

No. 13501

Supreme Court of Illinois

Bristol.

vs.

City of Chicago.

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Supreme Court of Illinois
Third Grand Division
April Term 1860.

Richard Bristol
v
The City of Chicago } Error to look Court
Common Pleas.

William B. Ogden et al
v s
The City of Chicago } Same.

At the last term of this court
the judgments in each of these cases
was affirmed - upon ~~the same~~
grounds - which are stated in the
opinions as reported in 22 Ill R
587-592.

The plaintiffs in error respectively
petition the Court for a rehearing
upon the following grounds.

I

The decision was put upon a
ground that was not raised
nor discussed - and they therefore

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desire to be heard upon the very important principle involved in the cases - as they think that the decision is wholly sustained by authority - but are the contrary directly at war with every case upon the subject.

II

The cases are put upon judicial blindness to all the statements and facts in the record, except such as the City Charter required the Collector to report - and that the charter did not require a report of the assessment Roll. The substance of the decision is that the Court acquires jurisdiction to render a specific judgment for the sale of any man's land for an alleged indebtedness or liability - simply upon a Report of the City Collector that it is chargeable for a certain "Amount of taxes, assessments, interest & Costs, respectively due thereon."

(3)

This to me is a most startling doctrine,
and here announced for the first
time

The great principle which regulates
nated powers, such as this is,
was very fully & distinctly announced
and settled in *Stead v. Mrs. v. Bourse*
4 Cranch R. 403 (2 Pet. Cond. R. 151):
and a good collection of authorities
on the subject may be seen in
Blackwell on Tax Titles, Chap. 2.
pp 43 to 83.

The second great principle applic-
able to these cases is contained
in the doctrine which requires
the record to contain upon its
face all the facts necessary
to give and show jurisdiction
in inferior courts, and courts of
limited jurisdiction - and also in
Superior Courts, exercising ^{limited}
or special jurisdiction

Striker v. Kelly 7 Hill R. 17
People v. Roeben 7 Hill R. 41.
Harvey v. Montgomery Breese R. 188
County of Mermillian v. Knight 1 Scam 97

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Robinson v Harlan 1 Scam 237
Piggot v Ramsey 1 Scam 147
Evans v Rice 2 Scam 468
Wells v Mason et al 4 Scam R 89
Laswell v Hickox et al 4 Scam 182
Beaubien v Pinkshoff 2 Scam 272
Propst v Meadows 13 Ills 169
Sogef Lemobert v Hammel 3 Harrison 79
Crizdon Lessee v Astor 2 How U.S R 319
Hatcher et al v Powell et al 6 Wheat 119
Rule's Lessee v Parker 1 Cooke R 365
Donaldson v Hagen 1 Hump R 423

In summary proceedings where a court exercises an extraordinary power under a special statute which prescribes its course, that course ought to be strictly pursued, and the facts which give jurisdiction ought to appear on the face of the record. Otherwise the proceedings are not merely voidable but absolutely void, as being Coram non iudice.

Hatcher et al v Powell et al 6 Wheat 119
Rule's Lessee v Parker 1 Cooke 365

(5)

Where the Statute prescribes a particular mode of service it is essential to the jurisdiction that it be made to appear as required

East v. East v. Rose v. East 17 Ills 276

Thus in a proceeding by an administrator to sell real estate of the intestate, he must pursue the mode pointed out by the Statute for bringing the parties before the Court, or the Court will have no jurisdiction

Wardman v. East v. Shorth. 18 Ills 59.

So the ~~in~~ jurisdiction of the Circuit Court, in Appeal cases depends upon the original jurisdiction of the Justice of the Peace - and that must appear

Kennedy v. Bunick 21 Ills 597.

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Bergen Turnpike Co v State 1 Dutcher 554
Hyde & Rose Plank Road Co v Parker 22 Barb 323
Keenan v Commissioners Court of Dallas Co
26 Ala R 568
Hester v Glazener 27 Ala R 391
Owen v Jordan 27 Ala R 608

In Hester v Glazener 27 Ala R 391
it was held that although every rea-
sonable intendment is to be made
in favor of the regularity of pro-
ceedings of Courts of general
jurisdiction; yet this rule
does not apply to their summary
proceedings under special stat-
utory powers, in derogation of
the common law, as to which
they are placed on the same
footing as Courts of limited &
special jurisdiction, and must
strictly pursue the statute

And so again it was held
in Owen v Jordan 27 Ala R 608
that where a special & limited
jurisdiction is conferred by statute,
on either an individual, or a
court, the records must affirma-

(8)

truly show a compliance with all the requisitions of the statute

Jurisdiction must appear on the face of the proceedings of an inferior tribunal. No presumption is to be made in its favor.

Stranahan v Inge 5 Ind R 157.
Bostwick v Perkins 4 Ga R 47.
Perkins v Attaway 14 Ga R 27.
Commissioners' Court of Talladega
v Thompson 18 Ala R 694.

Every fact necessary to give the Court jurisdiction in a summary proceeding, must appear of record, to give the judgment validity; if they do not appear the judgment is coram non jure, and void.

Hamilton v Burren 3 Serg R 355.
Barry v Patterson 3 Humph 313.

(9)

And although a Court may acquire jurisdiction of parties by consent, yet a Court of Special, and limited jurisdiction, cannot, as such Court, acquire jurisdiction of a subject-matter not conferred by the law of its creation

Gilliland v Sellers 2 Ohio N.S. 223
Raney v McRae 14 Ga R 589.
The Central Bank of Ga v Gibson 11 Ga R 453
Fields v Walker 23 Ala R 155
The State v Bonney 34 Maine R 223
Winn v Greere 19 Ala R 171
The State v Caroline 20 Ala R 19
Jeffries v Harbor 20 Ala R 387.
Chapman v Morgan 2 Greene Iowa R 374

In Cases of Special Statutory Authority, a tribunal or officer, must show that an act done comes within their limited jurisdiction; for if this be not shown, it will be presumed to be with-
out the jurisdiction

Perrine v Starr 2 New Jersey R 356
In re v Cuthbertson County 2 Eng R 159.

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Such are the principles which govern this class of cases

The act conferring jurisdiction upon the Superior Court, forms no exception to the general rule applied to all such cases.

The act has substituted, the report of the Collector, in place of a declaration or bill - and authorized an issue to be made in a summary way without pleadings - or in case no defence be made then judgment shall be pronounced as by default

The Charter requires the Collector to report the "Amount of taxes, assessments, interest & costs, respectively due" ~~thereon~~ on the lands

Now the error into which I think the Court has fallen is in treating this section as provision as affording proof of all the facts that must exist to give the Court jurisdiction - and as also requiring them to render judgment upon such mere reports

(11)

The provision of the act which authorizes the court to render a judgment if no defence be interposed - does not vary, alter or change the common law - which would in all cases authorize a judgment upon default, if the Court had jurisdiction of the parties and subject-matter.

No one ever dreamed that the power to proceed upon default, created & conferred jurisdiction over a subject-matter, not otherwise within the jurisdiction.

Now the act never was intended to do more than prescribe the mode of bringing suit, & making service.

As well might the Court take the bill or petition for Mechanic's lien, for partition, and for dower to become proof as well as pleading - and in Mechanic's lien cases, become additionally the source & evidence of jurisdiction, without requiring more on default.

But although default

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be made in these special jurisdictions, yet they require the petitioner to show upon its face all the facts which confer jurisdiction to declare a specific lien upon the land, and to make an order to sell it.

Now I had always understood the principle of law applicable to naked powers, as much stricter than in any other cases. Yet according to the rule as applied here, not only is that rule reversed, but by construction, & not by express provision of the act, the court indulges in a presumption of the existence of the necessary facts & acts to confer jurisdiction by a compliance with the law.

No case has ever indulged in this degree of laxity - and much less should the court adopt it in cases of these naked powers for taxes and assessments.

(13)

Collector's Warrants have invariably been transcripts from the Assessment Roll - or Tax Assessment. These Warrants have invariably been returned & exhibited to the Court - or a full copy.

Now in practice these have been requested & treated as the Rolls. But no one ever conceived the idea that the Collector was entitled to have a judgment without making some sort of proof that there had been an Assessment or levy of Taxes made.

These cases announced that doctrine for the first time; and I think so long a rule would not be accepted as a sound construction of any statute prescribing a private remedy between men - and much less of public officers.

I have said the Court arrived at this as the legislative meaning, by construction

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I would go further & say that had the act expressly authorized the Court to accept and act upon such a report as evidence of the facts which confer the jurisdiction, and authorize the condemnation of one's land, that this Court would denounce such a law as unconstitutional and against natural rights.

The legislature may declare that a tax or assessment duly levied shall become a lien upon the land and personally - but it has no power to authorize a public officer to create such a lien by his mere report - nor to declare such report a lien on the citizen's land.

They do not possess the power to dispense with proof of demands & liens on our property - nor to substitute the claim for the evidence.

The Court ought to recollect

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that there is, and ought to be a difference between these cases, and suits where a personal summons is served upon the person alleged to be indebted. In this case a default may well be deemed an admission of the debt claimed in the declaration.

But here, the proceeding is a specific one in rem for the enforcement of an alleged lien on the land itself, by a judgment for its sale: and that too upon a constructive notice to the owner, by a ~~personal~~ publication of notice merely. The owner may happen to know of the proceeding as a matter of fact, or he may not.

His failure to make objections, is not therefore to be construed into an admission of anything.

It is left therefore for the Collector to make out his case, by showing the existence of a lien, as alleged.

(16)

For that is all his report amounts to, and that there is no personally to be found to buy on for it.

The Court in ~~the~~^{their} opinion studiously close their eyes, and exclude all facts in the report, not required to be stated. To this I make no objection. But they go on, & infer, or assume from the facts required to be set forth, the existence of the main & essential facts upon which the power & jurisdiction of the Court depend. To this I most strenuously object.

No presumptions in favor of this jurisdiction can be indulged.

If there ~~is~~^{has been} a legal Assessment made within two years previous then there is a lien — if there is a lien, then the Court may pronounce a judgment. But on the contrary, if no Assessment was made — or if in making it, the Council exceeded their Authority in the mode or amount, or if two years have elapsed since its confirmation (Hamilton)

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Stat v The city of Chicago. 22 Ills R. 580. Bristol v Same 22 Ills R 587 or if the assessment was for deepening the River (Wright Stat v The city of Chicago 20 Ills R 252) in neither case is there a lien on the land or lot - and the Court below had no jurisdiction

How is it logically or legally to be inferred that any of these facts do or do not exist, from the existence of the facts required to be set forth in the report?

Every word in the report may be true, and yet there may be no lien - and if there be no lien then there is no jurisdiction in this form of proceeding

It may be true that an assessment has been made, and that the Collector can find no personal property of the owner of the lots assessed - yet it may also be true that that assessment was made for deepening the River or that more than three per cent has been assessed - or that

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it was confirmed more than two years before the application - It may be true that due notice was not given - and in each and all these cases, the jurisdiction fails, although all the facts set forth in the report be true. Unless indeed the report is to be taken as a conclusive guaranty that the collector would not ask a judgment in any case in which he was not entitled to it.

I respectfully suggest, that while the rule laid down here may cover the negligence of public officers, and abridge their labor & responsibility, yet such a departure from the old land-marks of protection to private property - will be attended with infinitely greater mischiefs than to leave the old rule still to exact proof of a strict compliance with the law.

Walter D. Seates
of counsel for Plaintiffs in error.

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R. C. Bristol & City

Wm B. Ogden & Tal & Same

Petition for Re-
hearing

Bristol

Chicago

13501

1860

W. B. Scates
for Plffs in Error