

No. 14618

Supreme Court of Illinois

City of Chicago

vs.

Pres., Directors of the
Home Bank et al

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

Proposed
No. 175 *167*

M. A. L.
J. W. Middleton & Co., Stationers, 196 E.

Home Bank

1864

City of Chicago

Feb 25
Remerding

IN THE
SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A.D. 1864.

The City of Chicago, Plaintiff in error,

VS.

The President, Directors and Company of
the Home Bank; the President, Directors
and Company of the Meriden Bank; and
Samuel Yale, Defendants in error.

Error to the Superior Court of
Chicago.

This is a writ of error from a judgment upon a special assessment warrant No. 375 South, for the curbing, filling and paving with Nicholson pavement, Clark street from the north side of Polk street, to the north side of Taylor street, in the City of Chicago, dated Sept. 24, 1863.

ABSTRACT OF RECORD.

3 The report, and application for judgment of the City Collector,
 4 filed in the Superior Court of Chicago, Feb. 1st, 1864 sets forth, that
 5 special warrant No. 375 South, was delivered to him for collection, on
 6 or before the 31st day of October, 1863, to wit, on the 25th day of
 7 September, 1863; that upon the receipt of said warrant, he forthwith
 8 gave due notice, by publication, that the same was in his hands for
 9 collection, and that he had also given due notice, by publication, of his
 10 intended application to said court for judgment against the delinquent
 11 lands, and that a schedule annexed to said report is a correct list of the
 12 lands, lots and parcels of land specified in said warrant on which the
 13 assessments are not paid, and that the amounts of the assessments,
 14 damages and costs due on said lands, lots and parcels of land, respec-
 15 tively, are therein correctly stated and set forth, and praying for
 16 judgment &c.

6-7-8-9 Copies of the notices referred to in the report, together with
 certificates of publication of the same, are annexed to said report and
 application.

The first of said notices is as follows:

COLLECTOR'S NOTICE.

*City Collector's Office, Court House,
 Room 14, Chicago, Ill., Sept. 25, 1863.*

Public notice is hereby given, that the following described war-
 rants have been placed in my hands for collection, to-wit:

* * * * *

6-7 Warrant No. 375 south, dated September 24th, 1863, and issued
 for the collection of a special assessment levied for the curbing, filling
 and paving with Nicholson pavement, Clark street, from the north side
 of Polk street to the north side of Taylor street.

* * * * *

All persons interested in said assessments are requested to make
 immediate payment thereof at my office. In default of such payment,
 the said assessment will be collected at the cost and expense of the per-
 sons liable therefor.

FREDERICK MEHRING,
 City Collector.

9-10 Here follows a schedule of the delinquent premises:

11-12 Recital of the filing of objections by defendants in error, and of
 13-14 proceedings, and order of Court thereon, rendered February 19, 1864,

sustaining the objections, and refusing judgment against the premises therein described.

- 15-43 THE BILL OF EXCEPTIONS contains the names of the defendants
16 in error, and a list of the premises of which they claimed to be owners, or in which they claimed to be beneficially interested, and for which they filed objections respectively.

The defendants objections are as follows:

- 17 1 and 2.—The mode and manner of levying said assessment, and the provisions of the City Charter relating to the filling, curbing and paving of streets are contrary to the Constitution of the United States, and of this State.
- 17 3. No notice was given to owners or property-holders, as contemplated by sec. 3, chapter 7, City Charter.
- 17 4. Ordinance for improvement passed, and assessment made without petition from owners of a majority of the property to be assessed,
18 and no notice from the Board of Public Works, or any of the commissioners thereof, of the intention to recommend said improvement, or of the pendency of such recommendation.
- 18 5. The recommendation of said improvement, signed by only three commissioners of the Board of Public Works, whereas it should have been signed by the full Board.
- 18-19 6, 7.—No recommendation of said improvement, accompanied with a proper estimate was made by the Board of Public Works to the Common Council, nor was any application for the improvement made to said Board, nor did the owners of a majority of the property petition for the same.
- 19 8. There is no valid ordinance for the making of said improvement.
- 19 9. The recommendation of the Board of Public Works and accompanying ordinance were referred to the Committee on Streets and Alleys, and the ordinance was subsequently passed on the same day the committee reported, without deferring the committee's report to the next regular meeting.

- 19-20 10. The commissioners were not sworn before proceeding to make the assessment, as required by Sec. 6, Chap. 7, of the City Charter.
- 20 11, 12. No notice, as required by the Charter, was given by the commissioners of the time and place of meeting to make the assessment. The notice was insufficient, and the commissioners acted without authority.
- 20-21 13, 14. The commissioners did not estimate damages as well as benefits to property owners; and the assessment roll is defective in not showing damages as well as benefits, and because no balance is struck, &c.
- 21 15, 16. The commissioners did not sign the assessment roll, as required by the City Charter, before filing the same in the office of the City Clerk, and a duplicate thereof in the office of the Board of Public Works, and the roll was not signed, as required by the Charter; nor was the duplicate signed, nor was any sufficient assessment roll filed in the office of said City Clerk, or any duplicate in the office of said Board.
- 21-22 17. No notice, as required by the City Charter, was given by the Commissioner of the filing of the assessment roll, in the Clerk's office, or of their intended application to Common Council for a confirmation of the assessment.
- 22 18. The Common Council had no authority or jurisdiction to confirm the assessment, and the order of confirmation is void.
- 22 19, 28. The assessment roll does not show that the assessment was levied abutting and fronting upon the line of improvement, in proportion to the number of front feet, nor is the number of front feet of the various lots given, nor is it stated that they adjoin or abut upon the proposed improvement.
- 23 21. Defendants object to rendition of judgment for the one per cent damages asked by the Collector, for the reason that the Court has no authority to render such judgment.
- 23 22. No notice given by collector as required by Sec. 9, Chap. 9, Rev. Charter.

EVIDENCE.

- 24 REPORT FROM BOARD OF PUBLIC WORKS to the Common Council dated July 13, 1863, recommending "the improvement of Clark street to the north side of Polk street to the north side of Taylor street, with

Nicholson pavement; the street to be first curbed with a suitable wall and filled to grade." The report states that the improvement is not asked for by the petition of the owners of a majority of the property to be assessed. Accompanying the report is an estimate of the expense of the improvement, as follows:

ESTIMATE.

24	Curb walls.....	\$5,054.93
	Filling.....	2,824.14
	Grading.....	
	Nicholson pavement	7,926.47
	Total estimate of expenses.....	\$15,805.53
	Less cost of intersections.....	835.07
		\$14,970.46

25 Also a general plan or description of improvement, and an ordinance which is as follows:

25 Be it ordained by the Common Council of the city of Chicago,
North side of Taylor street SECTION 1. That Clark street, from the north side of Polk street, *to the*
 be, and is hereby, ordered curbed, filled and paved with Nicholson
 pavement; said work to be done under the superintendence of the
 Board of Public Works, conformably to the general plan or de-
 scription prepared by said Board, and hereto annexed.

26 SECTION 2. That the sum of fourteen thousand nine hundred and sev-
 enty and 46-100 dollars be assessed upon the real estate fronting
 or abutting on the improvement hereby ordered according to the
 provisions of the Revised Charter in such case made and provided,
 and that such sum, when collected, be applied to the payment of
 the said improvement.

The said report is signed.

J. G. GINDELE, } Board of Public Works
 FRED. LETZ, } of
 O. J. ROSE, } the city of Chicago.

27 Endorsement on report and ordinance showing the proceedings in
 relation thereto.

27-28 THE RECORD OF THE PROCEEDINGS OF THE COMMON COUNCIL
 shows that the foregoing report and ordinance were presented to the

Common Council, at their regular meeting held July 13, 1863, and were referred to the committee of streets and alleys of the south division of said city; that, at a regular meeting of the Council, held August 10th, 1863, Alderman Barrett, of said committee, reported in favor of the passage of said ordinance, and that the same was laid over under a rule of the Common Council; and that, at a regular meeting of the Council, held August 24, 1863, the votes being taken by ayes and noes, the ordinance was unanimously passed.

The ordinance was approved by the Mayor August 26, 1863 Certified copy of the assessment roll for the curbing, filling and paving with Nicholson pavement, Clark street, from the north side of Polk street to the north side of Taylor street.

COMMISSIONERS' OATH.

The undersigned, commissioners to assess the amount directed by the Common Council of the city of Chicago, to be assessed on the real estate fronting or abutting on the contemplated improvement of Clark street, from the north side of Polk street to the north side of Taylor street, by curbing, filling and paving the same, do severally solemnly swear that we will faithfully execute our duty to the best of our ability

[U. S. Revenue Stamp 5 Cents]	J. G. GINDELE, FRED. LETZ, O. J. ROSE,	} Commissioners of the Board of Public Works.

Sworn to and subscribed before me
the 7th day of September, A. D., 1863.

JOHN B. REILY, Notary Public.

Then follows a list of the property assessed, the amounts assessed, and the names of persons to whom assessed. The following is an abstract from said list, showing the lots only for which defendants in error filed objections, with the names of persons to whom assessed, and the amounts assessed:

NAME OF OWNER.	PART OF LOT OR LAND.	SUB-LOT.	LOT.	BLOCK.	ASSESSMENT.	
					DOLLARS.	CENTS.
31 R. Coe,			21	127	\$231	99
"			22	"	231	99
"			28	"	231	99
"			33	"	231	99
"			34	"	231	99
"			40	"	231	99
"			45	"	231	99

The sum total of the assessment was \$14,970 46-100, the amount ordered to be assessed.

33 Attached to said assessment roll are the following certificates :

OFFICE OF THE BOARD OF PUBLIC WORKS,
CHICAGO, Sept. 14th, 1863.

33 The undersigned hereby certify that they have completed the Assessment Roll for the curbing, filling, and paving with Nicholson pavement, Clark street, from the north side of Polk street to the north side of Taylor street; that, before proceeding to make such assessment, they were duly qualified before entering upon their duties, as appears by the oath hereunto attached; that they published a notice of the time and place of their meeting, for the purpose of making said assessment, in The Chicago Times, the Corporation newspaper of the City of Chicago for the period of six consecutive days previous to such meeting, a certificate of which publication is hereunto annexed; that they were present at the time and place, and for the purpose designated in the said notice, and did then and there, and do hereby, assess the respective amounts set opposite to each separate block, lot, sub-lot, piece or parcel of land in the foregoing assessment roll mentioned, in their appropriate columns, as the amount directed by the Common Council of the City of Chicago, to be assessed on the real estate fronting or abutting on said contemplated improvement. We further certify that said assessment roll embraces all the separate blocks, lots, sub-lots, pieces or parcels of land fronting or abutting on the proposed improvement, and that the assessment has been made in such manner, as nearly as may be, that each separate block, lot, sub lot, piece or parcel of land, on either side of the street, or part of the street to be improved, shall sustain the cost and expense of making or completing the improvement upon that half of the street adjacent to or in front of the same.

[U. S. Revenue Stamp 5 Cents] J. G. GINDELE, }
FRED LETZ, } Commissioners of the
O. J. ROSE } Board of Public Works.

34-35 Then follows a copy of the notice given by the commissioners of the time and place of meeting, to make the said assessment, and a certificate of the publication thereof, in the corporation newspaper.

36 Certificate of the city clerk that the assessment roll was filled in his office, Sept. 14, 1863.

36-37 Next follows the following notice of application for confirmation of the assessment.

ASSESSMENT NOTICE.

OFFICE OF THE BOARD OF PUBLIC WORKS,
CHICAGO, Sept. 15, 1863.

Public notice is hereby given to all persons interested, that the

Board of Public Works of the City of Chicago has completed the Assessment Roll for the curbing, filling and paving with Nicholson pavement, Clark street, from the north side of Polk street to the north side of Taylor street, and such Assessment Roll has been filed in the office of the City Clerk. The Board of Public Works will apply to the Common Council of said city, at its next regular meeting, to be held on the 21st day of September, 1863, at the hour of 7½ o'clock, P. M., for a confirmation of such assessment, at which time all parties interested will have the right to be heard. All persons wishing to object to said assessment must file their objections to the same, in writing, in the office of the City Clerk, at least one day prior to such meeting of the Common Council.

J. G. GINDELE, }
 FRED LETZ, } Commissioners of the
 O. J. ROSE, } Board of Public Works.

37 To said notice is appended the publisher's certificate of publication.

APPLICATION FOR CONFIRMATION.

CHICAGO, Sept. 21st, 1863.

To the Mayor and Alderman of the City of Chicago in Common Council assembled :

The undersigned, Commissioners of the Board of Public Works of the city of Chicago, hereby apply to your honorable body for a confirmation of the foregoing assessment roll.

J. G. GINDELE, }
 FRED. LETZ, } Commissioners of the
 O. J. ROSE, } Board of Public Works.

ORDER OF CONFIRMATION.

IN COMMON COUNCIL, Sept. 21st, 1863.

38-39 WHEREAS due notice has been given by the Commissioners of the Board of Public Works of their filing with the City Clerk, the foregoing assessment roll, and whereas, the said commissioners have applied to the Common Council for confirmation of said assessment, and, no objections thereto having been filed in due time; It is therefore ordered that the said assessment roll, as revised by the Common Council, be, and the same is hereby confirmed.

39 It is further ordered that a warrant be issued for the collection thereof.

Passed.

H. W. ZIMMERMAN, City Clerk.

39 Then follows a certificate of the clerk that the assessment roll offered in evidence is a true copy, &c., and endorsements on the assess-

40 ment roll showing the date of order of confirmation, the presentation
of the order to the Mayor for his approval, and the approval.

40 It was admitted that the Chicago Times was the corporation
newspaper; that Storey & Worden were the publishers of said paper;
that the notices appended to the assessment roll were published as
stated in the publishers' certificates, attached to the roll, and that said
paper is published and circulated regularly every Sunday morning.

41 The record of the proceedings of the Common Council introduced
in evidence shows that, at a regular meeting, held September 21, 1863,
the Board of Public Works returned to the Common Council sundry
assessment rolls, duly advertised, to which no objections had been filed
in due time, which were severally confirmed by the entry of the usual
order of confirmation, among which was "an assessment roll for curbing,
filling, and paving with Nicholson pavement, Clark street, from
the north side of Polk street to the north side of Taylor street."

41 H. W. Zimmerman, City Clerk, being sworn as a witness, testified
that the order of confirmation attached to the assessment roll was presented
to the Common Council with the roll, and was passed at a regular
meeting of the Council, held Sept. 21, 1863.

42 Evidence was introduced showing that the said order of confirmation
was duly presented to the Mayor for his approval, Sept. 23, 1863,
and approved by him September 24, 1863.

42 It was admitted that no duplicate of the assessment roll had been
filed in the office of the Board of Public Works.

42 The foregoing was all the evidence in the cause, whereupon it was
ordered by the Court that the said objections be sustained, and judgment
against the said above described premises was then and there
refused, to which decision the said city of Chicago, by its attorney, then
and there excepted.

ERRORS ASSIGNED.

1

2

whereof the plaintiff prays that said judgment be reversed, &c.

175-107
The City of Chicago.
The Pres. Directors &c.
of the Home Bank,
et al.
Abstract.

Filed April 19, 1864
J. L. M. W. M.

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

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

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

Van H. Higgins } Judges.
Joseph E. Gary }

Joseph Hunt Prosecuting Attorney.

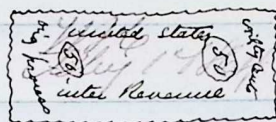
David S. Hammond Sheriff of Cook County.

Attest, Thomas B. Carter Clerk.

Be it remembered that heretofore said; on the first day of February in the year of our Lord one Thousand Eight hundred and sixty four. came Frederick McKing, City Collector of the City of Chicago. and filed in the office of the Clerk of the said Superior Court of Chicago. a report of all the land lots and parcels of land in which assessments damages and costs were then due and unpaid on the warrant for special assessment therein described. and his application for judgment thereon. together with any

affidavit of the said McKim, and also a certificate signed by the Publishers of the Corporation newspaper of the said City of Chicago, of the due publication of notice that said warrant had been placed in the hands of the said City Collector for collection, and also a certificate signed by the said Publishers of the said Corporation newspaper of the due publication of notice of the said City Collector's intended application for judgment, which said report, affidavit and certificates are in the words and figures following, to wit:

State of Illinois }
City of Chicago } ss
County of Cook }



Superior Court of Chicago
February Term A.D. 1864

To the Honorable John M. Wilson, Van H. Higgins
and Joseph C. Gary, Judges of the Superior
Court of Chicago.

The Report of Frederick Meising, City
Collector of the City of Chicago, in said County
of Cook, respectfully represents that a special
warrant, in due form of law, issued for
the collection of a special assessment duly
made for the curbing, filling and paving
with Nicholson pavement Clark street from
the North side of Polk street to the North side
of Taylor street, and signed by the Mayor,
Comptroller and City Clerk of said City of
Chicago, and under the corporate seal of said
City, which said warrant is known and
designated as number 375 South and dated
September 24th A.D. 1863, was delivered to
him, the said City Collector, for collection, on
or before the 31st day of October last. Durt. on
the twenty fifth day of September A.D. 1863.

That forthwith after the delivery of the
said warrant to him, he gave notice by ten

day's publication in the Chicago Times, the corporation newspaper of said City, that such warrant was in his hands for collection, briefly describing its nature and requesting all persons interested to make immediate payment at his office, and that in default thereof, the same would be collected at the cost and expense of the persons liable for the payment of such assessment, a copy of which said notice, together with a certificate of the due publication thereof from the printer or publisher of said corporation newspaper is herewith filed, and the same are hereby referred to for a more particular description.

That he has given notice by six days' publication thereof in the Chicago Times, the corporation newspaper of said City, of his intended application to said Court, on the first day of said February Term, A.D. 1864, for judgment against the lands, lots, and parcels of land specified in said warrant, for the amount of the assessment, damages and costs respectively due thereon, the first publication thereof being on the 19th day of January A.D. 1864, in which said notice he briefly specified the nature of said warrant, and requested all persons interested

therein to attend at said term; a copy of which said notice is herewith filed, together with a certificate of the due publication thereof from the printer or publisher of said Corporation newspaper, and the same are hereby referred to for a more full and particular description.

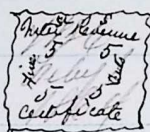
That the annexed Schedule is a correct list of the lands, lots and parcels of land specified in said warrant, on which the assessments are not paid, and that the amounts of the assessments, damages and costs, due on the said lands, lots and parcels of land respectively, are therein correctly stated and set forth. Wherefore your petitioner prays that judgment may be rendered according to the form of the Statute in such case made and provided.

J. Mehring
City Collector

State of Illinois }
County of Cook }

I Frederick Mehring City Collector in and for the City of Chicago do solemnly swear, that the foregoing report by me made is true, according to the best of my knowledge

and belief, and the annexed Schedule is a true and correct list of the delinquent lands lots and parcels of land specified in the special warrant mentioned in said report upon which I have been unable to collect the assessment as required by law, and that the amount due upon said lands, lots and parcels of land are therein correctly set forth.



X Mehring
City Collector.

Subscribed and sworn to
before me, this 1st day of
February A.D. 1864

Thomas B Carter Clerk

Certificate of Publication

Collectors Notice.

City Collector's Office. Court House }
Room 14 Chicago, Ill. Sept 25. 1863 }

Public Notice is hereby given that the following described Warrants have been placed in my hands for collection, to wit:

X X X X X X X

Warrant No 375, South, dated September 24th 1863, and issued for the collection of a special

7 assessment levied for the curbing, filling
and paving with Nicholson pavement Clark
street, from the North side of Polk street to
the north side of Taylor street

X X X X X X

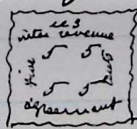
All persons interested in said assessments
are requested to make immediate payment
thereof at my office. In default of such
payment, the said assessment will be
collected at the cost and expense of the persons
liable therefor

Fredrick Mehring
City Collector.

This certifies, that the appended Collector's
notice has been published in the Chicago
Times, the Corporation newspaper of the
City of Chicago, County of Cook, and State
of Illinois, ten days consecutively, commen-
cing with the twenty sixth day of September
1863.

Chicago January 30th 1864

Story & Wadsworth
Publishers



Certificate of Publication

State of Illinois }
Cook County } s.s.

City Collector's office. Court House
Room 14. Chicago. January 18th 1864

Public Notice is hereby given that on the first Monday of February next. being the first day of February, 1864. at a regular term of the Superior Court of Chicago, to be begun and holden at the Court House in said City of Chicago, on said last mentioned day. I shall make report to said Court of the following special assessment warrants, placed in my hands for collection on or before the last day of October, 1863. and ask for judgment against the several lots and parcels of land or other property described in such warrants for the amount of assessments, damages and costs respectively due thereon to wit:

X X X X X

Warrant No 375. South. dated September 24th 1863. for curbing, filling and paving with Nicholson pavement, Clark street from the north side of Polk street to the north side of Taylor street

X X X X X

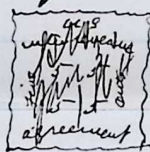
All persons interested are requested to attend

9

at the aforesaid term of said Superior Court
of Chicago

Frederick Mehring
City Collector

This certifies that the appended collectors
notice has been published in the Chicago
Times, the Corporation newspaper of the
City of Chicago, County of Cook, and State of
Illinois, six days consecutively, commencing
with the nineteenth day of January 1864
Chicago January 30th 1864



Storey & Norden
Publisher

School Section Addition to Chicago

Names	Part of Lot or Land	Sub Lot	Lot	Block	Amt of his payment		Deductions		Costs	Amt due		Remarks
					Dollars	Cents	Dolls	Cts	Cts	Dollars	Cents	
Catholic Church			1	110	414	32	9	11	10	423	53	
"			6	"	342	75	7	53	10	350	38	
"			7	"	368	83	8	10	10	377	03	
"			12	"	368	84	8	10	10	377	04	
"			13	"	361	88	7	95	10	369	93	
J Linders	N $\frac{1}{2}$		18	"	184	41	4	05	10	188	56	
A Gunner	S $\frac{1}{2}$		"	"	184	42	4	05	10	188	57	
B F Adams			19	"	368	83	8	10	10	377	03	
Wm Roll	N $\frac{1}{2}$		24	"	184	41	4	05	10	188	56	

School Section Addition to Chicago.

Names	Part of Lot or Land	Sub Lot	Lot	Block	Price of Absent		Dampers		Costs	Airt. Due		Remarks
					Dollars	Cents	Doll	Cts		Dollars	Cents	
A Gummer	S 1/2		24	110	184	42	4	05	10	188	57	
Le Thilmout	N 1/2		25	"	184	42	4	05	10	188	57	
Peter Rolff	S 1/2		"	"	184	41	4	05	10	188	56	
J. N. Raithel	N 1/2		30	"	184	41	4	05	10	188	56	
J. H. Myers	S 1/2		"	"	184	42	4	05	10	188	57	
G. H. Bliss			3	127	288	31	6	33	10	294	74	Paid
"			4	"	213	49	4	69	10	218	28	Paid
"	Except N. 16 ft		9	"	76	85	1	65	10	78	60	
"			10	"	231	99	5	10	10	237	19	
"			15	"	232		5	10	10	237	20	
L. H. Grannis			16	"	231	99	5	10	10	237	19	
R. Coe			21	"	231	99	5	10	10	237	19	
"			22	"	231	99	5	10	10	237	19	
J. I. Hallis			27	"	232		5	10	10	237	20	
R. Coe			28	"	231	99	5	10	10	237	19	
"			33	"	231	99	5	10	10	237	19	
"			34	"	231	99	5	10	10	237	19	
J. Schier			39	"	232		5	10	10	237	20	
R. Coe			40	"	231	99	5	10	10	237	19	
"			45	"	231	99	5	10	10	237	19	
A. F. Couch			46	"	203	23	4	46	10	207	79	
Phil. Carpenter			10	128	233	14	5	12	10	238	36	
do			15	"	233	14	5	12	10	238	36	
J. H. Post			27	"	233	14	5	12	10	238	36	Paid
J. B. King			45	"	233	14	5	12	10	238	36	Paid
"			46	"	286	54	6	30	10	292	94	Paid

And afterwards writ on the third day of February in the year of our Lord one Thousand Eight hundred and sixty four. came the following named persons claiming to be the owners or persons beneficially interested in certain of the lots and parcels of land mentioned and described in the foregoing report and application for judgment of the said City Collector, and hereinafter set opposite to their respective names, by P L Sherman their attorney, and filed and entered their objections to the entering of judgment against the said lots and parcels of land by them respectively owned or in which they were beneficially interested, writ:

School Section Addition to Chicago

	Sub Lot	Lot	Block
The President, Directors and		21	127
Company of the Home Bank		22	127
The President, Directors and		28	127
Company of the Meriden Bank		33	127
Samuel Gale		34	127
Samuel Gale		40	127
Samuel Gale		45	127

And afterwards writ on the nineteenth day of February in the year aforesaid. the same being one of the days of the February Term of the said Superior Court of Chicago. A.D. 1864. the following among other proceedings were had and entered of record. To wit:

And now on this nineteenth day of February A.D. Eighteen hundred and sixty four came the said City of Chicago by Francis Adams City Attorney, and due notice having been given of the intended application for a judgment against said lands and other property in said Warrant mentioned. And objections to taking of judgment having been filed on the third day of February A.D. 1864. by The President Directors and Company of the Mercantile Bank, owners and beneficially interested in Lots twenty eight and thirty three in Block one hundred and twenty seven. and by The President Directors and Company of the Home Bank owners and beneficially interested in the following described property. set opposite their names. To wit: Lots twenty one (21) and twenty two (22) in block one hundred and twenty seven (127) and also

by Samuel Gale owner and beneficially
 interested in Lots Thirty four (34) forty (40)
 and forty five (45) in Block one hundred
 and twenty seven (127) in the School Section
 Addition to the City of Chicago. And described
 in the report of the said Frederick Mehring
 City Collector of the City of Chicago as aforesaid
 who appears by P. L. Sherman attorney. and
 Counsel being heard on said objections to
 taking of judgment against the lands and
 other property set forth in said several
 objections. And as herein before set forth and
 described. And due deliberation being thereupon
 had. And the premises being fully understood,
 it appears to the Court that the said several
 objections to the taking of judgment as afore-
 said are sufficient. the said several objections
 to taking of judgment are therefore hereby sus-
 tained and judgment against the said lands
 & other property mentioned in said several
 objections and as herein before described. is
 hereby refused at the costs of the said City
 of Chicago to which ruling of the Court in
 sustaining said several objections to taking
 of judgment said City of Chicago by her
 attorney then and there excepted - and it
 is ordered by the Court that twenty days
 be allowed in which to file bill of Exceptions

herein - And on motion of said City Attorney

It is therefore considered by the Court that judgment be and is hereby entered against the aforesaid Lots and parcels of land and other property mentioned in said Warrant (be which objections have not been filed and sustained) in favor of the City of Chicago for the sum annexed to each lot or parcel of land or other property being the amount of the assessment damages and costs due severally thereon -

And it is ordered by the Court that the said several Lots and parcels of land or other property mentioned in said Warrant (not herein before excepted) or so much thereof as shall be sufficient of each of them to satisfy the amount of the assessment damages and costs annexed to them severally be sold as the law directs

John M. Wilson }
Joseph E. Gary } Judges

And afterwards writ, on the fifth day of March in the year of our Lord one thousand Eight hundred and sixty four, the said City of Chicago by the City Attorney, came and filed in the office of the Clerk of the said Superior Court of Chicago, its certain Bill of Exceptions, which said Bill of Exceptions is in the words and figures following.

Writ:

State of Illinois }
County of Cook } ss.

Superior Court of Chicago
February Term A.D. 1864

City of Chicago }
Catholic Church }
et al }

Suit for assessment on
warrant No 375 South. for the curbing,
filling and paving with Nicholson pavement
Clark Street from the North side of Park
Street to the North side of Taylor Street

Bill of Exceptions

Be it remembered that on filing the City Collector's report and application for judgment in this cause in the Superior Court of Chicago, on the first day of the February Term A.D. 1864, the following named persons claiming to be adverse and persons beneficially interested in the premises described and set opposite their respective names. To-wit:

School Section Addition to Chicago

	Sublot	Lot	Block
The President, Directors and Company of the House Bank		21	127
		22	127
The President, Directors and Company of the Mercantile Bank		28	127
		33	127
Samuel Gale		34	127
Samuel Gale		40	127
Samuel Gale		45	127

made and filed the following objections and defenses to said application for judgment against the above described lots, pieces and parcels of land. To-wit:

Objections

17
First - That the mode of making and
levying the assessment upon which said
warrant was issued and prescribed in
the City Charter of the said City and the
manner in which said assessment was
made and levied was and is contrary
to the Constitution of the State of Illinois
and the United States of America.

Second. That all and singular the provi-
sions of said City Charter relating to the
filling, curbing and paving of the streets are
unconstitutional and void -

Third - That no notice was given to said
owners or to any of them or to the holders
of property fronting or abutting on said
improvement as contemplated by Section
3 Chapter 7 of said City Charter, entitled
Public Improvements and Special assessments.

Fourth - That the ordinance for the making
of the said improvement and of said assess-
ment was passed by the Common Council
of the said City of Chicago, and the said
improvement and assessment was
made without any petition therefor by the
owners of a majority of the property to be

assessed therefor - and that none of said owners had notice nor was any notice previous to the passage of the said ordinance given to said owners or any of them of the intention of said Board of Public Works or of any Commissioners of said Board to recommend to the said Common Council the making of said improvement or of the pendency of any such recommendation or matter before said Common Council

Fifth That the recommendation made to the Common Council for the making of said improvement was made and signed by the three Commissioners of the said Board of Public Works, whereas it should have been signed by the full Board

Sixth. That no recommendation for the making of said improvement accompanied with an estimate of the expense thereof and the proper ordinance or order directing the improvement was made by said Board of Public Works to the Common Council, nor did the owners of a majority of the property to be assessed petition therefor, nor was any application made

5
19
Either to said Board by said owners or to said Common Council for the said improvement

Seventh. That no estimate of the expense of the said improvement as required by the City Charter was reported by said Board to said Common Council

Eighth. That there is no valid ordinance or order of said Common Council for the making of said improvement or assessment

Ninth. That the pretended recommendation of said Board of Public Works and the reported ordinance accompanying the same were referred by said Common Council to the Committee of said Council on Streets and alleys of the South Division of said City. which said Committee made their report thereon upon the 19th day of October A.D. 1863. and the Common Council aforesaid upon said day without authority of law passed said pretended ordinance without deferring the said report to the next regular meeting of said Council

Tenth. The Commissioners of said Board

of Public Works were not sworn nor did they or either of them take the oath required by Section 6. Chapter 7. of said City Charter entitled Public Improvements and Special assessments before proceeding to make said assessment -

Eleventh. That no notice was given by the said Commissioners of the time and place of their meeting for the purpose of making the said assessment as required by the said Charter -

Twelfth. The notice given by said Commissioners of the time and place of their meeting for the purpose of making the said assessment was insufficient and said Commissioners had no authority to make said assessment.

Thirteenth - That in making said assessment said Commissioners did not estimate nor take into account or consider the damages as well as benefits to the said property owners as required by the said City Charter.

Fourteenth. That said assessment will

is defective in not showing damages as well as benefits to the property owners and because no balance is struck and carried forward on said assessment roll as required by said City Charter

Fifteenth. That said Commissioners did not sign said assessment roll before filing the same in the office of the said City Clerk, and before filing a duplicate thereof in the office of the Board of Public Works

Sixteenth. That said pretended assessment roll was not signed by said Commissioners as required by the said City Charter, and the pretended duplicate thereof filed in the office of the Board of Public Works was not signed by said Commissioners, and that no sufficient assessment roll in said improvement and special assessment was ever filed in the office of the Clerk of said City and no duplicate of a sufficient assessment roll in said improvement was ever filed in the office of the Board of Public Works as required by the said City Charter

Seventeenth. That no notice was given by said Commissioners of the filing of said

pretended assessment roll in the said City Clerk's office and of the intended application by said Commissioners to said Common Council for the confirmation thereof according to the said City Charter in that behalf as required by said City Charter.

Eighteenth - That said Common Council had no authority to confirm said assessment and did not have jurisdiction thereof or of the said subject matter, and that the pretended order of confirmation of said assessment by said Common Council is illegal, unauthorized and void.

Nineteenth - That it does not appear by said assessment roll that the assessment was levied upon the lots of ground abutting and fronting upon the line of improvement and does not state that it is in proportion to the number of feet of any of the lots fronting the improvement.

Twentieth - That the number of front feet of the various lots is not given nor is it stated in and by said assessment roll that they adjoin or abut on the street proposed to be improved.

Twenty first. The said owners of and persons beneficially interested in said above described lots, lands and premises object to the rendering of judgment against said premises for the one per cent. damages asked for by the said City Collector because the Court has no authority to render judgment therefor in this case.

Twenty second. And because no notice was given by the City Collector as required by Chap. 9. Sec 9 of Revised Charter.

P. L. Sherman
atty for objectors

Evidence

And on the trial of said cause at the February Term of this Court. A.D. 1864. the said objectors to maintain the issue on their part, and in support of said objections, gave in evidence to the Court the following report from the Board of Public Works to the Common Council, with the accompanying ordinance and the certificates annexed to and endorsed thereon. Writ:

Report and Ordinance for Improvement of Streets

To the Mayor and Aldermen of the City of Chicago, in Common Council assembled;

The Board of Public Works recommends to your Honorable Body the improvement of Clark street from the North side of Park street to the North side of Taylor street with Nicholson pavement; the street to be first curbed with a suitable wall and filled to grade.

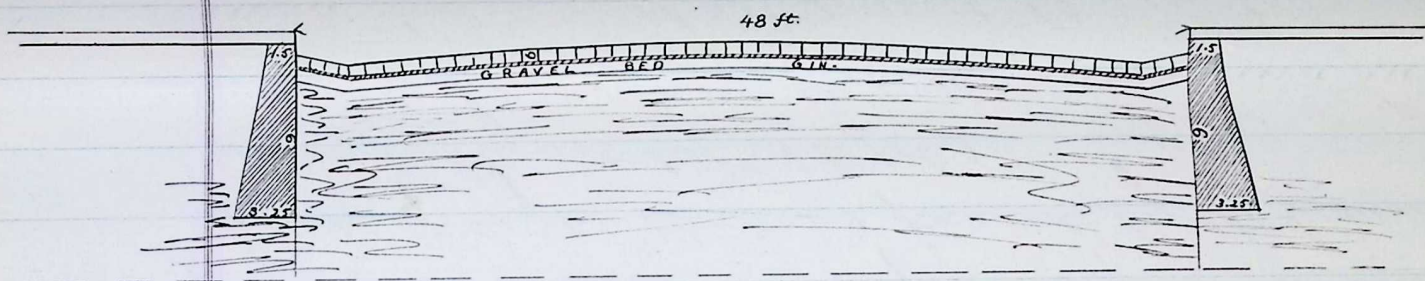
The contemplated improvement is not asked for by the petition of the owners of a majority of the property to be assessed for such improvement.

We herewith submit an estimate of the expense thereof, accompanied by a general plan or description of the proposed work, together with a proper ordinance directing the work.

Estimate.

Curb Walls	\$ 5,054.93
filling	\$ 1,824.13
Grading	-----
Nicholson pavement	\$ 7,926.47
Total estimate of expense	\$ 15,805.53
Less Cost of intersections	\$ 835.07
Amount to be assessed	\$ 14,970.46

General plan or Description



Ordinance

Be it ordained by the Common Council of the City of Chicago:

Section 1. That Clark street from the north side of Park street to the north side of Taylor street, be and is hereby ordered curbed, filled and paved with Nicholson pavement, said work to be done under the superintendence of the Board of Public Works, conformably to the general plan or description prepared by said Board, and hereto annexed.

Sec. 2. That the sum of fourteen thousand nine hundred seventy and $\frac{46}{100}$ Dollars be

assessed upon the real estate fronting or abutting on the improvement hereby ordered, according to the provisions of the Revised Charter, in such case made and provided, and that said sum, when collected, be applied to the payment of the said improvement.

Respectfully Submitted

J. G. Gindale } Board of Public Works
 Fred. Litz } of
 A. J. Rose } the City of Chicago

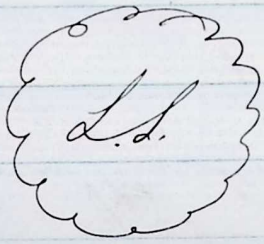
Chicago July 13th 1863.

State of Illinois }
 City of Chicago } S. S.

J. H. W. Zimmerman Clerk
 of the City of Chicago aforesaid, do hereby certify
 that the above and foregoing is a true copy
 of a Report and ordinance for curbing, filling
 and paving with Nicholson pavement Clark
 street from the N. side of Polk street to the
 N. side of Taylor street, as passed by the Common
 Council August 24th A.D. 1863.

I further certify that ~~the above and foregoing~~
~~xxxix~~ I am entrusted with the custody and
 safe keeping of the Original of which the
 above and foregoing is a true and certified
 copy

Witness my hand and the



Corporate seal of the City of
Chicago this Twenty third day
of February 1864
H W Zimmerman
City Clerk

(on the back of which Report and ordinance is endorsed)

Document No 350.

Report and ordinance for curbing, filling and
paving Clark st from N. side Rock st to N. side
of Taylor st

Referred to Com. Streets & Alleys South Div.
July 13. 1863

Laid over under Rule. Aug 10/63

Ordinance passed. Aug 24th 1863

Presented to the Mayor for his approval Aug 26th
1863. H W. Zimmerman Clerk.

Approved ----- 186. J C Sherman Mayor.

The proceedings of the Common Council upon
the foregoing report and ordinance, as shown
by the record thereof kept by the City Clerk,
were then introduced in evidence. The
record is as follows:

Council Proceedings

Regular Meeting. July 13th 1863.

"The Board of Public Works presented ordinances for the following improvements:

Curbing, filling and paving Clark street from the North side of Park street to the North side of Taylor street

X X X X X

Referred to the Committee on Streets and alleys of the South Division "

Regular Meeting. August 10th 1863

"Ald Barrett of Committee on Streets and Alleys of the South Division, to whom was referred an ordinance for curb, filling and paving with Nicholson pavement Clark street from the North side of Park street to the North side of Taylor street, reported in favor of the passage of the ordinance.

Laid over under the rule "

Regular Meeting. August 24th 1863

"Ald Holden called up the report and ordinance laid over under the rule August 10th for curb, filling and paving Clark street from the North side of Park street to the North side of Taylor street, and asked for its passage

Ald. McDonald moved that the ordinance be amended so as to extend the improvement from Park to Swelfth street

Ald. Holden moved that the amendment be laid on the table and demanded the yeas and nays

The motion prevailed by the following vote;

Ayes. Ald. Roberts, Barrett, Gallup, Camiskey, Ulbrich, Clark, Hinward, Holden, Von Holten, Gastfield, McKuer, Hottinger. 12

Noes. - Ald. Hahn, Sheidan, Walsh, McDonald, Bond, Casselman, Armstrong, Ruck, Coulau, Sullivan, Woodman. 11

The yeas and nays were then called for on the passage of the ordinance as reported by the Committee, and it was passed by the following vote;

Ayes - Ald. Hahn, Roberts, Barrett, Gallup,

Sheidan, Walsh, McDonald, Camiskey, Ulbrich, Clark, Hinward, Holden, Von Holten, Bond, Gastfield, Casselman, Armstrong, McKuer,

Ruck, Hottinger, Coulau, Sullivan, Woodman. 23

Noes - None

Evidence was then introduced showing that the said ordinance was presented

to the Mayor for his approval by the City Clerk, on the 26th day of August A.D. 1863. and that it was duly approved by the Mayor on the same day-

The assessment roll in this case, with the accompanying notices, papers, certificates and order, was then introduced in Evidence and is as follows, to wit:

Certified Copy of Assessment Roll for the curbing, filling and paving with Nicholson pavement Clark Street from the North side of Park Street to the North side of Taylor Street

(Commissioners Oath)

The undersigned, Commissioners to assess the amount directed by the Common Council of the City of Chicago to be assessed on the real estate fronting or abutting on the contemplated improvement of Clark Street from the North side of Park Street to the North side of Taylor Street, by curbing, filling and paving the same do severally solemnly swear that we will faithfully execute our duty to the best of our ability - J. G. Gindler } Commissioners

U.S. Post Stamp 5 cents

Frederic Lutz

Sworn and subscribed before me

A. J. Rose

} of the Board of

Public Works

this seventh day of September A.D. 1863. John C. Kelly Notary Public

School Section Additions to Chicago

Name of Owner.	Part of Lot or Land.	Sub-Lot.	Lot.	Block.	Assessment.	
					Dollars.	Cents.
Chicago & N. I. R. R. Co	E $\frac{2}{3}$			109	\$	3783 62
Catholic Church			1	110		414 32
"			6	110		342 75
"			7	110		368 83
"			12	110		368 84
"			13	110		361 88
J. Linden	N $\frac{1}{2}$		18	110		184 41
A. Gruner	S $\frac{1}{2}$		18	110		184 42
B. H. Adams			19	110		368 83
Wm. Koll	N $\frac{1}{2}$		24	110		184 41
A. Gruner	S $\frac{1}{2}$		24	110		184 42
C. Thelmont	N $\frac{1}{2}$		25	110		184 42
Peter Wolf	S $\frac{1}{2}$		25	110		184 41
J. A. Kaitzel	N $\frac{1}{2}$		30	110		184 41
J. H. Myers	S $\frac{1}{2}$		30	110		184 42
G. H. Bliss			3	127		288 31
"			4	"		213 49
"			9	"		213 49
"			10	"		231 99
"			15	"		232 00
J. W. Grannis			16	"		231 99
R. Cove			21	"		231 99
"			22	"		231 99
J. S. Hallare			27	"		232 00
R. Cove			28	"		231 99
"			33	"		231 99
"			34	"		231 99

Amount carried forward

\$10,287 61

School Section Addition to Chicago

Name of Owner.	Part of Lot or Land.	Sub-Lot.	Lot.	Block.	Assessment.	
					Dollars.	Cents.
Amount Carried forward					\$10.287	61
J Schier			29	127	232	00
R Coe			40	"	231	99
"			45	"	231	99
A S Couch			46	"	203	23
P Carpenter			3	128	233	14
"			4	"	233	14
"			9	"	233	14
"			10	"	233	14
"			15	"	233	14
"			16	"	233	14
"			21	"	233	14
"			22	"	233	14
J R Post			27	"	233	14
Wm Short			28	"	233	14
"			33	"	233	14
P Carpenter.			34	"	233	14
"			39	"	233	14
J. B. King			40	"	233	14
"			45	"	233	14
"			46	"	286	54
					\$14.970	46

Office of the Board of Public Works
Chicago. Sept 14th 1863

The undersigned hereby certify that they have completed the Assessment Roll for the curbing filling and paving with Nicholson pavement Clark street from the North side of Park street to the north side of Taylor street. — That before proceeding to make such assessment they were duly qualified before entering upon their duties, as appears by the oath herewith attached; that they published a notice of the time and place of their meeting, for the purpose of making said assessment, in the Chicago Times, the Corporation newspaper of the City of Chicago, for the period of six consecutive days previous to such meeting, a certificate of which publication is herewith annexed; that they were present at the time and place, and for the purpose designated in the said notice, and did then and there, and do hereby, assess the respective amounts set opposite to each separate block, lot, subplot, piece or parcel of land in the foregoing Assessment Roll mentioned, in their appropriate columns, as the amount directed by the Common Council of the City of Chicago to be assessed on the real estate fronting or abutting on said contemplated

improvement.

We further certify that said Assessment Roll embraces all the separate blocks, lots, sublots, pieces or parcels of land fronting or abutting on the proposed improvement, and that the assessment has been made in such manner, as nearly as may be, that each separate block, lot, sublot, piece, or parcel of land, on either side of the street or part of street to be improved, shall sustain the cost and expense of making or completing the improvement upon that half of the street adjacent to or in front of the same.

U.S. Post Stamp
5 cents

J. G. Girdle }
Fred Letz } Commissioners
A. J. Rose } of the Board of
Public Works

Corporation Notice

Office of the Board of Public Works
Chicago Sept 8th 1863

Whereas the Common Council of the City of Chicago has ordered that Clark street, from the north side of Park street, to the north side of Taylor street, be curbed, filled and paved with Nicholson pavement said work to be done under the superintendence of the Board of Public Works, and that the sum of Twenty

thousand nine hundred and seventy ⁴⁶⁻¹⁰⁰
 be assessed upon the real estate fronting or
 abutting on the improvement so ordered,
 according to the provisions of the Revised
 Charter in such case made and provided:

Now therefore public notice is hereby
 given to all persons interested, that the
 undersigned will meet at Room No 15, in
 the Court house, in said City, on the 14th
 day of September A.D. 1863, at the hour of
 10 o'clock A.M. to assess the amount direc-
 ted as aforesaid by the Common Council
 to be assessed on the real estate fronting or
 abutting on said contemplated improvement.
 The amount of said assessment will be
 \$14,970.46

J. G. Girdle }
 Fred Letz }
 Q. J. Rose } Commissioners
 of the Board of Public Works

This certifies that the appended
 Corporation Notice has been published in
 the Chicago Times, the Corporation newspaper
 of the City of Chicago, County of Cook, and
 State of Illinois, six days consecutively, commen-
 cing on the 8th day of Sept A.D. 1863. Street & Gordon
 Chicago Sept 14th 1863

as per
 stamp
 5 cents

Publishers

State of Illinois }
 City of Chicago } ss.

I do hereby certify that the foregoing Assessment Roll was returned to me and filed in my office by the Board of Public Works, this fourteenth day of September 1863

us Res Stamp - 5 cents

W Zimmerman
 City Clerk

Certificate of Publication

Assessment Notice.

Office of the Board of Public Works }
 Chicago, Sept 15th 1863

Public Notice is hereby given to all persons interested, that the Board of Public Works of the City of Chicago has completed the assessment Roll for the curbing, filling and paving with Nicholson pavement Clark street from the north side of Park street to the north side of Taylor street, and such Assessment Roll has been filed in the office of the City Clerk

The Board of Public Works will apply to the Common Council of said City at its

next regular meeting, to be held on the 21st day of September, 1863. at the house of 7 1/2 o'clock, P.M. for a confirmation of such assessment, at which time all ~~parties~~ parties interested will have the right to be heard. All persons wishing to object to said assessment must file their objections to the same in writing, in the office of the City Clerk, at least one day prior to such meeting of the Common Council

J. G. Gindelo }
 Fred Letz. }
 A. J. Rose. } Commissioners
 of the Board of Public Works.

This Certifies that the appended Assessment Notice has been published in the Chicago Times, the Corporation newspaper of the City of Chicago, County of Cook, and State of Illinois, six days consecutively, commencing with Sept 15th 1863.

Chicago Sept 21st 1863

Storey & Hayden

Publishers

U.S. Res Stamp 5 cents

Application for Confirmation.

Chicago Sept 21st 1863

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

The undersigned Commissioners of the Board of Public Works of the City of Chicago hereby apply to your honorable body for a confirmation of the foregoing Assessment Roll.

J. G. Gindale	} Commissioners	of the
Edw. Letz		
A. J. Rose		
		Board of Public Works

Order of Confirmation

In Common Council Sept 21st 1863

Whereas due notice has been given by the Commissioners of the Board of Public Works of their filing with the City Clerk the foregoing Assessment Roll, and whereas the said Commissioners have applied to the Common Council for confirmation of said Assessment, and no objections thereto having been filed in due ~~proper~~ time, it is therefore ordered that the said Assessment, as revised by the

Common Council. be and the same is hereby confirmed.

It is further ordered that a warrant be issue for the collection thereof.

Passed

H W Zimmerman
City Clerk

Memo - Warrant issued Sept 24th 1863

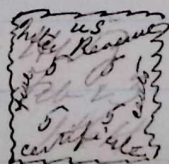
State of Illinois }
City of Chicago } ss.

I, H W Zimmerman Clerk of the City of Chicago aforesaid, do hereby certify that the above and foregoing is a true copy of an assessment Roll for the curbing filling and paving with Nicholson pavement Clark street from the North side of Park street to the North side of Taylor street.

I further certify that I am entrusted with the custody and safe keeping of the Original of which the above and foregoing is a true and certified copy

E. D. B.

Witness my hand and the Corporate Seal of the City of Chicago this Twenty third day of February 1864



H W Zimmerman
City Clerk

(on the back of which assessment roll is endorsed as follows)

Document No. 318.

Assessment Roll for curbing filling and paving with Nicholson, Clark street between Pack & Taylor sts.

Confirmed Sept-21st 1863

Presented to the Mayor for his approval Sept-23rd 1863. H W Zimmerman Clerk.

Approved Sept-24th 1863. R. C. Sherman Mayor

It was admitted by the parties that the Chicago Times was the Corporation newspaper of the City of Chicago while said assessment proceedings were pending - that Storey and Proden were publishers of said newspaper and that the two several notices appended to said assessment roll were published in said newspaper as stated in the two several Certificates of publication attached to said roll - It was further admitted that the said Chicago Times is published and circulated regularly every Sunday morning - The proceedings of the Common Council

in relation to said assessment, as shown by the record thereof kept by the City Clerk, were then introduced in evidence. The record is as follows:

Council Proceedings,

Regular Meeting, September 21st 1863.

"The Board of Public Works returned to the Common Council sundry assessment rolls duly advertised and to which no objection had been filed in due time; which were severally confirmed by entry of the usual order of confirmation, the said assessment rolls being entitled as follows:

x x x x x

An assessment roll for curbing, filling and paving with Nicholson pavement Clark street from the North side of Park street to the North side of Taylor street."

At W Zimmerman, ^{City Clerk} was then introduced as a witness, who being sworn, testified that the order of confirmation attached to said assessment roll was presented to the Common Council with the said assessment roll, and that said order was passed by the Council at its regular meeting Sept 21st 1863

Evidence was then introduced showing that the said order of confirmation was presented to the Mayor for his approval, by the City Clerk. on the 23rd day of September A.D. 1863. and that the same was duly approved by the Mayor on the 24th day of September 1863.

It was further admitted on the trial of said cause, that no duplicate of the foregoing assessment roll was filed by the Commissioner in the office of the Board of Public Works.

The foregoing was all the evidence introduced at the trial on either side in this case; and it was then and there considered and ordered by the Court that the said objections to the taking of judgment against the several parcels of land in said objections specified and hereinbefore described, be sustained, and judgment against the said several parcels of land was then and there refused.

Whereupon the said City of Chicago made its exception then and there to the said decision of said Court, and the

Counsel for the said City prayed that
said Court would set their hands and
seals to this bill of Exceptions, which is
done accordingly

John M. Wilson *Per*

State of Illinois }
County of Cook } ss.

I, Thomas B. Carter, Clerk of
the Superior Court of Chicago in said County and
State do hereby certify that the above and foregoing
is a true and correct transcript of the Report and
application for judgment of the City Collector of the
City of Chicago together with the order of Court
thereon and of the Bill of Exceptions filed in
said Court in a certain cause lately pending
therein wherein The City of Chicago was plain-
tiff and Catholic Church and others were
defendants

In testimony whereof I have
hereunto set my hand and affixed
the seal of said Court this
Seventeenth day of March A.D.
1864

Thomas B. Carter Clerk



State of Illinois }
Third Grand Division } At

In Supreme Court
To April Term, A.D. 1864.

The City of Chicago,
Plaintiff in Error

v.

The President, Directors &
Company of The ~~Western~~ ^{Home}
Bank, et al.

Defendants in Error

Assignment of Error.

And now the said City of Chicago, plaintiff in error, comes and says that in the record and proceedings aforesaid, there is manifest error in this, to wit:

I. The Superior Court of Chicago erred in sustaining the objections filed by the said defendants to the application made by the collector for judgment against the several lots and parcels of land in said objections set forth.

II. The said Court erred in refusing to render judgment in favor of the City of Chicago against the several lots and parcels of land set forth in the objections filed by said defendants.

III. The judgment rendered by said Court in favor of the said defendants was contrary to the law and evidence, and should have been for the plaintiff.

By reason whereof the plaintiff prays that said judgment may be reversed, &c.

By B. F. Ayer, ^{+ Francis Adams} Attorneys for Plaintiff in Error.

And the said President, Directors & Company of the Western Bank, and the other defendants in error in the foregoing

record mentioned, now come and say, that there is no error, either in the record and proceedings aforesaid, or in giving judgment aforesaid, in manner and form as above assigned; and therefore they pray that the said judgment may be affirmed, and that their costs may be adjudged to them, &c.

Barker & Tuley attys
for defendants in error

175
Supreme Court of
Illinois. Third Grand
Division.

The City of Chicago.
Plff. in Error,

vs.
The Pres. Directors & Co.
of The Home Banch
et al

Record.

Filed April 19, 1864
J. L. Leland Clerk

State of Illinois }
Third Grand Division } ss.

In Supreme Court. To April
Term a. d. 1864.

The City of Chicago,
Plaintiff in Error,
vs.

The President, Directors and Com-
pany of The Home Bank, The
President, Directors and Company
of The Meriden Bank, and
Samuel Gale.

Error to The Superior Court
of Chicago.

Judgment at February Term a. d.
1864, in a suit for a permanent
warrant No. 375 South, for curbing,
filling and paving with Nichol-
son pavement; block street, from
the north side of Polk street to
the north side of Taylor street
in the City of Chicago—

Issue a writ of error to The

Superior Court of Chicago in
the County of Cook against the
above named defendants, at
the suit of the City of Chicago,
returnable on the third Tuesday
of April A. D. 1864.

B. F. Ayer,
Attorney for Plaintiff
in error -

Dated at Ottawa,

The 18th day of April A. D. 1864.

To the Clerk of the Supreme
Court of the Third Grand
Division -

175-
Supreme Court of
Illinois. Third
Grand Division.

The City of Chicago,
Plff. in Error.

vs.

The Pres. Directors &c.
of the Home Bank
et al.

Recipe

Filed Apr. 19, 1864
Leland
Clk.

City of Chicago

No. 174

v.

E. C. Larned et al

On the point referred to on page 36 of Brief for plaintiff in error, particular reference is made to the following sections of the Revised Charter, which expressly recognize the proceedings of the Commissioners in levying the apportionment as the action of the Board of Public Works:

Section 27 p. 79

" 28 " "

" 35 " 82

" 42 " 85

See also: Section 30 p. 105

"The law does not require the strictest possible compliance with all its provisions, but only that there shall be nothing omitted to be done which is fundamental."

Bruse, J., in Town v. Town of Blackburny
29 Ills. 138.

(175) 107

Sec^s. Citel App.

SUPREME COURT,

APRIL TERM, 1864.

THE CITY OF CHICAGO,

VS.

THE PRESIDENT, DIRECTORS AND COMPANY,
OF THE HOME BANK, ET. AL.

ERROR TO SUPERIOR COURT OF CHICAGO.

BRIEF FOR DEFENDANTS, BY A. W. ARRINGTON.

Beach & Barnard, Print. 14 South Clark Street.

Filed April 21, 1864
L. Leland
Clk

1. Power of taxation
 2. Power of escheatment
 3. Eminent domain
 4. Policed regulations
- by any or the other
of these laws can a
man be deprived of his
property.

THE CITY OF CHICAGO,

vs.

THE PRESIDENT, DIRECTORS AND COMPANY,
OF THE HOME BANK, ET. AL.

The points discussed in the present brief, come under two general divisions: THE UNCONSTITUTIONALITY OF THE LAW; AND THE WANT OF JURISDICTION IN THE COMMON COUNCIL.

Of these in their order.

THE UNCONSTITUTIONALITY OF THE LAW.

The law, under which the city claims the right to levy this imposition, authorizes the taking of private property for the improvement of a public thoroughfare. Yet it provides no compensation; makes no reference to any benefits; does not even deign to disguise the naked burden which it casts upon the citizen. See City Charter, p. 76.

In countries where the will of the reigning sovereignty, whether of the one or the many, is the sole rule of civil conduct, such an exercise of arbitrary power, however onerous and unjust, would be irremediable by the courts. But before this tribunal, we have the privilege of invoking the 8th sec. of our Bill of Rights, a provision transplanted from the great charter, and placed under the guard of the State judiciary: "No freeman shall be imprisoned, &c., "or in any manner deprived of his life, liberty or property, "but by the judgment of his peers or the law of the land."

It is conceded, that this inestimable guarantee does not prohibit the taking of property by taxation, or by the right of eminent domain; nor does it prohibit restraints in the use of property by virtue of the police power.

Sedgwick on Stat. & Cons. Law, p. 505, *et seq.*

But with these three exceptions, according to all the authorities, the State is absolutely excluded from the power of interference with private property. And since there can be no pretence that the exaction of which we now complain, falls within the category of a police regulation, it must be sustained, if at all, either as a tax, or as an exercise of eminent domain.

We may therefore set out with the AXIOM OF AMERICAN CONSTITUTIONAL LAW: "That private property can only be taken for public use, in one or two ways; by taxation, or by the prerogative of eminent domain."

People v. Mayor of Brooklyn, 6 Barb., p. 209.

Same case, 4 Comstock, p. 422.

And it will now be shown, that the present imposition cannot be upheld under either power.

FIRST. Let us suppose, that this imposition is a tax. Nor is the supposition gratuitous. This is a tax in any sense of the term. The following are among the many definitions of the word.

"A tax is a portion of the property of individuals which is taken from them by government, and disposed of by it."

Ency. Brittan. xxi, p. 37.

Taxa, exactio, impositio, certum pretium, seu certa pecuniæ quantitas, per vim exacta.—Ducange.

"Literally, or according to its derivation—an imposition laid by government upon individuals, in a certain order and proportion."

Burrill's Law Dic. "Tax."

"The word *taxes* means burdens, charges, or impositions, put or set upon persons or property for public uses."

Matter of the Mayor, &c., 11 Johns., p. 80.

The fundamental idea indicated by the term "tax," is that of a *burden* imposed as such, and without immediate reference to the individual benefit of the persons upon whom it is laid.

"Whatever be the denomination it bears, it is virtually a burden imposed upon individuals, by the ruling power."

Say's Polit. Econ., p. 446.

Demonstrably then, this impost is a tax. Therefore, it is prohibited by the constitution, Art. ix, sec. 5: "The corporate authorities of counties, townships, school districts, cities, towns, and villages, may be vested with power to assess and collect taxes for corporate purposes; such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same."

DILEMMA. If this imposition be a tax, it is either for "CORPORATE PURPOSES," or it is not.

But if it be for "corporate purposes," it violates the plain letter of the constitution: because it is not "uniform" in respect to persons and property within the jurisdiction of the body imposing the tax.

If, on the other hand, the tax is not for "corporate purposes," it is clearly unconstitutional: because "corporate authorities" can only be vested with power to assess and collect taxes "for corporate purposes."

Johnson v. Stark County, 24 Ills., pp. 87-89.

Ergo; upon either alternative, the tax must be pronounced unconstitutional.

SECOND. Let us suppose this imposition to be an exercise of eminent domain.

Then it is opposed to the constitution, Art. XIII, Sec. 11 :
 "Nor shall any man's property be taken, or applied to
 "public use, without the consent of his representatives in
 "the general assembly, nor without just compensation
 "being made to him."

The RULE is: That the method of ascertaining the compensation must be provided before the property can be taken.

This results from the language of the constitution: "The property shall not be taken without just compensation."

The taking and the compensation are logical correlatives. And, therefore, the one can not exist without the other. The condition and the conditioned must stand or fall together.

To the same effect are all the cases:

Sedg. Stat. & Const. Law, p. 526;

2 Kent's Comm. p. 340, note;

Bloodgood v. Mohawk, &c., R. R., 18 Wend.
 p. 9;

Gardner v. Newburg, 2 Johns. Ch., p. 162;

Cushman v. Smith, 34 Maine, p. 247;

Henderson v. Mayor, &c., 5 Miller's La. R.,
 p. 416.

But no compensation has been provided by the law in this instance.

Ergo; as an exercise of eminent domain, the law is unconstitutional.

Hence, the general conclusion of rigorous logic is that, this impost must be declared void under the constitution, whether considered as a tax, or as an attempt to exercise eminent domain.

THIRD. Let us next see how the case stands in the light of your past judicial decisions.

Under the old constitution, the case of *Shaw v. Dennis*,

5 Gilman, p. 416, decided: "That the legislature has the right to impose a local tax upon a town or city, a precinct or county, for some local improvement." But that, "In doing this, it can not say that one man shall pay all and others none, or that one shall pay one dollar and another ten; for the tax must still be uniform, and upon the value of the property which each one has, so that the burden shall press alike upon the whole community."

The first case of "special assessments" which I have found in the Illinois Reports, is that of *Canal Trustees v. Chicago*, 12 Ills. p. 403.

It was the case of widening an alley, and the damages and expenses of the improvement were "assessed and apportioned on real estate deemed benefitted thereby, apportioning injury and benefits," &c.

The court decided that the assessment then in question "had none of the distinctive feature of a tax," predicating their opinion upon the cases of the Mayor, 11 Johns., p. 80, and *Bleecker v. Ballou*, 3 Wend. p. 263, and laying down, as the cardinal premise of their logic, the following proposition: "The assessment is precisely in the ratio of the advantages accruing to the property in consequence of the improvement. It is but an equivalent, or compensation for the increased value the property derives from the opening of the street." (Id. p. 406).

Here, the legislative power to direct special assessments is evidently located under the head of eminent domain. Assessments are made to stand on the ground of a "just compensation," the compensation being provided in the act authorizing them.

All the subsequent cases in Illinois have maintained the integrity of this equitable doctrine. Instance the following:

Higgins v. Chicago, 18 Ills. p. 281, where "the mode of

"apportioning the burden" of local improvements in the ratio of "benefits" is pronounced "very just and reasonable."

Chicago v. Colby, 20 Ills. pp. 615, 618, where "an assessment in proportion to benefits" was sustained on the authority of the two preceding cases.

McBride v. Chicago, 22 Ills. pp. 576, 577, where a similar assessment was upheld upon the same grounds.

Peoria v. Kidder, 26 Ills. p. 357, is to the same effect, and still stronger to show that "special assessments" belong to the category of eminent domain.

In short, there has never been a case in Illinois, nor has any dictum ever fell from the lips of an Illinois judge, giving the faintest color to the idea that a "special assessment" can be laid in any other mode than in the ratio of benefits; or, that anything is, or can be, a special assessment, unless it professes to formulate an equation between benefit and burden.

In the court below, *Town of Pleasant v. Kost*, 29 Ills. pp. 494, 495, was cited as if in favor of the city. It is however, directly the reverse.

In that case the court decided that the assessment of labor, for the repair of roads, was not a tax. But even there the court held that "the number of days levied, and the sum which might be received by commutation, must be uniform within the limits of the body imposing the same."

The general result of the Illinois cases is briefly this:

1. Special assessments are in the ratio of benefits.
2. Such assessments are not taxes.
3. Such assessments are constitutional.
4. Such assessments must have the same uniformity and equality as taxes.

If, therefore, we are to look only to the Illinois decisions

the ground occupied by the defendants is unassailable.

But the counsel for the city make their appeal from the *lex loci* to the adjudications of foreign forums, and out of courtesy, at least, we must meet them on that field of debate also.

FOURTH. THE DECISIONS OF OTHER STATES.

In treating this branch of the discussion it is necessary to bear in mind that, in a majority of the States, the power of taxation has no limits. It is limited in the following States only: Tennessee, Louisiana, Arkansas, Texas, Missouri, California, Massachusetts, Michigan, Wisconsin, Ohio and Illinois; eleven States.—*Sedgwick*, p. 555.

But in no other State constitution, is there the same absolute limitation in respect to the taxing power which may be vested in "corporate authorities."

I hasten to notice the principal foreign cases that have been adduced in support of the other side; and in the order of their supposed relative importance.

PEOPLE V. THE MAYOR, 4 COMSTOCK, P. 419.

This case decides three things:

1. That an assessment for a local improvement, made "in proportion to benefits," is constitutional.
2. That such an assessment is an exercise of the taxing power.
3. That the taxing power is unlimited in the State of New York.

The bare statement of these points shows that the case can furnish no aid in the solution of a similar question arising under the constitution of Illinois.

But as the whole opinion in 4 Comstock assumes the *ex cathedra* style, and Mr. Justice RUGGLES unmercifully

criticises the supposed mistakes of other judges, it may not be amiss to indicate a few of his own errors.

I. The learned judge asserts: "That by eminent domain and taxation, the State *resumes* part of the property of individuals." p. 422.

How can the State *resume* property which it did not create, and which it never possessed? The State is not a producer. It only consumes.

II. "That the tax-payer receives compensation in the "protection afforded by government," in return for the money taken, is another favorite axiom of Justice Ruggles. p. 422.

This is the *quid pro quo* principle, now rejected by all advanced writers on political economy. The true principle of taxation is necessity, and the rule, "equality of sacrifice."

2 Mills Polit. Econ., pp. 370-372.

But these are mere errors in general theory. We proceed to the flagrant fallacies in the judicial logic.

III. On the 425th page, the judge concedes, "that the paving of Flushing Avenue was a *public* work, the expenses of which might rightfully have been raised by general taxation." And then he immediately changes front, on the same page, and proclaims the injustice of "general taxation" for such "a special local object."

But how, and in what mystic sense, "a public work," and "a special local object" happen to be synonymes in the language, he does not trouble himself to explain.

IV. The judge affirms the justice of the assessment in question, as a pure equation of "burden and benefit." p. 425.

This is astonishing. Can that be a burden which bestows an equivalent benefit? Can that be a tax which takes a hundred dollars out of the left pocket, and, at the

B Still 478

same time, puts another hundred dollars in the right? I had always supposed that in algebra *plus* and *minus* quantities cancel each other, without affecting the equipoise of values.

V. The fundamental premise of the reasoning in 4 Comstock, is: That "special assessments" find their justification in the taxing power; and yet Justice RUGGLES hesitates to call them taxes! p. 432.

The learned counsel for the city, in the present case, have adopted the idea; boldly asserting such assessments to fall under the taxing power, and yet denying them to be taxes.

Is not this a virtual contradiction in terms? Is not the exercise of any power, an act of that power: for example, of the war power, an act of war; of the legislative power, an act of legislation; of human reason, a rational act? Though I must confess that such logic as I am now combating does not seem entitled to the denomination of "rational."

VI. With a contemptuous air of authority, *inter pueros senex*, Justice RUGGLES sets aside the earlier New York cases, which the Illinois courts, in their simplicity, have followed. He pronounces them all *dicta*!

Suppose they were so. Yet the *dicta* of such men as KENT, and SPENCER, and VAN NESS, and YATES, and WALWORTH, may be of more weight than the most elaborate and pertinent adjudications of less experienced jurists.

However, the cases referred to are not *dicta*, as the briefest examination will show.

In the case of the Mayor, 11 Johns., p. 80, certain churches, exempted by law from taxation, resisted, for that reason, an assessment in the ratio of benefits.

The logic of the churches was:

We are not subject to taxation;

But a special assessment is a tax ;

Ergo; we are not subject to special assessment.

The only way to overthrow this conclusion was by attacking the minor premise ; since the major was a statute law.

The court disproved the minor by this short syllogism :

Taxes are burdens ;

But a special assessment is not a burden ;

Ergo; it is not a tax.

Is such reasoning a mere *dictum* ?

In the case of *Livingston v. The Mayor*, 8 Wend. p. 86, to which Justice RUGGLES refers, it was decided : " That the benefit accruing to a person whose land is taken for a street, by the increased value of his adjacent property, may be set off against the damage sustained by the loss of the property so taken."

The court deduced this inference, in part, from the analogy of "special assessments" for local improvements. Their logic ran thus : "If money taken for the improvement of a street may be compensated in benefits to adjacent land, why may not land, taken for a street, be compensated in the same way, by like benefits to land ?

8 Wend., p. 101.

And I defy any stretch of legal ingenuity to answer that question by the statement of any difference. For all concede the taking of land to be an exercise of eminent domain. But that may be compensated by benefits to adjacent land. Therefore, the money taken for street improvements may be so compensated. And therefore, again, the latter case, to wit, that of a special assessment comes under the head of eminent domain, as well as the former case.

Yet Justice RUGGLES denies that money can ever be taken by eminent domain !—4 *Comstock*, p. 424.

Let these instances suffice as to the method of treatment

adopted by Justice RUGGLES in dealing, as well with the cases he quotes, as with those he criticises.

VII. But the great fault, in the opinion of Justice RUGGLES, consists in the fact that it is a continuous *dictum*, or rather a long and patient series of *dicta*.

For the assessment in that case was apportioned to benefits.—4 *Comstock*, p. 421.

And the learned judge himself actually sustains the assessment on that very ground. (Id. pp. 431, 438.)

Why not, then, let the matter stand where it had stood, as he says, for a century and a half? Why forsake the *via trita via tuta*, to wander in the wilds of novel theory, searching for the *via deserta et interclusa*?

Hill v. Rigdon, 5 Ohio St. Rep., p. 243, is another case relied upon by our adversaries.

In that case an impost, similar to the present, was sustained.

One constitutional provision there referred to was to the effect: "That laws shall be passed taxing, by a uniform rule, all property, &c., according to its value," &c. (p. 246.)

It was held, however, that another constitutional provision, which required the general assembly to restrict the power of taxation, assessment, &c., of cities and incorporated villages, controlled the rule of uniformity so as to legitimate the assessment in question.

The court, however, were of the opinion, that had it not been for the latter provision, the assessment would have been unconstitutional. (p. 246.)

RANNEY, C. J., had "doubts not entirely removed," (p. 244) and BARTLEY, J., dissented.

The decision was probably correct; because, the legislature, having authority to restrict the power of taxation of

cities, &c., must necessarily determine the extent and limits of the restrictions.

The court held, too, that the assessment was a tax.

That case, then, is an authority in our favor, rather than against us.

Weeks v. Milwaukee, 10 Wis. R., p. 259, was a mere repetition of nearly the same facts, constitutional provisions, and judgment, as in the Ohio case.

It was strongly decided, in *Weeks v. Milwaukee*, that an assessment compelling every owner to pay for the improvement in front of his lot, without reference to inequalities in the value of the adjacent property, "was destructive of uniformity." (Id. p. 258.) And, therefore, that the impost would have been unlawful, but for the constitutional provision directing the legislature "to restrict the power of taxation, assessment, &c., of cities and incorporated villages."

Burnet v. Sacramento, 12 Cal. R., p. 76, was a case where the apportionment was according to the assessed cash value of the adjacent property. And it was decided that the provision in the constitution—"Taxation shall be equal and uniform throughout the State"—"did not refer to special assessments, by which individuals are chiefly benefitted, in the increased value of their property." (Id. p. 83.)

It was also held by the court, following the case in 4 Comstock, "that special assessments come under the taxing power." (Id. p. 83.)

Of all the other cases cited adversely we may say, *et sic de similibus*. They prove nothing; at least, nothing to the purpose.

One may well ask, with some surprise, what can be the object in adducing such cases?

For either this court must adopt their doctrines, or not.

And if they are not to be adopted, for what reason are they quoted?

But if you adopt the premises set forth in those cases, you must follow them out logically to their natural consequences, but in combination with the new premise of your own constitution.

Well, those cases all affirm special assessments to be substantially taxes.

But your own constitution declares, "that taxes shall be uniform throughout the jurisdiction of the body imposing the same."

Ergo. If those foreign cases are right, and special assessments are taxes, this impost is unconstitutional, from its want of uniformity.

FIFTH. ARGUMENTS OF THE OTHER SIDE.

I. The central fallacy of our opponents is the question-begging name, "Special Assessments."

They prove, from the Illinois reports, that special assessments are constitutional, and then call this a "special assessment."

Can you legitimate an unjust thing by giving it an honest name? Can you compel adjacent owners to pave a street with gold under the title of a special assessment?

The fundamental question is, what is the essential and characteristic attribute of a special assessment? And all the Illinois cases answer, "an apportionment of benefits to the burden."

But there is no such apportionment here.

Ergo. Unless logic itself is a lie, this is not a special assessment.

This impost lacks the specific difference which contradistinguishes a special assessment from a tax.

Ergo. It is a tax.

II. The extraordinary position has been taken, "that the legislature has, by the charter, *per se*, fixed the ratio of 'benefits,' by determining it to be in proportion to the linear front feet of the adjacent property!"

To this, we make answer:

1. The charter does not pretend to apportion any benefits. And therefore you will not reverse the maxim, *quod voluit non dixit*, into the enormous absurdity, *nihil dixit ergo voluit*. Courts are not creators to make worlds of meaning out of sheer vacuity.

2. The charter does not specify the kind of pavement; and different kinds of pavement have very different degrees of absolute value, as compared with relative cost: while some kinds of pavement would entail positive injury upon the adjacent owners, instead of benefit. Hence the ratio would not be that of justice. It would not be a ratio at all, but the reign of chance.

3. This court have decided, "that they can not know whether the Nicholson pavement is a benefit or a damage."—*Chicago v. Wright and others*.

4. The determination of what constitutes a "benefit," and its valuation, are judicial acts, which do not appertain to the legislative function.—*Sedgwick*, pp. 169, 174, 175, 177.

What! will any lawyer say, that the legislature can fix, by statute, what, and how much, shall be the "just compensation" for any property it may choose to take, and apply to public use? Then indeed, is the constitutional limitation upon eminent domain worse than a delusion. It is but the gilded snare of a despotism purely Asiatic.

III. The RHAPSODIES on legislative omnipotence, I will leave untouched. They are proper subjects to be dealt with by the court alone. They are logic turned into rhetoric for the purpose of preparing the minds of the court to

surrender the highest judicial prerogative, that of passing upon the constitutionality of all laws.

WANT OF JURISDICTION IN THE COMMON COUNCIL.

This was our second general division. It may be dispatched in a few words.

The charter requires the commissioners to give notice of "the filing of the assessment roll"; and that at the next regular meeting of the common council, &c., *they* will apply for "a confirmation of the said assessment."

Charter, pp. 72, 73.

No such notice was given. The commissioners did not give notice at all, of their own past or prospective action. But the notice actually published was "that the Board of Public Works had completed the assessment roll; and that the Board of Public Works would apply for a confirmation of such assessment."—*Abstract*, pp. 7, 8.

Now, the facts stated in this notice, were either true or false.

Suppose them to be true. Then it was the Board of Public Works, and not the commissioners, that had completed the assessment and filed the roll, and that were to apply for a confirmation. But every reader of the newspaper in which the notice appeared, necessarily knew, as being presumed to know the law, that the Board of Public Works had nothing to do with such a matter. And therefore the publication could be no legal notice to any one.

Then, suppose the facts set forth in the notice to be false. No one will pretend that a falsehood, though published in all the newspapers of the world, can operate as a valid notice.

Besides, the statute prescribes what the notice must contain; and the giving of the notice was a jurisdictional fact, without which the common council could not take one step in the proceedings.—*Eddy v. The People*, 15 *Ills.*, p 387.

175-107.

175-107

THE SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

14618

APRIL TERM, A. D. 1864.

THE CITY OF CHICAGO
VS.
THE PRESIDENT, DIRECTORS AND
COMPANY OF THE HOME BANK,
et als.

*Error to the Superior
Court of Chicago.*

*Filed April 28. 1864
J. L. McDonald*

BRIEF OF PLAINTIFF IN ERROR.

F. B. Jones —

CHICAGO :

THE TIMES STEAM PRINTING HOUSE, 71 RANDOLPH STREET.

THE SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

THE CITY OF CHICAGO

VS.

THE PRESIDENT, DIRECTORS
& COMPANY OF THE HOME
BANK, *et als.*

*Error to the Superior
Court of Chicago.*

BRIEF OF PLAINTIFF IN ERROR.

This was a suit upon a special assessment warrant numbered 375, South, in the City of Chicago.

The assessment, for the collection of which the warrant issued, was made to defray the expense of curbing, filling and paving with Nicholson pavement, Clark street, from the North side of Polk street to the North side of Taylor street, in the City of Chicago.

The suit was brought, and the proceedings in the Court below took place under and by virtue of the Revised Charter of 1863, of the City of Chicago. Chap. 9, Secs. 12, 13, 14, 15 and 16.

At the February Term, 1864, of the Superior Court of Chicago, the City Collector, in accordance with the provisions of Section twelve aforesaid, made a report to the said Court, asking for judgment against the several lots and parcels of land, or other property described in his report, for the amount of taxes, assessments, damages and costs respectively due thereon.

Upon the filing of said report, and application for judgment against the delinquent premises described in the warrant aforesaid, the defendants filed certain objections, some of which were sustained by the Court, and judgment was refused, to which decision the plaintiff in error then and there excepted, and sued out a writ of error.

The defendants filed twenty-two objections. Record 17—23.

Objections 1 and 2 of defendants are, in substance, that the mode and manner of levying said assessment, and the provisions of the City Charter relating to the filling, curbing and paving of streets are contrary to the constitution of the United States and of this State.

These objections have been fully considered and discussed in a Brief filed by the plaintiff in error, at the present term of this Court, in the case of "*The City of Chicago vs. Edwin C. Larned et als.*," to which reference is hereby made. Brief 4—23.

As we will have occasion again to refer to the brief last mentioned, we will, for greater convenience designate it Brief A.

Objections 3 and 4 are that no notice was given to owners or property holders, as contemplated by Chapter 7, Section 3, Revised Charter; that the ordinance was passed, and the assessment made without a petition from the owners of a majority of the property to be assessed; and that none of the owners had notice, prior to the passage of the ordinance, of the intention of the Board of Public Works to recommend the improvement.

These objections are answered in Brief A., p. 24—25.

Objection 5, that the recommendation of the improvement was signed by only three commissioners of the Board of Public Works, is bad.

The Board of Public Works is constituted of three commissioners, and the Mayor of the City. Revised Charter, Chapter 6, Section 1.

A majority of the Board constitute a quorum to do business. *Idem*, Section 10.

The recommendation was signed by the three commissioners, who described themselves as the "Board of Public Works of the City of Chicago." Record 26.

Objection 6, that no recommendation for the making of the improvement accompanied with an estimate of the expense of the same and a proper ordinance directing the work, is contradicted by the record. Record 24 — 26.

N. B. — There is a mistake in the first section of the ordinance as printed in the abstract of the Record, p. 5; after the words "Polk street" in the first line of said section should be "to the North line of Taylor street." Record, p. 25.

Objections 6 and 7, that the owners of a majority of the property to be assessed did not petition for the improvement and did not make application therefor, either to the Board of Public Works or to the Common Council, are noticed and answered in Brief A, p. 25.

Objection 8 is, that there is no valid ordinance for the making of the said improvement.

The record of the proceedings of the Common Council shews that the ordinance directing the work, and which accompanied the recommendation of the Board of Public Works, in accordance with Chap. 7, Sec. 3, Revised Charter, was presented to the Common Council at their regular meeting, held July 13, 1863: that it was, at said time, referred by the Coun-

cil to the Committee of Streets and Alleys of the South Division of the city; that at a regular meeting held August 10, 1863, an alderman of said committee reported in favor of the passage of the ordinance; and that, at a regular meeting held August 24, 1863, the votes being taken by ayes and noes, the ordinance was unanimously passed. The vote was taken by ayes and noes, because the improvement, as appears from the recommendation, or report of the Board of Public Works, (record 24—26,) was not petitioned for by the owners of a majority of the property to be assessed, and in such case the charter requires the vote to be so taken.

Revised Charter, Chapter 7, Section 4.

The ordinance was approved by the Mayor, August 26, 1863.

Record 30.

It is difficult to perceive any defect in these proceedings; they appear to be regular in every respect.

Objection 9, that the recommendation of the Board of Public Works and the accompanying ordinance were referred to the Committee on Streets and Alleys, and that the ordinance was passed on the same day the Committee reported, and without deferring the report until the next meeting, is not well taken.

This objection is answered in Brief A, p. 26.

Objection 10, that the Commissioners were not sworn is contradicted by the evidence.

Record p. 30.

They were sworn as required by Revised Charter, Chapter 7, Sections 6 and 23.

Objections 11 and 12 are that no notice, as required by the charter, was given by the Commissioners of the time and

place of meeting to make the assessment; that the notice given was insufficient, and that the Commissioners acted without authority.

The record, 34—35, contains a copy of the notice given.

The notice specifies particularly the time and place of meeting for the purpose of making the assessment; the improvement to defray the expense of which the assessment was to be made; and the amount to be assessed, and is signed by the Commissioners of the Board of Public Works.

This is in precise conformity with Chapter 7, Section 3, Revised Charter.

Attached to the notice is a certificate of Storey & Worden, the publishers of the Chicago Times, that the notice was published in said paper six days consecutively, as required by the charter, Chapter 7, Section 23.

It was admitted upon the trial that the Chicago Times was the corporation newspaper; that Storey and Worden were the publishers of said paper; that the notices appended to the assessment rolls were published as stated in the publishers' certificates attached to the roll; and that the said paper was published and circulated regularly every Sunday morning.

Record 40.

Objections 13 and 14. The Commissioners did not estimate damages as well as benefits to property owners; and the assessment roll is defective in not shewing damages as well as benefits, &c.

The provisions of the City Charter which require an assessment of damages, relate exclusively to condemnation proceedings for the opening, widening, and extension of streets, &c.

Chapter 7, Revised Charter, Sections 5, 6, 7, 8.

Idem, Section 21, under and by virtue of this assessment was made, neither requires, nor contemplates an assessment of damages.

Idem, Section 24, which provides, that upon application by the Commissioners for confirmation of an assessment "all parties in interest shall have the like rights, and the Common Council shall perform the like duties, and have like powers in relation to such assessments as are herein given in relation to assessments for the condemnation of real estate" is relied on to sustain these objections.

The rights of "parties in interest" intended to be secured by this section, are the right to file objections to the assessment, and the right to have such objections heard by the Common Council, as prescribed in Revised Charter, Chapter 7, Section 13.

The case of the *City of Chicago vs. Wright et al.*, decided at the April Term, 1863, of this Court, is also relied on by defendants. This case is not in point. It involved a construction of the Revised Charter of 1861, which, upon this subject, is essentially different from the Charter of 1863, under which this assessment was made.

Objections 15 and 16. The Commissioners did not sign the assessment roll, as required by the City Charter, before filing the same in the office of the City Clerk, and a duplicate thereof in the office of the Board of Public Works; nor was the duplicate signed, nor was any sufficient assessment roll filed in the office of said City Clerk, or any duplicate thereof in the office of said Board.

These objections are discussed at length, and, as we think, fully answered in Brief A, p. 31—34.

Objections 17 and 18 are that no notice, as required by the City Charter, was given by the Commissioners of the filing of the assessment roll in the City Clerk's office, or of their intend-

ed application to the Common Council for a confirmation of the assessment, and that the Council had no jurisdiction to confirm the assessment.

Revised Charter, Chapter 7, Sections 13 and 24 prescribe the notice to be given in such case.

The notice given, together with the certificate of the publication of the same, is contained in the record p. 36—37.

The objection to the notice is that the Commissioners described themselves in the notice as "the Board of Public Works," instead of the Commissioners of the Board, &c.

The notice is properly signed.

This objection is purely technical, and has already been discussed in Brief A, 34—37.

Objections 19 and 20 are not well taken.

The certificate of the Commissioners at the end of the roll, shews that the assessment was made, in all respects, as required by Revised Charter, Chapter 7, Section 21.

Record 33—34.

Objection 21 is to the rendition of judgment for one per cent. damages.

Revised Charter, Chapter 9, Sec. 11, provides that "if the assessments charged in any special assessment warrant shall not be paid within sixty days after the first publication of notice by the collector that he has received such warrant for collection, the assessments then remaining unpaid shall be collected with damages at the rate of one per cent. thereon for each and every month thereafter, until the same shall be paid."

This court has already determined that such an imposition is legal. *Bristol vs. City of Chicago*, 22 Ill. R. 587.

The Collector's notice (Record 6—7) is prescribed by Chapter 9, Sec. 9, Revised Charter, and was correct as given.

FRANCIS ADAMS, *City Att'y.*

B. F. AYER, *Counsel to the Corporation.*

Revised Charter, Chapter 7, Section 13 and 21 prescribe the notice to be given in each case.

The notice given, together with the certificate of the publication of the same, is contained in the record p. 38—39.

The objection to the notice is that the Commissioners described themselves in the notice as "the Board of Public Works," instead of the Commissioners of the Board, &c.

The notice is properly signed.

This objection is purely technical, and has already been discussed in Brief A, p. 37—38.

Objections in such matters are overruled.

The certificate of the Commissioners at the end of the roll shows that the assessment was made in all respects as required by Revised Charter, Chapter 7, Section 21.

Record 12—13.

Objection 21 is to the validity of judgment for two per cent damages.

Revised Charter, Chapter 7, Sec. 11, provides that "if the assessment charged in any special assessment warrant shall not be paid within sixty days after the first publication of notice by the collector that he has received such warrant for collection, the assessment then remaining unpaid shall be collected with damages at the rate of one per cent thereon for each and every month thereafter, until the same shall be paid."

This court has already determined that such an imposition is legal. Bristol vs. City of Chicago, 22 Ill. 11, 527.