

14786

No. _____

Supreme Court of Illinois

Fox

vs.

City of Rockford

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 191

J. W. Middleton & Co., Stationers, 196 Lake St.

For
Atty General
1865

Alman Loy }
The City of Rockford }

In the Supreme
Court April Term 1865

The Attorneys for the respective
parties admit service upon them
of each others Brief & Points and
a copy of Abstract of Record,
And hereby agree to submit
the above cause to the Court
upon printed Briefs & Points
without oral argument

L. L. Warner

Atty for Appellant

L. M. Brazee

Atty for Appellee.

¹⁹¹ ⁴¹⁵
Supreme Court

Herman Fox

The City of Rockford

Agreement to
Submit

Filed Apr 5. 1865

L. L. Woodcock,

IN THE SUPREME COURT
OF ILLINOIS,
THIRD GRAND DIVISION.
APRIL TERM, 1865. AT OTTAWA.

THE CITY OF ROCKFORD, *Appellee.*

vs.

HEMAN FOX, *Appellant.*
Appeal from Circuit Court of Winnebago County, Illinois.

APPELLEE'S POINTS AND BRIEF.

I.

An assessment of labor for the improvement of streets, &c., is not a capitation tax under Sec. 1, Article 9 of the Constitution.

"A capitation tax is a sum of money levied upon each poll," and is a tax based upon the right of suffrage.

An assessment for road or street labor "is a requisition of so many days labor, which may be commuted in money" and is levied upon all residents and inhabitants, whether alien or citizen.

Consequently the limitation as to age, contained in Sec. 1—Art. 9, of the Constitution, does not apply in the assessment of road labor in this case.

Town of Pleasant, vs. Kost, 29, Ill., 490-4, and authorities there cited.

The record in this cause shows that the appellant was served with notice on the 5th day of June, 1863, requiring him to labor on the streets on the 11th and 12th days of the same month. And the record also shows that the appellant was NOT SIXTY years of age until the 15th day of June 1863, which facts would not bring him within the provisions of the 1st Sec.—Art. 9, of the Constitution, as he was not sixty years of age until after the days upon which he was notified to labor.

II.

Section 102 of the act incorporating the City of Rockford, is in the words and figures following, to-wit:

This gives the city authorities exclusive control of the streets and highways

within the city limits, and the general township organization law is not in force within the corporate limits, neither in regard to the improvement of streets, or the assessment of road labor.

Town of Ottawa et al, vs. Walker et al, 21 Ill., P. 608.

III.

If the township organization law in regard to labor upon roads &c., is in force within the corporate limits of Rockford, so as to limit the assessment of road labor upon the inhabitants who are under fifty years of age, then the township law would also prevail within the city limits, so as to give the town authorities the control of the streets and highways within the city, to the exclusion of the city authorities. This the legislature could never have intended.

Town of Ottawa et al vs, Walker et al 21, Ill., 608 and 9.

IV.

The provisions regarding the assessment of labor upon the streets, &c, contained in the act of the legislature, incorporating the city of Rockford, are as follows:

"§ 154. The inhabitants of said city shall not be liable to work upon any roads beyond the limits of the city." [Sess. laws 2d Sess, 1854—Page 122,

By the reading of these provisions it is plain that the legislature intended to give the city authorities the whole control of the matter of street labor, and to make no exemptions as to age, except as expressed in the above sections of the Charter. And the city authorities have the right to assess road labor upon all inhabitants over the age of twenty-one years, notwithstanding the township law limits, the assessment of road labor upon persons within the ages of twenty-one and fifty years.

The ordinance under which this action was brought, follows the language of the sections 151, 152 and 153, of the charter above mentioned, and is in every way in strict conformity with the provisions of the Charter.

V.

The City of Rockford is by its charter made a separate road district, "and has the right to require the road labor for the repair of the roads and streets in its limits prescribed by its charter, and persons residing within the corporate limits are not liable to be required to perform such labor beyond those limits, or under the township authorities," or under the township laws.

Town of Pleasant, vs. Kost 28 Ill. 494.

VI.

The township organization law does not repeal the provisions of the charter of the city of Rockford, relating to road and street labor, "and when two acts are seemingly repugnant, they should, if possible, be so construed, that the latter may not operate as a repeal of the former by implication, so a subsequent statute, which is general, does not abrogate a former statute, which is particular.

And a general law does not operate as a repeal of a special law on the same subject, passed at the same session.

The town of Ottawa, vs. the county of La Salle, 12, Ill.—340.

The fact that the general law is subsequent in date, does not repeal the provisions of the charter of the City of Rockford, regarding street labor, and it will not be so construed by the Court, unless it plainly appears from the language of the statute, that such was the intention of the legislature.

Town of Ottawa et. al, vs. Walker et. el. 21, Ill., 609, in which case the court say. "even if the City Charter was not subsequent in date, unless it plainly appeared from the language employed, that it was intended to be joint or concurrent, it would be held that the power was exclusive in the commissioners beyond the city limits, and exclusive in the common council within their jurisdictional limits, and neither have any power to perform any acts in reference to this subject beyond their respective limits.—Ib.

Also, Tyson et. ux. vs. Postlethwaite, et. el. 13, Ill.—728.

The Charter and Ordinances of the City of Rockford, makes it the duty of every male inhabitant over the age of twenty-one, to labor upon the streets of the city, a certain number of days in each year, and it was the duty of Fox, when notified by the Street Commissioner, either to labor upon the streets as required by the ordinance, or to commute for such labor by the payment of money. The fact that he was over fifty, or even sixty years of age, makes no difference as to his liability under the charter and ordinances of the city.

No male inhabitant over the age of twenty-one years is exempt from labor upon the streets in the City of Rockford, and the Court below committed no error in rendering the judgment appealed from in this case.

VII.

The Appellant is not exempt from an assessment for road labor, because he is exempt from military duty, aliens are exempt from military, are exempt from jury duty, yet they are subject to perform road labor.

There is nothing in the Record showing Fox not to be an able-bodied man. If he was not, he could commute, and there would be no more hardship in this assessment than in an ordinary tax.

No objection can be raised in this case by the Appellant, concerning the evidence in the court below. The Record shows that all the evidence necessary on part of the City to maintain the action against Fox was agreed upon and the case submitted to the Court upon questions of Law only.

C. M. BRAZEE,
Attorney for the City of Rockford, Appellee.

191 45—
Supreme Court
Third Grand Division
Illinois

City of Rockford
at
Human Proxy

appellee's Points
authorities

Filed April 5, 1865—
L. L. Caldwell

BRIEF AND POINTS
IN THE SUPREME COURT
OF ILLINOIS,
APRIL TERM, 1865.

HEMAN FOX, *Appellant.*

vs.

THE CITY OF ROCKFORD, *Appellee.*

Appeal from Circuit Court of Winnebago County, Illinois.

The Appellant, by L. F. WARNER, his Attorney, shows first: In both brief and argument, that the judgment of the Circuit Court should be reversed and the above cause remanded.

For reasons, that the suit was brought by the City of Rockford against the Appellant to recover a penalty for the alledged violation of an Ordinance of said City, by said Appellant Fox, for a failure on the part of said Fox to perform road labor in said City, as required by an Ordinance of said City.

That, a judgment was rendered in the Police Court of said City against Appellant Fox, in said suit, August 29th, 1864, against said Fox for the penalty of two dollars and costs of suit. That, on the twelfth day of September, 1864, the Appellant appealed said cause to the Circuit Court of Winnebago County, as shown by the record in said cause—page 3.

The Court having over-ruled said motion for the dismissal of the appeal, the cause then stood for trial, and was submitted to the Court upon an agreed state of facts, without the intervention of a Jury. See pages 6, 7 and 8 of Record.

By which statement of facts it was agreed that an Ordinance was duly made and passed by the Common Council of said City, and, also, duly published, and was then June 15, 1863, and now is in force, requiring all male persons of the age of twenty-one years and upwards to labor upon the Streets, Alleys and Highway of said City two days in each year, or commute therefor by paying to the Street Commissioner the sum of seventy-five cents per day for each day he was so required to labor.

That in pursuance with said Ordinance he, said Fox, was duly notified to labor on the streets of said City by the Street Commissioner thereof.

And that he failed and refused to so labor as he had been notified so to do.

And, also, that he said Fox was on the 15th day of June, 1864, and for a long time had been over the age of sixty years.

This Appellant therefor claims and insists to your Honors, that he being over the ages of fifty and sixty years as shown by said agreement is and he was not required to perform such road labor in said City.

That Sec. I of Article 9 of the Constitution exempts persons over the age of sixty years, from paying a capitation tax.

That while the Ordinance of the City may not be directly a capitation tax, it is in the nature of a capitation tax, and seeks to make those liable to its burthen, who have arrived at that age in life, that the policy of the Law exonerates from personal liability and personal duties and deprives men over that age of many personal rights. He is not subject to military duty. He is not competent to serve as a juror. He is not considered after arriving at that age as an able-bodied man.

And only able-bodied men between the ages of twenty-one and fifty are required to perform road labor. [Revised Statute, Page 22.]

That, although the Charter of the City of Rockford, passed March 4th, 1854, Session Laws 2d Session, on page 122, Section 151, authorize the Common Council of the City to collect of all persons over the age of twenty-one years a Personal Road Tax.

It can only mean to collect such tax from able-bodied men, and from men who have all the rights and privileges that appertain to every citizen and not from persons over the age of fifty or of sixty years. The Appellant, therefore, claims that the judgment of the Circuit Court was wrong and should be reversed.

That the Circuit Court should have found for the Appellant. That the Circuit Court should have granted a new trial, and that the cause should be remanded.

L. F. WARNER, Att'y for Appellant.

191
Supreme Court
Reman For
The City of Rockford

Appellants
Brief & Points

Filed April 5, 1865
L. Leland Clerk

1
United States of America

State of Illinois Warrabeg County f.

Has before the Hon
Benj R. Shedd Judge of the fourteenth Judicial Cir-
cuit of the State of Illinois began and held at the Court
House in the City of Rockford on the 26th day of September
1864:

Hon^{ble} Benj R. Shedd Judge

R. L. Bailey State Atty pro tem.

H. J. Sawyer Sheriff

Allist O'Keefe Clerk:

Manuscript:

In Police Magistrate Court before Selas G.
Oxley: Rockford August 22nd 1864.
City of Rockford

Memor^{andum} Fox Action of Debt

On Complaint of Ephraim
Wymann on oath before me that on or about the 11th or 12th
days of June 1863 at the City of Rockford, Wymann
unlawfully violated the provisions of an ordinance of
said City entitled an ordinance "To establish Street
Districts and to provide for the improvement of Chutes
Alleys and highways within the City of Rockford."
Warrant issued and handed to the City Marshal.
On Subpoena for the Plaintiff - Aug 29th Warrant.

Returned by Marsh Dams with deft on Court-fes 56 cts.
 Sub returned by the same duly served fes 31 cts: Parties answers
 Prauer for Plaintiff, Answer for Deft. Deft pleads not guilty: E
 Wymann appeared was sworn and testified as a witness on the
 part of the plff: After hearing testimony it is considered by the
 Court that the said Deft is guilty and that he pay a fine of
 of two dollars and the Costs herein taxed at two dollars and
 twenty two Cents and stand Committed till paid:

Silas G. Tyler:

August 29th 1864. Mittimus issued and handed to Marsh
 Dams. Sep^r 12th 1864. Mittimus returned by Marsh Dams en
 dorsed "The within named Herman Fox appeals this Case:
 this 12th day of Sep^r 1864: Fees 50 Cts.

James Dams Marshall.

Sep^r 12 1864. The above named deft with Amor Woodruff
 as his security filed his bond for an appeal to the Circuit Court
 which bond was approved by me and appeal granted:
 Sep^r 12. 1864: Bond transcript and all the papers in the
 case this day filed in the Office of the Clerk of the Circuit
 Court.

Silas G. Tyler J.P.

State of Illinois } I, Silas G. Tyler a Police Magis
 Winnebago County } tral of the City of Rockford in
 said County do certify that the foregoing is a true copy of the
 proceedings in the cause therein entitled here before me and
 that herewith are all the papers and documents belonging
 to the said suit:

Witness my hand this 12th day of Sep^r 1864.

Appeal Bond (50 c. u. o. d.)
Where all men in these presents, that in Human For the sum of ten dollars, lawful money of the United States for the payment of which well and truly to be made, are their heirs and assigns, jointly severally and jointly, do hereby bind themselves and their heirs, executors and assigns, jointly severally and jointly, to the City of Rockford in the County of Winnebago, Illinois, to remain in full force and effect, to be rendered otherwise

Justice fees \$1.60
Mark " 137

Silas G. Tyler J.D.

Appeal Bond & transcript \$1.00 paid by Deft.
Filed Sept 12, 1864

At Penneyer Clerk

Summons on Appeal

State of Illinois } The People of the State of Illinois, to
Winnebago County } the Sheriff of said County, Greeting:
Whereas in a certain cause lately pending before Silas G. Tyler, one of the Justices of the Peace, within and for said County, wherein City of Rockford Plaintiff and Human For defendant, judgment was rendered by said justice against the said For, from which judgment the said Human For has appealed to the Circuit Court of said County:

We therefore Command you that you summon the said City of Rockford to be and appear before said Circuit Court on the first day of the next term thereof, to which at the Court House in Rockford on the 14th Monday in September next, at ten O'clock in the forenoon, and abide by and perform the judgment of said Court on the premises.

Witness, At Penneyer Clerk of said Court, and the Seal thereof, at Rockford in said County, this 12th day of Sep^r A.D. 1864

(S.S.)

At Penneyer Clerk

Endowed

State of Illinois } I have duly served this writ, by me
County } Clerk the same to Rufus C. Bailey

5-

And afterwards to wit on the 28th day of September
 AD 1864 at being one of the days of the September term
 of Court the following entry was made as appears of Court
 Record to wit:

City of Rockford

Appears:

⁽¹⁰⁾
 Herman Fox

This day comes the plain-
 tiff by Praeger its Attorney and
 moves the Court to dismiss the
 appeal herein.

5-

And afterwards to wit on the 30th day of Sep-
 tember 1864 at being one of the days of the aforesaid term of
 Court the following entry was made as appears of Court record
 to wit:

City of Rockford

Appears

⁽¹⁰⁾
 Herman Fox

This day comes the parties here
 in by their Attorneys and the Court
 having heard argument of Counsel
 on motion of plaintiff to dismiss appeal overrules the
 same:

Respectation:

City of Rockford

Winnebago County Cir Court

⁽¹⁰⁾
 Herman Fox

Sept' Term 1864

Appeal from Police Magistrate:

It is hereby stipulated and agreed by and between the parties to this suit that William Fox the defendant is and has been since June 5th 1862 a resident of the City of Rockford in that District No 1. That on the 5th day of June A.D. 1863 said Fox was by the Street Commissioners of said District No 1. duly notified personally in writing and with what tools and implements to appear and labor on the streets &c of said city on the 11th and 12th days of June A.D. 1863 in said road District according to the provisions of an ordinance of said City entitled "an ordinance to establish Street Districts and to provide for the improvements of the streets, alleys and highways within the city of Rockford" passed and approved the 23rd day of June A.D. 1862.

That said ordinance was duly passed approved and published according to the requirements of the Charter of said City and that the same was on the said 5th day of June 1863. and now is in full force and effect in said City. That said Fox failed and refused to labor or work on the said streets &c in accordance with the requirements of said notice and said ordinance and that he also failed and refused to commute for such labor. It is also agreed that said Fox was on the 15th day of June 1863 over sixty years of age. It hereby being the intention and agreement of the parties to disjunct with and agree upon all testimony necessary to maintain this action and to submit the same to the Court upon issues of law with the case. That Section 110 (2) and 110 (5) of the ordinance heretofore recited to and with the words of grace following

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to wit: "Sec 2 That each male inhabitant of said City twentyone years of age and upwards shall be and is hereby required to labor two days in each year upon the Streets alleys and public highways in the street district in which he shall reside (according accounting in hours labor as one day) at such time and place and in such manner as the Street Commissioner shall by notice or other writ demand require or direct and every person so liable to labor shall furnish such tools and implements with which to labor as the Street Commissioner in their respective districts may direct: But every such person may at his option commute for such labor by paying to the Street Commissioner of the district which he may inhabit at the rate of twenty five cents for each day of he shall be so bound to labor: provided however that such payment shall be made on or before the first of the two days upon which he may be notified by the Street Commissioner to labor: any person who shall refuse or neglect to perform such labor when duly notified by the Street Commissioner and who shall also fail or refuse to commute therefor as aforesaid shall forfeit and pay a penalty of one dollar per day for each day he shall so refuse or neglect to labor and his liability to perform such labor shall not thereby be discharged."

"Sec 3" In order to enable the Street Commissioners to carry out the provisions of this ordinance they are hereby authorized and required to demand the services of all persons who are by this ordinance required to labor upon the Streets alleys and public highways of said City at such time and place and in such manner, and

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with such tools and implements as the Street Commissioners shall deem necessary and proper: The Street Commissioners shall deliver or cause to be delivered to or left at the place of residence or ordinary place of business of every person liable to perform labor upon the streets, alleys and public highways within their respective districts a notice stating the time place, and with what tools or implements such person is required to appear and labor upon the streets, alleys and public highways, which notice shall be given as aforesaid at least three days previous to the first day upon which such person is thereby required to labor and such notice may be in writing or printing or partly both: and such notice shall be all the demand or notice necessary from the Street Commissioners under the provisions of this ordinance."

C. M. Brazz Att'y for City.
S. F. Warren Att'y for Dist.

Filed Oct 14. 1864.

Of Penney's Clerk

6

And afterwards to wit on the 5th day of October at 6 o'clock one of the days of the aforesaid term of Court the following entry was made as appears of Court record to wit:

City of Rockford. Appeal:

(11)
Herman Doo

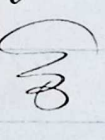
This day came the said
his honor by their Attornies &
specie being joined this cause is
submitted to the Court for trial without the intervention

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of a jury, and the Court having heard the evidence and
argument of Counsel as for the penalty at \$2.00 thereupon
the defendant moves the Court for a new trial herein, which
motion is overruled: to which decision of the Court the
Defendant excepts: It is therefore Considered and ordered
by the Court that the City of Rockford have and receive
of the defendant the sum of two dollars penalty aforesaid,
and also its costs & charges herein expended and that
they have execution therefor: Thereupon the Defendant prays
an appeal to the Supreme Court - which is allowed And
advised that the said Defendant file with the Clerk
of this Court within ten days from rising of Court his
appeal bond And advised, with Auer Woodruff surety
in a penalty of One hundred & fifty Dollars.

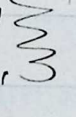
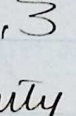
Appeal Bond

9
Know all men by these presents that we Roman Fox
& Auer Woodruff of the County of Winnebago in the
State of Illinois are here and formerly bonded unto the
City of Rockford in the penal sum of One hundred
and fifty dollars, for the payment of which costs and
writs to be made we bind ourselves our heirs executors
administrators and assigns jointly and severally firm-
ly by these presents: Witness our hands and seals this
12th day of October in the year of our Lord one thousand
and eight hundred and sixty four: The Condition of
the above obligation is such that whereas the above
named City of Rockford did on the 3rd day of October

1864 at the Circuit Court of said Warrabago County re
 Corr a judgment for two dollars & costs of suit against the
 above named Herman Fox in a certain cause then now
 duly in said Court, wherein said Aley was Plaintiff &
 said Herman Fox was defendant, and from which said
 judgment the said Herman Fox has taken an appeal
 to the Supreme Court of the State of Illinois: Now if the
 said Herman Fox shall pay the said judgment costs
 interest and damages in said the said judgment shall
 be affirmed, and shall prosecute his appeal duly and
 with effect, then the above obligation to be void otherwise
 to remain in full force and effect.:

In presence of  Herman Fox (Plaw)
 O. Pennington.  A. Woodruff (Secy)
 Endowed Filed Oct 14 1864

O. Pennington Clerk

State of Illinois  J. O. Pennington Clerk Circuit
 Warrabago County  Court & Ex Officio Recorder in
 and for said County do hereby certify that the foregoing
 is a true & true transcript from the files & Court records
 in my office in foregoing entitled Cause wherein Aley
 of Rockford is Plaintiff and Herman Fox is defendant
 duly impeached therewith by me.

Witness my hand & Official seal at the City of
 Rockford this 18th day of October A.D. 1864
 O. Pennington Clerk



For \$ 300 paid

Supreme Court
State of Illinois

Third Grand Division.

April Term 1863.

City of Rockford Appellee } Appeal From
ats } Winnebago County
Heman Fox Appellant } Circuit Court.

Inditer in Error.

And the said City of Rockford Appellee in
the Above Cause, now comes and says,
that there is no error, either in the record
and proceedings aforesaid, or in giving
judgment aforesaid, or in overruling the
motion for a new trial ~~as~~ aforesaid,

in manner and form as above assigned,
and therefore the said Appellee prays that
the said judgment may be affirmed
and that its costs herein, may be adjudged
D it & c

L. M. Brazee
Attorney for Appellee.

Supreme Court
Illinois
Third Grand Division

City of Rockford
vs
Herman Fox

Indes in Error

191-45
In Armi Co. Ar Court
~~~~~

City of Rockford

Wernaw Fox  
~~~~~

Record + Joinder
in error
~~~~~

Filed Apr. 5. 1868.  
Melan  
Clk.

# IN THE SUPREME COURT

OF ILLINOIS,

APRIL TERM, 1865.

HEMAN FOX, } *Appeal from Circuit Court*  
vs. } *of*  
THE CITY OF ROCKFORD. } *Winnebago County, Illinois.*

The record in this cause shows that this cause was originally commenced in the Police Court, for the City of Rockford, by the City of Rockford, against Heman Fox, to recover a penalty for failing to perform Road labor in said City, under an ordinance of said City, and that a judgment in that Court was rendered against said Fox, August the 29th, 1864, in the sum of two dollars and costs; that said Fox appealed said cause to the Circuit Court of Winnebago County, September 12, 1864.

RECORD Page }  
2 and 3. }  
3.  
Page 4.

By making and filing his appeal Bond, and having the same approved by the said Magistrate on the 12th of September, 1864, which together with the papers of said cause, was, on the same day filed in the Office of the Clerk of said Circuit Court. That the City of Rockford, by its Attorney, on the 26th of Sept. 1864, (it being one of the days of the September Term of said Court) entered a motion to dismiss the appeal, alledging for reason, that the appeal was not taken in the time required by law.

Page 4.

And also, on the 28th of said September, entered another motion to dismiss the said appeal for reason "that the appeal was not properly entered into and approved, and said appeal was not properly before the Court.

Page 5.

That on the 30th day of September in said term, the Court, after hearing argument of council on the motion to dismiss the appeal overrules the same.

That on the fifth day of October (it being one of the days of said term of Court) the cause was submitted to the Court for trial without the intervention of a jury, upon an agreed statement of the facts made and filed in said cause by the respective Attorneys thereto, on the fourth day of October aforesaid, which agreement is set out in pages six, seven and eight, and the only evidence used in said cause.

Page 6.

That the evidence used in said cause, and the only evidence taken in said cause, being the agreement of the parties as follows, viz: That Heman Fox, the defendant, is and has been, since June 5th, 1862, a resident of the City of Rockford, in street district No. 1; that on the 5th day of June, A. D. 1863, said Fox was, by the Street Commissioner of said district No. 1, duly notified personally in writing, and with what tools and implements to appear and labor on the streets, &c., of said City, on the 11th and 12th days of June, 1863, in said Road District, according to the provisions of an ordinance of said City, entitled an ordinance to establish street districts, and to provide for the improvement of the streets, alleys and highways within the City of Rockford, passed and approved the 23d day of June, 1862.

That said ordinance was duly passed, approved and published, according to the requirements of the Charter of said City, and that the same was on the said 5th day of June 1863, and now is, in full force and effect in said city.

That said Fox failed and refused to labor or work on the said streets, &c., in accordance with the requirements of said notice and said ordinance.

And that he also failed and refused to commute for such labor.

It is also agreed that said Fox was on the fifteenth day of June 1863, over sixty years of age.

It being the intention and agreement of the parties to agree upon all the testimony necessary to maintain this action, and submit the same to this Court upon issues of law in the case.

Page 7. That section two (2) and five (5) of the ordinance heretofore referred to, are in the words and figures as follows, to-wit: "Sec. 2. That each male inhabitant of said City, twenty-one years of age and upwards, shall be, and is hereby required to labor two days in each year upon the streets, alleys, and public highways, in the street district in which he shall reside, accounting ten hours labor one day, at such time and place, and in such manner as the Street Commissioner shall by notice or otherwise demand, require or direct; and every person so liable to labor shall furnish such tools and implements with which to labor, as the Street Commissioner in their respective districts may direct, but every such person may at his option commute for such labor by paying to the Street Commissioner of the district which he may inhabit, at the rate of seventy-five cents for each day he shall be so bound to labor; provided, however, that such payment shall be made on or before the first of the two days upon which he may be notified by the Street Commissioner to labor. Any person who shall refuse or neglect to perform such labor when duly notified by the Street Commissioner, and who shall also, fail or refuse to commute therefor as aforesaid, shall forfeit and pay a penalty of one dollar per day for each day he shall so refuse or neglect to labor, and his liability to perform such labor shall not thereby be discharged.

Page 8. SEC. 5. In order to enable the Street Commissioner to carry out the provisions of this ordinance, they are hereby authorized and required to demand the services of all persons who are by this ordinance required to labor upon the streets, alleys, and public highways of said city, at such time and place and in such manner, and with such tools and implements as the Street Commissioner shall deem necessary and proper. The said Street Commissioner shall deliver or cause to be delivered to, or left at the place of residence or ordinary place of business of every person liable to perform labor upon the streets, alleys and public highways, within their respective districts, a notice stating the time, place, and with what tools or implements such person is required to appear, and labor upon the streets, alleys and public highways; which notice shall be given as aforesaid, at least three days previous to the first day upon which such person is thereby required to labor, and such notice may be in writing or printing, or partly both; and such notice shall be all the demand or notice necessary from the Street Commissioner under the provision of this ordinance.

C. M. BRAZEE, Att'y for City.

L. F. WARNER, " Defendant.

Filed October 4, 1864.

Pages 8 and 9.

That the Court after hearing the evidence and argument of counsel, found for the plaintiff and assessed the penalty in the sum of two dollars.

That thereupon the defendant, Fox, by his attorney, entered his motion for a new trial, and assigned as reasons that the decision of the court was contrary to the law and the evidence, and should have been for the defendant.

That the court overruled said motion for a new trial, to the overruling of which motion, the defendant excepted.

And thereupon the Court rendered judgment, that the City of Rockford have and recover of the defendant the sum of two dollars penalty and its costs and charges herein expended, and that they have execution therefor.

9. Thereupon the defendant prays an appeal to the Supreme Court, which is allowed, upon the defendant filing his bond with Anor Woodruff security, in the sum of one hundred and fifty dollars, within ten days from the rising of the Court.

9. That on the 14th of October 1864, the said defendant, with Anor Woodruff as security, filed his bond with the Clerk of said Court, for the appeal of said cause.

#### Assignment of Errors.

- I. That the Court erred in overruling the defendant's motion for a new trial.
- II. That the Court erred in rendering judgment in favor of the plaintiff.
- III. That the Court erred in not finding the issue for the defendant upon the evidence in the case.

L. F. WARNER, Att'y for Appellant.

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Hemian Lox  
is  
The City of Rockfire

Abstract

Filed April 15, 1895  
J. L. Leland Clerk