

12718

No. _____

Supreme Court of Illinois

Brown

vs.

City of Joliet

256-129

J. H. Brown

City of Joliet

1859

1
The People of the State of Illinois
By the grace of God free & Independent

Do all to whom this present may come. Greeting!
Know Ye,
that we having caused to be inspected the Records & proceedings
now remaining in the Office of our Clerk of our Circuit Court in &
for our County of Will; do find therein certain records and writs
and process following To Wit:

United States of America
State of Illinois
Will County

That before the Honorable
Judge O. Parker, Judge of the Circuit Court of the State
of Illinois, and presiding at the May Special Term of the
Will County Circuit Court, before of which, at the Court House
in the City of Joliet in said County of Will and State of Illinois
on the second Monday (the same being the Circuit day) of
May in the year of our Lord One Thousand Eight
Hundred and Fifty Seven, by the Independence of the United
States the Circuit Court.

I warrant Ye Judge O. Parker, Judge of the 11th Judicial Circuit
Will County, Illinois
Judge R. Dyer, Sheriff of Will County
Sheriff J. J. Hall, Clerk of the Circuit Court of Will Co

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"In the Matter of
Hearings General Rule"

And now comes the respective Plaintiff
in suits and parties from the docket, in which pleas have not been filed
by their respective Attorneys and enter their motion for leave to plead
against the respective Defendants in the said causes respectively. And
upon motion the respective Defendants by their Attorneys in each case
have caused and enter their cross motion for leave to plead therein from
case Number One to case Number Sixty five successively, until
twelve noon morning at Eight o'clock. And also enter their further cross
motion that they further time be given therein to file pleas in the
remainders of said causes. And the Court being fully advised
in the premises it is ordered that all pleas in all cases, pen-
ding under Common Law docket, from case Number One
to case Number Sixty five successively, and not heretofore
filed be filed respectively by twelve noon morning at Eight
o'clock and in another case by next Wednesday morning
at Eight o'clock.

Be it Remembered that on the 1st day of July in the year of our Lord one thousand eight hundred and fifty six Sir J. W. Brown, Esq. Attorney at Law, filed in the Office of the Clerk of the Circuit Court in and for the County of Will, a Transcript of the Records of the County Court of said County, concerning a certain judgment rendered and doct. - which said Transcript is in words and figures following - To Wit:-

"A Transcript from a judgment rendered in the County Court of Will County, State of Illinois in favour of the City of Solon for Special Taxes or Assessments and Costs levied by the Corporate Authorities of said City against the Real Estate hereinafter described owned by J. N. Brown Esq. from which judgment said Brown has taken an Appeal to the Circuit Court of said County and State to Wit:-

"Will County Court"
July Term A.D. 1856.

A List of Real Estate Reported by Phillip Filer City Collector in and for the City of Solon Will County State of Illinois upon which he has been unable to collect certain Special Taxes due thereon and as herein after set forth

4

And now on this First day of July A.D. 1856 files
this his Petition for a judgement and Order of Sale
Against Said Real Estate at the July Term A.D. 1856
of the County Court of Will County.

Monday July 7th 1856

State of Illinois }
Will County }p

Will County Court July Term A.D. 1856.

Please before the Honorable Solomon
Simmons County Judge in and for the County of Will and
State of Illinois and Presiding Judge of Said Will County
Court in the State aforesaid

At a regular Term of Said
County Court of Will County began and held at the
Court House in the City of Joliet in said Will County on
Monday the Seventh day of July in the year of Our Lords
One thousand Eight hundred and fifty six

There were Present

Hon. - Solomon Simmons County Judge.

Perry, J. Camitt Sheriff of Will County
and O. L. Hawley Clerk of Will Co Court

State of Illinois }
Will County }p.

Whereas Phillip Filer City Collector of
Taxes and Assessments in and for the City of Joliet Will
County State of Illinois returned to the County Court of
Said Will County on the First day of July A.D. 1856.

5
the following described Lots and Blocks and parts of
Lots and Blocks upon which Assessments have been made
by Special Ordinances passed by the Common Council
of said City of Joliet for the purpose of Grading Jeff-
erson Street between Chicago Street and the River Bridge
in the Corporate limits of the said City of Joliet and
Whereas Phillip Filer City Collector of said City of Joliet
has made the following return to wit:

State of Illinois

County of Will

City of Joliet

A List of Real Estate Reported by
Phillip Filer City Collector in and for the City of
Joliet Will County and State of Illinois upon which he
has been unable to Collect Certain Special Taxes
due thereon and as hereinafter set forth and now
on this First day of July A.D. 1856, files this his
Petition for a Judgement and Order of Sale Against
Said Real Estate at the July Term A.D. 1856, of the County
Court of said Will County.

(In which List is included the
following to wit: "I")

List of Real Estate Situated within
the Corporate limits of the City of Joliet and lying, and
being on both sides of Jefferson Street in said City upon
which a Special Tax or Assessment remaining due
and unpaid heretofore duly assessed and levied
by the Corporate Authorities of said City for the
(over)

6.

purpose of Grading said Street and improving said Street from Chicago Street to the River Bridge to wit.

Name of Owner	Part of Lots	Lot	Blk	Sidewalk Foot	Grading Crossing & Sewer Exp.	Cents	Total Foot
<u>Old Town of Solist</u>							
	22 ft West Ends	1	27		50.60	1.44	52.04
	22 ft Corn - 25 ft from West	8	"	11.11	61.60	2.00	74.71
	15 " " 147 " " " "	8	"	7.58	42.00	1.42	51.00

State of Illinois

Will County }
I Phillip Filer City Collector in and for
the City of Solist Will County and State Aforesaid do Solemnly
Swear that the foregoing List by me returned are a true
and Correct Records of the Real Estate Situated within
Said City upon which he has been unable to collect the
Tax or Assessments as required by law and ordinances
of said City Council of said City Aforesaid and levied
as in the foregoing List set forth and that said Taxes
or Assessments Aforesaid remain due and unpaid
as set forth in said List to wit

Given Subscribed to before me } Phillip Filer Collector
this 1st day of July A.D. 1886 } for the City of Solist
W. B. Hawley Clerk Will County
per W. B. Hawley Deft

Will County Court July Term A.D. 1886

State of Illinois

Will County }
Whereas due notice has been given

7.

of the intended Application for A Judgement Against
Said Lots and Blocks and parts of Lots and parts of Blocks
and. No Owner hath Appeared to make Defence or
Show Cause why Judgement should not be Entered
Against the said Lots and Blocks and parts of Lots and
parts of Blocks for the Special Taxes or Assessments and
Costs due and unpaid thereon as in the foregoing List
Set forth (Except Uri Argood Esq. who Appeared
as Attorney for J. H. Brown and filed his Exceptions
to A Judgement on the following) parts of Lots to wit.
(which Real Estate is the same as heretofore described in
this Transcript.) and on Motion of Uri Argood Esq.
the hearing of said Petition was continued until to
Morrow Morning at Nine O'clock A.M.

Came now on this day. Tuesday the
Eighth day of July A.D. 1856. the hearing of said Petition
was taken up by the Court. Henry Snapp Esq. Appearing
as Attorney and protesting the same for the City of Solih
and Uri Argood Appearing and defending as Attorney
for the Above named J. H. Brown relative to the Above
described Lots which Exceptions have been filed for said
Brown and after the reading and filing of said excep-
tions and after Examining the Testimony adduced in
the premises; It is therefore Considered by the Court that
the Exceptions filed herein be Overruled and that
Judgement be and is hereby entered against the
Aforesaid Lots and Blocks and parts of Lots and parts of
Blocks in favor of the City of Solih for the same assessed

8.

to Each Lot and Block and parts of Lots and parts of
Blocks being the Amount of Taxes or Assessments and
Costs due Severally thereon. And it is Ordered by the Court
that the Several Lots and Blocks and parts of Lots and parts
of Blocks or so much as shall be sufficient of Each of
them to satisfy the Amount of Taxes or Assessments and
Costs annexed to them Severally be sold as the Law directs
S. Simmons County Judge

Will County Court Saturday July 12th 1856
And Thereupon the said An Osgood as Attorney
for J W Brown enters his Motion for an Appeal to the
Circuit Court of said Will County from the Judgement
of this Court in rendering Judgements Against the
said Several Lots of Land aforesaid described to
which Exception was taken by the said Osgood as
Attorney for J W Brown for the Delinquent Taxes or
Assessments and Costs specified in this proceeding -
Whereupon It is Ordered by the Court
that the said Appeal be and it is granted upon
Condition that the said Brown files an Appeal Bonds
with good and sufficient Security for the sum of
Four Hundred Dollars

State of Illinois
Will County ³ I Oscar L Healey Clerk of the
County Court in and for the County of Will and
State of Illinois do Certify that the foregoing is a true

Transcript from the Records of the County Court of said County of Will of a Judgement rendered in said Court in favour of the City of Solier Against the Afore-said Desire's Real Estate owned by J. M. Brown for the Special Taxes or Assessments and Cots therein Specified in which Matter said J. M. Brown filed Exceptions and took his Appeal from said Judgement to the Circuit Court of said Will County which Appeal and a proper Bond is herewith transmitted to said Circuit Court. —



In Testimony whereof I have hereunto
 Subscribed my name and affixed the
 Seal of our said County Court of Will
 County at Solier this 19.th day of July
 A.D. 1856 O. W. Hawley Clerk
 per W. B. Hawley *clerk*

And afterwards I Wit.

On the day and year last
 appeared the said J. M. Brown by Wm. Ogden
 his Attorney filed in the Office of the Clerk of the
 Will County Circuit Court his exceptions to said
 Judgement rendered in said Court, which said
 document or bill of exceptions is on the rolls and
 figures following: Do Wit.

And J. W. Brown against whom a tax is levied on the following described Real Estate to wit

25 feet West End of Lot one in Block 27.
22 feet Commencing 25 feet from the West End of Lot 8 in Block 27. & 15 feet Commencing 47 feet from the West end of Lot 8. in Block 27. Olds folied

Comes & Says that

Ought not to have judgement for the taxes against said parcels of Real Estate or any or either of them, or any part thereof, or an Order to sell the same because he says:—

- 1st That said Taxes levied thereon were levied without Authority of Law
- 2nd That no Assessment or Valuation of said Real Estate taxed was made before said Taxes were levied for the purpose of said taxation
- 3rd The Taxes on said property were levied without regard to Valuation
- 4th The Sewer Along side of said Real Estate & the Wall thereof & the grading of said Jefferson Street Along side of said Real Estate were made, done & Constructed by him said Brown at his own Expence for which he was not Allowed by the City in levying said Taxes
- 5th The Taxes levied on said Real Estate were levied Contrary to the Constitution & Laws of the State of Illinois & of the United States
- 6th The improvement on Jefferson Street (for the payment of which the Taxes on said property are pretended)

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to be levied) were made & paid for in part by Cash out of the City Treasury of Solist & in part by the issuing of City Orders or Warrants on the City Treasury before said taxes were levied

7th The City of Solist had no right or Authority to levy the taxes on said Real Estate in the manner said taxes was levied

We therefore pray that said proceedings may be dismissed

Uri Osgood

Atty for J W Brown

And afterwards, To Wit:

On the day and year last aforesaid, said J. W. Brown, Plaintiff and Attorney filed in the said Court, this certain Affidavit and to the Circuit Court of said County, which said Bond as filed as aforesaid, is in the following words and figures, To Wit:—

Know all men by these presents, that we J W Brown as principal & C. E. Manger as Surety of Will County & State of Illinois are held firmly bound unto the People of the State of Illinois for the use of the City of Solist in the penal sum of Four Hundred Dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves and

Deeds & Administrators jointly, Severally & jointly by these
presents - Witness Our hands & seals the 10th day of
July A.D. 1886

The Condition of the Above Obligation is such
that Whereas the said City of Soler died on the Eighth
day of July A.D. 1886 before Solomon Simmons County
Judge of Mill County, Sitting as County Court of of
said Mill County & at the July Term A.D. 1886 of said
Mill County Court, received a judgement for taxes & an
Order for Sale Against the following described Real
Estate in said City of Soler assessed & Returned as
the property of said J. H. Brown to wit:

Description		Lot	Blk	Amount Judgment
Old Town	22 feet Width	1	27	50 60
" "	22 feet Com 25 ft from Width of	8	27	72 71
" "	18 feet Com 25 ft from Width of	8	27	44 58
				\$172.89

Amounting in all to the Sum of one hundred
Seventy two Dollars & Eighty nine Cents together with Costs
from which judgement & Order the said J. H. Brown has taken
an Appeal to the Circuit Court of the County of Mill
& State of Illinois Now if the said J. H. Brown shall
prosecute his Appeal with Effect & shall pay whatever
judgement may be rendered by the Court upon dismissal
or trial of said Appeal then the above Obligation to be void otherwise
to remain in full force and virtue of J. H. Brown
Taken & Appraised in Open Court 3 L. E. Manger

this 22nd day of Aug. A.D. 1856.

W. B. Hawley, Clerk of said Court.

By W. B. Hawley, Esq.

And Afternoon, To Wit:

Ordered 22nd day of Aug on the year last aforesaid, that a writ of subpoena be issued under the seal of the Miller's Court Court. a certain writ of subpoena, which said subpoena, is in words and figures following, To Wit:—

Sheweth That

"This County Sec. Sh. Rep. of the State of Minn. to the Sheriff of said County, Gustav:—

"I do Command you that you summons, the City of St. Paul, to be present in your Court, generally to be and appear before said Court, Court of said Miller's Court, on the first day of the next term thereof, to be holden at the Court House in St. Paul, in said County, on the first Monday of September 1856—to answer J. H. Brown, concerning his appeal, lately taken to our said Court, from the judgment of the Court of said County in certain matter of taxes or assessments for said improvement as is said and have you then show this writ."

Given at the Court House in St. Paul, Minn. this 22nd day of Aug. A.D. 1856.

Witness Royal E. Barker, Clerk of our said Court and the seal thereof here affixed at office in St. Paul in said Miller's Court, this 22nd day of Aug. A.D. 1856. R. E. Barker Clerk

Upon the Back of Which Summons, there appears the following endorsement, made by the Sheriff of Will. Co. viz.

2 have seen the artist's Engravings, by reading the same
to Henry Snapp, C. of Art. and having a true copy thereof
August 7th 1856.

August 7th 1856.
"Copy 50." Service 50. Return 50. Total 150. P. B. Hewitt Sheriff
P. J. James Clerk Dep't. of Ag.

And Lieutenant S. W. F.

And afterward, To Wit: On the Tenth day of May in
the year one, Six thousand Eight Hundred and fifty Seven,
being one of the regular days of said May special Term of
said Court, for the said year, and the same, being then
judicially sitting, for the adjudication of business, the following
among other proceedings were had and entered of record
by said Court. To Wit:—

Salut of foliet

49th. *Table of Joliet* *Journal* *and other parts.*
J. H. Brown

And other parts -

And now come further Paroloffs, in
each of said abovesaid cases, respecting G. E. State
their Atty, and enter their motion, respecting that the
intervention of a jury in said cases, respecting be
waived, and also enter the proper motion that said cases
be respectfully submitted to the Court for trial; and said

"parties defendants respectively come by their Counsel their Attorneys,
and enter their case motion in said causes respectively that
a jury therein be named - and also that said causes
be submitted to the Court respectively for trial - And the
Court being fully advised in the premises it is ordered
that the intervention of a Jury be and it is waived in said
causes respectively - and it is also further ordered that each
of said causes be and they are respectively submitted to the Court
for trial:-"

And Afterward: T. W. T. On the Seventeenth day of May
in the year of our Lord one thousand Eight Hundred and
Fifty Eight, it being one of the regular days of the May Term of said
Court. In the said year, and the same being then duly or-
ganized (and the Honorable David Davis, Judge of the
Eighth Judicial Circuit, of said State presiding) for the trans-
action of business, the following among other proceedings were
had and pursued at Bench. T. W. T.:-

"The City of Joliet vs. Appeal"

J. C. Davis Esq. vs. Appeal

And now at this day comes David H. Davis

Prosecution Attorney of the said defendants in the above titled suits also
come by their Counsel the City and by the argument of said parties
it is ordered by the Court that in trial of the same respectively be and
they are hereby set for next Wednesday morning:-

And afterward I Wit.

On the Twelfth day of May
in the year last aforesaid, it did come on of the record
by said May Term, of said Court, and the same
being then duly organized, and sitting for the adjudication
of business, the following, among other proceedings, were had
and entered of record by said Court. I Wit.:-
Rural Court and Daring, judges aforesaid.

"The City of Jlat

"Pipab."

LPH

J. H. 1. Darn.

And now at this day comes:
"And J. H. 1. Darn. Cit. Attorney. Of the said defendant, at comes
by Ver. Agard & his Attorneys. Whereas in our motion
by said Ver. Agard & his Attorneys, it is ordered by the Court, that
this case be recalled, as per the record, and it is further
ordered, that the intervention of a jury be waived, and
is waived, and by the agreement of said parties this
case is submitted to the Court for trial:- Thereupon
on motion of said J. H. 1. Darn. Cit. Attorney, it is ordered
that the trial be adjourned, as per the record, and
the ordered addressed, the arguments of counsel, the case
is by the Court taken under advisement."

And afterward I Wit. On the 22nd day of

May, in the year last aforesaid: it also being one of
the regular days of said May Term of said Court for
the said just. And the same being then adjourned
and sitting for the adjudication of business the fol-
lowing among other proceedings were had and entered
of Record by said Court, to-wit: and issues, to
wit:

"The City of St. Louis"

"Appel"

J. H. I. Dunn

And now this day again
"comes the said Plaintiff by A. G. Ames, Esq., and the
"said defendants also comes by Van Cuyck & Co. Attorneys, and
"this cause having been submitted to the Court for decision,
"and the same having been taken under advisement -
"The Court finds the same herein joined for the said
"Plaintiff and assess its damages to the sum of One
"Thousand and Seventy Two dollars and Eighty Nine cents
"There is no answer of said City Attorney, it is ordered by
"the Court that said Plaintiff do stand judgment against
"the said Defendant to the sum aforesaid."

It is thereupon recorded by the
"Court that said Plaintiff do recover of said defendant
"its damages aforesaid to the sum of One Thousand
"and Seventy Two dollars and Eighty nine cents
"together with the costs and charges by it about this
"suit in this suit aforesaid, and that execution do

issued therefor.

Whereupon comes the said Defendant
by his said Attorney, and prays an appeal from the judg-
ment of this Court to the Supreme Court of this State.
Whereupon it is ordered by the Court, that a chap-
book be, and it is granted upon condition, that said
defendant do file Bond in this cause no later than the
amount of judgment within ninety days from the
entry of this order; and it is further ordered that
said defendant have leave to file his Bill of excep-
tions in vacation.

And afterwards, To Wit:

On the fourth day of June in the year
last aforesaid it also being one of the regular days of
the May term of said Court for the said Court and
those attending to be organized and sitting for the
transactions of business the following among other
proceedings were had and entered of record by said
Court, To Wit:—

That Hon. Just. C. W. W. Ingersoll

The City of Detroit
"I. H. B. D. Appeal"

And on at this day comes
the said defendant by his Attorney

19.

and present and file his appeal / Done (in compliance
with a previous order of this Court entered in this cause) with
"Miles" Demerth as security which in relation of said
"Hambroff" is in all things approved, ratified and
conformed to.

And afterwards J. H. On the Twentieth day of August in the year one thousand Eight hundred and Eighty Eight the said J. H. Brown, by his Agent, his attorney, pled in the office of the Clerk of the Circuit Court in & for said County a certain other appeal Bond, which said Bond is in words and figures following, To Wit:—

" Know all men by these presents that we J. H. Brown & Willis S. Comfort of the County of Will & State of Illinois are held & firmly bound unto the City of Joliet in County of Will & State of Illinois in the penal sum of three hundred & ninety dollars & twenty cents current money of the United States for the payment of which well and truly to be made we bind ourselves our heirs Executors & Administrators jointly, severally & firmly by these presents

Witness Our hands & seals this nineteenth day of August A.D. 1888

"The condition of the above obligation is such that whereas the said City of Joliet did on the twenty second day of May A.D. 1888 in the Circuit Court in and for the County & State aforesaid recover a judgment against the above bounden J. H. Brown for the sum of one hundred & seventy seven dollars & seventy five cents debt & execution dollars

" & thirty five cents Costs from which said judgement
 " of the said Circuit Court the said J. N. Brown has
 " prayed for & obtained an Appeal to the Supreme
 " Court of said State. Now if the said J. N. Brown shall
 " duly prosecute his said Appeal with effect & shall
 " Moreover pay the Amount of the judgement Costs
 " interest & damages rendered & to be rendered
 " against him in case the said judgement shall
 " be affirmed in the said Supreme Court then the
 " Above Obligation to be void otherwise to remain
 " in full force and virtue

J. N. Brown *Test.*

Willis Saufertto *Test.*

Taken & approved by me this

20th day of August 1858

A. M. Dutcher Clerk

And afterward J. N. Brown on the Sixth day of
 December in the year last aforesaid the said
 J. N. Brown by Hen. Aspell his Attorney filed
 in the Clerk's Office of the said Circuit Court
 certain stipulations in words and figures, to wit:

"State of Illinois Will County ss

"Will County Circuit Court"

"The City of Elletts

vs

"on appeal"

"J W Brown

"It is hereby Stipulated & agreed

"by & between the parties in the above named suit

"that the time appointed for the filing of the Bill

"of Exceptions in said case be extended until the

"twentieth day of January A.D. 1858 & that said Bill

"of Exceptions if filed on or before said twentieth day

"of January shall have the like force and effect as

"if the same had been filed on or before the first

"day of December Term of said Court

"Dated this Second day of December A.D. 1858

"J. S. Brown Atty for Plff

"Wm Caspary Atty for Defr"

And afterwards, To Wit,

On the Twelfth day of January
in the year one thousand eight hundred
and fifty nine, Howard Dean by Wm Caspary
his Atty filed in the office of said Clerk this
Bill of exceptions to the judgment entered in
this Court, which are as follows. To Wit:—

The City of Joliet -
 vs
 J H Brown

[Decorative flourish]

Be it remembered that at the trial of this cause at the May Term AD 1858 of said Will County Circuit Court the said Plaintiff by their attorney to maintain the issue on their part gave in as evidence the following -

J S Buffum being called & sworn testified substantially as follows - "I am City Clerk of the City of Joliet - The Book here introduced contains the Record of the proceedings of the Common Council of the City of Joliet."

The following Petitions were then introduced

"To the Hon the Mayor & Alderman of the City of Joliet -

The undersigned being owners of property or engaged in business on that part of Jefferson street in the City of Joliet which lies between Joliet street & the bridge across the Des Plaines River in said City respectfully petition your Honorable body to cause to be completed the filling up of said street or so much thereof as lies between the points above specified & that it be raised to such grade as the Common Council may cause to be established -

And your Petitioners further ask that the cost of filling up the above named portions of Jefferson street be assessed upon the real estate fronting on the unpaved and proposed in proportion to the cost of the

"same opposite each lot a part of lot computing from
 "the front end of each lot a part of lot to the center of
 "said street & as in duty bound &c -

"Joliet December - 6 - 1852 -

"B S Johnson	N B Edmund	Geo Woodruff	James T M'Dougall
"Allen Pratt	J M Roberts	Geo Swack	E Harwood
"Richd Booklette	M Wilder	John W Stevens	W L Ferguson
"L S Blackman	V H Prentiss	Lurin & Williams	J A Meson
"A Bagwin	A Johnson	John Bergers	John Webber
"J B Brown	Michael Schaller	F B Bagwin	John George
"L Farley	S W Stone	J J Gordinig	

"To the common council of the city of Joliet in its
 "committee on streets ^{allies} & Bridges

"We, the undersigned ^{young} Petition
 "are wish to represent ^{our} & refer opinion as to the proper
 "manner (the manner we wish) Jefferson Street in which
 "we own real estate, to be improved of the three following
 "plans proposed we are decidedly for that described
 "above on ^{respective} names -

"a. a Parwig & put gutters on each "side of street, g. arching "inter frames at 80 to 100 "as estimated "running foot	"a. a Parwig & put gutters "each side of street, M "adornizing the center "estimated at near "\$1.25 running foot	"a. a Parwig whole street "from center to curb esti "mated cost running foot "to the center street "\$2.00 "Joseph E. Stein
---	---	--

"B Booklette, J A Perislat, John George, J A Mills, E Harwood

" A Bagwin, F L Bagwin, Casper Kneizer, S W Stone, Sebas-
 " tian Stevens, L & Le Farley, Henry K Stevens, J H Brown
 " Parker, Elwood, R S Johnson, John Wade, Isaac Wrighe-

Sec 6. of an act entitled - "An act to amend an act entitled an act to
 " incorporate the City of Joliet Passed June 19-1852- was
 " then introduced

The following from page 149. of City records was introduced -

" Be it ordained by the Common Council of the City of
 " Joliet; That that part of Jefferson Street lying between
 " the Des Plaines river & Chicago street be improved by sewer-
 " age grading & paving & side walks as follows - There shall
 " be a sewer of the proper grade with the necessary sluices
 " & openings thereto & suitable & sufficient outlets therefrom
 " on each side of said street the center of which shall be
 " eight & one half feet from the respective lines of said
 " street & be not less than three feet wide at top & not less
 " than an average of seven feet in depth below - Side
 " walks with stone walls not less than one & a half feet
 " thick upon the street side of said walks to rest upon
 " with substantial stone caving at the crossings of streets
 " & alleys - A side walk on each side of said street twelve
 " feet wide of plank not less than two inches thick with
 " crossings & streets & alleys of stone flagging not less
 " than three feet wide & six inches thick - The street be-
 " tween said walls to be marked up to the proper grade &
 " sloping from the center towards the sides & forming
 " suitable gutters next said walls & a curb stone next
 " to said walls of suitable width & thickness & all to be

"paved with a good quality of quarry stone not less
 "than three inches thick eight inches wide & six inches
 "in length said stone to be set upon the edge in courses
 "at right angles with said street the setting to be in
 "sand or fine gravel & in a durable & substantial
 "manner - the surface of said gutters to be sixteen
 "inches below the outer edge of said wall all to be done
 "under the direction of a superintendent for that pur-
 "pose hereafter to be appointed by the Common Council
 "The above direction as to said improvements shall be so
 "changed or modified if found necessary as not to
 "interfere with or injure the shade trees now stand-
 "ing in front of lot 5 Block 21 Old Joliet many of
 "them & that H B Risley Otto Handley & William L Wood
 "be & they are hereby appointed commissioners to make
 "an estimate of the cost of said improvement in pro-
 "portion to the benefit to accrue to said estate in ac-
 "cordance with an ordinance heretofore passed for
 "grading & paving streets -

From same Page 168 - "An Ordinance for the construction
 "of a side walk on the South side of Jefferson street
 "Be it ordained by the Common Council of the City
 "of Joliet - That as soon as the drain or sewer which
 "is now being excavated on the South side of Jefferson
 "street between Ottawa & Des Plaines streets shall be
 "completed as heretofore directed that said street
 "Commissioners of District No 4 employ hands
 "and continue said improvement by walking up

27.

said drain or sewer upon the North side thereof with a good & substantial stone wall of sufficient height to correspond with the grade of said street as heretofore established by the City Surveyor & also that said street commissioner obtain the proper materials & construct a good substantial & permanent plank side walk over said drain or sewer from said Ottawa street to Des Plaines street with proper stone crookings that said walk be twelve feet in width & constructed of plank not less than two inches thickness & that said street commissioner keep a correct account of all the expenses of the excavation of said drain or sewer & of such wall or side walk & report the same to the Common Council & that the City Clerk draw orders on the City Treasurer to said street commissioner to meet the expenses when his account is vouched for as correct by the Aldermen of the 4th ward. such expense to be returned to the treasurer from the tax on the property benefitted when collected. Passed May 9th 1855

S W Stone City Clerk

Approved N B Elwood Mayor

From same - Page 129. Be it ordained by the Common Council of the City of Joliet -

Sec. 1. That whenever a Petition shall be presented for & the Common Council shall deem it necessary & expedient to grade from or plank any street, side walk or alley, lane or avenue or to construct any drain

"in sewer within the limits of the city they shall cause
 "any order to be entered upon the record of their pro-
 "ceeding to that effect which order shall particularly
 "describe the location character & specifications of
 "the proposed improvement. The publication of such
 "order for one week in the corporation newspaper shall
 "be deemed sufficient notice to the holders or owners
 "of lots & real estate benefitted by or adjoining such
 "improvement. The common council shall elect
 "three discreet & disinterested householders as com-
 "missioners whose duty it shall be to make an esti-
 "mate of the cost of such improvements & who shall
 "also make an apportionment of the cost of such im-
 "provement on all real estate benefitted thereby
 "each lot or parcel of ground thus benefitted to be
 "apportioned in proportion to the benefit it will receive
 "from the same. Said commissioners before enter-
 "ing upon their duties shall take an oath before some
 "person authorized to administer oaths to true & impar-
 "tially apportion the expense of the proposed improvement
 "on the real estate benefitted thereby according to the
 "best of their knowledge & understanding & shall
 "also give notice of the time & place of meeting to
 "make such apportionment said notice to be published
 "in the corporation newspaper at least one week before
 "the time of meeting. Such commissioners shall
 "make a written report of their actings & doings in
 "the premises on the succeeding meeting of the

Common Council - On the coming in of said report
 "if no objections are made the same shall be adopted
 "and the tax levied in accordance therewith; but if
 "objections be made thereto the Council shall levy
 "such tax as they ^{shall} deem just & reasonable -

"Sec 2 - That ~~such~~ improvement shall be made
 "by & at the expense of the owners of the real estate front-
 "ing & adjoining or benefitted by the same such owner
 "making & doing his or her proportion of such im-
 "provement in front of or adjoining his or her lot &
 "do the same under the supervision of the Common
 "Council or such person as they shall direct & appoint
 "as superintendent of the same -

"Sec 3 - That if the holder or owner of any lots or parts of
 "lots shall neglect to make his or her proportion of
 "such improvement in conformity with the order of
 "the Common Council published as aforesaid the
 "Common Council Mayor or other person appointed
 "to superintend the same may contract for same
 "to be done at the expense of the City & the same to be
 "paid for from the tax aforesaid when collected
 "said special tax shall be for sufficient amount
 "to cover all the expenses thereof which special tax
 "shall be collected in the same manner now pro-
 "vided for collecting of other special taxes -

Passed June 20th - 1854 -

From same Page 166 - "On motion of Alds Mack - resolved
 "that H. D. Risley be discharged from acting as Com.

"commissioner to assess the benefits of the property adjoining
 "Jefferson Street for grading & improving said
 "street & H N Stoddard be appointed -

From same - Page 167-178 & 179 - "W B Wood tendered his resignation as commissioner to assess the tax for the
 "improvement of Jefferson street - Resignation accepted & Joseph Campbell appointed to fill the vacancy -

"On motion of Ald Mack, Ald Woodruff was
 "appointed commissioner for same improvement
 "in place of H N Stoddard who could not act.

"Be it ordained by the common council of the
 "City of Joliet - That Geo Woodruff & W H Hardy &
 "Joseph Campbell the commissioners heretofore appointed
 "as commissioners to make an estimate & assess
 "the amount of the expense of the improvement of
 "Jefferson Street as heretofore provided by ordinance
 "be & they are hereby authorized & directed to estimate
 "the amount of the expense of making the said improvement
 "in accordance with the provisions of the
 "ordinance passed March 10 - 1855 - exclusive of the
 "said paving the excavation sewer & building side
 "walk in front of lot 5 Block 21 old Joliet & also of
 "excavating sewer in front of Public square & also of
 "cut stone on each side of said street & to assess the
 "amount of such estimate upon the real estate in
 "accordance with the above mentioned ordinance
 "report their doings in the premises at the next

31

"meeting of the Common Council-

From the same Page 180 - "Geo Woodruff Otis Hardy & Joseph
"Sanford Commissioners heretofore appointed to
"ascertain the cost & benefit of the improvement of Jefferson
"street - made their report which was concurred in
"by the Common Council & the Clerk ordered to levy
"the tax in accordance with the report -

The following was then introduced

No 2

" State of Illinois Will County &c

To the Common

" Council of the ^{said} City of Joliet -

" The undersigned Com-
" missioners heretofore appointed to estimate the
" cost of the improvement of that portion of Jefferson
" street between Des Plaines street & Chicago street & to
" ascertain the amount of the same upon the real estate
" opposite said improvement according to an ordi-
" nance passed on the 9th of March 1855 would respect-
" fully report that before entering upon their duties in
" this behalf they did each of them take an oath before
" A F Patrick Police Magistrate of said City to truly
" & impartially ascertain the expenses of the said impro-
" vement on the real estate benefited according to
" the best of their knowledge & understanding - And
" that after giving more than one weeks notice in the
" Joliet signal of the time & place of such meeting they
" met at the office of Otis Hardy on the 21st day of

June 1855 at 8 o'clock A.M. for the purpose of making
 "the estimate & improvement of said street for the pur-
 "pose of giving all parties interested an opportunity
 "to be heard in the premises & to give the subject a full
 "& careful investigation they adjourned from time
 "to time until 4th day of August 1855 when the
 "final meeting was held by them at said office.
 "That after hearing the allegations & suggestions of
 "all parties interested & after careful examination
 "& estimation in the premises they estimated the whole
 "expenses of said improvement to be done as
 "specified in said ordinance except the paving also
 "the excavating the same & building side walk in
 "front of lot 5 Block 21 also the excavating the sewers
 "in front of the Public square & also the curb stone on
 "each side of said street at three thousand eight
 "hundred & 7/100 Dollars. And that the whole real estate
 "on each side of said improvement should according
 "to the direction of said Ordinance be assessed
 "as follows -

Description	L	B	side walk	sewer grading openings &c	Total
" 2: 10 end of	4	23	Built by owner	43 20	43 20
" 2: 1 ft com, 24 ^{ft} from W. end of	"	"	11 38	41 80	53 18
" 20 ft com, 45 ft from W. end of	"	"	Built by owner	45 00	45 00
" 20 ft com, 65 ft from W. end of	"	"	" "	36 00	36 00
" 20 ft com, 85 ft from W. end of	"	"	" "	36 00	36 00
" 45 ft com, 105 ft from W. end of	"	"	" "	87 00	87 00
" 22 ft W. end	5	"	" "	39 00	39 00
					339 38

" 20 ft ⁵⁰ com 22 ft from N, end of	"	"	"	38	00	38	00
" 15 ft com 42 ft from N, end of	"	"	"	27	00	27	00
" 20 ft com 57 ft from N, end of	"	"	"	56	00	56	00
" 24 ft com 77 ft from N, end of	"	"	"	62	20	62	20
" 27 ft com 101 ft from N, end of	"	"	"	75	60	75	60
" 22 ft com 125 ft from N, end of	"	"	"	61	60	61	60
" 75 ft N, end of	1	26	58	97	143	00	20.1
" 25 ft com 75 ft from N, end of	"	"	Bullby	00	48	00	48
" 25 ft com 100 ft from N, end of	"	"	"	48	00	48	00
" 25 ft com 125 ft from N, end of	1	26	do	48	00	48	00
" 21 ft N, end of	8	"	66437 do	58	80	58	80
" 21 ft com 21 ft from W, end of	"	"	do	40	80	40	80
" 24 ft com 42 ft from W, end of	"	"	"	49	20	49	20
" 84 ft E, end of	"	"	do	176	20	176	20
" 20 ft W, end of	4	22	do	36	00	36	00
" 22 ft com 20 ft from W, end	"	"	11	94	61	60	73
" 22 ft com 42 ft from W, end	"	"	11	94	61	60	73
" 22 ft com 64 ft from W, end	"	"	11	94	61	60	73
" 22 ft com 86 ft from W, end	"	"	11	94	61	60	73
" 22 ft com 108 ft from W, end	"	"	11	94	61	60	73
" 20 ft E, end of	"	"	X and small Bullwall	50	60	50	60
" 20 ft W, end of	5	"	10	85	56	00	66
" 20 ft com 20 ft from W, end	"	"	10	85	56	00	66
" 22 ft com 40 ft from W, end	"	"	11	94	61	60	73
" 22 ft com 62 ft from W, end	"	"	11	94	61	60	73
" 22 ft com 84 ft from W, end	"	"	11	94	61	60	73
" 22 ft com 106 ft from W, end	"	"	11	94	61	60	73
" 22 ft com 128 ft from W, end	"	"	11	94	61	60	73

" 22 ft W. end of	1	27	side walk wall built by owner	50	60	50	60
" 22 ft com 22 ft from W end	"	"	do	50	60	50	60
" 106 ft E. end of	"	"	58 58	296	80	350	38
" 25 ft W. end of	8	"	12 63	70	00	82	63
" 22 ft com 25 ft from W end of	"	"	11 11	61	60	72	71
" 15 ft com 47 ft from W. end of	"	"	7 58	42	00	49	58
" 22 ft com 62 ft from W. end of	"	"	side walk wall built by owner	50	60	50	60
" 22 ft com 84 ft from W. end of	"	"	do	50	60	50	60
" 22 ft com 106 ft from W. end of	"	"	do	50	60	50	60
" 22 ft E. end of	"	"	14 18	61	60	75	78
" 75 ft	3	21	Built by owner	131	25	131	25
" 75 ft	4	"	do	75	00	75	00
" 150 ft	5	"	do	75	00	75	00
" Court House & Public square			200 00	150	00	350	00
"	4	24	Built by owner	25	00	25	00
"	1	25	"	25	00	25	00
"	4	2		15	00	15	00
"			14 8028				

1480.25
 618.85
 664.37
 641.16
 337.38
 3742.04

" & therefore a fee upon the parcels of real estate above de-
 " scribed the sum set opposite to each respectively for the
 " purpose of defraying the expenses of said improvement
 " as aforesaid all of which is respectfully submitted

Dated, Joliet August 6-1855

Joseph Campbell
 Geo Woodruff
 O. H. Hardy

" State of Illinois: Will County &

" O. H. Hardy, Geo Woodruff & Jo-
 " seph Campbell commissioners appointed by the City

" Council of the City of Joliet to make a reference of the
 " cost of the improvement on Jefferson Street do solemnly
 " swear that we will well & truly & impartially to the best
 " of our knowledge & understanding of the expense of
 " such improvement on the real estate benefitted thereby
 " & estimate the cost of the same according to the pro-
 " visions of an ordinance passed March 9 - 1855

" Sworn & Subscribed May 21st 1855

" A F Patrick Police Magistrate

Otis Hardy

Geo Woodruff

Joseph Campbell

" State of Illinois Will County &

" We the undersigned publishers of
 " the Joliet Signal a weekly newspaper published in Joliet
 " Will do I do hereby certify that the annexed notice
 " was published in said paper for the term of two weeks
 " successively commencing June - 12 - 1855

L & L Farley

Notice

" To the owners of real estate on Jefferson Street is here-
 " by given to the owners of & persons interested in the
 " Real Estate lying on each side of Jefferson Street betw-
 " een the Bee Plains river & Chicago Street that the under-
 " signed commissioners heretofore appointed by the
 " Common Council of the City of Joliet to make an esti-
 " mate of the cost of draining, grading, paving & con-
 " structing sidewalks on the portion of Jefferson Street
 " aforesaid & to levy any assessment of the amount of
 " the same in conformity with the provisions of an

26.

"Ordinance passed by the Common Council of said
City March 9-1855 will meet at the office of Cts
Hardy in said City on the 21st day of June next at
8 o'clock A.M. to make the estimate & levy the assessments
aforesaid at which time & place all persons interested
are hereby requested to appear

"Johid June 11-1855

Geo Woodruff

Cts Hardy

Joseph Campbell

The following was then introduced from page 135 of the City
Records - "Sec 2 of an ordinance concerning City
Collector - Whenever any general taxes shall not be
collected within sixty days from the date of the Collec-
tors Warrant for the collection of the same, or any
special tax shall not be collected within twenty
days after the Warrant for the collection of the same
shall come into the hands of the collector it shall be
the duty of the collector to apply to the County Court
for an order for the sale of the real estate on which
such general or special taxes remain unpaid in
pursuance of the provisions of an act entitled "An
Act to amend the Charters of the several towns & cities
in this State approved March 1st 1854" & to proceed in
all respects as is provided in said act.

This was all the testimony given by S S Buffum -
Who was being called & sworn testified substantially as follows
I was City Clerk at the time these ordinances relating
to the improvement of Jefferson Street were passed

37.

"They were all published in the City paper
The following was then sworn to by S W Stone as being the warrant
issued to the collector & then introduced -

"State of Illinois City of Joliet -

"The People of the State of Illinois to
the Collector of the City of Joliet - Greeting 111

"Whereas the
Common Council of the City of Joliet did on the
day of August 1855 levy & apportion upon the real & per-
sonal estate hereinafter described the several sums
set opposite thereto in the appropriate column for the
purpose of improving Jefferson street -

"Now Therefore
you are hereby commanded to make levy & collect the
said several sums of money set opposite to the real
estate hereinafter mentioned & make due return in
accordance with the ordinances of the City in relation
to the collection of taxes -

"Witness My hand & the Seal of the City of Joliet & the Corporate seal here -
of this 15th day of August AD 1855



Furnian Mack Mayor pro tem

Attest S W Stone City Clerk -

	Names	L	B	Side angle	sewer grad- ing & roofing	Total
"	J H Brown	22 ft W. end of	1	27	Side walk & wall built by owner	50 00
"	J H Brown	22 ft from 25 th from W. end	8	11	11	61 60
"	same	15 ft from 47 ft from W. end	"	"	7 58	42 50
						X Others

Notice

Is hereby given that in accordance with the provisions of an act to amend the charters of the several Towns & Cities in this State in force March 4-1854 - Application will be made to the County Court of Will County, Illinois at the July term to be holden on the first Monday of July A.D. 1856 for judgment against such real estate for said assessment & costs & for an order to sell said real estate for the satisfaction thereof & all real estate for the sale of which an order shall be made will be exposed to public sale at the door of the Court House in said City of Joliet - Will Co on the second Monday in July A.D. 1856 for the amount of taxes with costs due thereon as provided by law

Joliet May 15-1856

Phillip Filer City Clerk

State of Illinois Will County - City of Joliet -

J. P. Filer of said

County & City being duly sworn say that the foregoing list & real estate was published in the True Democrat at least thirty days previous to the first Monday of July A.D. 1856 & that the above lots & real estate was published in the said True Democrat paper being the official organ of the said City of Joliet May-15-1856

Sworn & subscribed before me this

8th day of July A.D. 1856

P. Filer City Collector

G. L. Hawley Clerk of Will County Court per W. B.

Hawley Deputy

The following return was then introduced

¹⁴⁰
State of Illinois Will County &

City of Joliet

E. J. A list of real estate reported
by Phillip Filer City Collector in & for said City of
Joliet-Will County, State of Illinois upon which he has
been unable to collect certain special taxes due
thereon & as hereinafter set forth & on this first day
of July A.D. 1854 & files this his petition for a judg-
ment & order of sale against said real estate at the July
Term 1854 of the County Court of said Will County -

List of real estate situated within the corporate
limits of the City of Joliet & lying & being on both sides
of Jefferson Street in said City upon which a special
tax & assessment remains due & unpaid heretofore
duly assessed & levied by the corporate authorities
of said City for the purpose of grading said street &
improving said street from Chicago Street to the
River Bridge.

Names	Description	L	B	Side walk	Sewerage	Total
J H Brown	22 ft W. end	1	27	Built by owner	50 60	50 60
J H Brown	22 ft com 25 ft from W. end	8	27	11 11	61 60	72 71
J H Brown	15 ft com 47 ft from W. end	8	27	7 58	42 00	49 58

State of Illinois Will County &

I Phillip Filer City Collector in & for the
City of Joliet-Will County & State aforesaid do solemnly
swear that the foregoing list by me returned are a true
& correct record of the real estate situated within said
City upon which he has been unable to collect the

" the tax or assessment as required by law & ordinances
 " of said city Council of said city aforesaid & lived
 " as in the foregoing list set forth & that said taxes or
 " assessments aforesaid remain due & unpaid as set
 " forth in said list at this date

" Brown subscribed to before me

P Filer City Collector

" This 1st day of July A D 1854

" O L Hawley Clerk Will do Court Per W B Hawley Deputy

" Brown's lots were in the notices published

Phillip Filer on cross examination testified substantially as follows

" I made demand of Brown for taxes in the store pre-
 " vious to day 15-18 56 & might have done so after adver-
 " tisement. Brown had personal property. Received the
 " Warrant of the former collector. N B Elwood was
 " City Mayor. I have lived in Joliet some fourteen
 " years. Each original lot was 150 feet front on
 " Jefferson street. There were improvements on Jeffe-
 " son street at that time S W Stone, Sebastian Stephens
 " N B Elwood & Perichal had stores on Jefferson street
 " these were good substantial buildings
 " N B Elwood had two stores above the basement. The
 " two stores of Stone & Stephens increased the value of
 " the lots three or four thousand dollars. Improvements
 " enhance the value of real estate.

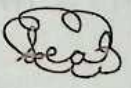
This was all the testimony given by Phillip Filer
 Alexander W. Mosh being called & sworn testified substantially
 as follows (A copy of the True Democrat was here intro-
 duced containing the notice of the application for a
 judgment to the County Court above set forth) I was

"Publisher of the True Democrat at that time - This no-
 "tice was published in all the papers of that date -
 "This was the City paper from April 1856 to April 1857
 "I should think this was the type of the True Democrat
 "This was all the evidence given by Alexander M. Smith

William Turner being called & sworn testified substantially as fol-
 lows - I am County Clerk of Will County - "This book
 "here introduced contains the records of the Will County
 "Court - The Record of the Will County Court was here in-
 "troduced corresponding to the transcript on file -

This was all the testimony given by William Turner

And the attorney for the plaintiffs having offered
 no other or further evidence to the whole of which
 said evidence at the time & in the order in which it was
 offered the said defendant by his attorney objected
 which said objections were then & there overruled by
 the Court & the testimony admitted to which decision
 of the Court the said defendant by his attorney
 then & there excepted & prayed the Judge would set
 his hands & seal to this his Bill of Exceptions
 which is accordingly done

David Davis 
 Judge

State of Illinois 3

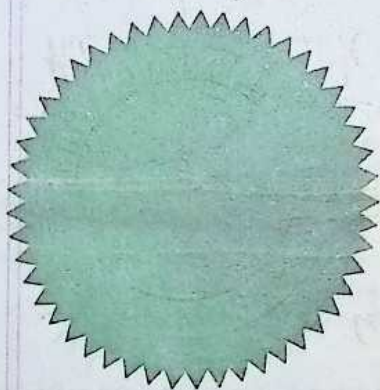
Will County 3/4

I Alexander Mcintosh Clerk of the Circuit Court in and for the County of Will and State of Illinois do hereby Certify that the foregoing is a True and Correct Transcript of the Records of proceedings in the above entitled Cause and also of the Papers on file in said above entitled Cause and now remaining in my Office, so far as required by Law.

In Witness whereof I have hereunto Subscribed my name and affixed the Seal of said Court at my Office in Joliet this twenty sixth day of April A.D. 1859.

A. Mcintosh Clerk

Clerks fees for Transcribing Records \$15.00



444 Supreme Court State of Illinois - Third Grand Division
J. H. Brown appellant April Term 1859
vs. Appeal from Will County Court
The City of Joliet appellee

And the said J. H. Brown the appellant herein comes & says that there is manifest error in the record & proceedings & in the rendition of the judgment in the Will County Circuit Court in this case, & assigns the following errors

- 1st. That the Court below allowed improper evidence to be given on the trial, by defendant in error
- 2dly- That the evidence introduced in the case in the Court below, was wholly insufficient to authorize the rendition of the judgment therein
- 3dly- That the Transcript of the County Court of Will County, & evidence in the case given in the Circuit Court, on the trial of the case, showed conclusively that the County Court from which the appeal was taken to the Circuit Court, had no jurisdiction to enter judgment, & the suit should have been dismissed in the Circuit Court, & judgment entered against the appellee for costs
- 4thly- That the return of Philip Liles as City Collector & his Collector's warrant & delinquent list, were entirely insufficient to authorize the rendition of any judgment, against the said appellant or the property returned, & no evidence

45 was given or offered on the trial supplying the defects therein, sufficient to authorize the rendition of the judgment against the appellant Brown in said suit & the Circuit Court was not authorized to take jurisdiction in the case

5thly - That no assessment or valuation of the property, on which a tax or assessment was purported to be levied was ever made, & no evidence introduced showing any amount of taxes or assessments made in Dollars & Cents, & no character used showing or denoting, that any taxes or assessments were made in Dollars & Cents

6thly - That the judgment was improperly & erroneously rendered against the appellant Brown, & directing execution to be issued against him - when the judgment should have been rendered against the City of Joliet for costs

7thly - That the said judgment rendered is contrary to the evidence & the law, & contrary to the Constitution of the State of Illinois & of the United States & the Court had no jurisdiction to render such judgment - And also that there are other errors apparent upon the said record & proceedings & the rendition of the said judgment - Wherefore by reason of the errors aforesaid & the many other errors contained in the record & proceedings in said cause, the said appellant prays that the judgment rendered in said cause, in the Circuit Court of said Will County be reversed, annulled & rendered void -

Wm Osgood atty &
of counsel for appellant

356-129

Sup. Ct. 3d - Division

J. H. Brown appellant

vs.
The City of - Polist appellee

Transcript of record &
affidavits of errors

Filed April 22 1889

L. Leland
Clerk

SUPREME COURT, THIRD DIVISION.

J. H. BROWN, APPELLANT,
vs.
 THE CITY OF JOLIET, APPELLEE. } APPEAL FROM WILL CIRCUIT COURT.

ABSTRACT OF CASE.

RECORD.

1. Caption of Record—Title and Term of Court.
 2. General Rule as to pleading in Court.
 3. Transcript of Record from County Court of Will County on appeal to the Circuit Court, filed; showing appeal to be from a judgment rendered on a special assessment of taxes on real estate of appellant by the city, for improvement on Jefferson street.
 Philip Filer, as City Collector of the City of Joliet, files with the Clerk of Will County Court, a list of real estate, upon which he alleges he has been unable to collect special taxes due thereon, with
 4. his petition for a judgment, and order of sale, July 1st, 1856.
 July 7, 1856, County Court commences its session for July.
 5. Philip Filer, as City Collector, applies for judgment in Will County Court against real estate, on which special taxes have been levied, lying on both sides of Jefferson street, to improve said street, from Chicago street to the river bridge.
 6. Description of the property of Brown appellant, against which the collector applies for judgment, with the different items of taxes, amounts, &c., as follows:
- | Names of Owners. | Part of Lot. | Lot. | Block. | Sidewalk Tax. | Grading, Crossing & Sewerage Tax. | Costs. | Total tax. |
|---------------------|-----------------------------------|------|--------|---------------|-----------------------------------|--------|------------|
| Old Town of Joliet. | | | | | | | |
| | 22 ft. west end, | 1 | 27 | | 50.60 | 1.44 | 52.04 |
| | 22 ft. com. 25 ft. from west end, | 8 | 27 | 11.11 | 61.60 | 2.00 | 74.71 |
| | 15 ft. " 47 ft. " " " | 8 | 27 | 7.58 | 42.00 | 1.42 | 51.00 |
6. Affidavit of Philip Filer as City Collector appended,
 STATE OF ILLINOIS, } ss.
 WILL COUNTY, }
 I, Philip Filer, City Collector in and for the City of Joliet, Will County and State aforesaid, do solemnly swear that the foregoing list by me returned are a true and correct record of the real estate situated within said city upon which he has been unable to collect the tax or assessments as required by law and ordinance of said City Council of said city aforesaid, and levied as in the foregoing list set forth, and that said taxes or assessments aforesaid remain due and unpaid as set forth in said list, to-wit:
 Sworn and subscribed to before me }
 this 1st day of July, A. D. 1856. } PHILIP FILER,
 O. L. HAWLEY, Clerk Will Co. Court, Collector for the City of Joliet.
 per W. B. HAWLEY, Dept.
 - Application by Filer as City Collector, against the said Lots, Blocks, and parts of Lots and Blocks as above, to Will County Court at July Term, 1856, July 7th.
 7. Exceptions filed by Brown, appellant, and petition for judgment continued till the 8th July.
 8. Tuesday, July 8th, 1856.—A hearing had on said petition; the exceptions overruled, and judgment "entered against the aforesaid Lots and Blocks and parts of Lots and Blocks in favor of the City of Joliet," for the sum annexed to each Lot and Block, and parts of Lots and parts of Blocks, being the amount of taxes or assessments and costs due severally thereon, and order for sale of same.
 July 12th, 1856.—Appeal prayed by Brown to Circuit Court of Will County, and granted on his entering into bond with security in the sum of \$400.00.
 Record of the proceedings in the County Court of Will County, certified by the County Clerk to the Will County Circuit Court, July 19th, 1856.
 9. 10-11. Exceptions filed by Brown, appellant, in the County Court.
 - 11-12. Appeal Bond from County Court to Circuit Court.
 13. Summons from Circuit Court *vs.* The City of Joliet on appeal.
 14. Sheriff's return on summons.
 - 13-15. May Term Circuit Court, 1857.—Jury waived and agreement to submit case to Court.
 15. May Term, 1858.—Case set for trial (with other like cases), Hon. David Davis, Judge of the 8th Circuit, presiding.
 15. Case tried and submitted and taken under advisement, May 20, 1858.
 17. May 22, 1858.—Judgment rendered *vs.* Brown for \$172.89 and costs; [no judgment against the Lots].
 18. Appeal prayed to Supreme Court, and granted on appeal bond being filed in 90 days in double the amount of judgment. Leave to file bill of exceptions by 1st day of next term.
 19. Appellant presents his appeal bond to the Court, with his security and the same is approved by the Court.
 - 20-21. Appeal bond set out.
 22. 1st day of Dec. Term Will Circuit Court, 1858—Stipulation to extend time of filing bill of exceptions to Jan. 20, 1859.
 23. Jan. 12, 1859.—Bill of exceptions filed by appellant.
 - 23-24. Bill of exceptions set out.
 23. S. S. Buffum a witness for the city testifies that he is City Clerk, and produces record of the pro-

- ceedings of the City Council.
- 23. Petition for improvement of Jefferson street, between *Joliet street* and the bridge across the Des Plaines River, and that the expense be paid by the real estate fronting on such improvement.
24. Recommendation to Common Council (by petition or suggestion) of the kind of improvement desired.
25. Sec. 6, of an act entitled "An act to amend an act entitled an act to incorporate the city of Joliet, passed June 19th, 1852," introduced in evidence.
- City ordinance, on page 149, of the city records, introduced in evidence: Authorising the improvement of Jefferson street, between Des Plaines river and Chicago street, and specifying manner of making improvement and the materials to be used; including sidewalks and sewers, reserving right to change or modify same, and appointing H. D. Risley, Otis Hardy, and William C. Wood commissioners to estimate the cost of such improvement.
- 26. City ordinance on page 168 of city records given in evidence by the City Attorney for the construction of a sidewalk, on the *south side* of Jefferson street; specifying, that as soon as the drain or sewer, on the *south side*, between Ottawa and Des Plaines street, shall be completed, as *heretofore directed*; that the Street Commissioner employ hands and continue said improvement, by walling up said drain or sewer upon the *north side* thereof, with good substantial stone wall, &c., and procure materials and construct a plank side walk from said Ottawa street to Des Plaines street, with proper stone crossings, &c. That the street commissioner keep an accurate account of all the expenses of such drain or sewer, and wall or sidewalk and report the same to the Common Council; and the City Clerk draw orders on the City Treasurer to the Street Commissioner to meet the expenses; such expenses to be re-imbursed to the Treasurer from the tax, on the property benefitted, when collected.
- Ordinance passed May 9th, 1855.
- 27-28- City ordinance on page 129, of city records, (section 1, 2 & 3,) introduced on behalf of the city, extending from near the bottom of the page 27, to near the bottom of page 29; making it necessary, that when petition is presented, and it is deemed necessary by the Common Council to improve any street, &c., they shall cause an order to be entered upon the records of their proceedings to that effect; which order shall particularly describe the location, character and specifications of the proposed improvement. That the publication of such order for one week in the corporation newspaper, should be deemed sufficient notice to the holders or owners of lots and real estate, benefitted by, or adjoining such improvement.
- 29. That the Common Council shall elect three discreet and disinterested householders as commissioners to make estimate of the cost of such improvements, on all real estate benefitted thereby, each lot or parcel of ground thus benefitted to be assessed in proportion to the benefit it will receive from the same; such commissioners to be sworn before entering upon their duties, &c., and to give notice of the time and place of meeting to make such assessment; such notice to be published in the corporation newspaper at least one week before the time of meeting. The commissioners to make a written report on the *succeeding* meeting of the Common Council; such report to be adopted if no objections made; and if objections made, the Common Council to levy such tax as they should deem right and reasonable.
- 29. Sec. 2.—That such improvement be made by and at the expense of the owners of the real estate fronting and adjoining, or benefitted by the same. Such owner making the improvement under the supervision of the Common Council, or such person as they shall appoint.
29. Sec. 3.—If such owner neglect to make his proportion of such improvement, in conformity with the order of the Common Council published as aforesaid, the Common Council, Mayor, or other person appointed, &c., may contract for same at expense of the city, and the same to be paid from the tax when collected; such special tax to be for sufficient to cover all expenses and be collected as other special taxes. Passed June 20th, 1854.
29. City ordinance on page 166, of city records introduced in evidence, showing that H. D. Risley was discharged from acting as commissioner on the improvement of Jefferson street and H. N. Stoddard appointed.
30. Portions of the city records on pages 167, 178, and 179, introduced in evidence, showing resignation of W. C. Wood as commissioner on said street, and Joseph Campbell appointed in his stead. That Alderman Woodruff was appointed commissioner in place of H. N. Stoddard who could not act.
- An ordinance ordering that George Woodruff, Otis Hardy, and Joseph Campbell, commissioners, &c., be authorised and directed to estimate the amount of the expenses of making the said improvement in accordance with the provisions of the ordinance passed March 10, 1855, exclusive of said paving, &c., and to assess the amount of such estimate upon the real estate in accordance with the above mentioned ordinance, and report their doings in the premises at the next meeting of the Common Council.
31. City records at page 180 introduced in evidence by the city attorney, as follows: "George Woodruff, Otis Hardy, and Joseph Campbell, commissioners heretofore appointed to assess the cost and benefit of the improvement of Jefferson street, made their report, which was concurred in by the Common Council and the Clerk ordered to levy the tax in accordance with the report
31. The report of the commissioners Woodruff, Hardy, and Campbell, is introduced in evidence by Plaintiff below, showing that said commissioners (heretofore appointed to estimate the cost of the improvement of Jefferson street, between Des Plaines street and Chicago street), to assess the amount of same upon the real estate opposite said improvement, according to an ordinance passed the 9th of March, 1855; that they were sworn, &c.; and after giving more than one weeks notice in the Joliet Signal of the time and place of such meeting, they met at the office of Otis Hardy on the 21st day of June, 1855, at 8 o'clock, A. M., for the purpose of making the estimate and assessment aforesaid, that for the purpose of giving all parties interested an opportunity to be heard, and to give the subject a full and careful investigation they adjourned from time to time until the 4th August, 1855—(note—no notice appears any where to be given of these adjournments), when the final meeting was held by them at said office. That after hearing all the allegations and suggestions of all parties in-

tarested, &c., they estimated the whole expense of the improvements at \$3,800.64, and that the whole real estate on east side of said improvement should, according to the direction of said ordinance be assessed as follows:

	Description.	Lot.	Block.	Side Walk	Sewer, Grad'g and Cross'g.	Total.
32-33	24 ft W end of (side walk built by owner)	4	23		43 20	43 20
	21 ft com 24 ft from W end of	"	"	11 38	41 80	53 18
34	20 ft com 45 ft from W end of (side walk built by owner)	"	"		45 00	45 00
	20 ft com 45 ft from W end of do	"	"		36 00	36 00
	20 ft com 85 ft from W end of do	"	"		36 00	36 00
	45 ft com 105 ft from W end of do	"	"		87 00	87 00
	22 ft N end of do	5	"		39 00	39 00
	20 ft com 22 ft from N end of do	"	"		36 00	36 00
	15 ft com 42 ft from N end of do	"	"		27 00	27 00
	20 ft com 57 ft from N end of do	"	"		56 00	56 00
	24 ft com 77 ft from N end of do	"	"		62 20	62 20
	27 ft com 101 ft from N end of do	"	"		75 60	75 60
	22 ft com 128 ft from N end of do	"	"		61 60	61 60
	75 ft N end of	1	26	58 97	143 00	201 97
	25 ft com 75 ft from N end of (side walk built by owner)	"	"		48 00	48 00
	25 ft com 100 ft from N end of do	"	"		45 00	45 00
	25 ft com 125 ft from N end of do	1	26		45 00	45 00
	21 ft N end of do	8	"		58 80	58 80
	21 ft com 21 ft from W end of do	"	"		40 80	40 80
	24 ft com 42 ft from W end of do	"	"		49 20	49 20
	84 ft E end of do	"	"		176 20	176 20
	20 ft W end of do	4	22		36 00	36 00
	22 ft com 20 ft from W end of	"	"	11 94	61 60	73 54
	22 ft com 42 ft from W end of	"	"	11 94	61 60	73 54
	22 ft com 64 ft from W end of	"	"	11 94	61 60	73 54
	22 ft com 86 ft from W end of	"	"	11 94	61 60	73 54
	22 ft com 108 ft from W end of (built wall and side walk)	"	"		50 60	50 60
	20 ft E end of	"	"	10 85	56 00	66 85
	20 ft W end of	5	"	10 85	56 00	66 85
	20 ft com 20 ft from W end of	"	"	10 85	56 00	66 85
	22 ft com 40 ft from W end	"	"	11 94	61 60	73 54
	22 ft com 62 ft from W end	"	"	11 94	61 60	73 54
	22 ft com 84 ft from W end	"	"	11 94	61 60	73 54
	22 ft com 106 ft from W end	"	"	11 94	61 60	73 54
	22 ft com 128 ft from W end	"	"	11 94	61 60	73 54
	22 ft W end of (side walk and wall built by owner)	1	27		50 60	50 60
	22 ft com 22 ft from W end do	"	"		50 60	50 60
	106 ft E end of	"	"	53 53	296 80	350 33
	25 ft W end of	8	"	12 63	70 00	82 63
	22 ft com 25 ft from W end of	"	"	11 11	61 60	72 71
	15 ft com 47 ft from W end of	"	"	7 58	42 00	49 53
	22 ft com 62 ft from W end of (side walk and wall built by owner)	"	"		60 60	60 60
	22 ft com 84 ft from W end of do	"	"		60 60	60 60
	22 ft com 106 ft from W end of do	"	"		60 60	60 60
	22 ft E end of	"	"	14 18	61 60	75 78
	75 ft (side walk built by owner)	3	21		191 25	191 25
	75 ft do	4	"		75 00	75 00
	150 ft do	5	"		75 00	75 00
	Court House and Public Square			230 00	150 00	350 00
	(side walk built by owner)	4	21		25 00	25 00
	do	1	25		25 00	25 00
	East Joliet	4	2		15 00	15 00

34-35. Oath of commissioners.

35. Certificate of publication of notice given by commissioners for 2 weeks in Joliet Signal.

Notice by commissioners to owners of real estate on Jefferson street, between Des Plaines river and Chicago street, that they will meet at the office of Otis Hardy on the 21st day of June inst., at 8 o'clock A. M., to make the estimate and levy the assessment, for the improvement on said street, in conformity with the provisions of an ordinance passed by the Common Council of said city, March 9th, 1855. [Note—No ordinance passed March 9, 1855, was introduced in evidence and the record shows no such ordinance.]

36. City records at page 135, introduced by city attorney, as follows:

Sec. 2 of an ordinance concerning city collector—Whenever any general taxes shall not be collected within sixty days from the date of the collector's warrant for the collection of the same, or any special tax shall not be collected within twenty days after the warrant for the collection of the same shall come into the hands of the collector, it shall be the duty of the collector to apply to the county court for an order for the sale of the real estate on which such general or special taxes remain unpaid in pursuance of the provisions of an act entitled "An act to amend the charters of the several towns and cities in this State," approved March 1st, 1854, and to proceed in all respects as is provided in said act.

Buffum gave no further testimony.

36. S. W. Stone, a witness called by the city attorney, testified as follows: "I was city clerk at the time these ordinances relating to the improvement of Jefferson street were passed, and they were published in the city paper; this is the warrant issued to the collector:

"State of Illinois, City of Joliet. ss.

37. "The people of the State of Illinois, To the collector of the city of Joliet, Greeting:
"Whereas the Common Council of the city of Joliet did on the day of August, 1855, levy and assess upon the real and personal estate hereinafter described, the several sums set opposite thereto, in the appropriate column, for the purpose of improving Jefferson street.
"Now, therefore, you are hereby commanded to make levy and collect the said several sums of money set opposite to the real estate hereinafter mentioned, and make due return in accordance with the ordinances of the city in relation to the collection of taxes.

"Witness Firman Mack, Mayor pro tem, of the city of Joliet, and the corporate seal thereof, this 15th day of August, A. D. 1855.

"FIRMAN MACK, Mayor pro tem.

{ SEAL }

"ATTEST—S. W. STONE, City Clerk."

NAMES.		L. B. Sidewalk, Sewer, Grading & Crossing. Total.			
J. H. Brown, 22 ft. from W end of (sidewalk and wall built by owner),		1	27	50	60
J. H. Brown, 22 ft. com. 25 ft. from W end,		8	27	11	11
same, 15 ft. com. 47 ft. from W end,		8	27	7	58
And others.				42	00
					49

38. S. W. Stone on cross examination testified that "the commissioners report was filed by me; I remember of Mr. Osgood calling at my store and looking at the report; I do not remember that there were any papers attached to the report with ilets; I do not remember of having seen the certificate of publication before now; I was city clerk for four or five years up to April, A. D. 1856; I do not remember of having seen the commissioners report before with these leaves attached," [being the oath and notice to owners and certificate of publisher.]
- Philip Filer, a witness called by the city attorney, testified as follows: "I was city collector from April, 1856, to April, 1857; I made demand of Brown for the taxes due; Brown did not pay the assessment; I made return to the city authorities, [no such return appears in evidence]; the *True Democrat* was the corporation paper at that time; notice was published in it for thirty days."
- Then a list of the real estate upon which special tax had been levied to improve said street, was introduced, [indentically the same as given with the collector's warrant].
39. Notice by Philip Filer, as city collector, that he would apply to the County Court of Will County, for judgment against the delinquent lots, &c., at the July Term, 1856, and an order to sell. Dated May 15, 1856.
- Affidavit of Philip Filer that publication of delinquent list made in the *True Democrat* at least thirty days previous to the first Monday of July, 1856, said paper being the official organ of the city of Joliet.
- Subscribed and sworn July 8th, 1856.
40. Return of Philip Filer, as city collector, to Will County Court, of delinquent lots, &c., on Jefferson street, in the city of Joliet, July 1st, 1856, giving the list of property, the same as before described, with the amounts carried out as before specified—[but no amount of valuation, or of taxes or assessments in dollars and cents, or characters representing dollars and cents]—his affidavit appended to return as to its correctness, &c.
41. Philip Filer on cross-examination, testified as follows: "I made demand of Brown for taxes in the store, previous to May 15, 1856, and might have done so after advertisement; Brown had personal property; I received the warrant of the former collector, N. D. Elwood was City Mayor; I have lived in Joliet some fourteen years; each original lot was 150 feet front on Jefferson street; there were improvements on Jefferson street at that time. S. W. Stone, Sebastian Stephens, N. D. Elwood, and Periolat had stores on Jefferson street; these were good substantial buildings; N. D. Elwood had two stores, above the basement; the two stores of Stone & Stephens increased the value of the lots, three or four thousand dollars; improvements enhance the value of real estate." This was all of Mr. Filer's evidence.
- Alexander McIntosh was called by the city attorney, and testified as follows (a copy of the *True Democrat* was here introduced containing the notice of the application for judgment to the County Court above set forth): "I was publisher of the *True Democrat* at that time; this notice was published in all the papers of that date; this was the city paper from April, 1856, to April, 1857; I should think this was the type of the *True Democrat*." This was all the evidence given by Alexander McIntosh.
- William Tonner, a witness called by the attorney for the city, testified as follows: "This book here introduced, contains the records of the Will County Court." The record of the Will County Court was here introduced corresponding to the transcript on file. This closed the evidence for the city.
- To the whole of which said evidence at the time and in the order in which it was offered, the said Defendant (appellant here) by his attorney, objected, which said objections were then and there overruled by the Court, and the testimony admitted. To which decision of the Court the said Defendant by his attorney then and there excepted.
43. Clerk's certificate.
44. Assignment of errors, as follows:
- 1st. That the Court below allowed improper evidence to be given on the trial, by Defendant in error.
- 2d. That the evidence introduced in the case in the Court below, was wholly insufficient to authorize the rendition of the judgment therein.
- 3d. That the transcript of the County Court of Will County and evidence in the case, given in the Circuit Court on the trial of the case, showed conclusively that the County Court, from which the appeal was taken to the Circuit Court, had no jurisdiction to enter judgment, and the suit should have been dismissed in the Circuit Court, and judgment entered against the appellees for costs.
- 4th. That the return of Philip Filer as city collector and his collector's warrant and delinquent list, were entirely insufficient to authorize the rendition of any judgment against the said appellant, or the property returned, and no evidence was given or offered, on the trial supplying the defects therein, sufficient to authorize the rendition of the judgment against the appellant Brown in said suit, and the Circuit Court was not authorized to take jurisdiction in the case.
45. 5th. That no assessment or valuation of the property, on which a tax or assessment was purported to be levied was ever made, and no evidence introduced showing any amount of taxes or assessments made in dollars and cents, and no characters used showing or denoting that any tax or assessments were made in dollars and cents.
- 6th. That the judgment was improperly and erroneously rendered against the appellant Brown, and directing execution to be issued against him, when the judgment should have been rendered against the city of Joliet for costs.
- 7th. That the said judgment rendered is contrary to the evidence, and the law, and contrary to the Constitution of the State of Illinois and of the United States, and the Court had no jurisdiction to render such judgment, and other errors, &c.

SUPREME COURT, THIRD DIVISION.

J. H. BROWN, APPELLANT,
vs.
THE CITY OF JOLIET, APPELLEE. } APPEAL FROM WILL CIRCUIT COURT.

POINTS AND BRIEF OF APPELLANT.

1st. The tax or assessment levied on appellant's property was illegal and void; no valuation of said property having been made, on which such tax or assessment was levied—and the same were unequal, compared to the taxes or assessments on other property on the same street, levied for the same improvement. See evidence in the case; City charter of Joliet, Article V. Sects 1-2-9, Session Laws, (special session) 1852, Page 164 and amendments to Charter—Session L. 1853, Page 275-6, Sec. 3, Division 4 and Sec. 6, 3 Scam. Rep. 227-130—Sawyer *vs.* The City of Alton 5. Gill. Rep. 405-416-17—Shaw *vs.* Dennis.
2. Seldens. Rep. 92—Thompson *vs.* Schermerhon.
1. Dutchers Rep. 309—State *vs.* Jersey City.

2d. The proceedings of the City Council and the Commissioners appointed by them, in the levying of the tax or assessment in this case were illegal, and not in accordance with the ordinances of said city, and the same were contrary to the constitution and are of no validity or effect. See City Charter and amendments, and the evidence as above Constitution Ills., 1858, Art. IX, Sects 2-5-6. 2. Scam. Rep. 187-188—Kinzie *vs.* Chicago. 2. Cranch Rep. 167—Head *et. al. vs.* The Providence Insurance Company. 2. Kents Com. 298-299.

3d. The report of the City Collector to the Will County Court, and his application for judgment and the evidence introduced, were insufficient to authorize said court to take jurisdiction and render judgment; and the evidence introduced in the Circuit Court, showed that said County Court had no jurisdiction, to render judgment, and the said report and application and evidence introduced in the Circuit Court were wholly insufficient to authorize that court to render judgment in favor of the City, even if said court were authorized to take jurisdiction at all. See City Charter of Joliet and amendments and evidence and authorities above. See also 20, Ills. Rep. 338—Lawrence *vs.* Fast.

4th. This is a proceeding *in rem*, and the Circuit Court rendered judgment in damages against the party and awarded execution on same, which is erroneous.

5th. No judgment could be legally rendered against the appellant, on the return and petition of the City Collector, and the evidence produced on the trial by the Plaintiff in the Court below, (the appellee here,) nor could any judgment be legally rendered against the property of appellant. See City Charter and amendments as above, the evidence and authorities above cited. These Points all come within the exceptions filed in the County Court, and the errors assigned here.

URI OSGOOD, Atty. and
of Counsel for Appellant.

No. Folio 10. Cost Amount . Received Payment from App. Atty.

256-129

Superior court

J. M. Brown appellant
vs.

The City of St. Louis appellee

Attendant & Trust
of appellant

Wm. Osgood atty.
for appellant

Filed May 12, 1859

L. Deland

Clerk

Referred

State of Illinois Supreme Court for
J H Brown Appellant
vs
Appeal from Will
The City of Joliet Appellee

It is hereby stipulated & agreed
by & between the parties to this suit that the time for filing
the Record in the above entitled suit in the office of the
Clerk of the Supreme Court be extended until the thirteenth
day of May AD 1859 -

Joliet April 14th 1859

Wm Orsford
Atty pro Appellant

J. E. Street
Atty for Appellee,

25th B

1st B
W

Supreme Court-

J H Brown Appellant

25th vs

The City of Joliet Appellee

Filed April 26, 1839

L. Leland
Clerk

State of Illinois - Supreme Court
The City of Joliet
vs
J. H. Brown
Appeal from
Will.

And now the said City of
Joliet by R. E. Shurtz its attorney
comes & says that there is no error
either in the record and proceed-
ings aforesaid or the rendition
of the judgment aforesaid
& prays that the justices of the
said Supreme Court now
may proceed to examine as well
the record and proceedings
aforesaid as the matters aforesaid
assigned for error & that
the judgment aforesaid
in form aforesaid may
be in all things affirmed etc

J. E. Shurtz
Atty for Appellant.

256-129

Supreme Court
The City of New York
ad

J. A. Brown
Jury de in error,

Filed April 28, 1857
L. Leland
Clerk