

No. 13417 $\frac{1}{2}$

Supreme Court of Illinois

Bonner

vs.

city of Ottawa

SUPREME COURT.

THIRD GRAND DIVISION.

ROSALIA A. BONNER, AND
PERCY WILLIAM BONNER,
AN INFANT, BY HIS NEXT FRIEND,
JOHN JONES,
VS
CITY OF CHICAGO.

}

ABSTRACT OF RECORD.

This was a special assumpsit, brought in the Superior Court of Chicago, by the plaintiffs, in this Court, who were the plaintiffs in the court below, against the city of Chicago, defendant.

The said defendant filed a general demurrer to each of the counts of the plaintiffs' declaration. The plaintiffs joined in demurrer.

The court below sustained the demurrer to each of the counts of the declaration.

The plaintiffs stood by their declaration, and final judgment was rendered against them, with costs, and they bring the case to this court by writ of error.

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

SUPERIOR COURT OF CHICAGO.

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

STATE OF ILLINOIS, }
COOK COUNTY. } ss.

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

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

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

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

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

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

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

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

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

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

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

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

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

SECOND COUNT.

Rec. 12 For that whereas the said Rosalia A. Bonner and Percy William Bonner, plaintiffs, together with one G. Virginia Bonner, since deceased,

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

And the said plaintiffs aver and say that the said G. Virginia Bonner on or about the seventeenth day of April, A. D., 1857, died, leaving them the said plaintiffs, her sole and only heirs at law. And the said plaintiffs
 REC. 13 aver further that they are the sole and only heirs at law of the said James D. Bonner, and that as such heirs they are entitled to the said sum of money awarded to the said estate of said James D. Bonner, as hereinafter mentioned. And the said plaintiffs aver and say that heretofore, to wit, prior to the 9th day of June, A. D., 1856, the said defendant determined to take certain proceedings to extend La Salle street, in said city, from its then present terminus at Madison street, south to Jackson street, in said city, and did, through their common council, give the legal notice of their intention to appropriate and take the land necessary for the laying out said extension of said street: and therefore did choose certain commissioners as and in the manner required by the charter of said city, to assess the damages and expenses of such improvement: and said plaintiffs further say that the commissioners so chosen, as aforesaid, did proceed to
 REC. 14 discharge their duties, and did in all things comply with the law and the charter, and the ordinances of said city, in the making of the assessment for the opening of the extension of said street, and did apportion and assess the damages and expenses, etc., of said improvement, and did sign and return their said assessment to said common council within the time required by law, and thereafter, to wit, on the 9th day of June, A. D., 1856, such proceedings were taken as that the said defendant, by its common council, did confirm and enter an order of confirmation of the said assessment of said commissioners.

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

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

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

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

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

THIRD COUNT.

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

Rec. 19 And the said plaintiffs aver and say in consideration of the powers conferred upon said defendant in and by the said city charter, and in further consideration of the franchise and the right to the use of said pieces of land for said street, so had and taken of the said estate of said James D. Bonner, to wit, of said plaintiffs, as aforesaid, it, the said defendant promised and undertook to indemnify, or caused to be indemnified unto the

Rec. 20 said plaintiffs therefor, by the collecting and payment of the said sum of ten thousand one hundred and twenty-five dollars, so appraised, awarded

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

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

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

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

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

ARNOLD, LAY & GREGORY,

Attorneys for Plaintiffs.

ASSIGNMENT OF ERRORS.

The plaintiffs assign the following ground of error appearing upon the record, in this cause.

1. The court below erred in sustaining the demurrer to said first count of said declaration, and in rendering judgment in favor of said defendant, upon the issue of law formed by said demurrer and joinder.

2. The court erred in sustaining the said demurrer to said second count of said declaration, and in rendering judgment in favor of said defendant upon the issue of law formed by said demurrer and joinder.

3. The court erred in sustaining the said demurrer to said third count of said declaration, and in rendering judgment in favor of said defendant upon the issue of law formed by said demurrer and joinder.

4. The judgment rendered in said cause is erroneous, and contrary to law.

ARNOLD, LAY & GREGORY,

Attorneys for said Plaintiffs.

223-
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13417

Filed Apr-18. 1860

G. Leland
Clerk