

12883

No. _____

Supreme Court of Illinois

McA^U~~A~~ley

vs.

City of Chicago

71641  7

Supreme Court.

ABSTRACT OF RECORD.

HENRY McAULEY,	}	Appeal from Cook Co. Court of Com. Pleas
Appellant.		
vs.		
CITY OF CHICAGO.		
Appellee.		

Application for judgment on an assessment warrant under Act of Legislature, approved February 16, 1857.

Page 2 Report of Joseph N. Hendricks, city collector, to Court of Common Pleas, filed January, 1859, stating that the special warrants attached thereto, made out in the manner required by law and countersigned by the city Comptroller, were delivered to the city collector, on or before the second Tuesday of October, A. D. 1858, that immediately after he published a notice in the corporation newspaper, that the warrants were in his hands for collection, briefly describing the warrants and requesting

3 payment; that he gave ten days notice of his intended application for judgment. And that the annexed schedule is a correct list of the lands, lots and parcels of land together with the amounts of taxes and assessments, interests and costs respectively due therein, as set forth in said, warrant.

4 Affidavit of said Collector of truth of report:

SPECIAL WARRANT, No. 308, W.

STATE OF ILLINOIS,	}
CITY OF CHICAGO,	

The people of the State of Illinois, to the Collector of the city of Chi-

5 cago, greeting: Whereas, the common council of the city of Chicago, did on the 5th day of October, 1857, confirm the assessment duly made and filed in the Clerk's office by the commissioner appointed by the said common council to assess the sum of seven thousand three hundred and sixty-five dollars and eighty-eight cents, upon the real estate in the west division of said city, deemed benefited by planking Lumber street from North street to South street in proportion to the benefits attached thereto, in pursuance of an order for said assessment made by the said common council on the 29th day of April, 1857, after duly revising the same, and did thereby assess the said sum of money upon the real estate described in the roll of said assessment in the respective proportions thereof, marked assessments, set opposite to each lot, part of lot and real estate described in said roll which roll is in the words and figures following to wit:

ASSESSMENT ROLL.

A description of the real estate deemed benefited by the filling and planking of Lumber street, &c.

Canal T. Sub. of S. W. $\frac{1}{4}$ &c., and so much of S. E. $\frac{1}{4}$ of Sec. 21, 39, 14, as lies west of Chicago River.

Names of Owners.	Desc'pn	S. Lot.	Lot.	Bl'k.	Valuat'n.	Ass'mt
Henry McAuley,			1	4	\$10,500	311,45
"	N. $\frac{1}{2}$		1	5	7,500	222,33

6 Then follows names of other owners, &c., as above.

7 Now therefore you are hereby commanded to levy, make and collect, &c.

Dated, Oct. 9, 1857.

[Seal] and signed by Mayor and Comptroller.

COLLECTOR'S RETURN.

8 Corporation notice of intended application for judgment, dated January 7, 1859, and proof of publication for 21 days.

9 Judgment against above property, stating that objections had been filed and overruled.

11 Bill of exceptions filed by H. McAuley.

12 Objections made by Henry McAuley, to the entering of judgment.

1. That the assessment specified in warrant is alleged to have been made in pursuance of an order passed by the common council for filling and

planking Lumber Street, from the center of North Street to the West line of Canal street, and from the west line of Canal street to South street.

13 2. That the commissioners appointed by the common council to make assessment upon property deemed benefited by such improvement, made such assessment and reported the same to the common council with their assessment roll made out and completed in which assessment roll, lot one block 4 was valued by them at the sum of \$13,500 and assessed at the sum of \$257, and north half of lot one, in block five, was valued at \$12,000 and assessed at \$221.13, that before the assessment was confirmed, McAuley made his objections to the confirmation of said report, that on the 20th of July, 1857, an order was passed directing the commissioners to report to the common council an explanation of the basis of their report; that they made such report and on the 7th of August, 1857, the said commissioners, without any further authority, and while the assessment roll was awaiting the confirmation of the common council, made out another and different assessment roll in which they valued said lot one in block 4 at \$10,500 and said lot one in block 5, at \$7,500, and assessed said lot one in block 4, at the sum of \$311.45, instead of at the sum of \$257, the amount stated in the original assessment roll, and that the assessment first made by the commissioners, was confirmed by the common council and that warrant No. 308, was issued to collect the amount of such new assessment, and insists that the new assessment and the warrant issued therein is authorized by law. That at the time of the making such new assessment the authority of the commissioners had ceased in the morning and was completely exhausted, and that they had received no authority from the common council to make such new assessment, that the common council had made no order to revise or correct the first assessment, and that said commissioners gave no notice, as required by law, (see sec. 4, chap. 7, city charter, entitled assessments for public improvements,) of the time and place where they would meet to make such new assessment.

14

15 3. That the city clerk did not cause a notice to be published in the corporation newspaper of the completion of the assessment, and filing of such new assessment roll as required by sec. 6, of said chapter 7.

18 4. That no committee was appointed by the common council to prepare and report a plan for said improvements as required by law with an estimate of the expenses thereof, nor was any plan for said improvements or an estimate of the expenses thereof, ever prepared and reported to said common council as required by sec. 1, chap. 3, of the charter and ordinances of said city, entitled an ordinance concerning assessments for public improvements at page 155, published in 1856.

5. Further that the court had no jurisdiction to enter judgment, and that the application for judgment should have been made at the January term of 1858.

19 The defendant upon the hearing of the defence to the application for judgment, introduced the proceedings of the common council relating to said assessment which are as follows:

"Assessment roll for filling and planking South street."

"In common council, April 27, 1857, ordered that the Superintendent take all proper steps for filling and planking Lumber street, &c."

20 "Commissioners appointed to make such assessment."

21 "Report of commissioners with their assessment roll, as follows:

Part of						
Names of Owners.	L't of Ld.	S. Lot.	Lot.	Bl'k.	Valuat'n.	Ass'mt
Henry McAuley,			1	4	\$13,500	257
"	N. $\frac{1}{2}$		1	5	12,000	222,33

Other names &c.

22 Commissioners return.

23 Notice of Com. that they would meet on the 11th of May, to make assessment and dated May 7th, 1857, first that they would assess the sum of \$5098 40, for planking Lumber street from the centre of North street, to west line of Canal street. Second, the sum of \$2267,24 for filling and planking Lumber street from the west line of Canal street to the center of South street, with proof of publication of three notices, certificate of

25 city clerk, of the return and filing of the foregoing assessment roll.

"Endorsed on same is following:

"Local assessment, June 1, 1857. Referred back to commissioners with instructions to report explaining basis of assessment."

February 20, 1857.

"Referred back to committee for amendment, Aug. 10, 1857, and attached to the other roll is the assessment roll, first above mentioned, upon which the warrant issued,"

"Notice of city clerk, dated May 18, 1857, that commissioners had completed the assessment, and returned the same to his office; and that objections must be made on or before the first day of June. 1857, published ten days.

28 "Order of confirmation. Ordered that said assessment, as revised and corrected by common council, be, and the same is confirmed. Dated Oct. 5, 1857.

29 Defence introduced record of proceedings by common council, in relation to said assessment, as follows:

The other roll (Record p 25. 26 924) shows was a more regular roll and was accompanied by instructions when the Council confirmed making it final, concluded 1857.

1st. June 1, 1857, "The clerk presented assessment rolls for the planking of Lumber street and opening alleys in block 111, school section, with objections thereto." Referred to committee on local assessments."

2nd. July 30, 1857. Alderman LaRue, of committee on local assessments, to whom was referred the assessment roll for planking Lumber st., together with objections thereto, recommended that assessment roll be rescinded. Referred to commissioners with instructions to report explaining basis of assessment."

3rd. Aug. 10, 1857. "The committee for making assessment for planking Lumber street, to whom was referred the roll for explanation reported thereon, asking leave to make certain amendments. Alderman La Rue moved to proceed to elect commissioners to make a new assessment and demanded the ayes and nays.

Ayes 7. Nays 9.

And on motion the roll was referred back for amendment."

HOYNE, MILLER & LEWIS,

For Apellant.

265- 133
Sup. Bureau
"

Henry B. Caudy
"

Levy of Caudy
"

Abstracty Bureau

Filed May 5. 1859

H. Keland
Clerk

Henry Miller Lewis

Supreme Court

Henry McAuley

vs.

City of Chicago

It is hereby stipulated that appeal allowed for
appellant Henry McAuley has been to
withdraw the record in this case for the
purpose of preparing abstract of same -
E. Anthony
for Deft in Error

Sup. Exmt
"

Harry McCarty
"

Art. of Chicago
"

Sup. Exmt. & Mr. M. M. M.
and
"

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

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

Present The Honorable John M. Wilson . . . Judge
John Gray Sheriff

Attest

Walter Kimbale, Clerk.

Be it remembered that heretofore to wit on the
day of January A. D. Eighteen hundred and fifty nine
came Joseph M. Henricks, City Collector of the City of Chicago
and filed in the Office of the Clerk of said Cook County Court
of Common Pleas, Collectors Report, Warrant, Assessment Notice
Return & Notice of Sale, Which said several documents are
in the words & figures following to wit.

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

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

The report of Joseph M. Henricks, City Collector of
the City of Chicago respectfully represents that the Special
Warrants mentioned in the Schedule herunto attached were for
the collection of the Special Assessments and Taxes authorized by law
for the purposes therein severally set forth made out in the manner
required by law, and countersigned by the City Comptroller were
delivered to him the said City Collector on or before the second
Tuesday of October A. D. 1858. That forthwith after the delivery
of the said Warrants to him he published a Notice in the Chicago
Newspaper of said City, that such Warrants were in his hands
for collection, briefly describing the nature of each of said
Warrants, and requesting all persons forthwith to make payment
thereof at his Office, and that in default of such payment the

in the 24th day of April 1857 after duly receiving the
Order for said appointment made by the said Common Council
petition. It has been the practice heretofore in pursuance of an
by Jean King & James Street from 1831 to 1857 to send
Dea. Solato in the West Division of said City & to send another
of Peter Hunsicker there, having pretty fine 100 acres who he
applied by the said Common Council to agree the
made such fees in the Clerk's Office by the Commission
in the 15th day of October 1857 and from the 15th day
of the Common Council of the City of Chicago, stating
that before of the City of Chicago, stating
the Mayor of the State of Illinois to the
City of Chicago, Illinois

" SpecialARRANT No 308 of.

Let it be Court Clerk: of the
State of Illinois, be it

one this 24th day of January 1859

Quintus and Peter to be

Chas. W. Hunsicker

instructed as above stated.

has been and appointed, here remain the said Hunsicker, and
as required by law for the year 1858 as herein set forth, that
which of have been made to collect the fees and appoints
but if the defendant file bonds and forfeits of four
feet, here - then the court of justice to a fine and costs
against any made to be the best of my knowledge and

paid taxes and assessments would be collected at the cost and expense of the person liable for the payment of such taxes and assessments, which said Notices were severally published for ten days in said Corporation Newspaper.

That he has given ten days Notice of his intended application to this Court for judgment against the lands lots and parcels of land for the amount of taxes, assessments, interest & costs due thereon, before the first day of the January Special Term of this Court A.D. 1859, briefly specifying the nature of the said Warrants upon which the said application was to be made, requesting all persons interested therein to attend at such time and place. A copy of which said Notice is herewith filed together with a Certificate of the due publication of said Notice from the publisher of the said Corporation Newspaper, in which the said Notice was published.

That the annexed Schedule is a correct list of the lands lots and parcels of land together with the amounts of taxes, assessments, interest and costs respectively due thereon as set forth in the said Warrant which remain unpaid & unpaid.

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

Geo. W. Huricks

City Collector."

"State of Illinois
Cook County ...

I Geo. W. Huricks City Collector of and for the City of Chicago do solemnly swear that the annexed

and did hereby apportion the said sum of money upon the said
 Estate described in the roll of said apportionment in the respective
 proportions thereof marked "Assessment," set opposite to each
 part of lot and real Estate described in said roll, which roll
 is in the words and figures following to wit:

"Assessment Roll,"

A description of the real Estate in the West Division
 of the City of Chicago deemed benefited by the filling & plank-
 ing of Lumber Street from North Street to South Street, with the
 Valuation thereof and the sums of money generally apportioned
 for benefits by the Commissioners, to wit:

Barred Streets Subdivision of S. W. 1/4 and so much of S. E. 1/4 of
 Sec. 21, 29, 111, as lies N. of Chicago River.

Name of Owner	Description	S. Lot	Lot	Blk	Valuation	Assessment	
Henry Wm Culey			1	H	105000	311 45	
J. H. Leamonworth			2	"	8500	245 13	
Lumbard			3	"	8500	245 13	
G. Westbrook			4	"	8500	245 13	
W. Mc Henry			5	"	100000	299 45	
H. Wm Culey	3 1/2		1	S	7500	222 33	
J. H. Reed	3 1/2		"	"	7500	222 33	
W. Green			2	"	121000	416 36	
W. Green			1	111	10000	299 45	
Thos Stinson			1	2	"	1000	10 21
"			2	"	"	1000	10 21
"			3	"	"	1000	10 21
"			4	"	"	1000	10 21
"			5	"	"	1000	10 21

and did hereby apress the said sum of money upon the real estate described in the roll of said apsement in the respective proportions thereof marked "Assessment," set opposite to each part of lot and real estate described in said roll, which roll is in the words and figures following to wit:

"Assessment Roll,"

A description of the real Estate in the West Division of the City of Chicago deemed benefitted by the filling & plank-
Lumber Street from North Street to South Street, with the
Valuation thereof and the sums of money generally apressed there-
for benefits by the Commissioners, to wit:

Barat Street Subdivision of S. W. 1/4 and so much of S. E. 1/4 of
Sec 21, 29, 111, as lies N. of Chicago River.

Name of Owner	Description	S. Lot	Lot	Blk	Valuation	Assessment	
Henry Mrs Culey			1	H	105000	311 45	
J. H. Leamonworth			2	"	8500	245 13	
Lumbard			3	"	8500	245 13	
G. Westbrook			4	"	8500	245 13	
W. Mc Henry			5	"	100000	299 45	
H. Mrs Culey	3 1/2		1	S	7500	222 33	
J. H. Reed	3 1/2		"	"	7500	222 33	
W. Green			2	"	121000	416 36	
W. Green			1	111	10000	299 45	
Thos Stinson			1	2	"	1000	10 21
"			2	"	"	1000	10 21
"			3	"	"	1000	10 21
"			4	"	"	1000	10 21
"			5	"	"	1000	10 21

Name of Owner	Description	S Set	Sq	186	Value	Hand
Thos. Stinson		6	2	14	1000	11 21 Paid
"		7	"	"	1100	30 63 Paid
"		8	"	"	1100	30 63 Paid
"		9	"	"	1100	30 63 Paid
"		10	"	"	1100	30 63 Paid
"		11	"	"	1100	30 63 Paid
"		12	"	"	1100	30 63 Paid
	Alms 1/2	3	"	"	4300	125 52 Paid
	Alms 1/2	"	"	"	4300	125 51
A. Carter		14	"	"	7000	196 53 Paid
G. Murphy		5	"	"	10000	296 48 Paid
John Handley		1	33	"	10000	296 48 Paid
H. W. Lister		2	"	"	8500	246 03 Paid
Wm. Williams		3	"	"	8000	227 02 Paid
"		"	"	"	8000	227 02 Paid
Wm. L. Brown		4	"	"	6000	165 86 Paid
Thos. Loring		5	"	"	6000	166 86 Paid
S. F. Sutherland		6	"	"	6000	168 49 Paid
"		7	"	"	6000	168 86 Paid
Thos. Stinson		8	"	"	6000	168 86
W. Green		9	"	"	6000	168 86 Paid
Thos. Stinson		10	"	"	9500	258 07 Paid
L. Shelby Jr.	6 2 1/2 acres paid	36	"	"	31000	491 27 Paid
H. D. Hilpui		1	37	"	10500	315 17 Paid
Wm. Green		3	"	"	2600	69 27 Paid

\$7365.86

Now therefore you are hereby commanded to buy make and
collect of the goods and chattels of the respective owners of the
real estate above described, the several sums of money assessed
thereon, for which each may be liable as assessed and hereof
make due return in what manner you shall ^{think} proper this date
within thirty days from the date hereof

Corporate
Seal

Witness John Wentworth Mayor of the City
of Chicago, and the Corporate Seal thereof
this 9th day of October 1851

J. Wentworth, Mayor

Attest

Saml D. Ward Comptroller

W. Weissmann, City Clerk

Collectors Return.

State of Illinois

City of Chicago

City Collectors Office

1851

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

to the payment thereof.

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

Corporation Notice

"City Collectors Office, Chicago

January 7, 1859.

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

Warrant No 308, west, dated October 9th 1858 for plankings Lumber Street from North Street to South Street"

Joseph N. Henricks

January 7th 1859.

City Collector "

"This certifies that the appended Notice has been published in the Chicago Daily Democrat, a Newspaper printed & published in the City of Chicago, County of Cook and State of Illinois for one day consecutively commencing with the 4th day of January 1859 and that I have received dollars for publishing the same.

John Wentworth, Publisher

By Order "

Judgment Book for Special Assessments, City of Chicago of
Illinois.

Names	Description	S Lot	Lot	Block	Valuation Dollars	Am't of Assessment Dollars	Cent	Penalty Dollars	Cent	Cents	Total Dollars	Cents
Henry Mc Auley			1	41	105.00	311	415	31	15			
Henry Mc Auley	1 1/2		1	5	75.00	223	30	22	33			

And now on this fifth day of February A.D. Eighteen
hundred and fifty nine comes the said City of Chicago by
E. Anthony City Attorney and due notice having been given of
the time and place of making the intended application for judgment
against the said several lands lots pieces and parcels of land in
said Warrant set forth and objections to the taking of judgment
having been filed by Henry Mc Auley owners of Lots 1 in Block 51
and 1 in Block 51 described in Warrant and Counsel being
heard upon said objections and mature deliberation being thereupon
had and the premises fully understood it appears to the Court that
the said objections to the taking of judgment are insufficient and
objections are therefore overruled and on Motion of said City Attorney

It is considered by the Court that judgment be and
thereby is entered against the said lands lots pieces and parcels
of land being the amount of Assessments and for Costs of suit
generally thereon and that the said City of Chicago have and
recover the further sum of ten per cent upon the amount of
assessments respectively due and unpaid upon each of the lots
pieces and parcels of land therein set forth as aforesaid legal damages

And it is further Ordered by the Court that said several
lands, lots pieces and parcels of land or so much thereof as
shall be deemed sufficient of each of them to satisfy the amount

of Assessment damages & costs annexed to them severally, as per
as the law directs.

And thereupon comes the said Henry Mc Guley, by his
Counsel and enters his Exceptions herein and prays an
Appeal herein to the Supreme Court of the State of Illinois for
Assessments on lots 1 in Block 11 and 12 & Lot 1 Block 51
which is allowed on filing his Appeal Bond in Seven hundred
dollars with security to be approved by Judge of Court in
ten days, and that he have twenty days time given him to
file his Bill of Exceptions herein.

And thereafter to wit on the Eleventh day of February 1859
Eighteen hundred and fifty nine the said Henry Mc Guley
filed his Appeal Bond, in the Office of the Clerk of said Court
which said Bond is in the words and figures following to
Know all Men by these Presents That we Henry
Mc Guley and Richard, J. Hamilton of Chicago, in the County of
Cook and State of Illinois are held and well and truly bound
unto the City of Chicago in the penal sum of Fifteen hundred
dollars, lawful money of the United States for the payment of
which well and truly to be made, we do hereby bind ourselves
our heirs, executors and administrators jointly and severally by
these Presents. Witness our hands and seals this 11th day of
February A.D. 1859.

The condition of the above Obligation is such that whereas
the Cook County Court of Common Pleas at the Special Term
Term thereof A.D. 1859 the said Cook County Court of Common

11
He has did render a judgment against said Henry Mc Ouley for
\$587 ^{and costs} dollars & costs being the amount of a
certain Assessment upon a Warrant issued by said City of
Chicago for the filling and plankimg of Lumber Street in
City a report of which was filed for Judgment against the
of said Mc Ouley at said Special January Term under the statute
in such cases made and provided from which said judgment
said Henry Mc Ouley has prayed an Appeal from said judgment
to the Supreme Court of this State.

Now therefore if the said Henry Mc Ouley shall ^{and}
truly prosecute his said Appeal with effect and pay all such
damages, judgment, interest and costs as may be awarded
against him in case said judgment be affirmed in said Supreme
Court, then the above obligation to be void, otherwise to remain
in full force and virtue."

"Henry Mc Ouley (Seal)
Appeared Richd A. Hamilton (Seal)
John Mc Wilson, Judge of."

And hereafter to wit on the twenty sixth day of February
A. D. Eighteen hundred and fifty nine the said Henry Mc Ouley
by his said Attorneys filed in the Office of the Clerk of said Court
his Bill of Exceptions in said proceedings which said Bill of
Exceptions is in the words and figures, following to wit,

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

City of Chicago
 ——— as ——— } Suit for Assessment on Warrant No.
 Henry Mc Culey unpleaded } 308 West for filling & blanketing
 with others . . . } Street from North Street to South Street.

Be it remembered that on the hearing of this cause on this fourth day of February A.D. 1854, upon the said writ being called upon the application and report of the City Collector for Judgment against the Lot 1 in Block 4. and North half of Lot 1 in Block 5 in Canal Trustees subdivision of West 1/2 of 1/4 part of the South East quarter of Section 21. Township 36 N. R. 14 E. as described in said Report, the said Defendant filed his defense thereto and his objections to a judgment in the words and figures following to wit.

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

Henry Mc Culey owner of Lot 1. in Block 4. and North half of Lot 1, Block 5 in Canal Trustees Sub: of W 1/2 of 1/4 part of S.E. 1/4 Sec 21. Town 39, R. 14 E, makes the following objection to the entering of judgment against said property upon Warrant No 308 West.

That the Assessment specified in said Warrant to allege to have been made in pursuance of an order of a City Council of the City of Chicago April 29th 1851 for filling and blanketing Lumber Street from the Centre of North Street to the West line of Canal Street and from the West line of Canal Street to South Street.

13
That the Commissioners appointed by the Common Council
to make assessment upon property deemed benefited by such
improvement made such assessment, and reported the same
to the Common Council with their Assessment Roll made out and
completed in which Assessment as appears thereon and paid in
Assessment Roll; said Lot 1 in Block H. was valued by them
at the sum of \$13500, and assessed for said improvement at the
sum of \$257.00. and said North half of Lot 1. in Block B
was valued by them at the sum of \$12000 and assessed by them
at the sum of \$222.13, that subsequently and on the 29th day
of May 1857 and before said Assessment was confirmed, the
said Henry Mc Auley, duly made known to the Common Council
his objection thereto, and that on the 20th day of July 1857 an
Order was passed by said Common Council directing said
Commissioners to Report to said Common Council an explanation
of the basis of their said Assessment, that afterwards and on the
27th day of July 1857, they made such report explaining the
basis of their said assessment and subsequently and on the 4th day
of August A.D. 1857 the said Commissioners without any notice
being given to them in that behalf, and while their said Assessment
Roll was with the Common Council awaiting its confirmation, made
out another and a different assessment Roll, in which they valued
Lot 1. in Block H. at the sum of \$10500, and said Lot 1 in Block
5, at the sum of \$7500, and assessed said Lot 1, Block H at the
sum of \$311.45, instead of at the sum of \$257. the amount
stated in their Original Assessment roll and filed said new assessment
roll with the City Clerk.

14

Whose said New Assessment Roll That the Assessment first
made by said Commissioners was confirmed by said Common
Council, and that said Warrant No 308 was issued to collect
the amount of such new assessment - as will more fully appear
from the Record thereof.

The said Henry Mc Culley insists that said new assess-
ment and the Warrant issued thereon is irregular and
unauthorized by law in this to wit.

That at the time of the making of said new assessment
their power and authority of said Commissioners to act in the
premises had been fully exercised by them and was completely
exhausted & that they had received no direction or authorization
said Common Council to make such new assessment, and that
the Common Council had passed or made no Order to revise or
correct the Assessment first made. That the said Commissioners
gave no notice as required by law -

(See 4 Chap. City Charter, entitled Assessment
for Public improvements.)

of the time and place when they would meet to make such
new assessment, and that said Assessment and Warrant is otherwise
irregular and illegal."

" Henry Mc Culley

Dr. Hym. Miller & Co. is his Attorney.

" And the said Henry Mc Culley makes the further objection
to said Assessment and the Warrant issued thereon - that the
City Clerk did not cause a notice to be published in the
Cincinnati Newspaper of the completion of the Assessment and

13

filing of such new Assessment Rolls as required by Section 6
of said Chapter Seven.

And the said Henry Mc Aubrey further objects to the
rendering of such judgment on the ground of the insufficiency
the notice of the Application therefor.

" Henry Mc Aubrey."

" And for a further Objection to the rendition of a judgment in
said Cause, the said Mc Aubrey says that the Ordinance passed
by the Common Council of the said City of Chicago under and
by the authority of which the said improvement of said Summer
Street was made, was in the words and figures following
to wit

" Common Council April 27th 1857.

Ordered, That the City Superintendent do and he hereby is
directed to take all proper steps. First, For the filling and
planthing of Summer Street from the Centre of North Street to the
West line of Canal Street, said filling to be one foot deep and
twenty four feet wide, and placed in the Centre of said Summer
Street, and said planthing to be with three inch Oak Plank
well spiked with six inch wrought spike to run 11x6 Oak
beams and to be twenty four feet wide and in the Centre
of said Summer Street.

Second, For filling and planthing of Summer Street from the
West line of Canal Street to the Centre of South Street to be filled
one foot deep and thirteen feet wide in the Centre of said Summer
Street, and to be plank sixteen feet wide with three inch oak
plank well spiked with six inch wrought spike to run 11x6 Oak

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Oak planks, paid plankers to be in the center of said
Lumber Street, in accordance with City Superintendent's estimate
herewith submitted.

Ordered, That the sum of Five thousand two hundred eight and
sixty four one hundredths dollars (\$5198.64) be assessed upon
the Real Estate in the West Division of the City of Chicago
benefitted by said filling and plankings from North Street to Canal
Street, and the sum of Two thousand two hundred twenty
seven and twenty four one hundredths dollars (\$2267.24)
be assessed upon the Real Estate of said West Division
benefitted by said filling and plankings from Canal Street to
South Street as described in the preceding Order, and that the
Common Council do now elect by ballot three reputable and
disinterested freeholders of the City of Chicago to make said
Assessment.

Report concurred in and Order passed,

" The Election of Commissioners was Ordered and on the
first ballot J. H. Kinzie, S. H. Price and William Hayman were
elected, each having received fifteen votes "

" Attest H. Kreisman, City Clerk."

Where said Ordinance required the filling said Street one foot
and the plankings of the same - that the Assessment levied upon
the said property was so levied for the purpose of filling and
plankings said Street, and that the amount of said Assessment
was much more than sufficient to fill and plank said Street
and that the property holders upon said Street could have
procured the filling & plankings of said Street at less for a

sum much less than the amount of said Assessment and offered the said City to do the same and procure the same to be done. And he further says that after the said opening the said City commenced, and as the City Superintendent over completed the work of improving said Sumner Street, but the said Mr. Aubrey says that the said Street was not filled, but that the Plank were laid upon the surface of the said Street, composed of light foam and that the work upon said Street was not done according to the Ordinance authorizing the said improvement upon which said assessment was made.

And he further says that the City have completed the work upon said Street and does not intend to fill said Street.

And for a further objection he says that the Ordinance aforesaid required the property benefitted by said improvement to be taxed for the same and he says that the property at the head of said Street owned by and in possession of the Galena & Chicago Union R.R. Co., was far more benefitted by said improvement than any other, and that the said improvement, was mainly made for the benefit and convenience of said Railroad Company and that the said property of said Railroad Company against which the said Street abuts was not assessed at all for said improvement.

And for a further objection he says the said work done upon said Street by the said City did not cost the said City over two thirds of the amount of the said Assessment and that the said property holders upon said Street offered to do the said work of filling and planking said Street according to said

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Ordinance and that a responsible person offered to take the
Contract at less than two thirds the amount of said assessment
and that the said Assessment was procured to be confirmed
through the fraud and connivance of the City Officials."

"Henry Mc Aubey"

And for further objection to said assessment and the
entering of judgment in said Warrant, the said Henry Mc Aubey
says that in Committee was appointed by the Common Council
to prepare and report a Plan for said improvements as required
by law with an estimate of the expenses thereof nor was any
Plan for said improvement or an Estimate of the expenses
thereof ever prepared and reported to said Common Council as
required by Section 1 Chap 3 of the Charter and Ordinances of
said City, entitled "An Ordinance concerning Assessments for
Public Improvements", at page 155, of the Charter & Ordinances of
the City, Chicago, published in 1856."

"Henry Mc Aubey."

And the Objector further objects to the authority & jurisdiction
of the Court for the reason that the said assessment was not
one levied in 1858, which is returnable to this term under the
Statute. but that the same was continued by order of this
Court from the last January Term 1858."

"Henry Mc Aubey"

And thereupon and upon hearing of the answer to said
report and said Application for judgment on said said, the said
Defendant by his Counsel introduced in evidence the following
Assessment Roll, filed among the proceedings of the Common

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Council in the City Clerk's Office of said City of the Commission
appointed by the said Common Council of said City to make the
Assessment upon the said property benefited by said improvement
of the respective sums of money, damages and costs therein stated
Which said Assessment Roll is in the words and figures following
to wit.

'Assessment Roll'

for

Filling and Planking Lumber Street from North Street to South
Document No.

In Common Council April 27th 1851.

'Ordered. That the City Superintendent do and he is hereby
directed to take the proper steps. First. For the filling & planking
of Lumber Street, from the Centre of North Street to the West line of
Canal Street, said filling to be one foot deep and twenty four feet
wide and placed in the Centre of Lumber Street, and said planking
to be with three-inch oak plank well spiked with six inch wrought
spike to nine 4x6 oak beams and to be twenty four feet wide
and in the Centre of said Lumber Street.

Second. For filling and planking of Lumber Street from the West
line of Canal Street to the Centre of South Street to be filled one foot
deep and sixteen feet wide in the Centre of said Lumber Street and
be planked sixteen feet wide with three inch oak plank well spiked
with six inch wrought spike to nine (5) 4x6 oak stringers, said
planking to be in the Centre of said Lumber Street in accordance
with the City Superintendent's 'estimate,' herewith submitted.

Ordered that the sum of Five thousand nine eight forty five

one hundredth dollars (\$5048.64) be assessed upon the Real Estate in the West Division of the City of Chicago, deemed benefited by said filling and plankling from North Street to Canal Street and the sum of Two thousand two hundred and sixty seven and four one hundredth dollars (\$2267.24) be assessed upon the Real Estate of the West Division, deemed benefited by said filling and plankling from Canal Street to South Street as described in the preceding Order, and that the Common Council do now elect by Ballot three reputable and disinterested freeholders of the City of Chicago to make said apportionment.

Report Concurred in and Order Passed.

The Election of Commissioners was Ordered and on the first ballot. A. H. Kingie, J. H. Fries and William Hayman were elected each having received fifteen Votes.

Attest H. Kresman, City Clerk.

Oath of Commissioners.

State of Illinois }
City of Chicago }

We the undersigned Commissioners appointed by the Common Council of the City of Chicago to assess the sum of Seven thousand three hundred and sixty seven ⁸⁸/₁₀₀ dollars upon the Real Estate by us deemed benefited by filling and plankling from North Street, in accordance with the foregoing Order in proportion to the benefits resulting therefrom as nearly as may be, do solemnly swear that we will faithfully and impartially execute our duty according to the best of our ability.

Sworn to and subscribed before me this 11th day

of May 1857.
H. Kreisman
City Clerk "

"John M. Knize
William Warman Commissioners"
Same Mr. Trust

" A description of the Real Estate in the West Division of the City of Chicago, deemed benefitted by the filling and widening of Lumber Street, from North Street to South Street, with the Valuation thereof, and the sums of money severally assessed thereon for benefits, by the Commissioners, to wit.

Name of Owner	Part of lot of Land	Lot	Lot Blk	Valuation	Assess ^{ts}
Henry Mc...	Canal Street Subdivision	1	4	13500	257 00
A. H. Savanworth	of W 1/2 and part of E	2		13500	245 13
Lombard	E 1/2 Section 21. T 39	3		13500	245 13
Grace M. Westbrook	R 111	4		13500	245 13
W. W. G. Ferry	do	5		13500	350 93
Henry Mc Auley	do	N 1/2	1 5	12000	232 33
A. H. Reed	do	2		24000	416 36
See	do	S 1/2	1	12000	232 33
W. Green	do	1	111	13500	350 93
Thos. Shuman		2		13500	246 13
S. Marsh		North 1/2	3	13500	122 52
Unknown		do	3	13500	122 51
A. Carter		4		7500	148 13
J. Murphy		5		13500	296 41
John Macdiffe		1	36	13500	296 41

Name of Owner	Part of Lot of Land	Lot	Lot	Blk	Value	Assess
St. Wheeler		2			13500	246 13
Wm. Williams		3			13500	147 02
Isaac Shelby Jr.			36		418000	920 87 1/2
Wm. Williams		3	35		13500	64 76
M. J. Brown		4			13500	165 86
Thos. Longan		5			13500	165 86
S. P. Sutherland		6			13500	168 119
do		7			13500	165 86
Thos. Stinson		8			13500	165 86
W. Green		9			13500	165 86
Thos. Stinson		10			24000	282 07
H. D. Gilpin		1	37		25000	313 17
Wm. Green		3			110000	609 117 1/2 236 1/2
						57365 88

Commissioners Return.

"The undersigned freeholders and residents of the City of Chicago duly elected and appointed by the Common Council of said City, to assess the sum of Seven thousand three hundred and sixty five⁵⁸ dollars upon the Real Estate in the West Division of said City, by us deemed benefited in proportion as nearly as may be to the benefits resulting thereto by reason of the filling and plankings of Chicago St. from North Street to South Street do hereby report and return to the Common Council

That in pursuance of said appointment they were duly qualified before entering upon their duties, as appears by the Oath recorded herein - that they published a notice of the time and place

of their Meeting for the purpose of making said Assessment in the
 Daily Democratic Press, the Corporation Newspaper for the period
 of six consecutive days previous to such meeting a Certificate
 which publication is herewith attached; that they are present at the
 time and place and for the purpose designated in said Notice and
 having first fixed a valuation on the Real Estate described and set
 forth in the proper column of the foregoing Assessment Roll in the
 then and there and do hereby, in pursuance of said appointment,
 assess the said sum of money upon the Real Estate herewith set
 forth and described as the only Real Estate benefited by said
 improvement, and that the benefits resulting there to is the
 proportion of said sum set opposite to each lot, part of lot and
 land respectively in said Assessment Roll.

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

All of which is respectfully submitted.

"Edward H. Kinzie
 James H. Frier } Commissioners
 Wm. Wrayman"

"Chicago, May 13th 1851."

Commissaries Notice

Public Notice is hereby given to all persons interested that the
 undersigned Commissioners appointed by the Common Council of the
 City of Chicago to assess the sum of Five thousand and no other
 \$100 dollars upon the Real Estate in the West Division lying thereon
 benefited by filling and plankings of Sumner Street from the
 North Street to the West line of Canal Street, will be at room 22

In the Court House on the Eleventh day of May 1857 at the hour of ten o'clock A.M. for the purpose of making said agreement.

Chicago }
May 2, 1850 }
"John H. Kugler }
S. H. Price } Commissioners."
Wm. Wapman }

"Public Notice is hereby given to all persons interested that the undersigned Commissioners appointed by the Common Council of the City of Chicago to assess the sum of Five thousand two hundred and sixty seven & 24/100 dollars (\$5267.24) upon the Real Estate in the West Division by them deemed benefited by filling and plank of Lumber Street from the West line of Canal Street to the Center of South Street will be at Room No 3 in the Court House on the Eleventh day of May 1857 at the hour of ten o'clock A.M. for the purpose of making said agreement."

"John H. Kugler }
S. H. Price } "Commissioners"
Wm. Wapman }

"Chicago May 2, 1857."

(Certificate)

"This certifies that the appended Notice has been published in the Daily Democratic Press, the Corporation Newspaper of the City of Chicago, County of Cook, and State of Illinois, on days consecutively commencing with May 4th 1857.

Chicago May 11th 1857.

Scraps, Burr & Spence. Publishers.

At Rogers."

"State of Illinois
City of Chicago } &c.

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I do hereby certify that the foregoing Assessment
Roll was returned to me and filed in my Office by the Commissioners
this 18th day of May 1857.

H. Kreusman, City Clerk."

Upon the back of which is inclosed the following words as
filings on the same in the Office of the Clerk of said City of
Chicago, to wit.

"Local Assessment. June 1st 1857.

"Referred back to the Commissioners, with instructions to report a
reaffirming the basis of the Assessment."

July 20th 1857.

"Referred back to Commissioners for amendment August
10th 1857."

And thereunto afterwards is attached the following other
and further Roll in the words and figures following, to wit.

"Assessment Roll"

"A description of the real Estate in the West Division of the
City of Chicago divided by lotting and plankroad
Street from North Street to South Street, with the valuation thereof
and the names of many persons appearing thereon for benefits by
the Commissioners to wit, Canal Trustees Subscribers of S. & C. Co.
and so much of S. & C. Co. of S. & C. Co. of S. & C. Co. as has been
Chicago River."

Name of Owner	Part of Lot of Land	Lot	Block	Valuation	etc.
Henry M ^o Ouley		1	11	10800	311 1/2
A. H. Leavenworth		2	"	8600	243 1/2
Lombard		3	"	8600	243 1/2
G. Woodworth		4	"	8600	243 1/2
W. M. Ferry		5	"	10000	299 1/2
Henry M ^o Ouley		1	3	7500	222 1/2
A. H. Rice		2	"	7500	222 1/2
		2	"	7500	222 1/2
W. Green		1	11	10000	299 1/2
Thos. Sullivan		1	2	1000	10 21
"		2	"	1000	10 21
"		3	"	1000	10 21
"		4	"	1000	10 21
"		5	"	1000	10 21
"		6	"	1000	10 21
"		7	"	1100	30 63
"		8	"	1100	30 63
"		9	"	1100	30 63
"		10	"	1100	30 63
"		11	"	1100	30 63
"		12	"	1100	30 63
	Block 42			4200	122 1/2
	Block 42			4200	122 1/2
A. Carter				7500	196 1/2
J. Murphy				10000	299 1/2
John Radcliffe		1	33	10000	299 1/2
H. Wheeler		2	"	8500	243 1/2
Wm. Williams		3	"	5000	141 1/2
A. Shelby Jr.		3 1/2		21000	490 1/2

Name of Owner	Part of Lot of Land	Lot	18th	Valuation	Assessment
Wm. Williams		5	36	5000	60 1/2
M. J. Brown		11		6000	165 1/2
Mrs. Loring		12		6000	165 1/2
S. H. Sutherland		6		6000	165 1/2
"		7		6000	165 1/2
Mrs. Stinson		8		6000	165 1/2
W. Green		9		6000	165 1/2
Mrs. Stinson		10		4500	250 1/2
H. D. Gelpin		1	37	10000	313 1/2
Wm. Green		3		25000	609 1/2
					\$2267.24

Assessment Notice

City Clerk's Office, Chicago

May 18, 1854.

Public Notice is hereby given to all persons interested that the Commissioners appointed by the Common Council of the City of Chicago assess the sum of Seven thousand three hundred and forty five dollars upon the Real Estate in the West Division of said City deemed beneficial by filling and planking Vanvor Street from Street to South Street, have completed their assessment and will 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 first day of June 1854 at Seven o'clock P.M. The Common Council will at that time in the Council Room hear and

objections to said Assessment and revised and confirmed the same.

"H. Kreismann, City Clerk."

"This Certifies that the appended Notice has been published in the Daily Dem: Press, the Corporation Newspaper of the City of Chicago, County of Cook and State of Illinois, ten days, commencing with May 18th 1857."

"Scrapps Bros & Spars - Publishers."

Order of Confirmation

"In Common Council

October the 5th 1857.

"Whereas due Notice has been given by the City Clerk of the return of the foregoing Assessment Roll and objections thereto having been filed. It is therefore Ordered, That the said Assessment as revised and corrected by the Council, be and the same is hereby confirmed, and such assessment is hereby required to be paid within thirty days from this date, and that a Warrant be issued for the collection thereof returnable in thirty days from this date."

"Passed, H. Kreismann, City Clerk"

"Mem: Warrant issued Oct: the 7th 1857."

on the back of which are indorsed the words "Confirmed Oct. 5. 1857."

And the said Defendant further introduced in evidence the records of the proceedings of the Common Council

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of the City of Chicago in connection with said Assessment Roll or Rolls and in their respective Order as follows to wit,

1st The Record of said proceedings on the 7th day of June A. D. 1857, in the words and figures following to wit:

"The Clerk presented Assessment Rolls for planking Lumber Street and opening Utter Block 111. School Section together with objections thereto."

"Referred to Committee on local Assessments."

2nd The record of said proceedings on the twentieth day of July A. D. 1857, in the words and figures following, to wit,

"Alderman Lathrop of Committee on local assessments to whom was referred the Assessment Roll for planking Lumber Street together with objections thereto"

"Recommended that the Assessment Roll be reconsidered"

"Referred to the Commissioners with instructions to report explaining the basis of the Assessments."

3rd The Record of said proceedings on the tenth day of August A. D. 1857 in the words and figures following, to wit:

"The Committee for making the Assessment for planking Lumber Street to whom was referred the Roll for explanation reported thereon asking leave to make certain Amendments"

"Alderman Lathrop moved to proceed to that Committee to make a new Assessment and demanded the City and Ward which resulted as follows: City, Ald; Myers, Greenbaum, Bauprey, Lathrop, Duerin, Conley & Boughton. 4.

Ward. Long, Harris, Kudala, D. Wolf, J. Sitt, Green and Wake. 9. and on Motion the Roll was referred back to

Amendment "

Which was all the evidence introduced on said defence by the said Defendant.

Whereupon after argument of Counsel the Court pronounced judgment against said Lots of Land as described in the Report of said Collector, and entered an order thereupon directing the Clerk of said Court to make out and issue an order for the sale of said premises for the amount of said apportioned damages and costs as charged in said Collectors Report against said Order owner.

To the entering of which said judgment and order the Defendant then and there by his said Counsel excepted and says that this his Bill of Exceptions thereto has signed and sealed by the Court.

(signed) John M. Nelson

Judge of the Cook Co. Ct. of
Common Pleas

Seal

State of Illinois
Cook County

I Walter Kimbale Clerk of the Cook County Court of Common Pleas within and for the County and State aforesaid Do hereby certify the foregoing to be a true and correct Transcript of the Collectors Report, Warrant, Apportionment

Roll, Collectors Return, Notice of Sale, Appeal Bond, and Bill of
 Exceptions, together with the Order of judgment entered of
 said Court, in certain proceedings therein wherein The
 of Chicago is Plaintiff and Henry McConkey is Defendant

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

Walter Humbalter Clerk



It is hereby stipulated that in the above entitled
 Cause the Ordinances of the City of Chicago which
 are now in the ~~Ordinance Book~~ Book known as
 Municipal Laws, may be read in evidence
 the same as if copied into the Bill of
 Exceptions in the Cause

Accepted April 18, 1859

Wm. B. (Clerk)
 City Attorney
 J. H. (for appeal bond)

Note - this stipulation here made
 is made by a stranger & without
 any authority at all.

E. Anthony -

Henry M. Canby

City of Chicago

Appeal from Court of
Common Pleas, 18,

And now comes the case of the
and says that in the Record Proceedings of the said Court
there is manifest error in this Court -

1st That the ^{1st} Assessment upon which the Manual
was issued to the City Collector in 1857, the Court
had no jurisdiction and its proceedings are void and
invalid.

2^d That the Manual upon which judgment
was rendered being one issued for an assessment
levied in 1857, and several terms of Court
having intervened in 1858 after the ^{first} Tuesday
of January in that year - and it not
being presented for judgment at the
same time or term at which the
general tax Manual for the annual
taxes of 1857 was presented, ~~but at the~~
~~term~~ but in a subsequent year and
the annual tax Manual of 1858
the Court acquiesced no jurisdiction
and its judgment proceedings are void.

3^d The Order of the Common
Council fixing the assessment upon which the
Manual issued, was based upon a plan of
the improvements first made with an
accurate estimate of the expense that

including the case of the money - the
assessments - as appearing record and
therefore the assessments are illegal and
all subsequent proceedings thereon are simply
void -

4th The Assessments were never legally
submitted by Commissioners appointed for the
purpose, to the Common Council and were
illegally confirmed by them in the absence of
all notices to persons interested in the
proposed assessment, as required by the Charter

5th The Common Council acted illegally
in sending the Assessments of the Commissioners
back to them - 1st for explanations; - and 2^d
for amendment instead of referring it
back for having a new assessment; the
only power vested in them; - and the
Commissioners has no authority to make
any amendments such as were made
by filing a new Roll, without first
having published all the notices
required by the Statute or Charter.

6th The Common Council acted
illegally in making any provision as to
the subject in confirming the assessments
after a new Roll was returned or
amendments made without first
having published notice to all persons

had such Roll had been filed and some time
 of place for hearing objections. The persons
 interested never had a day in Court and no
 allowed by appeal or otherwise -

7th The amended Roll is not signed
 as required by the charter
 the Commissioners, it does not appear when it is
 filed, and it is uncertain what Roll of the
 Commissioners was continued by the Court,
 as it does not designate either.

8th The Court never agreed there.
 The judgment is illegally rendered because of the
 abandonment of procedure of the Court when it
 being in violation of the Charter Ordinance, and
 all proceedings thereon have been void. The
 Commissioners that appeared exhausted all their
 power after their time roll was completed
 and under the reference made to them to amend
 they acted if at all as not a new Board
 should have given all entire required

and may have done

State of Illinois 265
 Court County
 Court of Common Pleas.

The City of Chicago

vs

Henry M. Bailey Applicant

Record

Filed April 21. 1857

L. Ireland

clerk

Wm. H. Miller Secy
 for appellants

Filed 26th

And now come the said
 defendant in Error by Elliott Anthony
 its attorney. & says that there is no error
 in the record & proceedings aforesaid
 or in the rendition of the judgment aforesaid
 & prays that the said Supreme Court now here, may
 proceed to examine the record & proceedings aforesaid
 and matters aforesaid, above assigned & under the
 judgment aforesaid in favor aforesaid may in all
 things affirmed
 E. Anthony
 atty for Def.