

No. 12533

# Supreme Court of Illinois

City of Chicago.

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vs.

Rock Island R. R. Co.

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United States of America  
State of Illinois }  
Cook County }

Pleas before the Honorable  
John M. Wilson, Judge of the Cook County Court  
of Common Pleas. within and for the County and  
State aforesaid. at a Special Term of said Cook  
County Court of Common Pleas. begun and hol-  
den at the Court House in the City of Chicago  
on the Twenty-seventh day of January in the year  
of our Lord One Thousand Eight Hundred and  
fifty Eight. due notice of the time and place of  
holding said term of Court having been printed  
and published in the "Chicago Daily Democratic  
Press" the Corporation Newspaper of said City of  
Chicago. said notice having been printed and  
published twenty days previous to the holding of  
said Court. in accordance with the Statute in such  
case made and provided. and in pursuance of  
an Order made by the Judge of said Court on the  
Seventh day of January A.D. Eighteen Hundred  
and fifty Eight.

Present the Honorable John M. Wilson, Judge  
John L. Nelson Sheriff

Attest

Walter Kimball, Clerk



Be it Remembered. That on the Twenty Seventh day of January A.D. Eighteen Hundred and fifty eight. said day being one of the days of the January Special Term of said Cook County Court of Common Pleas. the following, among other proceedings. was had in said Court and entered of Record. to wit.

The City of Chicago

vs. The } Suit for abatement on Warrant  
for the extension of LaSalle Street  
Rock Island R.R. Co. others from Madison to Jackson Street.  
imple with S.B. Pomroy &c.

And now on this 27<sup>th</sup> day of January 1858. comes the said City of Chicago by J.C. Miller her Attorney, and moves the Court for judgment against the several lots, pieces and parcels of land, described in the warrant filed in this case. and thereupon come the Rock Island Rail Road Company. The Michigan Southern & N. Indiana R.R. Company, and Allen Robbins by their attorneys, and severally object to the rendition of judgment in this case. and the Court after hearing argument of counsel on said objections, being now fully advised in the premises, overrules the Defendants First & Second objections, and sustains their Third objection.

It is therefore considered by the Court, that this application of said City for judgment against said lots in this case be denied. and that this application



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be dismissed at the cost of said City. And that said  
Defendants recover of said City their costs in this  
behalf expended and have execution therefor. To  
which ruling and judgment of the Court the said City  
enters her exceptions.



Of the January Special Term of the Cook  
County Court of Common Pleas 1858.

State of Illinois }  
Cook County }

The City of Chicago

as

The Rock Island R.R.

Michigan S. & N. I. R.R.

Allen Robbins

} Suit for Taxes.

Be it Remembered, that  
on the Twentyninth day of January 1858 came  
into open Court. George W. Calby, City Collector of the  
South Division of Special Assessments for the year  
1856. and filed his Report as such Collector. which  
said Report is in the words and figures following  
that is to say,

Of the January Special Term of the Cook  
County Court of Common Pleas 1858.

State of Illinois }  
Cook County }

A list of Lands and Town Lots  
reported by George W. Calby, City Collector of Special  
Assessments of the City of Chicago in said County  
and State for the year 1856 - 7, for the South Division,  
upon which he has been unable to collect, the Special



4  
assessments due thereon. And now on this 26th day  
of January 1858. files this his petition for a judg-  
ment and order of sale against said land and  
lots. at the January Special Term 1858 of the Cook  
County Court of Common Pleas.

I George W. Calby collector of the City of Chicago  
of Special assessments in the South Division for the  
year 1856-7. do solemnly swear. that the forego-  
ing is a true and correct Record. of the delinquent  
lands and town lots within the County of Cook  
upon which I have been unable to collect the  
Special Assessments made during said year therein  
set forth. That said several Special assessments,  
for improvements now remain due and unpaid  
as I verily believe.

George W. Calby

Subscribed & sworn to  
before me this 26th day of  
January 1858

Walter Kimball, Clerk  
Cook County Ct. Com. Pleas.

And said collector produced his Special Warrant,  
for the collection thereof. which is as follows.

State of Illinois }  
City of Chicago } ss.

The People of the State of Illinois



5  
To the Special Collector of the South Division of  
the City of Chicago - Greeting.

Whereas the  
Common Council of the City of Chicago did on the  
ninth day of June 1856, confirm the assessment  
duly made, and filed in the office of the City Clerk  
by the Commissioners appointed by the said City  
Council to assess the damages, expenses and benefits  
resulting from extending La Salle Street from its  
present terminus to Jackson Street, upon the real  
estate in the South Division of said City, deemed  
benefited or damaged thereby in proportion as near  
as may be to the value of such damages or benefits,  
upon the several pieces or parcels of land deemed dam-  
aged or benefited thereby each to each in pursuance  
of an order of the Common Council for said assess-  
ment made on the tenth day of January 1856, and  
did thereby assess the several sums of money noted  
in the Roll of said assessment, upon the several  
lots, sublots, pieces or parcels of land respectively  
opposite thereto, which said Roll is in the words  
and figures following, to wit:

A description of the real Estate in the South Division  
of the City of Chicago, deemed benefited and damaged  
by reason of the extension of La Salle Street from its  
present terminus at Madison Street South to Jackson  
Street, in accordance with the order for the survey  
thereof, passed by the Common Council of the said City  
on the fifteenth day of October 1855, and the subsequent



orders in relation, together with the valuation of said Real Estate, and the sums of money severally assessed thereon for benefits, and awarded as damages respectively by the Commissioners, to wit,

| Names of owners           | Description of land | Lot                    | Block | Valuation | Total Benefits | Nett Benefits |
|---------------------------|---------------------|------------------------|-------|-----------|----------------|---------------|
| Rock Island R.R. Co.      | with many others    | 1                      | 99    | 4500      | \$33,482.65    | \$33,482.65   |
| Michigan S. & W. R.R. Co. | with many others    | 4                      | 110   | 2400      |                |               |
| Allen Robbins             | with many others    | East $\frac{2}{3}$ rds | 105   | 28,000    | 517.50         | 1035.—        |
|                           |                     | W. $\frac{2}{3}$ rds   | 108   | 26,000    | 517.50         |               |

Now Therefore you are hereby commanded, to levy, make, and collect of the goods and chattels of the respective owners of the real estate above described, the several sums of money assessed thereon, for which each may be liable as aforesaid, and make due return in what manner you shall execute the writ, within thirty days from the date hereof.

Witness Thomas Ogden Mayor of the City of Chicago and the Corporate Seal thereof  
this 17th day of June 1856

Thos Ogden Mayor

Attest A. H. Zimmerman City Clerk.



7  
City Collectors Notice

Public notice is hereby given that I shall apply to the Cook County Court of Common Pleas, on the first day of a Special Term thereof, to be holden at the Court House in the City of Chicago, on the Twenty seventh day of January A.D. 1858, for judgment against all blocks, lots, sublots, pieces and parcels of land together with the improvements, if any situated thereon, for all taxes, assessments, interests and costs due thereon, and remaining unpaid as appears from the following described warrants, now in my hands for collection, to wit,

No. 203. S. dated 27th March 1856. Special warrant for constructing sidewalk. North Side Jackson Street on S. 30 feet of lots 15, and 16, Block 140. S. Sec.

No. 206. S. dated 14th June 1856. Special warrant for plankin and crossing alley running east and west through block 31. original Town of Chicago.

No. 207. S. 17th June 1856. Special warrant, opening LaSalle Street from its present terminus at Madison Street South to Jackson Street.

No. 208. S. 15th August 1856. Special warrant, paving Lake Street, from State Street to Lake Street Bridge. Original Town.

No. 211. S. 24th September 1856 Special warrant, grading Michigan Avenue from the residence of Mrs. Clark, to Ringgold place, School Section.

No. 212. S. 24th September 1856 Special warrant for rescinding assessment for opening Alley between



Blocks 122. & 139. School Section.

No. 213. S. 24th September 1856. Special warrant for macadamizing Market Street, from its Southern terminus to VanBuren Street School Section.

No. 214. S. 24th September 1856. Special warrant, filling up and relaying the plank on LaSalle Street, from Lake to South Water Street. O.T.

No. 216. S. 1st December 1856. Special warrant, paving South Water Street from Clark to Franklin Street O.T.

No. 217. S. 8th December 1856. Special warrant plankning South Clark Street, from Park to Taylor School Section.

No. 218. S. 8th December 1856. Special warrant filling up and replankning East. Madison Street from the River to Market Street O.T.

No. 220. S. 12th February 1857 Special Warrant plankning and sewerung alley in blocks 127 & 128 School Section.

No 221. S. 12th February 1857 Special warrant plankning and sewerung alley in Blocks 123. and 124 between Blocks 137. and 138. and 123. and 124. School Section.

No. 222 S. 12. February 1857 Special warrant for plankning and sewerung alley in blocks 137 & 138. School Section.

No. 223. 20th February 1857 Special warrant for opening an alley 20 feet wide, running north & south, through the centre of block 21. fractional section.



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15. addition to Chicago.

All persons interested in the above described warrants, are requested to attend at said Term.

George W. Colby  
City Collector, South Division of the City of Chicago,  
Office 48. Clark St.

The undersigned do hereby certify that they are the Editors, Publishers, and proprietors of the Democratic Press, a Daily newspaper of general circulation, printed and published in the City of Chicago, County of Cook, and State of Illinois, and that a notice of which the printed notice hereto annexed is a true copy was published in said paper for Ten days, and that the first insertion of said notice in said paper was on the 15th day of January A.D. 1858. Dated Chicago Jan'y 26th 1858

Scraps Brass & Spears  
per Rogers Clerk.

Notice. All persons interested in the following warrants, and have not paid their assessments, are hereby notified that I have them in my hands for collection, and they are requested to call immediately and make payments thereof or the same will be collected at the cost and expense of the persons liable to the payment of such taxes and assessments.

Warrant No. 213. S. constructing sidewalk north side of



Ringgold Place. lot. 15. + 16. Block 140. School Section,  
Warrant 206. S. plankung and sewerung alley. Block  
31. O.T. Warrant 208. S. paving Lake Street O.T.

Warrant 207. S. opening Lasalle Street from Madison  
St. to Jackson St. Warrant 211. S. grading Michigan  
Avenue from the residence of Mrs. Clark to Ring-  
gold Place. Warrant. No 212. S. rescinding the agree-  
ment for opening alley between blocks. 122. + 129.  
Warrant 213. S. macadamizing Market Street. from its  
southern terminus to Van Buren Street. Warrant 214.  
S. filling up and laying plank on Lasalle Street, from  
Lake to South Water Street. Warrant 217. S. plankung  
South Clark Street from Park to Taylor Street.

Warrant 218. S. filling and replankung East Madison  
Street. from the River to Market Street. Warrant 220.  
S. plankung and sewerung alley in Blocks 127 and  
128. S.S. Warrant 221. plankung and sewerung alley  
between Blocks 123 + 124. and 137 + 138. S.S. Warrant  
222 S. plankung and sewerung alley in Blocks 137  
+ 138 S.S. Warrant 223. S. opening alley Block 21.  
Fraction Section 15. Addition to Chicago.

Geo. W. Colby Collector S. D.

Office 48. Clark St. Room No 1;

The Undersigned, do hereby certify that they are  
the Editors, Publishers, and Proprietors, of the  
Democratic Press, a daily newspaper of general  
circulation printed and published in the City of  
Chicago, County of Cook and State of Illinois,  
and that a notice of which the printed notice.



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hereto annexed, is a true copy. was published in said paper for thirty days and that the first insertion of said notice in said paper, was on the 31st day of December A.D. 1857.

And Chicago January 26th 1858

Joseph Profet Spear  
Per Rogers Clerk.

And thereupon the said City by her Attorney John B. Mullin Esqr. moved for judgment against the several lots above described amongst others.

Whereupon the said defendants, to wit, the said Rock Island R.R. and the said Michigan S. & N. W. R.R. came by Winston their Attorney, and the said Allen Robbins, by Stuart their Attorney, and severally objected to the rendition of judgment in his behalf against said several lots &c. upon the following grounds - among others, viz.

First. There is no sufficient legal notice given of this application - the same being general, indefinite and void.

Second. The said George W. Colby has no legal power and authority under and by virtue of his appointment as Collector of Special Assessments, in the South Division of the City of Chicago for the year 1856, to hold over or do any act as such Collector after the expiration of his term of office on the day of March 1857.



Third

This Court has no jurisdiction of this cause, because the Amending Charter does not apply to warrants and assessments issued and made before its passage, and judgments upon such assessments must be rendered by the County Court, or an order issued by the Common Council according to the provisions of the acts in force at the time of making such assessments and warrants,

Fourth

George H. Calby as Collector of Special assessments, for the year 1856. Cannot apply to, nor has this Court jurisdiction to render judgment, on his application under warrants for the Special assessments, made in 1856. &c.

And thereupon after argument heard, and the Court had fully considered the same. It was considered and adjudged by the Court, that the first and second objections were not well taken but overruled the same.

It was further Considered by the Court that the Third objection was well taken, and that the law was with the defendants, objectors, and sustained said objection.

Whereupon it was considered by the Court that the application of the said City of Chicago, for judgment against said lots &c. for said assessment be denied, and said application be dis-



missed at the cost of the said City.

To which decision of the Court, that there was no jurisdiction of this cause in this Court and in the refusal to render judgment for said assessment, against said lots, and in dismissing said suit, and in rendering said judgment for costs, the said City of Chicago then and there accepted. And prays this Bill of Exceptions, may be sealed and allowed by this Hon. Court. Which is accordingly done.

John M. Wilson Secy

It is hereby agreed by and between the respective parties, that this cause may be taken by appeal to the Supreme Court upon the foregoing statement of facts, and questions in the Bill of Exceptions, without Bond or Superseas, - and that the defendants will enter their appearance therein, without service of process, and will plead to the assignment of errors therein.

Chicago Feb 2nd 1858.

City of Chicago, by  
John C. Miller City Attorney  
Rock Island Rail Road  
Michigan I. & N. I. Rail Road  
By Judd & Winston their Attorneys  
Allen Robbins  
P. F. W. Peck et al  
By D. Stuart & their Attorneys



State of Illinois }  
 County of Cook } S.S.

I Walter Kimball Clerk of the Cook County Court of Common Pleas in & for said County State, do hereby Certify that the foregoing is a full and correct transcript of all the papers filed in my office, and proceedings & judgment entered of Record in said Court in the Case of the City of Chicago against The Rock Island Rail Road Company and others, being a suit for apportionment on warrant for the extension of La Salle Street from Madison to Jackson Street, - Except as to the copy of list of lands and lots mentioned in the Warrant filed in said Case

In Testimony whereof I hereunto set my hand & affix the Seal of said Court at Chicago this 19th day of April A.D. 1858.

Walter Kimball  
 Clerk

State of Illinois }  
 Supreme Court } April Term 1858.

And now comes the said City of Chicago, appellant by Scates McAllister Jewett & Peabody its Counsel and says that



in the record and proceedings and in the conditions of judgment in this case there is manifest error intervening in this

First. That the Court sustained the third objection for want of jurisdiction ~~and refused~~ and refused to entertain jurisdiction - but dismissed the same

Second. The Court refused to render judgment for the said apartments - but dismissed the same

Third. The Court rendered judgment against the appellants for costs.

Wherefore it prays judgment and that the same may be reversed, annulled and for nothing esteemed - And it restored to all its rights so wrongfully adjudged against it - with its reasonable costs

Scatur McAllister Jewett & Peabody  
for Appellants

In nullum est datum

Race Road Co's

By Judd Weston

Attorney for  
Robins. Beck. Horton

J. King



Cash Cash of 0m 100

~~201~~ 203

The City of Chicago

ms

The Rock Island R.R.

Rock Island

From

Filed April 21. 1888

By Leland

H. S. J. C. R.

Facs. 10. 10. 10.

made by copying

W. H. S. J. C. R.

Scatter M. S. J. C. R.



An application is made on the  
part of the City of Chicago, 'thru'  
Cobby, a Special Collector  
of taxes or assessments, to the  
Court of Common Pleas of Cook  
County, for judgments, against certain  
lots, the owners or proprietors of which  
had failed to pay the assessments  
levied on their property, for the opening  
of La Salle Street in Chicago -

The Court refused the application, for  
want of jurisdiction -

Notwithstanding, the City of Chicago  
appears nominally as the party defended  
against, the Special Collector, Cobby, is,  
in truth, the real party, by whom the  
appeal is brought into this Court -



- Interested to a large extent in a claim which he makes for Commissions for the collection of the very large sum demanded by his Warrant, apprehensive that unless the money collected pass through his own hands, his demands in this respect must be defeated, he has seen fit to set at the authority of the Common Council at defiance, - has refused to surrender to them the Warrant which had been placed in his hands, as an official of the City - & is attempting to enforce the payment of the assessments "on his own hook" - This is resisted by the parties, against whose property he asks for judgments, for several reasons - prominent amongst which is the one, that the Common Council of the City, or the Officers of the City Government, it is understood, decline utterly, to recognize any payments made to this Special Officer, or to give the parties assessed any releases, acquittances or vouchers for any such payments - They refuse to acquit their property of the assessments unless the money shall be paid into the City Treasury by Cobby - thus requiring the parties paying the assessments, virtually to become the underwriters themselves of the



responsibility & integrity of the Collector -  
as at present advised, the parties assessed,  
are unwilling to assume the risk proposed  
to them - They deny, generally, the authority  
of local by to collect or receive their assessments,  
- but the grounds upon which they depend or pro-  
pose to defend their resistance, we refrain  
from discussing at present, relying as we do  
upon the soundness of the objection to the  
jurisdiction of the Court of Common Pleas -  
Beyond a simple reference to the Statutes  
& Ordinances of the City, we can see no argu-  
ment involved in the question - To these we  
respectfully ask the attention of the Court,  
tendering a cheerful submission to its con-  
struction -

The 3<sup>d</sup> section of the 2<sup>d</sup> Chapter of the Charter  
of 1851, provides for an annual election  
of a City Collector - whose duties by the  
10<sup>th</sup> Sec of Chap<sup>r</sup>. 3<sup>d</sup> are defined, generally,  
to be, "to collect all taxes and assess-

"meats which may be levied by said City  
& and perform such other duties as may be  
prescribed in the Charter, or ordained by the  
"Common Council" - Page 14. (City Ordinances)  
"or "Municipal Laws" - (Ed: by Thompson.)

The Ordinance of 27<sup>th</sup> Feb<sup>y</sup>. 1854 "creating a



Special Collector for each Division of the City of Chicago & defining their duties", was repealed by an Ordinance, passed July 17<sup>th</sup> 1856 -

This repealing Ordinance provides, that thereafter "in addition to the Collector elected by the People, there shall be three other City Collectors - whom the Common Council, shall appoint by ballot on the second Tuesday of March in each & every year, or as soon thereafter as may be" - Chap 4<sup>th</sup> of Ordinances § 1. & 2.

"Such Collectors so appointed by the Council shall collect all warrants which may be issued for the collection of all special assessments for the construction of streets, sidewalks or other public improvements, assessments for the opening of any street or alley & assessments for any purpose whatsoever" - § 4. Same chap. (page 163.)

"The said Collectors are severally hereby vested with all the powers given by law for the collection of such warrants & are hereby required to conform in the execution of their duty to the provisions of the Charter & the Ordinances of the Common Council regulating & prescribing the duties of Collectors" § 8. Same chap. (p. 163)



The provisions of the Charter regulating and prescribing the duties of Collectors, are contained in the eighth Chapter -

Section 8. Chap 8. (page 44. Municipal laws)  
is as follows -

" In case of the non payment of any taxes  
" or assessments levied or assessed under this  
" act, the premises may be sold for the pay-  
" ment thereof, at any time within two years  
" after the confirmation of the assessments  
" by the Common Council. Before any  
" such sale, an order shall be made by  
" the Common Council, which shall be  
" entered at large in the Records kept by the  
" Clerk, directing the Collector to sell, particu-  
" larly describing the delinquent premises  
" to be sold, & the assessment for which the  
" sale shall be made; a certified copy of  
" which order under the Corporate Seal,  
" signed by the Mayor or presiding Officer  
" or Clerk, shall be delivered to the Collector,  
" which together with the Warrant shall con-  
" stitute the process upon which such sale  
" may be made" -

This chapter from which the above  
extracts are made, was passed in 1857.

On March 1. 1854. (Vide Sep. Laws 1854, p. 22)



D. B. Cook & Co's Ed<sup>2</sup> Rev. Stat. p. <sup>201. &</sup> 202) The Legis-  
-lature passed an act amendatory of the Act  
to incorporate Cities & Towns - By its terms  
the act expressly excepts the City of Chicago from  
the operation of the provisions of the first sec-  
-tion - The Second Section of the Act applies  
as well to the City of Chicago, as to other Cities  
in the State - it was the undoubted intention of  
the General Assembly that it should - & has been  
held by the able judges of the Court of Common  
Pleas in the City of Chicago, to apply to that City -

We recite the section -

Section 2. In all cases where assessments  
have heretofore been made, or where  
assessments may hereafter be made, by  
the Corporate authorities, of any town or city  
in this State, on any lot or real estate  
in such town or city, for the purpose of  
improving any street sidewalk or alley  
in front of such lot or real estate, or  
for any purpose whatever, either by  
Ordinance, Resolution or other proceeding  
and such assessment is not paid  
within the time fixed by the order,  
Resolution or Ordinance making such  
assessment, the Corporate Authorities  
of the several Towns & Cities in this  
State, may apply to the County Court of  
the proper County for judgment against



Such lot or Real Estate for the amount of  
said assessments & costs: & the County  
Court on such application being made,  
shall under judgment against said lot or  
Real Estate, for the amount of said assess-  
ments & costs, & shall issue its precept  
to the Sheriff of the proper County, Command-  
ing him to sell said lot or Real Estate,  
or so much thereof as may be necessary  
to pay said judgment & costs, in the  
same manner & with like effect, as if  
sold upon Execution at law. And the  
Corporate Authorities of the several Towns  
or Cities shall have full power to provide  
by Resolution or Ordinance for the making  
or levying any such assessment, & they  
shall have full power to fix the time of  
payment & the kind & time of notice of such  
assessment, & of the said application to  
the County Court; And the Corporate Au-  
thorities of any town or City, shall have  
full & complete authority to adopt any  
rule or regulation or proceeding which  
they may deem necessary to carry the  
provisions of this Section into full and  
complete effect.

For the purposes of our objection to the juris-  
-diction of the Common Pleas, it is quite im-



=Material, whether the Special Collector in this case should properly resort to the <sup>one</sup> or the other Tribunal, for his authority to sell -

If he is to be governed by the 8<sup>th</sup> Section of Chap 8. of the Charter, the order of sale proceeds from the Common Council -

If the 2<sup>d</sup> Sec (last above quoted) of the act of 1854, controls, he must have applied to the County Court for his judgment -

Or, it may be, if they please, that a choice is left them - We care not for the moment how they construe their duties or powers under these two acts - Neither one or the other, directs the Collector or the Corporate Authorities to the Common Pleas - They must look else - where for a law conferring jurisdiction on that Court, to entertain this application -

It is contended, on behalf of the application, & in support of the jurisdiction, that it is conferred by the provisions of the Amendments to the Charter of the City of Chicago, passed Febr<sup>y</sup>. 1857.

This act was designed to remodel the financial relations of the City Government, & besides inaugurating several new features, it makes many very material & important changes in the former charter. It now, controlling the action of the City Gov<sup>t</sup> -



By the Amended Charter, the office of Special Collector, (of whom as we have shown there were three annually appointed by the Council under the former law) is abolished, in terms. Vide Section 27-

There is to be but one Collector & the  
& Comptroller, City Treasurer & City Collector  
& shall nominate & by & with the advice  
& consent of the Common Council  
& appoint such various assistant  
& collectors, clerks & subordinates in  
& their respective offices, as the Common  
& Council may authorize" § 33 - p. 900.  
& Sep Laws 1857

These assistant collectors are subject to removal at the pleasure of the Finance Committee of the Council, whenever they deem the public interest to require it - & their places filled as required by Law § 29.

By this act the duties of the City Collector are prescribed & fully defined - vide § 37 to 52 -

The 40<sup>th</sup> Section confers on the Court of General jurisdiction held in the City of Chicago the powers, of which the applicant in this case is seeking to avail himself - We quote the Section, as follows -



"Section 40. "If from any cause the taxes,  
and assessments, charged in said Collection  
Warrants, are not collected or paid on the  
lands or lots described in such Warrants  
on or before the first Tuesday in January  
ensuing the date of said Warrants, it shall  
be the duty of the Collector to prepare and  
make report thereof to some Court of Gen-  
eral jurisdiction to be held in Chicago  
at any vacation, General or Special  
term thereof, for judgments against the  
lands lots & parcels of land, for the amounts  
of taxes, assessments, interest & costs,  
respectively due thereon, & he shall give  
ten days notice &c. &c.

The 44<sup>th</sup> Section, expressly authorizes, and  
empowers the City Collector, in like manner  
as Sheriffs may do, acting under process  
of the Fa under the laws of the State, to  
make sale of the lands lots, pieces or  
parcels of land upon twenty days notice  
&c.

The 48<sup>th</sup> Section, directs the proceedings  
to be had, as to issuing Certificates of  
sale, the making of deeds & redemption  
in cases of sale, &c. &c.



The 50<sup>th</sup> Section, provides for the discharge by his successor, of the unfinished duties of the Collector, in the event of a change - providing likewise the discharge of his duties, by the Comptroller, in cases of vacancy, happening in the Office of Collector.

The act nowhere contemplates or provides for such an application as is here made, to be presented by any other person than the City Collector himself - on no other application or return, can the Common Pleas Court, entertain jurisdiction - the order of sale is to be given to him by the Clerk, in the manner prescribed - he must make the sale - give the Certificate, &c - & by no construction or possibility can these powers be devolved on a stranger, or on any other person, than as prescribed in the act.

It may not be pretended that the act has left the City Government, at fault for a remedy, or means for the enforcement of its collections -

The 52<sup>d</sup> Section provides that,  
"The Common Council may direct also  
" Special Warrants for the collection of  
" any special assessment, levied on



9 any property for any improvements to pay  
4 the delivered to the City Collector forthwith,  
9 who shall notify by advertisements, all  
11 persons interested to pay the same immediately  
to

But if it shall be even doubted, that the  
Warrant in question, should be delivered for  
execution to the City Collector, in virtue of  
the above provision of the 52<sup>d</sup> Section,  
(altho' we believe this to be the only  
instance, in which it has failed to be  
done) & if the City Government must  
or may, under the 86<sup>th</sup> or other Section of the  
Miscellaneous provisions of the act,  
proceed to prosecute the collection of the  
assessments, then, we insist they must  
avail themselves of & be confined to, the  
remedies under the former laws & Ordinances.  
— The last Statute does not authorize  
the City Government or Corporation to  
make this application to the Common  
Pleas Court, except through the City Collec-  
tor, from whom, we repeat, the return  
to the Court, must proceed, & to whom  
the Warrant & orders of the Court are  
& must be directed —



Argument 203 - 86

City of Chicago

Rock Island R.R.  
et al

Argument of

David Stuart

Counsel for

Allen Robbins

Filed May 18. 1858

L. Seland  
clerk



The City of Chicago }  
or  
Rock Island R.R. }

In reference to the position of  
Depts Council. that G. W. Colby is not, and  
has no authority as Collector

I would submit  
the following considerations.

The amendment  
of the City Charter of 16 Feb 1857 does not oper-  
ate retrospectively. Courts now give a retros-  
pective effect by construction merely. it is only  
done when required by the language or man-  
ifest intention of the law given

It is true that the Amended Charter organizes  
a Comptroller's Department including a Treasury  
Department: and makes the Collectorship a  
bureau of the latter (sects 25 & 36)

But by the express terms of the Act (Sec 25)  
it relates to "the City Collector hereafter to be elec-  
ted": And the 28<sup>th</sup> Section confirms this view. As  
the true meaning of the Act, in providing that  
"from and after the passage of this act there  
shall be no Special Collectors of the City rev-  
inues or assessments appointed by the Com-  
mon Council other than assistants to the  
City Collector."

This is consistent with the new organization. But



has nothing to do with the old. So the 53rd Section has reference to cases of assessments made where no warrant had been delivered for their collection.

In such cases Warrants might be made and delivered "forthwith" to the City Collector. But it does not authorize a recall and cancellation of warrants in the hands of Collectors.

These warrants when delivered to the Special Collectors impose upon them the duty to collect or otherwise account for the amounts contained in them, in the same manner as the Collector of the State and County taxes is bound by the delivery of the tax books for the year. The faithful performance of this duty is secured and secured by the Collectors Bond, - And his sureties are or will be liable for his default in collecting or accounting.

Uncollected balances of such taxes or assessments at the end of the year or term of office do not pass to the hands of a successor, with the office, but remain a charge upon the Collector receiving them, and upon his bond and bondsmen. His power to collect is commensurate with his duty and discharge his obligation and sureties on his bond.

I should altogether doubt the liability of the sureties on the bond of the subsequent Collector



to account for such taxes and assessments, if squandered by the Collector, I am sure the Honorable The Common Council upon mature reflection would not hazard such large amounts, without bond and surety or in cases when the liability of the sureties of present Collectors might be at all doubtful.

The mis-citations provisions in Sects 85, 86 & 87 further confirm this view. All that is not inconsistent with this Amendment is left in full force. Proceedings now commenced for the opening of any street or streets in said City and the apportionment of real estate for any such improvements is hereby expressly legalized and affirmed and the Common Council is hereby expressly authorized to continue such proceedings, and open said street or streets, any defect, decree, or order of any Court to the contrary notwithstanding.

An essential of such "proceedings" is the collection of the assessments in order to pay the damages, and to this end Collectors holding warrants may "continue" and complete the collection of all balances due for such apportionments "now" made on real estate for such improvements.

If express authority were wanting the 86<sup>th</sup> Section of this Amendment confers it. For this is in no wise inconsistent with its provisions nor with the



new order of things provided for the Collectors department in the future

Repeals by implication for repugnance or inconsistency are not favored in law and are never resorted to when provisions may be reconciled by Construction

So far from a repugnance in the duty of Collectors to be appointed under the act of February <sup>1857</sup> ~~last~~ and those of 1836 - it would be a total change of the uniform and universal practice in this State for all time past to charge a new Sheriff or collector with the unpaid balances of the taxes on his predecessors books. I have never known an instance in which a new Officer ~~is~~ took and collected the remnants of taxes due on the old tax books, on the contrary there are many instances when the State has given the Sheriff or his deputies further time, by Special Act, to collect such balances even after judgment had been obtained upon the bond for not paying over such uncollected taxes

The rule has ever been to charge the Collector with the whole amount due on the tax books or Special warrant delivered to him, and his deputies become immediately liable for the amount, and nothing will discharge this liability but the money - or showing an inability for want of property real or personal, after



due diligence, & make it out of. The public security would be worthless, if Collectors might collect what they please and discharge themselves from the remainder by handing over their books to a successor; or if the County Court or other County authority had power to discharge them from liability under the bond, by ordering them to return their books, or warrants. I do not think a plea setting up such an order would be held to be a defence to a suit on their bond.

Besides such a power of discharge is liable to great abuse from prejudice or favoritism. A friend could be discharged with his sureties from the collection of a hard unprofitable balance, and the same be imposed upon a successor. Successors would be loth to take office & which such profitable responsibilities were attached. But it seems to me it ought to be enough that the constant and uniform practice throughout the State, with the State and County tax gatherers has been to the contrary - and so has the City practice - the Counsel to the contrary notwithstanding.

These special Collectors have the same powers of the City Collectors (Municipal Laws page 161 Sec 12) and both have the same power and authority and the taxes & assessments to be collected in the same manner as State



and County taxes (Municipal Laws Page 44 Sect 7) The law fixes his liability in the absence of a special ordinance, and all I have said of general collectors of State & County taxes equally applies in that case

The powers, duties and liabilities of a Collector for the amounts due on the books or warrants delivered, are, I think strongly analogous to that of a sheriff after the levy of an execution

It is the duty of the officer when once he has made the levy, no matter what becomes of the execution, to go on with the sale, and bring the money into Court

|                            |           |      |
|----------------------------|-----------|------|
| Phillips et al vs Dana     | 3 Scam R  | 558  |
| Cox vs Joiner              | 1, Pitt R | 94   |
| Clerk vs Wilkes            | 2 Ed Raym | 1075 |
| Reddick vs Cloud Adms      | 2 Gil     | 677  |
| Bellingall vs Duncan et al | 3 "       | 479  |

From these Authorities, therefore, it appears that the power communicated to the Sheriff by the fieri facias does not now cease upon the expiration of his office but that the Sheriff having once seized the goods is bound to proceed

See Ex Dennis Stevens vs Dunston 1st Barnwell & Alderson R 231

In Rollins Abridgement 893-4 it is said



that if the Sheriff seizes goods upon a fieri fa  
and be removed before the return of the writ,  
and afterwards sell the goods, that is a goodsale

His bond and receipt of the tax books or  
warrant imposes a liability upon him analo-  
gous to a levy and the Collector possesses cor-  
responding rights and powers to enable him  
to discharge his liability. I might doubt the  
power of the Council to discharge these parties  
by agreement even. For they take these assess-  
ments in trust & pay damages awarded to  
property holders.

The liability & duty were completely imposed  
and a corresponding power to meet them conf-  
ered before the act of July last. Had that act  
clearly abolished this office retrospectively and  
discharged the collector from his obligations  
and imposed his duties on officers to be app-  
ointed under that act - then the course indi-  
cated by the order of the Common Council  
would be proper. But there is no such pro-  
-vision nor any strong implication of such  
an intention. On the contrary it is very clear  
that the collection by Mr Colby is altogether  
consistent with the provision of that act  
and in strict accordance with the general  
laws and usages under them in relation to the



powers and duties of Collectors.

Under these circumstances any controversy between the Council and these collectors questioning the authority of the latter, will only tend to jeopardize or delay their collections by bringing the authority it does into doubt whether by these collectors or the present City authorities

~~Chicago Aug 14<sup>th</sup> 1889~~

~~Walter D. Seaton~~

~~of Council~~

Council have fallen into error in construing the provisions of the City Charter respecting Collectors of Assessments, in supposing that the authority to act under a special warrant for the collection of these Assessments expired on the return day. Now the power under such a warrant does not expire on the day fixed for returning it - but it continues until the warrant is fully executed. It is not like an execution in this respect.

In practice, but one warrant is ever issued to collect taxes or assessments. A return day is not fixed in the law or in the warrant to limit the power



but to quicken the diligence of the officer - and is in this regard more like a Vendition than a Fifa. One Chief object of fixing a return day is to Call the officer to account for the monies to be collected on the warrant.

Again Counsel make another very similar mistake in supposing that the rights & powers of the Collectors of the ~~taxes~~ or of these assessments cease and expire with the term of office. Such might be and doubtless is true of the Sheriff in relation to executions not levied. But it is not true of those levied, of Vendition - and of Tax & assessment warrants.

The expiration of the term cuts off the right to take any new business - or to act generally - but does not affect the rights & powers in the cases above specified.

They only cease with performance. This is peculiarly the case with Collectors, who qualify by entering into bond for this very purpose.



I presume no body ever heard of  
a Collector's returning his warrant  
either for Taxes or assessments;  
until a Republican administration  
of the City Government first  
sought to recall such warrants  
from the hands of opponents.  
Even had they succeeded in  
getting in these warrants - as it is  
said they did under pretence of  
re-issuing or renewing it - and  
then with holding it another - still  
I should doubt exceedingly, whether  
the ~~sureties~~ sureties on the bond  
of the present Collectors would  
be bound for these monies - any  
more than a successor would  
for a predecessor, of the taxes.  
And in cases of the taxes, it has  
been held that a legislative in-  
terference by giving time to the  
Collector - or by imposing duties  
on the office or officer, after the  
execution of the bond - would  
not bind the sureties -

The return day return presented  
by City Ordinance was not to  
cancel the warrant - but to



have an account of the monies, &  
to proceed further for judgement  
There is no provision for issuing  
another - but only to proceed by  
order of Sale of lands.

See Mun Code p 427.

Mr Colley's Counsel who are paid  
for their advice by him, have ad-  
vised him under these views that  
he is liable under his bond - and  
has power & authority to fulfil  
his obligation by Collectings.

He must therefore beg to decline  
the gratuitous advice so gener-  
ously offered, even at the  
imminent peril of labouring  
under the imputation of "im-  
prudently" refusing to return  
his warrant.

"It seems that ~~it~~ has occurred  
to some one that Mr Colley  
might be the Common Council  
itself, and have power to ap-  
ply for judgements against  
delinquent land owners  
under the act of March 1. 1854"  
is arrived as a slur - for it has  
neither wit nor argument in it



The Sage Conclusion to which the  
learned Council arrives, is self evi-  
dent - that Mr Colby is not the  
Common Council. But is not  
quite so clear that Collectors are  
required to Consult the Common  
Council about applications for  
judgements against delinquent  
lands, except in the cases  
where an order of sale was  
to be made by the Council.

And it has "been discovered"  
by Mr Colby Council, as he believes  
that there is now no case in  
which the Council have  
jurisdiction to make an  
order of sale.

The warrant & the provisions of  
the law are specific & definite  
as to the Collector's duty in Col-  
lecting with or without judge-  
ment. There is no provision  
of law or ordinance requiring  
Collectors to Consult the Com-  
mon Council about the time  
place, or Court where judge-  
ment may be obtained - nor



The City of Chicago

Rock Island R. R.

et al

Plff's argument



indeed in any matter relative to the Collections, except when it is necessary to apply to them for an order of Sale, and then only, as they would any other Court

Counsel seem to regard Collectors as wholly dependent upon the orders and subject to the wishes of the Council from time to time

This is by no means a sound view of the provisions of the statutes and ordinances. Their powers & duties, & obligations are well defined, and are not under the will of the Council - nor have the Council anything to do with these Collections - further than their powers and duties are defined & prescribed by law or ordinance

Counsel seem anxious to get up immaterial and sick bar issues between Mr Colby as Collector and the City Council. There are no facts in the record to raise it - And their Assertion to the contrary, I assert that there is no such issue in fact. The Council



are not interfering with Mr Colby  
or his authority. Nor am I aware  
that the City authorities decline  
to recognize payments to Mr Colby.  
On the contrary there has been  
a full recognition of his authority  
since the beginning of this term  
in admitting the application  
for Mandamus against the  
Supervisors. Whenever the  
Council or their Clients, or the  
City Authority choose to institute  
a proper proceeding by quo  
warranto against Mr Colby  
as Collector he will stand ready  
at all times to vindicate his  
right, power and authority as  
Collector. Until such proceed-  
ings are instituted he  
must peremptorily decline a  
trial of this question in any  
and all collateral issues.

For although I have heretofore  
discussed his question of title  
to the office, deeming the case  
an extremely clear one - yet  
I refer the Court to, and rely  
upon the following authorities



which show conclusively that  
the question cannot be raised  
collaterally even against an  
officer de facto.

*Pritchett v The People* 1 Gil R 529

It is a general principle of law  
that the ministerial acts of an  
officer de facto are valid and  
effectual when they concern  
the public, and the rights of  
third persons, although it may  
appear that he has no legal  
or Constitutional right to the  
office

*The People v Collins* 7 John R 549

*McIntyre v Tanner* 9 Do 135

*Howler v Beebe* 9 Mass 231

1 Gil 529, 580

*Culbertson v The City of Galena* 2 Gil 130

The acts of an officer de facto are  
as valid and binding, when the  
interests of third persons or the public  
are concerned, as if he had  
been an officer de jure. And  
the fact that he is an officer de facto  
may be shown by parol

*The People v Ammons* 5 Gil 107

*McCluskey v McKeely* 3 Gil 582



Objection is Taken to the Sufficiency  
of the Notice

The notice in *Eastman v Little* was  
5 N. Hamp R 290, did not even  
state that the taxes were due or un-  
paid.

The notice in this case is in  
strict compliance with the  
amended Charter of the City  
under which this application  
was made. Jurisdiction in  
this case, was not declined  
by the Court below upon the  
ground of an insufficient  
notice. The notice was deemed  
sufficient by him.

If the notice was sufficient  
the defendants below had  
their day in Court.

Having referred in my printed  
brief to the provisions relative  
to this and other notices  
provided in the Charter - I  
leave these two objections -  
by simply adding that the re-  
cord shows that the City ap-



appeared in the Court below by  
John C. Miller City Attorney, and  
asked a judgement upon this  
Application. This is true in fact  
—And yet gentlemen pretend  
here that there is a Controversy  
between Mr. Coby the Collector — and  
the City in relation to his authority  
And seek to raise Collateral issues  
I would further remark that the  
City Attorney would have appeared  
here to assist, had I intimated a  
desire that he should

The City is extremely anxious to  
settle at once & forever all these  
technical & dilatory objections  
urged alone to gain time, and  
an extended Credit, probably on  
account of the hard times

There have been three peremptory  
Mandamuses awarded to pay over  
these assessments; one by this  
Court a year ago — and two by  
the Courts below. And for want  
of sufficient Collections — The  
City has already been compelled  
to issue City bonds to comply with  
these orders. Parties being tired



And impatient of the vexatious delays interposed upon frivolous and other pretences - as the Court must perceive by Defendants Briefs - Contemplate, making other applications for Mandamuses to pay over these damages before the Collector is allowed to collect them

We hope the Court will look to the public interest by putting an end at once to all these technical objections; which only serve to retard, & hinder the Collection - and throw doubt upon the proceedings in the public mind. Misleading no doubt many honest persons who otherwise would settle up their Assessments

The last and only real objection urged against the application is the want of jurisdiction in the Common Pleas. This was the view taken of these several acts by the Court below - and that the application should have



been made to the County Court or  
the Common Council

I think defendants Counsel  
place too much stress upon  
the literal reading of some  
sections of the statutes - and  
too little upon others

Now the 85 or 6<sup>th</sup> Section of  
the Amended Charter declares  
the legislative intent emphatically  
to be that hereafter there shall  
be but one annual sale for  
these taxes and assessments  
- and this is so declared in view  
of the provisions of that amendment  
prescribing a uniform time and  
place for judgments. The intent  
is so clear here, that all such  
sales were included & contemplated  
that it ought to controvert the very  
doubtful inference to be drawn  
from the language of the other  
Sections which speak of the  
City Collector. Colby and the  
other Special Collectors are  
as to these warrants placed in  
their hands - as much City Collec-  
tor as the present City Collector



Their office, name, and power  
Continue for the Collection of these  
warrants. So far as changes have  
been introduced by the new  
Charter applicable to former  
warrants, Assessments & collectors,  
the act should be construed as  
including them - Such are the  
provisions as to proceedings  
to obtain judgments against  
the land - and for sales.

The reason of the thing - the nature  
of the case, and the evil to be  
remedied - all support this  
view of the Statute.

The particular phraseology of  
many of the sections may refer  
literally and truly to collectors  
under the amended Charter -  
and yet, we are not therefore  
justified in limiting the mean-  
ing of the 40th section which  
authorises this application on a  
failure to obtain the Assessments.

To my mind the true sense and  
policy of the legislature is more  
forcibly indicated in what  
is declared concerning



Tax & Assessment Sales. There is no ground it seems to doubt that the evil to be remedied was the frequency of such sales, which took place from time to time - making it extremely inconvenient to land owners to watch such proceedings.

These sales are still to be made by the Collector.

But the act of 1854 - providing for judgments in the County Court, requires the sale to be made by the Sheriff. This was properly applicable to such towns & cities as had no special Charter provisions, and no collector. Chicago had both and the provision was inapplicable to her condition. Now I see no reason to exclude her in the case of tax sales, in the 1<sup>st</sup> section which would not equally apply to assessments in the 2<sup>nd</sup> section. We should read the second with the same implied exception as the 1<sup>st</sup>.



It falls within the same reason  
in every sense - and under all the  
Circumstances. Wherefore allow  
Applications to one Tribunal  
for Taxes & to another for As-  
sessments in the same City.

Tax Sales could happen but  
once a year. Assessments, Sales,  
could be made as often as  
the County Court might hold  
its terms - But if the facility  
& convenience of the frequency  
of these Sales was an object  
to be attained at that time -  
the Council sat more frequently  
than the County Court - or might do so.

But I will not multiply  
remarks upon this branch of the  
Case having discussed it  
pretty fully in the opening

I hope this Case will receive  
the early Attention of the Court  
as the public interest in that  
Community is suffering until  
this question is settled.

Should the Court be of opinion  
that this judgement ought to be



affirmed - we most respectfully  
ask - that the grounds of the  
opinion in reference to the  
proper tribunal which has  
jurisdiction may accompany  
the judgement - that we  
may know where application  
ought to be made - without  
being compelled to bring a  
case here again before  
this improvement in the  
City can be proceeded  
with. For these collections must  
precede the opening of the street

W. D. Seates  
of Counsel for Plff



City of Chicago

v

Rock Island RR

et al

Plaintiffs Argument

in reply

Scates



Supreme Court of Illinois, Third Grand Division.

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|                            |   |         |
|----------------------------|---|---------|
| THE CITY OF CHICAGO,       | } | APPEAL. |
| VS                         |   |         |
| THE ROCK ISLAND R. R.      |   |         |
| S. M. AND N. IA. R. R. AND |   |         |
| ALLEN ROBBINS ET AL        |   |         |
| S. R. POMEROY, ET AL.      |   |         |

*impleaded with*

This was a suit for the recovery of a special assessment made by the city for the opening of La Salle street, south from Madison to Jackson, on an application for a judgment against the tracts described in Record among others and against these defendants among others, for the amount as assessed upon such tract or lot, with expenses, &c.      Pages 2, 6.

Geo. W. Colby, collector of special assessments for the south side, for 1856-7 made his report to a special term of the Cook County Court of Common Pleas, held in January, 1858.      (Pages 2, 4.)



At said special term the collector returned a copy of his special warrant for the collection of said assessment roll, containing the tracts and owners, in the record mentioned, among others. (Pages 5, 6.)

Due notice was given of this application by publication of notice, according to law. (Pages 7, 8, 9, 10, 11.)

The defendants filed the following written objections, viz: (Pages 11, 12.)

First. There is no sufficient legal notice given of the application, the same being general, indefinite and void.

Second. The said Go. W. Colby has no legal power and authority under, and by virtue of his appointment, as collector of special assessments in the South Division of the city of Chicago, for the year 1856, to hold over, or to do any act as such collector, after the expiration of his term of office, on the            day of March.



Third. This court has no jurisdiction of this cause, because the amendatory charter does not apply to warrants and assessments issued and made before its passage, and judgments upon such assessments must be rendered by the County Court, or an order issued by the common council, according to the provisions of the acts in force at the time of making such assessment and warrants." (Page 12.)

Fourth. Geo W. Colby as collector of Special Assessments for the year 1856, cannot apply to nor has this court jurisdiction to render judgment on his application under warrants for the Special Assessments made in 1856 &c.

The court overruled the first two objections but sustained the third and dismissed the writ and rendered judgment against the city for cost. (Pages 12, 13.)

Appellant assigns the following errors. (Page 15.)

First, The court sustained the third objection for want of jurisdiction, and refused to entertain jurisdiction but dismissed the same.



Second. The court refused to render judgment for the said assessments but dismissed the same.

Third. The court rendered judgment against the applicant for costs.

The appellant makes the following points.

## I

In case of default in the payment of special assessments after notice given, the collector shall report to some court which is authorized to render judgment against the lots.

Amended charter, page 13, section 40,  
Under the old charter the order of sale  
or judgment was made by the Common  
Council. Municipal Laws, page 44, sec-  
tion 8.



Again, by act of 1854, (Cooke's Statutes, page 202, section 2,) the County Court had power to render judgment for the assessments.

Of these several modes of obtaining a judgment and sale, that under the amended charter seems to be the only one now in force,

This will become apparent by examination of other sections of the amended charter.

After March 1857 all sales of property for taxes and assessments shall be held at the same time with the general sale of city property for the non-payment of city taxes, and there shall be but one such sale.

Amended charter, pages 15, 16, sections 51, 52.

All parts of former acts, &c., inconsistent with amended charter are repealed.



Amended charter, pages 22, 23, Sections 85, 86, 87.

The different modes of obtaining judgment, and time and manner of sale were inconsistent, and therefore are repealed.

We see the inconsistencies by comparing the several provisions.

First. In obtaining judgment under old charter, Municipal Law, page 44, section 8.

Amended charter, page 13, section 40, Acts 1854, (Cooke's Statutes, page 202, section 27.)

Second. The process to sell. Municipal Law, page 44, section 8. Amended charter, page 14, section 44.

Third. The notice to be given of sale. Municipal Law, page 45, section 9, Amended charter, page 14 sections, 44, 5



Will not this money, like other monies for taxes and assessments for improvements, pass into account on the Comptroller's books.

See amended charter, pages 5, 6, 7, 8.

Or will it be paid to the city treasury without any account being kept by the Comptroller, under the old charter.

Municipal Law, page 44, section 7.

## II.

The notices are sufficient. and such as are required by the charter.

First. The notice of the assessment is only required to be general.

Municipal Law, Page 32, Sec 2.

Second. The notice of confirmation may be general also.

Municipal Law, Page 35, Sec. 11.



Third. Notice of application for a judgment, prescribed by the new charter, Page 13, Sec. 40. When personal notice is intended to be required, as in case of removal of buildings.

Municipal Law, Page 33, Sec. 5.

And when special notices are intended, as in cases of sales, the legislature specified what they intended to require.

Am. Chr., Page 14, Sec. 45.

*Expressio Unius Exclusio Alterius.*

See Statute of Wills, Sec. 195, as to general notice.

Bowls Heirs, vs Rouse 3 Gil R 419.

Grignon's Lesse vs Astor 2, How U. S. 319.

### III.

The authority of the collector, the sufficiency of the notice, and the regularity of the proceedings cannot be collaterally inquired into. If the commissioners and the common council had jurisdiction, their action is final and conclusive.

2 Freeman's Dig. 1167.

When power or jurisdiction is conferred upon any public officer or tribunal over a subject matter, and its exercise is confided to his or their discretion, the acts so done are binding as to that subject matter, and individual rights will not be disturbed collaterally for anything done in the exercise of that jurisdiction, within the authority or power conferred.



Parties may not attack collaterally the proceedings which they have neglected to question directly.

U. S. vs Arredondo 6, Pet. 729.

Hollingworth vs Barbour et al, 4 Pet. 470.

Ingle vs Bosworth, 5 Pick. R. 500.

Dillingham vs Snow et al, 5 Mass 557.

Hemmingway vs Inhabitants of Machias 33 Maine 445.

Sandford vs Dick et al, 15 Con. 447.

Williams vs Holder 4 Wend 223.

Here an appeal was provided, and parties neglected to take it, and revise the proceedings.

Municipal L. Pages 36, 40, Sects. 17, 7.

And they are now concluded.

#### IV.

The collector is liable, under his bond, (Municipal Law, Page 16, Sec. 16.) for all the monies due upon warrants delivered to him for collection.

Municipal Law, Page 163, Sec. 3, 4.

And is charged with those monies in account, (Page 163, Sects. 7, 8,) and must possess the necessary rights, and power to discharge the obligation.

SCATES, McALLISTER, JEWETT & PEABODY,

*Counsellors.*



The City of Albany

*The S. J. R. Co.*

## I A

*Filed Apr 22, 1858*

Hand  
Book

*Mitteilungen der Folger, 4 A und 583.*

Confidential Dick of 41, 12 Con 441.

1927



## Supreme Court of Illinois, Third Grand Division.

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|                            |   |         |
|----------------------------|---|---------|
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| VS                         |   |         |
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Geo. W. Colby, collector of special assessments for the south side, for 1856-7, made his report to a special term of the Cook County Court of Common Pleas, held in January, 1858.      (Pages 2, 4.)



At said special term the collector returned a copy of his special warrant for the collection of said assessment roll, containing the tracts and owners, in the record mentioned, among others. (Pages 5, 6.)

Due notice was given of this application by publication of notice, according to law. (Pages 7, 8, 9, 10, 11.)

The defendants filed the following written objections, viz: (Pages 11, 12.)

First. There is no sufficient legal notice given of the application, the same being general, indefinite and void.

Second. The said Go. W. Colby has no legal power and authority under, and by virtue of his appointment, as collector of special assessments in the South Division of the city of Chicago, for the year 1856, to hold over, or to do any act as such collector, after the expiration of his term of office, on the            day of March.



Third. This court has no jurisdiction of this cause, because the amendatory charter does not apply to warrants and assessments issued and made before its passage, and judgments upon such assessments must be rendered by the County Court, or an order issued by the common council, according to the provisions of the acts in force at the time of making such assessment and warrants. (Page 12.)

Fourth. Geo W. Colby as collector of Special Assessments for the year 1856, cannot apply to nor has this court jurisdiction to render judgment on his application under warrants for the Special Assessments made in 1856 &c.

The court overruled the first two objections but sustained the third and dismissed the writ and rendered judgment against the city for cost. (Pages 12, 13.)

Appellant assigns the following errors. (Page 15.)

First. The court sustained the third objection for want of jurisdiction, and refused to entertain jurisdiction but dismissed the same.



Second. The court refused to render judgment for the said assessments but dismissed the same.

Third. The court rendered judgment against the applicant for costs.

The appellant makes the following points.

## I

In case of default in the payment of special assessments after notice given, the collector shall report to some court which is authorized to render judgment against the lots.

Amended charter, page 13, section 40,  
Under the old charter the order of sale  
or judgment was made by the Common  
Council, Municipal Laws, page 44, sec-  
tion 8.



Again, by act of 1854, (Cooke's Statutes, page 202, section 2,) the County Court had power to render judgment for the assessments.

Of these several modes of obtaining a judgment and sale, that under the amended charter seems to be the only one now in force.

This will become apparent by examination of other sections of the amended charter.

After March 1857 all sales of property for taxes and assessments shall be held at the same time with the general sale of city property for the non-payment of city taxes, and there shall be but one such sale.

Amended charter, pages 15, 16, sections 51, 52.

All parts of former acts, &c., inconsistent with amended charter are repealed.



Amended charter, pages 22, 23, Sections 85, 86, 87.

The different modes of obtaining judgment, and time and manner of sale were inconsistent, and therefore are repealed.

We see the inconsistencies by comparing the several provisions.

First. In obtaining judgment under old charter, Municipal Law, page 44, section 8.

Amended charter, page 13, section 40, Acts 1854, (Cooke's Statutes, page 202, section 27.)

Second. The process to sell. Municipal Law, page 44, section 8. Amended charter, page 14, section 44.

Third. The notice to be given of sale. Municipal Law, page 45, section 9, Amended charter, page 14 sections, 44, 5



Will not this money, like other monies for taxes and assessments for improvements, pass into account on the Comptroller's books.

See amended charter, pages 5, 6, 7, 8.

Or will it be paid to the city treasury without any account being kept by the Comptroller, under the old charter.

Municipal Law, page 44, section 7.

## II.

The notices are sufficient. and such as are required by the charter.

First. The notice of the assessment is only required to be general.

Municipal Law, Page 32, Sec 2.

Second. The notice of confirmation may be general also.

Municipal Law, Page 35, Sec. 11.



Third. Notice of application for a judgment, prescribed by the new charter, Page 13, Sec. 40. When personal notice is intended to be required, as in case of removal of buildings.

Municipal Law, Page 33, Sec. 5.

And when special notices are intended, as in cases of sales, the legislature specified what they intended to require.

Am. Chr., Page 14, Sec. 45.

*Expressio Unius Exclusio Alterius.*

See Statute of Wills, Sec. 195, as to general notice.

Bowls Heirs, vs Rouse 3 Gil R 419.

Grignon's Lesse vs Astor 2, How U. S. 319.

### III.

The authority of the collector, the sufficiency of the notice, and the regularity of the proceedings cannot be collaterally inquired into. If the commissioners and the common council had jurisdiction, their action is final and conclusive.

2 Freeman's Dig. 1167.

When power or jurisdiction is conferred upon any public officer or tribunal over a subject matter, and its exercise is confided to his or their discretion, the acts so done are binding as to that subject matter, and individual rights will not be disturbed collaterally for anything done in the exercise of that jurisdiction, within the authority or power conferred.



Parties may not attack collaterally the proceedings which they have neglected to question directly.

U. S. vs Arredondo 6, Pet. 729.

Hollingworth vs Barbour et al, 4 Pet. 470.

Ingle vs Bosworth, 5 Pick. R. 500.

Dillingham vs Snow et al, 5 Mass 557.

Hemmingway vs Inhabitants of Machias 33 Maine 445.

Sandford vs Dick et al, 15 Con. 447.

Williams vs Holder 4 Wend 223.

Here an appeal was provided, and parties neglected to take it, and revise the proceedings.

Municipal L. Pages 36, 40, Sects. 17, 7.

And they are now concluded.

#### IV.

The collector is liable, under his bond, (Municipal Law, Page 16, Sec. 16.) for all the monies due upon warrants delivered to him for collection.

Municipal Law, Page 163, Sec. 3, 4.

And is charged with those monies in account, (Page 163, Sects. 7, 8.) and must possess the necessary rights, and power to discharge the obligation.

SCATES, McALLISTER, JEWETT & PEABODY,

*Counsellors.*







203, = 86

In City of Wash

vs

The Rock Island

City of Ohio

203

1858

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X

Prepared