

12277

No. _____

Supreme Court of Illinois

Higgins.

vs.

City of Chicago.

The People & relations,
Saml. Higgins }

Sam H. Higgins

The City of Chicago

The City of Chicago } To the Honorable the Justice

of the Supreme Court of the
State of Illinois as a term thereof began
& ended at Ottawa on the Third Week
of April in the Year of of our Lord one
Thousand Eight hundred and fifty
Seven -

Respectfully represents unto your
honors Fur H. Higgins of the City of Chicago,
County of Cook & State of Illinois, that
he was on the fifteenth day of October A.D.
^{to wit} 1855, ^{with} ~~the~~ ^{John D. Higgins} ~~Balthus~~ Shrother who has since sold all his interest
in fee, and that he was long before
& ever since has continued to be the owner in
fee simple either in his own right or in connection
with said Shrother - of the following described prop-
erty to wit The West half of the East half
of Lot No four (4) in Block No Forty
five (95) School Section addition to the
City of Chicago - Which said Lot has been
subjected to the proceedings hereinafter
named to condemn said property for
the purposes of opening over a part of
the same a highway or street being
an extension south of La Salle Street

That the said City of Chicago on the 15th day of October A.D. 1833 in pursuance of the power conferred upon it, by its charter, did through its common council order a survey for the extension of La Salle

Street from its present terminus at
Madison Street South to Jackson
Street - After which the said Common
Council gave notice of their intention
to appropriate & take the land necessary
for the extension of said Tenth Street
South from Madison to Jackson Street
to the owners of said land, by publishing
said notice for ten days as required
by law in the Corporation Newspaper

And that said City through its Common
Council at the expiration of said notice
did choose by ballot three disinterested
to wit H. A. Bragg - Thomas Church & William M. Sulson at large
free holders, residing in said City as com-
missioners to ascertain and assess the damages
and recompense due the owners of such land
respectively and at the same time to determine
what persons would be benefitted by such
improvement and assess the damages and
expenses thereof on the real estate of persons
benefitted, in proportion, as nearly as
may be to the benefits resulting to each which
said Commissioners were elected by a majority
of all the aldermen authorized by law to be
elected - Said Commissioners, were duly
sworn as required by law & before entering
on their duties did give notice to the persons
interested of the time & place of their meeting
for the purpose of viewing the premises, and

making their assessment by publishing
the same ten days before the time of
such meeting in the Corporation News
paper - and did therein & thereafter
in all things proceed according
to law - And said Commissioners did
thereupon proceed to make their assess-
ment and did determine & appraise
to the owner or owners the value of the
said estate appropriated for the im-
provement and the injury arising to
them respectively as damages after
making due allowance therefrom for
any benefit which such owner or
owners may respectively derive from
such improvement - And said
Commissioners ~~also~~ did in all things
fully comply with the law & the Charter
& ordinances of said City in regard to
said assessments & opening said street
having ascertained the damages & expenses
of such improvement as aforesaid the
said Commissioners did thereupon ~~afford~~
assess the same together with the costs
of the proceedings upon the said estate
by them deemed benefitted in pro-
portion to the benefits resulting therefrom
from the improvements aforesaid -
And describe the real estate upon which their

assessments were made & when com-
pleted the commissioners did sign
return to the common council
within forty days of their appointment
& within the & tenured time allowed by the
common council as authorized by law
and the clerk of the City of Chicago
did thereupon give ten days notice in
the Corporation paper that such assess-
=ment had been returned & that on a
day specified in such notice said
assessment would be confirmed
by the common council unless objections
to the same were made by some persons
interested, and thereupon afterwards
at the day specified no objections
having been made the said assessment
was in all things affirmed by the common
council of said City - Your petitioner says
that there was allowed to your petitioner
and Bulletin H. Shott (who has
since sold out his interest to your
orator the mutual damages) the sum
of seven thousand & two hundred
dollars & that there was assessed
against said premises as benefits
the sum of one thousand dollars
all of which will appear by reference
to the assessment Roll herewith

submitted & by agreement made
part of this application - which
assessments were duly returned
by the said persons
& duly confirmed by the City Council

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. 1836 &
duly signed & sealed & that
the collector received and
collected of the same nearly
thirty thousand dollars & that
over one hundred thousand
dollars remains uncollected
& that the city has ever since
neglected to collect the balance
of said moneys although the
said writ was returnable
within thirty days after the
date thereof -

Your petitioner claims that
on the confirmation of said
assessment, he became entitled
to the moneys assessed to him, ^{& B. F. & others} as
the damage to said lot - & says
that he is entitled to a writ
of mandamus against said
city of Chicago to compel

said City to proceed & collect
said tax & pay over to him
the money to which he is so
entitled by reason of the said
proceedings. Wherefore your
petitioner prays your Honor
to grant a writ of Mandamus
under the seal of this Court directed
to the proper authorities of the City
of Chicago commanding them forth
with to proceed & collect said assess-
ment & pay over to your petitioner
the amount to which he may be
entitled by virtue of said assessment
& to do & perform all such acts
& things in the premises as the Court
requires & for such other or further
relief as to your Honor, may
seem meet & the justice & right
may appertain. And as in
duty bound will ever pray

Yours &c Wiggins

By Thomas Boyne

Att'y -

Supreme Court April Term 1857
The people & rel T. W. Wiggins, of City of Chicago
In the above entitled cause
The parties agree that the facts in
the foregoing ~~petition~~ ^{Petition} are correctly

stated and that the facts set
forth in the petition & Memorandum
thereto annexed signed by the
Council of both parties, shall
be considered by the Court the
same as if they were returned
by the said ~~City of Chicago~~ to an
alternative Mandamus.

It is admitted & agreed that
the copy of the collection warrant
accompanying this petition shall
be examined by the Court as a
part of the case.

And it is further agreed that
the Court, on the hearing of the
petition shall make a final
order, or grant a peremptory
Mandamus, if the case requires
it, in the same manner as if an
alternative writ of Mandamus
had issued and return thereon had
been duly made by the said defendant
embodying the same facts -

May Miller
Attorney for
the City of Chicago
W. H. Rogers
Attorney for defendant

Memorandum referred to in the
Petition of Van H. Higgins in the case
of the The People vs. Van H. Higgins vs
The City of Chicago.

The City accepts as a reason
for not proceeding to yet judgment
against the County assessed that on
the 14th day of Feb. A.D. 1837 an act
was passed by the Legislature of Illinois
providing that all sales of property for
non payment of taxes & assessments
should be held at the same time
with the general sale of property
for non payment of City taxes
in each year & that no sale can
be made of the City property until
after the first Tuesday of January
A.D. 1838. & it is agreed that all
of the provisions of the new Charter
shall be considered a part of
this case.

The City accepts as a further
reason that a tax was illegally
assessed upon the Court House
square against the County of Cook
for the sum of 769⁵⁰/₁₀₀¢ & that
the Legislature had no power
to legalize the same as was done
by the Legislature in the new Charter.

3 The City allege as a further reason that the persons in assessing the property benefited & ~~extended~~ their assessment too far & embraced property not in fact benefited so much as assessed & in some instances perhaps not at all benefited

4 The City allege as a further reason that the amount of costs assessed was unreasonable & excessive & that the particular items of expense ought to have ~~given~~ been given by the persons & that the assessment was illegal for that reason -

It is hereby agreed that if the said assessment is so illegal that it ~~can~~^{would} be set aside by any court for the above reasons then the application may be denied but if they do not invalidate the assessment so that it must be set aside then the Court shall award a mandamus according to ~~see~~ their discretion -

Wm. Miller
Attorney for the
City of Chicago

The Hayre
also be noted

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Superior Canal
Albany

Wm H Huggins canal
by

City of Chicago

Petition for
a secondary

The People of the State of Illinois }
Ex. rel. Van H. Higgins

vs
The City of Chicago
Relator's Costs

Petition for Mandamus
Preemptory writ of Mandamus Awarded

Fl. petn. 6¢. Dk. Cause 12½ leave to file. 25. Apper. 25. 68 ¾
Mo. for writ 25. prep. & fil. abstr. 25. 40. Ent. argt 25. 25. 72
Subm. 25. Under advst. 25. ord. for writ 25. judt. fees 25. 1.00
Ent. judt. & opm. 2'37½ Copy 237½ Certf. & seal 50. 5.85
Ord. for ex. 25. Dk. judt. 25. bill of costs 37½ Copy 25. 1.12½
Satisfaction 25. 25.
Amt. \$34.23

The People of the State of Illinois }
Ex rel. Van H. Higgins

vs
The City of Chicago
Defts Costs

Petition for Mandamus

Apper. 25. bill of costs 37½ Copy 25. 87½
Dk. fee 125 satisfaction 25. 1.50
Amt. \$2.37

A true copy from my fee book as taxed & recorded thereon
L. Leland Clerk
by J. B. Rice Deputy

Higgins

Supreme Court at Ottawa

People of Ills. & related

Paul & Hygers

City of Chicago

Applicants for Mandamus

for upon the confirmation of its assessment
a vested right to the money assessed
as damages to the owners of the
land taken, accrued to the owners
of the land condemned.

22 Pick. 263.

4 Barb. 76.

5 Cover 292.

19 Whinn 272

8 Conn 243.

2^d Public Squares liable for assessment for
benefits, the same as the property of
private Owners.

3^d Wendell 333.

~~4 S. & R. 355.~~

~~13 ibid. 422.~~

12^d Ill. Canal trustees & Chicago.

C. Contra.

~~Wendell~~ 272 Page 1403

3^d For an over estimate of benefits by way of assessment
by Commissioners on real estate supposed benefited, the
only remedy is by application to the Common Council within the
time limited by law - 6 Pick 98 - 7. Cushing - 273 -

15 Conn 447

[2277-8]

4. Wind 223 - 26 Maine - 217 - 2^d Maine 289 - 33^d Maine -
445 - 11. Wend 91 - 5 Mass. 547 - 5 Pick 498 -

4th. It is alledged that the apessment is irregular & illegal because the costs & expenses apessed by the Commissioners are excessive, & that the same are improperly included because the particular items are not specified.

By Appearances to the Laws it will be found that there is no law or ordinance prescribing the amounts or in any way limiting it, and it is submitted that it is now too late to make ~~a~~ ~~more~~ the amounts nor objections. It should have been made to the Common Council before the time of the Confirmation of the Com^r's report. To invalidate the entire apessments upon the ground that the Commissioners over taxed their charges, is too trifling to make it after the ~~time~~ full term has elapsed when by law such objections might have been heard - & it seems corrected if any - This objection properly lies with the tax payers - who are concluded by their laches or neglect to raise this question before the City Council - See authorities under cited
under 3rd point - in relation
to over apessment -

5th. It is a question of Construction in regard to a Law under the amendments to the City Charter - That act repealed no previous apessments nor changed the mode of their collection - but left the old modes to operate in full force -
See Sects - 51-52 - & Sec. 40 -

See sec 87 -

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Supreme Court of Illinois

John H. Higgins & Co. vs. John

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City of Chicago

Brief

Filed May 16, 1857

L. Leland
Clerk

12277