

13262

No. _____

Supreme Court of Illinois

City of Chicago

vs.

Roth

71641  7

STATE OF ILLINOIS,
SUPREME COURT.
1326
Third Grand Division.

No. 220.

City of Chicago
vs
Rash

1861

Depeau

N. 220

SUPREME COURT
OF ILLINOIS.

THIRD GRAND DIVISION.

THE CITY OF CHICAGO, Appellant,

v.

CHRISTIAN ROTH, Appellee.

*Filed June 18th 1861
Le Leland
Clark*

ARGUMENT FOR APPELLANT

CHICAGO:

WM. CRAVENS & CO. STEAM JOB PRINTERS,
No. 132 LAKE STREET.

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, 1861.

THE CITY OF CHICAGO,

Appellant,

v.

CHRISTIAN ROTH,

Appellee.

} Appeal from the Superior
Court of Chicago.

ARGUMENT FOR APPELLANT.

This was a "test case," to determine the law of a large number of claims similar to this. It was tried and argued before one of the judges of the Superior Court, and was decided by another of them who had not heard the argument, and who, prior to giving his opinion, admitted it would be something of a "guess."

The amount involved in this particular suit is inconsiderable—but there was a very greatly larger amount dependent on the question to be determined. The importance of those questions justifies the city in asking for their consideration and settlement by the authoritative tribunal of the State.

I.

Let us look at the facts. Roth, a carpenter, prior to November 25, 1859, worked twenty-three and a half days, and after that date,

worked forty-seven and one quarter days, upon the employment and under the direction of Peter Beygeh, street commissioner of the west division of the city of Chicago, and such work was done on the street crossings and streets in that division and was necessary work. The appropriation by the common council for the fiscal year, April, 1859 to April 1860, for labor on streets and crossings, including street taxes worked, was twelve thousand dollars, and Beygeh had notice of the amount appropriated.

On the 29th June, 1859, the comptroller notified, in writing, the said street commissioner that there were no means at his disposal to pay for labor or anything else, and that there was no probability there would be, until the taxes were raised the next winter, and that if he employed any men—a single one—it would be at his own risk for pay, as he could agree to pay nothing before January next.

And also on November 23, 1859, another notice in writing was served on street commissioner Beygeh, to the effect that the amount appropriated by the common council to be expended by the commissioner, in street labor—twelve thousand dollars—was then very nearly expended and would be certainly, by the street tax to be worked out, so that there would not be another dollar to be expended—that he, the commissioner, should govern himself accordingly, as a single person employed by him would be on his own personal responsibility, as the comptroller could not pay one dollar beyond the appropriation, the law giving him no authority.

II.

What were the duties and powers of the street commissioner, under the charter and ordinances of the city?

The charter, (1851, chap. 3, section 13,) declares, "it shall be the duty of the street commissioners to superintend all local improvements in their respective divisions and carry into effect all orders of the common council in relation thereto. They shall keep accurate account of all expenditures made by them and render

"monthly accounts thereof to the council." This is the general authority conferred by the charter.

Sec. 4, chap. 2, charter 1851 provided for the election of a street commissioner for each division of the city.

Section 2, of chap. 51, of the municipal laws, p. 375 is as follows: "It shall be the duty of the several street commissioners, under the direction of the committee on streets and alleys of their respective divisions, faithfully to superintend all repairs and improvements upon the streets and alleys ordered by the common council (or in the judgment of the said street commissioner necessary to be made) within their respective divisions: *Provided*, that in all improvements not made by order of the common council the street commissioner shall confer with and secure the concurrence of such alderman as shall be appointed in each ward for that purpose before proceeding to make such improvements or repairs as aforesaid."

Also section 5, of said chapter: "No moneys shall be expended out of the general treasury for improvements or labor upon the streets and alleys, until all the collectable street tax has been collected and expended, without a special order of the common council directing the improvement or expenditure for which such payment out of the general treasury is to be made."

Section 11, of same chapter: "It shall be the duty of the street commissioner forthwith to mend all breaks or places requiring repairs in any street which may be planked under the direction of the committee on streets and alleys of their respective divisions, and report the expenses thereof to the common council for assessment or to be charged to the division, as the common council shall determine."

III.

Other provisions of the charter and ordinances bearing upon the question are—section 3, of the act, Feb., 1857, amendatory of the

charter:—"No contracts shall be hereafter made by the common council or any committee or member thereof, *and no expense shall be incurred by any of the officers or departments* of said city government whether the object of expenditure shall have been ordered by the common council or not, *unless an appropriation shall have been previously made concerning such expense.* The making of contracts and superintendence of all public works undertaken at the expense of said city shall be committed by law or ordinance of the corporation to some proper officer or department under proper rules and regulations preventive of fraud and collusion therein."

Section 7, of the printed and published ordinances—an "ordinance defining the duties of the city comptroller and other officers"—of 27th May, 1857, is as follows: "The comptroller shall require *all city officers* before incurring liabilities in their respective departments to ascertain from him *whether appropriations have been made by the common council to meet the proposed liabilities and that they shall not incur any liabilities whatever unless expressly ordered by the common council or the written order of the comptroller.*"

This section 3d, of amended charter, 1857, and section 7, of ordinance 27th May, 1857, were particularly relied upon by the city as answers to the claim of plaintiff below.

Sec. 5, of chapter 5, charter 1851, provides that the common council shall in all expenditures for strictly local purposes, expend annually in the several natural divisions of the city such proportion of the whole expenditure for like purposes during the same period as will correspond to the several sums contributed respectively by each division to the general fund.

Some reference to other provisions of the amended charter, 1857, relating to the "Treasury Department" will afford aid in the discussion and decision of the case. Sec. 10, the comptroller shall keep a set of books wherein shall be stated "the appropriations of the year for each distinct object and branch of expenditure." Sec. 13, —the warrant on the treasurer of the city for moneys payable, must "state therein the particular fund or appropriation to which the

same is chargeable." Sec. 15—Comptroller must in February, each year make and publish a detailed statement of receipts and expenditures, which shall also detail the condition of "all *unexpended* appropriations" &c., sec. 16. He shall in month of April, of each year, submit to the council an estimate, as nearly as may be, of the expenses of the city government during the ensuing fiscal year—in such report he shall "class the different objects and branches of said city expenditure, giving as nearly as may be the amount required for each" and for this purpose he is authorized to require of city officers and heads of departments their statements of the condition and expense of these departments and offices with any proposed improvement and the probable expense thereof, &c.

So, on defining the duties of treasurer, sec. 19, requires warrants to state the particular fund or appropriation to which the same is chargeable and "no money shall be otherwise paid than upon such warrants so drawn," Sec. 20.,—He shall keep a separate account of each fund or appropriation and the debts and credits belonging thereto. Sec. 21—Receipts shall state upon what account paid, sec. 24—his register of warrants redeemed and paid shall state the fund from which payable.

IV.

With these various provisions of the charter and of the ordinances in view and applied to the facts, it will not, probably, be thought difficult to determine the questions presented.

Is the street commissioner vested with a *general* power in relation to improvements and repairs in his division—has he a *general* jurisdiction over them, and, is he a general agent, like other agents, having power to bind his principal within the scope of his authority? These questions were held affirmatively by the Judge of the Superior Court.

But is this correct, either upon the facts or in contemplation of law? Under the ordinances, that officer has only special and defined author-

ity. Section 2 chapter 51, of municipal laws directs him to superintend all repairs and improvements upon streets and alleys ordered by the council (or *in the judgment of said street commissioner* necessary to be made,) *provided*, when the council does not order improvements, he shall *confer with and secure the concurrence of such aldermen* as shall be appointed in each ward for that purpose, before proceeding to make such improvements or *repairs*. Thus, it is seen, that the judgment of the commissioner as to repairs to be made is subject to a concurrence to be first had with aldermen of the ward. Then, in section 5 is the further restriction that no money is to be expended for labor on the streets *until all the collectable street tax has been collected*, without a special order of the common council directing it.

Further, sec. 11, makes it the duty of the commissioner forthwith to mend all breaks or places requiring repairs in any street which may be planked, *under the direction of the committee on streets and alleys* of their respective divisions and report the expenses to the council for assessment or to be charged to the division.

Upon these provisions, then, it is clear that the authority of the street commissioner is not discretionary. The concurrence of aldermen—the collection of the collectable street tax—the direction of the committee on streets and alleys, are restrictions upon his discretion. These are special limitations, upon the face of the ordinance defining his duties.

Then, there is the general restriction of section 3 of charter 1857 and of section 7 of ordinance of May 25th 1857, applicable to all officers and departments of the city. It is contended by us that whatever general authority the ordinances defining the duties of the street commissioner may have conferred, these last provisions,—of the charter 1857 and of the ordinance,—are absolute limitations on that authority so conferred, or on any authority otherwise reasonably to be implied from the nature of his duties, and, moreover, are such limitations as every one specially dealing with the officer, and the public, generally, must inquire into and know. This is the view to be taken, supposing the street commissioner to be simply an agent

having the powers and governed by the rules controlling private agents. But we think it extremely fallacious to apply the analogies derived from the law of private agencies to the acts of public officers.

It is said in Story on Agency, sec. 307 *a.*, "In cases of public agents, the government or other public authority, is not bound unless it manifestly appears that the agent is acting within the scope of his authority, or he is held as having authority to do the act or is employed in his capacity as a public agent to make the declaration or representation for the government. Indeed, this rule seems indispensable, in order to guard the public against losses and injuries arising from the fraud or mistake or rashness or indiscretion of their agents."

In *Smith v. The City of New York*, 4 Sandf., 221, the court had occasion to consider the power of an officer to bind the city when he has not complied with its ordinances. The Court held that the street commissioner is an independent public officer, acting under certain laws, and having no power except as he acts in conformity with them—and further, if an agent of the corporation in any sense, he is not an agent having power to bind his principal generally, but is one acting under special instructions, from which he cannot depart, and of which those dealing with him are bound to take notice.

So in *Mayor, &c., of Albany, v. Cunliff*, 2 Comst., 165, the same view is substantially taken, where it is said, that the officers of the city act for their constituents, who have to pay when they are responsible at all, and such officers are limited in their legitimate action to the powers conferred by their charters. So long as they confine their agency to such powers their constituents are responsible, for the plain reason that the constituents have selected the officers and have intrusted them with the performance of the duties. But the voters cannot with propriety be supposed to elect their officers with the intent that they should exceed their legitimate powers, and should such officers do so, whatever may be the rule as to themselves individually, their constituents never having even impliedly given their assent to the act should not be holden for the

consequences. The rule, although it may sometimes operate harshly, is a safe and sound one and should be applied uniformly to all cases of misconduct in persons acting in a representative character where they travel beyond their legitimate powers.

The same reasoning is to be found in *Brady v. The Mayor*, 2 Bosw., 173.

It is, therefore, apparent, that the analogies derivable from the implied powers of private agents, when applied to public officers, acting officially, are more specious than sound and tend to mislead. The only safe rule is to hold officers acting in a public capacity, strictly to their conferred powers. It cannot be assumed or permitted by courts that any excess of authority by them can bind the corporation. "It is clear, we think, he had no power to dispense with any of the regulations provided by the legislative power of the common council or to bind the city by a contract not made in accordance with them. We cannot regard the street commissioner as acting in the capacity of an agent of the corporation. He is an independent public officer, acting under certain laws, and having no power, except as he acts in conformity with them. * * * If he could disregard the ordinance as to the amount of the security to be required, he might as rightfully dispense with security altogether. The fallacy of the respondent's argument consists in considering the street commissioner as an agent having power to bind his principal generally. Whereas, if an agent in any sense, he is acting under special instructions from which he could not depart, and of which *the plaintiff was bound to take notice.*"

These general principles can be found in many cases. "The city is a body corporate, clothed with extensive powers for the management of her municipal affairs. She can only act through her officers and agents, and if those officers, in violation of her ordinances, do unauthorised acts to her prejudice, it would be hard she should be bound by them. * * We must all see the numberless frauds the sanctioning of the principle insisted on would produce."

"The argument confounds the city with her officers, and assumes that they are the city. If an officer of the city, in violation of her ordinances, makes a contract with an individual, is the city bound by such a contract?"

City of St. Louis v. Gorman, 29 Missouri, 593.

It is however unnecessary to cite farther authorities on this point. It remains to inquire now, how far persons dealing with city officers, whose duties are prescribed by charter or ordinances, are bound to take notice of the extent of the powers of such officers. Of course, so far as the charter, a public law, prescribes or limits the duties and powers of city officers, all persons are bound to know it. But on principle, there is no reason why inhabitants of a city should not be held to a knowledge of the municipal, as well as of the general public law and statutes of the State. City ordinances and police regulations, in their sometimes oppressive minuteness and details, and, the courts which administer them, could be sustained only by holding every individual within the municipal limits to the same presumption of knowledge which is the basis everywhere of the administration of justice. The ordinances of corporations, while acting within powers conferred on them by the legislature, have as binding an effect on the particular members of that corporation, as the acts of the general assembly have on the citizens throughout the State. The general and legal obligation to obey them is the same, and the consequences of non-obedience ought to be same.

Milne v. Davidson, 8 Martin, 586.

It will be seen that the courts have applied these principles, and hold the rule to be, that persons having relations with public officers, must know the extent of their authority, where it is created or limited by law or ordinance.

"The plaintiff making a contract with a public board of officers, is bound to know how far the powers of such officers are limited, and in what event they cease and their work is stayed, and to understand that his contract with them will be subject to such limitations

"and restrictions as the general public statutes of the State impose upon the subject matter."

Taft v. Pittsford, 28 Vermont, 286.

A member of a municipal corporation will be presumed to be aware of its by-laws and ordinances.

Inhabitants of Palmyra v. Morton, 25 Missouri, 593.

City of London v. Venacie, 12 Mod., 269.

Glover on Corporations, 290, 297.

"Agencies are indispensable in the transaction of the business of men; and if those who employ them are estopped to deny the validity of the acts performed by them, commerce must be restrained within very inconvenient, if not ruinous, bounds * * * Must not those who contract with the officers employed by the city see that the officers with whom they are contracting conduct themselves in pursuance to law?" 29 Missouri, 593.

Smith vs. City of New York, 4 Sandf., 221.

Those who deal with a corporation, the mode of whose action is limited, must take notice of the restrictions in its charter, and see to it that the contracts on which they rely are entered into in the manner authorized by the charter. *Brady v. The Mayor*, 2 Bosw., 173.

"And there is no hardship in requiring from private persons, dealing with public officers, the duty of inquiry, as to the real or apparent power and authority to bind the government. *Story on Agency*, sec. 207 a.

It must result from the preceding authorities applied to this case: *First*, that Beygeh was not such an agent of the city, having a general power and discretion over streets, their repair and improvement, in his division, as that he could bind the city by contracts within the seeming scope of his authority: *Second*—that he was bound to secure the concurrence of an alderman of the ward before he employed plaintiff to make repairs on the streets, that no money could be expended by him out of the treasury for labor on streets until the collectable street tax has been collected and expended, without a special

order of the council—that the breaks or repairs requiring forthwith to be mended were to be done under direction of the committee on streets and alleys of his division—and, at least, and particularly, he was bound to know whether appropriations had been made by the common council to meet the proposed liabilities in which he entered with plaintiff and, most specially of all was prohibited from *incurring any liabilities whatever unless expressly ordered by the common council or the written order of the comptroller* : and, *Third*—that these were limitations upon his powers as street commissioner, imposed by ordinances of the city, which the plaintiff was bound to know and must be supposed actually to have known.

The comptroller, on 25 June, 1859, notified the street commissioner, in writing, that there were no means at his disposal to pay for labor, and that if a single man were employed it must be at the risk, for pay, of the street commissioner himself. This was before any of the work was done or a man hired. In October and November, 1859, plaintiff did twenty three and a half days work. Then, on 23d November '59, the comptroller served another notice on the street commissioner—that the amount appropriated for street labor in his division was nearly expended and would be by the street tax to be worked out, so that there would not be another dollar to be expended, and that he must govern himself accordingly, as a single person employed by him would be on his own personal responsibility. After this notice was served, plaintiff performed forty seven and one quarter days of street labor.

What effect did the service of this notice have? Unquestionably, as to Beygeh himself, it would be to render him personally responsible—as the comptroller notified him, a single person employed by him, would be on his own personal responsibility. When he knew the appropriation was expended, and he had no order of council or of the comptroller, every subsequent contract for labor was in violation of the ordinances and an excess of power by him. The effect of the notice must be the same, as to the plaintiff. He was bound to know the ordinance, which limited the discretion and power of the street commissioner—was bound to know the charter

which restricted expenditures within appropriations made—and, as the street commissioner was prohibited from incurring any liabilities whatever unless expressly ordered by the common council or written order of the comptroller, he was equally bound to know if that authority had been given. These notices had been served on that officer for the express purpose of limiting the expenditure. Now shall it be contended or held, that in order that such intention should be effectuated, the notice must also have been served on the plaintiff? Clearly not. If he was bound to know the ordinance, he was bound to the full and reasonable extent of its meaning and requirements.

And could its meaning and requirements be held to be satisfied without further implying, on his part, a knowledge or notice that the appropriation was exhausted,—or, in other words, is it not to be taken that the comptroller's notice to Beygeh did "some impartment make" to Roth himself, so that, in the eye of the law, the notice to one was notice to the other?

If it, at all, affect plaintiff, it must be to the extent of imposing on him the duty of inquiring as to all and everything which touched upon, qualified and affected the commissioners' real or apparent authority to bind the city.

Less significance than this can hardly be attributed to the knowledge or notice which the law imputes to him.

To hold otherwise, is virtually a repeal of sec. 5, amended charter and of the ordinance May, 25, 1857. To so decide, is practically to say that the street commissioner has an unlimited and absolute control over the expenditures of his office, that, in the exercise of his own will, he may determine what labor shall be done, what men hired, what sum paid or the city be made liable for, without being controlled either by ordinances of the city, orders of the council or directions of the comptroller.

It is further, in substance, to repeal that clause of the charter which restricts local expenditures in each division to sums in proportion to the sums contributed by each division to the general fund.

In this instance, the appropriation fixed for the west division was

twelve thousand dollars—it was expended—and, if plaintiff, and those standing in like position, can recover here, then the amounts so recovered are so much expended in that division, beyond and over its proportion as settled by the council—expenditures not estimated and appropriated for, in regular course of law, but wholly created by the illegal, arbitrary and wilful action of the street commissioner.

And, in this connection, we again ask attention to the 5th section charter 1857, that no expense should be incurred by any of the officers or departments of the city, whether the objects of expenditure shall have been ordered by the common council or not, unless an appropriation shall have been previously made concernig such expenses.

The direct purpose of this section is to check expenditures and prevent municipal extravagance and corruption, by subjecting those expenditures, as far as practicable, to the control of the council.

And for the further purpose of preventing fraud and collusion, there are the other provisions as to classifying the different objects and branches of city expenditure which are to be specifically estimated for by the comptroller in his annual statement or "budget," and appropriated for by the council, and to be drawn and accounted for separately. It is manifest from these, and from the scope of all the other clauses of the charter organizing the financial department of the city, that each object of expenditure is to be distinct from all others, is to be separately provided for, in the tax levy, and the fund limited, in disbursement, to its particular class or object of appropriation. For instance, the fund for the police department is to be separately estimated for, and that estimate, as approved by the council, is to be the basis of taxation for that object, and that fund raised from the taxes is to be appropriated for that department exclusively—and so of all the other different objects of expenditure. By the observance of this system, the expenditures and receipts can be kept nearly equal, and always within control of the council. But is not this whole design of the charter defeated, if some officer may incur, for the city, liabilities beyond those intended and provided for by the common council?

By holding city officers strictly to the ordinance which requires them to ascertain the amount appropriated, and prohibiting them from incurring liabilities not ordered by the council or the comptroller—the ordinance being a “proper rule and regulation preventive of fraud or collusion”—and, by requiring, also, of all who deal with them the duty of inquiring as to their real or apparent power and authority to bind the city, the policy of the law can be maintained and accomplished. This policy is one which—considering the tendency to corruption and prodigality in municipal bodies—courts ought to be prompt to respect and enforce.

It is, clear in this case, that the plaintiff below was employed by Beygeh in violation of the ordinance. By his omission to inform himself as to the extent of the street commissioners’ authority, the plaintiff below himself is to be regarded as a participant in the violation of the ordinance. His employment then, was illegal, and his claims based on and springing directly from that employment, cannot be aided in a court of justice, without disregarding the policy of the law and setting at naught its plainest requisitions.

It may be said it is a hardship that the city should have the labor of Roth, and that Roth should not have his reward, or his labor’s worth. But it is a hardship he brought on himself. And considerations of private hardship cannot be paramount to those of public policy. Safeguards against improvidence and corruption cannot be overthrown, ordinances cannot be judicially annulled, for the sake of averting, in some particular instance, a seeming or actual hardship, and especially, when it is the result of the party’s own act.—And, as the court says in *Fox v. New Orleans*, 12 Lou. An. R., 154, “if by overriding this statute, the municipal officers could saddle the city with the expenses of the contracts they choose to make in defiance of its mandates, the tax-payers would become an easy prey to the jobbing contracts which it was the commendable object of the statute to defeat.”

These general views are similar to, or, in principle, sustained by those in

Smith v. City of New York, 4 Sandf., 221.

Altemus v. Mayor, &c., 6 Duer., 446.

Fox v. Sloo, 10 Lou. An., 154.

Brady v. Mayor, 3 Bosw., 173. S. C. 20, N. Y. R., 312.

It cannot be contended, here, that the work done by Roth was such as was required upon some sudden emergency, such as filling up holes, &c., made by casualty.

His employment *continued*, in October and November twenty-three and a half days, and after the 25th of November, forty-seven and a quarter days. Many other persons were similarly employed and continued. The fact excludes the pretension as to the employment being casual.

And besides, the ordinance requires the street commissioner forthwith to mend all breaks or places requiring repairs in any street which may be planked, under the direction of the committee on streets and alleys, of the division, and report the expenses to the council.

Finally—This is not one of the cases where an implied assumpsit can be maintained. Anything done by an officer of the city, beyond his authority, can no more be the ground of an implied, than the subject of an express contract. The charter and the ordinances would be a nullity as much in the one case as the other. And see *City of Alton v. Mulledy*, 21 Ill., 76.

JOHN LYLE KING,
Attorney for the City.

SUPREME COURT OF ILLINOIS

THIRD GRAND DIVISION.

April Term, 1861.

CITY OF CHICAGO, Appellant,

v.

CHRISTIAN ROTH, Appellee.

*Appeal from the Superior
Court of Chicago.*

Abstract of the Record.

This was an action of Assumpsit. The Count was for work and labor.

Plea—General Issue.

Case submitted to Court for trial without a Jury. The parties filed an agreed state of facts, given in the Bill of Exceptions—of which agreed facts an abstract is as follows :

9 The appellee is a carpenter, and worked on street crossings and streets in the West Division of the City, in October and November, 1859, twenty-three and a half days, at one dollar and a quarter per day, being \$29.37. He was employed for such labor by Peter Beygeh, Street Commissioner of West Division, and it was done under his direction, and was necessary work.

10 Appellee labored on streets and crossings on West Division after the 25th November, 1859, forty-seven and one quarter days, at the wages aforesaid, making a sum of fifty-nine dollars, six cents. This labor was done from time to time, during the time aforesaid, as called for by Street Commissioner, and under his direction. One half days work of above time was in putting up proper protections for the polling place, at the March Election, 1860.

11 Appellee has requested and demanded frequently of the Mayor, Comptroller and Common Council, payment of each of above amounts, which have been refused, and whole amount unpaid is, eighty-eight dollars, fifty-five cents.

12 The appropriation by the Common Council for the fiscal year, April 1st, 1859 to April 1st, 1860, to West Division, for labor on streets and crossings, including street taxes worked, was twelve

thousand dollars, and Peter Beygeh, Street Commissioner, had notice of the amount appropriated, and was frequently reminded of it during summer of 1859.

12 On the 29th June, 1859, the following notice of that date, was served on said Beygeh. "I hereby notify you that there are no means at my disposal to pay for labor or anything else, and I see no probability that there will be until the taxes are raised next winter. So if you employ any men (a single one,) it will be at your own risk for pay, as I can agree to pay nothing before January next, as the Superior Court has enjoined us from borrowing any money."

Yours,
SAMUEL D. WARD,
City Comptroller.

13 And afterwards, on the 23rd November, 1859, a notice of that date was also served on said Street Commissioner, Beygeh, as follows:

"The amount appropriated by the Common Council to be expended by you, was twelve thousand dollars in street labor. That amount is now very nearly expended, and will be certainly by the street tax to be worked out, so that there will not be another dollar to be expended in money. You will please govern yourself accordingly, as a single person employed by you, will be on your own personal responsibility, as I can not pay one dollar beyond the appropriation, the law giving me no authority."

Yours respectfully,
SAMUEL D. WARD,

City Comptroller.

15 The foregoing, except the ordinances of the City referring to or bearing upon the issue in the case, was all the evidence given in the case. It is stipulated that all provisions of the charter and ordinances
16 of the City bearing on the issue, are to be read by the parties from the printed and published copies of the same, and considered as incorporated in the record.

The Court found for the plaintiff, and assessed the damages at \$87.77.

16 Defendant moved for new trial, because finding was contrary to law—contrary to evidence—ought to have been for defendant. Motion overruled. Defendant excepts.

ERRORS ASSIGNED.

The appellant assigns as error, the finding of the Court on said issue for plaintiff below, and the refusal of the ^{Court} ~~account~~ to set aside such finding and grant a new trial, and the rendering judgment on such finding for the plaintiff below.

220
City of Chicago

^{no}
Christian Rott

Abstract

Filed Apr 17. 1861

A. Keland
Clerk

UNITED STATES OF AMERICA,
STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Third day of December in the year of our Lord One Thousand Eight Hundred and Sixty fifth and of the Independence of the United States of America the Eighty fifth.

Present, The Honorable John M. Wilson Chief Justice of the }
Superior Court of Chicago. }

Wm. A. Higgins }
Grant Goodrich } Judges.

Charles Hagan Prosecuting Attorney.

Anthony C. Heising Sheriff of Cook County.

Attest, Walter Kimball Clerk.

It is remembered that heretofore to wit: on the eighteenth day of December A.D. 1860, Christian Roth by Garrison & Anderson his attorneys filed in the office of the Clerk of the Superior Court of Chicago his certain declaration which is in the words and figures following. to wit:

2

Superior Court of Chicago
Of December Term 1860

State of Illinois
County of Cook ss.

Christian Roth plaintiff
in this cause by Garrison & Anderson his
Attorneys Complain of the City of Chicago defendants
of a plea of Trespass on the Case on promises
For that whereas the said defendant
heretofore to wit: at the City of Chicago in
the County of Cook aforesaid. to wit: on
the first day of December A.D. 1860 was
indebted to said Plaintiff in the sum of two
Hundred dollars lawful money of the United
States of America for the work and labor, care
and diligence of the said Plaintiff by the
said Plaintiff before that time done and
performed as laborer Carpenter & Mechanic
and bestowed as such in and about the
business and the making and repairing
the struts, Strut Cropping and side tracks
of said City in the West Division thereof
such labor and services being done at
the special and request of said defendant
and under the direction and at the
request of Peter Beyger. Street

Commissioner of said division.

And whereas also the said defendant afterwards built at the time and place last aforesaid was indebted to said plaintiff in the further sum of two Hundred dollars lawfull money as aforesaid, in Consideration that plaintiff had before that time at the like request of defendant performed and bestowed divers other work & labor as Carpenter & laborer in and about the making, keeping and repairing the streets, crossings & side walks of said division of said City and in putting them in necessary repair and condition the said defendant then and there undertook & promised to pay plaintiff so much money as plaintiff reasonably deserved for such labor work care and diligence when they said defendant should be therunto requested. And plaintiff avers that he deserves to have of defendant the said sum of Two Hundred dollars to wit at the place aforesaid. Whereof

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the defendant to wit. at said
time, and place had notice -
Nevertheless the said defendant
although often requested so to do
has not paid said sum of money
above mentioned or any part
thereof but neglect and refuse so
to do to the damage of Plaintiff
of two Hundred Dollars. and
therefore he brings suit vs.
Perrison & Anderson
attys for Plff

And afterwards to wit. on the
said day and year last aforesaid
said defendant by its attorney filed
in the office of the Clerk aforesaid
certain pleas in the words and
figures following to wit.

Superior Court of Chicago

Christian Roth
The City of Chicago } and now

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Comes said defendant by its atty
J Lyle King and defends the wrong
and injury when re and says.
said defendant did not undertake
and promise in manner and
form as the said plaintiff parts
above thereof complained against
them and of this the said defendant
puts themselves upon the Country &c
J Lyle King
attys for the City

And as to the above plea whereof
the said defendant puts itself
upon the Country. Plaintiff does
the like &c

Garrison & Anderson
attys for Plaintiff

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And afterwards to wit on the 15th
day of March A.D. 1861 said day
being one of the days of the march
Term thereof. the following among
other proceedings were had and
entered of Record in said Court.
to wit:

Christian Roth
The City of Chicago } } } agreed case

This day comes
the said plaintiff by Garrison & Anderson
his Attorney and the said defendant
the City of Chicago by John Lyde King
City attorney also comes and upon
agreement of the parties made now
here in open Court this agreed
Case is submitted to the Court
for trial on the merits upon and
agreed state of facts, and the Court
now here after due deliberation
being fully advised in the premises
finds issues for the said plaintiff
and assesses his damages to the
sum of eighty seven dollars and

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Seventy seven Cents. whereupon said
defendants submit motion for a
new trial which is ordered by the
Court. to which ruling and decision
of the Court the defendant enters
exceptions.

Therefore it is considered
that the said plaintiff do have and
recover of and from the said de-
fendant his damages of eighty
seven dollars and seventy seven cents
in form aforesaid found and assessed
by the Court together with his costs
and charges in this behalf expended
and thereof have execution therefor.

And thereupon the said defendants
having entered exceptions pray an
appeal herein to the Supreme Court
of this State. which is allowed
the said defendant. without filing
bond. by Consent of Plaintiff's
attorney. bill of Exceptions to be filed
within ten days from this date.

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And afterward to wit, on the same day and year last aforesaid. there was filed in the office of the clerk aforesaid a certain Bill of Exceptions which is in the words and figure following to wit:

Superior Court of Chicago
March Term 1861.

Christian Roth
The City of Chicago } Bill of Exceptions

Be it remembered that on the trial of this case in said Court on the 15th day of March 1861 at the March Term of said Court was by the agreement of the parties submitted to the Court for trial on the issues joined without the intervention of a jury - And ^{it was} thereupon further agreed by the parties that the following agreed facts were to be ~~presented~~ ^{presented} and taken as part of the evidence in this case namely:

of which labor was upon the streets
and Crookings in the vicinity of the
fine in the fall of 1859 between Lake
and Kenzie Streets in said West divi-
sion of said City. One half days
work of which above time was done
under the direction of said Com-
missioner in putting up proper pro-
tections at the polls for Election in
said West Division in March last

And further plaintiff has re-
peatedly requested and demanded
of the Mayor, Comptroller, Treasurer
and Common Council of said City
until the Commencement of this suit
and each one of them in due
form of law payment of each of the
above amounts so due to him for
his labor as aforesaid, which
payments have been refused and
and said Officers and City de-
nying that they are liable therefor.
And the whole amount of eighty
eight dollars and forty five Cents.
is still unpaid.

It is further agreed that

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the appropriation by the Common
Council of said City for the fiscal
year 1859. April 1. 1859 to April 1. 1860
to said West Division for labor on
said streets and crossings including
street taxes worked out was twelve
thousand dollars. And that said
Commissioner had notice of the
amount so appropriated to said
Division and was frequently reminded
of it during the summer of 1859.

And that in June 1859 the
following notice was served on him.

Comptroller's Office
Chicago June 29 1859.
Peter Buggch Esq
A Commissioner

West Division.
Dear Sir

I hereby notify
you that there are no means at my
disposal to pay for labor or any thing
else. and I see no probability that
there will be until the taxes are
raised next winter. so if you employ
any men (a single one) it will

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be at your own risk for pay, as
I can agree to pay nothing before
January next as the Superior Court
has enjoined us from borrowing any
money.

Yours
Saml D Ward
City Comptroller.

And it is further agreed that said
City Comptroller served on said
Commission at the time in said
notice mentioned and dated the
following notice, to wit.

Comptrollers Office
Chicago Nov 25 1859.

Mr John Ryggch

Street Commission, West
Division, City of Chicago

The amount appropriated by
the Common. Council to be expended
by you was twelve thousand dollars
in street labor that amount is now
very nearly expended and will be
entirely by the street tax to be worked
out so that that there will not be

another dollar to be expended in money.
You will please govern yourself
accordingly, as a single person
employed by you would be on your
own ~~account~~ personal responsibility
as I cannot pay one dollar beyond
the appropriation. the law giving
me no authority.

Yours Respectfully
Saml B Ward,

City Comptroller

It is further agreed that the
payment of the above sum was
declined on the ground that the ap-
propriation made as aforesaid
was exhausted and also that said
Comptroller alleged that he had no
authority on the part of the City to
pay the same or means for that
purpose —

It is further agreed that the
acts Incorporating the City of Chicago
and also the acts defining the
duties of said Trust Commissioners
and Comptroller be made part of
this agreed Case. —

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And it further agreed that all ordinances legally passed and of legal effect and bearing upon this issue may be read on the argument and incorporated herein as part hereof.

But it is expressly agreed that so much or any part thereof of the facts above stated as either party may desire to object to, may be objected to and are subject to the decision of this Court as proper evidence in this case, and also are the ordinances that may be introduced subject to the objection of relevancy. materially &c.

Garrison & Anderson
for Reff

J. Lyle King
Atty for the City.

Excepting certain ordinances of said City introduced and read in evidence from the printed and published Municipal laws and the ordinances of said City. the above and foregoing was all the evidence offered and read in the case.

And as to said ordinances it was
Expressly agreed by the parties that
the same and all printed and published
ordinances bearing on the issue in
this cause might be read and
introduced from the printed copies
of the same. And that the same
were to be considered as if incorporated
in terms in the evidence. And all
other published ordinances ~~and~~ pertinent
to this case and such as are therein
recited as laws and ordinances as
being legally passed and published
may be used and read in the Court
as if incorporated in the Record.

And the Court then and there found
the issues for the plaintiff and assessed
the damages at the sum of Eighty seven
dollars, seventy seven Cents. And
thereupon the said defendant by
her attorney moved the Court to set
aside the said finding and decision
of the Court, and grant a new
trial, because said finding and
decision were contrary to the law.
2^d said finding and decision were

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Contrary to the evidence and
3^d the finding and decision of the
Court ought to have been in favor of
the defendant instead of for the
plaintiff. Which said Motion to set
aside said finding and decision
of the Court and grant a new trial
the said Court then and there
overruled and denied, and to the
opinion and decision of the Court
overruling said Motion the defendant
by her attorney then and there excepted.
And thereupon the Court rendered and
gave judgment on the finding and for
the sum aforesaid in favor of the
plaintiff - And defendant prayed
an appeal which is allowed, and
it was agreed by the parties that the
said defendant should not be
required to file a bond - And
it was further agreed by the parties
that the appeal in this case be taken
to the next (April) term of the Supreme
Court by consent of the parties -
And inasmuch as said matters
and exceptions do not appear

of record the defendant prays they
may be made of Record of Bill
of Exceptions - And this Bill of
Exceptions is accordingly signed
and sealed,

Signed and sealed at the Court
House in the City of Chicago
Illinois this 15th day of March
1861. Van N Higgin, Esq.
Judge

It is expressly stipulated in this case that
all ordinances of said City and all provisions
of the Charter of said City bearing upon the
issue in this case, may be introduced
and read on the trial of this case in the
Supreme Court from the printed and published
copies of the same, as if they were
incorporated in hac verba in the bill
of Exceptions - And further that this
case shall be tried at the April
term of the Court.

Garrison & Anderson
for Roth
Jr by Knip
for the City

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State of Illinois
County of Cook Ss.

I Walter Kimball
Clerk of the Superior Court of Chicago
in and for said County of Cook
and State aforesaid. do hereby Cer-
tify, the above and foregoing to be a
true and Correct Copy of the Dec-
laration. Pleas + Bill of Exceptions
now on file in my office in the
Case wherein Christian Roth is plaintiff
and the City of Chicago defendant
and also the order made and
entered of Record in said Cause

In testimony whereof I
hereunto set my hand and
affix the seal of said Court
at Chicago. in said County
this Twelfth day of April.
A.D. 1861.



Walter Kimball Clerk
#

Supreme Court of Illinois
The City of Chicago April Term 1861.

Christian Roth

And now comes said City of Chicago
Appellant by John Lyle King her attorney and
says that in the record and proceedings aforesaid and
in giving ^{the} judgment aforesaid there is manifest
error in this

That the finding and decision of the Court
below were contrary to the law - That the finding
and decision of the Court below were contrary
to the evidence - That the finding and decision
of the Court below ought to have been in
favor of the defendant ~~below~~ ^{above} instead
of for the plaintiff below - That the
Court erred in refusing the motion of the
defendant below for a new trial - That
the Court below erred in rendering the
judgment aforesaid. Wherefore Appellant
prays that the judgment aforesaid be
reversed, annulled and set aside -

John Lyle King
Attorney for the City of Chicago

And said appellee comes and says that
there is no error in the record and proceedings
nor in the judgment given as aforesaid as above
alleged.

Garrison Anderson
for Appellee