) This is a suit to recover money due upon an "*instrument of writing*," viz: a written appraisement or award to Wheeler of a liquidated sum in cash awarded to him by the commissioners, for his land appropriated. The charter directs the commissioners to "*determine and appraise*" to the owner or owners, the value of the real estate appropriated for the improvement," &c. This the commissioners did in this case, and filed their assessment in writing, containing their appraisement to Wheeler; which the Common Council confirmed, and thereby devolved upon the city the obligation to pay the award within a reasonable time within which to collect the means. After the expiration of such reasonable time (the expiration of two years after the confirmation, or at least at the commencement of this suit, nearly three years,) this award became due, and from that time should draw interest, within the statute. The obvious design of this statute is to allow the successful party interest upon all cash claims, liquidated and fixed by instrument of writing. That this assessment is an "*instrument of writing*" seems clear from the very definition of the term. Webster says that the word instrument signifies "In law, a writing containing the terms of a contract, as a deed of conveyance, a grant, a patent, an indenture, &c.; in general, a *writing by which some fact is recorded for evidence*, or some right conveyed." An instrument is "a writing as a means of giving *formal expression or effect to some act*; a *writing expressive of some act, contract, process or proceeding*, as a deed, writ, &c. 2 *Burrell's Law Dic.*, 624.

In answer to this view, the counsel for the city in the Court below relied principally upon the case of *Stewart vs. the County*, 2 Barr. (Penn.) 340. But that case is not like the case at bar. There, by the statute, the rights of the parties did not become fixed till the authorities actually paid the award and opened the street. And in the mean time the owner was untrammelled in the use of his property, save by the contingency that the public might within a year proceed to perfect their rights by paying the award and opening the street, and unless they did so elect within

one year, the proceedings expired by lapse of time, and fell to the ground. Hence the Court in that case held that "*the report* (of the viewers) *had relation to the time when the street should be opened.*"

Here, immediately upon the confirmation of the assessment, all leases, covenants, contracts or agreements respecting the land condemned, ceased and became absolutely discharged (see sec. 15 and 16 of chap. 6 of Charter of 1851,) and the land, for all practical purposes, was appropriated. The rights of the parties then became fixed and vested. (18 Ill., 276; 1 Wend., 53; 18 do., 318; 20 do., 618; 3 Barb., (N. Y.) 602. But besides this, the case in 2 Barr, is not based upon our statute, and the simple question here is, whether this case is within the statute, and if it be, that is an end of all argument.

FARWELL & SMITH,

Att'ys for Wm. Wheeler, Appellee.

SUPERIOR COURT OF CHICAGO.

WILLIAM WHEELER
vs.
THE CITY OF CHICAGO. }

OPINION BY JOHN M. WILSON, JUDGE.

This is an action of assumpsit to recover of the City the amount of an assessment made upon the authority of the City, for property of the plaintiff taken and appropriated for extending La Salle street.

The action is based upon the assumption that the City promised to collect and pay over the amount of the assessment within a reasonable time, and that it has failed to do so.

The power exercised is the right of eminent domain conferred upon the City by its charter. The City having exercised the power, the law imposed the obligation to proceed with reasonable diligence, and one whose property is thus appropriated to public use may compel the City, by mandamus, to proceed and collect and pay over such assessment.

Higgins vs. The City of Chicago, 18 Ill., 276.

In this class of cases, where property may be taken for public uses, without the consent, and even against the will of the owner, the Constitution requires that compensation be made and imposes this duty upon the State or Corporation exercising this power. In the case of a corporation liable to be sued, an action on the case is maintainable for negligence or unreasonable delay in the performance of its duty. *McCullough—the Mayor &c. of Brooklyn*, 23 Wend., 458.

I understand the Supreme Court to have decided in this case not merely that an action of assumpsit for money had and received could be maintained if the city had collected the assessment, (for of this there can be no doubt) but that this action for not collecting in reasonable time is maintainable. (See this case reported in 24 Ill., 105.)

If this is so, the only question remaining is whether the facts show that the defendant has delayed an unreasonable time in collecting this assessment.

The assessment was made and confirmed by the Common Council on the 9th of June, 1856. And on the same day they passed an order for a warrant to collect the assessment, and the Collector proceeded and collected \$23,913.03.

This suit was commenced March 2d, 1859, almost three years after the assessment was confirmed, and two and a half years after the Council ordered a sale of the lands assessed.

The lien upon the lands by the Charter continued only two years from the confirmation of the assessment. The warrant for the sale of personal property to satisfy assessment having been returned, and two years having elapsed after the confirmation without collecting the assessment, it is apparent that the city had no power when this suit was commenced to collect the assessment, and a Court would not even award a mandamus to compel her to collect an assessment by the sale of the lands after the lien had ceased. The only remedy left for the plaintiff was by suit.

The city by failing to collect the assessment of those assessed to pay, had deprived the plaintiff of the special provision the law had made for his compensation, and without such provision, the land could not be taken for public use. It is clear that if he cannot recover in this action, he cannot obtain compensation at all.

And as to the question of unreasonable delay, the Legislature, it would seem, had settled that by limiting the lien to two years; certainly a delay beyond the two years deprived the plaintiff of the only means of compensation provided by law under the Charter, and it is difficult to conceive what delay would be unreasonable if this was not, for further delay for any length of time would place the plaintiff in no worse position.

But it is contended by the City, that the whole proceeding is void, and numerous grounds are stated. But I do not deem it necessary to decide upon this branch of the argument except as to the dollar mark question (so called), for if the Act of February 16, 1857, makes the assessment valid, as it assumes to do, it may be admitted that the assessment was invalid independent of the act.

Numerous authorities have been cited to show that the Legislature cannot make valid a void act. This is, doubtless, true in relation to all Acts wherein the Legislature assumes judicial functions and attempts to settle the rights of property between man and man, and most of the cases cited embody this principle, and I fully subscribe to this doctrine.

There is, on the other hand, a large class of cases in relation to proceedings for the condemnation of private property for public use where acts of the Legislature have been declared to be effective in making irregular and void proceedings valid retrospectively.

Marsh vs. Chestnut, 14 Ill. 223; *Schofield vs. Watkins*, 22 Ills. 66; *State vs. City of Newark*, 3 Dutcher, 185; *Municipality No. 1 vs. Wheeler*, 10 La. An. 745; *City of New Orleans vs. Cordeville*, 13 La.

An. 268, *Fost's report*, 17 Penn. (5 Harris) 524; *Schenly vs. Commonwealth*, 36 Penn. (12 Casey) 29. And if there were no authority, I am at a loss to see how this power could be *denied*. The right of eminent domain exists in the State, and the Legislature under the Constitution has the right to take private property for public use—subject only to the condition that adequate provision for compensation is made. The Legislature may also authorize corporations to take private property for public use on the same conditions. *Johnson vs. Joliet & Chicago R. R.* 23 Ills. 203.

Now whatever may be the defects in this assessment inasmuch as compensation was provided, the Legislature might have authorized the City to take this property in the precise manner it was attempted to be taken. Admitting that as the law stood, many provisions were not complied with, if they might do it in the first instance, how do they become incompetent to waive, what they might have omitted? It being matter of discretion to insist upon these or not in the first instance. The city is deprived of no right, for by the Act she is obtaining what she sought to do, but failed to effect by her own errors and mistakes. And the owner of the land is deprived of no right, for he has his compensation secured, and the public upon that condition have a right to his land.

In relation to the dollar mark, several cases decided by the Supreme Court have been referred to—*Jackson vs. Cummings*, 15 Ills. 449; *Lawrence vs. Fast*, 20 Ills. 338; *Lane vs. Francis*, 21 Ills. 143; *Gibson vs. the City of Chicago*, 22 Ills. 566; *Eppinger vs. Kirby*, 23 Ills. 521. I understand these decisions to establish that an assessment which contains only figures is not sufficient; and that the Court will not intend that certain figures mean dollars or cents, unless there are some characters, marks, figures or words, to indicate what is intended. In the case of *Jackson vs. Cummings*, (15 Ills. 449), the Court recognized the sign \$ as indicating dollars; and in *Gibson vs. Chicago*, (22 Ills. 566), Chief Justice Caton, in delivering the opinion of the Court, says:

"In the assessment roll are two columns, one headed 'valuation' and the other 'assessment'—in each of which certain figures are set down. The last column is footed thus: '\$20,814 00' and between the 4 and the next to the last 0 is a red line drawn, which may be fairly understood to mean twenty thousand eight hundred and fourteen dollars and no cents, and when the footing at the bottom of the column is found to be the sum of all the figures in the column above, we are reasonably informed that the figures above are designed for dollars and cents, although there is nothing in the column above to indicate what those figures were to stand for."

I understand from this language that in that case the Supreme Court held the assessment column sufficiently certain, but the assessment invalid because the valuation column (which was essential, it being an assessment for improving under 7th chapter of Charter, and not for

opening a street under 6th chapter), had no words, signs or characters to indicate what the figures were designed to represent.

In this case, the sign \$ is prefixed to the sum total of the columns headed "costs of proceeding," "nett damages" and "nett benefits" with a red line dividing the dollars from cents as in the Gibson case, which together constitute all that is to be paid for property taken, and all that is to be assessed upon those benefited, and is, substantially, the assessment. At the left hand of the sums is the word "Total" showing affirmatively that the sums are designed for and are the sums total of the columns above.

If the views I have taken of the Act of February 16, 1857, is sustainable, there is clearly sufficient in the assessment to form the basis of a judgment. The land condemned is described as land condemned; the nett damages sustained by the plaintiff, and the costs and expenses of the assessment and the nett benefit and benefits and damages to each party whose land is taken or assessed for benefits. That it was competent for the Legislature to authorize the city to appropriate lands to public use upon making an assessment, specifying the net damages and net benefits, and expenses as is done in the case, without any other column or specification, is clear from the case of *Johnson vs. Joliet R. R. Co.*, and if so from the cases already cited, it was competent for the Legislature to make such assessment valid by act of confirmation. But aside from this, taking the totals as a guide to indicate what the figures in the various columns stand for, and the printing at the head of the columns, by subtraction and addition, the whole assessment is a technical and strict compliance with the provisions of the charter in relation to opening streets, and, as I understand the principle adopted by the Supreme Court in the case of *Gibson vs. Chicago*, is all that is necessary.

The objection certainly comes with a bad grace from the city, the acts being to confirm defects in her own proceedings, which are presumed to have been taken in good faith to effect a lawful purpose. By the act, property is condemned to public use, and the plaintiff is deprived of all power and control over it, as property, except the right to retain the possession, as security, until he receives compensation. I know of no way in which the plaintiff's property can be restored. If the street was discontinued he would obtain no title to it. I know of no law authorizing the city to convey. In any view, it is not the plaintiff's property now. It is out of the power of the city to collect compensation in the manner provided by law, and it is either the fault or misfortune of the city that it is so. If it is her fault and by her negligence, as she has obtained the plaintiff's property without his consent, and against his wish upon the common principles of justice, she should be held liable to make compensation. If it is her misfortune that her advisers mistook the law, and she was thus placed in a position that she could not obtain compensation from those who should make it, such mis-

fortune ought not to be visited upon the plaintiff, who had no agency in producing the result.

It is true, as suggested in argument, that the large amount of assessment unpaid will necessarily be paid by the citizens at large, instead of those who are specially benefitted as the law provides.

This, however, is no answer to the plaintiff, if a corporation is liable for the dilatory proceedings of those who represent her, when the law imposes upon her a duty which she performs so negligently as to cause injury to another. This is undoubtedly the law, and as the Supreme Court have decided that the law implies a promise on the part of the city to perform that duty within a reasonable time, I can see no ground for refusing judgment in this case.

218

Supreme Court

~~Wheeler~~
218 + 219, ~~and~~ appellee

The City of Chicago
Appellant

Briefs for Appellee

Filed April 24, 1881

L. Leland
Clerk

Darwell & Smith
Attorneys

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 219.

City of Chicago
vs
Wheeler

1861

Appended

SUPREME COURT OF ILLINOIS

THIRD GRAND DIVISION.

April Term, 1861.

CITY OF CHICAGO, Appellant,

v.

WILLIAM WHEELER, Appellee.

CITY OF CHICAGO, Appellant,

v.

ROSALIA A. BONNER, and another, Appellee,

} *Appeal from the Superior
Court of Chicago.*

Abstract of the Record.

Declaration sets out the various steps taken, or alleged to be taken, in pursuance of the Charter, for the purpose of condemning the lots of the Appellees, for the opening of Lasalle Street—and among other things, that the “Common Council, in pursuance of the requirements of the Charter, chose three disinterested freeholders, to wit: F. A. Bragg, Thomas Church, and W. W. Salstonstall, residing in said city, as commissioners “to ascertain and assess damages”—that the commissioners proceeded to make their assessments, and “did determine and appraise to the owner and owners the *value of the real estate* appropriated,” &c., that there was “appraised, allowed and awarded to said plaintiff in and by said assessment * * * as damages for the taking and appropriation of the land of said plaintiff * * * and the buildings thereon, for the purpose of opening said street over and above benefits for the lands appropriated, the sum of, &c.—that it was the duty of the City to proceed to collect the assessment with diligence, and to pay the plaintiffs the sum of, &c., within a reasonable time. And the City then and there undertook and promised to do their duty in that behalf.

Plea—General Issue. Trial before Hon. John M. Wilson, without a jury, submitted to decision of court by agreement, February 8th, 1861.

BILL OF EXCEPTIONS.

Plaintiff offered in evidence original assessment roll, with entries

and endorsements thereon, including the order of confirmation, among others, as follows :

"In Common Council November 12th, 1855. By Alderman Fletcher : Ordered, that the Common Council do now elect by ballot three reputable, discreet and disinterested freeholders of the City of Chicago, whose duty it shall be to ascertain the damages and recompense due the owners respectively of such real estate as shall be taken and appropriated for the opening of Lasalle Street to Jackson Street, in accordance with an ordinance for the survey thereof, passed October 15th, 1855, and at the same time, assess the amount of such damages, together with the cost of the proceedings upon the real estate, deemed benefitted by the improvement in proportion as nearly as may be to the benefits resulting to each parcel of ground respectively.

The order was passed and the Council proceeded to the election of Commissioners thereunder. On the first ballot F. A. Bragg and Thos. Church received each 10 votes, and were declared elected ; on the second ballot for a third Commissioner there was no choice.

Attest—

H. W. ZIMMERMAN, *City Clerk.*

In Common Council, January 10th, 1856. Alderman Colby an order for the election of Commissioners for the opening of Franklin Street. The order was passed, and the Council proceeded to the election of Commissioners thereunder.

On the first ballot there was no choice, and on motion of Alderman Fletcher further balloting on said order was suspended for the purpose of electing three Commissioners to make an assessment for the extension of Lasalle Street. On the first ballot there was no choice. On the second ballot, W. W. Salstonstall received 10 votes and was declared elected. On the third ballot, F. A. Bragg and Thomas Church received each 10 votes, and were declared elected.

Attest—

H. W. ZIMMERMAN, *City Clerk.*

Upon said roll was also the following :

State of Illinois, City of Chicago, ss.—We, the undersigned freeholders of the City of Chicago, appointed by the Common Council of said City as Commissioners to ascertain the damages and recompense due the owners of such real estate as shall be appropriated and taken for the extension of Lasalle Street from its present terminus to Jackson Street, in accordance with the foregoing orders ; and at the same time to assess such damages together with the cost of these proceedings upon the real estate deemed benefitted thereby as nearly as may be, do solemnly swear that we will faithfully and

impartially perform our duty as such commissioners according to the best of our ability.

Subscribed and sworn to before me this }
16th day of Jany. 1856

H. W. ZIMMERMAN, *City Clerk.* }

F. A. BRAGG,
W. W. SALSTONSTALL,
THOMAS CHURCH,
Commissioners.

And then followed said assessment roll consisting of thirty five pages, the caption and first page, also the thirty-fourth and thirty-fifth pages of the same being herein given as follows—and also in the Bonner case, the twelfth page as follows :

A Description of the Real Estate in the South Division of the City of Chicago, deemed benefitted and damaged by reason of the Extension of La Salle Street from its present terminus at Madison Street South to Jackson Street.

in accordance with the order for the Survey thereof, passed by the Common Council of the said City, on the fifteenth day of October 1855, and the subsequent orders in relation thereto; together with the valuation of said Real Estate and the sums of Money severally Assessed thereon, for benefits and awarded as damages, respectively, by the Commissioners, to wit:

Original Town of Chicago,

NAMES OF OWNERS.	DESCRIPTION.	S. Lot.	Lot.	Block.	Valuation.	Value of Land Condem'd.	Damage to Buildin's Condem'd.	Total Damages.	Benefits by the Improvement.	Cost of Proceedings.	Total Benefits.	NET DAMAGES.	NET BENEFITS.
S. B. Tomery & Co	Wharfing Lots		10		21000				20 00	70	20 70		20 70
Julius Wadsworth			11		22000				30 00	1 05	31 05		31 05
do	E 1/2		12		15000				50 00	1 75	51 75		51 75
P. H. W. Beck	W 1/2		"		16000				200 00	7 00	207 00		207 00
Wis State Bank			13		19000				250 00	8 75	258 75		258 75
E. D. Taylor	E 1/2		14		9000				18 00	63	18 63		18 63
R. J. Hamilton	W 1/2		"		10000				12 00	42	12 42		12 42
J. S. Newhouse			15		20000				20 00	70	20 70		20 70
Orad Couch			2	18	56000				20 00	70	20 70		20 70
G. Wadsworth			3	"	44000				30 00	1 05	31 05		31 05
Estate of J. Rice	N E 1/4		4	"	13800				20 00	70	20 70		20 70
P. H. W. Beck	N 2/3 E. N. E. 1/4		"	"	21600				600 00	21 00	621 00		621 00
Amounts carried forward										44.45			1314 45

NAMES OF OWNERS.	DESCRIPTION.	S. Lot.	Lot.	Block.	Valuation.	Value of Land Condemned.	Damage to Buildings Condemned.	Total Damages.	Benefits by the Improvement.	Cost of Proceeding.	Total Benefits.	Net Damages.	Net Benefits.
							Amounts bro't forward,			2089 46		305-25 00	61 789 46
Est of J. D. Bonner	E 1/4 of 34 3/4 ft		4	96	14125	10000	1600	11600	14 1/5 00		14 1/5 00	10125 00	
R. Toisap	E 1/4		5	"	4500	4500		4500				4500 00	
Wm Gentry	1/2 of E 1/2		"	"	4500	3500	900	4400	500 00		500 00	3900 00	
Henry Meyers	E 1/2 of W 1/2		"	"	4500				388 00	13 58	401 58		401 58
R. Schlosser	W 1/4		"	"	4500				28 1/2 00	10 05	29 1/2 05		29 1/2 05
Berg & Atzel	E 1/4		6	"	4500				230 00	8 05	238 05		238 05
J. Burke	1/2 of E 1/2		"	"	4500				160 00	5 60	165 60		165 60
Leopold Mayer	E 1/2 of 1/2		"	"	4500				140 00	4 90	144 90		144 90
R. White	1/4		"	"	4500				120 00	4 20	124 20		124 20
John S. Wright			7	"	18000				250 00	8 1/5	258 1/5		258 1/5
J. Whitlock			1	97	10000	8000		8000	1000 00		1000 00	7000 00	
Dan Taylor			2	"	10000				700 00	24 50	724 50		724 50
do			3	"	10000				450 00	15 1/5	465 1/5		465 1/5
do			4	"	10000				350 00	12 25	362 25		362 25
Est of J. Rice			5	"	10000				200 00	7 00	207 00		207 00
Rippon			6	10511		2500			20 00	7 0	20 70		20 70
Thomas Whitlock			12	"	15000				200 00	7 00	207 00		207 00
							Amounts carried forward,			2211 1/9		56050 00	65406 1/9

[illegible]

NAMES OF OWNERS.	DESCRIPTION.	S. Lot.	Lot.	Block.	Valuation.	Value of Land Condemned.	Damage to Buildings Condemned.	Total Damages.	Benefits by the Improvement.	Cost of Proceeding.	Total Benefits.	Net Damages.	Net Benefits.
J. B. Floyd	Removing building on leased lot						Amounts bro't forward,						
do	Damages to lease						4 00	4 00		4437 53	133778 00	140065 53	
Mer Law	do do										400 00		
City of Chicago	Cost of proceedings										150 00		
											1000 00		
							Totals			\$4437 53	\$135328 00	\$140065 53	
							Amounts carried forward,						

It is expressly agreed by the parties that all the pages of said original assessment roll following the one first herein given, and up to the said thirty fourth and thirty fifth ~~pages~~ ^{pages} herein given, are in form like the said thirty-fourth page to the corresponding columns, and having the words "amounts brought forward" at the top, and the words "amounts carried forward" at the bottom of each page, the figures following such words at the top and bottom in the corresponding columns representing the aggregate of all the figures of such corresponding columns, in preceding pages as in said 34th page. The words "amounts brought forward," and the figures following such words on the top of the thirty-fourth page, being the aggregate of the amounts brought forward from the corresponding columns of all said preceding pages, and the words "amounts carried forward" with the figures following such words at the foot of said thirty-fourth page, being the aggregate of the amounts carried forward from all the corresponding columns of the preceding pages, together with said twenty-fourth page—all the said preceding pages being like the thirty-fourth page without the "\$" or any words, sign or character to denote or characterize the figures other than or different from what appears on said thirty-fourth page.

This description of the pages also applies in the Bonner case, substituting the 12th for the 34th page.

The plaintiff offered the said assessment roll, the entries and proceedings thereon, including those in this abstract set forth. But to the introduction of the same, or any part thereof, in evidence, the defendant by its attorney objected.

The plaintiff also offered in evidence the act amendatory of the City Charter, approved February 16th, 1857, and the 86th Section of the same as follows:

"All actions, rights, fines, penalties in suit or otherwise, which have accrued under any act to which this act is an amendment, or under any ordinance of said City, now in force, shall be vested in, and prosecuted by the corporation. And all proceedings now, or hereafter commenced, for the opening of any street or streets, in said City, and the assessment of real estate for any such improvement, is hereby expressly legalized and affirmed, and the Common Council is hereby expressly authorized to continue such proceedings, and open said street or streets, any defect, decree, or order of any court to the contrary notwithstanding."

The Court overruled the objection of defendant to the introduction of the said assessment roll, the proceedings, orders, and entries endorsed thereon, and received, read, and considered the same in evidence, to which decision of the Court, the defendant then and

there excepted. It appeared in evidence, also, that a warrant issued on said assessment, 17th June, 1856, upon which was collected \$23,913.03, and no more, which sum was all paid out prior to the commencement of this suit by the city to those entitled to the same under the assessment, but none to plaintiff.

This was all, and there was no other evidence in the case offered or given.

Plaintiff claimed to recover interest on amount assessed to him, at six per cent. from the expiration of the two years next after the confirmation of said assessment, (June 9, 1856) or at least from March 2, 1859, (time of commencement of this suit), and excepted to so much of the decision of the Court as refused and disallowed the interest.

Afterwards, on 15th March, Court found the issues for plaintiff, and assessed the damages at \$15545.00, being amount of said assessment, without interest.

To the decision and finding of the Court, the defendant excepted. To the refusal of the Court to allow interest, the plaintiff also excepted.

Defendant moved the Court to set aside the finding and decision of the Court as aforesaid, and grant a new trial, because—

1. The same were contrary to the evidence in the case.
2. The same were contrary to law.
3. The same ought to have been for the defendant instead of for the plaintiff.
4. The Court admitted illegal, improper, and incompetent evidence.

But the Court overruled said motion, to which the defendant then and there excepted. Thereupon the Court rendered judgment on the decision and finding aforesaid, for the sum aforesaid.

And said appellant, (The City of Chicago,) assigns as error upon said record—

1. That the decision and finding of the Court and judgment thereon are contrary to the evidence in the case.
2. That the decision and finding of the Court and judgment thereon, are contrary to law.

3. That the decision, finding and judgment of the Court ought to have been for the defendant, (appellant) below, instead of for plaintiff below.

4. The Court erred in admitting and considering illegal, incompetent and improper evidence.

5. The Court erred in denying the motion to set aside the finding of the Court, and grant a new trial.

And the said William Wheeler, and said Rosalia and Percy W. Bonner, assign cross error as follows :

The Court below erred in disallowing interest to the said Wheeler upon the award and appraisement to him of damages for his land condemned.

218-219

¹⁸⁸⁰
Supreme Court

The City of Chicago
vs

William Wheeler

Adm'd by

Record

Filed Apr 19. 1861

Deland

Clk

SUPERIOR COURT OF CHICAGO.

WILLIAM WHEELER
vs.
THE CITY OF CHICAGO. }

OPINION BY JOHN M. WILSON, JUDGE.

This is an action of assumpsit to recover of the City the amount of an assessment made upon the authority of the City, for property of the plaintiff taken and appropriated for extending La Salle street.

The action is based upon the assumption that the City promised to collect and pay over the amount of the assessment within a reasonable time, and that it has failed to do so.

The power exercised is the right of eminent domain conferred upon the City by its charter. The City having exercised the power, the law imposed the obligation to proceed with reasonable diligence, and one whose property is thus appropriated to public use may compel the City, by mandamus, to proceed and collect and pay over such assessment.

Higgins vs. The City of Chicago, 18 Ill., 276.

In this class of cases, where property may be taken for public uses, without the consent, and even against the will of the owner, the Constitution requires that compensation be made and imposes this duty upon the State or Corporation exercising this power. In the case of a corporation liable to be sued, an action on the case is maintainable for negligence or unreasonable delay in the performance of its duty. *McCulloch—the Mayor &c. of Brooklyn*, 23 Wend., 458.

I understand the Supreme Court to have decided in this case not merely that an action of assumpsit for money had and received could be maintained if the city had collected the assessment, (for of this there can be no doubt) but that this action for not collecting in reasonable time is maintainable. (See this case reported in 24 Ill., 105.)

If this is so, the only question remaining is whether the facts show that the defendant has delayed an unreasonable time in collecting this assessment.

The assessment was made and confirmed by the Common Council on the 9th of June, 1856. And on the same day they passed an order for a warrant to collect the assessment, and the Collector proceeded and collected \$23,913.03.

This suit was commenced March 2d, 1859, almost three years after the assessment was confirmed, and two and a half years after the Council ordered a sale of the lands assessed.

The lien upon the lands by the Charter continued only two years from the confirmation of the assessment. The warrant for the sale of personal property to satisfy assessment having been returned, and two years having elapsed after the confirmation without collecting the assessment, it is apparent that the city had no power when this suit was commenced to collect the assessment, and a Court would not even award a mandamus to compel her to collect an assessment by the sale of the lands after the lien had ceased. The only remedy left for the plaintiff was by suit.

The city by failing to collect the assessment of those assessed to pay, had deprived the plaintiff of the special provision the law had made for his compensation, and without such provision, the land could not be taken for public use. It is clear that if he cannot recover in this action, he cannot obtain compensation at all.

And as to the question of unreasonable delay, the Legislature, it would seem, had settled that by limiting the lien to two years; certainly a delay beyond the two years deprived the plaintiff of the only means of compensation provided by law under the Charter, and it is difficult to conceive what delay would be unreasonable if this was not, for further delay for any length of time would place the plaintiff in no worse position.

But it is contended by the City, that the whole proceeding is void, and numerous grounds are stated. But I do not deem it necessary to decide upon this branch of the argument except as to the dollar mark question (so called), for if the Act of February 16, 1857, makes the assessment valid, as it assumes to do, it may be admitted that the assessment was invalid independent of the act.

Numerous authorities have been cited to show that the Legislature cannot make valid a void act. This is, doubtless, true in relation to all Acts wherein the Legislature assumes judicial functions and attempts to settle the rights of property between man and man, and most of the cases cited embody this principle, and I fully subscribe to this doctrine.

There is, on the other hand, a large class of cases in relation to proceedings for the condemnation of private property for public use where acts of the Legislature have been declared to be effective in making irregular and void proceedings valid retrospectively.

Marsh vs. Chestnut, 14 Ill. 223 ; *Schofield vs. Watkins*, 22 Ill. 66 ; *State vs. City of Newark*, 3 Dutcher, 185 ; *Municipality No. 1 vs. Wheeler*, 10 La. An. 745 ; *City of New Orleans vs. Corderville*, 13 La.

An. 268, *Yost's report*, 17 Penn. (5 Harris) 524; *Schenly vs. Commonwealth*, 36 Penn. (12 Casey) 29. And if there were no authority, I am at a loss to see how this power could be *denied*. The right of eminent domain exists in the State, and the Legislature under the Constitution has the right to take private property for public use—subject only to the condition that adequate provision for compensation is made. The Legislature may also authorize corporations to take private property for public use on the same conditions. *Johnson vs. Joliet & Chicago R. R.* 23 Ills. 203.

Now whatever may be the defects in this assessment inasmuch as compensation was provided, the Legislature might have authorized the City to take this property in the precise manner it was attempted to be taken. Admitting that as the law stood, many provisions were not complied with, if they might do it in the first instance, how do they become incompetent to waive, what they might have omitted? It being matter of discretion to insist upon these or not in the first instance. The city is deprived of no right, for by the Act she is obtaining what she sought to do, but failed to effect by her own errors and mistakes. And the owner of the land is deprived of no right, for he has his compensation secured, and the public upon that condition have a right to his land.

In relation to the dollar mark, several cases decided by the Supreme Court have been referred to—*Jackson vs. Cummings*, 15 Ills. 449; *Lawrence vs. Fast*, 20 Ills. 338; *Lane vs. Francis*, 21 Ills. 143; *Gibson vs. the City of Chicago*, 22 Ills. 566; *Eppinger vs. Kirby*, 23 Ills. 521. I understand these decisions to establish that an assessment which contains only figures is not sufficient; and that the Court will not intend that certain figures mean dollars or cents, unless there are some characters, marks, figures or words, to indicate what is intended. In the case of *Jackson vs. Cummings*, (15 Ills. 449), the Court recognized the sign \$ as indicating dollars; and in *Gibson vs. Chicago*, (22 Ills. 566), Chief Justice Caton, in delivering the opinion of the Court, says:

“In the assessment roll are two columns, one headed ‘valuation’ and the other ‘assessment’—in each of which certain figures are set down. The last column is footed thus: ‘\$20,814 00’ and between the 4 and the next to the last 0 is a red line drawn, which may be fairly understood to mean twenty thousand eight hundred and fourteen dollars and no cents, and when the footing at the bottom of the column is found to be the sum of all the figures in the column above, we are reasonably informed that the figures above are designed for dollars and cents, although there is nothing in the column above to indicate what those figures were to stand for.”

I understand from this language that in that case the Supreme Court held the assessment column sufficiently certain, but the assessment invalid because the valuation column (which was essential, it being an assessment for improving under 7th chapter of Charter, and not for

opening a street under 6th chapter), had no words, signs or characters to indicate what the figures were designed to represent.

In this case, the sign \$ is prefixed to the sum total of the columns headed "costs of proceeding," "nett damages" and "nett benefits" with a red line dividing the dollars from cents as in the Gibson case, which together constitute all that is to be paid for property taken, and all that is to be assessed upon those benefited, and is, substantially, the assessment. At the left hand of the sums is the word "Total" showing affirmatively that the sums are designed for and are the sums total of the columns above.

If the views I have taken of the Act of February 16, 1857, is sustainable, there is clearly sufficient in the assessment to form the basis of a judgment. The land condemned is described as land condemned; the nett damages sustained by the plaintiff, and the costs and expenses of the assessment and the nett benefit and benefits and damages to each party whose land is taken or assessed for benefits. That it was competent for the Legislature to authorize the city to appropriate lands to public use upon making an assessment, specifying the net damages and net benefits, and expenses as is done in the case, without any other column or specification, is clear from the case of *Johnson vs. Joliet R. R. Co.*, and if so from the cases already cited, it was competent for the Legislature to make such assessment valid by act of confirmation. But aside from this, taking the totals as a guide to indicate what the figures in the various columns stand for, and the printing at the head of the columns, by subtraction and addition, the whole assessment is a technical and strict compliance with the provisions of the charter in relation to opening streets, and, as I understand the principle adopted by the Supreme Court in the case of *Gibson vs. Chicago*, is all that is necessary.

The objection certainly comes with a bad grace from the city, the acts being to confirm defects in her own proceedings, which are presumed to have been taken in good faith to effect a lawful purpose. By the act, property is condemned to public use, and the plaintiff is deprived of all power and control over it, as property, except the right to retain the possession, as security, until he receives compensation. I know of no way in which the plaintiff's property can be restored. If the street was discontinued he would obtain no title to it. I know of no law authorizing the city to convey. In any view, it is not the plaintiff's property now. It is out of the power of the city to collect compensation in the manner provided by law, and it is either the fault or misfortune of the city that it is so. If it is her fault and by her negligence, as she has obtained the plaintiff's property without his consent, and against his wish upon the common principles of justice, she should be held liable to make compensation. If it is her misfortune that her advisers mistook the law, and she was thus placed in a position that she could not obtain compensation from those who should make it, such mis-

fortune ought not to be visited upon the plaintiff, who had no agency in producing the result.

It is true, as suggested in argument, that the large amount of assessment unpaid will necessarily be paid by the citizens at large, instead of those who are specially benefitted as the law provides.

This, however, is no answer to the plaintiff, if a corporation is liable for the dilatory proceedings of those who represent her, when the law imposes upon her a duty which she performs so negligently as to cause injury to another. This is undoubtedly the law, and as the Supreme Court have decided that the law implies a promise on the part of the city to perform that duty within a reasonable time, I can see no ground for refusing judgment in this case.

218 247 & 219
⁷⁹ Supreme Court ⁸⁰

Wm Wheeler
appellee
ad

The City of Chicago
~~appellee~~

~~Brief of Appellee~~

Quinn
Wilson

Dorwell & Smith
attorneys

UNITED STATES OF AMERICA,
STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular 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 first Monday, being the fourth day of March in the year of our Lord One Thousand Eight Hundred and Sixty two and of the Independence of the United States of America the Eighty fifth

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

Wm H. Higgins }
Grant Goodrich } Judges.

Charles F. Faxon Prosecuting Attorney.

Arthur C. Hising Sheriff of Cook County.

Attest, Walter Kimball Clerk.

Be it remembered that herefore to wit on the
day of _____ in the year of our Lord one thousand
eight hundred and fifty _____ there was issued out of
and under the Seal of said Court. Peoples Writ of
Summons against the City of Chicago; Which Summons
is in words and figures as follows, to wit,

" State of Illinois }
County of Cook } ss.

The People of the State of Illinois
to the Sheriff of said County Greeting.

We command you that you Summon the City of Chicago
if it shall be found in your County personally to be
and appear before the Superior Court of Chicago of said
Cook County on the first day of the next term thereof to
be holden at the Court House in the City of Chicago in

2

said County on the first Monday of next to
answer unto William Wheeler in a plea of trespass on the
case upon promises; to the damage of the said Plaintiff as
is said in the sum of Twenty five thousand dollars

And have you here this writ with an endorsement
thereon in what manner you shall have executed the same

Witness Walter Kimball Clerk of our said
Court and the Seal thereof at Chicago

Seal
aforesaid this day of

A. D. 185

Walter Kimball. Clerk "

And hereafter came the said Plaintiff and filed
in the Office of the Clerk of said Court his declaration
in said cause: Which declaration is in the words
and figures as follows to wit

Cook County Court of Common Pleas,

Of the April Term, A. D. 1859.

STATE OF ILLINOIS, }
COUNTY-OF-COOK, } ss.

3 William Wheeler, plaintiff in this suit, by Goodrich, Farwell & Smith, his attorneys, complains of The City of Chicago, defendants therein, who have been summoned, &c., of a plea of trespass on the case upon promises :

For that, whereas, the said plaintiff heretofore, to-wit : on the fifteenth day of October in the year of our Lord one thousand eight hundred and fifty-five was and

thence until and at the time of the appropriation thereof for street purposes by said defendants, as hereinafter stated, seized in fee of the west thirty feet of sub lot eight, and all of sub lot seven in lots one and two in block one hundred and eighteen, in school section addition to the City of Chicago, in the County of Cook and State of Illinois, together with the buildings and appurtenances therein, which said lands and premises have been subjected to the proceedings, hereinafter named, to condemn such property for the purpose of opening over the same a highway or street; being an extension south of La Salle Street, to-wit: at said County of Cook. And said plaintiff further says, that heretofore, to wit: on the said fifteenth day of October in the year aforesaid, to-wit: at the said County of Cook, the said City of Chicago, defendants did, through their Common Council, in pursuance of the power conferred upon said defendants by their charter, order a survey for the extension of said La Salle Street, from its then present terminus at Madison Street in said City of Chicago, south to Jackson Street in said City; which said survey was made accordingly, and afterward the said defendants, through their said Common Council, gave the notice required by their charter, of their intention to appropriate and take the land necessary for the extension of said La Salle Street south from said Madison Street to said Jackson Street, to the owners of said lands, by publishing said notice ten days as required by said charter in the corporation newspaper of said defendants. The first publication of which said notice being on the twentieth day of October in the year aforesaid, and the same being published ten days consecutively thereafter, and the said plaintiff further says, that afterward and after the expiration of said notice, to-wit: on the tenth day of January, in the year of our Lord one thousand eight hundred and fifty-six, to-wit: at said County of Cook, the said defendants, through their Common Council, and in pursuance of the requirements of the said Charter, did choose three disinterested freeholders, to-wit: F. A. Bragg, Thomas Church and W. W. Saltonstall, residing in said City, as Commissioners to ascertain and assess the damages and recompense due the owners of such lands respectively; and, at the same time, to determine what persons would be benefited by such improvement, and assess the damages and expenses thereof on the real estate benefited in proportion, as nearly as may be, to the benefits resulting to each; which said Commissioners were then and there elected by a majority of all the Alderman authorized by law to be elected; which said Commissioners were afterwards, to-wit: on the sixteenth day of said month of January, in the year last aforesaid, duly sworn as required by law faithfully to execute their duties according to the best of their ability, and before entering upon their duties the said Commissioners did give notice to the persons interested of the time and place of their meeting for the purposes of viewing the premises and making their assessment, by publishing said notice ten days before the time of such meeting in the said defendants' corporation newspaper, to-wit: at the said County of Cook. And the said plaintiff further says, that the said Commissioners did thereupon, after the expiration of said last named

7 notice, proceed to make their assessments, and did determine and appraise to the owner and owners the value of the real estate appropriated for the said improvement, and the injury arising to them respectively as damages, after making due allowance therefrom, for any benefit which such owner or owners might respectively derive from such improvement, to-wit: at the said County of Cook. And the said plaintiff further says, that the said Commissioners did in all things comply with the law and the Charter and the ordinances of said City in regard to said assessment and the opening of said street, and having ascertained the damages and expenses of such improvements as aforesaid, the said Commissioners did thereupon apportion and assess the same, together with the costs of the proceeding, upon the real estate by them deemed benefited in proportion to the benefits resulting thereto from the aforesaid improvement, and did describe the real estate upon which their assessments were made; and, after having completed and signed said assessment, the said Commissioners did within the extended time allowed them by the said Common Council in which to complete and return their said assessment, to-wit: on the fifth day of April, in the year of our Lord one thousand eight hundred and fifty-six, return their said assessment to the said Common Council of said City of Chicago as required by law. And the Clerk of the said City of Chicago did thereupon after the return of said assessment, give ten days notice, commencing on, to-wit: the eighth day of April in said year last aforesaid, in the said defendants' corporation newspaper, that such assessment had been returned, and that, on a day specified in such notice, said assessment would be confirmed by said Common Council, unless objections were made to the same by some person interested.

9 And the said plaintiff further says, that after the expiration of the said last named notice, to-wit: on the ninth day of June in the year last aforesaid, at to-wit: the County of Cook aforesaid, (no objections having been made), the said assessment of the said Commissioners, so as aforesaid by them returned, was in all things confirmed by the said Common Council of said City of Chicago, in due form of law. And the said plaintiff further says, that there was appraised, allowed and awarded the said plaintiff, in and by said assessment, so as aforesaid made and returned by said Commissioners and confirmed by said Common Council, as damages for the taking and appropriation of the lands of the said plaintiff, hereinbefore described, and the buildings thereon, for the purpose of opening said street, over and above benefits for the land appropriated, the sum of twelve thousand and forty-five dollars, and for the buildings thereon three thousand five hundred dollars, making in aggregate of fifteen thousand five hundred and forty-five dollars. And the said plaintiff avers, that it thereupon then and there became and was the duty of the said defendants to proceed immediately and with diligence to collect money by the means provided by their charter, sufficient to pay the aforesaid assessment and award, so as aforesaid assessed and awarded to said plaintiff and confirmed as aforesaid; and to pay the said sums to said plaintiff within a reasonable

~~(4)~~

11 time; and the said defendants, in consideration thereof, then and there undertook and faithfully promised the said plaintiff, to faithfully and diligently perform their said duty in all respects in this behalf. Yet the said defendants disregarding their said undertaking and promise in the premises, did not within a reasonable time pay to the said plaintiff the said award and assessment, or any part thereof, but on the contrary thereof, the said plaintiff avers, that the said defendants since the confirmation of said assessment as aforesaid, for an unreasonable and long space of time, to-wit: for the space of two years and eight months and over, wholly failed and neglected to pay to the said plaintiff the said sum of money so appraised, awarded and allowed to him as such damages as aforesaid, or any part thereof, though often requested so to do. By means of the premises the said defendants became liable to pay the said plaintiff the said sum of fifteen thousand five hundred and forty-five dollars, so as aforesaid appraised, awarded and allowed to him as such damages as aforesaid; and being so liable they the said defendants, in consideration thereof, afterwards, to-wit: on the first day of March, in the year of our Lord one thousand eight hundred and fifty-nine, at to-wit: the County of Cook aforesaid, undertook and then and there faithfully promised the said plaintiff, to pay to him the aforesaid sum of fifteen thousand five hundred and forty-five dollars, so as aforesaid appraised, awarded and allowed to him.

Yet the said defendants, not regarding, &c., have not paid the said several sums of money, or any or either of them, or any part thereof, to the said plaintiff, (though often requested so to do); but so to do have hitherto refused and still do refuse, to the damage of said plaintiff, of twenty-five thousand dollars, and there fore he brings suit, &c.

GOODRICH, FARWELL & SMITH,

Plaintiff's Attorneys.

(7)

to wit on the 15th day of November 1864

And thereafter, came the said Defendant and
filed in the Office of the Clerk of said Court its
Plea to said Declaration: Which Plea is in words
and figures as follows, to wit,

"State of Illinois
Cook County .. } &

In the Superior Court
of Chicago.

November Term 1864.

And now comes the said defendant
by John Lytle King its attorney and defends the
wrong and injury when to and says that the said
Defendant did not undertake and promise in manner
and form as the said Plaintiff hath alleged thereof
complained against it; And of this the said defendant
puts itself upon the Country &c

John Lytle King
Defts Atty."

"And the said Plaintiff doth the like
Harwell Smith
Plffs Atty."

8

And afterwards to wit on the fifteenth day of
March (being one of the days of the March term of
said Court) A. D. Eighteen hundred and sixty one
the following proceedings were had in said case and
interlocutory of Record in said Court, to wit,

"William Wheeler
vs
The City of Chicago } Assumpsit

On this day comes the said Plaintiff by
Harwell Smith his attorneys and the said defendant the
City of Chicago by John Lyle King esq City Attorney also
come and upon agreement of the parties made now here in
open Court, this case is submitted to the Court sitting in
Court for trial on the issues joined herein without
intervention of a Jury and the Court now here present
after hearing evidence and arguments of counsel and being
fully advised in the premises finds issues for said Plaintiff
and assessed his damages herein against the said defendant
to the sum of ¹⁰Eight thousand five hundred and forty
five dollars and thereupon the said Plaintiff excepts to the
opinion of the Court in refusing to allow Plaintiff interest
Whereupon defendant submits Motion herein for a New trial
in said case which Motion for a New trial being heard
and argued by Counsel is hereby overruled by the Court
to which decision and ruling of the Court the said defendant
excepts and enters its exceptions.

9

Therefore the said Plaintiff ought now to have a judgment entered on the finding of the Court - for her damage assessed as aforesaid.

Therefore it is considered that the said Plaintiff do have and recover of and from the said defendant his damages of Fifteen thousand five hundred and forty five dollars in forens aforesaid found and assessed by the Court together with his costs and charges about his suit in this behalf expended and thereof have execution.

And thereupon the said defendant having entered exceptions to the verdict and appeal herein to the Supreme Court of this State which is allowed to the said defendant - upon filing Appeal Bond in the sum of five thousand dollars with security to be approved by a Judge of this Court and to be filed with Bill of Exceptions within ten days from this date.

And thereafter to wit on the twenty third day of March A. D. eighteen hundred and sixty one came the said Defendant by its Attorney and filed in the Office of the Clerk of said Court its Bill of Exceptions in said cause; Which Bill of Exceptions is in words and figures as follows, to wit,

In Superior Court of Chicago.

William Wheeler

^{vs.} The City of Chicago. *Recd of Exceptions.*

March Term. A.D. 1861.

Be it remembered, that on the Eighth day of February A.D. 1861. at the February term of said Court, and before one of the Judges of said Court, the said above entitled cause came on for trial on the issues joined. And the said respective parties, by their Attorneys, having waived a jury for the trial of the cause, submitted said cause for trial to the said Court without the intervention of a jury.

And, thereupon, on the trial of said issues, the Counsel for the Plaintiff, to maintain and prove the said issues on his part, offered in evidence the original assessment Roll, with the endorsements and entries thereon as follows:

"Assessment Roll for the Extension
of La Salle Street"

11
"In Common Council October 15th 1855.
"Ordend, that when the survey shall be
made, that the City Clerk give ten days
notice in the Corporation Newspaper that
the Common Council of the City of Chicago,
intend to appropriate and take so
much land as shall be necessary
for the extension of LaSalle Street from
its present terminus at Madison Street,
in a straight line south to Jackson
Street, to conform in width, with that
part of LaSalle Street already opened,
said extension to run through Block
95, 96, 97, 116, 117, 118, School Section Addition
to Chicago.

Ordend, that the City Surveyor proceed
forthwith, to survey, mark out, plat and
record in the Book provided for that
purpose, showing particularly the
proposed improvement and the real estate
required to be taken therefor, the extension
of LaSalle Street from its present terminus
at Madison Street, in a straight line south
to Jackson Street, to conform in width
with that part of LaSalle Street already
opened, said extension to run through
Blocks 95 and 118, 96 and 117, and 97 and 116
of the School Section Addition to Chicago.
Passed, attest to W Zimmerman
City Clerk"

and also, when the said Assessment Roll appeared a copy of the Corporation notice appended to the certificate of publication of said notice as follows.

"Corporation Notice"

City Clerk's Office Chicago October 19. 1855.
Public notice is hereby given to all persons interested, that the Common Council ^{of the City of Chicago,} intend to appropriate and take the land necessary to extend LaSalle street from its present terminus at Madison street in a straight line south to Jackson street, to conform in width with that part of LaSalle Street already opened. said extension to run through blocks 95 & 118, 96 & 117, 97 & 116 of the School Section Addition to Chicago.

(10 to) W. Zimmerman City Clerk."

And with said notice there was the following certificate.
"This certifies that the appended notice relative to the Extension of LaSalle Street to Jackson street &c - has been published in the Chicago Daily Democrat, the Corporation Newspaper of the City of Chicago, County of Cook and State of Illinois, ten days consecutively commencing with

October 20th 1855.

Chicago March 24th 1856.

G. W. Bradley Publisher

Upon the said Assessment Roll there were also the following orders of the said Common Council.

In Common Council November 12. 1855.
By Alderman Fletcher.

Ordered. That the Common Council do now elect by ballot three reputable, discreet and disinterested freeholders of the City of Chicago, whose duty it shall be to ascertain the damages and recompense due the owners respectively, of such real estate as shall be taken and appropriated for the opening of LaSalle Street to Jackson Street in accordance with an ordinance for the purpose thereof passed October 15th 1855, and at the same time assess the amount of such damages together with the cost of the proceedings upon the real estate deemed benefited by the improvement in proportion as nearly as may be to the benefit resulting to each parcel of ground respectively.

14

The order was passed and the Council proceeded to the Election of Commissioners thereunder, on the first ballot J. A. Bragg and The Church received each 10 votes and were declared elected, on the second ballot for a third Commissioner there was no choice.

Attest

W. W. Zimmerman. City Clerk

In Common Council May 10th 1856.
Alderman Colby, an order for the election of Commissioners for the opening of Franklin Street.

The order was passed and the Council proceeded to the Election of Commissioners thereunder. On the first ballot there was no choice, and on motion of Alderman Fletcher, further balloting on said order was suspended for the purpose of electing three Commissioners to make an assessment for the extension of LaSalle street.

On the first ballot there was no choice
On the second ballot W. W. Saltmeall received 10 votes and was declared

16
impartially perform our duty as
such commissioners according to the
best of our ability.

Subscribed and sworn } J. A. Bragg
to before me this 16th day } Wm W. Saltmire
of May 1856. } Thomas Church
H. W. Guinnessman, City Clerk } Commissioner

upon said assessment roll also
appeared the publisher's certificate
of the publication of the Commissioners
notice, with a copy of said notice
appended thereto as follows.

"Commissioner's 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 as-
certain the damages and recom-
pense due the owners respectively
of such real Estate as shall be
appropriated and taken for the
extension of La Salle street from its
present terminus at Madison St
to Jackson street, in accordance
with an order for the survey thereof
passed October 15th 1855 and in
accordance with an order passed

17
in Common Council Jan'y 10," 1856. and
at the same time to assess the amount
of such damages together with the
cost of the proceedings upon the real
estate by them deemed benefitted, in
proportion as nearly as may be
to the benefits resulting to each parcel of
ground respectively, will meet at room
No. 1. in the Court House on the eighteenth
day of February 1856. at the hour of 10
o'clock A.M. for the purpose of viewing
the premises and of making said as-
sessment.

J. A. Pragg

W. H. McMillan

Thos Church

"Chicago Jan'y 24th 1856" Commissioners "

"This certifies that the appended notice
relative to the extension of LaSalle
street from Madison to Jackson street
has been published in the Chicago
Daily Democrat, the Corporation Newspaper
of the City of Chicago, County of Cook
and State of Illinois, two days con-
secutively, commencing with January
24th 1856

Chicago March 24th 1856.

D. M. Bradley Publisher for
the Proprietor

18
Upon said Assessment Roll appeared
also a copy of a notice as follows.

Commissioners Notice

All persons interested in the Extension
of LaSalle Street from Madison Street
to Jackson Street, who wish to introduce
testimony as to the value of the land
appropriated for said improvement
are requested to meet the commissioners
at the supervisors room in the Court
House on Monday the twenty fourth instant
at 10 o'clock A.M.

March 27 (T.D.) J. A. Bragg
The Clerk
W W Saltmestall
Commissioners

Upon said Assessment roll appeared
also the following orders. viz:
"In Common Council Feby 18th 1866"
Action of the Commissioners for 40 days
Extension of time for making the assess-
ment for the Extension of LaSalle Street
from its present terminus to Jackson
Street. Granted
Attest. H. M. Gimmelman
City Clerk

19
" In Common Council March 24. 1856.
" Petition of the Commissioners for an
" extension of fifteen days time to complete
" the assessment for the Extension of
" La Salle Street. Granted

" Attest W. M. Ginneman City Clerk"

The Assessment as appears by said
Assessment Roll, consists of thirty five
(35) pages. the caption and first page
of which is as follows.

The page of said Assessment next following the foregoing thirty fourth page and the last and concluding (thirty fifth) page thereof is as follows.

NAMES OF OWNERS.	DESCRIPTION.	S. Lot.	Lot.	Block.	Valuation.	Value of Land Condemned.	Damage to Buildings Condemned.	Total Damages.	Benefits by the Improvement.	Cost of Proceeding.	Total Benefits.	Net Damages.	Net Benefits.
Amounts bro't forward,										4624 13		104125 00	136712 13
Est of Elmhurst	25 fr Wad; E 35 fr	6	142	118	10,000	2000	2500	6500	2000 00		2000 00	4500 00	
	Sub Lot 8. vall Sub Lot 6	"	"	"									
Wm Wheeler	W 30 fr of Sub Lot 8 vall of 7	"	"	"	12045	12045	3500	10545				15545 00	
D. Knights	W 1/2	3	"	"	14000				150 00	5 25	155 25		155 25
D. Taylor	150 ft from black br Exp 125	"	"	"	6000				50	1 75	5 175		51 75
	fr by 16 ft deep of 4 E 1/2 of 3	"	"	"									
I. Praevck	E 1/2	6	"	"	11000								
Thomas Brock	25 fr Wad; E 1/2	"	"	"	6000								
W. Jay	W 20 fr	"	"	"	5000								
R. Laurester	E 50 fr 100 ft deep Sene	7	"	"	10000								
W. Jay	E 50 fr 89 ft deep Sene	"	"	"	3000								
Est of S. Jackson	W 40 fr 24 ft 66 ft of 24 ft 8	48	"	"	25000	2500		2500	5000 00	87 50	5087 50		2587 50
A. Mobie	W 30 fr	8	"	"	7500	7500	1200	8700				8700 00	
Thomas Allen	raising building on leased lot											000 00	
do	Damages lease											125 00	
John Murphy	" " "											384 00	
Amounts carried forward,										4737 53		133748 00	140065 53

NAMES OF OWNERS.	DESCRIPTION.	S. Lot.	Lot.	Block.	Valuation. DOLLARS	Value of Land Condemned. DOLLARS	Damage to Buildings Condemned. DOLLARS	Total Damages. DOLLARS	Benefits by the Improvement. DOLLS CTS	Cost of Proceeding. DOLLS CTS	Total Benefits, DOLLARS CENTS	Net Damages. DOLLARS CENTS	Net Benefits. DOLLARS CENTS
J. C. Boyd	removing building on leased lot,						Amounts bro't forward,			\$478.53		133.74800	140.06553
do	Damages Here						400 400					400 00	
Mer Law	do do											150 00	
City of Chicago	Cost of proceedings											1000 00	
							Totals			\$478.53		\$135.32800	\$140.06553
							Amounts carried forward,						

25

At about the middle of the tenth (10th) page of said assessment, at the conclusion of the list of lots assessed on the "Original Town of Chicago" with which general descriptive heading the first page commences, there is the general descriptive heading, "School Section Addition to Chicago" under which the assessment continues to the conclusion.

It is expressly agreed by the parties that all the pages of the said original assessment following the one first herein given and up to the said thirty fourth and thirty fifth pages herein given are in form like the said thirty fourth page with corresponding columns, and having the words "amounts brought forward", at the top, and the words "amounts carried forward" at the bottom of each page. The figures following such words at the top and bottom in the corresponding columns, representing the aggregate of all the figures of such corresponding columns in preceding pages as in said 34th page. The words "amounts brought forward" and the figures following such words on the top of the 34th page being the aggregate of the

26

amounts brot forward from the corresponding columns of all said preceding pages, and the words "amount carried forward" with the figures following such words at the foot of said ~~thirty~~ fourth page being the aggregate of the amounts carried forward from all the corresponding columns of the preceding pages together with said ~~thirty~~ fourth page - all of the said preceding pages being like the ~~thirty~~ fourth page without the sign \$ or any words, sign or character to denote or characterise the figures other than, or different from what appears on said ~~thirty~~ fourth page,

following the body of the assessment and upon said assessment roll was the following Commissioners return: viz.

COMMISSIONER'S RETURN.

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

The undersigned, Commissioners appointed by your Honorable body to ascertain the damages and recompense due the owners of such real estate as shall be appropriated and taken for

the extension of La Salle Street from Madison Street to Jackson Street in accordance with

in accordance with the orders passed by the Common Council and hereto prefixed, and at the same time to assess the amount of such damages, together with the cost of the proceedings, upon the real estate deemed benefited by the said improvement, in proportion as nearly as may be, to the benefits resulting to each lot or parcel of ground respectively; Do hereby report and return to the Common Council:

That in pursuance of said appointment they were duly qualified before entering upon their duties, as appears by the oath recorded herein; that they published a notice of the time and place of their meeting for the purpose of making their assessment, in the *Chicago Daily Democrat* the Corporation Newspaper of the City of Chicago, for the period of ten consecutive days previous to such meeting, a certificate of which publication is hereto prefixed; that they were present at the time and place and for the purpose designated in said notice *that they adjourned from day to day until*

April 5th 1856, when they were all present at the same hour at room no 3, in the Court House and after viewing the premises and did then and there, and do hereby assess the respective amounts set opposite to each lot or parcel of ground in the foregoing Assessment Roll mentioned in their appropriate columns, as the damages and benefits resulting from ~~the~~ said improvement, to such lots or parcels of ground respectively—having first fixed a valuation on the said real estate, which is likewise set forth in said roll.

All of which is respectfully submitted,

J. A. Bragg
Thomas Church
Wm W. Saltinettall

Commissioners.

Chicago, *April* the *5* 1856.

28
Then, Endorsed upon said assessment Roll. appears the following certificate, viz:

" State of Illinois
" City of Chicago

I do hereby certify that the foregoing assessment roll was returned to me and filed in my office by the Commissioners this fifth day of April 1856.

W. W. Zimmerman. City Clerk

Then followed, appended to said assessment Roll. the following copy of a notice, together with the certificate of the publication of said notice, viz:

City Clerks Office Chicago
April 7th 1856.

Assessment Notice

Public Notice is hereby given to all persons interested that the Commissioners appointed by the Common Council of the City of Chicago, to ascertain and assess damages and benefits resulting to owners of real estate in the South Division by reason of the destruction of La Salle Street from its present terminus

29
at Madison street in a straight
line south to Jackson street, have
completed their assessment and made
return thereof to my office.

Any persons wishing to appeal from said
assessment must file their objections in
writing in my office, on or before Monday
the 21st day of April 1856 at 4 o'clock P.M.
as the Common Council will, at that time
in the Council Room, hear all objections
to said assessment, and revise and confirm
or annul the same.

(9 lines)

Wm. G. McQuinn City Clerk

This certifies that the appended notice
has been published in the Daily Times,
the corporation newspaper of the City of Chicago
County of Cook and state of Illinois, two
days consecutively, commencing with
April 8th 1856.

Chicago

185

Publishers

Then follows endorsed upon said assess-
ment Roll, the order of confirmation
of said assessment, passed in
Common Council June 9th 1856: viz:

30

Order of Confirmation
In Common Council June 9th 1856.

Whereas due notice has been given by the City Clerk of the return of the foregoing Assessment Roll, and objections thereto having been filed and overruled, it is therefore ordered, that the said assessment as revised by the Common Council be, and the same is hereby confirmed, and it is further ordered that a warrant be issued for the collection thereof, returnable in thirty days after its date.

"Passed"

Then followed the under written the following memorandum,
"Mem - Warrant issued June the 14th 1856.

It is expressly stipulated by the parties, that the foregoing portions of said Assessment Roll, hereinbefore given are sufficient to constitute the record in this case, and no omission of any of the parts of said record shall prejudice either party.

31

And the said defendant
by its attorney, John Lyle King, then
and then objected to the reading and
introducing in evidence of the said
assessment Roll and order of
confirmation and orders and proceedings
thereon.

The Attorneys for said Plaintiff
then introduced in evidence. The
Act amendatory of the City Charter
of said City of Chicago, approved
February 16, 1857, and read to the
said Court the eighty sixth section
of said act, from the printed Session
Laws of 1857, published by authority of
this state as follows.

Sec 86. All actions, rights, fines, penalties
in suit or otherwise, which have
accrued under any act which
this act is an amendment, or under
any ordinance of said City now
in force, shall be noted in, and
be prosecuted by the Corporation,
and all proceedings now or hereafter
commenced for the opening of any
street or streets in said City and the
assessment of real Estate for any
such improvement, is hereby expressly

32
legalized and affirmed, and the
Common Council is hereby Expressly
authorized to continue such proceedings
and open said street or streets, any
defect, decree or order of any court
to the contrary notwithstanding."

And the said Court thereupon, then
and then overruled the said objections
of the said defendant to the reading
in evidence of the said Assessment
Roll and order of Confirmation and
orders and proceedings thereon, and then
and then admitted the same in evi-
dence, to which decision of the said
Court, overruling said objections and
receiving the said roll in evidence,
the said defendant by its said attor-
ney then and then Excepted.

The said Plaintiff by his said
attorney thereupon read in evidence
the said Assessment Roll together
with the said order of confirmation thereof
so entered thereon.

It also appeared in evidence
that a warrant was issued in due
form of law upon said assessment
on the 17th day of June A.D. 1856.

33

directed and delivered to the collector of said city, reciting said order of confirmation, and directing the collection of said assessment. And that there was collected upon said assessment the sum of twenty three thousand nine hundred and thirteen dollars and three cents, and no more, which sum was all paid out, previous to the commencement of this suit, by the City authorities to those entitled to the same under said assessment, but no part thereof to the Plaintiff in this suit. This was all the evidence, and no further or other evidence was given or offered by either of both the parties, than that herein given.

The Plaintiff by his said Attorney claimed and insisted that he was entitled to recover interest upon the amount of the assessment awarded to him by said assessment, for his real estate condemned, at the rate of six per cent per annum, to be recovered from the expiration of the two years next after the confirmation of said assessment by said common

Councils, or at least, from March 2^d 1859 (the time of the commencement of his said suit) to the time of rendering judgment in addition to the amount of said assessment or award.

The said Court took said case under advisement, and afterwards writ: on the 15th day of March A.D. 1861. That being one of the days of the March Term of said Court. The said Court made and rendered the decision and finding of said Court in said cause in and by which the Court found the issues joined in said cause for the Plaintiff and assessed his damages Fifteen thousand Five hundred and forty five dollars, being the amount of his said assessment or award without interest. The said Court then and there in said decision refusing to allow to said Plaintiff interest as he had claimed, or any interest. Which decision and finding of the said Court the said defendant then and there excepted, and to so much of the said decision of the said Court as

35

refused and denied to said Plaintiff interest as aforesaid the said Plaintiff by his said attorneys then and there accepted.

The said defendant by its said Attorney, then and there moved to set aside the finding and decision aforesaid of the Court and to grant a new trial because 1st Said finding and decision of the Court are contrary to the evidence in the case

2^d. Said finding and decision of the Court are contrary to the law.

3^d Because said finding and decision of the Court ought to have been for the defendant instead of for the Plaintiff.

4th Because the Court admitted improper illegal and incompetent evidence, which said motion to set aside said finding and decision and grant a new trial, the said Court did thereupon overrule and deny, and to the decision of the Court in overruling and denying said motion. the defendant by its Attorney then and there accepted.

36

And the Court thereupon rendered
judgment on the said decision
and finding of the Court in favor
of the plaintiff for the sum aforesaid
And inasmuch as the matters
and exceptions aforesaid do not appear
of record, this bill of Exceptions is
signed and sealed.

John M. Wilson Esq

And thereafter to wit on the fourth day of
April A. D. eighteen hundred and sixty one the said
Defendant filed in the Office of the Clerk of said Court
its Appeal Bond in words and figures as follows
to-wit:

"Know all Men by these Presents That we
the City of Chicago and Samuel, D. Ward of the
County of Cook in the State of Illinois are held
and firmly bound unto William Wheeler also of the
same County and State in the sum of Five
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 jointly by these presents.

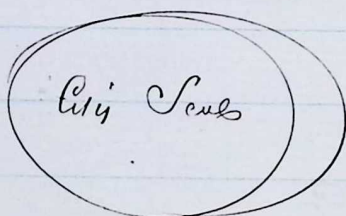
Witness our hands and seals this 23^d day of
March A. D. 1861.

The condition of the above obligation is such

37

That whereas the said William Wheeler did on the 15th day of March A. D. 1861 in the Superior Court of Chicago in the County of Cook and State aforesaid and of the March term thereof A. D. 1861 recover a Judgment against the above named City of Chicago for the sum of Fifteen thousand five hundred and forty five dollars and — Cents besides Costs of suit from which said judgment of the said Superior Court the said City of Chicago has prayed for and obtained an Appeal to the Supreme Court of said State.

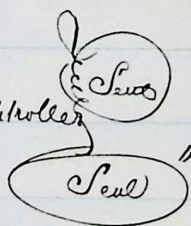
Now therefore if the said City of Chicago shall duly prosecute his said Appeal with Effect and moreover pay the amount of the judgment costs interest and damages rendered and to be rendered against her in case the said judgment shall be affirmed in said Supreme Court then the above obligation to be void otherwise to remain in full force and virtue.



City of Chicago Her

Same. D. Ward City Comptroller

Samuel D. Ward



Approved by me

John M. Nelson C. J.

Superior Court of Chicago."

38

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 and perfect
Transcript of the Process, Pleadings, Bill of Exceptions
and Appeal Bond now on file in my Office, together
with the Order and Judgment entered of record in
said Court in a certain suit therein, wherein William
Wheeler was Plaintiff and the City of Chicago, defendant,
All testimony whereof I have heretofore
set my hand and affixed the Seal of
said Court at Chicago in said County
the Eleventh day of April A. D. 1861.

Walter Kimball Clerk



Supreme Court
City of Chicago appellant

William Wheeler appellee

The said appellant, the City of Chicago,
alleges an error upon said record

First That the decision and finding of
the Court and Judgment thereon
are contrary to the evidence in the
case.

Second - That the decision and finding
of the Court and Judgment thereon
are contrary to law.

Third That the decision finding and
Judgment of the Court ought to
have been for the defendant below
instead of for the plaintiff below.

Fourth The Court erred in admitting
and considering illegal incompetent
and improper evidence.

Fifth The Court erred in denying
the motion to set aside the
finding of the Court and grant
a new trial.

Wm Lyle Strong
attorney for City of Chicago.

Supreme Court
William Wheeler
appellee
vs
The City of Chicago
Appellant

and now comes the
said William Wheeler appellee
by Farnell & Smith his attorneys
and says as to the errors above
assigned by said appellant, that
in the record & proceedings
of one said & in the rendering
of the judgment of one said
there is no error & that he is
ready to comply & to ~~leave~~

Farnell & Smith
attorneys for
appellee

Supreme Court
William Wheeler
vs
The City of Chicago } Cross Error
by Stipula
tion

and now comes the said
William Wheeler by Farnell
& Smith his attorneys and

Says that in the record
I find calling upon said and
in the rendering of the
judgment of one said there
is manifest error in
this

The Court be said found
in disallowance interest
to said Wheeler upon the
account and appraisement
to him of damages for his
land condemned, and
that he is really to receive
\$100 Wherefore he prays
judgment &c

Forrell & Smith
attorneys for
said Wheeler

And said City of Chicago says as to
the above error alleged and assigned
by said William Wheeler, ^{for his said crops and improvements} that there
is not in the record and proceedings
aforesaid any error as alleged by
him.

For the City
City Attorney.

218 + 79
State of Illinois
Book County.

William Wheeler
vs
The City of Chicago
Record

Filed April 17, 1861
A. A. Arnold
Clerk

\$2 $\frac{5}{11}$

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular 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 first Monday, being the fourth day of March in the year of our Lord One Thousand Eight Hundred and Sixty one and of the Independence of the United States of America the Eighty fifth

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

Wm St. Higgins }
James Goodrich } Judges.

Charles Harris Prosecuting Attorney.

Anthony La Hering Sheriff of Cook County.

Attest, Walter Kimball Clerk.

Be it remembered that on the twenty fourth day of March A.D. Eighteen Hundred and sixty one came Rosalia A. Bonner et al and filed, by her Attorneys, ^{and Bond for Costs} Process for ^{and Bond for Costs} Summons against the City of Chicago: Where said Process is in words and figures as follows to wit:

" State of Illinois } Cook County Court of Common Pleas
County of Cook } April Term A.D. 1861.

Rosalie A. Bonner and
Percy William Bonner by her
next friend John Jones . . . } Trespass on the case upon promises
to } Damages
City of Chicago . . . } \$20,000.

The Clerk of said Court will issue a summons in the above cause directed to the Sheriff of Cook County in a plea

of repairs on the case on promises returnable at the next term
of said Court - A. D. 1859 to the damage of the Plaintiff of
Twenty thousand dollars.

Armed, Say and Gregory
Plaintiffs Attorneys "

To
Walter Kimball Esq. Clerk
Chicago March 24th 1859 "

"Rosalia A. Bonner and
Percy William Bonner by } Cook County Court of
the next friend John Jones } Common Pleas.
vs. }
City of Chicago } City of Chicago

I do hereby enter myself security
for costs in this cause, and acknowledge myself bound to
pay in cause to be paid, all costs which may accrue in
this action either to the opposite party or to any of the Officers of
this Court in pursuance of the laws of this State.

Dated this twenty fourth day of March A. D. 1859.
John Jones

Guaranty in fact W. Bonner."

And thereupon accordingly on the twenty fourth day of
March A. D. 1859 Summons issued out of and under the
Seal of said Court - against said City of Chicago; which
Summons with the Sheriff's return thereon Endorsed is in the
words and figures as follows to wit,

"State of Illinois
County of Cook & J^s

The People of the State of Illinois to the Sheriff
of said County Greeting

We command you that you Summon City of Chicago if it
shall be found in your County personally to be ^{to} appear
before the Cook County Court of Common Pleas of said County on
the first day of the next term thereof to be holden at the
Court House in the City of Chicago, in said County on the first
Monday of April next to answer unto Rosalie W. Bonner and
Dorey William Bonner by his next friend John Jones in a
plea of Trespass on the case on promises to the damage of
said Plaintiffs as they say in the sum of Twenty thousand
dollars And have you then and there this Writ with an endorse-
ment thereon in what manner you shall have executed the
same.

(Seal)

Witness Walter Kimball Clerk of our said Court
and the Seal thereof at the City of Chicago in
said County this 25th day of March A.D. 1859.
Walter Kimball. Clerk."

(Endorsed) "Served by reading to the within named defendants
by John F. Hamies Menon of the City of Chicago and S. D.
Harcourt Comptrollers of said City by delivering a copy thereof
to them at their Office in said City this 25th March A.D.
1859.

John Gray. Sheriff

By George Anderson. Deputy

And afterwards to wit on the twenty fourth day of May
A. D. Eighteen hundred and forty nine the said Plaintiffs by
their said Attorneys filed in the Office of the Clerk of said
Court their Declaration in said Cause: Which said declaration
is in words and figures as follows to wit

The said first, second and third counts of said declaration are as follows :

SUPERIOR COURT OF CHICAGO.

Of the May Term, A. D., 1859.

STATE OF ILLINOIS, }
COOK COUNTY. } ss.

See Rec. p. 3. Rosalia A. Bonner, in her own name and behalf, and Percy William Bonner, an infant, who sues by his next friend, John Jones, all of the City of Chicago, in the county and State aforesaid, who are the sole surviving heirs at law, of one Jas. D. Bonner, deceased, plaintiffs in this suit, by their attorneys, Arnold, Lay & Gregory, complain of the City of Chicago, defendant in this suit, which has been summoned, &c., in a plea of trespass on the case on promises.

For that, whereas, the said Rosalia A. Bonner and Percy William Bonner, plaintiffs, together with one G. Virginia Bonner, since deceased, were on the fifteenth day of October, in the year 1855, and long before that time, and have been ever since until and at the time of the appropriation of the same for street purposes by said defendant, as hereinafter stated, seized in fee of the following described premises (describing it): a portion of which said land and premises have been subjected to the proceedings hereinafter named, to condemn the same for the purpose of opening over the same a highway or street, being an extension south of La Salle street, to wit, at the said County of Cook. And the said plaintiffs aver and say that the said G. Virginia Bonner, on or about the seventeenth day of April, A. D., 1857, died, leaving them, the said plaintiffs, her sole and only heirs at law.

And the said plaintiffs further say that on, to wit, the said fifteenth day of October, A. D., 1855, at, to wit, the county aforesaid, the said City of Chicago, defendant, did, through its common council, in pursuance of the powers conferred upon said defendant by its charter, order a survey for an extension of said La Salle street, from its then present terminus, at Madison street, in said city of Chicago, south to Jackson street in said city, which said survey was made accordingly: and afterwards,

the said defendant, through its said common council, gave the notice required by its charter, of its intention to take and appropriate the land necessary for the extension of said La Salle street, south from said Madison street to said Jackson street, to the owners of said lands, by publishing said notice ten days, as required by said charter, in said defendant's corporation newspaper, the first publication of which notice being on the twentieth day of October, A. D. 1855, aforesaid, and the same being published ten days consecutively thereafter.

And the said plaintiffs further say that afterwards, and after the expiration of said notice, to wit, on the 10th day of January, A. D., 1856, to wit, at the said the county of Cook, aforesaid, the said defendant, through the said Common Council, and in pursuance of the requirements of their
 REC. 6 said charter, did choose three disinterested free holders residing in the said city of Chicago, to wit, F. A. Bragg, Thomas Church and W. W. Saltonsall, as Commissioners, to ascertain and assess the damages and recompense due the owners of such lands respectively: and at the same time to determine what persons would be benefitted by such improvement, and assess the damages and expenses thereof on the real estate benefitted, in proportion as nearly as might be the benefits resulting from each: which said commissioners were then and there elected and chosen by a majority of all the aldermen authorized by law to be elected: which said commissioners were afterwards, to wit, on the sixteenth day of said month of January, in the year last aforesaid, duly sworn as required by law faithfully to execute their duties, according to the best of their ability, and before entering upon their duties the said commissioners did give notice to the persons interested, of the time and place of their meeting, for the purpose of viewing the premises and making their assessment, by publishing said notice ten days before the time of such meeting in the said defendant's corporation newspaper, to wit, at the County of Cook, aforesaid.

REC. 7 And the said plaintiffs further say that the said Commissioners did thereupon after the expiration of said last named notice proceed to make their said assessment and did determine and appraise to the owner or owners, the value of the real estate appropriated for said improvements, and the injury arising to them respectively, as damages, after making due allowance therefrom for any benefit which such owner or owners might respectively derive from such improvements, to wit, at the County of Cook aforesaid.

And the said plaintiffs further say that the said Commissioners did in all things comply with the law, and the charter and the ordinances of said city in regard to said assessment and the opening of said street, and having ascertained the damages and expenses of such improvement, as aforesaid, the said Commissioners did thereupon apportion and assess the same, together with the costs of the proceedings upon the real estate by them deemed benefitted, in proportion to the benefit resulting thereto from the aforesaid improvements, and did describe the real estate upon which their assessment were made, and after having completed and signed said assessment, the said Commissioners did within the extended time allowed them by the said Common Council in which to complete and return and sign the said assessment, to wit, on the fifth day of April in the year last aforesaid, return their said assessment to the said Common Council of the said city of Chicago, as required by law, and the clerk of the said city of Chicago did thereupon, after the return of said assessment, give ten days notice, commencing on, to wit, the eighth day of April, in said year last aforesaid, in the said defendant's corporation newspaper, that said assessment had been returned, and that on a day specified in said notice, said assessment would be confirmed by said Common Council, unless objections were made to the same, by some person interested, and the said plaintiffs further say that after the expiration of said last mentioned notice, to wit, on the ninth day of June, in the year last aforesaid, at, to wit, the County of Cook aforesaid, (no objection having been made) the said assessment of the said Commissioners, so as aforesaid by them returned was in all things confirmed by the said Common Council, of the said City of Chicago, in due form of law.

And the said plaintiffs further say that there was appraised, allowed and awarded to the said estate of said James D. Bonner, in and by said assessment so as aforesaid returned by said Commissioners, and confirmed by said Common Council, for the taking and appropriating of the portion of said land hereinbefore described, which was included in such survey and appropriated to said street, the sum of ten thousand dollars, and for the buildings thereon the sum of sixteen hundred dollars, and said commissioners did then and there estimate the benefit to the balance of said lot not appropriated, at the sum of fourteen hundred and seventy-five dollars; and then and there deducted the amount of said last

named sum from the aggregate of said damages, leaving the sum of ten thousand and one hundred and twenty-five dollars, which said commissioners then and there, by said assessment appraised, awarded and allowed to said plaintiffs as net damages over and above benefits.

And said plaintiffs aver that thereafter, to wit, on the 17th day of June, A. D., 1856, a collector's warrant was duly issued for the collection of said assessment duly signed and sealed, to wit, at said Cook County, aforesaid.

And the said plaintiffs further aver that they are the sole and only heirs at law of the said James D. Bonner, and that as such heirs they are entitled to the said sum of money, so awarded to the said estate of said James D. Bonner, as aforesaid, as such damages, as aforesaid.

And the said plaintiffs aver that the said defendant for a long time after the said confirmation of said assessment, as aforesaid, to wit, for the space of two years and nine months, and upwards, has wholly neglected and failed to pay to said plaintiffs, or either of them, or to any other person, for the use of said plaintiffs, the said sum of ten thousand and one hundred and twenty-five dollars, (\$10,125.00) appraised, awarded and allowed to the estate of said James D. Bonner, to wit, to said plaintiffs, as such net damages, as aforesaid, or any part thereof, though often requested so to do.

By means of the premises, the said defendant became liable to pay to the said plaintiffs said sum of ten thousand and one hundred and twenty-five dollars appraised, awarded and allowed to the said plaintiffs, as aforesaid; and being so liable, in consideration thereof, then and there undertook and promised to pay the same to the said plaintiffs when it, the said defendant, should be thereunto afterwards requested, to wit, at Cook County, aforesaid.

SECOND COUNT.

Rec. 12

For that whereas the said Rosalia A. Bonner and Percy William Bonner, plaintiffs, together with one G. Virginia Bonner, since deceased,

were on the 15th day of October, A. D., 1855, and long before that time, and have been ever since until and at the time of the appropriation of the same for street purposes by said defendant, as hereinafter stated, seized in fee of the premises above described in the said first count in this declaration set out, a portion of which said land and premises have been subjected to the proceedings hereinafter named, to condemn the same for the purpose of opening over the same a highway or street, being an extension of La Salle street, to wit, at the said county of Cook.

And the said plaintiffs aver and say that the said G. Virginia Bonner on or about the seventeenth day of April, A. D., 1857, died, leaving them the said plaintiffs, her sole and only heirs at law. And the said plaintiffs

REC. 13 aver further that they are the sole and only heirs at law of the said James D. Bonner, and that as such heirs they are entitled to the said sum of money awarded to the said estate of said James D. Bonner, as hereinafter mentioned. And the said plaintiffs aver and say that heretofore, to wit, prior to the 9th day of June, A. D., 1856, the said defendant determined to take certain proceedings to extend La Salle street, in said city, from its then present terminus at Madison street, south to Jackson street, in said city, and did, through their common council, give the legal notice of their intention to appropriate and take the land necessary for the laying out said extension of said street: and therefore did choose certain commissioners as and in the manner required by the charter of said city, to assess the damages and expenses of such improvement: and said plaintiffs further say that the commissioners so chosen, as aforesaid, did proceed to

REC. 14 discharge their duties, and did in all things comply with the law and the charter, and the ordinances of said city, in the making of the assessment for the opening of the extension of said street, and did apportion and assess the damages and expenses, etc., of said improvement, and did sign and return their said assessment to said common council within the time required by law, and thereafter, to wit, on the 9th day of June, A. D., 1856, such proceedings were taken as that the said defendant, by its common council, did confirm and enter an order of confirmation of the said assessment of said commissioners.

And the said plaintiffs aver that in and by the said assessment there was appraised, allowed and awarded to the said estates of said James D. Bonner the sum of ten thousand one hundred and twenty five dollars, as

net damages over and above benefits, for a piece of land of the estate of said James D. Bonner, so taken and appropriated for the purposes of said street.

And the said plaintiffs aver that, thereupon, to wit, after the proceedings so had and taken, as aforesaid, by the said defendant, and after the confirmation of said assessment, as aforesaid, it became and was the duty of the said defendant to proceed with all convenient dispatch, or within a reasonable time to collect and pay over the said sum of money so awarded to the estate of said James D. Bonner, to wit, to said plaintiffs.

And the said plaintiffs aver that the said defendant did not proceed with all convenient dispatch or within a reasonable time to collect and pay over, nor to collect the said sum of money, so awarded, as aforesaid, though often requested so to do, but has unreasonably, and without cause, and carelessly and negligently, and in disregard of its duty in that regard, neglected, failed and refused so to do for a long space of time, from thence hitherto, to wit, for a space of two years and nine months, and upwards, to the great damage and injury of said plaintiffs.

Rec. 16 By means of which said premises, &c.. (as on page 5 of this abstract.)

THIRD COUNT.

The said third count is the same as the second count down to page 6 and mark * of this abstract, where the language of the said third count is as follows:

Rec. 19 And the said plaintiffs aver and say in consideration of the powers conferred upon said defendant in and by the said city charter, and in further consideration of the franchise and the right to the use of said pieces of land for said street, so had and taken of the said estate of said James D. Bonner, to wit, of said plaintiffs, as aforesaid, it, the said defendant promised and undertook to indemnify, or caused to be indemnified unto the
 Rec. 20 said plaintiffs therefor, by the collecting and payment of the said sum of ten thousand one hundred and twenty-five dollars, so appraised, awarded

and allowed, as aforesaid, and to raise and obtain the money to indemnify the said plaintiff, did promise and undertake to proceed to collect and pay over said sum of money in the manner required by the said charter, with all convenient dispatch, and within a reasonable time.

And the said plaintiffs aver that the said defendant did not proceed with all convenient dispatch, or within a reasonable time to collect and pay over, nor to collect the said sum of money, so awarded, as aforesaid, though often requested so to do, but has unreasonably and without cause, and carelessly and negligently, and in disregard of its promise and undertaking, neglected, failed and refused so to do, for a long space of time, to wit, from thence hitherto, to wit, for the space of two years and nine months and upwards, to the great damage and injury of the said plaintiffs,

REC. 21 By means, etc., (as at the end of the first count on page 5 of this abstract.)

REC. 23 Nevertheless the said defendant (although often requested so to do,) has not as yet paid the said several sums of money above mentioned, or any or either of them, or any part thereof to the said plaintiffs, but to pay the same or any part thereof, to the said plaintiffs, the said defendant has hitherto altogether refused, and still does refuse:

To the damage of the said plaintiffs of twenty thousand dollars, and therefore the said plaintiffs bring their suit, etc.

ARNOLD, LAY & GREGORY,

Attorneys for Plaintiffs.

And afterwards to wit on the thirteenth day of November A.D.
Eighteen hundred and sixty came said defendant and filed
in the Office of the Clerk of said Court its Plea to said
Declaration in words and figures as follows to wit

"Rosalie A. Bonner Tothens

vs

The City of Chicago

Superior Court of Chicago

November Term 1860

The said City of Chicago, defendant, comes and defends
to and says she did not undertake or promise in manner and
form as the Plaintiffs have above complained and of this the
said defendant puts herself on the Country.

John Lytle King

City Attorney

'And the said Plaintiffs do the like.

Arnold Say & Gregory

Attys for Plffs

"State of Illinois

Book County

City of Chicago

Samuel D. Hara City Comptroller of the City
of Chicago being duly sworn on his Oath says the said City of
Chicago has a good and substantial defense to the above
entitled action, on the merits thereof

Sworn to and subscribed before me this 13th day of November 1860

S. D. Hara
City Comptroller

G. W. Chandler

J. P.

Plaintiff as aforesaid ought to have a judgment entered on the finding of the Court for their damages assessed as aforesaid,

Therefore it is considered that the said plaintiffs do have and recover of and from the said defendant their damages of New thousand one hundred and twenty five dollars in form aforesaid found and assessed by the Court together with their costs and charges about their suit in this behalf expended and thereof have execution.

And thereupon the said defendant having entered Exception to the Appeal herein to the Supreme Court of this State which is allowed upon the said defendant's filing appeal Bond in the penalty of Five thousand dollars with security to be approved by a Judge of this Court and to be filed with Bill of Exceptions in ten days from this date.

And thereafter to wit on the fourth day of April A.D. Eighteen hundred and sixty the said defendant accordingly filed in the Office of the Clerk of said Court its Appeal Bond in said cause in words and figures as follows to wit,

"Know all Men by these Presents That we the City of Chicago and Samuel D. Wara of the County of Cook and State of Illinois are held and firmly bound unto Percy W. Bonner and Joseph Platt Executors of Estate of Rosalie A. Bonner also of the same County and State in the penal sum of Five 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 23rd day of March A.D. 1861

The condition of the above obligation is such that whereas the said Percy W. Borman by his next friend John Jones and Joseph Platt Executors &c did on the 15th day of March A.D. 1861 in the Superior Court of Chicago, in the County of Cook and State aforesaid, and of the Marshal, Term thereof A.D. 1861 receive a judgment against the above bounden City of Chicago for the sum of Ten thousand one hundred and twenty five dollars and is cents besides costs of suit from which said judgment of the said Superior Court of Chicago the said City of Chicago has since then and obtained an Appeal to the Supreme Court of said State

Now therefore if the said City of Chicago shall duly prosecute her said Appeal with effect and moreover pay the amount of the Judgment with interest and damages rendered, and to be rendered against her in case the said judgment shall be affirmed in said Supreme Court, then the above obligation to be void otherwise to remain in full force and virtue.

City Seal

City of Chicago

Seal

Samuel D. Wara

City Comptroller

Seal

Samuel D. Wara

Seal

Approved by me

John W. Nelson, C. J.

Superior Court of Chicago

And thereafter to wit on the twenty third day of March A. D. eighteen hundred and sixty one came the said City of Chicago and filed in the Office of the Clerk of said Court its Bill of Exceptions in said cause: Which Bill of Exceptions is in words and figures as follows to wit,

" Percy W. Bonner (an infant) by
John Jones his next friend, Joseph
Platt Executor of Rosalie A. Bonner
vs
The City of Chicago

In the Superior Court of
Chicago March Term
1861.

Be it remembered that on the eighth day of February A. D. 1861 at the February Term of said Court before one of the Judges of said Court the said above titled cause came on for trial, on the issues joined, and the said respective parties by their Counsel having waived a trial by Jury, said cause was by them submitted to the Court for trial without the intervention of a Jury.

And upon the trial of said cause before said Court it was admitted that the title to the real Estate described in the Declaration was in the said Rosalie A. Bonner and Percy W. Bonner as sole surviving heirs at law of James D. Bonner, and that during the pendency of this suit Rosalie A. Bonner departed this life and the said Joseph Platt is sole Executor of the Estate of said Rosalie A. Bonner.

And the Plaintiff thereupon on the said trial before said

Court to maintain the fees on his part produced and offered in evidence the original Assessment Roll, Orders & Proceedings therein as follows.

"Assessment Roll for the Extension of Lasalle Street"

"In Common Council October 15th 1855.
"Ordered that when the survey shall be made that the City Clerk give two days Notice in the Corporation Newspaper that the Common Council of the City of Chicago intend to appropriate and take so much land as shall be necessary for the extension of Lasalle Street from its present terminus at Madison Street in a straight line South to Jackson St. to conform with that part of Lasalle Street already opened, said extension to run through blocks 95. 96. 97. 116. 117. 118 School Section Addition to Chicago.

Ordered that the City Surveyor proceed forthwith to survey mark out, plat and record in the book provided for that purpose, showing particularly the proposed improvement and the real Estate required to be taken therefor - the extension of Lasalle Street from its present terminus at Madison Street in a straight line South to Jackson Street, to conform with that part of Lasalle Street already opened, said extension to run through blocks 95 and 118, 96 and 117 and 97 and 116 of the School Section Addition to Chicago.

"Passed

"Attest, Chas. W. Zimmerman
City Clerk."

And also upon the said Assessment-Roll there appeared a Copy of the Corporation Notice appended to the Certificate of the publication of said Notice as follows,

" Corporation Notice

City Clerk's Office

Chicago October 19th 1855.

Public Notice is hereby given to all persons interested, that the Common Council of the City of Chicago, intend to appropriate and take the land necessary to extend La Salle Street from its present terminus at Madison Street in a straight line ^{with} South to Jackson Street, to conform in width ^{with} that part of La Salle Street already opened, said extension to run through blocks 95 and 118, 96 & 117. 97. 116. of the School Section Madison to Chicago."

(sigs.) (sign) "H. H. Zimmerman - City Clerk."

And with said Notice there was the following Certificate

" This certifies that the appended Notice relative to the Extension of La Salle Street to Jackson Street &c has been published in the Chicago Daily Democrat the Corporation Newspaper of the City of Chicago, County of Cook and State of Illinois ten days consecutively commencing with October 20th 1855."

" Chicago, March 24th 1856.

D. M. Bradley. Publisher."

Upon the said Assessment Roll there were also the following Orders of the said Common Council.

" In Common Council, November 13th 1855

By Alderman Fletcher.

"Ordered that the Common Council do now elect by ballot three reputable, discreet and disinterested freeholders of the City of Chicago, whose duty it shall be to ascertain the damages and recompense due the owners, respectively, of such Real Estate as shall be taken and appropriated for the opening of La Salle Street from Madison Street to Jackson Street in accordance with an Order for the survey thereof passed October 15th 1855, and at the same time assess the amount of such damages, together with the cost of the proceedings, upon the real Estate deemed benefited by the improvement in proportion as nearly as may be to the benefits resulting to each parcel of ground perpetually.

The Order was passed and the Council proceeded to the Election of Commissioners thereunder. On the first ballot J. A. Bragg and Thomas Church received each ten votes and were declared elected. On the second ballot for a third Commissioner there was no choice."

"Attest H. H. Zimmerman
City Clerk."

"In Common Council January 10th 1856.
By Alderman Colby: An Order for the Election of Commissioners for the opening of ^WFranklin Street.

The Order was passed and the Council proceeded to the Election of Commissioners thereunder.

On the first ballot there was no choice, and on motion of Alderman Fletcher further balloting on said Order was suspended for the purpose of Electing three Commissioners to make an Assessment for the Extension of La Salle Street

On the first ballot there was no choice. On the second ballot W. W. Saltonstall received two votes and was declared elected. On the third ballot F. A. Bragg and Thomas Church received each 11 votes and were declared elected."

"Attest H. W. Zimmerman
City Clerk."

Upon the said Assessment roll also appeared the Oath of the Commissioners as follows.

"Oath of Commissioners."

"State of Illinois
City of Chicago."

We the undersigned freeholders of the City of Chicago, appointed by the Common Council of said City as Commissioners to ascertain the damages and recompense due the owners of such real Estate as shall be appropriated and taken for the Extension of Kasabie Street from its present terminus to Jackson Street in accordance with the foregoing Orders; and at the same time to assess such damages, together with the cost of these proceedings, upon the real Estate deemed benefited thereby, as nearly as may be, do solemnly swear that we will faithfully and impartially perform our duty as such Commissioners, according to the best of our ability.

Subscribed and sworn to

before me this 16th day of
July 1856

H. W. Zimmerman
City Clerk

F. A. Bragg

W. W. Saltonstall

Thomas Church

Commissioners

Upon said Assessment-Roll also appeared the Publishers
Certificates of the publication of the Commissioners Notice with a
Copy of said Notice appended thereto as follows.

" 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 ascertain the damages and
reimburse due the owners respectively of such real Estate
as shall be appropriated and taken for the extension of Cassall
Street from its present terminus at Madison Street to Jackson
Street in accordance with an Order for the survey thereof passed
October 15th 1855, and in accordance with an Order passed
in Common Council January 10th 1856 and at the same time
to assess the amount of such damages together with the cost of
the proceedings upon the real Estate by them deemed lawful
in proportion as nearly as may be to the benefits resulting to
each parcel of ground respectively, will meet at Room No 1
in the Court House on the Eighteenth day of February 1856
at the hour of 10 o'clock A.M. for the purpose of viewing
the premises and of making said assessment.

J. A. Bragg

W. H. Saltmatal

Thos. Church

" Chicago

(10th.) Jan'y 24th 1856.

Commissioners "

" This Certifies that the appended Notice relative to the
extension of Cassall Street from Madison to Jackson Street
has been published in the Chicago Daily Democrat the

Corporation's Newspaper of the City of Chicago, County of Cook
and State of Illinois ten days consecutively commencing with
January 24th 1856.

Chicago, March 24th 1856.

D. M. Bradley. Publisher
for Proprietor,

Upon said Assessment role appeared also a copy of a Notice
as follows.

"Commissioners Notice"

"All persons interested in the extension of Lasalle Street
from Madison Street to Jackson Street, who wish to introduce
testimony as to the value of the land appropriated for said
improvements, are requested to meet the Commissioners at the
Superior's Room in the Court House on Monday the 24th instant
at 10 o'clock A.M.

J. C. Bragg

Thos. Church

W. H. Saltwater

Commissioners.

March 24. t.d.

Upon said Assessment-Roll appeared also the following
Orders viz:

"By Common Councils Feb'y 18th 1856

"Petition of the Commissioners for 40 days extension of time
for making the Assessment for the extension of Lasalle Street
from its present terminus to Jackson Street."

"Granted, Attest. H. W. Zimmerman

City Clerk."

" In Common Council March 24th 1856

" Petition for the Commissioners for an extension of fifteen days time to complete the Assessment for the Jackson of Gasalle Street.

" Granted, Attest, H.W. Zimmerman,
City Clerk."

The Assessment as appears by said Assessment-Roll consists of Thirty five (35) pages, the Caption and first page of which is as follows.

(1.)

A Description of the Real Estate in the South Division of the City of Chicago, deemed benefitted and damaged by reason of the Extension of Cassale Street from its present terminus at Madison Street South to Jackson Street

in accordance with the order for the Survey thereof, passed by the Common Council of the said City, on the fifteenth day of October 1855, and the subsequent orders in relation thereto; together with the valuation of said Real Estate and the sums of Money severally Assessed thereon, for benefits and awarded as damages, respectively, by the Commissioners, to wit:

NAMES OF OWNERS.	DESCRIPTION.	S. Lot.	Lot.	Block.	Valuation.	Value of Land Condem'd.	Damage to Buildin's Condem'd.	Total Damages.	Benefits by the Improvement.	Cost of Proceedings.	Total Benefits.	NET DAMAGES.	NET BENEFITS.
S. B. Pomeroy & Co.	Wharfing Lots		10		21000				20 00	40	20 40		20 40
Julius Wadsworth			11		22000				30 00	1 05	31 05		31 05
do	E 1/2		12		15000				50 00	1 75	51 75		51 75
P. F. W. Peck	W 1/2		"		16000				200 00	7 00	207 00		207 00
Mrs. Eliza Barker			13		19000				250 00	8 75	258 75		258 75
E. D. Taylor	E 1/2		14		9000				18 00	63	18 63		18 63
R. J. Hamilton	W 1/2		"		10000				12 00	42	12 42		12 42
J. S. Newhouse			15		20000				20 00	70	20 70		20 70
Geo. Cook			2	18	56000				20 00	70	20 70		20 70
J. Wadsworth			3	"	44000				30 00	1 05	31 05		31 05
Est. of J. Rice	N. E. 1/4		4	"	13800				20 00	70	20 70		20 70
P. F. W. Peck	N 2/3 E & N E 1/4		"	"	21600				600 00	21 00	621 00		621 00
Amounts carried forward												44 45	1314 45

The twelfth (12th) page, upon which is the Assessment or
award of damages to the Estate of James D. Bonner for
real Estate condemned, and for which award this suit
is brought is as follows.

NAMES OF OWNERS.	DESCRIPTION.	S. Lot.	Lot.	Block.	Valuation.	Value of Land Condemned.	Damage to Buildings Condem'd.	Total Damages.	Benefits by the Improvement.	Cost of Proceedings.	Total Benefits.	NET DAMAGES.	NET BENEFITS.
Amounts brot forward										2089 46		30525 00	61789 46
Est of L. O'Brien	Sec 14 34 1/4 feet		4	96	14125	10000	1600	11600	1475 00		1475 00	10125 00	
R. Trip	E 1/4		5	"	4500	4500		4500				4500 00	
William Gentry	W 1/2 of E 1/2		"	"	4500	3800	900	4400	500 00		500 00	3900 00	
Henry Meyers	E 1/2 of W 1/2		"	"	4500				388 00	13 58	401 58		401 58
B. Schloffer	W 1/4		"	"	4500				287 00	10 05	297 05		297 05
Berg & Angel	E 1/4		6	"	4500				230 00	8 05	238 05		238 05
J. Burke	W 1/2 of E 1/2		"	"	4500				160 00	5 60	165 60		165 60
Leopold Meyer	E 1/2 of W 1/2		"	"	4500				140 00	4 90	144 90		144 90
R. White	W 1/4		"	"	4500				120 00	4 20	124 20		124 20
John S. Wright			7	"	18000				250 00	8 75	258 75		258 75
J. Whitlock			1	97	10000	8000		8000	1000 00		1000 00	7000 00	
Daw. Taylor			2	"	10000				700 00	24 50	724 50		724 50
"			3	"	10000				430 00	15 75	465 75		465 75
"			4	"	10000				350 00	12 25	362 25		362 25
Est. of L. Reir			5	"	10000				200 00	7 00	207 00		207 00
Rippon			6	10411	2500				20 00	70	20 70		20 70
Thomas Whitlock			12	"	15000				200 00	7 00	207 00		207 00
Amounts Carried forward										2211 79		56050 00	65406 79

The last and concluding part of said Assessment-
Roll is as follows.

NAMES OF OWNERS.	DESCRIPTION.	S. Lot.	Lot.	Block.	Valuation.	Value of Land Condemned.	Damage to Buildings Condem'd.	Total Damages.	Benefits by the Improvement.	Cost of Proceedings.	Total Benefits.	NET DAMAGES.	NET BENEFITS.
							<i>Amounts bro't forward</i>	<i>4737 53</i>				<i>13378 00</i>	<i>140065 53</i>
<i>L. B. Bryer</i>	<i>rebuilding building on leased lot</i>						<i>400, 400.</i>					<i>400 00</i>	
<i>do</i>	<i>Damage to Lease</i>											<i>150 00</i>	
<i>Mr Law</i>	<i>do do</i>											<i>1000 00</i>	
<i>City of Chicago</i>	<i>Cost of Proceedings</i>												
							<i>Totals</i>	<i>\$4737 53.</i>				<i>\$135328 00</i>	<i>\$140065 53</i>

up to the said thirty fifth page being like the said twelfth page without the sign '\$' or any words sign or character to denote or characterize the figures other than or different from what appears on said twelfth page

Following the body of the Agreement upon said Agreement Roll was the following Commissioners return.

"Commissioners Return"

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

The undersigned Commissioners appointed by your honorable body to ascertain the damages and recompense due the owners of such Real Estate as shall be appropriated and taken for the Extension of La Salle Street from Madison Street to Jackson Street in accordance with the Orders passed by the Common Council and hereto prefixed, and at the same time to assess the amount of such damages, together with the cost of the proceedings upon the real Estate claimed benefited by the said improvement, in proportion as nearly as may be to the benefits resulting to each lot or parcel of ground respectively

Do hereby Report and return to the Common Council

That in pursuance of said appointment they were qualified before entering upon their duties as appears by the Oath recorded herein; that they published a Notice of the time and place of their meeting for the purpose of making their appointment in the Chicago Daily Democrat, the Corporate Newspaper of the City of Chicago for the period of ten consecutive days previous to such meeting: a certificate of which publication is hereto prefixed; that they were present at the time and place

up to the said thirty fifth page being like the said twelfth page without the sign '\$' or any words sign or character to denote or characterize the figures other than or different from what appears on said twelfth page

Following the body of the Agreement upon said Agreement Roll was the following Commissioners return.

"Commissioners Return"

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

The undersigned Commissioners appointed by your honorable body to ascertain the damages and recompense due the owners of such Real Estate as shall be appropriated and taken for the extension of La Salle Street from Madison Street to Jackson Street in accordance with the Orders passed by the Common Council and hereto prefixed, and at the same time to assess the amount of such damages, together with the cost of the proceedings upon the real Estate deemed benefited by the said improvement, in proportion as nearly as may be to the benefits resulting to each lot or parcel of ground respectively

Do hereby report and return to the Common Council

That in pursuance of said appointment they were qualified before entering upon their duties as appears by the Oath recorded herein; that they published a Notice of the time and place of their meeting for the purpose of making their appointment in the Chicago Daily Democrat, the Corporate Newspaper of the City of Chicago for the period of ten consecutive days previous to such meeting: a certificate of which publication is hereto prefixed; that they were present at the time and place

and for the purpose designated in said Notice, that they adjourned from day to day until April 5th 1856 when they were all present at the same hour at Room No 3 in the Court House and after viewing the premises did then and there and do hereby assess the respective amounts set opposite to each lot or parcel of ground in the foregoing Assessment Roll mentioned in their appropriate columns as the damages and benefits resulting from the said improvement, to such lots or parcels of ground respectively, having first fixed a valuation on the said Real Estate which is likewise set forth in said roll.

All of which is respectfully submitted

J. W. Bragg

Thos: Church

Commissioners

Chicago

Wm. W. Saltmastele

April the 5th 1856.

When endorsed upon said Assessment roll appeared the following Certificate viz:

State of Illinois
City of Chicago

I do hereby certify that the foregoing Assessment Roll was returned to me and filed in my Office by the Commissioners this fifth day of April 1856

M. W. Zimmerman

City Clerk.

When forwarded appended to said Assessment Roll, the following Copy of a Notice together with the Certificate of

the publication of said Notice viz:

" City Clerk's Office

Chicago April 7th 1856

Assessment Notice

Public Notice is hereby given to all persons interested that the Commissioners appointed by the Common Council of the City of Chicago to ascertain and assess damages and benefits resulting to owners of real Estate in the South Division by reason of the extension of LaSalle Street from its present terminus at Madison Street in a straight line South to Jackson Street have completed their Assessment 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 21st day of April 1856 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 pass and confirm or amend the same.

J. W. Zimmerman

City Clerk."

(10 lines)

" This Certifies that the appended Notice has been published in the Daily Times, the Corporation Newspaper of the City of Chicago, County of Cook and State of Illinois ten days consecutively commencing with April 8th 1856.

Chicago

185

Publishers."

Then follows indorsed upon said Assessment Roll, the order of Confirmation of said assessment passed in Common Council June 9th 1856 viz:

"Order of Confirmation."

In Common Council June 9th 1856.

Whereas due notice has been given by the City Clerk of the return of the foregoing Assessment Roll and objections thereto having been filed and overruled, it is therefore Ordered that the said Assessment as revised by the Common Council be and the same is hereby confirmed.

And it is further Ordered that a Warrant be issued for the collection thereof returnable in Thirty days after its date.

"Passed"

Then followed thereunder written the following ^{to} ~~indorsement~~ ^{indorsement} viz,

Warrant issued June the 17th 1856.

It is expressly stipulated that ^{by} the parties that the ~~following~~ ^{foregoing} portions of the said Assessment Roll heretofore given are sufficient to constitute the record in this case and no omission of any other parts of said record shall prejudice either party.

Now the said defendant by its Attorney John Lyle King then and there objected to the reading and introducing the evidence of the said Assessment roll and order of Confirmation and orders and proceedings thereon.

The attorney for said plaintiffs then introduced in evidence.

The act Amending of the City Charter of said City of Chicago
Approved February 16. 1857, and read to the said Court the eighth
section of said Act, from the printed Session Laws of
1857, published by authority of this State as follows.

" Sec 86. All actions, rights, fines, penalties and forfeitures, in
" suit or otherwise, which have accrued under any act to
" which this act is an amendment, or under any Ordinances of
" said City now in force, shall be vested in and be prosecuted
" by the Corporation, and all proceedings now or hereafter commenced
" for the opening of any Street or Streets in said City, and the
" assessment of real Estate for any such improvement, is hereby re-
" spectfully legalized and affirmed and the Common Council is
" hereby, respectfully, authorized to continue such proceedings, and
" open said Street or Streets; any defect, decree, or order, of
" any Court to the contrary notwithstanding.

" And the said Court thereupon then and there overruled
the said objections of said defendant to the reading in evidence
of the said Assessment Roll and Order of Confirmation, and
Orders and proceedings thereon, and then and there admitted
the same in evidence

to which decision of the said Court overruling
said objection and receiving said Roll in evidence
the said defendant by its said Attorney then
and there assented.

The said Plaintiffs by their said attorneys thereupon
read in evidence the said Assessment roll together with the
said Order of Confirmation thereof so entered thereon

It also appeared in evidence that a Warrant was issued in due form of law upon the said Assessment on the 17th day of June A. D. 1856 directed and delivered to the Collector of said City, reciting said Order of Confirmation and directing the collection of said Assessment; and that there was collected upon said Assessment the sum of Twenty Three thousand nine hundred and thirteen dollars and three cents and no more, which sum was all paid out, previous to the commencement of this suit by the City authorities to those entitled to the same under said Assessment, but no part thereof to the plaintiffs in this suit.

^{by}
This was all the evidence - and no further or other evidence was given or offered by either or both the parties than that herein given.

^{to}
The plaintiffs by their said Attorneys claimed and insisted that they were entitled to recover interest upon the amount of the Assessment awarded to the Estate of said James D. Bonner by said assessment, for the said Estate condemned, at the rate of Five per cent per annum, to be recovered from the expiration of the two years next after the Confirmation of said Assessment by said Common Council, or, at least, from March 24th 1859, the time of the commencement of their said suit, to the time of rendering judgment, in addition to the amount of said assessment so awarded.

^{by}
The said Court took said case under advisement and afterwards to wit on the fifteenth day of March A. D. 1861

4th Because the Court admitted improper illegal incompetent evidence.

Which said Motion to set aside said finding and decision and grant a new trial the said Court did thereupon overrule and deny.

And to the decision of the Court in overruling and denying said Motion the said defendant by its attorney then and there excepted.

And the Court thereupon rendered judgment on the said decision and finding of the Court in favor of the plaintiffs for the sum aforesaid; And inasmuch as the matters and exceptions aforesaid do not appear of Record, this Bill of Exceptions is signed and sealed.

John M. Nelson (Seal).

State of Illinois
Cook County } ss.

I Walter Kimball clerk of the Superior Court of Chicago (formerly the Cook County Court of Common Pleas) within and for the County of Cook in the State of Illinois Do hereby certify the above and foregoing to be a true and perfect Transcript of the Precept, Bond for Costs, Process, Declaration, Plea, Appeal Bond and Bill of Exceptions now on file in my Office, together with the Order and judgment entered of record in said Court in a certain suit therein, wherein Rosalie A. Bonner Et al were Plaintiffs and The City of Chicago was defendant.



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

Walter Kimball Clerk.

Supreme Court of Illinois
City of Chicago Appellant
v
Rosalia A. Bonner and Percy
W. Bonner et al. appellees

The said appellant City of Chicago
appears for error that in the record
showing that

1st The decision and finding of the
Court are contrary to the evidence in the
case.

2d The finding and decision of the Court
are contrary to the law.

3d The finding and decision of the Court
ought to have been for the ~~defendant~~ defendant
below instead of for plaintiff below.

4th The Court below admitted illegal
incompetent and improper evidence

5th The Court below erred in overruling
the motion for a new trial.

6th The Court ^{below} erred in rendering
judgment for plaintiff below.

Wherefore said City of Chicago prays that for the
errors aforesaid the said judgment ~~may~~ be
said Court may be reversed annulled & set aside

John Lyle King
Attorney for
Appellant.

And now comes the said Rosalia A Bonner and
Percy W Bonner appellants by

their Attorneys And say as
to the errors above alleged and assigned
by said Appellant that in the record and proceedings
aforesaid and in the rendering of the Judgment
aforesaid there is no error and they are ready
to verify &c

Arnold Lay & Gregory
attys for appellants

And said Rosalia A Bonner and Percy W Bonner
by &c now and say that in the record & proceedings
aforesaid and in the rendering of Judgment aforesaid
there is manifest error in this - The Court below
err in disallowing interest to said Rosalia A
Bonner and Percy W Bonner upon the award and
appraisement to them of damages for his land condemned
And they are ready to verify. Wherefore they
pray Judgment &c

Arnold Lay & Gregory
attorneys for appellants

And said City of Chicago Appellant say
as to the assignment of error in the foregoing
by said Appellants, that in the record & proceedings
and Judgment aforesaid there is not any error
or above alleged or assigned or proposed errors
alleged appellants -

Geo H A King
Attorney for City
of Chicago

It is stipulated that the Abstract of the
acts in the case of William Wheeler appellant
and City of Chicago appellants, shall be considered
sufficient in this case as presenting all the
points for decision in the case.

Chicago April 15. 1861.

Arnold, Layt Gregory
attorneys for appellants.

219, 50
State of Illinois }
Cook County . . . }

Rosalie, A. Pinner et al

— (vs) —

The City of Chicago

Records.

Filed April 17. 1861

A. Arnold
Clerk

\$8.00