

12665

No. 12665

Supreme Court of Illinois

Wright, et al.

vs.

City of Chicago.

305

12665

1858

1
United States of America
State of Illinois }
Cook County }
Jp.

Pear before the Honorable John M. Wilson, Judge of the Cook County Court of Common Pleas, within and for the County and State aforesaid, at a special term of said Cook County Court of Common Pleas, begun and holden at the Court House in the City of Chicago, on the Twenty seventh day of January in the year of our Lord one Thousand Eight hundred and fifty eight, due notice of the time and place of holding said term of Court, having been printed and published in the Chicago "Daily Democratic Press," the Corporation Newspaper of said City of Chicago, said notice having been printed and published, twenty days previous to the holding of said Court, in accordance with the Statute in such case made and provided, and in pursuance of an order made by the Judge of said Court, on the Seventh day of January A.D. Eighteen Hundred and fifty Eight.

Present the Honorable John M. Wilson, Judge
John L. Wilson, Sheriff.

Attest

Walter Kimball Clerk

Be it Remembered. That on the Twentyninth day of January A.D. Eighteen Hundred and fifty Eight. Joseph W. Hendricks Collector of the City of Chicago, came into aforesaid Court and filed his Report as such Collector. which said Report is in the words and figures following to wit.

Of the January Term of the Cook County Court of Common Pleas. in the year of our Lord One Thousand Eight Hundred and fifty Eight.

To the Honorable John M. Wilson,

Judge of Cook Co. Ct. of Comm Pleas.

The Report of Joseph W. Hendricks, City Collector of the City of Chicago, respectfully represents. That the Special Warrants mentioned in the Schedule hereto attached, issued for the collection of the Special Assessments and Taxes, authorized by law for the purposes therein severally set forth. Made out in the manner required by law. and countersigned by the City Comptroller were delivered to him the said City Collector on or before the second Tuesday of October A.D. 1857. That forthwith after the delivery of the said Warrants to him. he published a notice in the Daily Democratic Press, the Corporation Newspaper of said City. That such Warrants were in his hands for collection briefly describing the nature of each of said Warrants. and requesting all persons forthwith

to make payment thereof at his office, and that in default of such payment, the said taxes and assessments would be collected at the cost and expense of the persons liable to the payment of such taxes and assessments. which said notices were severally published for thirty days in said Corporation Newspaper.

That he has given ten days notice of his intended application to this Court for judgment against the lands, lots and parcels of lands for the amount of taxes, assessments interest and costs, respectively due thereon, before the first day of the January Special Term of this Court A.D. 1858, briefly specifying the nature of the said Warrants, upon which said application was to be made, and requesting all persons interested therein to attend at such term, a copy of which said notice is herewith filed, together with a certificate of the due publication of said notice from one of the publishers of the "Chicago Daily Democratic Press," the newspaper in which said notice was published.

That the annexed Schedule is a correct list of the lands, lots, and parcels of land, together with ^{the} amounts of taxes and assessments interest and costs respectively due thereon as set forth in the said Warrants, which remain unpaid.

for W. Henricks
City Collector

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The said Collector also filed his Warrant and List of Property. Which are as follows, to wit,

Special Warrant No. 4. N. & N.

State of Illinois

City of Chicago

ss. The People of the State of Illinois
To the Collector of the City of Chicago
Greeting.

Whereas the Common Council of the City of Chicago did on the 23rd day of March 1857 confirm the assessment duly made and filed in the Clerk's office by the Commissioners appointed by the said Common Council to assess the sum of Forty three Thousand Four Hundred and thirty one Dollars upon the real Estate in the several Divisions of said City deemed benefited by dredging or otherwise deepening the Chicago River and its branches between the west line of Franklin Street, North line of Lake Street, North line of Kinzie Street, and the Established Rock lines, in proportions to the benefits resulting therefrom, in pursuance of an order for said assessment, made by the said Common Council on the twentyfourth day of November 1856, after duly reviewing the same, and did thereby assess the said sum of money upon the real Estate described in the said assessment, in the respective proportions thereof marked. Assessment set off to each lot, part of Lot and real Estate described

in said roll, which shall be in the words and figures following, to wit,

Assessment Roll.

A description of the real estate in the several divisions of the City of Chicago deemed benefitted by the dredging or otherwise deepening the Chicago River and its branches, between the West line of Franklin Street, North line of Lake Street, North line of Kinzie Street, and the established Dock lines, with the valuation thereof, and the sums of money severally assessed thereon, for benefit by the Commission, to wit.

Warren No. 4. M. & H. Dated April 7th 1857.

NAME OF OWNER.

DESCRIPTION.

S. LOT.

LOT.

BLOCK.

Valuation.

ASSESSMENT.

CO

For dredging and otherwise deepening the Chicago River
and its Branches between the West line of Franklin St. North
line of Lake St. North line of Kinzie St. and the established
Dock lines.

Original Town of Chicago

J. S. Wright	Mid 3/4	1	5	25000	10500
Do.	" 1/4	"	5	8333	3500
Do.		2	"	25000	14000
G. A. Gibbs		3	"	40000	14000
Do.		4	"	24000	14000
Munger & Raymond		1	6	40000	26900
E. H. Husdick	E 1/2	2	"	8000	4000
Est. Mrs. Spring	W 1/2	"	"	8000	4000
Isaac Coats		3	"	16000	8000
E. S. Prescott		4	7	25000	32400
Do.		5	"	17000	22860
Jas. Jones		1	3 4 6	3000	6000
S. F. Taylor		2	"	3000	6000
Jas. Morrison		3	"	2000	4000
S. F. Taylor		4	"	1900	3750
Ogden Jones		5	"	1800	3500
Do.		6	"	1700	3250
Do.		7	"	2500	4500
S. F. Gale		8	"	3000	5000
Halsted & Ogden		9	"	3000	5000
Do.		10	"	2500	4500
Do.		11	"	2520	4200
S. F. Taylor		12	"	2540	4500
George Smith		13	"	2560	4500
Do.		14	"	3500	5000
Hugh Mahon		7	"	10000	16000

NAME OF OWNER.	DESCRIPTION.	S. LOT.	LOT.	BLOCK.	Valuation.	ASSESSMENT.	COS.
Hugh Maher			8	14	7000	1600	
Thos Pardee	Wharfing Lot		17		25000	69	
J. T. Ryerson	Do. Do.		18		21000	69	
W. Ferriant	Do. Do.		19		18000	69	
J. H. Scammon	Do. Do.		20		20000	69	
E. B. Taylor			21		30000	800	
Do.	E 1/2		22		12000	200	
Wm. H. Wickley	N 1/2		"		11000	200	
Do.	E 1/2		23		11000	200	
W. S. Gurnee	N 1/2		"		11000	200	
Do.	E 1/2		24		11000	200	
O. Sicut	N 1/2		"		11000	200	
Do.	E 3/4		25		14000	300	
E. B. Taylor	N 1/4		"		7000	100	
Do.			26		21000	300	
Sharns & Co.			27		14000	400	
C. W. Reed	S. 76 ft.		28		28000	76	
	N. 125 ft.		"		30000	125	
S. Link			29		50000	180	
J. S. Reed	S. 40 ft.		2	J.	41000	1000	
Est. A. Bronson			3	"	68000	600	
Wm. B. Ogden			4	"	7000	650	
Est. Wm. Allen	N. 20 ft.		1	K.	5000	240	
J. P. Chapin	E. N. 20 feet		"	"	14000	600	
William C. Avery			21	"	8000	840	
J. H. Burch			304	"	16000	1680	
Ogden Jones			5	"	10000	890	
Est. A. Bronson			1	22	8000	774	
Do.			44	"	8000	726	
Do.			5	"	8000	726	
Do.			8	"	10000	774	
W. J. Vickrey			1	N.	11000	76	
F. Wheeler			2	"	9000	76	

John Taylor	Wabausia Addition to Chicago.	3	St.	9000	7600
Est. J. Muller	Mid Jr	1		4500	3000
J. & W. R.R. Co.	" "	"		4500	3000
Do.	" "	2		6000	4000
J. H. Cobb.	" "	"		6000	4000
J. & W. R.R. Co.		3		11000	7500
Do.		4		10500	7500
Do.		5		11500	7500
Do.		6		10000	7500
Do.		7		10000	7500
Do.		8		10000	7500
Do.		9		10000	7500
Do.		10		10000	7500
Do.		11		10000	7500
Do.		12		10000	7000
Do.		13		10000	7000
Russell Mather & Roberts	Addition to Chicago.	1	62	1500	3000
J. & W. R.R. Co.		2	"	1500	3000
Do.		3	"	1600	3000
Do.		7	"	2000	2000
Do.		8	"	2200	3000
Thos Mather		1	63	2000	3000
Do.		3	"	2000	2500
J. & W. R.R. Co.		4	"	2000	2500
Do.		5	"	2000	2500
Do.		6	"	2100	2500
Do.		7	"	2100	2500
Do.		8	"	2500	3400
Do.		1	64	2100	2200
Do.		2	"	2000	2200
Do.		3	"	2000	2200

NAME OF OWNER.	DESCRIPTION.	S. LOT.	LOT.	BLOCK.	Valuation.	ASSESSMENT.	CO
<i>V. & M. R. R. Co.</i>			4	64	2000	22 "	
<i>Do.</i>			5	"	2000	22 "	
<i>Do.</i>			6	"	2000	22 "	
<i>Do.</i>			7	"	2000	22 "	
<i>Do.</i>			8	"	2000	25 "	
<i>Do.</i>	<i>S. 17 ft.</i>		1	65	7000	8 "	
<i>Do.</i>			2	"	1600	20 "	
<i>Do.</i>			3	"	1600	20 "	
<i>Do.</i>			4	"	1600	20 "	
<i>Do.</i>			5	"	1600	20 "	
<i>Do.</i>			6	"	1800	25 "	
<i>Thos. Master</i>			2	81	1200	18 "	
<i>Do.</i>			3	"	1200	18 "	
<i>Do.</i>			4	"	1200	19 "	
<i>Ogden Jones</i>			5	"	1200	19 "	
<i>Thos. Master</i>			11	"	1600	20 "	
<i>Ogden Jones</i>			12	"	1700	20 "	
<i>Thos. Master</i>			13	"	1700	20 "	
<i>Ogden Jones</i>			18	"	2000	20 "	
<i>Do.</i>			19	"	2000	19 "	
<i>Do.</i>			20	"	2000	18 "	
<i>Do.</i>			23	"	500	10 "	
<i>Sedgwick's Addition to Chicago.</i>							
<i>Ogden Jones</i>			6	13	2200	24 "	
<i>Heirs of J. B. Kingsburg</i>	<i>Part of E. 1/2 of N. W. 1/4 Sec. 9, T. 9, R. 14.</i>						
	<i>bounded S. by King's St., E. by Butler</i>						
	<i>Wright & others add. N. by Sedgwick's</i>				20000	1250 "	
	<i>Add. & N. by North Branch of Chicago</i>						

Now, therefore, you are hereby Commanded, to levy,
make and collect of the goods and Chattels, of the
respective owners of the real estate above described
the several sums of money assessed thereon, for which
such may be liable as aforesaid, and hereof make
due return in what manner you shall execute
this writ, within thirty days from the date hereof.

 Witness John Wentworth, Mayor of the
City of Chicago, and the Corporate Seal
thereof this Sixteenth day of April 1857.
Jno. Wentworth, Mayor

Attest H. Kneissman, City Clerk.

Saml. R. Ward, Comptroller

The said Collector also files his Notice and the Certifi-
cate thereto attached, which are as follows, to wit:

Corporation Notice, City Collectors office April
18th 1857.

Public Notice is hereby given to all persons
interested, that Special Warrant No. 4, for dragging
the Chicago River and branches, between the West
line of Franklin Street, North line of Lake Street, North
line of Kinzie Street, and the established dock lines,
is in my hands for collection at this office forth-
with, or the same will be collected at the cost and
Expense of the persons, liable to the payment of such
Taxes and Assessment. J. W. Hennicks
City Collector

This certifies that the appended notice of Special Warrant delivered to the City Collector of the City of Chicago has been published in "The Daily Democratic Press," the Corporation Newspaper of the City of Chicago, County of Cook & State of Illinois thirty days consecutively

1857

Chicago Jan'y 27, "1858.

Gripps Proof officers, Publishers.

City Collector's Notice. Public notice is hereby given that I shall apply to the Cook County Court of Common Pleas. on the first day of a Special Term thereof, to be holden at the Court House in the City of Chicago, on the 27th day of January A.D. 1858, for judgment against all blocks, lots, sub lots, pieces and parcels of land, together with the improvements, if any, situated thereon, for all taxes, assessments, interest, and costs thereon, remaining unpaid or appears from the following described Warrant now in my hands for collection.

Special Warrant No. 4, dated March 23, 1857, for dredging or otherwise deepening the Chicago River and its Branches, between the West line of Franklin Street, North line of Lake Street, North line of Kinzie Street, and the established dock lines. All persons therein interested are requested to attend at said term.

J. W. Heurich

City Collector.

This Certifies. That the appended Notice of the
intended application of the City Collector for
Judgment &c. has been published in the "Daily
Democratic Press" the Corporation Newspaper of
the City of Chicago, County of Cook and State of
Illinois, ten days consecutively, commencing
with January Sixteenth 1858
Chicago Jan'y 27th 1858.
Kripps Board & Press Publishing.

And afterwards, to wit, on the same day and year
last aforesaid, Theron Pardee, and others, by Scammon
Fuller their Attorneys, filed in said Court their
objections, to the rendition of judgment against cer-
tain of the lots &c. in said Warrant described, which
said Objections are in the words and figures, following
to wit,

In the Cook County Court of Comm. Pleas,
Of the Jan'y Special Term 1858.

In the matter of the City of Chicago applying for
judgment against the following lots of land in said City
for non-payment of a special assessment, as appears
by Special Warrant No. 4, "W. H. advertised as dated
Mar. 23. 1857, recdly dated April 16. 1857, for dredg-
ing and otherwise deepening the Chicago River and
its branches, between the West line of Franklin Street

" N. line of Lake Street, N. line of Kinzie Street, and
 " the established docklines.

E. D. Taylor	Wharfing Lot St Franklin St No. 21.	
"	E. $\frac{1}{2}$ Lot.	23
M. Hinkley	N. $\frac{1}{2}$	22
"	E. $\frac{1}{2}$	23
W. S. Furness	N. $\frac{1}{2}$	23
"	E. $\frac{1}{2}$	24
O. Smith	N. $\frac{1}{2}$	24
"	E. $\frac{3}{4}$	25
E. D. Taylor	N. $\frac{1}{4}$	25
"		26
Stearns & Co.		27
C. M. Read.	S. 76 ft.	28
T. Wheeler		3
Theron Pardee	Wharfing Lot St Rio	17.

Statement of facts.

All the above Lots are on the S^t Side of Chicago River. The working for which this assessment is laid is all on the West side, and on the North Branch. The owners of abrad property made all the improvement needed on their side the River, and all the new work done or proposed to be done is done on the West and North Shores.

On the 17th Nov. 1856 Mr. E. Granger the City Supt. sent a written recommendation, to the Common Council to make some improvements in the above named parts of the River.

On the 24th Nov. 1856, the Com. Council ordered that the work to be done, and Elected Commissioners to make assessments, no advertisement of their intended action was made.

On the 3rd Decr. 1856, the Com^{rs} were sworn.

On the 20th Feby 1857, they made their Report and returned their Asst. Roll. no leave was given them to extend time for making return beyond forty days from date of their Appt.

General notice to all persons was published, but it did not describe persons or property which had been assessed for benefits.

On the 23rd Mar. 1857, the Com. Council Confirmed assessment roll, ordered that it be paid in 30 days from that date, and that a warrant issue for the collection of it, returnable in 30 days from date of the order.

A warrant issued dated April 16, 1857 returnable 30 days from that date.

Authority for the City to excavate and improve the Chicago River.

Municipal Laws. Pages 97-8. Sec. 5. Act of Feby 27, 1845.

Municipal Laws pages 19, Sec. 4, Article 2. City Charter of 1857

It is provided by Sec. 5. Act. 1845, Municipal Laws pages 97-8, that "for widening the River" and assessing damages and benefits such proceedings shall be had, as are in case of opening street valleys

what "such proceedings were". See the old City Charter Sec. 38, 39, 40, 41, in the Municipal Laws pages 511, 12-13. Sec. 11. Amendment to old Charter in Municipal Laws, pages 527, - 8, 9, and Chapter 6. New City Charter, of 1851, M. Laws, pages 52-3-4-5-6-7.

The Court will see that the present assessment was laid, not for "widening", but for "deepening" by excavation or otherwise the Channel of the river,

The parties above named, object, to the entry of judgment against their lots above named, for following reasons:

First. These proceedings being commenced prior to the enactment of the new City Charter, of Feby 16, 1857, and being a special assessment, this Court has no jurisdiction of the matter.

Secondly. No Notice was given, no foundation laid by the Common Council for instituting these proceedings, as required by all the above referred to Laws & Charters.

Thirdly. None of the advertisements are such as the Law requires, as to these respondents.

Fourthly. The assessors did not return their report, as required by all the above Laws & Charters.

Fifthly The order of Confirmation, entered by the Council, having ordered a Warrant to issue in a given manner, and one entirely different having issued, it is wholly unauthorized by Law.

For these reasons and because the proceedings are otherwise insufficient and illegal, the said Respondents insist that no judgment should be entered against them or their Lands.

By their Attys

Samuel Fuller

To the first objection taken above, we understand the Court does not desire any argument.

The second objection needs no argument.

The 3^d & 4th & 5th points we deem well sustained by authorities and the Law as held by our Supreme Court.

S. Fuller

And afterwards, to wit, on the Thirtieth day of January in the year last aforesaid, said day being one of the days of the January Special Term of said Court, the following, among other proceedings, was had in said Court and entered of record to wit,

The City of Chicago

^{vs} { Suit for abatement on Warrant
J. S. Knight & others } No. 4. W. M. for Dredging and
otherwise deepening the Chicago
River and its Branches, between the west
line of Franklin Street, North line of Lake
Street North line of Kinzie Street, and the
established Docklines.

And now at this day, to wit, the Thirtieth day of Janu-
ary, at this Term comes the said City of Chicago
by John B. Miller City Attorney, and due notice of
the time and place of making application for
judgment in this case, having been given as required
by Law. And now also come Thos. Pardee and
others by their attorneys, owners of certain lots in
said Warrant described, and file herein their objections.
And the Court after hearing argument of counsel on
said objections sustains said objections. And doth order
that judgment be entered on said Warrant for the Lots
herein described, except those to which objections are
sustained, being the following described Lots, to wit,
Wharfing Lot, Sixteen old Town. The East half
of Wharfing Lot, 22, West half of 22, East half of 23,
West half 23, East half 24, West half 24, East 1/4 of
25, West 1/4 25, Lot 26, Lot 27, and South 70 feet of
Lot 28, and Lot 2, Block North.

Therefore it is considered by the

Court, that judgment be and is hereby entered, against the said lands, lots, parcels of land, and other real estate, described in the aforesaid Warrant, in the name of the City of Chicago, for the sum annexed to each lot or parcel of land being the amount of apportionment, and for costs of suit thereon.

And that the said City of Chicago have and receive the further sum of ten per cent, upon the amount of assessments respectively due, and unpaid upon each of the lots, lands, parcels of land, and other Real Estate therein set forth as and for her legal damages.

And it is further ordered by the Court that the said several tracts and parcels of land, or so much thereof as shall be deemed sufficient of each of them to satisfy the amount of assessment, damages and costs annexed to them severally, be sold as the law directs.

State of Illinois }
County of Cook } ss.

J. Walter Kimball, Clerk of the Cook County Court of Common Pleas, within and for said County do hereby certify, that the above and foregoing is a full and true transcript of the papers on file in my office and the proceedings entered of Record in said Court, in the case of the City of Chicago, vs J. S. Wright and others, as far as relates to the property described in Warrant Number 1 North and West, Special assessment for Roadway

and otherwise deepening the Chicago River and its
Branches, between the West line of Franklin Street,
North line of Lakes Street. North line of Kinzie Street
and the Establisher's docklines.



In Testimony Whereof I do hereunto
subscribe my name and affix the
Seal of said Court at Chicago in
said County this 20th day of April
A.D. 1858 Walter Kimball Clerk

It is stipulated and agreed between the parties to the foregoing Record that all the Papers and Documents Copied into the foregoing Record are on file in said Cause and were before the Court upon the trial and form a part of the Record in this Cause and it is agreed that the Supreme Court shall look to examine, and treat them as if incorporated into the Record by Bill of exceptions.

It is further agreed that the annexed paper marked "Assignment Roll" shall also be taken and treated as a part of the Record in like manner as if incorporated in a Bill of exceptions and errors may be assigned accordingly.

State of Illinois ^{which was all the evidence in the case}
 Supreme Court

And now comes the said plaintiff in Error by Solicitor General and says that in the Record aforesaid & in the rendition of judgment manifest errors have intervened in this case.

1st That in preliminary notes of the caption of the

Proceedings by the common Council was given as
required by the Charter & Ordinances of the City of Chicago

2^d That the Common Council did not return their judgment
Roll at the time required by Law

3^d That none of the notices in their proceedings are
sufficient or such as are required by Law

4th That the City of Chicago has exprom-
ised its Charter & Ordinances to lay a special
assessment for the purpose of dredging & otherwise
excavating & deepening the Bed of Chicago River
and its Branches

5th That the Court acted in rendering judgment
against the said several lots & pieces a parcel
of property for the amount of said assessment
without damages and costs

Wherefore for the errors aforesaid the said
Plaintiffs pray that the same may be reversed
annulled & for naught and they retuned back
their Rights of which they have been deprived
by the judgment aforesaid together with their
reasonable costs.

I Certify & Declare Annul for
kept in Error

In all which Dept in sum says that in Error

Elliott Anthony
City Attorney

Dredging or otherwise deepening the Chicago River
and its branches between the N line of Franklin St. N line of
Lake St. north line of Kinzie St. and the established dock lines

In Common Council November the 24 1856

Ordered. That the Chicago River and its branches, between the west line of Franklin St. north line of Lake St. north line of Kinzie St. and the established dock lines, be dredged or otherwise excavated to the depth of twelve feet below low water mark, in accordance with the estimates and profiles herewith submitted, and that the City Clerk advertise for 20 days for sealed proposals for performing said work in such sections as may be constructed to the best advantage, subject to be paid for, out of moneys to be collected by an assessment for that purpose. Ordered, that the sum of forty three thousand four hundred and thirty one and $\frac{6}{100}$ dollars be assessed upon the real estate in the City of Chicago deemed benefitted by the said improvement, and that the Common Council do now elect by ballot three reputable and disinterested freeholders of the City of Chicago to make said assessments.

The orders were passed and the Council proceeded to the Election of Commissioners thereunder, on the first ballot Thomas Church received 16 votes. William Wayman 18 votes and J. Duffey 11 votes and they were declared elected.

Attest H. W. Zimmerman City Clerk

OATH OF COMMISSIONERS.

STATE OF ILLINOIS, }
CITY OF CHICAGO, }

WE, the undersigned, Commissioners appointed by the Common Council of the City of Chicago, to assess the sum of Forty three thousand four hundred & thirty one & $\frac{6}{100}$ Dollars upon the real estate by us deemed benefitted by

dredging or otherwise deepening the Chicago River and its branches in accordance with the foregoing orders

in proportion to the benefits resulting thereto as nearly as may be, do solemnly swear that we will faithfully and impartially execute our duty according to the best of our ability.

Sworn to and subscribed before me, the
3^d day of December 1856

H. W. Zimmerman
City Clerk.

Thomas Church
James Duffey
Wm Wayman } Commissioners.

A DESCRIPTION of the real estate in the

~~Division of the~~ City of Chicago, deemed benefitted

by

by Dredging or otherwise deepening the Chicago River and its Branches between the west line of Franklin St. north line of Lake St. North line of Kinzie St. and the Established dock lines

with the valuation thereof, and the sums of money severally assessed thereon for benefits, by the Commissioners,
to wit :

NAME OF OWNER.	PART OF LOT OF LAND.	S. LOT.	LOT.	BLOCK.	VALUAT'N.	ASSESST.
Original Town of Chicago						
A. Lind	Wharfing Lot	2930 1/2	50,000	180.		
S. S. Wright	Alond 3/4	1	5	25,000	105.	
"	" 1/4	"	"	8,333	35.	
"	"	2	"	25,000	140.	

3
To the Mayor and Aldermen of the City of Chicago, in Common Council assembled:

The undersigned Commissioners appointed by your Honorable body to ascertain the damages and recompense due the owners of such real estate as shall be appropriated and taken for the Dredging the Chicago River and its branches

in accordance with the orders passed by the Common Council and hereto prefixed, and at the same time to assess the amount of such damages together with the cost of the proceedings upon the real estate deemed benefitted by the said improvement, in proportion as nearly as may be, to the benefits resulting to each lot or parcel of ground respectively; Do hereby report and return to the Common Council:

That in pursuance of said appointment they were duly qualified before entering upon their duties as appears by the oath recorded herein; that they published a notice of the time and place of their meeting for the purpose of making their assessment, in the Chicago Daily Times the Corporation Newspaper of the City of Chicago, for the period of ten consecutive days previous to such meeting, a certificate of which publication is hereto prefixed; that they were present at the time and place and for the purpose designated in said notice that they adjourned from day to day until February 20th 1857 when they were all present and did then and there, and do hereby assess the respective amounts set opposite to each lot or parcel of ground in the foregoing Assessment Roll mentioned in their appropriate columns, as the damages and benefits resulting from the said improvement, to such lots or parcels of ground respectively—having first fixed a valuation on the said real estate, which is likewise set forth in said roll.

All which is respectfully submitted,

Thomas Church
Wm Wayman
James Duffy } Commissioners.

Chicago, Feb the 20th 1857

Notice is hereby
given to all persons interested, that
the undersigned Commissioners, appointed by the Common Council of the City of Chicago to assess the sum of Forty three thousand, four hundred and thirty one dollars (\$43,431.60) upon the real estate in the City of Chicago, by them deemed benefitted by excavating the Chicago River and its branches between the west line of Franklin Street and the line of Lake Street, north line of Kinzie Street and the established dock lines to the depth of twelve feet below low water mark, will meet at Room No. 2, in the Court House, on the 18th day of December 1856 at the hour of 2 o'clock P.M., for the purpose of making said assessment.

Chicago December 7th 1856. 61

Thomas Church
James Duffy
Wm Wayman } Commissioners

This Certifies that the appended Notice

relative to dredging the Chicago River &c
has been published in the Chicago Daily Times the Corporation Newspaper of the City of Chicago, County of Cook, and State of Illinois, ten days consecutively, commencing with December 7th 1856

Chicago, February 21st 1857

Shadant Cameron } PUBLISHER.

ASSESSMENT NOTICE.

CITY CLERK'S OFFICE,

CHICAGO, *All February 21* 1857. }

Public Notice is hereby given to all persons interested, that the Commissioners appointed by the Common Council of the City of Chicago, to assess the sum of *Forty three thousand* ^{*four hundred and thirty one*} ^{*60*}/_{*100*} dollars upon the real estate in the *Chicago* Division of said City, deemed benefitted by

dredging or otherwise deepening
the Chicago River and its branches between
the west line of Franklin St. north line of
Lake St. north line of Kinzie St. and Estab-
lishing deep lines

have completed their assessment, and made return thereof to my office.

Any persons wishing to appeal from said assessment, must file their objections, in writing, in my office, on or before *Monday*, the *21st* day of *March* 1857, at 7 o'clock P. M., as the Common Council will, at that time, in the Council Room, hear all objections to said assessment, and revise and confirm or annul the same.

(10 ts.)

R. J. Zimmerman City Clerk.

4
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 Commissioners, this 20th day of July 1857

W. Zimmerman CITY CLERK.

This Certifies, that the appended Notice

has been published in the Democratic Press the Corporation
Newspaper of the City of Chicago, County of Cook, and State of Illinois, ten days
consecutively, commencing with July 21st 1857

CHICAGO, March 23 1857

Scriffs Bros & Spars PUBLISHERS.

ORDER OF CONFIRMATION.

IN COMMON COUNCIL, March the 23rd 1857

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

It is further ordered, that upon the return of such warrant, if any part of said assessment shall not be collected, the
Superintendent of special assessments, shall apply to the County Court of Cook County, for judgment against the lots or
real estate upon which such assessment remains unpaid, for the amount of such assessment and costs, after publishing a
notice of such intended application in the Corporation Newspaper, for 3 days.

PASSED:

H. Kreismann CITY CLERK.

MEM. Warrant issued April the sixteenth 1857

State of Illinois }
City of Chicago } J. H. Kreismann, Clerk of said City
do hereby certify that the foregoing
is a true copy of an original assessment Roll, now
on file in my office: so far only, as relates to the
lots herein given, the remainder of list of real estate owners,
valuation and assessments being omitted.

Witness my hand and the
corporate seal of said City
this 16th day of April A.D.
1858.

H. Kreismann City Clerk



Limit or City of Chicago

805 365

The Council

John S. Wright

Index

Filed April 24 1854

John S. Wright

Prosser

J. S. Wright et al v The City of Chicago

II

The question presented in this case is one, as to the power of the City to levy a special assessment for deepening the Chicago River.

In order to determine this point, I would call the attention of the Court to the provisions of the Charter, which confer power upon this subject.

Power is conferred upon the Council,

"To remove and prevent all obstructions in the waters which are public highways in said City, and to widen, straighten and deepen the same"

Muni Code p. 14 Sec 4 Clause 2

"To widen the Chicago River and the branches thereof, within the City from time to time, as they may deem proper and necessary for the Commercial business of said City, by cutting away the whole or any part of the Streets or lots on the bank of said River or its branches. Id P 97, Sect 5.

In this latter case proceedings to condemn

such lots, and to assess "the damages and benefits" shall be had under the provisions of the Charter for opening Streets &c "So far as they are applicable."

Ibidem

Now these provisions for opening Streets are peculiar, and I submit would become unconstitutional and oppressive upon those who might thus become riparians by widening of the River, if these provisions are to be literally understood and applied.

The Council are authorised to elect 3 Commissioners, "to ascertain and assess the damages and recompense due the owners of such lands, respectively, and at the same time to determine what persons will be benefitted by such improvements, and assess the damages and expenses thereof, on the real estate of persons benefitted, as nearly as may be, to the benefits resulting to each" Mun. Code P 33 Sect 2.

After the Commissioners have ascertained the damages &c they are directed to assess the same, together with costs

of the proceedings, upon the real estate by
there deemed benefited, in proportion to the
benefits resulting therefrom from the improv-
ements, as nearly as may be."

Ed D 35 Sect 11

Now this act does not provide simply
to impose an amount of the ^{damages} ~~proportioned~~ ^{proportioned} to the benefits - but it is to
apportion the whole damages expenses and cost
upon the real estate deemed benefited,
without regard to the whole amount of
benefit, - only as among the lots benefited,
the amount of benefit of each, is taken
into account, in order to proportion to each,
its relative share of the whole.

The Constitution protects property from
spoliation, without payment being first
made, even when taken for public use.

Equally so here, will every man be pro-
tected in his property, though the attempt
to take it, be in the name of benefits
occurring from improvements.

It is one thing to make men account
for and pay over the amount of the
additional value conferred upon their
property by any improvements made in
the vicinity of it.

But it is quite another thing to compel them to pay a sum over and above the value of these benefits.

All that is required above the amount of benefits conferred, is an oppressive exaction, and contrary to the Constitution and cannot be enforced without first making just compensation.

It is quite immaterial whether the land, personally or money be taken — each and all are under the same protection. A law then which requires the whole of the damages, expense and cost of any given improvement, to be levied upon certain persons, whose property is deemed benefited thereby, without regard to the amount of benefit thus conferred — is unconstitutional and void. For under such provision one, whose land may be benefited to the amount of one thousand dollars of the damages

&c assessed, and still only thereby bear his proportion of the whole damage according to the benefit -

Now this apportionment of the whole damages upon the real Estate benefitted in proportion to these benefits, can only find a Constitutional Sanction, in those cases where the amount of the benefits conferred is equal to the whole damages

But in those cases where these benefits are less than the damages, then the apportionment should be of a proportion equal to the benefits. And any thing more or beyond this will be unlawful.

6 Barber 5 C.R. 223-4-5 11 John RMY
4 Hill 76. 3 Wend. 452. 9 Wend. 244. 11 Wend. 149. 158.
19 Wend 678. 1 Barber - C.R. 224. 9 Barb 5 C.R. 53

The City Charter has preserved this principle in making assessments for market grounds, Markets, a Public Square, or Park, and a Lake Basin, (Muni Code p 29. Sect 2 clause 2) - for after apportioning an amount of the cost upon property thereby benefitted equal in amount to the conferred on each lot, then the remainder is required to be raised by taxation on all the property in that

natural division of the City in which the improvement may lie -

The same principle is applied in the amended Charter of 1837 p 26 - sects 9-17 for laying out a Park in the South Division - but it has not been preserved as a rule in the erection of Water Works, Sewers, Lamps, Pumps, Bridges, and the Reform School.

See Muni Code

Pumps	Page 24	Sec 4	clause	45
Lamps	"	"	"	47
Bridges	25	"	"	52
Lamps	30	"	3	
Water Works	86	"	5	
Sewerage	103	"	3	

Reform School Amended Charter 1847 p 28 sec 1.

These improvements have been made out of a common treasure or by a common debt - and no one however much locally benefitted by these improvements has been made to pay for those benefits. Yet I can see no difference in the application of the principle to the River as a highway or to a bridge across it. Each is equally open to all Citizens. And the facilities

afforded to contiguous Lots by locating a bridge at them may greatly enhance their value. —

The Lamps, and Public Pumps afford little advantage to those beyond the Water & Gas limits — and one of great convenience and value to the lots accommodated by them — Still all are made to pay alike for these improvements.

The Constitution has fixed a rule of uniformity, and valuation for laying taxes, if it be a tax Article 9 Sects 2-3

So whether as an apportionment or a tax, it is erroneous. See 9 Dana 114

5 Dana 28 See also 4 Const R 63-4

This last case lays down a different rule — and a distinction between an apportionment & a tax, which is not very obvious.

Whatever may be its authority as a general rule, it cannot apply here where the Constitution has given a rule of uniformity in laying taxes by Corporations to be in proportion to the value which is to be by valuation.

I submit that the true distinction is laid down, and a sound principle adopted in reference to the doctrine of taking private property for public use, and claiming contribution for benefits, in the

cases of Keasy v The City of Louisville 4 Dana
R 154 Sutton's heirs v Earne 5 Dana R 30, 31.

and which was re-affirmed in Rice et al
vs Danville & Turnpike Co 7 Dana R 87, 88, &
Jacob v The City of Louisville 9 Dana R 114

In the first Case it is laid down that
when a man's property is injured & yet
no part of it is taken for public use, he can
neither be made to pay for the advantages
conferred upon his property, nor is he entit-
led to pay for any disadvantages that may result
from the proposed work. This principle is
repeated in the second case of Sutton's heirs
and the Court say that where property is
taken, its value must be paid, and the advan-
tages or benefits can only be set off against
the disadvantages apart from the value of the
land.

In Jacob v The City of Louisville 9 Dana 114
the Court say a man cannot be made to pay
for the speculative advantages either by giving
up any part of his property or paying in money.

Now if he may be required to pay money for
them — his land or personalty may be taken
for them. This I submit cannot be required
either in the ^{one} shape, or in the other. And
while I deny this this, I do not question the
absolute power of the State to levy taxes

to an unlimited amount — So that at the same time, they are duly apportioned on each man's property in Common with all others taxable within the jurisdiction or limits for which it is laid is taxed likewise in proportion to its value.

How different, however, is this equal apportionment of taxes to supply a public want of revenue — from a claim to collect so much in value because of an indefinite enhancement in value of the party's property.

This latter comes more in the shape of a claim of debt as an equivalent for benefits conferred. Now when these advantages or benefits are deducted from the price or damages of property taken, under the power to condemn, or make an involuntary purchase. I should not question the justice, or Constitutionality of the rule.

But when we go a step beyond and exact a sum of money from another for supposed benefits, although his property in kind is neither bought nor seized, it is an attempt under a specious pretence, and under a false analogy to levy exactions not in the nature of a tax, nor yet a condemnation of property to public use

upon just compensation.

The whole Subject received a very elaborate discussion & consideration in the Case of the People v The Mayor &c of Brooklyn 9 Barb S. C. R. 535. Although this decision was reversed in the Court of Appeals 4 Cornet R 420, still I think the reasons and argument of the Supreme Court remain unanswered, and I must think the prior decisions in that State support it, on this point.

It is laid down in the The Trustees v &c v McConnell 12 Ill R 140 - that money is personal Estate. In 15 Wend R 374. It is said that "private property is taken for public use, when it is appropriated to the use of the public at large. A stronger instance cannot be given than that of a lot of an individual in a City converted into a street" - and Justice Brown says in 9 Barb 546 - that "the money therefore, mentioned in the agreement for grading Flushing Avenue, must be deemed property 'within the meaning of the Constitution' for condemning property for public use.

Now the rule of taxation is well

laid down in Sutton's heirs v The City of
Louisville 5 Dana R28 "A Common burden
should be sustained by common contribu-
tions; regulated by some fixed general
rule, and apportioned according to some
uniform rule of equality. Thus if a Capitation or
poll tax be levied, it must be imposed on all
the free Citizens equally & alike. Or if an Ad-
Valorem or specific tax be laid on property,
it must bear equally according to the value or
kind of all the property, or on each article of
the same kind owned by every Citizen"

The expenses of the State ought to be supported
equally, or in just proportion. It is in this
as in the throwing of merchandize overboard
to save the vessel. The Citizens are entitled
to require that the Legislature itself shall cause
all public taxation to be fair and equal
in just proportions to the value of the property
so that no one class of individuals, and no one
species of property, may be unequally taxed
or unduly assessed. Counties & towns,
School districts, Road districts &c may be
made equally and justly to bear their own
local expenses without violating this general
principle of equality & uniformity.

This principle is very old and very
universally recognized (see 9 Barb 530)

and has been made a fundamental in our Constitution.

Now in the matter of the Mayor of N. York 11 John R 77. Street assessments, were held not to be taxation in the sense of the Law, and therefore Church property exempt from taxation was held liable to the Street assessments. So a paving assessment was held not to be a tax in the meaning of a Covenant to pay all taxes, charges & impositions.

Bleeker vs Ballou 3 Wend 263. Again in Sharpe v Spier 4 Hill 76 - an Authority given to sell lands for every description of taxes did not authorize a sale for City & village assessments.

Justice Bronson says "Now the first remark upon this is that it only authorizes a sale of lands for the payment of a tax; and although it extends to a tax of every description, still it includes nothing but a tax of some kind. Our Laws have made a plain distinction between taxes, which are burthens, or charges imposed upon persons or property to raise money for public purposes, & assessments for City & Village improvements, which are not regarded as burdens - but as an equivalent, or compensation for the enhanced value which the property of the person

assessed has derived from the improvements!" Justice Brown says in 9 Port 535
"The measure of compensation in benefits or enhanced value, if it obtains at all, must apply as well to money assessed & collected to grade and make a public street fit for travel, as to lands over which the street runs. Both the land & the money are taken for the public use, and if compensation must be made for the one, so it should be for the other." "In regard to the compensation itself, it is the same, whether the property is taken by the State for an arsenal or a dock, by a Corporation for a railway or a municipal body for a public avenue!"
"and" The prohibition against taking private property for public use without just compensation, is general and universal in its application.

It recognizes no exceptions, and what is just compensation must be measured by the Actual Value of that which is taken, at the time it is taken — and not by the uses to which it is to be devoted."

In Bloodgood v. The Mohawk & Hudson R.R. Co. 18 Wend. 9 — the Court held that the compensation must be made

before the property is taken & used -
which therefore cannot be made in ben-
efits to accrue afterwards, from the use
of the property in making the improvements.

For further discussion of the
distinction between Compensation for property
taken in the meaning of the Constitution,
and the deduction of benefits from damages
done to other property by taking a part -
See 9 Barb 537 to 560. 9 Dana R 1145 Dana 128

"The demands of the Constitution are
not satisfied by coercing one class of propri-
etors, to compensate another class; or
by taking the lands of some and the money
of others - no matter how equitable may
be the rule of apportionment - and appro-
priating both to the construction of works
designed exclusively for the public use
and of which the public have an exclusive
title.

If the language of the Constitution
could possibly be construed into the recog-
nition of anything less than a compen-
sation in money made by the public from
the public treasury, there would still
remain the difficult task of showing
that the medium in which the proposed

J. S. Wright et al vs The City of Chicago

II

"The question presented in this case is one as to the power of the City to levy a Special Assessment for deepening the the Chicago River

In order to determine this point I would call the attention of the Court to the provisions of the Charter, which confer power on this subject —

Power is conferred upon the Council
"To remove and prevent all obstructions in the waters which are public highways in said City, and to widen, straighten & deepen the same" —

Muni. Code p 19 Sec 4 clause 2 :

"To widen the Chicago River and the branches thereof, within the City from time to time, as they may deem proper and necessary for the commercial business of said City, by cutting away the whole or any part of the streets, or lots on the banks of said River or its branches

Id p 97 Sec 5

In this latter case, proceedings to condemn such lots, and to assess the "damages & benefits" he had under the provisions of the Charter for opening streets &c -

"So far as they are applicable"

Ibidem

Now these provisions for opening streets &c are peculiar, and I submit would become unconstitutional & oppressive upon those who might thus become riparians by widening of the River, if these provisions are to be literally understood & applied

The Council are authorized to elect 3 Commissioners, "to ascertain and assess the damages & recompense due the owners of such lands, respectively, and at the same time to determine what persons will be benefitted by such improvements, and assess the damages and expenses thereof, on the real estate of persons benefitted, in proportion, as nearly may be, to the benefits resulting to each"

Muni Code 1233 Sect 2.

After the Commissioners have ascertained the damages &c they are directed to "apportion and assess the Same, together with costs of the proceedings, upon the real Estate by them deemed benefitted, in proportion to the benefits resulting thereto from the improvements, as nearly as may be"

id § 35 Sect 10

Now this act does not provide simply to impose an amount of the damages proportioned to the benefits, & not exceeding the benefits - but it is to apportion the whole damage, expense & cost upon the real estate deemed benefitted, without regard to the whole amount of benefit: - only as among the lots benefitted, the amount of benefit of each, is taken into account, in order to proportion to each, its relative share of the whole -

The Constitution protects property from Spoliation, without payment being first made, even when taken for public use. Equally & here, will every man be protected in his property, though the

attempt to take it, be in the name of benefits accruing from improvements -

It is one thing to make ^{an} account for & pay over the amount of the additional value conferred upon their property by any improvements made in the vicinity of it

But it is quite another thing to compel them to pay a sum over and above the value of these benefits

All that is required above the amount of benefit conferred, is an oppressive exaction, and contrary to the Constitution - & cannot be enforced without first making just compensation -

It is quite immaterial whether the land, personally, or money be taken - each & all are under the same protection -

A law then which requires the whole of the damages, expense & cost of any given improvement, to be laid upon certain persons, whose property is deemed benefitted thereby, without regard to the amount of benefit thus conferred - is unconstitutional and void. For under such provision one, whose land may be benefitted to the amount of one thousand dollars may have apportioned upon his land four thousand dollars of the damages

remuneration is to be made, rightfully
belongs to those, upon whom the obli-
gation, to make just compensation rests?"
Brown J. 9 Barb 559

II

I have considered the question upon
the provision of the charter for assessing
damages for opening Streets.

But it may be
noted, that the charter has simply conferred
the power upon the council to deepen the
river, without providing how the means
may be raised for paying for it.

All the Harbor
reaching out into the Lake, including the
piers, and extending to the sources of the
river, for some public purpose is within
the jurisdiction of the City; and many
acts may be done, and regulations made
which will require expenses, as well as
deepening the River. Yet it does not follow
therefore, that the lots must contribute
be made to bear the expenses.

All that portion
of the River not included within the bound-
aries of the lots, is doubtless public Water

charge, has been thrown upon the public.

Suppose we take it upon the provisions of the Charter, and we find nothing to throw this burden upon adjacent States. The power to make the improvement is conferred, but the power to raise revenue, is one only in common with the general objects of the city government. No special mode can be resorted to, without it be provided by the charter, or by law: none such exists.

Corporations, municipal as well as private, have only such rights and powers, as are expressly granted to them, or as are necessary to carry into effect the rights and powers so granted. *New London v. Trainard* 22 Conn. 1552
Thompson v. Schenck 2 S. & R. 92
Trustees, &c. v. McClellan 12 S. & R. 138.
Sullivan's heirs v. City Louisville 5 Don. R. 30

Where many different improvements are placed within the powers of the corporation, and powers conferred of a general character to raise revenue by general taxation—
together with special ^{powers for raising revenue by} ~~powers~~ ^{special} ~~in~~ ⁱⁿ ~~various~~ ^{various} cases for specified objects—We cannot apply the latter class of special powers and modes for the purpose of raising the necessary

revenue to make improvements authorized, without specification of particular modes of raising means.

Where therefore power is given to make a particular improvement, and no special mode of raising means is pointed out, the corporation must resort to a general levy of taxes for that purpose and these must be laid under the constitutional rule of uniformity.

While the power of the Legislature is unlimited as to the amount of taxation, it is restricted as to the mode of laying it. The mode in cities &c. is "to be uniform in respect to persons and property within the jurisdiction of the body imposing the same." And the general Assembly shall require that all the property within the limits of municipal corporations, belonging to individuals, shall be taxed for the payment of debts contracted under authority of "law."

Article 9 Sect 5 Const

"Nor shall any man's property be taken or applied to public use without the command of his representatives in the general assembly, nor without just compensation being made."

to him."

Article 13. Sect. 11. Const.

Suppose that, as no part of the land of plaintiff is taken, this is not within the provision of the power to take private property for public use, but a tax according to the decision in 4 Const. R. 420. - still the levy is unsustainable as a tax, for want of uniformity upon "all the property within the limits of the 'municipality'." These limits of the jurisdiction may mean the boundaries of the city - or for certain municipal purposes lesser ascertained and fixed limits within those boundaries.

Now if the language of the constitution requiring uniformity in laying taxes for local purposes, operates any restraint upon legislative or municipal power, it must require, that, limits or boundaries shall be prefixed by the Corporation or Legislature for every local tax - and upon a reasonable and natural basis according to the nature of the object for which the tax is laid.

If persons appointed at the time of laying a tax, may fix the municipal boundaries or district limits within which it is to be

The constitution of N. York contained such a restriction as that of Illinois, the court would have arrived at a different conclusion in ~~the~~ ^{the} ~~case~~ ^{case} of Comstock upon this principle. every general lay for specific improvements which ought to be upon the whole city - may if some piece of property is required by condemnation be made special by apportioning the tax upon supposed benefits to the selected victims so that by this paltry fiction, all the bridges, lamps, pumps, Sewerage Water Works Reform Schools, Prisons Parks Piers Break waters, and all improvements in a Common Harbor, may be imposed on a few property holders - and upon a very limited amount of the city property. Indeed it, ^{may} as well extend to the Court house - and all improvement that have a locality.

The principle adopted by the Kentucky Court of appeals without a Constitutional requirement is more consonant to natural justice & equality.

Why should a half dozen property-holders, whose lands have been enhanced ten thousand dollars by a certain improvement be made, therefore, not only to contribute that amount towards it - but one hundred thousand dollars - over and above.

If the constitution was confined, to
an amount equal to the benefits—and
the same and other property made to bear
a pro rata share with all property for
the excess—then there might be an argument,
in its favor, specious indeed, if not solid.
If incidental benefits from public improv-
-ements, creates a debt, then an action
ought to be for the amount. Will an action
lie? Why then issue a warrant for its
collection of persons, not by way of deduc-
-tion from damages done where property is
taken, but from third persons, or strangers
to the proceedings for condemnation.

Persons are adjudged to owe certain sums
to the public, and condemned to pay them
by Commissioners appointed to assess
damages to persons whose property is taken.
In the opinion of Commissioners, when a
certain improvement is made, certain
benefits will be conferred—and thereupon
execution is issued and this supposed bene-
-fit is collected in order that by its expen-
-diture, the benefit or consideration may
be conferred.

This process is called a tax—but
it seems to me a naked and unmitigated
instance of taking a man's private property

for public use. Nor do I see any difference
whether it be land or money that is taken.
both are property within the meaning of
the Constitution.

And the supposed folly or absurdity
of taking one hundred dollars in money
for public use, and returning as much more
in compensation, only goes to show it
is an instance and ~~so~~ mode, not contem-
-plated by the Constitution.

The true inference from it is - not
that the act is, therefore, a tax - but that
it is unlawful, unconstitutional, and
void - and to illustrate it - suppose the
State should need one thousand Dollars
to make an improvement or to support
the army - and I am called on to pay
it, upon the allegation that I am benefited
by the improvement or the protection affor-
ded to my property - and upon my declining
or neglecting to pay process is issued
and my property seized - is this a tax -
or an unconstitutional extortion?
Surely there is little difficulty in determin-
-ing that this is not a compliance with
power ^{either} to levy a tax or condemn property
for public use. Yet I do not perceive the
difference between such a case and the case

before the Court.

This arbitrary assessment of the cost of this improvement by deepening the River - is not a constitutional exercise of a general power under the City Charter to levy a tax for this improvement. There is no mode provided for raising revenue for this branch of improvements in the city: - Nor was there even here the semblance of a proceeding to condemn any property and assess damages thereon - but a naked practical illustration of the principle contended for: that where a projected improvement is supposed to be beneficial to any particular property, the Council may assess a sufficient sum upon that property to make the improvement. And this is said not to be taking of private property for public use because it is money that is wanted and if required to make compensation, it would take dollar for dollar, and nothing is gained - and that it is therefore a tax.

As a tax it is sought to be sustained because it is levied in the name of benefit conferred - without regard to uniformity.

Now money is personal estate, and taxable within the meaning of the Constitution - so held in *Trustee v. McConell*

-12 Ills R 140 - and the same case holds
that no discrimination is allowed so as
to exempt a part, while a greater burden
is thrown upon the remainder of property
within the same jurisdiction

The defendant is Counsel, rather assume than show the existence of a power to raise money for deepening the River by a special assessment

While we admit the power to do the work, we deny the power to raise the money by special assessment

Where power is given to municipal corporations to make certain improvements - and special power conferred to raise means by particular modes for certain specified improvements - and a general power of taxation is also given - any particular improvement within the power, for which no particular mode is provided, must be made under the general taxing power.

This is conformable to the general principle which limits corporations to the powers granted - and confines them to the modes pointed out in their exercise

To this effect are the cases cited in defence 15 Barb S. C. R 457. 464-5
19 Wend R 678.

This is the limitation for which we contend here. We do not claim that this Court will revise any discretion of the Common Council or of the Commissioners, as to the policy or expediency of this work.

But it will inquire into the questions of their powers - and the mode in which they exercise them.

We distinctly disavow the grounds upon which defendants Council has argued the defence. He proceeds upon the assumption that it is at most but an irregular, or erroneous exercise of power, and subject to review on appeal or writ of error in some regular mode.

On the contrary we proceed upon the assumption - first - that the provisions of the law authorising the entire cost of any improvement to be apportioned on the property benefited, without regard to its excess above those benefits are unconstitutional and void - and that the act under which

This Assessment was made is ob-
noxious to this objection —
Second That the Constitution
of this State will not allow bur-
thens of this Character to be ar-
bitrarily Assessed on property in
undefined, and unascertained
Districts — in the Discretion of Com-
missioners — but that these local
municipalities, or Districts for such
local purposes must be ascer-
tained and fixed by law — and
then these local burthens, over
and above the individual bene-
fits to those whose lands are
taken — must be laid under
the Constitutional rule of
Uniformity upon all the like
persons & property, in such
District — and

Third — the power to make
Special Assessments for City im-
provements, does not extend to,
nor include the Deepening of
the River — while we therefore
urge the first and second objections
to protect these plaintiffs — we also
conclusively urge, this last, for

want of power in the Charter to
justify this mode of raising funds
for this particular purpose

The Common Council have just
as much power and authority
under the Charter, to levy the
expense of building & rebuilding
the Bridges, and such like
improvements upon adjacent
proprietors

It is not sufficient to author-
ise these assessments upon par-
ticular property, to show that
that property will be benefited,
as is assumed on the argu-
ment. It is necessary also to
show a provision of the Char-
ter authorising the expense to
be placed upon such property.
and then we further submit
that it will be incumbent
to show that appointment does
not exceed the amount of the
benefits - and that the remain-
der is fairly & uniformly levied
upon all alike within the
local jurisdiction, in which
the improvement is situated

305 = 188

J. S. Wright that
in
The City of Chicago

Pls argument
W. B. Seaton

I should regret to see it established
as a general principle that every
citizen whose property is benefited
by public works - thereby becomes
a debtor to the public to that
amount or for the expense
of the improvement

We submit this case in the
full confidence that this
Assessment is erroneous and
void for want of jurisdiction
in the Council to make a
Special Levy for this Object

W. B. Seates
of Council for Plpps

Error to Cook County Court of Common Pleas.

J. S. WRIGHT, ET AL,
Plaintiffs in Error;
 VS
 THE CITY OF CHICAGO,
Defendants in Error.

ABSTRACT OF RECORD.

This was an application for judgment against certain property, hereinafter described, for non-payment of a special assessment, levied by the common council of the city of Chicago, upon said property, for dredging or otherwise deepening the Chicago river and its branches, between the west line of Franklin street, north line of Lake street, north line of Kinzie street, and the established dock lines, and which assessment was ordered by said common council, upon the report and recommendation of the city superintendent of said city of Chicago, which said order was dated "In the common council, November 24th, 1856," as appears by a certified copy of the assessment roll, made in said assessment, and to be referred to by pages numbered as hereinafter—on page one, (1); assessment roll. Commissioners were appointed by said common council, at the date of said order, to make said assessment. On the 3d day of December, 1856, the said commissioners, Thomas Church, James Duffy and William Wayman, took the oath required of them—page one (1), and on the 20th day of February, 1857, reported the list of lands, and their assessments made thereon, according to the damages and benefits resulting from said improvements, and among others assessed the following described property, to wit :

OWNER.	LOT.	VALUATION.	ASSESSMENT.
S. Lind,	Wharfing Lots 29, 30, 31,	\$25,000,	\$180 00.
J. S. Wright,	Undivided $\frac{3}{4}$ Lot 1, B. 5,	\$25,000,	\$105 00.
" " "	" $\frac{1}{4}$ " 1, " 5,	\$ 8,333,	\$ 35 00.
" " "	Lot 2, B. 5,	\$25,000,	\$140 00.

and others following in like manner. Pages 2 and 3.

On the 7th day of December, 1856, said Commissioners gave notice in

*Page 1 assessment
Roll*

Page 1 ass. Roll

Page 3 Ass't Roll

the *Chicago Daily Times*, that they would meet on the 18th day of December 1856, in room No. 2, in the court house in Chicago, for the purpose of making said assessment, which notice was published 10 days—page 3. On the 21st day of February, 1857, the city clerk of Chicago gave notice in the *Daily Democratic Press*, that said commissioners had completed their assessment, and persons wishing to appeal therefrom must file their objections in writing in his office on or before Monday, March 9th, 1857—page 4. On the 23d day of March, 1857, the common council confirmed said assessment, and ordered that said assessment should be paid within thirty days from that date—page 4.

Page 4 Ass't Roll

As appears by the Record of the proceedings at the time of the application for judgment as aforesaid referred to by pages as hereinafter. Joseph N. Hendricks, Collector of the City of Chicago, on the 27th day of January, 1858, filed his Report as Collector, of such proceedings in relation to said assessment, pages 2 and 3, and filed his warrant for the collection of said assessment therewith, page 4, together with the Assessment Roll, pages 7, 8, 9, 10, 11, 12, 13 and 14, and a copy of his notice that said special warrant, No. 4, was in his hand for collection and which said notice was dated April 18, 1857,—pages 15 and 16,—on the 16th of January, 1858, said Collector gave notice to *all persons interested*, that he would apply for judgment on said special warrant, No. 4, to the Cook County Court of Common Pleas on the first day of a special term thereof to be holden at the Court House in Chicago, on 27th of January, 1858, which notice was published in the *Daily Democratic Press*, ten days consecutively beginning on 16th of January, 1858, pages 16 and 17.

Page 2 & 3 of Record

Page 4 of Record

Pages 7-8-9-10-11-12-13-14 of Record

Pages 15 & 16 of Record

Pages 16 & 17 of Record

And afterwards, to wit, on the 30th of January, 1858, as appears by said Record on pages 21, 22 and 23, judgment was rendered among others, against the property hereinafter described and an order entered that the same be sold or so much thereof as should be sufficient to satisfy the amount of assessment, damages and costs annexed to them severally as the Law directs.

Pages 21-22-23 of Record

It has been agreed between the parties to the above case that the Record filed in this cause and all the papers and documents copied therein are on file in said cause and were before the Court upon the trial and form a part of the Record in this cause,

Page 25 of Record

and it was also agreed that the Supreme Court shall look to, examine and treat them as if incorporated into the Record by Bill of exceptions.

It was also agreed that the paper marked Assessment Roll, should be taken and treated as a part of the Record in like manner as if incorporated in a Bill of exceptions, and errors might be assigned accordingly.

The above named defendant assigns for error the reading of the judgment in said application in that.

1st. No preliminary notice of the inception of these proceedings by the common council, was given, as required by the charter and ordinances of the city of Chicago.

2d. The commissioners did not return their assessment roll in the time required by law.

3d. None of the notices in the proceedings are sufficient, or such as are required by law.

4th. The city of Chicago, has no power, under its charter and ordinances, to levy a special assessment for the purpose of dredging, or otherwise excavating or deepening the bed of Chicago river, and its branches.

5th. The court erred in rendering judgment against the said several lots pieces or parcels of land or property for the amount of said assessment, interest, damages and costs.

WALTER B. SCATES AND SAM. W. FULLER,

Counsel for Plaintiff in Error.

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WALTER B. SCATES AND SAM. W. FULLER,

Counsel for Plaintiff in Error.

J. S. Knight & Co
806-
City of Chicago
Abstract

Filed April 29, 1858

J. Lockwood
Clerk



SUPREME COURT OF ILLINOIS

THIRD DIVISION.

APRIL TERM, A. D. 1858.

ERROR TO COOK COUNTY COURT OF COMMON PLEAS.

JOHN S. WRIGHT, et. al.,

PLAINTIFFS IN ERROR.

vs.

THE CITY OF CHICAGO,

DEFENDANT IN ERROR.

SCATES & FULLER, for Plaintiffs in Error.

ELLIOT ANTHONY, City Attorney for Defendants in Error.

CHICAGO :

DAILY DEMOCRAT BOOK AND JOB PRINTING OFFICE, NO. 45 LA SALLE STREET.

1858

POINTS FOR DEFENDANTS IN ERROR.

The argument of the Counsel for the Plaintiffs in error, in this case, may be divided into two divisions and viewed under two distinct heads.

1st. The power of the Common Council of the City of Chicago, under the Charter of the City and Constitution of the State, to *levy a special assessment*, for the purpose of dredging or otherwise excavating and deepening the bed of the Chicago River and its branches, and

2d. If the proceedings herein are not *unconstitutional*, they are illegal, and should be set aside.

1st. The Plaintiffs admit that the City of Chicago, by its Charter, has power to widen and deepen the Chicago River and its branches, but insist that it should be done at the expense of the general fund—that is—by a *general tax* and not by a *local and special assessment*.

Municipal Laws, Page 97, Sec. gives the City of Chicago power to *widen* the river and its branches, and the mode of doing it is prescribed.

Page 19, Sec. 4, 2d Clause, gives the Common Council power to widen, straighten and deepen all waters which are public highways.

Page 25-26, gives jurisdiction over the navigable waters in the city and harbor, and is defined so as to include the Chicago River and its branches to their respective sources.

Now as to this point, whether an improvement of this kind should be done by a local and special assessment or by a general tax. I contend that it is perfectly competent for the Common Council to determine that point. This improvement does not differ from the improvement of a street; the River is a public highway and so is a street. If a street is to be paved, planked or graded, no one would contend but that the Common Council would have power to levy a special assessment upon the property-holders along the street, for that purpose. It is done every day in the City of Chicago and has been done for the last thirty years. Now, the Chicago River is to be deepened, dredged and excavated. The proprietors owning lots along the River are taxed to pay for it, and why? Because they are benefitted by it to a greater extent than any body else. Does it require any argument to show that the individual who owns a lot on a part of the river—which is now inaccessible to vessels—is benefitted when the River is excavated and deepened to the required depth of twelve feet at the dock line, so that the largest vessels can load and unload at his dock? Are not individuals benefitted in such cases in the same way as those are, when a street is graded, paved or planked? Would not water lots be increased in value by rendering them accessible? And is not the proprietor benefitted more than any body else?

Does it require argument to show that a water lot which cannot be reached by vessels by reason of the shallowness of the bed of the river, would be rendered very valuable when the river is deepened so that cargoes can be loaded and unloaded at the dock lines?

This thing is too notorious to require a moment's consideration. Every intelligent citizen of Chicago knows and understands this well.

*Barney et al vs The city of Buffalo 15 Barb 457 - (464-5)
In the matter of Williams & Anthony streets in the City of N.Y.
19 Wend 678-9 - 11 Wend. 148 -*

*It is not the province of the court, any more than
of the commissioners, to inquire into the policy or ap-
propriety of the improvement ordered by the corporation -
though doubtless a certiorari would lie for want of
jurisdiction or error on the face of the proceedings
8 Pick 218 - 11 Wend. 154*

Hence a special assessment is resorted to in preference to a general tax. The reasoning in the case of *People ex. sel. Griffin vs. Mayor of Brooklyn*—4 Comstock 419—is very applicable to a case of this kind, and is exactly in point, although that was a street assessment. The Court say: "It is wrong that a few should be taxed for the benefit of the whole; and it is equally wrong that the whole should be taxed for the benefit of a few. No one town ought to be taxed exclusively for the payment of country expenses; and no country should be taxed for the expenses incurred for the benefit of a single town. The same principle of practice requires that where taxation for any local object benefits only a portion of a city or town, that portion only should bear the burden. There being no constitutional prohibition, the legislation may create a district for that special purpose, or they may tax a class of lands or persons benefitted, to be designated by the public agent appointed for that purpose, without reference to town, country or district lines. General taxation for such local objects is manifestly unjust. It burdens these who are not benefitted and benefits those who are not burdened. This injustice has led to the substitution of street assessments in place of general taxation; and it seems impossible to deny that in the theory of their apportionment they are far more equitable than general taxation for the purpose they are designed for."

In the matter of the Mayor &c. of New York, for improving Nassau Street—11 Johns 77—the Court discuss the same point and say: "That there is no inconvenience or hardship in it, and the maxim of law that he who feels the benefit, ought to feel the burden also, is perfectly consistent with the interests and dictates of science and religion." I contend that this case is the same in principle as levying a special assessment for grading, planking and paving streets. If this then be so, if the Common Council have the power to determine who are benefitted, and if the individuals in the case at bar, are in the opinion of the Common Council, benefitted, then this assessment is perfectly fair and equitable.—Sec. 5, Art. 9, of the constitution of the State of Illinois does not apply, because that applies to taxes while this is an assessment.

Difference between a tax and an assessment.

"An assessment is doubtless a tax, but the term implies something more: it implies a tax of a particular kind, predicated upon the principle of *equivalents* or benefits, which are peculiar to the persons or property charged therewith, and which are said to be assessed according to the measure or proportion of such equivalents. Whereas a simple tax is imposed for the purpose of supporting the government generally, without reference to any *special* advantage which may be supposed to accrue to the persons taxed."

Ridenow vs. Saffin.—1 Handy, (Superior Court of Cincinnati,) 473.

Canal Trustees vs. the City of Chicago.—12 Ill., 83.

Matter of the Mayor of New York.—11 Johns 77.

Blecker vs. Ballou.—3 Wend 264.

Sharp vs. Spier.—4 Hill 77.

2d. The Plaintiffs further insist that if the Common Council did have the power to make the assessment in question, that the proceedings are illegal and void.

1st. Because no preliminary notice of the intention of the Common Council to levy the assessment was made, and

2d. Because all the notices that were given in the proceedings are insufficient.

The provisions of the city charter cited by the Counsel for the Plaintiffs in error, in this case, show most clearly the difference between "widening" and "deepening" the Chicago River; and while we might differ with the Counsel as to what might be included in the term "widening" the river, we yet agree with the counsel in saying that to "deepen" the river is a different work; "it does not require the taking and condemnation of private property, but merely the improvement of property already public, like the cleansing of streets and alleys which have previously been laid out while the widening of the river requires the subjection of strictly private property to the demands of public interest."—See *Plaintiff's Brief*.

And it is for just this very reason that no notice is required. The Common Council has the power to deepen the Chicago River; *how and in what manner* they shall proceed to exercise that power is no where stated in the charter; and, indeed, neither was it required. If the Legislature of the State of Illinois has, by the constitution of the State, power to pass any law, or is to legislate upon any particular subject, and the constitution is silent and says nothing as to the mode in which the legislature should pass the law or legislate, it is safe to say that a law introduced and passed in the ordinary mode of legislation would be perfectly valid—so in this case. The work ordered was by an *order* or *ordinance* passed by the Common Council, and the assessment levied by and under its direction. It did not violate a single provision of its charter;—it levied the assessment and ordered the work precisely as it orders a thousand other things done. It exercised its power legitimately; as long as no notice was required to be given *by the charter* none was necessary.

3d. The plaintiffs further insist that none of the notices in the proceedings are sufficient, or such as are required by law.

The answer to this is, that it is perfectly competent for the Legislature to direct the mode of giving such notices as it may think proper, in regard to assessments; and if the requirements of the statute in such cases be complied with, it is sufficient.

Owners of Grounds *vs.* the Mayor of Albany.—15 Wend. 374.

The People *vs.* the Mayor of Brooklyn.—4 Comstock 441.

The Statute of New York proscribes one kind of a notice—our statute a different one—*there* lots must be described which are to be taken.

In the case at bar, the order passed by the Common Council, and published in the Corporation Newspaper, first describes the district and bounds within which the property would be assessed. The next thing, after the Commissioners had been sworn into office, was to give six days notice in the Corporation Newspaper to all persons interested, of the time and place of their meeting, at which time and place all persons could appear.—The *notice* that they give describes the property upon which the assessment was to be levied, as situated within certain limits. They followed the statute literally. See “Commissioners’ Notice” in the Record.

Next. Sec. 6, Page 39 of Municipal Laws. When they have completed their assessment and made a correct copy thereof, they deliver the same to the City Clerk, and he gives *notice* “to *all persons interested*” by publication in the Corporation Newspaper for six days, of the completion of the assessment and the filing of the roll—time and place being designated therein for hearing objections.

The notice of the Clerk refers to the former proceedings of the Council, and describes generally, it is true, the property; but it is nevertheless a notice in strict compliance with the City Charter. See Notice of City Clerk in the Record.

Another kind of notice would have, perhaps, been better. A notice describing the property assessed would have been more specific, and would, I think, be preferable; but it is not for this Court to legislate; upon the legislature devolves that responsibility.

4th. The Plaintiffs in error claim that the Commissioners did not return their assessment roll within the time required by law.

The provisions of the City Charter and ordinances cited by the counsel for Plaintiffs in error, under this assignment of error, apply to the opening of streets and alleys, and not to a case like the one at bar; and while I admit that there should be uniformity as to the *time* when the Commissioners of estimate and assessments for all public works should make their *returns*, I contend that the statute is merely *directory*, and not *imperative*.

A sale of land for non-payment of an assessment, for an improvement in the City of New York, was held valid, notwithstanding the improvement was made before the assessment, the provision in the statute in that respect being *merely directory*; and notwithstanding *only two of the assessors signed* the estimate, it not appearing but that all met and consulted; and, notwithstanding the warrant directed the collection to be made off the owner or occupant, as the direction respecting the latter would not vitiate the direction as to the owner. *Doughty vs. Hope*.—3 Denio 249.

Three assessors were authorized to estimate the expenses of a public improvement in the City of New York, and to assess the same upon the owners and occupants of premises benefitted thereby. Held, that an assessment signed by two of them, afforded a presumption that the third was present and acted; but that evidence to the contrary was advisable, and that one of the assessors who signed the certificate was a competent witness for that purpose.—*Id.*

In the matter of Mount Morris Square—2 Hill 20—where ayes and noes were not called.

Edmundson vs Mayor of N.Y. 25 Wend. 696

5th. But I contend that the parties hereto are estopped, by the *confirmation* of the Common Council, of the assessments made by the commissioners. I ask the especial attention of the Court to this point.

Municipal Laws of Chicago—page 39-40. Assessments—Sec. 6-7—are as follows:

Sec. 6. When the Commissioners shall have completed their assessment, and made a correct copy thereof, they shall deliver the same to the City Clerk, within forty days after their appointment, signed by all the Commissioners. The Clerk shall thereupon cause a notice to be published in the Corporation Newspaper for six days, to all persons interested, of the completion of the assessments, and the filing of the roll. Time and place shall be designated therein for hearing objections—

Sec. 7—page 40. Any person interested may appeal to the Common Council for the correction of the assessment. Appeals shall be in writing, and filed in the Clerk's office, within ten days after the first publication of said notice. The Council may adjourn such hearing from day to day, and shall have power, in case of appeal or otherwise, in their discretion, to revise and correct the assessment, and confirm or annul the same, and direct a new assessment to be made in the manner hereinbefore directed, by the same commissioners, or by three others, which shall be *final and conclusive* on all parties interested, if confirmed. When confirmed, the assessment shall be collected as in other cases, and no appeal or writ of error shall lie in any case from such order and determination. If any assessment be set aside by order of any Court, the Common Council may cause as new one to be made in like manner for the same purpose—for the collection of the amount of assessed.

It will be seen by reference to Sec. seven of the charter above quoted, that the statute makes the assessment, when once confirmed, conclusive. This point has been much discussed in the New York Courts in cases arising in New York City, under the charter of that city, which is like ours in making confirmations conclusive; and while they have held that no illegality could be inquired into by a Court of Chancery—except in cases of specific acts of fraud—they have also held that in order to have a Court of Law review the proceedings, they must take the whole proceedings up by certiorari.

* Nothing is better settled, as a general rule, than that, where a statute requires an act to be done by an officer or officers within a certain time for a public purpose, the statute shall be taken to be *merely directory*; and though he neglect his duty by allowing the precise time to go by, if he or they afterwards perform, the public shall not suffer by the delay—*Ex parte Heath & others* 3 Hill 47—*People vs Allen* 6 Wend. 486—7—8 cases there cited—*Bolt vs Esch* 12 Cowen 243-253—255 & cases there cited—*Jackson et al vs Young & Brown* 267—2 Hals 230

Matter of Mayor of New York.—6 Cowen 571.
 Stafford *vs.* the Mayor of Albany.—6 Johns 4.
 Municipal Laws of Chicago—page 40, Sec. 7:
 Stafford *vs.* the Mayor of Albany.—7 Johns 542; 11 East 200, 194; 7 East 307; 1 Cairns *Rees*
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 Tompkins *vs.* Sands.—8 Wend. 462.
 Livingston *vs.* Hollenbeck.—4 Barb. 16.
 Atkins *vs.* Brewer.—5 Cowen 206.

This case comes up on a writ of error, or what is the same thing—a stipulation in the ^{nature} matter of a writ of error. A judgment has been obtained, and it is different from a case where a party had *appealed* from the *confirmation* of the Common Council, or taken the proceedings up by a writ of certiorari. *17 Wend. 464*

Finally—Sec. 86 of New Charter, legalizes all improvements, and if the whole thing was wholly and palpably wrong in its inception, the Legislature has made it all right.

Section 86—of Miscellaneous provisions of an Act to amend an Act, entitled an Act to reduce the law incorporating City of Chicago, &c., &c., passed Feb. 14, 1857.

All actions, rights, fines, penalties and forfeitures, in suit or otherwise, which have accrued under any Act to which this Act is an amendment, or under any ordinance of said city, now in force, shall be vested in, and be prosecuted by the corporation, and all the proceedings now or hereafter commenced, by the opening of any street or streets in said city, *and the assessment of real estate for any such improvement, is hereby expressly legalized and affirmed*, and the Common Council is hereby expressly authorized to continue such proceedings and open said street or streets; any defect, decree or order of any court to the contrary notwithstanding.

*And now what course this court is to pursue —
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 of this case upon an argument upon a point of law —
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*In the matter of Pearl st. 17 Wend. 649 —
 ———— Wm. B. Anthony st " " 693 ————*

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305-183
Supreme Court

John. S. Wright et al

vs

The city of Chicago

Points of Debt in Error

E. Anthony
City, atty

Error to Cook County Court of Common Pleas.

J. S. WRIGHT, ET AL,
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 VS
 THE CITY OF CHICAGO,
Defendants in Error.

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Page 1 ass't Rec

Page 1 ass't Rec

the *Chicago Daily Times*, that they would meet on the 18th day of December 1856, in room No. 2, in the court house in Chicago, for the purpose of making said assessment, which notice was published 10 days—page 3. On the 21st day of February, 1857, the city clerk of Chicago gave notice in the *Daily Democratic Press*, that said commissioners had completed their assessment, and persons wishing to appeal therefrom must file their objections in writing in his office on or before Monday, March 9th, 1857—page 4. On the 23d day of March, 1857, the common council confirmed said assessment, and ordered that said assessment should be paid within thirty days from that date—page 4.

As appears by the Record of the proceedings at the time of the application for judgment as aforesaid referred to by pages as hereinafter. Joseph N. Hendricks, Collector of the City of Chicago, on the 27th day of January, 1858, filed his Report as Collector, of such proceedings in relation to said assessment, pages 2 and 3, and filed his warrant for the collection of said assessment therewith, page 4, together with the Assessment Roll, pages 7, 8, 9, 10, 11, 12, 13 and 14, and a copy of his notice that said special warrant, No. 4, was in his hand for collection and which said notice was dated April 18, 1857,—pages 15 and 16,—on the 16th of January, 1858, said Collector gave notice to *all persons interested*, that he would apply for judgment on said special warrant, No. 4, to the Cook County Court of Common Pleas on the first day of a special term thereof to be holden at the Court House in Chicago. on 27th of January, 1858, which notice was published in the *Daily Democratic Press*, ten days consecutively beginning on 16th of January, 1858, pages 16 and 17.

And afterwards, to wit, on the 30th of January, 1858, as appears by said Record on pages 21, 22 and 23, judgment was rendered among others, against the property hereinafter described and an order entered that the same be sold or so much thereof as should be sufficient to satisfy the amount of assessment, damages and costs annexed to them severally as the Law directs.

It has been agreed between the parties to the above case that the Record filed in this cause and all the papers and documents copied therein are on file in said cause and were before the Court upon the trial and form a part of the Record in this cause,

page 3 asst Roll

page 4 asst Roll

pages 2 & 3 asst Roll

page 4 asst Roll

pages 7 8 9 10 11 12 13

of Roll

pages 15 & 16 of

Roll

pages 16 & 17 of

Roll

pages 21 22 & 23

of Roll

page 25 of Roll

and it was also agreed that the Supreme Court shall look to, examine and treat them as if incorporated into the Record by Bill of exceptions.

Page 25

It was also agreed that the paper marked Assessment Roll, should be taken and treated as a part of the Record in like manner as if incorporated in a Bill of exceptions, and errors might be assigned accordingly.

Pages 25-26

The above named defendant assigns for error the reading of the judgment in said application in that.

1st. No preliminary notice of the inception of these proceedings by the common council, was given, as required by the charter and ordinances of the city of Chicago.

2d. The commissioners did not return their assessment roll in the time required by law.

3d. None of the notices in the proceedings are sufficient, or such as are required by law.

4th. The city of Chicago, has no power, under its charter and ordinances, to levy a special assessment for the purpose of dredging, or otherwise excavating or deepening the bed of Chicago river, and its branches.

5th. The court erred in rendering judgment against the said several lots pieces or parcels of land or property for the amount of said assessment, interest, damages and costs.

WALTER B. SCATES AND SAM. W. FULLER,

Counsel for Plaintiff in Error.

J. S. Wright Esq
303-183
City of Chicago
Abstract

Filed April 27, 1858
L. Seland
Clerk

In Supreme Court of the State of Illinois.

APRIL TERM, 1858, AT OTTAWA.

J. S. WRIGHT, ET AL,
Plaintiffs in Error,
VS
THE CITY OF CHICAGO,
Defendant in Error

POINTS OF PLAINTIFFS IN ERROR,

The first and fourth assignments of error will be considered together.

It is believed that the volume entitled "Municipal Laws, Chicago, 1856," contains all the statutory provisions, and city ordinances affecting this case, and that book will be referred to here by pages merely.

On page 97, sec. 5, authority is given to the city of Chicago to *widen* the river and its branches, and the mode of doing this prescribed.

On page 19, 2d clause of section 4, authority is conferred upon the city, by its common council, to widen, straighten and deepen all waters which are public highways in said city.

On pages 25, 26, jurisdiction is given to the city over the navigable waters in the city and the harbor, and the harbor is defined so as to include the Chicago river and its branches, to their respective sources.

These are all the provisions of the charter, and the statutes affecting the power of the city of Chicago to "widen and deepen" the Chicago river, and while the plaintiffs in error do not question the power of the city to deepen the bed of the river, they insist that this shall be done at the expense of the general funds of the city, and not at the expense of the persons and property immediately adjoining the improvements, or, in other words, that the city has no power to levy a special assessment on particular persons and property for the cost of the work, but that it shall be paid for out of the general funds of the city, as it is an improvement of a general, public nature.

Under the first assignment of error, we object that no notice of the inception of these proceedings, by the common council of the city of Chicago, was given.

By the 5th sec, page 97, of the Wharfing Act, above referred to, the common council are empowered "to widen the river, and its branches," and when this is done, such proceedings shall be had, as in case of opening streets and alleys, what these "proceedings" shall be, will fully appear from an examination of chapter 6, city charter, page 32, and following.

We insist, that under the power to "widen" the river, given on page 97, the city has no power to "deepen" the bed of the river by excavation, or otherwise.—The latter is a different work; it does not require the taking and condemnation of private property, but merely the improvement of property already public, like the cleaning of streets and alleys which have previously been laid out, while the

widening of the river requires the subjection of strictly private property, to the demands of public interest.

We then think it plain that the grant of power to "widen" the river, does not, of itself, confer the power to "deepen" the bed of the river, but should the court be of a different opinion, we then insist that these proceedings, which the court will see were instituted expressly for the purpose of "excavating, dredging, or otherwise deepening the Chicago river, and its branches," that the common council should have pursued the requirements of the law in regard to opening streets and alleys.

These requirements will be found in chapter 6, page 32, of city charter; the preliminary step is prescribed in sec. 2, of this chapter, and is—giving notice of their intention to appropriate and take the land necessary, &c., for ten days, by publication "in the corporation newspaper."

On page 1 of abstract and page 1 of assessment roll, attached to record, it appears, that these proceedings were instituted and set in motion by the common council upon the report of the city Superintendent of the city of Chicago; that an order was passed November 24th, 1856, that said work should be done, page 1 of abstract and assessment roll; commissioners were then elected who proceeded to assess the property deemed benefited by the improvement, for the payment of the estimated cost of the work, being \$43,000 and upwards.

Now, here had been no petition from property holders for the performance of this work, no notice to them that their property was to be assessed for a public improvement, nor indeed any notice to the public or to those immediately interested, that

this work was to be undertaken, but solely on the recommendation of the city Superintendent, is this great burden imposed on these plaintiffs in error.

The Legislature wisely required notice to be given of an intention to undertake these public improvements, to be given not only to particular persons, but to the whole community, that there might be an opportunity for remonstrance or objection, and we submit that no where in the letter of the city charter or the statutes relating to this matter, nor in the spirit of these laws is there any countenance for the opinion that without this notice or a strict compliance with all the requirements of said chapter 67 has the Common Council any authority to proceed in this matter; for when we call the attention of the court in another part of this argument to the advertisements and notices given in this case, it will be apparent that these proceedings are most oppressively *ex parte*, and dangerous to the citizen.

But while these proceedings are thus fatally defective in form, we insist that in fact the city has no power under its charter and the constitution and laws of this state to levy this assessment on the property of these few plaintiffs in error to complete a public work.

These proceedings are substantially conformable to the provisions of chapter 7 city charter, page 38, but this chapter only applies to the four classes of "public improvements" enumerated in section 1 of that chapter, none of which either expressly or by any sort of implication include the dredging or deepening of the Chicago River and its branches.

The provisions of this chapter 7 only apply to the class of improvements therein named and these are all in their nature local, and differ widely from the improvement,

of public navigable waters which are used by the whole community, and the cost of which should in justice be borne by the public at large.

This construction of the laws and city charter works no harm or inconvenience to the city or the public interests. We do not doubt the power of the city to order and make this improvement but we insist that the work of deepening the bed of the river and its branches is of a public nature which should be done out of the general funds of the city, and as the Legislature has seen fit to prescribe the mode of widening the river and its branches, and of condemning property for that purpose, but has not pointed out any particular mode of defraying the expenses of deepening the bed of the river, it is a fair and inevitable presumption that this kind of public improvement, should be done and paid for as a public work out of public funds.

It is not to be presumed that the Legislature intended to grant to the city of Chicago, any unconstitutional powers, and to hold that a work of this kind so public and general in its character and necessity, so costly and so burdensome if borne by only a few individuals, who may be liable by the mistakes or worse of assessors and designing speculators to be deprived of their entire property in riparian lots under the pretence of special assessments, is a fit class of public improvements to be paid for by a few individuals seems to us plainly in contravention of sections 2 and 5 of article 9, of our state constitution which say that taxes for corporate purposes shall be uniform, in respect to persons and property, within the jurisdiction of the body imposing the same.

It is not "uniform" to compel ten citizens out of one hundred to pay for an improvement general and public in its character, like improving a public navigable river. Nor is it uniform in respect of property to assess upon lots adjoining such a river, the cost of a work which when done enures to the benefit of the entire corporate body

doing the work, this mode is unequal both in respect to persons and property, and a violation of the rule of that equality of benefit and burden, which is intended by sec. 5, art. 9 of our constitution.

No authorities need be cited to prove that a corporation whether municipal or private is strictly limited to the exercise of the powers which are specifically conferred upon it, and that the exercise of corporate franchises being restrictive of individual rights cannot be extended beyond the letter and spirit of the act of incorporation,

Beatty vs Lessees of Knowler, 4 Peters, 168.

And we insist that no where in the city charter of the city of Chicago is the power expressly and plainly given to assess upon individual property the cost of deepening the bed of the river, and when the court considers the fact that the river is by law a public navigable highway, open to all citizens of this and other states, that the cost of deepening its bed as appears from this very record involves a very heavy expenditure of money which, if these proceedings are sustained may, without notice in fact, to any individual or any opportunity of being fairly heard, be imposed as an onerous burden upon his land and lots in the discretion or indiscretion of an *ex parte* tribunal, we think the court will be very cautious in holding that such a dangerous and tremendous power is given by implication.

These commissioners were appointed to assess the cost of the work upon the real estate deemed benefited by the improvement, while the benefit whatever it may be is by them at once charged upon the adjacent real estate and required to be paid by the owners thereof, which seems to us a very unequal way of sharing burdens and benefits resulting from a public improvement.

As to the second error assigned, it will appear from sec. 10, page 35, and sec. 6,

page 39, of the city charter that the commissioners who are appointed to assess the damages resulting from opening streets and alleys, and in case of other public improvements are required to return their assessment roll to the common council within forty days after their appointment, and sec. 9, page 159 of the ordinances relating to assessments requires the return to be made within the same period.

The commissioners in this case were appointed Nov. 24th, 1856, page 1 of abstract and reference to record. They returned their assessment roll Feb. 21st, 1857, page 2 of abstract and no extension of the time for making their return was ever granted, so far as appears from the record.

Is this requirement merely a directory one, or is it a limitation upon the power of the commissioners not to proceed after the expiration of the forty days?

If imperative the following cases are full to the point that a failure to make their return within the time fixed by law, vitiated the assessment.

Billings vs. Detten, 15 Illinois, 218

Marsh vs. Chesnut, 14, Illinois, 224.

Hough vs. Hastings, 18 Illinois, 316.

There is good reason for holding this an imperative requirement of the statutes and ordinances. The proceedings are in a measure *ex parte*, and the law must be strictly complied with.

In case of opening streets and alleys, and of other improvements, upon the inception of the proceedings, the attention of persons interested, whose property is

to be taken or affected by the assessment, is presumed to be called to the proceedings by the action of the common council, in giving notice of their intention to undertake the improvements and election of commissioners, to assess the damages and benefits resulting therefrom. However insufficient the notices or advertisements may be, they are still presumed to be brought home to the property owner, that he may object to the proceedings for want of form or substance. Now, how long shall his attention be required, and he compelled to watch the proceedings of the council and commissioners? He ought not for an indefinite period, for no new notice being given, he cannot know at what time the commissioners may complete their work, and make returns of their proceedings. If they delay beyond the forty days allowed them, as in this case, forty-nine days, without leave first obtained for that purpose, what limit shall be fixed within which they shall make return?

Forty days would seem to be sufficient in a city to do this business, and to give ample time for commissioners and property owners to discharge their duties, and exercise their rights, and sufficiently long to require the property holder to watch the proceedings of an *ex parte* tribunal, which has an almost unlimited power over his property.

We insist that the law has fixed a reasonable time, within which this work shall be done; that in view of the *ex-parte* character of these proceedings, the strictness required in the exercise of special, corporate powers, the public good, and the absolute safety of the citizen, the court should construe this provision of the statute as imperative, and fixing a limitation upon the power of the commissioners, which they ought not to be allowed to pass, and that more especially, as within that limitation they have ample opportunity and time to discharge their duties to the public and the citizen.

The 3d assignment of error calls in question the sufficiency of the notices and advertisements made in the course of the proceedings.

By an oversight there is no copy of the advertisements or notices in the abstract, but what these in fact were, will appear by a reference to pages 3 and 4 of assessment roll, and which plaintiffs in error admit are in conformity with the ordinances fixing the forms of these notices on pages 157 and 159 of Municipal Laws, above referred to.

This is an important point, and we wish it carefully considered, for, under these advertisements, and the mode of conducting these proceedings, there is not, from first to last, any personal notice to persons whose property is affected, nor in any of the advertisements are either persons or property designated by name or description, other than that "of all persons interested."

Section 2, page 32, relating to the opening streets and alleys, says that "the common council shall give notice of their intention to take land, &c., to the owner or owners thereof, by publication, &c." This is in cases where land is taken.

By sec. 3, page 33, the commissioners are directed to give notice "to all persons interested," that they will view the premises, and make assessments, &c. Now, who are "persons interested?" Plainly those whose property is assessed for the payment of damages and benefits, as well as those whose property is taken altogether.—The commissioners having made their assessments, are to return their report to the common council, who are to give notice that it has been returned. Sec. 11, page 35, and call for objections to be made in a certain time, or the report will be confirmed

The same notices are required in sections 4-6, page 39, in case of improvements enumerated in chapter 7.

Now, look at the notices prescribed in sec. 6, page 157, and sec. 9, page 159, and the notices actually given in the case under consideration, as appears in pages 2-3-4 of assessment roll ; and suppose notice was in fact given "A," that his lot 1 would be condemned, for the purpose of opening a street, and that he is, in fact, cognizant of every step taken by the officers, in which case he has no cause of complaint, but the commissioners, in the exercise of their discretion, assess "B's" lots 2 and 3 \$200 and \$100 for benefits arising from the condemnation of "A's" lot 1, and what is very likely, and does often happen in practice, the commissioners impose a sliding scale of assessments upon the neighboring property for benefits which, in their judgment, will enure to it. Plainly these parties who are thus assessed, are "persons interested," but how shall they find it out?

The preliminary notice required by chapter 6, sec. 2, page 32, did not include these parties, and could not, for it was impossible to know who would be assessed until the assessment was made, and when made and returned, of course all persons whose property was either condemned or assessed, are interested. But it is unreasonable to require the whole community to stand on watch for assessments upon property more or less remote from the site of public improvements, to see how far the "discretion" of the commissioners will extend for the purpose of assessing benefits and damages.

In regard to the general State and County taxes, there is, by a public law, a time fixed when the collector shall call on the citizen to pay his taxes, and when the citizen knows they must be paid.

But, in case of special taxes, no such time is fixed. The proceedings are *ex parte*; their institution unknown to the citizen, as in all cases under chapter 7, page 39, and generally under chapter 6, page 32 ; certainly in all cases where benefits and damages are assessed upon the neighboring property, and as in the pre-

sent case, the first notice to the citizen is that his property has been assessed—the assessment confirmed, a judgment entered against his property for that amount, and that it will be sold to pay it unless he pays it.

He has had no day in court, no notice that a demand was made upon him until it was fixed.

We insist that a fair construction of sec. 3 and 11, chap. 6, pages 33 and 35, and sec. 4 and 6, chap. 7, page 32, requires that at some stage of the proceedings prior to the confirmation of the assessment, notice should be given either to the persons by name or by a description of the property affected "to all persons interested."

Probably the most convenient way and time of doing this is upon the return of the assessment roll, as then it fully appears who are interested, and a notice describing either persons or property affected by the assessment, or both would be in apt time to protect the interests of the public and the citizen.

The confirmation of the report of the commissioners is in the nature of a judgment, sec. 11, page 35, and sec. 7, page 40, it is made final upon the parties interested.

This construction of these sections, and thus giving notice to the persons interested, will, it appears to us, preserve public interest and private right, and any other will be likely to do wrong to all persons interested.

As to authority on this point, see

Eastman vs. Little, 5 N. H., Rep. 290.

Webster vs. Reed, 11 How, U. S. 437.

And in every case where extraordinary powers are claimed and exercised it has always been held that the greatest strictness is required in the regularity of the proceedings and notice "to persons interested."

And we cannot think it was ever the intention of the Legislature, to authorize any tribunal or body of men to take for public purposes the property of the citizen without giving him at some stage of the proceedings, a day in court, a place and time to be heard before a final judgment or order was entered against him, but that all persons interested should be notified by name, or in some other way, of the pendency of the proceedings which subjected them to heavy payments of money, or loss of their property in consequence of a want of notice.

SAM. W. FULLER,

Counsel for Plaintiffs in Error.

Night at also
" 305 - 183
City of Chicago
Public argument
for Effs in case

Filed May 26. 1858
S. Leland
clerk