

No. 13410

Supreme Court of Illinois

People

vs.

City of Chicago

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 66.

People
vs
City of
Chicago

13410

Jam-son & Morse, Printers, 14 La Salle Street, Chicago.

SUPREME COURT

OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1860.

To the Judges of the Supreme Court of the State of Illinois.

Your petitioner, Franklin V. Chamberlain, respectfully represent unto your Honors that your petitioner, Franklin V. Chamberlain, on the 15th day of February, A. D. 1854, was seized in fee of the west one-fourth of lot eight, in block one hundred and seventeen in the School Section Addition to Chicago, in the County of Cook and State of Illinois, and continued to be the owner and was in the undisputed possession of said premises until the institution and completion of the proceedings hereafter mentioned, and which were had by the City of Chicago to condemn said premises for the purpose of opening over the same a highway or street, being an extension south, of La Salle street, in said city.

Your petitioner further represents, that the said City of Chicago, on the fifteenth day of October, in the year of our Lord one thousand eight hundred and fifty-five, in pursuance of the power conferred upon it by its charter, did through its Common Council, order a survey for the extension of LaSalle street, from its then terminus at Madison street, south to Jackson street, in said City, which said survey was in accordance with said order, duly made, and the said Common Council thereupon afterwards gave notice of the intention of said City to take and appropriate the land necessary for the extension of said LaSalle street, south from Madison street to Jackson street, to the owners of said lands, by publishing said notice for ten days, as required by law, in the corporation newspaper of said city; that the first publication of said notice was on the 20th day of October, A. D. 1855, and was continued to be published in said newspaper for ten days consecutively thereafter, and that after the expiration of said notice, on the tenth day of January, A. D. 1856, the said City of Chicago, through its Common Council, and in pursuance of

*The people of Illinois
Ex Rel Franklin V
Chamberlain*

The City of Chicago

the provisions of the Charter of said City did choose three disinterested freeholders, to wit: F. A. Bragg, Thomas Church, and W. W. Saltonstall, residing in said city, as commissioners to ascertain and assess the damages and expenses thereof over the real estate benefited in proportion, as nearly as may be, to the benefits resulting to each, which said commissioners were then and there duly elected by a majority of all the Aldermen authorized by law to be elected.

That said commissioners were, on the 16th day of January, A. D. 1856, duly sworn as required by law, faithfully to execute their duties according to the best of their ability, and before entering upon their duties the said commissioners did give notice to the persons interested, of the time and place of their meeting, for the purpose of viewing and making their assessment, by publishing said notice ten days before the time of such meeting in the said corporation newspaper of said City. That the said commissioners did thereupon, after the expiration of the said last named notice, proceed to make their assessments, and did determine and appraise to the owner and owners the value of the real estate appropriated for the said improvement, and the injury arising to them respectively as damages, after making due allowance therefrom for any benefit, which such owner or owners might respectively derive from such improvement. That said commissioners did in all things comply with the law and the charter and the ordinances of said City in regard to said assessment and the opening of said street, and having ascertained the damages and expenses of such improvements as aforesaid, the said commissioners did thereupon apportion and assess the same, together with the costs of the proceeding, upon the real estate by them deemed benefited in proportion to the benefits resulting thereto from the aforesaid improvement and did describe the real estate upon which their assessments were made, and having completed and signed said assessment the said commissioners did within the extended time allowed them by the said Common Council in which to complete and return their said assessment, and on the 5th day of April, A. D. 1857, return their said assessment to the said Common Council of said City of Chicago, as required by law, and the Clerk of the said City of Chicago did, thereupon, after the return of said assessment, give ten days notice, commencing on the 8th day of April, A. D. 1856, and continue for ten consecutive days in said corporation newspaper, of said City, that such assessment had been returned, and that on a day specified in said notice, said assessment would be confirmed by said Common Council unless objections were made to the same by some person interested.

That after the expiration of the said last named notice, and on the 9th day of June, A. D. 1856, (no objections having been made,) the said assessment of the said commissioners, so as aforesaid by them returned,

was in all things confirmed by the said Common Council of said City of Chicago, in due form of law.

Your petitioner further represents, that there was appraised, allowed and accorded to your petitioner, Franklin V. Chamberlain, in and by said assessment, so as aforesaid made and returned by said commissioners and confirmed by said Common Council, as damages for the taking and appropriating of the said premises of your petitioner, and the buildings thereon, for the purpose of opening said street, over and above the benefits for the land appropriated, the sum of forty-five hundred dollars, and for the buildings thereon, the further sum of three hundred dollars, making in the aggregate the sum of forty-eight hundred dollars in all, which will fully appear by reference to the assessment roll now in the possession of said City, which said assessment roll was duly returned by the said assessors, and duly confirmed by the said Common Council of said City.

Your petitioner further represents, that a collectors warrant was duly issued for the collection of said assessment, dated the 17th day of June, A. D. 1856, and duly signed and sealed, and that the collector collected and received thereon a large amount of money, to wit, the sum of thirty thousand dollars, and that over one hundred thousand dollars still remain uncollected, and that the said City has ever since neglected to collect the balance of said money, although said warrant was returnable within thirty days after the date thereof.

Your petitioners further represent that afterwards, to wit: on the day of A. D. 185 , the said city paid to your petitioner of the sum so as aforesaid assessed, allowed and awarded to your petitioner by said Commissioners, the sum of *twenty two hundred* ~~forty~~ dollars, and that the balance of said sum, together with the interest thereon, has ever since and does now remain due and wholly unpaid to your petitioner, and that the said city neglects and refuses to pay the same, or to take any measure for the collection of the moneys wherewith to pay the same.

Your petitioner insists that upon the confirmation of said assessment, as heretofore stated, your petitioner became entitled to the moneys, so as aforesaid assessed and allowed to him as damages to said premises, and that it thereupon became the duty of said city to collect and pay the same, and the whole thereof, to your petitioner; and that inasmuch as the said city of Chicago have hitherto and do still neglect and refuse to do this, your petitioner is entitled to a writ of mandamus against said city of Chicago, to compel said city to proceed and collect said moneys and to pay over to your petitioner that portion thereof to which he is entitled by reason of the premises aforesaid.

Wherefore your petitioner prays your Honors to grant a writ of mandamus to be issued out of and under the seal of this Honorable Court, directed to the proper authorities of the city of Chicago, commanding them forthwith to proceed and collect, and pay over to your petitioner, the amount to which he may be entitled by virtue of said premises, and to do and perform all such acts and things in the premises as the case requires, and for such other or further relief as to your Honors may seem agreeable to equity and justice. And your petitioner as in duty bound will ever pray.

FRANKLIN V. CHAMBERLAIN,

By WALKER, VAN ARMAN & DEXTER, *his Att'ys.*

279 66-36

People vs rel

vs

City of Chicago

Petition for mandamus

Filed Apr 19. 1860

L. Leland
Clerk

Supreme Court - Third
Grand Division.

The People of the State of Illinois
ex relatione Franklin V.
Chamberlain
vs
City of Chicago

And now comes the said
respondent by Elliott Anthony
its attorney and shows to the
court the following reasons
why an alternative Mandamus
should not issue in this case.

First. Said petition of the relator is
not sworn to - This is absolutely
necessary - See Tapping on
Mandamus page 341-342. The
Law Library Edition - The language
which he uses is as follows - In
a matter of right as for instance
when a mandamus is prayed

to restore a man &c the court does
not require, although it is
usually supplied with an affidavit
but where the writ is asked
upon a supposed failure of
duty then the court requires
an affidavit; for such a
writ is never granted merely
for asking, some reason must
be assigned for it which is
done by the disclosure of a
sufficient case upon affidavits

Bracken v. Wells & Texas 88.

2^d

The petition does not state that the relator has no other legal remedy.

School Inspectors of Peoria v. The People ex rel
Lowe 20 Ill 531-

Tapping on Mandamus page 368-9.

3^d

The petition contains no averment of a demand & refusal - which is necessary.

Tapping on Mandamus p 368-

15 Georgia 473-

4th

The relator has an adequate remedy at law - see Whelan v. City of Chicago, 24 Ill 109-

For these reasons the said respondent respectfully submits that ~~an~~ alternative writ of mandamus should not issue.

Elliot Anthony
Att'y for respondent

People ⁶⁶⁻³⁶ ex rel F.V.
Chamblaine
vs
City of Chicago

Reasons why
an alternative
mandamus
should not
issue

Filed April 12, 1861
L. Deland
Clerk

C. Anthony
att'y for respondents