

No. 14589

Supreme Court of Illinois

Foss et al

vs.

City of Chicago

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

Pop. & Bluffing
No. 155 *164*

J. W. Middleton & Co., Stationers, 126 Lake St.

J. J. [unclear]
1864

408

155

SUPREME COURT OF ILLINOIS,

APRIL TERM, 1864.

ROBERT H. FOSS ET AL., PLAINTIFFS IN ERROR,

VS.

CITY OF CHICAGO, DEFENDANT IN ERROR.

BRIEF FOR ROBERT H. FOSS,

One of the Plaintiffs in Error,

BY F. H. KALES.

Filed April 18. 1864

J. S. Landolt

SUPREME COURT OF ILLINOIS.

ROBERT H. FOSS, ET AL, <i>Plaintiffs in Error,</i>	}	APRIL TERM, 1864.
VS.		
CITY OF CHICAGO, <i>Defendant in Error.</i>		

Brief for Robert H. Foss, one of the Plaintiffs in Error.

On the 1st day of May, 1860, Sylvester Lind was elected Sewerage Commissioner for the west sewerage district of Chicago; and afterwards entered into an official bond, on which this suit is brought, with Robert H. Foss, Benjamin F. Carver and A. H. Heald as his sureties. The bond bears date the 23d day of May, 1860; was accepted and approved by the Common Council of the city, as the declaration alleges, on the 17th day of December, 1860, and is conditioned,

1st—That Lind should well and faithfully perform his duties as Sewerage Commissioner *for the West District of Chicago*; and,

2d—That he should well and truly appropriate, account for and pay over all *moneys and funds* coming to *his* hands or control *by virtue of the provisions of an Act of the General Assembly, entitled "An Act to incorporate a Board of Sewerage Commissioners for the City of Chicago,"* *Approved February 14, 1855.*

The city brought suit on this bond at the September Term, 1861, in the Superior Court of Chicago, against Lind and his sureties, assigning as breaches,

1st—That Lind did not well and faithfully perform his duties as such Commissioner;

2d—That he did not well and faithfully appropriate and account for moneys, &c., coming to his hands or control by virtue of the provisions of the foregoing Act.

The facts appearing upon the trial were:

That Lind had held the office of Sewerage Commissioner in 1856; that he was re-elected in 1857; and again, for the last time, in 1860; that prior to his last election he had been chosen Treasurer of the "Board of Sewerage Commissioners;" and that subsequent to such election, he continued to act as Treasurer of the Board, but whether under a new order of appointment to that place, does not appear. In 1856 the Board, by its official action, selected the Marine Bank of Chicago as one of the places of deposit of "the funds of the Board;" and late in that year such of its funds as had previously been kept on deposit in the Chicago Marine and Fire Ins. Co., were accordingly transferred to the Marine Bank, which thereafter continued to be the official place of deposit till the Board was abolished, in 1861. The selection of the Marine Bank was thus made by the Board pursuant to Section 51 of the Sewerage Act of Feb. 14, 1855; and the Council were then notified of it in due form, and from 1856, tacitly approved of the place of deposit thus selected. The city also, in 1862, settled with this bank upon the basis that it had been the official depository of the funds of the Board during Lind's last term of office. Lind, while acting as Treasurer of the Board, kept its funds on deposit in the bank thus selected, and the Bank assumed to deal with him in his official character as such.

Treasurer; paid the official checks drawn by him in due form, and about which no complaint is made by the city; and it also paid certain illegal and unofficial checks signed by Lind, out of the funds of the Board, which go to make up the money *deficit* of Lind sued for and recovered in this action.

The Marine Bank also discounted the private note of Lind for 30,000 and odd dollars, Jan. 19, 1861, and received of him 40 Sewerage Bonds of \$1,000 each, as collateral thereto. Lind failed to pay his note when due, and the bonds were converted by the bank and applied thereon.

1st—As to the funds illegally drawn from bank:

It appeared that these were the "funds of the Board," and not of Lind, individually, from the fact that the Marine Bank had been selected by the Board as its depository, and that Lind had a deposit account thereof with the bank to the credit of the Board; that prior to his last election he had drawn a large amount from the Marine Bank on illegal checks of the same character and description as those hereafter mentioned; that subsequent to July 1, 1860, (when the city claims the Bond was delivered,) he drew checks signed "S. Lind, Treasurer," on the *Chicago Marine and Fire Insurance Co.*, a banking incorporation with which no moneys or funds of the Board were deposited, or even authorized to be kept. These checks finally amounted to \$25,910; were not numbered; *were all but one payable to Lind, personally*; none of them specified the purpose or account for which they were drawn; nor were they drawn upon the bank in which the funds of the Board were deposited; there were also checks of the same character and description, except the name of the bank, drawn on the Marine Bank, and upon it and the *Fire Ins. Co.* combined; to

the amount of \$9,195.10 ; making the whole of these illegal checks amount to the sum of \$35,105.10.

Col. Gamble, the Secretary of the Board, states that this money did not go for sewerage purposes ; but acknowledges, on cross-examination, that he did not know what did in fact become of the money. Still, the checks themselves made out a sufficient *prima facie* case that the moneys were not drawn out of bank for sewerage purposes, *but for Lind's own benefit*, contrary to sections 51 and 57 of the Act of 1855, of which the bank was bound to take notice.

The Marine Bank, however, assumed the right to take up or pay these irregular checks, mostly drawn on another institution ; and to charge them against the funds of the Board on deposit with it. Lind's account as Treasurer was accordingly made up by the bank from time to time, on the basis of rightful payment of these checks.

On the 21st day of August, 1862, as the evidence shows, the City of Chicago, with full knowledge of all the facts before mentioned, made a full settlement with the bank touching the sewerage account ; permitted the bank to credit itself with the moneys thus improperly paid on the foregoing checks ; received from the bank the balance of the fund, and executed a formal release to it of all liability in the premises.

2d. As to the 40 Sewerage Bonds converted :

These Bonds were for \$1,000 each, dated March 5th, 1860, and payable in 1884, with interest coupons attached ; they were issued by virtue of the Act of Feb. 14, 1859 ; all the Bonds authorized by the Act of 1855 having been previously issued and expended for sewerage purposes. On the 3d of March 1860, the City passed an ordinance authorizing *The Board* of Sewerage Commissioners to *issue and sell* \$250,000 of Bonds authorized by the act of February

1859; and directing the Mayor and Clerk to mark them approved in conformity with the 3d section of the Acts of 1855 and 1859. This was done, and the 40 Bonds in question were the first forty of the last one hundred of the above issue.

The bonds in question, although regular on their face, were issued without any plan of sewerage having been previously adopted for any one district; and not for the purpose of defraying the cost of any given plan or part thereof for any district, as required by section 17, of the Act of 1855; but yet they were approved by the Mayor and clerk of the city under its corporate seal; and thereupon became binding upon the city by virtue of section 3 of that act, so far as innocent holders were concerned. *Upon the back of these Bonds, the Act of February 14, 1859, was printed in full;* and also sections 3, 18, 19, 21, 22, 23 and 60, of the Act of 1855; and the bonds on their face profess to be issued in accordance with both Acts.

It is provided in section 3 of the Act of 1859, that "THE SAID BOARD of Sewerage Commissioners *shall hold, retain, apply, and appropriate the said Bonds and the proceeds,*" &c., and there is no provision in the Act confiding them to a single commissioner.

These bonds remained in the safe of the Board from March until the 30th November, 1860, when Mr. Webster, one of the members of the Board, directed the Secretary to perfect and give the 40 bonds to Lind, and to enter on the register "*to S. Lind on deposit,*" which was done. While 60 other bonds of the same denomination and issue were still retained in the safe, and there remained for months after, in perfect security.

Afterwards, and on the 19th day of January 1861, Lind desired to raise money; and accordingly the Marine

Bank, still the official depository of the funds of the Board, discounted his note for 30,000 and odd dollars; and received the 40 Sewerage Bonds in question as collateral security therefor; *the Act of 1859 was printed on the back of these Bonds* as before stated; and in section 3 thereof the penal provisions of the Act of 1855, and particularly of section 51 thereof, were in general terms denounced against Lind as a member of the Board for thus making use of these bonds; and the bank thus had notice that this pledge was illegal, and that it thereby obtained no title to or interest in the bonds; Lind never obtained possession or control of the bonds again, and they became lost to the city; the proceeds of the note—\$30,000—however, went into the deposit account of Lind as Treasurer of the Board, at the Marine Bank. After this transaction, Lind drew out money on illegal checks (being part of the checks before enumerated) to the amount of \$11,705.10; and only deposited \$1,850.05 of sewerage funds; and these checks as well as the bonds are charged against him as defalcations, and included in the judgment against the sureties. In the settlement made by the city with the bank, no question was made but that the bank had rightfully received and appropriated the bonds pledged to it by Lind; but a general release was executed to the bank by the city; and the basis of the settlement was broad enough to include the liability of the bank to the city in relation to the 40 sewerage bonds.

3d. There was a further sum of money which came to Lind's hands from the American Exchange Bank, N. Y.; and he failed to account for \$6,084 thereof.

Excepting \$1,850.05 sewerage moneys, and the money received from the American Exchange Bank as above, the 40 sewerage bonds, and the moneys of the Board drawn from its official depository—the Marine Bank—upon checks

of Lind, illegal and insufficient on their face, as vouchers either in behalf of the bank or in behalf of Lind, (see section 57, Act 1855,) constitute the whole cause of action of the city against Lind's sureties on the official bond; for these doings of Lind the city recovered in the Court below; but the amount of the recovery was reduced to \$37,911.94, by reason of money credits allowed Lind, and paid from his private funds.

The mode in which the amount of this recovery was made up, and the items of it, appear fully set out in the Record, p. 162 and 163, and in the Abstract p. 24—according to the statement thereof furnished by the counsel for the city, as follows:

Amount converted by Lind subsequent to June 7th, 1860, for which he and his sureties are chargeable on the bonds in suit,

June 8, 1860. Amount received from American Exchange Bank, New York, not accounted for by Lind.....	\$ 6,805 00
Amount of 17 checks drawn by Lind on Marine Bank, all subsequent to July 1, 1860, and not accounted for by him.....	35,105 10
Amount of Sewerage taxes received and retained by Lind in winter of 1860-1,..	1,805 05
Jan. 19, 1861. Sewerage Bonds converted by Lind, Principal.....	\$40,000 00
Interest at 7 per cent.. as per coupons attached.....	3,671 11
	43,671 11
Total.....	\$87,431 26

Credits to which Defendants are entitled:		
Dec. 1, 1860. Cash deposited to credit of Sewerage account in Marine Bank.....	\$ 3,000	00
Jan. 19, 1861. Cash deposited to credit of same account.....	30,000	00
Jan. 24, 1861. Cash paid by Lind to city authorities,	16,027	69
Interest at 7 percent., from June 24, 1861, on \$5,267.54 balance to his credit after satisfying his cash deficit at that date,	491 63	49,519 32
Balance now due.....	\$37,911	94

POINTS.

I. Upon the facts stated, Lind's sureties are not liable on their bond for his misconduct, either in relation to the *funds of the Board*, or in relation to the sewerage bonds used by him for his private benefit.

The sureties in their bond to the city only undertook, as expressly recited therein,

1st. That Lind should faithfully perform his duties as Sewerage Commissioner for the West District of Chicago, and

2d. That he should account for and pay over all moneys coming to *his* hands or control, by virtue of an Act of the Legislature entitled "An Act to incorporate a Board of Sewerage Commissioners for the city of Chicago." Approved February 14, 1855.

1. An examination of the Act of 1855—the only law prescribing the duties of Sewerage Commissioners—will show that no moneys or funds could come to the hands or control of Lind, “as Sewerage Commissioner for the West District of Chicago;” hence no duty devolved on him as Commissioner for that district, touching moneys or funds; therefore his sureties are not liable under the first branch of their undertaking, for Lind’s conduct touching the funds, &c., in question.

2. Did the funds come to *his* hands or control, by virtue of the Act of 1855?

Under the Act of 1855, the funds came to and were by law vested, *not in Lind as Sewerage Commissioner* for the west district, *but in the “Board of Sewerage Commissioners”*—(§51) *a body politic and corporate by that name and style, having perpetual succession*, (§1) composed of all the Sewerage Commissioners.

The funds by the express terms of the sewerage Act, were made “the funds of the Board;” are described as “belonging to the board”: were “to be deposited in such place as should by an order of said board be directed” (§51;) and “drawn out” *as the funds of the Board* in the manner prescribed by §57.

The foregoing provisions of the law embrace the whole sewerage fund, and cover the bonds and moneys alleged to have been embezzled by Lind. In no sense, therefore, did the bonds or funds in question come to the hands or control of Lind himself, (nor could they,) under or by virtue of the provisions of the Act of 1855; but on the other hand they came to the hands and control of the whole Board, as a body corporate.

But the sureties of Lind did not undertake for funds coming to the hands of the Board, and over which the Board

as such had legal control, and therefore they are not liable for Lind's misconduct as a member of the Board.

By the terms of the Act the funds were vested in and controlled by the Board, and not by any single member of it; for although the Board were to choose a Treasurer from one of their number, still such Treasurer was not allowed the possession of the funds except as a member of the corporate Board; and in this instance only to deposit them in the place already designated by the Board itself. The duties of this Treasurer are no where defined in the Act, further than that he is created an officer of the Board; as Treasurer he could deposit the moneys of the Board as directed by it; but whether he had the power to draw out the funds when deposited, is not stated in the Act, and it appears *that in his absence*, other members of the Board signed the checks (Abs. p. 5): and we are to presume that in drawing out moneys, Lind was under the complete control of his associate corporators, as well as limited by the legal disability of the Bank to pay any checks or drafts on this fund, unless drawn in the mode prescribed by § 57 of the sewerage Act.

Besides this, the drafts and checks were to be returned, not to the Treasurer, but *to the Board itself*, to be preserved as vouchers. Sec. 57, of Act of 1855.

Now, since the moneys and bonds converted by Lind were at the time of their conversion in contemplation of the sewerage Act, in the hands and under the control of the corporate Board—in the Bank selected by it—and *could never after, by virtue of that law, come to the hands of Lind*, either as a private person or as Sewerage Commissioner of the West District of Chicago, or even as Sewerage Commissioner generally; it is therefore submitted that Lind's sureties are not, and cannot be made liable under

their bond for these funds thus situated. Suppose Lind had broken into this bank after the funds were thus deposited, and taken all its money including these deposits, would this act have amounted to a breach of the official bond executed by his sureties? Would the money then have come to his hands or control under or by virtue of the Act of 1855, as recited in their bond?

That Act, as already seen, limits the drawing out of money of the Board thus situated, to a particular mode, and upon a certain kind of vouchers, (§ 57 of Act,) to pay debts of the Board; and such vouchers as the law prescribes would *prima facie* show such indebtedness.

The sureties might well consent to undertake for Lind's performance of the duties which the law imposed on him alone; but not for the proper appropriation of a large fund partly in the legal control of a selected bank, and partly under the control of and vested by law in him conjointly with two others *as a corporation*; nor for any corporate duties to be performed by him jointly with others; nor can the obligation of the sureties be extended by implication to meet such cases.

This case comes clearly within the principle that a bond with sureties that A will pay over all moneys of B coming to *his* hands or control, is not broken if the money come to A and C as partners, and there is a failure to pay it over to B.

London Ass. Co. vs. Bold, 6 Ad. & E., 514.

Mills vs. Alderbury Union, 3 Excheq., 590.

In the case of the *London Ass. Co. vs. Bold*, the plaintiffs had appointed one Boulton to be their agent, and he gave

bond with surety to account for moneys received to the plaintiff's use; Boulton continued to act as sole agent of the plaintiffs for some time, when he entered into a partnership with Addison, and notified the plaintiffs that he desired that Addison might be added to the agency; the plaintiffs assented to the proposal upon the condition that Addison *should also* enter into bond with surety for moneys which he should receive in the course of the agency. Addison accordingly furnished a bond, with Boulton, the defendant, as surety, as required, which was of the same tenor as the bond already given to the plaintiffs by Boulton. The evidence showed *that the bond of Addison was furnished with direct reference to indemnifying the plaintiffs for moneys coming to his hands in the course of this partnership arrangement*, entered into by him with Boulton. The plaintiffs then had the separate bonds with surety of each of the members of the firm, *but not the joint bond of both*, as security for the moneys to be received for plaintiff's use. After this the firm of Boulton & Addison received into their hands a large amount of premiums for plaintiff's use; and finally failed, having in their hands a large amount of plaintiffs' money. Suit was then brought against the sureties of Addison, upon his bond given to the plaintiffs for the purposes before stated, and the question was whether under the circumstances of the case, the sureties of Addison were liable.

Lord Denman, C. J., said: "The only question is as to the meaning of the condition. Of that there can be no doubt. Where a party makes himself surety for the conduct not of A. and B., but of A., *the stronger proof you give that he knew the relation in which A. and B. stood to each other, the stronger you make the inference arising from his mentioning only A.* Suppose the condition recited that the two were joint agents, and then spoke only

"of the conduct of one, would not that be strong proof that
 "the suretyship was intended to apply only to A?"

And the Court accordingly held that the sureties of Addison were not liable.

In the case of *Mills vs. Alderbury Union*, Brodie alone entered into a bond with surety to the Alderbury Union. And it was recited in the condition of the bond amongst other things, that he was to account for all moneys which should be *in his* custody, possession or power in virtue of his office as *Treasurer* of the Union, *or otherwise howsoever*. Upon entering into the bond, Brodie became Treasurer of the Union, and at that time he was also a partner with one Charles G. Brodie, in the business of banking, under the firm name of W. B. & C. G. Brodie. It appeared in evidence that after this bond was entered into, the Alderbury Union placed the very funds described in the bond of W. B. Brodie in the hands of W. B. & C. G. Brodie, as bankers; and that the said W. B. Brodie *had never* in fact *been in the exclusive* receipt of the moneys of the Union, otherwise than as a member of the firm. Subsequently the firm failed with a portion of these moneys in its hands; the sureties of W. B. Brodie were then notified thereof, and requested to make good to the Union the deficiency. One of the sureties complied with the request, and paid the amount claimed; but on ascertaining the facts before stated, brought suit against the Union to recover back the money, on the ground that the condition of his bond to the Union, had not been broken by W. B. Brodie, although the firm of which he was a member had failed to pay over the moneys of the Union; and that the plaintiff had paid the *deficit* to the Union under a mistake of fact.

Parke B. said: "The payments not having been made
 "to the Treasurer, but to the Bank, I think the plaintiff

"has made out a sufficient case that he was not liable to pay; and consequently, having paid under a mistake as to facts, he is entitled to recover."

In the case at bar, it appears that there were three Sewerage Commissioners; and under the Act of 1855, each was required to give a separate bond with surety, to perform his duties.

No joint bond of all the Commissioners was required by the act; but to protect the city against possible embezzlement of moneys or bonds, the Legislature enacted a penalty designed *by proper descriptive terms* to reach the person implicated, instead of comprehending the whole corporate Board in the penal provision.

See Section 51 Sewerage Act 1855.

The provision of the section referred to, had this extent, no more: to inflict upon the real culprit a severer penalty than the common law would impose, for a conversion of the *funds of the Board*; and does not therefore enlarge the duties of a single commissioner, even by implication, so as to lawfully give him the control and custody of the funds alone; and thereby raise a duty in him separate and apart from the Board itself.

If the Board was not satisfied with the security afforded by this penalty, it should have taken a bond from Lind as security for the funds it chose to place in his hands as Treasurer. There could have been no legal objection to such a bond; nor any embarrassment occasioned to the Board or any member of it, in requiring such a bond of its Treasurer; for any responsible bank selected under the Sewerage Act as depositary of the fund, would willingly, no doubt, have become the surety of the Treasurer in consideration of the deposits; especially as the Treasurer was

prohibited from drawing the fund out of bank except upon vouchers *so specific*, that the bank could at all times have satisfied itself whether or not the funds were being drawn for the purposes required by the Sewerage Act.

Act 1855, § 57.

The cases of sureties to a firm for the good conduct of a clerk, for his accounting, &c., by analogy may be considered in point, and are all to the effect that where there has been a subsequent change in the firm, either by taking in or letting out a member, that the sureties are thereby discharged.

Arlington vs. Merrick, 2 *Saund.*, 412.

5 *Bos. & Pul.*, 175.

U. S. vs. Kirkpatrick, 9 *Wheat.*, 720.

Bell v. Bruen, 1 *Howard*, 184.

Barnett v. Smith, 17 *Ill.*, 565.

In *Bell v. Bruen* the Court say: "The general rule is
" well settled in controversies arising on the construction of
" bonds with conditions for the performance of conditions
" preceded by recitals, that when the undertaking is general
" it shall be restrained and its obligatory force limited
" within the recitals."

The principle established by the cases of the *London Ass. Co. vs. Bold*, *Mills vs. Alderbury Union*, *Arlington vs. Merrick*, *Bell vs. Bruen*, and other cases cited is, that where the cause of action accrues against their principal in a different right from that to which the recitals have limited the undertaking of the sureties, although touching the same general subject matter of the undertaking, they are not liable.

These precedents, and the rule fairly deducible from them, are directly in point in determining the liability of the defendants in this case, for Lind's embezzlement, both of the Bonds of the Sewerage Board, and of the moneys of the Board deposited in the Marine Bank.

Lind did not obtain the moneys or Bonds *in the same right* in respect of which his sureties undertook that he should perform his duties, nor in respect of which they undertook that he should account for moneys:

(1.) He was to faithfully perform his duties as Sewerage Commissioner *for the West District of Chicago*.

(2.) He was to account for all moneys and funds coming to his hands or control *by virtue of* the provisions of the *Sewerage Act of 1855*.

But by the express provisions of the Sewerage Act, the moneys, bonds and funds came to the hands and control of the Corporate Board, and not to Lind alone. Nor had he, as Sewerage Commissioner *for the West District—or generally*—any duty imposed by law on him, either expressly or by implication, touching the moneys, bonds or funds of the Board, except conjointly with his associate corporators.

Again, the Sewerage Act, Sec. 25, defines the condition of the bond to be furnished by each Commissioner; but the condition required by the law is silent as to whether any moneys or funds can come to the hands of any one Commissioner. But the draughtsman of the Bond now under consideration seems to have essayed an improvement upon the statutory condition; and has inserted therein a specific undertaking on the subject of moneys and funds. As this additional clause is not contrary to public policy, nor inserted in violation of any statute, no valid objection can be urged against it, or against the bond for containing it. It is valid to enlarge the statutory condition of the bond, if

that be its effect, and therefore it is valid to limit the statutory condition, if it shall be deemed under the ordinary rules of construction to have that operation.

And if the statutory condition of the bond standing alone, would—as contended by the counsel for the city—have been broad enough, by virtue of the implied undertaking therein contained, to have covered the defalcation of the moneys and sewerage bonds taken by Lind; still the draughtsman, by adding an express undertaking on the subject of “moneys and funds,” thereby destroyed the implied obligation in respect thereto, supposed to lie concealed in the general words of the condition as prescribed by the statute; and thereby limited the condition of the bond taken in this instance, to Lind’s accounting for such moneys and funds *as should come to him alone*, or as Commissioner *for the West District of Chicago, by virtue of the Act of 1855*. And as no moneys or funds could, under the Act of 1855, come to Lind alone, either in the *character* or *mode* specified in the recitals, all possible liability of Lind’s sureties as to his accounting for moneys and funds, while holding this office, was effectually cut off; and the general words of the condition are thus left to refer to all duties except in relation to *moneys and funds*; and these additional duties under the Act were indeed numerous.

The principle that an implied undertaking is limited by an express one on the same subject, is well established.

Farrar vs. United States, 5 Pet. 373.

In the case of U. S. vs. Kirkpatrick, 9 Wheat., 720, it is held that an official bond by a collector, with sureties conditioned for the discharge of his duties according to law,

does not cover duties of the collector created by laws subsequently enacted.

In *Farr vs. Hollis*, 9 Barn. and Cress., 332, 333, it is held, in substance, in a suit on Collector's Bond, that although several Acts are in force at the time the Bond is entered into, yet if the recitals specify the undertaking to be under one of the Acts, that such recital would restrain the general words to the Act specified.

In *Miller vs. Stewart*, 9 Wheat., 704, Story, J., says:—"The recital states a special appointment of deputy collector for eight Townships; and the condition is that the appointee shall faithfully discharge the duties of said appointment according to law. Of what appointment? Plainly the appointment *stated in the recital* to which the condition refers, and to which it is tied up; *that is to say, the appointment for EIGHT townships*. If this be the true construction, &c., then the only question is, whether any money unaccounted for was received *under that appointment*."

In the last case, the number of townships was material. The original appointment was for eight. Another was added, and interlined in the Bond; but the money unaccounted for was actually collected in the original townships, and not in the other, inserted in the bond; but the Court held that the sureties were not liable; as the bond, as altered, was a different undertaking from that entered into by them.

In the case now before the Court, Lind was Commissioner for *only one* district, not for *three* districts; but the plaintiff seeks to hold his sureties for moneys received from all three of the districts.

This principle of construction admits of further illustration, for instance: The words "grant, bargain and sell,"

under our statute, when used in a conveyance of real estate, are operative as covenants of warranty, &c., if unaccompanied by express covenants; but if express covenants less broad than those thus implied, are inserted in the same deed, the implied covenants have no operation beyond what is expressly covenanted.

Finley v. Steel, 23 Ill., 56, and cases cited.

So although the word *demise* implies covenants, both for title and quiet enjoyment during the term, yet such implied covenants are by an express covenant for quiet enjoyment, limited to quiet enjoyment alone.

Line v. Stephenson, 5 Bing. N. C., 183.

Hume v. Rundell, 1 S. & S., 177.

4 Taunt., 329.

6 Scott, 447.

So the general words of a deed or release are restrained by and limited to the subject matter of the recitals therein; and this rule is applicable to the construction of bonds of sureties.

Story Contr., Sec. 643-4-5, and cases cited.

U. S. vs. Kirkpatrick, 9 Wheat., 720.

1 How., 184.

II.—Even if the undertaking of Lind's sureties were broad enough to cover moneys and funds of the Board, either in its hands or on deposit in bank according to its order, and subsequently converted or embezzled by Lind, yet there are special matters in this case, to which the City was either party or privy, which relieve the sureties of all liability to it, either for the money or bonds converted.

FIRST—As to the 40 Sewerage Bonds :

1. These Bonds were issued by the Board of Sewerage Commissioners in violation of the Sewerage Acts of 1855 and 1859; and the City of Chicago, by Ordinance passed March 3d, 1860, thus directed the issue, and the Mayor and Clerk afterwards approved of the illegal issue.

The Sewerage Act of 1855, Sec. 17, provides that *after the adoption of a plan of sewerage for any one District*, the Board shall have power to issue, *in the manner thereinbefore provided* (in §3), such amount of Bonds as shall be required to defray the cost of the execution of said plan. Sections 8 to 16 of the same Act specify in detail in what manner such plan shall be adopted preparatory to being carried into effect. And the Act of 1859 authorizing the additional issue of which the bonds in question were a part, re-enacted the foregoing provisions, among others, of the Act of 1855. Section 17 must be construed in connection with Sec. 3, of the same Act, in order to ascertain the power and authority of the Board to issue Bonds. Section 17 is prohibitory in its character, and operates by way of limitation upon the power and authority of the Board to issue the Bonds authorized by Section 3 of the Act. Construing the two sections together, the Board had no power to issue any Bonds *till after a plan of sewerage had been adopted* for some one of the sewerage districts; nor could the Board even then is-

sue more bonds than were necessary to defray the cost of the plan, the cost of which was to be previously ascertained, as provided in section 8 to section 16 of the Act, and see section 59 of same Act.

The only evidence in the case on this point is given by Col. Gamble, the Secretary of the Board during a period commencing prior to the time these bonds were issued, and continuing as Secretary until the Board was abolished by law. Col. Gamble testifies (page 121 of Record and page 24 of Abstract) that the Bonds in question were not issued to or on account of any sewerage district, nor apportioned to any district of the city. This evidence shows that the bonds were issued without reference to the cost of any sewerage plan. But the burden of proof was on the city, to show that the issue was to carry out a given plan, in order to establish the authority of the Board to issue these particular Bonds, and to justify the City in approving them. But, as shown by the evidence on this point, the Bonds were illegally issued by the Board, because it had failed to comply with those conditions which stood in the way of its exercise of the power to issue.

The issue of the bonds, however, would have done no harm, if the matter had rested here, because they could not become binding, even after they were issued, until they had received the approval of the Mayor and Clerk of the City, under its corporate seal. (See the last paragraph of Section 3 of Act 1855.)

This approval was obtained, however, and these bonds, issued in violation of the sewerage law, were rendered valid by the approval of the City, evidenced by its corporate seal; itself acting in violation of Section 17 of the Sewerage Act of 1855, for it had no more right to approve, than the Board had to issue the Bonds, till the re-

quirements of Section 17 had been complied with. So that the Bonds derived their binding force (Section 3) from the wrongful Act of the City—the plaintiff in this case.

Of this, the sureties of Lind have the right, in this suit, to complain, and to insist that the City cannot recover against them for Bonds which it illegally made binding upon itself, and assisted to place in the hands of their principal, who embezzled them.

(1.) The sureties of Lind, when they undertook with the City that he would faithfully account for funds, &c., had the right to require of the City that it would do no illegal or unauthorized act, the consequences of which would enlarge their undertaking.

(2.) Section 17, if observed by the City, and insisted on as a condition to its approval of bonds, would have operated directly to the advantage of Lind's sureties; and therefore the City was not, as against these sureties, at liberty to disregard its provisions, and thereby place in the hands of the Board a larger fund at one time, than the law under which they became sureties, contemplated.

(3.) The proof shows that the bonds in question, with 60 others, remained long after their issue in the hands of the Board, undisposed of.

2. Another objection to the plaintiff's recovery against the sureties for the embezzlement of these sewerage bonds is, that they did not come to the hands or control of Lind by virtue of the Act of 1855, to which the sureties *in any event*, limited their liability by the recitals in their bond.

It appears in evidence (Abstract page 16), that all the bonds authorized by the Act of 1855, had been issued and expended prior to 1859, and therefore all the provisions of that Act on the subject of bonds had become extinct. But the Legislature in 1859 passed an additional Act, author-

izing a further issue of Bonds for Sewerage purposes, upon the same terms and conditions provided by the Act of 1855, thus incorporating into the Act of 1859 all the dormant provisions of the former Act on the subject of bonds for sewerage purposes. The 40 bonds in question were part of the issue last authorized. Hence the bonds could not come to Lind's hands by virtue of the Act of 1855, however else he might obtain them.

But the 3d Section of the Act of 1859 sets the question at rest. It provides that *the corporate board*, and not any one Commissioner, "shall hold, retain, apply and appropriate the said bonds, and the proceeds thereof."

This provision of the Act of 1859 also brings the receipt of these bonds directly within the principle of the cases of *London Ass. Co. vs. Bold*, 6 Ad. & E., 514, and *Mills vs. Alderbury Union*, 3 Excheq. 590, before cited, viz: that as the bonds and the proceeds of them, by the provisions of the law, *must be held, retained, applied and appropriated by the corporate Board*, that they therefore could never legally come to the hands or control of Lind—one of the members of the Board—by virtue of the law of 1855, or 1859, so as to make the sureties on his individual bond liable for his embezzlement of them.

Not only this, but the undertaking to be liable for funds received by virtue of a specified law or statute, excludes all liability of sureties for moneys received by their principal *contrary to the provisions of that law*; or received in some manner not specified in their undertaking. Suppose Lind had broken into the safe of the bank and stolen the bonds, would the sureties be liable?

Farr vs. Hollis, 9 Barn. & C., 332-3.

U. S. vs. Kirkpatrick, 9 Wheat, 730-2.

And in this case the evidence shows that the bonds, prior to their conversion, had come to the control and custody of the Board itself; that while they were thus in its hands, it passed a resolution instructing Mr. Webster, one of the commissioners, to proceed to New York and effect a negotiation of \$50,000 of the bonds. (Abs. p. 15.) Mr. Webster subsequently directed the Secretary of the Board to give the bonds to Lind, and enter on the record in pencil, "to S. Lind, Treasurer, on deposit," and this was accordingly done; if the possession and control which Lind thus obtained, was separate and distinct from that of the Board—if the control over the bonds passed to Lind as one of its members, even for the purpose of holding them, did they come to his hands or control by virtue of the law of 1855, or only as a common bailee? If the latter, then his sureties are not liable for his embezzlement; since they only undertook for the acts which it was made his duty to perform by the sewerage laws. The fair test of the whole matter is this: could Lind have refused to take the bonds into his hands on deposit, when they were offered by Webster, without violating his duty under the Sewerage Acts of 1855 and 1859? He could not only have refused, but the 3d section of the law of 1859 would have justified the refusal. Hence, if he did so receive the bonds from Webster, it was not in the performance of any duty devolving on him by virtue of the Sewerage Acts, but only as the agent of the Board. And therefore his sureties are not liable for his misconduct, in afterwards embezzling the bonds entrusted to him—they did not undertake for him in any such capacity.

4. Another objection to the plaintiff's recovering for these embezzled bonds is, that soon after Lind had come in

possession of them, he obtained his individual note to be discounted at the Marine Bank of Chicago—the official place of deposit of the sewerage fund—for \$30,000, and pledged the 40 bonds to the bank as collateral security therefor. This pledge to the bank was in direct violation of the Sewerage Act of 1855, and the bank had notice of its provisions, from the printed extracts on the back of the bonds, and had no right to thus receive them from Lind in this way.

§ 51 Act 1855.

§ 3 Act 1859.

Under these Acts, no title to these bonds passed to the Marine Bank; and it was liable to account to the city for their full value.

Dealfield vs. State of Illinois, 26 Wend., 192.

Same case “ “ 2 Hill, 160.

Same case “ “ 8 Paige.

But the city, after all the facts were fully known to it, settled with the bank and released it from all liability in the premises.

See Abs. p. 22.

Testimony of Hayes, p. 21, 22, 23, Abs.

The settlement was made with the bank on the basis that it had rightfully received the bonds of Lind as collateral; when it had in fact and in law illegally obtained them.

The city now seeks to reimburse itself for these bonds out of Lind's sureties; but as the bonds were its own promises to pay, and as the bank was liable to it for the

full amount, from which it has released the bank, it is not perceived upon what principle the sureties of Lind can, under all the circumstances, be called upon to make good the liability of the bank so gracefully relinquished.

17 N. Y., 242.

SECOND--As to the moneys in bank:

1. Even if the undertaking of Lind's sureties were broad enough to cover the "funds of the Board" on deposit in the *Bank selected by it*, which is denied, still they are not liable for the moneys paid out by such bank, on checks which on their face were illegal, and contained ample notice to it that Lind was appropriating to his own use, and consequently under the Sewerage Act embezzling, the sewerage funds which the bank held on deposit.

Section 51 of the Act of 1855, provides that "the funds of said Board remaining on hand shall at all times until disposed of, be kept deposited in such place or places of deposit, as shall by an order of said Board be directed: provided that such place or places of deposit shall first be approved by the Common Council."

As early as 1856, the Board amongst other banks selected the Marine Bank of Chicago, but never did select the Chicago Marine and Fire Insurance Company, as one of the places of deposit of its funds, in conformity with the foregoing section, and reported its action to the Mayor and Common Council; there is no record of the Common Council showing what was done; but as the Board went on and made deposits with this bank, but never with the Marine and Fire Insurance Company, and continued to do so without any objection on the part of the city, for several years prior to 1860, and so to the close of Lind's term, it is a

presumption of law that the Common Council had approved of this place of deposit before 1860, although its records on that subject are silent. As the statute did not require the approval to be made a matter of record, the approval can be presumed from acquiescence.

Bank of United States vs. Dandridge

12 Wheat., 70, 85, 86.

Section 57 of the Act provides that the funds of the Board thus held on deposit "shall be drawn out upon "checks or drafts regularly numbered, and payable to the "order of the person or persons for whose benefit the same "are intended, and briefly specifying for what purpose or "account the same are drawn."

And the concluding paragraph of section 51 provides that "if any of the officers of said Board shall directly or "indirectly receive, or appropriate for his own use or benefit, *any of the funds, money or property of the said Board*; or shall take, pledge, or borrow, any of said "funds or property of the said Board, for his own use or "benefit, such commissioner or officer of said Board, shall "be deemed guilty of embezzlement and liable to indictment, &c."

But in the face of these legislative enactments, of which the bank was bound to take notice, it paid checks drawn by Lind *payable to his own order, or to himself or bearer*, on the Chicago Marine and Fire Insurance Company—a corporation with which not a dollar of the funds of the Board was deposited—to the amount of \$20,610.00; it also paid another check on the same bank, payable "to ditto on N. Y. or bearer," for \$5,300.00, making in all, drawn on the

Chicago Marine and Fire Insurance Company, the sum of \$25,910.

None of these checks were numbered; none of them were drawn upon the bank in which the funds of the Board were kept on deposit; none of them specified in any way "for whose benefit, or for what purpose or account the same were drawn," *other than for the benefit of Lind himself*; and the 51st section as we have seen, had declared that Lind "should not receive or appropriate for his own use or benefit, any of the funds or property of said Board," under pain of indictment; by what authority then did the Marine Bank pay "over moneys and funds of the Board" to Lind, upon such vouchers as these?

Four checks were also drawn by Lind on the Marine Bank, and the Chicago Marine and Fire Insurance Company combined, amounting to \$6,995.10; and two checks on the Marine Bank alone, amounting to \$2,200. All of these checks were as irregular and illegal on their face as those drawn upon the Insurance Company, except that they happened to be drawn upon the bank in which the funds of the Board were deposited. The aggregate amount of these checks is \$35,105.10, as follows:

On Chicago Marine and Fire Insurance Company.	\$25,910.00
On Marine Bank and Insurance Company.....	6,995.10
On Marine Bank alone.....	2,200.00
Total	<u>\$35,105.10</u>

All of these checks had fraud and embezzlement written upon them in the plainest terms, even down to the word "Treasurer," with which Lind's name is rounded off in every instance; and the strongest, nay, the only real evidence in this case, proving Lind's embezzlement of the \$35,105.10 drawn out of bank on these checks, is the irreg-

ularity and illegality of the checks themselves, apparent on their face, coupled with the fact that he got the money on them. The law (Section 57) provides that checks drawn *as there prescribed*, shall be vouchers; and shall be returned and held by the Board as such. This invests them when drawn in the prescribed form, with a legal character, viz: they are thereby made *prima facie* evidence, 1st—That they were rightfully drawn for the sewerage purposes therein specified, and, 2d—when returned to the Board by the bank as required by Section 57, that the bank had paid out the moneys for the sewerage purposes specified in such checks. But the checks in question were not even *prima facie* evidence that they were drawn for sewerage purposes to pay debts chargeable to that account, as official checks would have been; hence they were not legal vouchers in the hands of the bank to show, *prima facie*, a proper disbursement of the funds of the Board, on deposit with it. The checks were *prima facie* evidence to the bank that Lind was embezzling the sewerage fund, as fully as they are such evidence to the Court of that fact. And certainly the bank was prohibited, by every principle of law, from paying out a trust fund placed in its hands, upon checks which had the taint of embezzlement and fraud stamped on their very face, and which, taken in connection with the payment of the money on them by the bank, constitute the most satisfactory evidence in this case that the money thus drawn was embezzled. Gamble's testimony in regard to the embezzlement of these moneys, is not from his knowledge of any specified misappropriation of them by Lind, but is based solely upon the fact that the checks were unofficial, and that he had no knowledge of the rightful appropriation of these funds by Lind to sewerage purposes. If, then, the bank assumed the responsibility of paying these checks, it

did so at its peril; for if the moneys so drawn were never applied to sewerage purposes, as *prima facie* from the vouchers they never were to be, then the bank, in paying out the fund, rendered itself liable to the corporate Board and to the City of Chicago, which became its successor, for the full amount thus improperly paid out.

And the City of Chicago, after becoming the successor of the Board, and authorized to receive its funds, understood this whole matter of the illegal checks, in the same way, before this suit was commenced, and before any settlement was had by it with the bank. At a meeting of the Common Council, held August 5, 1861, a Committee previously appointed to investigate the affairs of the Board of Sewerage Commissioners (see Abstract page 20,) made a report to the Council in which they say: "Mr. Lind, the Treasurer of the late Board, has, since June, 1859, repeatedly drawn checks outside of and apart from the office of the Sewerage Board, of various forms, and signed, "S. Lind, Treasurer;" which checks do not show upon their face whether they are drawn on sewerage account or on account of some other institution of which Mr. Lind might have been Treasurer, which checks amount to, say \$69,000, and which sum was evidently *not* used for sewerage purposes, inasmuch as Mr. Lind refunded at various times on account of such drafts, say \$40,000.

"THE MAYOR AND CITY TREASURER HAVE NOTIFIED THE PRESIDENT OF THE MARINE BANK THAT THESE CHECKS WILL NOT BE ACCEPTED BY THE CITY AS VOUCHERS; AND THAT THE CITY WILL HOLD SAID BANK RESPONSIBLE FOR ALL MONEY WHICH HAS BEEN PAID FROM CITY FUNDS ON IMPROPER AND ILLEGAL CHECKS.

"*Your Committee are at a loss to understand how this state of things could have existed for so long a time, with-*

"out the knowledge or consent of the other members of the Board."

The liability of the Marine Bank to account to the City as the successor of the Sewerage Board, for the moneys thus paid out on the illegal checks, cannot for a moment be doubted; and this was an existing liability at the time this suit was brought against Lind's sureties, for the money thus paid by him to the bank.

Dealfield v. State of Illinois, 8 Paige.

24 Wend.

2 Hill.

17 N. Y., 242.

It thus appears that the moneys in question did not, in the language of the bond of Lind's sureties, come to his hands or control by virtue of the Act of 1855, but were in the hands and control of the Marine Bank by virtue of that law, and could not, *by virtue thereof*, come to Lind's hands or control upon the checks in question; but on those checks could only come to his hands in direct violation of that law, to which violation the bank itself was a party, and therefore the sureties are not liable on their bond given to the city, and embracing only funds *coming to Lind's hands by virtue of that Act*.

2. Another reason why Lind's sureties are not liable for these moneys is, that after the City of Chicago had succeeded to the rights of the Board of Sewerage Commissioners and was entitled to all the funds, as alleged in the declaration in this case, and after the report of its Common Council in relation to the liability of the bank for improperly paying the checks in question, the City made a full and final settlement with the bank in regard to the whole

sewerage fund ; received of the bank what it could get ; and executed to the bank a full release of all liability in the premises.

Now as this suit is upon the hypothesis that the sureties obligated themselves to the City for these very moneys embezzled ; and as the bank paid out the money in its own wrong, and hence was liable to make the amount good to the City ; and as the City has settled with the bank and released it, therefore these sureties to the City for the same debt released by it, are themselves excused from all liability touching the moneys in question.

If the sureties are liable at all, it is by reason of the joint misconduct of Lind and the Bank ; for had the Bank done its duty, Lind never could have drawn a dollar of the funds of the Board upon the vouchers which he asked the Bank to honor ; therefore a release of the Bank for improperly placing the fund in Lind's hands, will operate to excuse Lind's sureties from all liability.

Parsons v. Hughes, 9 Paige, 591.

Bronson v. Fitzhugh, 1 Hill, 185.

If after such a settlement with the Bank, the City should recover against the sureties of Lind, the other wrong doer, they would have no remedy over against the Bank for its wrongful act in placing the moneys in Lind's hands ; for the release would, in such a case, protect the Bank.

III. The Bond sued on was not accepted and approved by the Common Council until the 17th of December, 1860, while the following moneys and funds "coming to Lind's hands and control" prior to that time, are included in the judgment against the sureties (see record page 163), viz :

1. Moneys received June 8, 1860, from the American Exchange Bank, N. Y. (and supposed to be in Lind's hands on the 1st of July, 1860,) \$6,805.00
2. Moneys drawn out by Lind on illegal checks from July 1, to December 1, 1860, 12,020.00
3. 40 Sewerage Bonds received by Lind November 30th, 1860. These are charged to Lind with the interest thereon, at \$43,671.11, and he is credited *on this item* the \$30,000 obtained on the discount of his note at Marine Bank. A small difference of interest is also allowed of \$491.63, making the actual credit \$30,491.63. The difference between bonds and money realized on note, then, is. 13,179.48

Total, \$32,004.48

But Lind's sureties were not liable for any moneys or funds coming to his hands or control prior to the acceptance and approval of the bond by the Common Council.

United States vs. Le Baron, 19 How., 73.

Bruce vs. State of Maryland, 11 Gill & J., 382.

Broome vs. United States, 15 How., 143.

United States vs. Giles, 9 Crouch, 212.

Farrar vs. United States, 5 Pet., 389.

Hulic vs. Scoville, 4 Gill., 176.

The principle established by these cases, and which harmonizes any apparent conflict in the numerous authorities on this subject, is,

1st—Where the giving of an approved bond is required by law as a condition precedent to the appointee's entering upon the duties of the office, the bond tendered does not take effect, as between the parties to it, *till it is approved*.

2d—Where the giving of a bond is not made a condition precedent to the exercise of official duties, it may take effect from the time it is *put in course of transmission* for approval, although not in fact approved till long afterward.

The bond sued on in this case comes within the first of the above rules. By the 25th section of the Sewerage Act of 1855—the section authorizing the bond in question—it is enacted that “each Commissioner *before* entering upon “the duties of his office shall give bond to the City * * * “to the satisfaction of the Common Council.”

The plaintiff *in its declaration alleges* that, “on the “17th day of December, A. D. 1860, the bond *was duly “accepted and approved* by the Common Council of said “City.” And the evidence is also conclusive to the same effect.

The case of *Green vs. Wardell*, 17 Ills., 279, has been relied on by the counsel for the City, as establishing a different rule from the one here contended for.

In that case, an action of debt was brought against a Justice of the Peace and his sureties, on his official bond *in behalf of a third party*, assigning as a breach the failure of the Justice to pay over money which he had collected in his official capacity, for *such party*. The defense relied on was that the Clerk of the Court had never approved the bond, as the statute required, previous to the Justice's entering upon his duties.

It appeared in the case that the Justice had made out and executed the bond, and left the same for approval with the *approving officer*, within the time required by law ; and that no objection was made by that officer to the sufficiency of the bond, either at that time or afterwards. It may be remarked, also, that no form or mode of signifying the approval was required by the statute.

Upon these facts the Court held,

1st. That there was a sufficient acceptance of the bond to authorize the Justice to enter upon the duties of his office. And in short that such an acceptance was all the law required, so far as concerned the public, and those coming before the Justice. The Court say :

“If the clerk was not satisfied with the sureties, it was his duty to disapprove of the bond so that the Justice might find other and satisfactory sureties. If this was not done, upon principle, the bond became obligatory to *secure the rights of the public and third persons.*”

2d. That in any event, when he collected the money for such third party, he was *de facto* a justice of the peace.

The case, then, decides this: that the evidence of approval may be other than by formal entry thereof, when the statute is silent as to the mode ; and that a bond given to the approving officer, to be accepted and approved, is to be deemed approved if not objected to by the officer whose duty it is to act ; at least so far as the public are concerned.

And the same doctrine is held and ably enforced in the case of the *Bank of the U. S. vs. Dandridge*, 12 *Wheat.*, p. 85, 86, and 87, in the opinion of Judge Story. Neither in the foregoing cases, nor in the case at bar, was any statutory form of approval prescribed.

But the argument that the bond of Lind and his sureties *running to the defendant in error*, and to whom the

breaches, if any, accrued, may be presumed to have been accepted and approved prior to Dec. 17, 1860, wholly fails in this case, even if the case were to be held within the second of the foregoing rules—because,

1st. It is not shown to have been in the hands of the approving body before that time.

2d. It is not shown to have been left with any person by or in behalf of the obligors, *with instructions to present it for approval.*

3d. Even the city clerk contents himself with simply stating that the bond was in his office in the early part of June, 1860; he seems to be wholly ignorant of the circumstances under which it came there; but fortunately he has furnished a few facts which, in connection with the evidence of Mr. Marble, show how this occurred. The testimony of both taken together shows,

(1st.) That Marble was in the city clerk's office from February to the 1st of June, 1860, as deputy.

(2d.) That about the 23d of May 1860, Marble drafted the bond in question.

(3d.) That Kohn, the city clerk, saw it about 1st of June 1860, the time Marble left the office—and then put it in a box. He does not know *that all* had then signed it.

(4th.) That Kohn went to New York in August, leaving Marble again in charge of the office; and that while Marble was so in charge, Foss came and got the bond.

(5th.) Kohn *knows* nothing of the purpose for which Foss obtained the bond; he does not pretend to have ascertained the purpose from any party to the bond; and he was in New York when it was taken from the office.

This is all the evidence there was of a delivery to the city before its acceptance and approval.

4th. The evidence shows precisely when the approval and acceptance did take place ; and that the bond had not previously been presented to the Common Council.

5th. The declaration *also alleges* the same time of acceptance and approval—viz. the 17th December, 1860.

Thus the door is closed both to presumption and to proof of a previous acceptance and approval ; without which, *in some way or other first had*, Lind could not lawfully enter upon the performance of his duties as Sewerage Commissioner ; nor his sureties, as a consequence, become bound for his acts.

The official bond of a Sewerage Commissioner stands upon a different footing from that of a Justice of the Peace ; the public acts of the latter as an officer *de facto*, are sustained for reasons of public policy growing out of the nature of the office, to the end that third persons may be protected : no such reasons obtain in the case of a Sewerage Commissioner.

It is submitted, therefore, that upon this point, the case is brought directly within the rule laid down in *United States vs. Le Barron*.

IN CONCLUSION : Points I and II, if deemed well taken, however, end this case ; while that last presented does not cover any defalcations subsequent to December 17, 1860.

F. H. KALES,
Of Counsel for R. H. Foss,
Plaintiff in Error.

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THE SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

ROBERT H. FOSS, and
BENJAMIN F. CARVER,
PLAINTIFFS IN ERROR. } *Error to the Superior Court*

VS. } *of Chicago.*

THE CITY OF CHICAGO,
DEFENDANT IN ERROR. }

Filed Apr. 20. 1864
S. S. Loomis

BRIEF OF DEFENDANT IN ERROR

CHICAGO :

THE TIMES STEAM PRINTING HOUSE, 74 RANDOLPH STREET.

THE SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

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VS.

THE CITY OF CHICAGO,
DEFENDANT IN ERROR.

Error to the Superior

Court of Chicago.

BRIEF OF DEFENDANT IN ERROR.

This was an action of debt on the official bond of Sylvester Lind, one of the Sewerage Commissioners of the city of Chicago. Lind was elected commissioner under the provisions of an act entitled "An act to incorporate a Board of Sewerage Commissioners for the city of Chicago," approved February 14, 1855. The act provides for the election of "three persons to serve as Sewerage Commissioners, one for the South, North and West divisions of said city respectively, who shall each be residents and freeholders of the respective districts for which they are elected." One commissioner was to be elected each year, to serve for the term of three years. Said commissioners and their successors were made a body politic and corporate, by the name and style of the "Board of Sewerage Com-

missioners." By the 34th section of the act it is provided, that the "Board shall appoint some other person to act as secretary, and shall also appoint one of their number to act as treasurer of said Board." And by the 25th section, it is required, that "each commissioner before entering upon the duties of his office, shall give bond to said city in such sum and with surety to the satisfaction of the Common Council of said city, conditional for the faithful performance of his duties as such commissioner, the amount of which bond may be increased at any time, as the said Common Council may deem expedient."

Provision is made in the act for borrowing \$500,000 on bonds to be issued by the Board, pledging the faith and credit of the city for their payment, to defray the cost of the execution of the plan of sewerage that should be adopted—said bonds to bear interest at a rate not exceeding seven per cent. per annum.

By the 51st and 57th sections, it is enacted that "the funds of said Board remaining on hand shall at all times, until disposed of, be kept deposited in such place or places of deposit as shall, by an order of said Board, be directed," and "shall be drawn out upon checks or drafts, regularly numbered and payable to the order of the respective person or persons for whose benefit the same are intended, and briefly specifying for what purpose or account the same are drawn." It is further provided, that no member or officer of said Board shall, either directly or indirectly, receive any interest or profit whatsoever on account of the deposit of any of the funds belonging to the Board, or make use of, or borrow, any of the funds of said Board, for his own private benefit or advantage; and if either of the commissioners shall, directly or indirectly, receive or appropriate to his own use or benefit, any of the funds, money or property of the said Board, or shall take, pledge or borrow any of the said funds or property, for his own use or benefit, such commissioner shall be deemed guilty of embezzlement, and shall be liable to indictment.

The act provided that there should be three sewerage districts in said city, corresponding to the three divisions of the city, and an independent plan of sewerage was to be established for such district. The accounts of the receipts and expenditures for each district were to be kept separate, and a special tax was to be levied annually on the property of the respective districts to pay the interest accrued on the bonds issued for each district, and to provide a sinking fund for the liquidation of such bonds.

Mr. Lind was re-elected Sewerage Commissioner for the West division or district, on the first day of May, 1860, his first term of three years being then about to expire. His second term was terminated on the first Monday of May, 1861, by virtue of an act of the General Assembly, amendatory of the City Charter of Chicago, approved Feb. 18th, 1861, which abolished the office of Sewerage Commissioners, and transferred their powers to the Board of Public Works.

During his two terms of office Mr. Lind acted as Treasurer of the Board. A deposit account was kept by the Board, in his name as treasurer, with the Marine Bank. The official checks drawn upon that fund were signed by Lind, and an accurate account of them was kept by the secretary. At different times between the first of June, 1859, and the 10th of April, 1861, divers large sums of money credited to this account, were drawn out by Lind, upon checks signed by him as treasurer, and applied to his private use; and during the same period various sums were deposited by Lind to the credit of the account, to reimburse, in part, the moneys thus unlawfully converted.

The following statement shows the dates and amounts of the fraudulent checks, and of the said deposits:

CHECKS.

1859. June 17,	\$1,000 00
July 12,	1,000 00
“ 30,	1,600 00

1859.	Aug. 6,	6,085 42
	" 17,	3,500 00
	Oct. 9,	2,000 00
	" 26,	1,000 00
	Dec. 5,	3,663 00
	" 12,	1,000 00
	" 14,	5,000 00
1860.	Jan. 6,	1,100 00
	" 23,	1,000 00
	" 26,	775 00
	Feb. 22,	5,100 00
	April 17,	500 00
	" 19,	1,000 00
	" 21,	400 00
	May 2,	3,000 00
	" 4,	500 00
	" 9,	500 00
	" 15,	1,000 00

\$40,723 42

	July 2	\$5,000 00	
	Oct. 18	2,020 00	
	Nov. 7	3,000 00	
	" 9	1,500 00	
	Dec. 1	500 00	
	" 19	1,000 00	
	" 22	2,000 00	
	" 24	1,000 00	
1861.	Jan. 3	1,090 00	
	" 7	1,200 00	
	" 12	1,000 00	
	" 17	1,000 00	
	" 28	380 00	
	" 28	5,500 00	
	Feb. 4	3,000 00	
	" 23	615 10	
	April 10	5,300 00	35,105 10
			\$75,828 52

DEPOSITS.

1859. Sept. 2-----	\$ 2,000 00	
Dec. 14-----	5,000 00	
1860. Dec. 1-----	3,000 00	
1861. Jan. 19-----	30,000 00	\$40,000 00

Record p. 89.

In addition to the sewerage moneys thus drawn by Lind from the Marine Bank, it appears that on the 8th day of June, 1860, he drew \$19,805, from the American Exchange Bank in New York, which the Board had there on deposit to his credit as treasurer, and that he appropriated \$6,805, of this sum to his own use.

Record pp. 89, 90, 99, 101.

In the spring of 1861 he also received the sum of \$1,805 05, a portion of the sewerage tax, which he kept and never accounted for.

Record pp. 89, 102.

It is furthermore shown that on the 30th of November, 1860, Mr. Lind took from the office of the Board forty one-thousand-dollar sewerage bonds, with interest coupons attached, which had been duly executed with a view to their negotiation and sale, and that he has never returned or accounted for them. On the 19th of January, 1861, these bonds were hypothecated by Lind to the Marine Bank as collateral security for his private note for \$30,700, then discounted by the bank. This note was afterwards sold, and it was subsequently ascertained that the bonds had been transferred to parties in New York. The net amount of the above discount, \$30,000, was passed to Lind's credit as Treasurer on the sewerage account at the Marine Bank.

See Record pp. 102 to 113, 120 to 127, 133, 136 to 139,
150 to 152, 161.

The above bonds were a portion of the *second loan sewerage* bonds, authorized to be issued by an act of the General Assembly, approved February 14th, 1859; by which it was expressly provided, that the Board of Sewerage Commissioners should hold, apply and appropriate said bonds and their proceeds, "for the same objects and purposes, and subject in all respects to the same terms, conditions, restrictions, penalties and liabilities, as are contained in the act to which this is an addition, and the act shall apply in the like manner, to all intents and purposes, to the said bonds hereby authorized to be issued, and the proceeds thereof; and to the rights, duties and liabilities of said Sewerage Commissioners respecting the same, as if the said bonds hereby authorized to be issued had been issued under and by virtue of the act to which this is an addition."

On the 24th of June, 1861, the city received from Mr. Lind n cash, the sum of \$16,027.69, which was passed to his credit, and no other payments than those already mentioned have been made by him.

This suit was commenced on the 22nd day of August, 1861. The bond on which the action is founded is for the penal sum of \$100,000, and is conditioned as follows:

"The condition of the above obligation is such that, whereas the above bounden Sylvester Lind was duly elected to the office of Sewerage Commissioner of the West District of the city of Chicago, for the term of three years, at an election held on Tuesday, the first day of May, A. D. 1860, under and by virtue of an act of the General Assembly of the State of Illinois, entitled "An act to incorporate a board of Sewerage Commissioners for the city of Chicago," approved February 14, 1855; and whereas the above bounden Sylvester Lind has accepted said office; now, therefore, if the said bounden Sylvester Lind shall well and faithfully perform his duties as such Commissioner, and shall well and truly appropriate, account for and pay over all moneys and funds coming to his hands or control by virtue of the provisions of the act aforesaid, then this obligation shall be void, otherwise to be and remain in full force and effect."

The bond is dated the 23d day of May, 1860, and was presented to the Common Council and approved by them on the 17th of December, 1860. The precise date of its delivery to the City Clerk does not appear. The only evidence upon that point is the testimony of Mr. Kohn, the City Clerk. He testifies that it was left in his office in the beginning of June, and the jury, to whom this question was distinctly submitted in the instructions, have found that the delivery was prior to the 8th of June, 1860.

On the facts proved at the trial, the city claimed the right to recover damages to the amount of \$37,911.94, according to the following statement:

Amount converted by Lind,
subsequent to June 7th, 1860, is
as follows:

June 8, 1860. Amount received from American Exchange Bank, N. Y., not accounted for by Lind.....	\$6,805.00
Amount of 17 checks drawn by Lind on Marine Bank, all subsequent to July 1, 1860, and not accounted for by him.....	35,105.10
Sewerage tax received and re- tained by Lind in Spring of 1861.....	1,850.05
Jan. 19, 1861. Forty sewerage bonds converted by Lind— principal.....	40,000 00
Interest at 7 per cent., as per coupons attached.....	[3,671.11— \$87,431.26

Credits to which defendants
are entitled:

Dec. 1, 1860. Cash deposited to credit of sewerage account in Marine Bank.....	\$3,000.00	
Jan. 19, 1861. Cash deposited to credit of same account....	30,000.00	
June 24, 1861. Cash paid by Lind to city authorities.....	16,027.69	
Interest at 7 per cent. from June 24, 1861, on \$5,267.54, bal- ance to his credit after satis- fying his cash deficit at that date.....	491.63	49,519.32
Balance now due.....		\$37,911.94

The jury returned a verdict for this amount on the 24th day of October, 1862. A motion for a new trial was made by the defendants, which motion was overruled on the 28th day of November, 1863. Judgment was thereupon rendered in favor of the city, for \$100,000 debt, to be satisfied on payment of \$37,911.94, the damages assessed by the jury, with the legal interest thereon from the 24th day of October, 1862.

To reverse this judgment two of the sureties have sued out this writ of error. The points on which they rely for a reversal of the judgment will be briefly noticed.

Points.

I.

The sureties insist, in the first place, that the terms of their obligation are not broad enough to render them liable either for the moneys or bonds converted by Lind. Our first inquiry, then, is, what is the nature and extent of the engagement made by the sureties, as indicated by the written contract.

We admit the rule, that the liability of sureties is not to be extended by implication beyond the scope of their undertaking. They have a right to stand upon the terms of their en-

gement. Yet in ascertaining the extent to which they are bound, the same regard must be paid to the intention of the parties, as derived from the language used in the instrument, as in the construction of all other instruments. In adjudicating, therefore, upon the construction and legal effect of the bond in question, the common rule of interpretation must be applied: namely, "that it ought to receive that construction which its terms will admit, and which will best effectuate the intention of the parties, to be collected from the whole of the agreement, and that greater regard is to be had to the clear intent of the parties than to any particular words which they may have used in the expression of their intent."

Rochester City Bank v. Elwood, 21, N. Y. 88.

The authorities clearly show, that in construing the condition of a bond, when the intention of the parties is manifest, the Court will suppress all useless and insensible words, and even supply accidental omissions, in order to give effect to that intention.

Iredell v. Barbee, 6 Ired. 250.

Bennehan v. Webb, 6 Ired. 57.

Cooke v. Graham's Admr., 3 Cranch, 229.

Whitset v. Womack, 8 Ala. 466.

1. The bond in this case recites, in strict accordance with the fact, that Lind had been duly elected to the office of Sewerage Commissioner of the West District, *under and by virtue of the act to incorporate the Board of Sewerage Commissioners*, and that he had accepted said office. The undertaking of the sureties was that he should "well and faithfully perform his duties as such commissioner." This is the condition and the only condition prescribed by the statute. We insist that it binds the sureties for any misconduct of Lind as a member of the Board, and for the faithful performance of all duties which devolved upon him as commissioner under the sewerage act. To give it any narrower construction would be consistent neither with the evident intention of the parties nor the language used. The law under which Lind was elected is

expressly referred to in the recital, and the duties required of him by that law must be regarded as explanatory of the intent of the sureties. If, therefore, the embezzlement by Lind of moneys belonging to the Sewerage Board, which he got into his hands by virtue of his official position, and the unlawful conversion of its bonds entrusted to him as a member of the Board, were violations of his duty as Sewerage Commissioner, it necessarily follows that the sureties are liable therefor by the express terms of their contract.

2. The legal effect of this general statutory condition is not controlled or qualified by the additional undertaking, that Lind "shall well and truly appropriate, account for and pay over all moneys and funds coming to his hands or control by virtue of the provisions of the act aforesaid." This special clause furnishes no evidence that the parties did not use the general words in the preceding clause in their natural and unrestricted sense and meaning. The first is a distinct and independent condition and pursues the statutory requirement. Being unqualified in itself, and neither inconsistent nor connected with the special subsequent clause, it must be regarded as an absolute undertaking according to the ordinary sense of the words used. It is a rule, that what is generally spoken shall be generally understood, *generalia verba sunt generaliter intelligenda*, unless it be *qualified* by some special subsequent words; and general words cannot be so restricted as to exclude a case both within their object and their ordinary sense, without violating the fundamental rule, which requires that effect should be given to such intention of the parties as they have used fit words to express.

Broom's Legal Maxims, 502, 506.

Smith v. Compton, 3 B. and Ad. 189.

Crossfield v. Morrison, 7 M. G. and S. 286.

Saward v. Anstey, 2 Bing. 519.

The rule, that where an implied covenant is followed by an express covenant, the former is controlled or qualified and restrained by the latter, does not apply. It is true the sureties do not by the first clause of the condition, undertake *in so*

many words for the faithful application by Lind of the moneys he might get into his hands as Commissioner, and so an obligation of that sort may in one sense be said to be implied. But it is not an implied undertaking within the meaning of the above rule. It is only those covenants which the law itself implies that can be properly considered covenants in law. Here the obligation is created by the agreement of the parties, and the liability of the sureties, under the clause in question, for moneys unlawfully converted, is no more an implied one than their liability for any other violation of duty on the part of their principal. In this sense of the term, an implied undertaking differs nothing in its operation or legal consequences from an agreement in express words.

Williams vs. Burrill, 1 M. G. & S. 430.

Bower vs. Hodges, 13, C. B. 675.

Hawk vs. McCullough, 21 Ills. 220.

It is, moreover, insisted by the plaintiffs in error, that this special clause in the bond, on which they rely to control and qualify the legal effect of the general clause, is wholly inoperative. No moneys or funds, they say, could come into Lind's hands by virtue of the act of 1855, and so no possible liability could be created by that clause against the sureties. If this be so, there is no operative and valid special clause providing for the delinquency and misconduct shown in this case, and the second useless clause can have no operation to exclude or restrain the first. If the latter part of the condition be void or inoperative, it will not vitiate the former, which pursues the language of the statute. In such cases the maxim will apply, *Utile per inutile non vitiatur*.

Gwynne vs. Burnell, 2 Bing. N. C. 24.

The authorities furthermore show that this special condition, being one not required by the statute, may be rejected as surplusage.

Shunk vs. Miller, 5 Barr, 250.

Wood vs. State, 10 Mis. 698.

U. S. vs. —, 1 Brock. 195.

Dixon vs. U. S., 1 Brock. 177.

3. If the foregoing views in respect to the legal effect and operation of the first clause of the condition are correct, it is not material to inquire what the parties intended by their special undertaking, that Lind should "well and truly appropriate, account for and pay over all moneys and funds coming to his hands or control by virtue of the provisions of the act aforesaid." The court will presume, however, that the parties attributed some efficacy to it; and should it be deemed necessary to inquire, it will not be found very difficult to ascertain what they really intended by it.

The members of such a Board must, from the necessity of the case, in the course of their official duty, receive from time to time into their hands, and have within their individual control, large sums of public money. Moneys which are thus received by a commissioner may be properly enough said to have come into his hands by virtue of the act from which he derived his official authority. In the present case, some of the moneys embezzled by Lind consisted of a portion of the sewerage tax, paid over to him as commissioner, and another large amount was a sum drawn by him from the Bank in New York for a legitimate purpose, but afterwards converted and applied to his own use. The moneys fraudulently drawn from the Marine Bank were moneys placed within his control as treasurer, by virtue of the act under which he was appointed. The *bonds* were delivered to him as commissioner—whether for safe keeping or sale does not appear—but he got possession of them only by virtue of his official position, and thus they may be said with propriety, to have come into his hands by virtue of the act which conferred this official authority upon him. It was unquestionably the real intention of the parties to this bond, to provide by the special clause in question for the faithful appropriation of all moneys and funds that might in any of these ways come into the hands or within the reach or control of Mr. Lind, and if the clause will admit of such a construction the Court will not hesitate to adopt it, and thus give effect to what must have been the clear intent of the parties.

We submit, therefore, that the embezzlement of the moneys

and the conversion of the bonds were manifest breaches of both the general and special conditions inserted in the obligation.

II.

The forty Sewerage Bonds converted by Lind were properly authorized to be issued. They appear on their face to have been duly issued, are transferable by delivery and are binding on the city in the hands of a *bona fide* holder, although in fact disposed of by Lind contrary to law.

DeLafield v. State of Ills. 2 Hill, 159, 177.

Stoney v. Am. Life Ins. Co., 11 Paige, 635.

Fisher v. Morris Canal Co., 1 Stockton's Ch. 667.

Johnson v. County of Stark, 24 Ills. 92.

The city having been subjected or exposed to a legal liability upon these bonds, by the unlawful act of Lind, who negotiated them in violation of his duty and contrary to the provisions of the act of 1855, defining his powers and duties as commissioner, his sureties are liable to the city for the amount of said bonds and the accrued interest.

The ordinance authorizing the issuing of the bonds was not illegal; nor was it prematurely passed. The evidence shows that a plan of sewerage had been adopted, and \$500,000, previously borrowed, had been expended in the execution of the plan, before the issue of the bonds in question was approved by the common Council.

Besides, the power to approve the issue of Sewerage bonds could be lawfully exercised by the Common Council, as well before as after the adoption of a plan of sewerage.

The act of 1855 does not restrict the exercise of this power in the manner contended for by the plaintiffs in error. Section 17 of that act has reference only to the *issue* of the bonds by the *Sewerage Commissioners*, and in no way qualifies or con-

trols the authority conferred by section 3 on the Common Council to *approve* of such issue.

The fact that these bonds were issued under the act of 1859, does not relieve the sureties from liability. That act was passed before this engagement was entered into by the sureties, and the Common Council had also before then approved of the issue of the bonds in question.

Although these bonds were not issued under the act of 1855, Lind, as before shown, may be properly said to have got them into his hands by virtue of the provisions of that act; and the conversion of them was, therefore, a breach of the special as well as the general clause inserted in the condition of his official bond.

III.

Another ground on which the sureties seek to shield themselves from liability, is, that the fraudulent checks drawn by Lind on the Marine Bank were not in legal form, and that the bank ought not to have honored them.

The evidence shows that the deposit account was kept in the name of "S. Lind, Treasurer." As treasurer of the Board, it became one of his duties, from the nature of his office, to receive and disburse moneys, to draw checks and adjust the accounts with the different banks where he made deposits. The checks in question were signed by him as treasurer, with the expectation and intention that they would be paid from the sewerage fund. He knew they were so paid, and at every settlement or balancing of the account at the bank, the checks were surrendered to him and filed away as vouchers in the office of the Sewerage Board. It is true the checks were not drawn according to the statutory form, but the fact that he violated the law in this particular also, can hardly be considered a satisfactory reason for discharging the sureties from liability for the money he embezzled.

IV.

The fact that Lind was the acting treasurer of the Board at the time of these embezzlements, does not shield the sureties from liability. Parties to such a bond are always supposed to contract with reference to the existing state of the law, and the law provided that the Sewerage Commissioners should appoint one of their own number to act as treasurer. The sureties were, therefore, apprised when they executed the bond, that the duties of treasurer might devolve upon their principal, and that he was in fact then pretending to discharge them. They undertook for the faithful performance of all duties which might under the act be required of him. The law required no additional bond from the treasurer, and neither the Common Council or Board of Sewerage Commissioners could have compelled him to give one.

V.

It is also insisted by the sureties, that they are discharged from all liability both for the moneys and the bonds converted by Lind, because the city has settled with the Marine Bank, without requiring the bank to makegood to the city the amount paid out on the fraudulent checks.

This settlement was made on the 21st of August, 1862. The city agreed to receive the sum of \$52,994.56, in full satisfaction of the sum of \$58,882.84, the balance then remaining in said bank to the credit of the sewerage fund—the settlement, when consummated by the payment of the money, to be in full and final discharge of said bank “from all liabilities of said city or its authorities for any *deposits* made” with said institution.

See Abstract p. 22.

It will be seen on examining the instrument executed by the city that it relates only to the *deposits* made with the bank. If any right of action accrued to the city against the bank, growing out of its transaction with Lind respecting the forty sewer-

age bonds, that right of action still subsists. It is not released, nor is the liability of the bank, in respect to that transaction, in any way affected by the settlement in question. This settlement, therefore, can have no possible bearing upon the liability of the sureties, so far as the bonds are concerned.

It is equally a mistake to suppose that it affects in any way their liability for the moneys embezzled.

It is assumed by the sureties, that the city might have compelled the bank to pay these moneys over again. But this is a point to be *proved*; and if not clearly established by the evidence in this case, the objection founded upon it must be disregarded. Some of the evidence bearing upon this question is briefly referred to in the plaintiff's 10th instruction, (see Abstract, page 26), but it may assist the court if the leading facts are noticed here a little more in detail. It appears then, from the evidence, that there were in all 38 of these fraudulent checks. They were drawn at different times between the 17th of June, 1859, and the 10th of April, 1861. Ten of them, amounting in the aggregate to \$25,848.42, were drawn during the year 1859, and eleven more, amounting in all to \$14,875, prior to the 23d of May, 1860, when the bond in suit is dated. At several different times during this period of one year and ten months, within which these checks were drawn and cashed at the bank, the bank account was balanced, the pass book "written up," and the checks returned as vouchers to the Board of Sewerage Commissioners. No objection was made by any member or officer of the Board to the payment or allowance of the checks, nor was the bank ever apprised that there was any impropriety in cashing checks drawn in the way these were. There is no evidence that the officers of the bank had any knowledge or suspicion of the illegal purpose for which they were drawn, or any reason whatever to suspect Lind of dishonesty or official misconduct. The deposit account was kept in the name of "S. Lind, Treasurer," and it does not appear that the bank was ever notified that any particular form was necessary to be observed in drawing checks upon the sewerage account.

The question is, whether on this state of facts the Board of Sewerage Commissioners could have sustained an action against the bank for the recovery of the moneys paid upon these checks. It would seem perfectly clear that this question must be answered in the negative, and, if so, it will not be pretended that the city could maintain such an action, for the city has succeeded only to the rights possessed by that Board.

Philips vs. Belden, 1 Edw. Chan. 1.

U. S. Bank vs. Bank of Georgia, 10 Wheat. 333.

Gloucester Bank vs. Salem Bank, 17 Mass. 33.

Langdon vs. Roane's Admr. 6 Ala. 518.

Baker vs. Biddle, 1 Bald. 418.

Skyring vs. Greenwood, 4 B. and C. 281.

Willis vs. Jernegan, 2 Atk. 251.

We submit, therefore, that the settlement made by the city with the Marine Bank has in no conceivable way prejudiced the rights of these sureties.

VI.

The bond in suit was obligatory upon the obligors from the time it was executed and delivered to the City Clerk as and for the bond required by law from Lind, as Sewerage Commissioner.

The act of 1855, does not make its approval by the Common Council necessary to its validity.

Green vs. Wardwell, 17 Ills. 278.

Sutherland vs. Phelps, 22 Ills. 93.

Musselman vs. The Commonwealth, 7. Barr, 240.

Skellinger vs. Yendes, 12 Wend. 306.

State vs. Cromwell, 7 Blackf. 70.

Moore vs. State, 9 Mis. 330.

Auditor vs. Woodruff, 2 Pike 73.

Taylor vs. The Auditor, 2 Pike 174.

Broome vs. U. S., 15 How. 143.

The only evidence respecting the date of its delivery is the testimony of Mr. Kohn. The jury have passed upon that evidence, and the court will not disturb their finding.

French vs. Lowry, 19 Ills. 158.

Archdale vs. Moore, 19 Ills. 565.

VII.

Interest was properly allowed by the court on the amount of the verdict, from the time it was rendered to the rendition of judgment.

Johnson vs. Railroad Co., 43 N. H. 410.

People vs. Gaine, 1 Johns. 343.

Bull vs. Ketchum, 2 Denio. 188.

Vredenburg vs. Hallett, 1 Johns. Cases, 27.

Lord vs. Mayor, &c., 3 Hill, 426.

Vail vs. Nickerson, 6 Mass. 262.

Robinson vs. Bland, 2 Burrows, 1085.

Sutton vs. Morgan, 5 Taunt. 758.

—— vs. *Edmunds*, 6 Taunt. 346.

B. F. AYER,

Counsel for Defendant in Error.

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

OF THE APRIL TERM, A. D. 1864.

ROBERT H. FOSS AND
BENJAMIN F. CARVER, IMPL'D &C.,
Plaintiffs in Error, }
vs.
CITY OF CHICAGO, }
Defendants in Error.

Record,
page 5

This is an action of debt on an official bond of Sylvester Lind as Sewerage Commissioner, executed by said Lind, Robert H. Foss, Benjamin F. Carver, and Alexander H. Heald.

The declaration was filed at the September Term, A. D. 1861, of the Superior Court of Chicago, and contains two counts substantially the same, except as to the breaches assigned.

5 to 55

The declaration alleges that on or about the 1st day of May, 1860, Lind was elected Sewerage Commissioner for the west Sewerage district of the City of Chicago; that he qualified on the 7th of the same month; that he afterwards entered into an official bond for the performance of the duties of his office, wherein the plaintiffs in error, Foss and Carver, together with A. H. Heald, became sureties; the bond bears date the 23d day of May, 1860, and is substantially set out, in a copy annexed to the declaration; and is in the words and figures following:

BOND SUED ON.

56

Know all men by these presents. that we, Sylvester Lind,
of the City of Chicago, County
of Cook, State of Illinois, are held and firmly bound unto the City of
Chicago in the penal sum of one hundred thousand dollars, for the pay-
ment of which sum of money well and truly to be made, we bind our-
selves, our heirs, executors and administrators, jointly and severally,

firmly by these presents. Sealed with our seals, and dated this twenty-third day of May, A. D. 1860.

The condition of the above obligation is such that, whereas the above bounden Sylvester Lind was duly elected to the office of Sewerage Commissioner of the West District of the City of Chicago for the term of three years, at an election held on Tuesday, the first day of May, A. D. 1860, under and by virtue of an act of the General Assembly of the State of Illinois, entitled "An Act to incorporate a board of Sewerage Commissioners for the City of Chicago," approved February 14th, 1855; and whereas the above bounden Sylvester Lind has accepted said office; now, therefore, if the said bounden Sylvester Lind shall well and faithfully perform his duties as such Commissioner, and shall well and truly appropriate, account for and pay over all moneys and funds coming to his hands or control by virtue of the provisions of the Act aforesaid, then this obligation shall be void, otherwise to be and remain in full force and effect.

In presence of —

SYLVESTER LIND, [L. s.]

ROBERT H. FOSS, [L. s.]

A. H. HEALD, [L. s.]

B. F. CARVER, [L. s.]

(Endorsed) Approved 17th December, 1860.

It is alleged in the declaration that this bond was delivered to the City Clerk about the day of its date, as the official bond of said Sylvester Lind: and that afterwards, and on the 17th day of December, 1860, it was *duly accepted*, and approved by the Common Council.

The breaches assigned are in substance:

10 to 35 1st—That Lind did not well and faithfully perform his duties as Sewerage Commissioner for the West District of Chicago.

38 to 55 2d—That he did not during his term, (and until his office was abolished, &c.,) well and truly appropriate, account for and pay over all moneys and funds coming to his hands or control, by virtue of the provisions of an act of the General Assembly of this State, entitled "An Act to incorporate a board of Sewerage Commissioners for the City of Chicago." Approved February 14th, 1855.

Under these breaches the particulars of the supposed misconduct of Lind are set out at much length, and, it is alleged, constitute a ground of recovery against Lind and his sureties upon his official bond. As the question whether the facts set out make out a case, arises upon the evidence introduced at the trial, and hereinafter contained, they are omitted here.

To this declaration Foss and Carver severally pleaded *non est factum* : and the City of Chicago, by its counsel, stipulated with Foss and Carver severally, that upon the trial they might give in evidence thereunder any legal defense which either of them might have therein on the merits, which would be admissible under any special pleas well pleaded ; and these stipulations were filed in the cause, and the issues thus made up between the said City and Foss and Carver.

Lind, by his attorney, pleaded *non est factum* alone. And Heald suffered default.

Afterwards, at the October Term, 1862, the cause came up for trial before Hon. Van H. Higgins, Judge, and a jury ; and thereupon the plaintiff introduced the following evidence, to-wit :

An Act of the General Assembly entitled "An Act to incorporate a board of Sewerage Commissioners for the City of Chicago." Approved February 14, 1855.

Also, an Act approved February 14, 1859, entitled "An Act in addition to" the foregoing Act of February 14, 1855.

By agreement of counsel reference is made to the pulished laws of the State for the contents of those Acts, both in the Court below and in the Supreme Court.

A. J. Marble called and sworn for plaintiff, and testified :

I am City Clerk. Mr. Lind was qualified as Commissioner on the 7th of May, 1860.

It was admitted that Lind was duly elected and qualified as Sewerage Commissioner for the West sewerage district, of the City of Chicago.

An ordinance of the City, passed by the Council March 3, 1860, was here read in evidence. This ordinance authorizes the Board of Sewerage Commissioners to *issue and sell* \$250,000 of Bonds authorized by the Act of 14th of February, 1859 ; and directs the Mayor and Clerk to mark the Bonds approved, in conformity with the 3d Section of the Act of 1855, and of the above mentioned Act of 1859.

Cross-Examined.

The books of the Board are in its custody. Lind did not tender any Bond when he qualified. The records show that his Bond was tendered to the Common Council for the first time Dec. 17, 1860.

Direct—

The record shows that it was entered and approved by the City.

Cross Ex.—

I was not then City Clerk, but was in the office from the middle of February, 1860, to the 1st of June.

78 The record of the 17th Dec., 1860, is as follows: "The official Bond of Sylvester Lind was presented, and, on motion, the same was approved." The witness here identifies the Bond in suit as the one referred to. I have no knowledge of the time of its delivery. There were no meetings of the Common Council from Sept. 10th to Dec. 3d, 1860; and none from then till Dec. 17th. Witness identified another Bond given by Lind in his previous term of office as Sewerage Commissioner, signed by Geo. Smith as surety.

A. Kohn testified for Plaintiff:

82 Witness examined official Bond of Lind, and stated that he copied it into the Books when City Clerk; that he was City Clerk from May 7, 1860, to May 7, 1861; that the Bond was brought into the City Clerk's office in the beginning of June, 1860; that it was afterwards in the hands of Mr. Foss to report on, as Chairman of the Finance Committee; supposed Foss felt some delicacy about reporting, and had possession of it till sometime before Dec. 17, 1860, and that witness took it up to the Council at that time; that it was then approved, and he recorded it. The Bond was here read in evidence, and is the same attached to the declaration, and hereinbefore set forth.

The condition of the Bond is in substance as follows:

84 After reciting that Lind was duly elected Sewerage Commissioner for the West District of Chicago, at an election May 1st, 1860, under and by virtue of an Act of the General Assembly, entitled "*An Act to incorporate a Board of Sewerage Commissioners for the City of Chicago*," approved February 14, 1855, it is recited, that "if the said bounden Sylvester Lind shall well and faithfully perform his duties as such Commissioner; and shall well and truly appropriate, account for and pay over all moneys and funds coming to his hands or control, by virtue of the provisions of the Act aforesaid, that then the obligation should be void.

The Bond is marked "approved 17th December, 1860."

Kohn Cross-Examined:

I read the Bond in the month of June; know it was that time, as I was there the beginning of May and after a few weeks the Bond was

85 handed me. I put it into a box, and remember its being there ; fix the time because it was three or four weeks after I came into office. The Bond was written by Mr. Marble on the 23d day of May, I suppose. I take it for what it says, and it says that day. The Bond was for \$100,000, signed by Lind, Foss, Heald, and another man.

Ques.—Do you know it was signed by those men at the time you read it ?

86 *Ans.*—I know it was signed by Foss and Carver, and I thought them the best men on that Bond.

Ques.—Who gave the Bond to Foss ?

Ans.—I am not sure. I only know it was brought to me in June ; afterwards taken by Foss, and then brought back by him in the Fall. I believe it was signed by Foss and Carver when I first saw it.

Ques.—Who delivered the Bond to Foss ?

Ans.—I could not say that I did ; but I know it was in Foss' hands for several months.

Ques.—I asked you who delivered it ? If you did not, who did ?

Ans.—I was in New York, and had Mr. Marble there to attend to my duties. Mr. Marble may have delivered it. Mr. Foss returned the Bond to me a week or ten days before it was approved, Dec. 17, 1860.

79 *Col. William Gamble testified :*

I was Secretary of the Board of Sewerage Commissioners during its existence. It was my duty to keep the records of the Board ; kept all the official accounts. I had charge of the books and papers of the Board.
80 The Treasurer of the Board sometimes had charge of the bank pass-books of the Banks where the Board had deposits ; sometimes they were in the office ; the check books were in the safe under my charge ; kept Journal and Ledger and account with each Bank. I drew all the official checks ; they were filled up by me, and signed by Lind, Treasurer ; or, if he was not there, by some of the other Commissioners ; I or Lind made deposits
81 at Bank ; when official checks were drawn, I entered same on " stubs," with amount and date. The Board had an account at the Marine Bank ; their books show the amount of the deposits and credits.

89 A statement was here shown witness, prepared by himself from the books, papers and accounts of the Board. Witness continues : The state-
90, 91 ment shows the date and amount of each check drawn. The checks were
95 here put in evidence, and those subsequent to July 1, 1860, (the time from which the city recovered on the Bond), were as follows ;

96, 97, 98 10 checks payable to S. Lind, or bearer, drawn on the Chicago
 Marine and Fire Insurance Co.; amounting in all to.... \$20,610 00
 99 1 check payable "to draft on New York" or bearer, drawn
 on the C. M. & F. Ins. Co. for..... 5,300 00
 The form of these checks, except dates and amounts, is as follows:

No.	CHICAGO, July 2d, 1860.
<i>Chicago Marine and Fire Insurance Company:</i>	
Pay to S. Lind, or bearer, Five Thousand Dollars.	
\$5,000.	S. LIND, Treasurer.

Also 4 Checks drawn on the Chicago Marine and Fire Insurance Co.
 and the Marine Bank, together, as follows:

1 Check to "A. B. C. & Co., or bearer,".....	\$ 500
1 do to "E. F. Brown, or bearer,".....	380
1 do to " <i>S. Lind</i> , or bearer,".....	5,500
1 do to "E. I. Tinkham & Co., or bearer,".....	615 10

Making thus drawn,.....6,995 10

The form of these checks is as follows:

No.	CHICAGO,, 1861.
MARINE BANK:	
<i>Chicago Marine and Fire Insurance Company:</i>	
Pay S. Lind (or as the case might be) or bearer, Five Thousand Five Hundred (or whatever the sum) dollars.	
\$5,500	S. LIND, Treasurer.

Also 4 Checks on the Marine Bank, alone, of the same form as the
 foregoing, except the Bank, to-wit:

1 Check to "B. F. Carver, or order,".....	\$1,000
1 do to "E. I. Tinkham & Co., or order,".....	1,200

Making..... \$2,200

Recapitulation of amounts:

11 Checks on C. M. & Fire Ins. Co.,.....	\$25,910
4 do on Marine Bank & Fire Ins. together,....	6,995 10
2 do on Marine Bank alone,.....	2,200
Total,.....	\$35,105 10

The above Checks also show that thirteen of them were payable to Lind, himself, to the amount of....\$31,410

To A. B. C. & Co,.....	500
To E. F. Brown,.....	380
To E. I. Tinkham & Co.,.....	1,815 10
To B. F. Carver,.....	1,000

\$35,105 10

The illegal checks drawn by Lind during *his previous term*, and prior to July 1, 1860, were as follows:

91, 95 *On Chicago Marine and Fire Ins. Co.*, commencing July 12, 1859, and ending May 9, 1860,
16 Checks, *mostly to S. Lind, or bearer*, amounting to...\$36,548 42
On Marine Bank of Chicago from June 17, 1859 to May 15, 1860,
6 checks mostly to *S. Lind, or bearer*, amounting to 5,175 00
Total illegal checks prior to Lind's term of office, commencing in May, 1860,.....\$41,723 42

The witness Gamble continues: These checks were returned to Lind, as Treasurer, at different times when the pass book was written up, and placed in the office safe.

Ques.—State whether any of these checks were drawn on account of Sewerage Commissioners.

Ans.—No, sir; they were drawn on private account.

100 I did not know any thing about the drawing of these checks, and do n't know what was done with the money. It was not used for sewerage purposes. Semi-annual statements were made by the Board to the Council; these reports were of the money that ought to be on hand; there was no account of these checks in the reports. There were five semi-annual reports, as follows:

Dec. 31, 1858.	June 30, 1859.	Dec. 31, 1859.
June 1, 1860.	Dec. 31, 1860.	

These checks were not taken into account in the reports. The reports were signed by Lind, and sworn to.

101 The witness further testifies that Lind obtained of the American Exchange Bank, New York, where an account was kept, \$6,805, more than he could account for, and that it was charged to him.

The witness next proved the receipt by Lind and which he never accounted for of \$1,805.05 of sewerage moneys.

The witness is here shown a *fac simile* of the 40 Sewerage Bonds alleged to have been embezzled by Lind; and he says they were the same in form except the number. The bond shown witness is as follows:

UNITED STATES OF AMERICA, STATE OF ILLINOIS.

No. 305—B.

\$1000.

Chicago City Sewerage Commissioners' Second Loan.

—o—

103 Know all men by these presents, that there is due from the city of Chicago, in the State of Illinois, to the Board of Sewerage Commissioners of said city, or bearer, one thousand dollars, lawful money of the United States of America, payable on the first day of July, A. D. 1884, at the American Exchange Bank in the city of New York, with interest at the rate of seven per centum per annum, payable semi-annually on the first days of July and January in each year, on the presentation and surrender of the annexed coupons. *This bond is executed and issued in conformity with and by the authority of an Act of the General Assembly of the State of Illinois, entitled "An Act to incorporate a Board of Sewerage Commissioners for the City of Chicago," approved February 14th, 1855, authorizing said Commissioners to borrow a sum not exceeding five hundred thousand dollars, and of an Act entitled "An Act in addition to" said first mentioned Act, approved February 14th, 1859, authorizing said Commissioners to borrow a further sum of not exceeding five hundred thousand dollars.* For the punctual payment of the principal and interest of this bond, and for the liquidation of the principal at the maturity thereof, the faith and credit of said city of Chicago and the sinking fund to be provided in conformity with and by the authority of said Acts of the General Assembly, are hereby irrevocably pledged.

In testimony whereof, the undersigned, duly elected as a Board of Sewerage Commissioners for the city of Chicago, a *body politic and corporate*, by the name and style of "*The Board of Sewerage Commissioners of the City of Chicago*," have signed this bond, and caused the seal of said Board to be hereunto affixed, at Chicago, in the State of Illinois, the first day of July, A. D. 1859.

[Seal.]

PHILIP CONLEY,	} Sewerage Commissioners of the City of Chicago.
J. D. WEBSTER,	
S. LIND,	

The issue of this bond has been approved by the Common Council of the city of Chicago, by a vote of a majority of all the Aldermen, by law authorized to be elected, and the same is hereby marked "Approved," in conformity with an Act entitled "An Act to incorporate a Board of Sewerage Commissioners for the City of Chicago," approved February 14th, 1855, and of an Act in addition to said first mentioned Act, approved February 14th, 1859.

In witness whereof, the Mayor and Clerk of said city have hereunto set their hands and affixed the corporate seal of said city, this fifth day of March, A. D. 1860.

[Seal of City of Chicago.]
H. KREISMAN,
Clerk.

JOHN C. HAINES,
Mayor of the city of Chicago.

Extracts from the Act of Incorporation of the Board of Sewerage Commissioners of the City of Chicago.

3. The said commissioners shall have power to borrow, from time to time, as they shall deem expedient, a sum not exceeding five hundred thousand dollars, upon the credit of the said City of Chicago, and shall have authority to issue bonds pledging the faith and credit of said city for the payment of the principal and interest of said bonds, which bonds shall issue under the seal of said Board of Commissioners and shall be signed by them, and may be payable at such place and in such currency as they shall deem expedient, and bearing interest not exceeding seven per cent. per annum. Provided, that the said Commissioners shall not sell the said bonds, whatever rate of interest the same may bear, at a rate which will yield over seven per cent. per annum. Provided further, that no bonds shall be issued until the Common Council shall have approved of such issue, by a vote of a majority of all the Aldermen by law authorized to be elected, and provided that all bonds issued, before they shall be binding upon said city, shall be marked approved by the Mayor and Clerk of said city, under the seal of said city, and that such signature and seal shall be conclusive evidence to the holders of said bonds of the fact of such approval.

18. It shall be the duty of the Board to report to the Common Council twenty days prior to the time fixed by the ordinance of said city for the assessment of city taxes, the amount which will be required to be raised in each sewerage district for the municipal year next ensuing, to meet the payment of interest to accrue due during said year on all the bonds theretofore issued, or which are during said year to be issued for the sewerage of the said district.

19. It shall be the duty of the said Board further to report to the Common Council, at the time named in said last section, such amount as they shall, upon calculation, find necessary, in order to provide a sinking fund for the liquidation of the bonds so issued as aforesaid at the maturity thereof: Provided, that the amount to be raised for such sinking fund shall not exceed two per cent. of the amount of bonds theretofore issued, and which are during said year to be issued for the sewerage of such district.

21. The amount which shall be so reported to the Common Council as required for each sewerage district, as provided in said last three sections, shall be raised by the said Common Council by a special tax on the property of the respective sewerage districts, for which the sum is required to be designated sewerage tax, which shall be collected in like manner with the other taxes of said city, and the said amount shall be paid over by the collector of said city, to the said Board of Commissioners.

22. It shall be the duty of the said Commissioners to pay the interest on such bonds as the same becomes due, and also the principal as the said bonds become due.

23. It shall be the duty of said Commissioners to invest the amount raised to provide a sinking fund for the liquidation of said bonds, which amount shall be first invested in the purchase of said bonds, if they can be purchased at or below par, if not, then in United States or State Government stocks, or upon bond and mortgage upon unencumbered real estate in the county of Cook, of at least double the value of the amount loaned, under the direction and approval of the Mayor and committee on finance of the Common Council, or a majority of them, such approval to be signified in writing, under the hand of such Mayor or finance committee, or a majority of them, and also to invest the interest received upon such loans in like manner, and to invest and re-invest the same and the interest thereof in such manner as to create and constitute the same a sinking fund, and to make the same available for the liquidation of the said bonds, at the time of the maturity thereof, such investments shall be made in the name of the said corporation, and shall be designated as the sewerage sinking fund, and shall in no case be used or appropriated for any other purpose whatsoever than the liquidation of the said bonds. The semi-annual report of said Board shall specify in full the nature and amount of the respective securities in which the said sinking fund is invested.

60. The provisions hereinbefore contained, for the establishment of a sinking fund, shall be deemed and taken as a part of the contract with the parties purchasing said bonds, and shall not be repealed or modified so as in any manner to impair the security thereby afforded to the said bond holders.

An Act in addition to an Act entitled "An Act to incorporate a Board of Sewerage Commissioners for the City of Chicago," approved February 14th, 1855.

SEC. 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the Board of Sewerage Commissioners for the city of Chicago shall have power to borrow (in addition to the sum heretofore authorized,) a further sum not exceeding Five Hundred Thousand Dollars upon the credit of the city of Chicago, and shall have authority to issue bonds pledging the faith and credit of said city for the payment of the principal and interest of said bonds.

SEC. 2. The said bonds shall in all respects be issued and registered, and the principal and interest provided for and paid in the same manner and subject to the same regulations as provided in the original act to which this is an addition, and all the provisions of the said original act establishing a sinking fund or securing in any manner the payment of the principal and interest of the bonds authorized to be issued by the said act to which this is an addition, shall apply to the bonds authorized to be issued by this act, in the same manner and to the same extent to all intents and purposes, as if the said bonds hereby authorized had been issued under and by authority of the said original act.

SEC. 3. The said Board of Sewerage Commissioners shall hold, retain, apply and appropriate the said bonds and the proceeds thereof, for the same objects and purposes, and subject in all respects to the same terms, conditions, restrictions, penalties and liabilities as are contained in the Act to which this is an addition, and the said Act shall apply in the like manner, to all intents and purposes, to the said bonds hereby authorized to be issued, and the proceeds thereof; and to the rights, duties and liabilities of said Sewerage Commissioners respecting the same, as if the said bonds hereby authorized to be issued had been issued under and by virtue of the Act to which this is an addition.

SEC. 4. The said bonds shall not be sold at a rate less than that which is provided by the said act to which this is an amendment, unless the Common Council of said city shall, by a vote of a majority of all the Aldermen elected authorize the said Board of Sewerage Commissioners to sell the same at a lower rate; and then only at such a rate as shall be fixed by said City Council: Provided, however, that reasonable commissions of brokers or agents employed in procuring the sale or negotiation of said bonds may be paid by said Board.

Approved February 14th, 1859.

Ans.—The bonds were in the safe, about 100 of them, under my charge. There was a meeting of the Board, at which I was not present. After the meeting, I was requested to prepare 40 Bonds, and did so, by attaching the seal of the Board to them. They had been signed by the Board, and approved by the Mayor and Clerk. I gave them to Mr. Lind by order of the Board, about the 30th Nov. 1860. I think Lind never returned or accounted for these Bonds; not to my knowledge. The Bonds were numbered 401 to 440, inclusive, *second loan* Bonds. On reference to the Register kept by me, I find that I made the entry therein Nov. 30th, 1860, that the Bonds were "delivered to S. Lind, Treasurer, on deposit."

114 The Common Council were notified of the places of deposit for the Sewerage funds. I find only one communication, it was made in 1856 by the Board to the Common Council, and is as follows :

SEWERAGE COMMISSIONERS' OFFICE, }
Chicago, Ill, 11th April, 1856. }

The Board met. Present, Commissioners Ogden, Webster and Lind.

EXTRACT.

Ordered, That for the time being, and until otherwise ordered, the funds of this Board be deposited in New York, with Winslow, Lanier & Co., Bankers, and in Chicago with the Marine Bank, Geo. Smith & Co., Edward I. Tinkham & Co., R. K. Swift and Co., I. H. Burch & Co., H. A. Tucker & Co., one or more of them, as this Board may from time to time find advantageous and desirable.

SEWERAGE COMMISSIONERS' OFFICE, }
Chicago, Ill., 14th April, 1856. }

To the Hon. Mayor and Common Council of the City of Chicago:

In conformity with the fifty-first (51st) section of the Sewerage Law, the accompanying order in reference to the deposit of the funds of this Board, is respectfully submitted for the approval of the Common Council.

Very Respectfully, &c.,

J. D. WEBSTER, Acting Com'r.

This is the only order I know of on the subject, and it was entered of record, and the foregoing is a copy of the document sent by the Commissioners to the Common Council April 14, 1856, signed by J. D. Webster.

It was here admitted by the counsel for the city that said communication was laid before the Common Council April 28th, 1856, and referred to Committee on Finance.

116 I have examined all the checks put in evidence, and they are all signed by Lind in his own hand.

The Marine Bank pass book was here shown to the witness and he said, "this is the last pass book; it is a continuation of the others."

Col. Gamble Cross-Examined by Defendants' Counsel.

The funds of the Board were deposited in the Marine Bank of Chicago, in the name of S. Lind, Treasurer.

117 Since 1856, no deposit of funds of the Board has ever been made with the Chicago Marine and Fire Insurance Company. From the latter part of 1856, the deposits were kept by Lind in the name of the Marine Bank. Before that time an account was kept with the Chicago Marine and Fire Insurance Company, but it was changed to the Marine Bank at that time. The attention of the witness was here called to the irregular checks drawn by Lind subsequent to May 23d, 1860, and he sets them forth as they appear on pp. 95 to 99 of record, and says: "These moneys drawn out upon the checks on the *Marine and Fire Ins. Co.* I do n't know anything about it, further than the checks show, except that they did not go for sewerage purposes. During the time these checks were drawn, I know of no funds of the Board on deposit in the Marine and Fire Ins. Co. I certainly ought to have known it, if there had been.

118 The official checks were filled out by me, and were always drawn on the Marine Bank; never on the Marine and Fire Insurance Co. Early in 1857, after the account was charged to the Marine Bank, the Marine and Fire Insurance Co. never presented any book showing charges against the Sewerage Commissioners on the one hand, or allowing them credit on the other, after the change made to the Marine Bank.

Int.—I understand you to say that these checks were never returned by Lind as having been drawn on the Sewerage account, in the semi-annual accounts?

Ans.—No, sir; nor in the books of the Board.

Int.—What was the correct amount of public money deposited by Lind, as Treasurer, in the Marine Bank, from May 7, 1860, to the close of his official term?

119 *Ans.*—The amount deposited was \$220,278.41; and that is the amount of public money, not including the private deposits.

Int.—I want the private moneys in addition.

Ans.—The credits are specified on the paper I have given you; (See page 89 of *Record*;) it is, after May 7, 1860, \$38,000.

Int.—During that time, how much did Lind draw out of the Marine Bank?

Ans.—Upon the Marine Bank official checks, \$186,100.35 was the amount.

Int.—Now, how much do the unofficial checks drawn upon the Marine and Fire Insurance Co. amount to?

Ans.—That you have in the statement.

See Record, p. 93 to 99, for these checks, amounting, from July 2, 1860, to the close of Lind's term, to \$35,105.10.

Int.—You say Lind also had \$1,850.05 of sewerage taxes, and \$6,805.00 from American Exchange Bank, New York.

Ans.—Yes, sir.

120 *Int.*—In regard to the 40 sewerage bonds—when were they issued?

Ans.—They were drafted in May, 1860; they had been previously, March 5th, signed. The bond register shows the purpose for which they were issued; it gives description of the bonds, but no date of issue at
121 all, because they were not issued.

Int.—On account of what sewerage district were those bonds issued?

Ans.—They were not issued to any district.

Int.—Look over the records and memoranda of the Sewerage Commissioners, and state whether there is anything on record showing whether this issue of 100 bonds, of which the 40 in question are a part, had been appropriated to any sewerage district in the city of Chicago.

Ans.—They had not, to my knowledge.

Int.—Do your records show any such appropriation?

Ans.—Not to my knowledge.

Int.—Have you examined?

Ans.—I know it.

Int.—You kept the records?

122 *Ans.*—Yes, sir. Those bonds were sold, and the proceeds assigned to different districts after the sale.

Int.—How long after their issue did the 40 bonds pass to Lind, and under what circumstances?

123 *Ans.*—In the month of November, 1860, about the 30th, there was a meeting of the Board; the Acting Commissioner, Webster, through whom the business was usually done, came to me at my desk, and directed me to deliver 40 of these bonds to Lind, and mark upon the register in pencil, "Nov. 30, '60, to S. Lind, Treasurer, on deposit," and I did so, and delivered the bonds to Lind. I understood it to be the action of the Board, though I was not present when it was agreed upon.

124 I don't know of my own knowledge that Lind gave any security to the Board for these bonds; there was a package of papers with Mr. Webster's name on the back, to be put in the safe, which I afterwards ascertained to be something of the kind. The package was afterwards opened; it was given to me to put into the safe for Mr. Webster, but can't say whether given me by Lind or Webster; it was delivered about the time the bonds were handed to Lind. I presume Webster knew of the package being left with me. It was afterwards delivered to Commissioner Webster.

125 *Int.*—What was Webster's duty as a member of the Board?

Ans.—He was the channel of communication for the transaction of official business, and carried on the official correspondence. He told me to give the bonds to Lind, &c., and I did so.

During the time Mr. Lind was Commissioner, Mr. Webster spoke to me and said he would rather Lind would return the bonds; that it was his wish and desire to get Lind to do so. Nothing was done; he simply made the remark to me.

Direct resumed:

128 There should have been on deposit at the Marine Bank, at the close of Lind's term, \$94,661.36; there was actually, then, \$58,882.84. When the pass-book was written up, I suppose the checks were returned; the unofficial checks made up the balance there; these checks were sometimes handed me by Lind and sometimes I got them when I went to the bank. In relation to the 40 bonds, there is an order in the records, under date of May 2d, 1859, to the effect that the second loan bonds about to be issued be numbered 1--B, and so on, to the full number issued, and that Commissioner Webster proceed to New York to arrange sale of same to the amount of \$50,000. Five hundred of the bonds
129 were then actually prepared; the bonds in question were the first 40 of the last 100. The bonds in question were sealed at the time they were ordered to be given to Lind, Nov. 30, 1860.

Cross-examination of Gamble resumed:

Int.—As to the sewerage fund, you have sworn that there was \$94,661.36 which should have been in the Marine Bank to the credit of the sewerage fund?

Ans.—Yes, sir.

Int.—Do you mean that this should have been, providing you go back to 1856, and so trace up the account to May 1, 1861?

Ans.—Yes sir.

130 *Int.*—Do you mean there should have been \$94,661 36 to the credit of the sewerage fund, providing the acct. is made up from May 7, 1860, to the end of Lind's official career?

Ans.—No, sir.

Int.—State whether all the bonds authorized to be issued by the Sewerage Act of 1855, had been issued, and the proceeds expended prior to May 1, 1860.

Ans.—Yes, sir.

Julian S. Rumsey, for Plaintiff, testified:

131. Was Mayor of Chicago for one year from May 6, 1861. Had several interviews with Lind in regard to his defalcation. First learned it in May, 1861, in New York. On my return to Chicago, a committee of
132 the Common Council was appointed to investigate into Lind's matters, and the Committee met at my office on several occasions, Lind being present. Mr. Webster and Mr. Conley, the other Commissioners were sometimes present. We investigated the condition of the sewerage fund, and discovered what we considered a great fraud upon the city. Lind's
133 attention was called particularly to a *deficit* in the Marine Bank. He admitted using the money of the Board of Sewerage Commissioners, and taking and using 40 Sewerage Bonds for himself. We made a report of the investigation to the Common Council.

134 to 137 Witness testifies that E. I. Tinkham & Co., and B. F. Carver & Co. were Bankers, and details history of certain checks, &c.

135, 136 That the city received and credited Lind with \$16,027 69, on account of a check on B. F. Carver, and witness says "the late Board should be credited with this sum."

137 Witness testifies that Lind claimed to have purchased the 40 Sewer
138 age Bonds at 98 cts., or taken them with an option, and pretended to have
139 given security to that effect. Also, that Lind claimed a great many other
140 things that the witness did not believe, &c., &c.

The attention of the witness, Rumsey, was here called to the report of the Investigating Committee, dated Aug. 5, 1861, page 6, and he testifies that *every word in it* is substantially true. The report was read in evidence, and is as follows:

REPORTS OF SPECIAL COMMITTEES.

The special committee on affairs of the Sewerage Commissioners presented the following, which was concurred in.

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

Your special committee appointed to investigate the affairs of the late Board of Sewerage Commissioners, having had the same under advisement, beg leave to report: that according to their report made to this Council on the 24th day of June last, the amount of money then remaining in the hands of said late Board, according to the report of their own Secretary, was 196,037.90.

The Treasurer of the said Board has since that time paid over, by a check on Marine Bank, for the amount on deposit in that institution and received as cash in accordance with the instructions of this Council, the sum of \$58,882.84. The said Treasurer has also left his check (with this Committee) on B. F. Carver & Co., for the sum of \$50,142.38, to be used as the officers of the city might deem expedient, and on which there has been drawn, for the payment of interest on Sewerage Bonds, in New York, and outstanding labor bills of the Sewerage Department, the sum of \$30,142.35, which sum netted the city 65 cents on the dollar.

The City Comptroller found in the American Exchange Bank of New York City, three Sewerage Bonds of \$1,000 each, which have been credited to the Sewerage Commissioners, \$3,000.

In the former report of this Committee, was shown that Mr. Lind had on that day, June 24th, paid to the City Treasurer the sum of \$14,310.44.

This payment was received in the shape of a check of Sturges, Buckingham & Co. on B. F. Carver & Co., amounting to \$23,850.73. On this amount Mr. Carver paid 60 per centum, amounting to the sum before named, to-wit: \$14,310.44.

Your Committee agreed to give Mr. Lind credit for 12 per centum more than the actual amount received, which would be \$1,717.25.

The late Board should therefore be credited on the 24th day of June \$16,027.69.

There has been paid over a balance from the American Exchange Bank, N. Y., the sum of \$1,488.48.

This leaves in the hands of the late Board, a cash balance

of.....	\$86,496 54
Forty bonds not handed over, as per our late report,...	40,000 00

Making a total deficit.....\$126,496 54

Your Committee have ascertained that a part of the above amount is situated as follows :

In B. F. Carver & Co.'s Bank,.....	\$20,000 00
In E. I. Tinkham & Co.'s Bank,.....	\$38,040 66
In same " which was deposited on the 27th day of May, 21 days after the functions of the late Board had ceased,.....	\$11,149 27
Total,.....	\$69,189 93

This leaves a balance utterly unaccounted for, and which, in the opinion of your Committee, has been taken by the Treasurer of the late Board, and used for private purposes, the sum of \$57,306.61.

Your Committee are informed by Mr. Lind, that the forty bonds included in this amount, and which have been hypothecated in the city of New York, for the benefit of Mr. Lind, were loaned to him by the late Board, by a resolution passed by them, and that he gave said Board a second mortgage on his Block, known as "Lind's Block," but such mortgage does not appear of record.

If this statement is true, it shows a plain dereliction of duty on the part of the whole of the late Board of Sewerage Commissioners. Section 51 of the Sewerage Act reads as follows :

"Sec. 51. No member or officer of said board, and no member of the common council shall, either directly or indirectly, receive any interest or profit whatsoever on account of the deposit of any of the funds belonging to the said board, nor shall any member or officer of the said board, or any member of the common council, either directly or indirectly, make use of or borrow any of the funds of said board, or of the said sinking fund, for his own private benefit or advantage. The funds of said board remaining on hand, shall at all times, until disposed of, be kept deposited in such place or places of deposit, as shall, by an order of said board be directed, which order shall be entered upon the records of said board : *Provided, however,* that such place or places of deposit shall first be approved by the common council ; and *provided, further,* that whenever the said common council shall pass a resolution disapproving of such place or places of deposit, it shall be the duty of said board forthwith to select other place or places of deposit for said funds, such as shall be approved by the said common council. And if either of the commissioners or any of the officers of said board shall, directly or indirectly, receive or appropriate for his own use, or benefit, any of the funds, money, or property of the said board or of the said sinking fund, or any of the interest thereon, or shall take, pledge, or borrow any of the said funds or property of the said board, or of the said sinking fund, for his own use, or benefit, such commissioner, or such officer of said board shall be deemed

guilty of embezzlement, and shall be liable to indictment, and on conviction thereof, shall be fined not exceeding one thousand dollars, or imprisoned, not exceeding one year, in the county jail."

Mr. Gamble, the Secretary of the late Board, says that he was directed by Mr. Webster of the said Board, to seal, perfect, and give the said 40 bonds to Mr. Lind, and enter on the register in pencil, "given to S. Lind, Treasurer, for safe keeping." Which order was complied with by Mr. Gamble.

These 40 bonds with 60 others had been in the safe of the late Board for nine months previous to this time, and were certainly as safe there as the 60 bonds of the same description, which were left in the same place for the next five months.

Mr. Gamble states that as Secretary of said Board, he was never present at their meetings, except at meetings for auditing bills, and that the record of the proceedings of said Board were made up by him from penciled memoranda made by some member of the Board, and handed to him after their meetings; and Mr. Gamble, not being present at such meetings, did not sign the records as Secretary.

Section 57 of the Sewerage act is as follows:

"SEC. 57. The funds of the said board shall be drawn out upon checks or drafts regularly numbered and payable to the order of the respective person or persons for whose benefit the same are intended, and briefly specifying for what purpose or account the same are drawn, a careful register of said checks or drafts shall be kept in the office of said board, and the original checks or drafts when returned to said board shall be carefully filed and preserved among the vouchers of the said board, and the said register, and the said returned checks or drafts shall always be subject to the examination of the finance or any other committee of the said common council, and it shall be the duty of said finance committee or of some other committee appointed by the common council, to examine the said register and the cash account and checks and drafts of the said board at least once in three months, and oftener, if the common council shall deem it expedient."

In accordance with the foregoing section, the Board had provided a book of checks or drafts, of which the following is a copy, was made in accordance with law:

SEWERAGE COMMISSIONERS' OFFICE,
Chicago, Ill., 18

No.
Marine Bank of Chicago:
Pay to order of..... Dollars, for
....., and charge Chicago Sewerage Com'rs.
\$....., Treasurer.

But your Committee find that Mr. Lind, the Treasurer of the late Board, has, since June, 1859, repeatedly drawn checks outside of and apart from, the office of the Sewerage Board, of various forms, and signed "S. Lind, Treasurer," which checks do not show upon their face, whether they are drawn on sewerage account, or on account of some other institution, of which Mr. Lind might have been Treasurer, which checks amount to, say \$69,000.00, and which sum was evidently *not* used for sewerage purposes, inasmuch as Mr. Lind refunded, at various times, on account of such drafts, say \$40,000.00.

The Mayor and City Treasurer have notified the President of the Marine Bank, that these checks will not be accepted by the city as vouchers, and that the city will hold said Bank responsible for all money which has been paid from city funds on improper and illegal checks.

Your Committee are at a loss to understand how this state of things could have existed for so long a time, without the knowledge or consent of the other members of the Board.

Mr. Gamble states, that last February, and again in April last, he called the attention of Mr. Commissioner Webster to the fact of a discrepancy between the actual bank account, and such accounts as per his books, and told him that the discrepancy was caused by the checks of Mr. Lind drawn outside the office. Previous to this, Mr. Gamble had spoken to Mr. Lind on this subject, and was informed by Mr. Lind that that was a subject with which he, Gamble, had nothing to do, and that he, Lind, was the custodian of such funds, and had given satisfactory bonds for their safe keeping.

Your Committee would report, that no legal proceedings have been commenced against the late Board, for the reason that the Committee have had the benefit of the advice and counsel of the best legal talent in the city, and the interests of the city have not suffered by the delay, and your Committee had hoped might have been materially benefitted thereby.

Your Committee would report that there has come into the possession of the City Comptroller the following securities, the proceeds of which may be applied to liquidate the indebtedness of said Board:

1 Mortgage of	\$15,000 00
1 "	3,000 00
Interest paid on same, since it came into possession of the City,	150 00
Note of Tarleton Jones, endorsed by E. I. Tinkham,	30,338 02
Sundry other notes, amounting to	13,336 03

\$62,674 05

Your Committee would recommend that the Mayor and Comptroller be instructed to commence the necessary suits at law, to recover of the parties liable to pay the same, the amount of this defalcation, and your Committee would respectfully ask to be discharged from further consideration of the subject.

Respectfully submitted,

JULIAN S. RUMSEY,
CHARLES C. P. HOLDEN,
J. M. MARSHALL,
R. PRINDIVILLE,
Committee.

Samuel D. Ward testified for Plaintiff:

150 Lind was in New York July 1, 1861; he told me there he had hy-
151 pothecated the forty bonds for his own use, and he was trying to get
them back for the city. The bonds were quoted in the market at par in
the fall of 1861. The bonds drew 7 per cent. semi-annual interest, pay-
able in New York.

Col. Gamble, recalled for Plaintiff, said:

152 Four coupons were cut off the forty; they bore date July 1, 1859;
the January and July, 1861, coupons were cut off, and the other two had
previously matured.

153 The plaintiff here rested; and the counsel for the defendants Foss
and Carver severally asked and moved the court to exclude and rule out
of the case all the evidence admitted on the part of the plaintiff touching
the alleged embezzlement by Lind of the forty sewerage bonds, which
the court then and there refused to do, and the defendants excepted.

The defendants then called S. S. Hayes, who testified as follows:
I am City Comptroller. The city has received during my term of office
money from J. Y. Scammon, on account of moneys deposited in the
Marine Bank by Sylvester Lind, as treasurer of the Board of Sewerage,
supposed to be the settlement of that account. J. Y. Scammon was
President of the Marine Bank, and I think he is settling up the affairs of
that bank. Whether this payment was out of his own funds or out of
those of the bank, I cannot say. The City entered into a written con-
tract, which will show exactly what was done.

Said agreement is as follows:

CITY COMPTROLLER'S OFFICE,
CHICAGO, August 21, 1862.

154 It is hereby agreed, by and between the City of Chicago and J. Young Scammon, that said Scammon shall and will pay to the said City the sum of fifty-six thousand three hundred and eighty-seven 24-100 dollars, in weekly payments of five thousand dollars each, except the last, (which shall be six thousand three hundred and eighty-seven 24-100 dollars,) unless hereafter otherwise agreed, commencing September 1, 1862; and said payments, when fully made as aforesaid, time being the essence of this contract, shall be in full satisfaction and discharge of all claims and demands of the City of Chicago upon the Marine Bank of Chicago and the Marine and Fire Insurance Company, on account of deposits of said City by any of the officers, or the late Board of Sewerage Commissioners, with the said bank, to the credit of the sewerage fund of said City; the balance of said deposit, amounting to \$58,882.84, and also account of deposits to the credit of the school tax fund of said city, the
155 balance of said last named deposits being \$3,392.68: of the sums herein provided to be paid, \$52,994.56 is to be in settlement of the account for said sewerage fund deposits, \$3,392.68 in settlement of the account for said school tax deposits.

This settlement, when consummated by the payment of said sums as aforesaid, will be in full and final discharge of said Bank and Insurance Company from all liabilities of said City or its authorities for any deposits made with either or both of said institutions.

Signed and sealed at Chicago, the day and year above written.

{ Corporate Seal
of City
of Chicago. }

F. C. SHERMAN, Mayor.
S. S. HAYES, City Comptroller.
J. YOUNG SCAMMON. [Seal]

A. J. MARBLE, City Clerk.

156 The witness continued: I do not know how that amount of sewerage fund balance was made up. I was not present when the account was adjusted and balanced; the account was reported to my office from the Board of Public Works; they keep an account of sewerage moneys and pay over monthly to the city treasurer the money received during the preceding month. Mr. Scammon agreed to the correctness of these reports. I do not know that in the account there were checks drawn upon the Marine and Fire Insurance Co.; but I imagine it was a final settlement of the claims of the city upon either or both of the banks. That was the understanding at the time; my impression is the amount was ascertained from the books of the Sewerage Commissioners.

The Marine Bank book was here shown the witness, and he says: I think this is the book; the amount is the same.

One of the plaintiff's counsel here admitted that the settlement was on that basis.

The agreement of the City with the Banks was here read in evidence.

Julian S. Rumsey examined for Defendants:

158

The Marine Bank and the Chicago Marine and Fire Insurance Co. were incorporated at two different times; I think the first in 1836 to 1840. The Marine Bank proper had deposit accounts in 1860. In 1861 I knew of two or three accounts. The sewerage account was one; and I have seen one or two small bank books; there was a credit to different individuals; I recollect one to one of my neighbors. The United States funds were there, as I have heard.

Cross-examination of Rumsey:

159

The two institutions kept two sets of books; a stockholder in one is also in the other; have done business with the Marine Bank or the other for years. We always called it the Marine Bank, while on the book it has been the Marine and Fire Insurance Co.; we look upon them as the same. Do business in the same building but at separate counters; on one side is a counter for Marine Bank, on the other for Marine and Fire Insurance Co.

Int.—Were they in the habit of paying checks indiscriminately?

160

Ans.—I know they did in this case of Lind. The names of both institutions were on different sides of the same building. I suppose the building belongs to both institutions.

161

It was here admitted by the counsel on both sides that on January 19, 1861, Sylvester Lind had his private note for \$30,700 odd dollars discounted at the Marine Bank of Chicago, and the proceeds, \$30,000, on that day placed to his credit as Treasurer on sewerage account; and that the forty sewerage bonds in question were deposited as security therefor; and that the note was afterwards sold.

Defendants here put in evidence the Act of 1836, incorporating the Marine and Fire Insurance Co.; and the counsel for the plaintiff admitted that the date of the incorporation of the Marine Bank was from 1851 to 1853.

The foregoing was all the evidence in the case.

162 Upon the foregoing evidence the plaintiffs' counsel claimed the right to recover damages to the amount of \$37,911.94, according to the following statement:

163 Amount converted by Lind subsequent to June 7th, 1860, for which he and his sureties are chargeable on the bonds in suit, June, 8, 1860. Amount received from American Exchange Bank, New York, not accounted for by Lind, \$ 6,805 00
 Amount of 17 checks drawn by Lind, on Marine bank, all subsequent to July 1, 1860, and not accounted for by him, 35,105 10
 Amount of Sewerage taxes received and retained by Lind in winter of 1860-1, 1,850 05
 Jan. 19, 1861. Forty Sewerage Bonds converted by Lind, Principal, \$40,000 00
 Interest at 7 per cent., as per coupons attached, .3,671 11 43,671 11
 Total, \$87,431 26

Credits to which Defendants are entitled:

Dec. 1, 1860. Cash deposited to credit of Sewerage account in Marine Bank, \$ 3,000 00
 Jan. 19, 1861. Cash deposited to credit of same acct., 30,000 00
 June 24, 1861. Cash paid by Lind to city authorities, 16,027 69
 Interest at 7 per cent. from June 24, 1861, on \$5,267.54, balance to his credit after satisfying his cash deficit at that date, 491 63 49,519 32
 Balance now due, \$37,911 94

164 The counsel for the defendants, Foss and Carver, thereupon moved the Court upon the foregoing evidence, to direct the jury to find for said defendants, as in case of a non-suit, on the ground that the plaintiff had failed to make out its case. This the Court refused to do, and the said defendants then and there excepted.

The Court thereupon instructed the jury as follows:

INSTRUCTIONS FOR PLAINTIFF.

The jury are instructed that the bond in suit was obligatory from the time it was delivered to the City Clerk as and for the bond required by law from Lind as Sewerage Commissioner, and the fact that it was

not presented to the Common Council and approved by them for some time after its actual delivery to the Clerk, is a matter of no legal significance, so far as the liability of the sureties is concerned. And the jury are to determine from the evidence in the case, what was the date of its delivery to the Clerk.

2. If the jury believe from the evidence that the said Sylvester Lind, during his last term of office, appropriated and converted to his own use, any moneys or funds belonging to the late Board of Sewerage Commissioners, which came into his hands or control as Sewerage Commissioner, or which were confided to his custody as Sewerage Commissioner as recited in the condition of the Bond of the Defendants in this action, the Defendants are liable for the amount of all such moneys and funds as were so appropriated and converted subsequently to the delivery of their bond to the City Clerk, and before the expiration of his said term of office, after deducting therefrom all sums refunded or paid, for which the sureties upon said bond are entitled to receive credit.

4. Names of sureties need not be inserted in the body of a bond. The neglect or omission, therefore, to insert the names of the sureties in the body of the bond in question, will not relieve them from any liability which they would otherwise be subjected to in this action.

5. If the jury believe, from the evidence, that after the delivery of the bond in suit to the City Clerk, the said Lind received into his custody the forty one thousand dollar Sewerage Bonds described in the declaration, and that he afterwards, and before the expiration of his said term of office, appropriated and converted said Bonds to his own use, either by selling, pledging or otherwise disposing of them, and has never accounted for their value or proceeds, and that said Bonds are now outstanding against the city, the Defendants are answerable in this action for the amount of said bonds, and the interest which has since matured, according to the coupons attached thereto, at the rate of seven per centum per annum. But all payments made by said Lind, for which the Defendants are entitled to credit, in accordance with the instructions given by the Court to the jury for their guidance upon this point, are to be allowed them in making up your verdict.

8. It is provided by section 51, of the Act of February 18, 1861, as follows: "All moneys now in the hands of said "Water Commissioners" and "Sewerage Commissioners," their respective treasurers, other officers or employees, belonging to the Hydraulic Works or Sewerage funds, shall be forthwith paid over to the City Treasurer; to the credit of the

respective funds to which they belong." And by section 92 of said Act it is provided that said Act "shall take effect and be in force from and after its passage." If, therefore, the jury believe from the evidence that the said Sylvester Lind had, at the time of the passage of said Act, on deposit, to his credit, as Treasurer of the said Board of Sewerage Commissioners, at the Banking House of E. I. Tinkham & Co., any of the said Sewerage moneys, and that he kept the said moneys deposited there until after the expiration of his said term of office, and until the subsequent failure and insolvency of said firm of E. I. Tinkham & Co., without having offered to transfer or pay over the same, in the meantime, to the City Treasurer; and if they further believe, from the evidence, that said moneys might have been all safely withdrawn by said Lind, from said firm of E. I. Tinkham & Co., and paid over to the City Treasurer at the time his said term of office expired, if he had properly attended to his duty in that behalf, but that in consequence of his neglect so to withdraw and pay over said funds, and the failure and insolvency of said firm of E. I. Tinkham & Co., said funds have been wholly lost to the City, without any fault of the City or of its officers, then he was guilty of a violation of the duties of his said office, and the Defendants are answerable in this action for the damage sustained by the city for the wrongful conduct of said Lind, if there were any in the premises, unless Lind had previously tendered the money to the City.

9. If the jury believe, from the evidence, that the deposit of \$11,149.27, made by the said Lind to his credit as Treasurer of the Board of Sewerage Commissioners, at the Banking House of E. I. Tinkham & Co., on the 27th day of May, 1861, was made by him upon his own motion or responsibility, without any consultation with the city authorities, and without any understanding or agreement on their part, that he should be allowed credit therefor; and if they further believe that no portion of said amount has ever been received by or paid to the City, in such case the Defendants are not entitled to any credit therefor, and the jury in such case will disregard said item in making up their verdict.

10. If the jury believe, from the testimony, that Lind kept his account as Treasurer, with the Marine Bank, and did not keep any account with the Marine and Fire Insurance Company, and that both of these institutions transacted business in the same rooms, and had the same President and officers, that the stock of both institutions was owned by the same stockholders, and that the rules and regulations of each institution required that the owner of any stock in either institution should take and hold, at the same time, a like amount of the stock of the other institution, and that the certificates of stock were so printed that each certificate en-

titled the holder thereof to an equal amount of stock in each institution, that the Bank was as well known by the name of the Marine Bank as by that of the Marine and Fire Insurance Co., that both names were on the building, "Marine Bank," "Marine and Fire Insurance Company," and that the printed checks circulated by both of these Institutions were "Marine Bank," others with the name of both institutions, "Marine Bank—Marine & Fire Ins. Co.," and others with the name of the "Marine & Fire Insurance Co., and that such checks were recognized and paid by both said institutions, when the drawer had funds in either of them, and that the Defendant, Lind, as Treasurer, sometimes drew his checks on the Marine & Fire Ins. Co., and that the Marine Bank paid such checks and charged them in account as if drawn on itself, and that Lind, as Treasurer, from time to time recognized such payments, and in balancing his account, said Bank entered the same in his, Lind's, pass book from time to time, and Lind did not object to the same, and did acquiesce in such entries on his book, then he is chargeable with such money in the same manner as if he had drawn his check in form on the Marine Bank, instead of the Marine & Fire Ins. Co.

To the giving of each and every of which instructions, the said Defendants, Foss and Carver, severally then and there excepted. The Court then and there also gave the following instructions on the part of said Defendants, Foss and Carver:

Instruction given for Defendant, subject to qualification by the Court, to which the Defendants, Foss and Carver, then and there excepted:

INSTRUCTION FOR DEFENDANTS, CARVER AND FOSS.

Given as qualified by the Court, by inserting part in brackets, to which qualification the Defendants Foss and Carver then and there excepted:

If the jury shall believe, from the evidence, that Lind deposited the bonds in controversy with the Marine Bank as collateral security for his own note for thirty thousand dollars, which sum of money was loaned to him by the Bank, they are instructed that such hypothecation of the Bonds was illegal, and the Marine Bank became liable to account to the City, or to the Board of Sewerage Commissioners, for those Bonds, or for their value. And if the jury should further believe, from the evidence, that the City has released the Marine Bank from such liability, they are further instructed that the City cannot recover the value of those Bonds from Lind's sureties.

[But the written release, read in evidence here, does not discharge the Bank from that liability.]

The said defendants, Foss and Carver also then and there severally requested said Court to give the following instructions on their part and behalf and on behalf of each of them, to-wit:

Instructions for Defendants, Foss and Carver, refused.

1. That the plaintiff cannot recover in this suit on account of the Bonds alleged to have been converted by Lind to his own use, a greater sum than they have already paid on account of said Bonds—and if the Jury shall believe that only the interest on said Bonds has been paid by the City, then it can only recover the interest so paid.
2. If the Jury believe from the evidence that Lind held the funds and Bonds, or either or any part of them, in question, as Treasurer of the Board of Sewerage Commissioners, and in the capacity of such Treasurer, and while holding said funds and Bonds as such Treasurer, converted and appropriated the same to his own use, then the sureties of Lind are not liable on the Bond sued on.
3. If the Jury believe from the evidence, that the Bonds in question were issued in the manner and form as they purport, and under the Laws therein mentioned, and that all Bonds originally authorized by the Sewerage Act of 1855, referred to in the Bond sued on in this case, had been issued, and the proceeds expended prior to the execution of the Bond sued on, then the plaintiff cannot recover against Lind's sureties, for his conversion of the Bonds proved in this suit to have been taken by him for his own purposes.
4. If the Jury believe from the evidence, that the Bonds in question were issued before any plan of Sewerage had been adopted as required by law, and that such issue of said Bonds was approved by the City, and that said Bonds so issued were not required to defray the cost of the execution of any such plan or parts of such plan, and that they were then placed in the hands of said Lind, and before the adoption of any such plan, converted by him to his own use, then his sureties are not under the bond sued on in this case, liable for such conversion.
5. If the Jury believe from the evidence, that the Bonds in question were issued by the Board of Sewerage Commissioners and the City, as shown by the evidence, and were so issued and placed in the hands of

Lind as Treasurer of the said Board, and issued and sold before any plan of Sewerage had been adopted as required by Section 17 of the Sewerage Act of 1855, then the plaintiffs are not entitled to recover of said sureties for any conversion of said Bonds by Lind, prior to the adoption of such plan.

6. The Act incorporating the Board of Sewerage Commissioners is a public Act, and the Marine Bank, and all persons dealing with the Board of Sewerage Commissioners, are bound to take notice of its provisions, and all of its provisions, and therefore the Marine Bank knew and was bound to know the form and character of the checks by which alone under the said Act, the moneys of the Sewerage Commissioners at its Bank could legally and rightfully be drawn out. And if the Jury shall believe from the evidence that the Marine Bank had paid a part of the whole amount of \$35,000, said to have been misappropriated, or any of said moneys, upon checks not drawn by the authority and in the manner prescribed by law; then the Jury are instructed that all such moneys were unlawfully and improperly paid by said Bank, and the Bank is responsible for all moneys thus paid to the late Board of Sewerage Commissioners, or to the City, which has succeeded to its rights. And if the Jury further believe from the evidence, that the City have settled with and relieved said Bank from said liability, then for all such sums as paid, the City cannot recover in this cause against the sureties.

7. If the Jury believe from the evidence, that \$27,000 of what are called unofficial checks drawn upon the Chicago Marine and Fire Insurance Company by Lind, were known to the Marine Bank to be drawn without the authority of the Board, or that this course was adopted by Lind to withdraw the moneys of the Sewerage Commissioners, in violation of law, and apply the same to his own private account, or might with reasonable diligence have known these facts—then the Jury are instructed that said Marine Bank had no right to pay the same out of said fund, and if they did so, they did not and could not thereby acquire the right to be refunded that sum by the City, or out of said fund, but would still be liable to the Board of Sewerage Commissioners or to said City for the whole amount of the moneys thus drawn out; and if the Jury shall further find from the evidence, that the City has settled with the Marine Bank, and released them from this liability, the plaintiff cannot recover against the securities for the amount of such checks, or on account of the money drawn from said funds by means of these checks.

8. If the Jury shall believe from the evidence, that the forty Bonds in question were deposited in the Marine Bank by Lind, as collateral

security for the payment of his private notes for \$30,000, and were not otherwise sold or disposed of by Lind, then the Marine Bank by such pledge or deposit acquired no right to or title in said Bonds, and if now in its possession, holds them in trust for said city, or the real owners thereof, and if it negotiated them in the market, then the Marine Bank is liable to the City, or whoever may be entitled to the same for the value thereof; and if the Jury shall further find that the City, knowing of said deposit of Bonds with the Bank, has settled with said Bank and released said Bank from said liability, then the plaintiff can on account of the same only recover nominal damages.

To give which as requested, the Court then and there refused. To which refusal of said Court each of said defendants Foss and Carver, by their counsel then and there excepted.

The cause was thereupon given to the Jury, who afterwards returned with their verdict against the defendants, for

Debt.....	\$100,000 00
Damages	37,911 94

Debt to be discharged on payment of damages. And thereupon the said defendants Foss and Carver, severally moved the Court for a new trial.

1st. Because improper testimony was admitted on the part of the plaintiff at the trial.

2d. Because proper testimony offered on the part of said defendants was rejected at the trial.

3d. Because improper instructions were given to the Jury on behalf of the plaintiff.

4th. Because proper instructions asked for by said defendants severally, were refused.

5th. Because proper instructions asked for by each of said defendants were modified and changed by the Court, by the addition of the words in brackets, at the end of the instruction given for the defendants.

6th. Because the verdict of the Jury was not warranted by the evidence, but was against the evidence in the case.

7th. Because the Court refused to instruct the jury to find for said Foss and said Carver, respectively, as in case of a non-suit.

8th. Because the jury should, from the evidence in the case, have found a verdict in favor of said defendants and each of them.

And afterwards, at the November Term, 1863, of said Court, the said motion was *pro forma* overruled, and the said Foss and Carver then and there severally excepted to the ruling of the Court, refusing a new trial in said case.

Thereupon the Court rendered a judgment against the said Defendants, upon the verdict of said jury, and in said judgment, included and allowed interest upon said verdict from the time of its rendition to the time of said entry of judgment, to which allowance of interest said Defendants then and there excepted.

And thereupon the said Defendants, Robert H. Foss and Benjamin F. Carver, by their counsel, then and there severally prayed the Court to allow this, their bill of exceptions in said cause, which is done accordingly.

ERRORS ASSIGNED ON BEHALF OF FOSS AND CARVER, PLAINTIFFS IN ERROR.

1. That the Court below erred in overruling the motions of said Foss and Carver for a new trial, and in arrest of judgment; but should have granted the same for the reasons then and there assigned.

2. That the judgment entered in the Court below against the plaintiffs in error, is erroneous in this: that the evidence introduced in said cause upon the trial thereof, was not sufficient to make out said action or to support said judgment.

3. That upon the evidence, the verdict and judgment and each of them, should have been for the Plaintiffs in Error, and not for the Defendants in Error.

4. That upon the evidence, the Defendant in Error was only entitled to nominal damages, if to anything.
5. That said judgment is contrary to the law of the case.
6. That it is contrary to, and unsupported by the evidence therein.
7. That it is otherwise erroneous and void.

135

Robert H. Cross et al
as
The City of Chicago

Abstract

Filed April 18, 1864
J. Selamson

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 21st day of
October 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 Seventh

Present, The Honorable

John M. Theron Chief Justice of the }
Superior Court of Chicago. }

Van H. Higgins } Judges.
Grant Goodrich }

Joseph O'Moy Prosecuting Attorney.

Anthony C. Hessing Sheriff of Cook County.

Attest,

James B. Carter Clerk.

Page 1.

Complaint of James B. Carter
of the County of Cook and State of Illinois, against
John M. Theron, Chief Justice of the Superior Court of Chicago,
and Van H. Higgins and Grant Goodrich, Judges of said Court,
for damages and costs. In allomys,
filed in the Clerk's Office of said Court, in
Pursuance of a Commission, which is in Words
and Figures following to Wit:

State of Illinois }
County of Cook } 00

Superior Court of Chicago
Of the September Term A.D. 1861

The City of Chicago
vs

Isabella Lind
Robert H. Stoo.
Alexander H. Stead
Benjamin H. Carver.

2.

The Clerk of said Court
will issue a summons in the above cause directed
to the Sheriff of Cook County in a plea of debt
for one hundred thousand dollars, returnable
at the September Term of said Court A.D. 1861.
To the damage of the Plaintiffs of seventy
thousand dollars

Ira H. Buell. } Plaintiffs
B. A. Ayer } Attorneys

To

Walter Kimball Esq. Clerk

Chicago August 31st 1861

I do certify that on the day and year
above said I have issued out of the said Court

office of said Court the Peoples Right of Summons
in debt which calls the return of the Sheriff
thereon in Writs and process following to wit.
State of Illinois }
County of Cook. } 100

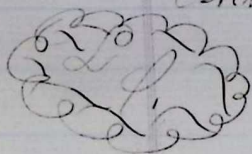
The People of the State of Illinois to the
Sheriff of said County greeting.

3.

It commands you that you
summon before said Court Robert A. Cross, Alexander
H. Mead, & Benjamin B. Carver, if they shall
be found in your County, personally to be, and
appear before the Superior Court of Chicago of
said County, on the first day of the next term
thereof to be holden at the Court House in Chi-
cago in said County, on the first Monday of
September next to answer unto The City of
Chicago of a plea that they render to the
said Plaintiffs One hundred Thousand Dollars
and — cents which they owe to and unjustly
detain from it to the damage of the said Plain-
tiff as is said in the form of Severally Thousand
Dollars.

And that you then and there do this with an
endorsement thereon in what manner you shall have
executed the same.

Witness my hand and the Seal of said Court at
Chicago this 22nd day
of August A.D. 1861. Walter Kimball Clerk



(Enforcement and return of Sheriff)

Served by reading this writ to the within named defendants Sylvester Smith on the 22nd day of August instant Benjamin D. Leavitt on the 23rd day of August inst. inst. and Alexander D. Deane on the 28th day of August 1861. The other within named defendant not found in my County on the 31st day of August 1861.

Anthony C. Messing Sheriff
By John W. Nelson, Deputy,

And afterwards to wit on the seventh,
day of September in the year aforesaid, the
said City of Chicago by Ira H. Baell and
B. J. Ayer its attorneys filed in the said Court
office of said Court its Declaration which
is in and follows following to wit,

Superior Court of Chicago
of the September Term A.D. 1861.

State of Illinois }
County of Cook } ss.

The City of Chicago a
municipal corporation in said County of Cook
duly incorporated organized and established
under and by virtue of the laws of the said
State of Illinois Plaintiff in this suit by
Ira H. Buell and Benjamin F. Ayer its
attorneys complains of Silvestre Lima &
Robert H. Foss Alexander H. Stead and
Benjamin F. Carver defendants in this suit
who have been summoned to answer unto the
said City of Chicago of a plea that they
render to the said Plaintiffs the sum of
one thousand thousand Dollars of lawful
money of the United States of America
which they owe to and unjustly detain
from said Plaintiffs

1st Count. For that whereas heretofore to wit on
the first day of May A.D. 1860 at Chicago
in said County of Cook the said Silvestre
Lima was duly elected to the office of Mayor

Commissioners for the West. Sewerage District
of the City of Chicago for the term of three
years made and by virtue of an act of the
General Assembly of the State of Illinois entitled
"an act to incorporate a Board of Sewerage
Commissioners for the City of Chicago" approved
on the Twentieth day of February A.D. 1855.
and afterwards to wit on the Seventh day of May
A.D. 1860. at Chicago in said County of
Cook the said Silvester and took and sub-
scribed the oaths prescribed by law. and after-
wards to wit on the Twenty third day of May
A.D. 1860. at Chicago in said County of Cook
the said defendants by their certain writing
obligatory sealed with their seals. and now
to the Court here shown the date whereof
is a certain day and year above named to
wit the twenty third day of May A.D. 1860
acknowledged themselves to be held. and firmly
bound unto the said City of Chicago in the
pende sum of one thousand Three hundred and Dollars
above demanded, for the payment of
which sum of money well and truly to be
made they bound themselves their heirs
executors and administrators jointly
and severally: which said writing obligatory
was and is subject to a certain condition
hereunder written whereby after receiving

to the effect following to wit that whereas
the said Sylvester Lind was duly elected to
the office of sewerage Commissioner for the West
District of the City of Chicago for the term of three
years at an election held on Tuesday the first
day of May A.D. 1860. under and by virtue of an
act of the General Assembly of the State of Illinois
entitled "an act to incorporate a board of sewerage
Commissioners for the City of Chicago" approved
February 14th 1853. and whereas the said Sylvester
Lind has accepted said office it was provided
that if the said Sylvester Lind should well
and faithfully perform his duties as such
Commissioner and should well and truly &
appropriate account for and pay over all
moneys and funds coming to his hands
or control by virtue of the provisions of the
act aforesaid, then the said obligation &
should be void otherwise to be and remain in
full force and effect. and the said Plaintiffs
aver that the said writing obligatory with
the endorsement aforesaid did remain in full
force and effect on the twenty third day
of May A.D. 1860 at Chicago in said
County of Cook delivered to and lodged with
the City Clerk of the said City of Chicago
as the official bond of the said Sylvester Lind
as sewerage Commissioner for the West District

District of the City of Chicago by the defendants and afterwards took on the first (cent) day of December A.D. 1860. at Chicago in said County of Cook. was duly accepted and approved by the Common Council of said City, and the Plaintiff further avers that from the time of the delivery of the said writing obligatory as hereinbefore mentioned until and at and after the misconduct of the said Forestor & Lind as Sewerage Commissioner aforesaid hereinafter complained of the said Forestor & Lind took upon himself to discharge the duties of and was then and there Sewerage Commissioner for the West Sewerage District of said City of Chicago pursuant to the provisions of the act aforesaid and so & continued to be such Sewerage Commissioner until the first day of May A.D. 1861. and as such Commissioner was held and bound to the faithful observance and discharge of all the duties obligations and requirements in the aforesaid act prescribed, yet the said Plaintiff in fact avers that the said Forestor & Lind did not well and faithfully perform the duties of his said Office a trust and well and truly appropriate account for and pay over all moneys and funds coming to his hands a control

by virtue of the provisions of the act aforesaid during his said term of office but he said person said neglected and failed in various instances so to do, and during the time he held said office and after his acceptance thereof and after the delivery of the said writing obligatory aforesaid, and before the expiration of his said term of office committed divers & breaches of the said recited condition of the said writing obligatory.

1st Breach and first in time, that it is provided by Section Fifty one of the aforesaid act, entitled "an act to incorporate a Board of Sewerage Commissioners for the City of Chicago" in substance as follows to wit: "no member or officer of said Board, nor any member of the Common Council shall either directly or indirectly receive any interest or profit whatsoever on account of the deposit of any of the funds belonging to the said Board, nor shall any member or officer of the said Board or any member of the Common Council either directly or indirectly make use of or know any of the funds of said Board or of the said said Sewerage funds for his own private benefit or advantage. The funds of said Board remaining on hand shall at all times until disposed of be kept deposited in such

place or places of deposit as shall be an-
order of said Board be directed which order
shall be entered on the records of said Board
Provided however That such place or places
of deposit shall first be approved by the Common
Council and provided further That whenever
the said Common Council shall pass a reso-
lution disapproving of such place or places of
deposit it shall be the duty of said Board forth-
with to select other place or places of deposit
for said funds such as shall be approved
by the said Common Council, and further
of the Comptroller or any of the Officers of
said Board shall directly or indirectly re-
ceive or appropriate for his own use or benefit
any of the funds, money or property of the said
Board, or of the said sinking fund or any
of the interest thereon or shall take pledge
or borrow any of the said funds or pro-
perty of said Board or of the said sinking
fund for his own use or benefit, such Com-
ptroller or such Officer of said Board
shall be deemed guilty of embezzlement and
shall be liable to indictment, and on conviction
thereof shall be fined not exceeding one thousand
Dollars or imprisoned not exceeding one year
in the County Jail" yet the said Plaintiff
in fact avers that the said Robert Lind

after the said Twenty third day of May
A.D. 1860. until on the last day of June, A.D.
1860. and on divers other days and times between
that day and the first day of May A.D. 1861
while he was such Swearage Commissioner
as aforesaid and a member of said board of
Swearage Commissioners and after the delivery
of the writing obligatory aforesaid and
before the expiration of his said term of office
at Chicago in said County of Cook did
unlawfully and contrary to the above recited
provisions of the aforesaid act make use of
receive: and appropriate for his own private
use benefit or advantage divers sums of
money belonging to the said board of
Swearage Commissioners amounting in the
whole to a large sum of money to wit
to the sum of Fifty Thousand Dollars of
lawful money of the United States of
America which said sum of money the
said Oliver W. Smith has hitherto retained
and wholly neglected and refused to account
for, refund or pay over, either to the said
Board of Swearage Commissioners or to the
City of Chicago or unto the treasury thereof
or to any other clerk or other person or
persons entitled to receive the same al-
though he has been often requested so to do

to wit on the twenty first day of August, A.D.
1861. at Chicago in said County of Cook
but hath thereon wholly failed and made
default, and the said sum of money remain-
ing received and appropriated by the said
Trustee Ltd as aforesaid is still wholly
unpaid & unsatisfied contrary to the form
and effect of the said condition of the
said Writing obligatory to wit at Chicago
in said County of Cook.

13 23rd Dec. 1861. It is hereby certified that the said Trustee
Ltd after the said twenty third day of
May A.D. 1860 to wit on the first day of June
A.D. 1860 and on divers other days and
times between that day and the first day
of May A.D. 1861 while he was such
Juror Commissioner as aforesaid and as
such Commissioner, and after the delivery of
the writing obligatory aforesaid and before
the expiration of his said term of office
at Chicago in said County of Cook had
and received for and on account of the
said Board of Juror Commissioners &
created and established by the aforesaid
act entitled "an act to incorporate a
Board of Juror Commissioners for the
City of Chicago" divers sums of money
amounting in the whole to a large sum

of money to wit the sum of one million dollars
 of lawful money of the United States of
 America which it was his duty to deposit
 hold, appropriate account for, disburse
 and pay over, according to the provisions of the
 act, aforesaid, yet the said Florence Lind
 disregarding the provisions of the said act
 and in wilful violation thereof did after-
 wards to wit on the first day of June, A.D.
 1860. and on divers other days and times between
 that day and the first day of May A.D. 1861 at
 Chicago in said County of Cook unlawfully make
 use of receive and appropriate for his own private
 use, benefit or advantage divers sums of money
 parcels of the said sum of one million Dollars
 so had and received by him as aforesaid amount-
 ing in the whole to a large sum of money
 to wit the sum of Fifty Thousand Dollars
 and the said Florence Lind has hitherto
 retained the said last mentioned sum of
 money, and wholly neglected and refused to ac-
 count for, refund or pay over the same, or
 any part thereof, either to the said Board of
 Sewerage Commissioners or to the City of
 Chicago or unto the Treasury thereof or to
 any officer thereof or other person or
 persons entitled to receive the same although
 he has been requested so to do

twenty first day of August A.D. 1861. at Chicago
in said County of Cook, but having then wholly
failed and made default. and the said sum
of money so had and received and so made
use of and appropriated by the said Floreste Lima
as aforesaid is still wholly unpaid and unsatis-
fied Contrary to the form and effect of the said
Enaction of the said Acting obligatory to wit. at
Chicago in said County of Cook.

J. P. Quack.

15-
Shedly in this. that within one year from
the said twenty third day of May A.D. 1860
and while the said Floreste Lima was such
Sewerage Commissioner as aforesaid and after
the delivery of the said Acting obligatory, as
hereinbefore mentioned, and before the expiration
of his said term of office there came into
his hands as such Commissioner at Chicago
in said County of Cook, divers sums of
money amounting in the whole to a large
sum of money to wit to the sum of fifty
thousand Dollars lawful money of the
United States of America belonging to the
said Board of Sewerage Commissioners &
created and established by the aforesaid act
entitled "an act to incorporate a Board of
Sewerage Commissioners for the City of Chicago"
and the said sum of money remained in
his hands as such Commissioner at the ex-

piration of his said Com of Office, and
the said Secretar said then and there wholly
failed neglected, and refused to account
for appropriate and pay over the same or
any part thereof either to the said Board
of Sewerage Commissioners as he was bound
to do by law. and the duties of his said Office
and hath ever since retained said sum of
money, and converted the same to his
own use and hath not nor would although
often requested to wit on the twenty first
day of August. A.D. 1861. at Chicago in
said County of Cook accounts for and
paid over the same or any part thereof
either to the said Board of Sewerage Com-
missioners or to the City of Chicago or into
the Treasury thereof, or to any Officer thereof
or other person or persons entitled to receive
the same but hath therein wholly ~~neglected~~
failed and made default. and the said
sum of money so had and received by
the said Secretar said as aforesaid is
still wholly unpaid and unsatisfied &
contrary to the form and effect of the said
condition of the said meeting obligatory to
wit at Chicago in said County of Cook
on the twenty first day of August 1861
after the delivery
of the said meeting obligatory and before

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Beach

the expiration of the said term of office to
 wit on the first day of June. A.D. 1860. and
 on divers other days. and times between &
 that day and the first day of May A.D. 1861
 at Chicago in said County of Cook. the said
 Director Ltd. being then and there at the said
 several times when &c. such Sewerage Com-
 missioner as aforesaid and as such Com-
 missioner charged with the safe keeping trans-
 fer and disbursement of the moneys belonging
 to the said Board of Sewerage Commissioners
 created and established by the aforesaid
 act. entitled 'an act to incorporate a Board
 of Sewerage Commissioners for the City of Chicago'
 unlawfully and fraudulently did convert
 to his own use. and embezzle divers portions
 of the said moneys. intrusted to him the said
 Director Ltd. for safe keeping transfer and
 disbursement amounting in the whole. to a
 large sum of money to wit the sum of &
 fifty Thousand Dollars belonging to said
 Board of Sewerage Commissioners. and hath
 not. nor would although often requested
 to wit on the twenty first day of August. A.D.
 1861. at Chicago in said County of Cook &
 accounted for and paid over the same
 or any part thereof. either to the said Board
 of Sewerage Commissioners or to the City of Chicago.

or into the treasury thereof or to any officer
thereof or other person or persons entitled to
receive the same. but hath therein wholly
failed and made default and the said
sum of money so converted to his own use
and embezzled by the said Edward Linn
as aforesaid is still wholly due and
unpaid contrary to the form and effect
of the said condition of the said writing
obligatory to wit at Chicago in said County
of Cook.

5th Breach. Proof in this that the said Edward Linn
after the delivery of the said Writing obligatory
and before the expiration of this said term
of office to wit on the fifteenth day of January
A.D. 1861 at Chicago in said County of Cook
wherein he was such surrogate Commissioner
as aforesaid and as such Commissioner did
receive and take into his possession certain
valuable securities belonging to the said
Board of Sewerage Commissioners created
and established by the aforesaid act en-
titled "an act to incorporate a Board
of Sewerage Commissioners for the City of
Chicago" to wit forty Sewerage bonds
for the payment of one Thousand dollars
each and of the value of one Thousand
Dollars each executed by the Sewerage &

Commissioners of said City of Chicago under
 their hands and the seal of said Board
 in conformity with and by the authority
 of an act of the General Assembly of the
 State of Illinois entitled "an act to incorpo-
 rate a Board of Sewerage Commissioners for
 the City of Chicago" approved February
 Nineteenth A.D. 1855 authorizing said
 Commissioners to borrow a sum not exceed-
 ing five hundred thousand Dollars
 and of an act of the General Assembly
 of the State of Illinois approved February four-
 teenth, A.D. 1859, entitled "an act in
 addition to an act entitled 'an act to
 incorporate a Board of Sewerage Commissioners
 for the City of Chicago' approved February
 14th 1855" authorizing said Commissioners
 to borrow a further sum of not exceeding
 five hundred thousand Dollars bearing
 date the first day of July A.D. 1859 and
 due and pay payable as expressed and
 declared therein from the said City of
 Chicago to the Board of Sewerage Commissioners
 of said City or bearer on the first day of
 July A.D. 1884 at the American Exchange
 Bank in the City of New York with in-
 terest at the rate of seven per cent per
 annum payable semi annually on the

first days of July and January in each year on the presentation and surrender of the coupons to the said bonds annexed, which said Bonds had been at a meeting of the Common Council of said City of Chicago duly held on the third day of March A.D. 1860. duly authorized to be issued by a vote of a majority of all the aldermen of said City of Chicago by law authorized to be elected and had been afterwards to wit on the fifth day of March A.D. 1860. marked "approved" in conformity with the act of the General Assembly of the State of Illinois above mentioned by the Mayor and Clerk of said City of Chicago man their hands and the corporate seal of said City and the Plaintiff avers that the said Silvermaster did afterwards and whilst he was such Sewerage Commissioner as aforesaid and before the expiration of his said term of office to wit on said fifteenth day of January A.D. 1861. at Chicago in said County of Cook in violation of the duties of his said office and contrary to the provisions of the aforesaid acts of the General Assembly of the State of Illinois unlawfully and fraudulently did sell negotiate transfer and convert to his own use the said valuable securities above mentioned, and from thence hitherto has wholly neglected and refused

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to account for and pay over the value or
proceeds of the said securities or any portion
thereof, either to the Board of Sewerage Commissioners
or to the City of Chicago or into the Treasury thereof
or to any officer thereof or other person or persons
entitled to receive the same. although he has been
often requested ^{on the 11th inst. first day of August, A.D. 1861} to do so at Chicago in
said County of Cook, but hath therein wholly
failed and made default, contrary to
the form and effect of the said Condition of
the said writing obligatory to wit at Chicago
in said County of Cook. and the said
securities are still outstanding and
uncancelled and the said City of Chicago
by reason of the said misconduct of the said
Peterson Lind has become liable & is held &
firmly bound for the payment of the whole
amount of said securities to the holders thereof
at maturity. Wherefore and by reason
of the said misconduct of the said Peterson
Lind Sewerage Commissioners as against
the said Plaintiff was and is damaged
to the amount of the said securities and
the interest thereon to wit the sum of fifty
thousand Dollars.

6th March.

Sixthly in this, that the said Peterson Lind after
the delivery of the said writing obligatory and
before the expiration of his term of Office to wit

on the fifteenth day of January A.D. 1861
 at Chicago in said County of Cook whilst
 he was such Sewerage Commissioner as
 aforesaid and as such Commissioner did
 receive and take into his possession certain
 valuable securities belonging to the Board
 of Sewerage Commissioners to wit forty
 Sewerage bonds for the payment of one
 thousand Dollars each and of the value
 of one thousand Dollars each executed
 by the said Sewerage Commissioners of said
 City of Chicago under their hands and the
 seal of said board in conformity with and
 by the authority of an act of the General Assem-
 bly of the State of Illinois entitled "an act
 to incorporate a Board of Sewerage Commis-
 sioners for the City of Chicago" approved
 on the fourteenth day of February A.D. 1855
 authorizing said Commissioners to borrow
 a sum not exceeding five hundred &
 thousand Dollars. and of an act of the
 General Assembly of the State of Illinois
 approved on the fourteenth day of February
 A.D. 1859. entitled "an act in addition to
 an act to incorporate a Board of Sewerage
 Commissioners for the City of Chicago app-
 roved February 14th 1855" authorizing said
 Commissioners to borrow a further sum

not exceeding five hundred Thousand
dollars, bearing date the first day of July
A.D. 1859. and due and payable as expressed
and declared therein from the City of Chicago
to the Board of Sewerage Commissioners of
said City or bearer on the first day of July
A.D. 1864, at the American Exchange Bank
in the City of New York with interest
at the rate of seven per cent. per annum
payable semi annually on the first days
of July and January in each year on
the presentation and surrender of the
coupons to the said bonds annexed, which
said Bonds had been at a meeting of the
Common Council of said City of Chicago
duly held on the third day of March A.D.
1860 duly authorized to be issued by a vote of
a majority of all the aldermen of said
City of Chicago by law authorized to be
elected and had been afterwards to wit
on the fifth day of March A.D. 1860. made
"Approved" in conformity with the act
of the General Assembly of the State of
Illinois above mentioned by the Mayor and
Clerks of said City of Chicago under
their hands and the corporate seal of said
City, and the Plaintiff avers that the said
defendant Lind afterwards and whilst he

was such surage. Commissioner as aforesaid
and before the expiration of his said term
of office to wit on the said fifteenth day
of January A.D. 1861. at Chicago in said
County of Cook in violation of the duties
of his said office and contrary to the provisions
of the aforesaid acts of the General assembly
of the State of Illinois unlawfully and fraud-
ulently did take, pledge, and transfer, and
did embezzle and convert to his own use
the said valuable securities above mentioned
and from thence hitherto has wholly neglected
and refused to surrender the same, or to ac-
count for and pay over the value or amount
thereof either to the said Board of Sewerage
Commissioners or to the City of Chicago or to
any other thereof or any other person or
persons entitled to receive the same, although
he has been often requested to wit, on the
twenty first day of August, A.D. 1861. at
Chicago in said County of Cook but
has therein wholly failed and made
default. Contrary to the form and effect
of the said enactment of the said meeting
obligatory to wit at Chicago in said
County of Cook, and the said se-
curities are still outstanding and
uncancelled and the said City of Chicago

by reason of the said mismanagement of the said Olevester Lind has become liable and is held and firmly bound for the payment of the whole amount of said securities to the holders thereof at maturity.

Wherefore and by reason of the said mismanagement of the said Olevester Lind the said Plaintiff was and is damaged to the amount of the said securities and the interest thereon to wit the sum of fifty thousand dollars.

7th Bench Seventhly, in this that it is an effect & provided by section fifty one of the aforesaid act entitled "an act to incorporate a Board of Sewerage Commissioners for the City of Chicago" that the funds of said Board of Sewerage Commissioners remaining on hand, shall at all times until disposed of, be kept deposited in such place or places of deposit as shall by an order of said Board be directed, which order shall be entered upon the records of said Board, provided however that such place or places of deposit shall first be approved by the Common Council of said City of Chicago and the Plaintiff avers that after the delivery of the said maturing obligatory

as herein before mentioned and whilst
 the said Silvestre Lind was such Juris-
 dge Commissioner as aforesaid and before
 the expiration of his said term of office
 to wit on the first day of June A.D. 1860
 and on divers other days and times between
 that day and the first day of May A
 D 1861 at Chicago in said County of
 Cook the said Silvestre Lind dis-
 regarding the above mentioned provision
 of the act aforesaid and in violation
 thereof and of the duties of his said
 office did as such Commissioner to
 wit, negligently and unlawfully
 permit, suffer, cause and procure
 divers sums of money belonging to
 said State of New York Commissioners
 then remaining on hand and undispensed
 of amounting in the whole to a large sum
 of money to wit the sum of fifty thousand
 Dollars of lawful money of the United
 States of America to be deposited and
 to remain and be kept deposited in
 the hands of and with Edward J. Litcham
 and John C. Ambler then partners in
 the business of Banking in said Chicago
 jointly negotiating under the firm name
 and style of E. J. Litcham & Co. and the

Plaintiffs further aver that no order was
ever made by the said Board of Sewerage
Commissioners and entered upon the records
of said Board directing or authorizing the
said moneys to be deposited and to remain
and be kept deposited with the said E. J.
Tuttham & Co. as aforesaid, nor was the
said place of deposit ever approved by
the Common Council of said City of Chicago.
But the said Silvestre Carelessly &
negligently, unlawfully, permitted &
suffered caused and procured the
said moneys to be so deposited and
to remain and be kept deposited
with the said E. J. Tuttham & Co. of his
own money and without any lawful
warrant or authority whatever, and the
plaintiffs further aver that afterwards
and while the said moneys above men-
tioned remained deposited with the said
E. J. Tuttham & Co. or any portion thereof had
been withdrawn from said firm or had
been transferred or agreed to be transferred
by said Board of Sewerage Commissioners or
any officer of said Board to the City &
Treasurer of said City of Chicago or to any
other person or persons entitled to receive
the same, and before the Common Council

of said City or the said City Treasurer
had been notified by the said Board
or by any officer thereof of said deposits
or any knowledge or information as to the
amount of such deposits had been communi-
cated to any other department or officer
of the said City of Chicago and before
the said Joseph Smith had acquitted
himself of his liabilities, duties and obli-
gations as such surety or commissioner
as aforesaid in that behalf to wit on
the sixth day of May A.D. 1861, the said
firm of C. J. Smith & Co and both
of the aforesaid members of said firm
failed in business, suspended payments
and became and were utterly insolvent
and unable to pay over or refund the
said money so deposited and kept de-
posited with them as aforesaid or any
portion thereof, and have from thence &
hitherto remained insolvent and unable
to pay over or refund the said money or
any portion thereof, and they have not
nor would they although often requested
to wit on the twentieth day of August A.
D. 1861 at Chicago in said County of
Cook paid over or refunded the same
or any portion thereof either to the

said Board of Chicago Commissioners
 or to the City of Chicago or into the
 treasury thereof, or to any officer thereof
 or other person or persons entitled to
 receive the same, but have therein
 wholly failed and made default, and
 the said sums of money so deposited &
 kept deposited with them as aforesaid
 are still wholly unpaid and unsatis-
 fied and the Plaintiff avers that by
 reason of the insolvency and inability
 of said firm and each of the members
 thereof as above mentioned, any suit
 that might be brought against said
 firm or either of the members thereof to
 recover the said sums of money or
 any portion thereof would be utterly fruit-
 less, and unavailing, of all of which
 the said defendants had notice to wit.
 on the twenty first day of August, A.D.,
 1861, at Chicago in said County of Cook.

Wherefore and by reason of the said
 Careless negligence and misconduct
 of the said Robert Lind Sewnager Com-
 missioner as aforesaid the said Plaintiff
 was and is damaged to the amount of
 said sum of fifty thousand dollars
 above mentioned to wit. at Chicago in said
 County of Cook.

5th Buach. Eighthly in this, that it was in effect provided by section fifty one of the act of the General Assembly of the State of Illinois approved on the Eighteenth day of February A.D. 1861 and entitled "an act to amend an act to amend the act entitled 'an act to reduce the law incorporating the City of Chicago and the several acts amending thereof into one act and to amend the same' approved February 14th 1857 and to reduce the several acts amending of said act into one act and to amend the act entitled 'act to incorporate the Chicago City Hydraulic Company' approved February 15, 1857 and to reduce the several acts amending of said last mentioned act into one act and to amend the act entitled 'an act to incorporate a Board of Sewerage Commissioners for the City of Chicago' approved February 14, 1860" that all moneys then in the hands of the said Sewerage Commissioners of said City of Chicago then Treasurer then officers or employees belonging to the Sewerage Fund should be forthwith paid over to the City & Treasurer of said City of Chicago to the Credit of the said Sewerage Fund and that receipts therefor should be filed

with the City Comptroller and the Board of Public Works, and the plaintiffs aver that the aforesaid act was made and approved and went into legal effect after the delivery of the said Public obligatory heretofore mentioned, and whilst the said Joseph Smith was such Sworn Commissioner as aforesaid and whilst he was the acting Treasurer of said Board of Sworn Commissioners and before the expiration of his said term of office to wit on the said Eighteenth day of February A.D. 1861, and the plaintiffs aver that at the date last mentioned there were moneys belonging to said Sworn Commissioners deposited to the credit of the said Joseph Smith as Treasurer of said Board of Sworn Commissioners with Edward J. Parham and John C. Ambler then partners in the business of banking at said Chicago in good faith and jointly negotiating under the firm name and style of E. J. Parham & Co. amounting in the whole to a large sum of money to wit the sum of fifty thousands and Dollars of lawful money of the United States of America which said moneys it was the duty of the said Joseph Smith as such Commissioner then

and then to have transferred, and paid over to the City Treasurer of said City of Chicago to the credit of the said Sewerage fund. Yet the said Sylvester Lord whilst he was such Commissioner, as aforesaid disregarding the provisions of the aforesaid act and in violation thereof and of the duties of his said Office did not then and there transfer and pay over the said moneys, to the City Treasurer but carelessly, negligently and unlawfully permitted, suffered caused and procured the said moneys to remain, and to be kept deposited into the said E. J. Lenthum & Co to his credit as Treasurer aforesaid for a long space of time, thereafter and until and at and after the failure and insolvency of the said E. J. Lenthum & Co hereinafter mentioned and the plaintiff further avers that afterwards and whilst the said moneys aforesaid mentioned were so carelessly negligently and unlawfully permitted suffered caused and procured to remain and to be kept deposited into the said E. J. Lenthum & Co as aforesaid and these said moneys or any portion thereof had been transferred or paid to be transferred by the said Sylvester Lord or by said

Board of Sewage Commissioners or any officer of said Board to the City Treasurer of said City, or to any other person or persons, entitled to receive the same and before the Common Council of said City or the said City Treasurer had been notified by said Board of Sewage Commissioners or by any member or officer thereof of said deposits or any knowledge or information as to the amount of such deposits had been communicated to any other department or officer of said City of Chicago and before the said Sylvester Lind had acquitted himself of his duties and obligations as such Commissioner as aforesaid in that behalf took on the sixth day of May A.D. 1861, the said firm of E. J. Smitham & Co. and both of the aforesaid members of said firm failed to timely suspend payment and became, and were actually insolvent, and unable to pay over or refund the said money so deposited with them as aforesaid or any portion thereof, and from thence forth have remained insolvent and unable to pay over or refund the said money or any portion thereof, and they have not nor would they, although often requested

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to wit on the twentieth day of August
A.D. 1861. at Chicago in said County of
Cook. paid over & refunded the same
or any portion thereof either to the City
of Chicago or into the Treasury thereof
or other person or persons entitled to receive
the same. but have therein wholly failed
and made default. and the said moneys
are still wholly unpaid and unsatisfied
and the Plaintiffs aver that by reason
of the insolvency and inability of the said
firm of E & S Litcham & Co and both of
the members thereof above mentioned
any suit that might be brought ag-
ainst said firm or either of the members
thereof to recover the said moneys or
any portion thereof would be entirely
fruitless and unavailing of all of
which the said Defendants had notice
to wit on the twenty first day of August
A.D. 1861. at Chicago in said County
of Cook. Wherefore and by reason
of the said Carelessness negligence
and mis conduct of the said Peter
Lind Sewnago Commissioner aforesaid
said the said Plaintiffs were and are
damaged to the amount of said sum
of Eight Thousand Dollars above mentioned

to wit at Chicago in said County of
Cook.

35- And so the said plaintiffs in fact
say that the said Silvestro Lima did
not well and faithfully perform the
duties required of him by law as sewerage
commissioner for the West Sewerage
District of the City of Chicago aforesaid
and did not well and truly appropriate
account for and pay over all moneys and
funds that came into his hands or control
by virtue of the provisions of the aforesaid
act entitled "an act to incorporate a
Board of Sewerage Commissioners for the City of
Chicago" and by reason of the nonperformance
by him the said Silvestro Lima of his duties
in that behalf the said City of Chicago
has been injured and an action hath
thereby accrued to the said City of Chicago
to demand and have of and from the said
Defendants the said sum of one hundred
thousand Dollars above demanded.

2^d Count

And whereas also the said Defendants after
wards to wit on the twenty third day of May
A.D. 1860 at Chicago in said County of Cook
by their Certain other writing obligatorily
bound into their seals and now to be continued

shown the date whereof is the day and year
aforesaid acknowledged themselves to be held
and firmly bound unto the said City of
Chicago in the penal sum of one Thousand
Dollars above demanded for the
payment of which sum of money well and
truly to be made, they bound themselves &
their heirs executors, and administrators &
jointly and severally which said obliging
obligation was and is subject to a certain
Condition the same matter whereby after
reciting to the effect following to wit,

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That whereas the said Silvestre Lind
was duly elected to the Office of Sewerage &
Commissioner for the West District of
the City of Chicago for the term of three
years at an election held on Tuesday
the first day of May A.D. 1860 and
and by virtue of an act of the General
assembly of the State of Illinois entitled
"An act to incorporate a Board of sewer-
age Commissioners for the City of Chicago"
approved February 14th 1855, and whereas
the said Silvestre Lind has accepted a
said Office it was provided that if
the said Silvestre Lind should well
and faithfully perform his duties as
such Commissioner and should well

and truly appropriate account, for and
pay over all moneys and funds coming to
his hands or control by virtue of the
provisions of the act aforesaid then the
said obligation should be void otherwise
to be null and void in full force and effect, and
the said Plaintiff avers that the said
writing obligatory with the condition aforesaid
thereunder written was afterwards
to wit, on the said twenty third day of
May A.D. 1860 at Chicago in said
County of Cook delivered to the City
Clerk of said City of Chicago at the Office
and of the said Silvestre Lina as
Sewerage Commissioner for the West
Sewerage District of the City of Chicago
by the Defendants and afterwards to wit
on the seventeenth day of December A
D 1860 at Chicago in said County of
Cook was presented to, and duly accepted
and approved by the Common Council of
said City, and was then and there lodged
with the said City Clerk and placed
on file in his Office and thereupon the
said Silvestre Lina then and from
thenceforth made and at and after
the misconduct of the said Silvestre
Lina as Sewerage Commissioner aforesaid

hereinafter complained of took upon himself to discharge the duties of and was then and then Sewerage Commissioner for the West Sewerage District of the said City of Chicago and so continued to be such Sewerage Commissioner until the first day of May A.D. 1861, and as such Commissioner was held and found bound to the faithful observance and discharge of all the duties obligations, and requirements in the aforesaid act prescribed, yet the said Plaintiff in fact avers that the said Joseph Smith did not well and faithfully perform the duties of his said office & trust, and will and truly appropriate account for and pay over all money and funds coming to his hands or control by virtue of the provisions of the act aforesaid during his said term of office & but the said Joseph Smith neglected and failed in several instances so to do and during the time he held said office and after his acceptance thereof and after the delivery acceptance and approval of the said writing obligatory as aforesaid and before the expiration of his said term of office committed serious breaches of the said recited condition of the said writing obligatory.

Busch. And just in this that it is provided by section fifty one of the aforesaid act entitled "an act to

incorporate a Board of Sewerage Commissioners
for the City of Chicago "in substance as follows. To-wit:
"no member or officer of said Board, and no mem-
ber of the Common Council shall either directly or
indirectly receive any interest or profit whatever
on account of the deposit of any of the funds be-
longing to the said Board, nor shall any member or
officer of the said Board, or any member or officer
of the Common Council either directly or indirectly
make use of or borrow any of the funds of said
Board or of the said sinking fund, for his own
private benefit or advantage. The funds of said
Board remaining on hand shall at all times &
until disposed of be kept deposited in such
place or places of deposit as shall by an order
of said Board be directed which order shall be
entered on the records of said Board. Provided
however That such place or places of deposit
shall first be approved by the Common Council
and Provided further That whenever the said
Common Council shall pass a resolution disappro-
ving of such place or places of deposit, it shall
be the duty of said Board forthwith to select
other place or places of deposit for said funds
such as shall be approved by the Common
Council, and if either of the Commissioners or
any of the officers of said Board shall di-
rectly or indirectly receive or appropriate

for his own use or benefit any of the funds
money or property of the said Board or of the
said sinking fund or any of the interest thereon
or shall take pledge or borrow any of the said
funds or property of said Board or of the said
sinking fund for his own use or benefit such
Commissioner or such officer of said Board shall
be deemed guilty of embezzlement, and shall
be liable to indictment and on conviction
thereof shall be fined not exceeding one thou-
sand Dollars or imprisoned not exceeding one year
in the County Jail." Yet the said Plaintiff in
fact avers that the said Charles Lind after
the said seventeenth day of December A.D. 1860
to wit on the eighteenth day of December A.D.
1860 and on divers other days and times between
that day and the first day of May A.D. 1861
at Chicago in said County of Cook while he was
Sewerage Commissioner as aforesaid and a
member of said Board of Sewerage Commissioners
and after the delivery acceptance and approval
of the said sinking obligatory aforesaid and
before the expiration of his said term of office
did unlawfully and contrary to the above cited
provisions of the act aforesaid, make use of &
receive and appropriate for his own private
use benefit or advantage divers sums of
money belonging to the said Board of Sewerage

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Commissions amounting in the whole to a large sum of money to wit the sum of fifty thousand dollars of lawful money of the United States of America which said sum of money the said Silvestro Lima has heretofore retained and wholly neglected and refused to account for refund or pay over + either to the said board of Sewerage Commissioners or to the City of Chicago or into the treasury thereof or to any Officer thereof or other person or persons entitled to receive the same although he has been often requested so to do to wit on the twenty first day of August A.D. 1861 at Chicago in said County of Cook. but hath therein + wholly failed and made default. and the said sum of money so made use of received and appropriated by the said Silvestro Lima as aforesaid is thus wholly unpaid and unsatisfied contrary to the form and effect of the said condition of the said Writing obligatory to wit at Chicago in said County of Cook

Quach. I remind in this that after the delivery acceptance and approval of the said writing obligatory and before the expiration of his said term of office to wit on the eighteenth day of December A.D. 1861 and on divers other days and times between that day and the first day of May A.D. 1861 at Chicago in said County of Cook the said Silvestro Lima being then and there at

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the said several times when as such commissioners as aforesaid and as such Commissioners charged with the safe keeping, transfer and disbursement of the moneys belonging to the said Board of Sewerage Commissioners created and established by the aforesaid act entitled "an act to incorporate a Board of Sewerage Commissioners for the City of Chicago" unlawfully and fraudulently did convert to his own use and embezzle divers portions of the said moneys intrusted to him the said Silvestre Lima for safe keeping transfer and disbursement amounting in the whole to a large sum of money to wit the sum of fifty thousand dollars of lawful money of the United States of America belonging to said Board of Sewerage Commissioners and hath not, nor would, although often requested to wit on the twenty first day of August A D 1861 at Chicago in said County of Cook & accounted for and paid over the same or any part thereof either to the said Board of Sewerage Commissioners, or to the City of Chicago or into the Treasury thereof or to any officer thereof or other person or persons entitled to receive the same, but hath therein wholly failed and made default, and the said sum of money so converted to his own use and embezzled by the said Silvestre Lima as aforesaid is still wholly due and unpaid.

contrary to the form and effect of the said
condition of the said writing obligatory to wit at
Chicago in said County of Cook.

3^d Breach

Kindly in this that the said Edward Lind
after the delivery acceptance and approval of
the said writing obligatory when before men-
tioned and before the expiration of his said term
of office to wit on the fifteenth day of January
A.D. 1861 at Chicago in said County of Cook
whilst he was such Sewerage Commissioner as
aforesaid and as such Commissioner did receive
and take into his possession certain valuable securities
belonging to the said Board of Sewerage Commis-
sioners to wit forty Sewerage Bonds for the payment
of one thousand dollars each and of the value
of one thousand dollars each executed by the sewer-
age Commissioners of said City of Chicago under
their hands and the seal of said Board in confor-
mity with and by the authority of an act of
the General Assembly of the State of Illinois en-
titled "an act to incorporate a Board of Sewerage
Commissioners for the City of Chicago" approved on the
fifteenth day of February A.D. 1855, authorizing said
Commissioners to borrow a sum not exceeding five
hundred thousand dollars and an act of the General
Assembly of the State of Illinois approved on the fourteenth
day of February A.D. 1859, entitled "an act in
addition to an act entitled 'an act to incor-

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for a Board of Sewerage Commissioners for the
City of Chicago: approved February 14th 1888
authorizing said Commissioners to borrow further
sum not exceeding five hundred thousand dol-
lars bearing date the first day of July A.D. 1889
and due and payable as expressed, and declare
them from the said City of Chicago to the Board
of Sewerage Commissioners of said City a loan
on the first day of July A.D. 1884, at the American
Exchange Bank in the City of New York with
interest at the rate of seven per centum per annum
payable semi annually on the first days of July
and January in each year on the presentation and
surrender of the Coupons to the said Bonds annexed
which said Bonds had been at a meeting of the
Common Council of said City of Chicago duly
held on the third day of March A.D. 1860 duly
authorized to be issued by a vote of a majority
of all the Aldermen of said City of Chicago
by law authorized to be elected and had been
afterwards to wit on the fifth day of March
A.D. 1860 marked "approved" in conformity with
the acts of the General Assembly of the State
of Illinois above mentioned by the Mayor and
Council of said City of Chicago under their
hands and the Corporate Seal of said City and
the Plaintiff avers that the said Charles L. Smith
afterwards and whilst he was such Sewerage

Commissioner aforesaid and before the expiration of his said term of office to wit on the said fifteenth day of January A.D. 1861 at Chicago in said County of Cook in violation of the duties of his said office and contrary to the provisions of the aforesaid act of the General Assembly of the State of Illinois, unlawfully and fraudulently did take dispose of and transfer and did embezzle and convert to his own use the said valuable securities above mentioned and from thence his duty has wholly neglected and refused to render the same or to account for and pay over the value or amount thereof either to the said Board of Sewerage Commissioners or to the City of Chicago or to any officer thereof or other person or persons entitled to receive the same. although he has been often requested to wit on the twenty first day of August A.D. 1861. at Chicago in said County of Cook but hath therein wholly failed and made default contrary to the form and effect of the said enactment of the said making obligatory to wit at Chicago in said County of Cook and the said securities are still outstanding and unencumbered and the said City of Chicago by reason of the said mismanagement of the said Foresta Lind has become liable and is held and firmly bound for the payment of the whole amount of said securities to the holders thereof

at maturity. Wherefore and by reason of the said misconduct of the said Silverter Linda the said Plaintiff was and is damaged to the amount of the said pecunies and interest therein to wit the sum of fifty thousand Dollars

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 vs. Buach

Annually in this to wit that it is in effect provided by section fifty one of the aforesaid act entitled "an act to incorporate a Board of Sewage Commissioners for the City of Chicago" that the funds of said Board of Sewage Commissioners remaining on hand shall at all times until disposed of be kept deposited in such place or places of deposit as shall by an order of said Board be directed which order shall be entered upon the records of said Board. Provided however that such place or places of deposit shall first be approved by the Common Council of said City of Chicago, and the Plaintiff avers that after the delivery acceptance and approval of the said writing obligation as herein before mentioned and whilst the said Silverter Linda was such Sewage Commissioner as aforesaid and before the expiration of his said term of office to wit on the eighteenth day of December A.D. 1860 and on several other days and times between that day and the first day of May A.D. 1861 at Chicago in said

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County of Cook the said Charles Lind disre-
 garding the above mentioned provision of the
 act aforesaid and in violation thereof and
 of the duties of his said office did as such
 Commissioner carelessly negligently, and un-
 lawfully permit said cause and procure-
 dures sums of money belonging to said
 Board of Sewerage Commissioners then remain-
 ing on hand unexpended of amounting in the
 whole to a large sum of money to wit the sum
 of fifty thousand Dollars of lawful money
 of the United States of America to be deposited
 and to remain and be kept deposited in
 the hands of and with Edward J. Smitham
 and John C. Ambler then partners in the
 business of banking at said Chicago jointly
 negotiating under the firm name, and style
 of E. J. Smitham & Co. and the plaintiff &
 further avers that no order was ever made by the
 said Board of Sewerage Commissioners and entered
 upon the records of said Board directing or
 authorizing the said moneys to be deposited
 and to remain and be kept deposited with the
 said E. J. Smitham & Co. as aforesaid nor
 was the said place of deposit ever approved
 by the Common Council of the said City of
 Chicago, but the said Charles Lind care-
 lessly negligently, and unlawfully permitted

suffered caused and procured the said moneys
to be so deposited and to remain and be kept de-
posited with the said E. J. Litcham & Co of their
own money and without any lawful warrant
or authority whatsoever and the plaintiff further
avows that afterwards and while the said
moneys above mentioned remained deposited
with the said E. J. Litcham & Co and before said
moneys or any portion thereof had been withdrawn
from said fund or had been transferred or issued
to be transferred by said Board of Sewerage Commis-
sioners or any officer of said Board to the
City Treasurer of said City of Chicago or to
any other person or persons entitled to receive
the same. and before the Common Council of
said City had been notified by the said
Board or by any officer thereof of said de-
posit or any knowledge or information as to
the amount of such deposit had been commu-
nicated to any other department or officer
of said City of Chicago and before the said
Devereux Lind had acquitted himself of his
liabilities, duties and obligations as such
sewerage Commissioner in that behalf to wit
on the sixth day of May A.D. 1861. the said firm
of E. J. Litcham & Co. and both of the aforesaid
members of said firm failed in business, sus-
pended payments and became and were utterly

insolvent and unable to pay over or refund the
said moneys so deposited and kept deposited
with them as aforesaid, or any portion thereof
and have from thence hitherto remained insol-
vent, and unable to pay over or refund the said
moneys, or any portion thereof, and they have not
nor would they, although often requested to do so
on the twentieth day of August, A.D. 1861, at
Chicago in said County ^{of Cook}, paid over or refunded
the same or any portion thereof either to the
said Board of Sewerage Commissioners or to
the City of Chicago or into the Treasury thereof,
or to any Officer thereof or other person or per-
sons entitled to receive the same, but have
therein wholly failed and made default
and the said sums of money so deposited
and kept deposited with them as aforesaid
are still wholly unpaid and undis-
bursed, and the plaintiffs aver, that by reason
of the insolvency and inability of said firm
and each of the members thereof as above
mentioned any sum that might be brought
against said firm or either of the members
thereof to recover the said sums of money
or any portion thereof would be entirely
fruitless and unavailing, of all of which
the said Defendants had notice to wit
on the twentieth day of August, A.D. 1861.

at Chicago in said County of Cook.
 Whence and by reason of the said Careless
 negligence and misconduct of the said Forest
 and Lumber Commission as aforesaid, the said
 plaintiff was and is damaged to the amount
 of said sum of fifty thousand Dollars. now
 mentioned to wit at Chicago in said
 County of Cook.

5th Buach.

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Proffely in this that it was in effect provided
 by section fifty one of the act of the General
 assembly of the State of Illinois approved on
 the Eighteenth day of February A.D. 1851. and
 entitled "an act. to amend an act. to amend
 the act. entitled 'an act. to reduce the law
 incorporating the City of Chicago and the
 several act amendatory thereof into one act. and
 to amend the same. approved February 14th
 1837. and to reduce the several act amendatory
 of said act. into one act. and to amend the act
 entitled 'act to incorporate the Chicago City
 Hydraulic Company' approved February
 15 1851. and to reduce the several act into
 one act. and to amend the act. entitled 'an
 act to incorporate a Board of sewerage
 Commissioners for the City of Chicago approved
 February 14 1855" - that all money then
 in the hands of the said Sewerage Commission
 of said City of Chicago. due treasurer

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other officers or employees, belonging to the
Sewerage Fund should be forthwith paid over
to the City Treasurer of said City of Chicago to
the Credit of the said Sewerage Fund, and
that receipts therefor should be filed with the
City Comptroller and the Board of Public Works,
and the Plaintiff avers that the aforesaid
act was passed and approved and went into legal
effect after the delivery acceptance and approval
of the said Acting Mayor hereinafter men-
tioned and whilst the said Edward Lind was
such Sewerage Commissioner as aforesaid and
whilst he was acting Treasurer of said Board
of Sewerage Commissioners and before the ex-
piration of his said term of office to wit. on the
said eighteenth day of February A.D. 1861.
and the Plaintiff avers that at the date last
mentioned there were monies belonging to
said Sewerage Fund deposited to the credit
of the said Edward Lind as Treasurer of said
Board of Sewerage Commissioners with Edward
Litcham and John C. Ambler then partners
in the business of Banking at said Chicago
on good credit, and jointly negotiating &
under the firm name and style of E. J.
Litcham & Co amounting in the whole
to a large sum of money to wit the sum
of fifty thousand dollars of lawful

money of the United States of America which said
money it was the duty of the said Collector
as such Commissioner then and there to have trans-
ferred and paid over to the City Treasurer of said
City of Chicago to the credit of the said Sewerage
fund. Yet the said Collector said whilst he
was such Sewerage Commissioner as aforesaid &
disregarding the provisions of the aforesaid act. and
in violation thereof, and of the duties of his &
said Office did not then and there transfer
and pay over the said money to the said City
Treasurer but carelessly negligently and un-
lawfully permitted suffered caused and
procured the said money to remain and be kept
deposited with the said firm of E. I. Smitham
& Co. to his credit as Treasurer as aforesaid for
a long space of time thereafter and until and
at and after the failure and insolvency of the
said firm of E. I. Smitham & Co. hereinafter men-
tioned, and the plaintiff's further aver that after
wards and whilst the said money above
mentioned were so carelessly negligently and
unlawfully permitted suffered caused and pro-
cured to remain and be kept deposited with the
said firm of E. I. Smitham & Co. as aforesaid
and before said money or any portion thereof
had been transferred or should be transferred
by the said Collector said by said Board of

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Sewerage Commissioners or any Officer of
said Board, to the City Treasurer of said City
or to any other person or persons entitled to re-
ceive the same and before the Common Council
of said City or the said City Treasurer had
been notified by said Board of Sewerage Com-
missioners or by any member or Officer thereof
of said deposits or any knowledge or informa-
tion as to the amount of such deposits had
been communicated to any other department
or Officer of said City of Chicago and before
the said Charles Lind had acquitted himself
of his duties and obligations as such Commissioner as
aforesaid nor that he had to wit on the sixth day
of May A.D. 1861 the said firm of E. L. Smith &
Co. and both of the aforesaid members of said
firm failed in business suspended payments
and became and were utterly insolvent and
unable to pay over or refund the said money
deposited with them as aforesaid, or any portion
thereof and from thence hitherto have remained
insolvent and unable to pay over or refund
the said money or any portion thereof and
they have not nor would they, although
often requested, to wit on the twentieth day
of August A.D. 1861. at Chicago in said County
of Cook paid over or refunded the same
or any portion thereof either to the City or

Chicago or into the treasury thereof or to any & new thereof or other person or persons entitled to receive the same. but have thereon wholly failed and made default. and the said moneys are still wholly unpaid and unsatisfied, and the plaintiffs aver that by reason of the insolvency and inability of the said firm of E. J. Smith & Co. and both of the members thereof as above mentioned, any suit that might be brought against said firm or either of the members thereof, would be entirely fruitless and unavailing. and that the said Defendants had notice to wit on the twenty first day of August A. D. 1861. at Chicago in said County of Cook, wherefore and by reason of the said Carelessness negligence and mismanagement of the said Defendant, said Sewerage Commissioner as aforesaid the said Plaintiffs was and is damaged to the amount of said sum of fifty thousand dollars as are mentioned to wit at Chicago in said County of Cook. And so the plaintiffs in fact say that the said Defendant did not well and faithfully perform the duties required of him by law as Sewerage Commissioner for the West Sewerage District of the City of Chicago aforesaid and did not well and truly appropriate, account for and pay over all money and funds that came

into his hands or control by virtue of the provisions
of the aforesaid act entitled "an act to incorpo-
rate a Board of Sewerage Commissioners for the
city of Chicago" and by reason of the non per-
formance by him the said Forestu Lind of his
duties in that behalf the said city of Chicago
has been injured and an action hath thereby
accrued to the said city of Chicago to demand
and have of and from the said Defendants
the said sum of one hundred thousand &
dollars above demanded.

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Yet the said defend-
ants although often requested so to do have
not nor hath either of them as yet paid the
said sum of one hundred thousand dollars
above demanded. or any part thereof but
to do this have hitherto wholly neglected and
refused and still do neglect and refuse.
To the damage of the said Plaintiffs. &
seventy thousand dollars. and therefore
the said Plaintiffs bring this suit &c.

Ira H. Bull
B. L. Ayer.
Plaintiffs attorneys,

Copy of Instrument" sued upon.

I now all men by by these presents that wt. Silvestre
Lima

56 of the City of Chicago County of Cook and State
of Illinois are here and firmly bound unto the
City of Chicago in the penal sum of one hundred
thousand dollars. for the payment of which sum
of money well and truly to be made we bind
ourselves our heirs executors and administrators
jointly and ^{severally} firmly by these presents. Sealed &
with our Seal and dated this twenty third day
of May A.D. 1860

The condition of the above
obligation is such that whereas the above
bounden Silvestre Lima was duly elected to
the Office of Sewage Commissioners for the
West District of the City of Chicago for the
term of three years at an election held on
Tuesday the first day of May A.D. 1860 un-
der and by virtue of an act of the General
Assembly of the State of Illinois entitled "an
act to incorporate a board of Sewage &
Commissioners for the City of Chicago" approved
February 14th 1855: and Whereas the above
bounden Silvestre Lima has accepted said Office

Now Therefore of the above bounden Silverton
 Ltd shall well and faithfully perform Industries as
 such Commission and shall well and truly appropriate
 account for and pay over all monies and funds
 coming to his hand or control by virtue of the
 provisions of the act aforesaid then this obligation
 shall be void otherwise to be and remain in
 full force and effect.

In presence of	{	Silverton Ltd	{L.S.}
		Robert H. Ross.	{L.S.}
		J. H. Heard	{L.S.}
		B. H. Wain	{L.S.}

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(Endorsed)

approved 17 Decr 1880.

And afterwards to wit on the Twelfth
day of October in the year aforesaid the said
Silvestro Lind filed in said Clerk's Office of
said Court, his affidavits of merits which
in words and figures following to wit,

State of Illinois
Cook County 100

In the Superior Court
of Chicago.
Of the September Term A.D. 1861.

58

The City of Chicago
vs.

Silvestro Lind Robert H. Ross
Alexander H. Stead and
Benjamin H. Carver

Silvestro Lind
being duly sworn deposes and says that he
is one of the Defendants in the above entitled Cause
and that they the said Defendants have a
good defense to the same upon the merits
thereof as he truly believes.

Subscribed and sworn before J. Lind.
me this Twentieth day of
October 1861

W. Kimball Clerk

And afterwards took on the Thud day of
February in the year of our Lord one thousand
Eight hundred and sixty two, the said Ltd
by Horne Miller & Lewis his attorneys filed
in said clerk's office of said Court his plea
which is in words and figures following to wit,

Superior Court of Chicago
September Term 1861.

57
Silver Lake Ltd
impleaded with
Robert H. Prop.
Alexander H. Stead &
Benjamin B. Carson
ad.
The City of Chicago

And the said Defend-
ant Silver Lake Ltd impleaded as aforesaid
by Horne Miller & Lewis his attorneys, Comes and
defends the wrong and injury when &c. and
says that the said supposed meeting obligatory
is not his deed and of which he puts himself upon
the country &c.

Horne Miller & Lewis
attys for Def. Ltd

And afterwards to wit on the Twenty Third
day of June in the year aforesaid, the
said City of Chicago by B. F. Ayer its
attorney and the said Robert H. Lipp by
his attorney, Dr. H. Kaler and the said B. F.
Larson by Walter Van Arman & Dexter, filed
in said Clerk's office of said Court their
stipulations, which are in Words and figures
following to wit:

Superior Court of Chicago.

Robert H. Lipp imp^d into
Sylvester Linn & Co. et al.
60
City of Chicago

It is hereby stipulated
that the said defendant Robert H. Lipp may
on the trial of the above cause go on in witness &
under the plea of non est factum any legal defense
which he may have therein on the merits which &
would be admissible under any special pleas
well pleaded. If any defenses other than those
already stated to Plaintiffs Counsel are relied
on at the trial ten days previous notice thereof
should be given to Plff's attys

B. F. Ayer atty for Plff
Dr. H. Kaler for Lipp

Chicago June 19. 1862.

And afterwards to Wit on the day and year
last aforesaid the said Robert H. Robt. by
King Hales ^{and William} his attorneys and the said B. F.
Carr by Walker Van Arman his attorneys plus
in said clerk's office of said Court. their
several pleas which are in Writ. and figures
following to Wit.

Superior Court of Chicago
of the Term June 1862

Robert H. Robt. m^{rs}?
with Charles Lind oral.

ad.
City of Chicago

now comes the

62

said Defendant Cross. by King. Hales &
William his attys and defends the wrong and
injury when &c and says that the said
supposed wrong obligatory is not his and
and of this he puts himself on the Country
&c.

King Hales & William
Attys for Cross.

And the Plaintiffs doth the like
B F Ayer
ally for Plff.

Superior Court of Chicago

B. B. Leaver, m.p.d.
with Sylvester Lind et al

ad
City of Chicago

of the Term June
1862.

63 And now comes the said defendant Leaver
by Walter Van Arman & Dexter his attorneys
and defends the Wrong and injury when &c
and says that the said supposed meeting obli-
gation is not his due and of this he puts &
himself on the country &c

Walter Van Arman & Dexter
attys for Leaver

And the plaintiffs do the like
B. H. Ayer
attys for Plffs.

And afterwards to Wit on the day and year
last aforesaid the same being one of the days of
the Term of said Court the following,
among other proceedings were had and taken
of record in said Court to Wit.

The City of Chicago
vs
Oglethorpe Lumber Co. } Debt.
Robert H. Dyer, Alexander H. Heard,
and Benjamin D. Leavenworth.

64

This day again comes said Plaintiff by George
A. Welch Esq. attorney and due personal &
service of process of summons is given in said
cause having been had on the said Alexan-
der H. Heard, one of the Defendants in above entitled
Cause. and he being three times solemnly called
on open Court comes not nor does any person
for him, but herein he makes default, which
is on motion is ordered, to be taken, and it is
hereby entered herein of record. Wherefore
said Plaintiff ought to have and recover
of and from said Defendant, Alexander
H. Heard, impleaded with Oglethorpe Lumber Co.
Robert H. Dyer, & Benjamin D. Leavenworth, the debt
and also the damages for detention thereof.

and due upon reference is had to the
Court, to assess damages herein hereafter,

65

And afterwards to wit on the twentieth day
of October in the year aforesaid the same
being one of the days of the October Term of
said Court the following among others &
proceedings were had and entered of record
in said Court to wit,

The City of Chicago

Sylvester Lind

Robert H. Prop.

Alexander H. Heald and

Benjamin H. Cairn.

Debt;

64

This cause being then day called for trial comes
said Plaintiff by George Muehl, City attorney
and said Defendant Sylvester Lind by Stogner
Miller & Lewis, his attorneys the said Defend-
ant Robert H. Prop. by Chauncey H. Kales, his
attorney and said defendant Benjamin
H. Cairn by Walter & Dexter his attorneys
also. Come, and fees being joined, herein
on pleas of the said defendants Sylvester Lind
Robert H. Prop. and Benjamin H. Cairn in-
pleaded &c. It is adjudged that a Jury come
whereupon comes the Jury of good and lawful
men to wit J. H. Preston C. C. Holmes James

M. Neely, John Long, J. Forsyth, John Broth,
Henry Hendle, Enoch Woods & H. Wood, a
J. L. P. L. Woodward and George Colby,
who being duly elected to do and sworn to by
the judges & one herein, as aforesaid, as well
to assess damages against the said defendant.
Alexander & Heald defaulted herein, after
hearing & pair of the testimony, and the law
of adjournment, having arrived it is ordered upon
agreement of the parties that the jury separate
and meet the Court tomorrow morning.

67 And afterwards to wit on the twenty first day
of the month and year aforesaid, the same
being one of the days of the October of said Court the
following among other proceedings were had
and entered of record in said Court to wit,

The City of Chicago
78.

Abraham Smith Roberts & J. L.
Alexander & Heald and
Benjamin D. Cannon.

debt.

This day again
came the parties to this cause by their attorneys
respectively as aforesaid, and the jury em-
pannelled herein on yesterday for the trial

of said cause also come, and after hearing
further testimony, and the hour of adjournment
having arrived it is ordered, upon agreement
of parties, that the jury separate, and
meet the court tomorrow morning on coming
in, and opening thereof.

And afterwards to part on the Twenty second
day of the month, and year last aforesaid
the same being one of the days of the October
term of said court, the following among the
proceedings who had and entered of record
in said court to wit

68 City of Chicago

vs

Lywell Smith
Robert H. Dyer
Alexander H. Heale
and Benjamin H. Carter

Debt

This day again come
the parties by their attorneys, and the jury em-
paneled herein for the trial of said cause as
on yesterday, also come and having heard
all the testimony and the hour of adjourn-
ment having arrived it is ordered upon
agreement of the parties that the jury separate
and meet the court tomorrow morning.

And afterwards took on the Thursday this
day of the ~~day~~ month and year aforesaid
the same being one of the days of the October
Term of said Court the following among
other proceedings were had and entered of record
in said Court to wit,

The City of Chicago

Robert L. Lind
Robert S. Pop
Alexander P. Peck
and Benjamin P. Leavenworth

debt.

69

This day again
Came the parties to this cause, and the Jury
impaneled herein for the trial of said Cause
as on yesterday also came and having now
heard arguments of counsel and instruction
of the Court the cause is submitted and the
Jury retire to consider their verdict and the
Court of adjournment having expired it is
ordered upon agreement of the parties that
when the Jury shall have agreed upon a
verdict herein they shall appear to the Court
to deliver sign and seal the same and after
wards separate and meet the Court upon Monday
next and opening thereof to morrow morning,

and after said to sit on the Thursday
day of the Month and year last at which
the same time one of the days of the October
Term of said Court the following among
other proceedings were had and entered of
record on said Court to wit,

The City of Chicago

70
George Lind Robert Dof,
Alexander H. Stead, and
Benjamin H. Carver.

debt

Friday again came the parties to this cause
by their attorneys respectively aforesaid, and
the same arguments herein for the trial of said
cause, also come, as on yesterday and sub-
mit their verdict and say, We do, say
find issues for said Plaintiffs on the issues
formed and we further find the said several
defendants in this cause to owe and be indebted
to said Plaintiffs in the sum of one hundred
thousand Dollars Debt, and we award said
Plaintiffs damages for detention of said
debt, against all of said defendants to the
sum of Forty Seven Thousand nine hundred
and eleven Dollars and ninety five cents,

paid debt to be discharged upon pay-
ment of the damages aforesaid,

And thereupon said Defendants, Sylvester
Lind, Robert Strop, and Benjamin D-
Cawer, impleaded & submit their motion,
herein for a new trial, in said cause,

And afterwards on the Twenty fifth
day of the month and year aforesaid, the
said Robert Strop and Benjamin D-
Cawer by J. H. Kaler, and J. M. Walker.
their attorneys ^{severally} filed in said clerk's office
of said Court, their motion for a new
trial, ^{and in quest of judgment} which is in words and figures following
to wit,

7/

	Superior Court of Chicago
City of Chicago	}
Sylvester Lind & Cae	

And now come the
said Defendants Robert Strop, and Benjamin D-
Cawer, by their respective attys. and severally move the
Court for a new trial of said cause, and they
also move the Court in quest of judgment thereon,

J. H. Kaler for Strop
J. M. Walker for Cawer

And afterwards went on the Twenty Eighth
day of November in the year of our Lord one
thousand Eight hundred and sixty three
the same being one of the days of the Nov-
ember Term of said Court the following
among other proceedings were had, and
entered of record in said Court to wit,

The City of Chicago
vs.

72 Sylvester Lord Robert St. Prop.
Alexander St. Keala, and Benjamin D. Leavitt

} Motion for New Trial
in Debt.

And now at this day comes the said plaintiff
by Francis Adams City attorney and the said
Defendant Sylvester Lord by George Miller & Lewis
his attorneys, the defendant Robert St. Prop. by
Francis St. Staley his attorney & said defendant
Benjamin D. Leavitt by Walter & Dexter his
attorneys also come, and this cause coming on now
to be heard upon the motion of said defendants
Sylvester Lord, Robert St. Prop. and Benjamin
D. Leavitt, impleaded &c. as are named and
heretofore submitted herein by them on
the Twenty fifth day of October A.D. 1862
for a New Trial in said cause, and
Cause being heard thereon and the Court

being fully advised in the premises it is
considered by the Court that the motion of
said several Defendants Sylvester Lind
Robert of Dief and Benjamin O'Leary mi-
pleaded & be and the same is hereby over-
ruled, and that a new trial be and is hereby
refused to them in said Cause.

Wherefore it is considered that said
Plaintiffs do have and recover of and from the
said Defendants the sum of one thousand &
thousand Dollars to gether with its damages
of thirty seven thousand nine hundred and
Eleven Dollars and ninety four cents, and Costs
in this behalf Expended and have ~~the~~ Execution
therefor.

And it is further advised and considered by
the Court that upon payment of the sum of thirty
seven thousand nine hundred and Eleven dollars
and ninety four cents, the damages aforesaid by
the party aforesaid assessed on this behalf, with
the legal interest thereon, from the twenty fourth day
of October 1862 and the Costs aforesaid, that said
Judgment be deemed and taken as paid and satis-
fied in full.

And it is further considered that
said Defendants be allowed twenty days in
which to file their bill of exceptions in said
Cause.

Left for Court,

June 37, 911, 94.

73

And afterwards, to-wit on the 16th day of
December in the year aforesaid, the said Robert
St. John and Benjamin St. John by their respective
attorneys filed in said Clerk's Office of said
Court their Bill of Exceptions which is in
words and figures following to-wit,

Superior Court of Chicago.

City of Chicago
v.

Of the December Term 1863

Sylvester Lind

Robert St. John

Benjamin St. John

Alexander St. John

Bill of Exceptions

Be it remembered that heretofore to-wit at the
October Term A.D. 1862 said cause came
up for trial in said Superior Court
before Hon. Van St. John one of the Judges
of said Court and a jury duly empanelled
therein to try the issues joined. And there-
upon the Plaintiff introduced its evidence
to sustain the issues on its part and behalf
as follows

an act of the general assembly of the
State of Illinois entitled. "an act to in-
corporate a Board of Sewerage Commis-
sioners for the City of Chicago."
approved February 14th 1855.

An act approved February 14th 1859
entitled "an act in addition to an act,
entitled 'an act to incorporate a Board
of Sewerage Commissioners for the City of
Chicago' approved February 14th 1855.

75- By agreement of Counsel on
both sides reference is made to the published
laws for the contents of the acts above men-
tioned

A. J. Marble sworn & examined by B.
J. Ayer on the part of the plaintiff

Int. Are you City Clerk?

Ans. Yes Sir.

Int. Produce the record of election of sewer-
age Commissioners for 1860.

Int. When was Mr. Linn qualified as Commissioner
Ans. on the 7th of May 1860. He was elected

May 1st 1860, & the vote was canvassed and
declared by the Common Council on May
5th.

(It is admitted that the defendant
Lind was duly elected in May 1860 as Sew-
erage Commissioner for the West Sewerage
District of the City of Chicago)

Mr Ayre read record of ordinance passed
March 3^d 1860.

76 An ordinance authorizing the Board of
Sewerage Commissioners to issue Bonds.

Be it ordained by the Common Council
of the City of Chicago that the Board of
Sewerage Commissioners are hereby autho-
rized to issue and sell at such rates as
they may deem advantageous and proper
the Two Hundred and Fifty Thousand
Dollars authorized by the act of the
Legislature approved 14th February 1859
and the Mayor, and Clerk are hereby
requested to mark the Bonds "approved"
under the seal of the City in conformity
with the provisions of the third section of
the act establishing said Board of Sewerage
Commissioners and of the above mentioned

act of 14th February 1859

Cross examination of Mr Marble by Mr Kaler.

Int. Where are the books of the Board of sewerage Commissioners, and in whose custody?

Ans. I suppose in the custody of the Board of Public Works.

Int. You say Mr Lind appeared & qualified on the 7th May?

Ans. Yes sir

Int. Did Mr Lind at that time tender any bond to the City as appears by the City record?

Ans. No sir

Int. When did he as appear by the records?

Ans. The records show that his bond was tendered to the Common Council 17th Dec. 1860.

Int. Did it not show any before that?

Ans. Not subsequent to his election

Int. When was the Oes Ominis Bond given?

Ans. At his first election two years before.

Int. When was his Bond tendered to the Council

Ans. I cannot tell, the first appearance upon the record on Dec 17th 1860.

By Mr Ayre.

Int. What is that record?

2
Ans. That it was entered & approved by the City

By Mr. Hales,

Int. Were you at that time City Clerk?

Ans. No Sir. I was not.

Int. Were you in the office?

Ans. I was there from the middle of February 1840. to the first of June & after that I was not in till next May

Int. What is the record of 17th December?

Ans. "The official bond of Sylvester Lind was presented & on motion the same was approved."

78

By Mr. Ayre

Int. The date of Geo Smiths bond was May 18. 1857?

Ans. Yes Sir

By Mr. Hales.

Int. Was any other Bond besides this given to the City after May 7th on behalf of any body?

Ans. No Sir

By Mr. Ayre.

Witness identifies the bond presented as the one on file

Int. Have you any knowledge as to the time of its delivery to the City Clerk?

Ans. No positive knowledge

Int. Have you any whatever?

Ans. Only what Mr. Kohn has told me.

Int. Have you the records for December 1860?

Ans. Yes Sir

Int. Refer to them & see what meetings of the Council took place?

Ans. From September 10th to December 3rd there are no meetings of Common Council & from that time no other meeting until Dec 17th.

79 Col. William Gamble sworn & examined by Mr. Ayer on the part of the plaintiff

Int. Will you state whether you were secretary of the Board of Sewerage Commissioners?

Ans. I was

Int. For how long a period?

Ans. During its existence

Int. Show the beginning

Ans. Yes Sir

Int. Will you state what your duties as secretary, what duties you actually performed?

Ans. The duties I actually performed was to keep the records on account of the Board.

Int. Did you keep all the accounts?

Ans yes in all the official accounts

Int. Where were the books & papers kept?

Ans. They were kept in the safe in the Comr's office

Int. Who had charge of them?

Ans I had.

Int. State whether the Books just brought into Court were the books belonging to the board of which you had charge?

Ans yes.

Int. Who had charge of the bank pass books at those banks where the board had deposits?

Ans. The treasurer of the board sometimes had them in his safe, sometimes they were in the office

By Mr Meach.

Int. He had charge of them?

Ans yes Sir

Int. Who had charge of the check books?

Ans. The check books were in the safe under my charge

Int. Did you keep a Journal & Ledger & account with each bank?

Ans yes Sir.

Int. Who drew the checks?

Ans. all the checks were drawn by me. the official checks

By the Judge.

Int Drawn by you?

Ans. They were filled in by me not signed.

By Mr. Ayer.

Int By whom were they signed?

Ans. They were signed by Mr Lind Treasurer. or if he was not there some of the other Com. mrs.

Int Who made the deposits at the Bank?

Ans. Mr Lind made the deposits & sometimes I was sent to make them.

8) Int When official checks were drawn, did you state whether you entered on the stubs the amount and date?

Ans yes sir.

Int. State whether the Board had any account with the Marine Bank?

Ans yes

Int. State whether that book gives the amount of deposits made & credits given?

Ans. As far as I know.

Int you used to examine the book?

Ans yes.

Int Is that the pop book. (presenting one)

Ans yes

Int. Did it show correctly the amounts of deposits made & credits given?

Ans. It does so far as I know, there are two books
this is only one of them.

(The further examination
of this Witness was here postponed for the present)

A. Kohn being sworn & examined by Mr
Ayer. testified as follows on part of Plaintiff.

Int. Please examine the official bond now
in court. and state whether your attention has
been called to it before?

Ans. I have copied this bond in the books.

Int. When were you City Clerk?

Ans. I came into Office May 7 1860. I remained
in Office till May 7 1861.

Int. Was that bond filed with you in your
office whilst you were City Clerk?

Ans. So the best of my recollection I will
state that that was brought into the City
Clerk's office in the beginning of June
1860. It was afterwards in the hands of
Mr. Dyer to report upon it as Chairman
of the Committee of Finance Mr. Dyer I
suppose felt some delicacy about reporting
it to be good & brought it back sometime
in the Fall & he had possession of it till
some time before Dec. 17. I simply took

it up to the Council at that time, it was approved, & I recorded it.

Int. you say it was about the first of June?

Ans. It was

Int. It was left with you on that day?

Ans. I don't say it was the first of June, but I know it was in my office about two or three months before it was presented to the Council.

Int. How came it in Pop's hands?

Ans. Every bond was presented to the Finance Committee & he was one of them. I suppose

83 he felt some delicacy in presenting it being himself one of the Bondsmen. Mr Ward knows more about it than I do perhaps he can tell where it came in.

Bond introduced in evidence.

Show all men by these presents that we Silvester Lind.

of the City of Chicago County of Cook and State of Illinois are held and firmly bound unto the City of Chicago in the penal sum of one hundred thousand Dollars for the payment of which sum of money well and truly to be made. we bind ourselves our heirs executors and administrators jointly

and severally, firmly by these presents, sealed
with ~~four~~ seals, and dated this twenty third day
of May A.P. 1860.

The condition of the above
obligation is such, that whereas the above
bondman Silvester Lind was duly elected to
the office of Sewerage Commissioner of the
West District of the City of Chicago for the
term of three years, at an election held on
Tuesday the first day of May A.P. 1860. un-
der and by virtue of an act of the General
assembly of the State of Illinois entitled "an
act to incorporate a board of Sewerage &
Commissioners for the City of Chicago"
approved December 14th 1855, and whereas
the above bondman Silvester Lind has accepted
said office, Now therefore if the said
bondman Silvester Lind shall well and faith-
fully perform his duties as such Commissioner
and shall well and truly appropriate ac-
count for and pay over all monies and
funds coming to his hands or control
by virtue of the provisions of the act aforesaid
then this obligation shall be void, otherwise to be and re-
main in full force and effect.

In presence of

(Endorsed)

approved 17. Decr 1860.

Silvester Lind

Robert H. Trip

A. H. Stead

B. D. Leamon

{L D}
{R D}
{S S}
{L S}

By Mr. Walter.

Int. Did you examine it carefully when it was first brought into the office?

Ans. I have read it

Int. When was that?

Ans. In the month of June

Int. How do you know that it was in the month of June?

Ans. I was there at the beginning of May & after a few weeks that bond was handed me I put it in a little green box & I remember its being there.

Int. How do you know that it was in the month of June?

85

Ans. Because I think it was about 3 or 4 weeks after I came into the office

Int. Then it is mere guess work as to when it was?

Ans. I fix it because it was but a few weeks after I came into the office.

Int. But if it had been in the month of July it would have only been a few weeks after

Ans. No it was not so long as that.

Int. Who was it written by?

Ans. Mr. Marble.

Int. On what day?

Ans. On the 23^d day of May

Int. It might have been written on the 3rd of May might it not?

Ans. It might have been but I take it for what it says. & it says May 23rd.

Int. That is the reason you say it was brought in in June?

Ans. No sir: I fix that because. I think that it was not more than five or six weeks after I came in.

Int. Do you know what the bond contained?

Ans. It was a bond for \$100,000, signed by ~~David~~ Prop. Stead & another man.

Int. Do you know it was signed by those men at the time you read it?

Ans. I know it was signed by Prop & Carrer & I thought them the best men on that bond.

Int. Who gave the bond to Mr. Prop?

Ans. I am not sure.

Int. Now I want to ask you when Mr. Prop took that Bond out of the office, if you do not know, that it was signed by him & that it was not signed by him & Carrer, till some time in September.

Ans. I do not know that.

Int. I want you to refresh yourself on that.

Ans. I only know it was brought to me in June afterwards taken by Prop. & then brought back.

by him in the fall I believe it was signed
by Drop and Carver when I first saw it
Int. Do you now state that it was signed
by them before September 25th

Ans. I believe so

Int. Why do you believe so?

Ans. I believe so from remembering that I
considered Mr Drop & Mr Carver were good
bonds for any man

Int. You would have remembered that all
the better from its being September and June
would you not.

87 Ans. Well it would not have made much
difference. I can state here only to best of
my recollection I can only say I believe or
I know to the best of my recollection

Int. Can you state how that bond was
signed by either Drop or Carver prior to the
25th September?

Ans. I cannot state positively but I believe so.

Int. Who delivered the bond to Drop?

Ans. I could not say that I did but I
know it was in Drop's hands for several
months

Int. I asked you who delivered it if you
did not. do you know who did?

Ans. I was in New York. I had Mr Marble
there to attend to my duties. I was away

from the 1st to the latter part of August
& Mr Marble may have delivered it

Int. Do you think you did?

Ans. I do not recollect anything about it.

Int. Do you know who did?

Ans. I do not.

Int. Mr Doss. returned this bond sometime
before it was presented by you to the Committee
of the Common Council; it was approved?

Ans. Yes Sir

Int. What day was that?

Ans. It was a week or ten days. It might
be only two or three days after it was delivered
to me before the meeting of the 17th December.
I would not. be positive about the date.

By Mr. Hales.

Int. Was Mr Doss. Chairman of Finance
Committee at that time?

Ans. Yes Sir.

Tuesday Oct. 21. 1862.

Col. William Gamble's examination resumed
Statement. handed him & requested to state
what it shows.

Chester drawn by J. Smith

Treasury upon the Chicago Marine & Fire Insurance Co. and Marine Bank of Chicago.

1859

June. 17	1,000.
July 12	1,000.
" 30	1,000.
Aug. 6	6,085. 42
Aug. 17	3,500.
Oct. 9	2,000.
" 26	1,000.
Dec. 5	3,663.
" 12	1,000.
" 14	5,000.

1860

Jan. 1	1,100.
" 23	1,000.
" 26	775.
February 22	5,000.
April. 17	500.
" 19	1,000.
" 21	1,400.
May 2	3,000.
" 4	500.
" 9	500.
" 15	1,000.
July 2	5,000.
Oct. 18	2,020.
Nov. 7	3,000.
Nov. 9	1,500.
Dec. 1	500.
" 19	1,000.
" 22	2,000.
" 24	1,000.

1861

Jan. 3.	1,090.
" 7	1,200.
" 12	1,000.
" 17	1,000.
" 29	380.
" "	5,500.
Feb. 4	3,000.
" 23	615.10.
April 10	5,300.

cash drawn 107. June 8. 1860 1,854. 15
 Am. Ex. Bank N. Y. 6,805.
 Nov 27. 40 Bonds of
 \$1000 each.

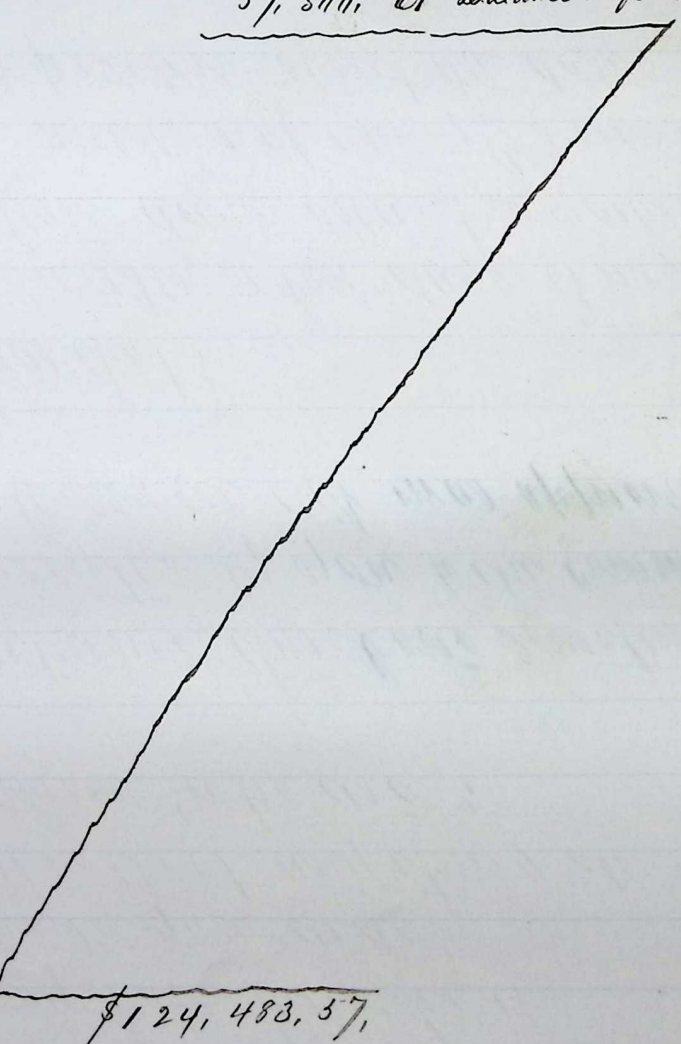
401. 000.
\$124,483.57

Credits from Linas private &c

1859.
 Sept. 2. 2,000. on Marine Bank
 Dec. 14. 5,000 " " "

1860
 Dec 1. 3,000 " " "

1861
 Jan. 19. 30,000. " " "
 May 27. 11,149. 27 on E. J. Tinscham & Co
 June 24 16,027. 69 paid to Am. B. City Com. Co.
67,176. 96. Total Credits.
 57,306. 61 Balance Debit



Ans. This a statement prepared by myself showing the amount of sewerage funds drawn or received by Mr Lind at different times while he was sewerage commissioner, and appropriated to his own use. It also shows the amounts returned or paid back by him at different times as appears from the books papers, and accounts which were in my custody as secretary of the board. These checks were paid by the Bank out of the sewerage funds, and charged to the Board or to their deposit account at the Marine Bank.

90 The statement shows that there were 38 checks drawn by Mr Lind amounting to \$75,828⁵²/₁₀₀ cash received for sewerage tax \$1,850.⁰³/₁₀₀ on the American Exchange Bank of New York he drew \$6,805. The credits from Lind's private account entered to the credit of public account as Treasurer are in the following items Sept 2/59 \$2,000. on Marine Bank Book. Dec 14/59 \$5,000 on Marine Bank book. Dec 1/60 \$3,000. on Marine Bank book Jan'y 19/61 \$30,000. on Marine Bank book May 27/61 \$11,149. on E. I. Dentham & Co. Book. June 24/61 \$16,027.⁶⁹/₁₀₀ paid to committee of common council. Total credits \$67,176.⁹⁴/₁₀₀. leaving a balance

of deficit of \$57,316. 01/100. taking all these accounts at the face value, without deducting for prompt cash currency
Int. The statement gives ^{dates} the amounts of each check drawn?

Ans yes Sir

Int. And of each payment?

Ans yes Sir

Int. Will you state whether these are checks (checks presented)

Ans yes Sir they are.

91 No. Chicago June 17th 1859
Marine Bank Chicago Marine and
Fire Insurance Co. Pay W. H. Salcott
or Bearer one Thousand Dollars in currency
\$1000. J. Lind Treasurer

No. Chicago July 12th 1859.
Chicago Marine and Fire Insurance
Co. Pay to. or Bearer one Thousand
Dollars.
\$1000. J. Lind Treasurer

No. Chicago July 30th 1859
Chicago Marine and Fire Insurance Co. Pay to self
or Bearer fifteen hundred Dollars
\$1400. J. Lind Treasurer

No. Chicago Aug 6. 1859.
Chicago Marine and Fire Insurance Co.
Pay to E I Smithham & Co or Bearer. Six
Thousand & Eighty five $\frac{42}{100}$ Dollars
\$6,085. $\frac{42}{100}$ J. Lind Treasurer

No. Chicago Aug 17. 1859
Chicago Marine and Fire Insurance Co
Pay to E I Smithham & Co or Bearer. Thirty
Five Thousand Dollars.
\$3500. J. Lind Treasurer.

92 No. Chicago Oct. 9. 1859
Chicago Marine and Fire Insurance Co
Pay to J. Lind or Bearer Two Thousand Dollars
\$2,000. J. Lind Treasurer.
Sewage Co.

No. Chicago 26 Oct. 1859
Chicago Marine and Fire Insurance Co
Pay to E I Smithham or Bearer one Thousand
Dollars
\$1,000. J. Lind Treasurer
Sewage Office

No. Chicago Dec 5th 1859
Chicago Marine and Fire Insurance
Co. Pay to Jft. in R. Y. or Bearer Thirty

six hundred & fifty three Dollars.

\$3113.

P. Lind. Treasurer

N^o Chicago Dec. 12th 1859,
Marine Bank Chicago Marine and Fire
Insurance Co. Pay. Bills Pay'ble or Bearer
one Thousand in currency

P. Lind Treasurer

\$1,000.

Comr.

N^o Chicago Dec 14. 1859

hold until 25th.

Chicago Marine and Fire Insurance Co.
Pay to Coverage Commissioners or Bearer
Five Thousand Dollars

93

\$5,000.

P Lind Treasr. Comr.

N^o Chicago Jan'y 6th 1860.

Chicago Marine and Fire Insurance Co.
Pay to P. Lind or Bearer Eleven Hundred
Dollars.

\$1,100.

P. Lind Treasurer

N^o Chicago Jan 23. 1860

Chicago Marine and Fire Insurance Co.
Pay to P Lind or Bearer ten hundred
Dollars.

\$1,000.

P. Lind Treasurer

4.
No. Chicago June 26. 1860.
Marine Bank. Chicago Marine and Fire
Insurance Co Pay Cash or Bearer Seven
hundred. and Seventy five Dollars.
\$775. P. Lind Treasurer

No. Chicago Feby 22. 1860.
Chicago Marine and Fire Insurance
Co Pay to Draft or Bearer Five Thousand
one hundred Dollars
\$5,100. P. Lind Treasurer

94 No. Chicago April 17 1860
Chicago Marine and Fire Insurance
Co Pay to P. Lind or Bearer five hundred
Dollars.
\$500. P. Lind Treasurer

No. Chicago April 19. 1860
Marine Bank. Chicago Marine. and
Fire Insurance Co. Pay P. Lind. or Bearer
one Thousand Dollars in currency
\$1,000. P. Lind Treasurer

No. Chicago April 21. 1860.
Marine Bank. Chicago Marine and Fire Insurance Co Pay P.
Lind or Bearer Four hundred Dollars in currency
\$400 P. Lind Treasurer

N^o Chicago May 2 1860.
Chicago Marine and Fire Insurance Co
Pay to P. Lind or Bearer Three Thousand
Dollars.

\$ 3,000.

P. Lind Treasurer
Crewage Comd.

N^o Chicago May 4. 1860
Chicago Marine and Fire Insurance
Co Pay P. Lind or Bearer Five Thousand
Dollars and charge account of
\$ 5.00 P. Lind Treasurer

95-

N^o Chicago May 9. 1860
Chicago Marine and Fire Insurance
Co Pay to P. Lind or Bearer Five Thousand
Dollars.
\$ 500. P. Lind Treasurer

N^o Chicago May 13. 1860.
Marine Bank Pay P. Lind or Bearer
one Thousand ^{dollars} and charge the same to
account of

\$ 1,000.

P. Lind Treasurer

N^o Chicago July 2^d. 1860.
Chicago Marine and Fire Insurance Co. Pay to
P. Lind or Bearer Five Thousand Dollars
\$ 5,000. P. Lind Treasurer

Commenced
here with
the 4th.

No. Chicago Oct. 18. 1860.
Chicago Marine and Fire Insurance Co
Pay to Self or Bearer Two Thousand and twenty
Dollars.
\$2020. J. Lind Treasurer

No. Chicago Nov. 7 1860
Chicago Marine and Fire Insurance Co
Pay to J. Lind Commissioner or Bearer Three
Thousand Dollars
\$3,000. J. Lind Treasurer

No. Chicago Nov. 9. 1860
Chicago Marine and Fire Insurance Co
Pay to J. Lind or Bearer Fifteen Hundred
Dollars.
\$1500. J. Lind Treasurer

No. Chicago Decemr 1. 1860
Marine Bank, Chicago Marine and
Fire Insurance Co Pay W. B. C. & Co.
or Bearer Five Hundred Dollars in currency
\$500. J. Lind Treasurer

No. Chicago Decemr 19. 1860
Chicago Marine and Fire Insurance Co Pay
to J. Lind or Bearer one Thousand Dollars
\$1000. J. Lind Treasurer

96

n^o

Chicago Decemb. 22 1860.

Chicago Marine and Fire Insurance Co. Pay P. Lind or Bearer: Two Thousand Dollars.

\$2,000.

P. Lind Treasurer

n^o

Chicago Decemb. 24. 1860

Chicago Marine and Fire Insurance Co. Pay to P. Lind or Bearer Ten Hundred Dollars

\$1,000.

P. Lind Treas.

n^o

Chicago Jan'y 3. 1861

Chicago Marine and Fire Insurance Co. Pay to P. Lind or Bearer Ten Hundred & Ninety Dollars.

\$1090.

P. Lind Treasurer

97

n^o 1084.

Chicago January 7 1861

Marine Bank Pay E. J. Kirkham & Co. or Bearer Twelve Hundred Dollars.

\$1200.

P. Lind Treasurer

n^o

Chicago January 12. 1860

Chicago Marine and Fire Insurance Co. Pay to F. B. Carver or Bearer one Thousand Dollars

\$1,000.

P. Lind Treasurer

7.
No. Chicago Jan'y 17. 1861.
Chicago Marine and Fire Insurance Co.
Pay to J Lind or Bearer one Thousand &
Dollars.
\$1000. J. Lind Treasurer

98 No. Chicago Jan'y 28. 1861.
Marine Bank Chicago Marine and
Fire Insurance Co. Pay E. F. Brown or
Bearer. Three Thousand & Eighty Dollars
in currency
\$380. J. Lind Treasurer

No. Chicago January 28. 1861.
Marine Bank Chicago Marine
and Fire Insurance Co Pay J. Lind or
Bearer. Fifty Five hundred Dollars in
currency
\$5500. J. Lind Treasurer

No. Chicago Feby 23. 1861
Marine Bank, Chicago Marine and Fire
Insurance Co. Pay E. I. Pinkham & Co.
or Bearer. Six hundred & fifteen ¹⁰/₁₀₀ Dollars
in currency
\$615 ¹⁰/₁₀₀ J. Lind Treasurer

N^o. Chicago April 10. 1861.
Chicago Marine and Fire Insurance
Co Pay to Pft on N.Y. or Beaver #
Fifty Three hundred Dollars
\$5300. J. Lind Treasurer

N^o. New York June 8. 1860.
The American Exchange Bank, Pay
to the order of the Am. Exch. Bank nineteen
Thousand Eight hundred and five Dollars
\$19,805. J. Lind Treasurer
Furnace Comm^{rs}

99

Int. Were they returned to the board by the
Marine Bank when the pass books were
written up?

Ans They were returned to Mr Lind as Treasurer
at different times when the pass books was
written up

Int Where were they deposited by him?

Ans They were put in the office safe

Int. State whether any of those checks were
drawn on account of Furnace Commissioners?

Ans no sir They were drawn on private
account.

Int. Did you know anything about the draw-
ing of those checks at the time they were
drawn?

Ans. no Sir

Int. Do you know what was done with the money

Ans. no Sir

Int. Was it used for Sewerage purposes?

Ans. No Sir

Int. State whether you ever called Mr. Lewis attention to these checks.

Ans. I have called Mr. Lewis attention to it & he stated that he was Treasurer to the Board & he had given the City ample security for \$100,000; it was his business to keep the public monies & mine to keep the keys in the office.

Int. Will you state whether semi annual reports were made out by the Commissioners & presented to the Common Council.

Ans. They were made out every six months according to law.

Int. Who made these reports.

Ans. They were prepared by me from the books.

Int. Will you state whether in the reports there was any statement of the money actually on hand & the money that ought to be on hand?

Ans. There was of the money that ought to be

Int. Was there any account of these checks in those reports?

Ans. No Sir

Int. Will you examine these reports & say whether they were thus made by the Board to the Common Council from time to time?

Ans. There are five semi-annual reports presented by the board to the Com. Council.

They are for half years ending Dec 31, 1858, June 30, 1859, Dec 31, 1859, June 1, 1860, & Dec 31, 1860.

Int. Do any of these reports show these checks?

Ans. No Sir. They were not taken into account upon the books at all.

Int. Were the reports signed by Lind and sworn to?

Ans. Yes Sir so far as I know

Int. Is there anything about this amount of the American Exchange Bank \$6,805, state how the a/cs were kept & how that was drawn

Ans. That arose in this way. There was a check of Mr. Lind for \$19,805. Mr. Lind as I understood was authorized to purchase or negotiate sewerage bonds to a certain amount for the sinking fund of the board, &c., returned to the board on account of purchasing to the amount of \$13,000, which reduced this \$19,805 to \$6,805. On this he could not account & it was charged to him of course.

Int. He never did account for it.

Ans No Sir

Int. was the account afterwards settled at the Bank, & vouchers returned?

Ans yes

Int. Did you say anything to Lin's about that?

Ans yes. a dozen times or more.

Int. What did he say?

Ans. He said he would see and settle it but he never did it

Int. Will you explain about the sewerage tax of \$ 1.805.⁰⁵/100.

Ans. Some time in the Spring of 1861. he got that Sewerage tax into his possession & kept it

Int. Did you speak to him about that?

Ans yes Sir

Int. What did he say?

Ans. He said he would fix it

Int. Did he ever do so?

Ans. No Sir in all my knowledge

Int. In regard to the 40 Sewerage bonds explain to the Jury the facts in regard to this point, and I will ask you to look at that bond & say if the others were of the same issue & of the same tenor except the number.

"Bond is as follows"

United States of America.
State of Illinois.

N^o 305 B.

\$1,000.

Chicago City Sewerage Commissioners Second Loan

Know all men by these presents, that there is due from the City of Chicago in the State of Illinois to the Board of Sewerage Commissioners of said City or Bearer one Thousand Dollars lawful money of the United States of America payable on the first day of July A.D. 1884 at the American Exchange Bank in the City of New York with interest at the rate of Seven per centum per annum payable semi-annually on the first days of July and January in each year on the presentation and surrender of the annexed & coupons. This Bond is executed and issued in conformity with, and by the authority of an Act of the General Assembly of the State of Illinois entitled "An act to incorporate a Board of Sewerage Commissioners for the City of Chicago, approved February 14th 1855. authorizing said Commissioners to borrow a sum not exceeding Five Hundred Thousand Dollars, and of an Act entitled "an Act in addition to" said first mentioned Act approved February 14th 1859

103

one Thousand Dollars

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authorizing said Commissioners to borrow a further sum not exceeding Five Hundred Thousand Dollars. For the punctual payment of the principal and interest of this bond and for the liquidation of the principal at the maturity thereof, the faith and credit of said City of Chicago, and the sinking fund to be provided in conformity with and by the authority of the said Act, of the General Assembly are hereby irrevocably pledged

In Witness Whereof the undersigned duly elected as a Board of Sewerage Commissioners for the City of Chicago a body politic and corporate by the name and style of "The Board of Sewerage Commissioners of the City of Chicago" have signed this bond and caused the seal of said Board to be hereunto affixed at Chicago in the State of Illinois the first day of July A.D. 1859.



Philip County
J. P. Webster
of Lind.

Sewerage
Commissioners
of the City
of Chicago

The issue of this Bond has been approved by the Common Council of the City of Chicago by a vote of a majority of all the Aldermen by law authorized to be elected, and the same is hereby marked "approved" in conformity with

an Act entitled "An act to incorporate a board of
Sewerage Commissioners for the City of Chicago"
approved February 14th 1855. and of an Act in
addition said first mentioned Act approved February
14th 1859.

And Whereas the Mayor and
City Clerk have hereto their hands and
affixed the Corporate Seal of said City
this fifth day of March A.D. 1860.

 L.L.B.

John. C. Haines Mayor
of the City of Chicago
J. K. Kneemann Clerk.

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Annexed to said Bond are 45 Coupons or interest notes
numbering from 5. to 50, inclusive, each for the sum of \$35,
one of which is payable on the first days of July and January in each year,
after the date of said bond, at the American Exchange Bank New York City
No 5 payable 1st day of January 1862, and No 50 on the 1st day of July 1884,
each of which said coupons is in the words and figures following
except the number of each and the time when payable, to wit
The City of Chicago will pay to the holder hereof
on the day of A.D. 186. at the American Exchange
Bank in the City of New York. Thirty five Dollars interest
due on Sewerage Commissioners Second Loan Bond No 30515.
\$35- J. L. H. Treasurer

"on the back of said Bond is the following,"

Extract from the Act of Incorporation of
the Board of Sewerage Commissioners of the
City of Chicago

3. The said Commissioners shall have power to
borrow from time to time as they shall deem
expedient a sum not exceeding five hundred
thousand Dollars, upon the credit of the said
City of Chicago, and shall have authority to
issue bonds pledging the faith and credit of
said City for the payment of the principal
and interest of said bonds, which bonds shall
issue under the seal of said Board of Com-
missioners and shall be signed by them and
may be payable at such place, and in such
currency as they shall deem expedient and
bearing interest not exceeding seven per cent
per annum. Provided that the said Com-
missioners shall not sell the said bonds
at a rate of interest the same may bear
at a rate which may yield over seven per
cent per annum. Provided further that
no bonds shall be issued until the Commis-

Commons shall have approved of such issue by a vote of a majority of all the Aldermen by law authorized to be elected and provided that all bonds issued before they shall be binding upon said City shall be manually approved by the Mayor and Clerk of said City under the seal of said City, and that such signature and seal shall be conclusive evidence to the holders of said bonds of the fact of such approval

18. It shall be the duty of the board to report to the Common Council twenty days prior to the time fixed by the ordinance of said City for the assessment of City taxes the amount which will be required to be raised in each sewerage district for the municipal year next ensuing to meet the payment of interest to accrue due during said year on all the bonds theretofore issued or which are during said year to be issued for the sewerage of the said district

19. It shall be the duty of the said board further to report to the Common Council at the time named in said last section such amount as they shall upon calculation find necessary in order to provide a sinking fund for the liquidation of the bonds so issued as aforesaid at the maturity thereof.

Provided that the amount to be raised for such sinking fund shall not exceed two per cent of the amount of Bonds heretofore issued and which are during said year to be paid for the sewerage of such district.

108 21. The amount which shall be required to the Common Council as required for each sewerage district as provided in said last three sections, shall be raised by the said Common Council by a special tax on the property of the respective sewerage districts for which the sum is required to be designated sewerage tax which shall be collected in like manner with the other taxes of said city, and the said amount shall be paid over by the collector of said city to the said Board of Commissioners.

22. It shall be the duty of said Commissioners to pay the interest on such bonds as the same becomes due, and also the principal as the said bonds become due.

23. It shall be the duty of said Commissioners to invest the amount raised to provide a sinking fund for the liquidation of said bonds, & such amount shall be first invested in the purchase of said bonds if they can be purchased at or below par. if not then in United States or State Government Stocks or upon

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bond and Mortgage upon unincumbered real
estate in the County of Cook of at least double
the value of the amount loaned under the direction
and approval of the Mayor and Committee on
Finance of the Common Council or a majority
of them such approval to be signified in writing
under the hand of such Mayor or Finance &
Committee or a majority of them and also to
invest the interest received upon such loans
in like manner, and to invest and re-invest
the same and the interest thereof in such
manner as to create and constitute the same
a sinking fund and to make the same avail-
able for the liquidation of the said bonds
at the time of the maturity thereof, such
investments shall be made in the name of
the said corporation, and shall be designated
as the Sewerage Sinking fund, and shall
in no case be used or appropriated for any
other purpose whatsoever than the liquidation
of the said Bonds. The semi-annual report
of said Board shall specify in full the
nature and amount of the respective securities
in which the said sinking fund is invested
to. The provisions herein before contained for
the establishment of a sinking fund shall
be deemed and taken as a part of the contract
with the parties purchasing said bonds, and

shall be repeated or modified so as in any manner to impair the security thereby afforded to the said bond holders

An Act in addition to an Act. entitled "An Act to incorporate a Board of Sewerage & Commissioners for the City of Chicago" approved February 14th 1853.

110⁻ sec 1. Be it enacted by the people of the State of Illinois represented in the General Assembly That the Board of Sewerage Commissioners for the City of Chicago, shall have power to borrow (in addition to the sum heretofore authorized) a further sum not exceeding One Hundred Thousand Dollars upon the credit of the City of Chicago, and shall have authority to issue bonds pledging the faith and credit of said City for the payment of the principal and interest of said bonds.

sec 2. The said bonds shall in all respects be issued and registered and the principal and interest provided for and paid in the same manner, and subject to the same regulations as provided in the original act. to which this is an addition and all the provisions of the said original act establishing a sinking fund, or securing in any

in and to the payment of the principal and interest of the bonds authorized to be issued by the said act. to which this is an addition shall apply to the bonds authorized to be issued by this act. in the same manner, and to the same extent to all intents and purposes. as if said bonds hereby authorized had been issued under. and by authority of the said original act.

111 Sec. 3. The said Board of Sewerage Commissioners shall hold retain apply and appropriate the said bonds and the proceeds thereof for the same objects and purposes and subject in all respects to the same terms conditions restrictions penalties and liabilities as are contained in the act. to which this is an addition and the said act shall apply in the like manner. to all intents and purposes, to the said bonds hereby authorized to be issued, and the proceeds thereof and to the rights. duties and liabilities of said Sewerage Commissioners respecting the same. as if the said bonds hereby authorized to be issued. had been issued, had been issued under. and by virtue of the act. to which this is an addition.

Sec 4. The said bonds shall not be sold. at a rate less than that which is provided by the said act. to which this is an amendment.

unless the Common Council of said City shall by vote of a majority of all the Aldermen elected authorize the said Board of Sewerage Commissioners to sell the same at a lower rate, and then only at such a rate as shall be fixed by said City Council. Provided however that reasonable commissions of brokers or agents employed in procuring the sale or negotiation of said bonds may be paid by said Board.

Approved May 14th 1859.

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Ans yes sir they were the same in form except the number

Int. Explain all about that transaction.

Ans. The bonds were in the safe I think there were something like 100 of them in the safe in my charge. there was a meeting of the board at which I was not present. the meetings were held in the inner room & I was not present at any of them After the meeting I was requested to prepare 40 bonds which I accordingly did

Int. How did you prepare them?

Ans. I attached the seal of the Board to them

Int. Had they been executed?

Ans. They had been signed by the board, by

the Clerk & by the Mayor & only required
the seal. I think there were 100 of them.
Int. You gave them to Mr Lind?

Ans. I did by the order of the Board.

Int. Do you know what it was for?

Ans. I was not present at the meeting it
was in the private room & I could not see
what passed at all. When there was any
thing to be entered they gave it me on a
slip of paper & I entered it I knew nothing
about what transpired

Int. What date was that meeting?

Ans. I think it was Nov 27/10. I think
it is upon the books yet.

Int. Were those bonds ever returned by Lind
or accounted for?

Ans. I think not.

Int. Do you know why he did not?

Ans. No sir

Int. State whether there is any record of
what became of these bonds, or the proceeds
from them

Ans. No sir they were never accounted for to
my knowledge

Register of Bonds produced.

Ans Cont. The bonds are numbered 401
to 440 inclusive second loan bonds. No-
vember 30th they were delivered I simply

made a mistake about this date before.
that was the day they were directed to
'O Lind' Treasurer on deposit a remark is
there put by myself.

Int. I will ask you were the Common Council
ever notified of any place designated by
the board as places of deposit for the
sewerage funds?

Ans. There was one Communication I think
in April 1857 designating places.

Int. Is that the only one?

Ans. It is the only one I know of.

Int. Is that the copy.

(Produced and is as follows)

Sewerage Commissioners Office
Chicago Ill. 11th April 1856

The Board met. present Commrs. Ogden
Webster & Lind.

Extract

Ordered. That for the time being and until
otherwise ordered the funds of this Board
be deposited in New York with Winslow
Lanier & Co. Bankers and in Chicago with
the Marine Bank George Donist & Co.
Edward J. Litcham & Co. R. K. Swift
& Co. J. St. Bush & Co. St. A. Ducler & Co.

one or more of them as this Board may
from time to time find advantageous and
desirable

Sewerage Commissioners Office
Chicago Ill. 14. April 1856,
To the Hon Mayor & Common Council of
the City of Chicago.

In conformity with the fifty first
(51st) section of the Sewerage Law. the
accompanying order in reference to the
deposit of the funds of this Board is res-
pectfully submitted for the approval of
the Common Council

Very Respectfully &c.

J. P. Webster.

acting Commr.

Ans. Yes Sir It is dated April 11 1856.

Int. Look under date of April 11. 1856. in
the records of the Board of the Board of
Sewerage Commissioners, & say if you find
record of any action taken with regard
to deposits.

Ans yes. the order recd in the Communication
to the Common Council just mentioned
was at that time entered on the record
Int. Is this a copy of the document sent
by the Commissioners to the Common
Council?

Ans. Yes sir signed by J D Webster April 14/56

(It is admitted that said communication was laid before the Common Council April 29. 1856. and referred to Committee on Finance)

Int. Have you examined all these checks to see if Linas genuine signature is attached to them?

Ans. I believe it is to all of them.

Pay Book to Marine Bank shown.

Int. Is that the last pass book?

Ans. Yes sir a continuation of the other

By Mr. Kaler.

Int. In what name was the fund of the Sewerage Commissioners deposited in the Marine Bank? What was the name of the account & what Corporation was it the fund was deposited with

Ans. It was in the name of S Lind Treasurer

Int. With what Corporation?

Ans. It was with the Marine Bank of Chicago

Int. Was there ever any deposit made with the Chicago Marine & Fire Insurance Company as a Corporation in that name & style to your knowledge.

Ans. When the Board was first organized

I think there was a deposit kept in that name for a short time. & by the direction of the Board it was changed to the Marine Bank. Int. Some time in 1856?

Ans. Yes Sir.

Int. From what time in what name was account of deposits kept by Lind?

Ans. In the name of the Marine Bank.

Int. Look upon the checks & tell me what corporation they are drawn upon

Ans. Upon the Chicago Marine & Fire Insurance Co. & the Marine Bank.

Int. You may give me the amounts & dates respectively of checks drawn upon the Marine, & Fire Insurance Co. subsequent to May 23/60

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Ans. May 9/60 \$500. July 2/60 \$1000. Oct. 18/60. \$2020
Nov. 7/60 \$3000. Nov. 9/60. \$1500. Dec. 19/60. \$1000. Dec.
23/60 \$2000 Dec. 24/60. \$1000. Jan. 3/61 \$1090. Jan. 12/61
\$1000. Jan. 17/61. \$1000. Feb. 4/61 \$3000 Apr. 17/61. \$5300.

Int. This money drawn out upon the checks of the Marine & Fire Insurance Co. was drawn for the private use & did not go for Overage purposes
Ans. I do not know any thing further than the checks show except that they did not go for Overage purposes

Int. How much do the thirteen checks amount to?

Ans. The total is \$27,410.

Int. That was drawn & not used for Purage purposes?
 Ans. Yes sir

Int. During this time was there any funds on deposit
 in the Marine & Fire Insurance Co as such?

Ans. Not that I know of.

Int. Would you have known or have been likely
 to have known if there had been any funds of the
 Purage Commissioners on deposit with the Marine
 & Fire Insurance Co.

Ans. I certainly ought to have known it.

Int. Had you all the means of knowing it?

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Ans. The Treasurer might have made a deposit
 then without my knowledge but I don't
 think he would. I kept the account of
 deposits.

Int. You stated yesterday that you filled
 out the official checks as a general rule.

Ans. Yes sir

Int. State whether any of them were drawn upon
 the Marine & Fire Insurance Company

Ans. Upon the Marine Bank

Int. Always?

Ans. Yes sir

Int. Did the Marine & Fire Insurance Co.
 ever present any books showing charges
 against the Purage Commissioners on the
 one hand & allowing credit on the other

Ans. Not since it was closed at first early

in 1857.

Int. I understand you to say that these 13 checks were never returned by Mr. Lind as having been drawn on the Scurage account in the same annual reports.

Ans. No sir, nor in the books of the Board.

Int. What was the correct amount of the money deposited by Lind in the Marine Bank, as Scurage Commissioners from May 7 1860 till the close of his official term.

Ans. The amount deposited was \$220,278.⁷¹/₁₀₀ & that is the amount of the public money not including the private deposits already named.

Int. I want the private money in addition.

Ans. The credits are specified on the paper.

I have given you it is after May 7, 1860, \$33,000, the total will be \$253,278.⁷¹/₁₀₀

Int. During that time how much did Lind as Treasurer draw ^{out} of the Marine Bank upon checks in the regular course of business?

Ans. Upon the Marine Bank official checks \$186,100.⁰⁵/₁₀₀ was the amount.

Int. Now how much, do the unofficial checks drawn on the Marine & Fire Insurance Co. amount to.

Ans. That you have in the statement,

Int. you say Lm's also had, during the time
\$1850, 7th of Passage Letter, & \$6,800, as the
balance, of the a/c. with the American Exchange
Bank New York,

Ans. Yes Sir,

Int. In regard to the 40 Passage Bonds, when
were they issued,

Ans. They were not issued at all to my know-
ledge.

Int. When were they drafted?

Ans. Filled in.

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Int. Yes Sir

Ans. Filled in May 1860

Int. What time in May?

Ans. I don't exactly remember.

Int. Now Mr. Ayer gave me a copy of the
Bond Let me refresh my memory

Witness examined Bond:

Ans. It appeared to have been signed by
the Mayor, & Clerk, as appeared, March 5th 60
& to the best of my recollection it was in May
about the beginning that they were filled
in & put away in the safe.

Int. What words exist touching the issue of
these bonds, & the purpose for which they
were issued,

Ans. The Bond Register

Int. I went to it and saw

Ans. The Bond Register gives description of the Bonds. but no date of issue at all, because they were not issued.

Int. What purpose were they signed for, what is shown on the records as to the purpose, for which they were issued,

Ans. These 40 bonds.

Int. Yes sir, or what was the amount of the bonds at that time.

Ans. There were, 100 bonds, of \$1,000. each.

Int. How many had been issued at that time, or subsequent to the 1st of

Ans. These, 100 were the last under the act of 1859.

Int. How many had been issued before that time.

Ans. 400.

Int. There was no other issue of bonds.

Ans. No sir.

Int. What is shown by the records as to the particular purpose, for which these bonds were issued, were these 40 bonds a part of the 100 one thousand dollar bonds.

Ans. They were.

Int. on account of what. Jurisage District of the City of Chicago were these bonds issued.

Ans. They were not issued to any district,

Int. Look over the memoranda & records of the Sewerage Commission & state whether there is anything on record showing & whether this issue of 100 bonds, of which the 40 in question are a part, had been appropriated to any Sewerage District in the City of Chicago.

Ans. They had not to my knowledge.

Int. Do your records show any such appropriation,

Ans. Not to my knowledge.

Int. Have you examined.

Ans. I know it.

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Int. How kept the records

Ans. Yes sir. These bonds were sold & the proceeds assigned to different districts.

Int. But after the sale of the Bonds

Ans. Yes sir.

Int. How about the issue of these bonds about how long after their issue did the parcel of 40 pass over to F. Lind & under what circumstances.

Ans. In the month of November 1885 about a little before the 30th, there was a meeting of the Board & when the meeting was over (I was not in the room during the time the board met & don't of my own knowledge know what happened) the acting

commissioner Webster through whom the business was usually done. Came to me at my desk & directed me to deliver 40 of those bonds to Mr Lind & to mark them upon the register which I accordingly did.

Int. Look upon the register & see what is marked.

Ans. Sir pencie "Nov 3/40 to J. Lind Treasurer on deposit."

Int. Did you then deliver the bonds to Mr Lind in accordance with that direction?

Ans. Yes Sir I understood it to be the action of the Board though I was not present when it was agreed upon.

Int. Is there any record of that action?

Ans. Not in writing Sir.

Int. Did you hear any member of the Board state what had been their action in regard to these bonds?

Ans. No Sir.

Int. State all that transpired between you & Webster & Lind in this case.

Ans. That was all. I got the order & complied with it.

Int. Did Lind give any security to the Board or to the City or leave any with you at that time?

Ans. I don't know of my own knowledge.

There was a package of papers given to me with Mr Webster's name on the back to be put in the safe which I afterwards ascertained to be something of the kind.

Int. How did you ascertain it?

Ans. They were opened.

Int. Did you open them?

Ans. One of the Commissioners did.

Int. Was it stated at that time that Mr Lind was a purchaser of the Bonds?

Ans. I did not understand that he purchased them.

Int. What was said about this package?

Ans. It was a package that was given me to put into the safe.

Int. For whose account?

Ans. It was addressed to Commr. Webster, & sealed the contents I did not know.

Int. Who gave you the package Lind or Webster?

Ans. That I could not say.

Int. Was it done about the time the bonds were delivered to Lind?

Ans. About that time.

Int. Did Mr Webster know about it?

Ans. I do not know.

Int. Did he know of its being left in your hands with his name upon it?

Ans. I presume he did.

Int. What afterwards became of them?

Ans. I think they were delivered to Commr. Webster as near as I can recollect.

Int. Did you ever hear anything said about the arrangement by which Mr Lind was to purchase the bonds at his option?

Ans. I heard Commr. Webster afterwards.

Int. I ask what Commr. Webster said in regard to these bonds?

The Judge ruled that as Mr Webster was a competent witness explanation would be in vain.

Int. What was Webster's duty as member of the board?

125- Ans. It was the channel of communication for the transaction of official business & ran on the official correspondence.

Int. Do you know of any official communication between him & you as to these bonds?

Ans. He told me to give Lind the bonds & I did & to put them in pencil in the register which I did.

- The Defendants Counsel then sought to prove by the admissions of Webster, while he was Postage Commissioner along with Lind that Lind took Bonds in November & had the option and afterwards exercised it with regard to the purchase of them.

deposited these securities during which were found afterwards directed to Mr Webster. After objection by Plaintiffs Counsel the Court refused to allow proof of the admissions of Webster in that subject made while he was such Commissioner unless they were shown to have been made by him in the performance of some official act and made at the time of performing such act and not afterwards. To which ruling of the Court the Defendants by their Counsel then and there excepted.

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By Mr. Kaler

Int. Did you ever hear Bradley or any other Commissioner say anything about these bonds or for what purpose they were given to Mr Lind?

Ans. During the time Mr Lind was Commissioner he had got the bonds. Webster spoke to me & said he would rather Lind would use them along with the 40 that were there. that would be his wish and desire to get Lind to do so.

Int. What was done?

Ans. There was not anything done he

simply made the remark to me.

Int. For what purpose did he say I'm
has these Bonds.

Ans. He did not tell me.

Int. He was aware that he did have them

Ans. Oh: yes: at a meeting of the Board at
the previous day

Int. Did you ever know what took place
at the Board, or were you ever informed by
any one of them?

Ans. No Sir I inferred from what was
stated to me by Mr Webster, in regard to these
bonds.

127 - Objection by Peffs and excluded
by the Court as violating the rule already
laid down as to the admissions of Comr.
Webster and Defendants then and there
excepted to the ruling of the Court. -

By Mr Ayer.

Int. Did you keep these books you have
been referring to here?

Ans. Yes Sir.

Int. Do the accounts show precisely the
amount these phones have been on deposit

Ans. Yes Sir.

Int. How much should there have been on deposit at the Marine Bank, at the expiration of that time of office in May 1861

- objection to by Defendants Counsel objection overruled by the Court, and Defendants then and there excepted -

Ans. There should have been \$94,611 ²⁶/₁₀₀ there was actually there \$58,882 ⁸⁴/₁₀₀

Int. How when the pass book was written up were the checks returned?

Ans. I suppose they were

Int. When did they come into your hands

Ans. When the books came into my hands

Int. These unofficial checks made up the balance due,?

Ans. Yes Sir.

Int. And they were handed you by Lind & there was no discrepancy except these checks

Ans. They were handed me by Mr Lind, & sometimes when I went to the Bank I got them

Int. about the 40 bonds. Look at the proceedings in the records under date May 2^d. 1859. Is there any entry or order there in regard to issuing these bonds.

Ans. There is page 33. Chicago May 2^d. 1859. and it said that the 2^d loan bonds &

about to be issued be numbered. 1. B. &
go on to the full number issued, ordered
that Commissioner Webster, proceed to New York,
to arrange sale of same, to the amount of
\$50,000.

Int. How many bonds were then actually
prepared?

Ans. Five hundred of them.

Int. And these forty were the last?

Ans. They were the first 40 of the last 100.

Int. Was the sum of \$1805⁰⁰, given a gift tax
received in 1869, or 1861.

Ans. Paid on the fall of 1860. & the remainder
in the Spring of 1861.

Int. Do you know whether Lind had the money
on hand on the 1st of July 1861.

Ans. I do not know

Int. Don't you know whether he used it immediately
after he drew it.

Ans. I do not.

Int. When were those 40 bonds sealed?

Ans. They were sealed at the time they
were ordered, to be given to him.

Int. Do you know what became of these bonds?

Ans. No sir.

Int. These were the books were they.

Ans. Yes sir.

Witness identified Ledger Journal & Register.

By Mr. Staler.

Int. Story ~~is~~ of the Sewerage fund, you have shown that there was \$94,111.²⁴/₁₀₀ which should have been in the Marine Bank to the credit of the Sewerage fund.

Ans. Yes Sir.

Int. Do you mean that this should have been providing you go back to 1857. & so trace up the account to May 1 1861.

Ans. Yes Sir.

Int. Do you mean there should have been \$94,111.²⁴/₁₀₀ to the credit of Sewerage fund providing the account made up from 7th May 1860. to the end of Sims' official career.

Ans. Yes Sir.

Int. State whether all the bonds authorized to be issued by the Sewerage Act of 1856. had been issued & the proceeds expended prior to May 1 1861.

Ans. Yes Sir.

By Mr. Ayer.

Int. Do you know how much money was received on account of sewerage taxes?

Ans. The books will show that.

Int. What was about the amount?

Ans. There was an estimate made annually but in carrying it it would not always come out correct.

Int. What was the aggregate amount of the tax of 1860.

Ans. \$102. 11. paid at different times to April 1861.

By a Juror.

Int. In regard to these checks, some of these irregular checks came back into the bank books before 1861.

Ans. Yes sir

Int. Did you ever speak to Webster or any one else about it

Ans. Mr Lind was treasurer of the Board I called the attention of the board to it in 1861.

Int. Did you ever charge up to Lind in the books of the Commissioners the amount which he had taken out.

Ans. No he was treasurer & custodian of the funds.

Julian J. Pomeroy sworn & examined for Dep. by Mr. Ayer.

Int. Were you mayor in 1861.

Ans. Yes sir

Int. Tell you state when your term commenced.

Ans. On the 6th day of May 1861. I submit

Int. State whether you had any interview with Mr Lind in regard to his defalcation as sewerage Commissioner

Ans. I had several.

Int. I wish you to state, all you know in regard to the matter.

Ans. The first I knew of it was discovered by me in New York from information communicated to me there some time about the end of May or beginning of June. I went from New York to New York for the purpose of negotiating some bonds belonging to the City & I found there were some Sewerage bonds in existence there, which there did not any one seem to know much about.

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Int. State what you did when you got back.

Ans. There was a committee of the Common Council appointed to investigate Mr Smith's matter & that Committee met in my office on several occasions & we had Mr Smith present & also many other parties who were cognizant of what happened in the Sewerage Commission. There were Mr Hulet, Conley & perhaps others present upon different occasions & the Committee was appointed to investigate the condition of the Sewerage Commission & more particularly Mr Smith. We did investigate the condition of the Sewerage fund & discovered & what we considered a great fraud upon the City.

Int. Did you call Mr Smith's attention to it.

Ans. Yes upon several occasions.

Int. was it called particularly in reference to a deficit in the Marine Bank?

Ans. yes sir.

Int. what did he say.

Ans. He was very much embarrassed & a little bit nervous in the Court, on several occasions & he admitted subsequently, before us, that he had used the money of the board of pierage commissioners for which he expressed regret, & had taken 40 bonds & had used them for himself.

Int. Did you make a report of this to the Common Council?

Ans. yes. two or three I believe.

Int. Did you get any money from Mr Lind & were any payments made towards the defalcations. if so how much & when?

Ans. I cannot state exactly without reference to report of Council. He made some payments to the City, there was a check for \$28,850.⁷³ to start with on loan.

Int. State from what source that came.

Ans. Well. I did not see the check myself but I know how it was so far as I know & I have no doubt of the truth. Mr Lind finding himself a defaulting undertaker to raise money to cover up his iniquity. He went to Mr Plüger & undertakes to raise money upon

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some securities which he proposed to give, he
gave security for a loan I think \$30,000,
it was pretty easy to effect a loan at that
time because Stumpless was a float, he got
a check upon Carson as before stated, & he got
a check upon Smithams for \$11,149.²² This
last check he deposited at Smithams to his
Credit as Treasurer of the Sewerage Board
May 27. 1860.

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[It is not claimed by Defendants that
Lmd is entitled to be credited with the
amount of this deposit \$11,149.²² the City
never having received any portion of the
money or authorized Lmd to deposit it
at Smithams and the parties agreed that
this item is not to be considered by the jury]

Int. about the date

Ans. I cannot tell without referring. The
check upon Carson states for being & the date
of the deposit at Smithams was May 27th.
This appeared in our investigations. I did not

see him deposit it. he had it to his credit
there

Int. How do you now in reference to this check
of Lewis, who assisted Lind in raising &
money upon it or rather in negotiating
that loan

Ans. I believe Mr. Le Moigne had something
to do with it. This check came into my pos-
session a long time after: it is dated May
10 1861. I was inaugurated May 6 1861 &
finding as I thought the need for negotiating
these bonds I went to New York. I returned
about the 13th day of June 1861. When I
came back I discovered the hole in the
skimmer. The check into the hands of the
Committee, through either Lind Conley or
Le Moigne. I do not know which

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Int. Did you accept it as payment

Ans. I accepted it & the Committee that
was interested in this money consented to
accept it for a certain amount not for
its face.

Int. For how much.

Ans. We told Lind (I did) we would take
the check (upon canvas & Co) having ascertained
what we could get for it upon the most
favorable terms any banks would pay for stamp
tax. The merchants Loan Savings & Trust Co

was discounting at 12 per cent. & so for the
sake of getting this from Lind we paid this
12 per cent. Cairns said they would pay some
60 cents I think we received \$14,310⁴⁴/₁₀₀ we
agreed to give Mr Lind credit for 12 per cent. more
than we received. The late board should
be therefore credited with the sum of \$14,310⁴⁴/₁₀₀
Int. Was there any agreement about depositing
deposited at Smithham May 27.

Ans. No Sir we never paid any attention
to it we never considered he had any right
to deposit there

Int. How long was it after this that Smithham
failed

Ans. Well he failed within three days I believe
I found this nominal depositor there. & on my
way home from New York I found Smithham
had suspended the second time

Int. Do you know of any other sums received
from Mr Lind after his term of office expired

Ans. I don't know of any

Int. Did Mr Lind ever return these bonds.

Ans. Not to my knowledge

Int. Do you know whether he made use of them.
Ans. Yes Sir as far as I got in my investigation
but then I knew they were hypothecated
with the Maine Bank for \$37,000.

Int. Lind Did this.

Ans. Yes Sir. As was told so & I saw the
bonds. I chased them from Wall st. to Chicago
& from there to Boston from there back again
to New York & from there back again to Chicago
Int. Was the City ever able to get these bonds back
Ans. No for I never was.

Int. Was the City paid interest upon them.
Ans. To the best of my belief had to do it or
allow the Credit to suffer.

By Mr. Stales.

137 Int. Did you ever hear anything said by the
Commissioners by Mr. Laid or others whether
he bought these bonds or not.

Ans. Yes I don't know.

Int. Did he ever claim that he bought them
of you or either of the other Purchase Commrs.

Ans. I believe he did in one case claim to
have purchased them.

Int. on what terms.

Ans. It was during conversations had in my
office he claimed to have done so. at first
but he kept out of it again because we
knew better, I have forgotten the terms & can
not tell you.

Int. Was there anything of this kind that
he claimed to have taken down on November

under the hope to some time purchase them
if he wished & that he put up some security
Ans. No there was never any such reservation
he acted apart of the time as he was insane
and at other times as a fool. he claimed on one
occasion that the other Commissioners had
allowed him the bonds.

Int. With the hope to purchase

Ans. No sir you remind me of a remark
he made.

Int. What was it

Ans. I don't know he said he bought the bonds at
98 cts. & was entitled to take them out at 98 cts
which by law he could not do.

Int. How long did he have that right

Ans. He did not state that he had any time

Int. When did he say he purchased them
at what meeting of the board of Sewerage
Commissioners did he say that.

Ans. He never stated the time we asked him
for the bonds & in his embarrassment he made
a great many statements each inconsistent
with the other. & on one occasion he stated
that he had bought the bonds. Well we want-
ed to know what he paid for them.

Int. Did he mention about giving to Gilester
his securities

Ans. He said something about securities but

did not mention what they were. I know
there was a third mortgage upon some prop-
erty. I believe he claimed that but we were
never able to discover it.

Int. Was there a mortgage given at the time
those bonds were delivered to him for the pay-
ment of 98 cts on the dollar.

Ans. We never found out that he claimed
a great many things.

Int. But the other Commissioners did they not?

Ans. Mr. Fletcher was thunder struck about
his making such a claim.

Int. What was the security?

Ans. It seems there was a package, locked
up in the safe.

Int. What did it contain?

Ans. I do not know what it contained.
I was told by Mr. Lind that a mortgage
was given to secure him for these 40 bonds.

Int. What was the security on that package
given to Gamble.

Ans. I do not know that I understand from Mr.
Lind certain things & I understand from Mr.
Gamble that there was a package locked
up in the safe.

Int. That was the security was it not?

Ans. Well if people call it security but they were
papers purporting to be security I suppose. I

consider the security matters if ever given &
in the next place I did not believe nor do
I now. that it was given as security for the
bonds taken from the city.

Int. I did not understand Linn's claim to that,
he simply states that he gave them as security
for the payment of these bonds.

Ans. Here is the report of the Council dated
Aug. 5. 1861, page 6, & I do not see any
thing in it which leaves me to think that
every word in it is not substantially true.
It will give us the facts of the case just
as near as we can get at them.

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"Report referred to is full out."

Report of Special Committee.

The special committee on affairs of the
Sewerage Commissioners presented the follow-
ing which was concurred in.

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

Your special Committee &
appointed to investigate the affairs of the late
Board of Sewerage Commissioners having had
the same under advisement, beg leave to &

report that according to their report made to this Council on the 24th day of June last the amount of money then remaining in the hands of said late Board according to the report of their own Secretary was. \$196, 037. 90.

The Treasurer of said Board, has since that time paid over by a check on Marine Bank for the amount on deposit in that institution and received as cash in accordance with the instructions of this Council the sum of \$58, 982. 94. The said Treasurer has also left his check (with this Committee) on B. F.

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Carr. & Co. for the sum of. \$50, 142. 3. to be used at the offices of the City might deem expedient and on which there has been drawn for the payment of interest on Sewerage Bonds in New York and outstanding labor bills of the Sewerage Department the sum of \$30, 142. 35, which sum netted the City 15 cents on the Dollar

The City Comptroller found in the American Exchange Bank New York City due Sewerage Bonds of \$1,000. each which have been equated to the Sewerage Commissioners \$3,000.

In the former report of this Committee was shown that Mr Lind had on that day June 24th paid to the City Treasurer the sum of \$14, 310. 44.

This payment was received in the

shape of a check of J. G. Buckingham & Co
on B. F. Carver & Co amounting to \$23,850.73.

On this amount Mr Carver paid 10 per
centum amounting to the sum before named
to wit. \$14,310.44.

Your Committee agreed to give Mr
Lind credit for 12 per cent more than the ac-
tual amount received which ~~amounted~~ to \$1,717.25.

The late Board should therefore be cred-
ited on the 24th day of June. \$11,027.19.

There has been paid over a balance from
the American Exchange Bank N.Y. the sum
of \$1,488.48.

This leaves in the hands of the late Board
a cash balance of.

\$86,496.54

Forty bonds not handed over as per our late report. 40,000.00

making a total deficit \$126,496.54

Your Committee have ascertained that a part
of the above amount is situated as follows.

Sw. B. F. Carver & Co. Bank. \$20,000.00

" E. J. Lintkams & Co. Bank. \$38,040.66

" same " which

was deposited on the 27th day of May 21 days

after the functions of the late Board had ceased. \$11,149.27.

Total

\$126,496.54

This leaves a balance unaccounted for.

and which in the opinion of your committee has been taken by the Treasurer of the late Board and used for private purposes. the sum of \$57,301.64

Your Committee are informed by Mr Lm'd that the Forty bonds included in this amount, and which have been hypothecated in the City of New York for the benefit of Mr Lm'd were loaned to him by the late board by a resolution passed by them, and that he gave said board a second Mortgage on his Block known as "Lm'ds Block" but such Mortgage does not appear of record.

If this statement is true it shows a plain dereliction of duty on the part of the whole of the late Board of Sewerage Commissioners.

Sec. 57. of the Sewerage act. reads as follows.

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Sec. 57, No member or officer of said board and no member of the common council shall either directly or indirectly receive any interest or profit whatsoever on account of the deposit of any of the funds belonging to the said board nor shall any member or officer of the said board or any member of the common council either directly or indirectly make use of or borrow any of the funds of said board or of the said sinking fund for his own private benefit or advantage.

The funds of said board remaining on hand shall at all times until disposed of be kept deposited in such place or places of deposit as

shall, by an order of said Board be directed
which order shall be entered upon the records of
said board. Provided however that such place
or places of deposit shall first be approved by the
Common Council, and provided further that
whenever the said common council shall pass a
resolution disapproving of such place or places
of deposit it shall be the duty of said board
forthwith to select other place or places of deposit
for said funds, such as shall be approved by
the said common council. And if either of the
commissioners, or any of the officers of said board
shall directly or indirectly receive or appropriate
for his own use or benefit any of the funds, money
or property of the said Board, or of the sinking
fund, or any of the interest thereon or shall
take pledge, or borrow any of the funds or property
of the said board, or of the sinking fund, for
his own use or benefit such commissioner or such
officer of said board shall be deemed guilty of
embezzlement and shall be liable to indictment and
on conviction thereof shall be fined not exceeding
one thousand dollars, or imprisoned not exceeding
one year in the County jail."

Mr Gamble the secretary of the late Board
says that he was directed by Mr Webster of the said
Board to seal perfect and give the said to him
to Mr Lind and enter on the register in pencil,

"given to said Treasurer for safe keeping"
which order was complied with by Mr Gamble.

These forty bonds, with 60 others had been in the safe of the late board for nine months previous to this time and were certainly as safe then as the 60 bonds of the same description which were left in the same place for the next five months.

Mr Gamble states that as Secretary of said Board he was never present at their meetings except at meetings for auditing bills and that the record of the proceedings of said Board were made up by him from penciled memoranda made by some members of the board and handed to him after their meetings and Mr Gamble not being present at such meetings did not sign the records as Secretary.

1445

Section 57 of the Furraige act is as follows.
"Sec 57. The funds of the said Board shall be drawn out upon checks or drafts regularly numbered and payable to the order of the respective person or persons for whose benefit the same are intended and briefly specifying for what purpose a receipt. The same are drawn a careful register of said checks or drafts shall be kept in the office of said board and the original checks or drafts when returned to said board shall be carefully filed and preserved

among the vouchers of said board and the said register and the said returned checks or drafts shall always be subject to the examination of the finance or any other committee of the said Common Council, and it shall be the duty of said finance committee or of some other committee appointed by the Common Council to examine the said register and the cash account and checks and drafts of the said board at least once in three months and if the Common Council shall deem it expedient.

146 In accordance with the foregoing section the Board had provided a book of checks and drafts of which the following is a copy now made in accordance with law.

Sewerage Commissioners Office.

No-

Chicago Ill. -

18.

Masonic Bank of Chicago.

Pay to order of.

dollars for

and charge Chicago Sewerage &

Com.^{rs}

\$-

Treasurer.

But your Committee find that Mr Lind the Treasurer of the late Board has since June 1859 repeatedly drawn checks outside of and apart from the Office of the Sewerage

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Bonds of various forms and signed "J Lm's
Treasurer" which checks do not show upon
their face. whether they are drawn on Sewerage
account. or on account of some other institution of
which Mr Lm's might have been Treasurer, which
checks amount to say \$19,000.00, and which
manifestly not used for sewerage purposes in-
as much as Mr Lm's returns at various times on
account of such drafts say \$40,000.00.

The Mayor and City Treasurer, have notified
the President of the Marine Bank that such
checks will not be accepted by the City as
Vouchers, and that the City will hold said
Bank responsible for all money which has been
paid from City funds on improper and illegal
checks

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Your Committee are at a loss to under-
stand how this state of things could have ex-
isted for so long a time, without the know-
ledge & consent of the other members of the Board

Mr Gamble states that last February and
again in April he called the attention of Mr
Commissioner Webster to the fact of a discre-
pancy between the actual bank account and
such accounts as per his books, and told him
that the discrepancy was caused by the checks
of Mr Lm's drawn outside the Office. Previous
to this Mr Gamble had spoken to Mr Lm's on

this subject. and was informed by Mr Lind that
that was a subject with which he Gamke had
nothing to do. and that he Lind was the
custodian of such funds and had given satis-
factory bonds for their safe keeping.

Your Committee would report that no
legal proceedings have been commenced against
the late board for the reason that the Committee
have had the benefit of the advice and counsel
of the best legal talent in the city and the in-
terests of the city have not suffered by the de-
lay and your Committee had hoped might
have been materially benefited thereby.

148 Your Committee would report that there
has come into the possession of the City Comptroller
the following securities the proceeds of which
may be applied to liquidate the indebted-
ness of said Board.

1 Mortgage of	\$15,000.00
1 do	3,000.00
Interest paid on same since it came into possession of the City	150.00
Debt of Charles Jones assigned to L. Pickhau	30,338.02
Various other notes amounting to.	13,336.03
	\$62,174.05

Your Committee would recommend that the Mayor
and Comptroller be instructed to commence the
necessary suits at law to recover of the parties liable

to pay the same the amount of this defalcation
and your Committee would respectfully ask
to be discharged from further consideration
of the subject.

Respectfully submitted,

Julian J. Ramsey
Charles C. P. Holden.

J. W. Marshall.

R. Prindle
Committee.

Int. Don't that upst. pay anything about
leaving a package in the safe. a security
Ans. It governs what Lind claims.

Roads. extract

149 We ascertain that Mr Gamble said there
had been a package put in his safe, which
he did not know anything about. We tried
to find the mortgage through Mr Gamble
but did not succeed.

Int. Had Lind said in any of his communications
what were the terms on which he had re-
ceived the bonds. and how soon he was to
return them.

Ans. No he on one occasion claimed that
he had the right to sell them at 98 cts we
did not think that he had the right to buy
them.

[It is admitted that a demand was duly made by plaintiff on defendant. Limit before suit brought]

Samuel, P. Ward. Examined,

By Mr Ayer,

Int. Do you know anything in regard to the bonds said to have been used by Lind?

Ans I was in New York about the 1st of July 1860, attending to the payment of interest for the City of Chicago. Mr Lind was there at the same time. I met him several times & he told me the 40 bonds were hypothecated there for his own use, & that he was trying to get them back for the City.

Int Were they ever returned.

Ans No sir

Int In whose hands were they.

Ans In the hands of Misses Ruby & Co.

Int Do you know what became of them afterwards.

Ans I do not.

By Mr. Kaler,

Int Do you know of any settlement with the Marine Bank of the Lind & Co.

Ans No sir. the Marine Bank were made

any settlement during the whole of my term.

Int. Were you compensated during Lind's term of office or most of it.

Ans. Yes Sir.

Int. Do you know that Lind had the Sewage fund deposited in the Marine Bank?

Ans. I only know from hearsay.

Int. Do you know from any transaction that took place between you & him.

Ans. He paid some money & I saw Mr. Gamble get it from there.

By Mr. Ayer.

Int. What was the value of these Sewage bonds about the fall of 1860.

157 Ans. I know from what parties told me, they paid for bonds in the market.

Int. Do you know what they were selling at.

Ans. I saw quotations.

Int. What were they.

Ans. Par.

Int. Do you know anything about what coupons were attached to these bonds when taken by Lind whether the January coupon was attached.

Ans. The January & July coupons were both detached for 1860 & 1861.

Int. Then there was no interest due.

Ans. No Sir Not until January 1862.

By the Judge.

Int. These bonds drew 7 per ct. interest January stand

Ans. Yes or payable in New York

Col Gamble. recalled by Plaintiff.

Int. Will you state whether Coupons were detached from these bonds when you handed them over to Lind, if so. what Coupons

Ans. I want to see the register

Miner refuses to register

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There were four Coupons cut off & cancelled January 1st & July 1st 1861.

Int. From all the bonds

Ans. Yes Sir.

By Mr. Kalu.

Int. Then there were two years cut off.

Ans. Yes Sir

Int. What was the date of the bonds themselves?

Ans. This sample bond will show that the bonds were dated July 1st 1859.

By the Judge.

Int. January & July Coupons for 1861. were cut off & two had matured

Ans yes Sir

The Plaintiff here rested its case, and the counsel for said defendant, Prof. Cannon then and there personally asked & moved the Court to exclude and rule out of the case all the evidence admitted on the part of the plaintiff touching the alleged embezzlement by the Defendant Lmd of the 40 Sewage Bonds in question, which the Court then and there refused to do, and so remanded said motion to which refusal and ruling of the Court the said Defendants by their counsel personally then and there excepted.

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The Defendants then called the following witnesses on their part and belief
base for the Defence:

D. J. Mayer sworn and examined for Defth.
By Mr. Kaler.

Qnt. Are you City Comptroller?

Ans yes Sir

Qnt. State whether the City has received any money from the Marine Bank during your term of Office on account of money deposited in that Bank by Christen Lmd as Treasurer

of the board of Paving.

Ans. The City has received money from J. Y. Scammon on paid to be the settlement of that account.

Qnt. What is his connection with that Bank?

Ans. He was President & I think Principal Officer

Qnt. So he now

Ans. I think he is selling up the affairs of that Bank & whether the payment was out of his monies or out of those of the Bank I cannot say.

Qnt. Did the City enter into any arrangement with Mr. Scammon.

Ans. The City entered into a written contract which will show exactly what was done.

Said agreement is as follows.

City Comptroller Attest
Chicago August 21, 1862.

It is hereby agreed by & between the City of Chicago & J. Young Scammon that said Scammon shall and will pay to the said City the sum of Eighty six thousand three hundred & eighty seven & 4/10 dollars in weekly payments of One Thousand Dollars each (except the last which shall be Six thousand three hundred & eighty

seven 24/100 Dollars) unless hereafter otherwise
agreed Commencing Sept. 1 1862, & said
payments, when fully made, as aforesaid time
being the essence of the contract shall be
in full satisfaction & discharge of all claims
& demands of the City of Chicago upon
the Marine Bank Chicago & The Marine &
Fire Insurance Company on account of
deposits of said City by any of the Officers
or the late Board of Sewerage Commissioners
with the said Bank, to the credit of the
Sewerage fund of said City, the balance of
said deposit amounting to \$58,982.84, & also
account of deposits to the credit of the School
Tax fund of said City the balance of said
last named deposits being \$3392.68, of the
sums herein provided to be paid \$52,994.56.
or to be in settlement of the account of said
Sewerage fund deposits & \$33.92 68. in
settlement of the account of said School
Tax fund deposits

This settlement when completed by the
payment of said sums aforesaid shall
be in full & final discharge of said Bank
& Insurance Company from all liabilities
to said City or its authorities for any deposits
made with either or both of said institu-
tions.

Signed & sealed at Chicago the day &
year above written

Attest

J. C. Thurman Mayor
D. D. Hayes City Comptroller
Lyonmg Seammn. *Attest*

Attest

A. J. Marble City Clerk,

Int. Do you know how that amount of sewage
fund balance was made up?
Ans I do not.

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Int. Now you present when the account was ad-
justed & balanced

Ans No sir but the a/c was reported to my office
from the board of Public Works they keep an
a/c of sewage dispo. & pay over monthly to the
City Treasurer the money received during the
preceding month. Mr Seammn agreed to the
correctness of their reports.

Int. Do you know that in that a/c there was
Checks drawn upon the Marine & Fire Insurance
Co.

Ans I do not but I imagine it was a final
settlement of the claims of the City upon
either or both of those banks.

Int. It is also stated in that agreement,

Ans That was the understanding at the time,
my impression of the amount was ascertained

from the books of the drainage Com. though
I am not positive of that.

Int. What Bank books do you refer to.

Ans. Well one of them I don't know whether
they had one.

Maine Bank pass books
produced.

I think that is the books the amount is the
same

Mr. Welch said the settlement was made on that
basis.

Mr. Hales offered the agreement in evidence.

157 Mr. Ayer objected to it as having no bearing
on the case.

The Judge overruled Mr. Ayer's objection.

And agreement read in evidence

Mr. Ayer said the agreement was made on a
basis of 90 cents on the dollar of indebtedness.
although it is mentioned in the agreement as
a general settlement all the items in the
settlement were agreed to & all of them taken
as they stood

Julian Ramsey examined by Mr. Kaler.

Int. Are you stockholder of the Marine Bank?

Ans. I am not myself but I hold a certificate.

Int. Are the Marine Bank & the Marine & Insurance Company two different corporations?

Ans. They were incorporated at the same time.

I think the first about 1836 or 1840. I do not know how long a time before the general Bank Law passed, under which the Marine Bank was incorporated.

Int. What is the style of the Marine Bank?

Ans. A basis of upon incorporated under the general Banking Law of the State of Illinois. I don't know the full paper but probably you will know.

Int. Had the Marine Bank proper my deposit accounts as the Marine Bank?

Ans. They had.

Int. What was the amount in 1840?

Ans. I do not know I know in 1841. I know of two or three accounts I know the Sewage account of the City was with the Marine Bank proper. I have seen one or two small bank books when there was a credit to different individuals. I recollect one. I rather think it was one of my neighbors.

Int. Do you know they had the United States Funds

Ans. I only know from hearsay. Mr Walker mentioned it.

Int. Do you know of those foreign Collection agencies
Ans I do not I think there were or two similar
accounts which were not included in those
I have mentioned.

By Mr. Ayer.

Int. Had the two institutions the same set of
stockholders officers & clerks

Ans. They kept two sets of books and the cer-
tificate of stock that a certain individual
is entitled to a certain share in each institu-
tion I am an executor perhaps a certificate

Int. Can a person purchase stock in one with-
out being a share holder in both institutions
Ans. Not as I understand it.

Int. Is there any connection between them
in their management

Ans. I can only state from general knowledge
we have done business with the Farmers &
Bank or the other for a great many years
we always called it the Farmers Bank & Co.
on the books it has been Farmers & Co. Insur-
ance Co. We look upon them as the same.

Int. Do they do business in the same place
or on the same corner?

Ans. I believe they separated their corner.

about last June on one side thru a
Committee for the Marine Bank. on the other
for the Marine & Life Insurance Co. & in
another part. one for Mr. Seamon.
Sgt. & they in the habit of paying checks
more or less liberally?

Ans. I know they did in this case, of course.

Int. What are the letters on the building?

Ans. They were the names of both on different
sides the building itself is called Marine
Bank Building

Int. Who owns it?

Ans. It belongs to the institution

Int. Which institution

Ans. To both I suppose they tried to sell
it to us (the City) for money deposited in
both institutions Mr. Seamon made that
proposition to me.

Int. Did you know anything about this
defalcation of funds until you were in
New York?

Ans. No Sir

Int. What time did you leave New York?

Ans. I said yesterday that I returned home
from the 5th to the 15th of June. In all this
evidence has come up in reference to Smith's
failure I should say that I left there about
the 6th I heard of the failure on my way home

Int. When you arrived here was anything known about this defalcation of Lind?
Ans. Not to my knowledge.

Int. Had any steps been taken to investigate his affairs?

Ans. There had been a resolution passed by the Council to appoint a committee for investigating the Sewerage Commission's account. May 14, 1861, was the date I think it was about the time I left home. The committee was not intended for any investigation as to fraud.

Int. I will ask about that resolution of June 17.

Ans. That was passed after I returned & I suppose it was in consequence of what I had found out. I spoke to the Board of Public Works & others & I procured this resolution to be adopted. I believe.

Int. Was there any Committee appointed?
Ans. Yes sir.

Afternoon Oct. 22, 1861

It is admitted that on January 19, 1861, Lind had his private note for \$20,700, 000.00 deposited at the Marine Bank. & the proceeds of \$30,000, were on that day placed to his credit as Treasurer in Sewerage account & \$20,000 were deposited as security for the Sewerage bonds in question in this suit & the note was

afterwards sold. It appears under date January 19. 1861, in the pap books of the Marine Bank.

Mr Hales. Based on evidence act of 1836, incorporating Marine Fire Insurance Co. Mr H. said he understood Mr Ayer to admit that the date of the incorporation of the Marine Bank was from 1851 to 1853, Mr Ayer assented.

The foregoing was all the testimony given in the case on either side.

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Upon this evidence the Plaintiff's Counsel claimed the right to recover damages to the amount of \$37,911.94, according to the following statement, to wit

Amount converted by Lm's subsequent to June 7th 1860. for which he and his partners are chargeable on the bond in suit.

June 8. 1860. Amount received from American Exchange Bank New York. & not accounted for by Lm's \$6,805.00
Amount of checks drawn by Lm's on Marine Bank all subsequent to

July 1 1860. not accounted for by him \$35,105.10.
Amount of Sewerage taxes accrued &
retained by him in notes of 1860. - 1. - \$ 1. 850.15.

May 19. 1861. City Sewerage Bonds. Entered by
him Principal. 40,000

Interest at 7 per cent as

Per Coupons attached 3,471.11

Total,

\$43,471.11
87,431.26.

Items to which Defendants are
entitled.

Dec 1 1860 Cash deposited to credit of.

Sewerage account in Marine Bank \$3000.

Jan 19. 1861. Cash deposited to credit of same account. \$30,000.

June 24. 1861. Cash paid by him to City authorities 16,027.69.

Interest at 7 per cent. from June 24. 1861.

on \$5,267.54 balance, to his credit after

satisfying his cash deficit at that date,

Balance now due.

491.43, \$49,579.32
\$37,911.94.

The Comtee for the defendants Gop. and
Carver then and there moved and requested
the Court upon the foregoing evidence to
charge the Jury that they should find for
said Defendants as on case of argu sent on
the ground that the Plaintiff had failed to
make out the case. which the Court then
and there refused to do. and then and there
overruled said motion, to which refusal
and the overruling of which motion the said
Defendants Gop. & Carver by their Comtee
then and there severally excepted.

The said Cause was then argued to
the Jury and the Court thereupon on behalf
of the Plaintiffs instructed the Jury as
follows. -

Instructions for Plaintiffs.

1.
The Jury are instructed that the bond in
suit was obligatory from the time it was
delivered to the City Clerk as for the
bond required of and from said Lind as
surety for commission, and the fact that
it was not presented to the Common Council
& approved by them for some time after
its actual delivery to the Clerk is a matter
of no legal significance so far as the

liability of the parties concerned, and
the Jury are to determine from the evidence
in the case what was the date of de-
livery to the Clerk.

2.
If the Jury believe from the evidence that
the said Sylvester Lord during his last
term of Office appropriated and converted
to his own use any money or funds be-
longing to the late Board of Sewerage Com-
missioners which came into his hands or
control, as Sewerage Commissioners or which
were confided to his custody as Sewerage
Commissioner as recited in the Caption of
the bond of the Defendants in this action
then defendants are liable for the amount
165- of all such moneys and funds as were so
appropriated and converted subsequently to
the delivery of their bond to the City Clerk or
before the expiration of his said term of Office
after deducting therefrom all moneys received
or paid for which the said Defendants
Bond are entitled to receive credit.

4

Names of parties need not be inserted in
the body of a bond. The neglect or omission
thereof to insert the names of the parties

in the body of the bond in question
will not release them from any liability
which they would otherwise be subjected
to in this action

5.

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If the Jury believe from the evidence that
after the delivery of the bonds afloat to the
city of New York the said bonds were received into the
custody of the city one thousand dollars.
Borrowing bonds, described in the declaration
and that he afterwards and before the
expiration of his said term of office appropri-
ated and converted said said bonds to his
own use either by selling or pledging or
otherwise disposing of them and has
never accounted for their value or pro-
ceeds and that the said bonds are now
outstanding against the city the
Defendants are answerable in this action for
the amount of said bonds and the
interest which has since matured
according to the coupons attached thereto
at the rate of seven per cent. per annum.
But all payments made by said City
for which the Defendants are entitled to
credit in accordance with the instruc-
tions given by the Court to the Jury for

then guided upon this point, as to
be allowed them in making up your
Tidier

8.

It is provided by sec 57. of the act of
February 18th 1861, as follows..

"All moneys now in the hands of said
Water Commissioners" and "Sewerage
Commissioners" their respective treasurers
other officers or employees belonging to
the Hydraulic Works or Sewerage Comrs
shall be forthwith paid over to the
City Treasurer to the credit of the respective
accounts to which they belong" and
by section 92 of said act it is provided
that said act "shall take effect and
be in force from and after its passage"
Of this no doubt I am believe from the
evidence that the said Charles Lind
had at the time of the passage of said
act, on deposit to his credit as Treasurer
of the said Board of Sewerage Commissioners
at the Banking House of E. J. Smith
& Co. any of the said Sewerage moneys
and that he kept the said moneys
deposited there until after the expiration
of his said term of office and until the

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9

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10. Subsequent failure and insolvency of said
firm of E I Smitham & Co. without
having agreed to transfer or pay over the
same, in the mean time to the City &
Treasurer, and of their further belief
from the evidence that said money
might have been all safely withdrawn
by said Lind, from said firm of E. I.
Smitham & Co. and paid over to the City
Treasurer, at the time his said term of office
expired, if he had properly attended to his
duty, in that behalf. but that on consequence
of his neglect, so to withdraw & pay over
said funds and the failure and insolvency
of said firm of E I Smitham & Co. said
funds have been wholly lost to the City
without any fault of the City or of its officers
tho he was guilty of a violation of the
duties of his said office, and the defen-
dants are answerable in this action for the
damages sustained by the City for the
wrongful conduct of said Lind if there
was any in the premises unless Lind had
previously tendered the money to the City

9.

of the jury believe from the evidence that
that the deposit of \$1149.27, made by

the said Lind to his credit as treasurer
of the Board of Savings Commissioners at
the Banking House of E. L. Fishman & Co
on the 27th day of May 1861, was made
by him upon his own motion or responsi-
bility without any consultation with the
city authorities and without any under-
standing or agreement on their part, that
he should be allowed credit therefor,
and if they further believe that no por-
tion of said amount has ever been received
by or paid to the city in such case the
defendants are not entitled to any credit
therefor and the jury in such case will
disregard said item in making up
their verdict

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If the jury believe from the testimony
that Lind kept his account in Sweden
with the Marine Bank and did not
keep any account with the Marine
Insurance Company and that both
of these institutions have their offices
in the same room and are the same
President and Officers - and that the stock
of both institutions was owned by the
same stockholders & that the rules and
regulations of each institution required

that the owner, of any stock, in either insti-
 tution, should take & hold at the same &
 time a like amount of the stock of the other
 institution, and that the owners of
 stock were so printed that each certificate
 entitled the holder thereof to an equal
 amount of stock in each institution, and
 that the bank was a member of
 the name of the Marine Bank as by chart.
 of the Marine & Fire Insurance Co
 Chap both names were on the Building
 "Marine Bank", "Marine & Fire Insurance
 Company" and that the printed checks
 circulated by both of these institutions
 were "Marine Bank" others with the name
 of both institutions "Marine Bank - Marine
 & Fire Insurance Co" others with the
 name of the Marine & Fire Insurance
 Co, and that such checks were recognized
 & paid by both of the said institutions &
 when so drawn had funds in either of
 them and that the defendant Lind
 as Treasurer sometimes drew his checks
 on the Marine & Fire Ins Co, and that
 the Marine Bank paid such checks
 & charged them in as if drawn on
 itself & that Lind as Treasurer from
 time to time recognized such payments

and on balancing his account said Bank, entered the same, in his Lias Bank pass Book from time to time & Lina did not object to the same, and did acquiesce in such entries on his books. Thus he is chargeable with such money in the same manner as if he had drawn his check in form on the Marine Bank instead of the Marine & Lias Ins Co,

So the giving of each and every of which instructions the said Defendants, J. P. and Carver, verbally then and there executed. The Court then and there also gave the following instruction on the part of said Defendants, J. P. and Carver.

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Instruction for J. P. Carver & J. P. given as qualified by the Court by inserting the part in brackets at the end of the instruction to which qualification the Defendants, J. P. and Carver, then and there assented.

If the Jury shall believe from the evidence that Lina appropriated the money in Carver's house, into the Marine Bank, for the purpose of securing for his own use for use, Thousand Dollars which sum of money was loaned to him by the Bank. They are instructed that such hypothecation of the bond was illegal and the Marine Bank became

liable to account to the City or to the Board of Sewerage Commissioners for these bonds or for their value, and if the Jury shall further believe from the evidence that the City has released the Marine Bank from its liability, they are further instructed that the City cannot recover the value of these bonds from said parties.

[But the written release and evidence here does not discharge the Bank from that liability]

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The said Defendants Rob and Carver also then and there severally requested said Court to give the following instructions on their part and behalf and on behalf of each of them to wit,

That the Plaintiff cannot recover in this suit on account of the Bonds alleged to have been emitted by said to his own use a greater sum than they have already paid on account of said bonds and if the Jury shall believe that only the interest on said Bonds has been paid by the City then it can only recover the interest so paid

If the Jury believe from the evidence
that Bond held the funds and bonds
or either or any part of them in question
as Treasurer of the Board of Sewerage Com-
missioners and in the capacity of such
Treasurer, and while holding said
funds and bonds as such Treasurer em-
bezzled and appropriated the same to his
own use, then the parties of Lind are
not liable on the bond sued on

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If the Jury believe from the evidence that
bonds in question were issued in the
manner and form as they purport and
under the Law therein mentioned, and
that all Bonds originally authorized by
the Sewerage Act of 1855, referred to in
the Bond sued on in this case have
been issued and the proceeds expended
prior to the execution of the Bond
on then the plaintiff cannot recover
against Lind's parties for an embezzlement
of the bonds issued in this case to have been
taken by him for his own purposes

If the Jury believe from the evidence
that the bonds in question were issued before

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any plan of sewerage had been adopted,
as required by law and that such issue
of said bonds was approved by the City,
and that said bonds were not
required to defray the cost of the execution
of any such plan or part of such plan,
and that they were delivered in the
hands of said Lind and remained in his
possession until the adoption of any such plan
by him to his own use. - The defendants
are not under the bond sued on in
this case liable for such conversion.

If the Jury believe from the evidence
that the bonds in question were issued
by the Board of Sewerage Commissioners
and the City, as shown by the evidence
and were so issued and placed in the
hands of Lind as Treasurer of the said
Board and issued and sold before any
plan of sewerage had been adopted as
required by P. C. 17 of the Sewerage Act of
1855, then the Defts. are not entitled to recover
of said parties for any conversion of
said bonds by Lind prior to the adoption
of such plan,

The act incorporating the Board of Quorage
Commissioners is a public act and the Marine
Bank and all persons dealing with the Board
of Quorage Commissioners are bound to take
notice of its provisions and all of its provisions
and therefore the Marine Bank knew and
was bound to know the form and character of
the checks by which alone under the act the
money of the Quorage Commissioners at its
Bank could legally and rightfully be drawn
out. and if the Jury shall be alive from the
evidence that the Marine Bank had paid
a part of the whole amount of \$35,000 said
to have been misappropriated or any of said
money upon checks not drawn by the au-
thority and in the manner prescribed by law
then the Jury are instructed that all such
money was improperly and unlawfully
paid by said Bank and the Bank is
responsible for all money thus paid to the
said Board of Quorage Commissioners
to the said City which has succeeded to its
rights. and if the Jury further believe from
the evidence that the City is entitled to
and released said Bank from said liability
then for all such sums so paid the City can
not recover in this case against the Bank

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If the Jury shall believe from the evidence
that \$27,000. of what are called unofficial
checks drawn upon the Chicago Marine
or Fire Insurance Co by Lind were
to the Marine Bank to be drawn by
authority of the board. or adopted by Lind to maintain the
purse commissioners in violation of Law. and
apply the same to his own private account.
a Knight with reasonable diligence have
known these facts - then the Jury are instructed
that said Marine Bank had no right to
pay the same out of said fund and if
they did so they did not. and could not thereby
acquire the right to be refunded that
same by the City or out of said fund. but
would still be liable to the board of purse
commissioners or to said City for the ^{whole amount of} money
thus drawn out. and if the Jury shall
find from the evidence that the
City has settled with the Marine Bank
and released them from this liability the
plaintiff cannot recover against the securities
for the amount of such checks or on account
of the money drawn from said fund by
means of these checks

177 If the Jury shall believe from the evidence that the forty bonds in question were deposited to the Marine Bank by Lind as collateral security for the payment of his private notes for \$30,000 and were not otherwise sold or disposed of by Lind then the Marine Bank by such pledge or deposit acquired no right to or title in said bonds and if now in its possession holds them in trust for said City or the real owner thereof, and if it negotiated them in the market, then the Marine Bank is liable to the City or to whoever may be entitled to the same for the value thereof, and if the Jury shall further find that the City, through said deposit of Bonds made the Bank, has settled with said Bank and released said Bank from said liability, then the plaintiff can on account of the same only recover nominal damages.

To give which as required by law and then refused. I will therefore award said Court each of said defendants costs and carrier by their counsel, and that there be no other costs.

The cause was then upon given to the Jury who afterwards returned

into Court with their verdict against the
Defendants, for Debt.

\$100,000

Damages.

37,911.²⁴/₁₀₀

debt to be discharged on payment of damages

And thereupon the said defendants
Dob and Carver severally moved the Court
for a New Trial.

1st Because improper testimony was ad-
mitted on behalf of the Plaintiff at the trial.

2^d Because proper testimony offered on the
part of said Defendants was rejected at the trial.

3^d Because improper instructions were given
to the Jury on behalf of the Plaintiff.

4th Because proper instructions asked for by the
said Defendants severally were refused.

5th Because proper instructions asked for by
each of said Defendants were modified and changed by the Court.

6th Because the verdict of the Jury was not warranted
by the evidence, but was against the evidence
in the case.

7th Because the Court refused to instruct the
Jury to find for said Dob and said Carver
respectively as in case of a non-suit.

8th Because the Jury should from the evidence
in the case have found a verdict in favor of
said defendants and each of them.

And afterwards at the November Term 1863
of said Court the said motion was granted.

overruled, and the said Ross and Carver
then and there severally excepted to the
ruling of the Court refusing a new trial in
said Cause

Then upon the Court rendered
a judgment against said Defendants upon
the said verdict of said Jury, and in said
judgment included and allowed interest upon
said verdict from the time of its rendition to
the time of said entry of judgment to which
allowance of interest said defendants then
and there excepted.

And then upon the said
Defendants Robert H. Ross and Benjamin
H. Carver by their counsel then and there
severally prayed the Court to allow them
their bill of exceptions in said Cause which
is done accordingly

Witness the hand and seal of Van H. Higgins
one of the Judges of said Superior Court of
Chicago before whom the said Cause was
tried at the County of Cook, Illinois
this 16th day of December 1883.

Van H. Higgins
Judge.

State of Illinois } ss
County of Cook }

I Thomas B. Carter
Clerk of the Superior Court of Chicago,
within and for the County of Cook, do hereby certify the above and foregoing to
be a true perfect and complete transcript of
all the papers on file in my office, together
with all the orders and judgments made and
entered of record in a certain cause lately
pending in said Court on the law side to-wit
Wherein the City of Chicago was Plaintiff
and Silvestre Lord Robert H. Fox Benjamin
B. Carter and Alexander H. Herald were defend-
ants

In Witness Whereof I have hereunto set
my hand and affixed the seal of said
Court at Chicago this Twelfth day of
February A.D. 1864.
Thomas B. Carter Clerk



Supreme Court of Illinois

Robert H. Foss and

Benjamin F. Carver, impl^d &c
Plffs in error

vs

City of Chicago, Deft in error

Of the April Term AD 1864

And now come the said Robert H. Foss, and Benjamin F. Carver, impl^d &c, by their attorneys and severally say that the said judgment of the Superior Court of Chicago rendered &c, is erroneous in this to wit:

1st That the Court erred in overruling the motions of said Foss and Carver for a new trial; but should have granted the same for the reasons then and there assigned:
2^d That the judgment entered in the Court below against the plaintiffs in error is erroneous in this; that the evidence introduced in said cause upon the trial thereof was not sufficient to make out said action, or to support said judgment.

3^d That upon the evidence the verdict and judgment and each of them should have been for the plaintiffs in error, and not for the defendant in error.

4th Because the verdict and judgment include moneys taken by Lind prior to the approval of the bond, by the Common Council,

5th Because the judgment is otherwise erroneous and void
And this said plffs in error are ready to verify &c where for they pray &c
J. H. Kales Atty for Foss.
J. M. Walker Atty for Carver.

And the said City of Chicago,
defendants in error in the foregoing
record mentioned, now comes and
says that there is no error either
in the record and proceedings afore-
said, or in giving judgment afore-
said, in manner and form as
above assigned, and therefore it
prays that the said judgment
may be affirmed, and that its
costs may be adjudged to it, &c.

By its attorney
B. F. Upton

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Robert W. Frost et al
City of Chicago

Record

Filed April 18, 1864

J. L. Leland CM

Fees. \$40.50