

No. 12693

Supreme Court of Illinois

City of Chicago

vs.

Starkweather

City of Co.
by
C. R. Starkweather

1267

1889

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

Pleas before the Honorable John M. Wilson Judge
of the Cook County Court of Common Pleas within and for the
County and State aforesaid at a Special term of said Cook County
Court of Common Pleas begun and 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^{ble} John M. Wilson Judge
John Gray Sheriff

Attest

Walter Kimbato, Clerk

Be it remembered that heretofore to wit on the 27th day of January A. D. Eighteen hundred and fifty nine came Joseph M. Henricks, City Collector of the City of Chicago, and filed in the Office of the Clerk of the said Cook County Court of Common Pleas, Collectors Report, Warrant, Assessment Role, Collectors Return, Notice of Sale; Which said several documents are in the words and figures following, to wit.

"Of the January Special Term of the Cook County Court of Common Pleas in the year of our Lord one thousand eight hundred and fifty nine.

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

2 The Report of Joseph M. Henricks, City Collector of the City of Chicago respectfully represents that the Special Warrants mentioned in the Schedule herewith 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 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 payments of such taxes and assessments - Which said notices were generally published for thirty days in said Corporation Newspaper.

3 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, interest 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 Warrant upon which such 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 amounts of taxes and assessments, interest and costs respectively due thereon, as set forth in the said Warrants, which remain unpaid and uncollected - Therefore your said Petitioner prays that judgment may be rendered as in such cases made and provided.

Chs. N. Henricks

City Collector."

State of Illinois,
Cook County, ss.

I, Joseph N. Henricks, 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 1853, 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 1854

Walter Kinzie, Clerk

Clock to Court Com: Pleas

Sw: N. Huricks."

" Specific Warrant No 265 S.

State of Illinois

City of Chicago

The People of the State of Illinois to the Collector
of the City of Chicago, Greeting.

Whereas the Common Council of the City of Chicago did on
the 21st day of December 1853 confirm the assessment duly
made and filed in the Clerks Office by the Commissioners
appointed by the said Common Council to assess the sum of
Twelve thousand one hundred & forty four dollars upon the
Real Estate in the South Division of said City deemed benefited
by Paving La Salle Street from Randolph Street to South
Wabash Street in proportion to the benefits resulting thereto in

jurisdiction of an Order for said Assessment made by the said Common Council on the Ninth day of November 1851 after duly reviewing 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 benefited by the filling, curbing and paving LaSalle Street from South Water Street to Randolph Street, with the Valuation thereof and the sums of money, generally assessed thereon for benefits by the Commissioners, to wit.

Original Town of Chicago.

Name of Owner	Description	S Lot	Lot	BER	Valuation	Assessment	
J. F. W. Beck	N 2/3		4	18	37000	914 41	
E. R. Starkweather	S 26 ft		"	"	14000	290 32	
M. Mowry	25 ft N 4 adg S 26 ft		"	"	14000	249 18	Paid
M. L. Patrick	N 1/8 ft		5	"	30000	798 52	Paid
J. Y. Scammon	N 110 ft on Lake St by 73 ft on LaSalle Street		"	"	25000	522 52	Paid
Scammon & McCagg	N 1/4 of E 1/4 1/3 ft deep		"	"	11000	80 00	Paid
H. H. Magie	E 20 ft on Lake St by 90 ft deep		"	"	12000	63 00	Paid
Couch			1	19	64000	1452 92	

Original Town of Chicago

Name of Owner	Description	S Lot	Lot	Block	Valuation	Assess ^{mt}	
John Link		1	8	"	15000	136 73	Paid
"		2	"	"	13000	83 82	Paid
"		3	"	"	12000	68 58	Paid
E. S. Smodes		4	"	"	13000	60 96	
John Link	E 60 ft.	5	"	"	10000	187 60	Paid
E. S. Smodes	W 20 ft.	"	"	"	1000	5 -	
"	(Rec'd \$160 on 4/2)	6	"	"	10000	143 16	
E. B. McLaughy		7	"	"	10000	191 31	Paid
"		8	"	"	10000	220 98	Paid
D. F. W. Peck	N 4/9	1	33		25000	668 90	
John S. Rumney	S 110 ft.	"	"		1300	381 61	Paid
6 John S. Rumney	20 ft N 4/9 S 110 feet	"	"		6500	179 94	Paid
John S. Rumney	40 " " " 60 "	"	"		13000	346 82	Paid
John S. Rumney	S. 100 ft	8	"		30000	836 12	Paid
W. Borden	N 80 "	"	"		25000	714 16	Paid
J. Newberg	20 ft on Lake St. by 100 ft deep W of E 1/4	4	11	321	16000	90 00	Paid
H. H. Magie	20 ft on Lake St. by 100 ft deep W 4/9 E 1/2	"	"		16000	110 "	Paid
Est of L. M. Ponce	20 ft on Lake St. by 100 ft on La Salle St. N. W. cor.	"	"		20000	556 12	Paid
John Kentworth	20 ft on La Salle St. by 60 ft on Cullum St. end	"	"		10000	221 52	Paid
J. D. Skinner	15 ¹⁵ / ₁₀₀ ft on La Salle St. N 4/9 avg. S. 20 1/2 feet	"	"		7500	135 67	Paid

Original Town of Chicago.

Name of Owner	Description	Lot	Cor	BLK	Valuation	Assessment	
L. Berg	20 ft on La Salle St N 4 adjg S 35 ⁶⁵ / ₁₀₀ ft	4	34		8500	176	22 Paid
Est. of L. M. Boyce	26 ft on La Salle St N 4 adjg S 33 ⁶⁵ / ₁₀₀ ft	"	"		11000	224	48 Paid
Est of J. Butterfield	E 1/4	"	"		17000	80	c
Geo. Rish	20 ft on Randolph St 16 ft deep	5	34		15000	428	52 Paid
R. Nichols	20 " (75 ft deep) E 1/4 adjg 20 ft	"	"		14000	92	57 Paid
Judd & Wilson	20 " " " " 40 "	"	"		14000	77	64
Geo. Rish	E 20 " "	"	"		14000	70	17 Paid
7 Geo. Rish	31 23 ft on La Salle St 70 feet deep	"	"		11500	245	47 Paid
Geo. Rish	25 4/10 " " " 21 23 ft	"	"		12500	232	41 Paid
Geo. Rish	30 " " " " 48 ⁸ / ₁₀ "	"	"		14000	287	51 Paid
W. Rish	16 1/2 " " " " 78 ⁸ / ₁₀ "	"	"		8000	178	38 Paid
							\$12154

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

Witness John Wentworth, Mayor of the City of Chicago and the Corporate Seal thereof this 1st day of Jan'y 1858.

Attest

J. Kricomian, City Clerk

J. Wentworth, Mayor

James D. Ward

Collectors Return

"State of Illinois

City of Chicago } City Collectors Office

185-

The undersigned Collector of the City of Chicago makes return to the Common Council of the within 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 7th 1859.

"Public Notice is hereby given that I shall appear 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 21st day of January A.D. 1859 for judgment against all Blocks, lots, sublots pieces 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.

"Warrant No 265 South dated January 1st 1858
for paving Lasalle Street from Randolph Street to South Water St."
(Certificate)

"This certifies that the appended Notice has been published
in the 'Chicago Daily Democrat' a Newspaper printed & published
in the City of Chicago, County of Cook and State of Illinois, during
one days consecutively commencing with the 9th day of January
1858.

John Wentworth, Publisher
By Recd."

9 And afterwards to wit on the fourth day of February
(being one of the days of the said January Special Term of
said Court) A.D. Eighteen hundred and fifty nine, the following
among other proceedings were had and entered of record in said
Court, to wit:

Original Town of Chicago

Name	Description	S Lot	Lot	Block	Valuation	Amt of		Tax for		Cts	Total amt. due
					Dolls Cts	Dolls	Cts	Dolls	Cts		
E. R. Starkweather	\$23 ft		11	18	11000	290	32	290	13		

The City of Chicago

(u2)

E. R. Starkweather Esq

And now on this fourth day of February A.D.
Eighteen hundred and fifty nine comes the said City of Chicago
by E. Anthony, City Attorney and due notice having been given

of the time and place of making the intended application for judgment against the said several lands lots pieces and parcels of land in said Warrant set forth and objections to taking of judgment having been filed by P. H. W. Peck for Lot No 11 in Block 18 and N $\frac{1}{4}$ of lot 1 Block 33, by L. R. Starkweather for South 25 feet of Lot 11 Block 18, by Executor of Ira Couch for lot 1 Block 19, owners of lots described in Warrant and Counsel being heard upon said objections and mature deliberation being thereupon had and the premises fully understood, it appears to the Court that the said objections to the taking of judgment against Lot 11, Block 18, and South 25 feet of lot 11 Block 18 and lot 1, Block 19, respectively are sufficient, and that the objection to taking of judgment against N $\frac{1}{4}$ of lot 1, Block 33 is insufficient, the objections to lot 11 Block 18 and South 25 feet of Lot 11 Block 18 and lot 1 Block 19, are therefore sustained and the objection to N $\frac{1}{4}$ of Lot 1, Block 33, is therefore overruled. And on Motion of said Attorney

It is considered by the Court that judgment be and hereby is entered against the said several lands lots pieces & parcels of land, described in the aforesaid Warrant including the N $\frac{1}{4}$ of lot 1 Block 33 (and accepting the said several lots pieces and parcels of land to which objections are heretofore sustained, namely, Lot 11 Block 18 and South 25 feet of lot 11 Block 18 and Lot 1 Block 19) in favor of the City of Chicago for the sum annexed to each lot piece and parcel of land not excepted, being the amount of assessments and for costs of suit generally thereon. And that the said City of Chicago have and recover the further sum of Ten per

out upon the amount of Assessments respectively due and unpaid upon each of the lots lands and parcels of land therein set forth and not heretofore accepted 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 not heretofore accepted, or so much thereof as shall be deemed sufficient of each of them to satisfy the amount of assessments damages &c. to annex to them severally be sold as the law directs.

And thereupon comes the said City of Chicago by Elliot Anthony, City Attorney, and prays an Appeal upon entering Exceptions herein to the Supreme Court of the State of Illinois for lot 4 Block 18 South 25 feet of lot 14 Block 18 and lot 1 Block 19, respectively as set forth in said Warrant, and to which objections were sustained by the Court, Which Appeal is allowed upon filing Bond in each case in the sum of Two hundred dollars with security to be approved by the Judge of this Court in ten days with Bill of Exceptions.

And thereupon also comes the said J. F. H. Peck one of said objectors and enters his Exceptions herein and prays an Appeal herein to the Supreme Court of the State of Illinois for North 4/9 of lot 1 Block 33, to which objections are overruled, Which Appeal is allowed to him on the Condition that he file his Appeal Bond in the sum of One thousand dollars with James Long as security thereon within ten days, and that he have twenty days time to file his Bill of Exceptions.

And afterwards to wit on the Twenty fourth day of February
A.D. Eighteen hundred and fifty nine, the said City of Chicago
filed its Bill of Exceptions in the words & figures following to wit

"State of Illinois } Of the January Special Term of the Cook
County of Cook } County Court of Common Pleas A.D. 1859.
The City of Chicago } Suit for Special Appraisal to
vs } file, curb & pave S. La Salle St
C.R. Starkweather } from South Water Street to Randolph
impleaded with others } Street.

13 Be it remembered that heretofore to wit on the
day of January A.D. 1859 the said Defendant C.R. Starkweather
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 answers of the facts therein objected and
alleged as follows, that is to say.

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

The City of Chicago }
vs } Suit for Special Appraisal
C.R. Starkweather impleaded } Warrant No 265.
with others }

The Defendant C.R. Starkweather by
his Attorneys comes and defends the cause of action and
objects to the rendition of a judgment or an order of Sale of

the premises 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 reported by any Committee, nor was any plan of the same ever made, or submitted to the Common Council or adopted by it.

Second The Order of the Common Council of the 9th day of November 1857 directing that the sum of Twelve thousand one hundred and forty four dollars be assessed on the Real Estate of the City of Chicago deemed benefited by the filling, curbing and paving of LaSalle Street from South Water St. to Randolph Street "in accordance with estimate and specifications herewith submitted," was made by Common Council without any estimate and specifications being made and submitted adopted or agreed upon, and without adopting or agreeing upon or having adopted or agreed on any plan for or of said improvement, 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 of said Street - And this Warrant is being now prosecuted for that purpose.

The whole of the work on said Street was done by said McBean, before said Order was made for an Agreement's part under private Contract as aforesaid, and part without any Agreement with the City, or City authorities, or owners of Lots on said Street - And so defendant says that the Order of Common

Council and said Commissioners, and all others acting under said Warrant was and is wholly Void.

Third. The Common Council have no jurisdiction, power, or authority to make Assessments to pay for improvements made under private Contracts or made without Contracts. Nor to enter into Contracts to make such improvements before 50 per Cent of the amount of their Costs shall have been collected, according to Sect. 5 of amended Charter. § 4 and Sects 15 & 16 of City Ordinances, Muni Code § 162.

Fourth. The Common Council have no authority to elect Commissioners to make Assessments under the 6th Section of amended Charter of 1857, but the Mayor had the power to nominate and the Council to approve only.

Fifth. That the Assessment exceeds three per Cent both of the actual and assessed Value of the premises.

Be it further remembered that afterwards to wit on the 5th day of February 1859 this cause came on in the Cook County Court of Common Pleas.

Whereupon the Plaintiffs Attorneys read the following documents in evidence.

1st A Petition for paving LaSalle St from South Water St. to Randolph Street, as follows.

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

"Your Petitioners do most respectfully call on your Honorable body to take immediate steps to have LaSalle Street

praised from South Water to Randolph Street and your Petitioners
as in duty bound will ever pray

"Chicago } M. S. Patrick
" 8th July 1857 } C. R. Starkweather."

" John P. Chapin

" S. McKichan

" Geo. Steel

" E. Young Seaman
for Marine Bank } 98 feet front
and M. Morris }

" John Lusk. 90 feet

" E. B. McCagg for Geo. F. as yet his Alley 39 $\frac{1}{2}$ feet."

16 " The Order for local improvement from Committee on Streets
and Alleys South Division, viz^t

Order for Local Improvement.

" To the Mayor and Aldermen of the City of Chicago in
Common Council assembled -

" Your Committee on Streets and Alleys of the South
Division to whom was referred the Petition of M. S. Patrick
and others for the filling curbing and paving of La Salle Street
from South Water Street to Randolph Street, having had the same
under consideration are of the opinion that the prayer of the
Petitioners should be granted, they therefore ask for the passage
of the following Orders

" Ordered, That La Salle Street from South Water Street to Randolph
Street be filled curbed and paved in accordance with estimate

"and specifications herewith submitted,

"Ordered, That the sum of Twelve thousand one hundred and
forty four 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.

"Respectfully Submitted."

"Chicago, Sept 16. 1857, Henry Joy, of Committee on Streets and
Alleys, South Division."

17 2nd Assessment Roll for paving LaSalle Street from Randolph
to South Water St.

"In Common Council, Nov 9th 1857.

"Ordered, That LaSalle Street from South Water Street to Randolph
Street be filled, curbed and paved, in accordance with estimate
and specifications herewith submitted"

"Ordered, That the sum of Twelve thousand one hundred and forty
four dollars be assessed upon the Real Estate in the South Division
of the City of Chicago deemed benefited 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,

"Also Long, demanded the Ayes and Nays on the passage of the
Orders, which resulted as follows. Ayes, Ald, Brop, Harris,
Kendall, D. Wolf, Joy, Kennedy, Green, Carter, Sells, Dempsey,
Dunlap, LaRue, Conley & Schmidt 14. Nays. Long. Myers

and Wahl. 3.

"The Council then proceeded to the election of Commissioners
thereunder. On the first Ballot, J. H. Kinzie, Thos. Hale and
A. H. Aiken, received each 111 votes and were declared
"Elected."

"Attest, J. H. Kinzie, City Clerk."

"Oath of Commissioners.

"State of Illinois }
"City of Chicago } &

18
"We the undersigned Commissioners appointed
"by the Common Council of the City of Chicago to assess the
sum of Twelve thousand two hundred and forty four dollars
upon the Real Estate by us deemed benefited by Paving LaSalle
Street from Randolph Street to South Water Streets in proportion
"to the benefits resulting thereto as nearly as may be do
"solemnly swear that we will faithfully and impartially execute
"our duty to the best of our ability.

"Sworn to and subscribed before me J. H. Kinzie
"The 13th day of Nov: 1854 . . . Thos Hale } Commissioners."
"J. H. Kinzie, City Clerk" } A. H. Aiken }

"Assessment Roll." Setting forth "a description of the Real
"Estate in the South Division of the City of Chicago, deemed
"benefited by filling, curbing & paving LaSalle Street from
"South Water Street to Randolph Street, with the valuation thereof
"and the sums of money severally assessed thereon for benefits
"by the Commissioners to wit.)

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 Twelve thousand one hundred and forty four dollars, upon the Real Estate in the South Division of said City, by us deemed benefited in proportion as nearly as may be to the benefits resulting therefrom, by reason of filling Curbing and paving La Salle Street from Randolph to South Water Street do hereby report and return to the Common Council.

19 That in pursuance of said appointment they were duly qualified; before entering upon their duties, as appears by the City records herein, that they published a Notice of the time and place of the Meeting of 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 Real Estate hereinbefore set forth and described as the only Real Estate benefited by said improvement and that the benefits resulting therefrom 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.

" John H. Kinzie

" Thos Hale } Commissioners."

" E. H. Hiken }

" Chicago, December 7th 1857."

" 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 Twelve
" thousand one hundred & forty four dollars (\$12,144) upon the
" Real Estate in the South Division by him deemed benefitted by
" filling, paving & curbing LaSalle Street from South Water Street
" to Randolph Street, will be at Room No 6 Cole's Building on the
" twenty first day of November 1857 at the hour of 10 o'clock
" A.M for the purpose of making said Assessment

" John H. Kinzie

" Thos. Hale

" E. H. Kinzie

} Commissioners "

" Chicago November 13th 1857 "

" This Certifies that the appended Notice relative to
" paving S. LaSalle St. has been published in the Democratic
" Press, the Corporation Newspaper of the City of Chicago, County
" of Cook & State of Illinois, six days consecutively commencing
" with November 14th 1857."

" Chicago, November 24th 1857.

" Scripps, Bros & Spear
" Publishers."

Assessment Roll.

A description of the said Estate in the South Division
of the City of Chicago, deemed benefitted by filling curbing
and paving La Salle Street, from South Water Street to Randolph
Street, with the Valuation thereof, and the sums of money
generally assessed thereon for benefits by the Commissioners of the
Original Town of Chicago

Name of Owner	Part of Lot of Land	S Lot	Lot	BLK	Valuation	Assessed
J. H. H. Peak	N 2/3		14	18	37000	914 41
J. R. Starkweather	S 25 ft.		"	"	14000	290 32
J. H. H. Peak	25 ft N of adj. S 25 ft		"	"	14000	249 18
J. H. H. Peak	N 73 ft		5	"	30000	793 52
J. H. H. Peak	N 40 ft on Lake St by 73 ft		"	"	23000	522 52
J. H. H. Peak	ft. on La Salle Street		"	"	11000	
J. H. H. Peak	N 1/2 of E 1/2 73 ft. deep		"	"	11000	80 "
J. H. H. Peak	E 20 ft on Lake St by 73 ft		"	"	12000	63 "
H. H. Magner	90 feet deep		"	"		
Ira Corick			1	19	54000	1453 92
John Link			1	8	15000	426 72
do			2	"	13000	83 82
do			3	"	13000	68 58
E. S. Smiles			4	"	13000	60 96
John Link	E. 60 ft.		5	"	10000	184 60
E. S. Smiles	N 20 "		"	"	10000	5 00
do			6	"	10000	192 16
J. H. H. Peak			7	"	10000	191 31
J. H. H. Peak			8	"	10000	220 98
						\$5808

Original Town of Chicago

Name of Owner	Part of Lot of Land	Lot	St	Blk	Valuation	Assessment
P. J. W. Deek	N 4/9		1	33	24000	668 90
Julian J. Rumsey	S 40 ft	"	"	"	13000	384 61
M. Stadel	20 ft N & adjg S 40 ft	"	"	"	6500	179 94
Frederic Leiz	40 " " " 60 "	"	"	"	13000	346 82
Jason A. Gurney	S 100 ft	"	8	"	30000	836 12
J. V. Boyden	N 80 "	"	"	"	25000	744 15
	20 ft on Lake St by					
P. Newberg	100 ft N of E 1/4	41	34		16000	90 "
	20 ft on Lake St by 100					
A. H. Magu	ft N & adjg E 1/2	"	"	"	16000	110 "
	20 ft on Lake St by 100					
Est. of L. M. Boyce	on La Salle St N W cor	"	"	"	20000	536 12
	20 1/2 ft on La Salle St by					
John Wentworth	60 ft on Lake Alley S. end	"	"	"	10000	221 57
22	13 1/2 ft on La Salle St N					
S. P. Skinner	& adjg, S 20 1/2 ft	"	"	"	7500	133 67
	20 ft on La Salle St N					
L. Berg	& adjg, S 35 60/100 ft	"	"	"	8500	176 22
	26 ft on La Salle St N &					
Est of L. M. Boyce	adjg S. 35 60/100 ft	"	"	"	1100	224 45
Est of J. Butterfield	E 1/4	"	"	"	17000	80 "
Geo Roth	N 20 ft on Randolph St	5	34		15000	428 52
	75 ft deep					
R. McHale	20 ft (75 feet deep) E &	"	"	"	121000	92 57
	adjg N 20 ft					

Name of Owner	Part of Lot of Land	Lot	Block	Valuation	Assessment
Quad & Wilson	21 ft (75 ft deep) E & adg 44 ft	5	34	14000	77 64
Geo. Roth	620 ft	"	"	14000	70 17
L. G. Sinclair	11 23 ft on La Salle 70 ft deep	"	"	11500	242 117
Geo. Roth	23 8/10 S & adg 11 23 ft	"	"	12500	232 44
P. Spole	30 " " " " 48 8/10 "	"	"	14000	239 21
J. M. Reis	16 1/3 " " " " 78 8/10 "	"	"	8000	178 38
					\$6336

'State of Illinois }
'City of Chicago }

23

"I do hereby certify that the foregoing
"Assessment Roll was returned to me and filed in my office
"by the Commissioners this 9th day of Dec. 1857.
"H. Kierman, City Clerk"

P. Martle."

'This certifies that the Appended Notice has been
'published in the Daily Democrat Press, the Corporation
'Newspaper of the City of Chicago, County of Cook and State
'of Illinois, ten days consecutively commencing with Dec
'10th, 1857

'Chicago, March 19, 1858

"Scripps, Bros & Spears, Publishers."

Assessment Notice

'City Clerks Office, Chicago,

'December 9, 1857.

'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 Twelve thousand one hundred
and fifty four dollars, upon the Real Estate in the South
Division of said City, deemed benefitted by having LaSalle
Street, from South Water Street to Randolph Street 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,
the 21st day of December 1854 at 7 o'clock P.M. as the
Common Council will at that time in the Council Room, hear
all objections to assessment and revise and confirm or annul
the same.

H. Kresman, City Clerk,

Order of Confirmation.

In Common Council Dec^r the 21st 1854.

Whereas due Notice has been given by the City Clerk of
the return of the foregoing Assessment Roll, and no objections
thereto having been filed, it is therefore,
Ordered, That the said Assessment as revised and corrected
by the Council, be and the same is hereby confirmed, and
such Assessment is hereby required to be paid within Thirty
days from this date and that a Warrant be issued for the
collection thereof returnable in thirty days from its date

Dated,

H. Kresman

City Clerk,

"Mem: Warrant issued January the 1st 1858."

4th Estimate of City Superintendents of the Cost for filling
grading curbing and paving Sadalle Street from South Water
Street to Randolph Street. viz

"City Superintendent under requisition of Streets &
"Alleys of South Division submits the following as an estimate
"of the cost for filling, grading, curbing and paving Sadalle
"Street from South Water to Randolph Street, to wit,

25 "The Street to be filled within 9 inches of the established
"Grade, with suitable earth, paving to be of dimension Stone laid
"in edge not less than 9 inches deep from 4 to 10 inches thick &
"from 6 to 15 inches long to be hammer dressed on face and
"joints (joints not to exceed five eighths of an inch) to be laid
"in the work regular equal courses, to be curbed with Solid
"Limestone not less than 3 feet square & 6 inches thick to be
"dressed on face & sides not less than four inches from top joints
"to be high for 18 inches from top

"In separate Blocks, viz^t

"From South line of South Water Street to North line of
"Lake Street Sq^{rs} yards stone @ \$3 per yard

"Add ten per Cent for Engineering, advertizing &
"Superintending and Collecting

"From the South line of Lake St^h to the North
"line of Randolph Street

"1920 Sq^{rs} Yards @ \$3 per Yard

\$5760.00

"Add 10 per Cent for advertizing & Eng. Sup^t & Collec:

\$576.00

\$6336.00

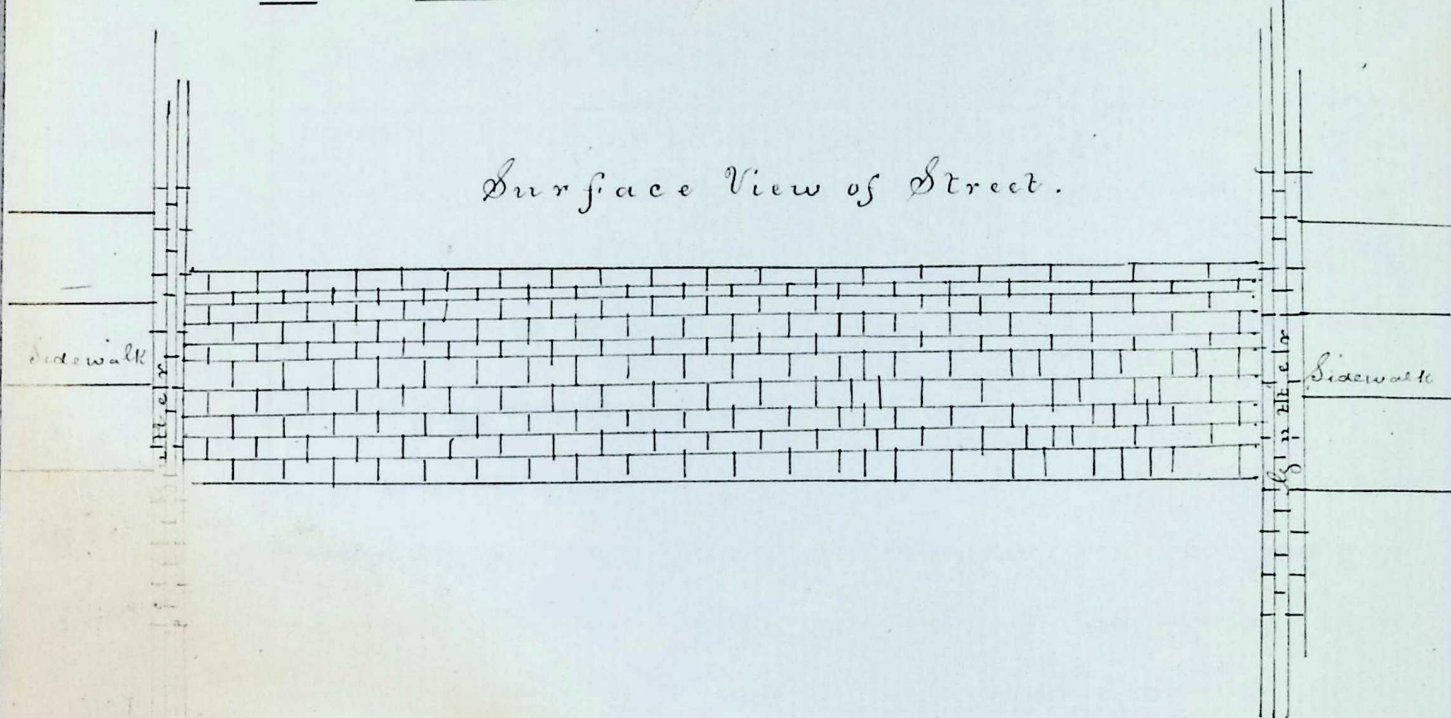
Dated September 14: 1857.

"N. S. Bouton, Superintendent

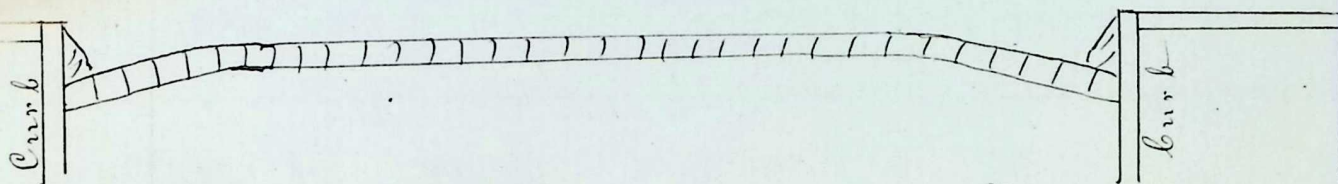
"J^r Shipman."

51¹/₂" Plans by City Superintendent.

Surface View of Street.



Section of Street.



This was all the evidence offered by Plaintiffs and it
here closed. Thereupon to maintain the issue on his part
Defendant offered in evidence the following documents

1st A Contract between John Mc Bean and proprietors of
property on La Salle Street accepted with certain provisions by
N. S. Bouton, Supt, as follows, viz^t

"Chicago, 22^o July 1857

"To the proprietors of property on La Salle Street,

Gentlemen.

I propose to furnish all materials and do all the work grading and paving the above Street with dimension Stone to be laid on edge not less than 9 inches deep from face to ten inches thick and from six to fifteen inches long, to be laid in the work in equal courses. The joints to not exceed five eighths of an inch, the material and work to be approved of, and made to the satisfaction of the City Superintendent at the rate of Three dollars per superficial yard or sixteen dollars per linear foot, Forty eight feet wide, Payments to be made at the rate of Seventy five per cent as the work progresses, the balance when the work is completed

I remain, Gentlemen

Yours &c

John McBean

The undersigned proprietors accept the above proposal

M. L. Patrick

John Link

72 A. Young Scammon. Trust.

25 M. Morris by A. Young Scammon his Attorney

24 1/2 Ezra B. McBagg by John Forsythe his Attorney

P. J. W. Beck subject to stipulation left with

Van Coddell & Bauman, July 23/57.

Upon which is endorsed the following viz:

The Conditions of the within Contract I accept on the part of the City, provided that said Street is first covered with a bed of clean gravel nine (9) inches thick and also provided

that the intersection of the Streets and Alleys on said Street are
"paved to the Street line"

"M. S. Bouton, Supt."

"July 25th 1857."

2nd A Contract between P. J. W. Peck and John McBean
for Paving LaSalle Street and laying Curbing and Area wall
as follows.

"I agree to subscribe to Contract for paving LaSalle
"Street between John McBean and the owners of the Real Estate
"between Lake and S. Water Street provided said McBean
"shall execute Contract & specifications to be made by and do the
"work for my part of said Real Estate under the direction of John
"M. Van Cordell & Bauman, to wit, lay my outside area wall &
"curbing in the manner to be specified by said Van Cordell at
"the rate of Sixteen dollars per foot for the Stone & Curbing laid
"into the Wall and of the height, length and thickness said Van
"Cordell shall direct

"P. J. W. Peck."

"I agree to perform said above work and furnish all
"materials in the manner and in all respects as above specified
"under the direction and according to the specifications to be
"furnished by said Van Cordell & Bauman within thirty days from
"date and to execute a Contract with all the owners for paving
"Chicago July 25. 1857. John McBean."

3rd Two receipts from Geo. Stebb, Atty, of John McBean to
P. J. W. Peck for paving, Curbing &c and a power of Attorney
from McBean to Geo. Stebb, to wit,

\$600.00. Received of P. V. H. Peck Six hundred dollars on
"acc of the Paving, Grading, Filling and Curbing done by John
"McBean on the East half of Lasalle Street, fronting the North
"One hundred feet of Lot 4 in Block 18 in the Original Town of
"Chicago. Said McBean claims to have done paid work under
"in accordance with a written Contract, between himself and the
"owners of the Real Estate fronting Lasalle Street between South
"Water Street & Lake Street, for the paving between said Streets &
"represents that said Peck's proportion of said work for the 100
"feet aforesaid, according to said Contract amounts to \$928.
"But it is hereby understood that said Peck does not admit his
"liability for said sum of \$928 for said work, unless the same
"is properly satisfied properly Certified and said Contract is established
"and the said sum is shown to be the proper proportion for said
"work. Therefore in consideration in part of the sum now paid
"and for the purpose of promoting an amicable settlement. I do
"hereby agree to and with said Peck for myself and as the authorized
"agent of said McBean and do guarantee that said Peck shall
"never be held liable to pay any more money in proportion for the
"work done in front of his 100 feet aforesaid than also the other
"owners of the Real Estate aforesaid shall be made to pay for
"their respective proportions of said Paving, Grading, Filling &
"Curbing, and that no owner or other person shall be settled
"with for or on of said work &c. for any less sum in
"proportion to their number of feet without deducting an equal
"proportionate amount from the work &c. done in front of the above
"Real Estate owned by said P. V. H. Peck. In witness

whereof I hereto set my hand at Chicago this twelfth day of
'September 1857.

"Geo: Steel."

"I hereby authorize Geo: Steel to settle for me and in
"my behalf with P. F. W. Peck, all matters pertaining to the
"Area Wall, also to the Paving, Grading, Filling & Curbing in front
"of said Peck's One hundred feet of lot Four in Block 18 in the
"Original Town of Chicago on La Salle Street, and any settlement
"or partial settlement or compromise made therefor, between said
"Steel and said Peck shall be legally binding as though
"made by myself-in person

"John McBean"

Chicago, September 12th 1857."

"I hereby represent and guarantee that I am authorized to
"settle with P. F. W. Peck for everything appertaining to the area
"Wall contracted to be done by John McBean for said Peck on
"La Salle Street, between South Water and Lake Street and thereby
"acknowledge that said Peck has this day paid me Three hundred
"Seventy two ⁰⁸/₁₀₀ dollars in full for said Wall and everything
"appertaining thereto & in full of all demands under the Contract
"therefor, left in the hands of John M. Van Osdel (see an
"accompanying Bill of items and said Van Osdel's Certificate
"given under said Contract, identified by my own signature
\$372 ⁰⁸/₁₀₀

"Chicago

"Geo: Steel."

"September 11th 1857.

Defendants proceeded to introduce witnesses viz:
Walter Kimball called and sworn. Judges Seated for Defs.

I will ask Mr Kimball at what time a suit was brought against Mr McBean in 1857 and when was it disposed of.

Objected to. Objection sustained and opinion accepted to.

James Long called and sworn, Examined by Judges Seated for Defendant.

State whether Mr McBean filled, curbed and paved LaSalle Street from Lake to Water Street and if so when he finished it.

Answer. Yes Sir, All of that Block was done before the 11th of Sept and a portion of the other. I think it was done before the 1st of September.

State whether Mr McBean claimed that he had a Contract with Mr Peck and others to fill, pave and curb LaSalle St. from Lake to Randolph?

Objected to. Objection sustained and opinion accepted to by Defs.

Q. State if Mr McBean filled, curbed and paved LaSalle Street from Lake to Randolph Street, and if so, When did he do it, and when did he finish it?

Answer. I could not tell precisely the time when he finished the whole of it.

Q. State first if he did the work?

Yes Sir, he did the work.

When did he do it, and when did he finish it?

Answer, Well as I said, I can't say when he finished the entire work, but I know he had finished in front of the premises, in front of Mr. Peck's about the 21st of Sept.

Q. September 1857?

Answer Yes Sir 1857.

Q. Which end of the Street did he begin at - Did he not begin at Randolph St?

Answer, Well Sir, he began if I mistake not at both ends to fill and get in his stuff, but began the paving at Lake Street, When I saw him in front of Mr. Peck's premises, I told him of the notice, I told him not to begin on it.

Q. State if Mr. Peck notified him not to do any work before his premises & show what notice if any he gave him?

Objected to, objection sustained & document marked "D" (Notice from Mr. Peck to Mr. McBean) not to do any work in front of his lot in LaSalle St. Excluded & Exceptions taken by defendant to opinion.

Q. State Mr. Long, if you can and as near as you can when the paving was completed by Mr. McBean.

Objected to - Objection sustained and opinion excepted to.

Q. Do you know anything about it Mr. Long?

Answer I can't say precisely the time it was done, but I can tell by dates the time it was done. There are dates from which I could tell. I am certain that it was done before the

Order of the 9th Novr. 1864 was passed;

Q. What other Circumstances enables you to fix the date?

Answer I relied upon the facts that came before me to refresh my mind. I only can say it was done before any action was taken by the Council.

Mr Harvey for Plaintiff.

Before the 21st of July?

Answer No Sir, I don't count it, when the petition was presented that anything was done by the Council - Nor do I count it when the Petition is referred, but I count it at the action of the Council when the thing is accepted by the Common Council & I know that it was done before anything was accepted by the Council.

Q. You state it was done before the 9th of Novr?

Yes Sir, I am pretty confident of it.

Q. I would ask you if Mr McBean had any conversation with you on the subject of doing the work, between these two Streets and if so, state what that conversation was?

Objected to. Objection sustained and opinion excepted to.

Q. State whether there was any Contract entered into by the City or under the authority of the City with John McBean or any other person for the filling, curbing and paving La Salle Street from Randolph to Lake, previous to the 9th day of Novr. 1864?

Objected to. Objections sustained and exceptions taken.

State if you are one of the Aldermen of the City of Chicago, and were you at the time mentioned in the previous question?

Answer. Yes.

Q. If there had been a contract entered into by the City for the work as before stated, would you have known it as Alderman of the City?

Answer. I would not necessarily have known it as an Alderman.

Gross Examined by Mr. Harvey.

Q. Mr. Long were you a Member of the Council at the time this Petition of Mr. Starkweather was introduced?

Answer. Yes.

Q. Were you in Council on that occasion. Were you present when this Petition was presented?

Answer. I am not confident of that.

Q. Did you ever have that Petition in your possession?

Answer. It was handed to me in my Office.

Q. By whom Sir. handed to you by Mr. Peck?

Answer. No Sir.

Q. Did you ever have any conversation with Mr. Peck in relation to said Petition?

Answer. Mr. Peck never said five words to me on the subject of paving that Street from one end to the other.

Q. Did he ever give you any directions on the subject?

Answer. Not one word.

Q. Did you ever have this Petition in your possession after it was presented to the Council?

Answer. I think not, I never saw it from the first day I did see it, until this afternoon.

Q. Did you ever have this Petition in your possession before it was presented to the Common Council?

Answer. On the 2nd July was the only time I had it in my possession.

Q. How long did you have it before it was presented in Council?

Answer. Well I have an impression that it was given to me to present to the Clerk.

Q. Well do you recollect how long you kept it in your possession?

Answer. I think it was presented the first time the Council met after it came into my hands.

Q. Was it by your instrumentality that these proceedings upon the Petition of Mr. Starkweather and others were obstructed in their passage through the Council?

Objection to.

Objection sustained.

Q. Was it by your means that any delays, if there were any, were caused?

Answer. Well Sir, I in the Council took the position that the work being done they could not legally levy an assessment for doing a private work and it was put over I think to the next meeting for the report to be made out upon that promise.

A. S. Bouton called and sworn - Examined by Judge Seates.

Q. Are you City Superintendent and were you so in 1854?

at the time of the making of this Contract of Mr McBean with the private property holders?

Answer. Yes Sir.

Q. State if you as City Superintendent ever entered into any contract with Mr, McBean for the City for the doing of any work on this Street?

Objected to. Objection sustained & opinion excepted to.

Q. State if you signed that Agreement upon the back of the agreement entered into with the property holders. Did you sign that Memorandum upon that Contract?

Yes Sir.

(Contract referred to being that between John McBean and the property holders of date of July 22. 1857)

Q. State if you take the charge and Superintendence of all improvements that are made in the Streets whether by the property holders themselves, or Contractors under them, or by Contractors with the City?

Objected to. Objections sustained and exceptions taken.

Q. Did you sign that Memorandum upon the Contract as approving the Plan that had been agreed upon in the Contract or with the view to bind the City?

Objected to. Objection sustained and exceptions taken.

Q. State whether property holders are required to have the approval of the City to the Plans upon which they propose to

fill, curb and pave the Streets?

Objected to, Objections sustained and
Exceptions taken.

Q. State whether the property holders are allowed by the
Council to adopt any grade or file or mode of curbing and
paving the Streets that they make think proper?

Objected to. Objections sustained and
Exceptions taken.

Q. State whether the plan upon which Lascalle Street was
paved & curbed by Mr. McBean in 1854 from South Water to
Randolph was the plan of the property holders, or a plan adopted
and furnished by the City.

Objected to. Objections sustained and
Exceptions taken.

Q. Was the plan specified in the Contract referred to between
Mr. McBean and others ever submitted to the City Council or
approved by it, at any time before the work was done by Mr.
McBean under it?

Objected to. objection sustained and
Exceptions taken.

Q. Will you state whether you adopted the Plan that you
found already executed by Mr. McBean under the contract with
the private property holders as the Plan you reported with a
Map and report on the 14th Sept 1854 and the basis of your
estimate therein?

Objected to. Objections sustained and
Exceptions taken.

State whether the Plan and Estimate reported by you to the City Council did not embrace the plan adopted by the private property holders in their contract with Mr. McBean before referred to and whether the estimate was not the same rate as therein agreed to be paid by the property holders under that contract?

Objected to - Objection sustained and exceptions taken.

Q. State if you were on the work Mr. Bouton daily before the 11th Sept 1857 and when Mr. McBean was filling and paving the Street & saw the work as it progressed?

Answer. Yes Sir, or nearly every day.

State whether Mr. McBean filled paved and Curbed the Street from Randolph to Lake and if so when? Do you know when Mr. McBean did this work from Lake to Randolph?

Answer. Yes Sir,

Q. Will you state at which end of that portion of the Street he commenced to pave?

Answer. At Randolph Street.

Q. About what time did he finish the paving at Lake St?

Answer. I can only tell you about - about the 20th October I think it was, I may be mistaken a few days - 1857.

Q. Had he finished the paving of the Street from Lake to Water before that time and if so, when was that finished?

Answer. He finished the paving of Lake to Water between the 10th & 15th of Sept.

Q. State if the work was done from Lake to Randolph

under or any part under any other Contract than the one in evidence here?

Answer I don't know of any.

James Long recalled and examined by Judge Seates.

Q. State whether you know of any other Contract between Mr. McBean and lot holders for this work between Lake and Randolph?

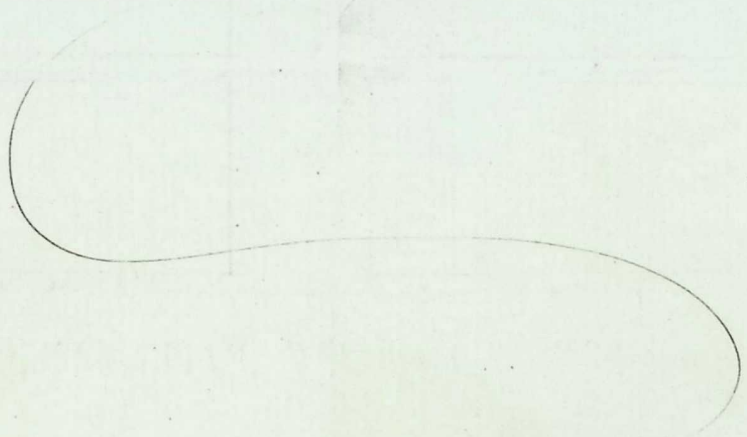
Answer Well Sir, I do not.

Q. Do you know of any such Contract from the statement of Mr. McBean?

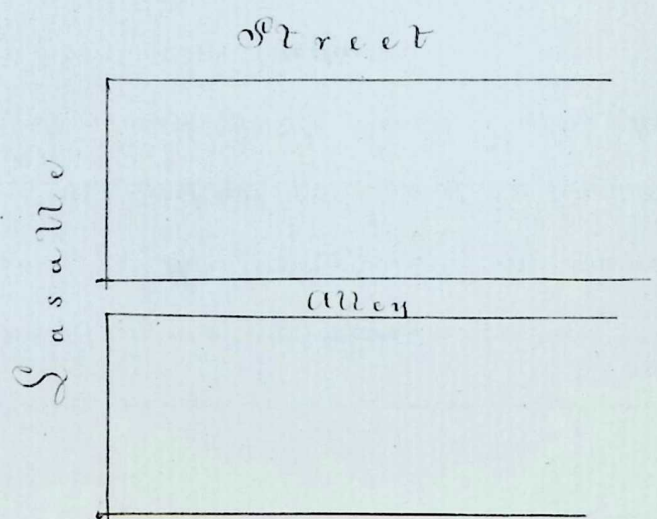
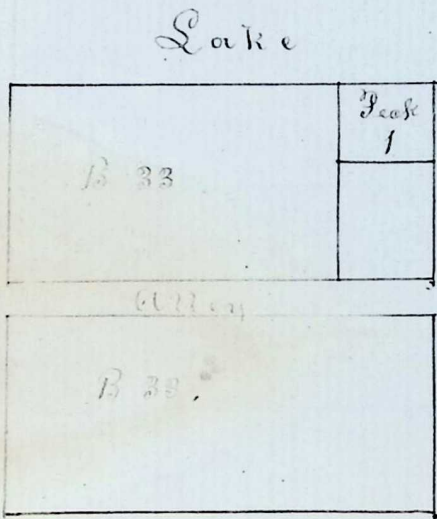
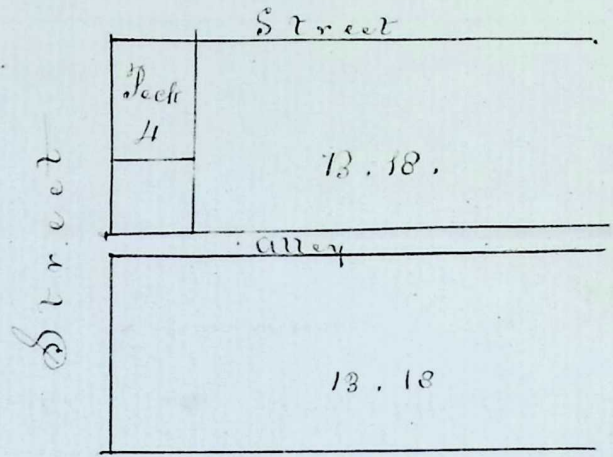
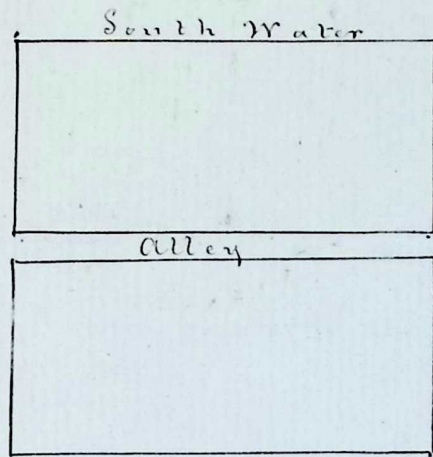
Objected to. Objection sustained and excepted to opinion.

It is admitted that there is no evidence in the records of the Comptrollers Office or of the proceedings of the Common Council that there is any other Contract for filling curbing and paving Lasalle Street from Randolph to South Water Street except as are hereinbefore shown as evidence.

It is admitted that the following Map is a correct representation of the Blocks, Lots, Streets, Alleys &c contiguous to and connected with this improvement



Part Old Town Chicago



Randolph

Street

The foregoing was all the evidence in this cause. Whereupon the Court having heard the argument of Counsel and mature deliberation had, considered that the said objections to the taking of judgment against Lot Number 4 Block 18 and South 25 feet of lot 11, Block 18 and lot 1 Block 19 respectively were sufficient, and the said Court therefore sustained the said

objections thereto respectively.

To all which rulings, opinions & decisions the said Plaintiff then and there excepted. And prays this its Bill of Exceptions may be deemed read and allowed, which is done accordingly.

John M. Wilson.

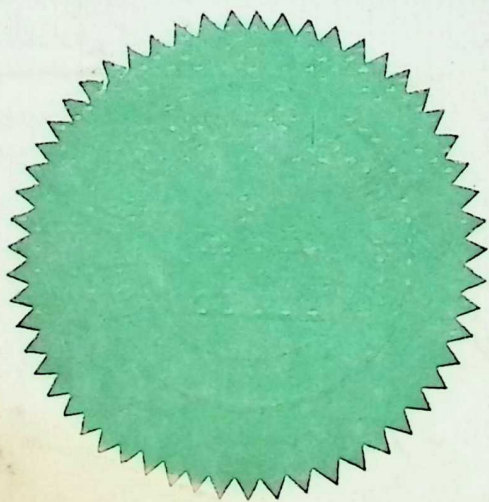
Seal

Judge of Cook County Court
of Common Pleas.

State of Illinois }
Cook County ... }

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 Transcript of the Collectors Report, Warrant, Assessment Roll, Return, Notice of Sale and Bill of Exceptions together with the order of judgment entered of Record in certain proceedings in said Court wherein the City of Chicago is Plaintiff and L. R. Starkweather and others are defendants.

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 first day of April A. D. 1859.
Walter Kimball Clerk



Supreme Court of Illinois-
City of Chicago } Error ~~to~~ Cook
vs } County Court of
C. R. Starkweather } Common Pleas.

And now comes the
said city of Chicago, by Elliott
Anthony its attorney, and say
that in the record & proceedings
and in the rendition of judgment
by the court below in this cause
manifest error hath intervened
in this to wit

First- The court below erred in
permitting the defendant to
file, ^{interposed} ~~the~~ objections to the rendition
of judgment against the delinquent
lot & lands & premises assessed.

Second. The court erred in permitting the
defendant to introduce testimony
in relation to the assessment
and circumstances under which
the same was levied.

Third. The defendant could only inquire
into jurisdictional facts appearing upon
the face of the ^{report} ~~report~~ of the collector in filing
his delinquent list.

Fourth. The court erred in rendering
judgment for the defendant

Wherefore for the errors aforesaid
and others apparent upon
the face of the record - the
plaintiff prays that the
judgment rendered in this
behalf - may be annulled
reversed, and set aside & for
nothing esteemed - and
the plaintiff may recover
its reasonable costs.

E Anthony
City Atty

in nullo erratum est
Deates for Defendant

243-11
State of Ill.
Cook County
Court of Common Pleas

The City of Chicago
Plff. in Error
v.

C. R. Starkweather

Record.

Filed April 20, 1859
L. Leland
Clerk

Trans \$12.00 Paid by
City of Chicago
\$12.00

Supreme Court---Third Grand Division.

April Term, A. D. 1859.

P. F. W. PECK,	}	APPEAL
VS.		
CITY OF CHICAGO.	}	FROM THE
CITY OF CHICAGO,		
VS.	}	COOK CO. COURT
CHAS. R. STARKWEATHER,		
		OF
		COMMON PLEAS.

STATEMENT OF CASE.

These are two cases pertaining to an assessment for filling, curbing and paving LaSalle street, from South Water to Randolph street, in the City of Chicago.

The first is here by an *appeal* taken by the plaintiff in error, Peck. The other by a *writ of error* sued out in behalf of the city.

Peck and Starkweather owned property upon the same street, and were assessed for the same improvement. Yet the Court rendered judgment against Peck in the one case, and against the City in Starkweather's case.

Peck owned two lots on the street, Charles R. Starkweather one, and Ira Couch, or rather the estate of Ira couch, another.

The two cases of Peck and Starkweather, now in question, are to decide all the matters pertaining to their own lots and the lots of estate of Ira Couch.

When the cases were before the Cook County Court of Common Pleas, upon an application for judgment against the lots and lands upon which the assessments remained unpaid at that time. The plaintiff in error in the Peck case, and the defendant in error in the Starkweather case filed certain objections against the assessment—which objections are now before this Court in the shape of assignments of error—the objections taken in the court below being here filed *as errors*.

A trial was had upon the objections before the court below—and a verdict rendered in favor of Peck upon the N. $\frac{1}{2}$ Lot 4, B. 18 of original Town of Chicago—and a verdict against him upon the N. four-ninths of lot 1, block 33 original Town of Chicago. A verdict was rendered in favor of the lots of Starkweather and Ira Couch and against the city.

The defence set up by Peck, Starkweather and Couch upon the N. $\frac{1}{2}$ of lot 4 block 18, and south 25 feet of lot 4 block 18, belonging to Starkweather, and lot 1 block 19 original Town owned by the estate of Ira Couch was—that they had made a contract with one John McBean for doing the work and that they were not responsible to the city at all for any assessment levied by the city for said improvement—that they alone were responsible to McBean—and that the assessment was wholly illegal for that reason, and other reasons, particularly set forth in the assignment of errors and filed in this court, and which will hereafter be particularly enumerated and examined.

The record in the case shows the following proceedings on the part of the city.

1. July 8, 1857. Petition presented to the common council for paving La Salle street from South Water to Randolph.

2. Sept. 14, 1857. The City Superintendent submits to the committee on streets and alleys his *estimate and plans of work*. See page 25 and 26 of Record.

3. Sept. 16, 1857. Committee of the common council on streets and alleys report that the prayer of the petitioners be granted, and recommend certain orders to be passed, which were afterwards passed.

4. Nov. 9, 1857. Orders were passed ordering the improvement to be done in accordance with *the plans and specifications of the City Superintendent*, and commissioners of estimate and assessment were elected.

5. Nov. 13, 1857. Took oath to execute their duties.

6. Nov. 14, 1857. Commissioners published notice that they would meet all persons at No. 6 Dole's Building for the purpose of making assessment.

7. Dec. 9, 1857. Public notice was given by City Clerk that the Commissioners had made their assessment, and returned their assessment roll to his office, and that any person wishing to appeal to the common council to correct any errors could do so by filing their objection in the City Clerk's office on or before Monday, the 21st December, 1857.

8. Dec. 21, 1857. Order of confirmation was passed, no person objecting. See 24th page of Record.

II.

PROCEEDING FOR LEVYING AN ASSESSMENT.

These proceedings are the usual proceedings for levying an assessment.

The first error which the plaintiff assigns is that, "The court erred in rendition of judgment for the city; because there was no reference of these subjects of these improvements to a committee by the council, to prepare a plan of said improvements; and because the common council did not agree upon or *adopt* any plan thereof or estimate."

Now, with the record of this case staring the council in the face, I do not understand how such an objection as this could be urged and insisted upon with any show of fairness at all. Assumption is, however, the order of the day, in assessment cases—and the bolder the position assumed and the bolder the facts the better. Does the *charter* of the city of Chicago provide that before any public improvement can be made that it must first be *referred to a committee* of the common council, and for them to pronounce upon the policy of the same. The charter of the city of Chicago is a public law, and contains no such provision, but that seems to make no difference. This assessment must be assailed and some ground must be assumed in order to do it. Is not a common council like a legislative body, judges of how its proceedings shall be conducted? What subjects shall be brought before them, and when acted upon? and can this Court or any other court control their legislative discretion?

See—

Suarez v. Mayor of New York, Sandf. 174.

1 Duer. 498.

2 Denio 140.

3 Comstock 430.

The *charter* of a city is its *constitution*—and since gentlemen are so technical, and have such a holy horror of all departures from the established law in this class of cases—I ask them to point out any section in the charter requiring any such thing as a reference to a committee of the common council to *prepare a plan*. If there is no such requirement, then

in accordance with the case of *City of Ottawa v. Macy*, 20 Illinois 413, a compliance with the charter is sufficient.

See also, particularly—

Ex parte Mayor, &c. of Albany, 23 Wend. 278.

Mayor &c. of Rome v. Duke, 19 Georgia 93.

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That section is as follows :

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Now, I submit that a proper construction of this section will not imply any such thing as is here contended for. I contend that the ordinances are not made a part of this law at all, but that this section is merely of a declaratory character, and provides that all ordinances which were not inconsistent with the act, shall remain in force under this act, until altered, modified or repealed by the common council. It merely declares what

would have been the law, if this section of the act had not been passed. If this section had not been passed, all the ordinances of the city would have remained until they were repealed, of course. They would, however, have been *mere ordinances*, which I again repeat cannot be taken judicial notice of by this court.

That is all that there is in this section, and no ingenuity can, I think, make any more out of it.

IV.

The third assignment of error, that "Said assessment was made by said commissioners without due notice of their meeting for that purpose."

Sec. 4 Chap. 7 of Municipal Laws prescribes that the commissioners shall give six days notice in the corporation newspaper of the time and place of meeting, to all persons interested, and they may, if necessary, adjourn from day to day.

The 20th page of the Record shows that the commissioners strictly complied with this section.

See also—

City of Ottawa v. Macy, 20 Ill. 413.

V.

The sixth assignment of error is, "that the assessment amounts to more than three per cent. on the assessed valuation."

This point is wholly disproved by the record as a matter of fact. See page 7 of Record. The same question was discussed in the case of *Bristol v. City of Chicago*, although in that case, the question was strictly confined to the property of the plaintiffs in error; while here, the error assigned is general, and applies to the whole assessment, most clearly.

VI.

The seventh assignment of error is, that "The election of commissioners by the common council without a nomination by the Mayor, under the 6th section of amended charter of 1857, was without authority and void.

COMMISSIONERS NOT OFFICERS OF THE CITY.

That section reads as follows :—

"All officers of the city whose election by the people is not provided for in this act, or the act to which this is an amendment, shall, after the next annual election, be appointed by the Mayor of said city, by and with the advice and consent of the common council; any provision of law in relation to the appointment or election of such officers, now in force, providing for such appointment or election in any other manner, being hereby expressly repealed."

Now, the first thing to be decided here is, are commissioners of estimate and assessment, who are appointed for the purpose of levying an assessment, *officers of the city*? The officers of the city are particularly enumerated in chapter 2 of Municipal Laws, page 6, 7, 8, 9, 10, and commissioners are no where enumerated. Section 1 chapter 3 of Municipal Laws, page 11, prescribes that "Every person chosen or appointed to an executive, judicial or administrative office under this act, shall, before he enters on the duties of his office, take and subscribe the oath of office pre-

scribed in the constitution of this State, and file the same, duly certified by the officer before whom it was taken, with the clerk of the city."

Now, whoever thought or heard of the idea, that it was necessary for commissioners of estimate and assessment, who were to perform a duty, of an *occasional character*, which occasion is created by the common council, to swear that he has not fought a duel, or sent a challenge to fight a duel, &c., as prescribed by the constitution of the State—the thing is absurd; the section in question, I submit, means no such thing.

VII.

The eighth assignment of errors is, that "There was no valuation in money fixed upon said lots, and there was no sum of money assessed upon the same by the said commissioners; and the common council and the Common Pleas Court had no jurisdiction, power or authority to assess or give judgment against said lots for any sum of money."

The assessment roll which was introduced in evidence, appearing on page 22 of the transcript, is set out in and the word "*valuation*" is put over the top—without anything else—but at the bottom of the column the whole amount is figured up and the aggregate put down in dollars and cents, with the proper dollar marks. The *report* of the City Collector, found on page 5 of record, recites and explains the meaning of the figures found in the tabular columns, while the judgment book, found on page 9 of record, conforms in every respect to the *Lawrence v. Fast* dollars and cents rule. Does it make any difference as to where the dollar marks in an assessment roll are, whether at the top or bottom of the column, or whether a valuation should be set forth in dollars and cents, against *each* man's land, and each *marked* with the dollar marks—does not the word "*valuation*" at the *top*, and the dollar mark at the *bottom*, sufficiently indi-

cate without any "guessing," that the figures placed opposite each man's lot, means that it is valued at so much in dollars and cents? *A lithograph of a dollar and cent attached to each man's premises by the commissioners could not, in my estimation, make it more certain.*

VIII.

CONFIRMATION CONCLUSIVE.

The objections which are here made, I have shown on several other occasions at this term of the court, are proper grounds for opposing the confirmation of the report of the commissioners, and cannot be reviewed in this court. The parties have had *their day in court*, and having utterly neglected to interpose any objections, they are absolutely estopped. See sec. 7 of chapt. 7 page 40 of Municipal Laws, which makes the *confirmation* of the common council "final and conclusive on all parties interested."

2 Kernan 406.

1 Kernan 276.

9 Paige 16.

6 Paige 625.

CONCLUSION.

And now, in the language of Judge Treat, in the case of *Atkins v. Hinman*, 2 Gil. 452-3—"In dismissing the various objections taken to "these proceedings, I cannot forbear the remark, that they are *perfectly technical*. The duty of every citizen to contribute, in proportion to the

"value of his estate, towards the support of the government which protects him in the enjoyment of his rights, must be acknowledged by all. The present revenue laws are liberal in their character; the rate of taxation is uniform and reasonable. The tax-payer can readily ascertain the amount he is required to pay. He has several months in which to make his payment, after his property is assessed. If he omit to pay, and his land is sold, he has still the right to redeem in two years from the sale. If, after this delay he suffers his title to be transferred to the purchaser, the loss must be attributed to his gross disregard of his duties and interests, and *not the fault or injustice of the law*. He should not, then, be permitted to defeat the title of the purchaser by interposing mere *technical objections*. If allowed to do it, he is enabled to take advantage of his own laches and wrong, not only to defeat the claim of the purchaser, but to avoid, altogether, the payment of his share of the public burden. Where all the material requisitions of the law have been *substantially* complied with, courts should not hesitate to sustain rights fairly acquired under them."

"It is time that the object and design of these enactments should be regarded. Judges should not be alert to discover frivolous objections, and resort to mere technical rules to sustain them, in order to defeat the claims of a purchaser. Such objections are generally insisted on, and have, in some instances, been countenanced by the courts. They proceed from a one-sided view of the subject."

Again Judge Scates says, in the case of *Hinman v. Pope*, 1 Gilman, 141-2: "The courts have adopted a rule of strict construction in these cases of, naked powers, requiring a party to show a strict compliance with every prerequisite of law. This vigilance of the law upon naked powers, is a substitute for that vigilance which interest always prompts in those who execute a power coupled with an interest. *But technical rules should have their limit subservient to the public good*. The government must have revenue, and it must be collected from all; it must be en-

"forced from the unwilling and negligent by disposing of their property to those who are willing to advance the moneys. But *it will be impossible to do so if technical rules are applied* to defeat their rights acquired under sales upon *all and every plausible pretext of error that ingenuity can from time to time suggest.*"

"If the public confidence is destroyed in ever acquiring a title free from technical objection, the state will be unable to collect her dues as no one will advance where the blunders of ignorance and negligence in executive officers, in not *complying literally* with the law, will be allowed to defeat their rights."

"Legislation can hardly keep pace with ingenuity, so as to remove, or anticipate the grounds of objection."

Again, in the case of *McMillan v. Robbins*, 5 Ham. R. 28, Judge Hitchcock says—"I am aware that it is common to complain of tax laws, and there is, perhaps, no part of legislation which is more difficult to perform satisfactorily, or in such a manner as to do equal and exact justice to all, than to frame a revenue system. We are aware, too, that courts have been *ASTUTE to find defects* in tax sales; so much so, that in this State at least, it has become the general, if not the universal opinion, that a title derived under such a sale cannot be supported. Whether courts have done wrong in this, it is not for us to say. The consequences, however, as members of the community, we cannot but regard. That it has a direct tendency to *encourage* those who dislike to pay a tax, in the *neglect* of the performance of this duty, there can be no doubt."

E. ANTHONY,

Attorney for City.

E. Anthony "Brief"

Supreme Court---Third Grand Division.

April Term, A. D. 1859.

P. F. W. PECK,	}	APPEAL
VS.		
CITY OF CHICAGO.	}	FROM THE
CITY OF CHICAGO,		COOK CO. COURT
VS.	}	OR
CHAS. R. STARKWEATHER,		COMMON PLEAS.

STATEMENT OF CASE.

These are two cases pertaining to an assessment for filling, curbing and paving LaSalle street, from South Water to Randolph street, in the City of Chicago.

The first is here by an *appeal* taken by the plaintiff in error, Peck. The other by a *writ of error* sued out in behalf of the city.

Peck and Starkweather owned property upon the same street, and were assessed for the same improvement. Yet the Court rendered judgment against Peck in the one case, and against the City in Starkweather's case.

Peck owned two lots on the street, Charles R. Starkweather one, and Ira Couch, or rather the estate of Ira couch, another.

The two cases of Peck and Starkweather, now in question, are to decide all the matters pertaining to their own lots and the lots of estate of Ira Couch.

When the cases were before the Cook County Court of Common Pleas, upon an application for judgment against the lots and lands upon which the assessments remained unpaid at that time. The plaintiff in error in the Peck case, and the defendant in error in the Starkweather case filed certain objections against the assessment—which objections are now before this Court in the shape of assignments of error—the objections taken in the court below being here filed *as errors*.

A trial was had upon the objections before the court below—and a verdict rendered in favor of Peck upon the N. $\frac{1}{2}$ Lot 4, B. 18 of original Town of Chicago—and a verdict against him upon the N. four-ninths of lot 1, block 33 original Town of Chicago. A verdict was rendered in favor of the lots of Starkweather and Ira Couch and against the city.

The defence set up by Peck, Starkweather and Couch upon the N. $\frac{1}{2}$ of lot 4 block 18, and south 25 feet of lot 4 block 18, belonging to Starkweather, and lot 1 block 19 original Town owned by the estate of Ira Couch was—that they had made a contract with one John McBean for doing the work and that they were not responsible to the city at all for any assessment levied by the city for said improvement—that they alone were responsible to McBean—and that the assessment was wholly illegal for that reason, and other reasons, particularly set forth in the assignment of errors and filed in this court, and which will hereafter be particularly enumerated and examined.

The record in the case shows the following proceedings on the part of the city.

1. July 8, 1857. Petition presented to the common council for paving La Salle street from South Water to Randolph.

2. Sept. 14, 1857. The City Superintendent submits to the committee on streets and alleys his *estimate and plans of work*. See page 25 and 26 of Record.

3. Sept. 16, 1857. Committee of the common council on streets and alleys report that the prayer of the petitioners be granted, and recommend certain orders to be passed, which were afterwards passed.

4. Nov. 9, 1857. Orders were passed ordering the improvement to be done in accordance with *the plans and specifications of the City Superintendent*, and commissioners of estimate and assessment were elected.

5. Nov. 13, 1857. Took oath to execute their duties.

6. Nov. 14, 1857. Commissioners published notice that they would meet all persons at No. 6 Dole's Building for the purpose of making assessment.

7. Dec. 9, 1857. Public notice was given by City Clerk that the Commissioners had made their assessment, and returned their assessment roll to his office, and that any person wishing to appeal to the common council to correct any errors could do so by filing their objection in the City Clerk's office on or before Monday, the 21st December, 1857.

8. Dec. 21, 1857. Order of confirmation was passed, no person objecting. See 24th page of Record.

I.

PROCEEDING FOR LEVYING AN ASSESSMENT.

These proceedings are the usual proceedings for levying an assessment.

The first error which the plaintiff assigns is that, "The court erred in rendition of judgment for the city; because there was no reference of these subjects of these improvements to a committee by the council, to prepare a plan of said improvements; and because the common council did not agree upon or *adopt* any plan thereof or estimate."

Now, with the record of this case staring the council in the face, I do not understand how such an objection as this could be urged and insisted upon with any show of fairness at all. Assumption is, however, the order of the day, in assessment cases—and the bolder the position assumed and the bolder the facts the better. Does the *charter* of the city of Chicago provide that before any public improvement can be made that it must first be *referred to a committee* of the common council, and for them to pronounce upon the policy of the same. The charter of the city of Chicago is a public law, and contains no such provision, but that seems to make no difference. This assessment must be assailed and some ground must be assumed in order to do it. Is not a common council like a legislative body, judges of how its proceedings shall be conducted? What subjects shall be brought before them, and when acted upon? and can this Court or any other court control their legislative discretion?

See—

Suarez v. Mayor of New York, Sandf. 174.

1 Duer. 498.

2 Denio 140.

3 Comstock 430.

The *charter* of a city is its *constitution*—and since gentlemen are so technical, and have such a holy horror of all departures from the established law in this class of cases—I ask them to point out any section in the charter requiring any such thing as a reference to a committee of the common council to *prepare a plan*. If there is no such requirement, then

in accordance with the case of *City of Ottawa v. Macy*, 20 Illinois 413, a compliance with the charter is sufficient.

See also, particularly—

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Now, I submit that a proper construction of this section will not imply any such thing as is here contended for. I contend that the ordinances are not made a part of this law at all, but that this section is merely of a declaratory character, and provides that all ordinances which were not inconsistent with the act, shall remain in force under this act, until altered, modified or repealed by the common council. It merely declares what

would have been the law, if this section of the act had not been passed. If this section had not been passed, all the ordinances of the city would have remained until they were repealed, of course. They would, however, have been *mere ordinances*, which I again repeat cannot be taken judicial notice of by this court.

That is all that there is in this section, and no ingenuity can, I think, make any more out of it.

IV.

The third assignment of error, that "Said assessment was made by said commissioners without due notice of their meeting for that purpose."

Sec. 4 Chap. 7 of Municipal Laws prescribes that the commissioners shall give six days notice in the corporation newspaper of the time and place of meeting, to all persons interested, and they may, if necessary, adjourn from day to day.

The 20th page of the Record shows that the commissioners strictly complied with this section.

See also—

City of Ottawa v. Macy, 20 Ill. 413.

V.

The sixth assignment of error is, "that the assessment amounts to more than three per cent. on the assessed valuation."

This point is wholly disproved by the record as a matter of fact. See page 7 of Record. The same question was discussed in the case of *Bristol v. City of Chicago*, although in that case, the question was strictly confined to the property of the plaintiffs in error; while here, the error assigned is general, and applies to the whole assessment, most clearly.

VI.

The seventh assignment of error is, that "The election of commissioners by the common council without a nomination by the Mayor, under the 6th section of amended charter of 1857, was without authority and void.

COMMISSIONERS NOT OFFICERS OF THE CITY.

That section reads as follows :—

"All *officers of the city* whose election by the people is not provided for in this act, or the act to which this is an amendment, shall, after the next annual election, be appointed by the Mayor of said city, by and with the advice and consent of the common council; any provision of law in relation to the appointment or election of such officers, now in force, providing for such appointment or election in any other manner, being hereby expressly repealed."

Now, the first thing to be decided here is, are commissioners of estimate and assessment, who are appointed for the purpose of levying an assessment, *officers of the city*? The officers of the city are particularly enumerated in chapter 2 of Municipal Laws, page 6, 7, 8, 9, 10, and commissioners are no where enumerated. Section 1 chapter 3 of Municipal Laws, page 11, prescribes that "Every person chosen or appointed to an executive, judicial or administrative office under this act, shall, before he enters on the duties of his office, take and subscribe the oath of office pre-

scribed in the constitution of this State, and file the same, duly certified by the officer before whom it was taken, with the clerk of the city."

Now, whoever thought or heard of the idea, that it was necessary for commissioners of estimate and assessment, who were to perform a duty, of an *occasional character*, which occasion is created by the common council, to swear that he has not fought a duel, or sent a challenge to fight a duel, &c., as prescribed by the constitution of the State—the thing is absurd; the section in question, I submit, means no such thing.

VII.

The eighth assignment of errors is, that "There was no valuation in money fixed upon said lots, and there was no sum of money assessed upon the same by the said commissioners; and the common council and the Common Pleas Court had no jurisdiction, power or authority to assess or give judgment against said lots for any sum of money."

The assessment roll which was introduced in evidence, appearing on page 22 of the transcript, is set out in and the word "*valuation*" is put over the top—without anything else—but at the bottom of the column the whole amount is figured up and the aggregate put down in dollars and cents, with the proper dollar marks. The *report* of the City Collector, found on page 5 of record, recites and explains the meaning of the figures found in the tabular columns, while the judgment book, found on page 9 of record, conforms in every respect to the *Lawrence v. Fast* dollars and cents rule. Does it make any difference as to where the dollar marks in an assessment roll are, whether at the top or bottom of the column, or whether a valuation should be set forth in dollars and cents, against *each* man's land, and each *marked* with the dollar marks—does not the word "*valuation*" at the *top*, and the dollar mark at the *bottom*, sufficiently indi-

cate without any "guessing," that the figures placed opposite each man's lot, means that it is valued at so much in dollars and cents? *A lithograph of a dollar and cent attached to each man's premises by the commissioners could not, in my estimation, make it more certain.*

VIII.

CONFIRMATION CONCLUSIVE.

The objections which are here made, I have shown on several other occasions at this term of the court, are proper grounds for opposing the confirmation of the report of the commissioners, and cannot be reviewed in this court. The parties have had *their day in court*, and having utterly neglected to interpose any objections, they are absolutely estopped. See sec. 7 of chapt. 7 page 40 of Municipal Laws, which makes the *confirmation* of the common council "final and conclusive on all parties interested."

2 Kernan 406.

1 Kernan 276.

9 Paige 16.

6 Paige 625.

CONCLUSION.

And now, in the language of Judge Treat, in the case of *Atkins v. Hinman*, 2 Gil. 452-3—"In dismissing the various objections taken to these proceedings, I cannot forbear the remark, that they are *perfectly technical*. The duty of every citizen to contribute, in proportion to the

"value of his estate, towards the support of the government which protects him in the enjoyment of his rights, must be acknowledged by all. The present revenue laws are liberal in their character; the rate of taxation is uniform and reasonable. The tax-payer can readily ascertain the amount he is required to pay. He has several months in which to make his payment, after his property is assessed. If he omit to pay, and his land is sold, he has still the right to redeem in two years from the sale. If, after this delay he suffers his title to be transferred to the purchaser, the loss must be attributed to his gross disregard of his duties and interests, and *not the fault or injustice of the law*. He should not, then, be permitted to defeat the title of the purchaser by interposing mere *technical objections*. If allowed to do it, he is enabled to take advantage of his own laches and wrong, not only to defeat the claim of the purchaser, but to avoid, altogether, the payment of his share of the public burden. Where all the material requisitions of the law have been *substantially* complied with, courts should not hesitate to sustain rights fairly acquired under them."

"It is time that the object and design of these enactments should be regarded. Judges should not be alert to discover frivolous objections, and resort to mere technical rules to sustain them, in order to defeat the claims of a purchaser. Such objections are generally insisted on, and have, in some instances, been countenanced by the courts. They proceed from a one-sided view of the subject."

Again Judge Scates says, in the case of *Hinman v. Pope*, 1 Gilman, 141-2: "The courts have adopted a rule of strict construction in these cases of naked powers, requiring a party to show a strict compliance with every prerequisite of law. This vigilance of the law upon naked powers, is a substitute for that vigilance which interest always prompts in those who execute a power coupled with an interest. *But technical rules should have their limit subservient to the public good*. The government must have revenue, and it must be collected from all; it must be en-

"forced from the unwilling and negligent by disposing of their property to those who are willing to advance the moneys. But *it will be impossible to do so if technical rules are applied* to defeat their rights acquired under sales upon all and every plausible pretext of error that ingenuity can from time to time suggest."

"If the public confidence is destroyed in ever acquiring a title free from technical objection, the state will be unable to collect her dues as no one will advance where the blunders of ignorance and negligence in executive officers, in not *complying literally* with the law, will be allowed to defeat their rights."

"*Legislation can hardly keep pace with ingenuity, so as to remove, or anticipate the grounds of objection.*"

Again, in the case of *McMillan v. Robbins*, 5 Ham. R. 28, Judge Hitchcock says—"I am aware that it is common to *complain of tax laws*, and there is, perhaps, no part of legislation which is more difficult to perform satisfactorily, or in such a manner as to do equal and exact justice to all, than to frame a revenue system. We are aware, too, that courts have been *ASTUTE to find defects* in tax sales; so much so, that in this State at least, it has become the general, if not the universal opinion, that a title derived under such a sale cannot be supported. Whether courts have done wrong in this, it is not for us to say. The consequences, however, as members of the community, we cannot but regard. That it has a direct tendency to *encourage* those who dislike to pay a tax, in the neglect of the performance of this duty, there can be no doubt."

E. ANTHONY,

Attorney for City.