

No. 13523

# Supreme Court of Illinois

Wilder.

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vs.

Hubbard.

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STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

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No. 285.

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Wilder

28  
Hobbs

135 v 3

1861  
Prepaid



285

# SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, 1861.

NATHANIEL P. WILDER, AND

GURDON S. HUBBARD,

Impleaded with Ogden and Russell,

*Appellants,*

v.

THE CITY OF CHICAGO,

*Appellee.*

Appeal from Cook  
Circuit Court.

## ARGUMENT FOR APPELLEE.

This was suit on an official bond, against a city collector and two of his sureties.

The case has already been before this court, *Russell et al. v. City of Chicago*, 22 Ills., 283.

The chief error now assigned—or “ruling of which the appellants here complain”—was the sustaining, by the court below, of the city’s demurrer to the eighth plea of defendants. The substance of the plea was that Russell, as city collector, was alone authorized by law and empowered to collect, as well all *special assessments* levied and assessed by said city for the year 1855 for improvements and other municipal purposes, as the taxes levied and assessed by said city for said year for ordinary purposes, and that as such collector he was, by law wholly and solely entitled to all fees and com-

*affs before*

*Filed May-22-1861*

*J. C. Elam*

missions for the collection of *special assessments*: that he was, at all times, ready and willing, whilst he was such collector, to collect all moneys due and owing to the city for and upon such *special assessments* levied during the year 1855, and did, as soon as elected city collector, notify the city of his readiness and willingness and offered to collect said *special assessments*—that the city refused to allow him to collect said *special assessments* or any part of them, but unlawfully authorized and appointed certain others, not having the right by law so to do, to collect said special assessments, levied and assessed during the year 1855, whilst he was such collector.

The plea then pleads a *set-off* to the extent of \$5,000 due and owing by the city to Russell, being the amount of fees and commissions upon the whole amount of said *special assessments* collected during the year 1855, and to which, as collector, he was by law entitled.

The plaintiff below demurred, generally, to this plea, and the judgment of the court thereon was for the plaintiff.

The question presented by the plea is, whether the common council, by the charter, had legal authority to appoint collectors of special assessments? This precise question has been presented, discussed, decided and settled in this court. 22 Ill., 283.

Appellant's counsel seem to think the court intimated some doubt in the former decision upon the main question presented here, and avail themselves of "a different issue, and one proper to be made under the ruling of the court in the former case," for the purpose of asking a reconsideration.

It is difficult to discern in Justice Walker's opinion, any intimation whatever of a doubt, either as to the conclusiveness of the reasoning or as to the result itself. It would require more than ordinary acuteness and subtlety of intellect to deduce even a plausible appearance of doubt as to the proper construction of the various clauses of the charter cited. There is, probably, nothing in the argument now addressed to the court, to induce a reconsideration,



which was not, with equal ingenuity and force, and by the same counsel, pressed upon the court in the former appeal. At least, Judge Walker's opinion satisfactorily and decidedly meets and disposes of the views now urged. It could hardly be expected, in the absence of additional, or more plausible reasoning, directed against the Court's "foregone conclusion," that we should consider and discuss the subject as if it were *res integra*. Therefore, the question of the legality of the appointment of special collectors, and for the collection of special assessments, we assume to be no longer an open one.

Why the form or nature of the plea in which the question is involved, can make any difference upon the question itself—why a plea of set-off is a more appropriate or proper one "under the ruling of the Court in the former case," for the raising the question, we are not informed.

A defence not good in itself, cannot, of course, be made good by its change of shape, the substance being left.

But the very nature and form of the plea here resorted to, as the more appropriate one, make that plea inadmissible in this action.—It is a plea of set off. It seeks to set up on behalf of Wilder and Hubbard, who only plead, an alleged indebtedness of the city to Russell. It attempts to give to two defendants the benefit of an individual demand claimed for a third one of the defendants. Demands are not the subject matter of set-off unless they are mutual and between all the parties to the action. Nor can parties avail themselves of a matter of set-off, unless it is a subsisting cause of action in their favor. There is no subsisting cause in favor of Wilder and Hubbard, in the alleged indebtedness of the city to Russell.

*Burgwin v. Babcock*, 11 Ill., 28.

*Ryan v. Berger*, 16 Ill., 28.

## II.

It is assigned for error that the Court below erred in sustaining the plaintiff's demurrer to the sixth plea.

That substantially sets out the facts alleged in the eighth plea, as to said special assessments, and further that the sum of \$3,188.13 is the true and just amount of fees and commissions for and upon the whole amount of said special assessments, and further, that the sum of \$3,188.13 is the just and true amount of fees and commissions for and upon the whole amount of said special assessments for the year 1855 and during his term of office and no more, and that Russell, as such collector, kept and retained said sum as fees and commissions upon special assessments.

This is substantially the same plea as the sixth in the record of the former suit, and of course is conclusively disposed of, both as to the legality of special collectors and as to the right of retainer, by the decision in that case.

But in addition to what was then said as to Russell's right to retain fees and commissions, it will be perceived, from the record here, that there was special municipal legislation in prohibition of such retaining.

The second replication to the 5th plea sets up that the keeping and retaining of said sum for fees and commissions was and is contrary to, and, in violation of, article 2, chap. 14, of the municipal laws of said city—section 1, provides “that every collecting officer shall pay over into the city treasury, weekly, all moneys which he may have collected, by virtue of his office in the kind of funds received by him.”

Section 2 of same article provides “no officer shall be allowed to withhold any money collected by him for the payment of any salary or fees which may be due him. The salary and compensation of officers shall be paid monthly by the common council: and it shall be the duty of officers to present their accounts monthly for adjustment and payment,”—which article and sections before and during and since Russell's term of office were and are in full force and effect.

JOHN LYLE KING,  
*Attorney for the City.*



285

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JOHN LYLE KING,  
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GURDON S. HUBBARD,  
APPELLANTS.  
IMPLEADED WITH  
WILLIAM B. OGDEN,  
vs.  
THE CITY OF CHICAGO,  
APPELLEE.

## ABSTRACT OF RECORD.

This is an action of debt on an official bond, brought by the appellee against Jacob Russell and the other defendants on the official bond of the said Russell as the city collector.

The cause was taken to the Supreme Court, upon a judgment heretofore recovered, and was reversed and remanded at the April term, A. D. 1859, of this Court.

1 The plaintiff below, on the 20th day of February, 1860, filed its amended declaration, amended as to the "ad damnum," increasing it from \$2,000 to \$50,000.

Declaration claims the penalty of the bond, \$50,000, against Jacob Russell, Nathaniel P. Wilder, William B. Ogden and Gurdon S. Hubbard.

The first Count sets up as a breach:

1 That defendants, on the 19th day of March, A. D. 1855, made their writing obligatory, sealed, &c., in the penalty of \$50,000—conditioned, that, whereas the said Russell was, on the 16th day of March, A. D. 1855, elected city collector of said city, to hold said office for one year, and until his successor should be duly elected and qualified, if the said Russell should faithfully execute his duties as city collector, and account for and pay over all moneys by him received as such collector, in accordance with the orders theretofore passed, or which theretofore might be



passed, by the Common Council, &c., then the obligation to be void, otherwise, &c.

2 As a breach of said condition, it is assigned that the Common Council, September 29, 1851, passed an ordinance, entitled "An ordinance concerning the assessment and collection of taxes," being chap. LVIII, on page 418, of G. W. & J. A. Thompson's Compilation of the Charter and Ordinances of said city; that Sec. 6 of Article II of said ordinance prescribes, among other things, that the collector shall pay into the city treasury all moneys collected by him as fast as collected, at least as often as every Monday, in the like funds as collected.

That said ordinance, article and section, were in full force during the term of office of said Russell.

3 That the Common Council of the city duly levied and assessed the taxes for the year 1855, and that its clerk, on the 18th day of October, 1855, duly delivered to said Russell, as city collector, a warrant commanding him to make, levy, and collect the sums of money therein set forth, opposite the real and personal estate therein set forth, and to make return of said warrant within ninety days after its date.

That said Russell, by virtue of said warrant, as, and being, such collector, collected and received \$250,000, the taxes aforesaid, and the proper money of said city—which it was his duty to pay over, under said ordinance.

3 That said Russell did not pay over the sum of \$3,188.13, as provided by said ordinance, nor at any time since.

That thereby an action hath accrued to demand of said defendants the said sum of \$50,000.

4 Second Count sets out, substantially, the same facts and breaches as  
5 assigned in the first Count.

6 Third Count—That defendants were indebted to the city in \$5,000, on an account stated between them, and for money had and received.

7 Ad damnum, \$50,000.

7 Pleas filed March 13th, A. D. 1860, by defendants, Russell, Wilder and Hubbard, impleaded with Ogden.

1st Plea—Non est factum to 1st and 2d Counts.

8 2d Plea—Nil debet to 3d Count.



3d Plea to 1st and 2d Counts—That defendant Russell did, whilst such collector, faithfully execute his duties and pay over all moneys, as provided by law, and according to the condition of said writing obligatory.

9 4th Plea to 1st and 2d Counts—That said Russell accounted for and paid over said sum of \$3,188.13, as provided by law, and according to the condition of said writing obligatory.

9 5th Plea to the 1st and 2d Counts—That defendant Russell was, as such collector, entitled to fees for making said collections; that said sum of \$3,188.13 was a portion of such fees, and that he kept and retained said sum for such fees (as he lawfully might) as said collector.

9 & 10 6th Plea to 1st and 2d Counts—That defendant Russell, by virtue of his office of city collector, was alone authorized by law and empowered to collect, as well all special assessments levied and assessed by said city for the year 1855 for improvements and other municipal purposes, as the taxes levied and assessed by said city for said year for ordinary purposes; and that he was by law, as such collector, wholly and solely entitled to all fees and commissions for the collection of said special assessments.

10 That said Russell was, at all times, ready and willing, whilst he was such collector, to collect all moneys due and owing to said city for, and upon, such special assessments levied during the year 1855, and did, as soon as elected city collector, notify the said city of such his readiness and willingness, and offered to collect said special assessments.

That said city unlawfully refused to allow him to collect said special assessments, or any part thereof, but unlawfully authorized and appointed certain others not having the right by law so to do, to collect the said special assessments, levied and assessed during the year 1855, and whilst he was such collector.

That the sum of \$3,188.13 is the just and true amount of fees and commissions for and upon the whole amount of said special assessments, levied and assessed by the city for the municipal year 1855, and during his term of office, and collected, and no more, and that the said Russell (as he lawfully might), as such collector, kept and retained the said sum of \$3,188.13 as fees and commissions lawfully due to him as said collector upon the said special assessments so assessed, levied and collected as aforesaid.

11 7th Plea, as to 1st and 2d Counts—Set off to the extent of \$5,000, due by said city to said Russell for fees and commissions, upon taxes collected by him as collector during his term of office.

11, 12 & 13      8th Plea, as to 1st and 2d Counts—Sets up, substantially, the same facts as in the 6th plea, as to said special assessments, and pleads a set off to the extent of \$5,000, due and owing by the city to said Russell, being the amount of the fees and commissions upon the whole amount of said special assessments collected during said year 1855, and to which said Russell, as such collector, was entitled by law.

13              9th Plea—To whole declaration set off, to the extent of \$6,000, by defendants, for work and labor, money lent, paid, laid out, and expended, money had and received, and money due on account stated.

14              Replication and demurrer to pleas, filed Sept. 21, A. D. 1860.

Replication to 1st Plea—Similiter.

Replication to 2d Plea—Similiter.

Replication to 3d Plea—That said Russell did not, as collector, pay over and account for all moneys by him received as collector, as alleged in said 3d plea. Concluding to the country.

15              Similiter, Nov. 26, 1860, by Wilder and Hubbard.

Replication to 4th Plea—That Russell did not pay over and account for the said sum of \$3,188.13, &c. Concluding to the country.

Similiter, Nov. 26, 1860, by Wilder and Hubbard.

16              Replication to 5th Plea—That said sum of \$3,188.13, kept and retained by said Russell, as in the plea alleged, was not a portion of fees and commissions due and owing by the city to said Russell for the collection of taxes for the year 1855. Concluding to the country.

Similiter, Nov. 26, 1860, by Wilder and Hubbard.

2d Replication to 5th Plea—That the keeping and retaining of the said sum of \$3,188.13 by said Russell, was, and is, contrary to, and in violation of, article 2, chap. 14, of the municipal laws of said city of Chicago, section 1st of which article provides, that "every collecting officer shall pay over into the city treasury, weekly, all moneys which he may have collected, by virtue of his office, in the kind of funds received by him."

16              Section 2d of which same article provides, that "no officer shall be allowed to withhold any money collected by him for the payment of any salary or fees which may be due him. The salary and compensation of officers shall be paid monthly by the Common Council; and it shall be the duty of officers to present their accounts monthly



"for adjustment and payment." And that said section, before and during and since the term of office of said Russell, were, and are, in full force and effect, of which defendants had notice. Concluding to the country.

Similiter, Nov. 26, 1860, by Wilder and Hubbard.

General demurrer to 6th, 7th and 8th pleas.

- 17      Replication to 9th Plea—City not indebted to defendants. Concludes to the country.

Similiter, Nov. 26, 1860, by Wilder and Hubbard.

Replication to 7th Plea, Nov. 24, 1860—That city is not indebted to Russell for fees and commissions, owing by said city to him for the collection of taxes for the municipal year 1855, in a larger sum than \$3,188.13, nor in any other sum, in manner and form as by defendants alleged in said plea. Concluded to the country.

Similiter, by Wilder and Hubbard.

- 18      Nov. 26, 1860, death of defendant Russell, suggested.

Court sustains the demurrer of the said city to the 6th and 8th pleas of defendants Wilder and Hubbard, impleaded, &c., to which ruling of the Court the said defendants Wilder and Hubbard, impleaded, &c., then and there except.

Demurrer to 7th Plea is overruled.

Jury waived, cause submitted to Court for trial.

Court finds issues for the plaintiff below, and judgment against Wilder and Hubbard, survivors, and impleaded, &c., for debt, \$50,000, and assesses the damages at \$3,974.93.

Motion for a new trial by defendants Wilder and Hubbard made and overruled, and ruling then and there by them excepted to.

Judgment against defendants Wilder and Hubbard, survivors and impleaded, &c., for debt, \$50,000 and costs; debt to be discharged on payment of damages aforesaid assessed, together with interest thereon and costs of suit.

- 19      Appeal prayed and allowed on filing bill of exceptions and bond, in the penalty of \$7,500, within 10 days.

Bond filed with J. W. Chickering as surety, Dec. 5, 1860.

December 4, 1860, bill of exceptions filed.

20 Bill of exceptions sets forth:

Cause submitted to Court for trial, without a jury, by argreement.

Plaintiff produced a bond from defendants, together with Jacob Russell and William B. Ogden. Admitted without objection.

21 Charles B. Farwell sworn by plaintiff:

Knew Jacob Russell in his life time; know his handwriting; proves an account current between Russell and the city to be in Russell's handwriting.

#### ACCOUNT OFFERED IN EVIDENCE.

21 & 22 The account shows the debits and credits from the city to Jacob Russell, and is balanced and dated July 15, A. D. 1856.

The last item of the debits to the city in said account is as follows:

"To commissions, \$106,270.94, collected of special taxes, 3 per ct., \$3,188.13."

Account admitted, without objection, by counsel for defendants.

22 Walter S. Frazier testified for the plaintiff:

Am clerk in the city comptroller's office; examined the foregoing account, and says, that is a final settlement by Russell of his account as collector, and is a transcript of an account, attached to the original general tax warrant for the year 1855, also signed Jacob Russell. Witness here produced the general tax warrant for the year 1855, with the said account attached, and also produced the record of collectors' receipts for warrants delivered to them, with the entry, as follows:

For what purpose issued.	Date of issue 1855.	When returnable. 1855.	Amount of warrant.	Remarks.
General Tax Warrant for 1855,	Oct. 18	Dec. 18	206,209 03	Received the amount this 19th day of October, 1855. JACOB RUSSELL.

23 Sometimes there are additions to a tax warrant, when the assessor has omitted some persons, in making up the roll; also deductions, where the valuation is too high, or the property is found to be exempt from taxation. Russell, in his account with the city, charges it with deductions, made from time to time during the year, on the warrant; also with the



uncollected personal tax, \$2,511.74, which is always done; also with amount deposited by him with the treasurer, as per receipts, \$200,686.67; also with commissions, \$106,270.94, of special taxes collected, being 3 per cent., and amounting to \$3188.13. He credits the city with \$1,040.34—increased assessments—and with \$206,209.03, being the amount of the warrant; and the footings are thus made equal.

Russell claimed the right to collect the special assessments and his claim on the account of \$3,188.13 is for commissions on the special assessments collected during the year he was collector.

Witness also produced a number of accounts and receipts by Jacob Russell, of one of which the following is a copy:

The City of Chicago,

To Jacob Russell, City Collector, *Dr.*

To commissions for collecting \$10,500 of the general City Taxes

on warrant for 1855, as per Treasurer's receipt herewith,

\$10,500 a  $1\frac{1}{2}$  pr cent., \$157.50

Endorsed on the back, "Received payment. JACOB RUSSELL."

The other accounts and receipts are similar in form, and all together show the receipt by Russell, that is the amount collected by him, \$198,152.48, on the general tax warrant, and an aggregate of commissions, \$2,972.28, received and paid to him at the rate of one and one-half per cent.

Russell also collected besides, on the general warrant, \$2,533.59, on which he never was paid his commissions, \$38.01; an order was drawn for it, but never paid him. Except this, he was paid in full of all his commissions for collection on the general tax warrant.

The account shows that Russell claimed commissions to the amount of \$3,188.13, for collection of special taxes, which means assessments. I do not know of my own knowledge that Russell did not collect any portion of the special tax of \$106,270.94.

Plaintiff then introduced Andrew J. Marble, who testified: I knew Jacob Russell in his life time, and knew his hand-writing—proves the accounts and receipts spoken of by Frazier to be in Russell's hand-writing. In the year 1855, was in City Clerk's office as assistant Clerk. All warrants for the collection of taxes and assessments were issued and delivered by the City Clerk, and receipts were taken from the officers or collectors who received the warrants, on the books produced by Frazier, and from which Russell's receipt was read in the case. Receipts for all special assessment warrants were taken in this book. I have looked and

find no receipt from Russell of any warrant for special taxes or assess-



ments. If he had received such, his receipt would be there. There were three collectors of special assessments in the year 1855, appointed by the Common Council under an ordinance for the collection of special assessments, one for each division, viz: E. A. Weber, W. B. H. Gray and Van Vechten. I knew, as a matter of fact, that the warrants for special assessments were placed that year in the hands of the special collector for each division; I delivered the warrants to the special collectors myself. Think I know of my own knowledge that Russell did not collect any special assessments that year. I had charge of that department in the City Clerk's office, and I delivered all the warrants that were delivered; I delivered no warrant to collect assessments to Russell; he reported all his collections to the Common Council. Never saw any report of special assessments collected by him. I acted as assistant clerk, and had charge of the documents that were before that body; there could not have been anything presented without going through my hands.

24           This was all the evidence in the case.

Judgment for City against Wilder and Hubbard, impleaded with Russell and Ogden for debt of \$50,000—damages assessed at \$3974.93, and costs of suit, debt to be discharged on payment of damages and costs.

Motion for new trial by Wilder and Hubbard, impleaded, &c., because—

25           1. The Court erred in allowing a judgment against said defendant for interest since July 15th, A.D. 1856, on the sum of \$3188.13.

2. The judgment was contrary to the law and the evidence in the case.

3. The said judgment was erroneous in amount and in form.

Motion overruled—ruling of the Court excepted to, and appeal prayed, &c.

Nov. 26, 1860.

GEORGE MANIERRE, [SEAL.]  
*Judge, &c.*

25           December 5th, 1860, bond filed in penalty of \$7900 by defendants. Wilder and Hubbard, defendants, with J. W. Chickering as surety.

ERRORS ASSIGNED.

1. The Court erred in sustaining the demurrer of the plaintiff below to the 6th and 8th pleas of the defendant below.

2. The Court erred in rendering judgment against the defendants Wilder and Hubbard, impleaded, &c., for \$50,000 debt and in assessing the damages at \$3974.93.

3. The judgment of the Court below was contrary to the law and evidence in the case.

4. The judgment of the Court below should have been for the defendants below on the demurrer to the 6th and 8th pleas, and on the issues made in the cause.

J. P. CLARKSON,  
*Counsel for Appellants.*



285-113  
Supreme Court  
April 7, 1861

N. J. Wilder  
and  
G. S. Hubbard  
in pleading &c  
appellants

The City of Chicago  
appellee

abstract of Record

Filed Apr. 27, 1861  
J. S. Ireland  
Clerk

J. S. Clarkson  
counsel for appellants

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The sustaining by the Court below of the demurrer of the appellee to the 8th plea of the defendants below, is the ruling of which the appellants here complain.

This Court has before, to some extent, considered the case now before it in this record, but, inasmuch as the Court intimated some doubt in a former decision upon the main question presented here, and as it now comes before the Court under a different issue, and one proper to be made under the ruling of the Court in the former case, the appellants desire again to present it for their consideration.

In *Russell et al. vs. The City of Chicago*, 22 Ill., 283, the question of the legality of the office of Special Collector of Assessments in the city of Chicago, under its charter, approved February, 1851, was made.

The pleadings in that case showed that Russell *retained* the fees or commissions on the amount of special assessments collected during his



term of office by the special collectors, alleging that he had the right so to do, inasmuch as the office of such special collector was an illegal one, and he was solely authorized to make such collections, as the regularly elected city collector for the city.

This Court held that *he had no right so to retain the money*, even though their ruling as to the legality of the office of special collector might not be correct.

In the present record the question of the legality of the special collector is directly and more properly presented by *the 8th plea*.

This is a plea of *set off*, and sets forth that the city of Chicago was indebted to said Russell in a larger sum than the amount claimed in the declaration, for so much commissions of right due to him upon the amount of special assessments collected during the term of his office in said city, by said special collector, appointed by said city, contrary to law, to make such collections.

That Russell, as the city collector of the city, duly elected, was alone authorized to make such collections, and that he notified the city immediately upon his election, of his readiness and willingness to collect both the special and regular taxes during his term of office, but that the city nevertheless unlawfully appointed others to make such collections.

If the Court is disposed again to examine and consider the legality of the office of special collector of the city under its charter of 1851, upon which some doubt was expressed by it *on* the decision, in 22 Ill., 283, it is now, I submit, properly made, under the plea of *set off*.

The Court below sustained the demurrer to that plea, and that ruling is relied upon for the reversal of the judgment.

Under the charter of the city of Chicago, March 4, 1837, the Common Council of the city were empowered by ballot to appoint *one or more collectors*. Section 16 of the act entitled "An Act to Incorporate the City of Chicago."

This act, in so far as the collector's office was concerned, remained in force until February 16, 1847, when the act, amendatory to the original act of incorporation, was passed.

In section 6 of the latter act, it is provided that there shall be elected annually of the legal voters of the city of Chicago, *one city collector*.

The act, approved February 14, 1851, entitled "An Act to reduce the law incorporating the city of Chicago and the several acts amend-



atory thereof into one act, and to amend the same," was in force when Russell was city collector, and, by this act, the question presented by the appellants is to be determined.

Chapter II, section 1, clause second, of this act, provides that the officers of the corporation shall be, with others, "one or more collectors," &c.

Section 2d provides that at the annual election there shall be elected by the qualified voters of the city, with other officers therein mentioned, "a collector."

It seems clear that the legislature intended to change the manner of creating the collector, and to make it an elective office, not one in the appointment of the Common Council.

The words "one or more collectors," in section 1, provide for the contingency of the necessity of more than one collector, but the appointment of additional collectors by the city is excluded by the phrase "other officers," used in the same section, for it provides that the officers of the city shall be "*one or more collectors*" and *other officers* specifically mentioned, and then it adds that "*all other officers*" shall be appointed by the Common Council.

*Other officers* can mean nothing else than other officers than those specially provided for in the former part of the section.

*Section 3d*, providing for the election of a collector by the people, cannot be construed, I submit, to mean other than that the "*one collector*" or "*more collectors*," should more than one be found necessary, *shall be elected by the people annually, &c.*

This, it seems to me, is the only way to construe the act, so as to prevent contrariety in its terms; for, otherwise, the 1st section, declaring that "the collectors" shall not be amongst the "other officers" appointed by the Common Council, and the 3d section, authorizing the election of the collector by the people, cannot be reconciled.

Giving them, however, the construction claimed by us, their interpretation together is clear.

Section 5 provides that all other officers mentioned in the act, and not otherwise provided for, shall be appointed by the Common Council, &c.

The officers specially provided for in the 1st and 3d sections are, with others, the collector or collectors. Their appointment by the Common Council is therefore excluded.

Chapter III of the act, section 10, provides that it shall be the duty of the *collector or collectors* to collect all *taxes and assessments*, &c.

Can the special Collector, appointed by the Common Council to collect the *assessments*, collect also the *taxes*?

He certainly might, if the words "*collector or collectors*," in Section 10, mean the Collector elected by the people and the Collector appointed by the Council, for the Section seems to give them indiscriminately, the power to collect taxes and assessments.

And if he might so do, then the Common Council would have the authority, if so disposed, to *delegate away to special Collectors the entire duties of the Collector elected by the people*, and so render the office a mere name, without duty, right, privilege or emolument.

This the Legislature did not design, when they declared that the "*Collector shall be elected by the people, and shall collect the taxes and assessments.*"

It is not pretended that any but the City Collector, elected by the people under the charter, *shall collect the taxes*. If not, then none other can collect the assessments, for they stand upon precisely the same footing in the charter.

The collection is manifestly contemplated to be the act of one and the same person.

The apparent contrariety and inconsistency vanish, when the statute is construed as is contended for by us, namely, that the Collector or Collectors shall be elected by the people, and shall collect the taxes and assessments.

*Chapter VIII, of the Charter of 1851, Section 6.*—"All warrants for the collection of general or special taxes and assessments, shall be delivered to the *Collector or Collectors of the city for collection*."

To the Collector or Collectors *of the city!* Not to the special Collector for any particular division of the city, appointed otherwise than under the charter, for the term *of the city*, must mean the *city Collector or Collectors, who collect the taxes of the whole city*, just as was meant by the term *city* under the old city charter, when there was and could be but one Collector.

It means the City Collector elected by the people, because he only can collect *taxes*, and the collection of *taxes and assessments* are used and spoken of together, in the same connection, to be done by the same officer.



The City Collector must collect both, if any.

If he only could collect the taxes, he only could collect the assessments. If any *other* than himself might *collect the assessments*, as well might the other *collect the taxes*, since no distinction is made in the act between them.

And thus, as before stated, the entire powers of the City Collector might be unjustly and corruptly taken from him.

The same Section 6, Chapter VIII, provides that, "if not otherwise paid, the Collector shall have power to collect *said taxes* with interest and costs, by suit in the corporate name, or by distress and sale of personal property.

Shall collect "*said taxes*"—referring to the taxes mentioned in the first part of the Section,—that is, *the general and special taxes and assessments*. And these he may collect by *distress and sale of personal property*.

Now, suppose the right to collect the taxes by *distress and sale of personal property* to belong rightly to the special Collectors appointed by the Common Council.

Their duties are, by their appointment, confined to their particular division of the city—one for the North, one for the South, and one for the West Division,—their jurisdiction is limited.

Can they then enforce the collection of a tax or assessment levied upon real estate in their particular Division, by distress and sale of personal property of the delinquent, which is in a different Division?

Suppose the real estate assessed, to be in the South Division, and the personal property of the owner of the realty to be in the North Division. Can the special collector for the South Division, levy upon his personalty in the North Division, for the payment of the assessment? Clearly not, for he cannot exceed the limits of his jurisdiction given him by his appointment.

Then, the result would be, that the collection of the assessment, by distress as provided by the act, is rendered an impossibility, and becomes a meaningless provision, unless the power of distress is contemplated by the act to exist in the Collector.

And it can only so exist where the collector is the *City Collector*; that is the collector who *has jurisdiction over the whole city*.

And this Collector is the one, and the one alone, *elected by the people*, under the charter, and not the one for a particular division of the city.

It follows then, that the City Collector alone, can properly, within the spirit and intent of the act, and entirely, collect the taxes and assessments alike.

*Chapter VIII, Section 7, provides—That all taxes and assessments, general or special, shall be collected by the Collector or Collectors, in the same manner, and with the same power and authority, as are given by law to Collectors of State and County taxes.*

No one, manifestly, can be intended here, but *the Collector for the city, that is, the officer elected by the people*, for he alone has jurisdiction co-extensive with the city, and therefore, he alone can levy upon personal property throughout the city, for the payment of taxes and assessments.

Such a construction will be given by the Court to the act, as will best conduce to its proper and complete enforcement, and that construction be avoided, which must inevitably lead to injury to the rights of persons, or to results which would be either absurd or mischievous in their character.

I respectfully ask the reconsideration of the Court, for the foregoing reasons, of the question now directly presented by the record to them; and submit that the 8th plea of the defendant below, the plea of *set off*, was a good one, and that the Court erred in sustaining the demurrer to it, and that, therefore, this judgment should be reversed.

J. P. CLARKSON,  
*Att'y for Appellants*



Label No. 285  
Agenda 113

Supreme Court  
April 2, 1861

Nathaniel P. Alden  
et al.  
Appellants

The City of Chicago  
Appellee

Prints & authentication for  
Appellants

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# SUPREME COURT OF ILLINOIS,

## THIRD GRAND DIVISION.

APRIL TERM, A. D. 1861.

NATHANIEL WILDER and  
GURDON S. HUBBARD, }  
APPELLANTS. }  
IMPLEADED WITH  
WILLIAM B. OGDEN, }  
vs. }  
THE CITY OF CHICAGO, }  
APPELLEE. }

### ABSTRACT OF RECORD.

This is an action of debt on an official bond, brought by the appellee against Jacob Russell and the other defendants on the official bond of the said Russell as the city collector.

The cause was taken to the Supreme Court, upon a judgment heretofore recovered, and was reversed and remanded at the April term, A. D. 1859, of this Court.

1 The plaintiff below, on the 20th day of February, 1860, filed its amended declaration, amended as to the "ad damnum," increasing it from \$2,000 to \$50,000.

Declaration claims the penalty of the bond, \$50,000, against Jacob Russell, Nathaniel P. Wilder, William B. Ogden and Gurdon S. Hubbard.

The first Count sets up as a breach:

1 That defendants, on the 19th day of March, A. D. 1855, made their writing obligatory, sealed, &c., in the penalty of \$50,000—conditioned, that, whereas the said Russell was, on the 16th day of March, A. D. 1855, elected city collector of said city, to hold said office for one year, and until his successor should be duly elected and qualified, if the said Russell should faithfully execute his duties as city collector, and account for and pay over all moneys by him received as such collector, in accordance with the orders theretofore passed, or which theretofore might be



passed, by the Common Council, &c., then the obligation to be void, otherwise, &c.

2 As a breach of said condition, it is assigned that the Common Council, September 29, 1851, passed an ordinance, entitled "An ordinance concerning the assessment and collection of taxes," being chap. LVIII, on page 418, of G. W. & J. A. Thompson's Compilation of the Charter and Ordinances of said city; that Sec. 6 of Article II of said ordinance prescribes, among other things, that the collector shall pay into the city treasury all moneys collected by him as fast as collected, at least as often as every Monday, in the like funds as collected.

That said ordinance, article and section, were in full force during the term of office of said Russell.

3 That the Common Council of the city duly levied and assessed the taxes for the year 1855, and that its clerk, on the 18th day of October, 1855, duly delivered to said Russell, as city collector, a warrant commanding him to make, levy, and collect the sums of money therein set forth, opposite the real and personal estate therein set forth, and to make return of said warrant within ninety days after its date.

That said Russell, by virtue of said warrant, as, and being, such collector, collected and received \$250,000, the taxes aforesaid, and the proper money of said city—which it was his duty to pay over, under said ordinance.

3 That said Russell did not pay over the sum of \$3,188.13, as provided by said ordinance, nor at any time since.

That thereby an action hath accrued to demand of said defendants the said sum of \$50,000.

4 Second Count sets out, substantially, the same facts and breaches as  
5 assigned in the first Count.

6 Third Count—That defendants were indebted to the city in \$5,000, on an account stated between them, and for money had and received.

7 Ad damnum, \$50,000.

7 Pleas filed March 13th, A. D. 1860, by defendants, Russell, Wilder and Hubbard, impleaded with Ogden.

1st Plea—Non est factum to 1st and 2d Counts.

8 2d Plea—Nil debet to 3d Count.

3d Plea to 1st and 2d Counts—That defendant Russell did, whilst such collector, faithfully execute his duties and pay over all moneys, as provided by law, and according to the condition of said writing obligatory.

9 4th Plea to 1st and 2d Counts—That said Russell accounted for and paid over said sum of \$3,188.13, as provided by law, and according to the condition of said writing obligatory.

9 5th Plea to the 1st and 2d Counts—That defendant Russell was, as such collector, entitled to fees for making said collections; that said sum of \$3,188.13 was a portion of such fees, and that he kept and retained said sum for such fees (as he lawfully might) as said collector.

9 & 10 6th Plea to 1st and 2d Counts—That defendant Russell, by virtue of his office of city collector, was alone authorized by law and empowered to collect, as well all special assessments levied and assessed by said city for the year 1855 for improvements and other municipal purposes, as the taxes levied and assessed by said city for said year for ordinary purposes; and that he was by law, as such collector, wholly and solely entitled to all fees and commissions for the collection of said special assessments.

10 That said Russell was, at all times, ready and willing, whilst he was such collector, to collect all moneys due and owing to said city for, and upon, such special assessments levied during the year 1855, and did, as soon as elected city collector, notify the said city of such his readiness and willingness, and offered to collect said special assessments.

That said city unlawfully refused to allow him to collect said special assessments, or any part thereof, but unlawfully authorized and appointed certain others not having the right by law so to do, to collect the said special assessments, levied and assessed during the year 1855, and whilst he was such collector.

That the sum of \$3,188.13 is the just and true amount of fees and commissions for and upon the whole amount of said special assessments, levied and assessed by the city for the municipal year 1855, and during his term of office, and collected, and no more, and that the said Russell (as he lawfully might), as such collector, kept and retained the said sum of \$3,188.13 as fees and commissions lawfully due to him as said collector upon the said special assessments so assessed, levied and collected as aforesaid.

11 7th Plea, as to 1st and 2d Counts—Set off to the extent of \$5,000, due by said city to said Russell for fees and commissions, upon taxes collected by him as collector during his term of office.



11, 12 & 13      8th Plea, as to 1st and 2d Counts—Sets up, substantially, the same facts as in the 6th plea, as to said special assessments, and pleads a set off to the extent of \$5,000, due and owing by the city to said Russell, being the amount of the fees and commissions upon the whole amount of said special assessments collected during said year 1855, and to which said Russell, as such collector, was entitled by law.

13              9th Plea—To whole declaration set off, to the extent of \$6,000, by defendants, for work and labor, money lent, paid, laid out, and expended, money had and received, and money due on account stated.

14              Replication and demurrer to pleas, filed Sept. 21, A. D. 1860.

Replication to 1st Plea—Similiter.

Replication to 2d Plea—Similiter.

Replication to 3d Plea—That said Russell did not, as collector, pay over and account for all moneys by him received as collector, as alleged in said 3d plea. Concluding to the country.

15              Similiter, Nov. 26, 1860, by Wilder and Hubbard.

Replication to 4th Plea—That Russell did not pay over and account for the said sum of \$3,188.13, &c. Concluding to the country.

Similiter, Nov. 26, 1860, by Wilder and Hubbard.

16              Replication to 5th Plea—That said sum of \$3,188.13, kept and retained by said Russell, as in the plea alleged, was not a portion of fees and commissions due and owing by the city to said Russell for the collection of taxes for the year 1855. Concluding to the country.

Similiter, Nov. 26, 1860, by Wilder and Hubbard.

2d Replication to 5th Plea—That the keeping and retaining of the said sum of \$3,188.13 by said Russell, was, and is, contrary to, and in violation of, article 2, chap. 14, of the municipal laws of said city of Chicago, section 1st of which article provides, that "every collecting officer shall pay over into the city treasury, weekly, all moneys which he may have collected, by virtue of his office, in the kind of funds received by him."

16              Section 2d of which same article provides, that "no officer shall be allowed to withhold any money collected by him for the payment of any salary or fees which may be due him. The salary and compensation of officers shall be paid monthly by the Common Council; and it shall be the duty of officers to present their accounts monthly

"for adjustment and payment." And that said section, before and during and since the term of office of said Russell, were, and are, in full force and effect, of which defendants had notice. Concluding to the country.

Similiter, Nov. 26, 1860, by Wilder and Hubbard.

General demurrer to 6th, 7th and 8th pleas.

- 17      Replication to 9th Plea—City not indebted to defendants. Concludes to the country.

Similiter, Nov. 26, 1860, by Wilder and Hubbard.

Replication to 7th Plea, Nov. 24, 1860—That city is not indebted to Russell for fees and commissions, owing by said city to him for the collection of taxes for the municipal year 1855, in a larger sum than \$3,188.13, nor in any other sum, in manner and form as by defendants alleged in said plea. Concluded to the country.

Similiter, by Wilder and Hubbard.

- 18      Nov. 26, 1860, death of defendant Russell, suggested.

Court sustains the demurrer of the said city to the 6th and 8th pleas of defendants Wilder and Hubbard, impleaded, &c., to which ruling of the Court the said defendants Wilder and Hubbard, impleaded, &c., then and there except.

Demurrer to 7th Plea is overruled.

Jury waived, cause submitted to Court for trial.

Court finds issues for the plaintiff below, and judgment against Wilder and Hubbard, survivors, and impleaded, &c., for debt, \$50,000, and assesses the damages at \$3,974.93.

Motion for a new trial by defendants Wilder and Hubbard made and overruled, and ruling then and there by them excepted to.

Judgment against defendants Wilder and Hubbard, survivors and impleaded, &c., for debt, \$50,000 and costs; debt to be discharged on payment of damages aforesaid assessed, together with interest thereon and costs of suit.

- 19      Appeal prayed and allowed on filing bill of exceptions and bond, in the penalty of \$7,500, within 10 days.



Bond filed with J. W. Chickering as surety, Dec. 5, 1860.

December 4, 1860, bill of exceptions filed.

20 Bill of exceptions sets forth :

Cause submitted to Court for trial, without a jury, by argreement.

Plaintiff produced a bond from defendants, together with Jacob Russell and William B. Ogden. Admitted without objection.

21 Charles B. Farwell sworn by plaintiff :

Knew Jacob Russell in his life time ; know his handwriting ; proves an account current between Russell and the city to be in Russell's handwriting.

#### ACCOUNT OFFERED IN EVIDENCE.

21 & 22 The account shows the debits and credits from the city to Jacob Russell, and is balanced and dated July 15, A. D. 1856.

The last item of the debits to the city in said account is as follows :

" To commissions, \$106,270.94, collected of special taxes, 3 per ct., \$3,188.13."

Account admitted, without objection, by counsel for defendants.

22 Walter S. Frazier testified for the plaintiff :

Am clerk in the city comptroller's office ; examined the foregoing account, and says, that is a final settlement by Russell of his account as collector, and is a transcript of an account, attached to the original general tax warrant for the year 1855, also signed Jacob Russell. Witness here produced the general tax warrant for the year 1855, with the said account attached, and also produced the record of collectors' receipts for warrants delivered to them, with the entry, as follows :

For what purpose issued.	Date of issue 1855.	When returnable. 1855.	Amount of warrant.	Remarks.
General Tax Warrant for 1855,	Oct. 18	Dec. 18	206,209 03	Received the amount this 19th day of October, 1855. JACOB RUSSELL.

23 Sometimes there are additions to a tax warrant, when the assessor has omitted some persons, in making up the roll ; also deductions, where the valuation is too high, or the property is found to be exempt from taxation. Russell, in his account with the city, charges it with deductions, made from time to time during the year, on the warrant ; also with the

23 uncollected personal tax, \$2,511.74, which is always done; also with amount deposited by him with the treasurer, as per receipts, \$200,686.67; also with commissions, \$106,270.94, of special taxes collected, being 3 per cent., and amounting to \$3188.13. He credits the city with \$1,040.34—increased assessments—and with \$206,209.03, being the amount of the warrant; and the footings are thus made equal.

Russell claimed the right to collect the special assessments and his claim on the account of \$3,188.13 is for commissions on the special assessments collected during the year he was collector.

Witness also produced a number of accounts and receipts by Jacob Russell, of one of which the following is a copy:

The City of Chicago,

To Jacob Russell, City Collector, *Dr.*  
To commissions for collecting \$10,500 of the general City Taxes  
on warrant for 1855, as per Treasurer's receipt herewith,  
\$10,500 a 1½ pr cent., \$157.50  
Endorsed on the back, "Received payment. JACOB RUSSELL."

The other accounts and receipts are similar in form, and all together show the receipt by Russell, that is the amount collected by him, \$198,152.48, on the general tax warrant, and an aggregate of commissions, \$2,972.28, received and paid to him at the rate of one and one-half per cent.

Russell also collected besides, on the general warrant, \$2,533.59, on which he never was paid his commissions, \$38.01; an order was drawn for it, but never paid him. Except this, he was paid in full of all his commissions for collection on the general tax warrant.

The account shows that Russell claimed commissions to the amount of \$3,188.13, for collection of special taxes, which means assessments. I do not know of my own knowledge that Russell did not collect any portion of the special tax of \$106,270.94.

22 Plaintiff then introduced Andrew J. Marble, who testified: I knew Jacob Russell in his life time, and knew his hand-writing—proves the accounts and receipts spoken of by Frazier to be in Russell's hand-writing. In the year 1855, was in City Clerk's office as assistant Clerk. All warrants for the collection of taxes and assessments were issued and delivered by the City Clerk, and receipts were taken from the officers or collectors who received the warrants, on the books produced by Frazier, and from which Russell's receipt was read in the case. Receipts for all special assessment warrants were taken in this book. I have looked and  
24 find no receipt from Russell of any warrant for special taxes or assess-



ments. If he had received such, his receipt would be there. There were three collectors of special assessments in the year 1855, appointed by the Common Council under an ordinance for the collection of special assessments, one for each division, viz: E. A. Weber, W. B. H. Gray and Van Vechten. I knew, as a matter of fact, that the warrants for special assessments were placed that year in the hands of the special collector for each division; I delivered the warrants to the special collectors myself. Think I know of my own knowledge that Russell did not collect any special assessments that year. I had charge of that department in the City Clerk's office, and I delivered all the warrants that were delivered; I delivered no warrant to collect assessments to Russell; he reported all his collections to the Common Council. Never saw any report of special assessments collected by him. I acted as assistant clerk, and had charge of the documents that were before that body; there could not have been anything presented without going through my hands.

24 This was all the evidence in the case.

Judgment for City against Wilder and Hubbard, impleaded with Russell and Ogden for debt of \$50,000—damages assessed at \$3974.93, and costs of suit, debt to be discharged on payment of damages and costs.

Motion for new trial by Wilder and Hubbard, impleaded, &c., because—

- 25
1. The Court erred in allowing a judgment against said defendant for interest since July 15th, A. D. 1856, on the sum of \$3188.13.
  2. The judgment was contrary to the law and the evidence in the case.
  3. The said judgment was erroneous in amount and in form.

Motion overruled—ruling of the Court excepted to, and appeal prayed, &c.

Nov. 26, 1860.

GEORGE MANIERRE, [SEAL.]  
Judge, &c.

25 December 5th, 1860, bond filed in penalty of \$7900 by defendants. Wilder and Hubbard, defendants, with J. W. Chickering as surety.

285-  
Supreme Court  
April 1. 1861

J. P. Wilder

G. S. Hubbard  
3rd  
impleaded vs.  
appellants

vs.  
The City of Chicago  
appellee

Abstract of Record

J. P. Clarkson  
counsel for appellants



# UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable George Manierre Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit Court of Cook County; in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the Third Monday, (being the Fifteenth day) of November in the year of our Lord one thousand eight hundred and Sixty and of the Independence of the said United States the Eighty-fifth

Present, Honorable George Manierre Judge of the 7th Judicial Circuit of the State of Illinois. }

Carlos Haven States Attorney.

A. C. Hising Sheriff of Cook County.

Attest, W. L. Church Clerk.

Be it Remembered, that heretofore-to-wit: on the 20th day of February AD 1860. the City of Chicago, by John Lisle King, its Attorney, re-filed in the Court aforesaid its certain amended declaration against Jacob Russell et al Defendants, in the words and figures following, to-wit:

State of Illinois } In the Cook Circuit Court  
Cook County } October Term. 1856  
The City of Chicago, Plaintiff in this suit, by her Attorney, Marsh King, complains of Jacob Russell, Nathaniel P. Wilder, William B. Ogden and Gordon S. Hubbard Defendants of a plea that they render unto said plaintiff the sum of Fifty Thousand



Dollars which the said Defendants owe to and unjustly detain from the Plaintiff

For that whereas the said Defendants heretofore to wit: on the nineteenth day of March in the year of Our Lord one thousand eight hundred and fifty five at Chicago in the County aforesaid by their certain writing obligatory sealed with their seals, and now to the Court here shown, the date whereof is the same day and year aforesaid, acknowledged themselves to be held and firmly bound unto the City of Chicago in the penal sum of Fifty thousand dollars for the payment of which sum of money well and truly to be made the said Defendants bound themselves, their heirs, executors and administrators jointly and severally firmly by these said writing obligatory.

The Plaintiff says said writing obligatory was and is subject to a certain condition thereunder written whereby after reciting to the effect following, to wit: that whereas the above bounden Jacob Russell was on the ~~sixth~~ day of March A.D. eighteen hundred and fifty five elected to the Office of City Collector in and for the City of Chicago to hold said office for the period of one year and until his successor should be duly elected and qualified or until the said office should <sup>be</sup> otherwise legally vaca-



ted, it is provided that if the said Jacob Russell should faithfully execute the duties of his said office and account for and pay over ~~all~~ moneys received by him as such Collector in accordance with the Orders theretofore passed or which hereafter might be passed by the Common Council and deliver all books and papers and all other property belonging to the City to his successor in office, then the said obligation to be void otherwise to remain in full force and effect.

Said Plaintiff for affirming a breach in the said writing obligatory in fact says, that the Common Council of the City of Chicago on the 29th day of September in the year 1851 passed an order of said Council entitled "An Ordinance concerning the Assessment and collection of Taxes" (which said order or Ordinance is numbered as Chapter L.VIII on page 418 of George W. and John A. Thompson's Compilation of the Charter and Ordinances of the City of Chicago, reference to which is herewith made) A part of which said Ordinance, viz: the part entitled "Article II of the collection of taxes" prescribes defines and regulates, as the Order of the Common Council, the duties of the City Collector and particularly in the section thereof numbered six (6) directs and prescribes



3  
barrier and lamp taxes of the City of Chicago for the municipal year Eighteen hundred and fifty five as follows (therein making a perfect copy of the assessment rolls and incorporating said rolls therein as part of said warrant) and commanding therein said Jacob Russell to make levy and collect the said several sums of money set opposite to the real and personal estate therein above described as the taxes for the year aforesaid of the goods and chattels of the respective owners of said real and personal estate, and thereof make due return of the manner in which he should execute said warrant within ninety days from the date thereof which said warrant bearing date day & year last aforesaid; afterwards and before the said return day thereof to wit: on the 18 day of October in the year Eighteen hundred and fifty five at the County aforesaid was delivered to said Jacob Russell who then, and from thence, until and at and after the day of the return of the said writ was collector of the City of Chicago, to be executed in due form of law.

By virtue of which said warrant the said Jacob Russell as being City Collector of the City of Chicago as aforesaid afterwards ~~afterwards~~ and before the



return day of said warrant, to-wit: on the 18th day of January in the year eighteen hundred and fifty six levies received and collected of the taxes in said warrant specified a very large sum of money, to-wit: the sum of Two hundred and fifty thousand dollars the taxes aforesaid and proper monies of said City of Chicago - which said taxes or monies so collected by the said Jacob Russell it was his duty in pursuance of the ordinance and the aforesaid Section 6th of Article second thereof, to pay into the City Treasury as fast as the same was collected and at least as soon as the next Monday thereafter in the like funds collected by him. Yet the said Jacob Russell so being such City Collector as aforesaid not regarding his duty as such City Collector but contriving, wrongfully and unjustly intending to injure prejudice and aggrieve the said City of Chicago in that behalf and to deprive the City of Chicago of a portion of the said monies, to-wit: of the sum of Three thousand one hundred and eighty eight dollars thirteen cents, did not pay over into the City Treasury and account for a large portion of said monies, to-wit:



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the sum of Three thousand one hundred and eighty eight dollars and thirteen cents fast as and when the same were collected or so soon as the Monday succeeding their collection and in the like funds collected by him according to the order of the Common Council contained in the ordinance and section aforesaid. nor hath the said Jacob Russell paid the said sum of money Three thousand one hundred and eighty eight dollars and thirteen cents or any part thereof or accounted for the same or any part thereof since the same were collected or since or during the return ~~set~~ day of said warrant or at any time but refused and neglected to pay over and account for said sum and every part thereof and yet retains the same. By means of which said several premises the City of Chicago has been and is greatly injured and deprived of the means of obtaining the said money so withheld and is likely to lose the same, to wit: at the County aforesaid, and by means of which said several premises the said writing obligatory became forfeited and thereby an action hath accrued to the said Plaintiffs to demand & have of and from the said defendants the sum of fifty thousand dollars above —



demande

And for that whereas, <sup>also</sup> the said defendants heretofore, to wit: on the nineteenth day of March in the year of Our Lord Eighteen hundred and fifty five at the County aforesaid by their certain other writing obligatory sealed with the seals of said defendants and to the Court now here shown the date whereof was on the <sup>same day</sup> ~~date~~ of year last aforesaid acknowledged themselves to be held and firmly bound unto the City of Chicago in the penal sum of Fifty Thousand dollars for the payment of which sum of money well and truly to be made the said defendants bound themselves, their heirs, Executors and administrators jointly and severally firmly by the said writing obligatory last mentioned - which said writing obligatory last mentioned was and is subject to a certain condition therein written whereby, after reciting to the effect following, to wit: That whereas the above bounden Jacob Russell was on the sixth day of March A.D. Eighteen hundred and fifty five elected to the office of City Collector in and for the City of Chicago to hold said office for the period of one year and until his successor should be



5. duly elected and qualified or until the said office should be otherwise legally vacated, it is provided if the said Jacob Russell shall faithfully execute the duties of said office and account for and pay over all monies received by him as such collector in accordance with the orders of theretofore or which might hereafter be passed by the Common Council and deliver all book and papers and all other property belonging to the City to his <sup>Successor</sup> in office, then the said writing obligatory to be void, otherwise to remain in full force and effect,

And the said Plaintiff for assigning a breach of said last mentioned writing obligatory says, that heretofore on the 29<sup>th</sup> day of September in the year 1851 the Common Council of said City of Chicago passed an order or ordinance entitled "An ordinance concerning the appointment and collection of taxes" to which reference is here made prescribing and defining the duties of the City collector of said City, and it is provided and declared by Section Six of Article Two of said Ordinance that said collector shall pay into the City Treasury all moneys collected by him as fast as collected and at least as often as every Monday the like funds collected by him which said



Ordinance & said Section were and continued in force during all the term of office of said Jacob Russell. That while said Jacob Russell was such City Collector and the Common Council of said City having duly levied and assessed the taxes for the year 1855, a certain other warrant directed to him as collector, and bearing date the 18th day of October in the year 1855 for the collection of taxes due to the City of Chicago for the Municipal year 1855 was delivered to said Jacob Russell commanding him to make levy and collect the several sums of money as taxes therein specified and to make due return of said warrant in writy dump, by virtue of which said ~~xxxxxx~~ last mentioned warrant the said Jacob Russell proceeded to collect and did collect, to wit: on the 21st day of March in the year 1856 of said City taxes a very large amount, to wit: the sum of Two Hundred and fifty thousand dollars which sum by the Ordinance aforesaid it was his duty as City Collector to account for and pay over into the City Treasury as soon as collected and in funds like those collected or at least as often as every Monday after such sums were so collected.

Yet the said



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Jacob Russell so being such City Collector as  
aforesaid not regarding the duty of his said  
office as such collector but contriving and  
wrongfully and unjustly intending to injure  
prejudice and aggrieve the said plaintiff  
and deprive her of a portion of the money  
so collected did not nor would account for  
and pay over a large amount thereof  
to wit: the sum of three Thous and one  
Hundred Eighty Eight dollars thirteen cents  
as soon as the same was collected, or as soon as  
the Monday succeeding such collection or at  
any time before the return day of such  
warrant nor hath he at any time since the  
collection of said last mentioned sum paid  
over into the City Treasury the said amount  
of Three Thousand one Hundred eighty eight  
Dollars and Thirteen cents or any part thereof  
although his Term of office has long since  
expired and his successor has been elected and  
qualified but retained from the date of its  
collection ever since the said sum and still  
retains the same, and hitherto hath and  
still doth wholly neglect and refuse to pay  
over the said sum of money or account for  
the same,

By means of which said several prem  
ises the said last mentioned writing obliging



became forfeited and thereby an action hath accrued to the plaintiff to demand and have of and from the said defendants the sum of Fifty Thousand dollars.

Yet the said defendants although often requested so to do have not as yet paid the said sum of Fifty Thousand dollars above demanded nor any part thereof to the plaintiff but have hitherto wholly neglected and refused and still refuse to do so to the damage of the plaintiff Fifty Thousand dollars and therefore plaintiff brings suit.

And whereas the said Jacob Russell, Nathaniel P. Wilder, William B. Ogden and Gordon S. Hubbard on the tenth day of March 1856 at the County aforesaid were indebted to the plaintiff in the sum of Five Thousand dollars on an account then and there stated between them - and in the like sum of Five Thousand dollars for so much money before that time had and received by the said defendants to the plaintiffs use which said several sums were to be paid to the plaintiff on request and which said several sums remaining unpaid by defendants an action hath accrued to the plaintiff to demand and recover of said defendants said



7 sum Yet though requested to pay the same  
 defendants have not nor has either of  
 them paid the same or either of them or  
 any part of both or either - So Plaintiffs  
 damage Fifty Thousand dollars where-  
 fore Plaintiff sues

Mark String  
 Atty. for Plff

### Copy of bond

Know all men by these presents that we  
 Jacob Russell, A. P. Wilder, W. B. Ogden and  
 S. S. Hubbard of the County of Cook and  
 State of Illinois are held and firmly  
 bound unto the City of Chicago in the  
 special sum of Fifty Thousand dollars  
 for the payment of which <sup>Sum of money</sup> well and  
 truly to be made we bind ourselves our  
 heirs, Executors and administrators jointly  
 and severally firmly by these presents,  
 Sealed with our seals and dated this  
 nineteenth day of March AD 1855.

The condition of the above obligation  
 is such that whereas the above bounden  
 Jacob Russell was on the sixth day of  
 March AD eighteen hundred and fifty  
 five elected to the office of City Collector  
 in & for the City of Chicago to hold



said office for the period of one year and  
until his successor should be duly elected  
and qualified or until the said office  
shall be otherwise legally vacated. Now  
Therefore if the said Jacob Russell shall  
faithfully execute the duties of said  
office and account for and pay over  
all monies received by him as such  
collector in accordance with the orders  
heretofore passed <sup>or</sup> hereafter may be passed  
by the Common Council and deliver all  
books papers and other property belong-  
ing to the City to his successor in office  
then this obligation to be void otherwise  
to remain in full force and effect.

Signed Sealed and  
delivered in the presence  
of H. W. Zimmermann

City Clerk

Jacob Russell (Seal)

A. P. Wilder (Seal)

W. B. Ogden (Seal)

E. S. Hubbard (Seal)

Approved by the Common  
Council March 19. 1855

H. W. Zimmermann, City Clerk

And afterwards, to wit: on the 13<sup>th</sup> day of  
March A.D. 1860 the said defendants <sup>impletione</sup> by Messrs  
Clarkson & Tree, their Attorneys filed in the  
Court aforesaid in said cause, their certain  
Plea to the said declaration of the said



Plaintiff in the words and figures following, to-wit:

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Cook County Circuit Court  
February Term AD 1860

Jacob Russell, Nathaniel  
O. Hilder, and Gordon S. Hubbard } Defs  
impleaded with William B. Ogden }

vs

The City of Chicago - Plff

1<sup>st</sup> Plea. And the said defendants impleaded vs  
by Clarke & Doe their attorney come and de-  
fend the wrong and injury when vs and as  
to the said first and second counts of the  
said declaration say that the said supposed  
writing obligatory therein set forth is not  
their deed and of this they put them-  
selves upon the Country vs

2<sup>d</sup> Plea- And the said defendants impleaded  
vs as to the said third Count of the said  
declaration say that they do not owe the said  
sum of money therein mentioned or any  
part thereof in manner and form as the  
said Plaintiff hath in said third Count  
complained against them, and of this  
they put themselves upon the Country vs,

3<sup>d</sup> Plea- And for further Plea to the said first



and second Counts of the said declaration the said defendantsimpleaded &c say actio  
now because they say that the said defen-  
dant Jacob Russell did, from time to time  
and at all times after the making of the  
said writing obligatory, and whilst he  
was City Collector in and for the said City  
of Chicago, faithfully execute all the duties  
of his said office, and did account for  
and pay over all monies <sup>received</sup> by him as such  
Collector, in accordance with the orders be-  
fore the sixth day of March AD 1855, the  
said day of his election to the said office  
of City Collector, and after said day during  
the continuance of his said office, passed  
by the said Common Council of the said City  
of Chicago according to the tenor and effect,  
true intent and meaning of the said con-  
dition of the said writing obligatory, and  
this the said defendantsimpleaded &c are  
ready to verify wherefore they pray jud-  
gment &c.

Hk Plew- And for further plea to the said  
first and second Counts of the said de-  
claration the said defendantsimpleaded &c  
say actio now, because they say that the said  
defendant Jacob Russell, so being City collector



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in and for the said city of Chicago, did well and truly pay over into the City Treasury of the said city of Chicago and account for the said sum of Three Thousand one hundred and eighty eight dollars and thirteen cents, and in the manner appointed and provided by the sixth section of said second article of said Ordinance entitled "An ordinance concerning the assessment and collection of taxes, passed by said Common Council on the 29<sup>th</sup> day of September AD 1851 according to the true intent and meaning and according to the tenor and effect of the said sixth section and of the said condition of the said writing obligatory and of this the said defendants impleaded &c put themselves upon the country &c,

5<sup>th</sup> Plea. - And for further plea to the said first and second Counts of the said declaration the said defendants, impleaded &c say actio non, because they say that the said defendant Jacob Russell, so being the City Collector of said city of Chicago, duly elected and qualified at the time and for the period in the said first and second Counts set forth, of right and by the laws and ordinances of the Common Council of said city of Chicago was entitled to certain fees and com-



missions for the collection by him as such collector of the taxes of said City for said year 1855, and upon all monies by him so collected as such collector, and that the said sum of Three Thousand one hundred and eighty eight dollars and thirteen cents, claimed and alleged in said first and second Counts of said declaration to be due and owing by him to the said City of Chicago were and are a portion of the said fee and commissions, so lawfully due and owing by the said City of Chicago to him for the collection of said taxes for said year, and were as such, by him (as they well and lawfully might) kept and ~~and~~ retained. And this the said defendants implicate &c are ready to verify, whereupon they pray judgment &c,

6th. Plea- And for further plea to the said first and second Counts of the said declaration, the said defendants implicate &c say actio non, because they say that the said defendant Jacob Russell, as being such collector of the said City of Chicago, elected and qualified at the time and for the period in said first and second Counts set forth, was by law authorized and empowered solely to collect <sup>as such</sup> the monies then and accruing to said City for and upon all special assessments for improvements and for other municipal purposes levied



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and assessed during said Municipal year 1855 by the said City, as the taxes levied and assessed by said City for said year for ordinary purposes, and was by law as such Collector wholly and solely entitled to all fees and commissions for the collection of such special assessments so levied as aforesaid by said City for said year, and the said defendants, impleaded to show that the said defendant Jacob Russell was, at all times, during his said term of office as such Collector ready and willing to collect all the monies due and owing to the said City of Chicago for upon and by virtue of all special assessments by it levied and assessed during said year 1855, and during his said term of office for improvements and other municipal purposes and did immediately after his said election as such Collector notify the said City of Chicago, of such his readiness and willingness and did offer to collect, as such Collector all such said monies and collections for said special assessments made, levied and assessed during his said term of office by said City but that the said City of Chicago unlawfully refused to allow him to collect the same, or any part thereof, and unlawfully appointed and authorized certain others, not having the right by law as to do, to collect all the said



monies so levied and assessed by the said City of Chicago during the said year 1855 and during his said term of office for said special assessments. And the said defendant impleaded &c further avers that the said sum of Three Thousand one hundred and eighty eight dollars and thirteen cents alleged in said first and second Counts to be due and owing by the said defendant Russell to said City of Chicago was and is the just amount of fees and commissions for and upon the whole amount of the said special assessments so levied and assessed by the said City of Chicago for the said Municipal year 1855, and during his term of office and collected, and no more, and that he the said defendant Russell, as he lawfully might, kept and retained the same as he lawfully might such City Collector aforesaid as to him lawfully due for the said fees and commissions upon the said special assessments so levied, assessed and collected as aforesaid. And the said defendants, impleaded &c, are ready to verify, wherefore they pray Judgment &c,

7th, Plea - And for further plea to the said first and second Counts of the said declaration the said defendants impleaded &c say actis non, because they say that before and at the time of



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the commencement of this suit, the said City of Chicago was and still is indebted to the said defendant Jacob Russell in a much larger sum of money than the amount due and owing by him to the said plaintiff by virtue of the said condition of the said writing obligatory, to wit: in the sum of Five Thousand Dollars for so much fees and commissions lawfully due and owing by the said City of Chicago to him for the collection by him during the municipal year 1855, and during his said term of office as such City collector, of a large amount, to wit: of the amount of Three Hundred Thousand dollars of the taxes levied and assessed by said City for said municipal year 1855 and during his said term of office, and by him collected as such collector and by virtue of his said office, and paid over from time to time as collector, in the manner provided by law to the said City of Chicago: which said sum of Five Thousand Dollars so due and owing by the said City of Chicago to the said defendant Russell is wholly unpaid and exceeds the said sum so due and owing, as in said first and second counts alleged, from the said defendant Russell to the said City of Chicago by virtue of the said condition of the said writing obligatory, and which said sum of Five Thousand Dollars



so due and owing by the said City of Chicago to the said defendant Russell as aforesaid, or so much thereof as shall be necessary in this behalf, the said defendants are ready and willing and hereby offer to set off and allow to the said City of Chicago against the said sum of money so due and owing from the said defendant Russell to the said City, by virtue of the said condition of the said writing obligatory, according to the form of the Statute in such case made and provided, And the said defendants impleaded &c, are ready to verify wherefore they pray Judgment &c.

8th Plea - And for further plea in this behalf to the said first and second Counts of the said declaration the said defendants, impleaded &c, say Action non because they say that before and at the time of the commencement of this suit at Chicago, to-wit, at Cook County aforesaid, the said plaintiff was and still is <sup>indebted</sup> ~~entitled~~ to the said defendant Jacob Russell in the sum of Five Thousand Dollars lawful money of the United States in manner following that is to say That the said defendant Russell being such City Collector for said City of Chicago



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duly elected and qualified at the time and to hold his said office for the period in said first and second Counts mentioned was by law alone authorized to collect all monies due and accruing to the said City of Chicago as well for all assessments levied and assessed by said City for special purposes during the Municipal year 1853 and during his said term of office, as for the taxes regularly levied and assessed for ordinary purposes for said year and was alone entitled by law to receive all the lawful commissions and fees for the collection of the same; and being so solely authorized that he the said defendant Russell was always, from the time of such his election and qualification as such City Collector, ready and willing to collect as such Collector during his said term of office as well the monies due said City for and by virtue of said special assessments as those due to it upon for and by virtue of the ordinary taxes levied and assessed for said Municipal year 1853, and that he notified the said City of Chicago immediately upon such his election and qualification as such Collector of such his readiness and willingness to make all the collections aforesaid, but that the said



City of Chicago, without authority of law wholly refuses to allow the said defendant Russell, being such collector, to collect the said Special assessments, and to receive the lawful fees and commissions therefor, and without authority of law appointed and empowered certain other persons, not authorized by law so to do, to collect all the said special assessments for said Municipal year 1855, and paid to them the sum of Five Thousand Dollars as fees and commissions for the collection by them of said special assessments, so of right and law belonging to the said defendant Jacob Russell, and these defendants unpleadedly say that by reason of such the unlawful act of the said City of Chicago the said plaintiff is, the said City was, before the commencement of this suit, and still is indebted to the said defendant Russell as aforesaid in the said sum of Five Thousand Dollars, the amount aforesaid of said lawful fees and commissions upon the whole amount of said special assessments, so lawfully belonging to him and so unlawfully paid by the said City of Chicago before the commencement of this suit to the said persons unauthorized by law to collect said special assessments, which said sum of Five Thousand Dollars so due and owing



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by the said City of Chicago to the said defendant Russell, is now wholly unpaid and exceeds the said sum so due and owing from the said defendant Russell to the said City of Chicago, as in said first and second Counts alleged by virtue of the said condition of the said writing obligatory, and which said sum of Five Thousand Dollars so due and owing from the said City of Chicago to the said defendant Russell as aforesaid or so much thereof as shall be necessary in this behalf, the said defendants impleaded &c are ready and willing and hereby offer to set off and allow to the said City of Chicago against the said sum of money so alleged to be due and owing from the said defendant Russell to the said City of Chicago by virtue of the said condition of the said writing obligatory, according to the form of the Statute in such case made and provides, and this the said defendants impleaded &c are ready to verify, Wherefore they pray Judgment &c.

9th. Plea. - And for further plea in this behalf to the said declaration the said defendants impleaded &c say Actis non because they say that before and at the time of the



commencement of this suit, the said City of Chicago was and still is, indebted to the said defendants impleaded &c. in the sum of Six Thousand Dollars for the work and labor care and diligence of the said defendants impleaded &c. by them before then done and bestowed in and about the business of the said City of Chicago at its request and for so much money before then lent and advanced to, and paid laid out and expended for the said City of Chicago by the said defendants impleaded &c. at its like request, and for other money before then had and received by the said City of Chicago to and for the use of the said defendants impleaded &c. and for so much money before <sup>they</sup> ~~that~~ ~~have~~ found due and owing by the said City of Chicago to the said defendants impleaded &c. upon an account then and there stated between them; which said sum of money is still wholly due and unpaid, and the said defendants are ready and willing and hereby offer to set off and allow to the said City of Chicago, so much of the said sum of Six Thousand Dollars as shall be sufficient in that behalf, against any sum of money which the said City of Chicago shall establish on the trial of this cause to be due and owing by the said defendants impleaded &c.



14 to wit: by virtue of the said condition of the said writing obligatory in the said first and second counts set forth, and by virtue of the said third count of the said declaration and the allegations therein contained, according to the form of the Statute in such case made and provided,

And this the said defendants implored &c are ready to verify, wherefore they pray judgment &c,

Clarkson & Drexel

Attorneys for Defs Impl'd &c.

And afterwards, to wit: on the 21st day of September A.D. 1860 the said Plaintiff by Geo. Lytle King, its attorney filed in the Court aforesaid its certain Replications and Demurs to the said Pleas of the said defendants Russell et al Impleaded &c in the words and figures following to wit:

State of Illinois } In the Circuit Court of Cook County.  
Cook County } September Term - 1860.

The City of Chicago  
against

Jacob Russell, Nathaniel Wilder  
& Gordon S. Hubbard Impl'd  
with William B. Ogden

And the Plaintiff as to



the plea of the defendants first pleaded, where-  
of they have put themselves on the Country,  
doth also put herself upon the Country,

And the plaintiff as to the plea of the  
defendants secondly above pleaded whereof  
they have put themselves on the Country, doth  
also put herself on the Country,

And plaintiff as to the plea by defendant  
thirdly pleaded says she ought not to be preclu-  
ded &c because she says said Jacob Russell  
did not faithfully execute the duties  
of his said office of collector, and did  
not account for and pay over all moneys  
by him received as such collector in ac-  
cordance with the orders in said pleas  
mentioned in manner and form  
as defendants in their said third  
plea alledged, and the plaintiff prays  
this may ~~~~~



be enquired of by the County,

15

And the defendants Wilden & Hubbard  
impleaded with Jacob Russell who died  
April 7. 1860. and William B. Ogden who is  
not served with process of summons do  
the like -

Clackson & Ince

Nov. 26. 1860

attys for Defendants Wilden & Hubbard

And plaintiff as to the plea by the defendant  
fourthly pleaded says she ought not to be precluded  
there because she says said Jacob Russell did not  
pay over into the City Treasury and account for  
the said sum of Three Thousand one hundred  
eighty eight dollars thirteen cents or any part  
thereof in the manner appointed and provided  
by the ordinances in said plea specified in man-  
ner and form as the defendants have pleaded  
in their said fourth plea.

And the plaintiff prays this may be enqui-  
red of by the County,

And the defendants Wilden & Hubbard implea-  
ded with Jacob Russell who died April 7 A.D.  
1860. and William B. Ogden who is not served  
with process do the like,

November 26. 1860

Clackson & Ince

attys for Defendants Wilden & Hubbard



And plaintiff as to the plea by the defendants  
fifthly above pleaded says she ought not to  
be precluded &c because she says the sum  
of Three Thousand one hundred and eighty  
eight dollars thirteen cents claimed retained  
and kept by said Jacob Russell, as specified in  
said plea was not nor is the same sum a por-  
tion of fees and commissions for the collection  
of taxes for the year 1855 lawfully due and  
owing by the said City of Chicago to said  
Russell, as alleged in said plea, nor does  
or did the said City of Chicago owe and  
stand indebted to said Jacob Russell ~~in~~  
in the said or any sum whatever for fees  
and commissions for collections of taxes  
or moneys by him in the year 1855 or for  
any purpose or on any account whatever,  
And this the plaintiff prays may be  
enquired of by the Court,

And the said defendants Wilson & Hubbard  
impleaded with Jacob Russell, who died  
April 7. 1860, and William B. Ogden  
who is not served with process do the like.  
November 26. 1860- Clarkson & Dree  
Attys. for Defendants Wilson & Hubbard

And plaintiff for further and second



16 reply to the plea by defendants fifthly above pleaded (leave of the Court for such second reply being first had and obtained according to the statute in such case made and provided) says she ought not to be precluded because she says:-

The keeping or retention of the said sum of Three Thousand one hundred and eighty eight dollars thirteen cents or of any other sum by said Jacob Russell on pretence as alleged in said plea, of fees and commissions due said Russell for collection of taxes or other moneys of the City of Chicago by him as City collector were and are contrary to and in violation of Article second, Chapter fourteen of the Municipal Laws of said City of Chicago: Section first of said article being in the words following: "It shall be the duty of every collecting officer of the City to pay weekly to the Treasurer all moneys which he may have collected by virtue of his office in the kind of funds received by him" And section second of said Article in the words following:-

"No officer shall be allowed to withhold any money collected by him for the payment of any salary or fee which



"may be due him, The salary and com-  
pensation of officers shall be paid monthly  
by the Common Council, and it shall be  
the duty of officers to present their accounts  
monthly for adjustment and payment"  
which said sections of said ordinance  
prior to and during and ever since the term  
of office of said Jacob Russell were and  
are in full force and effect, of which  
defendants had notice,

And this the plaintiff  
may be enquired of by the County,

And the defendants Wilden Hubbard,  
impleaded with Jacob Russell who died  
April 7<sup>th</sup> AD 1860, and William B. Ogden who  
is not served with process, do the like—  
November 26, 1860—Blackson & Tree Attys for  
Defendants Wilden & Hubbard

And as to the pleas by the defendants sixthly  
seventhly and eighthly pleaded above the plaintiff  
says the said pleas and the matters therein con-  
tained are not, nor is either of them or the matter  
of either of them sufficient in law to preclude her  
from maintaining her said action nor is she  
bound to answer the same. This she is ready  
to verify.



as to the plea by the defendants monthly  
and lastly above. pleaded the plaintiff says  
she ought not to be precluded &c because she  
says she is not indebted to the defendants in  
manner and form as the defendants have  
thereof above alleged.

And this the plaintiff  
prays may be required of by the Court.

John Lyle King  
Atty for City

And the defendants Wilder & Hubbard implored  
with Jacob Russell who died April 7. 1860 and  
William B. Ogden who is not served with  
process do the like

Clackson & Free attys for  
defendants Wilder & Hubbard.

And afterwards, to wit: on the 24th day  
of November ad. 1860 the said plaintiff by her  
said Attorney filed in the Court aforesaid in said  
cause its certain Replication to the said defen-  
dants 7th Plea, in the words and figures follow-  
ing, to wit:

City of Chicago

Jacob Russell & others

Court Court Nov 2' 60

And said plaintiff as



to the plea by the defendants severally above  
pleaded says she ought not to be precluded  
because she says said City of Chicago was  
not and is not indebted to said Jacob  
Russell on a larger sum of money than  
the amount due and owing by said Russell  
to said City by virtue of said writing ob-  
ligation, for so much fees and commissions  
due and owing by said City to said Russell  
for the collection of taxes for the municipal  
year 1855; nor was or is said City of  
Chicago indebted to said Russell in any  
sum whatever for or on account of fees  
and commissions accruing & due said  
Russell as collector of taxes for the year  
1855, in manner and form as defendants  
have pleaded in said seventh plea,

And plaintiff prays this may be enjoin-  
ed of by the Court,

Mo Lyse King  
City Attorney,

And the defendants Wilder &  
Hubbard in pleas do the like

Clarkson & Free  
their attys

And afterwards, to wit: at the november  
term of said Court, to wit: on the 26th day  
of November A.D. 1860, the following proceedings



among others were had and entered of record  
 18 therein in said cause, to-wit;

City of Chicago

7481 2340, <sup>vs</sup>

Jacob Russell Nathaniel  
 P. Wilder, William B. Ogden  
 and Gordon S. Hubbard } Debt

This day comes the said  
 plaintiff by John Lytle King, its attorney, and now here  
 suggests to the Court, that since the commencement of said  
 suit Jacob Russell, one of the defendants thereto, has depar-  
 ted this life, and thereupon come also the said defendants.  
 Nathaniel P. Wilder and Gordon S. Hubbard, Survivors of  
 Jacob Russell deceased, and impleaded with William B.  
 Ogden, by Clarkson & Tree their attorney, and the Court  
 having heard counsel as well in support of the demur-  
 ner of the plaintiff to the 6th & 8th and to the 7th  
 pleas of the defendants Wilder and Hubbard to the plain-  
 tiff's declaration filed in said cause, as in opposition  
 thereto, and the Court being now fully advised in the  
 premises, doth find that the defendants said 6th &  
 8th pleas are not sufficient in law to bar and preclude  
 the said plaintiff from having and maintaining  
 his aforesaid action against them; Therefore it is or-  
 dered that said demurer to said 6th & 8th pleas be  
 and the same is hereby ~~overruled~~ sustained, to which  
 ruling of the Court in sustaining said demurer, the



Defendants Wilder and Hubbard by their Counsel now here except. And the Court doth further order that said demurrer of plaintiff to said 7th plea of Defendants be overruled, and the same hereby is overruled accordingly, and thereupon by oral consent of said parties given in open Court, said cause is submitted to the Court for trial of the issues joined therein, and the intervention of a jury waived, and the Court, after hearing all the evidence adduced by the parties, the arguments of Counsel as well on the part of the plaintiff as of the defendants, and being fully advised in the premises, doth find the issues for the plaintiff, and that the defendants Wilder Hubbard, survivors and impleaded as aforesaid, owe and are indebted unto the plaintiff in the sum of Fifty Thousand Dollars for its debt in said declaration mentioned, and besides the plaintiff's damages herein by reason of the premises breaches assigned in said declaration to the sum of Three Thousand nine hundred and seventy four dollars and ninety three cents. Whereupon the said defendants Wilder and Hubbard, by their Counsel, move the Court for a new trial of said cause, and the Court being now fully advised in the premises, doth order that said motion be and the same is hereby overruled, to which ruling of the Court in overruling said motion for a new trial, the defendants Wilder and Hubbard by their Counsel now here except.

Therefore it is considered by the Court that said



19 Plaintiff do have and recover of the said defendants Nathaniel P. Wilder and Gordon S. Hubbard, Survivor of Jacob Russell, and impleaded with William B. Ogden its said debt of Fifty Thousand Dollars in form aforesaid, together with its costs and charges by it about its suit in this behalf expended and have execution therefor,

And it is further Ordered that upon payment of the sum of three thousand nine hundred and seventy four dollars and ninety three cents, the damages aforesaid by the Court herein assessed, together with the interest accrued thereon and all costs of suit, that said Judgment be deemed paid and satisfied in full, and on motion it is further Ordered that the time for defendants Wilder and Hubbard to file their bill of exceptions in said cause be extended ten days and the same hereby is extended accordingly.

And afterwards, to wit, at the same term of said Court last aforesaid, to wit, on the 5th day of December in the year last aforesaid, the following proceedings, among others, were had and entered of record therein in said cause to wit,



City of Chicago

7481 2340.

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Nathaniel J. Wilder and  
Gordon S. Hubbard Survors  
of Jacob Russell dec'd Imp'd  
with William B. Ogden

Rebt

This day come the said  
defendants Nathaniel J. Wilder and Gordon S. Hubbard  
by Clarkson & Ince their Attorneys, and pray an appeal  
herein to the Supreme Court of the State of Illinois,  
which is granted by the Court upon condition that the  
said defendants Wilder and Hubbard shall within ten  
days from this date execute and file with the Clerk of  
this Court their appeal bond in the penal sum of Seven  
thousand nine hundred dollars, conditioned according to  
law with John W. Schuckering as surety thereon.



And afterwards, to wit: on the 14th day of December in the year last aforesaid the said defendants, impleaded &c by Clarkson & Tree their attorneys, filed in the Court aforesaid in said Cause their certain Bill of Exceptions in the words and figures following, to wit:

In the Levee County Circuit  
Court of the November Term AD 1860

Nathaniel J. Kilder and  
Gordon S. Hubbard implead  
with Jacob Russell and  
William B. Ogden } Defendants

ads  
The City of Chicago - Plaintiff

Be it remembered  
that on this twenty Sixth day of November AD 1860  
that being a day of the November Term AD 1860 of  
said Circuit Court, this cause came on for trial  
before the Honorable George Manierre Judge of the  
said Court upon the aforesaid issues joined therein  
and thereupon the said parties then and there ap-  
peared by their counsel and the said cause was  
then and there submitted for trial upon the said  
issues to the said Court, a Jury being then and  
there waived,

And the Counsel for the plaintiff to maintain  
and prove the said issues on its part, then and



there produced and offered in evidence a certain Bond or writing obligatory made and executed by the said defendants, implorers and by the said Jacob Russell and William B. Ogden dated March 19<sup>th</sup> A.D. 1855. which is in the words and figures following to wit:

Know all men by these presents that we Jacob Russell, N. P. Wilder W. B. Ogden and G. S. Hubbard of the County of Cook and State of Illinois, are held and firmly bound unto the City of Chicago in the penal sum of Fifty Thousand dollars for the payment of which sum of money well and truly to be made we bind ourselves, our heirs executors and administrators jointly and severally firmly by these presents Sealed with our seals and dated this nineteenth day of March A.D. 1855. The condition of the above obligation is such that whereas the above bounden Jacob Russell was on the sixth day of March A.D. Eighteen hundred and fifty five elected to the office of City Collector in & for the City of Chicago to hold said office for the period of one year and until his successor shall be duly elected and qualified or until the said office shall be otherwise legally vacated. Now therefore if the said Jacob Russell shall faithfully execute the duties of said office and account for and pay over all monies received by him as such Collector in accordance with the orders heretofore passed or hereafter may be passed by the Common Council and deliver all books papers and all



other property belonging to the City to his successor in office then this obligation to be void otherwise to remain in full force & effect.

Signed sealed and delivered in the presence of  
H. H. Gummertmann, City Clerk  
Approved by the Common Council, March 19th  
1855. H. H. Gummertmann, City Clerk.

Jacob Russell *Seal*  
H. P. Wilder *Seal*  
H. B. Ogden *Seal*  
E. S. Hubbard *Seal*

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which was then and there admitted as evidence by the said Court without objection on behalf of the said defendants.

The plaintiff further to maintain and prove the said issues on his part offered as a witness, Charles B. Darwell, who being duly sworn deposed and testified as follows: I knew Jacob Russell in his lifetime and know his handwriting (a paper purporting to be a statement by Jacob Russell of his account with the City as collector was here shown to the witness; this is Russell's handwriting; The plaintiff then offered in evidence the said account current above examined and proven by said Darwell to be in the handwriting of the said Russell dated July 15th A.D. 1856 which is as follows:

City of Chicago in account with Jacob Russell City Collector &c.  
To Assessment on Lot 65 B. 1, Canal Zone. Sub of  
N. 1/2 of N. 1/2 of N. E. 1/4 Sec. 17, P. Allen Square 2.80  
" Error in extending S. L. 7 S. 17 B. 17 C. 2. 2.00  
" Amt deducted personal tax E. M. Brown 20.00  
H. D. Com Council



1	Am't. deducted Personal Tax S.D. Bruce & Dobson	93.10
"	Erron in Warrant Lot 25 in B. 67 O.C.	61.20
"	" " " " " " " 5 specimens $\frac{1}{2}$	
	Sub L. S. N. $\frac{1}{4}$ Sec 22 $\frac{1}{4}$	2.80
1	Remission Personal Tax. Saml Myers Feb 4	7.00
"	19 $\frac{1}{2}$ ft Lot 8 B. 38 O.C. 47.1000	56.80
"	Personal Tax H. B. Farrell in person	20.47
	Erron Warrant S.D. Lot 3. B. 12 O.C. -	26.56
"	" " Lot 75 B. 61. Sec. 7. 39.14	.88
	Canal Lands E $\frac{1}{2}$ B. 35 in E $\frac{1}{2}$ N $\frac{1}{2}$ of S. N. $\frac{1}{4}$ Sec 19	6.00
"	" " 36 " " "	5.60
"	" " Block 37. 38. 43. 44	38.40
"	" " E $\frac{1}{2}$ Blocks 45 & 46	10.80
"	" " Blocks 57 to 62 inclusive	120.00
	S. L. 12 L. 2. B. 14. S. E. $\frac{1}{4}$ Sec 21. W & alley	.60
	Erron ap Gun Light n. 100 ft. of E $\frac{1}{2}$ of N $\frac{1}{2}$ B 39 King's add	2.80
	ap'r remitted 10 ft. in alley Lot 6 & 7 B 42 Carpenter add <sup>Dep 2.12</sup> Oct 22	2.32
	Canal Lands Sub of N $\frac{1}{2}$ of N $\frac{1}{2}$ of S. N. $\frac{1}{4}$ Sec 19 <sup>Dep 40.00</sup> Oct 22	60.00
"	" " Lots 8 & 9 B. 64 O.C. <sup>Dep 14.40</sup> Costs <u>20</u>	14.60
	City Lots 11 $\frac{1}{4}$ L 1 & 2. B 83. S. S. add'n <sup>Dep 13.30</sup> Costs <u>20</u>	13.50
	Church Lot Lot 1 B. 54 Carpenter add <sup>Dep 9.20</sup> Costs <u>.10</u>	9.30
"	" " 1 & 2 & 80 R. M & R add <sup>Dep 12.60</sup> Costs <u>20</u>	12.80
	Canal Lands B. 14. Sec. 7. <sup>Dep 44.00</sup> Costs <u>10</u>	44.10
"	" " " 21 " 7 <sup>Dep 43.20</sup> Costs <u>.10</u>	43.30
"	" " " 5 " 7 <sup>Dep 40.00</sup> Costs <u>10</u>	40.10
	Church Lot Lot 7 B. 38. O.C. <sup>Dep 40.00</sup> Costs <u>.10</u>	40.10
"	" " " 2 " 54 " <sup>Dep 32.00</sup> Costs	32.00

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" Streets past Lots 12 + 37, 13 + 36. B. 87. $\frac{1}{2}$		
" " " " " " " " " " " "	W. J. See 39, 39, 14 $\frac{1}{2}$	2.31
Canal Lands Lot 3 B. 24, O. J.		19.20
" " " 10 " 64. " "	Jan 720 Cts 10	7.30
" " " 18 " " "		7.20
" " " 7, 8, 9 + 10. B. 63. O. J.		28.80
" " " 19 B. 70 O. J.	24 8.00 Cts 10	8.10
Personal Tax not collected - S. D.	1546.54	
" " " " " " " " " " " "	M. D. 417 59	
" " " " " " " " " " " "	W. D. 547. 61	2.511.74
" Amount deposited with City Treas <sup>r</sup> as receipts		200.686.67
" Commissions \$106270.94 collector		
of Special Taxes 3% —		3.188.13
		<u>207,249.38</u>

CP

By Increase of a payment Lot 2. B. 18 O. J.	224 22.40	201.60
" " " " " 3 " " " "	176 " " 17.60	158.40
" Error Keobury Tolly & Maxwell	S. D.	12.60
" " W. J. Dommumuck & Co	"	84.00
" " S. J. White & Bros	"	49.00
" " E. B. Manbalt & Co	"	11.55
" " W. Luddington & Co	N. D.	24.00
" " Norton & Bros	"	20.00
" " Bernard & Soudheim	S. D.	5.60
" " D. L. Jacobs	N. D.	8.00
" " J. Wilde	"	12.80
" " Stephani & Bros	"	3.20



" " C. H. Castle " 3. 20  
 " Error in Warrant Lot 1 to 14  
 inclusive B. Co. O. J. 446.40  
 " Am't. of Warrant 206,209.03  
 207,249.38

Errors & commissions excepted -

Chicago July 15<sup>th</sup> 1856. Jacob Russell

which was then and there admitted as evidence by the Court without objection thereto by the counsel of the said defendants.

The plaintiff next produced as a witness on his behalf Walter S. Frazier - who being duly sworn testified as follows. I am Clerk in the City Comptroller's office (examines the above set out account) and says this account by Russell is a final settlement by him of his account as collector and is a transcript of an account attached to the original general tax warrant also signed Jacob Russell. witness then produced the general tax warrant for the year 1855, with the said account attached also produced the record of collectors receipts for warrants delivered to them with the entry as follows,

For what purpose issued	Date of issue	When returnable	Amount warrant	Remarks
	1855	1855		Received this Warrant
General Tax Warrant of 1855	Oct. 18	Dec 18	206,209.03	This 19 <sup>th</sup> day of October 1855 Jacob Russell

It often occurs that upon a tax Warrant that there must be additions made, the Common Council by reason of the ap-  
 upon having omitted some persons in making up the roll and also there must generally be some deductions



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where the valuation is too high or property is found to be exempt from taxation. In his account Russell charges the City with deductions made from time to time during the year on the Warrant. He also charges the City with the uncollected personal tax being in this instance \$2511.74. This is always done. He also charges the City with amount deposited by him from time to time with the treasurer as per receipts and it is here \$200,686.67. He also charges the City in his account with the commissions \$106,270.94. collector of special taxes being three per cent and amounting to \$3188.13. He credits the City with \$1040.35 increased assessments and with \$206209.03 being the amount of the Warrant and the footings are thus made equal. Russell claimed the right to collect special assessments and his claim in the account of \$3188.13 is for commissions on the special assessments collected during the year he was collector. Said Brazier also produced a number of accounts and receipts by Jacob Russell of one of which the following is a copy.

City of Chicago March 31<sup>st</sup> 1856

The City of Chicago

To Jacob Russell City Collector Ad.  
 To Commissions for collecting \$10,500 of the General City tax on  
 warrant for 1855 as per Treasurer receipt herewith  
 \$10,500 @ 1 1/2 per cent \$157.50  
 endorsed on the back. "Received Payment Jacob Russell."

The other accounts and receipts are similar in form and all together show the receipt by Russell that is the



amount collected by him \$198,152.48 on the General tax warrant and an aggregate of commissions \$2972.28 received and paid to him at the rate of one and one half per cent, In addition to the amount shown as collected in these bills Russell collected an additional of \$2533.59 on the general warrant upon which he never was paid his commissions amounting to \$38.01 an order was drawn on the City Treasurer for the amount, but was never delivered to Russell, with this exception he was paid in full of all his commissions or fee for collections on the General tax warrant.

The account shows that Russell claimed commissions to the amount of \$3188.13 for collection of special taxes which means afelements. I do not know of my own knowledge that Russell did not collect any portion of the special tax of \$106,270.94.

Plaintiff then introduced Andrew J. Marble, who being duly sworn testified as follows, I knew Jacob Russell in his lifetime and knew his handwriting (the accounts and receipts produced by Mr. Drazier were shown to this witness) these are all in Russell's handwriting. In the year 1855 I was in the City Clerk's office as assistant clerk, all warrants for the collection of taxes and afelements were issued and delivered by the City Clerk and receipts were taken from the officers or collectors, who received the warrants in the book produced by Mr. Drazier and from which Russell's receipt was read in this case. Receipt for all Special afelements Warrants were taken in this book

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I have looked and find no receipt from Russell of any warrant for special taxes or assessment. If he had received such a warrant his receipt would be there. There were three collectors of Special assessments in the year 1855 appointed by the Common Council under an ordinance regulating collections of Special assessments, one for each division, viz: E. M. Weber, W. H. B. Gray and Van Vechten. I knew as a matter of fact that the warrants for Special assessments were placed that year in the hands of the special collectors for each division. I delivered the warrants to the special collectors myself. I think I know of my own knowledge that Russell did not collect any special assessments that year. I had charge of that department in the office of the City Clerk and I delivered all the tax warrants that were delivered. I delivered no warrants to collect assessments to Russell. We reported all his collections to the Common Council. I never saw any report of Special assessments collector by him. I acted as Assistant Clerk and had charge of the documents that were before that body. There could not have been anything presented without going through my hands.

This was all the evidence offered by the said plaintiff and the said defendants offered no evidence in their behalf.

And thereupon the said Judge did then and there render a judgment in favor of the said City of Chicago and against the said Nathaniel P. Wilder and Gordon



S. Hubbard impleaded with the said Jacob Russell and William B. Ogden for the sum of Fifty Thousand Dollars (\$50,000) debt and Three Thousand nine hundred and Seventy four dollars and ninety three cents (\$3974.93) damages and costs of suit - the debt to be discharged upon payment of the damages aforesaid and costs of suit,

And thereupon the said Nathaniel P. Wilder and Gordon S. Hubbard impleaded &c. by their counsel Clarkson and Tree moved the said Court for a new trial in said cause which said motion is as follows,

Cook County Circuit Court  
November Term A.D. 1860

Nathaniel P. Wilder and  
Gordon S. Hubbard impleaded  
with Jacob Russell and William B. Ogden

Defendants

vs  
The City of Chicago

Plaintiff

And now comes the said defendants impleaded &c. by Clarkson and Tree their attorneys, and moves the Court for a new trial in this cause because,

1. The Court erred in allowing a judgment against said defendants for interest since July 15<sup>th</sup> A.D. 1856 on the sum of \$3188.13.

2. The judgment was contrary to the Law and the evidence in the case,



3. The said judgment was erroneous in amount and in form,

Clarkson and Tree

Attorneys for defendants

Nathan W. Hubbard

which said motion the said Court then and there required to which decision and ruling of the Court the said Nathan W. Hubbard and Hubbard pleaded to them and there by their said Counsel excepted, and prayed an appeal to the Supreme Court of the State of Illinois: and upon the prayer of the said defendants <sup>Nathan W.</sup> Hubbard and <sup>Hubbard</sup> pleaded to praying such appeal the said Judge hath to this Bill of Exceptions put his Seal according to the form of the Statute in such case made and provided this 26th day of November AD 1860,

George M. Mene Seal

Judge 7th Judicial Circuit Illinois

And afterwards, to wit: on the 5th day of December in the last aforesaid, the said defendants pleaded to file in the office of the Clerk of said Court their certain appeal Bond in said cause, in the words and figures following, to wit:

Know all men by these presents that we Nathaniel W. Hubbard and Gordon S. Hubbard and John W. Chickering of Chicago in the County of Cook and State of Illinois are held and firmly bound unto the City of Chicago in said State of Illinois in the penal sum of Seven Thousand nine hundred Dollars lawful money of the United States for the payment of which sum well and truly to be made <sup>unto the said City of Chicago</sup> we bind,



ourselves our and each of Our heirs executors and administrators jointly and severally firmly by these presents, Dated at Chicago and sealed with our seals this 27<sup>th</sup> day of November AD 1860.

The condition of the above obligation is such that whereas the said City of Chicago did on the twenty sixth day of November AD 1860 recover a Judgment in the Circuit Court of the County of Cook aforesaid before the Honorable George Manierre Judge of the said Circuit Court against the above bounden Nathaniel P. Wilder and Gordon S. Hubbard impleaded with Jacob Russell and William B. Ogden for the sum of Fifty Thousand Dollars Debt and Three Thousand nine hundred and Seventy four Dollars and ninty three cents Damages (\$53,974.93) the debt to be discharged upon the payment of the damages, and costs of suit: from which Judgment the said Nathaniel P. Wilder and Gordon S. Hubbard impleaded &c as aforesaid have taken an appeal to the Supreme Court of the State of Illinois.

Now therefore if the said Nathaniel P. Wilder and Gordon S. Hubbard impleaded as aforesaid shall duly prosecute their said appeal, and shall pay the Judgment, costs interest and damages in case the said Judgment shall be affirmed then the above obligation to be void, otherwise to remain in full force and virtue,

N. P. Wilder Seal B

G. S. Hubbard Seal  
J. W. Chickering Seal

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of the Amended declaration, pleas, replications or demurrers, bill of exceptions, appeal bond <sup>proceedings of record</sup> in a certain cause lately pending in said Court on the Common Law side thereof, wherein The City of Chicago <sup>was</sup> Plaintiff and Nathaniel P. Wilder & Susan B. Hubbard Quinn <sup>were</sup> Defendants.

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court at Chicago, this Thirteenth day of April A. D. 1861.

Wm L. Church Clerk.

Recd for Recd \$14.50 Paid by J. P. Peterson  
W. L. C. Clerk



Supreme Court of the State of Illinois  
Third Court Session

April Term 1861

Ruthven Plunkett &  
Gordon S. Hubbard } Appellants  
Impleaded with

Jacob Russell & William B. Ogden

The City of Chicago, Appellee

By J. M. Clark, their Attorney <sup>and one come the said</sup>  
Appellants, and say that there is manifest error  
in the record and proceedings aforesaid, and also  
in the giving of the judgment aforesaid, in this, to-wit:

1. The Court below erred in sustaining the  
demurrer of the Plaintiff below to the 6<sup>th</sup> and 8<sup>th</sup>  
pleas of the defendants below.

2. The Court erred in rendering judgment ~~for~~  
against the defendants (Plunkett and Hubbard, impleaded  
to for \$50,000 dollars and in assessing the  
damages at \$3944.93.

3. The judgment of the Court below was contrary  
to the law and the evidence in the case.

H. The judgment of the Court below should have  
been for the defendants below on the demurrer to the  
6<sup>th</sup> and 8<sup>th</sup> pleas and on the issues made in the  
Cause

And the said appellants pray that the judgment  
aforesaid, for the errors aforesaid and other errors  
in the record and proceedings aforesaid may be  
reversed, annulled and altogether held for naught and  
that they may be restored to all things which they  
have lost by occasion of the said judgment &

J. H. Clarkson  
Attorney for Appellants.

And the said City of Chicago appeals  
comes and says that there is no error in  
the record and proceedings and in the giving  
the judgment aforesaid as is above alleged  
nor in any other wise, wherefore the said  
City of Chicago prays that the judgment  
aforesaid of the said Court below may in  
all things be affirmed.

John A. Leitch  
Attorney for Appellees



Circuit Court Cook Co.

City of Chicago  
286 v 285-113  
H. P. Melton Estate

Record

Filed April 18, 1861

L. Leland  
Clerk