

No. 13178

Supreme Court of Illinois

City of Chicago

vs.

Hosley

STATE OF ILLINOIS, 8)

SUPREME COURT,

Third Grand Division.

1857
No. 26.

Thosley
vs
Chicago

13178

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

CITY OF CHICAGO, Plaintiff in Error, }
vs. }
GEORGE H. HOSLEY, Defendant in Error. }

ABSTRACT OF THE RECORD.

PAGE OF REC.

- 1 Suit in assumpsit by *Hosley vs. City of Chicago*; process issued May 21st, 1857.
- 2 Return of Sheriff showing service, May 22, 1857.
- 3 Declaration filed June 9th, 1857, alleging that on the — day of —, A. D. 1856, the city of Chicago, by its common council, appointed commissioners to ascertain and appraise the damages and benefits by reason of opening an alley through Block eight, Duncan's Addition to Chicago, and commissioners appraised and valued one frame house belonging to plaintiff, at \$1,000, and commissioners so reported to common council; that council ordered that city marshal sell all buildings standing on said condemned property, the owners of which had not accepted the award
- 4 of commissioners; that the city marshal advertised and sold the said house and delivered the same to one Fenton; by reason whereof defendant became liable to pay plaintiff \$1,000, and promised to pay said sum.
- 5 Common counts: For goods, wares, merchandise, &c., sold and de-
- 6 livered; for money paid, laid out, and expended; for money had and received, and on an account stated *quantum meruit*, for house sold and delivered.
- 8 Declaration concludes to plaintiff's damage \$2,000.
- 9, 10 Default of defendant and judgment for \$1,000, July 9th, 1859.
Writ of *fiery facias* issued August 8th, 1859, in usual form, against lands and tenements, goods and chattels of city of Chicago.
- 13 Motion by defendant to set aside judgment overruled June 6th, 1859.
- 14 Motion by defendant to set aside and quash execution theretofore issued, for the reason that the statutes do not authorize execution to

PAGE OF REC.

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issue against the property of a municipal corporation, filed October 27, 1859.

Motion to quash execution overruled December 10, 1859, to the overruling of which motion defendant excepted.

ERRORS ASSIGNED.

That the Court overruled the motion to quash the execution issued in the cause.

GEORGE F. CROCKER, *J. Anthony*
Attorney for Plaintiff in Error.

And the said defendant, by E. F. Runyan, his attorney, says that the Court did not err in overruling said motion.

E. F. RUNYAN,
Defendant's Attorney.

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City of Chicago

vs

George H. Husley

Abstract

Filed Apr. 16th 1861

L. Leland

Clerk

SUPREME COURT,

THIRD GRAND DIVISION,
APRIL TERM, A. D. 1861.

CITY OF CHICAGO,
Plaintiff in Error.
vs. *l*
GEORGE H. HANSEY,
Defendant in Error.

POINTS FOR PLAINTIFF IN ERROR.

I.

An execution cannot issue against a Municipal Corporation in this State, unless it is expressly authorized by Statute.

Monaghan vs. City of Philadelphia, 4 Casey 210.

Gilman vs. County of Costa, 8 California, 52.

Emeric vs. Gilman, 10 California, 408.

1 Louisiana 435

13 Wend 354

II.

There is no Statute authorizing an execution to issue against the City of Chicago; therefore, any execution which is issued against said City, is issued without authority, and should be set aside as illegal and void.

ELLIOTT ANTHONY,

Attorney for Appellant.

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City of Chicago

vs

George H. Husky

Abstract
Points

Filed Apr. 16th 1861

L. Leland
Clark

RECEIVED
MAY 16 1861
CLERK OF THE COURT

RECEIVED
MAY 16 1861
CLERK OF THE COURT

United States of America }
State of Illinois Cook County } R

Placed before the Honorable the Judges of 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 fifth day of December in the year of our Lord one thousand eight hundred and fifty nine and of the Independence of the United States of America the Eighty fourth.

Respect The Hon John M. Wilson Chief Justice
of Superior Court of Chicago

Wm H Higgins & Grant Gordon Deputies
Carlos Hansen Prosecuting Attorney
John Gray Sheriff of Cook County

After

Walter Kimball Clerk.

Be it remembered that heretofore to wit on the Twenty first day of May A.D. eighteen hundred and fifty seven there was issued out of and under the Seal of said Cook County, Court of Common Pleas a Writ of Summons: Which said Summons with the Sheriffs return thereon indorsed is in the words and figures following, to wit

" State of Illinois }
County of Cook } ss

The People of the State of Illinois to the
Sheriff of said County, Greeting:

We command you that you summon the City of Chicago if it shall be found in your County, personally to be and appear before the Cook County Court of Common Pleas of said County on the first day of the next term thereof to be holden at the Court House in the City of Chicago in said County on the first Monday of June next to answer unto George H. Hosley in a Plea of Trover for the case on promises to the damage of the said Plaintiff as he pays in the sum of Two thousand dollars.

And have you then and there this Writ with an endorsement thereon in what manner you shall have executed the same.

Witness Walter Kimbale Clerk of our said Court
and the Seal thereof at the City of Chicago in
said County this 21st day of May A.D. 1857.
Walter Kimbale, Clerk"

Indorsed " Served the within named City of Chicago by John Wentworth, Mayor of said City and Herr Krisman City Clerk

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of said City and by delivering a copy to them this 29th day of
May A.D. 1857.

John L. Nelson - Sheriff

By George Anderson - Depy:

And thereafter to wit on the Ninth day of June A.D.
Eighteen hundred and fifty seven the said Plaintiff by his
Attorneys, filed in the Office of the Clerk of said Court, his
Declaration in said suit, in the words and figures following
to wit.

" State of Illinois } The Cook County Court of Common
County of Cook } Pleas Of the July Term A.D. 1857.

George H. Mosley by Brown & Runyan his attorneys
Complain of the City of Chicago of a Plea of Trespass on the Case
upon promises. Now that whereas the said Defendant on the
day of

A.D. 1856 at Chicago in said
County by their Council in Session passed an Order appointing
F. A. Bragg, Ruben Taylor and B. H. Hayes, Commissioners
to ascertain and appraise the damages and benefits resulting
to owners of Real Estate by reason of the opening of an alley
through Block Eight Duncans Addition to Chicago, and by
reason of said appointment and by the authority vested in them
as such Commissioners, they the said Commissioners valued
and appraised one frame House belonging to the said Plaintiff
situated upon said proposed condemned property at One thousand
dollars, which said appraisement was duly returned to the City
Clerk of the City of Chicago, under the hands of the said

Commissioners. Also a report that said City Marshal he and he is hereby directed to proceed forthwith to advertise for Sale at Public Auction on the premises as required by law all building standing upon ground proposed to be taken for opening Alley through Blocks Nos 8 and 12 in Duncan's Addition to Chicago, the owners of which have failed or refused to accept the award of the Commissioners appointed to make the Assessment for opening said Alley under the hand of F. A. Bragg Sup^r Special Assessments. After which under and by virtue of an Order issued to the said Marshal, to the said Marshal of the City of Chicago under and by virtue of the said Order afterwards to wit on the day and year aforesaid advertise and afterwards sold the said Street aforesaid and delivered the same to one Charles Fulton.

By reason whereof and by force of the Statute in such case made and provided, the said Defendant became liable to pay to the said Plaintiff the sum of One thousand dollars, and being so indebted and liable, the said Defendant in consideration thereof, afterwards to wit on the same day and year and at the place aforesaid undertook and then and there faithfully promised the said Plaintiff well and truly to pay unto the said Plaintiff the said sum of money aforesaid.

And whereas also the said Defendant afterwards being on the day and year last aforesaid at the City of Chicago in said County aforesaid was indebted to the said Plaintiff in the sum of One thousand dollars lawful money for divers goods wares and Merchandise, houses, farms, lumber, laths, shingles, plaster, lime, sand, &c. by the Plaintiff before that time sold and delivered

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to the said Defendant at its special instance and request; And also in the further sum of One thousand dollars for houses sold and delivered by the Defendant for the said Plaintiff And also for other houses sold by the Officers of the said Defendant belonging to the said Plaintiff; And also in the further sum of One thousand dollars of like lawful money for money by the said Plaintiff before that time but not advanced to and paid out and expended for their said Defendant, and at their like special instance and request; And also in the further sum of One thousand dollars of like lawful money for other money by the said Defendant before that time had and received to and for the use of the said Plaintiff and being so indebted to the said Defendant in consideration thereof afterwards to wit on the day and year aforesaid at the City of Chicago aforesaid undertook and then and there faithfully promised the said Plaintiff to pay him the said several sums of money in this Court mentioned when he the said Defendant should so thereto afterwards request.

And whereas also the said Defendant afterwards to wit on the day and year last aforesaid, at the City of Chicago in said County aforesaid accounted with the said Plaintiff of and concerning the sales of other houses, furniture, tools, stables, sold and delivered by the said Plaintiff to the said Defendant; and drew other sums of money from the said Plaintiff, if and concerning divers other sums of money from the said Defendant to the said Plaintiff, before that time due and owing and then in arrears and unpaid, and upon such accounting the said Defendant was then and there found to be in arrears and indebted to the said Plaintiff in the further sum of One thousand dollars of like

7 lawful money, and being so found in arrears and indebted he the said Defendant undertook and then and there faithfully promised the said Plaintiff to pay him the said last mentioned sum of money, when he the said Defendant should be thereto afterwards requested.

And whereas also afterwards to wit on the day and year last aforesaid, at the City of Chicago aforesaid in consideration that the said Plaintiff at the like special instance and request of the said Defendant had before that time sold and delivered to the said Defendant at the special instance and request of the said Defendant one certain House situated on a part of Block Eight in Duane's Addition to Chicago, the said Defendant undertook and then and there faithfully promised the said Plaintiff to pay him so much money as he therefore reasonably deserved to have of the said Defendant when he the said Defendant should be thereto afterwards requested such the said Plaintiff avers, that he therefore reasonably deserved to have of the said Defendant the further sum of One thousand dollars of like lawful money to wit at Chicago aforesaid, whereof the said Defendant afterwards to wit on the day and year last aforesaid then had notice.

And whereas also afterwards to wit on the day and year last aforesaid at the City of Chicago aforesaid in consideration that the said Plaintiff at the like special instance and request of the said Defendant had before that time sold and delivered to the said Defendant by its properly constituted Officers, who were acting under and by virtue of an Order issued on behalf of the Corporation of the City of Chicago, one certain frame

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house situate on a part of Block Number Eight in Duane's Addition to Chicago, and for lumber, lath, shingles, stone, brick, lime & Mortar the said Defendant undertook and then and there faithfully promised the said Plaintiff to pay him so much money as the said last mentioned house, lumber, lath, shingles, lime, stone and brick at the time of the said sale and delivery thereof were reasonably worth when the said Defendant should be thereunto afterwards requested. And the said Plaintiff avers that the said last mentioned house, lumber, lath, shingles, brick, lime and stone at the time of the said sale and delivery thereof, were reasonably worth the further sum of One thousand dollars of like lawful money to wit at the City of Chicago aforesaid, whereof the said Defendant afterwards to wit, on the day and year last aforesaid then had notice.

Nevertheless the said Defendant not regarding the said several promises and undertakings but contriving & fraudulently intending craftily and subtly to deceive and defraud the said Plaintiff in this behalf hath not as yet paid the said several sums of money, or any or either of them, or any part thereof, to the said Plaintiff (although often requested so to do) but the said Defendant to pay him the same hath hitherto wholly neglected and refused, and still doth neglect and refuse to the damage of the said Plaintiff of Two thousand dollars and therefore he brings his suit &

Brown & Kinyan
Plffs. Petrs."

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Copy of Account sued on,

To 1 house sold and delivered	\$2000.00
" 1 house sold	2000.00
" 1 house sold by the Marshall upon an order from the City authorities belonging to Plaintiff	2000.00 2000.00
" 1 house Appraised and sold to the City	2000.00
" 1 house " sold and delivered	2000.00
" 1 house on part Block 8 Duncans Addition to Chicago	2000.00
" Lumber, Lath, Shingles, Stone & Lime	
" Money lent and advanced	2000.00
" " paid out	2000.00
" " on account stated	2000.00
" balance due on account stated	2000.00

X

And afterwards to wit on the Ninth day of July (being
one of the days of the July term of said Court) A.D. Eighteen
hundred and fifty seven, the following proceedings were had
in said cause and entered of record in said Court to wit,

"George H. Hosley

(w)

The City of Chicago

Att^y

And now on this day comes the said
Plaintiff by Brown & Runyan his Attorneys and it appearing to
the Court that due personal service of process of Summons

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issued in this Cause has been had on the said Defendant, by due personal service thereof on John Wentworth Mayor of the said City of Chicago, and the said Defendant being three times solemnly called in open Court, comes not, nor does any person for the said Defendant, but the said Defendant herein makes default. Which on Motion is ordered to be taken and is hereby entered. Therefore said Plaintiff ought to have and recover of said Defendant his damages sustained by occasion of the premises and the Court having heard the proof and allegations submitted and being fully advised now assesses said Plaintiff's damages herein to the sum of One thousand dollars.

Therefore it is considered that said Plaintiff do have and \$1000.00 recover of the said Defendant his damages of One thousand dollars so as aforesaid by the Court assessed and also his costs and charges by him in this behalf expended and have execution therefor.

And afterwards to wit on the English day of August A. D. eighteen hundred and fifty nine, there issued out of and under the Seal of said Court, a Certain Writ of the People, commonly called a Fieri Facias: Which said Writ now in the hands of the Sheriff of Cook County, together with Notice of Sale is in the words and figures following to wit,

State of Illinois }
County of Cook } S.

The People of the State of Illinois to the
Sheriff of said County, Greeting;

The Command ^{as we have that of the} ~~you~~ ^{Land} and ^{Government} ~~you~~ ^{Sanct} and ^{and} ~~you~~ ^{Town} ~~you~~ ^{ments}, ~~you~~ ^{Goods} and ~~you~~ ^{Chattels} of City of Chicago Defendant in your County, you cause to be made the sum of One thousand dollars which George H. Hosley, Plaintiff, solely in the Cook County Court of Common Pleas of said County at a term thereof begun and held at Chicago in said County on the first Monday of July A. D. 1859 recovered against the said Defendant, and which by the said Court was adjudged to the said Plaintiff for his damages And also the further sum of Nine dollars and sixty five Cents which were adjudged to the said Plaintiff for his Costs and charges in that behalf expended whereof the said defendant was convicted as appears to us of Record

Thus have you these Monies ready to render to the said Plaintiff for his damages and costs aforesaid and make return of said Writ, with an Incarcerment thereon, in what manner you shall have executed the same, in Ninety days from the date hereof.

Seal,

Witness, Walter Kimbale, Clerk of ^{the Superior} ~~our~~ ^{of Chicago} ~~said~~ ^{Court} and the Seal thereof at Chicago in said County this 8th day of August A. D. 1859
Walter Kimbale Clerk.

(Clerk's Notice of Sale)

" Sheriff's Sale "

"By virtue of a Writ of Execution issued from the Superior Court of Chicago, Cook County, in favor of George H. Hosley, Plaintiff and against The City of Chicago, Defendant, at 10 o'clock A.M.

12 on the 21. day of December 1869 at the West gate of the Court
House Yard in the City of Chicago I shall offer for sale as public
Manduo also the right title and interest of said Defendant in and to
the following described property to wit, 1 Grey Horse - 1 Buckskin
Colored Horse 10 bay Horses and 11 sets of Harness.

Dated the 10th day
of December 1869

John Gray

Sheriff of Cook County

By Ira Snow, Deputy,

And afterwards to wit on the sixth day of June (being one of the days of the June term of the Superior Court of Chicago, formerly the Cook County Court of Common Pleas) A.D. Eighteen hundred and fifty nine, the following proceedings were had in said cause and entered of record in said Court, to wit:

George H. Hooley

vs

Apt

City of Chicago

} Motion to set aside Judgment rendered,

And now comes again the said Plaintiff by Brown Wemyan his Attorneys and the said Defendant by City Attorney and on reading and filing of Defendant's Affidavit on Motion to set aside the judgment entered of record on the 9th day of July A.D. 1857 at July Vacation term in favor of said Plaintiff and against said City of Chicago for One thousand dollars, the Court being fully advised in the premises, overrules said Defendant's Motion to set aside said judgment and it is ordered said Defendant pay costs of said Motion.

And thereafter to wit on the Twenty seventh day of October A.D. Eighteen hundred and fifty nine the said Defendant filed in the Office of the Clerk of said Court, Motion to quash said execution, in the words and figures following to wit,

In the Superior Court of Chicago
Of the October Term A.D. 1859.

14 "George H. Mosley

(vs)

The City of Chicago

And now comes the said Defendant by George H. Crocker its Attorney and moves the Court that the Writ of Execution heretofore issued in said cause be quashed.

George H. Crocker

Defendants Attorney.

The reason why Defendant claims said execution should be quashed are that the Statutes do not authorize a Writ of Execution to issue against the real or personal property of a Municipal Corporation but the proper remedy is by Mandamus.

"Monaghan v City of Philadelphia" 28 Penn: 204
Stat: 1815. Chap 24 Sec 19.

And afterwards to wit on the Tenth day of December (being one of the days of the said December term of said Court) A.D. Eighteen hundred and fifty nine, the following further proceedings were had in said cause and Entered of record in said Court, to wit

"George H. Mosley

(vs)

City of Chicago

Appe

And now again comes the said defendant City of Chicago, by George H. Crocker, its Attorney, and said Plaintiff by Brown & Rungas his Attorneys also comes and Counsel

15 being heard on defendant's Motion heretofore filed herein and now submitted for hearing, that the Writ of Execution heretofore issued on the judgment entered herein in favor of said Plaintiff and against said Defendant in this Court, in said cause, be quashed and due deliberation being thereupon had, and the Court being fully advised, overrules Defendant's said Motion to quash said Writ of Execution Whereupon said Defendant enters its exceptions to the ruling and decision of the Court, in overruling and denying said Motion.

State of Illinois)
Cook County . . .) ss.

I Walter Kimball, Clerk of Superior Court
of Chicago (formerly Cook County Court of Common Pleas)
witness unto for the County of Cook and State of Illinois Do
hereby certify the above and foregoing to be a full true and
perfect Transcript of the Process, Declaration and Motion
papers and Writ of Execution now on file in my Office, together
with the orders and judgment entered of record in said Court
in a certain suit therein, wherein George H. Storkley was
Plaintiff and City of Chicago, Defendant.



In testimony whereof I have hereunto set
my hand and affixed the Seal of said
Superior Court at Chicago in said
County the fifteenth day of December
A. D. 1859.

Walter Kimball Clerk

City of Chicago

Supp H Masby
Supreme Court of Illinois

And now comes the plaintiff
in error and assigns for error the
overruling of the motion to set aside
and quash the execution, and says that
the Court acted in overruling said motion

George S Crocker
Attorney for Plaintiff in error

Let a supersedeas issue in this cause
upon filing this record with a bond conditioned
as by law required in the penal sum of
Two thousand dollars, with John B Haines
and Samuel B Ward Sureties

Chicago December 21. 1887.

L. D. Carver

State of Illinois 26
Cook County 79

Superior Court of Chicago

George M. Husley

vs

City of Chicago

Record.

Filed December 23, 1888

L. Leland
clerk

STATE OF ILLINOIS,
SUPREME COURT,

To the Clerk of the Superior

ss The People of the State of Illinois,
of the City of Chicago
Court for the County of Cook

Greeting:

Because, In the record and proceedings, as also in the rendition of
the judgment of a plea which was in the ~~County Court of Cook~~ ^{Superior} ~~Court of the City of Chicago~~ ^{County}, before the Judge thereof, between
George H. Hosley

plaintiff, and the City of Chicago

defendant, it is said manifest error hath intervened, to the injury of the aforesaid defendant

as we are informed by the complaint of said defendant and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law!

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 23rd day of December — in the Year of Our Lord one thousand eight hundred and fifty-nine

L. Leland

Clerk of the Supreme Court.
J. D. McHenry

George H. Hesley
26 47 ~~7~~

The City of Chicago

Writ of Error

This writ of Error is made
a supersedeas and as such
is to be obeyed by all
concerned.

L. Leland att.
by J. D. Rice Deputy

Filed December 23^d 1859

L. Leland att.

Know all men by these presents that we, the City of Chicago as principal and Samuel D Ward and John C Haines as sureties, are held and firmly bound unto George H Mosley in the full sum of Two thousand dollars, for the payment of which, well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly severally and firmly, by these presents

Witness the signatures of the Mayor and Comptroller of said City of Chicago, and the Corporate seal of said City, attested by the signature of the City Clerk of said City; and the hands and seal of the said Samuel D Ward and John C Haines Sureties hereto.

The condition of the above obligation is such, that Whereas the said George H Mosley, did on the Ninth day of July A.D. 1857 in the Cook County Court of Common Pleas, in and for the County of Cook and State of Illinois, and of the July term thereof A.D. 1857, recover a judgment against the above bounden City of Chicago, for the sum of one thousand dollars, besides costs of suit, ~~from~~ and whereas, the said City of Chicago has prayed for and obtained a writ of error from the Supreme Court of said State, to the Superior Court of Chicago, which said writ of error, by an order of J.D. Cotton Chief Justice of said Supreme Court is to be a Supersedeas in said cause and operate accordingly. Now therefore if the said City of Chicago shall duly prosecute its said writ of error with effect, and moreover pay the amount of the judgment, costs, interest and damages rendered, and to be rendered against it in case the said judgment shall be affirmed in said Supreme Court, then the above obligation to be void otherwise in full force and effect.

John C Haines Mayor.

Samuel D Ward Comptroller

John C Haines Seal

Samuel D Ward Seal

Attest

H. H. Kreisemann City Clerk
1857

26 ~~74~~

City of Chicago
vs
George A. Holey

Bond

Filed December 23, 1859
L. Leland
Clerk

The parties whose names are
attached to the within bond
are responsible

Wm. H. Thompson
Att. for Holey

City of Chicago }
 vs } motion to set aside &
 George Horley } continuance.

Suggestions why the continuance
 heretofore granted should not be
 set aside -

1. ~~The case~~ was 1st This case was
 called in its regular order
 and was not continued until
 it was so called - no attorney appearing
 for the defendant & no one's name on the docket
 pretending to appear for him.
2. The counsel who makes the
 affidavit in this case - has never
 extend his appearance at all
 in this cause - and when this
 cause was called in its order
 no person answered or appeared
 of record - and I never knew
 that Horley had any attorney in
 the case at all -
3. ~~It~~ does not appear by the
 affidavit filed in this cause

to set aside that ~~and~~ continue
that Mr Runyon is acting as
the attorney of Husly in this case
in this court at all.

4. It appears from the affidavit
itself that Mr Crocker who the
deponent says was city attorney last year,
has long since gone out of
office - and so far as the city
is concerned - is a perfect
stranger -

5. The deponent could not have been
misled, because by the charter of
the city of Chicago the ^{actual} city attorney
has charge of all law business
& all suits - unless other
and additional counsel are
employed by the Comptroller
by virtue of authority given
him by sec 11 of the new
Charter of 1857 - The deponent
says that one Sayle King is
at present city attorney.

6. I was especially retained

of the city of Chicago
by the comptroller, to take
charge of all the city cases
pending in this court - and
have been in attendance upon
this court from the very first
day of its opening up to the
present - with ^{the} exception of
Monday of this week -

7. My name was entered & read
in this case on the 1st Day of
the opening of this court -

Elliott Anthony
Atty for City of
Chicago -

26
city of Chicago
vs
George Hosley

Suggestions
why continuances
should not be set
aside - filed on
behalf of Plaintiff
in Error.

City of Chicago, } Sup. Ct. 3d, 5, & 6th,
vs. } April Term, 1861,
Geo. H. Hosley }

Error to the Cook County
Court of Common Pleas,

Error assigned,

That the Court overruled
the motion to quash the execution
issued in the cause,

The position taken by the City is
that an execution cannot issue
against a Municipal Corporation
in this State, unless it is
expressly authorized by Statute, and
that there is no Statute author-
izing an execution to issue against
the City of Chicago; therefore any
execution which is issued
against said City, is issued
without authority, and should
be set aside as illegal and void.

In reply to this proposition,
or rather to the two propositions, we
say that, the Rev. St. of 1845, P. 300,
Sec. 1, provides that when a judgment
is obtained in a Court of Record that

An execution may issue against the defendant for its collection, and section 8, of the same act provides that the writ of execution so issued shall be returnable within thirty days from the date of their issuing.

Again in P. 133, of the same Statute Sec. 20, provides, especially against executions ~~executions~~ issuing against Counties, as to taking the property belonging to a County, and provides that money (due upon a judgment against a County,) shall be collected by warrant upon the Treasurer. - Thus making a special provision for the collection of such judgments and relieving the Counties from the embarrassments, which might arise, in case no such act had been passed.

In the Laws of Penn. P. 574, Sec. 6 will be found the Statute upon which the Case of Monaghan vs. the City of Philadelphia was decided, and that Statute is similar although not quite like the one above referred

8, it refers exclusively to the collection of judgments against the Counties and gives the form and language of the execution that must issue and expressly provides that it shall be in no other form, and in this case they treat the City as a County and say that the execution shall be a Manelamus execution.

The Rev. Ord. of the City of Chicago P. 2, Sec. 2, provides that the City of Chicago, may sue and be sued in its corporate name, may take hold and purchase property, lease and control it in every sense as an individual might, but in no instance so far as I have been able to ascertain does it provide officially for the enforcement of a judgment by the issuing of execution thereon as against the City. And the question here is, does the General Statute apply, or does the Statute with reference to Counties apply as to the collection of a judgment when obtained, this being purely a question of law is directed that it may settle.

In the Case of Agerton vs The
Third Municipality of New Orleans,
1. Lou. Annual Rep. P. 435, The Court
held that the Taxes due to the muni-
cipal Corporation cannot be
seized upon execution, because
as they say it might have a ten-
dency to stop the movements of
the Corporation and, ^{as} effectually
repeal its Charters as an express
provision of the Legislature for that
purpose, but by their language
recognizing the right of an execu-
tion to issue, as I think against
the property of the Corporation,

In the Case of Gilman vs County
of Contra Costa, 8. California P. 52,
the Court say that as Common Law,
an action did not lie against
a County, and that the Law of
May 1st 1854, (which gave them right
to sue them.) did not affect the
right of the defendant in that
suit, either way, because that act
was merely an affirmation of the
Common Law, and then they say
that an execution lay upon a

County revenues in the hands
of the treasurer is illegal and
void, but, never, if the statute
is silent as to how the judgment
of the Court shall be executed, is
not an execution, the proper and
necessary writ for that purpose,

Again the same Court in the
Case of Emerie vs. Gilman (which
is in fact the same case as above,)
10, Cal. P. 404, The Court decided first
that you cannot take the property
of a private individual to satisfy
the debt of the County,

Second, — That you cannot
issue an execution against the
County because the Code has
made express provisions as to the
payment of the money upon
judgments which are against
the County,

That is not true of this
Case, There is no course pointed out
by which we may enforce the collec-
tion of a judgment against the
City of Chicago, unless it be by an
execution under the general statute
to which we have referred, The case

Monaghan vs The City of Philadelphia,
the City is treated as a County, whether
that would be correct as to the City of
Chicago or not, is for this Court
to determine and in ~~its~~ determin-
ing will decide what should
be the practice in enforcing
judgments against the City.

So far as this case is
concerned, it is in one sense merely
a question of the costs upon the
issuing of the execution - if it properly
issued, then the City pays the costs
of the same and the costs in this
Court, but if it improperly issued
then Hooley must pay those costs,
it does not (let the decision be
whatever it may,) affect in the
least the judgment, and this
Court will of course point out
the mode of collecting it, The
only error assigned being that
the Court erred in overruling
the motion to quash the execution
issued in the Court, and the question
being fairly presented in this case
and that for the first time

as to whether an execution can
be issued or not, we feel inclined
that the Court shall establish
the proper practice for collecting
judgments against the City of
Chicago.

Most Respectfully Submitted
R. F. Rumay
Sept 2nd 1887

26-8

Sup. Ct of State of Ill

City of Chicago

George W. ^{vs} Mosley

Argument of Defendant

E. H. Remy att
City of Ill

State of Illinois } Supreme Court of
Cook County ss } Illinois, of the April
Term 1861

City of Chicago
vs
George H. Hosby, }

Now comes the
said Geo. H. Hosby by E. F. Remy
his attorney comes and moves
the Court to let said case
continue in that
case upon the affidavit
herin filed -

E. F. Remy
att. of Hosby.

26 79

Supreme Ct. of Illinois
City of Chicago,
vs
George W. Hooley
Affid & Motion

Filed Apr. 20/60
L. H. H. and
Clk.

C. H. Runyan
Att'y of Applee

I am satisfied no limitation can issue against a
Municipal Corporation - It is to a certain extent a political
institution. It has no property liable to execution which can be
detached & sold without injury to the public, and a stoppage of
all proceedings under the charter to the great detriment of the
public -

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

CITY OF CHICAGO, Plaintiff in Error, }
vs. }
GEORGE H. HOSLEY, Defendant in Error. }

ABSTRACT OF THE RECORD.

PAGE OF REC.

- 1 Suit in assumpsit by *Hosley vs. City of Chicago*; process issued May 21st, 1857.
- 2 Return of Sheriff showing service, May 22, 1857.
- 3 Declaration filed June 9th, 1857, alleging that on the — day of —, A. D. 1856, the city of Chicago, by its common council, appointed commissioners to ascertain and appraise the damages and benefits by reason of opening an alley through Block eight, Duncan's Addition to Chicago, and commissioners appraised and valued one frame house belonging to plaintiff, at \$1,000, and commissioners so reported to common council; that council ordered that city marshal sell all buildings standing on said condemned property, the owners of which had not accepted the award
- 4 of commissioners; that the city marshal advertised and sold the said house and delivered the same to one Fenton; by reason whereof defendant became liable to pay plaintiff \$1,000, and promised to pay said sum.
- 5 Common counts: For goods, wares, merchandise, &c., sold and de-
- 6 livered; for money paid, laid out, and expended; for money had and received, and on an account stated *quantum meruit*, for house sold and delivered.
- 8 Declaration concludes to plaintiff's damage \$2,000.
- 9, 10 Default of defendant and judgment for \$1,000, July 9th, 1859.
Writ of *fiery facias* issued August 8th, 1859, in usual form, against lands and tenements, goods and chattels of city of Chicago.
- 13 Motion by defendant to set aside judgment overruled June 6th, 1859.
- 14 Motion by defendant to set aside and quash execution theretofore issued, for the reason that the statutes do not authorize execution to

PAGE OF REC.

— 15 issue against the property of a municipal corporation, filed October 27, 1859.

Motion to quash execution overruled December 10, 1859, to the overruling of which motion defendant excepted.

ERRORS ASSIGNED.

That the Court overruled the motion to quash the execution issued in the cause.

GEORGE F. CROCKER, & E. Anthony
Attorney for Plaintiff in Error.

And the said defendant, by E. F. Runyan, his attorney, says that the Court did not err in overruling said motion.

E. F. RUNYAN,
Defendant's Attorney.

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City of Chicago

vs

George H. Husley

Abstract

Filed Apr. 16th 1861

L. Leland

Clerk

IN WITNESS WHEREOF

GEORGE H. HUSLEY

H. H. BULLOCK

SUPREME COURT,

THIRD GRAND DIVISION, }

APRIL TERM, A. D. 1861. }

CITY OF CHICAGO,

Plaintiff in Error.

vs.

GEORGE H. HALSEY,

Defendant in Error.

POINTS FOR PLAINTIFF IN ERROR.

I.

An execution cannot issue against a Municipal Corporation in this State, unless it is expressly authorized by Statute.

Monaghan vs. City of Philadelphia, 4 Casey 210.

Gilman vs. County of Costa, 8 California, 52.

Emeric vs. Gilman, 10 California, 408.

/ Louisiana 435

/ 3 Wend 334

II.

There is no Statute authorizing an execution to issue against the City of Chicago; therefore, any execution which is issued against said City, is issued without authority, and should be set aside as illegal and void.

ELLIOTT ANTHONY,

Attorney for Appellant.

24
City of Chicago

20
Geo H Hosley
Prints

Filed Apr 16. 1861

A. Hilant

Dupl

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1861, AT OTTAWA.

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GEORGE F. CROCKER, *E. Anthony*
Attorney for Plaintiff in Error.

And the said defendant, by E. F. Runyan, his attorney, says that the Court did not err in overruling said motion.

E. F. RUNYAN,
Defendant's Attorney.

City of Chicago

vs

George H. Hasley

Abstracts

Filed Apr. 16th 1861-

L. Ireland

Clerk