

12730

No. _____

Supreme Court of Illinois

Barker, Imp.

vs.

City of Chic ago

234 115

J. A. Barker
of
City of Chicago

12730

1859

J. N. Barker

Supreme Court of Illinois
Third Grand Division
Ottawa April Term 1859

The City of Chicago v
Appell from Cooks County
Court of Common Pleas

And now at this day comes the said appellant by Scates, McAllister & Jewett his counsel and says that in the record and proceedings, and in the rendition of judgment in this cause, manifest error hath intervened in this, to wit:

First. The Court erred in rendition of judgment for the City - because there was no reference of the subjects of these improvements to a Committee of the Council to prepare and report a plan of said improvements, and an estimate of the costs and expense of making the same, and because the Common Council did not agree upon, or adopt any plan thereof, or estimate.

Second The order of Common Council of 2nd August 1858 was adopted without first having agreed upon, or adopted any plan, or estimate of said improvements, or "specifications" for doing the work, but the same was an order arbitrarily made for raising by assessment the sum of

\$18,200 to pay John Mc Beaw for doing said work under a private contract, wherefore said order was made without authority, and was, and is void

Third. Said assessment was made by said Commissioners without due notice of their meeting for that purpose

Fourth. The Common Council have no power to levy an assessment to pay for improvements made under private contracts - or without a contract with, or employment by the City

Fifth. The City have no authority or power to enter into contracts for such improvements, nor to adopt or sanction those entered into by others, until 50 per cent of the amount of their cost and expense shall have been collected

Sixth That the assessment amounts to more than three per cent on the assessed valuation

Seventh The Election of Commissioners by the Common Council without a nomination by the Mayor, under the 6th Section of the Amended Charter of 1857, was without authority & void

Eighth There was no valuation in money fixed upon said lots, and there was no sum assessed upon the same by the said Commissioners, and the Common Council and the Com-

now Pleas Court had no jurisdiction, power
or authority to assess, or give judgment
against said lots for any sum of money
Kintz. The Court rendered judgment against
said lots, when by the laws of the State —
judgment ought to have been rendered for
defendant.

Scates McAllister & Jewett
Counsel for Appellant

In ~~hullo~~ erratum is

E. Anthony
for Deft in error

(1)

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

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 holden at the Court
House in the City of Chicago on the twenty
seventh day of January in the year of our Lord
one thousand eight hundred and fifty nine, due
Notice of the time and place of holding said
term of Court having been printed and published
in the Chicago Daily Democrat, the Corporation
Newspaper of said City of Chicago, said Notice
having been printed and published Twenty days
previous to the first day of holding said Court
in accordance with the Statute in such case
made and provided, and in pursuance of an
Order made by the Judge of said Court on
the fourth day of January Eighteen hundred
and fifty nine.

Present the Hon: John M. Wilson . . . Judge
John Gray . . . Sheriff
Attest Walter Kimbato, Clerk.

(2)

Be it remembered that heretofore to wit on the day of January A. D. Eighteen hundred and fifty, nine came Joseph M. Hendricks City Collector of the said City of Chicago and filed in the Office of the Clerk of the Cook County Court of Common Pleas aforesaid his Report and Petition for Judgment for Special Assessments upon certain property in said City of Chicago, together with the Assessment Role, Collectors Warrant and Notice of Sale; Which said, Report, Petition, Assessment Role, Collectors Report Warrant and Notice of Sale, is in the words and figures following, to wit:

The City of Chicago	{	Of the January Special Term of the
us		Cook County Court of Common Pleas
J. N. Barker unpleaded		One thousand eight hundred and fifty
with others	}	nine

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

The Report of Joseph M. Hendricks City Collector of the City of Chicago respectfully represents that the Special Warrants mentioned in the Schedule hereunto attached, issued for the Collection of the Special Assessments and Taxes, authorized by law for the purposes therein severally set forth, made out in the manner required by law, and countersigned by the City Comptroller were delivered to him the said City Collector on or before the second Tuesday of October A. D. 1858. That forthwith after the delivery of the said Warrants

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to him he published a Notice in the Corporation Newspaper of said City that such Warrants were in his hands for collection, briefly describing the nature of each of said Warrants, and requesting all persons forthwith to make payment thereof at his Office, and that in default of such payment the said taxes and assessments would be collected at the cost and expense of the person liable for the payment of such taxes and assessments. Which said Notice was generally published for Thirty days in said Corporation Newspaper.

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

That the annexed Schedule is a correct List of the lands, lots and parcels of land, together with the amount of taxes and assessments interest and costs respectively due thereon as set forth in the said Warrants which remain unpaid and uncollected, Wherefore your

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said Petitioner prays that judgment may be rendered as in such case made and provided.

Jos: N. Hendricks

City Collector,"

"State of Illinois }
Cook County ... } p

I Joseph N. Hendricks City Collector in and for the City of Chicago, do solemnly swear that the annexed Report by me made, is to the best of my knowledge and belief, true - And the annexed Schedule is a true and correct list of the delinquent lots lands and parcels of land, upon which I have been unable to collect the taxes and assessments as required by law for the year 1858 as herein set forth. That said taxes and assessments now remain due and unpaid and uncollected as above stated

Subscribed and sworn to }
before me this 27th day }
of January A. D. 1859 }

Jos: N. Hendricks"

Walter Kimbale. Clerk

Cook County Court Com: Pleas."

(Warrant & Assessment Rule)

"Special Warrant No 280 S.

"State of Illinois }
City of Chicago ... } p

The People of the State of Illinois to the

(5)

Collector of the City of Chicago, Meeting.

Whereas the Common Council of the City of Chicago did on the 20th day of September 1858 confirm the assessment duly made and filed in the Clerk's Office by the Commissioners appointed by the said Common Council to assess the sum of Eighteen thousand two hundred dollars upon the real Estate in the South Division of said City deemed benefitted by filling, curbing and paving Washington Street from La Salle Street to the East line of Market Street in proportion to the benefits resulting therefrom in pursuance of an Order for said Assessment, made by the said Common Council on the second day of August 1858 after duly revising the same, and did thereby assess the said sum of money upon the real Estate described in the roll of said assessment in the respective proportions thereof marked "Assessment" set opposite to each lot, part of lot and real Estate described in said roll; which roll is in the words and figures following, to wit:

"Assessment Roll"

"A description of the real Estate in the South Division of the City of Chicago deemed benefitted by filling curbing and paving Washington Street from La Salle Street to Market Street, with the Valuation thereof, and the sums of money severally assessed thereon for benefits by the Commissioners to wit

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Original Town of Chicago.

Name of Owner	Description	Lot	Lot	Block	Value	Assessm.	
Samuel Cole		1	50 1/2	110	29000	418 33	Paid
R. D. McFarlane		2	"	"	21000	418 33	Paid
D. R. Holt		3	"	"	23800	418 33	Paid
W. B. Lumsbury	W 1/2 of E 1/2		6	"	20750	207 28	Paid
S. A. Smith	E 1/4		"	"	20750	207 28	Paid
J. King	30 ft on Washington St. by 95 1/3 ft deep		7	"	16000	251 10	Paid
J. Brinkerhoff	W 20 ft on Washington St. by 95 1/3 ft deep		7	"	17000	167 40	Paid
A. B. Farwell	20 ft on Washington St. by 106 ft deep 64 adjg W 20 ft. "		7	"	17000	167 40	Paid
J. King	E 95 1/3 feet		8	"	82500	669 60	Paid
City of Chicago	Ex 20 feet	5	5	111	15000	204 84	Paid
L. Naas		6	"	"	17000	204 83	Paid
A. Rawson		7	"	"	9500	204 83	Paid
Wm. McClure		8	"	"	9500	204 83	Paid
A. W. Barker			6	"	48000	809 24	
Burham & Smith		1	7	"	10750	203 82	Paid
"		2	"	"	10750	203 82	Paid
A. Hodgson		3	"	"	15000	203 82	Paid
"		4	"	"	15000	203 82	Paid
G. Export		8	8	112	28000	817 49	Paid
L. C. P. Peur			5	"	79000	648 03	
R. M. & L. C. Casey		1	6	"	12000	162 01	Paid
"		2	"	"	12000	162 01	Paid
"		3	"	"	9500	162 01	Paid
"		4	"	"	10500	162 01	Paid
A. Getzler	E 1/2 of W 1/2		7	"	14500	202 50	Paid

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Original Town of Chicago

Name of Owner	Description	Lot	Lot	Block	Value	Assess	
St. Bardell	N 1/4		7	42	11000	202 50	Paid
C. G. Dillbeck	E 1/4		"	"	10500	202 50	Paid
Ch. Schaller	N 1/2 of E 1/2		"	"	11000	202 50	Paid
A. King Jr.		1	8	"	11000	202 50	
"		2	"	"	11000	202 50	
"		3	8	42	11000	202 50	
"		4	4 2	42 53	11000	202 50	
F. E. Sherman		1	4 2	42 53	9500	210 88	Paid
"		2	"	"	7000	202 78	Paid
"		3	"	"	7000	202 78	Paid
"		4	"	"	8000	202 78	Paid
"		5	"	"	8000	202 78	Paid
Ogden Plaster & Co.	N 3/4		2	"	31000	608 34	Paid
Gas. Brook Jr.	E 1/4		3	"	8500	162 39	Paid
Wm. S. Woodson	N 1/2 E 1/2		"	"	18500	162 39	Paid
A. H. Foster	N 1/2		"	"	24500	324 77	Paid
Nugent & Owens	North 110 ft 70 ft deep		4	"	70000	649 53	Paid
Edw. P. Carr	110 ft on Washington St. by 100 ft on Wells		1	54	45000	405 96	Paid
W. H. Brand	110 ft on Washington St. by 100 ft deep N & adjg E 40 ft		"	"	16000	405 96	Paid
Wm. Blair			2	"	35000	811 92	Paid
A. H. Foster			3	"	37500	811 92	Paid
Alg. Burling & Co.	Ch. E. 1/4		4	"	11500	405 96	Paid
E. C. Weber	Ch. N 1/4		"	"	20000	405 96	Paid
P. F. W. Cook	N 1/2 of lot 1 + E 1/2 of		2	55	85000	811 91	
Alvan White	N 3/4		"	"	37500	487 15	

(9)

within and foregoing Warrant, that he has collected the assessments on all the real Estate described in said Warrant opposite to which in the appropriate column the word "Paid" is written, that a demand of payment has been made of the several other assessments not marked "Paid" in every case of the persons mentioned in said Warrant as liable to the payment thereof and that he has not been able to find any personal property belonging to any of them subject to the payment thereof.

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

City Collector"

" Corporation Notices

" City Collectors Office, Chicago

January 7, 1859.

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

The Warrants for the collection of taxes for general and special purposes assessed for the Municipal year 1858. Said

(10) Warrants being dated September 27th 1858.

" Warrant No 280, South dated September 22^d 1858 for filling, curbing and paving Washington Street from La Salle Street to the East line of Market Street"

" This certifies that the appended Notice has been published in the "Chicago Daily Democrat" a Newspaper printed and published in the City of Chicago, County of Cook and State of Illinois twenty one days consecutively commencing with the ninth day of January 1859.

Geo. Houtworth - Published
By Reed."

And afterwards to wit on the fifth day of February (being one of the days of the said January Special Term of said Court) the following proceedings were had and entered of Record in said Court, to wit:

Judgment Book for Special Assessments
City of Chicago Illinois.

Names.	Description	Sub lot	Lot	Block	Valuation	Amount		Tax per		Cts	Total	
					Dollars	Dollars	Cts	Dolls	Cts		Dolls	Cts
J. N. Barker			6	41	113000	809	24	80	92			
L. C. P. Hunt			5	112	79000	648	02	64	80			
J. F. H. Cook	W 3/4 of Lot 1 & E 1/4 of		2	33	86000	811	91	81	19			
J. N. Barker			3		110000	811	92	81	19			

been presented &c. &c. &c. and the same owners of the described in Warrant and Counsel having been heard upon said objections and mature deliberation being

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thereupon had and the premises fully understood it appears to the Court that the said objections to the taking of judgment by the City of Chicago against the lands lots and parcels of Real Estate in said Warrant are insufficient the objections are therefore overruled, and on Motion of said City Attorney.

It is considered by the Court that judgment be and hereby is entered against the said several Lands Lots pieces and parcels of land described in the aforesaid Warrant in favor of the City of Chicago for the sum assessed to each lot piece & parcel of land being the amount of assessments and for Costs of suit generally therein and that the said City of Chicago have and recover the further sum of Two per cent per cent upon the amount of assessments respectively due and unpaid upon each of the lots lands and parcels of lands therein set forth as and for her legal damages.

And it is further Ordered by the Court that the said several lands, lots, pieces and parcels of land or so much thereof as shall be deemed sufficient of each of them to satisfy the amount of assessment damages & Costs assessed to them severally be sold as the law directs.

And thereupon comes the said L. C. P. Freer, J. W. Barker and P. J. H. Beck owners of lots in said Warrant set forth and enter their exceptions herein to the judgment of the Court in overruling said objections, and the said L. C. P. Freer prays an Appeal in this cause to the Supreme Court of the State of Illinois for Lot 5 in

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Block 42 forty two Old Town, described in the aforesaid Warrant, against which judgment has been entered; Which appeal is allowed on filing Bond in One thousand dollars with James Long as security within ten days, and that he have twenty days to file his Bill of Exceptions.

And the said J. N. Barker prays an Appeal to the in this cause to the Supreme Court of the State of Illinois for lot six (6) in Block (41) forty one, and lot (3) three in Block fifty five (55) Old Town described in the aforesaid Warrant against which judgment has been entered, Which Appeal is allowed in filing Bond in Two thousand dollars with James Long as security in ten days and Bill of Exceptions within twenty days.

And the said P. F. H. Peck also prays an Appeal in this cause to the Supreme Court of the State of Illinois for N $\frac{1}{4}$ North five Mists of Lot (1) one and East Quarter of lot (2) two Block (55) fifty five, old Town described in the aforesaid Warrant, against which judgment has been entered; Which Appeal is allowed on filing Bond in One thousand dollars with James Long as security in ten days and Bill of Exceptions within twenty days.

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And thereafter to wit on the fourteenth day of February A.D. Eighteen hundred and fifty^{nine} the said L. C. P. Truer J. N. Barker and Philip J. H. Peck, accordingly filed in the Office of the Clerk of said Court their several Appeals Bonds in said cause, which said Bonds are in the words and figures following, to wit:

"Know all Men by these Presents That we L. C. P. Truer and James Song of the County of Cook and State of Illinois are held and firmly bound unto the City of Chicago, also of the same County and State in the penal sum of One thousand dollars lawful Money of the United States for the payment of which well and truly to be made we bind ourselves our heirs executors administrators and assigns jointly severally and firmly by these Presents

Witness our hands and seals this seventh day of February A.D. 1859.

The Condition of the above obligation is such that whereas the said City of Chicago did on the fifth day of February A.D. 1859 in the Cook County Court of Common Pleas in and for the County and State aforesaid and of the January Special Term thereof A.D. 1859 render a judgment against lot five in Block numbered forty two Old Town in the City of Chicago for the sum of Seven hundred and thirteen dollars and three cents besides Costs of suit for a special assessment on Warrant No 280, from which said judgment of the said Cook County Court

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of Common Pleas the said L. C. T. Freer has prayed for and obtained an appeal to the Supreme Court of said State.

Now therefore if the said L. C. Payne Freer shall duly prosecute his said appeal with effect, and moreover pay the amount of the judgment, costs, interest and damages rendered and to be rendered against him and said lot in case the said judgment shall be affirmed in the said Supreme Court, then the above obligation to be void otherwise to remain in full force and virtue

L. C. Payne Freer (Seal)

James Long (Seal)

'Know all Men by these Presents That we J. N. Barker and James Long of the County of Cook and State of Illinois are held and firmly bound unto the City of Chicago, also of the same County and State in the sum of Two thousand dollars lawful Money of the United States for the payment of which unto and duly to be made we bind ourselves our heirs executors and administrators jointly, severally and firmly by these presents.

Witness our hands and seals this seventh day of February A. D. 1859.

The Condition of the above Obligation is such That whereas the said City of Chicago did on the fifth day of February A. D. 1859 in the Cook County Court of Common Pleas in and for the County and State aforesaid and of the January Special Term thereof A. D. 1859 recover a judgment against lot Six in Block (41) forty one and

(15)

lot three (3) in Block (35) fifty five Old Town for the sum of \$1783.67 for a Special Assessment on Warrant No 280 South besides costs of suit, from which said judgment of the said Cook County Court of Common Pleas, the said J. N. Barker has prayed for and obtained an Appeal to the Supreme Court of said State.

Now therefore if the said J. N. Barker shall duly prosecute his said Appeal with effect and moreover pay the amount of the judgment, costs, interest and damages rendered and to be rendered against him or said lot in case the said judgment shall be affirmed in the said Supreme Court, then the above obligation to be void, otherwise to remain in full force and virtue.

Joseph N. Barker (Seal)

James Long (Seal)

Know all Men by these Presents That we Philip F. H. Peck and James Long of the County of Cook and State of Illinois are held and firmly bound unto the City of Chicago also of the same County and State in the penal sum of One thousand dollars lawful Money of the United States for the payment of which well and truly to be made, we bind ourselves our heirs executors and administrators jointly, severally and jointly by these presents.

Witness our hands and seals this Seventh day of February A. D. 1859.

The Condition of the above obligation is such that whereas the said City of Chicago did on the fifth day of

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February A. D. 1859 in the Cook County Court of Common Pleas in and for the County and State aforesaid and of the January Special term thereof A. D. 1854 recover a judgment against parts of lots one and two in Block Fifty five in Old Town for the sum of Eight hundred and ninety three dollars and fifty cents, besides Costs of Suit, for a Special Assessment on Warrant No. 280 South, from which said judgment of the said Cook County Court of Common Pleas, the said P. J. H. Peck has prayed for and obtained an Appeal to the Supreme Court of said State,

Now therefore if the said Philip J. H. Peck shall duly prosecute his said Appeal with effect and moreover pay the amount of the judgment, costs, interest and damages rendered and to be rendered against him and said lots in case the said judgment shall be affirmed in the said Supreme Court, then the above obligation to be void; otherwise to remain in full force and virtue.

P. J. H. Peck (Seal)

James Song (Seal)

And thereafter to wit on the Twenty fourth day of February A. D. Eighteen hundred and fifty nine came the said Defendants Filed in the Office of the Clerk of said Court their Bill of Exceptions in the words and figures following to wit.

(17)

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

The City of Chicago } Suit for Special Assessment to file, and
— (vs) — } and pave Washington Street from west
J. N. Barker impleaded } side LaSalle Street to the East side
with others . . . } of Market Street.

Be it remembered that heretofore to wit on the
day of January A. D. 1859 the said defendant
J. N. Barker came into Court and filed his objections to the
 rendition of Judgment and order of Sale applied for in
 this suit, which said objections are as follows, and to
 which the City Attorney for the City filed Demurrers and
 traverses of the facts therein objected and alleged as follows
 that is to say,

State of Illinois } Of the January Special Term of the
Cook County . . . } Cook County Court of Common Pleas
The City of Chicago } A. D. 1859.
vs } Suit for Special Assessment
J. N. Barker impleaded } Warrant No 280.
with others . . . }

The defendant J. N. Barker by his
Attorneys comes and objects to a Judgment, and an order

(18)

for sale in this case for the following reasons viz

First

There was no reference of the subject of improving this Street to a Committee to prepare and report a plan for the filling, curbing and paving thereof - nor was any plan agreed on by any Committee, nor was any plan referred by any Committee. nor was any plan of the same ever made or submitted to the Common Council or adopted by it.

Traverse by Elliott Anthony, City Attorney.

Second

The order of the Common Council of the 2nd of August A. D. 1858 directing that the sum of \$18,200.00 be assessed on Real Estate of the City of Chicago, deemed benefited by the filling, curbing and paving of Washington Street from the West line of LaSalle Street to the East line of Market Street "in accordance with Superintendent's Specifications for same," was made by the Common Council without having adopted or agreed upon any plan or mode or Specifications for said improvements but the same was an arbitrary order for assessing that sum for the purpose of raising money to pay one John McBean for paving said Street under a private Contract with some of the property holders on said Street, and this Warrant is being now prosecuted for that purpose.

A large part of the said work was done by said McBean under said private agreement with said property holders before said Order was made.

Traverse by Elliott Anthony, City Attorney.

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Third

Said assessment was made without due Notice of the Meeting of the Commissioners having been given for 6 consecutive days as required by the Ordinances of the City.

Traversed by Elliott Anthony, City Attorney.

Fourth

The Common Council have no jurisdiction, power or authority to make assessments to pay for improvements made under private Contracts, or without Contracts, Nor to enter into Contracts to make such improvements until 50 per Cent of the amount of their cost shall have been collected, according to Sec 5 of the amended City Charter & 11 and Secs 15 and 16 of the City Ordinances Muni Code p 162.

Traverse of facts alleged on which legal principles are stated by Elliott Anthony City Attorney.

Fifth

The Election of Commissioners by the Common Council without a nomination by the Mayor under the 6th Section of the Amended Charter of 1857 was without authority & void.

Demurrer by Elliott Anthony, City Attorney.

Sixth

That the Assessment amounts to more than the per cent on the assessed Valuation. And more than three per cent on the actual Valuation.

Traversed by Elliott Anthony, City Attorney.

(20)

Be it further remembered that this cause coming on for trial on the 5th day of February 1859. the Plaintiff to maintain the issue on its part introduced and read in evidence the following proceedings viz.

' Paving Washington Street

From LaSalle Street to Market Street.

' In Common Council August 2nd 1858.

Ordered, That Washington Street from the West line of LaSalle Street to the East line of Market Street be filled curbed and paved in accordance with the Superintendents Specifications for same. Whole distance including intersections 1127

feet at \$16. \$18032.00

Engineering, Superintending, assessing & collecting 168.00

\$18200.00

Ordered,

That the sum of Eighteen thousand two hundred dollars be assessed upon the Real Estate in the South Division of the City of Chicago deemed benefited by the said improvement and that the Common Council do now elect by Ballot three reputable and disinterested freeholders of the City of Chicago to make said assessment.

Ald: Long offered a Substitute and moved its passage. Lost.

The Orders were then passed and the Council proceeded to the Election of Commissioners thereunder. On the first ballot there was no choice. And on the second ballot, McKinzie S. R. Heaven and L. W. Stone received each 17 votes and were declared elected. Attest, H. Kruzman, City Clerk.

oath of Commissioners.

(21)

State of Illinois }
City of Chicago }

We the undersigned Commissioners appointed by the Common Council of the City of Chicago, to assess the sum of Eighteen thousand two hundred dollars upon the Real Estate by us deemed benefitted by Paving Washington Street in accordance with the foregoing Orders in proportion to the benefits resulting thereto as nearly as may be, do solemnly swear that we will faithfully and impartially execute our duty according to the best of our abilities

Sworn to and subscribed }
before me this 11th day }
of Aug: 1858 }

John H. Kinzer

L. W. Stone

S. R. Heaven

H. K. Kneeman

Commissioners

City Clerk

Assessment Roll.

A description of the Real Estate in the South Division of the City of Chicago deemed benefitted by filling, curbing and paving Washington Street from La Salle Street to Market Street, with the Valuation thereof and the sums of money severally assessed thereon for benefits by the Commissioners to wit -



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Original Town of Chicago

Name of Owner	Part of Lot of Land	S. Lot	Lot Block Valuation	Assess ^d
Samuel Cole		1	1/2 1/2 1/2 29 000	418 33
R. D. McFarlane		2	" " 21 000	418 33
D. R. Holt		3	" " 23 500	418 33
H. B. Lonsbury	1/2 of E 1/2	6	" " 20 750	207 25
S. A. Smith	E 1/4 of 30 ft on Washington St.	"	" " 20 750	207 25
S. King	by 93 1/3 deep	7	" " 16 000	231 10
J. Brinkerhoff	1/2 20 feet on Washington	"	" "	
	Street by 106 feet deep	"	" " 17 000	167 10
C. B. Farwell	20 ft. on Washington St.	"	" " 17 000	167 10
	by 106 ft. deep to and adjoining 1/2 20 feet	"	" "	
J. King	5 95 1/3 feet	8	" " 82 500	669 60
City of Chicago	ex N 20 feet	5	5 111 15 000	204 84
L. Haas		6	" " 17 000	204 03
A. Ramson		7	" " 9 500	204 03
Mrs. Melure		8	" " 9 500	204 03
L. N. Barker		6	" " 43 000	809 24
Burhaus Smith		1	7 " 10 750	203 82
"		2	" " 10 750	203 82
A. Hodgson		3	" " 15 000	203 82
"		4	" " 15 000	203 82
G. Cooper		8	8 " 28 000	817 14
L. C. P. Fier		5	112 70 000	648 15
R. M. & L. C. Casey		1	6 " 12 000	162 01
"		2	" " 12 000	162 01

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Name of Owner	Part of Lot of Land	S Lot	Set	Block	Valuable	Assess ^{ts}
R. M. & J. C. Casey		3	6	12	9800	162 01
A. Getzler	E 1/2 of N 1/2	4	"	"	10800	162 01
			7	"	111500	202 50
N. Berdell	N 1/4		"	"	11000	202 50
C. G. Ulrich	E 1/4		"	"	10500	202 50
A. Schreeller	N 1/2 of E 1/2		"	"	11000	202 50
J. King Jr.		1	8	"	11000	202 50
"		2	"	"	11000	202 50
"		3	"	"	11000	202 50
"		4	"	"	11000	202 50
J. C. Sherman		1	1/2	53	9500	210 88
"		2	"	"	7000	202 78
"		3	"	"	7000	202 78
"		4	"	"	8000	202 78
"		5	"	"	8000	202 78
Oscar Fleckwood & Co	N 3/4	2	"	"	31000	618 34
James Brock Jr.	E 1/4	3	"	"	8500	162 39
Wm. J. Fordson	N 1/2 of E 1/2	"	"	"	18500	162 39
L. H. Foster	N 1/2	"	"	"	24500	324 77
Margaret & Owens	N 1/2 70 ft 70 ft deep	4	"	"	70000	649 53
Est. of P. Carr	{ 110 ft on Washington St. by 100 ft on Hill St.	1	54	"	46000	1105 96
W. H. Brand	{ 110 ft on Washington St. by 100 ft deep N 1/2 adj to 110 ft.	"	"	"	16000	1105 96
William Blair		2	"	"	35000	811 92
A. H. Foster		3	"	"	37500	811 92
A. J. Burtley & Co	E 1/2 of N 1/2	4	"	"	14500	1105 96
B. C. Webber	N 1/2 . . .	"	"	"	20000	1105 96

(24)

Name of Owner	Part of Lot of Land	S. Lot	Lot	Block	Valuation	Assess.
P. H. F. Peck	N $\frac{1}{4}$ of lot 1 & E $\frac{1}{4}$ of	2	55		\$8000	811 91
Alexr. White	N $\frac{3}{4}$	"	"		37600	487 15
James Short	{ E 20 ft on Washington St. 60 ft. deep	4	"		7600	202 98
L. Beal	{ 30 ft on Washington St. 60 " deep N $\frac{1}{4}$ of S. E 20 ft.	"	"		11500	304 41
C. Mehle	{ N 30 ft on Washington St. 60 ft deep	"	"		11000	304 47
A. M. Barker		3	"		40,000	811 92
						<u>\$18200.00</u>

Commissioners Return.

The undersigned freeholders and residents of the City of Chicago duly elected and appointed by the Common Council of said City, to assess the sum of Eighteen thousand and two hundred dollars upon the real Estate in the South Division of said City, by us deemed benefitted, in proportion as nearly as may be to the benefits resulting thereto by reason of filling, curbing and paving Washington Street from East line of Market Street to West line of LaSalle Street, do hereby report and return to the Common Council

That in pursuance of said appointment they were duly qualified before entering upon their duties, as appears by the Order recorded herein. That they published a Notice of the time and place of their Meeting, for the purpose of making said assessment in the Daily Democrat the

(25)

Corporation Newspaper, for the period of six consecutive days previous to such Meeting a certificate of which publication is herewith attached; that they were present at the time and place and for the purpose designated in said Notice, and having first fixed a Valuation on the real Estate described and set forth in the proper column of the foregoing Assessment roll, we did then and there, and do hereby in pursuance of said appointment assess the said sum of money upon the said Estate heretofore set forth and described as the only real Estate benefited by said improvement, and that the benefits resulting thereto is the proportion of said sum, set opposite to each lot, part of lot and land respectively in said assessment roll.

And we further report that such assessment does not exceed three per Centum per annum on the property assessed. All of which is respectfully submitted.

Wm. St. Kizig

S. W. Stone

S. R. Haven

Commissioners

Chicago - August the 19th 1855.

Commissioners Notice - Public Notice is hereby given to all persons interested that the undersigned Commissioners appointed by the Common Council of the City of Chicago to assess the sum of Eighteen thousand and two hundred dollars (\$18200) upon the real Estate in the South Division by them deemed benefited by filling Culberg & paving Washington Street from the West line of Taylor Street to the East line of Market Street with

This certifies that the appended Notice relative to improvement on Washington Street has been published

(26)

met at room No 6. Dole Building on the
Nineteenth day of August 1858 at the hour of
10 o'clock A.M. for the purpose of making
said assessment

John H. Kinzie

L. W. Stone

J. R. Haven

Chicago, August 12th 1858.

Ans: 18 d 6 A.

in the Daily Democrat
the Corporation Newspaper of
the City of Chicago, County of
Cook and State of Illinois

Six days consecutively commencing
with August 13th 1858.

Chicago August 19th 1858.

John Wentworth, publisher
By W. H. Allen.

"State of Illinois
City of Chicago"

I do hereby certify that the foregoing
Assessment rolls was returned to me and filed in my office
by the Commissioners this 19 day of Aug: 1858.

J. Kricomaw City Clerk."

Assessment Notice.

"City Clerk's Office Aug: 19, 1858.

Public Notice is hereby given to all persons interested
that the Commissioners appointed by the Common Council
of the City of Chicago to assess the sum of Eighteen thousand
two hundred dollars upon the real Estate in the South
Division of said City deemed benefitted by paving Washington
Street from LaSalle St. to Market St. have completed their
Assessment and made return thereof to my Office. Any
person wishing to Appeal from said Assessment must file
their Objections in writing in my Office on or before Monday

(27)

the 30th day of August 1858 at 7 o'clock P.M. as the Common Council will at that time, in the Council room hear all objections to said assessment and revise and confirm or amend the same.

"St. Kriesman

"Aug. 30 at 10 1/2 "

City Clerk."

"This certifies that the aforesaid notice has been published in the Daily Democrat the Corporation Newspaper of the City of Chicago, County of Cook and State of Illinois ten days consecutively, commencing with August 20th 1858."

John Wentworth

"Chicago, December 24th 1858."

Publisher."

Order of Confirmation.

"In Common Council Sept. the 20th 1858

Ordered, that the Assessment roll for filling, curbing and paving Washington Street from LaSalle to the East line of Market Street with Block Stone, be confirmed and the usual Warrant issued on or before the 24th inst."

"Passed, St. Kriesman, City Clerk,"

And here the Plaintiff rested its case, and this was all the proof introduced by it.

Whereupon the Defendant J. N. Barker to maintain the issues on his part introduced the following witnesses viz. James Long, who being sworn testified as follows viz.
On the 20th of August A.D. 1858 I was a member

(27)

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"Passed, St. Kriesman, City Clerk,"

And here the Plaintiff rested its case, and this was all the proof introduced by it.

Whereupon the Defendant J. N. Barker to maintain the issues on his part introduced the following witnesses viz. James Long, who being sworn testified as follows viz.
On the 20th of August A.D. 1858 I was a member

(28)

of the Common Council of the City of Chicago.

Was there on or before the said 2nd of August 1858
a reference to a Committee of the Council to propose and
report a Plan and Estimate for filling curbing & paving
Washington St between LaSalle & Market Streets.

Objected to, objection maintained and opinion
excepted to.

Was there any Plan agreed on by any Committee?

Objected to, sustained & opinion excepted to.

Was any Plan submitted to, or adopted by the Common
Council in any form on or before 2nd day of August
1858.

Objected to. Objection overruled.

Ans: I did not consider it a Plan.

Were you familiar with the Entries of the Ordan
Book of the Common Council prior to Aug^t 2. 1858
And if you were please state all that was submitted to
the Common Council Verbally or in writing in reference
to a Plan and Estimate of said improvement?

Objected to - Objection sustained, and opinion
excepted to.

State whether any Plan or Estimate, verbal or
written for the filling, curbing & paving of Washington St
from LaSalle to Market Streets.

(29) was reported to or adopted by the Common Council at or before August 2nd 1858?

Ans: There was neither a Plan nor Estimate submitted to the Common Council -

State to what the Common Council in their Order of 2nd of August 1858, refer in this language "in accordance with Superintendents Specifications of same,"?

Objected to. Objection sustained & accepted to.

The following proceedings were offered in evidence
Objections were made to their introduction by the Plaintiff, but overruled and proceedings of the Common Council were read as follows.

'Council Proceedings

Regular Meeting

Monday Evening May 10: 1858.

Alderman Cox, of Committee on Streets and Alleys of the South Division presented the following.

Your Committee of Streets and Alleys of the S. D. to whom was referred the Petition of W^m Blair Et al for the filling and paving of Washington Street from the East line of Clark Street to the East line of Market Street and asking that the owners interested may contract for said work themselves, having had the same under advisement beg leave to report in favor of granting the prayer of said Petition, and submit the following Orders and ask the passage thereof -

(30)

Ordered That Washington Street, from Clark Street to Market Street, be filled, curbed and paved

Ordered, That the Owners of the Property on Washington Street between Clark & Market Streets, be and they are hereby authorized to fill, wall and pave said Washington Street at their own cost and expense, provided the work shall be performed in a manner satisfactory to the Superintendent of Public Works.

"Report Concurred in and Orders passed."

"Council Proceedings

Regular Meeting

Monday June 7th 1858.

Alb. Myers presented Orders for paving Washington Street from Clark Street to ^{Sagable} Market Street -

Alb. Long, moved to reconsider the Vote by which the Order was passed, at the last Meeting of the Council for paving Washington Street from Clark Street to Market Street and refer the whole subject to the Committee on Streets and Alleys of the South Division

Alb. Ward. called for a Division of the Question

Alb. Kennedy. demanded the Ayes and Nays on the question to reconsider, which resulted as follows.

Ayes. Alb. Long, Kendall, Abbott, Joy, Carter, Conley, and Carpenter and Boughtin. 8.

Nays. Bliss, Kennedy, Myers, Ward, Sills, Von Horn, Wendt & Enzembach. 8.

And the Motion was Carried by the Vote of the

(31)

Mayor. and the question of reference was thus put and carried."

"To the Mayor and Alderman of the City of Chicago in Common Council assembled.

Your Committee on Streets and Alleys of the South Division, to whom was referred back for final adjustment the subject of paving Washington Street, having had the same under consideration are of the opinion that in the opinion of your Committee the improvement should be made forthwith, they therefore ask for the passage of the following Orders:

Ordered, That Washington Street from the West line of La Salle Street, to the East line of Market Street be filled, curbed and paved in accordance with Superintendent's Specifications for pavement.

Whole distance including intersection

1127 feet at \$16 \$18032.00

Engineering, Supt, Assess: & Coll: 168 " 00

18200 " 00

Ordered. That the sum of Eighteen thousand two hundred dollars be assessed upon the Real Estate in the South Division of the City of Chicago deemed benefited by the said improvement and that the Common Council do now elect by Ballot three reputable and disinterested freeholders of the City of Chicago to make said Assessment Chicago,

Respectfully Submitted

July 19th 1858.

C. H. Abbott, of Committee on Streets
& Alleys, South Division."

(32)

In Common Council Aug: 2. 1858.

Ordered, That Washington Street from the West line of La Salle Street to the East line of Market Street, be filled Curbed and paved in accordance with the Superintendents Specifications for same.

Whole distance including intersections

1127 feet @ \$16. \$18032.00

Engineering, Superintending, Assessing

and collecting 168 " 00

\$18200 " 00

Ordered, That the sum of Eighteen thousand, two hundred dollars be assessed upon the real Estate in the South Division of the City of Chicago deemed benefited by the said improvement and that the Common Council do now elect by ballot, three reputable and disinterested free holders of the City of Chicago to make said assessment.

Ald: Long, offered a substitute and moved its passage. Lost.

The Orders were then passed and the Council proceeded to the Election of Commissioners thereunder. On the first ballot, there was no choice and on the second ballot, J. H. Kinzie, J. R. Haven and L. V. Stone ^{received} 17 Votes and were declared Elected.

"I am authorized by certain property holders on Washington Street, between La Salle St. & Market St. viz Tuttle King, L. C. P. Fox, J. A. W. Peck & Mrs. M. McLean

(33)

to protect against any Contract being entered into with any party or parties for paving said Street, unless the said work is advertised for and let to the lowest bidder"
"James Long"

W. Crisman,

"State if there are any other Orders among the proceedings of the Common Council in reference to the improvement of said Street than those heretofore referred to."

Ans: There was no other Orders up to August 2, 1858.

State if there was any plan and Estimate written or Verbal on file in the City Clerk's Office of Common Council, prior to August 2, 1858?

Ans: I think there is one of the City Superintendent?

State if it is set forth in that Order of Common Council of Aug. 2, above herein set forth?

Ans: It is set forth in Order of Common Council of August 2, 1858, that is all either of Plan or Estimate on file in City Clerk's Office and is as follows:

"In Common Council Aug; the 2nd 1858.
Ordered, That Washington Street from the West line of Lavaca Street, to the East line of Market Street, be filled, curbed and paved in accordance with Superintendent

(34)

Specifications for same

Whole distance including intersection

1127 feet @ \$16 \$18032.00

Engineering, superintending, Assessing
and collecting } 168.00

\$18200.00

Ordered; That the sum of Eighteen thousand two hundred dollars be assessed upon the Real Estate in the South Division of the City of Chicago deemed benefitted by the said improvement, and that the Common Council do now Elect by Ballot three reputable and disinterested free holders of the City of Chicago to make said Assessment

Ald; Long offered a substitute and moved its passage - Lost.

The Orders were then passed and the Council proceeded to the Election of Commissioners thereunder.

On the first ballot there was no choice, and on the second ballot J. St. Kuizie, S. R. Haven and L. H. Stone received each 17 Votes, and were declared Elected."

State what Specifications of the Superintendent are referred to in that Order?

Ans: I suppose that they are the Specifications set forth in the Order of Aug: 2. 58. The Copy furnished to Judge Seaton and now before the Court, is a Copy of the record - the same as hereinbefore referred to.

There are no other Orders in the matter.

Cross Examined -

(35)

Ans: Abbott submitted all the Specifications & Plans that there was - They were written by Mr Bouton or some one in his employ - I referred Mr. Abbott to Mr Bouton for them."

Samuel D. Ward.

I am Comptroller of the City of Chicago, all contracts for work on Assessments, and all other contracts to which the City of Chicago is a party are filed in my office.

Is there any contract of the City with any person for the paving, filling and curbing of Washington Street from LaSalle to Market Street on file in your office?

Objected to - Objection sustained and opinion excepted to.

State whether there is any contract or copy of contract between the City and John McBean to do said work?

Objected to - sustained & opinion excepted to.

State whether the City ever entered into any contract with any individual for the paving, filling and curbing of Washington Street from LaSalle to Market Street.

Ans: There never was any contract made by the City

(36) with any individual for paid work.

A. S. Bouton.

I am City Superintendent. Have been for all the past year. I made an estimate for the filling, paving and curbing of Washington Street.

Alderman Abbott or Alderman Boy requested me to make an estimate for filling, paving and curbing Washington Street from Sausalito to Market Street.

The estimate was upon specifications in the Contract made by John McBean with private property holders on that part of Washington Street.

The estimate was I think based on the linear foot for filling, curbing and paving with Block Stone - The Contract set forth the size of the Stone. It was for filling, curbing and paving Washington Street from Sausalito to Market and the Contract was between John McBean and some of the property holders on said Street.

State if you reported any specifications to Ald. Boy or Abbott or simply an estimate from specifications in said Contract?

Ans: Simply an estimate from the specifications in said Contract. I think that estimate in the Order of Common Council of Aug. 2, 1858 is the one I made. I made no specifications. I never reported any Plan or specifications. Nor was any ever submitted to me.

other than the one in Mr Beaus Contract aforesaid.

(37)

State if Mr McBean had done any of the work under said Contract prior to your making your said Estimate Aug. 2. 1858?

Ans: I think that the Block between Wells & Franklin Streets, was $\frac{2}{3}$ done, when I made that Estimate, the Block between Sadler and Wells was being filled.

State if Mr McBean continued and finished the Street from Sadler to Market?

Ans: It has never been finished - he quit work in December last - I mean it has never been finished to my satisfaction, nor in accordance with his Contract with private individuals.

State if you please if the \$18200. Ordered to be assessed is not an Estimate of the work in that Contract?

Objected to and sustained and opinion
Excepted to.

Gross Examination - I stated in my direct Examination that I made the Estimate for Alderman Fox or Abbott. The figures are mine and incorporated in the Order. The figures were made for an Assessment for paving

(38)

Washington Street from Lasalle to Market Streets. Abbott or Jay called on me for them for that purpose.

I was on the work as it went along. I was there one day while they were paving across Wells Street.

I was on the work constantly. I ordered Mr Bean to stop, he came to me to see why; - the private Contract provided that the work should be done under my superintendence and approval. I ordered Mr McBean to pave the intersections of the Streets at Wells Street, making it 80 feet wide, his contract being for 48 feet only. - he asked how he should be paid for the Extra work. I told him that was another consideration. Can't tell exactly the date - it was when he was about crossing Wells Street.

I ordered Mr McBean to do some work in front of the Engine House, this I ordered done for the City. I can't tell whether I ordered the filling, paving and curbing in front of the Engine House for the City.

I was superintending all the time. Mr McBean would not always obey Orders, I assumed the direction of the work, the work is not all done. I think it would take \$3000. or \$4000 to make the work satisfactory.

The work is 3/4 done nearly. I can't tell when the contract required it to be done.

Re. Direct Examination -

I superintended the work officially as I am bound to look after all improvements.

H. J. Waite-

(39)

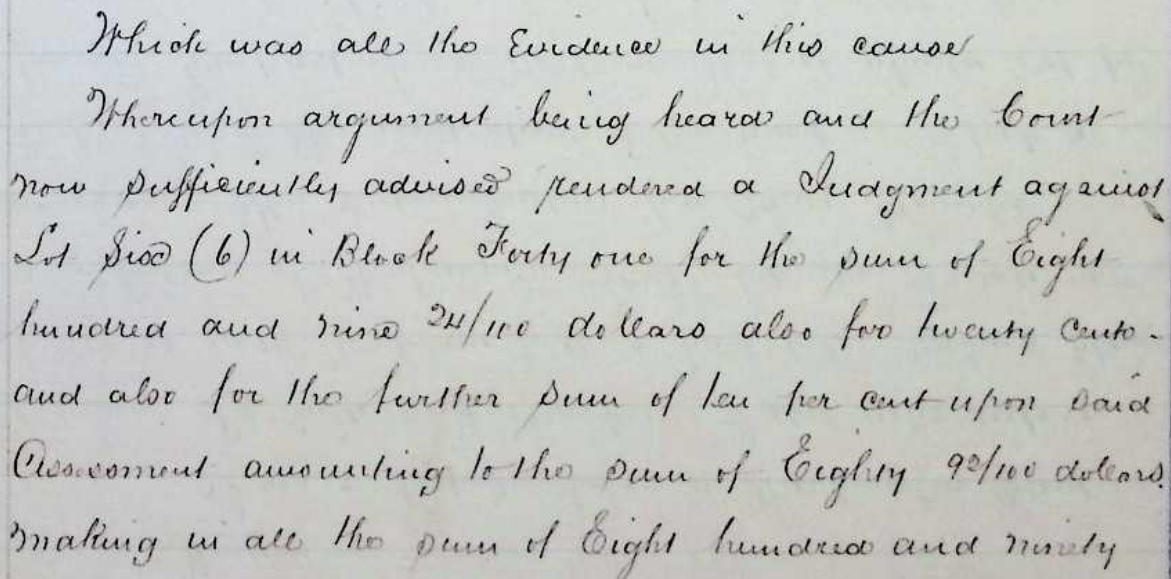
I am a property holder on Washington Street between La Salle and Market. I did enter into a contract with McBean to do a part of the curbing, filling and paving of Washington Street, between La Salle and Market - The Superintendent has never brought in any Certificate of the Completion of the work. I took a private Contract from McBean that it should not be paid for until he brought a Certificate of the City Superintendent, that the work was done according to contract.

A. S. Bouton.

I have looked over the points of the work and know better than I did last Evening - The afternoon was leased after the commencement of the filling and before the paving was made - I do not know of any order of Council stopping work - I do not know that I ordered it stopped, and it lingered along, there was no paving at the date of the levy of the Assessment - between Wells and Franklin, the work was all nearly done Sept 20/88.

It was expressed in the Contract that the work on Washington Street should be the same as that done on either La Salle or Franklin Street.

It was further admitted that the following Map is a correct representation of the Blocks, Lots, Streets Alloys &c contiguous to and connected with said improvement.



[41]

thirty six $\frac{10}{100}$ dollars together with the costs - Also a Judgment against lot three (3) in Block fifty five (55) Original Town of Chicago for the sum of Eight hundred and Eleven $\frac{92}{100}$ dollars, with twenty cents, and the additional sum of Eighty one $\frac{19}{100}$ dollars being ten per cent upon the paid assessment, make in all the sum of Eight hundred and ninety three $\frac{3}{100}$ dollars.

To all which decisions, opinions, rulings and judgments the said defendant then and there excepted And prays his his Bill of Exceptions may be signed sealed and allowed, Which is done accordingly.

John M. Wilson (Seal)

Judge Cook County Court
of Common Pleas

State of Illinois }
Cook County . . } p

I Walter Kimball Clerk of the Cook
County Court of Common Pleas within and for the County
and State aforesaid Do hereby Certify the foregoing to be
a true and correct Copy of the Collector's Report, Warrant
Assessment Role, Return, Notice of Sale, Appeal Bond, Bill
of Exceptions, Stipulation, and order of judgment, Entered
of Record in a certain suit in said Court, wherein J. N.
Barker is Defendant and the City of Chicago, is Plaintiff.

In testimony whereof I the said Walter
Kimball have hereunto set my hand and
affixed the Seal of said Court at Chicago
in said County this twenty first day of
Marchy A. D. 1859.

Walter Kimball Clerk

State of Illinois
Circuit Court.
Court of Common Pleas

234-115

The City of Chicago

vs

J. N. Barker in vs

Record.

Filed Apr. 20, 1889.
L. Ireland Clk.

Trans \$12-60
Court & Secy . 50
\$13-10

SUPREME COURT.

THIRD GRAND DIVISION,

OTTAWA, APRIL TERM, 1859.

JOSEPH N. BARKER,

Impleaded, &c.

vs.

The CITY OF CHICAGO.

APPEAL FROM COOK COUNTY COURT
OF COMMON PLEAS.

2 The City Collector filed his report on the day of January, 1859,
in the common pleas, setting forth a special warrant had been duly issued
and delivered to him, for the collection of a special assessment; that
3 having advertised notice of same, and for payment, and that default being
made, he had given ten days' notice of his intended application to this
court for judgments against the lots for the amount of the taxes, assess-
ments, interest and costs, and that he returns therewith a correct list of
the lots, &c.

6-22 The assessment roll returned and offered in proof on the trial, is made
up in tabular form, as follows, viz:

Original Town of Chicago.

Name of Owner.	Description.	S. Lot.	Lot.	Block	Valu'n	Ass'ment
J. N. Barker,			6	41	43000	\$809 24
J. N. Barker,			3	55	40000	811 92
O. L. P. Freer,			5	42	79000	648 03
P. F. W. Peck,	{ N. E. 1/4 of Lot 1 & E. 1/4 of		2	55	85000	811 91

The court rendered a judgment against the several pieces of land in a
a tabular form as follows, viz:

NAME.	DESCRIPTION.	Sub-Lot.	Lot.	Block.	Value.	Am't of Assess't.	10 per cent Cost.	
					Dols.	Dols.	Dols.	Cts.
J. N. BARKER, L. C. P. FREER, P. F. W. PECK, J. N. BARKER,	N. 5-9 of lot 1 & E. 1/4 of		6	41	43000	809	24	80
			5	42	79000	648	63	64
			2	55	85000	511	91	81
			3		49000	511	92	81

Including ten per cent, upon the amount of the judgment, as additional cost.

- 13, 14, 15, 16 From this judgment Barker and the other defendants appealed and gave bonds respectively.

BILL OF EXCEPTIONS,

- 17 Sets forth in substance, that defendants filed the following objections, in writing, to the rendition of a judgment, viz:

- 18 *First.*—There was no reference of the subject of improving this street to a committee, to prepare and report a plan for the filling, curbing and paving thereof, nor was any plan agreed on by any committee; nor was any plan reported by any committee; nor was any plan of the same ever made or submitted to the common council, or adopted by it.

Traversed by E. Anthony, City Attorney.

- 18 *Second.*—The order of the common council of the 2d August, A. D. 1858, directing that the sum of \$18,200 be assessed on real estate of the city of Chicago deemed benefitted by the filling, curbing, and paving Washington street, from the west line of La Salle street to the east line of Market street, "In accordance with the Superintendent's specifications for the same" was made by the common council without having adopted or agreed upon any plan, or mode, or specification for said improvements, but the same was an arbitrary order for assessing that sum for the purpose of raising money to pay one John McBean for paving said street, under private contract with some of the property holders on said street, and this warrant is being now prosecuted for that purpose.

A large part of the said work was done by said McBean under said private agreement with said property holders, before said order was made.

Traversed by E. Anthony, City Attorney.

Third.—Said assessment was made without due notice of the meeting of the commissioners, having been given for six consecutive days, as required by the ordinance of the city.

Traversed by Elliott Anthony, City Attorney.

Fourth.—The Common Council have no jurisdiction, power, or authority to make assessments to pay for improvements made under private contracts, or without contracts. Nor to enter into contracts to make such improvements until 50 per cent of the amount of their cost shall have been collected, according to section 5 of the amended city charter, page 4, and section 15 and 16 of the city ordinances.—Municipal Code, page 162.

Traverse of facts alleged on which legal principles are stated.

E. ANTHONY.

City Attorney.

Fifth.—The election of Commissioners by the Common Council without a nomination by the Mayor under the 6th section of the amended charter of 1857, was without authority and void.

Demurrer by Elliott Anthony, City Attorney.

Sixth.—That the assessment amounts to more than three per cent. on the assessed valuation.

Traverse by Elliott Anthony, City Attorney.

PLAINTIFF'S EVIDENCE.

ORDERS OF COUNCIL.—Paving Washington Street from La Salle street to Market street—In Common Council—August 2, 1858.

Ordered, that Washington street, from the west side of La Salle street to the east line of Market street be filled curbed and paved in accordance with the superintendent's specifications for the same.

Whole distance, including intersections, 1,127 ft. at \$16,	\$18,032 00
Engineering, superintending, assessing and collecting,	168 00
	\$18,200 00

Ordered, that the sum of eighteen thousand two hundred dollars be assessed upon the real estate in the south division of the city of Chicago, deemed benefited by the said improvements; and that the Common

Council do now elect by ballot, three reputable and disinterested freeholders of the city of Chicago, to make said assessment.

21 These orders were adopted and Commissioners elected, who were duly
22 qualified, and made an assessment in the tabular form, and with the
24, 25, 26 headings as hereinbefore shown.

26 This assessment was returned to the city clerk, and by him notice was
27 given that it would be confirmed on the 30th day of August, 1858. Order
of confirmation was made 20th September, 1858. This was all the evidence offered by the plaintiff.

DEFENDANT'S EVIDENCE.

Alderman Long, sworn and testified, was member of the Common Council on 2d August, 1858, whereupon the defendant propounded these questions to him:

28 Q. "Was there, on or before the said 2d August, 1858, a reference to a committee of the Council to propose and report a plan and estimate for filling, curbing and paving Washington Street, between La Salle and Market streets?"

The court sustained an objection to this question, and defendant excepted.

Q. "Was there any plan agreed on by any Committee?" Court sustained objection, and defendant excepted.

Q. "Was any plan submitted to, or adopted by the Common Council in any form on or before 2d day of August, 1858."

Answer, I did not consider it a plan.

Q. "Were you familiar with the entries of the order book of the Common Council, prior to August 2d, 1858, and if you were, please state all that was submitted to the Common Council verbally, or in writing, in reference to a plan and estimate of said improvements?"

The court sustained an objection and defendant excepted.

29 Witness further stated that there was neither a plan nor estimate submitted to the Common Council for the filling curbing, and paving Washington street, from La Salle to Market Street.

Q. "State to what the Common Council in their order of 2d August 1858, refer in this language "in accordance with superintendent's specifications for same?"

Court sustained an objection and defendant excepted.

29 The following orders and proceedings of the council were read in evidence :

COUNCIL PROCEEDINGS.—REGULAR MEETING.

Monday Evening, May 10, 1858.

Alderman Joy, of Committee on streets and alleys of the South division, presented the following :

Your committee of streets and alleys of the south division to whom was referred the petition of Wm. Blair, *et al*, for the filling and paving of Washington street, from the east line of Clark street, to the east line of Market street, and asking that the owners interested may contract for said work themselves, having had the same under advisement, beg leave to report in favor of granting the prayer of said petitioners and submit the following orders, and ask the passage thereof.

30 Ordered that Washington street from Clark street to Market street be filled, area-walled and paved.

30 *Ordered*—That the owners of the property on Washington street, between Clark and Market streets, be and they are hereby authorized to fill, wall and pave said Washington street, at their own cost and expense; provided the work shall be performed in a manner satisfactory to the superintendent of public works. Report concurred in and orders passed."

These orders were re-considered on the 7th day of June, 1858, and the subject again referred to the committee on streets and alleys of the South Division.

31 On the 19th July, 1858, that committee reported in favor of making said improvement forthwith, and submitted the following orders :

" *Ordered*, that Washington street, from west line of La Salle street to east line of Market street, be filled, curbed and paved, in accordance with the Superintendent's specifications for the same.

The whole distance, including intersections, 1,127 feet	
at \$16	\$18,032 00
Engineering, assessment and collecting.	168 00
	\$18,200 00

Ordered that the sum of eighteen thousand two hundred dollars be assessed upon the real estate in the South Division of the City of Chicago, deemed benefitted by said improvement, and that the common council do now elect, by ballot, three reputable and disinterested freeholders, of the City of Chicago, to make said assessment.

- 32 No further action was had until the 2d August, 1858, when the council adopted these orders, as hereinbefore shown and set forth, and commissioners elected.

At the time these orders were adopted, Alderman Long made and entered upon the Journal of the Council, the following protest:

- 33 "I am authorized by certain property holders on Washington street, between La Salle street and Market street, viz.: Tuttle King, L. C. P. Freer, P. F. W. Peck, and Thos. M. McLean, to protest against any contract being entered into with any party or parties for paving said street, unless the said work is advertised for and let to the lowest bidder.

"JAMES LONG."

H. Crisman, the City Clerk, being sworn, stated that there were no other orders among the proceedings of the common council, up to the 2d of August, for the improvement of said street. Thinks there was a plan of the City Superintendent, and it is set forth in the said order of the common council, of 2d August, 1858, as hereinbefore set forth *verbatim*.

- 34 The specifications referred to in that order are those set forth in it—there are none others—and there are no other orders than those hereinbefore set forth.

- 35 Alderman Abbott submitted all the specifications and plans there were. They were written by Mr. Bouton, or some one in his employ. I referred Mr. Abbott to Mr. Bouton for them.

- 35 *Samuel D. Ward*, City Controller, being sworn, testified that all contracts for work, under assessments, and all other contracts with the City are filed in his office.

Question by Defendant.—"Is there any contract with the city with any person for the paving, filling and curbing of Washington street from La Salle to Market street, on file in your office?"

Court sustained an objection to this question, and defendants excepted; also, in like manner to the following, viz:

Q. "State whether there is any contract or copy of contract between the city and John McBean to do said work?"

Witness further stated that there never was any contract made by the city with any individual for said work.

36 *N. S. Bouton*, City Superintendent of Public Works, being duly sworn, testified: That he made an estimate for the filling, paving and curbing Washington street, at the request of Alderman Abbott or Joy. I made the estimate upon the specifications in the contract made between John McBean and the private property holders, on that part of Washington street.

36 The estimate was based, I think, upon the lineal foot for filling, curbing and paving with block stone. The contract set forth the size of the stone. The contract was for filling, curbing and paving Washington street from La Salle to Market, and was between John McBean and some of the property holders on said street.

I did not report any specification to Alderman Abbott or Joy, but simply an estimate from the specifications in the said contract with McBean. My estimate is set forth in the order of Council of 2d August, 1858. I made no specifications; I never reported any plan or specifications, nor were any ever submitted to me, other than the one in McBean's contract.

37 I think the work on the block between Wells and Franklin streets was two-thirds done, and that between La Salle and Wells was being filled, when I made that estimate.

McBean quit work in December last, but did not finish the work on the street to my satisfaction, nor in accordance with his contract with the property holders.

The following question was asked of Mr. Bouton, and excluded; and opinion excepted to, by defendants.

Q. "State, if you please, if the \$18,200 ordered to be assessed, is not an estimate of the work in that contract?"

37 *On Cross-Examination*, Mr. Bouton stated:

The figures in the estimate incorporated in the order of 2d August, 1858, are mine, and were made for Alderman Abbott or Joy, for an estimate for paving Washington street from La Salle to Market; one or the other of

38 them called on me for them. I was on the work constantly ; was there when they were paving across Wells street. I ordered McBean to stop ; the private contract provided that the work should be done under my superintendence and approval. I ordered him to pave the intersection of Wells street, making it 80 feet wide, his contract being for 48 feet only. He asked me how he should be paid for the extra work. I told him that was another matter. I do not recollect the date of this exactly, but it was when he was paving the intersection. I ordered him also to do some work in front of the engine house, for the City, but cannot tell whether I ordered the filling, paving and curbing for the City. I was superintending all the time. McBean would not always obey my orders ; I assumed the direction of the work ; it is not all done ; I think it would take three or four thousand dollars to make it all satisfactory. The work is nearly three-fourths done ; can't tell when the contract required it to be done. It is my official duty to look after all improvements.

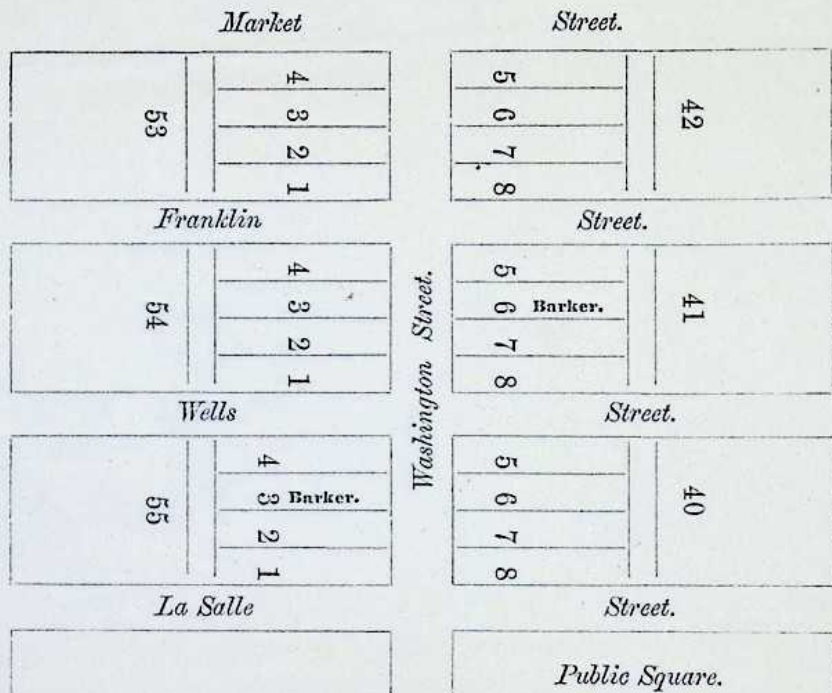
39 *H. F. Waite*, being sworn, stated that he is a property holder on Washington street, between La Salle and Market ; entered into the contract for part of the curbing, filling and paving on that street between La Salle and Market. The Superintendent has never brought in any certificate of the completion of the work ; it was not due, by a private arrangement between McBean and myself, until he brought me the City Superintendent's certificate of the completion, according to the contract.

N. S. Bouton being re-called, stated, that he had, since his former testimony, looked over the points of the work.

The assessment was levied after the commencement of the filling and before the paving was made. I know of no order of council to stop it—nor did I stop it. It lingered along ; there was no paving, at the date of the levy of the assessment between Wells and Franklin. The work was all nearly done September 20, '58. The contract provided that the work on Washington street should be the same as that done on either La Salle or Franklin street.

The following is a map of the streets and lots connected with the improvements in this case.

PART OLD TOWN CHICAGO.



This was all the evidence.

41

The court rendered judgment for the amount claimed and ten per cent. additional costs; and overruled a motion for a new trial.

ASSIGNMENT OF ERRORS.

First—The court erred in rendition of judgment for the city ; because there was no reference of the subject of these improvements to a committee of the council to prepare and report a plan of said improvements, and an estimate of the costs and expense of making the same, and because the common council did not agree upon or adopt any plan thereof, or estimate.

Second—The order of the common council, of 2d August, 1858, was adopted without first having agreed upon or adopted any plan, or estimate of said improvements, or "specifications" for doing the work ; but the same was an order arbitrarily made for raising by assessment the

sum of \$18,200, to pay John McBean for doing said work, under a private contract; wherefore said assessment was made without authority, and was and is void.

Third—Said assessment was made by said commissioners without due notice of their meeting for that purpose.

Fourth—The common council have no power to levy an assessment to pay for improvements made under private contracts, or without a contract with, or employment by the city.

Fifth—The city have no authority or power to enter into contract for such improvements, nor to adopt or sanction those entered into by others, until fifty per cent. of the amount of their cost and expense shall have been collected.

Sixth—That the assessment amounts to more than three per cent. on the assessed valuation.

Seventh—The election of commissioners, by the common council, without nomination by the Mayor, under the 6th section of the amended charter of 1857, was without authority and void.

Eighth—There was no valuation in money fixed upon said lots, and there was no sum of money assessed upon the same, by said commissioners, and the common council and common pleas court had no jurisdiction, power or authority to assess or give judgment against said lots for any sum of money.

Ninth—The court rendered judgment against said lots, when by the laws of the land, judgment ought to have been rendered for defendant.

SCATES, McALLISTER & JEWETT,

Counsel for Appellant.

234-115

Banker vs. City of Chicago

Abstract